

-(1)- WP No. 17704/2018 (PIL)
Gaurav Pandey vs. Union of India and Others

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

DIVISION BENCH

BEFORE: SHEEL NAGU

AND

RAJEEV KUMAR SHRIVASTAVA, JJ.

Writ Petition No. 17704/2018

Gaurav Pandey

Versus

Union of India and Others

Shri Aditya Pratap Singh Rajawat, learned counsel for the petitioner.

Shri F.A. Shah, learned Government Advocate for the respondent No.2 and 5/State.

Shri Harish Dixit, learned counsel for the respondent No.3-M.P. Pollution Control Board.

Shri Deepak Khot, learned counsel for the respondent No.4-Municipal Corporation, Gwalior.

ORDER
(26/02/2020)

Per Rajeev Kumar Shrivastava, J.:

This petition is preferred for public cause and has been treated as Public Interest Litigation, whereby public cause was raised to protect the environment from plastic carry bags.

2. The petitioner has sought relief of implementation of Plastic Waste Management Rules, 2016 (hereinafter shall be referred to as the “Rules of 2016”) in whole of State of Madhya Pradesh and has also prayed that respondents be directed to implement notification bearing No.F5-2-2015-18-5 dated 24.05.2017 in its letter and spirit in the State of Madhya Pradesh and in terms of said notification, prayed to ban production, transport, storage, sale and use of plastic carry bags/polythene.

Further relief sought is to initiate imposition of fine against the wrong doers.

3. Respondent No.4 - Municipal Corporation, Gwalior has submitted through its return that all possible steps are being taken by the Municipal Corporation and Municipal Corporation is regularly seizing the carry bags from various fruit vendors, grocery shops, sweet shops and with the help of public they have spread message of 'Swaccha Bharat'. In support of its version, the Municipal Corporation has produced photographs before this Court.

4. Pollution Control Board and State in their return have submitted that the main responsibility is of the Municipal Corporation to meet these challenges and get the rules implemented.

5. The expression 'litigation' means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest belonging to public or a class of the community, whereby their legal rights or liabilities are affected. The basic definition of PIL in historical context is in which the commonality of the various forms of legal representation involving the basic and fundamental rights of a significant segment of the public demanding vindication of its rights has been recognised in various parts of the world.

6. Under Article 32, 51A and 136 of the Constitution of India, Rule of locus standi is not a rigid rule, rather, we can say, in defining the rule of locus standi in PIL no "rigid litmus test" can

be applied since broad contours of PIL are still developing apace seemingly with divergent views on several aspects of the concept of this developing law and discovering jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process. The dominant object of PIL is to ensure observance of the provisions of the Constitution and law which can be achieved with permitting the cause of community and disadvantaged groups or public interest by representing a person, who is acting *bonafide* and having sufficient interest in maintaining an action for judicial redressal for public injury to put the judicial machinery in motion like “*actio popularis*” of Roman Law, wherein any citizen/person can bring such an action in respect of a public delict.

7. The scope of PIL has been enlarged and is being enlarged by the Supreme Court widely by relaxing and liberalising the rule of locus by treating letters or petitions sent by any person or association complaining violation of any fundamental rights and also by entertaining writ petitions filed under Article 32 by public-spirited and policy-oriented activists or by any organisation.

8. The present petition is filed as Public Interest Litigation. The concept of “Public Interest Litigation” (PIL) is in consonance with the principles enshrined in Article 39A of the Constitution of India to protect and deliver prompt social justice. Prior to the year 1980, the locus standi was prominent in India Judicial System and only aggrieved party would approach to the Courts of justice. After the emergency era, the High Court reached out to the people devising the means for any person of the public to approach the Courts seeking legal remedy where public interest

is involved. There are various instances when letters and telegrams addressed to the Courts have been taken up as PILs and were considered. Two Professors of the University of Delhi sent a letter to the Court seeking enforcement of the Constitutional Rights of the inmates at protective home in Agra who were living in inhuman and degrading conditions. In **Ms. Veena Sethi vs. State of Bihar & Ors. [1982 (2) SCC 583]**, the Court treated a letter addressed to a Judge of the Court by the Free Legal Aid Committee in Hazaribagh (Bihar) as a writ petition. In **Citizens For Democracy through its President vs. State of Assam and Ors. (1995 KHC 486)**, the Court entertained a letter from Kuldeep Nair to a judge of the Court arising human rights violation of Terrorist and Disruptive Activities (prevention) Act (TADA) detainees. It was also treated as a petition under Article 32 of the Constitution of India.

9. Rule of law is the primary essential of the democracy. However, any person filing the petition must have to prove to the satisfaction of the Court that the petition is being filed for the public interest and not as a frivolous litigation for pecuniary gain. In the case of frivolous PIL, the Court is having jurisdiction to impose substantial costs to the petitioner. Public Interest Litigation” gives a wider description to the fundamental rights enshrined in the Constitution of India. It functions as an effective measure for changes in the society for its welfare.

10. “Public Interest Litigation” is known as “Social Interest Litigation”. The concept of “Public Interest Litigation” was conceived by Hon. Justice V.R. Krishna Iyer in **Socialist Karamchari Sangh (Railway) vs. Union of India (AIR 1981 SC 298)**, wherein an unregistered association of workers was

permitted to institute a writ petition under Article 32 of the Constitution for redressal of their common grievances. In other words, “Public Interest Litigation” may be moved by public spirited citizen to the Court for the public cause by invoking writ jurisdiction of the superior courts.

11. The traditional rule of locus standi that a person whose right is affected alone can file a petition which has been laid down by the Apex Court in various decisions. Now the Courts permit “Public Interest Litigations” at the instances of public spirited citizens for the enforcement of constitutional legal rights.

12. In the case of S.P. Gupta vs. Union of India, (AIR 1962 SC 149), Hon'ble the Apex Court defined the term “Public Interest Litigation” in the Indian context. Thereafter, various prisoners of Bihar Jail had filed a petition before the Supreme Court Bench headed by Hon. Justice Bhagwati which was registered as Hussainara Khatoon v. State of Bihar, (AIR 1979 SC 1369), wherein Hon'ble the Apex Court has held that the prisoners should be given benefits of free legal aid and speedy hearing.

13. In various judgments passed by the Apex Court, the issue of PIL was widely considered and PILs have achieved the place of importance in our legal system. See, Mumbai Kamgar Sangh vs. M/s Abdulbhai Faizullahai and others [1976 (3) SCC 832]; M.C. Mehta vs. Union of India [AIR 1987 SC 965]; Parmanand Katara v. Union of India [AIR 1989 SC 2039]; Vishaka v. State of Rajasthan, [(1997) 6 SCC 241]; and, Javed v. State of Haryana, [(2003) 8 SCC 369].

14. At this juncture, it is also relevant to mention here

that to avoid inappropriate use of PIL, in the light of the judgment passed by Apex Court in **R & M Trust Vs. Kormangla Residents Vigilance Group, [(2005) 3 SCC 91]**, following basic requirements are to be seen at the time of verifying the bonafides of a person, group, organization filing PIL before the Court having jurisdiction :-

- (i) Whether the petitioner is bonafide and whether he has/had filed any PIL for any other cause before any competent Court ?
- (ii) Whether the petition filed sounds of bonafide ?
- (iii) No petition was filed earlier for the same cause.
- (iv) No petition was earlier decided by the Court for the same cause.
- (v) Whether cause relates to poor and needy persons in general suffering from violation of their fundamental rights ?
- (vi) The petition is not filed for personal gain or private profit or political motive or oblique consideration ?
- (vii) The petition is not vexatious petition under the colour of PIL .
- (viii) The petition is not filed for vindicating any personal grievance.
- (ix) The petition is not filed with intention to to abuse process of law.

- (x) Petitioner is not a proxy of others.
- (xi) The petition is not filed for extraneous motivation or for glare of publicity.

15. It is well said that if you want to survive for years together, you are required to protect the environment. Ecosystem is one of most important factor which protects the environment. Ecosystem is defined as “a system wherein community of living organisms is in conjunction with the nonliving components of their environment, interacting as a system”. Such biotic and abiotic components are linked together through nutrient cycles and energy flows. Ecosystem is controlled by external and internal factors. External factors such as climate, parent material which form the soil and topography, control the overall structure of ecosystem but are not themselves influenced by the ecosystem. Internal factors are controlled by decomposition, root competition, shading, disturbance, succession etc. That means, an ecosystem is a geographic area where plants, animals, and other organisms, as well as weather and landscapes, work together to form a bubble of life.

16. In the light of above, banning of polythene/plastic bags has to be considered as a most **significant moment** of life. If any material which is generally used is not biodegradable then the whole ecosystem will be affected and indirectly will affect all living organisms of the world.

17. Polythene is a poly (methylene). The properties of polythene are as under :-

(i) **Mechanical properties of polyethylene:**

Polyethylene is of low strength, hardness and rigidity, but has a high ductility and impact strength as well as low friction. It shows strong creep under persistent force, which can be reduced by addition of short fibers. It feels waxy when touched.

(ii) **Thermal properties :**

The commercial applicability of polyethylene is limited by its comparably low melting point. For common commercial grades of medium- and high-density polyethylene the melting point is typically in the range 120 to 180°C (248 to 356°F). The melting point for average, commercial, low-density polyethylene is typically 105 to 115°C (221 to 239°F). These temperatures vary strongly with the type of polyethylene.

(iii) **Chemical properties :**

Polyethylene consists of nonpolar, saturated, high molecular weight hydrocarbons. Therefore, its chemical behavior is similar to paraffin. The individual macromolecules are not covalently linked. Because of their symmetric molecular structure, they tend to crystallize; overall polyethylene is **partially crystalline**. Higher crystallinity increases density and mechanical and chemical stability.

Most LDPE, MDPE, and HDPE grades have excellent chemical resistance, meaning they are not attacked by strong acids or strong bases, and are resistant to gentle oxidants and reducing agents. Crystalline samples do not dissolve at room temperature. Polyethylene (other than cross-linked polyethylene) usually can be dissolved at elevated temperatures in aromatic hydrocarbons such as toluene or xylene, or in chlorinated solvents such as trichloroethane or trichlorobenzene.

Polyethylene absorbs almost no water. The gas and water vapour permeability (only polar gases) is lower than for most plastics; oxygen, carbon dioxide and flavorings on the other hand can pass it easily.

PE can become brittle when exposed to sunlight, carbon black is usually used as a UV stabilizer.

Polyethylene burns slowly with a blue flame having a yellow tip and gives off an odour of paraffin (similar to candle flame). The material continues burning on removal of the flame source and produces a drip.

Polyethylene cannot be imprinted or bonded with adhesives without pretreatment. High strength joints are readily achieved with plastic welding.

(iv) Electrical properties of polyethylene :

Polyethylene is a good **electrical insulator**. It offers good electrical treeing resistance; however, it becomes easily electrostatically charged (which can be reduced by additions of **graphite**, carbon black or **antistatic agents**).

(v) Optical properties :

Depending on thermal history and film thickness PE can vary between almost clear (**transparent**), milky-opaque (**translucent**) or **opaque**. LDPE thereby owns the greatest, LLDPE slightly less and HDPE the least transparency. Transparency is reduced by crystallites if they are larger than the wavelength of visible light.

18. Polythene is produced from ethylene, and although ethylene can be produced from renewable resources, it is mainly obtained from petroleum or natural gas. Moreover, the widespread usage of polyethylene poses difficulties for waste management if it is not recycled. Polyethylene, like other synthetic plastics, is not readily biodegradable, and thus accumulates in landfills and puts the life of human being as well as animals into danger.

19. It is relevant to mention here that the problem raised in this PIL cannot be solved by punitive measures. Time has come to make the citizens/stakeholders aware of their duties and liabilities. This duty of every citizen is constitutionally provided in Article 51-A (g), which for ready reference and convenience is reproduced below :

“(g) to protect and improve the natural environment including forests, lakes, rivers

and wild life, and to have compassion for living creatures”.

The duty to ensure clean and unpolluted environment is as much of the State and its functionaries as it is of the citizen.

20. The fundamental rights are defined in Constitution of India. Similarly, fundamental duties as amended by 42nd Amendment, were incorporated in Article 51-A and contained in Part 4-A of the Constitution. In **AIIMS Students' Union vs. AIIMS and others [(2002) 1 SCC 428]**, Apex Court has observed as under:

“Fundamental duties, as defined in Article 51A, are not made enforceable by a writ of court just as the fundamental rights are, but it cannot be lost sight of that duties in Part IVA -Article 51A are prefixed by the same word fundamental which was prefixed by the founding fathers of the Constitution to rights in Part III. Every citizen of India is fundamentally obligated to develop the scientific temper and humanism. He is fundamentally duty bound to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. State is, all the citizens placed together and hence though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State. Any reservation, apart from being sustainable on the constitutional anvil, must also be reasonable to be permissible. In assessing the reasonability one of the factors to be taken into consideration would be whether the character and quantum of reservation would stall or accelerate achieving the ultimate goal of excellence enabling the nation constantly

rising to higher levels. In the era of globalisation, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go by and certainly not compromised in its entirety. Fundamental duties, though not enforceable by a writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice, peoples wish as manifested through Article 51A, can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. Constitutional enactment of fundamental duties, if it has to have any meaning, must be used by courts as a tool to tab, even a taboo, on State action drifting away from constitutional values.”

A L L A B O U T L A W

21. In such view of the matter, we are compelled to remind all the stakeholders as well as citizens to awake for the welfare of all living organisms of the world by assuming participative role to achieve the goal of elimination of plastic waste/polythene in terms of the provisions contained in Plastic Waste Management Rules, 2016.

22. At this juncture, it is made clear that the responsibility cast upon each stakeholder is independent and requires honest involvement for eradication/elimination of plastic bags/polythene.

23. Thus, this writ petition is hereby disposed of with the following suggestions/directions to the Citizens/Authorities/Print & Electronic Media as under :-

(A) Suggestions :

- (i) Citizens should be made aware of the causes and effects of plastic pollution and how to prevent it.

- (ii) A campaign must be started to immediately stop using non-biodegradable plastic/polythene.
- (iii) Citizens should not purchase single use plastic/ polythene water bags etc.
- (iv) Citizens should use cloth / jute made bags for carrying purchases.
- (v) They may also themselves prepare paper bags from daily newspaper of their house.
- (vi) Citizens should not embed any plastic/ polythene waste in soil/ land.
- (vii) Citizens (parents/teachers) should teach children not to use plastic bottles/ tiffins in schools/ park/ malls etc.
- (viii) Citizens should cooperate in this task with different Authorities of the Government.
- (ix) Citizens should carry non-plastic water-bottles/daily need articles, which are reusable for many years together.
- (x) Similarly, it is expected of the Print & Electronic Media to propagate and install awareness amongst the citizens that use of non-biodegradable polythene/plastic has become a national problem. The Media should create an atmosphere in the society for non-use of non-biodegradable polythene/plastic articles by publishing relevant topics regularly in the media and should also attempt to make the people aware regarding hazardous results of use of non-biodegradable plastic/ polythene.
- (xi) For awareness amongst the children, the subject

of adverse affects of use of plastic/polythene and means to manage its waste should be incorporated in curriculum.

(B) Directions :

- (i) The State shall pass direction to Schools and Colleges to stop use of plastic immediately.
- (ii) The State shall issue directions to the industries to take immediate steps to stop the production and use of single use plastic.
- (iii) The State and its instrumentalities shall issue directives ensuring manufacturing and marketing of carry bags and packets made of non-plastic bio-degradable material on highly subsidized rates to be affordable to the common man.
- (iv) For this purpose, the State should encourage the small scale industry to manufacture and market such bags/packets by establishing necessary plants for this purpose in adequate number in all districts in the State of M.P.
- (v) The State shall install adequate number of Water Dispensers in the city area to make available pure water to the citizens.
- (vi) The State should install single use plastic bottles crushing machines in every possible public places in adequate number and on crushing particular numbers of such bottles, deposit return scheme may be started.
- (vii) The State shall install Recycling Plants at various places;
- (viii) The State shall use plastic/polythene waste for

Thermal Electric Production Plant.

24. It is further directed that each stakeholder, as mentioned above, shall submit their independent progress reports through respective Collectors every three months before the Principal Registrar of this Court to ensure compliance of this order. As the order is passed in the interest of public at large, therefore, it is expected that the directions given by this Court shall be complied with in letter and spirit with utmost promptitude.

25. Principal Registrar of this Court is hereby directed to send copy of the order to all the responsible stakeholders for compliance.

26. In case of non-compliance or if the compliance is found to be deficient, the Principal Registrar is hereby directed to list this case before the Bench under caption '**Direction**'.

(Sheel Nagu)
Judge

(Rajeev Kumar Shrivastava)
Judge

(Yog)