

High Court Division
(Special Original Jurisdiction)
Mohammad Fazlul Karim and Md. Abdud Wahhab Miah, JJ
Writ Petition No. 1825 of 1999
with
Writ Petition No. 4521 of 1999
Professor Nurul Islam
..... Petitioners
in W. P. No. 1825/99
Mr. Alhaj Nur Mohammad and others
..... Petitioners
in both the Writ Petitioners

Date of Judgment: The 7th February, 2000

Result: Both the Rule absolute with directions

Judgment

Mohammad Fazlul Karim, J:

1. These two Rules were heard together since both the Rules relate to the same and similar subject matter and are disposed of by this single judgment.
2. In Writ Petition No. 1825 of 1999 Rule Nisi was issued calling upon the respondents to show cause as to why section 3 of the Tamakjato Shamogri Biponon Niontroner Jone Pronito Ain 1988 (ZvgvKRvZ mvgMÖx wecbb wbqşj;†Yi Rb` cÖYxZ AvBb, 1988) should not be enforced properly and as to why the respondents should not be directed to enact law in the light of the Ordinance No. 16 of 1990 for the prohibition of all forms of tobacco advertisements and/or such other or further order or orders passed as to this Court may seem fit and proper.
3. In a application under Article 102 of the Constitution of the People’s Republic of Bangladesh, the Petitioner Professor Dr. Nurul Islam, President, ADHUNIK (Aamra Dhumpan Nibarón Kori) and a National Professor of Banglaesh has stated, Inter alia, that at the present moment all the tobacco related companies are advertising their products in different spheres of media such as newspapers, magazines, television, radio, billboards and various kinds of sponsorship of cultural and sports programme. Section 3(1) of Tamakjato Shamogri Biponon Niyontroner Jonno Pronito Ain provided for a statutory warning “smoking is dangerous for health would be printed on packed or canned tobacco based products sold in the market to the easily readable and understood Bengali on a prominent and distinct space of the said container or packer and similarly section 3(2) of the said Act states “No advertisement of tobacco based products shall be published, broadcast or displayed without having the said warning in easily readable and understood Bengali, engraved, written or printed on a prominent part of the advertisement. Majority of the tobacco related companies printed the said statutory warning on the packets and containers and also broadcast and published in their advertisements but they are

committing a fraud by not following the law accurately in breach of section 3(1) of the Statute, tobacco related companies have often been printing the statutory warning on obscure corners of tobacco packets and containers and published the warning in so small size making it barely readable in breach of the statutory provisions. In advertisements with moving images in the movie theatres, broadcast on television the statutory warning is shown so briefly and without any voice which has little or no affect on the viewers or having little effect on them. Similarly in the most of the tobacco billboards by the side of the streets and the advertisements in the newspapers and magazines, the statutory warning is so small that it is not even readable thereby defeating/violating the spirit of the Act to make awareness about heinous and dangerous nature of the tobacco based products. It has further been stated that the statutory warning itself does not expressly the extent of the effect of consuming tobacco. It has been accepted not only but the medical researchers by also by the tobacco industry in developed countries that the tobacco consumption leads to fatal diseases such as cancer, lung and heart diseases causing about 3.5 million deaths each year, thereby there is about 10,000 deaths throughout the world per day. It has been asserted that one million of deaths occur in developing countries such as Bangladesh Global tobacco epidemic is predicted to claim premature death of some 250 million children and adolescents, at present a third of these shall occur in developing countries. It has been further asserted that by 2020 it is predicted that the tobacco will become the leading cause of death and disability, killing more than 10 million people annually, 2 million in China alone. Tobacco causes more deaths worldwide than the HIV, Tuberculosis, Maternal Mortality Rate, Motor Vehicle Accident, homicidal and suicidal deaths combined. The petitioner has further stated that the passive smoking also has dangerous effect sudden infant death, respiratory illness and middle ear disease in babies and children and lung cancer, heart disease in adults. Children are put at risk because smoking by their parents increase the likelihood that they themselves will in time take up smoking. The petitioner has further asserted that the statutory warning itself must correspond to the extent tobacco's harms and accordingly the warnings should be prominently displayed on the tobacco packets and advertisements. As smoking in the developed countries are being gradually marginalized, the international tobacco manufactures have now targeted the underdeveloped countries like Bangladesh for reviving their fortunes. United States recently banned advertisements of tobacco based products and such bar is presently operating in forty-six States with immediate effect. Smoking in public places more or less is prohibited in both developed and under developed countries with effective measures for penalizing the company for any will full negligence in not disclosing the dangers and consequences of consuming tobacco. The petitioner has further asserted that tobacco advertising is not for brand switching as claimed but it is to attract the non-smokers, specially the children and women. The advertisements are generally attractive in order to induce the young and general non-smokers to smoke. U.S. Surgeon General's Report in 1988 concluded that "Cigarettes and other forms of use are addicting. Patterns of tobacco use are regular and compulsive and accompanies tobacco abstinence. The pharmacological and behavioral processes that determine tobacco addiction are similar to those tobacco addiction to drugs such as heroin and cocaine". The petitioner has asserted that in a ranking of the addictiveness of psycho-active drugs. nicotine was determined to be more addictive than heroin, cocaine, alcohol, caffeine and marijuana. The petitioner has asserted great majority of rural people

who consumed tobacco based products are illiterate and completely unaware of the dangers and harmfulness of consuming it. Even if the statutory warning is written on a distinct space on the packets, it would not make any sense to the illiterate consumers. Hence the statutory warning should be readout in the advertisements of tobacco related products on radio, television and cinema, theatres which has tremendous effect dangers of smoking on the illiterate public including children and women who are simply failed to understand, appreciate and realise the dangers and harmfulness of consuming tobacco products. Even considering the dangers and mischief of consuming tobacco products, merely enforcing of section 3 of the Act, 1988 would rather be of little use unless manufacturing, consumption and promotion of tobacco related products are prohibited.

4. By way of supplementary affidavit the petitioner has asserted that the World Health Organization in its 31st World Health Assembly was seriously concerned at the production and consumption of cigarettes during the last two decades, which has increased at an alarming rate in some of the countries, particularly in developing countries. WHO, thus found consumption has accelerated at the extensive promotional drive for the sale of the cigarettes being carried out on radio and television, in newspapers and other news media and through association with sporting and cultural events, which has the effect of inducing and perpetuating smoking habits especially among the youth and the women. The petitioner has further asserted that tobacco smoking is a major cause of chronic bronchitis, emphysema and lung cancer as well as a major risk factor for myocardial infraction, certain pregnancy related and neonatal disorders and a number of other serious health problems having harmful effects for those who are involuntarily exposed to tobacco smoke apart from causing economic and social problems resulting in loss of the lives of at least one million people every year and in illness and suffering for many more, which has promoted the World Health Organization adopting resolutions since 1970 urging the member countries to formulate a national tobacco control strategy for creating and developing effective machinery to coordinate supervise programmes for control and prevention of smoking on a planned, continuous and long term basis, to consider steps which can be taken towards causing the non-smokers receive protection to which they are entitled from an environment polluted by tobacco consumption, to adopt comprehensive measures to control tobacco smoking, inter alia, for increasing taxation on the sale of cigarettes and restricting as far as possible all forms of publicity for promotion of smoking, to strength and to initiate where lacking the smoking control strategies, laying special emphasis on educational approaches particularly, with respect to youth and women on measures to ban, restrict or limit advertising of tobacco products. Bangladesh being a member state of World Health Organization is duty bound to give effective the said resolution. In news report titled “stop tobacco firms targeting children” published on BBC news stating that faced with declining sales in Europe and north America, the giant tobacco corporations are stepping up their activities in poorer countries. Although smoking is in decline in the industrialized world but the consumption of cigarettes rose by 67% in developing countries between 1970 and 1994 and if present trend continues unchecked tobacco recorded deaths in developing countries will rise from one million a year to seven million a year 2030. The report of the Scientific Committee on Tobacco and Health prepared by the Department of Health and Social Services of United Kingdom also cautioned a warning as to maximum mortality among males and rising mortality

among females. Over the past decade there has been increasing recognition regarding underlying smoking behavior and remarkable intractability to change addition to the drug nicotine which has been shown to have effect on brain dopamine systems similar to those of drugs like heroine and cocaine.

