

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 8536 OF 2022****TAMIL NADU AND PUDUCHERRY PAPER
CUP MANUFACTURES ASSOCIATION****...APPELLANT(S)****Versus****STATE OF TAMIL NADU & ORS.****...RESPONDENT(S)****WITH****CIVIL APPEAL NO(S). 8537-8538 OF 2022****J U D G M E N T****S. RAVINDRA BHAT, J.**

1. These appeals were heard finally, with the consent of the parties. The appellants are aggrieved by a common judgment¹ of the Madras High Court, by which their writ petitions challenging a government order² banning manufacture, storage, supply, transport, sale, distribution, and use of ‘*one time use and throwaway plastics*’, was dismissed. The appellants before this court are an association representing manufacturing units involved in the manufacture of ‘reinforced’ paper cups, and a manufacturer of non-woven plastic bags, respectively.

Facts

2. The Environment and Forest Department of the Government of Tamil Nadu issued the Government Order in question, in exercise of its power under Section 5 of the Environment Protection Act, 1986 (‘EPA’) on 25.06.2018 and it was to take

¹ Judgment dated 11.07.2019 in WP No. 3984/2019.

² G.O.Ms No. 84 dated 25.06.2018 w.e.f. 01.01.2019 (hereafter referred to as ‘**Government Order**’).

effect from 01.01.2019. The Government Order included directions, banning manufacture, storage, supply, transport, sale, distribution, or use of “use and throwaway plastics” – which as per Explanation 2, included plastic carry bags, plastic flags, plastic sheets used for food wrapping, spreading on dining table, etc. plastic plates, “plastic coated teacups” and plastic tumbler, water pouches and packets, and plastic straws, regardless of thickness. Pertinently, non-woven bags were not expressly mentioned until a clarification dated 08.12.2018 issued by the state government, brought them within the scope of the ban.

3. The directions also contained exemptions for plastic carry bags produced exclusively for export purposes by an industry in an SEZ or EOU; plastic bags which constitute or form an integral part of packaging in which goods are sealed prior to use at manufacturing/processing units; plastic bags and sheets used in forestry and horticulture nurseries against the orders from the government departments; plastic used for packing dairy products, oil, medicine, and medical equipment; and carry bags made of “compostable plastics”³ (as per regulations).⁴ Pursuant to the Government Order, a Steering Committee headed by the Chief Secretary of the Government of Tamil Nadu, was constituted to monitor and implement the Notification.

4. The appellant paper cup association made a representation on 05.09.2018 to the Government to reconsider and exclude them from the ban. Pursuant to this, an Expert Committee was constituted on 25.09.2018 to study and furnish a report on the compostable properties of paper cups and compostable plastics. The Expert Committee discussed the properties of LDPE coated paper cups, and alternative bioplastics which were biodegradable. It concluded that the LDPE made such cups non-biodegradable, but recyclable. However, due to insufficient collection

³ See Explanation 5 for definition.

⁴ During the pendency of litigation, there have been further amendments to the Government Order; by Notification dated 05.06.2020, the State removed the exemption for plastic bags used for packaging goods sealed prior to use at processing units, and added a further direction to the effect that alternatives to the use and throw plastics (other than compostable plastics) shall be examined and tested by the Central Institute of Plastic Engineering and Technology (CIPET) and necessary approval to be obtained from the Tamil Nadu Pollution Control Board (TNPCB).

mechanism or failure on the part of extended producer responsibility - they are not being recycled.

5. The petitioner association was also invited for a personal hearing on 14.11.2018, during which they contended that the use of reinforced paper cups had not been banned in other states (such as Maharashtra, Karnataka and Orissa) which had also implemented a 'plastic ban'. The association's representation was rejected on 08.12.2018 by the TNPCB on two grounds: firstly, that this policy to ban one time use and throwaway plastics was to safeguard the environment in light of the Plastic Waste Management Rules, 2016 (hereafter '2016 Rules'); and secondly, that the Expert Committee had concluded that the composition of the product, made it difficult to degrade under natural environmental conditions.

6. Similarly, the non-woven bag association also made representations on 23.08.2018 and 19.09.2018 to the TNPCB, which were rejected on similar grounds on 08.12.2018⁵ through a clarification issued by TNPCB and a further detailed clarification issued by the State Government, that such non-woven bags were also banned. The reasoning given was that such bags are made of polypropylene, and do not degrade easily in natural environment.

7. Aggrieved by the ban, the paper cup association challenged the Notification before the NGT which was dismissed⁶ on the ground that the challenge was not maintainable before the NGT.

