
Thakor Hiraji Sagthaji Vs State of Gujarat

Special Civil Application No. 12644 of 2015 With Special Civil Application No. 12740 of 2015

Court: GUJARAT HIGH COURT

Date of Decision: April 28, 2016

Acts Referred:

Constitution of India, 1950 - Article 14, Article 21, Article 226, Article 47#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 10, Section 74A, Section 8, Section 9, Section 9A

Citation: (2017) 1 GLR 605

Hon'ble Judges: Mr. N.V. Anjaria, J.

Bench: Single Bench

Advocate: Mr P.J. Kanabar, Advocate, for the Petitioner Nos. 1 to 6; Ms. Manisha Lavkumar, GP and Mr. Tirthraj Pandya, AGP, for the Respondent Nos. 1 to 3; Viral K. Shah, Advocate, for the Respondent No. 4

Final Decision: Dismissed

Judgement

Mr. N.V. Anjaria - Whether right to consume Poppy Capsule can be said to be part of rights under Article 21 of the Constitution; whether the

impugned Resolution dated 05th May, 2015 is liable to be ruled as violative of such right; whether the Resolution is illegal on the ground that the

same is de hors any statutory powers, and whether it is bad in law on the contention that it renders the Gujarat Poppy Capsules Rules, 1963 as

redundant. These and the incidentals are the questions arising to be addressed in the present petitions.

2. What is prayed by the six petitioners, by invoking the jurisdiction of this Court under Article 226 and asserting rights under Articles of 14 and 21

of the Constitution, is to set aside Resolution dated 05th May, 2015 of the Home Department, Government of Gujarat. Under the impugned

Resolution, the governmental authorities have prohibited and discontinued the supply of Poppy Capsules with effect from 01st April, 2016.

3. For lodging the challenge as above, it is the case of the petitioners that they have been consuming Poppy Capsules since last more than 10 years

under the Poppy-1 permit issued by the second respondent-Director of Prohibition & Excise, and the third respondent-the Sub Inspector,

Prohibition & Excise. Such permit is issued under Gujarat Poppy Capsule Rules, 1963. Petitioners claim that they regularly consume the poppy

capsules under the permit. It is claimed that in the entire State there are as many as 6786 permit holders. It is the case of the petitioners inter alia

that they want Poppy Capsules and that their consumption use of the same is for medicinal purpose. What is contended in the pleadings in the

petition, in relation to the above aspect that the petitioners require Poppy Capsules for consumption, that the impugned Resolution is passed with a

view to give benefit to the private stakeholders engaged in the business of manufacturing and selling of the drugs. They also contend that because of

the prohibitory nature of the Resolution, the petitioners would have to incur a huge amount for purchasing the Poppy Capsules.

3.1. As suggested by outlining the core questions raised in the controversy stated above, it is principally on three grounds, as elaborated in the

submissions of learned advocate for the petitioner Mr.P.J. Kanabar that the petitioners have questioned the legality of the impugned Resolution and

the ban on supply of Poppy Capsule. The first contention broadly stated is that the respondent-State authorities do not have powers in law to pass

the Resolution in question. It is the submission that even if authorities are presumed to have powers to regulate, it would not include power to

totally prohibit. The second ground urged is that by virtue of the impugned Resolution, Gujarat Poppy Capsule Rules are made redundant by the

authorities, which is not permissible; the concomitant ground raise is that unless Rules are formulated, the ban cannot be prescribed under the

Resolution. The third contention made to govern the other submissions as above, is that the imposition of ban violates petitioners' right under

Article 21 of the Constitution.

The Impugned Resolution

3.2. The impugned Resolution dated 05th May, 2015 providing for total discontinuation of use of Poppy Capsules from 31st March, 2016

onwards, is passed in exercise of powers under Section 139 of the Gujarat Prohibition Act, 1949. The Resolution mentions inter alia that the

Government of India has repeatedly recommended and insisted for discontinuing the use of Poppy Straw which is covered under the NDPS Act,

1985; that the Government of India has issued instructions dated 07th March, 2012 in succession to the previous instructions dated 30th July,

2014, requiring the State Government to discontinue the use and gradually reduce the quantity of the Poppy Straw from 31st March, 2015. It

appears that applications and objections were received from the permit holders to allow them to continue the use of the substance, in the

meantime, having regard to the said request, the Government of India by renewed instructions dated 19th February, 2015 extended the deadline to

close the use of Poppy Straw from 31st March, 2015 to 31st March, 2016.

