

CRL OP(MD). No.14942 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 18.10.2024

PRONOUNCED ON : 30.10.2024

PRESENT

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.O.P.(MD)No.14942 of 2024

Aunestraja

... Petitioner

Vs.

1.The State

By the Inspector of Police
Kadayam Police Station
Tenkasi District.
(Crime No.216 of 2024)

2.Union of India

The Ministry of Health & Family Welfare
Room No.201 – D, Nirman Bhawan
New Delhi – 110 011.

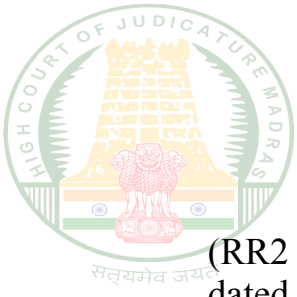
3.The Secretary to Government

School Education Department
Secretariat, Chennai – 600 009.

4.The Commissioner of Food Safety and Drug

Administration in Tamil Nadu
No.359, Anna Salai, Teynampet, Chennai – 600 009.

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(RR2 to 4 suo motu impleaded as per the order of this Court dated 12.09.2024)

5. Tejram Dharam Paul Pvt. Ltd.,
Nathpur Village, Sonpet, Haryana – 131 029.

6. Vidharath Industries Pvt. Ltd.,
Antharasanhalli Industrial Area
Tumkuru, Karnataka – 572 106.

7. VRG Products Pvt. Ltd.,
Antharasanhalli Industrial Area
Tumkuru, Karnataka – 572 106.

(RR5 to 7 suo motu impleaded as per the order of this Court dated 13.09.2024.

... Respondents

For Petitioner : Mr.D.Venkatesh

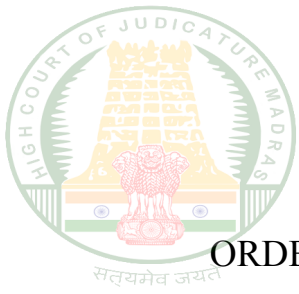
For Respondents : Mr.R.M.Anbunithi, APP for R1
Mr.AR.L.Sundaresan, ASGI
assisted by
Mr.K.Govindarajan, DSGI for R2
Mr.Veera Kathiravan, AAG
Assisted by
Mr.P.Thilak Kumar, Govt. Pleader
Mr.M.R.Sreenivasan for R5
Mr.R.Mani Bharathi, Amicus Curiae

PETITION FOR BAIL Under Sec.483 of BNSS

PRAYER :-

For Bail in Crime No.216 of 2024 on the file of the Respondent Police.

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ORDER : The Court made the following order :-

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A. Prelude :

Extreme emergency looms. There is a sudden spurt of children using Tobacco product more specifically a product named Cool Lip. Huge quantity of tobacco products are seized in State of Tamilnadu especially in and around the schools. Decision has to be made by this Court in at least 10 cases per day relating to grant of bail in these type of matters. This Court also exercises the jurisdiction under Section 482 of the Code of Criminal Procedure and under Article 226 of the Constitution of India with reference to Criminal matters. Repeatedly questions of addiction of school children to tobacco products arise. Since, percolation from other neighbouring states where the products are permitted to be sold is alleged, it required detailed consideration. This case is also one.

1.1 More importantly, Teachers are literally crying unable to control, teach or do anything with these children who are using Tobacco products and getting into addiction and violent and indifferent behaviour. The future of any society will be safe if only it listens to the cries of the

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teachers. For the above reasons, the matter is taken up for detailed consideration.

B. The Background:

2. Even though all forms of Khaini and tobacco products are banned across the State of Tamilnadu, every day huge quantities of these products percolate from across borders are seized cases filed and it has become of routine affair of every Court dealing with bail petitions deal with at least 10 cases arising out this every day. The crackdown is made both by the Police and by the Food Safety Officers. But that is not all. Closer scrutiny of these cases reveals:

(i) These mafia of manufacturers, distributors and sellers are specifically targeting School Children and they want to catch them young so that they become their customers and consumers life long. Even as per the Global Youth Tobacco Survey(GYTS) 2019 data 8.5% of School students in the age group of 13 to 15 consume tobacco. It is estimated that 5,500 children are initiated into tobacco consumption every day and 55% of them become completely addicted to it before the age of 20.



(ii) The majority of the cases relate to the seizure of these tobacco products from the shops in and around schools;

(iii) Once the shops are raided they come with a bag by walk or stand in a two-wheeler near the schools and sell these products to children;(Annexure -1 - Sample Picture)



(iv) When police step up vigil, they have even lured housewives living near the school to just keep it in their house and give it to children.





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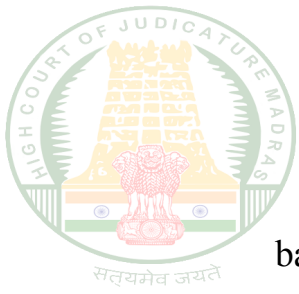
(v) The product named 'Cool Lip' is a dipping tobacco marketed in a dipping pouch like dip-tea. The pouch is small, like a candy, and it is placed between the cheek and gum. The tobacco content oozes slowly, and the nicotine is absorbed effectively and deeply, leading to delirious and intoxicating effects in children.

(vi) It can last long and be secretively placed between the gum and the cheek. It is a candy-like attraction and comes with additional flavours, such as menthol, that lure the children and cannot be easily found by parents or teachers. The test done on samples seized demonstrates that it has a Nicotine content as high as 1.85%.

(vii) It has more nicotine content than the ordinary tobacco.

(viii) Children are using this all the time even while they are in the classroom and the following are the effects on them:

(a) Even when the children get up in the morning, it is stated that without sucking from this dipping tobacco, they cannot even move their bowels, and therefore, they smuggle one to the



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bathroom in the morning without which they cannot even answer the nature's call;

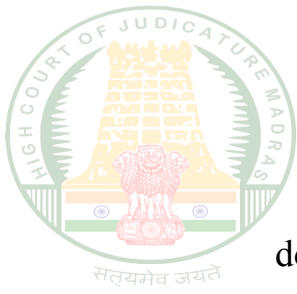
(b) After they enter the school or even in the prayer session, they put one in their mouth. There have been complaints that after the prayer/assembly, many students don't even move and they are standing there in a dazed condition;

(c) In the classroom they just sit in an intoxicated and addicted condition unable to absorb what is going on;

(d) If there is any disturbance from anybody, including the other students or teachers, violence breaks out and they become extremely violent in their behaviour;

(e) They indulge in lying, stealing money, for purchasing their addiction, leading to other crimes and permanently dooming their conduct and character, destining them to be delinquents;

(f) Apart from these things noted in the cases as also widely reported in print and other media, teachers are the ones who are most affected and unable to do anything with these children. If we do not listen to the Teachers now, certainly, our future is



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doomed because these children are our future. If this is not gotten out of their way, then the future effects are :

(i) ADDICTION: Only for a while, the nicotine-induced intoxication/addiction will be enough and the are further moving to ganja and other Narcotic substances;

(ii) HEALTH: Risk of cancer of the mouth, throat, oesophagus, tongue and pancreas. Increased heart rates, high blood pressure, irregular heartbeat and higher risk of heart attack and strokes. Gum Disease, tooth decay, losing teeth etc. Formation of leukoplakia in the mouth. These products contain substances like Arecoline, Lime, Menthol, Cadmium, Formaldehyde and Lead also.

