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Analysing developments impacting business

ODISHA PLASTIC BAN ORDER 2018

26 October 2018

Introduction

The state of Odisha has joined the growing list of states to have introduced plastic ban in some form. An overwhelming 23 states in India thus have some form of regulation on the use of plastic. In the wake of wide-spread outcry pursuant to the Maharashtra Plastic Ban Notification which came in March 2018 and was subsequently amended twice as late as July, Odisha joins Tamil Nadu in implementing regulations on manufacture and usage of plastic. Tamil Nadu has also passed a notification banning usage and manufacture of plastic items from 1 January 2019. Even Bihar has passed a notification yesterday, i.e. 25 October 2018, implementing plastic ban in certain forms, which we will be addressing separately.

The State Government has restricted the use of certain types of plastic products in the territorial jurisdiction of 6 Municipalities and Municipal Corporations namely Bhubaneswar, Cuttack, Berhampur, Rourkela, Sambalpur and Puri (6 Municipalities) with effect from 2 October 2018 vide an Order dated 29 September 2018 (Ref: 21103/F&E ENV-1-57/2018) (Order).

Banned Items and Activities

- Under the Order, no person (either by himself or through another), shall knowingly or otherwise can sell, trade, manufacture, import, store, carry, transport, use or distribute the following within the 6 Municipalities:
 - Polythene carry bags of any shape, size and thickness;
 - PET/PETE bottles i.e., bottled drinking water bottles of less than 200 ml capacity;
 - Single use disposable cutleries made of thermocol (polystyrene), polyurethane and the like; or plastic such as dish, spoon, cup, plate, glass, fork, bowl, pouch to store liquid and container etc. of any size and shape;
 - Thermocol decorative materials (flowers and like).
- The Government has also banned the use of polythene sheets of less than 50 micron thickness for storing, transporting, dispensing or packaging of any

article/commodity/food items, consumables, packaging of milk and milk products and edible oil in sealed manner.

- The authorities/owners of places of worship or institutions, hotels and restaurants, cafe, mobile food counters or vans, caterers and other such places like marriage/party halls, offices or institutions and the outdoor event managers in the 6 Municipalities, shall be responsible for ensuring strict compliance.
- Cinema hall owners have to exhibit slides in their halls regarding the restriction of plastic use in the state for a period of one year from the date of the Order.

Exemptions

- The Order excludes compostable plastics which conform to the Indian Standard: IS 17088:2008. The manufacturers or sellers of compostable plastic carry bags shall obtain a certificate from the Central Pollution Control Board before marketing or selling;
- Pouch to store liquid and container etc. of any size and shape used for packing and selling of milk and other ancillary milk products;
- Any plastic for carrying and transporting garbage and containers like cup for milk products including curd and ice-cream etc., polythene packaging materials used in plant nurseries, horticulture, agriculture and healthcare sector like medicines, blood transportation bags, syringe, sample or specimen bags, re-sealable bags, medical instruments and accessories etc. and packing materials used for wrapping any item at manufacturing stage.

Extended Producer's Responsibility

- The authorities/owners of places of worship or institutions, hotels and restaurants, cafe, mobile food counters or vans, caterers and other such places like marriage/party halls, offices or institutions and the outdoor event managers shall also provide space for collection of plastic waste within their campus and returning the same to the concerned manufacturer or retailers or supplier.
- Manufacturers or Producers of PET/PETE bottles for bottled drinking water and soft drinks shall take back the PET/PETE bottles and plastic waste respectively through the same retail sales network under mutually agreed terms and conditions.

Enforcement Mechanism and Authority

The Forest and Environment Department will be the nodal agency for enforcement of the ban in the State. The implementation of the Order will be monitored by District Collectors and Municipal Commissioners. District Collector, Sub-Divisional Magistrate, Member- Secretary of State Pollution Control Board, who are empowered to take cognizance of offence under the Environment (Protection) Act, 1986 shall enforce the provisions of the Order in their respective jurisdiction.

The Municipal Commissioner or the Executive Officer shall make suitable arrangements for collection and disposal or recycling of any type of plastic item within their jurisdiction. The Municipal Commissioners or the Executive Officers of Urban Local Bodies and other concerned officers/agencies as nominated, shall widely publicise all provisions of the Order through the press and electronic media. Cinema hall owners or proprietors shall exhibit slides in their halls regarding the restriction of plastic use for a period of 1 year from the date of issue of this Order.

The State Pollution Control Board shall ensure closure of the industries producing plastic products which are not confirming to the stipulations to the Order.

Time Limit

Any person (including vendor) possessing any banned material are required to dispose those articles within 1 month from the date of publication of this Order.

Comment

The Odisha Plastic Ban is a blanket ban on any kind of sale, trade, manufacture, import, store, carry, transport, use or distribute of the banned plastic items within the municipal limits of the 6 Municipalities. However, since plastic removal is sought to be achieved in a phased manner and the ban being in its first phase implemented in limited number of cities in the State, the repercussions of implementing the same may not lead to dissonance as observed in states where a blanket ban is imposed in the entire State.

Additionally, the Order bans the activity of littering of any public place with any plastic item banned under the Order. Furthermore, the State Government goes a step ahead by casting a responsibility on the Centre for Environmental Studies, Odisha to make necessary public awareness campaign regarding consequences of indiscriminate use and littering of plastics and restrictions imposed under the Order through Non-Government Organizations and Eco Clubs.

From a legal perspective, it is interesting to note that while the Maharashtra plastic ban was carried out under a state legislation of 2006, Tamil Nadu ban has been implemented by a Notification from the Governor under the central legislation, i.e. Environment Protection Act, 1986, the instant Notification in Odisha is passed by the Forest and Environment Department of the state pursuant to Section 5 of the said Environment Protection Act, 1986.

It would be interesting to note whether similar challenges which arose in Maharashtra will arise in challenging the instant Notification. One safe-guard in the instant case is that the state did promulgate the draft for public views on 4 September 2018 and gave stakeholders a time period of 15 days to make representations therein. However, in light of the other grounds, it remains to be seen how effectively the said Order is effected.

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