

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 16TH DAY OF FEBRUARY 2021/27TH MAGHA,1942

W.P(C).No.4291 OF 2020 (J)

PETITIONER:

- 1 DR.VASUNDHARA MENON  
AGED 49 YEARS  
PROPRIETOR, GREEN EARTH SOLUTIONS,  
LAYAM ROAD, THRIIPPUNITHURA P O,  
ERNAKULAM DISTRICT, PIN-682301.
  - 2 P.M. NEERAJ RAM  
MANAGING PARTNER, NATUR GREEN SOLUTION,  
THADEKKADU, PONJASSERY P O, PERUMBAVOOR,  
ERNAKULAM DISTRICT, PIN-683547.
  - 3 K.M. SHAMNAS  
PROPRIETOR, ECO GREEN BAGS,  
ERUVATTY, PINARAYI P O, THALASSERY, KANNUR DISTRICT, PIN-  
670642.
- BY ADV. SHRI.JAWAHAR JOSE

RESPONDENTS:

- 1 THE UNION OF INDIA  
REPRESENTED BY ITS SECRETARY,  
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, INDIRA  
PARYAVARAN BHAWAN, JORBAGH ROAD, NEW DELHI,  
PIN-110003.
- 2 THE STATE OF KERALA,  
REPRESENTED BY ITS CHIEF SECRETARY,  
GOVERNMENT SECRETARIAT, STATUE,  
THIRUVANANTHAPURAM, PIN-695001.
- 3 THE SECRETARY  
DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE,  
GOVERNMENT SECRETARIAT,  
STATUE, THIRUVANANTHAPURAM, PIN-695001.
- 4 THE CENTRAL POLLUTION CONTROL BOARD,  
REPRESENTED BY ITS MEMBER SECRETARY,  
PARIVESH BHAWAN, EAST ARJUN NAGAR,  
NEW DELHI, PIN-110032.
- 5 THE KERALA STATE POLLUTION CONTROL BOARD,  
REPRESENTED BY ITS MEMBER SECRETARY,  
PATTOM P O, THIRUVANANTHAPURAM, PIN-695004.

R1 BY SRI.M.A.VINOD, CGC  
BY SRI.K.V.SOHAN, STATE ATTORNEY  
R2-3 BY SRI.T.S.SHYAM PRASANTH, GOVT. PLEADER  
BY SRI.S.DILIP, GOVT. PLEADER  
BY SRI.T.NAVEEN, SC  
BY SRI.S.SUJIN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
11-02-2021 ALONG WITH W.P(C).4493/2020(J) & CONNECTED CASES, THE  
COURT ON 16-02-2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 16TH DAY OF FEBRUARY 2021/27TH MAGHA,1942

W.P(C).No.4493 OF 2020(J)

PETITIONERS:

- 1 ADARSH.P.S  
AGED 34 YEARS  
S/O. SWAMINATHAN.P.K., PUTHAN VEEDU, KARNAKI  
NAGAR,KODUVAYUR P.O., PALAKKAD DIST, KERALA-678 501  
PROPRIETOR, GLOBIO PACKS PVT LTD,P-32,KINFRA IITP,  
KANJIKODE P.O., PALAKKAD ,KERALA-678 621
  - 2 M.B.SHINOY,  
AGED 38 YEARS  
S/O. M.S.BALACHANDRAN,MADAPPULLY HOUSE,  
BEHIND KRISHI BHAVAN, AYYANTHOLE-THRISSUR -680 003,  
PROPRIETOR, GEETHA INDUSTRIES, AMBAKKAD ROAD,  
PUZHAKKAL, THRISSUR-680553
  - 3 NEENA C.MOHAN,  
AGED 39 YEARS  
D/O. K.CHANDRAMOHAN,32,UMA NAGAR, PULIPPARAMBU, OLLUKKARA  
P.O., THRISSUR-680 655,PROPRIETOR, ESSEN TRADINGS, POPULAR  
ROAD, PARAVATTANI, OLLUKKARA P.O., THRISSUR,PIN-680 655
  - 4 SAJIN ANTONY  
ELUVATHINGAL HOUSE, ST JOHN'S STREET, P.O CHIYARAM,  
THRISSUR-680026, PROPRIETOR, ECOPLANET, ST JOHNS STREET,  
P.O.CHIYARAM, THRISSUR, PIN -680 026
  - 5 MUMDAS SAHAB  
AGED 37 YEARS  
D/O. P.A SAHABUDHEEN PALLAVEETIL HOUSE, KANNAMKULANGARA,  
KOORKENCHERY, THRISSUR-680 007, PROPRIETOR, SB TRADERS  
GROUP, KANNAMKULANGARA, KOORKENCHERY, THRISSUR-680 007
  - 6 C.K.SUNNY  
AGED 52 YEARS  
S/O.C.V KURIAN, CHERUVATHORE HOUSE, PAUL ABRAO ROAD, KOCHI-  
682 018, ERNAKULAM, PROPRIETOR, MILTONE ENTERPRISE, MUSLIM  
STREET, OPP ARISTO LODGE,  
KOCHI-682 035
- BY ADV. SRI.C.R.REKHESH SHARMA

RESPONDENTS:

- 1 UNION OF INDIA  
REPRESENTED BY ITS SECRETARY, MINISTRY OF ENVIRONMENT,  
FOREST AND CLIMATE CHANGE, PARYAVARAN BHAVAN, JORBAGH ROAD,  
NEW DELHI,PIN-110 003