5. In Writ Petition No. 4521 of 1999 Rule was issued calling upon the respondents to show cause as to why the promotional advertisement activities of the respondent Nos. 9 and 11 through their 'Voyage of Discovery' in order to discover new and potential victims of tobacco products by popularizing the "Gold Leaf" Cigarette or to advertise the same by whatever means with the illegal help, assistance, permission and by aiding and abetting of the other respondents should not be declared to have been made illegal, without lawful authority and of no legal effect. While issuing the Rule this Court was inclined to pass an order of stay directing the respondents not to proceed with the promotional advertisement activities of the respondents 9-15 through their "Voyage of Discovery" scheduled to commence from 22nd to 26th November at 15 No. Kailaghat, Chittagong Port and the telecast and publications and advertisement of the same till 28th November, 1999. The petitioners President, Additional Secretary General, Secretary General and other officials of the Bangladesh Anti Drug Federation have stated, inter alia, that being a conscious persons representing a cross section of the civil society who are genuinely concerned about the outcome and impact of promotion/advertising campaign by a foreign vessel "Gold Leaf Yecht" to promote tobacco products during their 'Voyage of Discovery' which arrived at Chittagong Port on 21.11.99 with a motive to capture a potential market and discover potential victims amongst young teenage boys in order to get them hooked/addicted to cigarettes smoking. The petitioners engaged their activity in establishing nexus between smoking and various injury to health to smokers as well as passive smokers which kills lives through addiction to make more than heroin. The petitioners have asserted that because of recent landmark cases in U.S.A. i.e. Minnesota's Tobacco Settlement, the tobacco industry, incurring damages as compensation and thereby making them selves economically unreliable to operate in such jurisdiction. The cigarettes manufacturer are making nose driving and plummeting to the bottom of the share market. The multinational tobacco companies have known for a long time since 1960 that nicotine found in tobacco is infact an addictive drug, extremely harmful to the human health and environment which they kept secret from the innocent consumers and public at large while knowingly these tobacco multinationals have been marketing this poison to the innocent consumers who are mostly young and women. Tobacco based products camping. 'Voyae of Discovery' organized by British American Tobacco Company to promote their product Gold Leaf cigarette world-wide with particular emphasis in Africa and Asia as an alternative and new area of marketing and product by adopting an illuminating new style, method started from London on 17th June, 1999 with view to promote cigarettes tobacco at least in 17 countries including Bangladesh within 170 days arriving at Chittagong Port on or about 21st November, 1999 at No. 15 Kailaghat. The Voyage as part of its advertising and promotional campaign will conduct a long programme of five days commencing from 22nd November, 1999 allowing about 4000 visitors to the vessel on 24th, 25th and 26th of November, 1999 to view the vessel against tickets, priced at Tk. 100/- Such exhibition of the vessel, which itself is covered by promotional materials including the message an its sale, do not

contain any statutory health warning as required by law in order to carry out any promotional or advertisement of tobacco products. The respondent No. 11 at a Press Conference admitted the purpose and aim of the said Voyage is to popularize the tobacco product 'Gold Leaf of the British American Tobacco company by way of alternative advertisement. It has stated that the tobacco is targeting and developing third world countries like African and Asian taking advantage of social unawareness and illiteracy to campaign for promotion of tobacco related products. The respondent No. 11 has been advertising about the voyage in Bangladesh in Television and publishing the same as well in news papers for more than one months in violation of the provision of law and as a part of their promotional campaign. The respondents 9-11 have been distributing the advertisement materials and free gifts like cards, calendars, lighters etc. to the members of the public at large often targeting boys in particular in violation of the provision of Juvenile Smoking Act, 1919. The Petitioner has further asserted that as a result of the settlement in Minnesota, USA tobacco industry has been forced to make huge payment to Minnesota, USA tobacco industry has been forced to make huge payment to Minnesota State amounting to US\$ 6.6 billion over 25 years and imposed comprehensive tobacco unmarking measures to be effected and founded by the tobacco industry and similar steps are being taken in other states following the said cause of action forcing the tobacco industry to pay huge sum of compensation. The report of the World Health Organization stated that tobacco kills 11000 people per day world wide and by the year 2020 it will cause 17.7% of all death in developed countries and 10.9% of all deaths in developing countries. As a pre-emptive measure to fight back such encroachment into their profits the tobacco industry is now engaging in aggressive marketing tactics and hitting soft targets in countries like Bangladesh gearing their promotion to the teenage population. The respondent No. 10 made total misrepresentation regarding the purpose of the vessel which did not come for a simple visit as stated for obtaining permission for berthing but has undertaken in order to popularize the product of British American tobacco by capturing the young generation of the country below 16 years old who shall become the life long consumers.

6. Mr. Omer Sadat, learned Counsel appearing for the petitioner has taken us through Annexures and the provision of Article 11 of the Constitution enshrining fundamental principles of state policy that the Republic shall be democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed submits that the marketing and consumption of the tobacco not only helps robbing of the dignity but addition to tobacco has the effect of worsening the worth of a human person and in that view of the matter the State having a responsibility to persuade and protect the dignity and worth of person has a duty to restrict the business of tobacco related products including cigarettes. The learned counsel has further submitted that the international tobacco manufacturers now having failed to attract a market in the developed countries because of the awareness of the ill-effect of tobacco related products have concentrated upon the illiterate and unaware citizens of developing countries in Asia and Africa and in order to boost of their business have targeted the unaware and illiterate citizens in under developed countries whereby the consumers are to their peril are being affected with disease like cancer, respiratory illness particularly among the babies and children ultimately causing death to them. The learned counsel has further submitted that

the effect of consuming tobacco being fatal disease like cancer, lung and heart diseases and one million of deaths occur in developing countries like Bangladesh, the authority not only has duty to prevent production of tobacco related products but while marketing the same has duty to enforce the prevailing law as to statutory restriction that the tobacco is injurious to health inasmuch as the advertisement or marketing of the cigarettes do not contain adequate warning so as to make the consumers aware of the ill effects of consumption of tobacco related products. The learned counsel has further submitted that the foreign tobacco related products that are being imported into the country and used by the consumers do not contain such statutory warning contemplated by law of the land for which the authority would prohibit importation of cigarettes without warning as contemplated under the Municipal law of Bangladesh. The learned counsel has further submitted that in view of the legislation as to advertisement that has been allowed to be lapsed not being placed in the Parliament, law similar to that should be promulgated so that there should not be any advertisement either in newspapers or international/national radio, television with the sole object of marketing and promoting cigarette related products which has the effect of attracting the young generation to smoking by consuming tobacco related products.

7. Mr. Obaidur Rahman Mostafa, learned Deputy Attorney-General has however, submitted that the effect of consuming tobacco related products has been made aware to the consumers by way of statutory warning against smoking under the provision of law and as such if the consumers consume the same the respondents can not be made responsible inasmuch as no further restriction is required so as to prevent consumption of cigarettes related products as the manufacturers, have the right to continue with their business in manufacturing the tobacco related products and advertisement for its commercial purpose. The learned Deputy Attorney-General has further submitted that the Ordinance regarding advertisement has been allowed to be lapsed by not placing the same before the Parliament in the interest of the manufacturer of tobacco related products and in view of the statutory warning any further restriction would effect the business of the manufacturer but when occasion shall arise the Government may restrict the advertisements of cigarette related products in public interest.

8. Ms. Tania Amir, learned counsel appearing for the petitioners in Writ Petition No. 4521 of 1999 has, however, submitted that the British American Tobacco Company having failed to promote its production in developing countries has undertaken the 'Voyage of Discovery, in order to promote their 'Gold Leaf cigarette particularly among the illiterate and backward people of Africa and Asia as their alternative and new method of advertisement.

