

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 37 of 2014

Dharmendra Kansal. Petitioner

Versus

Union of India & others. Respondents

Mr. Arvind Vashistha and Mr. Munish Bhardwaj, Advocates for the petitioner.
Mr. Pradeep Joshi, Standing Counsel (Central Government) for respondent No. 1.
Mr. Subhash Upadhyaya, Chief Standing Counsel for the State of Uttarakhand /
respondent No. 2.
Mr. Ahin Chaudhary, Senior Advocate, assisted by Mr. Ajay Aggarwal, Mr. Prabal
Mehrotra and Mr. Sandeep Tiwari, Advocates for respondent No. 3.
Mr. Ajay Aggarwal and Mr. P.S. Bisht, Advocates for respondent No. 4.
Mr. Ajay Aggarwal and Mr. Prabal Mehrotra, Advocates for respondent No. 5.

JUDGMENT

**Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble V.K. Bist, J.**

Dated: 3rd June, 2014

BARIN GHOSH, C. J.

In this Public Interest Litigation, petitioner is seeking enforcement of Sub-Section (5) of Section 7 of 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 "Act"), insofar as cigarettes are concerned. It is also seeking true implementation of the enforced provisions of the Act. In the petition, it has been stated that the petitioner has not been able to collect necessary particulars regarding other tobacco products and, as such, confines prayer relating to cigarettes only in the petition. Petitioner sought for and obtained leave of this Court, which was granted on 21st March, 2014, to re-approach this Court in relation to other tobacco products when necessary particulars are collected. Similarly, petitioner prayed for and obtained leave under Order I Rule 8 of the Code of Civil Procedure in relation to wholesale distributors of cigarette manufacturers. In the petition, it has been contended that respondent Nos. 3, 4, 5, 6 & 7

are the only cigarette manufacturers in India and the petitioner has not been able to gather, whether there is any other manufacturer of cigarettes in India.

2. The petition was moved upon notice to respondent Nos. 1 & 2, namely, Union of India and the State of Uttarakhand. By an order dated 21st March, 2014, the remaining respondents were noticed. The notice was returnable on 22nd April, 2014. By that time, respondent No. 1 was directed to file an affidavit indicating what steps it has taken to ascertain the maximum permissible quantity of nicotine and tar in cigarettes after the Act came into force on 25th February, 2004. Respondent No. 2 was also directed to file an affidavit indicating, whether tobacco cultivation is carried out in the State and whether there is any cigarette manufacturing unit in the State. Respondent No. 2 was also asked to indicate in the affidavit, whether it has any data pertaining to cigarette / tobacco related deaths in the State and, if such data is available, to furnish the same. Before the returnable date, respondent Nos. 2 to 7 were served and, on the returnable date, respondent Nos. 3, 4 & 5 entered appearance. On that date, respondent Nos. 2 to 7 were asked to file affidavits indicating what steps, if any, they have taken to assist the Union of India for earmarking the limits of nicotine and tar in cigarettes. Respondent No. 1 was granted extension of time to file affidavit, as was sought for on 21st March, 2014. Publication, pursuant to the leave granted under Order I Rule 8, was also recorded on the returnable date. However, no one appeared on that date pursuant to the publication so made. At the same time, leave was granted for filing affidavits to support or to oppose the petition. The hearing of the petition was fixed on 27th May, 2014. On 27th May, 2014, respondent No. 1 filed an affidavit in Court. On that date, respondent No. 2 also filed an affidavit in Court. Prior thereto, respondent No. 3 had filed an affidavit with an Application for condonation of delay in filing the same.

3. In the affidavit filed by respondent No. 1, it has been stated that the provisions of the Act pertaining to depiction of tar and nicotine contents with maximum permissible limit on tobacco product package have not

been notified primarily due to (i) lack of institutional capacity to test nicotine and tar contents of the tobacco products; and (ii) there is no internationally accepted standard on whether there is any safe or any maximum permissible limit for tar and nicotine contents in tobacco products. In addition thereto, it has been stated that the mandate of Section 7(5) of the Act is contrary to the guidelines of the World Health Organisation – Framework Convention on Tobacco Control (FCTC) that cautions all member parties from displaying any quantitative statements on tobacco product packaging and labelling and, hence, it is imperative that the said Section should be deleted. The said affidavit has been affirmed by an Under Secretary of Ministry of Health and Family Welfare, New Delhi. It has been suggested in the said affidavit that there is scientific evidence that:

- (i) nicotine and tar is harmful even in small quantity; and
- (ii) there is no safe level for nicotine and tar contents.

