

Kerala High Court

Kerala Voluntary Health Services vs The Union Of India on 13 June, 2000

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HON'BLE ACTING CHIEF JUSTICE MRS.MANJULA CHELLUR

&

THE HON'BLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 26TH DAY OF MARCH 2012/6TH CHAITHRA 1934

WP(C).No. 38513 of 2010 (S)

PETITIONER:

KERALA VOLUNTARY HEALTH SERVICES,
A REGISTERED NON-PROFIT VOLUNTARY CO-ORDINATING
AGENCY HAVING REGISTERED NO.S-69/1971, MULLANKUZHY,
COLLECTORATE PO, KOTTAYAM, REP.BY ITS
EXECUTIVE OFFICER SAJU V.ITYY.

BY ADVS.SRI.SHAJI P.CHALY
SRI.S.GOPAKUMAR
SRI.R.SANJITH
SMT.H.ROSHNI
SMT.LIJITTA G.MATHEW

RESPONDENT(S):

1. THE UNION OF INDIA , REP.BY ITS
SECRETARY,MINISTRY OF INFORMATION AND, BROADCASTING
'A' WING, SHASTRI BHAWAN, DR.RAJENDRA PRASAD ROAD,
NEW DELHI-110 001.
2. THE STATE OF KERALA,REP.BY ITS CHIEF
SECRETARY,SECRETARIAT, THIRUVANANTHAPURAM.
3. THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS,THIRUVANANTHAPURAM.
4. CENTRAL BOARD OF FILM CERTIFICATIION,
BHARAT BHAVAN, 91-E WALKESHWAR ROAD,MUMBAI 400 006

REP.BY ITS CHAIRPERSON.

BY ADV. SRI.T.P.M.IBRAHIM KHAN, ASST.S.G OF INDIA
BY ADV. SRI.P.PARAMESWARAN NAIR, ASG OF INDIA
BY ADV.SRI.T.SANJAY, ACGSC
BY SRI.P.I.DAVIS, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-03-2012,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AS

WPC.NO.38513/2010

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE REGISTRATION CERTIFICATE OF PETITIONER
ORGANIZATION DT. 07/10/71.

EXT.P2: COPY OF THE AUTHORIZATION ISSUED TO THE EX-OFFICIO MEMBER
DT.07/12/10.

EXT.P3: COPY OF THE STUDY REPORT OF WHO AS OBTAINED BY THE
PETITIONER.

RESPONDENT'S ANNEXURE:

ANNEXURE A: COPY OF THE CIRCULAR DATED 13/6/2000.

ANNEXURE B: COPY OF THE CIRCULAR DATED 5/3/2005. WITH ENGLISH
TRANSLATION.

ANNEXURE C: COPY OF THE G.O. DATED 8/12/2011.

/TRUE COPY/

P.A. TO JUDGE

AS

C.R

MANJULA CHELLUR, Ag. C.J. &
A.V.RAMAKRISHNA PILLAI, J

W.P(C) No.38513 of 2010-(S)

Dated this the 26th day of March, 2012

JUDGMENT

Ramakrishna Pillai, J The petitioner, an organisation registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1995 and affiliated to the Voluntary Health Association of India, New Delhi, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking positive directions for the implementation of the statutory stipulations in the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, hereinafter called as 'COTPA' and its allied Rules, which were enacted in public interest to protect public health as well as to prohibit consumption of Cigarette and other Tobacco products which are injurious to health.

2. The petitioner alleges that the negligence and callous attitude of the law enforcing agencies have in effect flouted the provisions of COTPA and its allied Rules and the same is dereliction of duty cast upon them under Article 47 of the Constitution of India. The petitioner association claims to have undertaken the mission of striving towards the goal of taking measures to protect health of the people of the State by propagating the menace of use of Tobacco.

3. The specific case of the petitioner is that though the Parliament has enacted COTPA in public interest in the year 2003, with a view to achieve improvement of public health as enjoined by Article 47 of the Constitution of India and as a result of the same direct advertisements of Cigarettes and other Tobacco products to a large extent were controlled or rather restricted, the tobacco companies are resorting to other measures for taking their products to the general public in a more effective and efficient manner than through direct advertisements. It is alleged that the said companies are now resorting to films, tele-serials and other visual media for indirect advertisements and marketing their products by depiction of their products through popular artists having huge fan followers in the State and the Country, thereby indirectly violating the provisions of COTPA and its allied Rules.

