

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

(By Video Conferencing)

I.A. Nos. 109 to 111/2021
IN
Original Application No. 1002/2018

Abhisht Kusum Gupta Applicant
Versus

State of Uttar Pradesh & Ors. Respondent(s)

Virender Singh & Ors. ----- Applicants in the IAs

Date of hearing: 27.05.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Ms. Malvika Trivedi, Senior Advocate with Mr. Nipun Katyal, Advocate
in I.A Nos. 109 to 111/2021

Respondent: Mr. Balendu Shekhar, Advocate for EDMC

ORDER

1. This order will dispose of I.A. Nos. 109 to 111/2021 filed by Mr. Virender Singh and 19 others seeking impleadment, quashing of closure notice dated 24.02.2021 issued by the East Delhi Municipal Corporation (EDMC) and stay of the said closure notice respectively. The fact remains that this is indirect method of challenging the said notice by way of an IA, though otherwise NGT is neither appellate forum against the said notice nor original challenge is maintainable. Ground for taking this route is said to be 'misinterpretation' of NGT order by the EDMC. However, we have heard learned Counsel for the applicants at length on merits. Earlier the

applicants moved the Delhi High Court by way of writ petition which was withdrawn to move this Tribunal.

2. The applicants have referred to **five** earlier orders of this Tribunal dated 30.11.2018, 19.02.20219, 11.09.2019, 25.02.2020 and 06.11.2020 in the main matter, which is now fixed for further hearing on 22.6.2021. The issue raised in the main application concerns pollution of irrigation canal near Sector 137, NOIDA.

3. We may give a brief resume of the five orders referred to in the application to understand the background. Vide **first** order dated 30.11.2018, the Tribunal sought a factual report from NOIDA and UPPCB in response to allegation of pollution of the drain in question. As per report dated 14.02.2019, it was stated that apart from local pollution, pollution from Delhi (Village Kondli) was also being discharged into the drain. Accordingly, vide **second** order dated 19.02.2019, the Tribunal directed the CPCB, DPCC, DJB and EDMC to be part of the joint Committee apart from the UP PCB and NOIDA. The said joint Committee gave its report dated 18.04.2019 and supplementary report dated 08.07.2019 *inter alia* stating that source of pollution in Delhi was unauthorized colonies namely GD colony, Gharauli village and Kondli village which were discharging their untreated sewage to drainage system meeting the drain in question at Noida Sector 137. **It was recommended that in respect of pollution in Delhi, action should be taken by EDMC and DJB which should include decentralized treatment facility for the dairy farms at Gharauli village.** In the supplementary report it was mentioned that CPCB mentioned that it has given **direction under Section 5 of the Environment (Protection) Act, 1986 in respect of Delhi** as follows:-

“1. **Directions issued to EDMC:**

- i. To direct dairy farms to develop decentralized treatment facility so that their untreated waste shall not be discharged to DDA drainage system.*
- ii. To ensure that untreated dairy waste including animal dungs from Gharuli village should not be discharged into storm water drain. Challan / Legal action shall be initiated against such violators.*

2. **Directions issued to DJB:**

- i. To initiate legal proceedings against the residents of GD colony, Gharauli village and Kondli village, Delhi having failed to take sewer connections.*
- ii. To ensure that each building under their jurisdiction shall have sewer connection so that current practice of discharge of untreated sewage into storm water drainage system should be stopped.”*

4. The statutory direction of CPCB is not under challenge. The Tribunal, accordingly, vide **third** order dated 11.9.2019, directed further remedial action, including taking of performance guarantee from the EDMC and DJB. The matter was then considered by the **fourth** order on 25.02.2020 in the light of status report dated 01.11.2019 filed by the CPCB. In respect of the subject in question, the status was mentioned as follows:

