

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

Original Application No. 807/2018  
With  
Original Application No. 996/2018

**News item published in "The Times of India" Authored by Paras Singh  
Titled  
"Ignoring NGT orders, Mayapuri 'graveyard' spews toxic fumes"  
With  
News item published in "The Times of India" Authored by Paras  
Singh Titled "In factory setting, Mayapuri's scraping through"**

Date of hearing: 29.01.2019

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

For Applicant(s):

For Respondent (s): Mr. Narender Pal Singh, Advocate and  
Mr. Dinesh Jindal, LO.

**ORDER**

1. The issue in these proceedings relates to massive air and water pollution being caused on account of illegal scrap business at Mayapuri in Delhi which is estimated to be to the tune of Rs. 6,000 crores per annum. In the course of the said business toxics fumes, chemicals and oils etc. are emitted, severely affecting air, water quality and public health.
2. The matter was earlier dealt with by the Tribunal on 14.05.2015 in Original application number 50(T<sub>HC</sub>)/2013, S.C. Jain Vs. Govt. of NCT of Delhi & Ors. Learned counsel for DDA and DPCC had made a statement that the units unauthorizedly operating will be closed. On the ground, the situation did not improve. As per newspaper report dated

21.10.2018 in the Times of India, Mayapuri has become 'graveyard', spewing toxic fumes severely polluting air in Delhi..

3. Vide order dated 23.10.2018, the Tribunal constituted a seven Member Special Task Force (STF) to stop illegal activities and to take proceedings against identified polluters. The Chief Secretary of Delhi was to monitor the working of the STF atleast once in a month and furnish a report to this Tribunal.
4. Report dated 25.01.2019 has been filed jointly in Original Application Nos. 807/2018 and 996/2018 by Special Secretary (Environment) -cum- Member Secretary, DPCC. The Affidavit states that the Chief Secretary held a meeting on 12.12.2018. The relevant part of the minutes of the meeting is as follows:-

*“(a) Transport Department is required to issue public notices in newspapers informing the public about the scrapping guidelines prepared by them.*

*(b) Ministry of Road Transport and Highways, GOI is required to formulate a policy of scrapping. Transport Department may formally send the guidelines prepared by them.*

*(c) The representative of MoRTH, GOI informed that Ministry has not yet constituted a Committee as per the order of the Hon'ble NGT Chief Secretary desired quick action on the issue.*

*(d) Commissioner (Transport), GNCTD will be the representative of the Govt. of Delhi in the proposed Committee and a DO will be sent to the Secretary, MoRTH by the Chief Secretary. Commissioner (Transport) will put up the file for sending the DO letter.*

*(e) Representative of CPCB informed that they have already framed guidelines, in the year 2016, for environmental sound management of End of the Life Vehicle (ELV).*

(f) Chief Secretary directed the representative of the CPCB to give it in writing about the compliance of the direction regarding handling, processing and disposal in para no. 7 of the order of the Hon'ble NGT dated 27.11.2018.

(g) Divisional Commissioner informed about the survey by the SDMC which found the number of people involved in scrapping as 400. Data will be supplied by the Revenue Department to DSIIDC, South MCD and DPCC for necessary action.

(h) Chief Secretary directed DSIIDC and South MCD to clear the encroachments in the Mayapuri Industrial Area where scrap market exists. DSIIDC, South MCD and DPCC shall take necessary action as per the relevant statute(s).

(i) Chief Secretary directed the Commissioner (Transport) to obtain inputs from stakeholders and prepare an action plan as per the order of the Hon'ble Tribunal.

(j) Representative of DDA informed that the present Master Plan 2021 does not have any provisions for scrap market/yard in NCT of Delhi. She opined that the present site being industrial use zone, scrapping may be allowed. Chief Secretary has directed DDA to submit the provisions of the MPD 2021 in writing.

5. The STF held meetings on 19.12.2018, 04.01.2019, 09.01.2019 and 16.01.2019. In the meeting dated 19.12.2018, it was noted:-

*"The representative of DSIIDC informed that shops/units, operating in the scarp market of Mayapuri, were allotted by the DDA and that DDA is the lessor. The DSIIDC was only been given the task of maintenance of the roads, drains etc. And that it does not collect any revenue from the area nor does it regulate any of the operations of the industrial units.*

*It was informed by the DPCC that the shops/units would have been allotted some decades ago and were meant for light engineering activities. These units have been allotted on the lease hold basis and only violation of the lease agreement makes that lessee liable for action/ cancellation of the lease.*



*The representatives of Delhi Police informed that they have been taking regular encroachment removal action and have seized a number of items including gas cutters. Similarly, AO/West Zone, SDMC informed that encroachment removal action has been taken regularly in the area and a number of items have been seized from the roads.”*

6. Closure directions have been issued to 34 units under the Water (Prevention and Control of Pollution) Act, 1974, as such units did not have any Consent to Operate. 812 premises were surveyed. 18 units have been challaned under Section 416 of DMC Act by South DMC. Delhi Police has launched prosecution against encroachers that is 02 units under Section 283 of Indian Penal Code, 05 Units under Section 66 of Delhi Police Act in December 2018 and against 04 units under Section 283 of IPC, 01 unit under Section 583/97 of Delhi Police Act and 02 units under Section 66 of Delhi Police Act. Encroachment removal action has been taken by South Delhi Municipal Corporation and Delhi Police on six occasions.
7. The above affidavit shows that no amount has been collected from the polluters towards damages for loss to the environment even after finding that 34 units were engaged in illegal industrial activity without requisite Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and the Air (Prevention and Control of Pollution) Act, 1981 (Air Act). In view of the severity of the problem the area in question and Delhi is facing, this number is too less and demonstrates lackadaisical attitude of the authorities. In the minutes of the meeting dated 12.12.2018, annexed to the affidavit as annexure C-1, the statement of representative of DDA is noted that in the Master Plan 2021,

there is no provision for scrap market/yard in Delhi, but in the industrial zone scrapping may be allowed. The Chief Secretary also directed DSIIDC and South DMC to clear the encroachments in the Mayapuri area where scrap market exists.

8. The above affidavit shows a grim picture of lackadaisical performance by the statutory authorities, including the DPCC. Its stand that only lessor is to take action and even if there is violation of norms of environment, DPCC has no responsibility is quite deplorable and avoidance of responsibility ignoring the mandate of law under the Water Act and the Air Act.

9. In the meeting dated 14.01.2019 following decision were taken:-

*“1. Chief Secretary was informed about the order issued by DPCC constituting STF headed by the DC of West Zone of South MCD.*

*2. Dy. Commissioner of West Zone of SDMC informed that two meetings of STF have been convened by him and a survey of Blocks in question has been carried out by a team consisting of officials from DSIIDC, South MCD, DPCC, Delhi Police, Delhi Cantt. sub-division, DDA and the report is being finalised.*

*3. Chief Secretary directed DPCC to issue directions to DSIIDC and DDA to cancel the allotment of the plots in which the occupiers are using premises for purposes other than for which the same was allotted. Survey report be forwarded to the said agencies for necessary action.*

*4. DC of West Zone, SDMC informed that encroachments in the Blocks in question do not exist as of now. Chief Secretary directed South MCD and DSIIDC to keep constant vigil on encroachments and remove the same from time to time.*

*5. Chief Secretary directed to file ATR before NGT through e-mail quickly.*

*6. Transport Commissioner informed that a DO letter from Chief Secretary has already been sent to Secretary of Ministry of Road Transport and*

*Highways, GOI as decided in the meeting dated 12.12.2018.*

*7. Transport Commissioner informed that MPD 2021 does not have any provision for scraping in NCT of Delhi and so is not allowed.*

*8. Ministry of Road Transport and Highways, GOI is required to formulate a policy of scraping.”*

10. In the meeting held on 19.12.2018, it is *inter-alia* noted as follows:-

*“CPCB informed that their activities are coordinated through the DPCC with focus on controlling polluting activities. DPCC representative informed that it does not directly takes action against any polluting unit. Wherever it notices pollution /violations of its consent to operate, it issues directions to the SDM concerned for closure and to Delhi Jal Board and BSES for disconnection. However, it was also informed that no such action has yet been taken in the scrap market.”*

11. The above also shows failure of DPCC.
12. It is an acknowledged fact that the air quality in Delhi is extremely unsatisfactory<sup>1</sup>.
13. According to a survey, 15,000 persons died prematurely in Delhi in the year 2016. Delhi was ranked as third in the list of cities reporting most deaths due to air pollution. Premature deaths in Mumbai, Kolkata, Bangalore and Chennai are reported to be between 5,000-10,000 in 2016.<sup>2</sup> Thus, strong precautionary and remedial measures are required, as earlier observed by this Tribunal in some cases.<sup>3</sup> Heavy amounts of

<sup>1</sup><https://www.timesnownews.com/mirror-now/in-focus/article/pollution-level-today-delhi-ncr-noida-gurgaon-gurugram-mumbai-bangalore-aqi-air-quality-index-30-january/356478>- **Delhi air pollution today: AQI at 'poor' 266**

<sup>2</sup><https://www.thehindu.com/sci-tech/energy-and-environment/india-ranks-177-out-of-180-in-environmental-performance-index/article22513016.ece> <https://www.ndtv.com/delhi-news/delhis-air-pollution-has-caused-of-death-of-15-000-peoplestudy-1883022>, Original Application No. 95/2018, order dated 11.01.2019: wherein this Tribunal noted inadequate performance of PCBs and directed for their performance audit.

<sup>3</sup> O.A. No. 681/2018, O.A.No. 400/2017, order dated 02.11.2018: wherein the Tribunal directed the authorities to take immediate steps to stop activities that are contributing to the pollution and prepare action plan.



damages must be recovered for any illegal polluting activities found. In the present case, despite severely polluting activities, the statutory authorities are consistently failing to perform their duties of recovering damages caused to the public health and to environment and have chosen to shut their eyes in breach of trust reposed by law. Higher authorities are complacent and not taking any punitive action for such blatant failure jeopardising health and welfare of citizens. Such failures are rampant and repeatedly noted by this Tribunal in the context of Delhi itself in *All India Lokadhikar Sangathan v. Govt. of NCT of Delhi & Ors.*<sup>4</sup>, *Satish Kumar v. Union of India & Ors*<sup>5</sup>, *Mayank Manohar & Paras Singh, Reporter Times of India Vs. GNCTD & Ors.*<sup>6</sup>, *Westend Green Farms Society Vs. Union Of India & Ors.*<sup>7</sup>, *Manoj Mishra Vs. Union of India & Ors.*<sup>8</sup>, *Aryavart Foundation vs. M/s. Vapi Green Enviro Ltd. & Ors.*<sup>9</sup>, and in other cases in *Threat to life arising out of coal mining in south Garo Hills district Vs. State of*

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<sup>4</sup> Execution Application No.11/2017 in O.A. No.159/2013, order dated 16.10.2018: the Tribunal directed Delhi Government to pay a sum of Rs. 50 Crores as compensation for damage to the environment thereby continuing stainless steel pickling industries covered in prohibited/negative list of industries as per Master Plan of Delhi, 2021.

<sup>5</sup> Original Application No. 56(T<sub>HC</sub>)/2013, order dated 03.12.2018: the Tribunal has directed Delhi Government to deposit a sum of Rs. 25 Crores towards the cost of damage to the environment for its failure to regulate the activities of illegal industrial clusters.

<sup>6</sup> Original Application No. 601/2018, order dated 24.01.2019: “it is necessary to take prompt measures to prevent further damage to the environment and to uphold the rule of law in the manner suggested by the two members Committee. This may require exercise of statutory power to prohibit polluting activity, initiate prosecution, and recover cost of damage to the environment.”

