

**HON'BLE MR. JUSTICE SAMEER JAIN****Judgment****Reportable****Reserved on: 11/05/2023****Pronounced on: 02/06/2023**

1. With the due consent of both the sides, the present batch of writ petitions involving common questions of facts and law, is being taken up for final disposal.

2. The lead case from the said batch is taken as **S.B. Civil Writ Petition No. 11299/2022** titled as **M/s Khandelwal Paper Industries vs. Rajasthan State Pollution Control Board and Ors.**

3. By way of the present writ petition, the following reliefs are sought by the petitioner:

(a) Quashing and setting aside of the impugned orders dated 14.07.2022 and 15.07.2022 passed by respondent nos. 1 and 2 i.e. Rajasthan State Pollution Control Board (hereinafter, RSPCB), whereby the RSPCB has directed the closure of the petitioner's business.

(b) Quashing and setting aside of the impugned show cause notice(s) dated 12.04.2022 and 15.07.2022, issued by the respondent no.2, which pertained to the intended closure directions emanating from Section 31A of the Air (Prevention & Control of Pollution) Act, 1981 and Section 33A of Water (Prevention & Control of Pollution) Act, 1974 along with the quashing of the minutes of the meeting drawn by the RSPCB on 07.04.2022, 17.05.2022 and 21.07.2022.

(c) Issuance of a writ, direction or an order to the effect that neither the Notification dated 12.08.2021 issued by the Ministry of





Environment, Forest and Climate Change i.e. respondent no.3 and nor the clarification thereof, given by the National Task Force of the said Ministry in its Meeting Convened on 24.06.2022 or on any other date, has included raw materials of paper cups with a plastic coating/laminated paper cups, within the ambit of the said Notification.

(d) Issuance of a writ, direction or an order to the effect that the respondent nos. 1 and 2 i.e. RSPCB do not cause any restriction in the trade, commerce and dealings of raw materials of 'paper cups with plastic coating/laminated paper cups' as are manufactured by the petitioner-firm and to allow the petitioner-firm to function in the manner in which they were functioning prior to the issuance of the Notification dated 12.08.2021 by the Ministry of Environment, Forest and Climate Change.

(e) Quashing and setting aside of all or any other action(s) as may have been undertaken by the respondents on the basis of all or any of the impugned orders, notices or minutes of the meetings or the impugned clarification, at any time before or during the pendency of the present writ petition; and thereafter, the respondents may also be directed to restore all facilities/connections etc, if any withdrawn, withheld or cancelled at any time before or during the pendency of the present matter, on the basis of any of the action(s) which have been impugned by way of the present petition.

(f) Issuance of a writ, direction or an order for quashing and setting aside of the impugned orders, notices and other actions impugned herein-above, as passed by the respondent nos. 1 and



2, by wrongly banning paper spoon, fork and knife by treating them to have been made of plastic.

(g) Issuance of any other order, direction or relief, as this Court may deem fit and proper, in favour of the petitioners.

**SUBMISSIONS OF THE PETITIONER:**

3. Learned Senior counsel, Mr. Rajendra Prasad, appearing on behalf of the petitioner has submitted that the petitioner-firm is a registered partnership firm engaged in the business of manufacturing of raw material, which is used in the production of paper cups with a plastic coating i.e. 'laminated paper cups'. At this very stage, learned counsel for the petitioner has made it clear that the raw material so manufactured by him, is not only used for making 'laminated paper cups' but also for the production of 'plates', 'glasses' and such other items made of paper but along with a plastic coating/lamination. Thus, any reference to 'laminated paper cups' herein forward shall also be read as such items mentioned above, which are made of paper and have a plastic coating/lamination.

4. Learned counsel for the petitioner submitted that on 02.02.2021, the respondent-RSPCB issued the 'Consent to Establish' in favour of the petitioner-firm under Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 21(4) of the Air (Prevention and Control of Pollution) Act, 1981. The petitioner-firm was required to obtain the said 'Consent to Establish', as the production/manufacturing process, as sought to be undertaken by the petitioner-firm, fell within the ambit of the 'Orange Category'. It was submitted that



subsequent to the grant of the said Consent, the petitioner-firm set up the industry and commenced the manufacture of raw material, which is used in the production of paper cups with a plastic coating i.e. 'laminated paper cups'.

5. The cause of action in the instant matter arose when respondent nos. 1 and 2 i.e. the Headquarter and Regional Office of the RSPCB, in light of the newly amended Plastic Waste Management Rules of 2016 vide Notification dated 12.08.2021 and the corresponding inspection conducted at the unit of the petitioner-firm, issued show cause notices dated 12.04.2022 and 15.07.2022 to the petitioner-firm emanating from under Section 31A of the Air (Prevention & Control of Pollution) Act, 1981 and Section 33A of Water (Prevention & Control of Pollution) Act, 1974 for the intended closure of the petitioner-firm. By way of the said show cause notices, it was expressed by the respondent-RSPCB that the petitioner-firm had purportedly failed to satisfy the amendments effectuated by way of the notification dated 12.08.2021. Thereafter, the petitioner-firm by way of a response to the said notice(s), submitted that the nature of the products so manufactured by the petitioner-firm was different from the specific commodities/items banned under the notification dated 12.08.2021, solely on account of the fact that the petitioner-firm was engaged in the production of 'plastic laminated'/ 'coated papers' only, which constitutes the raw materials, which is subsequently used in the production of paper cups with a plastic coating i.e. 'laminated paper cups'. Therefore, the products as manufactured by the petitioner-firm, which are purely raw



materials, did not fall under the ambit of the newly incorporated prohibitions as enunciated in the notification dated 12.08.2021.

6. In pursuance to the response submitted by the petitioner-firm qua the nature of the products manufactured by the firm being that of raw materials used in the production of the specific products as banned under the said Notification, the respondent-RSPCB, without considering the averments made in the said response, vide impugned orders dated 14.07.2022 and 15.07.2022, directed the closure of the petitioner's business including all import, stocking, supply, sale and manufacturing of the plastic laminated paper cups, as was purportedly undertaken and/or performed by the petitioner-firm.

7. The direction for closure was issued by the respondent-RSPCB on account of the fact that the petitioner-firm engaged in the production of 'plastic laminated paper', which is used as raw material for the manufacturing of 'single-use plastic items', whose manufacture/import/storage/distribution/utilization and sale stood prohibited w.e.f. 01.07.2022. Furthermore, in the impugned order dated 14.07.2022, the respondent-RSPCB categorically noted that in pursuance to the notification dated 12.08.2021 banning certain identified 'single-use plastic items', the RSPCB sought a clarification from the Ministry of Environment, Forest and Climate Change. Thereafter, on 24.06.2022, the National Task Force, as constituted by the Ministry of Environment, Forest and Climate Change, provided the clarification that as per the single-use plastic items ban, there is no exemption granted for paper cups with a plastic coating layer, thereby meaning, that 'single-use



plastic items' made of paper with plastic coating layer would also be banned.

8. Therefore, with regards to the notification dated 12.08.2021, learned counsel for the petitioner submitted that the subject notification vide sub-rule (2) of Rule 4, sought to prohibit the manufacture, import, stocking, distribution, sale and use of certain 19 identified 'single-use plastic' commodities, of which, the product manufactured by the petitioner-firm i.e. plastic laminated papers, which are used as raw materials, did not constitute a part of. In support of the said contention, learned counsel adopted the following arguments:-

8.1 That by way of the notification dated 12.08.2021, the Ministry of Environment, Forest and Climate Change has not imposed a blanket ban on the use of all single use plastic commodities in the country. Rather, the subject notification, by the specific inclusions made therein, only prohibits the manufacture, sale, import, stocking, distribution and use of only a selective list of items.

8.2 That by way of the newly inserted sub-rules 2(a) and 2(b), a cumulative list of only 19 commodities is sought to be banned by the subject notification.

8.3 That the ban sought to be imposed by way of the subject notification is only on single use plastic items as a whole, which comprise only of plastic and not those items wherein plastic is also used as a layer or otherwise. In essence, the products must be constituted purely of plastic and not mixed with any other substance. Accordingly, in the facts and circumstances of the



present matter, the items produced by the petitioner-firm are 'plastic laminated papers' i.e. a product wherein plastic is merely used as a layer on sheet of paper. In this regard, it was illustrated that the raw material being manufactured by the petitioner-firm (plastic laminated paper) comprises of 95% paper and 5% of a thin layer of low-density Polyethylene (LDPE), wherein the LDPE layer is used just to add a seal on the product and provide water resistance while the virgin fibre-based paper used provides strength and grip to enable the raw material being manufactured to be held by the consumer, without crushing.