Si. No	Department	Directions of CPCB and NGT	Status report	Recommendations
4.	EDMC	<ul style="list-style-type: none"> <i>i. To direct dairy farms to develop decentralized treatment facility so that their untreated waste shall not be discharged to DDA drainage system.</i> <i>ii. To ensure that untreated dairy waste including animal dungs from Gharuli village should not be discharged into storm water drain. Challan/Legal action shall be initiated against such violators.</i> <i>ii. Hon'ble NGT directed to submit furnish performance guarantees in the sum of Rs. 1 crore each to the satisfaction of CPCB undertaking to take remedial actions in the terms of the directions of the CPCB, failing which the said amount will be forfeited.</i> 	<ul style="list-style-type: none"> <i>i. EDMC has informed during the meeting that 591 Challan issued to residents of Kondli and Gharauli for disposing their wastewater into drain and Show-Cause notice is also issued to illegal dairies for discharging waste in drain.</i> <i>ii. East Delhi Municipal Corporation Veterinary Services Department Vide email dated 31/10/2019 provided the action taken report indicating action taken against the illegal dairy farms at Gharoli colony. Copy attached as Annexure-VIII.</i> <i>iii. Performance Bank Guarantee was not submitted. However, it was informed that same was approved by Competent Authority and will be submitted in one week time.</i> 	<ul style="list-style-type: none"> <i>i. EDMC should ensure that untreated dairy waste including animal dungs from Gharuli village should not be discharged into storm water drain. Challan / Legal action shall be initiated against such violators.</i> <i>ii. The dairy farms be shifted to outskirts of the area in a time bound manner.</i>

5. The Tribunal directed further action. The matter was last considered by **fifth** order dated 06.11.2020 in the light of further status report dated 29.10.2020. The present issue was considered as follows:-

*“9. Learned counsel for EDMC, on instructions says, that there is a proposal to shift the dairies but that is not possible in absence of land. We find this excuse untenable only to avoid responsibility. The plea raised is not a justification for permitting violation of law by the dairies to the detriment of the rights of the citizens. **To enforce rule of law and prevent the causing of pollution and hazard to the health of the inhabitants, activities operating in violation must be forthwith stopped and compensation recovered for the violations. Prosecution may be initiated and source of pollution may be closed. DPCC must also take necessary action on its part. If the EDMC remains non-compliant, the Commissioner will be personally held responsible. Let the compliance report be file within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.**”*

6. We note from record that CA (Diary No.) 5433/2021 State of UP vs. Abhisht Kusum Gupta has been dismissed by the Hon’ble Supreme Court on the ground of limitation against an earlier order in this matter. As already mentioned, the matter is now scheduled to be listed for hearing on 22.06.2021. In the meanwhile, the EDMC has issued closure notice dated 24.02.2021, which is said to be ‘misinterpretation’ of order of this Tribunal and otherwise unsustainable.

7. The impugned order, after referring to the above proceedings, mentions that:

*“5. **There is no facility for treating of dairy waste in Gharoli Dairy Colony and Gharoli Village. Thus, to comply the order of Hon’ble NGT court is a priority for EDMC to check the pollution of Irrigation Canal in Section 137, Noida, Uttar Pradesh. Therefore, closing of dairies at above area is unavoidable.***

*6. **Therefore, you are hereby directed to close down your dairy business at your premises within days after receipt of this notice or otherwise department will take suitable action against you including sealing action of your dairy.**”*

8. Main contention on behalf of the applicants in IAs is that action of the EDMC is based on wrong interpretation of order dated 06.11.2020. The dairies in question have been in existence since 1976. The applicants have been paying electricity bills, license fee and renewal fee for the license to operate the dairies. They are getting water supply from private operators, in absence of water supply by the DJB. **They are in the process of installing bio-gas plant for which land is required. They will not discharge dung into the sewer or contribute to the air or water pollution if amiable solution is found by the Tribunal. The closure will affect the right to livelihood. Waste generated is not hazardous and is being duly collected. Bio-medical waste Management Rules, 2016 are also being complied with. In absence of infrastructure for proper handling of waste, the Municipal Corporation should facilitate the same by composting bio-gas production, manufacturing of dung wood.** The applicants approached the Delhi High Court by way of *W.P (C) 4396/2021, Virender Singh v. East Delhi Municipal Corporation & Ors.*, which was disposed of as follows:-

“Learned counsel for the petitioner seeks leave to withdraw the petition with liberty to approach the National green Tribunal for appropriate directions.

The petition is accordingly dismissed as withdrawn with the liberty as prayed for.”

