AIR LAW&POLICY
Reporter

An update on legal and policy development in the field of Air Pollution in India

INTRODUCTION

Air Pollution has been one of the central issues in the National Green Tribunal and the Supreme Court. In the initiative to deal with this persisting concern, a number of developments have taken place in law and legislation.

While all the institutions and the judiciary seem to wake up during the times of environmental crisis due to appalling levels of air pollution, the momentum gets reduced when visible pollution goes down. Further, the actions during the emergency situation are all taken in the eleventh-hour and this has proven to affect effective implementation, thereby rendering it futile.

Moreover, as always the actions and the measures undertaken by organizations, executive and the judiciary to deal with air pollution continues to keep Delhi in focus ignoring a number of states across India that are as affected and are even worse off.

This edition of the Air, Law and Policy Reporter has covered all the legal developments that have taken place in the area of air pollution since the last edition.

RESTRUCTURING OF POLLUTION CONTROL BOARDS – Supreme Court overrules National Green Tribunal

The National Green Tribunal (**NGT**) in its judgment and order dated August 24, 2016 in the case of *Rajendra Singh Bhandari Vs State of Uttarakhand and Ors* (Original Application No 318/2013), had directed all the State Governments/ Union Territories to reconstitute the Pollution Control Boards (**PCB**) strictly in accordance with Section 4 of the Water (Prevention and Control of Pollution) Act 1974 (**Water Act**) and Section

5 of the Air (Prevention and Control of Pollution) Act 1981 (**Air Act**). The said sections require the Chairperson and the Member Secretary of the PCB to be a person having special knowledge or practical experience in respect of matters relating to environmental protection, or a person having knowledge and experience in administering institutions dealing with environmental matters. The judgment elaborated on these specified criterions and finally listed down filtered and specific qualifications that were mandated to be fulfilled by the Chairperson and Member Secretaries of the PCBs.

While a few states reconstituted their respective PCBs in compliance to the National Green Tribunals directions, a number of States appealed against this decision of the National Green Tribunal in the Supreme Court. The Supreme Court thereby passed a detailed judgement on September 22, 2017 on the issue in the case *Techi Tagi Tara Vs Rajendra Singh Bhandari & Ors*.

While the Supreme Court principally concurred to the intention of National Green Tribunal, it however stated that the power to direct for reconstitution of the SPCBs does not lie within the statutory jurisdiction of the National Green Tribunal. The Supreme Court made this statement based on its argument that Section 14 of the National Green Tribunal Act, 2010 has to be read in conjunction with Section 15 of the National Green Tribunal Act and cannot be read in isolation, and the joint reading of the two sections illustrates that the present issue is not covered within the jurisdiction of the National Green Tribunal.

Section 14 of the National Green Tribunal, Act states that the National Green Tribunal has jurisdiction over all civil cases where a dispute on the substantial question relating to environment is involved. Section 15 of the Act on the other hand, talks about the power of the Tribunal to grant relief and compensation in case of an environmental dispute. The Tribunal stated that both the said sections have to be read together and the combined reading of the said sections requires:

i. A substantial question relating to environment
ii. The said question must arise in a dispute and must not be an academic question
iii. The dispute should be capable of settlement by the National Green Tribunal by grant of some relief by way of compensation or restitution of property damage or restitution of environment and any other ancillary relief connected therewith.

The Supreme Court stated that the issue of appointment of Chairperson and members of the SPCBs cannot be classified as a substantial question relating to the environment and moreover the appointment is not a dispute as one would normally understand it. Additionally, no relief as postulated by Section 15 of the Act could be granted to a claimant. The National Green Tribunal being a statutory body therefore had no jurisdiction of the said issue and the National Green Tribunal should have required the claimant to approach a constitutional court for the relief prayed in the application.

The Supreme Court thereby set aside the direction of the National Green Tribunal.

The Supreme Court subsequently directed that all the officials removed pursuant to the judgment and order of the National Green Tribunal have an independent cause of action and may challenge their removal in independent proceedings. Further, with respect to issuing guidelines for appointment, the Supreme Court was of the opinion that this is for each State Government to consider and decide. It stated that laying down guidelines in this

regard is beyond the jurisdiction of both the National Green Tribunal and the Supreme Court and the State Governments should appoint the officials after considerable deliberation.

The Supreme Court directed the Executive in all the states to frame appropriate guidelines or recruitment rules within six months keeping in mind the institutional requirements of the SPCBs.

Note: While the Supreme Court in the said case recognised the importance of the issue in hand and concurred with the intention of the National Green Tribunal, the judgement is problematic in two areas.

Firstly, the Supreme Court interpreted that Section 14 of the National Green Tribunal Act, 2010 has to be read in conjunction with Section 15 and cannot be read in isolation. However, the National Green Tribunal had clearly laid down that Section 14 and 15 of the National Green Tribunal Act are mutually exclusive and not interconnected and remedy under Section 15 is not a consequential remedy to the provisions under Section 14.[1] This has been the general understanding and the Court has reaffirmed this several times.

Secondly, the Supreme Court in the said case stated that neither the National Green Tribunal nor the Supreme Court has the jurisdiction to make guidelines for recruitment of the Chairperson and members of the SPCBs. The Supreme Courthas however in the past laid down guidelines at various occasions.[2]

[1]Forward Foundation, a Charitable Trust and Ors.Vs. State of Karnataka and Ors. [2015 ALL (I) NGT Reporter (2) (Delhi) 81]

[2]For example *Vishaka and OrsVs State of Rajasthan and Ors* (JT 1997 (7) SC384) () and *D.K Basu v. State of West Bengal* (1997) 1 SUPREME COURTC 416

REFERENCES

1. *Rajendra Singh Bhandari Vs State of Uttarakhand and Ors* (Original Application No 318/2013)
2. *Techi Tagi Tara Vs Rajendra Singh Bhandari & Ors*.

HOW THE NATIONAL GREEN TRIBUNAL DEALT WITH THE 2017 ENVIRONMENTAL CRISIS

With the onset of this winter, the levels of air pollution like in the previous year invariably touched soaring numbers again. This was despite various measures worked out by the government and the directions of the judiciary as a result of last year's crisis. The figures as per the Delhi Pollution Control Committee (**DPCC**) were above 1000 µg/m^3 in most places for PM_{10}. The highest level being 1079 µg/m^3 and the value of $PM_{2.5}$was found to be in the range between 594 µg/$m^3$to 802 µg/m^3.[3] This awfully severe situation of an environmental emergency remained for over a week.

The National Green Tribunal, given the failure of the executive to implement the measures adopted last year, took the responsibility to ensure compliance upon itself again. It held that the right to life has been infringed by persons, Authorities and States who have the constitutional and statutory obligations to provide and ensure decent and clean environment to the public. The Tribunal noted that this state of environmental emergency was a result of apathy by the statutory bodies who 'dealt' with the issue by only holding meetings and shifting the blame to one another for non-performance and non-cooperation. The Tribunal considered the issue at National Green Tribunal last year (10.11.2016) and clearly laid down the emergency measures

[3]Vardhaman Kaushik Vs Union of India and Ors.(O.A No. 21/2014) Order dated November 14, 2017

that were to be adopted when a situation of environmental emergency arises due to air pollution; however the same were non-executed or complied with. [4]

The National Green Tribunal thereby passed immediate directions at zero hour to curtail air pollution and prevent it from becoming worse. The directions included ban on construction activities for 7 days, ban on industrial activities that release emissions, authorities were directed to ensure that wastes are not burned, shutting down brick kiln and hot mix plants, sprinkling water, cleaning of road, ensuring that no crop residue is burned, implementation of GRAP and submission of their action plan.[5]

Furthermore, the NCT Delhi had proposed to implement the odd-even Scheme in Delhi from 13th of November 2017, however the National Green Tribunal strongly objected to this stating that this decision is without any study and the CPCB report for last year's odd-even implementation did not show any reduction in pollution during the times of implementation[6] and furthermore, diesel vehicles and two wheelers/ two stroke engines (which will be in use during this time) are much more serious contributors to air pollution than petrol operated cars. The Tribunal however left it for NCT Delhi to decide whether the odd-even Scheme should be implemented but upon the condition that no exemption should be allowed this time apart for vehicles of essential services. Further, it also stated that it must be borne in mind that as and when the PM_{10} and $PM_{2.5}$ crosses values of 500μg/m^3 and 300 μg/m^3 respectively, Graded Response Action Plan (**GRAP**) and odd-even scheme should mandatorily be implemented automatically without default.[7] The NCT Delhi however withdrew the application and the Scheme was not implemented.

It was noted that there was a considerable improvement in the ambient air quality and the National Green Tribunal thereby lifted a number of bans previously imposed by it.[8]

The winter of 2017 saw the same crisisas the winter in the previous year despite detailed measures laid down by the authorities and the judiciary. The problem was attributed to the inaction and apathy of the statutory bodies, more so since none of the action plans were seen implemented during the initiation or even in the middle of the crisis.

Further, it was directed NCT of Delhi, State of Rajasthan, State of Haryana, State of Uttar Pradesh and State of Punjab to file a complete action plan based on GRAP, orders of the Supreme Court of India and orders passed by this Tribunal in this case and in all subsequent orders[9]. The Central Pollution Control Board, Delhi Pollution Control Committee and every State Pollution Control Boards also have been directed to file an ambient air analysis before the Tribunal on monthly basis along with copies to the respective governments, local authorities and management authorities and make the same available on their websites to enable the concerned authority to take effective steps as for the action plan to prevent and control the air pollution.[10]

[4]Vardhaman Kaushik vs. Union of India (O.A. No. 21/2014), Order dated November 9th,2017

[5]Vardhaman Kaushik Vs Union of India O.A No. 21/2014 Order dated November 9, 2017

[6]Vardhaman Kaushik Vs. Union of India, (O.A. No. 21/2014), Order dated November 11th, 2017

[7]Vardhaman Kaushik Vs Union of India and Ors.(O.A No. 21/2014) Order dated November 11, 2017

[8]Vardhaman Kaushik Vs Union of India O.A No. 21/2014 Order dated November 17, 2017

[9]Vardhaman Kaushik Vs. Union of India and Ors. ((O.A. No. 21/2014)) Order dated 17th November,2017

[10]Vardhaman Kaushik Vs Union of India (O.A No. 21/2014) Order dated November 17, 2017

In February, 2018, the Tribunal passed fresh order directing the Central Pollution Control Board, Delhi Pollution Control Committee and every State Pollution Control Boards to file a report along with the ambient air quality analysis data of Delhi-NCR and also submit recommendations to improve the air quality standards of Delhi-NCR.[11]

REFERENCES

1. *Vardhaman Kaushik Vs Union of India* &Ors (O.A. 21 of 2014)

THE APEX COURT ON AIR POLLUTION

The Supreme Court in its endeavour to curtail air pollution has been taking action and directions on a number of factors pertaining to air pollution. The Court in the matter ***M.C.Mehta vs. Union of India (Writ Petition No. 13029/1985)*** has taken up various issues relating to Air Pollution and has passed and continues to pass numerous orders to help curtail Air Pollution. The developments on the same are discussed below.

Pet Coke and Furnace Oil

The Environment Pollution (Prevention & Control) Authority (EPCA) Report indicated that the sulphur content in pet coke and furnace oil is extremely high and that it is a major cause of pollution in Delhi and NCR. The Supreme Court has therefore elaborately considered the issue of air pollution caused due to the use of Pet coke and furnace oil as fuel. A number of meetings were held between various stakeholders based on the responses received from various institutions such as CSIR, TERI, NPL, CPCB and Ministry of Petroleum and Natural Gas to understand the issue better.[12] Natural gas and electricity were identified and accepted as viable substitutes.

The Supreme Court thereafter banned the use of Furnace Oil and Pet Coke in Delhi on 2nd May, 2017. Subsequently, on 24th October 2017, the court directed that the ban will also extend to the states of Uttar Pradesh, Haryana and Rajasthan and the same came in to effect from 1st November 2017.

Consequently, the Supreme Court received a number of applications for recall of order regarding ban on use of pet coke and furnace oil in the states of UP, Haryana and Rajasthan. However the Court upheld the ban and also requested all the State Governments and Union Territories to consider taking similar measures.[13]

EPCA accepted the recommendation for use of Pet Coke in certain industries on the basis of recommendation by Central Pollution Control Board (CPCB). EPCA recommended that to permit the use of pet coke there should be constructive implementation of the guidelines set by CPCB. CPCB shall compile all the data from all the State Pollution Control Boards with regard to use of Pet Coke. For a period of one year monthly monitoring shall be carried out and subsequently quarterly monitoring shall be carried out.[14]

It was submitted by the Chairman, CPCB that they have been monitoring the use and utilisation of pet coke currently in three industries namely Calcium Carbide, Lime and Cement Industries with assistance of the SPCBs. The data will be available on the public domain by 31st May, 2018.

[11]Vardhaman Kaushik vs. Union of India (O.A. No. 44/2018) (Earlier O.A. No.21/2018) order dated 13th February,2018

[12]M.C.Mehta vs. Union of India (W.P. (C) No. 13029/1985) order dated 17.01.2017

[13]M.C.Mehta vs. Union of India (W.P. (C) No. 13029/1985) order dated 17.11.2017 and 22.11.2017

[14]M.C.Mehta vs. Union of India (W.P. (C) No. 13029/1985) order dated 05.02.2018

The matter is further listed for directions and hearing on 9th July, 2018.

Setting Emission Standards for Industries

A lot of directions have been passed with regard to setting of emission standards for Industries. Justice Madan Lokur and Justice Deepak Gupta have noted that there were no SO_2, NOx and Sox standards fixed for almost 35 industries including Thermal Power Plants, sugar plants, cement plants, coke ovens, iron and steel plants, glass industries and a number of other highly polluting industries. The Union of India and the Central Pollution Control Board (CPCB) were therefore directed to fix SO_2, Nox and SOx standards for the said industries by 30 June, 2017.[15]

On 24th October 2017, the Court took into record an assurance that the industries would abide by whatever standards are fixed by the CPCB by 31st December 2017.

Furthermore, the CPCB had submitted draft standards fixed by it to the MoEF&CC for 16 industries and subsequently for 5 more, however the MoEF&CC did not consider or act on these standards for almost 3 months and the Court thereby imposed a cost of Rs 2,00,000 (Two lakhs) on MoEF&CC.[16]

MoEF&CC on 22nd March, 2018 published a notification whereby Ministry had set Standards for SO_2 and NOx for 5 industries namely - Ceramic, Foundry Industries (Furnaces based on Fuel), Glass, Lime Kiln and Reheating Furnace. The step has been taken by the MoEF&CC, taking into account the seriousness of air pollution that has direct impact on the human population. The MoEF&CC decided to waive of the public consultation, without putting the Draft in public domain for comments.