8.4 That in terms of the Plastic Waste Management Rules of 2016, the 'plastic laminated papers' can at best, be treated as a multi-layered commodity, which is primarily made of paper, wherein only a thin layer of plastic is added to provide water resistance etc.

8.5 That if it was the intent of the legislature to prohibit such a commodity as mentioned herein-above, then it would have expressly and specifically enunciated the same and in the absence of any such enunciation thereof, such a commodity cannot be included within the ambit of the specific list of commodities as provided under sub-rule 2 of Rule 4 of the Plastic Waste Management Rules of 2016. In this regard, it was categorically submitted that in order avoid uncertainty in the case of packaging products, the Plastic Waste Management Rules of 2016 have categorically and separately defined 'plastic packaging' and 'multi-layered packaging'.





8.6 That other legislations/statutes such as the HSN Code, which is specifically used under the GST law to classify goods in a systematic manner for Customs and GST Classification, also classifies 'Plastic Laminated Papers' as 'paper products' under Chapter 48 of the said Code.

9. Apart from the submissions made herein-above regarding the misplaced classification of the petitioner-firm's raw material as a 'single use plastic item' prohibited under sub-rule 2(b) of Rule 4 of the Plastic Waste Management Rules of 2016, learned counsel for the petitioner raised a challenge to the arbitrary action(s) of the respondent-RSPCB by submitting that a prohibition made under the law, being a restriction on the fundamental rights conferred by Article 19(1)(g) as well as a right arising under Article(s) 14 and 21 of the Constitution of India, must be a just, fair and reasonable restriction emanating from law and not from executive/administrative orders. If the prohibition so sought to be imposed, is not contained in the law, then the enforcing authority cannot travel beyond the language of the law. Therefore, the provisions of such a nature must be strictly construed and accordingly, a prohibition cannot be assumed without there being clear words to that effect or for that said purpose, within the concerned law itself. In this regard, learned counsel placed reliance upon the dictum of the Apex Court as enunciated in **K. Kuppusamy and Ors vs. State of Tamil Nadu and Ors.** reported in **(1998) 8 SCC 469.**

10. Learned counsel for the petitioners placed emphasis on the dictum of the Apex Court as held in **Commissioner of**





**Customs (Import) Mumbai vs. Dilip Kumar and Company &**

**Ors** reported in **AIR 2018 SC 3606**. Relevant extract is reproduced herein-under:

*"In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision making."*

11. In this Furthermore, learned counsel for the petitioner also placed reliance upon the dictum of the Apex Court judgment in **Union of India (UOI) and Ors vs. Asian Food Industries** reported in **AIR 2007 SC 750**. Relevant extract is reproduced herein-under:

*"In construing such a prohibitory order, whereas the rule of strict construction must be followed, the interpretation which subserves the intention of the Central Government as laid down in the policy as well as in the procedure should be given effect to. A statute as is well known may have to be construed in the light of the subordinate legislation framed thereunder. When subordinate legislation has been framed by the same authority which exercises the power under the policy, the intention of such policy maker must be found out from the words used therein albeit having regard to the rights of the exporters which are sought to be protected thereby."*

11.1 In this regard, to establish that the 'plastic laminated papers' manufactured by the petitioner-firm were not intended to form part of or be covered by the prohibitions incorporated in the notification dated 12.08.2021, learned counsel drew the attention of this Court to the FAQ's answered by the Ministry of Environment, Forest and Climate Change i.e. respondent no.3, regarding the subject notification dated 12.08.2021. Upon being asked, as to how were the banned single use plastic items



identified, the Ministry clarified that the banned single use plastic items were identified based upon the recommendations of Expert Committee on Single Use Plastics constituted by the Department of Chemical and Petrochemicals, Government of India.

11.2 Thus, in light of the aforesaid response qua the recommendations of the Expert Committee, learned counsel submitted that even when the 19 identified items banned vide subject Notification dated 12.08.2021 were based on the recommendation of the expert committee appointed by the Department of Chemical and Petrochemicals, Government of India vide its report on Single Use Plastics of September, 2019 and that the said products were not even identified by individuals specifically appointed by the Ministry of Environment, Forest and Climate Change i.e. respondent no.3, then under no powers, authority and knowledge, can the National Task Force, constituted by the respondent no.3, be allowed to issue clarifications on the items identified by the aforementioned expert committee. In simpler words, it was argued that when the item specifically banned by the subject notification is 'plastic cup' then the same specifically excludes from its purview 'paper cups with plastic coating/laminated paper cups'.

11.3 To further establish the absence of intent to include 'laminated paper cups' within the ambit of the term 'plastic cups' as incorporated under sub-rule 2(b) of Rule 4 of the Plastic Waste Management Rules of 2016, learned counsel relied upon the specific introduction of a novel Notification by the State of Maharashtra, pursuant to the issuance of notification dated



12.08.2021 issued by the respondent no.3., whereby the State of Maharashtra specifically prohibited the use of 'layered products' i.e. plastic coated and laminated disposable cups etc. Thus, if the subject notification issued by respondent no.3 did intend to prohibit the manufacture, usage, sale etc of the plastic laminated paper, then it would have explicitly added the same to the list provided under the said Notification for banned products.

12. Learned counsel for the petitioner also illustrated that the petitioners have invested their entire life's savings in setting-up the manufacturing unit comprising of total set-up cost including the cost of machineries to the tune of Rs. 3,00,00,000/- (Rupees Three Crores Only) besides having employed a number of persons for all of whom the said business is the sole source of sustenance. Moreover, the grant of 'Consent to Establish' by the respondent-RSPCB, enabled the petitioner to seek grant of several loans from nationalized banks, repayment of which is still due and outstanding. Therefore, the closure of the said manufacturing activity shall adversely affect multiple stakeholders such as owners, promoters, secured creditors, employees and the other related individuals with the petitioner-firm.

13. It must be noted that the learned counsel for the petitioners, most empathetically pressed on the recognition of the enunciated principle of 'sustainable development' in the construction of Sub-Rule (2)(b) of Rule 4 of the Plastic Waste Management Rules of 2016. To spell the existence of the said principle in the sub-rule mentioned hereinabove, learned counsel elaborated upon the principle of 'sustainable development' to



mean a balancing act between the inherent need to preserve our environment juxtaposed with the societal calls of development and growth. In this regard, reliance was placed on the judgment of the Hon'ble Apex Court in **Vellore Citizens Welfare Forum vs. Union of India** reported in **(1996) 5 SCC 647**.

14. Accordingly, it was argued that in the facts and circumstances of the case, the Ministry of Environment, Forest and Climate Change, while applying the prohibition only to 19 identified commodities, took into account the principles of sustainable development thereby to meet the needs of the present by allowing certain commodities to be used whilst simultaneously banning the use of certain items so that the abilities of the future generations are not compromised. In essence, learned counsel argued that the by way of the notification dated 12.08.2021, the Government intended to only phase out the use of single-use plastic items, by banning a selective list of identified commodities in the present, thereby balancing the needs of the society against the requirements of the future. Therefore, in light of the same and under the facts and circumstances of the matter, the respondents/executive cannot be allowed to over reach and interpret the provisions of the subject notification, in a manner that is beyond the intent of the said rub-rule (2)(b) of Rule 4 and the literal construction of the said sub-rule as well.

15. In conclusion, learned counsel for the petitioner relied upon the dictum of the Apex Court in **Opto Circuit India Ltd. vs. Axis Bank and Ors.** reported in **(2021) 6 SCC 707** wherein it was held that when a statute provides that a particular thing be



done, then the same must be done in the manner prescribed and not in any other way. Therefore, in light of Rule 4(4) of the Plastic Waste Management Rules of 2016, the respondents no.3/executive can only ban 'laminated paper cups' by way of novel Notification to be issued by them, wherein the said product is categorically and expressly included and that too can only be made applicable only after the expiry of a period of 10 years from the date of the publication of the said Notification and not at any point in time prior thereto.

