

ITEM NO.302

COURT NO.3

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 13029/1985

M.C. MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

((1) REPORT NO. 106 SUBMITTED BY EPCA (SPECIAL REPORT ON POLLUTION HOT SPOTS IN NCR WITH REQUEST FOR URGENT DIRECTIONS TO IMPROVE ENFORCEMENT AND POLLUTION CONTROL),
 IN RE: STUBBLE BURNING AND SMOG IN DELHI,
 (2) IA NO. 127792/2017 (DISPOSED OF) (APPLN. FOR DIRECTIONS FILED BY A.C.)
 (3) IA NOS. 158128 AND 158129/2019 (APPLNS. FOR INTERVENTION AND DIRECTIONS ON BEHALF OF DR. KAUSHAL KANT MISHRA)
 (4) IA NOS. 177602 AND 177610/2019 (APPLNS. FOR INTERVENTION AND DIRECTIONS ON BEHALF OF INDIA TRADE PROMOTION ORGANISATION)
 (5) IA NOS. 179126 AND 179130/2019 (APPLNS. FOR INTERVENTION AND DIRECTIONS ON BEHALF OF DR. ARVIND KUMAR)

IN RE: COLOUR CODED STICKERS
 REPORT NO. 103 SUBMITTED BY EPCA (SPECIAL REPORT FOR DELAY IN IMPLEMENTATION OF COLOUR CODED STICKERS ON VEHICLES) AND
 IA NO. 168887/2019 (APPLN. FOR EXEMPTION FROM FILING O.T. ON BEHALF OF STATE OF U.P.)

IN RE: DIESEL VEHICLES
 IA NO. 79444/2019 (APPLN. FOR DIRECTIONS ON BEHALF OF EAST DELHI MUNICIPAL CORPOATION),
 IA NO. 177432/2018 (APPLN. FOR DIRECTIONS ON B/O NORTH DELHI MUNICIPAL CORPORATION),
 IA NO. 142872/2019 (APPLN. FOR MODIFICATION OF ORDERS DT. 16.12.2015 AND 31.03.2016 ON B/O DY. COMMISSIONER OF POLICE)

WITH

C.A. No. 8187/2019 (XVII)
 (IA No.162347/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 36562/2019 (XVII)
 (IA No.161186/2019-CONDONATION OF DELAY IN FILING and IA No.161189/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SMW(C) No. 3/2019 (PIL-W)
 (FOR ADMISSION)

W.P.(C) No. 1333/2019 (PIL-W)
(FOR ADMISSION and IA No.170316/2019-EX-PARTE STAY and IA
No.170317/2019-PERMISSION TO APPEAR AND ARGUE IN PERSON)

T.C.(C) No. 42/2019 (XVI-A)

T.C.(C) No. 41/2019 (XVI-A)

Date : 25-11-2019 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE DEEPAK GUPTA

Counsel for
the parties

Mr. Harish N. Salve, Sr. Advocate (A.C.) (Not Present)

Ms. Aparajita Singh, Sr. Advocate (A.C.)
Mr. A.D.N. Rao, Advocate (A.C.)
Mr. Siddhartha Chowdhury, Advocate (A.C.)

Mr. Tushar Mehta, SG
Mr. Sanjay Jain, ASG
Ms. Ranjeeta Rohatgi, Advocate
Mr. Ajay Pal Singh Kullar, Adv.
Mr. Vikalp Mudgal, Adv.
Ms. Samten Doma, Adv.

Mr. Tushar Mehta, SG
Mr. Anil Grover, AAG
Ms. Noopur Singhal, Adv.
Mr. Rahul Khurana, Adv.
Mr. Sanjay Kr. Visen, Advocate
Dr. Monika Gusain, Adv.

Mr. A.N.S. Nadkarni, ASG
Ms. Suhasini Sen, Adv.
Ms. Archana P. Dave, Adv.
Mr. S.S. Rebello, Adv.
Mr. D.L. Chidananda, Adv.
Mr. Rajat Nair, Adv.
Mr. Raj Bahadur Yadav, Adv.
Mr. G.S. Makker, Advocate
Mr. Rajesh K. Singh, Adv.
Mr. B.V. Balramdas, Advocate
Ms. Anil Katiyar, Advocate
Ms. Archana Pathak Dave, Adv.
Mr. Vibhu Shankar Mishra, Adv.
Mrs. Snidha Mehra, Adv.

Mr. P.S. Narshimha, Sr. Adv.
Ms. Uttara Babbar, Advocate

Mr. Manan Bansal, Adv.
Ms. Sindoor VNL, Adv.
Mr. Rahul T. Ganwani, Adv.
Ms. Aditi Tripathi, Adv.
Ms. Kanti, Adv.

