

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)

(IN RE: COMMISSION FOR AIR QUALITY MANAGEMENT (CAQM) 1) I.A. NO. 236055/2024 (APPLICATION FOR INTERVENTION) 2) I.A. NO. 231348/2024 (APPLICATION FOR DIRECTIONS) 3) I.A. NOS. 16223, 16230, 16235, 16236/2021 (APPLICATIONS FOR CONDONATION OF DELAY IN FILING, CONDONATION OF DELAY IN REFILING, DIRECTIONS, PERMISSION TO APPEAR AND ARGUE IN PERSON) NAME OF THE FOLLOWING ADVOCATES MAY BE TREATED TO HAVE BEEN SHOWN IN THE LIST: MR. HARISH N. SALVE, SR. ADVOCATE (A.C.) MS. APARAJITA SINGH, SR. ADVOCATE (A.C.) MR. A.D.N. RAO, SR. ADVOCATE (A.C.) MR. SIDDHARTHA CHOWDHURY, ADVOCATE (A.C.) PETITIONER-IN-PERSON MR. G.S. MAKKER, MR. AMRISH KUMAR, MR. M.K. MARORIA MR. SANJAY KR. VISEN, MR. SUDEEP KUMAR, MR. KARAN SHARMA, MR. SANDEEP KR. JHA MR. JYOTI MENDIRATTA, MR. RAHUL KHURANA, MS. FILZA MOONIS, MR. ANIL KUMAR, ADVOCATES MR. DEEPAK KHOSLA, PETITIONER-IN-PERSON)

Date : 23-10-2024 This petition was called on for hearing today.

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HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

1. Pursuant to this Court's order dated 16th October, 2024, the Chief Secretaries of the States of Punjab and Haryana are present today.

2. We have heard the learned counsel appearing for the parties on the implementation of our earlier orders and, in particular, the order passed by the Commission for Air Quality Management (for short, "the Commission") on 10th June, 2021.

3. As regards the implementation of the directions contained in paragraph 14 of the said order, today we have a scenario where both the Punjab and Haryana Governments have come out with a case that monitoring as required by clause (e) of paragraph 14 through Village Nodal Officers, Cluster Officers, Sub Divisional Officers, District level Officers and State Level Officers is now being done. However, the precise action taken by a large number of officers is not specifically placed on record.

4. It is claimed by the Chief Secretary of the Government of Haryana that this year, the instances of stubble burning have been reduced considerably. However, in the case of both Governments, we find that selective action is being taken against the wrongdoers. In some cases, the Governments claim that they have recovered compensation. In some other cases, they are claiming that they have registered First Information Reports. The environmental compensation that is stated to be recovered is minimal.

5. The learned Additional Solicitor General appearing for the Commission states that the Government of India has exercised power under Section 15 of the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 (for short, "the Act") and has

adopted the formula laid down by the National Green Tribunal for fixing rates of compensation while framing Rules. Nothing is placed on record to show that the rule-making power has been exercised in terms of Section 15 of the Act prescribing the rates of compensation. The importance of Section 15 of the Act has to be understood in the context of the proviso to sub-section (1) of Section 14 of the Act, which excludes the farmers from the applicability of penal provisions. When such a concession is given to the farmers, power has to be exercised by the Government of India under Section 15 of the Act by framing rules and by providing appropriate Environmental Compensation. The Government cannot blindly rely upon the formula fixed by the National Green Tribunal.

6. We direct the Government of India to reconsider the issue and take action under Section 15 of the Act for prescribing proper rates of compensation. Section 15 of the Act talks about the manner of collecting compensation. Unless proper exercise of power under Section 15 of the Act is made, there cannot be any effective action against the wrongdoers. We expect the Government to take action within two weeks from today.

7. Another serious issue is flagged by the compliance affidavit filed by the State of Punjab. Our attention is invited to the amendment made to Section 15 of the Environment (Protection) Act, 1986 (for short "the

Environment Protection Act") by Jan Vishwas (Amendment of Provisions) Act, 2023. Section 15 as originally enacted provided that violation of provisions of the Environment Protection Act, the Rules framed thereunder, and the directions and orders passed thereunder was an offence. The provision of Section 15, which required prosecution of the wrongdoers, is substituted by a provision for recovery of penalty for contravention of provisions of the Environment Protection Act. This provision came into force on 1st April, 2024. The substituted Section 15 has been rendered completely ineffective due to inaction on the part of the Government of India. Neither the Rules are framed to support the said provision nor has the appointment of adjudicating officers as provided in Section 15C been made, though more than six months have elapsed since the date the substituted Section 15 came into force. As the adjudicating officers are not appointed under Section 15C, the law-enforcing machinery cannot impose penalties under Section 15. In the absence of machinery created by the Government of India, Section 15 as substituted has become toothless. There is nothing in the hands of law-enforcing authorities to strictly enforce the provisions of the Environment Protection Act. Therefore, those who violate the laws are now scot-free, as no action can be taken against them. The learned Additional Solicitor General assures the Court that the entire machinery will be brought into existence within

two weeks from today.

8. The inaction is reflected in the figures given across the bar. For example this year, there are 1084 identified cases of stubble burning in Punjab. However, compensation has been recovered from only 473 persons. As far as Haryana is concerned, 419 cases have been identified. First Information Reports have been lodged only against 93 of the wrongdoers, and nominal compensation has been recovered in the case of 320 wrongdoers. *Prima facie*, it appears to us that the penal provisions have not been consistently applied by both the States.

9. Under Section 14(1) of the Act, penal action has to be taken against those officials who have not implemented the directions issued under Section 12 of the Act. Instead of setting criminal law in motion, all that the Commission has done is to issue a show cause notices.

10. The time has come to remind the Government of India and the State Governments that every citizen has a fundamental right under Article 21 of the Constitution of India to live in a pollution-free environment. The stubble burning leads to huge air pollution. These are not matters only of implementing the existing laws; they are the matters of blatant violation of fundamental rights guaranteed under Article 21 of the Constitution of India. It is not only a question of implementing the orders of the Commission and taking action for breaches

of law; the Governments will have to address themselves to the question of how they will protect the right of citizens to live with dignity and in a pollution-free environment. Therefore, it is a high time that the Governments and the authorities note that this litigation is not an adversarial litigation and this litigation is only to ensure that the laws relating to the environment are strictly complied with so that the constitutional rights of the citizens are protected. We may also note here that coordination between the Commission and the authorities of the States is absolutely necessary.

11. As noted in the earlier orders, the most important statutory committee under the Act is not properly functioning because many members remain absent in the Committee meetings. It is this Committee which deals with the implementation of the orders passed by the Commission. Now, there is an assurance in the affidavit filed by the Union of India that necessary action will be taken, even to replace the members not attending the meetings.

12. Ms. Aparajita Singh, the learned senior counsel appointed as amicus curiae, is absolutely correct in submitting that year after year, this Court has passed directions to deal with the issue of stubble burning. In fact, she pointed out that creation of the Commission is as a result of the orders passed by this Court. She is right in submitting that despite the orders passed by

this Court, every year at the grass-root level there is no change.

13. We fully agree with the learned senior counsel appointed as amicus curiae, and we have put all concerned to notice that stricter action will have to be taken against those responsible for violations.

14. We direct the Government of India to immediately look into the proposal submitted by the State of Punjab for the release of additional funds so that provision for making available tractors with drivers and diesel can be made to those farmers whose holding is less than 10 hectares. We direct the Government of India to take appropriate decision on the proposal submitted by the State Government within two weeks from today.

15. The learned amicus curiae has rightly pointed out that the other aspects causing pollution in Delhi will have to be addressed. Those issues are broadly as under:

(a) There are 13 hot spots in Delhi already identified by EPCA where large-scale open burning of garbage/waste burning happens;

(b) Pollution created by transport in Delhi;

(c) Entry of heavy trucks in Delhi; and

(d) Pollution caused by industries.

16. This Court has issued a large number of directions on the aforesaid aspects from time to time. We direct the State Government of Delhi to examine all earlier

orders passed by this Court on the aspects mentioned above and submit a compliance report regarding all the directions within two weeks from today. Certain directions were also issued against the Central Government. The Government of India and all National Capital Region States shall file similar compliance affidavits.

17. For hearing on the subjects mentioned above and for reporting compliance with the directions issued today, list on 4th November, 2024 at the end of the Board.

18. The presence of the Chief Secretaries is dispensed with.

IA No.236055/2024

19. We direct the applicant to provide copies of the application to the learned counsel representing all the State Governments. We direct the State Governments to look into the suggestions made in the application.

20. List on 4th November, 2024 at the end of the Board.

IA No.231348/2024 and 158128/2019

21. List on 4th November, 2024 at the end of the Board.

IA Nos.88585/2020 and 16223, 16230, 16235 and 16236 of 2021

22. The Registry will ensure that copies of IA D.Nos.64377, 50346, 50347, 50349 and 50350 of 2020 are

placed before the Court on the next date.

23. List on 4th November, 2024 at the end of the Board.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER