

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

M.A. No. 1715/2018 & M.A. No. 20/2019
In
Execution Application No.11/2017
In
O.A. No. 159/2013
With
Review Application No. 01/2019
(I.A. No. 34/2019, I.A. No. 35/2019 & I.A. No. 49/2019
In
Execution Application No.11/2017
In
O.A. No. 159/2013 & O.A. No. 77/2016
With
Review Application No. 07/2019
(I.A. No. 72/2019)
Execution Application No.11/2017
In
O.A. No. 159/2013 & O.A. No. 77/2016
With
I.A. No. 74/2019
In
Original Application No. 77/2016

All India Lokadhikar Sangathan

Applicant(s)

Versus

Govt. of NCT of Delhi & Ors.

Respondent(s)

With

All India Lokadhikar Sangathan

Applicant(s)

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Govt. of NCT of Delhi & Ors.

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All India Lokadhikar Sangathan

Applicant(s)

Versus

Govt. of NCT of Delhi & Ors.

Respondent(s)

With

M/s. Ashok Vihar Mira Mandal

Applicant(s)

Versus

Delhi Pollution Control Committee & Ors.

Respondent(s)

Date of hearing: 07.02.2019

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

For Applicant(s): Mr. S.K. Bhattacharya and Mr. Brij Mohan
Garg, Advocates

For Respondent(s): Mr. Sanjeev Ralli and Mr. Balaji Arusha,
Advocates for DPCC
Mr. Krishna Kumar, Advocate for MoEF&CC
Ms. Pinky Anand, ASG, Mr. Hemant Arya, Advocate
and Mr. Dinesh Jindal, LO
Mr. Vinay Kr. Garg, Senior Advocate, Mr. Ajay Jain
and Mr. Pranay Jain, Advocates
Mr. Vivek Kumar Tandon, Advocate for CETP
Mr. Kush Sharma, ASC, for DDA
Mr. Tanmaya Mehta, Mr. Rajeev Aggarwal and Mr.
Anunaya Mehta, Advocates of Review Applicant
Ms. Puja Kalra, Advocate for North MCD
Mr. Vinayak Gupta, Advocate and Mr. Harish
Chandra, EE (Civil) for DSIIDC

ORDER

1. Review Application Nos. 1 and 7 of 2019 have been filed by the Wazirpur Industrial Estate Welfare Society and the Government of National Capital Territory of Delhi (GNCTD) and the Delhi Pollution Control Committee (DPCC) respectively, for review of the order of this Tribunal dated 16.10.2018 in Execution Application No. 11/2017 in O.A. No. 159/2013 and O.A. No. 77/2016.
2. M.A. No. 1715/2018 in E.A. No. 11/2017 in O.A. No. 159/2013 seeks enforcement of order dated 16.10.2018. I.A. No. 74/2019 in O.A. No. 77/2016 seeks direction to deal with the hazardous waste dumped at the green belt in Ashok Vihar, Phase-II, Delhi.
3. Our attention has been drawn to the order of the Hon'ble Supreme Court dated 14.12.2018 in *C.A. No. 11726-11727 of 2018* filed against the above order of this Tribunal by the GNCTD/DPCC and the Welfare Society of Wazirpur Industrial Estate, giving liberty to

move this Tribunal by way of review. In the course of the said order, observation made by the Hon'ble Supreme Court are as follows:

i. On the subject of decision of Delhi Government to allow industries to continue subject to compliance with the Environmental legislation contrary to the Master Plan.

"Be that as it may, no administrative decision can be taken in violation of the Master Plan" ..

.....
"Prima facie, the above note only permits a determination of whether a particular industry, factory or activity falls in a specified entry. The negative or prohibited list cannot be amended by an administrative act in violation of the Master Plan."

ii. On the subject of direction to deposit Rs. 50 Crores as compensation for damage to the environment.

"Prima facie, the direction is relatable to the provisions of Section 17 of the National Green Tribunal Act, 2010. Consequently, we direct that in terms of the order passed by the NGT and before the applications for review are entertained, an amount of Rs. 15 crores be deposited within four weeks by GNCTD. The deposit shall abide by the final result of the applications for review."

iii. On the subject of reopening the industries which have been closed in pursuance of order of this Tribunal.

