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Kerala HC verdict on Food Safety & Standards Act may impact gutkha ban

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Abhitash Singh, Mumbai

The Kerala High Court recently ruled in favour of manufacturers and dealers of tobacco products while disposing of a writ petition filed by the dealers of tobacco products. However, the state government has appealed against the court order.

Through the ruling, the ban on the sale and supply of chewing tobacco and tobacco products under the Food Safety and Standards (FSS) Act, 2006, has been struck down by the Kerala High Court. The ban was imposed on May 22, 2012.

While the verdict is applicable only for the state of Kerala, it is likely to have a deeper impact on similar bans imposed by some 16 other states earlier and which are being contested in the Supreme Court as well as few lower courts across the country.

In the Kerala High Court ruling, Justice A M Shaffique ordered that the state and commissioner of food safety had no right to take any action against tobacco or tobacco products as chewing tobacco was not a food product as defined under the FSS Act.

Allowing the petition, the court observed that tobacco and tobacco products were not food as defined under Section 3(J) of the Act and it was not a food product as specified in Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sale) Regulation (FSSR), 2011.

Tobacco and tobacco products were to be manufactured and sold strictly in accordance with the provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003 (CTP) and the rules framed thereunder, the court observed.

FSSR permitted the government to impose any restrictions on all food products containing tobacco or nicotine. However, the judgment stated that it could not prohibit the manufacture and sale of tobacco and tobacco products as they could not be considered as food product. The court observed that tobacco was not a food product and it might at best be an intoxicant, which was not used for taste or nourishment.

“The food safety commissioner of the southern state



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does not have a right to take action against manufacturers and dealers of gutkha, tobacco and tobacco products. The state government appealed against the Kerala High Court,â€ Shaffique added. This was corroborated by D Sivakumar, designated officer, commissionerate of food safety, Kerala, in a telephonic conversation with F&B News.

Gutkha is also banned in Bihar, Maharashtra, Haryana, Gujarat, Rajasthan, Chhattisgarh, Jharkhand, Uttar Pradesh, Himachal Pradesh, Punjab, Uttarakhand, Delhi, Goa, Mizoram, Andhra Pradesh, Odisha and Chandigarh.

FDA, Maharashtra

Ravi Goenka, an advocate representing Vishnu Packaging, which manufactures Vimal Gutkha, recently filed a petition against Food and Drugs Administration (FDA), Maharashtra, arguing that the body had no jurisdiction to seize the consignment or initiate a criminal case against his client.

â€œAccording to FSSA, 2006, most states of the country have banned gutkha, but it continues to be sold illegally, and there is no one to govern it. I have been representing Vishnu Packaging since criminal proceedings were initiated against them. The case is still pending in the Supreme Court,â€ he added.

Sanjay Bechen, executive director, Smokeless Tobacco Federation, an association of smokeless tobacco-producing companies, said, â€œThe industry called the ban illegal, stating that COTPA is a special Act and FSSA is a general Act. FSSA was enacted in 2006 - three years after COTPA â€“ but the latter has not been repealed yet. A special Act is always above a general one, so gutkha is still regulated by COTPA.â€

He added, â€œThe federation is in possession of an RTI reply from the Food Safety and Standards Authority of India (FSSAI), dated June 29, 2012. The applicant had asked the food regulatory body whether gutkha is tobacco or a food product and whether FSSA or COTPA regulates it. The reply read, 'As per the FSSA and FSSR, gutkha has not been defined as food.' This shows FSSAI's double standards. In the RTI response, they said gutkha is not food, but made a contradictory statement in court.â€

The Smokeless Tobacco Federation has filed a petition against the governments of the states that have banned gutkha, and the case is pending.

Mizoram

Mizoram is the only state in the country to ban both gutkha and zarda. A spokesperson from the government, on the condition of anonymity, said, â€œAlthough it is banned in the north-eastern state, many dealers continue to sell it at a high price.â€

Odisha

Odisha invoked Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, to ban gutkha and tobacco products in the state. As per this regulation, the manufacture, storage, sale or distribution of gutkha and pan masala containing tobacco and nicotine as ingredients is prohibited in the market.

Damodar Rout, minister for health and family welfare, Government of Odisha, said, â€œGutkha containing nicotine is injurious to health, often leading to oral cancer. India has

more people suffering from oral, throat and intestinal cancers than any other country in the world. In the interest of the general public, we have decided to ban gutkha in the state.â€

The public health director of the eastern state has been designated as its food safety commissioner, while the additional district medical officers (ADMOs) will be the designated officers at the district level, and the food inspectors will function as food safety officers (FSOs). These designated officials can impose penalties if the Act is violated.

Uttar Pradesh

Uttar Pradesh will ban gutkha and pan masala which contains tobacco products from April 1, 2013.

Seema Gupta, regional director, Voluntary Health Association of India (VHAI) said, â€œWe are skeptical about Uttar Pradesh banning gutkha, because it is not only a gutkha manufacturing hub, but also a hub for dealers and exporters.â€

Akhilesh Yadav, the state's chief minister, urged all gutkha manufacturers and sellers to shut shop, adding that he would try to create employment for the 12 lakh people associated with the industry.

Andhra Pradesh

On January 9, the government of Andhra Pradesh imposed the ban on gutkha and pan masala which contains tobacco products with effect.

All the manufacturers and sellers of gutkha and pan masala downed their shutters, fearing that failure to do so would result in the cancellation of their licences.

The old stocks of gutkha would be burned off. That should not be a difficult task, as it is not a large industry in the state. There are only 4-5 manufacturers, and the bulk of it is imported from other states.

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