IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2017

PRESENT

THE HON'BLE MR.JUSTICE B.S.PATIL

AND

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

W.P.No.4470/2015 (GM-RES)
C/W
W.P.No.56789/2014 (GM-RES),
W.P.No.59460/2014 (GM-RES),
W.P.No.59587/2014 (GM-RES),
W.P.Nos.53876-877/2015 (GM-RES),
W.P.No.27715-716/2016 (GM-RES),
W.P.Nos.31838/2016 & 33042/2016(GM-RES),
W.P.No.100996/2016 (GM-RES),
W.P.No.101879/2016 (GM-RES),
W.P.No.103356/2016 (GM-RES),
W.P.No.103391/2016 (GM-RES),
W.P.No.103417/2016 (GM-RES),
W.P.Nos.103517-518/2016 (GM-RES),
W.P.No.103519/2016 (GM-RES),
W.P.No.103520/2016 (GM-RES),
W.P.Nos.103521-522/2016 (GM-RES),
W.P.No.103744/2016 (GM-RES),
W.P.Nos.103796/2016 & 103978/2016 (GM-RES),
W.P.Nos.103797/2016 & 103977/2016 (GM-RES),
W.P.Nos.103873-874/2016 (GM-RES),
W.P.Nos.103875-876/2016 (GM-RES),
W.P.Nos.103877-878/2016 (GM-RES),
W.P.Nos.103970-971/2016 (GM-RES),
W.P.No.34184/2016 (GM-RES),
W.P.No.34185/2016 (GM-RES),
W.P.No.34186/2016 (GM-RES),
W.P.No.34188/2016 (GM-RES),
W.P.No.34189/2016 (GM-RES),
W.P.No.34190/2016 (GM-RES),

W.P.No.34191/2016 (GM-RES),
W.P.No.34192/2016 (GM-RES),
W.P.No.34193/2016 (GM-RES),
W.P.No.35716/2016 (GM-RES),
W.P.No.35717/2016 (GM-RES),
W.P.No.35718/2016 (GM-RES),
W.P.No.35719/2016 (GM-RES),
W.P.No.35720/2016 (GM-RES),
W.P.No.35721/2016 (GM-RES),
W.P.No.35722/2016 (GM-RES),
W.P.No.35723/2016 (GM-RES),
W.P.No.35724/2016 (GM-RES),
W.P.No.35725/2016 (GM-RES),
W.P.No.35726/2016 (GM-RES),
W.P.No.35727/2016 (GM-RES),
W.P.No.35728/2016 (GM-RES),

IN W.P.No.4470/2015:

BETWEEN:

THE TABOCCO INSTITUTE OF INDIA,
HAVING ITS REGISTERED OFFICE
AT 316-318, 3RD FLOOR,
BLOCK "E", INTERNATIONAL TRADE TOWER,
NEHRU PLACE, NEW DELHI-110019.
REP. BY S.M.AHMAD -
DIRECTOR AND SECRETARY GENERAL. **..PETITIONER**

(BY SRI S.VIJAY SHANKAR, SR. COUNSEL FOR
MISS ARADHANA LAKHTAKIA,
MISS SHRISTI WIDGE,
MR. PRATIBHANI SINGH KHAROLA,
MS. NALINA MAYEGOWDA (POOVAYYA & CO.), ADVS.)

AND:

1. UNION OF INDIA,
REP. BY THE CABINET SECRETARY,
CABINET SECRETARIAT,
GOVERNMENT OF INDIA,
RASHTRAPATI BHAWAN,
NEW DELHI-110004.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REPRESENTED BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI – 110 011.

3. MINISTRY OF AGRICULTURE,
REP. BY ITS SECRETARY,
KRISHI BHAVAN,
NEW DELHI-110001.

4. MINISTRY OF LABOUR AND EMPLOYMENT,
REP. BY ITS SECRETARY,
SHRAM SHAKTI BHAWAN,
RAFI MARG,
NEW DELHI-110001.

5. MINISTRY OF COMMERCE AND INDUSTRY,
REP. BY ITS SECRETARY,
UDYOG BHAWAN,
NEW DELHI-110007.

6. MINISTRY OF FINANCE,
REP. BY ITS SECRETARY,
NORTH BLOCK,
NEW DELHI-110001. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.
SMT. JAYNA KOTHARI FOR IMPLEADING APPLICANTS
IN IAs-3/15 & 4/16;
SRI K.V.DHANANJAY, ADV. FOR IMPLEADING APPLICANT
IN IA-3/16;
SRI RAVISHANKAR.S.S., ADV. FOR IMPLEADING APPLICANT
IN IA-5/16;
SRI PRASHANTH, ADV. FOR IMPLEADING APPLICANT
IN IA-2/2016)**

IN W.P.No.56789/2014:

BETWEEN:

MR. G.R.VENKATESH MURTHY,
S/O LATE Mr.H.RAME GOWDA,
AGED ABOUT 45 YEARS,
R/ AT NO.40, 1ST MAIN,
SHANBHOG NARAYANAPPA LAYOUT,

SAHAKARA NAGAR POST,
BANGALORE-560 092. **..PETITIONER**

**(BY SRI SAJAN POOVAYYA, SR. COUNSEL FOR
MISS ARADHANA LAKHTAKIA,
MISS SHRISTI WIDGE,
MR. PRATIBHANI SINGH KHAROLA,
MS. NALINA MAYEGOWDA (POOVAYYA & CO.), ADVS.)**

AND:

1. UNION OF INDIA,
REP. BY THE CABINET SECRETARY,
CABINET SECRETARIAT,
GOVERNMENT OF INDIA,
RASHTRAPATI BHAWAN,
NEW DELHI-110 004.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY THE SECRETARY,
NIRMAN BHAVAN,
NEW DELHI-110 011. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.
SMT. JAYNA KOTHARI FOR IMPLEADING APPLICANTS
IN IA-1/15 & 2/16;
SRI K.V.DHANANJAY, ADV. FOR IMPLEADING APPLICANT
IN IA-1/15)**

IN W.P.No.59460/2014:

BETWEEN:

MR. B.SHIVANNA,
S/O MR. BHIME GOWDA,
AGED ABOUT 44 YEARS,
SOLE PROPRIETOR OF "CHAT CENTER",
#538/2, 1ST CROSS,
SOUTH END ROAD,
MALLESHWARAM,
BANGALORE-560 003. **..PETITIONER**

**(BY SRI SAJAN POOVAYYA, SR. COUNSEL FOR
MISS ARADHANA LAKHTAKIA,
MISS SHRISTI WIDGE,
MR. PRATIBHANI SINGH KHAROLA,
MS. NALINA MAYEGOWDA (POOVAYYA & CO.), ADVS.)**

AND:

1. UNION OF INDIA,
CABINET SECRETARIAT,
GOVERNMENT OF INDIA
RASHTRAPATI BHAWAN,
NEW DELHI-110 004,
REP.BY THE CABINET SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
NIRMAN BHAVAN,
NEW DELHI 110 011.
REP. BY THE SECRETARY. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.
SMT. JAYNA KOTHARI FOR IMPLEADING APPLICANTS
IN IA-2/16;
SRI RAVISHANKAR S.S., ADV. FOR IMPLEADING APPLICANT
IN IA-3/16)**

IN W.P.No.59587/2014:

BETWEEN:

SRI JAVARE GOWDA.B.V.,
S/O LATE MR. VENKATE GOWDA,
AGED ABOUT 59 YEARS,
R/AT DOOR NO. 927,
POST OFFICE ROAD,
PERIYAPATNA
MYSORE (DISTRICT)
KARNATAKA-571 107. **..PETITIONER**

**(BY SRI SAJAN POOVAYYA, SR. COUNSEL FOR
MISS ARADHANA LAKHTAKIA,
MISS SHRISTI WIDGE,
MR. PRATIBHANI SINGH KHAROLA,
MS. NALINA MAYEGOWDA (POOVAYYA & CO.), ADVS.)**

AND:

1. UNION OF INDIA
   REP. BY THE CABINET SECRETARY,
   CABINET SECRETARIAT,
   GOVERNMENT OF INDIA
   RASHTRAPATI BHAWAN,
   NEW DELHI-110 004.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
   RER. BY ITS SECRETARY,
   NIRMAN BHAVAN,
   NEW DELHI-110 001.

3. MINISTRY OF AGRICULTURE,
   REP. BY ITS SECRETARY,
   KRISHI BHAVAN,
   NEW DELHI-110 001.

4. MINISTRY OF LABOUR AND EMPLOYMENT,
   REP. BY ITS SECRETARY,
   SHRAM SHAKTI BHAWAN,
   RAFI MARG,
   NEW DELHI-110001. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.
SMT. JAYNA KOTHARI FOR IMPLEADING APPLICANTS
IN IA-2/16)**

IN W.P.Nos.53876-53877/2015:

BETWEEN:

1. KARNATAKA BEEDI INDUSTRY ASSOCIATION,
   C/O BHARATH BIDI WORKS,
   KADRI ROAD,
   MANGALORE-570 003,
   REP BY ITS SECRETARY -
   SRI D. SOMAPPA SHETTY.

2. D.SOMAPPA SHETTY,
   AGED ABOUT 75 YEARS,
   D.CHANDU SHETTY,
   SHRAVANA, NO.111/16,

3RD MAIN, GANGANAGAR,
BANGALORE-32. **..PETITIONERS**

**(BY SRI K.G.RAGHAVAN, SR. COUNSEL FOR
SRI ABHISHEK MARLA.M.J., ADV.)**

AND:

1. UNION OF INDIA,
REP. BY ITS SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE,
DEPARTMENT OF HEALTH,
NIRMAN BHAVAN,
NEW DELHI-110 011.

2. HEALTH FOR MILLIONS,
THROUGH ITS LEGAL ADVISOR,
MR.GAUTAM BANNERJEE,
HAVING ITS OFFICE AT B40,
QUTUB INSTITUTIONAL AREA,
NEW DELHI – 110 016. **..RESPONDENTS**

(R2 IMPLEADED VIDE COURT ORDER DT.24.02.2016)

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS. FOR R1,
SRI B.V.ACHARYA, SR. COUNSEL FOR
RAVISHANKAR S.S., FOR R2,
SRI T.SURYANARAYANA, ADV. FOR IMPLEADING APPLICANT
IN IAs 1/16 & 2/16,
SRI PREM PRASAD SHETTY, ADV. FOR IMPLEADING
APPLICANT IN IAs 3, 11 TO 14/16,
SRI K.V.DHANANJAY, ADV. FOR IMPLEADING APPLICANT
IN I.A.4/16,
SRI K.B.NARAYANASWAMY, ADV. FOR IMPLEADING
APPLICANT IN I.A.8/16,
SRI V.R.DATAR, ADV. FOR IMPLEADING APPLICANT
IN I.A.9/16,
SRI SATISHA K.N., ADV. FOR IMPLEADING APPLICANT
IN I.A.10/16)**

IN W.P.Nos.27715-27716/2016 (GM-RES)

BETWEEN:

1. THAKUR SAVADEKAR AND COMPANY PRIVATE LIMITED,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956,
AND HAVING ITS REGISTERED OFFICE AT
377, GURUWAR PETH, FUIWALA CHOWK,
NEAR JAIN MANDIR, PUNE-411042,
REP. BY DIRECTOR -
MR. SHRINAWAS VASANTRAO THAKUR,
AND ALSO HAVING ITS TRADING CENTRE
AT C/O M/S. SHAPOONAM CHANDRAJMAL,
630, KAIPET, DISTRICT-DAVANAGERE,
KARNATAKA.

2. MR. SHRINAWAS VASANTRAO THAKUR,
AGED ABOUT 67 YEARS,
S/O LATE VASANTRAO GOVINDRAO THAKUR,
OCCUPATION: BUSINESS.
R/A.40, MAGALWADI "VASANT",
SENAPATI BAPAT ROAD,
PUNE-411016. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN,
SRI SHIVARAMAN VAIDYANATHA &
SRI PIYUSH KUMAR RAY, ADVS.)**

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI - 110011,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI 110011.

3. MINISTRY OF COMMERCE AND INDUSTRY,
REP. BY ITS SECRETARY,
UDYOG BHAWAN,
NEW DELHI-110 007.

4. MINISTRY OF CONSUMER AFFAIRS
FOOD & PUBLIC DISTRIBUTION,
REP. BY ITS SECRETARY,
KRISHI BHAWAN,
NEW DELHI 110 114. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.Nos.31838/2016 & 33042/2016:

BETWEEN:

1. JEET BIRI MANUFACTURING CO. PVT. LTD.,
A COMPANY WITHIN THE MEANING OF THE
COMPANIES ACT, 1956,
HAVING ITS OFFICE AT
NEW DUCK BANGLOW,
P.O. RATANPUR,
SAMESERGANJ,
MURSHIDABAD DISTRICT-742202,
WEST BENGAL,
REP. BY ITS DIRECTOR –
MR.MILTON BISWAS.

2. MILTON BISWAS,
S/O BABAR BISWAS,
WORKING FOR GAIN AT NEW DUCK BANGLOW,
P.O. RATANPUR,
SAMESERGANJ,
MURSHIDABAD DISTRICT -742202,
WEST BENGAL. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN,
SRI SHIVARAMAN VAIDYANATHA &
SRI PIYUSH KUMAR RAY, ADVS.)**

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH AND FAMILY WELFARE,
NIRMAN BHAVAN,
NEW DELHI-110011,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI-110011.

3. MINISTRY OF COMMERCE AND INDUSTRY,
REP. BY ITS SECRETARY,
UDYOG BHAVAN,
NEW DELHI-110007.

4. MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION,
REP. BY ITS SECRETARY,
KRISHI BHAVAN,
NEW DELHI – 110 114. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG, ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.100996/2016:

BETWEEN:

GHODAWAT INDUSTRIES (I) PVT. LTD.,
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE INDIAN COMPANIES ACT AND
HAVING ITS REGISTERED OFFICE
AT PLOT NO.438,
CHIPRI-416 101, KHOLAPUR,
MAHARASHTRA,
AND HAVING ITS FACTORY
AT 105/1A & B, KOTAGONDAHUNSHI VILLAGE,
POST: ADARGUNCHI, TQ: HUBBALLI,
DIST: DHARWAD,
REP.BY ITS DIRECTOR LEGAL –
MR. RAGHAVENDRA
VISHNUTHIRTH BELGAUMKAR. **..PETITIONER**

(BY SRI SURAJ GOVINDA RAJ, ANUP S. SHAH LAW FIRM, ADVS.)

AND:

1. THE UNION OF INDIA
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI,
THROUGH ITS SECRETARY.

2. MINISTRY OF AGRICULTURE
BY ITS SECRETARY,
KRISHI BHAVAN,
NEW DELHI-110 001

3. MINISTRY OF LABOUR & EMPLOYMENT,
BY ITS SECRETARY,
SHRAM SHAKTI BHAWAN,
RAFI MARG,
NEW DELHI-110 001.

4. MINISTRY OF COMMERCE & INDUSTRY,
BY ITS SECRETARY,
UDYOG BHAWAN,
SHASHTRI BHAVAN,
KAMARAJ MARG,
NEW DELHI-110001.

5. MINISTRY OF FINANCE,
BY ITS SECRETARY,
NORTH BLOCK,
SHASHTRI BHAVAN KAMARAJ MARG,
NEW DELHI-110 001. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.,
SRI SHIVAKUMAR S.BADAWADAGI, ADV. FOR
IMPLEADING APPLICANT IN I.A.2/16)**

IN W.P.101879/2016:

BETWEEN:

GHODAWAT FOODS INTERNATIONAL PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE INDIAN
COMPANIES ACT, AND HAVING ITS
REGISTERED OFFICE AT
PLOT NO.436 & 437, CHIPRI-416 101,
KOLHAPUR, MAHARASHTRA AND
HAVING ITS FACTORY AT 105/1A & B,
KOTAGONDAHUNSHI VILLAGE,
POST ADARGUNCHI, TALUKA HUBLI,
DISTRICT DHARWAD,
REP. BY ITS CHAIRMAN -
MR. SANJAY DANCHAND GHODAWAT. **..PETITIONER**

(BY SRI SURAJ GOVINDA RAJ, ANUP S. SHAH LAW FIRM, ADVS.)

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH AND FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI-110001,
THROUGH ITS SECRETARY.

2. MINISTRY OF AGRICULTURE,
GOVERNMENT OF INDIA,
REP. BY ITS SECRETARY,
KRISHI BHAVAN,
NEW DELHI-110 001.

3. MINISTRY OF LABOUR AND EMPLOYMENT,
GOVERNMENT OF INDIA,
REP. BY ITS SECRETARY,
SHRAM SHAKTI BHAWAN,
RAFI MARG,
NEW DELHI-110001.

4. MINISTRY OF COMMERCE AND INDUSTRY,
GOVERNMENT OF INDIA,
REP. BY ITS SECRETARY,
UDYOG BHAWAN,
NEW DELHI- 110 007.

5. MINISTRY OF FINANCE,
GOVERNMENT OF INDIA,
REP. BY ITS SECRETARY,
NORTH BLOCK,
NEW DELHI-110 001. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.103356/2016:

BETWEEN:

ITC LIMITED,
A COMPANY WITHIN THE MEANING OF
THE COMPANIES ACT 2013,
HAVING ITS REGISTERED OFFICE AT

37, J.L.NEHRU ROAD,
KOLKATA 700071.

ALSO HAVING ITS OPERATIONS AT
MUNAVALLI ENTERPRISES,
97/2A, BOMMAPUR VILLAGE,
NH-63 BELLARY ROAD,
HUBLI-580029,
KARNATAKA,
REP. BY CONSTITUTED ATTORNEY
MR.RUPAK HALDER. **..PETITIONER**

**(By SRI SAJAN POOVAYYA, SR. COUNSEL FOR
MISS ARADHANA LAKHTAKIA,
MISS SHRISTI WIDGE,
MR. PRATIBHANI SINGH KHAROLA,
MS. NALINA MAYEGOWDA (POOVAYYA & CO.), ADVS.)**

AND:

1. UNION OF INDIA,
REP. BY THE CABINET SECRETARY
CABINET SECRETARIAT,
GOVERNMENT OF INDIA,
RASHTRAPATI BHAWAN,
NEW DELHI-110004.

2. MINISTRY OF HEALTH AND FAMILY WELFARE
REP. BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI 110011.

3. MINISTRY OF AGRICULTURE,
REP. BY ITS SECRETARY,
KRISHI BHAVAN,
NEW DELHI-110001

4. MINISTRY OF LABOUR AND EMPLOYMENT,
REP. BY ITS SECRETARY,
SHRAM SHAKTI BHAWAN,
RAFI IMARG,
NEW DELHI-110001.

5. MINISTRY OF COMMERCE AND INDUSTRY,
REP. BY ITS SECRETARY,
UDYOG BHAWAN,
NEW DELHI-110007.

6. MINISTRY OF FINANCE,
REP. BY ITS SECRETARY,
NORTH BLOCK,
NEW DELHI-110001. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.
SRI RAVISHANKAR.S.S., ADV. FOR IMPLEADING APPLICANT
IN IA-2/16)**

IN W.P.No.103391/2016:

BETWEEN:

GODFREY PHILLIPS INDIA LIMITED,
A COMPANY REGISTERED UNDER
THE LAWS INDIA,
HAVING ITS REGISTERED OFFICE AT
MACROPOLO BUILDING, GROUND FLOOR,
NEXT TO KALA CHOWKY P.O.,
DR.BABASAHEB AMBEDKAR ROAD,
LALBAUG, MUMBAI 400033,
MAHARASHTRA
REP. BY AUTHORISED SIGNATORY
MR.RAJESH NAIR

ALSO HAVING ITS OPERATIONS AT
96, DANE GALLI, SHAHAPUR,
BELGAUM-590003, KARNATAKA. **..PETITIONER**

**(BY SRI SAJAN POOVAYYA, SR. COUNSEL FOR
MISS ARADHANA LAKHTAKIA,
MISS SHRISTI WIDGE,
MR. PRATIBHANI SINGH KHAROLA,
MS. NALINA MAYEGOWDA (POOVAYYA & CO.), ADVS.)**

AND:

1. UNION OF INDIA,
REP. BY THE CABINET SECRETARY,
CABINET SECRETARIAT,
GOVERNMENT OF INDIA,
RASHTRAPATI BHAWAN,
NEW DELHI-110004.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI 110011. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.
SRI RAVISHANKAR.S.S., ADV. FOR IMPLEADING APPLICANT
IN IA-2/16)**

IN W.P.No.103417/2016:

BETWEEN:

VST INDUSTRIES LIMITED,
GOVERNED BY THE COMPANIES ACT, 2013,
HAVING ITS REGISTERED OFFICE
AND PLANT AT 1-7-1063/1065,
AZAMABAD, HYDERABAD 500020.

ALSO HAVING ITS OPERATIONS AND
GODOWN AT NO.1182/3 A BLOCK,
6TH MAIN ROAD, SAHAKARA NAGAR,
BANGALORE 560092, KARNATAKA.
REP. BY COMPANY SECRETARY & GM
MR. NITESH BAKSHI. **..PETITIONER**

**(BY SRI SAJAN POOVAYYA, SR. COUNSEL FOR
MISS ARADHANA LAKHTAKIA,
MISS SHRISTI WIDGE,
MR. PRATIBHANI SINGH KHAROLA,
MS. NALINA MAYEGOWDA (POOVAYYA & CO.), ADVS.)**

AND:

1. UNION OF INDIA,
REP. BY THE CABINET SECRETARY,
CABINET SECRETARIAT,
GOVERNMENT OF INDIA,
RASHTRAPATI BHAWAN,
NEW DELHI-110004.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI 110011. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.
SRI RAVISHANKAR.S.S., ADV. FOR IMPLEADING APPLICANT
IN IA-2/16)**

IN W.P.Nos.103517-518/2016:

BETWEEN:

1. PATAKA INDUSTRIES PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956,
AND HAVING ITS REGISTERED OFFICE
AT 97, PARK STREET,
KOLKATA-700016,
REP. BY PETITIONER NO.2.

2. MR. SARIF HOSSAIN,
AGED ABOUT 30 YEARS,
SON OF SRI MUSTAK HOSSAIN.
OCC: BUSINESS,
R/AT 97, PARK STREET,
KOLKATA-700016. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN,
SRI SHIVARAMAN VAIDYANATHA &
SRI PIYUSH KUMAR RAY, ADVS.)**

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI 110011,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY ITS SECRETARY
NIRMAN BHAVAN,
NEW DELHI 110011.

3. MINISTRY OF COMMERCE AND INDUSTRY,
REP. BY ITS SECRETARY,
UDYOG BHAWAN,
NEW DELHI-110007.

4. MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION.
REP. BY ITS SECRETARY,
KRISHI BHAWAN.
NEW DELHI.110114. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.103519/2016:

BETWEEN:

M/S HIRA ENTERPRISES,
A PARTNERSHIP FIRM
REGISTERED AS MANUFACTURER
OF EXCISABLE GOODS,
HAVING ITS PLACE OF BUSINESS
AT 37/2, YARANAL ROAD,
BIROBA MAL, NIPANI-591237,
TALUKA CHIKODI,
DISTRICT BELAGAVI,
REPRESENTED BY ITS
AUTHORISED PERSON -
MR.NAZIR BASHIR PHARAS. **..PETITIONER**

(BY SRI SURAJ GOVINDA RAJ, ANUP S. SHAH LAW FIRM, ADVS.)

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI 110011.

3. MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION,
REP. BY ITS SECRETARY,
KHRISHI BHAVAN,
NEW DELHI-110114. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.103520/2016:

BETWEEN:

FASTTRACK PACKERS PVT. LTD.,
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE INDIAN COMPANIES ACT,
HAVING ITS PLACE OF BUSINESS
AT SURVEY NO.165,
CMC NO.126, 180, 15-110,
OLD P.B. ROAD NEAR BUS STAND,
NIPANI, TALUKA CHIKODI-591237,
DISTRICT BELAGAVI, KARNATAKA,
REP. BY ITS FACTORY MANAGER
MR.PRAVEEN,
S/O NARAYANRAO BAPAT. **..PETITIONER**

(BY SRI SURAJ GOVINDA RAJ, ANUP S. SHAH LAW FIRM, ADVS.)

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH & FAMILY WELFARE,
REP. BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI 110011.

3. MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION
REP. BY ITS SECRETARY,
KHRISHI BHAVAN,
NEW DELHI-110114. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.Nos.103521-522/2016:

BETWEEN:

1. MANOJ KUMAR SRIVASTAVA,
PROPRIETOR OF V.S.PRODUCTS,
AGED ABOUT 47 YEARS,
S/O. SRI.SITARAM SRIVASTAVA,
OCC: BUSINESS,
R/O. PLOT NO.21-P, 2ND PHASE,
A.I. AREA, TUMKUR.572106

2. M/S. V.S. PRODUCTS,
A PROPRIETORSHIP CONCERN,
PLOT NO.21-P, 2ND PHASE,
A.I.AREA, TUMKUR. 572106
REP. BY ITS PROPRIETOR,
MANOJ KUMAR SRIVASTAVA.

HAVING BUSINESS TRANSACTIONS AT:
MADHURA MARKET,
SHILWANTAR ROAD,
HUBLI, 580020. **..PETITIONERS**

**(BY SRI VEERESH R BUDIHAL &
SRI PRASHANTH F. GOUDAR, ADVS.)**

AND:

1. MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI-110001,
THROUGH ITS SECRETARY.

2. MINISTRY OF COMMERCE AND INDUSTRY,
REP. BY ITS SECRETARY,
UDYOG BHAWAN,
NEW DELHI-110007.

3. MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION.
REP. BY ITS SECRETARY,
KRISHI BHAWAN,
NEW DELHI.110114. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.103744/2016:

BETWEEN:

NTC INDUSTRIES LTD.,
A COMPANY WITHIN THE MEANING
OF COMPANIES ACT 2013 HAVING
ITS REGISTERED OFFICE,
AT 149, B.T.ROAD, KAMARHATI,
KOLKATA-700058.

ALSO HAVING ITS OPERATIONS
THROUGH ITS CONSIGNMENT AGENT
M/S. VIBAGINI AGENCIES,
6/1 RAMDOOT COMPLEX,
DESHPANDE NAGAR, HUBLI-29.
REP. BY ITS AUTHORIZED
SIGNATORY CFO
SRI. PREM CHAND KHATHOR. **..PETITIONER**

(BY SRI P.H.PAWAR & SRI GANESH RAIBAGI, ADVS.)

AND:

1. UNION OF INDIA,
   REP. BY THE CABINET SECRETARY,
   CABINET SECRETARIAT,
   GOVERNMENT OF INDIA,
   RASHTRAPATI BHAWAN,
   NEW DELHI - 110 004.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
   REP. BY ITS SECRETARY
   NIRMAN BHAVAN,
   NEW DELHI - 110 011.

3. MINISTRY OF AGRICULTURE,
   REP. BY ITS SECRETARY,
   KRISHI BHAWAN,
   NEW DELHI - 110 001.

4. MINISTRY OF LABOUR AND EMPLOYMENT,
   REP. BY ITS SECRETARY,
   SHRAM SHAKTI BHAWAN,
   RAFI MARG, NEW DELHI - 110 001.

5. MINISTRY OF COMMERCE AND INDUSTRY,
REP. BY ITS SECRETARY,
UDYOG BHAWAN,
NEW DELHI - 110 007.

6. MINISTRY OF FINANCE,
REP. BY ITS SECRETARY,
NORTH BLOCK,
NEW DELHI - 110 001. ..RESPONDENTS

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.Nos.103796 & 103978/2016:

BETWEEN:

1. MAA SHARDA TOBACCO CO. PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT:
#15/260, CIVIL LINES,
KANPUR-208 001 (UP),
REP. BY ITS DIRECTOR,
HARI BHUSHAN BAJPAI.

2. HARI BHUSHAN BAJPAI,
AGED ABOUT 59 YEARS,
S/O LATE SHRI C.M.BAJPAI,
OCC: BUSINESS,
R/O # 32, 1ST A CROSS,
MEI COLONY, LAGGERI MAIN ROAD,
PEENYA 3RD PHASE,
BENGALURU 58.

HAVING BUSINESS TRANSACTIONS AT
MADHURA MARKET, SHILWANTAR
ROAD, HUBLI-580 020. **..PETITIONERS**

(BY SRI VEERESH R BUDIHAL & SRI L.M.KURAHATTI, ADVS.)

AND:

1. MINISTRY OF HEALTH OF FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI-110001,
THROUGH ITS SECRETARY.

2. MINISTRY OF COMMERCE AND INDUSTRY,
REP. BY ITS SECRETARY,
UDYOG BHAWAN,
NEW DELHI-110007

3. MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION,
REP. BY ITS SECRETARY,
KRISHI BHAWAN,
NEW DELHI 110114. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.Nos.103797 & 103977/2016:

BETWEEN:

1. MANGALORE GANESH BEEDI WORK,
REP. BY GOPINATH SHENOY,
A REGISTERED PARTNERSHIP FIRM,
DULY REGISTERED UNDER THE
PROVISIONS OF THE
INDIAN PARTNERSHIP ACT, 1932 AND
HAVING ITS HEAD OFFICE AT
VINOBA ROAD, MYSORE-570005.

AND HAVING ITS DEPOT/TRADING
CENTRE AT M/S SHREE JAGANNATH TRADERS,
"SRINIDHI" BUILDING,
2ND MAIN, VIVEKANANDA NAGAR,
VIDYAGIRI DHARWAD-580004.

2. MR. GOPINATH SHENOY,
AGED ABOUT 58 YEARS,
SON OF LATE GOVIND RAO SHENOY,
OCC:BUSINESS.
R/O NO. 964/4 " GOVINDA MADHAV"
3RD MAIN, DEWAN SHESHADRI

IYER ROAD, LAKSHMIPURAM,
MYSORE-570004. **..PETITIONERS**

(BY SRI RAJEEV KUMAR JAIN, SRI SHIVARAMAN VAIDYANATHA, SRI PIYUSH KUMAR RAY & SRI VEERESH R. BUDIHAL, ADVS.)

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI-110011,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI – 110 011.

3. MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION,
REP. BY ITS SECRETARY,
KRISHI BHAWAN,
NEW DELHI-110114. **..RESPONDENTS**

(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)

IN W.P.Nos.103873-874/2016:

BETWEEN:

1. DESAI BROTHERS LIMITED,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956,
AND HAVING ITS REGISTERED
OFFICE AT 1436, KASBA PETH,
PUNE – 411 011.
AND ALSO HAVING ITS DEPOT/TRADING CENTRE AT
C/O. VENKATESH JOSHI,
BESIDES SHRI AMARNATH AUTOMOBILES,
NATIONAL HIGHWAY.
NO.13, HOSALINGAPUR, DISTRICT-KOPPAL,
KARNATAKA – 583 233.
REP. BY BIMAL DESAI AUTHORISED REPRESENTATIVE.

2. BIMAL N DESAI,
AGED ABOUT 57 YEARS,
SON OF NATUBHAI HARIBHAI DESAI,
OCC: BUSINESS,
R/O. 20, PURNA PRASAD EXTENSION,
RACE COURT ROAD,
BANGALORE – 560 001. **..PETITIONERS**

(BY SRI RAJEEV KUMAR JAIN, SRI SHIVARAMAN VAIDYANATHA, SRI PIYUSH KUMAR RAY & SRI VEERESH R. BUDIHAL, ADVS.)

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI 110011,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI 110011.

3. MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION,
REP. BY ITS SECRETARY,
KRISHI BHAWAN,
NEW DELHI 110114. **..RESPONDENTS**

(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)

IN W.P.Nos.103875-876/2016:

BETWEEN:

1. BHARATH BEEDI WORKS PRIVATE LIMITED,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956
AND HAVING ITS REGISTERED OFFICE AT
BHARATH BAGH, KADRI ROAD,
MANGALORE-575 003.

AND ALSO HAVING ITS DEPOT/TRADING CENTRE
AT C/O. SHALINI TRADING CORPORATION,
122/78/B2, BEHIND VRL COMPLEX,
NEW COTTON MARKET, HUBLI-580029,
KARNATAKA.
REP. BY MR. NAGENDRA D. PAI,
EXECUTIVE DIRECTOR.

2. NAGENDRA D. PAI,
AGED ABOUT 43 YEARS,
SON OF SRI DAMODARA M PAI,
OCC: BUSINESS,
R/O BHARATH BAGH, KADRI ROAD,
MANGALORE-575003. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN, SRI SHIVARAMAN VAIDYANATHA,
SRI PIYUSH KUMAR RAY & SRI VEERESH R. BUDIHAL,
ADVS.)**

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI 110011,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI-110011.

3. MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION,
REP. BY ITS SECRETARY,
KRISHI BHAWAN,
NEW DELHI 110114. **..RESPONDENT(S)**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.103877-878/2016:

BETWEEN:

1. SABLE WAGHIRE AND COMPANY PRIVATE LIMITED.
A COMPANY REGISTERED UNDER THE PROVISIONS
OF THE COMPANIES ACT, 1956,
AND HAVING ITS RGISTERED OFFICE
AT 105, BHAWANI PETH-411042,
THROUGH THE MANAGER BALASAHEB A. JAGADALE.

AND ALSO HAVING ITS TRADING CENTRE AT
C/O. GURU TRADERS, RABKAVI,
TALUKA-JAMKHANDI, DISTRICT-BAGALKOT,
KARNATAKA.

2. MR. BALASAHEB A JAGADALE,
AGED ABOUT 46 YEARS,
SON OF ANNASAHEB B. JAGADALE,
OCC: EMPLOYEE,
R/O: 105, BHAWANI PETH,
PUNE-411042. **..PETITIONERS**

(BY SRI RAJEEV KUMAR JAIN, SRI SHIVARAMAN VAIDYANATHA, SRI PIYUSH KUMAR RAY & SRI VEERESH R. BUDIHAL, ADVS.)

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI-110011,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REPRESENTED BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI 110011.

3. MINISTRY OF CONSUMER AFFAIRS,
FOOD AND PUBLIC DISTRUBUTION,
REPRESENTED BY ITS SECRETARY,
KRISHI BHAWAN,
NEW DELHI-110114. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.103970-971/2016:

BETWEEN:

1. P & J TOBACO PRODUCTS CO.,
(A PARTNERSHIP FIRM)
395/5-BA, INDUSTRIAL AREA,
MAGODA ROAD,
NEAR OLD GANGA RICE MILL,
RANEBENNUR – 581115,
TQ. RANEBENNUR, DIST. HAVERI,
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE
SRI RAMANBHAI SHIVRAMDAS PATEL.

2. SRI RAMANBHAI SHIVRAMDAS PATEL,
AGED ABOUT 60 YEARS,
R/O # 395/5-BA, INDUSTRIAL AREA,
MAGODA ROAD,
NEAR OLD GANGA RICE MILL,
RANEBENNUR.581115,
TQ. RANEBENNUR, DIST. HAVERI. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN, SRI SHIVARAMAN VAIDYANATHA,
SRI PIYUSH KUMAR RAY & SRI VEERESH R. BUDIHAL,
ADVS.)**

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI.110011,
THROUGH ITS SECRETARY.

2. MINISTRY OF HELATH AND FAMILY WELFARE,
REPRESENTED BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI 110011.

3. MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION,
REPRESENTED BY ITS SECRETARY,

KRISHI BHAWAN,
NEW DELHI.110114. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.34184/2016:

BETWEEN:

1. DHARAMPAL SATYAPAL LTD.,
C6-10, DHARMPAL SATYAPAL,
(D.S.) ROAD, SECTOR-67,
NOIDA-201309, U.P.

2. DHARMPAL PREMCHAND LTD.,
4873, CHANDANI CHOWK,
NEW DELHI,
DELHI-110004. **..PETITIONERS**

**(BY SRI SANJAI KUMAR PATHAK, SRI BISWAJIT DUBEY,
SRI SHARAN A.KUKREJA, ADVS.)**

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN, NEW DELHI,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REPRESENTED BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI 110011.

3. MINISTRY OF AGRICULTURE,
REPRESENTED BY ITS SECRETARY,
KRISHI BHAVAN,
NEW DELHI-110001.

4. MINISTRY OF LABOUR & EMPLOYMENT,
REPRESENTED BY ITS SECRETARY,
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI-110001. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.34185/2016:

BETWEEN:

SHREE FLAVOURS LLP,
339, FUNCTIONAL INDUSTRIAL ESTATE,
PATPARGANJ, DELHI-110092. **..PETITIONER**

**(BY SRI VIVEK KOHLI ALONG WITH SRI NALIN TALWAR &
MISS ANUBHA SINGH, ADVS.)**

AND:

THE UNION OF INDIA,
THROUGH THE SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
MINISTRY OF HEATLH AND FAMILY WELFARE,
C-WING, NIRMAN BHAVAN,
NEW DELHI. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN. W.P.No.34186/2016:

BETWEEN:

1. GODFREY PHILIPS INDIA LTD.,
A COMPANY INCORPORATED AND REGISTERED
UNDER THE COMPANIES ACT, 1913 AND
EXISTING UNDER THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT CHAKALA,
ANDHERI (E), MUMBAI-400 099.

2. MR.R.RAMAMURTY,
ADULT, INDIAN INHABITANT AND
WHOLE TIME DIRECTOR,
AND SHAREHOLDER OF PETITIONER NO.1 COMPANY
AND HAVING HIS OFFICE AT 49,
COMMUNITY CENTRE,
FRIENDS COLONY, NEW DELHI-110 025.

3. LOGISTECH INDIA PVT. LTD.,
CARRYING AND FORWARDING AGENT OF
GODFREY PHILIPS INDIA LTD.,
HAVING ITS WAREHOUSE AT GODOWN
NO.12, MANE FARM HOUSE, MUMBAI-AGRA ROAD,
KALHER BHIWANDI, THANE-421 302.

4. SHRI SHRIDHAR SHANKARRAO KULKARNI,
PROPRIETOR OF M/S. MAHARASHTRA AGENCIES,
HAVING ITS WAREHOUSE AT SHOP NO.3,
VARSHA COMPLEX, OPP. RAMESHWAR MANDIR,
KALYAN NAKA BHIWANDI,
THANE AND ANOTHER WAREHOUSE AT
GALA NO.1, AARYA COMPLEX LELE AALI,
TILAK CHOWK, KALYAN (W), THANE. **..PETITIONER(S)**

**(BY SRI ASHISH KAMATH, SRI PRADEEP MANE,
SRI VARUN SATIYA, ADVS.)**

AND:

1. THE COMMISIONER OF FOOD SAFETY,
FOOD AND DRUGS ADMINISTRATION,
GOVERNMENT OF MAHARASHTRA,
SURVEY NO.341, BANDRA-KURLA COMPLEX,
BANDRA (E), MUMBAI-400 051.

2. STATE OF MAHARASHTRA,
THROUGH ITS DEPARTMENT OF HEALTH,
HAVING ITS OFFICE AT MANTRALAYA,
MUMBAI-400 020.

3. FOOD SAFETY OFFICER OF FOOD & DRUGS
ADMINISTRATION, M.S.THANE,
VARDAN, MIDC BUILDING, OFFICE NO.1 TO 5
AND 10 TO 12, ROAD NO.16, WAGALE ESTATE,
THANE-400 608.

4. UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE,
NARIMAN BHAVAN, NEW DELHI. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.34188/2016:

BETWEEN:

1. GODFREY PHILIPS INDIA LTD.,
A COMPANY INCORPORATED AND REGISTERED
UNDER THE COMPANIES ACT,1913 AND
EXISTING UNDER THE COMPANIES ACT,1956,
HAVING ITS REGISTERED OFFICE AT CHAKALA,
ANDHERI(E), MUMBAI-400 099,
THROUGH ITS AUTHORIZED SIGNATORY
SHRI RAJESH NAIR.

2. MR R RAMAMURTHY,
ADULT, INDIAN INHABITANT AND
WHOLE TIME DIRECTOR AND SHAREHOLDER OF
PETITIONER NO.1 COMAPANY AND
HAVING HIS OFFICE AT 49 COMMUNITY CENTRE,
FRIENDS COLONY,NEW DELHI-110 025.

3. M/S RAINBOW ENTERPRISES,
SOLE PROPRIETORSHIP,
THROUGH MR. RAMESH AGGARWAL,
CARRYING AND FORWARDING AGENT OF
GODFREY PHILIPS INDIA LTD.,
HAVING ITS WAREHOUSE AT GODOWN AT 18/19,
MARUTI UDYOG VASATH, MIDC, WADI,
TAL-DIST-NAGPUR-440 028. **..PETITIONERS**

(BY SRI A.A.NAIK & SRI N.A.GAIKWAD, ADVS.)

AND:

1. THE COMMISSIONER OF FOOD SAFETY,
FOOD AND DURGS ADMINISTRATION,
GOVERNMENT OF MAHARASHTRA,
SURVEY NO.341,BANDRA-KURLA COMPLEX,
BANDRA(E), MUMBAI-400 051.

2. STATE OF MAHARASHTRA,
THROUGH ITS DEPARTMENT OF FOOD &
CIVIL SUPPLIES, HAVING ITS OFFICE AT
MANTRALAYA, MUMBAI-400 020

3. FOOD SAFETY OFFICER OF FOOD & DRUGS,
ADMINISTRATION, M.S-NAGPUR,
GOVERNMENT BUILDING NO.2,

5TH FLOOR,B-WING,CIVIL LINES,
NAGPUR-440 001.

4. UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE,
NARIMAN BHAVAN,
NEW DELHI. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.34189/2016:

BETWEEN:

MAHARASHTRA JARDA MANUFACTURUERS ASSOCIATION,
AN ASSOCIATION DULY REGISTERED UNDER THE
SOCIETIES ACT,1860 AND HAVING ITS
REGISTERED OFFICE AT MALPANI HOUSE,
SANGAMNER-422605, DIST: AHMEDNAGAR,
MAHARASHTRA REPRESENTED BY ITS
HONARARY REPRESENTATIVE,
MR. PRASHANT SHASHIKANT RUNWAL,
AGE 44 YEARS, OCCUPATION: SERVICE,
R/O BUNGLOW NO.2,804-22, MEHERMALA
SANGAMNER-422605. **..PETITIONER**

(BY SRI BAJAJ ANIL S., ADV.)

AND:

1. THE UNION OF INDIA,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAWAN,
NEW DELHI,
THROUGH ITS SECRETARY.

2. MINISTRY OF HEALTH AND FAMILY WELFARE,
REPRESENTED BY ITS SECRETARY,
NIRMAN BHAVAN,
NEW DELHI-110 011.

3. MINISTRY OF CONSUMER AFFAIRS FOOD &
PUBLIC DISTRIBUTION,
REPRESENTED BY ITS SECRETARY,

KRISHI BHAVAN,
NEW DELHI-110 001. **..RESPONDENTS**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.34190/2016:

BETWEEN:

1. GUJARAT TOBACCO MERCHANT ASSOCIATION,
THROUGH ITS PRESIDENT,
SHRI BHIKHUBHAI NARANBHAI PATEL,
AGED ABOUT 67 YEARS,
HAVING ITS REGISTERED OFFICE AT
203-204, TRIVENI COMPLEX,
ANAND-VIDYANAGAR ROAD,
ANAND, GUJARAT.

2. SHRI DINESHBHAI ISHWARBHAI PATEL,
AGED ABOUT 64 YEARS,
OCCUPATION: TOBACCO FARMING,
RESIDING AT: MOTI KHADAKI,
POST: KHANPUR, TALUKA ANAND,
ANAND, GUJARAT.

3. MR. IBRAHIMBHAI REHMANBHAI VOHRA,
AGED ABOUT 59 YEARS,
PROPRIETOR, ALLARAKHA CHHAP BEEDI,
HAVING ITS ADDRESS AT: UMETA,
TALUKA: ANKALAV, DISTRICT: ANAND,
GUJARAT. **..PETITIONERS**

(BY SRI K.S.NANAVATI & SRI NANDISH CHUDGAR, ADVS.)

AND:

UNION OF INDIA,
THROUGH SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
MINISTRY OF HEALTH & FAMILY WELFARE,
C-WING, NIRMAN BHAVAN,
NEW DELHI. **..RESPONDENT**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.34191/2016:

BETWEEN:

VISHNU TOBACCO PRODUCT,
THROUGH ITS SOLE PROPRIETOR NITIN GARG,
HAVING ITS OFFICE SITUATED
AT 7- ASHAVMEGH INDUSTRIAL AREA,
CHANGODAR,
AHMEDABAD. **..PETITIONER**

**[BY SRI VIVEK KOHLI, ADV. A/W
SRI NALIN TALWAR & ANUBHA SINGH, ADVS.]**

AND:

THE UNION OF INDIA,
THROUGH THE SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
MINISTRY OF HEALTH AND FAMILY WELFARE,
C-WING, NIRMAN BHAVAN,
NEW DELHI. **..RESPONDENT**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.34192/2016:

BETWEEN:

1. PITAMBERDAS ANANDJI MEHTA,
A PARTNERSHIP FIRM THROUGH ITS
PARTNER - SHRI NITINBHAI KRUSHNALAL MEHTA,
AGED 61 YEARS , MALE,
HAVING OFFICE AT J.K.MEHTA ROAD,
SIHOR – 364240.

2. BAROT NANALAL KANJI & BROS.,
A PARTNERSHIP FIRM, THROUGH ITS
PARTNER - SHRI BHARATBHAI GHUGHABHAI MALUKA,
AGE - 61 YEARS, MALE,
HAVING OFFICE AT VAKHARWALA CHOWK,
SIHOR – 364240.

3. DANI BROTHERS SHAH,
A PARTNERSHIP FIRM THROUGH ITS

PARTNER - SHRI GIRISHBHAI SAVAILAL DANI,
AGED - 69 YEARS, MALE,
HAVING OFFICE AT PALIYAD ROAD,
BOTAD – 364710.

4. KALIDAS HARGOVINDDAS,
A PARTNERSHIP FIRM, THROUGH ITS
PARTNER - SHRI MAHENDRABHAI JAYANTILAL SHAH,
AGE - 63 YEARS, MALE,
HAVING OFFICE AT PALIYAD ROAD,
BOTAD – 364710.

5. JANI BROTHERS,
A PARTNERSHIP FIRM, THROUGH ITS PARTNER
SHRI CHANDRAVADAN BHASKAR JANI,
AGE - 58 YEARS, MALE,
HAVING OFFICE OPP.BUS STAND,
LIMBDI, DIST. SURENDRANAGAR. **..PETITIONERS**

**[BY SRI KAMAL B.TRIVEDI, SRI JAY KAUSARA &
SRI TANVISH BHAT, ADVS.]**

AND:

THE UNION OF INDIA,
THROUGH THE SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
MINISTRY OF HEALTH AND FAMILY WELFARE,
C-WING, NIRMAN BHAVAN,
NEW DELHI. **..RESPONDENT**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.34193/2016:

BETWEEN:

1. ISHWAR SNUFF WORKS,
A PARTNERSHIP FIRM,
(THROUGH ITS PARTNER TUSHARBHAI JASVANTRAI MEHTA),
AGED 54 YEARS, MALE,
HAVING OFFICE AT NEAR JOGIWAD NI TANKI,
RANIKA, BHAVNAGAR - 364 001.

2. M/S RANCHHODDAS ZINABHAI DHOLAKIA,
A PARTNERSHIP FIRM,
(THROUGH ITS PARTNER JAYESH NIRANJANBHAI DHOLAKIA)
AGED 49 YEARS, MALE,
HAVING OFFICE AT N.R.DHOLAKIA ROAD,
SIHOR 364240.

3. M/S PARAG PERFUMES,
A PARTNERSHIP FIRM,
(THROUGH ITS AUTHORIZED SIGNATORY
CHANDRAKANT JAYANTILAL PARIKH)
AGED: 73 YEARS, MALE,
HAVING OFFICE AT
GIDC 1, BHAVANAGAR-RAJKOT ROAD,
SIHOR – 364 240.

4. DHOLAKIA TOBACCO PVT. LTD.,
A PRIVATE LTD. COMPANY (THROUGH ITS
DIRECTOR PARAG NAVINCHANDRA DHOLAKIA),
AGED: 50 YEARS, MALE,
HAVING OFFICE AT: SURVEY NO. 268/1/2,
BHAVNAGAR, RAJKOT ROAD,
SIHOR - 364 240.

5. ANANT TOBACCO WORKS,
A PARTNERSHIP FIRM, (THROUGH ITS PARTNER
SHARADKUMAR CHANDULAL VORA),
AGED: 52 YEARS, MALE,
HAVING OFFICE AT VAKHAR WALA CHOWK,
SIHOR DISTRICT, BHAVNAGAR (GUJARAT)

6. VORA MOHANLAL RUGNATH,
A PARTNERSHIP FIRM, (THROUGH ITS PARTNER
BHAVESH VINODRAI VORA),
AGED 42 YEARS, MALE,
HAVING OFFICE AT: TOBACCO BAZAR,
SIHOR 364240. **..PETITIONERS**

[BY SRI MANISH BHAT & SRI MAUNA M.BHAT, ADVS.]

AND:

THE UNION OF INDIA,
THROUGH THE SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
MINISTRY OF HEALTH AND FAMILY WELFARE,

C-WING, NIRMAN BHAVAN,
NEW DELHI. **..RESPONDENT**

**(BY SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.35716/2016:

BETWEEN:

1. M/S NEW INDIA BIRI FACTORY,
A REGISTERED PARTNERSHIP FIRM,
HAVING ITS OFFICE AT VILLAGE – SHIVMANDIR,
THAKURPARA , P.O.DHULIYAN,
DISTRICT MURSHIDABAD – 742202,
WEST BENGAL.

2. MD.NOOR ALAM,
SON OF MD.LAYEK ALI,
WORKING FOR GAIN AT VILLAGE SHIVMANDIR,
THAKURPARA, P.O.DHULIYAN,
DISTRICT – MURSHIDABAD-742202,
WEST BENGAL. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN, PIYUSH KUMAR &
REENA BATTH, ADVS.)**

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA

HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

**(By SRI KRISHNA S.DIXIT, ASG ALONG WITH
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.35717/2016:

BETWEEN:

1. SK. NASIRUDDIN BIRI MERCHANTS
PRIVATE LIMITED
A COMPANY WITHIN THE MEANING
OF THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT 1,
RIPPON STREET, KOLKATA - 700016

2. SHAHBAZ AKHTAR
SON OF ABDUR
RAHAMAN ATHAR, WORKING
FOR GAIN AT 1 RIPPON STREET,
KOLKATA – 700016. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)**

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,

HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)

IN W.P.No.35718/2016:

BETWEEN:

1. ANAND BIRI FACTORY
A REGISTERED PARTNERSHIP FIRM,
HAVING ITS OFFICE AT
VILLAGE-GOBINDAPUR, P.O.TINPAKURIA
P.S.SAMSERGANJ, DISTRICT
MURSHIDABAD-742202
WEST BENGAL.

2. MD.ARZAD ALI
SON OF LATE MD.DAUD SHAIKH,
WORKING FOR GAIN AT VILLAGE-GOBINDAPUR,
P.O.TINPAKURIA
P.S.SAMSERGANJ, DISTRICT
MURSHIDABAD-742202
WEST BENGAL **..PETITIONERS**

(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)

IN W.P.35719/2016:

BETWEEN:

1. O2 INDUSTRIES PRIVATE LTD
A COMPANY WITHIN THE MEANING OF THE
COMPANIES ACT 1956, HAVING ITS
OFFICE AT NEW DUCKBANGLOW P.O.RATANPUR,
SAMSERGANJ, DISTRICT-MURSHIDABAD-742202,
WEST BENGAL.