3.3. By the said Resolution, the State Government has thus directed to gradually reduce the supply in the quantity of substance and discontinue the

same fully from 01st April, 2016. The gradual reduction of poppy straw was provided to be thus-from 01st June, 2015 supply was limited to be

500 grams, from 01st August, 2015 400 grams, from 01st October, 2015 300 grams and from 01st December, 2015 and 01st February, 2016, it

was made limited to 200 grams and 100 grams respectively. From 01st April, 2016, the ban is made total and no quantity was permitted to be

supplied.

Rival Submissions:

4. Learned advocate Mr.P.J. Kanabar elaborate the submissions on the above contentions. He submitted firstly that the impugned Resolution is

without any basis of statutory power. He secondly contended that Gujarat Poppy Rules, 1963 cannot be made redundant. He invited attention of

definition of poppy capsule in Rule 4(1) of the Gujarat Poppy Capsules Rules, 1963. It was submitted that as per Rule 4, the licence of Poppy I to

possess more than 100 gms. of poppy capsules was required to be obtained. According to petitioners, as per the prevailing Rules, the limitation of

quantity of poppy capsules for sell exceeding 200 kg. is impermissible for retail as well as wholesale licensee. It was submitted that Rules of 1963

which operate in the filed since they were framed and under which the petitioners have been granted permit, are made without any value. It was in

the third place submitted that unless the Rules are framed, the ban by way of Resolution cannot be prescribed.

4.1 He further submitted that even if there is a power to regulate, it would not include power to control. For this proposition, learned advocate

relied on decision of the Supreme Court in *Narinder S. Chadha v. Municipal Corporation of Greater Mumbai* [AIR 2015 SC 756]. In the

last he contended that consuming poppy capsules by the petitioners is their fundamental right and that the complete prohibition on such

consumption of the poppy capsules is violative of Article 21 of the Constitution. Lastly mentioned, but it was the submission at the outset that the

poppy capsule cannot be treated as psychotropic substance or narcotic drug.

4.2 Learned Government Pleader Ms.Manisha Lavkumar refuted all the contentions. She took the relevant provisions of the NDPS Act to submit

that there was a power available with the State Government and backed by the statutory power the impugned Resolution was issued. She also

refers to the definition of "poppy straw", etc. from the Act. She relied on the affidavit-in-reply filed on behalf of respondent No.2 through Deputy

Director, Prohibition, Excise Department and extensively relied on the contentions and submissions raised therein. She relied on decision of the

Allahabad High Court in *Bailey Sing v. State of U.P.* [AIR 1967 Allahabad 341] by which it was highlighted that total prohibition on cultivation

of poppy was held justified and competent exercise of powers and right to consume poppy could never be claimed as right under Articles, 14,

19(1)(g) or 21.

Background of the impugned decision:

5. Before and for appreciating the contentions and grounds of challenge, the facts traced in the history of the controversy may be pertinently

noticed from the material on record. On 30th November, 2009 the Government of India, Ministry of Finance, Department of Revenue issued an

Order under Section 74A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for sake of brevity) in which certain

directions to the State Governments under the aforesaid Section of the NDPS Act in connection with licensing and permitting the possession,

transport, import inter-State, export inter-State, warehousing, sell, purchase and consumption of the Poppy Straw. From the copy of the said

Order made part of the affidavit-in-reply filed on behalf of respondent No.2, it transpires that an expert committee comprising the Drugs Controller

General of India, the Narcotics Commissioner, doctors from the All India Institute of Medical Sciences, Delhi, Post Graduate Institute of Medical

Education and Research, Chandigarh, Ram Manohar Lohia Hospital, Delhi, representatives of the States of UP, MP, Rajasthan and Punjab had

been constituted to examine whether providing poppy straw to addicts can be regarded as a medical use it terms of Section 8 of the NDPS Act.