### **SUBMISSIONS OF THE RESPONDENTS**

16. Prior to raising scrutiny qua the arguments put forth by the learned counsel for the petitioner herein-above, Mr. Shashwat Purohit, appearing on behalf of respondent nos. 1 and 2, has raised a preliminary objection regarding the maintainability of the instant writ petition. While placing reliance upon Section 5A of the Environment Protection Act, 1986 as well as Section 14 read with Section 18 of the National Green Tribunal Act, 2010, learned counsel submitted that the said provisions provide an alternate remedy to the petitioners to raise their grievance before the National Green Tribunal. In this regard, learned counsel also submitted that it is an admitted fact that the impugned show-cause notices dated 12.04.2022 and 15.07.2022 have been issued under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 respectively. Thus, the said show cause notices issued specifically under the aforementioned provisions, are amenable to an appeal before the National Green





Tribunal as per Section 16(c) and 16(f) of the National Green Tribunal Act, 2010. Hence, in light of the same and on account of the petitioner not having exhausted the alternate remedy available to him by way of an appeal before the National Green Tribunal, it was prayed that the instant writ petition be dismissed.

17. Mr. Shashwat Purohit, while not conceding to the maintainability of the instant writ petition, also put forth his contentions on the merits of the case. It was submitted that the Ministry of Environment, Forest and Climate Change, Government of India has notified the Plastic Waste Management Amendment Rules, 2021, which specifically and categorically prohibit identified single-use plastic items. In this regard, learned counsel drew the attention of the Court to the subject notification dated 12.08.2021 which prohibits the manufacturing, import, stocking, distributorship, sale and use of certain identified single-use plastic commodities with effect from 1<sup>st</sup> July 2022. The single-use plastic commodities, including those containing polystyrene and expanded polystyrene, which were sought to be banned were enumerated by way of the newly inserted Rule 4(2)(a) and 4(2)(b) of the Rules of 2016. It is pertinent to note that by way of the latter Rule 4(2)(b) of the said Rules, single use 'plastic cups' were categorically included in the list of commodities to be prohibited with effect from 1<sup>st</sup> July 2022. Thereafter, to seek clarity on the issue of prohibition of 'plastic coating layer' on paper cups/laminated paper cups and other identical items, several discussions and deliberations were undertaken during the third meeting of the National Task Force constituted for the



implementation of the ban so envisioned by the subject notification dated 12.08.2021. It was submitted that the said meeting was constituted under the Chairmanship of the Secretary, Ministry of Environment, Forest and Climate Change, Government of India on 24.06.2022. In the said meeting, after due deliberations, it was clarified by the National Task Force that as per the ban/prohibition on single-use plastic commodities, there was no exemption carved out for paper cups with plastic coating/laminated paper cups. Accordingly, it was duly clarified by the National Task Force, which was constituted with due authority of the Ministry of Environment, Forest and Climate Change i.e. the Ministry which had issued the subject notification dated 12.08.2021 at the first instance, that the identified single-use plastic items, made of paper but with a coating of single use plastic/laminated paper cups, were also banned by the mandate of the subject notification.

18. Learned counsel further submitted that it was only in compliance of the notification dated 12.08.2021 read with the decision taken and/or clarification issued in the meeting of the National Task Force on 24.06.2022, which was duly constituted with the authority of the Ministry of Environment, Forest and Climate Change, that the present respondent nos.1 and 2 directed all the Regional Officers of the State of Rajasthan to initiate necessary action for the closure of all such units, located within their jurisdiction, which engaged in the production of identified single-use plastic commodities, including those items which are made of paper but with a plastic coating/laminated paper cups.





The said direction(s) were issued vide impugned order dated 14.07.2022. Learned counsel for the respondents also submitted that it was only in compliance of the subject notification read with the clarification issued thereto that proceedings/action was initiated against the industries/firms engaging and/or dealing with the said banned commodities. In this regard, it was stated that in furtherance of the impugned order dated 14.07.2022, the Regional Officers (in the present case, respondent no.2) initiated action against the defaulting firms/industries, of which the present petitioner-firm constituted part as well. While initiating action as mentioned above, the respondent no.2 duly convened a meeting with the different project proponents and thereafter, issued show cause notices to them for the intended refusal of consent application(s) on part of the State/revocation of consent to operate/closure of such units, as mentioned above.

19. With respect to the submissions made herein-above qua the initiation of the impugned proceedings against the petitioner-firm by the respondent nos. 1 and 2, Mr. Shashwat Purohit argued that the respondent-RSPCB is duty bound to protect the environment under the scheme of the Constitution of India as well as under the various statutes enacted for that purpose including the Environmental Protection Act of 1986. It was submitted that under the scheme of the Indian Constitution, the Hon'ble Apex Court has declared the right to clean environment as a fundamental right guaranteed under Article 21 i.e. right to life. Thus, every person has right to a clean and healthy environment as a fundamental right and accordingly, the



impugned orders passed by the respondents are in accordance with the aforesaid fundamental right. In this regard, learned counsel also drew the attention of this Court to the pleadings of the petitioner-firm whereby it was submitted that the petitioner-firm had nowhere in their pleadings as well as the oral arguments submitted that the product manufactured by the petitioner-firm was an entirely environment friendly product, which causes no harm to the environment.

20. Furthermore, in order to establish the fact that the respondent nos. 1 and 2 had issued the impugned show cause notices and the subsequent impugned orders for closure, with complete jurisdiction and without invoking legislative powers to issue the said impugned show cause notices dated 14.07.2022 and 15.07.2022, learned counsel relied upon provisions of various statutes legislated for the protection of the environment as well as the Constitution of India. Firstly, by relying upon the Directive Principles of State Policies imbibed under Article 48-A of the Constitution of India as well as Article 51-A(g), learned counsel submitted that the respondents as well as the petitioner, are both bound by the mandate of the Constitution to maintain and promote the environment. Thus, the orders impugned have been passed only to uphold the spirit of the constitutional responsibility to protect our environment, in letter as well as in spirit. Additionally, learned counsel also illustrated by way certain references to Section 3 read with Sections 5 and 6 of the Environment Protection Act, 1986 that the scheme of the said Act provides the Central Government with ample power to undertake



measures to curb down pollution in any form in the country. Hence, in this background, learned counsel submitted that it is needless to say and as is evidently admitted, that the utilization of single-use plastic severely affects the environment adversely.

Thus, on a combined reading of Section 3 read with Section 5 and 6 of the Act of 1986, the Central Government is duly empowered to take measures to protect and improve the environment and thereby, in furtherance of the said goal, issue directions pertaining to ban on single-use plastic commodities. Additionally, learned counsel also relied upon Section 23 of the Act of 1986 which deals with the Central Government's power to delegate its powers and functions on any authority including the State Government. Thus, considering the aforesaid statutory powers bestowed upon the Central Government to undertake measures to protect the environment as well as to issue directions in furtherance of the same to the State Government etc, the National Task Force, as constituted with the authority of the Ministry of Environment, Forest and Climate Change, was statutorily empowered to issue clarifications in terms of the subject notification dated 12.08.2021, which admittedly came to be issued by the Central Government only. Thus, having established the valid jurisdiction of the National Task Force to issue the said clarification on 24.06.2022 with regards to the subject notification dated 12.08.2021 issued by the Central Government, it was conclusively urged by the learned counsel for the respondent nos. 1 and 2 that while passing the impugned orders dated 14.07.2022 and 15.07.2022, the RSPCB did not exercise legislative function. Rather, the orders



so passed were in consonance with the directions issued by the Central Government under its powers provided under the scheme of the Environment Protection Act, 1986. Even otherwise, it was argued that Section 23 of the Act of 1986 empowers the Central Government to delegate its functions on the RSPCB, which constitutes an enabling provision for the RSPCB to issue the aforesaid impugned orders dated 14.07.2022 and 15.07.2022.

