

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Application No.110 of 2016(SZ)

Appeal Nos.117, 118, 119, 125, 128 to 130 of 2016 (SZ)

Diary No.542 of 2016

In

Appeal No. of 2017

In the matter of

M/s. K.K. Plastic Waste Management Pvt. Ltd.,
Shanthy Industrial Estate, Bangalore, rep. by its .. Applicant in
Managing Director, K. Ahmed Khan .. Application No.110 of 2016

Canara Plastics Manufacturers & Traders
Association, Industrial Area, Baikampady
Mangalore, rep. by its General Secretary .. Appellant in
B.A. Iqbal .. Appeal No.117 of 2016

Teemach Plastics .. Appellant in
Rep. by its Partner .. Appeal No.118/2016
Sunil Kumar Bagrecha
Donanna Industrial Estate, Bangalore

Karnataka State Plastic Association
Rajaji Nagar Industrial Estate
Bangalore, rep by its President .. Appellant in
V. Vijay Kumar .. Appeal No.119/2016

Karnataka Association of Signage Industry
Bannerghatta Road, Bangalore .. Appellant in
Rep. by its President Sailesh Choudhary .. Appeal No.125/2016

Coffee Day Global Ltd
Vittal Mallya Road, Bangalore .. Appellant in
Rep. by Mahesh Reddy .. Appeal No.128/2016

K.K. Poly Flex Pvt. Lt
Shanthy Industrial Estate
Y.V. Annaiah Road, Yelachenahalli
Kanakapura Road, Bangalore
Rep. by its Managing Director .. Appellant in
K. Asif Khan .. Appeal No.129/2016

Reliance Poly Pack
Kubalgedu, Bangalore .. Appellant in
Rep. by Mohamed Ashf aq .. Appeal No.130/2016
PVR Limited

Rep. by it Cinema General Manager .. Appellant in
Joshua Peter, Vasant Vihar New Delhi .. Diary No.542/2016

Vs

The State of Karnataka .. R1 in Appln.110/2016
Rep. by its Principal Secretary .. Appeal No.117 of 2016
Department of Forest, Environment .. Appeal No.118/2016
and Ecology, Bangalore .. Appeal No.119/2016
.. Appeal No.125/2016
.. Appeal No.128/2016
.. Appeal No.129/2016

Appeal No.130/2016
Diary No.542/2016

Member Secretary

Karnataka State Pollution Control Board
Bangalore

.. R2 in Appln.No.110/2016
Appeal No.117/2016
Appeal No.118/2016
Appeal No.119/2016
Appeal No.129/2016
Appeal No.130/2016
Diary No.542/2016

Union of India

Rep. by its Secretary to Government
Ministry of Environment, Forest, and
Climate Change, New Delhi

..R2 in Appeal No.125/2016
.. R3 in Appln.110/2016
Appeal No.117/2016
Appeal No.118/2016
Appeal No.119/2016
Appeal No.129/2016
Appeal No.130/2016
Diary No.542/2016

Commissioner

Bruhat Bangaluru Mahaagar Palike (BBMP)
Bangalore

R2 in Appeal No.128 /2016
R3 in Appeal No.125/2016
.. R4 in Appln.110/2016
Appeal No.129 & 130/2016
R6 in Appeal Nos.117,118 &
119/2016

The Secretary

Ministry of Chemicals and Fertilizers,
Dept. of Chemicals and Petro Chemicals
New Delhi

.. R4 in Appeal
No.117,118 & 119/2016

The Director General

Central Institute of Plastics Engineering
And Technology,, TVK Industrial Estate
Guindy, Chennai

.. R5 in
Appeal No.117,118 & 119/2016

Counsel appearing for the applicant/appellant

Application No.110/2016

Appeal No.119 of 2016

Appeal No.129 of 2016 and

Appeal No.130/2016

Appeal Nos.117 and 118/2016

.. Mr. Kundan K.R. Mishra

for

Mr.L.G. Sahadevan

.. Mr. M. Ravindran, Senior Counsel for

M/s. Krishna Ravindran

Charles Darwin, M. Balaji

S. Praveen Kumar

Appeal No.125/2016

.. M/s. K.J. Kamath, K.G. Kamath

Veena J. Kamath, S. Giritharan

Sandhiya. G.

Appeal No.128/2016

M/s. P.J. Rishikesh

P.J. Sri Ganesh

Mahesh Arkalgud

Diary No.542/2016

M/s.R. Parthasarathy, Rahul Balaji

Madhan Babu, Vishnu Mohan

Counsel appearing for the respondents

For respondent Nos.1 & 2

In Appln.110/2016

Appeal Nos.117,118,119,129 & 130/2016

Dairy No.542/2016

Respondent R1 in Appeal.No.125 &

128/2016

.. Mr. Devaraj Ashok

Standing Counsel

for State of Karnataka

For 2nd respondent in

Appeal No.125/2016

For 3rd respondent in

Application No.110/2016

Appeal Nos.117, 118, 119, 129

130/2016 Dairy No.542/2016

. Mr.M.R. Gokul Krishnan

R2 in Appeal No.128/2016

R3 in Appeal No.125/2016

For R4 in Application No.110/2016

Appeal Nos.129 &130/2016

R6 in Appeal Nos.117,118,119/2016 .. Mr. Mr.T.V. Sekar

For R4 & R5 in Appeal Nos.117,

118 & 119/2016

.. Mr. Mr. Su. Srinivasan

O R D E R

Quoram: Hon'ble Shri Justice Dr. P.Jyothimani, Judicial Member

Hon'ble Shri P.S. Rao, Expert Member

Delivered by Dr.P. Jyothimani, Judicial Member

13th January, 2017

Whether judgment is allowed to be published on the Internet .. Yes/No

Whether judgment is to be published in the All India NGT Reporter .. Yes/No

Application No.110 of 2016 is filed by K.K. Plastic Waste Management Pvt. Ltd., Bangalore under Section 14 read with Section 18(1) of the National Green Tribunal Act, 2010 (NGT Act) praying for issuance of injunction against the respondents particularly, the Government of Karnataka from initiating any action on the applicant's unit on the basis of the Notification issued by the first respondent – State of Karnataka dated 11.3.2016 issued by virtue of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (EP Act) banning manufacture, supply, sale and use of plastic carry bags, plastic banners, plastic buntings, flex, plastic flags, plastic plates, plastic cups, plastic spoons, cling films and plastic sheets used for spreading on dining table including the above items made of thermocol and plastic which use plastic micro beads in the entire State of Karnataka with certain exempted categories.

2. The applicant company is incorporated in the year 2002 for activities in the waste management projects and involved in the process of littered garbage. The second respondent – Karnataka State Pollution Control Board (KSPCB) in the order dated 21.2.2011 has allowed the appellant company to incorporate the process of waste cable encapsulated PVC material free from metal fuse in addition to plastic waste process in littered garbage of capacity 20 TPM and that order is valid upto 31.12.2016. The plastic collected from the rag pickers, households, schools and other places is processed by blending into bitumen which becomes a major ingredient in road making. It is also stated that the applicant company, in partnership with Bruhat Bangalore Mahanagara Palike (BBMP) , subsequently impleaded as fourth respondent, laid around 3,000 km road which according to the applicant last longer than the normal road and is cost effective.

3. By virtue of the Notification issued by the first respondent dated 11.3.2016 which according to the applicant is not applicable to its units, the authorities are not allowing the applicant unit to carry on its operations. Therefore, mainly on the ground that the Notification of the Government dated 11.3.2016 does not prohibit the business of the

applicant and that the action of the respondents is arbitrary and without jurisdiction that, the applicant's process involves only the manufacturing of raw materials for formation of plastic roads and that there is no health or environmental hazard by the business activity of the applicant, the application with the above said prayer has been filed.

4. **Appeal No.117 of 2016** is filed by the Canara Plastics Manufacturers & Traders Association, Mangalore, challenging the Notification issued by the Government of Karnataka dated 11.3.2016 under Section 16(g) read with 18(1) of the NGT Act. The appellant is a Society, registered under the Societies Registration Act, 1860 having its members who are stated to be tiny and small industries situated in Dakshina Kannada and Udupi Districts, engaged in trading, dealing and manufacturing which includes sale, usage, storage and manufacturing of plastic products, including plastic bags. The appellant Association is having 54 members, the list of which has been given in the Annexure – B filed along with the appeal. The members of the Appellant Association are all producers, manufacturers, retailers, users and consumers of plastic products, including virgin and recycled within the State of Karnataka. The appellant Association is recognized by the All India Plastic Manufacturers Association (AIPMA), Federation of Karnataka Chambers of Commerce and Industry (FKCCI) and Karnataka Small Scale Industries Association (KASSIA). The industries set up by the members of the appellant Association have obtained necessary registration issued by the Director of Industries and Commerce and its members are paying huge amount of tax to the State Government. The members of the appellant Association have been given "Consent" orders by KSPCB for running their factory and they have also been given registration for the manufacture of plastic carry bags/multi-colour plastic carry bags, plastic disposable glasses/cups by the authority. The "Consent" given by the KSPCB for the manufacture of plastic carry bags has treated it as "Green Category". It is stated that the members of the appellant Association have borrowed money from banks and other financial institutions and have employed two lakh employees directly and indirectly. In addition to the permission granted by the KSPCB, the members of the appellant Association have obtained licence under the Factories Act, registration under various labour legislations, Karnataka Shops and Commercial Establishments Act, 1961, Employees' State Insurance Act, 1948, Karnataka Value Added Tax Act, 2003, Central

Excise Act, trade licences issued by the Mangalore City Corporation and Registration under Packaging Commodities Act.

5. It is stated by the appellant Association that the Ministry of Environment, Forest and Climate Change (MoEF & CC), impleaded as third respondent herein, has published Plastic Waste (Management & Handling) Rules, 2011 exercising powers under Sections 3, 6 and 25 of the EP Act. As per Rule 5 of the said Rules 2011, manufacture, stock, distribution and sale of carry bags made up of virgin or re-cycled or compostable plastic which is less than 40 microns thickness, is prohibited. However, it permits manufacture, stocking, distribution, sale and use of carry bags and sachets as per ISI standard. The members of the appellant Association are manufacturing plastic carry bags which are 40 micron thickness and above and hence are within the standard prescribed by the Rules, 2011.

6. The Government of India, in supersession of the said Rules, 2011 has notified Plastic Waste Management (PWM) Rules, 2016 on 18.3.2016 by virtue of the powers conferred under Sections 3, 6 and 25 of the EP Act. By PWM Rules, 2016 the Government of India prohibits manufacture, supply, sale etc., of plastic carry bags etc made of virgin and recycled plastic less than 50 microns in thickness.

7. In spite of the above said Plastic Waste (Management and Handling) Rules, 2011, certain problems created by the authorities in Mangalore resulted in the appellants' filing W.P.Nos.45448 and 45449 of 2012 before the High Court of Karnataka which by an interim order dated 15.1.2013 directed the authorities not to prevent manufacture, sale and use of plastic products more than 40 micron thickness and ultimately the High Court disposed of the above writ petitions on 23.1.2014 on the basis of an undertaking given by the respondents therein, clarifying that the members of the appellant Association are entitled to manufacture plastic products above 40 micron thickness and the members of the appellant Association have been strictly acting as per the directions of the Rules, 2011 and they are also bound by the new PWM Rules, 2016. The appellant Association further states that it has set up a permanent plastic waste collection centre with the help of Mangalore City Corporation at Kadri Market at Mangalore collecting plastic waste in one place and conducting awareness programme regarding plastic

management. The Government of Karnataka – first respondent herein, has issued a Draft Notification on 28.10.2015, proposing blanket ban on manufacturing, trading, stocking, selling, using of all types of plastic products, calling upon the interested parties to make objections. According to the appellant Association, the Draft Notification itself is contrary to Plastic Waste (Management and Handling) Rules, 2011 as also the PWM Rules, 2016.

8. The appellant Association, on behalf of its members, has filed its detailed objections along with various documents with all research reports etc., objecting to the proposed banning of plastic products being illegal, affecting general public. The said objections are as follows:

i. Plastic Carry Bags are generally made out of Polyethylene (Polythene) which is used in contact with food stuffs, milk pharmaceuticals and drinking water and its use in these critical areas is approved by the regulatory authorities across the world including that in India like Bureau of Indian Standards (BIS).

ii. Plastic Carry bags contributed significantly in creating a sustainable, cost effective, energy efficient, hygienic and environmental friendly packaging system and for carrying, storing and packing various types of commodities / products including food products. The attributes, which have made the use of plastics safe and popular as a packaging material in general and as a carry bag in particular, are:

- a) Non-toxic characteristics, inertness and chemical resistance.
- b) Excellent barrier properties and water-proof characteristics.
- c) Safe in handling due to non-breakability and light in weight.
- d) Transparency, allowing easy visibility of content being carried / stored.
- e) Can also be opaque to protect the content from exposure to sunlight,
- f) When packed resistance to bacterial and other microbial growth.
- g) Pilfer proof characteristics etc.

iii, Plastic carry bags due to these properties ensure that the products of mass consumption are delivered to the consumers in the best, hygienic and economic fashion. Being inert in nature, they do not pose any health hazard. All plastics in

general meet the requirements of both National and International standards like BIS, FDA etc.

iv. Plastic carry bags and ancillary products add convenience to day-to-day life. They are essential for packaging of bread, confectionery items, all range of Farsan / Namkeen and bakery products in view of its superior properties and cost effectiveness. All these products are very sensitive to moisture and loose taste and quality within no time. Hygroscopic edible products like sugar, salt, jaggery and many other food items susceptible to moisture cannot be effectively packed in alternative materials without sacrificing the quality or cost of packaging. Over years plastics packaging have played a major role in protecting and increasing the shelf life of these products. For carrying fish, meat, poultry and other wet food products, plastic bags are most suitable and no other alternative packaging can substitute them.

v. Plastic bags generate 60% less greenhouses gas emissions than un-composted paper bags and 79% less greenhouse gas emissions than composted paper bags. The Plastic bags generate 3,097 tons of CO₂ equivalents per 100 million bags, while un-composted paper bags generate 7,621 tons, and composted paper bags generate 14,558 tons, per 100 million paper bags.

9. It is the further case of the appellant Association that the plastic materials are approved by the National Standards (Bureau of Indian Standard – BIS) and other regulatory authorities for use in contact with foodstuffs, pharmaceuticals and drinking water and plastic bags which consume 40% less energy during production and generate 80% less solid waste after use than paper bags etc. The appellant states that the paper bags generate 70% more air pollutants and 50 times more water pollutants than plastic bags. However, plastic takes 91% less energy to recycle than that of the paper. All these things were brought by way of objection to the Draft Notification of the first respondent and also explained the potential danger and environmental hazard associated with unmindful removal of plastic bags and replacing with some other materials. It is also stated that in total disregard of the objections raised by the appellant and also against the provisions of the Plastic Waste (Management and

Handling) Rules, 2011, including the latest PWM Rules, 2016, the Government of Karnataka has issued the impugned Notification dated 11.3.2016.

10. The appellant states that even a perusal of the impugned notification shows that the same has been issued with total non-application of mind and strangely the notification gives exemption to the industries running in Special Economic Zone (SEZ) and industries manufacturing plastic only for export, apart from multi layered and metalized polymer used for packing which are not recyclable and therefore the notification is arbitrary. It is further stated that alternate to plastic viz., paper is a “red” category; while plastic is “green” category and the pollution index of “paper” is above 60 while in respect of “plastic” the pollution index would be between 21 and 40 as per the categorization of industries issued by the Government of India. It is further stated that the powers given in the impugned notification results in corruption and harassment of manufacturers and traders as many authorities are empowered to act as per the notification.

11. It is the further case of the appellant that when the KSPCB has given “Consent” indicating plastic industry as “green” category the same has been totally ignored while passing the impugned notification. Further, the plight of two lakh employees who will be rendered jobless because of the impugned notification has not been considered and it is against the Industrial Policy of the Government of India. The appellant also relies upon an order passed by the Andhra Pradesh High Court in W.P.No.9852 of 2010 dated 16.6.2011 directing the authorities not to interfere with the sale of plastic bags of less than 40 micron thickness. The appellant further raises an issue that the impugned notification is against public interest and it is in conflict with the PWM Rules, 2016 issued by the Government of India by virtue of the powers conferred under Sections 3, 6 and 25 of the EP Act. It is also the case of the appellant that by virtue of the blanket ban of plastic, the result will be large scale deforestation and instead of regulating the use of plastic as per the Central Rules, the State Government, by the delegated power, has taken away the very right of carrying on trade and manufacture of plastic.

12. The appellant has raised the following legal grounds:

- (i) The impugned notification dated 11.3.2016 banning manufacture and sale of plastic products is *ultra vires* to EP Act, 1986, Plastic Waste (Management and Handling) Rules, 2011 and PWM Rules, 2016 and it is beyond the powers conferred to the Government of Karnataka under Section 5 of the EP Act, 1986.
- (ii) The impugned notification violates the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India, apart from Articles 301 to 304 of the Constitution of India and the right conferred under EP Act, 1986 and Plastic Waste (Management and Handling) Rules 2011 and PWM Rules, 2016.
- (iii) The members of the appellant Association are manufacturers, traders and stockists of carry bags and other ancillary products of more than 50 microns in thickness which are permissible as per PWM Rules, 2016, while the said right has been taken away by the first respondent – State Government under the impugned notification by exercising delegated powers.
- (iv) The powers conferred under Section 5 of the EP Act, 1986 has been transgressed by the impugned notification which is an abuse of discretion which is beyond the jurisdiction of the first respondent – State Government, in as much as the direction has been issued against the statutory rules.
- (v) The impugned notification is a colourable exercise of delegated power which contains blanket ban of manufacturing activity, given to the first respondent – Government of Karnataka as per Section 23 of the EP Act, 1986 and is not a legislative power which is a preventive power against individual person.
- (vi) Under Section 5 of the EP Act, 1986 the direction to be issued by the Central Government or by the State Government by delegated power is by way of direction in writing to any person and therefore the impugned notification which is general in nature, without any direction to individual manufacturer, is without jurisdiction.
- (vii) The impugned notification is a result of excessive delegation, since the delegated authority cannot go beyond the powers of the original authority which in fact, exercised those legislative function by framing statutory rules, putting complete

ban on plastic manufacturing which affects the fundamental right guaranteed under Article 19 of the Constitution of India and cannot be treated as any reasonable restriction under Article 19(6) of the Constitution of India.

- (viii) The act of the first respondent in issuing the impugned notification without following the regulatory region and imposing of blanket ban without assigning any reason and proper scientific study is violation of Article 14 of the Constitution of India; especially when other series of plastic materials are given exemption.
- (ix) The impugned notification has been issued without making any Environmental Impact Study and giving substitute for plastic bags as an alternate; especially when the probable substitute will have more environmental disaster and the plastic is bio degradable and therefore the impugned order has no leg to stand.
- (x) When the statutory rules of the Government of India framed under Sections 3 and 6 of the EP Act, 1986 taking care of precautionary principle and imposed various responsibilities on the manufacturers, users and sellers of plastic bags including imposing of harsh penal treatment, the impugned notification is totally uncalled for.
- (xi) The impugned notification is a result of the inability of the municipal bodies in properly implementing Waste Management Scheme which includes segregation and disposal of solid waste and because of the inability of the first respondent – Government the total ban of manufacture cannot be the resultant consequence.
- (xii) The exemption of plastic categories given under the plastic category itself shows that these exempted categories are non recyclable and more dangerous than plastics which are banned and therefore there is no proper nexus between the object sought to be achieved and the purpose of the impugned notification.
- (xiii) The impugned notification results in unemployment and many social disorders affecting the economy of the country and when the banking and other financial institutions have lent enormous amount to the manufacturers and any discourage to the small scale industries is against the industrial policy of the Government of India.

- (xiv) The impugned notification has been issued without considering any of the objections raised by the appellant and similar manufacturers and the notification has not given any remedy to the persons who are in the business and the overnight closure of industries without any indication affects the livelihood.
- (xv) The impugned notification is devoid of any scientific study and in fact ,is contrary to scientific research. The plastic i.e., Polyethylene is basically made up of molecule having $NC_2 H_2$ which is a complete inert chemical and are macromolecules formed by Polymerization with ability to withstand reasonable amount of heat and pressure and different plastics are made from different monomers and they are absolutely harmless and complete inert and more useful for safety of food and other materials and therefore there is absolutely no necessity for imposing total ban on manufacture of plastic carry bags.
- (xvi) The impugned notification is against the principles of sustainable development and is in violation of various rules framed by the Government of India, the statutes enacted by the Parliament like EP Act, 1986 and Rules made thereunder etc.
- (xvii) Plastic forms a small percentage of dumped waste; while majority of other wastes are responsible for chocking of drains viz., rubber products, foot wear, cable etc.

While so, there is no necessity for the first respondent – Government in choosing the plastic carry bags alone. The impugned notification is against the acceptable scientific option regarding solid waste management like reducing the solid waste generation, reusing the material in an environmental friendly manner disposed of the solid waste being reused of etc. With the above legal grounds, the appellant has chosen to challenge the impugned notification of the first respondent – Government of Karnataka under Section 5 of the EP Act.

13. Appeal No.118 of 2016 is filed by Teemach Plastics, Bangalore which is a partnership firm, engaged in the business activities connected with trading, dealing, manufacturing which includes sale, usage, storage of virgin plastic products such as disposable cups, spoons, plates etc., made from Polypropylene and high impact

Polystyrene which according to the appellant are degradable and recyclable in character, challenges the impugned notification issued by the first respondent – Government of Karnataka dated 11.3.2016 with all and other legal grounds raised by the appellant in Appeal No.117 of 2016.

14. **Appeal No.119 of 2016** is filed by the Karnataka State Plastic Association, a registered Society under the Karnataka Societies Registration Act, 1860 having 684 members whose list is annexed with the appeal who are all engaged in various activities connected with the trading, dealing, manufacturing including sale, usage and storage of various plastic products including plastic bags, has challenged the impugned notification of the first respondent – Government of Karnataka dated 11.3.2016 with identical facts, legal and other grounds raised therein.

15. **Appeal No.125 of 2016** has been filed by the Karnataka Association of Signage Industry which is a Society registered under the Karnataka Societies Registration Act, 1860 having members who are engaged in the business of signage and advertising industry comprising traders for a declaration that the flex is neither causing serious environmental hazard nor affecting health of human beings and animals and therefore delete the same from the impugned notification of the first respondent State of Karnataka dated 11.3.2016. Alternatively, to direct the first respondent to fix a date and consider the objections raised by the said appellant against the draft notification dated 28.10.2015 by providing reasonable opportunity to the appellant and thereafter to pass orders.

16. According to the said appellant, the notification dated 11.3.2016 has been passed without considering any of the representations made by way of objection by signage industry to the draft notification issued by the first respondent dated 28.10.2015. The appellant has been under the impression that the signage industry which is distinctive in character, will be differently considered by the first respondent before passing the impugned notification dated 11.3.2016. However, the first respondent authorities have started coercive proceedings to implement the direction. The members of the appellant Society are registered small scale industries and therefore the appellant has filed the appeal on behalf of all the members and the

appellant is mainly challenging the inclusion of flex in the notification dated 11.3.2016 and therefore the scope of the appeal is relating to the inclusion of flex materials alone.

17. The notification is challenged on the ground that the first respondent ought not to have treated and other plastic materials in the same category as if the flex causes hazard like that of the other plastic materials; that even if the first respondent has authority to pass the impugned notification in respect of flex banners, the first respondent has failed to act in accordance with the procedure of giving opportunity to the members of the appellant Society to be heard before passing the impugned notification. That apart, the impugned notification is questioned on the ground that the absolute ban imposed on flex with immediate effect is wrong and contrary to law and without following the procedure contemplated under Section 5 of the EP Act. The flex sheet is having two layers of films sandwiched with fabric in between. The fabric is made up of polyester yarn which is never considered as pollutant or hazardous. The film is produced with Calcium Carbonate, Poly Vinyl Chloride (PVC) Resin, plasticiser like Dicotyl Phthalate (DOP) which are used in different quantities. The raw material with highest quantity used in the production of flex is Calcium Carbonate which is a grounded natural stone which can never be treated as hazardous or pollutant and on the contrary, are used in essentials such as medical tablets. PVC Resin is used in a small extent in the making of flex and PVC Resin itself is classified as a non hazardous material according to US and global standards. Dicotyl Phthalate (DOP) is a plasticiser used all over the world to mix calcium carbonate with PVC Resin and widely used for medical and sanitary products such as blood bags and dialysis equipment. Therefore, according to the appellant, flex banner is different from plastic banner, since in respect of plastic banner the end product is plastic but in case of flex banner the end product is not plastic. That apart, it is the case of the appellant that there is vast material difference between flex and other plastics and the Government of India strongly supports flex industry by imposing anti dumping duties on import of flex into India and devising various schemes for promoting and use of plastics. According to the appellant, flex is 100% recyclable. The appellant states that by virtue of the powers under Section 5 of the EP Act with an intention to prohibit plastic carry bags found to be causing short term and long term environmental damage and health hazard by blocking the gutters,

sewers and drains, the Government of Karnataka published draft notification on 28.10.2015 seeking objections. Pursuant to the said draft notification, the appellant Association, represented by its members has filed its objections mainly with the following material facts:

A. The ban on flex is a violation of the Environment (Protection) Act and the Plastic Waste (Management and Handling) Rules, 2011 as both these statutory provisions permit the Appellant and its members to carry on the business on the flex for signage industry.

B. The raw materials used in Flex are not hazardous substances. In fact, a major part of the raw material is Calcium Carbonate, which is a naturally available substance.

C. Flex is not banned in other countries and research from few countries has indicated that Flex is a non-hazardous substance.

D. The blanket ban on flex violates the rights of the Appellant and its members, guaranteed under the Constitution of India, to practice any profession or to carry on any occupation, trade or business, by depriving employment opportunities to those currently working in the flex business.

E. The blanket ban on flex deprives of communication and propaganda to several industries which solely or extensively depend on advertisements through flex banners, such as education, films, business and corporate and government social programs, most effective example being that of pulse polio drive.

18. However, the first respondent failed to consider any of the above said objections and published the impugned notification without application of mind arbitrarily making a total ban of flex along with other plastic materials. It is also the case of the appellant that the Government has regulated the usage of flex through the KSPCB and also through BBMP, impleaded as the third respondent. The appellant states that the first respondent has not made any proper study regarding the signage industry and its environmental effects and by the arbitrary ban nearly 80,000 to 1,00,000 employees are

affected and they will be rendered jobless. That apart, most of the members of the appellant Association have been carrying on the activity after obtaining loan and credit from various banks and commercial organisations and by virtue of the absolute ban the livelihood of the members of the Association is affected.

19. The appellant has raised the following legal grounds:

- (i) Flex cannot be compared with other plastic materials based on the composition of the materials
- (ii) The procedure contemplated under Section 5 of the EP Act has not been followed before the impugned notification was issued since no notice to persons have been issued and the objections have not been considered.
- (iii) Even if the flex is to be considered along with other plastic material as it is seen in the impugned notification, the PWM Rules notified by the Government of India have taken care of the management and without following the statutory rules, the State Government cannot impose the notification under Section 5 of the EP Act and it is contradictory to the statutory notification issued under Sections 3, 6 and 25 of the EP Act by the Government of India.
- (iv) The impugned notification is arbitrary and issued without application of mind
- (v) The notification violates the fundamental principles of Rio Declaration and Stockholm Declaration, based on which EP Act was enacted.
- (vi) That apart, the appellant has reiterated that flex used for signage board industry is of different composition. Plastic is defined as polypropylene non woven polypropylene, multi layered co extruder poly propylene, poly ethylene, poly vinyl chloride, high and low density poly ethylene, poly styrene which is also called thermocol, poly amides (Nylon), poly terephthalate, poly methyl methacrylate and plastic micro beads. The end product of the plastic does not fall under any of the components as the flex is made up of certain other ingredients like calcium carbonate and fabric. Even though flex contains poly vinyl chloride (PVC) it is only a small extent and is a non hazardous substance. The appellant also distinguishes flex with that of other plastic material stating

that flex is used for advertisement purposes not of house sector and business to business product while other plastic materials are used for domestic purposes. Flex is considered as a technical textile for which the Government of India, Ministry of Textiles grants incentive to promote the industry. Apart from imposing heavy anti dumping duty on imported flex in order to encourage flex manufacturing within the country. Further, flex used by the members of the appellant Association are used only for advertisement and cannot be obtained in 4 inches size like other plastic materials, since the usual standard flex board used in the signage industry is minimum of 10 x 6 feet and because of the nature it is of substantial value of fetching upto 50% cost of new flex and therefore they are not thrown around and are 100% recyclable. Further, due to difference in composition and use, there can be plastic spoons, plates, cups etc., but there cannot be flex spoon, cups etc., since it is used only for the signage industry and cannot be equated to other plastic materials. All authorities, including Municipal Authority are rendered hoarding spaces to the members of the appellant to put up advertisements in flex boards and it is only after obtaining permission such advertisements are put up while for plastic materials there is no such permission granted by any of the authorities. Flex is 100% recyclable and is converted for further use such as for producing foot wear soles, tarpaulin etc and is not an environmental hazard like any other materials and it cannot be arbitrarily disposed of like other plastic material. Further, flex used in signage industry is large in size which can withstand winds and rains and cannot be carried in drains and gutters like other plastic materials. While plastic has other alternative like paper, there is no alternative for flex.

20. According to the appellant all the above said factors have not been considered by the first respondent before issuing the notification, particularly when the draft notification is intended to avoid short term and long term environmental damage and health hazard and plastic bags and other items used in daily life are causing environmental damage and health hazard. It is further stated by the appellant that even otherwise flex is approximately 240 microns in thickness and the statutory rules framed viz., PWM Rules, 2016 provided manufacture, distribution, sale of plastic bags more

than 50 microns and therefore there is no reason for the first respondent to include flex along with other plastic materials especially when the plastic content in flex is least minimum. In addition to that as raised in the other appeals, the appellant also questions the validity of the impugned notification on the ground that the appellant or its members have not been given any adequate opportunity by way of notice to "person" as mandated under Section 5 of the EP Act. The appellant has challenged the validity of the impugned notification also on the ground that it violates the procedure contemplated under Rule 4(4) of the Environment (Protection) Rules, 1986 (EP Rules) which contemplates 45 days time to be given for objections while the draft notification issued by the first respondent Government of Karnataka has stipulated only 30 days time and therefore it is against the procedure contemplated under the statutory rules. Further, the appellant has raised the issue of non-application of mind, especially stating that in the impugned notification the first respondent has not chosen to ban plastic products which are used by way of plastic bottles, plastic boxes, tooth brushes, shampoo sachets etc., and therefore there is an arbitrary discrimination of plastic carry bag alone without reasonable nexus and is unreasonable. The blanket ban on manufacturing, supplying, storing, transporting and selling affects human development and against the Rio Declaration and Stockholm Declaration, apart from affecting the fundamental right to carry on trade and business guaranteed under Article 19(i) of the Constitution of India and the notification cannot be termed as reasonable restriction. Further the impugned notification is against the principles of sustainable development and because of the inability of the Municipalities from implementing the statutory rules framed by the Government of India under Section 3, 6 and 25 of the EP Act. It is further stated by the appellant that while the Government of India intended to issue PWM Rules, 2016, a draft notification was published on 25.5.2015 and it also provides two years time to the manufacturers and sellers of plastic to phase out and the said fact has been completely ignored by the first respondent in the impugned notification and sudden ban on the entire manufacturing process will put an end to the basic livelihood of these manufacturers and traders. With the above facts and legal grounds, the appellant has chosen to challenge the impugned notification and prayed for the relief which has been elicited above.

21. **Appeal No.128 of 2016** is filed by the appellant viz., Coffee Day Global Ltd., Bangalore which is a Public Limited Company engaged in the business of running of chain of food and beverage outlets in India under the brand name “Coffee Day” “Cafe Coffee Day” and “Coffee Day Xpress” having 1,556 cafes spread across 209 Cities and Towns across India, duly certified by ISO obtained permission and licenses through Food Safety and Standards Authority of India (FSSAI), Department of Legal Metrology and BBMP, impleaded as second respondent for carrying on its trade, challenges the impugned notification dated 11.3.2016 issued by the first respondent – Government of Karnataka under Section 5 of the EP Act.

22. The appellant uses various products and accessories made of plastic during the course of its business which includes plastic cups and lids, plastic spoons, food pouches which are all above 40 microns in thickness as prescribed under the statutory rules framed by the MoEF & CC and PWM Rules, 2016. It is also the case of the appellant that based on the draft notification issued by the State Government dated 28.10.2015, proposing to issue blanket ban of manufacturing, trading and using all types of plastic products, the appellant has filed objection to the draft notification on many grounds, including that the draft notification is contrary to the Plastic Waste (Management and Handling) Rules, 2011. The case of the appellant is that considering the nature of its business, use of plastic cups etc., is inevitable. When the appellant was anxious to know about the outcome of the objection raised for the proposed draft notification, even before the final impugned notification came to be issued, in the months of January to March, 2016 the officers of the first respondent – Government have forcibly taken away the plastic materials from the business places causing harassment. It is the case of the appellant like the other appellant, many affected parties have also filed their objections to the draft notification dated 28.10.2015 and in total disregard of the objection and without application of mind, the first respondent – Government has issued the impugned notification dated 11.3.2016 imposing ban on plastic.

23. Reiterating that the Government of India, in supersession of Plastic Waste (Management and Handling) Rules, 2011 has framed PWM Rules, 2016 permitting use of plastic above 50 microns as against 40 microns permitted in the Rules, 2011, the first

respondent without resorting to the waste management system has imposed blanket ban affecting the business activities in toto.

24. The appellant has raised the legal grounds that the impugned notification is *ultra vires* the EP Act and the Rules framed thereunder that, when the statutory Rules framed under Rules 3,6 and 25 of the EP Act by the Government of India regulating to ensure effective management and handling and disposal of plastic, the act of the first respondent – State Government having delegated power under Section 23 of the EP Act, imposing total ban by way of direction under Section 5 of the EP Act, is contrary to the statutory notification issued by the Government of India. According to the appellant, the delegated power to the State Government must be for effective implementation of the Rules and not to negate such Rules already framed by the Government of India. It is the further case of the appellant that the plastic is eco friendly and recyclable and therefore the handling of the plastic must be properly managed instead of banning totally which cannot be said to be reasonable restriction under Article 19(6) of the Constitution of India. Further, there is no opportunity given to find out an alternate material and even if the alternate material can be found out, ultimately if the municipal authority failed to regulate the same, such waste will be a cause of obstruction of waterbodies etc., and therefore what is needed is proper management which has not been taken care of by the first respondent – Government.

25. **Appeal No.129 of 2016** is filed by K.K. Poly Flex Pvt Ltd., challenging the impugned notification of the first respondent – Government of Karnataka dated 11.3.2016. The appellant which is a company registered under the Companies Act, 1956 for the business of manufacturing plastic bags/multi layered plastic using virgin plastic of capacity of 10 MTA, obtained “Consent” from the KSPCB and Certificate of Registration under the Plastic Waste (Management and Handling) Rules, 2011 which is valid upto 31.12.2016. Under the appellant 300 employees are working directly, apart from 200 employees working indirectly who are depending upon the running of the appellant unit. According to the appellant the first respondent – Government has no jurisdiction to pass the impugned notification, imposing total ban and the same is beyond the scope of the delegated power conferred under Section 5 of the EP Act and that the reason given for imposing such total ban is legally unsustainable since the

problem arose because of lack of monitoring by the authorities of the State Government. Further, it is the case of the appellant that by virtue of the impugned notification, the Plastic Waste (Management and Handling) Rules, 2011 has been made redundant, especially when the Government of India has no proposal to ban flex. It is the further case of the appellant that the impugned notification by the first respondent – Government of Karnataka is against the assurance given before the Supreme Court in W.P.(C).No.154 of 2012 dated 10.12.2014 stating that all effective steps to implement the Plastic Waste (Management and Handling) Rules 2011 will be taken. The appellant has also raised the ground that by virtue of the Government Order the statutory “Consent” order obtained from KSPCB valid upto 31.12.2016, cannot be superseded and the ban affects the livelihood of more than 300 persons and therefore it is violation of Article 21 of the Constitution of India.

26. **Appeal No.130 of 2016** is filed by Reliance Poly Pack, Bangalore, challenging the impugned notification of Government of Karnataka on the same grounds. The appellant is also involved in the process of manufacturing plastic carry bags/printing activity of capacity of 150 MT per annum and obtained “Consent” from KSPCB as well as registration under the Plastic Waste (Management and Handling) Rules, 2011 which is valid upto 6.8.2017. The appellant has also employed more than 300 employees apart from 200 employees indirectly.

27. **Diary No.542 of 2016** in un-numbered appeal is filed by PVR Ltd., New Delhi, challenging the impugned notification of the Government of Karnataka dated 11.3.2016. Since the appeal was filed on 26.9.2016 which is beyond the period of limitation under Section 16 of the NGT Act, the matter was posted for maintainability. Along with hearing on maintainability of the appeal, we have also heard on the merits of the matter, since the issue involved is having larger ramifications, affecting similar owners carrying on the said business in the State of Karnataka.

28. In the grounds of appeal the appellant has chosen to state that it is a company registered originally under the Companies Act under the name of Priya Village Roadshow Ltd., and subsequently changed the name as PVR Ltd., a renowned name in the field of entertainment and film industry and is a listed company with BSE and NSE

and is currently operating 658 screens in 120 properties in 47 cities across India. The appellant is committed to channelizing the disposal of plastic and allied products as a consequence of its Corporate Social Responsibility. As part of its business, the appellant runs canteens and eateries within its theatre premises in the State of Karnataka as well as in other parts of India using inter alia plastic cups, spoons, storage boxes, hand gloves etc for selling food and beverages to the customers which is also followed in theatres all over India and necessary approvals and permissions from the Government have been obtained. The Government of India has passed statutory rules in 2011 under EP Act, prohibiting manufacture, stocking, distribution, sale and use of carry bags made of virgin or recycled or congestible plastic less than 40 micron thickness. In spite of that when the local authorities in Bangalore have started creating problems by making ban on use of plastic some of the manufacturers preferred W.P.Nos.45448 and 45449 of 2012 before the High Court of Karnataka in which there was an interim order on 15.1.2013 not to prevent any manufacturer from using plastic of more than 40 micron thickness and ultimately the writ petitions came to be disposed on the undertaking given by the government that the manufacturers are entitled to manufacture plastic above 40 microns. However, the first respondent – State Government has chosen to give the draft notification on 28.10.2015 proposing to impose a blanket ban of plastic products in respect of which many manufacturers have given their objections and without considering the objection the first respondent State Government issued impugned notification dated 11.3.2016. The said notification is with total non application of mind and opposed to the rules framed by the Central Government. Further, exemption has been given in respect of some of the plastic materials which are non recyclable while recyclable plastic bags have been banned totally and the same is arbitrary and violative of Article 14 of the Constitution of India.

29. Even under the Plastic Waste (Management and Handling) Rules 2011 the prescribed authority lead by the Joint Commissioner of BBMP along with the team of many officers have visited the PVR Spirit and collected material from canteen, eatery and issued a demand notice for Rs.75,000/- for use of plastic. However, under the impugned notification issued under Section 5 of the EP Act a total ban has been imposed which is illegal, affecting the right to carry on trade. According to the appellant,

by virtue of the Plastic Waste (Management and Handling) Rules 2011 followed by PWM Rules, 2016, the Government of India has occupied the field. While so, the State Government has to strictly follow the same by regulatory measure and therefore the issuance of the impugned notification is illegal. The appellant has also raised various legal grounds, as raised by the other appellants.

30. The Government of Karnataka which has issued the impugned notification has filed its reply dated 25.7.2016 in Appeal No.119 of 2016 which is being adopted in all other application/appeals which is also adopted by BBMP which has been impleaded subsequently in these appeals. The Government of Karnataka has raised a preliminary objection to the maintainability of these application/appeals on the ground that the substantial issues raised in these cases have been raised and conclusively decided by the Principal Bench of the NGT in GOODWILL PLASTIC INDUSTRIES VS UNION TERRITORY OF CHANDIGARH (Application No.26 of 2013). In the said judgment it was held that ban of plastic made by the State Government under Section 5 of the EP Act is valid and is only complementary to the Central Government formulated statutory rules and the directions issued under Section 5 to the State Governments and the Rules framed by the Government of India a per Sections 3,6 and 25 of the EP Act, act in different fields, one complementary to the other and therefore the impugned notification is not violative or in excess of the PWM Rules framed by the Government of India. It is also stated by the Government of Karnataka that as many as eight other State Governments in India, by exercise of the power under Section 5 of the EP Act, have imposed ban on plastic, in addition to PWM Rules framed by the Government of India. The States which have banned plastic are Maharashtra, Rajasthan, Union Territory of Delhi, Punjab, Himachal Pradesh, Goa and West Bengal

31. It is further stated by the State Government that the Hon'ble Supreme Court is seized of the subject matter of total ban of plastic in terms of Section 5 of the EP Act in KARUNA SOCIETY FOR ANIMALS AND NATURE V. UNION OF INDIA (Writ Petition No.154 of 2012). It is stated that in the said case, the Hon'ble Supreme Court has directed the State of Rajasthan to strictly implement the directions given under Section 5 of the EP Act. Further, all the State Governments, including State of Karnataka have

been impleaded as parties in the said matter and in such circumstances the appellants cannot seek any relief before this Tribunal.

32. On the merit of the matter, it is stated that it is not that all plastics have been banned, but only those plastic products which are excessively used inspite of existence of alternative product and such use which is dangerous and non bio degradable and difficult to collect as municipal solid waste or recyclable and therefore they have been banned. The ban has been imposed to address the personal concern of irreversible pollution, after inviting objections from the stakeholders by issuing the draft notification and forming a committee consisting of Experts and government representatives to evaluate the objections so submitted and after due consideration of all objections, the impugned notification came to be issued finally. It is reiterated that all attributes of plastic and restricted permission for use stipulated under PWM Rules of the Government of India have failed to reign in the irreversible environmental degradation caused by plastic and therefore imposing ban in respect of those items of plastic particularly carry bags has become inevitable. It is also stated that the impugned notification came to be passed only after implementing PWM Rules framed by the Government of India after finding that the same was inadequate to address serious consequences of environmental degradation caused by plastic.

33. It is the case of the government that environmental concern and protection of public interest is of much greater cause than economic interest sought to be highlighted by the appellant. In respect of similar products it was already held that the constitutional right of small section of the society to carry on such business for gain at the cost of larger public health and environmental degradation, cannot be permitted. Therefore, according to the State Government it is in the public interest, the impugned direction came to be issued under Section 5 of the EP Act. It is stated that even though the plastic and its hazards may not be readily discernable but plastic being an inert material and non bio degradable, is an immense environmental hazard and menace and its impact is evident at several places and in several ways and that is the reason why in various States plastic have been banned and the Hon'ble Supreme Court is also considering the possibility of all States banning plastic in exercise of power under Section 5 of the EP Act. If within the territorial jurisdiction of the State it is found that the

Central Statutory Rules are not found to be adequate to address the specific need or necessity, particularly to regulate specific activities and protect the environment, it is for the State Government which is empowered to pass orders in terms of Section 5 of the EP Act and they are in consonance with law and Constitution of India. The State Government has also taken a stand that this Tribunal has taken several positive steps to ensure protection of environment by various judgments, addressing environmental issues which is also reflected in the judgment of the Principal Bench of the NGT in GOODWILL PLASTIC INDUSTRIES case. It is also stated that the direction given under Section 5 of the EP Act is not comprehensive and the appellant could continue to produce the items which are not banned.

34. While replying the legal grounds raised by the appellants/applicant and subject to the preliminary objection of non maintainability of the appeal and denying all the contentions raised by the appellants/applicant it is stated that while Section 3 of the EP Act enumerates the powers of the Central Government to take measures to protect and improve the environment, Section 5 of the EP Act enables the Central Government to take certain measures to protect the environment. Section 23 of the EP Act empowers the Central Government to delegate its powers. It is also stated that the powers granted in EP Act to the Central Government under Section 5 enable the government to take necessary steps to regulate and protect the environment which includes the power of closure of industry that are polluting. In terms of Section 23 of the EP Act the Central Government can delegate its powers to the State Governments. The powers of the Central Government under Section 5 of the EP Act has been delegated by the Government of India by virtue of the powers under Section 23 of the EP Act in the notification dated 10.2.1998. By such delegation of power, the State Government in effect is discharging the functions of the Central Government at the local level to address the exigencies of the environmental pollution. The power under Section 5 of the EP Act as it is seen in the explanation, includes power to direct closure, prohibition or regulation of industries, stoppage of electricity, water connection etc., and this power is to enforce measures to protect and improve environment and in addition to the regulatory power under Sections 3,6 and 25 of the EP Act. It is the case of the Government of Karnataka that environmental problem created by excessive use of

plastic with particular reference to State of Karnataka has become unmanageable especially when certain plastic products and their excessive use are avoidable and unwarranted and such use can be either regulated or curtailed. It is stated that as per the Karnataka State Environment Report, 2011 it was estimated that about 9,000 tonnes of municipal solid waste is produced per day in the State and out of the same nearly 5% viz, 450 TPD constitutes plastic waste which is a matter of grave concern.

35. The National Environmental Engineering Research Institute (NEERI), Nagpur has estimated in its report that annual rate of waste generation would be 6% and at this rate it is estimated that about 14,500 tonnes solid waste is generated in the State, out of which 750 TPD would be plastic waste and such huge quantum of plastic waste creates serious environmental and health hazard. It is further stated by the State Government that as per the report of the FKCCI the quantum of plastic products manufactured in the country was 8.46 million metric tons in 2013. As per KSPCB, permission has been accorded to 201 manufacturing units to produce plastic carry bags, out of which 120 units are established in Bangalore and the remaining are in other parts of the State. It is estimated that these units produce plastic to the tune of 77,247 tons every year. In addition to that plastic produced in the neighbouring States also enters into the State of Karnataka, resulting in accumulation of large quantity of plastic used in the State of Karnataka.

36. Regarding the nature of chemicals used in plastic, it is stated that the plastic is manufactured from chemical polymers and by-products of petroleum oil. Various types of plastic are used for different purposes like Poly Ethylene Terephthalate (PET), High Density Poly Ethylene (HDPE) Poly Vinyl Chloride (PVC), Low Density Poly Ethylene (LDPE), Poly Styrene (PS), Polypropylene (PP), Non Oven Polypropylene, Polyethylene (PE), Poly Amide (Nylon), Poly Methyl Methacrylate (PMM) and Plastic Micro beads. Among the above said products of plastic, LDPE, HDPE and PET plastics are produced on a large scale and used to manufacture various articles for day-to-day use including for packaging and carrying materials. As plastic is based on chemical polymer, normally, it will not be degraded by natural process and it remains inert and does not decompose for a long period leading to one form of pollution or other, causing environmental hazard. This includes chemical forming part of the food chain and

become intrusive elements in soil and water courses. Plastics are found in dumping yards which find their way to drains, lakes and ponds, municipal solid waste sites, rivers, seas and even environmentally sensitive areas. Plastics are consumed by endangered species of animals, resulting in their death.

37. Some of the hazards caused by the use of plastic are:

(i) If the plastic sheets and carry bags are not properly disposed of, they choke storm water drains during rainy season which create floods in low lying areas, damaging property and in some cases claiming human life also.

(ii) When some kinds of plastics are exposed to sunlight they emit hazardous chemicals which has harmful side effects on all living organisms.

(iii) At the stage of manufacturing of plastics, various hazardous chemicals are produced having adverse effect on environment and human health.

(iv) Throwing plastic sheets and plastic bags in public places like parks, temples, places of worship, national parks etc., not only spoils the aesthetic beauty of those places but also adds to the municipal solid waste issues.

(v) Throwing of eatables and vegetable wastes, wrapped in plastic bags, both in rural and urban areas results in cattle feeding of this waste, causing serious health problems and ultimately may lead to death of such animals and in any event such plastics enter the food chain with animal products such as milk and meat.

(vi) Heavy metals like Cadmium and Lead containing chemicals are used in manufacturing coloured carry bags and sheets and these heavy metals create serious health problems consumed by animals by entering into the food chain and also directly consumed by human and pet animals when food products are packed in them.

(vii) Plastic wastes which are thrown on agricultural land and other areas remain non bio degradable for many years and this has been found to have adverse effect on the recharge of ground water and soil fertility resulting drop in production of food grains.

(viii) Scientific disposal of municipal solid waste becomes complicated because of the presence of plastic waste in it and most of the plastics that are collected at the municipal solid waste sites get burned and such burning of plastic releases hazardous chemical like dioxins and furans into the air. Breathing of such air containing toxic gases may cause serious health problem to human beings. It is stated by the Government of Karnataka that as the studies on ill effects of plastic show that the same has to be banned.

38. Regarding monitoring, regulation and use of plastic, in Plastic Waste (Management and Handling) Rules, 2011 less than 40 microns thickness have been banned and in the absence of any ban on plastic of more than 40 microns thickness (now it is 50 microns thickness as per PWM Rules, 2016) in the State Level Advisory Committee meeting Chaired by the Secretary, Urban Development Department, it was

decided that it is impossible to control and regulate the manufacturing and use of plastic either less or more than 40 microns by identifying the same. Accordingly, KSPCB was also of the opinion that since the technology for the production of plastic sheet or carry bags, either less than 40 micron or more, are the same and therefore it is very difficult to identify the difference in thickness for effective regulation and control over the plastic carry bags. It is stated that plastic bags less than 40 microns or 50 microns entering from the neighbouring States has also posed a serious problem and it is difficult to control such movement.

39. It is also stated that the order passed by the High Court of Karnataka in W.P.Nos.45449 and 45449 of 2012 was in the different context and that was in accordance with the Plastic Waste (Management and Handling) Rules 2011 framed by the Government of India and that does not have any bearing on the impugned notification issued by the Government of Karnataka under Section 5 of the EP Act and therefore the notification cannot be held to be invalid. It was in those circumstances of the ground reality and on the request of BBMP and Urban Development Department of Government of Karnataka, the State Government has decided to control the ill effects of excessive use of plastic carry bags and plastic sheets on environment in order to create a better environment on public health. It was only after due consideration of the relevant factors, the State Government imposed the ban on manufacture, sale and use of certain plastic products, such as plastic carry bags, plastic banners, plastic buntings, flex, plastic flags, plastic plates, plastic cups, plastic spoons, cling films and plastic sheet used for spreading on dining table irrespective of their thickness including the above items made of thermocol and plastic which use plastic micro beads.

40. The problem of pollution caused by plastic cannot be treated as municipal solid waste management alone and the same has to be dealt with comprehensively at the level of necessary users as compared to mere conveniences or possibilities of its use and for attending the commercial interest. While every effort has been made at the level of municipal solid waste management to deal with the recycling of plastic it has to be admitted that the same cannot be effectively and completely implemented to curtail the pollution caused by plastic. The intent of the State Government for banning certain items made with plastic is to restrict the quantum of plastic generated and to limit its use

where such use is unwarranted and excessive. The State Government, as delegatee of the Central Government, while exercising powers under Section 5 of EP Act, has taken into account all relevant factors and followed due process of law, including the procedure laid down in Rule 4 of the Rules framed under EP Act. It was as per the said rule, the draft notification was published inviting objections from various stakeholders, providing them 30 days time.

41. In addition to that, the State Government has constituted a committee consisting of four members who are Experts in the field viz., Secretary, (Ecology and Environment) Forest, Ecology and Environment Department – Chairman, Prof. Giridhar. M, Department of Chemical Engineering, Indian Institute of Bangalore, A.R. Ramesh, Senior Environmental Officer, Waste Management Cell, KSPCB as Members and The Special Director (Tech. Cell), Ecology and Environment Department – Convenor.

42. It is stated that in response to the draft notification, 1,623 objections and suggestions were received and out of the same 204 objections were from industries. The particulars are given as follows:

Sl. No.	Particulars	Number of representations
1	Wholesale Dealers	32
2	Industries	204
3	Public	14
4	Institutions	01
5	Labourers	1372
Total		1623

43. The representations made by the industries manufacturing plastics were by and large common, mostly indicating the economic hardship while the majority of the representations are welcoming the proposal of the draft notification and suggested even stringent measures. It was after considering the representations of the industries, the Committee expressed the following opinion:

(i) Banks and financial institutions may be requested to reschedule the repayment period where loans had been availed by the industries

(ii) The plastic used for packing milk could be exempted as they are under complete regulation and are typically reused. Further, the question of plastic used in Forestry and Horticulture nurseries is very meagre and its banning may be considered subsequently.

(iii) No ban is imposed on export of plastic which is otherwise banned in the State of Karnataka. The industries may use their existing machinery for manufacturing of items that are not banned in the notification. Further, the industries could operate by shifting the units to either to SEZ or may be converted into export oriented units.

(iv) The State Government may also consider encouraging the industries by providing cheaper loans and subsidies etc., for undertaking manufacture of alternative to plastic.

(v) Flex banners have been made with PVC coating and are posing chronic problems for disposal. Therefore, it was found that these banners are to be banned. Cloth and canvass may be used as an alternative to flex.

(vi) It was also found that the problem of disposal of municipal solid waste has been aggravated by inclusion of plastic in the waste. Extension of time in banning of plastic would be difficult and it would cause adverse impact on the effective measures being taken to tackle the problem of municipal solid waste. Therefore, it was found essential to ban the plastic without any extension of time.

(vii) The opinion of the Finance Department of the State Government has also been obtained on the impact of banning of plastic and its consequences for the revenue of the State Government. Considering the cost incurred for disposal of plastic waste and the impact of plastic on environment, the cost of disposal was found to be higher than the revenue generated.

44. It was following the said opinion given by the Expert Committee and having considered the same carefully and taking note of the fact that the existing PWM Rules

could not be effectively implemented since the public who were using the plastic were not in a position to know the exact thickness of plastic and ultimately the regulation of the permitted plastic carry bags could not be achieved, the State Government, as delegatee of the Central Government, has taken a decision to effect complete ban of plastic carry bags and certain other plastic items within the State of Karnataka. The State Government has taken into account the relevant aspects into consideration such as hazardous effects on human life, animals and the environment including the quantum of plastic waste generated per day.

45. It is stated that the State Government, while issuing notification, has followed the jurisprudential principle for protection of environment viz., (a) precautionary principle (b) sustainable development and (c) principles of inter generational equity, in the light of the Directive Principles of State Policy enshrined under Article 48 – A and Article 51(g) of the Constitution of India, the right to life guaranteed under Article 21 of the Constitution of India as Fundamental Right. Therefore, based on comprehensive multi disciplinary and interdisciplinary consideration, the Government found that if such ban is not imposed Karnataka will virtually become a plastic dumping yard, causing irretrievable damage to the environment. Therefore, the appellant cannot find fault with the said notification issued by the State Government. In fact, the State Government has also taken economic considerations into account and provided adequate options and alternatives. It is also stated that it is not all types of plastics which are banned and only those plastics which are frequently used, causing environmental impact, have been banned. Therefore, the manufacture of other types of plastic permitted can be continued and one cannot say that there is a blanket ban.

46. Permissible plastic to be manufactured are:

- (i) plastic carry bags manufactured exclusively for export purposes against any export orders by a plastic industry located in SEZ and Export Oriented Units (EOU)
- (ii) plastic bags which constitute or form an integral part of packaging, in which goods are sealed prior to use at manufacturing/processing units

(iii) plastic bags and sheets used in Forestry and Horticulture nurseries against the orders from the Government Departments or from the firms concerned

(iv) plastic used for packing of milk and milk products (dairy products)

47. Therefore, the intent of the State Government in banning certain plastic is to restrict the quantity of plastic waste generated which would progressively add up to large quantity of plastic waste and as such to limit its use, where such use is unwarranted and rampant and thereby limit its polluting effect. The State Government has also evaluated and analysed the relevant data and found that the quantum of waste generated out of plastic used for packing eatables like chocolates and other products is insignificant and further, there may not be any viable alternative for such packing at present. Therefore, the ban of plastic has been considered after due evaluation and consideration of relevant information, uses and alternatives available.

