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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 12th May, 2021

+ **W.P.(C) 5191/2021 & CM APPL. 15949/2021**

**CEMENT MANUFACTURERS ASSOCIATION
& ORS.**

..... Petitioners

Through: Dr. Abhishek Manu Singhvi &
Mr. Pinaki Misra, Sr. Advocates with
Ms. Vanita Bhargava, Advocate.

versus

**UNION OF INDIA THROUGH: SECRETARY MINISTRY OF
ENVIRONMENT FORESTS CLIMATE CHANGE
& ANR.**

..... Respondents

Through: Ms. Nidhi Raman, CGSC with Ms.
Nidhi Mohan Parashar, GP, Mr.
Zubin Sengh and Mr. Vikrant Kumar,
Advocate for Respondent No.1/UOI.
Mr. Balendu Shekhar, Advocate for
Respondent no.2/CPCB with Ms.
Divya Sinha, Scientist from CPCB

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The Petitioners have filed the present petition challenging the impugned Standard Operating Procedure (hereinafter, "SOP") for Registration of Producers, Importers & Brand-Owners (PIBOs), under the Plastic Waste Management Rules 2016 (as amended from time to time), dated March, 2021, issued by the Central Pollution Control Board (hereinafter 'CPCB'). The notice for registration under the SOP issued on 6th April, 2021 by the CPCB, is also under challenge.

3. The case of the Petitioners is that it is an association of several cement manufacturers, who together have a market share of more than 87% in India. According to them, the impugned SOP and the notice for registration dated 6th April 2021, are impractical, inasmuch as there are various obligations imposed on the Petitioners.
4. Vide order dated 6th May 2021, this court had issued notice in the matter and directed the Id. Counsel for the Union of India to place their stand in the matter on record.
5. The counter affidavit has been received and is on record. Rejoinder to the same has also been filed by the Petitioners, which is stated to be under objections, however the same has been emailed to the Court Master. The Registry to bring the same on record.
6. Today, Dr. Abhishek Singhvi along with Mr. Pinaki Misra, learned Senior Counsels, submit that under the Plastic Waste Management Rules, 2016 (as amended from time to time), an Action plan was issued in 2019. However, thereafter for the purpose of implementing the said Rules, by prescribing the EPR i.e. Extended Producers Responsibility, a Draft Guidelines Document was also put up in 2020 by the Ministry of Environment, Union of India. They submit that various industries have given their representations and comments on the same, including the Petitioners. The said Draft is currently under the consideration of the Union of India. Though it there was an Action plan of 2019, under the Plastic Waste Management Rules 2016, since the final platform and the modalities for implementation of the said Rules have not yet been finalised, the issuance of the SOP and the action of the Respondents of bringing the same into effect from 15th May, 2021 is not justified and is onerous on the

Petitioners. Ld. Senior Counsels submit that there is a huge difference between the Draft Action Plan of 2019, and the present notified SOP, and hence bringing the same into effect, puts an enormous responsibility upon the Petitioner, as there is a lack of clarity in the SOP itself.

7. On the other hand, on behalf of the CPCB, Mr. Balendu Shekhar, Id. counsel, submits that the CPCB is merely a regulatory body. Under Rule 9(2) of the Plastic Waste Management Rules 2016, the responsibility is of the producers and they are under an obligation to file their Form-1's for registration as producer or as brand owners. He further submits that as a part of the Form-1, an action plan for collection of the plastic waste has to be submitted by the Petitioners and other industries, and the SOP does not notify anything new.

8. He submits that, since 2016, when the Plastic Waste Management Rules, were framed, for one reason or the other, the Plastic Waste Management Schemes are continuously being postponed by the industry, and proceedings are also pending before the National Green Tribunal in this regard. In order to expedite and give effect to the Rules, the CPCB exercising its powers under the Act, has notified the present SOP.

9. On behalf of the Union of India, Ms. Nidhi Raman, Id. counsel, submits that the clarification which was issued by the Ministry of Environment dated 17th January, 2018, was merely directing that the regulatory body- CPCB, would not take any action till further orders of the Ministry of Environment. However, thereafter a Committee was constituted, which had submitted a report and had given its recommendations.

10. She submits that pursuant to the said report, the Draft Guidelines of 2020 had been put up. Insofar as the Draft Guidelines are concerned, the

Ministry of Environment had a meeting on 24th March, 2021 with various stakeholders, including the Petitioner, and the Ministry would require two more months to finalise the same.

11. Heard ld. senior counsels and for ld. Counsels appearing for the parties concerned, and perused the record.

12. There is no doubt that the Plastic Waste Management Rules need to be given effect to, in order to ensure that the “Polluter Pays” Principle is fully implemented and the industries do take care of the pollution that is being created by their actions, and their responsibilities *qua* the same are also duly prescribed and managed.

13. However, there ought to be clarity in the manner in which the implementation of the Plastic Waste Management is to take place. The chronology of events, in this case, clearly shows that in 2016, i.e., when the Plastic Waste Management Rules were notified, the Government had constituted a committee in October, 2017, to evaluate the implementation of the said Rules. It was in the context of the said committee being constituted, that the clarification dated 17th January, 2018 was issued. The same reads as under:

“OFFICE MEMORANDUM

Sub: Notices being issued by State Pollution Control Boards/Pollution Control Committees to the Producer/Importer/Brand owners under the clause 9 (Extended Producers Responsibility (EPR)) of the Plastic Waste Management Rules, 2016.

The Ministry of Environment, Forest and Climate Change has Notified Plastic Waste

Management Rules, 2016 vide notification dated 18th March, 2016.

2. *Ministry has received a number of suggestions/comments regarding the Rules and also requests for clarifying a number of issues related to the Rules. The Ministry has constituted a committee to deliberate on the issues raised by stakeholders relating to the plastic waste Management Rules, 2016 and solid Waste Management Rules, 2016.*

3. *It has come to the notice of the Ministry that several State Pollution Control Boards/Pollution Control Committee have issued notices to the "Producers" for not submitting modalities for waste collection system based on EPR, Action Plan for setting up plastic waste management system, obtaining authorization/registration etc.*

4. *Since the committee constituted by the Ministry has yet to finalize its report and submit to the Ministry, SPCBs/PCCs are advised not to initiate further action against 'producers' pursuant to the notice issued by them until further orders of the Ministry.*

This issue with the approval of the Competent Authority"

Thereafter, as per the Union of India's submission, the Committee had submitted its report in 2018, pursuant to which the PWA Amendment of 2018 was notified. The Draft Guidelines have now been issued in 2020. It is not in dispute that comments have been received on the said Draft from the industry and various stakeholders.

14. The Draft Guidelines contemplate the creation of a national platform for registration of the producers, importers and brand owners, as also other

stakeholders. It also contemplates creation of a uniform EPR framework for the entire country which ought to be brand and geography neutral. The Draft Guidelines also provide for a graded approach to be taken in respect of the plastic waste management.

15. Since the Union of India's stand today clearly is that the Draft Guidelines, which are published are still to be notified by the Ministry of Environment, and stakeholders consultation is going on, the following directions are issued:

- i) Insofar as the Draft Guidelines are concerned, the Ministry of Environment shall, after interacting with all the stakeholders, within a period of two months, i.e. by 31st July, 2021, notify the Plastic Waste Management Amendment Rules, 2021. The said Rules would take into consideration the suggestions made by the various stakeholders, and shall also establish a framework for Plastic Waste Management;
- ii) Insofar as the Petitioner's members are concerned, the Action plan in terms of Form-1, for collecting and for the disposal of plastic waste etc., shall be submitted in terms of the Rules which are currently existing, and in compliance with the Action plan of 2019.
- iii) To the extent that there is any inconsistency between the Action plan of 2019 and the present SOP, all members of the Petitioner association, would make an endeavour to submit their plans to the best extent possible. However until and unless the final Waste Management Rules, 2021 are notified by the Ministry of Environment, no coercive steps shall be taken against the Petitioner and their members, for violation of the SOP under challenge.

16. At this stage, it is submitted by Mr. Balendu Shekhar, Id. Counsel for CPCB, duly instructed by Ms. Divya Sinha from the CPCB, that there are only 4 cement industries that have submitted their action plan as of today. Id. counsel for the Petitioner disputes the same and submits that 16 cement manufacturers have submitted their Action plans.

17. Considering the same, the Petitioner association, as also its members, shall submit their respective Action plans, on or before 1st July, 2021, under the existing regime *sans* the SOP under challenge. If any manufacturers have already submitted their Action plan, the same shall be processed for registration under the existing regime, without insisting upon the additional conditions as imposed in the SOP.

18. The submission of an action plan by the Petitioners members would be without prejudice to their rights and contentions in the present petition.

19. A status report shall now be filed by 10th August, 2021 by the Petitioners/its members and the Ministry of Environment, showing the progress in terms of the directions given above. Responses thereto, shall be filed at least two weeks before the next date.

20. List on 24th August, 2021. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

MAY 12, 2021
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