

(Today on 06.07.2020, Court Issued Notice
Returnable on 29.7.2020)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(DIST: AHMEDABAD)

(EXTRA ORDINARY CIVIL JURISDICTION)

Re: Public Interest Litigation Seeking Enforcement Of The Consumer's Right To Be Informed about the country where the company manufacturing the product is based and the Place Of Manufacture Of all Products Sold Through Web Portals And / Or Sold Through E-Commerce Applications and for seeking issuance of directions to the respondent Government and authorities to legislate or impose restriction on sale of products without mentioning the place of manufacturing and the country where the company manufacturing the product is based.

WRIT PETITION (PIL) NO. 102 OF 2020

In the matter under Articles
19, 21, and 226 of the
Constitution of India;

And

In the matter under the
Consumer Protection Act,
2019

And

In the matter between:

Yatin Sureshbhai Soni,
Male, Aged: 54 years, Profession: Advocate,
Residing at: L-501, Indraprasth - 6,
HDFC Bank Lane, Prahladnagar,
Satellite,

Ahmedabad-380015.

...Petitioner

VERSUS

1. Union of India
Notice to be served through:
The Secretary
having its office at:
Department of Consumer Affairs,
Government of India,
Krishi Bhavan,
New Delhi : 110 001.
2. Joint Secretary,
Ministry of Information and broadcasting,
Government of India,
Room No. 552, A wing,
Shastri Bhavan,
New Delhi-110001
3. Secretary,
Ministry of Consumer affairs, food
And public distribution,
Government of India,
Krishi Bhavan,
New Delhi - 110 001
4. Principal Secretary to PMO Office,
PMO Office, South Block, Raisina Hill,
New Delhi- 110011.
5. State of Gujarat
Notice to be served through:
The Chief Secretary,
having its office at:
Block No. 1, 5th Floor,
Sector - 10, Sachivalaya,

Gandhinagar: 382 010.

6. Secretary,
 Food, Civil Supplies &
 Consumer Affairs Department of Gujarat,
 5th Floor, Block No. 14,
 New Sachivalaya, Sector - 10,
 Gandhinagar,
 Gujarat - 382010

...Respondents

To
 Hon'ble The Chief Justice
 And Other Hon'ble Judges
 Of The High Court Of
 Gujarat,

The humble application
 of the applicant above
 named;

MOST RESPECTFULLY SHEWETH THAT:

1. The petitioner is a citizen of India and residing in the state of Gujarat and therefore the petitioner is entitled to the protection of his fundamental rights and public at large enshrined under the Constitution on India. The present petition is under Article 226 of the Constitution of India and is being filed by the petitioner by way of public interest litigation. The present petition is not guided by self-gain or for any gain of any other person / institution / body and that there is no oblique motive other than that of public interest in filing this petition. This petition is filed purely in public interest and not at the instance of any person or organization other than the petitioner. That this

petition is filed in the public interest to achieve the objects of "Atmanirbhar Bharat Abhiyan" as addressed by the Hon'ble Prime Minister of India, in his address to the Nation on 12th May, 2020. The present petition is filed for the benefit of large number of people and therefore public interest is involved.

2. That the petitioner is a resident of Ahmedabad and practising as an Advocate in Gujarat High Court since last 31 years and is a public-spirited person and thereby espousing the common cause in the interest of public at large and has no personal interest in the present litigation except for benefit of public at large. The petitioner has earlier not filed any other public interest petition as a party in person either in this Hon'ble Court or in any other courts. This being the petitioner's first PIL as a Party In Person.

3. That the petitioner is filing the present petition purely in public interest on his own and not at the instance of any other person or organization. The complete costs of litigation along with ancillary expenses are borne by the petitioner himself. This petition is filed by the petitioner and he is going to appear as a party in person and hence, there is no advocate's fees. It is hereby declared that the petitioner has not faced any proceedings under the Contempt of Courts Act, 1971 and the present petition is covered under item (xiii) of Rule 5 of Public Interest Litigation Rules, 2010.

4. Brief facts of the case are as under:-

4(1). By way of this Public Interest Litigation petition, the petitioner seeks to achieve effectively the objects of "Atmanirbhar Bharat Abhiyan " Policy of India and to seek various reliefs from this Hon'ble Court to implement the same. The present petition is filed for seeking enforcement of the consumer's right to be informed about the country where the company manufacturing the product is based and the place of manufacture of all products sold through Web Portals and/or E-Commerce applications and seeking appropriate directions to the respondent Government and government authorities to legislate or impose restriction on online sale of products which is the subject matter of the present Writ Petition(PIL), so that public at large may become aware about the place manufacture and the country where the company manufacturing the product is based and exercise their fundamental right of choice.

4.(2) (a). That with the advent of technology, a large scale sale of goods takes place through E-commerce forums such as Amazon, Flipkart, Myntra, Alibaba.com, Paytm, etc.

4.(2) (b). That it has been observed that the web portals and/or Mobile applications of the E-commerce platforms do not state the "Place of Manufacturing and the country where the company manufacturing the product is based "conspicuously" which makes it difficult and/or impossible for the prospective consumer of the product to know about the country/place of manufacturing of the product which he/she intends to purchase. It also becomes difficult and/or impossible to know if the company manufacturing the product is based in India or in a

foreign country or if the majority shareholding of the company selling the product on the E-Commerce platform is of a parent company outside India.

4.(2)(c). Every citizen has a fundamental right to know the name of the company and the country/place where the product has been manufactured. With the increase in user friendly apps and the new developing trend of "Home-Delivery", goods on large scale are sold through E-commerce websites and/or applications that can be accessed through mobile phones, computers and laptops. The E-Commerce platforms spend a huge amount on advertisements for promotion of their sales, attract the customers offering wide range of their products at competitive rates with no delivery charges or very little delivery charges and with heavy discounts that too through digital payments which offer interest free credit for at least 45 days. However, taking undue advantage of this situation, the unscrupulous vendors on the online platforms do not mention the place of manufacturing of the product and the country where the company manufacturing the product is based. It is only when the product is delivered to the customer that the customer comes to know that the product is either made in India or in a country which is not in the list of his/her preferences. It also happens that large number of people purchase the product online, and when they get the delivery of the said product, to their utter surprise, they do not find that products contain the name of the company who and where it has manufactured the said product.

4.(2)(d). There are large number of people, who wish to give preference to purchase products which are "Made in India" and manufactured by Indian

Companies, if available in the open market as they belong to Swadeshi School of thought. While purchasing the product through E-Commerce platforms, the citizen will be deprived of such a vital and important information, which violates his "Right to information" enshrined under the Constitution of India.

4.(2)(e). It is impossible for every user to alternatively search for the manufacturer online and extract information about it which includes but is not limited to:

4.(2)(e) (i). Name of the Manufacturer: Whether it is an Indian Company or a Foreign Entity and the percentage of share holding of the Indian stake holders.

4.(2)(e) (ii). Place of Manufacture: Whether the product is manufactured in India or in a foreign land.

4.(2)(e) (iii). Even if the Company manufacturing the production is a foreign company, in that case, whether the production of such goods takes place in India.

4.(3). Every citizen of India is not tech-savvy and it becomes crucial and vital to provide information to all such citizens that they are entitled to. The consumers are deprived of important information by consciously omitting such vital and material facts. Such important information is not conspicuously mentioned on the web portal and/or application of the E-Commerce platform, which makes it difficult for the consumer to take an informed decision and

exercise his right to choose and purchase Indian products. That an indicative list of products sold on Amazon and Flipkart wherein the particulars about place of manufacturing of the product are not conspicuously stated is annexed hereto and marked as Annexure-A Colly.

4.(4). The petitioner states that on 12.5.2020, the Hon'ble Prime Minister of India addressed the nation and gave a clarion call for "Atmanirbhar Bharat". Important and vital parts of his speech are abbreviated here for convenience. He said that it was time to become vocal about local products and make them global and that a self-reliant India will stand on five pillars viz.

4.(4)(i). Economy, which brings in quantum jump and not incremental change;

4.(4)(ii). Infrastructure, which should become the identity of India;

4.(4)(iii). System based on 21st century technology driven arrangements;

4.(4) iv). Vibrant Demography, which is our source of energy for a self-reliant India; and

4.(4)(v). Demand, whereby the strength of our demand and supply chain should be utilized to its full capacity.