2. NIPON JEET BISWAS
SON OF BABAR BISWAS, WORKING FOR GAIN AT NEW
DUCKBANGLOW, P.O.RATANPUR,
SAMSERGANJ, DISTRICT-MURSHIDABAD-742202,
WEST BENGAL. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)**

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

**(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.35720/2016:

BETWEEN:

1. LOHA BIRI FACTORY
A REGISTERED PARTNERSHIP FIRM,
HAVING ITS OFFICE AT NEW DUCKBANGLOW,
P.O RATANPUR
DHULIYAN, DISTRICT
MURSHIDABAD-742202

2. NIPON JEET BISWAS
S/O BABAR BISWAS
WORKING FOR GAIN AT NEW DUCKBANGLOW

PO, RATANPUR
DHULIYAN,
DISTRICT MURSHIDABAD-742202 **..PETITIONERS**

(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)

IN W.P.No.35721/2016:

BETWEEN:

1. RADHASHYAM TIRTHABASHI PAUL
A REGISTERED PARTNERSHIP FIRM,
HAVING ITS OFFICE AT CF-125,
SALT LAKE CITY,
SECTOR - 1,
KOLKATA - 700064

2. RATAN KUMAR PAUL
SON OF LATE TIRTHABASHI PAUL
WORKING FOR GAIN AT CF-125,
SALT LAKE CITY , SECTOR - 1,
KOLKATA – 700064 **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)**

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

**(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.35722/2016:

BETWEEN:

1. KALPANA BIRI MANUFACTURING CO.PVT LTD
A COMPANY WITHIN THE MEANING OF THE
COMPANIES ACT, 1956,
HAVING ITS OFFICE AT AURANGABAD
MURSHIDABAD - 742201

2. PRASANTA KUMAR SAHA
SON OF LATE SHYAMA CHARAN SAHA,
WORKING FOR GAIN AT AURANGABAD,
MURSHIDABAD – 742201. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)**

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,

GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

**(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

IN W.P.No.35723/2016:

BETWEEN:

1. K.B. SAHA & SONS INDUSTRIES PRIVATE LIMITED,
A COMPANY WITHIN THE MEANING OF THE
COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT 28/8
GARIAHAT ROAD, KOLKATA-700029

SRIKANTA SAHA
S/O LATE KUMUD BANDHU SAHA
WORKING FOR GAIN AT 28/8
GARIAHAT ROAD
KOLKATA-700029. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)**

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)

IN W.P.No.35724/2016:

BETWEEN:

1. SAHA BROTHERS BIRI WORKS PRIVATE LTD,
A COMPANY WITHIN THE MEANING OF THE
COMPANIES ACT, 1956,
HAVING ITS OFFICE AT P.O DHULIYAN
DISTRICT-MURSHIDABAD-742202

2. SANTOSH KUMAR SAHA
S/O LATE SHYAMA CHARAN SAHA
WORKING FOR GAIN AT P.O DHULIYAN,
DISTRICT-MURSHIDABAD-742202 **..PETITIONERS**

(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY

GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)

IN W.P.No.35725/2016:

BETWEEN:

1. MRINALINI BIRI MANUFACTURING CO. PVT LTD
A COMPANY WITHIN THE MEANING OF THE
COMPANIES ACT 1956, HAVINT ITS REGISTERED
OFFICE AT P-43,RABINDRA SARANI, 1ST FLOOR,
KOLKATA 700001.

DEBOPRIYO DAS
SON OF LATE DIPTI
KUMAR DAS, WORKING FOR GAIN AT P-43,
RABINDRA SARANI, 1ST FLOOR,
KOLKATA-700001 **..PETITIONERS**

(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,

HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)

IN W.P.No.35726/2016:

BETWEEN:

1. KAMALA BIRI MANUFACTURING CO. (P) LTD
A COMPANY WITHIN THE MEANING OF THE
COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT 1,
RUPCHAND ROY STREET, KOLKATA 700007

RAJ KUMAR JAIN
SON OF LATE MATILAL
JAIN, WORKING FOR GAIN AT 1, RUPCHAND
ROY STREET, KOLKATA 700007 **..PETITIONERS**

(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)

IN W.P.No.35727/2016:

BETWEEN:

1. NUR BIRI WORKS PVT LTD
A COMPANY WITHIN THE MEANING OF THE
COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT 18/1A,
GORA CHAND LANE, KOLKATA-700014.

2. KHALILUR RAHMAN
SON OF LATE NUR MOHAMMED BISWAS,
WORKING FOR GAIN
AT 18/1A, GORA CHAND LANE,
KOLKATA-700014 **..PETITIONERS**

(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE
A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)

IN W.P.No.35728/2016:

BETWEEN:

1. M/S MURSHIDABAD BIRI WORKS
A REGISTERED PARTNERSHIP FIRM,
HAVING ITS OFFICE AT KANCHANTALA,
POST OFFICE DHULIYAN,
DISTRICT MURSHIDABAD-742202
WEST BENGAL.

2. MUKUL HOSSAIN
SON OF MD.JALALUDDIN BISWAS,
WORKING FOR GAIN AT KANCHANTALA,
POST OFFICE-DHULIYAN

DISTRICT- MURSHIDABAD-742202
WEST BENGAL. **..PETITIONERS**

**(BY SRI RAJEEV KUMAR JAIN A/W
SRI SIVARAMAN VAIDYANATHAN,
PIYUSH KUMAR & REENA BATTH, ADVS.)**

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE

A WING NIRMAN BHAWAN
NEW DELHI - 110011

2. THE JOINT SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT A WING
NIRMAN BHAWAN, NEW DELHI- 110011

3. THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA
HAVING HIS OFFICE AT UDYOG BHAWAN
NEW DELHI - 110007

4. THE SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA,
HAVING HIS OFFICE AT KRISHI BHAWAN
NEW DELHI – 110001. **..RESPONDENTS**

**(By SRI KRISHNA S.DIXIT, ASG A/W
SRI ADITYA SINGH & S.R.DODAWAD, ADVS.)**

WRIT PETITION NO.4470/2015 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED NOTIFICATION DT.15.10.2014 (ANNEX-A) ISSUED BY R-2 AS BEING ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY & DISTRIBUTION) ACT 2003 AND ULTRA VIRES ARTICLES 14,19[1][a] AND 19[1][g] OF THE

CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT 1999, THE LEGAL METROLOGY [PACKAGED COMMODITIES] RULES 2011 AND NOTIFICATION 1272/1962 ISSUED UNDER TRADEMARKS LAW & ETC.

WRIT PETITION NO.56789/2014 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED NOTIFICATION DTD.15.10.2014 (ANNEX-A) ISSUED BY R-2 AS BEING, ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY & DISTRIBUTION) ACT 2003 AND ULTRA VIRES ARTICLES 14, 19 & 21 OF THE CONSTITUTION OF INDIA & ETC.

WRIT PETITION NO.59460/2014 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED NOTIFICATION DTD.15.10.2014 (ANNEX-A) ISSUED BY R-2 AS BEING, ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY & DISTRIBUTION) ACT 2003 AND ULTRA VIRES ARTICLES 14, 19 & 21 OF THE CONSTITUTION OF INDIA & ETC.

WRIT PETITION NO.59587/2014 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED NOTIFICATION DTD.15.10.2014 (ANNEX-A) ISSUED BY RESPONDENT BEING UNCONSTITUTIONAL, ULTRA VIRES, ILLEGAL, WITHOUT JURISDICTION, BAD IN LAW AND NULL AND VOID & ETC.

WRIT PETITION NOS.53876-53877/2015 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED NOTIFICATION DTD.15.10.2014 (ANNEX-A) ISSUED BY RESPONDENT NO.1 AS BEING, ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY & DISTRIBUTION) ACT 2003 AND ULTRA VIRES ARTICLES 14, 19 & 21 OF THE CONSTITUTION OF INDIA & ETC.

WRIT PETITION NOS.27715-27716/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, QUASH THE NOTIFICATION DATED 15.10.2014 VIDE ANNEX-C, ISSUED BY R-2 HEREIN, AND NOTIFICATION DATED 24.09.2015 VIDE

ANNEXURE-E, ISSUED BY R-2 AS BEING, ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION SUPPLY AND DISTRIBUTION) ACT, 2003 ULTRA VIRES ARTICLES 14, 19(1)(a) AND19(1)(g) OF THE CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011 AND NOTIFICATION 1272/1962 ISSUED UNDER TRADEMARKS LAW AND ETC.

WRIT PETITION NOS.31838/2016 & 33042/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA TO DECLARE THAT THE PROVISIONS OF THE RULE 3, RULE 4, RULE 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS [PACKAGING AND LABELLING] RULES, 2008 AS AMENDED BY [AMENDMENT] RULES, 2014 VIDE ANNEX-B IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLE 13, 14 AND 19 OF THE CONSTITUTION OF INDIA AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADEMARKS ACT, 1999 AND/ OR THE LEGAL METROLOGY [PACKAGED COMMODITIES] RULES, 2011 AND ETC.

WRIT PETITION NO.100996/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014 VIDE (ANNEXURE-B) AND DATED:24.09.2015 (ANNEXURE-D) ISSUED BY RESPONDENT NO.2 AS BEING, ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003, ULTRA VIRES ACTICLES 14, 19(1)(a), 19(1)(g) OF THE CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY (PACKAGED COMMODITIES) RULES 2011 ADN NOTIFICATION 1272/1962 ISSUED UNDER TRADEMARKS LAW AND ETC.

WRIT PETITION NO.101879/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014 ISSUED BY THE RESPONDENT NO.1, VIDE ANNEXURE-A AND NOTIFICATION DATED:24.09.2015, ISSUED BY RESPONDENT NO.1, VIDE ANNEXURE-C AS BEING ILLEGAL, INVALID, VOID, AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003, ULTRA VIRES ARTICLES 14, 19(1)(a) AND 19(1)(g) OF

THE CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011 AND ETC.

WRIT PETITION NO.103356/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15TH OCTOBER 2014 (ANNEXURE-A) AND NOTIFICATION DATED:24TH SEPTEMBER 2015 (ANNEXURE-C) ISSUED BY RESPONDENT NO.2, BEING, ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003; AND ULTRA VIRES THE CONSTITUTION OF INDIA; AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY ACT, 2009 AND LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011 & ETC.

WRIT PETITION NO.103391/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014 (ANNEXURE-A) AND NOTIFICATION DATD:24.09.2015 (ANNEXURE-C) ISSUED BY RESPONDENT NO.2, AS BEING ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERNCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003 AND ULTRA VIRES THE CONSTITUTION OF INDIA, AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY ACT, 2009 AND LEGAL METROLOGY (PACKAGED COMMODITIES RULES, 2011 & ETC.

WRIT PETITION NO.103417/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014 (ANNEXURE-A) AND NOTIFICATION DATD:24.09.2015 (ANNEXURE-C) ISSUED BY RESPONDENT NO.2, AS BEING ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERNCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003 AND ULTRA VIRES THE CONSTITUTION OF INDIA, AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY ACT, 2009 AND LEGAL METROLOGY (PACKAGED COMMODITIES RULES, 2011 & ETC.

WRIT PETITION NOS.103517-518/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014, VIDE

ANNEXURE-C, ISSUED BY THE RESPONDENT NO.2 HEREIN, AND NOTIFICATION DATED:24.09.2015, VIDE ANNEXURE-E ISSUED BY RESPONDENT NO.2 AS BEING ILLEGAL, INVALID, VOID, AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003, ULTRA VIRES ARTICLES 14, 19(1)(a) AND 19(1)(g) OF THE CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011 AND NOTIFICATION 1272/1962 ISSUED UNDER TRADEMARKS LAW & ETC.

WRIT PETITION NO.103519/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014, VIDE ANNEXURE-C, ISSUED BY THE RESPONDENT NO.2 HEREIN, AND NOTIFICATION DATED:24.09.2015, VIDE ANNEXURE-E, ISSUED BY RESPONDENT NO.2 AS BEING ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003, ULTRA VIRES ARTICLES 14, 19(1)(a) AND 19(1)(g) OF THE CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011 AND NOTIFICATION 1272/1962 ISSUED UNDER TRADEMARKS LAW & ETC.

WRIT PETITION NO.103520/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014, VIDE ANNEXURE-C, ISSUED BY RESPONDENT NO.2 HEREIN, AND NOTIFICATION DATED:24.09.2015, VIDE ANNEXURE-E, ISSUED BY RESPONDENT NO.2, AS BEING ILLEGAL, INVALID, VOID, AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003, ULTRA VIRES ARTICLES 14, 19(1)(a) AND 19(1)(g) OF THE CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011 AND NOTIFICATION 1272/1962 ISSUED UNDER TRADEMARKS LAW & ETC.

WRIT PETITION NOS.103521-522/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014, ISSUED BY RESPONDENT NO.1 VIDE ANNEXURE-B, AND NOTIFICATION DATED:24.09.2015, ISSUED BY RESPONDENT NO.1, VIDE

ANNEXURE-D, AS BEING ILLEGAL, INVALID, VOID, AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003, ULTRA VIRES ARTICLES 14, 19(1)(a) AND 19(1)(g) OF THE CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011 AND NOTIFICATION 1272/1962 ISSUED UNDER TRADEMARKS LAW & ETC.

WRIT PETITION NO.103744/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014,(ANNEXURE-A) AND NOTIFICATION DATED:24.09.2015 (ANNEXURE-C), ISSUED BY RESPONDENT NO.2 AS BEING ILLEGAL, INVALID, VOID, AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003, ULTRA VIRES THE CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY ACT, 2009 AND LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011 & ETC.

WRIT PETITION NOS.103796 & 103978/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 15TH OCTOBER, 2014 BEARING G.S.R. 727(E) VIDE ANNEXURE B, ISSUED BY THE RESPONDENT NO.1 HEREIN, AND NOTIFICATION BEARING NO. G.S.R. 739 (E) DATED 24.09.2015 VIDE ANNEXURE D, ISSUED BY RESPONDENT NO.1 & ETC.

WRIT PETITION NOS.103797 & 103977/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 15TH OCTOBER, 2014 BEARING G.S.R. 727(E) VIDE ANNEXURE C, ISSUED BY THE RESPONDENT NO.2 HEREIN, AND NOTIFICATION BEARING NO. G.S.R. 739 (E) DATED 24.09.2015 VIDE ANNEXURE E, ISSUED BY RESPONDENT NO.2, & ETC.

WRIT PETITION NOS.103873-874/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 15TH OCTOBER, 2014 BEARING G.S.R. 727(E) VIDE ANNEXURE C, ISSUED BY THE RESPONDENT NO.2 HEREIN, AND NOTIFICATION BEARING NO. G.S.R. 739 (E) DATED 24.09.2015 VIDE ANNEXURE E, ISSUED BY RESPONDENT NO.2, & ETC.

WRIT PETITION NOS.103875-876/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 15TH OCTOBER, 2014 BEARING G.S.R. 727(E) VIDE ANNEXURE C, ISSUED BY THE RESPONDENT NO.2 HEREIN, AND NOTIFICATION BEARING NO. G.S.R. 739 (E) DATED 24.09.2015 VIDE ANNEXURE E, ISSUED BY RESPONDENT NO.2, & ETC.

WRIT PETITION NOS.103877-878/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 15TH OCTOBER, 2014 BEARING G.S.R. 727(E) VIDE ANNEXURE C, ISSUED BY THE RESPONDENT NO.2 HEREIN, AND NOTIFICATION BEARING NO. G.S.R. 739 (E) DATED 24.09.2015 VIDE ANNEXURE E, ISSUED BY RESPONDENT NO.2, & ETC.

WRIT PETITION NOS.103970-971/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 15TH OCTOBER, 2014 BEARING G.S.R. 727(E) VIDE ANNEXURE C, ISSUED BY THE RESPONDENT NO.2 HEREIN, AND NOTIFICATION BEARING NO. G.S.R. 739 (E) DATED 24.09.2015 VIDE ANNEXURE E, ISSUED BY RESPONDENT NO.2, & ETC.

WRIT PETITION NOS.34184/2016 ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014 VIDE ANNEXURE-P2, AND NOTIFICATION DATED:24.09.2015 VIDE ANNEXURE-P4 ISSUED BY RESPONDENT NO.1, AS BEING ILLEGAL, INVALID, VOID, AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003, ULTRA VIRES ARTICLES 14, 19(1)(a) AND 19(1)(g) OF THE CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011 AND NOTIFICATION 1272/1962 ISSUED UNDER TRADEMARKS LAW & ETC.

WRIT PETITION NO.34185/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 15.10.2014 AND NOTIFICATION DATED 24.09.2015 & ETC.

WRIT PETITION NO.34185/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE SEIZURES OF THE GOODS AND THE SEIZURE ORDERS,

REPORTS AND PANCHANAMAS IN RELATION THERETO BEING EXHIBITS 'A', 'B' & 'C', HERETO, & ETC.

WRIT PETITION NO.34188/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE SEIZURES OF THE GOODS AND THE SEIZURE ORDERS, REPORTS AND PANCHANAMAS IN RELATION THERETO BEING EXHIBITS 'A', 'B' & 'C', HERETO, & ETC.

WRIT PETITION NO.34189/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:15.10.2014 VIDE EXHIBIT-A, AND NOTIFICATION DATED:24.09.2015 VIDE EXHIBIT-B ISSUED BY RESPONDENT NO.1, AS BEING ILLEGAL, INVALID, VOID, AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TABACCO PRODUCTS (PROHIBITION OF ADVERTISMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003, ULTRA VIRES ARTICLES 14, 19(1)(a) AND 19(1)(g) OF THE CONSTITUTION OF INDIA AND AS CONTRARY TO THE TRADEMARKS ACT, 1999, THE LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011 AND NOTIFICATION 1272/1962 ISSUED UNDER TRADEMARKS LAW & ETC.

WRIT PETITION NO.34190/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 15.10.2014 VIDE ANNEXURE-P1 AND NOTIFICATION DATED 24.09.2015 VIDE ANNEXURE-P2, & ETC.

WRIT PETITION NO.34191/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTIFICATION BEARING G.S.R.727 (E) DATED 15TH OCTOBER, 2014 AND NOTIFICATION BEARING G.S.R. 739(E) DT.24TH SEPTEMBER 2015 BEING UNREASONABLE, ARBITRARY AND IRRATIONAL, & ETC.

WRIT PETITION NO.34192/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTIFICATION BEARING G.S.R.727 (E) DATED 15TH OCTOBER, 2014 AND NOTIFICATION BEARING G.S.R. 739(E) DT.24TH SEPTEMBER 2015 BEING UNREASONABLE, ARBITRARY AND IRRATIONAL, & ETC.

WRIT PETITION NO.34193/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION BEARING G.S.R.727 (E) DATED 15TH OCTOBER, 2014 AND NOTIFICATION BEARING G.S.R. 739(E) DT.24TH

SEPTEMBER 2015 BEING UNREASONABLE, ARBITRARY AND IRRATIONAL & ETC.

WRIT PETITION NO.35716/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35717/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35718/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35719/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35720/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35721/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35722/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35723/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35724/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF

THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35725/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35726/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35727/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

WRIT PETITION NO.35728/2016 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULES 3, 4 & 5 AND SCHEDULE THERETO OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) RULES, 2008 AS AMENDED BY (AMENDMENT) RULES, 2014 IS ULTRA VIRES AS THE SAID PROVISIONS ARE VIOLATIVE OF ARTICLES 13, 14 & 19 AND THAT IT IS NOT SAVED BY ARTICLE 304 OF THE CONSTITUTION OF INDIA AND IS CONTRARY TO THE TRADE MARKS ACT, 1999 AND/OR THE LEGAL METROLOGY (PACKAGED COMMODITES) RULES, 2011, & ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.02.2017 COMING ON FOR 'PRONOUNCEMENT OF ORDER', THIS DAY, **B.S.PATIL J.**, MADE THE FOLLOWING:

ORDER

1. In all these writ petitions, common questions arise for consideration. Petitioners in these writ petitions have challenged the validity of the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008 (for short, 'COTP Rules, 2008') as amended by the Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2014 (for short, 'COTP Amendment Rules, 2014'). Indeed 2008 Rules (unamended) are also challenged in some of the writ petitions.

2. In furtherance of the purpose and object of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short, 'COTPA') and to prohibit

advertisement of, and to provide for regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products, COTPA has been enacted. The enactment provides for mandatory requirement to carry such specified warnings against the use of cigarettes and other tobacco products on packages of such products in such form and manner as may be prescribed by the rules made under the COTPA. Without such specified warnings including pictorial warnings, production, supply or distribution of cigarettes or any other tobacco products, is prohibited as per Section 7(1). Even carrying on of trade or commerce in cigarettes and other tobacco products is also prohibited, unless every package bears on its label, the specified warning as per Section 7(2). Similarly, import of cigarettes and other tobacco products for distribution, supply or for sale is also prohibited unless it carries such specified warning as per Section 7(3). The specified warning is required to be displayed on one of the largest panels of the package, in which the product is packed, as per Section 7(4).

3. The manner in which the specified warning shall be made is stipulated in Section 8. It requires that the same has to be

legible and prominent; conspicuous as to size and colour; and in such style or type of letter as specified in the rules made under the COTPA. The size of letters or figures or both used on such warnings vide Section 10, shall be as prescribed in the rules made under the COTPA.

4. Section 31 empowers the Central Government to make rules to carry out the provisions of COTPA, particularly to provide for the form and manner in which warning shall be given in respect of the products; the height of the letter or figure or both to be used in specified warning. Every rule made under the COTPA shall be laid before each house of the Parliament for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session, both houses agree for making any modification in the Rule or both houses agree that the rules shall not be made, then the rule will have the effect only as modified or be of no effect.

5. In exercise of the power under Section 31, the Central Government framed COTPA Rules, 2008. Rule 3 provided for the manner of labeling and packing. As per Rule 3(1)(a), the

'specified health warning' had to be exactly as specified in the Schedule to the Rules; specified health warning was required to cover at least 40% of the principal display area on one side of the largest panel.

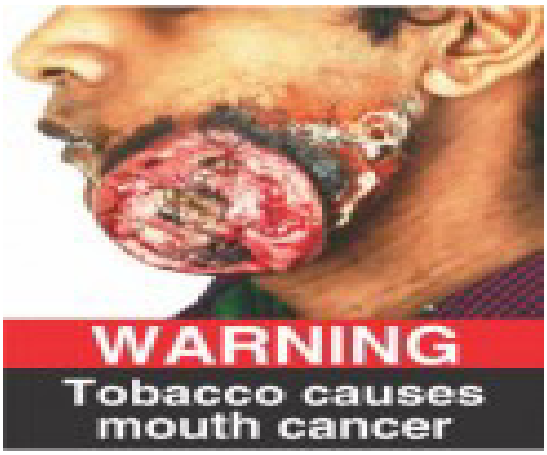
6. By way of amendment to COTPA Rules, 2008, COTPA Amendment Rules 2014 have been framed by the Central Government. As per the said amendment, Rule 3(1)(b) requires that the specified health warning on the package shall cover 85% of the principal display area of the package on the largest panels of both sides and insofar as cylindrical or conical type of package, the warning shall appear diametrically opposite to each other on two largest sides of faces covering 85% of each side; on both sides of display area 60% shall cover pictorial health warning and 25% shall cover textual health warning. Rule 3(1)(c) requires that none of the elements of the specified warning are severed, covered or hidden in any manner when the package is sealed or opened. Rule 3(1)(h) provides that every package containing the product shall contain the following particulars, namely (a) name of the product; (b) name and address of the manufacturer or importer or packer; (c) origin of the product (for import); (d) quantity of the product; (e) date of

manufacture; and (f) any other matter as may be required by the Central Government in accordance with the international practice.

7. In the Schedule appended to the Rules, in paragraph 1(i) dealing with the textual health warning, it is mandated that the word 'WARNING' shall appear in white font colour on a red background and the words 'SMOKING CAUSES THROAT CANCER' shall appear in white font colour on a black background. For smokeless form of tobacco products, the words 'WARNING' shall appear in white font colour on a red background and the words 'TOBACCO CAUSES MOUTH CANCER' shall appear in white font colour on a black background. As per paragraph 1(ii) of the Schedule, pertaining to pictorial health warning covering 60% of the principal display area the manner in which it has to be printed has been enumerated. In paragraph 2(a) of the Schedule, the specified health warning for smoking form of tobacco products – image (1) containing the following picture which shall be followed for a period of 12 months following its commencement is shown. The said picture is printed hereunder for better appreciation:

8. In paragraph 2(b) of the Schedule, image (2) to be printed in the specified health warning which shall come into effect after the end of 12 months whereunder image (1) was carried is specified and printed. The said picture is printed hereunder:

9. Paragraph 2(c) of the Schedule pertains to smokeless forms of tobacco products to be specified on every package for a period of 12 months following its commencement. The said picture is shown hereunder:



10. Paragraph 2(d) deals with image (2) to be printed as specified health warning after the expiry of 12 months. The same is shown hereunder:

11. Paragraph 3(1) of the Schedule deals with the size of the specified health warnings. It states that on each panel of the tobacco package, the size of the specified health warning shall

not be less than 3.5 cm (width) X 4 cm (height), so as to ensure that the warning is legible, prominent and conspicuous.

12. Paragraph 3(2) of the Schedule mandates that the size of all components of the specified health warning shall be increased proportionally according to increase of the package size to ensure that the warning covers 85% of the principal display area.

13. Thus Central Government issued notification amending COTP Rules increasing the extent of specified warning from 40% on one side of the largest panel to 85% of the principal area of the package on both sides along with other amendments noted above as per notification dated 15.10.2014. The Rules were to come into force from 01.04.2015. Several objections were raised to the amendment by members of Parliament as also the general public. The Rules were laid before the Parliament as required under Section 31 (3) of COTPA. In June 2015, the matter was referred to Parliamentary Committee on subordinate legislation. In December, 2014 and January, 2015, W.P.Nos.56789/2014 and 59587 and 59460/2014 were filed. In all these writ petitions, petitioners challenged the notification dated 15.10.2014 issued by the Ministry of Health and Family

Welfare, Government of India, notifying 2014 Amendment to COTP Rules as illegal, invalid and ultra vires the 2003 Act and as also the provisions of the Constitution of India. However, in W.P.No.4470/2015 filed on 03.02.2015, an additional prayer has been sought laying challenge to the COTPA as unconstitutional. But, during the course of arguments, by filing a memo, learned Counsel for petitioner has given up the challenge made to the validity of the provisions of COTPA.

14. The Parliamentary Committee on sub-ordinate legislation which undertook examination of the provisions of COTP Amendment Rules, 2014, presented its interim report on 16.03.2015 before the Lok Sabha. The Committee recommended that implementation of COTP Amendment Rules, 2014, may be kept in abeyance till the committee finalized the examination of the subject and arrived at appropriate conclusions and presented an objective report to the Parliament. In this report, the Committee opined that COTP Amendment Rules, 2014 would have a socio-economic impact on the livelihood of the workers associated with the tobacco industry and that it was imperative to address the apprehensions and views expressed by the stakeholders

including the Ministry of Labour and Employment, Ministry of Agriculture. The Committee felt that comprehensive examination of the COTP Amended Rules, 2014 was necessary before they were brought into effect.

15. The Central Government accepted the said recommendation contained in the interim report and issued a notification by way of Corrigendum to COTP Amendment Rules, 2014 to substitute sub-rule (2) of Rule 1 of the COTP Amendment Rules, 2014 providing for deferring the commencement of COTP Amended Rules, 2014 to such date as the Central Government may by notification in the Official Gazette appoint. This Corrigendum was issued on 26.03.2015. However, in W.P.No.8680/2015 (PIL) filed before the Rajasthan High Court, interim order was passed staying the operation of the Corrigendum dated 26.03.2015 which prevented implementation of COTP Amendment Rules, 2014. It is necessary to notice here that the said order dated 03.07.2015 was an exparte order. The Court, it appears, was not informed of the matter being seized before the Parliamentary Committee on subordinate legislation which was considering the views of various stakeholders, nor is there anything to show that the

interim report presented by the Parliamentary Committee recommending to keep in abeyance implementation of COTP Amendment Rules, 2014 was brought to the notice of the Court.

16. As the Central Government did not act in accordance with the interim order of stay and the interim direction issued by the Rajasthan High Court, contempt petition in CCC.No.800/2015 was filed on 21.07.2015 before the Rajasthan High Court against the Union of India for non-compliance of the interim order dated 03.07.2015. Notice was issued in the contempt petition and the matter was ordered to be connected with W.P.No.8680/2015 vide order dated 28.07.2015.

17. On 24.09.2015, the Central Government issued notification declaring that COTP Amendment Rules, 2014 shall be effective from 01.04.2016. By that time, on 15.03.2016 itself, the Committee on subordinate legislation had submitted its final report after considering the views, apprehensions and difficulties of all the stakeholders including various departments of Government of India, thereby recommending that the pictorial warnings to be printed on the packages could be 50% instead of 85%. However, as the Central Government

had already issued the notification dated 24.09.2015, the requirement of 85% pictorial warning to be printed on both sides of the largest panels became effective from 01.04.2016. As a result, the manufacturers, distributors, traders, tobacco growers and other affected persons filed these batch of writ petitions before various High Courts including before different Benches of High Court of Karnataka challenging the validity of COTP Amendment Rules, 2014.

18. The Apex Court as per order dated 04.05.2016 passed in Special Leave Petition (C) Nos.10119-10121/2016 and connected cases, has transferred all these cases from different High Courts with a direction that they shall be heard by the Karnataka High Court. The said order of the Apex Court reads as under:

> "Heard learned counsel appearing for the parties.
>
> Mr. Arvind P. Datar, learned senior counsel submits that the subject-matter of challenge in writ proceedings in which the impugned order has been passed pertains to the constitutional validity of the Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2014 (hereinafter referred to as the Rules) framed by the Government of

India and the same is pending before the Karnataka High Court.

Mr. Ranjit Kumar, learned Solicitor General has handed over a list of cases on the issue pending before various High Courts. It is seen from the list that most of the matters are pending before the Karnataka High Court and few of them are pending in Bombay, Gujarat and Delhi High Courts.

It has been contended before us by learned counsel appearing for the parties that all the matters which are pending before different High Courts be transferred to a particular High Court so that the matters can be heard and disposed of at a time.

In view of that, it is considered appropriate, at this stage, to transfer all the matters pending before the different High Courts to the Karnataka High Court.

We, therefore, transfer all matters pending before various High Courts, as referred to hereinabove, on the issue to the Karnataka High Court. We request the Hon'ble Chief Justice of the Karnataka High Court to constitute a Bench, which would dispose of the same within a period of six weeks from date. We further make it clear that the matters should be disposed of by the Principal Bench of the Karnataka High Court.

We have also been informed that the cases transferred include Public Interest Litigation petitions pending for implementation of the said Rules. In view

of that, we would also request the Chief Justice of the Karnataka High Court to decide whether the cases transferred hereby would be taken up by a Division Bench or a Single Bench in accordance with the Rules of the said High Court.

Stay, if any, already granted by any High Court shall not be given effect to till the cases are finally disposed of.

We make it clear that any other order passed by any High Court including the order passed by this Court dated 06.05.2009 on the Interlocutory Applications filed in Writ Petition (C) No.549/2008 with regard to the stay shall not stand in the way of the Karnataka High Court to decide the matter on merits.

The Secretary General of this Court is directed to send a copy of this order to the Registrar Generals of the concerned High Courts where similar matters are pending with a request to take necessary steps for sending the relevant records/documents to the Karnataka High Court within a period of two weeks from the date of receipt of copy of this order.

The Special Leave Petitions and the Writ Petitions stand disposed on the aforestated terms."

This is how all these matters have been heard together and are being disposed of by this common order.

19. **Background facts regarding the COTPA and the Rules**: The COTPA has been enacted by the Parliament for the purpose of prohibiting the advertisement and to provide for regulation of trade and commerce in the matter of production, supply and distribution of cigarettes and other tobacco products and for matters connected therewith or incidental thereto. Preamble to COTPA makes specific reference to Fourteenth Plenary meeting of the World Health Organization held on 15.06.1986, wherein the Member States were urged to implement the measures to ensure that effective protection was provided to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco. A reference is also made to the concerns expressed in the 43rd World Health Assembly meeting held on 17.05.1990 urging the Member States to consider in their tobacco control strategies plans for legislation and other effective measures to protect their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discouraging the use of tobacco and imposition of progressive restrictions and also to take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco.

20. In the light of the above, Parliament considered it expedient to enact a comprehensive law on tobacco in public interest and to protect public health. The Preamble further states that it was found expedient to prohibit consumption of cigarettes and other tobacco products which were injurious to health with a view to achieving improvement of public health in general as enjoined by Article 47 of the Constitution of India.

21. The Statement of Objects and Reasons appended to the enactment takes note of the fact that tobacco is universally regarded as one of the major public health hazards responsible directly or indirectly for an estimated eight lakh deaths annually in the country. There is also reference to the fact that for treatment of tobacco related diseases and the loss of productivity caused therein, it is costing the country almost Rs.13,500 crores annually, which more than offsets all the benefits accruing in the form of revenue and employment generated by tobacco industry. There is also reference to the need felt for a comprehensive legislation to prohibit advertising and regulation of production, supply and distribution of cigarettes and other tobacco products as recommended by the Parliamentary Committee on Subordinate Legislation (Tenth

Lok Sabha) and number of points suggested by the Committee on Subordinate Legislation which had been incorporated in the Bill. It is further stated that the proposed Bill intended to put total ban on advertising of cigarettes and other tobacco products and to prohibit sponsorship of sports and cultural events either directly or indirectly as well as sale of tobacco products to minors.

22. The enactment proposed to make Rules for the purpose of prescribing the contents of the specific warnings, the language in which they are to be displayed and also for displaying the quantities of nicotine and tar contents of the said products. The objective of the proposed enactment, as stated in the Statement of Objects and Reasons is to, 'to reduce the exposure of people to tobacco smoke (passive smoking) and to prevent the sale of tobacco products to minors and to protect them from becoming victims of misleading advertisements'. It is also clear from the statement of objects that the measures would result in a healthier life style and protection of the right to life enshrined in the Constitution, apart from implementing Article 47 of the Constitution which inter alia required the State to make endeavour to improve public health of the people.

23. Article 47 of the Constitution provides that 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 consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health.

24. Article 47 of the Constitution contains one of the Directive Principles of State Policy which is fundamental in the governance of the country and the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of intoxicating drinks and also certain drugs that are injurious to health. Therefore, it is the privilege of the State and it is for the State to decide to bring about prohibition with regard to liquor an intoxicating drink or with regard to certain drugs which are injurious to health. A citizen has, therefore, no fundamental right to trade or business in such drugs or intoxicating drinks that are regarded as *res extra commercium*.

25. Article 47 makes it clear that improvement of public health is one of the primary duties of the State. Thus, it is clear that when the Parliament enacted COTPA, it was discharging its primary duty as stated in Article 47 to improve public health of the people. It is necessary to notice that though in the Preamble to COTPA it has been stated that it was found expedient to prohibit the consumption of cigarettes and other tobacco products which were injurious to health with a view to achieving improvement in public health in general as enjoined by Article 47 of the Constitution, the provisions of COTPA are not enacted to prohibit consumption of cigarettes and other tobacco products. A careful scrutiny and analysis of various provisions of COTPA would make it very clear that COTPA is not enacted with a view to prohibit consumption of cigarettes and other tobacco products.

26. COTPA, no doubt, prohibits smoking in public place as per Section 4 which reads as under:

> "**4. Prohibition of smoking in a public place**.- No person shall smoke in any public place:
>
> Provided that in a hotel having thirty rooms or a restaurant having seating capacity of thirty

persons or more and in the airports, a separate provision for smoking area or space may be made."

27. Another provision which enacts prohibition is contained in Section 6, which reads as under:

> "**6. Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area**.- No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product –
>
> (a) to any person who is under eighteen years of age, and
>
> (b) in an area within a radius of one hundred yards of any educational institution."

28. Except these two provisions in the enactment, all other provisions pertain to prohibition of advertisement and regulation of trade and commerce, production, supply and distribution.

29. **Important provisions of COTPA which have bearing on the question**.

Section 2 contains a declaration as to expediency of control by the Union over the tobacco industry. It reads as under:

> "**2. Declaration as to expediency of control by the Union**.- It is hereby declared that it is expedient in the public interest that the Union should take under its control the tobacco industry.

30. Section 3 is the definition clause. It is useful to refer to Section 3(a) which defines the term 'advertisement'. It reads as under:

> "(a) 'advertisement' includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas."

31. Section 3(o) defines the term 'specified warning'. It reads as under:

> "(o) 'specified warning" means such warnings against the use of cigarettes or other tobacco products to be printed, painted or inscribed on packages of cigarettes or other tobacco products in such form and manner as may be prescribed by rule made under this Act."

32. Section 5 lays down Prohibition of advertisement of cigarettes and other tobacco products. It bars advertisement of cigarettes or any other products and also taking part in any such advertisement which directly or indirectly suggests or

promotes the use or consumption of cigarettes or any other tobacco products. Sub-clause (2) of Section 5 enacts a prohibition prohibiting display of any advertisement of cigarettes or any other tobacco product for any direct or indirect pecuniary benefit, or sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product, or distribute, cause to distribute or permit or authorize to distribute to the public any leaflet, hand-bill or document which contains such advertisement, or erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product. The only exception provided is,

(a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale.

33. Sub-clause (3) of Section 5 also prohibits promotion or any agreement to promote the use or consumption of cigarettes or other tobacco products or any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.

34. Section 7 enacts restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products. Broadly stated, this provision provides that no person shall produce, supply and distribute cigarettes which do not carry the specified warning and that the specified warning shall cover not less than one of the largest panels of the cigarettes. It also provides that nicotine and tar contents should not exceed the maximum permissible limit as prescribed and that these contents must be displayed on the package. The provision also makes it clear that the specified warning could include the pictorial warning as may be prescribed. Such specified warning shall be used even on imported cigarettes or tobacco products.

35. Section 8 deals with the manner in which specified warnings shall be made. It provides that the specific warning on any package shall be,

(a) legible and prominent;

(b) conspicuous as to size and colour;

(c) must be presented in such style or type of lettering boldly and clearly in distinct contrast to other letters or graphic material used on the package; it shall be printed, painted or inscribed on the package in a colour which contrasts conspicuously with the background of the package or its labels.

The manner in which a specified warning shall be printed, painted or inscribed on a package shall be so packed as may be specified in the Rules made under this Act. Section 8 further provides that every package containing cigarettes or other tobacco products shall be so packed as to ensure that the specified warning appearing thereon, on its label, is, before the package is opened, visible to the consumer.

36. Section 9 deals with the language in which the specified warning shall be expressed. Section 10 deals with the size of letters and figures. It reads as under:

"**10. Size of letters and figures**.- No specified warning or indication of nicotine and tar contents in

> cigarettes and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both used on such warning and indication is less than the height as may be prescribed by rules made under this Act."

37. Sections 12 & 13 provide for power of entry and search, and also power to seize. Section 14 provides for confiscation of package, in respect whereof, any provision of the Act has been or is being contravened. Section 15 provides an option to be given by the Court to the owner of the confiscated package to pay in lieu of confiscation, costs which shall be equal to the value of the goods confiscated. On such payment, the seized packages shall be returned to the person from whom they were seized with a condition that they shall be sold, supplied, etc., only after inscribing the specified warning on each such package. Section 16 makes it specific that confiscation of such packages shall not prevent imposition of any punishment to which the person affected is liable under the provisions of the Act or under any other law.

38. Section 20 provides for punishment for failure to give specified warning and nicotine and tar contents. It provides that producer or manufacturer of the products which do not

contain specific warning shall be punished with imprisonment which may extend to two years if it was a first conviction or with fine, which may extend to Rs.5,000/- or with both. If it is the second or subsequent conviction, the sentence of imprisonment may extend to five years and with fine which may extend to Rs.10,000/-. Section 20(2) also prescribes punishment for any person who sells or distributes cigarettes or tobacco products which do not contain specified warning, for a term which may extend to one year or with fine upto Rs.1,000/- or with both and for its second or subsequent conviction, the imprisonment may extend to two years and fine may extend to Rs.3,000/-.

39. Section 22 provides for punishment for advertisement of cigarettes and tobacco products. If anyone contravenes Section 5, he is liable for conviction or imprisonment for a term which may extend to two years or with fine upto Rs.1,000/-. If it is a case of second or subsequent conviction, imprisonment which may extend to five years and with fine which may extend to Rs.5,000/-.

40. Section 30 provides for power in favour of the Central Government by issuing notification to add any tobacco product

in the schedule, in respect whereof, advertisements are to be prohibited and its production, supply and distribution is required to be regulated under the Act.

41. Section 31 is important for the present purpose, it provides for power of the Central Government to make Rules. The Central Government has power to frame rules by issuing notification in the official gazette to carry out the provisions of the Act, and in particular, to provide for the following matters, viz.,

> (a) specify the form and manner in which warning shall be given in respect of cigarettes or other tobacco products under clause (o) of section 3;
>
> (b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7;
>
> (c) specify the manner in which the specified warning shall be inscribed on each package of cigarettes or other tobacco products or its label under sub-section (2) of section 8;
>
> (d) specify the height of the letter or figure or both to be used in specified warning or to

indicate the nicotine and tar contents in cigarettes or other tobacco products under section 10;

(e) provide for the manner in which entry into and search of any premises is to be conducted and the manner in which the seizure of any package of cigarettes or other tobacco products shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody any package of cigarettes or other tobacco products has been seized;

(f) provide for any other matter which is required to be, or may be, prescribed.

42. Sub-clause (3) of Section 31 requires that every rule made under the Act and every notification issued under Section 30 to be laid before each house of Parliament while it is session for a total period of 30 days. It provides that if both the houses agree in making any modification in the rule or notification, or if both the houses agree that the rule or notification shall not be made, then it will have effect with such modification or shall be of no effect, as the case may be. It is thus clear that Section 31 provides for power in favour of the Central Government to make Rules.

43. **COTP RULES**: Pursuant to the provision contained in Section 31, COTP Rules, 2008, were framed by the Central Government. These Rules were brought into force with effect from 31.05.2009. They required all tobacco product packages to carry a specified health warning (consisting of pictorial and textual) covering 40% of the front panel of the packages.

44. By way of amendment to these Rules, COTP Amendment Rules, 2014 were notified on 15.10.2014 to come into force with effect from 01.04.2015. The amended rules proposed, inter alia, to increase the size of the specified warning from 40% of the front panel of tobacco product packages to cover 85% of both sides of the packets. The material changes in the new Rules compared to 2008 Rules can be understood by the comparative chart given below.

Sl. No.	2008 Labelling Rules	2014 Amendment Rules
1	Notified on 28.11.2008 and came into force on 31.05.2009	Notified on 15.10.2014 and came into force on 01.04.2015.
2	Rule 3(1)(b) – Specified Health Warning shall occupy at least 40% of the principal display area of the front panel of the pack and shall be positioned parallel to the top edge of the package and in the same direction as the information	Rule 3(1)(b) – Specified Health Warning shall cover at least 85% of the principal display area of the package of which 60% shall cover pictorial health warning and 25% shall cover textual health warning and shall be

	on the principal display area: Provided that for conical packs, the widest end of the pack shall be considered as the top edge of the pack.	positioned on the top edge of the package and in the same direction as the information on the principal display area: Provided that for conical package, the widest end of the package shall be considered as the top edge of the package: Provided further that on box, carton and pouch type of package, the specified health warning shall appear on both sides of the package, on the largest panels and for cylindrical and conical type of package, the specified health warning shall appear diametrically opposite to each other on two largest sides or faces of the package and the specified health warning shall cover 85% of each side or face of the principal display area of the package of which 60% shall cover pictorial health warning and 25% shall cover textual health warning.
3	Rule 3(1)(d) – no messages that directly or indirectly promote a specific tobacco brand or tobacco usage in general are inscribed on the tobacco product package.	Rule 3(1)(d) – no messages, images or pictures that directly or indirectly promote the use or consumption of a specific tobacco brand or tobacco usage in general or any matter or statement which is inconsistent with, or

		detracts from the specified health warning are inscribed on the tobacco product package.
4	Rule 3(1)(f) – the specified warnings shall be inscribed in the language/s used on the pack: Provided that where more than one language/s is used on the pack the specified warning shall appear in two languages, one in which the brand name appears and the other in any other language used on the pack.	Rule 3(1)(f) – the textual warning shall be inscribed in the language used on the package: Provided that where the language used on a package or on its label is – (a) English, the health warning shall be expressed in English; (b) English and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears; (c) Hindi and other Indian languages, the health warning shall be expressed in Hindi and any one of the Indian language in which the brand name appears; (d) any Indian language, the health warning shall be expressed in such Indian language; (e) Indian languages, the health warning shall be expressed in any two Indian languages in which the brand name appears;

		(f) foreign language, the health warning shall be expressed in English; (g) foreign and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears: Provided further that the textual health warning shall appear in not more than two languages used on the package: Provided also that the textual health warning in one language shall be displayed on one side or face of principal display area and the textual health warning in the other language shall be displayed on the other side or face of principal display area of the package;
5	Rule 3(1)(h) – xxxx	Rule 3(1)(h) – every package of cigarette or any other tobacco product shall contain the following particulars, namely:- (a) Name of the product; (b) Name and address of the manufacturer or importer or packer; (c) Origin of the product (for

		import); (d) Quantity of the product; (e) Date of manufacture; and (f) Any other matter as may be required by the Central Government in accordance with the international practice.
6	Rule 5 – Rotation of specified health warnings.- The specified health warning on tobacco packs shall be rotated every two years from the date of notification of the rules or earlier, as the case may be, as specified by the Central Government.	Rule 5 – Rotation of specified health warning.- (1) The specified health warning on tobacco product package shall be rotated every 24 months from the date of commencement of these Rules or before the period of rotation as may be specified by the Central Government by notification. (2) During the rotation period, there shall be two images of specified health warning for both smoking and smokeless form of tobacco products and each of the images of the specified health warning shall appear consecutively on the package with an interregnum period of 12 months. (3) At the end of 12 months period, the first image of the specified health warning shall be replaced

		with the second image of specified health warning, which shall appear for the next 12 months. (4) At the end of each 12 months of the rotation period, the Central Government may allow the distributors, retailers and importers of cigarettes and other tobacco products a grace period, not exceeding two months to clear the old stock of package of tobacco products bearing the warning specified for the expired period of 12 months of the rotation period. (5) The distributors, retailers and importers of cigarettes and other tobacco products shall not distribute or sell any package having the specified health warning of the expired period of 12 months after the grace period of 2 months.

45. Thus, the 2014 Amendment Rules have introduced certain changes. Rule 3 mandates that specified health warning has to be exactly as specified in the schedule to the Rules and shall cover atleast 85% of the principal display area of the package, of which, 60% shall cover pictorial health warning and

25% shall cover textual health warning and that it shall be positioned on the top edge of the package and in the same direction as the information on the principal display area. It also provides that no tobacco product package or label shall contain any information that is false, misleading or deceptive regarding health effects and health hazards including use of words or descriptors such as 'light, ultra light, mild, ultra mild, low tar, slim, safer' or similar words or descriptors.

46. Rule 5 provides for rotation of specified health warning, in as much as, the specified health warning on tobacco product package shall be rotated every 24 months from the date of commencement of the Rules or before the period of rotation as may be specified by the Central Government. During the rotation period, there shall be two images of specified health warning for both smoking and smokeless form of tobacco products and each of them shall appear consecutively on the package with an interregnum period of 12 months. At the end of 12 months, the first image shall be replaced with the second image which shall appear for the next 12 months. At the end of each 12 months of rotation, the Central Government may allow a grace period upto and not exceeding two months to clear the

old stock. Schedule to the Rule as referred to in Rule 3 mandating that every package of cigarette or any other tobacco product shall have the specified health warning exactly as specified in the schedule to these Rules is also required to be examined. The schedule consists of clauses 1 to 3 with the specified pictorial images which have been referred earlier and that are mandatorily required to be published in colour along with textual warning.

47. Challenging the legality and validity of the Rules, several contentions have been raised by learned Senior Counsel Mr. Vijay Shankar, Mr. Sajan Poovayya and Mr. K.G.Raghavan. The other learned counsel Mr. Rajeev Kumar Jain, Mr. Kohli, Mr. Sanjai Kumar Pathak and Mr. Datar, have also addressed arguments for other petitioners. Learned Assistant Solicitor General, Mr.Krishna Dixit, has appeared for the Central Government, learned Senior Counsel Mr. B.V.Acharya, learned Counsel Mr. K.V.Dhananjay, Smt. Jayna Kothari and Mr. Ravishankar.S.S., have appeared for the interveners viz., Cancer Patients Aid Association, Consortium for Tobacco Free Karnataka, Citizens Forum for Justice, Health for Millions, to assist the Court.

48. Learned Senior Counsel Mr. Vijay Shankar has raised two fold contentions which go to the root of the matter regarding the very authority of the Health Ministry, Government of India, to frame these Rules and also regarding manifest arbitrariness and unreasonableness of the Rules. In this regard, he has urged the following contentions:

(i) the impugned Rules are not made and brought into force in accordance with the provisions of the Constitution of India, in particular, Article 77 of the Constitution of India;

(ii) the impugned Rules are manifestly arbitrary as the procedure followed for making and brining the Rules into force is opposed to the legislative consultative policy of the Central Government and Article 118 of the Constitution and that the Rules are vitiated for non-application of mind, bias and legal malice.

Regarding violation of Article 77 (1) and (2) of the Constitution of India

49. Elaborating his contentions on point No.1 above, learned Senior Counsel Mr. Vijay Shankar has urged that the notification dated 24.09.2015 notifying COTP Amendment Rules, 2014, does not conform to Article 77, in as much as, the

same has not been expressed in the name of the President. It is submitted by him that as per sub-clause (8) of Section 3 of the General Clauses Act, 1897, Central Government means the President. Section 31(1) of the COTPA states that the Central Government may by notification in the official gazette make Rules. The term 'Central Government' necessarily refers to the President and the executive action of the Government of India has to be expressed in the name of the President as per Article 77(1) and all orders and other instruments made in the name of the President shall be authenticated in such manner as may be specified in the Rules. It is his submission that neither the Rules are expressed to have been made in the name of the President, nor the provisions regarding authentication of the said Rules as specified in the Rules of Business have been followed.

50. The contention of learned Assistant Solicitor General Mr. Dixit is that as per the judgment of the Apex Court in the case of **ASHOK LANKA & ANOTHER VS RISHI DIXIT & OTHERS – (2005) 5 SCC 598**, particularly in the light of the observations made in paragraph 57, the rule making power of the executive is not an executive power but a legislative power, and therefore,

Article 77 (1) and (2) have no application for exercise of rule making power. In so far as non-publication of the Rules in the name of the President is concerned, learned Assistant Solicitor General has vehemently urged that non-publication of the Rules in the name of the President does not result in violation of Article 77(1) & (2) of the Constitution. In this regard, Mr. Dixit has placed reliance on the judgment in the case of **M/S. SABLE WAGHIRE & COMPANY VS THE UNION OF INDIA & OTHERS – (1975) 1 SCC 763**. He invites the attention of the Court to paragraph 20 of the said judgment to contend that merely because notification was not published in the name of the President, it will not get vitiated. He further urges that authentication by the Joint Secretary in the Health Department is a valid authentication.

51. On examination of the respective contentions in this connection, it follows that as held by the Apex Court in M/s. Sable Waghire & Company's case, merely because notification publishing the Amendment Rules 2014 was not issued in the name of the President but was issued by the Joint Secretary, it cannot be said that the notification gets vitiated. The notification publishing the Rules does not contain an executive

order but it is a piece of subordinate legislation. As long as it was duly published in the Gazette of India under the signature of the Joint Secretary who was authorized for the purpose, it cannot be said that sub-clause (1) or sub-clause (2) of Article 77 have been contravened.

Regarding violation of Rules framed under Article 77 (3) of the Constitution of India

52. The next contention of Mr. Vijayshankar is based on Article 77(3) of the Constitution of India. He refers to Government of India (Allocation of Business) Rules, 1961 (for short, 'AOB Rules') and the Government of India (Transaction of Business) Rules, 1961 (for short 'TOB Rules'). These Rules are framed for the convenient transaction of business of the Central Government in accordance with the provisions contained in Article 77(3) of the Constitution of India. As per Rule 2 read with Rule 3 of AOB Rules, the legislative business of the Government of India has been allocated to different Ministries to empower them to act in the name of the Central Government. The subject matters allocated to different Ministries are set out in the Second Schedule to AOB Rules. It is urged that only upon allocation of the matter to the Ministry, can that Ministry

exercise the power of the Central Government in relation to that subject matter.

53. The contention of Mr.Vijayshankar is that 'tobacco' or 'tobacco legislation' is not allocated to Health Ministry, therefore, the Rule making power under Section 31 of COTPA could not have been exercised by the Health Ministry. He points out that Health Ministry has been specifically allocated other legislations such as Food Safety Standards Act, 2006 and Prevention of Food Adulteration Act, 1954 and no item relating to tobacco has been allocated till date to the Health Ministry under the AOB Rules. He also points out from these Rules that production, distribution (for domestic consumption and exports) and development of plantation crops, tea, coffee, rubber, spices, tobacco and cashew, and Tobacco Board has been allocated to the Ministry of Commerce and Industry as per item Nos.8, 10 (d) of AOB Rules. These AOB Rules are reviewed from time to time for proposed changes. Amendments to the AOB Rules are notified by the President; the Health Ministry had indeed made a proposal to include 'tobacco control programme' and 'tobacco legislation' as new items by way of amendment to AOB Rules; this proposal of the Health Ministry

was not accepted, and therefore, tobacco legislation has not been allocated to the Health Ministry. It is, therefore, urged that the subject of regulation of tobacco products including warnings to be carried on packages concerned various Ministries like commerce, industry, agriculture, labour and employment and it was not the exclusive domain of the Health Ministry.

54. In this connection, Rule 4(1) of the TOB Rules is emphasized to contend that when the subject matter concerns more than one department, no decision could be taken or order issued until all such departments had concurred; failing such concurrence, the decision thereon has to be taken by or under the authority of the cabinet. Explanation to Rule 4 of TOB Rules provides that every case in which a decision, if taken in one department, is likely to affect the transaction of business allocated to another department, it shall be deemed to be a case where the subject indeed concerned more than one department.

55. In the above background, it is contended that Health Ministry, without consulting other Ministries, had unilaterally framed 2006 Rules prescribing warnings on tobacco product packages; the Union Cabinet intervened and empowered a

group of Ministers to decide the subject matter of warnings on tobacco product packages and it is the said empowered group of Ministers who decided with regard to the warnings on tobacco packages: it was only thereafter, that COTP Rules, 2008 providing for 40% warning on the front panel of the tobacco product packages was implemented with effect from 31.05.2005. In this regard, reliance has been placed on the terms of reference dated 17.05.2007 to the Cabinet constituted empowered group of Ministers. It is thus urged from the above that even as per the understanding of the Central Government, the issue of prescribing warnings on tobacco packages concerned various Ministries and not the Health Ministry alone.

56. Learned Assistant Solicitor General Mr. Krishna Dixit has made piquant effort to counter the arguments of Mr. Vijayshankar. He has also urged that the subject matter falls within the purview of Health Department. It is contended by him that 'International Health Regulation' and WHO are the subjects mentioned under the purview of Health Department as per AOB Rules, hence, it is the Health Ministry which has the power to make Rules. He has placed reliance on the judgment in the case of **M.S.M.SHARMA Vs DR.SHREE KRISHNA SINHA**

AND OTHERS – AIR 1960 SC 1186 to contend that irregularity of procedure in the legislature cannot be the subject matter of legal scrutiny as it has the immunity from legal proceedings. In the aforesaid judgment, it has been laid down that validity of proceedings inside the legislature of the State cannot be called in question on the allegation that procedure laid down by law had not been followed; no court can go into this question which is within the special jurisdiction of the legislature itself, which has the power to conduct its own business.

57. It is apparent from the pleadings, contentions urged by the respective parties with regard to this aspect and indeed there is no dispute regarding the factual aspect that the Health Ministry has prescribed new warnings on the tobacco product packages by bringing into force the COTP Amendment Rules, 2014. Other Ministries concerned were not consulted and the matter did not fall for consideration by the Cabinet. The question, therefore is,

(I) whether tobacco control and tobacco legislation is not allocated to Health Ministry or for that matter to any particular Ministry as per Allocation of Business Rules?

(II) what is the effect of unilateral action of the Health Ministry in framing and notifying the 2014 Rules without following the Allocation of Business Rules?

58. **Questions (I) & (II)**: Both these aspects are considered together for the sake of convenience. In Convenience Compilation Volume-III produced by the petitioner in W.P.No.4470/2015, petitioner has produced the Government of India (Allocation of Business) Rules, 1961, as amended upto May 24, 2016 and Government of India (Transaction of Business) Rules, 1961, as amended upto May 6, 2016. Petitioner has also produced Review of Allocation of Business Rules, 2010.

59. Rule 2 of AOB Rules reads as under:

> "2. Allocation of Business – The business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to these rules (all of which are hereinafter referred to as "departments")."

60. Rule 3 of AOB Rules deals with Distribution of Subjects. Sub-rule (1) of Rule 3 states that distribution of subjects among the departments shall be as specified in the Second Schedule to

these Rules. The Second Schedule deals with Distribution of Subjects among the Departments (Vibhag). It starts with Department of Agriculture, Cooperation and Farmers Welfare. 'Tobacco Control and Legislation' is not included in the Department of Agriculture. The next concerned Ministry viz., Ministry of Commerce and Industry is allocated with production, distribution (for domestic consumption and exports) and development of plantation crops, tea, coffee, rubber, spices, tobacco and cashew at Sl. No.8 in the business allocated to this department. At Sl. No.10(e) Tobacco Board is mentioned. It is thus clear that Tobacco Control and Tobacco Legislation is not mentioned even under the Ministry of Commerce and Industry though tobacco and tobacco board fall within its ambit. In respect of the Ministry of Health and Family Welfare/Department of Health and Family Welfare, it is mentioned at Sl. No.2 as under:

> "2. All matters relating to the following institutions-
>
> (a) …
>
> (b) …
>
> (c) …
>
> (d) …
>
> (e) …

(f) …

(g) …

(h) …

(i) …

(j) …

(k) International Health Regulations.

(l) World Health Organization (WHO).

61. In the case of Ministry of Labour and Employment also, there is no mention regarding tobacco control and tobacco legislation.

62. In exercise of the powers conferred by Clause (3) of Article 77 of the Constitution, the President made certain Rules to amend the AOB Rules, 1961. This notification is produced at page 178 of Convenience Compilation Volume-III filed in W.P.No.4470/2015. Even in this amendment, though certain alterations are made in the Second Schedule with regard to certain Ministries and Departments, so far as the subject pertaining to Tobacco and Tobacco Control Legislation is concerned, no change is made. In addition, it has to be pointed out that Health and Family Welfare Ministry sent a proposal to include new entries as subject matter falling within its purview

which included tobacco control programme and tobacco legislation. This is evident from the proposal made by the Health Ministry. But, no change in the existing AOB Rules was approved or accepted. Petitioner has produced the extract of the proposal made for inclusion of these two subjects asserting that the same has not been accepted. The accuracy, correctness and the assertions made with regard to the subject matters allocated in favour of different departments as adverted to herein above is not challenged by the Central Government. Mr. Dixit, has however contended that the subject tobacco legislation falls within the ambit of the subject matter "World Health Organization (WHO) and International Health Regulations".

63. At the outset, it is apparent and very clear that tobacco legislation and tobacco control programme is not included in the subjects allocated to Health Department. Indeed, it is not included under any of the departments. In such circumstances, the TOB Rules 1961, which are framed by the President of India in exercise of the power under Clause (3) of Article 77 of the Constitution of India will come into operation. Rules 3 & 4(1) are relevant for our purpose. They are extracted hereunder:

"**3. Disposal of Business by Ministries.-** Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge.

4. Inter-Departmental Consultations.- (1) When the subject of a case concerns more than one department, no decision be taken or order issued until all such departments have concurred, or, failing such concurrence, a decision thereon has been taken by or under the authority of the Cabinet.

Explanation- Every case in which a decision, if taken in one Department, is likely to affect the transaction of business allotted to another department, shall be deemed to be a case the subject of which concerns more than one department." *(emphasis supplied)*

64. It is, therefore, clear that in terms of Rule 4 of TOB Rules, as the subject pertaining to tobacco control and tobacco legislation is not allotted to Health Department and as the subject concerns more than one department, in as much as, the Department of Commerce and Industry, Department of

Labour and Employment, and Department of Agriculture have their stake in the matter which is indeed apparent from the claims made by them before the Committee for Subordinate legislation and which in fact was the reason for constituting empowered group of ministers while framing 2008 Rules, no decision could have been taken or order issued framing the impugned Amendment Rules until all such departments had concurred. Failing such concurrence, a decision was required to be taken by or under the authority of the cabinet. In the instant case, it is thus clear that though tobacco control and tobacco legislation was not allocated to the Health Ministry and although rival departments had divergent views expressed in the matter pertaining to the nature and quantum of specified health warning, the Health Department has unilaterally finalized the Rules.

65. That the subject matter tobacco control and tobacco legislation did not fall within the subjects allocated to Health Department and that it indeed affected the interest of other departments like Labour and Employment, Agriculture and Industry and Commerce, becomes evident from the fact that as rightly pointed out by Mr. Vijay Shankar, while framing the

Labeling Rules at the earliest point of time, because of lack of unanimity in the various departments, cabinet constituted empowered group of ministers. The empowered group of ministers selected images which were to be published requiring 40% of the front panel. As a result, 2008 Rules were framed incorporating the said suggestions. These Rules held the field for nearly six years. But, 2014 Amendment Rules were unilaterally framed by the Health Ministry without consulting any other ministry which was concerned with the matter, nor the matter was placed before the cabinet.

66. The assertion of learned Assistant Solicitor General Sri Krishna Dixit is that the subject falls within the ambit of 'WHO' or/and 'International Health Regulations' over which health department has got jurisdiction. It has to be stated that such an inference is impermissible. As the subject pertains to Tobacco legislation, in the absence of any mention made regarding this subject in the subjects allocated to Health Department, it is not permissible to make such presumptions. Even assuming that the subject falls under WHO or International Health Regulations, as long as the subject affected other departments, consultation with them was necessary.

67. The subject 'International Health Regulations' cannot be construed to include Regulations or Rules framed under the delegated power of Domestic Law so as to operate within the Territory of India. COTPA Rules 2008 are framed in exercise of the power conferred by sub-section (1) of Section 7, sub-section (2) of Section 8, Sections 10 & 31 of the Cigarettes and Other Tobacco Products, supply, and distribution Act, 2003. These Rules nowhere make any reference to any International Health Regulations. There is no material to show that they have to be treated as part of International Health Regulations. None of the provisions under Sections 7, 8, 10 & 31 of the 2003 Act make any reference to any such International Health Regulations. Merely because in the preamble to the COTPA 2003 reference is made to Resolution passed by the 39th World Assembly dated 15.05.1986 and 43rd World Health Assembly urging the Member States of WHO to implement the measures for effective protection to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco and also to discourage the use of tobacco and impose progressive restrictions on advertising, promoting and sponsoring tobacco, it cannot be

said that the COTPA Rules framed partake the characteristics of International Health Regulations or fall within the ambit of WHO. Similarly, the impugned 2014 amendment made to the 2008 Rules do not contain any such reference to categorize them as international regulations. The 2008 Regulations and 2014 Regulations are domestic health regulations and are not international health regulations.

68. By a process of judicial interpretation, the scope and ambit of expressions 'International Health Regulations' & 'WHO' cannot be amplified to include Regulations/Rules made under COTPA. A careful perusal of the nature of the subjects which are enumerated as subjects falling within the scope of Department of Health and other departments including the Department of Industry and Commerce clearly show that such amplification of the subjects by a process of inference is neither permissible nor warranted in the present case.

69. The question is whether the departments concerned were consulted and not as to who prepared and published the rules. 2008 Rules were the result of consultation of concerned departments by the Government. The object and purpose of COTPA as expressly declared and as is discernible from the

various provisions including Section 7 thereof is to regulate the Trade and Commerce and production, supply and distribution of cigarette and other tobacco products. Cigarette and other tobacco products are the only significant trading commodities produced from Tobacco. But for these products large network of growing tobacco, manufacturing different tobacco products out of the crop grown and trading in such products could not have been established. There is complete interdependence between growing tobacco by the agriculturists, manufacture of cigarettes and other products and supply and distribution by trading in them. When Rules are framed imposing several restrictions on the tobacco products in manufacturing, trading, supplying and distributing them including by way of treating the said products as contraband products if rotation of pictorials textual warnings were not adhered to, it cannot be said that such restrictions placed on health grounds by the Health Department will have no consequence or concern for tobacco cultivation falling under Department of Agriculture or Trade and Industry in tobacco falling under the Department of Industry and Commerce or for that matter on lakhs of labourers engaged in the beedi manufacturing industry. Therefore, even if the subject matter fell within the ambit of a particular department say for example,

Department of Industries and Commerce or Department of Health, etc., the regulations framed will have adverse effect on other departments because of the interconnection of the matter over several subjects. It is one thing to say that a subject comes under a particular department but entirely another to say whether rules framed on the subject affect other departments or other subjects which fall under various departments for the purpose of consulting them. If the pictorial and textual warnings prescribed in the Rules to cover 85% of the front and back panels of the package and the rule regarding rotation prescribed rendering a legally manufactured product an illegal commodity for trade on the expiry of the grace period could be successfully attacked as violative of fundamental rights of the manufacturers, producers, suppliers and distributors of tobacco products, it is difficult to hold that such offending rules framed by Health Department do not concern the Department of Commerce and Industry under which tobacco industry, trade in these products and also the Tobacco Board established to protect the interest of tobacco growers, curers and importers come. Merely because the rules are framed to protect public health, it cannot be said that other affected interests need not be consulted. Such an interpretation will frustrate the very

object behind Rule 4. Plain meaning of Rule 4 does not permit such an interpretation.

70. Rule 7 of TOB throws considerable light even as regards the mandatory nature of compliance of the requirement. Indeed, while framing 2008 Rules, because of the difference of opinion between different departments, the matter was referred to GOM constituted by the cabinet. The 2008 Rules were finalized only after consulting the affected and interested persons represented by different departments. Inspite of the past experience and the procedure followed while framing the very Rules in 2008, the Health Department has consciously chosen to bypass the said process which was well recognized and followed earlier. Therefore, similar consultation was a must while effecting amendment to the very Rules of 2008 that too when it was proposed to impose greater rigors and restrictions in the form of prescribing 85% of specified warnings on both the larger panels of the package as against 40% on only one side of the package that was agreed while framing 2008 Rules after due consultation of the concerned departments which represented the affected interests.

71. As regards the effect of unilateral action of the Health Ministry in framing and notifying the 2014 Amendment Rules without following AOB Rules, the matter is fully covered by the decisions of the Apex Court. In the judgment in **MRF LIMITED Vs. MANOHAR PARRIKAR & OTHERS – (2010) 11 SCC 374**, the appellant had raised an issue with regard to nature of business rules framed by the Government of Goa, i.e., whether the Rules were directory or mandatory. It was contended before the High Court that the rules of business of the State of Goa were directory and not mandatory and failure to comply with such rules would not nullify the decision taken by the State Government. This argument was advanced based on the decision in **DATTATRAYA MORESHWAR PANGARKAR VS. STATE OF BOMBAY - AIR 1952 SC 181 (see para 42 of the judgment)**. In order to appreciate this contention, the Apex Court extracted Article 166 of the Constitution of India in paragraph 65 of the said judgment. Article 166 which is similar to Article 77 is again referred to in paragraph 66 & 67 of the said judgment. In paragraph 72 of the said judgment, the Apex Court has observed as under:

> "72. The High Court has observed, that the Rules of Business are framed in such a

manner that the mandate of the provisions of Articles 154, 163 and 166 of the Constitution are fulfilled. Therefore, if it is held that the non-compliance with these Rules does not vitiate the decisions taken by an individual Minister concerned alone, the result would be disastrous. In a democratic set-up the decision of the State Government must reflect the collective wisdom of the Council of Ministers or at least that of the Chief Minister who heads the Council. The fact that the decisions taken by the Minister alone were acted upon by issuance of notification will not render them decisions of the State Government even if the State Government choose to remain silent for a sufficient period of time or the Secretary concerned to the State Government did not take any action under Rule 46 of the Business Rules. If every decision of an individual Minister taken in breach of the Rules are treated to be those of the State Government within the meaning of Article 154 of the Constitution, the result would be chaotic. The Chief Minister would remain a mere figure head and every Minister will be free to act on his own by keeping the Business Rules at bay. Further, it would make it impossible to discharge the constitutional responsibility of the Chief Minister of advising the Governor under Article 163. Therefore, it is difficult to accept the contentions

of the appellants that the Business Rules are directory."

72. In paragraph 73, the Apex Court while agreeing with the view taken by the Bombay High Court and rejecting the contentions urged by the appellant before it, observed that business Rules 3, 6, 7 & 9 of the State Government were mandatory and not directory and any decision taken by any individual Ministry in violation of the said business Rules cannot be termed as the decision of the State Government. In this regard, the Apex Court has referred to the judgments in the cases of **K.K.BHALLA Vs. STATE OF M.P. – (2006) 3 SCC 581**; **STATE OF U.P. Vs. NEERAJ AWASTHI – (2006) 1 SCC 667**. The Court also held that the decision of the Constitution Bench in **R.CHITRALEKHA Vs. STATE OF MYSORE – AIR 1964 SC 1823** had been misinterpreted, wherein it was held that the fact that an order which was not expressed in the name of the Governor in terms of Article 166 (1) & (2), could not vitiate the same as the provisions of Article 166 were only directory and not mandatory in character, inasmuch as, the context clearly showed that the observation of the Apex Court in Chitralekha's case referred only to clauses (1) & (2) of Article 166 and did not

refer to clause (3) which was not under consideration at all. In paragraph 91, the Apex Court has observed as under:

> "91. The Rules of Business framed under Article 166(3) of the Constitution are for convenient transaction of the business of the Government and the said business has to be transacted in a just and fit manner in keeping with the said Business Rules and as per the requirement of Article 154 of the Constitution. Therefore, if the Council of Ministers or the Chief Minister has not been a party to a decision taken by an individual Minister, that decision cannot be the decision of the State Governemnt and it would be non est and void ab initio. This conclusion draws support from the judgment of this Court in Haridwar Singh v Bagun Sambrui. This Court in the said case was dealing with the Business Rules of the State of Bihar framed under Article 166(3) of the Constitution of India and the observations of this Court on the issue apply to the case on hand in all force. This Court observed: (SCC pp. 895-96, paras 14-16)
>
> > "14. Where a prescription relates to performance of a public duty and to invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, such prescription is generally understood as mere instruction for the guidance of those upon whom the duty is imposed. ...

> 15. Where however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right or authority. ...
>
> 16. Further, Rule 10(2) makes it clear that where prior consultation with the Finance Department is required for a proposal, and the Department on consultation, does not agree to the proposal, the Department originating the proposal can take no further action on the proposal. The Cabinet alone would be competent to take a decision. When we see that the disagreement of the Finance Department with a proposal on consultation, deprives the Department originating the proposal of the power to take further action on it, the only conclusion possible is that prior consultation is an essential prerequisite to the exercise of the power."

73. Again in paragraph 108, the Apex Court has observed as under:

> "108. The appellants contended before this Court that another Division Bench of the High Court in its earlier judgment of 21.1.1999 had held that the Notification dated 1.8.1996 was clarificatory and that it did not create any extra financial liability on the

> State Government requiring approval of the Cabinet in compliance with the Business Rules before it was brought into force. In our opinion the said notification cannot be treated as mere clarificatory. It is a notification issued purportedly in terms of a government decision. It was a decision finalized at the level of the Minister of Power alone and was taken in violation of the Rules of Business framed under Article 166(3) of the Constitution of India. The decision cannot be called a government decision as understood under Article 154 of the Constitution, though it may satisfy the requirements of authentication. Nevertheless, mere authentication as required under Article 166(2) of the Constitution did not make it a government decision in law nor would it validate a decision which is void ab initio. Thej validity of the notification will have to be tested with reference to the constitutional provisions and the Business Rules and not by their form or substance. Therefore, this contention of the appellants is liable to be rejected."

74. Tobacco or tobacco legislation has not been allocated to the Health Ministry. Therefore, the rule making power under Section 31 of COTPA could not have been exercised by the Health Ministry unilaterally. While the Health Ministry has been specifically allotted other legislation such as Food & Safety Standards Act and Prevention of Food Adulteration Act, no item relating to tobacco has been allocated to the Health Ministry

under the AOB Rules. The subject matter of production, distribution (for domestic consumption and exports) and development of plantation crops, tea, coffee, rubber, spices, tobacco and cashew and Tobacco Board have been allocated to the Ministry of Commerce and Industry as can be seen from item Nos.8, 10(d) of the AOB Rules. The subject World Health Organization is allocated to the Health Ministry. The proposal made by the Health Ministry to include 'Tobacco Control Programme' and 'Tobacco Legislation' as new items by way of review of AOB Rules was not accepted. It is also clear that tobacco legislation is not included within the ambit of Commerce Ministry, though tobacco Board and production, distribution and development of tobacco for domestic consumption and exports are included therein. Hence, in terms of Rule 4(1) of the TOB Rules, when the subject of a case concerns more than one department, no decision be taken or order issued until all such departments have concurred or failing such concurrence a decision thereon has been taken by or under the authority of the cabinet. It is evident that Health Ministry without consulting other Ministries has unilaterally promulgated these Rules. It is because of these objections raised, the matter was referred to the Committee on

subordinate legislation and when the Committee interacted with all the stakeholders and came up with concrete recommendations, without taking note of the same, in the guise of implementing exparte interim order granted by the Rajasthan High Court, the Rules have been implemented. Therefore, there is manifest illegality.

75. It is also relevant to notice here that COTP Rules, 2008 required tobacco products packages to bear 40% warnings on the front panel. These Rules were promulgated and implemented after a decision in this regard was taken by the empowered group of Ministries. Whereas, COTP Amended Rules, 2014 drastically increased the size of 40% warnings on the front panel to 85% on the front and back panels. When this variation of the previous decisions was taken and implemented, the matter did not pass through the cabinet nor the group of Ministries who had examined COTP Rules, 2008. There does not appear to be any unanimity between the various Ministries of Central Government in respect of COTP Amendment Rules, 2014 as is evident from the statement made before the Parliamentary Committee on subordinate legislation for various Ministries in relation to the warnings under the COTP

Amendment Rules, 2014. A perusal of the report of the Committee would show that –

(a) The Ministry of Commerce and Trade stated that COTP Amendment Rules, 2014 would have severe and irreprehensible consequences without any corresponding benefit and therefore, recommended that the warnings of 40% on the front panel be continued, or at the most changed to 50% of the principal display area;

(b) The Ministry of Labour stated that increase in the size of warnings by COTP Amendment Rules, 2014 would adversely impact the bidi industry and the livelihood of bidi workers, and therefore, recommended an audio visual campaign as an alternative to the excessive and large gruesome warnings under the COTP Amendment Rules, 2014.

76. When these two departments have come up with specific assertions before the committee on subordinate legislation stating how the interest of their departments were involved and alleging that unilateral action of the Health Department was illegal, in the absence of these two departments being parties to these writ petitions and behind their back, it cannot be said that the present Rules do not concern them. Once it is found

that the restrictions imposed by the Rules (regarding 85% + rotation) are arbitrary and violative of the rights of traders, manufacturers and suppliers of cigarettes and other tobacco products, it cannot be said that it will not concern Department of Trade, Commerce, Agriculture and Labour.

77. In **DELHI INTERNATIONAL AIRPORT LTD VS INTERNATIONAL LEASE FINANCE CORPN. – (2015) 8 SCC 446**, the Apex Court in paragraphs 19, 20, & 22 while dealing with the TOB Rules and its effect, has observed as under:

> "19. Under the Government of India (Transaction of Business) Rules, 1961, the Government business is divided amongst the ministers and specific functions are reallocated to different ministries. Each ministry can therefore issue orders or notifications in respect of the functions which have been allocated to it under the Rules of Business. We may usefully refer to Government of India (Transaction of Business) Rules, 1961, as lastly amended by amendment dated 1.12.2014 made by the President in exercise of the provisions of sub-clause (3) of Article 77 of the Constitution of India for more convenient transaction of the business of the Government of India. Rule 3 provides that subject to certain exceptions made

thereunder, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961 shall be disposed of by or under the general or special directions of the Minister in Charge. Further Rule 4 provides for Inter-Departmental Consultations. Rule 4(1) reads as under :-

> "4 Inter-Departmental Consultations. - (1) When the subject of a case concerns more than one department, no decision be taken or order issued until all such departments have concurred, or, failing such concurrence, a decision thereon has been taken by or under the authority of the Cabinet."

Sub-clause (2) of Rule 4 which is very much relevant in instant case can be reproduced here for convenience:

> > "4. (2) Unless the case is fully covered by powered to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Ministry of Finance, no department shall, without the previous concurrence of the Ministry of Finance, issue any orders which may-

(a) involve any abandonment of revenue or involve any expenditure for which no provision has been made in the Appropriation Act;

(b)-(c) *

(d) otherwise have a financial bearing whether involving expenditure or not;"

20. In State of Sikkim v. Dorjee Tshering Bhutia & Ors., (1991)4 SCC 243, it is observed as under:-

"14...The Government business is conducted under Article 166(3) of the Constitution in accordance with the Rules of Business made by the Governor. Under the said Rules the Government business is divided amongst the ministers and specific functions are allocated to different ministries. Each ministry can, therefore, issue orders or notifications in respect of the functions which have been allocated to it under the Rules of Business."

21. .....

22. In terms of Rule 3 the alleged decision taken pursuant to meeting dated 26.3.2013 should have been sanctioned by

> under the general or special directions of the Minister in Charge. Since in this case, stakes of different departments headed by different ministries are concerned, the provision of Rule 4 would apply i.e. alleged decision should have been taken by the concerned committee of the Cabinet. Since, the alleged decision involves the financial bearing also, it should have all concurrence of Finance Department also. Apparently alleged minutes of the meeting purportedly stated to be an order in writing by Central Government and later communicated to all concerned, are not disposed of in pursuance of Rule 4 i.e. neither the decision was sanctified by Cabinet nor the concurrence of Finance Department was taken"

78. Indeed, the Apex Court in this judgment has also referred to the case of ***MRF LIMITED V. MANOHAR PARRIKAR & ORS., 2010(11) SCC 374*** and has extracted paragraph Nos. 67 to 73 in support of its findings. It has finally concluded by observing as under in paragraph No.25 of the judgment.

> "25. According to the second respondent (Union of India), the meeting had been convened in the backdrop of Cape Town Convention and Protocol i.e. the Convention on International Interests in

Mobile Equipment which provides for the protection of the international interests in the aircrafts as well and India became signatory to this Convention on 31.3.2008. Union of India contends that in the meeting convened on 26.3.2013, it was decided that in order to honour the international obligations of India and to restore faith of international business community and investors, it was necessary to allow the aircrafts to be returned to the owners / lessors. Stand of UOI is that minutes of the meeting is the decision of the Central Government is in accordance with law and has the force of law. Such a decision involving financial implications must have been taken in terms of the constitutional scheme i.e. upon compliance of requirement of Article 77 of the Constitution. There is nothing on record to show that the minutes of the meeting had the concurrence of the Finance Department and was either confirmed or approved by the concerned minister and such directions were not shown to have been issued pursuant to any decision taken by a competent authority in terms of Rules of Business framed under Article 77 of the Constitution of India. The minutes of the meeting do not become a general or special order in writing by the Central Government unless the same was sanctified and acted upon by issuing

> an order in the name of the President in the manner provided under Article 77 (2) of the Constitution."

79. As held by the Apex Court in the aforesaid two judgments, where different departments headed by different ministers are concerned with the subject, provision of Rule 4 of Transaction of Business Rules, 1961, will be applicable and the decision ought to be taken by the Cabinet. There is nothing on record placed by the Central Government Health Department which is arrayed as respondent in these writ petitions to show that other departments, particularly Ministry of Labour and Employment, Ministry of Industry and Commerce, and Ministry of Agriculture were consulted. On the other hand, the report of the committee of subordinate legislation makes it clear that there were rival claims and discordant notes expressed by different departments. In such situation, unless the competent authority had taken decision in terms of Rule 4 of the AOB Rules framed by the President in exercise of power under Article 77(3) of the Constitution, the decision to frame the 2014 Amendment Rules and notify them cannot be sustained. As a result, the Rules so framed by the Health Department are illegal

being without authority and power over the subject matter and also due to violation of Rule 4 of the AOB Rules.

80. It is also necessary to notice here that merely because the Rules framed by the Health Department had been placed before the Parliament as required under Section 31(3) of COTPA, the same will not make any difference as regards the power and jurisdiction of the Court to pronounce on the validity of the Rules. Compliance with the laying procedure will not inoculate the Rules from being challenged before the Courts of law if they are otherwise illegal or unconstitutional. Mr. Vijayshankar is right and justified in bringing to our notice a judgment of the Apex Court in the case of **DAI-ICHI KARKARIA PRIVATE LIMITED VS UNION OF INDIA & OTHERS – 1995 (80) ELT 24 BOM**. Relevant observations in this regard are found at paragraph 8 of the said judgment.

81. To find out whether a particular rule is mandatory or is only directory, the important test is the language used therein. If the obligatory and mandatory nature of the duty cast coupled with the consequences of not complying with the said obligation are clearly spelt out in the relevant rule, then the obligation cast has to be construed as mandatory. This proposition of law

is very well established by various judicial decisions. Useful reference can be made to the following decisions in this regard.

82. In **LALARAM AND ORS, VS. JAIPURA DEVELOPMENT AUTHORITY AND ORS – 2016(4) SCJ 161**, wherein earlier decision in **HARIDWAR SINGH VS. BAGUN SUMBRUI AND ORS – (1973) 3 SCC 889** was adverted to dealing with the directory or mandatory character of the constituents of Article 166 of the Constitution of India, the Apex Court amongst other, quoted with approval the following excerpts from its earlier decision in Haridwar Singh's case, as under:

> *"13. Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. Prohibitive or negative words can rarely be directory and are indicative of the intent that the provision is to be mandatory..*
>
> *78. Apart from noting the extract from the erudite work, Maxwell on Statutes, referred to hereinabove, this Court did refer as well to the following quote from the Halsbury"s Laws of England, 4th Edn. Reissue, Vol. 44(1) at para 1238:*
>
> > *"Mandatory and directory enactments.—The distinction between mandatory and directory enactments concerns statutory requirements and*

may have to be drawn where the consequence of failing to implement the requirement is not spelt out in the legislation. The requirement may arise in one of two ways. A duty to implement it may be imposed directly on a person; or legislation may govern the doing of an act or the carrying on of an activity, and compel the person doing the act or carrying on the activity to implement the requirement as part of a specified procedure. The requirement may be imposed merely by implication.

To remedy the deficiency of the legislature in failing to specify the intended legal consequence of non-compliance with such a requirement, it has been necessary for the courts to devise rules. These lay down that it must be decided from the wording of the relevant enactment whether the requirement is intended to be mandatory or merely directory. The same requirement may be mandatory as to some aspects and directory as to the rest. The court will be more willing to hold that a statutory requirement is merely directory if any breach of the requirement is necessarily followed by an opportunity to exercise some judicial or official discretion in a way which can adequately compensate for that breach. Provisions relating to the steps to be taken by the parties to legal proceedings (using the term in the widest sense) are often construed as mandatory. Where, however, a requirement, even if in mandatory terms, is purely procedural and is imposed for the benefit of one party alone, that party can waive the requirement. Provisions requiring a public authority to comply with formalities in order to render a private individual liable to a levy have generally been held to be mandatory.

Requirements are construed as directory if they relate to the performance of a public duty, and the case is such that to hold void acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, without at the same time promoting the main object of the legislature. This is

> *illustrated by many decisions relating to the performance of public functions out of time, and by many relating to the failure of public officers to comply with formal requirements. On the other hand, the view that provisions conferring private rights have been generally treated as mandatory is less easy to support; the decisions on provisions of this type appear, in fact, to show no really marked leaning either way."*

83. In the instant case, if Rule 4 of AOB Rules which is the relevant rule for our purpose is examined, it becomes very clear that as per sub-clause (1) of Rule 4 wherever the subject of a case concerns more than one department, no decision can be taken or order issued unless all such departments have concurred or failing such concurrence, a decision thereon has been taken by or under the authority of the cabinet. The first part of sub-rule (1) of Rule 4 unambiguously and clearly enacts that wherever the subject of a case concerns more than one department, no decision can be taken or order issued unless all such departments have concurred. The second part of sub-rule (1) of Rule 4 makes it clear that in case of non-concurrence of the various departments concerned, a decision has to be taken by or under the authority of the cabinet. Therefore, applying the test enumerated in the aforementioned cases, if the nature of the duty cast regarding concurrence of the concerned

departments is examined, then the same has to be characterized as mandatory and not directory. If such mandatory direction is not complied with, then as held by the Apex Court in the various judgments including the latest judgments in the case of MRF Limited 2010(11) SCC 374 and Delhi International Airport 2015(8) SCC 446, where different departments headed by different ministries are concerned with the subject, provision of rule 4 of TOB Rules will be applicable and the decision ought to be taken by the cabinet in case of non-concurrence of different departments.

84. For all the reasons stated above, it is held that the impugned Rules which are unilaterally framed by the Health Department without concurrence of the other concerned departments, are illegal and void ab initio.

(II) Whether the Rules are manifestly arbitrary and unreasonable?

85. It is next urged by the learned Counsel for the petitioners that 2014 Amendment to COTP Rules are manifestly arbitrary and unreasonable and are therefore vitiated. In this connection, following contentions have been raised.

(i) One of the recognized grounds for striking down a subordinate legislation is manifest arbitrariness or unreasonableness, to an extent where the court might well say that the legislature never intended to give authority to make such rules. Some of the factors which make up manifest arbitrariness are non-consideration of relevant material, consideration of extraneous material, non-application of mind, lack of intelligent deliberation and care and legal malice.

(ii) The concept of 'manifest arbitrariness' takes within its ambit the substance/content of the subordinate legislation, as well as the manner in which the power to frame subordinate legislation is exercised.

(iii) In the present case, the element of manifest arbitrariness is evident both, in the manner in which the said Rules have been framed and brought into force, as well as in the content of the 2014 Amendment Rules.

86. Commenting on the manner in which the 2014 Amendment Rules were framed, Mr. Vijay Shankar, Mr.Sajan Poovayya and Mr.Kohli have been highly critical of the method adopted by the Ministry of Health and Family Welfare (for short,

'Health Ministry') unilaterally framing the Rules. It is urged that in the year 2006 Rules known as the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2006, had been framed which prescribed certain graphic health warnings to be printed on tobacco product packages requiring that the said warnings shall cover 50% of both sides of the packages. Thereafter, the Central Government/Cabinet constituted an empowered Group of Ministers to suggest alternative methods of communication that were more subtle than the warnings proposed by the Health Ministry as per 2006 Rules. The Group of Ministers (GOM) selected more subtle images and proposed to bring down the requirement of warnings from 50% of both sides of the package to 40% on one (front) side of the package. It is pursuant to the said decision, the COTP Rules, 2008, were brought into force requiring specified health warnings to cover 40% of the front panel of a tobacco product package. However, it is urged that at the time of framing of COTP Amendment Rules, 2014, which changed the warnings to more gruesome images and enlarged their size so as to cover 85% of both sides of the package, the Health Ministry again acted unilaterally and none of the other ministries concerned with the subject of tobacco industry were engaged or consulted while framing

COTP Amended Rules, 2014. This unilateral decision of the Health Ministry to change and enlarge the warnings, it is urged, flies in the teeth of the decision of the Cabinet and the Group of Ministries which resulted in framing 2008 Rules that were followed for nearly seven years.

87. Mr. Vijay Shankar further points out that the graphic health warnings as per 2014 Amendment Rules were the result of recommendations made by "Committee of Experts", which was constituted by the Health Ministry itself and did not include any members of the Ministry of Commerce & Industry, which is the nodal ministry for the subject of tobacco; nor the Ministry of Labour and Employment or any other ministries which were concerned with the subject participated in it, let alone participation from the tobacco industry or the packaging/ printing industry. It is urged by him that the so-called 'Committee of Experts' comprised only of representatives of Health Ministry and certain representatives from anti-tobacco organizations. The said organizations, Mr. Vijay Shankar urges, were funded from organizations based in foreign countries, primarily the United States of America. It is thus urged that the Health Ministry has unilaterally by abdicating its responsibility

in favour of Non-Governmental Organizations, has accepted the recommendations of the Committee without any independent application of mind and without consulting the stakeholders concerned including other Ministries which are concerned with the subject in question. Thus, it is urged, the process followed has resulted in the Health Ministry giving a complete go by to the pre-legislative consultative policy issued by the Ministry of Law & Justice, urging ministries to hold consultations with the stakeholders, including governmental departments and public to facilitate a transparent decision making process.

88. So far as this aspect of the matter regarding the Health Ministry unilaterally framing the Rules i.e., COTP Amendment Rules 2014, it is already held that the subject matter pertaining to Tobacco control or Tobacco legislation was not allocated to any single ministry let alone the Health Ministry and therefore, the Health Ministry could not have overlooked the provisions of the AOB Rules and TOB Rules. Therefore, though this aspect will have bearing on the issue of arbitrary and unreasonable exercise of power, as the same has been already dealt with, it need not be again answered. Suffice to state that action taken by the Health Ministry shows non-consideration of relevant

aspects and non-application of mind and is therefore, manifestly arbitrary and unreasonable.

89. **Regarding the manner in which the amendment rules were brought into force**: It is contended by Mr. Vijay Shankar, that Parliamentary Committee on subordinate legislation having noticed that the provisions of 2014 Amendment Rules were framed after they were examined only by the Health Ministry and having felt the need that the views of other ministries had to be taken and considered, recommended that the Rules be kept in abeyance till final report was issued. The Health Ministry following the recommendation of the committee issued a notification/corrigendum which effectively deferred commencement of 2014 Amendment Rules to such date as the Central Government might appoint. Thereafter, exercise of consulting various stakeholders was undertaken by the Committee. As per the 11th Report (Final Report) issued by the Parliamentary Committee on 15.03.2016, the Committee found that the warnings proposed by Health Ministry were harsh and recommended reduction in their size. Mr. Vijay Shankar points out that before the Final Report of the Committee was published, the Health Ministry had issued a notification on

28.09.2015, thereby bringing the 2014 Amendment Rules into effect from 01.04.2016. This was allegedly in furtherance of the interim order dated 03.07.2015 passed by the Rajasthan High Court in W.P.No.8680/2015 filed by Rahul Joshi. In this regard, it is urged that the said order of Rajasthan High Court was an ex-parte ad interim order; the Health Ministry did not make any effort seeking vacation of the interim order nor did it attempt to challenge the maintainability of the petition in any manner. Instead, the Health Ministry issued notification to bring the 2014 Amendment Rules into effect from 01.04.2016 ignoring the fact that Parliamentary Committee was seized of the issue and its final report was awaited.

90. It is further urged that though the final report of the Parliamentary Committee was placed before the Parliament on 15.03.2016, the Health Ministry did not take any steps to defer the implementation of the Rules to examine the final report. On the other hand, the Ministry of Health and Family Welfare filed an affidavit in the writ petition before the Rajasthan High Court bringing the final report of the Parliamentary Committee on record and contended that the legislative authority of the Health Ministry was examining the final report, but no action

was taken on the said report as required under the Rules of Procedure and Conduct of Business of the Lok Sabha and the Speaker's directions. It is urged that even after the presentation of the final report before the Parliament, the Health Ministry did not take any steps to consider the contents and recommendations made in the report by deferring the implementation of the Rules as amended in the year 2014 as they had been already notified to be effective from 01.04.2016. It is thus apparent that there is non-application of mind to the report and the report of the committee was totally disregarded.

91. It is very effectively contended by Mr.Kohli, learned counsel for some of the petitioners that the process integrity required to be adhered to while framing the Rules has been violated allegedly due to the exparte interim order passed by the Court followed by the contempt petition filed.

92. The Committee on Subordinate Legislation is a body constituted under the Rules of Procedure and Conduct of Business in Lok Sabha framed under Article 118 of the Constitution of India. The Committee comprises cross section of the members of the Lok Sabha nominated by the Speaker and entrusted with the function to scrutinize and report to the

House whether delegated legislative powers are being properly exercised within the limits of such delegation. The said committee is also empowered to look into whether a subordinate legislation is in accord with the general objects of the Constitution or the parent Act pursuant to which it is made. The Parliamentary Committee on Subordinate Legislation is a permanent body as opposed to an ad-hoc or temporary body. The Health Ministry has apparently not considered the report, wherein it was clearly stated that size of the warnings had to be reduced. The Health Ministry has issued the notification bringing the Amendment Rules into force with effect from 01.04.2016 by notification dated 28.09.2015 in supersession of the corrigendum issued earlier deferring the implementation of the Rules by taking note of the interim report of the committee. The Health Ministry has acted in great haste to implement the rules by virtue of the interim order passed by the Rajasthan High Court in the public interest writ petition, particularly because of the contempt proceedings initiated complaining violation of the interim order. Instead of placing all the relevant materials before the Court and seeking to either defer the contempt proceedings or to vacate the interim order till the main matter was disposed of, the Health Ministry has

chosen to publish the Rules without examining the implications and without taking note of the recommendations made by the Committee on sub-ordinate legislation.

93. It is well established that High Court exercising power under Article 226 will not direct the Government to implement or to bring into force proposed amendment to any rules by issuing a writ, as the same would be a legislative act primarily within the domain of the body competent to legislate. Nothing prevented the Health Department to appraise the Court of all relevant facts and seek vacation of the interim order. Hence, it is apparent that the Rules as brought into force have not gone through the required consultative process analysis and examination. There is non-application of mind to the interests of various stakeholders.

94. The next question interconnected with the above would be whether mere fact that the Health Ministry failed to take note of the recommendations made in the report of the Parliamentary Committee would vitiate the amendment rules?"

95. Learned Assistant Solicitor General Sri Krishna Dixit has contended that how the report has to be taken into

consideration by the Health Ministry? What is the effect of not taking into consideration the said report, are not matters that can be gone into by this Court, in as much as, procedural safeguard envisaged in the Act under Section 31(3) was complied with by laying the Rules before each House of Parliament for a total period of 30 days; before the expiry of the said period of 30 days, the Parliament has not chosen to make any modification in the rule or notification; therefore, amendment rules have validly come into existence.

96. It cannot be denied that one of the challenges that can be laid against the delegated legislation is with regard to its manifest arbitrariness. In the case of **INDIAN EXPRESS (BOMBAY) VS UNION OF INDIA – AIR 1986 SC 515**, it has been observed at page 73 that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by the statute passed by the competent legislature. The subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense it is manifestly arbitrary. Again in the case of **CELLULAR OPERATOR**

ASSOCIATION OF INDIA & OTHERS VS TELECOM REGULATORY AUTHORITY OF INDIA & OTHERS – (2016) 7 SCC 703, the Apex Court has set out the parameters of judicial review of subordinate legislation. One of the grounds for such judicial review has been stated as manifest, arbitrariness/unreasonableness (to an extent where the court may well say that the legislature never intended to give authority to make such rules). Even in the case of **SHARMA TRANSPORT VS GOVERNMENT OF ANDHRA PRADESH – (2002) 2 SCC 188**, the Apex Court has ruled that in order to strike down the delegated legislation as arbitrary, it has to be established that there is manifest arbitrariness.

97. It is useful to deal with some of the contentions of learned Senior Counsel Mr. Sajan Poovayya who has also urged that the Rules suffer from manifest arbitrariness violating Article 14 of the Constitution of India. Elaborating this submission, he urges the following points:

i) The 2014 Amendment Rules have the effect of the Health Department unilaterally reversing the decision of the cabinet and its empowered group of ministers.

ii) **The Central Government (Health Department) has abdicated its power to the 'expert committee'. –** In this connection, it is contended by him that 2014 Amendment Rules have been admittedly promulgated pursuant to the recommendations of the so-called expert committee. This committee consisted of only non-governmental organizations involved in anti-tobacco activities apart from the reports of the Health Ministry. No other department or Ministry of the Central Government was consulted by the so-called expert committee. Hence, it is urged that the nature of pictorial images and warnings to be used was entirely left to the voluntary health association of India, and hence, the gruesome images prescribed and the excessive size of warnings is not the result of rational and reasonable choice made by the Central Government.

iii) **There was pre-determined approach on the part of the Health Ministry –** It is urged in this connection that the notification publishing 2014 Amendment Rules was issued on 14.10.2014 barely five days after the report of the so-called expert committee was submitted. Although the report recommended size of 80% on the front and back panel, the

Health Ministry prescribed 85% on the front and back panel. This disclosed the Health Ministry's pre-determined approach and lack of transparency.

iv) **Views of Parliamentary Committee and other Ministries disregarded –**

v) **Pre-legislative Consultation Policy not adhered to by the Health Ministry –** In this connection, it is urged that the Ministry or Department proposing a sub-ordinate legislation is required to give wide publicity to the Rules inviting comments or suggestions from the public before framing the Rules. The Health Department has admittedly not adhered to this process. That the implications of the proposed amendment including its impact on the fundamental rights, lives and livelihood of the affected people has not gone into the process of framing of Rules as pre-legislative consultation process has not been followed.

vi) **Violation of Intellectual Property Rights –** In this connection, it is urged that the manufacturers of cigarettes and other tobacco products have valuable rights in their trade mark under statute and common law. The trade marks include not

only brand names, but also logos and other insignia, trade dress and representations on the whole or on one or more faces of the cigarette packages. Such usage of trade mark generates goodwill over a period of time, but 2014 Amendment Rules violated manufacturers right in their trade marks; thus, it contravenes other plenary legislation viz., the rights under the Trade Marks Act, 1999. In this connection, he has placed reliance on the judgment in the case of **INDIAN EXPRESS VS UNION OF INDIA – AIR 1986 SC 515** inviting our attention to paragraph 75. He also points out that right to use the trade marks registered under the Trade Marks Act, 1999, is statutorily protected under Section 28 of the Trade Marks Act, 1999. He also urges that even as per COTPA, this right is preserved by proviso (a) to Section 5(2) of the 2003 Act. His contention is, that the mandatory requirement now imposed to cover 85% of the front and back panels of tobacco product packages prevent the use of these registered trade marks on the packages, and therefore, the Rules are liable to be struck down as they violated the rights conferred by the Trade Marks Act, 1999.

vii) **FCTC cannot be regarded as law and cannot justify the 2014 Labelling Amendment Rules –** Dealing with the stand taken by the Health Ministry in the statement of objections, it is urged that merely because India is a party to the Framework Convention on Tobacco Control (FCTC), there cannot be any justification for the Health Department to frame 2014 Labelling Amendment Rules in the guise of implementing the obligations thereunder. The following decisions have been relied upon in this regard.

a) **MAGANBHAI ISHWARBHAI PATEL VS UNION OF INDIA – (1970) 3 SCC 400** (paragraphs 29, 77 & 80), to urge that any international treaty which affects the rights of citizens or modifies the domestic law in any manner is not binding and cannot be enforced unless parliament passes a legislation enacting such international treaty into a law.

b) **CIVIL RIGHTS VIGILANCE COMMITTEE SLSRC COLLEGE OF LAW VS UNION OF INDIA – AIR 1983 KAR 65** (paragraph 17), to urge that 2003 Act is not enacted pursuant to Article 253; that Chavan Committee, in fact had suggested the inclusion of the statement to the effect that 'India being a signatory to the resolutions (39th & 43rd World Health Assembly Resolutions), it is considered necessary to implement the said resolutions and in

> terms of Article 253 of the Constitution'. This proposal and suggestion to include the above statement in the preamble was not carried out and that is how in the preamble to the 2003 Act, it is not stated that the Act was made under Article 253.

Therefore, it is urged that the delegate cannot rely on any international instrument to justify the validity of the Rules framed under 2003 Act.

98. On careful consideration of the above contentions, it can be found that FCTC came into effect as an international instrument on 27.02.2005; the 2003 Act was enacted on 18.05.203; it was brought into force on 31.05.2004. Thus, COTPA is prior in point of time to the FCTC. Hence, it is clear that COTPA is not enacted pursuant to the FCTC or so as to implement it. The 39th & 43rd World Health Assembly Resolutions which have been referred to in the preamble to COTPA 2003, do not require the members of the World Health Assembly to impose pictorial warnings to such an extent. The COTPA which empowers the Central Government to frame Rules does not authorize the Central Government to adopt measures which might be recommended by an international convention. Though an amendment was brought to COTPA vide

2007 Amendment (Amendment Act 38 of 2007), the said amendment is not pursuant to any international treaty or convention not is it for implementation of FCTC. The stand of the Health Ministry that being a delegate of the Parliament, it has exercised powers to frame subordinate legislation by way of Amendment Rules, 2014 to implement the provisions of the international treaty or convention is untenable because as per Article 253 of the Constitution, it is the parliament which has the power to make any law for implementing any treaty or agreement or convention entered into with any other country or countries or any decision made at any international conference or association or other body. Even assuming that the Health Department has taken into consideration the provisions of FCTC while framing the rules, that does not render the action of the Health Ministry immune from challenge on the ground that it had no jurisdiction or power to unilaterally frame such rules, or for that matter, on the ground that they were manifestly arbitrary and unreasonable.

99. Indeed, the provisions of FCTC specifically state that they are subject to national laws and constitutional principles of the member countries. Hence, provisions of FCTC cannot support

the rules or provide an answer to the challenge laid to the Rules on various grounds including on the ground of violating the constitutional and fundamental rights.

100. It is necessary to notice here that power conferred under Rule 3(h)(f) is not sanctioned by any provisions of COTPA. It is necessary to recapitulate what Rule 3(h), particularly Rule 3(h)(f) states. It reads as under:

> "**3. Manner of packing and labeling**.- (1) Every person engaged directly or indirectly in the production, supply, import or distribution of cigarette or any other tobacco product shall ensure that:-
>
> (a) …
> (b) …
> (c) …
> (d) …
> (e) …
> (f) …
> (g) …
> (h) every package of cigarette or any other tobacco product shall contain the following particulars, namely:-
>
> (a) …
> (b) …
> (c) …
> (d) …
> (e) …

> (f) Any other matter as may be required by the Central Government in accordance with the international practice."

101. Thus, Rule 3(h)(f) is a case of self-empowerment because it is de hors the power given under the Act, in as much as, international practices do not become relevant while placing restrictions on fundamental rights, as is alleged here. In paragraph 76 of the judgment in the case of **INDIAN EXPRESS VS UNION OF INDIA – AIR 1986 SC 515**, the Apex Court has observed as under:

> "76. .....On the facts and circumstances of the case, a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."

102. In the case of **CELLULAR OPERATORS ASSOCIATION OF INDIA & OTHERS VS TELECOM REGULATORY AUTHORITY – (2016) 7 SCC 703**, the Apex Court has reiterated the principles and the parameters of judicial review of subordinate legislation as laid down in the case of **STATE OF TAMIL NADU VS P.KRISHNAMOORTHY – (2006) 4 SCC 517**. In P.Krishnamoorthy's case, the Apex Court, after adverting to the relevant case law on the subject, laid down the parameters of judicial review of subordinate legislation generally, thus:-

> "There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds???:
>
> (a) Lack of legislative competence to make the subordinate legislation.
>
> (b) Violation of fundamental rights guaranteed under the Constitution of India.
>
> (c) Violation of any provision of the Constitution of India.
>
> (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
> (e) Repugnancy to the laws of the land, that is, any enactment.

> (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).
>
> The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy.
>
> But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."

