

CASE NO. :
Writ Petition (civil) 316 of 1999

PETITIONER:
MURLI S. DEORA

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 02/11/2001

BENCH:
M.B. SHAH & R.P. SETHI

JUDGMENT:
JUDGMENT

2001 Supp(4) SCR 650

The following Order of the Court was delivered :

Heard the learned counsel for the parties.

Fundamental right guaranteed under Article 21 of Constitution of India, inter alia, provides that none shall be deprived of his life without due process of law. Then - why a non-smoker should be afflicted by various diseases including lung cancer or of heart, only because he is required to go to public places? Is it not indirectly depriving of his life without any process of law? The answer is obviously - 'yes'. Undisputedly, smoking is injurious to health and may affect the health of smokers but there is no reason that health of passive smokers should also be injuriously affected. In any case, there is no reason to compel non-smokers to be helpless victims of air pollution.

The statement of objects and reason of (The) Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975, inter alia, provides, "Smoking of cigarettes is a harmful habit and, in course of time, can lead to grave health hazards. Researches carried out in various parts of the world have confirmed that there is a relationship between smoking of cigarettes and lung cancer, chronic bronchitis; certain diseases of the heart and arteries; cancer of bladder, prostate, mouth pharynx and oesophagus; peptic ulcer etc., are also reported to be among the ill-effects of cigarette smoking."

Similarly, the statement of objects and reasons of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2001, provides, "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".

In this view of the matter, when this petition under Article 32 of the Constitution of India came for orders on 31st August, 2001, we have passed order for implementing 1975 Act. At that time of hearing, learned Attorney General as well as counsel for the parties submitted that considering harmful effect of smoking, smoking in public places is required to be prohibited. On this submission, we sought response of the Central Government. As no affidavit was filed during the stipulated time by the Central Government, on 28th September, 2001, we were required to adjourn the matter. Today also, when the matter came up for hearing no response is filed on behalf of the Central Government. However, learned Attorney

General with all emphasis at his command submitted that appropriate order banning smoking in public places be passed. Learned counsel for the petitioner also submitted to the aforesaid effect. Counsel appearing for other respondents also supported the same.

In the petition, it is pointed out that tobacco smoking contains harmful contents including nicotine, tar, potential carcinogens, carbon monoxide, irri-tants, asphyxiates and smoke particles which are the cause of many diseases including the cancer. It is alleged that three million people die every year as a result of illness related to the use of tobacco products of which one million people belong to developing countries like India. The World Health Organisa-tion is stated to have estimated that tobacco related deaths can rise to a whopping seven million per year. According to this organisation, in the last half century in the developing countries alone smoking has killed more than sixty million people. Tobacco smoking also adds to the air pollution. Besides cancer, tobacco smoking is responsible for various other fatal diseases to the mankind.

It is further submitted that statutory provisions are being made for prohibiting smoking in public places and the Bill introduced in the Parliament is pending consideration before a Select Committee. The State of Rajasthan has claimed to have passed Act No. 14 of 2000 to provide for prohibition of smoking in place of public work or use and in public service vehicles for that State. It is stated that in Delhi also there is prohibition of smoking in public places.

Learned Attorney General for India submits and all the counsel appearing for the other parties agree that considering the adverse effect of smoking in public places, it would be in the interests of the citizens to prohibit the smoking in public places till the statutory provision is made and implemented by the legislative enactment. The persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of acts of the smok-ers.

Realising the gravity of the situation and considering the adverse effect of smoking on smokers and passive smokers, we direct and prohibit smoking in public places and issue directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places, namely :

1. Auditoriums
2. Hospital Buidings
3. Health Institutions
4. Educational Institutions
5. Libraries
6. Court Buildings
7. Public Office
8. Public Conveyances, including Railways.

Learned Attorney General for India assured the court that Union of India shall take necessary effective steps to give wide publicity to this order by electronic as well as print media to make the general public aware of this order of prohibition of smoking.

We further direct the Registrar General to intimate the State Govern-ments Union Territories as well as the Commissioners of Police as mentioned in our orders dated 31st August, 2001 and 28th September, 2001 of this Court with directions for submission of their compliance report in this Court

within five weeks from today. Union of India shall also file its response at the earliest.

List after six weeks.

JUDIS