

Public Interest Litigation
IN THE HIGH COURT OF JUDICATURE AT CHENNAI
(Under Article 226 of the Constitution of India)
(Special Original Jurisdiction)

W.P.No. of 2009

A.NARAYANAN
No.7C,Daffodil, Ceebros Gardens,
Arcot Road, Virugambakkam,
Chennai-600 092.

...Petitioner

1.The Secretary to Government
Department of Environment & Forests
Secretariat, Chennai – 600 009.

2.The Secretary to Government
Municipal Administration & Water Supply
Secretariat, Chennai-600 009

3. The Chairman
Tamilnadu Pollution Control Board
76,Anna Salai,Guindy,
Chennai – 600 032.

4. The Commissioner
Corporation of Chennai,
Rippon Buildings, EVR Salai,
Chennai- 600 003

...Respondents

AFFIDAVIT OF A.NARAYANAN

1. I, A.Narayanan, son of T.N.Anantha padmanabhan, aged about 44 years, residing at No.7C, Daffodil, Ceebros Gardens, Arcot Road, Virugambakkam, Chennai – 600 092, do hereby solemnly affirm and sincerely state as follows:-

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2. I am a permanent resident of Chennai and is the Managing Director of a firm manufacturing Scientific instruments used for Research and Development, which is my profession. However, as a responsible citizen, I am involved in certain projects for the betterment of the society. I am the trustee of Sevaman Trust, which is a non profit trust, providing artificial limbs to physically challenged persons with amputations. I am also the Founder trustee and Mentor of INFORSE-IDL, an advocacy organization espousing the cause of children, especially underprivileged school going children.

3. I am also the Founder and Convener of PAADAM (People Against Alcohol, Drug Abuse and Merchandise), a People's Movement against manufacture, marketing, distribution, Advertisement,. Glamourising of alcohol and Abuse of Alcohol, whether by the Government or Corporate.. I also write various articles about issues critical to nation building and for justice to underprivileged and deprived communities and also about the various types of harm from the present alcohol culture.

4. I am a petitioner herein and filing this writ petition as a Public Interest Litigation.

5. It is submitted that Government of Tamilnadu originally proposed to introduce a Bill in 2002 for banning manufacture, distribution and usage of use and throw, non-recyclable plastic materials throughout Tamilnadu including carry bags, glasses, cups, plastic coated paper plates, forks, spoons, knives,

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sheets used to cover dining tables and ropes. Though there was a positive response from the environmentalists and general public, there was strong opposition from those involved in the business of polythene and plastic disposable items, citing financial and job losses. Hence, the bill was referred to a select committee, but decision on the ban was never taken by the Government.

6. It is submitted that even way back in March 2001, Tamilnadu Pollution Control Board sent a resolution to all the urban local bodies of the state to work on the ban of single use plastic products. Subsequently, Chennai Corporation proposed to ban manufacture, trading and usage of disposable single-use plastic products like disposable bags, cups, plates and table spreads effective from 1st October 2001 and sent a proposal to the Municipal Administration and Water Supply department in this regard for introducing a Bill by the Government. However, this proposal has not been made into a Bill till date.

7. It is submitted that Government of India notified 'The Recycled Plastics Manufacture and Usage Rules, 1999 and amended in 2003 in exercise of the powers conferred by clause (viii) of Sub Section (2) of Section 3 read with Section 25 of the Environment (Protection) Act, 1986 (29 of 1986) with the objective to regulate the manufacture and use of recycled plastics, carry bags and containers. As per these rules, the use of recycled plastic bags for storing, carrying, dispensing, or packaging of foodstuffs is prohibited. Further, the Ministry banned the manufacture, stocking, distribution or selling of carry bags made of virgin/recycled plastics, which are below 8 x 12 inches in size and 20

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micron in thickness. The prescribed authorities for enforcement of the provisions of these rules related to manufacture and recycling are the State Pollution Control Boards.

8. It is submitted that the above notification of the Union Government has never been implemented in the whole of Tamilnadu except very few tourist places and municipalities. Hence, we continue to have a situation of rampant manufacture, distribution and usage and indiscriminate disposal of both virgin and recycled coloured polybags throughout the state, from supermarkets to small vendors and households.

9. It is submitted the toxic chemicals that are most frequently released during the production of plastic materials in general and single use products in particular include dichloromethane, acetone, methylene chloride, methyl ethyl ketone, styrene, toluene and benzene. Other major emissions include sulfur oxides, nitrous oxides, methanol, ethylene oxide and volatile organic compounds. The production of a Polyethylene terephthalate (PET) bottle produces nearly 100 times the air pollutants than by the production of same quantity of glass bottles. The use of chemicals such as plasticisers, antioxidants, colorants, flame-retardants, heat stabilizers and barrier resins during plastic production cause toxicity of lead, cadmium, mercury and carcinogens.

