

Item No. 04

Court No. 1

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

(By Video Conferencing)

Original Application No. 242/2021
(I.A. No. 61/2022)

Satish Govind

Applicant

Versus

President and Secretary, Windsor Park
Residents Welfare Association & Anr.

Respondent(s)

Date of hearing: 01.11.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: None

Respondent: Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB
Mr. Sunil Sharma, Advocate for Windsor Park Residents Welfare
Association

ORDER

1. Grievance in this application is against violation of air quality norms by operation of diesel generators by the Management Board of the Windsor Park Residents Welfare Association (WPRWA) at Ghaziabad, UP. It is stated that Windsor Park society has 12 towers of 10 to 23 floors, but the chimneys of all the DG sets end right above the DG sets and thereby all the exhaust emissions are released at the ground floor level. The chimneys are not extended to above the roof heights of the residential towers. Windsor Park Society has about 770 apartments. Many residents, particularly those living on the lower floors in all the towers, have been suffering for many years on account of this pollution. Many residents

have complained to the Management Board of WPRWA verbally in meetings and in the Windsor Park social media forums to take action to control such pollution, but the WPRWA has not taken any action.

2. Vide order dated 18.10.2021, the Tribunal noted the potential of DG sets for air pollution and need for action plan for controlling the same in the light of the earlier orders of this Tribunal dated 08.04.2021 in O.A. No. 681/2018, *In Re: News item published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with multiple timelines to clean air in 102 cities to be released around August 15"*. The Tribunal accordingly directed that apart from the enforcing Graded Response Action Plane (GRAP) in the matter of functioning of DG sets. Further remedial action for upholding the air quality and noise quality standards in the operation of DG sets was required. The Tribunal accordingly directed CPCB, State PCB and District Magistrate to take further remedial action and furnish an action taken report. The operative part of the order is reproduced below:-

“1&2....xxx.....xxx.....xxx

3. *Potential for air pollution by diesel generator sets is well known. This requires effective safeguards and regulation by the statutory authorities for protection of public health and enforcement of rule of law. Air Act empowers the PCBs to take remedial action against operation of DG sets violating air quality norms. Penal code makes pollution generated thereby criminal offence and action can also be taken under section 133 Cr. PC by the Executive Magistrates, it appears that adequate remedial action is not being taken. Apart from the said provisions, Graded Response Action Plan (GRAP) has been notified by the Central Government for the NCR and approved by the Hon’ble Supreme Court, providing that the diesel generators cannot be operated when the air quality in NCR is very poor and above, normally between 15th October to 15th March. The relevant part of the GRAP is reproduced below:*

Very Poor (ambient PM_{2.5} OR PM₁₀ concentration value is between 121-250 ug/m³ or 351 ug/m³ respectively	Agency responsible/Implementing Agency
Stop use of diesel generator sets	Chairpersons Delhi Pollution Control

	Committee, State Pollution Control Boards of Haryana, Rajasthan, Uttar Pradesh
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4. National Clean Air Programme (NCAP) of Government of India also envisages replacement of DG sets by gas operated generators and retrofitting of existing generators.

5. This Tribunal has also considered the issue of air pollution by generators in several matters including O.A. No. 681/2018, In Re: News item published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with multiple timelines to clean air in 102 cities to be released around August 15". The Tribunal directed constitution of Air Quality Monitoring Committees in all States/UTs to prepare and execute action plan for control of air pollution taking into account all pollution sources, including DG sets. In pursuance of order of this Tribunal dated 6.8.2019, statutory orders have been issued by some of the State PCBs.¹ For Ghaziabad and Noida DG sets have been banned in the manner mentioned in the orders in public domain.² Similar orders have been issued by many other PCBs.³

6. Orders passed by the Tribunal include direction for Data Grid for better planning and monitoring. Reference was also made to direction on the subject of constituting mechanism in all States similar to task force under the GRAP for NCR. The Tribunal noted that GRAPs were prepared outside NCR also by various States. Extracts from the order dated 8.4.2021 in the said matter, passed in continuation of earlier orders, are reproduced below:

“1to3..xxx.....xxx.....xxx

4. Categories of air quality and its adverse health effect can be noticed from following tables extracted from the judgment of the Hon'ble Supreme Court in Arjun Gopal & Ors. v. UOI & Ors.⁴:

Table 1

AOI	Associated Health Impacts
Good (0-50)	Minimal impact.
Satisfactory (51-100)	May cause minor breathing discomfort to sensitive people.
Moderately polluted (101-200)	May cause breathing discomfort to people with lung disease such as asthma, and discomfort to people with heart disease, children and older adults.
Poor (201-300)	May cause breathing discomfort to people on prolonged exposure, and discomfort to people with heart disease.
Very Poor	May cause respiratory illness to the people on prolonged exposure. Effect may

¹ Vide order dated 25.6.2020 Haryana PCB directed that all DG sets with capacity of 500KVA must retrofit emissions control equipments having minimum specified capturing efficiency of 70%

https://hspcb.gov.in/content/Consent_Policy_Procedure/NCAP-DG-Sets_25.06.2020.pdf

² <https://www.indiatvnews.com/news/india/delhi-noida-ghaziabad-diesel-genset-ban-people-high-rises-suffer-face-problem-658249>

³ <https://www.newindianexpress.com/states/karnataka/2021/sep/27/pollution-control-devices-mandatory-for-generators-inkarnataka-2364165.html>

⁴ (2017) 1 SCC 412

(301-400)	<i>be more pronounced in people with lung and heart diseases.</i>
<i>Severe May (401-500)</i>	<i>May cause respiratory impact even on healthy people, and serious health impacts on people with lung/heart disease. The health impacts may be experienced even during light physical activity.</i>