(iii) EDUCATION: Unable to concentrate on studies, lack of absorption capacity, and dropping out of school.

(iv) CONDUCT: Prone to violence, stealing, and delinquency leading to forming part of peer groups of addiction. These peer groups are used by Criminals leading them into crimes like murder by canvassing them that they are only juveniles, and promising them money for addiction.



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2.1 Thus, it can be seen that this menace can leave our children with a corrupt body, mind and soul. Therefore, the matter requires the extreme attention of all concerned. Therefore, all the necessary parties, the Central and State Government, the Food Safety Authorities, and the Manufacturers were impleaded as parties and all concerned were heard in detail on repeated occasions. Each of the parties has filed their responses and materials.

C. The Submissions:

3. *Mr AR.L.Sundaresan*, the learned Additional Solicitor General of India and *Mr K. Govindarajan*, the Deputy Solicitor General of India appearing on behalf of the Government of India and *Mr. Veera Kathiravan*, the learned Additional Advocate General and *Mr.Thilak Kumar*, the learned Government Pleader appearing on behalf of the State of Tamilnadu appearing on behalf of all the parties and *Mr.R. Manibharathi*, the amicus curiea made submissions and proposed measures for control and eradication of the children using these tobacco products and assisted the Court, without considering this as an adversarial litigation.



WEB COPY 3.1 Even *Mr.M.R.Sreenivasan*, learned counsel appearing on behalf of the manufacturers, while submitting that they are manufacturing in accordance with law in the States where it is permitted would submit that they do not intend that their product be supplied to children and that it is not within their domain or control that people smuggle the product inside the banned state and that they are selling it to children.

D. The Legal Framework :

4. The Constitution of India, in the Directive Principles of State Policy, enjoins that the policy of the state to develop the children in health manner and to protect them against exploitation and the same is extracted hereunder for ready reference :

“39. The State shall, in particular, direct its policy towards securing—

.....

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”



4.1 Article 47 of the Constitution of India enjoins the as the primary duty of the state to prohibit consumption of drugs which are injurious to health and it reads as under :

“47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

4.2 India is a signatory to the United Nations Convention, titled Single Convention on Narcotic Drugs, 1961. Article 38 of the same reads as follows:

“Article 38 MEASURES AGAINST THE ABUSE OF DRUGS

2. The Parties shall give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved and shall co-ordinate their efforts to these ends.

3. The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of drugs.

4. The Parties shall take all practicable measures to assist persons whose work so requires to gain an



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understanding of the problems of abuse of drugs and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of drugs will become widespread.”

4.3 India is also signatory to the Convention on Psychotropic Substances, 1971 and a similar provision is contained in Article 20.

4.4 The most significant provision is contained in the Juvenile Justice (Care and Protection) Act, 2015, whereby supplying tobacco products to a child is punishable by imprisonment for a term extending up to seven years and Section 77 is extracted hereunder :

“77. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child.— Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.”



4.5 Section 26 (2) of the Food Safety and Standards Act reads as

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“(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food-

(i) which is unsafe; or

(ii) which is misbranded or sub-standard or contains extraneous matter; or

(iii) for which a licence is required, except in accordance with the conditions of the licence; or

(iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or

(v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.”

4.6 Section 27 of the said Act makes all the manufacturers packers, wholesalers, distributors and sellers liable for meeting the requirements under the Act.

“.27. Liability of Manufacturers, packers, wholesalers, distributors and sellers.-

(1) The manufacturer or packer of an article of food shall be liable for such article of food if it does not meet



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the requirements of this Act and the rules and regulations made thereunder.

(2) The wholesaler or distributor shall be liable under this Act for any article of food which is-

(a) supplied after the date of its expiry; or

(b) stored or supplied in violation of the safety instructions of the manufacturer; or

(c) unsafe or misbranded, or

(d) unidentifiable of manufacturer from whom the article of food have been received; or

(e) stored or handled or kept in violation of the provisions of this Act, the rules and regulations made thereunder; or

(f) received by him with knowledge of being unsafe.

(3) The seller shall be liable under this Act, for any article of food which is-

(a) sold after the date of its expiry; or

(b) handled or kept in unhygienic conditions; or

(c) misbranded; or

(d) unidentifiable of the manufacturer or the distributors from whom such articles of food were received; or

(e) received by him with knowledge of being unsafe.



4.7 The selling unsafe food is an offence punishable under Section

59 of the Act and the same is extracted hereunder:-

“59. Punishment for unsafe food.-

Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable,-

(i) where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where such failure or contravention results in a non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees.”



4.8 Section 66 of the Act specifically fastens liability on every

officer and employee of the corporate entity, liable for prosecution and the same is extracted hereunder:-

“66. Offences by companies.-

(1) Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:

Provided further that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.



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(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purpose of this section,-

- (a) "company" means any body corporate and includes a firm or other association of individuals; and*
- (b) "director" in relation to a firm, means a partner in the firm."*

4.9 Rule 2.3.4 of the Food Standard and Safety Rules prohibits tobacco and nicotine to be used as an ingredient in any food products.

The rule reads as under:

"2.3.4. Product not to contain any substance which may be injurious to health: Tobacco and nicotine shall not be used as ingredients in any food products."

4.10 Further, Section 6 of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and



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Commerce, Production, Supply and Distribution Act, 2003 (Act No.34 of 2003) prohibits the sale of cigarette and tobacco products to any person

under eighteen years of age and the same reads as under :

“6. Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area.—No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product—

(a) to any person who is under eighteen years of age, and

(b) in an area within a radius of one hundred yards of any educational institution.”

4.11 Violation of the above provision is a punishable offence under Section 24 which reads as follows :

“24. Punishment for sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years.—

(18) Any person who contravenes the provisions of section 6 shall be guilty of an offence under this Act and shall be punishable with fine which may extend to two hundred rupees.

(19) All offences under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973 (2 of 1974).”



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4.12 In exercise of powers under the Act, vide G.S.R. 619(E) dated

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11.08.2011, The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2011 and Rule 5 reads as follows:

“5. Prohibition on sale of tobacco products to and by persons below the age of eighteen years.-

(1) The owner or the manager or the in-charge of the affairs of a place where cigarettes or other tobacco products are sold shall ensure that,-

(a) a board with a warning as specified in "Annexure I" is displayed at the entrance of the place where cigarettes or other tobacco products are sold and all the components of the board should appear in a manner exactly as in the soft copy provided in the compact disk [CD) accompanying these rules:

Provided that such board shall not have any advertisement or promotional messages .or pictures or images of cigarettes or any other tobacco products.

(b) no tobacco product is sold through a vending machine;

(c) no tobacco product is handled or sold by a person below the age of eighteen years;

(d) tobacco products are not displayed in a



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marmer that enables easy access of tobacco products to persons below the age of eighteen years.

(2) The onus of proof, that the buyer of the tobacco product is not a person below the age of eighteen years lies with the seller of the tobacco products and the seller in case of doubts may request the buyer to provide appropriate evidence or age proof of having reached eighteen years of age'."

