
(2003) 05 MP CK 0002

In the Madhya Pradesh High Court

Case No : Writ Petition No. 161 of 2002

Sarita Agnihotri

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 12-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Environment (Protection) Act, 1986 — Section 25, 3(2)(viii)

Citation : (2004) 1 MPLJ 71

Hon'ble Judges : Dipak Misra, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : S.K. Yadav, Government Advocate for Respondents No. 1, 3, 4 and 5, V.S. Shrotri with A.P. Shrotri, for the Respondent

Judgement

Dipak Misra, J.

The petitioner, the President of an organisation called "People for Animals" as pro bono publico has preferred this writ petition under Article 226 of the Constitution of India to issue a writ in the nature of mandamus commanding the respondents to direct all the Collectors of the districts to issue orders forthwith banning the sale and consumption of polythene bags and other polythene materials, and to pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case.

The factual score as depicted in the petition is that the petitioner is involved in the propagation of welfare measure for the life of animals. She is qualified in the Special Cultivation Techniques for growing wild medicinal plants in farms and gardens and received training in various national institutes viz. C.S.I.R. and tribal villages in the dense forests of Mandla district. She is also trained in "Pranik Healing" and is an active social worker. It is setforth that she is the author of many an articles relating to hazards caused by polythene bags and the effects by use of such bags to the health and life of animals as well as human beings. She has represented to the authorities of the execution for banning the sale and use

of the polythene bags in the Kanha National Park highlighting the effects of these articles on the grazing animals.

According to the writ petitioner there has been realisation of the adverse effects of polythene material which is insoluble and undestroyable. Such realisation has led many State Legislatures to come up with legislation banning the use of recycle of these polythene materials. It is putforth that the Central Government has framed rules called The Recycled Plastics Manufacture and Usage Rules, 1999 (hereinafter referred to as "the Rules") and the said Rules has prescribed certain standards. It is putforth that polythene bags and other plastic materials made out of insoluble and undestroyable cannot be converted into wastage products because of its very nature. It remains in the atmosphere even after being destroyed and the animals are badly affected by filthy material which is swallowed by them, as a result of which the digestive system gets affected leading to the inevitable result of death of animals. An instance has been given in Joteshwar near Narsinghpur where an elephant was operated and about 100 Kgs. of polythene was found in its stomach, which caused the death of the elephant. With these averments prayer has been made, as has been indicated hereinabove.

At this juncture it is worthwhile to state that when the matter was listed on 7-3-2003 it was submitted by the petitioner who appeared in person that the Secretary, Health Services, Government of M.P. and Secretary, Environment, Government of M.P., Bhopal, should be impleaded as respondent Nos. 4 and 5 and the prayer was accepted and the said authorities were impleaded as respondent Nos. 4 and 5.

A reply has been filed by the respondent Nos. 1, 3, 4 and 5 who are the functionaries of the State. It is asserted in their counter affidavit that the claim of imposition of total ban by the petitioner has not been supported with any data. It has also been putforth that the Central Government has framed rules pursuant to the powers conferred on it by clause (viii) of sub-section (2) of section 3 read with section 25 of the Environment (Protection) Act, 1986. Certain rules have been referred in the return highlighting how there is prohibition of recycled plastics relating to storing, carrying, dispensing or packing of foodstuffs and how certain conditions are provided for the manufacture of carry bags and containers made of plastics. It is setforth in the return that a meeting had been convened by the Chief Secretary wherein the secretaries of the Department of Urban Administration and Development, Housing and Environment, Public Health and Family Welfare, the Principal Secretaries of respective Departments and the Chairman, M.P. Pollution Control Board were also present. After due deliberation it has been decided that the Pollution Control Board which had procured micron gauge meters would be used at the district level for checking thickness of polythene bags. It has been setforth that a report has been received indicating that plastics bags less than 20 microns are being manufactured and the Pollution Control Board has been actively involved in ensuring that the norms are complied with. Emphasis has been laid on public awareness. A reference has been made to

