

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Original Application No. 21/2014**

(M.A. No. 828/2017, M.A. No. 829/2017, M.A. No. 889/2017, M.A. No. 1177/2017, M.A. No. 1314/2017, 1341/2017, 1342/2017, 1343/2017, 1344/2017, 1345/2017, 1346/2017, 1347/2017, 1348/2017, 1349/2017, 1350/2017, 1351/2017, 1356/2017, 1357/2017 & M.A. No. 1358/2017 and M.A. No. 1324 of 2017, M.A. No. 1325 of 2017 and M.A. No. 1332 of 2017)

And

**Original Application No. 95/2014**

(M.A. No. 1156 of 2016)

And

**Original Application No. 303/2015**

And

**Original Application No. 609 /2016**

And

**Original Application No. 179 of 2016**

**IN THE MATTER OF:**

**Vardhaman Kaushik Vs. Union of India & Ors.**

And

**Sanjay Kulshrestha Vs. Union of India & Ors.**

And

**Supreme Court Women Lawyers Association Vs. Union of India & Ors.**

And

**Diya Kapur & Ors. Vs. Union of India & Ors.**

And

**Mahendra Pandey Vs. Govt. of NCT of Delhi & Ors.**

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON  
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER  
HON'BLE MR. BIKRAM SINGH SAJWAN, EXPERT MEMBER**

**Present: Applicant :**

Ms. Upama Bhattacharjee and MR. Saumitra Jaiswal, Adv. for Mr. Sanjay Upadhyay, Adv.  
Ms. Divya Kapur and Ms. Shqel Trehan and Mr. Ruhabh Sharma Adv.  
Mr. Vijay Sondhi, Ms. Cauvery Birbal and Mr. Sarvajeet Kumar Thakur, Adv. for Toyota  
Mr. Narender Pal Singh, Adv. with Mr. Dinesh Jindal, LO for Delhi Pollution Control Committee  
Ms. Priyam Mehta, Adv. in M.A. 1291 of 2017  
Mr. Sumeer Sodhi, Mr. Arjun Nanda Adv. in M.A. 1301 OF 2017  
Mr. Dinesh Kumar Garg, Adv. and Mr. Deepak Mishra, Adv. for State of Uttarakhand  
Mr. Raman Yadav, Adv. for GDA  
Mr. Amit Agarwal, Ms Asha Basu, Adv. for WBPCB  
Mr. Shuvodeep Roy and Mr. Sayooj Mohandas, Adv. for State of Assam  
Mr. V. K. Shukla, Adv and Mr. Vijay Laxmi, Adv for State of M.P.  
Mr. Ajay Marwah for HPPCB  
Mr. D. K. Thakur, Adv  
Mr. Pradeep Mishra and Mr. Daleep Dhyani, Adv for UPPCB  
Mr. Gaurav Dubey, Adv. in M.A. No. 1324, 1325 & 1332  
Mr. Rajesh Bhardwaj, Adv. in M.A. No. 1332/2017  
Mr. Sapam B. Meitei and Mr. Naresh Kumar Gaur, Adv.  
Mr. Vibhav Misra, Ms. Saumya Misra and Mr. Yashveer Singh, Adv. for DTC  
Mr. Shashank Bajpai and Mr. Shakun S. Shakla, Adv.  
Mr. Kamaljeet Singh, Adv.  
Mr. Devraj Ashok, Adv.

