

**BEFORE THE NATIONAL GREEN TRIBUNAL, CENTRAL ZONAL BENCH,
BHOPAL**

M.A.No. 586/2014

in

Original Application No.04/2013 (P.B. No.97/2012) (THC) (CZ)

Sandeep Lahariya Vs. State of M.P. & Ors.

**CORAM : HON'BLE MR. JUSTICE DALIP SINGH, JUDICIAL MEMBER
HON'BLE MR. P.S.RAO, EXPERT MEMBER**

PRESENT : Applicant : None
Respondent No. 1, 3, 7 & 8: Shri Sachin K.Verma, Advocate
Respondent No. 4 : Shri Vijay Shahni, Advocate
Respondent No. 6 : Mohd. Alauddin, Advocate
State of Chhattisgarh : Shri Ranjeet Dwivedi, Advocate for
Shri S.S.Chouhan, Advocate
State of Rajasthan & RSPCB : Shri Sandeep Singh, Advocate

Date and Remarks	Orders of the Tribunal
Item No. 7 15th October, 2014	<p>While deciding this petition in the judgement dated 11.11.2013 on the issue of pollution being caused as a result of non compliance of the Plastic Waste (Management & Handling) Rules, 2011 in general and to prohibit manufacture, sale, distribution, storage and use of plastic carry bags as well as their proper disposal so as to ensure that no pollution is caused, this Tribunal after hearing Counsels for all the three States i.e. Rajasthan, Chhattisgarh, and Madhya Pradesh directed after finding that the compliance of the Rules, 2011 was not being made in all the three States by the local authorities, that manufacture of plastic carry bags of the prohibited category would not be permitted and all States shall take necessary steps for implementation of the Extended Producer Responsibility (EPR) as provided under Rule 6 of the Rules, 2011.</p> <p>To report compliance a period of 6 months was granted to all the three States i.e. up to 31st May, 2014.</p> <p>When the matter was taken up on 1st July, 2014 it was found that compliance had not been made and the case was adjourned to 30.09.2014. On 30.09.2014 also opportunity was granted to the Respondents for filing the compliance and reporting the steps taken so far and the impact of the same. The case was posted for 15.10.2014 for reporting such</p>

compliance.

M.A. No.586/2014

Today counsel for the State of M.P. has filed Misc. Application No. 586/2014 seeking extension of time for compliance. Having found that ban imposed on manufacture, sale, distribution, use etc. of plastic carry bags of less than 40 microns had not achieved the desired results, we directed in our order dtd. 30.09.2014 that each of the three States to inform this Tribunal whether they would be willing to notify orders as has been done by the State of Rajasthan imposing total ban on the manufacture, sale, distribution, use etc. of plastic carry bags. The State of Rajasthan had issued the notification in this behalf in July, 2010 itself as has been done in some other States like Tripura, Union Territory of Chhandigarh to name a few. The legality of the said notification in the case of Union Territory of Chhandigarh was challenged and the petition in that behalf was dismissed by the Principal Bench of the National Green Tribunal at New Delhi, though no challenge is reported to have been made so far as the Rajasthan notification is concerned.

By the Misc. Application No. 586/2014 State of M.P. has submitted that a proposal, pursuant to our order dtd. 30.09.2014 and even before that for imposing total ban, has been drafted by the concerned Ministry and it is pending approval before the Minister concerned and as such it has been prayed that time may be extended for a period of 3 months for compliance of orders dtd.30.09.2014.. Having considered the matter, we are inclined to accept the limited request of the State of M.P. for notifying orders imposing of total ban on manufacture, sale, distribution, use etc. of poly carry bags within the State of M.P. and this is supported by the concern raised even before the Lok Sabha by the Hon'ble Members and the assurance given by the Govt. of India in this behalf in August, 2012 itself. The State of M.P. accordingly must take into account the views expressed by the Members of Parliament and the

adverse environmental impact which the poly carry bags are creating not only in the urban areas but also even in the rural areas and the inability of the local authorities like Municipalities and Panchayats to deal with the aforesaid problem as a result of large scale use, sale, manufacture and distribution etc. of poly carry bags. Misc. Application No. 586/2014 is accordingly allowed but the time is granted only upto 30.10.2014. The prayer for extension of time for 3 months is refused as the matter is pending for consideration before the State since 2012 when it was referred and brought to it's notice by the MoEF, Govt. of India based on the concern raised in the Lok Sabha by the Hon'ble Members,

