

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

W. P. No. 3959 of 2009

A. Narayanan,
No. 7-C, Daffodil, Ceebros Gardens,
Arcot Road, Virugambakkam,
Chennai – 600 009.

Petitioner

Versus

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,
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy,
Chennai – 600 032.
4. The Commissioner,
Corporation of Chennai,
Ripon Buildings, EVR Salai,
Chennai – 600 003.
5. The Tamil Nadu Pongy Plastic Manufacturers
and Merchants' Association,
Rep by its Secretary,
No. 26, Choolai High Road,
Choolai, Chennai – 600 112.

Respondents

COUNTER AFFIDAVIT ON BEHALF OF THE FIFTH RESPONDENT

I, S. Radhakrishnan, son of Sennaiah, Hindu, aged about 40 years, having office at No. 26, Choolai High Road, Choolai, Chennai – 600 112, do hereby solemnly affirm and sincerely state as follows:

1. I am the Secretary of the fifth respondent association herein and as such am well acquainted with the facts of the case and competent to swear this affidavit.
2. This respondent has perused the affidavit filed by the petitioner in support of the above writ petition and denies each and every one of

the averments and allegations contained therein save those that are specifically admitted herein.

3. At the outset, this respondent states and submits that the above writ petition is liable to be dismissed *in limine* as being not maintainable as it seeks a relief which is not maintainable in law. The entire writ petition proceeds on the erroneous premise that the very manufacture, distribution and usage of virgin and recycled poly bags is the root cause for the entire environmental problem faced by the society. On the erroneous premise, the writ petition has gone to the extent of seeking a total ban on the manufacture, distribution and usage of all types of plastic carry bags irrespective of size and thickness and single use plastic items below the thickness of 150 microns as well as coloured pots, mugs etc., throughout the State of Tamil Nadu, which relief is clearly outside the scope of permissible use of plastic, stipulated in the Recycled Plastics Manufacture and Usage Rules, 1999, as amended in 2003 issued by the Government of India.
4. Before dealing with the merits of the issue, subject matter of the present proceeding, this respondent wishes to raise the following preliminary objections as to the very maintainability of the above writ petition.
5. **Writ petition is liable to be dismissed for non-joinder of proper and necessary parties:**

In the above writ petition, the petitioner is seeking a total ban on manufacture, distribution and usage of all types of plastic carry bags irrespective of size and thickness and single use plastic items below the thickness of 150 microns as well as coloured pots, mugs etc., through out the State of Tamil Nadu. In this connection, it is respectfully submitted that the Government of India, 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, framed Recycled Plastics (Manufacture and Usage) Rules, 1999, which was duly published in the Government of India Gazette on 2.9.1996. Under Rule 8 of the said Rules, the Government of India has already prescribed the minimum thickness of carry bags made of virgin plastics or recycled plastic shall be 20 microns. In the present writ petition, the petitioner is seeking a total ban on the manufacture, distribution and usage of all plastic carry bags upto 150 microns, which prayer clearly goes contrary to the permissible thickness as laid down by the Central Government. In view thereof, the petitioner ought to have impleaded the Union of India as a party to the writ petition. The petitioner, having failed to implead the Union of India, Ministry of Environment and Forests, the present writ petition is liable to be dismissed for non-joinder of proper and necessary parties.

6. **The present writ petition liable to be dismissed as it is tantamount to seeking a direction to the executive to introduce a legislation:**

- i. It is the contention of the petitioner that the State Government has introduced a Bill in 2002 proposing to ban manufacture, distribution, usage and throw of non-recyclable plastic materials throughout the Tamil Nadu, including carry bags, cups etc. Admittedly, the said Bill has already been referred by the State Legislature to a Select Committee and a decision in this regard is yet to be taken. Such being the factual position, the present attempt on the part of the petitioner herein, to seek a direction to completely ban manufacture, distribution and usage of all plastic items upto 150 microns is tantamount to an indirect attempt on the part of the petitioner to compel, by means of a

judicial order, to initiate or bring down a legislation against such use. In this regard, it is respectfully submitted that the Hon'ble Supreme Court rendered in ***State of U.P. Vs Parent of a Student (1985) 3 SCC 169*** at para 4 at page 175 has held as follows:

"But at the same time the court cannot usurp the functions assigned to the executive and the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law-making activities of the executive and the legislature."

- ii. In the present case, the petitioner herein is attempting to seek a judicial order from this Hon'ble Court to require the executive, the respondents 1 to 4 herein, to introduce a particular legislation to be brought into force without passing the same by the legislature. In fact, in the present writ petition, the petitioner is attempting to bring into a force a legislation which was not even the purport and intent of the Bill introduced in 2002 which is still pending before the Select Committee. As already stated, such a power of direction to the executive cannot be exercised by this Hon'ble Court and hence the present writ petition is liable to be dismissed *in limine* on this ground also.

7. **The writ petition is not maintainable as it is tantamount to seeking a judicial order of repeal of Recycled Plastics (Manufacture and Usage) Rules, 1999, without challenging the same:**

- i. It is respectfully submitted that, as already stated, the Union of India, 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, framed Recycled Plastics (Manufacture and Usage) Rules, 1999, which was duly published in the Government of India Gazette on 2.9.1996. Under Rule 8 of the said Rules, the Government of India has already prescribed the minimum thickness of carry bags made of virgin plastics or recycled plastic shall be 20 microns. The said rules are still in force. Such being the case, the present attempt on the part of the petitioner in seeking a total ban on manufacture, distribution and usage of all plastic materials upto 150 microns, without even challenging the aforesaid Rules framed by the Government of India, is tantamount to seeking a judicial order of repeal of the aforesaid rules without any challenge to the same which is clearly impermissible. Hence, the present writ petition is liable to be dismissed as not being maintainable on this ground as well.

- ii. By the present writ petition, the attempt on the part of the petitioner appears to be to bring forth a judicial legislation to completely ban manufacture, distribution and use of plastic upto 150 microns, by dispensing with the elaborate and consultative procedure that would otherwise precede a legislation. Such a prayer is inconsistent with the extant laws already passed by the Parliament. Needless to say, the legislative activity would involve policy making which, by its very nature, does not conform to the adjudicatory process in a court of law. It is therefore submitted that the present writ petition, in effect, seeks to distort the clear separation of powers between the three organs of the State viz., legislature, executive and judiciary.

iii. This respondent respectfully states and submits that the constitutional validity of an Act cannot be struck down on a mere apprehension of its abuse. In the present case, the petitioner, by seeking a Mandamus to direct the respondents to ban manufacture, distribution and use of all plastic items upto 150 microns, is attempting to have the Central Act viz., Municipal Solid Waste Management (Rules) struck down on the sole ground of its abuse. If the power already available under the Central Statute is exercised, there will be no room for any complaint whatsoever as alleged in the present writ petition or at all. On the contrary, to seek the State Legislature to supplant the existing rules and regulations under the central legislation is untenable.

iv. It is further respectfully submitted that the very prayer that is now sought for in the present writ petition, if allowed, would result in a situation whereby the already existing central statute viz., Municipal Solid Waste Management Rules and Recycled Plastics Manufacture and Usage Rules, 1999, as amended in 2003 and the state legislation proposed in the writ petition would result in operational incompatibility. In this connection, a reference may be made to the Judgment of the Hon'ble Supreme Court in **Tika Ramji and others Vs State of Uttar Pradesh and others AIR 1956 SC 676**, wherein the Hon'ble Supreme Court at page 699 at para 31, observed as follows:

"The Calcutta High Court in G.P. Stewart V. B.K. Roy Chaudhury, AIR 1939 Cal 628(R), had occasion to consider the meaning of repugnancy and B.N. Rau J, who delivered the judgment of the Court observed at page 632:

'It is sometimes said that two laws cannot be said to be property repugnant unless there is a direct conflict between the, as when one says 'do' and the

other 'don't', there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test; there may well be cases of repugnancy where both laws say 'don't but in different ways.

For example, one law may say, 'No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time' and another law may say, 'No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time'. Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified".

