

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 2532 OF 2015

Society for Alternative Media and Research, etc.

Vs

Ministry of National Health Services Regulations and Coordination, etc.

PETITIONER BY: M/s Muhammad Abdullah Amin, Khurram Ibrahim Baig and Syed Khawar Ameer Bukhari, Advocates.

RESPONDENTS BY: Mr Farrukh Shahzad Dall, Assistant Attorney General.
Ms. Umaimah Anwar Khan, Advocate for respondent No.7.
Mr. Hassan Idrees Mufti, Advocate for the respondent, FBR.

DATE OF DECISION: 08.10.2021.

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BABAR SATTAR, J.- Through this judgment the instant writ petition along with *W.P No. 2516 of 2015* titled *Faisal Bin Khursheed Vs Federation of Pakistan, etc.* are being decided as they involve common questions of law.

2. Through these petitions the petitioners sought enforcement of SRO No. 22(KE)/2015 and SRO No. 23(KE)/2015 (**"SROs 22 & 23 of 2015"**) and sought a direction restraining respondents from withdrawing the said SROs or issuing any notification causing delay in the enforcement of said SROs.

3. Learned counsel for the petitioners stated at the very outset that SROs 22 & 23 of 2015 stayed in the field from January 2015 to December, 2017 and they were amended by SRO No. 127(KE)/2017 dated 19.12.2017, which has reduced the required size of pictorial health warning on cigarette packs from 85% to 60%. He submitted that SRO 127 has not been challenged and does not form the subject matter of these petitions. He contended that notwithstanding SRO No. 127 of 2017 having amended SROs 22 & 23 of 2015, the petitions have not been rendered infructuous.

4. Learned counsel for the petitioners stated that the petitioners are aggrieved by lack of implementation of Rules 5(1)(a), 6 and 8(a) of the Cigarette (Printing of Warning) Rules, 2009 ("**2009 Rules**"). He submitted that through SRO No.22 of 2015, cigarette manufacturers were required to print a health warning which covered 85% of the pack, which was subsequently reduced by SRO No.127 issued in December 2017 to 50% for the year 2018 and 60% for the year 2019. The petitioners are aggrieved as SRO No.22 was not implemented even during the period in which it was in the field. The petitioners' second grievance was that under Rule 5(1)(a) of 2009 Rules, there was a requirement to rotate the picture on a cigarette every year which condition was not being complied with. He submitted that the picture which was approved through SRO No.127 of 2017 had not been changed and the failure to rotate the warning graphic every year was in breach of Rule 5(1)(a) of the 2009 Rules. He further submitted that the manner of printing of warning on cigarettes had been addressed in Rule 8(a) of 2009 Rules, which required

that the health warning should not be covered or hidden in any manner. And that such rule was not being complied with as the pictorial warning was printed on the upper end of the cigarette pack and when the cigarette pack was opened, the entire pictorial warning and picture was not apparent from the front.

5. The learned Assistant Attorney General submitted that by notification dated 06.07.2021 the Ministry of National Health Services Regulations and Coordination had reconstituted the National Specification Committee for governance of Pictorial Health Warnings on cigarette packs. And consequently, to the extent that the petitioner was aggrieved that at the time of filing of the petitions the Committee was not properly constituted, such prayer had become infructuous. He further submitted that the learned counsel for the petitioner had acknowledged that SROs 22 & 23 of 2015 have already been overridden by SRO No. 127/2017 and in view of the same, the petitions had become infructuous.

7. Learned counsel for the respondent, FBR, stated that the petitions are infructuous as the SRO No.22 & 23 of 2015 are no longer in the field. He further submitted that SRO No.127 of 2017 that has replaced SRO No. 22 of 2015 has been competently issued and has reduced the required size of the pictorial warning. He submitted that the change in size of the pictorial warning is in consequence of a policy decision reached by the Federal Government in accordance with jurisdiction vested in it and cannot be interfered with by this Court. He relied on **Mian Muhammad Aslam Vs Federation of Pakistan (PLD 2020 Islamabad 352)** for the proposition that policy matters vest within the domain of the executive and are not amenable to

judicial review. He submitted that the petitioners are seeking to move away from their initial prayer which has now become infructuous.

8. Learned counsel for respondent No.7 submitted that health warnings on cigarette pack was not a new concept. The requirement was first imposed under section 3 of the Cigarettes (Printing of Warning) Ordinance, 1979. Under section 8 of the said Ordinance authority was vested in the Federal Government to make rules and in exercise of such power the Federal Government promulgated Cigarette (Printing of Warning) Rules, 2003, which were subsequently replaced by Cigarette (Printing of Warning) Rules, 2009. That According to Cigarette (Printing of Warning) Rules, 2009, the size of health warning was to cover 40% of the cigarette pack, 30% of which was to be graphic warning and 10% textual warning. That SROs 22 & 23 of 2015 amended the size of the graphic warning increasing it from 30% to 85%. That subsequent to the prescription of 85% pictorial health warning, the Federal Government realized that the such requirement had been imposed without due process and without consultation of stakeholders and a direct effect of the same could be promotion of smuggled cigarette packets that only came with textual health warning. She submitted that consequently SROs 22 & 23 of 2015 were replaced by SRO No. 127/2017 that prescribed the size of the graphic health warning up to 60% of the cigarette pack. She submitted that the petitions had become infructuous and were not maintainable as the SROs (i.e. SROs 22 & 23 of 2015) which were sought to be enforced were not in the field, and SRO No. 127/2017 was in the field and was being

abided by. She further submitted that the petitioners' contention that the Government is under an obligation to enforce pictorial health warning of 85% is not backed by any international treaty that Pakistan is party to and further even provisions of treaties that Pakistan is party to cannot be enforced until such treaty provisions have been transformed into municipal law through promulgation of an appropriate statute. For this proposition she relied on **Societe Generale de surveillance S.A. Versus Pakistan through Secretary, Ministry of Finance Revenue Division, Islamabad (2002 SCMR 1694, Government of Punjab Vs Aamir Zahoor-ul-Haq (PLD 2016 SC 421) and Muhammad Akram Zaidi Versus W.A.P.D.A (PLD 1999 SC 1096)**. She submitted that SRO No. 127 of 2017 reflected a policy decision by the Federal Government which had fiscal ramifications as well as implications for Pakistan's external obligations and the courts in view of trichotomy of powers are loath to interfere in policy matters. She relied on **Government of Khyber Pakhtunkhwa Versus Syed Sadiq Shah (2021 SCMR 747) and Ghulam Rasool Versus Government of Pakistan through Secretary, Establishment Division Islamabad (PLD 2015 SC 6)**. With regard to requirements of rotation under rule 5 of the Rules of 2009, the learned counsel contended that such requirement was not mandatory and it was for the Federal Government to prescribe the pictorial warning that was to be used by the tobacco industry and respondent No.7 was in compliance with the pictorial warning that had been prescribed by the Federal Government.

9. In view of the averments in the petitions and the arguments of the learned counsel for the petitioners, it appears that the prayer sought by the petitioners has become infructuous given that SROs 22 & 23 of 2015 have been replaced by SRO No. 127 of 2017, which admittedly has been implemented by the Federal Government and by the tobacco industry.

10. The additional claim of the petitioner that the National Specification Committee for pictorial health warning was not lawfully constituted has also become infructuous in view of the notification issued by Ministry of Health Services Regulations and Coordination dated 06.07.2021 pursuant to which such committee has been reconstituted and there is no challenge to such constitution before this Court.

11. The contention of the learned counsel for the petitioner that respondent No.7 has not rotated the pictorial warning in accordance with rule 5 of the Rules 2009 is not a matter that has been raised in the memo of the petitions and appears to be an afterthought. In any event it is for the Federal Government to determine the nature of the pictorial warning to be published by the tobacco industry and further to prescribe how frequently such warning is to be changed. The allegation that the Federal Government has been delinquent in giving effect to the requirement to rotation was not raised in the petitions. Thus no opportunity has been afforded to the respondents to address such allegation and the issue cannot be taken up by this Court merely on the basis of arguments of the counsel. What is not denied is that the pictorial warning prescribed by the Federal

Government is currently being given effect by the respondents and on that score no breach of law is made out.

12. The third contention of the learned counsel for the petitioners that the health warning is partly printed on the cover of the pack which makes it less visible is not a justiciable objection, being too pedantic. The placement of pictorial warning over the cigarette pack is not something that this Court can rule over in its writ jurisdiction. Such decisions belong within the domain of the executive. The learned counsels for the petitioners have failed to point out any illegality in the manner in which the Federal Government is exercising its authority in such regard. The learned counsels for the petitioners have also failed to point out any breach of law or the issuance of any orders that are not backed by legal authority or otherwise suffer from legal infirmity.

13. In view of the above, there is no justiciable issue that arises from these petitions after the original prayer having become infructuous. The petitions are **dismissed** accordingly for being infructuous.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **08.11.2021.**

JUDGE