

Laxmikant

Vs

Union of India and Others

Civil Appeal No. 3000 of 1997

(K. Ramaswamy, D. P. Wadhwa JJ)

11.04.1997

ORDER

1. Leave granted. We have heard the counsel on both the sides.
2. This appeal, by special leave, arises from the judgment passed by the Madhya Pradesh High Court, Jabalpur Bench, on 23-11-1995.
3. The appellant is a manufacturer of toothpaste, using tobacco as one of the ingredients therein. The Government exercising the power under Section 33-EED 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 toothpastes/toothpowders 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 powers conferred by Section 33-EED of the Drugs and Cosmetics Act, 1940 (23 of 1949), the Central High Court in W.P. Government hereby prohibits the manufacture and sale of all Ayurvedic drugs licensed as toothpastes/toothpowders containing tobacco.

(No. X. 11014/3/91-DM-S & PFA) H. S. Lamba, Jt. 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 Government of India, Ministry of Health and Family Welfare dated 30-4-1992 prohibiting the use of tobacco in the manufacture and sale of all Ayurvedic drugs including toothpowder and toothpaste 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 toothpaste and toothpowder 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 toothpaste and toothpowder. 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 toothpaste 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 a correct proposition; the permitted use of 4% would not be injurious to the health of the user of toothpaste 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-D of the Act. The Board has gone into the question and opined as under :

"The Board has discussed in depth the side effects of nicotine compared to its advantages as a drug in toothpowder and toothpaste. Since there are many safe antiseptics available, the Board unanimously decided that there is no rationality in using tobacco in the toothpowder/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 viewpoints, the Committee decided that manufacturers should be told that use of toothpastes or powders containing tobacco is fraught with the 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 27-7-1991 and 28-7-1991 at All India Institute of Medical Sciences, New Delhi and the Conference also made similar recommendations which read thus :

"The Conference recognised 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 toothpaste and toothpowder 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 toothpowder and toothpaste 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.