

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

Original Application No.46/2018
(M.A. No. 1474/2018, M.A. No. 1539/2018,
I.A. No. 456/2019&I.A. No. 457/2019)

(With reports dated 18.09.2019 & 22.01.2020)

WITH

Original Application No. 1083/2018

Nuggehalli Jayasimha

Applicant(s)

Versus

Government of NCT of Delhi

Respondent(s)

WITH

Residents of C2 Block Aya Nagar

Applicant(s)

Versus

Govt. of NCT of Delhi

Respondent(s)

Date of hearing: 24.01.2020

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

For Applicant(s): Ms. Priyanaka Bangari and Ms. Gitanjali Sanyal,
Advocates

For Respondent(s): Ms. Jyoti Mendiratta, Advocate for GNCTD
Mr. Rajkumar, Advocate for DPCC
Mr. Daleep Dhyani, Advocate for UPPCB
Mr. Mukesh Kumar, Advocate for CPCB
Ms. Puja Kalra, Advocate for North MCD and
South MCD
Mr. Sanjay Dewan, Advocate
Mr. Shlok Chandra, Advocate for DDA

ORDER

1. This order may be read in continuation of order dated 08.07.2019, on the subject of remedial action for compliance of environmental norms by the dairies.
2. Earlier, vide order dated 01.04.2019, the Tribunal considered the allegation of air, water and soil pollution by the dairy industries. It was alleged that solid and liquid waste releasing gaseous emissions was generated and dumped into the drains, by dairies in Delhi, meeting the river Yamuna resulting contamination of river Yamuna. The waste clogged the drainage system which was becoming breeding ground for mosquitoes and other insects and thus creating health hazard. Waste generated was also resulting in discharge of Ammonia and Nitrogen oxides in the air and nitrate in soil and ground water. The odour from dairies negatively impacted the air quality. Ammonia wafted into the air from manure lagoons. Gases known as volatile organic compounds were created by the huge piles of feed. The foul smell from the dairy caused migraine, severe headache and people had no option but to inhale the impure-foul air present in the atmosphere.
3. In the light of inspection reports dated 04.12.2015 and 15.12.2015, prepared by the Animal Welfare Board of India, it was noted that there was rampant use of Schedule H drugs, oxytocin injections, syringes, plastic bottles and other veterinary drugs etc. which are disposed of improperly and in unscientific manner, in violation of Bio-medical Waste

Management Rules, 2016. The dairies were not following waste management practices. There was also violation of Food Safety and Standards (Licence and Registration of Food Businesses) Regulations, 2011.

4. The Tribunal also noted various articles on the subject¹ which highlight adverse consequences on the environment due to illegal and unscientific dairy activities. It was also observed that there was violation of various provisions of the Delhi Municipal Corporation Act, 1957.

5. After quoting the observation from the report of the Committee, the stand of the Delhi Pollution Control Committee (DPCC) that it was not concerned with the subject despite the violation being clearly acknowledged was rejected in view of statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974, (Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and Environment (Protection) Act, 1986 and rules framed thereunder. It was noted that though various authorities of the Delhi Government were parties and represented by Counsel, no authority came forward to take the responsibility and none of the Counsel made any suggestion for enforcement of law. In this background, the Tribunal in the order dated 01.04.2019 directed the Chief Secretary of Delhi to

¹*“Delhi is major contributor of population in Yamuna”* published in “The Hindu” dated 17.04.2007, *“Feeding on plastic poses high risk to lives, output of stray cattle”* published in “Indian Today” dated 08.05.2017, *“Serious farm population breaches rise in UK-and many go unprosecuted”* published in “Guardian” dated 21.05.2017, *“How growth in Dairy is affecting the environment”* published in “The New York Times” dated 01.05.2015 and *“Stray cows clog South Delhi roads”* published in “The Times of India” dated 05.08.2012 and research papers titled *“Nitrogen pollution by dairy cows and its mitigation by dietary manipulation”*, *“Impact of Dairy Effluent on Environment-A Environmental Science and Engineering (Subseries: Environmental Science)”*, apart from other documents and photographs.

call a meeting of all concerned and fix their accountability. The Tribunal also noted that the DPCC had failed to perform its statutory duties under the Water Act, the Air Act and the Environment (Protection) Act, 1986 (EP Act) in preventing polluting activities, prosecuting the polluters and recovering compensation for restoration of the environment from the polluters. The Tribunal also required DPCC, South Delhi Municipal Corporation (SDMC) and North Delhi Municipal Corporation (North DMC) to pay sum of Rs. 10 Lakhs each as an interim compensation and furnish a performance guarantee of Rs. 10 Lakhs each with the Central Pollution Control Board for taking necessary steps within three months for restoration of the environment. The amount could be recovered from the erring officer and polluters. The Chief Secretary, Delhi was to furnish an action taken report.

