

GHOI FOODS PRIVATE LIMITED VS UOI
Writ Petition No. 3131/2012

07/05/2012

Shri K. N. Gupta, Senior Advocate with Shri S.P. Jain & Shri Vivek Jain, Advocates for the petitioner- Company.

Shri Ankur Mody, Asst. Solicitor General for the respondent No.1- Union of India.

Shri Raghvendra Dixit, Government Advocate for the respondents No. 2 to 4- State.

Heard.

The petitioner has filed this petition with the following reliefs:-

- “(a) That, a writ of certiorari or any other appropriate writ, order or direction may kindly be issued for quashing the impugned order/communication dated 31-03-2012 (Annexure P/ 1) issued by the respondent no.3, with direction to the respondents in particular to the respondents No. 2, 3 and 4 not to create any interference or obstruction in the usual functioning of the petitioner – company in respect of production, storing and selling of commodity “ Gutka”
- (b) That, any other such orders or directions which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case, be also passed along-with the costs of the writ petition.”

The petitioner is a Private Limited Company incorporated under the Companies Act, 1956. As per the petitioner- Company, it is engaged in production and sale of "Gutka" in the State of Madhya Pradesh under the brand name “Puja”, “Heera” and “Pan Fit” for the last fifteen years. The petitioner- Company challenged the order dated 31-03-2012 (Annexure P/1) issued by the Commissioner, Food Safety, Bhopal (MP). It is mentioned in the order that in accordance with the provisions of Food Safety and Standards (Prohibition and Restrictions of Sales), Regulations, 2011, the production of any food products in which Tobacco and nicotine used as ingredients, are prohibited. Hence, the authorities shall take appropriate steps that the food products contains Tobacco and nicotine as “Gutka” shall not be permitted to manufacture or sale in the areas and no licence can be issued in this regard. It is submitted that the impugned order Annexure

P/1 is illegal, arbitrary and without jurisdiction and in accordance with the provisions of Act of 2006, named as "Food Safety and Standard Act, 2006" and another Act of 2003, named as "The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003", the appropriate authority has no power and jurisdiction to ban sale and use of "Gutka". In support of his contentions, learned Senior Counsel appearing on behalf of petitioner, relied on the following judgment:-

**(I) Godawat Pan Masala Products I.P. Ltd.
and Another Vs. Union of India and Others
[(2004) 7 SCC 68]**

The Ministry of Health and Family Welfare Department [Food Safety and Standards Authority of India] vide notification dated 1st August, 2011, in exercise of the powers conferred to it by clause (1) of subsection (2) of Section 92 read with Section 26 of Food Safety and Standards Act, 2006 (34 of 2006), made the regulations, named as "Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011". Regulation 2.3.4 is as under:-

"2.3.4: Product not to contain any substance which may be injurious to health. Tobacco and nicotine shall not be used as ingredients in any food products." From the aforesaid regulation, it is clear that no food product shall contain any substance of Tobacco and nicotine.

In our opinion, the judgment relied upon by learned Senior Counsel appearing on behalf of petitioner is not applicable in the present case because this Court has no jurisdiction to entertain the petition filed by the petitioner in regard to vires of statutory provision and that can only be challenged at the Mean Seat. In this view of the matter, in our opinion, the authority has rightly issued the order dated 31-03-2010 (Annexure P/1). If there is any grievance of the petitioner, the petitioner can challenge the vires of Regulations, 2011 because it is a statutory provision framed under the provisions of Act of 2006. Hence, we do not find any merit in this petition. It is hereby dismissed.

(S. K. Gangele)
Judge

(Brij Kishore Dube)
Judge