

Item No. 03

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 15/2014

Him Jagriti Uttaranchal Welfare Society

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 31.05.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Sharan Mathew, Advocate

For Respondent (s): Mr. K.K. Singh, Advocate for MoEF&CC
Mr. Nilakanta Nayak, Advocate FOPE
Mr. R. Chandrachud, Advocate for IDMA
Mr. Ritin Rai, Senior Advocate with Mr. Abbas
Keshtrapol and Mr. Rohit Chandra, Advocates for
PCMA

ORDER

1. Issue for consideration is restriction on use of plastic bottles and multi layered plastic packages used for packaging of carbonated soft drink and liquor as well as other items, in view of the adverse impact on the environment and health. According to the applicant, use of plastics, including polyethylene terephthalate (PET) bottles and multi-layered packs such as Tetra Packs has an adverse impact on health and environment. This also results in increase in plastic waste. The Ministry of Environment, Forests and Climate Change



(MoEF&CC) undertook a study in this regard titled **“Report of the Committee to Evolve Road Maps on Management of Wastes in India”**. Shri R.H. Khwaja, Additional Secretary submitted a report indicating the extent of waste generated and the steps required. Plastic recycling results in contaminated and hazardous plastic products like tiffin boxes, water bottles, toys, buckets etc. Use of such recycled plastic in food and beverages packaging has adverse impact on health and environment. The applicant has relied upon several study reports on the subject. Central Pollution Control Board (CPCB) sponsored a study by Indian Institute of Toxicological Research (IITR), Lucknow on the impact of plastic waste disposal on soil and water quality at Lucknow Dumpsites. Study found serious adverse impact on the environment. Further reports referred to include **“public health impact of plastics: An overview”** prepared by the various researchers from the Department of Community Medicine, Maulana Azad Medical College, Delhi, Department of Community Medicine, VMMC and Safdarjung Hospital, New Delhi, Department of Community Medicine, College of Medicine and J.N.M. Hospital, Kalyani, Nadia, West Bengal, Kolkata, **“Polyethylene Terephthalate May Yield Endocrine Disruptors”** by Leonard Sax from Montgomery Center for Research in Child and Adolescent Development, Exton, Pennsylvania, USA, **“Biscardi D, Monarca S, De Fusco R, et al. 2003. Evaluation of the migration of mutagens/ carcinogens from PET bottles into mineral water by Tradescantia/ micronuclei test, Comet assay on leukocytes and GC / MS. Sci Total Environ 302:101-108”**, **“Shotyk S. Krachler M. 2007. Contamination of bottled waters with**

antimony leaching from polyethylene terephthalate (PET) increases upon storage. Environ Scitechnol 41(5):1560-1563” and “Westerhoff P, Prapaipong P, E Shock E, Hillaireau A. 2008. Antimony leaching from polyethylene terephthalate (PET) plastic used for bottled drinking water. Water Res 42(3):551-556” to submit that PET bottles contaminate even the stored water.

2. The Tribunal issued notice on 29.01.2014 and has been considering the matter for more than five years. It may not be necessary to refer to all the orders passed from time to time. Reference to some of the orders may suffice. On 03.3.2015, the Tribunal noted the stand of the MoEF&CC that the matter was being considered. The Tribunal observed that plastic multi-layered packaging/ PET bottles may be injurious to human health. On 15.07.2015, directions were issued to the CPCB, the MoEF&CC, the Director General of Health Services (DGHS) and Food Safety Standards Authority of India (FSSAI) to file a collective response. On 24.08.2015, the Tribunal noted that draft notification dated 29.09.2014 had been issued under the Drugs and Cosmetics Act, 1940 to deal with the packaging of pharmaceutical preparations. The stand of the MoEF&CC was that a National Study on leaching from various kinds of plastic packaging material was proposed. The Tribunal also considered the report of All India Institute of Hygiene and Public Health. The Tribunal also noted that Plastic Waste (Management and Handling) Rules, 2016 had been notified but the implementation remained the main difficulty.