The learned Judge then discussed the various authorities which laid down the test of repugnancy in Australia, Canada and England and concluded at page 634:

'The principle deducible from the English cases, as from the Canadian cases, seems therefore to be the same as that enunciated by Isaacs, J. in the Australian 44 hour case (37 CLR 466(M)), if the dominant law has expressly or impliedly evinced its intention to cover the whole field, then a subordinate law in the same field is repugnant and therefore inoperative.'

In view of the above principles, if the prayer of Mandamus as prayed for by the writ petitioner is granted by this Hon'ble Court, the same would, with all due respect, make the central statute viz., "Municipal Solid Waste (Management and Handling) Rules, 2000 and Recycled Plastics Manufacture and Usage Rules, 1999, as amended in 2003 superfluous and a dead letter. Hence, it is most respectfully submitted that the prayer made in the writ petition ought to be rejected.

8. Without prejudice to the above preliminary objections as to the very maintainability of the writ petition, this respondent wishes to place the correct facts relating to the issue, subject matter of the present writ petition, as follows:

9. It is respectfully submitted that prior to the plastic era in the society, only conventional materials such as wood, paper, jute, glass, timber etc., were in use by the society for various purposes such as packaging and use as containers etc. In so far as packaging industry is concerned, these materials could be used only after an elaborate processing from their respective raw materials. For instance, for the purpose of using paper and cardboard boxes for packaging, the raw material viz., bamboo, timber etc., were required to undergo an elaborate process. Similarly, yet another packaging material viz., glass has to cross a lengthy process of manufacturing before it attained a final shape of a bottle for being used for packaging. Further, use of such materials had their own disadvantages which are as follows:

- i. They are fragile. Glass materials such as bottles required a very careful handling and they could not withstand heavy handling during transportation and consumes huge energy also.
- ii. Certain materials, such as paper, jute, card board boxes etc., could not withstand water, fire etc.
- iii. Wooden boxes which are used in packaging have more weight, thereby incurring more transportation cost, besides occupying more space.
- iv. The materials, once broken, cannot be used once again.
- v. Manufacture of paper, wooden boxes and other materials called for destruction of large number of trees, thereby resulting in ecological imbalance and Carbon-di-oxide emission in the atmosphere. To quote an instance, it was the past practice in Himachal Pradesh to pack the cultivated apples in wooden

crates which required large scale destruction of trees for the manufacture of wooden crates required for packing. With the advent of plastic usage, such apples are now being packing in plastic crates, which are reusable, thereby saving the trees from their large scale destruction, in turn, maintaining the ecological balance in the country.

10. In the above background, an alternative source for use by the society which would suitably replace the conventional materials was widely felt by the society. The advancement in science and technology that has taken place during the last century blessed the society with an alternative source viz., the plastic which consists of polymers. Though the use of plastics was only minimal during the initial stages of its introduction, it gained momentum and started replacing the conventional materials of paper, cardboard, jute, wooden and iron boxes and glass materials. Such momentum and the acceptance of the importance of and necessity for plastic in the society are attributable to the following reasons:

- a. Preserves land, water and forest resources: Plastic has also been playing a major role in tackling water distribution crisis, with affordable, easily constructed piping as well as storage tanks, providing solutions to clean water shortages.
- b. Packaging is the most visible use of plastics. Previously, packaging was heavy, often fragile and costly. Plastics have revolutionised the packaging by providing light, strong, flexible packaging materials. It is pertinent to state that the use of plastics in packaging reduces the overall packaging weight by 300 per cent. In our country, the use of plastics in the packaging industry amounts to about 30% of the total

consumption of plastics, with packaging material for packing water such as PET bottles etc., constituting a major portion.

- c. Plastic packaging also helps preserve food. The traditional packaging materials such as jute, paper, wood, cardboard, tinsplate, glasswares etc. were widely replaced with the advent of plastics due to many inherent advantages, which are as below:
 - i. They are light in weight when compared to conventional packaging materials.
 - ii. They are non-toxic, non-corrosive, and resistant to chemicals and water.
 - iii. Plastic packaging materials can be sterilisable which is an important requirement for packaging in medical field.
 - iv. Plastics consume low energy while converting raw materials into finished product.
 - v. Plastics protect food, pharmaceuticals and detergents due to its good barrier properties.
11. In fact, plastics have permeated every facet of human life, including but not limited to agriculture and water consumption, building construction, communication, small and bulk packaging, education, medicine, transportation, defence, consumer durables. One of the reasons for great popularity of plastics is due to tremendous range of properties exhibited by them because of the ease of processing.
12. The global consumption of plastics, which was in the order of 130 Million M.Tons per annum (MMTPA) in 2003, is estimated to be in the order of 205 MMTPA by the year 2010. In India, the consumption of plastic is a mere 3% of the global consumption of plastic.

13. The rapid development in all walks of life, more particularly in the field of computers, transportation, advancement of surgical medicine etc., would not have been possible without plastics. Continuous technological innovation by the plastics industry has resulted in the development of more efficient, light weight and adaptable forms of plastic materials, thereby a leading role being played by plastic in all fields, including packaging industry.
14. It is respectfully submitted that even cost-wise, the use of plastic materials has been proved to be cost effective. For instance, prior to the introduction of plastic carry bags and plastic packing materials, paper was mainly used for the purpose of packing in shops, malls, grocery shops etc. In most of the cases, such paper materials were found to be unfit for reuse in view of their fragile nature. Even in cases where such used paper materials were put to recycling, the same could not be resorted to more than two or three times. Even preservation of such materials by the household consumers and putting them to reuse were proved to be ineffective. On the contrary, after introduction of plastic materials for packing, the consumers at large and in particular household consumers started cultivating a habit of preserving plastic carry bags and putting them to reuse several times. Such practice on the part of the consuming public has not only saved the country from ecological imbalance that would have resulted in large scale destruction of trees for manufacture of paper, card board etc., but has also greatly reduced the cost of packing in as much as the carry bags and other reusable plastic items are preserved and reused any number of time.
15. The cost effectiveness of the plastic packaging when compared to the cost that may have to be incurred for packaging without use of plastics is briefly stated herebelow:

Particulars	With plastic	Without plastic
Cost of packaging	100%	390%
Energy consumption	100%	260%
Volume of waste	100%	210%
Weight of packaging	100%	310%

16. In this scenario, innumerable entrepreneurs evinced interest in the manufacture of plastic materials and the plastic packaging materials industry, such as manufacture of carry bags, disposable cups, plates, plastic wrappers, spreads etc., has been one of the major avenue for such entrepreneurs. As on date, there are about 70,000 small, medium and large scale manufactures of plastic packaging materials all over the country out of which more than 10,000 units, including the members of this respondent association, numbering about 7,500, are located in the State of Tamil Nadu, providing direct employment to about 2 lakhs families. Besides the same, there are more than 3 lakhs persons in the State of Tamil Nadu, who are eking out their livelihood by indirectly depending upon the plastic industry. In addition to the above, the units engaged in the manufacture of plastic materials in the State of Tamil Nadu also manufacture plastic materials for export not only to other states in the country but also to foreign countries, thereby earning considerable foreign exchange for the country.
17. In the background, the Government while encouraging the use of plastics in all walks of life also duly felt the importance of ensuring that proper safeguards are taken for proper and efficient disposal of plastic waste so that they do not have any adverse environmental impact. With this in mind, the Government of India framed various rules regulating the use of plastics in general, more particularly, regulating the use of recycled plastics in the packaging industry.

