

ITEM NO.65

COURT NO.1

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No.37348/2017

(Arising out of impugned final judgment and order dated 15-12-2017 in WP No. 53876/2015 passed by the High Court of Karnataka at Bangalore)

HEALTH FOR MILLIONS TRUST

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln.(s) for exemption from filing c/c of the impugned judgment and permission to file additional documents)

WITH S.L.P.(C) No.37354/2017 (IV-A)

S.L.P.(C) Diary No.751/2018

Date : 08-01-2018 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s)
D.No.751/2018

Mr. K.K. Venugopal, AG
Ms. Pinky Anand, ASG
Dr. Nishesh Sharma, Adv.
Mr. R. Balasubramanian, Adv.
Mr. D.N. Goburdhun, Adv.
Ms. Shradha Deshmukh, Adv.
Mr. Sumit Teterwal, Adv.
Ms. Saudamini Sharma, Adv.
Ms. Aarti Sharma, Adv.
Mr. G.S. Makker, Adv.

SLP 37348/17

Mr. R.S. Suri, Sr. Adv.
Mr. Anand Grover, Sr. Adv.
Ms. Simar Suri, Adv.
Mr. Varun Khanna, Adv.
Mr. Avinash Kumar, AOR

Mr. Ranjit Singh, Adv.

SLP 37354/17

Ms. Aishwarya Bhati, AOR
Mr. Jaideep Singh, Adv.
Ms. Nupur Bhati, Adv.
Mr. T. gopal, Adv.
Ms. Tanuja Patra, Adv.
Ms. Vaiduti Mishra, Adv.
Ms. Wimbi S., Adv.
Mr. Vishwajeet Singh, Adv.
Ms. Ritu Apurva, Adv.
Ms. Heena Khan, Adv.

For Respondent(s)

Mr. Kapil Sibal, Sr. Adv.

Mr. C.S. Vaidyanathan, Sr. Adv.
Mr. Vivek Kohli, Adv.
Mr. Nalin Talwar, Adv.
Ms. Anubha Singh, Adv.
Mr. Nikhil Mathur, Adv.
Mr. Sameer Abhyankar, Adv.

Mr. Manu Nair, Adv.
Mr. Kuber Dewan, Adv.
Mr. Ravinder Nijhawan, Adv.
Mr. S. S. Shroff, AOR

Mr. Sajan Poovayya, Sr. Adv.
Mr. Mahesh Agrawal, Adv.
Mr. Ravinder Narain, Adv.
Mr. Ajay Aggarwal, Adv.
Mr. Kishan Rawat, Adv.
Mr. Saransh Kumar, Adv.
Ms. Aradhana Lakhatakia, Adv.
Mr. Pratibhanu Singh Kharola, Adv.
Ms. Priyadarshi Banerjee, Adv.
Ms. Aradhana Lakhtakia, Adv.
Mr. Himanshu Satija, Adv.
Mr. Meka Rama Krishna, Adv.
Mr. E. C. Agrawala, AOR

Mr. Ashok Bhan, Sr. Adv.
Mr. Sanjai Kumar Pathak, Adv.
Mr. Arvind Kumar Tripathi, Adv.
Mr. Akhilendra Singh, Adv.

Mr. Shashibhushan P. Adgaonkar, Dav.
Mr. Rana Sandeep, Adv.

Mr. Rajeev Kr. Jain, Adv.
Mr. Hiren Dasan, Adv.
Mr. Chand Qureshi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

S.L.P.(C) Diary No.751 of 2018 is taken on Board.

Issue notice.

As the respondents have entered appearance, no further notice need be issued.

We have heard Mr. K.K. Venugopal, learned Attorney General for India along with Ms. Pinky Anand, learned Additional Solicitor General, Mr. Anand Grover and Mr. R.S. Suri, learned senior counsel and Ms. Aishwarya Bhati, learned counsel for the petitioners in the respective special leave petitions.

Mr. Venugopal, learned Attorney General has pressed for stay of the judgment and order passed by the Division Bench of the High Court of Karnataka at Bangalore in a batch of writ petitions, whereby the High Court has struck down the amendment to the Cigarettes and other Tobacco Products (Packaging and Labelling Rules) 2008, ('the 2008 Rules') as amended by the amending Rules of 2014 ('the 2014 Rules'). It is contended by him that life sans health is not worth living

and the chewing of tobacco or smoking of cigarettes or bidis, etc. causes irretrievable hazard to health and it is the obligation of the State to make the people aware as regards the injurious nature of these indulgences. He would further submit that initially one may start with smoking or chewing tobacco as an adventure, but gradually it becomes a habit and, thereafter, it gets converted to addiction; and that addiction becomes the killing factor or causation of pain, suffering, agony, anguish and ultimately death. Learned Attorney General would submit that apart from the victim of the habit, the family suffers and in the ultimate eventuate, it is the whole society which faces peril. Criticizing the judgment and order of the High Court, it has been urged by Mr. Venugopal as well as by other learned counsel that the High Court on unjustifiable foundation has struck down the amended Rules, as a consequence of which, the respondents would be in an advantageous position and would continue to sell such obnoxious and poisonous products in the market with no warning or 40% warning on the packages. It is urged by them that it is a fit case where this Court should intervene and direct stay of the judgment and order in entirety.