48. It is the case of the State Government that after the impugned notification was issued, its enforcement was entrusted to various officers and in fact a per EP Act and the Rules made thereunder apart from other notification issued by the Government of India from time to time, the Government of India has delegated the power to prosecute any violator for violation of any provisions of the EP Act and to file cases in the jurisdictional Judicial Magistrate's court and such permission has been granted to

(i) the Secretary to Government, (Ecology and Environment), Forests, Ecology and Environment Department

(ii) Chairman and Member Secretary, KSPCB

(iii) Deputy Commissioners of the Districts

(iv) Regional Officers of KSPCB

(v) Assistant Commissioner, Revenue Department

49. It is also stated that there is no conflict between the PWM Rules notified by the Government of India, including PWM Rules, 2016 which operate for distinct purposes and are complementary to each other and not contradictory. The said aspect has

already been considered by the Principal Bench of NGT in GOODWILL PLASTIC INDUSTRIES case and therefore there is no necessity now to reopen the said issue again. It is also stated that banning the plastic products and replacing them with alternative materials like paper and jute etc., does not create any potential environmental hazard, as wrongly contended by the appellants/applicant. It is also stated that the Government will always encourage the industry which produce eco friendly products. It is also stated that before imposing ban, the local urban bodies were instructed to ensure creation of adequate awareness among the general public about the alternatives available to the plastic carry bags and such other products. By virtue of the present conduct of the State Government, the urban public at large are bound to change their activity of use and throw products which are causing environmental pollution. The ill effects of the rampant use of plastics is well studied and well documented scientifically and administratively and certain measures are to be taken to curtail its consequences.

50. It is reiterated that the impugned notification is issued keeping in mind the magnitude of the pollution caused by different kinds of plastic and the State Government has never stated that paper products were the only alternative to plastic. Though paper industries are "red" category one, the same has been categorised to have better monitoring of the functioning of those industries. The pollution control measures stipulated by the Central Pollution Control Board (CPCB) and MoEF & CC are to be carried out strictly by the industries which are categorised as "red" category and monitored regularly by the KSPCB. However, it cannot be disputed that the paper is naturally bio degradable as compared to plastic which is inert and the end product is not corrosive on the environment like that of plastic. Though plastic is "green" category, its rampant and improper use and disposal causes serious environmental and health hazards. It is also stated that the association of plastic manufacturers in the State of Karnataka were aware of the need to take such steps even in the year 2011 and it was only on the representation of the manufacturers, the authorities of the State Government made all steps to bring about public awareness to minimise the pollution caused by the plastic products. However, having found that all such efforts and methods have become ineffective in combating the menace of plastic products, the

State was constrained to issue the impugned notification, banning plastic. It is also reiterated that it is not as if the State of Karnataka alone has banned the manufacture of plastic and there are eight other States in India which have already banned plastic viz., Maharashtra, Delhi, Punjab, Rajasthan, Himachal Pradesh, Goa, West Bengal and Union Territory of Delhi.

51. In addition to that it is stated that some foreign countries have also found it necessary to impose ban of plastic viz., Germany, South Africa, Italy, Australia, Somalia, Botswana, Philippines, Uganda, Kenya, Japan, Turkey, Zanzibar, Eritrea, Ethiopia, Papua New Guinea, Samoa, Belgium, South Korea, Singapore, Sweden, Bhutan, Malta, China and some States in USA. It is ultimately reiterated by the State Government that when the matter is pending in the Supreme Court in KARUNA SOCIETY case wherein the Hon'ble Supreme Court has directed all the State Governments to file their response, ultimately when the Hon'ble Supreme Court takes a decision that will be binding on all States and stakeholders. Therefore, the State Government has prayed for dismissal of the application/appeals.

52. In the reply filed by the 4th respondent in Appeal No. 119 of 2016 viz., Department of Chemicals and Petro-Chemicals, New Delhi a preliminary objection has been made that the Government of India is committed towards environmental issues arising out of usage of plastic and therefore formulated standard through the Bureau of Indian Standards. While stating that plastic is a versatile material, playing major role in delivering and sustaining quality, comfort etc. it is submitted that it also provides safety of modern life. It is stated that the domestic industry had consumed 11 Million Tons of plastic during 2013 – 2014 and there are about 40,000 plastic processing units spread throughout India with an estimated investment of Rs.30,000 Crores and employs about 3 Million people. It is further stated that the industry has potential to grow with annual growth rate of 10% in the next 10 to 20 years time.

53. It is also stated that the MoEF & CC has recently notified PWM Rues 2016 providing long term sustainable solution to manage plastic waste effectively. The said Rules increase the minimum thickness of plastic carry bags from 40 to 50 microns and expand the jurisdiction of applicability from municipal area to rural areas/villages. That

apart, the Rules impose responsibilities both, on producers and generator of plastic, apart from introducing collection back system by the producers by Extended Producer Responsibility. The Rules also introduced collection of Plastic Waste Management Fee by pre registration of product etc., and promote use of plastic waste for road construction as per the Indian Road Congress Guidelines. It is stated that the plastic are recyclable and recycling industry is large in the unorganised sector.

54. It is the case of the said respondent that Polyethylene Terephthalate (PET) is safe for packaging of food and beverages. Further, almost all the PET waste are being collected and recycled, the PET waste are converted into granules and used for manufacture of value added products like fibres, filaments, pillows, mattresses etc. It is also stated that the FSSAI has provided regulation for packaging and labelling of food and other eatable items in the Notification dated 1.8.2011 called Food Safety and Standards (Packaging and Labelling) Regulation, 2011. The use of PET for packaging of the food stuff and beverages is approved internationally as well as by the National Regulatory Body. The BIS has already prescribed specification for PET for packaging of beverages. It is the case of the said respondent that Tetrapack cartons are different from other flexible multi layered packs and have also received food safety approval in every country and therefore there is no threat to environment due to Tetrapak. It is stated that in India in the year 2014 around 5 Billion Tetrapak cartons were sold and more than 30% of the used cartons have been recycled by which raw materials for various industries like Aluminium are recovered. Flexible packaging is used to increase shelf life of packed raw, semi processed or processed food.

55. Therefore, according to the fourth respondent there should not be any direction for imposing almost a blanket ban on manufacture, supply, sale and use of plastic carry bags, plastic banners, plastic buntings, flex, plastic tags, plastic plates, plastic cups, plastic spoons, cling films and plastic sheets used for spreading on dining table in the State of Karnataka, if they conform to the relevant Rules/Guidelines/Standard etc. In effect, it is the case of the fourth respondent that the plastic materials should be allowed and the Rules framed by the Government of India regarding regulation of plastic materials must be scrupulously followed.

56. The 5th respondent – Central Institute of Plastics Engineering and Technology (CIPET) in the reply while stating that it is a premier National Institute devoted to academic, technology support services and research and development for plastic and allied industries in India. It has got 28 CIPET centres across the country. It is also an ISO 9001 certified organisation and the testing facility are accredited by the National Accreditation Board for Testing and Calibration Laboratories (NABL). It is also an internationally recognised institute. The 5th respondent agrees with the contention of the appellant that the plastic is the material choice for a variety of applications ranging from consumer oriented products to industrial products by virtue of its supremacy in terms of cost, performance, balance, easy mobility, unlimited colourability, design versatility over the conventional materials like metal, ceramic and wood. It is also stated that technologies are available for recycling of various kinds of plastic and the collection and segregation at source is a vital issue. It is stated that even multilayered plastics/mixed plastics waste which is beyond separation, can be recycled into plastic lumbars and the real issue is the collection and enormous quantity of waste is available for recycling under one roof to make it economically viable.

57. While it is stated that plastic industry which is categorised as “green category” PWM Rules, 2016 prescribe authority for enforcement of strict compliance of the Rules and Regulations expanding the jurisdiction. The minimum prescribed features under the PWM Rules 2016 in respect of plastic carry bags are bound to be used. It is further stated that complete ban of manufacture, use and sale of plastic carry bags and other items is against the public policy.

58. Mr.M. Ravindran, learned Senior Counsel appearing for the appellants in Appeal Nos.117 and 118 of 2016 has submitted that the Government of India, under the powers conferred under the EP Act has passed Plastic Waste (Management and Handling) Rules, 2011 which have been replaced by PWM Rules, 2016 with effect from 18.3.2016 and that is within a week after the date of impugned notification issued by the Government of Karnataka on 11.3.2016. In the statutory rules of the Government of India of 2011 and 2016 manufacturing, trade etc., of plastic bags of less than 40 microns and 50 microns thickness respectively, have been banned. The Rules contemplate the stakeholders to obtain “Consent” from KSPCB under Water (Prevention

and Control of Pollution) Act, 1974 (Water Act) and Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and elaborate procedure has been prescribed under the Rules with respect to plastic waste management. He has also submitted that under the Rules, responsibilities have been fixed on local bodies, grama panchayats, waste generators, producers, machinery importer and brand owners, apart from retailers and vendors. While delegating the powers vested under Section 5 of EP Act to the State Government by notification dated 10.2.1988, the Central Government has not delegated its power under Section 3, 6 and 25 of the EP Act to the State Government under which the statutory rules have already been framed by the Government of India as stated above. The power which has been delegated to the State Government under Section 5 of EP Act is only to regulate and implement the provisions of the Act and the Rules and nothing more or less. The learned Senior Counsel would insist on the terms "any person" and "such person" which find place in Section 5 of the EP Act and contended that in the absence of the definition of the word "person" the term which has been defined in the Environment (Protection) Rules 1986 framed under the EP Act has to be taken into consideration. As per Rule 2(e) of the said Rules, the term "person" in relation to any factory or premises means a person or occupier having control over the affairs of the factory or premises. Therefore, the term "any person" used under Section 5 of the EP Act must be construed as a person in relation to any individual, factory or premises. Both in the Act as well as in Rules the word "person" is used as singular. Till date no single person who has been in control over the affairs of the firm or premises manufacturing, trading etc of plastic carry bags etc., have ever been given any notice individually. Therefore, this is a gross violation which will vitiate the impugned notification as such.

59. The learned Senior Counsel has also drawn the effect of Rule 4 of the Environment (Protection) Rules, 1986 which contemplates the procedure to be followed in implementing Section 5. Rule 4 prescribes direction in writing specifically stating the action to be taken and to be complied with by the person to whom such direction is given and such person to whom the direction is sought to be given, must be given 45 days notice. An opportunity of not less than 15 days to file objection and then 45 days thereafter after receiving their objection, the Central Government may issue direction by

recording the reason. Therefore, according to the learned Senior Counsel, Rule 4 makes the procedure to be followed for the purpose of issuing direction under Section 5 of the EP Act and the said procedure has not been followed and therefore the direction has become ineffective in the eye of law

60. It is also his submission that all the members of the Association have obtained "Consent" under Water Act and Air Act and they are all registered under the Plastic Waste (Management and Handling) Rules, 2011. While registering under the said Rules, the authorities have imposed various conditions, violation of which will attract penal provision. If any condition mentioned in the order is violated, directions could be issued under Section 5 by the State Government to comply with such condition and even while issuing such direction the procedure contemplated under Rule 4 and Rule 5 of the EP Rules is to be followed. Therefore, according to the learned Senior Counsel, a combined reading of the EP Act as well as EP Rules makes it clear that for violation of any condition any individual/person could be proceeded under Section 5 of the Act. In these circumstances, the conduct of the Government of Karnataka by issuing the impugned direction in imposing total ban on manufacture of plastic is in violation of the Act as well as Rules, since the Central Government has never delegated the powers to the State Government its powers under Sections 3, 6 and 25 of the EP Act. It is his further submission that the members of the Association who are having valid "Consent" order, cannot be prevented from manufacturing plastic carry bags etc., even after fulfilling the requirements of the PWM Rules. The vested right has accrued to the members of the association and if such right is to be taken away, there should be violation of the conditions followed by the issuance of notice to person and other procedure as contemplated under Rules 4 and 5 of the Rules framed under the EP Act and by a single order, all industries in the entire State cannot be closed by exercising the power under Section 5 of the EP Act. It is his further submission that the Government of Karnataka has not made any individual allegation against any manufacturer of plastic. On the other hand, the Government has admitted that it is unable to manage along with the local bodies, the regulation of plastic waste generated and therefore the Government has imposed a ban. The said stand is not legally sustainable, especially when the Rules are specific. If this contention is accepted, no

Rule framed under any Act can be implemented. In fact, the Government of India has framed various Rules under EP Act in respect of different kinds and at least 14 kinds of those Rules will become redundant by a single stroke of order by the State Government by illegally enforcing its delegated power under Section 5 of the EP Act. He also questioned the reasonableness of such stand taken by the government especially when the Central Government has specifically permitted under the statutory Rules manufacture of plastic above 50 microns thickness. When the Government of India permits such manufacturing process, by delegated authority, the State Government cannot take away such right conferred by the Government of India. Therefore, the impugned order is liable to be set aside on the ground of excessive delegation. Inability of the Government in making regulatory efforts cannot be a ground for the purpose of putting an end of any business activity and that will be against the public interest. The learned Senior Counsel would submit that the above said aspect has not been considered by the Principal Bench in GOODWILL PLASTIC INDUSTRIES case and therefore the said judgment is not a bar for this Tribunal to consider the same. According to him, the finding of the Principal Bench is *per incurium*. However, in another case, the Principal Bench has considered properly the import of Section 5 of EP Act and Rules 4 and 5 of the Environment (Protection) Rules. And even though the said judgment was before the judgment in GOODWILL PLASTIC INDUSTRIES case was passed, the Principal Bench in the GOODWILL INDUSTRIES case has not considered the above said judgment. He has also submitted that based on the impugned direction, the State Government authorities have started shutting down the manufacturing units, most of which are small and medium scale industries and have illegally confiscated the stored plastic materials which are even meant for sending the same out of State causing hardship. He has also submitted that the elaborate objections submitted by the Association on behalf of its members have been totally disregarded while issuing the impugned notification. The members of the association are always taking all initiatives to properly implement the waste management scheme and therefore he has submitted that the impugned notification has to be set aside

61. Mr. Kundan K.R. Mishra, learned counsel appearing for the appellant in some of the appeals viz., Appeal Nos.119, 129 and 130 of 2016 has elaborated about the ambit

of power under Section 5 of the EP Act. His contention is that Section 5 of EP Act does not empower the State Government to issue notification of general/generic nature akin to the rule making power for the whole State and the ambit and scope of Section 5 to issue direction is restricted to direction of specific nature against a specific person/specific officer/specific authority for a specific purpose by delegating the power by the Central Government to State Government to issue direction under Section 5 of the EP Act. By virtue of Section 23 of EP Act, the Central Government does not delegate even the power of administrative measure of general or particular nature. The rule making power under Section 3 and 6 read with Section 25 cannot and has not been delegated. He has also quoted Section 5 which is the power of the Central Government, subject to the provisions of the EP Act and the Rules made thereunder which includes Plastic Waste (Management and Handling) Rules, 2011, now replaced by PWM Rules, 2016, the purpose of EP Act being protection and improvement of human environment and prevention of hazards to human beings, other living creatures, plants and property. Further, Section 5 specifically uses the words "any person" and the term "any person" has been defined under Rule 2(e) of the Rules framed under the EP Act. The explanation attached to Section 5 of the EP Act clarifies that the nature of direction that can be given is closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of supply of electricity or water or any other service against specific industry and therefore the general direction given by way of notification, banning the entire plastic industry, except certain items, is outside the purview of the powers of issuing of direction under Section 5 of the EP Act.

62. It is his further submission that Rule 4 of the Rules framed under the EP Act prescribes a mandatory procedure to exercise power under Section 5 of the EP Act. Such procedure makes it clear that the direction must be in writing and specify the nature of action to be taken and individual has to be served with a copy of proposed direction, giving 15 days time to respond by way of objection and therefore it contemplates the principles of natural justice viz., giving opportunity of being heard. He also elaborates that as per Rule 2, the Central Government has to consider the objections and record its reasons in writing and therefore a speaking order is to be passed. To substantiate his contention, he would rely upon the judgment of the

Supreme Court in B.A. LINGA REDDY & ORS VS. KARNATAKA STATE TRANSPORT AUTHORITY & ORS (2015) 4 SCC 515. The Rule further contemplates notice to be given to specific individual and that does not envisage publication of a general notice as it has been done in the present case where the draft notification was published on 28.10.2015. According to him, Section 3 of EP Act empowers the Central Government to take administrative measures and Section 6 relates to procedure to regulate environmental pollution and it is only by virtue of the powers under Section 6 read with Section 25 of EP Act, the Central Government can make Rules by way of subordinate legislation. Therefore, according to him, even in respect of measures to be taken by the Central Government, there is a difference between the measures under Section 3 and 6 read with Section 25 of the EP Act. Neither the powers under Section 3 nor under Section 6 are covered under Section 5 of the EP Act which not only makes clearly about specific 'person' but also is subject to the elaborate procedure to be followed. Admittedly, such procedure has not been followed in this case, as any "individual person" carrying on manufacturing activity have not been given specific notice to enable them to give individual representation by way of objection. It is his further submission that the EP Act and the Rules framed thereunder contemplates punitive action and administrative measures for protection and improvement of environment. Therefore, it is the duty of the Government to establish that the product manufactured is an environmental pollutant which is a condition precedent for the exercise of any power under the EP Act. He has also taken pain to expand the meaning and expression of "any industry" operation or process under the Rules framed under the EP Act and according to him "any industry" does not mean all like industries in the whole State and it must be related to specific industry, specific operation or specific process.

63. While elaborating the rationality as to whether plastic carry bags pose threat to the quality of air and water, the plastic carry bag by itself has no inherent quality of pollutant and in any event while imposing complete ban on the sale, usage, manufacture etc., of plastic bags, the State Government should have conducted an Environment Impact Assessment (EIA) and the Government should have considered the objection made by the appellants that plastic is most ecological, benign and comparing the life cycle analysis with various other products or substitutes, it is far

better on each scale of ecological credential. He has also referred to various documents including the report of the Committee constituted by the Hon'ble Supreme Court to substantiate his contention that plastic carry bags are not inherently against environment, if they are regulated properly as per the Rules framed by the Government of India by virtue of the powers conferred under Section 6 of the EP Act and the said product is more ecological friendly.

64. Mr. Mishra has also insisted that the Government which is to implement the statutory Rules, has failed to do the same and it is not even the case of the Government that steps have been taken in accordance with the Rules and could not achieve the object and in such circumstances it is certainly not open by exercising the power under Section 5 of the EP Act to close down the entire plastic industry. This affects the fundamental freedom guaranteed under Article 19(1)(g) of the Constitution of India and the total ban will not amount to reasonable restriction. He relied upon the judgment of the Supreme Court in S RANGARAJAN VS. JAGAJEEVAN RAM & ORS (1989) 2 SCC 574, MOHAMMED FARUK VS. STATE OF MADHYA PRADESH & ORS (1969) 1 SCC 853. He also submitted that the appellants have obtained all necessary permissions from various authorities and therefore the business cannot be said to be illegal. He also submits that the impugned notification is arbitrary and unreasonable piece of legislation, causing serious prejudice, violating Articles 14, 19(1)(g), 21, 301 to 304 of the Constitution of India. Arbitrariness in State's action itself is sufficient to challenge the administrative action and twin test of reasonable nexus and intelligible differentia are one of the means to check the State's action on the touch stone of Article 14. He has also relied upon the judgment of the Supreme Court AJAY HASIA VS. KHALID MUJIB SEHRAVARDI (1981)1 SCC 722, M.A. RASHEED VS. STATE OF KERALA (1974) 2 SCC 687, R.D. SHETTY VS. INTERNATIONAL AIRPORT AUTHORITY OF INDIA (1997) 3 SCC 489, MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD VS. JAN MOHD USMANBHAI (198) 3 SCC 20, CHINTAMANRAO VS. STATE OF M.P AIR 1951 SC 118. He also submitted that there was no hearing given and the entire provision of Rule 4 has become scant exercise and therefore the impugned notification is in violation of the principles of natural justice. He relied upon the judgment in S.L. KAPUR VS. JAGMOHAN (1980) 4 SCC 379, SWADESHI COTTON MILLS V. UNION

OF INDIA (1981) 1 SCC 664 and INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA VS. L.K. RATNA (1986) 4 SCC 537.

