

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

M.A. No. 841/2013 to M.A. No. 863/2013

In

Original Application No. 164/2013

Pankaj Sharma V/s MoEF & Anr.

**CORAM:** HON'BLE SHRI JUSTICE DR. P. JYOTHIMANI, JUDICIAL MEMBER  
HON'BLE DR. G.K. PANDEY, EXPERT MEMBER  
HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER  
HON'BLE SHRI RANJAN CHATTERJEE, EXPERT MEMBER

Original Applicant : Ms. Sumedha Dua, Adv.  
Miscellaneous Applicant : Mr. Chetan Sharma, Sr. Adv. along with  
Ms. Megha Mehta Agrawal, Adv.  
Respondent No. 1 : Mr. Dharampal, Assistant  
Respondent No. 2 : Mr. Biraja Mahapatra along with Mr.  
Sandeep Mishra, Member Secretary and  
Mr. Jindal, Law Officer.  
Restaurants Owner : Mr. S.K. Bhattacharya, Sr. Adv.  
Ms. Bandhya Kohli & Ripu Adalakha, Adv.

Date and Remarks	Orders of the Tribunal
<b>Item No. 1</b> <b>September 25,</b> <b>2013</b>	<p>All the impleading petitions are heard. We are of the considered view that these are the restaurants which were directed to be closed by the earlier order of this Tribunal and, therefore, according to us, they are proper and necessary parties and are, therefore, directed to be impleaded as Respondents. Registry to take necessary steps in this regard.</p> <p>We have heard all the respective counsel including the Member Secretary of the Delhi Pollution Control Committee (DPCC) who is present before this Tribunal even today. The Member Secretary of the DPCC has stated, as noted in the earlier order of this Tribunal, that there are more than 20,000 restaurants situated in the whole of Delhi area. In so far as it relates to the Hauz Khas region, he has already stated that out of 41 restaurants listed by the applicant, 7 restaurants were closed and in respect of remaining 34 restaurants, 19 restaurants have responded to the notice issued by the DPCC while there was no response from 14 restaurants. Regarding M/s Azure Cafe &amp; Kitchen, 14, top floor, Hauz Khas Village New Delhi, the owner of the premises said that there was no</p>

restaurant at the place and it was purely residential in nature. The Member Secretary has also expressed his anguish that in so far as the DPCC is concerned, it is under staffed and they have only 26 scientists with whom it is quite impossible to have monitoring of the entire city of Delhi as they are mostly concerned about the environmental pollution. However, according to him the DPCC has taken necessary steps to see that these mushroom growth of restaurants are streamlined in a proper manner and accordingly notices have been issued.

Today, when the matter is taken up, the Learned Counsel appearing for the DPCC would submit that out of the 33 hotels which are mentioned in the Counter Affidavit filed by the Respondent No. 2, One (1) hotel, namely, M/s Thirty Nine, T-6B, Main Market Road, Hauz Khas Village, New Delhi has already set up the ETP Plant but the DPCC has to verify the proper functioning of the same and the adequacy is to be certified by a consultant accredited by the Ministry of Environment and Forests (MoEF), New Delhi and after such accredited consultant approve the same, the DPCC will pass appropriate order regarding the said hotel/restaurant. Taking note of the fact that out of the 33 hotels / restaurants, it is this hotel which has made a concrete effort to put up the ETP system, we allow the said hotel to be opened with the condition that the same shall be subject to the final order that may be passed by the DPCC after the accredited consultant give necessary certificate. It is also made clear that in respect of this hotel, the DPCC shall make proper supervision in respect of the efficient functioning of the ETP.

Apart from the above said hotel, it is now brought to the notice of this Tribunal that 14 hotels/restaurants have started establishing ETP Plant and the civil work is in progress. They are :

1. M/s Amour – The Patio Restaurant, Cafe & Bar, 30 Hauz Khas Village, New Delhi.
2. M/s Diva Piccolo, 1<sup>st</sup> Floor, 30, Hauz Khas Village, New Delhi.
3. M/s Garage Inc., 2<sup>nd</sup> Floor, 30 power house building, Hauz

Khas Village, New Delhi.

4. M/s Out of the Box, 9A, Hauz Khas Village, New Delhi.
5. M/s Raas, 9A, 1<sup>st</sup> Floor, Hauz Khas Village, New Delhi.
6. M/s Raasta, 30A, 1<sup>st</sup> Floor, Hauz Khas Village, New Delhi.
7. M/s Food Mill, 30, 2<sup>nd</sup> floor, Power House Building, Hauz Khas Village, New Delhi.
8. M/s Asia Kitchen, 30A, Ground Floor, Hauz Khas Village, New Delhi.
9. M/s Kaffeine, 50A, 1<sup>st</sup> floor, Hauz Khas Village, New Delhi.
10. M/s Fork You, 30, 1<sup>st</sup> floor, Hauz Khas Village, New Delhi.
11. M/s Amici, 30, ground floor, Hauz Khas Village, New Delhi.
12. M/s Cire, 30, 1<sup>st</sup> floor, Hauz Khas Village, New Delhi.
13. M/s Farashi/M/s Faarsi, 26, ground floor, Hauz Khas Village, New Delhi.
14. M/s Masha, 9A, Hauz Khas Village, New Delhi.

In respect of these 14 restaurants since it is stated that the installation of ETP is under progress and civil work is also being carried out, we are of the view that with certain conditions, they must be permitted to function. Accordingly, we direct that the installation of the entire ETP shall be completed within a period of four (4) weeks subject to the condition that within the said time the DPCC shall pass appropriate orders after the accredited consultants give report in respect of functioning of the ETPs installed in these restaurants. In the event of failure of completion of the above process within the specified period, the DPCC shall order closure of the restaurants concerned.

It is brought to the notice of this Tribunal that out of the remaining restaurants/hotels, 11 restaurants have placed orders but they have not started any civil work regarding installation of ETP. According to the Learned Counsel appearing for the DPCC, the Committee has verified the genuineness of the steps taken by these restaurants including the purchase orders and other papers stated to have been placed before them. The said restaurants are:

1. M/s Fat Ninja, 27, Hauz Khas Village, New Delhi.
2. M/s He Said She Said, 31, first floor, Hauz Khas Village, New



Delhi.

3. M/s Pizzeria Rosso, 26, Ground Floor, Hauz Khas Village, New Delhi.
4. M/s The Golconda Bowl, 22, Hauz Khas Village, New Delhi.
5. M/s The Pink Room, 29A, Hauz Khas Village, New Delhi.
6. M/s Verve, 28, 3<sup>rd</sup> floor, Hauz Khas Village, New Delhi.
7. M/s Yeti – Himalayan Kitchen, 50A, 2<sup>nd</sup> floor, Hauz Khas Village, New Delhi.
8. M/s Zo, 1, Hauz Khas Village, New Delhi.
9. M/s ELF Cafe Lounge, 26A, 2<sup>nd</sup> Floor, Hauz Khas Village, New Delhi.
10. M/s Naivedyam, 1, Hauz Khas Village, New Delhi.
11. M/s Miabella 50A, 3<sup>rd</sup> floor & 4<sup>th</sup> floor, Hauz Khas Village, New Delhi.

In so far as these 11 restaurants are concerned, in as much as it is stated that the DPCC is satisfied about the genuineness of the efforts taken by them for the purpose of installation of ETP, we permit these 11 restaurants to open subject to the following conditions :

- i) Each of the said restaurants/hotels shall pay an amount of Rs. 10,000 towards cost to be paid to the legal aid fund of the National Green Tribunal Bar Association within a period of 2 weeks; and
- ii) They shall install ETP and complete the entire process within 4 weeks;

Subject to the condition that within the said time, the DPCC shall pass appropriate orders for permission after obtaining the certificate of accredited consultant. In the event of failure of compliance by any of these restaurant within the stipulated period, the DPCC shall order closure of those restaurants.

The following restaurants are either closed or not made any progress in-spite of the order passed by this Tribunal and notice issued by the DPCC:

1. M/s Capri Villiggio, 1A, Hauz Khas Village, New Delhi.
2. M/s The 1970 Cafe, 3<sup>rd</sup> floor, Building 2, Hauz Khas Village,

New Delhi.

3. M/s Dzukou, 13A, Roof top, Hauz Khas Village, New Delhi.
4. M/s Iron Curtain, 19, 1<sup>st</sup> floor, Hauz Khas Village, New Delhi.
5. M/s The Sky Cafe, 12, Hauz Khas Village, New Delhi.
6. M/s Futomaki, The Sky Cafe, 12, Hauz Khas Village, New Delhi.
7. M/s Grey Garden, 13A, Hauz Khas Village, New Delhi.
8. M/s TLR Cafe, 31, Hauz Khas Village, New Delhi.
9. M/s The Rose, 9A, Hauz Khas Village, New Delhi.
10. M/s Cashmere, 37, Hauz Khas Village, New Delhi.
11. M/s Cafe 22 Tango, 13B, 2<sup>nd</sup> floor, Hauz Khas Village, New Delhi.

Since these restaurants on inspections made by the DPCC are stated to have been closed and further they have not approached the DPCC, we direct continuous closure of these restaurants and these shall not be allowed to open until they take measures for installation of ETP and approach the DPCC for permission in accordance with law. The DPCC shall pass appropriate order in accordance with law. We also make it clear that other than the above said restaurants, all other restaurants which are not brought to the notice of this Tribunal shall also remain closed until further order of this Tribunal.

We also make it clear that in respect of those restaurants which are closed by this Tribunal today, electricity and water connection shall be immediately disconnected by the concerned authorities.

We also make it very clear that while taking the final decision by the DPCC, it is not necessary for the Committee to approach the Tribunal except to say that such decision shall be made strictly in accordance with law.

This order shall be without prejudice to any legal activities done in the residential area. Our order shall also not change the status of restaurants, if they are located in non-conforming areas.

The Learned Counsel for the Applicant M/S Sumedha Dua

has vociferously made a submission that passing of such order in granting permission to those who are attempting to make ETP and in the meantime permitting to continue their business would amount to perpetuating the pollution which according to her may not be allowed. She would also submit with equal force that in allowing installation of ETP in the restaurants run illegally in residential areas, it would amount to permitting the commercial activities in the residential area. She has also submitted that nothing has been spoken about the DG sets and also air pollution.

In so far as the first contention raised by the learned counsel, it is contended by Mr. S.K. Bhattacharya, Counsel appearing for one of the Respondent restaurants, that under the Water (Prevention and Control of Pollution) Act, 1974, there is scope for giving permission to those persons who are desirous of implementing various methods required for the purpose of abating pollution. According to him, under section 25(5) of the said Act, there is an implied permission granted for those persons who attempt to comply with the environmental norms.

It is also submitted by the learned counsel Mr. Chetan Sharma appearing for the restaurants which are impleaded today as party respondents, that the same Applicant has moved the Hon'ble High Court of Delhi for a direction to take action against the illegal running of the restaurants in Hauz Khas area. According to the learned counsel, when the Applicant has already moved the Hon'ble High Court of Delhi, the Applicant must first choose either the case to continue in the Hon'ble High Court of Delhi or to continue the same in the Tribunal. He has also stated that in the writ petition filed in the Hon'ble High Court, the Applicant has chosen to make these 33 restaurants as Respondents. However, the Applicant has deliberately not made them parties in this Application for the reason best known to him. According to the learned counsel for non-joinder of the necessary parties, the application deserves dismissal.



After hearing the rival contention made by the respective counsel and on reference to the Water Act, we have no hesitation to hold that by permitting a defaulter to act as per the provisions of law, the same can never be taken to be as perpetuation of environmental hazard in that area. In respect of these cases, these are the restaurants which were admittedly running for a long period and it is stated by the learned counsel for the DPCC that there has been proper drainage system and therefore there is no question of any health hazard. It is also admitted that these restaurants are not using any boiler which may emanate the air pollution and many of the restaurants are connected to Delhi Jal Board. It is stated that while potable water is being obtained from Delhi Jal Board (DJB) some of the restaurants are taking potable water from the ground without prior approval of the competent authority which in our view is not permissible in law. We make it very clear that the restaurants shall not take potable water from the ground water source without prior approval and in the event of any restaurants doing such illegal activity the DPCC shall take necessary steps immediately.

Therefore, by taking note of the above circumstances, we are of the view that the contention raised by the learned counsel for the Applicant that by permitting these restaurants to open with stringent condition it would amount to perpetuation of pollution, does not merit consideration. Under section 25 of the Water Act which imposes restriction on new outlets and discharge in sub-section 5 which runs as follows:

*“(5) Where, without the consent of the State Board, any industry, operation or process or any treatment and disposal system or any extension of addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal*

*system or any extension or addition thereto, or using the outlet or meeting the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.”*

No doubt the above section empowers the defaulter to make necessary rectification and in case of such industry which are deciding to put up the treatment system for the purpose of abating pollution as well as nuisance, the authorities while granting consent shall also take the same into consideration.

On a reading of the said section as submitted by Mr. Bhattacharya, we are of the view that in so far as it relates to the restaurants concerned since the level of pollution is not of serious nature and that the restaurants have at last realised that the DPCC is the authority and they are bound to seek permission from it, conditional permission granted would not amount to violation of law.

We make it very clear that in respect of DG sets all the restaurants are specifically bound to comply with the prescribed norms and the DPCC shall take appropriate action as and when the DG sets are found not complying with the standards and the air pollution level is not within prescribed limit.

Taking note of the submission made by the Member Secretary of the DPCC, we are of the view that certain regulatory measures have to be taken in respect of the running of the 20,000 restaurants which are stated to be situated in the city of Delhi. At the outset, we express our displeasure that the Government of Delhi has not taken steps for strengthening the staff position of DPCC. It is unfortunate to note that the DPCC, which is responsible for restricting pollution in the capital of India, is having only 26 scientists.

We direct and hope that the Delhi administration will take immediate steps for the purpose of permitting the DPCC to appoint adequate staff for implementing the onerous responsibility vested on DPCC both under the Water (Prevention and Control of Pollution) Act,



Air (Prevention and Control of Pollution) Act and the Environment (Protection) Act.

Apart from the above directions the Tribunal directs as follows:

In order to see that functioning of the restaurants/hotels in the Capital of India i.e. Delhi is done in a proper manner without causing pollution, we appoint a committee consisting of the following persons who shall periodically inspect and supervise and suggest various ways and means to be followed for the purpose of running of restaurants/hotels in a proper manner. The Committee shall consist of the following:

1. Secretary  
Department of Environment  
Government of NCT of Delhi - Chairperson
2. Member Secretary, CPCB. - Member
3. A Representative of NDMC  
to be nominated by the NDMC  
( Not below the rank of Director ) - Member
4. A Representative of MCD  
to be nominated by the MCD  
in respect of each of the three Corporations.  
(Not below the rank of Director ) - Member
5. A Representative of National Productivity  
Council, New Delhi, who shall be nominated  
by the said Council.  
(Not below the rank of Director) - Member
6. A Representative of Central Ground  
Water Authority to be nominated  
by the said authority.  
(Not below the rank of Director) - Member
7. A Representative of DDA  
to be nominated by the DDA.  
(Not below the rank of Director) - Member
8. A representative of Delhi Police  
(Not below the rank of Dy. Commissioner) - Member
9. Member Secretary of DPCC who shall act as a member  
as well as member convenor of the said Committee.

It is made clear that this Committee shall be entitled to co-opt any Expert or any other authority as and when the same is required.

The Terms of reference of this Committee shall be as follows:

- a) The Committee appointed above shall suggest measures to control water pollution and air pollution.
- b) The Committee shall propose the Solid Waste Management.
- c) The Committee shall propose conservation of water scheme.
- d) The Committee shall also propose scheme for sanitation and hygiene.
- e) The Committee shall also propose scheme for waste minimisation and better work practices.

The Committee shall file its report within a period of two (2) months from today.

Copy of this order shall be issued to all the concerned Authorities.

The DPCC shall file its status report by the next date of hearing.

We place on record our deep sense of appreciation for the assistance made by the Member Secretary of the DPCC in order to arrive at the above conclusion. Needless to say that his presence is dispensed with during future hearings. However, we hope that as and when his presence is required he will assist the Tribunal. We hope that DPCC will take all necessary steps for installing of ETPs in all the hotel / restaurants of Delhi including their proper operation and maintenance.

Dasti order allowed.

M.A. No. 841 to M.A. No. 862 are disposed of.

In case of any difficulty experienced by any party regarding this order, it is open to them to make representation before this Tribunal.

Stand over to 30<sup>th</sup> October, 2013.

....., JM  
(Dr. P. Jyothimani)

....., EM  
(Dr. G.K. Pandey)

....., EM  
(Prof. A.R. Yousuf)

....., EM  
(Ranjan Chatterjee)

