

# THE HIGH COURT OF TRIPURA AGARTALA

WA 04 of 2014

**All India Plastic Industries Association,**

Through its General Secretary,  
Sri Praveen Prakash Tuteja,  
S/O Lt. Sri Girdhar Tuteja,  
having its registered office at  
203, Hansa Tower, 25, Central market,  
Ashok Vihar, Phase-I, Delhi-110052.

..... Appellant

Versus

**1. State of Tripura**

Through the Secretary,  
Department of Science, Technology  
and Environment,  
Vigyan Prajukti O Parivesh Bhawan,  
Tripura-799006.

**2. The Commissioner,**

Department of Science, Technology  
and Environment,  
Vigyan Prajukti O Parivesh Bhawan,  
P.N. Complex, Gurkhabasti,  
P.O. Kunjaban, Agartala,  
Tripura West.

**3. Union of India,**

Through the Secretary  
Ministry of Environment & Forest,  
Paryawaran Bhawan CGO Complex,  
New Delhi-700001

..... Respondents

**BEFORE  
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA  
THE HON'BLE MR. JUSTICE UB SAHA**

|                                             |                                                                                |
|---------------------------------------------|--------------------------------------------------------------------------------|
| For the appellant                           | : Mr. KK Mishra, Advocate<br>Mr. BN Majumdar, Advocate<br>Mr. R Saha, Advocate |
| For the respondents                         | : Mr. BC Das, Advocate General<br>Ms N Guha, Advocate                          |
| Date of hearing and<br>delivery of judgment | : <b>09.01.2015.</b>                                                           |
| Whether fit for reporting                   | : <b>No.</b>                                                                   |

## **JUDGMENT AND ORDER (ORAL)**

*( Deepak Gupta, CJ )*

This writ appeal is directed against the judgment dated 16.01.2014 passed by a learned Single Judge of this Court in WP(C) 423 of 2013 whereby the learned Single Judge held that the issues raised by the appellant (hereinafter referred to as the original writ petitioner) fell within the jurisdiction of the National Green Tribunal and therefore the appropriate remedy for the writ petitioner would be to approach the National Green Tribunal and he accordingly held that the writ petition was not maintainable.

**2.** The writ petitioner is an association of plastic industries and they are aggrieved by the notification dated 3<sup>rd</sup> July, 2013 published in the gazette on 4<sup>th</sup> July, 2013 whereby the State of Tripura imposed a complete ban on the manufacture, import, storing, transport, sale and use of plastic carry bags in the entire State of Tripura. This notification was issued by the State Government in exercise of the powers vested in the Central Government under Section 5 of The Environment (Protection) Act, 1986 which powers of the Central Government have admittedly been delegated to the State Government.

**3.** Various contentions were raised before the learned Single Judge including, (i) the contention that the State had no competence to issue the said notification; (ii) assuming that the State was empowered to issue such notification the same had not been issued in accordance with Rule 4 of the Environment (Protection) Rules, 1986. (iii) Another contention raised was that the notification in question did not fall within the ambit of Section 5 and encroached upon the powers which were vested upon the Central Government under Sections 3 and 6 of the

Environment (Protection) Act. (iv) It was also contended that the State had violated Article 304 of the Constitution of India as the notification places restrictions on inter-state trade and commerce. Other issues were raised with regard to the merits of the notification. The learned Single Judge, after an elaborate discussion of the entire law, came to the conclusion that these were matters which fell solely within the domain of the National Green Tribunal and accordingly held that the High Court had no jurisdiction to entertain the petition. As far as this issue is concerned, we are not wholly in agreement with the learned Single Judge.

**4.** The power of judicial review is now recognized to be a part of the basic structure of the Constitution. In this behalf, reference may only be made to **L. Chandra Kumar V. Union of India and Ors, (1997) 3 SCC 261** and **I.R. Coelho Vs. State of Tamil Nadu, (1999) 7 SCC 580** wherein the power of judicial review has been recognized to be a part of the basic structure of the Constitution.

**5.** We may make it clear that when a tribunal has been formed to go into certain matters even applying the principle of effective alternative remedy the court may not exercise its writ jurisdiction in a given case. However, this will depend on the facts of each case. Where the challenge is based totally on legal grounds and no factual aspects are to be considered then, according to us, the writ court may interfere in the matter because what is being decided is the legality of the action taken by the State. We have a doubt whether the National Green Tribunal will have the jurisdiction to decide upon the validity of any legislative enactment or not. It is true that the National Green Tribunal

has taken a contrary view in ***Goodwill Plastic Industries and Anr. Vs. Union Territory of Chandigarh and Ors, [Application No. 26 of 2013(T<sub>HC</sub>)]***

but that view is not binding on us and we are clearly of the opinion that when the validity of a legislation or a notification issued is under question, then the jurisdiction of the High Court to decide whether such legislation, statutory rules or executive orders are constitutional or not, falls solely within the domain of the High Court. In any event, we are not going into a detailed discussion on this matter because assuming for the sake of argument that the National Green Tribunal has such jurisdiction then also the jurisdiction vested in the High Courts' under the Constitution cannot be taken away by any statutory enactment.

**6.** It is well settled law that even when there is an effective alternative remedy the Court can exercise jurisdiction when only legal questions are involved or where the inherent jurisdiction to take action is under question. We are, therefore, allowing this appeal to this limited extent. We, however, make it clear that we are only entertaining this writ appeal with regard to the jurisdictional aspects of the notification and not with regard to the merits of the notification.

**7.** The first contention raised is that the State does not have the jurisdiction to issue such notification since the subject matter of the notification does not squarely fall within the ambit of Section 5 of the Environment (Protection) Act and encroaches upon the powers vested in the Central Government under Sections 3 and 6 of the said Act. To appreciate and understand this contention, it would be apposite to make reference to certain provisions of the Environment (Protection) Act.

***“3. Power of Central Government to take measures to protect and improve environment.-(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it***

*deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.*

*(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--*

*(i) co-ordination of actions by the State Governments, officers and other authorities-*

*(a) under this Act, or the rules made thereunder; or*

*(b) under any other law for the time being in force which is relatable to the objects of this Act;*

*(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;*

*(iii) laying down standards for the quality of environment in its various aspects;*

*(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:*

*Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;*

*(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;*

*(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;*

*(vii) laying down procedures and safeguards for the handling of hazardous substances;*

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

*(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;*

*(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;*

*(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;*

*(xii) collection and dissemination of information in respect of matters relating to environmental pollution;*

*(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;*

*(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.*

**(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.**

.....

**5. Power to give directions.- Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.**

**Explanation--For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct--**

**(a) the closure, prohibition or regulation of any industry, operation or process; or**

**(b) stoppage or regulation of the supply of electricity or water or any other service.**

**6. Rules to regulate environmental pollution.-(1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.**

**(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--**

**(a) the standards of quality of air, water or soil for various areas and purposes;**

**(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;**

**(c) the procedures and safeguards for the handling of hazardous substances;**

**(d) the prohibition and restrictions on the handling of hazardous substances in different areas;**

**(e) the prohibition and restriction on the location of industries and the carrying on process and operations in different areas;**

**(f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.”**

**8.** Section 3 empowers the Central Government to take measures to protect and improve the environment. This is a general power and

under sub-section (2) of Section 3 certain special powers have been identified. If Section 3 is analyzed as a whole it is clear that it empowers the Central Government to take any action to protect and improve the environment. It may take action by coordinating action with the State governments; the officers and authorities under the Act. It has the power to plan and execute a nationwide programme. It has the power to lay down standards for the quality of environment in its various aspects. The Central Government has the power to lay down standards for emission or discharge of environmental pollutants from various sources. The Central Government also has the power to prescribe which are the areas where industries should be established and what type of industries should be established in some areas. The Central Government also has the power to lay down the procedure and safeguards for prevention of accidents which may cause environmental pollution. The Central Government also has the power to lay down procedure and safeguards for handling of hazardous substances and examination of manufacturing processes, materials etc. The Central Government is empowered to carry out and sponsor investigations and research relating to problems of environmental pollution. It also has the power to inspect any premises, plant, equipment, machinery. The Central Government is also empowered to establish or recognize environmental laboratories, collect and disseminate information in respect of Environmental Pollution and prepare manuals, codes or guides relating to prevention, control and abatement of environmental pollution. These powers are all general in nature which have a pan India connotation.

**9.** Section 6 empowers the Central Government to make rules in respect of any of the matters laid down in Section 3. These rules may be relating to the standards of quality of air, water or soil for various areas; the maximum allowable limit of various environmental pollutants including noise pollution; the procedures and safeguards for the handling of hazardous substances; the prohibition and restrictions on the handling of hazardous substances in different areas; the prohibition and restrictions on the local of industries and the carrying on of processes and operations in different areas; and the procedures and safeguards for prevention of accidents which may cause environmental pollution.

**10.** Sections 3 and 6 obviously have to be read together. The rules which the Central Government is empowered to frame in terms of Section 6, all relate to the matters referred to in Section 3 of the Act. As far as Section 5 is concerned, this is a power in addition to the power given under Section 3 of the Act. When the legislature empowers a body under two different sections, the power under the two different sections has to be a different power. It cannot be the same power because then there would be no need of enacting two different sections to give the same power. It is a well established principle of interpretation of statutes that no word in a statute should be treated to be otiose and every word, every phrase, every sentence, every clause, every Section in the legislation has to be given a meaning which furthers the cause of the Act.

**11.** Coming to Section 5, it starts with a non-obstantive provision and empowers the Central Government to take action which may be inconsistent to any other law except the Environment (Protection) Act.

Therefore, even if there is any other law, which is inconsistent, the power under Section 5 overrules the other enactment and the Central Government has a right to exercise powers under Section 5 which may be in conflict with other laws.

**12.** Under Section 5 the empowered government is authorized to issue directions in writing to any person, officer or any authority and such person, officer and authority shall be bound to comply with such directions. The power is extremely wide in nature. It empowers the government to issue any directions which further the provisions of the Act. In the explanation, to avoid doubt, it has been stated that the power shall include the power to order closure, prohibition or regulation of any industry, operation or process and stoppage or regulation of the supply of electricity or water or any other service. The power vested in the Central Government under Section 5 has been delegated to the State Government vide notification dated 25<sup>th</sup> July, 1991 and, therefore, the State of Tripura is empowered to exercise the jurisdiction of the Central Government under Section 5 of the Act.

**13.** Whether plastic carry bags are to be banned or not is an issue which will not fall within the domain of Section 3 or Section 6 but will squarely be covered under Section 5 of the Act. We have no doubt with regard to this and, therefore, we reject the first contention that the State government has no authority or competence to issue such notification.

**14.** It has also been urged that this notification is violative of Article 304 of the Constitution of India, in so far as, it places restrictions on interstate trade and commerce. This contention is wholly without merit and has been made only for the purpose of being rejected outright.

**15.** Article 304 of the Constitution will come into play only when the State allows the residents/citizens of the State to pursue some trade but places a restriction on outsiders from coming into the State. When the State bans the use of plastic bags it treats all the citizens, whether residents of the State or not of the State equally and there is no restriction on interstate trade or commerce. In support of our finding we would like to give one example. Suppose a State comes to the conclusion that keeping in view the larger public interest and with a view to protect the health of the people it is necessary to ban the use of tobacco products in the State, can it be argued that such a ban is violative of Article 304 of the Constitution. A reading of Article 304 clearly indicates that only when discrimination is made between local industry and outside industry then the approval of the President of India is required.

**16.** Furthermore, the action of the State has been taken in exercise of the powers conferred upon it under Section 5 of the Environment (Protection) Act which is a Central Act which has already received the assent of the President of India and this power has been exercised under the said Act. Therefore, no assent of the President of India was required even if such action would amount to restriction on interstate trade and commerce.

**17.** As far as the issue whether plastic bags are injurious to health or not is concerned, that is not for this Court to decide. That is a matter which falls solely within the domain of the National Green Tribunal and it is for the State to decide whether plastics bags are to be banned or not.

18. The other main submission of the petitioners is that Rule 4 of the Environment (Protection) Rules, 1986 has not been complied with. Relevant portion of Rule 4 reads as follows:-

***“4. Directions. – (1) Any direction issued under section 5 shall be in writing.***

***(2) The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given.***

***[(3-a)] The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.***

***[(3-b) Where the proposed direction is for the stoppage or regulation of electricity or water or any other service affecting the carrying on any industry, operation or process and is sought to be issued to an officer or an authority, a copy of the proposed direction shall also be endorsed to the occupier of the industry, operation or process, as the case may be and objections, if any, filed by the occupier with an officer designated in this behalf shall be dealt with in accordance with the procedures under sub-rules (3-a) and (4) of this rule:***

***Provided that no opportunity of being heard shall be given to the occupier if he had already been heard earlier and the proposed direction referred to in sub-rule (3-b) above for the stoppage or regulation of electricity or water or any other service was the resultant decision of the Central Government after such earlier hearing.]***

***(4) The Central Government shall within a period of 45 days from the date of receipt of the objections, if any or from the date up to which an opportunity is given to the person, officer or authority to file objections whichever is earlier, after considering the objections, if any, received from the person, officer or authority sought to be directed and for reasons to be recorded in writing, confirm, modify or decide not to issue the proposed direction.***

***(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.***

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19. It is contended on behalf of the petitioners that this rule has not been complied with, inasmuch as, no notice as envisaged under sub-rule 3-a was issued to the petitioners or any other person. Learned counsel for the petitioners has relied upon the judgment of the Apex Court in **Ramchandra Keshav Adke (Dead) by Lrs. And Ors. V. Govind**

**Joti Chavare and Ors., (1975) 1 SCC 559** wherein the Apex Court held as follows:-

***“25. A century ago, in Taylor v. Taylor, (1876) 1 Ch D 426, Jessel M. R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor, AIR 1936 PC 253, and later by this Court in several cases, AIR 1954 SC 322, to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies "where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other." (Maxwell's Interpretation of Statutes, 11th Edn., p 362-363) The rule will be attracted with full force in the present case because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non-est for the purpose of Section 5 (3) (b).”***

**20.** Right from **Nazir Ahmad Vs. King-Emperor: AIR 1936 PC 253** till now the law is consistent that when the statute or a rule prescribes a certain method of doing a thing then that method must be followed. The courts have held that where a power is given to do a particular thing then that thing must be done in that particular manner and in no other manner. To this extent the contention of the learned counsel for the petitioner has force.

**21.** We have been informed at the Bar that the State has not issued any notice in terms of Rule 4 but after the impugned notification in question was issued the local traders had made representations and met the Minister and, therefore, hearing has been given. We have also been informed that at the request of the traders the time of enforcement of the notification was delayed. We have no doubt in our mind that these meetings with the traders, which are termed to be post-decisional hearings, do not meet the requirement of Section 4 of the Act.

**22.** Both in **Nazir Ahmad's** case and in **Ramchandra Keshav's** case the Apex Court held that if the statute prescribes a certain manner of doing things then that thing must be done strictly in accordance with the methodology prescribed or not at all. In case the State wants to exercise any powers vested in it under Section 5 then it must follow the procedure under Rule 4 while exercising its powers because Rule 4 prescribes the procedure for the exercise of the power.

**23.** There can be no doubt that the powers under Section 5 which have been delegated to the State government by the Central government can only be exercised in the manner prescribed by the Central government in Rule 4 of the rules and in no other manner. Rule 4 clearly lays down that the direction should be in writing, which it is. Sub-rule 3-a provides that the person to whom any direction is sought to be issued should be served with a copy of the proposed directions and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.

**24.** The Environment (Protection) Rules, 1986 have been framed in exercise of the powers vested in the Central Government under the Environment (Protection) Act, 1986 and these rules are statutory in nature. These rules are laid before the parliament and they are, therefore, legislative rules. The delegatee, which is the State Government, cannot violate the rules framed by the delegator, and, therefore, the State government is bound to exercise the powers under Rule 5 only by following the procedure laid down in Rule 4. In case the State government is of the opinion that in view of grave injury to the

environment it is not expedient to provide an opportunity to file objections against the proposed directions then it must record its reasons in writing and then is empowered to issue a notification without issuance of notice. The State has not taken recourse to sub-rule 5 and in fact, the contention of the State that it delayed the effect of the notification by five months militates against sub-rule 5 which only would apply when there is likelihood of grave injury to the environment. Therefore, it is obvious that the impugned notification was issued without following the procedure prescribed in Rule 4 of the rules.

**25.** That brings us to the last question as to what relief should be granted. This Court cannot lose sight of the fact that for more than one year no plastic bags have entered the State of Tripura. Should we permit plastic bags to enter into the State of Tripura pending the hearing envisaged under Rule 4? We are not inclined to grant such relief to the petitioner. We, therefore, dispose of the appeal with the following directions:-

**(i)** That, the notification dated 3<sup>rd</sup> July, 2013 published in the gazette on 4<sup>th</sup> July, 2013 shall be treated to be the draft notification as envisaged under Rule 4. The petitioners already have notice of such notification and they may within fifteen days from today make appropriate representation to the State Government.

**(ii)** We further direct that the State Government shall within fifteen days from today publish this draft notification in two newspapers having wide circulation in the State of Tripura and in two national newspapers, one English and one Hindi having wide circulation in the country inviting objections against the said draft notification and the

such advertisement be issued latest by 31st January, 2015 and objections be invited latest by 15th February, 2015.

**(iii)** Thereafter, the State shall consider the objections and decide the matter latest by 15<sup>th</sup> March, 2015. The objections filed by the petitioners or any other persons shall be disposed of by a speaking order.

**(iv)** In the larger interest of the public we direct that the draft notification will be given effect to and no plastic bags will be permitted to be imported till 15<sup>th</sup> March, 2015 or the date of decision of the State, whichever is earlier, and thereafter the matter shall be governed by the decision taken.

**(v)** In case the State takes no decision by 15<sup>th</sup> March, 2015 then the notification shall cease to be in force w.e.f. 16<sup>th</sup> March, 2015.

**(vi)** In case any decision is taken by the State Government which is against the petitioners, the petitioner shall be at liberty to challenge the same before the National Green Tribunal because all legal questions have now been decided as far as this court is concerned.

No costs.

**JUDGE**

**CHIEF JUSTICE**

*lodh*