The Annexure -I to the rules reads thus and the boards are also prescribed:

"1. The Board shall be of a minimum size of 60 cm by 30cm of white background.

2. The Board shall contain the warning "sale of tobacco products to a person below the age of eighteen years is a punishable offence", in Indian language(s) as applicable and a pictorial depiction of the ill-effects of tobacco use on health."

4.13 Under the same act, yet another rule, The Cigarettes and Other Tobacco Products (Display of Board by Educational Institutions) Rules, 2009 is also framed and the Rule 3 and the board prescribed to be kept by the Educational Institution reads thus :

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“3. Display of Board by Educational Institutions.--

(1) The owner or manager or any person incharge of affairs of they educational institution shall display and exhibit a board at a conspicuous place outside the premises, prominently stating that sale of cigarettes and other tobacco products in an area within a radius of one hundred yards of educational pastitution is strictly prohibited and that it is an offence punishable under Section 24 of the Act with fine which may extend to two hundred rupees.

(2) The distance of one hundred yards referred to in sub-rule (1), shall be measured radially starting from the outer limit of the boundary wall or fence, as the case may be, of the educational institution.”

4.14 The State of Tamilnadu has also enacted the Tamilnadu Prohibition of Smoking and Spitting Act, 2003 and Section 7 of the same reads as follows :

“7. Prohibition of storage, sale and distribution of cigarettes, etc.- No person shall himself or by any person on his behalf, store, sell or distribute cigarettes, beedies, cigar, supari with tobacco, Zarda, snuff, or any other smoking or chewing substance or



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substances containing tobacco within an area of one hundred metres around any college, school or other educational institutions.”

4.15 As per Section 9 of the said Act, the contravention of Section 7 is an offence Punishable with three months imprisonment and fine of Rs. 500-1000/-.

“9. Penalties.- Any person, who contravenes the provisions of:—

(i) Sections 4, 5, or 8 shall be punishable with fine which it may extend to one hundred rupees and in the case of second or subsequent offence, shall be punishable with a minimum fine of two hundred rupees, but which may extend to five hundred rupees;

(ii) section 6 or 7 shall be punishable with fine which may extend to five hundred rupees and in case of second or subsequent offence, shall be punishable with imprisonment which may extend to three months, or with a minimum fine of five hundred rupees, but which may extend to one thousand rupees, or with both.

E.The Measures taken by the Central Government :

5. The Ministry of Health and Family Welfare by its letter dated 05.12.2016 directed all the Chief Secretaries of all the States and Union Territories to ensure that manufacture, storage, distribution or sale of



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gutka or Pan masala (containing tobacco or nicotine) and any other products marked separately having tobacco or nicotine in the final product by whatever name called, whether packaged or unpackaged and / or sold as on-product, is prohibited. The relevant portion is extracted hereunder:-

“In view of the above, I request you to please get the necessary orders passer in compliance of the above request your direction/order dated 23.09.2016 and ensure that the manufacture, storage, distribution or sale of gutka and pan masala (containing tobacco or nicotine) and any other products marketed separately having tobacco or nicotine in the final product by whatever name called, whether packaged or un-packaged and/or sold as one product, or though packaged as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the consumer is prohibited in your jurisdiction.

I would be grateful if a copy of the order could be endorsed to the Ministry for information and record.”

5.1 The FSSAI (Food Safety and Security Authority of India) also issued similar directions vide its letter dated 05.06.2019 and 02.10.2019.



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5.2 The Government of India vide notification in G.S.R. 592(E)

dated 21.07.2022 has specified the image and textual warning to be contained on the products which is reproduced hereunder :

*“In the Cigarettes and other Tobacco Products
(Packaging and Labelling) Rules, 2008, the Schedule,-*

(i) in paragraph 1, for clause (1) the following clause shall be substituted, namely: -

"(i) Textual Health Warning For smoking and smokeless forms of tobacco products, the words TOBACCO CAUSES PAINFUL DEATH' in Image-1 and the words 'TOBACCO USERS DIE YOUNGER in Image-2 shall appear in white font colour on a red background. The words 'QUIT TODAY CALL 1800-11-2356 shall appear in white font colour on a black background. The intensity of color in the background of the textual health warning shall be: White: C: 0%, M:0%, Y:0% K:0%, Red: C:0%, M: 100%, Y:100% K: 0% and Black: C:0%, M: 0%, Y:0% K: 100%. The textual health warnings shall be printed with four colors with printing resolution of minimum 300 DPI (Dots per inch). The font type and colour of the health warning shall be exactly as uploaded on the website www.mohfw.gov.in



OR ntcp.nhp.gov.in"

(ii) for paragraph 2, the following paragraph shall be substituted, namely: -

2 The specified health warnings shall be-

(a) Image-1, shall be valid for a period of twelve months following its commencement.

Image-1



(b) Image-2, shall come into effect following the end of twelve months from the date of commencement of specified health warning of Image-1.

Image-2





WEB COPY 5.3 By a communication dated 18.06.2024, the Ministry of Education requested all the States and Union Territories to appoint State Nodal Officer and District Nodal Officer to ensure tobacco free educational institutions. The relevant portion of the communication is extracted hereunder:

*“(i) Display ‘**Tobacco Free Area**’ Signage inside the premise of Educational Institution with the information of designated person.*

*(ii) Display ‘**Tobacco Free Education Institution**’ signage at entrance/boundary wall of Educational Institution with the information of designated person*

(iii) There should not be any evidence of tobacco use inside the premise like cigarette/beedi butts or discarded gutka/tobacco pouches, spitting spots

(iv) Display of poster & other awareness materials on harms of tobacco within the premise of educational institutions.

(v) Organizing at least one tobacco control activity every 6 months in educational institutions.

(vi) Nomination of ‘Tobacco Monitors’ and their names, designation, and contact number are to be mentioned on the signages.

(vii) Inclusion of ‘No Tobacco Use’ Guidelines in



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the Educational Institutions code of conduct.

(viii) Marking of 100 yards area from the outer limit of boundary wall/fence of the educational institute.

(ix) Shops within 100 yards of the Educational Institute shall not sell any kind of tobacco products.

(x) Take pledge against Tobacco use as per Annexure-III of Implementation Manual of ToFEI.

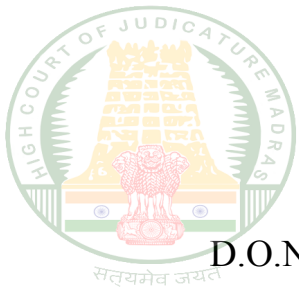
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To facilitate better coordination with the States/UTs, States/UTs are requested to appoint a State Nodal Officer and District Nodal Officers in each district for this far reaching initiative and issue necessary directions to all your schools for compliance in implementation of this guidelines and strive to make children free from tobacco consumption. A copy of the ToFEI guidelines and Implementation Manual is enclosed for your ready reference. Further, the details of the State Nodal Officer may be communicated to this department at keytask20@gmail.com on priority.”

5.4 The Ministry of School Education also requested the Home Ministry to issue directives for implementation of tobacco free educational institutions manual ensuring there is no sale of tobacco products within a radius of 100 yards of educational institutions by

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D.O.No.8-2/2024-KT dated 07.08.2024. A further demi official letter dated 18.09.2024 was also addressed to all State and Union territories to implement the ToFEI Manual. By a further communication dated 23.09.2024 the Police authorities were required to allocate resources to prioritize the implementation of the COPTA Act, 2003.