In view of the specific restriction under the law that any advertisement, promotion of marketing of cigarettes related product without the statutory warning is prohibited under sections 2(2) and 3 of the Ordinance No. 26 of 1988. The respondents is continuing with the 'Voyage of Discovery' by holding visit to the said vessel as promotional move is prohibited under the law and as such the respondents 9 and 11 through 'Voyage of Discovery' allured the potential victims of tobacco product by popularizing 'Gold Leaf'

cigarettes to advertise by an alternative way without the statutory warning, has been done illegally and without lawful authority.

9. Mr. Nazmul Huda, learned counsel appearing for respondents 9 and 11 has however, submitted that although the 'Voyage of Discovery' is designed for promotional activities but has nothing to do with the marketing and commercial activities of the Gold Leaf cigarette and there is no restriction of the 'Voyage of Discovery' to be present in Bangladesh in order to facilitate visits of the visitors. The learned counsel has further submitted that the presence of 'Voyage of Discovery' of the purpose of allowing visit to the visitors is passive and not harmful and is at best be promotional voyage of product, has nothing to do in attracting the consumers of the tobacco related products namely. 'Gold Leaf'. The petitioner has asserted that the smoking of tobacco related products not only affect the smokers themselves but also the surrounding individuals by way of smoking passive particularly effecting the infant's death, respiratory illness and middle ear disease in babies and children and lung cancer and heart discuss for the adults. It has further been asserted that after being gradually marginalized in the developed world, the international tobacco products have targeted the underdeveloped countries such as Bangladesh for reviving their fortunes. In the very recent past countries such as United States, bill board advertisements of tobacco based products have been banned in forty-six states with immediate effect. But the said multinational tobacco companies have found their way out for promotion in under developed countries. IN 1988 US Surgeon General's Report stated. inter alia:

"Cigarettes and other forms of tobacco use are addicting, Patterns of tobacco use are regular and compulsive, and a withdrawal syndrome usually accompanies tobacco abstinence. The pharmacological and behavioural process was that determine tobacco addiction are similar to these that determine tobacco addiction to drugs such as heroin and cocaine."

In the ranking of addictive of psycho-active drugs, nicotine was determined to be more addictive than heroine, cocaine, alcohol, coffeine and mariguana. It is not denying the fact that the general rural people who consume tobacco based products are illiterate and completely unaware of the dangers and harm of consuming it. Although under the 'Tamakjato Shamogri Biponon Niontroner Jonno Pronito Ain, 1988', allow to promote tobacco based products with a statutory warning written on its packet yet the same has been proved to be a boomerang or without any effect as most of the consumers are illiterate and others are not aware of the fatal effect of consuming the tobacco based products. The Government as well being aware of this situation had promulgated Ordinance No. 16 of 1990 incorporating Section 3(Ka) in the Act of 1988. which provided as follows:

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But unfortunately the said Ordinance in Bangladesh Gazette Extra Ordinary published on 25th October, 1990 was not placed before the Parliament and ultimately died a natural death not having been placed as per Article 93(2) of the Constitution. The said Ordinance was designed to incorporate certain provision of Ordinance No. 16 of 1988 in 45 of 1988 providing prohibition of any advertisement of tobacco related products. The Ordinance also contain a statutory warning in a low side of the packet written in bengali over the tobacco related products that “smoking is dangerous for health” and the violatory shall be dealt in accordance with law. There is a worldwide agitation against the tobacco related products including cigarette and the World Health Organization was seriously concerned with the production and consumption of cigarette during the last two decades which has increased in some other developing countries including Bangladesh. The anxiety was due to accelerated consumption in view of advertisement for sale of cigarettes being carried out on radio and television, newspapers, billboards and other news media including sports and cultural events which have the effect of inducing and perpetrating smoking habits especially affecting the youths, male and female.

It is now an established fact that tobacco smoking is a major cause of chronic bronchitis, emphysema and lung cancer as well as a major risk factor for myocardial infraction, certain pregnancy related and neonatal disorders etc and accordingly, the World Health Organization has adopted resolutions ruing its member countries, since 1970 to which Bangladesh is a member, to formulate a national tobacco control strategy containing measures to create awareness and to develop effective machinery to coordinate and supervise programmes for control and prevention of smoking on a planned, continuous and long term basis: to consider steps which can be taken towards causing the non-smoking reserve protection to which they are entitled from an environment free from pollution by tobacco smoke, to adopt comprehensive measures to control tobacco smoking by providing for increased taxation on the sale of cigarettes and restricting all forms of publicity for promotion of smoking; to strengthen and to initiate where lacking the smoking control strategies, laying special emphasis on educational approaches particularly with respect to youth on measures to ban, restrict or limit advertising of tobacco products, member States which have not yet implemented smoking control strategies to take measures for non smokers to receive effective protection to which they are entitled, from involuntary exposure to tobacco smoke, in enclosed public places, restaurants, public transports and places of work and entertainment, abstention from the use of tobacco so as to protect children and young people from becoming addicted; to print prominent health warnings which might include the statement that tobacco is addictive on cigarette packets and containers of all types of tobacco products. Apart from yearly half-hearted celebration of “No smoking day” on 31st of May each year Bangladesh, a member State of World Health Organisation is merely duty bound to give effect to the aforesaid resolution. Moreover, Article 25(1) of our Constitution casts on obligation upon the State to respect for International Law and the principles enunciated in the United Nations Charter and the WHO resolutions. It has been asserted by the petitioner that the developing countries like England has taken step by distinctly publishing through BBC news titled stop tobacco firms targeting children propagating against the effect of consumption of Tobacco related products. Facing a decline in their commercial project in developing countries, the multinational tobacco companies are

leaning towards under developed countries in Asia and Africa to have alternative market of their tobacco products and with that end in view have engaged themselves in undertaking various promotional measures including that of “Voyage of Discovery”. According to WHO study between 1970 and 1994 smoking is in decline in the industrialized developed World, but consumption of cigarettes rose by 67% in developing countries and if the said trend continues unchecked, tobacco related death will rise for one million a year to seven million a year in 2030. It may be mentioned that Dr. Bill O’Neill Scientific Adviser to the British Medical Association has also opined that:

“To be consistent in promoting an ethical Foreign Policy we have to play a lead role in curbing international marketing efforts of British tobacco companies who are responding to tighter regulations in the developed world by targeting vulnerable people world by targeting vulnerable people in developing countries.”

We like to mention here about a report of the Scientific Committee on Tobacco and Health prepared by the Department of Health and Social Services of United Kingdom, to the effect that tobacco is the most important avoidable cause of chronic ill health and premature death in developed countries where it causes a quarter of all the deaths in middle age with maximum mortality among females and in developing countries many men now smoke and mortality from tobacco is increasing.

10. Similarly, the British Regional Heart Study reported that men who never smoked having 78% chance of reaching 73 years of age whereas those who start smoking by the age of 20 and never stop have only 42% chance. A U.K. Study of ever 10,000 survivors from heart attacks reveal smokers in 30/40 have five times heart attack than non smokers. Similarly the British Medical Bulletin on tobacco and health published in 1996 estimated the number of deaths attributable to smoking in forty developed countries and calculated in 1990 smoking accounted for 35% of all deaths in middle aged males between 35-69 years of age. A survey of U.S. countries for Disease Control and Prevention show that smoking has risen in sub-Saharan Africa where cheap brands are available and tobacco companies are using intensive advertising and marketing campaigns, sponsorship of events and cigarette price wars. Over the past decade there has been increasing recognition that underlying smoking behavior and its remarkable intractability due to smoking drug, nicotine which has the effect similar to those of drugs such as heroin and cocaine. Dependence on nicotine is established in teenagers smoking careers and there is compelling evidence that adult smoking behavior is motivated by a need to maintain a preferred level of nicotine intake is leading to the phenomenon of nicotine titration or compensatory smoking in response to lower nicotine yields and the scientific committee having looked at the available evidence that tobacco advertising and promotion influence the uptake of smoking by young people and accordingly recommended open advertising and promotion of tobacco products could no longer be justified and this is briefly what has been agitated for long by the World Health Organization and has adopted resolution. To us ZvgvKRvZ mvgMÖx wecbb (wbqš;Y) AvBb 1988 (Act 45 of 1988) is designed to control the advertisement and marketing of tobacco based products by way of written warning that ‘smoking is dangerous for health’ impliedly prohibiting advertisement in any form. The said void was reiterated by Ordinance 16 of 1990 incorporating prohibition

of advertisement of tobacco and tobacco related products incorporating section 3A but unfortunately the said amending Ordinance was given a go-bye and was not made a law with the lapse of statutory period. In view of the resolution of the World Health Organization and admitted bad effects as aforesaid in the matter of advertisement, promotion of tobacco based products and the provision in Article 25A of our Constitution, we are of the view that the government should have taken appropriate steps for banning/restricting advertisement and promotion of cigarettes related products by incorporating restrictions as to advertisement etc. as was provided by Ordinance No. 26 of 1990.

