

9 SCOB [2017] AD 46

APPELLATE DIVISION

PRESENT

Mr. Justice Surendra Kumar Sinha
-Chief Justice
Mr. Justice Syed Mahmud Hossain
Mr. Justice Hasan Foez Siddique
Mr. Justice Mirza Hussain Haider
Mr. Justice Mohammad Bazlur Rahman

CIVIL APEAL Nos.204-205 of 2001

(From the judgment and order dated 07.02.2000 passed by the High Court Division in Writ Petition Nos.1825 and 4521 of 1999)

Government of Bangladesh and others :Appellants
(In all the appeals)

Versus

Professor Nurul Islam :Respondent
(In C.A. No.204/01)

Al-haj Nur Mohammad :Respondent.
(In C.A. No.205/01)

For the Appellants. : Mr. Ekramul Haque, Deputy Attorney
(In all the appeals) General, instructed by Mrs. Sufia Khatun,
Advocate-on-Record

For the Respondents : Ex-parte
(In all the appeals)

Date of Hearing : The 1st March, 2016

Date of Judgment : The 1st March, 2016

Meaning of right to life:

Right to life is not only limited to protection of life and limbs but also extends to the protection of health, enjoyment of pollution free water and air, bare necessities of life, facilities for education, maternity benefit, maintenance and improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent to human dignity. ... (Para- 52)

Constitution of Bangladesh

Articles 18(1), 31 and 32:

No one has any right to endanger the life of the people which includes their health and normal longevity of an ordinary healthy person. Articles 31 and 32 of the Constitution

not only means protection of life and limbs necessary for full enjoyment of life but also includes amongst others protection of health and normal longevity of an ordinary human being. It is the obligation of the State to discourage smoking and consumption of tobacco materials and the improvement of public health by preventing advertisement of tobacco made products. Though the obligation under Article 18(1) of the Constitution cannot be enforced, State is bound to protect the health and longevity of the people living in the country as right to life guaranteed under Articles 31 and 32 of the Constitution includes protection of health and longevity of a man free from threats of man-made hazards. Right to life under the aforesaid Articles of the Constitution being fundamental right it can be enforced by this Court to remove any unjustified threat to health and longevity of the people as the same are included in the right to life.

... (Para-54)

When the right to life of the people is at stake, the legislature is under the obligation to enact law to protect such right as per directives of the Court. As such the question of encroaching upon the domain of the legislature by the Court does not arise. ... (Para-56)

Smoking and Tobacco Product Usage Control Act, 2005:

What we are observing daily is that the provisions of this Act and the Rules made thereunder are not being properly implemented particularly as regards prohibition of smoking in public places and selling of tobacco products to minors. We have also noticed that in public places, the facilities relating to smoking such as ashtrays, matches, lighters are kept. It has become necessary to save our posterity from the curse of tobacco addiction and to inform them about the Smoking and Tobacco Product Usage Control Act, 2005 as amended by the Smoking and Tobacco Usage (Control) Amended Act, 2013 and also the Rules made thereunder. Therefore, we are inclined to give four more directives in addition to the directives given by the High Court Division.

I. The law enforcing agencies are directed to implement the provision of section 4 of the Act, which provides that no person shall smoke in any public place and public transport and that if any person smokes in contravention of sub-section (1) shall be punishable with fine not exceeding three hundred taka and the penalty shall be doubled for each subsequent violation.

II. The law enforcing agencies are directed to ensure that no one can sell tobacco product to a minor as per sub-section (1) of section 6(a) and subsection (2) thereof provided if any person contravenes the provision of sub-section (1) he shall be punishable with fine which may extend to five thousand taka and if a person contravenes the provisions more than once, every time the amount of fine shall be doubled.

III. The owner, proprietor of a public place shall ensure that no person smokes in that place. Ashtrays, matches, lighters and other things designed to facilitate smoking are not to be provided in public place where smoking is prohibited altogether.

IV. The Ministry of Education, the Ministry of Primary and Mass Education and the National Curriculum Textbook Board (NCTB) are directed to incorporate a chapter in the curriculum of schools and intermediate colleges about the adverse effect of smoking and also about the latest law in this regard.

... (Para-68)

JUDGMENT

SYED MAHMUD HOSSAIN, J:

1. Both the appeals, by leave, are directed against the judgment and order dated 07.02.2000 passed by the High Court Division in Writ Petition Nos. 1825 and 4521 of 1999 making the Rules absolute with direction.

2. Both the appeals involving similar questions of laws and facts having been heard together are now disposed of by this single judgment.

