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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.24355 OF 2014

S.Cyril Alexander
State Convenor
Tamil Nadu People's Forum for Tobacco
Control (TNPFTC),
39/8, Starling Apartments,
2nd Street, Akbarabad,
Kodambakkam, Chennai - 600 024.

... Petitioner

.Vs.

1. Union of India
Rep. by its Principal Secretary,
Ministry of Information & Broadcasting,
Room No.552, A-Wing,
Shastri Bhawan, New Delhi - 110 001.
 2. State of Tamil Nadu
Rep. by its Principal Secretary to the Govt.
Department of Health and Family Welfare,
Govt. of Tamil Nadu, Secretariat,
Chennai - 600 009.
 3. The Director of Public Health and Preventive Medicine,
DMS Campus, Teynampet, Chennai - 600 018.
 4. Central Board of Film Certification,
Rep. by its Chairman
35, 5th Floor, Shastri Bhawan,
Haddows Road, Chennai - 600 034.
 5. M/s.WUNDERBAR Films Private Limited
1/6, Appavu Apartments,
1, Venus Colony, 2nd Street,
Alwarpet, Chennai - 600 018.
- ... Respondents

PRAYER :

Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the



2nd respondent to prosecute the 5th respondent under Section 5 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution) Act, 2003 within a time frame fixed by this Court and further directing the 1st respondent to take appropriate action against the 4th respondent for the dereliction of duty committed in respect of violations of law by the 5th respondent within a time frame fixed by this Court.

For Petitioner : Mr.Perumpral
For Mr.S.Sathiachadran

For Respondents 1 & 4 : Mr.T.V.Krishnamachari, SPC

For Respondents 2 & 3 : Mr.K.M.D.Muhilan
Government Advocate

For 5th Respondent : Mr.P.S.Raman, Senior Counsel
for Mr.Vijayan Subramanian

O R D E R

The lis on hand has been instituted by the petitioner who is the State Convenor of Tamil Nadu People's Forum for Tobacco Control to direct the 2nd respondent to prosecute the 5th respondent under Section 5 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as "the Act, 2003" within a time frame fixed by this Court and to direct the 1st respondent to take appropriate action against the 4th respondent for the dereliction of duty committed in respect of violations of law by the 5th respondent within a time frame fixed by this Court.

2. The petitioner states that he is the State Convenor of the Tamil Nadu People's Forum for Tobacco Control (TNPFTC) which is a network of individuals, professional associations, like-minded organisations and institutions who are actively working towards tobacco control. The petitioner has narrated the vision of forming a forum exclusively for tobacco control. The activities carried out by the forum has also been elaborately stated by the petitioner.

3. The grievance of the petitioner raised in the present writ petition is that under the banner of the 5th respondent, feature film in the name and style of "Vellaiyilla Pattathari" in short "VIP" was produced, which was released on 18th July, 2014 and is running in many theatres in and around Tamil Nadu and throughout India. Soon after, within a couple of days,



friends of the writ petitioner in Chennai and from other parts of Tamil Nadu, who are all the members of the Forum, reported to the petitioner that the film had violated the relevant provisions of law. The petitioner ascertained the said complaint by viewing the film on 24.07.2014. Accordingly, the petitioner has summarised the violations as under:

"a) The advertisement banners of the said film, erected in front of all the theatres all over Tamil Nadu where the film is run, carries the picture of the lead actor (Dhanush) prominently smoking with heaps of smoke emanating from his mouth, which is a violation punishable under Section 5 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and Rule 9(2) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution) (Amendment) Rules, 2004 as amended on 27.10.2011.

b) The conspicuous absence of the disclaimer mandated under Rule 8(1)(d) of the above said Rules which provides that a disclaimer of minimum twenty seconds duration, by the concerned actor regarding the ill effects of the use of such products, in the beginning and middle of the film or the television programme be displayed, is a very serious violation of law.

c) In the film, the lead actor has been shown frequently smoking throughout the film without any editorial justification, which is a violation of Rules 8(1)(i) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution), Rules, 2004.

d) Further, when such smoking scenes are shown in the film, the Rule that the anti-tobacco health warning scroll should be displayed legibly and readably in black coloured font on white background containing the warning as mentioned in 8(1)(i)(b) and (c) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution) Rules, COTPA, 2004 has not been complied with as the health spot warnings were shown in without white background defeating the very purpose of the requirement made under the Rules. Not only the said



