

# AIR LAW & POLICY

## Reporter

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

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### INTRODUCTION

The Air (Prevention and Control of Pollution) Act, 1981 was the first comprehensive legislative recognition of the problem of air pollution. It was enacted at a time when the problem of air pollution was still at a nascent stage. Over the years, the problem of air pollution has reached gigantic scale in India with many of the world's most polluted cities being located in India. In such a scenario, the implementation of the Air Act is of critical importance. Unfortunately, the Air Act is among the most neglected legislation in India. The latest report of the National Crime Records Bureau stands testimony to the sorry state of affairs. In 2015, only 50 offence cases were filed under the Air Act in the whole country, of which 42 were in Maharashtra only. Judicial activism to clean up the air is limited to passing judicial orders for enforcement of a citizen's right to clean air. It is generally ad hoc and based on the existence of litigation before the National Green Tribunal or the High Court or Supreme Court. This unfortunately, does not provide for a systematic and comprehensive mechanism to deal with the issue of air pollution.

There is thus a critical need to ensure that the Air Act is implemented in letter and spirit. Information gap is one of the reasons for the lack of implementation. We are therefore initiating this **Air Law and Policy Reporter** in order to provide updates of latest legal development in the area of air pollution laws in India. This report will include latest notifications and amendments in both the Central as well as the State laws, Judgments and Orders passed by Courts and specially the National Green Tribunal. We hope that Reporter will assist in taking a more informed action on tackling the problem of air pollution in India.

## AIR POLLUTION RELATED OFFENCES IN INDIA IN 2015

The *Crime in India Statistics* published annually by the 'National Crime Records Bureau' (NCRB) started including 'environment related offences' from the year 2014. It has been only two years since such data has been made available for analysis of the trend of such offences. The Crime in India Statistics contains a dedicated chapter on 'environment related offences' which at present covers only five environment statutes.

As per the statistics, a total of 299 offences were reported under the Environmental (Protection) Act, 1986 (EPA) in the year 2015. Only 50 offences were reported in the same year under the Air (Prevention and Control of Pollution) Act, 1981 (Air Act). The NCRB 2015 data does not however reveal the number of persons actually convicted out of the total number of cases registered.

It is interesting to note that 42 out of 50 offences recorded under the Air Act in 2015 were from the state of Maharashtra alone and the remaining offences were reported from Rajasthan, Karnataka, West Bengal and Jharkhand.

*The World Health Organisation: Global Urban Ambient Air Pollution Database 2016* (WHO Report) report published a list of 20 most polluted cities in the world and 10 out of the 20 cities published were cities located in India. These included Gwalior, Allahabad, Patna, Raipur, Delhi, Ludhiana, Kanpur, Khanna, Firozabad and Lucknow. However, no offences under the Air Act have been reported in these cities.

The Air Act provides that where any person establishes or operates any industrial plant without the consent order of the State Board, or exceeds prescribed standards for emission of air pollutants as laid down by the State Board,

or fails to comply with the directions issued by the Board, then such persons shall be punished with a minimum imprisonment of one year and six months and fine [Section 37 of the Air Act]. Further, the Act also states that the court shall take cognizance of any offence when a complaint is made by (i) a Board or an authorised officer, (ii) any person who has given notice of not less than sixty days in the prescribed manner to make a complaint to the Board or authorized officer [Section 43 of the Air Act].

The NCRB data 2015 reveals inaction and negligence on the part of the members and officers of the Pollution Control Board in registering complaints under Air Act which is a part of their official duty.

*'The Cost of Air Pollution: Strengthening the Economic Case for Action, the World Bank and Institute for Health Metrics and Evaluation University of Washington, Seattle, 2016'* reveals that air pollution is the fourth leading fatal health risk worldwide after metabolic risks, dietary risks and tobacco smoke. Such statistics reinforces the fact that there is an urgent need to reduce and control air pollution. The enforcement agencies under EPA and the Air Act need to discharge their duties not just effectively but also in a proactive manner so that India is able to take charge of the problem of air pollution.

## REFERENCES

1. Crime in India 2015 Statistics, National Crime Records Bureau, Ministry of Home Affairs.
2. The World Health Organisation: Global Urban Ambient Air Pollution Database 2016.
3. The Cost of Air Pollution: Strengthening the Economic Case for Action, the World Bank and Institute for Health Metrics and Evaluation University of Washington, Seattle, 2016.

## **SUPREME COURT LIFTS BAN ON PRIVATE CARS AND SUVs USING DIESEL WITH 2000cc AND ABOVE ENGINE CAPACITY AND TACKLES THE ISSUE OF AIR POLLUTION IN DELHI AND NCR**

The Supreme Court of India in the case *MC Mehta Vs. Union of India* passed several orders as a measure to deal with the issue of Air Pollution in Delhi.

### Lifting the diesel ban

In the order dated August 12, 2016 and further orders thereafter, the Supreme Court lifted the ban on diesel vehicles permitting registration of all diesel cars/SUVs of 2000cc capacity and above within Delhi or NCR region upon the deposit of 1 % of the EX-show room price towards environment protection charge. This order was passed post manufacturers such as Mercedes Benz, Toyota Kirloskar appealed to the court in this respect.

The court directed that the deposit is to be made in an account opened by the CPCB. The deposits thus collected were directed to be used exclusively for augmenting public transport and improving roads, particularly for the most vulnerable users like cyclists and pedestrians in Delhi.

The court further declared that a Radio Frequency Identification Device (**RFID**) for effective and credible Environmental Compensation Charge (**ECC**) collection be installed and the estimated cost on the installation of RFID may, in principle, be incurred from out of the ECC collection. The South Delhi Municipal Corporation was directed to start the process of execution of the proposed project in the right earnest.

Further, the court directed that vehicles carrying raw vegetables, fruit, grains, milk, poultry items, egg, ice used as food item and tankers carrying petroleum products, shall be free from payment of ECC.

### On the issue of Air Pollution

The Central Government on November 10, 2016 submitted a Plan of Action in the form of a compilation which explained the cause of pollution and the possible solutions for reducing the same. The Court was however dismayed upon finding out from CPCB, that the number of Pollution Monitoring Stations in Delhi and their efficiency were not sufficient. The CPCB also had no definite plan of action formulated for responding to different levels of pollution at different points of time and at different locations in the city. The Court therefore issued directions to the CPCB to evolve a definitive plan of action that would make its response to different levels of pollution predictable and setting up of pollution monitoring centres for appraising and grading of pollution levels and evolving different responses to different levels of pollution.

The matter was heard again on December 2, 2016 wherein the final version of the Action Plan corresponding to the prevalent air pollution levels, as directed by the court to be formulated earlier, was submitted by the Government before the Court. The action plan categorizes air pollution quality based on the PM level, proposes banning industries use furnace oil and pet coke, banning of trucks in Delhi which are not carrying goods for Delhi, temporary stoppage of construction, immediate implementation of the Delhi Government's promise on vacuum cleaners and increase in public transport including buses.

A reply to certain queries raised by the Court on 25.11.2016 was placed before the Court. The queries included:

1. What is the system of issuing Pollution under Control Certificates to vehicle owners and who licenses the Centre where such pollution checks are carried out and certificates issued in the form of stickers.
2. How are the Centre, so licensed, monitored and by whom.

3. How many licences, given to such Centres, have been cancelled on account of the Centre's not performing their duties satisfactorily.
4. What steps, if any, can be taken to check vehicular pollution randomly either through the Transport Department or motor vehicle/traffic department concerned.
5. Whether the pollution check Centres are computerised and whether data available to it is uploaded on Net, if so, which is the agency that monitors the entire process.

The Court indicated that Ms. Sunita Narain should study these responses submitted by the Government and submit a detailed report on the same, including suggestions on how the pollution certification system can be strengthened.

The Court, in light of various submissions then directed as under:

- Further to the various steps undertaken by the CPCB for monitoring air pollution i.e. upgrading central control rooms, expanding the monitoring stations, equipping the control rooms adequately etc. The Court directed that the CPCB was granted six months' time to implement the proposed plan, and would have liberty to seek an extension of so required.
- The Court accepted the action plan put forth and held that the only measure pending is the statutory notification by the Government under Section 3 of the Environment Protection Act.
- The Court directed that determination of the grade of pollution will be done by the Environment Pollution Control Authority (EPCA). This decision was taken by the Court as the CPCB is an authority under the Air Act, while the EPCA was set up under a notification under the Environment Protection Act. The Court noted that since the Central Government Notification would be under the Environment Protection Act, an authority under the

same Act should determine the grade of pollution. The CPCB has powers under the Air Act and could pass appropriate instructions in line with the said action plan.

