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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W. P. (C) 5350/2016 & C. M. No. 27454/2016 (directions)

Date of Decision : 10th August, 2016

ZULFIQUAR HUSSAIN Petitioner

Through : Mr. Tariq Adeeb, Advocate.

Versus

GOVERNMENT OF NCT OF DELHI Respondent

Through : Mr. Rahul Mehra, Standing Counsel
with Mr. Anuj Aggarwal, ASC for
Government of NCT of Delhi/R-1.
Mr. Anil Sapra, Sr. Adv. with Mr. S.
K. Gandhi, Mr. Shivanshu Kumar,
Mr. Aditya Kapoor, Advs. for
applicant/proposed respondent.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

Ms. G. ROHINI, CHIEF JUSTICE

1. The present writ petition has been filed as a public interest litigation seeking issuance of directions to Ministry of Environment, Government of NCT of Delhi-Respondent to take steps under the provisions of Environment (Protection) Act, 1986 and other relevant Acts to prohibit the manufacture, use, sale and purchase of synthetic manja/nylon kite thread and all similar synthetic threads used in kite flying and to enforce the prohibition throughout Delhi. The contention is that the thread used for

flying of kites which is made of nylon or synthetic material and other toxic materials, often referred to as “Chinese manja” though it has nothing to do with China, being razor sharp is very dangerous and is capable of causing severe injuries to birds and humans.

2. Few incidents reported in various newspapers, have been mentioned in the writ petition which are as follows :

- a twenty year old man was killed in Gokulpuri locality of East Delhi when his throat was slit by nylon/synthetic thread when he was riding on his motor bike;
- a ten year old killed in Jaffarabad locality of the city when his throat was slit by the sharp synthetic kite thread;
- a ten year old seriously injured in Shaheen Bagh locality of the city when he came into contact with nylon manja;
- the nephew of the petitioner was seriously injured by nylon kite thread in Abu Fazal locality of Delhi;
- a five year old girl in Jaipur (Rajasthan), became the victim when her throat was slit by the sharp synthetic kite thread;
- an engineer was killed in Bareilly (U.P.) when nylon manja slashed his throat;
- a five year old boy was killed in Moradabad (U.P.) when his throat was slit by synthetic thread (manja) while he was riding on a bike with his father;
- two boys died in Allahabad and Bareilly (U.P) when manja got rolled to their throats;

- eight deaths were reported in the city of Ahmedabad (Gujarat) one of which was a four year old girl whose throat was slit with nylon synthetic thread.

3. In this background, the petitioner contends that the ‘Chinese manja’ should be immediately banned as the kite flying is prominent in Delhi not only during festivals but throughout the year whereas it is at peak during the festive season of ‘Makar Sankranti’, ‘Raksha Bandhan’ and ‘Independence Day’.

4. Mr. Rahul Mehra, learned Standing Counsel for Government of NCT of Delhi apprised us, that the Government is seized of the matter and submitted that the draft Notification proposed by and in the name of Lt. Governor, made in exercise of powers conferred by Section 5 of the Environment (Protection) Act 1986, Rule 5(3) of Environment (Protection) Rules, 1986 read with Government of India, Ministry of Home Affairs, Notification No. S.O. 667 (E) dated 10.9.1992 delegating the power under Section 5 of the Act to the Lt. Governor, for prohibition on the manufacture, use, sale and purchase of synthetic manja/nylon kite thread and all similar synthetic threads used in kite flying, has been placed before the Law Department for vetting. It was further submitted that in light of Rule 13 of Environment (Protection) Rules, 1986, objections are yet to be invited in public interest and, therefore, the issuance of the notification is likely to take some time.

5. Rule 13 of Environment (Protection) Rules, 1986 reads as under :

“Rule 13 – Prohibition and restriction on the handling of hazardous substances in different areas –

Sub section (1) The Central Government may take into consideration the following factors while prohibiting or restricting the handling of hazardous substances in different areas:

- (i) The hazardous nature of the substance (either in qualitative or quantitative terms) as far as may be in terms of its damage causing potential to the environmental, human beings, other living creatures, plants and property;
- (ii) The substances that may be or likely to be or readily available as substitutes for the substances proposed to be prohibited or restricted;
- (iii) The indigenous availability of the substitute, or the State of technology available in the country for developing a safe substitute;
- (iv) The gestation period that may be necessary for gradual introduction of a new substitute with a view to bringing about a total prohibition of the hazardous substance in question;
- (v) Any other factor as may be considered by the Central Government to be relevant to the protection of environment.

Sub section (2) while prohibiting or “restricting the handling of hazardous substances in an area including their imports and exports the Central Government shall follow the procedure hereinafter laid down :

- (i) Whenever it appears to the Central Government that it is expedient to impose prohibition or restriction on the handling of hazardous substance in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.
- (ii) Every notification under Cl., (i) shall give a brief description of the hazardous substances and the geographical region

or the area to which such notification pertains and also specify the reasons for the imposition of prohibition or restriction on the handling of such hazardous substance in that region or area.

- (iii) Any person interested in filing an objection against the imposition of prohibition or restrictions on the handling of hazardous substances as notified under Cl. (i) may do so in writing to the Central Government within thirty days from the date of publication of the notification in the official Gazette.
- (iv) The Central Government shall within a period of sixty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may impose prohibition or restriction on the handling of hazardous substances in a region or an area.”

6. On the other hand, the counsel for the petitioner drew our attention to Rule 4 (5) of Environment (Protection) Rules, 1986 where an exception had been provided and the Central Government could expedite the process in public interest without inviting objections. Rule 4(5) reads as under :

“Rule 4 (5) - In a case where the Central Government is of the opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed direction, it may, for reasons to be recorded in writing, issue directions without providing such an opportunity”.

7. We have heard learned counsel for the parties and have also gone through the relevant records.

8. From perusal of the short affidavit dated 25.7.2016, filed on behalf of the Government of NCT of Delhi, it transpires that the Government of NCT of Delhi is in the process of issuing a Notification in relation to

imposing a complete ban on sale, production, storage, supply and use of nylon, plastic and Chinese manja and other kite-flying thread that is sharp or made sharp such as being laced with glass, metal or other sharp objects in National Capital Territory of Delhi and that a proposed draft notification is ready and the same has been forwarded to the Law Department, Government of NCT of Delhi for vetting.

9. The matter was taken up on 02.08.2016 and 08.08.2016 to enable the learned counsel for the Government of NCT of Delhi to obtain instructions. Mr. Rahul Mehra, Standing Counsel, Government of NCT of Delhi has apprised us that though the proposed notification is ready, the procedure prescribed in Rule 5 of Environment Protection Rules, 1986 needs to be followed and objections thereto will have to be invited in public interest.

10. However, it is suggested by Mr. Rahul Mehra, learned Standing Counsel for Government of NCT of Delhi that since the notification cannot be issued immediately, advisories may be issued to the general public by the local governing bodies as well as the Delhi Police to create awareness at large that the use of synthetic manja/nylon kite thread and all similar synthetic threads used for kite flying can prove fatal to human life as well as other living creatures.

11. As mentioned above, it is sought to be contended by the petitioner that the present case falls within the ambit of Rule 4 (5) of the Environment (Protection) Rules, 1986 and therefore prohibitory orders be issued by Government of NCT of Delhi without inviting objections from public. We are unable to agree. Though the petitioner has brought to our

notice a few incidents based on newspaper reports, however, we are of the view that more material and adequate data requires to be collected and evaluated and opportunity is to be given to raise objections, before prohibiting or restricting the handling of hazardous substances in accordance with the provisions of the Environment (Protection) Rules, 1986.

12. In this background, considering the public interest we deem it appropriate to dispose of this writ petition with the following directions:

- (i) Office of the Divisional Commissioners/ Directorate of Information & Publicity and all the Municipal Corporations shall issue advisories within 3 days from today through various modes to make the public aware of the fatal effects of use of razor sharp thread/manja made of nylon/plastic/synthetic using glass/metal and/or other toxic materials.
- (ii) Steps be taken by the Commissioner of Delhi Police to ensure that advisories are issued by all concerned authorities in terms of the above direction so as to prevent any un-toward incidents in Delhi.
- (iii) Government of NCT of Delhi is directed to expedite the process of inviting suggestions/objections from the general public and thereafter to issue the notification following the procedure laid down under the Environment (Protection) Act, 1986 read with the Environment (Protection) Rules, 1986, to tackle the adverse

effects of razor sharp kite flying threads on humans as well as other living creatures as expeditiously as possible.

C. M. No. 27450/2016 (Impleadment)

12. In view of the direction at Serial No. (iii) above, to the Government of NCT of Delhi, the applicant is at liberty to file his objections, if any, at the relevant time before the appropriate authority.

13. Accordingly, application is disposed of.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

AUGUST 10, 2016

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