

Item No. 01

Court No. 1

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

(By Video Conferencing)

Original Application No. 15/2014

Him Jagriti Uttaranchal Welfare Society

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 10.09.2020

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

Applicant(s): Mr. Ritwick Dutta, Advocate  
Respondent(s): Mr. Raj Kumar, Advocate for CPCB  
Mr. S. Nandakumar, Advocate for BIS

**ORDER**

1. Issue for consideration is restriction on use of plastic bottles and multi layered plastic packages used for packaging of carbonated soft drink and liquor as well as other items, in view of the adverse impact on the environment and health.

2. Vide order dated 14.10.2019, the Tribunal considered the report dated 30.08.2019 by the Expert Committee comprising FSSAI, BIS, CPCB and DGHS suggesting an action plan with 12 specific points, after considering the areas of concern on the subject. The Tribunal also noted the steps taken by FSSAI. The relevant extract from the said order is as follows:-

- “2. The matter was last dealt with by this Tribunal vide order dated 31.05.2019. After taking note of the Notification dated 24.12.2018, issued by the Ministry of Health and Family Welfare under Section 92 of Food Safety and Standards Act, 2006, Food Safety and Standards (Packaging) Regulations, 2018 and the Food Safety and Standards (Labelling and Display) Regulations, 2018 regulations, **the Tribunal constituted an Expert Committee comprising of the representatives of FSSAI, BIS, CPCB and DGHS** to consider whether any further regulatory provisions are required on the subject of restrictions on the packaging by use of plastic material and if so to what extent. The Nodal agency for coordination was the FSSAI.
3. Accordingly, a report dated 30.08.2019 has been filed by the Expert Committee. The Committee noted following key areas of concern:
- “1) Continued use of multi polymer plastic (MPP) or multi layered plastic (MLP) with associated difficulties in its recycling.
  - 2) Increasing use of small packages such as bottles used for beverages, sachets, pouches which are not viable to collect and recycle.
  - 3) High capital cost involved in the presently available techniques in recycling plastics.
  - 4) Inadequate reach of Extended Producer Responsibility (EPR).
  - 5) Non availability of economically viable substitutes to the plastics.
  - 6) Lack of consumer awareness for proper disposal of plastics and litter management.
  - 7) Absence of joint regulatory mechanism with respect to plastic waste management.”

It proposed a systematic action plan with 12 specific points as follows:

- “(A) Manufacturer / User Industries of Plastic Packaging Materials.
- (1) Institute concept of ‘plastic footprint’: What gets measured is managed. Therefore, in order to encourage businesses to reduce use of plastics through innovation and redesigning of their packaging, a system of quantifying the use of plastics per unit of final product (say kg of plastic used in 1000 kg/kiloliter of final product) may be put in place. A deflator or inflator may be used for use of recyclable plastics, biodegradable/compostable plastics or multilayered plastic as the case may be. A system of periodic assessments of plastic footprint for each product category may be done. In food and beverages, these categories could include confectionery and bakery products (biscuits, ice-creams, bakery products and chewing gum), namkeens (chips, namkeen, nuts/peanuts), instant noodles and cereals, beverages

*(cold drinks, juices, energy drinks and hot drinks) and dairy products (milk, paneer, yoghurt and flavoured milk). Plastic footprint for each category may be benchmarked with the market average of use of plastic. This would encourage companies to adopt packaging reduction strategies that may include reducing weight of packaging, eliminating unnecessary packaging, using lightweight packaging materials, optimizing packaging size and use of recyclable (compostable) and reusable packaging material. Through a system of recognition, rewards and perhaps eventually penalties, it is hoped that the companies would work towards continuous reduction of plastics, product by product and enable businesses to demonstrate their commitment to safer environment.*

- (2) Discourage small pack sizes: Lighter, portable, and cost-effective nature of single serve sachets/pouches/bottles continues to make them an attractive proposition for the low-income consumers as well as young and active millennials. Smaller pack sizes/single serve packaging also have brought better quality and premium products affordable to all the sections of the society. But on the other hand it constitutes to the major plastic waste and litter, as their collection is economically non-viable. Hence, in consultation with Legal Metrology Dept. the small pack sizes such as small water bottles, pouches, cups which constitute a considerable amount of plastic waste may not be allowed.*
- (3) Reducing plastic content in multi-layered plastic (MLP): Ideal packaging materials had been tailored by combining different material with customized functionality to sufficiently protect sensitive food products and thus obtain extended shelf life. Latest feasible techniques and technologies may be employed to cut down the use of multiple polymers/plastics. More research in this area is required to be done by scientific institutions. Use of Single polymer/layer recyclable packaging materials shall be encouraged in this case.*
- (4) Encourage alternatives to plastics: Bio-plastics and biodegradable plastics like Poly Lactic Acid (PLA) made from fermented plant starch etc. can be a sustainable alternative to conventional plastics. However there are limitations with the availability of resources for such material. More research in the area to reduce the cost of PLA is required to be done. There is also need to create awareness on biodegradable, compostable or bio-based plastics since their degradation requires conditions like appropriate temperature, light, hydration and/or microbial presence. Hence these have to be separately marked and disaggregated. In case, the biodegradable & compostable or bio-based plastics remain unsegregated and go in landfills just like that, it is unlikely to meet these conditions and serves no purpose. Existing packaging systems of paper based cartons with minimal plastics as coatings, composite and reusable containers made up of glass, tin, metal*

*and paper maybe promoted as replacements. A list of alternatives to plastic packaging materials as suggested by Centre for Science and Environment (CSE) is at Annexure-2.*

- (5) *Effective Extended Producer's Responsibility (EPR) framework: The current Plastic Waste Management Rules mandate the "producer of packaging products and branded consumer goods to dispose plastic packaging waste generated due to their business activities". Even though the policy framed under these rules is fairly good but it has been confined to selected few big businesses. It is understood that National Framework on EPR for plastic waste management is being finalized. The framework may consider a system of monitoring as well as penalty provision for its non-compliance may be explored. The companies may be encouraged to use their downstream supply chain of distribution and retail for collection and aggregation of plastics for recycling. This may be quite easy in direct selling entities that use multi-layered marketing, distribution networks.*

- (B) *Final consumers/Users of plastic packaged articles and food stuff.*

*Establishments, agencies, institutions, organizations including government/nongovernment, food/non-food operators such as roadways, railways, airlines, schools, colleges and university campuses, E-commerce groups, corporate campuses, hotels, marriage, banquet and community halls under this head shall take-up responsibilities on the following;*

- (6) *Eliminate/Ban single use plastics: should eliminate and prohibit the usage of single serve/use plastics within their ecosystems. Recent ban by the Parliament and Indian railways is worth emulating.*
- (7) *Alternatives to plastics: They shall encourage the use of reusable and recyclable environment friendly alternatives such as jute and cloth bags, bamboo and wooden cutlery, leaf based plates, glass and metal containers etc.*
- (8) *Improved Litter Management: They should take up the responsibility of collecting all the waste in their campuses, sorting out dry and wet waste. They could also encourage their staff, teachers and students to bring such plastic waste from homes and help in collection and aggregation of such waste by tying up with businesses in plastic recycling. Dry waste can be segregated into recyclable and non-recyclable and accordingly processed. Wet waste may be sent to composting, which can be done in-house. This activity could be made a part of the social responsibility system.*
- (9) *Better Plastic Disposal: Initiatives are to be taken up, to dispose plastic waste by forming groups/clusters to set up/identify energy recovering systems such as incineration and pyrolysis. Getting adequate quantities*

*of suitable plastics waste is seen as most important factor in success of such units. More organized efforts and encouragement is required for this proper disposal.*

*(C) Municipal bodies/other organizations promoting circular economy.*

*(10) All municipal bodies must be made responsible for development and setting up of infrastructure for segregation, collection, storage, transportation, processing and disposal of the plastic waste either on its own or by engaging agencies or producers as mentioned in the Plastic Waste Management Rules.*

*(D) Citizens and consumers.*

*(11) Citizens, especially the socially engaged ones living in urban areas with wide access to information, have adopted more environmentally conscious consumption habits oriented toward recycling, reusing and composting the waste that derives from their domestic consumption. This segment of socially discerned consumers, appreciate brands that demonstrate a commitment to environmental sustainability. A more intensive public campaign, however, is needed to mainstream this kind of behavioral change to a wider public segment. Further approach of incentivizing the customers can also be explored to encourage them for plastic waste management.*

*(E) Science and Research Institution.*

*(12) Science and research institutions must be encouraged for working in the direction of developing environmental friendly packaging materials and plastic waste management systems which can be used on commercial basis. Start-ups may also be encouraged to work in this area. For the food and beverages sector, FSSAI may create a group of institutions and experts to coordinate new work in this area with leading institutions like the Indian Institute of Packaging, CIPET, IIT Delhi, IIT Guwahati, Indian Institute of Toxicological Research (IITR), National Chemical Laboratory, Pune and others.”*

