

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

**Appeal No. 34 of 2016  
(M. A. No. 602 of 2016)**

**Excellent India Pvt. Ltd. & Anr.  
Vs.  
Sub Division Magistrate, Chankyapur & Ors.**

**CORAM :** HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER  
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER

**Present:** **Applicant:** Mr. Sudhir K. Makkar, Sr. Adv. with Mr. Varrun Pandia, Adv. and Mr. Pankaj Bhardwaj, AR OF Company  
**Respondent Nos. 1 & 3:** Mr. Narender Pal Singh, Adv. for Mr. Tarunvir Singh, Adv.

	<b>Date and Remarks</b>	<b>Orders of the Tribunal</b>
	<b>Item No. 05  June 15, 2016</b>	<p>In Appeal No. 34 of 2016 the Appellant have assailed the order dated 19<sup>th</sup> May, 2016 on the file that Sub-Divisional Magistrate (SDM), Chanakyapuri whereby a D.G. Set installed in the premises of the Appellant has been sealed on the ground that it has contravened the provision of the Environment (Protection) Act, 1986 read with Noise Pollution (Regulation and Control) Rules, 2000 and notification issued there under. The grievances of the Appellant is the order impugned, is not sustainable as the procedures prescribed for sealing of any property for contravention of the provision of Noise Pollution (Regulation and Control) Rules, 2000 has not been complied with and followed.</p> <p>That, show cause notice was issued on 15<sup>th</sup> February, 2016 to the Appellant by the SDM directing them to show cause as to why the D.G. Set should not be closed/removed from the above premises as per provision envisaged under Noise Pollution (Regulation and Control) Rules, 2000.</p> <p>The Appellants claim to have sent reply to the show</p>

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cause notice dated 22<sup>nd</sup> March, 2016 in which they requested S.D.M. to grant them 15 to 20 days, during which they would rectify the defects, if any, and install new set. Despite receipt of the reply to the show cause the SDM proceeded to visit the premises on 30<sup>th</sup> March, 2016 and has sealed the D.G. Set by the provisional order dated 30<sup>th</sup> March, 2016 placed at Annexure A-1.

It is urged it was but necessary that SDM should have given them reasonable time to rectify the defects or install new D.G. Set instead of resorting to punitive action of sealing. The main grievance is after the sealing order when they applied to the SDM, he did not consider representation. Compelling them to file writ before the Hon'ble High Court of Delhi in W.P. No. 4102 of 2016. The said writ petition was disposed of directing the SDM to consider the representation of the Appellant.

Pursuant to the order of Hon'ble High Court of Delhi SDM has considered the representation and by the impugned order dated 19<sup>th</sup> May, 2016 has declared that he has lost jurisdiction in view of the FIR having been registered vide FIR No. 45 of 2016 dated 11<sup>th</sup> May, 2016 against the Appellants for prosecution of the Appellant under the provision under Section 15 of the Environment (Protection) Act, 1986.

Referring to these factual aspects it is contended the Appellants have been singled out by SDM to harass them. The Learned counsel submits when the appellant had offered to replace D.G. Set with the new and non-polluting D.G. Set, the SDM should have allowed them instead of proceeding to order initiation of Criminal Action against