Mr. Guntur Prabhakar and Mr. Guntur Pramod Kumar and Mr. Prashant Mathur, Advs.  
Mr. Raja Chatterjee, Mr. Chanchal Kr. Ganguli, Advs. for State of West Bengal  
Mr. Atul Jha, Adv. for State of Chhattisgarh  
Mr. Rajkumar, Adv with Mr. Bhupender L.A for CPCB  
Mr. Shubham Bhalla and Ms. Roopam Rai, Advs.  
Mr. Soumyajit Pani and Mr. Chittaranjan Singh, Advs.  
Mr. Jayesh Gaurav, Adv. for JSPCB  
Mr. Gaurav Dubey, Adv. in M.A.  
Mr. Anil Grover, AAG & Mr. Rahul Khurana , Adv. for HSPCB, MCG, MCF & HUDA  
Mr. A.K. Prasad and Mr. Shashank Saxena, Advs. for MoPNG  
Mr. Ravindra Kumar Adv. for NOIDA & Greater NOIDA  
Ms. Sakshi Popli, Adv. for NDMC  
Mr. Rakesh Sharma and Mr. V. Mowli, Advs. for State of TN and TNPCB  
Mr. Gopal Singh, Mr. Rituraj Biswas & Mr. Kumar Milind, Advs. for State of Tripura  
Mr. Anil Shrivastav, and Ms. Sujaya Bardhan and Mr. Rituraj Biswas, Advs.  
Mr. Raj Kumar, Adv. with Mr. Bhupender Kumar, LA for Central Pollution Control Board  
Mr. Mukesh Verma and Mr. Pawan Kr. Shukla, Advs.  
Mr. Mukul Singh, Adv. for Ministry of Environment, Forest and Climate Change  
Mr. Parminder Chauhan Adv.  
Mr. Tarunvir Singh Khehar and Ms. Guneet Khehar, Mr. Sandeepn Mishra, Advs. for GNCTD  
Mr. Rajiv Bansal, Sr. Adv., Ms. Kanika Singhal and Ms. Vasudha Trivedi Mr. Kush Sharma and Mr. Lalit Mohan, Advs for Delhi Development Authority  
Mr. Archit Sharma, Ms. Satamita Ghosh and Mr. Rahul Singhal, Advs.  
Ms. Aruna Mathur, Mr. Avneesh Arputham and Ms. Anuradha Arputham, , and Ms. Simran Jeet, Advs. For State of Sikkim & Pollution Control Board  
Dr. Abhishek Atrey, Adv. for Ministry of Environment, Forest and Climate Change  
Ms. Yogmaya Agnihotri, Adv. and Ms. Prity, Adv. for CECB  
Mr. Arun Monga, Adv.  
Mr. Aman Shukla and Mr. S. S. Rebello, Advs.  
Mr. Abhimanyu Garg and Ms. Preety Makkar, Advs.  
Mr. Anchit Sharma, Mr. Satumita Ghosh and Mr. Dipankar Wadhwa, Advs.  
Mr. Om Prakash, Adv.  
Mr. Nishe Rajen Shonker, Adv. for State of Kerala.  
Mr. Jogy Scaria, Adv., Ms. Beena Victor, Mr. Reeghan S. Bal, Ms. Mrianda Solaman Advs. for Kerala State Pollution Control Board  
Mr. Edward Belho, AAG, K. Luikang Michael and Ms. Ms. Hoinethiam Advs. For Nagaland.  
Ms. Priyanka Swami, Adv. for Ghaziabad Nagar Nigam.  
Mr. Gautam Singh, Mr. Rudreshwar Singh Advs. for BSPCB  
Mr. Gautam Singh and Mr. Sohoab Alam, Advs. for State of Bihar  
Mr. Balendu Shekhar, Adv., Mr. Sriansh Prakash, Mr. R.K. Maurya and Mr. Ravi Gopal, Advs. for EDMC  
Mr. S.A. Zaidi and Ms. Mansi Chahal, Advs. in M.A.  
Mr. Debarshi Bhuyan Adv.  
Ms. Rani Chhabra, Ms. Priyanka Soni, Advs. in MAS  
Mr. Shiv Mangal Sharma (AAG), Ms. Shikha Sandhu & Mr. Saurabh Rajpal, Advs. for State of Rajasthan and RSPCB  
Mr. K.V. Jagdishvaran, Mr. Bhupesh Narula & G Indira, Advs. for UT of Admanan and Nicobar Administration  
Ms. Priyanka Sinha, Adv. for State of Jharkhand  
Dr. Sandeep Singh, Adv., Mr. Utkarsh Sharma and Mr. Vinay Pal, Adv. for State of Uttar Pradesh  
Mr. Nikhil Singhvi, Mr. Arjun Syal and Mr. Mohit Seth, Advs.  
Mr. D. Rajeshwar Rao, Adv.  
Mr. Gaurav Dubey, Adv. in MA 1289, 1324 and 1325  
Mr. Rajul Shrivastav, Adv.

Ms. Alpana Poddar and Mrs. Preeti Goyal, Adv.  
 Ms. Puja Kalra, Adv.  
 MS. Shruti Munjal and Mr. Ankur Chhibber, Adv.  
 MR. Rishabh Sharma, Mr. Nitish NEgi, Adv. and Mr.  
 Nawani, Assisand Engineer  
 Mr. Rajneesh Bhuj, Mr. Raj Kishan Gaur, Mr. Rahul  
 Sharma and Mr. Tarun Aggarwal, Adv.  
 Mr. Preet Pal Singh and Ms. Priyam Mehta, Adv.