11. A similar petition like the present one came up for consideration before a Division Bench, High Court of Kerala in PO NO. 24160 of 1998 in the case of Ramakrishna Vs. State of Kerala and other reported in 1992(2) KLT 725 wherein highlighting the public health issue of the dangers of smoking and passive smoking in which prayers were made to declare that smoking of tobacco in any form, whether in the form of cigarette, cigar besides or otherwise in public places is illegal, unconstitutional and violative of Article 21 of the Constitution of India alleging, inter alia, that one million Indians die every year from tobacco related diseases. This is more than the number of deaths due to motor accidents, AIDS, alcohol and drug put together say the Indian Medical Association (IMA) and the Indian Academy of Pediatrics (IAP), Cigarette smoking is the major preventable cause of death in America contributing to an estimated 350000 death annually. Epidemiological and experimental evidence has identified cigarette smoking as the primary cause of lung cancer and chronic obstructive pulmonary diseases (COPD) and as a major risk factor for coronary heart disease. Smoking has been associated with other cancer, cerebrovascular and peripheral vascular diseases and peptic ulcer disease, Smokers also suffer more acute respiratory illness. Cigarette smoke consisting of particles disposal in a gas phase and smoke constituents strongly implicated in causing disease are nicotine and tar in the particulate phase and carbon monoxide in the gas phase, Smokers have a 70% higher mortality rate than non-smokers, Lung cancer has been the leading cause of cancer death in men since 1950 and it passed breast cancer as a leading cause of cancer death in women since 1985. Cigarette smoking is a major independent risk factor for coronary artery disease. Autopsy studies demonstrate more atheromatous changes in smokers than non smokers carbon monoxide in cigarette smoke decreases oxygen delivery to endothelial to endothelial tissues. Smoking also triggers acute ischemia. Cigarettes smoking is the primary cause of chronic bronchitis and emphysema, inhaling cigarette smoke impairs / pulmonary clearance mechanisms by paralyzing ciliary transport. Smokers have a high prevalence of peptic ulcer disease and a higher case fatality rate. Female smokers weight less than non smokers and have an earlier age of menopause and these factors are associated with osteoporosis. The said illuminating judgment has relied on a good number of data including those of Mr. Lawrence Garfinkel and epidemiologist and the Vice-President of the American Cancer Society who has said that he was at present sceptical of Dr. Hirayama report but was convinced from later studies, including his own, that there was about 30% increasing in developing lung cancer from smoking. Mr. Garfinkel said a study of 1.2 million Americans now being completed should help clarify the degree of risk from all types cancer and their diseases. Dr. Glantz estimated that one-third of the 50,000 deaths from

passive smoking were from cancer. In addition to lung cancer, researchers have linked cancer of the cervix to both mainstream and side stream smoke. Non-smokers involuntarily inhale the smoke of nearby smokers, a phenomenon known as passive smoking (Environmental Smoke Exposure). Wives, children and friends of smokers are a highly risk prone group. Inhalation of side stream smoke by a non-smoker is definitely more harmful to him than to the actual smoker as he inhales mere toxins. This is because side stream smoke contains three times more nicotine, than about 50 times more anemia. The American Academy of Paediatrics estimates that 9 million to 12 million American children under the age of 5 may be exposed to passive smoke. The newer studies strengthened earlier conclusions that passive smoke increases the risk of serious early childhood respiratory illness, particularly bronchitis and pneumonia in infancy. Increased coughing was reported from birth to the mid-teenage years among 13 newer studies of a passive smoking and respiratory symptoms. It has also been found that passive smoke can lead to middle ear infections and other conditions in children. Asthmatic children are particularly at risk and the lung problem in childhood can extend to adulthood. In 1962 and 1973 the Royal College of Physicians in London and the Surgeon General of the United States released landmark reports documenting the casual relation between smoking and lung cancer. Thereafter extensive research has confirmed that smoking affects virtually every organ system. By 1990 the Surgeon General of the United States concluded that smoking represents the most extensively dominant cause of disease ever investigated in the history of biomedical research. Studies have shown increased risk of lung cancer in non-smoking women whose husbands smoked. Passive smoking is associated with an overall 23% increase in the risk of coronary heart disease (CHD) among men and women who had never smoked. It also concluded that passive smoking is a cause of heart disease mortality, Acute and chronic heart disease morbidity retardation of foetal growth. Sudden infant death syndrome (SIDS). Nasal sinus cancer and induction of asthma in children. Two important studies from the Wolfson Institute of Preventive Medicine in London published in 1998 show that marriage to a smoker increased the risk of lung cancer by 26%. Studies have also established strong relation between passive smoking and ischemic heart, disease (IHD). Maternal smoking during pregnancy increases risk to foetus and non-smokers chronically exposed to tobacco smoke will suffer hazard. It also contributes to foetal growth retardation. Infants born to mother who smoke weigh on average of 200% less but no shorter gestation than infant of non-smoking mother. Carbon monoxide in smoke may decrease oxygen availability to the foetus and account for the growth retardation. Smoking during pregnancy has also been linked with higher rates of spontaneous abortion, foetal death and neonatal death. Smoking in Bus, Bars and conference rooms with poor ventilation result in high level of smoke exposures with angina, chronic obstruction pulmonary disease (COPD) or asthma. Dr. Donald Shopland of the U.S. National Cancer Institute in the Surgeon General's report said that "there is no question" now that passive smoking is also a cause of heart disease. In recent years Missouri, North Carolina, Tennessee and Wyoming have passed comprehensive laws limiting smoking in public place. The systematic reviews from the Wolfson Institute, the California Environmental Protection Agency and US Environmental Protection Agency and various reports released make it clear that exposure to environmental tobacco smoke is a cause of lung cancer, heart disease and other serious illness. Their Lordships further held:-

“Despite the fact that India is a signatory to those regulations it is saddening to note that no significant follow-up action has been taken except banning smoking in public transport and printing a statutory warning on cigarette packets. Even here the action has been half-hearted with the ban on smoking in public places is confined to Delhi and a few other cities and the statutory warning being followed more as a ritual and printed in such small letters that the consumer hardly notices it. Advertisement in the government-controlled mass media has been prohibited but it continues unabated in the print media and private television channels. The Government lip service is reflected in the absence of any mention about the hazards of tobacco in the Health Ministry’s Annual Report except on the occasion of the “World No Tobacco Day” once a year, there has been no sustained campaign to counter the promotional campaign of tobacco and highlight the toll tobacco use takes.”

The judgment further held :

Smokers did not only their own graves prematurely but also pose a serious threat to the lives of lakh of innocent non-smokers who get themselves exposed ETS to thereby violating their right to life guaranteed under Art 21 of the Constitution of India. A healthy body is the very foundation for all human activities. In a welfare State it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.”

