

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

**Original Application No. 56(T_{HC}) of 2013
(M.A. Nos. 1567/2017 & 582/2018)**

And

**Original Application No. 57(T_{HC}) of 2013
(M.A. No. 391/2017)**

IN THE MATTER OF:

**Satish Kumar Vs. Union of India & Ors.
and
Mahavir Singh Vs. Union of India & Ors.**

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

Present: **Applicant /Appellant** : Ms. K. Gayatri Adv. with Mr. Satish Kumar,
applicant in person
Mr. B.S. Bartwal, Adv.
Mr. Rahul Choudhary, and Mr. Utkarsh Jain,
Adv.

Respondents : Mr. Ravinder Kumar Adv. for Mr. Pradeep
Kumar, Adv.
Ms. Sakshi Popli, Adv. for NDMC
Mr. Rajkumar Adv with Ms. Niti Choudhary,
LA for CPCB
Mr. Tarunvir Singh Khehar, Adv., Ms.
Guneet Khehar, Adv. and Mr. Sandeep
Mishra, Adv.
Mr. Rajiv Bansal, Sr. Adv., Mr. Kush Sharma,
and Mr. Prateek Gautam, Adv. for DDA
Mr. Balendu Shekhar and Mr. Sriansh
Prakash and Mr. Rajkumar Maurya advs. for
NDMC
Mr. Biraja Mahapatra, Adv. and Mr. Dinesh
Jindal, LO, DPCC.
Mr. Anil Grover AAG, Mr. Rahul Khurana,
Adv. and Mr. Mishal Vij, Adv for HSPCB
Ms. Sakshi Popli, Adv.
Dr. Abhishek Atrey, Adv.
Mr. Rajesh K. Singh and Mr. Rovins Verma,
Adv. for Ministry of Environment, Forest
and Climate Change
Mr. Biraja Mahapatra, Adv. And Mr. Dinesh
Jindal, LO
Mr. Vikas Garg, Adv.

| | Date and Remarks | Orders of the Tribunal |
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| | <p>Item Nos. 07-08</p> <p>July 20, 2018 dv</p> | <p>1. These matters arise out of two writ petitions filed before the Hon'ble High Court of Delhi which were transferred to this Tribunal.</p> <p>2. One petition was filed by Mr. Satish Kumar resident of village Mundka, New Delhi alleging environment pollution caused by burning of plastic, leather, rubber, motor engine oil and other waste materials and</p> |

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| | <p>Item Nos. 07-08</p> <p>July 20, 2018 dv</p> | <p>continuous operation of illegal industrial units dealing with such articles on agricultural lands in village Mundka, New Delhi. The other petition has been filed by one Mr. Mahavir Singh resident of Village Neelwal, Tikri-Kalan, Delhi and complains of pollution caused by illegal and unauthorized industrial activities of shredding, cleaning, recycling, burning of plastic, rubber articles or such other waste materials in the villages of Nangloi, Ghewara, Neelwal, Mundka, Kamruddin Nagar, Tikri-Kalan, Ranhaura etc. spread over a stretch of land along the Delhi - Haryana border. Both the Writ Petition are identical</p> <p>3. The order of the High Court refers to the orders passed by the Hon'ble Supreme Court in <i>M.C. Mehta vs. Union of India & Ors: (2004) 6 SCC 588</i>, whereby the industrial activities falling under category 'F' of the Master Plan of Delhi, 2001 in all residential/non-conforming areas of Delhi were ordered to be stopped and closed down.</p> <p>4. Though, the writ petition filed by Mr. Satish Kumar was sought to be withdrawn before the Hon'ble High Court of Delhi on the ground that unauthorized industrial activities in villages Ghewara and Nangloi had been stopped, the Delhi High Court permitted the learned Counsel to continue to assist the court as the issue raised was not merely individual but common to others.</p> <p>5. It was noted that the Monitoring Committee was constituted under the orders of the Hon'ble Supreme Court for stoppage of the illegal industrial activities. The Monitoring Committee framed an action plan to deal with</p> |
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| | <p>Item Nos. 07-08</p> <p>July 20, 2018 dv</p> | <p>the situation.</p> <p>6. After transfer of the matter to the Tribunal, the Associations of Dealers of the plastic wastes were also heard by the Tribunal. The Tribunal looked into evidence in the form of photographs and status reports which clearly showed that the prohibited activities were being carried out. The Tribunal referred to the Plastic Waste (Management and Handling) Rules, 2011 which require registration of a person recycling or handling plastic waste. The Rules also lay down the standards for plastic management and responsibilities for those who handle the plastic. Accordingly, the Tribunal concluded that unregulated handling of plastic wastes was required to be prohibited.</p> <p>7. The Tribunal passed the following order on 12.12.2013:</p> <p><i>“a. All the plastic waste/scrap dealers and/orrecyclers including the member of the PWD AssociationRespondent herein shall be restrained from carrying on their business of segregation of plastic waste and its eventual transfer to recyclers or disposal contrary to and without registration under the provisions of Plastic Waste(Management and Handling) Rules, 2011;</i></p> <p><i>b. There shall be no unregulated open burning of plastic/rubber or such other articles anywhere in India.</i></p> <p><i>c. All the Municipal Authorities within the meaning of Rules 3 (j) of thePlastic Waste(Management and Handling) Rules 2011, shall strictly enforce the provisions of the said rules relating to use, collection, segregation, transportation and disposal of plastic waste, and for such purposes shall (i) set up, operatilialise and coordinate the waste management systems within their limits (ii) work out and set up systems for the use of plastic waste in road construction and/or in co-incineration plans for generation of energy in accordance with law and lastly (iii) incorporate necessary provisions in their bylaws for enforcement of the said rules.</i></p> <p><i>d. Government NCT of Delhi, Delhi Pollution Control Committee, Haryana State Pollution Board and the Municipal Corporation of Delhi withinwhose limits the villages of Nangloi, Ghewara, Neelwal, Mundka, Kamruddin Nagar, Tikri-Kalan, Ranhauila etc. fall are directed to work out a plan for restoration of lands affected by illegal and unauthorized activity of segregation and disposal of plastic waste along with the cost required to be incurred therefor in consultation with each other and to submit its report to the Tribunal within one month of this order. Copies of this report shall be furnished to the other parties well in advance.</i></p> |
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e. Parties hereto are at liberty to raise objections and/or make suggestions in respect of the plan for restoration of land recommended in the said report and shall file affidavits giving following particulars:

1. The extent of area in use and occupation of each plastic waste dealer.

2. Amount of plastic waste handled by each of the plastic waste dealer over the years since the occupation of the area for their business.

3. Amount of plastic waste not fit for recycling.

4. Any other relevant data for the purposes of the quantification of the damages caused along with the description of the land involved along with khasra number.

f. The Respondents are herein directed to cooperate with each other in securing compliance of these directions expeditiously.”

8. Even after more than four and a half years, the complaint of the aggrieved parties is that the pollution caused by the unregulated handling of plastic continues to remain unabated.

9. This Tribunal, thus, has been dealing with such grievances in series of orders. It will be necessary to refer to some of the orders passed by this Tribunal. On 24th December, 2014, the Tribunal directed the concerned Municipal Corporations, Police Authorities and the Delhi Pollution Control Committee to take steps to prohibit illegal transportation of plastic waste and close the operations of illegal handling of plastic waste.

10. On 24th February, 2015, the unauthorized handling of plastic waste by five individuals was considered and a direction was issued to the authorities to plan restoration of the affected land and prosecute the violators.

11. On 6th December, 2016, direction was issued to the North Delhi Municipal Corporation to demolish the premises illegally and unauthorizedly constructed on the agricultural lands as per Section 343 of the Delhi Municipal Corporation Act, 1957 and submit report before the Tribunal.

12. In the order dated 10th January, 2017, the Tribunal

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| | <p>Item Nos. 07-08</p> <p>July 20, 2018 dv</p> | <p>noted that the attitude of the NCT of Delhi was totally one of indifference and one of helplessness in enforcing the order of the Tribunal.</p> <p>13. On 10th October, 2017, the applications of persons whose properties were sealed were considered and the properties were de-sealed subject to certain undertakings and conditions. On 25th May, 2018, de-sealing of certain other properties was also allowed on certain undertakings and directions.</p> <p>14. Today, we have taken up for consideration the status reports filed on behalf of the North Delhi Municipal Corporation and the SDM, Punjabi Bagh, Delhi. The status report of the North DMC states that the field staff has been instructed to take action as per the Municipal Corporation Act. Five properties have been sealed and 85 conditional orders has been passed under Section 133 of the Cr. P.C. The report of the SDM, Punjabi Bagh, Delhi, is that the North DMC did not provide requisite machinery i.e. one JCB and two dumpers on account of which necessary action could not be taken. We have also seen status reports filed on 18th April, 2018 to the effect that proceedings under Section 133 of the Cr. P.C. were initiated against the properties and godowns indulging in plastic segregation/storage.</p> <p>15. We have also perused the application filed by the original applicant on 18th April, 2018 complaining that despite the order of this Tribunal, illegal burning of plastic was rampant in villages Mundka, Nangloi, Neelwal, Kamruddin Nagar, Ranhaura, Tikri-Kalan as shown by the evidence in the form of photographs annexed to the</p> |
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| | <p>Item Nos. 07-08</p> <p>July 20, 2018 dv</p> | <p>application. We find from the photographs that averments in the application are fully supported.</p> <p>16. We, thus, find that inspite of clear directions, in practical terms there is hardly any action for compliance of orders of the Tribunal. Environment pollution as was found in the order dated 12th December, 2013 continues unabated in blatant violation of law and under the nose of the authorities who have hardly done anything concrete except furnishing excuses and helplessness.</p> <p>17. Learned Counsel for both the North DMC on the one hand and the Delhi Administration on the other, state that there is non-cooperation by the other. The Administration claims to be willing to act but expressed inability as the Municipal Authorities have to provide JCB machines and vehicles. The stand of the Municipal Corporation is that failure is on account of vigilance of the police.</p> <p>18. Under the provisions of the National Green Tribunal Act, 2010, there is undoubted power to settle a dispute under Section 14(2), to direct compensation for victims under Section 15 and to execute the award, order or decision of the Tribunal as a decree of a civil court. The Tribunal may also transmit the order or award made by it to a civil court. Penalties are also provided for non-compliance of the order of the Tribunal. In practical terms, it is the Administration or the police authorities who are expected to be the machinery of this Tribunal to execute the orders. Unfortunately, the Administration and the Police Authorities as well as the Municipal Authorities have only paid lip sympathy and failed to act in the manner. Though the head of a Government Department is</p> |
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made punishable under Section 28 of the Act for failing to comply with the orders of this Tribunal, the defiance continues. It is hardly practicable or desirable to prosecute the heads of the Government Departments for their failings in every case. This at time results in breakdown of the rule of law as is happening in the present case.

19. Accordingly, we have to explore viable alternatives including involving the higher authorities and even the civil society. Machinery for implementation of order passed has to be evolved on case to case basis.

20. In the circumstances of the present case, we consider it appropriate to direct as follows.

(i) The Chief Secretary Delhi is directed to co-ordinate with the concerned municipal authorities, the police authorities and other officers responsible for compliance of orders of this Tribunal already passed referred to above to ensure compliance at the ground level forthwith. The Chief Secretary must hold a joint meeting with the persons considered responsible for compliance within two weeks from today and till the orders remain un-complied, continue to hold such meetings atleast once in a month. It will be open to the Chief Secretary to seek feedback from concerned inhabitants about the ground situation.

(ii) We give four months time for compliance of this order. On expiry of period of four months, the Chief Secretary must file his own affidavit with regard to the steps taken.

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(iii)The Chief Secretary may also indicate the persons accountable for their failures so that this Tribunal can consider prosecution or other penal action against the persons failing to perform their legal duties.

21. Before parting with this order, we consider it appropriate to refer to another significant aspect which has emerged during the course of hearing in light of the judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs Rajendra Singh Bhandari & Ors* (2018) 11 SCC 734. In the said judgment, the question considered was the unsatisfactory manning of the Pollution Control Boards. Competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people must man the public services including the Pollution Control Boards.

22. It was concluded:

“33. Unfortunately, notwithstanding all these suggestions, recommendations and guidelines the SPCBs continue to be manned by persons who do not necessarily have the necessary expertise or professional experience to address the issues for which the SPCBs were established by law. The Tata Institute of Social Sciences in a Report published quite recently in 2013 titled “Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards” had this to say about some of the appointments to the SPCBs:

“An analysis of data collected from State Pollution Control Boards, however, gives a contrasting picture. It has been observed that time and again across state governments have not been able to choose a qualified, impartial, and politically neutral person of high standing to this crucial regulatory post. The recent appointments of chairpersons of various State Pollution Control Boards like Karnataka (A a senior BJP leader), Himachal Pradesh (B a Congress party leader and former MLA), Uttar Pradesh (C appointed on the recommendation of SP leader X), Arunachal Pradesh (D a sitting NCP party MLA), Manipur Pollution Control Board (E a sitting MLA), Maharashtra Pollution Control Board (F a former bureaucrat) are in blatant violation of the apex court guidelines. The apex court has recommended that the appointees should be qualified in the field of environment or should have special knowledge of the subject. It is unfortunate that in a democratic set up, key enterprises and boards are headed by bureaucrats for over a decade. In this connection, it is very important for State Governments to understand that filling a key regulatory post with the primary intention to reward an ex-official through his or her appointment upon retirement, to a position

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for which he or she may not possess the essential overall qualifications, does not do justice to the people of their own states and also staffs working in the State Pollution Control Boards. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non-transparent unilateral decision. Many senior environmental scientists and other officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the board. It has also been argued by various environmental groups that if the government is unable to find a competent person, then it should advertise the post, as has been done recently by states like Odisha. However, State Governments have been defending their decision to appoint bureaucrats to the post of Chairperson as they believe that the vast experience of IAS officers in handling responsibilities would be easy. Another major challenge has been appointing people without having any knowledge in this field. For example, the appointment of G with maximum qualification of Class X as Chairperson of State Pollution Control Board of Sikkim was clear violation of Water Pollution and Prevention Act, 1974.”

34. The concern really is not one of a lack of professional expertise – there is plenty of it available in the country – but the lack of dedication and willingness to take advantage of the resources available and instead benefit someone close to the powers that be. With this couldn’t-care-less attitude, the environment and public trust are the immediate casualties. It is unlikely that with such an attitude, any substantive effort can be made to tackle the issues of environment degradation and issues of pollution. Since the NGT was faced with this situation, we can appreciate its frustration at the scant regard for the law by some State Governments, but it is still necessary in such situations to exercise restraint as cautioned in *State of U.P. v. Jeet S. Bisht*.¹⁵

35.. Keeping the above in mind, we are of the view that it would be appropriate, while setting aside the judgment and order of the NGT, to direct the Executive in all the States to frame appropriate guidelines or recruitment rules within six months, considering the institutional requirements of the SPCBs and the law laid down by statute, by this Court and as per the reports of various committees and authorities and ensure that suitable professionals and experts are appointed to the SPCBs. Any damage to the environment could be permanent and irreversible or at least long-lasting. Unless (2007) 6 SCC 586 corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such.”

23. Having regard to the statutory schemes of composition of the Central Pollution Control Board as well as State Pollution Control Boards under Section 3 and 4 of

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the Water (Prevention and Control of Pollution) Act, 1974 we do not find any prohibition for a person with legal and judicial background being at the helm of affairs. While the technical functions can be performed by other technically qualified persons, legal and judicial functions like grant of consent, hearing of appeals, taking action for non-compliance can certainly be taken by the person having legal/judicial background.

Accordingly, we suggest that the Central Government as well as State Governments may appoint persons with judicial background to deal with the issues which may require the knowledge of legal and judicial system in the Pollution Control Boards and the local authorities. Such persons can also advise such bodies on manner of compliance of law so that such bodies can be saved from unnecessary litigation and charges of failure to comply with law.

24. Presence of a person with judicial background will help the Pollution Control Boards as well as local bodies to effectively discharge their administrative and judicial functions in an efficient manner. We are informed that in some of the Pollution Control Boards and Local Bodies, Judicial officers are already being engaged.

25. We thus call upon the Central Government and all the State Governments to take a call on this issue consistent with the observation of the Hon'ble Supreme Court in *Techi Tagi Tara (Supra)*

26. Let a copy of this order be sent to the Secretary, MoEF Central Government and the Chief Secretaries of all the States by e-mail for their consideration and action.

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| <p>Item Nos. 07-08</p> <p>July 20, 2018 dv</p> | <p>They are at liberty to send their response, if any, in four months by e-mail.</p> <p>List again matter on 03rd December, 2018 to consider the matter particularly the compliance report of the Chief Secretary, Delhi the same be registered as an independent petition.</p> <p>....., CP (Adarsh Kumar Goel)</p> <p>....., JM (Dr. Jawad Rahim)</p> <p>....., JM (Raghuvendra S. Rathore)</p> <p>....., EM (Dr. Satyawan Singh Garbyal)</p> <p>20.07.2018</p> |
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