4. In the counter affidavit filed by respondent No. 2, affirmed by the Joint Secretary, Medical Health and Family Welfare, it has been stated that tobacco cultivation is not carried out in the State and that there is no cigarette manufacturing unit in the State. It has been stated that no survey records are available pertaining to cigarette / tobacco related deaths in the State and that it is taking steps to inform / assist the Union of India for determination of tar and nicotine in cigarettes.

5. In the counter affidavit filed by respondent No. 3, it stated that it is supplying informations, as were called for by this Court on 22nd April, 2014, i.e. on the returnable date of the petition after notice, to indicate the steps, if any, the said respondent has taken to assist the Union of India for earmarking the limit of nicotine and tar in cigarettes. It was categorically stated that respondent No. 3 is not giving a para-wise reply to the various allegations made in the petition. It was stated that a similar petition was filed before the Hon'ble Supreme Court, where it was prayed to make it mandatory for tobacco companies to specify the basic contents of tobacco,

i.e. tar, nicotine and carbon monoxide, on every pack of cigarette in clearly visible size and the said petition was dismissed by an order dated 20th July, 2009. A copy of the said order was annexed as Annexure No. 1 to the counter affidavit. In addition to that, it was contended that the Act grants unfettered discretion to respondent No. 1 to notify the date of coming into force of different provisions of the Act and, accordingly, it is purely a matter of policy decision of the Executive, not interferable by court even in PIL. The said contention has been supported by referring to the Constitutional Bench Judgment of the Hon'ble Supreme Court rendered in the case of **A.K. Roy vs. Union of India & others**, reported in (1982) 1 SCC 271. It has further been contended that FCTC has decided that declaration of nicotine and tar may not serve any useful purpose and, on the contrary, can lead to consumers thinking that tobacco products with lower levels of these ingredients would be safer. In this connection, reference was drawn to paragraphs 34 and 44 of the FCTC Conference held from 17th-22nd November, 2008. Those are as follows:

“34. Parties should not require quantitative or qualitative statements on tobacco product packaging and labelling about tobacco constituents and emission that might imply that one brand is less harmful than another, such as the tar, nicotine and carbon monoxide figures or statements such as ‘these cigarettes contain reduced levels of nitrosamines’.

44. Parties should prohibit the display of figures for emission yields (such as tar, nicotine and carbon monoxide) on packaging and labelling, including when used as part of a brand name or trademark. Tar, nicotine and other smoke emission yields derived from smoking-machine testing do not provide valid estimates of human exposure. In addition, there is no conclusive epidemiological or scientific evidence that cigarettes with lower machine-generated smoke yields are less harmful than cigarettes with higher smoke emission yields. The marketing of cigarettes with stated tar and nicotine yields has resulted in the mistaken belief that those cigarettes are less harmful.”

6. It has been contended that, in such view of the matter, there has been a re-thinking in the reverse direction at the international level. It has been contended that specification of nicotine and tar contents on the packaging of tobacco products is actually counter-productive. It has been stated that, in Brazil and Canada, requirement of declaring the exact

quantities of nicotine and tar contents has been removed. It was contended that, in that background, the question of bringing into force Section 7(5) of the Act cannot be and should not be decided in a petition of this nature. It was contended that the said Section applies to all tobacco products and the same does not contemplate laying down of maximum permissible limits only of cigarettes and not of other tobacco products. It has been contended that the petitioner is making discrimination against cigarettes. It has been contended that, in the Chavan Committee Report, it was pointed out that only 15 per cent of tobacco is consumed in India in the form of cigarettes. It has been contended that, on the basis of the said Committee Report, Section 7(5) of the Act was made applicable to all tobacco products and not to cigarettes alone. It has been contended that this Court cannot restrict the operation of Section 7(5) to cigarettes alone. It has further been contended that such an action would give an impression that the other products are safer to consume as compared to cigarettes. It has been contended that such discrimination will be in violation of Article 14 of the Constitution of India. It has been stated that there are different standards and methodologies to measure nicotine and tar contents of tobacco products; but, they are different, which needs standardization and uniform approach to the measurement. The same needs to be addressed in a scientific manner before Section 7(5) of the Act can be brought into force. It has been contended that specification of tar and nicotine contents will encourage smuggling of products without such specification leading to increase in consumption of such products on the belief that they are safer. It has been stated that respondent No. 3 has assisted in all the initiatives of the Central Government relating to tobacco products. It has been stated that the said respondent is part of the Tobacco and Tobacco Products Selection Committee, FAD 4, a committee under the Bureau of Indian Standards (BIS), which is entrusted to develop standards for the measurement of tar and nicotine contents in tobacco products including cigarettes. It also referred to a letter written by it through Tobacco Institute of India in the year 2006 to the Central Government.

7. In the background of the pleadings as above, submissions were made by the counsel appearing for the parties.

8. The learned counsel for respondent No. 1 submitted that, within six months, it would prescribe the maximum permissible quantity of nicotine and tar contents in terms of Sub-Section (5) of Section 7 of the Act, despite pleadings of respondent No. 1 being contrary thereto.

9. The learned Chief Standing Counsel appearing on behalf of respondent No. 2 drew our attention to the pleadings of the said respondent and submitted that it would do whatever is required to be done to assist respondent No. 1 in prescribing the maximum permissible quantity of nicotine and tar. At one stage, the learned Advocate General of the State appeared and he submitted that, even if maximum permissible quantity is prescribed, by consuming more, the maximum permissible quantity may be exceeded giving no benefit of the prescription.

10. Taking a clue therefrom, the learned senior counsel appearing on behalf of respondent No. 3 submitted that, if maximum permissible quantity is prescribed and one manufacturer specifies that its product is less than such prescription, the other manufacturer may hold out that his prescription is even lesser and, accordingly, more safer, which, in the background of the facts and circumstances of the case, as is known, will be a deception. The learned senior counsel, in addition thereto, repeated the case of his client, as has been put forward in his client's pleadings, and drew our attention to the judgments of the Hon'ble Supreme Court rendered in the cases of **A.K. Roy vs. Union of India & others**, reported in (1982) 1 SCC 271; **Union of India vs. Shree Gajanan Maharaj Sansthan**, reported in (2002) 5 SCC 44; and **Common Cause vs. Union of India & others**, reported in (2003) 8 SCC 250, for the proposition that, when the Parliament has left enforcement of a provision of the Act to the Central Government, it would be necessary to leave the judgment to the Central Government as to when the law should be brought into force and that, when enforcement of a provision in a statute is left to the

discretion of the Government without laying down any objective standards, no writ of mandamus can be issued directing the Central Government to consider the question, whether the provision should be brought into force and when it can do so. The learned senior counsel also brought to our notice the Starred Question No. 404 raised before the Parliament and answered on 21st February, 2014. The said question was, amongst others, whether the Government has laid down any provision in the Tobacco Control Act, 2003 for depiction of tobacco / nicotine contents and other ingredients on packages of cigarettes and other tobacco products being marketed in the country. The Hon'ble Minister answered the said question in the manner as follows:

“The legislative framework for testing the contents of tobacco products is laid down in the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA). Section 7 (5) of COTPA lays down as under

“.....No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:”

However, the said section has not been notified in the absence of adequate testing facilities for tobacco products, as currently only limited testing facilities are available with the Food and Drug laboratories. Moreover, the extant provisions of display of only nicotine and tar on tobacco product packages is self-limiting, as in addition to nicotine and tar, there are a large number of chemicals and additives / intoxicants in tobacco as well as second hand smoke (SHS) that are harmful to health. There is no internationally accepted standard of any minimum (safe) or maximum permissible limit for tar and nicotine content in tobacco products. As tar and nicotine, abinitio, are harmful in any quantity whether it is smoking or smokeless forms of tobacco. Hence, these provisions under COTPA will need to be aligned to the latest scientific and research based evidence.