6. The matter was reviewed on 08.07.2019 in the light of the report of the DPCC dated 03.07.2019. Commenting on the said report, this Tribunal found that DPCC was trying to avoid responsibility by taking untenable plea that only Municipal Corporations or other Departments were to monitor the pollution caused by the dairies. Accordingly, DPCC was directed to enforce its statutory obligation of closing polluting activities, prosecute the polluters and recover compensation on 'Polluter Pays' principle. **The Tribunal also directed CPCB to undertake a study and lay down appropriate guidelines for management and monitoring of environmental norms by**

dairies throughout country. The observations of the Tribunal are reproduced for ready reference:

“1to6 xxx

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7. We find that in spite of observations in the earlier order of this Tribunal as well as repeated orders in large number of cases, the DPCC seems to be avoiding its statutory responsibilities under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and to cover up their inaction, is passing the order of imposition of fines on other statutory bodies, without any jurisdiction. Learned Counsel for the Delhi Government as well as DPCC have not been able to show any legal authority for doing so. While the DPCC may take action on 'Polluter Pays' principle against polluting activities of any statutory body, it has no authority to recover compensation for alleged inaction by such statutory authorities. Such authorities are not authorized to enforce the Water (Prevention and Control of Pollution) Act, 1974 or Air (Prevention and Control of Pollution) Act, 1981 which DPCC itself has to enforce. Even if they have overlapping powers under other statute, the DPCC cannot avoid its obligation under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981. It is undisputed that the dairies are operating in violation of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 as already noted in the order of this Tribunal dated 01.04.2019. The DPCC is required to ensure that the polluting activities, without consent to operate, are stopped by way of prohibitory order, prosecution and recovery of compensation which has not been done. Just as local bodies cannot fine DPCC for its utter failure, DPCC also cannot shift its onus and responsibility to local bodies and absolve from its responsibility. It has to proceed against polluters which it is avoiding to do.

8. We find that as per the circular dated 05.03.2016 issued by the MoEF&CC, the dairy industries fall under the 'Orange' category industries. Consent to operate is necessary under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. Under the Environment (Protection) Rules, Schedule-I, read with Rule-3, lays down the norms for discharge by various activities or operations. Entry 56 deals with 'dairies' (industrial units) and provides for standards of effluents and violation of such standards.

9. Faced with the above, learned Counsel for the DPCC has undertaken to withdraw the notices issued to other

statutory authorities and not to indulge in such illegal activities in future.

10. We find that the action of the DPCC is inadequate. Under Section 15 of the NGT Act, 2010, this Tribunal has to deal with enforcement of statutes mentioned in Schedule-I which include Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. Such violations may also be overlapping with the other statutory violations for which concerned statutory authorities have to take action on that ground. The local bodies have the responsibilities under the SWM Rules, 2016² but on that ground, the DPCC cannot avoid its responsibility. Local bodies must perform their statutory duties.

11. In view of above, while disapproving the above illegal action of DPCC as well as its inaction, we expect the DPCC now to enforce its concerned statutory obligations by closing polluting activities, prosecuting the polluters and recovering compensation from the polluters in accordance with law and to furnish a further report to this Tribunal by e-mail at judicial-ngt@gov.in before the next date.

12. We may note that livestock is a major source of methane emissions and studies on the subject show that the problem in India is severe. Results of a recent study³ show that the Indian livestock emitted 15.3 million tonnes of methane in 2012⁴. Enteric methane emission from Indian livestock contributed 15.1% of total global enteric methane emission. In India, contribution of enteric methane was 91.8% of the total GHG emissions, followed by manure methane (7.04%) and manure Nitrous Oxide (1.15%) in the year 2010⁵. The livestock sector in India has the potential to cause surface temperatures to surge up to 0.69 millikelvin over 20 year time period which is roughly 14 per cent of the total increase caused by the global livestock sector. Methane has a warming potential 20 times higher than carbon dioxide. Globally, livestock sector generates 65 percent of human-related nitrous oxide, which has 296 times the Global Warming Potential (GWP) of

²See Rule 3(46) read with Rule 15 of the Solid Waste Management Rules, 2016.

³ Study carried out by the Indian Institute of Technology Delhi and the Deenbandhu Chhotu Ram University of Science and Technology, Murthal in Ecotoxicology and Environmental Safety, Climate change impact of livestock CH₄ emission in India: Global Temperature change Potential (GTP) and surface temperature response, <https://www.sciencedirect.com/science/article/pii/S0147651317305766>, Volume 147, January 2018, Pages 516-522.