Ms. Anitha Shenoy, Sr. Adv.
Ms. Srishti Agnihotri, Advocate
Ms. Sanjana Grace Thomas, Adv.
Ms. Sharon Mathew, Adv.

Mr. Sanjiv Sen, Sr. Adv.
Mr. Ajay Bansal, Adv.
Mr. Praveen Swarup, Advocate
Mrs. Puja Kalra, Adv.
Mr. Gaurva Yadva, Adv.
Mr. Suresh Kumar, Adv.
Mr. Sayan Ray, Adv.
Mr. Soumo Palit, Adv.

Mr. Dhruv Mehta, Sr. Adv.
Mr. Rahul Mehra, Adv.
Mr. Chirag M. Shroff, Advocate
Ms. Yashika Verma, Adv.
Ms. Riya Thomas, Adv.
Ms. Jyoti Mehndiratta, Adv.

Mr. Gopal Sankaranarayanan, Sr. Adv.
Mr. Senthil Jagadeesan, Advocate
Ms. Sonakshi Malhan, Adv.
Ms. Shruiti Chowdhary, Adv.
Ms. Mrinal Kanwar, Adv.
Mr. Shrutanjaya Bhardwaj, Adv.
Mr. Vishal Sinha, Adv.

Mr. Gopal Jain, Sr. Adv.
Mr. Jasmeet Singh, Adv.
Mr. Manu Sharma, Adv.

Mr. Vijay Panjwani, Adv.

Mr. Sandeep Narain, Adv.
Ms. Nivedita Nair, Adv.
For M/s. S. Narain & Co., Adv.

Mr. B.K. Prasad, Advocate

Mr. Kamendra Mishra, Advocate

Ms. Ruchi Kohli, Advocate

Ms. Sakshi kakkar, Advocate
Mr. Shakti Singh, Adv.

Mr. Akash Mishra, Adv.
Mr. Abhishek, Adv.

Mr. Murari Kumar, Adv.
Mr. Animesh Kumar, Adv.
Mr. Neeraj Shekhar, Advocate
Mr. Sumit Kumar, Adv.
Ms. Ekta Bharati, Adv.

Mr. Pradeep Misra, Adv.
Mr. Suraj Singh, Adv.

Mr. Charanpal Singh Bagri, Adv.
Ms. Gurjit Kaur, Adv.

Petitioner-in-Person

UPON hearing the counsel the Court made the following
O R D E R

(1) REPORT NO. 106 SUBMITTED BY EPCA

(special report on pollution hot spots in ncr with request for urgent directions to improve enforcement and pollution control)

IN RE: STUBBLE BURNING AND SMOG IN DELHI

IA NO. 127792/2017 (DISPOSED OF)

(APPLN. FOR DIRECTIONS FILED BY A.C.)

IA NOS. 158128 AND 158129/2019

(Applns. for intervention and directions on behalf of Dr. Kaushal Kant Mishra)

1. Heard the learned counsel for the parties and the Chief Secretaries to the States of Punjab, Haryana, Uttar Pradesh and Govt. of NCT of Delhi at length. We find from the Affidavit placed by Mr. A. N. S. Nadkarni, learned ASG, that the fire count as on 07.11.2019 has increased thereafter in the States of Punjab and Haryana and Uttar Pradesh on some of the days. The situation is alarming and indicates that the order has not been complied with and for that not only the State machinery is responsible, but the

farmers are also responsible. Considering the aforesaid aspects and also the Air Quality Index, it has become necessary to take care of the situation, otherwise such incidents are not going to stop in future.

2. We are informed by the Chief Secretary to the Govt. of NCT of Delhi also that they have arrangements to clean annually the garbage and waste to the extent of 55% only and the remaining 45% cannot be cleaned in spite of best efforts considering the annual capacity to clean the garbage/waste. We have *suo moto* taken note of the water pollution in Delhi and other places as it appears that there are reports that impure water is being supplied to the people and there are reports to the contrary that samples have been manipulated. We cannot leave the matter at that. As a matter of fact, in such a matter of air and water pollution, it is the Constitutional duty enjoined upon all the stakeholders to do the needful for providing better air and potable water. It was also stated by the Chief Secretary to the Govt. of Delhi that there are certain problems of governance. The problem of governance, if any, cannot come in the way to deal with such matters. It is expected from the Government machineries not to enter into the rival claims, but to sit down together, work it out how to improve the air quality and whether potable water is being supplied or not, and how to improve the water management.

