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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20th SEPTEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 12402/2023**

DIVYAM AGGARWAL

..... Petitioner

Through: Mr. Divyam Aggarwal, Petitioner in person.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Ajay Digpaul, CGSC, Mr. Amit Gupta, Ms. Swati Kwatra, Mr. Kamal Rattan Digpaul, Mr. Ghanshyam Jha and Ms. Ishita Pathak, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT(ORAL)

CM APPLs. 48954/2023 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 12402/2023

1. Petitioner has approached this Court for a writ/direction to the Respondent for prohibiting the display of anti-tobacco health spots during films in cinemas, on TV and on OTT, which contain graphic or gross images.
2. It is stated that the present Writ Petition has been filed due to the incorporation and prevalence of distasteful, gross, graphic anti-tobacco



imagery in the health spots played during the screening of movies and TV programmes.

3. The health risks associated from smoking tobacco and related products are multifarious in nature. Smoking is widely recognized as a pivotal factor responsible for the onset of lung cancer, chronic obstructive pulmonary diseases (COPD), and a significant contributor to coronary heart disease. Additionally, it has been linked to a plethora of health issues, including different types of cancer, cerebrovascular and peripheral vascular diseases, and peptic ulcer disease. Smokers also experience a higher frequencies of acute respiratory illnesses.

4. Cigarette smoke, comprising suspended particles of gaseous nature, is a complex blend of thousands of compounds due to incomplete combustion of tobacco leaves. Notable components of smoke linked to health issues are nicotine, predominantly in the particulate-phase, and carbon monoxide in the gaseous state. Smokers face seventy percent higher mortality rate than non-smokers and such risks escalate in proportion to the duration and quantity of smoking. Excess mortality in smokers' leading contributors are Coronary heart diseases, followed by lung cancer and COPD. Smoking significantly shortens life expectancy and specifically, tobacco smoke, when dissolved in saliva and ingested, exposes the upper gastrointestinal tract to carcinogens.

5. A strong link between smoking and lung cancer is shown in various prospective and retrospective epidemiological studies, supported by autopsy findings. Lung cancer has held the position of the leading cause of cancer-related deaths among men since the 1950s and surpassed breast cancer as the leading cause of such deaths in women in 1985. Male smokers face a much higher risk of developing lung cancer and is also correlated to the number of



cigarettes smoked. Additionally, there is also compelling evidence linking smoking to cancers of the larynx, oral cavity, and esophagus, with the risk intensifying with increased exposure to cigarette smoke, whether active or passive.

6. Epidemiological research moreover proves associations between smoking and cancers of the bladder, pancreas, stomach, and uterine cervix. Cigarette smoking is also an important factor for coronary artery disease. Both retrospective and prospective epidemiological studies have established a substantial connection between smoking and coronary morbidity and mortality in both men and women. Smokers face a 70 percent higher coronary disease death rate than non-smokers, and the risk escalates with increased cigarette consumption. Sudden death is two to four times more likely in smokers, and they also have an elevated risk of cardiac arrest and severe malignant arrhythmias. Furthermore, smokers are more susceptible to non-fatal myocardial infarctions or unstable angina, with smoking further decreasing exercise tolerance in angina patients. Female smokers who also use oral contraceptives or postmenopausal estrogen replacement therapy significantly raise their risk of myocardial infarction.

7. Autopsy studies reveal atheromatous changes in arteries of smokers compared. As Carbon monoxide of cigarette smoke reduces oxygen delivery to endothelial tissues, it may trigger acute ischemia. Furthermore, nicotine increases myocardial demand by releasing catecholamines that elevate blood pressure, heart rate, and contractility. Both carbon monoxide and nicotine induce platelet aggregation, which can lead to the occlusion of narrowed blood vessels. In fact, cigarette smoking lowers exercise tolerance in patients with intermittent claudication. It will also reduce graft survival



after vascular surgery. Smokers are more likely to develop aortic atherosclerosis and face higher risk of dying from a ruptured aortic aneurysm. Smokers under the age of 65 also have a heightened risk of death from other diseases such as cerebrovascular disease, and female smokers are at a greater risk of subarachnoid hemorrhage, if combined with the usage of oral contraceptives.

8. Cigarette smoking is the leading cause of chronic bronchitis and emphysema. Smokers exhibit a higher prevalence of respiratory symptoms compared to non-smokers. Studies on pulmonary function indicated the existence of impairment exists in both asymptomatic and symptomatic smokers. They also have a higher risk of acute and chronic pulmonary diseases. Inhaling cigarette smoke blocks pulmonary clearance mechanisms, which may explain their susceptibility to viral respiratory infections, including influenza. Smokers who contract such acute respiratory infections experience longer and episodes of higher magnitudes along with a prolonged cough. Additionally, smokers also have a higher chance of peptic ulcer disease and rates of fatalities arising thereof. Smoking can also lead to higher chances of osteoporosis in men and postmenopausal women. Female smokers usually tend to have lighter body weights and experience an earlier onset of menopause, both of which are associated with osteoporosis. Smoking also lowers serum estrogen levels in postmenopausal women using estrogen replacement therapy.

9. Involuntarily exposure of non-smokers to those smoking nearby, known as passive smoking, are also at higher risks of health complications. Inhaling side way smoke, which non-smokers do more than the actual smokers themselves has a higher level of detriment, as it more nicotine, tar,



and approximately 50 times more ammonia. Passive smoking, especially in children under the age of two due to parental smoking, is a leading cause of diseased such aa acute lower respiratory infections, decreased lung function, increased incidence of eczema and asthma, and an increased risk of sudden infant death syndrome. It's important to note that in India, hospital admission rates are 28 percent higher among children of smokers, through which adverse health effects of passive smoking can further be demonstrated.

10. Looking at the ill effects of cigarettes and other tobacco products, the Government of India brought in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (*hereinafter referred to as 'the 2003 Act'*) to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products. The said Act also provides for statutory warning on the packets of cigarettes and other tobacco products and also the manner in which the specified warning has to be made. Section 31 of the Act gives power to the Central Government to make rules for the implementation of the Act. Rule 4 of the Act lays down the nature of the warnings that are to be placed in respect of cigarettes or other tobacco products. The Act also provides that no individual or person or character in films or in Television shall display tobacco products or their use. However, it is provided that the rule will not apply to old Indian films and old television programmes, produced prior to coming of the 2003 Act or Rules, being screened in a cinema hall or theatre or aired on television provided they carry a warning regarding the ill effects of tobacco and tobacco



products.

11. With a view to deter people from smoking tobacco and tobacco products, the Government of India has brought in advertisements to educate people about the ill effects of tobacco and tobacco products. The graphic description given in these Government issued advertisements which, according to the Petitioner, are gross and graphic imagery, are in fact meant to be eye-openers for the people not to use tobacco and tobacco products and is, therefore, in public interest. The purpose of display of distasteful, gross, graphic anti-tobacco imagery in the health spots played during the screening of movies and TV programmes is only to make people aware of the ailments and ill-effects of consuming tobacco and tobacco products and to show them what tobacco can do to their health.

12. It is the duty of the State to take steps to ensure that health of the people is protected. The present Writ Petition is a gross abuse of the process of law. Off late, this Court is seeing that Public Interest Litigation, which was actually a tool for providing voice to the voiceless, is being used to achieve private gains and the present Writ Petition is also one such Petition which has been backed by the tobacco industry lobby to prevent the Government from creating awareness against tobacco, which, as stated earlier, is the sole cause responsible for a number of ailments among men and women.

13. In BALCO Employees' Union (Regd.) v. Union of India, (2002) 2 SCC 333, the Apex Court has recognised the increasing trend of abuse of the forum of PIL and has noted that time has come to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief.



14. In Tehseen Poonawalla v. Union of India, (2018) 6 SCC 72, the Apex Court has held as under:

"96. Public interest litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in Bandhua Mukti Morcha v. Union of India [Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389] . Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and undertrials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable instrument and jurisdictional tool to promote structural due process.



97. *Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly misutilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this Court in State of Uttaranchal v. Balwant Singh Chauhal [State of Uttaranchal v. Balwant Singh Chauhal, (2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807] . Underlining these concerns, this Court held thus : (SCC p. 453, para 143)*

“143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.”

98. *The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this Court and the High Courts are flooded with litigations and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract*



from the time and attention which courts must devote to genuine causes. This Court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space."

15. The aim of the present Writ Petition is actually to restrain the Government from achieving a noble objective of a tobacco free State and to ensure that people do not become tobacco addicts.

16. The present Writ Petition deserves to be dismissed with exemplary



costs but looking at the Petitioner, who is a young Advocate having a bright future ahead, this Court restrains itself from making any comments on the Petitioner which might have a bearing on his future. However, this Court warns the Petitioner not to file such kind of frivolous petitions in future.

17. The Writ Petition is dismissed. Pending applications, if any, also stand dismissed.

SUBRAMONIUM PRASAD, J

SEPTEMBER 20, 2023

Rahul