⁴ *Id.*

⁵<https://www.ajas.info/journal/view.php?number=4850>.

CO2. Most of this comes from manure.⁶While the dairy industry is covered by 'Orange category' under the circular dated 05.03.2016 issued by the MoEF&CC, no such guidelines are said to be existing for management and rearing of livestock. Needless to say that such activity have potential of causing air and water pollution as already noted in the context of Delhi. Accordingly, instead of limiting the scope of remedying the compliance of environment norms by dairies to Delhi, we consider it necessary to expand the same for the whole country. Let the CPCB undertake a study in the matter and lay down appropriate guidelines for management and monitoring of environmental norms by the dairies throughout India and furnish a report in the matter by e-mail at judicial-ngt@gov.in before the next date. The local bodies in all the States/ UTs be required to file inventory of dairies in their respective jurisdiction so that state PCB can compile such information in their respective reports furnished to CPCB."

7. It appears from the record that *Civil Appeal No. 7285/2019* was filed before the Hon'ble Supreme Court by the SDMC against the said order and was dismissed.
8. Accordingly, an action taken report has been filed by the DPCC that it has issued notice for closure under the Water Act and the Air Act and also directed disconnection of electricity and water supply. Show cause notice has also been issued for enforcement of the guidelines prepared by the CPCB. The local bodies have been asked to perform their duties.
9. CPCB has filed two reports. First report is dated 18.09.2019, to the effect that an expert group was constituted. After discussion and interaction with the stakeholders, Guidelines for Environmental Management of Dairy Farms and *Gaushalas* were finalized. As per available statistics, prepared by the CPCB population of adult female bovine in the country is

⁶<http://www.fao.org/newsroom/en/news/2006/1000448/index.html>

13,32,71,000. Many dairy farms and *gaushalas* discharge the cattle dung along with wastewater into the drains, leading to clogging, which ultimately reach rivers and creates water pollution. Also, these clogged drains become breeding ground for mosquitoes, creating health hazards and odour nuisance. The dung produces many gases/compounds such as Carbon dioxide, Ammonia, Hydrogen sulphide, Methane, etc. which are emitted into the atmosphere and are responsible for degradation of air quality. The greenhouse gases, mainly Methane and Carbon dioxide, produced by dung also impact the climate. Disposal of cow/buffalo dung is the biggest challenge in dairy farms and *gaushalas*. However, cattle dung, if effectively utilised, can be an excellent resource of manure & energy and reduce the adverse impact on environment. The cattle dung contains many beneficial constituents which may be used as fuel source either by direct combustion or converted to biogas, soil conditioner, fertilizers, material for wall plastering, construction of granaries, livestock & fish feeding, etc. The draft Guidelines stipulate solid waste management, waste water management, air quality management, monitoring mechanism to be adopted by the local authorities/Corporations/ PCBs/ PCCs. The guidelines also prescribed a Performa for monitoring by the local authorities/Corporations for preparing inventories of dairies farm and *gaushala*.

10. Second report dated 22.01.2020 is to the effect that the inventory Performa was circulated to the PCBs/PCCs to which response was received from 31 States/UTs. No response was

received from Andhra Pradesh, Maharashtra, Manipur, Uttarakhand and Delhi. 20 States provided the details while 11 States/UTs have yet to provide details. Observations and conclusion in the report are :-

“3.0 Observations:

Following are the observations based on the information as received from SPCBs/PCCs about dairies and gaushalas operating in the States/UTs:

- i. The total number of dairies operating in 19 States/UTs is 93,033 (ninety three thousand & thirty three) and total number of animals in these dairies is 7,04,127 (seven lakh, four thousand, one hundred & twenty seven).*
- ii. There are 960 dairy colonies/clusters in 19 States/UTs.*
- iii. The total number of gaushalas operating in 20 States/UTs is 6,462 and total number of animals in these gaushalas is 3,51,592.*
- iv. The total amount of dung generated/produced by animals in dairies and gaushalas in the 20 States/UTs is 2,58,688 ton/day and 13,698 ton/day, respectively.*
- v. In general, the methods used in States/UTs for disposal/utilization of cattle dung include using dung as manure in fields, vermi-composting, biogas generation, etc.*
- vi. SPCBs/PCCs have not provided the information about disposal/utilization of wastewater.*

4.0 Conclusion:

- i. The local authorities/corporations should carry out inventory of all the dairy farms and gaushalas located in their jurisdiction in the prescribed performa. The same should be updated and shared with the concerned SPCB/PCC on regular basis.*
- ii. The dairies and gaushalas operating in the States/UTs should follow the "Guidelines for*

Environmental Management of Dairy Farms and Gaushalas.”

