* **HIGH COURT OF DELHI : NEW DELHI**

\+ **Writ Petition (Civil) No. 883 of 2009 & CM 4355/2009**

Judgment reserved on: May 21, 2009

% Judgment delivered on: July 14, 2009

1. All India Plastic Industries Association
through its Secretary
Shri Ajay Gupta
S/o Shri R.N. Gupta
Aged about 40 years
having its Head Office at
203, Hansa Tower
25, Central Market
Ashok Vihar, Phase-1
Delhi – 110 052

2. Mr. Bhupesh Ralli
Aged about 37 years
S/o Shri J.P. Ralli
Gupta Plastic Industries
36, Sandesh Vihar
Pitampura, Delhi

3. Mr. Radhey Shyam Gupta
Aged about 64 years
S/o late Shri O.P. Gupta
Gupta Plastic Industries
36, Sandesh Vihar
Pitampura, Delhi …Petitioners

Through Mr. Sandeep Sethi, Sr. Advocate
with Mr. Sidharth Singhal and
Mr. Nikhil Bhalla, Advocates

Versus

Government of NCT of Delhi
Department of Forests & Wildlife
2nd Floor, 'A' Block, Vikas Bhawan
New Delhi …Respondent

Through Mr. Parag P. Tripathi, ASG with Ms. Ruchi Sindhwani, Ms. Akanksha Sharma and Mr. Amey Nargolkar, Advocates

Mr. Arvind Sah, Advocate for the Intervenor in CM 4355/2009

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

Three questions arise for our consideration in this case. Firstly, on the preliminary submission of the learned Additional Solicitor General – whether the writ petition filed by the Petitioners should at all be entertained in view of the principles analogous to the principles of *res judicata* or constructive *res judicata* since the issues

raised in this case are similar to the issues raised in an earlier writ petition. In our opinion, this writ petition ought not to be entertained for the reason canvassed by the learned Additional Solicitor General. Additionally, in this case we are called upon to collaterally decide the correctness of the decision taken in the earlier writ petition, which is not permissible on the facts and in the circumstances narrated herein below.

The second question for consideration is whether the principles of natural justice enshrined in Rule 4 of the Environment (Protection) Rules, 1986 have been adhered to by the Respondents while issuing the impugned notification dated 7th January, 2009. In our opinion, the answer to this is in the affirmative, since the spirit of the law and the procedure has been followed, though not necessarily the restrictive letter of the law. No prejudice has been caused to the Petitioners in this respect.

The third question is whether on merits, the impugned notification dated 7th January, 2009 is invalid in law. Our answer to this question is in the negative.

The background facts

One Mr. Vinod Kumar Jain filed a Public Interest Litigation

(PIL) in this Court painting a grim picture of the failure by the civic agencies in Delhi to effectively manage solid waste.[1] One of the issues raised by Mr. Jain concerned the management of plastic waste, which according to him remains in the environment as it is non-biodegradable. It is said to enter the food chain resulting in health risks. The disposal of plastic waste in streams, canals, water bodies etc. compounds the problem caused to the environment.

2. Apparently, with a view to assist the Court in issuing appropriate directions, the Division Bench hearing the PIL constituted a Committee headed by Justice R.C. Chopra, a retired judge of this Court as its Convener, with the Chairman of the Central Pollution Control Board and the Chairman of the Delhi Pollution Control Committee as its Members. Seven questions were posed for the consideration of the Committee and the Report given by it in respect of each question is as follows:

Question: Whether plastic bags are per-se injurious to health or hazardous to the environment?

Report: Virgin plastic bags are not per se injurious to health or

[1] Vinod Kumar Jain v. Union of India & ors. WP(C) No. 6456/04 decided on 7th August, 2008.

hazardous to the environment but recycled/coloured bags are injurious. Therefore, a blanket ban on the use of plastic bags is not called for.

Question: Whether degradable/biodegradable plastic bags are an alternative and can be introduced without any difficulty?

Report: Biodegradable plastics are in its nascent stage and research work is on for the development of appropriate types of biodegradable plastics. It cannot be said that degradable plastics do not pose any health or environmental hazard. These do not decompose naturally on account of action of micro-organism. Biodegradable plastics however, are made of natural substances and decompose through microbial action. Therefore, biodegradable plastics should be encouraged for the manufacture and use of plastic bags.

Question: Whether bags made of other materials can substitute plastic bags and meet the demand?

Report: The use of plastic bags cannot be withdrawn or banned completely in Delhi but other alternatives can be encouraged and propagated which may result in reducing the demand/use of plastic bags. The chaos and problem created by the use of plastic bags is primarily because of waste generated by plastic bags which needs efficient handling by the authorities as well as by the Plastic Manufacturers'

Association.

Question: What are the existing laws to regulate the use of plastic bags in Delhi?

Report: The Delhi Degradable Plastic Bag (Manufacture, Sale and Usage) and Garbage (Control) Act, 2000 read with the Plastic Manufacturer, Sale and Usage Rules, 1999, as amended from time to time, provides that virgin or recycled plastic bags should be of a thickness not less than 20 microns and of a size not less than 8" x 12". The thickness of plastic bags should be increased to 40 microns. The existing ban on use of plastic bags in some institutions such as in four/five star hotels, hospitals with 100 beds or more, restaurants with a seating of more than 100 etc. is not effectively enforced. Since the ban in these institutions takes care of a small percentage of plastic bags, the maximum consumption thereof being through main markets, local shopping centres, small shopkeepers and street vendors, the ban should be extended to them also.

Question: Whether recycling of the plastic bags waste is a health/ environment hazard?

Report: Unsound recycling practices pertaining to plastics are a serious health / environmental hazard and those who violate the provisions of

law in this regard should be dealt with very strictly.

Question: What are the major health or environmental hazards arising out of the use of plastic bags?

Report: The use only of virgin plastic bags which are translucent and of more than 40 microns thickness should be encouraged and this should take care of most of the health hazards particularly since these do not contain any harmful additives and can be easily identified by rag pickers for recycling purposes.

Question: What steps can be taken to check the health and environment hazards arising out of use of plastic bags in Delhi?

Report: The Committee gave as many as twelve recommendations, but it is not necessary to reproduce all of them for the purposes of this decision.

3. Suffice it to say, the Division Bench hearing the PIL generally accepted the recommendations of the Committee and issued the following directions in its final order dated 7th August, 2008:

> "i) The respondents Government of NCT of Delhi shall issue a proper notification fixing the minimum thickness of plastic bags at 40 microns in place of 20 microns currently stipulated.
>
> ii) The respondents, Government of Delhi, the Pollution

Control Committee of Delhi and the civic agencies shall take immediate steps for closure of unlicensed recycling units operating from non-conforming areas by using unsound methods for recycling of plastic bags.

iii) Government of India shall expedite the constitution of the committee for verifying protocols for degradable and biodegradable plastics in India if the same has not already been done.

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.

v) The other recommendations referred to in the report made by the Committee appointed by this Court and extracted above shall be examined by the Government of NCT of Delhi as also the civic agencies and appropriate actions taken in accordance with law wherever such recommendations are found feasible."

4. Subsequent to the decision rendered by this Court, the Delhi Government issued advertisements in newspapers discouraging the use of plastic bags and a list of "must do" by consumers, retailers, manufacturers, recyclers, airports, malls, railways, fast food centres etc. Following up on this publicity blitz, the Delhi Government issued a notification dated 7th January, 2009 wherein it was mentioned in clause (2) thereof that the use, sale and storage of all kinds of plastic bags is forbidden in several generally identified places in the National Capital

Territory of Delhi. In clause (3) of the notification, it was laid down that in places other than those covered by clause (2), only biodegradable plastic bags could be used. The notification also conferred jurisdiction on several officials to enforce its terms.

5. The notification dated 7th January, 2009 reads as follows:

> "**NOTIFICATION**
> **Dated 7th January, 2009**
>
> 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 wholesale outlets of Branded chain of outlets selling different consumer products including fruits and vegetables.

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

The following officers shall implement these orders in their respective jurisdiction namely:-

1. Member Secretary, Delhi Pollution Control Committee and its staff.
2. Director Environment, and staff of Environment Dept. Govt. of Delhi.
3. Additional Divisional Magistrates in their respective district.
4. Sub-Divisional Magistrates in their respective jurisdiction.
5. Environmental Engineers, Delhi Pollution Control Committee in their respective jurisdiction.
6. Asstt. Commissioner (FL), Municipal Corporation of Delhi.
7. Food and Supply Officers, in their respective jurisdiction.
8. Medical Officer Health, NDMC.
9. Director Health Services, Government of National Capital Territory of Delhi.
10. Municipal Health Officer, MCD.
11. Food Inspectors of PFA Department, Government of National Capital Territory of Delhi.

4. Member Secretary, Delhi Pollution Control Committee shall act as the co-ordinator to implement the above orders. The Chairman and Member Secretary of the Delhi Pollution Control Committee are authorized to lodge the complaint under Section 19 of the Environment (Protection) Act, 1986 vide notification No.S.O.394(E) dated 16-4-1987 as further amended vide notification No.S.O.624(E) dated 3-9-1996.

5. This is in supersession of the Government of Delhi's earlier notification no.F.8(86)/EA/Env./2005(ii)/486, dated the 2nd June, 2005 and notification No.F.8(86)/EA/Env./2005/450, dated the 25th May, 2006.

6. This notification shall come into force with effect from the day it is notified in the Official Gazette.

By Order and in the Name of the Lt. Governor
of the National Capital Territory of Delhi,

Sd/-
(Sushma Jerath)
Dy. Secy.

No.F.08(86)/EA/Env./2008/9473
Issued by:
Government of the National Capital Territory of Delhi
Department of Environment and Forest and Wild Life
New Delhi."

6. A perusal of the notification reveals that it has been issued in exercise of powers conferred by Section 5 of the Environment (Protection) Act, 1986 (for short the EPA) read with a Government of India notification (on which there is no dispute) and in compliance with

the orders of this Court in the PIL initiated by Mr. Jain.

The submissions:

7. Petitioner No.1 claiming to be an all India association of manufacturers of plastic bags and other plastic products filed a writ petition in this Court along with Petitioners No.2 and 3. Petitioner No.1 claims to represent more than 1,500 registered members on an all India basis. Petitioners No. 2 and 3 are said to be manufacturers/storers/users sellers of plastic products. These Petitioners have challenged the notification dated 7th January, 2009 because, it is submitted that the notification has put them under great hardship and their business has come to a total standstill. According to the Petitioners, a 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.

8. There is no dispute that the power to issue the notification is available with the Respondents under Section 5 of the EPA but learned counsel for the Petitioners submitted that this power has to be exercised in accordance with the Environment (Protection) Rules, 1986 (for short

the EPR). In this context, it was submitted that the Respondents have not followed the mandatory procedure prescribed under the EPR and, therefore, the notification is not valid. The second submission of learned counsel was that the Petitioners have no difficulty with direction No. (i), (ii), (iii) and (v) above but insofar as direction No. (iv) is concerned, it has been issued by the earlier Division Bench on a factual misconception. For understanding this contention of learned counsel, direction No. (iv) is once again reproduced:

> "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**." (emphasis supplied).

9. According to learned counsel for the Petitioners, the use of plastic bags in hotels, hospitals and malls is not forbidden. What is forbidden in these places is the use of non-degradable plastic bags. It is submitted that the conclusion of this Court that "where use of such bags is already forbidden" is partially inaccurate – what is forbidden is the use of non-degradable plastic bags and not all plastic bags. In support of this assertion, reliance is placed upon two notifications dated 2nd June, 2005 and 25th May, 2006 issued by the Government of Delhi

which provide that the use of degradable plastic bags shall be compulsory in the following institutions. In other words, the use of non-degradable plastic bags is forbidden in these places, that is –

(a) All 4/5 star hotels categorized as such by the Department of Tourism, Government of India,

(b) All hospitals having bed strength of 100 beds or more,

(c) All restaurants having seating capacity of more than 50 seats,

(d) All food and vegetable outlets of Mother Dairy,

(e) All liquor vends, and

(f) All shopping malls.

10. It was submitted that since the High Court proceeded on a partially incorrect assumption that all plastic bags (both degradable and non-degradable) are forbidden in these institutions, therefore, directing extension of the ban to other institutions/areas of Delhi is erroneous.

11. The learned Additional Solicitor General appearing on behalf of the Respondents refuted the various submissions made by learned counsel for the Petitioners. He also raised a preliminary objection to the effect that the Petitioners were fully represented in the PIL before this Court (through one Mr. O.P. Ratra). They cannot now be permitted to

challenge the notification dated 7th January, 2009 which was issued in compliance with the directions given by this Court in the PIL. It is appropriate to first deal with the preliminary objection raised by the learned Additional Solicitor General.

Preliminary submission of the Respondents:

12. We find from the record of the PIL that one Mr. O.P. Ratra had moved an intervention application in the PIL. A perusal of that application reveals that Mr. Ratra claims to have been engaged in the development and promotion of applications of plastics since 1965. He says that he has served in various departments of the Government of India as well as in various technical committees etc. He cites his various accomplishments and concludes his application by submitting that plastic bags are technically and environmentally safe and that he is pained to notice that unjustifiable publicity is given against plastic bags in complete variance with the provisions of the law.

13. We also find from the record of the PIL that after this Court rendered its decision, Mr. Ratra filed a review application in the writ petition in which he described himself as a founder member of Plastics

Chintak.

14. The learned Additional Solicitor General submitted before us that his instructing counsel made a search on the internet to determine the identity of Plastics Chintak. As a result of that search, some material was collected and that has been placed on record. From these documents, it has come to be known that Mr. Ratra is the Secretary of Plastics Chintak, which is a forum of All India Plastic Industries Association and All India Federation of Plastic Industries. Plastics Chintak is intended to create awareness that plastics are environmentally safe and eco-friendly, that plastic bags are essential and an integral part of our daily life and plastics cannot be banned completely without providing cheap and acceptable alternatives.

15. It may be noted that one of the two constituents of Plastics Chintak is All India Plastic Industries Association, which is Petitioner No.1 in the writ petition that we are concerned with. The address of Plastics Chintak as displayed on the internet is c/o All India Plastic Industries Association, 203, Hansa Tower, 25, Central Market, Ashok Vihar, Phase-I, Delhi and this is the same as the address of Petitioner

No.1. The submission of learned Additional Solicitor General in this regard was that although the Petitioners in the case before us may not have directly been parties in the PIL, but they were certainly represented, or at least their point of view was certainly put forth by Mr. Ratra, who participated in the proceedings before the Justice Chopra Committee, intervened in the PIL and also filed a review petition in this Court. It was, therefore, submitted that it is too late in the day for the Petitioners to contend that they were not heard before the abovementioned directions were issued by this Court or that their point of view was not available with the Delhi Government when the notification dated 7th January, 2009 was issued.

16. Learned counsel for the Petitioners did not refute the factual submission of the learned Additional Solicitor General about the identity of Mr. Ratra or his association with Petitioner No.1 or even the connection between Plastics Chintak and Petitioner No. 1. We, therefore, have no option but to proceed on the basis that Mr. Ratra is integrally connected with Plastics Chintak as mentioned by him in the PIL and that Plastics Chintak is a forum which has Petitioner No. 1 as one of its constituents. We must also proceed on the basis that since

Petitioner No.1 has an all India reach, the point of view of all plastic manufacturers in India was represented by Mr. Ratra in the PIL.

17. What is the cumulative effect of this? As far as we can see, the entire PIL was heard and decided with the active participation of the plastic industry and manufacturers of plastic. Not only this, their view was also placed before the Justice Chopra Committee, which took into consideration the opinion of the plastic industry and manufacturers of plastic and only then submitted its Report. This Court delivered judgment in the PIL only after hearing all concerned parties, including Mr. Ratra. In essence, therefore, the Petitioners were parties to the PIL and if they had any grievance with the conclusions arrived at by this Court, the only appropriate course available for them would have been to either file a review petition in this Court (which they did through Mr. Ratra), or to prefer a petition for special leave to appeal in the Supreme Court.

18. By filing an independent writ petition, the Petitioners are inviting us to sit in judgment over the decision rendered by another Division Bench of this Court. We simply cannot do this, nor can we,

without any valid reason, doubt the conclusions arrived at by a coordinate Bench.

19. In ***Govt. of A.P. v. B. Satyanarayana Rao, (2000) 4 SCC 262*** it was said:

> "A decision by two Judges has a binding effect on another coordinate Bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law."

20. It might have been a completely different story if we did not agree with the conclusions arrived at by the earlier Division Bench. In that event, we could have referred the matter to a larger Bench, but no such submission was made.

21. In ***Vijay Laxmi Sadho (Dr) v. Jagdish,(2001) 2 SCC 247*** it was said:

> "As the learned Single Judge was not in agreement with the view expressed in *Devilal case* [Devilal v. Kinkar Narmada Prasad, Election Petition No. 9 of 1980] it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. … … …. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be

> referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."

22. Similarly, in ***Mahadeolal Kanodia v. Administrator General of West Bengal, (1960) 3 SCR 578*** it was said:

> "Before we part with this appeal, however, it is our duty to refer to one incidental matter. We have noticed with some regret that when the earlier decision of two judges of the same High Court in *Deo Rajan's Case* [58 CWN 64] was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of coordinate jurisdiction in a High Court start overruling one another's decision."

23. Therefore, we uphold the contention of the learned Additional Solicitor General that we ought not to even entertain this writ petition, but leave it to the Petitioners to approach the Supreme Court for challenging the correctness of the conclusions arrived at by the earlier Division Bench.

24. It was submitted by learned counsel for the Petitioners that even if the principles analogous to the principles of *res judicata* or constructive *res judicata* apply to this case, a challenge to the notification dated 7th January, 2009 is a completely independent cause of action and the Petitioners are entitled to independently challenge the validity of that notification. We do not think this is the correct way of looking at the issue. As we have mentioned above, the notification dated 7th January, 2009 was a direct result of the judgment of this Court in the PIL. The impugned notification was, in fact, issued in execution of the directions issued by this Court. That being the position, the mere issuance of the impugned notification does not give an independent cause of action to the Petitioners. There is nothing to suggest that the directions issued in the PIL were without jurisdiction or were excessive or arbitrary or could be challenged on any other ground whatsoever. In that view of the matter, if, in the faithful implementation of the decision of this Court, the Delhi Government decided to issue the impugned notification, it cannot be faulted with, unless of course the decision of this Court in the PIL is wrong, but as we have mentioned above, this is not the appropriate forum for raising that issue.

Natural justice and the Environment (Protection) Rules:

25. Nevertheless, having entertained this writ petition, which really involves issues of general public importance, we feel it appropriate to deal with the contentions raised by learned counsel for the Petitioners. The first principal submission of learned counsel was that the procedure given in Rule 4 of the EPR was not followed. The rules that we are concerned with are Rule 4(1), 4(2), 4(3)(a) and 4(4). These read as under:

> **"4. Directions.** – (1) Any direction issued under section 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) xxx xxx xxx
>
> (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 objections, 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."

26. The submission made by learned counsel is to the effect that the Petitioners were neither given a notice of the issuance of the notification nor were they given a hearing before the notification was actually issued. At first blush, this submission does appear to be attractive.

27. There is no doubt that the principles of natural justice, which are sought to be relied upon by learned counsel for the Petitioners would generally be applicable to a case such as the present but at the same time it cannot be forgotten that these principles cannot be put in a strait jacket. It is now very well settled that the principles of natural justice are flexible and their scope, extent and applicability would depend from case to case.

28. In ***Karnataka SRTC v. S.G. Kotturappa, (2005) 3 SCC 409,*** it was observed:

> "The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural

> justice cannot be applied in vacuum. They cannot be put in any straitjacket formula."

29. Similarly, in ***P.D. Agrawal v. State Bank of India, (2006) 8 SCC 776,*** it was said:

> "The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change."

30. Given the requirements of Rule 4 of the EPR, what is it that the Petitioners could expect? Their first expectation would be a notice that a notification on the lines of what was actually issued on 7th January, 2009 is contemplated. Their second expectation would be an opportunity of filing objections to the proposed notification and if deemed appropriate they would be heard before a final decision is taken on the question whether a notification should be issued and if so what its contents should be.

31. What has actually happened in this case? Before we answer this, it is important to remember (1) that the PIL concerned itself with the management of solid waste, particularly plastic waste, and (2) the prayer in the PIL was for a ban on the manufacture and sale of all plastic

bags. It is in this context that the contention of learned counsel for the Petitioners ought to be looked at.

32. Well before the impugned notification was even contemplated, the Petitioners were put on notice that there is a PIL, the outcome of which could be that the use of plastic bags may be prohibited. In response to this PIL, which was really in the nature of a notice of a blanket ban, the Petitioners intervened through Mr. Ratra and were given a full hearing in respect of the question whether the manufacture, use and sale of plastic bags should be prohibited. In addition thereto, the Petitioners were also given an opportunity of placing their point of view before the Justice Chopra Committee and the Report of that Committee indicates that Mr. Ratra was given an adequate opportunity of placing his point of view (which he availed) before the Committee. Then, before final orders were passed by this Court, the Petitioners were again heard at length by a Division Bench which issued some directions, one of them being direction (iv) adverted to above. Significantly, this Court did not fully accept the prayer made in the PIL, but only partly granted the relief prayed for. This Court did not impose a blanket ban on the manufacture of plastics and its use and

sale within Delhi. The direction was limited to only forbidding the use of plastic bags in certain areas of Delhi. In other words, the view of the Petitioners was (to an extent) accepted by this Court. It is only thereafter that the Delhi Government issued the notification dated 7th January, 2009. Clearly, therefore, the Petitioners were given a full length hearing on the issue on more than one occasion - before a constitutional court and also before a Committee - before any decision was taken on the issuance of a notification such as the one actually issued on 7th January, 2009. Both the expectations of the Petitioners were fulfilled – notice of a possible blanket ban and an opportunity of hearing before any such ban is imposed. To us, this is substantial and adequate, though not a literal, compliance with Rule 4 of the EPR.

33. In this context, it would be wise to refer to ***Ajit Kumar Nag v. G.M. (PJ), Indian Oil Corpn. Ltd., (2005) 7 SCC 764,*** wherein the Supreme Court observed (in paragraph 44 of the Report):

> "But we are also aware that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated: " 'To do a great right' after all, it is permissible sometimes 'to do a little wrong'." [Per Mukharji, C.J. in *Charan Lal Sahu* v. *Union of India* (*Bhopal Gas Disaster*),

> [(1990) 1 SCC 613]. While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. **In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential".** (emphasis supplied).

34. It is true that the actual physical procedure laid down in Rule 4 of the EPR was not followed by the Respondents, but there can be no doubt that the spirit or the sum and substance of Rule 4 was followed, inasmuch as the Petitioners had notice of what was likely to happen or what was proposed. The Petitioners were given a hearing in respect of that proposed action and the hearing resulted in a decision being taken by this Court, which partly accepted their submissions. It is only then, and as a follow up, that a final decision was taken which took the shape of the notification dated 7th January, 2009. In other words, the entire range of activity postulated by Rule 4 of the EPR was followed if not in letter then certainly in spirit before the impugned notification was issued. As the Supreme Court has told us, a pragmatic view of the matter has to be taken.

35. Has any prejudice been caused to the Petitioners for non-

compliance of the physical procedure laid down in Rule 4 of the EPR? In this context, it was submitted by learned counsel for the Petitioners that if an act has to be done in a particular manner, then it must be done in that manner or not at all. For this, reliance was placed upon ***Nazir Ahmed v. King Emperor, AIR 1936 Privy Council 253 (2)***. While this general proposition still holds the field, it is not an absolute proposition when over the years it has been recognized and accepted in independent India that flexibility in procedure or a play in the joints is permissible in given circumstances, particularly where the principles of natural justice are involved. As mentioned above, on the facts of this case, the Petitioners were given an adequate opportunity of placing their point of view not only before the administrative authorities but even before a judicial authority. This is much more than the Petitioners could have asked for. To this extent, the Petitioners can certainly have no grievance. Therefore, if the Petitioners are given more than what they are entitled to and if in being given that greater opportunity, the spirit of the law is followed, there can hardly be any reason for complaint on the part of the Petitioners.

36. Looked at from another point of view, all that the Petitioners

can hope for, in these circumstances, is an opportunity of placing their point of view before the Respondents in respect of a blanket ban on the use of plastics. As held above, this opportunity was made available to the Petitioners (and they accepted it). During the pendency of this case, an opportunity was again offered to the Petitioners specifically in respect of the issuance of the notification dated 7th January, 2009. The learned Additional Solicitor General made an offer to the Petitioners for a post decisional hearing, as contemplated by ***Maneka Gandhi v. Union of India, (1978) 1 SCC 248*** and ***Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664*** but this request was turned down by learned counsel for the Petitioners. Had the Petitioners accepted the offer given by the learned Additional Solicitor General, the Respondents would have heard the Petitioners and taken a view in the matter but now that the offer has been rejected, we are left with no option but to determine if the view taken by the Respondents is in any manner prejudicial to the Petitioners or whether the decision making process can be faulted in any manner.

37. So far as the merits of the validity of the notification dated 7th January, 2009 are concerned, we will advert to it a little later. However,

in so far as the decision making process is concerned, we are of the view that even though there has not been a literal or doctrinaire compliance with the provisions of Rule 4 of the EPR, the Petitioners have perhaps got a better hearing that they could have expected if Rule 4 of the EPR was strictly complied with. In their getting a better opportunity of expressing their views, no prejudice has been caused to the Petitioners.

Has the earlier Division Bench misconstrued the factual position?

38. In this context, learned counsel for the Petitioners pointed out that direction (iv) issued by the earlier Division Bench proceeded on a factually, though partially, incorrect basis. In our opinion, as mentioned above, the Petitioners are entitled to challenge this direction independently if they believe that the direction was given on the basis of a wrong factual premise. That apart, whether the direction was based on an erroneous factual premise or not is really of no consequence at all. The intention of the earlier Division Bench was clearly to forbid the use of plastic bags completely in eight broadly categorized areas. This is clearly expressed in direction (iv). It hardly matters if the Division Bench wrongly believed that, even earlier, the use of plastic bags was forbidden in some of these categorized areas. There is nothing to

suggest (except inferentially) that the direction issued by the earlier Division Bench would have been different had it been advised that the use of only non-degradable bags is forbidden in some categorized areas. As far as we are concerned, the earlier Division Bench would have been aware that the Report stated (though in a negative manner) that degradable plastics could pose a health or environmental hazard and that research work is on for the development of appropriate types of biodegradable plastics (second question posed to the Committee). Apparently keeping this in mind, inter alia, direction (iv) was issued by the earlier Division Bench.

39. We also find that direction (iv) is composite and the last few words in this direction, namely, "where use of such bags is already forbidden" are merely an appendage. These few words are clearly severable from the substance of the direction. At best, it could be said that these words form the justification for issuing the direction, but this might not be the best or only way of construing the basis of the direction. This is because the reasons for the direction are contained in the text of the judgment.

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.

42. While construing the judgment of the earlier Division Bench, we must also remember what the Supreme Court said in ***Kesar Devi v. Union of India, (2003) 7 SCC 42*** that,

> "The judgment of a court is not to be interpreted like a statute where every word, as far as possible, has to be given a literal meaning and no word is to be ignored."

43. Similarly, in ***British Railways Board* v. *Herrington 1972 AC 877*** Lord Morris said:

> "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

44. The impact of all this is that the action taken by the Delhi Government, namely, the issuance of the notification dated 7th January, 2009 is a direct consequence of the decision of this Court and if the Petitioners have any grievance in this regard, as we have said above, their remedy lies elsewhere, certainly not in another writ petition.

Validity of the impugned notification:

45. In so far as the merits of the impugned notification are concerned, we may note that it does not prohibit the manufacture of plastic bags, which appears to be the primary activity of the Petitioners. All that it seeks to achieve is a prohibition on the use, sale and storage of plastic bags in certain categorized locations within Delhi. Again, it is not as if there is a blanket ban on the use, sale or storage of all kinds of plastic bags all over Delhi. It is true that initially, only non-degradable plastic bags were prohibited in 4/5 star hotels, hospitals having a bed strength of 100 beds or more and restaurants having a seating capacity of more than 100 seats. However, what has now been done is to extend this ban to include degradable plastic bags as well and to prohibit their use (along with non-degradable plastic bags) in restaurants having a

seating capacity of more than 50 seats. A ban on the use of degradable plastic bags has been extended to four other categorized areas, such as fruit and vegetable outlets of Mother Dairy, liquor vends, shopping malls and all shops in main markets and shopping centres. Is there anything terribly wrong with this?

46. According to learned counsel for the Petitioners, his clients' business has come to a standstill because of the impugned notification. We are unable to understand how this is possible. The manufacture of plastic bags has not been prohibited by the Respondents. The use and sale of plastic bags has also not been prohibited except in certain designated areas, and not elsewhere. At best, the manufacturing activity of the Petitioners would have been reduced or their quantum of sales would have decreased – but that is not sufficient to invalidate the impugned notification. There is only a partial prohibition imposed and not a complete prohibition, and certainly not one of such a magnitude as to fall foul of Article 19(6) of the Constitution.

47. In ***Om Prakash v. State of Uttar Pradesh, (2004) 3 SCC 402*** the Supreme Court took the view that the prohibition on the sale of eggs

within the municipal limits of Rishikesh was a reasonable restriction within the meaning of Article 19(6) of the Constitution. It was held that the nature of the trade and the public interest sought to be served are important factors to be taken into consideration. Although it was accepted that trade in eggs cannot be considered objectionable or injurious to society, yet the prohibition was held to be in public interest. Reliance was placed on the following passage from ***State of Madras v. V.G. Row, 1952 SCR 597***:

> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

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.

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.

49. We find no good reason to strike down the impugned notification. The writ petition is dismissed. No costs.

MADAN B. LOKUR, J

July 14, 2009 **A.K. PATHAK, J**
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Certified that the corrected copy of the judgment has been transmitted in the main Server.