

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2203 of 2022

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Rounak Sinha, S/o Sri Arvind Kumar Sinha, Permanent Resident of Sahangi, Bohjpur, Bihar 802203, Temporary Resident of Mahendrapuram Apartment, Block A, House No. N4, Patna, Bihar 800011.

... .. Petitioner/s

Versus

State of Bihar, through the Additional Chief Secretary cum Food Safety Commissioner, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna 800015.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rounak Sinha (In Person)
For the Respondent/s : Mr. Lalit Kishore (Ag)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 25-03-2022

Petitioner has prayed for the following relief(s):-

“i. For the issuance of a writ of mandamus, and/or, any other appropriate writ/direction/order commanding the respondent no. 1 to impose the complete prohibition in the manufacture, storage, distribution, transportation, display or sale of any type of Gutkha and Pan Masala containing tobacco and/or nicotine.

ii. For the issuance of writ of mandamus and/or, any other appropriate writ/direction/order commanding the respondent no. 1 to impose the complete prohibition on chewing tobacco, pure tobacco, Khaini, Kharra scented tobacco/Flavoured tobacco or by whatever name locally it is called packed in sachets/pouches/package in the State of Bihar.”

On 25.02.2022, we had passed the following order:-



“Shri Vikash Kumar has placed on record order dated 23.02.2022, whereby manufacture, storage, distribution, transportation, display or sale of any type of *Gutkha* and *Pan Masala*, containing tobacco and/or nicotine, whether packaged or unpackaged, stands prohibited within the State of Bihar.

List on 25.03.2022, as prayed for.”

The order dated 23.02.2022 issued by the Commissioner of Food Safety, Bihar reads as under:-

Ratanak Sinha (in person vs. State)
in compliance of
order dt. 18.02.22.
Vikash Kumar
Adv.
S.C.11.

बिहार सरकार
खाद्य संरक्षा आयुक्त का कार्यालय

बिहार सरकार

Memo No: FSC/22/2012/01 (अर्थात् 01) Patna, Dated: 23.02.2022

ORDER

WHEREAS, Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 made by the Food Safety and Standards Authority of India in exercise of the powers conferred by clause (i) of Sub-section (2) of section 92 of the Food Safety and Standards Act, 2006 (Central Act 34 of 2006) read with section 26 thereof, prohibits article of food in which tobacco and nicotine are used as ingredients as they are injurious to health;

AND WHEREAS, Hon'ble Apex Court in the matter Transfer Case (Civil) No: 1/2010 in its order dated: 23.09.2016 directed the Secretaries of the Health Department of all the states to ensure total compliance of ban imposed on manufacturing and sale of Gutkha and Pan Masala with tobacco and/or nicotine.

AND WHEREAS, Gutkha and Pan Masala are article of food in which tobacco and nicotine are widely used as ingredients now-a-days;

AND WHEREAS, it is expedient to prohibit Gutkha and Pan Masala containing tobacco and nicotine in the State of Bihar, being food products in which tobacco and nicotine are widely used as ingredients;

AND WHEREAS, The Commissioner of Food Safety of the State is empowered under Section 30 (2) (a) of the Food Safety and Standards Act, 2006 to prohibit for one year, in the interest of public health, the manufacture, storage, distribution, transportation, display or sale of any article of food in the whole of State.

AND WHEREAS, it is one of the primary duties of the State, inter alia, to improve public health, as a matter one of the directive principles as enshrined in the article 47 of the Constitution of India and, Whereas, it implicitly includes the concept of provision of measures of citizens' health;

THEREFORE, I, Pratyaya Amrit, Commissioner of Food Safety, Government of Bihar, in exercise of the powers conferred by clause (a) of sub-section (2) of section 30 of the Food Safety and Standards Act, 2006 (34 of 2006), prohibit in the interest of public health for a period of one year from date- 23.02.2022, the manufacture, storage, distribution, transportation, display or sale of any type of Gutkha and Pan Masala containing tobacco and/or nicotine, whether packaged or unpackaged in whole of the State of Bihar.

(Pratyaya Amrit)
Commissioner of Food Safety, Bihar
Patna, Dated: 23.02.2022

Memo No: FSC/22/2012/01 (अर्थात् 01)
Copy to :- Superintendent, Bihar Secretariat press, Patna is requested to publish in the extra ordinary Gazette.

(Pratyaya Amrit)
Commissioner of Food Safety, Bihar

In this view of the matter, learned counsel for the



petitioner states that he shall approach the competent authority, under the provisions of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 as also the Food Safety and Standards Act, 2006, venting out the surviving grievances enabling the authority to take an appropriate decision in this regard.

Statement accepted and taken on record.

Instant petition is disposed of in the aforesaid terms reserving liberty, as aforesaid.

We only hope and expect that the appropriate authority dealing with the issue, shall take a decision at the earliest and preferably within a period of three months thereafter.

Copy of the decision assigning reasons shall be supplied to the petitioner, who is at liberty to pursue the matter, if the need so arises.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	28.03.2022
Transmission Date	