8. Approaching the High Court in its writ jurisdiction, the appellants cited their rights under Article 14, and Article 19(1)(g) of the Constitution of India. Their principal grounds were: *firstly*, that the reports relied upon by the State recognised that the paper cups were recyclable provided the paper and LDPE plastic layer were separated (which the association was willing to assist/support), and this product was not on the same footing as other plastic products banned. It was also emphasised

⁵ The CIPET report concluded that "*polypropylene is a synthetic plastic which is spun into fibres and bonded together by chemical or solvent treatment as non-woven fabric*".

⁶ Order dated 28.01.2019 in Appeal Diary No. 05/2018 before the NGT, Principal Bench, New Delhi.

that this action was taken without application of mind and would have a vast economic impact on the livelihood of 5-6 lakhs of employees. *Secondly*, that the mandatory consultative mechanism captured in Rule 4 of the Environment (Protection) Rules, 1986 (hereafter ‘1986 Rules’) – of publishing a draft notification, inviting objections and passing a final notification after considering these – was not followed.

9. Arguments on behalf of the non-woven bag industry were that these bags were water and air permeable, and hence did not choke drains. They were eco-friendly alternatives that could be used more than 10 times and were recyclable; they had not been banned anywhere else in the world and had wide usage and application.

10. The High Court heard the writs along with various petitions filed by other aggrieved manufacturers from the plastic industries, and dismissed them by common judgment, upholding the ban.⁷ It agreed with other courts (namely, the Delhi High Court, Madhya Pradesh Court⁸, NGT⁹) as having rightly upheld the State’s competence to pass such government orders under Section 5 of the EPA, in furtherance of its policy decision; judicial review of which, was limited.¹⁰ On the question of non-woven bags, the court held that since they were non-biodegradable, their reusability carried the risk of pathogenic transmission, and the bags have tendency to cause reduction in rainfall infiltration and ground water discharge, there was no basis to conclude they were eco-friendly carry bag alternatives; the State had pursuant to a CIPET study, banned them. Given that the court is not scientific experts to determine the rival contentions of the parties, deference had to be paid to

⁷ The High Court noted that various other writ petitions (WP No. 34065/2018 dd. 27.12.2018, WP No. 24623/2018 dd. 19.12.2018, WP (MD) No. 10131/2018 dd. 03.12.2018) either challenging the validity of impugned government order, or seeking its implementation, were dismissed by coordinate benches of the court.

⁸ *Popular Plastic and Ors. v. State of Madhya Pradesh*, WP No. 8182/2017 dd. 06.09.2018

⁹ *KK Plastic Waste Management Pvt. Ltd. & Ors. v. State of Karnataka & Ors.*, Appeal No. 117/2016.

¹⁰ The court followed *Andhra Pradesh Pollution Control Board v. M.V. Nayudu* [(2001) 2 SCC 62] and *Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd.* [(2011) 1 SCC 640] the latter having held that judicial review was limited in matters of policy.

the decision of experts more familiar with the material¹¹ and this could not be gone into in the writ petitions filed under Article 226 of the Constitution. With regards to cups, it was noted that they are indiscriminately used and thrown after single use, accumulating in huge quantities, and causing an eye sore; since they squarely fall within ‘one time use and throw’ plastics, the ban was justified.

11. The appellants seek this court’s intervention on the ground that the common judgment was passed without considering the specific contentions made by them, and the product(s) in question.

Appellants’ contentions

12. Counsel appearing for the appellant-association urged that reinforced paper cups (referred to as “plastic coated teacups” in the impugned notification) were an eco-friendly alternative to plastic cups owing to their composition of 94% food grade paper and only 6% coating of LDPE which is necessary to reinforce the cup and make it water resistant. Once the paper and plastic are separated, the paper is both recyclable and biodegradable while the LDPE is recyclable and reusable for different purposes. It was pointed out that the manufacturers in the MSME sector purchase the paper with the LDPE coating from paper mills like TNPL, ITC, etc. and use them to make the cups.

13. The appellant’s submissions were primarily on two planks – firstly that there was no scientific basis for the ban, which created an arbitrary classification; and secondly, that there was non-compliance with the 1986 Rules, which mandate publishing of draft rules and inviting objections, before passing an order such as the impugned notification. Counsel contended that the classification – of including paper cups with LDPE coating with other products that are largely composed of plastic – was arbitrary, and unjust. It was further highlighted that the products exempted under the notification are in fact, far more harmful to the environment which the High Court too, took note of.

¹¹ Court relied on *Secretary and Curator, Victoria Memorial Hall v. Howra Ganatantrik Nagrik Samity and others*, (2010) 3 SCC 732; *Basavaiah (Dr) v. Dr. H.L. Ramesh and Ors.*, (2010) 8 SCC 372.

14. Addressing the three reports relied on by the State – counsel appearing for the appellant pointed out that none of these three reports, recommended a ban on reinforced paper cups. In fact the IIT Report recommended the use of paper cups as an alternative to plastic cups; the Expert Committee Report specifically noted that the LDPE coating on the paper cups can be separated in the pulping and screening process in paper mills, which it was urged is a common practice leading to both resultant paper and LDPE that is recyclable and reusable for different purposes; and that while the CIPET report elaborates on the physical characteristics of paper cups, there is no finding that it ‘poses a threat to the environment’ as concluded by the High Court erroneously.

15. Counsel laboured on the failure of conducting prior consultation before issuing delegated legislation. Emphasis was placed on Rule 4 of the Environment Protection Rules, 1986, as being a *mandatory* requirement, rather than directory in nature. Therefore, the state had to have issued a draft or proposed notification, with a period of at least 15 days to make a reply to the same, followed by the issuance of a written order dealing with the objections raised. Reliance was placed on this Court’s judgment in *Cellular Operators Association of India & Ors., v. TRAI*¹².

16. Counsel submitted that the High Court had proceeded on a misconceived notion on the ‘degradability’ of the cups. The question, however, is of ‘recyclability’ instead. That paper and LDPE coating can be separated in paper mills, is not in contention; the absence of a collection mechanism was the problem for which a total *ban* was a disproportionate solution. Citing Rule 6 of the Plastic Waste (Management & Handling) Rules 2016, the responsibility of creating and putting in place a collection mechanism was placed on the municipal corporations. The failure to do so, cannot impede the appellants’ right to carry out its business. Without conceding their case, counsel expressed the appellants’ willingness to cooperate with the authorities to improve the collection mechanism including through a buyback scheme of used cups.

¹² (2016) 7 SCC 703 [para 74].

17. Lastly, counsel submitted that there is a large-scale reliance on and usage of disposable cups by the State of Tamil Nadu and its residents, and due to the ban on local production, they are being brought in from manufacturers in other states in which there is no ban of this kind. This large-scale usage was exponentially magnified during and after the COVID-19 pandemic. Counsel reiterated that reinforced cups, are the only eco-friendly alternative to plastic cups, and banning manufacture of them adversely affects only small shopkeepers, and the MSME enterprises that are especially promoted and supported by the government through loans and other schemes. In light of these facts, it was urged that the test of the reasonable person should be applied to balance development and environment and allow manufacture, albeit with stringent safeguards. Reliance was placed on this court's decision in *M.C. Mehta v. Union of India*¹³.

18. Counsel on behalf of the manufacturer of non-woven carry bags, contended that such bags are made out of poly-propylene granules by spun-bonding fibres similar to polyester filaments used for manufacturing of sarees, shirts etc.; and non-woven fabrics have wide usage¹⁴. They have weak chemical structure and are made of a mono-polymer, making it easy to segregate and recycle. Non-woven polypropylene carry bags are reusable alternatives to plastic bags. They have a fabric like structure with air and water permeability. Therefore, even if the non-woven carry bags are discarded, there is no possibility for clogging or choking of water channel, drains, sewer lines etc., and affecting soil fertility. These fabrics are chemically inert and non-toxic and therefore, even burning these materials will not produce any poisonous gases or pollutants. The non-woven bags disintegrate on exposure to sun light and rainfall and can degrade within even 100 days. Even the test report issued by CIPET, it was argued, has proved that non-woven carry bags are 100% eco-friendly. The life Cycle Assessment study done by the Central

¹³ (2004) 12 SCC 118.

¹⁴ Non-woven fabrics have numerous applications – medical (surgical gown, face mask, shoe covers, caps, etc.), filters (vacuum bags, hepafiltration), agriculture (shade nets, crop covers, soil liners, tea bags, etc), and packaging (where porosity is needed, bags of all types namely WCUT, DCUT, handle loop bags used in malls, textile, retail, etc.)

Pollution Control Board, Ministry of Forest, and Climate Change, reveals that non-woven carry bags are the real substitute and alternate for plastics, as they are porous in nature and air and water can pass through freely, and there is a real global warming impact in recycling paper and plastic.