Table 2

<i>AQI Category, Pollutants and Health Breakpoints</i>								
<i>AQI category (Range)</i>	<i>PM₁₀ 24-hr</i>	<i>PM_{2.5} 24-hr</i>	<i>NO₂ 24-hr</i>	<i>O₃ 8-hr</i>	<i>CO 8-hr (mg/m³)</i>	<i>SO₂ 24-hr</i>	<i>NH₃ 24-hr</i>	<i>Pb 24-hr</i>
<i>Good (0-50)</i>	<i>0-50</i>	<i>0-30</i>	<i>0-40</i>	<i>0-50</i>	<i>0-1.0</i>	<i>0-40</i>	<i>0-200</i>	<i>0-0.5</i>
<i>Satisfactory (51-100)</i>	<i>51-100</i>	<i>31-60</i>	<i>41-80</i>	<i>51-100</i>	<i>1.1-2.0</i>	<i>41-80</i>	<i>201-400</i>	<i>0.5-1.0</i>
<i>Moderately polluted (101-200)</i>	<i>101-250</i>	<i>61-90</i>	<i>81-180</i>	<i>101-168</i>	<i>2.1-10</i>	<i>81-380</i>	<i>401-800</i>	<i>1.1-2.0</i>
<i>Poor (201-300)</i>	<i>251-350</i>	<i>91-120</i>	<i>181-280</i>	<i>169-208</i>	<i>10-17</i>	<i>381-800</i>	<i>801-1200</i>	<i>2.1-3.0</i>
<i>Very poor (301-400)</i>	<i>351-430</i>	<i>121-250</i>	<i>281-400</i>	<i>209-748*</i>	<i>17-34</i>	<i>801-1600</i>	<i>1200-1800</i>	<i>3.1-3.5</i>
<i>Severe (401-500)</i>	<i>430+</i>	<i>250+</i>	<i>400+</i>	<i>748+*</i>	<i>34+</i>	<i>1600+</i>	<i>1800+</i>	<i>3.5+</i>

5. The Air Act stipulates stopping of any activity violating norms of air quality and taking steps for prosecution or other regulatory measures⁵ which have been read to include recovery of compensation on 'Polluter Pays' principle⁶. National Ambient Air Quality Standards are laid down under Section 16(2)(h) of the Air Act. Notification dated 18.11.2009, issued by the CPCB is as follows:

"In exercise of the powers conferred by Sub-section (2) (h) of section 16 of the Air (Prevention and Control of Pollution) Act, 1981 (Act No. 14 of 1981), and in super session of the Notification No(s). S.O. 384(E), dated 11th April, 1994 and S.O. 935(E), dated 14th October, 1998, the Central Pollution Control Board hereby notify the National Ambient Air Quality Standards with immediate effect, namely:-

NATIONAL AMBIENT AIR QUALITY STANDARDS

S. No.	Pollutant	Time Weighted average	Concentration in Ambient Air		Methods of Measurement
			Industrial, Residential, Rural and Other Area	Ecologically sensitive area (notified by Central Govt.)	

⁵ Section 22 read with Section 31A of the Air Act and

⁶ Aryavart Foundation Vs. M/s Vapi Green Enviro Limited & Ors. O.A No. 95/2018, Indian Council for Enviro Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212 Para 16, Vellore Citizens Welfare Forum v. Union of India & Ors. (1996) 5 SCC 647 Para 12 to 18 - holding that 'Polluter Pay' principle is accepted principle and part of environmental law of the country, even without specific statute.

(1)	(2)	(3)	(4)	(5)	(6)
1	Sulphur Dioxide (SO ₂), mg/m ³	Annual*	50	20	<ul style="list-style-type: none"> Improved West and Geake Ultraviolet fluorescence
		24 hours**	80	80	
2	Nitrogen Dioxide (NO ₂), mg/m ³	Annual*	40	30	<ul style="list-style-type: none"> Modified Jacob & Hochheiser (Na-Arsenite) Chemiluminescence
		24 hours**	80	80	
3	Particulate Matter (size less than 10 mm) or PM ₁₀ mg/m ³	Annual*	60	60	<ul style="list-style-type: none"> Gravimetric TOEM Beta attenuation
		24 hours**	100	100	
4	Particulate Matter (size less than 2.5 microns) or PM _{2.5} mg/m ³	Annual*	40	40	<ul style="list-style-type: none"> Gravimetric TOEM Beta attenuation
		24 hours**	60	60	
5	Ozone (O ₃) mg/m ³	8 hours **	100	100	<ul style="list-style-type: none"> UV photometric Chemiluminescence Chemical method
		1 hour **	180	180	
6	Lead (Pb) mg/m ³	Annual*	0.5	0.5	<ul style="list-style-type: none"> ASS / ICP method after sampling on EPM 2000 or equivalent filter paper ED – XRF using Teflon filter
		24 hours**	1.0	1.0	
7	Carbon Monoxide (CO) mg/m ³	8 hours**	2	2	Non Dispersive Infra RED (NDIR) Spectroscopy
		1 hour**	4	4	
8	Ammonia (NH ₃) mg/m ³	Annual*	100	100	<ul style="list-style-type: none"> Chemiluminescence Indophenol blue method
		24 hours**	400	400	
9	Benzene (C ₆ H ₆) mg/m ³	Annual*	5	5	<ul style="list-style-type: none"> Gas chromatography based continuous analyser Adsorption and desorption followed by GC analysis
10	Benzo (a) Pyrene (BaP) – particulate phase only ng/m ³	Annual*	1	1	Solvent extraction followed by HPLC / GC analysis
11	Arsenic (As) ng/m ³	Annual*	6	6	AAS / ICP method after sampling on EPM 2000 or equivalent filter paper
12	Nickel (Ni) ng/m ³	Annual*	20	20	AAS / ICP method after sampling on EPM 2000 or equivalent filter paper

* Annual arithmetic mean of minimum 104 measurements in a year at a particular site taken twice a week 24 hourly at uniform intervals.

