

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

Original Application No. 681/2018

News item published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with multiple timelines to clean air in 102 cities to be released around August 15"

Date of hearing: 15.03.2019

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

For Respondent (s): Mr. Rajkumar, Advocate for CPCB

ORDER

1. The issue for consideration is the remedial measures to be taken to bring the air quality of 102 cities identified as 'non-attainment cities', which do not meet the National Ambient Air Quality Standards (NAAQS), prescribed under Section 16(2)(h) of the Air (Prevention and Control of Pollution) Act, 1981.
2. The matter was considered by this Tribunal on the administrative side on 05.09.2018 and thereafter by way of a judicial order dated 08.10.2018 in light of news item mentioned above.
3. The Tribunal noticed the reports that there are large number premature deaths on account of air pollution

and other diseases. As per survey in the year 2016, premature deaths in Delhi are reported to be 15000. Premature deaths in Mumbai, Kolkata, Bangalore and Chennai are reported to be between 5,000-10,000 in 2016¹. The Tribunal also noted the directions of the Hon'ble Supreme Court on control of vehicular pollution², industrial and construction sector pollution³, power sector pollution⁴ and agricultural sector pollution⁵. Notice was also taken of Comprehensive Action Plan (CAP) for air pollution control. It provides for Graded Response Action Plan (GRAP) envisaging specific steps for different levels of air quality. Strategies include reducing number of vehicles, traffic management, closing of polluting power plants and polluting industries, control of DG sets, stopping open burning, use of coal/wood open eateries, road dust, construction dust, entry of trucks, stopping construction activities, odd and even scheme for private

¹<https://www.ndtv.com/delhi-news/delhis-air-pollution-has-caused-of-death-of-15-000-people-study-1883022>.

² M.C. Mehta v. Union of India (1985)2 SCC 431, M.C. Mehta v. Union of India (2001) 3 SCC 756, M.C. Mehta v. Union of India (1998) 6 SCC 63, M.C. Mehta v. Union of India (2002) 3 SCC 356, M.C. Mehta v. Union of India (1998) 6 SCC 60

³ M.C. Mehta v. Union of India (1997) 2 SCC 353, M.C. Mehta v. Union of India and Shriram Foods and Fertilizer Industries and Anr. (1986) 2 SCC 235, Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P. (1985) 2SCC 431, Mohd. Haroon Ansari v. District Collector (1998) 6 SCC 60, Union of India v. Union Carbide Co. (1989) 1 SCC 674, M.C. Mehta v. Union of India (1992) 4 SCC 256, Sterlite Industries (India) Ltd. etc. v. Union of India & Ors.(2013) 4SCC 575 , M.C. Mehta v. Union of India (2004) 6 SCC 588, M.C. Mehta v. Kamal Nath (2000)6 SCC 213

⁴ Consumer Education and Research Centre v. Union of India (1995)3 SCC 42, Dahanu Taluka Environment Protection group and Ors. v. Bombay Suburban Electricity Supply Company Ltd. and Ors (1991) 2SCC 539

⁵ Arjun Gopal and Ors v. Union of India and Ors (2017) 16 SCC 280, Dr. B.L Wadhwa v. Union of India and Ors (1996) 2 SCC 594

vehicles, shutting of schools, closing of brick kilns, stone crushers, hot mix plants, power plants, intensifying public transport services, mechanised cleaning of road, sprinkling of water, stopping the use of diesel generator sets. The Tribunal noted that the Central Pollution Control Board (CPCB) has dealt with National Ambient Air Quality Monitoring Programme (NAAQM) with reference to notified air quality standards.