Refuting the aforesaid submissions advanced by the learned Attorney General for India and other learned senior counsel and Ms. Aishwarya Bhati, learned counsel appearing

for the petitioner, Mr. Kapil Sibal, Mr. C.S. Vaidyanathan and Mr. Ashok Bhan, learned senior counsel and other learned counsel appearing for the respondents submit that the learned Judges of the High Court though have expressed different opinions on various aspects, they have ultimately agreed for annihilation of the amended Rules for absence of empirical data. It is also propounded by them that grant of stay would tantamount to allowing of the special leave petitions at the stage of notice, which is not called for. Resisting the submission of the learned counsel for the petitioners, it is canvassed by them that the pictorial warning which has been projected, is absolutely horrifying as the pictures would fresco. That apart, when there has been no ban on the sale of the products, the right of the respondents under Article 19(1)(g) of the Constitution is protected. According to them, the pictorial warning up to 85% is not a reasonable restriction and falls foul of Article 19(1)(g) of the Constitution.

To appreciate the submissions for the purpose of interim order, we may refer to the relevant Rules of the 2008 Rules and the amended Rules of 2014, which are extracted below in a tabulated chart:-

Sl. No.	2008 Labelling Rules	2014 Amendment Rules
1	Notified on 28.11.2008 and came into force on 31.5.2009.	Notified on 15.10.2014 and came into force on 1.4.2015.
2	<p>Rule 3(1)(b) - Specified health warning shall occupy at least 40% of the principal display area of the front panel of the pack and shall be positioned parallel to the top edge of the package and in the same direction as the information on the principal display area:</p> <p>Provided that for conical packs, the widest end of the pack shall be considered as the top edge of the pack.</p>	<p>Rule 3(1)(b) - Specified Health Warning shall cover at least 85% of the principal display area of the package of which 60% shall cover pictorial health warning and 25% shall cover textual health warning and shall be positioned on the top edge of the package and in the same direction as the information on the principal display area:</p> <p>Provided that for conical package, the widest end of the package shall be considered as the top edge of the package:</p> <p>Provided further that on box, carton and pouch type of package, the specified health warning shall appear on both sides of the package, on the largest panels and for cylindrical and conical type of package, the specified health warning shall appear diametrically opposite to each other on two largest sides or faces of the package and the specified health warning shall cover 85% of each side or face of the principal display area of the package of which 60% shall cover pictorial health warning and 25% shall cover textual health</p>

		warning.
3	<p>Rule 3(1)(d) - no messages that directly or indirectly promote a specific tobacco brand or tobacco usage in general are inscribed on the tobacco product package.</p>	<p>Rule 3(a)(d) - no messages, images or pictures that directly or indirectly promote the use or consumption of a specific tobacco brand or tobacco usage in general or any matter or statement which is inconsistent with, or detracts from the specified health warning are inscribed on the tobacco product package.</p>
4	<p>Rule 3(1)(f) - the specified warnings shall be inscribed in the language/s used on the pack:</p> <p>Provided that where more than one language/s is used on the pack the specified warning shall appear in two languages, one in which the brand name appears and the other in any other language used on the pack.</p>	<p>Rule 3(1)(f) - the textual health warning shall be inscribed in the language used on the package:</p> <p>Provided that where the language used on a package or on its label is-</p> <p>(a) English, the health warning shall be expressed in English;</p> <p>(b) English and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears;</p> <p>(c) Hindi and other Indian languages, the health warning shall be expressed in Hindi and any one of the Indian language in which the brand name appears;</p> <p>(d) any Indian language, the health warning shall be expressed in such Indian language;</p>

		<p>(e) Indian languages, the health warning shall be expressed in any two Indian languages in which the brand name appears;</p> <p>(f) foreign language, the health warning shall be expressed in English;</p> <p>(g) foreign and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears:</p> <p>Provided further that the textual health warning shall appear in not more than two languages used on the package:</p> <p>Provided also that the textual health warning in one language shall be displayed on one side or face of principal display area and the textual health warning in the other language shall be displayed on the other side or face of principal display area of the package.</p>
5	Rule 3(1)(h) - xxxx	<p>Rule 3(1)(h) - every package of cigarette or any other tobacco product shall contain the following particulars, namely:-</p> <p>(a) Name of the product;</p> <p>(b) Name and address of the manufacturer or importer or packer;</p>

