

Item No. 01

Court No. 1

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

Original Application No. 400/2017

Westend Green Farms Society

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 19.09.2019

**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. Abhishek Bhardwaj, Advocate

For Respondent(s): Mr. Kush Sharma, Advocate for DDA
Mr. Divya Prakash Pandey, Advocate, Mr. Jigmet Takpa, Joint Secretary for MoEF&CC
Mr. Narender pal Singh, Mr. Kush Sharma, Mr. Dinesh Jindal, L.O for DPCC
Ms. Jyoti Mendivatta, Advocate for GNCTD
Ms. Sakshi Popli, Advocate for DJB
Mr. Satish Kumar, Advocate for CPCB
Ms. Pooja Kalra, Advocate for SDMC and NDMC

ORDER

1. The issue for consideration is the enforcement of environment norms against running of restaurants/hotels/motels/banquets where large congregations take place.
2. This Tribunal on consideration of material on record, vide order dated 02.11.2018, recorded a finding of violation of law on the subjects of waste management, discharge of effluents, illegal ground water extraction, ground water contamination, emission by illegally operating diesel generators, absence of statutory consents under the Water (Prevention and Control of Pollution) Act, 1974 ('Water Act'),

the Air (Prevention and Control of Pollution) Act, 1981 ('Air Act') and violation of conditions of consents where such consents had been granted, by the restaurants/hotels/motels/banquets in Mahipalpur, Rajokri areas in Delhi. The Tribunal also considered the issue of absence of rain water harvesting, ground water recharge system, excess noise pollution, illegal parking and encroachments.

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

- (i) Unauthorized constructions in violation of Delhi Municipal Act, 1957 and the Master Plan of Delhi.*
- (ii) Noise Pollution in violation of Noise Pollution (Regulation & Control) Rules, 2000.*
- (iii) Violation of Solid Waste Management Rules, 2016.*
- (iv) Violation of Water (Prevention & Control of Pollution) Act, 1974 by unscientific disposal of Sewage waste.*
- (v) Violation of Plastic Waste Management Rules, 2016.*
- (vi) Extraction of ground water in violation of Central Ground Water Authority guidelines, 2012.*
- (vii) Absence of water harvesting system in violation of Municipal Bye Laws, 2011 as well as CGWA guidelines requiring mandatory water harvesting for ground water recharge, as a condition for drawl of ground water.*
- (viii) Violation of Air (Prevention & Control of Pollution) Act, 1981.*
- (ix) Violation of principle of sustainable development, which requires carrying capacity assessment or adherence to laid down or inherently necessary norms for protection of Environment."*

4. The Tribunal directed the concerned authorities to take immediate steps to remedy the situation by preparing an appropriate action plan. A joint committee with representatives from the concerned departments was directed to be constituted. The action was to deal

with regulation of sewage disposal, extraction of groundwater, rain-water harvesting, air pollution on account of traffic congestion, use of DJ sets, management of solid waste and noise pollution which required addressing of following issues:

- “(i) Compilation of data of all such places where marriages and functions take place which should be published and appropriately regulated.*
- (ii) Regulate noise level at above places as per laid down norms. This includes regulation of DJ sets, loudspeakers and crackers etc.*
- (iii) Compliance of Solid Waste Management Rules, 2016, and sewage discharge including decentralized waste processing facilities, installation of CCTV camera, GPS system in garbage collection vans etc.*
- (iv) Regulation of extraction of groundwater as per applicable guidelines, sealing of tube wells including those installed for swimming pools in violation of law, need for reuse of water for flushing, Plantation or gardening.*
- (v) Rain Water Harvesting by installing roof top harvesting systems.*
- (vi) Regulating size of gatherings on the concept of sustainable development in the light of carrying capacity of the area.*
- (vii) Prohibiting such activities in overcrowded places not having adequate parking or other facilities.*
- (viii) Action against unauthorized construction or unauthorized use without statutory clearances prohibiting and stopping any existing or future activities non-complying with above norms and also taking penal action where ever necessary.*
- (ix) Environment restoration and compensating victims of violation of law in relation to Noise Pollution, Air Pollution, Water Pollution, Master Plan etc. The action*

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

5. The working of the Joint Committee was to be reviewed by Justice S.P Garg, former judge of the High Court and a report was to be submitted to this Tribunal with a copy to the CPCB and MoEF&CC. The MoEF&CC was to draw an action plan on pan-India basis.

6. Vide order dated 08.03.2019, the Tribunal considered the status report filed by the Delhi government on 07.03.2019 and found that the said report did not meet the mandate of the order of this Tribunal. Accordingly, Delhi Government was to furnish performance guarantee and file further compliance report which was to be cross-checked by Justice S.P Garg. MoEF&CC was also required to file its report.

7. Again, on 08.07.2019 the Tribunal reviewed the matter in light of the report dated 01.06.2019 filed by the Delhi Government which was found to be deficient with regard to following specific points:

- “
- i) *The data furnished is not exhaustive and appropriate regulations, in respect of the specified establishments, are not mentioned.*

- ii) *Noise regulatory mechanism is not mentioned except to state that 21 cases have been reported and a helpline has been established.*
- iii) *Direction with regard to installation of CCTV cameras at appropriate locations to ensure compliance of the Solid Waste Management Rules, 2016 and sewage discharge is not shown to have been complied. There is also no comprehensive report about compliance of waste management rules. It is pertinent to note that the problem of solid waste management in Delhi is assuming serious proportions due to increasing population, urbanisation, changing lifestyles and consumption patterns. The garbage from unauthorised developments, slums, JJ settlements, etc. is not collected which further adds to the environmental degradation. The projected average garbage generation upto the year 2021 is @ 0.68 kg per capita per day and total quantum of solid waste is 15750 tons/day.¹*
- iv) *No compensation is shown to have been assessed for the illegal drawal of ground water for swimming pools except saying that the unlicensed swimming pools were closed or that a report about illegal borewells was sent. Needless to say the compensation assessed must take into account the value of the water extracted as well as element of deterrence.² Further reference may also be made to other articles on the subject.³*
- v) *As regards rain water harvesting, it is stated that such system was established in some of the properties but no action is shown to have been taken against those where it was not established. The matter as regard to rainwater harvesting has also been dealt in O.A. No. 307/2016 Society for Protection of Culture Heritage,*

¹ https://dda.org.in/tendernotices_docs/may1/MPD-2021_31.03.2017260417.pdf

² See order of NGT dated 30.11.2018 in O.A. No. 546/2016 Harinder Singh &Ors. Vs. M/s Prateek Buidtech (India) Pvt.Ltd. &Ors. Para 10 and 11 which relies upon Assessment of Water resources consumption in building construction in India, Dr. S. Bardhan, Dept. of Architecture, Jadavpur University, India. Part of research study published in Ecosystems and Sustainable Development VIII. Edited by Y. Villacampa & C.A. Brebbia. Published by WIT press

³ <http://documents.worldbank.org/curated/en/804831468331771041/pdf/628030WP0Metho00Box0361494B0PUBLIC>

Environment, Traditions & Promotions of National Awareness (CHETNA) Vs. Union of India & Ors. vide order dated 04.10.2018 and directions have been issued for taking steps to enforce such requirement which is to be overseen by a committee headed by Justice S.P. Garg.

- vi) *With regard to regulating the size of gathering, it is stated that a draft policy is under submission in the light of direction of Hon'ble Supreme Court in Writ Petition (C) 4677/1985, M.C Mehta vs. Union of India & Ors. vide order dated 11.12.2018. We may only add that such policy must consider suitability of the location for the purpose having regard to sufficient space to parking extent of traffic in area and compliance of air and water norms. Such location must have adequate distance from the highways and it must be ensured that as a result of permitting such activities, the highway traffic is not affected so as to add to the air pollution. In this connection we may also refer to the order of this Tribunal vide order dated 03.10.2018 in Execution Application No. 29/2018 (M.A. No.1391/2018) in O.A. No. 386/2016, Society for Protection of Culture Heritage, Environment, Traditions & Promotion of National Awareness vs. NHAI & Ors.*
- vii) *With regard to prohibiting such activities in overcrowded places without having parking facilities, it is stated that a draft policy is under submission. We may note that survey of hotspots of traffic is possible with reference to Google Maps.⁶ We may also add that best practices to control parking at public places need to be adopted.⁴*
- viii) *With regard to action against unauthorized constructions without statutory clearance, a reference is made to certain reports of the local bodies which does not show how environmental norms will be complied*