9. Learned Counsel for the EDMC has opposed the application by pointing out that currently pollution is being discharged in the drain or on land and thus there was no option except to pass closure order to enforce the law. There is continued violation of environmental norms, statutory direction of the CPCB and the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the EP Act).

Mere holding of license for operating the dairy or allotment of land for the purpose does not create any right to violate the environment laws. The action of the EDMC is thus consistent with the mandate of law of ensuring that no pollutant is discharge into a water body which is criminal offense under Section 26 read with other provisions of the Water Act. An activity which is crime under the law of the land has to be stopped. Further reference has been made to an order of this Tribunal on the subject dated 08.10.2020 in *O.A No. 46/2018, Nuggehalli Jayasimha v. Government of NCT of Delhi*. Therein, reference was made to the **judgement of Delhi High Court in Common Cause v. UOI (2007 SCC Online Del 863), that hygiene and protection of environment in operating dairies in Delhi was required.** Under the directions of Delhi High Court, a policy was framed by the MCD on 17.07.2010, laying down standards to be followed. The Tribunal also referred to report of the Expert Committee constituted by the Indian Council for Agricultural Research, Government of India dated 01.11.2016 under the Chairmanship of Dr. Arjava Sharma, Director, ICARNBAGR, Karnal on sustainable management of the cattle in the light of adverse consequences of the dairy activities on the environment. On direction of the Tribunal, the CPCB proposed guidelines which were filed with its report dated 01.10.2020 proposing regulatory mechanism in the form of consents under the Water and the Air Acts. The Tribunal directed the mechanism to be finalized and published. In the said matter also, CA7285/2019 filed by the South Delhi Municipal Corporation against earlier direction of the Tribunal was dismissed by the Hon'ble Supreme Court on 16.9.2019. It will be appropriate to reproduce extracts from the said order:-

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1. *The issue for consideration is the enforcement of environmental norms in functioning of dairies. The Tribunal earlier considered the grievance that **unscientific management of solid and liquid waste from such dairies, by dumping such waste in drains or***

in open generates Ammonia and Nitrogen oxides in the air and nitrate in soil and ground water. The odour from dairies negatively impacts the air quality. Ammonia is wafted into the air from manure lagoons. Gases known as volatile organic compounds are created by the huge piles of feed. The foul smell from the dairy causes migraine and headache. People have no option but to inhale the impure/foul air present in the atmosphere. In the light of inspection reports dated 04.12.2015 and 15.12.2015, prepared by the Animal Welfare Board of India, it was noted that there was rampant use of Schedule H drugs, oxytocin injections, syringes, plastic bottles and other veterinary drugs etc. which are disposed of improperly and in unscientific manner, in violation of Bio-medical Waste Management Rules, 2016. The dairies were not following waste management practices. There was violation of Food Safety and Standards (Licence and Registration of Food Businesses) Regulations, 2011.

2. The Tribunal issued directions for enforcement of norms against which Civil Appeal No. 7285/2019, filed by the SDMC, was dismissed by the Hon'ble Supreme Court. The Tribunal referred to the judgement of the Delhi High Court in Common Cause v. UOI, (2007 SCC Online Del 863), wherein Municipal Corporation of Delhi was directed to formulate a licensing policy under Section 417 of the Delhi Municipal Corporation Act, 1957. The High Court observed that the dairies need to be relocated on account of hazard of stray cattle on the roads and trauma faced by the cattle in the cities on account of traffic. Reference was also made to the filth, squalor and outbreak of diseases. As a short-term measure, preventive steps were required for hygiene and protection of environment. Our attention has been drawn to a policy framed by the MCD on 17.07.2010 prohibiting keeping of cattle in any premises without license. Authorized dairy areas were specified and standards and measures were also specified. Reference was also been made to the report of an Expert Committee constituted by the Indian Council for Agricultural Research, Government of India, dated 01.11.2016 under the Chairmanship of Dr. Arjava Sharma, Director, ICARNBAGR, Karnal. The report dealt with sustainable management of unproductive cattle. The report specifies land requirement, feeding requirement, labour requirement and health management. The Tribunal also noted various articles on the subject¹ which highlight adverse consequences on the environment due to illegal and unscientific dairy activities. It was also observed that there was violation of various provisions of the Delhi Municipal Corporation Act, 1957.