(e): The following steps have been taken by Ministry of Health and Family Welfare to make compulsory provisions for manufacturers of tobacco products to depict the contents / ingredients on packages of cigarettes and other tobacco products

1. Setting up tobacco product testing laboratories is one of the key national level activities under the National Tobacco Control Programme (NTCP). EFC in its meeting held on 12.12.2013 under the Chairmanship of Secretary (H & FW) has approved the NTCP. The EFC has been duly endorsed by Hon'ble Minister of Health and Family Welfare and is currently in the Finance Ministry for endorsement of Finance Minister.
2. Ministry of Health & Family Welfare is creating the requisite institutional capacity by identifying existing laboratories whose capacity will be augmented to test tobacco products. The laboratories identified are:

Apex Laboratory-(1)

- i. National Institute of Biologicals (NIB), Noida.

Regional Tobacco Product Testing labs—(4)

- i. Central Drugs Testing Laboratory, (CDTL) Hyderabad.
 - ii. Regional Drugs Testing Laboratory, (RDTL) Chandigarh.
 - iii. Central Drugs Testing Laboratory, (CDTL) Mumbai and
 - iv. Food Research and Standardization Laboratory (FRSL) Ghaziabad.
3. A team of experts from MOHFW and Central Design Bureau (CDB) has been constituted to visit the identified labs to take a stock of the readiness of the labs and help them identify the spaces available, help in the designs and also solve all pending issues.
 4. The team first visited Central Tobacco Research Institute [CTRI] to study the tobacco testing laboratory. Thereafter, teams have visited the following laboratories:
 - a) Regional Drug Testing Laboratory, Chandigarh
 - b) Central Drug Testing Laboratory, Mumbai
 - c) Food Research Standardization Laboratory, Ghaziabad
 - d) National Institute of Biologicals, Noida
 5. The Technical Specification Committee has been reconstituted under the Chairpersonship of Special DGHS, Dr. S.Y. Kothari, to look into the specifications of the equipments to be procured for testing of tobacco products.
 6. The Technical Specification Committee met 5 times (11.3.13, 16.4.13, 17.5.13, 17.6.13, 23.12.13) for finalising the specification of the identified equipments.
 7. The Committee further met again on 15.1.14 to examine the matter in the light of the comments obtained from

prospective bidders in the pre-bid process. Hence, the technical specification committee is in the process of finalisation of the technical specifications of the equipments for the Tobacco Testing Laboratories.”

11. It was suggested by the learned senior counsel that the said state of affair will clearly indicate that the Central Government is alive to the problem and is not desirous of ignoring the will of the Parliament. It was contended that, even if subjective standards are available in the statute; the fact remains that, having had entrusted enforcement of the subject provision of the Act upon the Central Government, the Parliament did not lose its power to enforce the Act and it is evident that, even in February, 2014, the Parliament was conscious about enforcement of the subject provision and, having had considered to its satisfaction the steps taken by the Central Government in that direction, as reflected in the answer given to the said starred question, the Parliament has done nothing as yet and that is also one of the reasons the Court must leave the matter thus. After having had concluded his submissions, the learned senior counsel appearing on behalf of respondent No. 3 made over to us a Note on submissions covering the aspects dealt with above. While concluding, the learned senior counsel for respondent No. 3 submitted that, in addition to the law on the subject being clear, this Court must keep in mind that a similar matter has been dealt with by the Hon’ble Supreme Court in the negative. Lastly, the learned senior counsel for respondent No. 3 drew our attention to an unreported judgment of a Division Bench of the Hon’ble Allahabad High Court, rendered on 8th July, 2013, dealing with a Public Interest Litigation, where, amongst others, it was prayed not to allow sale of cigarettes in loose quantity and the Division Bench of the Hon’ble Court expressed an opinion that, if such a direction is issued, the same may lead to negative effect by forcing the public to buy packages of cigarette, which may lead to greater consumption even amongst those, who generally buy loose cigarettes for occasional smoking.

