

Item No. 02 & 03

Court No. 1

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

Original Application No. 46/2018
(M.A. No. 1474/2018, M.A. No. 1539/2018)

WITH

Original Application No. 1083/2018

Nuggehalli Jayasimha

Applicant(s)

Versus

Government of NCT of Delhi

Respondent(s)

WITH

Residents of C2 Block Aya Nagar

Applicant(s)

Versus

Govt. of NCT of Delhi

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. Nuggehalli Jayasimha, Ms. Priyanka, Chesta Jetly for Mr. Aditya Singh, Ms. Supriya Juneja, Advocates

For Respondent (s):

Mr. Shlok Chandra, Mr. Harshvardhan Sharma, Advocates for DDA
Mr. Abhitosh Pratap Singh, Ms. Gunjan Singh, Advocates for R-13
Mr. Arunesh Sharma, Harpreet Singh, Advocates for DUSIB
Mr. Ajay Jain, Ms. Smaridhi, Advocates for GNCTD
Mr. Sanjay Dewan, Advocate for R-2&3
Mr. Balendu Shekhar, Advocate for EDMC
Ms. Puja Kalra, Advocate for SDMC, North MCD
Ms. Sakshi Popli, Advocate for NDMC
Mr. M.C. Sharma, Advocate for R-11
Mr. Raj Kumar, Advocate for DPCC

ORDER

1. The issue for consideration is remedial action for non compliance of environment norms by the dairies operating in Delhi.

2. Vide order dated 01.04.2019, the Tribunal considered the allegation of air, water and soil pollution by the dairy industries. It is alleged that solid, liquid and gas waste is generated and dumped into the drains which are meeting the river Yamuna and thus, this activity results in contamination of river Yamuna. The waste clogged the drainage system which was becoming breeding ground for mosquitoes and other insects and thus creating health hazard. Waste generated was also resulting in discharge of ammonia and nitrogen oxides in the air and nitrate in soil and ground water. The odour from dairies negatively impacts the air quality. Ammonia wafts into the air from manure lagoons, and gases known as volatile organic compounds were created by the huge piles of feed. The foul smell from the dairy causes migraine, severe headache and people have no option but to inhale the impure-foul air present in the atmosphere.
3. In the light of inspection reports under the directions of this Tribunal dated 11.04.2018, and the recommendations of the inspection reports dated 04.12.2015 and 15.12.2015 prepared by the Animal Welfare Board of India it was noted that there was rampant use of Schedule H drugs, oxytocin injections, syringes, plastic bottles and other veterinary drugs etc. which are disposed of improperly and in unscientific manner, in violation of Bio-medical Waste Management Rules, 2016. The dairies were not following waste management practices. There was also violation of Food Safety and Standards (Licence and Registration of Food Businesses) Regulations, 2011.
4. The Tribunal also noted various articles on the subject¹ which highlights adverse consequences on the environment due to illegal

¹ "Delhi is major contributor of population in Yamuna" published in "The Hindu" dated 17.04.2007, "Feeding on plastic poses high risk to lives, output of stray cattle" published in "Indian Today" dated

and unscientific dairy activities. It was also observed that there was violation of various provisions of the Delhi Municipal Corporation Act, 1957.

5. After quoting the observation from the report of the Committee, the stand of the Delhi Pollution Control Committee (DPCC) that it was not concerned with the subject despite the violation being clearly acknowledged was rejected in view of statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981. It was noted that though various authorities of the Delhi Government were parties and represented by Counsel, no authority came forward to take the responsibility and none of the Counsel made any suggestion for enforcement of law. In this background, the Tribunal in the order dated 01.04.2019 directed the Chief Secretary of Delhi to call a meeting of all concerned and fix their accountability. The Tribunal also noted that the DPCC had failed to perform its statutory duties under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 in preventing polluting activities, prosecuting the polluters and recovering compensation for restoration of the environment from the polluters. The Tribunal also required DPCC, South Delhi Municipal Corporation (SDMC) and North Delhi Municipal Corporation (North DMC) to pay sum of Rs. 10 Lakhs each as an interim compensation and furnish a performance guarantee of

08.05.2017, “*Serious farm population breaches rise in UK-and many go unprosecuted*” published in “Guardian” dated 21.05.2017, “*How growth in Dairy is affecting the environment*” published in “The New York Times” dated 01.05.2015 and “*Stray cows clog South Delhi roads*” published in “The Times of India” dated 05.08.2012 and research papers titled “*Nitrogen pollution by dairy cows and its mitigation by dietary manipulation*”, “*Impact of Dairy Effluent on Environment-A Environmental Science and Engineering (Subseries: Environmental Science)*”, apart from other documents and photographs.

Rs. 10 Lakhs each with the Central Pollution Control Board for taking necessary steps within three months for restoration of the environment. The amount could be recovered from the erring officer and polluters. The Chief Secretary, Delhi was to furnish an action taken report.

6. An action taken report filed vide e-mail dated 03.07.2019 has been perused. The report states that DPCC has imposed environmental compensation on Municipal Corporations, apart from the dairies concerned. The local authorities are responsible for compliance of the Waste Management Rules. The DPCC has given the responsibility of sealing the borewells to the District Magistrates. The Flood Control Department, Animal Husbandry Department and Delhi Society are to take certain steps, apart from the Municipal Corporations.