"Ms. Indira Jaising stated that in compliance with the order passed by the NGT, the operation of the industry has been stopped by disconnecting water and electricity connections. This position shall continue until the Tribunal disposes of the review petitions, and thereafter will be subject to the outcome."

4. The issue pertains to environmental hazards caused by the Stainless Steel Pickling (SSP) industries which figures at entry no. 88 in the prohibited/negative list of industries in the Master Plan, 2021. The other issue is handling of hazardous waste generated by the said industry.

5. This Tribunal in order dated 16.10.2016, *inter-alia*, observed that the industries in question were contributing to the waste dumped into the river Yamuna and were discharging acidic effluents which were highly polluted and impacted the air quality of Delhi. The said

industries were inherently polluting which led to their being placed in the prohibited list in the Master Plan. In spite of order of Delhi High Court and this Tribunal, the Delhi Government failed to stop their operations.

6. We may briefly refer to the background in which the issue arises. In view of provisions of the Master Plan-2001, the Hon'ble Supreme Court noted that industries prohibited from operating in Delhi as per Master Plan are to be shifted from Delhi¹. In the said judgment it was noted that Delhi was one of the most polluted cities in the world. The quality of ambient air was hazardous and diseases are on the increase. There was lack of open space. On land occupied by the hazardous industries being surrendered, the same could be used for community needs.² The issue of compliance of the provisions of the Master Plan was also considered in the later judgments of the Hon'ble Supreme Court. It was noted that hazardous industries had been shifted out of Delhi but certain industries were continuing in residential/non-conforming areas which were also required to be shifted out of Delhi in view of Master Plan-2021. In situ regularization was not permissible. It was necessary that the authority should not consider legalizing illegalities so that Delhi was left for future generations without being polluted. The stand of the Central Government and Delhi government in avoiding implementation of Master Plan was disapproved.³

7. However, it appears that the hazardous industries continued to operate in violation of the provisions of the Master Plan. On 23.03.2012, the DPCC directed closure of the said industries. In the first round of litigation, the said direction was quashed by the Delhi High Court on account of a procedural technicality but in next round

¹ (1996) 4 SCC 351 para 1

² Para 7 ibid

³ (2004) 6 SCC 588 para 60

of litigation, vide order dated 11.11.2013 in *W.P. (C) No. 6904/2013*, it was held that in view of the Master Plan, prohibition for the industry was operative from 23.09.2013 and that the industries could not resume their activities without consent of the DPCC. The High Court also observed that the industries were highly polluting industries having effect on water/water bodies/drains.

8. The Tribunal, in the order dated 16.10.2018, referred to various earlier proceedings, including the order dated 17.10.2014 in O.A. No. 159/2013 noting the stand of the DPCC that the DPCC will not grant any permission to such units. Reference was also made to the order dated 13.12.2016 in Execution Application No. 33/2016. In the said order it was noted that in a meeting of the Delhi Government, DPCC, Delhi Development Authority (DDA) and Central Pollution Control Board (CPCB), a decision was taken to the effect that the pickling industries are in prohibited category. Consent to Operate had expired. In the order dated 25.07.2017 in Execution Application No. 11/2017, the Tribunal had required DPCC to explain why order of the Tribunal had not been implemented. In order dated 14.12.2017 in the same case, it was noted that the Secretary, Environment and the Secretary, Industries were required to ascertain the status of the pickling industries. Again, in the order dated 08.01.2018, it was noted by the Tribunal that there was a consensus that pickling industries could not be permitted after three years from 23.09.2013. In order dated 21.02.2018, the Tribunal again recorded the statement that the industries could not be allowed to work after three years from 23.09.2013. The Tribunal observed that after 23.09.2016, the industries did not have any Consent to Operate and were being run illegally. The Tribunal also observed that the metals used in pickling industries produced corrosive wastes and effluent discharge from these industries contained toxic waste harmful to the health and

aquatic life. Untreated effluents were being discharged in the river Yamuna. Accordingly, the operation of the industries was required to be stopped and the Delhi Government was required to pay Rs. 50 Crores for the damage to the environment which could be recovered from the erring industries or the erring officers. The amount was to be deposited with the CPCB.

9. The Hon'ble Supreme Court noted the plea that a decision of the Delhi Government dated 12.10.2018 could not be placed before the Tribunal and that under the Master Plan, 2021 though the category of industries was in prohibited list, the Environment Department in consultation with the Industries Department could take a final decision as to which industry was falling in the said list.
10. Further contention on behalf of the industries noted in the order of the Hon'ble Supreme Court is that the ETPs and the CETPs had been established which had the effect of abating the pollution and that the industry should be permitted to point out before this Tribunal that there has been an amendment in the Master Plan or that the Tribunal had no jurisdiction to pass the order.
11. We have heard learned Counsel for the Delhi Government, DPCC, DDA, the industries and the learned Counsel for the CETP in support of the Review Applications and learned counsel for the applicant in opposition thereto.
12. We have also heard learned Counsel for the applicant in M.A. No. 1715/2018 in E.A. No. 11/2017 in O.A. No. 159/2013 seeking enforcement of order dated 16.10.2018 and I.A. No. 74/2019 in O.A. No. 77/2016 seeking direction to deal with the hazardous waste dumped.

13. I.A. No. 74/2019 mentions that 7,000 tonnes of hazardous waste containing poisonous and toxic chemicals has been dumped on the green belt in the densely populated residential area at Ashok Vihar, Phase-II, Delhi. Order of the Tribunal dated 22.09.2016 records that NCT of Delhi does not have any mechanism or plan to treat the said hazardous waste and that they have sought allotment of land for the purpose from DDA as well as the Government of Haryana. The DDA has expressed its inability to give such land.
14. Learned Counsel for the review applicant submitted that order dated 16.10.2018 should be reviewed in view of order of Delhi Government dated 10.12.2018. The Master Plan could not be given effect in view of decision of Delhi Government. ETPs/CETP are operative and there is no pollution. Order of compensation could not be passed. Learned Counsel for the DDA has referred to letter dated 28.01.2019 addressed to the Urban Development Department of Central Government to the effect that the Central Government may like to consider the recommendations of the Delhi Government dated 16.01.2019 for deletion of SSP industries from serial no. 88 of the list of prohibited industries.
15. It is an undisputed fact that there is no amendment to the Master Plan. The SSP industry is part of prohibited list. The power of Delhi Government is limited to only determine whether a particular activity is part of such prohibited list and not to ignore the said list or modify the said list or permit industry falling in the said list to operate with or without any condition.
16. Learned ASG for Delhi Government has not been able to show the alleged order of the Delhi Government dated 12.10.2018 relied before the Hon'ble Supreme Court. However, she made reference to minutes of meeting held on 04.04.2018 in pursuance of order of NGT order

dated 14.12.2017 to determine whether the pickling industrial activity was covered by prohibited list of industries. In the said meeting there is reference of earlier meeting dated 27.12.2017 appointing a Committee of two SEs of DSIIDC and two officers of DPCC to inspect the level of compliance by the pickling industries. In the said meeting, recommendation was to consider whether SS pickling activity could be allowed to operate subject to compliance of consent condition of DPCC with regard to installation of ETPs and periodic checks of functioning of ETPs. Reference is also made to letter addressed to DDA dated 16.1.19 to delete item no. 88 from list of prohibited industries.

17. Learned counsel for the applicant submitted that no ground has been made out for the review of order of this Tribunal dated 16.10.2018. The review applications are liable to be dismissed. It is pointed out that the scope of order of this Tribunal dated 14.12.2017 which is the basis of meeting dated 27.12.2017 was limited to consider the question whether pickling industry was in the prohibited list but the Delhi Government assumed jurisdiction to go into the question of deleting the said industry from the prohibited list in the Master Plan. This was neither a suggestion of this Tribunal nor is within the purview of the Delhi Govt. In any case, the exercise undertaken of inspecting the industrial areas and suggesting deletion of the prohibited list can hardly be the justification for amendment of the Master Plan. Even otherwise, the Master Plan prohibiting highly polluting industry in Delhi cannot be amended to permit such prohibited industry without dealing with the circumstances under which such a provision was made namely, inherent nature of generation of pollution by such industries, adverse impact of such industry on polluted ambient air, impact on polluted Yamuna river and overall environment of Delhi. Such amendment could be thought

of only if facts which led to inclusion of inherently polluting industries in the list are addressed which has not been done. It will be ridiculous to say that ambient air quality has improved, environment of Delhi has improved so as to permit inherently polluting industries to be continued, reversing the earlier statutory provisions of the Master Plan-2001 and 2021. Master Plan amendment of such massive nature which may add to the pollution of Delhi cannot be a light hearted exercise without having any study of the public health and the needs for environment. It was also submitted that impact of adding acidic effluents and generation of hazardous waste required serious studies particularly when it has been consistently found in the past that mere ETP/CETP were not enough to take care of discharge of acidic and metal bearing effluent by the pickling industries.

18. Reference has also been made to the order of this Tribunal dated 06.11.2015 in *Rakesh Jain vs. DPCC, Appeal No. 46/2015* showing that the DPCC itself had found the SSP industry to be highly polluting and that the ETP/CETP were of no avail in the matter. The impact of polluting industries is not only on the air quality on account of release of acids in the process of electroplating. Its impact is also on the river Yamuna. Air of Delhi as well as river Yamuna are facing challenge by ever increasing pollution.

19. The photographs have been placed on record depicting very grim picture of flowing of liquids which are said to be poisonous and harmful to the soil and the inhabitants.

20. Thus it is clear:

- i. There is no amendment to the master Plan.
- ii. There is no power with the Delhi Government to permit industrial activity falling in the prohibited list in the Master Plan.

- iii. No study has been carried out which can be the basis to justify amendment of the Master Plan. There is no information on the Comprehensive Environmental Pollution Index (CEPI) in respect of the area.
- iv. Mere setting up of ETPs/CETP is not enough to permit activities of prohibited industries in violation of the Master Plan.
- v. Consistent decisions of DPCC and Delhi Government and their authorities recorded in the orders of this Tribunal show that high amount of pollution is actually being caused by the pickling industries. There is no change of circumstances.
- vi. Huge amount of hazardous waste is being generated and dumped and is not being scientifically disposed.
- vii. Photographs on record depict grim picture of polluted effluents flowing through the drains and entering Yamuna.

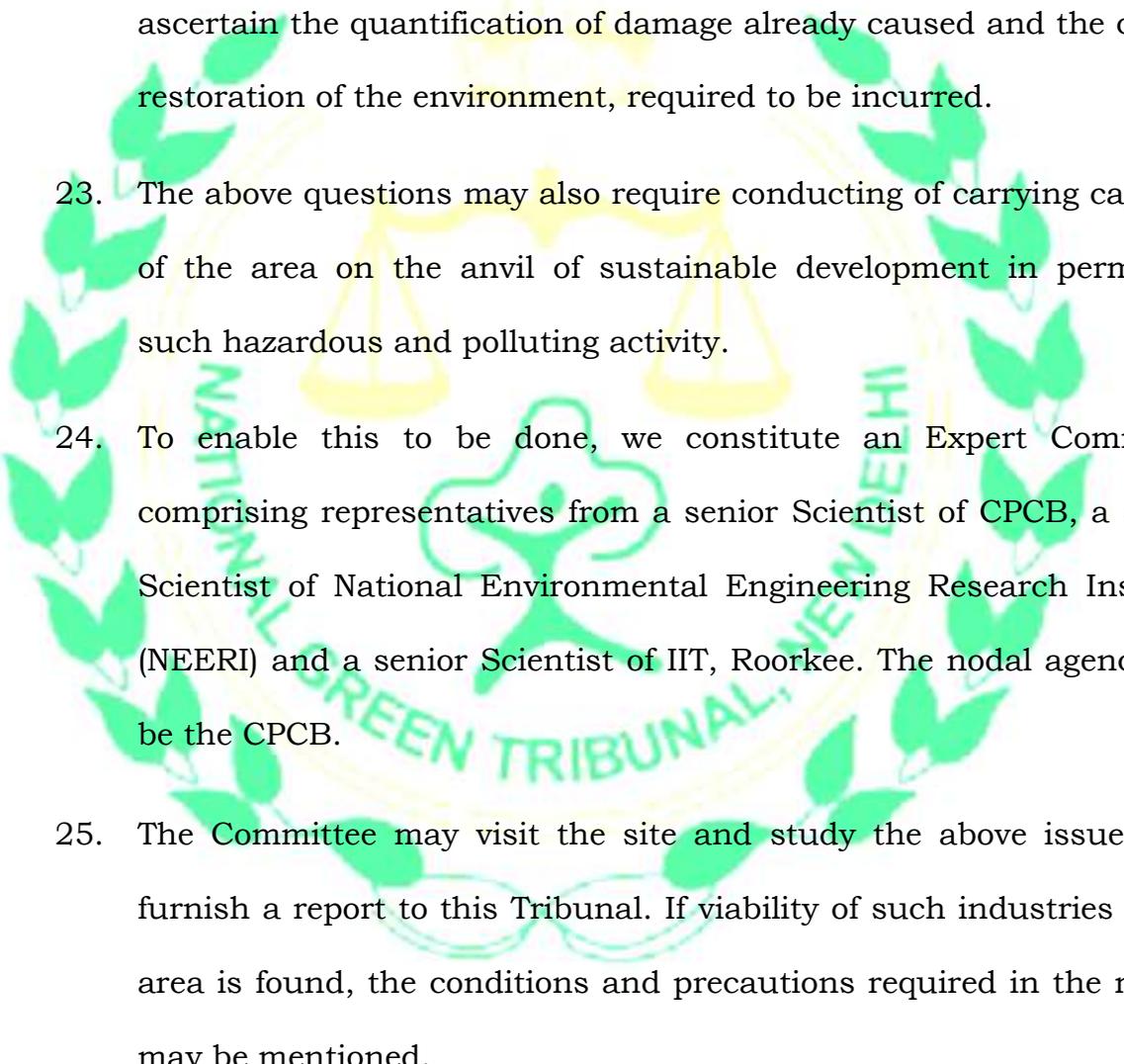
21. Principle of sustainable development is a part of right to life.⁴ No inherently polluting activity can be allowed in violation of law.⁵ The polluter can be prohibited from carrying on polluted activities and can also be required to pay the cost of restoration of the environment. Even the authorities which connive with the polluter or failed to perform their duties inspite of orders of the Court or Tribunal can be required to pay cost for damage to the environment. The precautionary principle requires anticipating and prohibiting inherently polluting activities. Environment belongs to people.⁶ Regulatory authorities dealing with the environment are trustees to exercise their powers for the people to protect environment. Access to potable water and to fresh air are fundamental rights of citizens.⁷ Precautionary principle is to be strictly observed in areas which are already polluted and do not have any carrying capacity to permit any further polluting activity. In this circumstances, we find it difficult to accept the review applications.

⁴ Vellore Citizens v. Union of India (1996) 5 SCC 647

⁵ M.C. Mehta v. Union of India & Ors., (1997) 3 SCC 715

⁶ *Supra* note 4

⁷ A.P. Pollution Control Board II v. M.V. Nayudu & Ors., (2001) 1 SCC 162

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22. However, before considering the matter further, it is necessary to ascertain the impact of the industry on the air quality of Delhi which is already highly polluted, on river Yamuna which is also subjected to severe pollution by several polluting activities, industrial as well as municipal, impact on the green belt and the inhabitants on account of huge hazardous waste already dumped and further potential for generation of such hazardous waste, if the pickling industry is to be allowed and the mechanism, if any, to deal with the poisonous liquids flowing in the area as depicted in the photographs caused damage to the environment, including the ground water. It is also necessary to ascertain the quantification of damage already caused and the cost of restoration of the environment, required to be incurred.
23. The above questions may also require conducting of carrying capacity of the area on the anvil of sustainable development in permitting such hazardous and polluting activity.
24. To enable this to be done, we constitute an Expert Committee comprising representatives from a senior Scientist of CPCB, a senior Scientist of National Environmental Engineering Research Institute (NEERI) and a senior Scientist of IIT, Roorkee. The nodal agency will be the CPCB.
25. The Committee may visit the site and study the above issues and furnish a report to this Tribunal. If viability of such industries in the area is found, the conditions and precautions required in the matter may be mentioned.
26. A copy of this order be sent to the CPCB by e-mail for coordination and compliance.
27. The report may be furnished as far as possible within two months from today by e-mail at ngt.filing@gmail.com.

28. We make it clear that it will be open to either side to furnish set of papers, including photographs and orders found relevant, based on the record of the present case, within two weeks from today. Any report earlier furnished may also be taken into account.

29. The CPCB may put the report on its website after the report is received. If there are any objection to the report, the same may be filed before this Tribunal.

List the matter for further consideration on the date already fixed i.e. 27.05.2019.



February 07, 2019
M.A. No. 1715/2018 & M.A. No. 20/2019
In Execution Application No.11/2017 In
O.A. No. 159/2013 and other connected matters
DV