

AD-12
Ct No.09
19.12.2023
TN

WPA No. 28535 of 2023

Indian Jute Mills Association and another
Vs.
Bureau of Indian Standards and others

Mr. Abhrajit Mitra,
Ms. Rajshree Kajeria,
Mr. Sarvapriya Mukherjee,
Mr. Deepan Sarkar,
Mr. Satadeep Bhattacharyya,
Mr. Uttam Sharma,
Mr. Samriddha Sen

.... for the petitioners

Mr. Saikat Roy Chowdhury,
Mr. Aritra Ghosh

.... for the respondent nos.1 & 5

Mr. Asok Kumar Chakraborty, Ld. ASG,
Mr. Dibashis Basu,
Mr. Arun Bandyopadhyay

.... for the respondent
nos.2, 3, 4 & 10

Mr. T.M. Siddiqui,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal

.... for the State

- 1.** Learned Additional Solicitor General (ASG) takes a preliminary objection as to the determination of this court to decide the writ petition, since the matter pertains to essential commodities, that is, jute products.

2. Learned ASG places reliance on Section 3 of the Essential Commodities Act, 1955 and argues that the present dispute relates to the said Act.
3. Learned senior counsel appearing for the petitioners submits that the reliefs sought in the writ petition have nothing to do with any function or provision under the Essential Commodities Act but pertains to a challenge in respect of specifications under the Indian Standards.
4. By placing reliance on the classification of writ matters, it is argued that the challenge in the present writ petition does not fall within any of the categories which pertain to regulation of essential commodities, as provided in the Writ Rules of this Court.
5. At this juncture, learned ASG submits that the matter be clarified before the Hon'ble the Chief Justice prior to the same being taken up by this court.
6. However, since the petitioners plead urgency and in order to avoid unnecessary wastage of time, the issue is taken up for *prima facie* decision.
7. Upon a consideration of the Writ Rules, it transpires that the present challenge pertains to a declaration that the Indian standard for textiles – jute and polypropylene bags for packaging and

the specification thereto has been assailed, which does not directly pertain to any provision of the Essential Commodities Act or regulation of the essential commodities under the said Act.

- 8.** As such, instead of wasting further time on the issue of determination, it *prima facie* transpires that the matter does not pertain to essential commodities in the true sense of the term.
- 9.** As such, this court, having determination to take up Group-IX residuary matters other than police inaction matters, is the appropriate Bench which is required to take up the matter.
- 10.** Hence, the matter is taken up for hearing.
- 11.** The present challenge has been preferred on a limited compass.
- 12.** Since the relevant documents are annexed to the writ petition and the matter pertains to a legal adjudication, affidavits are not being directed to be exchanged. It is, thus, deemed that none of the allegations made in the writ petition are admitted by any of the respondents.
- 13.** Learned senior counsel appearing for the petitioners contends that the provisions of Rule 22 of the Bureau of Indian Standards Rules, 2018 have been contravened by the Division Council formed under the said Rules and the

parent Act. As per Clause 22, Sub-Clause (3), the Division Council, on being satisfied as a result of its own deliberations or on investigation and consultation with concerned interested parties, finds that the necessity for standardization has been established, it shall assign the task of formulating the standards to a Sectional Committee constituted for the purpose. Under Sub-Rule (4), the Indian Standard prepared by the Sectional Committee shall be issued in draft form and widely circulated for a period of not less than one month, which may under certain circumstances be waived. Importantly, under Sub-Rule (5), the draft Indian Standards issued under Sub-Rule (4) shall be finalized by the concerned Sectional Committee after giving due consideration to the comments that may be received and the draft so finalized shall be submitted to the Chairperson of the concerned Division Council for adoption of the Standard.

- 14.** It is contended that in the present case, while the Sectional Committee was in seisin of the matter, being of the opinion that the same should be sent for legal advice on the issue as to whether the Sectional Committee had jurisdiction in the first

place to decide on the standards referred to it, the Divisional Council usurped its jurisdiction and prematurely recommended the notification of the standard.

- 15.** Such act, it is argued, is palpably violative of the said Rules.
- 16.** Learned ASG, appearing on behalf of the respondent nos. 2, 3, 4 and 10, contends that the matter pertains to a policy decision and, as such, ought not to be interfered with by a court of law. In any event, it is submitted that the petitioners have also sought for a consideration of the representation which, if granted by the court, would suffice in the present circumstances.
- 17.** Learned counsel appearing for the respondent no.1, the Bureau of Indian Standards, places reliance on the Jute Packaging Materials (Compulsory Use in Packing Commodities Act), 1987 and contends that under the said Act, certain standards have been fixed with regard to jute packaging material.
- 18.** Learned counsel for the respondent no.1 seeks to justify the impugned action of proposed notification of the standard by the respondent no.1 by placing reliance on the provisions of the said Act. It is further argued that the writ

petition is premature, since there are several subsequent steps involved. Out of the multitude of standards suggested for notification, only a few have as yet been actually notified. Thus, it is reiterated that the writ petition should be turned down at this stage.

- 19.** A bare perusal of Rule 22 clearly shows that there is a specific structure and checks and bounds contemplated in the said provision. The several layers and safety nets embedded in the said Rules have a purpose.
- 20.** As per Sub-Rule (3) of Rule 22, the Division Council, in the first place, upon being satisfied on the ground as stipulated therein, assigns the task of formulating the standard to a Sectional Committee constituted for the purpose. The key take-away of this provision is that the task of formulating the standard is assigned to the Sectional Committee, which is constituted for the purpose. Thus, the jurisdiction and authority of formulating the standard lies with the Sectional Committee and not the Division Council.
- 21.** Sub-Rule (4) again reiterates that the Indian Standard prepared by the Sectional Committee shall be issued in draft form, meaning thereby that the Indian Standard is actually formulated

and prepared by the Sectional Committee and then put in circulation which, of course, can be waived.

22. Although the circulation can be waived, Sub-Rule (4) of Rule 22 further stipulates that the draft Indian Standards issued under Sub-Rule (4) shall be “finalized” by the concerned Sectional Committee after giving due consideration to the comments received. The draft “so finalized” shall then be submitted to the Chairperson of the concerned Division Council for adoption of the standard.

23. Thus, the hierarchy and safety nets as provided in the said Rule clearly delineate the distinct scopes of operation of the Divisional Council and the Sectional Committee. Whereas the Division Council merely forms a *prima facie* opinion as to the necessity of standardization, it assigns the task of actual formulation of the standards to the Sectional Committee. The latter actually formulates and prepares the standards and after due deliberation within the contemplation of Sub-Rule (5), reverts it back to the Chairperson of the Division Council which then merely adopts the standards which have already been prepared and formulated by the Sectional Committee. Hence,

the Sectional Committee is primarily tasked with formulation and preparation of the standards and not the Division Council.

- 24.** In the present case, upon consideration of the comments as envisaged in Sub-Rule (5), particularly the comments made by the present petitioners, that is, the Indian Jute Mills Association which is a major stakeholder, as well as the Ministry of Environment, Forest and Climate Change, which also has an important say in the matter, a question of jurisdiction cropped up for being decided on by the Sectional Committee.
- 25.** Since the jurisdictional question hits at the root of the preparation and formulation of the standards, it cannot be gainsaid that the said issue had to be thrashed out first before the draft were to be finalized and submitted to the Chairperson of the Division Council by the Sectional Committee.
- 26.** In such view of the matter, quite rationally, the Sectional Committee awaited legal opinion on the issue.
- 27.** However, jumping ahead a few steps, the Division Council usurped the jurisdiction conferred specifically on the Sectional Committee by

refusing to wait for finalization of the draft and putting up the same for notification.

- 28.** Rule 19 of the 2018 Rules has been relied on by the respondent no.1. However, the said reliance is misplaced. Rule 19 clearly provides for the constitution of the Division Councils, Sectional Committees and sub-committees. Whereas Sub-Rule (3) thereof contemplates that the Division Council shall advise on the subject areas as enumerated therein, the role of the Division Council is clearly chalked out to be advisory.
- 29.** In the present case, the said Division Council, which has merely an advisory role, sought to override the Sectional Committee's final formulation of the draft standards and perform the impugned action of putting up the same for notification. Thus, even as per the argument of the respondent no.1, the Division Council was merely to advice and not to decide or formulate the standards, which power vests in the Sectional Committee.
- 30.** Insofar as the arguments of the learned ASG with regard to the matter being one relating to policy decision is concerned, the same cannot be accepted. There is no question of policy decision involved in the present adjudication at all, since

the arguments have been advanced regarding contravention of the 2018 Rules.

- 31.** It is also required to be noted that the learned ASG represents, among others, the concerned Ministry of Environment, Forest and Climate Change, that is, the respondent no.4 which is one of the stakeholders at whose behest the issue of jurisdiction arose to prompt the Sectional Committee to refer the matter for legal opinion. Thus, the stand now taken by the learned ASG is contradictory to the stance of the respondent no.4 itself in its comments as recorded in the minutes of the Sectional Committee.
- 32.** In view of the above observations, the impugned action of the Division Council to put up the standards for notification prior to those being finalized by the Sectional Committee is palpably *de hors* the law and illegal on the face of it.
- 33.** Accordingly, WPA No. 28535 of 2023 is allowed on contest, thereby setting aside the communication dated November 23, 2023 annexed at page-263 of the writ petition whereby the draft Indian standards-in-question were sent for approval of the Competent Authority.
- 34.** The matter shall now go back to the Sectional Committee from the stage where it was usurped

by the Division Council. The Sectional Committee shall, after taking legal advice as initially proposed by it, finalize the draft standards either way. After a final decision is taken by the Sectional Committee thereon, the matter, if the Sectional Committee feels that the standards should be finalized, shall be submitted to the Chairperson of the concerned Division Council in terms of sub-rule (5) of the Rule 22 of the 2018 Rules. However, nothing in this order shall be construed to be an adjudication on the merits of the issue as to whether the Sectional Committee has the jurisdiction to formulate and finalize such standards as it has been called upon to do so. It will be open to the said Committee to decide on such issue as well.

- 35.** Consequentially, the publication being Annexure-P-20 to the writ petition is also set aside.
- 36.** There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)