

DISTRICT: KAMRUP(M)
IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)

(CIVIL EXTRA ORDINARY JURISDICTION)

PUBLIC INTEREST LITIGATION NO. ____/2020
CATEGORY: PUBLIC INTEREST LITIGATION
CODE :

To,
The Hon'ble Mr. Justice Ajai Lamba, B.A.(Hons.), English, LL.B, the Chief
Justice of the Hon'ble Gauhati High Court and His Lordship's other
companion Justices of the said Hon'ble Court.

IN THE MATTER OF:-
Public Interest Litigation.

-AND-

IN THE MATTER OF:-
An application under Article 226 of the
Constitution of India for issuance of a
writ in the nature of Certiorari and/or
Mandamus and /or any other
appropriate Writ, Order or Direction of
like nature.

-AND-

IN THE MATTER OF:-

Violation and Infringement of the Fundamental and other legal rights of the Public as a whole guaranteed under Part – III of the Constitution of India.

-AND-

IN THE MATTER OF:-

Illegal sale and supply of Pan-Masala containing Magnesium Carbonate (presence of MgCO₃ causes cancer) in the State of Assam whereas manufacture, storage, distribution, transportation, display and sale of PAN MASALA containing "MgCO₃" as ingredients have been prohibited by the Government of Bihar, Maharashtra and Rajasthan.

-AND-

IN THE MATTER OF:-

Violation of section 26 of the Food Safety & Standards Act, 2006 as well as regulation 3.1.7 of Food Safety and

Standards (Food Products Standards and Food Additives) Regulations, 2011.

-AND-

IN THE MATTER OF:-

SRI JITUL DEKA,

General Secretary ,*Asomiya Yuva Mancha,*

..... PETITIONER

- Versus -

1. **THE STATE OF ASSAM,**
Represented by Chief Secretary,
Government of Assam, Dispur,
Guwahati
2. **THE DIRECTOR,**
Health Services of Assam
Hengrabari, Assam.
3. **THE JOINT DIRECTOR ,**
Health Services, Food Safety
Branch, Kamrup, Amingaon,
Guwahati- 781031.
4. **THE COMMISSIONER,**
Food Safety, Assam
Dispur, Guwahati
5. **VISHNU AROMATICS LTD.**
Engaged in the business of sale
and supply of "**Vimal Pan
Masala**" having its office
situated at Liwaspur, Rai,
Sonapat - 131021, Haryana

6. **KAMAKHYA PAN PRODUCTS PVT. LTD.**

Engaged in the business of sale and supply of "**Kamala Pasand Pan Masala**" having its office situated at Plot No. 41 F, Vill-Sila, North Guwahati - 781030.

...**Respondents**

The humble petition of the petitioner above named:-

MOST RESPECTFULLY SHEWETH :

1. That the Petitioner is filing the present writ petition as a Public Interest Litigation under Article 226 of the Constitution of India for enforcement of the Fundamental Rights guaranteed to the citizens of India under Articles 14 and 21 of the Constitution. The Petitioner states that he has no personal interest in this instant litigation and this petition is not guided by self gain or for gain of any other person/institution/body and there is no motive other than public interest in filing this instant petition. That the Petitioner is filing the present writ petition as a Public Interest Litigation under Article 226 of the Constitution of India for enforcement of the Fundamental Rights guaranteed to the citizens of India under Articles 14 and 21 of the Constitution. The petitioner is a prominent

Social activist and presently holding the post Secretary General, Asomiya Yuva Mancha (A youth organisation of Assam). Over the years he has been leading many anti-graft movements in the State. To unearth huge corruption in Dima Haso, the Petitioner also approached this Hon'ble Court by way of filing PIL, the same was registered and numbered as PIL No. 144/2015 before this Hon'ble Court and this Hon'ble Court passed a number of orders in the said PIL and because of the intervention of this Hon'ble Court, the investigation was ended in its logical conclusion. Further, against 24 hours Karbi Anglong Bandh from 19th May 2018 at 5 am to 20th May 2018 5 am called by local organisations, the Petitioner approached this Hon'ble Court as the same was in utter violation of law laid down by Hon'ble Supreme Court as well as this Hon'ble Court. And because of the intervention of this Hon'ble Court in PIL No. 31/2018, the said organisations were compelled to withdraw the same. Further, the Petitioner has filed another PIL before Gauhati High Court which is registered and numbered as PIL No. 44/2018 regarding more than 500 (Five Hundred) Crore Rupees insurance scam/fraud takes place in the State of Assam more particularly in Barpeta, Dhubri, Darrang, Nagaon district in connivance with Police personnel, Govt. Officers including