65. Regarding compliance of PWM Rules and failure of State Agency, Mr. Mishra has relied upon various judgments of the Supreme Court. He made a particular reference to the direction issued by the Supreme Court of India in KARUNA SOCIETY FOR ANIMALS & NATURE V. UNION OF INDIA (W.P.(Civil) No.154 of 2012 dated 10.12.2014. He has also relied upon the judgment of the Principal Bench of the National Green Tribunal rendered in SURESHBHAI KESHAVBHAI WAGHVANKAR & ORS V. STATE OF GUJARAT & ORS (Application No.65 of 2012 dated 9.5.2013), wherein while dealing with an embargo put on Plaster of Paris (PoP) it was held that appropriate Board has to determine whether PoP is an “environmental pollutant” within the meaning of Section 2(b) of the EP Act. He also submitted that the decision of the Principal Bench of the NGT in GOODWILL PLASTIC INDUSTRIES case is distinguishable on the facts of the present case. In that case, the notification was challenged on different grounds viz., the notification of Union Territory of Chandigarh is repugnant to the Plastic Waste (Management and Handling) Rules, 2011 which prescribes the thickness of plastic bag, below which the use has been prohibited and the issue involved was that the said provision cannot be taken away by a notification and that the ban was imposed only on plastic carry bags in Union Territory of Chandigarh on 30.7.2008 while no such ban has been imposed in the adjacent Districts of Punjab and Haryana which are part of State of Punjab and Haryana. The learned counsel would submit that none of the points raised in these cases have ever been agitated and therefore no reliance can be made on GOODWILL PLASTIC INDUSTRIES judgment. Further, according to the learned counsel, the decision given in GOODWILL PLASTIC INDUSTRIES case by the Principal Bench of NGT does not create a precedent, since Tribunal is not a Court of Record and decision of one Bench of NGT is not binding upon the other. It can be at the most a passing reference and to substantiate his contention he as referred to various decisions. Mr. L.G. Sahadevan has also made submission by adopting the arguments of the learned Senior Counsel Mr. M. Ravindran and learned Counsel Mr Kundan K.R. Mishra.

66. Mr. R. Parthasarathy, learned counsel appearing for the proposed appellant in Diary No.542 of 2016 while reiterating the distinction between Sections 3 and 5 of the EP Act, has insisted that under Section 16 of the NGT Act it is only after the communication of the order to the individual manufacturers or traders imposing ban under Section 5 of the Act, the period of limitation starts. Admittedly the proposed appellant in the said case which is one of the dealers, has not been communicated with the impugned notification. It was only in May, 2016, when a fine of Rs.75,000/- was imposed and in furtherance of the same when a demand was made, the proposed appellant came to know about the impugned notification and thereafter he has filed the appeal in time.

67. On merits of the case he would submit that the appellant is PVR Cinema wherein canteens are being conducted and the employees of the canteen wear plastic gloves which according to the learned counsel, have above 40 micron thickness and during the course of service of hot item they use plastic lids, plastic cups etc. He would submit that these are all the essential items to be used during the course of business since for example if juice is to be taken it can be only through a plastic straw and there cannot be an alternative to that. He also submits that before issuing notification there is absolutely no scientific study conducted by the State Government especially when the plastic is bio degradable. He has relied upon the judgment in MOHAMMED FARUK VS. STATE OF MADHYA PRADESH (1969) 1 SCC 853, SRINIVASA ENTERPRISES VS. UNION OF INDIA (1980)4 SCC 507 and BACHAN SINGH VS. STATE OF PUNJAB (1997) 10 SCC 597.

68. Mr. Kamath and Mrs. Meena Kamath, learned counsel appearing in Appeal No.125 of 2016 wherein the appellant is an Association of manufacturers of flex, while adopting the arguments of the learned counsel appearing for other appellants, would submit that flex, as a material, stands distinct from that of other plastic especially plastic carry bags. While some of the States banned plastic carry bags which are inert, the plastic content in the flex is very negligible and the flex are used only in the signage industry and its size are very big and cannot be said to be non disposable. It is their contention that as Association of manufacturers of flex itself is undertaking recycling process, sine flex even after use, is valuable. It contains Calcium Carbonate in the form

of sheet and thick line of plastic is embedded. It is also the specific contention of Meena J. Kamath that the field is already occupied by the Municipal Law which prescribes issuance of licence for signage industry to put up flex boards. The Municipal Law contemplates punishment and prosecution in cases where flex boards are exhibited without proper licence. Therefore there is an effective control mechanism provided under the Municipal Law and it cannot be said that the flex materials are used indiscriminately. It is also submitted that there is no manufacturing activity of flex in Karnataka and the same are purchased from outside and the signage industry in Karnataka is an organised sector and the appellant Association is having 102 members. Eventhough she would contend that the appellant Association is in touch with all its members and after the period of exhibition of flex is over, utilised flex will be returned to the Association for recycling purpose, is unable to give the exact particulars about the quantum of flex marketed by its members and the quantum of flex received back for recycling purposes. However, she undertakes that proper step will be taken for the purpose of recycling all flex materials used for signage industry through its members. She also produced the records to show that BBMP permits putting up of hoardings on extended producer responsibility on the part of the members of the signage industry and she earnestly submits that the government may consider the case of signage industry and flex board traders in a distinct way. It is her submission that in fact a detailed representation has been made based on the draft notification issued by the Government of Karnataka and the same has not been considered. She would submit that the inherent defects of plastic carry bags which may be found scattered on the surroundings, may not apply in case of flex which are large in size and there is no possibility for any animals eating the same and drainage or watercourses being chocked. She has referred to various communications of the Government of India which impose Anti Dumping Duty for importing flex materials from foreign countries which are heavy and in effect the Government of India promotes the manufacture of flex used in signage industry in India. She has also stated that the Karnataka State Environment Report does not show anything about the flex. She insisted that in the light of the fact that no other State in India has banned flex, the request of the members of the Association should be considered by the government. She also submits that

GOODWILL PLASTIC INDUSTRIES judgment of the Principal Bench of NGT has not dealt with flex and therefore the said judgment cannot be made applicable in respect of signage industry. She has also submitted that there has been no scientific data that flex contributes to the waste while on the one hand Government of India is imposing heavy Anti Dumping Duty for import of flex materials from foreign countries, thereby encouraging manufacture of the said material in the country, on the other hand the Government of Karnataka, without assigning any particular reason, has banned all plastic materials, including plastic carry bags and flex, without considering the individual merits and demerits.

69. Mr. Su. Srinivasan, learned Assistant Solicitor General of India appearing for the Government of India would submit that plastic being a versatile material played a major role in sustaining quality, comfort and safety of modern life. The ratio of cost performance attracts all people of low income group to enjoy the benefit of plastic worldwide with ever increasing demand of water proof shelter, sanitation etc., The domestic industry consumed 11 million Tonnes of plastic during 2013 – 2014. There are about 40,000 plastic manufacturers spread throughout India with an estimated investment of Rs.30,000 Crores, employing 3 Million people. The industry has production to grow with annual growth rate of more than 10% during the next 10 to 20 years while stating that use of plastic carry bags is convenient sine they are not sensitive to moisture etc. The MoEF & CC has recently notified PWM Rules, 2016 in supersession of Plastic Waste (Management and Handling) Rules 2011 providing long term and sustainable solution to manage plastic waste effectively. The said Rules contain a comprehensive sketch to address various issues involving effective plastic waste management and as per PWM Rules, 2016 the thickness of plastic carry bags has been increased to 50 microns thickness below which it has been prohibited. The said Rues impose responsibilities on purchasers. generators, municipalities, local bodies and also manufacturers under extended producer responsibility. It provides for registration etc., and basically deals with source segregation and treatment by way of recycling through organised sector. The Food Safety and Standards Authority of India (FSSAI), Ministry of Health and Family Welfare, Government of India has already provided various regulations for the purpose of packaging for food and other eatable items and the Government through

FSSAI has issued various standards of plastic for packaging food and beverage. Any blanket ban on the manufacture, supply, sale and use of plastic carry bags, flex etc., by way of direction should be in conformity with the rules, guidelines and standards.

70. Per contra, it is the contention of Mr. Devaraj Ashok, learned counsel appearing for the Government of Karnataka that the appeals are not maintainable for the reason that the Principal Bench of NGT has already dealt with the issue connected with these matters in Application No.26 of 2013 and the said judgment having become final, the same is applicable to the present case also. According to the learned Government Pleader, the issue relating to alleged discriminatory character of the notification issued by the Union Territory of Chandigarh has also been considered by the Principal Bench in the GOODWILL PLASTIC INDUSTRIES judgment and conclusively decided holding that Sections 3 and 5 of the EP Act act in different fields and one does not contradict the other. Therefore, according to him, the appellants having made their objections in response to the draft notification, cannot now go back to say that they were not aware of the same and that the principles of natural justice has not been followed. The draft notification was issued by the Government of Karnataka on 28.10.2015 and even in that except various items of plastic including plastic carry bags, flex etc, there were exemptions given. In this case it is only after considering all the objections raised by the manufacturers, traders of plastic carry bags, flex etc., the Government has passed the final notification and the same having been kept in public domain, cannot be said to be not communicated. He has taken us to various paragraphs of the judgment of the Principal Bench of NGT in GOODWILL PLASTIC INDUSTRIES case. According to him, the general ban issued under Section 5 of the EP Act is also a direction which is in the form of a measure and such direction forms part of law and in such circumstances specific notice to every individual is not required.

71. According to him, even though the power to issue direction under Section 5 of the EP Act may be apparently different from that of the rule making power under Section 3 and 6 of the EP Act, when once the State Government by way of delegated legislation passed a direction under Section 5 of the Act even a general direction can be given and it becomes a binding order throughout the State of Karnataka. He also reiterated that when the appellants, through their Association or themselves, have

submitted their objections, now they cannot say that individual notice to “person” have not been given to them. The appellants having given their objection to the draft notification issuing notice to individual “person” makes an empty formality.

72. He has also submitted that in the notification, the Government has made it very clear the reason for imposing ban on selective items of plastic material since the same is unmanageable. According to the learned counsel, the impugned order cannot be said to be arbitrary and it is in the interest of preventing environmental disaster since these plastic materials which are unable to be maintained effectively by applying the statutory rules made by the Government of India, from causing enormous damages to the running water courses by chocking, apart from affecting the sanitary system. It is also his submission that even though statutory rules of the Government of India permit thickness of plastic beyond 50 microns, in practice, while it is being used, people are not aware of the thickness and the segregation becomes impossible for the purpose of effective recycling and therefore in order to enable the traders to find out an alternative, the ban has been imposed. He would also refer to the decision in KARUNA SOCIETY case apart from NARMADA BHACAO case and he would submit that when the State Government with the authority of delegation, has taken a policy decision and unless it is shown that such decision is perverse, the jurisdiction of the Tribunal as well as the powers are limited. He also reiterated every stand taken by the Government of Karnataka in the detailed reply filed in Appeal No.119 of 2016.

73. Mr. T.V. Sekar, the learned counsel appearing for the BBMP, while adopting the argument of the learned Government Pleader and also the detailed reply filed by the Government of Karnataka in Appeal No.119 of 2016, would submit that the limits of Bangalore City Municipal Corporation extended to 800 Sq.Km area with a population of 10 Million and management of plastic waste creates huge problem to the Corporation. Segregation of plastic waste based on thickness is impossible because of callous attitude of the people in indiscriminately throwing away the plastic bags etc., and also inherent nature of the plastic being carried away by wind, the gutters of sewages and water flows are blocked. Out of nearly 5,000 MT of waste generated in the Corporation area everyday, 400 – 500 MT consists plastic materials and that the Corporation has been facing enormous problem in maintaining drainage and water supply systems

because of the widespread prevalence of the plastic materials and carry bags littered everywhere and therefore, based on a scientific study, the Corporation has recommended to the State Government to impose the ban. He would also submit that there are circumstances where animal mortality has taken place because of consumption of the carry bag materials containing left over eatables and that has created enormous environmental problem.

74. We have heard the learned counsel appearing for the applicant/appellants as well as respondents, including Karnataka Government, given our anxious thought to the issues involved in this case. On analysis of the entire facts, we are of the view that the following are the issues to be answered for effective adjudication of the application/appeals.

(1) Whether the appeals are maintainable in the light of the decision of the Principal Bench in GOODWILL PLASTIC INDUSTRIES judgment?

(2) Whether the procedure for passing direction under Section 5 of the EP Act and the Rules framed thereunder, have been violated by the Government of Karnataka and if violated whether it would vitiate the impugned notification?

(3) To what other relief the appellants/applicant are entitled to?

Considering that all the issues are interconnected, we are of the view that all the issues should be taken together.

DISCUSSION AND CONCLUSION:

75. Before adverting to the points raised by the learned counsel on both sides, we think it is appropriate to explain the salient features and the legal impact of EP Act in so far as the disputes that are raised in these appeals/application. The EP Act, 1986 and the Environment (Protection) Rules, 1986 (EP Rules) thereunder were enacted by the Parliament for the protection and improvement of environment, based on the decision taken in the United Nations Conference on Human Environment held in Stockholm in June, 1972 and also to prevent environmental hazard to human beings and other living creatures, plants and property. The term “environment” as defined under Section 2(a) of the EP Act reads as follows:

“environment” includes water, air and land and the interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property”

It is an inclusive definition which has a vast ramification. The term “environmental pollutant” as defined under Section 2(b) reads as follows:

“environmental pollutant” means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment”

The term mainly concentrate the aspect of injury to environment in respect of “pollutant” either solid, liquid or gas.

76. The EP Act conferred two types of powers to the Central Government viz.,

(i) power to take measures to protect and improve environment under Section 3 of the EP Act which enables the Central Government to frame Rules in respect of those matters covered under Section 3 providing various matters as contemplated under Section 6(2) of the EP Act.

77. For better appreciation of the entire facts, it is relevant to extract Sections 3, 6 and 25 of the EP Act which are as follows:

“3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--

(i) co-ordination of actions by the State Governments, officers and other authorities--

(a) under this Act, or the rules made thereunder, or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

6. RULES TO REGULATE ENVIRONMENTAL POLLUTION

(1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the standards of quality of air, water or soil for various areas and purposes;

(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;

(c) the procedures and safeguards for the handling of hazardous substances;

(d) the prohibition and restrictions on the handling of hazardous substances in different areas;

(e) the prohibition and restriction on the location of industries and the carrying on process and operations in different areas;

(f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

25. POWER TO MAKE RULES

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely-

-

(a) the standards in excess of which environmental pollutants shall not be discharged or emitted under section 7;

(b) the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or caused to be handled under section 8;

(c) the authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under sub-section (1) of section 9;

(d) the manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under sub-section (1) of section 11;

(e) the form in which notice of intention to have a sample analysed shall be served under clause (a) of sub section (3) of section 11;

(f) the functions of the environmental laboratories, the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test; the form of laboratory report; the fees payable for such report and other matters to enable such laboratories to carry out their functions under sub-section (2) of section 12;

(g) the qualifications of Government Analyst appointed or recognised for the purpose of analysis of samples of air, water, soil or other substances under section 13;

(h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (b) of section 19;

(i) the authority of officer to whom any reports, returns, statistics, accounts and other information shall be furnished under section 20;

(j) any other matter which is required to be, or may be, prescribed."

(ii) The power given to the Central Government to give direction under Section 5 of the EP Act is not withstanding anything contained in any other law but subject to the provisions of the EP Act. Section 5 of the EP Act reads as follows:

5. POWER TO GIVE DIRECTIONS

"Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, 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.”

78. A combined reading of these two powers makes it clear that the power given to the Central Government under Sections 3 and 6 read with Section 25 of the EP Act is statutory rule making power, while the power given under Section 5 of the EP Act to the Central Government is to exercise its executive power. While the statutory legislative power conferred to the Central Government under Sections 3 and 6 read with Section 25 of the EP Act cannot be delegated, the power conferred to the Central Government under Section 5 of the EP Act can be delegated by virtue of the power under Section 23 of the EP Act which is as follows:

23. POWERS TO DELEGATE

“Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notifications, such of its powers and functions under this Act [except the powers to constitute an authority under sub-section (3) of section 3 and to make rules under section 25] as it may deem necessary or expedient, to any officer, State Government or other authority.”

It makes abundantly clear that except the rule making power of the Central Government, including the power to constitute an authority under Section 3(3) of the EP Act, all other powers can be delegated. Further, the Rules framed as stated above under Sections 3, 6 read with 25 of the EP Act shall be placed before both the Houses of the Parliament when they are in Session for a total period of 30 days and both the Houses agree for making any modification in the Rules and thereafter the Rules shall have the effect as defined under Section 26 of the EP Act which is as follows:

26. RULES MADE UNDER THIS ACT TO BE LAID BEFORE PARLIAMENT

“Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as

the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

Therefore, the Rules framed under Sections 3, 6 read with Section 25 of the EP Act has the Parliamentary sanction.

79. By virtue of the powers under Section 23 of the EP Act, the MoEF & CC, Government of India, has delegated its powers to the State Governments indicated in the notification dated 10.2.1988 which reads as follows:

*DELEGATION OF POWERS TO THE STATE GOVERNMENTS AND THE
CENTRAL POLLUTION CONTROL BOARD
MINISTRY OF ENVIRONMENT & FOREST
(Department of Environment, Forest & Wildlife)*

New Delhi, the 10th February, 1988

NOTIFICATION

S.O.152(E) – In exercise of the powers conferred by section 23 of the Environment (Protection) Act, 1986 the Central Government hereby delegate the powers vested in it under section 5 of the Act to the State Government of Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Mizoram, Orissa, Rajasthan, Sikkim and Tamil Nadu subject to the condition that the Central Government may revoke such delegation of powers in respect of all or any one or more of the State Governments or may itself invoke the provisions of section 5 of the Act, if in the opinion of the Central Government such a course of action is necessary in public interest.”

By virtue of the said delegation, the Government of Karnataka which has also been delegated the powers by the Central Government as on date, enjoys the power of the Central Government under Section 5 of the EP Act.

80. So far as it relates to the statutory legislative powers of the Central Government under Sections 3,6 read with 25 of the EP Act and the power of direction under Section 5 of the EP Act either by the Central Government or any other authority or State Government which has been delegated, one has to keep in mind that though both the powers are relating to the measures to be taken by the Government of India for protecting and improving the quality of environment the nature and extent of both powers are different and are operating in different fields.

