

Item No. 18

Court No. 1

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

Original Application No. 1008 of 2019

**In Re: Air Quality Deterioration In And Around Delhi as reported
in Print and Electronic Media**

Date of hearing: 05.11.2019

**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
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

Officers summoned by this Tribunal and present during the hearing

Ms. Nidhi Khare, Joint Secretary, MoEF&CC
Mr. Vijay Kumar Dev, Chief Secretary, GNCTD
Mr. Prashant Gargava, Member Secretary, CPCB
Mr. Sanjiv Khirwar, Chairman, DPCC

ORDER

1. The issue for consideration is preventive strategies and remedial measures to ensure that air quality in and around Delhi does not deteriorate to emergency levels as has currently happened. Taking cognizance of media reports that air quality was recorded at 494 at 4.00 PM on Sunday, 03.11.2019, the matter was taken up for consideration by the Tribunal on 04.11.2019 at 10.00 AM in the presence of Chairman and Member Secretary of CPCB. The Chief Secretary, Delhi, Chairman, DPCC, Member Secretary, CPCB and the concerned Joint Secretary, MoEF&CC were directed to remain present in person today to assist the Tribunal on the subject. Accordingly,

they are present and have made presentations about the steps taken in the matter.

2. Since we are informed that matter is being considered by Hon'ble Supreme Court in WP (C) No. 13029 of 1985, *M.C. Mehta V. Union of India & Ors.*, we defer further consideration. We may only record, as already noted in order dated 04.11.2019, problem of deterioration in air quality is not creation of one day but result of continuous negligence and apathy in enforcing the law. There are acknowledged gaps in existing undesirable situation and enforcement strategies in place. We may also note that there are 122 'non-attainment cities' in the Country where the air quality is beyond prescribed norms which matter is being dealt with separately by this Tribunal¹. The Tribunal is also separately dealing with the enforcement of directions on the subject of preventing 'crop residue burning'². In O.A. No. 681 of 2018, *Supra*, the Tribunal noted reports about impact of air pollution on life and health of citizens³ with the rider that data therein required verification. However, stringent measure were undoubtedly necessary for which directions were issued. Again in O.A. No. 666 of 2018, the Tribunal rejected the stand of the Central and State Government that they were helpless and directed action against

¹ See order dated 06.08.2019 OA 681 of 2018, 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'

² Order dated 15.10.2019 in OA No. 666/2018, Smt. Ganga Lalwani v. UOI & Ors.

³ **Report by the Indian Council of Medical Research** has stated- In 2017, air pollution accounted for 12.4 lakh deaths in India, which included 6.7 lakh deaths due to outdoor particulate matter air pollution and 4.8 lakh deaths due to household air pollution. [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(18\)30261-4/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(18)30261-4/fulltext) **As per the Lancet Journal-** In 2017, 1.24 million deaths occurred in India, which were 12.5% of the total deaths, all attributable to air pollution, including 0.67 million from ambient particulate matter pollution and 0.48 million from household air pollution. Of these deaths attributable to air pollution, 51.4% were in people younger than 70 years. India contributed 18.1% of the global population but had 26.2% of the global air pollution DALYs in 2017. https://www.business-standard.com/article/current-affairs/air-pollution-kills-1-2-mn-indians-in-a-year-third-biggest-cause-of-death-119040300300_1.html **The study titled "State of Global Air 2019" reported that Air pollution kills 1.2 mn Indians in a year, third biggest cause of death.**

failure of the officers for preventing causing of pollution and also adoption of strategies for preventive and punitive actions.

It was observed:

“5. The fact remains that inspite of efforts said to have been made by the Central Government and the State Governments, on the ground level burning of crop is still taking place with all its adverse consequences on public health and environment for which no officer/authority is being held accountable. Even after information from satellite imagery there is hardly any tangible action to stop violations. The Air (Prevention and Control of Pollution) Act, 1981 provides for prohibiting burning of any material which is likely to cause air pollution and enforcing such prohibition in an appropriate manner including prosecution and recovery of compensation. Air pollution has adverse consequences on public health. Pollution free environment is right of every citizen and obligation of every State. This being the legal position, stand of the Central Government and the States that they are helpless is unacceptable. Just like enforcing law to prevent other crimes, the State has to own responsibility to enforce law to prevent pollution. The States are not doing this effectively. The States must take appropriate action against failure of its officers for preventing pollution caused by crop burning in such manner as may be appropriate. The strategy may be creating awareness, giving incentives or taking punitive action. It is unfortunate that the State have failed to perform to perform its duty and have merely pleaded helplessness on the ground that whatever action was possible have been taken.

6. Even in five years if the State machinery is not able to communicate to the concerned farmers the techniques of sowing crops without burning of the crop residue of the paddy, it is an unhappy situation which needs to be remedied. If an incentive is to be given, it is for the State to decide and provide for the same.

7. It is undisputed that in-situ degradation of paddy residue is useful to the soil fertility while burning of crop results in requiring more fertilizer and less yield and damage to the soil. Such desirable result has to be ensured by the State by proper monitoring. Failure in this regard cannot be a ground not to enforce the mandate of preventing pollution and a mechanism of immediate intervention to stop burning which is not shown to be happening. Linking of failure to demand for more subsidies from Central Government is not justified.

The States have to come out with enforcement or other strategies, including further incentives, if any.

8. *It is clear that steps taken are inadequate and do not provide for ground checking and vigilance and extinguishing of illegal fires. Preventive remedies of communicating with the farmers the disadvantages of burning are also unsatisfactory and ineffective. There is no effective incentive mechanism. The effective steps should include successful communication with the farmers, effective prevention of fires, supply of suitable equipment without unbearable cost for the farmer, change of crop patterns, use of labour by Panchayats under Rural Employment Guarantee Scheme, purchase of crop residue for fuel or composting and fixing accountability of officers for the failure.*

9. *The Central Government as well as States may place on their respective websites the data of fire incidents, responsible officers for the subject for the entire areas and action taken for the failures on daily basis.*

10. *Let the action plans and enforcement strategies be reviewed. The States may allocate such funds as may be found necessary to take remedial action.”*

3. The Tribunal has also dealt with the issues of burning of plastic and industrial pollution by industries operating in non-conforming areas and also considered the issue of remedial action against burning and unscientific disposal of garbage waste vide order dated 17.07.2019, in O.A. No. 519/2019, *News item published in "The Times of India" Authored by Jasjeev Gandhiok & Paras Singh Titled "Below mountains of trash lie poison lakes"*. This Tribunal directed steps for clearance of such legacy waste sites in a time bound manner on the pattern of such action at Indore or other places. This Tribunal observed

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“25. While the above order takes care of the matter listed today, it appears to be necessary that for protection of environment and public health, other such legacy waste dumpsites in the country are dealt with on the same pattern. This aspect has

been gone into by the Tribunal in O.A. No. 606/2018 Compliance of Municipal Solid Waste Management Rules, 2016, inter-alia by order dated 16.01.2019 whereby Chief Secretaries of all the States/UTs were required to be present in person to deal with the issue of solid waste management and other concerned issues. Orders have been passed on different dates for all the States/UTs but since this order expressly deals with the issue of dumpsites and a pattern has now been evolved by way of guidelines issued by the CPCB in February 2019, referred to above, and Indore model, or other model for bio-mining/bio-remediation, is found to be suitable to be followed for other big dumps, the same may be followed which may be monitored by Chief Secretaries of concerned states.

28. The Chief Secretaries may ensure allocation of funds for processing of legacy waste and its disposal and in their respective next reports, give the progress relating to management of all the legacy waste dumpsites. Remediation work on all other dumpsites may commence from 01.11.2019 and completed preferably within six months and in no case beyond one year. Substantial progress be made within six months. We are conscious that the SWM Rules provide for a maximum period of upto five years for the purpose, however there is no reason why the same should not happen earlier, in view of serious implications on the environment and public health⁴.

30. Needless to say that potential hazard of dumpsites on public health and environment is more or less on the same pattern and earliest such dumpsites are cleared, sooner it is better for public health. Such dumpsites are undoubted source of air pollution resulting in respiratory and other diseases. Most vulnerable are the infants and the senior citizens. The right to breathe fresh air being part of right to life, delay in remedying the situation is not desirable. The plea of capping is being put forward on the ground of need for urgent remedial action, ignoring that doing so will perpetuate the adverse

⁴ (a) *What a Waste 2.0, Global Snapshot of Solid Waste Management to 2050*, World Bank Group, ISBN (paper): 978-1-4648-1329-0, 2018 International Bank for Reconstruction and Development / The World Bank, <http://datatopics.worldbank.org/what-a-waste/>. The report states- When waste is burned, the resulting toxins and particulate matter in the air can cause respiratory and neurological diseases, among others (Thompson 2014). Piles of waste produce toxic liquid runoff called leachate, which can drain into rivers, groundwater, and soil. Organic waste entering waterways reduces the amount of oxygen available and promotes the growth of harmful organisms (Bhada-Tata and Hoornweg 2016). Marine pollution is also increasing as a result of mismanaged solid waste on land, poor disposal practices by sea vessels, and runoff from sewage and polluted streams.

(b) <https://www.epw.in/engage/article/institutional-framework-implementing-solid-waste-management-india-macro-analysis> Several studies have been published that link asthma, heart attack, and emphysema to burning garbage. Human faecal matter is also frequently found in municipal waste—this, along with unmanaged decomposed garbage, attracts other rodents, that further lead to a spread of diseases such as dengue and malaria. Leachate from rotten garbage contains heavy metals and toxic liquid; with such emissions ending up either absorbed into the soil or flowing into water bodies today (Awasthi 2013), the entire food chain can be affected when this contaminated water is utilised for agriculture, human consumption and animal consumption.

consequences of retaining non-biodegradable and other polluting components in the garbage eventually causing continuous damage to the soil and the ground water. Biological solutions have to be preferred over engineering solutions on the subject. However action has to be taken fast. Delay which has taken place so far is on account of inaction of the concerned authorities for which there is no justification.”

4. The above resume shows that steps so far taken do not meet the mandate of precautionary principle enforcement of which is part of Right to Life. While GRAP contemplates response to a grave situation which may arise, the law requires anticipation and preventive action. The past experience shows the deterioration of air quality in the month of October and November is a recurring phenomenon. It is not difficult to identify the causes and to have advance planned strategies to remedy the same. The causes and sources of air pollution may be crop burning, plastic burning, garbage burning, industrial emissions, vehicular emission, C&D waste, and pollution caused by crackers etc. A robust mechanism needs to be planned in the light of expert studies and remedying the failures in satisfactorily handling the situation in the past. Preparation of such comprehensive action plan is mandate of the precautionary principle which includes scenario projection by way of forecasting so as to make people aware of impending environment emergency and preparing for such eventualities.
5. We have interacted with the Joint Secretary, MoEF&CC, Chief Secretary, Delhi, and Member Secretary, CPCB and given certain suggestions. Since the Hon'ble Supreme Court is seized of the matter, we propose to take up the matter for consideration thereafter.

List after the orders of the Hon'ble Supreme Court on the subject.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

Saibal Dasgupta, EM

November 05, 2019
Original Application No. 1008 of 2019
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