21. Mr. Shashwat Purohit, in order to establish the factum of inclusion of laminated paper cups/ paper cups with plastic coating in the subject notification dated 12.08.2021, submitted that the subject notification by way insertion of the definition of single-use plastic commodities, provides clarity on the said products by categorizing them as 'plastic items intended to be used once for the same purpose before being disposed of or recycled'. Thus, a combined reading of sub-rule 2(b) of Rule 4 read with the aforesaid definition of 'single-use plastic commodities' as provided under Rule 3(va) of the Rules of 2016, would include paper cups with a plastic coating/laminated paper cups well within its ambit and therefore, the said product/commodity shall also be banned as a 'single use plastic commodity'. In this regard, it was categorically argued by learned counsel for the respondent-RSPCB that the contention of the petitioner that the subject notification dated 12.08.2021 does not expressly include the laminated plastic cups and thus, the same shall not be deemed to be prohibited by the notification, is entirely misconceived and perverse. While refuting the said contention, learned counsel submitted that the product manufactured by the



petitioners has the same traits/qualities as that of all the banned items and thus, it cannot be said that the non-inclusion of the said item specifically in the subject notification dated 12.08.2021 would be beyond the ban so imposed.

22. Having dealt with the authority of the Central Government to issue the subject notification and the corresponding clarification provided therewith by the National Task Force, learned counsel for the respondent-RSPCB dealt with contention of the petitioner qua the violation of its fundamental rights. Mr. Shashwat Purohit submitted that the impugned orders dated 14.07.2022 and 15.07.2022 as well as the impugned show cause notices dated 15.07.2022 and 12.04.2022, issued by the respondent-RSPCB, do not violate the fundamental rights of the petitioner guaranteed under the constitutional scheme in any manner whatsoever. The impugned orders as well as the show cause notices do not treat the petitioner unequally and indifferently and thus, the said orders and show cause notices survive all the tests laid down for invoking the protection provided under Article 14 and Article 19(1)(g) of the Constitution of India.

23. Furthermore, learned counsel for the respondent-RSPCB also submitted that the argument raised by the petitioner qua the product manufactured by the petitioner-firm being a 'raw material' and not a final product, of which the latter has been prohibited by the subject notification, is untenable and entirely misconceived. It is submitted that the petitioner was well aware of the fact that the product manufactured by the petitioner was used for further manufacturing products made of plastic coated papers



i.e. laminated paper cups, which have been banned by way of the subject notification dated 12.08.2021. Thus, the petitioner being unconcerned with the 'final product' made of its own manufactured 'laminated paper', cannot be a ground for letting the petitioner-firm continue with the production of the banned substance. Thus, considering the fact that the product manufactured by the petitioner-firm is not different and is rather, identical to the commodities so banned vide the subject notification dated 12.08.2021, which have been prohibited by the Central Government for the reason of the harm that they cause to the environment, ecology and public health, the impugned orders and show cause notices so passed by the respondent-RSPCB are in accordance with law. Lastly, it was also submitted that the petitioner cannot be permitted to continue with the production of a prohibited substance at the cost of the environment, especially, upon a consideration of the fact that petitioner-firm had over a year to resort to an alternative substance, in between the date of issuance of Notification dated 12.08.2021 and the date as on which the said Notification was to take effect i.e. 1<sup>st</sup> July, 2022.

24. Mr. Shashwat Purohit also placed reliance upon the judgment of the Division Bench of the Madras High Court in **Chennai Non Wovens Private Limited vs. State of Tamil Nadu and Ors.** reported in **2019-3-LW 780**, wherein the Court dealt with an identical issue of a ban/prohibition imposed on paper cups with a plastic coating/laminated paper cups, by the State Government. While passing the order therein, the learned Division Bench upheld the ban so imposed on paper cups with a plastic



coating, by treating them to be plastic items, as banned by the notification. Learned counsel for the respondents has submitted that the reasoning adopted by the Court therein, is squarely applicable to the facts and circumstances of the present case, as the prohibited commodity involved in both the matters is identical. It has been clarified by the learned counsel for the respondent that a Special Leave Petition No. 18305/2019 has been registered before the Apex Court against the said judgment of the Division Bench, wherein arguments have been concluded and the judgment has been reserved. No interim order/stay is in operation qua the said judgment.

25. Lastly, learned counsel appearing on behalf of the Union of India & Ors., Mr. Sandeep Pathak, has contended that the argument advanced by the learned counsel for the petitioner that the petitioner-firm is manufacturing laminated paper for the further production of laminated paper cups and that the product manufactured by the petitioner-firm (Plastic Laminated Papers) comprising of 95% paper and only 5% of a thin layer of low-density Polyethylene (LDPE) is not tenable. In support of the same, he has submitted that the Plastic Waste Management Rules of 2016, read with the amendment Rules of 2021, do not discriminate between the levels of plastic in a commodity. Admittedly, the product being manufactured by the petitioners contains single use plastic, which in itself, is prohibited. Thus, the petitioners cannot be permitted to claim any exclusion when the product being manufactured is squarely covered by the definitions provided under the Rules.





27. As a concluding remark, Mr. Sandeep Pathak, contended that the language adopted in the Amendment Rules of 2021 does not leave any ambiguity which may be required to be interpreted in the manner, as is proposed by the petitioner hereinabove. A plain reading of the provisions of the Amendment Rules of 2021 clearly shows that the manufacture/production of any commodity, which falls within the identified list of items and contains any amount of plastic with the prescribed specifications, cannot be permitted to be continued. Thus, no interpretation, other than the plain and simple interpretation, can be accorded to the provisions of the Rules of 2021. Accordingly, whilst praying for the dismissal of the instant petition, learned counsel submitted that while determining the single use plastic items prohibited by the subject notification, a thorough examination was conducted wherein relevant stipulations such as low utility and high adverse environmental impact was considered, based on a report prepared by an Expert Committee on the subject matter. Thus, the inclusion of 'laminated paper cups' and correspondingly and resultantly the 'laminated papers' being manufactured by the petitioner-firm as raw materials, are duly prohibited by the subject notification dated 12.08.2021. Hence, in light of the same, the present writ petition does not call for any indulgence of this Court.

**DISCUSSION AND FINDINGS:**

28. Heard the arguments advanced by learned counsel for the parties, perused the voluminous records produced by both the sides and considered the judgments cited at Bar.



29. In order to methodically address and adjudicate upon the issues raised in the present petition, this Court deems it appropriate to partition its findings on each of the pertinent contentions raised herein-above. The key arguments, warranting this Court's consideration are as follows:

(a) Whether the instant writ petition is not maintainable before this Court in light of the alternate remedy available to the petitioners before the National Green Tribunal?

(b) Whether the clarification issued by the National Task Force, with regards to the items prohibited by the subject notification dated 12.08.2021, is legally recognizable and/or whether the said Task Force, had the authority to issue clarification(s) on the commodities to be included under the ban sought to be imposed by way of the said notification?

(c) Whether the product manufactured by the petitioner-firm i.e. 'plastic laminated/coated papers' would be covered under the ambit of the subject notification dated 12.08.2021, without the same being expressly included therein?

(d) Whether the respondent-RSPCB exceed its jurisdiction and issued the impugned show cause notices and the subsequent impugned orders for closure, without complete jurisdiction, thereby invoking legislative powers/functions to issue the said impugned show cause notices dated 14.07.2022 and 15.07.2022?

(e) Whether the subject notification dated 12.08.2021, being prohibitory in nature, calls for strict or purposive interpretation of its provisions, especially in light of the desired outcome sought to



be achieved by the prohibitions enumerated in the said notification?

(f) Whether by the subject notification dated 12.08.2021 and the consequential show cause notice(s) as well as orders for closure so issued, the fundamental rights of the petitioners, as guaranteed under Articles 14 and 19(1)(g) of the Constitution of India, are violated?

(A) On the maintainability of the instant writ petition:

30. At the very outset, this Court feels it necessary to adjudge upon the maintainability of the present petition, before dealing with the merits of the petition and/or the contentions raised therein, if the need so arises.

31. Mr. Shashwat Purohit, learned counsel appearing on behalf of the respondent-RSPCB as well as Mr. Sandeep Pathak, representing the Union of India, have raised a preliminary objection regarding the maintainability of the instant writ petition, solely on account of the fact that the petitioners herein, have failed to avail the alternate remedy available to them under Section 5A of the Environment Protection Act, 1986 read with Section(s) 14, 16 and 18 of the National Green Tribunal Act, 2010.

32. In this regard, it is pertinent to take note of the following provisions, which shall aid in deciding the issue of maintainability of the present petition, as well as the subsequent issues framed above, if the need so arises. The relevant provisions warranting this Court's consideration are as follows:



### **The Environment (Protection) Act:-**

**"5. POWER TO GIVE DIRECTIONS.-** Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may<sup>1</sup>, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions

**Explanation--**For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-- (a) the closure, prohibition or regulation of any industry, operation or process; or (b) stoppage or regulation of the supply of electricity or water or any other service.