12. The learned counsel appearing on behalf of respondent Nos. 4 & 5 adopted the submissions made by the learned senior counsel appearing on

behalf of respondent No. 3 and drew our attention to the fact that, in 2006, respondent No. 1 was in the process of framing rules in respect of Sub-Section 5 of Section 7 of the Act and, in relation thereto, the Tobacco Institute of India wrote a letter dated 17th April, 2006 to Dr. Anbumani Ramadoss, the Hon'ble Union Minister for Health and Family Welfare, pointing out that, in the international field, such step is not being taken and, if taken, reverse action has been taken recourse to and, in particular, in Brazil and Australia.

13. In view of the submissions as above, a request was made on behalf of respondent Nos. 3, 4 & 5 that this Court should not do what has been sought for in the petition and, on the query of the Court, submitted that this Court may monitor, periodically, the progress made by the stakeholders in the matter of implementation of the subject Section.

14. We think that the subject matter of the petition is grave. As would be evident from the Act, the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 (hereinafter referred to as the "1975 Act") was the precursor of the Act, which was repealed by the Act. Therefore, a Central Legislation was covering the field since 1975. It was thought that the new experience gathered since the coming into force of the 1975 Act is such that there is a necessity of making a new Act by replacing the old Act. The question is, what was that new information that was gathered before the Act was enacted. The same is available from the Objects and Reasons of the Bill introducing the Act. They are as follows:

"1. Tobacco is universally regarded as one of the major public health hazards and is responsible directly or indirectly for an estimated eight lakh deaths annually in the country. It has also been found that treatment of tobacco related diseases and the loss of productivity caused therein cost the country almost Rs. 13,500 crore annually, which more than offsets all the benefits accruing in the form of revenue and employment generated by tobacco industry. The need for a comprehensive legislation to prohibit advertising and regulation of production, supply and distribution of cigarettes and tobacco products was recommended by the Parliamentary Committee on Subordinate Legislation (Tenth Lok

Sabha) and a number of points suggested by the Committee on Subordinate Legislation have been incorporated in the bill.

2. The proposed Bill seeks to put total ban on advertising of cigarettes and other tobacco products and to prohibit sponsorship of sports and cultural events either directly or indirectly as well as sale of tobacco products to minors. It also proposes to make rules for the purpose of prescribing the contents of the specified warnings, the languages in which they are to be displayed, as well as displaying the quantities of nicotine and tar contents of these products. For the effective implementation of the proposed legislation, provisions have been proposed for compounding minor offences and making punishments for offences by companies more stringent. The objective of the proposed enactment is to reduce the exposure of people to tobacco smoke (passive smoking) and to prevent the sale of tobacco products to minors and to protect them from becoming victims of misleading advertisements. This will result in a healthier life style and the protection of the right to life enshrined in the Constitution. The proposed legislation further seeks to implement article 47 of the Constitution, which, inter alia, requires the State to endeavour to improve public health of the people.

3. The Bill seeks to achieve the aforesaid objects.”

15. The Objects and Reasons for the Act are as follows:

“An 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 and for matters connected therewith or incidental thereto.”

16. In the background of the knowledge depicted in the Statement of Objects and Reasons introducing the Bill, the Act aimed to achieve, amongst others, the object to provide for the regulation of production of cigarettes and other tobacco products. We think that, in that background, one has to read the Act. Before that, one must take into account the fact that, despite knowledge of the Executive that treatment of tobacco related diseases and the loss of productivity caused therein offsets all the benefits accruing in the form of revenue and employment generated by the tobacco industry, the Executive did not propose in the Bill to ban production and sale of tobacco products; but, proposed to provide for in the Act, amongst others, regulation of production of cigarettes and other tobacco products.

17. Sub-Section (3) of Section 1 of the Act gives discretion to the Central Government to appoint different dates for enforcement of different provisions of the Act. Section 2 of the Act makes a declaration to the effect that it is expedient in the public interest that the Union should take under its control the tobacco industry. However, the Act does not define either “tobacco” or “industry” or “tobacco industry”. The Act, in Clause (p) of Section 3, defines “tobacco products” as those, which have been specified in the Schedule; but specifically defines “cigarette” in Clause (b) of Section 3 of the Act as follows:

- “(b) “cigarette” includes,-
- (i) any roll of tobacco wrapped in paper or in any other substance not containing tobacco,
 - (ii) any roll of tobacco wrapped in any substance containing tobacco, which, by reason of its appearance, the type of tobacco used in the filter, or its packaging and labelling is likely to be offered to, or purchased by, consumers as cigarette, but does not include *beedi*, cheroot and cigar.”