Date and Remarks	Orders of the Tribunal
<p><b>Item No. 53-57</b></p> <p><b>November 09, 2017</b></p>	<p>The Supreme Court of India has declared right to decent and clean environment as a fundamental right within the ambit and scope of Article 21 of the Constitution of India. The Legislature enacted the laws for protection of environment and natural resources. The Constitution of India in terms of Article 47 (A) and 15 (A) (g) read with Article 21 mandated the State to protect the environment imposed and fundamnt duty upon the citizens to protect the environment and the natural resources and the judiciary to ensure the protection of the fundamental rights granted to the citizens of India. That is the stature provided to protection of environment and ecology of natural resources in our country.</p> <p>The right to life has been infringed with impunity by the persons, Authorities and States upon whom lay Constitutional and statutory obligations to provide decent and clean environment to the public at large particularly in relation to breathing of clean air and drinking of clean water.</p> <p>The Central Pollution Control Board has provided monitoring stations in various parts of NCT of Delhi, the analysis reports clearly show persistent hazardous ambient air quality not only in NCT of Delhi but even in NCR of Delhi and other parts of the country. The PM<sub>10</sub> value is analyzed which shows 986 micro grams per cubic meter against the prescribed value of 100 micro grams per</p>



cubic meter on 08.11.2017. The PM<sub>2.5</sub> for the same date is analyzed 425 micro grams per cubic meter against the prescribed value of 60 micro grams per cubic meter. For today PM<sub>10</sub> value is declared to be 1136 micro grams per cubic meter against the prescribed value 100 micro grams per cubic meter and PM<sub>2.5</sub> is 760 micro grams per cubic meter against the prescribed value of 60 micro grams per cubic meter as per Delhi Pollution Control Committee. It is undisputable and infact has been exhibited on various platforms including display sites of Central Pollution Control Board and Delhi Pollution Control Committee where the value of PM<sub>10</sub> and PM<sub>2.5</sub> is in flagrant violation to the prescribed value. The Central Pollution Control Board has reported the pollution levels in Delhi around hazards or severe air pollution category. This has been a continuous state of affairs for the last more than 7 to 10 days. It is surprising that samples collected by the Central Pollution Control Board and Delhi Pollution Control Committee and other State Boards have not even bothered to test all the 8 parameters. Some of them claim that they have tested parameters but, however, none of the display board displays these parameters. The components are of very serious nature like SO<sub>2</sub>, NO<sub>2</sub>, CO and Ozone included in the ambient parameters. These can have very serious impacts on the human health if they are found to be in excess in the ambient air quality. The Boards shall provide the analysis report to the Tribunal consisting of all the 12 parameters on the next date of hearing.

We have no hesitation in observing that all the

concerned Government and stake holders and its departments have failed to perform their statutory function to provide decent and clean environment to the people living in NCR. Holding meeting and writing letters and shifting the blame to each other for non-performance and non- cooperation can hardly be an excuse for meeting such environmental emergency. No party, statutory bodies or even the citizens can be a mere spectators to such environmental crisis and there has to be concerted effort in discharging of constitutional and statutory duty by all concerned to ensure that the people do not suffer from health hazards because of non-performance from the concerned quarters.

The doctrine of preventive and precautionary principle with greater emphasis on inter generational equity has been violated, ignored at every relevant stages. The Tribunal had passed a detailed judgment in the case of Vardhman Kaushik on 10<sup>th</sup> November, 2016 and had clearly postulated the steps that were required to be taken on long term and short term basis keeping in view the precautionary principle to ensure that the ill-effects and adverse impact of polluted ambient air quality in the previous year is not repeated in the year 2017. However, this remains un-executed and non-complied. The judgment has been complied with only in default. The Central Pollution Control Board is stated to had issued some directions on 01<sup>st</sup> November, 2017 where in terms of Section 5 of Environment (Protection) Act, 1986 and in the face of these directions it is specifically noted that the field visits in September and October, 2017 and large incidents

of open dumping of waste, traffic congestion, open burning, construction activity with adequate dust control measures, open dumping of C&D waste, storage of construction material was observed, various deficiencies or inadequacies were noticed by the Board. The Board itself has failed to perform its function and issue timely and appropriate directions in exercise of its statutory power.

We find not even an single plausible explanation as to why the directions contained in the judgment had not been obeyed and carried out by concerned authorities/stake holders. The fundamental rights particularly which relates to right to life cannot be subjected to economic limitation. More often than not, the Supreme Court has held that the normally economic limitations cannot be raised as a defence to fundamental right particularly right to life. We are informed that certain directions have been issued by the administration which certainly are not adequate and they do not comply with the judgment of the Tribunal despite the fact that the matter was kept pending and various applications have been filed for different purposes. There is no Authority who is able to show the effective compliance of the directions contained in the judgment, coupled with the above situation and apparent non-cooperation and non-coordination amongst the various wings of the States and its instrumentalities. We hereby pass the following directions:-1

1. All the construction (structural) activity of any kind in the entire NCR is hereby prohibited and will not

be carried on by any person, private or Government Authority in the entire NCR till the next date of hearing. However, the internal finishing and interior work (causing no dust whatsoever) where no construction material is used can be carried on.

2. For the days when the construction activity remains prohibited the labourer shall not be denied of their daily wages and labourer would be paid their daily wages and would not be adversely affected by the order of the Tribunal.

3. All the industrial activity in NCR of Delhi which releases emission would also not be carried till the next date of hearing.

4. All the Corporations, Delhi Development Authority, Public Health and Environment Department of NCT of Delhi shall constitute teams of its Officers/officials who will visit different areas under their respective jurisdiction and ensure that there is not burning of waste or any material in any part of NCR and to ensure compliance of these directions. This will equally apply to the areas and the Authorities having jurisdiction over the NOIDA, Greater NOIDA, Ghaziabad, Sonapat, Gurgaon, Faridabad, Palwal, Bahadur Garh and Manesar.

5. These teams shall also inspect if there are any construction material particularly cement, sand and bajjari lying in the open un-covered and un-protected and the same shall be seized by the Corporation besides requiring the owner builder to pay environmental compensation in terms of the



judgment dated 10.11.2016.

6. If there are any brick kiln or hot mix plants operating in any part of the NCR the same shall be shut down and will not be permitted to operate till the next date of hearing.
7. The Central Pollution Control Board, Uttar Pradesh Pollution Control Board, Haryana Pollution Control Board, Punjab Pollution Control Board, Rajasthan Pollution Control Board and Delhi Pollution Control Committee shall maintain due records of ambient air quality in the areas falling under their jurisdiction being part of NCR.
8. We direct that there should be sprinkling of water where the PM<sub>10</sub> (ambient air quality) is found to be in excess 700 micro grams per cubic meter. The sprinkling of water would be done through helicopters or by the fire brigade in each District of NCT of Delhi.
9. There should be regular cleaning of road (by manually preferably vacuum cleaners) particularly and sprinkling of water so that the particulate matters do not again rise to the air.
10. We direct the NCT of Delhi and all the Authorities to ensure that the petrol vehicles which are more than 15 years of age and diesel vehicles which are 10 year old are not permitted to ply on the roads. The Authorities must seize such vehicles and they should be parked on the identified sites which sites should be identified by the Authorities as a temporary site for the purposes of parking by



tomorrow that is 10<sup>th</sup> November, 2017. No trucks, tractor and tractor trollys from outside station or within the NCR would be permitted to transport any construction material particularly sand, cement and bajjari till the next date of hearing. This will in addition to the directions already passed by the NCT of Delhi for Delhi.

11. No construction activity would be carried out and no digging would be done even on the roads/highways or constructions sites.

12. No fuel of waste, wood petcoke or any other would be used for purposes of heating bitumen for metalling roads or otherwise.

13. The States of Uttar Pradesh, Punjab, Haryana, Rajasthan would ensure that there is no crop residue burning in any part of their States and Government should provide due incentives to the farmers for removal, carrying and utilization of the crop residue providing some benefits to the farmers. The directions contained in the judgment in that behalf in the case of Vikarnt Tongad Vs. Union India shall be complied by all these States. We are informed that the Badarpur Thermal Power Plant has been lying closed for carrying out certain improvement in the plant till March, 18, 2018 under the Orders of the Government.

14. GRAP shall be implemented by the all the States that is State of Rajasthan, Punjab, Haryana, Uttar Pradesh and in NCR Region particularly to protect and improved the ambient air quality.

15. The NCT of Delhi and all the States Governments in NCR, Local Bodies would submit their action plan in furtherance to the judgment of this Tribunal in the cases Vikrant Tongad Vs. Union of India and Vardhman Kaushik Vs. Union of India within two weeks from today.

16. We direct that all the Authorities must comply with the directions of the Tribunal to enhance and encourage the public transportation to reduce car traffic pressure on the roads particularly by implementing the directions in relation to plying of deluxe/ air conditioned destination buses.

17. All the Corporation/ Local Authorities would ensure that there is no dust and waste accumulation on the roads or on the walking paths/lanes/service roads.

18. By Monday i.e. 13<sup>th</sup> November, 2017, the Boards must submit the analysis reports and we also direct the concerned Police Authorities to fully cooperate with the Local Authorities of the concerned States to ensure the compliance of this order,

We must also notice that judgment dated 10.11.2016 of the Tribunal which deals comprehensively with all the matters relating to the air pollution has attained finality as no one has challenged the same.

We direct that all directions contained in the judgment must be implemented strictly and expeditiously by all concerned.

List these matters on Tuesday that is 14<sup>th</sup>

November, 2017 when we will consider whether these directions should be vacated or continued for any longer time.

**M.A. No. 1324 of 2017, M.A. No. 1325 of 2017 and M.A. No. 1332 of 2017.**

All these applications are allowed subject to the conditions contained in our detailed order dated 13<sup>th</sup> October, 2017.

Thus the M.A. No. 1324 of 2017, M.A. No. 1325 of 2017 and M.A. No. 1332 of 2017 stand disposed of with no order as to cost.

.....,CP  
(Swatanter Kumar)

.....,JM  
(Dr. Jawad Rahim)

.....,EM  
(Bikram Singh Sajwan)