<p><b>Item No. 05</b></p> <p><b>June 15, 2016</b></p>	<p>the Appellant. He undertakes under instructions of client that even now they are ready to replace the D.G. Set with the new D.G. Set meeting all norms of the Noise Pollution (Regulation and Control) Rules, 2000.</p> <p>We had requested Advocate appearing on behalf of Respondent No. 3 in terms of our order dated 13<sup>th</sup> June, 2016 to take instruction for SDM. The Learned Counsel appearing for Respondent No. 1 and 2 submits that SDM would like to question maintainability to appeal for the reason. National Green Tribunal Act, 2010, has jurisdiction over all civil matters but not criminal prosecution. He submits an FIR No. 45 of 2016 is registered on 11<sup>th</sup> May, 2016 under Section 15 of the Environment (Protection) Act, 1986 to prosecute the appellant for contravention provisions of Noise Pollution (Regulation and Control) Rules, 2000. Thus this Tribunal has no jurisdiction. He submits that D.G. Set is now property subject to Criminal case and thus provision of Section 451 and 457 CrRPC would attract. In such circumstances the Appellant is required to approach Magistrate before whom FIR is lodged to seek order to release D.G. Set. He lastly submits that any order passed in regard to the D.G. Set to de-seal it may interfere with Criminal prosecution and it will not be in the favour of justice.</p> <p>We have given opportunity of sufficient hearing to both the side and have perused records in supplementation.</p> <p>It is not disputed that D.G. Set installed in the premises of Appellant is sealed by the SDM by order dated</p>
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	<p><b>Item No. 05</b></p> <p><b>June 15, 2016</b></p>	<p>13<sup>th</sup> March, 2016. Thus the orders impugned for sealing passed by the DM is the first order and is still in force. It was subject to writ action of Hon'ble High Court of Delhi whereby SDM was to consider representation of the Appellants who had sought permission to replace the D.G. Set meeting all norms and specification under the Noise Pollution (Regulation and Control) Rules, 2000. Thus, it is clear what Appellant wanted is permission to remove the D.G. Set with new D.G. Set. The SDM has considered the representation but did not allow them the relief.</p> <p>From the proceedings initiated by the SDM we are of the opinion he may be justified in initiating action under the provision of Noise Pollution (Regulation and Control) Rules, 2000 and also visiting the spot and sealing the D.G. Set but what happened subsequently is disturbing. The Appellant had requested him to permit replacing of the D.G. Set with a new set. The representation has not been considered by the SDM. On the other hand when the Hon'ble High Court directed him to consider the representation, he has declined on the ground he has no jurisdiction in view of the registration of FIR. This part of the proceedings before him does not appear to be reasonable action by a Statutory Authority like SDM.</p> <p>On overall consideration of facts and circumstances we are of the opinion that there is no impediment to the SDM to consider the representation of the Appellants to replace the D.G. Set because this D.G. Set was sealed only by the order of the SDM under the provisions of Noise Pollution (Regulation and Control) Rules, 2000. Besides, there is no material to show that the D.G. Set has been</p>
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seized during investigation as is required under the provisions of Section 100 and 101 of the Code of Criminal Procedure. In the circumstances it is difficult to accept contention of the Respondents Counsel that Appellant should approach the Magistrate for release of D.G. Set invoking Section 451, 457 and 453 of the Code of Criminal Procedure. That would arise only if there is seizure of property during investigation of criminal case. It does not apply when it is sealed under the provision of EP Act 1986.

Consequently we are of the opinion Appellant has made out cases.

The Appeal is allowed in part :-

(a) The SDM is directed to permit the Appellant to replace the D.G. Set sealed under order dated 30<sup>th</sup> March, 2016 No. F.16/DC/ND/The/Ch.Pui/Misc./2014-15/13163 with new set.

(b) The SDM may remove the D.G. Set from the premises of the Appellant and keep it in safe custody subject to any order that may pass in criminal proceeding arising out of FIR No. 45 of 2016 dated 11<sup>th</sup> May, 2016 or any Court or This Tribunal.

This order is confined only to permit replacement of the existing D.G. Set with the new D.G. Set and shall not be construed as affecting separate proceedings initiated against the Appellants in FIR No. 45 of 2016 dated 11<sup>th</sup> May, 2016 or action under provisions of Noise Pollution (Regulation and Control) Rules, 2000. The Appellant's right to question those proceedings is however reserved.

<p><b>Item No.</b> <b>05</b></p> <p><b>June 15,</b> <b>2016</b></p>	<p>With the above conditions appeal is disposed of. We grant one week time to Appellant to arrange to replace the D.G. Set. We further direct S.D.M. to make necessary provisions to take possession of the D.G. Set to enable the Appellant to replace it with new D.G. Set.</p> <p>In view of this order M.A. No. 602 of 2016 also stands disposed of with no order as to cost.</p> <p>Copy of this order may be made available to the Learned Advocates of both sides.</p> <p>.....,JM (Dr. Jawad Rahim)</p> <p>.....,EM (Dr. Satyawan Singh Garbyal)</p>
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