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specification is violated, the warning scroll is displayed legibly and readably in black colouted font on white background containing the warning as mentioned in 8(1)(i)(b) and (c) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution) Rules, COTPA, 2004 has not been complied with as the health spot warnings were shown in without while background defeating the very purpose of the requirement made under the Rules. Not only the said specification is violated, the warning scroll is displayed in too a tiny font that one cannot actually read it, defeating the very purpose of the warning scroll as mandatory.

e) The promo stills released by the 5th Respondent also contain the protagonist prominently smoking with heaps of smoke emanating from his mouth. The same are available in the internet."

4. The petitioner states that the above violations are punishable under Sections 22 and 23 of the Act 34 of 2003. Referring to Sections 22 and 23, the petitioner has stated that the complaint submitted on 25.07.2014 along with photographs evidencing the violation, has not responded by the competent authorities. It is contended that no action has been taken. The representation in-person was submitted to the Director General of Police, Chennai on 30.07.2014 and to the Commissioner of Police, Chennai and the City Health Officer, Chennai and to the authorities, who are all connected with the issues. In view of the fact that no action has been initiated, the petitioner has filed W.P.No.21698 of 2014 by way of Public Interest Litigation. The Hon'ble Division Bench of this Court dismissed the writ petition with an observation that 'Every citizen cannot become a super censor board or a super authority in the form of petitioning the court under a Public Interest Litigation'. Thus, the petitioner states that he is constrained to file the present petition for initiation of appropriate action under the provisions of the said Act.

5. The learned counsel for the petitioner made a submission that the said offences are being committed continuously even during the pendency of the writ petition and the petitioner has submitted several such complaints before the authorities and none of the complaints are looked into and the offences are being committed continuously affecting the public rights.

6. The learned counsel for the petitioner reiterated that prosecution is to be instituted in respect of such violations under the Act and failure on the part of the authorities are



also to be viewed seriously. When the enactment contemplates a particular conduct in respect of the movies and the violations committed by any person affecting the public at large can at no circumstances be dealt with in a casual manner. Thus, the petitioner contends that actions are to be initiated then and there in such circumstances by the authorities competent and in this regard, appropriate Committee also constituted by the Government for the purpose of Act 34 of 2003 and the Committee should conduct periodical inspections and vigil over the violations and initiate action in accordance with the provisions of the Act.

7. The learned Senior Counsel appearing on behalf of the 5th respondent/M/s.Wunderbar Films Private Limited objected the contentions raised on behalf of the petitioner by stating that the writ petition per se is not maintainable. Once a Public Interest Litigation is filed and the Hon'ble Division Bench of this Court dismissed the writ petition, there cannot be any further writ petition on the same cause and by filing the very same affidavit. The Division Bench dismissed the writ petition at the admission stage itself and therefore, the present writ petition is not maintainable. The learned Senior Counsel made a submission that the Central Board of Film Certification issued a letter to the 5th respondent and in response to the letter, they have informed that all such objectionable posters, stills etc. were removed and the 5th respondent ensure that no such irregularities will be repeated again. In fact, they have submitted a letter of apology to the Central Board of Film Certification. In view of the fact that such objectionable posters, stills etc. were removed on receipt of notice from the Central Board of Film Certification, no further action needs to be initiated in respect of the complaint given by the petitioner. Thus, the cause repeatedly raised after dismissal of the Public Interest Litigation deserves no merit consideration.

8. The learned Senior Counsel further contended that the 5th respondent is also acting with responsibility and following the rule of law in all respects. Once the mistake is pointed out and such mistakes are rectified, then there is no reason for continuation of further action.

9. The learned counsel appearing on behalf of respondents 1 and 4 relying on their counter affidavit made a submission that the advertisement banners and promo on social media stills do not come under the purview of Cinematograph Act and Rules. The learned counsel for respondents 1 and 4 reiterated that on receipt of such complaint, they have sent a letter to the 5th respondent and in response to the said letter, the 5th respondent also submitted a letter of apology and made a promise that they



will not repeat such mistakes.