the letter dated 14-2-2002 issued by the Minister, Housing and Environment to all the Mayors, President of Panchayats and District Collectors pointing out the dangers and menace of use of polythene bags by the society. On 2-7-2002 a letter had been written to the Secretary, School Education and Board of Secondary Education, Bhopal calling upon the said authorities to use their good office for apprising even at school level the dangers and menace being callous in the use of polythene bags. A suggestion was made by the M.P. Pollution Control Board for constituting a checking squad at the district level for the effective and proper implementation of the rules framed by the Central Government and the said checking squad is comprising of two officers from the office of the District Collectors and one from the concerned Regional Office of the Pollution Control Board. Correspondences had been going on between the State Government and the local self authorities for developing a sense of awareness. While so stating the stand has also been taken that a book has been published by the Indian Centre for Plastics Engineering and Technology, Chennai, to highlight about the utility of wide varieties of plastic products and also about biodegradation and disposal practices including recycled plastics. Indispensable use of plastic bags in certain spheres has been emphasised. It is also putforth that steps have been taken to curb the use of plastic bags in National Parks, forest areas so that disposed of bags are not consumed by animals.

A return has been filed by the respondent No. 2, M.P. Pollution Control Board, stating that the Central Government has framed rules and under the rules the State Pollution Control Board has been made the prescribed authority for enforcement of the provisions of the rules relating to manufacture of recycled plastics. The Prescribed Authority for enforcement of the provision of the Rules relating to the use, collection, segregation, transportation and disposal is the District Collector, Deputy Commissioner of the concerned district where no such authority has been constituted by the State Government. It is putforth that no such authority has been constituted by the State Government under any law pertaining to non-biodegradable garbage. A reference has been made to Rules 4 to 6 as well as to Rule 8. There is also reference to the guidelines for recycling of plastics as per the Indian Standard laid down by the Central Government. It is the stand of the Board that there has been correspondence by the authorities of the Board with the District Collectors. It has also provided micron gauge meters to all its Regional Offices. It is worthwhile to state here certain suggestions given by the Board which, in fact, are for the purpose of carrying on and giving effect to the Rules. That apart, certain other suggestions have also been given.

We have heard Mrs. Sarita Agnihotri, the petitioner, in person, Mr. Sanjay Yadav, learned Government Advocate for the State/respondent Nos. 1, 3, 4 and 5 and Mr. V.S. Shroti, learned Senior Advocate with Mr. A.P. Shroti, for the respondent No. 2.

The petitioner appearing in person, has submitted that the use of polythene bags has created an incurable dent in the environment as after the destruction of such

bags gaseous products affect the environment. It is canvassed by her that the pollution in the atmosphere affects the immunological resistance which ultimately destroys the marrow of physical health of the homosapiens. It is urged by her that when bags are not destroyed in a proper manner it has the effect potentiality to affect the foetus and sometimes may cause death. It is her submission that when animals eat polythene bags they slowly pave the path of death. It is also contended by her that any unscientific destruction of the bags leads to less rain, no rain or sometimes heavy and torrential rain thereby creating havoc in the atmosphere. It is forcefully contended by the petitioner that when the ecological effect is of such magnitude, the use of polythene bags should be banned and manufacture and use of polythene bags and other alternative materials should be prohibited, the same being warranted in the interest of the human race as well as animals.

Mr. S.K. Yadav, learned Government Advocate, per contra, has submitted that there is no legislation for banning the manufacture of polythene bags or any material made of polythene and such ban would tantamount to legislation. It is urged by him that research has shown that for certain areas plastic is integral to sustainable development and it plays a vital role in fundamental medical care such as blood bags, disposable syringes, hygienic medical instruments, etc. Therefore, a ban in every sphere is unwarranted. It is also contended by him that when the Central Government has framed rules what is to be done relates to implementation and hence, a total ban, as prayed by the petitioner is impermissible.

Mr. V.S. Shrotri, learned Senior Counsel appearing for the M.P. Pollution Control Board, in his turn, has contended that the Board has been appointed as the Prescribed Authority in certain areas and is prepared to perform its role but where the State functionaries have been appointed as prescribed authorities there should be co-operation/co-ordination so that wholesome step can be taken to curb the menace as per law. The learned counsel has given certain suggestions.