<sup>7</sup> Original Application No. 400/2017, order dated 02.11.2018: wherein the Tribunal observed that “Liberty to enjoy celebrations is welcome but not without any responsibility or accountability for protection of peace and comfort of others. If enjoyment by creating noise pollution, air pollution, water pollution, obstructing free flow of traffic irreversibly damages our limited natural resources in violation of law, such enjoyment has to be checked. Avoiding wasteful expenditure, adversely affecting the health and welfare of fellow citizens, is against the spirit of Fundamental Duties under the Article-51A of the Constitution of India. Enjoyment of few at the cost of happiness of others is neither the culture of this country nor consistent with the constitutional values” (para 37)

<sup>8</sup> Original Application No. 6/2012, order dated 29.01.2019: wherein the Tribunal held that, “issue of pollution of River Yamuna has been pending for more than thirty years. Unfortunately, there is no satisfactory progress. Failure of authorities is affecting life and health of citizens and threatening the existence of major River which also affects River Ganga. Precautionary as well as remedial actions are utmost significant.”

<sup>9</sup> Original Application No. 95/2018, order dated 11.01.2019: wherein this Tribunal noted inadequate performance of PCBs and directed for their performance audit.

*Meghalaya & Ors.*<sup>10</sup> , *Compliance of Municipal Solid Waste Rules, 2016*,<sup>11</sup>, *News item Published in 'The Hindu' authored by Shri. Jacob Koshy Titled "More river stretches are now critically polluted: CPCB"*<sup>12</sup> and in *News Item Published In 'The Times of India' Authored by Shri. Vishwa Mohan Titled "NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15"*<sup>13</sup> Needless to say that apathy of authorities to environment is noticeable at various levels.

14. The above shows that in-spite of statutory framework and binding legal precedents and orders, violation of law is rampant. Stern approach is, thus, required against the polluters as well as statutory authorities conniving or colluding with the polluters. The statutory authorities are trustees of the people and if their failure results in harm to the citizens or to the environment, the Court/Tribunal has to adopt strict approach to make them accountable so that such action acts as deterrent to prevent further harm.

15. To uphold the Rule of Law and accountability of those who are trustees of environment, it is necessary that the state machinery is required to compensate for their negligence and failure which may act as a deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. This is required

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<sup>10</sup> Original Application No. 110 (THC)/2012, order dated 04.01.2019, wherein this Tribunal laid down that state authorities colluding with polluters are equally liable to pay environmental compensation

<sup>11</sup> Original Application No. 606/2018, order dated 31.08.2018, wherein this Tribunal has constituted State-wise Committees to ensure effective implementation of SWM Rules, 2016

<sup>12</sup> Original Application No. 673/2018, order dated 20.09.2018 - wherein this Tribunal constituted River Rejuvenation Committees to prepare and execute Action Plan in time bound manner for rejuvenation of polluted river stretches: wherein this Tribunal dealt with the issue of compliance of judgement in *M.C Mehta v. UoI* (2004) 6 SCC 588 directing shifting of industries. The Tribunal again noting inaction of concerned authorities imposed environmental compensation and directed preparation of Action Plan for compliance of PWM Rules

<sup>13</sup> Original Application No. 681/2018, order dated 08.10.2018: wherein the Tribunal directed to prepare Action Plan for non-attainment cities and aimed at bringing the standards of air quality within prescribed norms.



not only as a part of 'polluter pays principle' which applies not only to actual polluters but also to those who collude with polluters or enable pollution to be caused and also for the negligence of public duties, adversely affecting the citizens in terms of threat to their lives and livelihoods especially of poor. While actual damages may be determined on the basis of objective data, if available, absence of precise data is not a ground not to undertake the exercise of determining such damages based on legal principles, including *res ipsa loquitur*, having regard to common course of events etc. The assessment of quantum of loss to the environment is not free from difficulty as it involves complex principles of environmental economics. The pristine environment is indeed priceless. These principles are settled in decisions of Hon'ble Supreme Court.<sup>14</sup>

16. We accordingly direct the DPCC to forthwith perform its duty instead of abandoning the same and also the Chief Secretary of Delhi to closely oversee the working of DPCC so that the objective for which it has been set up can be achieved in letter and spirit.

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- a) Sterlite Industries (India) Ltd. v. Union of India (2013) 4 SCC 575 : ¶ 47- To the effect that compensation must be deterrent having regard to paying capacity and magnitude of the polluter.
- b) T.N. Godavarman Thirumulpad v. UOI & Ors. (2006) 1 SCC 1 : ¶ 1- That protection of environment is responsibility of the State.
- c) Indian Council for Enviro-Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212 : ¶ 67 and Vellore Citizens Welfare Forum v. UOI , (1996) 5 SCC 647 : ¶ 11 to 13- Polluter Pays Principle extends not only to compensate harm to the victim but also to the environment.
- d) M.C. Mehta v. Kamal Nath (1997) 1 SCC 388 : ¶ 10 -Public Trust Doctrine, ¶ 24 Imposition of exemplary damages to be paid by polluter as a measure of as deterrence.
- e) M.C. Mehta v. UOI & Ors., W.P © No. 13029/1985 order dated 24.10.2017, Supreme Court : Liability of public functionaries for inaction.
- f) MCD v. Uphaar Tragedy Victims Association (2011) 14 SCC 481 : ¶ 99, 100- Principles of Private Tort do not control failure of State functionaries. Damages can be punitive and exemplary. Cost to cost method may not be applied in all situations.
- g) Vadodra Municipal Corporation v. Purshottam v. Murjani & Ors. (2014) 16 SCC 14 : ¶ 17 - monetary liability can be fastened for failure of statutory duty.
- h) M. C. Mehta & Anr. v. Union of India (1987) 1 SCC 395 : ¶ 32 -measure of compensation to be co-related to magnitude and capacity of enterprise, compensation must have deterrent effect

17. Mere passing of orders by the Tribunal is of no value unless the same are faithfully executed and the prescribed environmental standards are maintained. Execution is in the hands of the authority. As an executing court, it is not only the right but also the duty of this Tribunal to take such measures as may be necessary to ensure compliance. Mode of execution is laid down in CPC (Section 51), i.e. arrest and detention, appointment of a receiver or in such manner as nature of relief may require. There are provisions for prosecution, including of heads of departments of the Government. On 'Polluter Pays' principle, damages can be recovered not only from the polluters but also from the State functionaries who collude with the polluters. The authorities have not been at all vigilant in their performance of duties to protect environment.

18. It will be in the fitness of things, having regard to the facts and circumstances of the case that the authorities are required to furnish performance guarantee. In the factual background noticed above, we direct the Delhi Government to furnish Performance Guarantee in the sum of Rs. 5 crores to the satisfaction of CPCB within one month for ensuring compliance of the above directions.

19. Since the connected issue of taking action against illegally operating units in violation of directions of Hon'ble Supreme Court in M.C. Mehta matter is the subject matter several order of this Tribunal, including order dated 24.01.2019 in Original Application no. 601 of 2018, Mayank Manohar & Paras Singh, Reporter Times of India Vs. Govt. of NCT of Delhi & Ors. (*supra*) We are of view that the present issue may also be overseen by the Oversight Committee constituted in terms of

the said order headed by Justice Pratibha Rani, former Judge, Delhi High Court.

20. Let the Chief Secretary, Govt. of Delhi to furnish further report in the matter on 11.03.2019 on which date the Chief Secretary is to appear in person in Original Application No. 606/2018. In addition to report on issues mentioned in order dated 16.01.2019 in Original Application No. 996 of 2018 need not be listed on 11.04.2019, the scheduled date.

21. It is open to Delhi Government to take action against erring the officers and also to recover the amount from the polluters which may be deterrent against polluting activity at the cost of public health and environment. Such activity must be made unprofitable for protection of the environment.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 29, 2019  
Original Application No. 807/2018  
With  
Original Application No. 996/2018  
AK