

Jitendra Yadav vs Union Of India And Others on 7 July, 2022

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE CHIEF JUSTICE SHRI VIPIN SANGHI

AND

JUSTICE SHRI RAMESH CHANDRA KHULBE

WRIT PETITION (PIL) NO.93 OF 2022

07TH JULY, 2022

Jitendra Yadav

.....Petitioner

Vs.

Union of India and others

.....Respondents

Counsel for the petitioner
Counsel for respondent no.1
Counsel for the State/respondent
nos. 2, 3, 4, 7 and 8

: Shri Dushyant Mainali.
: Shri Lalit Sharma.
: Shri C.S. Rawat, learned
Chief Standing Counsel for the
State.
: Shri Rajeev Bhatt.
: Shri Adity Pratap Singh.

JUDGMENT:

(Per Shri Vipin Sanghi, Chief Justice) Issue notice.

2. Learned counsel for the respondents appears and accepts notice.

3. The petitioner has preferred the present writ petition in public interest. The petitioner states that he is passionate about environment protection. After having studied and worked in Delhi, and authored several books, in his quest for peaceful living in clean environment, he permanently shifted to and settled in district Almora. The petitioner has preferred this writ petition since he is alarmed by the ecological degradation of the State of Uttarakhand due to ignorance and non-observance of Extended Producers Responsibility, and due to failure of the State and its Authorities to follow the Solid Waste Management Laws enforced in the State of Uttarakhand. In this background, the substantive reliefs sought by the petitioner in this petition are as follows :-

"(i) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to take all immediate effective steps to strictly implement the provisions of Plastic Waste Management Rules 2016 (as amended upto date) and the provisions of Uttarakhand Plastic and other Non Biodegradable Garbage (Regulation of Use and Disposal) Act, 2013 and to strictly enforce the Extended Producer's Responsibility in terms of the notification dated 16.02.2021 in its letter and spirit.

(ii) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to take all immediate and possible steps for implementation of Uttarakhand Panchayat Solid Waste Management Policy 2017, by developing a robust Plastic Waste Management Mechanism including segregation at the level of village panchayats and urban local bodies, in its letter and spirit, forthwith without any further delay."

4. Even before we proceed to record the submissions advanced by the learned counsel for the petitioner, and to issue provisional directions premised thereon, we may begin by producing some of the photographs placed on record, which show the nature and extent of solid waste collection and utter lack of management in respect thereof by the State. These photographs are as follows:-

5. Learned counsel for the petitioner submits that it is not that the statutory frame work to deal with the aforesaid state of affairs is missing or deficient. He has, firstly, drawn our attention to the Environment (Protection) Act, 1986 (the "Act"). Under the said Act, "Environment" is defined to include water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property [Section 2(a)]. "Environmental pollutant" is defined under Section 2(b) to mean any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment. Section 2(c) defines "Environmental Pollution" to mean the presence in the environment of any environmental pollutant. "Hazardous substance" is defined in Section 2(e) to mean any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment. The said Act empowers the Central Government to take measures to protect and improve the environment. In recognition of the fact that Plastic-as presently in use, is mostly non-biodegradable, the Central Government, in exercise of the powers vested in it by virtue of Sections 3, 6 and 25, framed the Plastic Waste Management Rules, 2016, which were amended on 27.03.2018 by the Plastic Waste Management (Amendment Rules), 2018 (the "Rules"). These Rules have been duly published in the Gazette of India and have statutory force.

6. For the present purpose, we may only take note of some of the relevant provisions of these Rules. Rule 3 contains the definitions, which, in Clause (h), defines "extended producer's responsibility" to mean the responsibility of a producer for the environmentally sound management of the product until the end of its life.

7. Rules 9, 12 and 13 of the amended Rules are relevant, and they are read as follows:-

"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 multi-layered 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;
4. The producer, within a period of three months from the date of final publication of these rules in the Official Gazette shall apply to the Pollution Control Board or the Pollution Control Committee, as the case may be, of the States or the Union Territories administration concerned, for grant of registration;
5. No producer shall on and after the expiry of a period of Six Months from the date of final publication of these rules in the Official Gazette manufacture or use any plastic or multi- layered packaging for packaging of commodities without registration from the concerned State Pollution Control Board or the Pollution Control Committees; and
6. Every producer shall maintain a record of details of the person engaged in supply of plastic used as raw material to manufacture carry bags or plastic sheet or like or cover made of plastic sheet or multi-layered packaging."

(emphasis supplied) "12. Prescribed authority.-

- (1) The State Pollution Control Board and Pollution Control Committee in respect of a Union territory shall be the authority for enforcement of the provisions of these rules relating to registration, manufacture of plastic products and multi-layered packaging, processing and disposal of plastic wastes;

(2) The concerned Secretary-in-charge of Urban Development of the State or a Union Territory shall be the authority for enforcement of the provisions of these rules relating to waste management by waste generator, use of plastic carry bags, plastic sheets or like, covers made of plastic sheets and multi-layered packaging;

(3) The concerned Gram Panchayat shall be the authority for enforcement of the provisions of these rules relating to waste management by the waste generator, use of plastic carry bags, plastic sheets or like, covers made of plastic sheets and multi-

layered packaging in the rural area of the State or a Union Territory; and (4) The authorities referred to in sub-rules (1) to (3) shall take the assistance of the District Magistrate or the Deputy Commissioner within the territorial limits of the jurisdiction of the concerned district in the enforcement of the provisions of these rules."

(emphasis supplied)

13. Registration of producer, recyclers and manufacturer,-

1. No person shall manufacture carry bags or recycle plastic bags or multi-layered packaging unless the person has obtained a registration from the State Pollution Control Board or the Pollution Control Committee of the Union Territory concerned, as the case may be, prior to the commencement of production;

2. Every producer or brand-owner shall, for the purpose of registration or for renewal of registration, make an application in Form-I to i. "The concerned State Pollution Control Board or Pollution Control Committee of the Union territory, if operating one or two States or Union Territories"; or ii. "The Central Pollution Control Board, if operating in more than two States or Union Territories".

3. Every person recycling or processing waste or proposing to recycle or process plastic waste shall make an application to the State Pollution Control Board or the Pollution Control Committee, for grant of registration or renewal of registration for the recycling unit, in Form II.

4. Every manufacturer engaged in manufacturer of plastic to be used as raw material by the producer shall make an application to the State Pollution Control Board or the Pollution Control Committee of the Union territory concerned, for the grant of registration or for the renewal of registration, in Form III.

5. The State Pollution Control Board or the Pollution Control Committee shall not issue or renew registration to plastic waste recycling or processing units unless the unit possesses a valid consent under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) along with a certificate of registration issued by the District Industries Centre or any other Government agency authorised in this regard.

6. The State Pollution Control Board or the Pollution Control Committee shall not renew registration of producer unless the producer possesses and action plan endorsed by the Secretary in charge of Urban Development of the concerned State or Union Territory for setting of plastic waste management system;
7. On receipt of the application complete in all respects for the registration for recycling or processing of plastic waste under sub-rule (3), the State Pollution Control Board may, after such inquiry as it considers necessary and on being satisfied that the applicant possesses appropriate facilities, technical capabilities and equipment to handle plastic waste safely, may grant registration to the applicant on fulfilment of the conditions as may be laid down in terms of registration;
8. Every State Pollution Control Board or Pollution Control Committee shall take a decision on the grant of registration within ninety days of receipt of an application which is complete in all respects;
9. The registration granted under this rule shall initially be valid for a period of one year, unless revoked, suspended or cancelled and shall subsequently be granted for three years;
10. State Pollution Control Board or the Pollution Control Committees shall not revoke, suspend or cancel registration without providing the opportunity of a hearing to the producer or person engaged in recycling or processing of plastic wastes; and
11. Every application for renewal of registration shall be made at least one hundred twenty days before the expiry of the validity of the registration certificate."

(emphasis supplied)

8. From the aforesaid Rules, it would be seen that the producers of plastic waste were obliged to, within six months of the publication of the amended Rules, work out modalities for waste collection system, based on Extended Producers Responsibility, with the involvement of the State Urban Development Departments through their own distribution channel, or through the local body concerned. Rule 9 also places the primary responsibility for collection of multi-layered plastic sachet or pouches, or packaging, on the producers, importers and brand owners, who introduce the products in the market. It is their obligation to establish a system for collecting back the plastic waste generated due to their products. The plan that they prepare is required to be submitted to the State Pollution Control Board, while applying for Consent to Establish or Operate, or seek renewal of its permission/ license to produce goods, which result in plastic waste. The brand owners are also obliged to submit their plan within one year from the date of notification of the Rules, and implement the same within two years thereafter.

9. Considering the fact that the amended Rules came into force on 27.03.2018, the time limits set in Rule 9 for existing producers and brand owners to fulfill their statutory obligations has since long expired. In relation to States, the concerned Secretary-in-charge of Urban Development of the State is the Authority charged with the responsibility of enforcement of the provisions of the said Rules relating to waste management by waste generators.

10. Rule 12(2) of the said Rules also recognizes the manner in which generation of plastic waste takes place i.e. by use of plastic carry bags, plastic sheets or like, covers made of plastic sheets and multi-layered packaging. The Gram Panchayats have been charged with the responsibility for enforcement of the provisions of these Rules relating to waste management by the waste generators, on account of use of plastic carry bags, plastic sheets or like, covers made of plastic sheets and multi-layered packaging in rural areas of the State.

11. Under Rule 12(4) of the said Rules, the District Magistrate or the Deputy Commissioner concerned has been charged with the responsibility of providing assistance to the Secretary-in-charge of Urban Development of the State, as well as to the Gram- Panchayat, within the territorial limits of the jurisdiction of the concerned district, in the enforcement of provisions of the said Rules.

12. Under Rule 13 of the Rules, there is an embargo against manufacture of carry bags, or recycle plastic bags, or multi-layered packaging, unless the concerned person has obtained a registration from the State Pollution Control Board or the Pollution Control Committee, as the case may be, prior to commencement of production. Under Rule 13(4) of the Rules, every manufacturer engaged in manufacture of plastic to be used as raw material by the producer shall make an application to the State Pollution Control Board or the Pollution Control Committee for the grant of registration, or for renewal of registration.

13. Rule 14 of the Rules casts the responsibility on retailers and street vendors not to sell, or provide commodities to consumers in carry bags or plastic sheets, or multi-layered packaging, which are not manufactured and labeled, as prescribed under the Rules. Every retailer or street vendor selling or providing commodities in plastic carry bags, or multi-layered packaging, or plastic- sheets, or the like, or covers made of plastic sheets, which are not manufactured or labeled or marked in accordance with the said Rules, are liable to pay fine as specified under the by-laws of the local bodies.

14. At this stage itself, we may observe that from the materials placed on record to which reference shall be made a little later, it is evident that there is utter non- compliance of the Plastic Waste Management (Amendment) Rules, 2018, as there are hardly any registrations obtained by producers, importers or brand owners with the State Pollution Control Board in the State of Uttarakhand.

15. We direct the respondent Uttarakhand State Pollution Control Board to state, on affidavit, as to how many manufacturers, brand owners or importers, have registered themselves with the said Board in terms of Rule 13 of the Rules. They should also indicate the particulars of those producers, importers, and brand owners, who have not sought registration and complied with their obligation under the said Rules, and who are manufacturing plastic products/raw materials or are importing into the State, or selling their brand of goods within the State of Uttarakhand, while using non-biodegradable plastic.

16. We also direct that those producers, importers and brand owners, who do not register with the Uttarakhand State Pollution Control Board within the next fifteen days, shall not be permitted to either produce, or import into the State of Uttarakhand, or sell products of their brands, in the State of Uttarakhand, and the State shall ensure that all such products, which are contained in plastic sachets or pouches or packaging, are not permitted to enter the boundary of the State, or sold, in any manner whatsoever. Wide publicity shall be given to these directions by the State, so that all concerned have notice of it.

17. Since the primary responsibility for collection of used multi-layered plastic, sachets, or pouches, or packaging is of the producers, importers and brand owners, and it is their obligation to prepare their plan for collection and to submit the same to the Uttarakhand State Pollution Control Board while applying for consent, the Uttarakhand State Pollution Control Board shall also require all producers, importers and brand owners to strictly comply with this requirement. The affidavit to be filed by the Uttarakhand State Pollution Control Board should also indicate as to how many producers, importers and brand owners have provided the said plans, and those producers, importers and brand owners, who do not provide their plans for collection in the next 15 days, shall not be permitted to either produce, import or sell their brands, in the State of Uttarakhand, in plastic receptacles.

18. Respondent no. 4 - the Director, Urban Development, in the State of Uttarakhand, shall file his affidavit disclosing as to what steps he has taken for enforcement of the provisions of the aforesaid Rules relating to waste management by waste generators on account of use of plastic carry bags, plastic sheets, or the like, covers made of plastic sheets, and multi-layered packaging in terms of Rule 12 aforesaid. We direct respondent no. 4 to state on affidavit as to what measures he proposes to adopt, if not already adopted, for effective enforcement of the aforesaid Rules, and the definite timelines within which the measures would be implemented.

19. We are pained to notice that, even though the Gram Panchayats have been charged with the responsibility of enforcement of the provisions of the Rules relating to waste management by waste generators on account of use of plastic carry bags, plastic sheets, or the like, and covers made of plastic sheets, and multi-layered packaging in the rural areas of the State, not a single report is available with the State with regard to the steps taken by the Gram Panchayats in this regard. We have noticed that there are 7791 Gram Panchayats in the State of Uttarakhand, and solid waste, on account of use of plastic, is rampant in all rural areas of the State of Uttarakhand, inter-alia, due to use of plastics by the local population, as also the flow of tourists to all remote corners of the State.

20. We, therefore, direct all the District Magistrates in the State of Uttarakhand to file their respective affidavits disclosing as to what steps they have taken to render assistance to Respondent no. 4 - the Director, Urban Development in the State of Uttarakhand, and the Gram Panchayats, for the enforcement of the aforesaid Rules. The District Magistrates should also delineate the concrete and effective steps that they propose to take in a defined timeline to fulfill their statutory obligations under Rule 12(4) of the aforesaid Rules. The Commissioners shall ensure compliance by all the DMs of this direction, apart from ensuring that the DMs comply with their obligations and discharge their responsibilities under the laws framed for keeping the environment free from pollution, inter alia,

due to non-biodegradable plastic waste.

21. We also direct the District Magistrates to launch, in their respective districts, awareness campaigns about the Environment (Protection) Act, the Rules framed thereunder, as well as the Uttarakhand Plastic and Other Non Biodegradable Garbage (Regulation of Use and Disposal) Act, 2013, and the Notification dated 16.02.2021 issued thereunder, to which reference shall be made a little later, so that the public at large - including retailers and street vendors, are sensitized about the need to manage plastic waste in a proper manner to prevent environmental degradation.

22. We further direct that the State Legal Services Authority shall also be roped in the said awareness program, and all the District Legal Services Authorities shall provide whatever assistance can be rendered for this purpose, considering the fact that environmental degradation is directly impinging on the Right to Life of the people in the State, which is guaranteed under Article 21 of the Constitution of India.

23. We may now take note of the Uttarakhand Plastic and Other Non Biodegradable Garbage (Regulation of Use and Disposal) Act, 2013 ("Act of 2013" for short) enacted by the State Legislature. This Act of 2013 defines "biodegradable garbage" to mean the garbage or waste material capable of being destroyed by action of living beings. On the other hand, "non-biodegradable garbage" means the waste garbage made of non- biodegradable material. "Non-biodegradable material" is defined to mean the material including plastic which cannot be decomposed or degraded by action of micro- organisms, sunlight or other natural actions, and includes goods made or manufactured from Polythene, Nylon or other plastic substances such as Poly Vinyl Chlorides (P.V.C.), Poly-Propylene and Poly-Styrene, specified in the Schedule of the said Act of 2013. Section 3 of the said Act of 2013 empowers the State Government to impose restriction or prohibition on the manufacture, sale, purchase, storage, distribution and use of any plastic or other non-biodegradable material within the State of Uttarakhand, which is contrary to the norms, as the State Government may, by notification, specify.

24. Sections 4 to 7 of this Act are pertinent and read as follows:-

CHAPTER - II Restriction or prohibition on use of non-biodegradable material "4. Prohibition on throwing non-biodegradable garbage in public drain, sewers and water bodies. - (1) No person, by himself or through another, shall, knowingly or otherwise throw or cause to be thrown in any drain, ventilation shaft, pipe and fittings, connected with the private or public drainage works, canals, ponds, streams or rivers, any non biodegradable garbage or any bio-degradable garbage in a non-biodegradable bag or container.

(2) No person shall, knowingly or otherwise, place or permit to be placed, except in accordance with such procedure and after complying with such safeguards as may be prescribed, any bio-degradable or non-biodegradable garbage in any public place or in a place open to public view, unless-

(a) the garbage is placed in a closed garbage receptacle; or

(b) the garbage is deposited in a location designated, by a local authority having jurisdiction on an area for the disposal of the garbage.

5. Restriction on burn of non- biodegradable. - No person shall burn any non-biodegradable garbage containing any material mentioned in the schedule.

CHAPTER - III Management of non-biodegradable garbage

6. Provision for placement of receptacles and places for deposit of non- biodegradable garbage. - It shall be the duty of the local authority, or any officer authorized by it, to-

(a) place or provide in proper and convenient situation public receptacles, or places for temporary deposit or collection of non-biodegradable garbage;

(b) provide separate dust bins for temporary deposit of non-biodegradable garbage other than those kept and maintained for deposit of bio-degradable garbage;

(c) provide for the removal of contents of receptacles, deposit and of the accumulation at all places provided under clause (a) of this section;

(d) arrange for recycling of the non-biodegradable garbage collected under this Act;

(e) all such receptacles should have the facility to be closed from the upper side facing the sky.

7. Duty of owners and occupiers to collect and deposit non-biodegradable garbage. - It shall be the duty of the owners and occupiers of all lands and buildings:-

(a) to collect or to cause to be collected from their respective land and buildings the non-

biodegradable garbage and to deposit, or cause to be deposited, in public receptacles or places provided for temporary deposit or collection of the non-biodegradable garbage by the local authority in the area ;

(b) to provide separate receptacles or dust bins, other than those kept and maintained for deposit of bio-

degradable garbage, of the type and in the manner prescribed by the local authority or its officers for collection therein of all the non-biodegradable waste from such land and building and to keep such receptacles dust bins in good condition and repair."

(emphasis supplied)

25. Thus, on a reading of Section 4, it can be seen that there is a prohibition against the throwing or causing to be thrown in any drain, ventilation shaft, pipe and fittings, connected with the private or public drainage works, canals, ponds, streams or rivers, any non- biodegradable garbage or any bio-degradable garbage in a non-biodegradable bag or container.

26. Unfortunately, this provision of the Act of 2013 is being complied more in its breach, than compliance, as is evident not only from the photographs and other materials placed on record, but on a simple glance anywhere in the State. It is something that we can take notice of, since we see mounds of plastic waste collected within the municipal limits of the towns, as well as along the highways, in rivers and rivulets, meadows and plains, glaciers, and even in fields in the State.

27. It is also evident that Section 4 (2) has not been complied with by anyone. The reason for this is also the lack of adequate provision by the state of garbage receptacles, wherein non-biodegradable waste could be put, after being segregated. Unfortunately, it appears that the whole State has become a large garbage dump. We fail to understand as to how the statutory authorities in the State i.e., the Commissioners; the District Magistrates; the Executive Officers of the Municipalities of the local bodies; the authorities in the State Pollution Control Board, and; the Police can be so insensitive, and how they can shut their eyes to what is evident for all to see throughout the State. The local authorities have miserably failed to comply with their statutory obligations under Section 6 of providing public receptacles or places for temporary deposit of collection of non-biodegradable garbage, and to remove the waste from the receptacles on a regular basis. Separate dust bins for temporary deposit of non-biodegradable garbage have not been provided, and there is no system of removal of the contents of these receptacles and transportation for their scientific disposal.

28. We direct the local authorities within the State to file their respective affidavits, disclosing as to how they have complied with each of their obligations contained in Section 6 of the aforesaid Act of 2013. It shall be the responsibility of the Secretary, Department of Environment, Government of Uttarakhand to ensure that these directions are communicated to the Chief Executive Officers of all the local authorities for due compliance.

29. Section 7, which casts duties on owners and occupiers of all lands and buildings to collect, or cause to be collected from their respective lands and buildings, non-biodegradable garbage and to deposit, or cause to be deposited, the same in public receptacles, or places provided for collection of such garbage by the local authorities. This obligation is also not being complied with, firstly, for the reason that public receptacles are not made available, and; secondly, on account of lack of awareness and sensitivity in the people. We have already directed the launching of a State wide campaign for making people aware of their obligations which are not only statutory, but also moral to ensure a clean environment. It is the constitutional right of all persons to be provided a clean environment. The campaign should address the aspects provided for in Section 7 of the Act of 2013, as aforesaid. The District Magistrates should also indicate in their affidavits, as to what steps have been taken to impose penalty and punishment on the violators under Sections 10 and 11 of the aforesaid Act of 2013.

30. As noticed hereinabove, Section 3 of the said Act of 2013 empowers the State Government to issue notification for imposing restriction or prohibition on the manufacture, sale, purchase, storage, distribution and use of any plastic or other non-biodegradable material within the State of Uttarakhand.

31. In terms of the said powers, the State of Uttarakhand has issued a notification on 16.02.2021. We would like to recite the preamble to this notification, which shows that the State, and at least some Officers of the State, are conscious of the alarming situation created by proliferation of the non-biodegradable waste in the State. The said preamble reads as follows:-

"Whereas, plastics are non-biodegradable and cause threat to the ecological system as they reduce the fertility of soil and thereby hamper the growth of plants, choke drains and sewer resulting in overflowing of gutters and if swallowed by cattle and wild animals, they may cause death by obstructing their intestine;

Any whereas, the colour pigments present in the plastic contaminate food products wrapped in them and cause health hazards and some of it even carcinogenic;

And whereas, plastic products take hundreds of years for degradation, as they are not biodegradable, they also block the rain water infiltration into the soil hindering recharge of ground water;

And whereas, the plastic bags when discarded can get filled with rain water offering ideal breeding ground for vector borne diseases like malaria, dengue etc. and burning of plastics also releases carcinogenic and toxic substances like dioxins, furans and hydrogen cyanide, which pollute air as well as cause severe and chronic health problems;

And whereas, plastic waste and micro plastic cause danger to fresh and marine water biodiversity and also hamper ecosystem services due to spreading of such waste in and around eco-systems, on tourists places, heritage sites, eco-fragile areas like-Bugyals, high altitude areas and on agriculture and forest areas."

32. Unfortunately, the afore-extracted legislative concerns do not appear to have motivated the executive authorities into action.

33. The restrictions imposed by the said notification are pertinent, and we may reproduce the same hereunder:-

"1. (a) No person, by himself or through another, shall knowingly or otherwise, sale, trade, manufacture, import, store, carry, transport, use, supply or distribute the following plastic/thermocool/Styrofoam items in the entire state of Uttarakhand.

(i). Polythene carry bags of any shape (with or without handle), thickness, size & colour; and non-woven poly propylene bags Provided above restriction shall not be applicable on bio-compostable plastic bags and polybags more than 50 micron thickness used for handling, collection, transportation of the waste such as bio medical waste, municipal solid waste and hazardous waste.

(ii). Single use disposable cutleries made up of thermocol (polystyrene), polyurethane, Styrofoam and the like; or plastic such as plate, tray, bowl, cup, glass, spoon, fork, straw, knives, stirrer etc. of any size and shape.

(iii). Single use food packaging containers made up of recycled plastic of any size, shape, thickness and colour used to cover-carry, store food/liquid items.

Note: Compostable plastics shall confirm to the Indian Standard; IS 17088:2008. The manufacturers or seller of bio-compostable plastic carry bags shall obtain a certificate from the Central Pollution Control Board before marketing or selling.

(b) No person shall knowingly or otherwise, litter any public place with any plastic item allowed under this notification.

2. The authorities or owners of places of religious worship or institutions, multiplex, malls, hotels and restaurants, café, mobile food counters or vans, caterers and other such places like marriage or party halls, offices or institutions and the outdoor event shall be responsible for ensuring strict compliance of the aforesaid provisions and they shall provide space for collection of plastic waste within their campus and shall sent it to the recycles, duly registered with Uttarakhand Pollution Control Board.

3. Manufacturers of Products of Polyethylene Terephthalate (PET/PETE) bottles for bottled drinking water and soft drinks shall take back the Polyethylene Terephthalate (PET/PETE) bottles and plastic waste respectively through the same retail sales network under mutually agreed terms and conditions based on Extended Producer's Responsibility or they have to mandatorily compensate expenses incurred by the local authorities (Urban Local Bodies and Village Panchayats etc.) in collection, transportation and safe disposal of the plastic waste generated due to their products.

4. All manufacturing units engaged in manufacturing of the item as mentioned under clause 1(a)(i) to clause 1(a)(iii) shall have to stop manufacturing of such items within six months from the date of issue of this notification.

5. Any Violation of above provisions shall attract the penalty as follows:-

Violators	Amount of Penal ty
Manufacturer	Rs. 5.00

Transporter	Rs.	Lakh 2.00
Whole	Rs.	Lakh 1.00
Sellers/Traders		Lakh
Individual Users	Rs.	100/-

For subsequent violation by the same legal entity shall attract twice the fine mentioned above.

6. Following Officers are authorized for implementation of the directions and imposition of the penalty:-

- i). District Magistrate or officer nominated by him not below the rank of Tehsildar.
- ii). Municipal Commissioner/ Executive Officer of the Urban Local Bodies or officer nominated by them not below the rank of sanitary supervisors.
- iii). Superintendent of Police officer nominated by him not below the rank of Inspector.
- iv). Divisional Forest Officer or officer nominated by him not below the rank of Range officer."
- v). Commissioner Tax Department or officer nominated by him not below the rank of joint commissioner.
- vi). Commissioner Transport Department or officer nominated by him not below the rank of joint commissioner.
- vii). Regional Officer, Pollution Control Board or officer nominated by him not below the rank of Asst.

Engineer."

(emphasis supplied)

34. It is evident to us, as daylight, that these restrictions have only remained on paper, and no significant, effective or perceptible effort has been made by the State to enforce the same on the ground.

35. We direct the State and its officers aforesaid to strictly enforce the restrictions imposed by the said Notification dated 16.02.2021 forthwith. In the affidavit, which shall be filed by the Secretary, Department of Environment, Government of Uttarakhand, and the officers abovementioned, shall specifically deal with the aspect of compliance of each of the restrictions mentioned in the

notification dated 16.02.2021. Wherever it is proposed to take further planned action to enforce the restrictions, the same shall be delineated, and a definite timeline, therefor, shall be indicated.

36. Learned counsel for the petitioner has drawn attention of this Court to the communication dated 25.06.2019 issued by the Uttarakhand Environment Protection and Pollution Control Board, addressed to all the District Magistrates in the State of Uttarakhand, wherein he, inter-alia noted that, presently, none of the producers, importers and brand owners have produced any plan of action from which it could be said how much plastic waste is being generated by them in the State, and how the same is being collected/managed and disposed of. He also records that the producers, importers and brand owners have not obtained registrations and have not even applied for the same to the Uttarakhand Environment and Pollution Control Board. All the District Magistrates were required to direct the producers, importers and brand owners within their districts to take steps for registration, preparation, and implementation of the plan for collection and disposal of plastic waste.

37. The District Magistrates, in their respective affidavits, shall also state as to what steps they have taken to comply with the communication date 25.06.2019, as also the order issued by the Uttarakhand Environment and Pollution Control Board, on 28.12.2019, in exercise of the powers under Section 5 of the Environment Protection Act, which too has been referred by the counsel for the petitioner.

38. Learned counsel for the petitioner has also drawn the attention of this Court to the extract of a annual report published by the Uttarakhand Environment and Pollution Control Board for the year 2020-21. This status report shows that only 53 plastic units were registered with the State Pollution Control Board, out of which 46 are recyclers, and only, 7 are manufacturing units.

39. It appears to us that a large majority of manufacturers, and none of the importers and brand owners, have bothered to register with the Uttarakhand, State Pollution Control Board under the Plastic Waste Management Rules, 2016 framed under the Environment Protection Act, as taken note of hereinabove and the respondent authorities are indifferent to this non- compliance.

40. The petitioner has also drawn attention of the Court to the queries raised under the Right to Information Act, 2005. The responses given to the queries raised by the petitioner are evasive, and do not provide any information with regard to the compliance of the provisions of the aforesaid laws by the concerned authorities.

41. Learned counsel has also referred to the policy framed by the Government in the year 2017 for management of solid waste by the Village Panchayats. We may state that without adequate awareness, guidance, and provision of resources to the Gram Panchayats, the said policy has only remained on paper, and has not been implemented to achieve the stated objective.

42. All the affidavits as aforesaid shall be filed by the respective Authorities within the next five weeks.

43. Lastly, we direct the respondents to immediately take steps to clear the solid waste/non-biodegradable plastic waste, which has been collected all over the State in a mission mode. In this regard, status report should be filed by respective District Magistrates within three weeks. A copy of this order also be sent to State Legal Services Authority to do the needful in this regard.

44. List this matter on 03.08.2022 to examine the status report, as aforesaid, and thereafter, post on 23.08.2022 for further hearing in the petition.

45. A copy of this order be communicated to the Member Secretary SLSA for information and compliance.

_____ VIPIN SANGHI, C.J.

_____ RAMESH CHANDRA KHULBE, J.

Dated: 07th July, 2022 SK/RB