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

% **Date of decision: 1st May, 2015**

\+ **W.P.(C) 4402/2015**

INSTITUTE OF PUBLIC HEALTH ..... Petitioner

Through: Mr. Anand Grover, Sr. Adv. with Ms. Simar Suri, Adv.

Versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Akshay Makhija, CGSC with Ms. Mahima Bahl, Ms. S. Moktan, & Mr. Rochindra Deb, Advs. for R-1 to 3.
Mr. Gursharan Singh, Adv. for R-4.

CORAM:-
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), seeks, i) a direction to the respondent No.1 and its ministries and officials to withdraw their entire participation, any financial or technical assistance from the 12th Annual Asia-Pacific Tax Forum from 5th –7th May, 2015 to be co-organized by International Tax and Investment Centre (ITIC) at New Delhi, ii) a restraint against the Ministry of Finance, Ministry of Health and Family Welfare of the Union of India (UOI) and Government of National Capital Territory of Delhi (GNCTD) and their

representatives, employees and officers from participating in any manner in the said conference or attending the conference as resource persons, invitees at the inaugural ceremony etc., iii) a direction to the four respondents to adopt and implement code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.

2. It is the case of the petitioner:

(i) that ITIC is an organization sponsored and controlled by the International Tobacco Industry, having vested interest in promoting tax policies and reforms beneficial to the tobacco industry;

(ii) that as the conference aforesaid will focus on issues related to tax administration reforms in India and impact of tax policies on trade and investment, the participation of the Union Government and its representatives in the event co-organized by tobacco industry and those working to further the interest of the tobacco industry will be violative of Article 5.3 of the

Framework Convention on Tobacco Control (FCTC) to which India is a signatory as well as the FCTC Article 5.3 Guidelines;

(iii) that Article 5.3 of FCTC requires parties to protect their public health policies from the commercial and other vested interests of the tobacco industry in accordance with the national law;

(iv) that the Union and the State Governments, under the provisions of the FCTC, cannot interact with the tobacco industry at an industry-sponsored event where government officials will be lobbied to adopt policies antithetical to public health;

(v) that such interactions also conflict with the Union Government's constitutional obligation to improve public health.

3. The senior counsel for the petitioner has drawn out attention to:

(a) the list (sourced from a website) of sponsors and Board of Directors of ITIC;

(b) to a circular issued by FCTC with respect to an earlier conference held by ITIC in Moscow in October, 2014 advising against participation therein;

(c) to the programme of the conference showing the State Minister of Finance as the Chief Guest and Revenue Secretary, India and Chairman, Central Board of Direct Taxes (CBDT), India as Guest of Honour and State Guest respectively;

(d) to Article 5 of the FCTC laying down the general obligations of the covenanting States and Clause 3 whereof requires the covenanting States to in setting and implementing their public health policies with respect to tobacco control, protect these policies from commercial and other vested interests of the tobacco industry in accordance with the national law;

(e) to the "Guidelines for implementation of Article 5.3 of the FCTC on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry" and Guiding Principle 1 whereof is that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests and Guiding Principle 3 whereof is that parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent; as well as to the recommendation therein that the covenanting States should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products;

(f) to the orders dated 17th September, 2010 and 8th February, 2011 in W.P.(C) No.27692/2010 (GM-RES-PIL) titled ***The Institute of Public Health Vs. The State Government of Karnataka*** of the High Court of Karnataka whereby the Tobacco Board was restrained from actively participating in the Global Tobacco Networking Forum 2010 held at Bangalore from 4th to 8th October, 2010; and,

has argued that the Government of India by participation as aforesaid is granting recognition to the event aforesaid being held by the tobacco industry and the purport whereof is to influence the government and government functionaries to lower the taxes on tobacco and tobacco products to encourage the consumption thereof and which consumption is against the public interest concerning health of the citizens of India. It is further contended that the said participation by the Government of India would be in violation of its obligations under the FCTC and contrary to public interest. It is yet further argued that the situation is identical to as was before the Karnataka High Court.

4. Per contra, the counsel for the respondents UOI appearing on advance notice has drawn our attention to the agenda for the proposed event to demonstrate that the same is unrelatable to tobacco. He has further argued that there is no such prohibition in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act (COTPA), 2003. The order and judgment of the High Court of Karnataka is distinguished by contending that the said conference was strictly in relation to tobacco and tobacco products and which is not the case here.