81. It is true that by virtue of the rule making powers, as stated above, the Government of India has framed the Plastic Waste (Management and Handling) Rules,2011 in supersession of the Recycled Plastics (Manufacture and Usage) Rules,

1999 which includes prescribing of conditions for manufacture, stocking, distribution, sale and use of carry bags and sachets under Rule 5 which is as follows:

5. Conditions.- During the course of manufacture, stocking, distribution, sale and use of carry bags and sachets, the following conditions shall be fulfilled, namely:-

(a) carry bags shall either be white or made using only those pigments and colourants which are in conformity with Indian Standard : IS 9833:1981 titled as List of pigments and colourants for use in plastics in contact with foodstuffs, pharmaceutical and drinking water, as amended from time to time;

(b) no person shall use carry bags made of recycled plastics or compostable plastics for storing, carrying, dispensing or packaging food stuffs;

(c) no person shall manufacture, stock, distribute or sell any carry bag made of virgin or recycled or compostable plastic, which is less than 40 microns in thickness;

(d) sachets using plastic material shall not be used for storing, packing or selling gutkha, tobacco and pan masala;

(e) recycled carry bags shall conform to the Indian Standard: is 14534 : 1998 titled as Guidelines for Recycling of Plastics, as amended from time to time:

(f) carry bags made from compostable plastics shall conform to the Indian Standard: IS/ISO 17088:2008 titled as Specifications for Compostable Plastics, as amended from time to time.”

In addition to that, the Rules contemplate Plastic Waste Management which includes recovery, recycling etc apart from various other provisions including registration of manufacturers, recyclers etc. Therefore, the Plastic Waste (Management and Handling) Rules, 2011 has prohibited manufacturing, stocking, distribution and sale of plastic carry bags made up of virgin or recycled or compostable plastic less than 40 microns in thickness.

82. The Plastic Waste (Management and Handling) Rules, 2011 has been superseded by the Government of India by framing of the PWM, Rules, 2016 by a Notification dated 18.3.2016. PWM Rues, 2016 also contemplate conditions under Rule 4 which are as follows:

“4. Conditions.-(1) The manufacture, importer, stocking, distribution, sale land use of carry bags, plastic sheets or like or over made of plastic sheet and multilayered packaging, shall be subject to the following conditions, namely:-

a) carry bags and plastic packaging shall either be in natural shade which is without any added pigment or made using only those pigments and colourants which are in conformity with Indian Standard : 9833 : 1981 titled as “List of pigments and colourants for use in plastics in contact with foodstuffs, pharmaceuticals and drinking water”, as amended from time to time

b) carry bags made of recycled plastic or products made of recycled plastic shall not be used for storing, carrying, dispensing or packaging ready to eat or drink food stuff”,

- c) carry bag made of virgin or recycled plastic, shall not be less than fifty microns in thickness,
- d) plastic sheet or like, which is not an integral part of multilayered packaging and cover made of plastic sheet used for packaging, wrapping the commodity shall not be less than fifty microns in thickness except where the thickness of such plastic sheets impair the functionality of the product;'
- e) the manufacturer shall not sell or provide or arrange plastic to be used as raw material to a producer, not having valid registration from the concerned State Pollution Control Boards or Pollution Control Committee;'
- f) sachets using plastic material shall not be used for storing, packing or selling gutkha, tobacco and pan masala;
- g) recycling of plastic waste shall conform to the Indian Standard : IA 14534 : 1998 titled as Guidelines for Recycling of Plastics, as amended from time to time;
- h) The provision of thickness shall not be applicable to carry bags made up of compostable plastic. Carry bags made from compostable plastics shall conform to the Indian Standard: IS 17088 : 2008 titled as Specifications for Compostable Plastics, as amended from time to time. The manufacturers or seller of compostable plastic carry bags shall obtain a certificate from the Central Pollution Control Board before marketing or selling; and
- i) plastic material, in any form including Vinyl Acetate – Maleic Acid – Vinyl Chloride Copolymer, shall not be used in any package for packaging gutkha, pan masala and tobacco in all forms.”

There is an altered condition that carry bag made of virgin or recycled plastic shall not be less than 50 microns in thickness. In addition to that the PWM Rules, 2016 impose responsibilities on local bodies, Grama Panchayats, waste generators, producers, importers and brand owners, thereby attempting to bring a revolutionary reform in respect of Plastic Waste Management from the lowest level viz., from waste generators. The purport of PWM Rules, 2016 is no doubt to statutorily regulate the Plastic Waste Management in the entire country. But the power of the Central Government under Section 5 of the EP Act to issue directions, which is executive in nature, can also relate to the measures regarding protection of environment but acts in different field. It is only the exact power of the Central Government to issue direction under Section 5 of the EP Act which can be exercised by the delegated authority including the State Government and in the present case the State of Karnataka. Whether it is the Central Government or any other authority which has been delegated which includes the State Government in exercising its power under Section 5 of the EP Act, such power is certainly subject to the provisions of the EP Act. It does not mean that the power to issue direction under Section 5 of the EP Act should not be relating to any measure taken by the statutory Rules by the Government of India under Sections 3, 6, read with 25 of the EP Act. The

only condition is that the power of issuing direction shall not be contrary to the provisions of EP Act.

83. There is one other aspect viz, if delegated authority of the powers of the Central Government under Section 5 as per Section 23 of the EP Act is a State Government, such direction can be issued by the State Government only in respect of the territorial jurisdiction of that State. Only in that way the delegated power has got significance, since otherwise the nature of power under Section 5 of the Central Government and the delegated State Government is one and the same and the validity of such direction can be tested only in the touch stone of the provisions of the EP Act. Consequently, it is clear that both the powers of the Central Government as stated above, are in different fields and one is not inconsistent with the other and by issuing of a direction under Section 5 of the EP Act one cannot jump to a conclusion that the same is in violation of the rule making power of the Central Government under Sections 3, 6 read with 25 of the EP Act. That is exactly one of the dictum laid down by the Principal Bench of the NGT in GOODWILL PLASTIC INDUSTRIES case.

It is informed that the decision of the NGT in the said case has become final.

84. In that case, similar to the facts of the present case, the Union Territory of Chandigarh, in exercise of its power under Section 5 of the EP Act has issued a notification on 30.7.2008 which is as follows:

NOTIFICATION

Dated 30.7.2008

“No.ED/2008/684 whereas draft notification was issued by the Administrator, Union Territory, Chandigarh in exercise of powers conferred on him under Section 5 of Environment (Protection) Act, 1986 (29 of 1986) read with Govt. of India’s notification bearing No.S.O.667(E) dated the 10th September, 1992 which was published in the Chandigarh Administration’s Gazette (Extraordinary) vide No.ED/2008/125 dated 11th February, 2008 inviting objections from persons likely to be affected thereby within 60 days from the date of publication of the said draft notification.

And whereas objections and suggestions received within the aforesaid period have been duly considered by the Chandigarh Administration. Now, therefore, the Administrator, Union Territory, Chandigarh in exercising the delegated powers, under Section 5 of the Environmental (Protection) Act, 1986 hereby directs that no person including a shopkeeper, vendor, wholeseller or retailer, trader, hawker or rehriwala etc., shall use polythene/plastic carry bags for supply of goods in polythene/plastic carry bags and further directs that no person shall manufacture, store, import, sell or transport polythene/plastic carry bags in Union Territory, Chandigarh. The Administrator, Union Territory,

Chandigarh hereby further directs that the following Officers shall implement these orders related to use, storage, import, selling, transportation and disposal and authorizes them to file complaints under Section 19 of the Environment (Protection) Act, 1986, namely :-

1. Deputy Commissioner, U.T. Chandigarh.
2. Director Environment, Chandigarh Administration.
3. Sub Divisional Magistrates in their respective jurisdiction.
4. Joint Commissioner-I & II, Municipal Corporation, Chandigarh.
5. District Food & Supply Officer, Chandigarh Administration.
6. Inspectors, Food & Supply Department, U.T. Chandigarh.
7. Medical Officer Health, Municipal Corporation, Chandigarh.
8. Sanitary Inspectors o/o Medical Officer Health, Municipal Corporation, Chandigarh.
9. Food Inspectors of Health Department, U.T. Chandigarh.

Deputy Commissioner, U.T. Chandigarh shall act as the co-ordinator to implement above orders related to ban on the use, storage, import, selling, transportation & disposal of polythene/plastic carry bags.

The Administrator, Union Territory, Chandigarh hereby, further directs that the following Officers shall enforce above orders related to manufacture and also authorizes them to file complaints under Section 19 of the Environment (Protection) Act, 1986, namely :-

1. Deputy Commissioner, U.T. Chandigarh.
2. Director Environment, Chandigarh Administration.
3. Member Secretary, Chandigarh Pollution Control Committee.
4. Scientist 'B', Chandigarh Pollution Control Committee.
5. Assistant Environmental Engineer, Chandigarh Pollution Control Committee.

Member Secretary, Chandigarh Pollution Control Committee shall act as the co-ordinator to implement the ban on manufacture of polythene/plastic carry bags in U.T. Chandigarh.

This notification shall come into force with effect from 2nd October, 2008.

This supersedes the earlier notification bearing No.ED/2003/543 dated 16th Sept., 2003."

From the said notification also it is clear that a draft notification was issued by the Union Territory of Chandigarh on 11.2.2008 inviting objections and after considering the objections, a total ban has been issued regarding the use of polythene/plastic carry bags in the Union Territory of Chandigarh.

85. The said notification was challenged, as it is seen in the judgment itself, on various grounds viz.,

“a) the notification dated 30th July, 2008 issued by the UT of Chandigarh is repugnant to the Rules of 2011, and thus would be inoperative;

(b) in terms of the Rules of 2011, a person is entitled to carry on the business of manufacture and sale of plastic bags of prescribed thickness and this right to carry on the business cannot be taken away by the notification of 30th July, 2008;

(c) there is no nexus between the notification and the object or intent sought to be achieved thereof in relation to control of pollution and thus, the notification cannot stand the scrutiny of law; and

(d) the notification in question suffers from the vice of discrimination inasmuch as if plastic is environmentally hazardous, then putting a ban only on manufacture, sale and use of plastic ‘carry bags’ is irrational and discriminatory. Also the ban has been imposed only in the UT of Chandigarh vide the notification dated 30th July, 2008 while no such ban has been imposed or is in force in the adjoining districts of Punjab and Haryana, which are practically part of the UT, Chandigarh.”

86. While considering as to whether the notification was repugnant to the then existing Plastic Waste (Management and Handling) Rules, 2011, the Tribunal while observing that “there is no challenge before us with regard to the procedure adopted by the administrators of Union Territory of Chandigarh in issuance of such notification”, has distinctly held that the scheme of the statutory Rules framed by the Government of India viz., the Plastic Waste (Management and Handling) Rules, 2011 is to regulate a person who wishes to commence or enter into the manufacture, storage, sale of multi layered plastic, plastic carry bags etc. and it is intended not only to act as a regulatory measure with a primary aim in both the cases but to protect the environment and ensure that the environmental degradation does not take place and no environmental hazards are caused. By holding so, the Bench has held that Plastic Waste (Management and Handling) Rules, 2011 and the direction issued under Section 5 of the EP Act as contained in the notification of Union Territory of Chandigarh dated 30.7.2008 operate in distinct and different fields and there is no conflict between the two.

87. The said decision has been arrived at in paragraph 17 of the said judgment which is as follows:

“17. Rule 5 of the Rules of 2011 spells out the conditions which are to be observed during the course of manufacture, stacking, distribution, sale and use of carry bags and sachets. In terms of Rule 5 (c), no person shall manufacture, stack or distribute any carry bags made of virgin or recycled or compostable plastic which is less than 40 microns in thickness. This very rule emphasizes certain other conditions in relation to the use of plastic sachets and other packets for different articles specifying different standards. Rule 9 of the Rules of 2011 deals with registration of manufacturers and recyclers. Under Rule 9 (c) of the Rules of 2011, no person shall manufacture plastic carry bags or recycled plastic bags or multi-layered plastic pouch or sachet without obtaining the registration certificate

from the SPCB or PCC, as the case may be, prior to the commencement of production. The scheme of these rules is that a person who wishes to commence or enter into the field of manufacture, storage, sale of multi-layered plastics, plastic carry bags has to get registered and upon registration, the production, sale and storage of such material shall be regulated by the various provisions as afore-indicated. If a person does not obtain registration in terms of Rule 9(c) of the Rules of 2011, such person then, cannot carry on any of these activities. This rule thus, states conditions that are precedent to the carrying on of such business. In consonance with the provisions of the Environment Act all these provisions of the Rules of 2011 specify regulatory measures, compliance to which is essential for the grant of registration in terms of these Rules. In contra-distinction to this, the directions issued under Section 5 of the Environment Act are primarily mandatory and are intended not only to act as a regulatory measure but also as preventive and prohibitory measure. They are in exercise of extraordinary powers vested in the Central Government where in exercise of its powers and performance of its functions under the Environment Act it issues such directions. These directions are primarily intended to meet emergencies or exigencies of environment. Their primary aim is to protect the environment and ensure that the environment degradation does not take place and no environmental hazards are caused. Wherever 19 environmental pollution or certain pollutant activity occurs which is found to apprehend environmental hazards, the directions to the extent of closure and prohibition are issued. The Rules of 2011 and the directions contemplated under Section 5 of the Environment Act, as contained in the notification dated 30th July, 2008 operate in distinct and independent fields. There is no conflict between the two. The directions may come into play only when the first phase of grant of registration and permission to carrying on of such activity has been completed. These provisions are not in conflict with each other but are complimentary and supplementary to each other. Both of them aid/re-enforce the principal object of the Act, i.e. protection and improvement of the environment.”

88. We are in total agreement with the said decision taken by the Principal Bench of the NGT and hold that there is no conflict between the rule making power of the Central Government under Sections 3, 6 read with 25 of the EP Act and the power of issuing direction under Section 5 of the EP Act, either by the Central Government or by any of the delegated authority including the State Government.

89. This leaves us to the next question about the nature of direction that is being given by the Central Government or any other delegated authority under Section 5 of the EP Act. As stated by the Principal Bench in GOODWILL PLASTIC INDUSTRIES judgment, the primary aim is to protect the environment and ensure that the environmental degradation does not take place and no environmental hazards are caused.

90. On the factual matrix of the present case, the State Government of Karnataka, by virtue of the delegated power conferred on it, has passed the impugned direction on 11.3.2016 which is as follows:

**FOREST, ECOLOGY AND ENVIRONMENT SECRETARIAT
NOTIFICATION**

No.FEE 17 EPC 2012, Bangalore, Dated: 11.03.2016

Whereas, plastic carry bags and other plastic items used in daily life cause short term and long term environmental damage and health hazard;

And whereas, Article 48-A of the Constitution of India, inter alia, envisages that the State shall endeavour to protect and improve the environment

And whereas, it has come to the knowledge of the Government that, the use of plastic carry bags, banners, buntings, flex, plastic flags, plastic plates, plastic cups, plastic spoons, cling films and plastic sheets used for spreading on dining table and items that are made of thermocol are causing serious environmental hazards and affects health of human beings as well as animals;

And whereas, it is observed that the plastic wastes is also causing blockage of gutters, sewers and drains apart from resulting in pollution of water bodies in urban areas;

And whereas, with a view to prevent the recurrence of such problems, the State Government in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, issues the following directions imposing ban on manufacture, supply, sale and use of plastic carry bags, plastic banners, plastic buntings, flex plastic flags, plastic plates, plastic cups, plastic spoons cling films and plastic sheets used for spreading on dining table including the above items made of thermocol and plastic which use plastic micro beads in the state This notification comes into effect from the date of its publication in the Official Gazette.

DIRECTION

1.No person including shopkeeper, vendor, wholesaler, retailer, trader, hawker or salesmen shall use plastic carry bags, plastic banners, plastic buntings, flex, plastic flags, plastic plates, plastic cups, plastic spoons, cling films and plastic sheets used for spreading on dining table irrespective of thickness including the above items made of thermocol and plastic which use plastic micro beads. Further, no industry or person shall manufacture, supply, store, transport, sale and/or distribute plastic carry bags, plastic banners, plastic buntings, flex, plastic flags, plastic plates, plastic cups, plastic spoons, cling films and plastic sheets used for spreading on dining table irrespective of their thickness including the above items made of thermocol and plastic which use plastic micro beads in the State.

Provided that, the plastic used for the following purposes and circumstances are exempted from this notification;

- a)The plastic carry bags manufactured exclusively for export purpose against any export orders in a plastic industry located in Special Economic Zone (SEZ) and Export Oriented Units (EOU)*
- b) The plastic bags which constitute or form an integral part of packaging in which goods are sealed prior to use at manufacturing/processing units.*
- c) The plastic bags and sheets used in Forestry and Horticulture nurseries against the orders from the Govt. departments or from the firms concerned.*
- d) The plastic used for packing of milk and milk products (dairy products)*

2. That the following Officers shall enforce this direction in exercise of power conferred on them by law in their jurisdiction.

a)The Commissioner, Joint Commissioners, Revenue Officers, all Health Officers and all Engineer of BBMP.

b) All Deputy Commissioners of the districts.

- c) All Commissioners of City Corporations, Chief Officers, Health Officers and all Engineer of Urban Local Bodies.
- d) All Assistant Environmental Officers, Deputy Environmental Officers, Environmental Officer and Senior Environmental Officers of KSPCB.
- e) All Assistant Commissioner of Revenue Sub divisions
- f) Tahsildars of all Taluks
- g) All officers of Commercial Tax Department
- h) All officers of Department of Food and Civil supplies
- i) The Controllers, Deputy Controller and Regional Officers of Legal Metrology Department

3. That the following officers shall take cognizance of offense and initiate legal action in case of noncompliance of this direction as per the powers conferred on them under section 19 of the Environment (Protection) Act, 1985 and to file complaint in the jurisdictional court of law on all violators.

- a) Secretary to Government (Ecology & Environment), Forest, Environment and Ecology Department
- b) Chairman and Member Secretary, KSPCB
- c) Deputy Commissioners of the Districts
- d) Assistant Commissioners of Revenue Sub divisions
- e) Regional Officers of KSPCB

Explanation 1: "Plastic" means any of the item mentioned in this direction made out of poly propylene (PP) non-woven poly propylene, multi layered co-extruder poly propylene, poly ethylene (PE), poly vinyl chloride (PVC), high and low density poly ethylene (HDPE & LDPE), poly styrene (PS) which is also called thermocol, poly amides (Nylon) poly terephthalate (PT), poly methyl methacrylate (PMM) and plastic micro beads.

Explanation 2. The word "carry bag" will have the same meaning that is provided in Rule 3(b) of the Plastic Waste (Management and Handling) Rules, 2011. In this definition exemption is provided for plastic bag that constitute or form an integral part of packaging in which goods are sealed prior to use.

Explanation 3: Karnataka State Pollution Control Board shall be responsible for enforcement regarding the functions specified in clause (a) of Rule 4 of the Plastic Waste (Management and Handling) Rules, 2011 and Urban Local Bodies shall be responsible for enforcement regarding the functions specified in clause (b) of rule 4 of the said Rules;

Explanation 4. Officers as mentioned in Government of India's Notification No.S.O.394 (E) dated 16.4.1987 amended from time to time are authorized to file complaints against violation of directions included in this Notification under Section 19 of the Environment (Protection) Act, 1986."

91. It is an admitted case that before the said impugned direction was issued by the Government of Karnataka, a Draft Notification was issued by the State Government on 28.10.2015 indicating the opinion of the Government that the use of plastic carry bags, banners, buntings, flex, plastic flags, plastic plates, plastic cups, plastic sheets (for spreading on dining table) thermocol plates and cups used in functions is causing serious environmental hazards and affects the health of human

beings as well as animals and therefore intending to give direction under Section 5 of the Act, banning the above said items and called for objections.

The Draft Notification dated 28.10.2015 is as follows:
"GOVERNMENT OF KARNATAKA

No.FEE 17 EPC 2012

Karnataka Government Secretariat

M.S. Building,

Bangalore, dated: 28.10.2015

NOTIFICATION

Whereas, plastic carry bag cause short term and long term environmental damage and health hazard.

And whereas, Article 48-A of the Constitution of India, inter alia envisages that the State shall endeavour to protect and improve the environment:

And whereas, the Government of Karnataka is of the opinion that, the use of plastic carry bags, banner, buntings, flex, plastic flags, plastic plates, plastic cup, plastic sheets (for spreading on dining table), thermocol plates and cups used in function is causing serious environmental hazards and affects health of human beings as well as animals;

And whereas, it is observed that the plastic wastes also causing blockage of gutters, sewers and drains, resulting in serious environmental problems;

And whereas, with a view to prevent the occurrence of such problems, the State Government has proposed to issue directions in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, to impose ban on plastic carry bags, banners, buntings, flex, plastic flags, plastic plates, plastic cups and plastic sheet (for spreading on dining table) used in functions;

Wherefore the proposed Draft direction given below is issued in accordance with Rule 4(3a) of the Environment (Protection) Rules, 1986.

Any person, institution, body interested in making any objection or suggestion on the direction contained in the Draft Notification may do so in writing within a period of Thirty days from the date of this Notification Gazettee through post to the Secretary to Government (Environment and Ecology), Forest, Environment and Ecology department, No.709, 4th Gate, 7th floor Multistoried Building Ambedkar Veedhi, Bengaluru – 560 001. Further notice is hereby given that the said direction will be given effect on or after the expiry of Thirty days from the date of publication of draft direction in Gazette or made available to the public.

DRAFT DIRECTION

No person including shopkeeper, vendor, wholesaler, retailer, trader, hawker or salesman etc., shall use plastic carry bags, banners, buntings, flex, plastic flags, plastic plates, plastic cups and plastic sheets (for spreading on dining table) used in function for serving food item, irrespective of thickness. Further, no industry or person shall manufacture, supply, store, transport, sale and distribute plastic carry bags, banners, bunting, flex, plastic flags, plastic plates, plastic cups and plastic sheets (for spreading on dining table) used irrespective of thickness in the State of Karnataka from the date of publication of the directions through a Notification in the Gazette.

Provided that plastic carry bag manufactured exclusively for export purposes against any export purposes against any export order shall be

exempted in terms of rule 2 of the Plastic Waste (Management and Handling) Rules, 2011 from the application of this notification Further, provided that plastic bags or any plastic products used in nurseries, dairy industry, health sector and any other sector for non consumptive use shall be exempted from this notification.

2. That the following Officers shall enforce this direction in exercise of power conferred on them by law.

a) Commissioner, Joint Commissioners, Deputy Commissioners and all public health officers of BBMP

b) All Deputy Commissioners of the districts

c) All Commissioners and Chief Officers, and Health Officers and all members of local bodies in the state

d) All Regional Officers/Environmental officers of KSPCB

e) All Assistant Commissioners, Revenue Department

f) Tahshildars of all Taluks

g) Officers of Commercial Tax Department

h) Officers of Department of Food and Civil supplies

3. That the following officers shall take cognizance of offences and initiate legal action in case of noncompliance of this direction as per the powers conferred on them under section 19 of the Environment (Protection) Act, 1986 and to book cases in the jurisdictional courts of law on all the violators.

a) Secretary to Government (Environment & Ecology), Forest, Environment and Ecology Department

b) Chairman and Member Secretary, KSPCB

c) Deputy Commissioners of the Districts

d) Assistant Commissioner, Revenue Department

e) Regional Officers of KSPCB

Explanation 1 – Karnataka State Pollution Control Board shall be responsible for enforcement regarding the function specified in clause (a) of rule 4 of the Plastic Waste (Management and Handling) Rules, 2011 and Urban Local Bodies shall be responsible for enforcement regarding the function specified in clause (b) of rule 4 of the said Rules;

Explanation 2 – Officers as mentioned in Government of India's Notification No.S.O.394 (E) dated 16.04.1987 issued under Section 19 of the Environment (Protection) Act, 1986 shall be authorized to file complaints relating to matters included in this Notification."

In the said Draft Notification the Government of Karnataka has directed the interested persons to make objections if any, against the Draft Notification within 30 days from the date of Notification and it is after considering the said objections or suggestions the State Government has issued the impugned notification on 11.3.2016. In this regard, it is relevant to note that it is not the case of any of the appellants that they were not aware of the Draft Notification issued by the Government of Karnataka dated

28.10.2015 and on the other hand all the appellants along with other manufacturers and traders of plastic carry bags either themselves or through their Association have made detailed representations in the form of objections.

92. At this juncture, it is relevant to note that Rule 4 of the EP Rules explained the procedure to be followed while giving the direction under Section 5 of the Act which reads as follows:

“4. Directions – (1) Any direction issued under Sec. 5 shall be in writing.

(2) The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given.

(3-a) The person. Officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.

(3-b) Where the proposed direction is for the stoppage or regulation of electricity or water or any other service affecting the carrying on of any industry, operation or process and is sought to be issued to an officer or an authority, a copy of the proposed direction shall also be endorsed to the occupier with an officer designated in this behalf shall be dealt with in accordance with the procedures under sub-rule (3-a) and (4) of this rule:

Provided that no opportunity of being heard shall be given to the occupier if he had already been heard earlier and the proposed direction referred to in sub-rule (3-a) above for the stoppage or regulation of electricity or water or any other service was the resultant decision of the Central government after such earlier hearing.]

(4) The Central Government shall within a period of 45 days from the date of receipt of the objections. If any, or from the date up to which an opportunity is given to the person, officer or authority to file objections whichever is earlier, after considering the objectives. If any, received from the person, officer or authority sought to be directed and for reasons to be recorded in writing, confirm, modify, or decide not to issue the proposed direction.

(5) In a case where the Central Government is of the Opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed direction, it may, for reasons to be recorded in writing, issue directions without providing such an opportunity.

(6) Every notice or direction required to be issued under this rule shall be deemed to be duly served –

(a) where the person to be served is a company, if the document is addressed in the name of the company at its registered office or at its principal office or place of business and is either, -

(i) sent by registered post; or

(ii) delivered at its registered office or at the principal office or place of business;

(b) where the person to be served is an officer serving Government, if the document is addressed to the person and a copy thereof is endorsed to his Head of the Department and also to the Secretary to the Government, as the case may be, incharge of the Department in which for the time being the

business relating to the Department in which the officer is employed is transacted and is either, - (i) sent by registered post; or

(ii) is given or tendered to him;

(c) in any other case, if the document is addressed to the person to be served and-

(i) is given or tendered to him, or

(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building, if any, to which it relates, or

(iii) is sent by registered post to that person.

Explanation – For the purposes of this sub-rule-

(a) “company” means anybody corporate and includes a firm or other association of individuals;

(b) “a servant” is not a member of the family.”

93. The purpose of the powers given to issue direction under Section 5 of the EP Act even though is executive in nature, is mandatory for the purpose of providing clean environment. Since in the GOODWILL PLASTIC INDUSTRIES judgment the procedure was not questioned before the Tribunal, but in the present case, the procedures are questioned, we propose to take these aspects as to whether the procedures contemplated for the purpose of effective implementation of direction issued under Section 5 of the EP Act is followed or in the presence of any fault in the procedure, whether the entire direction is to be nullified.

94. As enumerated above, in respect of the procedure to be followed for the purpose of issuing direction under Section 5 of the EP Act, the learned counsel appearing for the appellants have been insisting the words ‘in writing to any person, officer etc.’ that occur in Section 5 of the EP Act regarding issuing of direction. According to the learned counsel including learned Senior Counsel Mr. M. Ravindran that the power of issuing direction under Section 5 of the EP Act is only in relation to the individual cases and such direction cannot be issued as a general direction, affecting all the similarly situated persons. In the admitted position by all the appellants that they are all aware of the written Draft Notification issued by the Government of Karnataka on 28.10.2015, prior to the impugned notification and all the appellants, either by themselves or through their accredited Association, have raised detailed objections about the proposal given in the draft notification, the word “direction given in writing to

any person” becomes redundant at least on the factual matrix of these appeals. The purpose of giving such notice in writing to any person affected is to see that the affected persons are informed so that they can be given reasonable opportunity to raise their objections, if any.

95. In all these cases, when they have raised objections in relation to the proposed notification, in our considered view these appellants can no more raise the objection that they are not given direction in writing and therefore the plea of principles of natural justice has become an empty formality. Natural Justice is a dynamic principle of law which has positive legal vibration which goes to show that no issue can be decided without informing the person who is likely to be affected and without giving an opportunity to express his objection. When these ideal principles are accomplished, there is no more issue of principles of natural justice or violation of the same at least on the factual issues raised in these cases.

96. When that is the case, the Rules, particularly Rule 4(6) of the EP Rules contemplating individual service of notices by proper method cannot be taken advantage of by the appellants to say that they were denied the principles of natural justice. Therefore, in our considered view, the principle of natural justice has not been violated by the procedure followed by the Government of Karnataka, resulting in passing of the impugned notification by way of direction given under Section 5 of the EP Act.

97. The purport of the principles of natural justice which means fair play in action and its exception being useless or empty formality theory, has been considered by the Principal Bench of the NGT in LITHOFERRO AND OTHERS VS. MOEF (Appeal No.71 of 2012 dated 9.5.2013) as follows:

53. Natural Justice means 'fairplay in action' and a clear distinction must be drawn between a case of 'no notice' or 'no hearing' on the one hand and a case of 'no fair hearing' or 'inadequate hearing' on the other. If the defect is of the former category and arises out of statutory obligations in the given case it may automatically make the order invalid but, if the defect is of the latter category the element of prejudice and failure of justice are required to be examined then it is only when such a conclusion is reached that the order may be declared invalid. One of the known but rare exceptions to the rule of audi alteram partem is the theory of 'useless or empty formality'. Where on admitted or undisputed facts, the view taken by the impugned order is the only possible view and it would be futile to issue any writ to compel

observance of natural justice. Then this is called the 'useless or empty formality theory.' This theory has been considered at some length by the Supreme Court of India in the case of Aligarh Muslim University supra as well as in M.C.Mehta supra. In the present case the appellants have not been able to show demonstrable prejudice beyond doubt and that the result would have been different had they been provided with an opportunity to present their case. Thus compliance to natural justice can be avoided because admitted and undisputed facts lead prima facie only to one conclusion that the appellants have indulged in violation of conditions of EC and lease terms and, therefore, the theory can be brought into service.

98. The next question that arises for consideration, as it has been repeatedly raised by the learned counsel appearing for the appellants, is the non application of mind. While it is admitted that the powers of issuing direction under Section 5 of the EP Act is executive in nature, Rule is well settled that the executive authority, while passing the order, need not give elaborate reasons like that of a Judicial or Quasi Judicial Authority.

99: While considering the necessity of recording of reason by the Executive relating to the service condition of a government servant, it was held by the Supreme Court in UNION OF INDIA VS. E.G. NAMBU DIRI (1991) 3 SCC 38 that while considering the representation of the government servant against adverse remarks, there is no requirement to act judicially and there is no obligation to record or communicate the reasons for the decision. However, the authority is not expected to act arbitrarily. It was held as follows:

"There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the office awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons,

the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence alinude before the court to justify its action."

100. On a reading of the impugned notification it can be culled out that there is application of mind by the authority in consonance with the avowed object of the EP Rules. In our considered view that itself is sufficient to hold that the order has been passed with application of mind. We are not for the time being to decide this issue based on the explanation submitted by the State of Karnataka in its reply to find out the application of mind as such explanation born out of the impugned order certainly justifies the stand that there is application of mind. The impugned notification on the face of it states that use of plastic carry bags, banners etc., are causing serious environmental hazard affecting human health as well as animals. Further, the impugned order makes it clear that the plastic wastes are causing blockade of gutters, sewers and drains apart from resulting in pollution of waterbodies in urban areas. The appellants and others who are manufacturers and traders have raised objection that plastic carry bags itself are not hazardous in nature. It is true that plastic carry bags themselves being inert, are not pollutants. But the inherent nature itself is its defect in the sense that it is non bio-degradable and blocks passages of water, gutters, carried on by wind and if consumed by animals it causes fatality. It may be true that the Government of India representing another Department takes the stand that plastic is more advantageous for package of food and other beverages. If the State Government has taken a stand to ban, it is due to the reason of its inability to control and regulate such large scale usage of plastic materials within the State and the Corporations and Municipalities are unable to control the callous situation and in such circumstances, if such a decision is taken, in our considered view, such decision is not only legal but the same cannot be assailed as a decision taken without application of mind. We have to reiterate that the power of issuing direction under Section 5 of the EP Act need not be necessarily in respect of individual cases but by taking note of the very object of issuing such direction it can be a common decision in respect of a particular nature of industry. Impossibility of enforcing Regulations scrupulously as contemplated in the statutory

Rules by the Government can certainly be a ground for invoking its power under Section 5 of the EP Act in larger public interest.

101. In *M.J. SIVANI VS. STATE OF KARNATAKA* (1995) 6 SCC 289 it was held that doctrine of hearing depends upon the fact of a given case and that principles of natural justice cannot be put in a rigid mould and that the executive order need not contain detailed reasons like a court order. Either the administrative order itself may contain reason or even file may disclose the reasons to arrive at a decision, it was held as follows:

“It is also settled law that the order need not contain detailed reasons like a court order. Administrative order itself may contain - reasons or the file may disclose reasons to arrive at the decision showing application of mind to the facts in issue. It would be discernible from the reasons stated in the order or the contemporaneous record. Reasons are the link between the order and the mind of its maker. When rules direct to record reasons, it is a sine qua non and condition precedent for valid order. Appropriate brief reasons, though not like a judgment, are a necessary concomitant for a valid order in support of the action or decision taken by the authority or its instrumentality or the State. Normally it must be communicated to the affected party so that he may have an opportunity to have it tested in an appropriate forum.”

Therefore, as per the judicial dictum, an administrative authority need not give elaborate reasons. In any event, on a reading of the impugned order, it is clear that the State Government has not only applied its mind but also has given reasons. The correctness or otherwise of the reasons is not for this Tribunal to decide at this stage unless the reasons are perverse and totally illegal.

102. In so far as it relates to the following of the procedure, as contemplated under Rule 4 of the EP Rules, in as much as draft notification has been given explaining the intention of the State Government in imposing ban as early as on 28.10.2015 and the Rule requires the objection to be filed and considered and in fact objections to the draft notification have been filed by the appellants, as stated above and a reading of the impugned order dated 11.3.2016 which is given well beyond the period stated under Rule 4, makes it clear about the reason for the ban and thus it is not possible for us to hold that the impugned notification runs against the procedure. There is no provision under the Rule for any personal hearing. Therefore, there is no violation of the procedure contemplated under Rule 4 of the EP Rules.

103. It is seen that apart from the delegation of powers to the State Government, as stated above, the Central Government has delegated its power under Section 5 of the EP Act to the Chairman of the State Pollution Control Boards/Committees to issue direction to any industry or any local or other authority for violation of the standards and Rules relating to bio medical waste, hazardous chemical industry, solid wastes and municipal solid waste including plastic waste notified under the EP Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself invoke the provisions of Section 5 of the EP Act, if in the opinion of the Central Government such a course of action is necessary in the public interest, as per the Notification dated 10.4.2001 published in the Gazette of India dated 12.4.2001. The power of delegation to the Pollution Control Board/Committee is relating to the power of the Central Government in issuing directions to individual industries or local or any other authority. While the power of delegation, as stated supra, to the State Governments is not restricted to the power of Central Government regarding the individual industries local or any other authority but it can be applied in respect of the similarly situated industries at large. Therefore, the delegated powers to State Government in respect of the powers of Central Government under Section 5 of the EP Act is different from the delegated powers of the Pollution Control Board/Committee regarding the powers of the Central Government under Section 5 of the EP Act.

104 . The reliance placed on the judgment of the Supreme Court in MOHAMMED FARUK VS. STATE OF MADHYA PRADESH 1969 (1) SCC 853 is not applicable to the facts of the present case. That was a case where Jabalpur Municipality by a notification has permitted slaughter of bulls and bullocks along with other animals which was later cancelled by the State Government in confirmation of the bye laws relating to slaughter of bulls and bullocks. While considering the validity of the notification issued by the State Government, the Supreme Court has held that when a validity of law on the basis of violation of fundamental right guaranteed under Article 19(1) of the Constitution of India was challenged, it is for the State to prove to the satisfaction of the court that restrictions are reasonable. In the absence of such reasons in the notification and the Government not having explained the reasons, the notification was held *ultra vires*, as infringing Article 19(1)(g) of the Constitution of India.

105. But on the factual matrix of the present case, the impugned notification passed under Section 5 of the EP Act, as direction contains the reasons and, in our view, are reasonable restriction to the rights guaranteed under Article 19(1)(g) of the Constitution of India. It is relevant to note that under the impugned notification, it is not as if all plastic products are banned and it is only those products which are incapable of being managed and creating menace to the water supply and drainage system and also causing environmental hazards affecting health of human beings and to the animals, are banned and such reasons cannot be said to be unreasonable and on the other hand, it is in the larger public interest.

106. Reliance placed on the judgment in LINGA REDDY VS. KARNATAKA STATE TRANSPORT AUTHORITY (2015) 4 SCC 515 is also not applicable to the facts of this case. There can be no doubt about the proposition laid down by the Hon'ble Supreme Court in the said judgment that the rule of reason is antithesis to arbitrariness in action and it is a necessary concomitant of the principles of natural justice and if no reasons are recorded, such administrative action becomes arbitrary but on the factual premise, as we have stated earlier, the reasons are explained in the impugned order itself and there is no necessity for this Tribunal to find out the reasonableness of the said reason, since, in our considered view, there is no perversity or patent illegality.

107. Holding that in cases like economic, social or other specialised subjects, courts should not embark upon views of half-lit infallibility and reject the scientific views, relating to the legislative binding prize chit and holding that the same is not violative of Article 19(1)(g) of the Constitution of India, the Supreme Court in SRINIVASA ENTERPRISES VS. UNION OF INDIA (1980) 4 C 507) held the requirements of Article 19(6) as follows:

“The twin requirements of [Art. 19\(6\)](#) are (a) the reasonableness of the restriction upon the fundamental right to trade, and (b) the measure of the reasonableness being the compelling need to promote the interest of the general public. Public interest, of course, there is.

But the controversy rages round the compulsive necessity to extinguish the prize chit enterprises altogether as distinguished from hand-cuffing them with severe conditions geared to protection of public interest. We have already indicated that the Raj Report does recommend a total ban on prize chits. In matters of economics, sociology and other specialised subjects, courts should not embark upon views of half-lit infallibility and reject what economists or social scientists have, after detailed studies, commended as the correct course of action. True, the

final word is with the court in constitutional matters but judges hesitate to 'rush in' where even specialists 'fear to tread'. If experts fall out, court, perforce, must guide itself and pronounce upon the matter from the constitutional angle, since the final verdict, where constitutional contraventions are complained of, belongs to the judicial arm. The alternative proposals to save the public from prize chit rackets attractively presented by Shri Venugopal do not impress us. In many situations, the poor and unwary have to be saved from the seducing processes resorted by unscrupulous racketeers who glamourize and prey upon the gambling instinct to get rich quick through prizes. So long as there is the resistless spell of a chance though small, of securing a prize, though on paper, people chase the prospect by subscribing to the speculative scheme only to lose what they had. Can you save moths from the fire except by putting out the fatal glow? Once this prize facet of the chit scheme is given up, it becomes substantially a 'conventional chit' and the ban of the law ceases to operate. We are unable to persuade ourselves that the State is wrong in its assertion, based upon expert opinions that a complete ban of prize chits is an over-kill or excessive blow. Therefore, we decline to strike down the legislation on the score of [Art. 19\(1\)\(f\)](#) and [\(g\)](#) of the Constitution."

108. Applying the above ratio to the facts and circumstances of the present case, wherein the State in the reply has factually stated that the Expert Committee has been constituted which has found that the maintenance and regulation of plastic waste and identification of thickness of plastic carry bags is not manageable or possible, a recommendation was issued to ban certain types of plastics, we are of the view that in such circumstances it is not for this Tribunal to find fault with the specialised Experts' Report. Even otherwise, we are of the view that judicial notice can always be taken of the menace of indiscriminate use of plastic materials and the consequences of such materials creating blockage in waterbodies and drainage systems and unscrupulous throwing of plastic products containing food materials which are being consumed by the animals like cattle etc, resulting in their fatality because of the inert nature of such plastic. Instances of open burning of plastic wastes releasing highly toxic gases affecting human health, are also not uncommon. Certainly such unscrupulous and indiscriminate use of plastics results in ecological imbalance and one cannot forget that it is in the public interest such extreme steps are required.

109. A research Article "Plastics: Issues Challenges and Remediation" published in the International Journal of Waste Resources, 2014 Volume-4, Issue – I authored by Researchers from the Department of Sociology, Punjab University, Chandigarh. School of Public Health, PGIMER, Chandigarh and Department of Hospital Administration, Chandigarh brings out the grave nature of plastic in respect of its disposal problem and impact on human as follows:

“The disposal of plastics—the “grave” phase, is one of the least recognized and most highly problematic areas of plastic’s ecological impact. Ironically, one of plastic’s most desirable traits—its durability and resistance to decomposition—is also the source of one of its greatest liabilities when it comes to the disposal of plastics. Natural organisms have a very difficult time, breaking down the synthetic chemical bonds to plastic, creating the tremendous problem of the material’s persistence. A very small amount of total plastic production (less than 10%) is effectively recycled, the remaining plastic is sent to landfill, where it is destined to remain entombed in limbo for hundreds of thousands of years, or to incinerators, where its toxic compounds are spewed throughout the atmosphere to be accumulated to biotic forms throughout the surrounding ecosystems.

Unfortunately, because of plastic’s low density, it frequently migrates” downstream” blowing out of landfills and off garbage barges. In 1997, Captain Charles Moor discovered widespread plastic garbage contamination area, called a gyre, in the North Pacific Ocean. By 2006, the estimated area of contamination expanded to 10 million square miles, 90% of the garbage was determined to be plastic, and 80% was originally sourced from land, such as construction waste. It has been reported that there are six similar gyres across the planet’s oceans, each laden with plastic refuse.

Impact on humans

The harmful effects of plastic on aquatic life are devastating, and accelerating. The impact of plastic waste on our health and the environment are only just becoming apparent. Most of our knowledge is around plastic waste in the marine environment, although there is research that indicate that plastic waste in landfill land in badly managed recycling system could be having an impact, mainly from the chemical contained in plastic.

Ingestion of plastic occur more frequently than entanglement. The MFSD has identified ingestion of waste as an indicator for monitoring environmental status. Ingestion of plastic waste has been documented in a number of species. For some species, almost all individuals contain ingested plastic (6) including sea birds, fish, turtle, mussels and mammals. Clearly different species ingest different types and sizes of plastic debris. Many animals mistake plastic waste for prey, for example fish can confuse plastic pellets for plankton, birds may mistake pieces of plastic for cattfish or other prey. (7,8)

There are several chemicals within plastic material itself that have been added to give it certain properties such as Bisphenol A, phthalates and flame retardants. These all have known negative effects on human and animal health, mainly affecting the endocrine system. There are also toxic monomers, which have been linked to cancer and reproductive problems. The actual role of plastic waste in causing these health impacts is uncertain. This is partly because it is not clear what level of exposure is caused by plastic waste, and partly because the mechanisms by which the chemicals from plastic may have an impact on humans and animals are not fully established. The most likely pathway is through ingestion, after which chemicals could bio accumulate up the food chain, meaning that those at the top could be exposed to greater level of chemicals (9)

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Chemical decomposing

Chemical decomposing is otherwise a very effective solution to plastic pollution, since the non biodegradable property of plastic is the main cause of plastic pollution. However, no technology has been developed yet to set up an

economical and effective large-scale plastic decomposing facility. But chemical decomposing is still a field that has a great potential to develop in the future.

There are mainly two ways to decompose conventional plastics. Decomposing plastic by microorganisms is one of them. Daniel Burd a Canadian high school student, found out that there are three kinds of microorganisms in the earth from a landfill that can break down the molecules of plastic bags. However, since this is a relatively new discovery, it is not applied industrially yet. Its economical applicability still needs to be discussed, but according to Burd, this decomposing method is possible to be applied on an industrial scale. Another way to decompose plastics is by combustion. This is a relatively easy and inexpensive way compared to using microorganisms, however odor and toxic gases produced during combustion is a big problem. Currently, some companies have already applied this method and Wheelabrator Technologies Inc. is one of them.

In Wheelabrator's clean energy plants, waste is burned and heat generated from combustion is turned into electricity with emission air control (2). These waste to energy plants not only handle municipal waste environmentally, but also provide electricity to households and business.

Alternative solutions

Biodegradable Plastics (BDP): : This is one of the options to the conventional plastics. One of the common constituents of BDP is polyhydroxyalkanoate (PHA). The BDP are similar to conventional plastics in all aspects with the additional quality of being able to naturally decompose and break into natural and safe byproducts. Hence if all plastics in the city waste were biodegradable, it could simply be allowed to decompose along with the food and other non recyclable but biodegradable articles like wet paper and cotton fibers (19)

Since the technologies to manufacture BDP's are relatively new and no widely prevalent, the production cost is higher. Therefore, further research in areas of more cost effective and energy efficient manufacturing methods for biodegradable plastics is the call of the hour (19) The incorporation of BDP is a progressive approach to a greener, healthier, and a better environment. The progressive development of several biopolymers over the years has stirred the plastic industry. The induction of biodegradable plastics is a promising and progressive prospect and will greatly reduce the dependence on fossil fuels. At present time, it is only an option over traditional plastics, but if it is to replace traditional plastics completely, people would have no other option but to use them. Incorporating biodegradable plastics in every day use would not only take the pressure off fossil fuel but also encourage agricultural producers who are interested in exploring and developing the natural fiber processing industry. A lot of income from agriculture can be generated if biodegradable plastics can be made mainstream. Aside from the obvious economic and environmental benefits, biodegradable plastics are progressive from scientific point of view as well. In addition to being useful for everyday life purposes, biodegradable plastics also have a great scope to be used in medical field.

What sets biodegradable plastics one step ahead of conventional plastics is the fact that they can be manufactured by using renewable biomass instead of biofuels. This will be of huge advantage because a "renewable biomass", will include "agro-industrial" wastes that are not only cheap but their conversion solves another problem by burning waste material into useful products. This makes production of biodegradable plastics possible even in the countries that lack the scope for crop expansion. In return, they are being benefited economically and ecologically. At present biodegradable polymer technology can only offer a limited range of materials. It is due to this limitation that biodegradable plastics have not been able to go mainstream yet.,

Bioplastics: A bioplastic is a plastic that is made partly or wholly from polymers derived from biological sources such as sugar cane, potato starch or the cellulose from trees, straw and cotton. Some bioplastics degrade in the open

air, others are made so that they compost in an industrial composting plant, aided by fungi, bacteria and enzymes. Others mimic the robustness and durability of conventional plastics such as polyethylene or PET.

Bioplastics – partly or wholly made from biological materials and not crude oil represent an effective way of keeping the huge advantages of conventional plastics but mitigating their disadvantages. However, that does not imply that bioplastics can naturally decompose like biodegradable plastics. The prime benefit in that it gives some respite to our depleting petroleum reserves.

Hence, further research should focus on developing bioplastics that are both biodegradable and also energy efficient to produce. Recycling is almost always more energy efficient and release less carbon dioxide than making a new product. One major problem with efforts to recycle bioplastic is that if they become mixed with petroplastics they can contaminate the whole batch.

Polymer Blended Bitumen Roads: The non-wetting property of plastics is also being implemented successfully in road construction business. Bitumen films is often stripped off the aggregates because of the penetration of water, which result in pothole formation. When polymer (plastic waste) is coated over aggregate, the coating reduces its affinity for water due to non wetting nature of the polymer, thereby obstructing the penetration of water. Polymers also shows higher softening temperature, thereby reduce the bleeding of bitumen during the summers (21)

To get rid of plastic waste disposal problems, Central Pollution Control Board (CPCB) has take initiative to use the plastic waste in manufacturing units through co processing. Co processing refers to the use of plastic waste material in industry process such as cement, lime or steel production and power stations or any other large combustion plants. Co processing refers to substitution of primary fuel and raw material by waste. Waste material such as plastic waste act as alternative fuels and raw material (AFR). Thus these units save fossil fuel and raw material consumption, contributing the more eco efficient production. After getting encouraging results CPCB has granted permission to many cement plants to co process the hazardous and non hazardous (including plastic) waste in their kilns after trial burns (21)

While some people are busy developing plastic substitutes, others are bent on making conventional thermoplastics biodegradable. By throwing in additives called Prodegradant concentrate (PDCs) PDCs are usually metal compounds such as cobalt stearate or manganese stearate. They promote oxidation processes that break the plastic down into brittle, low molecular weight fragments. Microorganisms gobble up the fragments as they disintegrate, turning them into carbon dioxide, water and biomass, which reportedly contains no harmful residues. When added to polyethylene (the standard plastic bag material) at levels of 3% PDCs can promote nearly complete degradation, 95% of the plastic is in bacteria-friendly fragments within four weeks.

2. Researchers are revitalizing the idea of converting casein, the principal protein found in milk, into a biodegradable material that matches the stiffness and compressibility of polystyrene. The modern milk based plastic doesn't crack as easily, thanks to that silicate skeleton, and they even made the stuff less toxic by substituting glyceraldehyde for formaldehyde during the process. Scientists have found a way make the protein less susceptible to cracking thanks to a silicate clay called sodium montmorillonite.
3. Chicken feathers are composed almost entirely of keratin, a protein so tough that it can give strength and durability to plastics. It's found in hair and wool, hooves and horns – and we can all appreciate how strong a horse's hoof can be without having the pleasure of being kicked by one. Researchers decided to tap into keratin's superstrong features by processing chicken feathers with methyl acrylate, a liquid found in nail polish. Ultimately, the keratin based plastic proved to be substantially stronger and more resistant to tearing than other plastics made from agricultural sources, such as soy or starch and scientists are clucking

excitedly about chicken feather plastic. After all, inexpensive abundant chicken feathers are a renewable resource.

4. *Next up is a promising new bioplastic, or biopolymer, called liquid wood Biopolymers fake it, these materials look, feel and act just like plastic but, unlike petroleum based plastic, they're biodegradable. This particular biopolymer comes from pulp based lignin, a renewable resource.*
5. *The next three entries on this list are all biodegradable plastics called aliphatic polyesters. Overall, they aren't as versatile as aromatic polyesters such as polyethylene terephthalate (PET) which is commonly used to make water bottles. But in aromatic polyesters are completely resistant to microbial breakdown, a lot of time and effort is being pumped into finding viable alternatives in aliphatic polyesters, polycaprolactone (PCL) a synthetic aliphatic polyester that isn't made from renewable resources but does completely degrade after six weeks of composting.'*
6. *Polyhydroxyalkanoate (PHA) polyesters, the two main members of which are Polyhydroxybutyrate (PHB) and Polyhydroxyvalerate (PHV). These biodegradable plastics closely resemble man-made polypropylene. While they're still less flexible than petroleum based plastics, you'll find them in packaging, plastic films and injection molded bottles."*

It is also relevant to note that it is not as if the first respondent is the only State which has imposed total ban of plastic. As narrated earlier, there are many States and Union Territories which have done so and the same is in the public interest and preservation of ecology and environment.

110. It was held in MILKMEN COLONY VIKAS SAMITI VS. STATE OF RAJASTHAN (2007) 2 SCC 413 that right to life guaranteed under the Constitution of India includes hygienic, clean and safe environment by referring to an earlier judgment rendered in RAMJI PATEL VS. NAGRIK UPBHOKTA MARG DARSHAK MANCH (2000) 3 SCC 29 which is as follows:

"In Ramji Patel & Others v. Nagrik Upbhokta Marg Darshak Manch & Others reported in (2000) 3 SCC 29, this Court has laid down that in a situation where the interest of the community is involved, the individual interest must yield to the interest of the community or the general public.

"We have heard the learned counsel for the parties at length and carefully perused the orders passed by the High Court from time to time. In our considered view, no interference is called for in the impugned judgment".

The decision rendered by the Principal Bench of the NGT in SURESHBHAI KESHABHAI WAGHVANKAR VS. STATE OF GUJARAT (Application No.65 of 2015 dated 9.5.2013) relates to use of PoP and idol immersion and in that case the Principal Bench has held that before issuing direction under Section 5 of the EP Act, the Central Government must determine as to whether PoP is an "environment pollutant", since the guidelines issued by CPB do not indicate any

such finding. But in so far as it relates to the facts of the present case is concerned which is relating to plastic carry bags etc., there is already finding and courts can take judicial notice that plastic carry bags by themselves being inert may not be hazardous but the way in which they are being handled and if they are unable to be controlled by the Government, ban of certain types of plastic bags which are frequently used, cannot be said to be illegal and in that way arbitrary use of such items cannot be slightly brushed aside as not "environment pollutant". Even in the above said case, it was clearly observed that improper immersion process should be checked. The judgment of Central Zone Bench of NGT in SANDEEP LAHARIYA VS. STATE OF MADHYA PRADESH & ORS (Application No.4 of 2013 dated 11.11.2013) relied upon by the learned Senior Counsel for the appellants Mr. M. Ravindran, is also not relevant to the facts of the present case since the prayer therein is to direct the respondents to ensure compliance of the Plastic Waste (Management and Handling) Rules, 2011 and not against any notification. The other judgments relied upon by the learned counsel are also of no relevance to the facts and circumstances of the present case.

111. As seen from the study made by the BBMP, the quantum of plastic waste generated in the City of Bangaluru was based on a detailed survey conducted with expertise and BBMP submitted a recommendation to the Government to impose the ban. The first respondent State Government, having considered that the regulation of plastic waste; especially carry bags etc., has gone beyond the controlling limits of the Corporations/Municipalities/Panchayats in the State and becoming highly unmanageable, as a matter of policy, has taken a decision which has been enforced by way of direction under Section 5 of the EP Act. Therefore, it is not for this Tribunal to decide the correctness of the State's policy especially in the absence of any perversity. It is also relevant to note that if a particular issue has two opinion, particularly, as in this case, whether regulation or ban and if the Government decides either of this without affecting the basic principles of law like natural justice and giving a reasoning, it is not for this Tribunal to direct the Government to follow either this option or the other. That was the judicial dictum laid down by the Hon'ble Supreme Court in NARMADA

BACHANO ANDOLAN VS. UNION OF INDIA (2000) 10 SCC 664 and STATE OF MADHYA PRADESH VS. NARMADA BACHAO ANDOLAN (2011) 7 SCC 639. Judicial review in such cases of the Tribunals or courts are limited, as the judicial authority cannot legislate.

112. There is one other relevant aspect which is to be considered. The Government of India, Ministry of Chemicals and Fertilizers, Department of Chemicals and Petro-Chemicals has taken a stand in the reply as elicited above, that complete ban of plastic is not permissible unless it is in accordance with law and procedure. If a Department of the Government of India has taken a decision that total ban is not permissible under Section 5 of the EP Act or in cases where Government of India which has delegated its powers to the State Government under Section 23 of the EP Act, decides to exercise such power by itself, there is certainly no bar for the Government of India to take a decision. In fact in the order of delegation of power given to various States in the year 1988, as stated above, the Government of India, has made it very clear that at any appropriate time it will be open to the Government of India to revoke such delegation or exercise the power by itself. Therefore, there are always checks and balances available and even in respect of a policy decision of the State Government taken under the delegated power, if the Central Government is of the view that either there is excess of the exercise of the powers or the powers are in violation of Rules, it is always open to the Central Government to pass appropriate orders under Section 5 of the EP Act itself.

113. In so far as it relates to Signage Industries, involved in trading in flex, used in signage and advertising industry, represented by its Association, appellant in Appeal No.125 of 2016, it is the case of the said appellant as well as the learned counsel that the members of the appellant Association consist of all the traders in flex in the State of Karnataka as there is no manufacturing activity of flex in Karnataka and the Association is taking earnest steps for the purpose of collecting used flex in the State and the appellant-Association itself is recycling the used flex materials. Therefore, there is no chance of flex causing environmental hazards and the flex can not be grouped with plastic carry bags

and other plastic products which are produced and utilised on a large scale. Taking note of the fact that there is minimum content of plastic component in flex, apart from chemicals, it is for the State Government to consider whether flex can be exempted in the event of the appellant-Association in Appeal No.125 of 2016 giving categorical assurance by way of affidavit to the Government that all the used flex materials which are traded in the State of Karnataka by the members of the appellant-Association will be recycled and based on the appellant's assurance that no flex will be left uncollected and thrown out after use. While considering the same, the State Government may also take note as to whether the States wherein plastics are banned, have banned the flex also. We make it clear that it is ultimately for the State Government to take any action. Till such orders that may be passed by the Government of Karnataka, flex materials also will continue to be covered in our above judgment.

114. In view of the above reasoning and looking at any angle, we are of the considered view that the appellants/applicant are not entitled for any relief as prayed for in these appeals/application and accordingly the appeals/application fail and are dismissed. However, there shall be no order as to cost.

In view of our decision taken above, Diary No.542 of 2016 is directed to be numbered as appeal and the above said order shall apply to the said appeal also.

As the Main Appeal No.119/2016 dismissed, M.A.186/2016 and M.A.99/2016 stands closed as unnecessary.

Justice Dr. P. Jyothimani
Judicial Member

P.S. Rao
Expert Member



NGT