18. In the year 1998, the Government of India, 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, framed Recycled Plastics (Manufacture and Usage) Rules, 1999, which was duly published in the Government of India Gazette on 2.9.1999, vide S.O.705(E) dated 20.11.1998. Under Rule 4 of the said Rules, no vendor shall use carry bags or containers made of recycled plastics for storing, carrying, dispensing or packaging of foodstuffs. Under Rule 5(a) of the said Rules, carry bags and containers shall be made of virgin plastic only and shall be in natural shade or white. Under Rule 5(b) of the said Rules, carry bags and containers made of recycled plastics and used for purposes other than storing and packaging foodstuff shall be manufactured using pigments and colourants as per IS:9833:1981 entitled 'List of pigments and colourants for use in plastics in contact with foodstuffs, pharmaceuticals and drinking water. In terms of Rule 6 of the said Rules, recycling of plastics shall be undertaken strictly in accordance with BIS specification IS 14534:1998 entitled 'Guidelines for Recycling of Plastics". In terms of Rule 8 of the said Rules, the minimum thickness of carry bags made of virgin plastics or recycled plastics shall not be less than 20 microns. In terms of Rule 3(b) of the said Rules, the District Collector/Deputy Commissioner of the concerned district, where no such authority has been constituted by the State Government under any law regarding non-biodegradable garbage, shall be the prescribed authority for enforcement of the provisions of the rules related to the use, collection, segregation, transportation and disposal of plastic materials.
19. In the meanwhile, the matter relating to municipal solid waste management, which also included plastics waste management,

engaged the attention of the Hon'ble Supreme Court when a Public Interest Litigation in W.P. No. 888 of 1996 was filed by one Mrs. Almitra Patel, seeking directions from the Hon'ble Supreme Court to urban local bodies as well as the Government of India and State Governments in the matter of improving Solid Waste Management practices expeditiously. In the said writ petition, the Hon'ble Supreme Court, vide its order dated 16.1.1998, was pleased to constitute a Committee to look into all aspects of solid waste management in the class I cities of India and to submit a report to the Hon'ble Supreme Court on the same. Pursuant to the said direction, the Committee headed by the Municipal Commissioner, Calcutta Municipal Corporation, after a detailed study in the matter, submitted a detailed report to the Hon'ble Supreme Court in March 1999, making its recommendation in the matter pertaining to solid waste management in class I cities in India. The said Committee, after a detailed examination of the issue, made its recommendation, under Chapter 3 of the Report, for the modernization of solid waste management practices in class I cities in India which, *inter alia*, included the following:

- i. No waste shall be thrown on the streets, footpaths, open spaces, drains or water bodies.
- ii. Waste shall be stored at the source of waste generation in two bins/bags, one for food waste/bio-degradable waste and another for recyclable waste such as papers, plastics, metal, glass, rags etc.
- iii. Waste such as used batteries, containers for chemicals and pesticides, discarded medicines and other toxic or hazardous

household waste, if and when produced, should be kept separately from the above two streams of waste.

- iv. The local bodies shall direct households, shops and establishment not to mix recyclable waste with domestic food/bio-degradable waste and instead keep the recyclable/non-biodegradable waste in a separate bin or bag at the source of waste generation.
- v. While domestic, trade and institutional food/bio-degradable waste shall be collected from the doorstep or from the community bin on daily basis, recyclable waste material/non-biodegradable waste other than toxic and hazardous waste shall be collected from the source of waste generation at the frequency and in the manner notified by the local body from time to time. (Modus operandi for such collection has also been set out in Para 3.4 in Chapter 3 of the Committee's report).
- vi. Adequate number of litter bins shall be placed in urban areas at railway stations, bus stations, market places, parks and gardens and important commercial streets to prevent the littering of streets and public places.
- vii. All public roads, streets, lanes and bye-lanes having habitation or commercial activity on one or both sides of the street shall be cleaned on a daily basis, assigning a clearly demarcated area to each sweeper, and street sweepings shall be deposited in the container placed at the temporary waste storage depot established in the city.
- viii. Transportation of waste shall be done regularly to ensure that the containers/trolleys and dustbin sites are cleared before they start over-flowing.

- ix. Only rejects and domestic hazardous waste (other than organic/bio-degradable waste) shall be carefully landfilled. Bio-medical waste shall be disposed of as per the Bio-Medical Waste (Management and Handling) Rules, 1998.
20. The aforesaid Committee appointed by the Hon'ble Supreme Court, under Chapter 11 of the Report, classified all its recommendations under the following three heads:
- i. Mandatory recommendations for citizens/associations.
 - ii. Mandatory recommendations for Local Bodies/State Governments.
 - iii. Discretionary recommendations for Urban Local Bodies.

It is pertinent to state here that all the aforesaid recommendations, which are only illustrative, were classified by the Committee under the mandatory recommendations either to the citizens/association or to the Local Bodies/State Governments.

21. Thereafter, the Government of India, in exercise of the powers conferred by Section 3, 6 and 25 of the Environment (Protection) Act, 1986, also framed a rule called "Municipal Solid Waste (Management and Handling) Rules, 2000 (hereinafter referred to as Municipal Waste Management Rules'), which was published in the Official Gazette on 25.9.2000, vide S.O. 908(E). These rules are aimed at regulating the issue of municipal solid waste management and handling (including plastics wastes) which prescribed the method of collection, storage, transportation, segregation and disposal of municipal wastes.
22. Rule 4 of the Municipal Solid Waste Management Rules fixes the responsibility on every municipal authority for implementation of the

provisions of the said Rules and for effective collection, storage, segregation, transportation and disposal of solid waste within its territory, which is extracted herebelow:

"4. Responsibility of municipal authority.- (1) Every municipal authority shall, within the territorial area of the municipality, be responsible for the implementation of the provisions of these rules, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes.

(2) The municipal authority or an operator of a facility shall make an application in **Form -I**, for grant of authorisation for setting up waste processing and disposal facility including landfills from the State Board of the Committee in order to comply with the implementation of the programme laid down in **Schedule - I**.

(3) The municipal authority shall comply with these rules as per the implementation schedule laid down in **Schedule I**

(4) The municipal authority shall furnish its annual report in **Form-II.-**

(a) to the Secretary-in charge of the Department of Urban Development of the concerned State or as the case may be, of the Union territory, in case of a metropolitan city; or

(b) to the District Magistrate or the Deputy Commissioner concerned in case of all other towns and cities,

with a copy to the State Board or the committee on or before the 30th day of June every year."

23. It is respectfully submitted that under Rule 5 of the Waste Management Rules, Secretary in charge of the Department of Urban Development of the concerned State or the District Magistrate or the Deputy Commissioner of the concerned district, as the case may be, shall have the overall responsibility for the enforcement of the provisions of the rules.

24. Rule 7 of the Municipal Waste Management Rules states as follows:

"7. Management of municipal solid wastes.- (1) Any municipal solid waste generated in a city or a town, shall be managed and handled in accordance with the compliance criteria and the procedure laid down in **Schedule-II**.

*(2) The waste processing and disposal facilities to be set up by the municipal authority on their own or through an operator of a facility shall meet the specifications and standards as specified in **Schedules III and IV.**"*

25. Schedule - II to the Solid Waste Management Rules specifies a detailed parameter and the compliance criteria in respect of collection, segregation, storage, processing and disposal of municipal solid waste. Some of the relevant compliance criteria specified in the said schedule are summarized herebelow.

- i. Littering of municipal solid waste shall be prohibited in cities, towns and in urban areas. To prohibit littering and facilitate compliance, steps shall be taken for organizing house-to house collection of municipal solid wastes through any of the methods, like community bin collection (central bin), house-to-house collection, collection on regular pre-informed timings and scheduling by using bell ringing of musical vehicle. [Clause 1(1)(i) of Schedule II]
- ii. Devising of collection of waste from slums and squatter areas or localities including hotels, restaurants, office complexes and commercial areas. [Clause 1(1)(II) of Schedule II]
- iii. Collected wastes from residential and other areas shall be transferred to community bin by hand-driven containerized carts or other small vehicles. [Clause 1(1)(v) of Schedule II]
- iv. Stray animals shall not be allowed to move around waste storage facilities or at any other place in the city or town and shall be managed in accordance with the State laws [Clause 1(1)(viii) of Schedule II]

- v. In order to encourage the citizens, municipal authority shall organize awareness programmes for segregation of wastes and shall promote recycling or reuse of segregated materials. [Clause 2 of Schedule II]
- vi. Storage facilities to be set up by municipal authorities or any other agency shall be so designed that wastes stored are not exposed to open atmosphere and shall be aesthetically acceptable and user-friendly. [Clause 2 of Schedule – II]
- vii. Vehicles used for transportation of wastes shall be covered. Waste should not be visible to public, nor exposed to open environment preventing their scattering. The storage facilities set up by municipal authorities shall be daily attended for clearing of wastes and they shall be cleaned before they start overflowing. [Clause 4 of Schedule II]
- viii. Municipal authorities shall adopt suitable technology or combination of such technologies to make use of wastes so as to minimize burden of landfill. Mixed waste containing recoverable resources shall follow the route of recycling. Incineration with or without energy recovery including pelletisation can also be used for processing wastes in specific areas. [Clause 5 of Schedule – II]
- ix. For the purpose of disposal of municipal solid wastes, land filling shall be restricted to non-biogradable, inert waste and other waste that are not suitable either for recycling or for biological processing. Land filling of mixed waste shall be avoided unless the same is found unsuitable for waste processing.
- x. The land fill site shall be away from habitation clusters. They shall be fenced or hedged and provided with proper gate and shall be

well protected to prevent entry of unauthorised persons or stray animals.

26. Thereafter, some State Governments such as Delhi, Haryana, Himachal Pradesh, Rajasthan, Sikkim and Utter Pradesh have also prescribed Rules in the matter of plastic waste management and in the matter of manufacture, sale and usage of plastics and on the control of non-biodegradable wastes. During July 2001, the Government of India, constituted a Committee on Plastics Waste Disposal, under the Chairman ship of Ranganath Mishra, in order to examine on the following issues:

- i. To examine on various environmental issues related to indiscriminate littering of plastics waste with particular reference to disposal.
- ii. To examine various regulations on plastics waste disposal brought out by the Central and State Governments and to suggest appropriate measures for collection, segregation, treatment and disposal of plastics waste and
- iii. To consider any other related issues as the committee may deem fit.

27. The aforesaid Committee had detailed deliberations and heard the views of various departments, agencies, organizations and individuals concerning plastic industries and environment during various meetings held by the committee. During such meetings, the representatives of the Indian Association of PET Manufacturers as well as the Indian Centre for Plastics in the Environment (ICPE), placed their views before the Committee, which included the following:

- i. Annually, 16 billion litres of milk are being sold in plastic pouches, catering to the needs of about 45 million families and 0.8 M.Tons of PE pouches are used for this purpose.
- ii. Proper implementation of Municipal Solid Wastes Rules and Recycled Plastics (Manufacture and Usage) Rules, 1999 and participation of local bodies/civil authorities is required.
- iii. For better recycling, there is need for industry initiatives to use good technologies, better environment and training to workers. Government's initiatives are also needed towards allocation of dedicated recycling zone/park with common waste management system, buy-back scheme and preferential excise duty.
- iv. State/Local authorities should provide infrastructure for waste management particularly for promoting waste segregation and its collection for recycling as per Municipal Solid Waster Rules.

28. Before the said committee, Dr. Indrani Chandrasekaran, Director, Ministry of Environment and Forests also submitted that it was proposed by the Ministry to bring out Recycled Plastics (Manufacture and Usage) Amendment Rules as per which, restriction on the manufacture, distribution and sale of carry bags made of virgin or recycled plastics below the prescribed size was stipulated and that carry bags shall not be of or below 8/12 inches (20 x 30 cms) in size. The Ministry also informed the said Committee that it has proposed to give a direction to the following effect:

- i. The authorities concerned at the State level should ensure environmental safeguards through waste prevention, reuse of packaging materials, return collection and recovery system as also marking and Identification system;

- ii. States should take action for collection of Statewise data on plastics packaging and packaging waste for their proper management; and
 - iii. States should notify norms/guidelines for the management of plastics packaging and packaging waste.
29. After elaborate deliberations on the issue, the aforesaid Committee gave its recommendations to the Government of India in February 2002, which are, *inter alia*, as follows:
- i. To prevent indiscriminate use and littering of plastics carry bags of smaller size and thickness, the Ministry of Environment and Forests may consider imposition of restriction on manufacture, storage, sale and use of such plastics carry bags through the Environment (Protection) Act, so that it becomes applicable throughout the country. However, some members did not agree to the recommendations and according to them complete ban on plastics carry bags will not be a desirable step. Instead, restriction may be imposed only on such carry bags with size of and less than 8/12". (emphasis supplied by this respondent).
 - ii. The concerned agencies at the State level should be asked to ensure implementation of the guidelines for plastics packaging and packaging wastes.
 - iii. Regulatory measures should be provided for discouraging the public from littering and powers should include compounding and imposing on-the-spot fines. The local statutes should incorporate appropriate provisions to this effect.

- iv. Import of plastic wastes should be banned and the government may formulate the policy accordingly.
- v. Plastics industry to be made responsible to retrieve empty packaging material should be asked to have proper disposal system. A scheme for buy back of plastic containers, plastic product including laminated items which was accepted by the representatives of the trade should be evolved by the plastics industry within six months. In case such a scheme is not formulated by the industry within the stipulated time, the government may impose regulatory measures.
- vi. Polyethylene Terephthalate (PET) bottles manufacturers' Association and bulk users should establish collection centres. The industry should establish requisite collection centre for collection of at least 90% of bottles in the first place and implement the scheme within 6 months failing which a deposit refund scheme @ Re.1.0 per bottle should be imposed.
- vii. Besides PET bottles, collection centre and proper recycling facilities should also be established by the concerned industry in consultation with the local bodies within one year.
- viii. R & D programmes relating to use of plastics waste in various applications like construction of roads etc., should be worked out in collaboration with R & D institutions.
- ix. The Government should formulate within six months a programme for creating mass awareness to reduce use of plastics at source and to regulate indiscriminate disposal of plastics wastes.
- x. Campaigns should be organized to create awareness and to involve community involvement to prevent littering of plastics

waste. Awareness programme should, in general, aim at providing consumers with all necessary information (including pros and cons on manufacture and use of plastics), disposal etc., and allowing public for informed choice.

- xi. Local bodies should be geared up to tackle the problem and they should provide proper bins for segregated plastics and there should be mechanized handling system along with compacting to reduce the volume. The local bodies should plan modalities for mobilization of resources required for such purpose and expenses should be shared by the concerned State authorities and beneficiaries.
- xii. State Governments need to implement the guidelines provided by MoEF for solid waste management and government bodies need to work together for streamlining collection, segregation and recycling of post consumer plastics wastes.
- xiii. The local bodies in association with the industry and citizen groups should ensure that plastic wastes are segregated and collected separately.
- xiv. Notwithstanding anything contained in the recommendations of the Committee, State Pollution Control Boards/Committees or the local bodies may frame appropriate schemes to regulate manufacture, use and disposal of plastics products and materials. However, such a scheme shall not be in derogation of measures suggested in the aforesaid recommendations and rules thereof. **(emphasis supplied by this respondent).**

30. It is respectfully submitted after submission of the recommendations by the Committee on Plastics Waste Disposal, the Government of India

issued a Notification dated 17.6.2003 issued in S.O. 698(E) whereunder Recycled Plastics Manufacture and Usage (Amendment) Rules, 2003 came into force. Under Rule 4 of the Amendment Rules, 2003 imposed restriction on manufacture, sale, distribution and use of virgin and recycled plastic carry bags and recycled plastic containers, which is as follows:

"4. Restriction on manufacture, sale, distribution and use of virgin and recycled plastic carry bags and recycled plastic containers.-

(1) No person shall manufacture, stock, distribute or sell carry bags made of virgin or recycled plastic bags which are less than 8x12 inches {20x30 cms} in size and which do not conform the minimum thickness specified in rule 8.

(2) No vendor shall use carry bags made of recycled plastic for storing, carrying, dispensing or packaging of foodstuffs.

(3) No vendor shall use containers made of recycled plastics for storing, carrying, dispensing or packaging of foodstuffs.

Explanation.- For the purpose of this rule, the minimum weight of 50 carry bags made of virgin or recycled plastics shall be 105 gms. plus or minus 5% variation and the carry bags or larger size shall be of proportionate increase in weight."

It is pertinent to state that under Rule 8 of the Recycled Plastics Manufacture, Sale and Usage Rules 1999, the minimum thickness of carry bags made of virgin plastics or recycled plastics shall be 20 microns.

31. It is submitted that the under Section 2 of the Recycled Plastics Manufacture and Usage (Amendment) Rules, 2003, the provisions of Rules 4 and 8 shall not apply to the manufacture of carry bags exclusively for export purpose, against an order for export received by the owner or occupier of the concerned manufacturing unit.

32. It is respectfully submitted that, in India, about 70% of the plastic wastes are recycled as against the average of 30% in the rest of the world. This is mainly on account of the poor living condition of the

people and unemployment problem prevailing in India. Almost all plastic materials except plastic materials which are rigidly fixed (such as PVC pipes, underground plastic cables and pipes etc.) are recyclable. In particular, all the plastic materials referred to by the petitioner in the present writ petition are recyclable. It is pertinent to state that there are about 1,000 industries in Tamil Nadu, which are engaged in the business of recycling of plastic materials, out of which about 200 units are located in the city of Chennai. More than 50% of these industries are now without any recycling activities on account of non-availability of materials for recycling. If the provisions of the Solid Waster Management Rules framed by the Government of India are implemented effectively by the authorities concerned, the same would not only redress the alleged grievance of the petitioner but would also enable all the aforesaid recycling industries to function effectively, thereby improving the economy of the state also.

33. It is respectfully submitted that large volumes of plastic bags are being regularly exported from India to various countries such as Germany etc. In those countries, the situation, which is alleged by the petitioner to be prevailing in Tamil Nadu, is not prevalent. This is for the reason that solid waste in those countries is managed efficiently with proper awareness and active cooperation from the general public. This singular fact would itself demonstrate the fact that it is only the improper management of solid waste that is attributable to the present situation. Hence, the need of the hour is only the proper and efficient management of solid waste in the state and not a total ban on manufacture of plastics as is wrongly sought to be pursued by the petitioner in the present writ petition. The problem lies only in the enforcement of the existing law and not in introducing any law without the willingness to enforce the existing laws.

34. This respondent further states and submits that over the past decade, use of plastic carry bags has been under review in several countries all over the world. However, none of the countries have banned the manufacture and/or use of plastic carry bags. On the contrary, some countries have come out with only regulatory measures in the use of such items. This fact is evident from the following table:

Country	Measures undertaken
Australia	Customers are required to pay for plastic bags in some states.
Brazil	Plastic bags are not banned. Multitask bags are available.
Canada	The Government called for 50% reduction in use of plastics bags in 5 years.
China	There is a ban on plastics having a thickness of less than 25 microns. In some provinces, the customers are required to pay for the bags.
Denmark	There is no ban on plastic bags. However, a Green Tax on retailers is levied at DKK 22 per Kg of plastic bags. Customers have to pay for the bag.
Finland	There is no ban. However, there is a levy on plastic bags which has to be paid by the customers.
France	There is a proposal to impose ban on plastic bags. However, no decision has been taken by Government in this regard.
Germany	There is no ban on plastic bags. However, in all large supermarkets, customers have to pay for the bags ranging from Eu 0.2 to 0.5.
Hongkong	No ban on plastic bags. There is a levy on plastic bags and the customers are required to pay for the bags.
Iceland	There is no ban on plastics. There is only a levy of Eu 2 per bag.
Ireland	Plastic bags are not banned. There is a levy on plastic bags.
Italy	Plastic bags are not banned. There is a levy on all packaging materials.

Japan	There is no ban on plastic bags. There is a plan to impose a levy on plastic bags.
Kenya	There is a ban on plastics bags having a thickness of less than 30 microns.
The Netherlands	There is no ban. Customers have to pay Eu 0.2 per thick bag.
Newzealand	There is no ban on plastic bags.
Russia	No ban on plastic bags.
Scotland	There is no ban on plastic bags. The Authorities are considering imposition of levy on plastic bags.
South Africa	There is a ban on plastics bags having thickness less than 24 microns. There is also a levy on plastic bags.
Switzerland	Plastic bags are not banned. Customers have to pay for bags in supermarkets.
United Kingdom	Plastic bags are not banned. Customers have to pay for the bags.
U.S.A.	Plastic bags are not banned. In March 2007, the city of San Francisco passed an ordinance effectively banning use of plastic grocery bags at supermarkets and large pharmacies and directed the supermarkets and large malls to use biodegradable plastic bags. However, in August 2008, the California Court struck down the ban on plastic carry bags and directed the authorities to conduct further environmental impact review on the issue. While in Alaska, plastics bags are banned only for about 30 commodities, in some other states, customers are required to pay for the plastic bags.

It is thus evident from the above that in almost the entire world, there is no ban on the manufacture and use of plastics bags and what is being regulated is only the use of such bags at consumer level. It is also amply evident from the above that almost all the countries in the world have rightly concluded that there cannot be a total ban on the manufacture and use of plastics.

35. This respondent further states that even as per various studies conducted by environmentalists, the environmental impact that may

be caused due to use of plastic bags is always less when compared to the impact that may be caused by use of paper bags. In this regard, it is submitted that, in the year 2007, after the passing of an ordinance effectively banning the use of plastic grocery bags at supermarkets and large pharmacies (of course the said ordinance was subsequently struck down by the Hon'ble California Court), a study was undertaken by the Editors of the ULS Report which revealed the following:

"The evidence does not support conventional wisdom that paper bags are a more environmentally sustainable alternative than plastic bags. While this is certainly counterintuitive for many people, relevant facts include the following:

1. *Plastic bags generate 60% less greenhouse gas emissions than uncomposted paper bags and 79% less greenhouse gas emissions than composted paper bags. The plastic bags generate 3,097 tons of CO₂ equivalent per 100 million bags while uncomposted paper bags generate 7,621 tons and composted paper bags generate 14,558 tons per 100 million bags produced.*
2. *Plastic bags consume less than 4% of the water needed to make paper bags. It takes 5,527 cubic meters of water to produce 100 million plastic bags versus 145,279 cubic meters of water to produce 100 million paper bags.*
3. *Plastic grocery bags consume 40% less energy during production and generate 80% less solid waste than paper bags. Significantly, even though traditional disposable plastic bags are produced from fossil fuels, the total non-renewable energy consumed during their lifecycle is no greater than the non-renewable energy consumed during the lifecycle of paper and biodegradable plastic bags.*
4. *Paper sacks generate 70 percent more air and 50 times more water pollutants than plastic bags.*
5. *It takes 91 percent less energy to recycle a pound of plastic than it takes to recycle a pound of paper.*
6. *After three uses, reusable plastic bags are superior to all types of disposable bags – paper, polyethylene and compostable plastic – across all significant environmental indicators."*

The conclusions/actions indicated in Para V of the ULS Report are relevant for the case on hand now, which is extracted herebelow:

"The conclusion to be drawn about how to reduce the environmental impacts and litter associated with grocery bags is very much in line with both longstanding EPA guidelines and the ULS Report philosophy: the issue is not paper or plastic, but rather finding ways to reduce, reuse, and recycle both of them – in that order. By putting more items in fewer bags, avoiding double bagging, switching to durable tote bags and reusing and recycling disposable bags, significant reductions in material and non-renewable energy consumption, pollution, solid waste, greenhouse gas emissions and litter will occur.

And, while recycling can help save resources, its real value lies in the reduction of greenhouse gas emissions and the minimization of waste going to landfills. Also, recycling helps reduce litter as bags are contained and stored. Containment reduces the potential for them to be left in open spaces, where they become eyesores."

The above findings squarely applies to the facts and circumstances of the present case and all that needed in our country is to contain the littering, minimizing the plastic wastes going to landfills, by proper and effective municipal solid waste management programme and in any event, not by total ban on the manufacture of plastic bags and other items as wrongly contended by the petitioner.