10. The learned Government Advocate appearing on behalf of the respondents 2 and 3 contended that the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 is to be implemented scrupulously by the State authorities. In this regard, a Committee has already been constituted through Government Order issued in G.O.(Ms)No.318 dated 26.09.2008. Thus, the Committee constituted in terms of Section 25 has to monitor the violations and file complaints and pursue the matter in accordance with the provisions of the Act. The Committee is very much in force and in the present case, the Committee has issued legal notice of violation to the persons concerned. The Committee has taken note of the violations and initiated action. Pursuant to the action initiated by the Committee, the Nodal Officer viz., Director of Public Health and Preventive Medicine issued legal notice of violation vide letter dated 17.08.2014 addressing to Mr.Dhanush, Actor and Producer, Vellaiyilla Pattathari Movie and Mr.Velraj, Director - Vellaiyilla Pattathari Movie, the Manager, Abirami Mega Mall, the Manager, AVM Productions, the Manager, Padmam Theatre, the Manager, Kasi Theatre, the Manager, Sathyam Theatre (Cinemas), the Manager, Woodlands Theatre, Tamil Nadu Film Producers' Council, Tamil Nadu Film Directors' Association, Tamil Nadu Cinema Theatre Owners' Federation, the Commissioner of Police, the Corporation Commissioner, Chennai Corporation.

11. The learned Government Advocate appearing on behalf of respondents 2 and 3 contended that the Committee constituted under Section 25 taken cognizance of the violations and the Nodal Officer issued legal notices for such violations to all the persons concerned and, in view of the pendency of the writ petition further actions are not continued.

12. The counter affidavit filed by the Director of Public Health and Preventive Medicine reveals that the apprehension of the petitioner that the feature film titled "Vellaiyilla Pattathari" (in short "VIP") was produced which was released on 18th July, 2014 has violated the relevant provisions of the COTPA, 2003 in the following instances:

"a) The advertisement banners of the said film, erected, in front of all theatres all over Tamil Nadu where the film is run, carries the picture of the lead actor (Dhanush)

b) Prominently smoking with heaps of smoke emanating from his mouth, which is a violation under Section 5 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade



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and Commerce, Production, Supply and Distribution) Rules, 2004 as amended on 27.10.2011.

c) The conspicuous absence of the disclaimer mandated under rule 8(d) of the above said Rules, which provides that an audio - visual disclaimer on the ill-effects of tobacco use, of minimum twenty seconds duration each, in the beginning and middle of the film and television be displayed, is a very serious violation of law."

13. Relying on the said counter affidavit, the learned Government Advocate appearing on behalf of respondents 2 and 3 reiterated that the Committee is functioning properly and they have initiated action in accordance with the provisions of the Act 34 of 2003 issued notice and on account of the pendency of the writ petition, further actions are not continued and therefore, the respondents 2 and 3 have acted in accordance with law and not committed any lapses or otherwise in the matter of initiation of appropriate action under the law.

14. Considering the arguments as advanced by the learned counsel for the petitioner and the learned Senior Counsel appearing on behalf of the 5th respondent and the learned counsel for respondents 1 and 4 and the learned Government Advocate appearing on behalf of respondents 2 and 3, this Court is of an opinion that the provisions of the Act are to be considered before considering the issues raised.

15. The very statement of objects for the enactment viz., Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 stipulates that the 43rd World Health Assembly in its Fourteenth Plenary meeting held on 17th May, 1990, reiterated the concerns expressed in the Resolution passed in the 39th World Health Assembly and urged Member States to consider in their tobacco control strategies plans for legislation and other effective measures for protecting their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discourage and use of tobacco and impose progressive restrictions and take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco.

16. Section 3 provides 'Definitions'. Section 3(a) defines 'advertisement' includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas. Section 4



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contemplates 'Prohibition of smoking in a public place'. Accordingly, no person shall smoke in any public place. Section 5 indicates 'Prohibition of advertisement of cigarettes and other tobacco products'. Section 6 denotes 'Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area'. Section 22 contemplates 'Punishment for advertisement of cigarettes and tobacco products'. Whoever contravenes the provision of section 5 shall, on conviction, be punishable. Section 25 deals with 'Prevention, detention and place of trial of offences under sections 4 and 6. The Act is to be read inconsonance with the purpose and objects stated for the enactment. As pointed out earlier, the very purpose and object is to impose progressive restrictions and take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco. Any provisions of Act must be interpreted inconsonance with the purpose and object sought to be achieved. The legislative intention is to be considered for the purpose of interpreting the provisions of the Act. In other words, constructive interpretation is imminent in respect of such legislations more specifically in the interest of public health. Health being an integral part of Article 21 of the Constitution of India, interpretation must be not only constructive, but also pragmatic and further, purposive interpretation is imminent so as to achieve the goal sought to be achieved through the enactment.

