

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 6 of 2023

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AMIT MANIBHAI PANCHAL

Versus

STATE OF GUJARAT

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Appearance:

PARTY IN PERSON(5000) for the Applicant(s) No. 1

MS DEVANGI SOLANKI, LEARNED AMICUS CURIAE

for the Opponent(s) No. 2

MS MANISHA LAVKUMAR, ADDL. ADVOCATE GENERAL ASSISTED BY

MR UTKARSH SHARMA, AGP for the Opponent(s) No. 1,3,4

MR HS MUNSHAW(495) for the Opponent(s) No. 5

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CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL
and

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 12/02/2024

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. The additional affidavit of the Collector and District Magistrate, Junagadh, filed today in the Court, is taken on record. In the instant Public Interest Litigation, issue has been raised with regard to prevalent unhygienic conditions and cleanliness in and around two important temples in the State of Gujarat namely Ambika Temple and Dattatreya Temple, Junagadh, which are located in Girnar hills.

2. The main issue raised in the present petition is about the menace of plastic waste in the area. By order dated 10.10.2023, we have appointed an Advocate Commissioner to make spot inspection of the site in question and submit a report. On submission of the report, by order dated 10.11.2023 noticing that issues raised with regard to the maintenance of hygiene and cleanliness in the areas surrounding Dattatreya Temple and Ambaji Temple have been found correct, noticing the contention of the learned Assistant Government Pleader that various steps were being taken to ensure maintaining cleanliness and hygiene of the area in and around two temples and steps to curb the plastic menace, some concrete steps would be taken, the matter was adjourned to 20.12.2023.

3. On the said date when no response was received, last opportunity was granted to the Collector to present a blueprint for maintaining cleanliness of the area, to deal with all those problems which are highlighted by the Court

Commissioner in her report.

4. On 04.01.2024, a joint affidavit of the Deputy Collector, Deputy Conservator of Forest, Junagadh Division and Deputy Municipal Commissioner, Junagadh Municipal Corporation was filed in the Court giving a report of the various steps taken by them to curb the use of plastic water bottle and maintaining cleanliness of the area. The Court has taken note of the assertions in the said affidavit and further noted that a notification dated 31.05.2012 had been issued by the Ministry of Environment and Forest, Government of India declaring an area of 17827.29 Hectares of Girnar Reserve Forest in Junagadh Taluka and Bhesan Taluka of Junagadh District as Girnar Wildlife Sanctuary. The area upto five kilometers from the boundary of the protected area of Girnar Wildlife Sanctuary enclosed within the boundaries described therein is declared as Eco Sensitive Zone, which included a peripheral area of about 9317.58 Hectares comprising of 27 villages of Junagadh and Bhesan

Talukas. It was noted that two temples of Ambaji and Dattatreya on the Girnar hills are lying within the Girnar Eco Sensitive Zone as declared by the Notification dated 31.05.2012. The Notification prohibited certain activities in the Eco Sensitive Zone, amongst which one is use of plastic polythene bags by the shopkeepers and disposal of plastic articles. It was noted that there are provisions with respect to regulation of solid waste in the area. The notification further provides for constitution of a Committee called as 'Girnar Eco Sensitive Zone Monitoring Committee' which is headed by the Collector, Junagadh as its Chairman.

5. Noticing that the Central Government notification mandated the constitution of the Monitoring Committee and further the task of Monitoring Committee is to implement the mandate of the Notification dated 31.05.2012, the Court has further recorded that looking to the current situation, highlighted by the Court Commissioner in her report and the affidavits filed on behalf of

the Executive Authorities, it seemed that the Collector, Junagadh was not well aware of the notification, inasmuch as, all actions to remove the plastic garbage, putting ban on the use of plastic bottles in the area have been taken only after the intervention of this Court in the instant Public Interest Litigation. The Court, therefore, called upon the Collector to file its person affidavit to bring on record the steps taken by him during the period of eleven years to comply with the mandate of the Notification dated 31.05.2012. It was further noted that only curb which has been put in place is the use of plastic water bottle and there is no clear action plan with regard to ban of plastic bottles and other plastic material in the area in question.

6. In the affidavit filed today, it is stated by the Collector that the Monitoring Committee as per the Notification dated 31.05.2012 was constituted on 15.01.2016 and the said Committee has all throughout been active even prior to its

constitution from the year 2015-16. Reference has been made in the affidavit about eighteen (18) meetings conducted by the Monitoring Committee over the period of eleven years addressing the issues arising in the area. In those meetings, numerous activities have been identified and placed under three categories, i.e. prohibited, regulated and permitted with additional remarks where required. On the issue of use of plastic carry bags and the disposal of plastic articles, it is stated that the same has been regulated and the prohibition order with regard to ban on use of plastic bags has been issued on 29.12.2023 appended as Annexure-IV of the said affidavit. It is sought to be stated that a conscious decision of banning plastic bags has been taken and implemented throughout the State whereby now bio-degradable bags are being used and there is a complete ban with regard to non-recyclable single use plastic. The Collector in his affidavit has further highlighted the ban put up on the issues like setting up industrial unit, commercial mining,

noise pollution, felling of trees, balance of forest area by curbing such activities and undertaking numerous awareness activities. The issue pertaining to extraction and contamination of ground water has also been addressed.

7. However, as to the main issue raised in the present petition as sought to be addressed by this Court in the orders passed earlier in light of the report of the Court Commissioner, reference has been given to the resolutions passed by the Municipal Corporation way back in the year 2014 and steps taken by the Gujarat Pollution Control Board for strictly banning/prohibiting use of plastic bags below 50 microns by the communication dated 01.11.2016. Reference has also been made to the communication dated 28.04.2017 of the Ministry of Cultural Development, Government of India about prohibiting the sale of water in pouches and other plastic usage. It is stated that the Monitoring Committee in its resolution dated 04.11.2018 has implemented the bye-laws with reference to plastic

usage. In a vague assertion made in paragraph '12.6', it is stated that very recently on 23.02.2022, plastic below 120 microns has already been banned which is in strict implementation. It is further contended that in the last three years in view of the breach in and around area Rs.14,00,000/- as penalty has been recovered. The Village Panchayat has also implemented the ban and taken steps to curb/prohibit plastic usage. Steps have been taken towards solid waste management.

8. Taking accolades in the steps taken by the State Government in banning the use of plastic and other steps taken to curb industrial, mining activities in the area, while addressing the menace of plastic waste and cleanliness in the area, highlighted in the report of the Court Commissioner, it is stated by the Collector that the Department has taken numerous steps which have been cited in previous affidavits and now there is a complete ban of use of plastic bottles and alternative means of water supply have been

adopted. It is further contended that however, looking to the peculiarity of the Girnar Forest Area and it being one of the highest number of pilgrimage point where there are 173 small and big temples located, sentiments and beliefs of numerous religions and communities are attached since centuries, systematic step-wise *modus* is being adopted so the efficacy of implementation and execution is maintained.

9. In a repetitive manner, it is sought to be stated by the Collector, Junagadh in the affidavit before us today that the Department is taking concrete steps to curb the menace of plastic waste more particularly plastic bottles which are major chunk of plastic waste. However, there is no explanation nor there is any assertion as to why such steps have not been taken by the Monitoring Committee which was constituted on 15.01.2016. The ban to plastic usage, as asserted in the affidavit, that too of the plastic below 120 micron had been taken only on 23.02.2022. The orders of complete

prohibition on use of plastic carry bags/polythene bags had been issued only on 29.12.2023. Moreover, a perusal of the Annexure-IV, the order issued by the Collector, Junagadh shows that the use of plastic material, packing material etc. and the entry of plastic in the area has been banned only from 30.12.2023 upto 27.02.2024, that too in view of the orders passed in the instant Public Interest Litigation.

10. We find a reference of Government Resolution dated 22.05.2019 in the aforesaid order of the Collector, whereby the Forest and Environment Department, Government of Gujarat has issued directives for curbing use of plastic and polythene material in the Girnar Eco Sensitive Zone. The copy of the said notification is also on record at page '74' of the paper book. The said notification clearly prohibits use of plastic material, throwing of plastic material and carrying of plastic material inside the Girnar Eco Sensitive Zone. From the averments made in paragraph '5' of the

affidavit filed by the Collector, the order dated 29.12.2023 appended as Annexure-IV and the assertion in paragraph '12.6' of his affidavit, it seems that the Collector, Junagadh, the deponent of the affidavit is carrying a misconception that the use of plastic in the Eco Sensitive Zone is merely regulated and not prohibited.

11. We take serious exception to the accolades taken by the Collector in his affidavit filed today when no proposed action plan or action taken report has been submitted before us, in compliance of the directions issued by us in the order dated 20.12.2023, asking the Collector, Junagadh, to place a blueprint for maintaining cleanliness of the area and to deal with the problems highlighted by the Court Commissioner in her report.

12. The Monitoring Committee as per the Notification dated 31.05.2012 though was in place since 15.01.2016, but it is evident that the said Committee did not take care of the menace of

plastic in the area. The ban on plastic, even in contravention of the Government Resolution dated 22.05.2019, has been set in place that too partially only after the intervention of this Court in the instant Public Interest Litigation. It has come on record that dustbins have been placed in and around the area during the visit of the Court Commissioner appointed by us. About 12 tons of plastic waste has been collected in the exercise conducted by the Collector during the visit of the Court Commissioner.

13. Section 29 of the Wild Life (Protection) Act, 1972 has been placed before us to submit that no person can be permitted to destroy or damage the habitat of a wild life sanctuary.

14. Having considered the reply of the Collector, Junagadh in the affidavit filed today, in totality, it is clear that the Collector, Junagadh has failed to understand the spirit of the orders passed by this Court and seems to have taken the instant

Public Interest Litigation as adversary litigation. Instead of cooperating with the Court being an officer of the State in an affair which pertains to discharge of his obligations, vehemence is being shown by the Collector, Junagadh in taking accolades in what has been done over the period of years since constitution of the Monitoring Committee in the year 2016. However, about the specific issue raised by us with regard to the plastic trash, ban on polythene bags, there is no action plan. The assertions in paragraph '19' of the affidavit of the Collector is a shield to cover up inaction on his part as Chairperson of the Monitoring Committee. It is evident from the record that there has been inaction and omission on the part of the Monitoring Committee to ensuring compliance of the prohibitions put in place by the Notification dated 31.05.2012 of the Ministry of Environment and Forest, Government of India. There has been non-compliance of the Government Resolution dated 22.05.2019. The steps taken by the

Collector in banning the plastic usage, by issuing the order dated 29.12.2023 are temporary in nature, in utter defiance of the above noted notifications of the Central as well as State Government.

15. At the cost of repetition, it may be noted that no blueprint to curb the plastic menace in Girnar Eco Sensitive Zone has been placed before us. We understand that such steps, which have not been taken for years together would require systematic implementation, but there is nothing before us to demonstrate that in spite of our order, some concrete plan has been prepared by the Collector in consultation with the officers of the Monitoring Committee. There is nothing before us to demonstrate that after the order passed by this Court on 04.01.2024, any meeting of the Monitoring Committee was held to find out the concrete solution to the problems being faced by the area, which is an Eco Sensitive Zone. The order dated 29.12.2023 appended at page '325' of the affidavit of the Collector, Junagadh is only an eye-wash.

16. Taking strong exception to the manner the Collector, Junagadh has responded in the matter, on the request made by Ms.Manisha Lavkumar, learned Additional Advocate General, we call upon the Additional Chief Secretary, Forest and Environment Department, Gandhinagar to take stock of the situation and file his response before us by the next date fixed.

17. Put up this matter on 27.02.2024.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

GAURAV J THAKER