The proposed amendment did not formulate any standard for CO and particulate matter emission, which are the two important criteria pollutants and which emits from these industrial sectors. Type of emission from a typical foundry includes carbon monoxide (CO), particulate matter (PM), organic compounds, sulphur dioxide, nitrogen oxides, and small quantities of chloride and fluoride compounds. Further the type of furnace used in any foundry is also a determinant factor for emission of any particular pollutant[17]

Lime industry is also dependent on two types of kiln viz. vertical and rotary types of kilns and the emission of SO_2 and CO is higher in case of vertical kiln. Therefore, a generalized standard for limekiln irrespective of the type of kiln cannot serve the purpose of reducing pollution.

MoEF&CC in the preamble of the Rule, though acknowledged the increase in particulate matter (PM) pollution in ambient air quality, have not formulated any standard for its emission from all the five industrial sectors.

All these standards are so relaxed in nature, that the proponent of these industries are hardly need to do any retrofitting and/or need to make any changes in their design system. It seems that, no scientific study has been conducted before coming to facts and figure. It is also not clear as to whether any international practice or standard were consulted before coming to these figures. For example, Ceramic is produced through kiln and this kiln can be very different in size and shape and design, which are the deciding factor behind pollutant emission. The age of a kiln is also a deciding factor

[15]M.C.Mehta vs. Union of India (W.P. (C) No. 13029/1985) order dated 02.05.2017

[16]M.C.Mehta vs. Union of India (W.P. (C) No. 13029/1985) order dated 24.10.2017

[17]Background Report on Iron Foundries prepared for U.S. Environmental Protection Agency https://www3.epa.gov/ttnchie1/ap42/ch12/bgdocs/b12s10.pdf

which determines whether a kiln design can be retrofitted or not.

Foundry industries are largely of two types – ferrous & non-ferrous foundry and therefore cannot be simply decided about the SO_2 and NOx standard without looking at the type of furnaces. Fuel specification will only control the emission of SO_2 as NOx is process specific and therefore generate in different extent from various sources. There are various industries which are based on reheating furnaces, for example Annehiling Furnaces, which is also a type of reheating furnaces, but in absence of any specification/definition of reheating furnace, it is difficult to gauge as to which type of furnaces are talked about in terms of emission standard.

The formulation of regulation without having public consultation is against the law. The Ministry of Parliamentary Affairs in its manual for subordinate legislation has listed out the consultation requirement with the authorities concerned as one of the primary conditions before amending rules, regulations, order etc[18].When describing the procedure for pre-publication and consultation, there is a clear mandate to publish the draft in the official gazette inviting objections and suggestions within a specified period of 30 days[19]. According to the Manual, suggestions can also be obtained from interests concerned who are likely to be affected by the legislation by sending registered letters to them and, if necessary, by publication of the draft rules in the national or regional press/newspapers to receive the comments at the earliest[20]

Shift from BS IV Fuel to BS VI Fuel by 2019

EPCA in its Report No. 71 has proposed that the Government has been in discussion with the Ministry of Petroleum and Natural Gas that it will make a shift from BS IV fuel to BS VI fuel by 01.04.2019, which would benefit all the citizens of our country by substantially reducing pollution levels. After much deliberated discussion the Ministry of Petroleum and Natural Gas has assured to the Court that BS VI fuel will be made available in 17 districts out of 23 districts in NCR and 2 districts adjoining NCR. The Ministry has also assured that by 01.10.2019 BS VI fuel will be available in districts of Haryana including Gurugram.

The Ministry of Petroleum and Natural Gas has submitted that with respect to the other 12 metropolitan cities, it will not be possible to provide the availability of BS VI Fuel by 01.04.2019, but there will be efforts to make BS VI fuel available by 01.04.2020. The Ministry has made commitment that BS VI fuel will be available in Agra by 01.04.2019.

The matter is further listed for hearing on 12th July, 2018.

UNABATED STORAGE AND BURNING OF PLASTIC CONTINUES

Plastic Waste has been a major contributor to pollution in the world. Plastic waste in India has become an increasingly pressing problem over the years. With increasing dependence on plastic, the tendency to dispose of plastic casually has also become a part of the mainstream.

In an ongoing case in the National Green Tribunal ***Mahavir Singh vs. Union of India***

[18]Checklist under Para 11.1.3at http://mpa.gov.in/mpa/Manual/Manual_English/Chapter/chapter-11.htm

[19] Sub para (b) of Para 11.2 at http://mpa.gov.in/mpa/Manual/Manual_English/Chapter/chapter-11.htm

[20] Sub para (c) of Para 11.2 at http://mpa.gov.in/mpa/Manual/Manual_English/Chapter/chapter-11.htm

(O.A. NO. 57 of 2016), the Court has passed various order with respect to the unauthorised/illegal running of plastic waste segregation/recycling units in the area of Mundka, Tikri Kalan, Kamaruddin Nagar, Safipur, Ranhola, Bakkarwala, Nilothi and Barpola of sub-division Punjabi Bagh.