5.5 The Ministry of Health and Family Welfare, has published the revised guidelines for tobacco free educational institutions containing the details as to the tobacco prevalence, the global adult tobacco survey, the directions for tobacco free education institutions and the roles and responsibilities of various authorities. The directions as contained in paragraph Nos.3 and 4 of the said guidelines are extracted hereunder:-

“3. TOBACCO FREE EDUCATIONAL INSTITUTION

3.1 An Educational Institution (EI) should display “Tobacco Free Educational Institution” signage as specified in Annexure II in the premises of the EI; and a “Tobacco Free Area” signage as specified in Annexure III outside the EI. The signage could be in the form of boards or wall paints. It may be noted that the formats given in the Annexures II and III are only suggestive. The Educational Institution is



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encouraged to innovate or adapt the signage according to their capacity and context. Care should also be taken to communicate the correct intended message while customizing the signage. The signage should be displayed in the language of instruction in the Educational Institution and also in the local language if it is so possible.

3.2 The signage should be displayed at prominent places outside and in the premises such as on the boundary wall, the main entrance, the official notice boards and any such place where the management thinks that these would communicate the intended message effectively.

3.3 The Educational Institution should designate Tobacco Monitor(s) from amongst their staff, an official or a teacher or a student representative (the student from class IX onwards). Health & Wellness Ambassadors should also be designated as Tobacco Monitors. The name, designation and phone number of the Tobacco Monitor(s) should also be mentioned on the signages. Multiple Tobacco Monitors may be designated and in fact it might be a good idea to do so. For example – appointment of a Tobacco Monitor for each class from amongst the students in the class. Participation of the most important stakeholder, the students of secondary school (classes IX to XII), would be key to successful



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implementation of the initiative. Care should be taken that tobacco users may not be designated as Tobacco Monitors.

3.4 The EI management should ensure that no tobacco products are sold inside the premises and in an area within a 100 yards from the premises. Any violation should be reported to the National Quitline at 1800-11-2356. The Management should also, if possible, with the help of local law enforcement authorities and community, including parents, make efforts to stop such sales. It may be noted that the Head of the Institution is also authorized to collect fine for violation of section 6(b), sale of tobacco products within 100 yards of an educational institution. EI should also with the help of local authorities mark such boundaries /area which clearly defines the 100 6 Guidelines for Tobacco Free Educational Institution (Revised) yards area to ensure that no tobacco products are sold within marked area.

3.5 The EI management must not permit any use of tobacco products in the premises of the institution by anybody, including students, teachers, other staff members, school buses' drivers & staff and visitors. Observance of the "No Tobacco Use" norm should be included in EI's code of conduct guidelines and action should be taken against such violations as per EI's internal policy. This may include community service,



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information to and discussions with parents. Another suggestion is to make tobacco users ineligible for the Student\Teacher\Staff of the Year Award or other awards given for co-curricular excellence.

3.6 Since the premises of all EIs by their nature are public places, smoking inside the premises of an EI is a violation of section 4 of the COTPA. The Head of all Educational Institutions are also authorized to impose and collect fine under the COTPA, 2003 for such violations.

3.7 The Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011 prohibits the use of tobacco and nicotine as ingredients in food products and as such various States have issued necessary orders for prohibiting the sale of Gutkha and Pan Masala (containing tobacco or nicotine). In 2016, communication was sent to all States/UTs to pass necessary orders in compliance of the Hon`ble Supreme Court order dated 23.09.2016 and ensure that the manufacture, storage, distribution or sale of gutkha and pan masala (containing tobacco or nicotine) and any other products marketed separately having tobacco or nicotine in the final product by whatever name called, whether packaged or un-packaged and/or sold as one product, or though packaged as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the



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consumer is prohibited in the jurisdiction of the respective States. Though Pan Masala without tobacco and/or nicotine is a standardized product under the Food Safety and Standards Act, 2006 and Regulations made thereunder, it may be noted that it is injurious to health and its use should be discouraged.

3.8 The EI should also help tobacco users and tobacco addicts to quit tobacco by encouraging them to avail the Quitline services and mCessation services. Information about these services can be obtained from the Quitline.

3.9 A ToFEI must not participate in any event sponsored by any firm or a subsidiary of a firm or a seller, which promotes the use of or manufactures or sells tobacco products in any form. EIs/ Students should also not accept any prize or scholarship instituted by such firms.

3.10 The EI management and the Tobacco Monitors must also be vigilant to note the tobacco substitutes such as e-cigarettes and the like devices viz. Heat-Not-Burn devices, Vape, e-Sheesha, e-Nicotine Flavoured Hookah. Such products, though not tobacco products, are also harmful for health. E-cigarettes come in many shapes and sizes which look like regular cigarettes, cigars, pipes, pens, USB flash drives, with sleek high-tech design with re-chargeable batteries. These products are usually marketed as



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being safer alternatives for conventional cigarettes but such notion of safety is false. There is evidence that these products induce adolescents and young adults to nicotine use leading to addiction. Any use of such products on the campus may be reported to the Quitline.

3.11 The Institution may use the Self-Evaluation Scorecard for Tobacco Free Educational Institution given in Annexure IV, to assess the status of implementation of the ToEFI Guidelines in their institution on half-yearly basis and to get a certificate to this effect to those EIs who score 90% and above marks. Once the EI is satisfied that they have achieved the benchmark score, the 7 Guidelines for Tobacco Free Educational Institution (Revised) EI can choose to participate in the ToFEI Award Scheme. A ToFEI Certificate will be awarded to a ToFEI if the EI's score is found to be equal to or more than the benchmark score after verification. Details of the ToFEI Award Scheme will be issued separately by the MoHFW.

3.12 Tobacco Control activities: The EI should undertake tobacco control activities from time to time. Some suggestive activities are as under –

- * Assemblies for taking pledge against tobacco,*
- * Poster/slogan/essay/quiz/debate competitions and street plays etc. Posters so developed with information*



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about the harmful effects of tobacco should be displayed at prominent places in the educational institution.

** The EI management should encourage tobacco control initiatives by students /teachers/ other staff and certificates of appreciation or awards may be given to those who take initiative and do good work in this regard.*

** The EI should invite the local law enforcement authorities /and health authorities to be the part of school assembly and deliver an address on tobacco control. This will facilitate in advocating the policy makers on tobacco related issues.*

** Marking of 100 yards area from the outer limit of boundary wall / fence of the EI. The above list is only suggestive and the EI team should explore other options as well.*

4. ROLES & RESPONSIBILITIES

4.1 Ministry of Health & Family Welfare – Tobacco Control Division (National Tobacco Control Cell)

4.1.1 To ensure that communications/advisories are sent to State Tobacco Control Cell for monitoring these guidelines at regular intervals.

4.1.2 IEC materials/ prototypes like posters, flip



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charts, brochures must be disseminated to States and uploaded on the NTCP website www.ntcp.nhp.gov.in

4.1.3 To collaborate with Ministry of Human Resource Development (Department of School Education and Department of Higher Education) for inclusion of a chapter on the harmful effects of tobacco use in curricula.

