

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

.....

ORIGINAL APPLICATION NO. 181/2013

And

M.A. No. 700/2015 & 824/2015

**OMESH SAIGAL
VERSUS
GOVERNMENT OF NCT OF DELHI & Ors.**

IN THE MATTER OF:

Omesh Saigal,
N-130, Panchshila Park,
New Delhi-110017

...Applicant

Versus

1. Government of NCT of Delhi
Through the Chief Secretary
Delhi Secretariat
IP Estate,
New Delhi-110002
2. Delhi Pollution Control Committee
Through its Chairman,
Room No. A 907, A Wing,
4th Floor, ISBT Building, Kashmere Gate
New Delhi-110006
3. Public Works Department, Delhi
Through Principal Secretary, P.W.D
P.W.D. Secretariat, 5th Level, B-Wing,
Delhi Secretariat, I.P. Estate,
New Delhi-110002
4. Delhi Police
Through Commissioner of Police, Delhi
Delhi Police Headquarter,
I.T.O. Delhi

5. Municipal Corporation of Delhi, South
Through Deputy Commissioner, MCD South Zone,
Green Park,
Delhi

6. Delhi Development Authority
Through its Vice Chairman,
Vikas Minar, I. P. Estate,
Delhi-110002

7. President
Dayalbagh, Soami Nagar Residents Society,
D4 & 5, Soami Nagar,
New Delhi-110017

...Respondents

APPLICANT

Mr. Y. N. Vidyarthi, Adv. and Mr. Omesh Saigal, Applicant in person

COUNSEL FOR RESPONDENTS

Mr. Balendu Shekar, Mr. R.K. Maurya and Mr. Sriansh Prakash,
Adv. for Respondent No. 5 & 6
Mr. Rajiv Bansal, Sr. Adv., Mr. Kush Sharma, Mr. Lalit Mohan and
Ms. Malvika Bhanot, Adv. for DDA
Mr. Tarunvir Singh Khehar, Ms. Guneet Khehar, Adv. for GNCTD
Mr. Narender Pal Singh, Adv. and Mr. Dinesh Jindal, L.O.

JUDGMENT

PRESENT:

Hon'ble Dr. Justice Jawad Rahim (Judicial Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Reserved on:

Pronounced on: 4th October 2017

- 1. Whether the judgment is allowed to be published on the net?**
- 2. Whether the judgment is allowed to be published in the NGT Reporter?**

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

1. The Applicant is a retired IAS officer and the President of Panchshila Co-Operative House Building Society, which is also recognized as the RWA of the area by Delhi Government, and a resident of a house, located adjacent to the Outer Ring Road. The main concern of the applicant herein is about the noise pollution, especially the noise pollution caused by traffic passing on both sides of the Outer Ring Road which divides the area into two, affecting the health of the residents of Panchshila Park Area. The Applicant's concern is that of violation of The Noise Pollution (Regulation and Control) Rules 2000 and also the State Government's inaction and disregard to the restriction imposed by the said Act. It's a recurrent cause of action and ever increasing.
2. The applicant has prayed for the following:
 - a) Passing an order directing the Delhi Government PWD/DDA to put up sound pollution control screen on outer ring road between the S and N blocks of Panchshila Park area from the Panchshila Club to the new Panchshila metro station.
 - b) Passing an order directing DDA to either erect the sound control barriers themselves or pay the required sum to the PWD for the purpose.
 - c) To put up sound control barriers within a limited time frame.

- d) Passing an order directing the Respondent no 4 to take action to ensure smooth traffic in area and to punish violators of traffic norms.
3. The Applicant states that the Panchshila Co-Operative House Building Society is classified as “A” class colony, which enables the Municipality to collect the highest rate of property tax from the residents. Further, the stretch of Outer Ring Road, running through the colony between S and N blocks of Panchshila Park, is an extremely busy road with a lot of traffic.
4. In course of the proceedings, the Tribunal deemed it fit to issue directions to the Delhi Development Authority to make a report formulating recommendations for noise abatement.
5. As per the orders of NGT dated 21.05.2014, the committee of experts under the chairmanship of Engineer Member {Delhi Development Authority (DDA)} conducted the site visit on 17.06.2014 near the Panchsheel park and the following recommendations were made for noise abatement:
6. The applicant considered the report of DDA, not to be sufficient enough to address the current situation of noise pollution. Hence, it asked the Tribunal to direct IIT Roorkee to make recommendations for noise abatement with respect to short , medium and long term.
7. A report was prepared by IIT Roorkee on 30th November, 2014 which was studying the noise level and traffic on roads connecting Nehru Place to Dhaula Kuan to and fro. It was observed that during day time, maximum hourly energy mean

