

**High Court Division hearing on
Writ Petition No. 1825 of 1999
and Writ Petition No. 4521 of 1999**

In the matter of:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

- AND -

In the matter of:

Professor Nurul Islam Petitioner in W.P. No. 1825/99

Mr. Alhaj Nur Mohammad and others.....Petitioner in W.P. No. 4521 of 1999

VERSUS

Government of the People's Republic of Bangladesh and others...Respondents in both the Writ petitions.

Mr. Omar Sadat...for the Petitioner in W.P. No. 1825 of 1999.

Mr. Amir-Ul Islam with Ms. Tania Amir....for the Petitioner in W.P. No. 4521 of 1999.

Mr. Nazmul Huda...for the Respondent

Mr. Obaidur Rahman Mostafa, Deputy Attorney General

Mr. Justice Mohammad Fazlul Karim and

Mr. Justice Md. Abdul Wahhab Miah

Main issue of Writ Petition No. 1825 of 1999:

The writ called on the respondents to show cause why the law of 1988 requiring a warning on all tobacco advertising should not be properly enforced, and why the respondents should not be directed to enact laws in light of Ordinance No. 16 of 1990 for the prohibition of all forms of tobacco advertisements, along with whatever other orders the Court feels proper.

Main issue of Writ Petition No. 1825 of 1999:

The writ called on the respondents to show cause why the promotional activities of respondents through the "Voyage of Discovery" in order to discover new victims of tobacco products by popularizing Gold Leaf cigarettes, and advertisements thereof, should not be declared illegal. The petitioners stated that the purpose of the yacht was to capture a potential market and get teenage boys addicted to cigarettes. The Court's response was to pass a stay order directing the respondents not to proceed with the promotional advertisement activities utilizing the Voyage of Discovery, from 22nd to 26th November 1999 in Chittagong Port, and not to proceed with the telecast, publications, and advertisements of the same till 28th November 1999.

Key points of petitioners:

- People in developed countries understand about the effects of smoking and thus are smoking less than previously. In addition, increasing litigation and legislation against tobacco in developed countries makes a hostile business environment, which the companies can avoid by targeting countries in Asia and Africa. As many developed countries have now banned tobacco advertising and smoking in public places, the industry is increasingly targeting the uninformed peoples of developing countries such as Bangladesh. The WHO indicates that between 1970 and 1994 smoking declined in the developed world, but cigarette consumption increased by 67% in developing countries. If this trend continues, tobacco-related deaths will rise from one million a year to seven million a year in 2030.
- The World Health Organization (WHO) is concerned about increasing consumption of tobacco related to the advertisement of tobacco products. Therefore the WHO has adopted resolutions since 1970 urging member counties to formulate long-term national tobacco control strategies, which should include protection of non-smokers from tobacco smoke, measures to reduce tobacco consumption such as increasing taxation on tobacco products, restriction as far as possible of all forms of publicity and promotion of tobacco use, and education of the public about the dangers of tobacco use. As Bangladesh is a member state of the WHO, it is duty bound to act on the said resolution. Article 25(1) of the Bangladesh Constitution casts an obligation upon the State to

respect international law and the principles enunciated in the United Nations charter and WHO resolutions.