		<p>(c) Origin of the product (for import);</p> <p>(d) Quantity of the product;</p> <p>(e) Date of manufacture; and</p> <p>(f) Any other matter as may be required by the Central Government in accordance with the international practice.</p>
6	<p>Rule 5 - Rotation of specified health warnings.- The specified health warning on tobacco packs shall be rotated every two years from the date of notification of the rules or earlier, as the case may be, as specified by the Central Government.</p>	<p>Rule 5 - Rotation of specified health warning.-</p> <p>(1) The specified health warning on tobacco product package shall be rotated every 24 months from the date of commencement of these rules or before the period of rotation as may be specified by the Central Government by notification.</p> <p>(2) During the rotation period, there shall be two images of specified health warning for both smoking and smokeless form of tobacco products and each of the images of the specified health warning shall appear consecutively on the package with an interregnum period of 12 months.</p> <p>(3) At the end of the 12 months period, the first image (image 1) of specified health warning shall be replaced with the second image (image 2) of</p>

		<p>specified health warning, which shall appear for the next 12 months.</p> <p>(4) At the end of each 12 months of the rotation period, the Central Government may allow the distributors, retailers and importers of cigarettes and other tobacco products a grace period, not exceeding two months to clear the old stock of package of tobacco products bearing the warning specified for the expired period of 12 months of the rotation period.</p> <p>(5) The distributors, retailers and importers of cigarettes and other tobacco products shall not distribute or sell any package having the specified health warning of the expired period of 12 months after the grace period of 2 months.</p>
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On a perusal of the judgment and order passed by the High Court, we find that the first opinion states that the Ministry of Health and Family Welfare was not competent to amend the rules under the allocation of business rules. According to the said opinion, the other Ministries should have been associated before making the amendment.

The other opinion differs with regard to competence, but concurs as far as lack of empirical data is concerned.

We may note here with profit that both the opinions state that the rules are arbitrary, being unreasonable.

At this juncture, we may note with profit another aspect which has been highlighted by Mr. Kapil Sibal, learned senior counsel for the respondent that under Rule 5, the specified health warnings on the product packages are to be rotated after 31st March, 2018. Hence he urged that this Court may fix the size of the pictorial warning at 50% and, thereafter, hear the matter, if this Court is inclined to pass an interim order. The said suggestion is seriously opposed by Mr. K.K. Venugopal, learned Attorney General for India and other learned senior counsel who urged that when a decision has been taken by the rule making authority fixing the percentage taking into consideration the prospects of health hazard of the citizens on the basis of expert opinion, this Court should not fix the percentage, but should grant stay of the judgment and order of the High Court.

In reply, it is also submitted by Mr. Venugopal that if 2014 Rules are struck down, 2008 Rules do not become alive. For the said purpose, he has placed reliance on the decision of this Court in State of Uttar Pradesh and Others vs. Hirendra Pal Singh and Others (2011) 5 SCC 305. He has commended us to paragraphs 28 and 29, which read as follows:-

"28. In *Firm A.T.B. Mehtab Majid and Co. v. State of Madras & Anr.*, AIR 1963 SC 928, this Court while dealing with a similar issue held:

"20. Once the old rule has been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new rule is held to be invalid."

29. Therefore, it is evident that under certain circumstances, an Act which stood repealed, may revive in case the substituted Act is declared ultra vires/unconstitutional by the court on the ground of legislative competence etc., however, the same shall not be the position in case of subordinate legislation. In the instant case, the L.R. Manual is consisted of executive instructions, which can be replaced any time by another set of executive instructions. (Vide *Johri Mal (supra)*.)"

Considering the rivalized submission advanced at the Bar and keeping in view the objects and reasons of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and the measures taken by the State, we think it appropriate to direct stay of operation of the judgment and order passed by the High Court of Karnataka. Though a very structural submission has been advanced by the learned counsel for the respondents that it will affect their business, we have remained unimpressed by the said proponent as we are inclined to think that health of a citizen has primacy and he or she should be aware of that which can affect or deteriorate the condition of health. We may hasten to add

that deterioration may be a milder word and, therefore, in all possibility the expression "destruction of health" is apposite.

Let the matter be listed on 12th March, 2018, for final disposal. Pleadings shall be completed in the meantime.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Assistant Registrar