



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.[MD]No.24623 of 2018

and

W.M.P.[MD]Nos.22327 and 22328 of 2018

K.K.Ramesh

: Petitioner

Vs.

- 1.The Government of India,
Rep. by its Secretary,
Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
Iodhi Road, New Delhi-110 003.
- 2.Union of India,
Rep. by its Secretary,
Department of Chemicals and Petro-Chemicals,
Ministry of Chemicals & Fertilizers,
341-(c) A-wing, 3rd Floor, Shastri Bhawan,
New Delhi-110 001.
- 3.The Director,
Central Pollution Control Board,
Parivesh Bhawan,
C.B.D., Cum-Office Complex,
East Arjun Nagar,
Shahdara,
Delhi-110 032.
- 4.The State of Tamil Nadu,
Rep. by its Chief Secretary,
Secretariat, Chennai-600 009.
- 5.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Health Department,
Secretariat, Chennai-600 009.
- 6.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Environment & Forests,
Secretariat, Chennai-600 009.



7.The State of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration & Water Supply,
Secretariat, Chennai-600 009.

8.The Director,
Tamil Nadu Pollution Control Board,
76, Mount Salai,
Guindy, Chennai-600 032.

9.The Managing Director,
Central Institute of Plastics
Engineering & Technology,
Guindy, Chennai-600 032.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records pertaining to the sixth respondent Tamil Nadu G.O. (Ms)No.84/2018, dated 25.06.2018, quash the same and based on the central acts, the sixth respondent may pass a Special Act or issue fresh G.O.then only single use plastic carry bags could be totally whipped out.

For Petitioner : Mr.K.K.Ramesh,
Party-in-Person

For Respondents 4to9 : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by,
Mr.A.K.Baskarapandian,
Special Government Pleader

O R D E R

[Order of the Court was made by **K.K.SASIDHARAN, J.**]

The challenge in this Writ Petition is to the Government Order in G.O.(Ms)No.84, Environment and Forests (EC.2) Department, dated 25 June, 2018, imposing a ban on manufacture, storage, supply, sale and use of 'use and throwaway plastics' across the State of Tamil Nadu.

THE FACTS:

2. The petitioner filed the Writ Petition in *pro bono publico* primarily on the ground that the Government Order in G.O. (Ms)No.84, Environment and Forests (EC.2) Department, dated 25 June, 2018, is only a paper tiger and unless there is a law made by the State Legislature, the menace of plastic would continue to the detriment of the people. The affidavit filed in support of the writ petition proceeds on an assumption that only by way of an executive order, the ban is imposed on the sale and use of



plastics and it has no legislative sanction. The petitioner seeks a direction to make a legislation to ban the plastics and stringent punishment for violation.

SUBMISSIONS:

3. The petitioner contended that without conducting any home work, the Government issued the impugned order, which is not comprehensive in nature. The petitioner contended that in the neighbouring State of Kerala, an Expert Committee was constituted to study the issues relating to imposition of a complete ban on one time use/throwaway plastic items and carry bags. According to the petitioner, the Government of Tamil Nadu ought to have formed a similar Committee of Experts for conducting a detailed study of the impact of plastics and the measures to be taken to ban the manufacture and sale of plastics. The petitioner further submitted that he is not against the ban of plastic items. His concern is to the absence of an effective machinery supported by a Statute to ban the plastics, both its manufacture and sale.

4. The learned Additional Advocate General contended that the Government Order in question was issued, pursuant to the delegation made by the Ministry of Environment and Forests, Government of India, by Notification dated 10 February, 1988. According to the learned Additional Advocate General, there is a constitutional mandate to the State under Article 48-A of the Constitution of India to protect and improve the environment. The State, in exercise of the power under Section 5 of the Environment (Protection) Act, 1986, and in furtherance of the delegation, issued the impugned Government Order. The learned Additional Advocate General contended that in view of the delegation made by the Government of India, it cannot be said that the State Government has no legislative competence to issue the order banning the manufacture and sale of plastics.

THE ISSUE:

5. The core question is as to whether the State of Tamil Nadu was legally correct in issuing the Government Order banning the manufacture and use of plastics, notwithstanding the Plastic Waste Management Rules, 2016 framed by the Central Government invoking Sections 3, 6 and 25 of the Environment (Protection) Act, 1986.

DISCUSSION:

6. The Environment (Protection) Act, 1986, was enacted for implementing the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which, India was a participant. It was resolved in the said conference to take effective steps for the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property. Section 5 of



the Environment (Protection) Act, 1986 [hereinafter referred to as 'the Environment Act'] gives power to the Central Government to issue directions, which includes closure, prohibition or regulation of any industry, operation or process. The power is given to the Central Government, notwithstanding anything contained in any other law. Section 23 of the Environment Act permits the Central Government to delegate such of its powers and functions under the Act, except the power to constitute an authority under Sub-Section (3) of Section 3 and to make rules under Section 25, to any officer, State Government or other authority.

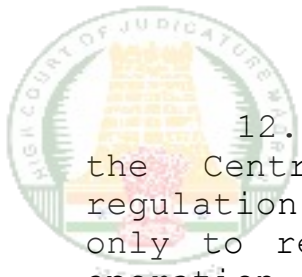
7. The Ministry of Environment and Forests, in exercise of the powers conferred by Section 23 of the Environment Act, delegated the power vested in it under Section 5 of the Environment Act to various State Governments including Tamil Nadu. The notification was issued in S.O.152(E), dated 10 February, 1988. The notification was published in the Government Gazette No.84, dated 10 February, 1988.

