

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 26TH DAY OF AUGUST 2020 / 4TH BHADRA, 1942

WP(C).No.17122 OF 2020(M)

PETITIONER:

SPROUT PRIVATE LIMITED
NEAR RUBCO LATEX FACTORY, SREEKANDAPURAM, KANNUR
DISTRICT - 670631, REPRESENTED BY ITS MANAGING
DIRECTOR SANTHOSH PHILIP. AGED 40 YEARS, S/O. P.M.
PHILIP, RESIDING AT PARAMBATTE HOUSE, KAITHAPURAM
P.O, MADAMAPAM, SREEKANDAPURAM, KANNUR - 670631.

BY ADVS.
SRI.PRAVEEN.H.
SRI.G.HARIHARAN
SMT.K.S.SMITHA
SMT.T.T.SHANIBA
SRI.M.V.VIPINDAS
SHRI.AMAL DEV D

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF
ENVIRONMENT AND CLIMATE CHANGE, SOUTH SANDWICH BLOCK
ROOM - SSBT II, 4TH FLOOR, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.
- 2 THE CHIEF ENVIRONMENTAL ENGINEER,
KERALA POLLUTION CONTROL BOARD PATTOM,
THIRUVANANTHAPURAM - 695004.
- 3 KERALA STATE POLLUTION CONTROL BOARD,
PAT TOM P O, THIRUVANANTHAPURAM- 695004,
REPRESENTED BY ITS MEMBER SECRETARY.

BY ADVS.
SRI.SAIGI JACOB PALATTY, SR.GOV'T.PLEADER,
SRI.T.NAVEEN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P(C) No. 17122 of 2020

Dated this the 26th day of August, 2020

JUDGMENT

The prayers in the above Writ Petition (C) are as follows:

- “(i) *Issue a writ of mandamus or any other appropriate writ or order commanding the 1st respondent to issue a clarification in view of Exhibit P18 report to the effect that the product of the petitioner will not come under the plastic ban notified under Exhibits P6 and P11.*
- (ii) *Issue a writ of mandamus or any other appropriate writ or order commanding the respondents to re consider Exhibit P3 representation and pass orders thereon in the light of Exhibit P18 report as expeditiously as possible.*
- (iii) *To pass such orders or reliefs as this Hon’ble Court deems fit in the interest of justice.”*

2. Heard Sri.Praveen Hariharan, learned counsel appearing for the petitioner, Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for R1 and Sri.T.Naveen, learned Standing Counsel for the Kerala State Pollution Control Board appearing for R2 & R3.

3. The case disclosed in the aforecaptioned Writ Petition (C) is broadly as follows:

That the Single use plastic products are banned in the State by virtue of Exhibit P6 and P11 notifications, citing environmental pollution because of the non-degradable nature of plastic

products. The Petitioner is manufacturing paper cups without plastic coating based on a water based emulsion coating, which contains 0% plastic and is bio-degradable and home compostable. By Exhibit P9 the government found that bio-degradable products will be exempt from Exhibit P6 and P11 provided they are lab certified. In this age of the pandemic, it is unsafe to push and compel people to use glasses used by others, which will expose them to the deadly virus, using plastic coated paper cups will endanger the environment. So the best alternative is a product which is disposable as well as environmental friendly, which is done by the petitioner, but the lethargy of the respondents is affecting the petitioner and his unit. Exhibit P17 is the lab report evidencing the biodegradability of the products of the petitioner. First respondent has not taken any decision on Ext.P3 representation of the petitioner despite there being a report as demanded by the 1st respondent.

4. It is in the light of these aspects that the petitioner would seek for a direction to the 1st respondent Government in the Environment Department to issue a clarification that the petitioner's product (paper cups with water based emulsion coating), would not come within the scope of the ban envisaged in Ext.P6 G.O(Rt)No.6/2019/Env't dated 27-11-2019 etc. In that regard, the

petitioner would point out that now the National Institute of Interdisciplinary Science & Technology has issued Ext.P18 certification dated 29-06-2020 that the test results in relation to the abovesaid product is lower than the permissible limit, so that the materials cannot leach enough chemical into soil and ground water etc, and that Ext.P18 certificate has been secured pursuant to the directions issued by this court in Ext.P17 judgment.

5. The learned counsel for the petitioner would therefore confine reliefs mainly for directions of this Court to ensure that appropriate decision is taken by the 1st respondent Government on the matters in Ext.P7 representation dated 05-12-2019, in the light of Ext.P18 certification as to whether the said product would come within the scope of the ban envisaged in Ext.P6.

6. In that regard, Sri.Saigi Jacob Palaty, learned Senior Government Pleader would point out that a reading of the last paragraph of Ext.P9 G.O(Rt)No.129/2019/Envr dated 31-12-2019 point out that which has been stipulated therein that only those material which are 100% biodegradable will not come under the abovesaid ban and that the degradability or compostability has to be lab certified by the Kerala State Pollution Control Board and further

that a reading of Ext.P18 certificate would show in internal page No.3 thereof that the average biodegradability of the tested material is only 81.75% etc.

7. It is also brought into the notice of this Court by the learned counsel for petitioner that the National Institute for Interdisciplinary Science and Technology has given the certification as it is approved by the Kerala State Pollution Control Board etc.

8. Taking note of the facts and circumstances of the case it is ordered in the interest of justice that, the competent authority of the 1st respondent Government in the Environmental Department may take up for consideration the matters in Ext.P7 representation and after affording reasonable opportunity of being heard to the petitioner and after ascertaining the views of the respondent Kerala State Pollution Control Board, may take an appropriate decision as to whether the petitioner's product could be excluded from the scope of the ban envisaged as per Ext.P6 and also taking note of the certification in Ext.P18 etc, appropriate decision thereon may be taken without much delay, preferably within a period of two months from the date of production of a certified copy of this judgment. After taking such a decision the same shall be duly communicated to

the petitioner as well as the 3rd respondent Kerala State Pollution control Board.

9. It is made clear that this Court has not entered into the merits of the controversy in any manner and has only directed the competent authority of the 1st respondent State Government to examine various aspects of the matter and then take a decision in the matter in accordance with law, as to the scope and ambit of the ban in question *viz-a-viz* the petitioner's product.

10. The petitioner will produce certified copies of this judgment along with copies of the memorandum of W.P(C) with all the Exhibits before the 1st respondent Secretary to Government in the Environmental Department as well as the 3rd respondent Kerala State Pollution Control Board, for necessary information and further action.

With these observations and directions, the Writ Petition (Civil) will stand finally disposed of.

**Sd/-
ALEXANDER THOMAS,
JUDGE**

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE CERTIFICATE OF INCORPORATION OF THE PETITIONER COMPANY,
EXHIBIT P2	TRUE COPY OF THE CERTIFICATE ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD DATED 29.01.2018.
EXHIBIT P3	TRUE COPY OF THE TRADE LICENSE ISSUED BY THE SREEKANDAPURAM MUNICIPALITY.
EXHIBIT P4	TRUE COPY OF THE TEST REPORT DATED 16.03.2019 ISSUED BY APT TESTING AND RESEARCH PRIVATE LTD. APPROVED BY FDA, MAHARASHTRA.
EXHIBIT P5	TRUE COPY OF THE CERTIFICATE ISSUED BY SAFE PACK SOLUTIONS EVIDENCING THAT THE PRODUCT IS BIODEGRADABLE IN CONFORMITY TO ASTM D5388.
EXHIBIT P6	TRUE COPY OF THE NOTIFICATION NO.GO NO.6/2019/ENVT DATED 27.11.2019.
EXHIBIT P7	TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER ALONG WITH THEIR SISTER CONCERN BEFORE THE GOVERNMENT.
EXHIBIT P8	TRUE COPY OF THE JUDGMENT DATED 09.12.2019 PASSED IN WP(C) NO.33114/2019.
EXHIBIT P9	TRUE COPY OF THE ORDER DATED 31.12.2019 AS GO(RT) NO.129/2019/ENVT PASSED BY THE GOVERNMENT.
EXHIBIT P10	TRUE COPY OF THE REPRESENTATION DATED 09.01.2020 ISSUED BY THE PETITIONER BEFORE THE RESPONDENT.

- EXHIBIT P11 TRUE COPY OF THE NOTIFICATION NO.
GO(MS) NO. 7/2019/ENVT DATED
17.12.2019.
- EXHIBIT P12 TRUE COPY OF THE INTERIM ORDER DATED
17.01.2020 PASSED IN WP(C) NO.
1357/2020 BY THIS HON'BLE COURT.
- EXHIBIT P13 TRUE COPY OF THE INTERIM ORDER DATED
27.01.2020 PASSED IN WP(C) NO.1357/2020
PASSED BY THIS HON'BLE COURT.
- EXHIBIT P14 TRUE COPY OF THE COMMUNICATION DATED
10.02.2020 ISSUED BY THE RESPONDENT TO
THE PETITIONER.
- EXHIBIT P15 TRUE COPY OF THE COMMUNICATION DATED
20.02.2020 ISSUED BY THE RESPONDENT OF
THE NATIONAL INSTITUTE OF
INTERDISCIPLINARY SCIENCE AND
TECHNOLOGY, PAPPANAMCODE,
THIRUVANANTHAPURAM.
- EXHIBIT P16 TRUE COPY OF THE RECEIPT EVIDENCING
PAYMENT OF RS.322258/- BY THE
PETITIONER ON 14.05.2020 TO CSIR.
- EXHIBIT P17 TRUE COPY OF THE JUDGMENT DATED
09.6.2020 IN WP(C) NO.11145/2020.
- EXHIBIT P18 TRUE COPY OF THE REPORT OF THE NATIONAL
INSTITUTE OF INTERDISCIPLINARY SCIENCE
AND TECHNOLOGY, PAPPANAMODE,
THIRUVANANTHAPURAM.
- EXHIBIT P19 TRUE COPY OF THE COVERING LETTER DATED
29.06.2020 ISSUED BY THE NATIONAL
INSTITUTE OF INTERDISCIPLINARY SCIENCE
AND TECHNOLOGY, PAPPANAMCODE,
THIRUVANANTHAPURAM TO THE 2ND
RESPONDENT COMMUNICATING THE ISSUANCE
OF EXHIBIT P18.

RESPONDENT'S/S EXHIBITS: NIL