In considering what relief the Court can grant to the petitioner the Court considered the Public Nuisance (section 268 of Penal Code), making atmosphere noxious to health (section 278 of IPC) and conditional order or removing of absence (section 133 IPC) and disobedience to order duly promulgated by public servant (section 188 IPC). Accordingly, it was held, interalia, that:

“Public smoking of tobacco in any form whether in the form of cigaretters, cigars, beedies or otherwise is illegal, unconstitutional and violation of Article 21 of the Constitution of India. We direct the District Collectors of all the Districts of the State of Kerala who are suo-moto impleaded as additional respondents 39 to 52 to promulgate an order under section 133 (a) Cr P C prohibiting public smoking within one month from today and direct the 3rd respondent Director General of Police, Thiruvananthapuram, to issue instructions to his subordinated to take appropriate and immediate measures to prosecute all persons found smoking in public places treating the said act as satisfying the definition of “public nuisance” as defined under section 268 IPC in the manner indicated in this judgment by filing a complaint before the competent Magistrate and direct all other respondents to take appropriate action by way of display of “smoking prohibited” boards etc. in their respective office or campuses.

ii. There will be a further direction to Additional Respondents 39 to 52 to issue appropriate direction to the respective RTOs to strictly enforce the provisions contained in Rule 227 (I) (d) and 227 (5) of the Kerala Motor Vehicles Rules. 1989.

iii. Tobacco smoking in public places falls within the mischief of the penal provisions relating to “public nuisance” as contained in the Indian Penal Code and also the definition of “air pollution” as contained in the statutes dealing with the protection and preservation of the environment, in particular the Air (Prevention and Control of Pollution) Act, 1981.

iv. The respondents, repositories of wide statutory powers and enjoined by the statute and Rules to enforce the penal provisions therein are duty bound to require that the invidious practice of smoking in public places, a positive nuisance, is discouraged and offenders visited with prosecution and penalty as mandated by law. Accordingly, the respondents are liable to be compelled by positive directions from this Court to act and take measures to abate the nuisance of public smoking in accordance with law. directions in the above lines are hereby issued.

v. The continued omission and inaction on the part of the respondents to comply with the constitutional mandate to protect life and to recognise the inviolability of dignity of man and their refusal to countenance the baneful consequences of smoking on the public at large resulted in extreme hardship and injury to the citizens and amounts to a negation of their constitutional guarantee of decent living as provided under Art. 21 of the Constitution of India.”

12. A Singaporean Medical Research Team has concluded that smoking lower sperm counts and weakens individual sperm after studying same samples of fertile and infertile men. Smokers with below average sperm counts were six times more likely to be infertile than non-sperm count, won't help if you smoke.

13. Pakistan is also not lagging behind in this respect as is apparent from the decision in the case of Pakistan Chest Foundation and others Vs. Government of Pakistan and others reported in 1997 CLC 1379 arising out of Writ Petition No. 14433 of 1994. The said decision was relied on Article 4 (i) (a) and 199 (i) (a) of Constitution of Pakistan read with Pakistan Broadcasting Corporation Act of 1973 of a public interest litigation in a constitutional petition seeking ban on commercials appearing on television and broadcasting from Radio Pakistan on behalf of cigarette companies .

14. The petition was on the assertion, inter alia, that the cigarette smoking is harmful to health and it endangers human life. Cigarette advertisement on the electronic media have the effect of promoting inducing smoking habit in the people, particularly in the younger generation and also result in endangering human health . In the said decision which was given on a petition by way of public interest litigation on the question of maintainability as to aggrieved person as used in Article 199, it has been held inter alia, that:-

“Public interest litigation can be initiated and maintained by a public such with regard to public injury, though such a person or a body of persons may not seemingly have been personally hurt by a public injury.”

The petitioners are being registered societies whose functions, aims and objects were to work for the health of the people by actively engaging themselves in creating awareness among the masses against diseases and to propagate methods by which diseases and

ailments could be prevented by taking precautions. Another petitioner in his individual capacity has also been doing laudable service in working for people's health. It cannot be said that such associations of individuals do not feel aggrieved or feel concerned when any action or inaction on the part of the functionaries of the State or public sector organizations/enterprises, has the effect of endangering human health. Any wrong doing or invasion of public rights, against the aims and objects of such societies does clothe them with the necessary locus standi to move the courts of law.

15. In the said decision the import of Article 4 (2) (a) of the Pakistan Constitution that no action detrimental to the life, liberty, body or property of any person can be taken unless such detrimental action has the backing of some law in existence. Before a detrimental action can be taken there must exist some law which may permit that any action detrimental to life, liberty, body, reputation or property of a person can be taken. In the absence of any existing law no such action can be taken by the State or any functionary of the State or any person connected with the affairs of the Federation or the Province. The decision further went on saying that mere existence of each permissive law is not enough to take detrimental action in the specified fields. The law authorizing invasion of the rights of the citizen must be such that it can validly be passed keeping in view the provisions of the Constitution including the fundamental rights. There is no law permitting the cigarette advertisement on the electronic media and such advertisements have the effect of propagating and inducing people, particularly younger generation to adopt smoking habit which result in endangering human life. Thus Cigarette advertisements on TV/Radio are steps which can be termed detrimental to life and body of the people and in that view of the matter Article 4 of the Constitution, particularly sub-article (2) is directly contravened by telecasting broad casting of cigarette commercials on the TV and Radio. The word 'life' as it occurs has the same meaning as in Article 9. The provisions of sub-article 2 (a) in the context of life carry the same meaning and substance as the word life carries appearing in Article 9. The citizens of this country (Pakistan) and particularly the younger generation are entitled to protection of law from being exposed to hazards of cigarette smoking by virtue of the command contained in Article 4 (2) (a) of the Constitution. The Court accordingly issued the following directions:

(a) The Pakistan Television Corporation shall not telecast from its television centres any cigarette related commercial nor shall it show any programme/advertisement which may have the effect of promoting propagating cigarette smoking among the people. This restraining order shall become operative with effect from 1.4.1997. as the subsisting contracts shall expire on 31.3.1997.

(b) The restraint order contained in the preceding paragraph will, however, not be applicable for a period of three years i.e. till 31.3.2000 in respect of live telecasting of various sports events sponsored by the cigarette companies, provided the actual smoking is not shown therein and is followed by a proper warning. To seek further extension in the aforesaid period of three years for sports live telecasting, the Pakistan Television Corporation may approach High Court with appropriate prayer which will be considered in the then prevailing facts and circumstances.

(c) The Pakistan Broadcasting Corporation shall not relay any advertisement for the purpose of popularising smoking among the people. The commentaries of sports events without propagating smoking can however, be relayed in view of the statement made by the counsel for the Pakistan Broadcasting Corporation that in the commentaries the only thing said is that the programme is relayed with the co-operation of the particular-cigarette company.

Our Constitution in Article 18 has provided that:

“18 (1) The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes as may be presented by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.”

16. From the citation and discussion above we have seen the intoxicating and fatal effect of smoking or consumption of tobacco related products and which convincingly proved to be injurious to health but the world has until today knowing fully well that the smoking for consumption of tobacco based products is fatal and injurious giving rise to incurable cancer and lung disease etc, has been carrying on the business of tobacco related products. Our country being a People’s Republic aimed at attaining economic and social justice to our people has a duty in which fundamental human right and respect for the dignity and worth of human person shall be guaranteed.

17. Furthermore, Article 19 of the Constitution providing for the State shall endeavour to ensure opportunity to all citizens and Article 18 postulating that through uniform maintenance of public health and taking step to do away with the habit of intoxication or consumption of tobacco related products, the State has a duty to all citizen to provide with the right to life as in Article 31 which means right to sound mind and health. Article 31 of the Constitution enshrines “To enjoy the protection of the law and to be treated in accordance with law is the inalienable right of every citizen, wherever may be, and of every other person for the time being within Bangladesh and in particular no action detrimental to the life, liberty, body, reputation or property shall be taken except in accordance with law. (The underlining in ours)

18. The words ‘no action detrimental to the life, liberty, body, reputation or property shall be taken except in accordance with law’ is almost the same provision appearing in Article 4 (2) (a) for the Constitution of Pakistan that ‘no action detrimental to the life, liberty, body, reputation or property of any person can be taken unless such detrimental action has the backing of some law in existence.’ The word ‘life’ in Pakistan Constitution is similar to the word ‘life’ appearing in Article 21 of the Indian Constitution and an Article 21 of our Constitution. Right to life in Article 31 means right to sound mind and health. Similar provision in Article 21 came up for consideration in the said Kerala case wherein it has been held that:

“The amplitude of the word ‘life’ is so wide that the danger and encroachment complained of would impinge upon the fundamental rights of citizens as in the present

case. The apex Court has interpreted Article 21 giving wide meaning to 'life' which includes the quality of life, adequate nutrition, clothing and shelter and cannot be restricted merely to physical existence. The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to the expression 'life' to enable a man not to sustain life but to enjoy it in a full measure. The sweep of right to life conferred by Article 21 of the Constitution is wide and far-reaching as to bring within its scope the right to pollution free and the "right to decent environment". Under our Constitutional set up the dignity of man and subject to law the privacy of home shall be inviolable. The Constitution through various Article in part III and Part IV guarantees the dignity of the individual and also right to life which if trampled upon will result in negation of these rights and dignity of human personality."

