

(2018) 04 BOM CK 0100

In the Bombay High Court

Case No : WRIT PETITION NO. 4033, 4091, 1061, 1098, 1129, OF 2018

**MAHARASHTRA PLASTIC MANUFACTURERS ASSOCIATION THROUGH ITS
PRESIDENT AND ORS.Vs STATE OF MAHARASHTRA AND ANR.**

Date of Decision : 13-04-2018

Acts Referred:

Constitution of India, — Article 226, 227
State of Maharashtra enacted the Maharashtra Non Biodegradable
Garbage (Control) Act, 2006 — Section 2(h), 3, 4, 4(1), 4(2), 9, 18, 18(3)

Citation : (2018) 04 BOM CK 0100

Hon'ble Judges : A.S.OKA, J, RIYAZ I. CHAGLA, J

Bench : Division Bench

Advocate : A.V.Anturkar, Sugandh B. Deshmukh, Ajinkya M. Udane, Ranjit D. Shinde, E.P. Bharucha, A.B.Vagyani, Manish M. Pabale, R.A.Salunkhe, Milind Sathe, Melanie D'Souza, Murari Madekar, Sachin Kudalkar, E.P.Bharucha, P.H.Kantharia, Geeta Shastri, Amar??Mishra

Judgement

1. We have heard the learned counsel appearing for the parties at some length.Â
Â Â Considering the legal contentions raised in this petitions, we

issue Rule. The learned Advocates representing the respondents today waive
service. We have heard the learned counsel appearing for the parties on

the prayer for interim relief. Before we advert to the submissions, it will be
necessary to make a reference to the factual controversy in brief.

2. The State of Maharashtra enacted the Maharashtra NonÂ Biodegradable
Garbage (Control) Act, 2006 (for short â??the said Act of 2006â?). The

challenge in these petitions under Article 226 of the Constitution of India is
mainly to the Maharashtra Plastic and Thermocol Products (Manufacture,

Usage, Sale, Transport, Handling and Storage) Notification, 2018 (for short â??
the impugned notificationâ?).

3. The preamble of the said Act of 2006 reads thus :Â?

â??An Act to prevent throwing or depositing nonbiodegradable garbage in public drains, roads, wetland, wasteland, water bodies, places open to

public view; to regulate the use of nonâ?biodegradable material and for matters connected therewith or incidental thereto.

WHEREAS both Houses of the State Legislature were not in session;

AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate

action to make a law to prevent throwing or depositing nonâ?biodegradable garbage in public drains, roads, wetland, wasteland, water bodies, places

open to public view; to regulate the use of nonbiodegradable material and for matters connected therewith or incidental thereto; and, therefore,

promulgated the Maharashtra Nonâ?biodegradable Garbage (Control) Ordinance, 2006, on the 27th February 2006.â?? (emphasis added)

4. We may note here that in the affidavitâ?inâ?reply filed by the State Government in Writ Petition (Ldg.) No.1061/2018 of Shri Sanjay Baliram

Sandanshiv, Under Secretary of the Environment Department, he has rightly pointed out that in none of the petitions, there is a challenge to the validity

of the said Act of 2006.

5. The provisions of the said Act of 2006 which are relevant for our consideration are sections 3, 4, 9 and 18 which read thus :â?

â??3. Prohibition to throw biodegradable and nonbiodegradable garbage in public drains, sewage lines, natural or manmade lake, wetlands â?

(1)â? No person, by himself or through another, shall knowingly or otherwise, throw or cause to be thrown, in any drain, ventilation shaft, pipe and

fittings, connected with the private or public drainage works, natural or manmade lake, wetlands, any nonâ?biodegradable garbage or construction

debris or any biodegradable garbage by placing in a nonâ?biodegradable bag or container likely to â?

(i) injure the drainage and sewage system;

(ii) interfere with the free flow or affect the treatment and disposal of drain and sewage contents;

(iii) be dangerous or cause a nuisance or be

prejudicial to the public health; and

(iv) damage the lake, river water or wetland.

(2) No person shall, knowingly or otherwise, place or permit to be placed, except in accordance with such procedure and after complying with such

safeguards as may be prescribed, any biodegradable or non-

biodegradable garbage in any public place or in a place open to public view, unless, -

(a) the garbage is placed in a garbage receptacle; or

(b) the garbage is deposited in a location designated by a local authority having jurisdiction on an area for the disposal of such garbage.

4. Restriction or prohibition on use of certain nonbiodegradable material -

5. (1) - The State Government may, by notification in the Official Gazette, impose restriction or prohibition on the use of non-biodegradable material,

or any other material harmful to environment within the State, which is contrary to the norms, as the State Government may, by notification in the

Official Gazette, specify.

(2) The State Government may, by general or special order, impose requirements on manufacturers, distributors and other persons who produce or

handle commodities, with respect to the type, size, thickness, labelling and composition of packaging with respect to its use and disposal including

standards or norms for material degradability and recyclability. - - - - - (emphasis added) -

- - -

9. Penalties. (1) Whoever contravenes any of the provisions of this Act or any rules, notification or order made under this Act shall, on

conviction, be punished, -

(a) for the first offence with a fine which may extend to five thousand rupees;

(b) for the second offence with a fine which may extend to ten thousand rupees;

(c) for the subsequent offence, with an imprisonment for a term which may extend to three months and with a fine which may extend to twenty-five

thousand rupees.

(2) Whoever, in any manner aids, abets or is accessory to the commission of an offence under this Act shall, on conviction, be punished with the

punishment provided for the offence. -

18. - Power to make rules. (1) The State Government may, by notification in the Official Gazette, make rules for the purpose of carrying

out the provisions of this Act.

(2) Except when the rules are made for the first time, all rules made under this Act shall be subject to the condition of previous publication.