⁴ https://dda.org.in/tendernotices_docs/may1/MPD-2021_31.03.2017260417.pdf; Paid on on-street and off-street parking to be developed for long term and short term parking provisions.

with and how activities which are non-compliant will be stopped.

ix) With regard to restoration of environment and recovery of compensation, only report is that a Committee has been constituted. There is nothing to show that any assessment has been made of the damage to the environment and such assessed amount has been recovered. The Committee is not shown to have persons competent in law to levy and assess compensation. They hardly have qualifications required for the purpose.

x) Policy for holding social functions provides for grant of license for holding of such functions in authorized space subject to certain general conditions. With regard to enforcement of the conditions, violators are liable to pay penalties of Rs. 5 Lakhs for first offence, 10 Lakhs for second offence and Rs. 15 Lakhs for third and every further offence and cancellation of license for one year. While compensation on 'Polluter Pays' principle can be recovered by a regulator with reference to statutory regulatory scheme, we are unable to understand how without any reference to such statutory scheme, a provision for 'penalty' can be made and how an ad-hoc amount can be provided without reference to the assessment of the loss caused, cost of restoration being assessed and the amount being deterrent having regard to financial capacity of the persons violating the environmental norms. On this aspect, the policy does not seem to have any clarity."

8. This Tribunal noticed the challenge posed by unregulated social gatherings resulting in damage to the environment and public health. It was observed that expert studies are required to be undertaken to mitigate the adverse impact on environment and public health and a mechanism is required to be developed to remedy the situation. The

matter was deferred to 19.09.2019 with an expectation that requisite initiative will be taken by the Delhi Government and the MoEF&CC.

9. We have perused the affidavit filed on behalf of the MoEF&CC on 17.09.2019. Referring to the statutory provisions on the subject and order of the Western Bench of this Tribunal dated 03.07.2017 in *O.A No. 08/2015, Sujal Sahakari Gruha Rachana Sanstha Maryadit v. The Commissioner, Pune Municipal Corporation & Ors.*, it is stated that the Maharashtra PCB has issued notice dated 29.07.2017 requiring all marriage halls/lawns to apply for consent under the Water Act and the Air Act. An action plan has been suggested as follows:

S.No	Action Point	Time Limit for completion of the action
1.	<p>Compilation of information regarding the current mechanism</p> <p>CPCB shall co-ordinate with all the SPCBs and PCCs to compile information on the current mechanism in States/ UTs for regulating banquet halls and other such places. The information may include but not limited to, the following:</p> <ol style="list-style-type: none"> a. Whether any guideline has been formulated by the SPCBs /PCCs or any other State/UT authorities for regulating banquet halls and other such places where marriages and functions take place. b. If so, whether such guidelines was formulated in compliance with the orders of any court of law. c. Whether banquet halls and other such places are presently covered under the consent mechanism. d. Whether a grievance redress mechanism is in place for receiving complaints related to violation of environmental norms by banquet halls and other such places. 	1 month

2.	<p>Actions by Central Pollution Control Board in respect of State/UTs having guidelines:</p> <p>In case of those States/UTs having defined guidelines for regulating banquet halls and other such places, Central Pollution Control Board shall co- ordinate with SPCBs and PCCs concerned to:</p> <p>(a) Review the guidelines of each State/UT to ensure addressing of all non-compliances/violations highlighted by the Hon'ble Tribunal in the instant matter (i.e., Original Application No. No. 400/2017).</p> <p>(b) Suggest amendments, if required, in the guidelines, also ensuring that the same does not violate or is at variance with (i) any other direction issued by a court of law and applicable to the State/UT (ii) any rules/ legislations/ orders issued by the State/ UT.</p>	2 months
3.	<p>Action by SPCB/PCC concerned of State/UTs having guidelines:</p> <p>In case of those States/UTs having defined guidelines for regulating banquet halls and other such places, the SPCB/PCC concerned shall:</p> <p>(a) Compile data of all such places where marriages and functions take place and publish the same in the website of the SPCB/PCC and local authorities.</p> <p>(b) Tabulate and submit to Central Pollution Control Board the status of compliance of the above complied banquet halls and other such places with various environmental rules guidelines along with the action taken by the SPCB/PCC for ensuring compliance.</p>	6-9 months
4.	<p>Action by Central Pollution Control Board in respect of State/UTs having no guidelines:</p>	

