

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6456/2004

VINOD KUMAR JAIN Petitioner
Through Mr.Arvind Sah, Advocate

versus

UOI & ANR. Respondents
Through Mr.Parbhathi Lal, Adv. For R-1
Ms.Namrata Bhatia, proxy counsel
for Ms.Alpana Poddar, Adv. For R-3
Ms.Hima Kohli, Adv. For State Govt.

For Private Use
Ex-minor Judicial Department
High Court of Delhi

CORAM:

HON'BLE JUSTICE DR. MUKUNDAKAM SHARMA

HON'BLE MS. JUSTICE REVA KHETRAPAL

ORDER

26.04.2006

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We have heard the learned counsel appearing for the petitioner as also the counsel appearing for Union of India as also the counsel appearing for the State Government. We have also perused some of the pleadings filed by the parties. It is pointed out that the Delhi Plastic Bag (Manufacture, Sales and Usages) and Non-Biodegradable Garbage (Control) Act, 2000 has been amended by the State Government. It is pointed out that the amended provisions have

not been given effect to entirely but given effect only in respect of institutions like five star hotels, restaurants, etc.

Counsel appearing for the petitioner states that it is high-time that the provisions of the said Act, which is in the nature of a beneficial legislation, should be directed to be enforced immediately. We also find that the rules like "Recycled Plastic Manufacture and Usages Rules, 1999" have also been framed under the Environment (Protection) Act, 1986 with amendment in 2003 for recycling and managing plastic bags and containers.

The State Government shall take steps for implementation of all the provisions of the amended Act and and if the same is not possible, an affidavit shall be filed giving reasons as to why any of those provisions cannot be enforced, which will be considered.

We have received certain suggestions and points through the affidavit of the Central Pollution Control Board. On going through the said suggestions, we find that the same is required to be considered and given due weightage as the same are outcome of a joint study made with regard to proper disposal of plastic waste including re-engineering of recycling process in collaboration with Jadavpur University, Kolkata and re-use of plastics waste in road

ATTENTION

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Hon'ble Justice, High Court of Delhi

construction in collaboration with Thiagarajar College of Engineering, Mudurai. The said suggestions read as follows:

1. Plastics Manufacturers & Recyclers shall ensure code/markings on the virgin or recycled products to help segregation & recycling;
2. Plastics Manufacturers & Recyclers shall ensure that recycling of plastics is taken as per BIS Code IS : 14534:1998 and IS 9833:1981;
3. BIS Codes IS 14534:1998 and IS 9833:1981 need to be reviewed w.r.t. Environmental aspects;
4. Multilayer & Laminated Packaging, PUF, Melamine Products & other Thermoset Plastics shall be banned as there is no provision for recycling of these products;
5. Present recycling mechanism (extrusion process) shall be equipped with pollution control & monitoring device as they are air & noise polluting.
6. Municipalities shall ensure segregation of plastics and shall be made responsible for disposal of plastics waste.
7. Setting up of demonstration plants using plastics waste in Road Construction, Conversion of Plastics waste as fuel etc.
8. Standards shall be evolved for biodegradable/degradable plastics involving Central Institute of Plastics Engineering Technology (CIPET), Chennai, National Chemical Laboratory, Pune & Bureau of Indian

ATTACHED

Subscribed and Signed
High Court of Delhi

Standards (BIS), New Delhi;

9. There is no provision of penalty for violating the "Recycled Plastics Manufacturing & Usage Rules, 1999 as amended 2003. As small size carry bags and containers are manufactured there is a need to provide a penalty clause in the Rules;
10. The size and thickness criteria shall be applicable to all shapes of bags regardless of "D" Punched or Vest Type;
11. Extended Producer Responsibility (EPR) shall be fixed in disposal of post-consumer plastics waste;
12. State Pollution Control Boards / Pollution Control Committees shall submit annual Report on the implementation of "Recycled Plastics Manufacturing & Usage Rules, 1999 as amended 2003" to CPCB;
13. A Committee / Expert Group shall be constituted to address issue relating to the biodegradable/degradable plastics comprising of (CIPIET), Chennai, National Chemical Laboratory (NCL), Pune, Bureau of Indian Standards (BIS), New Delhi, CPCB Delhi, Indian Plastic Institute, Indian Institute of Technology etc."

The above suggestions are worth consideration and should be enforced immediately by the State Government. An action taken report shall be submitted by the State Government within two weeks from today. In respect of the aforesaid suggestions the Central

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SECRETARY
GOVERNMENT OF PUNJAB
CHANDIGARH

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Government shall also file response within two weeks.

Copy of the order be given dasti to the counsel for the parties.

Renotify on 17th May, 2006.

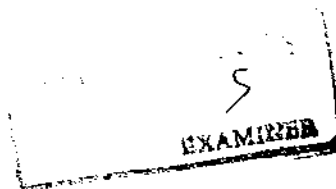

DR. MUKUNDAKAM SHARMA,

J


REVA KHETRAPAL, J

APRIL 26, 2006

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Authorized Under Section 70
Indian Evidence Act,



Indian Centre for Plastics in the Environment

(An Autonomous National Body Registered Under Societies Act)

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May 12, 2006

**The Chairman,
Central Pollution Control Board (CPCB),
Parivesh Bhawan,
CBD cum Office Complex,
East Arjun Nagar,
DELHI- 100 032.**

**Sub: Delhi High Court Order dtd. 26.04.2006 against W.P.(C)
6456/2004**

Dear Sir,

The Hon'ble Delhi High Court, in its 'Order' dtd. 26.04.2006 in the Writ Petition (C) 6456/2004 has given certain directions to the Delhi Government to enforce 13 point recommendations of the CPCB and asked for response from the Central Government on the same, within two weeks' time.

While giving the directions, the Hon'ble Delhi High Court relied on an affidavit of Central Pollution Control Board.

Out of the 13 points of the 'Order', we observe that at least 4 points need revision for proper clarity.

These four points are:

1. Sl. No. 4 of the Order on Multilayer & Laminates and Thermosets
2. Sl. No. 5 of the Order on Pollution Control Monitoring device
3. Sl. No. 10 of the Order on Shapes of Plastics Bags, and
4. Sl. No. 11 of the Order on Extended Producer Responsibilities

In this regard, we submit our comments for your examination and due consideration.

In our view these 4 points do not reflect correct positions on the subject matter and needs a critical review.

Contd...../2....



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We appeal to the Central Pollution Control Board for amending/revising its recommendation to the Delhi High Court based on the outcome of the review meeting as suggested above.

In the meantime a proper communication to Delhi High Court from CPCB side may be required to seek a stay on its 'Order' till the review suggestions are submitted.

We assure our full co-operation to Central Pollution Control Board in this matter.

Thanking you,

Yours Sincerely,

For Indian Centre for Plastics in the Environment (ICPE)

(Sujit Banerji)

Executive Secretary

Cc: 1. The Secretary, Ministry of Environment & Forest (MoEF), Govt. of India

2. The Member Secretary, Central Pollution Control Board (CPCB)

**Point-wise Response to the CPCB Recommendation as contained
in the Hon'ble Delhi High Court Order**

**Point No. 4: Multilayer & Laminated Packaging, PUF Melamine Products
& Other Thermoset Plastics shall be banned as there is no
provision for recycling of these products :**

Response :

Multilayer & Laminated Packaging are mainly used for Food and Food Products, which need special protection from the action of oxygen, Co₂, moisture and bacterial attack and to safe guard & retain the original property and quality of the content for the designated shelf life.

Examples of some of the products, which are packed in such packaging systems are:

Food Products : For safety, transportation and mass availability / affordability

- Milk & other Dairy Products
- Edible Oil
- Fruit Juice
- Noodle (Maggie/Top Ramon etc)
- Coffee / Tea
- Powder and Liquid Milk (Tetra Pack)
- Biscuits / Confectionary
- Wafers
- Various types of ready to eat snack foods like Haldiram Bhujia etc.
- Dry Fruits
- Various types of Ready-Mix Food items like Idly, Rava, Upma etc.
- Various types of spices

Medicines & Pharmaceuticals : For Safety, hygiene and mass availability / affordability

- Drugs & Medicines, Tablets, Liquid products like syrups etc.

Non-food items include:

- Oils Shampoo Pouches
- Lube
- Mosquito repelling cakes/mats; and many other products.