So far as the State of Rajasthan is concerned we find that the notification of July, 2010 imposing the aforesaid ban has already been issued and brought into force. However, it is not disputed before us that despite the aforesaid ban the sale, use and availability of poly carry bags in the State of Rajasthan is rampant. Mere issue of orders banning manufacture, distribution, sale etc. of such poly carry bags would not serve the purpose and the absence of the will of the Administration for effective implementation of the notification in the last 4 years after the said notification being in operation, is a serious cause of concern indicating that not enough efforts and effective steps for implementation of notification are being taken up and the implementation is conspicuous by its absence. Therefore, we hereby issue notice to the State of Rajasthan to show cause as to why a penalty of Rs. 5 Crores on 'Polluter Pay' principle be not imposed on the State, and the amount to be ordered to be deposited in the Environment Relief Fund for failure to prevent pollution of the environment by omission to implement the law as well as impose recurring penalty thereafter on day to day basis till the notification is effectively implemented as the matter is of great concern because of the State's failure to take effective steps for implementation of it's own notification and deliberate neglect in this behalf amount to

having abated the pollution. The response of the State on the above notice issued today shall be filed before 30.11.2014.

The State of Chhattisgarh has submitted their response today wherein they have filed the documents including a copy of the letter annexed at Annexure 'A' issued on 2.07.2014 to all the District Collectors by the State Chief Secretary apprising them of implementation of ban on the manufacture, sale, distribution use etc. of poly carry bags less than 40 microns. This however is not the response which this Tribunal has sought from the States which is with regard to the imposition of total ban. As has been indicated above the issue with regard to imposition of total ban had been brought to the notice even before the Lok Sabha by the Hon'ble Members of Parliament and the Govt. of India, MoEF had taken the aforesaid issue with all the States as well far back as 2012 as mentioned above.

We would accordingly grant one more opportunity, to the States Govt. of M.P. & Chhattisgarh to consider the issue in the light of the reminder issued by the MoEF, Govt. of India to all the Chief Secretaries on 15.07.2014 enclosing the earlier letter of Oct, 2012 and impose the ban by the end of this month.

Since the States have failed to carry out the necessary directions issued in our judgment dtd. 11.11.2013 the State of C.G. & M.P. are given one more opportunity in the interest of justice to take action by 30.10.2014 for issuing necessary orders for imposition of total ban on the manufacture, sale, distribution, use etc. of poly carry bags as defined under the Rules of 2011 and the ban should be made effective preferably from 1st January, 2015.

We find that so far as the other directions issued by this Tribunal with regard to taking effective steps for implementation of the Extended Produce Responsibility (EPR) as envisaged under Rules of 2011 none of the three States have so far in the last 11 months after our judgement,

taken any effective steps in this behalf. This amounts to deliberate non-compliance of our direction. We accordingly issue notice to the Principal Secretaries (Urban Development and Environment) of all the three States to show cause as to why they should not be punished for non compliance of the directions of this and sentenced both with imprisonment as well as imposition of penalty for deliberately flouting the orders and directions of this Tribunal as no compliance has been reported. Response to the above aforesaid notice to the Principal Secretaries of all the three States shall be filed before 30.11.2014.

Copy of this order be sent to the Chief Secretaries as well as the Principal Secretaries, Urban Development and Environment of all the three States.

Matter be listed on **11.12.2014**.

.....JM
(DALIP SINGH)

.....EM
(P.S.RAO)