The village in Mundka, New Delhi is being aggrieved by environment pollution which is caused by burning of plastic, leather, rubber, motor engine oil and other waste material and there is a continuous operation of illegal industrial units disposing such kind of article on agricultural land.

The direction given through the National Green Tribunal judgements has not been followed on the ground. For instance, as per the order dated 24.02.15, the Tribunal had directed NCT of Delhi to comply with the judgement passed on 12.12.2013 which has stated in the status report that the authorities did the surprise inspection of various sites of Sub Division Punjabi Bagh and sealed two factories material which were functioning in the residential area in Kamaruddin Nagar, but on ground situation has not changed and it can be stated because inspection done by the authority. Followed by another judgement of the Hon'ble Tribunal dated 12.12.2013 by the government of NCT Delhi, in which applicant has described the actual ground status of compliance of the direction passed in the judgement[21] are following .

1. All the plastic waste/Scrap dealer or recycler which include member of the PWD are restrained from carrying on their own business of segregation of plastic waste or transfer to recyclers or disposal without registration under the provision of Plastic Waste (Management and Handling) Rules,2011. On ground observation it was found that all mounds of plastic are dumped in the premises in which every other household is involved. It has also observed that in Tikri Kalan , Tikri Border, Mundka the segregation and sorting of waste is still taking place which is violation of the judgment
2. There shall be no unregulated open burning of plastic/rubber or such other articles anywhere in India[22] but during the inspection the open burning of waste is still continuing on the agricultural land and public spaces which also include the medical waste. Further Delhi Police was directed to keep check on illegal dumping and burning of waste; however through on ground inspection it was found that the burning of plastic waste was still taking place in open public spaces and agricultural land
3. Another direction given by the court was that all the Municipal Authorities under the rules of 3(J) of the plastic waste(Management and Handling Rules,2011 shall strictly enforce the provision of the said rules relating to use, collection, segregation , transportation and disposal of plastic waste and to make this workable further steps has been prescribed . But during the inspection it was observed that waste has not been segregated, that transportation of waste from neighbouring states is taking place even though it was prohibited by Hon'ble Tribunal. In fact in the order dated 24.12.2014 it was directed that carrying out illegally and unauthorised transportation of plastic waste shall be seized if carried out by someone who doesn't hold the authority.[23]

[21]Mahavir Singh vs. Union of India (O.A. No. 57 of 2016) Judgment dated 12.12.2013

[23]Mahavir Singh vs Union of India (O.A. No. 57 of 2016) order dated 24.12.2014

Despite the judgement given by National Green Tribunal in 2012, the compliance has not been made yet and the people of Tikri Kalan, Tikri Border, Mundka and New Delhi are baring the cost of it.

The matter is listed for further hearing on 20th July, 2018.

REFERENCES

1. *M.C. Mehta Vs. Union of India*, WP (Civil) No. 13029/ 1985
2. *Mahavir Singh vs. Union of India, O.A. No. 57 of 2016*

THE PERSISTING ISSUE OF STUBBLE BURNING

Crop residue burning is constantly held responsible as the major contributor to the state of the environmental crisis caused due to the alarming levels in air pollution in Delhi and NCR; and undoubtedly so. The issue of crop residue burning is essential and complex.

The National Green Tribunal has been dealing with finding solutions to the issue in the case *Vikrant Kumar Tongad Vs EPCA* since 2013 but with little progress.

The National Green Tribunal to begin with had directed the states to select a Model District where steps would be taken to prevent and control air pollution due to crop residue burning.[24] It has also repeatedly directed the State of Haryana, State of Uttar Pradesh, State of Punjab, State of Rajasthan and NCT, Delhi (States) to place on record the effective steps taken by them to prevent crop residue burning in the coming harvesting season.[25]

Despite the number of directions passed by the Tribunal to take steps in this regard, it was brought to the notice of the Tribunal by a group of farmers that the State of Punjab is not taking any effective steps except for passing orders without any sensitivity towards poor farmers.[26] The solutions so far were punitive in nature and cost intensive upon the farmers and thereby they received disagreement from the farmers who have to bear the cost of implementation. The Tribunal consequently stressed on providing incentives to the farmer and on ensuring that machineries that are necessary as a means to the solution are provided to the farmers at a low cost.

