

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 16th May, 2012

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W.P.(C) 7540/2010

WORLD LUNG FOUNDATION SOUTH ASIA Petitioner

Through: Mr. Santosh Kumar, Adv.

Versus

MINISTRY OF HEALTH & FAMILY WELFARE... Respondent

Through: Mr. A.S. Chandhiok, ASG with Mr. Jatan Singh & Mr. Gurpreet Singh, Advs.

Mr. N. Waziri, Standing Counsel for GNCTD.

Mr. Mohinder J.S. Rupal, Adv. for University of Delhi.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE

1. This Public Interest Litigation besides seeking enforcement of the provisions of Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 prohibiting sale of tobacco products within a radius of 100 yds. of an educational institutions, also seeks certain other directions, all aimed at reducing the harms from consumption of tobacco products. Cognizance of the petition was taken by issuing notice on 10th November, 2010. Direction was also issued to the respondent no.4

Commissioner of Police, Delhi to ensure such prohibition.

2. On 2nd February, 2011 the following order was passed:-

“Heard Mr. Santosh Kumar, learned counsel for the petitioner and Mr. Anjum Javed, learned counsel for respondent Nos. 2 to 4. It is submitted by Mr. Santosh Kumar that the present case in the real sense of the term involves public interest inasmuch as despite the Tobacco Act, 2003, the tobacco is being sold within the prohibited area from the premises where the schools are situated. It is contended by him that due to the existence of the said shops, the minor, young and adolescent children fall prey to the temptation of smoking and suffer from numerous diseases. That apart, submits learned counsel that the degradation in the social ethos occurs when the minor children are not protected by the thinking persons of the society. Learned counsel would go to the extent of saying that though he had made complaint about the existence of 28 tobacco shops and police had closed some of them, yet they have again revived their activities which in fact gives rise to an atmosphere of incurability and the law and order situation in this regard gets paralysed forcing the likes of the petitioner to get into a legal battle to save the society. It is urged by him that the petitioner, with the help of others, has carried out a survey throughout Delhi and found that there are more than 323 outlets where the tobacco is being sold affecting students of 1023 recognized schools which can be called a catastrophic situation that can splinter the spine of the future of the nation. Mr. Santosh Kumar, learned counsel would further submit that the activities are going on under the very nose of the police officers; otherwise such an activity at such a large scale was impossible to be carried by the persons involved.

Mr. Anjum Javed, learned counsel for the State would only say that they have taken action and they will take further action. Though the said statement has some meaning in the world of theoretical application of law, yet the law has to be applied in a proper perspective with clarity and a requisite mindset so that the people must know that if they violate the law,

they will be punished by the law. The blame game or passing of the responsibility cannot be tolerated.

In view of the aforesaid, while we like the respondent-State to file the counter affidavit to the allegations made within a period of four weeks, we would like the Commissioner of Police, Delhi to take appropriate steps in this regard so that the tobacco selling in these kind of centres, outlets, kiosks or for that matter thelas are absolutely stopped within the prohibited area. The Commissioner of Police, Delhi shall constitute a specialized task force who is committed to the cause within three days from today which shall take action taking note of the places mentioned in the rejoinder affidavit and also see to it that these kind of clandestine activities are not carried on. Any police officer of any rank giving any kind of protection to any such illegal tobacco sellers shall be departmentally proceeded against so that the police authorities must also realize that they cannot be complacent and silent spectator when law is broken with impunity. Action taken must be visible to the society and the civil society must know and has a right to know that appropriate action has been taken by the police. It is the duty of the police to satisfy the society and the collective at large that the law and order situation really exists and is not a show of a red carrot to the citizenry.

Let the matter be listed on 30th March, 2011.

Order dasti under the signatures of the Court Master.”

3. Thereafter the matter was monitored from time to time and various directions were issued. It is not necessary to recapitulate all these directions, however, following directions on 30th March, 2011 needs to be noted:-

“(a) The Commissioner shall collect the data pertaining to the actions taken by the task force constituted by him once a week and may depute an officer to analyze the same and thereafter proceed accordingly.

- (b) If it is required to have such more task forces, he shall constitute the same as consumption of tobacco by the young students is not only hazardous to health but also create an anti-social atmosphere.
- (c) The Ministry of Health and Family Welfare, the respondent no.1 and the Chief Secretary of GNCTD shall also nominate an officer each to work in harmony and shall hold awareness camps with the help of accredited NGOs so that the students can be apprised of the numerous deceases which one can suffer due to smoking/chewing tobacco in youth and the seeds of the disease once planted are not easily eradicated even after one abandons smoking/chewing. This awareness is necessitous as some people have an idea that one can smoke/chew for some time and if he leaves thereafter, he will not suffer from the disease without realizing its ill effects. Further both active smoking and passive smoking have the potentiality to cause more than 84 diseases which have been identified.
- (d) The Nodal Officers, who have been appointed by the colleges under the Delhi University and who are going to be appointed by the colleges are directed hereinbefore, should also participate in awareness campaigns and further perform the role of loco paraentis for the young and adolescent students, as wthey they leave home and come to school and colleges, they need their guidance.
- (e) The Nodal Officers, if they come to know about any particular shop or outlet or any person is selling tobacco products as defined under the Tobacco Act, will immediately intimate the office of the Deputy Commissioner of Police, who has crated a cell, which shall take up the matter in quiet promptitude. When we say 'quiet promptitude' we do not mean the Deputy Commissioner shall act directly but may issue instructions to the concerned SHOs to take appropriate action The very purpose is to take action against the people who do not obey the law and harbor pervert philosophy that individual interest and growth

matter more than the national health. When we say so, it is not to be construed that they cannot carry on their business in respect of other items but in the said shops they cannot sell tobacco products. Needless to say, the action can be both under the Tobacco Act and 1996 Act.

- (f) The Chief Secretary of GNCTD and the respondent no.1 shall work in harmony and get such clippings telecast and further project it in the audio and print media that any violation of the law shall be visited with consequences under the Acts. Further the nature of physical and mental disorders which can occur due to consumption of tobacco shall be disseminated. The aforesaid dissemination of information shall be done within a period of four weeks from today.
- (g) The petitioner is at liberty to give any further suggestions by way of writing to Mr. Waziri as well as to Mr. Chandhiok.”

4. In the hearing that took place on 18th May, 2011, it was observed that the aforesaid directions be carried out in letter and spirit by the authorities concerned and affidavits to that extent be filed by the competent authority by the next date. Statement of learned counsel for the University was also recorded to the effect that colleges had appointed nodal officers and appropriate steps were being taken.

5. Pursuant to these directions, respondents vide their affidavits highlighted the anti tobacco activities in or around various colleges of Delhi University. On 21st September, 2011, this Court took note of the fact that the measures taken by the respondents had been successful and there has been reduction from 63% to 11% in sale of tobacco products in the prohibited areas.

6. The counsel for the petitioner today states that as per the survey conducted by the petitioner, as on 24th January, 2012, there was not a single tobacco products selling outlet within the prohibited distance from any educational institution in Delhi. He thus states that the purpose for which this petition was filed has been achieved.

7. In order to ensure that this position remains and there is no recurrence of sale of tobacco products in or around educational institutions, learned counsel for the petitioner has given certain suggestions. We have gone through the same. Some of these suggestions are for acceptance and in the light thereof following directions are given:-

- (i) The Delhi Police is directed to from time to time and at least every three months carry out comprehensive inspections/survey to detect any tobacco products selling outlet within a radius of 100 yds. of any educational institution in Delhi and if finds any such outlet, to immediately ensure closure/removal thereof and to take action in accordance with law against the violators. A quarterly report be submitted to this Court.
- (ii) The Commissioner of Police to also undertake the necessary measures for sensitization of the police force, of harms of consumption of tobacco and tobacco products.

- (iii) The Commissioner of Police to also consider making all police stations in Delhi tobacco free; such a measure is expected to strengthen the commitment of the police force to implementation of various provisions of COTPA 2003 and in promoting tobacco free environment.

8. The counsel for the petitioner further states that the petitioner remains willing to render all assistance as may be deemed appropriate not only by the Delhi Police but also by Delhi University or by any other educational institution or any other agency in this regard.

The petition is accordingly disposed of.

SD/-
ACTING CHIEF JUSTICE

SD/-
RAJIV SAHAI ENDLAW, J

MAY 16, 2012

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