**5(A) Appeal to National Green Tribunal:-** Any person aggrieved by any directions issued under Section 5, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act."

### **The National Green Tribunal Act, 2010**

16. Tribunal to have appellate jurisdiction-

(c) Directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974)

(f)an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981)

33. Having relied upon the aforementioned provisions, learned counsel for the State as well as for the Union of India, advanced the argument that the impugned show cause notices dated 12.04.2022 and 15.07.2022 had been issued under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981. Thus, the said show cause notices are amenable to an appeal before the National Green Tribunal under Section 16(c) and





16(f) of the National Green Tribunal Act, as the said provisions specifically provide for an appeal to be filed by “any person” aggrieved of an order passed by a Board (herein, respondent-RSPCB) under Sections 33A and 31 of the Acts of 1974 and 1981 respectively. Hence, the petitioner, being aggrieved of the show cause notices issued by the respondent-RSPCB, possessed the statutory remedy of an appeal before the National Green Tribunal. Moreover, in addition to the said argument, reliance was also placed upon Section 5A of the Environment Protection Act of 1986, as reproduced above, which provides for the remedy of an appeal against any order passed by the Central Government, in exercise of its powers under Section 5 of the said Act. Moreover, by the language incorporated therein, Section 5A categorically provides for “any person”, who has been aggrieved by the directions issued under Section 5, to file an appeal.

34. During the course of arguments, learned counsel for the petitioners, countered the aforesaid preliminary objection by arguing that the above-stated provision, namely Section 16 of the National Green Tribunal Act, 2010 provides for the remedy of an appeal only to “any person” aggrieved of the orders and/or directions issued under various Acts, including those issued under Section 33A of Water (Prevention and Control of Pollution) Act, 1974 and Section 31 of the Air (Prevention and Control of Pollution) Act, 1981, amongst others. However, the petitioner-firm, not being “a person” could not have availed the said alternate remedy and therefore, has preferred to approach this Court by way of the instant writ petition. Learned counsel also



submitted that the mere availability of an alternate remedy of appeal, does not oust the jurisdiction of this Court under Article 226 of the Constitution of India, especially in matters where issues pertaining to the violation of fundamental rights are involved.

35. Having taken into consideration the arguments raised herein-above regarding the maintainability of the present petition, this Court deems it fit to hold that the preliminary objection raised by the respondent-RSPCB is not worthy of consideration at this stage, for the following reasons only:

- (a) The writ petition was filed in the year 2022.
- (b) Final pleadings in the matter were already made out.
- (c) During the tenure of the writ petition, arguments had already been made at length, in a substantive manner.
- (d) The dispute raised before the Court by way of the instant writ petition, involves deliberations on the alleged violation of fundamental rights of the petitioners, guaranteed under Articles 14 and 19(1)(g) of the Constitution of India.
- (e) That the issue involved herein called for urgency in the final disposal of the matter, as the ban imposed by the subject notification dated 12.08.2021 was already in operation, in the absence of any interim protection/stay granted previously.

36. In this background, reliance can be placed upon the dictum of the Hon'ble Apex Court in the celebrated judgment of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.** reported in **(1998) 8 SCC 1**. The relevant extract is reproduced herein:

*"Under Article 226 of the Constitution of India, the High Court, having regard to the facts of the case,*







*has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternate remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

37. In **Harbanslal Sahnia and Ors. vs. Indian Oil Corpn. Ltd. and Ors.** reported in **(2003) 2 SCC 107**, the Hon'ble Apex Court had held that:

*"So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternate remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternate remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

38. Similarly, the Hon'ble Apex Court in the case of **Radha Krishan Industries vs. State of H.P.** reported in **(2021) 6 SCC 771** lay down certain principles on the said subject matter. It was held that:

*"(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*

*(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the*





*power of the High Court is where an effective alternate remedy is available to the aggrieved person; (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;*

*(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;*

*(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and*

*(vi) In cases where there are disputes questions of fact, the High Court may decide to decline the jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with".*

39. Thus, considering the fact that dispute raised before this Court by way of the instant writ petition involves deliberations on the purported violation of fundamental rights of the petitioners, guaranteed under Articles 14 and 19(1)(g) of the Constitution; that the pleadings in the matter are already complete and substantial arguments have made been therein; that the ban imposed by the subject notification dated 12.08.2021 is already in operation, in the absence of any interim protection/stay granted previously, this Court deems it fit to hold that the preliminary objection raised by the respondent-RSPCB and Union of India regarding the availability of an alternate remedy, cannot be taken





and/or accepted at this stage, especially in light of the contingencies enumerated herein-above and taking note of the qualified discretion available to this Court in light of the dictum of the Apex Court in the judgments referred herein-above

(B) On the clarification issued by the National Task Force qua the 'laminated paper cups': Authority and Validity.

40. While challenging the authority of the National Task Force, in issuing a clarification regarding the inclusion of 'cups made of paper with a layer of plastic'/ 'laminated paper cups' within the purview of sub-rule 2 of Rule 4 by way of the subject notification dated 12.08.2021, learned counsel for the petitioner had relied upon the FAQ's answered by the Ministry of Environment, Forest and Climate Change i.e. respondent no.3, regarding the subject notification dated 12.08.2021, wherein upon being asked, as to how were the banned single use plastic items identified, the Ministry had clarified that the banned single use plastic items were identified based upon the recommendations of Expert Committee on Single Use Plastics constituted by the Department of Chemical and Petrochemicals, Government of India. It was accordingly argued that even when the 19 identified items banned vide subject notification dated 12.08.2021 were based on the recommendation of the expert committee appointed by the Department of Chemical and Petrochemicals, Government of India vide its report on Single Use Plastics of September, 2019 and that the said products were not even identified by individuals specifically appointed by the Ministry of Environment, Forest and Climate Change i.e. respondent no.3, then under no powers,



authority and knowledge, can the National Task Force, constituted by the respondent no.3, be allowed to issue clarifications on the items identified by the aforementioned expert committee.

41. Upon a perusal of the record as well upon a careful consideration of the minutes of the 3<sup>rd</sup> meeting of the National Task Force, this Court finds it difficult to countenance the argument advanced by the petitioners challenging the authority of the National Task Force in issuing the clarification regarding the inclusion of 'laminated paper cups' within the ambit of the prohibited substances as enumerated under sub-rule 2(b) of Rule 4.

42. It is noteworthy that the National Task Force (NTF) was constituted vide notification dated 25.06.2021. Moreover, the composition of the said Task Force included joint committees of officials from various Ministries of the Central Government as well different State Governments, apart from members of different Pollution Control Boards and Departments from across the country.

43. In this regard, it is pertinent to note that one of the specific members of the National Task Force, was the Secretary of the Ministry of Chemical and Petrochemicals, under whose authority the Expert Committee on Single Use Plastics was constituted and based upon which the 19 identified single-use plastic items were prohibited at the first instance vide the subject notification dated 12.08.2021. Additionally, the meeting of the National Task Force was also attended by several experts, whose knowledge in the field of science and technology as well as



pollution control, enabled them to take informed decisions regarding the implementation of the ban sought to be achieved by the subject notification dated 12.08.2021, in letter as well as in spirit. Moreover, the meeting was attended by over 194 members, who were experts in the field science, technology and pollution control, from across the country. Some of the experts who attended the meeting were:

- (a) Dr. Anita Aggarwal (Scientist 'F' and Head, Ministry of Science and Technology)
- (b) Ms. Divya Sinha (Scientist, Central Pollution Control Board)
- (c) Dr. Amit Love (Scientist, Ministry of Environment, Forest and Climate Change)
- (d) Dr. Sangita Kasture (Scientist 'F' and Head, Department of Biotechnology)

44. To establish the role of the aforesaid attendees, amongst others, as experts in their respective fields, it would be prudent to place reliance upon Section 45 of the Indian Evidence Act, 1872. For ready reference, the provision is reproduced herein-under:

**Section 45: Opinion of Experts-** *When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts. Such persons are called experts.*

Thus, considering the fact that the illustrated attendees named herein-above, who attended the 3<sup>rd</sup> meeting of the National Task Force convened on 24.06.2022, in addition to over 190 other



attendees, who were equally skilled in their field, and were in the capacity to form an opinion on the prohibitions sought to be achieved by the subject notification dated 12.08.2021, this Court deems it appropriate to hold that the opinions put forth by the said individuals, who were experts on account of their qualifications in their respective fields, based upon which, the National Task Force arrived at their decision to include 'laminated paper cups' within the ambit of the prohibited commodities as enumerated in the subject notification dated 12.08.2021, were with the authority of the law.