4. It is further alleged that the Central Board of Film Certification, the 4th respondent herein, who is duty bound to certify films as per the principles stipulated under Sections 5A and 5B of the Cinematograph Act, 1952 has miserably failed in exercising its statutory duties. According to the petitioner, the indirect advertisement through films and other visual media resorted to by the national and multinational cigarette and tobacco companies are having great impact in the society. Consequently adolescents and the children viewing their favorite heroes on screen indulging in

smoking will be tempted to pick up the habit of smoking believing it to be a style or fashion, is the apprehension of the petitioner.

5. The further case of the petitioner is that though Rule 4 of the COTPA Rules, 2004, specifically provides that the display of usage of tobacco products in movies and television programmes shall be subject to the safeguards prescribed therein and Rule 5 of the said Rules mandates the safeguards to be adopted by a person selling cigarette or other tobacco products so as to ensure that no such product is sold to a person below the age of 18 years, the illegal activity of sale of cigarette and other tobacco products are being carried out in blatant violation of the provisions therein, thereby posing a threat to the rule of law. It is also pointed out that the unbridled sale of cigarette and other tobacco products are being carried out in closer proximity to the educational institutions, in spite of the enactment of Prohibition on Sale of Cigarettes and Other Tobacco Products around Education Institutions Rules, 2004. Hence, according to the petitioner association, no other efficacious remedy is open to them, but to invoke the extraordinary jurisdiction of this Court to ensure the implementation of COTPA and its allied Rules, thereby protecting the fundamental right of the citizens to live in a healthy environment with dignity as enshrined under Article 21 of the Constitution of India.

6. The respondents entered appearance.

7. Reports were called for from the third respondent as well as from the Director of Public Instructions, Thiruvananthapuram.

8. As authorised by the third respondent, the Assistant Inspector General of Police (Public Grievance), Police Head Quarters, Thiruvananthapuram, filed report dated 17/11/2011 on behalf of State Police Chief. The learned Government Pleader for the State submitted a report dated 03/1/2012 on behalf of the Director of Public Instructions.

9. The report submitted on behalf of the 3rd respondent, can be summed up as under:

The police department has been taking stringent action in right earnest in the matter against those who violate the provisions of COTPA and the Rules thereunder. There was no dereliction of duty on the part of the police in enforcing the ban on smoking in public places. Consequent to the judgment of this Court in Ramakrishna v. State of Kerala (1999 (2) KLT 725), directions were issued to the police officers to conduct raid and to take other effective measures to enforce the directions in the judgment and to book the violators. After the decision of this Court in Nebu John v. Babu (2000 (1) KLT 238), the police have been more strict in the matter of prosecuting those who smoke in public places. Several cases relating to violation of ban on smoking have been conducted and proceeded against by the police. Emphasis has been given by the police in the matter of enforcement of COTPA and all District Police Chiefs have been directed to take initiative to form School Protection Groups for every school as far as possible. The school protection group of each school is to be chaired by either the Head of the Institution or the President of the Parent-Teacher Association. The local station house officer is to be the convenor of such group, the duty of which shall be to collect and pass on information regarding selling/supply/ use of tobacco products in the school area.

10. In the report submitted on behalf of the Director of Public Instructions, it is stated that all heads of the schools in the State and other educational institutions have been directed to issue directions that smoking in the respective institutions must be punishable by law and the authorities were also directed to display "smoking prohibited" boards in the schools and other premises. Thus, according to them smoking prohibited boards have been displayed in all schools and other educational institutions. Apart from this, it is stated that seminars, camps and counseling are periodically conducted in the schools utilising the service of social workers, counsellors; so stated in the report. Hazards of smoking of tobacco products are included in the school curriculum so that awareness can be created in their minds against smoking. Steps against smoking in the school premises and other educational institutions are periodically monitored in the meeting of the Headmasters concerned convened by Assistant Education Officers/District Educational Officers or other authorities. Heads of schools, with the support of Parent- Teachers Association are effectively taking steps to prevent sale of tobacco products near school premises by making complaint to the police and other authorities. So, according to the report, effective steps in tune with the direction of the State Government to prevent sale and consumption of tobacco products in all the schools and in the neighbourhood, have been taken.

11. We have heard the learned counsel for the petitioner, learned Central Government Standing Counsel and also learned Government Pleader for the State. The reports were also perused.

12. While the arguments advanced by the learned Government Pleader for the State was confined to the measures said to have been taken by the Government as well as the police, as per the statutory requirements and the judicial decisions, the learned counsel for the Central Government opposed the petition mainly on the following grounds:

(a) The jurisdiction of this Court cannot be invoked for the implementation of the provisions of a statute.

(b) No specific instance of violation has been pointed out by the petitioner to substantiate the alleged dereliction of duty.

13. Having heard the rival submissions at the Bar, we find that the following questions arise for consideration in this writ petition.

(a) Whether the jurisdiction of this Court under Article 226 of the Constitution of India be invoked for the implementation of the provisions of COTPA and its allied Rules, as well as the Cinematograph Act, 1952 ?

(d) What effective directions can be given in the matter to remedy the situation pointed out by the petitioner ?

14. It was brought to our notice that the 43rd World Health Assembly under the World Health Organisation (WHO) in its 14th Plenary Meeting held on 17/05/1990, has urged the Member States to consider in their tobacco control strategy plans, for legislation and other effective measures for

protecting their citizen with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, and to discourage the use of tobacco and impose progressive restrictions by taking concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco. The Central Government enacted the COTPA and the Prohibition of Smoking in Public Places Rules, 2008 drawing inspiration from the said resolution and other resolutions of the WHO.

15. During the course of the argument, we were taken to Rules 4, 5, 6 and 7 of COTPA, the reproduction of which would be relevant for our discussion. The relevant sections run as follows:

S.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. S.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 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 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) an 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.

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.

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, the specified warning including a pictorial depiction of skull and cross bones and such other 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.

16. The Central Government by virtue of the powers conferred under Section 31 of the COTPA, has enacted COTPA Rules, 2004. Rules 3, 4 and 5 of the said Rules are also worth quoting in this context. They read as follows:

"3. Prohibition of smoking in a public place.- (1) The owner or the manager or in charge of the affairs of a public place shall cause to be displayed prominently a board, of a minimum size of sixty centimetre by thirty centimetre in the Indian language(s) as applicable, at least one at the entrance of the public place and one at conspicuous place(s) inside, containing the warning "No Smoking Area- Smoking Here is an Offence".

(2) The owner or the manager or in charge of the affairs of a hotel having thirty rooms or restaurant having seating capacity of thirty persons or more and the manager of the airport shall ensure that,-

(i) the smoking and non-smoking areas as physically segregated;

(ii) the smoking area shall be located in such manner that the public is not required to pass through it in order to reach the non- smoking area; and

(iii) each area shall contain boards indicating thereon "Smoking Area/Non-Smoking Area".

4. Prohibition of advertisement of cigarette and other tobacco products.- (1) The size of the board used for advertisement for cigarettes and any other tobacco products displayed at the entrance or inside a warehouse or a shop where cigarettes and any other such tobacco products are offered for distribution of sale shall not exceed ninety centimetre by sixty centimetre and number of such boards shall not exceed two.

(2) Each such board shall contain in the Indian language as applicable, one of the following warnings occupying twenty-five per cent, of top area or the board, namely:-

(i) Tobacco Causes Cancer, or

(ii) Tobacco Kills (3) The board referred to in sub-rule (2) shall contain only the brand name or picture of the tobacco product and no other promotional message and

picture."

5. Prohibition of sale to minors.- (1) The owner or the manager or the incharge of the affairs of a place where cigarettes and other tobacco products are sold shall display a board of minimum size of sixty centimetre by thirty centimetre at conspicuous place(s) containing the warning "Sale of tobacco products to a person under the age of eighteen years is a punishable offence", in Indian language(s) as applicable.

(2) The onus of proof that the buyer of the tobacco product is not a minor lies with the seller of the tobacco products. The seller, in case of doubt, may request tobacco purchaser to provide appropriate evidence of having reached eighteen years of age.

17. In addition to that, the Prohibition on Sale of Cigarettes and Other Tobacco Products Around Educational Institutions Rules, 2004 was also enacted by the Central Government for prohibiting the sale of cigarettes and other tobacco products around the educational institutions. Rule 3 of the said Rules reads as follows:-

"3. Prohibition on sale of cigarettes and other tobacco products around educational institutions.- (1) Display of board.- The owner or manager or any person in-charge of affairs of the educational institution shall display and exhibit a board at a conspicuous place(s) outside the premises, prominently stating that the sale of cigarettes and other tobacco products in an area within a radius of one hundred yards of the educational institution is strictly prohibited and that it is an offence punishable with the fine which may extend to two hundred rupees.

(2) Measurement of distance.- Distance of one hundred yards shall be measured radially starting from the outer limit of boundary wall, fence or as the case may be, of the educational institution."

18. Our attention was drawn also to Section 5A and 5B of the Cinematograph Act, 1952, which read as follows:

"5A. Certification of films.- [(1) If, after examining a film or having it examined in the prescribed manner, the Board considers that-

(a) the film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to clause

(i) of sub-section (1) of section 4, it shall grant to the person applying for a certificate in respect of a film a "U" certificate or, as the case may be, a "UA" certificate; or

(b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition

restricted to members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film an "A" certificate or, as the case may be, a "S" certificate, and cause the film to be so marked in the prescribed manner.

Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under clause (a) or clause (b).] (2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India.

(3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this section shall be valid throughout India for a period of ten years.]

5B.Principles for guidance in certifying films.- (1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the sovereignty and integrity of India the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition."

19. In exercise of powers conferred under Sub Section (2) of Section 5B of Cinematograph Act, 1952, the Central Government have also issued guidelines to the 4th respondent to ensure that certain conditions are fulfilled for certification of films. One among those conditions is to see that "scenes tending to encourage, justify or glamorise consumption of tobacco or smoking are not shown".

20. It was argued that the motion pictures are able to steer up emotions more deeply than any other form of art among children and adolescents, since their immaturity makes them more susceptible to what is being depicted therein, than mature men and women. Therefore, it was prayed that indirect advertisements through films and other visual medias resorted to by the cigarette and other tobacco companies are to be curtailed and appropriate directions have to be issued to the 4th respondent in this regard.

21. Films and other visual media are forms of expressions the freedom of which is guaranteed by Article 19(i)(a) of the Constitution of India. However, the same is subject to reasonable restrictions that can be imposed by the State by enacting laws in the interest of the sovereignty and integrity of India, the security of the State, friendly relationship with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence [see A.19(2)]. Previously, the trend of judicial opinion was that commercial advertisements does not fall within the

freedom of speech and expression, as the advertisement is a part of business, the object of which is furthering business. But, later on the perception about the advertisement has changed and it has been held that commercial speech is a part of the freedom of speech and expression guaranteed under Article 19(1)(a). Therefore, a commercial speech can also be subjected to reasonable restrictions. (See *Tata Press Ltd. v Mahangar Telephone Nigam Ltd.* (AIR 1995 SC 2438).

22. Apart from being subjected to reasonable restrictions enumerated in Article 19(2), the freedom of speech and expression, guaranteed by Article 19(1)(a) is also circumscribed by the right to life guaranteed under Article 21 of the Constitution. We note with distress that the use of tobacco and allied products is spreading like cancer among the children and adolescents below the poverty line to which the majority of the population belongs. As rightly pointed out by the learned counsel for the petitioner, the smokers dig not only their own grave prematurely, but also pose a serious threat to the life of innocent non-smokers who get themselves exposed to environmental tobacco smoke thereby violating their right to life.

23. In *Munn v. Illinois*, Field, J. (94 U.S.113) spoke of the right to life in the following words:

"By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting cut of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world."

24. This statement which has been repeatedly quoted with approval by the Supreme Court (See *Kharak Sing v State of U.P.* (AIR 1963 SC 1295) *Olga Tellis and others v. Bombay Municipal Corporation* (AIR 1986 SC 180) has been further expanded in *Francis Coralie v. Union Territory of Delhi* (AIR 1981 SC 746), by the statement "that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21". Then, it was held that the right to life with human dignity enshrined under Article 21 derives its life breath from the Directive Principles of State Policy and particularly clause (e) and (f) of Article 39 and Articles 41 and 42 of the Constitution.

25. Ext.P3 which is a true copy of the study report of WHO (it is of the year 2003) on the portrayal of tobacco in Indian cinema was pressed into service by the learned counsel for the petitioner. A research was conducted on how the tobacco industry has leveraged to cinema to reinforce the image around their brands and how cinema in turn has promoted the cause of tobacco. The research was aimed at understanding the degree of influence the tobacco industry has on Indian cinema. The report states that the impact of this on youth has been devastating as studies have shown that non-smoking teens whose favorite stars smoke frequently on screen are 16 times more likely to develop positive attitudes towards smoking. The following extract from the report would reveal the gravity of the situation:

"India, with its billion-strong population and nearly 250 million tobacco users, is one of the prime target markets for tobacco companies. Cigarette users comprise just 14%

of the total tobacco using population. This presents a big opportunity for cigarette manufacturers who are increasingly looking at youth to grow their sales. The 15-24 year old population stands at 199.2 million and is projected to grow to 231 million by 2013. Nearly 5 million children under the age of fifteen are addicted to tobacco. According to National Family Health Survey, 20% of the India's adult male population and 2.5% of India's adult female population smoke and 28% of the India's male population and 12% of India's female population consume other forms of tobacco."

26. It is true that the indirect advertisement through films and other visual media resorted to by the national and multinational tobacco companies are having greater impact on the society. So, it is only just and proper that appropriate directions are issued to the respondents to prevent indirect advertisements in films and other visual media. It is also true that scenes depicting the use of tobacco and its allied products often appear in films and other visual media taking advantage of the leeways in the enactments. This can be curtailed only by proper enforcement of the provisions of the COTPA and its allied Rules as well as of the Cinematograph Act and the Guidelines issued thereunder.

27. The Legislature, being familiar with local conditions, is primarily, the judge of the necessity of enactments. If there exists a condition or state of affairs requiring the Legislature of the State to exercise its conceded right to enact laws for the protection of health, safety or welfare of the people, State can enact laws. Here, the Parliament in its wisdom has enacted laws to curb the menace arising out of the use of tobacco. The indiscriminate propagation of advertisement through films and other visual media without any proper restrictions, as well as, non implementation of the provisions of COTPA and its allied Rules as aforesaid, would infringe upon the right to life of the citizen, which is guaranteed under Article 21 of the Constitution of India. If the executing agency fails to implement the provisions of a statute, there is scope for judicial interference. Thus, prayers in this writ petition are relevant.

28. The five writs made mention of in Article 226 of the Constitution of India are known in English law as prerogative writs, for they had originated in the King's prerogative power of superintendence over the due observance of law by his officers and tribunals. However, the language used in Article 226 is very wide and does not confine the power of the High Courts to the issuing of prerogative writs only. (See *Rashid Ahammed v Municipal Board, Kairana* (AIR 1950 S.C. 163). The power under this Article extends to the issuing of "directions, orders or writs, including the writs mentioned in the Article, or any of them". The power under Article 226 can be exercised to meet the ends of justice in all cases where there is a specific legal right but no specific legal remedy for enforcing that right. Nothing is better settled than that. There is scope for judicial interference where there is a denial of right or substantial failure of justice.

29. We repel the contentions of the Central Government that the extra ordinary jurisdiction under Article 226 of the Constitution of India cannot be invoked for the implementation of the provisions of a statute. The argument that no specific instance of violation has been pointed out does not inspire confidence in us. Search for examples of violation would be a futile exercise. It is relevant to

note that there is no categorical denial of the allegations levelled against the authorities who are duty bound to implement the mandate prescribed by the provisions of COTPA and its allied Rules, as well as, the Cinematograph Act, 1952. Though certain instructions were said to have been given, they remain in paper. The reports filed on behalf of the 3rd respondent and on behalf of the Director of Public Instructions, Thiruvananthapuram, do not reveal whether any effective measures were taken for ensuring the proper implementation of the provisions of COTPA and its allied Rules. Also, there is no proper machinery for implementation. The result is that violations of the provisions of the COTPA and its allied Rules are being continued and the mischief sought to be remedied grows like anything in the society, resulting in substantial failure of justice which calls for an interference by this Court under Article 226 of the Constitution of India.

30. Having bestowed our anxious consideration over the entire circumstances of the case, we are of the definite view that there exists a grave situation on account of the violations of the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and its allied Rules as well as Cinematograph Act, 1952, which calls for an interference by this Court in exercise of the powers under Article 226 of the Constitution of India.

31. Accordingly, we dispose of this writ petition by issuing the following directions:

(1) Respondents 1, 2 and 4 shall ensure that no scenes are depicted in films, tele-serials and other visual media which would violate the provisions of COTPA and its allied Rules. (2) Respondents 1, 2 and 3 are directed strictly to implement the provisions of Prohibition on Sale of Cigarettes and Other Tobacco Products around Education Institutions Rules, 2004, and ensure that no tobacco products of whatever nature are sold within 100 yards measured radially starting from the outer limit of the boundary wall or fence or as the case may be of the educational institutions.

32. For the appropriate implementation of the aforesaid directions, the following measures also shall be taken:

(a) School Protection Committees be formed in all schools, which shall be chaired by the Head of the Institution. A representative of the Parents or Teachers duly selected by the Head of the Institution, the Local Station House Officer and the School Leader shall be the members of the said Committee. It shall be the duty of this Committee to set the law in motion against the violators of the provisions of COTPA and its allied Rules, on its own motion or on a complaint in that regard. The action as above, shall be taken within 15 days from the date of receipt of the information regarding the violation. The Committee shall meet atleast once in a month

(b) There shall be a District Level Monitoring Committee in each district chaired by the District Collector. The District Educational Officer, the District Medical Officer and the Chief of Police in the District shall be its members. It shall be the duty of this Committee to periodically supervise the functioning of the School Protection

Committee in their district. If it is brought to the notice of the District Level Monitoring Committee that no action was taken on time against the violators by the School Protection Committee, the District Level Monitoring Committee can set the law in motion against the violators. The said Committee can also recommend action against the authorities of the school which do not honour these directions. The District Level Monitoring Committee shall have the power to conduct surprise inspection of any school premises and the surroundings in their district to ensure that these directions are complied with in letter and spirit. The Committee shall meet atleast once in three months. It shall be the endeavour of the District Level Monitoring Committee to sensitize the school children within their district about the evil effects of the use of tobacco and allied products through seminars, campaigns and other effective methods. In this endeavour, the District Level Monitoring Committee shall seek assistance of the Kerala State Legal Service Authority or the District Legal Services Authority.

(c) There shall be a State Level Monitoring Committee which shall be chaired by the Secretary, Home Department. The Secretary, Health Department, the Secretary, Education Department, the Police Chief and the Director of Public Instructions shall be its members. It shall be the duty of this Committee, to ensure that the School Protection Committees are formed as above. This Committee shall ensure the performance of the District Level Monitoring Committees by calling for periodical reports from the District Level Monitoring Committees. This Committee shall meet atleast once in six months. This Committee will also formulate guidelines that may be used by the District Level Monitoring Committees for the purpose of monitoring the function of the School Protection Committees. The guidelines so issued shall indicate the most appropriate monitoring mechanisms. A copy of the guidelines so formulated shall be forwarded to this Court within two months from today.

This writ petition shall stand posted after two months for compliance report.

The registry shall forward a copy of the judgment to the Chief Secretary, Government of Kerala forthwith.

Sd/-

MANJULA CHELLUR, AG. CHIEF JUSTICE Sd/-

A.V.RAMAKRISHNA PILLAI, JUDGE //TRUE COPY// P.A TO JUDGE krj