3. The facts, leading to the filing of these civil appeals, in a nutshell, are:

Professor Nurul Islam is a National Professor and the President of 'ADHUNIK' (Amara Dhumpan Nibaran Kori), which is registered under Voluntary Social Welfare Organization Registration & Control Ordinance, 1961, working and lobbying for anti-smoking causes. The writ-petitioner obtained Rule from the High Court Division as to why section 3 of the 'Tamakjato Shamogri Biponon Niontrener Jonno Pronito Ain 1988' (তামাকজাত শামোগ্রী বিপোনন নিওন্ত্রেনার জোন্নো প্রণিত আইন, ১৯৮৮) should not be enforced properly and why should not be directed to enact, in the light of the Ordinance No.16 of 1990, for the prohibition of all forms of tobacco advertisement.

4. The case of the writ-petitioner is that section 3(1) of 'Tamakjatio Shamogri Biponon Niontrener Jonno Pronito Ain' provides for a statutory warning that the smoking is dangerous for health and the warning must be printed on packet or canned tobacco based products on a prominent and distinct space of the container of the packet, which would be easily readable and understood. Similarly, section 3(2) of the said Act states that no advertisement of tobacco based products shall be published, broadcast or displayed without having the said warning in easily readable and understood Bengali engraved, written or printed on a prominent part of the advertisement. In breach of section 3(1) of the statute, the companies engaged in tobacco business are printing the statutory warning in obscure corners of tobacco packets and containers and publish the warning in such small size that it is barely readable. In advertisements with moving images in the movie theatres and those broadcast on television the statutory warnings are shown so briefly and without any voice that they have little or no effect on the viewers.

5. It is accepted not only by the medical researchers but also by tobacco industries in developed countries that tobacco consumption leads to fatal diseases such as cancer, lung and heart diseases causing about 3.5 million deaths each year and one million of deaths occur in developing countries like Bangladesh. Global tobacco epidemic is predicted to claim premature death of some 250 million children and adolescents at present, a third of these shall occur in developing countries. By 2020 it is predicted that the tobacco will become the leading death and disability, killing more than 10 million people annually. The writ-petitioner further stated that the passive smoking also has dangerous effect on health. It was accepted that great majority of rural people in Bangladesh, who consume tobacco based products are illiterate and completely unaware of the dangers and the harm of consuming them. Even if, the statutory warning is written on a distinct space of the packets, it would not make any sense to the illiterate consumers. Considering the dangers of consuming tobacco products, mere enforcement of section 3 of the Act, 1988 would be useless unless the manufacturing, consumption and promotion of tobacco related products are prohibited. Although smoking is

in decline in the industrialized world the consumption of cigarettes rose by 67% in developing countries between 1970 and 1994 and tobacco related deaths in developing countries will rise from one million in a year to seven million in a year by 2030. A similar Writ Petition No. 4521 of 1999 was filed by Al-haj Nur Mohammad against manufacture, sale and advertisement of tobacco products.

6. The writ-respondents entered appearance to oppose the Rules and made submissions to controvert the materials on record made in the writ petitions.

7. The learned Judges of the High Court Division upon hearing the parties by the judgment and order dated 07.02.2000 made the Rules absolute with direction.

8. Feeling aggrieved by and dissatisfied with judgment and order passed by the High Court Division, the writ-respondents as the leave petitioners have filed Civil Petitions for Leave to Appeal Nos.670 and 667 of 2000 before this Division and obtained leave in both the civil petitions on 29.03.2001, resulting in Civil Appeal Nos.204 and 2005 of 2001.

9. Mr. Ekramul Haque, learned Deputy Attorney General, appearing on behalf of the appellants of both the civil appeals, submits that the High Court Division in exercise of its jurisdiction under Article 102 of the Constitution cannot direct the legislature to pass any law unless there has been positive violations of the Constitution and there is a necessity to rectify the wrong and that Parliament having not passed any law in violation of any provision of the Constitution cannot be directed to pass any law in a specified field and that the High Court Division is indirectly requiring the Parliament to pass any law by giving direction to the Government and as such, the impugned judgment should be set aside.

10. None appeared on behalf of the respondents.

11. We have considered the submissions of the learned Deputy Attorney General, perused the impugned judgment and the materials on record.

12. Before entering into the merit of the appeals, it would be pertinent to go through the grounds, for which, leave was granted in both the appeals. The grounds are quoted below:

(i) For that in the absence of any law in derogation of the fundamental rights ensured by the Constitution for the rectification of which the Court can give direction, the High Court Division was in error of law in giving direction compliance of which necessitates legislation and thus indirectly requiring Parliament to pass laws.

