

# Food & Beverages Hotline

October 21, 2014

## HC URGES INDIAN GOVERNMENT TO IMPLEMENT PLAIN PACKAGING OF CIGARETTE AND OTHER TOBACCO PRODUCTS

- Plain packaging prohibits the use of logos, colors, brand names or prominent information on packaging.
- Introduction of a plain packaging for cigarette and other tobacco products may make the products less attractive, and in turn safeguard the health of the youth
- In the interest of public health, the High Court urged the Indian Government to study the feasibility of plain packaging of cigarette and other tobacco products and take effective steps towards implementing it.

### INTRODUCTION

In the recent case of *Love Care Foundation* (“**Petitioner**”) v. *Union of India & Anr.*<sup>1</sup> (“**Respondents**”), the Allahabad High Court (“**Court**”) in a writ petition filed by the Petitioner observed that plain packaging of cigarettes and other tobacco products sold in India would help reduce the attractiveness of such products, which in turn would safeguard the health of the youth. The Court strongly recommended that the Government of India considers the feasibility of implementing plain packaging of cigarettes and other tobacco products and takes necessary steps at the earliest.

### BACKGROUND

The Petitioner, a registered society, approached the Court, initially praying for banning the sale and distribution of cigarettes and other tobacco products in the open market and to implement a plain packaging rule in cigarettes and other tobacco products by prohibiting the use of logos, colors, brand names or prominent information on packaging. However, during the course of the arguments, the Petitioner’s counsels restricted the prayer only to the extent of implementing the plain packaging rule, and not the ban on the sale of cigarettes and other tobacco products itself.

The primary argument of the Petitioner was that attractive packaging on cigarette and other tobacco products is a pseudo mode of advertisement, attracting the youth towards smoking.

The Petitioner stated that the ill-effects of smoking are well-known. To establish the case, the Petitioner referred to the statement of Objects and Reasons of the *Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975* which states that:

*“Smoking of cigarettes is a harmful habit and, in course of time, can lead to grave health hazards. Researches carried out in various parts of the world have confirmed that there is a relationship between smoking of cigarettes and lung cancer, chronic bronchitis; certain diseases of the heart and arteries’ cancer of bladder, prostate, mouth, pharynx and oesophagus; peptic ulcer etc., are also reported to be among the ill-effects of cigarette smoking.”*

Further, the Petitioner also referenced the statement of Objects and Reasons of the *Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2001*, which states as follows:

*“Tobacco is universally regarded as one of the major public health hazards and is responsible directly or indirectly for an estimated eight lakh deaths annually in the country. It has also been found that treatment of tobacco related diseases and the loss of productivity caused therein cost the country almost INR 13,500 crores annually, which more than offsets all the benefits accruing in the form of revenue and employment generated by the tobacco industry.”*

Reference was also made to the case of *Murlu S. Deora v. Union of India*<sup>2</sup> (“**Murlu Deora Case**”) wherein the Supreme Court of India (“**Supreme Court**”), on consideration of the adverse effect of smoking on smokers and passive smokers, prohibited smoking in public places and issued directions to the Union of India, State Governments and Union Territories of India to take effective steps to prohibit smoking in certain identified public places.

It is after the *Murlu Deora Case* that the *Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce Production, Supply and Distribution) Act 2003* (“**2003 Act**”) and the *Cigarettes and other Tobacco Products (Packaging and Labeling) Rules, 2008* (“**2008 Rules**”) were enacted, which provided for a health warning to be displayed regarding the ill-effects of tobacco use.<sup>3</sup>

The Petitioner contended that the very object of the aforementioned legislations was to prohibit the advertisement of cigarettes and smoking to the public. At present, cigarettes are displayed to the public in attractive packets, which attracts the youth towards smoking and the adoption of plain packaging would reduce the allurements among the youth towards smoking.

### THE RESPONDENTS’ CASE

Respondent No. 1, the Union of India, in its counter affidavit, provided various statistics highlighting the ill-effects of consuming cigarettes and other tobacco products and the trends relating to the consumption of these products.