(3) Without prejudice to the generality of the provisions of the sub-section (1), such rules may provide for, —

(i) requirements or conditions on manufacturers, distributors, users and other persons who produce or handle commodities with respect to type, size,

thickness, labelling and composition of packaging, with respect to its use and disposal, including standards or norms for material degradability and

recyclability under sub-section (2) of section 4; and (ii) any other matter which may be, or which is required to be, prescribed for giving effect to

the provisions of this Act.

(4) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session,

for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session

in which it is so laid or the session immediately following, both Houses agree in making any modification or both Houses agree that the rule should not

be made, and notify their decision in the Official Gazette, the rule shall, from the date of publication of such notification, have effect only in such

modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of

anything previously done or intended to be done under that rule.

6. Now, coming to the impugned notification, the last recital thereof records that the same has been issued in exercise of powers under sub-sections

(1) and (2) of Section 4 of the said Act of 2006. The impugned notification is dated 23rd March, 2018 which was published in the Government Gazette

on the same day and therefore, the same came into force on the very day.

7. Clause 2 of the impugned notification defines various terms such as plastic (sub-clause 2), compostable plastic (sub-clause 3), plastic sheets

(sub-clause 4), plastic waste (sub-clause 5), plastic bags (sub-clause 9), commodities made from thermacol (sub-clause 11) and plastic product

(sub-clause 13). Clause 3 of the impugned notification lays down the activities which will be regulated in purported exercise of the powers

conferred by Section 2(h) and sub-section (1) as well as sub-section (2) of

Section 4 of the said Act of 2006. There are three subheads (1, 2 and 3) in subclause (1) of clause 3 of the impugned notification. The first head

(1) purports to ban in the whole State of Maharashtra, the manufacture, usage, transport, distribution of, wholesale and retail sale and storage and

import of the following items :

A) Plastic bags with handle or without handle;

B) Following disposable products manufactured from plastic and thermacol(Polystyrene) :

1) single use disposable dish, cups, plates, glasses, fork, bowl, container, disposable dish/ bowl used for packaging food in hotels, spoon, straw, non?

woven polypropylene bags, cups/pouches to store liquid;

2) packaging with plastic to wrap or store the products;

3) packaging of food items and food grain material etc.;

8. The second head (2) of clause 3(1) specifically provides that the regulation/ restriction under the said notification will apply to every person, body

of persons, government and nongovernment organizations, educational institutions, sport complex etc. Third head (3) lays down that there

will be a ban in whole State for use of plastic and thermacol for decoration purpose.

9. The last part of the impugned regulation 3 [clause 3(2)] deals with manufacture of PET/PETE bottles which are defined in subclause (10) of

clause 2 of the impugned regulation. The said definition reads thus:

2. Definitions:

10) PET and PETE bottles means bottles made up of polyethylene terephthalate (PET) and polyethylene terephthalate esters (PETE) used for

packaging or storing liquid or semi liquid food, including water.

As far as this part of clause 3 is concerned, after the submissions were heard for a substantially long time, the said part of the notification was

amended by the notification dated 11th April 2018. Now the amended impugned notification provides that use, purchase, sale, storage and

manufacture of PET and PETE bottles made up of high quality food grade virgin Bisphenol free material and printed on it with predefined buy

back price shall be allowed subject to compliance of the three conditions

mentioned therein.Â Thus, now the requirements imposed on the manufacturers ofÂ PET and PETE bottles remain confined to the notification dated 11th April 2018.Â Â Use, purchase, sale, storage and manufacture of such bottles is permitted provided (i) the same are made up of high quality food grade virgin BisphenolÂA free material, (ii) on such bottles, predefined buy back price is printed, and (iii) that manufacturers, producers, sellers and traders under under the â??Extended Producers and Sellers/Traders Responsibilityâ? will develop a â??Buy Back Depository Mechanismâ? with a predefined buy back price printed specifically on such PET and PETE bottles and also set up collection centers, reverse vending machines, crushing machines with linkages established with recycling units to collect and recycle such PET and PETE bottles within a period of three months from 11th April 2018 at the strategic placesÂ suggested in subÂ clause (a) of clauseÂ1 of the said notification.Â Â The said strategic places areÂ malls, multiplexes, hotels, shops, tourist places, forts, public places etc.Â SubÂclauses (b) and (c) thereof provide that the traders/sellers will buy back such usedÂ PET and PETE bottles sold with predefined buy back price and such bottles having liquid holding capacity of 1 liter or more and of less than 1 liter will have printed on the body of the bottles the buy back price of Rs.1 and Rs.2 respectively.Â We must note here that clauseÂ7 of the impugned notification has been also amended byÂ the said notification dated 11th April 2018.Â Â ClauseÂ7 initially provided time of one month from the date of the impugned notification to the manufacturers/producers for disposing of the existing stock of banned items.Â It provided to sellers, retailers and traders,Â a period of one monthÂ for disposal of the existing stock in the manner indicated in the notification.Â Â The same notification granted time of one month from the date of the notification to the individual users for disposal of the existing plastic banned items.Â Â It also granted time of one month to the local bodies to arrange for the collection, transportation of stock of banned plastic items or plastic waste for recycling to authorized recyclers or industries or for scientific disposal. By clauseÂ2 of the notification dated 11th April 2018, wherever period of one month has been granted in clauseÂ7 of the impugned notification,Â it has been extended to three months.Â Â The notification dated 11th April 2018 provides that clause 3(2) shall be read as modified by the said

notification.Â Â Thus clause 3(2) of the impugned notification stands modified by notification dated 11th April 2018 and, therefore, time of three months will be available from the date of the impugned notification.