A copy of the press release dated 12.5.2020 by the Central Government is annexed hereto and marked as Annexure-B.

4.(5). For effectively implementing the "Atmanirbhar Bharat Abhiyan" referred to in the foregoing paragraph, it is imperative that the consumer is enabled to effectively exercise his / her "right of

choice" and can buy products manufactured in India and/or products manufactured by Indian Companies. This becomes difficult because the "Right to information" of the consumer is violated by E-Commerce platforms that fail to conspicuously state the "Place of manufacturing and the country where the company manufacturing the product is based or that majority shareholding of the company selling the product on the E-Commerce platform is of a parent company outside India.

4.(6). The petitioner states and submits that at present it appears that there is no law making it mandatory for or there are no restrictions imposed for E-Commerce platforms to disclose the place of manufacturing of the product and name of the country in which the company manufacturing the product is based or has majority shareholding, and therefore, the relevant information is not disclosed on the web portals and/or applications of the online E-Commerce platforms. The petitioner submits that it is the fundamental right of every citizen to have the information about place of manufacturing and the country where the company manufacturing the product is or has majority shareholding. Therefore, it appears that innocent prospective buyers are not getting proper and complete information and the same violates their fundamental right of information enshrined under Art.19 and 21 of the Constitution of India. Thus, as there is no law mandating that the information referred to above has to be indicated on the E-commerce platforms, the fundamental right of all such prospective buyers and also the right to consumer awareness enshrined under the Consumer protection Act, 2019 are violated. Therefore, this PIL is maintainable to seek appropriate directions

to the government to legislate or to impose restrictions on the subject matter of this Writ Petition (PIL) for the benefit of large numbers of prospective buyers who intend to purchase goods from web portals and/or applications of the online E-Commerce platforms.

4.(7). This present petition is filed with a view to seek issuance of appropriate writ, order or directions to the respondent authorities and the Government to make such law and impose strict restrictions and / or regulations for sale of product through the web portals and/or Mobile applications of the E-commerce platforms without mentioning the following details and make it mandatory to mention the following details:

4.(7)(i). Whether particular product is manufactured by Indian company and manufactured in India,

4.(7)(ii). Whether particular product is manufactured by Indian company and manufactured in foreign land,

4.(7)(iii). Whether particular product is manufactured by foreign company and manufactured in India,

4.(7)(iv). Whether particular product is manufactured by Foreign Company and manufactured in Foreign land,

4.(7)(v). If particular product is manufactured by a Multi National Company (hereinafter referred to as MNC for short), in that case percentage of Indian

stake holder must be stated at a conspicuous place, so that the purchaser will get information; at the time of purchasing such products, without which such advertiser and the E-Commerce platforms must be made liable for penal actions.

4.(8). The government should also assign particular symbols / colours to such the products so that illiterate or semi literate persons get immediate information about the type of product and category of goods manufactured, For example:

4.(8)(i). Orange colour or any symbol of orange colour for particular product which is manufactured by Indian company and manufactured in India,

4.(8)(ii). Blue colour or any symbol of blue colour for particular product which is manufactured by Indian company and manufactured in foreign land,

4.(8)(iii). Red colour or any symbol of red colour for particular product which is manufactured by foreign company and manufactured in foreign land,

4.(8)(iv). Yellow colour or any symbol of yellow colour for particular product which is manufactured by Foreign company and manufactured in Indian land,

4.(8)(v). Pink Colour or any symbol of pink colour for particular product which is manufactured by MNC.

4.(9). If the particular product is manufactured by a Multi-National Company, in that case, along with the product details, the manufacturer and the E-Commerce platform may also disclose the percentage

of share of Indian stakeholder and percentage of share of foreign stakeholders.

4.(10). Recently on midnight 15.06.2020 after the Chinese soldiers violated the 1993, 1996 and 2013 border agreements and crossed the LAC while killing 20 Indian Soldiers, there has been a huge hue and cry to boycott Chinese products in Indian market. As per recent TV News report, the citizens of India have come to the streets and shown their dissent on use of Chinese products and burnt them. This shows that a large numbers of Indians are not interested to purchase Chinese products. A survey has revealed that "4 in 10 Indians want to boycott Chinese smart phones". A copy of the said news article is annexed hereto and marked as Annexure-C.