4.1.4 To develop a monitoring mechanism for evaluation and assessment of implementation of Guidelines for ToFEI through internal review mechanism.

4.1.5 The National Cell will also put a mechanism in place for certification of EIs and for providing a Certificate to an EI that successfully reaches the benchmark score of 90/100.

4.2 STATE/DISTRICT TOBACCO CONTROL CELL:

4.2.1 Coordinate with State Education Departments (School/Higher/Technical/Medical Education) to institutionalize tobacco control by incorporating tobacco control activities in their Academic calendar. Efforts should also be made to make these guidelines a part of the terms and conditions for affiliation to the State Education Board. 8 Guidelines for Tobacco Free Educational Institution (Revised)



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4.2.2 *Coordinate with State Education Departments for sending circular to all Heads of Institutions to comply with the guidelines and permitting them to utilize the funds available under the untied grants available to Educational Institutions through government grants.*

4.2.3 *District Authorities and Local Bodies should be encouraged to set up institutional mechanisms to facilitate implementation of these guidelines and monitoring and review implementation and also to provide support to managements of institutions taking initiative for helping enforcement of COTPA.*

4.2.4 *To ensure the dissemination of these guidelines in all educational institutions in coordination with Education Departments. Funds under National Tobacco Control Programme can be utilized for this.*

4.2.5 *To make efforts to get questions related to 'Tobacco Free Educational Institution' included in existing monitoring/inspection mechanism of Education Departments.*

4.2.6 *To engage with Department of Rural Development/Urban Administration for setting up institutional mechanism for supervision and monitoring of these guidelines through Village Health,*



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Sanitation & Nutrition Committees in rural areas and Mahila Arogya Samitis and Mohalla Samitis\Ward Sabhas in urban areas.

4.2.7 Representatives of the State Education Departments (School/Higher/Technical/ Medical Education) should be co-opted in the State and District Level Coordination Committees and status of implementation of these guidelines should be reviewed in each of their meetings.”

5.6. The Department of School Education and Literacy, Ministry of Education, Government of India has also published an implementation manual on the tobacco free educational institutions by giving detailed instructions as to the need of tobacco control, health effects of tobacco use, the legal provisions of tobacco control, the activities to be undertaken for tobacco free educational institutions and self evaluation score card.

F. The Measures taken by the State Government :

6. It is stated that so far the authorities in Tamilnadu have seized 1,27,561.159 kgs of tobacco which includes 12,336.513 kgs of Cool Lip.



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WEB COPY 6.1 For the current year, vide the notification bearing No. 1418/2013/S9/FSD dated 23/05/2024 in the interest of Public Health, the manufacture, storage, transport, distribution or sale of all food products chewable or otherwise containing nicotine ingredient is banned.

6.2 By Government Order in G.O.(Ms) No. 242, School Education (E1) Department, dated 26/09/2012, educational institutions cannot associate with any events sponsored by tobacco promoting brands. The relevant portion reads as under :

"No educational institutions is permitted to participate through its students or its faculties in the events/sponsorship/gift/prizes scholarship for any other activities that promote any tobacco company either through the use of (tobacco) company or brand name, emblem trademark, logo or trade insignia or any other distinctive features connected with its tobacco or non tobacco products or services in such way the tobacco products and the non tobacco products service or like to be associated"

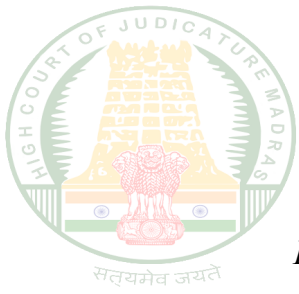


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6.3 The state of Tamilnadu is also on a Mission mode with reference to eradication of drugs and tobacco products it is titled the “Drug Free Tamilnadu Mission”, and had formed a Mission Management Unit and under the Chairmanship of the Chief Secretary and the following actions are proposed and is being implemented :

“The Additional Chief Secretary, Home, Prohibition and Excise Department briefed about the importance of the Drug Free Tamil Nadu Mission and the responsibilities of all the stake holder departments in this mission. The Joint Secretary to Government/Mission Director, Mission Management Unit explained about the formation of Mission Management Unit for the mission, the composition of the MMU, the role of the MMU in providing guidance and co-ordinating with all stake holder departments to bring awareness among youth and public on drug abuse and to impart trainings. The demo of the mobile app was made by Technical Education Directorate and the following suggestions were given:

- * To make personal and other details optional*
- * To include tobacco products such as Coolip and others in the drop-down menu*
- * To finalize the logo in consultation with Home, Prohibition and*



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Excise Department

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** To give the name for the app as "Drug Free Tamil Nadu"*

** All the inputs/complaints to be forwarded to control room of EB-CID where it will be scrutinized and sent to concerned officers for verification and necessary action. The EB-CID control room should be strengthened.*

** The identity of the informant shall not be revealed and it should be included in the app.*

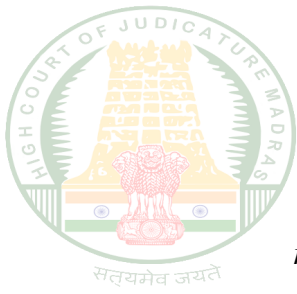
Then, the Chief Secretary reviewed about the action taken by various stake holder departments on the minutes of the meeting held on 16.05.2024 under the Chairmanship of Hon'ble Chief Minister of Tamil Nadu. The following instructions were given by the Chief Secretary to Government during the meeting.

Home, Prohibition and Excise Department/Mission Management Unit, Drug Free Tamil Nadu:

** To complete the selection of three specialists for the MMU within 15 days time.*

** To design a Logo for the MMU.*

** To create a web portal for MMU with reporting formats and*



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repository for different departments to upload their awareness videos, posters, training material etc.

** To re-circulate the objectives, activities and composition of the anti-drug clubs.*

Higher Education Department/School Education Departments:

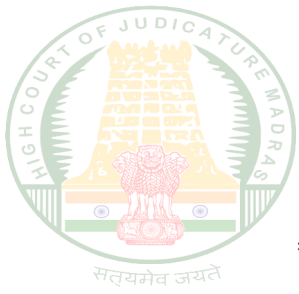
** To organize various activities/awareness programs on drug abuse in all colleges. The number of programmes and students who have participated shall be shared to Home Department/MMU.*

** Higher Education Department to give a report on the action taken to introduce a new credit based Health and Wellness curriculum in all educational institutions.*

** Higher Education Department to provide the copy of the SOP introduced for dealing with the students consuming/peddling drugs in schools and colleges to be followed in all educational institutions to MMU.*

** To popularize the Whatapp Number 9498410581 and Complaint toll free No. 10581 along with the new mobile app to all colleges to make complaints about the drug availability.*

** To nominate a Nodal Officer to monitor the functioning of anti-drug clubs.*



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* *To draw a calendar of activities for the anti-drug clubs and prepare material for them.*

* *The training material developed by National Health Mission and Social Welfare Departments to be obtained by Higher Education and School Education Departments.*

* *To Include drug awareness as an agenda in the School Management Committee meetings. A circular shall be issued in this regard by School Education Department.*