The Committee also examined any other consequential issues. The said expert committee gave report as to its findings. The Government of India

called for the comments from the State Governments of different States where Poppy Straw is produced or consumed. The comment-cum-opinion

was also asked for from the Narcotic Control Bureau in respect of the Report submitted by the aforementioned expert committee.

5.1. The expert committee concluded that the provision of poppy straw to addicts was not a medical necessity. It also indicated that the levels of

use of poppy straw noticed can hardly be regarded as compulsive, denial of which would cause acute withdrawal symptoms causing irreparable

damage to the patient. Further, it found that 5 to 8 kg. of poppy straw per month was being supplied to addicts in MP and Rajasthan and such a

large dosage is likely to lead to spread of addiction. It further found that medical use pre-supposes a prescription by an authorised medical

authority in which dosage and frequency are clearly prescribed and found that the manner and use of poppy straw in States was not under medical

supervision.

5.1.1. After considering the Report of the expert committee so constituted and the comments and suggestions received as above, the following

directions came to be issued in the said Order dated 30th November, 2009.

6. In exercise of the powers conferred on it under Section 74A of the NDPS Act, 1985, the Central Government, hereby, gives the following

directions to the State Governments of Andhra Pradesh, Delhi, Gujarat, Haryana, Madhya Pradesh, Maharashtra, Meghalaya, Nagaland Orissa,

Punjab, Rajasthan, Tripura, Uttar Pradesh and West Bengal, (which licence/ permit activities related to poppy straw):

- a) A nodal officer should be designated to deal with all matters pertaining to poppy straw.
- b) All existing addicts of poppy straw may be registered for proper medical care.
- c) On the basis of the registrations and the quantities declared by the addicts and after consulting medical and other experts, the nodal officer shall

determine the total quantity of poppy straw required for each addict and the entire State.

- d) The quantity of poppy straw to be provided to the addicts should be progressively reduced so as to ensure that after a certain period of time,

there are no addicts requiring poppy straw.

- e) Stringent conditions should be imposed for supply of poppy straw to addicts so as to ensure that they are in accordance with NDPS Act/Rules

framed thereunder.

- f) Poppy straw should be allowed to be purchased only from liciting cultivated crops.

- g) The licences issued for purchase and sale of poppy straw, etc., shall specify the quantity that can be purchased or sold.

- h) The total quantity of poppy straw licenced to be purchased and sold in any district shall not exceed the total requirement of poppy straw of drug

addicts and any scientific requirement of poppy straw in the district.

- i) All poppy straw which remains unutilised shall be destroyed and a certificate to the effect and an annual report for every calender year as at

ANNEX to this order shall be sent by the nodal officer of the State to the Narcotics Commissioner, 19, The Mall, Moran, Gwalior (M.P.)-

474006 (Fax:0751-2368111) by June of the following year.

7. The States of Rajasthan, Madhya Pradesh and Uttar Pradesh shall adopt strict checks and measures to prevent smuggling of poppy straw,

opium and other Narcotic Drugs to the neighbouring States.

8. The States other than those mentioned in para 6 of this order and the Union Territories shall not licence or permit activities related to poppy

straw.

5.1.2. The national policy on Narcotic Drugs and Psychotropic Substances was announced by the Government of India on 06th February, 2012.

In continuation and in conjunction of earlier order dated 30th November, 2009, the Government of India issued another order dated 07th March,

2012 in the same subject, in which referring to the national policy on the narcotic drugs and provision for modification in the earlier order dated

30th November, 2009, it was stated as under.

... The said Order was issued pursuant to the report of an expert committee comprising the Drugs Controller General of India, the Narcotics

Commissioner, doctors from the All India Institute of Medical Sciences, Delhi, Post Graduate Institute of Medical Education and Research,

Chandigarh, Ram Manohar Lohia Hospital, Delhi, representatives of the States of UP, MP, Rajasthan and Punjab, which had recommended that

the provision of poppy straw to addicts was into a medical necessity. The Committee had also indicated that the levels of use of poppy straw

noticed can hardly be regarded as compulsive, denial of which would cause acute withdrawal symptoms causing irreparable damage to the patient.

