

(2008) 08 DEL CK 0061
In the Delhi High Court
Case No : Writ Petition (C) 6456 of 2004

Vinod Kumar Jain

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Recycled Plastics Manufacture and Usage Rules, 1999 — Rule 6

Citation : (2008) 106 DRJ 27 : (2009) 1 ILR Delhi 616

Hon'ble Judges : T.S. Thakur, J;Siddharth Mridul, J

Bench : Division Bench

Advocate : Arvind Shah and O.P. Ratra, Party in Person in CM 3643/200, for the Appellant; Pinky Anand, Smriti Duggal and Suresh Kait, for the Respondent

Judgement

T.S. Thakur, J.—This writ petition has been filed in public interest. It paints a grim picture about the failure of the civic agencies in regard to the solid waste management in Delhi giving the capital of this country the dubious distinction of being the dirtiest city in the world. It points out that according to a study conducted by the Central Pollution Control Board, the gap between the waste generation and management will rise to 64% by 2021 from the present level of 40%, having regard to the current population growth and the change in urban life style. The petition alleges that landfill sites are packed with a mixture of non-biodegradable and toxic waste resulting in contamination of the ground water on account of the considerable leaching of the solid wastes from these areas. It also leads to atmospheric pollution and contamination and is thereby a great threat to the health of the citizens. It proposes effective measures at the grass root level in fiscal and non-fiscal areas to reduce the production and consumption of non-biodegradable material and the hazards arising out of the same. In particular, it refers to the problems arising out of use of plastic bags in general which are posing major environmental hazard. Inadequacy of the statutory provisions also is emphasized by the petitioner according to whom the legislation including the rules framed thereunder need to be strengthened by suitable amendments to face the challenge arising from the unregulated and unhindered use of plastic as

a packaging material resulting in growth of waste garbage which civic agencies are unable to handle. It alleges that plastic waste, when disposed of, remains in the environment as it is non-biodegradable and enters the food chain thereby resulting in health risks to the citizens. Inadequate refuse collection and disposal system also contributes to the seriousness of the problem. Disposal of plastic waste in streams, canals, water bodies or by burning compounds the problem. The absence of any awareness campaign or regulatory control by the civic agencies to prevent littering of plastic bags, packaged beverages, water bottles, plastic cutlery, plastic plates used in airlines, railways, wedding parties, mass gatherings at fast food joints also contributes to a great extent to the seriousness of the challenge arising out of environmental degradation. The petition points out that when plastics are burnt, they release a deadly mix of chemicals to the atmosphere notably dioxin and other poisonous chemicals. Dioxin is said to be a persistent organic pollutant which causes cancer. It is released every time chlorinated plastics are produced or combusted. They travel thousand of miles and go up the food chain causing health hazards for humans. Absence of any scientific recycling facilities, poor working conditions, unskilled workforce for such recycling process also add to the problem. There is, according to the petitioner, no solid based policy in the country. In any case the policy is ineffective insofar as managing the problems arising out of waste management in Delhi is concerned. The petition, therefore, prays for directions for upgrading the waste management system, effective means to curb the tendency to generate needless waste by strict legislative measures and also by educating the people at large about the hazards to environment arising out of absence of a scientific waste management programme. It prays for a mandamus directing the respondents to amend the provisions of the Delhi Plastic Bag (Manufacture, Sales and Usage) and Non-Biodegradable Garbage (Control) Act, 2000 and the Rules framed thereunder so as to ensure that the same apply and extend not only to prohibition but also to the manufacture and sale of all plastic bags in general.

2. The respondents have appeared and filed their counter affidavits. According to the respondents Municipal Waste Management and Handling Rules, 2000 framed under the Environment (Protection) Act, 1986 regulate the non-biodegradable waste especially plastic. Recycling of plastic is, in turn, undertaken as per the provisions of Recycled Plastics Manufacture and Usage Rules, 1999 as amended in 2003. Rule 6 of the said Rules requires that recycling of plastic shall be undertaken strictly in accordance with Bureau of Indian Standards Specifications : IS 14534:1998.

