

Item No.5

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Original Application No. 259 of 2017 (SZ)
(M.A.209 to 214 of 2017)

IN THE MATTER OF:

Lawyers' Environmental Awareness Forum (LEAF) .. Applicant

Vs.

Government of Kerala & others ... Respondent(s)

Date of hearing: 6.1.2020

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For applicant : Nil

For Respondent(s) : Mr. E.K. Kumaresan for

Mr.G. Prabhu for R1, R3 & R4

Mrs. Rema Smrithi for R2

Mr. D.S. Ekambaram for C PCB

Surabh Khattak for

Mr. Sandeep Gopal Krishnan for R5

ORDER

The above case has been filed by applicant before the Circuit Bench at Kochi, seeking the following reliefs:

“to issue an order or direction to the respondents to ban all diesel operated trucks, lorries, autos, taxis etc from plying for more than 10 years in Kerala;

To issue an order or direction directing that vehicles manufactured by the 5th respondent are banned from selling any vehicle till their manufacturing units are inspected and approved by the 4th respondent;

To issue an order or direction directing the Kerala Motor Vehicles Department to strictly insist for the pollution free certificates from buses, lorries, autos and taxis in Kerala with immediate effect.”

The allegation in the application was that petitioner is an organisation constituted with members of Lawyer community and they were pro-active in raising host of environmental issues, either through public awareness campaigns or approaching High Court. They were also assisting the High court in environmental issues. The issue that was raised in the case was regarding the anticipated pollution that is likely to be caused in the State of Kerala due to vehicular emission and other emissions. They have further mentioned in the petition that if the same situation continues, then it will be worsen than Delhi in respect of pollution. Further the city is also termed as one of the critically polluted cities which requires serious attention. It is mentioned in the petition that pursuant to the directions issued by the Hon'ble Supreme Court as well as the National Green Tribunal, Principal Bench, use and sale of diesel vehicles in the State of Delhi have been restricted. Due to uncontrolled use of diesel vehicles especially large trucks, auto rickshaws and taxies etc. Delhi has become the most polluted city in the world today.

In order to protect the citizens of Kerala from a similar fate, it is just and necessary that preventive measures are to be taken by the State Government. However, there was no policy formulation on the issue of curbing the use of diesel vehicles which are more than ten years old in Kerala. Kerala is already hit hard by unrestricted mining. Forests are cut down by property developers who are building luxury resorts in dense

jungles with impunity. The Hon'ble High Court of Kerala has time and again come to the rescue of environment by ruthlessly taming the builders lobby.

In a recent decision reported in Kerala High Court cases delivered by Hon'ble Justice A.V. Ramakrishna Pillai (as he then was) one of the biggest builders in India viz., DLF was directed to demolish its large scale construction project, since they have violated the Coastal Regulation Zone Regulations. An appeal has been preferred. That was pending at that time. The case has been now disposed of by the Hon'ble Apex Court, giving certain directions. The Greater Kochi Area which is the commercial hub of Kerala ranks 24th amongst the critically polluted areas (CPA) in the country. The density of vehicles in the city is highest in Kerala. The diesel fumes and other particulate matter in the air in Kochi is taking a heavy toll of its citizenry. Out door air pollution has become the fifth largest killer in India after high blood pressure, indoor air pollution, tobacco smoking and poor nutrition says a new set of studies. The Global Burden of Disease (GBD) report is a world wide initiative involving the World Health Organization which tracks deaths and illness from all causes across the world every ten years. The findings were released by Aaron Cohen, principal epidemiologist of the Health Effects Institute and co-chair of the GBD Ambient Air Pollution Expert Group. The report states that in 2010 about 6,20,000 premature deaths occurred in India by air pollution related diseases. Air pollution is one of the top 10 killers in the world and six most dangerous killer in South Asia. In fact, particulate air pollution is now just three places behind indoor air pollution, which is the second highest killer in India. Use of vehicles using diesel as fuel is on the increase today in Kerala. However, the recent ban of luxury SUVs, using diesel by the Apex Court is only to be replicated in Kerala.

