

Health For Millions

v.

Union of India & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE V.
GOPALA GOWDA

Civil Appeal No. 5912-5913 Of 2013 (Special Leave Petition (Civil) No. 413-414 Of 2013) With Civil Appeal No. 5914-5915 Of 2013 (Special Leave Petition (Civil) No. 13222-13223 Of 2013) | 22-07-2013

The application for permission to file the special leave petition is allowed.

Delay condoned.

Leave granted.

These appeals are directed against orders dated 19.12.2005 and 27.03.2006 passed by the Division Bench of the Bombay High Court in Writ Petition Nos.6151 of 2005 titled Sridhar S.Kulkarni and others vs. Union of India and Writ Petition No.8763 of 2005 titled Namdeo Kamathe and others vs. Union of India.

In the writ petitions filed by them under Article 226 of the Constitution, Sridhar S.Kulkarni and Namdeo Kamathe and others challenged the constitutional validity of The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short, 'the 2003 Act') and The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004 (for short, 'the 2004 Rules') as amended by The Cigarettes and other Tobacco Products

(Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Rules, 2005 (for short, 'the 2005 Rules'). Their plea is that the 2003 Act is beyond the legislative competence of Parliament and the Rules are ultra vires the provisions of the 2003 Act.

Along with the writ petitions, Sridhar S.Kulkarni and Namdeo Kamathe and others filed applications for stay of Rules 2(c), 2(3), 4, 5(3) and 5(4) of the 2004 Rules, as amended by the 2005 Rules.

On 19.12.2005, the Division Bench of the High Court passed separate interim orders in both the cases. The order passed in Writ Petition No.6151/2005 reads as under:

"On 3rd October, 2005 while granting leave this court directed consideration of the interim relief after six weeks granting adequate time to the respondents to file reply. The respondent - Union of India was duly represented before this Court, inspite of the opportunity granted none appears today hence ad-interim relief in terms of prayer clause(d). List the matter on 10th January, 2006."

The order passed in Writ Petition No.8763/2005 is also reproduced below:

"Heard.

Rule.

In view of the fact that interim relief is granted in writ petition No. 6151 of 2005 no separate order granting interim relief is necessary since operation of the rules itself is stayed. Therefore, interim relief in same terms. Issue notice, returnable on 10th January, 2006."

On the next date of effective hearing, i.e., 27.3.2006 also no one appeared on behalf of the Union of India. Therefore, the Division Bench of the High Court passed the following order.

"In some of the connected matters service is incomplete, therefore, the petitions cannot be taken up for final hearing. In this view of the matter, the interim order granted earlier in all these petitions to continue till the final disposal of the petitions."

Subsequently, the Union of India is said to have applied for vacating the interim order but did not pursue the matter and the cases do not appear to have been listed before the High Court for hearing for the next six years. We have been informed that the petitions filed by the Union of India for transfer of the cases from Bombay High Court were dismissed by this Court.

The appellant in the first case, i.e., Health for Millions, which is a public charitable trust and has been working since 1991 for making public aware about general health problems and promotion of knowledge of products, including tobacco, affecting the health of the common man has questioned the orders passed by the High Court on the ground that the same are contrary to the settled principles of law and are highly detrimental to larger public good. It has pleaded that the 2003 Act was enacted by Parliament keeping in view the observations made by this Court in *Murli S. Deora v. Union of India* (2001) 8 SCC 765 and the rules have been framed for giving effect to the objects of the main Act. The appellant has also relied upon the judgment of this Court in *Bhavesh D. Parish v. Union of India* (2000) 5 SCC 471 and pleaded that the High Court was not at all justified in staying the operation of the rules.

The appellant in the second case, viz., Shri Viplav Sharma, is a practicing advocate and is engaged in various socio-economic and socio-political activities for the welfare of the masses. He claims to have filed several petitions in public interest for espousing the cause of the common man. He too has questioned the orders of the High Court by contending that as a result of the impugned orders the manufacturers, suppliers and distributors of tobacco and other tobacco products have been freely advertising their goods inducing the younger generation to consume them adversely affecting their health.

Shri Prashant Bhushan and Shri Sanjay R. Hegde, learned counsel appearing for the appellants argued that the impugned orders are liable to be set aside because the High Court has not assigned any reason for granting blanket stay on the operation of the statutory rules and that too without realizing that such orders will have far reaching adverse effect on the health of the people. Learned counsel also criticized the role of the Union of India in not defending public cause before the High Court.