5. The senior counsel for the petitioner in rejoinder has contended that the taxation policy sought to be addressed in the conference includes taxation policy qua tobacco.

6. We have during the hearing enquired from the senior counsel for the petitioner, whether the minds of the government functionaries who are shown to be the participants in the said conference are to be taken as so feeble as to be influenced by the co-sponsors / co-host of the conference even if they are taken to be lobbying in favour of tobacco and tobacco products. We had yet further enquired whether such lobbying / influencing even if any is dependent upon the participation in the conference and cannot be otherwise. We have also wondered whether the citizens of the country and the Courts are to be so distrustful of their government, for the Courts being required to keep the government functionaries in glass houses, protected from uncalled for influences.

7. The senior counsel though agreeing that we cannot proceed on the premise that the government and the government functionaries are susceptible to such influence, then fell back on the Government of India being required to honour its obligation under the FCTC.

8. As far as FCTC is concerned, all that Article 5.3 thereof requires is the covenanting States to protect its policies from commercial and other vested interests of the tobacco industry in accordance with national law. The Guidelines issued thereunder (though inspite of our asking, we were not shown the power to make the guidelines or anything to indicate that India has accepted the said guidelines) too only require interaction with the tobacco industry on matters related to tobacco control or public health to be accountable and transparent and do not prohibit the governments of the covenanting States from participating in conferences even if sponsored / co-hosted by the tobacco industry.

9. Faced therewith, the senior counsel for the petitioner stated that ITIC was nowhere disclosing that it was alter ego of the tobacco industry.

10. According to the list of dates filed with the petition, India ratified FCTC in the year 1995. We can safely presume that the legislature, while enacting COTPA in the year 2003, was well aware of India's obligations and duties under the FCTC. No provision of the COTPA of which the actions impugned in the present petition may be violative of has been cited. Even

otherwise, no other law or provision barring government functionaries from the participation in the proposed conference is cited.

11. Though the government, for its own reasons, may not participate in an event promoting or glamorizing or encouraging the consumption of tobacco and tobacco products (we may notice that several public persons are seen to be avoiding any association with tobacco and tobacco products) but that is a matter for the decision of the government and it cannot be said that any government functionary would be violating any law if decides to do so.

12. The relief sought before the Karnataka High Court in the matter (supra), was of restraining the Tobacco Board constituted for promotion of tobacco industry from participating in the conference. The reason which prevailed with the Karnataka High Court was that the participation by the Board in the conference was beyond the provisions of the Tobacco Board Act, 1975. It was for this reason that restraint order against the Tobacco Board was issued. The position here is entirely different.

13. There is merit in the contention of the counsel for the respondent UOI that the proposed conference is not concerned with the use of tobacco and tobacco products. Even otherwise we find, that the participation of the

government and government functionaries is in the inaugural function only and hardly any in the technical sessions of the conference.

14. Supreme Court in ***Narmada Bachao Andolan Vs. Union of India*** (2000) 10 SCC 664 held that in exercising of its enormous power, the Court should not be called upon or undertake governmental duties or functions; the Courts cannot run the government and the essence of judicial review is a constitutional fundamental; that in matters of policy, the Court will not interfere; when there is a valid law requiring the Government to act in a particular manner, the Court ought not to, without striking down the law, give any direction and which is not in accordance with law not itself act above the law. Similarly, till the petitioner shows that the proposed actions of the Government sought to be restrained are contrary to any law, this Court cannot issue the restraint order. The Court cannot tell the Government how to go about its conduct and business on a day to day basis.

15. We cannot presume that the government functionaries who have consented to participation in the conference have done so mindlessly or without knowing the background of the sponsors of the conference. Moreover, even if they were not aware, the petitioner by making a

representation has made them so aware. The petitioner has not been able to invoke any ground in law whereunder we can restrain them from so participating. It cannot be lost sight of that we are a democratic country and where the government, comprising of representatives of people, is answerable to the people for its actions. If at all the people of India disapprove of the participation of the government functionaries in the conference, government will face the consequences thereof. Such representatives of people are supposed to know and be aware of the needs of the people and what is good and bad for them.

16. We therefore do not find any merit in the petition which is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MAY 01, 2015
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