103. In the instant case, as already pointed out, there is violation of the constitutional provision viz., Article 77(3), under which the TOB and AOB Rules have been framed by the President specifically providing the power and authority of different Ministries regarding the extent and scope of their jurisdiction on different matters. There is no justification offered as to how 85% warning was necessitated, particularly because while framing 2008 Regulations, the matter was entrusted to group of ministers as empowered by the cabinet to prescribe the percentage of display area and pursuant to the

recommendations made by the group of ministers, 2008 Rules were framed requiring the pictorial and textual display to cover 40% of the front panel.

104. It is important to notice here the communication issued by Health Department, Union of India in answer to the queries sought by one of the petitioners under the RTI Act which has been placed before us by the learned Counsel Mr. Sanjay Kumar Phatak appearing for petitioner in W.P.No.34184/2016. He represents manufacturers of chewing tobacco. He has pointed out how the impugned Rules in prescribing 85% coverage on each package of tobacco products with specified warning and rotation of warning have contravened the constitutional and statutory limits. He has pointed out that the provisions under Sections 7, 8, 10 & 31 of COTPA being relevant provisions, the Rules already in existence in the form of 2008 Labelling Rules, if satisfied the criteria of being legible, prominent and conspicuous as to size and colour in the matter of printing the specified warning, there had to be very valid ground made out by the Government to establish that the existing requirement laid down in the Rules did not satisfy the test of being legible, prominent and conspicuous and that

nothing less than 85% coverage would be legible, prominent and conspicuous. Prescription of 85% ought to be shown as reasonable restriction and that such prescription of 85% did not take away the right of the petitioners recognized by the proviso to Section 5(2) of the COTPA and other statutes like Trade Marks Act. Mr.Pathak, therefore, urges that power of the delegate (Central Government) in prescribing specified warning is fully controlled by the criteria provided under Section 8(1). He rightly emphasizes on the ruling of the Apex Court in the case of **KERALA SAMSTHANA CHETHU THOZHILALI UNION VS STATE OF KERALA & OTHERS - (2006) 4 SCC 327**, wherein at page 337, the Apex Court has held that a rule is not only required to be made in conformity with the provisions of the Act whereunder it is made, but the same must be in conformity with the provisions of any other Act, as a subordinate legislation cannot be violative of any plenary legislation made by the Parliament or the State Legislature. These observations are made in paragraph 17 of this judgment.

105. Mr.Pathak has also urged that lack of classification has resulted in inequality and arbitrariness and is, therefore, hit by Article 14. He contends that if 85% coverage of the specified

warning is uniformly made applicable to cigarettes, beedis and chewing tobacco manufacturers, it tantamounts to grouping together unequals for equal treatment, thus resulting in inequality. He urges, packaging itself is a complex subject, as cigarette package is box type consisting of six sides, beedi package is conical in shape, whereas, chewing tobacco is sold in small sachets having only two sides. Hence, he urges that chewing tobacco are worst hit by the impugned notification because after 85% coverage of the specified warning on both sides of the sachets, hardly any space is left to exercise rights available under the proviso to Section 5(2) of COTPA or to comply with the provisions of Legal Metrology Act, 2009 or for that matter to exercise the right to brand the product according to Trade Marks Act. It is also pointed out by him that the ground urged by the Additional Solicitor General or for that matter Mr. B.V.Acharya, learned Senior Counsel appearing for the interveners taking support from Article 21 is not available against chewing tobacco because it cannot have health hazard on any person other than the willing consumer and it does not cause any air pollution which may harm anybody.

106. In answer to this, the learned Assistant Solicitor General and the Counsel for the Interveners would urge that nothing prevents the beedi manufacturers and the manufacturers of chewing tobacco to go in for box type packages.

107. Suffice to observe at this stage that the rule making authority has to apply its mind to these aspects. The very process adopted by the Health Department to frame the impugned Rules is not only contrary to the AOB and TOB Rules framed by the President in exercise of power under Article 77(3), but is manifestly arbitrary because no attention is bestowed to the inherent difference in the packaging of cigarettes, beedies and chewing tobacco.

108. A very important point that Mr. Pathak has made out, particularly as an answer to the arguments constructed on behalf of the interveners, based on Article 47 of the Constitution is that the said Article specifically mentions intoxicating drinks and drugs which are injurious to health, but efforts to bring in tobacco within the ambit of Article 47 along with intoxicating drinks have failed in the past. He points out that the subject was raised before the constituent assembly when Article 47 (Article 38 in the draft constitution) was being

discussed. The constituent assembly refused to include tobacco in Article 47. This issue was agitated before the Apex Court in Khoday's Distilleries Case and was negatived. In the case of **GODAWAT PAN MASALA VS UNION OF INDIA – AIR 2004 SC 4057**, the Apex Court while referring to Khoday's case specifically formulated a question as to whether consumption of tobacco be considered as inherently or viciously dangerous to health and if so, is there any legislative ban for its use in the country? The Supreme Court has held that whether an article has to be prohibited as res extra commercium, is a matter of legislative policy and must arise out of an Act of legislature and not by a mere notification issued by an executive authority. Attention of the Court is invited to paragraph 53 of this judgment which is extracted hereunder.

> "53. Is the consumption of pan masala or gutka (containing tobacco), or for that matter tobacco itself, considered so inherently or viciously dangerous to health, and, if so, is there any legislative policy to totally ban its use in the country ? In the face of Act 34 of 2003, the answer must be in the negative. It is difficult to accept the contention that the substance banned by the impugned notification is treated as res extra commercium. In the first place, the gamut of legislation enacted in this country which deals with tobacco does not suggest that Parliament has ever treated it as an article res extra

> commercium, nor has Parliament attempted to ban its use absolutely. The Industries (Development and Regulations) Act, 1951 merely imposed licensing regulation on tobacco products under item 38(1) of the First Schedule. The Central Sales Tax Act, 1956 in Section 14(ix) prescribes the rates for Central Sales Tax. Additional Duties of Excise (Goods of Special Importance) Act, 1957 prescribes the additional duty leviable on tobacco products. The Tobacco Board Act, 1975 established a Tobacco Board for development of tobacco industries in the country. Even the latest Act, i.e. the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, does not ban the sale of tobacco products listed in the Schedule except to minors. Further, we find that in the tariff schedule of the Central Sales Tax Act, there are several entries which deal with tobacco and also pan masala. In the face of these legislative measures seeking to levy restrictions and control the manufacture and sale of tobacco and its allied products as well as pan masala, it is not possible to accept that the article itself has been treated as res extra commercium. The legislative policy, if any, seems to be to the contrary. In any event, whether an article is to be prohibited as res extra commercium is a matter of legislative policy and must arise out of an Act of legislature and not by a mere notification issued by an executive authority."

109. In the wake of this clear and binding legal position laid down by the Apex Court, the insistence on the part of some of the interveners asserting that tobacco has to be treated as res

extra commercium is totally misconceived. This court cannot be forced to engage in examining this question to lay down a proposition which is contrary to the legislative policy underlying COTPA and as laid down by the Apex Court.

110. Mr. Pathak also invites court's attention to the affidavit filed on 13.12.2016 by the petitioner in W.P.No.34814/2016 and the RTI application dated 26.08.2016 addressed to the Health Ministry and also the reply dated 27.09.2016. He rightly urges that this reply given by the Health Ministry belies the assertions made on behalf of the Central Government that after taking into consideration all the relevant factors, the Ministry decided to increase the pictorial and textual warnings to 85% of both sides. The reply given makes it clear that no such concrete material was available before the Ministry based on which the decision was taken to prescribe the pictorial warning. This reply, therefore, which has gone unrebutted, makes it clear that percentage of warning prescribed as per 2014 Amendment Rules, is without application of mind and is not based on any study or material as to how such prescription would indeed further the object and intent of the legislation and in what manner and to what extent and also as to how it might have an

adverse effect on other stakeholders. He has also rightly contended that the Rule Making Authority cannot be blind to the real and substantial difference of packaging involved in cigarettes, beedis and chewing tobacco. Chewing tobacco has only two panels unlike the cigarette package which has four panels.

111. At this stage itself, it is necessary to refer to the arguments of Rajiv Kumar Jain who has appeared for the Beedi Manufacturers. He has contended that manufacturing of beedi involves manual process. Therefore, it could not have been classified along with cigarettes for the purpose of prescribing the mandatory requirements regarding display of warnings. It is pointed out by Mr.Jain, learned counsel that Legal Metrology (Packaging and Commodity) Rules, 2011, provided in Rule 6 (I) (G) (a) (i) provision exempts beedies from displaying the date of manufacture whereas Rule 3 (H) (e) requires that every package of cigarette and any other tobacco product shall contain date of manufacture. He, therefore, urges that there is inconsistency in the COTP Rules and the Legal Metrology (Packaging and Commodity) Rules, 2011. Mr. K.G.Raghavan, Senior Counsel who has appeared for Beedi Industry Association in

W.P.No.53876-77/2015 has also extensively argued as to how the Rules are unreasonable. He points out that there is absolutely no rational behind the rotation nor has it been based on any research or data. He points out that as per the rule requiring rotation, the stock manufactured would be rendered illegal for supply and distribution after the expiry of the period. He, therefore, contends that such requirement is totally arbitrary and unreasonable. He has also pointed out that Rule 3(1)(g) creates conflict between the Legal Metrology Rules, 2011; that there is absolutely no application of mind. He has, particularly, emphasized the adverse impact the Rules have on beedi industry and how it affects the livelihood of several workers involved in beedi manufacturing.

112. Mr. Jain has urged that beedi bundle does not have the largest panel. Referring to the requirement of Rule 3(b), he points out that the same cannot be complied by beedi manufacturers because of the shape and size of the beedis and its manual rolling. He also points out that requirement under Rule 3(h) to mention date of manufacture that has been exempted under Section 3 of the Legal Metrology Act of 2009 and Rule 6 of Packaging and Commodities Rules, 2011, has

resulted in the impugned Rules being arbitrary, unreasonable and impossible of being complied with. It is his submission that beedi product has no expiry period and expiry has been forced on the manufacturers by virtue of Rule 5 pertaining to rotation. He, therefore, urges that though all taxes are paid on the product and are legally marketable, it is rendered illegal by the concept of rotation introduced under Rule 5 which is irrational and unreasonable. He urges that the manufacturer, supplier or the distributor as the case may be has to throw the beedis or to repack them after the expiry of prescribed period, in which event it will undergo taxation again. Hence, he submits that this rule regarding rotation is highly arbitrary and illegal. He has also placed reliance on several judgments.

113. It is undeniable that a delegated legislation can be challenged on the ground that it is contrary to some other statute and that it is unreasonable and manifestly arbitrary. This is evident from the ratio laid down by the Apex court in Indian Express case which has been already referred to herein above. It is evident from the discussion made above that there is non-application of mind by the Health Ministry before framing the rules as to whether prescription of 85% pictorial

and textual warning would result in violating the rights of the petitioners protected under Section 28 of the Trade Marks Act, 1999; whether the existing requirement laid down in the rules did not satisfy the test of being legible, prominent and conspicuous and that nothing less than 85% of coverage will amount to complying with the requirement of being legible, prominent and conspicuous; whether prescription of 85% as compulsory display area for pictorial and textual health warnings uniformly with regard to cigarettes, beedis and chewing tobacco was essential despite the fact that the packages containing cigarettes, beedis and chewing tobacco are inherently different, more so because in the case of sachets containing chewing tobacco product, there are only two sides and hardly any space is left to exercise the rights available to the petitioners under the provisions of different enactments such as Legal Metrology Act, 2009, Trade Marks Act, 1999, and also as per Section 5(2) of COTPA.

114. As is evident from the reply dated 27.09.2016 given pursuant to an RTI Application dated 26.08.2016 which are produced in W.P.No.34184/2016, there was no concrete material available before the Health Ministry based on which

decision was taken to prescribe the pictorial warning. This amply demonstrates that uniform prescription of 85% specified warning in respect of all these tobacco products was devoid of any basis. More importantly, there has been no application of mind as to how such prescription affected other stakeholders. Even as regards the rational behind the rotation, there was no material for the health department to take any decision. There is non-application of mind to the adverse impact it would have on different stakeholders. Therefore, it has to be held that the petitioners have been able to make out that the rules are manifestly arbitrary and unreasonable. However, it is made clear that it is the domain of the rule making authority to prescribe such reasonable criteria or prescription in accordance with law based on relevant materials.

Regarding violation of Fundamental Rights

115. The other aspect on which considerable arguments have been advanced have to be noticed. Learned Senior Counsel Mr. Sajan Poovayya has contended that Rule 3(1)(b) of the 2014 Labeling Amendment Rules read with paragraph 1, 2 & 3(2) of the Schedule thereto introducing 85% regime violates Article 19(1)(a) of the Constitution of India. It is urged by him that 85%

regime violates manufacturers fundamental rights for the following reasons:

(i) It compels the manufacturer to state an unsubstantiated statement – "Smoking Causes Throat Cancer" as a textual warning occupying 25% of the front and back panel of the cigarette packages;

(ii) It compels the manufacturer to print gruesome, repulsive, misleading and untruthful images depicting a hole in a person's throat which appears to be a "tracheotomy hole" and a person's neck with diseased, infected and purulent growths which appears to be an "ulcerous goiter" as pictorial warnings, occupying 60% of the front and back panel of the cigarette packages, and inaccurately connects these images to the abovementioned unsubstantiated statements;

(iii) It is not a reasonable restriction in "the interests of sovereignty and integrity of India", "the security of the State", "friendly relations with foreign States", "public order", "decency or morality", or "in relation to contempt of court, defamation or incitement to an offence" under Article 19(2) of the Constitution;

(iv) It is egregious excessive and unreasonable, both in size and content;

(v) It abrogates the manufacturers' right to commercial speech under Article 19(1)(a).

116. Mr. Sajan Poovayya also points out that 85% regime introduced by 2014 Labeling Amendment Rules infringes the manufacturers right against compelled speech which is protected under Article 19(1)(a). He points out that manufacturer has a right not to be compelled to disseminate factually inaccurate, untruthful, distorted and controversial messages against its products. According to him, as per Section 7(1) of the 2003 Act, Central Government can prescribe warnings to appear on tobacco product packages, but these warnings being compelled speech have to be necessarily based on facts and be truthful and not misleading, otherwise they cannot pass the test of being reasonable restrictions under Article 19(2). He has invited the attention of the Court to the judgment of the Apex Court in the case of **UNION OF INDIA VS MOTION PICTURES ASSOCIATION – AIR 1999 SC 2334**, to urge that a 'must carry' provision furthers informed decision making which is the essence of right to free speech and expression.

Therefore, the same will not amount to any violation of the fundamental right of speech and expression. However, if such a provision compels a person to carry out propaganda or project a partisan or distorted point of view, contrary to his wish, it may amount to a restraint on his freedom of speech and expression. It is essentially urged by the learned Counsel in this connection that unlike the statement such as 'cigarette smoking is injurious to health', the pictorial warnings consisting of gruesome images of a hole in person's throat and infected growths on a person's neck coupled with textual warning stating 'smoking causes throat cancer', do not convey truthful and reliable information to enable the consumer to make an informed decision. According to him, the warnings contained in the impugned amendment constitute to form a coercion as their aim is to cause revulsion, trauma and guilt in the minds of consumer of tobacco products through untrue and excessive statements and images. It is emphatically urged by him that the Health Ministry has neither pleaded nor produced any material to establish the truthfulness of the warnings and it is not aware whether the warnings are factual and truthful. Mr. Poovayya invites the attention of the Court to the reply of the Health Ministry to an RTI application filed by the petitioner in

W.P.No.34184/2016, wherein it is stated that no specific information was available with the Health Ministry as to whether the images were the real pictures of cancer patients suffering from cancer caused by tobacco.

117. In fact, we have already referred to the contention of the learned Counsel Mr. Pathak in this connection who appears in the said writ petition for the petitioner. He has specifically contended that admittedly there was no specific information available with the Health Ministry as to whether the images were the real images of human beings or were merely computer edited representational images. He has pointedly referred to the reply of the Health Ministry when asked to provide the source of images, stating that 'pictures were collected from various institutions/organizations and no such specific information is available'. Learned Counsel has taken the Court through various decisions including those rendered by the Courts in foreign countries in support of his contentions.

118. He has next contended that 85% regime abrogates the right to commercial speech under Article 19(1)(a) and also affects the consumer's right to know. He urges that the restrictions are based on the paternalistic assumptions of the

State that consumers are incapable of using truthful product information to make a rational decision and this approach violates the fundamental right to free speech. Even in this regard, reliance has been placed on several judgments.

119. He has also contended that right to advertise on their product packages by the manufacturers has been preserved by the proviso (a) to Section 5(2) of the 2003 Act and the same cannot be taken away. He has finally contended that the 2014 Labeling Amendment Rules are not and cannot be saved under Article 19(2) of the Constitution of India, because they do not fall under any one of the 'eight buckets' set out in Article 19(2), apart altogether from the fact the restriction is not a reasonable restriction. He urges that the 'general public interest' based on which restriction is sought to be imposed is not one of the subject matters under Article 19(2) and hence, it is not open to the State to curtail freedom of speech for the purpose of promoting general public interest. He has relied on the judgment in the case of **SHREYA SINGHAL VS UNION OF INDIA – (2015) 5 SCC 1**, particularly the observations made at paragraph 15.

120. In this connection, having carefully considered the various contentions urged by the learned Counsel for the petitioner based on the fundamental right to speech and expression under Article 19(1)(a) of the Constitution of India, as it has been already held that 2014 Amendment Rules framed by the Health Ministry are illegal and void ab initio, as the Health Ministry did not have the power or authority to unilaterally frame these Rules, it is not necessary to examine these contentions urged by the petitioners, at this stage, because such an exercise would be unnecessary. In addition, it has to be pointed out that as a conclusion has been reached holding that the Rules framed by the Health Ministry have not undergone the legal process of consultation and concurrence of the concerned departments and the amendment was enforced even when the matter was seized by the committee on subordinate legislation in the guise of enforcing the interim direction issued in the PIL and also because Amendment Rules may have to be framed afresh by following the required legal process, it is not advisable to pronounce on these contentious issues lest it may affect the independent and effective application of mind by the rule making authority to the desirability of choosing specific pictorial and/or textual

warnings and to prescribe the extent of such warnings to be carried on the packages. However, as considerable arguments have been advanced with regard to the provisions contained in Sections 5, 7 & 9 of the 2003 Act and COTP Rules, 2008 (Unamended) are also challenged it is necessary to deal with some of these contentions so that the effect of these provisions in the context of the rule making power of the Central Government and the right of the manufacturers, suppliers and traders of cigarettes and tobacco products are better appreciated. This exercise is undertaken in the light of the contention urged by the learned Counsel for the petitioners that if the Government intended to create awareness of the evils of smoking or consuming tobacco, it has to undertake that exercise itself by putting up hoardings and carrying on such other advertisements displaying the ill-effects of consumption of tobacco, but not by forcing the producers, suppliers or distributors to publish such textual or pictorial warnings on the packets and pouches manufactured by them to sell the products because it affected their fundamental rights.

121. In this regard, straight away reference may be made to Section 7(1) of the Act. It expressly mandates that no person

shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products, produced, supplied or distributed by him bears thereon, or on its label, such specified warning including a pictorial warning as may be prescribed.

122. Similarly, Section 7(2) of the Act mandates that no person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.

123. Section 7(3) of the Act mandates that no person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning.

124. Section 7(4) of the Act mandates that the specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco

products have been packed for distribution, sale or supply for a valuable consideration.

125. The Act is not challenged. Therefore, it is not open to petitioners to say that their right under Article 19(1)(a) is affected by the 2008 (Unamended) Rules framed requiring them to carry specified warnings on the ground that public health does not fall in any of the 8 heads based on which restriction can be imposed. Restriction on the right is imposed by the statute itself. A reading of Section 7 of COTPA makes it clear that without printing and carrying the specified warning on every package, no person can carry on trade or commerce in cigarettes and any other tobacco products.

126. Section 5 provides for prohibition of advertisement of cigarettes and other tobacco products. It reads as under:

> "(1) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which direct or indirectly suggests or promotes the

use of consumption of cigarettes or any other tobacco products.

(2) No person, for any direct or indirect pecuniary benefit, shall-

(a) display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product; or

(b) sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or

(c) distribute, cause to distribute, or permit or authorize to distribute to the public any leaflet, hand-bill or document which is or which contain an advertisement of cigarettes or any other tobacco product; or

(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

Provided that this sub-section shall not apply in relation to:-

(a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes

and any other tobacco products are offered for distribution or sale.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of-

(a) cigarettes or any other tobacco product; or

(b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given any another person.

127. As regards the scope and effect of sub-clause (1) of Section 5, elaborate arguments have been addressed at the bar, particularly keeping in mind the language employed therein and also in view of the provision contained in sub-clause (2) and the proviso thereto.

128. Sri Sajan Poovayya submits that prohibition for advertisement enacted in sub-clause (1) of Section 5 relates to advertisement in a medium such as electronic or print media and not to other advertisement because, other type of advertisements are enumerated in sub-clause (2). He further points out that if such meaning is not given to Section 5(1), it

will render sub-clause (2) and the proviso to sub-clause (2) otiose.

129. Sri Kohli and Sri Sanjay Pathak, learned counsel contend that while Section 5(1) contains prohibition against all advertisements which suggest or promote the use or consumption of cigarettes or any other tobacco products, Section 5(2) prohibits everybody, for any pecuniary benefit, from displaying advertisements of cigarettes and other tobacco products, sell any film or video tape containing such advertisements or distribute any leaflet or hand-bill of such advertisement or erect, exhibit, fix or retain on any land, building, wall etc., or shall display in any manner, advertisement of cigarette. According to them, proviso (a) and (b) are exceptions only to sub-clause (2) of Section 5 and they permit only such advertisement on the packet that do not suggest or promote the use or consumption of cigarettes directly or indirectly which is prohibited in sub-clause (1) of Section 5.

130. A very careful and thorough analysis of the various provisions of the Act in general and Section 5, Section 2(o) and Section 9(2) in particular to understand the effect and purport

of Section 5(1) and 5(2) read with proviso to Section 5(2) has been undertaken with the assistance of the learned counsel.

131. Analysis of Section 5(1) by understanding the plain meaning of the language used therein by dismembering the compound structure of the sentence and its adjective expressions and also by looking at it as a whole, the following legislative intent emerges.

(i) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products;

(ii) No person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products;

(iii) No person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.

132. Thus, Section 5(1) lays down an absolute prohibition on advertisement that promotes or suggests the use of cigarettes and other tobacco products.

133. Sub-clause (2) deals with specific types of display etc., of such products which is also prohibited subject to two exceptions as provided in proviso (a) and (b) to Section 5(2). Therefore, in order to fall within the ambit of proviso (a) and (b), the advertisement of cigarettes and other tobacco products on the packet must not be such as to suggest or promote their use and consumption. In addition, they shall not detract from the specified warning which is provided in Section 9(2) of the Act. For the sake of better appreciation, Section 9(2) is extracted hereunder:

> "No package of cigarettes or any other tobacco products or its label shall contain any matter or statement which is inconsistent with, or detracts from, the specified warning".

134. Therefore, there is no right in any person who is engaged or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products to advertise said products to suggest or promote their use and

consumption through any medium or method including through the package containing such product. But, advertisement of cigarettes or any other tobacco products which does not promote or suggest its use and consumption is permitted provided the same does not contain any matter or statement which is inconsistent with or detracts from, the specified warning as may be prescribed by Rules made under this Act.

135. Thus, in the light of the express prohibition contained for carrying any advertisement, matter or statement on the package that tends to promote consumption of the products and in view of the mandate contained in the Act that every package shall bear specified warning including a pictorial warning as may be prescribed by the Rules (see Section 7) without which production, supply or distribution of the product itself is prohibited and further in the light of the provisions contained in Section 8 providing that the specified warning on a package shall be-

(a) legible and prominent;

(b) conspicuous as to size and color;

(c) in such style or type of lettering, color, etc., -

it becomes very clear that the Act mandates compliance with such requirement and in the absence of any challenge to the provisions of COTPA, challenge made to the 2008 unamended Rules on various other grounds are untenable.

136. Suffice to observe that challenge laid on the ground that the producers, suppliers and traders of cigarettes and tobacco products cannot be forced to carry certain specified warning because that itself tantamount to forced speech and violates Article 19(1)(a) and therefore, such restriction imposed on the fundamental right to speech and expression on the ground of public health or public interest is unsustainable is a farfetched argument. In the absence of any challenge to the provisions contained in the 2003 Act, particularly to Section 7(1), the argument canvassed contending that restriction imposed by the Rules on the ground of interest of general public or public health not falling under any one of the eight buckets recognized under Article 19(2) on the freedom of speech and expression is unconstitutional, cannot be accepted.

137. However, the arguments advanced by the learned Senior Counsel, particularly Mr. Poovayya, that right under Article

19(1)(g) has been infringed by imposing unreasonable, arbitrary and excessive restrictions not sanctioned or authorized by the 2003 Act, hence the rules are unconstitutional, could have been examined but for the finding recorded with regard to the legal question touching the authority and jurisdiction of the Health Department of Union of India to unilaterally frame the Rules. In addition, it has been held that the 2014 Amendment Rules are manifestly arbitrary and hence unsustainable. As it is held in favour of the petitioners on these vital issues and it is declared that the impugned Rules are illegal, it is unnecessary to go into this question. Therefore, no attempt is made to refer to and consider the effect of several judgments relied on by the learned counsel for both sides in this regard.

Ultra Vires the Parent Act

138. The next point that requires consideration is whether the impugned Rules are ***ultra vires*** the Parent Act. It is contended by Mr. Poovayya, that Tobacco Board Act, 1975, lays down a legislative policy to support tobacco cultivation and not to curtail it. One of the functions of the Board as per Section 8 of the said Act, is to promote development of tobacco. In the case of **GODAVAT PAN MASALA Vs UNION OF INDIA – AIR 2004**

SC 4057, particularly in paragraph 35, 36 & 37, the object of COTPA has been stated to be intended to prevent passive smoking, advertisement and sale to minors and not to ban tobacco on grounds of public health. He also points to the observations made in paragraph 63 to urge that tobacco has not been considered to be injurious to public health. After referring to various provisions of COTPA, it is urged by him that when Section 7(4) of COTPA stated that specified warning shall appear on not less than one of the largest panels of the package and Section 10 laid down that the size of letters and figures on the specified warnings to be such as may be prescribed by the Rules, it can only be said that the Parliament empowered the Central Government to prescribe pictorial warnings and it did not include the power to prescribe percentage of coverage on the tobacco packages, muchless to an extent of 85%, so as to cover both sides of largest panel. He also points out that the requirement to increase the warning to cover 85% of front and back panels contravenes proviso (a) to Section 5(2) which expressly permits advertisement of cigarettes or any other product in or on a package containing cigarettes or any other tobacco product. He urges that the intention of the rule making authority in prescribing the specified warnings is to deter

smokers and to motivate them to quit even as per the admitted stand taken by the Central Government which travels beyond the provisions of COTPA and is also contrary to the provisions of the Tobacco Board Act. Hence, he urges that rules are ultra vires the parent Act; repugnant to the Tobacco Board Act, etc.

139. A careful perusal of the provisions of the enactment, keeping in mind the object with which the COTPA has been enacted to discourage the use of tobacco and impose progressive restrictions and take concrete action to eventually eliminate direct or indirect advertising or sponsorship concerning tobacco, it is clear that parliament intends to protect public health in discharge of the duty and obligation cast by Article 47 of the Constitution on the State and particularly in the light of the object of the legislation that it intended not only to prohibit advertising, but also regulate production, supply of cigarettes and other tobacco products and for effective implementation of the enactment. It is in this regard, Parliament has made provisions enabling the Central Government to make rules for the purpose of prescribing the contents of specified warnings, the language in which they are

to be displayed, the nature of pictorial and textual warning, the manner in which they have to be specified, the size of letters, etc. The Central Government has been delegated with the rule making power clothing it with vast powers.

140. The contention of Mr. Poovayya that a reading of Section 7(4) of COTPA would indicate that the specified warning shall appear only on one of the largest panels of the package and the rule making authority cannot require display of specified warning on both the largest panels of the package and therefore, the Rules framed are ultra vires the parent Act, cannot be accepted. Section 7(4) of COTPA states that specified warning shall appear on not less than one of the largest panels of the package. This cannot be construed to mean that the specified warning shall appear on only one of the largest panels. The rule making authority is vested with the discretion with a broad guideline contained in Section 7(4) that the specified warning shall appear in atleast one of the largest panels of the package. The rule making authority will be justified in requiring the manufacturers to carry the specified warning on both the largest panels.

141. As already stated, at the outset, the provisions of COTPA have not been challenged on the ground that they conferred excessive rule making power in favour of the Central Government. Therefore, only area falling for judicial scrutiny is, whether the rules providing for pictorial and textual warning to cover 85% of both the largest panels and as also the rule providing for rotation of such warnings every 12 months by substituting new images could be characterized as ultra vires the parent Act.

142. The definition of the expression 'specified warning' to mean such warnings against the use of cigarettes or other tobacco products to be printed, painted or inscribed on packages of cigarettes or other tobacco products in such form and manner as may be prescribed by Rules made under the COTPA (emphasis supplied) would clearly show that there is ample power given to the Central Government to prescribe by way of rules such warnings against the use of cigarettes as the Central Government deems fit to implement and enforce the object and purpose of COTPA. It is not for this Court to sit in judgment as to which type of warnings have to be permitted to be prescribed by making rules. It is also neither advisable, nor

possible for this Court to embark upon an enquiry to find out whether the warnings prescribed by the Rules are gruesome, false depiction or untrue. It is no doubt true that this exercise is required to be undertaken by the rule making authority by applying its mind to the relevant factors keeping in mind the nature and scope of its powers and the object sought to be achieved by the enactment. The reply furnished to the RTI application by the Health Department demonstrates that there has been no application of mind, nor the prescription of 85% of the specified warnings and the nature of pictorial warnings was based on any research or survey, etc. Juxtaposed to the exercise undertaken by the Central Government at the time of framing 2008 Rules, the 2014 Amendment Rules have not undergone such scrutiny or analysis by the Rule making authority. Therefore, as already held above, the Amendment Rules are manifestly arbitrary.

143. Rotation of specified health warnings cannot be termed as ultra vires the parent Act, inasmuch as Section 3(o) defining specified warning and Section 7(1) and Section 8(2) read together would make it clear that the nature of specified warnings against the use of cigarette and other tobacco

products, the specification of such warnings including pictorial warnings and the manner in which the specified warnings shall be printed, painted or inscribed, are left to be specified by way of rules to be made by the Central Government. If the intention of the legislature is to dissuade the people by warning them against the use of cigarettes or other tobacco products by printing such warnings as the Government may deem fit, it would, in its ambit and scope include the rotation of such warnings from time to time, and therefore, merely because the Central Government has prescribed the requirement of rotation of pictorial warnings in 2008 Rules it cannot be termed as exercise of power being ultra vires the parent Act. However, in prescribing the rotation as per Amendment Rules, 2014, the provision made providing for grace period not exceeding two months to clear old stock of tobacco products bearing specified warnings for the expired period of 12 months of the rotation period is uninformed by the serious repercussion it would have on the manufacturers, producers, retailers including even the consumers. This is so because, there is total prohibition in presenting the packages containing the old image from being released by the manufacturers after the expiry of rotation period and the grace period, if any. This will hit the bona fide traders,

particularly the retailers and thereby affect their economics. There is no application of mind in this connection by the rule making authority to any of the relevant aspects. Therefore, while the rule providing for rotation cannot be termed as ultra vires the parent Act, the manner in which the rotation has been provided and grace period is restricted to two months is not preceded by application of mind to the grievance of the affected interest and therefore, as already held, this portion of the rule is manifestly arbitrary.

144. Though some of the petitioners have challenged the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008 (unamended) also, no serious effort is made by any of the learned counsel to demonstrate how the 2008 Rules which have been operating for the last more than 8 years, are illegal. The general arguments advanced with regard to violation of fundamental right under Article 19 (i) (a) and 19 (i) (g) cannot be imported against the 2008 Rules. There is no valid ground to entertain the challenge against the 2008 Rules sans 2014 amendment. None of the contentions urged against the 2014 amendment are applicable against the 2008

Rules. Therefore, challenge made to 2008 Rules (unamended) is rejected.

145. In the light of the above, these writ petitions are partly allowed in the following terms:

i) The Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2014, are declared as illegal and are hereby set aside;

ii) The Central Government/the competent authority in terms of the Rules framed under Article 77 (3) of the Constitution of India is at liberty to undertake the exercise afresh in accordance with law and keeping in mind the findings recorded and the observations made in this order;

iii) The challenge made to the validity of the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008, (Unamended) is dismissed;

iv) Parties to bear their respective costs.

Sd/-
JUDGE

Kk/pks/jm/-

BSPJ & <u>BVNJ</u>: W.P.No.4470/2015 & conn.cases

PRONOUNCED ON 15/12/2017

Per Nagarathna J:

I have the benefit of reading the judgment of His Lordship, Hon'ble B.S.Patil J., and I find that on certain issues raised in these writ petitions, I would like to record a separate opinion. With regard to certain other aspects, I wish to amplify the scope of discussion as most of the issues raised by the petitioners in these writ petitions touch upon the constitutional validity of the amendments made to the Cigarettes and Other Tobacco products (Packaging and Labelling) Rules, 2008 by virtue of the Amendment Rules, 2014, which are impugned in these writ petitions (which shall hereinafter, be referred to as "Amendment Rules, 2014", for the sake of convenience). The Amendment Rules, 2014 have been made to the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008 (hereinafter, referred to as the

"Packaging and Labelling Rules, 2008", for the sake of convenience).

2. As His Lordship has referred to the facts leading to the filing of these petitions and contentions advanced by the respective parties in detail, it would be futile to reiterate the same. However, in light of the contentions raised at the Bar, I propose to deal with them on the following aspects:

(1) Whether the Amendment Rules, 2014 are vitiated on account of non-compliance with Article 77(1) and (2) of the Constitution of India (Constitution)?

(2) Whether under the Government of India (Allocation of Business Rules, 1961) and Government of India (Transaction of Business) Rules, 1961 (hereinafter, referred as the "Allocation of Business Rules" and "Transaction of Business Rules" respectively, for the sake of brevity), made under Article 77(3) of the Constitution of India by the President have been breached by the Department of Health and Family Welfare, functioning

under the Ministry of the same name, by unilaterally publishing the Amendment Rules, 2014 made to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter, referred to as "COTPA" for the sake of convenience)?

(3) Whether there has been breach of laying procedure before each House of Parliament as contemplated under Section 31(3) of COTPA?

(4) Whether the Amendment Rules, 2014 are violative of Article 19(1)(a) of the Constitution as they are not saved by Article 19(2)?

(5) Whether the Amendment Rules, 2014 are violative of Article 19(1)(g) of the Constitution as they are not saved by Article 19(6)?

(6) What Order?

3. I also wish to discuss the impact of the interim order granted by the Rajasthan High Court in

W.P.No.8680/2015, which is a Public Interest Litigation on the procedure subsequent to laying of the Rules before the Parliament under Section 31(3) of COTPA in the instant case and enforcement of the Rules even before submission of the Final Report by the Parliamentary Committee on Subordinate Legislation, which was seized of the matter at the time of enforcement of the Amendment Rules, 2014 made to the Packaging and Labelling Rules, 2008.

4. This is not a Public Interest Litigation. However, the Intervenors, who represent anti-tobacco movement have also been heard in these matters.

Bird's eye view of the controversy:

5. Article 47 of the Constitution, which is a part of the Directive Principles of State Policy enunciated in Part IV of the Constitution enjoins the State to raise the level of nutrition and standard of living and to improve public health. The said Article further enjoins that 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. Tobacco and its products are conspicuous by its absence in Article 47. That however, would not have any impact on the powers of the State in taking steps for the improvement of public health and in that regard measures being taken for restricting the use and consumption of tobacco and its products by the people of this Country. It is nobody's case that tobacco is not harmful to human health. It is the duty of the State to improve public health. In other words, although trade and business in tobacco and its products is not considered to be *res extra commercium* by the State, there could still be measures taken by the State to control or restrict its use.

6. On the other hand, one cannot lose sight of the fact that tobacco is a cash crop cultivated in many parts of the Country involving agricultural labour, whereas beedi industry is labour intensive. Manufacture of cigarettes and other tobacco products attracts employment in the

industrial sector and tobacco and its products is an item of trade and commerce, both domestic and transnational, export and import. It is in the aforesaid context that the Tobacco Board Act, 1975 was passed by the Parliament constituting the Tobacco Board for regulation of production and disposal of virginia tobacco widely grown in India.

7. At the same time, having regard to Article 47 of the Constitution, the Parliament had enacted the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975. The said Act *inter alia,* prescribed warnings to be put on cigarettes and other tobacco products. The said Act being repealed, has been substituted by COTPA. COTPA *inter alia,* has, not only prohibitions, but also contains certain restrictions, the discussion of which shall be made hereinafter.

8. Secondly, the challenge to the constitutionality of COTPA has been withdrawn by the petitioners herein. The challenge is with regard to the Packaging and Labelling Rules, 2008 and to the Amendment Rules 2014. The

impugned Rules is a piece of subordinate legislation and while considering the challenge made by the petitioners, the issues in controversy referred to above shall be considered and answered *in seriatim*.

Article 77 of the Constitution:

9. Learned senior counsel for the petitioners, Sri S.Vijayashankar has raised a three-fold contention with regard to there being non-compliance of Article 77 of the Constitution while publishing the notification, amending the Rules of 2008, by the Amendment Rules, 2014. He contended that Article 77(1) of the Constitution mandates that all executive action of Government of India should be in the name of the President. According to him, the orders and instruments made and executed in the name of the President should be issued in accordance with the Authentication (Orders and other Instruments) Rules, 2002, as required under Article 77(2) of the Constitution. He further submitted that Article 77(3) enables the President to make rules for the more convenient

transaction of the business of the Government of India and for the allocation among Ministers of the said business. That in the instant case, the Ministry of Health and Family Welfare had no singular authority to make the Amendment Rules, 2014, which have amended the rules of 2008 under COTPA. That the subjects "tobacco" and "tobacco legislation" are not allocated to the Health Ministry and therefore, the rule making power under Section 31 of COTPA could not have been exercised by the Health Ministry. Moreover, it is the Ministry of Commerce and Industry, which has been allocated the subject of "tobacco" concerning its "production, distribution and development" and "Tobacco Board" is a subject allocated to the very same Ministry under the Allocation of Business Rules. Therefore, the Ministry of Health and Family Welfare was not authorized to frame the Amendment Rules, 2014. According to him, as the said Rules are not published in the name of the President and are not authenticated in accordance with Article 77(2) and the Rules made there under are invalid. In the above premise, it is contended

by learned senior counsel that the Amendment Rules, 2014, which have amended the 2008 Rules must be struck down *en masse* as there is complete violation of Article 77 in publishing and enforcing the said Rules. In support of his submission, he placed great reliance on two decisions of the Hon'ble Supreme Court namely, ***MRF Limited vs. Manohar Parikkar*** reported in ***[(2010) 11 SCC 374]*** *(MRF Limited)* and ***Delhi International Airport vs. International Lease Finance Corporation*** reported in ***[(2015)8 SCC 446]*** *(Delhi International Airport).*

10. Learned Assistant Solicitor General, however, contended that there has been compliance with Article 77 of the Constitution in all respects. That under Article 77(1) the expression, President must be read in light of the definition given under Section 3(8)(b) of the General Clauses Act, 1897, which defines "Central Government", to mean the President. Therefore, when the impugned Rules were notified under the authentication of the Joint Secretary of the Department of Health and Family Welfare,

there was compliance with Article 77(1) as well as Article 77(2). He further submitted that there is also no infraction on the requirement of inter-departmental consultation while publishing the rules. That under Article 77(3), Allocation of Business Rules and Transaction of Business Rules have been made by the President. Under the said Rules, the subject "International Health Regulation" and "World Health Organization (WHO)" are expressly allocated to the Department of Health and Family Welfare and therefore, it is only that department which had the authority to prepare and publish the Amendment Rules, 2014. He further submitted that once the rules are laid before the Parliament, under Section 31(3) of COTPA, there is always scope for amendment of the said rules and hence, inter-departmental consultation before publishing the said rules was not necessary in the instant case. He further contended that there is no breach of Transaction of Business Rules. That under Article 253 of the Constitution, Parliament has given effect to the Resolutions passed during the World Health Assemblies and hence, COTPA has

been enforced. The impugned Rules made under Section 31 of COTPA are based on the World Health Organization's Frame Work Convention on Tobacco Control (FCTC), which is an International Health Regulation and the latter subject being allocated to the Department of Health and Family Welfare, the said department could alone prepare and publish the impugned rules. He concluded by submitting that there is no breach of Article 77 of the Constitution and that there is no merit in the submission of the petitioners in this regard.

11. Hon'ble B.S.Patil J., has considered the rival contentions and has expressed that the Ministry of Health and Family Welfare did not consult the other Ministries nor did the matter concerning Amendment Rules, 2014, fall for consideration by the Cabinet and hence, the question raised is, whether tobacco control and tobacco legislation are subjects allocated to Health Ministry or any other particular Ministry as per Allocation of Business Rules. The second question considered is, the effect of unilateral

action of the Health Ministry in framing and notifying the Amendment Rules, 2014 without following the Allocation of Business Rules. While dealing with the Allocation of Business Rules, what is considered by his Lordship are two subjects namely, "tobacco control programme" and "tobacco legislation". It is held that these two subjects do not fall under any ministry as such. That the subject "tobacco legislation" would also not fall within the ambit of the subject matter "International Health Regulations" and "World Health Organization", which are specifically allocated to the Department of Health and Family Welfare. Further, as "tobacco control programme" and "tobacco legislation" are not subjects allocated to the Department of Health and Family Welfare, no decision could have been taken or rules framed by that department, which are in the nature of "tobacco control" and "tobacco legislation". That other departments such as labour and employment, agriculture and industry and commerce have an interest in the subject of the Amendment Rules, 2014 and the said departments not being consulted has resulted in the

Amendment Rules, 2014 being invalid on account of the breach in Article 77(3) of the Constitution. His Lordship has also stated that it is not permissible to infer that the Amendment Rules, 2014 come within the ambit of the subjects, "International Health Regulations" or "World Health Organization", which are expressly allocated to the Department of Health and Family Welfare.

12. In this regard, reliance is placed on the decisions of *MRF Limited* and *Delhi International Airport* cited on behalf of the petitioners to hold that there has been non-compliance of the Allocation of Business Rules and Transaction of Business Rules in the instant case and hence, the Amendment Rules, 2014 are vitiated. That the Rule making power under Section 31 of COTPA could not have been exercised by the Health Ministry unilaterally, as no item relating to "tobacco" has been allocated to Health Ministry under Allocation of Business Rules. It is also held by His Lordship that the "tobacco legislation" is not included within the ambit of commerce ministry. Hence,

under Rules 4(1) of the Transaction of Business Rules, no decision could have been taken or order made until all departments concerned had concurred or, failing such concurrence, a decision had to be taken under the authority of the Cabinet. On the aforesaid basis, His Lordship has declared the Amendment Rules, 2014 as illegal and void *ab initio.*

13. With due respect, I propose to express a separate opinion.

14. Before considering the rival contentions, it would be necessary to understand the object and intent of Article 77 of the Constitution. Article 77 of the Constitution is almost *in pari materia* with Article 166. Hence, while discussing on this aspect, reference to Article 166 or decisions thereon are useful and could be relied upon.

Article 77 reads as under:

> *"**77. Conduct of business of the Government of India.-** (1) All executive action of the Government of India shall be*

expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."

15. The ***executive power*** of the Union, which is vested in the President can be exercised by him either directly, or through officers subordinate to him, in accordance with the Constitution vide Article 53. The expression "Executive" is used in a wide sense. Article 77(1) prescribes the mode in which ***executive action*** is to be expressed. While Clause (1) relates to the mode of

expression, clause (2) of Article 77 lays down the manner in which the order has to be authenticated. Where executive action of Government or its decisions have to be communicated to others, Articles 77(1) and (2) provide that executive action shall be taken in the name of the President and if authenticated in the manner prescribed by Article 77(2), it cannot be called in question on the ground that the order or instrument was not made or executed by the President. Under clause(2) of Article 77, the requirement of authentication is prescribed. Authentication, is for the purpose of a formal manner of promulgation to the public, any order and other instrument made and executed in the name of the President, that is to say, "all executive action of the Government of India" as contemplated under Article 77(1). While authentication under Article 77(2) is for the purpose of giving legal validity or to establish genuineness of an order of an instrument. Hence, Authentication (Orders and Other Instruments) Rules, 1958 have been made by the President for that very purpose. The aforesaid rules, confer

legitimacy to the orders and instruments issued in the name of the President by his subordinate officers even without any reference to him. Under the Authentication (Orders and other Instruments) Rules, 1958, the general mode of authentication of orders and other instruments made and executed in the name of the President is that "it shall be authenticated by the signature of a Secretary, Special Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India."

16. The Hon'ble Supreme Court has held that "the requirement to be complied with under Clause (1) of Article 77 is directory and not mandatory in character, and that non-compliance with it does not render the order a nullity" vide ***State of Bombay vs. Purshottam [AIR 1952 SC 317]***. Further, while dealing with Article 166(1), it has been held that the Constitution does not require a magic incantation, which can only be expressed in a set formula of words. What the court has to see is whether

the substance of the requirements of Article 166(1) is there. Therefore, even if there is any defect in the form of expression, it could be cured if there has been substantial compliance with clause (1) of Article 77. Consequently, failure to comply with Article 77(1) would not nullify the order. In ***Air India Cabin Crew Association vs. Yeshaswinee Merchant [AIR 2004 SC 187],*** it has been held that if the executive action of the Central Government is not formally expressed to have been taken in the name of the President, the same would not be void or invalid.

17. Next, the question, as to, whether, Article 77(2) is mandatory or directory, has been answered by the Hon'ble Supreme Court in the case of ***Dattathreya Moreshwar Pangarkar vs. State of Bombay [AIR 1952 SC 181]*** *(Dattathreya Moreshwar Pangarkar),* which dealt with Article 166, pertaining to the Governor, which provision is almost *in pari materia* with Article 77, which deals with the President, by holding that there is a

distinction between taking a formal executive decision and giving formal expression to it. When a decision has to be officially notified or communicated to outsiders, it should normally have expression in the form mentioned in Article 166 that is, in the name of the Governor. But this requirement, is only directory. As Article 77(1) is held to be directory, an order cannot be invalidated for contravention of the provision if there has been substantial compliance. Similarly, Article 166 has also been held to be directory vide ***Chaudhuri vs. L.S.G. Department [AIR 1980 SC 383].***

18. In ***Sable Waghire & Co. vs. Union of India [AIR 1975 SC 1172]*** *(Sable Waghire & Co.),* it has been held by the Hon'ble Supreme Court that the notification, which was a subject matter of controversy in that case was not an executive order, but a piece of subordinate legislation made by the Government. If it was duly published in the Gazette of India over the signature of the Under Secretary who was authorized for that purpose,

there was no violation of Article 77(1). Reliance has been placed on the above decision by learned Assistant Solicitor General, but the same is sought to be distinguished by the learned Senior Counsel, Sri S.Vijayashankar, by contending that the notification in that case was akin to one that could be issued under Section 30 of COTPA under which the schedule to the Act could be amended and therefore, is not applicable to the impugned notification, which has been issued under Section 31 of COTPA amending the Labelling and Packaging Rules, 2008.

19. In the instant case, it is noted that the Amendment Rules, 2014 have been notified by the Ministry of Health and Family Welfare and it has been authenticated by the Joint Secretary of the Department of Health and Family Welfare. The Amendment Rules, 2014 have amended Rule 3 and Rule 5, as well as the Schedule to the aforesaid Rules of 2008. Therefore, the said Rules have been authenticated in terms of the Authentication (Orders

and other Instruments) Rules, 1958. Hence, there is compliance with Article 77(2) of the Constitution.

20. As far as Article 77(1) is concerned, the requirement under that Article is only directory and not mandatory. Merely because the Notification publishing the Amendment Rules, 2014 does not expressly state that they have been issued in the name of the President, it cannot be held that the said rules are invalid or void *ab initio*. In fact, in *Sable Waghire & Co.*, the Hon'ble Supreme Court has concluded that when the notification was duly published in the Gazette of India over the signature of the Under Secretary, who was authorized for that purpose, there was no violation of Article 77(1). Irrespective of whether the publication of a notification is under Section 30 or Section 31 of COTPA, and so long as it is published in terms of the requirements of authentication prescribed under Article 77(2) and the rules made thereunder, the same cannot be held to be invalid, merely because the notification does not state that it has been

issued in the name of the President. Therefore, there is no substance in the contention of the learned Senior Counsel appearing for the petitioners insofar as violation of Article 77(1) and (2) are concerned. That having regard to the fact that the requirement under Article 77(1) of the Constitution is directory and not mandatory, even if it is held that the said rules have not been published in the name of the President, would not lead to striking down of the Rules on the ground of breach of Article 77(1) of the Constitution. As the Amendment Rules, 2014 are published under the signature of the Joint Secretary, Department of Health and Family Welfare, it is held that there is compliance with Article 77(2) of the Constitution insofar as authentication of the publication of the said Rules are concerned.

21. The next contention raised by learned Senior Counsel for the petitioners is with regard to Clause (3) of Article 77, which deals with the Allocation of Business and Transaction of Business of Government of India. The Rules

of Business allocate the business of the Government among the Ministers and also arrange for more convenient transaction of such business. The Rules of Business enable these powers to be exercised by a Minister or by any other official subordinate to him. Thus, under clause (3) of Article 77, the President of India has issued Government of India (Allocation of Business) Rules, 1961 and Government of India (Transaction of Business) Rules, 1961 (for short "Allocation of Business Rules" and "Transaction of Business Rules"). Thus, if under the Rules of Business and the allocation of business among Ministers any decision is taken by them or their officers under Article 77(3), it is in substance the decision of the President. Further, when the functions are performed by the officials, it does not mean that there is a delegation by the Ministers. The officials act as the machinery for the discharge of the functions entrusted to a Minister. In ***Shamsher Singh vs. State of Punjab [AIR 1974 SC 2192]*** *(Shamsher Singh)*, it is observed by the Hon'ble Supreme Court that the object of allocation of business under the Constitution is done for

the smooth and efficient administration and for convenient transaction of business of the Government of India. The Rules of Business, not only allocate various subjects amongst particular Ministers, but may go further and designate a particular official to discharge any particular function.

22. Reference could also be made to ***State of Sikkim vs. Dorjee Tshering Bhutia [(1991) 4 SCC 243]*** *(State of Sikkim)*, wherein it is observed that the Rules of Business made under Article 166(3) of the Constitution by the Governor of the State divides the Government business among the Ministers and specific functions are allocated to each Ministry and therefore, it could issue orders and notifications in respect of which functions were allocated to it under the Rules of Business. In *Dattathreya Moreshwar Pangarkar* and in ***Crawford Bayley & Co. vs. Union of India [AIR 2006 SC 2544]: [(2006) 6 SCC 25]***, it has been held by the Hon'ble Supreme Court that Rules of Business are administrative in

nature for governance of the business of the Government of India and no order could be invalidated if there is a breach of its provisions.

23. Bearing in mind the above discussion, the decisions of the Hon'ble Supreme Court, on which reliance has been placed by learned senior counsel appearing for the petitioners, could be considered in a little detail as a prelude to considering the substance of the controversy in the instant case while answering the contentions of the respective sides.

MRF Limited:

(a) In *MRF Limited*, the facts were that the Government of Goa issued a Notification dated 30/09/1991, granting 25% rebate in tariff to consumers of low tension and high-tension power supply. However, the said notification was rescinded by a subsequent Notification dated 31/03/1995. Another notification was issued on 15/05/1996 declaring that consumers of high tension, extra high tension or low tension etc., were also

entitled to rebate in tariff. The notification-dated 30/09/1991 was in force from that date to 30/03/1995. This was followed by Notification dated 01/08/1996 wherein it was mentioned that 25% rebate stood extended to all three categories of consumers for the further period from 01/04/1995 to 01/08/1996. The issue involved was whether the Notifications dated 15/05/1996 and 01/08/1996 were sustainable in law, even though the Business Rules of Goa Government were not followed while issuing the aforesaid notifications. The High Court of Bombay and Goa held that the notifications were invalid.