In the case of Dr. Mohiuddin Farooque Vs. Bangladesh, represented by the Secretary Bangladesh, represented by the Secretary. Ministry of Government of the People's Republic of Bangladesh. Bangladesh Secretariat and others reported in 48 DLR (HD) 438, the decision was on fact that the respondent No. 6 Danish Condensed Milk Bangladesh Ltd. imported 500 metric tons of skimmed Milk powder from Holland and upon clearance of the consignments radiation test was made and found 133 by radiation per kilogram which was above the minimum approved radiation level of 95 Bq. and opined that the consignment in question should not be marketed. Dr. Mohiuddin Farooque on behalf of the Environmental Lawyers Association moved this court and this court upon consideration of Articles 18, 21, 31 and 32 made the Rule absolute and Kazi Ebadul Hoque. J as his Lordship was held, inter alia:

"In the case of Vincent Vs. Union of India reported in AIR 1987 (SC) 990 learned Judge delivering the judgment in that case quoted with approval interpretation of right to life made by the Indian Supreme Court in the Bandhua Mukti Morcha case and held:

"A healthy body is the very foundation for all human activities. It is an obligation of the State to rest ensure the creation and the sustaining of conditions congenial to good health.Maintenance and improvement of public health have a rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. In the case of Subash Kumar Vs. The State of Bihar reported in AIR 1991 SC 420 it was further held:

"Right to life is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life" "Though the aforesaid provision cannot be enforced by the court it can be seen for interpreting the meaning of right to life under Articles 31 and 32 of the Constitution. A man has natural right to the enjoyment of healthy life and a longevity up to normal expectation of life of an ordinary human being. Enjoyment of a healthy life and normal expectation of longevity is threatened by disease, natural calamities and human actions. When a person is grievously hurt or injured by

another his life and longevity are threatened. Similarly, when a man consumes food, drink, etc. injurious to health he suffers ailments and his life and normal expectation of longevity are threatened. Natural right of a man to live free from all the man made hazards of life has been guaranteed under the aforesaid Article 31 and 32 subject to law of the land. Use of contaminated food, drink, etc. be it imported or locally produced undoubtedly affects healthy any threatens life and longevity of the people. In a country like ours where most of the people are illiterate they are unable to distinguish between contaminated and contamination free food, drinks, etc. In such circumstances marketing of contaminated food items is a potential danger to the health of the people ultimately affecting their life and longevity as most of the people are unable to avoid such food. Even for an educated person it is difficult to distinguish between contaminated and contamination-free food, drink, etc. No one has any right to endanger the life of the people which includes their health and normal longevity of an ordinary healthy person by marketing in the country any food item injurious to health of the people. We are therefore, of the view that right to life under Articles 31 and 32 of the Constitution not only means protection of life and limbs necessary for full enjoyment of life but also includes, amongst others, protection of health and normal longevity of an ordinary human being.

It is the primary obligation of the State to raise the level of nutrition and the improvement of public health by preventing use of contaminated food, drink, etc, though that obligation under Article 18 (1) of the Constitution cannot be enforced State is bound to protect the health and longevity of the people living in the country as right to life guaranteed under Article 31 and 32 of the Constitution includes protection of health and normal longevity of free from threats of man made hazards unless the threat is justified by law. Right to life under the aforesaid articles of the Constitution being a fundamental right it can be enforced by this Court to remove any unjustified threat to the health and longevity of the people as the same are included in the right to life.”

“The word “life” has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life does not merely a continued drudgery through life. The expression ‘life’ has a much wider meaning bringing within its sweep some of the finer graces of human civilization which makes life worth living. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. The amplitude of the word ‘life’ is so wide that the danger and encroachment rights or citizens as in the present case.

The judgment further held:

“The sweep of right” to life conferred by Article 21 of the Constitution is wide and far reaching so as to bring within its scope the right to pollution free air and the right to decent environment. Under our Constitutional set up the dignity of man and subject to law the privacy of home shall be inviolable. The Constitution through various Article in Part III and Part IV guarantees the dignity of the individual and also right to life which if permitted to trample upon will result in negation of these rights and dignity of human personality.”

It may be mentioned here that in a workshop named International Workshop on Tobacco and Youth at TIFR on behalf of World Health Organization (WHO). South East Asia Region Tobacco Free Initiative held at Tata Institute of Fundamental Research. Mumbai, Indian experts on the subject deliberated and reported the out-come of the workshop “Tobacco and Youth” which clearly demonstrated that tobacco industry is targeting youth as its future clients. This is to reply Mr. Nazmul Huda argument. So there should be no promotion through ‘Voyage of Discovery’ to create havoc in the country as its target which is generally aimed at encouraging and popularising smoking habit amongst youths of SEA Region. The data which has been found in Indonesia to be as high as 27% prevalence of tobacco use is as high as 60% in young girls in high mountainous regions than boys of that area and amongst medical students of Patna, smoking smokeless tobacco use found to be 80% and in all SEA countries smokes start before the age of 20 years and in some part of Madhya Pradesh Jharkhand Tribal Region children take to beedi smoking at 8 years. The study brought definite evidence that there is not only clear violation of rights of child but child labour are exploited in the process of manufacturing bidi but children suffer from occupational hazards as tobacco is absorbed due to handling. The children suffer from all deleterious effects of tobacco even if they do not consume any tobacco themselves. There is exposure in use of manufactured smokeless tobacco, their substantially health effects on mouth and demonstrating the oral cancer is decreasing in older age groups and it has started increasing in younger age groups. The cigarette smoking during pregnancy causes low birth weight and other adverse reproductive outcomes. Although prevalence of tobacco in youth is high, almost all of them recognise that sponsorship is just a form of advertisement and all forms of advertisements should be banned. Tobacco use among youth was recognized as a serious problem in an opinion study of Vice Chancellors of Indian Universities and most of them would like to ban it completely in university campuses.

19. Mr. Nazmul Huda learned Counsel for the respondents in Writ Petition No. 4521 of 1999 has strenuously argued that there is no law barring any promotional advertisement of tobacco products and the law cited by the petitioner is not an operative valid law so as to make the ‘Voyage of Discovery’ promotional activities stopped.

20. It is true that no law is in prevalence to bar the promotional advertisement of tobacco products and for that matter the “Voyage of Discovery’ promoting ‘Gold Leaf of British American Tobacco Co but we cannot be oblivious to that effect of consumption of tobacco and the effect of consumption of tobacco and the effect of promotional advertisement not only among the young but among unaware and illiterate citizens. It is no doubt such promotional advertisement are demonstrating effect to use tobacco in many countries in South Asia and have advocated for banning all forms of tobacco and promotional advertisement tobacco and tobacco related products and raising of hue and cry awakening the conscience of the various nations is now being seriously heard for totally banning the promotional advertisement of tobacco related products in the interest of prevention of diseases like oral cancer etc. The world nowadays are not oblivious about the effect of tobacco in the society and accordingly has been celebrating “No smoking day” with sole object to create awareness among the members of public as to the fatal effects of consumption of tobacco related products. It has been ruining bulk of the

population particularly the youths, both male and female Bangladesh is a signatory to the said international convention for the prevention of smoking and -----effect of smoking. In most of the public place -----striction of smoking in public. This is due to awareness among the conscious citizens about the effect of smoking or conscious the tobacco related products although there is no ban on products although there is no ban on production of tobacco related products. Tobacco kills 50% of its regular users within 40 years. Bangladesh also cultivates and produces tobacco and the Tobacco Companies invest on the tobacco farming in some districts including northern. District of Bangladesh thereby collecting most of the raw materials out of such production of tobacco leafs. Apart from the direct health complication of tobacco use, the hazards faced by those engaged in the plucking and curing of tobacco leaves, the environment around the area not only became toxic with nicotine but the hands of the workers get affected by the chemicals in tobacco and sackness is caused when nicotine gets absorbed into the body through the skin giving rise to the symptom of acute headache, and vomiting.

