



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22514 of 2017

and

W.M.P.No.23634 of 2017

S.Cyril Alexander

State Convenor

Tamil Nadu People's Forum for Tobacco Control (TNPFTC)

39/8, Starling Apartments,

Kodambakkam,

Chennai – 600 024.

... Petitioner

Vs.

1.Union of India

Rep. by its Principal Secretary,

Ministry of Information & Broadcasting,

Room No.552, A-Wing,

Shastribhawan, New Delhi – 110001.

2.The Chairman,

State Level Committee to Monitor the Violation

U/s.5 of COTPA

Health and Family Welfare Department,

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 Bhavan,
Haddows Road,
Chennai – 600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd respondent to prosecute the production company, namely M/s. Open Eye Theatres, and its Proprietor V.Ganesan, 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 production company, namely M/s. Open Eye Theatres.

For Petitioner	: Mr.P.T.Geotom
For R1	: Mr.T.V.Krishnamachari Standing Counsel Central Govt.
For R2 & R3	: Mr.T.Venkatesh Kumar Special Government Pleader
For R4	: No Appearance



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ORDER

The relief sought for in the present writ petition is to direct the 2nd respondent to prosecute the production company, namely M/s. Open Eye Theatres 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 production company, namely M/s. Open Eye Theatres.

2. The petitioner is the State Convenor of the Tamil Nadu People's Forum for Tobacco Control (TNPFTC) which is a network of individuals and professional associations, like-minded organisations and institutions, who are actively working towards tobacco control. The petitioner states that in India there are almost 275 Million Tobacco users and each year about 1 Million people die due to the use of Tobacco products and its ill-effects. The World Health Organisation (WHO) has formulated a convention on tobacco control namely “WHO Framework Convention on Tobacco Control”.



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3. The grievance of the writ petitioner is that the production company, namely M/s. Open Eye Theatres has involved in certain illegalities with reference to the provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution) Act, 2003. Section 5(3) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution) Act, 2003, reads as follows:

“5.(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of-

(a) Cigarettes or any other tobacco product;
or

(b) Any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another persons.”

4. In order to reduce the unnecessary exposure of tobacco usage through films and TV programmes and to regulate the depiction of the



tobacco products or their use in films and television programmes, the Government of India in exercise of the powers conferred by Section 31 of Cigarettes and Other Tobacco products (Prohibition of Advertisement and Regulations of Trade and Commerce, Production, Supply and Distribution) Act, 2003 framed rules. Thereafter, some amendments were made vide G.S.R.No.786 dated 27.10.2011 and another amendment to the rules was made vide G.S.R.No.708(E) dated 21.09.2012.

5. According to the G.S.R.No.708(E) dated 21.09.2012, new films and television programmes while displaying tobacco products or their use shall have;

- (1) a strong editorial justification explaining the necessity of display of tobacco products or their use in the film to Central Board of Film Certification (CBFC).
- (2) Anti-tobacco health spots of minimum 30 seconds duration each at the beginning and middle of the film or the television programme,
- (3) Anti-tobacco health warning as a prominent static message at the bottom of the screen during the period of display of the tobacco products or their use in the film and television programme and
- (4) 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 programme.

6. Under the banner of the said production company, feature film in the name and style of “Vishayam Veliya Theriya Koodathu” was produced, which was released on 31th August, 2014 and is running in many theatres in and around Tamil Nadu and throughout India. Soon after, within a couple of days, petitioner's friends in Chennai from other parts of Tamil Nadu, who are members of our Forum reported to me that the film had violated the relevant provisions of law in the following instances, which the petitioner ascertained by viewing the film on 22.08.2014. The violations may be summarised 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 actors 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) The promo stills released by the production company, namely M/s. Open Eye Theatres also contain the protagonist smoking with heaps of smoke emanating from his mouth. The same are available in the internet.”

7. The petitioner states that the violations committed in respect of the said movie “Vishayam Veliya Theriya Koodathu” are punishable under Section 22 and 23 of the Act, which reads as follows:



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“22. Punishment for advertisement of cigarettes and tobacco products.

Whoever contravenes the provision of section 5 shall, on conviction, be punishable.

(a) In case of first conviction, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or both, and

(b) In case of second or subsequent conviction with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.

23. Forfeiture of advertisement and advertisement material:

Where any person has been convicted under this Act for the contravention of the provisions of Section 5, the advertisement and the advertisement material for cigarettes and other tobacco products may be forfeited to the Government and such advertisement and advertisement material shall be disposed of in such manner as may be prescribed by rules made under this Act”.



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8. The petitioner sent representation along with photographs evidencing the violations and requested for initiation of action under the provisions of the Act. The petitioner also submitted a representation in person to the Secretary, Ministry of Health and Family Welfare, Nirman Bhavan, New Delhi, the Director of National Tobacco Control Programme, New Delhi, Ministry of Information and Broadcasting, New Delhi, Director of Public Health and Preventive Medicine, Chennai and to all other authorities. Since no action has been taken, the petitioner has chosen to file the present writ petition for a direction to initiate appropriate action under the provisions of the Act and initiate action against the 4th respondent for their dereliction of duty committed in respect of the violation of the law by the said production company.

9. 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.



10. 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.

11. 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.

12. 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 production company and aggrieved persons are at liberty to defend their case.

13. In view of the aforesaid discussions, this Court directs the respondents 2 and 3 to initiate all appropriate actions, if not initiated and continue the actions if initiated in accordance with the provisions of the Act and Rules as expeditiously as possible.

14. With the above directions, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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(2/5)

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Index : Yes
Speaking order
Neutral Citation : Yes



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Union of India
Ministry of Information & Broadcasting,
Room No.552, A-Wing,
Shastribhawan, New Delhi – 110001.
- 2.The Chairman,
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S.M.SUBRAMANIAM, J.

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