(b) Two distinct contentions were raised on behalf of the appellants before the Hon'ble Supreme Court. In that case, Article 166 of the Constitution came up for consideration. It was contended that the Rules of Business were directory and not mandatory. Failure to comply with such rules would not vitiate the decisions taken by the State Government. In other words, even if there was any violation of the Business Rules, it did not vitiate the

decision or the order. As opposed to the aforesaid contention, it was submitted on behalf of the respondents therein that there was no universal rule with regard to the violation of the Rules of Business and each case had to be decided on facts and on the test, as to, whether, the Rules of Business contained prohibitive or negative words. If so, they are indicative of the intent that the provision is mandatory. It was contended therein that in matters concerning revenue or finance, rigorous observance of the Rules is essential. When the Cabinet alone is competent to take a decision or, where the Finance Department has conveyed its disagreement or, where there is no prior consultation with the Finance Department, the decision of the individual Minister is liable to be quashed. It was contended in the said case that Rules 3, 6 and 7 of the Business Rules of the Government of Goa were mandatory and that the notifications issued by the Minister were in breach of the Rules and therefore invalid.

(c) The Hon'ble Supreme Court referred to the contentions made by the respondents in the aforesaid case to the effect that even under Article 166(3), the Rules of Business would be directory depending upon the nature of the rule, in which event, substantial compliance of the same would be required. But it was contended by the respondents therein that at least some of the provisions of the Rules of Business framed by the Government Goa were mandatory and non-observance of the same would vitiate the circulars, orders or notifications.

(d) The Hon'ble Supreme Court considered the **Rules of Business of the Government of Goa,** more particularly, Rule 7(2) which stated that a proposal which required previous concurrence of the Finance Department under the said Rule, but in which the Finance Department had not concurred, the proposal could not be proceeded with, unless the Council of Ministers took a decision to that effect. The Hon'ble Supreme Court opined that Rule 7(2) had to be read with Rule 3 of the said Rules, which stated

that the business of the Government shall be transacted in accordance with the Business Rules. That under Rule 7(2), the concurrence of the Finance Department was a condition precedent. While interpreting Rule 7 of the Business Rules of the Government of Goa, it was observed that Rule 7 required that no department without the concurrence of the Finance Department, could issue any order which may involve expenditure or abandonment of revenue, for which no provision had been made in the Appropriation Act, nor grant any land or assignment of revenue or, concession, grant, lease and licence of mineral in respect of forest rights or a right to water, power or any easement or privilege having a financial implication, whether involving expenditure or not. On a combined reading of Rules 7, 3 and 6 of the Business Rules of the Government of Goa, the Hon'ble Supreme Court concluded that any proposal involving expenditure or abandonment of revenue required concurrence of the Finance Department and could not be finalized merely at the level of the Minister in-charge. Further, after

concurrence of the Finance Department, the proposal had to be placed before the Council of Ministers or the Chief Minister and only thereafter a decision had to be taken in that regard, which would result in a decision of the State Government. It was further observed that in that case the decision was taken solely by the Minister to act upon the issuance of the notifications and was not the decision of the State Government. Therefore, there was breach of the applicable Business Rules of the Government of Goa, which Rules according to the Hon'ble Supreme Court were mandatory and not directory. It was, therefore, held that the notifications issued by the Minister of Goa were vitiated, being contrary to the Rules of Business of the Government of Goa. In the above circumstances, it was held that the notifications issued by the Minister therein were *non-est,* void *ab initio* as there was non-compliance of the aforesaid Rules of Business of the Government of Goa.

(e) In the said judgment, the Hon'ble Supreme Court has laid down the test as to whether the Rules of

Business are directory or mandatory in nature. According to the said test, it is only when the Rules of Business are mandatory in nature and there is breach of those Rules that the decision would become void *ab initio*. But if the Rules are only directory in nature and there is substantial compliance of those rules, then it would not vitiate the order, instrument or notification issued. The implication is that in each case it would be necessary to ascertain in the first instance, as to, whether, the applicable Rules of business are directory or mandatory in nature having regard to the facts and circumstances of the case.

Delhi International Airport:

(f) The aforesaid decision has been referred to in a recent judgment of the Hon'ble Supreme Court in the case of *Delhi International Airport,* on which much reliance has been placed by learned Senior Counsel for the petitioners herein. In that case, respondent Nos.1 and 2 therein had filed a writ petition before the Delhi High Court, challenging the order of detention of aircrafts

belonging to respondent No.1 therein by Delhi International Airport, the appellant therein and other authorities, by challenging the *vires* of Regulation 10 of the Airports Authority of India (Management of Airports) Regulations 2003. During the pendency of the writ petition, on 26/03/2013, a meeting was held between respondent No.8 therein and the airport operators regarding release of aircrafts. The Delhi High Court, by order dated 08/05/2013, directed all the airports to release the aircrafts in terms of the above decision taken in the meeting held on 26/03/2013 on payment of parking charges up to 13/05/2013. Being aggrieved, the appellant therein had preferred Special Leave Petition before the Hon'ble Supreme Court.

(g) Referring to Government of India (Transaction of Business) Rules, 1961, particularly Rules 3 and 4, the latter pertaining to inter-departmental consultations, the Hon'ble Supreme Court observed that in terms of Rule 3, the alleged decision taken therein pursuant to the meeting

held on 26/03/2013 should not have been sanctioned under special directions of the Minister in-charge since the stakes of different departments headed by different Ministries were concerned in the matter; the provisions of Rule 7 applied i.e., the decision should have been taken by the Committee concerned of the Cabinet and since the decision also involved financial implication, it should have had the concurrence of the Finance Department also. But the said decision on 26/03/2013 in that case was neither sanctified by the Cabinet nor had the concurrence of the Finance Department.

(h) After referring to *MRF Limited*, the Hon'ble Supreme Court observed that on a joint reading of Rules 3 and 4 of Rules of Business made under Article 77(3) of the Constitution, the decision dated 26/03/2013 could not have been finalized at the level of the officers or representatives of the Civil Aviation, Central Board of Excise and Customs etc. After concurrence of the Finance Ministry, the Minutes of the Meeting had to be placed

before the Ministers concerned as per the Rules of Business. In the absence of any such sanctification by the competent authority, the Minutes of the Meeting could not give any defeasible right to the appellant therein. It further observed that the Minutes of the Meeting dated 26/03/2013 was not a general or special order passed by the Central Government as the same was not issued in the name of the President in the manner provided under Article 77 of the Constitution. In the circumstances, the Hon'ble Supreme Court further observed that the final decision taken by the competent authority in terms of Article 77(3) was not acceptable as being enforced by issuance of a direction in a writ petition by the Delhi High Court and the order of the High Court was set aside.

(i) The aforesaid decisions have relied upon an earlier judgment of the Hon'ble Supreme Court in ***Haridwar Singh vs. Bagun Sumbrui and others [(1973) 3 SCC 889],*** wherein Rule 10 of the Rules framed by Bihar Government for conducting executive

business came up for consideration. The said Rule stated that no department shall, without previous consultation with the Finance Department, authorize any order, other than orders pursuant to any general or special delegation made by the Finance Department, which either immediately or by their repercussion, affected the finances of the State. Further, under Rule 10(2) of the said Rules, there was a prescription that where a proposal under the Rule required prior consultation with the Finance Department, which the Finance Department may not agree, no further action could be taken until the Cabinet took a decision to that effect. It was observed, on the facts of that case, when the Finance Department was consulted and had disagreed with the proposal of settling a bamboo coup known as "Bantha Bamboo coup" in Hazaribagh District by giving a contract to a particular person, the authorized department ought to have rejected the proposal and it could not take any further action. In the circumstances, the order passed by the Forest Minister

of Bihar State settling the coup in favour of the sixth respondent therein was held to be bad and quashed.

Thus, in all the aforesaid judgments, the common factor was that there were financial implications involved and prior approval of the Department of Finance was a condition precedent, which is not so in the instant case, as the impugned Rules do not have any financial bearing on the central exchequer.

(j) The test, as to, whether, compliance with the Transaction of Business Rules made under Article 77(3) or Article 166(3) of the Constitution, as the case may be, is directory or mandatory, has been adverted to in *MRF Limited*. However, in ***Lalaram & others vs. Jaipur Development Authority & another [2015 AIR SCW 6849],*** it is held that any decision to be construed as an executive decision as contemplated under Article 166 or Article 77, would essentially have to be in accordance with the Rules of Business. The Rules depending upon the scheme thereof, may or may not, accord an inbuilt

flexibility in its provisions in the matter of compliance. Contingent on the varying imperatives, some provisions may warrant compulsory exaction of compliance therewith e.g. negative/prohibitive expression/clauses, matters involving revenue or finance, prior approval/concurrence of the Finance Department consultation/approval/ concurrence of the Finance and Revenue departments in connection therewith and issues not admitting of any laxity so as to upset, dislodge or mutilate the prescribed essentiality of collective participation, involvement and contribution of the Council of Ministers, headed by the Chief Minister in aid of the Governor in transacting the affairs of the State to effectuate the imperatives of federal democratic governance as contemplated by the Constitution. Further, the Hon'ble Supreme Court at paragraph Nos.105 and 106 has held as under:

> *"105. As noticed hereinabove, it is affirmatively acknowledged as well that where provisions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of these*

have the potential of resulting in serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, such prescriptions are generally understood as mere instructions for the guidance of those on whom the duty is imposed and are regarded as directory. It has been the practice to hold such provisions to be directory only, neglect of those, though punishable, would not however affect the validity of the acts done. At the same time where however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it would neither be unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right of authority.

106. Obviously, thus the mandatory nature of any provision of any Rule of Business would be conditioned by the construction and the purpose thereof to be adjudged in the context of the scheme as a whole. The interpretation of the Rules, necessarily, would be guided by the

framework thereof and the contents and purport of its provisions, and the status and tenability of an order/instrument, represented as an executive decision would have to be judged in the conspectus of the attendant facts and circumstances. No straight jacket formula can, thus be ordained, divorced from the Rules applicable and the factual setting accompanying the order/decision under scrutiny".

Thus, there is no rigid prescription that the Business Rules are mandatory. The applicability of the rules would have to be considered depending upon the nature of the prescription under the Rules as well as exercise of power and the implications thereof.

Allocation of Business Rules and Transaction of Business Rules :

24. Bearing in mind the aforesaid dicta, the Allocation of Business Rules made under Article 77(3) of the Constitution could be considered before applying the same to the impugned notification dated 24/09/2014, issued by the Ministry of Health and Family Welfare,

notifying the Amendment Rules, 2014 under COTPA. This is having regard to the contention of the petitioners herein, that the subject matter of the Amendment Rules, 2014 does not fall within the authority of Ministry of Health and Family Welfare, but other Ministries, particularly Ministry of Commerce and Industries. Therefore, under the Transaction of Business Rules, there had to be prior consultation between the said departments and failing concurrence, the Cabinet had to consider the subject before the Amendment Rules, 2014 could have been notified by the Department of Health and Family Welfare is the contention.

25. Hence, the question for consideration is, whether the impugned Rules could have been prepared and notified by the Ministry of Health and Family Welfare or, in other words, whether, the subject matter contained in the impugned Rules is one which has been allocated to the Department of Health and Family Welfare coming under the Ministry of the same name or not.

26. The Allocation of Business Rules has been made by the President pursuant to Article 77(3) of the Constitution in supersession of earlier Rules and Orders on the subject. Rule 2 states, the business of the Government of the India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in First Schedule (all of which are referred to as "departments"). Under Rule 3(1), it is stated that the distribution of subjects among the departments shall be as specified in the Second Schedule to the Rules and shall include all attached and subordinate offices or other organizations including Public Sector Undertakings concerned with their subjects and Sub-rules (2), (3) and (4) of Rule 3(1). Sub-rules (2), (3) and (4) of Rule 3 are irrelevant for the purpose of this case and hence, need not be referred to. Rule 4 could be adverted to by noting that the business of the Government of India allocated to Cabinet Secretariat is and shall always be deemed to be allocated to the Prime Minister. Subject to the above, the President may, on the advice of the Prime Minister allocate

the Business of Government of India among Ministers by assigning one or more Departments to the charge of a Minister. Further, there could also be interchange in the assignment of subjects to Ministers although he may not be in-charge of any department.

27. Our attention has been drawn by learned senior counsel for the petitioners to the First Schedule in which ***Ministry of Commerce and Industry*** is at Sl.No.6, comprising of two departments namely, (i) Department of Commerce and (ii) Department of Industrial Policy and Promotion. ***Ministry of Consumer Affairs, Food and Public Distribution*** is at Sl.No.8, comprising of the following two departments namely, (i) Department of Consumer Affairs and (ii) Department of Food and Public Distribution. ***Ministry of Food Processing Industries*** at Sl.No.14 and ***Ministry of Health and Family Welfare*** is at Sl.No.15 comprising of two departments namely, "(b)(i) Department of Health and Family Welfare; (ii) ....; (iii) Department of Health Research; (iv) .....". ***Ministry of Labour and Employment*** is at Sl.No.20. It is also

necessary to note that Sl.No.46 deals with ***Cabinet Secretariat*** which deals with: (i) Secretarial assistance to the Cabinet and Cabinet Committees; (ii) Rules of Business.

28. The Second Schedule to the aforesaid Rules pertains to the distribution of subjects among the departments. Under ***"Ministry of Commerce and Industry"*** and under the Department of Commerce, under the heading, ***"III State Trading"*** the following entries are found:

> *"Entry 8 - "production, distribution (for domestic consumption and exports) and development of plantation crops, tea, coffee, rubber, spices, tobacco and cashew"*
> *x x x*
> *Entry 10(d)- "Tobacco Board"."*

With regard to Ministry of Consumer Affairs and Food and Public Distribution, under the Department of Consumer Affairs *"Regulation of Packaged Commodities"* is a subject allotted to that department.

With regard to the ***Ministry of Health and Family Welfare***, under the Department of Health and Family Welfare, Entries 2 and 3 of ***"Union Business"*** read as under:

"1. x x x

2. All matters relating to the following Institutions:

(a) Central Food Laboratory;

(b) Central Food and Standardization Laboratory;

(c) Central Indian Pharmacopoeia Laboratory;

(d) All India Institute of Physical Medicine and Rehabilitation;

(e) National Tuberculosis Institute;

(f) Central Leprosy Teaching and Research Institute;

(g) Regional Leprosy Training and Research Centre, Raipur (Uttar Pradesh), Aska (Orissa), Gauripur (West Bengal), Teetulmari (Bihar);

(h) Port quarantine (Sea and air) seamen's and marine hospitals and hospitals connected with port quarantine;

(i) Port and Air Port Health Organizations;

(j) Medical Examination of Seamen;

(k) ***International Health Regulation;***

(l) ***World Health Organization (WHO);***

3(a) The Food Safety and Standards Act, 2006(34 of 2006)

(b) The Prevention of Food Adulteration Act, 1954 (37 of 1954) and the Central Food Laboratory"

(emphasis by me)

It is noticed that under ***Ministry of Labour and Employment*** under Part V concerning "Miscellaneous Business" at Sl.No.16 is mentioned, *"International Labour Organization (ILO)"*.

29. Learned senior counsel for the petitioners, Sri Vijayashankar, has drawn attention to the Transaction of Business Rules, which have been in force since 14/01/1961. Rule 2 of the aforesaid rules defines "department" to mean any of the Ministries, Departments, Secretariats and Offices specified in the First Schedule to the Government of India (Allocation of Business) Rules, 1961, referred to above. He laid emphasis on Rule 3,

which deals with disposal of Business by Ministries and Rule 4, which deals with Inter-Departmental Consultation as well as Rule 7, which deals with submission of cases to Cabinet and the same read as under:

> *"3.* ***Disposal of Business by Ministries****.- Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge.*
>
> *4.* ***Inter-Departmental Consultations -*** *(1) When the subject of a case concerns more than one department no decision be taken or order issued until all such departments have concurred, or failing such concurrence, a decision thereon has been taken by or under the authority of the Cabinet.*
>
> *Explanation – Every case in which a decision, if taken in one Department, is likely to affect the*

transaction of business allotted to another department, shall be deemed to be a case the subject of which concerns more than one department.

(2) Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Ministry of Finance, no department shall, without the previous concurrence of the Ministry of Finance issue any orders which may

(a) involve any abandonment of revenue or involve any expenditure for which no provision has been made in the appropriation act;

(b) involve any grant of land or assignment of revenue or concession, grant, lease or licence of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession;

(c) relate to the number or grade of posts, or to the strength of a service, or to the pay or allowances of Government servants or to any other conditions of their service having financial implications; or

(d) otherwise have a financial bearing whether involving expenditure or not;

Provided that no orders of the nature specified in clause (c) shall be issued in respect of the Ministry of Finance without the previous concurrence of the Department of Personnel and Training.

(3) The Ministry of Law shall be consulted on

(a) proposals for legislation;

(b) the making of rules and orders of a general character in the exercise of a statutory power conferred on the Government; and

(c) the preparation of important contracts to be entered into by the Government.

(4) Unless the case is fully covered by a decision or advice previously given by the Department of Personnel and Training that Department shall be consulted on all matters involving.

(a) the determination of the methods of recruitment and conditions of service of

general application to Government servants in civil employment; and

(b) the interpretation of the existing orders of general application relating to such recruitment or conditions of service.

(5) Unless the case is fully covered by the instructions issued or advice given by that Ministry, the Ministry of External Affairs shall be consulted on all matters affecting India's external relations."

x x x

7. ***Submission of Cases to the Cabinet*** *– (i) All cases specified in the Second Schedule to these Rules except cases covered by sub-rule(5) of rule 6, shall be brought before the cabinet;*

Provided that no case which concerns more than one Department shall, save in cases of urgency, be brought before the Cabinet until all the Departments concerned have been consulted.

Provided further that no case which falls under entry (h) of the second Schedule and

where specific powers have been delegated to Ministries/ Departments or Public Sector Undertakings under a decision of the Cabinet or a Standing Committee of the Cabinet and duly notified by the concerned Department, shall be brought before the Cabinet.

Provided also that cases pertaining to the implementation of the nuclear doctrine and handling/deployment of the strategic assets, including matters relating to staffing and creation of the assets, shall be brought before the Political Council of the Nuclear Command Authority, headed by the Prime Minister.

(ii) The Prime Minister may from time to time amend the Second Schedule by adding to or reducing the number or class of cases required to be placed before the Cabinet."

30. It is further brought to our notice that the Department of Health and Family Welfare under the Ministry of the same name had sought for amendment of the Allocation of Business Rules in the year 2010 by seeking *"Tobacco Control Programme"*, *"Tobacco*

Legislation" and *"health promotion"* to be added to the said Department, but concurrence was not given to the same. Therefore, the contention of petitioners is that the Rules made under COTPA concerned not only Department or Ministry of Health and Family Welfare, but also Department of Commerce and other departments, it was a mandatory requirement to have had inter-departmental consultation in terms of Rule 4 of the Transaction of Business Rules, as the subject i.e., Amendment Rules, 2014 concerned more than one department or atleast the Department of Commerce also and hence, the Department of Health and Family Welfare coming under the Ministry of Health and Family Welfare could not have unilaterally amended the rules in the year 2014. The controversy herein is, as to whether the Department of Health and Family Welfare was not right in unilaterally taking the initiative to draft and publish the said rules, without involving or consulting the Department of Commerce or any other Department as per Rule 4 of the Transaction of Business Rules. Whether the Rules are invalid on that score?

31. On a conjoint reading of the Allocation of Business Rules, it is noted that the subjects, "Tobacco" and "Tobacco Board" come under the Department of Commerce, whereas "Regulation of Packaged Commodities" comes under the Department of Consumer Affairs while "International Health Regulations and World Health Organization (WHO)" come under the Department of Health and Family Welfare. Under the Department of Commerce, in respect of tobacco, it would be concerned only with regard to "production, distribution, both domestic consumption and exports and development of Tobacco" as a product as well as the subject, "Tobacco Board". These subjects pertain to tobacco as an industry and as an item of trade or commerce. The said Department would not be concerned with the adverse impact of use/consumption of tobacco and its products on human health. Under the Department of Consumer Affairs "Regulation of Packaged Commodities" is a subject allocated, which would also include tobacco products, which pertain to the manner of

packing the products. The said Department would also not be concerned with the aspect of adverse health effects of tobacco and its products on human health and therefore the need for health warnings to be prescribed on the tobacco packages while dealing with packaging of tobacco or its products. But on the contrary, under the Department of Health and Family Welfare, the subject ***"International Health Regulations"*** would, in my considered view, also include the impugned legislation whose object is to curb usage or consumption of tobacco, as such a legislation concerns the deleterious effect of tobacco on human health. Under the aforesaid subject, all Regulations made by the Union Government, based on ***International Health Regulation*** would be covered. Further, ***"World Health Organization (WHO)"*** is also a subject allocated to the Department of Health and Family Welfare. As already noted, COTPA and the Rules made thereunder are under the aegis of WHO and the impugned Rules are made on the basis of Framework Convention on Tobacco Control (FCTC), which is an International Health

Regulation. Therefore, the impugned rules pertaining to packaging and Labelling of cigarettes and other tobacco products namely, Amendment Rules of 2014, have been made and enforced only by the Department of Health and Family Welfare, which is questioned in these Writ Petitions.

32. While answering the question, it is noted that COTPA is an enactment, which deals with prohibition of advertisement and regulation of trade and commerce, production, supply and distribution of cigarettes and other tobacco products. The said Act was enacted pursuant to the resolutions passed in the World Health Assemblies held in the years 1986 and 1990 under the aegis of the World Health Organization. The Act of 2003 was published in the Gazette of India dated 19/05/2003**.** The Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Commerce and Industry, Production Supply and Distribution) Rules, 2004 have been made and notified by the Department of Health and Family Welfare and were published in the Gazette of India on 25/02/2004. Under

the very same Act, the Cigarettes and Other Tobacco Products (Display of Board by Educational Institution) Rules, 2009 have been published in the Gazette of India on 19/01/2010 by the Department of Health and Family Welfare. So also, the Prohibition of Smoking in Public Places Rules, 2008 have been issued by the Department of Health and Family Welfare and published in the Official Gazette of India on 30/05/2008. Petitioners herein have neither raised any challenge to any provision of COTPA nor any of the aforesaid Rules. The aforesaid Rules have been made and published by the Ministry of Health and Family Welfare.

33. Further, the Rules under controversy namely "Packaging and Labelling Rules, 2008" were first published in the Gazette of India on 15/03/2008 by the Ministry of Health and Family Welfare. The Packaging and Labelling Rules, 2008 have also not been attacked on the ground that the Ministry of Health and Family Welfare had no authority to publish the same. The Amendment Rules,

2014 were published in the Gazette of India on 15/10/2014 to be effective from 01/04/2015. They have also been prepared and published by the Ministry of Health and Family Welfare. As already noted, these Rules have been made under Section 31 of COTPA, which Act has been enacted pursuant to resolutions passed in the 39th World Health Assembly and the 43rd World Health Assembly (WHA) and on the basis of FCTC so as to, *inter alia,* prescribe the size and contents of specified health warning; the language in which they are to be displayed etc. COTPA has been enacted by the Parliament on the strength of Article 253 of the Constitution as Health is a subject coming under List II or State List of the VII Schedule of the Constitution in order to give effect to the resolutions passed or decisions taken in the aforementioned World Health Assemblies conducted by the World Health Organization, but under the heading 'Union Business' of Department of Health and Family Welfare of the Central Government. Article 253 reads as under:

> ***"253. Legislation for giving effect to international agreements.***– *Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."*

The basis on which COTPA and its Rules have been framed is Article 47, which is a Directive Principle of State Policy of the Constitution, which reads as under:

> "***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.*"

34. A reading of the Packaging and Labelling Rules, 2008, would clearly indicate that they pertain to packaging and Labelling of cigarettes and other tobacco products, so as to bear the specified health warning. The object and purpose of the amendments made to the said 2008 Rules, in the year 2014, is to prescribe the specified health warning on the package of cigarettes and other tobacco products purportedly in a more effective manner so as to dissuade a consumer of tobacco or a potential consumer. The amendments made to the rules are not just to prescribe a specified warning as defined under Section 3(o) of COTPA, but to prescribe a ***specified health warning*** as defined in Rule 2(d) of the Rules, which is a species of the expression "health warning", the latter being a generic one. The further object and purpose of amendment to the Rules by Amendment Rules of 2014 is to prescribe a specified health warning on the basis of FCTC, which is an International Convention which, in my view, is an International Health Regulation, which has come into

existence under the supervision and aegis of the World Health Organization, pursuant to the World Health Assemblies. Viewed in such a perspective, according to me, it is the Department of Health and Family Welfare, which could have prepared and published the said rules just as other Rules under COTPA have been published by the very same department as the subjects "International Health Regulations" and "World Health Organization" are expressly allotted to Department of Health and Family Welfare under the Allocation of Business Rules. This becomes all the more clear on a reading of the aforesaid recitals as well as Statement of Objects and Reasons for enacting COTPA, which are extracted as under:

> *"An Act to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto.*
>
> *WHEREAS, the Resolution passed by the 39th World Health Assembly (WHO), in its*

Fourteenth Plenary meeting held on the 15th May, 1986 urged the member States of WHO which have not yet done so to implement the measures to ensure that effective protection is provided to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco;

AND WHEREAS, THE 43rd World Health Assembly in its Fourteenth Plenary meeting held on the 17th May, 1990, reiterated the concerns expressed in the Resolution passed in the 39th World Health Assembly and urged Member States to consider in their tobacco control strategies plans for legislation and other effective measures for protecting their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discourage the use of tobacco and impose progressive restrictions and take concerned action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco;

AND WHEREAS, it is considered expedient to enact a comprehensive law on tobacco in the public interest and to protect the public health;

AND WHEREAS, it is expedient to prohibit the consumption of cigarettes and other tobacco products which are injurious to health with a view to achieving improvement of public health in general as enjoined by article 47 of the Constitution;

AND WHEREAS, it is expedient to prohibit the advertisement of, and to provide for regulation of trade and commerce, production, supply and distribution of cigarettes and other tobacco products and for matters connected therewith or incidental thereto:

BE it enacted by Parliament in the Fifth-fourth Year of the Republic of India as follows:-

Statement of Objects and Reasons.- *Tobacco is universally regarded as one of the major public health hazards and is responsible directly of 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 Rs.13,500 crores annually, which more than offsets all the benefits accruing in the form of revenue and employment generated by tobacco industry. The need for a comprehensive legislation to prohibit advertising and regulation of production, supply and distribution of cigarettes and tobacco products was recommended by the Parliamentary Committee on Subordinate Legislation (Tenth Lok Sabha) and a number of points suggested by the Committee on Subordinate Legislation have been incorporated in the Bill.

2. The proposed Bill seeks to put total ban on advertising of cigarettes and other tobacco products and to prohibit sponsorship of sports and cultural events either directly or indirectly as well as sale of tobacco products to minors. It also proposes to make rules for the purpose of prescribing the contents of the specified warnings, the languages in which they are to be displayed, as well as displaying the quantities of nicotine and tar contents of these products. For the effective implementation of the proposed legislation,

provisions have been proposed for compounding minor offences and making punishments for offences by companies more stringent, The objective of the proposed enactment is to reduce the exposure of people to tobacco smoke (passive smoking) and to prevent the sale of tobacco products to minors and to protect them from becoming victims of misleading advertisements. This will result in a healthier life style and the protection of the right to life enshrined in the Constitution. The proposed legislation further seeks to implement article 47 of the Constitution which, inter alia, requires the State to endeavour to improve public health of the people.

3. The Bill seeks to achieve the aforesaid objects.

Amendment Act 38 of 2007.- Statement of Objects and Reasons. - *The Cigarettes and Other Tobacco Products (Production of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 was enacted mainly for taking effective steps to discourage the use of*

tobacco and tobacco products so as to protect the public health.

2. As per sub-section (1) of section 7 of the said Act, no person shall, directly or indirectly, produce, supply or distribute cigarette or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label, the specified health warning including a pictorial depiction of skull and cross bones and such other warning as may be prescribed by the rules made by the Central Government under the Act.

3. It is felt that taking into account the religious sentiments expressed by certain sections of society against the depiction of skull and cross bones, the pictorial warning of skull and cross bones on the packets of tobacco products may be made optional rather than mandatory.

4. The Bill seeks to achieve the above objective."

35. The preamble and salient Articles of the WHO Framework Convention on Tobacco Control (FCTC) can be usefully extracted as under:

"***Preamble***

The parties to this Convention,

Determined to give priority to their right to protect public health,

…….

Seriously concerned about the increase in the worldwide consumption and production of cigarettes and other tobacco products, particularly in developing countries, as well as about the burden this places on families, on the poor, and on national health systems.

Recognizing that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability, and that there is a time lag between the exposure to smoking and the other uses of tobacco products and the onset of tobacco-related diseases,

Recognizing also that cigarettes and some other products containing tobacco are

highly engineered so as to create and maintain dependence, and that many of the compounds they contain and the smoke they produce are pharmacologically active, toxic, mutagenic and carcinogenic and that tobacco dependence is separately classified as a disorder in major international classifications of diseases,

…….

Seriously concerned about the impact of all forms of advertising, promotion and sponsorship aimed at encouraging the use of tobacco products,

…….

Recognizing the need to develop appropriate mechanisms to address the long term social and economic implications of successful tobacco demand reduction strategies,

…….

PART 1: INTRODUCTION
Article 1
Use of terms

For the purposes of this Convention:
…..

(d) "tobacco control" means a range of supply, demand and harm reduction strategies

that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke;

….

Article 2

Relationship between this Convention and other agreements and legal instruments

1. In order to better protect human health, Parties are encouraged to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions and are in accordance with international law.

…..

Article 4

Guiding Principles

To achieve the objective of this Convention and its protocols and to implement its provisions, the Parties shall be guided, inter alia, by the principles set out below:

1. Every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke and effective

legislative, executive, administrative or other measures should be contemplated at the appropriate governmental level to protect all persons from exposure to tobacco smoke.

2. Strong political commitment is necessary to develop and support, at the national regional and international levels, comprehensive multisectoral measures and coordinated responses, taking into consideration:

(a) the need to take measures to protect all persons from exposure to tobacco smoke;

(b) the need to take measures to prevent the initiation, to promote and support cessation, and to decrease the consumption of tobacco products in any form;

(c) the need to take measures to promote the participation of indigenous individuals and communities in the development, implementation and evaluation of tobacco control programmes that are socially and

culturally appropriate to their needs and perspectives; and

(d) the need to take measures to address gender-specific risks when developing tobacco control strategies.

.....

Article 11

Packaging and labelling of tobacco products

1. Each Party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to ensure that:

(a) tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other

tobacco products. These may include terms such as "low tar", "light", "ultra-light", or "mild", and

(b) each unit packet and package of tobacco products and any outside packaging and labelling of such products also carry health warnings describing the harmful effects of tobacco use, and may include other appropriate messages. These warnings and messages:

(i) shall be approved by the competent national authority,

(ii) shall be rotating,

(iii) shall be large, clear, visible and legible,

(iv) should be 50% or more of the principal display areas but shall be no less than 30% of the principal display areas,

(v) may be in the form of or include pictures or pictograms.

2. Each unit packet and package of tobacco products and any outside packaging and labelling of such products shall, in addition to

the warnings specified in paragraph 1(b) of this Article, contain information on relevant constituents and emissions of tobacco products as defined by national authorities.

3. Each Party shall require that the warnings and other textual information specified in paragraphs 1(b) and Paragraph 2 of this Article will appear on each unit packet and package of tobacco products and any outside packaging and labelling of such products in its principal language or languages.

4. For the purposes of this Article, the term "outside packaging and labelling" in relation to tobacco products applies to any packaging and labelling used in the retail sale of the product."

36. India has ratified the aforesaid convention on 05/02/2004. Thus, under Article 253 of the Constitution, COTPA has been enacted and the Rules, are framed under Section 31 thereof. The impugned Rules have been prepared and published by the Department of Health and Family Welfare, bearing in mind only one important aspect of tobacco and its products from the point of view of the

department i.e., the same being harmful and injurious to human health and hence its use and consumption needs to be controlled by the people of this country. Therefore, on the strength of COTPA, which is enacted under Article 253 of the Constitution and on the basis of FCTC, which is an International Health Regulation, the Amendment Rules, 2014 have been made as domestic law, as COTPA empowers such Rules to be made. Thus, when the subjects, "International Health Regulation" and "World Health Organization" are allocated to Department of Health and Family Welfare under the Allocation of Business Rules, it is that Department which would have the authority to deal with the subjects by implementing International Conventions or decisions as domestic law. Thus, COTPA is made by Parliament and in order to give effect to FCTC the impugned Rules have been made by virtue of Section 30(2) of COTPA. The basis to such an exercise being carried by the Department of Health and Family Welfare is in Article 47 of the Constitution, extracted above.

37. In this regard, reliance could be placed on a recent decision of the Hon'ble Supreme Court in the case of ***Narinder S.Chadha & Others vs. Municipal Corporation of Greater Mumbai & others [(2014)15 SCC 689]***, wherein it has been observed that COTPA is really an implementation of World Health Assembly Resolutions and was enacted to put a total ban on advertising of tobacco products and to prevent the sale of tobacco products to minors. It is also a legislation which seeks to implement Article 47 of the Constitution, which is a Directive Principle of State Policy, one of whose objects is to improve public health. Thus, COTPA is an enactment made by Parliament by invoking Article 253 of the Constitution. Reference to Article 253 of the Constitution, not being expressly made in the preamble of COTPA is immaterial. This is similar to other enactments such as, Environment Protection Act, 1986, which has been enacted pursuant to the resolutions passed at the Stockholm Conference 1972, conducted under the aegis of the United

Nations, which was also enacted pursuant to Article 253 of the Constitution.

38. Further, Article 253 of the Constitution has to be read along with Article 51(c). It begins with a *non obstante* clause, so as to enable the Parliament to make laws for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This Article enables the making of laws in the country even if a particular subject is under List II or the State List of Seventh Schedule of the Constitution. Article 51(c) is a Directive Principle of State Policy, to foster respect for international law and treaty obligations in the dealings of organized peoples with one another. Entry 14 of List I (Union List) deals with treaty making and agreements with foreign countries and implementation of treaties, agreements and conventions with foreign countries. However, any law, to give effect to a treaty or a decision taken at any international convention cannot

violate the provisions of the Constitution, particularly the fundamental rights. Therefore, any international convention, which is not inconsistent with the fundamental rights and in harmony with its spirit could be read into the Constitution. Further, Courts can interpret any municipal law in light of any international convention, which is not in variance with the Municipal Law. Also, Parliament cannot take away fundamental rights or change the basic structure of the Constitution while implementing a treaty or a decision arrived at in an international conference. But, a treaty entered into by India *ipso facto* cannot become a law of the land and it cannot be implemented, unless Parliament passes a law under Article 253. This is in line with the doctrine of "dualism". Parliament's power to legislate in respect of treaties lies under Entries 10 and 14 of List I (Union List) of the Seventh Schedule of the Constitution, although in ***Union of India vs. Azadi Bachao Andolan [AIR 2004 SC 1107],*** it has been held that so long as the rights of the citizens which are justifiable are not affected, no legislative measure is

needed to give effect to the agreement or treaty. Thus, it is in the aforesaid context that COTPA has been enacted by the Parliament pursuant to the resolutions passed in the 39th and 43rd World Health Assemblies and the Amendment Rules, 2014 have been passed pursuant to the FCTC, which is an International Health Regulation.

39. In the matter of interpretation of domestic law in light of International Conventions, the Hon'ble Supreme Court in case of ***Entertainment Network (India) Limited and Others vs. Super Cassette Industries Limited and Others [(2008) 13 SCC 30],*** at paragraphs 71 and 78 has observed as under:

> *"71. In interpreting the domestic/ municipal laws, this Court has extensively made use of international law, inter alia, for the following purposes:*
>
> *(i) As a means of interpretation;*
>
> *(ii) Justification or fortification of a stance taken;*
>
> *(iii) To fulfill spirit of international obligation which India has entered*

into, when they are not in conflict with the existing domestic law;

(iv) To reflect international changes and reflect the wider civilisation;

(v) To provide a relief contained in a covenant, but not in a national law;

(vi) To fill gaps in law."

x x x

78. However, applicability of the international conventions and covenants, as also the resolutions, etc. for the purpose of interpreting domestic statute will depend upon the acceptability of the conventions in question. If the country is a signatory thereto subject of course to the provisions of the domestic law, the international covenants can be utilized. Where international conventions are framed upon undertaking a great deal of exercise upon giving an opportunity of hearing to both the parties and filtered at several levels as also upon taking into consideration the different societal conditions in different countries by laying down the minimum norm, as for

example, the ILO Conventions, the court would freely avail the benefits thereof."

Further, even where India is not a signatory to International Conventions but have been followed by way of enactment of new parliamentary statute or amendment to the existing enactment, recourse to international convention is permissible.

"*80. Furthermore, as regards the question where the protection of human rights, environment, ecology and other second-generation or third-generation rights is involved, the courts should not be loathe to refer to the international conventions."*

40. Reference has been made by learned Senior Counsel, Sri B.V.Acharya, appearing for one of the intervenors to ***Vishaka and Others vs. State of Rajasthan and Others [AIR 1997 SC 3011(1)].*** In the said case, the Hon'ble Supreme Court while referring to Article 253 in light of Entry 14 of Union List (List I) has observed that in the absence of domestic law occupying the field, to formulate effective measures to check the evil

of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into the said provisions to enlarge the meaning and content thereof and to promote the object of the constitutional guarantee. This is implicit in Article 51(c) and the enabling power of the Parliament to enact laws for implementing International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. According to the Hon'ble Supreme Court Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the Parliament

enacts legislation to expressly provide measures needed to curb the evil.

41. In the same vein, it is observed that decisions taken in the conferences of International Labour Organization (ILO) are implemented in India by enacting or amending domestic law on the basis of Article 253 by the Parliament. Such initiatives would be taken by the Ministry of Labour and Employment as International Labour Organisation is a subject allocated to that Ministry.

42. At this stage, it is necessary to clarify one aspect of the matter. Learned counsel for the Beedi Industry has contended that the Amendment Rules, 2014 could not have been made applicable to the beedi packages as far as Rule 3(h) of the Rules is concerned. This is because, under the Legal Metrology Act, 2009, beedis are exempted from prescribing certain details as required under that Act and therefore, the impugned Rules are contrary to the aforesaid Act and hence, have to be struck down. While considering the contentions of the

beedi industry, their grievances would be considered and answered in detail. But at this stage, for a limited purpose, it is stated that merely because Rule 3(h) concerns certain details to be mentioned as prescribed under the Legal Metrology Act, 2009 or as per International practices would not imply that the Department of Consumer Affairs also had a role to play in the making of the impugned rules and therefore, the Department of Health and Family Welfare alone could not have notified the Rules pertaining to specified health warning. This is because the quintessence and the subject of the Amendment Rules, 2014 concerns specified health warning. No doubt, under Section 7 of COTPA, a specified warning is required to be carried on the package of cigarette or any other tobacco product, but when the rules concern a specified health warning, it is only the Department of Health and Family Welfare which could have prepared and published the rules. Therefore, the contention that there has been a breach of Allocation of Business Rules by the Department of Health and Family Welfare in usurping the authority of

other departments, in unilaterally notifying the rules in question cannot be accepted.

43. Further, the argument with regard to the amendments sought to the Allocation of Business Rules by the Department of Health and Family Welfare in the year 2010 being turned down is also not relevant to the issue under consideration. "Tobacco Control Programme" and "Tobacco Legislation" were sought to be included by the Department of Health and Family Welfare as part of the business to be allocated to the said Department, which was not permitted. By that it would not imply that Department of Health and Family Welfare had no authority to prescribe health warnings and that other departments such as Department of Commerce were also concerned with the health warning. Further, "Tobacco Control Programme" is akin to "National Tuberculosis Control Programme", "National Malaria Protection Programme" or "Programme relating to Control of Harmful Diseases", which are programs in the nature of schemes/actions to be taken for the purpose of taking steps to curb, control or

eradicate such diseases. But, the impugned rules are not in the realm of "tobacco control programme" or for controlling a disease as such, but an everlasting initiative or endeavour to reduce use/consumption of tobacco and its products. It is in the realm of raising awareness with regard to the harmful effects of tobacco on those who use/consume it or potential users by mandating a specified health warning on the packages of tobacco and its products. The impugned rules are not in the context of any scheme or action plan, but a piece of subordinate legislation made pursuant to an International Convention (FCTC), which is an International Health Regulation prepared under the supervision of the World Health Organization (WHO). When International Health Regulation and World Health Organization (WHO) are subjects, which are expressly allocated to the Department of Health and Family Welfare coming under the Ministry of the same name, in my view, it is that Ministry which has the authority and jurisdiction to bring about the rules pertaining to specific health warning and not any other

department under the Government of India. In saying so, I am fortified by observations made in the decisions referred to above.

44. Further, even though Ministry of Health and Family Welfare sought amendment of the Allocation of Business Rules so as to bring the subject "Tobacco Legislation" under its authority and it was not permitted, the same would not have any bearing on the controversy in the instant case. Even in the absence of such a subject being allocated to the Ministry of Health and Family Welfare, it was and is vested with the authority to bring about such a legislation on the basis of two subjects namely, ***"International Health Regulation"*** and ***"World Health Organization (WHO)"*** being expressly allocated to the said Ministry. As already observed any health regulation which is derived from or based on an International Health Regulation could be formulated into domestic law on the basis of Article 253 of Constitution by the Department of Health and Family Welfare either, as an

Act of Parliament or, by way of subordinate legislation made under an Act of Parliament such as, COTPA and its Rules. Hence, the Ministry of Health and Family Welfare need not have been specifically allocated the subject, "tobacco legislation" in order to legislate on the health warning concerning tobacco and its products, which is based on an international convention or regulation. Therefore, the subject "tobacco legislation" not being allocated does not make any difference to the power and authority of the Department of Health and Family Welfare in preparing and publishing the impugned Rules. For that matter, "tobacco legislation" is not a subject, which is allocated to any other department. But that would not imply department of Commerce, which can otherwise deal with tobacco, as it is a subject allocated to the said department is also not vested with the authority to bring about "tobacco legislation" from the point of its commerce and industry by encouraging measures for augmenting tobacco and its products. "Tobacco legislation" is in fact an improper nomenclature as what has to be seen is what

aspect of a subject i.e., the adverse health effects of tobacco is allocated to a particular department in the instant case while interpreting the Allocation of Business Rules. By way of an illustration, on the aspect of adverse health effects of endosulfan, a pesticide used on certain crops, it is the Ministry of Health and Family Welfare, which could deal with the matter although the subject, pesticides is allocated to the Ministry of Chemicals and Fertilizers.

45. What has to be noted is, whether a particular ***aspect*** of a subject is allocated to a particular Department and not whether the entire subject is allocated to it. Applying the said test, it can be held that the aspect concerning "adverse effect of tobacco and its products on human health", would be a subject allocated to Department of Health and Family Welfare particularly when the same is covered by an "International Health Regulation" and "World Health Organization" has taken initiatives in the matter and they are subjects allocated to

the said Department. Whereas the Commerce and Industry aspect of tobacco and its products would come under the Department of Commerce under the Ministry of Commerce and Industry.

46. Further, as already noted, specific health warning is a species of specified warning and under Section 7 of COTPA, the necessity is for every package of cigarettes and other tobacco products containing a specified warning which is in the nature of a restriction on production, supply or distribution of cigarettes and other tobacco products. Such a restriction as stipulated under COTPA has not been challenged by the petitioners. This is also a matter known to Department of Commerce and Industry. Thus, in my view, it is the Department of Health and Family Welfare, which has the authority to specify health warnings on the package of cigarettes and other tobacco products as the subject is exclusively allocated to the said Department in the form of International Health

Regulations and World Health Organization, being subjects allocated to the said department.

47. In this context, reliance could also be placed on the extract of the questions and answers, raised in the Rajya Sabha on 11/12/2012 and 05/05/2015, and also in the Lok Sabha, concerning the International Guidelines under FCTC, which have been ratified by India with regard to the size of the health warnings on the tobacco packages, The said questions have been answered by the Union Minister of Health and Family Welfare in Parliament. Petitioners' counsel has filed the aforesaid extracts as part of Convenience Compilation Volume II-A. Thus, this also establishes the fact that the Union Health Minister answered the questions raised in the Parliament as the subject regarding the health warnings on the packages of the tobacco products including their size was a subject, which came under the authority of Department of Health and Family Welfare. The Department of Commerce or any other department dealing with tobacco and its products has not intervened in the matter.

48. Next, it is necessary to consider the contentions of learned senior counsel for the petitioners in light of Transaction of Business Rules and, as to whether, Explanation to Rule 4(1) applies in the instant case. Rule 2 of the Transaction of Business Rules defines "department" to mean any of the Ministries, Departments, Secretariats and Offices specified in the First Schedule to the Allocation of Business Rules. Rule 3 of the said Rules states that all business allocated to the Department under Allocation of Business Rules shall be disposed of by, or under the general or special directions of, the Minister in-charge. Therefore, the authority to deal with the particular business of the Government of India is based on the allocation of business under the Allocation of Business Rules. In the instant case, it is already held that any Rule based on an *International Health Regulation* or pertaining to *World Health Organization,* would be within the authority of Ministry of Health and Family Welfare to enact. However, Rule 3 is subject to other

Rules such as, consultation with other Departments; submission of cases to Prime Minister, Cabinet and its Committees and the President.

49. Rule 4 of the said Rules deals with inter-departmental consultations. Rule 4(1) states that when the subject of a case concerns more than one department, no decision be taken or order issued until all such departments have concurred, or failing such concurrence, a decision there on has been taken by or under the authority of the cabinet. The Explanation states that every case in which a decision, if taken in one department, is likely to affect the transaction of business allocated to another department, shall be deemed to be a case, the subject of which concerns more than one department. The expression ”subject of a case concerns more than one department” in the aforesaid provisions is crucial. Thus, for inter-departmental consultation to happen, in the first place, “the subject of a case” must concern more than one department i.e., an aspect of the subject must concern

more than one department. That is a condition precedent. If the aspect of a subject does not concern more than one department, then inter-departmental consultation is not necessary. In order to ascertain whether the subject concerns more than one department, the Explanation states that if a decision is taken by one department and the said decision is likely to affect, the transaction of business allotted to another department, then it would be deemed to be a case the subject of which concerns more than one department.

50. Thus, the deeming provision in the Explanation qualifies Rule 4(1) and in fact, it prescribes the contingency or a situation which would necessitate inter-departmental consultation. The contingency being, if a decision is to be taken by one department, on a subject allotted to it, and the same is likely to affect the transaction of business allocated to another department then, inter-departmental consultation is necessary. Therefore, the converse position is, if a decision to be taken by one department does not or, is not likely to

affect, the transaction of business of another department in such a case inter-departmental consultation would not be necessary or mandatory, but only directory. The question to be decided in the instant case is, whether, prior to the prescription of specified health warning, the Department of Health and Family Welfare had to consult other departments particularly, Department of Commerce as per Rule 4 of Transaction of Business Rules. Before answering the same, it would be useful to compare Tobacco Board Act, 1975 with COTPA as they both deal with different aspects of tobacco and the former Act deals with development of tobacco industry, the latter does not.

51. The object and intent of the Tobacco Board Act, 1975 (for short "1975 Act") is for effectively regulating the tobacco industry, particularly virginia tobacco industry and for maintaining and improving exports and thereby augmenting the country's foreign exchange resources. Therefore, it deals with various measures to be taken right from the stage of production so as to increase its demand

and supply in the market. That there were as many as five different independent organizations looking after, or exercising control over the movement, production, research, extension, quality control and export of tobacco. This was not conducive to an integrated approach, which was needed for the effective regulation and development of the industry. In order to provide much-needed integrated institutional set-up, the question of bringing tobacco industry under the control of the Union and setting up a Tobacco Board was considered by the Central Government for sometime. Therefore, proposing for providing for development of the tobacco industry under the control of the Union and for the establishment of the Board to be known as the "Tobacco Board" comprising of members of Parliament, representatives of Ministries of Central Government dealing with Agriculture, Commerce, Finance and Industrial Development, Indian Council of Agricultural Research, growers of tobacco, dealers or exporters of tobacco and tobacco products, manufacturers of tobacco products, and representatives of the tobacco

growing States, the said Act has constituted the Tobacco Board. But the said Board does not have a representative from the Department of Health and Family Welfare. The reason being that the functions of the Board is to promote development of tobacco industry under the control of the Central Government and to take measures for regulating production and curing of virginia tobacco; keeping a constant watch on the virginia tobacco market both in India and abroad and ensuring that the growers get a fair and remunerative price while at the same time there are no wide fluctuations in the prices of the commodity; maintenance and improvement of existing markets and development of new markets outside India and inside India for virginia tobacco products and devising of marketing strategy in consonance with demand for the commodity outside India including group marketing under limited brand names. The other functions of the Tobacco Board as enunciated in Section 8 are establishment by the Board an auction platform for the sale of virginia tobacco by registered growers or curers; recommending the minimum

prices for the purpose of exporting virginia tobacco with a view to avoid unhealthy competition amongst the exporters; propagating information useful to the growers, dealers and exporters (including packers) of virginia tobacco and manufacturers of virginia tobacco products and others concerned with virginia tobacco and products thereof; protecting the interests of the growers of virginia tobacco and such other matters. The 1975 Act deals with regulation of production and disposal of virginia tobacco by prescribing registration of growers of virginia tobacco and curers as well as processors and manufacturers, exporters, packers auctioneers and dealers. Thus, 1975 Act is concerned with the development of tobacco industry by increasing its supply in the market so as to make it available for use/consumption of the general public.

52. However, pursuant to the resolutions passed in the 39th World Health Assembly (WHO) (1986) and the 43rd World Health Assembly (WHO) (1990), COTPA has been enacted to prohibit advertisement and to provide for

the regulation of trade and commerce in and production, supply and distribution of cigarettes and other tobacco products. Pursuant to the aforesaid Resolutions to which India is a signatory, by virtue of Article 253, COTPA has been enacted for the purpose of implementing tobacco control strategies so as to reduce consumption of cigarettes and other tobacco products, which are injurious to health. This is with a view to achieve improvement of public health as enjoined by Article 47 of the Constitution of India. The Act also prescribes for specified warning as per the Rules made under the Act. Section 2 of the Act expressly declares that the Union i.e., the Central Government has taken under its control tobacco industry as it is expedient in the public interest to do so. A perusal of the scheme of COTPA would indicate that the object of the Act is to prohibit smoking in public places; prohibit advertisement of cigarettes and other tobacco products; prohibit sale of cigarettes or other tobacco products to a person below the age of eighteen years and in particular areas and to place restrictions on trade and commerce,

production, supply and distribution of cigarettes and other tobacco products by having a specified warning including a pictorial warning on every such tobacco package having regard to Sections 8 to 10 of the Act. Specific rules have been framed for the implementation of the prohibitions as well as the restrictions. The impugned Amendment Rules, 2014 is in the context of packaging and labelling cigarettes and other tobacco products. The said Rules have been made pursuant to Section 31 of COTPA, which prescribe specified health warning to be contained on every package of cigarettes or other tobacco products used for consumption whether wholesale, semi-wholesale or retail pack. The said Rules have been made pursuant to the FCTC to which India is a signatory.