18. At the same time, “smoking” has been defined in Clause (n) of Section 3 of the Act as follows:

- “(n) “smoking” means smoking of tobacco in any form whether in the form of cigarette, cigar, *beedis* or otherwise with the aid of a pipe, wrapper or any other instruments.”

19. Section 4 of the Act prohibits smoking in public place. Section 5 of the Act prohibits advertisement of cigarettes and other tobacco products. Section 6 of the Act prohibits sale of cigarettes and other tobacco products to persons below the age of 18 years and in an area within a radius of 100 yards of any educational institution. Sub-Section (1) of Section 7 prohibits production, supply and distribution of cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed bears thereon, or on its label, such specified warning, including a pictorial warning as may be prescribed. Sub-Section (2) of Section 7 of the Act prohibits trade or

commerce in cigarettes or any other tobacco products unless every of cigarettes or any other tobacco products sold, supplied or distributed bears thereon, or on its label, the specified warning. Sub-Section (3) of Section 7 of the Act prohibits importation of cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products, so imported, bears thereon, or on its label, the specified warning. Sub-Section (4) of Section 7 mandates that the specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration. Sub-Section (5) of Section 7 is as follows:

“(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.”

20. Section 8 of the Act provides for the manner in which specified warning shall be made and Section 9 deals with the language in which the specified warning shall be expressed. At the same time, Section 10 directs that the size of letters and figures specifying warning or indication of nicotine and tar contents in cigarettes or any other tobacco products shall be in accordance with the prescription to be made under the Act. Section 11 of the Act authorises the Central Government to recognise testing laboratories for the purpose of testing nicotine and tar contents in cigarettes and other tobacco products. Sections 12 to 28 of the Act are provisions pertaining to enforcement of the provisions of the Act. Section 29 grants protection of action taken in good faith. Section 30 empowers the Central Government to add other tobacco products in the Schedule. Section 31 grants power to the Central Government to prescribe by making rules. Section 32 makes it clear that the Act will not apply to

cigarettes and other tobacco products, which are exported. Section 33 of the Act repeals the 1975 Act.

21. The above are the provisions of the Act made with the knowledge that cigarettes and other tobacco products bring-in death and give no advantage to the Indian society.

22. The provisions of Sections 1, 2, 3, 4, 5, 6(a), 12(1)(b), 12(2), 13(1)(b), 13(2), 14, 16, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 came into force on 1st May, 2004 vide S.O. 238 (E) dated 25th February, 2004. The provisions of Sections 7(1)(2)(3)(4), 8, 9, 10 and 20 came into force on 1st December, 2007 vide S.O. 1955 (E) dated 16th November, 2007. The provisions of Clause (a) of Sub-Section (1) of Section 12, Clause (a) of Sub-Section (1) of Sections 13, 15, 17, 18, 32 and 33 came into force on 30th July, 2009 vide S.O. 1865 (E) dated 30th July, 2009. The provisions of Section 6(b) came into force on 18th September, 2009 vide G.S.R. 687 (E) dated 18th September, 2009. Therefore, all the provisions of the Act have been enforced, except Sections 7(5), 11 and 12(1)(a). For the purpose of giving effect to the enforced provisions of the Act, various prescriptions have been made by making The Cigarettes and Other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004; The Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008; The Prohibition of Smoking in Public Places Rules, 2008; and The Cigarettes and Other Tobacco Products (Display of Board by Educational Institutions) Rules, 2009. Section 12(1)(a) can be enforced when the remaining two Sections are enforced. Enforcement of Section 11 will become necessary after Section 7(5) is enforced.

