

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

Date of Decision: 05.12.2016

+ W.P.(C) 7012/2012

ALL INDIA PLASTIC INDUSTRIES
ASSOCIATION & ANR

..... Petitioners

Versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

+ W.P.(C) 7937/2012

LIVING MEDIA INDIA LTD

..... Petitioner

Versus

GOVT. OF NCT OF DELHI

..... Respondent

Present: Mr.Arvind Nigam, Sr. Adv. with Mr.Sanjeev Goyal,
Mr.Sangeeth Mohan K. And Ms.Deeksha Rao, Advs. for
the petitioner in W.P.(C)7012/2012.
Mr.Sumeet Lall and Mr.Sidhant Kapoor, Advs. for the
petitioner in W.P.(C)7937/2012.
Mr.Vivek Goyal, CGSC for UOI.
Mr.Peeyoosh Kalra, Adv. for GNCTD.
Mr.Ajay Arora and Mr.Dinesh Puchnanda, Advs. for
MCD.
Ms.Monika Arora, CGSC with Mr.Harsh Ahuja, Advs.
for UOI.
Mr.Anil Grover, Standing Counsel, NDMC with
Mr.Nischal Vij, Ms.Noopur Singhal and Ms.Kanika
Singh, Advs. for NDMC.
Ms.Varsha Bharti, Adv. for Delhi Cantonment Board.
Mr.Uday Chauhan, Adv. for R-10.
Mr.Sanjeev Ralli and Mr.Vinod Kapoor, Advs. in
W.P.(C)7012/2012 for DPCC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGEETA DHINGRA SEHGAL

J U D G M E N T

MS. G. ROHINI, CHIEF JUSTICE:

1. These petitions have been filed assailing the Notification dated 23.10.2012 issued by the Government of NCT of Delhi in exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986 (hereinafter referred to as 'the Act') read with Rule 5(3) of the Environment (Protection) Rules, 1986 (hereinafter referred to as 'the Rules') thereby imposing ban on manufacture, import, store, sell or transport of any kind of plastic carry bags. The Petitioner is a registered association of individuals, companies/ enterprises engaged in various activities connected with trading, dealing, manufacturing etc. including sale, usage, storage and manufacturing of plastic bags.

2. The grounds of challenge included that:

- (i) the Government of NCT of Delhi lacks jurisdiction to issue the impugned Notification since "environment" which is a subject matter covered by Entry 97 of the Union List of Schedule Seven is beyond the legislative power conferred on the Government of NCT of Delhi under Article 239AA(3)(a) of the Constitution of India;
- (ii) The power to issue directions under Section 5 of the Environment (Protection) Act, 1986 cannot be exercised to nullify and negate the statutory rules already enforced;
- (iii) the impugned Notification dated 23.10.2012 suffers from the vice of excessive delegation since the power under Section 5 of Environment (Protection) Act, 1986 cannot be exercised for the

purpose which was not contemplated by the Act and the Rules made thereunder;

(iv) the impugned Notification amounts to colorable exercise of power since the same had in effect laid down Rules contrary to the Central Plastic Waste Management Rules made in exercise of the Rule making power under the Environment (Protection) Act, 1986;

(v) since the Plastic Waste Management Rules, 2016 notified on 18.03.2016 in supersession of Plastic Waste (Management and Handling) Rules, 2011 and Municipal Solid Waste (M&H) Rules, 2016 occupied the entire field related to manufacture, import, store, use and sale of plastic carry bags and also addressed the problem of collection, segregation and disposal of municipal wastes including the waste generated from plastic bags, the impugned Notification issued by the Govt. of NCT of Delhi being repugnant to the abovesaid Rules made by the Central Government is liable to be declared as void;

(vi) the impugned Notification has resulted in invidious discrimination violating Article 14 of the Constitution of India apart from violating the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India.