10. We may also note here that there are exemptions to the applicability of restrictions imposed by the impugned notification.Â Â The first exception

is in the case of plastic bags or plastic used for packaging of medicines.Â The second one is in respect of compostable plastic bags or material used

for plant nurseries, horticulture, agriculture, handling of solid waste.Â Â One of the conditions mentioned therein is that the manufacturers or sellers

of compostable plastic carry bags shall obtain a certificate from the Central Pollution Control Board before marketing or selling such products.Â Â

The third exception is in respect of manufacture of plastic and plastic bags for export purpose only in the special economic zones and export oriented

units.Â The next exception is in respect of plastic cover or plastic wrapping material at the manufacturing stage or when it is an integral part of

manufacturing.Â The last exception is in respect of food grade virgin plastic bags not less than 50 micron thickness used for packaging of milk.Â

However, on such plastic bags used for this purpose,Â the price for buy back should be printed which should not be less than Rs.0.50.

11. If what is provided in the impugned notification read with modified notification dated 11th April 2018 is perused, the restriction on manufacturing

and sellingÂ of the the regulated items will come into operation from 23rd March 2018.Â Â As far as sellers, retailers and traders are concerned, the

ban on sale also operates immediately from 23rdÂ March 2018.Â Even the ban on the use of banned or regulated items is operating from 23rd

March 2018.Â Â Broadly speaking three months' time is givenÂ for disposal of existing stock of regulated and banned item.Â Â Thus, the ban on

manufacturing, sale and use of the regulated items has come into force with effect from 23rd March 2018 and time for disposal of the existing stock in

the manner provided in clauseÂ?7 of the impugned notification will be available till 22st June 2018 (a period of three months).

12. On this factual scenario, now we turn to submissions canvassed across the bar by the petitioners.Â Â It is pointed out that the condition precedent

for exercising the power under subÂsection (1) of section 4 of the said Act of 2006 is the publication of norms in the official gazette.Â Â It is also

pointed out that the condition precedent for exercising power under sub-section (2) of section 4 is the existence of standards or norms for material biodegradability and recyclability. Our attention is invited to sub-section (3) of section 18 of the said Act of 2006 by urging that the norms contemplated by sub-section (1) of section 4 and the standards or the norms contemplated by sub-section (2) of section 4 can be fixed only by exercising the rule making power under clause (i) of subsection (3) of section 18. It is also pointed out that the impugned notification at various places refers to the word "regulations" which shows that, in fact, it is an exercise of the rule making power. It was urged that the rule making power under sub-section (3) of section 18 can be exercised only in the manner provided under section 18 which includes laying of rules after the same are made before each House of the State Legislature. Relying upon the decision of the Apex Court in the case of Quarry Owners' Association v. State of Bihar and others (2000) 8 SCC 655 and particularly paragraph 48 thereof, it was submitted that laying of such rules before the House of Legislature is not an empty formality as the Legislature has vast powers for dealing with the rules placed before it. It is, thus, submitted that the conditions precedent for the exercise of power under sub-sections (1) and (2) of section 4 of the said Act of 2006 have not been complied with.

13. Another submission canvassed is that according to the stand taken by the State Government, the rule making power has not been exercised for issuing the impugned notification and therefore, considering the scheme of the said Act of 2006, unless the rule making power is exercised, the power under Section 4 of the said Act of 2006 cannot be exercised. Reliance is placed in that behalf on the decision of the Apex Court in the case of P.Kasilingam and others v. P.S.G. College of Technology .

14. As far as the exercise of power under sub-section (1) of section 4 is concerned, it is submitted that the field is already occupied by existing statutory rules such as the Maharashtra Plastic Carry Bags (Manufacture and Usage) Rules, 2006 and the Maharashtra NonBiodegradable Solid Waste (Proper and Scientific Collection, Sorting and disposal in the areas of the Municipal Corporations) Rules, 2006. It is pointed out that the field is also occupied by the Central Regulations and Rules.

15. Our attention is invited to the provisions of said Act of 2006. It is submitted that in any event, the power under sub-section (1) of section 4 of the said Act of 2006 is a limited power of imposing restriction or prohibition on use of certain non-biodegradable material or any other material harmful to the environment within the State. Moreover, under sub-section (2) of section 4, the State Government can only impose requirements on manufacturers, distributors and other persons who produce or handle commodities with respect to the type, size, thickness, labelling and composition of packaging. The submission is that the standards or norms as provided by both the sub-sections are not in existence. It was urged that there is no power conferred by the said Act of 2006 to impose a ban on manufacture and use of certain category of plastic items. It is submitted that the object of the said Act of 2006 is limited to prevent throwing or depositing of the non-biodegradable garbage in public drains, roads, wetland, wasteland, water bodies, places open to public view and for regulating the matters incidental thereto. By no stretch of imagination, the power in the said Statute could be exercised for completely prohibiting production of a particular category of plastic item. The submission is that not only that such a ban which is introduced by the impugned notification is illegal, for the reasons indicated in the submissions made earlier, it is ultra vires of the said Act of 2006. Moreover, it infringes the fundamental rights guaranteed to the manufacturers and sellers of the plastic items under Article 19(1)(g) of the Constitution of India and the State Government has not discharged the burden on it of proving that so called restrictions tried to be imposed by the impugned notification are reasonable restrictions. The learned senior counsel appearing in one of the petitions pointed out the impact of the impugned notification on the plastic industries in the State which is having about 7,800 units in the State of Maharashtra. It is contended that the result of the ban imposed by the impugned notification is that the employment of more than 4 lakh persons will be affected. It is contended that apart from adverse effect on the income of the plastic industry, the State Government will be deprived of considerable amount by way of taxes paid by the plastic industry. It is also urged that assuming that the impugned notification is valid, the use of glass and metal items will considerably increase and there is a material available to show that the bottles made up of the said material will have more adverse impact on the

environment.Â A comparison is tried to be made between the plastic items and the glass/metal items to canvas thatÂ the plastic items are more easily degradable.

16. Our attention is also invited to another alleged violation made by the State Government of the assurance given to the Court.Â Our attention is

invited to the affidavit filed by Dr.Bhagwantrao N. Patil, Director, Environment Department of the State of Maharashtra in Writ Petition (St.)

No.4391/2018.Â In the said affidavit dated 5th March 2018, a solemn statement is made to this Court that the Government is in the process of

preparing draft notification and after calling for suggestions and objections from the members of public, theÂ final notification will be issued.Â It is

pointed out that in fact, a stand is taken in the said affidavit that the said process will take time of about one and half months and thereafter, the final

notification will be issued.Â It is pointed out that without publication of a draft notification and without inviting objections and suggestions, hurriedly

impugned notification has been issued on 23rd March 2018.Â Thus, theÂ State Government has committed theÂ breach of its own solemn

assurance.Â Moreover, the use of word â??regulationsâ? at several places in the impugned notification shows that the State Government intended

to exercise of the rule making power under section 18 of the said Act of 2006 and, therefore, it was necessary for the State to first publish a draft

notification and invite objections and suggestions.

17. Reliance is also placed on the decision of the Apex Court in the case ofÂ State of MysoreÂ v.Â H.Sanjeevia AIR 1967 SC 1189Â which deals

with the proviso added to rule 2 of the Rules framed under the Mysore Forest Act .Our attention is invited to findings recorded by the Apex Court in

the said decision.

18. It was also submitted that fundamental rights of manufacturers and sellers of the plastic items are infringed and as there is absolutely no case

made out by the State Government regarding the reasonableness of drastic restrictions sought to be imposed, the exercise made by the StateÂ by

issuing the impugned notification as amended by notification dated 11th April 2018 is per se illegal and, therefore, the same will have to be stayed.

19. It is also pointed out that had the State GovernmentÂ given an opportunity of submitting objections and suggestions, all the difficulties and

hardships could have been pointed out to the State Government. However, the State Government has hurriedly taken the step of publication of the impugned notification. It was also suggested that the manner in which the modification of the impugned notification is done by issuing notification dated 11th April 2018 shows that there is a complete non-application of mind by the State Government before issuing the impugned notification. Our attention was invited to clause 8 of the English version of the impugned notification. It is submitted that though the Empowered Committee has been constituted, the said Committee is powerless to take a decision about the modification of the impugned notification as the power under section 4 of the said Act of 2006 is the power of the State Government and, therefore, the Empowered Committee headed by the Hon'ble Minister has no power to modify the impugned notification.

20. The learned senior counsel appearing as a Special Counsel for the State invited our attention to the affidavit in reply filed in Writ Petition

No.1061/2018 of Shri Sanjay Baliram Sandanshiv, Under Secretary of Environment Department of the State of Maharashtra and pointed out the

reasons which led the State Government to exercise the powers. Dealing with the objection regarding the absence of norms contemplated

by subsection (1) and the standards or norms contemplated by subsection (2) of section 4 of the said Act of 2006, he urged that the norms or the

standards as provided therein need not be fixed by the exercise of the rule making power. He urged that as far as the norms referred in subsection

(1) of section 4 are concerned, the same have been fixed by the impugned notification itself. He submitted that the standards or norms

contemplated by subsection (2) of section 4 can be fixed without a gazette notification and the same have been incorporated in the impugned

notification. He submitted that the State is open for any suggestion and, in fact, the process of consultation was adopted prior to the issuance of

the impugned notification. He submitted that the Empowered Committee is regularly holding meetings. He pointed out that the suggestions

of the citizens were considered and necessary modification to the impugned notification was made on 11th April 2018.

21. The learned senior counsel representing the petitioners while replying to the said submissions contended that even assuming that the submission

made by the learned Special Counsel for the State is correct, existence of norms is a condition precedent for exercise of powers under sub-sections

(1) and (2) of section 4 and, therefore, the argument that the norms are fixed by the impugned notification cannot be accepted. It was urged that if

a Statute requires a particular thing to be done in a particular manner, the same should be done in that particular manner and in no other manner.

The learned senior counsel appearing for the petitioners also pointed out drastic consequences of committing the breach of the impugned notification

and in particular, the applicability of the penal provisions of sections 9 and 10 of the said Act of 2006.

22. We have given careful consideration to the submissions canvassed across the bar. We have already reproduced the preamble of the said Act

of 2006. The preamble records that it was necessary to prevent throwing or depositing non-biodegradable garbage in public drains, roads,

wetland, wasteland, water bodies, places open to public view and, therefore, it was necessary to frame enactment to regulate the use of non-

biodegradable material and for the matters connected therewith or incidental thereto. Thus, the law is enacted for regulating non-biodegradable

material with a view to prevent throwing or depositing of non-biodegradable garbage/waste in public drains, on roads etc. Perhaps it was felt

that the object will be achieved by regulating the use of non-biodegradable material. Sub-section (1) of section 4 of the said Act of 2006 is a

power to impose restrictions or prohibition on the use of certain non-biodegradable material or any material harmful to the environment within the

State. As far as sub-section (2) is concerned, it is a power to impose requirements on manufacturers, distributors or other persons who

produce or handle commodities with respect to the type, size, thickness, labelling and composition of packaging with respect to its use and disposal.

Firstly, we must note here that power under sub-section (2) of section 4 is not only to impose requirements but also to pass a special general order

providing for standards or norms for material degradability or recyclability. Even under sub-section (3) of section 18, by exercising the rule

making power, such standards can be fixed.