employees of Medical Record Department , Insurance Agents, Insurance Employees , Doctors, Gaon Burah, Asha Workers under Primary Health Centre(PHE)/ Community Health Centre(CHE) at rural level, Bank official , Employee of Postal Department etc. And vide order dated 23.07.2018, the Hon'ble Gauhati High Court is pleased to issue notice. In pursuance to the notice issued by this Hon'ble Court, the Barpeta Police on the basis of enquiry , registered an FIR being Barpeta P.S. 1907 of 2018. Ultimately, vide order dated 30.10.2019, this Hon'ble Court was pleased to dispose of the said PIL with the following direction.

- " (i) ***In case the petitioner or any other public spirited person brings to the notice of the Superintendent of Police of a particular district actionable evidence/material in regard to such insurance frauds, the Superintendent of Police concerned would ensure that an enquiry is conducted and concluded within 7(seven) days of receipt of that information so as to verify whether cognizable offence has been committed.***
- (ii) ***In case it is found that cognizable offence has been committed, the Superintendent of Police shall ensure that First Information Report is registered under Section 154 of the Code of***

Criminal Procedure and investigation is undertaken under Chapter XII of the said Code. The investigation would be conducted speedily and effectively and would be supervised/monitored by the SDPO in all such cases.

(iii) We further direct that a Cell shall be created by Director General of Police, Assam to be manned by an Officer not below the rank of ADGP. All such cases registered in context of insurance claims would be reported to the said officer, who would take into account the overall picture in the State and ensure that the needful as required by the Code of Criminal Procedure is done. We provide 2(two) weeks time to the Director General of Police to ensure that the system, as directed above, is put in place."

It is further stated that the petitioner has the means to pay the costs, if any, imposed by the Court.

2. That the present case is filed by the petitioner against manufacture, storage, distribution, transportation, display and sale of PAN MASALA containing Magnesium Carbonate (herein after in

short referred to as "MgCO₃") as ingredients by the private respondents . It is relevant to mention herein that as per scientific research consumption of Pan Masala containing MgCO₃ leads to Acute Hyper Magnesia, Cardiac Arrest and Cancer. The official respondents are allowing the private respondents to manufacture, storage, distribution, transportation, display and sale of PAN MASALA containing "MgCO₃" as ingredients are in clear violation of section 26 of the Food Safety & Standards Act,2006 (herein after in short referred to as "the Act of 2006") as well as regulation 3.1.7 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (herein after in short referred to as "the Regulations of 2011"). The Petitioner states that the information as well as the documents involving in the present litigation has been derived from different sources i.e. RTI, Media etc.

3. That the petitioner begs to state that the Govt. of Assam, time to time vide notifications dated 8.3.2013 , 10.05.2018 and 22.11.2019 prohibits manufacture, storage, transportation, display, distribution or sale of Gutkha, Pan Masala or any chewing material etc. (by whatsoever name) containing tobacco and/or nicotine as ingredients but no directions were issued by the Govt. of Assam prohibiting manufacture, storage, transportation, display, distribution or sale of Pan Masala or any chewing material etc. (by

whatsoever name) containing MgCO₃ as ingredients. It is relevant to mention herein that study in respect of mere presence of MgCO₃ as ingredients in Pan Masala makes it stimulator in causing Cardiac Arrest, Acute Hyper Magnesia and Cancer. In a research publishing in NNOVARE as regard quantitative estimation of MgCO₃ in Pan Masala , it is mentioned that mere presence of MgCO₃ in Pan Masala acts like fuel to the burning fire. Considering the magnitude of presence of MgCO₃ in Pan Masala in the larger public interest, the Govt. of Bihar vide order dated 30.08.2019 prohibits manufacture, storage, transportation, display, distribution or sale of Gutkha, Pan Masala or any chewing material etc. (by whatsoever name) containing MgCO₃ as ingredients. Further, being inspired by the move of Bihar Govt. in banning manufacture, storage, transportation, display, distribution or sale of Gutkha, Pan Masala or any chewing material etc. (by whatsoever name) containing MgCO₃ as ingredients, the State of Maharashtra and Rajasthan also banned manufacture, storage, transportation, display, distribution or sale of Gutkha, Pan Masala or any chewing material etc. (by whatsoever name) containing MgCO₃ as ingredients. As such the petitioner has preferred the instant PIL

because of the wider aspect of the case as well as in larger public interest.

Copies of notifications dated 8.3.2013 , 10.05.2018, 22.11.2019, Research Report, order dated 30.08.2019 and news report published in Deccanherald news paper are annexed herewith and marked as **Annexure- I, II, III & IV** respectively.

4. That the petitioner begs to state that official respondents vide letter dated 29.11.2019 in reply to the RTI query sent certain laboratory reports which says that certain brands of Pan Masala are sub-standard but inspite of the said report no order whatsoever was passed prohibiting manufacture, storage, transportation, display, distribution or sale of Pan Masala or any chewing material etc. (by whatsoever name) which is found to be of sub –standards. Further, no effort were made by the official respondents to have a laboratory test as regard presence of MgCO₃ in Pan Masala. The petitioner being a social worker had taken so much pain and vide letter dated 20.12.2019 approached the laboratory in respect different chemical present as ingredients in Pan Masala. To the utter shock and surprise, vide test report dated 13.01.2020 it is

revealed that MgCO₃ in large quantity is found as ingredients in certain Pan Masala in the State of Assam.

Copies of RTI reply dated 29.11.2019, letter dated 20.12.2019 and test reports dated 13.01.2020 are annexed herewith and marked as **Annexure-V, VI and VII** respectively.

5. That the petitioner begs to state that inspite of the fact that certain Pan masala in Assam found to be sub-standard , no efforts were made by the official respondents to have the detail chemical examination as regard presence of MgCO₃ and other chemical as ingredients for the reason best known to them. Whereas, the State of Bihar, Maharashtra and Rajasthan prohibited certain brands of those Pan Masala which is also present in market in Assam after it was found that MgCO₃ is present as ingredients in those Pan Masala .

6. That the petitioner begs to state that the Hon'ble Supreme Court in ***Union of India and Ors. Vs Unicorn Industries*** reported in ***MANU/SC/1291/2019 : (2019)10SC C 575*** recently while examining the issue relating to central excise exemption on Pan Masala and Gutkha after taking into consideration different reports

held that chewing of Pan Masala is responsible for Cancer and as such exemption given to such Pan Masala Companies cannot be said to be in public interest and thereby withdrawal of the exemption is in public interest. For the sake of brevity relevant paragraphs of the said judgment are reproduced below:

" 24 . In the case of Kanak Exports (supra), this Court again while considering the challenge for withdrawal of incentives to the exporters of some specified items held that, the incentive scheme in question was in the nature of concession or incentive which was a privilege of the Central Government. It was for the Government to take a decision to grant such a privilege or not. Grant of exemption, concession or incentive and modification thereof are the matters in the domain of public decisions of the Government. It further reiterated that when the withdrawal of such incentives was shown to have been done in public interest, the courts would not tinker with the policy decisions. This Court, after considering the materials on record as a matter of fact, held that withdrawal of exemption was in the public interest.

25 . It could thus be seen that, it is more than well settled that the exemption granted, even when the notification granting exemption prescribes a

particular period till which it is available, can be withdrawn by the State, if it is found that such a withdrawal is in the public interest. In such a case, the larger public interest would outweigh the individual interest, if any. In such a case, even the doctrine of promissory estoppel would not come to the rescue of the persons claiming exemptions and compel the State not to resile from its promise, if the act of the State is found to be in public interest to do so.

26. A judicial notice can be taken of the fact that by various scientific studies on betel quid and substitutes, tobacco and their substitutes, i.e., pan masala with tobacco and without tobacco, these products have been found to be one of the main causes for oral cancer. A detailed study has been considered by three Experts, namely, Urmila Nair, Helmut Bartsch and Jagadeesan Nair in the Division of Toxicology and Cancer Risk Factors, German Cancer Research Centre (DKFZ), Heidelberg, Germany. The research paper is titled as "Alert for an epidemic of oral cancer due to use of the betel quid substitutes gutkha and pan masala: a review of agents and causative mechanisms". After considering the entire material in detail and considering the various earlier studies, the paper observes thus:

Perspectives Banning of gutkha and pan masala has been strongly advocated by oncologists as a preventive measure to reduce oral cavity cancers. Recently, a number of States in India have banned the manufacture and sale of both products and this should reduce the incidence rate. Similar Regulations regarding other health-impairing tobacco products which have been on the market for centuries, together with cigarettes and bidis (an indigenous smoking product), should also be reinforced. However, for those who are addicted to these products or are already affected by premalignant lesions, educational interventions to encourage stopping the habit are essential. Additionally, chemo preventive interventions are being explored. Retinoids, NSAIDS and green tea are among the promising agents (Garewal, 1994; IUSHNCC, 1997; Papadimitrakopoulou and Hong, 1997; Lin et al., 2002a). Although a large percentage of lesions did respond to treatment, recurrence after terminating the chemo preventive regime was also observed (Sankaranarayanan et al., 1997), perhaps due in part to continuation of the addictive habit. As with all cancers, early diagnosis is important for successful treatment of oral cancer, as its prognosis is still very poor. There is, nowadays, a strong drive to apply proteomics technology to molecular diagnosis of cancer. Expression profiling of tumour

tissues, molecular classification of tumours and identification of markers to allow early detection, sensitive diagnosis and effective treatment are now being explored for oral cancers. Genes with significant differences in expression levels between normal, dysplastic and tumour samples have been reported and this should help in better understanding the progression of oral squamous cell carcinoma (Kuo et al., 2002; Leethanakul et al., 2003). DNA aneuploidy in oral leukoplakia in Caucasian tobacco users has been found to signal a very high risk for subsequent development of oral squamous cell carcinomas and associated mortality (Sudbo and Reith, 2003; Sudbo et al., 2004). A risk assessment model to predict progression of premalignant lesions that includes histology and a score combining chromosomal polysomy, expression and loss of heterozygosity on 3p or 9p has also been described (Lee et al., 2000; Rosin et al., 2002). Once diagnosed, these premalignant lesions could be treated at a much earlier stage by chemo preventive agents, surgery, chemotherapy and/or intense radiotherapy to prevent new lesions and premalignant lesions from progressing to invasive cancer. Conclusions Gutkha and pan masala have flooded the Indian market as cheap and convenient BQ substitutes and become popular across all age groups wherever this habit is practised. There is

sufficient evidence that chewing of tobacco with lime, BQ with tobacco, BQ without tobacco and areca nut are carcinogenic in humans (IARC, 1985, 2004). These evaluations in conjunction with the available evidence on the BQ substitutes gutkha and pan masala implicates them as potent carcinogenic mixtures that can cause oral cancer. Additionally, these products are addictive and enhance the early appearance of OSF, especially so in young users who could be more susceptible to the disease. Although recently some curbs have been put on the manufacture and sale of these products, urgent action needs be taken to permanently ban gutkha and pan masala, together with the other well established oral cancer-causing tobacco products. Finally, as the consequences of these habits are significant and likely to intensify in the future, an emphasis on education aimed at reducing or eliminating the use of these products as well as home-made preparations should be accelerated.

27. Recently, the Department of Oral Medicines and Radiology, Dental Institute, Rajendra Institute of Medical Sciences, Ranchi has through its experts, namely, Anjani Kumar Shukla, Tanya Khaitan, Prashant Gupta and Shantala R. Naik conducted a study on the subject "Smokeless Tobacco and Its Adverse Effects on Hematological Parameters: A

Cross-Sectional Study". The study paper considered the consumption of smokeless tobacco (SLT) in various forms in India such as pan (betel quid) with tobacco, zarda, pan masala, khaini, areca nut. After conducting an in-depth analysis, the paper concludes and recommends as under" Conclusion and Recommendation SLT use has severe adverse effects on hematological parameters. The present study might serve as an early diagnostic tool in any systemic diseases and be helpful in spreading awareness on the deleterious effect in the populace consuming SLT. Timely intervention among students can prevent the initial experimentations with tobacco from developing into addiction in adulthood. People should be counselled to avoid all habits of tobacco and undergo nicotine replacement therapy along with antioxidants. Knowledge and awareness about systemic and oral ill effects of tobacco should be spread through tobacco control programs in the pursuit for a tobacco-free world.

28. It was sought to be argued on behalf of the manufacturers of pan masala without tobacco, that the pan masala without tobacco stands on a different pedestal than the pan masala with tobacco. It was sought to be argued that, pan masala without tobacco cannot be considered to be hazardous to health. The Department of Head and Neck Surgery,

Tata Memorial Hospital, Mumbai through its experts Garg A, Chaturvedi P. Mishra A. and Datta S. had conducted a study on "A review on Harmful Effects of Pan Masala". It is to be noted that this study is of 'pan masala without tobacco'. It will be apposite to refer to the following observations of the said report: Policy Issues Concerning Pan Masala Pan masala use is rampant in India by all the Sections and age groups of the society. It has emerged as a major cause of oral cancer in India. National Family Health Survey-2 showed that 21% of people over 15 years of age consumed PM or tobacco. Study in the state of Tamil Nadu showed that the age at which people start consuming areca nut products ranges from 12 to 70 years. 58% of the subjects chewed the products more than twice a day. Advertising tobacco products including PM containing tobacco is banned in India since May 1, 2004. To bypass this ban tobacco companies are advertising PM ostensibly without tobacco, heavily in all forms of media. PM is surrogate for tobacco products as the money spent on marketing, and advertising is many times of the revenue generated from the sale of PM. In Mumbai after the ban on PM and gutka the sale has come down and the percentage of users quitting and reducing the habit was 23.53% and 55.88% respectively. The main reason of quitting and reduction in consumption was non availability of

these products. In spite of the ban gutka was still available but in different forms or at increased cost. Strict law in the form of Cigarettes and other Tobacco Products Act 2003 has been made in India, but the enforcement and compliance is lax. There is a need for strong enforcement and compliance of laws throughout the country. The genotoxic, carcinogenic properties and numerous other harmful effects of PM need immediate and strict action by the government on PM without tobacco as it has banned PM with tobacco. The consumers should also be made aware of the harmful effects of PM as they are under a false impression that it is not harmful. Conclusion Pan masala is widely used across all the strata of society and is freely available in many parts of the country. It is carcinogenic, genotoxic, and has harmful effects on the oral cavity, liver, kidneys and reproductive organs. Government action is immediately required to restrict the consumption and to make the people aware about its harmful effects.

29. The study which has been conducted in 2004, found that gutkha and pan masala have been one of the major causes of oral cancer. The Oncologists as early as in 2004 had strongly advocated banning of gutkha and pan masala. They further find that banning the manufacture and sale of these products

would reduce oral cancer incidence rates. It is found that gutkha and pan masala have flooded the Indian markets and become popular amongst all age groups. It is observed that pan masala with tobacco as well as without tobacco have been found to be having a potent carcinogenic mixtures that can cause oral cancer. It further found that, these products are an addictive and enhance the early appearance of oral sub-mucous fibrosis (OSMF). It is especially so in the young users who could be more susceptible to the disease.

30. The report further finds that, in the National Family Health Survey-2, it has been found that 21% of people over 15 years of age consumed pan masala or tobacco. The report finds that, though advertising tobacco products including pan masala containing tobacco is banned in India since 01.05.2004, to bypass this ban, tobacco companies are advertising pan masala ostensibly without tobacco, heavily in all forms of media. It has been found that, after the ban on pan masala and gutkha, the sale has come down. The 2016 report finds that, in Mumbai, after the ban on pan masala and gutkha, the sale has come down and the percentage of users quitting and reducing the habit was 23.53% and 55.88% respectively.

31. It could thus be seen that, by a scientific research conducted by Experts in the field, it has been found that the consumption of pan masala with tobacco as well as pan masala sans tobacco is hazardous to health. It has further been found that, the percentage of teenagers consuming the hazardous product was very high and as such exposing a large chunk of young population of this Country to the risk of oral cancer. Taking into consideration this aspect, if the State has decided to withdraw the exemption granted for manufacture of such products, we fail to understand as to how it can be said to be not in the public interest.

32. The Sikkim High Court has observed that the Appellant herein has been unable to establish any overriding public interest, which would make the doctrine of promissory estoppel inapplicable. It has further observed that, the pan masala has not been declared as hazardous to health by any notification or order of the Government of India or the State Government. It found that, no material or scientific report had been placed on record to demonstrate that the pan masala is a health hazard. We find that the reasoning arrived at by the Sikkim High Court is totally erroneous.

33. Insofar as the Gauhati High Court is concerned, the learned Single Judge by an elaborate reasoning had found that the notifications impugned before it was in the public interest and further observed that in view of the overriding public interest, the doctrine of promissory estoppel could not be invoked. Not only that, but the learned Single Judge in the judgment has specifically observed thus: Having regard to the background that had preceded the Policy 2007 and the curtailment of the benefits of exemption earlier granted by the Policy 1997 through various instruments of law in the form of Section 154 of the Finance Act 2003 read with Schedule 9 thereto as well as the notifications Under Section 5A of the Central Excise Act and other related legislations it would be in defiance of logic to conclude that all these notwithstanding, with the specific intention of excluding the industries engaged in the manufacture of goods under Chapter 24 and pan masala under Chapter 21 of the First Schedule to the Tariff Act, 1985, these would still continue to avail the benefits/incentives under the Policy 1997 only because the units concerned had commenced commercial production on and from 31/3/2007.

34. The learned Single Judge has also specifically observed in his judgment that the vires of Section

154 of the Finance Act, 2003 vide which the exemption granted to the manufacturers of cigarette was rescinded with retrospective effect, has been upheld by this Court in the case of R.C. Tobacco (P) Ltd. and Anr. v. Union of India and Another, reported in MANU/SC/0581/2005 : 2005(7) SCC 725. We are surprised at the approach of the Appellate Bench of the Gauhati High Court. It is pertinent to note that the contention of the learned A.S.G. appearing on behalf of the Union of India to the following effect have been specifically recorded by the Judges of the Appellate Bench of the High Court in paragraph 14 of the judgment, which reads thus: that the legality of the withdrawal of the benefit granted to the tobacco manufacturing units such as the Appellant under the 1997 Industrial Policy by Section 154 of the Finance Act, 2003 was already upheld the Apex Court in R.C. Tobacco (P) Ltd. v. Union of India, MANU/SC/0581/2005 : (2005) 7 SCC 725.

35. The Appellate Bench of the High Court observed that some of the notifications providing modalities for exemption were issued subsequent to the enactment of Section 154 of the Finance Act, 2003 and, therefore, Section 154 of the Finance Act, 2003 has no relevance in the said case. However, the Appellate Bench does not find it necessary to even make a reference to the judgment of this Court

which was relied on by the learned Single Judge while dismissing the writ petitions and which is specifically put in service by the Union of India. We are unable to appreciate as to how the Appellate Bench of the Gauhati High Court finds that withdrawal of exemption in respect of 'pan masala with tobacco' is not in the public interest. The legislative policy as reflected in Section 154 of the Finance Act was to withdraw the exemption granted to the manufacturers of cigarettes as well as pan masala with tobacco and that too with retrospective effect. Apart from the fact that, it is a common knowledge that tobacco is highly hazardous, the legislative intent was also unambiguous. In these circumstances, the finding of the High Court that the withdrawal of exemption for tobacco products was not in the public interest, to say the least is shocking. We find that the approach of the Appellate Bench of the High Court was totally unsustainable.

36 . As already discussed hereinabove, we have no hesitation to hold that the withdrawal of the exemption to the pan masala with tobacco and pan masala sans tobacco is in the larger public interest. As such, the doctrine of promissory estoppels could not have been invoked in the present matter. The State could not be compelled to continue the exemption, though it was satisfied that it was not in

the public interest to do so. The larger public interest would outweigh an individual loss, if any. In that view of the matter we find that the appeals deserve to be allowed.

Civil Appeal arising out of S.L.P.(C) No. 36926 of 2012:

37 . The appeal is allowed. The judgment and order passed by the High Court of Sikkim dated 11.05.2012 is quashed and set aside.

38. No order as to costs.

Civil Appeal Nos. 2345 of 2017 and 2346 of 2017:

39 . The appeals are allowed. The judgments and orders passed by the Appellate Bench of the Gauhati High Court dated 20.04.2016 and 25.05.2016 are quashed and set aside. The Order passed by the learned Single Judge dated 10.12.2010 dismissing the writ petitions is upheld.

40. No order as to costs."

From the aforesaid observations and findings of Hon'ble Apex Court it is crystal clear that Apex Court after taking into consideration various reports came to the conclusion that chewing Pan Masala is not in Public interest. In the present case, laboratory

reports clearly shows that MgCO₃ is very much present in the Pan Masala in the State of Assam , as such in the larger public interest manufacture, storage, transportation, display, distribution or sale of Pan Masala or any chewing material etc. (by whatsoever name) containing MgCO₃ as ingredients is liable to be banned with immediate effect.

A copy of the judgment and order passed by Hon'ble Apex Court in ***Union of India and Ors. Vs Unicorn Industries*** reported in ***MANU/SC/1291/2019 : (2019) 10 SC C 575*** is annexed herewith and marked as **Annexure- VIII.**

7. That the petitioner begs to state that the Parliament enacted Food Safety and Standards Act, 2006 (herein after in short referred to as "the Act of 2006") for the purpose of and with an object to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. For the sake of brevity relevant provisions of the Act of 2006 are reproduced below :

" Section 3

(q) "food safety" means assurance that food is acceptable for human consumption according to its intended use;

(y) "ingredient" means any substance, including a food additive used in the manufacture or preparation of food and present in the final product, possibly in a modified form;

(zz) "unsafe food" means an article of food whose nature, substance or quality is so affected as to render it injurious to health :—

- i) by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substance; or***
- ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or***
- iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or***
- iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or***
- v) by addition of a substance directly or as an ingredient which is not permitted; or***

- vi) by the abstraction, wholly or in part, of any of its constituents; or*
- vii) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or*
- viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or*
- ix) by the article having been infected or infested with worms, weevils, or insects; or*
- x) by virtue of its being prepared, packed or kept under insanitary conditions; or*
- xi) by virtue of its being mis-branded or sub-standard or food containing extraneous matter; or*
- xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations."*

" 26. Responsibilities of the Food business operator.
(1) Every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution

and sale within the businesses under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food –

(i) which is unsafe; or

(ii) which is misbranded or sub-standard or contains extraneous matter; or

(iii) for which a licence is required, except in accordance with the conditions of the licence; or

(iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or

(v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.

(3) No food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease.

(4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also gives a guarantee in writing in the form specified by regulations about the

nature and quality of such article to the vendor:

Provided that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.

(5) Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe: Provided that any conformity of a food with specific provisions applicable to that food shall be without prejudice to the competent authorities taking appropriate measures to impose restrictions on that food being placed on the market or to require its withdrawal from the market for the reasons to be recorded in writing where such authorities suspect that, despite the conformity, the food is unsafe."

It is relevant to mention herein that to carry out the provisions of the Act of 2006 , in exercise of the powers conferred by section clause (e) of sub section (2) of section 92 read with 16 of the Act of 2006, the Food Safety and Standards Authority of India framed the Food Safety and Standards Regulations in so far they relates to Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (herein after in short referred to as "the Regulation of 2011). For the sake of brevity relevant provisions of the Regulations are reproduced below :

" 3.1.7: Anticaking Agents

1) Restriction on use of anticaking agents. No anticaking agents shall be used in any food except where the use of anticaking agents is specifically permitted. Provided that table salt, onion powder, garlic powder, fruit powder and soup powder may contain the following anticaking agents in quantities not exceeding 2.0 per cent either singly or in combination namely :—

a. carbonates of calcium and magnesium.

b. phosphates of calcium and magnesium .

c. silicates of calcium, magnesium, aluminium or sodium or silicon dioxide;

d. myristates, palmitates or stearates of aluminium ammonium, calcium, potassium or

sodium. Provided that that calcium potassium or sodium ferrocyanide may be used as crystal modifiers and anti-caking agent in common salt, iodised salt and iron fortified salt in quantity not exceeding 10 mg/kg singly or in combination expressed as ferrocyanide.

From the aforesaid provisions, it is clear that the presence of MgCO₃ in Pan masala makes it unsafe and thereby the same is in clear violation of section 26 of the Act of 2006 and regulation 3.1.7 of the Regulation of 2011. Under such circumstances, in the larger public interest in the State of Assam manufacture, storage, transportation, display, distribution or sale of Pan Masala or any chewing material etc. (by whatsoever name) containing MgCO₃ as ingredients is liable to be banned with immediate effect.

8. That the petitioner has no other alternate and efficacious remedy and the remedy sought for by way of the present writ petition is just, proper and adequate.
9. That the petitioner demanded justice but the same has been denied.

10. That this petition has been filed bonafide and in the interest of justice.

In the premises aforesaid, it is respectfully prayed that Your Lordships may graciously be pleased to admit this petition, call for records and issue a Rule calling upon the respondents to show cause as to why a Writ in the nature of Mandamus and/or a Writ of like nature should not be issued writ in the nature of Mandamus and/or a Writ of like nature should not be issued

- a) Directing the official Respondents to issue necessary directions banning the Pan Masala Companies , their agents and dealers engaged in manufacturing, storage, transportation, display, distribution or sale of Pan Masala or any chewing material etc. (by whatsoever name) containing MgCO₃ as ingredients .

- b) Directing the official respondents to collect Pan Masala from the custodian of those Pan Masala and send the samples for laboratory test for examining the chemicals including $MgCO_3$ present in those Pan Masala .
- c) Directing the official respondents to prohibit manufacturing, storage, transportation, display, distribution or sale of Pan Masala or any chewing material etc. (by whatsoever name) till the aforesaid exercise as mentioned in prayer no. b is not completed.
- d) Constituting an Special Team under the Supervision of this Hon'ble Court for the purpose of prohibiting manufacturing, storage, transportation, display, distribution or sale of Pan Masala or any chewing material etc. (by whatsoever name) containing $MgCO_3$ as ingredients. And upon cause and causes that may be

shown by the parties, and after hearing the parties, be pleased to make the Rule absolute and/or pass any other order or orders as Your Lordship may deem fit and proper.

-AND-

Pending disposal of the instant petition, Your Lordships may be further pleased to ban and/or prohibit, manufacturing, storage, transportation, display, distribution or sale of Pan Masala or any chewing material etc. (by whatsoever name) containing MgCO₃ as ingredients. and/or pass any other order or orders as Your Lordship may deem fit and proper.

And for this act of kindness your humble petitioners shall ever pray.

AFFIDAVIT

I, **JITUL DEKA**

do hereby

solemnly affirm and states as follows :-

1. That I am the Petitioner in the instant petition and as such I am competent to swear this affidavit and fully conversant with the facts and circumstances of the case.
2. That I have filed the present petition as a Public Interest Litigation.
3. That I have gone through the Gauhati High Court (Public Interest Litigation) Rules 2011 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.
4. That I have no personal interest in the litigation and neither myself nor anybody in whom I am interested in any manner benefit from the relief sought in the present litigation save as a member of the General Public. This petition is not guided by self gain or gain of any person, institution, body and there is no motive other than of public interest in filing this petition.
5. I have done whatsoever inquiry/investigation which was in my power to do to collect all data/materials /information which were available and which are relevant for this Court to entertain the present petition.
6. I further confirm that I have not concealed in the present petition any data/ material/information which may have enabled this court to form any opinion to entertain this petition or not and/or whether to grant any relief or not.
7. That the statements made in this affidavit and in paragraphs 1 and 2 are true to my knowledge and in paragraphs 3, 4, 5 and 6 being

matters of record are true to my information received there from and the rest are my humble submissions before this Hon'ble Court. I swear that this declaration is true, that it conceals nothing, and that no part of it is false, so help me God.

And I sign this affidavit on this the 12th day of February 2020 at Guwahati.

Identified by

Advocate's Clerk

DEPONENT