In August 2017, the Tribunal noted that the State Government have failed to comply with the directions of the Tribunal, and to take precautionary and controlling measures for air pollution and even file Action Plan with complete accountability and elements of performance.[27]

The State of Punjab, State of Rajasthan, State of Uttar Pradesh and State of Haryana (States) were thereby directed to bring 10 cases of preferably marginal farmers to provide due incentive, help and means to them, so that they do not follow traditional methodology of crop residue burning in the field itself. The States were directed to thereafter place before the Tribunal, a complete documentation on utilization of the agricultural residue in accordance with

[24] *Vikrant Kumar Tongad Vs Environment Pollution (Prevention & Control) Authority &Ors* (O.A. No.118/2013) Order dated January 6, 2017

[25] *Vikrant Kumar Tongad Vs Environment Pollution (Prevention & Control) Authority &Ors* (O.A. No.118/2013) Order dated March 7, 2017

[26] *Vikrant Kumar Tongad Vs Environment Pollution (Prevention & Control) Authority &Ors* (O.A. No.118/2013) Order dated August 21, 2017

[27] *Vikrant Kumar Tongad Vs Environment Pollution (Prevention & Control) Authority &Ors* (O.A. No.118/2013) Order dated August 4, 2017

known scientific methods which would not be polluting.[28] The States were further directed to provide the National Green Tribunal with information on (i) the names and details of all the power houses, plants, biomass based energy plants and any other industry which can use the crop residue and such allied biomass as a fuel for energy generation and (ii) a mechanism which would ensure providing of happy seeders/balers to the farmers in an economically viable manner.

On November 8, 2017 during the peak of air pollution, the National Green Tribunal noted that agricultural residue lying in the field of the farmers have not been collected or utilised by Bio-mass based Energy Plants and by the industries which can manufacture board and allied items from such agricultural residue as directed previously. It thereby asked the States as to what steps were taken by them to ensure that there is no crop residue burning in the area adjacent to Delhi and under their own jurisdictions.

Further, NTPC was directed to file complete details of its total demand of coal and how much agricultural residue either in the form of pellet or otherwise it can use, if not purely at least mixed with coal, in all the coal based Thermal Power Houses in the States of Punjab, Haryana, Himachal Pradesh and Uttar Pradesh who should be present before the Tribunal. The respective State Governments shall serve a Notice upon them. Learned counsel appearing for the respective States shall take clear instructions as to the viability of the establishing plants which would collect agricultural residue and paddy stocks from the field and convert the same into pellets which can be used as a source of fuel for thermal power plants.[29]

As a workable solution after consulting with the States, Applicants and the stakeholders, the National Green Tribunal directed that National Thermal Power Corporation (NTPC) will use pellets of agricultural residue as fuel along with coal in its power plants. In this regards, the Secretary, Ministry of Agriculture was directed to hold a meeting on 28th November, 2017 (along with Additional Secretary from Ministry of Energy, Government of India; Principal Secretaries, Ministry of Agriculture of the respective State Governments besides any other Officer nominated by the State to attend the meeting; a Senior Scientist from BHEL; Managing Director, NAFED; and CMD of NTPC assisted by proper Technical Staff) to deliberate the working of this proposal and provide recommendations to the Tribunal with respect to whether:

"(a) every State should or should not be directed to establish its own pelletization plant for every agriculture residue to make it fit for utilization as fuel in the thermal power plant run by NTPC. It shall also be considered if the State Governments can be granted liberty to invite private players who can establish such plant in the respective States subject to such terms and conditions as the State Governments may consider appropriate.

(b) what is the proper mechanism that should be provided for transportation of agriculture residue excluding the residue left in the field for manuering of the fields, if at all to the plant and what incentives could be provided to the farmers in that regard particularly in terms of the judgment of the Tribunal passed in the matter of Vikrant Kumar Tongad Vs. Union of India &Ors.

[28] *Vikrant Kumar Tongad Vs Environment Pollution (Prevention & Control) Authority &Ors* (O.A. No.118/2013) Order dated September 1, 2017

[29] *Vikrant Kumar Tongad Vs Environment Pollution (Prevention & Control) Authority &Ors* (O.A. No.118/2013) Order dated November 16, 2017

(c) In the meeting the NTPC and even the others person would deliberate with regard to the adaptation in the technology that it required to be used for agriculture residue pellets for generation of power for the plants run by NTPC.

(d) Which Department and who in the Department shall be responsible for carrying out the recommendations that may be made by this Committee.

(e) Every State would also submit a list, before the Secretary of Agriculture, of the thermal power plants or bio-mass based energy plants which are being run or are proposed to be constructed in the respective States and their capacity. It shall also be considered as to whether the Utilisation of agriculture residue as a fuel can be effective alternative for power generation.

(f) The Secretary of Agriculture may hold a meeting day to day but should ensure that the Minutes- cum-recommendations are submitted to the Tribunal in advance to the next date of the hearing. All the concerned should provide due assistance to the Committee constituted under this Order to comply with the directions without default and delay."[30]

After a long adjournment to the case, it came up for hearing on 3rd January, 2018, where an execution application was moved for the execution of the directions passed in the judgment dated 10th December, 2015.The directions passed flow from the National Policy for Management of Crop Residues, 2014 prepared by the Ministry of Agriculture, Govt. of India.

The main direction passed required the State of Rajasthan, Uttar Pradesh, Punjab, Haryana and NCT of Delhi to implement the National Policy as prepared by the Ministry.