45. Hence, upon a cumulative consideration of the fact that the 3<sup>rd</sup> meeting of the National Task Force was held under the Chairmanship of the Secretary of the Ministry of Environment, Forest and Climate Change i.e. respondent no.3; that the composition of the said Task Force included joint committees of officials from various ministries of the Central Government as well different State Governments, apart from the members of different Pollution Boards and Departments from across the country; that one of the specific members of the National Task Force, was the Secretary of the Ministry of Chemical and Petrochemicals, under whose authority the Expert Committee on Single Use Plastics was constituted and based upon which the 19 identified single-use plastic items were prohibited at the first instance vide the subject notification dated 12.08.2021; that the meeting of the National Task Force was also attended by several experts from the fields of Science, Technology and Pollution Control and that the decision to include 'laminated paper cups' within the ambit of the prohibited



commodities as enumerated in the subject notification dated 12.08.2021 was arrived at by the said experts and relying upon Section 45 of the Indian Evidence Act, this Court deems it fit to hold that the National Task Force, had the authority in law, to issue clarification(s) qua the inclusion of 'laminated paper cups' within the ambit of the subject notification dated 12.08.2021.

(C) Whether the product manufactured by the petitioner-firm i.e. 'plastic laminated/coated papers' would be covered under the ambit of the subject notification dated 12.08.2021, without the same being expressly included therein?

46. In order to exclude the product manufactured by the petitioner-firm from the ambit of the notification dated 12.08.2021, learned counsel for the petitioners submitted that the nature of the products so manufactured by the petitioner-firm was different from the specific commodities/items banned under the notification dated 12.08.2021, solely on account of the fact that the petitioner-firm was engaged in the production of 'plastic laminated papers'/ 'coated papers' only, which constitutes the raw materials, and which are subsequently used in the production of paper cups with a plastic coating i.e. 'laminated paper cups'. Therefore, the products as manufactured by the petitioner-firm, which are purely raw materials, did not fall under the ambit of the newly incorporated prohibitions as enunciated in the notification dated 12.08.2021.

47. This Court finds it difficult to countenance the argument advanced by the learned counsel for the petitioners. It is an admitted fact that the product being manufactured by the





petitioners i.e. 'plastic coated paper', comprises of 95% paper and 5% of a thin layer of low-density Polyethylene (LDPE), wherein the LDPE layer is used to provide water resistance to the said sheet so produced.

48. Therefore, taking into account the definition a 'single-use plastic commodity' as provided under Rule 3(va) vide subject notification dated 12.08.2021, which categorically defines 'single-use plastic commodity' as a 'plastic' item intended to be used once for the same purpose before being disposed of or recycled, read with the definition of 'plastic' as provided under Rule 3(o) which defines 'plastic' as any material containing LDPE, amongst others, as an essential ingredient, it becomes abundantly clear that the product being manufactured by the petitioner-firm is a 'plastic' commodity under Rule 3(o), which further read with Rule 3(va), makes the same a 'single-use plastic commodity', on account of the fact that the plastic coated sheets as manufactured by the petitioner-firm, cannot be used multiple times and is rather, used in a disposable manner after its intended one-time use is exhausted.

50. Accordingly, a combined reading of Rule 3(o), Rule 3(va) and Rule 4(2) of the Plastic Waste Management Rules of 2016, as amended by the subject notification dated 12.08.2021, would draw a clear inference that the product of the petitioner is well within the prohibited commodities mentioned under Rule 4(2) (b).

51. At this juncture, it is noteworthy to appreciate the argument advanced by the learned counsel for the respondent-





RSPCB, Mr. Shashwat Purohit, that at the time of production of the 'laminated paper'/'plastic coated papers' by the petitioner-firm, the latter was in complete knowledge of the fact that the said product manufactured by the petitioner-firm was further used for manufacturing of products made of 'plastic coated paper' i.e. laminated paper cups, which in itself are a 'single-use plastic commodity' as established herein-above, and that such commodities have been prohibited vide subject notification dated 12.08.2021. Thus, the petitioner-firm being unconcerned of the final product made of their manufactured single-use plastic commodity, cannot be accepted as a tenable ground to permit the petitioner-firm to continue the production of the banned substance, further used in the manufacture of other banned substances, as is clarified herein-above.

52. Thus, relying upon the aforesaid, it can be conclusively said that the product manufactured by the petitioners are not different from the items which have been prohibited/banned by the subject notification dated 12.08.2021. Rather, the 'plastic coated papers' form a part and parcel of the banned substances enumerated under Rule 4(2), upon which further clarification has been conclusively provided by the National Task Force as well.

53. As a result, the product manufactured by the petitioner-firm i.e. 'plastic laminated/coated papers' would be covered under the ambit of the subject notification dated 12.08.2021, without the same being expressly included therein but forming a part and parcel of the prohibitions enumerated in



the scope of the notification as well as within the expert opinions provided in the meeting of the National Task Force convened on 24.06.2022.

(D) On whether the respondent-RSPCB exceed its jurisdiction and invoked legislative powers/functions in issuing the impugned show cause notices dated 12.04.2022 and 15.07.2022 and the subsequent impugned orders for closure dated 14.07.2022 and 15.07.2022?

54. In order to assess whether the respondent-RSPCB acted within its jurisdiction while issuing the impugned show cause notices as well as orders for closure, we must trace the statutory authority of the respondent-RSPCB, which enables the Board to exercise its functions related to the enforcement of the directions/notifications issued by the Central Government.

55. At the outset, it is observed that the respondent-RSPCB is duty bound to protect the environment under the scheme of the Constitution of India as well as under the various incidental statutes enacted for that purpose, including the Environment Protection Act, 1986.

56. It is also well established that the right to clean environment forms part of the fundamental right to life, as protected under Article 21 of the Constitution of India. Moreover, apart from ensuring the protection of the said fundamental right by the State, Article 48A of the Constitution, as part of the Directive Principles of State Policy puts the responsibility on the State to safeguard the country's forests and wildlife and to also maintain and promote the environment. Furthermore, Article



51A(g) goes a step further and bestows the responsibility of protecting and improving the natural environment, not only on the State but upon every citizen of India.

57. Therefore, Article 21 of the Constitution of India harmoniously read with Articles 48A and 51A(g), protects the right to clean environment as a fundamental right of all persons and incidentally, by way of Article 48A and 51A(g), puts the responsibility on the State to maintain and promote the environment. Thus, it shall be prudent to observe that the respondent-RSPCB, being the State authority responsible for keeping pollution in check within the State of Rajasthan, was duty bound, as per the constitutional scheme, to issue competent directions for upholding the mandate of the constitution, in letter as well as in spirit.

58. Moreover, Section 3 of the Environment Protection Act, 1986 provides the Central Government with the power to take all such measures, as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and thereby, preventing and/or controlling environmental pollution in the country. In furtherance of this right, Section 5 of the said Act also provides for the powers of the Central Government to issue directions with respect to the protection of the environment. Therefore, it can be ascertained that the Environment Protection Act of 1986 provides the Central Government with ample of power to undertake measures to curb down pollution in any form whatsoever, including the power to lay



down rules to regulate environmental pollution under Section 6 of the said Act.

59. Thus, a combined reading of Section 3 read with Sections 5 and 6 of the Environment Protection Act, 1986, would empower the Central Government to issue directions pertaining to the ban on single-use plastic items. Furthermore, Section 23 of the said Act, inadvertently, also bestows upon the Central Government the right to delegate certain powers and functions upon the State Government or any other authority, in order to ensure the effective compliance of the core mandate of the Environment Protection Act, 1986 i.e. to protect and improve our environment.