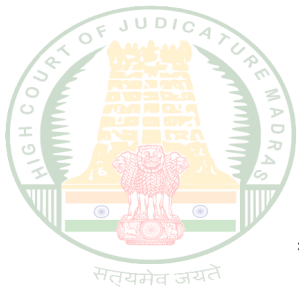
* *Training to teachers and students on drug awareness shall be arranged through experts from selected NGOs, SCERT experts etc. NSS co-ordinators / PETs shall be the Nodal Persons in schools who can be trained by State/District Master Trainers. Naan- Mudhalvan Co-ordinators can also be involved.*

* *To ensure all these drug awareness activities are carried out in both Government and Private educational institutions.*

* *To draw a schedule of training with number of institutions, number of teachers to be trained, number of students to be trained etc.*

Health and Family Welfare Department/National Health Mission

* *To make the 25 De-addiction centres functional in 30 days.*



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** To provide the details of counseling given to school students on III effects of drug use and banned tobacco products through RBSK teams to MMU.*

** To furnish the details of medical equipments and reagents provided to Government Hospitals and Public Health Centres to detect drug usage.*

** To check the availability of Drug Test Kit in the department to detect drug usage cases through Saliva in shortest time possible.*

** To continue the joint inspections/raids of officers belonging to Police, Food Safety and Local Bodies with regard to banned tobacco products.*

** ACS, Home shall conduct a meeting with Principal Secretary, MAWS to ensure active participation of local bodies in the joint inspections and taking action with regard to sale of banned tobacco products in licensed shops/premises.*

Social Welfare and Women Empowerment Department

** To conduct the survey on impact of drug use In Tamil Nadu in discussion with ADGP (EB-CID) more effectively and accurately.*

** To monitor the drug awareness activities done by NGOs and share the material prepared by NGOs to School Education and Higher Education Departments.*



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** To follow up the proposals sent to Gol with regard to drug awareness activities, establishment of de-addiction centres, IRCAS etc.*

** The Integrated Rehabilitation Centre for Addicts (IRCA) shall be monitored by DCPOs and District Collectors and their performance shall be reviewed during monthly NCORD meetings.*

Director of Information and Public Relations

** All stakeholder departments shall prepare content videos on drug awareness of short duration and a repository shall be created under MMU.*

** DIPR shall take necessary action to telecast awareness videos through LED vans, Local cable channels and In schools and colleges.*

** Short 10 seconds awareness videos shall be prepared and shared in social media, You-tube channel, local cable TV to reach the public.*

It should be made available in one week.

** Short awareness videos/films shall be telecast in theatres at frequent intervals.*



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* *These videos shall be telecast in KALVI CHANNEL also by School Education Department.*

* *It has already been decided during the meeting held on 16.05.2024 by Hon'ble Chief Minister awareness through the advertisements about the drug abuse in the minds of youngsters through the Social Media, Websites, TV, Radio, Print media, Content creation and PR activities at a cost of Rs.3.25 Crore can be done. DIPR shall get necessary financial sanction and spend the amount for the above activities.*

ADGP (EB-CID)

* *To make frequent raids in the dark areas of the cities especially beach areas through Commissioners of Police.*

* *To create awareness through the PEW In districts among students and public.*

* *To co-ordinate with Food Safety and local bodies and conduct joint Inspections for banned tobacco products more effectively.*

Other decisions made during the meeting are:

* *A 24X7 State Toll Free Drug De-addiction Help line number for the victims of drug abuse can be set up under Health and Family Welfare Department.*



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* *Self help groups formed under "Mahalir Thittam" (TNCDW) can be involved in drug awareness programs. Rural Development department can chart out a programme.*

* *Rapid Drug Test kits technology to be verified and if feasible, kits can be purchased by NHM and provided to GHs to test the drug use in individuals without delay. ADGP (EB-CID) to give their remarks regarding this.*

* *"MANAM Thittam" can be effectively utilized by School Education and Higher Education Departments.*

* *School Education Department Shall include an awareness story "குறள்வழி போதை விழிப்புணர்வு சிறுகதை" Value Education/Moral instructions/Physical Education classes and print them and give to students from 9 to 12 Standards through their department.*

* *Tamil Nadu Volunteers (a registered body of volunteers) can be Involved in Imparting training to Anti-Drug Club members in schools and Colleges in creating drug awareness, counseling to peers, information gathering and sharing etc. This volunteer group shall act under the guidance and monitoring of ADSP, PEW in the districts.*

* *EB-CID to devise a mechanism to monitor online sale of drugs/narcotics.*



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* *United Nations Office on Drugs and Crime (UNODC) at New Delhi shall be addressed for expert advice.*

* *All stake holder departments shall instruct concerned district officials of respective departments to actively participate in NCORD meeting conducted by District Collectors every month and give inputs in the formats already prescribed for each department.*

Finally, the ACS, Home, Prohibition and Excise requested the following from the stake holder departments:

* *To appoint a Nodal Officer for Drug Free Tamil Nadu at Government level (Deputy Secretary/Joint Secretary) to liaison with Mission Management Unit.*

* *To send a report to Additional Chief Secretary to Government Home P&E Department, every fortnight in the prescribed format after collecting details from districts officers.*

* *To send updates on the action points proposed during the Hon'ble Chief Minister's review as on 16.05.2024 every month.*

* *Since the drug awareness campaign is a continuous process, all the stakeholder departments shall prepare a plan of action and communicate to MMU."*



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6.4. Further, 391 Joint Inspection teams were formed by the Food Safety Department and police officials on 28.10.2023 to take action against the sale of banned food products containing tobacco and nicotine. The joint team started inspections from 01.11.2023. So far, it has found violation by 19822 shops which were ordered to be sealed and 1,32,890.803 kgs of products were seized and by way of compounding penalty a sum of Rs.36,81,89,400/- was collected and 1,15,073.397 kgs were destroyed. 990 criminal cases have been instituted and a penalty of Rs.46,98,500/- has so far been imposed. Further, 145 civil cases have been filed and a penalty of Rs.40,42,000/- is collected.

6.5. A Whatsapp Mobile Number 94440 42322 to send complaints and to take action within 72 hours is also established. By a communication dated 04.01.2024 revised rates for compounding is also fixed.

G. The Judgments of the Hon'ble Supreme Court of India & other Courts :

7. The Hon'ble Supreme Court of India considered the cause of alarming increase in the use of Drugs and alcohol among school children



in the matter of ***Bachpan Bachao Angolan -Vs- Union of India*** (2017 1

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SCC653), the Hon'ble Supreme Court of India directed completion of a national survey and formation of a national policy and the relevant portions in paragraphs 15 and 21 are extracted hereunder :

“15. The immediate areas requiring remedial attention have been summarised below:

- (i) Formulation of a national action plan for children;*
- (ii) Creation of a module containing an appropriate curriculum for children of all age groups in order to keep them away from drugs, alcohol and tobacco;*
- (iii) Setting up of de-addiction centres;*
- (iv) Establishing a standard operating procedure on enforcing the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 particularly Sections 77 and 78; and*
- (v) Implementing the action plan with the National Policy on Narcotic Drugs and Psychotropic Substances which has been approved by the Union Cabinet.*

.....