3. Sh. Arvind Nigam, the learned Senior Counsel made elaborate submissions reiterating the abovementioned contentions and the following decisions have been cited to substantiate his submissions:

(i) ***Geetika Panwar vs. Govt. of NCT of Delhi*, 2002 (64) DRJ 588 (FB);**

(ii) ***B.K. Industries vs. Union of India* 1993 Supp (3) SCC 621;**

(iii) ***Vasu Dev Singh vs. Union of India* (2006) 12 SCC 753;**

- (iv) *State of Punjab vs. Gurdial Singh* (1980) 2 SCC 471;
- (v) *K.C. Gajapati Narayan Deo vs. State of Orissa* AIR 1953 SC 375;
- (vi) *State of Maharashtra vs. Indian Hotel & Restaurants Assn.* (2013) 8 SCC 519;
- (vii) *Narendra Kumar vs. Union of India* (1960) 2 SCR 375;
- (viii) *Municipal Corporation, Ahmedabad vs. Jan Mohammad Usman Bhai* (1986) 3 SCC 20;
- (ix) *Hashmatullah vs. State of M.P.* (1986) 4 SCC 391.

4. Sh.Peeyoosh Kalra, the learned Additional Standing Counsel appearing for the Govt. of NCT of Delhi at the outset raised a preliminary objection as to the maintainability of the writ petitions in view of Section 5A of the Environment (Protection) Act, 1986 providing for an appeal to the National Green Tribunal against any directions issued under Section 5 of the Environment (Protection) Act and Section 14 of the National Green Tribunal Act, 2010 which empowers the National Green Tribunal to settle all disputes relating to environment. It is vehemently contended by him that the writ petitions therefore need to be transferred to the National Green Tribunal.

5. To substantiate his arguments, learned ASC for GNCTD relied upon *Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India* reported in (2010) 8 SCC 326 wherein it was held:

“40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the 'NGT Act') particularly Sections 14, 29, 30 and 38 (5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule 1 should be instituted and litigated before the National Green Tribunal (for short 'NGT'). Such approach may be necessary

to avoid likelihood of conflict of orders between the High Courts and the NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before the NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.”

6. The learned ASC has also brought to our notice that an identical Notification issued by the Administrator, Union Territory of Chandigarh dated 30.07.2008 in exercise of the powers vested in him under Section 5 of the Environment (Protection) Act, 1986 thereby prohibiting usage, manufacture, storage, import, sale or transportation of polythene, plastic carry bags in the UT of Chandigarh was assailed before the National Green Tribunal and by a detailed order dated 08.08.2013 in Application No. 26/2013 titled ***Goodwill Plastic Industries vs. Union Territory of Chandigarh***, the National Green Tribunal upheld the validity of the said Notification holding that it is step towards better environmental administration and in the larger public interest.

7. It is also brought to our notice that a Division Bench of this Court by order dated 06.02.2013 in W.P.(C) No. 7302/2009 titled ***Mahavir Singh vs. Union of India*** in a similar situation thought it fit to transfer a writ petition

to the National Green Tribunal in the light of Section 14 of NGT Act. The learned ASC has also placed reliance upon the recent order dated 29.3.2016 in Writ Petition Nos.14691-14824 of 2016 titled ***Karnataka State Plastic Association and Ors vs. State of Karnataka*** wherein a Division Bench of the High Court of Karnataka dismissed the petitions before it upholding the preliminary objections raised on behalf of the respondent on the ground of availability of an alternative and efficacious remedy before the National Green Tribunal. It is also brought to our notice that the Supreme Court is seized of the issues relating to hazards of plastic and the necessity of a total prohibition thereof vide Writ Petition(C) No.154/2012 and batch titled ***Karuna Society for Animals and Nature and Ors vs. Union of India***.

8. In these circumstances, it is submitted by the learned ASC that it would be appropriate to transfer these petitions to the National Green Tribunal (for short 'NGT').

9. Rebutting the preliminary objection, it is contended by Sh.Arvind Nigam the learned Senior Counsel appearing for the petitioners that the NGT in exercise of powers conferred under Section 14 of the NGT Act cannot go into any question relating to *vires* of the statutory rules or the notifications and therefore, the present petitions cannot be adjudicated upon by the National Green Tribunal.

10. Placing reliance upon ***L.Chandrakumar vs. Union of India; (1997) 3 SCC 261***, it is also contended by Sh.Arvind Nigam that the power of judicial review under Article 226 of the Constitution of India cannot be taken away or barred by any legislation.

11. Pointing out that the present petitions have been pending in this Court for the past five years, it is also contended that it is not open to the

respondents to raise an objection as to the maintainability of the writ petitions at this stage.

12. Section 14 of the National Green Tribunal Act, 2010, which empowers the National Green Tribunal exclusively to settle the disputes relating to environment and enforcement of any legal right relating to environment may be reproduced hereunder:

“14. Tribunal to settle disputes:

1. The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

2. The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

3. No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

13. Apart from Section 14, there is also a specific provision under National Green Tribunal Act, i.e., Section 29, which bars the jurisdiction of Civil Courts to entertain any appeal in respect of any matter which the Tribunal is empowered to determine under its appellate jurisdiction. It is also relevant to note that under Section 22 of the said Act, an appeal lies to the Supreme Court against a decision or order of the Tribunal.

14. As noticed above, the present writ petitions have been filed assailing the Notification 23.10.2012 which was issued in exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986 and the Rules made thereunder imposing a ban on manufacture and etc., of plastic carry bags. Apparently, the matter involves questions arising out of the implementation of the Environment (Protection) Act, 1986, which is one of the enactments specified in Schedule I to NGT Act. Consequently, Section 14(1), which confers the NGT with jurisdiction over all civil cases where a substantial question relating to environment is involved is attracted.

15. In W.P.(C) No.423/2013 filed by *All India Plastic Industries Association* in the High Court of Tripura, an identical notification issued by the Government of Tripura under Section 5 of the Environment (Protection) Act, 1986 imposing a complete ban on the manufacture, import, storing, transport, sale and use of plastic carry bags in the whole State was challenged and the Division Bench of the High Court of Tripura in Writ Appeal No.04 of 2015 opined that the said question falls solely within the domain of the High Court observing:

“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 v. Union Territory of Chandigarh*, [Application No. 26 of 2013(THC)] 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."

16. We respectfully disagree with the opinion expressed by the Division Bench of Tripura High Court in the light of the decision of the Supreme Court in *L.Chandrakumar (supra)* wherein the jurisdictional powers of the Tribunals were summarized as under:

"93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals,

rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."

17. Under the Scheme of the NGT Act, 2010, it is no doubt true that there is no provision empowering the Tribunal to decide upon the vires of any of the seven enactments which confer appellate or other jurisdiction upon it or to examine the validity of any Rules or Regulations made under the said enactments. However, the NGT is empowered to adjudicate an issue relating to the enforcement of a legal right relating to environment or a substantial question relating to environment and/or arising out of implementation of the enactment specified in Schedule I. So far as the present case is concerned, admittedly, there is no challenge to the provisions of NGT Act, 2010 i.e. the parent statute under which NGT has been constituted nor the *vires* of the provisions of any of the enactments specified in Schedule I to NGT Act is under challenge. What is challenged is only a Notification issued under Section 5 of the Environment (Protection) Act, 1986 imposing ban on manufacture, import, store, sell or transport of any kind of plastic carried bags. We also found that all the reliefs sought for are directly related to environment arising out of implementation of the Environment (Protection) Act, 1986. Hence, according to us, NGT is the more appropriate forum to determine the issues that have been raised in the present petitions.

18. For the aforesaid reasons, we hold that all the issues that have been raised by the petitioners being substantial questions relating to environment/enforcement of a legal right relating to environment are capable of being determined by NGT.

19. We have also taken note of the fact that though the Notification impugned in the present petitions was issued long back in the year 2012, the same has not been enforced till date. That apart, during the pendency of these petitions, two sets of new rules, namely, the Plastic Waste Management Rules, 2016 and Municipal Solid Waste (M&H) Rules, 2016 have been made by the Central Government and it is, therefore, necessary to consider the validity of the impugned Notification in the light of the abovesaid statutory rules in addition to the grounds raised in the writ petition. Hence, it would be appropriate to leave all these issues for consideration by the National Green Tribunal.

20. Accordingly, we direct transfer of these two petitions to the National Green Tribunal. Registry is directed to transmit the papers to NGT at the earliest.

21. Having regard to the fact that the impugned Notification has not yet been enforced, we direct that the respondents shall not take any coercive steps for implementation of the said Notification for a period of eight weeks from today or till appropriate order is passed by NGT.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J.

DECEMBER 05, 2016/pmc