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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 13th August, 2020*

\+ W.P.(C) 5222/2020

GAURAV YADAV & ANR. ..... Petitioners

Through: Mr.Rohit Arora, Adv.

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Chetan Sharma, ASG with Mr.Vikas Mahajan, CGSC, Mr.Manpreet Kaur Bhasin, Mr.Amit Gupta, Mr.R.V.Prabhat, Advs. for R-1 to 3 and 5.

Mr.Harpreet Singh, Adv. for R-4.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D.N.Patel, Chief Justice** *(Oral)*

Proceedings in the matter have been conducted through video conferencing.

C.M.No.18834/2020 *(exemption from filing Court fee)*

In view of the present prevailing situation, the present application is allowed. However, the applicant is directed to file the requisite Court fee within a period of 72 hours from the date of resumption of regular functioning of the Court.

The application is disposed of.

W.P.(C) No.5222/2020

1. This public interest litigation has been preferred with the following prayers:-

"a. An appropriate writ in the nature of Mandamus or any other appropriate Writ, Order, directions of like nature directing the Respondent No.1 to extend the Notifications dated 12/03/2020 and 21/03/2020 thereby classifying masks and sanitizers as 'Essential Commodity' under the Essential Commodity Act, 1955 and fixing the retail prices of the said products.

b. An appropriate writ in the nature of Mandamus or any other appropriate Writ, Order, directions of like nature directing the Respondent No. 2 and 3 to reduce the GST rate of 18% on alcohol based sanitizers to either 5% or 12%.

c. Such other and further orders and/ or directions as this Hon'ble Court may deem fit and proper in the fact and circumstances of the case."

2. Having heard the learned counsel for the parties and looking to the facts and circumstances of the case, it appears that, during the initial period of spread of the Covid-19 pandemic in the country, masks and sanitizers were included in the list of 'Essential Commodities' under the Essential Commodities Act, 1955 ("the Act") vide gazette notification dated 13th March, 2020 (Annexure P-2 to the memo of the writ petition). The said notification was in force till 30th June, 2020. Similarly, vide notification dated 21st March, 2020 (Annexure P-4 to the memo of the writ petition), the price of masks and sanitizers were regulated. Thereafter, there was no extension by the respondents. Being aggrieved, this writ petition has been preferred. Moreover, the petitioner has also sought for reduction in GST rate applicable on masks and sanitizers.

3. The petitioners have placed on record an Office Memorandum dated 1st July, 2020 issued by the respondents (Annexure P-5 to the memo of writ

petition) wherein it has been stated that inclusion of masks and sanitisers under the Act is not being continued as there were no longer any adverse reports from States and Union Territories regarding availability and price of these commodities.

4. Having regard to the aforesaid, none of the prayers can be granted by this Court mainly for the following reasons:-

(a) What items are to be included under the Essential Commodities Act, 1955 as 'Essential Commodity', is a policy decision of the respondent/Government and, therefore, unless the decision can be shown to be manifestly unreasonable or arbitrary, this Court will be extremely slow in interfering with the policy decision of the Government.

(b) Inclusion of commodities in the list of 'Essential Commodities' under the Essential Commodities Act, 1955 is a complex decision based upon varieties of factors such as availability, price etc. Moreover, the aforesaid notification dated 13th March, 2020 has not been extended beyond 30th June, 2020 as, in the opinion of the Government, masks and sanitizers are now easily available and there is no need to control such commodities or to regulate supply etc. of these commodities. Thus, **a conscious decision has been taken by the respondents** not to extend the notification dated 13th March, 2020 (Annexure P-2) beyond 30th June, 2020 as, in the opinion of the Government, based upon the facts, there is no need to control the price of the masks and sanitizers, as per the Office Memorandum dated 1st July, 2020 (Annexure P-5 to the memo of writ petition).

(c) The petitioners have not brought any material on record to demonstrate that the basis for the decision of the respondents is erroneous in any manner. In fact, the learned counsel for the petitioner specifically accepted that these commodities are now generally available. However, he submitted that in the absence of regulation, the manufacturers and traders may take advantage of the situation. In our view, this is a conjecture which is not supported by any materials, and cannot be used to characterise the decision of the respondents as arbitrary or unreasonable. Unless there is a cogent need for regulation, it cannot be said that normally the items should be included under the Essential Commodities Act, 1955. Such regulation of commodities based on conjectures is also not required.

(d) Even during the period of coverage of masks and sanitisers under the Act, the only regulation in place was about the price of the aforesaid two commodities as is clear from the notification dated 21st March, 2020 (Gazette Notification dated 24th March, 2020 - annexed at page-51 of the writ petition). Thus, there was no further restriction at all except regarding the price of the said two commodities in the notification dated 21st March, 2020. The contentions about regulation of quality of these products, as sought to be raised in the petition, are therefore not relevant to the relief sought.

5. In view of the above, we see no reason to issue mandamus and direct the respondents to extend the notification dated 13th March, 2020 or to include the masks and sanitizers as 'Essential Commodities' under the Essential Commodities Act, 1955. However, the learned Additional Solicitor General, appearing for the Union of India, assures us that the respondents

will monitor the situation carefully and take remedial action if required.

6. Looking to the other prayer in the petition, which relates to reduction of rate of GST on masks and sanitizers, it ought to be kept in mind that the rate of tax cannot be challenged in a Court of law unless it is abundantly confiscatory in nature. In the facts of the present case, nothing has been argued out about how the present rate of GST is confiscatory in law. Merely, because this petitioner feels that the GST rate applied on masks and sanitizers is excessive, this cannot be a reason for issuing a writ of mandamus and direct the respondents to reduce tax on the said commodities.

7. Therefore, in view of the aforesaid reasons, we see no reason to entertain this writ petition. The same is accordingly dismissed.

CHIEF JUSTICE

PRATEEK JALAN, J

AUGUST 13, 2020
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