- 2 THE STATE OF KERALA,  
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,  
STATUE, THIRUVANANTHAPURAM-695 001
- 3 THE SECRETARY,  
DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE,  
GOVERNMENT SECRETARIAT, STATUE,  
THIRUVANANTHAPURAM-695001
- 4 THE CENTRAL POLLUTION CONTROL BOARD,  
REPRESENTED BY ITS MEMBER SECRETARY, PARIVESH BHAVAN, EAST  
ARJUN NAGAR, NEW DELHI, PIN-110 032
- 5 THE KERALA STATE POLLUTION CONTROL BOARD,  
REPRESENTED BY ITS MEMBER SECRETARY, PATTOM P.O  
THIRUVANANTHAPURAM, PIN-695 004

R1 BY ADV.SMT.PREMLATHA K.NAIR  
R2-3 BY SRI.K.V.SOHAN, STATE ATTORNEY  
BY SRI.M.AJAY, SC  
BY SRI.T.NAVEEN, SC  
BY SRI.T.S.SHYAM PRASANTH, GOVT. PLEADER  
BY SRI.S.DILIP, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-  
02-2021 ALONG WITH WP(C).NO.4291/2020(J) & CONNECTED CASES,  
THE COURT ON 16-02-2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 16TH DAY OF FEBRUARY 2021/27TH MAGHA,1942

WP(C).No.4993 OF 2020(Y)

PETITIONER:

P.S.MURUGAN  
AGED 54 YEARS  
S/O LATE P.S.MONY, PROPRIETOR, 'GREEN BAGS',  
ALANKAR BUILDING, BLDG.No.24/1115,  
MC ROAD, CHENGANNUR-689121.

BY ADV. SRI.P.SANJAY

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY, ENVIRONMENT  
DEPARTMENT, SECRETARIAT, TRIVANDRUM,  
PIN-695001.
- 2 THE KERALA STATE POLLUTION CONTROL BOARD,  
H.O.PATTOM.P.O, THIRUVANANTHAPURAM, PIN-695004.
- 3 CHENGANNUR MUNICIPALITY,  
CHENGANNOOR.P.O, ALAPUZHA,  
PIN-689121, REPRESENTED BY ITS SECRETARY.
- 4 THE SECRETARY  
CHENGANNUR MUNICIPALITY,  
CHENGANNOOR.P.O, ALAPUZHA-689121.

R1 BY SRI.K.V.SOHAN, STATE ATTORNEY  
SRI.T.S.SHYAM PRASANTH, GOVT. PLEADER  
SRI.S.DILIP, GOVT. PLEADER

R3-4 BY SRI.S.HARIKRISHNAN, SC, CHENGANNUR MUNICIPALITY  
SRI.T.NAVEEN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
11-02-2021 ALONG WITH W.P(C).NO.4291/2020(J) & CONNECTED CASES,  
THE COURT ON 16-02-2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 16TH DAY OF FEBRUARY 2021/27TH MAGHA, 1942

W.P(C).No.5107 OF 2020 (K)

PETITIONER:

M/S.ANNA POLYMERS  
INDUSTRIAL ESTATE, MAVELIKARA, ALAPPUZHA DISTRICT  
690 509, REPRESENTED BY ITS PROPRIETOR SMT.LIZA ANNE  
VARGHESE, AGED 40 YEARS, WIFE OF NEBU THOMAS, RESIDING AT  
KILLILATH HOUSE, BANK ROAD, KAYAMKULAM.

BY ADVS.SRI.PRAVEEN.H.  
SRI.G.HARIHARAN  
SMT.K.S.SMITHA  
SMT.T.T.SHANIBA  
SRI.M.V.VIPINDAS  
SHRI.AMAL DEV D

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF  
ENVIRONMENT AND CLIMATE CHANGE, SOUTH SANDWICH BLOCK, ROOM-  
SSBT II, 4TH FLOOR, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM 695 001
- 2 THE DIRECTOR OF ENVIRONMENT AND CLIMATE CHANGE,  
DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE (DOECC)  
4TH FLOOR, K.S.R.T.C BUS TERMINAL, THAMPANOR,  
THIRUVANANTHAPURAM 695 001
- 3 THE CHIEF ENVIRONMENTAL ENGINEER,  
KERALA POLLUTION CONTROL BOARD, PATTOM, THIRUVANANTHAPURAM  
695 004
- 4 THE MEMBER SECRETARY,  
KERALA POLLUTION CONTROL BOARD, PATTOM, THIRUVANANTHAPURAM  
695 004
- 5 THE CENTRAL POLLUTION CONTROL BOARD,  
PARIVESH BHAVAN, CBD CUM OFFICE COMPLEX,  
EAST ARJUN NAGAR, SHAHDARA, NEW DELHI 110 032  
REPRESENTED BY ITS MEMBER SECRETARY.
- 6 UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY, MINISTRY OF ENVIRONMENT  
FOREST AND CLIMATE CHANGE, INDIRA PARYAVARAN BHAVAN,  
JORBAGH ROAD, NEW DELHI PIN 110 003

R1-2 BY SRI.T.S.SHYAM PRASANTH, GOVERNMENT PLEADER  
BY SRI.S.DILIP, GOVT. PLEADER  
BY SRI.K.V.SOHAN, STATE ATTORNEY  
R5 BY SRI.M.AJAY, SC  
BY SRI.T.NAVEEN, SC  
R5-6 BY ADV. SMT.CHANDINI G NAIR, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-02-2021 ALONG WITH WP(C).NO.4291/2020(J) & CONNECTED CASES, THE COURT ON 16-02-2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 16TH DAY OF FEBRUARY 2021/27TH MAGHA,1942

W.P(C).No.5952 OF 2020 (T)

PETITIONER:

MARY VIJAYAM K.T.  
AGED 47 YEARS  
W/O.P.S.RAJAN, PROPRIETOR, M/S.MYTHRI TRADE LINKS,  
DOOR NO.31/557/A3, A.K.G.ROAD, EDAPPALLY P.O.,  
ERNAKULAM DISTRICT, PIN-682024.