- The Court directed that Ms. Sunita Narain will examine the issue and submit a response on the same.

#### REFERENCES

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1. *M.C. Mehta Vs. Union of India*, WP (Civil) No. 13029/ 1985 (upto Order dated December 2, 2016.)

#### SUPREME COURT ON THE ISSUE OF FIRE CRACKERS: BANNED

The Supreme Court on November 11, 2016 passed an order in the case *Arjun Gopal Vs. Uoi* to grant interim relief in respect of fireworks. The Court giving consideration to the hazardous levels of air pollution in the region of NCR, issued interim directions and suspended the license to store and sell fireworks in the NCR. The Court directed the following to the Central Government:

- Suspend all such licenses as permit sale of fireworks, wholesale and retail within the territory of NCR.
- The suspension shall remain in force till further orders of this Court.
- No such licenses shall be granted or renewed till further orders.

In addition to the above, the Court directed the CPCB to study and prepare a report on the harmful effects of the materials which are currently being used in the manufacture of fireworks. The report was directed to be submitted within a period of three months (i.e from 11.11.2016) to this Court.

#### REFERENCES

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1. *Arjun Gopal Vs. Uoi WP(C) 728/2015 order dated November 11, 2016.*

### **NGT RECOGNIZES THE HARMFUL EMISSION OF VOLATILE ORGANIC COMPOUNDS AND ITS ADVERSE EFFECTS ON THE HEALTH OF THE RESIDENTS**

The Western Zone Bench, NGT in the case *Charudatt Koli Vs. Sealord Containers Limited*,<sup>1</sup> stated that the subject of air pollution control and air quality management must be treated as an issue of "Public Health". The case was filed by the residents of villages situated in outskirts of Mumbai who raised concerns over the continuous emissions of Volatile Organic Compounds (VOC) from the loading, storage and unloading of the chemicals at the terminal by Sea Lord Containers Limited and Aegis Logistics Limited and its adverse effect on the health of the local residents.

The Tribunal considered the definition of 'air pollutant' and 'air pollution' as explained in the Air (Prevention and Control of Pollution) Act, 1981 and pointed out that by including the term "any" in the definition of air pollutant, the legislature has intended to encompass the dynamics of air pollution. Thus, the term air pollutant and air pollution have capacious meaning. The National Ambient Air Quality Standards prescribed by the Central Pollution Control Board<sup>2</sup> lists down twelve pollutants and noted that the technical composition of air quality should not be restricted only to these parameters.

Maharashtra Pollution Control Board (MPCB) submitted an Ambient Air Quality Report in June 2014 for which it conducted sampling and analysis work through an agency called

<sup>1</sup>Charudatt Pandurang Koli v. Sealord Containers Limited, Western Zone Bench of NGT in O.A. No. 40/2014(WZ)

<sup>2</sup>National Ambient Air Quality Standards, Central Pollution Control Board Notification dated 18<sup>th</sup> November 2009

Goldflinch on 4<sup>th</sup> July 2015 despite having in-house expertise in the said field. The NGT was however disappointed with the analysis made by MPCB in their reports and decided to carry out their own analysis, interpretation and findings to draw a conclusion.

The Tribunal considered the reports submitted by KEM hospital and noted that there was a strong co-relation between the excessive concentration of VOCs in the ambient air in the areas of Ambapada and Mahuland and its adverse effects on the health of the residents. The Tribunal also took note of the industrial set up in Chembur area which was once identified as critically polluted area and was subsequently classified as severally polluted area in 2010 by CPCB. It underscored that the handling and storage of petroleum products at large scale by Sea Lord Containers Ltd, Bharat Petroleum Corporation Ltd and Hindustan Petroleum Corporation Ltd are the main industrial source of air pollution in the area.

The Tribunal appointed the Institute of Chemical Technology (ICT) to submit a report on specific issues. The ICT identified possible VOC emission sources such as storage tank filling, pressure valve tank, loading and scrubber unit. The ICT did not however consider issues such as composition of VOC emissions from various activities and pigging operations which have direct dealing with the case. The Tribunal did not appreciate the fact that ICT relied on secondary information for preparation of its own report and disregarded important aspects from the scope of its study report.

