

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION No. 54/2015 (WZ)**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)
Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

- 1. Shri Varad Co-Op Housing Society (Ltd.),**
Through Authorised Members-cum-office
Bearers Chairman, Secretary, Joint Secretary,
Viz. Shri A.D. Deshmukh, Shri A.V. Deshpande,
Shri Sadashiv S. Mungale, office at Sinhaga
Road, Hingne Kh. Pune 411 051
- 2. Mrs. Reshma Ram Risbud,**
Age 60 Yrs. Occn : Pensioner,
R/at House No.366, Gurukrupa Bunglow,
Sr.No.25/4/7/2, Hingne Khurd,
Nityanand Hall lane, Sinhgad road,
Pune.
- 3. Shri Jaideep Prabhakar Agnihotri,**
Age 47 Yrs. Occn. : Service, C-Wing,
Manibandh Complex, S.No.25/5,
Hingne Khurd, Opp : Nityanand Hall,
Sinhgad Road, Pune 411 051
- 4. Rajesh Jankiram Chaudhari,**
Age 45 Yrs. Occn. : Service, C-Wing,
Manibandh Complex, S.No.25/5,
Hingne Khurd, Opp : Nityanand Hall,
Sinhgad Road, Pune 411 051.
- 5. Madhav Gangadhar Kelkar,**
Age 46 Yrs. Occn. : Service, C-Wing,
Manibandh Complex, S.No.25/5,
Hingne Khurd, Opp : Nityanand Hall,
Sinhgad Road, Pune 411 051
- 6. Shri Kedar Shriram Phatak,**
Age 36 Yrs. Occn. : Service, C-Wing,
Manibandh Complex, S.No.25/5,

Hingne Khurd, Opp : Nityanand Hall,
Sinhgad Road, Pune 411 051

7. Vivek Dattatraya Pasarkar,
Age 42 Yrs. Occn. : Service, C-Wing,
Manibandh Complex, S.No.25/5,
Hingne Khurd, Opp : Nityanand Hall,
Sinhgad Road, Pune 411 051

8. Manoj Gajanan Lonkar,
Age 46 Yrs. Occn. : Service, C-Wing,
Manibandh Complex, S.No.25/5,
Hingne Khurd, Opp : Nityanand Hall,
Sinhgad Road, Pune 411 051

9. Shri Rajendra Ramchandra Aware,
Age 52 Yrs. Occn. : Business, C-Wing,
Manibandh Complex, S.No.25/5,
Hingne Khurd, Opp : Nityanand Hall,
Sinhgad Road, Pune 411 051

....Applicants

A N D

1. Deepak Engineering Works.
Survey No.25/3, Hingne Khurd,
Shade No.3, Near Dnyanganga
School, Sinhagad Road,
Pune 411 051.

2. SLR Industries,
Survey No.25/3, Hingne Khurd,
Shade No.7, Near Dnyanganga
School, Sinhagad Road,
Pune 411 051.

3. Arvind Industries,
Survey No.25/3, Hingne Khurd,
Shade No.15, Near Dnyanganga
School, Sinhagad Road,
Pune 411 051.

4. Press Comp. Industries,
Survey No.25/3, Hingne Khurd,
Shade No.14, Near Dnyanganga
School, Sinhagad Road,
Pune 411 051.

5. Mrs. Nalini Madhukar Gosavi,
Parth Bunglow, Survey No.25/3,

Hingne Khurd, Near Dnyanganga
School, Sinhagad Road, Pune 411 051

6. Pune Municipal Corporation,
Through : The Commissioner,
Pune 411 005

7. The Commissioner of Police,
Camp, Pune 411 001

**8. Maharashtra State Electricity
Distribution Company Ltd.**
Parvati Division, Sinhagad Road,
Pune.

9. The Sub Regional Officer, Pune-1
Maharashtra Pollution Control Board,
Jog Center, 2nd floor, Shivaji Nagar,
Pune 411 005.

