

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Original Application No. 22 of 2022 (SZ)
&
I.A. No. 63 of 2022(SZ), I.A. No. 114 of 2022(SZ) &
I.A. No. 143 of 2022(SZ)
(Through Video Conference)

IN THE MATTER OF

1. A Krishna,

Room No. 12, 2nd Floor,
Lakshmi Building Old No.11/6, New No, 14,
J C Road, Bangalore – 560002.

2. Antony Clement Rubin,

No. 18, E Block, VGN Imperia Phase 1,
3d Main road, VGN Mahalakshmi Nagar,
Thi ruverkadu, Chennai - 600 077.

3. Saravanan,

No. 30, Urur Kuppam,
Besant Nagar, Chennai - 90

...Applicant(s)

Versus

1. Union OF India

Through the Secretary,
Ministry Of Environment Forest And
Climate Change, Government Of India
Indira Paryavaran Bhawan, Jor Bagh
New Delhi - 110003.

2. Central Pollution Control Board

Through its Member Secretary,
Parivesh Bhawan, CBD- Cum Office Complex
East Arjun Nagar, Delhi -110032.

3. Kerala State Pollution Control Board

Through its Member Secretary,
Head Office, Pattom. P. O
Thiruvananthapuram - 695004.

4. Tamilnadu State Pollution Control Board

Through its Member Secretary,
76, Mount Salai,
Guindy, Chennai - 600032

5. Andhra Pradesh State Pollution Control Board

Through its Member Secretary,
D.No. 33-26-14 D/2, Near Sunrise Hospital,
Pushpa Hotel Centre, Chalamalavari Street,
Kasturibaipet, Vijayawada - 520 010.

6. Karnataka State Pollution Control Board

Through its Member Secretary,
Parisara Bhavan, No #49,
Church Street, Bengaluru – 560001.

7. Puducherry Pollution Control Committee

Through its Member Secretary,
III Floor, PHB Building, Anna Nagar, Pududerry-5.

8. Urban Development & Local Self Government (UD&LSG),

STATE OF KERALA
Through its Additional Chief (UD & LSGD),
Room No. 404, 4th Floor, Govt. Secretariat (Annexe),
Thiruvananthapuram – 695001.

9. Housing And Urban Development

DEPARTMENT, STATE OF TAMIL NADU
Through the Principal Secretary,
Namakkal Kavignar Maaligai,
Fort St. George, Chennai - 500009.

10. Municipal Administration And Urban

DEVELOPMENT DEPARTMENT, STATE OF ANDHRA PRADESH
Through the Special Chief Secretary to Government,
MA&UD Department, 2nd Block,
P. Secretariat, Velagapudi,
Andhra Pradesh – 522237.

11. Urban Development Department, State Of Karnataka

Through the Secretary,
Room No.436, Vikasa Soudha, Bangalore.

12. Tetra pak india pvt. Ltd

Managing Director,
16th Hoor, Building No. 5C, DLF Epitome,
DLF Cyber City, Gurugram,
Haryana-12002.

13. Uflex Ltd.

Managing Director,
305, Third floor, Bhanot Comer,
Pamposh Enclave, GK I - 110048, New Delhi, India.

14. State Of Telangana

Through the Chief Secretary,
5th Floor, Burgula Rama Krishna Rao Bhavan, NH44,
Hill Fort, Adarsh Nagar,
Hyderabad, Telangana - 500063.

15. Environment, forests, science & Technology department, telangana

Through Principal Secretary For Environment, Telangana,
Telangana State Secretariat, Hyderabad.

16. Telangana State Poltution Control Board

Through the Member Secretary
A-3 Paryavaran Bhavan,
Sanath Nagar Rd, Sanath Nagar Industrial Estate,
Hyderabad, Telangana - 500018.

17. Municipal administration & urban development, Department of telangana

Through Special Chief Secretary,

3rd to 5th Floors, 640, DT & CP Building, Ac Guards,
Hyderabad - 500004, Opposite PTI Building.

18. State Of Kerala

Through the Chief Secretary,
Government Secretariat, MG Road, Palayam,
Thiruvananthapuram, Kerala - 695001.

19. Secretary For Environment, Kerala

Directorate of Environment and Climate Change (DoECC)
4th Floor, K.S.R.T.C Bus Terminal, Thampanoor,
Thiruvananthapuram - 695001.

20. State Of Tamilnadu

Through the Chief Secretary,
Government Secretariat, Fort St. George,
Chennai - 600009.

**21. Department of environment, climate change and
Forests, government of tamil nadu**

Through Principal Secretary For Environment, Tamil Nadu
Government Secretariat, Fort St. George,
Chennai - 600009.

22. State Of Karnataka

Through the Chief Secretary,
Room No. 320, 3d Floor, Vidhanasoudha,
Bengaluru, Kanataka - 560001.

**23. Environment and ecology department, karnataka
Government**

Through Principal Secretary For Environment, Karnataka,
Secretariat, Room No. 442, Gate No. 2, M. S.
Building, Bangalore-560001.

24. State Of Andhra Pradesh

Through the Chief Secretary,
1st Block, 1st Floor, Interim Government Complex,
A.P. Secretariat Office, Velagapudi.

**25. Environment, forest science and technology
Department,**

Through Special Chief Secretary for Environment,
Andhra Pradesh, Block 4, First Floor, Secretariat, Velgapudi,
Guntur Distrct-522503.

...Respondent(s)

For Applicant(s):

Mr. Ritwick Dutta, Mr. Rahul Choudhary &
Mr. G. Stanly Hebzon Singh.

For Respondent(s):

Mr. Meyappan represented Mrs. M.E.
Sarashwathy for R1.
Mr. D. S. Ekambaram along with Mrs. P.
Jayalakshmi for R2.
Mrs. Remasrimithi along with Ms. Nivedita S
Menon for R3.

Mr. Sai Sathya Jith for R4.
Mrs. Madhuri Donti Reddy for R5, R10, R24 & R25.
Mr. Nishanth represented Mr. Gokul Krishnan for R6.
Mr. G. Vignesh represented
Mr. E.K. Kumaresan for R8, R18 & R19.
Dr. D. Shanmuganathan for R9, R20 & R21.
Mr. Sathish Parasaran, Senior Counsel along with Mr. Sridhar Potaraju & Mr. Ritwika Nanda for R12.
Mr. Raju Ramachandran, Senior Counsel along with M/s. Arun K. Sinha, Mr. M. Vasanthakumar & Mr. W. Clement Jonathan Ivan for R13/I.A
Ms. Lavanya represented Mr. T. Sai Krishnan for R16.
Ms. A. Sathyabhama for R7.

Judgment Reserved on: 24th March, 2023

Judgment Pronounced on: 10th August, 2023

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member

1. The applicants with the hope that the shiny cover in which many of the ready to eat snacks, juices, mouth fresheners etc., are being sold in which multi layered plastic is used should no longer add to environmental pollution have filed the above Original Application seeking direction to the official respondents to implement Clause 9(3) of the Plastic Waste Management Rules, 2016 as amended in 2018 and phase out multi layer plastic as they are not recyclable, not energy recoverable and do not have an alternative use.

2. A regulatory framework for management of plastic management generated in the country was provided by the Plastic Waste Management and Handling Rules, 2011 by the Government of India. To implement these rules more effectively and to give thrust on plastic waste minimization, source segregation, recycling, involving waste pickers, recyclers and waste processors in collection of plastic waste fraction either from households or any other source of its generation or intermediate material recovery facility and adopt polluter pay principle for the sustainability of the waste management system were introduced. The Government of India had reviewed the existing rules and brought out the Plastic Waste Management Rules, 2016.

3. In this Original Application, the applicants are seeking regulation of multi layered plastic (for short 'MLP') to be phased out in two years time as provided in Rule 9(3) of the Plastic Waste Management Rules, 2016. The Plastic Waste Management Amendment Rules, 2018 added the MLP to the list of plastic which was expected to be phased out. These MLP packets are one of the few materials which are non-recyclable, non energy recoverable or with no alternate use.

4. According to the applicants, the list of single use plastic items which were banned is not comprehensive as it did not include the MLP which is concern when it comes to plastic contamination. Even while managing the solid waste, the ban on single use plastic is not comprehensive as it does not include many of the single use plastics used every day. While so, the non inclusion of the MLP is also equally harmful as the same is used in all the fast moving

consumer goods. Going by the definition as per Section 3(N) of the Plastic Waste Management Rules, 2016 multi-layered packaging means:

"multi-layered packaging means any material used or to be used for packaging and having at least one layer of plastic as the main ingredients in combination with one or more layers of materials such as paper, paper board, polymeric materials, metallised layers or aluminium foil, either in the form of a laminate or co-extruded structures".

5. As the definition goes there is one layer of plastic in the combination of other layers of various materials like paper etc which makes it impossible to collect and also impossible to process. The definition 3(h) speaks about the extended producer's responsibility which means:

"responsibility of a producer for the environmentally sound management of the product until the end of its life".

6. The above definition only means to say that the companies which manufacture the MLP or consume this material are required to take it back and send it for reprocessing. The producers would bear the full costs including environmental and social impacts. But whether the EPR which sounds interesting on paper is practical and is easy to implement. Rule 9 of the Plastic Waste Management Rules, 2016 fixes a responsibility on the producers of the MLP to collect the waste generated due to their products.

" 9. Responsibility of producers, Importers and Brand Owners.-

(1) The producers, within a period of six months from the date of publication of these rules, shall work out modalities for waste collection system based on Extended Producers Responsibility and involving State Urban Development Departments, either individually or collectively, through their own distribution channel or through the local body concerned.

(2) Primary responsibility for collection of used multi-layered plastic sachet or pouches or packaging is of Producers, Importers and Brand Owners who introduce the products in the market. They need to establish a system for collecting back the plastic waste generated due to their products. This plan of collection to be submitted to the State Pollution Control Boards

while applying for Consent to Establish or Operate or Renewal. The Brand Owners whose consent has been renewed before the notification of these rules shall submit such plan within one year from the date of notification of these rules and implement with two years thereafter.

(3) Manufacture and use of non-recyclable multilayered plastic, if any, should be phased out in two years time"

7. As per the above, the producers are responsible for collecting back the waste produced due to their product and make a plan of collection of such wastes. Such plan has to be submitted to the State Pollution Control Board when applying for 'Consent to Establish' or Operate or renewal. The responsibilities on the State Pollution Control Boards not to grant the consent unless they submit plan of collection of waste. The reasons being that there is no information about the quantity of the plastic material or the waste the company generates, it is only based on the self declaration which is also not made available in the public domain to access its accuracy.
8. In India, the major manufacturers and producers of MLP are respondent nos. 12 and 13. As per the information available UFlex Ltd/13th respondent, who is one of the manufacturer of MLP has capacity of 07 billion MLP packaging. The other producer, namely, the 12th respondent, Tetra Pak India Pvt., there are about 12.34 billion MLP packaging produced by the company. According to the applicant, as per the information collected by them from different sources, it is found that only about 3% of MLP are recycled. Further there is information with respect to the disposal of the MLP by way of energy recovery or alternative use. The applicant also has produced the details of the production and recycling of the same from the year 2017-18, 2018-19 and 2019-20. As per which the recycling rate of collected tetra packs are 3.31%, 2.84% and

2.2% respectively. On the basis of the above, it is stated that only negligible amount of MLP are being recycled which is going down year by year.

9. The applicant was able to gather the facts that there are about 04 recycling units in the country which claims to recycle the MLP in the Country and they are (1) ITC Papers, (2) Khateema Fibres, (3) Deluxe Recycling (India) Private Limited and (4) Eastern Cargo. However, it is stated that there are no recycling of domestic MLP waste in these recycling units. The above referred recycling units are mostly recycling the MLP which are imported and not one generated within the country. The 12th respondent has funded the above recycling units directly to dispose of the MLP waste which are not collected within the country but imported from outside which is evident from the CSR document of the 12th respondent which clearly states that they directly funded the recycling units for the purpose of recycling.
10. According to the applicants, non recycling nature of the MLP is increasing the pollution in other countries as well and he had produced the articles published in various magazines. Even if there are technologies to separate the layer of MLP to make it recyclable those technologies involve complex scientific procedure which has not been tried on large scale and are only theoretically possible.
11. It is alleged that the MLP are not used for energy recovery in the country because of the structure of the MLP which contains plastic, paper and also contains aluminium, it is difficult to use in waste to energy plant or in incinerator without hugely polluting the

environment. If MLP wastes are burnt the toxic substances released are carcinogenic in nature and the remaining fly ash will also be highly toxic to dispose of in landfill. The burning of plastic releases toxic gases like dioxins, furans, mercury and polychlorinated biphenyls into the atmosphere and poses a threat to the vegetation, human and animal health.

12. MLP also do not have any alternate use because they are non-recyclable in nature. The conversion of MLP into chairs and benches is not done at the market level. Therefore, the production, usage and disposal of MLP in the country is causing irreparable damage to the environment and the phasing out of the production and usage of MLP in the country will improve the issue of worsening the waste problem in the country.

13. The applicant is now seeking to implement Clause 9(3) of the Plastic Waste Management Rules, 2016 to phase out the MLP which are not recyclable, non energy recoverable and also does not have an alternative use on the grounds that:

- (i) The recycling of MLP in India is not commercially viable because of the structure of the MLP.
- (ii) There is no information or evidence to suggest that any technology in India can be used to separate the layers of MLP to make it recyclable.
- (iii) Even If technological support is available, these technologies involve complex scientific procedures which are not being tried practically.
- (iv) As the MLPs are not recyclable, it is not even collected by the rag pickers, which has got no money value.
- (v) The MLP cannot be used in the energy recovery because of its structure that it not only contain plastic and paper but also contains aluminium and it is difficult to use in waste to

energy plant and in incinerator which would result in pollution.

- (vi) Additionally when there is no waste segregation done at source, it is difficult to use the same for energy conversion.

14. In response to the application, **MoEF&CC, who is the 1st respondent**, stated that in the plastic Waste Management Rules, 2018 which was notified on 27.03.2018 they have introduced a definition of 'alternate use' and 'energy recovery'.

Rule 3(ab) 'alternate use' means use of a material for a purpose other than for which it was conceived which is beneficial because it promotes resource efficiency.

Rule 3(ga) defines 'energy recovery' which means energy recovery from waste that is conversion of waste material into usable heat, electricity or fuel through a variety of processes including combustion, gasification, pyrolysis, anaerobic digestion and land fill gas recovery.

15. Rule 12 speaks about the prescribed authorities which is the State Pollution Control Board or the Pollution Control Committee of Union Territory, who will be the authority for enforcement of these rules relating to registration, manufacture of plastic products, MLP, processing and disposal of plastic waste. Similarly, the concerned Secretary, incharge, the concerned Gram Panchayat shall be the authorities for enforcement of the provisions, who shall take assistance of the District Magistrate or the Deputy Commissioner within the territorial limits of the jurisdiction of the concerned districts in the enforcement of the provisions of these rules.

16. There is also a State Level Monitoring Committee as per Rule 16 constituted by the concerned State Government or Union Administration for effective monitoring of implementation of these rules. The MoEF&CC has further stated that all MLP made in the country are either recyclable or energy recoverable or have

alternate use and as such may not require to be phased out. Further, information is also sought from the Central Pollution Control Board in this regard.

17. Regarding the import of the MLP, MoEF&CC has stated that the same is regulated by Hazardous and Other Wastes (Management and Transboundary) Rules, 2016. The import of plastic waste is prohibited in the country except for specific type of plastic waste subject to the conditions prescribed in Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
18. **The Central Pollution Control Board, who is the 2nd respondent, has filed its reply** touching upon the non-compliance of Rule 9 of the Plastic Waste Management Rules, 2016 in the State of Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Telengana and Union Territory Puducherry. The Central Pollution Control Board relied on Rule 17(3) of the Plastic Waste Management Rules, to state that the State Pollution Control Boards are required to file their annual report to the Central Pollution Control Board in Form-VI of the annual report in which the number of MLP manufacturing units in their respective State or UT had to be provided. The Central Pollution Control Board has not specifically mentioned about the States which are shown as respondents in this application. However, including them, it has mentioned that of the 17 States a total number of 297 MLP manufacturing units are registered in their States. As per Rule 13(2) every producer or brand owner for the purpose of registration or for renewal of registration make an application in Form-I to the concerned State Pollution Control Board, if they are

operating in one State or Union Territory. With the Central Pollution Control Board if they are operating in more than two States or Union Territories.

19. As per Rule 13(2), the units are to provide the action plan for fulfilling the extended producer responsibility for collection and processing of the plastic waste introduced by them in the market. The Central Pollution Control Board has further stated that there are guidelines prepared for the disposal of non-recyclable fraction (MLP waste) which is available on their website. As per this respondent, respondent nos. 12 and 13 as brand owners/producers have not registered with Central Pollution Control Board so far. The Central Pollution Control Board also had produced the notification GSR 133(E) dated 16.02.2022 which further amended the Plastic Waste Management Rules, 2016. As per this notification, the extended producer responsibility shall be applicable to both pre-consumer and post-consumer plastic packaging waste. These guidelines provide framework for implementation of extended producer responsibility. The said guidelines also provide roles and responsibility of producers, importers, brand owners, Central Pollution Control Board and State Pollution Control Board or Pollution Control Committee, recyclers and waste processors for effective implementation of the extended producer responsibility. By this amendment dated 16.02.2022 in the Plastic Waste Management Rules, 2016 in Rule 9 in Sub-Rule 1 for the words as per guidelines issued under this rules from time to time. The words "as per guidelines specified in Schedule-II shall be substituted".

20. In other words, the Schedule-II is added to the notification which has introduced definitions in Rule 3 which are as follows:

3. Definitions:

(a) —*Biodegradable plastics* means that plastics, other than compostable plastics, which undergoes complete degradation by biological processes under ambient environment (terrestrial or in water) conditions, in specified time periods, without leaving any micro plastics, or visible, distinguishable or toxic residue, which have adverse environment impacts, adhering to laid down standards of Bureau of Indian Standards and certified by Central Pollution Control Board.

(b) "Brand Owner" means a person or company who sells any commodity under a registered brand label or trade mark;

(c) —*Carry Bags* (covered under Category II of plastic packaging – Clause (5.1) (II)) means bags made from plastic material or compostable plastic material, used for the purpose of carrying or dispensing commodities which have a self-carrying feature but do not include bags that constitute or form an integral part of the packaging in which goods are sealed prior to use ;

(d) —*End of Life disposal* means using plastic waste for generation of energy and includes co-processing (e.g. in cement kilns) or waste to oil or for road construction as per Indian Road Congress guidelines, etc;

(e) —*Extended Producer Responsibility* means the responsibility of a producer for the environmentally sound management of the product until the end of its life;

(f) —*Importer* means a person who imports plastic packaging product or products with plastic packaging or carry bags or multilayered packaging or plastic sheets or like;

(g) —*Plastic* means material which contains as an essential ingredient a high polymer such as polyethylene terephthalate, high density polyethylene, Vinyl, low density polyethylene, polypropylene, polystyrene resins, multimaterials like acrylonitrile butadiene styrene, polyphenylene oxide, polycarbonate, polybutylene terephthalate;

(h) —*Plastic Packaging* means packaging material made by using plastics for protecting, preserving, storing and transporting of products in a variety of ways.

(i) —*Plastic Sheet* means plastic sheet is the sheet made of plastic;

(j) —*Plastic Waste Processors* means recyclers and entities engaged in using plastic waste for energy (waste to energy), and converting it to oil (waste to oil), industrial composting.

(k) —*Pre-consumer plastic packaging waste* means plastic packaging waste generated in the form of reject or discard at the stage of manufacturing of plastic packaging and plastic packaging waste generated during the packaging of product including reject, discard, before the plastic packaging reaches the end-use consumer of the product.

(l) —*Post-consumer plastic packaging waste* means plastic packaging waste generated by the end-use consumer after the intended use of packaging is completed and is no longer being used for its intended purpose.

(m) —*Producer* means person engaged in manufacture or import of carry bags or multilayered packaging or plastic sheets or like, and includes industries or individuals using plastic sheets or like or covers made of plastic sheets or multilayered packaging for packaging or wrapping the commodity;

(n) —*Recyclers* are entities who are engaged in the process of recycling of plastic waste;

(o) "Recycling" means the process of transforming segregated plastic waste into a new product or raw material for producing new products;

(p) —Reuse means using an object or resource material again for either the same purpose or another purpose without changing the object's structure;

(q) —Use of recycled plastic means recycled plastic, instead of virgin plastic, is used as raw material in the manufacturing process;

(r) —Waste Management means the collection, storage, transportation reduction, re-use, recovery, recycling, composting or disposal of plastic waste in an environmentally sound manner;

(s) —Waste to Energy means using plastic waste for generation of energy and includes co-processing (e.g. in cement kilns)

21. The Schedule-II defines biodegradable plastics, brand owners, carry bags, end of life disposal etc. The coverage of the extended producer responsibility is also categorised and in Category-III MLP packing (at least one layer of plastic and at least one layer of material of plastic is included) this has to be read in consonance with Rule 9(3).

22. So far as the **Kerala State is concerned, there were reports from the Pollution Control Board** as well as the local Self Government Department which has stated that regarding the disposal of MLP/other recyclables, Clean Kerala Company Ltd., entered into an agreement with M/s MRM Eco Solutions Pvt. Ltd., Kozhikode in November, 2021. The consent for waste processing unit by M/s Bharat Polyworld, Gujarat is also produced along with the agreement. The said Clean Kerala Company reported that a total quantity of 135.15 tonnes of MLP has been transferred to MRM Eco Solutions, Pvt. Ltd. A copy of the report is also submitted. Some local bodies are disposing plastic waste through private agency.

23. The Kerala Government also has stated that some brand owners have furnished the report to the Board. However, it is stated that the authenticity of these reports cannot be ascertained as the

required details of collection by the local body, mode of collection and transportation from the local body and the quantity collected, the quantity treated in the recycling unit were all not submitted by the brand owner.

24. A perusal of the details pertaining to collection and disposal of MLP from the reports of the brand owners during 2020-2021 and 2021-2022 go to show that several tonnes of MLPs were collected but the mode of disposal is not shown as it is not made known to them.

25. So far **as the Tamil Nadu is concerned, the Pollution Control Board has filed a report** which states that all the producers, importer and brand owners (PIBOs) are being insisted to register under the provisions of the extended producer responsibility so as to monitor the generation and disposal of plastic packaging. Of the above 04 numbers of producers of MLP packaging units have applied for registration under the extended producers responsibility. However, the particulars of the producers are not furnished. As per the notified guidelines of the Central Pollution Control Board, non-recyclable fraction i.e. MLP waste can be disposed of in cement plants. Accordingly, the local bodies are collecting the plastic waste including MLP along with other solid waste. The collected wastes are transported to material recovery facilities by the corresponding local bodies and the wastes are segregated accordingly. The plastic wastes are further segregated into recyclable and non-recyclable plastic waste including MLP. The recyclable plastic waste is sent to the recyclers and the non-recyclable plastic waste is sent to co-processing in cement kilns.

26. It is further reported that of the total quantity of plastic waste generated in the State of Tamil Nadu which is 3,97,387 tons, 3,75,310 tons of plastic wastes are collected by the local bodies. In the said collected waste, 54,124 tons of plastic wastes were sent to cement industries for co-processing in cement kilns.

27. The **State of Karnataka through its Pollution Control Board** has filed a report stating that the Karnataka Pollution Control Board issued notices to the identified brand owners for registration to comply with the extended producer responsibility under the Plastic Waste Management Rules, 2016. Besides, the Karnataka State Pollution Control Board also had issued notices to more than 350 identified brand owners. Interactive meetings were also held with major brand owners of the plastic packaging materials to check their compliances of EPR obligation under the Plastic Waste Management Rules.

28. The Karnataka Pollution Control Board has also directed all the regional offices for inspection, verification and submissions of details pertaining to MSME plastic manufacturing units furnished by the Central Pollution Control Board. There is nothing specific mentioned about the MPL and how they are treated and whether the producers, importers and brand owners are following the Rule 9 of the Plastic Waste Management Rules, 2016.

29. The **Andhra Pradesh Pollution Control Board has also filed its report.** State Pollution Control Board stated that instructions were issued to the urban local bodies to send non-recyclable plastic waste to the nearby cement plants and so far as 920 MT of

non-recyclable plastic waste has been sent to the cement plants so far. Instructions are also said to be issued to 41 of the urban local bodies who are within 100 km radius to the waste to energy plant to send combustible dry waste to the waste to energy plants.

30. The Andhra Pradesh Pollution Control Board has specifically stated that no MLP sachets or pouches or packaging producers existing in Andhra Pradesh. However, instructions were issued to all the urban local bodies to seek assistance of the producers and such system shall be set up within one year from the date of final publication of these rules in the official Gazette of India. If any brand owner or producers are operating without registration from Andhra Pradesh Pollution Control Board they shall take action against the defaulting units as per the provisions of the Plastic Waste Management Rules, 2016 as amended from time to time.

31. Similarly, the **State of Telengana Pollution Control Board** also has filed its report dated 09.12.2022. While agreeing with the MLP has to be phased out in 02 years. The State of Telengana has stated that there are 12 units of MLPs for which they have issued consents and EPR authorisation and also furnished the list of the same.

32. Finally, **the Puducherry Pollution Control Committee** filed its report stating that three MLP manufacturing units are functioning in Union Territory of Puducherry for whom the consent to establish issued under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and registration issued under Plastic Waste Management Rules, 2016.

33. The said two units, who were issued with the consent by the Pollution Control Board, they are manufacturing 2 and 3 layers of MLP products consisting of Polyester film and polyethylene for 02 layers MLP and polyester film, metalized polystyrene and polyethylene layers for 03 layers MLP. One M/s Amcor Flexibles India Pvt. Ltd., is indulging in single layer of MLP. Both the referred units registered with them have submitted the extended producer responsibility, EPR based action plan for collection and scientific disposal of their plastic waste.

34. The three types of MLP wastes generated from these units are (i) laminated plastic waste like biscuit cover, (ii) metalized plastic waste like shampoo sachet and (iii) aluminium foil contains plastic waste like coffee packs and other air tight packs. One of the companies is converting non-aluminium foil MLP waste into granules and lumps and block which are used for manufacturing value added products like rope, door, pavers and flexible hose. The said unit has also imported aluminium extraction machinery and extracting aluminium metal from aluminium foil embedded in the MLP waste. The extracted aluminium powder is proposed to send to firework units and Aluminium channel manufacturing units.

35. The other unit, namely, M/s Aparna Paper Processing Industry (P) Limited which generates MLP is disposed through M/s Sri Lakshmi Plastics, Puducherry who had obtained consent to establish and registration from Puducherry Pollution Control Committee. The said Sri Lakshmi Plastic is converting MLP waste into laminated plastic waste and metalized plastic waste into granules and blocks

and selling to value added products manufacturing units. The two of the plastic waste reprocessing units, namely, M/s Padma Polymers and M/s Sri Lakshmi Plastics had obtained registration under the Plastic Waste Management Rules, 2016 and submitting annual report which are also furnished along with the report. Accordingly, the Puducherry Pollution Control Committee has submitted that MLP wastes generated from the manufacturing units are being recycled and energy recovered through co-processing in the Union Territory of Puducherry.

36. It is also stated that the Puducherry Pollution Control Committee is periodically inspecting MLP manufacturing units and MLP recycling units and ensuring its scientific disposal without affecting environment.

37. **The 12th respondent** denying the facts stated in the application in support of the cause of action for filing the application has filed its reply. It is stated that the aseptic carton packaging of the 12th respondent has become the packaging of choice for many consumers of beverages as it is tamper proof and many of the States are using it for the sale of liquor, the sale in glass bottles have posed a mortal danger of adulterated or spurious alcoholic beverages. Besides that the primordial objection of the 12th respondent is that it has no manufacturing plant located within the States of Kerala, Tamil Nadu, Andhra Pradesh, Karnataka or Telengana the States which come under the purview of National Green Tribunal, Southern Zone. The 12th respondent has one plant in India at Chakan, Maharashtra and which is subject to jurisdiction of Maharashtra Pollution Control Board.

38. Secondly, it is further stated that the application itself is motivated as similar applications on the same allegations were filed before the Tribunal of which the applicants have knowledge. In O.A. No. 15 of 2014 in National Green Tribunal, Principal Bench, wherein the 12th respondent was a party and it was decided on 08.01.2021. The order passed in the said Original Application is now under challenge before the Hon'ble Supreme Court of India in C.A. No. 2314 of 2021 which is pending adjudication.

39. Thirdly, the applicant has got no cause of action against the 12th respondent except stating that the 12th respondent is manufacturing large amount of multi-layered cartons which are completely non-recyclable and harmful to the environment and in violation of Rule 9(3) of the Plastic Waste Management Rules, 2016.

40. Pursuant to the order passed in O.A. NO. 15 of 2014, O.A. No. 247 of 2017 and O.A. No. 990 of 2017, the MoEF&CC vide notification dated 16.02.2022 issued guidelines relating to extended producer responsibility of the producers, importer and brand owners. As per which the targets and obligations for each category of plastic packaging have been laid down including the obligation for recycling by the producer. According to the 12th respondent, in view of the above notification of MoEF&CC, there exists no cause of action against them. Hence the application is liable to be dismissed.

41. According to the 12th respondent, its carton packaging is in fact paper based aseptic carton which is fully recyclable and

increasingly being recycled in India. The paper based aseptic carton of the 12th respondent are not to be confused with MLP used in chips pack and shampoo sachets which are difficult to collect and recycle. It is stated that a separate international HSN code has been assigned for aseptic packaging paper that differentiates aseptic packaging paper such as tetra pack packaging material from MLP which has got a separate HSN code.

42. It is claimed that the 12th respondent company is there for many decades in the India market complying with all the applicable health and food safety standards and environmental requirements as prescribed by the various statutory and other Government authorities of India. According to it, the paper based aseptic carton is different and distinct from MLP and widely recognised as such in various laws rules and regulations. While admitting that the Plastic Waste Management Rules, 2016 as amended in 2018 directed phasing out of manufacture and use of non-recyclable MLP by March, 2020 the aseptic paper based carton packaging used by the 12th respondent is recyclable and increasingly being recycled in India unlike MLP. But the Plastic Waste Management Rules, 2016 defines MLP as any material used or to be used for packaging and having at least one layer of plastic as a main ingredient in combination with one or more layer of materials such as paper, paper board, polymeric materials, metalized layers or aluminium foil, either in the form of a laminate or co-extruded structure. Thus the Plastic Waste Management Rules definition includes all formats of plastic packaging including MLP such as metalized plastics used for chips packages and shampoo sachets. It is

claimed that unlike paper based cartons such as tetra pack carton packages, MLP are difficult to collect and recycle.

43. The 12th respondent also relied on the notification dated 30.06.2018 issued by the Maharashtra Government to include the definition of paper based carton packaging using one layer of plastic while also defining the MLP as a separate category from paper based carton packaging. It is stated that in respect of Plastic Waste Management Rules, 2016 certain provisions were inserted into the Maharashtra Plastic and Thermocol Products (Manufacture, Usage, Sale, transport, handling and Storage) Notification, 2018 dated 23.03.2018. Therefore, it is submitted that the Maharashtra Government recognizes non-recyclable multi-layered plastic and paper based carton packaging material as different and distinct categories. The 12th respondent also placed reliance on the Expert Committee report filed in O.A. No. 15 of 2014 but admittedly the Judgement based on the said report is under challenge before the Hon'ble Supreme Court.

44. Regarding the recyclability of the 12th respondent paper based material and its recycling eco-system, it is stated that the company identified recyclers to purchase used paper based cartons and recycle them into numerous value added products. It states that automobiles industries like Bajaj Autos and TVS motors are using the recycled tetra pack carton based chipboard for vehicle seating applications.

45. The 12th respondent also has denied all the grounds raised by the applicant in support of his case and was emphatic in saying that

their company's carton paper is a paper based which is fully recyclable and increasingly being recycled in India. Hence the same should not be confused with MLP which are difficult to recycle. Thus, prayed for dismissal of the application.

46. **The 13th respondent** is also manufacturing aseptic packaging paper having 21% of MLP which is fully recyclable and energy recoverable and therefore, it is claimed that there is no violation of Rule 9(3) of the Plastic Waste Management Rules, 2016. The 13th respondent also has produced certificate of registration for units engaged in processing or recycling of plastic waste from Gujarat Pollution Control Board. A certificate granted by Deluxe Recycling to Asepto packaging and consent granted to Deluxe Recycling by Maharashtra Pollution Control Board. It is stated that the product in question is aseptic packaging paper which is known in the international market as aseptic laminated packaging and has been found to be recyclable. The paper part can be recycled to make paper packaging and the plastic and aluminium foil parts can be recycled to make composite material for building construction.

47. The 13th respondent had further submitted that the aseptic packaging paper made by them does not contain plastic as a main ingredient as per the definition of the MLP as defined in the Rule 3(n) of the Plastic Waste Management Rules, 2016. The Aseptic packaging material, which is the product comes under the brand name Asepto, contains paper as the main ingredient in the following constitution: paper 73%, MLP 21% and Aluminium 6%. The above ratio according to the 13th respondent makes it clear that the main ingredient is not plastic but only paper.

48. It is also further stated that there is a functional difference between aseptic paper and MLP. The word "creased" used in the definition also provides a clear-cut differentiation between the aseptic packaging material and MLP packaging wherein the function of the creasing is to enable the formation of packaging containers, unlike in MLP pouches. Even presuming that the aseptic paper has to be treated as a plastic, it is having more than 300 microns. Hence, it is exempted under the notification. It is further stated that many types of MLP packaging are totally eco-friendly being fully recyclable and biodegradable.

49. The endeavour of the applicants is to implement the Clause 9(3) of Plastic Waste Management Rules, 2016 as amended in 2018 and further amended in 2021 and 2022 and accordingly phase out MLP since they are non-recyclable, not energy recoverable and not have an alternate use and to take further action against the respondents who do not comply with the said rules.

Jurisdiction

50. The present application is filed for implementing the Rule 9 of the Plastic Waste Management Rules, 2016 in the States of Kerala, Tamil Nadu, Andhra Pradesh, Karnataka and Telangana and also the Union Territory of Puducherry. Though, the manufacturing process of the respondent nos. 12 and 13 are outside the jurisdiction of the Southern Bench. The application pertains only to usage, disposal and waste production taking place in the above referred States. The application is questioning only the implementation of Rule 9(3) in the States coming within the

purview of the Southern Bench of National Green Tribunal regarding the disposal and recyclability of the MLP containing materials. Hence, this Bench has got the jurisdiction.

51. A similar case is pending before the Hon'ble Supreme Court. It is not in dispute that earlier O.A. No. 15 of 2014 was filed for restriction on use of plastic bottles and MLP or packaging of carbonated soft drinks, liquor and other items in view of the adverse impact of such packaging on the environment and the public health. The direction given therein was to the FSSAI officials to finalise the draft regulations mentioned within three months which may be enforced and monitored through a credible monitoring mechanism.

52. Admittedly, the said order is under challenge before the Hon'ble Supreme Court. The said O.A. No. 15 of 2014 was filed raising concerns about the improper plastic waste management and its impact on human health. But present case is concerned, there appears to be an amendment to the Plastic Waste Management rules in the year 2022 which provides an extension on the provisions of extended producer responsibility. As per the amendment, the EPR in category-III MLP packaging fixed up to 100% up to 2023-24 and obligation of producers, importers and brand owners in category-III, MLP fixed up to 2027-2028 onwards. However, the EPR have been a part of the Plastic Waste Management Rules since 2011 which was amended from time to time and last of its amendment came in the year 2022. Therefore, it is not a new obligation that was imposed on the EPRs but it was

there even from the promulgation of the Plastic Waste Management Rules in the year 2011 itself.

53. To be noted is that the Rule 9(3) of the Plastic Waste Management Rules amended in the year 2018 was not disturbed till today. The said provision states:

"1....

2.....

3) Manufacture and use of non- recyclable multilayered plastic which is non-recyclable or non energy recoverable or with no alternate use of plastic, if any should be phased out in Two years time".

54. The 12th respondent has placed his reliance on the notification dated 30.06.2018 of the Maharashtra Government and the information provided by the Maharashtra Pollution Control Board, HSN code and BIS standards that the product produced by the 12th respondent is not MLP but it is only a paper based aseptic carton. The MLP is defined in Rule 3(o) which reads as follows:

"multilayered packaging" means any material used or to be used for packaging and having at least one layer of plastic as the main ingredients in combination with one or more layers of materials such as paper, paper board, polymeric materials, metalised layers or aluminium foil, either in the form of a laminate or co-extruded structure;"

55. Rule 9(3) refers to the said MLP which is non recyclable or non energy recoverable or with no alternate use should be phased out in two years time. However, in the GSR No. 133(E) where the amendment to the Rules was brought on 16.02.2022, the coverage of extended producer responsibility was categorised into four categories. The 3rd category reads:

"MLP packaging (at least one layer of plastic and at least one layer of material other than plastic).

56. This has to be read along with definition 3(o) which means that even if there is one layer of plastic it is MLP packaging. Therefore, the definition of MLP packaging makes plastics as main ingredient in combination with other materials.

57. Learned Counsel quoted **Travancore Rayons Ltd. Vs Union of India and ors, 1985 (19) ELT 354 Del** to support his contention that the term main ingredient has to be interpreted as the essential ingredient in the product. The plastic is essential for the manufacturing of any kind of MLP packaging and therefore, forms the main ingredient of the product. The products produced by respondent nos. 12 and 13 have plastic as the main ingredient because without the use of plastic in these products, the product will lose its utility that only plastic can provide. The plastic forms 04 out of 06 layers of the product and paper forms only one layer, therefore, not categorising as tetra pack packaging in MLP will in violation of the definition given under 2018 Rules.

58. The MLP is used for the reason that it provides freshness to the product stored inside, reduces air contact and is leak proof. The above features are possible only because plastic forms the part of the packaging, if plastic is removed from the composition, MLP will lose its structure. Therefore, plastic forms a main ingredient in MLP.

59. For instance, a wrapper of a chips packet or a biscuit packet once discarded will stay in the environment forever because there is no plan to meet the extended producer responsibility to retrieve it from the open. Even the Government do not have a clue as to how

to deal with these packets which go to the garbage dump and are indestructible. These wrappers are made of MLP and these MLPs have two sheets of plastics enclosing a layer of aluminium but technically MLP can be any material that has at least one layer of plastic. The volume of such waste which may be due to the law of segregation and lack of continuous supply of MLP to the industries, it is not recycled. The Plastic Waste Management Rules, 2016 was introduced, Rule 9(3) mandated that phasing out of the non-recyclable MLP should be done in two years. However, the 1st amendment came in the year 2018.

60. In the said amendment "non recyclable multi-layered plastic" was substituted with "multi-layered plastic which is non-recyclable or non-energy recoverable or with no alternate use". This is now taken advantage by the producers by claiming that the packaging material, if not recycled can be put to some other use. The said amendment was being exploited by the MLP manufacturers and they continue to use the material. Though, the 2016 have mandated all these producers to practice EPR and recover the MLP which they used to package their products. So far as the recovery is concerned, there is no minimum percentage of the waste fixed to be retrieved. In other words, the manufacturers can continue to use MLP even if they recover or retrieve only 01% of what they sent into the market. As there was no criteria prescribed in the rules and also that the manufacturers cannot do that without MLP, the effective implementation of the rules has become impossible.

61. Yet another reason given by the manufacturers is that the climatic conditions of tropical India where the humidity is very high. But for

the MLP which is used in these packaging materials, the moisture and the gas transmission during the increase in temperature cannot be controlled. Therefore, this is a time to look for a material to match the performance of the MLP and make it available in the market. The 2021 amendment to the Plastic Waste Management Rules introduced definition N(a) which defines 'non-woven plastic bag' as follows:

"(na) "Non-woven plastic bag" means Non-woven plastic bag made up of plastic sheet or web structured fabric of entangled plastic fibers or filaments (and by perforating films) bonded together by mechanical or thermal or chemical means, and the "non-woven fabric" means a flat or tufted porous sheet that is made directly from plastic fibres, molten plastic or plastic films;"

62. The guidelines on extended producer responsibility for plastic packaging issued on 16.02.2022 defines also "Biodegradable Plastics" which means:

"(a) —Biodegradable plasticsII means that plastics, other than compostable plastics, which undergoes complete degradation by biological processes under ambient environment (terrestrial or in water) conditions, in specified time periods, without leaving any micro plastics, or visible, distinguishable or toxic residue, which have adverse environment impacts, adhering to laid down standards of Bureau of Indian Standards and certified by Central Pollution Control Board".

63. Whether, the above referred biodegradable plastic can be substituted for the non-degradable MLP. Whether the MLP used is collected and sent to processing units after segregation also has to be addressed. This can be done only by the MoEF&CC and the Pollution Control Boards by framing comprehensive EPR policy with clear responsibilities of all the stakeholders throughout the life cycle of MLP.

64. Though, there are no proven industrial solution for tackling MLP, the report filed by the Puducherry Pollution Control Committee

speaks about the imported aluminium extraction machinery for extracting aluminium metal from aluminium foil embedded in the MLP waste. The extracted powdered is proposed to be sent to fire work units and Aluminium channel manufacturing units.

65. Similarly, M/s Lakshmi Plastics in Puducherry is converting MLP into laminated plastic waste and metalized plastic waste into granules and blocks and selling to value added products manufacturing units etc.

66. From the report of the Puducherry Pollution Control Committee, it appears that there is coordination between the MLP manufacturers and MLP recycling /reprocessing units and the proper scientific disposal without affecting the environment is being ensured. The above arrangement in Puducherry appears to be very encouraging and there is a need for scaling up such initiatives. The Urban Local Bodies where the usage of MLP is very common should either consider establishing such units on their own or under PPP model either in the compost yard or very close to the compost yard so that there will be a seamless supply of MLP for such units.

67. As part of their Extended Producer Responsibility, the producer of MLP as well as the companies which are using this for packaging their products should collaborate with the Urban Local Bodies to begin with for establishment of such units.

68. Unless the EPR policy is made rigid, collecting of MLP will become too tedious. In this regard, the producers have to come up with

ideas of alternatives to MLP rather than trying to take shelter under the amendment clauses.

69. Albeit, it is not possible to have a blanket ban of non-recyclable multilayer plastic which would be disruptive for the industries. However, trying to take shelter under the extension granted by the MoEF&CC will not augur wells for finding a lasting solution to the vexatious problem. As on date there is no effective mechanism for collecting the MLP containers which is primarily due to mixing up of this waste along with other waste and making the task of segregation difficult in the compost yard. Therefore, there is a need for the industries also to work on alternative materials which are recyclable and also amenable to easy segregation even if they land in the compost yard mixed with other waste.
70. Though, these amendments and guidelines and new definitions have been introduced in the Plastic Waste Management Rules, 2016, Rule 9(3) which had originally intended to phase out these MLPs have not been amended. Once it become difficult to collect or treat MLP undoubtedly this has to be phased out. But merely substituting the words non-recyclable or non-energy recoverable or with no alternate use of plastic, the intention of the legislation cannot be attained. Multi-material multilayer packaging, there is a use of different materials in different layers connected to functionalizes and packaging performance needs. This MMPP recycling is complex since recycling industry is not able to identify sort and separate the diverse layers with current standard technology. Hence, this MMPP is sorted as mixed plastic waste post consumer use and incinerated with energy recovery. This method does not prioritize recycling and result in disposal on dump sites

and landfills. As solutions, (i) detach the distinct components for further treatment of materials separately, (ii) process all layers all together. However, no commercial treatment in industrial level is currently identified. It is time to enforce Extended Producers Responsibility (EPR) rigidly. The producers of MLP also revisit their design of products and examine packaging and delivery models. This is an area where the producers alone are responsible as the consumers or the Government cannot be forced to deal with the plastic management.

71. Considering the various issues which have been detailed supra, the following directions are issued:

- (i) The MLP industry is directed to work towards substituting the non-degradable plastic in the MLP packaging material with biodegradable plastic.
- (ii) The MoEF&CC is directed to encourage units for extraction of aluminium metal from foils by adopting dissolution techniques where the solvent would target the component and remove the plastic. The units also to convert the MLP into laminated plastic waste and the metalized waste into granule and blocks for utilisation in value added products.
- (iii) The Metropolitan Local Bodies like Greater Chennai Corporation, Bruhat Bengaluru Mahanagara Palike, Greater Hyderabad Municipal Corporation, Cochin Corporation and Andhra Pradesh Government are directed to examine the facilities established in Puducherry and establish such facilities either on their own or in a Public Private Partnership (PPP) mode.
- (iv) The above corporations/Local Bodies shall file an action taken report within three months to this Tribunal.

72. In view of the above, the Original Application is disposed of.

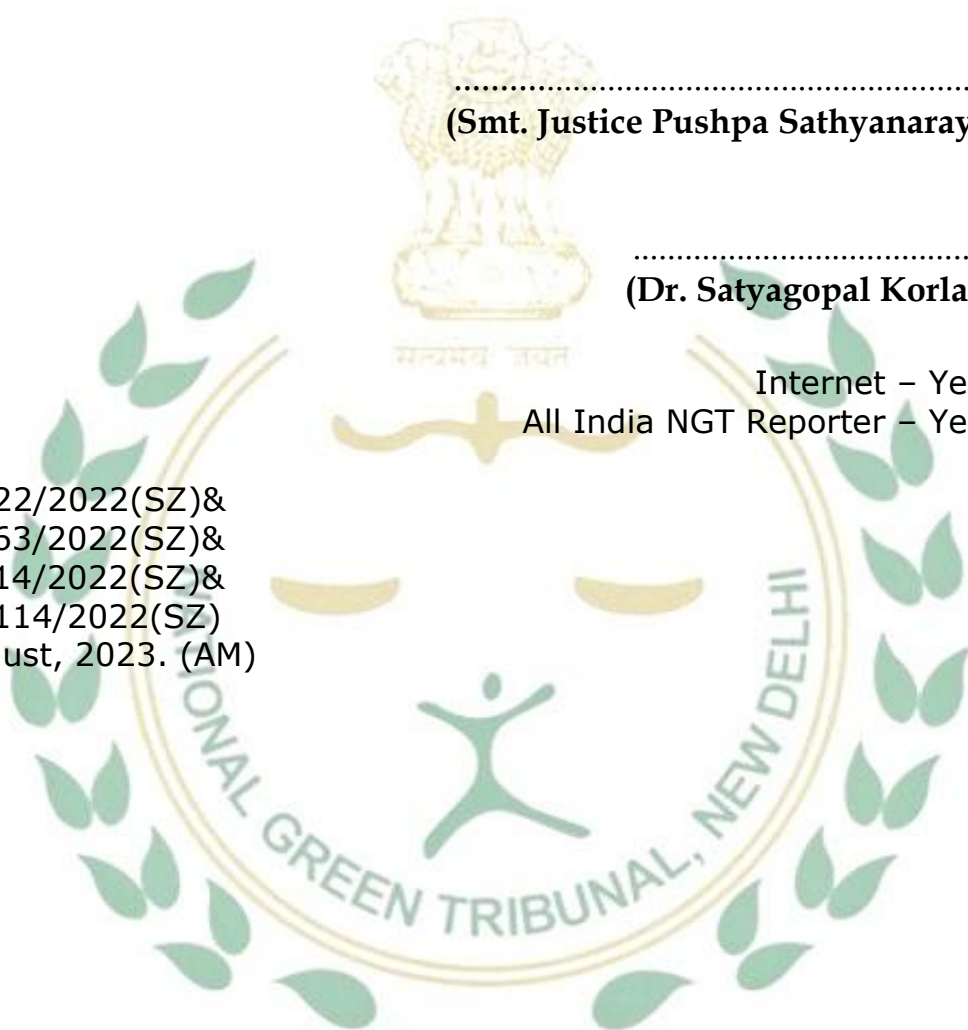
73. In view of the disposal of the above Original Application, the pending Interlocutory Applications, I.A. No. 63 of 2022(SZ), I.A. No. 114 of 2022(SZ) and I.A. No. 143 of 2022(SZ) also stand disposed of.

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

.....E.M.
(Dr. Satyagopal Korlapati)

Internet – Yes/No
All India NGT Reporter – Yes/No

O.A. No.22/2022(SZ)&
I.A. No. 63/2022(SZ)&
I.A. No. 14/2022(SZ)&
I.A. No. 114/2022(SZ)
10th August, 2023. (AM)



**Before the National Green
Tribunal
Southern Zone (Chennai)**

**O.A. No. 22 of 2022&
I.A. No. 63 of 2022(SZ) &
I.A. No. 114 of 2022(SZ) &
I.A. No. 143 of 2022(SZ)**

A. Krishna

Vs.

Union of India & Ors.

O.A No. 22/2022(SZ)
10th August, 2023. (AM)