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Respondent No. 2, the State of Uttar Pradesh (“**State of U.P.**”) filed its counter affidavit stating that the provisions of the 2003 Act and 2008 Rules are being strictly implemented in the State of U.P. by the State Government.

However, neither the Union of India nor the State of U.P. raised any objection against the prayer of the Petitioner.

JUDGMENT

The Court considered the question of what is plain packaging and how it will keep the Indian youth away from the allurements of smoking. The Court expressed its view that the effect of plain packaging would prevent the packets of cigarettes and other tobacco products from being a market tool for advertising brand image and promoting smoking as a status symbol.

The Court further acknowledged that even other countries such as Australia and Brazil have taken steps to implement plain packaging of cigarette and other tobacco products for compelling reasons and have received favorable results. The World Health Organization (WHO), which supports the plain packaging rule, estimates that 5 million worldwide die only from diseases linked with tobacco and this figure is likely to become 9 million by 2030 if necessary steps are not taken. Plain packaging has been recommended by the WHO Framework Convention on Tobacco Control (FCTC) as a component of marketing restrictions.

Based on the submissions made by the Petitioner and the Respondents, along with the examination of studies conducted on the effects of implementation of the plain packaging rule in other countries, the Court was in favor of this scheme being adopted in India. The Court stated since smoking and consumption of tobacco products is extremely injurious to the general health of the country, implementing the plain packing rule would be the duty of the State under Article 47<sup>4</sup> of the Constitution of India (“**Constitution**”) i.e., to raise the level of nutrition and standard of living and to improve public health as amongst its primary duties.

The Court felt that this would be a long term investment to safeguard the health of the youth and would eradicate the way in which tobacco companies use the deceptive market to allure children and the youth towards smoking through mobile advertisement. Thus, the mandatory health warning<sup>5</sup> coupled with the plain packaging will curb the misleading of consumers about the ill-effects of smoking. The Court also observed that, at present, cigarettes in India are packed in colorful and attractive packets and are being displayed openly in shops. Such packaging draws the attention of the youth and acts as an incentive in the immature mind of the youth to start smoking such products. The effect of plain packaging would be that cigarette packets cannot carry brands, logos and colorful designs; but the brand name and packets will be of a standard size, font and color.

Thus, with the introduction of the plain packaging rule in India, packets of cigarettes and other tobacco products would cease to be a market tool for advertising the brand image and promoting smoking as a status symbol. Plain packaging would also be an effective means of spreading public health messages and discouraging consumption at no cost of the Government. The Court, allowing the writ petition of the Petitioner, stated that the scheme of plain packaging must be welcomed by all concerned and the Government of India must implement such a scheme at the earliest.

IMPACT AND ANALYSIS

The ill-effects of smoking cigarettes and consuming tobacco products is evident from number of deaths caused by smoking cigarettes and consumption of tobacco products every year. The decision of the Court is a step forward in the direction of safeguarding public health, and is thus appreciation worthy.

The Constitution provides for a division of power between the legislature and the judiciary. The judiciary has provided its recommendations to the legislature. Since the suggestions of the Court are recommendatory in nature, and not in the nature of directions, it is now up to the Government to take necessary steps to implement plain packaging of cigarettes and other tobacco products, for public good.

– Aaron Kamath, Aarushi Jain & Gowree Gokhale  
You can direct your queries or comments to the authors

<sup>1</sup> WP No. 1078 (M/B) of 2013, decided on July 21, 2014.

<sup>2</sup> (2001) 8 SCC 765.

<sup>3</sup> Rule 3(1) of the 2008 Rules.

<sup>4</sup> Article 47 - Duty of the State to raise the level of nutrition and the standard of living and to improve public health.  
*The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.*

<sup>5</sup> The Schedule to the 2008 Rules prescribe a warning “Smoking Kills” to be displayed on smoking forms of tobacco products and “Tobacco Kills” on smokeless or chewing and other forms of tobacco products. Further, the 2008 Rules also prescribe pictorial representation of health warnings on smoking and chewing or smokeless forms of tobacco products, along with the size, language and printing of the health warnings.

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