

ITEM NO.2

COURT NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s).13029/1985

M.C. MEHTA

IN RE REPORT NO. 72 FILED BY EPCA AND
ALLOCATION OF NATURAL GAS TO IGL

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(1) IN RE: REPORT NO. 72 SUBMITTED BY EPCA REGARDING BAN ON SALES
AND USE OF FURNACE OIL & PET-COKE IN NCR

2) IN RE: ALLOCATION OF NATURAL GAS TO M/S INDRAPRASTHA GAS LIMITED
IA NO. 104664/2017 (APPLICATION FOR DIRECTIONS ON BEHALF OF
INDRAPRASTHA GAS LIMITED)

Date : 24-10-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s) Mr. Harish N. Salve, Sr. Adv. (A.C.) (NP)

Ms. Aparajita Singh, Adv. (A.C.)

Mr. A.D.N. Rao, Adv. (A.C.) (NP)

Mr. Siddhartha Chowdhury, Adv. (A.C.) (NP)

Petitioner-In-Person

For Respondent(s)

Mr. Maninder Singh, ASG

Mr. A.K. Panda, Sr. Adv.

Ms. V.A. Mohna, Sr. Adv.

Mr. Rajesh K. Singh, Adv.

Mr. Amit Sharma, Adv.

Mr. Vibhu Shanker Mishra, Adv.

Mr. Raj Bahadur, Adv.

Mr. Sanjai Kumar Pathak, Adv.

Mr. S.W.A. Qadri, Adv.

Mr. Zaid Ali, Adv.

Ms. Anil Katiyar, Adv.

Mr. B.V. Balaram Das, Adv.
Mr. Gurmeet Singh Makker, AOR

CPCB

Mr. Vijay Panjwani, AOR

Mr. Abhishek Choudhary, AOR (NP)

Mr. Anil Grover, AAG Haryana

Dr. Monika Gusain, Adv.

Mr. Satish Kumar, Adv.

Mr. Sanjay Kr. Visen, AOR

Ms. Ruchi Kohli, AOR (NP)

Mr. Neeraj Kishan Kaul, Sr. Adv.

Mr. Gourab Banerji, Sr. Adv.

Mr. Saurav Agrawal, Adv.

Mr. Bimal Roy Jad, AOR

Mr. Satyawant Shekhawat, Adv.

Mr. Kapil Sibal, Sr. Adv.

Mrs. Neelima Tripathi, Adv.

Mr. K.V. Mohan, Adv.

Mr. Shikhar Khare, Adv.

UPON hearing the counsel the Court made the following
O R D E R

REPORT NO. 72 SUBMITTED BY EPCA REGARDING BAN ON SALES
AND USE OF FURNACE OIL & PET-COKE IN NCR

We have considered the above Report filed by EPCA.

On 2nd May, 2017, learned *amicus curiae* had briefed us on the Report. It was pointed out on that day that use of Furnace Oil and Pet-Coke is prohibited in Delhi. It was further stated that the States of U.P., Haryana and Rajasthan had no objection if the ban is placed on the use of Furnace Oil and Pet-Coke. These State Governments were, therefore, permitted to place such a ban.

Almost four months have gone by and we are told that none of these three State Governments have taken any action in this matter. To make the situation worse, there is no representation on behalf of the State of U.P. nor is there any representation from the State of Rajasthan. Learned counsel appearing for the State of Haryana wants us to wait for two minutes so that he can get instructions from the State Government. We are not inclined to wait for two minutes so as to enable learned counsel to get instructions. Instructions should have been obtained well before the date of hearing.

Since the State Governments of U.P., Haryana and Rajasthan have no objection and they have not taken any positive action, keeping the pollution level in NCR and particularly in Delhi, we have no option but to place a ban on use of Furnace Oil and Pet-Coke in the States of U.P., Haryana and Rajasthan. The ban will come into effect from 1st November, 2017. We expect the State Governments to issue appropriate notification immediately. Even if they do not issue such notification then in compliance with the order of this Court, the ban will take effect from 1st November, 2017 in any case.

The issue for our consideration today is fixing standards for 34 industries with regard to the SO₂, NO_x and SO_x emissions.

On 2nd May, 2017, we had directed the Union of India as well as the Central Pollution Control Board (CPCB) to

fix the standards for the 34 industries mentioned in the order dated 2nd May, 2017.

We had further directed that the standards should be fixed on or before 30th June, 2017. We had given opportunity to the CPCB and the Union of India to move an application for reasonable extension of time. We had also cautioned the above industries, as submitted by learned *amicus curiae*, and agreed to by the learned Additional Solicitor General, that necessary steps would have to be taken by these industries to ensure that the pollution standards that are fixed by the CPCB are adhered to by 31.12.2017 as far as possible. The above industries should, therefore, start making their plans with immediate effect since sufficient notice is being given to them in this regard.

The matter was again taken up by us on 20th July, 2017.

On that date, we had noted the submissions of learned Solicitor General that some more time is required to fix the standards of NOX and SOX and perhaps some other emissions and effluents. Learned Solicitor General had stated that he will file an affidavit during the course of the day.

Several applications were also listed before us on that day and learned counsel for the applicant(s) had stated that they did not press these applications since they have instructions to assure this Court that the

industry would abide by whatever standards are fixed by the CPCB by 31st December, 2017. The assurance was taken on record.

Today, learned Additional Solicitor General has brought to our notice that an affidavit was in fact filed by learned Solicitor General on behalf of the Ministry of Environment, Forest and Climate Change on 20th July, 2017. In that affidavit, it was stated that insofar as 9 industries are concerned, SO₂, NO_X and SO_X standards had already been fixed. This is confirmed by learned *amicus curiae*.

It is also brought to our notice that emission standards for SO₂, NO_X and SO_X are not required to be fixed in respect of two industries, viz., electroplating industries and stone crushing units since there is no emission of SO₂, NO_X and SO_X.

We have been told by learned counsel appearing on behalf of the CPCB that draft standards were fixed by the CPCB in respect of 16 industries and these were communicated to the Ministry of Environment, Forest and Climate Change on 27.06.2017.

We are told by learned counsel that in respect of these 16 industries, the standards were communicated to the Ministry of Environment, Forest and Climate Change on 27.06.2017.

We are told by learned Additional Solicitor General that with regard to 5 more industries, the draft

standards were sent subsequently.

We are quite distressed that the Ministry of Environment, Forest and Climate Change has been sitting over 16 recommendations at least since 27.06.2017, that is, almost about three months without apparently showing any concern whatsoever for the pollution in Delhi and in NCR.

Learned Additional Solicitor General further informs us that the draft notification with regard to these industries was issued on 23rd October, 2017 inviting objections and in terms of Section 5 of the Environment Protection Rules, 60 days' time is required to be given for inviting objections. This period would expire on or about 23rd December, 2017 when hopefully notifications would be issued.

In any event, since the draft notifications have been issued and since the industry had assured us on 20.07.2017 that they would abide by the standards fixed by the CPCB, we expect the industries to live up to the assurance given to us by the industry even though the Ministry of Environment, Forest and Climate Change does not seem to be concerned about the entire issue.

With regard to two remaining industries, i.e., nitric acid industry and fertilizer industry, we are told that the standards in this regard were sent to the Ministry of Environment, Forest and Climate Change by the CPCB on 14th February, 2014. Three and half years have gone by, but

the Ministry of Environment, Forest and Climate Change has not done anything about it.

This is a completely disgusting state of affairs and this is hardly the way in which the Ministry ought to function if it is expected to perform its duties sincerely, honestly and with dedication.

Learned Additional Solicitor General informs us that necessary steps will be taken (after a lapse of three and half years) to issue a draft notification and needful will be done within one month from today, meaning thereby, the deadline of 31st December, 2017 will be crossed by the Ministry of Environment, Forest and Climate Change.

We record our unhappiness at the attitude of the Ministry of Environment, Forest and Climate Change, but we expect the industry to abide by the assurance that has already been given to us and particularly since they are aware of the standards proposed by the CPCB, maybe for the last couple of years at least.

We make it clear that the Ministry of Environment, Forest and Climate Change is bound by the statement made by learned Additional Solicitor General that the draft notification for the two industries would be issued within one month from today.

Seeing the totally insensitive attitude of the Ministry, We are inclined and we do impose costs of Rs.2,00,000/- (Rupees two lakhs only) on the Ministry of

Environment, Forest and Climate Change so that at least they now wake up to the problem relating to environment. The amount be deposited in the Supreme Court Legal Services Committee within four weeks from today for utilization of juvenile justice issues.

List the Report No.72 on 11th December, 2017.

Liberty is granted to the Union of India to file additional affidavit.

IA NO. 104664/2017 (APPLICATION FOR DIRECTIONS ON BEHALF OF INDRAPRASTHA GAS LIMITED)

Issue notice.

Mr. K.V. Mohan, learned counsel accepts notice and seeks some time to file reply.

List the application on 16th November, 2017 with other connected applications.

In the meanwhile, learned counsel for the petitioner has placed before us a letter dated 12th October, 2017 which has been issued by the State of Haryana through the office of the Executive Engineer, HUDA, Division No.1 Gurugram pursuant to the minutes of the meeting held on 8th September, 2017.

The letter has seriously been objected to not only by learned counsel for the petitioner, but also by learned Additional Solicitor General appearing on behalf of the Union of India.

In view of the above, until then, the letter dated 12th October, 2017 and the minutes of the meeting dated 8th September, 2017 will be kept in abeyance only as far as M/s. Indraprastha Gas Limited is concerned.

We had already directed that the I.As. on different subjects should be listed separately. We see no reason why the Registry has listed the matter relating to allocation of natural gas to M/s. IGL with Report No.72. Similarly, in other matters also, all the I.As in the same matter are being listed together, even though they pertain to different subject matters.

A copy of this direction be communicated to the Secretary General of the Registry for compliance.

(SANJAY KUMAR-I)
AR-CUM-PS

(KAILASH CHANDER)
COURT MASTER