- Tobacco is addictive. Patterns of tobacco use are regular and compulsive, and withdrawal symptoms accompany abstinence. The pharmacological and behavioral processes behind tobacco addiction are similar to that of drugs such as heroin and cocaine. Nicotine has been determined to be more addictive than heroin, cocaine, alcohol, caffeine and marijuana. The tobacco companies have known for decades that nicotine is an addictive drug and that tobacco is extremely harmful to human health, but have continued marketing this poison to consumers, including youth and women.
- Tobacco companies are currently advertising their products utilizing such vehicles as newspaper, magazines, television, radio, billboards, and sponsorship of cultural and sports programs. Tobacco advertising is not, as company executives claim, for brand switching, but to attract non-smokers, particularly women and children, to begin smoking.
- The respondents have distributed advertisement materials and gifts such as cards, calendars, and lighters to members of the public including adolescent boys, in violation of the provision of the Juvenile Smoking Act of 1919.
- Section 3(1) of Tamakjato Shamogri Biponon Niyontroner Jonno Pronito Ain provides for the statutory warning that “smoking is dangerous for health” to appear on packaged tobacco products, to be printed in Bengali so as to be easily readable and understood, on a prominent portion of the package. The same warning is also required on all advertisements. In breach of Section 3(1) of the above-mentioned law, the statutory warning on packages is written in very small print and placed in such a way as to be difficult to see. In addition, the statutory warning accompanying advertisements with moving images in movie theatres and on television is shown so briefly and without a voiceover, so as to have little or no effect on the viewers. In billboards the statutory warning is so small that it is not readable.
- The statutory warning is itself inadequate to express the extent of the effect of consuming tobacco. Consensus now exists among medical researchers, with recent admissions by tobacco company executives in developed countries, that tobacco consumption leads to fatal diseases such as cancer, lung, and heart disease, causing an estimated 3.5 million deaths each year throughout the world, with one million deaths occurring in developing countries such as Bangladesh. Tobacco causes a range of diseases in smokers, in adults and children exposed to the smoke, and in fetuses exposed in the womb. Therefore the warning must give more information, and must be displayed prominently both on tobacco products and on advertisements.
- As tobacco products imported into Bangladesh do not carry the statutory warning, the Authority should prohibit the importation of cigarettes without statutory warnings.
- Most consumers of tobacco products in Bangladesh are illiterate and unaware of the dangers of consuming tobacco. Thus the statutory warning accompanying radio, television, and cinema advertising should be read aloud. This is also inadequate, and it would be better to prohibit the manufacture, consumption, and promotion of tobacco products.
- Since the 1990 law banning advertising was allowed to be lapsed by the Parliament at that time, a similar law should be placed banning advertisement of tobacco products.
- Article 11 of the Constitution states that the Republic shall be a democracy in which fundamental human rights and freedoms, and respect for the dignity and worth of the human person, shall be guaranteed. Marketing and consumption of tobacco robs dignity and life, and addiction lowers the worth of a human person. The State has a responsibility to protect the dignity and worth of people by restricting the business of tobacco products, and by closing down, in phases, the production of tobacco and tobacco-related products. Article 31 of the Constitution states that “no action detrimental to the life, liberty, body, reputation or property shall be taken except in accordance with law.” In the case *Subash Kumar vs the State of Bihar*, it was held that Articles 31 and 32 of the Constitution include protection of health and normal longevity free from threats of man-made hazards, unless the threat is justified by law.
- In Kerala state of India, the Court declared tobacco smoke a public nuisance and a form of air pollution. The case invoked Article 21 of the Indian Constitution, which declares that in a welfare State, it is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health. The Court declared that the Authority was neglecting its mandate to protect life

and to recognize the inviolability of human dignity, and therefore must ban smoking in public places. The decision held that “right to life” in Article 21 should include the right to pollution-free air and the right to a decent environment.

- Article 4(2) of the Pakistan Constitution declares that no action detrimental to the life, liberty, body, reputation or property of any person can be taken unless such detrimental action has the backing of some law in existence. As there was no law permitting cigarette advertisements on the electronic media, and as such advertising induces youth to smoke and thereby endangers human life, the Court in 1997 declared that such advertisements must be stopped.

Key points of respondents:

- The effect of consuming tobacco products has been publicized to the consumers via the statutory warnings. The respondents can not be made responsible if the public consumes tobacco, inasmuch as no further restrictions are required to prevent consumption of tobacco, and the manufacturers have the right to continue with their business of manufacturing and advertising tobacco.
- The Ordinance regarding advertisement has been allowed to lapse. In view of the statutory warning, any further restriction would affect the business of the manufacturer. However, when occasion arises the Government may restrict advertisements of tobacco in the public interest.
- The petitioners’ say that the Voyage of Discovery did not carry the statutory warning but was being used to advertise Gold Leaf cigarettes. While the Voyage of Discovery is designed for promotional activities, it has nothing to do with the marketing and commercial activities of Gold Leaf cigarettes. The activities of Voyage were passive and not harmful, nor will they attract new consumers of Gold Leaf.
- As there is no law barring promotional advertisement of tobacco products, and the 1990 law is not operative, there is no reason why the Voyage should have been stopped.