3. In the affidavit filed by Sh. U. Sridharan, Additional Director, Ministry of Environment and Forests, Government of India, on 10th March, 2005, it is inter alia pointed out that in compliance with an order of this Court dated 10th November, 2004 the Ministry of Environment and Forests has issued the Recycled Plastics Manufacture and Usage Rules, 1999 regulating and managing plastic bags. These rules subsequently amended in 2003 are essentially meant to regulate carry bags to be used/manufactured in addition to the already stipulated

minimum thickness of 20 microns. The affidavit claims that wide publicity was given to the notifications on the subject and that several states have published their separate set of rules to control non-biodegradable garbage. The Ministry had also placed the rules on its website for use by the general public. The affidavit refers to various initiatives taken for propagating Plastic Rules and increasing the awareness on plastics through various state agencies apart from sponsoring a programme by the name "Bhoomi" on "Doordarshan" and "Yeh Gulistan Hamara" on the All India Radio. Enclosed with the affidavit is Annexure 1 which deals with the steps taken by various states in the country including Delhi where public notices in Hindi and English are said to have been issued and the Delhi Plastic Bag (Manufacture, Sales and Usage) and Non-Biodegradable Garbage (Control) Act, 2000 brought on the statute book to manage plastic waste.

4. An affidavit has been filed even by the Government of N.C.T. of Delhi sworn by the Deputy Secretary, Department of Environment, Government of NCT of Delhi which enlists the steps taken by the Government for implementation of the provisions of the Act aforementioned and the rules framed thereunder. It also refers to the action taken by civic agencies in the matter of effective implementation of the provisions of the statute. The affidavit encloses with it a note that highlights the actions taken by the Municipal Corporation of Delhi in regard to waste management and segregation of garbage as also the future plans which the Corporation intends to pursue.

5. A second affidavit filed by Sh. U. Sridhiran, Additional Director of Environment and Forest on 5th December, 2005 enlists various steps that have been taken for regulating and managing plastic carry bags and containers. It also refers to the amendments in the Recycled Plastics Manufacture and Usage Rules, 1999 and points out that the municipal authorities are responsible for ensuring compliance with the rules, namely, collection, storage, segregation, transportation, processing and disposal of municipal solid wastes in the city. It also points out that the responsibility for enforcement of the rules in Metro City is with the Secretary, Ministry of Urban Development and the District Magistrates for areas within their jurisdiction. It also states certain additional measures to be taken to make the entire machinery dealing with the collection and disposal of solid waste and refers to the proposed constitution of a committee to sort out issues relating to "testing protocols" for the biodegradable/degradable plastics in the country.

6. By an order dated 19th November, 2007 we had, with the agreement of counsel for the parties constituted a committee headed by Justice R.C. Chopra, former judge of this Court as convenor and Chairman, Central Pollution Control Board and Chairman, Delhi Pollution Control Committee as its Members. The Committee was requested to study the issue regarding environmental hazards including health hazards arising out of use of the plastic bags in the city of Delhi. It was given the liberty to associate with its study any institute or expert in the field of plastic/polymer and to elicit opinion from institutions like the IIT, CSIR,

National Chemical Laboratory of Pune, Bureau of Indian Standards and CIPEP, Chennai or any other expert or institution which the committee may consider necessary to consult. The Committee has formulated and answered the following issues in a detailed report submitted to this Court:

1. Whether plastic bags are per-se injurious to health or hazardous to environment?
2. Whether degradable/Biodegradable plastic bags are an alternative and can be introduced without any difficulty?
3. Whether bags made of other materials can substitute the plastic bags and meet the demand?
4. What are the existing laws to regulate the use of plastic bags in Delhi.
5. Whether recycling of the plastic bags waste is a health/environment hazard?
6. What are the major health or environmental hazards arising out of the use of plastic bags?
7. What steps can be taken to check the health and environment hazards arising out of use of plastic bags in Delhi?

7. The report deals with each one of the above issues and makes its recommendations in regard to the above. Insofar as issue No. 1, viz; whether plastic bags are per se injurious to health or hazardous to environment, the Committee has come to the conclusion that plastic, being a chemically inert substance does not pose any health hazard. It is used worldwide for packaging of medicines, life saving drugs, childcare products and wide range of personal care products. Virgin plastic bags are not, according to the committee, per se injurious to health or hazardous to environment. The same is not, however, true about recycled/coloured plastic bags which contain certain chemical additives that are injurious to health and may leach to the ground and contaminate soil as well as sub-soil water. These findings were not seriously assailed before us by Mr. Shah appearing for the petitioner. At any rate, there is no material to suggest that virgin plastic bags are in any way hazardous to health or to environment, although recycled/coloured plastic bags have the potential to be hazardous to health and environment both. Use of recycled bags is in any case already prohibited for carrying of food items in terms of Section 3 of the Delhi Plastic Bag (Manufacture, Sales and Usage) and Non-Biodegradable Garbage (Control) Act, 2000. which reads as under:

3. Prohibition of throwing garbage in public places, drains sewer etc.

(1) No person, by himself or by any person on his behalf manufacture for sale, or use any recycled non-biodegradable plastic bags or containers with or without containing inorganic or organic pigments, plasticizers, lubricants and stabilizers etc. which are liable to cause poisoning of food during storing, carrying or packing of any food with in the National Capital Territory of Delhi.

(2) No licence, for the manufacture, sale of recycled plastic bags referred in Sub-section (1) granted or received under any law before the date of commencement of this Act, shall entitle the holder thereof or any other person on this behalf to commence or carry on such business.

8. All that, therefore, needs to be done is to ensure that the above statutory provision is made effective by the authorities by taking appropriate action against all those engaged in manufacture or use of recycled plastic bags as containers for packing of any food within the National Capital Territory of Delhi.

9. As regards Issue No. 2 the Committee's report concludes that the "authorities have not been able to define and prescribe standards for the degradable and biodegradable plastics in India" Consequently, it cannot be said that degradable plastics pose no health or environmental hazards. The Committee has recommended use of that biodegradable plastics should be encouraged for manufacture/use of plastic bags. As noticed earlier according to the affidavit filed by Sh. U. Sridhiran, the Government are considering constitution of a Committee for sorting out the testing protocols for biodegradable, degradable plastics and recycling of non-biodegradable plastic in the country. It is not clear as to whether the Committee has indeed been constituted and if so whether any progress in the direction of evolving "testing protocols" has been made. All that we need to add is that the Government may expedite the formulation of the protocols referred to in the affidavit of Sh. U. Sridhiran to provide the missing link in the legal framework necessary for effectuating the provisions relevant to the regulation and control or use of degradable and biodegradable plastics in India.

10. Coming then to Issue No. 3 the Committee has taken the view that plastic bags are economical, efficient and a popular mode used by the citizens of Delhi which cannot be withdrawn or banned completely, although other alternatives can be encouraged and propagated with a view to reducing the demand/use of plastic bags. The Committee has observed:

The chaos and problems created by the use of plastic bags in the city of Delhi are primarily on account of waste generated by plastic bags which needs efficient handling by the authorities as well as Plastic Manufacturers Association.

11. We have no reason to take a different view. A blanket ban on the use of plastic bags may be premature having regard to the fact that plastic bags are indeed part of the commercial milieu in the city and cannot be completely banned without providing cheap and acceptable alternatives. The problems arising out of use of plastic bags, as rightly pointed out by the Committee, is on account of a failure on the part of the authorities in efficiently handling the plastic waste. The need of the hour, therefore, is to ensure proper handling of waste and not a complete ban on the use of plastic bags.

12. The Committee has referred to the legal provisions and noticed that plastic bags are required to have a thickness of not less than 20 microns and a size not less than 8 inches x 12 inches according to the Delhi Legislation. The Rules also

provide for registration of the Plastic Bag manufacturers but the said provisions are not, according to the Committee, being followed. The Committee has observed:

These provisions do not appear to be followed by the manufactures as well as suppliers of plastic bags and as such an effective and vigorous campaign is required for enforcing these provisions. It would reduce the menace of non recyclable plastic waste polluting the earth, subsoil water and atmosphere.

13. It has also recommended increase of the thickness of the bags to 40 microns as has been done in some other states with a view to reducing the inflow of plastic bags into solid waste and increasing the segregation and collection of the said waste by rag pickers for recycling purposes. The Committee also favours a ban on use of plastic bags in main markets, local shopping centres, small shopkeepers and street vendors. The Committee has observed:

The ban imposed on hotels, hospitals, malls etc. takes care of a small percentage of plastic bags only in as much as maximum consumption thereof is through the main markets, local shopping centres, small shopkeepers and street vendors.

