



Mahesh Bhatt, et al. v. Union of India and another

2008 Bus LR 366 (Del); 147 (2008) DLT 561

Country: India

Region: Asia

Year: 2008

Court: High Court - Delhi

Health Topics: Tobacco

Human Rights: Freedom of expression, Right to health, Right to life

Facts

Three writ petitions were clubbed together by the Court owing to the similarity in questions to be decided. The first Petitioner, Mr. Mahesh Bhatt, was a film maker. The second and third petitioners were engaged in the publication of the newspaper, The Hindu. The Petitioners challenged the validity of the Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 ('the Act') and the amended Cigarettes and Other Tobacco Products Prevention of Advertisements and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2005 ('the Rules') as unconstitutional. The Petitioners contended that the Act and the Rules stifled their freedom of expression guaranteed under Article 19 of the Constitution of India.

Decision and Reasoning

On the issue of whether the Central Government has legislative competency to enact the Act and the Rules, the Court held that it was done so on the grounds of public health. The Act made it clear that the Union of India would control the tobacco industry for public interest.

As to whether the Act and Rules violated the right to freedom of speech and expression, the Court held that it does not. This is because the act of promoting or advertising tobacco and tobacco related products is of a commercial nature. It did not satisfy the public interest test, whereby the object of the advertisement is to promote or propagate ideas for the larger public good. Moreover, if the purpose of such advertisements is for gaining profits, the element of free speech involved is minimalistic. Thus a violation of the right to freedom of expression cannot occur when the expression itself is not intended for public benefit, but merely to cater to monetary benefits of the advertiser.

On the issue of whether the Act and the Rules were issued in the interest of the public the Court held that the legislative intent was to protect the right to health. The right to a healthy life is one of the constituents of the right to life guaranteed under Article 21. The Act and the Rules were enacted to prevent the use of tobacco and cigarettes which are known to be unhealthy. The Court held that the glorification of tobacco in films and the electronic media prompted minors to adopt such habits. Thus the legislature, in its wisdom, merely sought to further public interest as everyone had the right to a healthy life.

Decision Excerpts

“Recognition under Article 19(1)(a) is to promote and enjoy freedom of speech and expression and not to misuse and propagate use of substances medically and scientifically proven as harmful, causing disease or insalubrity.” Para. 22.

“Safeguards as mentioned in the Rules are valid as they seek to promote and ensure right to a healthy life.” Para. 49.

“Fundamental Right of Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Constitution cannot and should not be extended to grant protection to any purely commercial speech which encourages use of tobacco products leading to disease and health problems.” Para. 32.