BY ADVS.SRI.PUSHPARAJAN KODOTH  
SRI.K.JAYESH MOHANKUMAR  
SMT.VANDANA MENON  
SRI.VIMAL VIJAY  
SHRI.RESHMA T.R.

RESPONDENTS:

- 1 THE UNION OF INDIA  
REPRESENTED BY ITS SECRETARY, MINISTRY OF ENVIRONMENT,  
FOREST AND CLIMATE CHANGE, INDIRA PARYAVARAN BHAWAN,  
JOBAGH ROAD, NEW DELHI, PIN-110003.
- 2 THE CENTRAL POLLUTION CONTROL BOARD,  
REPRESENTED BY ITS MEMBER SECRETARY, PARIVESH BHAWAN, EAST  
ARJUN NAGAR, NEW DELHI, PIN-110032.
- 3 THE STATE OF KERALA,  
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT,  
STATUE, THIRUVANANTHAPURAM, PIN-695001.
- 4 THE PRINCIPAL SECRETARY,  
DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE,  
GOVERNMENT SECRETARIAT, STATUE, THIRUVANANTHAPURAM,  
PIN-695001.
- 5 THE KERALA STATE POLLUTION CONTROL BOARD,  
REPRESENTED BY ITS MEMBER SECRETARY, PATTOM P.O.,  
THIRUVANANTHAPURAM, PIN-695004.
- 6 SHUCHITWA MISSION,  
REPRESENTED BY ITS EXECUTIVE DIRECTOR, SWARAJ BHAVAN,  
NANDANKODE, KAVADIYAR P.O., THIRUVANANTHAPURAM-695003.

R1 BY ADV. MR.C.DINESH, CGC  
R3-4 BY SRI.K.V.SOHAN, STATE ATTORNEY  
R3-4 BY SRI.T.S.SHYAM PRASANTH, GOVERNMENT PLEADER  
BY SRI.S.DILIP, GOVT. PLEADER  
BY SRI.M.AJAY, SC  
BY SRI.T.NAVEEN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
11-02-2021 ALONG WITH W.P(C).NO.4291/2020 (J) AND CONNECTED CASES,  
THE COURT ON 16-02-2021 DELIVERED THE FOLLOWING:



'C.R.'

**J U D G M E N T**

*'The utility of plastic in contemporary society is at a crossroads where the perceived benefit of single use, throw away products and packaging is outweighed by the true cost of persistent waste and fragmented micro plastics in terrestrial and marine ecosystems'*

*- Marcus Eriksen<sup>1</sup>*

*The Facts in Brief:*

Responding to calls from interest groups that sought a ban on the use of single use plastic articles, the State Government issued Orders, by invoking the power delegated to it by the Central Government under the Environment Protection Act, banning the manufacture, stocking and sale of single-use plastic/one-time use plastic in the State of Kerala with effect from 01.01.2020. While doing so, and with a view to encourage the use of non-polluting substitutes, articles made from compostable plastic were initially excluded from the purview of the ban order. Through subsequent orders, however, the State Government brought certain types of carry bags made from compostable plastic also within the purview of the ban. The

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<sup>1</sup>The Plasticsphere – The Making of a Plasticised World; Tulane Environmental Law Journal, Summer 2014, Vol.27, No.2, Plastic Pollution (Summer, 2014), pp.153-163

trigger for the changed stand of the Government is stated to be the report received by it from a technical task force that was constituted by it, which suggested that there are growing number of instances where carry bags made from non-compostable plastic are being passed off as compostable ones. The petitioners in these writ petitions being engaged either in the manufacture or distribution or both, of 'compostable carry bags' in the State, impugn the Government Orders that include their products within the purview of the ban on single-use/one-time use plastic.

2. The facts in each of these writ petitions are similar. The petitioners have the necessary licenses and consents under the various regulatory statutes for the manufacture and/or distribution of 'compostable plastic carry bags' as defined under the Plastic Waste Management Rules, 2016 (*hereinafter referred to as 'the PWM Rules' for brevity*) framed by the Central Government under the Environment Protection Act, 1986 (*hereinafter referred to as 'the EP Act' for brevity*). During the pendency of the writ petitions before this Court, and pursuant to interim orders issued therein, the products dealt with by the petitioners were tested by the statutory authorities for conformity with the specifications for 'compostable plastic carry bags' and the reports made available before this Court suggest that they do. Thus, the only issue that arises for consideration in these writ petitions is the legality of the impugned Government Orders that include the products dealt with by the petitioners within the purview of the ban on

single-use plastic.

*The Arguments of Counsel:*

The arguments advanced on behalf of the petitioners by their learned counsel Sri. Jawahar Jose, Sri. Praveen Hariharan, Sri. Kodoth Pushparaj, briefly stated, are as follows:

- The State Government, while issuing the impugned Government Orders has acted in terms of Section 5 of the EP Act, pursuant to the power delegated to it by the Central Government under Section 23 of the said Act. The said power under Section 5 of the Act, however, cannot be exercised to prohibit the use of an item that is otherwise permitted for use under the PWM Rules. The contention, in other words, is that the delegated power to issue directions cannot be exercised to prohibit the use of an item whose use is not prohibited by the Central Government through the issuance of any such direction.
- The petitioners having acted on the stated policy of the Central and State Governments, that permitted the use of compostable plastic carry bags as a legitimate substitute for plastic carry bags, and having incurred substantial costs for manufacture/purchase of such carry bags, cannot be deprived of their legitimate expectation to carry on their business of distribution of such carry bags merely on account of a finding that there were many instances noticed of fake carry bags being used in the market. The policy decision of the State Government contained in the impugned Government Orders infringes their fundamental rights under Articles 14 and 19 (1)(g) as also their right under Article 301 of the Constitution of

India.