Lorries and trucks that are more than 10 years old are the main culprits in rising air pollution levels in Kerala. Government vehicles are the most notorious. Kerala Road Transport Vehicles, due to poor maintenance, are spewing deadly gases into the atmosphere. The Motor Vehicles Department takes special interest only to penalize bike owners or car owners but are reluctant to ensure that buses and trucks in Kerala are complying with pollution norms. It is also mentioned in the petition regarding the action taken against fifth respondent company where certain directions have been issued to ban such vehicles plying on Indian roads. It is also mentioned in the application that diesel powered vehicles and equipment account for nearly half of all nitrogen oxides and more than two thirds of all particulate matter (PM) emissions from US transportation sources. Particulate matter or soot is created during the incomplete combustion of diesel fuel. Its composition often includes hundreds of chemical elements, including sulfates, ammonium, nitrates, elemental carbon, condensed organic compounds and even carcinogenic compounds and heavy metals such as arsenic, selenium, cadmium and zinc. Though just a fraction of the width of a human hair, particulate matter varies in size from coarse particulates (less than 10 microns in diameter) to fine particulates (less than 2.5 microns) to ultrafine particulates (less than 0.1 microns). Ultrafine particulates which are small enough to penetrate the cells of the lungs, make up 80 to 95% of diesel soot pollution. If this rising diesel soot pollution is not controlled, lungs of the citizen of Kerala would be damaged beyond repair. Diesel exhaust has been classified a potential human carcinogen by the U.S. Environmental Protection Agency (EPA) and the International agency for Research on Cancer. Exposure to high levels of diesel exhaust has been shown to cause lung tumors in rats

and studies of humans routinely exposed to diesel fumes indicate a greater risk of lung cancer. For example, occupational health studies of rail road, dock, trucking and bus garage workers exposed to high levels of diesel exhaust over many years consistently demonstrate 20 to 50 percent increase in the risk of lung cancer or mortality.

In M.C. MEHTA VS. UNION OF INDIA AND OTHERS 2004 (12) SCC 118 the Apex Court considered the need to have the environment protection and fundamental duty is cast upon the State by virtue of Article 51 (g) and other relevant provisions of the Constitution of India. Highlighting the “polluter pays” principle it was held that the natural resources of air, water and soil cannot be utilized if the utilization results in irreversible damage to the environment and that life, public health and ecology have priority over unemployment and loss of revenue. The principle of sustainable development and the precautionary principle were reiterated and explained, making it clear that development and protection of the environment are not enemies and that a balance has to be struck, however, categorically asserting that in cases of doubt, environment concerns take precedence over economic interest.

The services of 6th respondent National Environment Engineering Research Institute (NEERI), Nagpur has been sought for by the Supreme Court. In the decision reported in STERLITE INDUSTRIES INDIA LTD & OTHERS VS. UNION OF INDIA 2011 (13) SCC 769 the Supreme Court held that NEERI should make a pollution and environment impact assessment and submit their report to the court. In that case it was directed to study and report the level of pollution in major cities of Kerala starting from its commercial hub Kochi and also means to prevent another Delhi smog attack in Kerala. So with these grounds, as a precautionary measure, applicant wants intervention of the

National Green Tribunal to give a direction to the authorities to curtail the use of old vehicles and also to promote alternate clean fuel to prevent pollution.

This Tribunal by an interim order directed ban of ten years old diesel vehicles in Kerala. The following directions were given by this Tribunal.

“In the meanwhile, the State of Kerala shall not register any diesel vehicle with the capacity of 2000 CC and above, except Public Transport and Local Authority Vehicle. Further, we direct that all the diesel vehicles, whether light or heavy, which are more than ten years old, shall not be permitted to ply on the road in the major cities like Thiruvananthapuram, Kollam, Kochi, Thrissur, Calicut and Kannur. Upon expiry of 30 days from today, if any vehicle is found to be violating this direction, then it would be liable to pay Rs.5,000/- per violation, as Environmental Compensation. This would be collected by the Traffic Police and/or the Pollution Control Board. The State Pollution Control Board shall maintain a separate account in this behalf. The fund so collected shall be spent only for betterment of environment in these cities, subject to orders of the Tribunal.

That was challenged before the Kerala High Court by filing several writ petitions viz., W.P.(C)Nos.19067, 19249, 19255 & 19267 of 2016. Learned Single Judge of the Kerala High Court had stayed the operation of the order which was challenged by filing appeal before the Division Bench of the Kerala High Court and the Division Bench did not interfere with the order of the learned Single Judge but only mentioned that will not affect the right of the National Green Tribunal to go into the question, after hearing both sides and pass appropriate orders.

In this regard, we may also refer to the orders passed by the Larger Bench of the Principal Bench in the case of VARDHMAN KAUSHIK VS. UNION OF INDIA and the order of the Supreme Court in the case of M.C. MEHTA VS. UNION OF INDIA.”

Parties have filed counter statements which we are not elaborately discussing and certain parties got impleaded in the matter. There was direction to the Pollution Control Board to conduct studies regarding Ambient Air Quality in major cities viz., Thiruvananthapuram, Kollam, Kochi, Thrissur, Calicut and Kannur and they have submitted a report regarding the same. Such report was submitted in September, 2016.

The Central Pollution Control Board, South Zonal Office, Bengaluru had made the following observations in the latest report:

“The overall results of the analysis for annual average concentration reveals that the concentration of SO₂ and NO₂ in all the six cities were found to be within 50ug/m³ & 40 ug/m³ of the prescribed standard limit respectively. Whereas the annual average concentration of RSPM was found to be exceeded at Filatex, Veli during the years 2009 to 2012 and at SMV shoot during the year 2009 in Thiruvananthapuram district.

In Ernakulam/Kochi district, the annual average concentration of RSPM exceeded almost at all locations during 2012 & 2013 and also RSPM exceeded at five locations during the year 2014. In Kannur district, the RPM was found to be exceeded Mangattuparambu during 2013.

The monthly average concentration of all three pollutants SO₂, NO₂ and RSPM measured at 18 locations in six districts during period from January to June 2016 indicates low level concentration of pollutants.

However, the district wise ambient air quality status as compared to annual average is depicted as below:

1. In the district of Thiruvananthapuram, the annual average concentration of SO₂ and NO₂ are found to be below the prescribed standard limit as compared to the annual average standard limit of 50 ug/m³ 40 ug/m³ meant for industrial & residential zones respectively. The annual average concentration of RSPM exceeded at Filatex, Veli during the years 2009 -2012 and at SMV school during the year 2009. The RSPM concentration found to be within the prescribed annual average standard limit of 60 ug/m³ at Cosmopolitan and Pettah.

In Kollam district the SO₂ NO₂ and RSPM concentrations are found to be below the prescribed standard limit as compared to the annual average standard limit of 50 ug/m³ , 40 ug/m³ & 60 ug/m³ respectively.

In the district of Ernakulam/Kochi, the annual average concentration of SO₂ and NO₂ found to be within the prescribed standard limit at all locations during 2009 – 2015. The annual average concentration of RSPM exceeded almost at all locations during 2012 and 2013, whereas RSPM concentration found to be within the prescribed standard limit of 60 ug/m³ at all seven locations during the years 2009, 2010, 2011 and 2015. It is also found that the concentration of RSPM exceeded at five locations in the year 2014.

In Thrissur district, the SO₂, NO₂ and RSPM concentrations are found to be within the prescribed standard limit as compared to the annual average standard limit of 50 ug/m₃, 40 ug/m₃ & 60 ug/m₃ respectively. The RSPM concentration exceeded during 2012.

In Kozhikode district the SO₂, NO₂ and RSPM concentration are found to be below the prescribed standard limit as compared to the annual average standard limit of 50 ug/m₃ , 40 ug/m₃ & 60 ug/m₃ meant for industrial & residential zones respectively.

In Kannur district the concentration of SO₂ , NO₂ and RSPM are found to be below the standard limit as compared to the annual average standard limit of 50 ug/m³ , 40 ug/m³ and 60 ug/m³ respectively , except exceedance found at Mangattuparambu during 2013. “

The present status of ambient air quality in Kerala is not known. Further one cannot take shelter under premises that Kerala has not reached the stage of Delhi so as to take preventive measures in a war footing manner. As far as environment is concerned, there is a duty cast on the State to provide clean environment as part of right to life enshrined in Article 21 of the Constitution of India. One cannot be expected to be affected by disease for the purpose of treatment. Admittedly air pollution is an intricate cause for creating disease which affects the longevity of life throughout the world. It is a global issue. Prevention is better than cure must be the slogan one has to find out the reason for the disease and take steps to prevent the same instead of treating the disease. There is nothing wrong for State Government to take steps to protect environment against pollution, applying precautionary principle.

Admittedly, vehicular pollution is one which causes greater concern. Using diesel is also one of the causes which creates more emission resulting in air pollution and considered to be the reason for number of diseases. Conferences and seminars conducted by the Scientific Research Institute reflected that air pollution is one of the reasons for increasing the mortality rate in tune with cancer and lung diseases. Nobody is concerned about the steps to be taken to control the same as well.

So, under these circumstances, we feel it appropriate to have a study to be conducted in this regard as regards the State of Kerala. National Green Tribunal, Principal Bench, New Delhi is dealing with 102 polluted cities and action plan is being asked for from the States to know about the steps taken to curtail the pollution issues in these cities, including air pollution which is the result of indiscriminate use of diesel vehicles and disposal of garbage and other matters in O.A.No.681 of 2018 which is a

suo motu case registered by the Principal Bench of the National Green Tribunal, New Delhi on the basis of the news item published in Times of India authored by Sri Vishwa Mohan titled "ACAP with multiple time lines to clean air in 102 cities". Several directions have been given by the National Green Tribunal in the matter to improve the air quality standard in respect of these cities which is notified as critically polluted cities.

The directions that we are going to give in this matter will not in any way interfere with the directions given by the National Green Tribunal, Principal Bench, but it is a supplement to the action to be taken in respect of State of Kerala to make the State a pollution free State.

So, under these circumstances, we feel it necessary to have a study to be conducted by a committee comprising of (1) Central Pollution Control Board, (2) MoEF & CC Regional Office, Chennai, (3) Motor Vehicles Department, Kerala, (4) Kerala State Pollution Control Board, (5) IIT, Chennai and (6) NEERI, Chennai to consider the question of ambient air quality in the State of Kerala, especially in the cities viz., Thiruvananthapuram, Kollam, Kochi, Alapuzha, Kozhikode, Thrissur, Calicut, Kasarkode and Kannur and sources of pollution and also long term and short term steps to be evolved for the purpose of reducing pollution index and improve ambient air quality in the State of Kerala and also frame necessary time line for implementing the directions given in VARDHMAN KAUSHIK case in respect of banning of old vehicles and switch over to alternate clean fuel vehicles, including CNG and electric vehicles and submit a report to this Tribunal by e-mail @ ngtszzfiling@gmail.com. within a period of three months. The Kerala State Pollution Control Board will be nodal agency for this purpose. The Registry is directed to communicate this order to the concerned officials for the

purpose of compliance. The committee shall be at liberty to co-opt any other experts for the purpose of arriving at a right conclusion and suggestion for remediation.

Learned counsel appearing for fifth respondent Volkswagen submitted that the issue regarding their contribution to the alleged violation of pollution norms has been considered by the Principal Bench of the National Green Tribunal, New Delhi in O.A.No.509 of 2015 and O.A.No.527 of 2015 and the National Green Tribunal has imposed environment compensation of Rs.500/- Crores and that is being challenged by the fifth respondent before the Hon'ble Supreme Court by filing Civil Appeal Diary No.12697 of 2019 and Civil Appeal Nos.1086 of 2019 and Civil Appeal No.4069 of 2019. The Hon'ble Apex Court stayed the implementation of coercive steps to be taken against the appellant Volkswagen India Pvt Ltd for realization of compensation imposed by the Principal Bench of the National Green Tribunal, New Delhi. So they wanted to be deleted from the array of parties. Since other transport operators will also come on record and vehicular pollution is one of the matter which is to be considered by the committee, we feel that there is no necessity to delete them from the array of parties. They can also give their suggestions before the committee for the purpose of curtailing pollution index and improve ambient air quality by improving standard of vehicles to be used on road along with other manufacturers, if such suggestions are called for by the committee for the purpose of arriving at a proper assessment of the issue in question in respect of improving ambient air quality in the State of Kerala

For consideration of report post on 6.5.2020.

.....J.M.

(Justice K. Ramakrishnan)

.....E.M.

(S aibal Dasgupta)

kkr.

