2025:KER:75638

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE BASANT BALAJI

MONDAY, THE 13TH DAY OF OCTOBER 2025 / 21ST ASWINA, 1947

WP(PIL) NO. 117 OF 2025

PETITIONER:

RAJASIMHAN, AGED 47 YEARS
ADVOCATE, S/O. LATE T. V. APPUKUTTAN,
ADVOCATE, B12, ASHOKA APARTMENTS, MARINE DRIVE,
HIGH COURT P.O., ERNAKULAM, PIN – 682031.

BY ADVS. SRI. N. GOPAKUMARAN NAIR (SENIOR)
SRI. S. PRASANTH
SMT. HELEN P.A.
SRI. ATHUL ROY
SMT. RENUKA VENU
SRI. INDRAJITH DILEEP
SMT. AMALA ANNA THOTTUPURAM

RESPONDENTS:

1 **UNION OF INDIA**
REPRESENTED BY THE SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE,
NEW DELHI, PIN – 110001.

2 **PRESS COUNCIL OF INDIA**
REPRESENTED BY ITS SECRETARY/REGISTRAR,
SOOCHNABHAWAN, 8-CGO COMPLEX, LODHI ROAD,
NEW DELHI, PIN – 110003.

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3 STATE OF KERALA REPRESENTED BY THE SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE, SECRETARIAT, THIRUVANANTHAPURAM, PIN – 695001.

4 PENGUIN RANDOM HOUSE OF INDIA PRIVATE LIMITED, TOWER-1, 4TH FLOOR, EMMAR CAPITAL, MEHRAULI-GURGAON RD., SIKANDERPUR, GURUGRAM, HARYANA, 'PUBLISHER OF MOTHER MARY COME TO ME', PIN – 122002.

5 MS. ARUNDHATI ROY, AUTHOR, REPRESENTED BY HER PUBLISHER, PENGUIN RANDOM HOUSE OF INDIA PRIVATE LIMITED, TOWER-1, 4TH FLOOR, EMMAR CAPITAL, MEHRAULI-GURGAON RD., SIKANDERPUR, GURUGRAM, HARYANA, PIN – 122002.

BY ADVS. MS.KRISHNA S., CGC FOR R1 & R2
SRI.ANIL SEBASTIAN PULICKEL
SRI.SANTHOSH MATHEW (SR.) FOR R4
SRI.ARUN THOMAS
SMT.VEENA RAVEENDRAN
SMT.KARTHIKA MARIA
SRI.SHINTO MATHEW ABRAHAM
SMT.LEAH RACHEL NINAN
SRI.MATHEW NEVIN THOMAS
SRI.KARTHIK RAJAGOPAL
SRI.KURIAN ANTONY MATHEW
SMT.APARNNA S.
SRI.NOEL NINAN NINAN
SRI.ADEEN NAZAR
SRI.ARUN JOSEPH MATHEW

THIS WRIT PETITION (PUBLIC INTEREST LITIGATION) HAVING COME UP FOR ADMISSION ON 13.10.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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"C.R."

JUDGMENT

Dated this the 13th day of October, 2025

Nitin Jamdar, C. J.

The book authored by Respondent No.5 titled *"Mother Mary Comes to Me"*, published by Respondent No.4, a publishing house, was released on 2 September 2025. According to the Petitioner, the image of the author on the cover of this Book, smoking a cigarette, is in contravention of the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. The Petitioner seeks a direction to the Respondents – Union of India, Press Council of India, and State of Kerala, to prohibit the sale, circulation, and display of the Book, and to direct Respondent No.4 to withdraw all copies of the Book.

2. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (Act of 2003), as reflected in its Statement of Objects, was enacted to prohibit the advertisement of, and to regulate the trade, commerce, production, supply, and distribution of cigarettes and other tobacco products. Section 3(a) of the Act of 2003 defines "advertisement" to include any visible representation by way of notice, circular, label, wrapper, or other document, and also encompasses any announcement made orally or by any means of producing or transmitting light, sound, smoke, or gas.