It was, therefore, evident that providing poppy straw to addicts, could not be regarded as a medical use envisaged under Section 8 of the NDPS

Act, 1985.

5.1.3. In view of the said policy, the previous Order dated 30th November, 2009 was modified as under in the aforementioned subsequent Order

dated 07th March, 2012.

The quantity of poppy straw to be provided to the addicts should be progressively reduced so as to ensure that after 31st March, 2015, there are

no addicts requiring poppy straw. After this, no poppy straw will be allowed to be used for de-addiction and it shall only be ploughed back into

the field under the supervision of the Nodal Officer who shall issue a certificate to the Narcotics Commissioner that the entire quantity of poppy

straw has been ploughed back under his/her supervision.

5.1.4. It was further provided in the said Order that taking into account the difficulties experienced by the State Governments in disposal of the

unutilised poppy straw within the calendar year as stipulated in the Order dated 30th November, 2009, para 6(i) of the said Order was modified

extending the time to destroy the poppy straw till 30th June of the following year.

5.2. It may be mentioned that the respondent- State Government had invited objections by Notification dated 30th July, 2014 pursuant to direction

given by the Government of India in its letter/Order dated 30th November, 2009. The objections are invited for modification regarding Poppy I

permits and allocation of quantity of the existing Poppy I permit holders, by stating that (i) the extinct permit shall continue to be in force or liable to

be renewed upto 31st March, 2015; (ii) the poppy capsules which can be purchased under the permit shall not exceed 500 gms. with effect from

01st September, 2014 and 250 gms. with effect from 01st November, 2014.

5.3. The poppy capsules was thus proposed to be discontinued with effect from 31st March, 2015, however it appears that the Department

concerned of the Government of India received references from the State Governments of Rajasthan and Madhya Pradesh on the issue and

difficulties on various counts were cited to be faced by the State Governments after expiry of deadline on 31st March, 2015. The State

Government of Rajasthan had requested inter alia of the deadline of ploughing back of poppy straw beyond 31st March, 2015, since a large

number of poppy straw addicts in the State of Rajasthan has to be de-addicted. In view of the representation, Government of India, Department of

Revenue, issued another Order in exercise of powers under Section 74A of the NDPS Act whereby it was decided to extend the deadline of 31st

March, 2015 mentioned in the Order dated 07th March, 2012 by one further year beyond 31st March, 2015, that is till 31st March, 2016 for all

the three poppy cultivating States. The Order stipulated further that all efforts should be made by the State authorities for complete elimination of

addicts by this extended period as no further extension of the deadline was to be given.

5.4. The impugned Resolution by the State Government is the product of the aforesaid Orders and exercise in the subject.

Poppy Straw", "Poppy Capsule

5.5. Two contentions of the petitioners deserves to be dealt with for out rightly discarding them. It was attempted to contend that poppy capsule is

not a narcotic substance. Section 2(xiv) defines narcotic drugs which means coca leaf, cannabis (hemp), opium, poppy straw and includes all

manufactured goods. Poppy straw is defined in Section 2(xviii) to mean all parts except the seeds, of the opium poppy after harvesting whether in

their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom. In the Notification specifying the narcotic

drug and psychotropic substance, poppy straw is an item at Serial No.110. It is not possible to countenance at all the submission that the poppy

straw is not a narcotic drug.

5.5.1. Poppy capsules is defined in the Gujarat Poppy Capsules Rules, 1963. As per Rule 2(1) poppy capsules means capsules of poppy

(papaver somniferum L) which have been lanced and dried and from which juice has been extracted, whether they are in their original form or cut,

crushed or powdered.

5.6. A yet another meritless contention was canvassed by learned advocate for the petitioners that poppy capsules are not poppy straw.

According to submission of learned advocate, the poppy capsules are obtained from poppy by drying up the poppy and extracting the juice

therefrom as the definition in the Rule itself suggest. This submission is stated to have been rejected in as much as only because the poppy capsules

are the capsules of papaver somniferum L-the poppy which are lanced, dried up and emptied of juice by extracting it, they does not cease to be

poppy straw. On the contrary, definition of poppy straw referred to above is explicit to provide that poppy straw means all parts of opium poppy

after harvesting whether in the original form or "cut, crushed, powered and whether or not juice has been extracted therefrom". Therefore the

distinction sought to be artificially created to suggest that poppy capsules are not the poppy straw has to rest finally with the conclusion that poppy

capsules is poppy straw in form of capsule of poppy. Therefore the further submission that the petitioners are not the users of poppy but possess

and use poppy capsules which are different from poppy straw falls flat.

5.6.1. In order to further and support the submission that the poppy capsule is not narcotic drug or psychotropic substance, decision in Ajaib

Singh v. State of Punjab [2000 CR.L.J. 2270] was relied on. In that it was held that the term poppy husk is not defined but poppy straw is

defined and that the term poppy straw includes all parts of the opium poppy and the opium poppy means the plant or species paper. It was

observed that all parts except seed in the plant would fall within the term poppy straw. It was therefore held that for an offence under Section 15, it

is not necessary that poppy straw should have been used or made into opium. The second decision pressed into service of the Himachal Pradesh

High Court in State of Himachal Pradesh v. Vajinderpal [2013 Cr.L.J. 1289], also did not lay down the proposition sought to be canvassed

on behalf of the petitioners. In that case the report of the Chemical Examiner was found incomplete and held not binding, and the contents of the

samples also did not prove that they were poppy husk within the meaning of the Act. Reliance on both the judgments are therefore misplaced and

misconstrued.

Statutory Backing, statutorily empowered

5.7. There is hardly any substance in submission that the impugned Resolution is without any source of power and that it is dehors the powers of

the respondent authorities. Section 74A of the NDPS Act deals with powers of the Central Government to give directions, providing that the

Central Government may give such direction as it may deem necessary to a State Government regarding the carrying into execution of the

provisions of this Act, providing further that the State Government shall comply with such directions. The aforementioned Orders dated 30th

November, 2009 and 07th March, 2012 by the Government of India is an exercise of statutory powers under Section 74A. The State

Government in passing the impugned Resolution have carried out the mandate flowing from the Orders of the Central Government. The impugned

Resolution is a sequetor of the powers exercised by the Central Government and the State Resolution also is independently referable to the

provision of Section 74A of the NDPS Act since as stated above, it in terms provides that the State Government shall comply with the directions

issued under this provision.

5.7.1 There are other provisions which empower the authorities to take out the regulatory measures in relation to the narcotic drugs and

psychotropic substance. Section 4 says that Central Government to take measures for preventing and combating abuse of illicit traffic in the

narcotic drugs, etc. and such measures may be taken in coordination with the State Government. In Chapter III, Section 8 deals with prohibition of

certain operations which include in clause (b) cultivation of the opium poppy or to produce, manufacture, possess, sell, purchase, transport as well

as use and consume any narcotic drug or psychotropic substance. Section 9 of the Act again empowers the Central Government to permit control

and regulate by means of Rules. Similar is provision of Section 10 which vests in the State Government. Section 9A confers power to control and

regulate the controlled substances. It is therefore not possible to countenance that the impugned Resolution cannot be validated in terms of powers.

The Orders which are passed by the Central Government are directly traceable and amounts to an eminent exercise of powers under Section 74A

of the Act. The petitioners have not challenged the Orders of the Central Government. The impugned Resolution is also in terms of the validity and

legality, traces from the said Section 74A of the Act. It is passed by the State Government in terms of the said Section and in exercise of powers

under Section 139 of the Bombay Prohibition Act, 1950.