8. The State of Tamil Nadu, in exercise of the power under Section 5 of the Environment Act, issued the Government Order in G.O.(Ms)No.84, Environment and Forests (EC.2) Department, dated 25 June, 2018, imposing complete ban on the manufacture, storage, supply, sale and use of 'use and throwaway plastics' such as plastic sheets used for food wrapping, spreading on dining table etc., plastic plates, plastic coated tea cups and plastic tumbler, water pouches and packets, plastic straw, plastic carry bag and plastic bags, irrespective of thickness. Explanation 1 to 5 define the term "**Plastic**", "**use and throwaway plastic**", "**plastic sheet**", "**carry bag**" and "**compostable plastic**". The Notification will come into force on the first day of January, 2019.

9. The petitioner has taken up a contention on the basis of the Plastics Manufacture, Sale and Usage Rules, 1999 [hereinafter referred to as 'the Central Rules, 1999'] framed for regulating the use of plastic, to substantiate his contention that the Government Order has no legislative sanction. There is absolutely no merit in the said contention.

10. The Central Government framed the rules in the name and style of '**Plastics Manufacture, Sale and Usage Rules, 1999**', in exercise of the powers conferred by Sub-Section (2) of Section 3 read with Section 25 of the Environment (Protection) Act, 1986.

11. Section 3 of the Environment Act gives general powers to the Central Government to take measures to protect and improve environment. This provision is essentially regulatory in nature.



12. Section 5 is a comprehensive provision giving power to the Central Government to direct closure, prohibition or regulation of any industry, operation or process. The power is not only to regulate but also to prohibit a particular industry or operation or its process. The power is wide enough even to prohibit a particular industry from manufacturing articles for protecting the environment.

13. The Central Rules, 1999, framed under Sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986, do not take away the right conferred on the Central Government under Section 5 of the Environment Act or the delegatee to exercise the powers. The theory of occupied field also would not be attracted on account of the fact that it was only the Central Government who delegated the power under Section 5 of the Environment Act to the State Government. The impugned order has the necessary legislative flavour, in view of the notification issued by the Central Government delegating the powers vested in it under Section 5 of the Environment Act to the State Government. We, therefore, reject the contention that the State Government has no authority to issue an order of this nature.

14. It was the further contention of the petitioner that the State ought to have enacted a law to address the issue relating to use of plastic. The field is occupied by a Central Law, namely the Environment (Protection) Act, 1986. There is no question of the State Government enacting a law for prohibition of the manufacture and sale of plastic, in view of the Environment (Protection) Act, 1986, which was enacted pursuant to the deliberations of the United Nations Conference on the Human Environment and the delegation of the power to the State Government.

15. The notification issued by the State Government, which is impugned in this Writ Petition, was issued under Section 5 of the Environment (Protection) Act, 1986, which gives absolute power for prohibition of any industry, closure, or its regulation.

16. The power of the Central Government and its delegatee under Section 5 of the Environment (Protection) Act, 1986 was considered by the Supreme Court in **A.P. Pollution Control Board II v. M.V. Nayudu [2001 (2) SCC 62]**. The Supreme Court, while considering the Government Order issued by the State of Andhra Pradesh in G.O.No.111, dated 08 March, 1996, prohibiting the location of industries in specified areas, referred the notification dated 10 February, 1988 issued by the Central Government delegating the power under Section 5 of the Environment Act to the State Governments of Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Mizoram, Orissa, Rajasthan, Sikkim and Tamil Nadu. The



Supreme Court observed that by virtue of the delegation, the delegated authority could issue order prohibiting the location of industries in specified areas.

17. The Government Order impugned in this Writ Petition is referable to the delegated authority permitting the State Government to impose total prohibition/closure of industries. The legal issue raised by the petitioner is, therefore, covered by the judgment of the Supreme Court in **A.P. Pollution Control Board II v. M.V. Nayudu [2001 (2) SCC 62]**.

18. In the upshot, we dismiss the Writ Petition. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-I)

To

1. The Secretary

The Government of India,
Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
Iodhi Road, New Delhi-110 003.

2. The Secretary,

Union of India,
Department of Chemicals and Petro-Chemicals,
Ministry of Chemicals & Fertilizers,
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Shahdara,
Delhi-110 032.

4. The Chief Secretary,

State of Tamil Nadu,
Secretariat, Chennai-600 009.

5. The Principal Secretary,

State of Tamil Nadu,
Health Department,
Secretariat, Chennai-600 009.



6.The Secretary,
State of Tamil Nadu,
Department of Environment & Forests,
Secretariat, Chennai-600 009.

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7.The Secretary,
The State of Tamil Nadu,
Municipal Administration & Water Supply,
Secretariat, Chennai-600 009.

8.The Director,
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+1cc to Mr.K.K.Ramesh, Party-in-Person, Sr.No.101121.
+1cc to Mr.Dr.M.D.Poornachari, Advocate, Sr.No.101195
+1cc to Special Government Pleader, Sr.Nos.101308 & 101485.

Order made in
W.P.[MD]No.24623 of 2018
Dated: 19.12.2018

sml

RAM-SP/SV/SAR 1/26.12.2018/7P/13C