23. Prima facie, it appears to us that the power under sub-section (2) of section 4 is a power of issuing special or general order of imposing

restrictions on manufacturers, distributors and other persons who produce or handle commodities.Â Â This power includes a power to lay down the standards or norms for material degradability and/or recyclability. Therefore, according to us, it is legally permissible for the State to pass a general or special order imposing requirements on manufacturers/ distributors or any other persons who produce or handle commodities with respect to type, size, thickness or labelling and composition of packaging with respect to its use and disposal and also to fix standards or norms for material degradability or recyclability.Â Â This is not a case where by exercisingÂ rule making power, the standards or norms have been fixed and by exercising the power under subÂsections (1) and (2)Â of section 4 by issuing the impugned notification, theÂ standards or norms have been fixed which are contrary to the Rules.Â Â The rule making power under Section 18 has not been exercised till today.

24. It is true that it is possible to fix standards or norms by exercising the rule making power.Â However, the power under subÂsection (1) of section 4 is an independent power to fix norms by publication of a notification in the official gazette.Â Â Â It is pertinent to note that the requirement of publication of notification in official gazette is incorporated at two places in subÂsection (1).Â Â The first one is for issuing a notification for imposing restrictions and prohibition and the second one is for fixing norms by notification in the official gazette.Â Hence, there is no prohibition on issuing one notification for both the purposes specified in subÂsection (1).Â Â Â Â If the Legislature had intended thatÂ norms referred in subÂsection (1) of section 4 must be the norms fixed by the exercise of only the rule making power, the Legislature would have specifically provided so.Â Â However, the Legislature in its wisdom has provided in subsection (1) of section 4 that the power to fix the norms can be exercised by a notification published in the official gazette.Â Â In this case, the State has not exercised the rule making power for fixing the normsÂ which are referred in subÂsection (1) of section 4.Â Â Therefore, at this stage, when we are only taking a prima facie view of the matter, it is not possible for us to accept the contention that the exercise of fixing norms under subÂsection (1) of section 4 and the exercise of imposing the impugned restrictions could not have been made by one and the same notification.Â Â As far as subÂsection (2) of section 4 is concerned, it provides for fixing norms or standards.Â Â It does not

require publication in official gazette.Â Â It only provides for issuing a special or general order. Â Â Hence, it is always open for the State

Government to impose requirements and fix norms or standards by one such order.

25. Now we come back to the impugned notification as amended by the notification dated 11th April 2018.Â As far as use, purchase, sale, storage

and manufacture ofÂ PET and PETE bottles are concerned, now what is operative in the field is the notification dated 11th April 2018.Â Â PET and

PETE bottles are defined to mean the bottles which are used only for packaging or storage of liquid, semi liquid including water.Â Â Thus, the

definition is very limited.Â Â Â Prima facie, it appears to us that by no stretch of imagination the notification dated 11th April 2018 imposes any ban

on the manufacture ofÂ PET and PETE bottles.Â Â On the contrary, it permits manufacture, use, sale or storage ofÂ PET and PETE bottles

provided the requirements provided therein are adhered to.Â One specific requirement imposed is that the same must be made up of high quality food

grade virgin BisphenolÂA free material.Â The other requirement contemplates recycling or scientific disposal of suchÂ PET and PETE bottles

which will include setting up of Buy Back Depository Mechanism and printing of buy back price on the body of the bottle.Â Â Obvious intention is to

ensure that such plastic bottles are recycled and not thrown in public drain, roads, wetlands, open lands etc.Â Â The PET and PETE bottles are not

easily biodegradable. The power exercised as regards PET and PETE bottles is referable to subÂsection (2) of section 4 of the said Act of 2006.Â Â

Without imposing a ban on manufacture, only requirements have been imposed. Thus, the exercise of powers cannot be said to be illegal.

26. As far as clauseÂ3(1) of the impugned notification is concerned, it imposes restrictions on manufacture, usage, transport, distribution, whole sale

and retail sale and storage, import of plastic bags with handle and without handle.Â Â The restrictions are imposed on limited number of items which

are essentially single use disposal items made up of plastic or thermocol such as dish, cups, plates, glasses fork, bowl, container, disposable dish/bowl

used for packaging food in hotels, spoon, straw, pouches and nonÂwoven polypropylene bags.Â It is a matter of common knowledge that such

disposable articles are indiscriminately thrown into drains or in open spaces, roads, wetlands etc.Â Â These are the items which are used once and

thrown immediately. These items made up of plastic or thermocol are not easily biodegradable. Such articles which are thrown immediately after its

use pose a huge threat to the environment. Even PET or PETT bottles used for sale and storage of water and other liquids create the same problem.

The object of the said Act of 2006 is to prevent such mischief. For ensuring that the restriction or prohibition imposed by sub-section (1) of section

4 is effectively implemented, action to impose such ban on manufacture can be taken. This aspect is dealt with also in subsequent paragraphs.

27. At this stage, we may make a reference to the affidavit of Shri Sanjay Sandanshiv. In paragraphs 24 and 25 of the said affidavit, Shri

Sandanshiv has stated thus:

24. I say that the use of plastic carry bags and disposable plastic items being part of our day-to-day life generated on disposal of such plastics

tremendous quantity of plastic waste. In Maharashtra, near about 1200 Metric ton per day plastic waste is being generated and the disposal of

such plastic waste in a scientific manner was not taking place. I say that there is a daily usage of above 1.25 crore of quantity of pet bottles used

for water and other aerated drinks and further same are not being recycled.

25. I say that as the plastic carry bags and other products made up of plastic are not bio-degradable. Plastic requires more than 100 years to degrade.

