



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD).Nos.19130 and 19133 of 2019

and

W.M.P. (MD).Nos.15484, 15485, 15488 and 15491 of 2019

1.Savani Screen

Rep by its Proprietor B.R.Chandrasekar
No.19-B, Meenatchi Nagar III Street,
Villapuram, Madurai-625 012.

... Petitioner in
W.P. (MD) .No.19130/2019

2.Naga Screen

Rep by its Prop:N.R.Nagarajan
No.24, L.K.Thulasisingam II Cross Street,
Meenatchi Nagar,
Villapuram, Madurai-625 012.

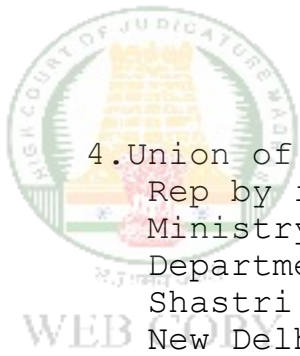
... Petitioner in
W.P. (MD) .No.19133/2019

Vs.

1.The Government of Tamil Nadu,
Rep by its Chief Secretary,
Fort St.George,
Chennai-600 009.

2.The Government of Tamil Nadu,
Rep by its Principal Secretary,
Environment and Forest(EC-2)
Department, Fort St.George,
Chennai-600 009.

3.The Member Secretary,
Tamil Nadu Pollution Control Board,
Guindy, Chennai-600 032.



4.Union of India,
Rep by its Secretary,
Ministry of Chemicals and Fertilizers
Department of Chemical and Petrochemicals
Shastri Bhawan, 3rd Floor, 341(C) A Wing,
New Delhi-110 001.

5.Union of India,
Rep by its Secretary,
Ministry of Environment & Forest,
Paryawaran Bhavan, CGO Complex,
New Delhi 110 003.

... Respondents in both W.Ps

COMMON PRAYER:These petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the inclusion of Non-woven Polypropylene bags as banned plastic item No.4(c) as shown in the web-portal of the third respondent, and quash the same, as it is not one-time user and it is reusable and recyclable and also contrary to the fifth respondent's Plastic Waste Management Rules 2016, which restricts only the Polypropylene bags of below 50 microns and consequently, declare that the restriction imposed under G.O.(Ms). No.84 dated 25.06.2018 of the fifth respondent is not for manufacture and sale of Polypropylene multiple user bags containing above 50 microns.

For Petitioners in both W.Ps	: Mr.R.Prabhakaran
For R1 and R2 in both W.Ps	: Mr.A.Muthukaruppan Additional Government Pleader
For R3 in both W.Ps	: Mr.V.Vasanthakumar
For R4 & R5 in both W.Ps	: Mr.P.Subbiah Central Government Standing Counsel

COMMON ORDER

(Order of this Court was made by **T.S.SIVAGNANAM, J**)

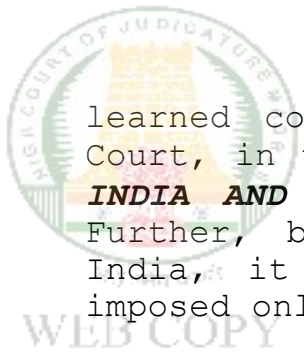
Heard, Mr.R.Prabhakaran, learned counsel appearing for the petitioners, Mr.A.Muthukaruppan, learned Additional Government Pleader accepting notice on behalf of the respondent Nos.1 and 2, Mr.V.Vaasanthakumar, learned counsel appearing for the third respondent and Mr.P.Subbiah, learned Central Government Standing Counsel for the respondent Nos.4 and 5.



2.The prayer sought for in all these writ petitions are for issuance of writ of certiorarified Mandamus to call for the records relating to the inclusion of Non-woven Polypropylene bags as banned plastic item No.4(c) as shown in the web-portal of the third respondent, Tamil Nadu Pollution Control Board and to quash the same as it is not a one-time user and it is reusable and recyclable and also contrary to the fifth respondent's Plastic Waste Management Rules 2016, communicated by the Central Government, which restricts only the Polypropylene bags of below 50 microns and consequently, to declare that the restriction imposed under G.O.(Ms).No.84 dated 25.06.2018 of the fifth respondent is not for the manufacture and sale of Polypropylene multiple user bags containing above 50 microns.

3.The learned counsel appearing for the petitioners submitted that the Central Government had issued notification dated 10.02.1988 in S.O.152(E)- in exercise of the powers conferred under Section 23 of the Environment (Protection) Act, 1986, whereby the Central Government delegates the powers vested in it under Section 5 of the Act to the Government of Tamil Nadu and other State Governments, subject to the condition that the Central Government may revoke such delegation of powers in respect of all or any one or more of the State Governments or may itself invoke the provisions of Section 5 of the Act, if in the opinion of the Central Government such a course of action is necessary in public interest.

4.It is the submission of Mr.R.Prabhakaran, learned counsel that the Central Government had issued notification dated 18.03.2016 in G.S.R.No.320(E) by enacting a new law in supersession of the Plastic Waste (Management and Handling) Rules 2011, by replacing it by Plastic Waste Management Rules 2016. It is submitted that in terms of Rule 4 of the 2016 Rues, what is not permitted are carry bags made of virgin or recycled plastic, which is not less than 50 microns in thickness. Thus, the notification issued by the Central Government, dated 18.03.2016 supersedes the delegation of power granted by the Central Government in favour of the State Government in S.O.152(E), dated 10.02.1988, when such is the position, the Tamil Nadu Government is denude of jurisdiction to issue the impugned Government Order in G.O.Ms.No.84, dated 25.06.2018, which has been issued in exercise of the delegated powers conferred on the State Government. Furthermore, it is submitted that the Central Rules 2016 provides for carry bags made of virgin or recycled plastic, which is not more than 50 microns in thickness. Therefore, it is submitted that since the Government Order issued by the Tamil Nadu Government in G.O.Ms.No.84, dated 25.06.2018, is inconsistent with the Central Rules, the State Government Order requires to be quashed. To explain as to what is the role of a delegate, the

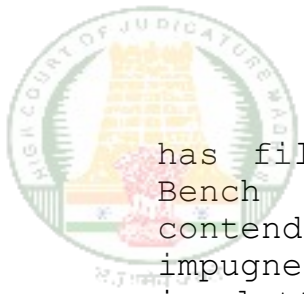


learned counsel referred to the decision of the Hon'ble Supreme Court, in the case of **KISHAN PRAKASH SHARMA AND OTHERS V. UNION OF INDIA AND OTHERS** reported in (2001) 5 Supreme Court Cases 212. Further, by referring to Article 304(b) of the Constitution of India, it is submitted that a reasonable restriction could be imposed only after obtaining the previous sanction by the President.

5.The learned counsel also referred to the decision of the **QUEEN'S BENCH** in the case of **HUTH V. CLARKE** dated 16.06.1890, which was quoted with approval by the Hon'ble Supreme Court in the case of **KISHAN PRAKASH SHARMA AND OTHERS** (supra). Further, the learned counsel had brought a sample bag stated to have been manufactured by its client and submitted that the same is not a once use plastic and the material is recyclable. Therefore, it is submitted that the impugned order in G.O.Ms.No.84 requires to be set aside and the petitioners should be permitted to carry on their manufacturing activities without any restrictions, subject to fulfilment of the conditions under the Rule framed by the Central Government.

6.After elaborately hearing the learned counsel for the petitioners, we are of the considered view that the submissions cannot be accepted for more than one reason. Firstly, there was a challenge to G.O.Ms.No.84 dated 25.06.2018 in a batch of writ petition before the Principle Bench by the Chennai Non-Woven Private Limited which are stated to be manufacturing similar products as that of the petitioner herein. Challenge to the impugned Government Order was on several grounds including the ground that there is no power for the State Government to issue G.O.Ms.No.84. The contention advanced by the petitioners in the said batch of cases was rejected by the Division Bench by order, dated 11.07.2019. We have gone through the said decision and find that earlier there was another decision of the Division Bench of this Court wherein a public interest writ petition was filed to direct the State Governments to give effect to the G.O.Ms.No.84. In the said writ petition, similar to the arguments advanced before us and was considered rejected by the Division Bench. This order has been quoted in the order, dated 11.07.2019. Therefore, we are of the view that in the light of the binding precedent we are unable to countenance the submission of the learned counsel for the petitioners. Secondly in Paragraph No.22 of the order dated 11.07.2019 in W.P.(MD).No.825 of 2018, etc., Batch, the issue relating to whether the State Government was legally correct in issuing the G.O.Ms.No.84 prohibiting the manufacture of one time use plastic notwithstanding the Plastic Waste Management Rules 2016, framed by the Central Government invoking 3,6,25 of the Environment Protection Act was considered and the contention advanced by the manufacturers were rejected. At this juncture, it would be appropriate to quote the relevant paragraph of the order, dated 11.07.2019,

<https://hcservices.ecourts.gov.in/hcservices/>



"22. It is seen from the records that one K.K. Ramesh has filed WP (MD) No. 24623 of 2018 before the Division Bench of this Court as a public interest litigation contending that G.O. Ms. No.84 dated 25.06.2018, which is impugned in these writ petitions, has not been implemented in letter and spirit and prayed for a direction to the Government to pass a Special Act or issue a fresh Government Order to curb the menace of single use plastic carry bags. The Division Bench of this Court, by Judgment dated 19.12.2018, referring to the decision of the Honourable Supreme Court in Andhra Pradesh Pollution Control Board, referred to supra, has dismissed the writ petition by holding that the issues raised in the said writ petition has already been answered by the Honourable Supreme Court in the said case. In that writ petition also, the power of the Government to invoke Section 5 of the Act was raised and it was held that by virtue of the delegated powers, the Government is wholly justified in invoking Section 5 of the Act. Relevant portion of the order dated 19.12.2018 reads thus:-

"5. The Issue:- 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 Section 3, 6 and 25 of the Environment (Protection) Act, 1996.

Discussion:-

6. The Environment (Protection) Act, 1986 was enacted implementing the decisions taken at the United National 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 of The Environment (Protection) Act, 1996 (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, <http://www.judis.nic.in> 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 10th February 1999. The notification was published in the Government Gazette No.84, dated 10th February 1999.

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.

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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* [MANU/SC/2953/2000 : 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."

23. Subsequently, WP No. 34065 of 2018 has been filed by Tamil Nadu Pondy Plastic Association, through it's President challenging the very same G.O. Ms. No.84 dated 25.06.2018 passed by the Government, which is impugned in these writ petitions. By order dated 27.12.2018, the Division Bench of this Court, by referring to the Judgment of another Division Bench of this Court in the order dated 19.12.2018 passed in WP (MD) No. 24623 of 2018, which relied on the decision of the Honourable Supreme Court in the case of (Andhra Pradesh Pollution Control Board vs. M.V. Nayudu) reported in 2001 (2) SCC 62, dismissed the writ petition filed by the petitioner aforesaid. In Para No.3 of the order dated 27.12.2018 passed in WP (MD) No. 34065 of 2018, it was observed as follows:-

"3. In the light of the above, this writ petition is dismissed. However, while dismissing the writ petition, this Bench is of the view that the Government shall consider phasing out of plastic of any kind in the market including the plastic that have been referred to in proviso to Directions 1 (b) of the aforesaid Government Order before the end of 2019. No costs....."

24. Similarly, yet another Division Bench of this Court in the order dated 03.12.2018 passed in WP (MD) No. 10131 of 2018 in the case of (Yagappa Nagar West Residents Welfare Association vs. The Chief Secretary and others) considered an identical issue wherein the petitioner therein sought for a Mandamus to pass suitable orders to ban the manufacture of plastic materials within the State of Tamil Nadu and the use of such banned materials in Tamil Nadu in any form. The Division Bench of this Court, while passing the order dated 03.12.2018 has also taken note of the order passed by the Government in G.O. Ms. No.84, Environment and Forest Department dated 25.06.2018 and issued the following direction:-

"14. We direct the Commissioner, Madurai Corporation to engage the service of Swatchh Police, Sanitary Inspectors, Health Officers, Assistant Health Officers for conducting regular check up in all the



establishments in all the wards within the Madurai Corporation and seize all plastic articles. The Corporation should also take action against those who are manufacturing, selling or using non-woven bags. Till appropriate regulations are made, consequent to the implementation of the Government Order in G.O. (Ms) No.84, Environment and Forests (EC-2) Department dated 25.06.2018, the Corporation must impose a fine of Rs.500/- (Rupees Five Hundred Only) on those who are found using the banned plastics for the first time. In case the violation is repeated, the Corporation shall take action for suspension of the licence, by following due process. The expenses in connection with the disposal of the seized plastic items should also be collected from the violators."

7. Therefore, for the above two reasons we cannot accede to the submission made by the learned counsel for the petitioner with regard to the power of delegated authority. It is no doubt true that the settled legal position is that when the authority delegates the power to another authority, it is not denude of exercising such power. This is a settled legal principle. What we are required to see is that whether this principle could be applied to the case on hand. In our considered view, the same cannot be applied for the simple reason that the power exercisable under Section 5 of the Environment Protection Act by the Central Government can be delegated in favour of the State Governments and this delegation has been done by exercising the power under Section 23 of the Environment Protection Act and the State of Tamil Nadu is empowered to exercise the powers which were exercisable by the Central Government. Plastic Waste Management Rules 2016 was enacted in exercise of power conferred under Section 3, 6 and 25 of the Environment Protection Act in supersession of the Plastic Waste Management Act handling Rules 2011. Therefore, there is nothing to hold that the notification dated 10.02.1998 has been superseded by the Central Government while issuing the notification dated 18.03.2016. Therefore, we are unable to accept the argument of Mr. Prabhakaran on the said issue. In any event, the order passed by the State Government in G.O. Ms. No. 84 is in public interest and the direction contained therein clearly shows as to the purpose for which the said direction has been issued and the State Government has rightly referred to Article 48 (A) of the Constitution of India which envisages that the State Government shall make every endeavour to protect and improve the environment. Therefore, we are of the considered view that the petitioner has not made out any ground to interfere with the impugned Government Order and the relief sought for in the writ petition cannot be granted.



8. With the above observations, these writ petitions stand dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

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To:

1. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Principal Secretary,
Government of Tamil Nadu,
Environment and Forest (EC-2)
Department, Fort St. George,
Chennai-600 009.
3. The Member Secretary,
Tamil Nadu Pollution Control Board,
Guindy, Chennai-600 032.
4. The Secretary,
Union of India,
Ministry of Chemicals and Fertilizers
Department of Chemical and Petrochemicals
Shastri Bhawan, 3rd Floor, 341(C) A Wing,
New Delhi-110 001.
5. The Secretary,
Union of India,
Ministry of Environment & Forest,
Paryawaran Bhavan, CGO Complex,
New Delhi 110 003.

+1 CC to M/s.P. SUBBIAH, Advocate (SR-84940[F] dated 03/09/2019)



+1 CC to M/s.SPL GP (SR-85024[F] dated 04/09/2019)

+2 CC to M/s.R. PRABHAKARAN, Advocate (SR-85257 & 85258[F] dated 05/09/2019)

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