



MURLI S. DEORA V. UNION OF INDIA AND OTHERS (AIR 2002 SC 40)

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ABSTRACT

“Smoking Kills. If you’re killed, you’ve lost a very important part of your life”

-Brooke Shields

The case of Murli S. Deora V. Union of India had a great impact over the right to life of the passive smokers. Where there was a time when smoking in public places deprives the life of non-smoker in those public places. The Hon’ble Supreme Court looking into the life of the non-smoker who is affected because of a smoking did by a person in public places which undoubtedly deprives the life of a non-smoker in those public places. It further observed that “Why should a non-smoker be afflicted by various diseases, including lung cancer or of heart, only because he is required to go to public places? Is it not indirectly depriving of his life without any process of law? Article 21 of the Indian Constitution provides that no person shall be deprived of his life without due process of law, but in this case, a non-smoker is deprived of his life not because of law alone because of the reason that he has to come into the public places. So, realizing the gravity of the situation and considering the adverse effect of smoking and also to protect the public health at mass. The Hon’ble Supreme Court directed and prohibited smoking in public places and also issued directions to the Union of India, State Governments, as well as the Union

Territories to take effective steps to ensure prohibiting the smoking in public places. This case comments aims at bringing out a critical analysis over it.

KEY WORDS: Passive smoking, Non-Smoker, Non-communicable diseases, Environment health

I. FACTS OF THE CASE:

✓ **Murli S. Deora – A famous politician**

Murli S. Deora was a famous politician. He was also a social activist who is very much concerned about the society.

✓ **Ill-effects of tobacco**

Tobacco related diseases caused an estimated eight hundred thousand deaths in India per year with treatment of tobacco caused diseases resulting in a loss of Rupees 13,500 crores annually. The World Health Organization estimated that upto seven million deaths, worldwide per year were attributable to tobacco related diseases, of which sixty million deaths occurred in developing countries during the previous fifty years.

✓ **Lack of legislation**

During those time only one act was in force called Cigarettes (Regulation of production, supply and distribution) Act,1975. The Tobacco Products (prohibition of advertisement and regulation of trade and commerce, production, supply and distribution) bill,2001 was pending. The objects of both Acts detailed the concern of tobacco smoking on public health, but did not establish a ban.



✓ **Petitioner Approached Hon'ble Supreme Court**

The Petitioner, Murli S. Deora has approached the Supreme Court by filing a Public Interest Litigation on the basis of the right to life, and liberty espoused in Article 21 of the Indian Constitution.

places affected a non-smoker in the those places with diseases like lung cancer or of heart.

It was further submitted that The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 inter alia provides, "Smoking of cigarettes is a harmful habit and in course of time can lead to grave hazard". Similarly The cigarettes and other products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2001 provides that cigarette smoking leads to various health hazards.

Both of them are not prohibiting the smoking in public places. So, it was prayed from the petitioner side that, considering the adverse effect of smoking in public places, the court in the interest of the public should prohibit smoking in public places until the statutory provisions is made and implemented.

The Attorney General as well as the counsels for respondents submitted that considering harmful effect of smoking, smoking in public places is required to be prohibited. Learned counsel Attorney General also submitted that appropriate order banning smoking in public places be passed. The counsels for other respondents also supported the stand. It was further submitted that statutory provisions are being made for prohibiting smoking in public places and the bill introduced in the parliament is pending for consideration before a select committee. The State of Rajasthan claimed to have passed Act No. 14 of 2000² to provide for prohibition of

II. ISSUES IN THE PRESENT CASE:

- i) **Whether smoking in public places deprives the right to life of a non-smoker under Article 21 of the Constitution of India?**
- ii) **Whether smoking has to be banned in public places?**

III. ANALYSIS OF ARGUMENTS

The Petitioner pointed out that tobacco contains harmful contents including nicotine, tar, potential carcinogens, carbon monoxide, irritants, asphyxiates, and smoke particles which are the cause of many diseases including the cancer. It was alleged that three million people die every year as a result of illness related to the use of tobacco products of which one million people belong to developing countries like India. The World Health Organization have estimated that tobacco related deaths can rise to a whopping seven million per year. Tobacco smoking also adds air pollution. Besides cancer, it is also responsible for various other fatal diseases to mankind. The petitioner submitted that article 21 of the constitution of India¹ provides that no one shall be deprived of his life without due process of law. But the smoking in public

¹ "No person shall be deprived of his life or personal liberty except according to a procedure established by law."