19. Counsel pointed out that non-woven carry bag fabric is classified as Technical Textile by, and promoted by, the Ministry of Textile, Government of India (GOI). Further, the non-woven polypropylene carry bags can be manufactured as per the requirement of customer and there is no fixed percentage of polypropylene i.e., all non-woven carry bags do not contain 98.2% polypropylene. It was argued that the non-woven carry bags contain less percentage of poly propylene, which varies from 57% to 70% while an average carry bag can be produced with 30% to 90% of polypropylene; and that the appellants are ready to manufacture the non-woven carry bags with any fixed percentage as may be fixed by this Court or any other authority. In this way, the state can regulate the ratio of polypropylene in non-woven carry bags by fixing the percentage of GSM. But the total ban or prohibition by branding it as 'one time use and throw' was unwarranted and disproportionate.

20. Such a ban, it was argued, caused massive unemployment and rendered the machineries purchased useless as they could be used only to manufacture non-woven carry bags and not for any other purposes. Therefore, it is contended by the learned counsel that the impugned ban is in violation of Article 19(1)(g) of The Constitution of India. Furthermore, counsel highlighted that the State government had entered into agreements with such small enterprises, that were manufacturing non-woven bags, as a part of various skill-development and entrepreneurship programmes promoted by the government.

21. It was also submitted that non-woven polypropylene is used in various medical, industrial, and other applications including diapers, sanitary napkins etc., in terms of the 2016 Rules and they exhibit very high percentage values compared to non-woven carry bags. While the disposal of other poly-propylene products is

permitted with treatment methods, if and when stipulated, it was urged that the same logic can be extended to non-woven polypropylene bags as well. Further, To demonstrate its safety, counsel pointed out that polypropylene is often used as a non-absorbable, synthetic suture material in medical implants, in specific surgeries, etc. which proves that it will not cause any health hazard to human being. It was further argued that scientific studies proved that even the discarded bags can be used as an ingredient for laying asphalt roads; this technology was not being utilized by the government. Instead of adopting and implementing ecological alternatives for re-use and re-cycling of the plastic, the Government had hastily imposed the ban without any scientific study preceding such ban.

22. Regardless, that apart, counsel contended that non-woven carry bags cannot be categorised as one time or single use and throw away items. These will not be thrown away after one use and there is also no data to show that the non-woven carry bags are causing any impact on the environment. Given that they are not distributed for free, it is more compelling to conclude that people would not throw after single use, and will reuse. Further, waste segregation is an important task which the Municipal authorities or local body have to carry out. Instead of ensuring that the instrumentalities of the government are efficiently discharging such duties, the government had chosen to adopt a short cut method to ban the non-woven carry bags. If waste segregation is properly done by adopting scientific and novel methods, the ban may not be necessary.

23. Further, before imposing the ban, the stakeholders were not consulted and no notice was issued to the manufacturers as a whole. Even though some of the associations approached the Government and gave their objections, it was argued that in itself could not dispense with the requirement to hear all the stakeholders who are likely to be affected before the ban.

24. Counsel argued also on the absence of data to establish that non-woven bags in fact contribute so heavily to litter. On the other hand, if the state intended to give

effect to the concept of micro plastics, they should also impose ban on other products (toothpaste, cosmetic items such as face wash, scrubs etc.), which directly affect the marine life. However, those products are not banned by the Government but it had chosen to ban only the non-woven carry bags and therefore, the impugned order is vitiated on the ground of discrimination. Counsel for the appellants urged that there is no alternative to non-woven carry bags and they are not made of 100% polypropylene. The consumption of water for manufacture of jute, paper and cotton, far exceeds the impact of polypropylene. Chemicals which are more toxic and harmful to environment and human existence are used in the manufacture of industrial products, such as mercury and cyanide, but they are not either banned or prohibited by citing flimsy and unfounded reasons.

Respondents' contentions

25. Learned counsel appearing on behalf of the State of Tamil Nadu, relied on the provisions of the EPA, specifically – Section 23 (central government's power to delegate) and Section 5 (power to give directions). It was submitted that the impugned government order was well within the legislative competence of the State Government which issued the same under Section 5 of the EPA (pursuant to this power being delegated by the Central Government). This delegation of power, it was argued, empowered the state government to impose stringent regulations on any industry, operation, process including a complete or partial ban. Reliance was placed on *AP Pollution Control Board v. Prof. M. Nayudu (Retd.) & Ors.*¹⁵

26. It was submitted that there was no repugnancy between the impugned government order and the 2016 Rules as they operate in distinct and independent fields. The Rules specify regulatory measures, compliance of which is essential for the grant of registration for plastic manufacturers in terms of these Rules, whereas the impugned notification only seeks to ban certain plastics that are harmful to the environment. The High Court had rightly accepted this position.¹⁶ Reliance was

¹⁵ (2001) 2 SCC 62, para 43.