14. We see no reason to take a different view. If plastic bags are unacceptable in hotels, hospitals and malls, there is no reason why they should be permitted in main markets and local shopping centres. In that view forbidding use of plastic bags even in main markets and local shopping centres would, therefore, help in dealing with the menace of plastic garbage in Delhi. The competent authorities from out of the respondents would, therefore, consider stipulating a minimum thickness of a plastic bag at 40 microns and forbidding use of such bags even in main markets and local shopping centres. The civic authorities would effectuate the said prohibition by taking suitable action against those violating the prohibition and publicizing the legal position by carrying out an awareness campaign for the benefit of all concerned.

15. While dealing with Issue No. 5, the Committee has taken the view that there are fairly large number of unauthorized recycling units in operation in non-conforming areas which use crude methods for recycling of plastic waste which are health and environment hazards. These unsound recycling practices, therefore, need to be forbidden by the authorities by taking suitable action. The Committee's observations, in this regard, are as under:

Unlicensed recycling units operating from non-conforming areas are using various methods of heating plastic bags waste, which emit toxic gases posing a serious environmental/health hazard. The doctrine of sustainable development heavily leans on precautionary principles and as such it is the duty of the State to ensure that such unauthorized units are immediately shut down or are made to shift to conforming areas where they are duly licensed and recycle the plastic waste as per guidelines with the help of modern plants and machinery. This Committee, therefore, has no hesitation in holding that unsound recycling practices are a serious health/environmental hazard. Those who violate the

provisions/norms should be dealt with very strictly as per law.

16. There is considerable merit in the above recommendation also. In our opinion, unlicensed recycling units operating from non-conforming areas using obsolete and unscientific methods for recycling of plastic waste being health and environmental hazards need to be shut down immediately by the authorities. The civic agencies as also the Government of Delhi would, therefore, do well to take up the matter in the right earnest and ensure that such unlicensed, unauthorized and unscientific recycling units are shut down immediately and those violating the law suitably dealt with.

17. Insofar as Issue No. 6 framed by the Committee is concerned, it has recommended increase in the thickness of the plastic bags from 20 to 40 microns by a suitable amendment in the Rules. That recommendation is also, in our opinion, well made. We were told at the bar by counsel for the parties that in the State of Maharashtra the minimum thickness of a plastic bag is 50 microns while in Punjab, Haryana and Chandigarh the thickness of plastic bag is 30 microns. In the State of Himachal Pradesh, however, thickness of plastic bags cannot be less than 70 microns. Thickness of virgin plastic bag is an incentive for the rag pickers to collect and segregate the same from the garbage for recycling purposes. Thicker the bag more its resale and recycling value.

18. The Committee has similarly dealt with issue No. 7 and made following recommendations

i) Thickness of the plastic bags for manufacture, sale and use in Delhi may be increased to 40 microns, as has been done in some other States, so that the plastic bags are more costly and its indiscriminate use by the vendors of various products is discouraged. It would also improve retrieval and recycling of the waste of such plastic bags as rag pickers would find it more remunerative as well as convenient to pick up waste of such bags.

ii) Manufacture and use of biodegradable plastic bags may be given wide encouragement as their waste is consumed by micro-organisms. Such plastics are costly but Govt. may introduce incentives and tax/duty concessions to make these plastics affordable and an economically viable option for plastic bags manufactures. Such indirect tax benefits may be provided separately on capital investments, raw materials and finished products for promoting biodegradable products.

iii) MCD, NDMC and Delhi Cantonment Board which handle and manage the solid waste/garbage in the city of Delhi may be directed to encourage and support proper agencies for removal of plastic waste and if possible in every zonal office/Dhalao they should set up a plastic compaction unit where rag pickers/agencies may bring the plastic bags waste and get it compacted for sale to the recyclers of plastic waste. Committee has been informed that such compaction machines are being manufactured in Delhi and one of such machines has been found working satisfactorily at Sreekot, Shrinagar, Pauri Garhwal.

Along with compaction units buy-back facilities can also be provided either by private entrepreneurs or by the State so that after compaction of plastic waste, the plastic waste may be sold there itself. Reasonable rates may be fixed for the plastic waste to encourage the rag pickers and others to collect and sell plastic bags waste. If this proposal is implemented even the domestic help may be prompted to segregate, store and then sell plastic bags waste at such centres, to earn some money.

iv) Recycling of plastic waste should be regulated effectively so that there are no recycling units in non-conforming areas. Strict action should be taken against unlicensed recycling units. Supreme Court directions should be complied with to shut down recycling units in non-conforming areas. DPCC must be provided adequate staff and powers for curbing this menace. The DPCC officers should have the powers of search, seizure as well as confiscation of plastic bags which are found to be in violation of the rules. They should also be empowered to search, seize and confiscate machines/material found for manufacturing plastic bags in violation of the rules or for recycling of plastic waste in unlicensed units.

v) Environmentally sound and economically viable modern recycling units must be established by licensed plastic bags manufactures or plastic manufactures associations on the basis of polluter pay principle. Directions may be issued by the Court in this regard.

vi) Discouraging use of recycled plastic bags and encouraging usage of virgin plastic/biodegradable bags may also help. Coloured bags contain metallic additives which are injurious to health as well as the environment should be banned totally. Multilayered and metalized pouches also be banned totally.

vii) The used/discarded plastic bags/packaging material should be encouraged for other segments like manufacturing of plastic furniture, non-critical household products like dustbins, mats, clothes hangers etc. It should be used in construction of roads since it blends with bitumen and has given encouraging results as pointed out by Shriram Institute of Industrial Research and CPCB.

The waste generated by plastic bags can also be used for making various items of daily use and handicraft items. It can also be used for manufacturing doors and windows. It can be used as partial fuel in cement kilns and blast furnaces of steel plants. Even railway sleepers can be manufactured by this waste.

viii) Plastic waste can also be used for generating power. This option may be addressed on priority for generating power through solid waste including plastic waste as is being experimented by local bodies in Delhi

ix) The proposal with DPCC for use of plastic waste for making nano particles be examined on priority basis. The experiment being carried out in Rajkot, Gujarat by M/s Hanger Bio Engineers Pvt. Ltd. Regarding segregation of plastic waste from solid waste and its use for power generation requires a closer examination and adoption if found feasible. In Delhi such projects are the need of the hour.

x) The major contributors/generators of plastic bags waste like malls, airports, railways, fast food centres etc. should be asked to make arrangements for plastic waste collection. They should be made fully accountable for delivery of plastic bags waste to authorized recycling units. They may also be directed to use only bags made of biodegradable plastics.

xi) Alternatives to bags of less than 8" x 12" made of paper/jute cloth should also be encouraged so that at least small sized plastic bags are not used. Paper, especially recycled paper, is an option for such smaller bags so that small size plastic bags do not form part of solid waste in Delhi. Bags made of recycled paper, jute or cotton may not totally replace plastic bags but their use in addition to plastic bags by vendors shopkeepers for certain items would solve the waste problem to a large extent.

xii) Public awareness campaigns may be intensified so that the citizens also appreciate the health and environmental issues arising out of the use of plastic bags. They may be educated and motivated to adopt alternatives for making their daily purchases and avoid accepting plastic bags for each and every item. They be also motivated to store and dispose plastic waste separately.

19. None of these recommendations came under any serious attack from either side. Some of the above recommendations may require formulation of proper strategies and schemes by the Government as also the civic bodies. All that can, therefore, be said about the said recommendations is that the same deserves to be seriously considered and appropriate decisions taken at the appropriate level. Some of the recommendations that we have discussed above being ex facie justified and perfectly rational do not require any further consideration and may, therefore, have to be accepted straightaway as already indicated by us in the preceding paragraphs.

20. In the result, we allow these petitions but only in part and to the following extent:

i) The respondents Government of NCT of Delhi shall issue a proper notification fixing the minimum thickness of plastic bags at 40 microns in place of 20 microns currently stipulated.

ii) The respondents, Government of Delhi, the Pollution Control Committee of Delhi and the civic agencies shall take immediate steps for closure of unlicensed recycling units operating from non-conforming areas by using unsound methods for recycling of plastic bags.

iii) Government of India shall expedite the constitution of the committee for verifying protocols for degradable and biodegradable plastics in India if the same has not already been done.

iv) Government of NCT of Delhi shall issue an appropriate notification forbidding use of plastic bags in the main markets and local shopping centres apart from hotels, hospitals and malls where use of such bags is already forbidden.

v) The other recommendations referred to in the report made by the Committee appointed by this Court and extracted above shall be examined by the Government of NCT of Delhi as also the civic agencies and appropriate actions taken in accordance with law wherever such recommendations are found feasible.

No Costs.