36. The facts and the legal provisions narrated hereinabove, clearly demonstrates beyond any doubt the following:
- i. The use of plastics is only advantageous to the society.
 - ii. The use of plastic materials, especially carry bags and other packaging materials cannot be banned altogether.
 - iii. Plastic materials are cost effective and easy to handle when compared to conventional packaging materials such as papers, cardboards, jute bags, wooden packs etc.
 - iv. Plastic materials consume less energy during their manufacture when compared to the manufacture of paper, glass materials etc.

v. Emissions that arise during the manufacture of plastic is less than the emissions that arise during the manufacture of glass and paper items.

vi. Any altogether ban on the manufacture of plastic carry bags and other items and replacing the same with paper products will put reverse the country's economic and industrial development besides leading to increased destruction of trees in the country.

37. While this being the position, the petitioner has come before this Hon'ble Court by portraying a picture as though the manufacture plastic materials, including carry bags, glasses, cups, plastic coated paper plates, forks, spoons etc., itself is wrong and harmful to the society and on that basis, the petitioner is trying to seek a direction for a total ban on all plastic materials below 150 microns, when in fact, the Rules as prescribed by the Central Government clearly permit manufacture, sale and use of plastics items which are 20 microns and above. A bare perusal of the affidavit filed in the above writ petition clearly reveals the fact that the entire alleged grievances of the petitioner is only against the improper treatment and disposal of plastics wastes and garbages. Such being the case, the petitioner cannot seek a prayer to altogether ban the very production of plastics materials upto 150 microns. In the light of the fact that manufacture, sale and use of carry bags and containers made of virgin plastics, which are 20 microns and above are permitted under Rules 4, 5 and 8 of the Recycled Plastics Manufacture and Usage Rules, 1999, as amended in 2003, the present attempt on the part of the petitioner in seek to ban manufacture of plastic carry bags and other plastics materials upto 150 microns is clearly contrary to law. Further, in the absence of any challenge to the aforesaid Rules, the prayer as sought for in the above writ petition is not maintainable. This respondent

respectfully states and submits that in compliance with the aforesaid Rules, the members of this respondent association do not manufacture any plastics materials which have a thickness below 20 microns, save and except for the purpose of export.

38. It is further submitted that on 30.5.2003, the Corporation of Chennai, the fourth respondent herein, floated a tender for sale of mixed plastic waste which are collected and segregated from the garbage collected within the corporation limits of Chennai. This respondent also participated in the said tender process and became the successful bidder and duly paid a sum of Rs.10,000/- towards security deposit, vide Pay Order No. 8979095 dated 4.8.2003 on Punjab National Bank. In addition thereto, the petitioner also made a payment of a sum of Rs. 6,250/- and Rs.1,250/- on 28.5.2003 and 18.8.2003 respectively, aggregating a sum of Rs.7,400/- towards advance payment for purchase of mixed plastic waste. In terms of the tender conditions, the fourth respondent was liable to supply mixed plastic waste that are collected through garbage collection centres in the city, for being recycled by the members of the petitioner association. However, the fourth respondent completely failed to supply any mixed plastic waste and even the repeated letters from this respondent to the fourth respondent for supply of mixed plastic waste had not evoked any response from the fourth respondent, this respondent was compelled to seek refund of the security deposit and the advance payment already paid by it while participating in the tender process. This singular instance would itself demonstrate the fact that it is only the improper or non-implementation of the provisions of the Municipal Solid Waste Managements Rules which is the root cause for the present situation. This being the position, the said improper or non-implementation of the rules on the part of the authorities cannot be

sourcing of showing way out for innumerable plastic industries and their employees.

39. In respect of the problems stated by the petitioner in the affidavit in relation to collection, segregation and disposal of the plastics wastes, it is for the other respondents authorities to deal with the said issue in accordance with the Municipal Solid Wastes (Management and Handling) Rules, 2000. However, as responsible citizens, the members of this respondent association are always ready and willing to extend their wholehearted cooperation to the other respondents in this regard. However, the same cannot in any manner take away the fundamental right guaranteed to the members of this respondent association under Article 19(1)(g) of the Constitution of India, especially when they are already complying with the provisions of the Recycled Plastics Manufacture and Usage Rules 1999. In view thereof, the petitioner has not justification to seek any prayer contrary to the said Rules and hence the writ petition is liable to be dismissed as not maintainable.

40. Without prejudice to the above contentions, this respondent is now setting forth its parawise remarks to the affidavit filed by the petitioner in support of the above writ petition.

Para 1 The contents of this para are matters of record.

Paras 2 The contents of these paras relate to the petitioner and
and 3 not within the knowledge of this respondents. No
comment.

Para 4 For the reasons already set out in the preliminary objections and elsewhere herein above, the very writ petition in public interest is not maintainable.

Para 5 In this para, the petitioner is trying to portray a picture as though the Bill introduced by the Government of Tamil Nadu in 2002 proposed to ban manufacture, distribution and usage and throw of non-recyclable plastic materials throughout Tamil Nadu, including carry bags, cups etc, which is incorrect and misleading. Even as per the documents filed by the petitioner in the above writ petition, what is contemplated under Section 4 of the proposed Bill is that *'no person shall sell, store, transport or use any non-reusable carry bag, cup, tumbler or plate made of, or containing, plastic and such other article as may be notified by the Government in this behalf'*. This section does not, at any rate, contemplated any ban on manufacture of such item, as sought to be wrongly projected by the petitioner. Further, admittedly, the said bill has already been referred to a Select Committee and a decision in this regard is yet to be taken. Therefore, the petitioner cannot, at any rate, seek a direction from this Hon'ble Court to the Government to take a decision on a particular line in as much as the decision making power of the Government cannot be directed to be exercised in a particular manner.

Para 6 The contents of this para are not within the knowledge of this respondent. It is however submitted that the contents in this para that the proposal referred to in this para has not been made into a Bill till date is wholly incorrect in for the reason that even according to the petitioner's contention in para 5, such a Bill has already

been introduced in 2002 and has been referred to the Select Committee and a decision in this regard is stated to be pending.

Para 7 The contents of this para are matters of record. It is however submitted that under the Recycled Plastics Manufacture and Usage Rules, 1999 as amended in 2003, only the plastic carry bags and recycled plastic containers which are less than 8X12 inches (20x30 cms) and having a thickness of less than 20 microns are prohibited from manufacture or sale in the country, except for export purpose. Hence, there cannot be any ban or restriction on the manufacture of plastic items having a thickness of 20 microns and above.

Para 8 The contents of this para are incorrect and baseless. The notification referred to in this para, viz., Recycled Plastics Manufacture and Usage Rules, 1999, as amended, is being followed in letter and spirit by the plastic manufacturers, such as the members of this respondent association, in the state of Tamil Nadu and they are manufacturing plastic carry bags and other items strictly in conformity with the said Rules. Hence, there is no basis for the allegation of rampant manufacture of the plastic items. In so far as the issue relating to indiscriminate disposal of poly bags throughout the state is concerned, it is for the other respondents authorities to take suitable steps for the strict adherence of the rules laid down under the Municipal Solid Waste Management Rules, 2000 and the members of

this respondent, as true citizens, are always ready and willing to extend their fullest cooperation in respect of disposal of plastics wastes however, without prejudice to their right of manufacture of plastic items as conferred under the Recycled Plastics Manufacture and Usage Rules, 1999, as amended.

