

**Sainath Traders and anr. Vs. Commissioner of Food and Drug Administration and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/369192](http://sooperkanoon.com/369192)

**Court :** Mumbai

**Decided On :** Dec-05-2005

**Reported in :** 2006(4)BomCR457

**Judge :** Deshpande A.P. and ;Kukday S.P., JJ.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 3, 7, 23, 23(1A) and 24; Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 - Sections 3; Maharashtra Prevention of Food Adulteration Rules, 1962 - Rule 3; Prevention of Food Adulteration Rules, 1955 - Rule 62; [Constitution of India](#) - Articles 14, 19 and 19(1)

**Appeal No. :** Writ Petitioner No. 6708 of 2005

**Appellant :** Sainath Traders and anr.

**Respondent :** Commissioner of Food and Drug Administration and ors.

**Advocate for Def. :** U.K. Patil, A.G.P. for Respondent Nos. 1 to 14

**Advocate for Pet/Ap. :** V.J. Dixit, Adv.

**Judgement :**

**Deshpande A.P., J.**

1. The instant petition challenges four orders issued by the Commissioner, Food and Drugs administration and Food (Health) Authority. Maharashtra State. Mumbai dated 2-11- 2004, 29-1-2005, 31-1-2005 and 8-2-2005. The challenge is based on the judgment of the Apex Court in the case of Godawat Pan Masala Products I.P. Ltd. and Anr. v. Union of India and Ors. : AIR 2004 SC4057 .

2. Learned Counsel for the petitioners has assailed the orders on the following grounds:

(a) That, the orders issued by the Food (Health) Authority of the Maharashtra State purportedly in exercise of powers under Rule 3 of the Maharashtra Prevention of Food Adulteration Rules, 1962, are without jurisdiction. The Authority has no power to prohibit sale, storage or distribution.

(b) That, tobacco and tobacco products cannot be regulated by the provisions of the Food Adulteration Act, 1954, and the same has to be regulated by cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

(c) That, the impugned orders are in violation of the petitioners fundamental right guaranteed by Article 19(1) and Article 14 of the [Constitution of India](#).

(d) That, the authority has not acted justly and fairly and has acted in breach of principles of natural justice.

3. Learned Counsel for the petitioners has invited our attention to the judgment of the Apex Court in the case of Godawat Pan Masala Products I.P. Ltd. (supra) and to be precise, to the conclusion recorded in paragraph 76 of the judgment. We reproduce the same:

1. Section 7(iv) of the Act is not an independent source of power for the State Authority:

2. The source of power of the State Food (Health) Authority is located only in the valid rules made in exercise of the power under Section 24 of the Act by the State Government to the extent permitted thereunder.

3. The power of the Food (Health) Authority under the rules is only of transitory nature and intended to deal with local emergencies and can last only for short period while such emergency lasts;

4. The power of banning an article of food or an article used as ingredient of food, on the ground that it is injurious to health, belongs appropriately to the Central Government to be exercised in accordance with the Rules made under Section 23 of the Act particularly, Sub-section (1-A)(f).

5. The State Food (Health) Authority has no power to prohibit the manufacture for sale storage, sale or distribution of any article, whether used as an article or adjust thereto or not used as as an food. Such a power can only arises as a result of wider policy decision and emanate from Parliamentary legislation or, at least, by exercise of the powers by the Central Government by framing rules under Section 23 of the Act:

6. The provisions of the cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Distribution Commerce, Production, Supply) Act, 2003, are directly in conflict with the provisions of Section (iv) of the Prevention of Food Adulteration) Act, 1954, The former Act is a special Act intended to deal with tobacco and tobacco products particularly, while the latter enactment is a general enactment. Thus, the Act 34 of 2003 being a special Act, and of later origin, overrides the provisions of Section (iv) of the [Prevention of Food Adulteration Act, 1954](#) with regard to the power to prohibit the sale or manufacture of tobacco products which are listed in the schedule to the Act 34 of 2003:

7. The impugned notification are ultra vires the Act and, hence, bad in law:

8. The impugned notification are unconstitutional and void as abridging the fundamental rights of the appellants guaranteed under Articles 14 and 19 of the

Constitution.