3. On 07.01.2019, the Tribunal directed the parties to file written notes. The applicant in a written note filed on 17.01.2019 pointed out that the regulations on the subject are inadequate for the following reasons:

“a. There is no specific Testing protocol for Specific Migration Testing (Antimony & Phthalates-DEHP)

b. The Plastic Waste Rules are limited for restrictions of plastic "Bags" only. It doesn't cover the plastic packaging especially PET Bottles.

c. In light of the inadequate standards, this Hon'ble Tribunal, vide order dated 10.10.2018, categorically stated that the Plastic Waste (Management and Handling Rules), 2016 need further amendments so as to eradicate the menace of use of plastics in general.”

4. The applicant sought enforcement of notification being G.S.R. no. 701 (e) dated 29.09.2014 issued by the Ministry of Health and Family Welfare for prohibiting plastic/ PET containers for oral pharmaceutical activities and fresh label registration with the direction that “no pet/ plastic container and /or multi-layered packaging be used for packaging of liquor and carbonated beverage.”

5. The applicant further submitted that the Notification dated 24.12.2018, issued by the Ministry of Health and Family Welfare under Section 92 of Food Safety and Standards Act, 2006 deals with the issue of packaging mode of food but it ignores Antimony and DEHP in specific migration limits provided for plastic packaging. Two sets of regulations were separately laid down being the Food Safety and Standards (Packaging) Regulations, 2018 and the Food Safety and Standards (Labelling and Display) Regulations, 2018 replacing

the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. The said regulations also give a list of suggested packaging material to be used for different food items.

6. On 22.01.2019, the Tribunal noted the steps taken by various States, the regulations prescribed by the Bureau of Indian Standards (BIS) in relation to packaging material and the regulations framed by FSSAI in respect of food safety standards. The Tribunal directed the MoEF&CC to look into the said regulations and file its response. The MoEF&CC in its response filed on 19.01.2019, apart from indicating the features of the Plastic Waste Management Rules, 2016, including the provision for phasing out multi-layered plastic (MLP), submitted that the same may not be immediately feasible without alternates which are technically comparable. The same was proposed to be phased out in two years. It was further stated that the mechanism for registration of manufactures was to be improved. Rule 13 was required to be amended and Rule 15 was required to be withdrawn. The Ministry also organized Ministers conference and adopted resolutions on the effective capacity building programme, promoting innovative technologies, meetings with Chief Secretaries to monitor the implementation of the Rules, efforts to reduce the use of plastic, adopting Green Good Deeds for better waste management and to develop mechanism to document success. Thereafter, on 15.02.2019, the matter was directed to be listed within O.A. No. 606/2018 dealing with the compliance of waste management Rules.

7. In view of the order of the Hon'ble Supreme Court dated 10.05.2019 in Civil Appeal No. 4626-27/2019, the matter has been delinked from O.A. No. 606/2018. We have heard learned counsel. On behalf of the applicants, it is submitted that MoEF&CC has only focused on waste management and not on the subject of restrictions on use of plastic as packaging material. MoEF&CC itself has found the Plastic Waste Management Rules to be deficient. The Packaging and Labelling Regulations, 2018 under the Food Safety and Standards Act, 2006 do not deal with the issue in entirety and are not adequate to deal with the problem.

8. In view of the above, we are of the opinion that the question whether any further regulatory provisions are required on the subject of restrictions on the packaging by use of plastic material, after the steps already taken, and if so to what extent be examined by an Expert Committee comprising of the representatives of FSSAI, BIS, CPCB and DGHS. The Nodal agency for coordination will be the FSSAI. The Committee will be at liberty to coopt any other expert/ institute or individual and furnish its report to this Tribunal within three months by e-mail at judicial-ngt@gov.in.

A copy of the order be sent each to the FSSAI, BIS, CPCB and DGHS by e-mail. The applicant is at liberty to place its precise view point before the FSSAI within two weeks.

List for further consideration on 14.10.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

May 31, 2019
Original Application No. 15/2014
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