4.(11). It becomes vital since advertisements and information on Web Portal and/or Online Apps does not disclose the name of the country manufacturing the product and it becomes difficult for the consumer to ascertain the name of the manufacturing country of the product which he/she intends to buy.

4.(12). The petitioner states that as per his information, many times, the prohibited goods, more particularly, prohibited in Gujarat are easily available on E-Commerce platforms. There is no government checking or investigation.

5.. That the source of information of the facts pleaded, is based on personal knowledge and information and indicative list of products sold on Amazon and Flipkart annexed at Annexure-A and as per recent news-paper articles and TV news reports.

6.. That the petitioner has not made any representation before any other authorities, as subject involved in the present petition for that there are various inter connected departments of government viz. Consumer affairs, Commerce and Trade, Public Information and Broadcasting, Foreign Trade and Financial department of Government, and it will take very long time to decide the issue involved.

7. That to the best of the knowledge of the petitioner, no public interest litigation is filed by the petitioner or by anyone else raising the same issue before this Hon'ble Court or before any other Court.

8. That the present petition has been filed on the basis of aforesaid facts and circumstances, and further on the following amongst other grounds:

GROUNDS

8.(a). That as mentioned hereinabove, the "place of manufacturing" of the product and the base-country of the company manufacturing the product is not conspicuously stated on the web portals and/or applications of the online E-Commerce platforms. The petitioner submits that it is his fundamental right to know the same. By not disclosing such vital information on conspicuous place, the fundamental rights of people at large are violated.

8.(b). That the "Right to information" is a fundamental right under article 19 and article 21 of the Constitution of India and that the same is

violated when the information about the place of manufacturing of the product and the base-country of the company manufacturing the product is not conspicuously stated on web portals and/or applications of E-Commerce platforms, it makes it difficult for the prospective consumer to access the information.

8.(C). The petitioner submits that due to inaction on the part of the respondent government authorities and government regarding non imposition of any such restriction as mentioned in this petition, the fundamental rights of a large number of citizens provided under Art. 19 and 21 of the constitution Of India are violated and therefore respondent authorities and government are required to be directed by appropriate direction and / or order to enact the appropriate law and impose restrictions as mentioned in this petition. The petitioner further submits that this Hon'ble court while exercising power under Art. 226 of the Constitution of India, has very wide power and jurisdiction to issue such direction. The petitioner refers to and relies upon the finding reported in the matter between Gainda Ram and Others Versus Municipal Corporation of Delhi, (2010) 10 SCC 715. In view of the limitation of E-filing, the petitioner has annexed only the head note of the judgment which is annexed hereto and is marked as Annexure D.

8.(c). That for effective implementation of the idea of "Atmanirbhar Bharat Abhiyan", it is imperative that the consumer should be informed of the place of manufacturing and the the country where the company manufacturing the product is based which he intends to buy to effectively exercise his / her "right of

choice" and buy products manufactured in India and products manufactured by Indian Companies.

8.(d). That Section 2(9)(vi) of the Consumer Protection Act, 2019 stipulates that the Consumer rights include the Right to Consumer Awareness too. This Right of the Consumer is also violated when he does not have easy access to information about "place of manufacturing" and information about base-country of the company manufacturing the product.

Section 2(9) of the Consumer Protection Act, 2019 has been reproduced here in below for ready reference"

"Section 2(9)".

"Consumer rights" includes,-

(i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;

(ii). the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices ;

(iii). the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;

(iv). the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;

(v). the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and

(vi). the right to consumer awareness;

8.(e) The petitioner submits that there are many Indian citizens who do not intend to buy products manufactured in China. It is curious to note that with a view to confuse the intending purchasers, instead of mentioning Made in China, the words Made in PRC (People's Republic of China) are used.

9. That the petitioner is seeking interim relief on the following grounds:

GROUND(S) FOR INTERIM RELIEF.

9. That people of this country are entitled to fully exercise their fundamental right enshrined under the Constitution of India and must be consciously aware of the "place of manufacturing" of products purchased online. Unless the "place of manufacturing" of the product is mentioned on the web portals and/or applications of the E-commerce platforms, it is virtually impossible and/or difficult for the prospective consumers of the product to get reliable information as to whether the product which he intends to purchase has been manufactured in India or outside India. The petitioner has a strong prima-facie case. That equity and balance of convenience is also in favour of the petitioner. Irreparable loss will be suffered by the citizens of India if they are not allowed to exercise their right to Information. The citizens of India will have to pay for products which they do not intend to buy since

it is not an Indian Manufactured product. The petitioner is also seeking interim reliefs on the above mentions all facts and grounds.

10. That the petitioner has not filed any other petition, appeal or application either before this Hon'ble Court or before the Hon'ble Supreme Court of India or before any other Courts on the same subject matter of this petition.

11. That the petitioner has no other alternative efficacious remedy but to approach to this Hon'ble Court by way of this petition. That the petitioner craves leave to add, amend, alter or rescind any of the foregoing para or paras, with the permission of this Hon'ble Court, if and when required.

12. The petitioner, therefore, prays that this Hon'ble Court may be pleased to:

(A). Your Lordships may be pleased to admit and allow the present writ petition (P.I.L.);

(B). Your Lordships may be pleased to issue any appropriate writ, order or direction by ordering / directing the Respondents to enact such law by imposing strict restrictions / regulations and to take immediate steps / measures to ensure that in respect of all products sold online in India, the web portals and/or applications of the online E-Commerce platforms must invariably mention along with colour and symbol as mentioned above that :

(I). Whether particular product is manufactured by Indian company and manufactured in India,

(II). Whether particular product is manufactured by Indian company and manufactured in foreign land,

(III). Whether particular product is manufactured by foreign company and manufactured in India,

(IV). Whether particular product is manufactured by Foreign company and manufactured in Foreign land,

(V). If particular product is manufactured by MNC, in that case percentage of stake holder of Indian and foreign companies.

IN THE ALTERNATIVE OF PRAYER:

(C). The present respondents Government and authorities be requested / directed by issuing appropriate writ, order or direction to treat the present petition as representation and same be decided within the period 30 days and take necessary steps in pursuance to the said representation and communicate to the petitioner about their decision, and, if they require the presence of the petitioner, petitioner may be heard.

(D). That pending admission, hearing and final disposal of this petition, your Lordships may be pleased to treat the present petition as a representation and respondents be directed to decide their stand and communicate their decision to this Hon'ble court within one month by filing their affidavit in reply and this Hon'ble Court may be further pleased to direct the respondents to make their stand clear regarding the subject matter of the present petition.

(E). That pending admission, hearing and final disposal of this petition, your Lordships may be pleased to order / direct the Respondents to take immediate steps / measures to ensure that in respect of all products sold online in India, the web portals and/or applications of the online E-Commerce platforms must invariably mention:

(I). Whether particular product is manufactured by Indian company and manufactured in India,

(II). Whether particular product is manufactured by Indian company and manufactured in foreign land,

(III). Whether particular product is manufactured by foreign company and manufactured in India,

(IV). Whether particular product is manufactured by Foreign company and manufactured in Foreign land

(V). If particular product belongs to MNC, in that case percentage of stake holder of Indian.

(F). Any other and further relief/s may kindly be granted in the interest of justice.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE PETITIONER SHALL AS IN DUTY BOUND FOREVER PRAY.

Date:27.06.2020

Place: Ahmedabad.

(Yatin Sureshbhai Soni)

Party-In-Person.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(DIST: AHMEDABAD)

(EXTRA ORDINARY CIVIL JURISDICTION)

WRIT PETITION (PIL) NO.

OF 2020

Yatin Sureshbhai Soni

...Petitioner

VERSUS

Union of India & Ors.

...Respondents

AFFIDAVIT

I, Yatin Sureshbhai Soni, Hindu, Aged about 54, Occupation- Advocate, residing at L- 501, Indraprastha 6, Prahladnagar, Ahmedabad, the petitioner, do hereby state on oath and on solemnly affirmation that what is stated here in above in para Nos. 1 to 7, 10 and 11 are true to the best of my knowledge, information and belief and I believe the same to be true. Para No 8 and 9 are legal grounds. Para No. 12 contains the prayer clause.

Solemnly affirmed at Ahmedabad on this 29.06.2020.

DEPONENT

Identified by me.