

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

O.A No. 50(THC)/2014

In the matter of :

1. M/s Madhup AgencyPetitioner

Versus

1. State of Rajasthan
through the Additional Chief Secretary
Department of Environment Government of Rajasthan,
Jaipur
2. The District Collector Bhilwara
3. The Municipal Council, Bhilwara
through its Chairman, Municipal Council,
Bhilwara.
4. The Commissioner,
Municipal Council, Bhilwara
5. The Rajasthan State Pollution Control Board,
through its Chairman,
Rajasthan State Pollution Control Board, Jaipur.
6. The State Pollution Control Board
through its Regional Officer,
State Pollution Control Board, Bhilwara

.....Respondents

Counsel for Petitioner/Applicant:

Mr. Vijay Purohit, Adv., Mr. Rakesh Arora, Adv., Mr. Sachin Acharya, Adv.

Counsel for Respondents:

Mr. Mohit Adv. for Mr. P.S. Bhati for Respondent No. 1,
Mr. Shreyansh Mehta, Adv, Mr. Manish Shishodia, Adv.
for SPCB for Respondent no. 2.
Mr. Pratishtha Dave on behalf of Mr. P.S. Bhati,
AAG for State of Rajasthan for Respondent No. 3 and 4.,

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Reserved on: 10th July, 2015

Pronounced on: 31st July, 2015

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE U.D. SALVI (JUDICIAL MEMBER):

1. Seizure of 10710 kilo grams of plastic bags by Municipal Council, Bhiwara on 20.06.2013 from the go-down of the applicant, M/s Madhup Agency situated at Mohala Laxmi Narayan Road, Rijwada under memorandum and moka panchnama both dated 20th June, 2013 has found challenge in the present application.
2. Initially these proceedings were initiated as a civil writ petition no. 9880 of 2013 in the High Court of Judicature at Jodhpur. Notices were duly served on the respondents. Respondent no. 3 to 6 filed replies. On 05.12.2013 the said petition was transferred before us as it involved the issue concerning the implementation of the Environment (Protection) Act, 1986.
3. A question arose as to whether the material seized fits in the definition of 'plastic carry bag' as envisaged by law or not. Rajasthan Pollution Control Board was directed to inspect the premises where the seized material was lying in the presence of the officers of the Municipal Council and produce before us

the samples of the materials seized vide order dated 1st May, 2014. Accordingly, the joint inspection of the go-down premises where the seized material was lying was carried out on 12th May, 2014 as directed.

4. The report of the inspection dated 12th May, 2014 has been placed before us along with the additional affidavit dated 10.07.2014 of Mr. Sharad Saxena, Officer Incharge, Rajasthan State Pollution Control Board. Samples of the seized material has also been produced before us. The Additional Affidavit has also been filed by the applicant.

5. Joint inspection report which is at annexure R/1 to the additional affidavit filed by the State Pollution Control Board reveals the description of the material seized as one plastic role and seven plastic bags of varying sizes totally weighing 1512 kilo grams. It further reveals that the said bags or the plastic role were without self carrying feature/s and do not answer to description of prohibited plastic carry bag vide notification of Rajasthan Notification dated 21.07.2010. It proceeds to state that the M/s Madhup Plastic Agency stores and sells the plastic material and does no packaging work or sell any other material. However, it proceeds to state that the possibility of the said plastic material being used as a plastic carry bag cannot be ruled out as explained vide explanation no. F VIII (1) ENV/ 99 part dated 13.09.2010 to the government notification dated 21.07.2010.

6. A short question therefore arises in the present application as to whether the material which was seized under moka panchnama answers to the description of the contraband carry bag as described in law. In the reply of the respondent no, 3 and 4 the justification to the seizure has been made with reference to the Plastic Waste (Management and Handling) Rules, 2011 and the public interest in checking the hazard of the plastic carry bags it serves. It is submitted that the plastic carry bags often clog the drains leading to spillage of waste water and sewage on the roads with consequent health hazard. Plastic bags it is submitted are often swallowed by the animals causing its death. At the end of his submissions the respondent No. 3 and 4 poses the same question regarding the character of the bags seized. Learned counsel appearing on behalf of the respondent no. 3&4 further pointed out that officers of Nagar Nigam, Nagar Palika, Nagar Parishad and Tehsildar have been conferred with the powers of entering and inspecting the premises for the purpose of carrying out of search and seizure for effective enforcement of notification dated 21.07.2010 issued by Department of Environment, Government of Rajasthan vide office order dated 18.07.2011.