The Tribunal passed the following directions:

- a) MPCB to prepare a comprehensive action plan to control air pollution in Mahul, Ambapada and Chembur areas within two months with an emphasis on control of VOCs and then subsequently submit the plan to CPCB for its approval. The action plan shall be implemented by CPCB and

- MPCB within the next 12 months. MPCB shall issue the directions for implementation of expert committee report which shall be complied with within 12 months.
- b) To conduct health impact assessment study as suggested by KEM hospital and MPCB to carry out the VOC assessment study on yearly basis for three years.
  - c) The Commissioner of Municipal Corporation of Greater Mumbai shall provide necessary medical facilities and treatment for the residents of Mahul, Ambapada and Chembur.
  - d) State Level Environment Impact Assessment Authority (SEIAA) and MPCB shall assess the environmental compliance of the activities for M/s Sea Lord Containers Ltd.
  - e) MPCB shall make standards under section 17 of the Air (Prevention and Control of Pollution) Act, 1981 for the presence of VOCs in the ambient air and emission standards for chemical storage terminals.
  - f) To form a committee that will suggest the criteria for location of industries and activities which are involved in handling of hazardous chemicals.

The Tribunal failed to maintain the consistency of its own observations in this case as on one hand, it acknowledged that the respondent companies are the major industrial source for causing air pollution in that area<sup>3</sup> and on the other hand it pointed out that it would be difficult for any court to close or shift any industry unless there is sufficient evidence of their contribution to air pollution.<sup>4</sup> The matter was later appealed to Supreme Court<sup>5</sup> where

<sup>3</sup> *Charudatt Koli Vs. Sealord Containers Limited* Para 30, Western Zone Bench of NGT in O.A. No. 40/2014(WZ)

<sup>4</sup> *Ibid* (Para 48)

<sup>5</sup> Supreme Court Civil Appeal D. No. 24242 of 2016

the court directed the NGT to dispose off the execution application filed by the appellants for implementation of the directions issued as expeditiously as possible.

#### REFERENCES

1. *Charudatt Koli & Ors Vs M/s Sealord Containers Pvt Ltd.* O.A. No. 40/2014(WZ)
2. Supreme Court Civil Appeal D. No. 24242 of 2016

#### NGT DIRECTS CONTINUOUS MONITORING OF PM<sub>2.5</sub> IN KOLKATA AND HOWRAH

The Eastern Zone Bench, NGT in the case of *Subhas Datta v. State of West Bengal* constituted an Expert Committee to recommend measures for dealing with the air pollution caused by heavy vehicular movement in Kolkata and Howrah. The Tribunal relied heavily on the recommendations of the Expert Committee and made the recommendations a part of the judgment. It stated that the recommendations of the Expert Committee is a result of wide consultation and has considered the views of both the State Government and the experts.

The Expert Committee observed that the emission from the tail pipe of vehicles directly contributes to the air pollution and there is a direct correlation between the re-suspension of road dust and the amount of particulate air pollution in urban air. It submitted the following observations to the Tribunal:

- a) The semi-automatic air monitoring stations have been made functional with effect from 01.01.2016 and they monitor the air quality of Kolkata every day. Currently there are 24 stations in Kolkata and Howrah operated by WBPCB which needs further augmentation through installation of 5 additional air monitoring stations. Further, WBPCB should make arrangement

for continuous monitoring of PM<sub>2.5</sub> at the automatic air monitoring stations.

- b) The WBPCB should initiate a "Source Apportionment Study" to collect and generate data on contribution of various sources of pollution by a national level agency having expertise in such studies. The long term air quality management plan for Kolkata and Howrah may be evolved on the basis of the Source Apportionment Study. The WBPCB should also integrate Kolkata and Howrah with the National AQI alert system.
- c) The WBPCB should display air quality data in electronic display boards at strategic locations in Kolkata and Howrah.
- d) Phasing out of commercial vehicles which are more than 15 years old.
- e) Various steps such as traffic re-engineering, replacement of traffic signals with circular roads, construction of underpasses, operationalisation of e-rickshaws and e-carts as a mode for short distances connectivity, strict enforcement of no parking rules, arrangements for underground or multitier parking arrangement, construction of pavement and provision for cycling should be considered by managing the traffic.
- f) The State Transport Department needs to review the number of the auto emission testing centres and their operation. They should be connected to a centralized server for better monitoring and enforcement. The WBPCB should continue to conduct surprise inspection of the auto emission trading centres as per the earlier order of the Tribunal dated 19.01.2016.
- g) Open burning of coal, wood and solid waste including dry leaves in Kolkata and Howrah should be stopped. Plantation of new saplings and sprinkling of water at traffic junctions should be done to mitigate air pollution.

The Tribunal while giving various directions emphasized on the implementation of the orders to combat air pollution. The Tribunal stated, "*all that is now required is to infuse fresh energy in the implementation and enforcement.*" Apart from considering the recommendations of the Expert Committee, the Tribunal passed the following directions:

- a) To strictly comply with the notifications<sup>6</sup> issued in pursuance to the orders passed by the Calcutta High Court for phasing out of commercial vehicles that are more than 15 years old.
- b) The permissible specification of vehicles in Kolkata and Howrah is Bharat Stage IV. However, several vehicles enter these two cities from various points which are of Bharat Stage III specification which is prescribed for the rest of West Bengal. The Tribunal directed that, "*any vehicle plying within the twin city limits registered outside its territorial limits shall not be permitted to remain in the city beyond a period to be specified which shall not in any case be more than one week.*"
- c) The vehicles which have undergone pollution test at the Auto-Emission Test Centres shall be mandatorily required to affix luminescent stickers indicating that the vehicle has been tested and its validity.

The Tribunal further stated that the above directions have to be complied within a period of six months.

#### REFERENCES

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1. Eastern Zone Bench, NGT in *Subhas Datta v. State of West Bengal* O.A. No. 33/2014/EZ

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<sup>6</sup> Notification dated 17<sup>th</sup> July 2008, Notification dated 7<sup>th</sup> October 2009 and Notification dated 31<sup>st</sup> August 2012 issued in pursuance of Calcutta High Court order dated 19<sup>th</sup> July 2012.

## **NGT TAKES ACTION ON THE CRITICAL SITUATION OF AIR POLLUTION IN NCT**

The National Green Tribunal passed its final directions in the case *Vardhaman Kaushik Vs. Union of India & Ors* on 10th November 2016, in purview of the appalling state of air pollution in the region of NCT. The NGT, dismayed by the inaction and indifferent attitude of the States (Delhi, Punjab, Haryana, Rajasthan and Uttar Pradesh), stated in its judgement that it was constrained to pass directions in order to ensure that some action is taken by the States to manage this grave situation.

The NGT, after having deliberated upon the Particulate Matter levels in each State and the primary contributors of Air Pollution in these regions at length, directed as under:

- A central monitory committee and state committee must be constituted for ensuring proper implementation of the law and the judgements passed relating to prevention of Air Pollution.
- Where Air Pollution reaches alarming heights it shall be a state of environmental emergency wherein all the States shall take preventive and precautionary measures to control the pollution as indicated in the judgements and in law.
- The authorities will ensure that all DG set in operation will comply with the prescribed norms and upon any default, 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.
- 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.
- 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 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.
- 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.
- 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.
- All State governments are directed 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.

- The State government, particularly Punjab shall 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 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.

In further order dated November 23, 2016 the NGT directed that all the hotels, hospitals, public offices, schools and colleges undertake a minimum environmental audit.

Furthermore, on November 28, 2016, the NGT dismayed by the inaction on the part of the States to scrap old vehicles from Delhi and the Ministry of Heavy Industries' inaction on framing a policy with respect to scrapping of old vehicles as ordered concluded that there was a serious issue of implementation of NGT's orders. In this respect, the NGT directed as under:

1. All the State Government, i.e., Punjab, Haryana, Uttar Pradesh, Rajasthan and NCT Delhi are directed to hold a meeting to

identify lands immediately on border areas of NCR Delhi to store/ park vehicles which are beyond the permissible age. The meeting should take place at the earliest and the minutes of the meeting should be placed before the Tribunal before the next date.

