

## Delhi HC nixes tobacco ban notifications

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# 'Beyond Law': HC Cancels Tobacco Ban Notifications

## Says Issue Can't Be Decided Merely On Basis Of Sentiments

TIMES NEWS NETWORK

**New Delhi:** Delhi High Court has set aside the notifications prohibiting manufacture, storage, distribution and sale of gutka, pan masala, flavoured tobacco and other similar products in the national capital. The court said the notifications, which came out between 2015 and 2021, were issued in a mechanical manner and the authorities had exceeded the powers vested in them.

Justice Gaurang Kant also said the court was conscious of the harmful effects and various diseases caused by tobacco and "accordingly condemns and discourages the use of any form of tobacco". However, the court underlined, a question of law cannot be decided merely based on public consciousness and sentiments. "Undisputedly, this court agrees that tobacco and

nicotine are injurious to health; however, the present case involves certain questions of law, which... have to be decided and settled based on the fair interpretation of the law in the light of the judicial precedents," it noted.

The verdict came on a batch of petitions filed by those engaged in the business of scheduled tobacco products, more particularly chewing tobacco. They had challenged various notifications issued by the Delhi government's commissioner of food safety in the interest of public health for a period of one year throughout Delhi.

The petitioners contended that the notifications were arbitrary, went beyond Food Safety and Standard Act (FSSA) and were violative of their fundamental rights. The court said the power under Section 30(2)(a) was transitory in nature and the commissioner

### COURT SAYS

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of food safety could issue prohibition orders only in emergent circumstances after giving an opportunity of being heard to the food operator concerned. The notifications were, however, "issued by respondent no. 1 (commissioner of food safety) year after year in a mechanical manner without following the general principles laid down under Section 18 and 30(2)(a) of

FSSA, which is a clear abuse of the powers conferred upon him under FSSA", the court said, adding that the classification sought to be created between smokeless and smoking tobacco to justify the ban was clearly violative of Article 14 of the Constitution.

"While issuing the notifications, the commissioner of food safety exceeded its power and authority in contravention of the powers vested in him under FSSA, and therefore, the said impugned notifications are quashed... The present writ petitions are allowed," Justice Kanth said.

The high court said it had never been the intention of Parliament to impose an absolute ban; it was to regulate the trade and commerce of tobacco and tobacco products in accordance with COTPA, a central Act dealing with the tobacco industry.