Shri V. Shekhar, learned senior counsel appearing for the Union of India supported the cause taken up by the appellants and submitted that even though he cannot explain the absence of the advocate engaged by the Union of India to contest the writ petitions before the High Court, the Central Government is committed to implement the rules.

Learned counsel for the writ petitioners strongly supported the impugned orders by arguing that the High Court passed those orders because it was satisfied that the rules are ultra vires the provisions of the Act. He further argued that the 2003 Act is beyond the legislative competence of Parliament and is liable to be struck down.

We have considered the respective arguments and submissions and carefully perused the record. Since the matter is pending adjudication before the High Court, we do not want to express any opinion on the merits and demerits of the writ petitioner's challenge to the constitutional validity of the 2003 Act and the 2004 Rules as amended in 2005 but have no hesitation in holding that the High Court was not at all justified in passing the impugned orders ignoring the well-settled proposition of law that in matters involving challenge to the constitutionality of any legislation enacted by the Legislature and the rules framed thereunder the Courts should be extremely loath to pass an interim order. At the time of final adjudication, the Court can strike down the statute if it is found to be ultra vires the Constitution. Likewise, the rules can be quashed if the same are found to be unconstitutional or ultra vires the provisions of the Act. However, the operation of the statutory provisions cannot be stultified by granting an interim order except when the Court is fully convinced that the particular enactment or the rules are ex facie unconstitutional and the factors,

like, balance of convenience, irreparable injury and public interest are in favour of passing an interim order.

In *Bhavesh D. Parish v. Union of India* (supra), this Court considered a somewhat similar question in the context of prayer made for stay of Section 45-S of the Reserve Bank of India Act, 1934 and observed:

"Before we conclude there is another matter which we must advert to. It has been brought to our notice that Section 45-S of the Act has been challenged in various High Courts and a few of them have granted the stay of provisions of Section 45-S. When considering an application for staying the operation of a piece of legislation, and that too pertaining to economic reform or change, then the courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restraint in staying the applicability of the same. Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the legislative will should not normally be put under suspension pending such consideration. It is now well settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reform, at the interim stage, cannot be understood. The system of checks and balances has to be utilised in a balanced manner with the primary objective of accelerating economic growth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself.

While the courts should not abrogate (sic abdicate) their duty of granting interim injunctions where necessary, equally important is the need to ensure that the judicial discretion does not abrogate from the function of weighing the overwhelming public interest in favour of the continuing operation of a fiscal statute or a piece of economic reform legislation, till on a mature consideration at the final hearing, it is found to be unconstitutional. It is, therefore, necessary to sound a word of caution against intervening at the interlocutory stage in matters of economic reforms and fiscal statutes."

A reading of the impugned orders leaves no manner of doubt that while granting interim relief to the writ petitioners, the High Court did not apply its mind to any of the ingredients, the existence of which is sine qua non for such orders. The High Court overlooked the fact that the consumption of tobacco and tobacco products has huge adverse impact on the health of the public at large and, particularly, the poor and weaker sections of the society which are the largest consumers of such products and that unrestricted advertisement of these produces will attract younger generation and innocent minds, who are not aware of grave and adverse consequences of consuming such products.

Learned counsel for the appellants pointed out that as on date 10 lakhs people die every year due to oral and lung cancer caused by consumption of tobacco and tobacco products. They further pointed out that as per the study conducted by National Institute of Health and Family Welfare 85 lakhs people are likely to die annually by 2015 due to oral and lung cancer caused by consumption of tobacco and tobacco products.

We have no doubt that the Central Government and the State Governments across the country are alive to the serious and grave consequences of advertising tobacco and various products manufactured by using tobacco. They know that the consumption of these products will result in rapid increase in the number of cancer patients and huge proportion of the Budget earmarked for health of the common man will have to be used for treating the patients of cancer.

In the result, the appeals are allowed and the impugned orders are set aside.

While disposing of the appeals, we consider it necessary to express our serious reservations and regret about the manner in which concerned officers of the Union of India dealt with the serious issue involving challenge to the validity of law enacted by Parliament and the rules framed thereunder. The non-appearance of the counsel engaged by the Union of India on the dates appointed for hearing the case is quite intriguing. Prima facie, it gives an impression that the counsel engaged by the Union of India had some other idea and, therefore, he refrained from representing the cause not only of its client but the people of India. We are sure that the Government of India will take remedial measure and ensure that

only those advocates are engaged by it who are serious and sincere in representing the cause of public before the Courts.

We also make it clear that as a sequel to setting aside of the interim order passed by the High Court, the Central Government and the Governments of all the States shall be bound to rigorously implement the provisions of the 2003 Act and the 2004 Rules as amended from time to time.