- The two sites submitted by the counsel for Delhi Development Authority (DDA), Narela and Rohini, can be provided to Delhi Police for parking such vehicles.
- Such sites will be (i) provided on a temporary basis, (ii) no permanent structures should be build on such lands, and (iii) an advance payment be made to the DDA.
- The Tribunal directed that challans on the vehicles on the roads polluting, are not challans under the Motor Vehicle Act, 1988 but are under Environment (Protection) Act, 1986 and the National Green Tribunal Act of 2010.
- The vehicles seized by the police are not seized under Motor Vehicle Act, 1988 but are under the National Green Tribunal order. No such vehicle will be released unless compensation under the Environment (Protection) Act, 1986 is paid.
- The environmental compensation has already been identified as INR 5000/- for each violation. Beside this, freight charges and parking charges will be additional obligations of the defaulter.
- All the compensation and vehicles seized will be actions taken under the NGT order and the acts mentioned above, since the offences mentioned herein are not covered under the Motor Vehicle Act.
- Delhi Police and the concerned corporations must jointly carry out an action plan to lift and carry away all such vehicles which are not functional (have no tyres or engines) and are parked in public places causing traffic.
- The Delhi police and other state police shall ensure that all such non destined vehicles do

not enter Delhi and do not violate the orders of this Tribunal. In case of any violation, strict action will be taken against such defaulters.

- All the authorities shall take immediate actions to ensure deregistration of vehicles which are in violation and submit report of the same.
- The Delhi Police and corporations will hold a meeting this week to find additional sites to ease out the issue of parking such old vehicles.

#### REFERENCES

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1. Principal Bench, NGT in *Vardhaman Kaushik Vs. UoI O.A. No. 21/2014*

#### **DELHI HIGH COURT ON AIR POLLUTION: TAKES ACTION AGAINST STUBBLE BURNING, DEISEL TAXIS, BURNING OF LANDFILL AND POLLUTION DUE TO ROAD DUST AND CONSTRUCTION**

The High Court of Delhi in the case *Court on Its Own Motion (Air Pollution in Delhi) Vs. Union Of India & Ors* passed its direction on the issue of Air Pollution on November 18, 2016. The Court heard the issues of air pollution caused due to stubble burning/ biomass burning and directed the Central Pollution Control Board to indicate after analysing the data scientifically as to how much of the paddy straw per metric tonne which is burnt ends up as PM 2.5 and PM 10 as also other noxious gases and pollutants. The Court further directed that the State of Punjab shall in the affidavit which is to be filed clearly indicate time lines with regard to the action proposed to be taken so as to eliminate stubble burning/biomass burning completely in the next year. Clear way-points shall be marked out in the affidavit and we shall monitor the same.

The Court also addressed the issue of the requirement for all taxis to be converted to CNG. The Court noted that around 40000 taxis

are still running on diesel in Delhi and the taxis running in other States, that is, Punjab, Haryana, Rajasthan and Uttar Pradesh are also mostly diesel based. In this respect, the Court directed that a clear-cut plan of action should be furnished by each of the States i.e. Punjab, Haryana, Rajasthan and Uttar Pradesh. Each of the States were directed to file affidavits clearly indicate the plans that have been drawn up or are being drawn up to attain this objective. All these affidavits by the States, as also by the CPCB, shall be filed within three weeks from today (i.e. 18.11.2016).

The next issue raised was the burning of garbage in sanitary landfill sites at Bhalaswa, Gazipur and Okhla. The Court held that the Municipal Corporations of Delhi are responsible for the landfill sites and they shall ensure that all fires in these landfill sites are extinguished with immediate effect. Lastly the issue of pollution contributed by road dust and construction was also addressed and the Court in this respect directed all the agencies to remove all the rubble and debris left on and along side roads and all public areas such as markets etc.

The matter was heard again on December 1, 2016 wherein the Court directed the respondents to file an affidavit indicating as to whether they have carried out the directions of the Court. It was submitted by East Delhi Municipal Corporation that an MoU has been signed with NHAI for utilizing the Gazipur landfill site for the purpose of widening NH24.