Para 9 The contents of this para are denied as false and misleading and the petitioner is put to strict proof of the same. The allegation that toxic chemicals are most frequently released during the production of plastic materials is not based on any scientific data or facts and the petitioner is trying to project a picture as if the plastic materials are the main cause of pollution. It is respectfully submitted that production of raw materials for basic plastics is carried out in our country in modern high tech plants and the quality and quantity of emission and/or effluent from such plants are being regularly monitored by the respective State Pollution Control Boards so as to ensure that they are maintained within the prescribed parameters. In India, there are only less than 10 such large scale plastic raw material manufacturers. Even in the case of manufacturers of plastic carry bags and other plastics materials, the emission/effluents discharged from these units are being periodically monitored and controlled by the State Pollution Control Board. Had the contention raised by the petitioner in this para been true, the TNPCB would not have allowed the members of this respondent association to continue their

manufacturing activities. Hence, the contentions of the petitioner as raised in this para are wholly baseless and untenable. As regards the mention of some of the chemicals in this para such as dichloromethane, acetone, methylene chloride etc., it is submitted that single use plastic items that are being used for manufacture of plastic items, subject matter of the present writ petition, are made of Poly Ethylene (PE), Poly Propylene (PP) and Polystyrene (PS). None of the chemicals mentioned by the petitioner in this para are used during the production of PE and PP and no emission of these chemical takes place during their production. Styrene is the basic raw material which is derived from Benzene. Though these chemicals are considered to be handled in special containers and reaction vessels in the plastic manufacturing units where Styrene is polymerized into PS, once PS is obtained, it turns into a safe material after the chemical reaction process and its use is approved under the existing BIS rules. The other chemicals named by the petitioner in this para are not being used for manufacture of single use items such as cups, plates, forks, plastic glass etc. By mentioning these names, the petitioner is trying to confuse the issue. The allegation of the petitioner in this para that PET produces nearly 100 times the air pollutants than by the production of same quantity of glass bottles is false and baseless. It is respectfully submitted that for manufacture of one PET bottle with a capacity of 1 litre (used for packaging drinking water), about 25 grams of PET material is used. On the other

hand, for manufacturing one glass bottle with the same capacity, at least 500 grams of glass raw material is used and the emission that arises during manufacture of glass bottle is also more than the emission that arises during the manufacture of PET bottle. It is pertinent to state that PET bottle and glass bottle should be compared on the basis of the quantity of material used to manufacture a standard size of bottle to pack the same volume of liquid and not on the basis of 1 KG of PET material or 1 KG of glass material. The further contention of the petitioner in this para that the use of chemicals such as plasticizers, antioxidants, colourants, flame retardants, heat stabilizers and barrier resins during plastic production cause toxicity of lead, cadmium, mercury and carcinogens is totally false and has been made solely with a view to mislead this Hon'ble Court for more than one reasons. **Firstly**, the one time use plastic items such as cups, glass, fork and plates etc., are made of PP, PE and PS materials and for these items external plasticizers or flame retardants are not used during their production. **Secondly**, Even the antioxidants or stabilisers used for manufacturing PE, PP and PS are all approved by the Indian Standards/Regulatory authorities. As regards the colour, it is respectfully submitted that most of the one time use plastics items are either virgin colour or white and the colours and pigments, when used, are ensured that they conform to the BIS specifications.

The allegation of the petitioner that pollution that occurs in the disposal stage is large during incineration and when

plastic wastes fail to reach landfills or incinerators, that burning of plastic containing chlorine substances releases toxic heavy metals and emits noxious gases like dioxins and furans is false and baseless. Burning of any product, be it paper and other conventional material or plastics, releases some type of emissions depending on the material content. In the present case, one-time use plastic materials such as cups, plate, forks or carry bags are made of PP, PE and PS. No Chlorine is present in these products. There is no scope of production of any heavy metals or dioxin etc. Further, Chlorine is not a heavy metal. The further statement in this para that single use polythene and plastic products such as carry bags, disposable cups, plates etc., cannot be disposed off easily is technically incorrect. There is no problem of disposing the said waste and they can be 100% recycled. On the contrary, the real issue is poor littering habits of the citizens and the inadequate solid waste management system in our country. It would not be out of place to mention here that scientific investigation and survey has revealed the startling fact that municipal solid waste stream contain only around 5% of plastic waste and the remaining 95% are silt, debris and construction materials, compostable matters, long time biodegradable materials etc. Hence, it is with utmost respect submitted that the need of the hour is strict implementation of the existing rule to arrest the problem of littering of plastic carry bags. Such being the factual position, the petitioner is trying to portray a picture as though the entire cause for the

present day situation is only allowing the manufacture of plastic materials, which is baseless and untenable. The major cause of clogging of drains is due to presence of silt/debris and other biodegradable and non-biodegradable waste, which constitutes more than 60% of the clogging materials in the drains. Further, the petitioner is trying to confuse the issue of any unwanted incident or accident which might have caused due to non-adherence of proper work safety measures during routine cleaning of sewerage pipes. With the modernization of cleaning system in the recent past, the scope of human labour being used for cleaning the system has reduced now. In any event, the plastic waste, which constitutes only 5% of the total municipal solid waste, cannot be singled out by the petitioner and held to be the root cause for the alleged clogging of drains. On the contrary, it is only the plastic materials which have enabled the economically poor section the access to many good things in life, which hitherto were not within their reach due to prohibitive cost. For instances, with the advent of small plastic pouches, many costly toiletry or food products which were earlier out of reach of the poor, have become easily available within the reach of the economically poor section that too with some affordable cost. To quote an example, hair shampoo which was available only in bottle containers of 50 ml, 100 ml and 200 ml at a cost of not less than Rs.20, is now available for economically poor section in a sachet that too for a nominal rate of Rs.1.50 or Rs.2/-. Yet another example on this line is the use of 'pickle', which is

available in a sachet for a poor man at a cost of mere 50 paise. These would not have been possible with the use of plastic in packaging industry. If the prayer as sought for by the petitioner is allowed, such economically poor sections of the society would be gravely affected.

Para 10 In this para, the petitioner has clearly admitted the fact that the cause of death of stray animals as well as the animals in aqua marine life and the animals in reserve forests and zoos are only due to littering of plastics items near forests, streams, water bodies and beaches. Such happenings has to be attributed only to the bad littering habits of the people and the improper and/or ineffective implementation of Municipal Solid Waste Management Rules by the local authorities. Without seeking any direction for proper implementation of the said rules, the petitioner has no justification to put the entire blame on the very manufacture of the plastics itself. This attempt on the part of the petitioner is, to say the least, nothing but 'burning a house in fear of a bug'.

Para 11 The petitioner himself has identified, in this para, burning of waste (be it plastic waste or other solid waste) near the dump yards as the cause of alleged environmental pollution near such places. As already stated, the Municipal Solid Waste Management Rules framed by the Government of India has elaborately set out the detailed procedure to be followed in relation to collection, storage, segregation and disposal of municipal solid wastes and

burning of solid waste in the dumping yard is clearly not in consonance with the said rules. It is always open for the petitioner or any other persons who are aggrieved by the same to bring the same to the attention of the authorities concerned in order to ensure that they are treated strictly in accordance with the aforesaid rules. On the contrary, the same cannot and does not confer any right to the petitioner to seek a prayer for total ban on the manufacture of plastic materials. The further contention in this para that the solid is also contaminated due to non-biodegradable nature of the plastic materials is false and baseless. Plastics are chemically inert and resistant to most of the commonly used materials. Especially, the one time plastic products are made of PP, PE and PS which are duly permitted under the BIS rules and hence the allegation that plastic waste contaminates soil is untenable. Similarly, there is no scientific evidence to show that plastics affect the fertility of land. On the other hand, the very use of plastic products such as drip irrigation, sprinklers, mulching etc, has contributed to improved productivity of land and reduced wastage of precious water. In fact, plastic products have made desert land of a small country like Israel the most fertile and immensely cultivable. Even in India, use of plastic has enhanced the cultivation of many useful farm products like groundnut, flowers, vegetables etc. Plastic films play an important role in post-harvest phase and in prevention of wastage of food. Hence, the contentions of the petitioner contained in this para are denied and disputed.

Paras 12 and 13 The contents of these paras are denied as false and misleading. Here again, the petitioner has resorted to blame the plastics products for clogging of drain and causing breeding of mosquitoes, which is untenable for the reasons already set forth hereinabove. It is pertinent to state that breeding of mosquitoes can take place in any stagnant water, in open water tanks, old tires, pots, wells etc. Hence, alleged plastics disposal alone, which comprises only 5% of the total municipal solid wastes, cannot be mulcted with the responsibility for breeding of mosquitoes. In many countries, including India, mosquito is one of the major causes of various diseases. Mosquito menace was there even in 1950s and 1960s, even prior to popularization of plastic materials. On the other hand, in reality, plastic offers the cheapest means for making mosquito nets which are made of monofilaments and it gives relief from the mosquito menace to millions of poor people not only in India but also across the world.