3. Section 5 of the Act of 2003, which is the primary provision prohibiting the advertisement of cigarettes and other tobacco products, reads as follows:

> *"5. Prohibition of advertisement of cigarettes and other tobacco products.– (1) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.*
>
> *(2) No person, for any direct or indirect pecuniary benefit, shall–*
>
> *(a) display, cause to display, or permit or authorise to display any advertisement of cigarettes or any other tobacco product; or*
>
> *(b) sell or cause to sell, or permit or authorise to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or*
>
> *(c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or*
>
> *(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:*

Provided that this sub-section shall not apply in relation to–

(a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of–

(a) cigarettes or any other tobacco product; or

(b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person."

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Sections 6 and 7 of the Act of 2003 regulate the trade, commerce, production, supply, and distribution of cigarettes and other tobacco products. Sections 8, 9, and 10 prescribe the manner in which the specified health warnings are to be displayed. Section 25 empowers the Central or State Government, by notification in the Official Gazette, to authorize one or more persons competent to act under the Act of 2003.

4. The Central Government, in exercise of the powers conferred under Section 31 of the Act of 2003, has framed the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of

Trade and Commerce, Production, Supply and Distribution) Rules, 2004 (Rules of 2004). Under Rule 2(e), "indirect advertisement" as referred to in Section 5(1) of the Act of 2003 is defined to include, the use of a name or brand of tobacco products for marketing, promoting, or advertising other goods, services, or events; the marketing of tobacco products with the aid of a brand name or trademark that is known or used as a name or brand for other goods or services; the use of particular colours, layouts, or presentations associated with specific tobacco products; and the depiction of tobacco products or smoking situations in the advertisement of other goods and services. Rule 4 of the Rules of 2004 provides for prohibition of advertisement of cigarettes and other tobacco products and also for the establishment of a Steering Committee to oversee compliance.

5. In exercise of the powers conferred under Section 25 of the Act of 2003 and Rule 4 of the Rules of 2004, the Central Government has constituted the Steering Committee to examine alleged violations under Section 5 of the Act. The Steering Committee constituted under sub-rule (9) of Rule 4 of the Rules of 2004, is empowered to take cognizance *suo motu* or examine specific violations under Section 5 of the Act of 2003, including cases relating to indirect advertising and promotion, and to pass appropriate orders. This is, in short, the statutory scheme and the adjudicatory forum for such matters.

6. We have heard Mr. N. Gopakumaran Nair, learned Senior Advocate, assisted by Mr. S. Prasanth, learned counsel for the Petitioner, Ms. S.

Krishna, learned Central Government Counsel appearing for Respondent Nos.1 and 2, and Mr. Santhosh Mathew, learned Senior Advocate, assisted by Mr. Arun Thomas, learned counsel for Respondent No.4.

7. The primary contention of the Petitioner is that the depiction of smoking on the cover of the Book constitutes a violation of Section 5 of the Act of 2003. It is further urged that, as a consequence, Sections 7 and 8 of the Act of 2003 are triggered and the Official Respondents are obliged to take appropriate action against Respondent Nos.4 and 5 in respect of the book in question.

8. The learned counsel for the Union of India, after taking instructions, submitted that the Steering Committee constituted under the Act of 2003 and the Rules of 2004 is the competent authority to examine allegations of violations of Section 5 of the Act. Any member of the public may submit a complaint, including through the online portal, and the Steering Committee is required to afford a hearing to the person against whom the complaint is made before passing any order. It was further submitted that, if the Steering Committee finds merit in a complaint, it can provide a hearing to both the complainant and the alleged offending party. The learned counsel emphasised that the Petitioner has rushed to this Court without first approaching the designated expert authority.

9. Respondent No. 4, the publisher of the Book, has taken serious objection to the suppression and lack of due diligence by the Petitioner in

failing to disclose the presence of a disclaimer on the Book, which states that the depiction is not intended to promote smoking. Respondent No.4 submitted that, with reference to the provisions of the Act of 2003 and the Rules of 2004, the Petitioner has wrongly stated in paragraph 15 of the petition that depictions of smoking in films, television, and media are required to carry statutory health warnings. The insertion of the word "print" in this context is erroneous, as no such requirement exists. It was further contended that the Petitioner has not complied with Rule 146AD of the Rules of the High Court of Kerala, 1971, which mandates disclosure as to whether the Petitioner has approached the competent authority for redressal of the grievance before invoking the writ jurisdiction of this Court. Respondent No.4 argued that a plain reading of Section 7 of the Act of 2003 shows that it applies only to persons engaged in the production, supply, and distribution of cigarettes, and that the statutory warning referred to therein is required to be placed on the packets of cigarettes and other tobacco products. There is no provision under the Act of 2003 or the Rules of 2004 mandating such warnings on images, pictures, or photographs. Respondent No.4 reiterated that Section 5 focuses solely on the prohibition of advertisements of cigarettes and that images or depictions such as those on a book cover are not covered under the Act of 2003, yet Respondent No.4 has volunteered to place a disclaimer in the Book. Respondent No.4 has relied upon the decisions in the cases of *K.A. Abbas v. Union of India*[1]*, Mahesh Bhatt v.*

1 (1970) 2 SCC 780

Union of India[2]*, Shreya Singhal v. Union of India*[3]*,* and *Ramanathan v. State*[4]. Respondent No.4 further contended that the book cover is an integral and inseparable part of the book, and that the Petitioner cannot, by selectively interpreting the Act of 2003 and the Rules of 2004 to suit his contentions, seek to infringe the fundamental rights of Respondent Nos.4 and 5 under Articles 19(1)(a) and 19(1)(g) of the Constitution of India. Respondent No.4 has also annexed to its counter affidavit several photographs, book covers, and materials from the print media illustrating depictions of persons smoking. According to Respondent No.4, this petition is merely an attempt to gain cheap publicity and ought to be dismissed.

10. At the outset, it is necessary to comment on the manner in which this petition has been presented by the Petitioner, who is a practicing advocate. The petition is filed with a photo of the book cover and a copy of the Act of 2003 as the only annexures. The petition makes no reference whatsoever to the scheme of the Rules framed under the Act of 2003. Various Rules have been notified under the Act of 2003, and other details are compiled in the *Guidelines for Law Enforcers for Effective Implementation of Tobacco Control Laws, 2024*, published by the Ministry of Health and Family Welfare, Government of India. These documents and the Rules are in the public domain, yet the Petitioner made no reference to them in the pleadings and the petition was filed

2 2009 SCC Online Del 104
3 (2015) 5 SCC 1
4 2023 SCC Online Mad 4522

without proper research. The language of the legal provision is sought to be distorted. The Petition does not disclose that the disclaimer placed by the publisher on the Book states that the depiction is not intended to promote smoking. When queried why this fact was not disclosed in the petition, the learned counsel for the Petitioner candidly stated that the Petitioner had not examined the Book before filing the petition. It is not the Petitioner's case that the disclaimer was examined and was found inadequate; rather, it was not examined at all. Such a cavalier approach is wholly unsatisfactory. Greater diligence and responsibility was expected, particularly in a petition filed by an advocate raising legal issues. After Respondent No.4 raised an objection regarding the incomplete and inaccurate presentation of facts and suppression, the Petitioner sought to tender a rejoinder in court without first seeking leave to do so.

11. The Steering Committee, constituted under Rule 4(9) of the Rules of 2004, is empowered to examine violations of Section 5 of the Act of 2003. The composition of the Steering Committee placed before us shows that it is comprised of senior-level officers and domain experts drawn from different fields. The Secretary, Ministry of Health and Family Welfare, Government of India, serves as the Chairperson. The members include a nominated Member of Parliament, the Director General of Health Services, the Joint Secretary of the Ministry of Information and Broadcasting, the Joint Secretary of the Ministry of Law and Justice, representatives of the Advertising Standards Council of India and the Press Council of India, representative of an Institute of Public Health, a