60. Thus, in light of the observations made herein-above, especially qua the constitutional burden upon the State to maintain and promote the environment, read under Article 48A, 21 and 51A(g) of the Constitution with the corresponding provisions of the Environment Protection Act, 1986 as discussed above, this Court deems it appropriate to hold that the respondent-RSPCB did not exceed its jurisdiction in issuing the impugned show cause notices dated 12.04.2022 and 15.07.2022 and the subsequent impugned orders for closure dated 14.07.2022 and 15.07.2022. In this regard, it is noted that the respondent-RSPCB has acted in a manner prescribed by the statute, and under the directions and clarifications issued by the Ministry of Environment, Forest and Climate Change, to ensure the compliance of the subject notification dated 12.08.2021 issued by the Central Government.



(E) On whether the subject notification dated 12.08.2021, calls for strict or purposive interpretation of its mandate, especially in light of the desired outcome sought to be achieved by the prohibitions enumerated in the said notification?

61. While adjudicating upon the said issue, it is pertinent to note that learned counsel for the petitioners, during the course of arguments, submitted that the subject notification dated 12.08.2021, which is prohibitory and restrictive in nature, must be construed strictly, as the prohibition sought to be imposed, cannot be assumed without clear words for the said purpose in the law itself. In this regard, reliance was also placed upon the Apex Court judgments rendered in the case of **Commissioner of Customs (Import) Mumbai (Supra)** and **Asian Food Industries (Supra)**.

62. However, this Court is unable to see any merit in the argument raised herein-above calling for the subject notification dated 12.08.2021 to be interpreted strictly. In this regard, it is noted that the subject notification under consideration, was issued to advance the cause of environmental welfare and safety, by imposing a ban on the manufacture, use, storage etc. of single-use plastic commodities. The intent behind the issuance of the notification was to curb the pollution caused by single-use plastic items, which have far reaching consequences in adversely impacting the health of our environment, in the longer as well as shorter run. The said intent is rather clear from a mere perusal of the notification dated 12.08.2021 as well as the Plastic Waste



Management Rules of 2016 read with the Environment Protection Act, 1986.

63. Therefore, in light of the aforementioned intent behind the issuance of the subject notification dated 12.08.2021, it becomes clear that any interpretation of the said notification, must be done in a manner whereby instead of construing the words included in the notification as stated strictly, the Court must look at the purpose behind the legislation altogether and harmoniously interpret the same with scheme and object of the Act/Rules in entirety. Thus, a purposive interpretation of the subject notification dated 12.08.2021 is warranted.

64. In this regard, reliance can be placed upon a plethora of Apex Court pronouncements wherein it has been categorically held that all statutes pertaining to environment protection must be construed purposively, in consonance with the intent and purpose behind legislating the same, especially on account of the desired outcome they seek to achieve, by way of the provisions enacted therein.

65. The reliance placed by learned counsel for the petitioners on the judgment rendered by the Apex Court in **Commissioner of Customs (Import) Mumbai (Supra)** is not tenable in the facts and circumstances of the present case. In the said case, the court was tasked with construing a taxation and penal statute, wherein no need to take into consideration the intent of the legislation was warranted, on account of the fact that the considerations therein did not affect the public at large. However, when construing a legislation drafted to protect and



promote the environment at large, which has far reaching consequences in protecting the fundamental rights of all individuals i.e. the right to life as enumerated under Article 21 of the Constitution, the Court must resort to looking at the purpose of the legislation and the intent with which it was drafted, before construing the same harmoniously with the said intent/purpose.

66. A similar view was adopted by the Hon'ble Apex Court in **Balram Kumawat vs. Union of India** reported in **(2003) 7 SCC 628**. Relevant extract is reproduced herein-under:

*"It is no doubt true that normally a technical meaning should be attributed rather than a common meaning to a word if the same relates to a particular trade, business or profession, art or science or words having a special meaning as has been held in Union of India v. Garware Nylons: 1996(87) ELT12 (SC) and Unwin v. Hanson 1331(2) QB 115. But we are not dealing with an ordinary/taxing statute. We are dealing with a law which has been enacted in larger public interest and in consonance with Articles 48A and 51A(g) of the Constitution of India as also International Treaties and Conventions."*

66. Furthermore, while dealing with issue of interpretation of certain provisions of the National Green Tribunal Act, which have also been enacted in the larger interest of the society, the Hon'ble Apex Court in **Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Ors.** reported **AIR 2021 SC 5147**, held that:

*"While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in the later parts of the judgment, the intention behind the statute should receive our careful attention. Tracing the legislative history for creating of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt for purposive interpretation. The statute will have to be read in its entirety and*







*each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy.”*

67. Thus, considering the fact that subject notification under consideration, was enacted to advance the cause of environmental welfare and safety, by imposing a ban on the use of single-use plastic commodities and that the intent behind the issuance of the notification was to curb the pollution caused by single-use plastic items, which have far reaching consequences in adversely impacting the health of our environment and upon taking note of the fact that we are dealing with a law that has been formulated in the larger public interest, this Court deems it fit to hold that the amendments brought forth by the subject notification dated 12.08.2021 will have to be read in their entirety with the Plastic Waste Management Rules, 2016 and each provision of the Rules must be given its due intended meaning by comprehending and resolving the menace the provisions seek to address and rectify.

(F) On whether by way of the subject notification dated 12.08.2021 and the consequential show cause notice(s) as well orders for closure so issued thereafter, the fundamental rights of the petitioners protected under Articles 14 and 19(1)(g) of the Constitution of India have been violated?

68. In order to exhibit the violation of fundamental rights of the petitioners, protected under Articles 14 and 19(1)(g) of the Constitution of India, learned counsel had argued before the Court that the petitioners are completely dependent for their bread and butter upon the business of manufacturing the product banned by





the subject notification and as such, the closure of business without any sufficient time to recover the investment made and repay the loans so acquired is violative of the petitioners fundamental rights protected under Article 19(1)(g) of the Constitution. Furthermore, learned counsel had also illustrated violation of the petitioner's fundamental right protected under Article 14 of the Constitution whereby it was alleged that the respondent-RSPCB had issued a fresh consent to operate to M/s Shiv Shakti Polymers on 03.06.2022, which undertook similar manufacturing as the present petitioner-firm thereby, discriminating against the petitioner-firm and treating it unequally.

69. Upon a perusal of the record, it is observed that the argument of the petitioner qua the issuance of a fresh consent to operate against M/s Shiv Shakti Polymers, is not worthy of consideration as during the course of arguments as well as by way of pleadings, it was clarified by the respondent-RSPCB that the revised consent to operate so issued in favour of M/s Shiv Shakti Polymers on 03.06.2022 categorically included stipulations/conditions therein that the manufacturer shall abide by the ban so imposed by the subject notification dated 12.08.2021. Therefore, it was only upon receiving due consent of the manufacturer qua the compliance of the subject notification, that the respondent-RSPCB issued the revised consent to operate in favour of M/s Shiv Shakti. In this regard, reliance can be placed upon Condition Nos. 5 and 18 of the Revised Consent dated 03.06.2022. They are reproduced herein-under:



*"5. That this revised Consent to Operate is being issued [For production of Paper Cup (60 Ton/Annum), only] in supersession to previous Consent to Operate issued vide letter no.2020-2021/Jaipur (S)/9725 dated 19.03.2021 and you are directed to immediately stop the production of Plastic Cups [Single use Plastic(SUP)] in compliance to MoEF&CC Notification dated 12.08.2021, failing to which directions for closure or/and prosecution shall be issued or/and launched, as per Rules."*

*"18. That no single-use plastic (SUP) will be manufactured within the unit's premises which is banned vide Ministry of Environment, Forest and Climate Change, Government of India notification dated 12.08.2021."*

70. Furthermore, on the issue of the alleged violation of Article 19(1)(g) of the Constitution of India, this Court deems it fit to observe that the fundamental rights conferred upon the citizens of the country under Article 19(1)(g) of the Constitution of India are not absolute and the same are subject to reasonable restrictions provided Article 19(6). Thus, the restriction imposed by the Central Government by banning certain single-use plastic commodities vide notification dated 12.08.2021, is to be construed as a reasonable restriction imposed under Article 19(6), whereby the manufacture, import, stocking, distribution, sale and use of certain single-use plastic commodities was prohibited in the larger interests of the general public, with the intent to curb the menace of the pollution so caused by single-use plastic in our society, which also affects the environment as well as the ecology at par.

