

(2009) 08 DEL CK 0362

Delhi High Court

Case No: Writ Petition (C) 8120 of 2009

Praveen Mittal

APPELLANT

Vs

Department of Environment,
Govt. of NCT of Delhi

RESPONDENT

Date of Decision: Aug. 28, 2009

Acts Referred:

- Environment (Protection) Act, 1986 - Section 5

Citation: (2009) 162 DLT 365 : (2010) 7 RCR(Civil) 1139

Hon'ble Judges: Veena Birbal, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: Ashutosh Jai Singh and Urmi Nanchahal, for the Appellant; Parag P. Tripathi, ASG, Ruchi Sindhwani, Aakanksha Sharma and Amey Nargolker, for the Respondent

Final Decision: Dismissed

Judgement

Badar Durrez Ahmed, J.

This writ petition is directed against the clarification issued by the Department of Environment, Government of NCT of Delhi, New Delhi on 20.02.2009, with regard to the use of non-woven bags. The clarification was issued in the context of the earlier notification dated 07.01.2009, which was issued by the Lt. Governor of the National Capital Territory of Delhi, in exercise of powers conferred u/s 5 of the Environment (Protection) Act, 1986, read with Notification No. U-11030/J/91-UTL dated 10.09.1992 and in purported compliance of this Court's order dated 07.08.2008 in WP(C) 6456/2004 entitled Vinod Kumar Jain v. Union of India and Anr. The order dated 07.08.2008 passed by a Division Bench of this Court in Vinod Kumar Jain (supra) pertained to the use of plastic bags and the failure on the part of civic agencies with regard to solid waste management in Delhi. The said petition was filed in public interest. By the said order dated 07.08.2008, the writ petition was disposed of by, inter alia, directing that:

iv) Government of NCT of Delhi shall issue an appropriate notification forbidding use of plastic bags in the main markets and local shopping centres apart from hotels, hospitals and malls where use of such bags is already forbidden.

2. Pursuant to the said direction, the Government of NCT of Delhi issued the aforementioned notification dated 07.01.2009, the relevant portion of which reads as under:

In exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986 read with notification No. U-11030/J/91-UTL dated 10-9-1992 and in compliance of the Hon'ble High Court of Delhi's order dated 7th August, 2008 in WP(C) No. 6456 of 2004, the Lieutenant Governor of National Capital Territory of Delhi hereby directs the following:

2. That the use, sale and storage of all kinds of plastic bags shall be forbidden in respect of the following places in the National Capital Territory of Delhi, namely:

(a) Five Star and Four Star Hotels.

(b) Hospitals with 100 or more beds except for the use of plastic bags as prescribed under Bio Medical Waste (Management and Handling) Rules, 1998.

(c) All restaurants and eating places having seating capacity of more than 50 seats.

(d) All fruit and vegetable outlets of Mother Dairy.

(e) All liquor vends.

(f) All shopping Malls.

(g) All shops in main markets and local shopping centres.

(h) All retail and whole sale outlets of Branded chain of outlets selling different consumer products including fruits and vegetables.

3. In places other than the aforesaid places and as observed by the Hon'ble High Court of Delhi only Bio-degradable plastic bags shall be used.

3. Thereafter, certain queries had been raised on behalf of the Confederation of All India Traders, the Polythene Film Manufacturers Association, the Delhi Mercantile Association and others with regard to the use of non-woven bags. In response to the said queries, the impugned clarification dated 20.02.2009 has been issued by the Department of Environment, Government of NCT of Delhi, New Delhi. The same reads as under:

Subject: Clarification regarding use of Non-woven bags.

Sir,

I am directed to refer to your queries regarding the above subject. It has been brought to the notice of this Department that after the ban on the use of all kinds of

plastic bags, in compliance of the Hon'ble High Court of Delhi's order dated 07.08.2008 there is increase in the use of non-woven types of bags which is also stated to be non-biodegradable. In order to assess the composition of these kinds of bags, testing was conducted at Shriram Institute of Industrial Research, New Delhi, which has clearly indicated that the composition of such non-woven bags contained Polypropylene to the tune of 98.3% which is again a non-biodegradable material.

This fact was discussed in the Consent Management Committee meeting held on 20.2.2009 and it has been decided that such bags are also covered in the ambit of the High Court's order and hence shall not be allowed in the Local Shopping Complexes and Main Markets in Delhi. This may clearly be communicated to all your members and may be circulated to them in your communication directing them not to use such bags. This is for information and strict compliance.

Yours sincerely,

Sd/-

(M. Dwarakanath)

Sr. Sci. Officer

4. At this juncture, it would be pertinent to note that the said notification dated 07.01.2009 was the subject matter of challenge in WP (C) 883/2009 entitled All India Plastic Industries Association and Ors. v. Government of NCT of Delhi. One of the questions raised in that writ petition was - whether, on merits, the notification dated 07.01.2009 was invalid in law ? The Division Bench hearing the said WP(C) 883/2009, by its judgment and / or order dated 14.07.2009, answered the question in the negative. In other words, the Division Bench upheld the validity of the notification dated 07.01.2009. The Division Bench observed that:

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.

Consequently, the Division Bench found no good reason to strike down the impugned notification, i.e., the notification dated 07.01.2009, and dismissed the writ petition. The said Division Bench decision in the case of All India Plastic Industries Association (supra) considered direction (iv) issued by the earlier Division Bench on 07.08.2008. In All India Plastic Industries Association (supra), the Division Bench clearly held:

The intention of the earlier Division Bench was clearly to forbid the use of plastic bags completely in eight broadly categorized areas. This clearly expressed in direction (iv).

In the said decision dated 14.07.2009, it was also observed as under:

40. The true test, in these circumstances, would be this: Can the direction be sustained without the "offending. words on the basis of the contents of the judgment? In our opinion, the answer to this is in the affirmative. It appears to us that the earlier Division Bench was conscious of the fact that "A blanket ban on the use of plastic bags may be premature having regard to the to the fact that plastic bags are indeed part of the commercial milieu in the city and cannot be completely banned without providing cheap and acceptable alternatives." It is for this reason that the earlier Division Bench did not ban the use of plastic bags all over the city - it restricted the ban only to a few specified areas. The logic of this is to be found in the following words from the decision of the earlier Division Bench: "If plastic bags are unacceptable in hotels, hospitals and malls, there is no reason why they should be permitted in main markets and local shopping centres. In that view forbidding use of plastic bags even in main markets and local shopping centres would, therefore, help in dealing with the menace of plastic garbage in Delhi."

41. At this stage, we need to remind ourselves that the earlier Division Bench was concerned with (1) the difficulty in the management of solid waste caused, *inter alia*, by plastic bags - not necessarily degradable or non- degradable plastic bags, and (2) the possibility of a total ban on the use of plastic bags in Delhi. The solution arrived at by the earlier Division Bench was that (1) the management of solid waste caused, *inter alia*, by plastic bags is possible if the use of plastic bags is curbed in some specified areas, and (2) a complete or a blanket ban on the use of plastic bags is inadvisable. We see no difficulty, *per se*, in accepting both these conclusions which were arrived at after hearing all affected parties.

5. According to the petitioner, the non-woven bags manufactured by it, would not strictly fall under the category of "plastic bags" since they do not have the essential characteristics of plastic. According to the petitioner, plastic is made of film grade propylene. After the film is formed, it is stitched to make plastic bags. On the other hand, non- woven bags, such as those manufactured by the petitioner, are made of fibre grade propylene (350 FG). The said fibre grade propylene cannot be used to make plastic film and is only used for the purposes of making non-woven fabric / yarn, which, according to the petitioner, is altogether different from plastic. The further contention of the petitioner is that the non-woven propylene fibre bags are breathable and porous and that water can pass through them. Consequently, they would not choke the sewage system. The non-woven polypropylene fibre bags are made out of polypropylene fibres and, although they are not woven, but are bonded together, the end product is essentially a fabric.

6. The learned Counsel for the petitioner also placed reliance on Tariff Heading 56.03 of the Central Excise Tariff, to indicate that their product was classified as "textile fabric". This was in an attempt to show that the non-woven polypropylene fibre bags manufactured by them were not really plastic bags as contemplated by the High Court in its order dated 07.08.2008 in WP(C) 6456/2004 as also in the

notification dated 07.01.2009. The petitioner also submitted that the product manufactured by them had a soft fabric feel and was strong, washable and printable and that it was also 100% recyclable and degradable, though not bio-degradable.

7. It was further contended on behalf of the petitioner that the judgment of this Court dated 07.08.2008 has been misunderstood by the respondent in the sense that the spirit of that judgment is not to ban plastic bags altogether, but to find a suitable alternative for plastic bags. According to the petitioner, the non-woven polypropylene fibre bags are a suitable alternative to plastic bags made out of polypropylene film. With regard to the decision of this Court in the case of All India Plastic Industries Association (*supra*), the petitioner clearly submitted that it did not dispute the findings therein in respect of the notification dated 07.01.2009 issued in pursuance of the earlier judgment of 07.08.2008, whereby the prohibition of use of plastic bags had been extended to shopping malls, main markets and local shopping centres. The learned Counsel for the petitioner submitted that the challenge is not directed against the notification of 07.01.2009, but against the clarification whereby the petitioner's product is sought to be brought within the ambit of "plastic bags". According to the learned Counsel for the petitioner, the petitioner's product, i.e., non-woven propylene bags, are not strictly plastic and, therefore, cannot be covered under the said notification dated 07.01.2009. It was further contended that the impugned clarification has sought to bring the product of the petitioner within the ambit of the said judgment of this Court and the notification dated 07.01.2009, not on the ground that it is plastic, but on the ground that it is non-biodegradable. It was further reiterated that the spirit of the judgment dated 07.08.2008 was that an alternative to plastic should be found and that the petitioner's product is, essentially, an alternative to plastic bags and ought not to be covered within the ban in terms of the notification dated 07.01.2009.

8. Mr Parag Tripathi, the learned Additional Solicitor General (ASG), who appeared on behalf of the respondent, submitted that the polypropylene non-woven bags are clearly within the ambit of the expression "plastic bags" inasmuch as they contain 98.3% polypropylene. He submitted that this fact, which is mentioned in the impugned clarification, has not been assailed. The clarification dated 20.02.2009, clearly indicates that in order to assess the composition of such kind of bags, testing was conducted at Shriram Institute of Industrial Research, New Delhi, which has clearly indicated that such non-woven bags contained polypropylene to the extent of 98.3%, which, again, is a non-biodegradable material. He submitted that non-woven bags possess similar properties to that of plastic bags. He submitted that use of non-woven polypropylene fibre is as harmful as propylene bags or plastic bags made out of propylene film. Both fall under the category of "plastic" and both are non-biodegradable. With regard to the Central Excise classification, the learned ASG submitted that the said classification as a textile has been done for specific purposes, and the same cannot be used to make a distinction between non-woven bags and plastic bags. He submitted that while polypropylene fibre can be moulded

in such a manner to form non-woven textiles, which have a fabric like structure, it does not mean that they lose their property of being a plastic all the same. The learned ASG referred to the definition of "polypropylene" as per the New Lexicon Webster's Dictionary of English Language. According to the said dictionary, "polypropylene" means: "a thermoplastic resin that is a moisture-resistant, hard, tough plastic used to make moulded objects in plates, fibres, film, rope and toys". He also referred to the Delhi Plastic Bag (Manufacture, Sales and Usage) and Non-biodegradable Garbage (Control) Act, 2000 (hereinafter referred to as "the Delhi Plastic Bag Act.). Section 2(h) of the said Delhi Plastic Bag Act defines "non-biodegradable garbage" to mean waste, garbage or material, which is not bio-degradable garbage and includes "plastic material", such as polyethylene, nylon, PVC, polypropylene, pet etc., which are not capable of being easily destroyed by the action of living organisms, light, heat, moisture, radiations, oxidations or combination of all these factors and which are more specifically included in the Schedule of the said Act. The Schedule to the said Act lists items which fall under the category of "non-biodegradable garbage". Polypropylene is indicated at S. No. 4. It was, therefore, contended that polypropylene was non-biodegradable and was a plastic material. Thus, non-woven bags, which contain 98.3% polypropylene, would clearly be covered within the ambit of the expression "plastic bags" and, more particularly, "non-biodegradable plastic bags". The learned ASG, therefore, submitted that the writ petition ought to be dismissed.

9. Having considered the arguments advanced on behalf of the parties, the key question that has to be answered is - whether the non-woven bags made out of polypropylene fibre would fall within the ambit of the expression "plastic bags"? It is an admitted position that the non-woven bags, which form the subject matter of this writ petition, comprise of 98.3% polypropylene. Consequently, it would not be wrong to say that the non-woven bags in question are essentially non-woven polypropylene bags. The definition of polypropylene given in the New Lexicon Webster's Dictionary makes it clear that propylene is a plastic and is used to make moulded objects in various forms. These forms include plates, fibres, films, ropes and toys. Polypropylene fibres are used for the manufacture of these non-woven bags. Polypropylene film is used for making plastic bags as they are normally understood. Whether it is polypropylene fibre or it is polypropylene film, the end product made out of it would remain to be plastic, provided the end product predominantly contains polypropylene, whether fibre or film. In the present case, the admitted position is that the non-woven bags comprise of 98.3% polypropylene. Therefore, the conclusion is simple that the end product is nothing but plastic. Since the products manufactured by the petitioner are admittedly bags, they would fall within the expression "plastic bags".

10. We may also point out that the clarification dated 20.02.2009 was really not necessary. This is so because when we consider the question of prohibiting the use of plastic bags in main markets and local shopping centres, the same is provided in

paragraph 2 of the notification dated 07.01.2009. The said paragraph 2 clearly stipulates that the use, sale and storage of "all kinds of plastic bags" shall be forbidden in respect of, inter alia, all shops and main markets and local shopping centres. Thus, whether the non-woven bags were bio-degradable or non-biodegradable, would be irrelevant for the purposes of paragraph 2 of the notification dated 07.01.2009. All that was needed to be seen was - whether the non-woven bags fell within the category of "plastic bags" or not ? It did not matter, in the least, as to whether they were degradable or non-biodegradable. The question of bio-degradable plastic bags is only relevant for the purposes of paragraph 3 of the notification dated 07.01.2009, which refers to "all other places. not mentioned in paragraph 2 of the said notification.

11. In any event, the petitioner's non-woven polypropylene bags would be covered in the expression "all kinds of plastic bags" as appearing in paragraph 2 of the said notification. Since the non-woven bags are admittedly not bio-degradable, they cannot be used at other places in Delhi also in view of paragraph 3 of the notification dated 07.01.2009. The argument that the petitioner's product is porous and that water can pass through the same is of no consequence because that is not the consideration which is to be taken into account while construing the notification dated 07.01.2009. Paragraph 2 of the said notification, as already indicated above, refers to "all kinds" of plastic bags. Once the petitioner's product falls within the ambit of "plastic bags", it is immaterial as to whether it is porous or whether it is a textile. The petitioner's argument that non-woven polypropylene bags are an alternative to plastic bags also does not appeal to us. The non-woven polypropylene bags are plastic bags in themselves and, therefore, they cannot be a substitute for plastic bags as suggested by the learned Counsel for the petitioner.

12. In view of the foregoing, the writ petition is dismissed. No order as to costs.