*4. The Committee further noted that these are not only environmental issues but also public health issues. In that view of the matter, FSSAI has taken steps to reduce the use of plastic in packaging of foods and beverages as follows:*

*“(1) FSSAI has decided to permit use of liquid nitrogen dosing in PET bottles during the packaging of drinking water. This would help in strengthening the bottle thereby facilitating the manufacture with the use of bottles with lower wall thickness.*

- (2) *FSSAI has initiated the process of removing the restriction on the use of returnable bottles for packaging of artificially sweetened beverages.*
  - (3) *FSSAI is promoting the use of bamboo as an alternative to plastics such as straws, plates, bowls, cutlery etc.*
  - (4) *Allow and enable hotels to keep in-house packed glass bottles in place of plastic bottles in hotel rooms.”*
5. *The FSSAI has also established a separate ‘Scientific Panel on Packaging and Food Contact Materials’. The Committee thereafter made following specific recommendations on regulatory aspects:*
- “(1) *Food Safety and Standards (Packaging) Regulations, 2018: To review the limits of heavy metals in PET and fix the limits of specific migration limits of Antimony and DEHP (Diethylhexyl-phthalate). In addition to this also explore the possibility of setting limits for Cadmium and chromium.*
  - (2) *Food Safety and Standards (Packaging) Regulations, 2018 and IS 14543 (Packaged Drinking water): To remove the restriction on the use non-transparent bottle for drinking water to enable businesses to explore the possibilities of use of alternatives other than the PET currently in use.*
  - (3) *Food Safety and Standards (Packaging) Regulations, 2018; IS 14534 (Guidelines for Recycling of Plastics); and Plastic Waste Management Rules, 2016: The European Food Safety Authority (EFSA) permits the use of recycled PET in food packaging under certain set protocols. EC recommends to explore the possibilities for removal of ban on use of recycled plastic in food packaging after a scientifically validated method of pre-cleaning of plastic waste is developed to ensure that the final product using recycled material does not pose any health risk.*
  - (4) *Legal Metrology (Packaged Commodities) Rules 2011: To explore the possibilities of restricting small packs of commodities such as water, shampoo, sauce, pickle etc.”*
6. *On the subject of review and monitoring, the Committee observed:*
- “8. *The Expert Committee noted that while regulatory provisions for restrictions on the packaging by use of plastic material are mostly in place, there is lack of coordinated approach and implementation of these provisions is poor. It suggested putting in place sector-specific mechanisms to review and monitor the use of plastics in packaging and commitment of businesses under ‘Extended Producer Responsibility (EPR)’ framework, managing plastic footprints, and related issues. In this, sector-specific regulators such as FSSAI (for food and beverage packaging), CDSCO (for drugs*

*and cosmetics packaging), Ministry of Textile (for textile packaging) etc. and the Central Pollution Control Board (CPCB) could work together to ensure better coordination. Related ministries and the Ministry of Housing and Urban Affairs and Department of Drinking Water and Sanitation could also be associated for better coordination with Swachh Bharat Mission.”*

7. *In view of the above report, we direct FSSAI, BIS, CPCB, DGHS and MoEF&CC to take further follow up action based on the above report within three months and furnish an action taken report before this Tribunal by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) before the next date.”*

3. Thereafter, the matter was taken up on 28.07.2020 but no action taken report was filed by FSSAI, BIS, CPCB and DGHS. Only report filed by the MoEF&CC on 14.02.2020 was that the issue of single use plastic was referred to the Committee of Secretaries which was yet to take further decision. Thereafter, seven months have passed but there is no report. There is also no appearance on behalf of the FSSAI, DGHS and MoEF&CC. The Counsel for the BIS and CPCB state that the matter is to be dealt with by the said authorities and not by them.

4. In view of above, let action taken report be now filed by the FSSAI, DGHS, MoEF&CC, the CPCB and the BIS before the next date by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

5. Since at this stage we are only considering the remedial action to be taken by the statutory authorities as per law, in terms of an action plan, and any affected individual will have independent remedy against such action, we do not propose to hear any individual party at this stage.

List for further consideration on 14.10.2020.

A copy of this order be sent to the FSSAI, DGHS, MoEF&CC, BIS and the CPCB by e-mail for compliance.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

September 10, 2020  
Original Application No. 15/2014  
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