Before we proceed to deal with the rival submissions and the necessary directions which are to be given, it is worthwhile to remind oneself the signification of a healthy life. In the case of Sayeed Maqsood Ali Vs. State of M.P. and others, it has been laid down as under:

Life is a glorious gift from God. It is the perfection of nature, a masterpiece of creation. It is majestic and sublime. Human being is the epitome of the infinite prowess of the divine designer. Great achievements and accomplishments in life are possible if one is permitted to lead an acceptably healthy life. It has been said "life is action, the use of one's powers" and powers one can use if he has real faith in life. The term "life" as employed under Article 21 of the Constitution of India does never mean a basic animal existence but conveys living of life with utmost nobleness and human dignity-dignity which is an ideal worth fighting for and worth dying for. Life takes within its fold "some of the finer graces of human

civilization which makes life worthliving". Right to live in its ambit includes right to health and health gives a serene and halcyon signification to life. It has been said that preservation of health is a duty and as per Herbert Spencer, "few seems conscious that there is such a thing as physical morality". While speaking about health thus spoke Izaak Walton....."for health is the second blessing that we mortals are capable of; a blessing that money cannot buy". Reverence for life is a fundamental principle of morality and a life without good health is denial of life. The human body is regarded as the house of creative intelligence. The health of an individual enhances the quality of the collective and in a welfare state it is the bounden obligation of the State to see that people remain in a healthy society.

In this context we may profitably refer to the decision rendered in the case of K.M. Chinnappa and T.N. Godavarman Thirumalpad Vs. Union of India (UOI) and Others, wherein the Apex Court in paragraph 17 held thus:

17. Article 48A in Part IV (Directive Principles) of the Constitution of India, 1950 brought by the Constitution (42nd Amendment) Act, 1976, enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". Article 47 further imposes the duty on the State to improve public health as its primary duty. Art. 51A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests, lakes rivers and wild life and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance." It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions, would cause environmental pollution. Therefore, hygienic environment is an integral fact of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environment protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man made and the natural environment. Therefore, there is constitutional imperative on the Central Government, State Governments and bodies like Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measure to promote, protect and improve the environment -man and natural environment.

In the aforesaid decision their Lordships have given emphasis on promotion of environmental protection and maintenance of the environment and the role of the Central Government, State Governments and the local bodies.

It is seemly at this juncture to refer to the foreword International wild Life Law, M.R.M. Prince Philip the Duke of Edinburgh: Cambridge as referred to in the case of K. M. Chinappa (supra):

Many people seem to think that the conservation of nature is simply a matter of being kind of animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that..... As usual with all legal systems, the crucial requirement is for the terms of the conversions to be widely accepted and rapidly implemented.....Regretfully progress in this direction is proving disastrously slow." (See International Wild Life Law by Simon Lyster, Cambridge, Grotius Publications Ltd. 1985 Edn.)

In the aforesaid case their Lordships in paragraph 14 referred to the famous story that evolves around between Indian Chief of Seattle and the White Chief in Washington that the latter made an offer to buy the land of the former. In the reply the Indian Chief apart from saying many things which their Lordships described as profound, timeless and beautiful, stated thus:

What is man without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected.

From the aforesaid it is luminescent that the animals have to be given their due.

We may at this stage state that the Environment (Protection) Act, 1986 [hereinafter referred to as "the Act"] was enacted to provide for the protection and improvement of environment and for matters connected therewith. The said legislation was brought into existence as it was considered necessary for protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property. Clause (viii) of Subsection (2) of section 3 of the Act reads as under :

3. Power of Central Government to take measures to protect and improve environment.--

(1) xxx xxx

(2) xxx xxx

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution.

Section 25 of the Act confers power on the Central Government by notification in the Official Gazette to make rules for carrying out purposes of the Act. The Rules which have come into force by publication of the Gazette notification are required to be understood to appreciate the contentions raised by the petitioner.

Rule 2(b) of the Rules defines "foodstuffs". It reads as under :

2(b). "Foodstuffs" means ready-to-eat food and food products fast food, processed and cooked food in liquid, powder, solid or semi-solid form.

Rule 3 of the Rules deals with Prescribed Authority. It reads as under:

3. Prescribed Authority.--

(a) The prescribed authority for enforcement of the provisions of these rules related to manufacture and recycling shall be the State Pollution Control Boards in respect of States and the Pollution Control Committees in respect of Union Territories.

(b) The prescribed authority for enforcement of the provisions of these rules related to the use, collection, segregation, transportation and disposal shall be the District Collector/Deputy Commissioner of the concerned district where no Such Authority has been constituted by the State Government/Union Territory administration under any law regarding non-biodegradable garbage.

Rule 4 prohibits usage of carry bags or containers made of recycled plastics. It envisages that no vendor shall use any bags or containers made of recycled plastics for storing, carrying, dispensing, or packaging or foodstuffs. Rule 5 of the Rules postulates conditions of manufacture of carry bags and containers, made of plastics. The said rule being relevant for our present purpose, is reproduced below:

5. Conditions of Manufacture of carry bags and containers, made of plastics. -- Subject to the provisions of rule 4 any person may manufacture carry bags or containers made of plastics if the following conditions are satisfied, namely --

(a) Carry bags and containers made of virgin plastics shall be in natural shade of white.

(b) Carry bags and containers made of recycled plastic and used for purposes other than storing and packaging foodstuffs shall be manufactured using pigments colourants as per IS 9866 : 1981 entitled "List of pigments and colourants for use in plastics in contact with foodstuffs, pharmaceuticals and drinking water."

Rule 6 of the Rules deals with recycling which stipulates that recycling of plastics shall be undertaken strictly in accordance with the Bureau of Indian Standards specifications : IS 14534 : 1998 entitled "The Guidelines for Recycling of Plastics". Rule 7 deals with marking/codification. It reads as under:

7. Marking/codification. -- Manufactures of recycled plastic carry bags having printing facilities shall code/mark carry bags and containers as per Bureau of Indian Standard Specifications : IS 14534 : 1998 entitled "The Guidelines for Recycling of Plastics" and the end product made out of recycled plastics shall be marked as "recycled" along with the indication of the percentage of use of recycled material. Other manufacturers, who do not have printing facilities, shall comply with the condition within one year of publication of these rules Manufacturers shall print on each packet of carry bags as to whether these are made of "recycled material" or of "virgin plastic".

Rule 8 of the Rules provides with regard to the thickness of Carry bags. Therein it has been mentioned that minimum thickness of carry bags made of virgin plastics or recycled plastics shall not be less than 20 microns.

From the aforesaid it is luminously clear that the rules are regulatory as well as prohibitory. The Rules do not make total ban in all spheres. What is banned under Rule 4 of the Rules is that no vendor shall use carry bags, containers made of recycled plastics for storing, dispensing or packaging of foodstuffs. Rule 5 lays down the conditions of manufacture of carry bags and containers made of plastics has been made subject to Rule 4. Rule 6 as has been indicated hereinabove deals with the process of recycling. Submission of the petitioner is that the rules are not being adhered to and, therefore, there should be complete ban on all carry bags and sale of polythene bags and also all other polythene materials. She has laid immense emphasis on the pollution of environment and protection of wild life as healthy life is seriously affected by eating all kinds of polythene materials.

Regard being had to the facts that have been brought on record, the data given and the apprehension expressed by the petitioner we are inclined to issue certain guidelines which we enumerate as under:

- (a) the State Government shall constitute the Prescribed Authority as provided under Rule 3 of the Rules within a period of three months from today;
- (b) till the said authority is constituted by the State Government in enforcement of provisions of the rule in question District Collector/Deputy Commissioner of the district shall function as the Prescribed Authority and do the needful so that there is due compliance of the requirement of the Rules and there is no deviancy;
- (c) the State Pollution Control Board being the Prescribed Authority under Rule 3(a) shall see that no manufacturing take place in violation of the Rules and conditions of manufacture of carry bags, containers made of plastics are strictly adhered to. The Board shall also scrutinise the minimum thickness of carry bags made of virgin plastics or recycled plastics as provided under Rule 8. If there would be any deviation consent shall be withdrawn immediately and appropriate legal action should be taken against the manufacturers;
- (d) the prohibitions contained in Rule 4 shall be strictly supervised by the Prescribed Authority under the Rules and if any vendor violates the said Rule, he should be proceeded against as per the prevalent law;
- (e) no carry bags made of virgin plastics or recycled plastics with a minimum thickness of 20 micron should be allowed to be imported or sold within the State.
- (f) the Collector of each district or the Prescribed Authority after it is constituted under Rule 3(b) shall constitute a "checking squad" at the district level comprising of two officers from the office of the concerned Collector and one officer from the office of the Municipal Corporation, Municipality, or Panchayat as the case may be, to check that there is adherence to the use and sale of

polythene bags;

