MANU/SC/1166/1997

Equivalent Citation: JT1997(5)SC39, 1997(3)SCALE681, (1997)4SCC739, [1997]3SCR861

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 3000 of 1997

Decided On: 11.04.1997

Appellants: **Laxmikant**
Vs.
Respondent: **Union of India (UOI) and Ors.**

For State of M.P.:

Hon'ble Judges:
K. Ramaswamy and D.P. Wadhwa, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: R.F. Nariman, Rajiv S. Ray and Rakesh K. Sharma, Advs

For Respondents/Defendant: P.P. Malhotra, Anubha Jain, M.P. Shorawala and Anil Katiyar, Advs. for Unior of India, K.N. Shukla, Prashant Kumar and S. K. Agnihotri, Advs. for State

Subject: Civil

Catch Words

Mentioned IN

Acts/Rules/Orders:
Drugs and Cosmetics Act, 1940 - Sections 33D and 33EED; Constitution of India - Article 19(1) and 19(6)

Prior History:
Appeal From the Judgment and Order dated 23-11-1995 of the Madhya Pradesh High Court in W.P. No. 1456 of 1995

Case **Note:**

Civil - ban of tobacco - Article 19 of Constitution of India - Government announced total ban on use of tobacco - appellant using tobacco in preparation of tooth paste in very small amount - Government imposed ban on use of tobacco as per international convention - ban imposed for purpose of fulfilling of public interest - ban rightly imposed.

ORDER

1. Leave granted. We have heard counsel on both sides.

2. This appeal, by special leave, arises from the judgment passed by the Madhya Pradesh High Court at Jabalpur Bench, on November 23, 1995.

3. The appellant is a manufacturer of tooth-paste, using tobacco as one of the ingredients therein. The Government exercising the power under Section 33-DDE of the Drugs and Cosmetics Act, 1940 (for short, the "Act") issued notification as under :

MINISTRY OF HEALTH AND FAMILY WELFARE
(DEPARTMENT OF HEALTH)

NOTIFICATION

New Delhi, the 30th April, 1992.

GSR-443(E), Whereas, the Central Government is satisfied on the basis of evidence and other material before it that the use of tobacco in tooth-pastes/tooth-powders is likely to involve risk to human beings and that is necessary and expedient in the public interest so to do;

Now, therefore, in exercise of powders conferred by Section 33(EED) of the Drugs and cosmetics Act, 1940 (23 of 1949, the Central Government hereby prohibit the manufacture and scale of all Ayurvedic Drugs licensed as tooth-pastes/tooth-powders containing tobacco.

(No. X. 11014/3/91-DM-S & PFA)
H.S. Lamba, It. Secy.

4. Calling that notification in question, the appellant filed a writ petition in the High Court. The High Court has upheld the notification and dismissed the same. Thus this appeal, by special leave.

5. When the matter came up before this Court for admission on 30.7.1996, this Court noted as under:

The petitioner has impugned the notification of the Govt. of India, Ministry of Health and Family Welfare dated 30.4.92 prohibiting the use of tobacco in the manufacture and sale of all Ayurvedic drugs including tooth-powder and tooth-paste containing tobacco. The High Court on elaborate consideration upheld the bar prohibiting the use of tobacco. Shri R.F. Nariman, learned Counsel for the petitioner, contends that what was prohibited was use of 50% and more of tobacco in the preparation of the Ayurvedic drugs including tooth-paste and tooth-powder containing tobacco. The petitioner is using only 4% tobacco. If there is evidence or reports to indicate that even 4% tobacco also would cause hazardous effects including cancerous effects, the petitioner would not mind to close the manufacturing of tooth-paste and tooth-powder. Issue notice on this limited question.

6. On that basis, notice was issued. Counter affidavit has been filed by the respondents stating that the view that there should be total ban of use of tobacco in the preparation of tooth-paste was taken by the Government in consultation with the Expert Committee constituted in that behalf and that, therefore, the notification is valid in law. Shri R.F. Nariman, learned senior counsel appearing for the appellant, contended that in view of the divergent views expressed by the members of the Board, total ban is not correct proposition; the permitted use of 4% would not be injurious to the health of the user of tooth-paste and that, therefore, the view taken is not factually correct in law. We find no force in the contention.

7. It is an admitted position that the Expert Body of Ayurvedic, Siddha and Unani Drugs Technical Advisory Board was constituted under Section 33-EED of the Act. The Board has gone into the question and opined as under:

The Board has in depth discussed the side effects of Nicotine compared to its advantages as a drug in tooth-powder and tooth paste. Since there are many safe antiseptics available, the Board unanimously decided that there is no rationality in using tobacco in the tooth-powder/pastes and approved the action taken by the Government, in public interest in prohibiting tobacco in Ayurvedic Drugs.

8. It is true that various authorities have expressed their views in this behalf. But on consideration of various views the Committee ultimately decided thus:

Considering the various view points, the Committee decided that manufacturers should be told that use of tooth-pastes or powders containing tobacco is fraught with risk of cancer and dissuaded from marketing such products. In the case of Orissa, the Chairman agreed to a communication being sent by the D.G.H.S. to the Director of Medical Education and Training to discourage the use of Gudakhu in Orissa, Copies of this letter would be endorsed to the Director of Medical and Health Services in other States and also to the Members of the Committee.

9. Similar view was also expressed at an International Seminar held on 27th and 28th July, 1991 at All India Institute of Medical Sciences, New Delhi and the Conference also made similar recommendations which read thus:

The Conference recognized tobacco as major public health hazard and also noted that no further research was needed to start tobacco control activities, as sufficient scientific evidence is already available about the ill-effects on health due to use of tobacco besides its being addictive.

10. Therefore, the International Conference held in collaboration with the World Health Organisation was of the opinion that the ban on use of tobacco in tooth-paste and tooth-powder should totally be imposed since it is prone to cancer. Under these circumstances, the view taken by the Government of India imposing total prohibition on the use of tobacco in the preparation of tooth-powder and tooth-paste is well justified in the public interest covered by Article 19(6) of the Constitution, though it offends the right to carry on trade guaranteed under Article 19(1) of the Constitution. The imposition of total ban is in the public interest.

11. The appeal is accordingly dismissed. No. costs.