53. Thus, on a comparison of the two Acts, it would at once become clear that while 1975 Act intends to encourage tobacco industry, COTPA's object is to discourage smoking and use or consumption of other tobacco products. Encouragement to tobacco industry as

envisaged under the 1975 Act is in the context of its cultivation or production, manufacture of tobacco products, distribution, sale, export and import etc. The 1975 Act has been enacted having regard to the concerns of growers, manufacturers, distributors, traders, exporters and importers of tobacco products. Whereas, COTPA has been enacted from the public health point of view to save the people of India from the ill-effects of the use and consumption of tobacco and its products. The object of the Act *inter alia,* is to warn the users or consumers of tobacco products or potential users or consumers with regard to their harmful effects. In the circumstances, the Department of Health and Family Welfare has taken the initiative to frame and publish the Rules under COTPA, including the Amendment Rules, 2014, on the basis of the FCTC, which is an ***"International Health Regulation"*** brought about under the aegis of the ***"World Health Organization (WHO)"***. The aforesaid two subjects being allocated to the Department of Health and Family Welfare,

it is that Department which could have prepared and published the impugned Rules.

54. Applying the aforesaid test to the instant case, the further question to be answered is, whether, the Department of Health and Family Welfare had to consult the other departments, particularly Department of Commerce before notifying the Amendment Rules, 2014. In my view, the answer is, in the negative. The reasons for the same are not far to see. Firstly, as already held, the subject matter of the Rules is exclusively allocated to the Department of Health and Family Welfare. Secondly, it would be useful to reiterate that on the enforcement of COTPA, the accepted position under Section 7 is that every package of cigarette or other tobacco product would carry a specified warning, which would also include a specified health warning. This is a restriction on production and trade of tobacco products. Therefore, on the enforcement of COTPA, the legal position is, the other departments of Government of India, particularly the Department of

Commerce is aware of the fact and has acknowledged that a specified warning must be notified by way of Rules made pursuant to Section 31 of COTPA. Further, the Rules made for the implementation of Sections 5 to 10 of COTPA are only with a view to reduce the use and consumption of tobacco and its products by people of this country. This is bearing in mind the adverse effects of tobacco and its products on human health. As already noted, COTPA has been enacted pursuant to Resolutions of World Health Assemblies and the impugned Rules are made pursuant to FCTC, which is a convention/treaty arrived at by various countries of the world so as to limit the use/consumption of cigarettes and other tobacco products in the member countries. This is with a view to save humanity from the ill-effects of such products and thereby not only to save the health of the population of the participating countries the world over, but also in a way to also reduce expenditure on treating people suffering from the ill-effects of use/consumption of tobacco and its products. Such being the case, in my considered opinion, the making and

notifying the impugned Rules or, for that matter, on any rule concerning or touching upon the harmful effects of tobacco products on the health of people of this country would not affect the business of the other Department of the Government of India, as it is the exclusive business of the Department of Health and Family Welfare to deal with the aspect concerning harmful effects of tobacco and not the Department of Commerce, Agriculture or Labour and Employment.

55. Viewed from another angle, if the Department of Commerce is to be vested with a role in the making of Rules pertaining to specified health warning, that would lead to a blatant situation of conflict of interest and it cannot be considered to be a case where the transaction of business in the form of making rules for specified health warning on the tobacco packages "is likely to affect the transaction of business of other Ministries" as contemplated under the Explanation to Rule 4 of Transaction of Business Rules. The two aspects concerning tobacco as a subject, in the instant case are different and

distinct. While the Department of Commerce is interested in the growth of tobacco industry, the Department of Health and Family Welfare is interested in controlling use/consumption of tobacco and its products. Therefore, all persons/entities involved in its growth would not, at the same time, device measured or take steps for controlling the demand for tobacco products by keeping in mind its ill-effects on human health. In other words, when the same person or entity is made to act in two contradictory directions, with two different objects and purposes would result in a conflict of interest situation. This is different from saying that the transaction of business of a Department is likely to affect the business of another department. Hence, when the Department of Health and Family Welfare prescribes a specified health warning, the same would have to be adhered to by the tobacco industry, if it is in accordance with law. The Department of Commerce cannot have a prior say in the matter of prescription of a specified warning. This is because with regard to tobacco and its products the Department of Commerce and Industry would never be interested in taking any measure or passing any

law, which would adversely affect commerce and industry in such products or reduce its demand from the consumers. Further, the Department of Labour and Employment would also not be interested in curbing tobacco industry, which would lead to a fall in demand for labour and employment or have any other adverse effect on labour involved in tobacco industry. Thus, in order to bolster trade in tobacco products, the Department of Commerce would only take such measures, which would achieve the aforesaid object; similarly, the Department of Labour and Employment would only encourage increase in cultivation of tobacco and growth of tobacco industry, so that tobacco industry would attract more labour and increase employment, which would ease the demand for employment in that sector. The aforesaid departments would be concerned with the growers of tobacco; producers, distributors, traders; or labour employed by the tobacco industry. But, on the other hand, specifying a health warning or any other warning, in order to caution tobacco users/consumers or potential users of its harmful

effects so as to safeguard their health is a matter of exclusive concern vested with the Department of Health and Family Welfare. Infact, as already held, that aspect of the subject is also allocated to the Department of Health and Family Welfare. Therefore, other departments, particularly Department of Commerce would not have a role in educating the people of this country or take steps to reduce the ill-effects of use/consumption of tobacco and its products on their health or, for that matter, prohibit addiction to tobacco products; smoking in public places or near the vicinity of educational institutions or having a ban on sale of tobacco products being sold to minor children or children below eighteen years. When the matter is viewed in the above perspective and context, it becomes all the more clear that it is only the Department of Health and Family Welfare and no other department, which could deal with the aspect of specifying health warnings on tobacco products. Other departments such as Department of Commerce may have a role to play in development of tobacco industry, but on account of conflict of interest with

the subject of health of the people being affected on account of use/consumption of tobacco products, in my view, there is no contingency as enunciated in the Explanation to Rule 4, which arises in the instant case. The business of the Department of Commerce cannot be said to be affected by the health warning being prescribed by the Department of Health and Family Welfare. It is conceded by one and all that tobacco products are harmful to public Health. When such is the position, the business of Department of Commerce cannot be said to be affected or likely to be affected by the prescription of health warning.

56. Apparently, it would seem that tobacco is a subject which Government of India has allocated to Department of Commerce and would also concern other departments but not Department of Health and Family Welfare. But, in substance, the position is to the contrary. When the matter pertains to the aspect of having specified health warnings on package of cigarettes or other tobacco

products, it is only the Department of Health and Family Welfare, which could deal with the same. This is because, the Department of Commerce is concerned with the production, supply and distribution of tobacco products, both for domestic consumption as well as exports i.e., tobacco as an item of trade/commerce. Thus, the Department of Commerce would be working towards encouragement of tobacco and tobacco products for the purpose of increasing its trade and for earning valuable foreign exchange by its export. The said Department would not be concerned with the ill-effects of tobacco and its products on human health. So long as commerce and industry in tobacco and its products are not classified or treated as *res extra commercium* by the Union Government, the Department of Commerce would be fully involved in development of tobacco products for the purpose of increasing its trade. In other words, the Department of Commerce being engaged in development of tobacco and its products as an item of trade, it would be presumptuous to think, the said Department would

simultaneously be concerned about tobacco having an adverse impact on human health and therefore, to take steps to ensure control on its use and consumption. In fact, the two purposes namely, development of trade in tobacco and its products as well as ensuring reduction in its use/consumption at the same time are distinct purposes or contrarian. Hence, it would result in a conflict of interest situation insofar as the Department of Commerce is concerned, if the said Department had to be consulted so as to have obtained its concurrence before the Amendment Rules of 2014 were published by the Department of Health and Family Welfare. The Department of Commerce cannot be expected to concur with the views of the Department of Health and Family Welfare in the matter of prescription of the health warning. This is because the same is not in favour of tobacco industry, as its intention is to control use/consumption of tobacco and its products. Therefore, it is held that prior concurrence under Rule 4 of Transaction of Business Rules with the other departments does not arise in the matter of

prescription of specified warning as in the instant case. In my considered view, prior consultation with other departments would be only directory and not a mandatory requirement. Hence, the Department of Commerce cannot have a mandatory role in making any legislation concerning the health warning on the package of a tobacco product as the prescription of the specified health warning does not affect the transaction of business of any other department, much less the Department of Commerce. Thus, apart from the Department of Health and Family Welfare, no other department under the Government of India could have drafted and published the Amendment Rules, 2014 and consultation with other departments was only directory. The submission to the contrary is not accepted.

57. In the instant case, the controversy is not really with regard to there being breach of Allocation of Business Rules, or Transaction of Business Rules, but whether the Department of Health and Family Welfare only could have framed and published the impugned rules. While answering the said question, one has to keep in

mind the object and intent of COTPA and its Rules on the one hand and Tobacco Act, 1975 on the other. COTPA and its Rules have been framed to safeguard the health of the people of India from the ill-effects of tobacco and its products. The legislation is not to further industry and commerce in tobacco and its products rather, to curb its use and consumption. Having regard to the object of the legislation and intention of the Parliament in enacting such a law, a balance in approach is necessary while dealing with the controversy. Thus, though the subject pertaining to tobacco has been allocated to Department of Commerce and Industry when it concerns a particular ***aspect*** of that subject, such as prescription of a health warning on tobacco products pursuant to International Health Regulations, it is only that particular Ministry/Department of the Government of India, which would have authority to deal with that particular aspect, which could frame the Rules. To further elaborate the above proposition, it is noted that the subject "tobacco" is expressly allocated to the Department of Commerce, but the transaction of

business in tobacco may also affect the Department of Labour and Employment and such other departments. Nevertheless, if a particular ***aspect*** concerning tobacco and its products clearly falls within the concern of a particular Ministry/Department, then it would not affect the transaction of business of another Ministry/Department to which it has been expressly allocated under the Allocation of Business Rules. Hence, when the aspect of use/consumption of tobacco and its products, causing adverse effects on human health, being the subject matter of a decision or legislation, subject of a case, then Department of Health and Family Welfare only would be concerned with such ***aspect*** and not any other department, much less Department of Commerce as the said ***aspect*** clearly falls within the subject International Health Regulations in the instant case. Similarly, if the ***aspect*** of tobacco concerns its export or import, then the said ***aspect*** would be within the exclusive domain of the Department of Commerce and not Department of Health and Family Welfare.

58. This is because the dominant aspect of the subordinate legislation concerning tobacco impugned in these writ petitions is regarding its adverse effects, which does not concern enhancing trade or commerce in tobacco and its products, rather it concerns the control in the use/consumption of tobacco and its products by its consumers or potential consumers in the interest of their health and public health in general. This becomes all the more clear on a reading of Section 7 of COTPA, under which, prescription of a specified warning is mandated on every package of cigarettes or other tobacco products in the matter of its sale, supply, distribution or import. Thus, the object and intent of Section 7 of COTPA is regarding prescription of a specified warning, which also includes a specified health warning on every package of tobacco and its products with a view to safeguard the people against the ill-effect of tobacco and its products. Hence, under Section 7 of COTPA, trade, supply, distribution of tobacco and its products is subject to a restriction in the form of printing a health warning on each package of tobacco

products. When such is the intention of the Parliament, which is so evidently discernable under Section 7 of COTPA, it cannot be envisaged or held that any other department would have a role in the matter. This is because the subject/aspect of specifying health warning on a package of tobacco or its products does not concern any other department other than Department of Health and Family Welfare and hence, does not concern the transaction of business of any other department, particularly in the matter of prescription of a health warning. Such a prescription can be done only by the Department of Health and Family Welfare. More over prescription of a health warning, is a subject which falls within the authority of the Department of Health and Family Welfare under the Allocation of Business Rules. Thus, any opinion expressed by the Department of Health and Family Welfare or any decision taken or legislation made by the said department vis-à-vis specified Health Warning on tobacco and its products is not likely to affect the business of the Department of Commerce or any other

Department. It is further held that the Amendment Rules, 2014 made pursuant to Sections 7 to 10 of COTPA, in no way affects the transaction of business of the Finance Department so as to make consultation with that Department mandatory. Thus, in the instant case, prior to the publication of the Amendment Rules, 2014, inter-departmental consultation was not mandatory and was only directory. By not complying with Rule 4 of Transaction of Business Rules, the Amendment Rules, 2014 are not rendered invalid or void *ab initio.*

59. Rule 7 of the Transaction of Business Rules states that all cases specified in the second Schedule, except cases covered by sub-rule (5) of Rule 7 shall be brought before the Cabinet. The first proviso to the Rule 7(1) states that no case which concerns more than one department shall, save in cases of urgency, be brought before the Cabinet until all the departments concerned have been consulted. In second Schedule to the Transaction of Business Rules, the list of cases, which have

to be brought before the Cabinet are enumerated and our attention has been drawn to "L" and "M" of the said list. They read as under:

> "L : Cases in which difference of opinions arises between two and or more Ministers and a Cabinet decision is desired and
>
> M : Proposals to vary or reverse a decision previously taken by the Cabinet."

The aforesaid contingencies do not exist in the instant case and hence, Rule 7 also does not apply.

60. Moreover, the petitioners herein have not assailed any provision of COTPA, which is enacted only for the purpose of saving the people of this country from the ill-effects of the use and consumption of tobacco and its products, while at the same time not treating it as *res extra commercium.* Precisely on the question of right to carry on trade or business in potable liquor, which is considered as *res extra commercium,* the Hon'ble Supreme Court has the summarized the law in the case of ***Khoday Distilleries Ltd., and Others vs. State of Karnataka***

and Others [(1995) 1 SCC 574], with reference to tobacco also and the relevant passage as applicable to tobacco products could be culled out as under:

> *"58. We also do not see any merit in the argument that there are more harmful substances like tobacco, the consumption of which is not prohibited and hence there is no justification for prohibiting the business in potable alcohol. What articles and goods should be allowed to be produced, possessed, sold and consumed is to be left to the judgment of the legislative and the executive wisdom. Things which are not considered harmful today, may be considered so tomorrow in the light of the fresh medical evidence. It requires research and education to convince the society of the harmful effects of the products before a consensus is reached to ban its consumption. Alcohol has since long been known all over the world to have had harmful effects on the health of the individual and the welfare of the society. Even long before the Constitution was framed, it was one of the major items on the agenda of the society to ban or at least to regulate, its consumption.*

That is why it found place in Article 47 of the Constitution. It is only in recent years that medical research has brought to the fore the fatal link between smoking and consumption of tobacco and cancer, cardiac diseases and deterioration and tuberculosis. There is a sizeable movement all over the world including in this country to educate people about the dangerous effect of tobacco on individual's health. The society may, in course of time, think of prohibiting its production and consumption as in the case of alcohol. There may be more such dangerous products, the harmful effects of which are today unknown. But merely because their production and consumption is not today banned, does not mean that products like alcohol which are proved harmful, should not be banned."

(underlining by me)

61. To conclude, COTPA has been enacted pursuant to the decisions taken and resolutions passed in the World Health Assemblies held under the aegis of WHO in the years 1986 and 1990. FCTC is an International Health Regulation. These are subjects allocated to Ministry

of Health and Family Welfare, Government of India under the heading "Union Business". It is only the Ministry of Health and Family Welfare, which has the authority to deal with specified health warnings in the use/consumption of tobacco products when it is pursuant to International Health Regulation or resolutions of WHO. The other rules made under COTPA were also made and published by the Department of Health and Family Welfare. As already noted, there has been no challenge to COTPA. Neither is there a challenge to other rules made by the Department of Health and Family Welfare. Therefore, there is no substance in the contention of the petitioners that Article 77(3) of the Constitution and the Rules made thereunder namely, Allocation of Business Rules and Transaction of Business Rules are breached. As the subject concerning the impugned Rules are expressly allocated to Ministry of Health and Family Welfare and consultation with other departments was only directory and not mandatory, the Amendment Rules, 2014 cannot be struck down as being

violative of Transaction of Business Rules made under Article 77(3) of the Constitution.

62. The decisions relied upon by the learned Senior Counsel, Mr. Vijayashankar, in the case of *MRF Limited* and *Delhi International Airport* discussed above are of no assistance to the petitioners as they are not applicable to the instant case and they are based on the peculiar facts arising in those cases, wherein consultation with the Department of Finance was a mandatory requirement. In fact, the earlier decisions of the Hon'ble Supreme Court have held that the Rules of Business are to be construed as directory so that substantial compliance with them would suffice to uphold the validity of the relevant Government order vide ***State of Uttar Pradesh vs. Om Prakash Gupta [AIR 1970 SC 679]***. In ***R.Chitralekha vs. State of Mysore [AIR 1964 SC 1823],*** the same view has been taken. The aforesaid judgments have been referred to in ***Bannari Amman Sugars Limited vs. Commercial Tax Officer, [2005 (1) SCC 625],*** wherein

it has been held that "*what the court has to see is, whether the substance of the requirement of Article 166 has been complied with. While doing so, the case has to be adjudicated on the factual background*".

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63. In fact, in a subsequent case i.e., ***Narmada Bachao Andolan vs. State of Madhya Pradesh [(2011) 12 SCC 333],*** which is a decision of three Hon'ble Judges, a categorical reference to the aforesaid decisions as well as to ***MRF Limited,*** which is a decision of two Hon'ble Judges of the Supreme Court, has been made and it has been held that ***MRF Limited*** is distinguishable as the case therein dealt with Rules pertaining to financial implications for which there were no provisions in the Appropriation Act, and so the Rules required mandatory compliance. In *Narmada Bachao Andolan,* the question was whether the Council of Ministers was permitted to delegate the power to amend its decisions to a Committee of Ministers consisting of the Ministers in-charge of the Department concerned and the Chief Minister (of Madhya

Pradesh) and whether such amendment had to be consistent with the Rules of Business framed under Article 166 of the Constitution of India. It is held that the Rules of Business framed under Article 166 are directory in nature and that the delegation was permissible under the said Rules.

In ***MRF Limited*****,** as well as in the case of *Delhi International Airport,* Hon'ble Supreme Court interpreted the relevant Transaction of Business Rules to be mandatory having regard to the nature of power exercised by the executive or the concerned government. But in certain other cases, they have been held to be only directory. Bearing in mind the exercise of power by the Department of Health and Family Welfare in formulating the Amendment Rules, 2014, so as to amend the prescriptions with regard to specified health warning in the instant case, it cannot be held that there was non-compliance of the Transaction of the Business Rules in the instant case as consultation was only directory and not a mandatory requirement. Further, subsequently on laying of

the said Rules before the Parliament and the Parliament Committee on Subordinate Legislation, scrutinizing the said Rules after hearing all the stakeholders had suggested certain recommendations. If only those recommendations had been considered by the Department of Health and Family Welfare and appropriate modifications were made to the said Amended Rules, possibly, the petitioners would not have raised the contention with regard to there being non-compliance of Article 77(3) of the Constitution to the effect that Transaction of Business Rules were not followed in the instant case. However, the fact remains that on the laying of the said Rules before the Parliament, the Parliamentary Committee has scrutinized the said Rules after hearing the views of concerned departments including the Department of Commerce, Agriculture, Labour and Employment as well as other stakeholders such as manufacturers, distributors etc., of cigarettes and other tobacco products. Therefore, it is held that there is substantial compliance of the said Rules, even if for a

moment it is assumed that the Rule 4 of Transaction of Business Rules was mandatory in nature.

Hence, it is concluded that as per the Allocation of Business Rules, the subjects, "International Health Regulations" and "World Health Organization" being allocated to the Department of Health and Family Welfare under the Ministry of Health and Family Welfare, the said Department was authorized to deal with the aspect concerning the specified health warning on the packages of cigarettes and other tobacco products and therefore, the said department was competent to prepare and publish the Amendment Rules, 2014. It was not mandatory for the Department of Health and Family Welfare to have consulted the other departments in the matter of preparation and publication of the Amendment Rules, 2014 as per Rule 4 of the Transaction of Business Rules. Any such consultation, in my view, was only directory. In the circumstances, the Amendment Rules, 2014 cannot be struck down as being prepared and published in violation

of the Allocation of Business Rules or Transaction of Business Rules or Article 77 (3) of the Constitution.

64. The next contention advanced on behalf of the petitioners is that the Amendment Rules, 2014 have been enforced without following the procedure contemplated under Section 31(3) of COTPA and also without giving due regard to the reports of the Parliamentary Committee on Subordinate Legislation ("Parliamentary Committee", for the sake of brevity). It is contended that the impugned rules are invalid on account of the non-completion of the parliamentary procedure of laying the impugned Rules before Parliament.

65. Section 31(3) of COTPA requires that, every rule made under the said Act and every notification made under Section 30 shall be laid before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or two or more successive sessions. If both the Houses agree in making any modification in the rule or notification or both

Houses agree that the rule or notification should not be made, the rule or notification shall thereafter, have effect only in such modified form or shall be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification. One of the legislative controls over delegated legislation is what is known as, laying procedure. Section 31(3) of COTPA contemplates, laying of the rules before the Parliament. Parliament would have to consider the said rules and either modify them, annul or approve the said rules.

66. Learned senior counsel, Sri S.Vijayashankar, has contended that in the instant case, after the impugned rules were laid before the Parliament, there were several objections raised and representations made against the said rules. The said rules were referred to the Parliamentary Committee. The said Committee submitted its Interim Report on 18/03/2015. By then, Notification

dated 15/10/2014 was already issued, by which, the impugned rules were notified to come into force from 01/04/2015. On receipt of the Interim Report, the said rules were sought to be kept in abeyance and a corrigendum dated 26/03/2015, was issued by the Central Government. But even before the Final Report of the Parliamentary Committee could be submitted, the impugned rules i.e., Amendment Rules, 2014 were enforced pursuant to the *ex parte* interim order dated 03/07/2015 issued by the Rajasthan High Court. It is contended by the petitioners that as a result, the recommendations of the Parliamentary Committee contained in its Interim and Final Reports have been given a go-by. It is further submitted that, the Ministry of Health and Family Welfare did not take steps to bring to the notice of Rajasthan High Court, the Interim Report of the Parliamentary Committee and instead, ordered for enforcement of the rules with effect from 01/04/2016 by issuance of a notification to that effect.

67. Learned counsel for some of the petitioners, Sri Vivek Kohli, has also submitted that, as a result of the manner in which the impugned rules were enforced, the process which was required to be followed before enforcing the rules has been breached. It is further submitted that, under Article 118 of the Constitution each House of Parliament has rules for regulating its procedure on the conduct of its business. That under the said Article, the Rules of Procedure and Conduct of Business in Lok Sabha have been framed. Under the said rules, Parliamentary Committee for Subordinate Legislation is a Committee constituted under Rule 3(1)(7) of the said Rules. That when the said Parliamentary Committee functions, even directions could be issued by the Speaker and action has to be taken in accordance with the recommendations of the Committee. That on account of there being no such procedure complied with, in the instant case, the rules would have to be struck down.

68. Learned senior counsel, Sri S.Vijayashankar, has also contended that pre-legislative consultation is an important control of delegated legislation, which has been given a go-by in the instant case. In support of his submissions, reliance has been placed on certain decisions which shall be adverted to.

69. Before considering the said arguments, it is necessary to note that despite the laying procedure contemplated under Section 31(3) of COTPA, the rules would come into force immediately when they are notified. But subsequently, if any modification is made by both Houses of Parliament then, on completion of the laying procedure, the modified rules would take effect prospectively. In the instant case, the Amendment Rules, 2014 have no doubt been laid before the Parliament after being notified. The question that now arises is, as to whether, the laying procedure has been completed in the instant case or not. At this stage, it may be noted that the laying procedure is regarded as being directory and not

mandatory unless the provision reads otherwise. Further, scrutiny of the Parliamentary Committee is an instance of parliamentary control of subordinate legislation. Sometimes, mere laying of the rules before the Houses may not be efficacious unless a method is followed to scrutinize the rules so laid. For that purpose, the rules are referred to the Parliamentary Committee to scrutinize the rules and submit its report before the respective Houses along with its recommendations.

70. As submitted by learned counsel for petitioners, in the instant case, after the Amendment Rules, 2014 were notified on 15/10/2014, they were laid before the Parliament and the Parliamentary Committee was requested to scrutinize the Amendment Rules, 2014 and submit a report thereon. Rules 319 to 322 of the Rules of Procedure and Conduct of Business in Lok Sabha deal with the manner in which the Parliamentary Committee on Subordinate Legislation would examine the rules and regulations which are laid before the House of

Parliament. Under Direction No.103 of the Directions of the Speaker, Lok Sabha, the said Parliamentary Committee would examine the rules, which when tabled are called "Orders", framed in pursuance of the provisions of the Constitution or a statute by delegating power to a subordinate authority to make such rules. On submission of the report of the said Parliamentary Committee, the Ministries shall be required to furnish from time to time to the Lok Sabha Secretariat, statements of action taken or proposed to be taken by them on the recommendations made by the said Committee in their reports. In case any Ministry is not in a position to implement or, has any difficulty in giving effect to a recommendation made by the Committee, the Ministry shall place its views before the Committee which may, if it thinks fit, present a further report to the House after considering the views of the Ministry in the matter.

71. To examine the contentions advanced on behalf of the learned senior counsel and other counsel for

the petitioners, it is necessary to consider them in light of Notification dated 15/10/2014, issued in the instant case and also, the developments which occurred before and thereafter. As early as in the year 2007, to be precise, on 17/05/2007, the Cabinet Secretariat constituted a Group of Ministers (GoM) on the issue of labelling ***beedi bundles*** with the warning, "Injurious to Health". The Notification dated 17/05/2007, pertained to the composition of GoM and the terms of reference. The terms of reference of GoM were as under:-

> *(a) Explore ways of creating awareness regarding the adverse impact of smoking tobacco in a manner that the interests of the labour engaged in the profession are protected.*
>
> *(b) Suggest alternative models of communication that the above subtle and can achieve the objects of health awareness without creating panic among those engaged in the Beedi industry.*
>
> *(c) Suggest avenues for diversification of employment of people engaged in the Beedi industry in case the demand tapers.*

Significantly, the terms of reference was with regard to the beedi industry and not in respect of cigarettes or any other tobacco products. Secondly, the GoM was to be serviced by the Department of Health and Family Welfare, which could, if necessary, consult the other Ministries in the matter.

72. Subsequently, the Packaging and Labelling Rules of 2008 were enforced. The said Rules were also implemented. The said Rules were made pursuant to the amendment made to Section 7(1) of COTPA, prescribing specified warning including the pictorial warning on every package of cigarettes or any other tobacco product. As a result, the extant pictorial depiction with skull and cross bones was made optional rather than mandatory.

73. The Packaging and Labelling Rules, 2008 were amended from time-to-time and on 15/10/2014, Amendment Rules, 2014 were published in the Gazette of India Extraordinary, Part-II. The Amendment Rules, 2014 were made pursuant to a Report submitted by an Expert

Committee constituted by the Ministry of Health and Family Welfare, Government of India, which submitted its Report on 09/10/2014. Section 3(1) and the Schedule were to come into force from 01/04/2015. There were several representations submitted with regard to the Amendment Rules, 2014, when the same were laid before the Parliament in terms of Section 31(3) of COTPA.

74. Although, the Amendment Rules, 2014 were notified on 15/10/2014, they were to be effective from 01/04/2015, but on account of the representations and objections submitted against the Amendment Rules, 2014, the matter was referred to the Parliamentary Committee in January 2015. The said Committee by its Interim Report dated 16/03/2015 observed as under:-

> *"The Committee is of the firm opinion that all such apprehensions are needed to be comprehensively examined before the amendment Notification is brought into force w.e.f. 01.04.2015. However, the Committee are yet to hear the views of other stakeholders, experts in the field as well as the*

formal evidence of the Ministry of Health and Family Welfare and other Government authorities concerned with the subject. The Committee also feel that the socio-economic effect on the livelihood of the workers associated with the tobacco industry trespasses the domain of the Ministry of Health and Family Welfare, and therefore, it would be imperative for them to seek the views of other Ministries especially the Ministry of Labour and Employment, Ministry of Agriculture etc. As this entire process including finding out the socio-economic ramifications of the Notification and possible remedies is likely to take some more time, the Committee strongly urge the Government that the implementation of the notification viz. GSR 727-E dated 15 October, 2014 may be kept in abeyance till the Committee finalize the examination of the subject and arrive at appropriate conclusions and present an objective Report to the Parliament."

(underlining by me)

75. The Parliamentary Committee after holding meetings with the representatives of the Ministry of Health

and Family Welfare decided to hear the views of experts/NGOs/stakeholders and other Ministries of the Government of India namely, Labour and Employment; Micro, Small and Medium Enterprises; Finance; Agriculture; Commerce, etc., for the purpose of having a clear picture on various aspects raised in the representations received by the Committee. The Final Report of the Committee is in two parts. Part-I *inter alia,* deals with increase in the size of the pictorial health warning on all tobacco products; Opinions of Ministries/Government Organizations; Need for separate Rules for different tobacco products; Need for National Policy on tobacco control. Part-I also contains observations/recommendations of the Committee. The Committee has noted the opinions of the Department of Commerce and its representatives on the consequences of the specified health warnings on display areas. Also Department of Industry; Department of Health and Family Welfare; Department of Finance and Department of Agriculture etc., have also been heard. Department of

Finance has, in fact, stated that the Ministry of Health and Family Welfare is the nodal ministry for tobacco control and it was working towards development of a comprehensive policy of tobacco and tobacco related issues.

76. In Part-II of the Final Report, the Parliamentary Committee has noted about the submission of the Interim Report and pending submission of the Final Report, the directions issued by the Rajasthan High Court on 03/07/2015 and it has made its recommendations stating that the Beedi industry would not be able to survive if the Amendment Rules, 2014 were enforced upon them. Hence, the said Committee recommended that the Government needs to reconsider the decision to cover Beedi industry under the Amendment Rules, 2014 and that a practical approach in the matter may be adopted, by increasing the size of the warning upto 50% on one side of the beedi pack, chewing tobacco and other tobacco products such as Zarda, Khaini, Misri etc., which would be

feasible to follow and which would also ensure that a large number of people would be saved rather than becoming unemployed.

77. As far as the impact of health warning is concerned, the Parliamentary Committee has opined that there should be a balance in approach in the matter, keeping in mind the interest of consumers of cigarettes and other tobacco products, the labour engaged in the tobacco industry and the livelihood of tobacco growers. Hence, it recommended that cigarette packs should have a health warning up to 50% on both sides of principal display area instead of 85%, otherwise it would result in flooding of illicit cigarettes in the Country.

78. We are informed at the Bar by Assistant Solicitor General that Department of Health and Family Welfare has studied the recommendations submitted by the Parliamentary Committee by way of its Final Report dated 15/03/2016. However, pursuant to the *ex parte* interim order passed by the Rajasthan High Court in

W.P.No.8680/2015 dated 03/07/2015 and the Contempt of Court petition filed soon thereafter, the Department of Health and Family Welfare issued Notification dated 24/09/2015 indicating that the Amendment Rules, 2014 would be effective from 01/04/2016 and they have been in force since that date. It is in the above context that the Amendment Rules, 2014 have been challenged.

79. In this regard it is observed that the Packaging and Labelling Rules of 2008 made under COTPA prescribed a specified warning to cover 40% of the principal display area, but the Amendment Rules, 2014 increased the size of the health warning from 40% to 85% of the principal display area of the package of cigarettes and other tobacco products on both sides to be effective from 01/04/2015. Notification dated 15/10/2014 was issued by the Department of Health and Family Welfare and the Amendment Rules, 2014 were laid before the Parliament in accordance with Section 31(3) of COTPA. Several objections were raised against the Amendment Rules,

2014, both from Members of Parliament as well as from general public. Hence, in January 2015, the matter was referred to the Parliamentary Committee on Subordinate Legislation. The said Committee submitted an Interim Report on 18/03/2015 stating that Notification dated 15/10/2014 required reconsideration particularly, with regard to the size of the specified health warning and therefore, the said notification be kept in abeyance till a Final Report was submitted. Consequently, on 26/03/2015, a corrigendum was issued stating that the Amendment Rules, 2014 would come into force on such date as the Central Government may by notification appoint.

80. The corrigendum was assailed in W.P.No.8680/2015 before the Rajasthan High Court, which petition has been transferred to this Court and it has been numbered as W.P.No.34194/2016. On 03/07/2015, Rajasthan High Court stayed the operation of the corrigendum dated 26/03/2015 and also directed implementation of the earlier Notification dated 15/10/2014 by which, the specified health warning was

increased from 40% to 85% as per the Amendment Rules, 2014. Immediately thereafter, on 21/07/2015, Contempt Petition No.800/2015 was filed before the Rajasthan High Court against the Union of India for non-compliance of the interim order dated 03/07/2015. Notices were issued in the contempt petition which was tagged along with W.P.No.8680/2015. In the face of contempt on 24/09/2015, notification was issued by the Department of Health and Family Welfare making the Amendment Rules, 2014 effective from 01/04/2016. It is only thereafter, i.e., on 15/03/2016 that the Parliamentary Committee submitted its Final Report recommending that the size of the pictorial warning be 50% on one side instead of 85% on both sides. But by then, by Notification dated 24/09/2015 with effect from 01/04/2016, the Amendment Rules, 2014 was to become effective, pursuant to the Interim Order of Rajasthan High Court.

81. Thus, between the submission of the Interim Report and the Final Report of the Parliamentary Committee, the Department of Health and Family Welfare

was directed to give effect to Notification dated 15/10/2014 by the Rajasthan High Court and as a result, Notification dated 24/09/2015 was issued making the Amendment Rules, 2014 effective from 01/04/2016. This was pursuant to *ex parte* stay of operation of the corrigendum dated 26/03/2015 by the Division Bench of the Rajasthan High Court. As a result, the recommendations made by the Parliamentary Committee by its Final Report have not been given its due weightage and consideration. This aspect of the matter would also throw light on the fact that the entire process of publication and enforcement of the Amendment Rules, 2014 is still inchoate as pursuant to laying of the impugned Rules before the Parliament, on the objections raised to the said Rules, the Parliamentary Committee was constituted to submit its Report on the said Rules. But before the Final Report could be submitted, the impugned Rules were enforced pursuant to the *ex parte* interim order passed by the Rajasthan High Court. The said Court was also not appraised of the developments vis-à-vis, the

Amendment Rules, 2014, subsequent to its publication, including the Constitution of the Parliamentary Committee on the said Rules being laid before the Parliament. Possibly, if the Rajasthan High Court had been appraised of the Interim Report submitted by the Parliamentary Committee and that the Final Report was awaited, then the *ex parte* order may have been modified and Parliamentary procedure, the procedure of laying of the impugned Rules would have been taken to its logical conclusion and possibly the impugned Rules may not have been in the form in which it is now enforced.

82. When viewed in the aforesaid perspective, it becomes clear that although, the Ministry of Health and Family Welfare prepared and published the Amendment Rules, 2014, on the said Rules being laid before the Parliament, Parliamentary Committee has considered the said Rules by hearing various stakeholders as well as different Departments of the Government of India and has made its final recommendations. But the recommendation

of the Parliamentary Committee made through its Final Report has not been considered as per Section 31(3) of COTPA so as to suggest amendments to the said Rules. Thus, the Parliamentary procedure, pursuant to laying of the Rules before the Parliament has not been completed, but that is on account of the intervention of the Rajasthan High Court, in the form of an *ex parte* an Interim Order dated 03/07/2015 and the threat of contempt on account of purported disobedience of the said Interim Order.

83. In ***S.R.Chaudhuri vs. State of Punjab and others [(2001) 7 SCC 126],*** it has been observed that, Parliamentary democracy generally envisages (i)representation of the people, (ii) responsible government, and, (iii) accountability of the Council of Ministers to the Legislature. The essence of this is to draw a direct line of authority from the people through the Legislature to the executive. The representatives of the people who are the members of the Parliament and Ministers of State are not only chosen by the people but

exercise their legislative and executive powers as representatives of the people. Seen in the above perspective, it is observed that the Reports of the Parliamentary Committee could not have been given a go-by, by enforcing the Amendment Rules, 2014. This is particularly so, when the Interim Report of the Committee had recommended that the size of the specified health warning be up to 50% only and not 85% as per the impugned Rules. However, the fact remains that despite the issuance of corrigendum dated 26/03/2015 by the Department of Health and Family Welfare, the impugned rules had to be enforced pursuant to the *ex parte* interim order issued by the Rajasthan High Court. In my view, but for the interim order, the impugned rules would not have been enforced with effect from 01/04/2016, as the corrigendum dated 26/03/2015 had stated that, the enforcement of the said rules would be from a future date and not with effect from 01/04/2016. This was on the basis of the Interim Report submitted by the Parliamentary Committee. Hence, though the laying procedure was

complied with by the Department of Health and Family Welfare in the instant case, the said procedure could not be taken to its logical conclusion on account of the *ex parte* interim order passed by the Rajasthan High Court, directing enforcement of the impugned rules with effect from 01/04/2016 by staying the corrigendum dated 26/03/2015. No steps were taken to seek vacation of the interim order owing to threat of contempt proceedings. If the Rajasthan High Court was informed about the Interim Report of the Committee and the reason as to why the corrigendum had been issued, possibly the Amendment Rules, 2014 would not have been enforced in its present form. After considering the Final Report, possibly there would have been modification in the Rules, which may have been to the satisfaction of all stakeholders. But in light of the aforesaid developments including judicial intervention by the Rajasthan High Court, the impugned Rules cannot be struck down or held to be invalid because, the laying procedure was not completed in the instant case.

84. Another contention raised on behalf of the petitioners is that owing to the absence of consultation with the stake holders, the impugned rules which are a piece of subordinate legislation are manifestly arbitrary. In this context, heavy reliance is placed on the latest decision of the Hon'ble Supreme Court in case of ***Cellular Operators Association of India & Ors. vs. Telecom Regulatory Authority of India & Ors. [(2016) 7 SCC 703],*** *(Cellular Operators Association of India).* In the aforesaid case, the Hon'ble Supreme Court was considering appeals filed by various telecom operators, who offer telecommunication services to the public, challenging the validity of the Telecom Consumers Protection (Ninth Amendment) Regulations, 2015 (hereinafter, referred to as the "Regulation"), issued by the Telecom Regulatory Authority of India. While considering the validity of the said Regulations, the Hon'ble Supreme Court alluded to the parameters of a valid subordinate legislation by referring to ***State of Tamil Nadu vs. P.Krishnamoorthy [(2006)***

4 SCC 517], *(State of Tamil Nadu)* and observed that, manifest arbitrariness/unreasonableness (to an extent where the Court might well say that the legislature never intended to give authority to make such rules) as one of the grounds for striking down the subordinate legislation. Reference was also made to *Khoday Distilleries Limited (supra),* to observe that, a law which could not be reasonably expected to emanate from an authority delegated with the law making power is manifestly arbitrary. Reference was also made to ***Sharma Transport vs. Government of Andhra Pradesh [(2002) 2 SCC 188],*** *(Sharma Transport),* to explain the term *"arbitrary"* to mean unreasonable manner, capricious, non-rational, to observe that a restriction may be in the interest of public, but it should not be arbitrarily unreasonable.

In that case, the Hon'ble Supreme Court held that under the Regulations made therein, the service provider was made to pay for call drops, that was not attributable to his fault and that the consumer received compensation

for a call drop that may be attributable to the fault of the consumer himself. Such a Regulation was without intelligent care and deliberation and hence, manifestly arbitrary. It was further observed that, if a Regulation is in the interest of general public it is saved under Article 19(6), but if it was manifestly arbitrary, then it did not have the immunity from Article 14 and could be struck down on that basis. In that case, the Hon'ble Supreme Court observed that, the impugned Regulation dated 16/10/2015, was to come into force only on 01/01/2016. That on 13/11/2015, i.e., a few days after the impugned Regulation was notified, it was realized that 36.9% of call drops took place because of the fault at the consumers' end. Instead of having a relook at the problem in light of the said technical paper, the Authority had gone ahead with the impugned Regulation, which held that the call drops was on account of deficiency of service by the service providers. According to the Hon'ble Supreme Court, this was an instance of manifest arbitrariness on the part of the Authority who had not bothered to relook the

problem. Therefore, it was held that the impugned Regulations were violative of Article 14 and an unreasonable restriction as it was also violative of Article 19(1)(g) of the Constitution.

85. However, in the instant case, the factual situation is quite different. The Ministry of Health and Family Welfare rightly issued a corrigendum dated 26/03/2015, on receipt of the recommendations by way of Interim Report dated 18/03/2015. However, corrigendum was assailed in a public interest litigation before the Rajasthan High Court, which passed an *ex parte* order staying the said corrigendum and thereby, directing enforcement of the Amendment Rules, 2014. In this regard, no fault can be found with the Union of India or for that matter, Department of Health and Family Welfare as they were directed to enforce the Amendment Rules, 2014 by virtue of a judicial order and threat of contempt issued by the Rajasthan High Court. As a result, the recommendation of the Parliamentary Committee could not

be considered and given its due weightage. This, in my view, is on account of judicial intervention. Hence, on this ground, the rules cannot be held to be manifestly arbitrary. Also, it cannot be held that there was absence of transparency in enforcement of the Amendment Rules, 2014 and on that score, the rules cannot be held to be manifestly arbitrary. Reliance placed on ***Global Energy Limited and Another vs. Central Electricity Regulatory Commission [(2009) 15 SCC 570],*** is of no assistance to the petitioners. However, validity of the impugned rules on the touchstone of Articles 14 and 19(1)(g) and 19(6) of the Constitution as to whether they are arbitrary on those grounds shall be considered later.

86. Therefore, the impugned rules cannot be held to be manifestly arbitrary on the ground of absence of consultation. Also, merely because the laying procedure was not concluded, the rules do not become manifestly arbitrary in the instant case. In fact, in the instant case, having regard to Section 31(3), the laying of the

Amendment Rules, 2014 before the Parliament is itself directory and not mandatory requirement. Therefore, when the impugned rules, which were in fact, laid before the Parliament, but did not receive the attention of the Parliament subsequent to the submission of the Final Report of the Parliamentary Committee and prior to that the rules being enforced by the Ministry of Health and Family Welfare (Union of India) on the direction of the Rajasthan High Court, it cannot be held that the rules are invalid on account of they being manifestly arbitrary. The Hon'ble Supreme Court in *Cellular Operators Association of India,* held that the rules were manifestly arbitrary as the technical report was not taken into consideration before the impugned regulations therein were enforced. But in the instant case, by an *ex parte* interim order, the Rajasthan High Court directed enforcement of the Amendment Rules, 2014 by staying the corrigendum dated 26/03/2015, which had in fact, intended to postpone the enforcement of the rules on consideration of the Interim Report of the Parliamentary Committee.

87. In fact, consultation of interests is also a matter considered by the Hon'ble Supreme Court in *Cellular Operators Association of India.* No doubt, consultation is useful in bringing to the fore individual interest and administrative exigency. Consultation ensures that, delegated legislation is passed by the authority concerned with adequate knowledge of the problem involved and relevant materials, so that it does not make a decision on insufficient information. In fact, consultative process is a salutary safeguard on improper use of power for delegated legislation. However, in India, there is no formal consultative procedure established unlike in the United States, which has the United States Administrative Procedure Act.

88. In the instant case, possibly, if the Rajasthan High Court had not intervened in the matter, the Ministry of Health and Family Welfare would have applied its mind to the Interim Report submitted by the Parliamentary Committee and reverted to the Committee with its views

and the said Department could have thereafter, considered the Final Report and the Parliament would have possibly considered the Amendment Rules, 2014 in light of any changes that would have been brought about by the Ministry of Health and Family Welfare on considering the Final Report. But such a thing did not happen in the instant case and instead, between submission of the Interim Report and the Final Report, the Amendment Rules, 2014 were enforced by virtue of a judicial order.

89. Hence, I further hold that the Amendment Rules, 2014 cannot be held to be manifestly arbitrary on account of the said rules not taking note of the recommendations submitted by the Parliamentary Committee. It is held that the Amendment Rules, 2014, are not invalid or null and void on account of non-completion of the laying procedure as contemplated under Section 31(3) of COTPA in the instant case.

90. Having regard to the aforesaid developments, 10the petitioners have assailed the *vires* of the Amendment Rules, 2014 on various aspects, which shall now be

considered on merits. At this stage itself, it is observed that had the Rajasthan High Court not passed the *ex parte* interim order directing enforcement of the impugned Rules, probably the laying procedure would have been completed and the Rules may not have been amenable to challenge and these petitions may not have been filed at all.

Articles 19(1)(a) and 19(2): Freedom of speech and expression and reasonable restrictions:

91. Learned Senior Counsel for the petitioners, Sri Sajjan Poovaiah, tenaciously contended that there is gross violation of the freedom of speech and expression of the petitioners in the instant case. He submitted that the Amendment Rules, 2014 are not only contrary to COTPA, but also violates Article 19(1)(a) and is not saved by Article 19(2). Elaborating the said contention, learned senior counsel drew our attention to the provisions of the 1975 Act and the provisions of COTPA and the impugned Rules and contended that under the proviso to sub-section (2) of Section 5 of COTPA the right to advertise tobacco products has been recognized. This is only on the package of cigarettes or other tobacco products or, at the entrance or

inside a warehouse or, a shop where cigarettes and any other tobacco product are offered for distribution or sale. But while the Act has preserved the right to advertise as stated above, the impugned Rules not only dilute the said right but completely annihilate the said freedom to advertise. In this regard, he drew our attention to three aspects: firstly, at least 85% of the principal display area of the package on both sides has to be covered by the health warning of which, 60% shall cover pictorial warning and 25% shall cover textual health warning. According to learned Senior Counsel, such a disproportionate health warning on the package violates the right to advertise on the package and consequently, is violative of the freedom of speech and expression as envisaged under Article 19(1) (a) of the Constitution as it is not saved under Article 19(2). He next submitted that the Amendment Rules, 2014 prescribe stipulations with regard to the labelling on the package of cigarettes and other tobacco products which again violates Article 19(1)(a) of the Constitution insofar as the petitioners are concerned. He elaborated this submission by drawing our attention to the Schedule to the Amendment Rules, 2014, particularly to the

contents of the pictorial and textual warnings and contended that such warnings are nothing but compelled or forced speech and hence, they invade petitioners' right to freedom of speech and expression envisaged under Article 19(1)(a). In support of his submissions, learned senior counsel, Sri Poovaiah, placed reliance not only on Indian decisions on the freedom of speech and expression but also, on innumerable decisions of the Supreme Court of United States and other Courts abroad as well. He contended that the impugned Rules would have to be quashed as being violative of the freedom of speech and expression granted under Article 19(1)(a) to the petitioners particularly, the manufactures, producers, distributors, sellers etc., of cigarettes and other tobacco products. Learned Assistant Solicitor General appearing for Union of India as well as learned Senior Counsel and other counsel for the Intervenors refuted the above submissions and contended that the petitioners have no such right.

The aforesaid contentions shall be considered in light of the judicial precedent on the content of Article 19(1)(a) read

with the restrictions prescribed under Article 19(2) of the Constitution.

92. Freedom of speech and expression including the freedom of press, has been regarded by great thinkers as necessary for a variety of ends, including democracy. Thus, freedom of speech and expression has been recognized in most democratic societies through constitutional documents or through myriad judicial precedent or through conventions. It has also been recognized that the said freedom is not absolute. The question, to be decided in each individual controversy is a difficult one of "how much freedom?". In resolution of such controversies, it generally falls upon the realm of the judiciary to locate the boundaries.

93. In the Constitution of India, Article 19(1)(a) guarantees to every citizen "the right to freedom of speech and expression". Article 19(2) provides that the guarantee of this right would not affect the operation of any existing law insofar as such law imposes reasonable restrictions on

the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India; the security of the State; friendly relations with foreign states; public order; decency or morality; in relation to contempt of Court; defamation or incitement to an offence, which petitioners' senior counsel, Sri Poovaiah, has termed as "eight buckets".

94. The permissible grounds of restriction contemplated by Article 19(2) are specific and they give rise to constitutional controversies whenever an action is taken by the State touching upon the right to freedom of speech and expression. It is the contention of learned senior counsel for petitioners, that any State action touching upon the right to freedom of speech and expression would have to be justified on the touchstone of the restrictions mentioned in Article 19(2) and ought to be reasonable. Important or noteworthy decisions of the Hon'ble Supreme Court touching upon the controversy relating to the restrictive clause are, ***Express Newspaper***

vs. Union of India [AIR 1958 SC 578], and ***Indian Express Newspapers (Bombay) Private Ltd. vs. Union of India [AIR 1986 SC 515]*** *(Indian Express Newspaper (Bombay) Pvt. Ltd.).* Of course, the aforesaid decisions are in the realm of freedom of press.

95. As far as the nuances of protected speech is concerned, in the matter of broadcasting rights, the Hon'ble Supreme Court in ***Secretary, Ministry of Information and Broadcasting, Government of India vs. Cricket Association of Bengal [AIR 1995 SC 1236]*** has held that as the airwaves or frequencies are public property, their use has to be controlled and regulated by a domain public authority in the interest of the public and to prevent the invasion of their rights.

Commercial Speech; Forced Speech or Compelled Speech:

96. The dictionary meaning of the expression "advertise" means, to draw attention to, or describe goods for sale, services offered, etc., through any medium, such as newspaper, television etc., in order to encourage people

to buy or use them. In other words, it is to draw attention to any product or service. "Advertisement" is a public notice, announcement, picture in a newspaper or on a wall in the street etc., which advertises something. In short, it is to advert attention to something and in the commercial sense, it would be to draw attention to goods for sale or services offered. In that sense, an advertisement is commercial speech.

97. Compelled or forced speech is speech, which compels a person to state a thing which is in the form of a "must carry" provision. An example of compelled speech is a provision mandating printing of the ingredients, its measure and such other details on a food product or pharmaceutical item. The object is to inform a potential consumer about the nature of the product. Such compelled speech cannot be a violation of the freedom of speech and expression. But if the State compels a citizen to carryout propaganda or a point of view contrary to his wish then it may be a restraint on his freedom of speech and expression.

98. In the aforesaid background, it would be useful to refer to the following dicta of the Hon'ble Supreme Court cited at the Bar having regard to the nature of controversy in the instant case.

(a) ***Hamdard Dawakhana vs. Union of India [AIR 1960 SC 554],*** *(Hamdard Dawakhana)*:

(i) In the aforesaid case, it has been held by the Hon'ble Supreme Court that an advertisement is a form of speech, but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under Article 19(1)(a) which it seeks to aid by bringing it to the notice of the public. But when it takes the form of commercial advertisement which has an element of trade or commerce, it no longer falls within the concept of freedom of speech for the object is not propagation of ideas – social, political or economic or, furtherance of literature or human thought; but, the commendation of the efficacy, value and importance of the product it seeks to advertise.

In such a case advertisement is a part of business. In the said case, the Hon'ble Supreme Court did not recognize commercial speech on par with other forms of speech by holding that it did not have the same value as political or creative expression. In that case, what was challenged was the Drugs and Magic Remedies (Objectionable Advertisements), Act, 1954. It was held that the object of the Act was the prevention of self-medication and self-treatment by prohibiting advertisements, which may be used to advocate the same or which tended to spread the evil. The Hon'ble Supreme Court relying on a decision of the Supreme Court of America in ***[Lewis J. Valentine vs. F.J.Chrestensen [(1941) 86 Law Ed. 1262]***, held that the right to publish and distribute commercial advertisements advertising an individual's personal business is a part of freedom of speech guaranteed by the Constitution. But it was held that not every advertisement is a matter which comes within the scope of freedom of speech, nor can it be said that it is an expression of ideas. In every case, one has to see what is the nature of

advertisement and what is the business/commercial activity falling under Article 19(1)(g) it seeks to further. It was further held that the advertisements of *Hamdard Dawakhana* were relating to commerce or trade and not propagation of ideas; and advertising of prohibited drugs or commodities of which the sale is not in the interest of the general public cannot be "speech" within the meaning of freedom of speech and would not fall within Article 19(1)(a). It was further held that the main purpose and true intent and aim, scope and object of the aforesaid Act was to prevent self-medication or self-treatment and for that purpose advertisements commending certain drugs and medicines could be prohibited.