(ii) For that the High Court Division was in error in not taking into consideration that Parliament has not passed any law which is in derogation of the right to life and Parliament which has plenary jurisdiction to decide what law to be passed and as such the High Court Division cannot give direction to the Government to do things which will require backing of law.

(iii) For that the learned judges of the High Court Division has been grossly in error of law in relying too liberally on the Principles of State Policy incorporated in Articles 11 and 18 of the Constitution without appreciating that such principles are not to be enforced in disregard of the social realities and that they are not to be judicially enforced.

(iv) For that the High Court Division has failed to appreciate that under the constitutional dispensation, the legislature should remain left with the task of looking after the questions involved in the matter and in that view, it has acted in disregard of the intent and purport of Article 47(1)(f) of the Constitution.

(v) For that in consideration of the existing laws on the subject in question and the policies and principles enshrined in the Constitution, it is the legislature that should be left to the job of looking for the occasion to bring in necessary ban and/or restriction to meet the problem.

13. The High Court Division observed that the Fundamental State Policy enshrined particularly in Articles 11 and 14 of the Constitution shall be a guide to the interpretation of the Constitution and the laws of the country to enforce fundamental rights of citizens. The High Court Division found that the effect of advertisement of tobacco based products is definitely designed to the detriment of right to life of the citizens, particularly the younger generation which is guaranteed by Articles 31 and 32 of the Constitution and they are entitled to protection of law from being exposed to the hazards of cigarette smoking through advertisements. The High Court Division observed that in view of the fundamental state policy enshrined in Article 18 providing for raising of the level of nutrition and the improvement of quality of public health, as its primary duties, and in particular shall adopt effective measures to prevent consumption of alcoholic and other intoxicating drinks and of drugs which are injurious to health and the provision in Article 11 providing for the dignity and worth of human person which although are not judicially enforceable they are the inviolable fundamental principles of state policy and shall be applied by the State in the making of laws and shall guide the interpretation of the Constitution and the laws of the country. The High Court Division therefore held that the writ-respondents and the authorities performing the functions in connection with the affairs of the Republic that advertisement in any form of Cigarette, Bidi, tobacco related products must not be continued in any manner in Newspapers, Magazines, Signboards or in any electronic medias like Television/Radio beyond the period of the existing contract/agreement with the manufacturers or their agents. The said authorities were duty bound to see that any other authority, private or public does not flout the direction in any manner. The High Court Division made the following specific directions:

a) The government shall take steps phase by phase to stop production of tobacco leaves in tobacco growing Districts of Bangladesh, giving subsidy to the farmers, if possible and necessary to produce other agricultural products instead of tobacco and for rehabilitation of the tobacco workers engaged in tobacco production, if possible with alternative beneficial jobs.

b) The Government shall restrict issuance of license for setting up tobacco industry or Bidi factory and direct the existing tobacco and Bidi Companies to switch over to some other industry to prevent production of Cigarette, Bidi and other tobacco related products, specifying a reasonable period for the purpose.

c) To prohibit importation of Cigarette or tobacco related product within a reasonable period and meanwhile to impose heavy tax for the import and to print the statutory warning legibly in bold words in Bengali.

d) The Government, the concerned Ministry of the Broadcasting Television Authority, Newspaper of Bill-Board authority or any other agencies engaged in

advertisement shall not advertise or telecast any cigarette/bidi related advertisement or commercials and shall not undertake any show/program/propagating cigarette/bidi smoking among the citizens. This direction shall be effective/after the expiry of the existing contract of advertisement between them and the manufactures or their agents.

e) The Government and/or any concerned authority shall not undertake or encourage any promotional ventures like “Voyage or Discovery” and those shall be strictly prohibited.

14. The Government shall direct the appropriate authorities to take steps prohibiting smoking in public and public places like Train, Railway Station, Bus, and Station, Ferry-Ghat, Steamer in any public gathering/meeting/assembly making the atmosphere noxious to health taking resort to strict complacence with the existing provisions of Sections 278, 133, 188, of the Penal Code.

15. Leading cause of death, illness and impoverishment

The tobacco epidemic is one of the biggest public health threats the world has ever faced, killing around 6 million people a year. More than 5 million of those deaths are the result of direct tobacco use while more than 600000 are the result of non-smokers being exposed to second-hand smoke.

16. Nearly 80% of the more than 1 billion smokers worldwide live in low- and middle-income countries, where the burden of tobacco-related illness and death is heaviest.

17. Tobacco users who die prematurely deprive their families of income, raise the cost of health care and hinder economic development.

18. In some countries, children from poor households are frequently employed in tobacco farming to provide family income. These children are especially vulnerable to "green tobacco sickness", which is caused by the nicotine that is absorbed through the skin from the handling of wet tobacco leaves.