The pollution that occurs in the disposal stage is largely during incineration and when plastic wastes fail to reach landfills or incinerators. Burning of plastic containing chlorine substances releases toxic heavy metals and emits noxious

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gases like dioxins and furans. These can cause a variety of health problems including damage to the reproductive and immune system, respiratory difficulties and cancer.

The single use polythene and plastic products such as carry bags, disposable cups, plates etc cannot be disposed off easily. Plastic wastes are left behind find their way into the soil, the sewage system and the water bodies. When it is in the soil, they clog the soil preventing the free flow of water and deplete its fertility. They also clog the sewerage system and drains. Because, mechanical equipments are not capable of removing such blocks effectively, Sanitary workers are often made to get into sewer lines and storm water drains to get rid of clogs caused by such products and they either die due to asphyxiation or contract various diseases due to exposure to sewerage. This is clearly Human Rights violation and an assault on Human dignity.

10. It is submitted that carry bags with left over food which are dumped in the street bins attract stray cattle, which often die after chewing the bags. Even aqua and marine life and animals in reserve forests and zoos are affected due to littering of plastic items near forests, streams, water bodies and beaches and these have long term consequences like endangering species and affecting the environment irreversibly.

11. It is submitted that open sites in places like Perungudi, Kodungaiyur in Chennai and several other sites across the state have been converted into dump

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yards, polluting the environment irreversibly. Continuous burning of plastic waste has been resorted to by both municipal workers as well as the general public on street corners and near dust bins throughout the state in their misguided effort at reducing the volume of waste. Plastic waste in dumping yards is also often set burning which affect the poor communities living in the vicinity of dumping yards. The soil is also contaminated due to the biodegradable nature of these plastic materials. There is a severe shortage of land available for land fills in urbanized states like Tamilnadu and and land fertility is already affected.

12. It is submitted that the rate at which air, water and land pollution are caused by the irresponsible use and reckless disposal of such products is really alarming. Even though Government is spending huge sums and putting great efforts to contain and eradicate epidemics like Malaria, Filariasis, Dengue, Chikungunia etc, the plastic disposable items clog the storm water drains, float on water bodies and offer excellent opportunity for breeding of mosquito larvae. Hence, vector control programs of the Health Departments have become ineffective.

13. Local bodies' efforts to contain the growth of mosquitoes is a losing battle and millions of malnourished and underprivileged children endure mosquito bites while trying to catch some sleep every night in the huts and slums throughout the state. The poor and middle class communities spend huge sums of money on Mosquito mats, drops and nets. In fact, WHO and UNICEF have time and again confirmed that millions of children in India need mosquito nets for their beds while sleeping to protect them from disease causing mosquito bites, but they cannot afford, due to extreme poverty.

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14. There is a rapid increase in middle class population and there is rapid urbanization happening throughout Tamilnadu. The trend of irresponsible use and disposal of single use plastic waste is giving rise to violation of Fundamental rights, human rights and child rights . While, everyone is affected in some way or other due to this trend, it is the socially and economically deprived sections who have no financial wherewithal and primary health to counter such environmental degradation.. This puts a huge economic burden on these marginalized families.

15. It is submitted that the Government, Industry and the general public solely depend on Rag pickers for undertaking segregation of plastic wastes through scavenging activities and as a source of income for these unfortunate poor people. But in a 'supposed to be welfare state', it is totally uncivic, demeaning and undignified and against the constitutional guarantees to let poor people, especially underprivileged children scavenge dust bins and dumping yards to segregate polythene and plastic waste so as to eke out a living which exposes them to innumerable mental and physical harm and perpetuate a vicious cycle of marginal sustenance. The petitioner has come across not only many poor school-dropout children but also poor school going children roam around dumping yards to scavenge for any scrap which could fetch them some money. Hence, the present system only encourages child labour.

16. It is submitted that many of the plastic single use items can never be recycled contrary to the claim of some in the industry and they can only be down-cycled. Recycling usually results in the down-cycling of plastics into lower-quality products that have higher and more leachable levels of toxic

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additives. The incomplete combustion of PE (Polyethylene) during recycling releases carbon monoxide. A recycling plant generates the largest amounts of effluents during washing and cleaning. The wastewater generally has high pollution load in terms of Biological Oxygen Demand (BOD), Chemical Oxygen Demand (COD) and Total Suspended Solids (TSS).

For example, Government of India has recently banned import of Chinese toys which use heavy metals and toxic chemicals. But, the pots manufactured in India in garish colours using down-cycled plastics that lakhs of poor people use to store water are made under much more unhygienic conditions using heavy metals such as cadmium, mercury and lead. These are extremely hazardous to health. In fact, the chemicals that leach through the stored water can disrupt glandular functions, the basis for immune system. But these environmentally unsustainable activities are going on in Tamilnadu due to lack of political and administrative will and poor regulation by the State Pollution Control Board.

17. It is submitted that the authorities have so far not effected a ban and proper regulation of such products due to the pressure from the plastic industry citing loss of labour. However, the fear is totally unfounded as only 500 to 600 units may be involved providing employment to about 10,000 people. While establishing a ban on such products, the Government can suitably compensate the affected parties and they can be rehabilitated.

18. It is submitted that banks that have financed such plastic units can be given a bail out package keeping the long term interests of the people and future

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generation in mind. Village industries and self help groups can be encouraged to manufacture environmentally sustainable paper bags, cups and plates of paper or leaves and clay and this will provide large employment opportunities and give a fillip to the village self help movement.

19. It is submitted that plastic bags in drains were identified as major factors in severe flooding in Bangladesh in 1988 and 1998 . Subsequently, Government of Bangladesh imposed a ban in year 2002 for manufacture, sale and usage of plastic bags up to 150 micron thickness . The initiative had become a grand success there due to participation and involvement of people and since then there had been considerable improvement in municipal management and inland flood mitigation in that country. The initial fear of the plastic industry on financial and job losses was also found to be unfounded as the changeover to ecofriendly products revived production of paper and jute products. Now, this has generated large sustainable employment, not only for workers but also jute agriculture in Bangladesh which was earlier almost collapsing.

20. It is submitted that many European countries like Switzerland, Germany, Holland, Spain, Norway, Italy, Belgium, Australia, Ireland and many Federal Governments in United states have put a tax on poly bags. China which was once the biggest consumer of carry bags have imposed a ban and also prohibited shops and super markets from giving free bags to customers. Even developing or poor countries like South Africa, Eritrea, Rwanda, Somalia, Zanzibar, Tanzania, Kenya, and Uganda. have banned 20-30 micron thick carry bags and are seriously implementing the ban. Neighbouring countries like

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Bhutan, Nepal and Taiwan have banned poly bags. Government of Pakistan has also banned all carry bags upto 30 microns and black colour bags of any thickness, based on a firm direction from their High Court.

21. It is submitted that Government of Himachal Pradesh has implemented a ban of poly bags of less than 70 microns and size of 18” x 12” since year 2004.

In 1998, Government of Maharashtra tried to ban plastic bags after severe floods but the plastics industry lobbied successfully against the ban. But, in the wake of massive flooding in July 2005, when plastic bags blocked water drains and exacerbated the flooding which in over a thousand lives were lost, the Government subsequently banned the use and sale of all types of plastic bags.

West Bengal has banned poly bags up to 40 microns thickness and plastic cups less than 4” in height, with effect from June 2007. Government of Orissa has banned poly bags up to 20 microns from May 2008. Union Territory of Chandigarh has also banned on all types of plastic bags from 2nd October 2008

Now, Government of New Delhi has ordered a complete ban on the use, sale and storage of all kinds and thickness of plastic bags from 7th January 2009 and shopkeepers caught providing the bags could be fined upwards of 1 lakh rupees or up to 5 years of jail term. Many such bans in states like Orissa , New Delhi and countries like Pakistan have been made possible due to Judicial intervention. The complete ban by Government of Delhi was made possible based on inputs from a High Power committee appointed by the Honourable High Court of Delhi.

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22. It is submitted that the petitioner brought this issue by writing to the Tamilnadu State Pollution Control Board, the State Human Rights Commission but the authorities have not responded to the crisis at all.

23. It is submitted that this issue should not be viewed merely as a State's policy prerogative and but importantly as an issue affecting Fundamental rights, Human rights and health of the citizens, especially children of present and future generations, the flora, fauna and overall environment of the state and hence demands urgent affirmative action. The current situation in Tamilnadu is developing into unimaginable environmental disaster and only the right kind of intervention and direction from this Honourable Court can save the situation.

24. It is prayed that this Honourable Court may be pleased to issue suitable directions to the respondents to come out with appropriate rehabilitation package for those industries and workers who may be affected by a ban on manufacture and distribution of polythene carry bags and other single use plastic items to enable them switch over to business of similar products which are environmentally sustainable.

25. It is prayed that this Honourable Court may be pleased to issue suitable directions to the respondents to create a high awareness amongst all sections of the society about the need for a ban, the short term and long term negative consequences of not implementing the ban and the overall benefits to society and the future generation by strictly implementing such a ban.

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26. It is therefore prayed that this Honourable Court may be pleased to direct the respondents to ban manufacture, distribution and usage of all types of plastic carry bags irrespective of size and thickness and also single use plastic items like disposable cups, plates, sheets below the thickness of 150 microns as well as coloured pots, mugs etc meant for storing water and food made of recycled and toxic plastic, throughout the state of Tamilnadu and pass such other order or orders that this Honourable Court may deem just and necessary and thus render justice. .

**Solemnly affirmed at Chennai on
this 12th March 2009
and signed his name in my presence.**

Before me

Advocate Chennai.

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