¹⁶ See paragraph 52 of the impugned HC judgment.

placed on *Goodwill Plastic Industries v. Union Territory of Chandigarh*¹⁷, the civil appeal against which, has also been disposed by this court.

27. Counsel laboured on the right to clean and hygienic environment as one falling under Article 21 of the Constitution and that this trumped the commercial interests of the appellants. The doctrine of public trust was pressed into service to buttress counsel's arguments, and it was urged that the standard of judicial review to be applied by courts where environment protection and interests of the general public are a stake, is a narrow one. Counsel pointed out numerous cases in this regard.¹⁸

28. The appellants' contention on violation of natural justice was strongly opposed; counsel highlighted that representation of both the appellants were taken into consideration by the respondent state government, and deliberations had also borne numerous clarifications. The High Court had rightly concluded that strict compliance with Rule 4 of the 1986 Rules was not warranted in the particular facts of the case and given the huge publicity around this ban.¹⁹

29. Counsel insisted that the appellant associations had been given ample opportunity to be heard; on 14.11.2018, the associations were invited for a hearing by the Steering Committee, where the appellants urged that paper cups had not been banned in other states that had instituted a 'plastic ban'. It was only after hearing them, that the clarification dated 08.12.2018 was made – by which their representation was rejected.

30. With regards to non-woven polypropylene bags, the State opposed the contention that it was a textile material and not plastic. CIPET has concluded that it is "polypropylene, a synthetic plastic which is spun into fibres and bonded together by chemical or solvent treatment as non-woven fabric". The filler material used in these bags make them stiffer, and water resistance. They easily break and thrown away frequently. It was stated that at high temperatures, polypropylene releases

¹⁷ 2013 SCC Online NGT 71, para 17.

¹⁸ *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388; *Association for Environment Protection v. State of Kerala* (2013) 7 SCC 226m *Fomento Resorts and Hotels Ltd. v. Minguel Martins* (2009) 3 SCC 571, *M.I. Builders (P) Ltd. v. Radhyen Shyam Sahu* (1999) 6 SCC 464.

¹⁹ See paragraph 56 of the impugned HC judgment.

harmful substances and if it is used in a long period with slow degradation process, the potential crisis is more dangerous than plastic bags. It was submitted that the appellant itself claimed that this non-woven fabric degrades under sun light within a very short span of time; it physically breaks down into very small fragments (termed as ‘disintegration’) and is not degraded biologically to yield CO₂, water, inorganic compounds and biomass and does not leave any visible distinguishable or toxic residue as for the case of compostable plastics (which is defined in 'IS/ISO 17088:2008 – Specifications for Compostable Plastics’). Therefore, the small fragments (known as ‘microplastics’ and could in soil, freshwater, etc. and could have a long-term negative impact on such ecosystems. Reliance was placed on the Delhi High Court’s observations in WP (C) No. 8120/2009²⁰ and the NGT’s order²¹ with respect to ban and use of plastic bags in State of Punjab and Haryana which included non-woven bags.

31. Attention was drawn to the three reports (IIT Madras Report, Report of Committee of Experts, and chemical tests conducted by CIPET) and counsel urged that the impugned notification was backed by expert data. Arguing that prohibition is only with respect to use and throw plastic, irrespective of whether they are recyclable or non-recyclable, as consumers nonchalantly discard these products widely, and litter unscrupulously, making it impossible to effectively collect, segregate and recycle. The High Court was justified in rejecting the appellants’ challenge on this ground and holding that the ban is defensible on scientific analysis since these products were not biodegradable.

Analysis and conclusion

A. Relevant provisions

32. Section 5 of the EPA, relates to the power to give directions:

“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*

²⁰ Paragraph 9 and 11 of judgment dated 28.08.2009 passed by the Delhi High Court in WP (C) No. 8120/2009.

²¹ Original Application No. 442/2015.

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."

By Notification dated 10.02.1988, the Ministry of Environment and Forest, Government of India, in exercise of its powers under Section 23 of the EPA, delegated its power vested under Section 5 of the Act, to numerous states – including Tamil Nadu. The Notification stated that the Central Government may revoke such delegation of powers in respect of all or any of the state governments, or may itself invoke Section 5 of the Act, if it found such course of action necessary in the interest of public interest.²²

33. Rule 4 of the 1986 Rules, is to be read with Section 5, and is relied upon by the appellants:

“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.

(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 (3a) 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 (3b) 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

²² Notification No. S.O. 152(E) dated 10.02.1988.

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 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.

(6) Every notice or direction required to be issued under this rule shall be deemed to be duly served

(a) where the person to be served is a company, if the document is addressed in the name of the company at its registered office or at its principal office or place of business and is either-

(i) sent by registered post, or (ii) delivered at its registered office or at the principal office or place of business;

(b) where the person to be served is an officer serving Government, if the document is addressed to the person and a copy thereof is endorsed to this Head of the Department and also to the Secretary to the Government, as the case may be, in-charge of the Department in which for the time being the business relating to the Department in which the officer is employed is transacted and is either-

(i) sent by registered post, or

(ii) is given or tendered to him;

(c) in any other case, if the document is addressed to the person to be served and-

(i) is given or tendered to him, or

(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building, if any, to which it relates, or

(iii) is sent by registered post to that person

Explanation.-For the purpose of this sub-rule:-

(a) "company" means any body corporate and includes a firm or other association of individuals;

(b) "a servant" is not a member of the family”

(emphasis supplied)

34. That the State has the legislative competence to impose a ban – of the kind contained in the government order (one which may have the effect of affecting industries even) - in exercise of its power under Section 5 of the EPA, is borne out from a reading of the relevant provisions.

35. The other regulations at play are the 2016 Rules which define ‘plastic’ and ‘compostable plastics’:

“‘plastics’ mean material which contains as an essential ingredient, a high polymer such as polyethylene terephthalate, high density polyethylene, Vinyl, low density polyethylene, polypropylene, polystyrene resins, multi-materials

like acrylonitrile butadiene styrene, polyphenylene oxide, polycarbonate, Polybutylene terephthalate.

‘compostable plastics’ mean plastic that undergoes degradation by biological processes during composting to yield CO₂, water, inorganic compounds and biomass at a rate consistent with other known compostable materials, excluding conventional petro-based plastics, and does not leave visible, distinguishable or toxic residue;”

36. At the outset, it is pertinent also to point out that the NGT dismissing the matter as not maintainable, struck this court, as rather strange. A quick glance at Section 16 of the National Green Tribunal Act, 2010 reveals that orders issued under Section 5 of the EPA fall squarely within the NGT’s remit:

“16. Any person aggrieved by, –

[...]

“(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986;”

37. The High Court, while deciding the question of natural justice, in light of Section 5 of the Act, read with Rule 4 of the Rules, held that since the ban only came into force on 01.01.2019 (i.e., 6 months after the date of the order), the petitioners were well aware of the ban and had even made representations that were heard and disposed, prior to the ban taking effect. Observing that individual notices cannot be expected to all concerned, it was held that when a policy decision of this nature is taken in larger public interest, there was no violation of principles of natural justice.

38. In the present case, the paper cup association sent in their representation, received an opportunity for a personal hearing, and a committee of experts was constituted to consider their representation. It was only after this, on 08.12.2018, that their representation was disposed of, with reasons.

39. A reference to Rule 4, indicates that it is mandatory. This court has dealt, in several cases with the question of post-facto decisional hearing. There is no gainsaying that principles of natural justice have to be complied with wherever the law requires that course. It is also an accepted principle that the silence of a statute or rule about natural justice, nevertheless, calls for a minimum hearing. At the same time, there have been cases, where the court has permitted post decisional hearing:

notably in *Liberty Oil Mills*²³. There the court recognized that there can be emergencies or urgent situations calling for immediate or expedient action, which cannot be delayed. In such eventualities, this court held that the rule of prior hearing can be dispensed with. In *Dharampal Satyapal Ltd. v. CCE*²⁴ held that the principles of natural justice cannot be placed in a straitjacket, especially if a fair hearing would in any event have resulted in the same decision.²⁵ A closer look at Rule 4(5) of the 1986 Rules reveals that it also contains within it, an exemption for furnishing prior notice in the interest of expediency.

40. In the present case, there is no doubt that a pre-decisional hearing was not granted. Yet, the court cannot be oblivious of the fact that the state notified the rules, on 25.06.2018 and did not bring it into force immediately. The ban was made effective, only from 01.01.2019. The petitioners and other parties were afforded the opportunity to represent and make their views known, which they did. Undoubtedly, the state did not accept those views. The question then, is whether this court should insist that the failure to grant opportunity prior to the government order, should result in invalidation of the ban itself. If one keeps in mind the larger public interest sought to be subserved by the impugned government order, and also importantly the circumstance, that the Central Government notification dated 01.07.2022 has resulted in a complete ban on single use cups among other use and throw plastic products, the public interest cannot be ignored.