** 24 hourly or 8 hourly or 1 hourly monitored values, as applicable, shall be complied with 98% of the time in a year. 2% of the time, they may exceed the limits but not on two consecutive days of monitoring.

Note: Whenever and wherever monitoring results on two consecutive days of monitoring exceed the limits specified above for the respective category, it shall be considered adequate reason to institute regular or continuous monitoring and further investigation.”

“6to8...xxx.....xxx.....xxx

9. In *M.C. Mehta v. UOI*, it was observed:

“1. The urgency for protection and improvement of the environment etc. has not been doubted for a long time. After the Stockholm Conference, 1972, in India several legislative steps have been taken for implementation of the programme. In addition to Article 47 in Part IV of the Constitution which imposes a duty on the State to improve the public health mentioned as one of the primary duties. Article 48A was inserted by the Constitution (42nd Amendment) Act, 1976 with effect from 3-1-1977 expressly to the effect that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". Thereafter, the Environment (Protection) Act, 1986 (the Act) was enacted to provide for the protection and improvement of the environment and for matters connected therewith. The Statement of Objects and Reasons emphasises the world-wide concern over the decline in environmental quality and the urgency of steps required for the protection and improvement of the environment. It is clear that the possibility of any deterioration in the environmental quality was excluded and emphasis at the minimum was on protection with the endeavour to improve the then existing state of environmental quality. Any further decline in the environmental quality at least after the enactment of the Act is undoubtedly a failure to perform this obligation by the State, contrary to the constitutional scheme.

2. It cannot be disputed by anyone that there has been considerable further decline in the environmental quality even after enactment of the Environment (Protection) Act, 1986, notwithstanding the resolve to prevent which the constitutional amendment was given effect to by enactment of the statute.

3. Even a cursory perusal of the provisions of the enactment reveal the emphasis on the need for not mere protection but also improvement of the environmental quality. The definitions including that of "environment"

in Section 2 of the Act, the extent of the powers of the Central Government in Section 3 and the further power to give directions in Section 5 are alone sufficient to indicate the high degree of duty imposed on the State for which large powers are given to enable discharge of that duty. We may refer in particular to Sub-section (3) of Section 3 which confers powers on the Central Government to constitute an authority or authorities considered necessary or expedient by it for the purposes of this Act and the further power to give directions under Section 5.

4. *In spite of a number of matters, including this writ petition of 1985 having been brought in the Court as PIL, the required attention does not appear to have been paid by the authorities concerned to take the steps necessary for discharge of this duty imposed on the State by the provisions mentioned above except for the enactment of the said statute. The least which ought to have been done in this direction was to constitute a high-power committee at the national level of eminent persons and to ensure Constitution of similar authorities at the State level in exercise of the power given by Sub-section (3) of Section 3 of the Act to ensure that the object of the enactment was duly served. The several aspects of the environment which this Court is required to deal with in this writ petition are all covered not merely by the general provisions in Sub-section (1) of Section 3 but also by the specific matters specified in Sub-section (2) thereof. It is only on account of the absence of the authority/authorities contemplated under Sub-section (3) of Section 3 that this Court is required to deal with these matters in this writ petition and several other similar writ petitions pending in this Court, in addition to those which are pending in different High Courts. It is also a matter of concern that notwithstanding the pendency of these matters in this Court for so long no steps have been taken as yet by the Central Government for the Constitution of the authority/authorities contemplated by Sub-section (3) of Section 3 so that even now these matters can be taken care of by the authorities intended for the purpose.*

5. *It is undoubtedly a matter of universal concern that the quality of the environment continues to deteriorate even now. Any further delay in the performance of its duty by the Central Government cannot, therefore, be permitted. Suitable directions by the Court to require performance of its duty by the Central Government is mandated by the law and have, therefore, now to be given. We consider it appropriate that before issuing such directions, the Central Government should be given one more opportunity to indicate all the measures taken by it so far for discharge of the duty enjoined on it by the above provisions in Part IV of the Constitution and the Environment (Protection) Act, 1986.*

6. It need hardly be added that the duty cast on the State under Articles 47 and 48A in particular of Part IV of the Constitution is to be read as conferring a corresponding right on the citizens and, therefore, the right under Article 21 at least must be read to include the same within its ambit. At this point of time, the effect of the quality of the environment on the life of the inhabitants is much too obvious to require any emphasis or elaboration.

7. We may also add that the Central Government in addition to stating all the steps taken so far, as indicated above, must also place before the Court the national policy, if any, drawn up in this behalf for the protection and improvement of the environment and the steps it proposes to take to restore the quality of the environment at least to the level at which it existed in 1977 together with the time-frame for the implementation of the programme. These particulars be furnished on the affidavit of the Secretary, Ministry of Environment and Forests, Government of India.”

10. The Tribunal also referred to a Comprehensive Action Plan (CAP) for air pollution control for NCR prepared in pursuance of order of the Hon’ble Supreme Court dated 06.2.2017 by the Environment Pollution (Prevention and Control) Authority (EPCA) in consultation with the CPCB and Delhi Pollution Control Committee (DPCC) on 05.04.2017⁷ and Graded Response Action Plan (GRAP) notified by the MoEF&CC on 12.01.2017 stipulating specific steps for different levels of air quality such **as improvement in emission and fuel quality and other measures for vehicles, strategies to reduce vehicle numbers, non-motorised transport network, parking policy, traffic management, closure of polluting power plants and industries including brick kilns, control of generator sets, open burning, open eateries, road dust, construction dust, etc.**⁸

“11...xxx.....xxx.....xxx

12. The GRAP categorises levels of pollution as severe plus, severe, very poor, moderate to poor. The action to be taken in such situations includes **stopping entry of trucks, stopping construction activities, odd and even scheme of private vehicles, shutting of schools, closing of brick kilns, stone crushers, hot mix plants, power plants, intensifying public transport services, mechanized cleaning of road, and sprinkling of water, stopping the use of diesel generator sets, enhancing parking fees, etc.**

⁷ Report No.71, EPCA-R/2-17/L-21, Comprehensive Action Plan for air pollution control with the objective to meet ambient air quality standards in the National Capital Territory of Delhi and National Capital Region, including states of Haryana, Rajasthan and Uttar Pradesh.

⁸ S.O.118(E), Notification, Ministry of Environment, Forest and Climate Change

13. The MoEF&CC has by various notifications put **restrictions on activities in Coastal areas, Flood plains, Taj corridor Eco-sensitive zones, etc. in view of ecological sensitivity and impact of such activities on environment if such activities are carried out in unregulated areas.** This needs to be extended to the NACs in view of impact on public health and environment to give effect to the 'Precautionary' and 'Sustainable Development' principles. Some of the well-known sources of air pollution are:

1. Construction activity and carriage of construction material.
2. Mining and transportation of mined material.
3. Burning of Municipal Solid Waste and other waste.
4. Burning of agriculture residue.
5. Bursting of crackers.
6. Vehicular Pollution
7. Diesel gen-sets
8. Dust on the roads.
9. Industrial and power house emissions including fly-ash.
10. Emissions from coal fired activities brick kilns, Hot-Mix Plants and Stone Crushers."

"14to29..xxx.....xxx.....xxx

"30. The report shows progress under 17 specific heads. With regard to installing 175 monitoring stations, it is stated that 20 new CAAQMs have been installed and 25 approved. SA and CC studies are underway. There is partial progress on shifting polluting activities out of non-conforming areas. PGRPs have been developed by several States and other States have yet to do the same. **Two more cities have been added to the list of NACs** and actions plans for the NACs have been mostly prepared. Status of execution of action plans is not very clear. Micro level planning has been done for some cities. Gaps in plans and execution remain to be addressed. The issue of revising NCAP and CAMPA Funds is still to be addressed. Certain steps have also been taken for control of noise pollution, including procurement of noise monitoring devices and limiters. Emergency response systems have been partly developed. Directions issued for utilizing 'Consent' and 'EC' funds and for bioremediation of legacy waste dump sites. Carrying capacity of road infrastructure to determine parking capacity is being dealt with by the Ministry of Road Transport and Highways and Urban Development Departments. Environment Cells have been set up by some of the Chief Secretaries. **The report does not indicate the reduction in pollution level in any of the NACs as a result of steps so far taken. Similarly, with regard to noise pollution control, no tangible progress has been shown.** Progress on SA and CC studies is highly inadequate. Preventive and remedial measures for stubble burning need to be planned in advance for effective control of pollution. CPCB needs to undertake finger printing and bio-marker analysis along with SA studies. While the report has stated that under heading (ix) that a separate report will be filed on the subjects of modification of NCAP, utilization of CAMPA Funds by

undertaking special afforestation drive, no such separate report has been filed.

“31to41..xxx.....xxx.....xxx

42. The data grid for continuous information will go a long way in dealing with the problem. As already noted in Para 20 above, there is need for National, State, District Environmental Data Grids giving the data of air quality. Apart from improving environment, this is necessary to enforce right of the citizens to information about air quality in different areas. Based on the level of pollution, categories of cities/districts need to be appropriately classified such as ‘red’, ‘orange’ and ‘green’. Further, based on such data National Air Quality Atlas may be compiled and published on the websites of MoEF&CC, CPCB and State PCBs/PCCs and updated from time to time.

“43to46..xxx.....xxx.....xxx

47. Final success of execution of action plans depends on graph of reduced pollution load. This requires monitoring at highest levels in Districts, States and at the national level by coordination of all concerned departments. There is constitutional obligation of good governance and a duty to citizens to enforce their right of breathing fresh air. Absence of adequate remedial action is resulting in deaths and diseases which are like pandemic or like causing of homicide or grievous hurts with no accountability. Main sources of air pollution have been identified and remedial measures also articulated.

“48to51..xxx.....xxx.....xxx

52. As already mentioned, pollution free environment is part of right to life. Air pollution beyond norms seriously affects health and environment. In spite of statutory mechanism and orders of the Hon’ble Supreme Court and other Courts/Tribunal, the challenge of pollution from different sources, including vehicular pollution, industrial and construction sector pollution, power sector pollution, agriculture sector pollution remains. Graded Action Response Plan (GRAP) has been issued for National Capital Region (NCR) in pursuance of directions of the Hon’ble Supreme Court stipulating steps to be taken for controlling/regulating several polluting activities depending upon the level of pollution.

53. In *Arjun Gopal & Ors. v. UOI & Ors.*⁹, it was observed that the residents of NCR faced severe air quality standards which were worst in the World. It had serious adverse health impact. Life of citizens in NCR had been brought to virtual standstill. The Capital was smoked into an environmental

⁹ (2017) 1 SCC 412

emergency of unseen proportions. It will be appropriate to extract some observations from the judgment:-

“4. The onset of winter and the festival/marriage season this year, presented to the residents of NCR severe concerns regarding the air quality standards. According to reports, the air quality standards in early November of this year were the worst in the world. It is reported that the PM_{2.5} levels recorded were “beyond scale” values (see India's Air Quality Among World's Worst Over Diwali Weekend: Report. 4-11-2016, Hindustan Times). The report indicates that 24-hour average of PM_{2.5} levels in South Delhi in 2016 were 38% higher than on the Diwali night of 2015. The day after Diwali, these levels were twice as high as the day after Diwali in 2015, crossing 650 µg/m³, which is 26 times above the WHO's standards or levels considered safe. Shockingly, on the morning of 1-11-2016, Delhi woke up to an average PM_{2.5} level of over 700 µg/m³ — some of the highest levels recorded the world over and 29 times above WHO standards. The report further states that the WHO guideline for 24-hour average PM_{2.5} levels is 25 µg/m³ and with an annual average PM_{2.5} level of 122 µg/m³, Delhi's air is the worst among global megacities with dense populations. We have particularly referred to the PM 2.5 levels because of the extreme effects and near invisibility of this type of particulate matter. PM_{2.5} or particulate matter 2.5 (PM_{2.5}), refers to tiny particles or droplets in the air that are two-and-one-half microns or less in width. It may be noted that the widths of the larger particles in the PM_{2.5} size range would be about thirty times smaller than that of a human hair. These particles primarily emanate from vehicle exhausts and other operations that involve the burning of fuels such as wood, heating oil or coal, and of course, use of fire crackers.

5. In India, air quality standards are measured in terms of the Air Quality Index (hereinafter “AQI”). The AQI was launched in India on 17-10-2014 by the Ministry of Environment and Forests. According to the press release of the Press information Bureau of the same date, it consists of a comprehensive set of parameters to monitor and asses the air quality. The AQI considers eight pollutants (PM₁₀, PM_{2.5}, NO₂, SO₂, CO, O₃, NH₃, and Pb), and based on the levels of these pollutants six categories of AQI ranging from “Good” to “Severe” have been prescribed. The index also suggests the health effects of the pollution categorywise. The gradation of AQI and its health impact is extracted below:

Tables 1 and 2 have already been reproduced above and are not being repeated.

xxx.....xxxxxx

xxx.....xxxxxx

6. Reports indicate that AQI in Delhi was much above the severe standard, shooting off the AQI 500 mark on many days this November. On the day after Diwali, it was more than 14 times the safe limits (see Delhi's Pollution Levels Peaks at 14-16 Times Safe Limits, 31-10-2016, The Hindu). The adverse health effects of these hazardous levels of pollution are only too evident from the table given above. We do not intend to refer to the multiplicity of reports and data on this front.

7. The hazardous levels of air pollution in the last few weeks have spared very few from its ill effects. The life of the citizens of NCR was brought to a virtual standstill, not to speak about the plight of the thousands of mute flora and fauna in NCR. Schools were declared shut, denizens of the city advised to stay indoors, construction activities stopped, power stations shut and ban imposed on burning of garbage and agricultural waste. The fall in air quality has had a significant impact on people's lifestyle as well. The rising costs to protect against air pollution are substantial. It has come to our notice that people are queuing up to purchase protective masks and air purification systems in the wake of dense smog all over the NCR. In short, the capital was "smogged" into an environmental emergency of unseen proportions.

8. The adverse effects of these extreme levels of air pollution spare no one — the young, the old, the infirm and even the future generations. A study of the data of the Global Health Depository of the World Health Organisation reveals that India has the world's highest death rate from chronic respiratory diseases and that about 1.5 million people in India die annually due to indoor and outdoor pollution (see Delhi Wakes up to an Air Pollution Problem it cannot Ignore, 15-2-2015, The New York Times). The Kolkata-based Chittaranjan National Cancer Institute (CNCI), in a study commissioned and handed over to the Central Pollution Control Board, found that key indicators of respiratory health, lung function to palpitation, vision to blood pressure, of children in Delhi, between four and 17 years of age, were worse off than their counterparts elsewhere. It also found that more than 40% of the school children suffer from lung damage (see Landmark Study Lies Buried, 2-4-2015, The Indian Express). We note with apprehension that there are nascent

studies that suggest that pollution can lower children's IQ, hurt their test scores and increase the risks of autism, epilepsy, diabetes and even adult-onset diseases like multiple sclerosis (see Holding Your Breath in India, 29-5-2015, The New York Times).

9. *It has been brought to our notice that the severe air pollution in the NCR is leading to multiple diseases and other health related issues amongst the people. It is said that the increase in respiratory diseases like asthma, lung cancer, bronchitis, etc. is primarily attributable to the worsening air quality in the NCR. The damage being caused to people's lungs is said to be irreversible. Other health related issues like allergies, temporary deafness are also on the rise. Various experts have pointed towards multiple adverse effects of air pollution on human health like premature deaths, rise in mortality rates, palpitation, loss of vision, arthritis, heart ailments, cancer, etc.*

10. *When we refer to these extreme effects, we are not merely referring to the inconvenience caused to people, but to abject deprivation of a range of constitutionally embedded rights that the residents of NCR ought to have enjoyed. Needless to state, the grim situation of air quality adversely affected the right to education, work, health and ultimately, the right to life of the citizens, and this Court is constitutionally bound to address their grave concerns. May we remind ourselves, that this is not the first time that this Court was impelled into ensuring clean air for the citizens of the capital region (see M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1998) 6 SCC 60] , [M.C. Mehta v. Union of India, (1998) 9 SCC 589] , M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1998) 8 SCC 648] and M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1998) 8 SCC 206]).”*

“54to57..xxx.....xxx.....xxx

58. *In the light of above detailed discussion, holistic and coordinated efforts at all levels in the government is dire need of the hour. Accountability in terms of adverse entries in the ACRs and recovery of compensation for non-compliance are imperative for fixing accountability. This requires authorities at higher level to function as trustees for discharge of constitutional and statutory obligation to the citizens. There is no other magic wand to protect people against acknowledged sorry state of affairs. As shown from the observations of Hon'ble Supreme Court quoted in para*

37 above, India has world's highest death rate from chronic respiratory diseases. About 1.5 million people in India die annually due to air pollution. The Hon'ble Supreme Court also observed that 40% school children suffer from lung damage. Air pollution can lower children's IQ, hurt their test scores and increase the risks of autism, epilepsy, diabetes and even adult-onset diseases. Severe air pollution is leading to diseases and irreversible damage to health. There are other health related issues like allergies, temporary deafness. Various experts have pointed towards multiple adverse effects of air pollution on human health like premature deaths, rise in mortality rates, palpitation, loss of vision, arthritis, heart ailments, cancer, etc. This is resulting in deprivation of constitutionally embedded rights. Grim situation is affecting right to education, work, health and ultimately, the right to life of the citizens. There are further reports¹⁰ that air pollution is resulting in fatalities and economic losses. Remedial action is thus utmost for protecting health of the citizens.

59. The matter has been monitored by the Tribunal for about two and a half years. Primarily **the Tribunal is an adjudicatory body and beyond giving directions necessary for protection of environment under section 15 of the NGT Act, execution has to be by administrative authorities.** Under public trust doctrine, the State authorities are under obligation to take effective measures to control pollution. Tribunal monitoring cannot be for indefinite period. Road map has crystallised to an extent. The Tribunal has formulated direction and conducted review five times with the assistance of data available with it. The ownership of monitoring must be now taken over by the statutory and administrative authorities for enforcement of rule of law for which a national level task force needs to be constituted. **Thus, we find it necessary to give effect to the principle of Sustainable Development, in the interest of protection of environment and public health, to direct constitution of an eight-member National Task Force (NTF) to be headed and coordinated by the Secretary MoEF&CC with nominees of Ministries from Housing and Urban**

¹⁰(i) Air pollution killed 1.7 million Indians in 2019: Lancet report: (https://www.downtoearth.org.in/news/air/amp/air-pollution-killed-1-7-million-indians-in-2019-lancet-report-74737#aoh=16178975512221&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s)

(ii) AIR POLLUTION RELATED DISEASE, DEATHS COST INDIA RS 260,000 CRORES IN ECONOMIC LOSS: REPORT (<https://www.firstpost.com/tech/science/air-pollution-related-disease-deaths-cost-india-rs-260000-crores-in-economic-loss-report-9159281.html>)

(iii) 1.7 million deaths in India were attributable to air pollution in 2019, says study: (<https://www.thehindu.com/news/national/17-million-deaths-in-india-were-attributable-to-air-pollution-in-2019-says-study/article33394600.ece>)

(iv) Air pollution in India caused 1.67 million deaths in 2019: (<https://www.news-medical.net/news/20201223/Air-pollution-in-India-caused-167-million-deaths-in-2019.aspx>)

(v) Air pollution caused 54,000 deaths, \$8.1 billion loss in Delhi in 2020 : (<https://www.businesstoday.in/current/economy-politics/air-pollution-claimed-54000-lives-in-delhi-last-year-one-death-per-500-people-claims-greenpeace-study/story/431766.html>)

Development, Road Transport, Petroleum, Power, Agriculture, Health and CPCB with a view to monitor remedial steps to improve the status of air quality in NACs consistent with the action plans already prepared and approved by the Expert Committee and directions of this Tribunal, referred to above and also to monitor compliance of noise control norms. The NTF may hold its first meeting within one month and thereafter evolve mechanism for monitoring by quarterly meetings with Chief Secretaries of concerned States/UTs. The NTF may coordinate and work in tandem with the Committees already constituted under NCAP at National and State levels. Needless to say that the Chief Secretaries must continue to monitor progress in execution of action plans at State level with the assistance of monitoring cells in their offices and the AQMCs so as to effectively provide positive feedback to the NTF. The State level monitoring must include action at the ground as per directions to be implemented by the District Magistrates or other concerned departments. The monitoring may include all associated issues, including road dust control by appropriate sprinkling of water (utilizing treated water, instead of potable water), planting herbs and shrubs, and all sources of pollution, including fire crackers.”

7. In view of above, apart from taking action for enforcement of GRAP for stopping the functioning of Diesel Generator Sets when air quality is very poor and above, there is need for adopting safeguards in view of potential for pollution to maintain the air quality standards. DG sets have to comply with the notified Emissions and Noise standards and maintain stack heights. This is more so when meteorological conditions result in hazy situation caused inter alia by dust and bursting of crackers during winter, as noted in orders of this Tribunal dated 1.12.2020 in OA 249/20 and dated 3.12.20 in OA 283/20. There is thus need for the statutory authorities to keep constant watch on air quality and take necessary remedial action as per law.

8. Accordingly, the CPCB, State PCB and the District Magistrate, Ghaziabad may take further remedial action to ensure compliance of air quality and noise standards in the operation of that Diesel Generator Sets. The State PCB will be the nodal agency for compliance and coordination. The State PCB may also take remedial action against operation of DG sets without requisite consent. If allowed to operate, DG sets must adopt suitable safeguards consistent with the provisions of the Air Act. An action taken report may be filed within one month to the Tribunal 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.”

3. The matter was last considered vide order dated 16.03.2022 in the light of report of the Committee dated 5.3.2022, after undertaking visit to the site. In the light of factual violations noticed, the Committee made recommendations. The Tribunal accordingly directed issue of notice to the Residents Welfare Association for compliance of principles of natural justice before passing final order in terms of the report. The Tribunal also directed the State of UP to issue a State wide policy and monitoring mechanism to deal with similar violations and sought an action taken report in the matter. The operative part of the order is reproduced below:

“xxxxxx.....xxx
 3. *In pursuance of above, a report has been filed on behalf of the Committee on 05.03.2022, after undertaking visit to the site on 24.12.2021. The Committee found that the stacks of adequate height need to be installed in all DG sets, 15 years old DG sets may be discontinued. Consents are required to be taken from the State PCB. For the past violations, compensation of more than 4 Crores has been assessed against the WPRWA. Relevant extracts from the report are:*

“Action taken by the Joint Committee

In compliance of above order Regional Officer, UPPCB, Ghaziabad vide letter No. 1370/NGT-126/OA No. – 242/2021 dated 27.10.2021 requested Member Secretary to nominate member from CPCB to carry out joint inspection. CPCB has informed about nomination for joint inspection vide letter dated 10.10.2021 copy of same is annexed as Annexure-I.

Accordingly, joint inspection of project comprising following Official was carried out on dated 24.12.2021.

- 1. Shri Vipin Kumar, Additional District Magistrate (City) Ghaziabad.*
- 2. Shri Kedarnath Dash, Scientist-D, Central Pollution Control Board, New Delhi*
- 3. Shri Kishan Singh, Assistant Environment Engineer, UPPCB, Ghaziabad*
- 4. Shri Ranjeet Singh, Junior Engineer, UPPCB, Ghaziabad.*

During inspection Mr. Shishir Gupta, Manager, RWA Windsor Park was present as project representative. As per information provided by representative, the salient feature of project is as follows:

<i>1</i>	<i>Plot Area:</i>	<i>11 acres</i>
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2	No of Towers:	12(with 10 to 23 multi-storied building)
3	Status of towers:	Residents are living in the Society since 2007. RWA has been looing after the maintenance since 2015.
4	No of Flats:	770
5	Project Commence on:	2007
6	No's of DG sets	8 (2x600 KVA, 5x 500KVA, 1x320 KVA)

1. Field Observations:

A1) DG Sets details site 1 (Near block K & L):

Sl. No.	Genset Brand Name	Date of Manufacturing	Capacity	Type approved	Stack Height	Distance from nearest Building
1	Jakson	2013	320 KVA	Yes	Inadequate	40 fit from K & L block
2		March, 2010	500 KVA	Yes		
3		July, 2008	600 KVA	Yes		30 fit from K & L block
4		June, 2008	600 KVA	Yes		

A2) DG Sets details site 2 (Near block B):

Sl. No.	Genset Brand Name	Date of Manufacturing	Capacity	Type approved	Stack Height	Distance from nearest Building
1	Jakson	April, 2007	500 KVA	Yes	Inadequate	31 fit from B block
2		February, 2006	500 KVA	Yes		
3		September, 2005	500 KVA	Yes		59 fit from B block
4		April, 2007	500 KVA	Yes		

A3) Age of generators:

Sl. No.	Age of Generators in years	No(s)
1	16	1
2	15	2
3	14	1
4	13	2
5	11	1
6	08	1

- As on date, power supply position to the society has been improved. As per log book shown to the team, generator is hardly used. It is used for testing and occasional power cut for maintenance with prior intimation.
- Generators were installed during erratic power supply situation in past.

4. Use of generator set is not required if there can be a dedicated Genset for emergency purposes.
5. This is a residential area and the area is having less traffic. Hence emission and noise pollution from other sources is hardly observed.
6. As per UPPCB, Ghaziabad record Project has not obtained CTO for operation of D.G. Sets.
7. On the inspection date there was ban on DG Set use. Hence actual compliance in the premise of complainant couldn't be monitored.
8. During inspection Manager RWA Windsor Park told that the Petitioner Shri Satish Govind was himself an office bearer (President) of RWA in year 2019.

Action taken report by Joint Committee:

1. As per GSR 371(E); dated 17.05.2002 revised vide GSR771(E); dated 11.12.13 regarding emission,

- a) **“Every manufacturer of engine or product, as the case may be, shall have valid certificate(s) of Type Approval and COP for each COP year, for all engine models being manufactured or, for all engine or product models being imported, after the effective date for the emission limits.**
- b) **“Stack height (in metres) for Genset shall be governed as per Central Pollution Control Board (CPCB) guidelines”.**

As per Emission Regulation Part IV: COINDS/26/1986-87 evolved by CPCB, the minimum height of stack with each generator set can be worked out using following formula:

$H = h + 0.2 \sqrt{KVA}$ where

H = Total height of stack in metre

h = Height of the nearest building

KVA = Total generator capacity of the set in KVA

2. CPCB Guide line for Genset use:

On 25th February, 2015, CPCB has submitted before the Hon'ble Tribunal vide appeal no. 12(CTO) of 2013 and original application No. 17(Tao) of 2013 in the matter of Market Welfare Association Vs. District Magistrate & Ors. and Fashion Market Welfare Association Vs. District Magistrate, SAS Nagar & Ors. and Sadhu Singh & Ors. Vs. The Chief Administrator & ors. that

- a) **Any diesel generator set without certified acoustic enclosure as per GSR 371(E), dated 17th May, 2002 not to be allowed to operate on or after 01.06.2015; and**

- b) Generator sets manufactured on or after 17th May, 2002 be scrapped and dismantled after its useful life, i.e. 15 years from the date of manufacturing or 50,000 hours of operator, which ever earlier.**

3. Recent NGT direction:

Hon'ble NGT Principal bench has passed an order vide OA No. 681; dated 06.08.2019, As per the order

- a) **Evolve standards and norms for in-use DG sets below 800 KVA categories.**
- b) **For DG sets already operational, ensure usage of either of the two options: (a) use of retrofitted emission control equipment having a minimum specified PM capturing efficiency of at least 70%, type approved by one of the 5 CPCB recognized labs; or (b) shifting to gas-based generators by employing new gas-based generators or retrofitting the existing DG sets FOR partial usage.**

4. UPPCB, Ghaziabad vide letter dated 22.10.2021 sent a notice to Project proponent to obtain CTO and install stack of adequate height on DG sets as per E.P. Act, 1986.

5. UPPCB Ghaziabad vide letter dated 12.01.2022 has sent a reminder notice to Project Proponent to obtain CTO and install stack of adequate height on DG sets as per E.P. Act, 1986.

Recommendations:

- **Project shall install stack of adequate height on all DG sets as per E.(P). Act, 1986.**
- **Generator of less than 15 years old may be allowed to be used.**
- **A separate generator may be used for lift and emergency services.**
- Complainant staying at D-13, 1st Floor around 200 meter distance from the position of Gensets. His complaint regarding emission and noise pollution from the Generator sets is redundant. Moreover, this is an issue with other residents that need to be addressed.
- **Project shall obtain Consent to operate from UPPCB after ensuring compliances.**
- As per guidelines framed by Central Pollution Control Board, New Delhi for calculation of Environmental Compensation in compliance of Hon'ble NGT orders, Calculation comes out as below:

$$EC = PI \times N \times R \times S \times LF$$

Calculation of Environmental Compensation for 01 day –
(75x1x250x1.0x1.25) = Rs. 23,437.50

Housing society is old. Residents are living in the society since 2007. As per CPCB and Hon'ble NGT orders Environmental Compensation can imposed for 05 years:-

(365 days x 5 years x 23,437.50) = Rs. 4,27,73,437.50/-

It is mentioned to impose Environmental Compensation of Rs. 4,27,73,437.50/- (Four Crores Twenty Seven Lakhs Seventy Three Thousand Four Hundred Thirty Seven Rupees Fifty Paise only) against this society.”

4. We have given due consideration to the matter. Action needs to be taken in the light of the report and earlier orders of this Tribunal. **We consider it in the interest of justice to require the State PCB to put WPRWA to notice who may file its response, if any, within one month.**

5. We further find that the violations found in the present case are not limited to the present housing complex nor to Ghaziabad but other housing complexes in Ghaziabad and also in other cities in the State which may call for a **State wide policy and monitoring mechanism to remedy the situation after discussion of the matter at the level of State level authorities in UP in the light of mandate of law and earlier directions of this Tribunal.** There is need to monitor operation of DG sets in Residential Societies and Commercial complexes with reference to use being of “Type Approved (TA)” category, cleaner fuel, acoustic control system with required stack height and being compliant with Regulations on the subject. There is also need for mechanism for creating awareness about need for compliance and also for guidance for compliance.

6. Accordingly, we direct a joint Committee of Additional Chief Secretary, Urban Development and Additional Chief Secretary, Environment and Forest with any other stake holders including District Magistrates of the Districts where problem may be perceived to be more serious to have an interaction on the subject to consider the remedial measures for control of air and noise pollution caused by the DG sets in the light of earlier order of this Tribunal dated 18.10.2021, quoted above within one month. The Additional Chief Secretary, Environment and Forest will be the nodal agency for convening the meeting and taking follow up action.

7. Action taken report may be filed 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.”

4. In pursuance of above, the welfare association has filed its response on 4.7.2022 inter-alia stating that a dispute is pending before

the Hon'ble Supreme Court about certain issues between the developer and welfare association. DG Sets were installed as there was no electricity and the developer has to pay compensation assessed by the State PCB. The report filed on behalf of the State is that it has constituted a task force for compliance against violations by setting up of DG sets throughout the State.

5. We find that the stand of the welfare association that the matter should not be dealt with by this Tribunal as some dispute between developer and welfare association is pending in the Hon'ble Supreme Court cannot be accepted. The issue before the Tribunal is compliance of environmental norms in operating DG sets which is not the issue before the Hon'ble Supreme Court. The environmental norms have to be maintained by all and any violator has to be dealt with as per law.

6. The record shows that out of 8 DG sets, 4 are more than 15 years old and two will complete 15 years by June/July 2023. Thus, these DG sets have to be replaced with cleaner fuel/retrofitted and be compliant as per specifications.

7. Accordingly, we direct that the report of the joint Committee dated 5.3.2022, referred in the order dated 16.3.2022, has to be acted upon in terms of discarding DG sets having life of more than 15 years and replaced by equipments run on cleaner fuel and compliant with norms including proper stack height. This be ensured by the State PCB and the District Magistrate. Operation of DG sets in violation of environmental norms has to be stopped and for past violations, accountability fixed, following due process of law. Compliance of G.O. dated 26.9.2022 may be monitored as per mechanism in para 13 of the said G.O. i.e. District level, AQMC and by Chief Secretary from time to time.

The application will stand disposed of accordingly.

I.A. No. 61/2022 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

November 01, 2022
Original Application No. 242/2021
(I.A. No. 61/2022)
DV