² THE RAJASTHAN PROHIBITION OF SMOKING AND NON-SMOKERS HEALTH PROTECTION ACT, 2000



smoking in place of public work or use in public service vehicles for that state. It was stated that in Delhi also there is a prohibition of smoking in public places.

IV. OBITER DICTA:

The main issue in this case was whether smoking in public places deprives the life of non-smoker in those public places. The court observed that smoking done by persons in public places undoubtedly deprives the life of a non-smoker in those public places. The court observed that Article 21 of the Constitution of India provides that no one shall be deprived of his life without due process of law, but a non smoker is deprived of his life not because of law. But only because of the reason that he has to come into the public places.

V. HON'BLE COURT VERDICT:

The Supreme Court held that smoking in public places deprives the Right to life of the passive smokers. Upon Realising the gravity of the situation and considering the adverse effect of smoking on smokers and passive smokers, the Supreme Court directed and prohibited smoking in public places. And it also issued directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places namely:

- Auditoriums
- Hospital Buildings
- Health Institutions
- Educational Institutions
- Libraries
- Court Buildings
- Public office

- Public conveyances including railways.

VI. CRITICAL ANALYSIS:

In earlier days there was only one legislation to regulate tobacco products in India, It was the Cigarettes (Regulation of Production, Supply, and Distribution) Act, 1975. This Act mandated the display of health warnings on cigarette packages, cartons and advertisements. It gave power to the law enforcement agencies to regulate the production and commercialization of tobacco products. However this legislation was strongly criticized for two reasons, Firstly, it did not encompass any provisions to regulate the production or use of non-cigarette tobacco products such as beedis, gutka, cheroots and cigarette. Secondly, the law was predicated on the beedis that as the tobacco industry accounted for a substantial share of public revenue. Law enforcement agencies should interfere in the working of the industry only if it is necessary to do so. In 1990, the central government by its executive order prohibited smoking in some public places where a large number of people could be present. In 1992, the manufacture and use of tobacco products in tooth pastes and tooth powder was banned vide an amendment to the Drugs and Cosmetics Act, 1940. The Supreme Court in *Murli s. Deora V. Union of India*³, prohibited smoking in public places like auditoriums, hospital buildings, health institutions, educational institutions, libraries, court buildings, public offices and public modes of transport including the railways. In 2003, The cigarettes and other Tobacco products (Prohibition of

³ AIR 2002 SC 40



Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 was passed which includes the Provisions of the Act of 1975, but also included within its fold provisions governing the use of non-cigarette tobacco products, ban on public smoking, advertisement of tobacco products, sale of tobacco products in certain contexts, etc. Section 4 of COTPA seeks to curb the menace of smoking in public places. This desire finds expression in Prohibition of Smoking in Public Places Rules, 2008 which came into force on 2nd October, 2008. As per the new regime, Smoking is prohibited in auditoriums, health institutes, educational institutes, cinemas, modes of public transport (planes, buses, taxis, trains) airports, bus stops/stations, railway stations, hotels and restaurants, all kinds of offices, libraries, shopping malls, canteens/refreshment rooms, post offices, amusement parks, courts, discotheques, pubs, bars and coffee houses. The Railway Act, 1989 also prohibits smoking in trains.

VII. CONCLUSION:

Thus, from the Analysis of this case, it is clear that the Supreme Court through the process of "JUDICIAL ACTIVISM" has banned the smoking in public places. The seed for the prohibition of smoking in public places was sown by the Judiciary respectively. . In this present case, Judiciary plays a major role for banning smoking in public places this which has been resulted in decrease of death annually. It had not only banned smoking in public places but it is also one to the extent of saying that Right to healthy environment is a fundamental right guaranteed under article 21 of the Constitution of India. Only after the steps

taken by the Judiciary, the legislature come forward and taken steps to bansmoking in public places. Even though the measures taken by the Indian Government have yielded substantive results, a lot more still remains to be done for fanning the flicks of progress that these measures have generated

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