7. Learned counsel appearing on behalf of the respondent no. 5 & 6, the State Pollution Control Board referred to the definition of carry bags in the clarification issued vide letter dated 13.09.2010. According to him the material which was

seized can be used or has a possibility of being used as carry bags.

Material portion of the notification dated 21.07.2010 reads as under:

“Now, therefore, in exercise of the powers conferred by section 5 of the Environment (Protection) Act, 1986 (Central Act No. 29 of 1986) delegated to the State Government of Rajasthan by the Government of India. Ministry of Environment & Forests (Department of Environment, Forests and Wildlife), by its notification No. S O 152 (E) dated 10-2-1988, issued under section 23 of the said Act, the State Government hereby, directs that-

No person including a shopkeeper, vendor, wholesaler or retailer, trader, hawker or rehriwala etc, shall use plastic carry bags for supply of goods and further directs that no person shall manufacture, store, import, sell or transport plastic carry bags in State of Rajasthan with effect from 1st August, 2010

Explanation For the purpose of this Notification the carry bags shall have the same meaning as defined in The Plastic Manufacture, Sale and Usage Rules, 1999 The containers used for packaging food material, milk and raising plants in the nurseries are not carry bags.”

This description of the carry bag is further clarified vide office order dated 13.09 2010 issued by Government of Rajasthan.

Which reads as under:

The definition of plastic carry bag given in-The Plastic Manufacture, Sale & Usage Rules, 1999, is as under-

“Carry bags” means plastic bags which have a self carrying feature commonly known as vest type bags or any other feature used to carry commodities such as “D” punched bags as illustrated in the Annexure to these rules:

Obviously, partly filled containers tied with thread or rope or stapled, have the self carrying feature and hence will come under the definition of carry bags.

8. One may ask question why ‘plastic carry bags’ as described herein above have been viewed as a contraband in light of the Plastic Waste (Management and Handling) Rules, 2011.

Answer to this lies in the very form of the plastic carry bags. It has peculiar shape or improvisation so as to tempt its use by common people in market transactions and thereafter litter the plastic carry bags in the public places with consequential environmental injury as quoted herein above. What is therefore, important is not the possibility of its use but its form and its attendant circumstances which tends to make it a contraband.

9. Applying this description to the samples before us and what has been described in the Joint Inspection Report we find that these plastic bags do not have self carrying features such as vest type bags or "D" punched bag. Seizure panchanama dated 20.06.2013 is silent about having found any ancillary material like punching machine or fresh rope or staple which could be used for converting these bags into form of a carry bag with self carrying feature.

10. Definition of a carry bag under section 3 (b) of the Plastic Waste (Management and Handling) Rules, 2011 excludes bags that constitute or form an integral part of the packaging in which goods are sealed prior to use. In absence of self carrying features the bags which were seized can be viewed as the those constituting integral part of the packaging in which goods are sealed prior to use. It is the case of the applicant that he was not a manufacturer but the seller of packaging material. There is nothing before us to disbelieve this case. We have, therefore, to hold in the given facts and

circumstances of the case that plastic role/bags seized under moka panchnama dated 20.06.2013 were not a contraband or prohibited carry bags susceptible to seizure vide notification dated 21-07-2010.

11. Before we part with this case we would like to invite the attention of all concerned to the provisions of section 10 of the Environment (Protection) Act, 1986 which governs such seizures and require the making of such search and seizure in conformity with the provisions of the Code of Criminal Procedure, 1973 so far as may be applicable to any search and seizure made under the authority of a warrant issued under section 94 of the said code or the corresponding provision as applicable. However, we notice that no criminal proceedings in respect of the seizure have been lodged against the applicant.

12. We therefore, allow this application and quash the seizure of the plastic material under notice/memorandum dated 20.06.2013 and moka panchnama of the same date with no order as to costs. Let the seized material be released and handed over to the applicant. Original Application No. 50/2014 stands disposed of accordingly.

....., JM
(Justice U.D. Salvi)

....., EM
(Dr. D.K. Agrawal)