- Even while bringing compostable carry bags under the purview of the ban order, the State Government has chosen to keep compostable garbage bags out of the purview of the ban order. Compostable carry bags and garbage bags are identical in their chemical composition and technical specifications and they differ from each other only in their form and size. The selective choice of compostable carry bags alone for inclusion under the ban order therefore lacks any rationale and consequently, the policy decision ought to be seen as irrational.
- The State Government has not produced any material that would suggest that they were possessed of the necessary facts or data that pointed to a proliferation of fake composite carry bags being used in the State. Inasmuch as the ban order has the effect of imposing restrictions on a legitimate business activity of the petitioners, and consequently on their fundamental rights under Article 19 (1)(g) of the Constitution, the doctrine of proportionality would mandate that strong reasons exist for resorting to the imposition of a ban on the products dealt with by the petitioners. It is emphasized that the products dealt with by the petitioners are not inherently unsafe or capable of causing pollution for they have been recognised as permissible substitutes for plastic articles even under the PWM Rules.

2. Responding to the arguments of the learned counsel for the petitioners, the contentions of the learned Government Pleaders Sri.T.S.Shyam Prasanth and Sri.Dilip.S., briefly stated, are as follows:

- In as much as the impugned Government Orders give expression to a policy decision of the State Government, the same ought not to be interfered with by this Court in exercise of its powers under Article 226 of the Constitution of India.
- It is pointed out that the Government only acted on the suggestions of the Task Force constituted by it to address various issues relating to the use of plastic articles in the State. The Task Force had observed that there was a flood of fake compostable alternative material to plastics and the said issue had to be tackled. Inasmuch as the observation was specifically with regard to carry bags, it was thought expedient to include only compostable plastic carry bags within the scope of the ban order while leaving other compostable plastic articles outside it.
- In response to a specific query posed by the Court as regards whether there was any material available with the task force, on the basis of which they inferred that there was a flood of fake compostable alternative materials to plastics being used in the State, it is conceded that there was no such data and the views expressed by the task force were based on their own perception of the alleged problem. It is also conceded that the Government does not have any empirical data as regards tests done on, and consequent detection of, fake compostable carry bags that could have led it to conclude that there was an issue with regard to such fake compostable carry bags.

*The Issue:*

On a consideration of the rival submissions, I find that the issue that arises for consideration in these cases is whether this Court would be justified in invoking its powers of judicial review under Article 226 of our

Constitution, to interfere with the policy decision of the State Government, that finds expression in the impugned Government Orders? A resolution of the said issue, however, calls for an examination of the principles that inform our higher courts while exercising the power of judicial review.

*The Contours of Judicial Review:*

The true basis of judicial review has been the subject matter of discussion among legal scholars for many years. While under American jurisprudence, even prior to the formal enunciation of a principle in *Marbury v. Madison*, the court's power of judicial review was seen as emanating from the larger concept of a fundamental law to which all state action, including legislation, had to conform, in England, where there was no written constitution, the basis for judicial review was often seen located in the concept of Parliamentary sovereignty, and the allied concept of 'ultra vires', that frowned upon any exercise of power by a statutory authority that went beyond the mandate of the statute. In more recent times, however, there has been a shift in judicial thinking in England, and it is now fairly well established that judicial review is nothing more than a means adopted by courts to uphold the rule of law in a modern day democratic republic. The many instances where courts have thought it fit to interfere with decisions of non-statutory bodies that have an impact on the rights of citizens, and where the doctrine of *ultra vires* has no role to play, clearly reveal that the said doctrine is not the sole basis for the exercise, by courts, of the power of

judicial review. Judicial review is no longer seen based solely on principles of statutory interpretation, but on the application of some general principles of good administration to the exercise of power, irrespective of the source of that power.<sup>2</sup>

2. Tom Bingham<sup>3</sup> observes that Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably. Judicial review is the tool that the courts use to ensure this standard. Review is an appropriate judicial function since the law is the judges' stock-in-trade, the field in which they are professionally expert. In the exercise of the power of judicial review, judges do not substitute their view for that of the statutory authority for they often do not have the expertise necessary for taking such a view. They are expected to act only as auditors of legality and nothing more.

3. Under our Constitution, the power of judicial review is traceable to Articles 32 and 226 that confer on the Supreme Court and the High Courts the power to issue prerogative and like writs to protect the citizens from state action that infringes upon their rights. The Constitution being the supreme law of our land, and the rule of law being one of its basic features,

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<sup>2</sup>Dawn Oliver, 'Is the Ultra Vires Rule the Basis of Judicial Review?' - 1987 Public Law, 543

<sup>3</sup>Tom Bingham, 'The Rule of Law', Penguin Books, London, 2011

the exercise of statutory power has to conform, *inter alia*, to the requirements of fairness, non-arbitrariness and reasonableness, all of which are integral aspects of the rule of law. Thus, when a litigant approaches a writ court, alleging a breach of his rights – be it a constitutional right, a statutory right or a common law right – by an authority empowered by the State, the court examines the manner in which the decision was arrived at, and in exceptional cases, the decision itself, to see whether it conforms to the requirements mandated by the rule of law.

4. In the context of statutory and common law rights, exercise of the power of judicial review takes the form of examining whether the impugned decision suffers from the vices of illegality, irrationality or procedural impropriety. An aspect of irrationality is highlighted by the test propounded in the *Wednesbury* case<sup>4</sup> of enquiring whether the decision maker took into consideration matters that were relevant to the decision, eschewed matters that were irrelevant therefor, or even if he complied with both of the above, his decision was so unreasonable that no reasonable person possessed of the relevant facts would have arrived at such a decision.

