

AIR LAW & POLICY

Reporter

Judgment Alert!

November 10, 2016

The National Green Tribunal in continuation with the discussions yesterday (10.11.2016) commenced the hearing by inviting from each State (Delhi, Haryana, Punjab, Rajasthan and Uttar Pradesh), data recording the highest and the lowest ratio of fine Particulate Matter (PM) in those States.

The Tribunal then asked for a classification of the range of Particulate Matter that if present in the air will cause harm to human health and the extent to which its presence can be said to be of negligible harm. The technical experts present provided with the prescribed parameters for PM that would imply tolerable pollution level.

With this consideration, the Tribunal then passed its final order.

Order

“Air Pollution in Delhi and the surrounding areas have touched the highest levels in the last ten days or so. It had adversely affected the health of the public and all generations without any exception.

The Ambient Air Quality was hazardous and it affected public health at large. School going children, infants, office going class, professionals and the whole strata of the society suffered.

It is appropriate at this stage to refer to the Indian Air Quality parameters that were recorded by the Central pollution Control Board, Delhi Pollution Control Committee and the State Pollution Control Boards of the neighbouring States particularly the States of Haryana, Uttar Pradesh, Punjab and Rajasthan.

The standard norm of PM_{10} is $100\mu g/m^3$ and $60\mu g/m^3$ for $PM_{2.5}$

In Anand Vihar in NCT Delhi, the values were recorded as $1685\mu g/m^3$ for PM_{10} (highest), these values were found to be utterly perilous.

The average value of Delhi was recorded as $950\mu g/m^3$ for PM_{10} and $590\mu g/m^3$ for $PM_{2.5}$ respectively as on 30th October, 2016.

According to NCT Delhi, the recorded value of PM_{10} was $1684\mu g/m^3$ and $PM_{2.5}$ was $1331\mu g/m^3$ respectively.

In Faridabad, even on 7th November 2016, the values recorded were 414 $\mu\text{g}/\text{m}^3$ and 985 $\mu\text{g}/\text{m}^3$ respectively.

In Ghaziabad and Noida, the value recorded for PM₁₀ was 720 $\mu\text{g}/\text{m}^3$ and for PM_{2.5} was 828 $\mu\text{g}/\text{m}^3$ respectively.

Even in Mandir Marg, on 2nd November, the value recorded was 985 $\mu\text{g}/\text{m}^3$.

However, the counsel appearing for the State of Rajasthan submitted that they do not have the instrument to measure PM_{2.5}

This data provided by different States show that the Indian Air Quality in all these area is hazardous to human health.

In light of the above statistics, the Tribunal was compelled to direct personnel of the concerned Secretary of each State to take immediate measures.

All the officers appeared before the Tribunal and the matter was heard for three days continuously.

The major disclosure made to the Tribunal was that all the concerned officers conceded that there was hardly any enforcement or proper implementation of law, judgements and the orders of the Tribunal.

However, hardly any suggestion came forward from any quarters on how the implementation can be ensured.

The major contributors of Air Pollution in all the mentioned States more particularly NCT Delhi are:

- 1. Construction Activities and transportation of construction material;*
- 2. Burning of solid municipal wastes and other wastes;*
- 3. Burning of agricultural residue;*
- 4. Vehicular pollution;*
- 5. Dust on the roads;*
- 6. Industrial and power house emissions and fly ash;*
- 7. Emissions from hot mix plants and stone crushers.*

All the above-mentioned contributors were deliberated upon at length before this Tribunal from time to time and detailed orders of all the facets under different orders were considered. Different orders dated 25.11.14, 04.12.14, 7.4.15, 10.04.15, 28.04.15, 18.05.15 and 11.12.15. All these orders of the judgements dealt with various sources of pollution except pollution from agricultural residue burning. This aspect was dealt with in detail in the comprehensive judgement of the case Vikrant Tongad Vs. Environment Pollution Authority & Ors decided on 10.12.2015. The judgement in the said case provided with a precautionary, preventive as well as an incentive oriented step that the State of Punjab was ready to take in order to make sure that agricultural residue burning was

stopped. The case thereby provided with an obligation upon the State to provide incentives to the farmer to stop burning crops or agricultural residue. The State of Punjab was called upon to provide incentives and requisite machines for distribution of agricultural residue from fields and its safe transportation to power generation plants, cement plants, biomass plants and its distribution as manure.