41. Therefore, this court holds that though the mandate of the rule calls for pre-decisional hearing, in the peculiar facts of this case, given the efflux of time, the resultant likely injury to the public in the event the notification is interfered with, interests of justice require that such infraction should not result in the invalidation of the notification.

B. Considering the ban, on merits

²³ *Liberty Oil Mills v. Union of India*, (1984) 3 SCC 465

²⁴ (2015) 8 SCC 519

²⁵ See also, *Karnataka SRTC v. S.G. Kotturappa.*, (2005) 3 SCC 409, *P.P. Agrawal v. State Bank of India*, (2006) 8 SCC 776

42. Both counsel appearing for the appellants argued at length on the merits of the ban and whether the State Government had taken an appropriate decision to ban their respective products.

(i) Paper cups

43. The main argument of the petitioners is that the use of plastic in paper cups is minimal [the ratio being 6% plastic and 94% paper] and that the blanket ban, of their products, is unreasonable, arbitrary, and disproportionate. The report of the expert body, Central Institute of Plastic Engineering and Technology, led to the re-examination of the issue, i.e., the ban on use of the petitioners' paper cups reinforced with plastic coating, and the TNPCB's subsequent order, dated 8.12.2018, which pertinently, reads as follows:

“Based on the representation, an Expert Committee was constituted as per the instructions during the Steering Committee meeting. The Committee has reported that poly-coated paper cup contains 94% paper (cellulose) & 6% LDPE. Further TNPCB tested the LDPE coated disposable paper cup samples in CIPET, Chennai for material identification test analysis. As per CIPET results, paper cups are paper substrate coated with ethylene/polyvinyl/ acetate which is a synthetic polymer. The polymeric nature is not easily degradable under natural environmental conditions. Accordingly, the LDPE coated disposable paper cups are banned and hence the representation cannot be considered”

44. The Report submitted by IIT (on the basis of which, the ban was first imposed) states that consumption of reinforced paper cups would be deleterious to the environment as it would lead to cutting of more trees, and the recycling of which, will cause more pollution. It also recommended alternatives such as leaf products, kora grass, products made of coconut, screw pine, earthen products, steel products, etc. The Expert Committee Report, similarly, concluded that paper cups are near impossible to recycle due to the LDPE coating, while relying on the CIPET testing.

45. That these cups are indiscriminately used and thrown, as a single use product (often to drink a warm beverage) – requires no statistics. By composition itself, they are non-biodegradable, and there is immense difficulty in their recycling, as it

requires appropriate collecting mechanisms, strict segregation, to name a few of the challenges. The appellants insisted that that this is a situation of not having an effective collective mechanism, which the local municipal corporations are responsible for as per the 2016 Rules; they also offered to take up the responsibility. However, given that there is scientific basis for the ban, and it is the State Government's policy decision to ban numerous categories of single use plastic products, in public interest, there is little room or reason, for this court to interfere on the ground of merits of the ban.

46. Therefore, the contention that the ban is over inclusive, and disproportionate, are in the considered opinion of this court, not made out in relation to reinforced paper cups. The appellant's right under Article 19(1)(g) has, without a doubt, been restricted; but in the larger interest of the general public to enjoy a pollution free environment the restriction was *reasonable* as per Article 19(6) of the Constitution of India, and is therefore, upheld.

(ii) Non-woven plastic bags

47. The ban of non-woven plastic bags was explained in the letter dated 08.12.2018 in response to a manufacturer-association seeking clarification. The letter read:

“Non woven carry bags are made up of polypropylene, which does not easily degrade in natural environment. Further, non-woven fabric carry bag samples tested from CIPET, Chennai for Material Identification test analysis, indicates that it is a polypropylene (synthetic plastic). The polymeric nature is not easily degradable under natural environmental conditions. Accordingly, the non woven polypropylene carry bags are banned”

48. This court is of the considered opinion that the arguments in the case of the non-woven bag, stand on a slightly different footing. These bags, it appears are reusable in nature *to some extent*. Their composition/proportion of polypropene and filler used, in the manufacture of these bags, is customizable. Therefore, the appellant contended that the overall ban was disproportionate. The State insisted that despite being said to be reusable to an extent, they are indiscriminately disposed and cause littering, which damage ground water, soil quality, etc., because

they do not biodegrade properly, and this therefore, justified the ban. Unlike reinforced paper cups, these bags are reusable, recyclable, and capable of some level of biodegradation (based on the composition), but no committee was constituted to look into it more closely, and it was in fact brought within the scope of the ban subsequently by way of clarification; the ban of this product perhaps deserves further scrutiny.