Judge’s decision:

- No law exists banning tobacco advertising.
- However, we cannot ignore the effect of promotional advertisements on youth and on unaware and illiterate citizens. Nor can we ignore the effect of tobacco consumption.
- Bangladesh is a signatory to the international convention for the prevention of smoking.
- Many people are already avoiding smoking in public, despite the absence of laws, due to their awareness about the effect of smoking.
- Not only is the consumption of tobacco dangerous, but so is the farmwork involved in its cultivation, as well as the labor involved in rolling bidis.
- Although the supporters of tobacco argue that it makes a significant contribution to the Exchequer by way of taxes, ultimately public awareness will demonstrate against production and consumption of tobacco in the interest of national health, and would eventually force the ban of production even if the State did not take effective measures in this regard.
- The judiciary in the subcontinent has denounced the consumption of tobacco products, as they impair the right to life. This Court is oath-bound to protect the Constitution, including the fundamental rights of the citizens, and is obliged to enforce the same even in the absence of any appropriate legislation, and would not hesitate to give direction to the respondents for banning promotional advertisement in the electronic media, newspaper, etc.; and to stop cultivation and production of tobacco products, because the State has a duty to protect ordinary human beings from the ill effects of the use of tobacco products.
- Article 31 of our Constitution guarantees the citizens of the country, particularly the younger generation, to protection of law from being exposed to the hazards of cigarette smoking. The Constitution also guarantees the dignity of its citizens and right to life from being violated by any means, including promotional advertisements of actual consumption of tobacco products.
- Given that the statutory warning is not readable compared to the warnings being used in developed countries, we hope that the respondents will take care to see that the warning is legibly and distinctly written on cigarette packets.

- A healthy person is the center of all healthy activities, and it is the obligation of the Republic to ensure creation of an environment to good health. The State should maintain and improve public health and maintain the dignity of life. The State should thus ban production and import of tobacco products for commercial purposes, initially by not allowing further means of production, with the ultimate object being to end the business of manufacturing, producing, or marketing of tobacco products in the country.
- Glamorous cigarette advertisements attract the public in general and youth in particular to smoking. The aim of the campaigns is to procure more and more smokers. The form of statutory warning used on the mass media is evasive and a violation of the provision of law. A detrimental action can only be taken if there is a law which permits that any action detrimental to life, body, liberty or property of a person can be taken. No such law is in existence in Bangladesh. Permissive law is not sufficient to take detrimental actions which violate the right to life of a citizen, for the State could not pass a law which is contrary to the fundamental rights of a citizen. There is no law permitting cigarette advertisement on the media or on billboards, and such advertisements have the effect of inducing people, particularly youth, to take up smoking, which endangers human life and the environment. Thus advertisement of cigarettes and tobacco products through any means can be termed detrimental to the life and body of the people, and thus Article 31 of the Constitution is directly contravened by such advertisements.
- The Court has the right to direct any person performing any function, “giving appropriate direction for the enforcement of any of the fundamental rights”. An earlier judgment held that “Article 16, 17, 18 and 19 likewise impose a duty upon the state to adopt effective measures for...raising the level of public health...” and Articles 27, 31, and 32 of the Constitution guarantee citizens equal protection of law; “In particular, it guarantees that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”
- **We urge the respondents including the Government to:**
 - Ban production of tobacco leaves in phases, giving subsidies to the farmers to produce other agricultural products, rehabilitating tobacco workers with other jobs, and imparting vocational training to them.
 - Restrict permission and licenses for establishing tobacco factories, and direct the owners to switch over to other products in phases, compensating them if necessary.
 - Persuade owners of tobacco factories not to continue with production of tobacco products beyond a reasonable time, by banning such production.
 - Close down the bidi factories through phases. This includes restricting harvesting of tobacco to produce bidis.
 - Discontinue advertisement of tobacco products and forbid any show or program that propagates smoking beyond the period of the existing contract/agreement.
 - Prohibit import of tobacco “within a reasonable period” and impose heavy tax for the import; all imports must print statutory warning legibly in bold words in Bengali.
 - Ban any promotional ventures like “Voyage of Discovery”.
 - Ban smoking in public places including transport and public gatherings.