Plastic waste are disrupting the natural balance of ecosystem, thereby causing various environmental problems and harm to flora and fauna and also

had harmful impacts on the biodiversity. Due to its nonbiodegradable nature, the plastic bags obstruct the streams of all types of waters, resulting

in clogging of drains and thereby giving rise to various health issues. Often the plastic bags, which are dumped carelessly on open spaces, are eaten up

and swallowed by many animals and eventually results in animal death incidents. The use of plastic carry bags and articles has also endangered

the aquatic life. The plastic waste and micro plastic causes danger to marine and freshwater biodiversity and also hamper ecosystem services

due to spreading of such waste in an around ecosystem, on tourist places, beaches and on agriculture and forest areas. (emphasis added)

Paragraph 5 thereof gives reasons in brief for the first restriction imposed. As regards plastic bags with handle or without handle and other

disposable items of plastic and thermocol, it is stated that the same cause

serious environmental hazards and are affecting the health of human beings and animals. It is claimed that an alarming material was placed before the State Government showing the harming effect of disposal of such non-biodegradable material on the environment. It is stated that the Mithi River and other water bodies in Mumbai are the severe casualties of the plastic waste. We must note that plastic waste is defined in clause 2(5) of the impugned notification to mean any plastic article discarded after use or after its intended use is over. Reliance is also placed on the affidavit of the State on scientific research study report which, according to the State Government, shows the global phenomenon of the harmful effects caused due to the waste plastic products. What is stated in paragraph 24 of the affidavit is material. It is stated that about 1,200 metric ton plastic waste is being generated per day and the disposal of such plastic waste in a scientific manner is not taking place. It is claimed that in the State, there is a daily usage of 1.25 crore PET bottles for water and other aerated drinks and the same are not being recycled. In paragraph 25, a case made out is that plastic requires more than 100 years to degrade and plastic carry bags made up of plastic are not biodegradable. The State Government has considered the impact of plastic waste which is generated in huge quantity in the State which is disrupting the natural balance of ecosystem thereby causing various environmental problems and harm to flora and fauna and also making harmful impact on the biodiversity. It is pointed out in the affidavit that apart from what has happened in case of rivers, throwing of such plastic material in public drains causes clogging of the drains. It is pointed out that the use of plastic carry bags and other articles has also endangered the aquatic life. Certain incidents are set out in paragraph 5 of the affidavit. In short, a decision was taken by the State Government to exercise the power under section 4 of the said Act of 2006 after having satisfied that for preventing throwing or depositing of non-biodegradable garbage in public drains, roads, wetlands, wasteland, water bodies, places open to public view, the exercise of the said power was necessary. Even assuming that the argument of violation of Article 19(1)(g) is available to the petitioners, at this prima facie stage, we find that more than sufficient material is placed on record by the State Government to show that the restrictions sought to

be imposed by the impugned notification are reasonable.Â Â

28. At this stage, we may make a reference to the decision of the Â Apex Court in the case ofÂ Indian Handicrafts Emporium and othersÂ Â v.

Union of India and others(2003) 7 SCC 589 .Â Â This was a case wherein the Apex Court dealt with a challenge to a complete prohibition on trade

in ivory imposed under the Wild Life (Protection) Act, 1972.Â The argument before the Apex Court was that the said Act of 1972 has nothing to do

with the trade in ivory and it does not provide for imposing ban on trade.Â The argument based on violation of Article 19(1)(g) was canvassed before

the Apex Court.Â Â The Apex Court dealt with the issue of reasonableness of the restrictions imposed by the State.Â In paragraphsÂ38 and 39, the

Apex Court held thus:

38. In order to determine whether total prohibition would be reasonable, the Court has to balance the direct impact on the fundamental right of the

citizens thereby against the greater public or social interest sought to be ensured. Implementation of the directive principles contained in Part IV is

within the expression of restrictions in the interest of the general public.

39. In Municipal Corpn. of the City of Ahmedabad v. Jan Mohammed Usmanbhai [(1986) 3 SCC 20 : AIR 1986 SC 1205 : (1986) 2 SCR 700] this

Court held: (SCC pp. 28Â?29 & 31Â?32, paras 15 & 20)

â??15. Before proceeding to deal with the points urged on behalf of the appellants it will be appropriate to refer to the wellÂestablished principles in

the construction of the constitutional provisions. When the validity of a law placing restriction on the exercise of a fundamental right in Article 19(1)(g)

is challenged, the onus of proving to the satisfaction of the court that the restriction is reasonable lies upon the State. If the law requires that an act

which is inherently dangerous, noxious or injurious to the public interest, health or safety or is likely to prove a nuisance to the community shall be done

under a permit or a licence of an executive authority, it is not per se unreasonable and no person may claim a licence or a permit to do that act as of

right. Where the law providing for grant of a licence or permit confers a discretion upon an administrative authority regulated by rules or principles,

express or implied, and exercisable in consonance with the rules of natural justice, it will be presumed to impose a reasonable restriction. Where,

however, power is entrusted to an administrative agency to grant or withhold a

permit or licence in its uncontrolled discretion the law ex facie infringes

the fundamental right under Article 19(1)(g).¹ Imposition of restriction on the exercise of a fundamental right may be in the form of control or prohibition.