The Policies framed were:

1. To control the burning of crop residue to prevent environment degradation and use of crop residue for various purposes like charcoal gasification, power generation, as industrial raw material for production of bio-ethanol, packing material, paper/board/panel industry, composting and mushroom cultivation etc.
2. Strategy devised to promote technologies for optimum utilization and in-situ management of crop residue.
3. Every state to provide machines, mechanism and equipments for its cost to the farmer to ensure that agriculture residue in the field are removed, collected and stored at appropriate identified sites.
4. Use crop residue in the form of pallets with permissible moisture for power generation and categorically asserted that it would be possible for NTPC to use agriculture residues directly as source of fuel in their power plants.

The Secretary, Ministry of Agriculture was directed to hold meeting with Additional Secretary, Ministry of Energy, Government of India, Principal Secretaries, and Ministry of Agriculture of the respective State Governments, senior Scientists from BHEK and Managing Director of NAFED and CMD of NTPC to deliberate and give recommendations:

1. Every State should or should not to be directed to establish its own pelletization plant with liberty to invite private players for establishing such plants.
2. Proper mechanism for providing transportation of agriculture

[30] *Vikrant Kumar Tongad Vs Environment Pollution (Prevention & Control) Authority &Ors* (O.A. No.118/2013) Order dated November 22, 2017

residue to the plants, adaptation of technology for pelletization of agriculture residue and identify the departments responsible for carrying out the recommendations made by the said committee.

3. List of thermal power plants or bio-mass based energy plants and whether utilization of agriculture residue as a fuel can be effective alternative for power generation.

The meeting was held on 28th November, 2017 and it was discussed that in State of Punjab and Haryana, few plants are there for palletisation for management of crop residue in the State and they can promote palletisation industry through private sectors if NTPC gives commitments with viable rates and long term buy back arrangements.

The Committee also recommended that the private players may be encouraged to purchase the crop residue after boiling, at the farmer's field directly for the use in their plants and transported from field to the collection centres by pelltisation unit. Torrefied biomass pellets have been suggested as a better solution for use of crop residue in plants for generation by NAFED.

States of Punjab, Haryana, Rajasthan and Uttar Pradesh have submitted the list of thermal power plants or bio-mass based energy plant in their respective States vide the minutes of 28th November, 2017.

The Hon'ble Tribunal concluded that there has not been any concrete development towards the execution of the said directions except having debate over the method of execution. Direct the States of Punjab, Uttar Pradesh, Haryana, Rajasthan and Delhi to identify sites in each district or cluster of districts for collection and storage of crop residue. The states have also been directed to detail out the description of area, capacity and manner of utilization of such residue.

The direction was passed in the light of the fact that collection and storage of crop residue is the first step in crop residue management.

On 20th February, 2018[31] the Tribunal observed that the order passed by the Hon'ble Tribunal on 3rd January, 2018 has not been complied with. The counsel appearing on behalf of State of Haryana submitted that action plan has been finalised for three states Haryana, Punjab and Uttar Pradesh in regard to in-situ Management. State of Rajasthan sought for time to prepare the action plan. NCT of Delhi sought for instructions.

Therefore, the Hon'ble Tribunal issued the following directions:

1. Chief Secretaries of each States to file a detailed Affidavit with regard to compliance of the judgment and order dated 10th December, 2015 and 3rd January, 2018 respectively and furnish the Hon'ble Tribunal with the scheme
2. State of Rajasthan submitted that only two districts were involved and the order does not apply to them, which was denied by the Hon'ble Tribunal and directed to file detailed action plan within two weeks from today. If the order is not complied with the Chief Secretary will have to present himself in person for explanation.

[31] *Vikrant Kumar Tongad Vs Environment Pollution (Prevention & Control) Authority &Ors* (O.A. No.118/2013) Order dated 20th February, 2018

On 20th March, 2018[32], Chief Secretaries of State of Haryana, Uttar Pradesh and Punjab filed affidavits and also produced the action plan. State of Rajasthan has not complied with the order of the Hon'ble Tribunal.

NCT of Delhi has not complied with the order of the Hon'ble Tribunal. Counsel for Delhi Pollution Control Committee submitted that he has got a report under the signature of the Joint Director, Agriculture and it should be accepted, but the Hon'ble Tribunal has not accepted the report, as the order expressly directed the Chief Secretary must file the affidavit and an action plan and hence cost was imposed.

The matter is listed for further proceedings on 26th July, 2018

CONTROL OF POLLUTION AND CARBON EMISSIONS FROM INDUSTRIAL UNITS

Background: The Environment Department, Uttar Pradesh government vide letter no. 183/55-2-2018/09(writ)/2016 dated 13.03.2018 issued an Office Memorandum for "Control of pollution and carbon emissions from Industrial units" wherein it was discussed that industrial emissions, vehicular emissions, developmental and construction projects are the reasons for the exponential increase in the concentration of carbon dioxide and other greenhouse gases (GHGs) in the state which is then required to be offset by plantation and afforestation activities.

