

(2016) 03 KAR CK 0368
In the Karnataka High Court

Case No : Writ Petition Nos. 14314-14402 of 2016 (GM-POL)

Canara Plastics Manufacturers and Traders Association and Others APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Environment (Protection) Act, 1986 — Section 5

Citation : (2016) 03 KAR CK 0368

Hon'ble Judges : Subhro Kamal Mukherjee, C.J. and Ravi V. Malimath, J.

Bench : Division Bench

Advocate : Uday Holla, Sr. Advocate and S. Chandrashekar, Advocate for Holla and Holla, for the Appellant; Madhusudhan R. Naik, Advocate General, D. Nagaraj and Devraj Ashok, AGAs, for the Respondent

Final Decision : Dismissed

Judgement

Subhro Kamal Mukherjee, C.J.

1. These writ petitions are filed challenging the notification dated March 11, 2016, issued by the Government of Karnataka in exercise of the power conferred under Section 5 of the Environment (Protection) Act, 1986, (for short, "the Act") imposing ban on manufacture, supply, sale and use of plastic carry bags, plastic banners, plastic buntings, flex, plastic flags, plastic plates, plastic cups, plastic spoons, cling films and plastic sheets used for spreading on dining table including the above items made of thermocol and plastic, which use plastic micro beads in the State.

2. Mr. Uday Holla, learned senior advocate moves the writ petitions challenging the notification dated March 11, 2016.

3. The principal contention of Mr. Holla is that there, already, exists Central Rules, that is, Plastic Waste (Management and Handling) Rules, 2011 and the Rule 4 of such Rules only prohibits manufacture and circulation of plastic bags

less than 50 microns. He submits that the Notification dated March 11, 2016, has been issued by the Government of Karnataka in terms of the delegation given to it under the notification dated October 2, 1998, by the Ministry of Environment and Forest, Government of India. He submits that when the Government of India has a Rule imposing ban of manufacturing and circulation of plastic items of less than 50 microns, there could not be complete ban as contemplated in the notification under challenge.

4. Mr. Holla, further, submits that the Supreme Court of India, in one matter, entertained an appeal against an order of Himachal Pradesh High Court and stayed the Rules prepared for complete ban of plastic items.

5. Mr. Madhusudhan R. Naik, learned advocate general, on the contrary, submits that these writ petitions are not maintainable as there is an alternative and efficacious remedy available under Section 5 of the Act. The remedy, if any, of the writ petitioners is before the National Green Tribunal. He cites several decisions to highlight that many of the High Courts have transferred the environmental issues to the National Green Tribunal for disposal.

6. Mr. Uday Holla, in reply, submits that when constitutional issues are involved, alternative remedy cannot stand in the way of this Court to entertain a writ petition.

7. When there is alternative and efficacious remedy before the Competent Tribunal constituted under a Statute, that is, National Green Tribunal Act, 2010, it is desirable that these matters be placed before the National Green Tribunal for consideration.

8. We accept the preliminary objections of the learned advocate general and dismiss the writ petitions on the ground that there exists an alternative and efficacious remedy before the National Green Tribunal.

All issues are, however, kept open.

In view of the dismissal of these writ petitions, I.A. No. 1 of 2016 for impleading does not survive for consideration and is, also, dismissed.

We make no order as to costs.