senior medical professional from the Department of Preventive Oncology, representative of the Non-Governmental Organisation Consumer Online Foundation, and the Joint Secretary in-charge of Tobacco Control, Ministry of Health and Family Welfare. Therefore, this Steering Committee is comprised of members who can bring in diverse perspectives when the question arises as to whether there is any violation of Section 5 of the Act of 2003. This wide and diverse composition is intended to ensure that the issue is looked at holistically and that would require expert input. It is, therefore, an expert body entrusted with the responsibility to examine violations of Section 5 and to pass orders thereon. As pointed out by the learned counsel for the Union of India, any person may bring to the notice of the Steering Committee an alleged violation of Section 5 of the Act of 2003, and the Committee also has the power to take up causes *suo motu*.

12. The Petitioner treats the Steering Committee as an alternative remedy and contends that this petition is maintainable notwithstanding the availability of an alternative remedy, on the ground that such a remedy is not efficacious. According to the Petitioner, the disclaimer stated to have been printed on the Book by the publisher is not in conformity with the provisions of the Act of 2003 and, therefore, despite the presence of such disclaimer, there is a violation of Section 5 of the Act. It is also submitted that since the alleged violation is a direct infraction of the statutory provisions, the matter warrants examination in the present writ petition.

13. The contention of the Petitioner regarding the exercise of writ jurisdiction despite the existence of an alternative remedy is wholly misguided. The Petitioner has not approached this Court for a personal cause but purports to raise an issue for the benefit of the public. The correct question, therefore, is not whether the Petitioner has an effective "remedy", but whether the matter is one that ought to be examined by an expert body constituted under the Act of 2003. Apart from making a general and vague assertion in oral arguments that the decision of the Steering Committee may not be correct, the Petitioner has offered no further substantiation as to why it would be so.

14. Neither the Act of 2003, particularly Section 5 thereof, nor the Rules of 2004 make any specific reference to a mandate to place statutory warning on a book cover. Therefore, it has to be determined whether Respondent Nos.4 and 5 have, in fact, contravened Section 5 of the Act of 2003. Such questions have to be examined in light of the statutory provisions and not on the basis of the Petitioner's moral perceptions. Respondent Nos.4 and 5 have, in turn, asserted their fundamental rights under Articles 19(1)(a) and 19(1)(g) of the Constitution of India, namely, the right to carry on trade or business and the right to freedom of expression. Any contravention of the Act of 2003 or the Rules of 2004 carries legal consequences, including the possibility of adverse orders against the concerned party. To determine whether there is a violation of Section 5, the statute itself provides a mechanism and constitutes an expert body, the Steering Committee, for that purpose.

15. As regards the conduct of the Petitioner, he has not only not bothered to take up the cause with the competent authority, but has also made no reference to it in the petition. For no reason, the Petitioner in the oral arguments raises doubts as to the credibility of the Steering Committee. The Petitioner has not taken even a minimal effort to ascertain the true facts or the correct legal position before invoking the jurisdiction of this Court. The Petitioner is not the sole guardian of the Act of 2003, as he seeks to portray. A statutory authority comprising experts and senior officials has been established under the Act of 2003 to ensure its proper implementation and to prevent its misuse, where applicable. The petition was filed without even examining the Book and, after the filing of a detailed counter affidavit by Respondent No.4, the suppression of material facts was now sought to be covered up. In the arguments, the Petitioner attributes "Intellectual Arrogance" to Respondent No.4, which is entirely irrelevant to the legal questions. The learned counsel for the Respondents submits that the Petitioner has chosen to file this Public Interest Litigation only to garner self-publicity, and to cast personal aspersions on Respondent No.5. We agree.

16. The misuse of Public Interest Litigation jurisdiction has been noted in several cases by the Hon'ble Supreme Court. In the case of *Dattaraj Nathuji Thaware v. State of Maharashtra and Others*[5], the Hon'ble Supreme Court observed as under:

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5 (2005) 1 SCC 590

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> *"12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."*

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This legal position will entail dismissal of the Petition.