7. We find that in spite of observations in the earlier order of this Tribunal as well as repeated orders in large number of cases, the DPCC seems to be avoiding its statutory responsibilities under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and to cover up their inaction, is passing the order of imposition of fines on other statutory bodies, without any jurisdiction. Learned Counsel for the Delhi Government as well as DPCC have not been able to show any legal authority for doing so. While the DPCC may take action on 'Polluter Pays' principle against polluting activities of any statutory body, it has no authority to recover compensation for alleged inaction by such statutory authorities. Such authorities are not authorized to enforce the Water (Prevention and Control of Pollution) Act, 1974 or Air (Prevention and Control of Pollution) Act, 1981 which DPCC itself has to enforce. Even if they have overlapping powers under other statute,

the DPCC cannot avoid its obligation under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981. It is undisputed that the dairies are operating in violation of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 as already noted in the order of this Tribunal dated 01.04.2019. The DPCC is required to ensure that the polluting activities, without consent to operate, are stopped by way of prohibitory order, prosecution and recovery of compensation which has not been done. Just as local bodies cannot fine DPCC for its utter failure, DPCC also cannot shift its onus and responsibility to local bodies and absolve from its responsibility. It has to proceed against polluters which it is avoiding to do.

8. We find that as per the circular dated 05.03.2016 issued by the MoEF&CC, the dairy industries fall under the 'Orange' category industries. Consent to operate is necessary under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. Under the Environment (Protection) Rules, Schedule-I, read with Rule-3, lays down the norms for discharge by various activities or operations. Entry 56 deals with 'dairies' (industrial units) and provides for standards of effluents and violation of such standards.

9. Faced with the above, learned Counsel for the DPCC has undertaken to withdraw the notices issued to other statutory authorities and not to indulge in such illegal activities in future.

10. We find that the action of the DPCC is inadequate. Under Section 15 of the NGT Act, 2010, this Tribunal has to deal with enforcement of statutes mentioned in Schedule-I which include Water (Prevention

and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. Such violations may also be overlapping with the other statutory violations for which concerned statutory authorities have to take action on that ground. The local bodies have the responsibilities under the SWM Rules, 2016² but on that ground, the DPCC cannot avoid its responsibility. Local bodies must perform their statutory duties.

11. In view of above, while disapproving the above illegal action of DPCC as well as its inaction, we expect the DPCC now to enforce its concerned statutory obligations by closing polluting activities, prosecuting the polluters and recovering compensation from the polluters in accordance with law and to furnish a further report to this Tribunal by e-mail at judicial-ngt@gov.in before the next date.

12. We may note that livestock is a major source of methane emissions and studies on the subject show that the problem in India is severe. Results of a recent study ³show that the Indian livestock emitted 15.3 million tonnes of methane in 2012⁴. Enteric methane emission from Indian livestock contributed 15.1% of total global enteric methane emission. In India, contribution of enteric methane was 91.8% of the total GHG emissions, followed by manure methane (7.04%) and manure Nitrous Oxide (1.15%) in the year 2010⁵. The livestock sector in India has the potential to cause surface temperatures to surge up

² See Rule 3(46) read with Rule 15 of the Solid Waste Management Rules, 2016.

³ Study carried out by the Indian Institute of Technology Delhi and the Deenbandhu Chhotu Ram University of Science and Technology, Murthal in Ecotoxicology and Environmental Safety, Climate change impact of livestock CH₄ emission in India: Global Temperature change Potential (GTP) and surface temperature response, <https://www.sciencedirect.com/science/article/pii/S0147651317305766>, Volume 147, January 2018, Pages 516-522.

⁴ *Id.*

⁵ <https://www.ajas.info/journal/view.php?number=4850>.

to 0.69 millikelvin over 20 year time period which is roughly 14 per cent of the total increase caused by the global livestock sector. Methane has a warming potential 20 times higher than carbon dioxide. Globally, livestock sector generates 65 percent of human-related nitrous oxide, which has 296 times the Global Warming Potential (GWP) of CO₂. Most of this comes from manure.⁶ While the dairy industry is covered by 'Orange category' under the circular dated 05.03.2016 issued by the MoEF&CC, no such guidelines are said to be existing for management and rearing of livestock. Needless to say that such activity have potential of causing air and water pollution as already noted in the context of Delhi. Accordingly, instead of limiting the scope of remedying the compliance of environment norms by dairies to Delhi, we consider it necessary to expand the same for the whole country. Let the CPCB undertake a study in the matter and lay down appropriate guidelines for management and monitoring of environmental norms by the dairies throughout India and furnish a report in the matter by e-mail at judicial-ngt@gov.in before the next date. The local bodies in all the States/ UTs be required to file inventory of dairies in their respective jurisdiction so that state PCB can compile such information in their respective reports furnished to CPCB.

13. The performance guarantee furnished in pursuance of order dated 01.04.2019 will stand forfeited on account of failure of the concerned authorities to perform their duties in terms of the order of this Tribunal. The Tribunal may consider further coercive measures, if the failure continues even on the next date.

List for further consideration on 20.09.2019.

⁶ <http://www.fao.org/newsroom/en/news/2006/1000448/index.html>

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

July 08, 2019
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