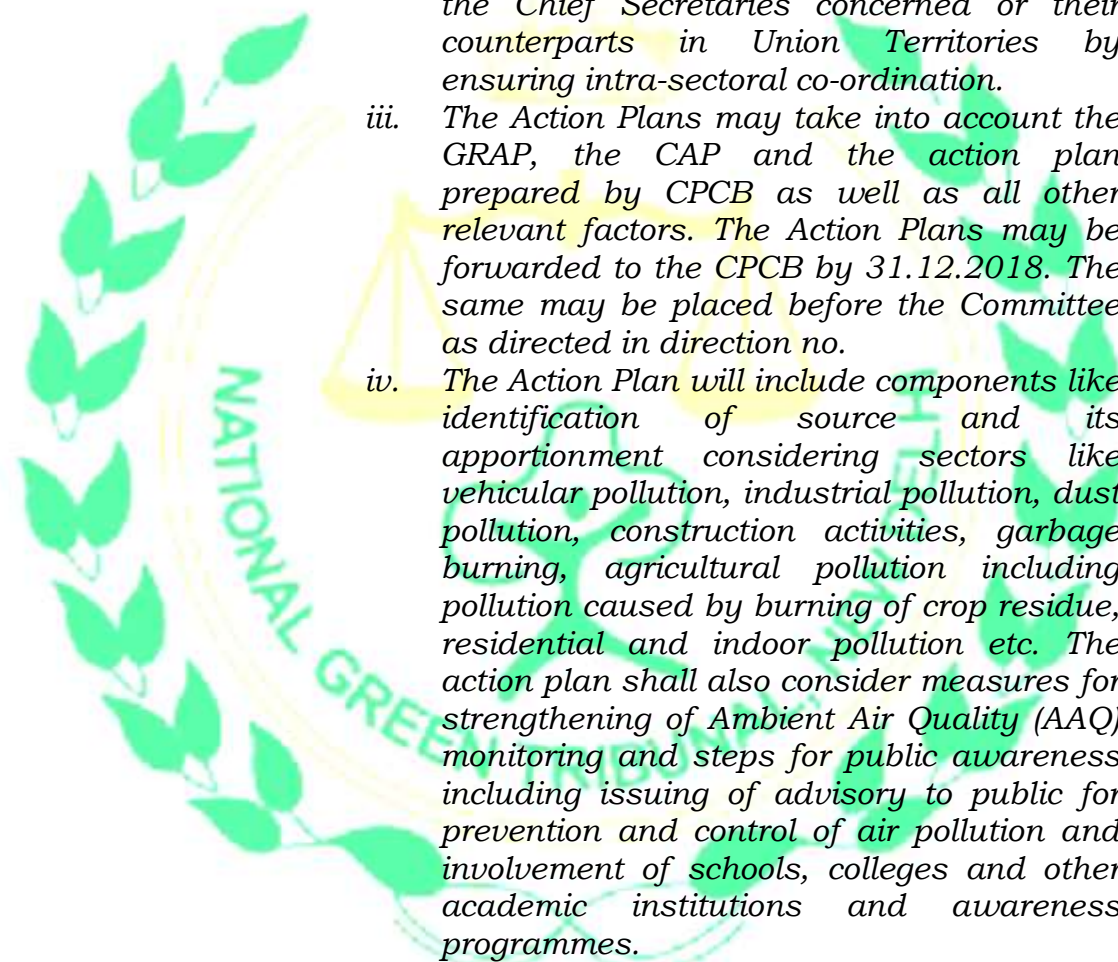
4. Accordingly, all the States and Union Territories with non-attainment cities were directed to prepare action plans to bring the air quality upto the prescribed norms. The action plans were to be forwarded by 31.12.2018 to the CPCB to be evaluated by a Committee constituted by the Tribunal. The Chief Secretaries of all the States and Administrators/Advisors of Union Territories were to be personally accountable. The CPCB and State PCBs were to work out and design National Ambient Air Quality Monitoring Programme and to be connected to the central server of CPCB. The directions are:

“15. Accordingly, we consider it appropriate to take cognizance of the alarming situation and issue directions as follows:

- i. All the States and Union Territories with non-attainment cities must prepare appropriate action plans within two months aimed at bringing the standards of air*

quality within the prescribed norms within six months from date of finalization of the action plans.

- ii. The Action Plans may be prepared by six-member committee comprising of Directors of Environment, Transport, Industries, Urban Development, Agriculture and Member Secretary, State Pollution Control Board or Committee of the concerned State. The Committee may be called Air Quality Monitoring Committee (AQMC). The AQMC will function under the overall supervision and coordination of Principal Secretary, Environment of the concerned State/Union Territory. This may be further supervised by the Chief Secretaries concerned or their counterparts in Union Territories by ensuring intra-sectoral co-ordination.
- iii. The Action Plans may take into account the GRAP, the CAP and the action plan prepared by CPCB as well as all other relevant factors. The Action Plans may be forwarded to the CPCB by 31.12.2018. The same may be placed before the Committee as directed in direction no.
- iv. The Action Plan will include components like identification of source and its apportionment considering sectors like vehicular pollution, industrial pollution, dust pollution, construction activities, garbage burning, agricultural pollution including pollution caused by burning of crop residue, residential and indoor pollution etc. The action plan shall also consider measures for strengthening of Ambient Air Quality (AAQ) monitoring and steps for public awareness including issuing of advisory to public for prevention and control of air pollution and involvement of schools, colleges and other academic institutions and awareness programmes.
- v. The Action Plan will indicate steps to be taken to check different sources of pollution having speedy, definite and specific timelines for execution.
- vi. The Action Plan should be consistent with the carrying capacity assessment of the non-attainment cities in terms of vehicular pollution, industrial emissions and population density, extent of construction and construction activities etc. The carrying capacity assessment shall also lay



emphasis on agricultural and indoor pollution in rural areas. Depending upon assessed carrying capacity and source apportionment, the authorities may consider the need for regulating number of vehicles and their parking and plying, population density, extent of construction and construction activities etc. Guidelines may accordingly be framed to regulate vehicles and industries in non-attainment cities in terms of carrying capacity assessment and source apportionment.

- vii. The Committee comprising of (a) Shri. Prashant Gargava, Member Secretary, CPCB, (b) Dr. Mukesh Khare, Professor, IIT Delhi, and (c) Dr. Mukesh Sharma, Professor, IIT Kanpur shall examine the Action Plans and on the recommendations of the said Committee, the Chairman, CPCB shall approve the same by 31.01.2019.
- viii. The Chief Secretaries of the State and Administrators/ Advisors to Administrators of the Union Territories will be personally accountable for failure to formulate Action Plans, as directed.
- ix. The CPCB, SPCBs and State Pollution Control Committees shall develop a public grievance redressal portal for redressal of public complaints on air pollution along with a supervisory mechanism for its disposal in a time bound manner. Any visible air pollution can be reported at such portal by email/SMS.
- x. The CPCB and all the State Pollution Control Boards and Pollution Control Committees shall collectively workout and design a robust nationwide ambient air quality monitoring programme in a revised format by strengthening the existing monitoring network with respect to coverage of more cities/towns. The scope of monitoring should be expanded to include all twelve (12) notified parameters as per Notification No B-29016/20/90/PCI-L dated 18th November, 2009 of CPCB. The continuous Ambient Air Quality Monitoring Stations (AAQMS) should be preferred in comparison to manual monitoring stations. The CPCB and States shall file a composite action plan with timelines for its execution which shall not be more than three months. It is expected that all such AAQMS shall be

connected to central server of CPCB for reporting analysis of results in a form of Air Quality Bulletin for general public at regular intervals atleast on weekly basis and ambient air quality on continuous basis on e-portal. MoEF&CC will provide requisite funds for the purpose. MoEF&CC in consultation with Ministry of Housing and Urban Affairs, MoRTH, Ministry of Petroleum and Natural Gas, Ministry of Agriculture, Cooperation and Farmers Welfare or any other Ministry to lay down such guidelines as may be considered necessary for improvement of air quality in the country.”

5. In pursuance to the above, the CPCB has filed compliance report vide e-mail dated 15.02.2019. An updated status report has been furnished during the hearing by the learned counsel for the CPCB which is as follows:-

*“Action Plan received: 83 cities
Action plan not received: 19 cities
Action Plan approved by CCB: 46
Action Plan not approved by CCB: 11
Action Plan under Review: 26+3 (three revised plan of Telangana received)
Monitoring Network worked out in consultation with SPCBs”.*

6. The question is the action to be taken for non-compliance by the States in not preparing action plans or incomplete plans and further directions for execution of plans.
7. Non-compliance of order of this Tribunal is a criminal offence under Section 26 of the National Green Tribunal Act, 2010 and in case of Government, Head of the

Department is deemed to be guilty for such an offence. Punishment provided is sentence upto three years or fine upto Rs. 10 crores or both with additional fine for the every day's failure. Under Section 25 of the NGT Act, 2010, order of the Tribunal is decree of Civil Court to be executed as per Civil Procedure Code. Section 51 Civil Procedure Code provides civil imprisonment as a mode for enforcing the decree. Alternatively, such further order can be passed as may be necessary to secure compliance.

8. Vide order dated 16.01.2019 in O.A. No. 606/2018, the Tribunal directed Chief Secretaries of all the States to appear in person and furnish compliance of various orders of this Tribunal, including the above order dated 08.10.2018 with regard to non-attainment cities. The Chief Secretaries of five States have already appeared and most of the States have are still non-compliant. They have been directed to take necessary steps with improved institutional mechanism and approach.

9. In view of non-compliance of orders of this Tribunal, on an important issue adversely affecting public health and lives of citizens, inspite of serious consequences statutorily provided by the Parliament, we direct Chief Secretaries of the States in respect of which action plans have not been filed i.e. Assam, Jharkhand,

Maharashtra, Punjab, Uttarakhand and Nagaland to forthwith furnish such action plans. If such action plans are not furnished till 30.04.2019, the States will be liable to pay environment compensation of Rs. 1 crore each. The States, where action plans are found to be deficient and deficiencies are not removed till 30.04.2019, will be liable to pay Rs. 25 lacs each. The timeline for execution of the action plans is six months from the date of finalization of action plan. Budgetary provision must be made for execution of such plans.

10. If action plans are not executed within the specified timeline mentioned above, the defaulting States will be required to pay Environmental Compensation and may also be required to furnish performance guarantee for execution of plans in extended timeline as per recommendations received from CPCB. The CPCB may make its recommendation in the matter before the next date.

11. The CPCB is directed to update the number of cities. If on parameters applied, there are other cities, not included in list of 102, such cities may be also included.

12. We also direct CPCB to prepare noise pollution map and identify hotspots and categorize the cities with

specified hotspots and propose a remedial action plan. Such report may be furnished within three months by e-mail at ngt.filing@gmail.com. We are informed that in 7 cities noise monitoring mechanism has already been established by the CPCB which is functioning on continuous basis and is connected to the server of CPCB. The CPCB may consider setting up such mechanism in all the cities which are found to be having noise level above approved the threshold.

13. We have considered the issue of noise pollution with reference to NCT of Delhi in Original Application No. 519 of 2016, *Hardeep Singh & Ors. v. SDMC* and found that effective monitoring mechanism is necessary to give effect to Noise Pollution (Regulation and Control) Rules, 2000 and law laid down inter-alia “*In Re: Noise Pollution - Implementation of the Laws for restricting use of loud speakers and high volume producing sound systems*”⁶. As noted by the Hon’ble Supreme Court, absence of implementation of such norms affects health of citizens, especially infants and senior citizens. It also affects sleep, comfort, studies and other legitimate activities. Steps required to be taken include:

⁶ (2005) 5 SCC 733

- i. Training of regulatory machinery and identifying and notifying accountable officers and preparing action plan and monitoring mechanism.
- ii. Awareness, particularly among students through Education Department and involvement of Resident Welfare Associations (RWAs), social and religious institutions and volunteers.
- iii. Prosecution of violators, seizure of equipment and recovery of compensation from violators.
- iv. Requiring installation of noise, measurement meters by those using equipment capable of producing noise higher than the prescribed limit.

14. The State PCBs may undertake noise level monitoring in conjunction with the Police Department and take remedial action. The Police Departments of all the States/UTs may obtain the noise monitoring devices within a period of three months and specification of such devices may be finalized in consultation with the respective State PCBs/Pollution Control Committees (PCCs). The Police Department of all the State/UTs may also train their staff regarding the use of such devices and develop a robust protocol for taking appropriate action against the defaulters. The CPCB may explore the possibility in consultation with the leading manufacturers of public address systems and other manufacturers of such instruments, to manufacture

such equipments wherein the noise meters with data loggers are fitted therein so that as and when the prescribed parameters are violated, the same gets recorded and retrieved by the regulators for fixing the responsibility on the violators. The Chief Secretary may finalize action plans in this regard within three months and submit the same to CPCB. CPCB may give its report by July 15, 2019.

15. The CPCB may also lay down scale of compensation to be recovered including conditions on which equipment seized is to be released within one month.

16. Copies of this order be sent to the Chief Secretaries of all the States/UTs and DGPs by e-mail.

List for further consideration on 19.07.2019

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

March 15, 2019
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