10. The Secretary,
State Environment Department,
Room No.217, 2nd floor,
Mantralaya Annex, Mumbai – 32

11. The Collector/District Magistrate
Pune, Through SDM, Haveli,
Camp, Pune 411 001.

.....**Respondents**

Counsel for Applicant :

Mrs. R.M. Risbud, Adv.

Counsel for Respondent No. 1 & 7 :

Mr. D.S. Pande, Adv..

Counsel for Respondent No.2 :

Mr. Rahul S. Gokhale, Adv.
c/o. SLR Industries,

Counsel for Respondent No. 3 :

Mr. Sanjeev A. Agashe, Adv.

Counsel for Respondent No. 4 :

Mr. A.P. Palshikar, Adv.

Counsel for Respondent No. 5 :

Mr. Ganesh S. Mate, Adv.

Counsel for Respondent No. 6 :

Mr. P.S. Suryavanshi, Adv.

Counsel for Respondent No. 8 :

Mr. D.N. Sabnis, Adv.

J U D G M E N T

1. By this Application, Applicants Shri Varad Co-operative Housing Society and its Members have approached this Tribunal raising an environmental dispute, substantially relating to noise pollution caused due to industrial activities of Respondent Nos.1 to 4 and alleged inaction on the part of other Respondents-Government authorities. They have prayed for giving directions to Respondent Nos.2 to 6 to issue written order directing the prevention/prohibition for permanent use of continuance of appliances/apparatus or equipments which are capable of producing or re-producing sound controlling decibels used by Respondent Nos.1 to 5.

2. It may be noted that the present dispute is existing since long and more particularly, show cause notice under Section 133 of Code of Criminal Procedure was issued by the authorities to Respondent Nos.1 to 4 on July 30th, 1993 to reduce the noise pollution or to relocate the manufacturing processes/operations to different location within 15 (fifteen) days. Further, this notice was made absolute by the order dated September 14th 1993. Thereafter, the Applicants have approached the Pune Municipal Corporation through its various offices on several occasions, alleging violation of the provisions of

Bombay Municipalities Act, Maharashtra Land Revenue Code, Maharashtra Regional Town Planning Act (MRTP) etc. It is also alleged that the Health Department of the Pune Municipal Corporation carried out inspections of the disputed area in March 2014 and April 2014 when certain non-compliances were observed. Based on such non-compliances, notices were issued to the Respondents-industries and thereafter Pune Municipal Corporation informed the Maharashtra State Electricity Distribution Company to disconnect the electric supply to the Respondents-Industries. Thereafter, the bunch of Communication between the different departments of PMC, shuffling and shuttling the matter from one department to another department has been filed and the Applicants have claimed that the cause of action has arisen only on January 1st, 2015 when the PMC failed to take effective action against the violators in terms of section 7(2) of the Noise-Pollution (Regulation and Control) Rules 2000.

3. Needless to say, the jurisdiction available to this Tribunal under Section 14(1) of N.G.T. Act is very specific and relates to the enactments referred in Schedule-I of the N.G.T. Act and therefore, the alleged non-compliances of other regulations like Maharashtra Municipalities Act, Land Revenue Code, Maharashtra Regional Town Planning

Act (MRTP) Act, etc. cannot be entertained by this Tribunal.

4. Respondent Nos.1 to 4-industries have not filed any written reply. However, the Advocate for the Respondents submitted that Respondent Nos.1 to 4 are infact very small, tiny or cottage industries having an area of about 600 sq.ft. only. He submits that these industries are operational since last more than 26 (twenty six) years and Respondents-Society has actually occupied the industrial plot/premises only after operation of the industries. He, therefore, submits that the “cause of action” arose for “the first time” long ago and in any case, latest by July 30th, 1993 when the S.D.M. issued show-cause notice. He, therefore, argued that the Application is hopelessly barred by Limitation.

5. He also contends that the Applicants-Society has not produced any document to indicate the date of occupancy certificate given to the Society. He also contends that the location of the disputed area as depicted in the sketch produced by the Applicants (page 77 and 77(a)), would clearly indicate that the Applicant No.1-Society is located along the Sinhgad road which, itself, is very heavy traffic density road. Further, the School i.e. Dnyanganga School/College is also located in the proximity of Applicants as well as the Respondent-Industries. He pointed out that the said schools/colleges

have never complained about noise pollution caused due to the industries and the Applicants for the reasons best known to them, have been targeting the Respondents-Industries. He further submits that, even if, the Respondents-Industries are closed, the problems of noise pollution in the disputed area will not be solved, due to continuous traffic noise coming from the Sinhgad road and the Applicants have deliberately not disclosed this fact. Neither they have raised any grievances related to noise pollution due to traffic on the Sinhgad road. According to him, non-disclosure of such important source contributor of noise pollution itself is an indication of the vindictive approach on the part of the Applicants and therefore, the Application needs to be dismissed on all these grounds.

6. Respondent No.5 is the landlady and the Advocate for Respondent No.5. She submits that the noise monitoring data presented by various authorities is not measured as per the prescribed procedural standards. Such monitoring data does not mention the exact location where such monitoring has been conducted; neither the duration of sampling as well as the contributing sources of noise to such ambient noise level are described. She, therefore, submits that the Application is barred by Limitation and devoid of any merits and needs to be dismissed.

7. Respondent No.9-MPCB did not file any affidavit. However, the Advocate of MPCB, on instructions, of Shri Salunke, Sub-Regional Officer of MPCB, states that the activity/process carried out by Respondent Nos.1 to 4 requires consent from the MPCB under the provisions of Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981. She further submits that the Respondent Nos.1 to 4-industries do not have the consent from the MPCB nor they have applied for such consent, so far.

8. Respondent No.6-Pune Municipal Corporation (PMC) has not filed any affidavit. However, Advocate for PMC fairly agrees that the PMC has received several complaints over a period of decade from the Applicants regarding alleged noise pollution and nuisance caused due to the Respondents-industries. He submits that these complaints have been investigated by various departments of the PMC, however, no consolidated action was initiated by the PMC. He also submits that as per the documents provided by the Applicants, the PMC has already notified silence zones in the city of Pune and a copy of the said declaration is on record at page No.58 and 59. He fairly concedes that such Notification for declaration of the silence zones was not briefed or informed to him earlier and therefore, in another matter i.e. "Gongat Virodhi Manch (PMC) Application No.42/2014 decided on 26th

August 2015”, he had made a statement, on instruction, that the silence zones have not been notified by the PMC. He submits that this is serious lapse on the part of PMC officials of not disclosing such important declaration in the record of that proceeding and he will inform the Municipal Commissioner for taking necessary action. He, however, submits that the PMC has carried out necessary investigation from time to time in the present matter and even recommended the Maharashtra Electricity Distribution Company Ltd. to disconnect the electricity supply of erring industrial units/residential houses etc.

9. Respondent No.8- Maharashtra Electricity Distribution Company Ltd. submits that it provides electricity supply to the Respondent-Industries on commercial basis and cannot disconnect the electricity supply under provisions of Electricity Act unless and until there are certain statutory orders or orders of the Court. The other Respondents i.e. Environment Department and Collector have not filed any reply.

10. We have gone through the pleadings and the rival arguments advanced by the learned Advocates. Before considering the details of the issues involved, the location of the disputed area needs to be properly explained. Though there is no detailed or authentic map which is placed on record, the learned Advocates would agree to the correctness of the sketch which is available on record at

page 77 and 77(a). It is observed that the Applicants-Society is abutting Sinhgad road which is a main road experiencing heavy traffic as well as traffic congestion. Needless to say that this road itself is a major source of noise in the vicinity. The PMC has already declared this area, more particularly area of 100 mtrs. surrounding the Dnyanganga School, as silence zone and therefore, certain restrictions are applicable as per the Noise Rules 2000.

11. The Respondents-Industries are located in between the premises of the Applicants on the eastern as well as on southern side of the industries, and naturally with this peculiar location, Respondents-Industries are practically surrounded by the residential area on three (3) sides and above mentioned school on the other. Obviously, such a land use scenario is bound to create environmental dispute, more particularly, the noise pollution issues when certain noise generating activities/processes are in operation. The noise Rules are salient on whether the industrial activities are allowed or prohibited for silence zone and whether the industries/industrial areas which are covered under the silence area needs to be relocated. It is also pertinent to note the provisions of noise Rules, more particularly, Regulation 3(4) which is as under :

3. Ambient air quality standards in respect of noise for different areas/zones—

(1)-----

(2)-----

(3)-----

(4) *All development authorities, local bodies and other concerned authorities while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.*

12. This provision clearly underlines the importance of the environmental consideration in the developmental planning in order to avoid such environmental disputes. However, admittedly, both the Applicants as well as the Respondents-Industries are existing prior to the noise Rules Notification and could not be benefited through such provisions.

13. The learned Advocate for Applicants have placed on record several citations which need not be re-produced as it is already well established that the noise pollution is an important environmental concern and the noise Rules need to be implemented by all the statutory authorities *strict-senso* as per Apex Court ruling in "*The Noise Pollution Vrs. Unknown, 2005(5) S.C.C. 733*". The Hon'ble Principal Bench of N.G.T. has also taken a view in "*Appeal No.74 of 2014 in between M/s. Jai Hanuman Ent. Udyog Vrs. U.P. Pollution Control Board & Anr.*" that a unit which is established contrary to Law and which cause pollution of the environment, cannot claim any advantage at a

subsequent stage, on the strength of NOC from the authorities which have no jurisdiction to deal with environmental matters as contemplated under the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981.

14. Now coming to the Limitation aspect, it is noted that the present dispute is related to the noise generated by the Respondent-Industries. This dispute is continuing since 1993 when certain directions under Section 133 Cr.P.C. were issued. Subsequently, the dispute continued and the PMC has also issued numerous directions/notices to the Respondent-Industries. The legal position in case of Limitation available under Section 14 of the National Green Tribunal Act, 2000, has been well documented through various judgments of Hon'ble Principal Bench of National Green Tribunal as well as this Bench. In view of the above and particularly the provisions of Section 14(1)(3) of the NGT Act, we are of the considered view that the Application is barred by Limitation under Section 14(1)(3) of the NGT Act is therefore, dismissed.

15. However, in view of the powers available with the NGT under Section 19 read with section 18 and also precautionary principles as referred in Section 20 of the NGT Act, we issue following directions while disposing the Application :-

- 1.** The Respondent-Industries shall apply to the MPCB for obtaining consent within period of 15 (fifteen) days from now, which shall be decided by MPCB in 8 (eight) weeks thereafter.
- 2.** In case MPCB decides to grant the consent, Respondent-Industries shall ensure the compliances of all the conditions effectively and continuously at all times.
- 3.** If the MPCB refuses the consent, then MPCB shall further issue necessary directions for closure of industries including the disconnection of Water and Electricity.
- 4.** In similar Application No.92/2014 (WZ) Mohammad Istiaque Bagban Vrs. The Police Commissioner, Greater Bombay & Ors., we came across a Notification issued by Municipal Commissioner of MCGM dated 24-9-2015 whereby certain silence zones are declared. Those zones are directed to be clearly defined with a map annexed alongwith amended Notification within 4 (four) months. Commissioner, PMC is directed to ensure that compliance of such direction be done within a period of four (4) months, for City of Pune.
- 5.** PMC shall immediately give wide publicity to such Notification within next seven (7) days and also send a copy of such notification to all concerned authorities as notified in Maharashtra Government Resolution dated 21st April, 2009 and also, make it prominently available its own web-site.

With these directions, the Application is disposed of. No costs.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay. A. Deshpande)

Date : October 1st, 2015.

ajp