

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

Original Application 400/2017

Westend Green Farms Society

Applicant(s)

Versus

Union of India &Ors.

Respondent(s)

Date of hearing: 08.07.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Sumit Gahlawat, Advocate

For Respondent (s): Mr. Ajay Jain and Ms. Smaridhi, Advocates for GNCTD
Mr. Kush Sharma, Advocate with Mr. Dinesh Jindal, L.O. for DDA and DPCC
Mr. Virender Mehta, Mr. Kunal Mehta, Tarak Joshi, Advocates for R-28&29
Mr. Divya Prakash Pande, Advocate for MoEF&CC
Mr. Akhil Shankwar, Advocate for R-18
Mr. Anant Ahluwalia, Advocate for R-20
Mr. Ajoy Bhushan Kalia with Mr. Anil, Advocates for R-15, 16, 19, 21, 23, 25 to 27
Mr. Dharamveer Singh, Advocate for R-15, 17, 25
Ms. Sakshi Popli, Advocate for DJB
Mr. Siddharth Batra, Ms. Garima Sehgal, Advocates for R-14

ORDER

1. The issue for consideration is the enforcement of environment norms against restaurants/hotels/motels/banquets illegally operating in Mahipalpur and Rajokri, Delhi and also by similar establishments elsewhere.

2. This Tribunal on consideration of material on record, vide order dated 02.11.2018, recorded a finding of violation of law on the subjects of waste management, discharge of effluents, illegal ground water extraction, ground water contamination, emission by illegally operating diesel generators, absence of statutory consents under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and violation of conditions of consents where such consents have been granted. The Tribunal also considered the issue of absence of rain water harvesting, ground water recharge system, excess noise pollution, illegal parking and encroachments.

3. The findings of the Tribunal are under the following heads:

(i) Unauthorized constructions in violation of Delhi Municipal Act, 1957 and the Master Plan of Delhi.

(ii) Noise Pollution in violation of Noise Pollution (Regulation & Control) Rules, 2000.

(iii) Violation of Solid Waste Management Rules, 2016.

(iv) Violation of Water (Prevention & Control of Pollution) Act, 1974 by unscientific disposal of Sewage waste.

(v) Violation of Plastic Waste Management Rules, 2016.

(vi) Extraction of ground water in violation of Central Ground Water Authority guidelines, 2012

(vii) Absence of water harvesting system in violation of Municipal Bye Laws, 2011 as well as CGWA guidelines requiring mandatory water harvesting for ground water recharge, as a condition for drawl of ground water.

(viii) Violation of Air (Prevention & Control of Pollution) Act, 1981

(ix) Violation of principle of sustainable development, which requires carrying capacity assessment or adherence to laid down or inherently necessary norms for protection of Environment.”

4. The matter was reviewed vide order dated 08.03.2019. It was noted that as per some reports in public domain¹, Delhi is one of the most polluted city in the country. Overcrowding was unmanageable, parking was being allowed on roads, obstructing traffic and marriage halls were allowed to operate without safeguards for protection of environment, including air, water and soil. This resulted in violation of Solid Waste Management Rules, 2016, illegal drawl of ground water, violation of Master Plan and non-compliance of statutory regulatory norms on 'Precautionary' principle of environment. 'Polluter Pays' principle was also not being complied with. The Tribunal directed the Joint Committee of representatives of concerned Departments to address, inter-alia, the following issues:

(i) Compilation of data of all such places where marriages and functions take place which should be published and appropriately regulated.

(ii) Regulate noise level at above places as per laid down norms. This includes regulation of DJ sets, loudspeakers and crackers etc.

(iii) Compliance of Solid Waste Management Rules, 2016, and sewage discharge including decentralized waste processing facilities, installation of CCTV camera, GPS system in garbage collection vans etc.

(iv) Regulation of extraction of groundwater as per applicable guidelines, sealing of tube wells including those installed for swimming pools in violation of law, need for reuse of water for flushing, Plantation or gardening.

(v) Rain Water Harvesting by installing roof top harvesting systems.

(vi) Regulating size of gatherings on the concept of sustainable development in the light of carrying capacity of the area.

(vii) Prohibiting such activities in overcrowded places not having adequate parking or other facilities.

(viii) Action against unauthorized construction or unauthorized use without statutory clearances prohibiting and stopping any existing or future activities non-complying with above norms and also taking penal action where ever necessary.

(ix) Environment restoration and compensating victims of violation of law in relation to Noise Pollution, Air Pollution, Water Pollution,

¹News Item Published in "The Times of India" authored by Shri Vishwa Mohan titled "NCAP with Multiple Timelines to clear Air in 102 cities to be released around August 15" dated 03.08.2018

Master Plan etc. The action plan must involve all stakeholders, particularly the students and senior citizens. The Joint Committee will have authority to close polluting activity and remove every illegal structure. The Committee will also look into the allegations whether members of the applicant are running swimming pools by illegally drawing groundwater without requisite valid sanctions and drawl of ground water from critical or over-exploited areas, without any mechanism for ground water harvesting and recharge. If so, remedial action must be taken forthwith.”

5. Since in spite of repeated directions, the Delhi Government failed to comply with the directions of this Tribunal, the Tribunal vide order dated 08.03.2019, supra, directed furnishing of performance guarantee in the sum of Rs. 5 Crores to the satisfaction of the Central Pollution Control Board (CPCB) which was to be forfeited, if there was no meaningful compliance of order of this Tribunal. A copy of the report was to be furnished to Justice S.P. Garg, former Judge of Delhi High Court who was to give his report in the matter within one month thereafter. It was observed that statutory norms were already in place and the policy had to provide for effective compliance measures and prompt timelines for enforcing the available statutory norms. The Tribunal also directed the Ministry of Environment, Forests and Climate Change (MoEF&CC) to draw up an action plan and guidelines applicable on Pan India basis and to file its report, failing which the concerned Joint Secretary of MoEF&CC was to remain present in person.
6. In compliance of order dated 08.03.2019, a ‘compliance’ report has been filed on 01.06.2019 by the Delhi Government. The same does not properly address the issues in terms of the order of the Tribunal. While the compliance report refers to sealing of some properties where illegal activities were going on and refers to certain other steps said to have been taken, the report is not shown to have been

furnished to Justice S.P. Garg to enable his comments to be recorded.

Following steps are clearly lacking with regard to specific points;

- i) The data furnished is not exhaustive and appropriate regulations, in respect of the specified establishments, are not mentioned.
- ii) Noise regulatory mechanism is not mentioned except to state that 21 cases have been reported and a helpline has been established.
- iii) Direction with regard to installation of CCTV cameras at appropriate locations to ensure compliance of the Solid Waste Management Rules, 2016² and sewage discharge is not shown to have been complied. There is also no comprehensive report about compliance of waste management rules. It is pertinent to note that the problem of solid waste management in Delhi is assuming serious proportions due to increasing population, urbanisation, changing lifestyles and consumption patterns. The garbage from unauthorised developments, slums, JJ settlements, etc. is not collected which further adds to the environmental degradation. The projected average garbage generation upto the year 2021 is @ 0.68 kg per capita per day and total quantum of solid waste is 15750 tons/day³.
- iv) No compensation is shown to have been assessed for the illegal drawal of ground water for swimming pools except saying that the unlicensed swimming pools were closed or that a report about illegal borewells was sent. Needless to say the compensation assessed must take into account the value of the

² See order of NGT dated 16.01.2019, 20.08.2018 in O.A. No. 606/2018 Compliance of Municipal Solid Waste Management Rules, 2016.

³https://dda.org.in/tendernotices_docs/may1/MPD-2021_31.03.2017260417.pdf

water extracted as well as element of deterrence⁴. Further reference may also be made to other articles on the subject.⁵

v) As regards rain water harvesting, it is stated that such system was established in some of the properties but no action is shown to have been taken against those where it was not established. The matter as regard to rainwater harvesting has also been dealt in O.A. No. 307/2016 *Society for Protection of Culture Heritage, Environment, Traditions & Promotions of National Awareness (CHETNA) Vs. Union of India & Ors.* vide order dated 04.10.2018 and directions have been issued for taking steps to enforce such requirement which is to be overseen by a committee headed by Justice S.P. Garg.

vi) With regard to regulating the size of gathering, it is stated that a draft policy is under submission in the light of direction of Hon'ble Supreme Court in Writ Petition (C) 4677/1985, *M.C Mehta vs. Union of India & Ors.* vide order dated 11.12.2018. We may only add that such policy must consider suitability of the location for the purpose having regard to sufficient space to parking extent of traffic in area and compliance of air and water norms. Such location must have adequate distance from the highways and it must be ensured that as a result of permitting such activities, the highway traffic is not affected so as to add to the air pollution. In this connection we may also refer to the order of this Tribunal vide order dated 03.10.2018 in Execution Application No. 29/2018 (M.A. No.1391/2018) in O.A. No. 386/2016, *Society for Protection of Culture Heritage,*

⁴See order of NGT dated 30.11.2018 in O.A. No. 546/2016 *Harinder Singh &Ors. Vs. M/s Prateek Buidtech (India) Pvt.Ltd. &Ors.* Para 10 and 11 which relies upon Assessment of Water resources consumption in building construction in India, Dr. S. Bardhan, Dept. of Architecture, Jadavpur University, India. Part of research study published in Ecosystems and Sustainable Development VIII. Edited by Y. Villacampa & C.A. Brebbia. Published by WIT press.

⁵<http://documents.worldbank.org/curated/en/804831468331771041/pdf/628030WP0Metho00Box0361494B0PUBLIC0.pdf>

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- vii) With regard to prohibiting such activities in overcrowded places without having parking facilities, it is stated that a draft policy is under submission. We may note that survey of hotspots of traffic is possible with reference to Google Maps.⁶ We may also add that best practices to control parking at public places need to be adopted.⁷
- viii) With regard to action against unauthorized constructions without statutory clearance, a reference is made to certain reports of the local bodies which does not show how environmental norms will be complied with and how activities which are non-compliant will be stopped.
- ix) With regard to restoration of environment and recovery of compensation, only report is that a Committee has been constituted. There is nothing to show that any assessment has been made of the damage to the environment and such assessed amount has been recovered. The Committee is not shown to have persons competent in law to levy and assess compensation. They hardly have qualifications required for the purpose.
- x) Policy for holding social functions provides for grant of license for holding of such functions in authorized space subject to certain general conditions. With regard to enforcement of the conditions, violators are liable to pay penalties of Rs. 5 Lakhs for first offence, 10 Lakhs for second offence and Rs. 15 Lakhs for third and every further offence and cancellation of license for

⁶See order of this Tribunal in O.A. No. 960/2018 in Abhi Kapoor vs. Govt. of NCT Delhi

⁷https://dda.org.in/tendernotices_docs/may1/MPD-2021_31.03.2017260417.pdf; Paid on on-street and off-street parking to be developed for long term and short term parking provisions.

one year. While compensation on 'Polluter Pays' principle can be recovered by a regulator with reference to statutory regulatory scheme, we are unable to understand how without any reference to such statutory scheme, a provision for 'penalty' can be made and how an *ad-hoc* amount can be provided without reference to the assessment of the loss caused, cost of restoration being assessed and the amount being deterrent having regard to financial capacity of the persons violating the environmental norms. On this aspect, the policy does not seem to have any clarity.

7. The Policy for enforcement of Environment norms for places in a densely populated city like Delhi where social gathering takes place, is necessary on account of there already being high level of air pollution. Such gatherings should not result in further deterioration of situation. It is well known that air pollution is responsible for large number of deaths and diseases in Delhi. The nature of diseases caused by air pollution includes respiratory diseases like asthma, heart problem, eye irritation etc., the dependence on private vehicles continue to create tremendous pressure on road space parking and congestion. Till this problem is satisfactorily tackled, most stringent precautions are required to regulate social events with participation of large number of people.
8. The Policy making on such vital issue is expected to be in the light of Expert Studies based on air and water samples of the area, and with the involvement of experts in environment, urban planning or other relevant subjects. This cannot be a casual exercise as happened in the present case. Neither any data is referred to nor any data on subject is shown to be associated. There is no impact assessment

study with a view to give effect to precautionary and sustainable development principles while permitting an activity which has clear potential of negative impact on environment. We hope that a serious exercise will now be carried out in the light of above observation and relevant experts will be associated in the process. The relevant studies on the subject may be taken into account.⁸ It will also be appropriate that some eminent citizens are also involved.

9. On request of Delhi Government, time is sought for taking remedial action. While accepting their prayer, we direct that in view of the constant failure of the Delhi Government, the amount of performance guarantee will stand forfeited. It is also made clear that if there is a further failure, the Tribunal may consider appropriate coercive measures.

10. No report has been filed by the MoEF&CC nor the Joint Secretary, MoEF&CC, who was to remain present in person, has appeared. Only explanation given is that he is deputed to the Parliament. If it was so, an appropriate affidavit or application should have been filed. The MoEF&CC should have filed the report, as directed. Let the same be done now before the next date. We make it clear that if there is further default by the concerned Joint Secretary, MoEF&CC, the Tribunal will have no other option except to take coercive measures personally against the erring Joint Secretary.

List for further consideration on 19.09.2019.

Adarsh Kumar Goel, CP

⁸For eg. https://dda.org.in/tendernotices_docs/may1/MPD-2021_31.03.2017260417.pdf

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

July 08, 2019
Original Application 400/2017 and connected matters
DV