11. We have heard the learned counsel for the applicant and learned counsel for the CPCB and DPCC.
12. Learned counsel for the applicant has drawn our attention to the judgment of the Delhi High Court dated 31.05.2019, *Common Cause v. UOI, (2007 SCC Online (Del) 863)*, wherein Municipal Corporation of Delhi was directed to formulate a licensing policy under Section 417 of the Delhi Municipal Corporation Act, 1957. While issuing such direction, the High Court noticed unsatisfactory state of affairs. The High Court observed that the dairies need to be relocated on account of hazard of stray cattle on the roads and trauma faced by the cattle in the cities on account of traffic. Reference was also made to the filth, squalor and outbreak of diseases. As a short term measure, preventive steps were required for protection and hygiene of environment. Our attention has been drawn to a policy framed by the MCD on 17.07.2010 prohibiting cattle to be kept in any premises without license. Authorized dairy areas were specified and standards and measures were also specified. Reference has also been made to the report of an Expert Committee constituted by the Indian Council for Agricultural Research, Government of India, dated 01.11.2016 under the Chairmanship of Dr. Arjava Sharma, Director, ICAR-NBAGR, Karnal. The report dealt with sustainable management of unproductive cattle. The report specifies land

requirement, feeding requirement, labour requirement and health management.

13. We may note that the matter is dealt with under the Environment (Protection) Rules, 1986 (EP Rules). With reference to Rule 3 thereof, general standards have been laid down in Schedule 6 in part A and part B.

14. We may now deal with the reports of the CPCB. The first report relates to Guidelines. We find that the draft Guidelines do not specifically mention the mandate of the Water and the Air Act. The issue has already been dealt with by this Tribunal. While sanitation may be an issue to be dealt with by local bodies, the Water Act, the Air Act and the EP Act are special laws dealing with the environment which do not stand excluded by application of other Municipal Laws. Regulatory regime of the Water Act, the Air and the EP Act is required to be followed and enforced by the State PCBs/PCCs, independent of the powers of local bodies to enforce the municipal laws. Precautionary and Sustainable Development principles are over arching principles which are not only enforceable by this Tribunal under Section 20 of the National Green Tribunal Act, 2010, but are also part of the Article 21 of the Constitution, which is a Fundamental Right, creating reciprocal obligation on all State authorities. Thus, the Guidelines prepared by the CPCB need to be revised by specifying that State Boards/Committees must enforce 'consent mechanism' and, in particular, follow an appropriate siting policy in the light of the carrying capacity of

the area for commercial dairy activities, having potential for air and water pollution. Dairy activities have been categorized as 'Orange' category as per the laid down guidelines.

15. The second report relating to analysis of action taken by all States/UTs is incomplete for want of data. For this purpose, we direct that all the local bodies may furnish relevant information to the State PCBs within one month from today. Private operators, including cooperative societies or other entities, not falling within the jurisdiction of Local Bodies, may also furnish the requisite information to the State PCBs within the same time. The State PCBs may, apart from compiling information and forwarding the same to the CPCB, perform their statutory obligations under the Water Act, the Air Act and the EP Act for enforcing environmental norms by such dairy activities with a view to protect the environment and the public health. The State PCBs/PCCs may publish an appropriate notice on the subject within two weeks from today requiring furnish of information and also adopting all necessary safeguards in the matter. Thereafter, the State PCBs/PCCs may furnish factual and action taken reports in the matter to the CPCB latest by 30.04.2020. CPCB may compile the data received and file a comprehensive report before this Tribunal by e-mail at judicial-ngt@gov.in before the next date.

A copy of this order be forwarded to CPCB, SPCBs/ PCCs, Chief Secretaries of all the States/UTs. The SPCBs/PCCS may

forward a copy of this order to all the local bodies in their respective jurisdiction within one week from today.

Since the issue being dealt with is an issue *in rem* and enforcement is left to the statutory bodies, we do not find it necessary to consider individual matters in these proceedings which may be dealt with by the concerned statutory authorities in accordance with law.⁷ Accordingly, the private parties will stand deleted from the memo of parties.

List for further consideration on 20.05.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

January 24, 2020
O.A. No. 46/2018
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⁷ In *M.C Mehta Vs. Union of India & Ors.*, (2001) 3 SCC 756 - Para 8, the Hon'ble Supreme Court observed that while issuing a direction *in rem*, all affected individuals need not be heard. (The said case concerned shifting of diesel to CNG by all the bus operators and plea that all the bus operators were required to be individually heard was rejected.)