#### REFERENCES

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1. *Court on Its Own Motion (Air Pollution in Delhi) Vs. Union Of India & Ors WP (C) 1346/2015 (upto Order dated 01.12.2016)*

## RESTRUCTURING OF THE POLLUTION CONTROL BOARD

The National Green Tribunal (NGT) addressed serious lacuna in the composition of the State Pollution Control Board (Board) in the case of *Rajendra Singh Bhandari Vs. State of Uttarakhand* by ruling out that only those persons who have 'special knowledge' and 'practical experience' in matters relating to environmental protection are eligible for appointment as Chairperson and Member Secretaries of the Board.<sup>7</sup> The requirement of special knowledge and practical experience is a statutory requirement as mentioned in the Water (Prevention and Control of Pollution Act, 1974 ('Water Act') and the Air (Prevention and Control of Pollution) Act, 1981 ('Air Act'). A person should have surpassing and exceptional knowledge acquired through specialized courses in environmental protection to satisfy the criterion of 'special knowledge'. The NGT laid emphasis on the word 'special' which means that the knowledge has to be acquired through an academic qualification in environmental protection and it cannot be 'ordinary' or 'casual' in nature. Similarly, practical experience has to be gained in matters relating to environmental protection. The NGT pointed out that the legislature in the Air Act which is *pari materia* to the Water Act deliberately deleted the expression 'experience in administering institutions dealing with the matters relating to environmental protection' Section 5 clearly highlights the intention of the legislature that the terms 'special knowledge' and 'practical experience' are two main eligibility criteria for appointment of Chairperson. The powers and functions of the Board are technical in nature and it is imperative that the Chairperson has the requisite knowledge and experience to discharge the functions of the Board. The NGT

observed that eligibility criteria defined in Water and Air Act have to be given a purposive interpretation for proper execution of the functions of the Board.

The Tribunal passed several detailed directions for appointment of Chairperson and Member Secretaries such as appointment, tenure, infrastructure of the Board and frequency of the meeting of the Board which have to be implemented within three months period. [The same can be accessed on ERC website: <http://ercindia.org/index.php/latest-updates/latest-from-national-green-tribunal>]

The Tribunal referred to *Binay Kumar Sinha Vs. State of Jharkhand* [2002 (50 BLJR 2223)] as an example to highlight the appointment of incompetent persons as Chairperson of the Pollution Control Board in which it was clear before the Court that Chairperson neither had special knowledge nor practical experience in matters relating to environmental protection as he was unable to answer any fact to justify his position to hold the office. The Jharkhand High Court observed, "We repeatedly asked him to inform us about one single such fact by which he could lay his claim to hold this office. He failed to inform us of even a single fact which could qualify him to hold this office. His only claim was that he is a politico-social worker." The Jharkhand High Court quashed his appointment as Chairperson by holding it as invalid.

Moreover, the Comptroller Auditor General in the Audit Report of Sikkim, 2015 also observed that the State Pollution Control Board was headed by persons not having the pre-requisite qualifications. He stated in the report that, "The Chairman was a public representative having qualification of B.A., whereas the Member Secretary possessed the qualification of B.Sc. Further, the Member Secretary was not a full timer as he also looked after functions of other

<sup>7</sup>*Rajendra Singh Bhandari v. State of Uttarakhand*, Principal Bench, NGT, O.A. No. 318 of 2013

*wings of Forest, Environment & Wildlife Management Department.”*

The Tribunal while invoking its jurisdiction stated that it can look into the said matter under Section 14 of the National Green Tribunal Act, 2010 which comprises of questions arising out of the implementation of the enactments specified in Schedule I of the Act which includes the Water Act and the Air Act and the question about composition of the State Pollution Control Board is in relation to these two enactments.

This is not the first time that the appointment of Chairperson and Member Secretaries of the Board has been brought before the Court. The Chairman of the Supreme Court Monitoring which was set up in the case of *Research Foundation for Science versus Union of India* [SC WP (C) 657/1995] issued letters to all the Chief Secretaries of the states that Chairperson of the Board must have an understanding of science and technology as they have to discharge functions which involve technical issues.

The Pollution Control Board in India has a two-tier regulatory mechanism, the Central Pollution Control Board and the State Pollution Control Board. The guidelines laid down by NGT for appointment of Chairperson and Member Secretary of the Board is definitely a significant administrative reform but not a wholesome solution to redress the issues of governance in the environmental regulatory bodies of India.

#### REFERENCES

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1. *Rajendra Singh Bhandari v. State of Uttarakhand*, Principal Bench, NGT, O.A. No. 318 of 2013

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