- Items of mass consumption – Extrusion coated films

Alternate packaging mode for these products, would create additional environmental burden in the form of higher energy consumption and other waste management problems, including creating a higher cost burden for the consumers.

Moreover, the statement that these are not recyclable is not the real position.

Multilayer and Laminated Packaging products can be recycled to produce Synthetic Wood/Synthetic Chip Board, which replaces conventional plywood for many applications. There are at least 4 such facilities, which are available within India today. More facilities are expected to come up in the near future. Multilayer packaging waste may also be used for manufacturing Industrial Fuel in the 'Zadgaonkar Process' developed by an Indian Scientist in Nagpur. Though the process has been developed recently, however this has potential of using all types of plastic waste including Multilayer Laminated Packaging products, for manufacturing fuel. Various authorities in the Government have noticed this development and it is envisaged that this facility would be established in other areas of the country also.

Hence, the Multilayer Packaging System should not be banned in the packaging applications.

Thermosetting plastics belong to a different class of materials having specific properties, which decide their applications. Due to high heat and electrical shock resistant properties coupled with other excellent mechanical properties, thermosets find applications in electrical appliances, table tops/laminates (Formica type), and for manufacturing crockeries, which have a very long life. Due to excellent binding property, the entire plywood industry is dependent on thermoset resins. Glass Reinforced Plastics (GRP), which is also one type of Thermoset, finds application in roofing and many other protective applications. Though Thermosets are not recyclables in the conventional manner, however waste thermosets are reused, as fillers in the similar industry - a practice, which is well known for years. Work is under progress to find alternate applications also. Thermosets are inert materials and do not have any leaching or toxic effect. These waste are safe for landfill also.

Hence there should not be any ban on Multilayer Packaging and Thermosets.

Point No. 5 : Present recycling mechanism (extrusion process) shall be equipped with pollution control & monitoring device as they are air & noise polluting.

Response :

Correct design of the extruders, proper ventilation of the production floor and appropriate cleaning of waste plastics before the application of heat (for recycling) – are the three steps, which take care of safe recycling process without causing any pollution problem. Additionally depending on the quantum and nature of cleaning activity, arrangement for appropriate effluent treatment system may also be required.

Jadavpur University, Kolkata has developed a system to be attached to an existing extrusion system, which reduces the level of any excess undesirable emission during extrusion process. This is a good development. However, it needs further scrutiny as its report declares the presence of HCl (Hydrogen Chloride) in the fresh LD (Low Density Polyethylene) sample after extrusion, which is theoretically as well as practically not possible, as fresh LDPE does not contain any Chlorine molecule. A thorough examination of the whole system is necessary before recommending its use. Moreover, it should not be made mandatory for all recycling (extrusion) system, which does not emit any undesirable volatile matters. There are many reputed machinery manufacturers in the country, which offer very good extrusion systems in the country as well as which export their products to even developed countries. Noise pollution device is part of their basic machine design. There are noise pollution norms for various industries, which should be adhered to.

Point No.10: The size and thickness criteria shall be applicable to all shapes of bags regardless of “D” Punched or Vest Type.

Response :

The Recycled Plastics Manufacture and Usage (Amendment) Rule, 2003 as per MoEF's Notification – S.O. 698(E), dtd. 17th June 2003, the definition of Carry Bags have been clearly defined, for which the thickness and size criteria were imposed.

While making this Rule, MoEF had consulted the spectrum of industry and other institutes and officials and decided to limit the restriction to the particular shape of plastic bags. Encompassing all shapes of Plastic Bags into this rule would

result in disbalancing of the existing manufacturing and packaging practices of many commodity products and thus creating chaos in the market place.

Before recommending such options, the overall impact of the options, suggestions of alternatives and effectiveness of such alternatives are to be analyzed by a wide spectrum of all concerned and involving the experts in the field.

Point No. 11: Extended Producer Responsibility (EPR) shall be fixed in disposal of post-consumer plastics waste

Response:

The report of the High Power Committee appointed by the Hon'ble Supreme Court for the Solid Waste Management in class I cities of India, which was submitted in 1999, encompasses all mandatory and other responsibilities of all concerned including the Civic Bodies, Industries and the Citizens alike, for proper management of Solid Waste.

The suggestions and recommendations of this report should be followed and implemented. No new suggestions are required in this respect.