17. The learned counsel appearing on behalf of the petitioner brought to the notice of this Court regarding the Guidelines issued by the Ministry of Health and Family Welfare, Government of India for Law Enforcers for effective implementation of Tobacco Control Laws. The above Guidelines provide detailed instructions to be followed with reference to the provisions of the Act.

18. With reference to the arguments advanced by the learned Senior Counsel appearing on behalf of the 5th respondent that the writ petition is not maintainable on the ground that the writ petitioner earlier filed W.P.No.21698 of 2014 on the same cause of action and with the same prayer, which was dismissed by the Hon'ble Division Bench of this Court. This Court is of the considered opinion that the order of the Hon'ble Division Bench is unambiguous that the Public Interest Litigation was not entertained with an observation that every citizen cannot become a super censor board or a super authority in the form of petitioning the court under a Public Interest Litigation. Thus, the Division Bench was not inclined to entertain the writ petition. Therefore, the Public Interest Litigation was not entertained as certain allegations raised in respect of certain acts which is raised as violation of the provisions of the Act,



the cause must be addressed properly and the Division Bench has opined that Public Interest Litigation cannot be an appropriate remedy in such circumstances. Thus, the said order cannot be a bar for the petitioner to raise the allegations by way of filing a writ petition regarding the complaint filed by him. The writ petitioner states that he is the State Convenor of Tamil Nadu People's Forum for Tobacco Control and they are conducting various activities for the effective control in respect of Tobacco and other injurious substances. Therefore, the complaint of the petitioner cannot be brushed aside. Perusal of the objects of the organisation in which the petitioner claims to be the State Convenor, this Court is of an opinion that they are involved many similar public activities and they have filed complaints in respect of such violations, which all are causing health hazards to the citizen in general and therefore, the dismissal of the Public Interest Litigation by the Hon'ble Division Bench cannot be a ground to dismiss the present writ petition and in such circumstances where complaint is made, the cause can never be allowed to die merely on the ground that a Public Interest Litigation was dismissed on a different ground of entertainability.

19. High Court is duty bound to consider the genuinity of the cause raised. Mere technicality of this nature cannot be a ground to reject the writ petition. High Court has to go to an extent to meet the ends of justice and in the process, various causes raised, its importance and relevance with reference to the provisions of the Act are to be considered.

20. As far as the State of Tamil Nadu is concerned, the learned Government Advocate appearing on behalf of respondents 2 and 3 in clear terms contended that the competent Committee constituted under Section 25 of the Act initiated action, issued legal notice and therefore, they have not committed any lapses in the matter of initiation of action. The continuance of the action is kept in abeyance in view of the pendency of the writ petition.

21. The learned counsel appearing on behalf of the respondents 1 and 4 made a submission that they had issued a letter to the 5th respondent and in response to the letter, the 5th respondent admitted the mistake and submitted a letter of apology. However, it is contended by the 4th respondent that such allegations would not fall under the provisions of the Cinematograph Act. Therefore, they cannot initiate any direct action under the provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.



22. This Court is of the considered opinion that the purpose and object of the Act is of paramount importance. The object of the Act is to ensure that 'Right to Life' enunciated under Article 21 of the Constitution of India, which is a fundamental right. Passive smokers are largely and seriously affected than the active smokers is the observations made by the Experts. The discussions made in World Health Assembly promoted the State to enact the laws. Thus, the Act is to be considered as an important legislation to protect the public health with reference to 'Right to Life' enshrined under Article 21 of the Constitution of India. Thus, the violations in any form falling within the ambit of the legislation is to be taken cognizance and such violators are to be prosecuted. There cannot be any other opinion in respect of prosecution of the offenders once materials are available for such prosecution. 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 crores annually, which more than offsets all the benefits accruing in the form of revenue and employment generated by tobacco industry. Under these circumstances, the comprehensive legislation is enacted and the authorities if fails to implement the provisions of the Act, then they are committing not only violation of the provisions of the Act, but emphatically infringing the fundamental rights of the citizen enshrined under Article 21 of the Constitution of India as right to life, medical facility, healthy life are integral part of Article 21 as repeatedly held by the Constitutional Courts across the country.

