

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

(By Video Conferencing)

Original Application No. 49/2021

Bandhua Mukti Morcha NGO

Applicant

Versus

Rajeev Kumar & Ors.

Respondent(s)

Date of hearing: 25.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Respondent(s): Mr. Piyush Sharma, Advocate for R - 5 to 7
Ms. Sakshi Popli, Advocate for DPCC

ORDER

1. Grievance in this application is against failure to take remedial action against dust and noise pollution arising out of illegal business of building material and use of heavy machinery like cranes, earth movers, trucks, dumpers, trailers and tractors etc. at plot no. 1 in Village & P.S. Pul Pehlad Pur, South-East District, New Delhi and Badarpur Market, Main Mathura Road, Near Tughlakabad Metro Station, Badarpur, New Delhi.

2. It is stated that the business generating pollution is being run by respondent nos. 1 to 7 - Rajeev Kumar, Sunder, Arvind Kumar, Neeraj Kumar, Plot No. 1, Pul Pehlad Pur, on Delhi Haryana Border, Village &

P.S. Pul Pehlad Pur, South-East District, New Delhi, Rajkumar Verma, Mr. Pawan Kumar and Hansraj Bhati, Rodi, Bajri, Dust and Badarpur Market, Main Mathura Road, Near Tughlakabad Metro Station, Badarpur, New Delhi-110044.

3. Vide order dated 03.03.2021, the Tribunal directed the statutory authorities to look into the matter, take appropriate action, following due process of law and file an action taken report. A joint Committee comprising Central Pollution Control Board (CPCB), Delhi Pollution Control Committee (DPCC) and District Magistrate, South-East district was constituted, with DPCC as nodal agency. The matter was last considered on 08.10.2021 in the light of report of DPCC dated 06.10.2021 finding violations of environmental norms as well as violation of provisions of the Delhi Municipal Corporation Act, 1957. Action taken mentioned in the report was considered by the Tribunal and found inadequate. Further directions were issued for remedial action. Operative part of the order is reproduced below:-

“1&2....xxx.....xxx.....xxx

3. In pursuance of above, DPCC has filed report on 06.10.2021 as follows:

“xxxxxxxxx

3. **That the joint team carried out inspection of the Site-1 near Tughlakabad Metro Station and Site-2 near P.S. Pul Pehlad Pur) on 07.04.2021. Finding of the inspection are as follow:-**

A. Site-1 near Tughlakabad Metro Station:-

- a. Plot where trading of construction material was going on is approximately 4 acres.
- b. There are approximately 10 vendors involved in the plot and 50 vehicles were seen including trucks, tractors, JCB, dumper etc
- c. Construction material was lying uncovered.
- d. After the reaching of team sprinkling of water started by the workers.

- e. Plot is divided into 2 parts. One part has boundary wall of approximately 4 mtr. (Fibre sheet) and second part has approximately a boundary wall of 2 mtr. No wind breaking wall has been provided at the front side (only green net is provided).
- f. One of the vendors Sh. Vikrant was contacted for the information on legal papers i.e. Proof of land possession/ NOC from SDMC or other department/ water bills/ electricity bills etc.). No papers were provided to the joint team.

B. Site-2 near P.S. Pul Pehlad Pur:-

- a. Plot where trading of construction material was going on is approximately 2.5 acres.
- b. Construction material was lying uncovered and no dust control measures had been taken.
- c. No boundary wall or green net has been provided.
- d. No responsible person was present on the site and no documents regarding proof of land possession/ NOC from SDMC or other department/ water bills/ electricity bills etc.) Were shown.
- e. As per revenue department records, the land bearing Kh. No. 321 to 323 has been acquired by Government of NCT of Delhi for DDA through award No. 63/82-83.

Inspection reports of both the sites are enclosed herewith as **Annexure 1** and **Annexure 2** respectively.

4. That as per section 416 of the DMC Act, 1957, No person shall, without the previous permission of the MCD, establish any trading activity in the premises. As the activity on the sites was storing and trading of building material, a letter was issued to SDMC on 01/07/2021 for taking necessary action including levy of fine/ Environmental Damage Compensation in terms of the orders passed by this Hon'ble Tribunal from time to time. Copy of the letter issued to SDMC dated 01.07.2021 is enclosed herewith as Annexure 3.

5. That land owing agency is responsible for removing any unauthorized activity on its land as decided by the Chief Secretary. As the land in this matter belongs to DDA, therefore, a letter was also issued to DDA on 01/07/2021 for taking necessary steps for stopping illegal activity on its land, including levy of fine/ Environmental Damage Compensation in terms of the orders passed by this Hon'ble Tribunal from time to time. This letter was also sent to District Magistrate (South East) for taking urgent necessary action. Copy of the letter issued to DDA/ DM (SE) is enclosed herewith as **Annexure- 4.**

6. That the Site -1 near Tughlakabad Metro Station falls under the jurisdiction of SDM (Santa Vihar) and site -2 i.e. site near PS Pul Pehladpur falls under the jurisdiction of SDM (Kalkaji).

7. That communication was also sent to Deputy Commissioner (South East) on 16/08/2021 for taking necessary action in the matter and submission of ATR. Subsequently, status/ATR has been received from SDM (Sarita Vihar) and SDM (Kalka ji). Copies of both the ATR are enclosed herewith as **Annexure-5 (Colly)**.

a) SDM (Sarita Vihar) vide its ATR dated 02.07.2021 & 13.09.2021 has forwarded the following action/ Status:-

- i. has allotted the land to Badarpur Traders Union, Plot No. 7, Mathura road, Badarpur.
- ii. All the stock at the venue belongs to 02 vendors i.e. Sh. Raj Kumar Verma and Sh. Vikrant.
- iii. Challan of Rs. 1.0 Lakh [@Rs. 50,000/- each] has been levied on the vendors. Shri Vikrant has deposited the amount whereas in the matter of other challan some dispute remains.
- iv. During the inspection conducted on 25.08.21 by Tehsildar /Executive Magistrate (Sarita Vihar), all stock of construction material was found covered and there was no movement of any vehicle. However, some vehicle (trucks etc.) were found standing on the venue.

b). SDM (Kalka Ji) vide its ATR dated 14.09.2021 has forwarded the following action/ Status :-

- i. Land owning agency is DDA and the village Pul Pehlad is an urbanized village and therefore the land use falls under the purview of south MCD.
- ii. A team of sub-division Kalka ji headed by Tehsildar (kalkaji) visited the site and imposed Environmental Compensation. Copies attached show that EDC of Rs. 1.0 Lakh [@ Rs. 50,000/- each] has been levied on the two vendors.

8. That the ATR of SDMC has also been received on 14.09.2021. The status as mentioned in the report is as follows:-

- A. No teh bazari were allocated by SDMC w.r.t. either of the above mentioned sites.
- B. As the lands belong to DDA, therefore any encroachment/removal drive needs to be conducted by DDA itself.

Copy of the ATR is enclosed herewith as **Annexure-6**.

9. That no action taken report from DDA has been received till date.

10. That, as no concrete report was received from any corner, **DPCC carried out the inspection of both the sites**

on 01.10.2021. Following were the observations on both the sites:

A. Site-1 near Tughlakabad Metro Station:-

- i. Wind breaking wall of sufficient height (i.e 10 meter) have not been erected all around the boundary.
- ii. No water sprinkling system has been installed to control the dust pollution whenever the fine aggregate is loaded or unloaded and the sprinkling with pipe was not found sufficient.
- iii. Entire fine aggregate was not fully covered with green net/ tarpaulin.
- iv. The internal pathway where vehicles movement is carried out were not concretized resulting in dust pollution.
- v. Workers involved in handling in material have not been provided with face mask.

B. Site-2 near P.S. Pul Pehlad Pur:-

- i. Wind breaking walls of sufficient height (i.e 10 meter) have not been erected all around the boundary. However, it was observed that wind breaking barrier of height 10 feet was maintained.
- ii. No proper water sprinkling system has been installed to control the dust pollution whenever the fine aggregate is loaded or unloaded and the sprinkling with pipe was being done.
- iii. Entire fine aggregate was not fully covered with green net/ tarpaulin.
- iv. The internal pathway where vehicle movement is carried out were not concretized resulting in dust pollution.
- v. Workers involved in handling in material have been provided with face mask.

Copy of the Inspection report of DPCC are enclosed herewith as **Annexure-7(Colly)**.

11. That on the basis of the inspection dated 01.10.2021, EDC of Rs 50,000/-each has been imposed against 16 vendors/traders working on both the sites in terms of the order dated 04.12.2014 passed by this Hon'ble Tribunal in OA 21/2014. In the direction it was also directed that no trading activity shall be carried out at the site till dust pollution control measures are in place at site.

12. That orders were also issued to both the SDMs concerned to ensure the compliance of dust pollution control measures at site and to ensure that no trading activity take place till these measures take place. Copy of the direction issued to SDMs is enclosed herewith as Annexure-8 (Colly)."

4. **Learned Counsel for the applicant states that there is no meaningful action taken on the ground. Serious violation of environmental norms is taking place on account of illegal business of building material and use of heavy machinery without any safeguards, in violation of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and Sections 268 to 271, 278 and 284 IPC. DPCC has neither coordinated with the police authorities nor filed prosecution itself before the concerned Court, even after finding violations.**

5. *Learned Counsel for the DPCC states that though violations have been found and compensation assessed, further action is to be taken in coordination with the Delhi Police and the SDMs. The objection of the SDMs that the land-owning agency is DDA to remove the encroachment is not tenable as the polluting activity can be stopped by the statutory regulators irrespective of who owns the land.*

In view of above, let DPCC take further action in accordance with law in coordination with other authorities, following due process. We also issue notice to the alleged violators – Respondents herein mentioned in para 1 above. The applicant may serve notice by speed post. DPCC may also serve notice on the said violators so that they have opportunity to put forward their response, if any, before this Tribunal within one month. The Registry may also issue notice by email/whatsapp as per particulars furnished by the applicant.”

4. In pursuance of the above, further report has been filed by DPCC on 15.02.2022 to the effect that recovery certificate has been issued for recovery of the compensation. There was further inspection done on 11.11.2021 by JEE and TE and it was found as follows:-

“Site 01- Badarpur Market, Main Mathura Road, Near Tughlakabad Metro Station, Badarpur, New Delhi.

1. *The business of construction material (rodi, badarpur, bajri etc.) was going on.*
2. *Construction material found covered.*
3. *Sprinkling of water observed at the site and the area was found in wet condition.*
4. *Boundary wall of adequate height was provided.*
5. *It was also informed to the team that Anti Smog Gun has already been ordered and the same shall be installed within 07 days.*

6. Vehicles entering with raw material and exiting back from the site found covered with green net cloth.

Site 02- Plot no. 1 in Village & P.S. Pul Pehladpur, South-East District, New Delhi.

1. The business of construction material (rodi, badarpur, bajri etc.) was going on.
2. No measures were taken for dust mitigation.
3. No water sprinkling system was provided nor water sprinkling was being done with any mechanism at site.
4. No boundary wall is provided at site.
5. Construction material was found uncovered.
6. Vehicles entering with raw material and exiting back from the site found not covered at all.”

5. It is further stated that D.O. letter has been issued to the Deputy Commissioner, South East on 03.12.2021 for remedial action as follows:-

*“As you are aware that an O.A. No. 49/2021 titled Bandhuwa Mukti Morcha Vs. Rajeev Kumar and Others is before the Hon’ble NGT regarding dust control from handling of construction material at **SITE-1, BADARPUR MARKET, MAIN MATHURA ROAD, NEAR TUGHLAKABAD METRO STATION, BADARPUR, NEW DELHI** and **SITE-2: PLOT NO. 1 IN VILLAGE & P.S. PUL PEHLADPUR, SOUTH-EAST DISTRICT, NEW DELHI.***

In this regard a joint inspection was conducted by the officers/officials of SDMC, DPCC, SDM, CPCB was conducted on 07.04.2021 and orders were issued on 01.10.2021 vide no. DPCC/CMC-II/NGT (O.A. NO. 49/2021)/2021/10033 & DPCC/CMC-II/NGT (O.A. No. 49/2021)/2021/10034 to SDM, Sarita Vihar and SDM, Kalkaji respectively for ensuring the compliance of dust control measures by all the vendors at the Site and for ensuring no trading activity at the site till the above said measures are implemented. Simultaneously, all the vendors were fined Rs. 50,000 each as environment damage compensation by DPCC on 01.10.2021.

*The matter was heard on 08.10.2021 by Hon’ble NGT and in compliance to the order, inspection was conducted on 11.11.2021 by DPCC official at aforementioned **SITE 1** and **SITE 2**, to check the latest status. As per inspection report it was revealed that nothing has been done to control the dust pollution from the trading activity at aforementioned **SITE-2** as no pollution control measures have been taken by the vendors. It shows the violation of the order issued by DPCC to SDM on 01.10.2021. DPCC has also issued the recovery Certificate for recovery of EDC from the vendors on this plot on 02.11.2021, the ATR on which has not been received yet.*

*As far as aforementioned **SITE-1** is concerned, dust control measures have been taken by the vendors. However, No ATR has*

been received on the recovery certificated issued by DPCC to SDM on 02.11.2021.

Through this letter, I request your personal attention in the matter and to direct the concerned officials to take necessary action as per the order issued on 01.10.2021 and its continuous compliance besides letter dated 02.11.2021 regarding Recovery Certificate for recovery of Environmental Damage Compensation and submit the ATR accordingly in DPCC by 05.12.2021.”

6. A counter affidavit has also been filed by Respondent Nos. 5 to 7, the alleged violators, claiming steps for compliance as follows:-

“xxx.....xxx.....xxx

9. *That the answering respondent is in possession of a plot size which is 3.69 Acre and less than 20000 sqmt.*

10. *That the answering respondent is doing the business of selling of Badarpur and Rodi in the area earmarked by DDA for the said purpose in the Master/Zonal Plan. The applicant is doing this business since last more than 51 years and have all the necessary permissions since last 51 years.*

11. *That entire material whether Badarpur or any other sand material is completely covered by tarpaulin. The wind breakers have been raised to applicable heights by the answering respondent.*

12. *That no date of inspection has been mentioned but when the team has visited on 01.10.2021, they have been shown to their satisfaction the entire arrangement made by the applicant which includes raising of wind breakers, covering of the entire construction material with tarpaulin, sprinkling of water by the workers at hourly intervals and anti smog guns.*

13. That he Hon’ble Delhi High Court in writ petition (C) No. 4625 of 1995 has given certain directions to the land owning agency DDA. The directions issued by the Hon’ble High Court to cover the Badarpur by Tarpaulin and keep it wet. Upon the undertaking given by Advocates appearing on behalf of answering respondent before the Hon’ble Delhi High Court, the Hon’ble Court permitted them to carry out trade of selling building materials. In the said order, the Division Bench of the Hon’ble Delhi High Court his directed that the Badarpur and Sand be kept wet and will be covered by a tarpaulin. It further passed an order that answering respondents have right to carry on the trade of Badarpur as well as sand and Rodi. The order passed by the Division Bench of the Hon’ble Delhi High Court dated 30.05.1997 was also shown to the DPCC officials and copy was also handed over. A true copy of this order dated 30.05.1997 in Writ Petition (C) No. 4625 of 1995 passed by the Hon’ble Delhi High Court is annexed herewith and marked as AnnexureR-1

14. That it is further respectfully submitted that **the imposition of heavy fine of Rs. 50,000- on a poor sand/badarpur seller association is hampering their right of livelihood as enshrined in Article 21 of the Constitution of India. Though the answering respondent /association is taking every step to control the dust pollution despite that the members of the Committee who are visiting the area/site earmarked for selling/trading of construction material are insisting of imposing fine upon the poor sand trader. In the order dated 01.10.2021 itself, it has been recorded that various steps have been taken by the sand traders to minimize the dust pollution in accordance with various orders of the Hon'ble Supreme Court as well as of the Hon'ble Delhi High Court.**

15. That as stated hereinabove the answering respondent has immediately taken out the corrective measures by constructing wind breaking wall of 10 meter high erected around the boundary.

16. That answering respondent have also installed Anti Smog Gun (Sprinkling Water Machine) and has covered entire material (fine aggregate) with green tarpaulin. The photograph of the entire of area submitted alongwith representation that the SDM (Sarita Vihar). In the said representation it has also been prayed that the fine imposed may kindly be waived. The copy of the representation alongwith photograph is annexed herewith and marked Annexure R-2 (colly).

17. That in view of the aforesaid submission it is submitted that present the application is devoid of any merit and therefore liable to be dismissed.

It is falsely claimed in the synopsis that the applicant is working for protection of the environment, improving the Air quality and ensuring that all citizen of this country get healthy environment to live and clean air to breath.

It is also falsely claimed that answering respondent are carrying out illegal businesses of building material chips, rodi, bajri from open plot of land.

It is also falsely claimed that answering respondent are not taken any steps to minimize the adverse impact on the air and environment. These submission are totally false in as much as the answering respondent as noticed in the various status report filed by the Tehsildar as well as by DPCC that no major violation are committed by the answering respondent."

7. From the above it is seen that the activities of business of building material without requisite safeguards have been causing and continue to

cause pollution. It is well known that dust pollution contributes 22%-23% of air pollution in Delhi, as per survey conducted by the MoEF&CC and published by way of NCAP in 2019. High level of PM₁₀ resulting from dust pollution causes serious adverse impact on health of the inhabitants. Air pollution in Delhi is very high which calls for stringent action to curtail the same. Mere fact that Delhi High Court did not stop business subject to compliance of safeguards cannot be treated as a licence to cause pollution which is criminal offence under the environmental laws as well as the Penal code. No business activity can be allowed unless appropriate safeguards are adopted against pollution and such activities need to be regulated as per Graded Response Action Plan (GRAP) correlating levels of PM₁₀ and PM_{2.5} with AQI and accordingly stopping activities causing dust. Pollution free environment is right of citizens and duty of the authorities to ensure control of pollution. Safeguards like water sprinkling system, plantations/shelter belts on the periphery of the operational area to control dust and noise are condition precedent to permitting any dust emitting activity. Thus, apart from fixing accountability for past violations, constant monitoring on the subject is required by the authorities including the DPCC, the local SDMs and the Police. A joint committee comprising DPCC, jurisdictional ACP, SDM and Divisional Forest Officer has to be constituted for the purpose. DPCC will be nodal agency for coordination and compliance. The said Committee may meet within one month from today and monitor compliance atleast once in a month by preparing an appropriate mitigation plan as per GRAP. The data from nearby CAQMS may be referred to assess ambient air quality of the area in question and if necessary, a new ambient air quality monitoring system may be set up at appropriate location. The Committee may also associate the concerned

traders to the extent considered necessary. If suggested measures are not fully followed, DPCC may take further adverse measures, including closure of the polluting activities and assessment of compensation for violation of air quality or other environmental norms.

The application is disposed of.

A copy of this order be forwarded to the DPCC, PCCF, Delhi, District Magistrate South East and DCP, South East by email.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

February 25, 2022
Original Application No. 49/2021
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