Considering the disastrous effect hazard of the production we urge upon the respondents including the Government to ban production of tobacco leaves phase by phase, giving subsidy to the farmers to produce other agricultural product, rehabilitate the tobacco workers with other beneficial jobs, imparting vocational training so that they can earn the livelihood, restrict permission/license for setting up tobacco factories, directing the owners to switch over to other products in phases and if necessary by compensating them or even persuading the owners of the tobacco factories not to carry on with the production of tobacco related products beyond a reasonable time by banning such production. The Badi factories are also to be closed down though phases, not to product Bidi, restricting plucking of tando or other leaves and production of tobacco leaves for manufacturing Bidi. Although one of the contentions of the protagonists of tobacco is that since it makes a significant contribution to the Exchequer by way of taxes it should not be disturbed but ultimately the awareness among the people would demonstrate against production and consumption of tobacco related products in the interest of National health and the public opinion would be mobilized eventually to force banning the production, even if, the State does not take any effective measure in this regard. We have seen in the subcontinent that judiciary as well has risen up to the occasion to denounce the consumption of tobacco related products which has tremendous fatal effect on the youth, both male and female, impairing their right to life, the obvious result is that cigarette smoking is harmful to health and it endangers human life. As quoted above our court in a different context in the case of Dr. Mohiuddin Farooque Vs. Bangladesh referred to above as to contaminated foods has uttered a warning that “if right to life under Article 31 and 32 of the Constitution means right to protection of health and normal longevity of an ordinary human being endangered by the use or possibility of use of any contaminated foods etc. then it can be said that fundamental right to life of a person has been threatened or endangered and such right of the petitioner is sought to be enforced in public interest.” This Court is oath bound to protect the Constitution including the fundamental right of the citizens and is obliged to enforce the same even in the absence of any appropriate legislation and would not hesitate to give direction to the respondents for banning the promotional advertisement in the electronic medias, news paper etc, to stop cultivation

and production of tobacco related products, for the state has a duty to protect the ordinary human being from the ill effects of the use of tobacco related products.

21. The Supreme Court of Pakistan has given extended meaning to the word “life” as used in Article 9, in the case of Ms Shehla Zia V. WAPDA (PLD) (SC) 693. This was the case in which complaint was made to direct WAPDA to construct high tension wires away from the residential areas, because the electromagnetic field created by high voltage transmission lines endangers human health. Observing that livelihood of any hazard to life by magnetic field effect could not be ignored precautionary measures were directed to be taken by Supreme Court as the scope of “life” as used in Article 9 was explained as under:-

“Article 9 of the Constitution provides that in accordance with law. The word ‘Life’ is very significant as it covers all facts of human existence. The word ‘life’ has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. For the purposes of present controversy suffice to say that a person is entitled to protection of law from being exposed to hazard of electro magnetic field or any other such hazards which may be due to installation and construction of any grid station, any factory power station or such like installations.”

“A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the present case this is the complaint the petitioners have made. In our view the word ‘life’ constitutionally is so wide that the danger and encroachment complained of would impinge fundamental right of a citizen. In this view of the matter the petition is maintainable.”

Applying the principle of law enunciated in Shehla Zia’s case (supra) to the facts and circumstances of the present case, the citizens of the country and particularly the younger generation are entitled to protection of law from being exposed to the hazards of cigarette smoking, by virtue of the command contained in Article 31 of our Constitution.

22. As quoted above our Constitution also in the same line in its Article 11 mentioned the dignity that has been guaranteed under the Constitution both in Part I. The fundamental principles of State policy are the Fundamental Rights which are the protecting provision enforceable in law has in the same tone guaranteed the dignity of its citizens and also right to life from being violated by any means in cluding a promotional advertisement or actual consumption of tobacco related products. We have also noticed that though in ver small letters one statutory warning being inserted on the packet of the tobacco related products but the same is not readable compared to the other writing on the packet as found in developed countries. This is surely a statutory warning in any cigarette packet and we hope that the respondents shall take care to see that the warning is legibly and distinctly written on cigarette packets. Moreover, a healthy human is the centre of all healthy activities and it is the obligation of the Republic to ensure creation of congenial

environment to good health provided in Articles 10 and 11. Maintenance/improvement of public health and to maintain the dignity of life is the anxious obligation of the State authorities. As we have already observed that the respondent has an obligation under the Constitution and under the law to protect and preserve nutrition with healthy mind of the citizens and should adopt measure for banning production and import of the cigarette related products for commercial purpose and to start with, initially to take step not to allow any further means of production to grow in the country and not to produce any cigarettes based products which has the danger and fatal effect on national life and the environment with the ultimate object to do away with the connected business of manufacturing, producing or marketing of the tobacco related products in the country.

23. WHO report indicates that information media is actively involved in teen-agers to tobacco thrall through attractive advertisement on T.V., the young generation yearn for a cigarette and fall prey to smoking. It is indeed true that most of the cigarette advertisements glamorise smoking to create attraction among youths for smoking, It is no denying the fact that the glamorous advertisement by cigarette manufacturer certainly allure public in general and youths in particular to take the habit of smoking and the publicity campaigns of cigarettes by the manufacturers are geared to procure more and more smokers.

24. Similarly, in the electronic media's like Radio and Television, we do not find any effective statutory warning on tobacco is dangerous for health and the respondents never take care to see that the law is not being abused while promotional advertisements are being made in the Radio/T.V. etc. Although at least in TV the authority displays a slide containing statutory warning but without any utterances, which in our opinion is definitely an evasive way of violation of the provision of law as to statutory warning. Same is not followed by sound that smoking is dangerous for health.

25. From the above, it is abundantly clear that before a detrimental action can be taken there must be some law which permits that any action detrimental to life, body, liberty or property of a person can be taken. No such law is in existence in Bangladesh. Mere non-existence of such permissive law is not enough to take detrimental actions invading the right to life of a citizen for the State could not pass such law which are contrary to the fundamental rights of a citizen. There is no law permitting cigarette advertisement on the news media, bill boards or on the electronic medias and such advertisements have the effect of propagating and inducing people, particularly the younger generation to adopt smoking habit which results in endangering human life and environment. Thus, advertisement of cigarette and cigarette related products bidi on T.V./Radio, newspaper, pamphlets, Billboard or through any other means are steps which can be termed detrimental to life and body of the people and in this view of the matter Article 31 of the Constitution is directly contravened by advertisements in any form of Telecasting and Board casting of cigarette/bidi commercials on the TV and Radio Bill boards, newspapers etc.

26. In view of the above, the advertisements of cigarette tobacco related products in the electronic medias, newspaper, bill-boards etc. are violative of the aforesaid fundamental

rights and Article 44(1) of our Constitution has guaranteed the right to move the High Court Division in accordance with clause(1) of Article 102 for enforcement thereof the next question is whether this Court can grant appropriate relief under Article 102 of the Constitution for coalition of Constitutional provisions. Article 102(1) reads:-

“The High Court Division on the application of any person aggrieved may give such direction or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution”.

27. Article 102(2)(a)(i) also provides that the High Court Division may, if satisfied that no other equality efficacious remedy is provided by law, on the application of any person aggrieved make an order directing any person performing any function in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do and declaring that any act done or proceeding taken by a person performing function in connection with the affairs of the Republic or of a local authority has been done and taken without lawful authority and is of no legal effect. This Court pass any order giving appropriate direction for the enforcement of any of the fundamental rights and as such could also give direction in the nature of mandamus etc.