23. The State Level Monitoring Committee constituted under Section 25 of the Act is the authority for the purpose of prosecution. They are empowered to monitor, conduct inspections, collect materials and prosecute the persons in the manner prescribed. The active role of the Committee is to be furthermore activated by the State authorities. Thus, the complaints submitted by any person or the informations provided to the Committee can never be treated in a casual manner and all such complaints are to be looked into properly and suitable actions are to be initiated by following the procedures.

24. It is brought to the notice of this Court that the competent Committee has been constituted and the tenure of the Committee is ordinarily two years. Thus, the 2nd respondent Principal Secretary to Government must ensure that the arising vacancy must be filled up without any delay and in the event of lapses, the Committee could not be in a position to deal with the complaints and the cases. It is further brought to the



notice of this Court that the members are nominated by the Director General of Police, Department of Drug Control, Cancer Institute at Adyar and University of Madras. These organisations are duty bound to nominate members for the purpose of constitution of the Committee without any lapses and the Committee constituted must look into the complaints, informations and materials and initiate appropriate action / prosecution under the provisions of the Act.

25. Because of the delay in disposing of the writ petition, the cause can never be allowed to die and more specifically, when the nature of proceeding involves prosecution under the Penal provisions of the Act, and thus, appropriate actions are to be continued in the interest of justice.

26. It is also brought to the notice of this Court that effective implementation of the provisions of the Act is lacking and inspite of several instances which all are in the public domain is not addressed or taken note of for the purpose of initiation of action. Thus, the State has to sensitize the authorities competent for the purpose of exercise of vigil over such illegalities and irregularities regarding violations under the provisions of the Act. It is needless to state that the 5th respondent and aggrieved persons are at liberty to defend their case.

27. In view of the aforesaid discussions, this Court is inclined to pass the following orders.

(i) Respondents 2 and 3 are directed to proceed with all further actions in continuation of the legal notice of violation already issued by the Nodal Officer viz., Director of Public Health and Preventive Medicine and by following the procedures as contemplated under the provisions of the Act as well as the Rules or Guidelines, within a period of six weeks from the date of receipt of a copy of this order.

(ii) Respondents 2 and 3 are directed to ensure that the Committee constituted under Section 25 of the Act functions continuously and the vacancies are to be duly filled up then and there without causing any delay.

(iii) Respondents 2 and 3 are directed to ensure that the complaints, informations provided to the competent Committee are responded swiftly and actions are initiated without causing any undue delay under the provisions of the Act.



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28. With the above observations, the Writ Petition stands allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Principal Secretary,
Union of India
Ministry of Information & Broadcasting,
Room No.552, A-Wing,
Shastri Bhawan, New Delhi - 110 001.
2. The Principal Secretary to the Govt.
State of Tamil Nadu
Department of Health and Family Welfare,
Govt. of Tamil Nadu, Secretariat,
Chennai - 600 009.
3. The Director of Public Health and Preventive Medicine,
DMS Campus, Teynampet, Chennai - 600 018.
4. The Chairman
Central Board of Film Certification,
35, 5th Floor, Shastri Bhawan,
Haddows Road, Chennai - 600 034.
5. M/s.WUNDERBAR Films Private Limited
1/6, Appavu Apartments,
1, Venus Colony, 2nd Street,
Alwarpet, Chennai - 600 018.

Copy To

1. Director General of Police,
Post Box No.601, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
2. Drug Control Department,
No.359, DMS Campus,
Teynampet, Chennai - 6.



3. Cancer Institute (WIA)
38. Sardar Patel Road,
Near Gandhi Mandapam,
Adyar, Chennai - 600 036.

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4. The Registrar,
University of Madras,
Chepauk, Chennai - 600 005.

+3cc to M/s.S.Sathiachandran, Advocate SR.NO.55577
+2cc to M/s.T.V.Krishnamachari, Advocate SR.NO.55942
+1cc to Government Pleader, SR.NO.55904

W.P.No.24355 of 2014

SSV(CO)
PM/17/11/2021