It is thus clear that the power of the Food (Health) Authority under the rules is only of transitory nature and intended to deal with local emergencies and can last only for short period while such emergency lasts. Though the impugned orders go to ban distribution and sale of Gutka, Tobacco products and Pan Masala, it does not limited the operation of the order by specifying any time frame.

4. Learned Assistant Government Pleader, Mr. U.K. Patil, appearing for the respondents, submitted that the research reveals that Magnesium Carbonate is injurious to health. He further points out that Rule 62 of the Prevention of Food Adulteration Rules, 1955. totally prohibited use of antiquating agents in any food except when the same is specifically permitted. It is submitted that as the production and sale of Gutka and Pan Masala is in violation of Rule 62, the authority is justified in issuing an order under Section (v) of the Prevention of Food Adulteration Act. He further pointed out that this point is not considered in the judgment of the Apex Court referred to above.

5. According to the State, the notifications are issued because due to regular consumption of Gutka and Pan Masala, there is possibility of serious consequences to the public Health and more particularly health of youth. A regular consumption of Gutka and Pan Masala can result in deadly disease, such as, cancer. The impugned order dated 31-1-2005 begins by saying that the orders prohibiting the sale of Gutkha and Pan Masala containing Magnesium carbonate has been passed by the Commissioner. By the said order/orders, the Local Health Authority and others are informed that as ban has been imposed on storage, distribution and sale, the goods be seized and criminal cases be instituted against the persons dealing in the said goods. The authorities of the State including Collector, superintendent of Police and Commissioner of Police are directed to seek implementation of the said orders. The petitioners are dealing in sale, purchase, transportation and storage of stocks of Gutka, Pan Masala and similar products. Petitioner No. 1 is a retail whereas petitioner No. 2 is carrying and forwarding agent in the State of Maharastra for various manufacturing units for Gutka, Pan masala and similar products. Pursuant to the orders issued by the

Food (Health) Authority, the business premises are being raided, stock seized and criminal action resorted to against the persons concerned which promoted filing of this petition.

6. The Apex Court in the case of Godawat Pan Masala Products I.P. Ltd, and another (supra) has categorically held that the provisions of cigarettes and other tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, and Prevention of food Adulteration Act, 1954, are directly in conflict, and Pan Masala and as such, Act 34 of 2003 shall prevail. As the Prevention of Food Adulteration Act is general enactment, the orders passed by the authority concerned are prima facie wholly without jurisdiction. It may not be out of place to point out that Section 3(p) of the Act of 2003 defines the expression 'tobacco products' as the products specified in the schedule. Entry 8 of the Schedule covers Pan Masala or any chewing material having tobacco as one of its ingredients (by whatever name called), where Entry 9 covers 'Gutka', The tobacco products are, as such, regulated by Act No. 34 of 2003 and the said products cannot be regulated by the Prevention of Food Adulteration Act.

7. In the above referred judgment, the Apex Court has answered all the issues dealing with the subject and the same goes in favour of the petitioners herein. The State Government or Food (Health) Authority has a limited power contained in Rule 3 of the Maharashtra Prevention of Food Adulteration Rules, 1962 and the same does not vest the authority to ban or restrict the sale and distribution of tobacco products except in case of an emergent situation, such as, outbreak of an epidemic or likewise. It is interesting to read the order dated 8-2-2005 which says that unless the Central Government/State Government determines the standards of goods as per provisions of Section 3 of Prevention of Food Adulteration Act, in respect of production and sale of Gutka and similar such other goods, no licence should be issued under the prevention of Food Adulteration Act. A further direction is issued to cancel the licences or suspend the same. The impugned order dated 8th February 2005 totally prevents the sale of Gutka, Pan Masala or other similar products and the same has been held to be impermissible, without authority or jurisdiction by the above referred judgment of the Apex Court. As a strong prima

facie case is made out, we grant interim relief prayed for.

8. Hence, issue Rule.

9. Pending decision of this petition, by way of interim relief, we grant stay to the effect, operation and execution of the impugned orders dated 2-11-2004, 29-1-2005, 31-1-2005 and 8-2-2005 passed by the Commissioner of Food and Drugs Administration of the Maharashtra State.

10. Certified copy expedited.

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