

Item No. 09

Court No. 1

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

(By Video Conferencing)

Original Application No. 681/2017

Gauri Maulekhi

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 16.09.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s): Mr. Raj Panjwani, Senior Advocate with Ms. Priyanka Bangari,
Advocate

Respondent(s): Mr. Thakur Sumit, Advocate for MoEF&CC
Mr. Amit Mahajan, Advocate for R-3
Mr. Sameer Sinha, Advocate for R-5
Ms. Inderjeet Sidhu, Advocate for intervenor

ORDER

1. Grievance in this Application is against the CPCB guidelines dated 20.10.2015 regarding poultry farms. Objection of the applicant is to the following part of the Guidelines:-

“The poultry farms which are handling 1,00,000 or more birds at a given time in single location need to approach State Pollution Control Board to obtain necessary consent for operation under the Water (Prevention and Control of Pollution) Act, 1974”

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“The hatcheries of any size which are performing the exclusive operation, feed mills of any capacity and the

commercial poultry farms which are handling more than 5,000 birds at a given time on any single location need to be got registered with local bodies”

Further grievance is against the direction dated 29.02.2016 issued by the CPCB to categorize commercial poultry farming as green industry.

2. Basis of the grievance is that poultry farms with less than one lac birds have been wrongly left out of the regulatory regime of the Stat PCBs/PCCs against the concept of sustainable principle and to that extent defeating the object of setting up of such regulatory mechanism. Classifying poultry farms as ‘green’ is arbitrary, based on no possible logic.

3. Case of the applicant is that chickens destined for the egg industry are artificially incubated and hatched at commercial hatcheries. At the age of approximately 16 weeks, most hens are then transferred into small, barren wire cages called ‘battery cages’ placed side by side. Every layer contains thousands of cages, lined in multiple rows, stacked 3-5 tiers high. The battery cages are so small that the hens are unable even to spread their wings. The floor space available to each hen is 450 cm which is less than the area of a single sheet of A4 size paper. Battery cages prevent all forms of natural behavior including perching and roosting, scratching and foraging, comfort behavior and exploring.

4. Poultry farms cause extensive pollution to the areas that surround them. As poultry farms have thousands of birds in intensive confinement in each farm, the level of waste is high. This waste is seldom disposed of scientifically, in accordance with law. Pests such as flies, ticks, lice,

mites, maggots, scavenging birds and even stray dogs are routinely attracted to the poultry farms. There is an intense odor that emanates from these farms which affects the entire neighborhood and is a source of blatant nuisance.

5. The built up fecal matter in the battery cage facilities makes for an environmental hazard and a health hazard for both people and the birds which are constantly exposed to pathogens. In order to keep these birds alive in such intensive and filthy environs, the poultry farm owners regularly administer non-therapeutic antibiotics. The administration of these non-therapeutic antibiotics causes antibiotic resistance in the human beings who consume eggs or meat of such birds.

6. Poultry farms impact the ecology and standard of living of those who surround the farms. Pests which are attracted to the farms make it difficult for the people living in the vicinity to such farms to eat, work or to perform their day-to-day activities. There are several instances where poultry farms situated near various establishments have made it difficult for the residents of those establishments to live normal lives.

7. In support of its averments, the applicant has relied upon several Newspaper and other Articles, article published on 07.05.2017 in "The Tribune" titled 'Children can't eat, study here, courtesy houseflies-Poultry Farm adjacent to Zirakpur school makes their stay miserable, an article published on 29.04.2011 in "The Hindu" titled "Unhygienic conditions in poultry farms result in fly menace", an article published in "The Indian Express" on 01.07.2016 titled "Flies in the face of a Karnal village", an article published in Poultry, Fisheries and Wildlife sciences, volume 1, issue 1 titled "Environmental Impacts of Poultry Production"

and an article published in “Indian Journal of Community Medicine” titled “Association of Poultry Farms with Housefly and Morbidity: A comparative Study from Raipur Rani, Haryana”. In short, findings in the said articles are that breeding of houseflies takes place in the poultry farms in the dumped waste. Poor manure management is not only a major cause of pollution of soil and water but it is also a source of highly offensive odor and houseflies and is capable of affecting the life of people living in the vicinity. Extensive use of antibiotics on regular basis adversely affects health of the persons living around the farms, in violation of the Drugs and Cosmetic Act, 1940. Antibiotic resistance has become a big issue as per several studies, a National Action Plan on Antimicrobial Resistance (NAP-AMR) 2017-2021, a study of Antibiotic Resistance in Poultry Environment, Spread of Resistance from Poultry Farm to Agricultural Field, a study dated 20.07.2017 done by Bloomberg¹ article titled "Indian Poultry Farms Are Breeding Drug Resistant Superbugs" by Natalie Obiko Pearson, highlights that the Indian poultry farms have become a breeding ground for drug resistant superbugs, a study dated 20.07.2017 titled ‘The Prevalence of Extended – Spectrum Beta-Lactamase-Producing Multidrug-Resistant Escherichia Coli in Poultry Chickens and variation according to farming practices in Punjab, India, a report on “Environmental Status of Some Poultry Farms in India” by CSIR-National Environmental Engineering Research Institute (NEERI), Delhi Zonal Centre, Ministry of Science and Technology and 269th Law Commission Report on Transportation and

¹ <https://www.bloomberg.com/news/articles/2017-07-20/poultry-farms-in-india-resemble-superbug-reservoirs-study-finds#:~:text=Indian%20poultry%20farms%20aren't,m most%20potent%20antibiotics%2C%20researchers%20found.&text=Of%20tested%20birds%20destined%20for,journal%20Environmental%20Health%20Perspectives%20showed>

House-keeping of egg-laying hens (layers) and broiler chickens dated July, 2017. Further, reference has been made to the report by CSIR-National Environment Engineering Research Institute ('NEERI') titled 'Environmental Status of Some Poultry Farms in India', recommending cage free farming for hygienic environment.

8. The decision of the CPCB exempting the poultry farms with less than one lakh birds from registration with the Pollution Control Boards under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act, 1981) and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act, 1974) has been questioned as not being conducive to the clean environment which is part of right to life. The exemption is hit by 'sustainable development' concept to be enforced by this Tribunal under Section 20 read with Section 15 of the National Green Tribunal Act, 2010. It is submitted that poultry farms are a source of odor, attract flies, rodents and other pests that carry disease. The emissions therefrom include gases like ammonia, volatile organic compounds (VOCs), and Hydrogen Sulphide (H₂S) that affect the life of the people living in that vicinity. The poultry farms use large quantity of pesticides and antibiotics in their feeds that contaminate the soil and ground water thereby compromising public health. The reports show that unregulated poultry farming causes pollution of soil and groundwater. The intensive battery cage factory farming facilities pose unacceptable risks to public health and the environment. The studies show that the crowded, stressful and unsanitary conditions of these facilities give rise to disease, including avian influenza. Use of antibiotics is so rampant that they are being administered as a precautionary measure rather than as a last resort in the case of medical needs. Misuse of antibiotics in poultry farms is leading to multi-drug resistant bacteria, which is

spreading into the environment through unsafe disposal of poultry litter and waste in agricultural fields, with the potential of spreading drug resistant infections to humans. Giving of non-therapeutic antibiotics in poultry farms is leading to drug resistance amongst the consumers of such meat and eggs and is causing tremendous financial loss to the nation. Non-therapeutic antibiotics are only needed to be given in poultry farms because the housing conditions of birds in poultry farms are so unhygienic. If better and more hygienic cage free methods of farming were utilized, as recommended by NEERI-CISR, then there would be no need to administer non-therapeutic antibiotics to the animals. The only way to ensure cleanliness is to give the animals space and keep the facilities clean. Unhygienic conditions in the poultry industry is a major health hazards for both humans and animals and has serious negative implications on the animal's health and also on humans who work and live in and near such unhygienic conditions. This certainly calls for effective regulation and not exempting regulatory mechanism provided for such farms with more than one lac birds.

9. The application was filed on 07.11.2017. On 13.11.2017 the Tribunal issued notice to Respondents, including MoEF&CC, CPCB and Central Drug Standard Control Organization. M.A. No. 1049/2018 was filed by an association of poultry farms for being party which was rejected on 25.07.2018. However, in the light of orders of the Hon'ble Supreme Court dated 16.08.2019 in Civil Appeal No. 9154 of 2018, the said association was permitted to intervene.

10. Response has been filed by the CPCB. In the said reply no justification has been shown as to why poultry farms with less than one lakhs birds have been exempted from the ambit of the Water Act, 1974

and the Air Act, 1981. However, it is stated that the use of antibiotics is an issue under the purview of Animal Husbandry and the Drug Control and Food Safety Departments. Reply filed by the MoEF&CC also does not in any manner give any justification for the impugned action. The reply of the Ministry of Health and Family Welfare also does not deal with the issue except to state that use of antibiotics is governed by the Drugs and Cosmetics Act and Antibiotic Policy of the Ministry. Food Safety and Standards Authority of India ('FSSAI') has also filed a counter affidavit which does not deal with the central issue, except to say that standards have been laid down for various types of foods. The association of poultry farmers have highlighted the importance of eggs and poultry and need for antibiotics. It is stated that the poultry farms are established far away from the residential areas and, thus, residents are not affected by the activities of the poultry farms. Such activities help the rural areas by providing jobs and source of livelihood. Cheap source of protein is provided by eggs and chickens. A copy of Notification dated 29.04.2019 issued by the Ministry of Agriculture and Farmers Welfare has been placed on record which deals with responsibilities of the poultry farm owners to comply with the rules as per given environmental conditions for the welfare of layer hens which require registration with the Department of Animal Husbandry, Dairying and Farming. Ministry of Animal Husbandry has also filed an affidavit to the effect that PILs are pending before the Delhi High Court on the subject of compliance of the provisions of the prevention of Cruelty Animals Act, 1960 and Rules framed thereunder.

11. We have considered the above pleadings and also heard learned counsel for the parties who have mainly relied upon the pleadings referred to above at length.

12. Main contention on behalf of the applicant is that unregulated disposal of waste and operation of poultry farms is detrimental to the environment. Waste generated in the natural course on account of fecal matter etc. harms the environment unless safeguards are adopted and use of pests antibiotics has great potential for diseases among the animals and the humans as mentioned in the study undertaken by the NEERI, referred to above and observations made by the Law Commission in its 269th Report. Thus, leaving the field of poultry farm below one lakhs birds unregulated is failure to protect environment, as required under the Water Act, 1974 and the Air Act, 1981. Mere requirement for poultry farms with more than 5000 birds to register with the local bodies could be no substitute for the said statutory regulation nor CPCB has any statutory Authority to delegate its powers to the local bodies. The categorization of poultry industry as green by the MoEF&CC is also arbitrary and not based on any logic. Reference has been made to the report of the NEERI as follows:-

“Poultry production is associated with a variety of environmental pollutants, including oxygen-demanding substance, ammonia, solids, besides the poultry attracts flies, rodents, dogs and other pest that create local nuisances and carry diseases. Poor management of manure, litter and waste water etc. adversely affects the living in the vicinity. Odour is generated for fresh and decomposed waste products such as manures, carcasses, feathers and bedding litter. Furthermore, intensive poultry production may be responsible for green houses gasses, acidification and eutrophication.”

13. It was submitted non-therapeutic use of antibiotics and anti-microbial resistance to keep birds alive, overcrowded and unsanitary conditions build up drug-resistant bacteria in the birds which transmits to the consumers to the poultry products.

14. In view of such serious ramifications and potential for deteriorating the environment, it is imperative that the CPCB reconsiders this Policy

and require applicability of consent mechanism under the Air Act, 1981 and Water Act, 1974, instead of exempting it. Reliance has been placed on an order of this Tribunal dated 08.07.2019 in O.A. No. 46/2018, *Nuggehalli Jayasimha vs. Government of NCT of Delhi* dealing with compliance of environmental norms by dairies. The Tribunal directed the DPCC to perform its responsibility under the Water Act, 1974 and the Air Act, 1981 of enforcing environmental norms against the dairies, rejecting the plea that there is provision in the Municipal laws to address the issue. The Tribunal held that overlapping provisions in the Municipal laws do not discharge the environmental authorities of their statutory responsibilities.

15. There is no meaningful response to the above contentions on behalf of the applicant either in the pleadings or in oral submissions.

16. On due consideration of the matter, we find substance in the submissions of the applicant. Sustainable development is part of right to life.² The State Authorities are under obligation to protect environment as per sustainable development concept. Responsibilities of the States to the environment are by Public Trust Doctrine³. The Water Act, the Air Act, and the Environment (Protection) Act have been enacted in the wake of international conventions and override all other legislations. They create obligation on the regulatory authorities to enforce the environmental measures. There is no discretion to exempt the mandate of mandate of Water Act for activities having potential to cause water pollution⁴. It has not been disputed that the operation of poultry farms has potential to damage to the environment which needs to be regulated.

² (1996) 5 SCC 647 *Vellore Citizens' Welfare Forum v. UOI*

³ 1997 (1) SCC 388 *M.C. Mehta v. Kamal Nath*

⁴ (1999) 2 SCC 718 & (2001) 2 SCC 62 *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) & Ors.*

Leaving out poultry farms below one lakh birds unregulated by the State PCB and merely requiring registration with the local bodies or treating them at par with the agricultural farms will be against the mandate of sustainable development, which principle is to be enforced by this Tribunal. Likewise, in view of pollution potential in operation of poultry farms except small ones, say upto 5000 birds cannot fall in the 'Green' category as has been done by the CPCB.

17. Accordingly, we allow this application and direct the CPCB to revisit the guidelines for categorizing the poultry farms as green category and exempting their regulation under the Air Act, Water Act and the EP Act. The CPCB may issue fresh appropriate orders within three months and in if no further order is issued, all the State PCBs/PCCs will require enforcement of consent mechanism under the above Acts after 01.01.2021 for all poultry farms above 5000 birds in the same manner as is being done for farms having more than one lac birds. Till then, even without such consent mechanism, the State PCB/PCCs may strictly enforce the environmental norms and take appropriate remedial action against the any violation of water, air and soil standards statutorily laid down.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

September 16, 2020
Original Application No. 681/2017
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