5.7.2. As per Section 139(a) of Bombay Prohibition Act, 1949, which confers on the State Government general powers in respect of licence, etc.,

empowers the State Government to prohibit the grant of any kind of licences, permits, passes or authorisations. The provision start with non-

obstante clause that notwithstanding anything contained in the Act or the Rules made under the Act, the State Government may be general or

special order issue the prohibition. The State Government has thus power to prohibit the licencees for poppy capsule. Even if the Gujarat Poppy

Straw Rules, 1963 are framed, which are also in exercise of powers under the Bombay Prohibition Act, the impugned Resolution prohibiting the

licencees as a clear source of power. Therefore reading the provision of Section 74A of the NDPS Act together with the aforesaid provision of

clause (a) of Section 139 of the Bombay Prohibition Act, the impugned Resolution is issued in competent exercise of statutory powers and cannot

be assailed on the ground of it being de hors of powers.

5.8 In the facts of the present case, submission cannot be accepted that total prohibition was not permitted. The decision in Narinder S. Chadha

(supra) while laying down the proposition that power to regulate do not include prohibition, the same is not true in the facts of the present case.

The prohibition imposed by the impugned Resolution is part of regulation and is a kind of regulatory measure only. It is not a ban or prohibition as

could be contra distinguished for its connotation. When there is no right claimable, the contention on such premise was misconceived and the said

principle does not come to rescue to the petitioners to successfully assail the impugned Resolution as illegal on that ground.

No right flows from Rules, 1963

5.9. Adverting to the contention of the petitioners that the resolution is bad as it has the effect of rendering the Gujarat Poppy Capsules Rules,

1963 redundant, the said Rules, which are framed by the State Government in exercise of powers conferred by Section 143 of the Bombay

Prohibition Act, 1949 deal with grant of licence and permitting possession of the poppy capsules. Rule 4 deals with permit for possession of poppy

capsules to provide that any person desiring to possess and use poppy capsules in excess of 100 grams for a bona fide scientific, research,

educational, medicinal, domestic or such other purpose can make application to the authorised officer for a permit, which application shall contain

the particular mentioned in sub rule (2). Retail licence for sale of poppy capsules is given as per the provisions of Rule 5, whereas Rule 5AA is

about wholesale licence. Rule 5A provides for limitation of quantity to be sold and Rule 6 contemplates the period of licence or permit stating inter

alia that no licence or permit under Rule 4 of Rule 5 shall be granted for a period beyond 31st March next following the date of commencement of

the licence or permit. Rule 7 is about import pass and Rule 8 is for export pass; Rule 9 and Rule 10 are the provisions regarding transport without

pass and making application for transport pass. Rule 11, Rule 12 and Rule 14 deal with the obligations to be observed during transit, power of the

inspection during transit where the poppy capsules are transported and are in transit. Rule 13 deals with accounts and returns, while Rule 14 says

that the licensee when selling any quantity of poppy capsules shall give to the purchaser memorandum of sale containing particular specified in

Form Poppy-8 and shall obtain purchaser's signature.

5.9.1. These rules in the scheme, purport and effect are enabling in nature. Rule 4 and Rule 5 allow permit or licence for poppy capsules; Rules for

issuance of transport pass are also of enabling character. The other rules which deal with the limitation period, the period for which a person may

continue to have a licence or permit and the provisions in the rule about the package not to be opened or broken during transit, revenue officer's

powers of inspection during transit and the requirement of maintaining accounts and procedure for selling by executing memorandum of sale, are all

the regulatory mechanism provided under the Rules for using or dealing with the poppy capsules. In other words, the entire set of Rules of 1963

are of enabling nature and of regulatory or controlling character. They define and regulate on the use of poppy capsules.

5.9.2. When the provisions of rules or of a statute are of enabling kind, such provisions are not and do not become source of any right, much less

any enforceable right. No right flows from the Poppy Capsules Rules, 1963 for a person to use or to deal with in any manner including to consume

the poppy capsules. Neither there is right to have a licence or permit, nor there is any right to sell, import, export or transport the poppy capsules.

The Rules of such kind and nature which prescribe regulatory mechanism, cannot be a source of right. When no right flows from these Rules, it

cannot be validly contended that the impugned Resolution which is otherwise passed in valid exercise of powers, is illegal on the ground that

because of Resolution, the Rules became otiose. A particular provision or group of provisions which is not a source of right and from which no

rights originate or claimable cannot become basis for assailing an action done or taken under the authority of law and with backing of statutory

provisions. For the aforesaid reasons, the contention with reference to the Gujarat Poppy Capsules Rules, 1963 is devoid of merit.

Rational and Reasonable:

5.10. The expert studies have revealed that the poppy capsule is not indispensable medicinal requirements without which the persons taking it-the

addicts cannot survive. On the contrary, it is stated by the Government of India that an expert committee was constituted in the year 2003 by the

Department of Revenue, Ministry of Finance, Government of India, for assessing the medical necessity of poppy straw addicts. The expert

committee in its report opined that the administration of poppy straw to addicts was not a medical necessity and the levels of use of poppy straw

noticed could hardly be regarded as compulsive denial of which would cause acute withdrawal symptoms.

5.10.1. Therefore the experts have raised doubts, founded on in-depth studies in the filed about the medicinal use and its indispensability for

consumption for medical purposes by the addicts, the entire aspect of medical necessity of poppy straw (popularly known as Doda Chura) lost its

emphasis for claiming a right to consume the said substance.

5.10.2. A decision of the Apex Court in *Academy of Nutrition Improvement v. Union of India* [(2011) 8 SCC 274] could be properly relied

on by learned Government Pleader. In that case, compulsory iodisation of common salt used for human consumption was in issue with reference to

the constitutional validity of Rule 44-I of Prevention of Food Adulteration Rules, 1955. It was the policy of the government to impose compulsory

iodisation so as to prevent iodine deficiency disorders (IDDs) which was evolved based on certain scientific and medical inputs. The Apex Court

held that mere fact that some medical experts hold a contrary opinion is not sufficient to declare policy as arbitrary or unreasonable. Therefore

when the impugned Resolution banning the poppy capsules is issued in the specific background of expert studies which advocated a particular view

point, and which is a valid exercise in law to pass the Resolution, the insistent submission on behalf of the petitioners that in their perception they

need the poppy capsule and the contents thereof for medical purposes, even if assumed for the sake of argument to be based on consideration

other than the addiction in some way, the same would not be of any help to the petitioners.

5.10.3 In *Academic Nutrition Improvement* (supra), the Supreme Court stated as under.

There is thus some material to support the contention of the petitioners that around 90% of the populace do not need iodised salt and that

consumption of excess iodine may have some adverse effects. On the other hand there is also considerable material for the view that compulsory

iodisation is also necessary to prevent IDDs in about 10% (or more) of the populace and the consumption of iodised salt by the remaining 90%

who do not require it, may not be injurious to their health as excess iodine is easily excreted. The question whether there should be universal salt

iodisation is a much debated technical issue relating to medical science. An informed decision in such matters can only be taken by experts after

carrying out exhaustive surveys, trials, tests, scientific investigations and research. Courts are neither equipped, nor can be expected to decide

about the need or absence of need for such universal salt iodisation on the basis of some articles and reports placed before it."" (para 34)

5.10.4. A trite principle is that entering into field of any technical or scientific expertise would amount to entering into an unchartered field always

not to be embarked upon by the Courts to weigh the expert opinion and take its own view, for, it is neither prudent nor permissible as the Courts

do not have the knowledge of the experts. This was stated in paragraph 35 by the Supreme Court as under:

This Court in a series of decisions has reiterated that courts should not rush in where even scientists and medical experts are careful to tread. The

rule of prudence is that courts will be reluctant to interfere with policy decisions taken by the Government, in matters of public health, after

collecting and analysing inputs from surveys and research. Nor will courts attempt to substitute their own views as to what is wise, safe, prudent or

proper, in relation to technical issues relating to public health in preference of those formulated by persons said to possess technical expertise and

rich experience."" (Para 35)

Furtherance of Directive Principles:

5.11. The studies undertaken by the experts on the basis of which the Orders referred to herein above were issued by the Government of India,

inter alia noted that the consumption of poppy capsules was not a medical compulsion, and that the use and consumption of poppy straw was

common amongst the class of labourers, truck drivers and such class of persons who used the capsules to relieve fatigue and physical pain. Most

of the users, found the studies, were able to leave the consumption addiction by themselves without any difficulties though with some symptoms.