¹ "Delhi is major contributor of population in Yamuna" published in "The Hindu" dated 17.04.2007, "Feeding on plastic poses high risk to lives, output of stray cattle" published in "Indian Today" dated 08.05.2017, "Serious farm population breaches rise in UK-and many go unprosecuted" published in "Guardian" dated 21.05.2017, "How growth in Dairy is affecting the environment" published in "The New York Times" dated 01.05.2015 and "Stray cows clog South Delhi roads" published in "The Times of India" dated 05.08.2012 and research papers titled "Nitrogen pollution by dairy cows and its mitigation by dietary manipulation", "Impact of Dairy Effluent on Environment-A Environmental Science and Engineering (Subseries: Environmental Science)", apart from other documents and photographs.

5. Accordingly, a further report dated 01.10.2020 has been filed by the CPCB to the effect that the Guidelines have been finalized on 05.06.2020. The same have been uploaded on the website and circulated to all the State PCBs/PCCs. The Guidelines deal with solid waste management, water waste management, air quality management, siting policy and regulatory/monitoring mechanism. We consider it appropriate to quote extracts dealing with the Siting Policy and Regulatory/Monitoring mechanism:

“4. Siting Policy:

The siting criteria will be applicable for new establishment, however, the existing establishments should take appropriate pollution control measures as per the guidelines. The siting policy for dairy farms and gaushalas are as follow:

- i. Dairy farms and gaushalas should be located outside city/village boundaries, atleast 200 meters away from residential dwellings and 500 meters away from hospitals & schools.*
- ii. Dairy farms and gaushalas should not be located in flood prone areas, subject to flooding at 1-in-25-year or more frequent levels in order to avoid contamination of water bodies.*
- iii. Dairy farms and gaushalas should not be located in areas with shallow groundwater depth of about 10 to 12 feet and in particular in alluvium areas in order to avoid groundwater contamination.*
- iv. Dairy farms and gaushalas may be allowed to follow minimum distance criteria given below which may be subject to vary with the local conditions:*
 - a. National and State Highways: 200 meters from National Highway and 100 meters from State Highway in order to avoid odour nuisance and road accident caused due to cattle.*
 - b. Major drinking water reservoir on catchment side: 500 meters in order to avoid water contamination due to leakages/spillages from the dairy farms and gaushalas.*
 - c. Drinking water source like wells, summer storage tanks, other tanks (drinking water): 100 meters in order to avoid water contamination.*
 - d. Major watercourses like River and Lake: 500 meters in order to avoid water contamination.*
 - e. Canals: 200 meters in order to avoid water contamination.*
 - f. Inter-se distance between two establishments should be atleast 5 meters for ventilation. Each unit should provide atleast 2.5 meters from each side and develop the green belt.*

5. Regulatory/ Monitoring Mechanism:

- i. **The local authorities/corporations should carry out inventory of the dairy farms and gaushalas** located in their jurisdiction in the modified inventory proforma given at **Annexure-A**. The same should be updated and shared with the concerned SPCB/PCC on annual basis (calendar year wise).*

- ii. **The local bodies/municipal corporations shall publish a public notice in newspapers and on their website for registration of dairy farms and gaushalas as per municipal law.** The registration may be done preferably through online mode and same may be displayed at their websites.
- iii. **The SPCBs/PCCs shall publish a public notice for dairy farms and gaushalas to obtain consent to establish and consent to operate under Water Act, 1974 as well as Air Act, 1981 as per the categorization of industries.** CPCB issued directions on 10.07.2020 under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 regarding classification of Dairy Farms and Gaushalas into Orange and Green Category, respectively.
- v. **The SPCBs/PCCs/local bodies/municipal corporations shall upload the environmental guidelines and Form-A for compliance status of environmental guidelines on their website and also circulate to all the dairy farms and gaushalas.** The compiled status of compliance in the form of report shall be submitted once in six months by SPCBs/PCCs to CPCB for Audit purpose. The concerned SPCBs/PCCs/local bodies/corporations should monitor the dairy farms and gaushalas on regular basis to ensure the proper disposal of cattle dung and wastewater to check compliance of environmental norms. The SPCBs/PCCs will considered the carrying capacity of the surroundings while allowing a new establishment and laying down the environmental norms.
- vi. **The SPCBs/PCCs shall carry out environmental audit of atleast 2 dairy farms and 2 gaushalas, randomly selected from each district of the state/UT and submit the compliance and action taken report to CPCB on half yearly basis.**
- vii. CPCB shall carry out environmental auditing of 4 dairy farms and 4 gaushalas in each state/UT, randomly selected based on the information received from SPCBs/PCCs on annual basis.
- viii. In case of any violation of environmental norms under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and Environmental (Protect) Act, 1986 by dairy farms and gaushalas, **the concerned SPCBs/PCCs should impose environmental compensation as per the CPCB methodology for "Environmental Compensation to be levied on Industrial Units",** for damaging the environment and in order to stop polluting activity and initiate prosecution for repeatedly polluting units.
- ix. SPCBs/PCCs should provide training and consultation to the Gram Panchayat for implementation of guidelines in their jurisdiction. Gram Panchayat should ensure the

implementation of the guidelines by dairy farms and gaushalas falling under their jurisdiction for handling and management of the wastes.

- x. Hands on practical trainings on environment/waste management & treatment technologies, scientific feeding for enteric methane reduction, waste to wealth management programme, etc. should be provided to dairy workers/entrepreneurs by the local bodies/SPCBs/PCCs on regular interval.”*

6. Shri Raj Panjwani, learned Senior counsel appearing for the applicant has made some pertinent observations and submissions about the report contained in the written note filed. The CPCB may consider the same and if necessary, also have oral interaction with Shri. Panjwani on telephone/video conference, as agreed to by him. In the light thereof, suitable changes may be made and either the Guidelines may be suitably revised considering all the points or a corrigendum may be issued. This exercise may be completed within one month. Thereafter, the CPCB may forward the finalized Guidelines for compliance to the Chief Secretaries of all the State/UTs and the State PCBs/PCCs. The State PCB/PCCs and all other statutory authorities may strictly follow the Guidelines and take remedial action wherever any violation comes to the notice of such authorities. The CPCB may also develop an App, if not already done, for redressal of any grievances relating to violation of such norms and such App may be circulated to the general public. The CPCB may also monitor this aspect from time to time.

The Application is disposed of.

A copy of this order be sent to the CPCB by email for compliance.”

10. In view of the above, it is seen that the matter has been dealt with earlier by the Delhi High Court and directions issued for maintaining environmental norms. Thereafter, MCD has framed policy which is not being complied with. CPCB has issued statutory directions to the EDMC which are operative. The EDMC has found violations which are not rebutted. The Tribunal has directed remedial action in the matter against which the matter has gone to the Hon'ble Supreme Court twice without any change in the order of the NGT. At this stage, it is not possible to entertain plea which in substance is for review so as to permit dairies to continue without compliance of environmental norms. The dairies in question have thus either to be closed or can be allowed after ensuring

compliance of norms so as to ensure that there is no discharge of pollution in the water body or on land and there is scientific management of the waste. Further, the dairies can be operated only after obtaining requisite consents under the Water and the Air Acts and compliance of siting norms.

11. Accordingly, we find no merit in the applications. If the dairies in question are to be allowed, it cannot be at the cost of public hygiene and health and can be only after the environmental norms are duly followed, including siting norms and carrying capacity of the recipient environment to sustain such activities without violating air and water standards. Only such number as may be found viable can be allowed. They have to take requisite Consents under the Water and the Air Acts. The dairies operating standalone or in clusters, are required to have Waste water treatment plant or Common Facility to treat waste water and management of dung. Besides, dairies are to comply with all other Guidelines issued by the CPCB in terms of order in OA No. 46/2018, supra. Till such compliance, the regulatory bodies – the EDMC, DPCC and the CPCB are free to proceed, according to law, in the matter of taking necessary coercive measures, as earlier directed. A joint committee comprising of the CPCB, DPCC and the EDMC (with EDMC as the nodal agency) may go into the surviving issues, pending further hearing on 22.6.2021.

Accordingly, I.A. Nos. 109 to 111/2021 stand disposed of.

A copy of this order be forwarded to the CPCB, DPCC and the EDMC by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

May 27, 2021
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