21. We proceed to summarise our directions to the Union Government as indicated earlier. The Union Government shall:

21.1. Complete a national survey and generate a national database within a period of six months;



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21.2. *Formulate and adopt a comprehensive national plan within four months, which will among other things also address the areas of immediate concern noted earlier; and*
21.3. *Adopt specific content in the school curriculum under the aegis of NEP.”*

7.1 In ***Central Arecanut Marketing Corporation & Others -Vs- Union of India*** (T.C.(c) No.6 of 2010 & Batch of cases), the Hon'ble Supreme Court is seized of the issue of Banning Gutka and Pan Masala and after recording that 23 States and 5 Union Territories passed orders banning the same, had as a matter of fact issued directions for all the other States and Union Territories to enforce the Regulation 2.3.4 of the Food Safety and Standards (Prohibition & Restrictions on Sales) Regulations, 2011, issued directions to the other states and union territories and the relevant portion of the Order is extracted hereunder :

“Learned Amicus Curiae has also pointed out that this Court has not granted any stay of Regulation 2.3.4 of the Food Safety and Standards (Prohibition & Restrictions on Sales) Regulations, 2011 and the concerned authorities are duty bound to enforce the said regulation framed under Section 92 read with Section 26 of the Food Safety &



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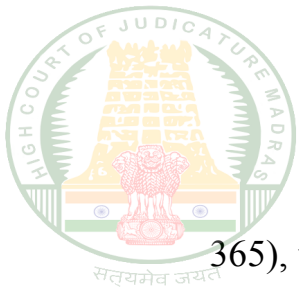
Standards Act, 2006.

In view of the above, the concerned statutory authorities are directed to comply with the above mandate of law. We also direct the Secretaries, Health Department of all the States and Union Territories to file their affidavits before the next date of hearing on the issue of total compliance of the ban imposed on manufacturing and sale of Gutkha and Pan Masala with tobacco and / or nicotine.”

7.2 In ***Ankur Gutka -Vs- Indian Asthama Care Society & Ors.,*** (SLP (C) No.16308 of 2007) the Hon’ble Supreme Court directed the States and the Union territories to file affidavit within four weeks on the issue of total compliance of the ban imposed on manufacturing and sale of gutka and pan masala with tobacco and/or nicotine.

7.3. In ***Health for Millions Trust -Vs- Union of India and others*** (2018 14 SCC 152) the Hon’ble Supreme Court considered the issue of printing the statutory warnings and issued directions.

7.4. In ***E. Sivakumar -Vs- Union of India and others*** (2018 7 SCC



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365), the Supreme Court upheld the directions of this Court to entrust the investigation relating to offences of manufacture and sale of tobacco products to the Central Bureau of Investigation;

7.5. In *Godawat Pan Masala Products I.P. Ltd -Vs- Union of India* (AIR 2004 SC 4057) while holding that Gutka products cannot be banned permanently under the Food Safety and Standards Act, 2006, the Hon'ble Supreme Court has held that the source of power for the authorities is only in the rules framed and the act and held that such power could be exercised while the emergency lasts. Essentially, the Hon'ble Supreme Court had rendered that the power be exercised like the present alarming and we are in a grave emergency.

7.6. When a Division Bench of this Court held that the provisions of the Food Safety and Standards Act, 2006 cannot be used to ban the products on permanent basis continuously, the same is stayed by the Hon'ble Supreme Court of India on 20/10/2023 vide Order in SLP (c) No.5140-5142 of 2023 and pursuant to the same, the ban order is in force till date in the State of Tamilnadu.



WEB COPY 7.7. In *Sai Traders & anr -vs- State of Goa* (2006 SCCOnline Bom 561) a Division Bench of Bombay High Court upheld the notification of the Public Health(Amendment) Act, 2005, by which the State of Goa brought an amendment banning the consumption of food containing tobacco in the entire state of Goa.

7.8. In *Kerala Voluntary Health Services -Vs- Union of India* (2012 SCC Online Ker 6778) the Kerala High Court, while considering the implementation of the provisions of COTPA in paragraph 31 issued directions to constitute a School Protection Monitoring Committee, District Level Committee and State Level Monitoring Committee to set the COTPA law in motion and to monitor and to conduct surprise inspections.

7.9. In *World Lung Foundation South Asia -Vs- Ministry of Health & Family Welfare* (2012 SCC Online Del 2854), directions were issued to make inspections in around the educational institutions in Delhi by the Delhi High Court.



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7.10. A Division Bench of the Bombay High Court had in the matter of ***Dhairwal Industries Limited -vs- State of Maharashtra and another*** (2013(1) Mh.L.J. 461) had held that gutka and pan masala are covered by the definition of ‘food’ as per the Food Safety and Standards Act.

7.11. In ***Urmin Products Private Limited -Vs- The Commissioner of Food Safety & another*** (WP.No.33531 of 2019) this Court has upheld the notification banning the tobacco products.

7.12. The Division Bench of this Court in ***Designated officer Vs. Jayavilas Tobacco Traders LLP, Rep.by its Partner – Mr.A.Prabaharan*** (W.A.No.2093 of 2018 etc dated 20.01.2023) had an occasion to consider whether these tobacco products will fall within the definition of food. After considering the Judgment of the Hon’ble Supreme Court in ***Godawat Pan Masala’s case*** (cited supra), Judgment of this Court in ***J.Anbazhagan Vs. Union of India***, Judgment of the Delhi High Court in ***Suganthi Snuff King Pvt. Ltd., and another Vs.***



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Commissioner (Food Safety) Government of Delhi (2022 SCC Online

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Del 3149) had held that these products will be ‘food’ as defined under Section 3 (j) of the Food Safety and Standards Act,2006, even while holding that the act cannot be used to ban the products on permanent basis. The same is subject matter before the Hon’ble Supreme Court and the Hon’ble Supreme Court has stayed the direction as stated supra.

7.13. In **Jaiswal Products(Manufacturer) Rep. by its Authorised Signatory -Vs- The State of Tamilnadu** (Crl.OP. No. 8080 of 2024 dated 03.09.2024), this Court has held that the manufacturer is also liable to be prosecuted for the sale of banned products within Tamilnadu and they have to factually prove the same before the concerned Court. This Court also traced the ill effects and it is relevant to extract para 30 and 36 which reads as follows :

“30. Thus, from the line of judgments discussed above, there can be no doubt regarding the power of the Government to issue Notification to ban tobacco product with nicotine used as an ingredient to any food.

31. The manufacturer of the banned product is liable to face the prosecution since their product which is a chewable tobacco with nicotine is a food and the Hon'ble



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Supreme Court in its interim order dated 25.04.2023 has given liberty to the respondent (chewing tobacco manufacturers) to seek redressal before the appropriate forum if they have a case that their acts or operations are not covered by the Notification issued under Section 30(2) of the FSS Act.

32. The next question to answer is whether there is nexus between the manufacturer and the person, from whom the banned product seized.

33. It is pertinent to note that soon after the seizure, the manufacturer been put to notice by the Food Safety Officer regarding the seizure and called for his explanation. Being the manufacturer of the product, the petitioner has the exclusive knowledge and information about the manner in which the product was cleared from their manufacturing unit. Being a registered dealer under GST and Excise Act, they are supposed to maintain register for their product including Batch No./Lot No./Code invoice number for the sale etc. These informations which are within the exclusive knowledge of the manufacturer were not disclosed, when the Food Safety Officer sought for explanation through a show cause notice. Without disclosing the information, which are within his exclusive knowledge, he cannot take a plea that there is no nexus between them (manufacturer and stockist).