28. In the case of Dr. Mohiuddin Farooque Vs. Bangladesh 49DLR (AD) Mustafa Kamal J: as his Lordship then was held:

“We now proceed to say how we interpret Article 102 as a whole. We do not give much importance to the dictionary meaning or punctuation of the words “any person aggrieved” Article 102 of our constitution is not an isolated standing above or beyond the sea-leave of the other provisions of the Constitution. It is a part of the over-all schemes, objectives and purpose of the Constitution. And its interpretation is inextricably linked with the (i) emergence of Bangladesh and framing of its Constitution (ii) the Preamble and Article 7, (iii) Fundamental Principles of State Policy, (iv) Fundamental Rights and (v) the other provisions of the Constitution.”

“As for (iii) in Part II of the Constitution, containing Fundamental Principles of State Policy, Article 8(2) provides that the principles set out in this Part “Shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh.” It is constitutionally impermissible to leave out of consideration Part II of our Constitution when an interpretation of Article 102 needs a guidance.”

“As for (iv), Part III of the Constitution bestows Fundamental Rights on the citizens and other residents of Bangladesh. Article 44(1) guarantees the right to move the High Court Division in accordance with Article 102(1) for the enforcement of these rights. Article 102(1) is, therefore, a mechanism for the enforcement of Fundamental Right which can be enjoyed by an individual alone insofar as his individual rights are concerned, but which can also be shared by an individual in common with others when the rights

pervade and extend to the entire population and territory. Article 102(1) especially cannot be divorced from Part III of the Constitution”.

“Article 102 therefore is an instrumentality and a mechanism containing both substantive and procedural provisions, by means of which the people as a collective personality, and not merely as a conglomerate of individuals, have devised for themselves a method and manner to realise the objectives, purposes, policies, rights and duties which in they stewn over the fabric of the Constitution.”

29. In the said decision interpreting Part II of our Constitution, Latifur Rahman. J. as his Lordship then was, held.

“A Constitution cannot be morbid at all. The language used by the framers of the Constitution must be given a meaningful interpretation with the evolution and growth of our society. An obligation is cast on the Constitutional Court which is the apex Court of the country to interpret the Constitution in a manner in which social, economic and political justice can be advanced for the welfare of the State and its citizens.”

BB Roy Chowdhury, J: while adding few words in the said judgment held:

“Article 16, 17, 18 and 19 likewise imposes a duty upon the State to adopt effective measures for rural development and agricultural revolution, free and compulsory education, raising the level of public health and morality and ensuring equality of opportunity to all citizens.”

“Part III of the Constitution has given corresponding fundamental Rights to the citizens. Article 27, 31 and 32 are of particular interest. All citizens are equal before law and are entitled to equal protection of law and to be treated in accordance with law and to be treated in accordance with law. In particular, it guarantees that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. Article 32 commands that no persons shall be deprived of life or personal liberty save in accordance with law. Under Article 44(1) the right to move the High Court Division under Article 102(1) is itself a fundamental right”.

“In order to ensure that the mandates of the Constitution are observed the High Court Division of the Supreme Court is vested with the power of judicial review under Article 102 which is contained in Part VI of the Constitution. The power is wide enough to reach any person or place where enough to reach any person or place where there is injustice.”

30. Law mentioned in Article 152 has been defined as meaning an Act, Ordinance, Order, Rule, Regulation, Bye-laws, Notification or other legal instruction and any custom or usage, having the force of law in Bangladesh.

31. ZvgvKRvZ mvgMÖx wecbb (wbqš;Y) AvBb, 1988 (Act 45 of 1988) though provided for statutory warning to be inscribed on the Cigarette packet but has not apparently prohibited any advertisements. By subsequent Ordinance No. 16 of 1990 though provided an amendment incorporating section 3(Ka) in Act 45 of the 1988 prohibiting advertisement, but the same was not placed in the Parliament within the

specified period and allowed to be lapsed, presumably the legislature in its wisdom though that under the whole scheme of Act 45 of 1988 the incorporation of section 3() providing prohibition of advertisements of any form by Ordinance was redundant as the said provision is impliedly incorporated therein and the same is also apparent from reading of section 3(2) thereof. But whatever may be the existing purport of Act 45 of 1988, Article 102(1) of the Constitution provides remedy thereunder if any of the fundamental rights is contravened. Thus, the provisions as to fundamental rights in our Constitution are self executory and any violation of the provisions of Article 31 is subject to judicial review in writ jurisdiction and this Court could remedy the wrong by issuing appropriate declarations and directions for enforcement of any of the fundamental rights conferred by Part III of the Constitution keeping in view the fundamental principles of State policy (para ii) as the same is constitutionally impermissible to leave out of consideration when our interpretation of Article 102 needs a guidance.

32. Although the learned Deputy Attorney General submits that when occasion shall arise the Government may restrict/ban the advertisements of cigarette or tobacco related products in public interest yet as we have already found that the obvious effect of advertisement in any media is definitely designed to the detriment of right to life of the citizens, particularly the younger generation, is entitled to protection of law from being exposed to the hazards of cigarette smoking being allowed by the advertisements, the related constitutional provisions including Article 31 is self executory. The Parliament as well in its wisdom though that amendment of Act 45 of 1988 incorporating a ban on advertisement the Ordinance incorporation 3A prohibiting advertisement to be ...

33. According, in view ... the fundamental State policy enshrined Article 18 providing for improvement of of public health, nutrition and to measures to prevent consumption of intoxicating measures to prevent consumption of intoxicating, tobacco related products and the provision in Article 11 providing for the dignity and worth of human person which though are not judicially afreceable yet those are the inviolable fundamental principles of State policy, fundamental to the governance of Bangladesh, shall be applied by the State in the making of law and shall be a guide to the interpretation of the Constitution and laws of the country together with the enforceable right to life as discussed above and for the preservation of environment maintaining ecological balance, we hereby direct the respondents and the authority performing the functions in connection with the affairs of the Republic that advertisement in any form of Cigarette, Beedi, tobacco related products must not be continued in any manner in Newspapers, Magazine, Signboards, or in any electronic media like Television/Redio beyond the period of the existing contract agreement with the manufacturers or their agents. The said authorities are duty bound also to see that any other authority, private or public do not flout this direction in any manner both under the provision of the Constitution and the law of the land.

34. In the result, the Rules are made absolute without any order as to costs with the following directions:

(a) The Government shall take steps phase by phase to stop production of tobacco leaves in tobacco growing Districts of Bangladesh, giving subsidy to the farmers, if possible and necessary to produce other agricultural products instead of tobacco and for rehabilitation of the tobacco workers engaged in tobacco production, if possible with alternative beneficial jobs.

(b) The Government shall restrict issuance of licence for setting up tobacco industry or Bidi factory and direct the existing tobacco and bidi companies to switch over to some other industry to prevent production of Cigarettes, Bidi and other tobacco related products, specifying a reasonable period for the purpose.

(c) To prohibit importation of cigarette or tobacco related product within a reasonable period and meanwhile to impose heavy tax for the important to print the statutory warning legibly in bold words in Bengali.

(d) The Government, the concerned Ministry or the Broadcasting Television Authority, Newspaper or bill-board authority or any other agencies engaged in advertisement shall not advertise or telecast any cigarette bidi related advertisement or commercials and shall not undertake any show / program / propagating cigarette / bidi smoking among the citizens. This direction shall be effective after the expiry of the existing contract of advertisement between them and the manufacturers or their agents.

(e) The Government and/or any concerned authority shall not undertake or encourage any promotional ventures like “Voyage of Discovery” and those shall be strictly prohibited.

(f) The Government shall direct the appropriate authorities to take steps prohibiting smoking in public and public places like Train, Railway Station, Bus, Bus Station, Ferry Ghat, Steamer in any public Gathering/meeting/assembly making the atmosphere noxious to health taking resort to strict compliance of the existing provisions of sections 278, 133, 188 of the Penal Code.

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