20. The tests of reasonableness have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and in

judging their validity, courts must approach the problem from the point of view of furthering the social interest which it is the purpose of the legislation

to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law, to solve its problems and

furthering the moral and material progress of the community as a whole. (See *Jyoti Pershad v. Administrator for the Union Territory of Delhi* [AIR

1961 SC 1602 : (1962) 2 SCR 125]) If the expression ‘in the interest of general public’ is of wide import comprising public order, public security

and public morals, it cannot be said that the standing orders closing the slaughter houses on seven days is not in the interest of general public.²

The ultimate conclusion drawn by the Apex Court is that the step of imposing the ban on trade on ivory was taken by the Legislature to protect the

Indian elephants and to arrest their further depletion.³ In the present case, there is a ban imposed on production of certain disposable items of plastic

and thermocol in exercise of powers under section 4.⁴ The said action has been taken obviously to make the prohibition on the use of disposable

articles mentioned in clause 3(1)(1) of the impugned notification more effective.⁵ Such power will have to be read into subsections (1) and (2) of

section 4 of the said Act of 2006.⁶ What is material is that when the issue arises of determining whether total prohibition would be reasonable, the

Court has to balance the direct impact on the fundamental right of the citizens against the greater public and social interest sought to be

ensured.⁷ In paragraph⁸ 52 of the same judgment, the Apex Court held thus:

⁹52. We cannot shut our eyes to the statements made in Article 48A of the Constitution of India which enjoins upon the State to protect and

improve the environment and to safeguard the forests and wildlife of the country. What is destructive or environment, forest and wildlife, thus, being

contrary to the directive principles of State policy which is fundamental in the

governance of the country must be given its full effect.â??

29. The Apex Court in the said decision quoted with approval its earlier decision in the case of *Municipal Corpn. of the City of Ahmedabad v. Jan*

Mohammed Usmanbhai (1986) 3 SCC 20,â? wherein it was held that the tests of reasonableness will have to be viewed in the context of the issues

faced by the Legislature.â? â? The Court must approach the problem from theâ? point of view of furthering social interest which is the purpose of the

Legislature to promote and the Courts have to remember that by the enacted law,â? an attempt is made toâ? solve the problem and to further theâ?

material progress of the community as a whole.

30. Another decision of the Apex Court on this aspect is the decision of the Constitution Bench in the case of *Modern Dental College and Research*

*Centre and others*â? v.â? *State of Madhya Pradesh and others* (2016) 7 SCC 353..â? Paragraphsâ? 56 and 57 of the said decision read thus:

â??56. At this juncture, we would like to deal with the arguments of the appellants that the provisions contained in the Act and the Rules have the

effect of completely taking away the rights of these educational institutions to admit the students.

57. It is well settled that the right under Article 19(1)(g) is not absolute in terms but is subject to reasonable restrictions under clause (6).

Reasonableness has to be determined having regard to the nature of right alleged to be infringed, purpose of the restriction, extent of restriction and

other relevant factors.â? In applying these factors, one cannot lose sight of the directive principles of State policy. The Court has to try to strike a just

balance between the fundamental rights and the larger interest of the society. The Court interferes with a statute if it clearly violates the fundamental

rights. The Court proceeds on the footing that the legislature understands the needs of the people. The Constitution is primarily for the common man.

Larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices, fee and admissions can certainly be

regulated.â??â?â? (emphasis added)

What is held by the Apex Court in paragraphâ? 57 is that while examining whether the restrictions imposed on the fundamental rights under Article

19(1)(g) are reasonable, one cannot ignore the directive principles of the State Policy and the Court has to try to strike a just balance between the

fundamental rights and larger interests of the society.Â Â In the present case, we have to considerÂ the effect of Article 48A of the Constitution of

India which is a part of the directive principles of the State Policy.Â Â In the same decision, the Apex Court dealt with a doctrine of proportionality

and paragraphÂ65 of the said judgment lays down factors which are to be borne in mind while examining reasonableness.Â Â The Court has to

consider the directive principles of the State Policy while applying its mind to the question whether the restrictions are excessiveÂ in nature which go

beyond the interests of the general public and a balance has to be struck between the restrictions imposed and social interest under Article 19(6).

ParagraphÂ 64 holds that the exercise which is required to be undertaken has to be confined to the question whether the limitation on the

constitutional rights is for a purpose that is reasonable and necessary in a democratic society.Â Â Â The whole thing is to be decided based on

proportionality by balancing different interests.

31. In the case in hand, the State is faced with serious issue of creation of 1,200 metric ton of plastic waste in the State every day especially when

there is hardly any provision for scientific disposal of such plastic waste.Â Â The issue is compounded by daily use of 1.25 croreÂ PET and PETE

bottles for water and aerated drinks.Â Â The restrictions imposed by the impugned notification were amended by the notification dated 11th April

2018 by removing the ban on manufacture, use, purchase, sale, storageÂ ofÂ certain categories of PET and PETE bottles which was provided in the

impugned notification.Â Â Only requirements are imposed by the amended notificationÂ for ensuring the recycling of PET bottles . Therefore, there

is a requirement to specify buy back price which is a nominal price as provided in the said notification.

32. As far as first part [clause 3(1)(1)] of the impugned notification is concerned, it concerns plastic bags and mainly disposable items of plastic and

thermocol.Â Â It has direct nexus with the object of reducing the quantity of plastic waste which at present is ofÂ 1,200 metric ton per day.Â Â

ItÂ appears from the stand of the State Government that plastic carry bags and disposable items such as dish, cups, plates, bowls pouches etc.

constitute plastic waste much of which is thrownÂ in public drains, open grounds etc.Â Â Considering the object sought to be achieved by the said

Act of 2006, the State Government has issued impugned notification.Â Â We do not accept that exercise of power by the State GovernmentÂ by the impugned notification imposes unreasonable restrictions on fundamental rights under Article 19(1)(g) of the Constitution of India of the manufacturers of plastic items and of those businessmen who deal with the storage or sale of the plastic items. Larger public interest has been considered by the State.Â Â The adverse impact on environment affects every citizen.Â Â Apart from the fact that prima facie, sufficient material is produced to discharge the onus of proof by the State Government to satisfy the reasonableness of the restrictions, while judging the reasonableness of the restrictions, we have to follow certain tests by considering directive principles of the State Policy, impact of generation of plastic waste on the environment and on ecosystem in general, hardship effect thereof on the citizens.Â Â One such hardship effect is floods in the cities which are created by clogging of drains due to indiscriminate throwing of plastic waste.Â Â As indicated in paragraphsÂ 24 and 25 of the affidavit filed on behalf of the State, common man is affected by several ways because of such usage and creation of plastic waste.Â Â An argument is canvassed across the barÂ that the plastic industries would suffer.Â Â We are considering the question of reasonableness of restrictions.Â Â Possibly, the manufacturers and those who deal with plastic items would suffer in terms of loss of money but, prima facie, we are of the view that by the impugned notification, the State Government has put restrictions which are reasonable.Â Moreover, the exercise of the powers is within the four corners of section 4 of the said Act of 2006.Â Â Another argument which was canvassed was that as a result of restrictions imposed on the use of plastic items, the use of glass and metal items would increase and that itself will create waste and it will be difficult to deal with such waste as it is also nonÂbiodegradable.Â Â We are dealing in this case with the challenge to the exercise of power under section 4 of the said Act of 2006.Â Â Writ Court cannotÂ go into the contention which is canvassed as we are not experts to deal with the issue as to whetherÂ the impugned notification will increase the waste of glass or metal items and whether the impact thereof on the ecosystem will be more drastic than the impact of plastic waste.Â Â The petitioners have missed one important issue.Â Â The ban on manufacture and use under clause 3(1)(1) is substantially in respect of

disposable plastic and thermocol items which are thrown in open spaces, drain, on roads etc. after its use.Â Â The glass/ metal items are normally not discarded or disposed ofÂ after only one use.

33. As far as the decisions relied upon by the petitioners are concerned, while recording reasons, we have dealt with the submissions made on the basis of the said decisions.Â Â We have already held that power under subÂsections (1) and (2) of section 4 could be exercised without taking recourse to the rule making power and, therefore it cannot be said that the said Act of 2006 becomes unworkable in absence of the rules.

34. The argument that the impugned notification is in breach of the assurance given by the State is no ground to stay it.Â Â The exercise of power under section 4 does not require prior publication of draft notification.Â Prima facie, we have found the same to be legal and has been issued in public interest.Â

35. For the reasons which we have recorded above, we are unable to grant the drastic prayer made for grant of stay of the operation and execution of the impugned notification as amended by notification dated 11th April 2018.

36. We have already referred extensively to the restrictions imposed by the impugned notification.Â Â The effect thereof is that if an individual is in possession of the restricted plastic items such as plastic bags or disposable items like cups, dishes, plates or bowls or PET or PETE bottles which are not in conformity with the impugned notification read with the notification dated 11th April 2018, such individual will be exposed to penal provision of section 9 of the said Act of 2006.Â We have made extensive reference to clauseÂ7 of the impugned notification.Â At serial No.3 of the table incorporated in clauseÂ 7 of the impugned notification, it is provided that as far as individual users are concerned, the use of banned/restricted items operates from 23rd March 2018.Â Time of onlyÂ three months is given to the individuals for disposal of the restricted or banned items possessed by them.Â Â We cannot ignore that large number of citizens must be in possession of the restricted items and may be using it even today.Â Â TheÂ restrictions will apply to PET and PETE bottles which are not in conformity with the notification dated 11th April 2018.Â Serial No.3 provides that disposal of these restricted items will be by handing over the same to local body for scientific disposal or recycling. Only other mode is to sell the same

to the authorized recycler or industry. The local bodies are granted time of three months (in view of notification dated 11th April 2018) to arrange for

the collection, transportation of banned plastic items or plastic waste of existing stock for recycling to authorized recyclers or industries or scientific

disposal.Â Â Â There is no provision made in the impugned notification to strictly ensure that the individual users are able to immediately dispose of

the restricted items which are in their possession.Â The local bodies will have to create a proper mechanism.Â Â Â The use of such restricted items

from 23rd March 2016 by anÂ individual will expose him to criminal prosecutionÂ under the provision of section 9 of the said Act of 2006.Â Â

Therefore, a limited protection will have to be granted to individuals.

37. The learned Special Counsel representing the State has canvassed at bar that the State will look into the suggestions of the petitioners and other

stakeholders.Â Â Â We are, therefore, proposing to direct the State Government to look into the representations made by the petitioners and other

stakeholders including individual citizens.Â Â If the State Government is satisfied that modification of the impugned notification is necessary, the State

Government is bound to take necessary steps.

38. Hence, we pass the following order:

(i) If the petitioners or any other citizens or the stakeholders make representations seeking modification of the impugned notification, the State shall

dispose of the said representations at the earliest.Â Â If the representations are made by the petitioners within one week from today, we direct the

State Government to consider the said representations after holding meetings with the representatives of the petitioners and take a decision thereon as

expeditiously as possible and in any event, by 5th May 2018 and communicate the said decision to the petitioners;

(ii) As we are directing the consideration of the representations by the State Government, though for the reasons recorded earlier, we are not inclined

to grant interim relief as prayed for, we direct that for a period of three months from 23rd March 2018, no coercive action shall be taken in terms of

Section 9 of the said Act of 2006 against individual citizens limited only to the use of restricted/ regulated/ prohibited items which are covered by the

impugned notification dated 23rd March 2018 as amended by the notification dated 11th April 2018;

(iii) Subject to above directions, we reject the prayers made in these petitions for grant of interim relief;

(iv) As this order is dictated in the open Court, even if a copy of the order is not available, the State Government will be bound by what is directed

above. We direct the State Government to act upon the operative part of this order which will be released immediately;

(v) Considering the importance of issue, we direct that the petitions shall be listed on 8th June 2018 for fixing a peremptory date of final hearing.