19. Surveillance is key

Good monitoring tracks the extent and character of the tobacco epidemic and indicates how best to tailor policies. Only 1 in 3 countries, representing one third of the world's population, monitors tobacco use by repeating nationally representative youth and adult surveys at least once every 5 years.

20. Second-hand smoke kills

Second-hand smoke is the smoke that fills restaurants, offices or other enclosed spaces when people burn tobacco products such as cigarettes, *bidis* and water-pipes. There are more than 4000 chemicals in tobacco smoke, of which at least 250 are known to be harmful and more than 50 are known to cause cancer.

21. There is no safe level of exposure to second-hand tobacco smoke

- In adults, second-hand smoke causes serious cardiovascular and respiratory diseases, including coronary heart disease and lung cancer. In infants, it causes sudden death. In pregnant women, it causes low birth weight.
- Almost half of children regularly breathe air polluted by tobacco smoke in public places.

- Second-hand smoke causes more than 600 000 premature deaths per year.
- In 2004, children accounted for 28% of the deaths attributable to second-hand smoke.

22. Every person should be able to breathe tobacco-smoke-free air. Smoke-free laws protect the health of non-smokers, are popular, do not harm business and encourage smokers to quit.

23. Over 1.3 billion people, or 18% of the world's population, are protected by comprehensive national smoke-free laws.

24. Tobacco users need help to quit

Studies show that few people understand the specific health risks of tobacco use.

25. Among smokers who are aware of the dangers of tobacco, most want to quit. Counselling and medication can more than double the chance that a smoker who tries to quit will succeed.

26. National comprehensive cessation services with full or partial cost-coverage are available to assist tobacco users to quit in only 24 countries, representing 15% of the world's population.

27. There is no cessation assistance of any kind in one quarter of low-income countries.

28. Picture warnings work

Hard-hitting anti-tobacco advertisements and graphic pack warnings – especially those that include pictures – reduce the number of children who begin smoking and increase the number of smokers who quit.

29. Graphic warnings can persuade smokers to protect the health of non-smokers by smoking less inside the home and avoiding smoking near children. Studies carried out after the implementation of pictorial package warnings in Brazil, Canada, Singapore and Thailand consistently show that pictorial warnings significantly increase people's awareness of the harms of tobacco use.

30. Only 42 countries, representing 19% of the world's population, meet the best practice for pictorial warnings, which includes the warnings in the local language and cover an average of at least half of the front and back of cigarette packs. Most of these countries are low- or middle-income countries.

31. Mass media campaigns can also reduce tobacco consumption by influencing people to protect non-smokers and convincing youths to stop using tobacco.

32. Over half of the world's population live in the 39 countries that have aired at least 1 strong anti-tobacco mass media campaign within the last 2 years.

33. Bans on tobacco advertising, promotion and sponsorship can reduce tobacco consumption.

- A comprehensive ban on all tobacco advertising, promotion and sponsorship could decrease tobacco consumption by an average of about 7%, with some countries experiencing a decline in consumption of up to 16%.

- Only 29 countries, representing 12% of the world's population, have completely banned all forms of tobacco advertising, promotion and sponsorship.
- Around 1 country in 3 has minimal or no restrictions at all on tobacco advertising, promotion and sponsorship.

34. Taxes discourage tobacco use

Tobacco taxes are the most cost-effective way to reduce tobacco use, especially among young and poor people. A tax increase that increases tobacco prices by 10% decreases tobacco consumption by about 4% in high-income countries and about 5% in low- and middle-income countries.

35. Even so, high tobacco taxes is a measure that is rarely implemented. Only 33 countries, with 10% of the world's population, have introduced taxes on tobacco products so that more than 75% of the retail price is tax. Tobacco tax revenues are on average 269 times higher than spending on tobacco control, based on available data.

36. Illicit trade of tobacco products must be stopped

The illicit trade in tobacco products poses major health, economic and security concerns around the world. It is estimated that 1 in every 10 cigarettes and tobacco products consumed globally is illicit. The illicit market is supported by various players, ranging from petty peddlers to organized criminal networks involved in arms and human trafficking.

37 Eliminating illicit trade in tobacco will reduce the harmful consumption of tobacco by restricting availability of cheap, unregulated alternatives and increasing overall tobacco prices. Critically, this will reduce premature deaths from tobacco use and raise tax revenue for governments. Stopping illicit trade in tobacco products is a health priority, and is achievable. But to do so requires improvement of national and sub-national tax administration systems and international collaboration, such as ratification and implementation of the Protocol to Eliminate the Illicit Trade in Tobacco Products, an international treaty in its own right, negotiated by parties to the WHO Framework Convention on Tobacco Control (WHO FCTC).