3. We are also apprised by the Chief Secretary to the State of Uttar Pradesh that they are mainly focusing on eight districts, as with regard to those districts this Court has passed the order. He has also reported to us that stubble burning incidents, which have

been increased, are in the Eastern region. It may not affect Delhi and NCR Region. As a matter of fact, such approach is not understandable that the State has to take care of only those areas for which this Court has issued the directions. We take judicial notice of the fact that there are six other cities in the country which are reportedly more polluted in air quality index than Delhi, out of which three are stated to be in Uttar Pradesh only. Hence, we propose to issue notice to all the States to report to us what is the Air Quality Index in the various towns. How they are discharging their obligations with respect to lifting of the garbage, waste etc. and by and large, we can take a judicial notice of the fact that similar is the situation in virtually several cities in various States. The Corporations are not having even the basic arrangements for lifting the garbage, which is being generated everyday. It appears to be a case of lost priorities. Be that as it may, there are certain cities which are managing the garbage effectively and efficiently in India, which indicates that it can be done in effective way but there is lack of proper planning in that regard.

4. We see Yamuna river virtually turned into a sullage. We take judicial notice of this situation. Similar is the position with Ganges. As it proceeds, industrial effluents are being poured in rivers. Sewage is also being directly put in rivers contributing to the river water pollution. We direct the Pollution Control Boards of the various States as well as the Central Pollution Control Board and various Governments to place before us the data and material with respect to various rivers in the concerned

States, and what steps they are taking to curb the pollution in such rivers and to management as to industrial effluents, sewage, garbage, waste and air pollution, including the water management. We club the ending case of water management with this matter.

5. It was stated by the Chief Secretary to the State of Punjab that there are few machines by which stubble can be collected called the bailors but those machines are concentrated in few districts only. He has assured us of the fact that such bailors to be provided in different districts at block levels so that small farmers can use these machines for removal of the stubble. We direct the States of Haryana and Uttar Pradesh also to do the needful in this regard. We also issue notice to various other States as stubble burning is taking place in various other States also to submit a report as to the stubble burning in their States and what steps they are taking and what they propose to do in this regard.

6. With respect to Smog Towers, let a concrete decision be taken within 10 days from today what kind of towers are required which may operate successfully and how many such towers are required so as to take care of the pollution which is being caused in Delhi and NCR region. The decision be taken not only by the Government of Delhi, but also by the States of Punjab, Haryana and Uttar Pradesh, where the position is reported to have deteriorated.

7. We are informed that Anti Smog Guns were experimented by the Government of NCT of Delhi which is used as a cannon that sprays atomized water 50 metres into the air to bring down suspended pollutants. The device is connected to a water tank and it can be

taken to different parts of the city on a vehicle. We require the Government of NCT of Delhi to report to us what steps they have taken in this regard to use and acquire these Anti Smog Guns and the outcome of the experiment which was performed. Let Central Pollution Control Board (CPCB) also ascertain and submit a report regarding the effect created by the use of such guns within 10 days.

8. There are other technologies which are being used to control the pollution. Oxy Furnaces are being developed to reduce the Ozone Emissions from industries. Technology of i) Wireless Sensors; ii) Nanotechnology; iii) Laser methods; (iv) Spectroscopic monitoring techniques and (v) Chemical methods are also used so as to control the pollution.

9. We require an IIT expert to be associated by the CPCB and High Level Committee to be formed by the Central Government including that of the stakeholders of the Government of NCT of Delhi to work out on the aforesaid various technologies and how they can be utilised and their feasibility etc. Let the Committee be constituted within three days from today and report be filed within three weeks in this regard with respect to above-mentioned technologies.

10. As we have noted that from last several years, the position of air pollution is worsening in spite of various orders passed by this Court. The reports and the scientific data indicating that large section of people are suffering from the dreaded diseases due to such air pollution such as Cancer, Asthma and various other diseases. Life span is adversely affected. Time has come that

the various States recognise right to life is important right. Human life and health have been put in danger. In such scenario, why they should not be required to pay compensation to such persons who are being affected by inadequate arrangement to check the air pollution, non-lifting of garbage, waste which add ultimately to the pollution.

11. In this case we find that Delhi is lacking the capacity to the extent of 45% to even clean the garbage/waste which is being generated. Similar is the situation in various other places. We take note of the situation which is alarming and time has come to remind the State machineries as to their duties as all of us are meant to serve the people of this great country. Our Constitution has envisaged certain Directive Principles as they are more important rights at the discretion of the Government. The Courts are not to interfere in that, but dereliction cannot be to the extent that the very right to life is endangered by the inaction.

12. We find that the State has to take care of the health and strength of workers, men and women. Children are given opportunities and facilities to develop in a healthy manner. The State is duty bound under Article 41 also to take care of old age, sickness and disablement etc. The State is also under obligation under Article 47 to raise the level of nutrition and the standard of living and to improve the public health. Under Article 48, the State is duty bound to endeavour to organise agriculture and animal husbandry with modern and scientific lines. Article 48A deals with protection and safeguarding of forests and wild life. Article 51A(g) confers duty on individuals to protect and improve the

natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Article 51A(h) requires to develop scientific temper, humanism and the spirit of inquiry and reform.

13. Not only the basic Fundamental Rights are being ignored with respect to air and water, problem of governance are being projected, which cannot come into the way of the basic Fundamental Rights which a human enjoys, much less to talk of the Fundamental Duties and Directive Principles contained in the State policy which have already found statutory expression in the form of Municipal laws, Prevention of Air Pollution and Water Acts and various schemes framed by the Central Government and State Governments, but we see neither the air quality has improved nor the water quality in several States, not to talk of Delhi only. We have called for the report from Delhi Government where the reports indicate that the contaminated water is being supplied and also from Bureau of Indian Standards to submit report in this regard.

14. In the aforesaid situation, we have to direct the various State Governments to submit a report not only as to the air quality but also as to the quality of water which is being supplied, and water management system.

15. At the same time, as we find that in spite of various orders passed by this Court, we are not able to improve the situation of air quality which we can see at least in Delhi and NCR with certainty. Time has come to require the State Governments to explain why they should not be asked to compensate the persons who are being affected by bad air quality. Obviously, the State is run

by the administration, why liability should not be imposed for such a tort on the concerned machinery also of the various States which are failing to discharge their basic duties. This Court in *Municipal Council, Ratlam Vs. Vardhichand & Ors.*, reported in (1980) 4 SCC 162 has held they have to take proper and positive action in this direction. It is their bounden duty to provide civic amenities, and also to see that self-created bankruptcy does not come in the discharge of the statutory obligation which are necessary for existence of human life. We have seen during the course of the arguments that one State is passing the burden upon the Centre and then it is stated on behalf of the Central Government that they have framed scheme and it for the State Governments to implement it. We expect not only the 'policy making' but also its 'implementation'. Let the States of Punjab, Haryana, Uttar Pradesh and the Government of NCT of Delhi respond, due to the air pollution, why the concerned Government and its concerned machinery, from top to bottom, should not be asked to compensate the citizens of Delhi and adjoining areas for various diseases which are being caused and sufferings and troubles which are being faced and the report indicates the life span is being shortened. Let show cause notice be issued to the various State Governments, and to the Chief Secretaries, to submit reply within six weeks. Let the matter be listed for consideration on 17.01.2020. The Chief Secretaries to the States of Punjab, Haryana, Uttar Pradesh and Government of NCT of Delhi be personally present on that date.

16. Besides that, we also issue notice to the learned counsel appearing on behalf of the farmers as to show cause why the orders of this Court have been violated and why the farmers should not be asked to pay the compensation which may be determined by this Court and why the burden should not be fastened upon them also.

17. Let the decision be taken with respect to other technologies mentioned in Paragraph No. 8 above as also the decision to be take on the smog guns and smoke towers within 10 days from today. List the case for consideration of above aspects on 09.12.2019.

I.A.Nos. 177602 and 177610 of 2019

Prayer has been made by India Trade Promotion Organisation with respect to Hall Nos. A3 to A5. The following averments have been made in the application :

"There is only some work of seven days left to enable holding of these events, such as housekeeping and cleaning the halls, preparation of access ways from Bhairon Road, strengthening and compacting at Hall No. 5, compaction of approach road for movement of cargo trucks and fire tenders from Gate No. 5 to Hall A3-A5, laying of temporary electrical services and water supply lines etc."

It is assured that no pollution shall be permitted to be caused by the aforesaid activity by taking the steps as mentioned in Paragraph 10 of the application, as specified by NBCC. We permit aforesaid activity with riders mentioned in para 10 of application.

Prayer was made regarding lifting the restriction of the other construction activity. Let the report be submitted by the CPCB. Then we will take a call whether we have to relax the restrictions

that have been imposed.

List after 10 days.

I.A.Nos. 179126 and 179130 of 2019

List after 10 days.

IN RE : COLOUR - CODED STICKERS

REPORT NO. 103 SUBMITTED BY EPCA

List on 10.01.2020.

IN RE : DIESEL VEHICLES

I.A.NO. 79444, 177432/2018 AND 142872/2019

List on 10.01.2020.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER