

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

M.A. No. 570/2013 & M.A. No. 582/2013 in
In

Application No. 50(T_{HC}) of 2013

And

M.A. No. 556/2013 & M.A. No. 584/2013 in
In

Original Application No. 51(T_{HC}) of 2013

Sh. S.C. Jain Vs. Govt of NCT of Delhi & Ors.

And

Sh. Nagender Deswal Vs. Chief Secretary & Ors.

CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER
HON'BLE MR. DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE MR. B.S. SAJWAN, EXPERT MEMBER
HON'BLE DR. R.C. TRIVEDI, EXPERT MEMBER

Present: In Application No. 50(T_{HC}) of 2013

Applicant: None appeared

Respondents No. 1: Mr. Gaurang Kanth Advocate with Mr. S.K Sahai,
Advocate

Respondent No.2: Mr. Anuj Aggarwal, Advocate

Respondent No.3: Ms. Neelam Rathore and Ms. Syed Amber, Adv.

Respondents No.5: Mr. A. D. N. Rao Advocate

For DSIIDC: Mr. Bipin B. Singh and Mr. Moni Cinmoy, Advocates

For SDMC: Mr. Balendu Shekhar, Advocate

For DDA: Mr. Rajiv Bansal, Mr. Kush Sharma and Mr. Ishwer
Upneja, Advocates.

In Application No. 51(T_{HC}) of 2013

Applicant : Mr. Nagender Deswal, Applicant in person

Respondents No. 1: Mr. Gaurang Kanth Advocate with Mr. S.K Sahai,
Advocate

Respondents No.2: Mr. Rajiv Bansal, Mr. Kush Sharma and Mr. Ishwer
Upneja, Advocates.

Respondent No. 3: Mr. Balendu Shekhar, Advocate

Respondents No.4: Mr. Vipin Kumar, SHO, Mayapuri

Respondents No.5: Mr. Sanjeev Ralli, Advocate, Mr. Dinesh Jindal, Law
Officer, DPCC and Mr.Sidharth Gautam, EE

Respondents No.6: Ms. Neelam Rathore, Advocate with Ms. Syed Amber,
Advocate.

Respondents No. 8: Mr. A.D. N. Rao, Adv.

Respondent No. 9: Mr. Anuj Aggrwal, Advocate

For DSIIDC: Mr. Bipin B. Singh and Mr. Moni Cinmoy, Advocates

Date and Remarks	Orders of the Tribunal
Item Nos. 3&4 January 24, 2014	<p><u>M.A. No. 566 of 2013 & M.A. No. 582 of 2013</u></p> <p>Both these Misc. Applications have been filed by different Associations for modification of our Order dated 08th May, 2013. It is contended on behalf of the Applicants that they are aggrieved from the direction mentioned at Serial No. 2 of the said Order, which is reproduced as follows:-</p>

“No person shall use any gas or electronic cutters in dismantling of heavy machineries like generators, tankers and transformers etc.”

Their preliminary grievance is that as a result of the above direction their business has come to an end and they are practically starving as of now. Further, it is stated that they only use LPG and Oxygen for the purposes of cutting metallic scrap material mainly made of iron and for no other activity. According to them they are neither causing any pollution nor are violating provisions of law.

On the contrary, Learned counsel appearing for the DPCC and the Applicant submits that while the Applicants in these Applications are cutting metal, particularly iron, the gas flame is brought in contact with the surface of the metallic part of scrap which is often painted or coated and even otherwise holds other hazardous material, it results in emissions which are air pollutants and are injurious to health.

It is also contended on behalf of the DPCC that the Board has granted consent to establish to some of the Applicants who had applied and would be willing to consider the Applications filed by the Members of these Associations and even others such as the individual-shop owners to establish and to operate their industry, as the case may be expeditiously in accordance with law.

In furtherance to the Order of this Tribunal, the inspecting team conducted the surprise inspection at the place in question on 16th April, 2013 and found that there were businesses dealing with some potentially hazardous material like truck body part, crane, engines motors and e-waste etc. It needs to be noted that while dealing with the gas cutting of heavy vehicles, which contain oil or other material falling in hazardous category, there was likelihood of pollution resulting from burning of the same oil.

In view of the respective submissions made above,

we are of *prima facie* view that these Units require consent under the provisions of Air (Prevention and Control of Pollution) Act, 1981 and the other environmental laws. The intent of the Order passed on 08th May, 2013 was not to deprive the Applicants of their livelihood but was primarily to ensure that environmental standards are adhered to and they are not permitted to carry on their business or industry which will be hazardous to the environment and health of others living in and around the area.

Another plea of discrimination is being raised on behalf of the Applicants in these Misc. Applications on the premise that in the remaining parts of Delhi the DPCC and other Authorities are permitting carrying on of such activity and the restrictions relate only to Mayapuri area. We find some substance in these submissions. The DPCC and the Authorities have to enforce environmental laws evenly without discrimination.

The Tribunal while being aware of the three principles contemplated under Section 20 of the National Green Tribunal Act, 2010 has to adopt the balanced approach which would help development as a result of such activity but at the same time ensure that no irretrievable damage and degradation of environment would be caused thereby.

Having heard the Learned counsel appearing for the respective parties in the main Applications, we pass the following directions:-

(1) The Applicants would be permitted to carry on their activity of cutting metal in the scrap of cars and such other allied vehicles and railway material with LPG – cutters strictly subject to compliance of the following conditions:-

(a) All the Applicants in these Misc. Applications and other individuals carrying on similar activity not only in the area of Mayapuri but in the entire NCT of Delhi should apply for obtaining consent of the Board for

establishment/operation of their activities ;

- (b) The Applications should be filed within a period of two weeks from today. If filed, the same shall be dealt with by the Board expeditiously and if necessary the Board may conduct inspection to actually observe and find for themselves as to the injurious effects of carrying on of such activity of cutting the metal scrap – Ferrous & non- Ferrous and such allied products with gas and other material on the environment and the health of people living around.
- (c) The consent so granted shall be elaborate and would prescribe definite remedies /anti pollution devices which need to be installed to ensure that there is no pollution of air or otherwise.
- (d) The Board shall also give due weightage, while imposing conditions in the Order of the consent, to due safety of life of the workers/labourers actually engaged in performing activities of cutting Iron and allied Ferrous and non-Ferrous items with gas cutters.

While giving this liberty to the Applicants, we make it clear that this liberty shall not extend to use of gas cutters employed in the case of heavy machinery or other such items holding or containing hazardous substances including used oil as contemplated in Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008. Such activities shall only be permitted, if the authorisation under the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 therefor is duly obtained and an undertaking that the hazardous material would be duly handed over to the authorised dealers for its onward recycling/disposal in accordance with law is given.

We also direct the DPCC and other concerned Authorities to apply this order uniformly in the entire NCT of Delhi and not to confine it to the scrap dealers in the Mayapuri Area alone. With the above directions the

order dated 08th May, 2013 stands modified to the limited extent afore-noticed. All other conditions and directions contained in the said Order shall remain operative.

Accordingly, with the above directions the M.A. No. 566 of 2013 & M.A. No. 582 of 2013 stand disposed of.

If the Applicants deal with the materials containing hazardous substances in violation of this Order, we make it clear that besides taking proceedings under the Contempt of Court Act, the Tribunal would also direct the DPCC to launch prosecution against them.

List Application No. 50(T_{HC}) of 2013 & Application No. 51(T_{HC}) of 2013 on 28th February, 2014.

.....,CP
(Swatanter Kumar)

.....,JM
(U.D. Salvi)

.....,EM
(Dr. D.K. Agrawal)

.....,EM
(B.S. Sajwan)

.....,EM
(Dr. R.C. Trivedi)