of the noise level over a specified period (herein after Leq), was observed during 6.00PM to 7.00PM and the minimum value of Leq was observed during 6.00AM to 7.00 AM. At both the instances the sound level exceeded the maximum permissible limit for noise pollution in residential areas which is 55dB(A) (during day time i.e 6.00AM to 10.00PM) and 45dB(A)(during night time i.e. 10.00PM to 6.00 AM) and rule 7 of Noise Prevention and Control (Regulation and Control) Rules 2000 stipulates that a complaint can be made only when the noise level exceeds the ambient noise level by 10dBA.

8. In this regard, the Respondent No. 3 PWD, Delhi, prayed dropping the present proceedings against Respondent No. 3. It stated that the work of providing and fixing Noise Barrier Systems on Chirag Delhi and Panchsheel Flyover has already been awarded with the date of commencement as 12.08.2013 and date of completion as 11.10.2013.

9. The counter affidavit on behalf of Respondent no. 1, Government of NCT of Delhi and Respondent no 2, Delhi Pollution Control Committee, states that the Government of NCT of Delhi issued a notification on 10.12.2001, interalia, designating some authorities as the 'Authority' for the maintenance of the ambient air quality standards. In continuation to the notification dated 10.12.2001, the Lieutenant Governor, Delhi vide notification dated 3.4.2008 also designated "Assistant Commissioners of police (traffic)" as the authority for the maintenance of the ambient air quality

standards in respect of noise under the Environment Protection Act (1986) in the NCT of Delhi.

10. Affidavit on behalf of Building Department, South Delhi Municipal Corporation (Respondent No. 5) states that the issue involved in the present application does not pertain to SDMC (Respondent no. 5) and prays to be deleted from the array of parties.

11. The Tribunal had directed on 13.01.2014 for studying the possibility of diverting the movement of heavy vehicles from Outer Ring Road to some other area. In this regard, Delhi Police had submitted that due to important commercial establishments like Nehru Place, Okhla Industrial Area and Tughlakhabad Container depot, the traffic volume and strategic location of this road does not permit diversion of traffic to any other road. Delhi Traffic Police, PCR and Local police were conducting a major joint exercise every night to educate, discipline and punish the violator's coming on National Highway number 8.

Its salient features are as follows:

- i. Banning pressure horns in vehicles.
- ii. Reducing the maximum speed of vehicles on this stretch of road.
- iii. Preventing overloading of goods carrier.
- iv. Using double door and sound proof glasses in houses.

12. The recommendations of IIT Roorkee are as follows:

Short term

- i. Minimizing the traffic volume and restriction on noisy traffic and its rerouting away from the residential areas. Closure of corridor to heavy traffic at night.
- ii. Sound insulation of individual houses or group of houses adjacent to major traffic roads and intersections.
- iii. Installing acoustic seals to existing windows or increasing the thickness of glazing or installing double glazed windows.
- iv. Noise abatement-oriented layout which means windows can be placed in the walls perpendicular to the outer ring road.

Medium Term

- i. Development of alternative mode of transport including public transport. Promoting environmentally friendly means of transport e.g walking and cycling.
- ii. Replacing rough surface with smooth asphalt which is low noise road surface material.
- iii. The planting of trees and shrubs along the road on both sides.

Long term

- i. Use of noise –attenuating barriers can be planned to be implemented in long run after analyzing their cost benefit ratio.
- ii. Enforcement of standards should be carried out through type testing of new vehicles and of replacement silencers, coupled with periodic inspections (which may be concurrent with safety inspections or as a requirement for resale) and roadside

monitoring and spot checks. Reliable standardized instruments as simple and inexpensive as each type of test permits should be used. Noise Emission Test can be included in Pollution Under Control (PUC) Certificate.

13. At this stage, the following questions need to be addressed:

1. Whether there is noise pollution?
2. What steps have been taken so far?
3. What steps need to be taken in future?

14. It is evident from the pleadings that noise emissions, far exceed the permissible limits and the same is not denied. The stretch of Outer Ring Road, running through the colony between S and N blocks of Panchshila Park, is an extremely busy road with a lot of traffic. A report prepared by IIT Roorkee on 30th November, 2014 which was studying the noise level and traffic on roads connecting Nehru Place to Dhaula Kuan to and fro. It was observed that during day time, maximum hourly energy mean of the noise level over a specified period (herein after Leq), was observed during 6.00PM to 7.00PM and the minimum value of Leq was observed during 6.00AM to 7.00 AM. At both the instances the sound level exceeded the maximum permissible limit for noise pollution in residential areas which is 55dB(A) (during day time i.e 6.00AM to 10.00PM) and 45dB(A)(during night time i.e. 10.00PM to 6.00 AM) and rule 7 of Noise Prevention and Control (Regulation and Control) Rules 2000 stipulates that a complaint can be made only when the noise level exceeds the ambient noise level by 10dBA.

15. It is also true that certain steps have been taken to control the effect of noise pollution on the residents, for instance the work of providing and fixing Noise Barrier Systems on Chirag Delhi and Panchsheel Flyover has already been awarded with the date of commencement as 12.08.2013 and date of completion as 11.10.2013.

16. However, this seems to be inadequate, compared to the enormity of the problem. Serious efforts have to be made which are cost effective, and yet which ameliorate the grievance of the residents in this case.

17. The first two questions are answered in the affirmative. A lot needs to be done in the future. Eventually the DDA and municipal authorities have to be made liable for abatement of sound pollution to the residents who are the unfortunate victims of perennial noise, particularly for the elderly, insomnia patients and the students.

18. The following citations in this case are relevant.

In Free Legal Aid Cell Shri Sujan Chand Aggarwal alias *Bhagatji v. Govt. of NCT of Delhi and Ors.* MANU/DE/0654/2001:, AIR2001Delhi455 ,

it was said that "Pollution being wrongful contamination of the environment which causes material injury to the right of an individual, noise can well be regarded as a pollutant because it contaminates environment, causes nuisance and affects the health of a person and would therefore, offend Article 21, if it exceeds a reasonable limit."

In Appa Rao, M.S. v. Govt. of T.N., (1995) 1 LW 319 (Mad),

the Madras High Court taking note of the serious health hazard and disturbance to public order and tranquility caused by the uncontrolled noise pollution prevailing in the State, issued a writ of mandamus directing State

Government to impose strict conditions for issue of license for the use of amplifiers and loudspeakers and for directing Director-General, Police (Law and Order) to impose total ban on use of horn type loudspeakers and amplifiers and air horns of automobiles.

In *Rabin Mukherjee v. State of West Bengal*: AIR1985Cal222 the use of air horns was prohibited by the court to prevent noise pollution.

The Court observed:

"...it is found that the atmosphere and the environment is very much polluted from indiscriminating noise emitted from different quarters and on research it was found that persons who are staying near the Airport, are becoming victim of various ailments. Such persons even become victim of mental disease. On such research it was also found that workers in various factories even become deaf and hard of hearing. It was further found on such research that as a result of this excessive noise pollution, people suffer from loss of appetite, depression, mental restlessness and insomnia. People also suffer from complain of excessive blood pressure and heart trouble. It is not necessary to go into the question about direct effect of such noise pollution because of indiscriminate and illegal use of such electric and air horn as it is an admitted position that the same is injurious to health and amongst different causes of environmental pollution, sound pollution is one which is of grave concern."

19. However, keeping in view our socio-economic condition and the vast responsibility of the state to look after its teeming millions, it would suffice, if an honest beginning could be made towards improved technology of roads to prevent noise and intensive green buffer to arrest the noise.

20. This case has been going on since 2013. It has been vociferously argued by the applicant that the Outer Ring Road runs through the Panchsheel Enclave on both sides of the said Road and as such sound barriers should be placed on either side to allow the residents to stay peacefully. We are aware that the volume of traffic has increased over the years. Under

the directions of this Tribunal, a small Committee under the Chairmanship of the Engineer Member of the Delhi Development Authority (DDA) has recommended on 18.06.2014, the banning of pressure horns in vehicles and preventing overloading of goods carriers, apart from double glazing of the window panes of the houses adjacent to the roads.

21. On further directions of the Tribunal, the IIT Roorkee has recommended replacing the rough surface of the roads with smooth asphalt, which emits no noise from the roads and further planting trees and shrubs along the road on both sides.

22. There is a Noise Prevention Control (Regulation and Control) Rules 2000, which prescribes sound emission not exceeding 55 decibels for day time and 45 decibels by night. It has been observed by the PWD that the noise levels in Panchsheel Enclave, adjacent to the road, at any time is 20% higher than the prescribed upper permissible noise level. In terms of the National Green Tribunal order of 05.05.2015, the Chief Secretary of Delhi has been looking at the short term, medium term and long term recommendations of IIT Delhi. The interim NGT orders dated 11.3.2015 left the double glazing of windows to the individual occupants. However, the police were asked to ensure that speed limits of vehicles do not exceed 30 kms/hour. Further the police were directed to prevent overloading of vehicles and pressure horns were strictly

prohibited. The police were directed to install speed cameras to monitor the speed of vehicles and challan the violators. The PWD was asked to declare the area as “no horn zone” with immediate effect. While imposing challan on the violators, in addition to the fine of Rs. 500/- permissible by law, the violators were directed to pay an additional amount of Rs. 1000/- by invoking the “polluter pays principle”. The police were asked to show the number of challans issued as testimony of the action taken. Further no parking of any vehicle was to be allowed on the road as well as on the service road.

23. The Delhi Government in compliance thereof had put up a board of “no parking” whereas the SDMC had indicated it to be a parking place. This was said to be violative of the directions to make it a no parking zone. SDMC was directed to remove the board and cancel the tender process for the parking lot.

24. The applicant brought to our notice that the Government had constructed a concrete sound barrier in Kakanagar, New Delhi opposite the Delhi Golf Club. However in private colonies, no such concrete walls for sound prevention have been built. In course of pleadings, the applicant has been very keen to have the concrete wall of about 8 to 10 ft. high on either side of the Outer Ring Road to prevent noise from coming in. Polycarbonate sheets have been placed along some of the flyovers by the Highways Department/PWD. These are imported, expensive and occasionally stolen. Viewed in that

context, concrete walls are a better option. However, the counsel for the DDA, made it clear that they have not been able to work out an appropriate strategy which will be cost effective. It would also imply that subsequently there would be demand from a large number of residential colonies, who are similarly placed and would like similar dispensation.

25. Finally, the applicant stated that he is not pressing the matter any further. He would be content if the DDA undertakes to implement the recommendations of the IIT Roorkee, both short and long term, in a spirit of service to the residents.

26. We, therefore, dispose of this petition with the following directions:

- i. We direct that this portion of the Outer Ring Road passing through Panchsheel Park to be the first patch where the road surface be made of smooth asphalt which will basically be a low noise causing material. Planting of trees and shrubs along both sides of the road should be done more vigorously to prevent noise pollution. The existing ban on pressure horns and prevention of overloading of goods carriers shall be strictly implemented by the Delhi Police.
- ii. Further, we direct that the installation of speed cameras has to be completed within December 2017 and immediately thereafter the violators should be challenged.

We further direct that DDA, Delhi Government and PWD to

report to the NGT every three months about the progress on the directions issued by this Tribunal.

27. The directions contained in this judgment are in supplementation to the directions in the interim orders passed by us on 11.03.2015. Therefore, in addition to the directions issued as above, we direct the statutory authority referred to in para supra and in our directions, that they shall, whenever a new colony comes up in Delhi, or is planned by DDA, implement the recommendations of IIT Roorkee in letter and spirit and also the directions issued vide this order.

28. With these observations we close Original Application No. 181/2013 with no order as to cost. As original application is disposed of, Miscellaneous Application no. 700/2015 and 824/2015 do not survive for considerations.

Dr. Justice Jawad Rahim
Judicial Member

Mr. Ranjan Chatterjee
Expert Member

New Delhi
4th October 2017