34. Section 109 of the Bharatiya Sakshya Adhiniyan, 2023 (106 of the Indian Evidence Act, 1872) reads as



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below:-

"109. Burden of proving fact especially within knowledge:- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

35. In all these cases, the manufacturer, who is supposed to disclose about the detail to whom they sold the product, had kept silent and the silence leads to statutory presumption that the product was knowingly distributed in a State, where there is a ban.

36. As permitted by the Hon'ble Supreme Court in the interim order dated 25.04.2023, before the appropriate forum (i.e.) before the trial Court, the petitioner can place all the documents either to prove that the product does not contain tobacco or nicotine and/ or prove that they have not sold the product to the person or dealer in Tamil Nadu either directly or through their agent. Being purely a question of fact, the criminal prosecution against this petitioner cannot be quashed.

I. The Directions :

8.For the above reasons and in view of the directions that are issued by the Hon'ble Supreme Court of India and the following



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directions are issued :

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8.1 The Prosecuting Agencies :

As and when any tobacco product is seized near any school, then for selling it or attempting to sell it to Children, then the offenders shall be booked under Section 77 of the Juvenile Justice(Care and Protection)Act, 2015 or S.77 read with — BNS as the case may be and they shall also be booked under Section 59 Food Safety and Standards Act, 2006. It shall be seen that the manufacturer, distributor and seller, everyone is liable as per Section 27 of the said Act and if it is a corporate entity, every employee who was actually involved as well as all the directors who are liable for the affairs of the company are liable to be prosecuted as per Section 66 of the Act and as per the Judgment of this Court in Jaiswal Products(Manufacturer) Rep. by its Authorised Signatory -Vs- The State of Tamilnadu (Crl.OP. No. 8080 of 2024) their liability to be prosecuted can be determined only in Trial. Such other provisions shall also be included. If the statutory warning picture and message is not there on the wrapper of the product,

58/65



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8.2 The State Government :

- (I) To implement the Tobacco Free Educational Institution Guidelines and the Implementation Guidelines in letter and spirit;
- (II) To conduct oral/dental health checks for all the school students, both government and private schools, periodically and at least twice in every academic year and look out for tobacco/nicotine stains and, if the same is present, without causing any public embarrassment to the child, in a private manner, the parents and the child have to be counselled ensuring the continuance of the education of the child;
- (III) As far as possible in every district, the Child Tobacco Cessation Centre shall be established and shall function in tune with the Guidelines issued by the Ministry of Health and Family Welfare and immediately ensure at least one Specialist, Medical Social Worker, or Child Psychologist is available to counsel/treat the addicted children;
- (IV) The Head Masters of every school shall help and co-ordinate such treatment and periodical follow-up, ensuring the cessation of the tobacco habit of the child and continuing the education of the child;
- (V) To formulate such methodology in consultation with



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child psychologists consider the due socio-economic and cultural background of the child;

(VI) To form a Two member Tobacco Monitoring Committee in every school consisting of one Teacher and one volunteer from PTA or from the vicinity, who will periodically inspect the premises of the school and the vicinity and inform the police station/food safety officer concerned if there is any evidence use of any tobacco product or selling of tobacco product to the children;

(VII) A mobile application can be developed to upload the information by the committee members, and reporting of the action, until such time the Whatsapp number as mentioned above can be continued;

(VIII) District-wise monitoring committees and State committee shall also be set up to oversee the functioning of the members below them;

(IX) Any Mobile Number or Toll-Free number or Website shall also be created and publicised for any public to report such selling of tobacco products;

(X) Every School shall comply with the ToFEI Guidelines by erecting boards, setting up monitoring committees, maintaining data/register recording compliance and self-analysing their score;

(XI) Decision can to be made by the School Education Department to issue a circular enabling regular inspection of



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the bags of the children discreetly without affecting the morale of the children;

(XII)The school education department shall in consultation with the health department shall have tie up with the leading government cancer hospitals and other private cancer hospitals, where the children should be created an awareness by visually demonstrating the conditions of the cancer patients by the Staff of the Hospital Concerned, subject to privacy of the patient and other rules, and this awareness programme by virtual mode shall be conducted in all the schools from where children shall get to know the sufferings of the patients and immediately the effects of tobacco shall be discussed in the class. Wherever, there is no facility for such live demonstration, actual videos can be made with date and be played to the students and the effects be discussed in the class. Such endeavours be made on regular basis at least once in an academic year but more frequently subject to the need of the school;

(XIII)The School Education Department, as also the Prosecution Agencies including the Commissioner of Food Safety shall periodically submit a report with all the data, including the number of children treated and rehabilitated etc., of such intervals as may be required by the Mission Management Unit and the authorities under the Drug Free Tamilnadu Mission.



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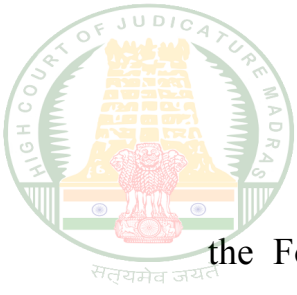
8.3 The Central Government:

(I) Tobacco, is dangerous because it is said to contain Nicotine and this particular product namely Cool Lip testing is said to contain about 1.7% and more in the various test reports and as such is classified as 'unsafe food' based on the rules framed by the Central Government under the Act. What is unsafe food for some states, cannot be termed as safe food for the rest of the states. Already a communication dated 05.12.201 is issued requesting the states to ban these items. The said directive is statutory in Character and it is essential to extract Section 86 of the Food Safety and Standards Act, 2006 which reads as follows :

“86. Power of Central Government to give directions to State Governments.—The Central Government may give such directions, as it may deem necessary, to a State Government for carrying out all or any of the provisions of this Act and the State Government shall comply with such directions.”

8.4 As such, the State Governments are bound to comply with the directions and therefore the Central Government shall consider the grave nature of the situation and issue further directions under Section 86 of

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the Food Safety and Standards Act, 2006. The wide use, immense popularity and appeal to the children and the unique nature of these new dipping/filter tobacco products shall be taken into consideration.

J.The Result:

9. The Criminal Original Petition stands disposed of with the above directions. The interim bail granted to the petitioner is made absolute and deemed to be the regular bail and already the petitioner has complied with the conditions.

30.10.2024

Speaking/non-speaking order

Jer/sji



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To

1.The Inspector of Police
Kadayam Police Station
Tenkasi District.

2.Union of India
The Ministry of Health & Family Welfare
Room No.201 – D, Nirman Bhawan
New Delhi – 110 011.

3.The Secretary to Government
School Education Department
Secretariat, Chennai – 600 009.

4.The Commissioner of Food Safety and Drug
Administration in Tamil Nadu
No.359, Anna Salai, Teynampet, Chennai – 600 009.

5.The Additional Public Prosecutor
Madurai Bench of Madras High Court.



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D.BHARATHA CHAKRAVARTHY, J.,

Jer/sji

CrI.O.P(MD)No.14942 of 2024

30.10.2024

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