17. To conclude, whether there is any infringement of Section 5 of the Act of 2003 is a question involving statutory interpretation and factual assessment. In view of the statutory scheme under the Act of 2003 and

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the Rules of 2004, such matters are to be decided by the expert body constituted under the Act, namely, the Steering Committee, after affording an opportunity of hearing to the parties. The Steering Committee is empowered to act *suo motu*, and any person may bring to its notice an alleged violation of Section 5 of the Act of 2003. The Petitioner, despite making him aware, has refused to take up the issue before the competent expert statutory authority, filed the petition without examining the relevant legal position, and without verifying the necessary material, including the presence of a disclaimer on the Book, has sought to invoke the extraordinary jurisdiction of this Court under the guise of public interest. In light of these circumstances, keeping in mind the caution that courts must ensure that Public Interest Litigation is not misused as a vehicle for self-publicity or for engaging in personal slanders, the Writ Petition is dismissed.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
BASANT BALAJI,
JUDGE

krj/-

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APPENDIX OF WP(PIL)NO.117/2025

PETITIONER'S EXHIBITS:-

EXHIBIT-P1	**TRUE COPY OF THE COVER PAGE OF THE 'MOTHER MARY COMES TO ME' BOOK.**
EXHIBIT-P2	**TRUE COPY OF THE (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003' (HEREINAFTER 'COTPA, 2003') ACT.**
EXHIBIT P3	**TRUE COPY OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION SUPPLY AND DISTRIBUTION) AMENDMENT RULES, 2005.**
EXHIBIT P4	**TRUE COPY OF THE AMENDMENT RULES, 2005.**
EXHIBIT P5	**TRUE PHOTOCOPY OF THE CIGARETTE PACKETS OF THREE MAJOR BRANDS OF CIGARETTES SOLD IN INDIA, WITH THE ABOVE STATUTORY WARNING.**

RESPONDENTS' EXHIBITS:

EXHIBIT-R4(1)	**TRUE COPY OF THE RELEVANT PORTION OF THE BACK COVER OF THE BOOK SHOWING THE DISCLAIMER.**
EXHIBIT-R4(2)	**TRUE COPY OF NOTIFICATION G.S.R.489(E) DATED 09.06.2010 OF THE MINISTRY OF HEALTH AND FAMILY PUBLISHED IN THE GAZETTE OF INDIA.**
EXHIBIT-R4(3)	**TRUE COPY OF THE RELEVANT PAGES OF THE 'GUIDELINES FOR LAW ENFORCERS FOR EFFECTIVE IMPLEMENTATION OF TOBACCO CONTROL LAWS' PUBLISHED IN 2024 BY THE NATIONAL TOBACCO CONTROL PROGRAMME, MINISTRY OF HEALTH AND FAMILY WELFARE, GOVERNMENT OF INDIA.**

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EXHIBIT-R4(4) **TRUE COPY OF THE ORDER DATED 16.01.2024 OF THE HON'BLE SUPREME COURT IN SLP(CRIMINAL) DIARY NO. 49498 OF 2023 (S. CYRIL ALEXANDER V. STATE)**

EXHIBIT-R4(5) **TRUE COPY OF THE ORDER DATED 02.04.2009 OF THE HON'BLE SUPREME COURT IN CC 3709-3711/2009 (UNION OF INDIA V. MAHESH BHAT).**

EXHIBIT-R4(6) **TRUE COPY OF PHOTOGRAPHS OF THREE PAINTINGS DEPICTING VAN GOGH SMOKING, WHICH ARE A PART OF VAN GOGH'S SELF-PORTRAIT SERIES.**

EXHIBIT-R4(7) **TRUE COPY OF 16 PHOTOGRAPHS OF BOOK COVERS DEPICTING SMOKING PUBLISHED IN INDIA AFTER THE COMMENCEMENT OF COTPA.**

EXHIBIT-R4(8) **TRUE COPY OF 14 PHOTOGRAPHS FROM MAGAZINE AND NEWS ARTICLES DEPICTING SMOKING PUBLISHED IN INDIA AFTER THE COMMENCEMENT OF COTPA.**

//TRUE COPY//

P.A. TO C.J.