49. One of the arguments made by the appellants was that the State government should have taken into consideration that the Government of India had by order dated 13.12.2018, constituted an expert committee to define ‘single use plastics’ in view of the conflicting decisions by various state governments on ban of such products, and that the decision of the steering committee to proceed without waiting for the Union government’s report is arbitrary and prejudicial. Though not applicable to the present *lis*, it is appropriate to note the amendments that have been made to the central Rules, since. The committee constituted by the Union Government, resulted in the Expert Committee Report on Single Use Plastics dated 19.09.2019 (which led to further amendments in the 2016 Rules).

50. The 2016 Rules were amended in 2018, 2021, and 2022. While the 2022 Amendment²⁶ inserted the definition of ‘biodegradable plastics’²⁷ in the Rules, the 2021 Amendment²⁸ to the 2016 Rules, inserted the definition for ‘non-woven bags’ and ‘single use plastic commodity’ which read as follows:

(na) “Non-woven plastic bag” means Non-woven plastic bag made up of plastic sheet or web structured fabric of entangled plastic fibers or filaments (and by perforating films) bonded together by mechanical or thermal or chemical means, and the “non-woven fabric” means a flat or tufted porous sheet that is made directly from plastic fibres, molten plastic or plastic films;”

[...]

(va) “Single-use plastic commodity” mean a plastic item intended to be used once for the same purpose before being disposed of or recycled;”

²⁶ Plastic Waste Management (Second Amendment) Rules, 2022, G.S.R. 522(E) w.e.f. 06.07.2022.

²⁷ Rule 3(ac) — “Biodegradable plastic” means plastics, other than compostable plastics, which undergoes degradation by biological processes under ambient environment (terrestrial or in water) conditions, without leaving any micro plastics, or visible, or distinguishable or toxic residue, which has adverse environment impacts, adhering to laid down standards of Bureau of Indian Standards and certified by the Central Pollution Control Board”

²⁸ Plastic Waste Management (Amendment) Rules, 2021 G.S.R. 571(E), w.e.f. 12.08.2021.

These definitions are similar to the understanding that the State Government of Tamil Nadu employed, in the ban that is the subject of the present case.

51. The 2021 Amendment also included a similar ban of single use plastic commodities w.e.f. 01.07.2022, through an amendment to Rule 4 which inserted sub-clause (2), (3) and (4):

“(1) [...]”

(2) *The manufacture, import, stocking, distribution, sale and use of following single use plastic, including polystyrene and expanded polystyrene, commodities shall be prohibited with effect from the 1st July, 2022:-*

(a) *ear buds with plastic sticks, plastic sticks for balloons, plastic flags, candy sticks, ice-cream sticks, polystyrene [Thermocol] for decoration;*

(b) *plates, cups, glasses, cutlery such as forks, spoons, knives, straw, trays, wrapping or packing films around sweet boxes, invitation cards, and cigarette packets, plastic or PVC banners less than 100 micron, stirrers.*

(3) *The provisions of sub-rule (2) (b) shall not apply to commodities made of compostable plastic.*

(4) *Any notification prohibiting the manufacture, import, stocking, distribution, sale and use of carry bags, plastic sheets or like, or cover made of plastic sheets and multilayered packaging and single-use plastic, including polystyrene and expanded polystyrene, commodities, issued after this notification, shall come into force after the expiry of ten years, from the date of its publication”*

52. The same Rule 4, was also amended in sub-clause (1), to regulate the manufacture of non-woven plastic bags, w.e.f. 01.09.2021:

“(j) *non-woven plastic carry bag shall not be less than 60 Gram Per Square Meter (GSM) with effect from the 30th September, 2021”*

53. Given that the amended 2016 Rules now allow non-woven bags above 60 GSM to be manufactured and used, i.e., the Centre has found a way to *regulate* it, rather than ban it – there is some merit in the appellant’s contention regarding disproportionality. If a less onerous restriction on the appellant’s Article 19(6) right is possible, it must be favoured. In light of the developments in terms of the amendment to the 2016 Rules, this court is of the considered opinion that it would be appropriate, and just, to remand the question of including non-woven bags within the single use plastic products ban, back to the TNPCB for consideration.

54. In light of the foregoing discussion, the C.A. No. 8536/2022 is hereby disposed of, seeing no reason to interfere with the High Court’s findings on the ban

of reinforced papercups. C.A. Nos.8537-38/2022 are partly allowed in the above terms; wherein the TNPCB is hereby directed to consider the case of non-woven bags afresh, in light of the 2016 Rules (as amended). There shall be no order on costs.

.....J.
[S. RAVINDRA BHAT]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

**NEW DELHI,
OCTOBER 20, 2023**