23. As aforesaid, the name of the Act is The Cigarettes and Other Tobacco Products Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution Act, 2003. The object of the said Act is 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 and for matters connected therewith or incidental thereto. The Act, therefore, deals with four specific areas, namely, (i) prohibition of advertisement; (ii) regulation of trade and commerce; (iii) regulation of production; and (iv) regulation of supply and distribution. Various provisions of the Act deal with the afore-mentioned various areas addressed by the Act. The provisions of the Act dealing with prohibition of advertisement, regulation of trade and commerce and regulation of supply and distribution have been given effect to. The only part, which deals with regulation of production, has been provided in Section 7(5) of the Act. Section 11 supplements the same. Therefore, as yet, that part of the Act, which provides for regulation of production, has not been given effect to.

24. As aforesaid, despite knowledge of the fact that tobacco industry does not contribute anything to the Indian society and, on the other hand, kills people; the Act did not contemplate prohibition of production, sale, supply and distribution of poison dealt with in the form of cigarettes and other tobacco products. The Act contemplated regulation of production by making it mandatory to prescribe maximum permissible limit of nicotine and tar contents of each cigarette and, as the case may be, of each tobacco product and to indicate the same on such cigarettes or other tobacco products or on its label. The question is, why such a step was taken by the Parliament. The legislative mind is required to be gathered from the enactment, the reasons for the enactment as well as the object intended to be achieved by the enactment. In the background of what had been considered while introducing the Bill, the name given to the Act, the object sought to be achieved thereby and the words used in Section 7(5) of the Act, make us believe that the Parliament, at the time of enacting the Act, despite being supplied with the information that tobacco kills and does not contribute anything to the Indian society, was of the view either (i) that it is possible to set down a limit of nicotine and tar contents of each cigarette or, as the case may be, of other tobacco products, which will make consumption of cigarettes and other tobacco products safe; or (ii) that such prescription will make the consumer aware that thus far, and

no further, cigarettes and other tobacco products are safe. The Parliament depended upon the Central Government to fulfill its afore-mentioned desire, which the Central Government has failed to achieve despite passage of more than 11 years from the date of enactment of the Act.

25. Even on 21st February, 2014, the Central Government informed the Parliament that it is still taking steps to perform its duties entrusted upon it by the Parliament by enacting the Act. It though reported that there is no internationally accepted standard of any minimum (safe) or maximum permissible limit of nicotine and tar contents in tobacco products; but, still then, it gave an impression to the Parliament that it is taking steps to achieve the same. However, in the affidavit filed before us, the Central Government (respondent No. 1) has stated, in no uncertain terms, that nicotine and tar is harmful even in small quantity and that there is no safe level for nicotine and tar contents. It is surprising that, despite acquiring such knowledge, the Central Government has not informed the Parliament in that regard in order to enable the Parliament to take drastic step of completely eradicating production, supply and distribution of cigarettes and other tobacco products.

26. It is true that the present trend of FCTC is not in favour of labelling tobacco constituents as that of tar and nicotine. It may also be possible that Brazil, Canada and Australia are of the view that such labelling is counter-productive; but the World Health Organisation has already estimated that the total number of premature deaths caused by tobacco during the 20th Century has been about 100 millions and, if current trend of tobacco use continues during the 21st Century, the death toll is projected to go up to one billion. It has also estimated that India will have the fastest rate of rise in deaths attributable to tobacco in the first two decades of 21st Century and many of these deaths will occur in the productive years of adult life as a consequence of an addiction acquired in the youth. In that background, the Treaty on Consumption of Tobacco Control was entered by a number of countries, including India. The Treaty made it absolutely clear that the signatories thereto will be free to

make laws dealing with the menace despite entering into the Treaty. One of the signatories to the Treaty, namely, Bhutan has totally banned manufacture, sale and consumption of cigarettes. Furthermore, in the backdrop of the said Treaty, when the Central Government and the Parliament considered the menace, it found that cigarette and other tobacco products bring-in only death and contribute nothing to the nation. It is not known, whether in Brazil, Canada and Australia, similar finding was recorded by its Executive Government and Legislature. Therefore, the present trend in FCTC or steps taken by Brazil, Canada and Australia have nothing to do with the protection to which the Indian citizens are entitled to from the menace of cigarette manufacture, sale and distribution.