The committee however find it proper to discontinue the use as the misuse was outweighing. It is also the case of the respondent-State

Government that the disposal of poppy straw is a major challenge and is repeatedly misused for drug paddling and illegal trafficking.

5.11.1. Article 47 which is Directive Principle of State Policy, enjoins a duty on the State to raise the level of nutrition and the standard of living

and to improve public health. It is a constitutional mandate that all policy decisions and actions by the State has to be guided and beckoned by the

salutary principles contained in these Directives. Therefore the banning of use of poppy capsules is informed by and amounts to redemption of the

Directive Principles of State Policy under Article 47 of the Constitution.

Never a right under Article 2:

5.12. When it is contended by the petitioners that their right to consume and have the poppy capsules is part of their fundamental right under

Article 21, it really implies that a fundamental right to consume intoxicant is claimed. Addiction to a drug or a narcotic substance can never be

claimed as right. Such proposition never hold good and is incongruous to the concept of right in the society governed by rule of law. A right to be

so-called for an individual living in the society has the necessary constituent of the rule of law and the collective interest. There cannot be a right to

consume a particular substance which is like poppy straw, much less the same can by any stretched be viewed or claimed as fundamental right

flowing from Article 21 of the Constitution. The concept of "life" encapsulated under Article 21 signifies healthy, reach and contentful orderly life.

Right to health is recognised as part of Article 21. A consumption of intoxicant or narcotic or psychotropic substance is antithetic to the concept of

health and therefore stands divorced from the right to life and from any other concomitant rights which may be claimed under the canopy of rights

under Article 21. Right of such nature cannot be claimed as fundamental. Claiming that right to consume poppy capsule is one emanating from right

to life, is to seek expansion of interpretation of Article 21, which is both innave and nasty. Right to life and liberty enshrined under Article 21

cannot have this much stress and width so as to allow a person to consume a intoxicating or psychotropic substance on the ground which are

otherwise not supported by the expert studies. The right under Article 21 and the concomitant rights cannot be claimed unbound and without

reasonable restrictions which have amongst others societal good and the considerations of larger interest of public. Furthermore, it is well settled

that in developing and defining the fundamental rights, there should be an intake of Directive Principles of State Policy. In Society for Unaided

School of Rajasthan v. Union of India [(2012) 6 SCC 1], the principle was reemphasised that fundamental rights have to be interpreted in light

of the Directive Principles.

6. In light of the aforesaid discussion and reasons, none of the contentions advanced to assail the impugned Resolution dated 05th May, 2015 as

illegal, stand good on merits. The impugned Resolution is product of exercise of powers available in the area to the State Government. The powers

being traceable in law as discussed above, the submission that passing of Resolution is de hors the powers cannot be accepted. The Poppy Straw

as well as Poppy Capsules both fall within the purview of NDPS Act and defined as narcotic drug, therefore supplying thereof could be dealt with

and controlled by the respondent-Governments under the NDPS Act, 1985. The ground that by virtue of the impugned Resolution, Gujarat Poppy

Capsules Rules, 1993 are rendered redundant, is meritless for questioning the legality of the Resolution as the Rules are of enabling character and

no right flows for the petitioners therefrom. Assailing of right for supply of Poppy Capsules and consumption thereof as part of Article 21 was a

miserably misconceived argument. Therefore, none of the submissions hold good.

7. As a result, the petition is devoid of merits. The same is hereby dismissed. Notice is discharged.

Order In Special Civil Application No.12740 of 2015:

The aforesaid order passed in Special Civil Application No.12644 of 2015 shall govern the present petition as well. The petition is devoid of

merits for the reasons recorded above. None of the prayers can be granted. Hence summarily dismissed.