The present OM proposes various measures to reduce emission of carbon dioxide by bringing in the concept of zero carbon foot print. Alternatives like solar energy, wind energy, biofuel, clean technology, afforestation are suggested to reduce carbon emissions and for carbon offsetting.

Generic nature of Proposed OM without having industry specific information

OM proposes that if any industry or developmental activity is generating more carbon dioxide than their allotted share then they can compensate it with afforestation at any location within the state which can also be used to earn carbon credits. All this has been proposed without setting up of any standard for $CO_2$to identify whether an industry or developmental activity has generated more carbon dioxide than its allotted share. The National Ambient Air Quality Standards[33] (NAAQS) talks about the ambient air quality standard for CO and not for CO_2 limit. Similarly, CPCB industry specific emission and effluent standards also do not give any data on industry specific CO_2 emission standard. Neither the UP government has formulated any industry specific standard for CO_2.

Afforestation Needs Suitable Land

As per OM, the afforestation should be done within the industrial premises, or on landfill sites or on any community land. Afforestation activity cannot be possible anywhere on any land. The National Forest Policy of 1988 as one of its objective[34] stated that, in order to achieve increased forest cover in the country, massive afforestation can be done in the denuded, degraded[35] and unproductive lands. The

[32] *Vikrant Kumar Tongad Vs Environment Pollution (Prevention & Control) Authority &Ors* (O.A. No.118/2013) Order dated 20th March, 2018

[33] http://cpcb.nic.in/air-quality-standard/

[34] Goals & Objective of NFP 1988 - 4thObjective,http://www.moef.nic.in/sites/default/files/jfm/jfm/html/national.htm

[35] The term degraded forests means land with a canopy density of less than 10 percent (shrub class) as per the FSI, Indian State of Forest Report, 2017, table 2.2

various land options proposed in OM includes landfill sites or community lands as a degraded or unproductive land. Landfill sites are designated sites[36] for final and safe disposal of residual solid and inert waste on land as per the design specifications given in the Solid Waste Management Rules 2016[37] which is supposed to be designed for at least 20-25 years and therefore, it can no way be used for other usage like afforestation purpose.

Escape of Polluter Pays Principle through the route of CSR

The very objective of this OM was stated as to comply with the direction of NGT in the matter of *Vardhaman Kaushik Vs. Union of India* (OA 21/2014), which directed to apply the Polluter Pays Principle on the polluting industries, and construction sector and directed them to reduce the pollution. The UP Government OM if asked the polluting industries to take afforestation and other activities (for carbon offsetting) through their Corporate Social Responsibility (CSR) initiatives, then it is a gross violation of the NGT direction. The application of Polluter Pays Principle should be reflected in additional spending beyond what is committed under CSR initiatives, as CSR was mandated for company the Companies Act 2013.

Community Land should be more specific

For using community land for afforestation the criterion for identification is not deliberated well, neither any insight is provided on the character of such land (location, accessibility, legal status, geography). In absence of such specifications, there will be likely chances of illegal over-taking of land by the industries in the name of afforestation program.

[37]Schedule I – Specifications for Sanitary Landfills

[37]Schedule I – Specifications for Sanitary Landfills

What are the unconventional Sources of Energy?

To reduce emissions, use of renewable and unconventional sources of energy is promoted without understanding that generation of carbon credit from such may not be lucrative given the complicated and tedious installation and maintenance process. Further, use of bio-fuel is suggested as they do not emit carbon as compared to fossil fuel which is not true as biomass burning is also considered as one of the major carbon contributor. A study titled "Carbon Emissions from burning biomass for energy" published in the paper Partnership for Policy Integrity[38]; shows biomass boiler would emit 6 times more carbon than the natural gas turbine[39]. Further, if sources of unconventional energy are not specified, there will be likely chances that industries will actually opt for the easily available means of electricity production thereby resulting in carbon emission, which ultimately defeats the purpose of the OM.

Protocol for development of Greenbelt should not encourage Lantana

A weed species Lantana is proposed for greenbelt development, which has tendency to outcompete other more desirable species, leading to a reduction in biodiversity. Its infestations alter the structural and floral composition of native communities.

[38]http://www.pfpi.net/wp-content/uploads/2011/04/PFPI-biomass-carbon-accounting-overview_April.pdf, accessed on 12th April, 2018

[39] A comparative study of two different fuel based boiler was carried to show emission from two different fuels.

Zero Carbon Footprints needs more insight

The concept of Zero Carbon footprint is explained but no clarification is given as to what all steps will have to be adopted by the polluting units.

Achieving Carbon Credit is time consuming

Carbon credit and trading is a complex and time consuming process for which a project or activity has to undergo Clean Development Mechanism (CDM) Project Cycle, which makes it impracticable for the industrial units or others to perform it at an individual/personal level. The proposed OM has not formulated any methodology for either the calculation or steps for availing benefit of carbon credit, unlike Gujarat Pollution Control Board, which has delineated a complete process of availing the benefit of carbon credit through its Emission Trading Scheme.

REFERENCES

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