(g) the Municipal Corporation/Municipal Council, Nagar Panchayat and such other public bodies shall be directed by the State Government to make adequate arrangement for collection and disposal of carry bags made of polythene, plastics or recycled plastics and dispose them off after obtaining the technical advice/know-how from the M.P. State Pollution Control Board;

(h) the State Government shall instruct the district administration to distribute pamphlets and exhibit/display posters at public places such as railway platforms, bus stands, market places, hospitals indicating the menace of carry bags or small bags;

(i) there should be advertisement in the cinema halls and other electronic media to create awareness amongst people so that they become eco-sensitive;

(j) the district administration shall publish in the newspapers giving wide publicity emphasizing on the ban on manufacture, sale, use and disposal of such polythene carrying bags keeping in view the rule in question;

(k) the local bodies shall install such garbage disposal containers in each street so that the bags and other materials made of polythene are thrown after use and the said garbage is cleaned each day and destroyed in consultation with the M.P. Pollution Control Board;

(l) the transport authority of the area concern shall install containers for putting polythene bags and other materials near bus stands, cinema theatres and such other public places and that should be destroyed as per the guidelines given by the M.P. Pollution Control Board.

(m) the Divisional Railway Manager of every Division in consultation with the M.P. Pollution Control Board shall also put certain garbage containers for putting and use of polythene bags and other materials in the said garbage container and the same shall be destroyed as per the guidelines issued by the M.P. Pollution Control Board;

(n) as apprehension has been expressed with regard to the consumption by animals nothing contained in polythene bags should be carried and/or thrown inside the Kanha National Park and other wild life sanctuaries and if anyone violates the same he should be proceeded in accordance with law;

(o) if any person witnesses any vendor using carry bags, containers made of cyclostyled plastics for storing, dispensing or packaging of foodstuffs, he shall bring it to the notice of the district administration so that Prescribed Authority shall take immediate action on such information.

(p) if any person is found disposing of polythene bags or materials at public places, bus stands, railway stations, etc. the competent authority shall take action as per prevalent law against such person and no laxity should be shown in that regard.

(q) the State Government shall constitute a high level committee consisting of the Principal Secretary, Health and the Principal Secretary, Urban and Rural Development so that adequate measures are taken to prevent the pollution. Competent authorities shall make the people aware with regard to distinction between the virgin polythene bags and the recycled polythene and other materials;

(r) the Committee shall meet once in two months. The meeting shall be convened by the Principal Secretary, Health. To each meeting the Chairman, M.P. Pollution Control Board shall be invited as a special invitee;

(s) the State Government shall issue instructions to each educational institutions viz. universities, colleges and schools for the purpose of imparting knowledge and information to the students about the dangers and use of polythene bags and how it affects the environment. This has to be done keeping in view to create a sense of awareness amongst the students;

(t) the State Government shall impart periodical training to one or two teachers in other educational institutions who can make the students aware;

(u) the head of the educational institution shall demarcate some time for the concerned teacher to impart this information. It will be in his discretion. This shall be done each year and should be modulated by the Secretary, Department of Higher Education and the authorised Incharge of School Education. There shall be imparting of education with regard to distinction between the virgin polythene carry bags and recycled polythene and other materials;

(v) the Committee which has been directed to be constituted shall submit the progress report to this Court with regard to all the facets as has been indicated hereinabove, within a period of four months;

A copy of the aforesaid order be sent to the Chief Secretary, State of Madhya Pradesh and due circulation amongst the authorities, who have any role as per the directions contained hereinabove. The said circulation shall be done within six weeks hence.

With the aforesaid observations and directions the writ petition stands disposed of without any order as to costs.