In case of those States/UTs having no defined guidelines for regulation banquet hall and other such places, Central Pollution Control Board shall co -ordinate with SPCBs and PCCs concerned for formulating guidelines and action plan for regulating banquet halls and other such places and to ensure adherence to the action plan. An indicative action plan may be as below:

- (a) SPCBs/PCCs concerned shall ensure that all the banquet halls and other such places under their jurisdiction are brought under the consent mechanism. In order to ensure this, SPCBs/PCCs may issue a public notice, through websites, advertisements in leading newspapers and or other such mechanisms mandating all banquet halls, restaurants, hotels, lawns and other such places where marriages and other functions take place, to apply for consent under the provisions of the Water(Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 within a period of one (01) month from the date of communication of guidelines/action plan by Central Pollution Control Board .
- (b) SPCBs/PCCs concerned shall complete the issuance of consent to banquet halls and all such places, under their jurisdiction, within a period of three (03) months from the date of communication of guidelines /action plan by Central Pollution Control Board. The terms and conditions on which consent is issued shall mandatorily include such conditions as to ensure compliance of banquet halls and such places with the various environmental rules and guidelines, and in particular those detailed in the order dated 02.11.2019 of the Hon'ble Tribunal in the instant matter.
- (c) SPCBs/PCCs concerned, in co - ordination with the local authorities concerned, as required, shall carry out inspections to identify the illegal/ non complying banquet halls and other such places. The list of banquet halls and other such places

	<p>along with their legal/compliance status shall be published in the websites of the SPCB and local authorities.</p> <p>(d) SPCBs /PCCs concerned shall take all necessary steps for closure of non-complying banquet halls, restaurants, hotels, etc. and such actions shall be completed within a period of six (06) months from the date of communication of guidelines/action plan by Central Pollution Control Board.</p>	
5.	<p>Periodic reporting of the progress in implementation of action plan</p> <p>Central Pollution Control Board shall periodically assess the progress made by the SPCBs/PCCs in the implementation of the action plan and Ministry of Environment, Forest and Climate Change & CC.</p>	<p>During 1st week of every month till desired compliance level is achieved.</p>

10. On behalf of the Delhi Government, a format of inspection with an action plan been filed. Referring to the gaps pointed out in order dated 08.07.2019, reproduced in para 7 above, it is stated that data has been compiled, noise regulatory mechanism has been evolved, norms for waste disposal and installation of CCTV cameras and GPS have been laid down, sewage management and air pollution control measures plan. The Action Plan also covers regulation of extraction of groundwater, rainwater harvesting, regulation of size of gatherings and action against unauthorized establishments and recovery of environmental compensation.

11. We have also interacted with the Joint Secretary of MoEF&CC and the learned counsel for the Delhi Government.

12. There can be no dispute that violation of environment norms having adverse impact on environment and public health cannot be ignored.

Apart from formalizing and enforcing the action plan reproduced above, the MoEF&CC may evolve appropriate siting guidelines as well as mechanism for undertaking impact assessment either of individual establishments or of the area/cluster to ensure that activities beyond carrying capacity of the area are duly regulated to enforce the 'Precautionary' principle as well as 'sustainable development'. The MoEF&CC may also review the reports which may be furnished by the CPCB in respect of progress made by the SPCBs/PCCs. We direct the MoEF&CC to entrust the responsibility of evolving mechanism for mitigation to the CPCB which is a statutory body under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 and/or any other expert/institution. It will be appreciated if the CPCB can lay down suitable guidelines for the regulation of such entities, within the framework of law. The guidelines must provide for coercive measures in case of violations and also a monitoring mechanism.

13. The Delhi Government may take steps as per its action plan. The Delhi Government may also have consultation with the CPCB and within a broad framework of pan India Guidelines, the Delhi Government can have its own guidelines to suit the local requirements to mitigate the adverse impact on environment and public health in the light of the orders already passed by this Tribunal.
14. Further report may be filed jointly by the MoEF&CC and the CPCB on their part and by the Delhi Government on its part by 30.11.2019.

15. It is made clear that this Tribunal is not concerned with the individual cases involved which may be dealt with as per the guidelines and mechanism to be laid down by the CPCB.

List for further consideration 17.12.2019.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

September 19, 2019
Original Application No. 400/2017
AK