27. As pointed out by the learned senior counsel appearing on behalf of respondent No. 3, we are bereft of any power of directing the Central Government to discharge its obligations under Section 7(5) of the Act and to enforce the said Section of the Act. On top of that, it has been brought to our notice that a petition, filed to make it mandatory for tobacco companies to specify tar and nicotine contents on every pack of cigarettes, has been dismissed by the Hon'ble Supreme Court, though by a one-line order. Hence, it would not be appropriate on our part to pass such an order. Further, in view of categorical assertion in the affidavit filed by respondent No. 1 to the effect that nicotine and tar is harmful even in small quantity and there is no safe level for nicotine and tar contents, there is no scope of our asking the Central Government to prescribe the maximum permissible limit of nicotine and tar contents of each cigarette. In such situation, there remains nothing to monitor. But then, despite knowledge of the fact that the manufacturers and sellers of cigarettes are merchants of death, should we do nothing? Are we so useless and incompetent to protect even the right of life of the citizens and would be idle spectator of sale of death for financial gain by a few?

28. We think that, inasmuch as no tobacco is produced in the State and no cigarette is manufactured in the State, it would be imperative on our

part to ensure that cigarettes are not sold in the State, inasmuch as, our writ is enforceable within the State. In this petition, we are dealing only with cigarettes and have already granted leave to the petitioner to re-approach the Court in relation to other tobacco products when necessary particulars are collected. Therefore, our writ will only apply to cigarettes alone and to no other tobacco product. The question is, whether we can do so and, if we do so, whether that would violate Article 14 of the Constitution of India. We do not think that a merchant of death can take shelter under Article 14 of the Constitution of India because the other merchants of death are spared as they are not answerable to the petition. In the affidavit filed by respondent No. 3, no attempt has been made to bring on record of the Court that it is possible to achieve a safe level of nicotine and tar contents of cigarettes. They know that even a small quantity of nicotine and tar contained in cigarettes is harmful and, ultimately, brings death.

29. Lastly, we will deal with sale of cigarettes in loose. We do not think that the Hon'ble Allahabad High Court was correct in its pronouncement as above. As it appears to us, the said pronouncement was made without taking notice of Section 7(2) of the Act, which came into operation as far back as on 16th November, 2007. Section 7(2) mandates that every of cigarettes sold, supplied or distributed should bear thereon, or on its label, the specified warning. There is, therefore, no concept of sale of cigarettes in loose without the same bearing on it the specified warning. It does not lie in the mouth of the merchants of death that, if ban is imposed on sale of loose cigarettes, the same would force the consumers to buy packages of cigarettes or more than one cigarette and the same will lead to greater consumption even amongst those, who generally buy loose cigarettes for occasional smoking. We are of the view that the Act has already mandated in Section 7(2), with a negative covenant, that every cigarette sold must bear on it, or on its label, the specified warning. Therefore, if the merchants of death feel that one single cigarette is sellable, it is obligatory on their part to ensure that the said single cigarette bears on it, or on its label, the specified warning. In

other words, if a cigarette is not bearing the specified warning, the same should be sold with a label, which must bear the specified warning.

30. We, therefore, allow the petition and ban sale of any cigarette in the State of Uttarakhand, which does not bear on the same, or on its label, the warning already specified. This ban will be effective on the expiry of six months from now, as it appears to us that the cigarette manufacturing industries are not yet geared-up to ensure that every cigarette sold bears on it, or on its label, the specified warning. We, at the same time, ban sale of cigarettes in the State of Uttarakhand. This ban will come into effect on expiry of one year from today and will not be effective at all, in the event, by that time, respondent No. 1 prescribes safe or maximum permissible limit of nicotine and tar contents in each cigarette and the cigarette manufacturers manufacture such cigarettes and hold out the same on every cigarettes or on their label or on every package of cigarettes. We, accordingly, issue a mandamus directing respondent No. 2 to ensure compliance of the above directions.

31. Having regard to what we have said and taking note of the importance of the matter, we, in exercise of power under Article 134A of the Constitution of India, *suo motu*, grant certificate of the nature referred to in Clause (1) of Article 133 of the Constitution of India.

(V.K. Bist, J.)

(Barin Ghosh, C. J.)

G