5. In the context of constitutional rights, it has often been found useful for courts to resort to a heightened review whereby the courts examine not only the manner in which the decision was arrived at but also

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<sup>4</sup>Associated Provincial Picture Houses v *Wednesbury* Corporation – (1948) 1 KB 223



the merits of the decision itself. In a sense, the court substitutes its view for that of the decision maker but only where the court finds that such a course is necessary to uphold the rule of law, or where the decision of the public authority is grossly disproportionate when compared to the object sought to be achieved through the decision concerned. As already noticed above, under normal circumstances, the lack of expertise in judges is seen as a reason for courts not substituting its views for those of the primary decision maker. However, when constitutional rights are at stake, the overriding public interest involved in the protection of such rights justifies the courts' resort to a heightened scrutiny and balancing of views through the application of the doctrine of proportionality.

6. A three-limb test was propounded by the Privy Council to be applied when deciding whether an interference with a particular human right is proportionate.<sup>5</sup> The said test has since been followed by the House of Lords, and later by the UK Supreme Court, when considering whether an interference with a Convention right is proportionate<sup>6</sup>. The three-limb test is as follows:

- (i) The objective sought to be achieved by the interference must be sufficiently important to justify limiting the right;

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<sup>5</sup>De Freitas v Permanent Secretary of Minister of Agriculture, Fisheries, Lands and Housing – (1999) 1 AC 69 PC

<sup>6</sup>Huang v Secretary of State for the Home Department – (2007) UKHL 11; R (F & Thompson v Secretary of State for the Home Department – (2010) UKSC 17

- (ii) The measures designed to achieve the objective must be rationally connected to it; and
- (iii) The means used to impair the right must be no more than is necessary to accomplish the objective.

7. In *Huang*<sup>7</sup>, the House of Lords added a fourth limb to the proportionality test, namely the need to balance the interests of society with those of individuals and groups. This 'fair balance' limb of the proportionality test is considered in addition to the three limbs set out before and is not an alternative to them<sup>8</sup>. Accordingly, the least intrusive means of achieving a particular objective may still be disproportionate if they do not strike a fair balance between the rights of the individual and those of society<sup>9</sup>.

8. In our country too, a similar approach has been adopted by the Supreme Court<sup>10</sup>, which found that when a law limits a constitutional right, such a limitation would be seen as constitutional only if it was proportional. Further, the law imposing restrictions would be treated as proportional only if it was meant to achieve a proper purpose, and if the measures taken to achieve such a purpose were rationally connected to the purpose, and were necessary. Accordingly, the exercise that has to be undertaken by the courts

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<sup>7</sup>*Huang v Secretary of State for the Home Department* – (2007) UKHL 11

<sup>8</sup>*R (Quila) v Secretary of State for the Home Department* – (2011) UKSC 45

<sup>9</sup>*R(Samaroo) v Secretary of State for the Home Department* – (2001) EWCA Civ. 1139

<sup>10</sup>*Modern Dental College and Research Centre & Ors v State of Madhya Pradesh & Ors* – 2016 (7) SCC 353

in judicial review is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and then strive to weigh the competing values and achieve a fair balancing of different interests. Reasonableness of a restriction has also to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations<sup>11</sup>.

*Discussions and Findings:*

The above discussion on the scope and ambit of judicial review clearly suggests that when a policy decision of the Government is challenged by a person on the ground that it violates his/her fundamental rights under our Constitution, this Court has to first examine the decision of the Government to see whether there is any flaw in the decision making process. In that exercise, this court would examine whether the relevant statute confers a power on the Government to issue such directions. It would then examine whether there are any factors, such as the non-compliance with the rules of natural justice and fairness that vitiate the exercise of that power by the Government. Thereafter, this Court would examine whether in arriving at the decision, the Government has taken into account relevant facts and eschewed irrelevant facts, and if both, whether the decision can be seen as one that a reasonable person apprised of the facts will arrive at. While the

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<sup>11</sup>Mohd.Hanif Quareshi v State of Bihar – AIR 1958 SC 731; BInoy Viswam v Union of India -2017 (7) SCC 59; Anuradha Bhasin & Anr v Union of India & Anr – 2020 (3) SCC 637

enquiry for the purposes of judicial review would ordinarily end at this stage, and this Court would refrain from making an enquiry as regards the merits of the decision, a primary or merits review would be undertaken when the infringement alleged is of a constitutional right. In that event, the decision of the Government will be subjected to a further scrutiny, by applying the tests of proportionality, to see whether the decision is indeed justified on the facts of the case.

2. On the facts of the instant cases, going by the express provisions of Section 5 read with Section 23 of the EP Act, I do not find merit in the contention of the learned counsel for the petitioners that the State Government does not have the power to issue the impugned Government Orders. The express provisions of the statute clearly and unambiguously suggest otherwise. The petitioners, however, argue that the decisions of the State Government that have the effect of prohibiting their trade in compostable plastic carry bags, infringes their fundamental right under Article 19 (1)(g) of the Constitution. They point out that compostable plastic carry bags, which are accepted as legitimate and non-polluting substitutes for single-use plastic carry bags, by the statutory rules framed by the Central Government under the EP Act, have now been brought under the purview of the ban order solely on the ground that, in the perception of the Government, there is a flood of fake compostable carry bags entering the markets in the State.

3. It is my view that such perception of the Government, without anything more, might have justified the imposition of restrictions on 'ordinary rights' of persons, whether statutory or under common law, especially when the restrictions are seen imposed with a view to sub serve the fundamental right to clean environment of the public at large- a right relatable to the fundamental right to life under Article 21 of our Constitution. It will not, however, suffice to justify restrictions on the 'fundamental rights' of a person. To impose restrictions on fundamental rights, the State Government would need to have cogent material that would support an inference of overwhelming use of fake composite plastic carry bags in the State. It cannot act on mere conjectures and surmises, unsubstantiated by empirical evidence.

As already noticed, the restrictions imposed by the orders impugned in these writ petitions is on the fundamental right of the petitioners under Article 19 (1)(g) of our Constitution, to trade and deal in compostable plastic carry bags, itself a non-polluting article, and through the dealing in which the objects of the EP Act and Rules are not frustrated. It follows, therefore, and on an application of the tests of proportionality discussed above, that the decision of the Government to include compostable plastic carry bags within the purview of the ban order in respect of single-use plastic articles cannot be legally sustained. A Government decision in that regard has

necessarily to be based on reliable material in the form of empirical data that would clearly suggest the detection of sufficiently large number of cases of fake composite carry bags entering the markets in the State, as would render it practically impossible for the State to prevent trade in such carry bags using the machinery for legal enforcement at its command. Only in such event will the Government be able to justify the curtailment of a fundamental right to trade/deal in a legitimate and non-polluting alternative to single-use plastic carry bags. Admittedly, the State Government does not have any such material. Their files, which were called for during the hearing, apparently do not contain such material; nor was any such material produced before this Court at the time of hearing. Thus, by leaving it open to the State Government to decide upon an appropriate policy measure, after gathering data/material to support the same, these writ petitions are allowed by quashing the impugned Government Orders to the extent they include compostable plastic carry bags also within the purview of the ban on single-use plastic/one-time use plastic in the State of Kerala, and holding that the petitioners shall be entitled to all the consequential reliefs flowing therefrom. No costs.

Sd/-

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

**prp/**

APPENDIX OF W.P(C) .NO.4291/2020

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE LICENSE DATED 6.2.2017 ISSUED IN FAVOUR OF THE 1ST PETITIONER BY THE THRIPIUNITHURA MUNICIPALITY UNDER SECTION 447 OF THE KERALA MUNICIPALITIES ACT, 1994, (TOGETHER WITH THE PAYMENT RECEIPT DATED 28.06.2019, ISSUED FOR THE LICENSE, FOR THE FINANCIAL YEAR 2019-2020)
- EXHIBIT P2 TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 15.5.2018 ISSUED IN FAVOUR OF THE 2ND PETITIONER UNDER THE GOODS AND SERVICE TAX ACT, 2017.
- EXHIBIT P3 TRUE COPY OF THE LICENSE DATED 25.09.2019 ISSUED IN FAVOUR OF THE 3RD PETITIONER BY THE PINARAYI GRAMA PANCHAYATH UNDER THE KERALA PANCHAYATH RAJ (ISSUANCE OF LICENSE TO THE DANGEROUS AND OFFENSIVE TRADES AND FACTORIES) RULE, 1996.
- EXHIBIT P4 TRUE COPY OF THE LETTER 4.12.2019 ISSUED BY M/S. TRUEGREEN ROSOVA GREENS L.L.P TO THE 1ST PETITIONER.
- EXHIBIT P5 TRUE COPY OF THE CERTIFICATE DATED 13.08.2018 ISSUED BY THE CENTRAL POLLUTION CONTROL BOARD TO M/S.GREENDIAMZ BIOTECH LIMITED(TRUEGREEN)
- EXHIBIT P6 TRUE COPY OF THE LETTER ISSUED BY M/S. LUCRO LIMITED TO THE 2ND PETITIONER.
- EXHIBIT P7 TRUE COPY OF THE CERTIFICATE DATED 23.10.2018 ISSUED BY THE CENTRAL POLLUTION CONTROL BOARD TO M/S. LUCRO LIMITED.
- EXHIBIT P8 TRUE COPY OF THE LETTER DATED 18.01.2020 ISSUED BY M/S. VISION INDUSTRIES TO THE 3RD PETITIONER.
- EXHIBIT P9 TRUE COPY OF THE CERTIFICATE DATED 1.11.2019 ISSUED BY THE CENTRAL POLLUTION CONTROL BOARD TO M/S. VISION INDUSTRIES.

W.P.(C).No.4291, 4493,  
4993, 5107 & 5952/2020

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EXHIBIT P10 TRUE COPY OF THE ORDER DATED 7/1/2019 ISSUED  
BY THE ENVIRONMENTAL DEPARTMENT OF THE  
GOVERNMENT OF KERALA.

EXHIBIT P11 TRUE COPY OF THE ORDER DATED 17.12.2019  
ISSUED BY THE ENVIRONMENTAL DEPARTMENT OF THE  
GOVERNMENT OF KERALA.

EXHIBIT P12 TRUE COPY OF THE ORDER DATED 19.12.2019  
ISSUED BY THE ENVIRONMENTAL DEPARTMENT OF THE  
GOVERNMENT OF KERALA.

EXHIBIT P13 TRUE COPY OF THE PRESS RELEASE DATED 6.1.2020  
ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL AND  
CLIMATE CHANGE.

EXHIBIT P14 TRUE COPY OF THE ORDER DATED 27.1.2020 ISSUED  
BY THE ENVIRONMENTAL DEPARTMENT OF THE  
GOVERNMENT OF KERALA.

EXHIBIT P15 TRUE COPY OF THE REPORT OF THE TECHNICAL  
COMMITTEE CONSTITUTED BY THE STATE GOVERNMENT  
VIDE GO(RT) NO.134/2018/ENVT.

RESPONDENTS EXHIBITS:

EXHIBIT R2 (A) TRUE COPY OF G.O. (MS) NO.4/2020/ENVT. DATED  
16.02.2020.

/TRUE COPY//

P.S. TO JUDGE



APPENDIX OF W.P(C).NO.4493/2020

PETITIONER'S EXHIBITS:

EXHIBIT P1 THE TRUE OF THE G.O.(MS) NO.6/2019/ENVT DATED 27.11.2019

EXHIBIT P2 THE TRUE OF THE G.O.(MS) NO.7 OF 2019, DATED 17.12.2019

EXHIBIT P3 THE TRUE COPY OF THE ABOVE SAID STANDARD OPERATING PROCEDURE ISSUED BY CPCB

EXHIBIT P4 THE TRUE COPY F THE TEST REPORT OF THE COMPOSTABLE CARRY BAGS MANUFACTURED BY THE FIRST PETITIONER

EXHIBIT P5 THE TRUE COPY OF THE KERALA PUBLIC POLLUTION CONTROL BOARD CERTIFICATE ISSUED BY THE 4TH RESPONDENT TO 2ND PETITIONER

EXHIBIT P6 TRUE COPY OF THE CERTIFICATE ISSUED BY CPCB TO M/S. UNIK PLY PACK, WHOSE PRODUCTS ARE DISTRIBUTED BY 2ND PETITIONER

EXHIBIT P7 THE TRUE COPY OF THE DETAILED TEST REPORT AND DEGRADABLE TEST PROCESS REPORT AND PROVISIONAL CERTIFICATE ISSUED BY THE CPCB OF M/S. VISION INDUSTRIES, WHOSE PRODUCTS ARE DISTRIBUTED BY THE PETITIONERS 3 TO 6

EXHIBIT P8 THE TRUE COPY OF THE ABOVE SAID GO (MS) NO 2/2020/ENVT DATED 27.01.2020

EXHIBIT P9 THE TRUE COPY OF THE PRINT OUT OF THE SCREE SHOT OF WWW.SANITATION.KERALA.GOV.IN DATED 13.02.2020

EXHIBIT P10 THE TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT ON 07.02.2020

EXHIBIT P11 TRUE COPY OF THE PRESS RELEASE OF DEPARTMENT OF ENVIRONMENT DATED 6.1.2020.

EXHIBIT P12 TRUE COPY OF THE GOVERNMENT ORDER GOP (MS) 04/2020 DATED 16.2.2020.

EXHIBIT P13 TRUE COPY OF THE RECEIPT OF CONFISCATION OF COMPOSTABLE CARRY BAGS.

EXHIBIT P14 TRUE COPY OF THE NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DAILY.

RESPONDENTS EXHIBITS:

EXHIBIT R2(A) TRUE COPY OF G.O.(MS) NO.4/2020/ENVT. DATED 16.02.2020

//TRUE COPY//

P.S. TO JUDGE

APPENDIX OF W.P(C).NO.4993/2020

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE LICENSE DATED 27-12-2019

EXHIBIT P2 TRUE COPY OF THE RELEVANT PAGES OF THE LIST OF CENTRAL POLLUTION CONTROL BOARD (CPCB) APPROVED COMPANIES.

EXHIBIT P3 TRUE COPY OF THE WEBSITE DECLARING THE INGREDIENTS OF GREEN BAG

EXHIBIT P4 TRUE COPY OF THE CERTIFICATE DATED 02.06.2017 ISSUED BY THE CENTRAL POLLUTION CONTROL BOARD (CPCB)

EXHIBIT P5 TRUE COPY OF THE CERTIFICATE DATED 11.05.2017 ISSUED BY CIPET FOR THE CARRY BAGS

EXHIBIT P6 TRUE COPY OF THE LABELING WITH QR CODE PRINTED ON THE BAGS

EXHIBIT P7 TRUE COPY OF THE G.O(MS)NO.6/2019/ENVT.DATED 27.11.2019

EXHIBIT P8 TRUE COPY OF THE G.O.(MS)7/2019/ENVT.DATED 27.11.2019

EXHIBIT P8(A) TRUE COPY OF THE G.O(MS)NO.2/2020 ENVT.DATED 19.12.2019

EXHIBIT P9 TRUE COPY OF THE RECEIPT ISSUED DATED 03.01.2020

EXHIBIT P10 TRUE COPY OF THE REPRESENTATION DATED 03.01.2010

EXHIBIT P11 TRUE COPY OF THE ORDER DATED 17.01.2020

EXHIBIT P12 TRUE COPY OPF THE G.O.(MS)NO.2/2020/ENVT DATED 27.01.2020.

EXHIBIT P13 TRUE COPY OF THE REPRESENTATION DATED 28.01.2020.

EXHIBIT P13(A) TRUE COPY OF THE REPRESENTATION DATED 12.02.2020.

EXHIBIT P14 TRUE COPY OF REPRESENTATION DATED 12.02.2020 TO SECRETARY.

EXHIBIT P15 TRUE COPY OF THE G.O(MS)4/2010/ENVT DATED 16.02.2020.

RESPONDENT'S EXHIBITS:

EXHIBIT R4(A) A TRUE COPY OF THE APPLICATION DT.27.12.2019 FOR TRADE LICENSE SUBMITTED BY PETITIONER BEFORE 4TH RESPONDENT.

EXHIBIT R4 (b)

A TRUE COPY OF THE COMMUNICATION NO.PCB/ALP/TG-378/18 DT.9.1.2020 ISSUED BY THE ENVIRONMENTAL ENGINEER, K.P.C.B, ALAPPUZHA TO 4TH RESPONDENT.

//TRUE COPY//

P.S. TO JUDGE

APPENDIX OF W.P(C).NO.5107/2020

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE PROVISIONAL CERTIFICATE ISSUED BY THE CPCB DATED 23/01/2020 TO THE PETITIONER.
- EXHIBIT P2 TRUE COPY OF THE LIST OF CERTIFIED MANUFACTURERS/SELLERS FOR MARKETING AND SELLING OF COMPOSTABLE CARRY BAGS/PRODUCTS PUBLISHED BY THE CPCB IN WHICH THE PETITIONER FIGURES AS AGAINST SERIAL NO. 56
- EXHIBIT P3 TRUE COPY OF THE PLASTIC WASTE MANAGEMENT RULES 2016 (AS AMENDED IN THE YEAR 2018)
- EXHIBIT P4 TRUE COPY OF THE SPECIFICATIONS FOR COMPOSTABLE PLASTIC UNDER IS 17088-2008 ISSUED BY THE BUREAU OF INDIAN STANDARDS
- EXHIBIT P5 TRUE COPY OF THE TEST REPORT DATED 27/11/2019 ISSUED BY CIPET TO THE PETITIONER.
- EXHIBIT P6 TRUE COPY OF THE QUOTATION HAVING REF CIPET-IPT-KOCHI/TESTING/2018-19 DATED 29/03/2019
- EXHIBIT P7 TRUE COPY OF THE INTEGRATED CONSENT TO OPERATE HAVING NO. PCB/ALP/ICO -3211/R3/19
- EXHIBIT P8 TRUE COPY OF THE GOVERNMENT ORDER GO(RT) NO. 134/2018.ENVT DATED 12/12/2018 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P9 TRUE COPY OF THE GOVERNMENT ORDER HAVING NO. GO 6 6/2019/ENVT DATED 27/11/2019 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P10 TRUE COPY OF THE NOTIFICATION HAVING NO. GO NO. 7/2019/ENVT DATED 17/12/2019 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P11 TRUE COPY OF THE PRESS RELEASE DATED 06/01/2020 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P12 TRUE COPY OF THE NOTIFICATION HAVING GO NO. 2/2020/ENVT DATED 27/01/2020 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P13 TRUE COPY OF THE NOTIFICATION NO. GO NO. 4/2020/ENVT ISSUED BY THE FIRST RESPONDENT
- EXHIBIT P14 TRUE COPY OF THE STANDARD OPERATING PROCEDURE (SOP) AS PROVIDED UNDER RULE 4 (H) OF THE PWM RULES ISSUED BY THE CPCB
- EXHIBIT P15 TRUE COPY OF THE CLARIFICATION DATED 18/06/2019 REGARDING REGISTRATION OF MANUFACTURES AND SELLERS OF COMPOSTABLE PLASTIC BAGS ISSUED BY THE CPCB

EXHIBIT P16

TRUE COPY OF THE ACKNOWLEDGMENT ISSUED BY THE 4TH RESPONDENT EVIDENCING RECEIPT OF AN APPLICATION SUBMITTED BY THE PETITIONER UNDER RULE 13 OF PWM RULES.

EXHIBIT P17

TRUE COPY OF THE RELEVANT PORTION OF THE REPORT OF NIIST PRODUCED BEFORE THIS HON'BLE COURT ALONG WITH A COVERING LETTER DATED 19/10/2020.

RESPONDENTS EXHIBITS:

EXHIBIT R2 (A)

TRUE COPY OF G.O. (MS) .NO.4/2020/ENVT. DATED 16.02.2020.

//TRUE COPY//

P.S. TO JUDGE

APPENDIX OF W.P(C).NO.5952/2020

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE LICENSE ISSUED TO THE PETITIONER BY THE KALAMASSERY MUNICIPALITY DATED 28.01.2020.
- EXHIBIT P2 TRUE COPY OF ENGLISH TRANSLATION OF EXT.P1.
- EXHIBIT P3 TRUE COPY OF THE LICENSE FOR THE GO-DOWN SITUATE IN KOTTUVALLY GRAMA PANCHAYATH, ISSUED BY KOTTUVALLY GRAMA PANCHAYATH TO THE PETITIONER DATED 01.04.2019.
- EXHIBIT P4 TRUE COPY OF ENGLISH TRANSLATION OF EXT.P3.
- EXHIBIT P5 TRUE COPY OF REGISTRATION CERTIFICATE ISSUED UNDER THE GOODS & SERVICE TAX ACT, 2017 DATED 10.01.2020.
- EXHIBIT P6 TRUE COPY OF THE LETTER OF AUTHORITY FROM M/S.BRIJWASI PLASTIC PRIVATE LIMITED COMPANY DATED 20.01.2020.
- EXHIBIT P7 TRUE COPY OF THE CERTIFICATE ISSUED BY THE CENTRAL POLLUTION CONTROL BOARD TO M/S.BRIJWASI PLASTIC PRIVATE LIMITED COMPANY UNDER RULE 4(H) SUPRA, DATED 26.11.2019.
- EXHIBIT P8 TRUE COPY OF THE GOVERNMENT ORDER DATED 27.11.2019.
- EXHIBIT P9 TRUE COPY OF ENGLISH TRANSLATION OF EXT.P8.
- EXHIBIT P10 TRUE COPY OF THE GOVERNMENT ORDER DATED 17.12.2019.
- EXHIBIT P11 TRUE COPY OF THE MODIFIED GOVERNMENT ORDER DATED 19.12.2019.
- EXHIBIT P12 TRUE COPY OF THE PRESS RELEASE ISSUED BY THE DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE DATED 06.01.2020.
- EXHIBIT P13 TRUE COPY OF GOVERNMENT ORDER DATED 27.01.2020, WHEREBY "THE MANUFACTURE, STOCK AND SALE OF COMPOSTABLE PLASTIC CARRY BAGS" WAS SPECIFICALLY BANNED.
- EXHIBIT P14 TRUE COPY OF THE REPORT OF THE TECHNICAL COMMITTEE CONSTITUTED BY THE STATE GOVERNMENT.
- EXHIBIT P15 TRUE COPY OF ORDER OF THE CENTRAL POLLUTION CONTROL BOARD DATED 07.01.2019.

EXHIBIT P16

TRUE COPY OF THE FINAL LIST OF CERTIFIED  
MANUFACTURERS/SELLERS FOR MARKETING AND SELLING  
OF COMPOSTABLE CARRY BAGS/PRODUCTS AS ON  
05.02.2020.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE