

(2010) 11 MAD CK 0133

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 11753 of 2010

The Registrar (Judicial), Madurai
Bench of Madras High Court

APPELLANT

Vs

The Secretary to Government,
Environment and Forest
Department and Others

RESPONDENT

Date of Decision: Nov. 10, 2010

Acts Referred:

- Advocates Act, 1961 - Section 1(3), 30
- Constitution of India, 1950 - Article 14, 19(1), 21, 301, 48A
- Environment (Protection) Act, 1986 - Section 5

Hon'ble Judges: S. Nagamuthu, J; R. Banumathi, J

Bench: Division Bench

Advocate: G. Prabhu Rajadurai, for the Appellant; V. Rajasekaran, Special Government Pleader. for Respondents 1 and 2, R. Ramanlal, for Respondents 3 and 5 and M. Ravishankar, for Respondent 4, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R. Banumathi, J.

The news reported in "Dina Malar" Tamil. Daily on 7.9.2010 as to the dumping of wastage materials like broken plastics, used tyres, waste papers etc., was taken up as a Suo-Motu Writ Petition. In this Suo-Motu Writ Petition, a direction is sought for directing the Respondents to take an effective and emergent steps to remove the waste materials like broken plastic, used tyres, waste papers etc., heaped in a large quantity in the vacant place near the market situate opposite to Thidirnagar Police Station, Madurai.

2. Pending writ petition, the Plastic Manufacturers' Association filed M.P.(MD) No. 1 of 2010 seeking to implead themselves as a party to the writ proceedings. However,

by a detailed order, dated 28.10.2010, we have dismissed the said miscellaneous petition.

3. In response to the notice, the Madurai City Municipal Corporation has filed a report stating that immediately on noticing the report, dumping of plastic bags and wastage were cleared and the Junior Engineer-Planning and Sanitary Inspector were strictly warned to keep vigil over the area to ensure that no such dumping of plastic and other waste materials occur in future. It is also stated that necessary instructions are issued to all the officers concerned to ensure that there is no such dumping of plastic bags within Madurai City.

4. The Tamil Nadu Pollution Control Board has also filed its report stating that the plastic wastes/garbage was removed by the Corporation. The Tamil Nadu Pollution Control Board has also further stated in its report that the site was jointly inspected on 13.9.2010 and found that no waste was dumped and the place was kept clean.

5. In the light of the counter filed by the Corporation and the Report filed Tamil Nadu Pollution Control Board, it would be appropriate to issue the following directions to the fourth Respondent to take the following remedial measures in future:

(i) To monitor the unauthorised dumping of solidwaste/garbage in Madurai Corporation limit.

(ii) Only to dispose of the solid waste/garbage in the place where the local body has obtained "No objection Certificate" from the Tamil Nadu Pollution Control Board.

(iii) To remove the solid waste/garbage lying in the city at unapproved places immediately.

6. By issuing the above directions to the fourth Respondent, we could have disposed of the Writ Petition as such. But the ill effects of use of plastics and improper disposal of plastics, which lead to atmospheric pollution and posing major environmental hazards thereby a great threat to the health of citizens and inadequacy of statutory provisions and lack of effective measures at grass root level, impel us to focus not only on ill-effects of plastics and dump age in Madurai but to take a macro view of the matter particularly when the Court is considering a question of issuing directions. Since it is the legitimate duty of the Courts to enforce the Constitutional objectives, this Court is required to take a holistic view in the matter.

7. Right from the stage of its production, the hazards plastic pose are numerous. The major chemicals that go into the making of plastic are highly toxic and pose serious threat to living beings of all species on earth. Some of the Constituents of plastic such as benzene and vinyle chloride are known to cause cancer, while many others are gases and liquid hydrocarbons that vitiate earth and air. Plastic resins themselves are flammable and have contributed considerably to several accidents

worldwide. Like in the case of all other chemical substances "disposal" of plastic is a myth. Once plastic is produced, the harm is done once and for all. Plastic defies any kind of attempt at disposal - be it through recycling, burning or land filling. Since plastic does not undergo bacterial decomposition, land filling using plastic would mean preserving the poison forever when burned, plastic releases a host of poisonous chemicals into the air, including dioxin, the most toxic substance known to science. Recycling of plastic is associated with skin and respiratory problems, resulting from exposure to and inhalation of toxic fumes, especially hydrocarbons and residues released during the process. What is worse, the recycled plastic degrades in quality and necessitates the production of more new plastic to make the original product. Plastic waste clog the drains and thus hit especially urban sewage systems. The plastic waste being dumped into rivers, streams and seas contaminate the water, soil, marine life and also the very air we breathe. Choked drains provide excellent breeding grounds for mosquitoes and causing diseases besides causing flooding during the monsoons. Vide [Indian Asthama Care Society and Another Vs. State of Rajasthan and Others,](#)

8. Recycled Plastics Manufacture and Usage Rules, 1999, as amended in 2003, imposes a restriction on manufacture, sale, distribution and usage of virgin and recycled plastic carry bags and recycled plastic containers which are less than 18 to 20 inches in size and which do not conform the minimum thickness of 20 microns. As per the said Rules, no vendor shall use carry bags or containers made of recycled plastics for storing, carrying, disposing or packaging of food stuffs. The prescribed authority for enforcement of the provisions of the these Rules relating to manufacture and recycling of plastic shall be the State Pollution Control Board (SPCB) and the prescribed authority for the implementation of these Rules relating to the use, collection, segregation, transportation and disposal shall be the District Collector of the concerned district.

9. From the submissions of the learned Counsel for the Tamil Nadu Pollution Control Board, it is seen that vide Notification dated 17.09.2009, the Government of India had issued draft notification called "The Plastic (Manufacture, Usage and Waste Management) Rules, 2009". As per the draft Rules, no person shall manufacture, stock, distribute or sell carry bags which are less than 40 microns thickness. Further, no person shall manufacture, stock, distribute or sell non-recyclable laminated plastic or metallic pouches, multilayered packagings and other non-recycled plastics and this rule is yet to be notified.

10. Though the Government of Tamil Nadu proposed to introduce the Bill called "The Tamil Nadu Throwaway Plastic Articles (Prohibition of Sale, Storage, Distribution and Transport) Act, 2003", the same has not been passed as an enactment till now. As pointed out earlier by the Division Bench in W.P. No. 3959 of 2009, the Government of Maharashtra, though made an attempt to ban plastic bags in the year 1998, it could not succeed. But in the wake of massive flooding in July

2005, the Maharashtra Government has banned use and sale all types of plastic bags. The Union Territory of Chandigarh has also banned all types of plastic bags from 2nd October, 2008. The West Bengal Government has banned poly bags upto 40 microns thickness and plastic cups less than 4" in height with effect from January, 2007. The Government of New Delhi has also ordered a complete ban on the use, sale and storage of all kinds and thickness of Plastic Bags from 7th January, 2009. Similar ban was imposed in the State of Orissa. Even though other States marched ahead in protection of environment in imposing ban/restriction in use of plastic bags, in the State of Tamil Nadu, as such there is no effective legislation to regulate the use sale and disposal of plastics and effective measures for monitoring.

11. Expressing concern over the ill-effects of plastic and emphasising the need for preservation of environment and also the need for enactment of the Tamil Nadu Throwaway Plastic Articles (Prohibition of Sale, Storage, Distribution and Transport) Act, 2003 and strict implementation of the pollution laws, in a public interest litigation in W.P. No. 3959 of 2009, a Division Bench of this Court has interalia issued various directions as under:

29. That being the position, we are in entire agreement with the Petitioner, who is the party in person, for implementation of the Rules, who is the party in person, for implementation of the Rules, but not to the extent of preventing the use of plastic upto 150 microns as putforth in the petition. The Pollution Control Board is directed to implement the Rules in full letter and spirit throughout Tamil Nadu. The Government of Tamil Nadu is also requested to bestow its serious attention to the draft Bill, which is pending from the year 2003 to make it as an Act. We may also add that the Government of Tamil Nadu and the Pollution Control Board should take a massive try by way of propoganda as to the devastation caused to the environment by use of plastic products and also make the people to aware that use of plastic products must be considerably reduced. The Government of Tamil Nadu may also, taking into consideration the various steps taken by the other States, should give its serious consideration to ban the use of plastic bags and other plastic materials upto 60 microns as an immediate step....

In spite of such directions being issued, the statute is yet to be enacted. The learned Special Government Pleader has drawn our attention to the letter of the Secretary to Government, Environment and Forest Department, in Letter No. 6613/Ec-2/10-5, dated 23.10.2010, addressed to him, wherein it is stated that by the steps are said to be taken by the State Government to enact the proposed legislation viz. "The Tamil Nadu Non-Biodegradable Garbage (Control) Act, 2010", which we would refer shortly.

12. From the Report of the Tamil Nadu Pollution Control Board, it is seen that the Government of Tamil Nadu forwarded a draft bill called The Tamil Nadu Throwaway Plastic Articles (Prohibition of Sale, Storage, Distribution and Transport) Act, 2003 to the Tamil Nadu Pollution Control Board and requested the Board to examine

whether any modifications are required. The Board has sought for opinion of the Central Institute on Plastic Engineering and Technology (CIPET), which has suggested that draft bill needs a review before bringing it to a final shape. The Government sent letters dated 02.04.2009 and 06.04.2009 requesting the Board to send a revised draft bill and accordingly TNPCB prepared a draft bill titled "The Tamil Nadu Non-Biodegradable Garbage (Control) Act, 2010" and sent the same to the Government in Environment and Forest Department for necessary action in the month of March, 2010. The learned Special Government Pleader has drawn our attention to the letter of the Secretary to Government, Environment and Forest Department, dated 23.10.2010, wherein it is stated that by the enactment of the Tamil Nadu Non-Biodegradable Garbage (Control) Act, 2010, it is proposed to prescribe the throwing of biodegradable and non-biodegradable garbage in public drains, sewage lines, natural or manmade lakes, wet lands, etc. Even though a draft bill is said to have been prepared taking into consideration the existing legislations on plastic carry bags in the State of Maharashtra, New Delhi and Haryana and in spite of earlier observation in W.P. No. 3959 of 2009, dated 27.07.2009, the legislation is still to be enacted.

13. Protection of the environment is not only the duty of the citizen but is also the obligation of the State and all other State organs including Courts. It, therefore, becomes the legitimate duty of the Courts as the enforcing organs of Constitutional objectives to forbid all action of the State and the citizen from upsetting the environmental balance. In this case the very purpose of preparing and publishing the developmental plan is to maintain such an environmental balance.

14. At this juncture, it is worthwhile to refer to the various directions issued by the Delhi High Court in the public interest litigations, which lead to the issuance of notification exercising the power conferred u/s 5 of the Environment (Protection) Act, 1986 forbidding the use, sale and storage of all kinds of plastic bags where the consumption of plastic bags is on the higher side.

15. One Vinoth Kumar Jain filed a public interest litigation in W.P.(C) No. 6456/2004 in the Delhi High Court painting a grim picture of the failure by the civic agencies in Delhi to effectively manage solid wastes. One of the issues raised by Mr. Jain was regarding the management of plastic waste which, according to him, remains in the environment as it is non-biodegradable. With a view to assist the Court in issuing appropriate directions, the Delhi High Court, hearing the Public Interest Litigation, constituted a committee headed by Justice R.C. Chopra, a retired Judge as its Convenor, with the Chairman of the Central Pollution Control Board and the Chairman of Delhi Pollution Control Committee as its members. The following seven questions were posed for consideration.

(1) Whether plastic bags are per-se injurious to health or hazardous to environment?

- (2) Whether degradable/Biodegradable plastic bags are an alternative and can be introduced without any difficulty?
- (3) Whether bags made of other materials can substitute the plastic bags and meet the demand?
- (4) What are the existing laws to regulate the use of plastic bags in Delhi?
- (5) Whether recycling of the plastic bags waste is a health/environment hazard?
- (6) What are the major health or environmental hazards arising out of the use of plastic bags?
- (7) What steps can be taken to check the health and environment hazards arising out of use of plastic bags in Delhi.?

16. After examining the matter in depth, the Committee answered all the questions and made several recommendations. It is not necessary for us to reproduce all of them. Suffice it to refer to some of the recommendations contained in the Report of the Committee in respect of Question Nos. 5,6 and 7.

(a) Report of the Committee in respect of Issue No. 5.-Whether recycling of the plastic bags waste is a health/environment hazard?

There are fairly large number of unauthorized recycling units in operation in non-conforming areas which use crude methods for recycling of plastic waste which are health and environment hazards. These unsound recycling practices, therefore, need to be forbidden by the authorities by taking suitable action.

Unlicensed recycling units operating from non-conforming areas are using various methods of heating plastic bags waste, which emit toxic gases posing a serious environmental/health hazard. The doctrine of sustainable development heavily leans on precautionary principles and as such it is the duty of the State to ensure that such unauthorized units are immediately shut down or are made to shift to conforming areas where they are duly licensed and recycle the plastic waste as per guidelines with the help of modern plants and machinery. The Committee, therefore, has no hesitation in holding that unsound recycling practices are a serious health/environmental hazard. Those who violate the provisions/norms should be dealt with very strictly as per law.

(b) Issue No. 6: What are the major health or environmental hazards arising out of the use of plastic bags.

...increase in the thickness of the plastic bags from 20 to 40 microns by a suitable amendment in the Rules. That recommendation is also, in our opinion, well made. We were told at the bar by counsel for the parties that in the State of Maharashtra the minimum thickness of a plastic bag is 50 microns while in Punjab, Haryana and Chandigarh the thickness of plastic bag is 30 microns. In the State of Himachal

Pradesh, however, thickness of plastic bags cannot be less than 70 microns. Thickness of virgin plastic bag is an incentive for the rag pickers to collect and segregate the same from the garbage for recycling purposes. Thicker the bag more its resale and recycling value.

(c) The Committee has similarly dealt with issue No. 7 and made following recommendations.

i) Thickness of the plastic bags for manufacture, sale and use in Delhi may be increased to 40 microns, as has been done in some other States, so that the plastic bags are more costly and its indiscriminate use by the vendors of various products is discouraged. It would also improve retrieval and recycling of the waste of such plastic bags as rag pickers would find it more remunerative as well as convenient to pick up waste of such bags.

ii) Manufacture and use of biodegradable plastic bags may be given wide encouragement as their waste is consumed by micro-organisms. Such plastics are costly but Govt. may introduce incentives and tax/duty concessions to make these plastics affordable and an economically viable option for plastic bags manufactures. Such indirect tax benefits may be provided separately on capital investments, raw materials and finished products for promoting biodegradable products.

iii) MCD, NDMC and Delhi Cantontment Board which handle and manage the solid waste/garbage in the city of Delhi may be directed to encourage and support proper agencies for removal of plastic waste and if possible in every zonal office/Dhalao they should set up a plastic compaction unit where rag pickers/agencies may bring the plastic bags waste and get it compacted for sale to the recyclers of plastic waste. Committee has been informed that such compaction machines are being manufactured in Delhi and one of such machines has been found working satisfactorily at Sreekot, Shrinagar, Pauri Garhwal.

Along with compaction units buy-back facilities can also be provided either by private entrepreneurs or by the State so that after compaction of plastic waste, the plastic waste may be sold there itself. Reasonable rates may be fixed for the plastic waste to encourage the rag pickers and others to collect and sell plastic bags waste. If this proposal is implemented even the domestic help may be prompted to segregate, store and then sell plastic bags waste at such centres, to earn some money.

iv) Recycling of plastic waste should be regulated effectively so that there are no recycling units in non-conforming areas. Strict action should be taken against unlicensed recycling units. Supreme Court directions should be complied with to shut down recycling units in non-conforming areas. DPCC must be provided adequate staff and powers for curbing this menace. The DPCC officers should have the powers of search, seizure as well as confiscation of plastic bags which are found to be in violation of the rules. They should also be empowered to search, seize and

confiscate machines/material found for manufacturing plastic bags in violation of the rules or for recycling of plastic waste in unlicensed units.

v) Environmentally sound and economically viable modern recycling units must be established by licensed plastic bags manufactures or plastic manufactures associations on the basis of polluter pay principle. Directions may be issued by the Court in this regard.

vi) Discouraging use of recycled plastic bags and encouraging usage of virgin plastic/biodegradable bags may also help. Coloured bags contain metallic additives which are injurious to health as well as the environment should be banned totally. Multilayered and metalized pouches also be banned totally.

vii. ...

viii. ...

ix. ...

x) The major contributors/generators of plastic bags waste like malls, airports, railways, fast food centres etc. should be asked to make arrangements for plastic waste collection. They should be made fully accountable for delivery of plastic bags waste to authorized recycling units. They may also be directed to use only bags made of biodegradable plastics.

xi) Alternatives to bags of less than 8" x 12" made of paper/jute cloth should also be encouraged so that at least small sized plastic bags are not used. Paper, especially recycled paper, is an option for such smaller bags so that small size plastic bags do not form part of solid waste in Delhi. Bags made of recycled paper, jute or cotton may not totally replace plastic bags but their use in addition to plastic bags by vendors shopkeepers for certain items would solve the waste problem to a large extent.

xii) Public awareness campaigns may be intensified so that the citizens also appreciate the health and environmental issues arising out of the use of plastic bags. They may be educated and motivated to adopt alternatives for making their daily purchases and avoid accepting plastic bags for each and every item. They be also motivated to store and dispose plastic waste separately.

17. Pursuant to the directions in Vinod Kumar Jain's Case, the Delhi Government issued advertisements in Newspapers discouraging use of plastic bags. Following up this publicity, in exercise of the powers conferred by Section 5 of the Environmental Protection Act 1986 the Delhi Government issued a Notification, dated 07.01.2009, wherein, in Clause(2) thereof, the use, sale and storage of all kinds of plastic bags is forbidden in several generally identified places in the National Capital like restaurants, fruit and vegetable outlets, all shopping malls, all shops in main markets and local shopping centres, all retail and wholesale outlets of branded

chain of outlets selling different consumer products, including fruits and vegetables. The Delhi Government has also specified the Officers who shall implement the orders in their respective jurisdiction.

18. The above said notification was challenged in Delhi High Court, by the Petitioners claiming to be All India Association of Manufacturers of Plastic Bags and other Plastic Products, claiming to represent more than 1500 registered members on an all India basis, in W.P.(C) No. 883 of 2009 & CM 4355/2009. The Petitioners therein contended that the total ban on the use of plastics is an arbitrary measure and is not a reasonable restriction either under the provisions of Article 14 or Article 19(1)(g) or Article 301 of the Constitution. Rejecting the contention of the Petitioners, the Delhi High Court dismissed the writ petition. In its order dated 21.05.2009, the Delhi High Court observed as follows:

48. Applying the tests laid down by the Constitution Bench, it is clear that the limitation on the sale, use and storage of plastic bags in certain areas in Delhi has been laid down keeping in view the problem of solid waste management, particularly of plastic bags, which choke drains and enter the food chain thereby potentially causing health risks. W./P.(C) No. 883/2009 Page 36 of 37 There can be no doubt that the limitations imposed are in public interest and have, apparently, been enforced in several other parts of India also. Merely because some commercial interests of the Petitioners are diluted does not mean that there is no public interest in issuing the impugned notification.

19. Article 48A of the Constitution mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wildlife of the country. Article 51A of the Constitution enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creates. As held by the Supreme Court in [Intellectuals Forum, Tirupathi Vs. State of A.P. and Others](#), , these two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution and also the various laws enacted by Parliament and the State Legislatures.

20. In efforts to improve the urban environment, local authorities play key role. Local authorities are responsible for the most aspects of environmental management at the city level. To properly discharge their civic responsibilities, local authorities must develop their capabilities far beyond their current levels. Though, local authorities have varied responsibilities, here, we are mainly concerned with the environmental hazards caused by routinely used plastic bags, polythene packaging materials.

21. Use of plastic has become part of the life. Plastic has replaced the traditional material (paper/cloth etc) as packing and carry bags because of cost and convenience which we have come to realise now that it is a wrong choice of material for such use. Plastics are used everywhere in Shops, Hotels, Grocery shops, Mineral water bottles and being increasingly used as packaging materials. People are so accustomed to it that they find it difficult to part with it. After using it, people are in the habit of throwing things they don't need, unmindful of ill-effects of such throwing. Plastic materials are so light that they are carried away by wind and speeding vehicles and scatter all over the area making the surrounding ugly.

22. Plastic disposables are all type of plastic materials. The disposables which generate waste and cause environmental problems when their useful life ends, include mainly the following: (i) plastic packaging/carry bags/bottles/containers/trash bags; (ii) plastics from health and medicare; (iii) plastics from hotels and catering industry; plastics from air, rail and road travel. Polythene carry bags have environmental implications from cradle to grave.

23. Clearance of plastic wastage is a challenging task for local authorities. Over the years, there is a network of collection of plastic wastage through "rag-pickers", "wastage collectors", "wastage dealers" and "recycling enterprises". It should be remembered that collection of plastic waste is a source of livelihood for innumerable "rag-pickers", or waste collectors. Plastic waste collection is a lucrative business when compared with that of other items. Balance plastic waste which remain uncollected found strewn around littered in open drainage or in the garbage dustbins. Throwing in open drainage often results in chockage of municipal sewers and storm water drains.

24. While carry bags made from virgin plastics are accepted as user-friendly, the problem arises when plastics are recycled for repeated use. The basic question is whether polythene bags should at all be manufactured using recycled materials, and if so what grade - first, second, third and so on. For consumer acceptance, recycled material of the first grade should be used. In respect of other cases when second grade material is used, they will find greater acceptance by blending virgin and recycled plastics in a 50:50 ratio. Carry bags manufactured using third and lower grade recycled materials are unacceptable and are the main environmental culprits. An interesting economic fact is that recycled polythene bags are generally priced at lower rate while bags made out of virgin plastics command a high price. The issue boils down to management of plastic waste, and more precisely carry bags and containers made out of recycled plastic waste material. It is said that any strategy for effective management of plastic wastes should have three "R"s reduction, reuse and recycle and include a package of prevention, promotion, and mitigation measures. The authorities should gear up its machinery for effective waste management and disposal of plastic apart from spreading awareness, anti-plastic campaign.

25. In view of the problem on solid waste management, particularly of plastic bags which choke drains and enter the food chain thereby potentially causing health risks, the ban/restrictions have apparently been enforced in several other parts of India. Insofar as restricting the use, sale and storage of all kinds of plastic bags and forbidding them in important places, the State of Tamil Nadu is still in nascent stage and the law is still to be enacted.

26. Responsibility of the State to protect environment: Emphasising upon the responsibility of the State to protect the State environment, in [Intellectuals Forum, Tirupathi Vs. State of A.P. and Others](#), the Supreme Court held as follows:

68. The debate between the developmental and economic needs and that of the environment is an enduring one, since if the environment is destroyed for any purpose without a compelling developmental cause, it will most probably run foul of the executive and judicial safeguards. However, this Court often faced situations where the needs of environmental protection have been pitched against the demands of economic development. In response to this difficulty, policy-makers and judicial bodies across the world have produced the concept of "sustainable development". This concept, as defined in the 1987 report of the World Commission on Environment and Development (Brundtland Report) defines it as "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". Returning to the Stockholm Convention, a support of such a notion can be found in para 13, which states:

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population....

71. A similar view was taken by the Supreme Court in [Indian Council for Enviroment-Legal Action Vs. Union of India \(UOI\) and Others](#), where it has been held as follows:

While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment....

84. The world has reached a level of growth in the 21st Century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the

environment and conserving the natural resources for the benefit of humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leads us to the conception of growth and development which sustains from one generation to the next in order to secure "our common future". In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, "conservation, however, always takes a back seat in times of economic stress". It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally.

85. Parliament has considerably responded to the call of the nations for conservation of environment and natural resources and enacted suitable laws.

86. The judicial wing of the country, more particularly this Court, has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Article 21 of the Constitution. This apart, the directive principles of State policy as also the fundamental duties enshrined in Part IV and Part IV-A of the Constitution respectively also stress the need to protect and improve the natural environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures.

27. In the State of Tamil Nadu that no legislation concerning different aspects including Management of hazards waste. In his letter No. 6613/EC-2/10-5, dated 23.10.2010, addressed to the Special Government Pleader of this Bench, the Secretary to Government, Environment and Forests (EC.2) Department, has referred to the statue the Tamil Nadu Non-Biodegradable Garbage (Control) Act, 2010, proposed to be enacted, in prohibiting the throwing of biodegradable or non-biodegradable garbage in public drains, sewage lines, natural or manmade lakes, wet lands, etc. The proposed Bill envisages the following:

1. empowers and enjoins upon the Local Authority to provide the necessary infrastructure for the collection, sorting, storage, segregation, transportation, processing and disposal of non-biodegradable solid wastes including non-recyclable, non-biodegradable plastics.

2. restricts or prohibits the use of certain non-biodegradable materials.

3. empowers of Local authority for effective implementation of the Act and Rules.

4. empowers the Local Authority for recycling of non-biodegradable plastic waste.
5. Specifies the minimum thickness of carry bags made of virgin plastic or recyclable plastics conforming to certain standards specified in the relevant rules.
6. Restricts the manufactures, stocking, distribution, sale and dumping of plastic bags which do not conform to the minimum thickness and standards specified in the relevant rules.

Keeping in view the public interest and improper disposal of plastics posing major environment hazard and great threat to the health of the citizens, we hope that the State Government makes up its mind in enacting the legislation at the earliest.

28. It is well settled that the Court cannot issue writ of mandamus directing the Government to enact the statute the Tamil Nadu Non-Biodegradable Garbage (Control) Act, 2010. In considering the question as to enforcement of Section 30 of Advocates Act and non-issuance of notification u/s 1(3) even after lapse of several years, in [A.K. Roy and Others Vs. Union of India \(UOI\) and Others](#), and in [Aeltemesh Rein, Advocate, Supreme Court of India Vs. Union of India \(UOI\) and Others](#), the Supreme Court has held that it is not open to this Court to issue a writ in the nature of mandamus to the Central Government to bring a statute the date on which it should be brought into force is left to the discretion of the Central Government. Having regard to the ill-effects of plastics and in the public interest it would be in order if the State Government considers the question whether it should exercise the discretion in bringing out the enactment of the Tamil Nadu Non-Biodegradable Garbage (Control) Act, 2010.

29. When other States have made much progress in banning the use of plastics, in the State of Tamil Nadu, the law is still to be enacted. Therefore, an Expert Committee may be constituted to check the health and environment hazards in the use of plastic bags and plastic packaging materials in Tamil Nadu and also various measures to be taken in checking health and environment hazards arising out of use of plastic bags and the ways and means to intensify the public awareness camps.

30. Directions to Tamil Nadu Pollution Control Board: As pointed out earlier, the prescribed authority for enforcement of provision of Rules of Recycled Plastics Manufacture and Usage Rules 1999 as amended in 2003 relating to use, collection, segregation, transportation and disposal shall be the District Collector of the concerned district. In its report, Tamil Nadu Pollution Control Board has stated that it has identified 1144 units in the State which manufactures plastic carry bags and containers using virgin or recycled plastics. Out of these, 1132 units have applied for consent. Consent under the Water (P&CP) Act, 1974 and under the Air (P&CP) Act, 1981 was issued to these units with a specific condition that they should strictly follow the specifications as laid down in the Recycled Plastics Manufacture and Usage Rules, 1999 as amended in 2003.

31. The units which have not applied for consent have been issued with necessary show cause notice and necessary follow up action is said to have been taken. Tamil Nadu Pollution Control Board shall take action for closure down against those units which have not obtained consent. In so far as, units which have applied consent, Tamil Nadu Pollution Control Board shall monitor whether those recycled units strictly follow the specifications as laid down in the rules. With respect to the compliance of these rules by the vendors and traders, the District Environmental Engineers of TNPCB in association with the District Administration shall take appropriate effective steps in dealing with the vendors and traders who violated the Recycled Plastics Manufacture and usage Rules, 1999, as amended in 2003.

32. Public Awareness -No law can indeed effectively work unless there is an element of acceptance by the people in society and public awareness. A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organization in many fields. [Reference - Lal's Encyclopaedia on Environment Protection and Pollution Laws - 5th Edition - Vol.1 - 2009]

33. Initiative taken in Kanyakumari District: It is not as if in the State of Tamil Nadu initiative has not at all been taken. At this juncture, it is worthwhile to refer to the initiative taken by the District Collector and District Administration of Kanyakumari District, in coordination with the Tamil Nadu Pollution Control Board, to achieve the goal of "PLASTIC FREE KANYAKUMARI DISTRICT". In the report filed by the Tamil Nadu Pollution Control Board, it is seen the multi flanked strategies adopted by the District Administration in Kanyakumari District. The ill-effects of the use and improper disposal of the plastic wastes are taken to the public in the following ways.

1. The plastic wastes if burnt, liberate tox gases such as "Dioxins" and "Furans" which causes detrimental diseases such as cancer, asthma, etc. and causes genetically related diseases.
2. When dumped on land, it spreads on the water bodies and affects the animal life, even the marine aquatic animals are also affected.
3. The drainage system gets blocked causing stagnation of sewage which leads to mosquito breeding, etc.
4. The disposal of plastic wastes on land also hinders the penetration of rain water thus affecting the ground water recharge.

The ill-effects of the use and improper disposal of the plastic wastes are taken to the people by involvement of all sectors of the District, which includes Elected Representatives of All Levels, Students, NG Os, Self Help Groups, traders, Residential

Welfare Associations and Industrialists, etc.

34. Removal of plastic wastes from the accumulated municipal solid wastes, water bodies and other important places.--The segregated plastic wastes were collected and stored at a centralized place in the compost yard of Nagercoil Municipality and the segregated plastic wastes were sent to the cement industry in Tirunelveli District, namely M/s. India Cements Limited, for co-processing in cement kiln, which is an approved technology by the Central Pollution Control Board. About 20 tonnes of plastic wastes were sent to cement industry.

35. Creating awareness among the people regarding the plastic avoidance.--By changing the mind set of the people to reduce the use of plastic items, especially use and throw plastic items, such as plastic carry bags, cups, etc., "Plastic Avoidance Awareness Campaign" were conducted at all the Four Municipalities level and 56 Town Panchayas and 99 Village Panchayats Levels. Plastic avoidance awareness messages were also spread through Media.

36. Monitoring and enforcement.--The District Level Monitoring Committee, under the Chairmanship of the District Collector with Assistant Environmental Engineer, TNPCB, as the Convenor, was constituted which comprises various members. Series and frequent meetings of the above committee were conducted for the planning of the programme and to give guidelines to the local bodies in implementing the programme. In order to strengthen the monitoring mechanism and enforcement and to make the programme success, monitoring teams comprising of officials from Revenue Department and Local Administration, supported by Police Department, were constituted and the monitoring teams started functioning from 1st April, 2010 by carrying out surprise checks. Penalty was imposed on the shops which violated the norms.

37. Outcome -In the report filed by the Tamil Nadu Pollution Control Board, it is stated that in Kanyakumari District this programme has gained remarkable improvement in the quality of environment in the District. Prior to the launch of the programme, the local bodies, especially the urban local bodies, found it difficult to maintain the drainage system and now choking the drainage system has been reduced resulting in free flow of sewage, which has reduced mosquito breeding and also enable the health workers to concentrate more on other works. The above are the immediate and evident benefits of the programme and the long term effect and benefit of the programme can be felt in due course.

38. Role of District Administration in creating public awareness: The District Collector of the concerned district is the prescribed authority for enforcement of the provisions of Recycled Plastic Manufacture and Usage Rules, 1999, as amended in 2003. It is heartening to note the initiatives taken in the Kanyakumari District. We are informed that the response from the public is very positive and there is active involvement of all sectors in making the district "plastic free". Since the response

from the public in one district is said to be positive, it would be in order, if in all the districts, the District Collectors take up the initiatives on par with the initiatives taken by the District Collector of Kanyakumari District in

(i) reduction on usage of plastics;

(ii) taking to the public the ill-effects of use of plastics and improper disposal of plastic bags;

(iii) Creating awareness among the people regarding "plastic avoidance";

(iv) monitoring and enforcement.

39. The problem of plastic pollution is serious. Plastic pollution is detrimental to the environment and health of the people. All human beings have the fundamental right to have unpolluted environment and pollution free water and air. The State is obligated to preserve and protect the environment. It is mandatory for the State and its Agencies to conceive, anticipate, prevent and attack the causes of environment degradation. Therefore, in Public interest, we deem it appropriate to issue various directions.

40. In the result, the suo-motu writ petition is disposed of with the following suggestions/directions.

I. Suggestions to the State Government:

(ii) Having regard to the ill-effects of plastics and in the public interest, it would be in order, if the State Government considers the question whether it should exercise the discretion in bringing out the enactment -The Tamil Nadu Non-Biodegradable Garbage (Control) Act, 2010.

(iii) We are also of the view that the State Government may constitute an Expert Committee to check the health and environmental hazards in the use of plastic bags and plastic packaging materials in Tamil Nadu and also to evolve various measures in checking the health and environmental hazards arising out of the use of plastic bags and to find out the ways and means to intensify "Plastic Awareness Camps.

II. Directions to District Administration:

Since the District Collector of the concerned District is the prescribed authority for enforcement of the provisions of Recycled Plastics Manufacture and Usage Rules, 1999, as amended in 2003, all the District Collectors in the State shall take initiatives at the District Level on the reduction of usage of plastics, on par with the initiatives taken in Kanyakumari District, taking to the public, the ill-effects of the use of plastics and improper disposal of plastic bags and also for strict implementation of the Recycled Plastics Manufacture and Usage Rules, 1999, as amended in 2003.

III. Directions to the Tamil Nadu Pollution Control Board:

(i) To change the mind set of the people in discouraging the use of plastics, the Pollution Control Board, in coordination with the respective district administration, may issue advertisements in Newspapers and Media and a list of "must do" by consumers, retailers, manufacturers, recyclers, airports, malls, railways, fast food centres, etc. is to be issued and to take effective steps for public awareness as to the hazards in the use of plastics.

(ii) Insofar as the recycled units which have not obtained consent, TNPCB is directed to take immediate steps for closure down of such units, in accordance with law. Insofar as the units which have obtained consent, TNPCB, in association with the District Administration, shall ensure that the recycling units strictly follow the specifications as laid down in the Recycled Plastics Manufacture and Usage Rules, 1999, as amended in 2003. With respect to the compliance of the rules by the vendors and traders, the District Environmental Engineers of TNPCB, in association with the District Administration, shall carry out necessary checks in shops, commercial establishments and take action against those who have violated the rules in accordance with law.

Registry is directed to mark copies of this order to (i)The Chief Secretary to the Government of Tamil Nadu, (ii)The Secretary to the Government of Tamil Nadu, Revenue Department, (iii)The Secretary to the Government of Tamil Nadu, Environment and Forest Department, (iv)The Chairman, TNPCB, (v)The Advocate General, High Court, Madras, and (vi) to all the District Collectors in the State.