

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10297 of 2012**

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Lal Babu Yadav S/O Indradeo Prasad Yadav R/O Shyam Enterprises,  
Pirbahore, P.S.-Pirbahore, Distt-Patna

.... .... Petitioner

Versus

1. The State Of Bihar through Principal Secretary, Department Of Health  
New Secretariat, Patna
2. The Commissioner of Food Safety cum Secretary, Health Bihar, Patna
3. The Secretary, Department Of Health New Secretariat, Patna
4. The Secretary, Department Of Commercial Taxes Bihar, Patna

.... .... Respondents

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**Appearance :**

For the Petitioner : M/s Chakrapani, Dipak Kumar & Madhuresh  
Singh

For the Respondents : M/s Pushkar Narain Shahi, AAG-14 &  
Mritunjay Kumar, AC to AAG-14

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**CORAM: HONOURABLE MR. JUSTICE V.N. SINHA**  
**ORAL ORDER**

3      10-07-2012                      Heard learned counsel for the petitioner and Sri  
Pushkar Narain Shahi, learned AAG-14 for the State.

2. Petitioner is a distributor of Paan Masala including Gutka and Jarda. He has filed this writ petition questioning the validity of the order bearing Memo No. 29 dated 30.5.2012, Annexure-1 to the writ petition whereunder Respondent-Commissioner of Food Safety exercising powers under Food Safety and Standards Act, 2006 and Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 prohibited manufacture, storage, sale or distribution of Gutka and Paan Masala containing Tobacco or

nicotine as ingredients within the State of Bihar.

3. Aforesaid challenge is made on the ground that the impugned order dated 30.5.2012, Annexure-1 is contrary to the provisions of Sections 4 to 6 of the Tobacco Act i.e. Act 34 of 2003 which prohibit sale of tobacco products to a child below 18 years of age. The impugned order, however, provides for complete prohibition of manufacture, storage and sale or distribution of Gutka and Paan Masala containing tobacco or nicotine as ingredient in the entire State of Bihar without confining the prohibition on sale or distribution to a child below 18 years of age. In this connection, learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of Godawat Pan Masala Products India Pvt. Ltd. and another Vrs. Union of India and others, reported in (2004) 7 Supreme Court Cases 68, paragraphs 35 and 41. Perusal of the judgment in the case of Godawat Pan Masala Products India Pvt. Ltd. & another (supra) would indicate that thereunder Hon'ble Supreme Court ruled that manufacture, sale or distribution of tobacco and tobacco products including Gutka and Paan Masala can be regulated with reference to the Tobacco Act i.e. Act 34 of 2003 and the Prevention of Food




Adulteration Act, 1954 shall have no application in regulating the tobacco and tobacco products. Reliance in this connection is placed on paragraph 41 of the judgment in the case of Godawat Pan Masala Products India Pvt. Ltd. & another (supra), which is quoted below for ready reference:

“It is submitted that a reading of Act 34 of 2003 clearly suggests that it is a special law intended to deal with tobacco and its product. The prevention of Food Adulteration Act, 1954 is a general law dealing with adulteration of food articles and a tobacco product is incidentally referred to in the said law in the context of prevention of adulteration. In case of conflict between a special law and a general law, even if both are enacted by the same legislative authority, the special law must displace the general law to the extent of inconsistency. The operation of the maxim *generalia specialibus non derogant* has been approved and applied by this Court in such situations.”

4. Learned counsel for the petitioner next submitted that the impugned order dated 30.5.2012,





Annexure-1 is further discriminatory, bad infracting Article 14 of the Constitution of India as restriction imposed thereunder is only confined to Gutka and Paan Masala containing tobacco or nicotine as ingredient but other tobacco products equally harmful for human consumption has not been included in the impugned prohibition order. Learned counsel for the petitioner further submitted that ban imposed is only for a period of one year, as such, purpose for such ban is not understandable.

5. Counsel for the State in opposition submitted that the provisions of the Act 34 of 2006 has an overriding effect on any other law, may be enacted by the Parliament or the State Legislature. In this connection, he referred to Section 89 of the Act which provides for a notwithstanding clause and submitted that the provisions of Act 34 of 2006 will prevail over anything inconsistent therewith in any other law for the time being in force. He further pointed out that such notwithstanding clause was not incorporated in the Prevention of Food Adulteration Act, 1954 which was considered by the Supreme Court along with the provisions of Act 34 of 2003 in the judgment rendered in the case of Godawat Pan Masala Products India Pvt. Ltd. & another

(supra) and as there was no notwithstanding clause considered in the judgment rendered in the case of Godawat Pan Masala Products India Pvt. Ltd. & another (supra), the said judgment will have no application to the present case which is to be considered in the light of notwithstanding clause incorporated in Section 89 of the Act 34 of 2006.

6. It is thus quite evident that the Commissioner of Food Safety has issued the impugned order dated 30.5.2012, Annexure-1 with reference to the provisions of Act 34 of 2006 and Regulations, 2011 framed thereunder providing for total ban on manufacture, storage, sale or distribution of Gutka and Paan Masala containing tobacco or nicotine as ingredients within the State of Bihar. It was within the discretion of the Commissioner of Food Safety to choose the tobacco food products for being brought under the purview of ban on manufacture, storage and sale or distribution and he having exercised his power confining the ban to Gutka and Paan Masala containing tobacco or nicotine as ingredient, no error can be found in exercise of power by the Commissioner of Food Safety under Section 92 read with Section 26 of the Act 34 of 2006 and Regulation 2.3.4 of the Restrictions, 2011 providing for ban on manufacture, storage,



sale or distribution of Gutka and Paan Masala containing tobacco or nicotine as ingredient under the impugned order dated 30.5.2012, Annexure-1, validity whereof, in my opinion, has to be upheld.

7. In view of my findings and observations above, I do not find any merit in the writ petition, which is dismissed.

**(V.N. Sinha, J)**

AFR  
Arjun/-