We must notice that all the States particularly the state of Punjab has not been able to implement the judgement in its own state.

It is also discerned that 70% of the land covered by agricultural activity was put on fire during the period before harvesting. Haryana also saw a large coverage of agricultural crop burning. U.P and Rajasthan were no exception although their contribution was not greater than that of Punjab.

This aspect needs to be examined and rigorous steps need to be taken by the respective state to ensure that there is no agricultural crop burning in the future. We would be passing directions in that respect separately.

We may also notice that the World Health Organization (WHO) has published a report in September. The report lists 20 (twenty) most polluted cities of the world, 10 (ten) of which are located in India. Namely:

1. Delhi
2. Gwalior
3. Patna
4. Kanpur
5. Raipur
6. Ahmadabad
7. Firozabad
8. Lucknow
9. Ludhiana
10. Amritsar

A study had also been conducted by IIT Kanpur on behalf of NCT Delhi and it stated sources of pollution which we have already mentioned above. Out of 22.7% of contribution from the transport sector, it is estimated that 66% results from diesel trucks among other contributors.

The study also shows that the level of $PM_{2.5}$ and PM_{10} is almost 17 (seventeen) times of the prescribe limit and has serious adverse impact on public health. Ministry of Environment and Forest (MoEF) has also brought out an Air Quality Index and it has termed 400-500 range of PM_{10} as severe pollution. This shows that the severe category carved out by MoEF has been left far behind as the PM_{10} levels touched $1990 \mu g/m^3$ in Delhi. This is the extent and kind of pollution that citizens of Delhi are facing. The basis and fundamental question that rises for consideration is whether the State Government and NCT Delhi can provide any justification acceptable to science and law.

The State was questioned as to why the people in Delhi should be exposed to such pollution and suffer from various

diseases. This equally applies to other States.

The Supreme Court of India backed and declared that Article 21 of the Indian Constitution has to be extended to include the right to a decent and clean environment as a Fundamental Right. The Fundamental Right is a core right of the people and the State must take actions to protect and enforce it.

We must say that in the past 3 (three) days not even a single point has been raised before the Tribunal by any of these States and the authorities have to be held answerable for not taking steps to control pollution in these zones of the country and most particularly Delhi.

The submissions made by the officers along with the learned council were only their inability to implement. We find no merit in any submissions made with respect to the inability to enforce law and judgement of the Tribunal where it was unambiguous and even provided for mechanisms to control and deal with the current pollution levels.

The State holds a constitutional duty to protect the environment and provide clean air to its citizens. The principle of intergenerational equity does not support any development even if carried under the Doctrine of Sustainable Development when the next generation will be exposed to the worst

environmental and ecological environment.

The state owes a constitutional duty to protect public health and to provide at least clean air for its citizens to breathe. The children of today have a right to breathe clean air and play in the playgrounds rather than to be ordered to be shut down in homes.

The present generation in any field has duty in law and morality to provide a clean and better earth to the next generation.

All the concerned authorities, irrespective of their status must show concern to improve the environment in these States and most particularly in NCT Delhi.

As we have noticed that the Indian Air Quality in these States and particularly in NCT Delhi have reached limits that are unimaginable, unacceptable and a clear indication of negligence on the part of the concerned authorities to the disadvantage of human health.

The prescribed annual limit of PM_{10} and $PM_{2.5}$ is $100\mu g/m^3$ and $60\mu g/m^3$ respectively. The experts before us submitted that the daily average is even lower i.e. $60\mu g/m^3$ and $40\mu g/m^3$ respectively. If the daily average has to be taken into consideration, then the violation is practically 20 (twenty) times in excess. This is disastrous. It may be

appropriated that the concerned authorities in the Central Pollution Control Board looked at air pollution in a different way. It appears that, to aim at the prescribed standards would be a dream difficult to achieve.

The normal pollution in contradiction to severe pollution, a situation of environmental emergency has to be examined and controlled by taking different measures depending on the situation. For example, when the PM values are recorded in excess of $431\mu\text{g}/\text{m}^3$ in PM_{10} and $351\mu\text{g}/\text{m}^3$ in $\text{PM}_{2.5}$ the pollution has to be treated as severe. For such scenarios, emergency measures have to be taken to control Air Pollution in these States once it crosses the above limits. These limits have been suggested by experts as Air Quality Index of NCT Delhi.

Normal steps to control Air Pollution and provide clean air to the people must be taken. Once the values cross the prescribed standards, then it must be the duty of the State to take emergency measures which would include preventive measures that require enforcement of the highest degree in the interest of public health.

In light of the above discussions, we now proceed to record the directions to be passed in the interest of environment, public health and Indian Air Quality

Standards and implement the Fundamental Rights granted.

All the judgements and orders passed by the Tribunal on 26.11.2014, 04.12.14, 07.04.15, 10.04.15, 18.05.15, 28.04.15, 11.12.15 in the case of Vardhaman Kayushik Vs UoI and the order dated 10.12.15 in the case of Vikrant Tongad Vs. Environment Pollution Authority & Ors shall be applicable mutatis mutandis.

These directions and orders provide for preventive, precautionary and punitive measures which will protect and ensure that the sources of pollution as mentioned above do not cause further Air Pollution and bring the Ambient Air Quality values below what was seen in the last ten days in the States.

All the concerned officers and authorities, Pollution Control Boards and other corporations would be responsible for proper implementation of the directions in this order in relation to the different sources of pollution.

We constitute the following central monitory committee and state committee for ensuring proper implementation of the law and the judgements passed relating to prevention of Air Pollution.

The central monitory committee shall be constituted with the following members:

- Secretary, MoEF (Chairman)
- Chief Secretary of each State
- Member Secretary, CPCB

- *Member Secretary, SPCB*
- *Professor Mukesh Khare, IIT Delhi*
- *The member Secretary of each State can bring one expert with him*
- *Additional Director General Of Health*

The committee will meet once every two months by rotation in all States. The first meeting of the committee will be held at NCT Delhi.

This committee shall ensure implementation in regard to various sources of pollution, particularly agricultural residue burning.

This centralised committee shall provide guidelines or directions to the State committees for prevention and control of Air Pollution in relation to all aspect.

The committee shall take important status report and verify the same and submit the final report after every 3 (three) months to the Tribunal. The report shall have guidelines, recommendations and shall record satisfaction in respect to the implementation of directions.

The committee would, in the event that it finds any officer of any cadre or by independent state body fail to implement the law and judgements in relation to the control of Air Pollution; it shall recommend initiation of disciplinary proceedings without any hesitation. It will be the responsibility of the

committee to verify that the directions are implemented on ground level and not merely on paper.

The committee shall prepare Action Plans in order to ensure proper implementation of the orders and enforcement of the same with respect to prevention of air pollution and circulate the same. The committee shall also publicize requisite matters through media.

The Chief Member of the Centre and the State committee shall be at liberty invite any officer of another department for effective execution of the objects of the committee. If invited, the officer cannot decline to appear before the committee.

The State level committee shall hold meetings every month. The first meeting of the centralised committee shall be held on 17th November 2016 while the State committee shall hold its first meeting on 24th November 2016. The State committee shall submit its report to the centralised committee at least three days before the centralised committee's first meeting.

The most important aspect in regard to which directions are issued is in lieu of what the States have been facing in the last ten days.

Where Air Pollution reaches alarming heights and leads to a severe state, then immediate steps have to be taken as

environmental emergency. We have noticed that 431 $\mu\text{g}/\text{m}^3$ PM₁₀ and 251 $\mu\text{g}/\text{m}^3$ PM_{2.5} exceed the prescribed parameters and this is a situation of severe pollution.

If the situation reaches such levels, then all the States shall take preventive and precautionary measures to control the pollution as indicated in the judgements and in law.

The States shall take the following measures:

- 1. Ensure water sprinkle through helicopters all over the cities where the values of PM are in excess of the above-mentioned standards;*
- 2. Provide Happy Seeders in agricultural fields immediately and ensure removal of agricultural residue and its distribution to power generation plants, cement plants, biomass plants;
The State government shall issue orders to all such companies and plants to discharge CSR and remove agricultural residue by providing the farmers with money as consideration.*
- 3. All the stone crushers and brick kilns are directed to shut down;*
- 4. All power generation plants, brick kilns, hot mix plants if found to be emitting pollutant in excess of the prescribed standards will be ordered to be shut down and take remedial*

measures to bring the standards down;

- 5. All construction activity and transportation of construction material shall be stopped till the Indian Air Quality Standards are brought down below the hazardous levels;*

The authorities will ensure that all machinery in operation will comply with the prescribed norms and upon any default by the plant, the plant or the industry will be directed to be shut down and such machines confiscated.

NCT Delhi is directed to provide schools, most particularly the government schools with air purifiers.

General Directions

The committee shall prepare a complete Action Plan for environmental emergency and elaborate prevention and control of Air Pollution when the parameters are in excess of the prescribed standards.

This Action Plan should be in line with the judgements and orders passed with the liability to provide with additional recommendations.

The Action Plan must be submitted to the centralised committee which will approve and fix a period for its implementation.

Each of the States shall in its first meeting notify one district which has major agricultural land use. This district shall be taken as a model district for implementation of the directions and orders relating to complete stoppage of agricultural residue burning.

The committee shall ensure that all the incentives as described in the judgement are provided to the district.

There should be a preventive, precautionary and incentive based step well in advance to the next harvesting season.

The authorities shall conduct field inspection and maintain a field inspection report which shall record if there has been complete stoppage of crop residue burning along with the reasons for the same.

All State governments, public authorities, development agencies shall introduce vacuum machines to remove dust and waste from roads. Manual cleaning of the roads should be stopped in a gradual manner and mechanical cleaning of the same should be introduced.

The police authorities and local bodies shall ensure that when mechanised cleaning of the roads are taking place, no cars are parked on either sides of the road.

It will be ensured that leaves, municipal wastes, plastic,

agricultural residue and oil are not burnt in the open or otherwise.

Strict punitive action will be taken if the Tribunal's directions in this regard are not complied with.

Further, 50% of the staff of corporations, development agencies and concerned government department should be on field inspection to ensure proper implementation of the Tribunal's directions. All the staff shall submit a report to the officer in charge who will submit the said report to the state committee bringing to its notice the effective implementation and stating whether it was satisfactory.

The traffic police and PwD shall ensure free flow of traffic and see that there are no undue jams.

The person who violates the direction of the Tribunal in regard to vehicular pollution should be strictly made liable for payment of environmental compensation. Such compensation shall be recovered by the concerned department and representative of the authority including the police.

We have been made to understand that 3 (three) lakh litre of petrol is burnt in NCT Delhi everyday by stationary vehicles. The committee shall consider this aspect with utmost priority.

We direct all State governments to issue guidelines with respect to manufacturing and burning crackers

in Delhi jurisdiction keeping in view the considerations for allowing crackers which must be least smoke and noise producing.

All the concerned authorities shall create social awareness in schools and colleges regarding the disadvantages and the impact on public health from burning crackers.

We also direct the State government, particularly Punjab to withdraw the incentive given to the farmers in case of default.

The order of the Tribunal regarding banning of petrol vehicles older than 15 years and diesel vehicles older than 10 years shall be implemented rigorously.

The Tribunal further directs that the concerned authorities of NCT Delhi will ensure that all parks, flyovers and road sides are covered with greenery so as to help increase the level of oxygen. Efforts should also be made to cover open land.

The authorities must ensure that waste dumps are not put on fire in any circumstance.

The Tribunal shall issue notice for payment of compensation to all offenders and defaulters.

The committee shall also ensure that the State takes steps to provide healthcare to all persons suffering from ailments caused due to Air Pollution.

All the environmental compensations shall be utilised for prevention of air and water pollution.”

The case is listed for further directions of the bench on 9th January 2016.