(ii) The Hon'ble Supreme Court queried as to whether it could be said that there was an abridgement of the right of free speech of the petitioner therein recognising that freedom of speech goes to the heart of the natural right of an organised freedom-loving society to "impart and acquire information about that common

interest". The Hon'ble Supreme Court observed that if any limitation is placed which results in the society being deprived of such right, then no doubt, it would fall within the guaranteed freedom under Article 19(1)(a). But if all it does is to deprive a trader from commending his wares, it would not fall within that term. Referring to ***John W. Rast vs. Van Deman and Lewis Company [(1915) 60 Law Ed.679],*** it was held that advertising has no other object than to draw attention to the article to be sold and the acquisition of the article to be sold constitutes the only inducement to its purchase. Thus, in *Hamdard Dawakhana* it was held that advertisements to be banned do not fall under Article 19(1)(a). It was held that the advertisements in that case affected by the Act assailed therein did not fall within the phrase, freedom of speech within Article 19(1)(a); that the scope and object of the Act, its true nature and character was not interference with the right of freedom of speech, but it dealt with trade or business; that there was no direct abridgement of the right of free speech

as a mere incidental interference with such right would not alter the character of law.

(b) ***Indian Express Newspaper (Bombay) Pvt. Ltd. vs. Union of India [AIR 1986 SC 515]*** *(Indian Express Newspaper (Bombay) Pvt. Ltd.):*

(i) The decision in *Hamdard Dawakhana* was considered by observing that the main plank of the decision in *Hamdard Dawakhana* was with the type of advertisement dealt with or its content thereof and that particular advertisement did not carry with it the protection of Article 19(1)(a). The Hon'ble Supreme Court further clarified that the observations relating to the right to publish commercial advertisements made in *Hamdard Dawakhana,* were in light of the American decision in *Lewis J.Valentine.* But the American Supreme Court did not approve of the aforesaid decision subsequently in atleast two decisions namely, ***William B.Cammarano vs. United States of America [(1959) 358 US 498: 3 Law ed 2d 462]*** and ***Jeffrey Cole Bigelow vs. Commonwealth of***

Virginia [(1975) 421 US 809: 44 Law ed 2d 600 at p.610]. Hence, the Supreme Court in *Indian Express Newspaper (Bombay) Pvt.Ltd.,* held that the observations made in *Hamdard Dawakhana* are too broadly stated. It categorically held that *"we are of the view that all commercial advertisements cannot be denied the protection of Article 19(1)(a) of the Constitution merely because they are issued by businessmen".* The aforesaid observation is the genesis for the Hon'ble Supreme Court to hold that advertising is commercial speech which is protected under Article 19(1)(a) of the Constitution, but subject to reasonable restrictions under Article 19(2).

(c) ***Tata Press Limited vs. Mahanagar Telephone Nigam Limited and Others [(1995) 5 SCC 139]*** *(Tata Press Ltd.):*

(i) Having regard to the controversy raised in the present case, it would be useful to refer to *Tata Press Limited* in a little detail as the said decision is in the realm of commercial speech as in the instant case. The

controversy that arose was, as to whether, Mahanagar Telephone Nigam Limited (MTNL), had the sole right to publish or print the list of telephone subscribers and that the same could not be printed or published by any other person without the express permission of MTNL or Union of India. In other words, whether *Tata Press Limited* had no right whatsoever to print, publish and circulate the compilation called "Tata Press Yellow Pages" ("Tata Pages"). While considering the appeal, the Hon'ble Supreme Court stated at the outset that the decision in the appeal would depend upon the determination of the larger issue, i.e., whether a simple "commercial advertisement" comes within the concept of "freedom of speech and expression" guaranteed under Article 19(1)(a) of the Constitution of India. Noting that *Hamdard Dawakhana* had placed reliance on *Lewis J.Valentine*, the Hon'ble Supreme Court considered some of the later decisions of the Supreme Court of United States of America such as, ***New York Times Co. vs. Sulivan [376 US 254]: [11 L Ed 2d 686 (1964)]*** and *Jeffrey Cole Bigelow vs.*

Commonwealth of Virginia, and noted that it has been held in those cases that speech does not lose the protection of the First Amendment made to the Constitution of United States, merely because it appears in the form of a commercial advertisement.

(ii) Reference was also made in detail to ***Virginia State Board of Pharmacy vs. Virginia Citizens Consumer Council, Inc [425 US 748: 48 L Ed 2d 346 (1976)].*** The contention therein was that the advertisement of prescription drug was outside the protection of the First Amendment to the American Constitution because it was commercial speech. Rejecting the contention, the United States Supreme Court held that commercial speech is not an exception to the First Amendment which guarantees the right to speech and expression in United States. Thus, in *Tata Press Limited,* Hon'ble Supreme Court of India concluded that the United States Supreme Court in *Virginia State Board of Pharmacy*, had virtually over ruled *Valentine's* case decided in 1942,

to the effect that the statute which had the effect of prohibiting pharmacies from advertising the price of prescription drugs violated the First Amendment. Later, in ***John R.Bates and Van O'steen vs. State Bar of Arizona [53 L Ed 2d 810: 433 US 350 (1977)],*** in the context of advertisement of attorneys, the United States Supreme Court, held that the blanket suppression of advertising by attorneys in United States violated the free speech clause of First Amendment.

(iii) Thus, the Hon'ble Supreme Court of India on the basis of the aforesaid decisions of the United States Supreme Court held that commercial speech, which is entitled to protection under the First Amendment is also, protected under Article 19(1)(a) of the Indian Constitution. However, the State was completely free to recall commercial speech which is false, misleading, unfair, deceptive and which proposes illegal transactions. Thus, commercial speech may be restricted more easily when1ever the State can show substantial justification for

doing so. Hence, under the Indian Constitution, commercial speech which is deceptive, unfair, misleading and untruthful, would be hit by Article 19(2) of the Constitution and can be regulated/prohibited by the State. This could plausibly be on the ground of morality. Thus, in *Tata Press Limited,* the observations made by the Hon'ble Supreme Court in *Hamdard Dawakhana* as well as in *Indian Express Newspapers (Bombay) Pvt. Ltd. (supra),* have been reconciled.

(iv) Finally, at Paragraph Nos.23, 24 and 25 of *Tata Press Limited,* the Hon'ble Supreme Court observed as under:-

> *"23. Advertising as a "commercial speech" has two facets. Advertising which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product advertised. Public at large is benefited by the information made available through the advertisement. In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public*

at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "commercial speech". In relation to the publication and circulation of newspapers, this Court in Indian Express Newspaper case, Sakal Paper case and Bennett Coleman case has authoritatively held that any restraint or curtailment of advertisements would affect the fundamental right under Article 19(1)(a) on the aspects of propagation, publication and circulation.

24. Examined from another angle, the public at large has a right to receive the "commercial speech". Article 19(1)(a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfillment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as the recipient of the speech. The recipient of "commercial speech" may be having much

deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life-saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration.

25. We, therefore, hold that "commercial speech" is a part of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution".

Thus, the Hon'ble Supreme Court held that contents of an advertisement, its nature and purpose, would be factors to be considered while considering the question as to how much of protection it would be entitled to under Article 19(1)(a) of the Constitution.

(v) The Court further held that right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, cannot be denied by creating a monopoly in favour of the State or any other authority. Publication of advertisements which is commercial speech

and protected under Article 19(1)(a) of the Constitution cannot be denied such protection under the Telegraph Act and Rules.

(d) ***Union of India & others vs. The Motion Picture Association & others [AIR 1999 SC 2334]*** *(Motion Picture Association)*:

(i) In this case, the validity of certain provisions of the West Bengal Cinemas (Regulation) Act, 1954 and Notification dated 20/09/1957, issued thereunder, and the Cinematograph Act, 1952, *inter alia,* were assailed. The aforesaid Act mandated that in each cinema theatre, the exhibitor of films was required to show a film, which may be educational or scientific, a documentary film, or a film carrying news or current events, along with the other films. The duration of such films was strictly limited and only a small proportion of the total viewing time was to be devoted to the showing of such films. Since short films in those categories were normally produced by the Films Division of the Government of India, each exhibitor was

required to enter into an agreement with the Films Division for the supply of such films for exhibition.

(ii) The respondents therein challenged the provisions in the year 1993 as being violative of their rights under Articles 19(1)(a) and 19(1)(g) of the Constitution of India. Certain mandatory provisions were struck down by the High Court. Before the Hon'ble Supreme Court, it was contended that just as a restraint on free speech is a violation of Article 19(1) except as justified under Article 19(2) of the Constitution, compelled speech, often known as a "must carry" provision in a statute, rule or regulation, is equally an infringement of the right to free speech. The Hon'ble Supreme Court held that whether compelled speech will or will not amount to a violation of the freedom of speech and expression, would depend upon the nature of a "must carry" provision. It observed that "*If a "must carry" provision further informed decision-making, which is the essence of the right to free speech and expression, it will not amount to any violation*

of the fundamental freedom of speech and expression. However, if such a provision compels a person to carry out propaganda or project a partisan or distorted point of view, contrary to his wish, it may amount to a restraint on his freedom of speech and expression".

(iii) Citing examples, the Hon'ble Supreme Court stated that a statute imposes an obligation to print certain information in public interest or a food product must carry on its package the list of ingredients used in its preparation, or must print its weight etc. These are beneficial "must carry" provisions meant to inform the public about the correct quantity and contents of the products. It enables the public to decide on a correct basis whether a particular product should or should not be used. Citing the example of cigarettes, it was observed that cigarette cartons are required to carry a statutory warning that "cigarette smoking is harmful to health". This is undoubtedly a "must carry" provision or compelled speech. Nevertheless, it is meant to further the basic purpose of

imparting relevant information which will enable a user to make a correct decision as to whether he should smoke a cigarette or not. Such mandatory provisions although they compel speech cannot be viewed as a restraint on the freedom of speech and expression. In this context, reference was made to two decisions of the American Supreme Court namely, ***Neal R. Wooley vs. George Maynard [430 US 705 (1977)]*** and ***Turner Broadcasting System Inc vs. Federal Communications Commission [(1997) 512 US 622]***.

(iv) Examining whether the purpose of compulsory speech in the impugned provisions was to promote the fundamental freedom of speech and expression and dissemination of ideas, or whether it was a restraint on the freedom, the Hon'ble Supreme Court observed that the social context of any such legislation cannot be ignored. According to the Hon'ble Supreme Court, when a substantially significant body of population is illiterate or does not have easy access to ideas or information, it is

important that all available means of communication, particularly audio visual communication, are utilized not just for entertainment but also for education, information, propagation of scientific ideas and the like. While in the said case, the contents of the compulsory films are specified in the legislation concerned, the Hon'ble Supreme Court further held that the time and place constraints on cinema halls have also been upheld as regulatory provisions in ***Minerva Talkies, Bangalore Vs. State of Karnataka [(1988) Supp. SCC 176]***. Further, the Hon'ble Supreme Court observed that the restrictions sought to be imposed are specific and tailored to fit the public purpose behind the restrictions. Also, the reasonableness or otherwise of restrictions or their right to carry on business will have to be examined in the context of the purpose sought to be served by imposing such restrictions and though the exhibitors of films had a right under Article 19(1)(g), but the same is subject to reasonable restrictions under Article 19(6) and the restrictions were in the interest of general public. In the

above premise, the Hon'ble Supreme Court allowed the appeals and dismissed the writ petitions filed by the respondents therein.

(e) ***Shreya Singhal vs. Union of India [(2015) 5 SCC 125],*** *(Shreya Singhal):*

(i) *Shreya Singhal* is the latest in the series of judgments on the fundamental right of freedom of speech and expression. In that case, Section 66-A of the Information Technology Act, 2000, came up for consideration as the constitutionality of that section was challenged in a writ petition filed under Article 32 of the Constitution. Considering the nature and scope of the freedom of speech and expression, the Hon'ble Supreme Court stated its importance both from the point of view of liberty of an individual as well as from the point of view of democratic form of Government. With regard to understanding the impact and content of freedom of speech, reliance has been placed on the observations made in *Indian Express Newspaper (Bombay) Pvt. Ltd.*,

wherein it is stated that American decisions could be taken into consideration in order to understand the basic principle of freedom of speech and expression and freedom in a democratic country.

(ii) In *Shreya Singhal,* the Hon'ble Supreme Court held that Section 66-A of the I.T. Act, 2000 created an offence which was vague and over-board and, therefore, unconstitutional under Article 19(1)(a) and not saved by Article 19(2) and struck down the said section as being *ultra vires* the Constitution.

99. Learned Senior Counsel appearing for the petitioners, Sri Sajjan Poovaiah, has also drawn our attention to the tests developed by the Supreme Court of United States in the matter of commercial speech. But before delineating on those, it is necessary to exercise caution by referring to what has been stated in the *Indian Express Newspapers (Bombay) Pvt. Ltd.,* in the context of being guided by the decisions of the Supreme Court of United States. In that case, the Hon'ble Supreme Court

has observed that *"while examining the constitutionality of a law which is alleged to contravene Article 19(1)(a) of the Constitution, we cannot, no doubt, be solely guided by the decisions of the Supreme Court of the United States of America. But in order to understand the basic principles of freedom of speech and expression and the need for that freedom in a democratic country, we may take them into consideration."* Reference was made to the pattern of Article 19(1)(a) and 19(1)(g) of the Indian Constitution as opposed to the First Amendment made to the American Constitution, which is in almost absolute terms, whereas, Article 19(1)(a) and 19(1)(g) have to be read along with clauses (2) and (6) respectively, of Article 19, which carve out areas in respect of which valid legislation can be made. The differences between the First Amendment to the American Constitution and Article 19(1)(a) read with Article 19(2) has been articulated in Paragraph 15 in *Shreya Singhal.*

100. Bearing the aforesaid aspects in mind only some of the American decisions cited at the Bar on behalf of the petitioners could be discussed having regard to the fact that in the Indian cases discussed above the Indian Supreme Court has referred to American cases.

(a) In ***Neal R.Wooley vs. Goerge Maynard [430 US 705 (1977)]***, it was held that "even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." This case is cited by our Hon'ble Supreme Court in *Motion Picture Association.*

(b) In ***Liquormart, Inc. and Peoples Super Liquor Stores Inc. vs. Rhode Island and Rhode Island Liquor Stores Association [517 US 484 (1995)]***, the facts were that the state of Rhode Island enacted statutory provisions completely banning liquor

price advertising by prohibiting licensed vendors in the state as well as out-of-state manufacturers, wholesalers, shippers etc., from advertising the price of any alcoholic beverage offered for sale in Rhode Island. It also prohibited Rhode Island's media from publishing or broadcasting any advertisement, even those referring to sales in other states that made reference to the price of any alcoholic beverages. There were other restrictions also in the said enactment. The United States Supreme Court held that advertisement has been a part of their culture throughout their history and as "commercial speech" was relied upon for vital information about the market. That commercial messages have an important role and therefore, it must be protected for vital information as advertising provides consumers with accurate information about the availability of goods and services. That in the 1970's, the United States Supreme Court had recognized that the First Amendment protected the dissemination of truthful and non-misleading commercial messages about lawful products and services.

Thus, the United States Supreme Court has recognized the State's power to regulate commercial transactions justifying its concomitant power to regulate commercial speech that is "linked inextricably" to those transactions. Therefore, commercial speech "occurs in an area traditionally subject to government regulation." However, on the facts of that case, it was held that the Rhode Island's price advertising ban constituted a blanket prohibition against truthful, non misleading speech about a lawful product. Also the ban did not result in an end unrelated to consumer protection.

According to one commentator, *"the entire commercial speech doctrine, after all, represents an accommodation between the right to speak and hear expression about goods and service and the right of government to regulate the sales of such goods and services."*

(c) In ***R.J. Reynolds Tobacco Company vs. United States Food and Drug Administration (FDA)***

[696 F.3d 1205], the controversy was with regard to the Family Smoking Prevention and Tobacco Control Act, which President Obama brought into law on 22/06/2009, which gave the FDA the authority to regulate the manufacture and sale of tobacco products, including cigarettes. The Act gave authority to the Secretary to "issue regulation that require color graphics depicting the negative health consequences of smoking". In addition, United States' Congress required all cigarette packages manufactured, packaged, sold, distributed or imported for sale or distribution within the United States to bear one of the nine textual warnings, one of which was, "cigarettes cause cancer". Congress required that these new textual warnings and graphic images occupy the top 50% of the front and back panels of all cigarette packages and the top 20% of all printed cigarette advertising. It gave the FDA "twenty four months after the date of enactment" of the Act to issue regulations implementing the requirements. The textual warning and graphic-image labels were scheduled to take effect fifteen months after issuance of

the Rule. Of the thirty six graphic images originally proposed, the FDA chose nine for publication. The new graphic images, which would rotate according to an agency-approved plan, included colour images of a man exhaling cigarette smoke through a tracheotomy hole in his throat and such other images.

101. The United States Court of Appeals, while considering the appeal, noted that the case raised novel questions about the scope of the government's authority to force the manufacturer of a product to go beyond making purely factual and accurate commercial disclosures and undermine its own economical interest i.e., by making every single pack of cigarettes in the country "a mini-billboard" for the government's anti-smoking message. It was also noted that the cigarette packages and other advertisements that fail to prominently display the negative health consequences of smoking are misleading. The cigarette companies never argued that "no disclosure requirements are warranted; they merely object to the

form and content of the specific requirements proposed by the FDA", which is very similar to the controversy in the present case. Therefore, the Court of appeal vacated the graphic warning requirements and remanded the matter to the authority. The order of permanent injunction issued by the District Court was also set aside.

102. What emerges from the aforesaid decisions is that in *Hamdard Dawakhana,* the Hon'ble Supreme Court did not *per se* recognise commercial speech, such as advertisements having protection under Article 19(1)(a) of the Constitution as is afforded to other forms of speech such as political or creative expression. An analogy was drawn in this regard between misleading advertisements and activities such as betting and gambling, which are not protected under the right to carry on business or trade as they are considered to be *res extra commercium*.

103. On the other hand, in *Tata Press Ltd.,* the Hon'ble Supreme Court recognised that the telephone directory, *Tata Yellow Pages* was a form of commercial

speech and that it is entitled to protection under Article 19(1)(a) of the Constitution. However, commercial speech could be restricted more easily when the Government had justification for doing so. In the said case, the Hon'ble Supreme Court has categorically held that the commercial speech has two facets namely, advertising or dissemination of information regarding the product advertised and the right of the public to receive the commercial speech. In *Motion Picture Association,* the Hon'ble Supreme Court has upheld, compelled speech or forced speech or "must carry" provision citing the example of cigarettes, it held that statutory warning is an example of must carry provision or compelled speech. They cannot be viewed *per se* as restraint on the freedom of speech and expression. Therefore, the restrictions in the form of compelled speech cannot be held to violate Article 19(1)(a) of the Constitution in all instances.

104. The aforesaid dicta could be considered having regard to the provisions of COTPA and the Rules made thereunder.

105. The Statement of Objects and Reasons of COTPA states that a comprehensive legislation to prohibit advertising and regulation of production, supply and distribution of cigarettes and tobacco products was recommended by the Parliamentary Committee on Subordinate Legislation (Tenth Lok Sabha) and a number of points suggested by the said Committee have been incorporated in the Bill. The Bill also proposed to make rules for the purpose of prescribing the contents of the specified warnings, the languages in which they are to be displayed etc. Pursuant to Parliament enacting COTPA, it received assent of the President on 18/05/2003 and was published in the Gazette of India on 19/05/2003. COTPA does not apply to cigarette or any other tobacco product which are exported. As already noted COTPA has repealed

the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975.

106. The Preamble to COTPA states that it is an Act meant for prohibition of advertisement and regulation of trade and commerce, production, supply and distribution of cigarettes and other tobacco products and for matters connected therewith or incidental thereto. Essentially the Act deals with two aspects: prohibition and regulation of certain acts/activities concerning cigarettes and other tobacco products. For the purpose of these cases, what is relevant is prohibition of advertisement of Cigarettes and other tobacco products and second, is regulation of cigarettes and other tobacco products (production supply, distribution and trade and commerce) contained in Sections 5 and 7 of COTPA.

107. The definition of 'advertisement' is given in Section 3(a) of COTPA which is an inclusive definition. The expressions, 'cigarette', 'distribution', 'label', 'package', 'production', 'public place', 'sale', 'smoking', 'specified

warning' and 'tobacco products' are also defined in Section 3 of the said Act. Section 3(o) of the Act states that "specified warning" means such warning against the use of cigarettes or other tobacco products to be printed or inscribed on packages of cigarettes or other tobacco products in such form and manner as may be prescribed by rules made under the Act. "Tobacco products" means the products specified in the Schedule, which are in ten categories. The Schedule to the Act specifies ten categories of products namely, cigarettes; cigars; cheroots; *beedis;* cigarette tobacco, pipe tobacco and *hookah* tobacco; chewing tobacco; snuff; *pan masala* or any chewing material having tobacco as one of its ingredients (by whatever name called), g*utka,* tooth powder containing tobacco. Section 5, which is relevant for the purpose of discussion on Articles 19(1)(a) and 19(2) of the Constitution deals with prohibition of advertisement of cigarettes and other tobacco products. It reads as under:

"***5. Prohibition of advertisement of cigarettes and other tobacco products.****–(1)*

No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.

(2) No person, for any direct or indirect pecuniary benefit, shall-

(a) display, cause to display, or permit or authorise to display any advertisement of cigarettes or any other tobacco product; or

(b) sell or cause to sell, or permit or authorise to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or

(c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or

(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

Provided that this sub-section shall not apply in relation to–

(a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of–

(a) cigarettes or any other tobacco product; or

(b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or

scholarship given or agreed to be given by another person."

Section 7 deals with restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products. It reads as under:

> "***7. Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.***–*(1) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products, produced, supplied or distributed by him bears thereon, or on its label, such specified warning including a pictorial warning as may be prescribed.*
>
> *(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.*

(3) No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning.

(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.

(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum

permissible quantity thereof as may be prescribed by rules made under this Act.

108. An analysis of Section 5 would reveal that in sub-section (1), three distinct category of persons are prohibited from advertisement of cigarettes and other tobacco products namely; (i) person engaged in, or purported to be engaged in, the production, supply or distribution of cigarettes or any other tobacco product, (ii)person having control over a medium through that medium and (iii) no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco product. Therefore, the aforesaid categories of persons are prohibited from advertising cigarette and other tobacco products. Sub-section (2) categorically prohibits four kinds of activities concerning advertisement of cigarette or any other tobacco product for a direct or indirect pecuniary benefit. They are display; sale; distribution and erection, exhibition, fix etc. Proviso to

Sub-Section (2) however carves out an exception as it expressly permits advertisement of cigarette or any other tobacco product in or on a package containing cigarette or any other tobacco product. The expression 'package' is defined in Section 3(i) to include a wrapper, box, carton, tin or other container. Further, the proviso expressly permits advertisement of cigarette and other tobacco products at the entrance or inside a warehouse or a shop where cigarettes or other tobacco products are offered for distribution or sale. In other words, the proviso enables the name of the product, the brand name etc., to be mentioned in or on the package along with any other information by way of advertisement. In my view, the proviso does not permit advertisement in the wide sense of the term. The proviso is enacted for the purpose of giving information on the package of a cigarette or any other tobacco product or at the entrance or inside a warehouse or a shop where cigarette or any other tobacco product are offered for distribution or sale, regarding its brand and trade mark and such other material. This is apart from

"must carry" information, which is a specified health warning and such other information as stipulated under COTPA and the rules made thereunder. Further, the contents of the advertisement cannot detract from the specified health warning.

Sub-section (3) of Section 5, prohibits any person to promote or agree to promote the use or consumption of cigarettes or any other tobacco product in a contract or otherwise promote or agree to promote the use or consumption of cigarettes or any other tobacco product or any trade mark or brand name of cigarettes or any other tobacco product to be used while sponsoring an event or an activity, by way of providing a prize, gift, or a scholarship to any person. In other words, in the name of a brand of cigarette or any other tobacco product, there cannot be sponsorship, scholarship etc., extended to any activity.

Thus, Section 5 prohibits advertisement of the use or consumption of cigarettes or any other tobacco product.

But at the same time the said Section categorically saves the right of advertisement of cigarettes or any other tobacco product in or on the package of cigarettes or any other tobacco product. It also enables advertisement of cigarettes or any other tobacco product, which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco product are offered for distribution or sale. This right, which has been guaranteed on the cigarette package is the subject matter of controversy in these writ petitions, inasmuch as the said right is subject to restriction stipulated under Section 7 of the Act. Thus, Section 5 is a prohibition except to the extent permitted, while Section 7 involves a restriction.

109. On a consideration of the scheme of COTPA as well as the rules made thereunder, what follows is, there is a prohibition on advertisement of cigarettes and any other tobacco product as envisaged in Section 5 of COTPA, except to the extent permitted under the proviso to Section 5(2), in or on the package of cigarettes and other

tobacco products. Prohibition of advertisement under Section 5 has not been assailed in these writ petitions and, rightly so. Further, the prohibition of advertisement is in the context of advertisement, directly or indirectly suggesting or promoting the ***use or consumption*** of cigarettes or other tobacco product. However, on the package of cigarettes or other tobacco products, the prohibition of advertisement would not apply.

110. At the same time, under Section 7 of COTPA, a producer, supplier or distributor of cigarettes or any other tobacco product cannot produce, supply or distribute such products unless every package of such products produced, supplied or distributed bears thereon, or on its label, such specified warning including a pictorial and textual warning as may be prescribed. Further, if any person is to carry on trade or commerce in cigarettes or any other tobacco product then, every such product sold, supplied or distributed should bear thereon, or on its label, the specified warning. Also, no person can import cigarettes

or any other tobacco product for distribution or supply for a valuable consideration or for sale in India, unless every package of cigarettes or any other tobacco product so imported bears thereon, or on its label, the specified warning. Hence, under Section 7 of the Act, the restriction is on the trade and commerce in, or production, supply and distribution of, cigarettes and other tobacco products. There cannot be any such activity unless the package of cigarettes or any other tobacco product has the specified warning as prescribed under COTPA and Rules made thereunder. The said restriction is therefore, in the realm of trade and commerce; production, supply and distribution; import etc., and therefore, the restriction is one which can be related to Article 19(1)(g) of the Constitution. Hence, it is held that the printing of specified warning on the package of cigarettes or other tobacco products as per COTPA and the rules made thereunder is, as mentioned under Section 7 of the Act itself, a restriction on trade and commerce; production, supply and distribution and not a restriction on right to free speech as

envisaged under Article 19(1)(a) of the Constitution. Section 7 of the Act has not been challenged by the petitioners. Thus, on a conjoint reading of Sections 5 and 7, it is observed that on the package containing cigarettes and other tobacco products, the right to advertise tobacco is subject to Sections 7 and 9, which are not under challenge. Thus, the freedom guaranteed under Article 19(1)(a) of the Constitution is not attracted in the instant case. At the same time, while considering the nature of restriction under Section 7, the right to advertise expressly granted on the package, which is in my view also a right under Article 19(1)(g), cannot be curtailed or nullified, except in accordance with the statute.

111. But at the same time, the package must bear a specified warning as prescribed under the Act and the rules, which is the subject of controversy in these cases. The petitioners have also contended that the size, nature and content of the specified warning is unreasonable in the context of Article 19(1)(g) read with Article 19(6) of the Constitution which shall be considered next. But with

regard to the restriction prescribed under Section 7 of COTPA as adumbrated above, it is held that Article 19(1)(a) does not apply in the instant case. The reason being that Section 9(2) of the Act specifically states, no package of cigarettes or any other tobacco product or its label shall contain any matter or statement which is inconsistent with, or detracts from, the specified warning which provision also has not been challenged in the instant case. Therefore, the right to advertise on the package permitted under Section 5 of COTPA is not at all curtailed, but it is subject to a restriction as stated in Section 7 of the Act, which is a restriction in the realm of industry and trade in tobacco and its products. Section 7 of the Act has not been challenged and Section 9(2) has also not been assailed by the petitioners herein. Hence, the question, as to whether, Article 19(1)(a) has been infracted in the instant case and, as to whether, the said curtailment is justified under Article 19(2) of the Constitution does not arise. Moreover, Section 7(1) has a positive content with regard to the inclusion of the specified warning on a

package of cigarettes or any other tobacco product along with any form of advertisement. While, Section 9(2) has a corresponding negative content, in that any material or advertisement on the package, shall not be inconsistent with, or detract from the specified warning. Thus, any material in the form of an advertisement on the package of cigarettes or any other tobacco product cannot at the same time contain any thing which is inconsistent with or detract from a specified warning.

112. As it is held that the incorporation of a specified warning, including pictorial or any textual warning, on a package of cigarette or any other tobacco product is a restriction on trade and commerce in, and production, supply and distribution of cigarettes or other tobacco products, the reasonableness of the said restriction has to be considered only in the context of Article 19(1)(g) read with Article 19(6) and not in the context of Article 19(1)(a) read with Article 19(2) of the Constitution. Thus, it is held that restriction on the right guaranteed in Article in 19(1)(a) of the Constitution does

not arise in my view, in the instant case as the reasonableness of the restriction has to be considered only in light of Article 19(1)(g) read with Article 19(6).

113. Further, the decisions of the American Supreme Court based on the First Amendment on which great reliance has been placed by learned senior counsel for the petitioners cannot be applied in a straightjacket manner. By doing so, one would be losing sight of the fact that the incorporation of a specified warning on the cigarette package or any other tobacco product in the instant case is a restriction, which is in the realm of trade and commerce in, or production, supply and distribution of, cigarettes and other tobacco products and not in the realm of advertisement or commercial speech on the package so as to attract Article 19(1)(a) of the Constitution. Further, the differences between the First Amendment to the Constitution of United States and Article 19(1)(a) articulated by the Hon'ble Supreme Court

in the case of *Shreya Singhal* has also been borne in mind in approaching this aspect of the controversy.

114. Moreover, apart from the specified warning, the package containing cigarettes and other tobacco products would have to also contain certain information as per the "must carry" provision in Rule 3(1)(h), the *vires* of which, shall be examined separately under Article 19(1)(g) and not in the context of Article 19(1)(a) of the Constitution.

115. In the circumstances, it is held that the right to freedom of speech under Article 19(1)(a) of the Constitution is not curtailed in the instant case. It is also reiterated that there is no challenge made to Sections 5, 7, 9 or any other provision of COTPA. Therefore, the petitioners, while accepting the prohibition to advertise cigarettes or any other tobacco product except to the extent permitted in Section 5**,** have also accepted the fact that production, distribution or trade and commerce in such products is subject to a restriction envisaged in

Sections 7 to 10 of COTPA, which restriction is in the nature of a specified warning to be printed on every package of the said product. It is held that the restriction contained in Section 7 of COTPA does not concern the right to freedom of speech and expression as contained in Article 19(1)(a) of the Constitution."

Article 19(1)(g) and Article 19(6):

116. The next point for consideration is, the reasonableness of the restriction in printing a specified health warning on the package of cigarettes and other tobacco products on trade and commerce, etc., of such products and, as to, whether, it would in any way hinder or, curtail the freedom guaranteed under Article 19(1)(g) and, if so, whether it is saved by Article 19(6) vis-à-vis the rules made under COTPA, which is a subject matter of serious controversy in these writ petitions. But before that, two contentions of learned counsel for intervenors would have to be considered. Firstly, it was contended by Sri K.V.Dhananjaya, that only citizens i.e., natural persons

could enforce their fundamental rights and that the petitioners herein who are corporate entities cannot assail the Rules. The answer to this contention lies in two decisions of the Hon'ble Supreme Court in ***Chiranjit Lal Chowdhuri vs. Union of India [AIR 1951 SC 41]*** and ***R.C. Cooper vs. Union of India [AIR 1970 SC 564].*** The other contention raised by Ms. Jaina Kothari is regarding 85% of the display area of the package being covered by the health warning is a matter of policy and that this Court cannot interfere with the same. The answer to this is that proviso (a) to sub-section (2) of Section 5 of COTPA, which expressly reserves a right to advertise the tobacco product on the packaging. But while doing so, the restriction under Section 7 read with Section 9(2) would have to be complied with. In the circumstances, a balance would have to be struck between the right to advertise on the package as a right under Article 19(1)(g) and the reasonable restriction on trade and commerce in tobacco products as enunciated under Section 7 read with Section 9(2) of the Act. Otherwise,

there would be infraction of proviso (a) to sub-section(2) of Section 5 of COTPA.

117. Also, it would be it would be appropriate to examine the validity of amendments made in the year 2014 in the context of the caveat sounded in *Hamdard Dawakhana* to the effect that Courts in India should not be carried away by the manner in which free speech is protected under the First Amendment in United States, but should rather be conscious of the reasonable restrictions that could be imposed on free speech in India, whether in the form of Article 19(2) or, in the form of Article 19(6), when the right to advertise a product is construed to be an aspect of the right to trade and business and subject to reasonable restrictions under Article 19(6) of the Constitution.

Enactment of COTPA and the impugned Rules: A Historical Perspective and Analysis:

118. What then, is the history behind the legislation under consideration and, what was the material before the

Parliament upon which it set out to enact COTPA and before the Union Government when it made the Rules of 2008 and its amendment in 2014, which are the subject matter of challenge in these cases. The background to the enforcement of the Amendment Rules, 2014 could be briefly adverted to at this stage, although it has been elaborately considered in the earlier part of this order. As already noted, Tobacco Act, 1975 was enacted to provide for the development under the control of the Union, Tobacco Industry, vide Section 2 of the said Act. By recognizing the importance of tobacco crop in the economy of the country, the Union Government undertook regulation of the tobacco industry, right from the stage of its production, in order to improve exports so as to augment foreign exchange. The said Act provided for the constitution of the Tobacco Board. The scheme of the said Act has been adverted to in the earlier portion of this Order. Subsequently, the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 (hereinafter called as "1975 Act" for the sake of brevity) was enacted

to *"provide for certain restrictions in relation to trade and commerce in, and production, supply and distribution of, cigarettes and matters connected therewith and incidental thereto"*. The said Act applied only to cigarettes and not other tobacco products. Section 2(m) of the said Act defined specified warning to mean only a textual warning namely, *"Cigarette smoking is injurious to health".*

119. The aforesaid Act was repealed and substituted by COTPA. The Union Government is empowered to appoint different dates for bringing into force different provisions of COTPA. COTPA provides for warnings to be displayed on the tobacco products in the form and manner prescribed under the rules made under the said Act. Sections 4, 5 and 6 are prohibitions under the said Act. The said prohibitions are with regard to advertisement of cigarette and other tobacco products (Section 5); smoking in public places (Section 4), and sale of cigarette and other tobacco products to a person below the age of eighteen years and in particular areas (Section 6). Four kinds of

activities namely, production, supply, distribution and trade including import of cigarettes and other tobacco products, which are mentioned in Section 7 are restricted as specified warnings have to be printed on the package of cigarettes and other tobacco products, while carrying out the said activities concerning tobacco and its products as per the Act and the rules made thereunder. The manner in which the specified warnings have to be printed is stipulated in Section 8; Section 9 *inter alia,* deals with the language that the specified warning shall be expressed in. The size of letters and figures of the specified warning are prescribed in Section 10. Section 31 empowers the Central Government to make rules *inter alia,* about specified warnings.

120. In the year 2006, the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules were made, but the said rules were notified on 02/02/2007. The said rules were not brought into force. Considering that the pictorial warnings proposed under the 2006 Rules

were gruesome and shocking, representations were made to the Members of Parliament and Ministers of the Union Government, in response to which, a Group of Ministers (GoM) was constituted to explore ways and means of creating awareness regarding the adverse impact of smoking tobacco in a manner, keeping in mind the interest of labour engaged in the profession are protected and to suggest alternative methods of communication of the warnings and as to how the rules could achieve the object of health awareness without creating panic among those engaged in the beedi industry. Union Ministers of different departments were part of the GoM. The GoM was constituted in May 2007 and in March 2008 the Packaging and Labelling Rules, 2008 were notified, which mandated that specific health warnings were required to be put on 40% of the principal display area on both sides of the packs of tobacco products. Thus, the size of the specified health warnings in 2008 was reduced from 50% as per 2006 Packaging and Labelling Rules to 40%. The Central Government notified that the 2008 Rules would come into

effect on 30/11/2008 but it was postponed to 31/05/2009. Since then, the 2008 Labelling Rules are in force and the amendment has been made by Amendment Rules, 2014, which are impugned herein.

121. As already noted initially, the Amendment Rules were to come into effect from 1st April 2015, but the Parliamentary Committee on Subordinate Legislation, which undertook the examination of the of the Amendment Rules, 2014 recommended that the said rules be kept in abeyance till the said Committee finalized the examination of the subject and arrived at appropriate conclusions and present an objective report to the Parliament. The Central Government while accepting the said recommendation deferred the commencement of the amendments till the Central Government notified enforcement of the said rules, by issuance of a corrigendum in the Official Gazette on 26/03/2015.

122. Thereafter, on 05/05/2015 the Union Minister of Health and Family Welfare in his answer to a question in

the Rajya Sabha had also stated that Amendment Rules, 2014 were kept in abeyance pursuant to the recommendation of the Committee in its Interim Report dated 18/03/2015. Subsequently, on 24/07/2015, the Union Minister of Health and Family Welfare stated in the Lok Sabha that till the Parliamentary Committee on Subordinate Legislation finalized the examination of the subject and presented its Final Report, the Amendment Rules, 2014 would be in abeyance. But on 28/09/2015, Gazette Notification was issued by the Ministry of Health and Family Welfare in supersession of the corrigendum, to the effect that Amendment Rules, 2014 would be effective from 1st April 2016. In fact, such a step was taken even prior to the Parliamentary Committee submitting its Final Report on 31/03/2006. The Final Report recommended that the health warning be reduced to 50% of both sides of the pack of cigarettes and one side of the package of beedis and other tobacco products. But as already noted, on 01/04/2016, the amended rules were brought into force pursuant to the direction issued in Writ Petition

No.8680/2015 by the Rajasthan High Court. On 04/05/2016 the Hon'ble Supreme Court by its order transferred various petitions pending before various High Courts relating to the constitutional validity of the Amendment Rules, 2014 and Public Interest Litigation to this Court.

123. After noting the events leading up to the enforcement of the impugned Rules, the same could be analysed in light of the submissions made by the counsel for the respective parties. The analysis of the Act would make it clear that Sections 4, 5 and 6 are prohibitions in the matter of production, supply, distribution and trade of tobacco and its products, while Section 7 speaks of restriction and *inter alia*, Sections 8, 9 and 10 have to be read along with Section 7. Section 4 prohibits smoking in a public place. 'Public place' is defined under Section 3(l) of the Act, while 'smoking' is defined under Section 3(n) of the Act. Section 6 prohibits sale of cigarette or other tobacco products to a person below the age of eighteen

years in an area within a radius of 100 yards of any educational institution. Section 5 is the prohibition of advertisement of cigarette and other tobacco products. Sub-sections (1) to (4) of Section 7 places restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products. Sub-section (5) of Section 7 mandates, nicotine and tar contents to be mentioned on the package of each cigarette or other tobacco products. The proviso states that the nicotine and tar shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under the Act. It is submitted at the Bar that the rules have not yet prescribed a maximum permissible quantity of nicotine and other tobacco products to be mentioned.

124. Section 30 enables the Central Government to add any other tobacco product to the Schedule under the Act for the purpose of imposing the prohibition and restrictions delineated in the Act. Section 31 empowers the Central Government to make rules to carry out the

provisions of the Act. Sub-section (1) of Section 31 is a general provision regarding making of rules while sub-section (2) is a special provision, which enables the Central Government to make rules for the purpose of carrying out the object and intent of Sections 3(o), 7, 5, 8 to 10 dealing with the manner in which specified warning must be made on the package or informing about the permissible nicotine and tar contents in cigarettes or other tobacco products etc. Sub-section (2) of Section 31 enables the Central Government to provide for any other matter which is required to be or may be prescribed. This is by way of an omnibus clause.

125. As the controversy is with regard to the specified warning as stipulated under Section 7 read with the rules, it would be useful to briefly recapitulate the said section. Sub-section (1) of Section 7 states that no person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco product unless every package of cigarettes or any other tobacco product

produced, supplied or distributed by him bears thereon, or on its label, such specified warning including a pictorial warning as may be prescribed. Sub-section (2) deals with trade or commerce in cigarettes or any other tobacco products. Sub-section (3) deals with import of cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India. Any cigarette or tobacco product which is produced, supplied or distributed or imported into India for sale must contain on its label, such specified warning including a pictorial warning as may be prescribed. Sub-section (4) of Section 7 states that specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration. The said mandate is in negative terms; not less than one of the panels would imply atleast one of the largest panels and it could also mean more than one panel. Sub-section (2) of Section 9 is relevant and it states that no package of cigarettes or any other tobacco products or its label shall

contain any matter or statement which is inconsistent with, or detracts from, the specified warning. In other words, there cannot be any contradiction or inconsistency with the specified warning being carried on the package of cigarettes or other tobacco products.

126. Section 8 deals with the manner in which the specified warning shall be made. It states that the specified warning on a package of cigarettes or any other tobacco products shall be – (a) legible and prominent; (b) conspicuous as to size and colour; (c) in such style or type of lettering as to be boldly and clearly presented in distinct contrast to any other type, lettering or graphic material used on the package or its label and shall be printed, painted or inscribed on the package in a colour which contrasts conspicuously with the background of the package or its labels. Sub-section (2) of Section 8 states that the

rules would prescribe as to how the specified warning shall be printed, painted or inscribed on a package. Sub-section (3) of Section 8 states that the specified warning appearing on the package, before the package is opened be visible to the consumer. Section 9 *inter alia,* deals with the language in which the specified warning shall be expressed, depending on the language which is used on its label namely; (a) English; (b) any Indian language or languages; (c) both English and one or more Indian languages; (d) partly English and partly any Indian language or languages; (e) any foreign language; (f) partly any foreign language and partly English or any Indian language or languages.

127. Section 10 is a deeming provision with regard to size of letters and figures of a specified warning or indication of nicotine and tar contents in cigarettes and any other tobacco products and it states if, the height of each letter or figure or both used on such warning and indication is less than the height as may be prescribed by rules made under the Act then, it would not be in accordance with the provisions of the Act. The other provision of the Act need not be considered as the

controversy is with regard to specified warning to be printed on the package of cigarette and other tobacco products except referring to Section 31 of the Act.

128. Thus, on a conjoint reading of Sections 5, 7, 8, 9 and 10, it becomes clear that on a package of cigarettes or any other tobacco product, it is the producer, supplier, distributor or trader, while carrying an advertisement on the package must also print the specified warning, including the pictorial warning as prescribed. Further, such an advertisement cannot in any manner be inconsistent with, or detract from the specified health warning.

129. It is no doubt true that neither Section 5 nor Section 7 or for that matter any other provision of the Act has been challenged by the petitioners. Even then the question that would arise is as to whether the Packaging and Labelling Rules 2008 along with the amendments made in 2014 violate the right to freedom of trade and commerce guaranteed under Articles 14 and 19(1)(g) of the Constitution. Therefore, the rules have to be analyzed

in order to give a finding as to whether the rules are unreasonable or arbitrary in nature.

130. Before doing so, it would be useful to refer to the decisions of the Hon'ble Supreme Court cited at the Bar in the matter of challenge being made to subordinate legislation as under:-

(a) In ***Indian Express Newspapers (Bombay) Pvt. Ltd.,*** it has been succinctly stated by the Hon'ble Supreme Court at paragraph Nos.73 and 75 as under:

> *"73. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the*

ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires". The present position of law bearing on the above point is stated by Diplock L.J. in Mixnam Properties Ltd. vs. Chertsey U.D.C., (1964) 1 QB 214 thus:–

"The various grounds upon which subordinate legislation has sometimes been said to be void..... can, I think, today be properly regarded as being particular applications of the general rule that subordinate legislation, to be valid, must be shown to be within the powers conferred by the statute. Thus the kind of unreasonableness which invalidates a bye-law is not the antonym of "reasonableness" in the sense of which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a court would say : 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra

vires..... If the courts can declare subordinate legislation to be invalid for 'uncertainty,' as distinct from unenforceable ..... this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain....."

x x x

"75. In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. In India any enquiry into the vires of delegated legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

(b) In ***State of Kerala and Others vs. Unni and Another [AIR 2007 SC 819],*** it is held that the principles on which constitutionality of a statute is judged, is different from that of a subordinate legislation. It is

observed if, by reason of the rule making power, the State intended to impose a condition, the same was required to be reasonable one. It was required to conform to the provisions of the statute as its violation would attract penal liability. It was expected to be definite and not vague. Indisputably, the State having regard to the provisions of Article 47 of the Constitution, must strive hard to maintain public health. While, however, imposing conditions in regard to the prescription of norms, it was expected of the State to undertake a deeper study in the matter. The Hon'ble Court has also observed that unreasonableness is one of the grounds of judicial review of delegated legislation. Reasonableness of a statute or otherwise must be judged having regard to the various factors which, of course, would include the effect thereof on a person carrying on a business.

(c) In a more recent judgment, the Hon'ble Supreme Court has highlighted that manifest arbitrariness of a subordinate legislation is violative of Article 14 and an

unreasonable restriction under Article 19(1)(g) to carry on business vide, *Cellular Operators Association of India.* The said judgment has been discussed in the earlier part of this judgment. The reasoning of the Hon'ble Supreme Court applies to the aspect of manifest arbitrariness of the Rules in the context of Article 14 and not in the context of absence of consultation as far as this case is concerned.

Whether Amendment Rules, 2014 are in violation of Article 19(1)(g) of the Constitution?

131. In order to give effect to Sections 7 to 10 of COTPA, the Packaging and Labelling Rules, 2008 have been enacted. Under the Packaging and Labelling Rules, 2008 the expression "package" is defined under Rule 2(b), "principal display area" is defined under Rule 2(c) and "specified health warning" is defined under Rule 2(d) to mean such health warnings as specified by the Central Government from time to time, in the Schedule to the said rules. Though the expression "specified health warning" is not defined under COTPA, it is held that the same would be

a species of "specified warning" which is defined in Section 3(o) of the said Act. In fact, Section 3(o) defines "specified warning" as may be prescribed by the Rules made under the Act. Therefore, there can be no objection to the expression "specified health warning" not finding a place in COTPA.

132. As the petitioners, have made a challenge to Rules 3 and 5 specifically, the same shall be considered threadbare. Prior to that it would be useful to refer to a decision of the Hon'ble Supreme Court on the question as to whether trade in tobacco and its products could be considered as *res extra commercium.* In ***Godawat Pan Masala Products I.P. Ltd., vs. Union of India and Others [(2004) 7 SCC 68],*** *(Godawat Pan Masala Products),* the Hon'ble Supreme Court has observed as under in the context of whether tobacco and its products could be treated as *res extra commercium*:

> *"53. Is the consumption of pan masala or gutka (containing tobacco), or for that matter tobacco itself, considered so inherently*

or viciously dangerous to health, and, if so, is there any legislative policy to totally ban its use in the country? In the face of Act 34 of 2003, the answer must be in the negative. It is difficult to accept the contention that the substance banned by the impugned notification is treated as res extra commercium. In the first place, the gamut of legislation enacted in this country which deals with tobacco does not suggest that Parliament has ever treated it as an article res extra commercium, nor has Parliament attempted to ban its use absolutely….. The Tobacco Board Act, 1975 established a Tobacco Board for development of tobacco industries in the country. Even the latest Act i.e., the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, does not ban the sale of tobacco products listed in the Schedule except to minors. ….. In the face of these legislative measures seeking to levy restrictions and control the manufacture and sale of tobacco and its allied products as well as pan masala, it is not possible to accept that the article itself has

been treated as res extra commercium. The legislative policy, if any, seems to be to the contrary. In any event, whether an article is to be prohibited as res extra commercium is a matter of legislative policy and must arise out of an Act of legislature and not by a mere notification issued by an executive authority."

Reliance placed by learned counsel for the intervenors on the order of the Delhi High Court in the case of ***Naya Bans Sarv Vyapar Association vs. Union of India [W.P.(C)No.7292/2011]*** is contrary to the aforesaid dictum of the Hon'ble Supreme Court. It is also stated at the Bar that the said order has been challenged and the matter is pending before the Apex Court and it has been modified. Sri K.V. Dhananjaya, appearing for the Intervenors insisted on a declaration that dealing with tobacco is *res extra commercium.* This Court has declined to grant such a declaration in these petitions having regard to the observations of the Apex Court. So long as the state does not declare tobacco to be an article *res extra commercium,* this Court cannot be compelled to declare it to be so contrary to the dictum of the Apex Court particularly at the behest of the

intervenors. It is reiterated that this is not a public interest litigation although the subject involved herein does affect the public at large, but this Court cannot lose sight of the parameters within which these writ petitions are to be decided. Thus, the challenge made by the petitioners under Article 19(1)(g) read with Article 19(6) of the Constitution has been considered in the above perspective.

133. A comparison of the rules made in the year 2008 with the amended rules particularly rules 3 and 5 substituted with effect from 01/04/2015 could be made at this stage.

Old Rules	***Amended Rules***
3. **Manner of packing and Labelling:** (1) Every person engaged directly or indirectly in the Production, supply, import or distribution of cigarette or any other tobacco product shall ensure that:	3. **Manner of packing and Labelling:** (1) Every person engaged directly or indirectly in the Production, supply, import or distribution of cigarette or any other tobacco product shall ensure that:
(a) every package of cigarette or any other tobacco product shall have the specified health warning exactly as specified in the Schedule to these rules;	(a) every package of cigarette or any other tobacco product shall have the specified health warning exactly as specified in the Schedule to these rules;
(b) the specified health warnings shall occupy at	(b) the specified health warning shall cover at

least forty percent (40%) of the principal display area of the front panel of the pack and shall be positioned parallel to the top edge of the package and in the same direction as the information on the principal display area; Provided that for conical packs, the widest end of the pack shall be considered as the top edge of the pack.	least eighty five percent (85%) of the principal display area of the package of which sixty percent (60%) shall cover pictorial health warning and twenty-five percent (25%) shall cover textual health warning and shall be positioned on the top edge of the package and in the same direction as the information on the principal display area: Provided that for conical package, the widest end of the package shall be considered as the top edge of the package: Provided further that on box, carton and pouch type of package, the specified health warning shall appear on both sides of the package, on the largest panels and for cylindrical and conical type of package, the specified health warning

	shall appear diametrically opposite to each other on two largest sides or faces of the package and the specified health warning shall cover eighty-five percent (85%) of each side or face of the principal display area of the package of which sixty percent (60%) shall cover pictorial health warning and twenty-five percent (25%) shall cover textual health warning;
(c) none of the elements of the specified warning are severed, covered or hidden in any manner when the package is sealed or opened;	(c) none of the elements of the specified warning are severed, covered or hidden in any manner when the package is sealed or opened;
(d) no messages that directly or indirectly promote a specific tobacco brand or tobacco usage in general are inscribed on the tobacco product package;	(d) no messages, images or pictures that directly or indirectly promote the use or consumption of a specific tobacco brand or tobacco usage in general or any matter

	or statement which is inconsistent with, or detracts from, the specified health warning are inscribed on the tobacco product package;
(e) no product shall be sold unless the package contains the specified health warning: Provided that the specified health warning shall be printed, pasted or affixed on every retail package in which the tobacco product is normally intended for consumer use or retail sale, as well as any other external packaging, such as cartons or boxes and will not include other packaging such as gunny bags;	(e) no product shall be sold unless the package contains the specified health warning: Provided that the specified health warning shall be printed on every retail pack in which the tobacco product is normally intended for consumer use or retail sale, as well as any other external packaging, such as cartons or boxes;
(f) the specified warnings shall be inscribed in the language/s used on the pack:	(f) the textual health warning shall be inscribed in the language used on the package;

Provided that where more than one language/s is used on the pack the specified warning shall appear in two languages, one in which the brand name appears and the other in any other language used on the pack;	Provided that where the language used on a package or on its label is- (a) English, the health warning shall be expressed in English; (b) English and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears; (c) Hindi and other Indian languages, the health warning shall be expressed in Hindi and any one of the Indian language in which the brand name appears; (d) any Indian language, the health warning shall be expressed in such Indian language; (e) Indian languages, the health warning shall be expressed in any two

	Indian languages in which the brand name appears; (f) foreign language, the health warning shall be expressed in English; (g) foreign and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears; Provided further that the textual health warning shall appear in not more than two languages used on the package: Provided also that the textual health warning in one language shall be displayed on one side or face of principal display area and the textual health warning in the other language shall be displayed on the other side or face of principal

	display area of the package;
(g) no tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effect, or health or other hazards of the tobacco product or its emissions. The words or descriptors, whether or not part of the brand name shall use such words as "light", "ultra light", "mild", "ultra mild", "low tar", "slim", "safer", or similar words or descriptors; any graphics associated with, or likely or intended to be associated with, such words or descriptors; and any product package design characteristics, associated with, likely or intended to be associated with, such	(g) no tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effect, or health or other hazards of the tobacco product or its emissions. This prohibition includes, but is not limited to, the use of words or descriptors, whether or not part of the brand name, such as "light", "ultra light", "mild", "ultra mild", "low tar", "slim", "safer", or similar words or descriptors; any graphics associated with, or likely or intended to be associated with, such words or descriptors; and any product package design characteristics,

descriptors.	associated with, likely or intended to be associated with, such descriptors.
	(h) Every package of cigarette or any other tobacco product shall contain the following particulars, namely: (a) Name of the product; (b) Name and address of the manufacturer or importer or packer; (c) Origin of the product (for import); (d) Quantity of the product; (e) Date of manufacture; and (f) Any other matter as may be required by the Central Government in accordance with the international practice.

Rule 5: Rotation of specified health warning: The specified health warning on tobacco packs shall be rotated every two years from the date of notification of the rules or earlier, as the case may be as specified by the Central Government.	**Rule 5: Rotation of specified health warning:** (1) The specified health warning on tobacco product package shall be rotated every twenty-four months from the date of commencement of these rules or before the period of rotation as may be specified by the Central Government by notification. (2) During the rotation period, there shall be two images of specified health warning for both smoking and smokeless form of tobacco products and each of the images of the specified health warning shall appear consecutively on the package with an interregnum period of twelve months. (3) At the end of the twelve months period, the first image (image 1) of specified health

	warning shall be replaced with the second image (image 2) of specified health warning, which shall appear for the next twelve months. (4) At the end of each twelve months of the rotation period, the Central Government may allow the distributors, retailers and importers of cigarettes and other tobacco products a grace period, not exceeding two months to clear the old stock of package of tobacco products bearing the warning specified for the expired period of twelve months of the rotation period. (5) The distributors, retailers and importers of cigarettes and other tobacco product shall not distribute or sell any package having the specified health warning

	of the expired period of twelve months after grace period of two months.

The Schedule to Rule 3 as in the original and the amended Schedule read as under:-

Earlier Schedule	***Amended Schedule***
1. Components of specified health warning.– The components for the specified health warning shall include:– **(1) Health warning.–** The warning "Smoking Kills" (on smoking forms to tobacco products) and "Tobacco Kills" (on smokeless or chewing and other forms of tobacco products), shall appear in white font colour on a black background, exactly as in the soft copy provided in the Compact Disk (CD) accompanying these rules.	**1. Components of specified health warning.–** The components for the specified health warning shall include the following:– **(i) Textual Health Warning:** For smoking forms of tobacco products, the word "WARNING" shall appear in white font colour on a red background and the words "Smoking causes throat cancer" shall appear in white font colour on a black background. For smokeless forms of tobacco products, the word "WARNING" shall appear in white font

	colour on a red background and the words "Tobacco causes mouth cancer" shall appear in white font colour on a black background. The textual health warning shall cover twenty-five per cent (25%) of the principal display area of the package. The intensity of color in the background of the textual health warning shall be: White: C:0%, M:0%, Y:0%, K:0%, Red:C:0%, M:100%, Y:100%, K:0% and Black: C:0%, M:0%, Y:0%, K:100%. The textual health warnings shall be printed with four colors with printing resolution of minimum 300 DPI (Dots per inch). The font type and colour of the health warning shall be exactly as in the soft copy provided in the Compact Disk (CD) accompanying these rules or as uploaded on

	the web sites *www.mohfw.nic.in* and *www.ntcptobaccocontrolpsa.in*.
(2)Pictorial representation of ill effect of tobacco use.– Pictorial depiction of the ill effects of tobacco use on health, shall be placed above the health warning and should appear in the same colour exactly as in the soft copy provided in the CD accompanying these rules.	**(ii) Pictorial Health Warning:-** A pictorial representation of the ill-effects of tobacco use on health shall be placed above the textual health warning, covering sixty per cent (60%) of the principal display area of the package. It shall be printed with four colors with printing resolution of minimum 300 DPI (Dots per inch). The pictorial health warning should appear in the same colour and resolution exactly as in the soft copy provided in the CD accompanying these rules or as uploaded on the web sites *www.mohfw.nic.in* and www.ntcptobaccocontrolpsa.in;

2. The specified health warnings are–	**2. The specified health warnings shall be:-**
(1) For smoking forms to tobacco packs:– (2) For chewing or smokeless forms of tobacco packages:–	(a) For packages containing smoking forms of tobacco products– Image (1), the specified health warning contained in these rules shall be valid for a period of twelve months following its commencement. (b) For packages containing smoking forms of tobacco products– Image (2), the specified health warning contained in these rules shall come into effect following the end of twelve months from the date of commencement of specified health warning of image (1). (c) For packages containing smokeless forms of tobacco products– Image (1), the specified health warning contained in these rules shall be

	valid for a period of twelve months following its commencement. (d) For packages containing smokeless forms of tobacco products– Image (2), the specified health warning contained in the rules shall come into effect following the end of twelve months from the date of commencement of specified health warning of image (1).
Note.–These rules are accompanied by a CD that contains a soft copy of these health warnings, for inclusion in printing of tobacco product packages.	**Note**:- These rules shall be accompanied by a (CD) that contains a soft copy of these specified health warning, the soft copies of these specified health warnings shall also be uploaded on the websites www.mohfw.nic.in and www.ntcptobaccocontrolpsa.in, for inclusion in printing of tobacco product package.

3. Size of the specified health warning.– (1) The size of the specified health warning on each panel of the tobacco pack shall ensure that the warning is legible and prominent. (2) The size of all components of the specified health warning shall be increased proportionally according to increase of the package size to ensure that the specified health warning occupies forty per cent (40%) of the principal display area of the pack.	**3. Size of the specified health warning:-** (1) The size of the specified health warning on each panel of the tobacco package shall not be less than 3.5 cm (width) x 4 cm (height), so as to ensure that the warning is legible, prominent and conspicuous. (2) The size of all components of the specified health warning shall be increased proportionally according to increase of the package size to ensure that the specified health warning covers eighty-five (85%) of the principal display area of the package of which sixty per cent (60%) shall cover pictorial health warning and twenty-five per cent (25%) shall cover textual health warning.
4. Language.–Each health warning has been specified in English and regional languages.	**4. Language**:- Each health warning shall be specified in English, Hindi and any other

Appropriate language combination should be selected from the combination provided in the CD to ensure that the language selected for health warning is in conformity with the language used on the pack by the manufacturer. Where more than on language is used on the pack, the health warning shall be given separately in each of the language. Provided that not more than two languages shall be used on the pack.	regional languages. Appropriate language combination shall be selected from the combination provided in the (CD) to ensure that the language selected for health warning is in conformity with the language used on the package by the manufacturer or importer or packer.
5. Printing.–Subject to sub-paragraph (2) of paragraph 3 of this Schedule, while printing, it must be ensured that the colour, intensity and clarity of all the components of the specified health warning are not tampered with.	**5. Printing:-** Subject to sub-paragraph (2) of paragraph 3 of this Schedule, while printing, it must be ensured that the colour, intensity and clarity of all the components of the specified health warning are not tampered with.

Rule 3 of the Amendment Rules, 2014 deals with manner of Packaging and Labelling. Restrictions are

envisaged in that regard. Sub-rule (1) states that every person engaged directly or indirectly in the production, supply, import or distribution of cigarette or any other tobacco product shall ensure that (a) every package of cigarette or any other tobacco product shall have the specified health warning exactly as specified in the Schedule to the rules. A lot of emphasis was laid by petitioners' counsel on the expression, ***"exactly as specified in the schedule"*** in the sub-rule to contend that there is a rigidity with regard to the specified health warning and it is impossible for the Beedi packets to have the label with the exact specified health warning. But when the Act itself permits the making of rules with regard to the specified warning and the rule permits specification to be given in the schedule, there can be no grievance in that regard. The grievance of the Beedi industry shall be considered separately.

Clause (b) of Rule 3 States that the specified health warnings shall occupy at least eighty five percent (85%) of the principal display area of the package, of which, 60%

shall cover pictorial warning and 25% shall cover textual warning and shall be positioned parallel to the top edge of the package and in the same direction as the information on the principal display area. There are two provisos to the said rule: first proviso deals with a conical package and, the second proviso deals with the package in the form of a box, carton and pouch type of package and with regard to the manner in which specified health warning should appear i.e., diametrically opposite each other on two largest sides or faces of the package. The argument is that, if 85% of the principal display area is to be covered by a specified health warning, there is hardly any space available for anything else to be written on the package of cigarette or any other tobacco item. It is contended that the prescription of 85% is contrary to what has been stated in clause III to the schedule. Clause 3(1) of the schedule states that the size of the specified health warning on each panel of the tobacco package ***shall not be less than*** 3.5 cm (width) x 4 cm (height) so as to ensure that the warning is legible, prominent and

conspicuous as stipulated in Section 8(1) of the Act. It is argued that, if the aforesaid stipulation is to be complied with, there was no need to prescribe a further stipulation that the size of the specified health warning should cover atleast 85% of the principal display area. It is contended that what is stipulated in Rule 3(1)(b) is contradictory to what is stipulated in Clause 3(1) Schedule. But I find no contradiction with regard to the two stipulations namely, with regard to the size of the specified health warning (85%) and with regard to its dimension as stipulated in Clause (3)(1) of the schedule.

Rule 3(1)(b) stipulates the percentage of the principal display area of the package that must be covered by the warning, namely 85%, out of which, 60% shall be pictorial health warning and, 25% shall cover the textual health warning. But on the other hand, clause 3(1) of the schedule pertains to the minimum size of the warning so as to make them legible, prominent and conspicuous. Thus, even if the minimum size of the warning is to be complied with, the warning should cover at least 85% of

the principal display area. Therefore, the aforesaid two stipulations have to be complied with, which means that the dimension or size of the letters could be increased so as to comply with the stipulation of 25% of the principal display area (textual warning) and the pictorial warning should be 60%, but on the whole the warning should cover 85% of the principal display area of each panel of the package. In other words, clause 3(1) of the schedule prescribes what should be the minimum size of the warning that is required so as to ensure that the warning is legible, prominent and conspicuous. But the size of the health warning including the pictorial warning should cover 85% of the principal display area of the package. Thus, what is mandatory is that the size of the specified health warning must cover 85% of the principal display area, but it need not have the minimum size of 3.5 cm (width) x 4.00 cm (height). Thus, the size of the warning mentioned in clause 3(1) of the schedule could be increased so as to make all the components of the specified health warning to cover 85% of the principal display area. Within that 85%,

60% shall cover pictorial warning and 25% shall cover textual warning. In other words, clause 3(1) of the schedule specifies the minimum size of the warning so as to make it legible, prominent and conspicuous, whereas rule 3(1)(b) read with clause 3(2) of the schedule speaks about the minimum size of the warning. Since the size of the warning is 85%, which has to be complied with in terms of Rule 3(2), the size of the warning have to be proportionately increased depending on the size of the packet in case it is increased. It need not be minimum of 3.5 cm width x 4.00 cm height. In order to ensure 85% of the principal display area being covered by the warning, the size of the warning could be above 3.5 cm width x 4.00cm height. Thus, there is no difficulty in complying with Rule 3(1)(b) read with Clauses 3(1) and (2) of the Schedule. This is also in consonance with what is stipulated in Sections 8 and 10 of COTPA dealing with the manner in which the specified warning shall be prescribed including the size of the letters.

134. However, serious contentions have been raised with regard to prescription of warning of 85% of the principal display area on both sides of the package of cigarette or any other tobacco product being unreasonable and therefore, violative of Article 19(1)(g) of the Constitution. The said aspect would be considered independently. There are also contentions with regard to the components of the specified health warning, both with regard to textual as well as pictorial health warning, which shall also be independently considered.

135. Further, clause (c) of Rule 3(1) states that none of the elements of the specified warning should be severed, covered or hidden in any manner when the package is sealed or opened. This stipulation has to be read along with Rule 3(1)(b), which states that the specified health warning shall be positioned on the top edge of the package and in the same direction as the information on the principal display area. There can be no objection with regard to these two stipulations as the

object of the printing of the specified health warning is to dissuade the smoker or a potential smoker of cigarettes or beedis or a consumer of any other tobacco product from smoking or consuming the same. If the specified health warning is severed, covered or hidden or is not aligned in the same direction as the information on the principal display area then the impact of the said warning would be lost or it would not serve the object and purpose of the Act as well as the Rules. This is also in consonance with Section 8(3) of COTPA, which states that every package containing cigarettes or any other tobacco product shall be so packed as to ensure that the specified warning appearing thereon, or on its label, is, before the package is opened, visible to the consumer.

Clause (d) of rule 3(1) states that no messages that directly or indirectly promote a specific tobacco brand or tobacco usage in general are inscribed on the tobacco product package. This stipulation has to be read along with Section 9(2) of the Act. While under Section 5(1) and (2), there is an embargo with regard to advertisement of

cigarettes or any other tobacco product vis-à-vis its use or consumption, at the same time, the same is permissible on a package containing cigarettes or any other tobacco product. As already noted Section 7 mandates the printing of the specified warning which also includes a specified health warning on the package. While doing so, Section 9(2) states that the package should not contain any matter or statement which is inconsistent with or detracts from the specified warning. Clause (d) of Rule 3(1) elaborates that the aforesaid embargo by stating that there can be no message, image or picture that would directly or indirectly promote the use or consumption of a specific tobacco brand or tobacco usage in general or any matter or statement which is inconsistent with or detracts from the specified health warning. This clause gives effect to Section 9(2), which has to be read with Section 7 to which provisions have not been assailed in these Writ Petitions. Therefore, there can be any message, image or picture regarding the use or consumption of a specific tobacco brand or tobacco usage in general or any matter or

statement which is ***consistent with*** the specified health warning and not detract from it.

136. A submission was made at the Bar that clause (h) of Rule 3(1) stipulates what could be contained on a package apart from the specified health warning and that any other matter printed on the package would be in violation of Rule 3(1)(d). I do not think that such an interpretation can be given as clause (h) prescribes the mandatory or "must carry" information, which have to be printed on the package apart from the specified warning. Apart from these two requirements if anything else has to be printed on the package, then the same cannot detract or, be inconsistent with the specified warning. In other words, apart from the specified warning and the requirements to be printed as per Rule 3(1)(h), there could be any other material printed on the package, which is not inconsistent with nor detract from the specified warning.

137. Clause (e) of Rule 3(1) states, no product shall be sold unless the package contains the specified health

warning. The specified health warning has to be printed on every retail pack intended for consumer use or retail sale as well as any other external packaging, such as cartons or boxes. There is no specific contention raised with regard to this clause *per se* as the said clause only states that the specified health warning shall be contained on every package meant for retail trade as well as on external packaging such as cartons or boxes. It also implies that tobacco products must be sold in a package, whatever its shape or size may be, and not loose.

Clause (f) deals with the language of the textual health warning to be inscribed on the package, which may be in English, Hindi or any other Indian language or a foreign language and the combination of such languages are given in clauses (a) to (g) of the first proviso thereof. The second proviso states that the textual health warning shall not appear in more than two languages used on the package. The third proviso states that the textual health

warning in one language shall be displayed on one side or face or principal display area and the textual health warning in the other language shall be displayed on the other side or face of principal display area of the package. This clause has to be read with clause (4) of the schedule which states that each health warning shall be specified in English, Hindi and in any other regional language; appropriate language combination has to be selected from the combination provided in the CD (Compact Disc) to ensure that the language selected for health warning is in conformity with the language used by the manufacturer, importer or packer. There can be no objection with regard to the manner in which a combination of languages must be used in the textual health warning along with the pictorial warning which have to be printed on the package. There is also no submission made on this sub-clause.

Rule 3(1)(g) states that no tobacco product, package or label shall contain any information that is false, misleading, or deceptive, or that it is likely or intended to create an erroneous impression about the characteristics, health effect, or health or other hazards of the tobacco

product or its emissions. The words or descriptors, whether or not part of the brand name shall not use such words as "light", "ultra light", "mild", "ultra mild", "low tar", "slim", "safer", or similar words or descriptors; any graphics associated with, or likely or intended to be associated with, such words or descriptors; and any product package design characteristics, associated with, likely or intended to be associated with, such descriptors. The contention of the petitioners with regard to this clause is that it restricts the right of commercial speech of the producer, supplier, distributor or trader or importer of cigarette or any other tobacco product inasmuch as the right to advertise or right to commercial speech on the package is recognized under Section 5 of COTPA. Therefore, the aforesaid right cannot be restricted or prohibited in terms of clause (g). On the other hand, respondents' counsel have submitted that clause (g) has been inserted in order to caution a producer, distributor etc., of cigarette or any other tobacco product from using such expression, figures or pictorial depiction on the

package which would be inconsistent with or detract from the specified health warning which has to be printed in terms of Section 7 of COTPA read with rules made thereunder. They contend that this is amply made clear by Section 9(2) of the Act.

138. On a reading of the aforesaid clause it becomes clear that the intention of the rule making authority is to prohibit any matter in the form of commercial speech being printed on the package which would be false, misleading or deceptive or is likely or intended to create an erroneous impression about the nature and the characteristics and health effects of a tobacco product or its emission. Ultimately, the purpose is not to lure any consumer of cigarette or any other tobacco product or a potential consumer from being carried away by any false, misleading or deceptive information being printed on the package as such information would be inconsistent with or detract from the specified health warning which has to be necessarily printed in terms of Sections 7 to 10 of COTPA read with the rules made

thereunder. On the other hand, it is made clear that apart from the "must carry" particulars, which have to be printed on every package of cigarette or any other tobacco product which includes not only specified health warning or any other warning and also various details which are mentioned in clause 3(1)(h), the manufacturer, distributor or importer etc. of cigarettes or any other tobacco product is entitled to print any other material on the package so long as it does not detract from the specified health warning. Otherwise it would be inconsistent with Section 7 read with Section 9(2) of the COTPA which are not assailed in these Writ Petitions. Further, any material which detracts from the specified warning cannot also form part of commercial speech as per the reasoning given by the Hon'ble Supreme Court in *Hamdard Dawakhana,* wherein it has been observed that any advertisement, which is deceptive or misleading cannot have the protection of Article 19(1)(a) of the constitution.

139. Rule 3(1)(h) mandates every package of cigarette or any other tobacco product shall contain the

following particulars, namely; (a) name of the product; (b) name and address of the manufacturer or importer or packer; (c) origin of the product (for import); (d) quantity of the product; (e) date of manufacture; and (f) any other matter as may be required by the Central Government in accordance with international practice.

140. With regard to the above, the contention of the petitioners is that if 85% of the package has to contain the specified health warning there is hardly any space left for also printing the aforesaid details on the said package. Secondly, it is contended that the aforesaid details at clauses (a) to (e) thereof are in any case printed on the package in terms of the Legal Metrology Act, 2009. It is also contended on behalf of the beedi manufacturers that under the aforesaid Act, there is an exemption given under Section 3 of the Legal Metrology Act, 2009 and Rule 6 of the Packaging of Commodities Rules, 2011 and such an exemption granted under that Act is taken away by the impugned rules made under COTPA. Therefore, the submission is, this clause is inconsistent with and, in

violation of the aforesaid substantive legislation. It is next contended that sub-clause (f) states that "any other matter as may be required by the Central Government in accordance with international practice" has also to be printed on the package which is a vague stipulation as the contents of the same are not made known under the rules. Also, there is too much leeway given to the Central Government by incorporating such a sub-clause. But the said sub-clause has been supported by the respondents by contending that the rules have been made pursuant to FCTC, which is an international convention and in the nature of International Health Regulation and therefore, if the Central Government thinks it is necessary to incorporate any other matter on the package to be printed for the purpose of implementing the objects of FCTC and COTPA, no exception can be made to the same.

141. I find that the aforesaid provision is in the nature of a "must carry" provision and it is information which must be available to any user/consumer or a potential user/consumer of cigarette or any other tobacco

product and therefore, there can be no objection to the mentioning of such details as required under sub-clause (a) to (e) of Clause (h). As far as the contention of manufacturers of beedis are concerned, although under the Legal Metrology Act, 2009 and the Rules made thereunder, there is an exemption from mentioning the details as required under clause (h) of Rule 3 of the impugned Rules, that would not prevent the Central Government from requiring that the details be mentioned under the Rules. This is because the Legal Metrology Act 2009, is a general enactment, whereas COTPA is a special enactment meant especially for cigarettes or any other tobacco product and under the said Act, the Packaging and Labelling Rules, 2008 as amended by the Amendment Rules of 2014, are even more specific and hence special rules under a special enactment would prevail over the general enactment and the Rules made thereunder. Therefore, on the principles of *generalia specialibus non derogant* and *generalibus specialia derogant* (general things do not derogate from special things and special

things derogate from general things), the special enactment and rules namely, COTPA and the Rules of 2008 as amended by the Amendment Rules, 2014 would prevail over the provisions of Legal Metrology Act, 2009 and the Rules made thereunder.

142. As far as the contention with regard to any other matter to be printed on the package containing cigarette or any other tobacco product in accordance with the international practice is concerned, I find that petitioners cannot have any grievance on this aspect. So long as such matter would not be contrary to what is stipulated in COTPA and the Rules made thereunder or would not be in violation of the Constitution or any other law, such material as per international practice could be printed. But the Central Government must prescribe the material that has to be printed on the package in terms of any international practice well in advance and after notifying the concerned stakeholders so that they could have adequate notice and sufficient time for incorporating

any such matter on the package. Thus, I find no infraction of any law or the Constitution insofar as clause (h) is concerned. Further, on the basis of Article 253 of the Constitution read with Section 31 of COTPA, any other matter in accordance with international practice may also be required to be printed on the package on the same being notified by the Central Government.

143. Rule 4 deals with prohibition on obscuring, masking, altering or detracting from the specified health warning. As there is no specific grievance with regard to the aforesaid rule and, having regard to the object and purpose of the said rule, it would not require any further consideration.

144. Rule 5, deals with rotation of specified health warnings, which is every twenty four months from the date of commencement of the rules or before the period of rotation as may be specified by the Central Government by Notification. There are two images of specified health warning for both smoking and smokeless form of tobacco

products and each of the images of the specified health warning shall appear consecutively on the package with an interregnum of twelve months. At the end of the twelve month period, the first image of the specified health warning shall be replaced with the second image of specified health warning, which shall appear for the next twelve months. At the end of each twelve months of the rotation period, the Central Government may allow the distributors, retailers and importers of cigarettes and other tobacco products a grace period of two months to clear the old stock of package of tobacco products bearing the warning specified for the expired period of twelve months of the rotation period. Rule 5(5) states that the distributors, retailers and importers of cigarettes and other tobacco products shall not distribute or sell any package having the specified health warning of the expired period of twelve months after the grace period of two months. Serious controversy has arisen on this aspect of the matter.

145. Thus, in my view, the validity of the Amendment Rules, 2014, have to be tested, in light of Article 19(1)(g) read with Article 19(6) on only three aspects.

First aspect: Size of the Specified Health Warning:

The first aspect is with regard to the size of specified health warning covering at least 85% of the principal display area of the package of which, 60% will cover pictorial health warning and 25% will cover textual warning. The 1975 Act also provided for certain restrictions in relation to trade and commerce in, and production, supply and distribution of, cigarettes and for matters connected therewith or incidental thereto. Under Section 2(m) of the 1975 Act, "specified warning" meant *"Cigarette smoking is injurious to health"*. Section 7 thereof, stated that no warning shall be deemed to be in accordance with the provisions of the said Act if the height of each letter used in such warning was less than three millimeters. Section 6 of the said Act dealt with the language in which the specified warning was to be

expressed. Therefore, under the 1975 Act, the specified warning was only a textual warning and there was no pictorial warning. Under the Packaging and Labelling Rules of 2008, Rule 3(2) stated that the specified health warning should occupy at least 40% of the principal display area of the front panel of the pack. Under FCTC, the guidelines issued is that the warning should be 50% or more of the principal display area, but shall be not less than 30% of the principal display area. The Parliamentary Committee on Subordinate Legislation has recommended that the specified health warning must be 50%, while the Expert Committee constituted by the Department of Health and Family Welfare recommended atleast 80% of the principal display area of the package. However, under the Amendment Rules, 2014, it is 85%.

146. Sri Sanjay Kumar Pathak, one of the learned counsel for the petitioners, submitted that the size of the warning being 85% under the impugned Rules as compared to it being only 40% under un-amended Rules is only to compete with other countries of the world in order to have a higher ranking in the movement against tobacco and to only create an image, but in

the process the fundamental rights of the petitioners have been violated. He has drawn our attention to answers sought under the Right to Information Act, 2005, so as to ascertain as to what was the basis or the material that weighed with the Department of Health and Family Welfare, to choose the specified health warning to be 85% of the principal display area of the package. One query was, "**W*hether the pictorial warning is a real image of a human being or a representational one*?**" The reply given by the Ministry of Health and Family Welfare (Tobacco Control Division) is "***No such specific information is available***". To the query, as to "**W*ho provided the images to the department for the purpose of prescribing the pictorial warning***", the answer given is, "***The pictures were collected from various institutions/ organizations and no such specific information is available***". To the further query, "***How many medically approved cases have been detected in India where the patients of mouth cancer have suffered the damage equal to the damage shown in the pictorial warning. Kindly provide sufficient details to identify those***

cases?", the reply is "***No such specific information/data is available with the Ministry***".

147. The aforesaid answers clearly establish that there was no scientific approach adopted while choosing 85% as the size of the warning. No material has been placed before this Court by the respondents to establish that if the size of the warning is 85%, it would have the effect of dissuading smokers or potential smokers from using/consuming tobacco products. Therefore, it becomes clear that neither was there any basis nor any application of mind to prescribe specified health warning to be 85% of the principal display area on both sides of the package. In the absence of there being any material, which has been considered by the Ministry of Health and Family Welfare, I find prescription of 85% of the principal display area of the package containing the specified warning is arbitrary and in violation of Article 14 of the Constitution apart from not being in consonance with the recommendation made by the Parliamentary Committee as well as the Expert Committee set up by the Ministry of Health and Family Welfare. Hence, prescription of 85% of principal

display area of the package with the specified warning is in violation of Articles 14 and 19(1)(g) of the Constitution as in the absence of any material to justify the same, it is unreasonable and unsustainable. Had any basis or rationale been established by the respondents that, if the size of the warning is 85%, and not any lesser (or more) would meet the object and purpose of the warning, it could have been sustained. As already noted, the size of the warning cannot be a mere matter of policy in which Courts may not interfere as proviso (a) to sub-section (2) of Section 5 of COTPA is also to be borne in mind. It is reiterated that a balance would have to be struck between the right to advertise on the package (as a right under Article 19(1)(g) and reasonable restriction on trade and commerce in tobacco products as enunciated under Section 7 read with Section 9(2) of COTPA. While COTPA permits advertisement on the package of tobacco products as per proviso (a) sub-section (2) of Section 5, at the same time it is subject to a reasonable restriction under Section 7 read with Section 9(2) thereof, inasmuch as the contents of the advertisement on the package cannot detract from the specified warning which has to be mandatorily printed

on the package. Thus, the right to advertise on the package of tobacco products must be read in the context of reasonable restrictions under Section 7 and the former cannot be whittled away in the name of policy. Further, the rule cannot overreach the provisions of COTPA. When COTPA permits advertisement on the package of tobacco products while prohibiting the same everywhere else, the said right cannot be diluted by the warning being increased to 85% of the display area of the package on each side. Therefore, size of the warning cannot be, having regard to the international image of India in the movement against tobacco, in total disregard of Fundamental Rights of the petitioners. Hence, Rule 3(1)(b) and consequently Clause 3(3) of the Schedule are liable to be quashed and are quashed vide ***Bishambar Dayal vs. State of U.P. [1982 (1) SCC 39]*** at para.33.

Second aspect: Content of the Specified Health Warning:

148. As far as the content of the health warning is concerned, it is noted that out of 85% of the principal display area, 60% must contain the pictorial health warning and 25% shall be the textual warning. As already noted, under the 1975 Act, there was no pictorial warning and only textual warning

was *"Cigarette smoking is injurious to health"*. Under the 2008 Rules, 40% of the principal display area of the front panel of the pack had to contain the textual warning ***"smoking kills"*** on packages containing smoking forms of tobacco products and ***"Tobacco Kills"*** on packages of smokeless or chewing and other forms of tobacco products, in white fawn colour on a black background. The pictorial depiction of the warning under Section 7 of COTPA, as it stood prior to the amendment made by Amendment Act, 2007 read, *"the specified warning including a pictorial depiction of skull and cross bones and such other warning as may be prescribed"*. The amendment to Section 7(1) was necessitated on account of religious sentiments expressed by certain sections of society against the depiction of skull and cross bones. Hence, the same was made optional rather than mandatory. But, other pictorial warnings and textual warnings as referred to above were prescribed. The guidelines of the FCTC in this regard is that culturally appropriate pictures must be used. The recommendation of the Expert Committee constituted by the Department of Health and Family Welfare is not made available before this Court by the respondents or intervenors.

But, under clause 3(2) of the Schedule to the Amendment Rules, 2014, there are four images given: two pertaining to smoking forms of tobacco and, two concerning smokeless forms of tobacco products. They are as follows:

For smoking forms of tobacco, the textual warning is, ***"smoking causes throat cancer"*** and for smokeless forms of tobacco products, the textual warning is ***"tobacco causes mouth cancer"***. Apparently, the pictures purportedly showing the effect of cigarettes on the throat and that of chewing tobacco in the mouth leading to cancer, are depicted.

149. The contention of the petitioners with regard to these images are two-fold: firstly, the manufacturers of cigarettes and other tobacco products cannot be compelled to print on the packages, a textual warning to the effect that ***"smoking causes throat cancer"*** and ***"tobacco***

chewing would cause mouth cancer" when the co-relation is not established. It is next contended that there are millions of smokers and chewers of tobacco who have not died due to cancer. Further, there are cases of non-smokers and non-chewers of tobacco who have died on account of cancer. That such images and messages do not depict the true picture and hence, it violates Article 19(1)(g). In other words, the contention of the petitioners is that the right of the petitioners under proviso to sub-section (2) of Section 5 of COTPA cannot be diluted or nullified in the guise of complying with Section 7 read with Section 9(2) of COTPA.

150. It is noted that the textual warning under the 2008 Rules was *"Smoking Kills"* and *"Tobacco Kills"*, which are warnings of a general nature. But now, the warnings are specific, related to causation of a disease namely, cancer. However, the point to be considered is, whether, a person who is dealing with tobacco and its products, either as a manufacturer or producer of tobacco products, distributor, seller, importer etc., could be compelled to

print such textual warnings on the packages of cigarettes or other tobacco products which, according to the petitioners, are not true and therefore, printing these warnings affect their right to advertise under Section 5 and to carry on business under Article 19(1)(g). Before answering the same, it must be noted that in these writ petitions, this Court is not expected to give a verdict as to, whether, smoking causes throat cancer, or whether chewing tobacco causes mouth cancer; that is for the medical experts to conclude. But, it is nobody's case that smoking does not cause any harm or injury to human health and it is generally endorsed that smoking and chewing tobacco products or any of its forms does have an injurious effect on human health. Therefore, the controversy is not as to, whether, smoking causes throat cancer and chewing tobacco causes mouth cancer. The petitioners have contended through their learned counsel that such statements are false as cancer could be caused due to several factors and not by smoking or chewing tobacco; that non-smokers and persons who do not

consume tobacco also succumb to it. But learned counsel for Intervenors supported the images and text on the packages. Without endorsing the views of either side as to whether smoking indeed causes throat cancer and chewing tobacco causes mouth cancer, this Court is only concerned with, whether, the depiction of the textual warning in the aforesaid forms is violative of Article 19(1)(g) of the Constitution or not. While answering the aforesaid question it is observed that the pictorial warnings have to be read in consonance with the textual warnings.

151. It is held that the textual warnings cannot be accepted as true in the face of a serious debate over it, the world over. Then the pictorial images also would have to be held to be impermissible for the very same reason. This is because there is no universal acceptance of the theory that use or consumption of tobacco and its products causes cancer. This Court is not expected to and, would not venture to give its verdict on that aspect of the matter one way or the other. But when there is no unanimity on

the statements contained in the textual warnings, rather when the same is a subject of serious debate the world over, the Amendment Rules, 2014 could not have incorporated the same without there being any rationale behind it. Further, as already noted, there appears to be no real application of mind on the selection of contents of the warnings, which are graphic images seeking to exaggerate the ill-effects of tobacco and its products so as to co-relate them to the textual warnings. In fact, the warnings may not even serve the purpose for which they are meant as the consumers or potential consumers of tobacco and its products may refuse to believe in the contents of such textual warnings and consequently, the pictorial warnings also would not have any impact on anybody. As a result, the whole object and purpose of having such warnings would be lost.

152. That apart, another contention advanced is, with regard to the morbidity of the pictorial warnings. According to the learned Senior Counsel for the petitioners,

Sri Poovaiah, it is egregious in nature and not in good taste as such. It is contended that if the object and purpose of the specified health warning is to warn the users and consumers of tobacco and its products as well as its potential users and consumers about its ill-effects, then it is improper and inappropriate to warn with reference to tobacco causing cancer and further, the images of throat, neck and mouth or the physiology of the person said to be suffering from cancer need not be depicted. While considering the said contention, it is noted that earlier a picture of skull and cross bones was the specified warning and even prior to that there was only a textual warning under the 1975 Act to the effect that "*smoking is injurious to health*". There has been no medical or scientific data or empirical research conducted and data collated with regard to impact of the warnings on package of tobacco and its products on users/consumers or potential users or consumers, which has been placed before this Court by having inputs from behavioral scientists. But, having regard to the avowed object of having warnings on the

packages of tobacco and its products, in my view, it is unnecessary to have pictorial and textual warnings suggestive of cancer particularly when the contents of the said warnings are not universally accepted as medically proven. That the impugned pictorial and textual warnings are in consonance with medical research, has not been established by the Respondents by producing any data. Had appropriate textual warnings and pictorial images been adopted as warnings on the packets of tobacco products, the same could have been sustained under Article 19(1)(g) of the Constitution. Further, had the laying procedure been taken to its logical conclusion, possibly there would have been amendments suggested and approved, and the petitioners herein may not have challenged the Amendment Rules, 2014.

In the circumstances, it is held that the contents of the specified health warning is arbitrary and it is an unreasonable restriction, in terms of proviso to sub-section (2) of Section 5 read with Section 7 of COTPA being

violative of Article 14 and 19(1)(g) as they have been arbitrarily selected and not a reasonable restriction under Article 19(6) of the Constitution. Hence, clause (2) of the Schedule to Amendment Rules, 2014 is liable to be quashed and is quashed.

Third aspect: Rotation of specified health warning:

153. The third aspect of the rules, which is in controversy is with regard to Rule 5, which deals with rotation of specified health warning. Petitioners are not aggrieved by the rotation of the warnings as such, but are aggrieved by clauses (1), (4) and (5) of Rule 5. Clause (1) states that the specified health warning on the tobacco product package shall be rotated every twenty-four months from the date of commencement of these rules or ***before the period of rotation,*** as may be specified by the Central Government by notification. The contention in this regard is concerning the uncertainty in the rotation period. It is submitted by Sri Poovaiah, learned Senior Counsel for the petitioners that the expression *"before the period of rotation as may be specified by the Central*

Government by notification" makes the period of rotation uncertain and gives a leeway to the Central Government to bring up new images without giving sufficient time for the producers, manufacturers and such others to print the new images on the packages of cigarettes and other tobacco products. It is contended that the aforesaid discretion given to the Central Government is unguided and it is wholly unwarranted. This argument is linked with the stipulations in clauses (4) and (5) of Rule 5. Clause (4) states that at the end of each twelve months of the rotation period, the Central Government may allow the distributors, retailers and importers of cigarettes and other tobacco products a grace period, not exceeding two months to clear the old stock of packages or tobacco products bearing the warning specified for the expired period of twelve months of the rotation period. After the expiry of the grace period of two months, the distributors, retailers and importers of cigarettes and other tobacco products shall not distribute or sell any package having the specified health warning beyond the expired period of

twelve months. According to the petitioners, the combined effect of clauses (4) and (5) is that on the expiry of that period, when there is a change in the specified warning notified by the Central Government, within a period of two months the tobacco products containing the earlier warnings would have to be sold. If not, the said products cannot be distributed or sold. In effect, the products become illegal on account of the packaging. It is contended that when the cigarettes and other tobacco products have shelf life of over two months, it is wholly unreasonable and arbitrary to curtail distribution or sale of cigarettes and other tobacco products beyond two months when there is a rotation in the health warnings. It is further contended that when the cigarettes and other tobacco products leave the manufacturers' premises, excise duty and other taxes are paid thereon. But on account of rotation in the health warnings, by the Central Government having regard to clause (1) to Rule 5, the cigarettes and other tobacco products would become illegal and it cannot be distributed or sold, which makes the

provision unreasonable, hence, clauses (1), (4) and (5) are in violation of Article 19(1)(g) of the Constitution.

154. There can be no fault found with regard to rotation of the health warning but after prior intimation to the stake holders, so as to give them sufficient time to print the new warnings, while exercising power under sub-rule (1) of Rule 5. I find considerable force in the argument of the learned Senior Counsel for the petitioners insofar as clauses (4) and (5) of Rule 5 are concerned. The product, whether it is in the form of cigarettes or any other tobacco product cannot lose its legality and its worth only on account of rotation of specified warning on the package. The form cannot override the substance only because packets of tobacco products containing earlier warnings are not sold within a period of two months, although the said products have a shelf life beyond two months and are legally produced. Such provisions cause great economic and financial loss to the distributors, retailers, importers and other stakeholders. Hence, in my view, the aforesaid clauses are violative of Article 19(1)(g)

and are not saved by Article 19(6) of the Constitution, they are liable to be quashed and are quashed.

Thus, while considering the aforesaid three aspects, it is noted that they are not only unreasonable restrictions, but also dilute and water down the right to advertise, which is also a right to trade as envisaged under Article 19(1)(g), in the instant case. A restriction on right to trade must be reasonable and should balance with other nuances of right to trade. Hence, the right to advertise on the package, which is interpreted as right to trade in the instant case under proviso (a) to sub-section (2) of Section 5 of COTPA cannot be nullified by the Rules made there under. But in the instant case, the unreasonable restrictions pointed out above have curtailed the right to advertise on the tobacco packages, which is reserved under the statute. As a result, there is infraction of that right, which is, in the form of an exception to prohibition on advertisement of tobacco and its products. It is well settled that a right created by an exception clause under a statute must be given its full effect and not be permitted to be whittled down by Rules made under statute. In other words, the impugned Rules are contrary to COTPA, which is impermissible in law.

Beedi Industry:

155. As far as the grievances of the beedi industry is concerned, the same have been ventilated by learned Senior Counsel, Sri K.G.Raghavan, appearing for some of the beedi manufacturers and Sri Rajeev Kumar Jain, learned counsel appearing for some other beedi manufacturers. It is contended that beedi is at item No.4 of the Schedule to COTPA and is hence, a tobacco product within the meaning of Section 2(p) of the said Act. That under the 1975 Act, no other tobacco product was covered apart from cigarette. That prohibition under Section 5 and the restriction under Section 7 of COTPA applies to beedis also. That under Section 7(1), no person shall, directly or indirectly, produce, supply or distribute *inter alia,* beedis unless every package of beedis produced, supplied or distributed bears thereon, or on its label, such specified warning including a pictorial warning as may be prescribed. Further, no person shall carry on trade in beedis unless every package of beedis sold, supplied or

distributed bears thereon, or on its label, the specified warning. Similarly, if beedis are imported for distribution or supply for a valuable consideration or for sale in India, then every package of beedis so imported shall bear on its label, the specified warning. Section 7(4) states that the specified warning shall appear on not less than one of the largest panels of the package in which beedis have been packed for distribution, sale or supply for a valuable consideration. Under the Packaging and Labelling Rules, 2008, "package" means, any type in which the product is packaged for consumer sale, but shall not include wholesale, semi-wholesale or poora packages, if such packages are not intended for consumer use. Rule 2(c) (iii) defines "principal display area" for conical or cylindrical type of package to mean the entire curving area of the pack that may be displayed or visible under normal or customary conditions of sale or use, which definition according to learned counsel is applicable for beedis.

156. Learned counsel have further contended that keeping the aforesaid provisions and definitions in mind

Rule 3 of the Amendment Rules, 2014 would have to be applied to beedis. Rule 3(1)(a) *inter alia* states that every person engaged directly or indirectly in the production, supply, import or distribution of beedis shall ensure that every package of beedis shall have the specified health warning ***exactly as specified in the Schedule*** to the Rules. Clause (b) states that the specified health warning shall cover atleast 85% of the principal display area of the package, of which, 60% shall cover pictorial health warning and 25% shall cover textual health warning and shall be positioned on the top edge of the package and in the same direction as the information on the principal display area. In respect of the conical packages, in which beedis are packed, the widest end of the package shall be considered as the top edge of the package. Further, for cylindrical and conical type of packages, which are meant for beedis, the specified health warning shall appear diametrically opposite each other on two largest sides or faces of the package and the specified health warning shall

cover 85% of each side or face of the principal display area.

157. With regard to the aforesaid stipulations, it is submitted that beedi industry is a labour intensive industry and not a mechanised one. Beedis are handmade and that the size of the beedis are not uniform. Therefore, there is no standard package in the form of a conical shape as far as beedis are concerned. Consequently, the packets containing beedis are not dimensionally identical and that their size varies according to the size of the beedis, when packed, as the size of the beedis themselves vary and are not of standard size as they are handmade. It is contended that the specified health warning cannot be exactly as stipulated in the schedule to the rules. That it may be so in the case of a cigarette package but not so with respect to beedi package. That there is non-application of mind in this regard as all products of tobacco have been grouped together. Further, it is difficult to adhere to the stipulation of having the specified health warning covering at least 85% of the conical type of

package of beedis. Moreover, the widest end of the package has to be the top edge of the package, but the beedi packages are normally opened at the widest end and not at the narrow end of the conical shape package. When the widest edge of the pack is opened, the specified warning would be severed and mutilated as the package is normally torn open for removing beedis from the package. It is contended that it is difficult to print the specified health warning diametrically opposite each other or on two largest sides of the package to an extent of 85% on each side or the size of the principal display area. That for conical or cylindrical types of packages i.e., beedi packages, the principal area is the entire curved area of the pack. It is contended by learned counsel for the petitioners that the realities concerning beedi industry have been given a go-by by not taking into consideration the nature of the product, the manner in which it is produced and the way it is packed. It is submitted that the rules have been prepared keeping in mind cigarettes and possibly other tobacco products, but not beedis which

is an unique product of tobacco. All the stipulations and prescriptions which have been made for cigarettes have been mechanically applied to packets of beedis without keeping in mind the nature of the product and the manner in which it is packed. It is contended by learned counsel for petitioners that there is total non-application of mind as far as beedi industry is concerned when the Amendment Rules, 2014 were prepared and enforced. Similar submissions have been made on behalf those petitioners dealing with chewing tobacco, which are sold in pouches.

158. It is further contended that under Rule 3(1)(e) no product including beedis shall be sold, unless the package contains the specified warning and the health warning shall be printed on every retail packet in which the tobacco product is intended for consumer use or retail sale. That beedis are not always sold in packets. The consumers of beedi buy in small numbers and not the entire beedi packet. That there is no prohibition from selling loose beedis by the retailers without the package under COTPA or the rules made thereunder. That

insistence on selling of beedis in packets would only increase the quantity of sale of beedis, which is contrary to the object and intent of COTPA. If there has to be control over the use and consumption of beedis, then there must be appropriate rules made for beedis, keeping in mind the nature of the said industry as well as the product and the people involved in the said industry.

159. It is therefore contended by learned counsel for petitioners that the Department of Health and Family Welfare was all along concerned with cigarette industry and have mechanically applied the Amendment Rules, 2014, which have been drafted and enforced vis-à-vis cigarettes, to beedis also, on the premise that it is a tobacco product, without there being any conscious application of mind to the nature of the product. It is contended, merely because packets of beedis must contain specified health warning when sold by a retailer to a consumer does not mean that loose beedis cannot be sold. It is further contended that clause (h) of Rule 3 is in violation of Section 3 of the Legal Metrology Act, 2009

and under Rule 3(h) of the rules made there under, as well as Rule 6 of the Packaging of Commodities Rules, 2011, as printing of certain details on the packages of beedis are exempted.

160. Further, the contentions of the petitioners dealing with cigarettes with regard to clauses in the schedule as well as on the following three aspects namely, 85% of the principal display area of the beedi package must be covered with the specified health warning; that the textual and the pictorial health warnings are egregious and morbid and further, on account of rotation of the health warnings, beedis cannot be sold beyond a period of two months from the period of expiry of the earlier health warnings, have been adopted by the petitioners, dealing with beedis.

161. No doubt, under the Legal Metrology Act, 2009 and the Rules made thereunder, beedis are exempted from the provisions of the said Act and the Rules made there under. But under the Amendment Rules, 2014, the package of beedis must also contain particulars mentioned in Rule 3(h)

thereof. As already held in the earlier part of this order, although an exemption has been made under the aforementioned Act and Rules which is a general enactment, that would not prevent the Amendment Rules, 2014, which is specific in nature from incorporating certain details on the beedi packages. Rule 3(h) requires certain details to be mentioned on the beedi packet. I do not think that the mandate to mention the above said details on the beedi packets would in any way violate the right to freedom of trade and business of the persons concerned with beedis. Hence, the specific contention made with regard to Rule 3(h) by petitioners dealing with beedis is rejected. According to Sri Pathak, who appears for petitioners dealing with chewing tobacco, which are packed in pouches, this is a case of unequals being treated equally, which is an instance of violation of Article 14 of the Constitution. The sub-rules and clauses in the schedules, which have been struck down vis-a-vis the cigarettes and other tobacco products would equally apply insofar as beedis and tobacco pouches are concerned.

162. In ***Chintaman Rao vs. State of M.P. [AIR 1951 SC 118],*** the Hon'ble Supreme Court has opined that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of public. The word 'reasonable' implies intelligent care and deliberation, i.e., choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Article 19(6), it must be held to be wanting in that quality.

163. In the context of imposing prohibition on carrying of a business or profession in ***Mohmad Faruk vs. State of M.P [(1969) 1 SCC 853]***, one of the aspects considered was the possibility of achieving the object by imposing a less drastic restriction so as to ensure that the object intended be achieved. Reliance is also placed.

Effect of quashing the Rules and clauses in the Schedule:

164. The next aspect to be considered is with regard to the effect of quashing of rule 3 (b), rule 5(1) partially and sub-rules (4) and (5), clauses (1) (i) and (ii), and clause (2)(a), (b), (c) and (d) and clause 3(2) of the schedule to the Rules on the rest of the rules and their enforcement thereof. On a holistic consideration of the Amendment Rules, 2014 in juxtaposition with the Packaging and Labelling Rules, 2008, which are un-amended, it becomes clear that quashing of the aforesaid Amendment Rules, 2014 and the clauses of the schedule to the said Rules takes away the substratum of the impugned Rules. The rest of the impugned Amendment Rules, 2014 cannot be implemented *de hors* the Rules which are quashed even though they are not illegal by themselves. Even on application of the doctrine of severability, in my view for the aforesaid reasons the entire Amendment Rules, 2014 would have to be quashed. In saying so, I am fortified by a decision of the Constitution Bench of the Hon'ble Supreme Court in the case of ***RMDC vs. Union of India [AIR 1957 SC 628].***

In the result, the Amendment Rules, 2014 being in violation of Article 19(1)(g) and not saved under Article19(6) of the Constitution, the said rules are quashed in its entirety as the same cannot be saved on the basis of doctrine of severability.

165. The next question that would arise is, as to whether, the quashing of the Amendment Rules, 2014 would result in a vacuum insofar as Packaging and Labelling Rules are concerned or whether the 2008 Rules would surface and become operational. In my view, there cannot be any vacuum insofar as the provision regarding specified health warning on the package of cigarettes and other tobacco products are concerned. On quashing of the Amended Rules, it is noted that the Parliamentary Committee on Subordinate Legislation has recommended that the warning on cigarette packages should be 50% on both sides on the principal display area of the package of cigarettes and other tobacco products. Be that as it may. On the quashing of the Amendment Rules, 2014, the Packaging and Labelling Rules, 2008 would resurface and operate until the Union of India decides to frame fresh Rules or amend the Packaging and Labeling

Rules, 2008, afresh. In the event, Union of India, represented by Department of Health and Family Welfare decides to amend the Packaging and Labelling Rules, 2008, the Interim Report as well as the Final Report submitted by the Parliamentary Committee on subordinate legislation may be considered and thereafter, to take a decision to amend the Rules. By giving such a direction, it is observed that the argument made by the petitioners with regard to Article 77(3) of the Constitution would also pale into insignificance in the instant case as the Parliamentary Committee, after hearing the views of the Department of Health and Family Welfare, has also heard the views submitted by various other departments of the Central Government including the Department of Commerce, Labour and Employment, Agriculture as well as the other stake holders in the tobacco industry including the manufacturers/producers of cigarettes and other tobacco products. Therefore, in the facts and circumstances of the

present case, I am of the view that due weightage may be given to the Interim as well as the Final Reports of the Parliamentary Committee and the same may be considered by the Union of India represented by the Ministry of Health and Family Welfare, which is stated to be the nodal ministry regarding the prescription of the statutory warning for cigarettes and other tobacco products.

166. Further, the Union of India, represented by Ministry of Health and Family Welfare is also at liberty to consult any other Department of Government of India, if it deems fit, in light of the Reports of the Parliamentary Committee on Subordinate Legislation in the event it intends to frame fresh Packaging and Labelling Rules or amend the existing Rules. The above shall, however, not be construed as a requirement under the Transaction of Business Rules, made under Article 77(3) of the Constitution.

167. In fact, by memo dated 28/02/2017, learned counsel for the petitioners has stated that the petitioners do not intend to press the prayer with regard to a

challenge made to COTPA reserving liberty to seek such relief in an appropriate proceeding. By the order of same date, memo was taken on record and the prayer seeking the challenge to COTPA has been dismissed as not pressed reserving liberty as sought for.

168. The challenge made to the validity of the Packaging and Labelling Rules, 2008 is ***dismissed.***

169. Writ petitions are ***allowed in part*** in the aforesaid terms.

Parties to bear their respective costs.

The valuable assistance rendered by learned Senior counsel and other learned counsel, learned Assistant Solicitor General, learned instructing counsel appearing for the respective parties is acknowledged, appreciated and placed on record.

Sd/-
JUDGE

Msu/*s*/*mvs*

ORDER OF THE COURT

Having regard to the separate opinions rendered by us, we hold that the Amendment Rules, 2014 are struck down as being in violation of the Constitution of India.

The challenge to COTPA being withdrawn by memo dated 28/02/2017, filed on behalf of the petitioners, did not require consideration by this Court.

The challenge made to the validity of the Packaging and Labelling Rules, 2008 is ***dismissed.***

Writ petitions are ***allowed in part*** in the aforesaid terms.

Parties to bear their respective costs.

Sd/-
JUDGE

Sd/-
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S*