71. In order to support the settled position of law on the reasonable restrictions impossible under Article 19(6) of the Constitution of India, the Hon'ble Apex Court in **Indian**



**Handicraft Emporium vs. Union of India & Ors.** reported in  
**(2003) 7 SCC 589**, held that:

"**32.** Dealing in imported ivory so long the law permits may be a fundamental right but if the statute prohibits it, it must be held to be a law within the meaning of Clause (6) of Article 19 of the Constitution of India in terms whereof reasonable restriction is imposed. A trade which is dangerous to ecology may be regulated or totally prohibited. For the aforementioned purpose, regulation would include prohibition.

**38.** In order to determine whether the total prohibition would be reasonable the Court has to balance the direct impact on the fundamental right of the citizens thereby against the greater public or social interest sought to be ensured. Implementation of Directive Principles contained in Part IV is within the expression of restrictions in the interest of the general public.

**52.** We cannot shut our eyes to the statements made in Article 48A of the Constitution of India which enjoins upon the State to protect and improve the environment and to safeguard the forests and wild life of the country. What is destructive of environment, forest and wild life, thus, being contrary to the Directive Principles of the State Policy which is fundamental in the governance of the country must be given its full effect. Similarly, the principles of Chapter IVA must also be given its full effect. Clause (g) of Article 51A requires every citizen to protect and improve the natural environment including forests, lakes rivers and wild life and to have compassion for living creatures. The amendments have to be carried out keeping in view the aforementioned provisions."

72. Similarly, while dealing with an identical ban on 'laminated paper cups' in the State of Tamil Nadu, the Division Bench of the Madras High Court in **Chennai Non Woven's Private Limited vs. State of Tamil Nadu and Ors.** reported in **2019-3-LW780** held that:

"58. In the present case, by reason of imposing a ban on manufacturing, distributing, supplying or storing of one time use and throw away plastic waste, the Government has only ensured that the fundamental rights of the citizen are protected and they can enjoy a life with water and air free from any pollution. In this context, useful reference can be made to the decision of the Honourable Supreme Court in Karnataka



*Industrial Areas Development Board vs. C. Kenchappa reported in (2006) 6 SCC 371 wherein it was held thus:-*

*61. The priority of developing nations is urgent industrialization and development. We have reached at a point where it is necessary to strike a golden balance between development and ecology."*

73. Therefore, considering the fact that the fundamental rights conferred upon the citizens of the country under Article 19(1)(g) of the Constitution of India are not absolute and the same are subject to reasonable restrictions provided Article 19(6) and that the restrictions imposed by way of the subject notification dated 12.08.2021 are reasonable in terms of Article 19(6) as the same has been issued with the intent to curb the menace of the pollution so caused by single-use plastic in our society, which also affects the environment as well as the ecology at par, this Court deems it appropriate to hold that by way of the subject notification dated 12.08.2021 and the consequential show cause notice(s) as well orders for closure so issued thereafter by the respondent-RSPCB, under due authority, do not violate the fundamental rights of the petitioners protected under Article 19(1) (g) of the Constitution of India.

**ANCILLARY REMARKS & CONCLUSION:**

74. Having arrived at the findings herein-above, this Court feels the need to take it upon itself to observe that single-use plastic items incarnate the alarmingly rising throwaway culture in our society. The whole country, inclusive of all of its inhabitants, is trying to persist and endure the extremities caused by the accumulation of single-use plastic items, be it humans or the flora and fauna of the nation. Therefore, the steps being undertaken to





tackle the grappling issue of single-use plastic accumulation in the society, needs to be acknowledged with a fair share of understanding of the intent with which the prohibitions sought to be imposed, are being formulated and/or legislated upon and what we as a society, can do to put our best foot forward to abide by the restrictions imposed upon us, albeit within realms of the constitutional safeguards in place for the same. In this regard, it would be beneficial to take note of the observations made by the Division Bench of the Madras High Court in **Chennai Non Woven's Private Limited (Supra)**. The relevant excerpt is reproduced herein-under:

*"64. Before we conclude, we wish to observe that slowly and steadily, plastic had infiltrated and intruded into our daily lives and the large scale use of plastic, for the purpose to which it was not intended to, had in fact sounded a death knell to our ecology and environment. By virtue of burgeoning use of plastics for all purposes, it resulted in mounting of garbage strewn all through the lanes and by-lanes of the streets and the Municipal authorities throughout the State find it an uphill task to deal with the situation. Above all, plastics which are meant for single use are certainly a menace inasmuch as it is littered at the drop of a hat. The more the easier the production of plastic, as we could infer, be it one time use and throw away plastic or other similar nature of product, the more easily it is thrown away in the bins or strewn haphazardly, which causes great concern to the environment and it is a huge pollution menace. As per the scientific study, it is estimated that some items of plastics will take at least 100 years to decompose. There are also data available in the internet to conclude that plastic wastes have been mistaken for food by numerous animals, mainly marine creatures and other domestic animals such as dogs, buffaloes and cows and large quantities of plastics have been found in the stomachs of many dead animals. The toxic contents in the plastic had the tendency to cause harm to vital organs or biological functions of marine as well as domestic animals. Cumulatively, plastic profoundly affected animals in aquatic, marine and terrestrial eco-systems. Further, when discarded in earth, the plastic items had the tendency to destruct and decline the quality of soil in the*





earth, which is also a greatest cause for concern. We also take note of the fact that increasing urbanisation and population growth is also considerably contributing and accounting for plastic pollution, especially the demand for cheaper and readily available materials such as wrappers, plastic water bottles, straws and food containers are easily available and accessed. We wish to observe that restaurants/food production units are causing greater harm than estimated by usage of the plastic covers for packing food items and the rise in usage of these products is alarming. This had in fact woken up environmentalists, natural lovers as well as the government to slowly think of getting rid of plastics which are meant for single use so as to save the earth and planet. In fact, in the counter affidavit filed by the respondents in WP No. 33897 of 2018, it was stated that the Government has granted exemptions to some of the items of plastic since it is not feasible to ban those items for the present. However, it was stated that such an elimination of exemptions may arise in future depending upon the circumstances. We place on record such submissions made on behalf of the respondents. At this juncture, we also wish to place on record that the Division Bench of this Court, in identical case, passed an order dated 27.12.2018 in WP (MD) No. 34065 of 2018 in which a direction was given to the State Government to ensure that the plastic in various forms are phased out from the markets and that the order of ban is implemented in letter and spirit before the end of 2019. We reiterate the same and direct the Government to ensure that the order imposing ban on various items of plastics is scrupulously followed and implemented without allowing it to remain on paper."

75. Therefore, upon a consideration of the concurring opinion as rendered by the Division Bench of the Madras High Court in **Chennai Non Woven's Private Limited (supra)** and upon a further consideration of the fact that the Special Leave Petition No. 18305/2019 preferred against the said judgment has been reserved for pronouncement by the Hon'ble Apex Court; that while reserving the said judgment, no interim order/stay was granted by the Apex Court in favour of the appellant/petitioner; that the commodity under consideration in **Chennai Non Woven's Private Limited (supra)** and the present petition is





identical in nature i.e. laminated paper cups/paper cups with a plastic coating and also relying upon the findings arrived at herein-above, this Court deems it appropriate to dismiss the present writ petition.

76. Moreso, this Court deems it appropriate to direct the Regulatory Authority, provided under the statute, to carry out the directions issued by way of the subject notification dated 12.08.2021, in letter as well as in spirit, to reflect their *bonafides* as it is observed that until now, the compliance drawn of the subject notification has been lethargic, insincere and negligent. The aforesaid callous compliance of the subject notification dated 12.08.2021 is established by the fact that the present batch of petitioners, engaged in manufacturing the prohibited commodities, have been inadvertently permitted to operate, as a result of inaction on part of the respondent-RSPCB, in enforcing the mandate of the subject notification in a timely manner.

77. With the observations and directions given above, present writ petitions are dismissed. Pending applications, if any, are disposed of.

78. To effectuate necessary compliance, a copy of this order be sent to the Chief Secretary, State of Rajasthan as well as respondent Nos. 1 and 2 i.e. Rajasthan State Pollution Control Board, Respondent No. 3 i.e. Union Of India, Ministry Of Environment, Forest And Climate Change, through Secretary and Respondent No. 4 i.e. State Of Rajasthan, Department Of Environment And Climate Change, Secretariat through Secretary



for implementation of the subject notification dated 12.08.2021  
with immediate effect.

(SAMEER JAIN),J

Pooja /1-8

