

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 56(T_{HC})/2013
(M.A. Nos. 582/2018, 1554/2018 & 1681/2018)

With

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

With

Original Application No. 1027/2018
(Earlier O.A. No. 56/2013)

With

Original Application No. 726/2017
(M.A. Nos. 1382/2017 & 1691/2018)

With

Original Application No. 435/2016
(M.A. Nos. 1720/2018, 1722/2018 & 1723/2018)

With

Original Application No. 1029/2018
(Earlier O.A. No. 13/2017)

With

Executive Application No. 47/2018
(M.A. No. 1480/2018 in O.A. No. 453/2018)

With

Original Application No. 627/2018

Satish Kumar

Versus

Applicant(s)

Union of India & Ors.

Respondent(s)

With

Mahavir Singh

Versus

Applicant(s)

Union of India & Ors.

Respondent(s)

With

Satish Kumar

Versus

Applicant(s)

Union of India & Ors.

Respondent(s)

With

Chattar Singh Rachhoya

Versus

Applicant(s)

North Delhi Municipal Corporation & Ors.

Respondent(s)

With

N.S. Yadav & Ors.

Versus

Applicant(s)

Commissioner, North MCD & Ors.

Respondent(s)

With

For Respondents (s): Ms. Puja Kalra, Advocate for NDMC
Mr. Narender Pal Singh, Advocate for GNCTD with
Mr. Dinesh Jindal, Law Officer, DPCC
Sumeet Pushkarna, Devanshu, Advocates with
Pulkit Saigal, Z.E. for DJB

Execution Application No. 47/2018

For Applicant(s): Mr. Vikas Dahiya, Advocate with Mr. Rajeev Kumar,
complainant

For Respondents (s):

ORDER

1. We have perused the affidavit of the Chief Secretary, Delhi dated 30.11.2018 in pursuance of order dated 20.07.2018.
2. The issue for consideration is relating to compliance of judgment by Hon'ble Supreme Court in *M.C. Mehta vs. Union of India & Ors: (2004) 6 SCC 588, paragraph 54-57*, directing shifting/closing of industrial activities falling under category 'F' of the Master Plan of Delhi, 2001. Aggrieved by the inaction in that direction, petitions were filed in the Delhi High Court alleging unauthorized industrial activities which included handling of plastic and its illegal disposal by way of burning, etc.
3. The Tribunal dealt the matter by way of final order dated 12.12.2013 noting the extent of environmental degradation and havoc caused by plastic on the environment. Plastic clogs the natural cycles - both physico chemical as well as biological, if recklessly littered are injurious to the animals which devour it. There is temptation to dispose the plastic by burning which generates fumes containing toxic volatile emissions including greenhouse gases such as Methane and Carbon dioxide. Plastic combustion also generates airborne particulate emissions (soot) and solid residue ash (black carbonaceous material). Several studies have demonstrated that soot and solid residue ash poses high potential of causing significant health and environmental concerns. Soot so generated contains Volatile Organic Compounds (VOCs), semi-VOCs, smoke (particulate matter),

particulate bound heavy metals including Lead, Cadmium, Chromium and Copper, Polycyclic Aromatic Hydrocarbons (PAHs), Polychlorinated Dibenzofurans (PCDFs) and Dioxins, which have the ability to travel long distances, depending on prevailing atmospheric conditions before it drops back to earth and thus, enters into the food chain. Composition of by-products of plastic combustion with respect to its type and concentration depends on the combustion temperature and the flame residence time. A study of the combustion of Polyethylene (both Low and High Density Polyethylene) at different operating conditions detected more than 230 VOCs and semi-VOCs, especially Olefins, Paraffin, Aldehydes and light hydrocarbons including benzo(a)Pyrene and 1,3,5 Trimethylbenzene. Significant amount of pollutants of environmental and health concern including carcinogens such as PAHs, nitro-PAHs and Dioxins have been identified in the airborne particulate emissions. Further, these particulates have been found to be highly mutagenic. PAHs in the range of 8-340 ppm have been observed in the soot which is significant enough to cause cancer. Di-(2-ethylhexyl) phthalate (DEHP), one of the compounds among the plasticizers used in plastic manufacturing, has been described by US Environmental Protection Agency (USEPA) as a probable human carcinogen, a potential endocrine disruptor and is believed to be harmful by inhalation, generating possible health risks and irreversible effects.

4. Accordingly, directions were issued restraining the plastic waste dealers and other involved in the activity to comply with the requirements of statutory Rules - Plastic Waste (Management and Handling) Rules, 2011 (now replaced by 2016 Rules as amended in 2018). All the municipalities were also directed to enforce the Rules. Concerned authorities were required to work out a plan

for restoration of lands affected by illegal activities. Direction was also issued to identify the extent of area in use of plastic dealers, amount of plastic handled, amount of plastic unfit for re-cycle and any other relevant fact.

5. In spite of lapse of more than fourteen years after the order of the Hon'ble Supreme Court and more than four and a half year after the order of this Tribunal, when the matter was reviewed on 20.07.2018, the Tribunal found that unregulated handling of plastic continued to remain unabated. Orders of this Tribunal dated 12.12.2013, 24.12.2014, 24.02.2015, 06.12.2016, 10.01.2017 and 10.10.2017 remained on paper in absence of sincerity of the authorities who were expected to take steps in the matter. Illegal burning of plastic continued, shown by photographs produced before this Tribunal.
6. The Tribunal observed that Administration, Police Authorities and Municipal Authorities had only paid lip sympathy in this regard.
7. This Tribunal directed the Chief Secretary, Delhi to co-ordinate with the concerned authorities and ensure compliance of directions of this Tribunal at the ground level forthwith. Four months' time was given for doing so. The Chief Secretary, Delhi was also directed to indicate the persons accountable for their failure against whom appropriate penal action could be taken.
8. Unfortunately, the Chief Secretary, Delhi has failed to comply with the direction. We note that the present Chief Secretary has taken charge only on 27.11.2018 as stated in the affidavit. This could hardly be a justification for total failure of the institution of the Chief Secretary even if not of the present incumbent. Not even one name of the person against whom penal action or prosecution is proposed, has been indicated even after accepting serious failures in the matter. Good governance requires public

servants failing in their duties to be identified and made accountable.

9. The affidavit filed is evasive and mere a lip sympathy to the duty assigned under the binding orders of this Tribunal.
10. The minutes of the meeting dated 17.10.2018 annexed to the affidavit mention that large quantity of solid waste mainly consisting of plastic goods etc. were found lying and being handled without any unauthorized permission. Workers were found engaged in unhygienic/unhealthy conditions. Burnt material, including PVC cables/wires were seen. About 7000 MT of waste was lifted till now. Action of sealing the godowns was underway. According to the affidavit, 1152 Bighas of land is affected by plastic waste. Total fine of Rs. 85,000/- (Rupees Eighty Five Thousand only) has been imposed. 223 godowns have been sealed since September 2018. 550 plastic godowns have been vacated. Electricity connection of 82 godowns were disconnected. Challans have been issued (no number given) under Section 5/15 of Environment Protection Act, 1986 by the SDM (Punjabi Bagh). Demolition drive will be carried out by the SDM level Special Task Force.
11. From the statements in the compliance report filed by the Chief Secretary, Delhi that large scale environmental degradation was taking place, collusion and misconduct of the officers of the Delhi Government can be readily inferred. It is unfortunate that the Chief Secretary, Delhi has refused to identify the names of such officers. During the hearing, learned counsel for the applicants suggested that in view of high magnitude of damage to the environment, the Tribunal may require payment of compensation at the rate of Rs. 10 Crores per month from the date of its order i.e. 12.12.2013. However, we may consider compensation for future at this rate but for the past we assess the compensation to

be more than Rs. 25 crores. Strict directions are required to ensure compliance with the order in the interest of public health and rule of law with timelines and consequences for non-compliance.

12. Section 20 of the National Green Tribunal Act, 2010 provides for application of 'Polluter Pays' Principle in such circumstances. 'Polluter Pays' Principle demands that financial cost of preventing or remedying damage caused by pollution should be the liability of the polluter and for failure of Authority to take action, liability can be fastened on the Authority so that the victim and the environment can be protected and restored¹. This Tribunal has applied these principles in *inter-alia*, *Venkatesh & Ors. v. Union of India & Ors.*², *All India Lokadhikar Sangathan v. Govt. of NCT of Delhi & Ors.*³, *Court on its own Motion v. NCT, Delhi & Ors.*⁴. Inaction of the authorities in the present matter has aggravated the environmental degradation and caused loss of human health also. They have failed to remedy the situation inspite of repeated opportunities. This necessitates direction to recover environmental compensation.

13. Accordingly, we direct as follows:

- (i) As an interim measure, the Delhi Government will forthwith deposit a sum of Rs. 25 Crores towards the cost of damage to the environment with the Central Pollution Control Board for restoration of the damage within one month. For delay interest @ 12% p.a. will be payable.
- (ii) The Delhi Government will furnish a Performance Guarantee of Rs. 25 Crores within one month from today to carry out the direction of this Tribunal in its entirety

¹ Indian Council for Enviro Legal Action V. Union of India (1996) 3SCC 212

² O.A. No. 711 of 2018 dated 24.10.2018

³ E.A. No. 11 of 2017 dated 16.10.2018

⁴ Suo Motu Application No. 290 of 2017 dated 24.10.2018

within next three months and on such failure, the amount will be forfeited.

- (iii) The Chief Secretary must directly or through his nominee prepare a clear action plan for compliance of Rules and restoration identifying the name of the persons responsible to execute and responsible officer to supervise and the consequences for failures.
- (iv) In the compliance affidavit, beyond making a vague averment that challans have been issued under Section 5/15 of the Environment (Protection) Act, 1986, no details of such challans have been furnished. Such particulars may now be furnished and action initiated under the law against those responsible, including the officers of the Delhi Government.
- (v) The Delhi Government is at liberty to recover the cost of damage to the environment from its officers as well as from the polluters acting in violation of law.
- (vi) We expect monitoring at the highest level at least once in a fortnight.
- (vii) We further direct that on failure to comply this order, the Delhi Government will be required to deposit further amount of Rs. 10 crores per month till the order of this Tribunal is fully executed.
- (viii) Let an appropriate compliance affidavit be filed by the Chief Secretary, Delhi on or before 31.03.2019.
- (ix) We make it clear that any individual case of sealing/de-sealing may be dealt with by appropriate authorities in accordance with law consistent with the orders of this Tribunal.

14. Monitoring of waste burning incidents should be stopped and be watched at ward level and may be by using aerial devices (like

drones with due permissions) and satellite imageries and the fire be extinguished at once. Complaints filed by citizens on mobile applications of Delhi Government/Central Pollution Control Board/Delhi Pollution Control Committee should be attended immediately and for this purpose, special teams be constituted (like fire brigades).

15. List for consideration on 10.04.2019.

M.A. No. 1691/2018 & 1722/2018:

The applications are dismissed.



Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

December 03, 2018

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