38. While publicly stating its support for action against the illicit trade, the tobacco industry's behind-the-scenes behaviour has been very different. Internal industry documents released as a result of court cases demonstrate that the tobacco industry has actively fostered the illicit trade globally. It also works to block implementation of tobacco control measures, such as tax increases and pictorial health warnings, by misleadingly arguing they will fuel the illicit trade.

39. WHO response

The WHO Framework Convention on Tobacco Control entered into force in February 2005. Since then, it has become one of the most widely embraced treaties in the history of the United Nations with 180 Parties covering 90% of the world's population.

40. The WHO Framework Convention is WHO's most important tobacco control tool and a milestone in the promotion of public health. It is an evidence-based treaty that reaffirms the right of people to the highest standard of health, provides legal dimensions for international health cooperation and sets high standards for compliance.

41. In 2008, WHO introduced a practical, cost-effective way to scale up implementation of provisions of the WHO Framework Convention on the ground: MPOWER. Each MPOWER measure corresponds to at least 1 provision of the WHO Framework Convention on Tobacco Control.

42. **The 6 MPOWER measures are:**

- Monitor tobacco use and prevention policies
- Protect people from tobacco use
- Offer help to quit tobacco use
- Warn about the dangers of tobacco
- Enforce bans on tobacco advertising, promotion and sponsorship
- Raise taxes on tobacco.

43. The WHO FCTC Protocol to Eliminate the Illicit Trade in Tobacco Products requires a wide range of measures relating to the tobacco supply chain, including the licensing of imports, exports and manufacture of tobacco products; the establishment of tracking and tracing systems and the imposition of penal sanctions on those responsible for illicit trade. It would also criminalize illicit production and cross-border smuggling. **(extracted from WHO Website)**

44. Though the case of *Dr. Mohiuddin Farooque Vs. Bangladesh, represented by the Secretary, Ministry of Commerce, Government of the People's Republic of Bangladesh, Bangladesh Secretariat and others, 48 DLR 438* is different from the case in hand, the principle expounded in that case may be taken into consideration in respect of the case in hand. In the aforesaid reported case, respondent No.6 Danish Condensed Milk Bangladesh Limited imported 500 metric tons of skimmed milk powder from Holland. Upon clearance of the consignment radiation test was made and found 133 Bq radiation per kilogram which was above the minimum approved radiation level of 95 Bq and was opined that the consignment in question should not be marketed. Therefore, Secretary General of Bangladesh Environmental Lawyers' Association (BELA) filed a writ petition in public interest as consumption of imported food item containing radiation level above the acceptable limit is injurious to public health. Therefore, the writ petitioner prayed that the respondents be directed to take measure for sending back the said milk powder to the exporter. The High Court Division on the fact of the said case held as under:

“It is the primary obligation of the State to raise the level of nutrition and the improvement of public health by preventing use of contaminated food, drink, etc. Though that obligation under Article 18(1) of the Constitution cannot be enforced state is bound to protect the health and longevity of the people living in the country as right to life guaranteed under Articles 31 and 32 of the Constitution includes protection of health and normal longevity of a man free from threats of man-made hazards unless that threat is justified by law. Right to life under the aforesaid Articles of the Constitution being a fundamental right it can be enforced by this Court to remove any unjustified threat to the health and longevity of the people as the same are included in the right to life.”

45. According to Article 31 of the Constitution, to enjoy the protection of the law, and to be treated in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. According to Article 32 no person shall be deprived of life or personal liberty save in accordance with law. Therefore, right to life is a fundamental

right subject to law of the land. In the absence of any interpretation of right to life in our jurisdiction we have to see what meaning was given by the superior Courts of other countries to right to life. Fifth Amendment to the Constitution of the United States of America declares: “No person shall be deprived of his life, liberty or property without due process of law. Fourteen Amendment also imposes similar limitation on the state. In the case of *Munn Vs. Illinois (1877) 94 US 113* in his dissenting judgment **Field J:** interpreted “life” under the aforesaid provisions of the US Constitution as follows:

“Something more 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 out of any eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.”

46. According to Article 21 of the Indian Constitution: “No person shall be deprived of life or personal liberty except according to procedure established by law.

47. Indian Supreme Court interpreted the right to life under the aforesaid Article 21 of the Indian Constitution similar to our Article 32 in several cases. The cases of *Francis Coralie V. Union Territory of Delhi reported in AIR 1981 SC 746*, right to life under Article 21 of the Indian Constitution has been interpreted in the following words:

“But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to life with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.”

48. In the case of *Bandhua Mukti Morcha V. Union of India reported in AIR 1984 SC 802*, Supreme Court of India while interpreting Article 21 of the Indian Constitution further extended the meaning of right to life as made in the earlier case in the following words:

“...It must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.”

49. In the case of *Vincent V. Union of India reported in AIR 1987 SC 990* learned Judge delivering the judgment in that case quoted with approval interpretation of right to life made by the Indian Supreme Court in the **Bandhua Mukti Morcha** case held:

“A healthy body is the very foundation for all human activities.In a welfare state, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health..... Maintenance and improvement of public health have a rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged.”

50. In the case of *Vikram Deo Singh V. State of Bihar reported in AIR 1988 SC 1782* it was further held:

“We live in an age when this Court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to quality of life consistent with his human personality. The right to life with human dignity is the fundamental right of every Indian citizen.”

51. In the case of *Subash Kumar Vs. the State of Bihar reported in AIR 1991 SC 420* it was further held:

“Right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.”

52. From the cases, cited above, it appears that right to life is not only limited to protection of life and limbs but also extends to the protection of health, enjoyment of pollution free water and air, bare necessities of life, facilities for education, maternity benefit, maintenance and improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent to human dignity.

53. If the right to life under Articles 31 and 32 of the Constitution means right to protection of health and normal longevity of an ordinary human being endangered by the use of tobacco and tobacco products then it cannot be said that fundamental right to life of a person has been threatened or endangered.

54. Article 18(1) of the Constitution says that the State shall regard the rising of level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcohol and other intoxicating drinks and of drugs which are injurious to health. Though the aforesaid provision cannot be enforced by the Court it can be seen for interpreting the meaning of right of life under Articles 31 and 32 of the Constitution. A man has natural right to enjoyment of healthy life and longevity up to normal expectation of life of an ordinary human being. Enjoyment of healthy life and normal expectation of longevity is threatened by diseases, natural calamities and human actions. When a person is grievously hurt or injured by another his life and longevity are threatened. Similarly when a man smokes which is injurious to his health he suffers ailments and his life and normal expectation of longevity are threatened. It is the natural right of a man to live free from all man-made hazards of life and such right has been guaranteed under the aforesaid Articles 31 and 32 of the Constitution subject to law of the land. No one has any right to endanger the life of the people which includes their health and normal longevity of an ordinary healthy person. Articles 31 and 32 of the Constitution not only means protection of life and limbs necessary for full enjoyment of life but also includes amongst others protection of health and normal longevity of an ordinary human being. It is the obligation of the State to discourage smoking and consumption of tobacco materials and the improvement of public health by preventing advertisement of tobacco made products. Though the obligation under Article 18(1) of the Constitution cannot be enforced, State is bound to protect the health and longevity of the people living in the country as right to life guaranteed under Articles 31 and 32 of the Constitution includes protection of health and longevity of a man free from threats of man-made hazards. Right to life under the aforesaid Articles of the Constitution being fundamental right it can be enforced by this Court to remove any unjustified threat to health and longevity of the people as the same are included in the right to life.

55. The meaning of most commonly saying “health is wealth” is very simple and easy. It means our good health is the real wealth of our life which gives us good physique and mind and enables us to enjoy whole life by managing its all challenges. Good health promotes a good mental, physical and social health. The true face of a smoking is disease, death and horror-not the glamour and sophistication the pushers in tobacco industry try to portray.

56. Therefore, the High Court Division was perfectly justified in issuing directives to protect health and longevity of people because consumption of tobacco products is universally accepted to be harmful to health. When the right to life of the people is at stake, the legislature is under the obligation to enact law to protect such right as per directives of the Court. As such the question of encroaching upon the domain of the legislature by the Court does not arise.

57. In order to discourage smoking and usage of tobacco products Bangladesh has signed the Framework Convention on Tobacco Control (FCTC) on 16th June, 2003 and ratified the same on 10th May, 2004 in 56th Conference of World Health Organization.

58. For the purpose of implementing the rules of the said Convention in Bangladesh, it was expedient and necessary to control smoking and production, usage, sale-purchase and advertisement of tobacco products. Therefore, Smoking and Tobacco Products Usage (Control) Act, 2005 (Act II of 2005) was enacted by the Parliament.

59. When the impugned judgment was pronounced, the Tobacco Products Sale/Control Act, 1988 (Act 45 of 1988) was in force. But the same law could not give the desired result as most of the consumers of tobacco were illiterate and they were not aware of the fundamental affect of consuming tobacco based product. Government being aware of this situation promulgated Ordinance No.16 of 1990 but unfortunately that Ordinance was not placed before the Parliament and ultimately it died a natural death.

60. Subsequently, the Parliament has passed the Smoking and Tobacco Product Usage (Control) Act, 2005 (Act No.11 of 2005 which was amended by the Smoking and Tobacco Usage (Control) (Amendment Act, 2013). In addition, Government also framed the Smoking of Tobacco Product Usage (Control) Rules, 2006 under the Act of 2005. A revolutionary change has been made in respect of prohibition on advertisement of tobacco product and on prohibition of smoking in public place and public transport by the Act of 2005 as amended till 2013 and the Rules made thereunder. Directive D, E and F of the impugned judgment were implemented in full and directive No. C was implemented in part.

61. Section 5 of the Act provides for prohibition on advertisement of tobacco product, which provides as under:

“5. PROHIBITION ON ADVERTISEMENT AND PROMOTION AND CONTROL OF SPONSORSHIP OF TOBACCO PRODUCTS- (1) No person shall—

(a) publish or cause to be published advertisement of tobacco products in any print or electronic media, books published in Bangladesh, leaflet, handbill, poster, printed paper, billboard or signboard or in any other way;

(b) give or propose to give any sample of tobacco products to the public, for the purpose of enticing to buy tobacco products, either free or at a reduced price.

(c) give or cause to be given any donation, prize, stipend or sponsorship of any program for the purpose of advertisement or promoting the usage of tobacco products;

(d) publish or cause to be published advertisement of tobacco or tobacco products in any cinema hall, print or electronic media or web page;

(e) broadcast, display or describe or cause to be broadcasted, displayed or described any scene of using any tobacco products in any cinema, drama, or documentary produced in Bangladesh or produced in abroad but available and broadcasted in Bangladesh through television, radio, internet, stage show or any other public media; However, if it becomes necessary for the sake of story of a cinema, the scene of using tobacco products may be displayed provided that written warning about the harmful effects of tobacco products shall be displayed on the screen, according to the rules;

(f) produce, sale or distribute or cause to be produced, sold or distributed the cover, packet or box which is similar to the cover, packet or box of a tobacco product;

(g) display tobacco products advertisements at the point of sales, in any way.

Explanation- To fulfil the objective of sub-section (1), “advertisement of tobacco products” means conducting any kind of commercial programs for encouraging the direct or indirect usage of tobacco or tobacco products.

(2) Nothing of article (e) of subsection (1) shall be applicable for the anti-smoke health related educational campaigns.

(3) No person shall use or cause to be used the name, sign, trademark, or symbol of any producer of tobacco or tobacco product, or entice any other person to use these if they participate in any social development work under the Corporate Social Responsibility programs or bear its expenses;

(4) If any person contravenes the provisions of this section he shall be punishable with imprisonment for a term not exceeding three months or a fine which may extend to one lakh taka, or both and if he contravenes the provisions more than once, every time the amount of fine or punishment shall be doubled.

62. Therefore, having gone through section 5 of the Act we find that there is blanket prohibition of advertisement and promotion and control of sponsorship of tobacco product. Sub-section (4) of this section provide that he, who contravenes the provision of section shall be punishable with imprisonment for a term not exceeding three months or a fine which may be one lakh taka or both and he, who contravenes the provision of this section more than once every time the amount of fine or punishment shall be doubled.

63. Section 4 of the Act provides for prohibition of smoking in public place and public transport. Sub-section (1) of section 4 provides that subject to the provision of section 7 no person shall smoke in any public place and public transport and that if any person smokes in contravention of the provision of sub-section (1) shall be punishable with fine not exceeding fifty taka.

64. Sub-section (2) of section 4 provides that if any person smokes in contravention of the provision of sub-section (1), he shall be punishable with fine not exceeding three hundred take and the penalty shall be doubled for each subsequent violation.

65. Section 8 of the Act provides that outside the area marked or designed as a smoking area under section 7, the owner, caretaker or controlling person or manager of every public place shall in one or more places in the said area and the owner, caretaker or controlling

person or manager of the public transport shall in the concerned transport arrange to display a notice “Refrain from Smoking, it is a punishable offence” in Bangla and in English language.

66. Directive-C of the impugned judgment was implemented in section 10 of the Act. Section 10 runs as follows:

“10. PICTORIAL WARNINGS ETC. ABOUT HEALTH AND OTHER HARMS ON THE BODY OF PACKETS OF THE TOBACCO PRODUCTS-

(1) Health warnings shall be printed on top of both sides of the packet, cover, carton or box of tobacco products, covering at least 50% of the total area of each main display area or if the packets do not have two main sides in that case covering at least 50% of the main display area, with colored pictures and accompanying text, according to the act, about the harms caused by the use of tobacco products and these shall be printed in Bengali.

(2) The following warnings shall be printed on the packet, cover, carton or box of tobacco products, i.e.

(i) For smoked tobacco products:-

(a) Smoking causes throat and lung cancer;

(b) Smoking causes respiratory problems;

(c) Smoking causes stroke;

(d) Smoking causes heart disease;

(e) Second-hand smoke causes harms to the fetus;

(f) Smoking causes harms to the fetus.

(ii) For smokeless tobacco products:-

(a) Consumption of tobacco products causes mouth and throat cancer;

(b) Consumption of tobacco products causes harms to the fetus.

(iii) Any other warning prescribed by law.

(3) All packets, covers, cartons and boxes sold in Bangladesh shall carry the statement: “Sales allowed only in Bangladesh” and no tobacco products may be sold in Bangladesh without this statement.

(4) Packets, cartons, boxes, or covers of tobacco products shall not use brand elements (such as: light, mild, low-tar, extra, ultra, etc.) to create false impression about its impact and risk on public health.

(5) The printing methods on the packets, cartons, boxes, or covers of tobacco products of pictorial warnings described in subsection (2) and the statements described in sub-section (3) shall be determined by law.

(6) If any person contravenes the provisions of this section he shall be punishable with imprisonment for a term not exceeding six months or a fine which may extend to two lakh taka, or both and if he contravenes the provisions more than once, every time the amount of fine or punishment shall be doubled.

67. According to sub-section (6) of section 10 if anybody contravenes the provisions of this section shall be punishable with imprisonment for a term not exceeding six months or a fine which may extend to two lakh taka or both or if he contravenes the provisions more than once, every time fine or punishment shall be doubled.

68. What we are observing daily is that the provisions of this Act and the Rules made thereunder are not being properly implemented particularly as regards prohibition of smoking in public places and selling of tobacco products to minors. We have also noticed that in public places, the facilities relating to smoking such as ashtrays, matches, lighters are kept. It has become necessary to save our posterity from the curse of tobacco addiction and to inform them about the Smoking and Tobacco Product Usage Control Act, 2005 as amended by the Smoking and Tobacco Usage (Control) Amended Act, 2013 and also the Rules made thereunder. Therefore, we are inclined to give four more directives in addition to the directives given by the High Court Division.

I. The law enforcing agencies are directed to implement the provision of section 4 of the Act, which provides that no person shall smoke in any public place and public transport and that if any person smokes in contravention of sub-section (1) shall be punishable with fine not exceeding three hundred taka and the penalty shall be doubled for each subsequent violation.

II. The law enforcing agencies are directed to ensure that no one can sell tobacco product to a minor as per sub-section (1) of section 6(a) and sub-section (2) thereof provided if any person contravenes the provision of sub-section (1) he shall be punishable with fine which may extend to five thousand taka and if a person contravenes the provisions more than once, every time the amount of fine shall be doubled.

III. The owner, proprietor of a public place shall ensure that no person smokes in that place. Ashtrays, matches, lighters and other things designed to facilitate smoking are not to be provided in public place where smoking is prohibited altogether.

IV. The Ministry of Education, the Ministry of Primary and Mass Education and the National Curriculum Textbook Board (NCTB) are directed to incorporate a chapter in the curriculum of schools and intermediate colleges about the adverse effect of smoking and also about the latest law in this regard.

69. There is nothing on record to show that the Government has taken any measure to implement directives (a) and (b) of the impugned judgments. Directives (a) and (b) are reproduced again as under:

“a) The government shall take steps phase by phase to stop production of tobacco leaves in tobacco growing Districts of Bangladesh, giving subsidy to the farmers, if possible and necessary to produce other agricultural products instead of tobacco and for rehabilitation of the tobacco workers engaged in tobacco production, if possible with alternative beneficial jobs.

b) The Government shall restrict issuance of license for setting up tobacco industry or Bidi factory and direct the existing tobacco and Bidi Companies to switch over to some other industry to prevent production of Cigarette, Bidi and other tobacco related products, specifying a reasonable period for the purpose.”

70. Therefore the concerned authorities of the Government are directed to start implementing directives (a) and (b) of the judgment of the High Court Division.

71. Accordingly, both the civil appeals are dismissed with the directives and direction made in the body of the judgment.

72. Let a copy of the judgment be communicated to the Secretary, Ministry of Education, the Secretary, Ministry of Primary and Mass Education and the Chairman, National Curriculum Textbook Board (NCTB) each for information and necessary action.