Para 14 The rapid increase in middle class population and the rapid urbanization throughout Tamil Nadu is a matter of record. However, the alleged irresponsible use and disposal of single use plastics waste and the resultant alleged violation of fundamental rights, human rights and child rights, are matters to be dealt with by the authorities under the Municipal Solid Waste Management Rules and the same cannot be ground for seeking ban on the very manufacture of plastic products. If such a prayer is allowed, contrary to the alleged economic burden on the

marginalized families due to use of plastic products, would revert the entire economy of the country to a position which prevailed over 50 years ago.

Para 15 The contents of this para are denied as false and misleading. In this para, the petitioner is trying to project a false picture as if the rag pickers are being engaged for the purpose of collection and segregation of plastic wastes only. In reality, there are innumerable rag pickers who are involved in picking other solid wastes such as waste papers, card boards, nails and other iron materials. The rest of the contents of this para in respect of the position of the poor people, especially underprivileged children scavenging dust bins and dumping yards are matters to be sorted out and handled by the other respondents authorities and as a responsible citizens, the members of this respondent association are always ready and willing to extend their cooperation in this regard. On the contrary, such a position is sought to be taken as a ground for an altogether banning of the plastics materials, the same would, with due respect, result in reversal of industrial and economic development in the society.

Para 16 The contents of this para are denied as false and baseless. The petitioner is trying to impose his individual idea or inadequate knowledge on which plastic can be or cannot be recycled. The definition for 'plastic recycling' has been defined by the International Standards Organisation which has been adopted in India by the BIS. According to this

definition, all single use plastic items as mentioned by the petitioner and for that matter, all types of plastic materials are recyclable. There is no term called 'down cycling' in plastic technology. Plastic recycling is a technology by itself and it is essential as a resource management. The recycled non-critical yet important products find innumerable application in our daily life. In this connection, it is also submitted that the report of the Committee constituted by the Hon'ble Supreme Court in March 1999 also duly recommended recycling of plastics waste as one of the solutions to waste management problems. It is further pertinent to state that recycling of plastics also help in many vital sectors such as asphalt road construction, generation of industrial fuel as an alternate fuel in cement kilns etc. As already stated, no harmful emission occurs during the processing of PE or any other material viz., PP, PS and PVC. Here again, the petitioner is trying to confuse the issue by co-relating 'combustion' with 'recycling process'. In fact, recycling process never undergoes combustion of plastic waste. Hence, the question of release of carbon monoxide during recycling process does not arise at all. The contention in this para to the effect that a recycling plant generates largest amount of effluent during washing and cleaning is false and baseless. It is submitted that, as set out in the international and Indian standards, cleaning is an integral part of recycling process of plastics. Cleaning ensures that all external contamination in the plastic waste is taken out of the plastic material. The standards specified for

recycling process also stipulates that after the cleaning operation, the effluent water must be treated in accordance with the prescribed standards to make it again usable safely, thereby saving the water resource of the country as well as keeping the environment clean. Hence, it is respectfully submitted that the recycling of plastics as per BIS guidelines is completely safe. The contention of the petitioner to the effect that the Government of India has recently banned import of Chinese toys which use heavy metals and toxic chemicals is denied as incorrect. The Chinese toys which were banned by the Government of India were mainly PVC toys painted with non-standard paints/pigments and not toxic chemicals as contended in this para. As regards the issue of water pot raised by the petitioner in this para, it is submitted that the plastic water pots mainly used in the southern parts of India are not made of PVC but are made of PE, especially HDPE. They are mostly made of virgin plastic. In some cases, Industrial PE waste is also used for manufacture of water pots. However, there is no technical or health problem in using the water pots made of industrial PE waste. Further, there is no question of these pots containing any heavy metals and HDPE also does not contain any heavy metal as its ingredient. Hence, the rest of the contentions made in this regard in this para are denied as incorrect and baseless.

Para 17 The contents of this para are untenable, unwarranted and baseless. This respondent takes strong objection to the

allegation of the petitioner 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. It is with due respect submitted that in view of the overwhelming evidence to substantiate the fact that the manufacture and use of plastics does not and will not cause any adverse environmental impact as alleged or at all and in the light of the fact that the Government of India itself had duly acknowledged the fact the use of plastic materials is absolutely essential for the growth of the country, there is no need or necessity for any of the persons or associations in the plastic industry to exert any pressure on any authorities as alleged or at all. It is also incorrect to state that only 500 to 600 units may be involved providing employment to about 10,000 people. In fact, there are about 18,000 units in the state of Tamil Nadu, which are engaged in the manufacture of plastic carry bags and other materials and there are about 5 lakhs families who are directly and indirectly employed in plastic industry. If the prayer as sought for by the petitioner is allowed, the same will result in the immediate closure of these industries, thereby rendering about 5 lakhs families jobless. Even assuming without admitting that such a prayer as prayed for in the writ petition is permissible, the same cannot be resorted to without the Government first making available suitable alternative employment to these innumerable families. The contention in

Para 18 The steps sought to be suggested by the petitioner in this para are, with due respect, irrelevant for the reasons already stated herein above. At the cost of repetition, it is submitted that the comparative environmental analysis carried out by an USA based organization clearly showed the adverse environmental implication if plastic bags are replaced by paper bags. The Life Cycle Analysis of plastic and paper also establishes the fact that plastics is more energy saving and generates lesser air and water emission as compared to paper. Above all, use of plastics save large number of trees being cut for the purpose of paper and cardboard manufacturing and for use in packaging industry. In view thereof, the suggestions proposed by the petitioner in this para deserves no consideration at all.

Para 19 The contents of this para are denied and disputed. The averment on the situation prevailing in Bangladesh and the ban imposed in Bangladesh in 2002 are wholly inapplicable to the facts and circumstances that prevails in India. The flood havoc is witnesses in Bangladesh in every alternate year and the same cannot be attributed to use of plastic materials in the said country in as much as they play no role in flood occurrence. As regards the contention that the ban on plastics has guaranteed large sustainable employment, not only for the worker but also the jute agricultural is incorrect for the reason that using of jute bag in that country is based only on political consideration and the same cannot be taken as a basis for

granting any relief or at all in the present writ petition.

Paras 20 and 21 The contents of this para are disputed as being incorrect and misleading. Even a bare perusal of the contents of this para clearly reveals the fact beyond doubt that none of the countries in the world has imposed a complete ban on the manufacture of plastic carry bags and other plastic items. Only in some countries, a restriction has been imposed on the thickness of the poly bags and definitely not on the lines as is sought for by the petitioner in the present writ petition. As regards the contention of the petitioner in this para in respect of alleged ban on manufacture of plastic bags altogether or upto a thickness of 70 or 40 microns, as the case may be, it is submitted that such a contention is raised by the petitioner on a misinterpretation of the respective government notifications. A perusal of the said notifications clearly reveals that what is banned therein was only such of the plastics bags or containers with or without containing inorganic or organic pigments, plasticizers, lubricants and stabilisers etc., which are liable to cause poisoning of food during storing, carrying or packing of any food. Thus, so long as the plastic bags or containers or other materials satisfies this condition, there cannot be any ban on the manufacture of such items.

Para 22 The contents of this para are not within the knowledge of this respondent.

Paras 23 The contentions raised in this para have no legal basis and

to 26 hence disputed. As already stated hereinabove, whatever grievances that have been alleged by the petitioner in his affidavit are all the matters pertaining to management and disposal of municipal solid wastes. Now it is for the other respondents authorities to consider the said alleged grievances and ensure that municipal solid wastes throughout the state are treated and handled strictly in accordance with the Municipal Solid Waste (Management and Handling) Rules, 2000. In any event, the same cannot be a source of unemployment for the innumerable families who are directly and indirectly in the manufacture of plastic carry bags and other items. In view thereof, either consideration or grant of any prayer as sought for in paras 24 to 26 or at all does not arise and the writ petition is liable to be dismissed.

In these circumstances, it is most humbly prayed that this Hon'ble Court may be pleased to dismiss the above writ petition and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

Solemnly affirmed at Chennai on this, the 9th day of July 2009 he having signed his name in my presence.

BEFORE ME

ADVOCATE, CHENNAI