

ITEM NO.301

COURT NO.4

CORRECTED
SECTION PIL-WS 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)

((1) REPORT NO. 106 SUBMITTED BY EPCA (SPECIAL REPORT ON POLLUTION HOT SPOTS IN NCR WITH REQUEST FOR URGENT DIRECTIONS TO IMPROVE ENFORCEMENT AND POLLUTION CONTROL)IN RE: STUBBLE BURNING(2) IA NO. 127792/2017 (DISPOSED OF) (APPLN. FOR DIRECTIONS FILED BY A.C.)(3) IA NOS. 158128 AND 158129/2019 (APPLNS. FOR INTERVENTION AND DIRECTIONS ON BEHALF OF DR. KAUSHAL KANT MISHRA)

WITH

SMW(C) No. 3/2019 (PIL-W)
(FOR ADMISSION)

Date : 06-11-2019 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE DEEPAK GUPTA

Counsel for the
parties

MR. HARISH N. SALVE, SR. ADVOCATE (A.C.)
[NOT PRESENT]

MS. APARAJITA SINGH, SR. ADVOCATE (A.C.)

MR. A.D.N. RAO, ADVOCATE (A.C.)

MR. SIDDHARTHA CHOWDHURY, ADVOCATE (A.C.)

Mr. K. K. Venugopal, Attorney General

Mr. Tushar Mehta, Solicitor General

Mr. A. N. S. Nadkarni, ASG

Mr. V. Shekhar, Sr. Adv.

Ms. Aishwarya Bhati, Sr. Adv.

Mr. Wasim A. Qadri, Sr. Adv.

Mr. Anil Grover, AAG

Mr. Rahul Khurana, Adv.

Mr. Satish Kumar, Adv.

Mr. Sanjay Kumar Visen, Adv.

Mr. Vibhu Shankar Mishra, Adv.

Mr. Rajesh K. Singh, Adv.

Mr. Rajeev Kumar Dubey, Adv.
Mr. Garvesh Kabra, Adv.
Ms. Chitrangda Rathore, Adv.
Mr. Kamendra Mishra, Adv.
Mr. D. L. Chidananda, Adv.
Ms. Archana Pathak Dave, Adv.
Ms. Suhasini Sen, Adv.
Mr. S. S. Rebello, Adv.
Mr. G. S. Makker, Adv.
Ms. Snidha Mehra, Adv.
Mr. Raj Bahadur Yadav, Adv.
Mrs. Anil Katiyar, Adv.
Mr. B. V. Balram Das, Adv.

Mr. Charanpal Singh Bagri, Adv.
Ms. Gurjit Kaur Bagri, Adv.

Mr. Pradeep Misra, Adv.
Mr. Suraj Singh, Adv.

Mr. P. S. Narasimha, Sr. Adv.
Ms. Uttara Babbar, Adv.
Ms. Bhavana Duhoon, Adv.
Mr. Manan Bansal, Adv.
Ms. Sindoor, Adv.
Mr. Rahul G. Tanwari, Adv.
Ms. Aditi Tripathi, Adv.

Mr. Gopal Sankaranarayanan, Sr. Adv.
Mr. Senthil Jagadeesan, Adv.
Ms. Sonakshi Malhan, Adv.
Ms. Shruiti Chowdhary, Adv.
Ms. Mrinal Kanwar, Adv.
Mr. Shrutanjaya Bhardwaj, Adv.
Mr. Vishal Sinha, Adv.

Mr. Anil Grover, AAG
Dr. Monika Gusain, Adv.

PETITIONER-IN-PERSON

MR. G.S. MAKKER, ADVOCATE

MR. B.K. PRASAD, ADVOCATE

MR. SANJAY KR. VISEN, ADVOCATE

MR. PRADEEP MISRA, ADVOCATE

MS. RUCHI KOHLI, ADVOCATE

MR. B.V. BALRAMDAS, ADVOCATE

MS. ANIL KATIYAR, ADVOCATE

Mr. Dhruv Mehta, Sr. Adv.
 Mr. CHIRAG M. SHROFF, ADVOCATE
 Ms. Jyoti Mendiratta, Adv.
 Ms. Mahima C. Shroff, Adv.
 Ms. Yashika Verma, Adv.
 Ms. Riya Thomas, Adv.

Mr. Sanjiv Sen, Sr. Adv.
 Mr. PRAVEEN SWARUP, ADVOCATE
 Mr. Suvesh Kumar, Adv.
 Mr. Kanishk Chaudhary, Adv.
 Mr. Ajay Bansal, Adv.
 Mr. Gaurav Yadava, Adv.
 Mr. Sayan Ray, Adv.
 Mr. Soumo Palit, Adv.

Ms. Garima Prashad, Adv.
 Mr. G. S. Oberoi, Adv.
 Mr. Mohit Kumar Bansal, Adv.

MS. UTTARA BABBAR, ADVOCATE

MR. SENTHIL JAGADEESAN, ADVOCATE

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

Heard Sh. K. K. Venugopal, learned Attorney General for India, Sh. Tushar Mehta, learned Solicitor General of India, Mr. A.N.S. Nadkarni, learned Additional Solicitor General, Mr. P.S. Narasimha, learned senior counsel.

We have also heard the Chief Secretaries to the States of Punjab, Haryana, Uttar Pradesh and Govt. of NCT of Delhi in extensive detail, who have appeared today pursuant to our order dated 04.11.2019. We have also heard Mr. Charanpal Singh Bagri, learned counsel appearing for the farmers. We have heard Mr. Bhure Lal as well.

We find that in advance, no serious groundwork was made by the concerned States where the stubble burning is taking place. This

Court passed an order on 29.01.2018. The comments and recommendations made by EPCA on the report of the Sub-Committee of the High Level Task Force on prevention of stubble burning in Punjab, Haryana and Western Uttar Pradesh was considered by this court. This Court directed the High Level Task Force to adhere to the time lines decided upon by itself and to ensure full compliance by all concerned. This Court also directed the Union of India to give the publicity to the Report of the High Level Task Force so that the people are aware of the action being taken. Publicity can be given through the print and electronic media as well. Thus, in the pious hope that stubble burning and its impact on the environment shall be taken care of, this Court disposed of the application.

The Report of the Sub-Committee of the High Level Task Force on stubble burning in Punjab, Haryana and Western Uttar Pradesh has been placed on record, in which a suggestion was made to offer Rs. 100/- per quintal as incentive and disincentive both.

The Chief Secretary to the States of Punjab has placed on record the action plan for control of burning of the crop in the State of Punjab dated 01.10.2019. However, the same does not contain the proposal to pay Rs. 100/-. The steps taken by the State of Punjab, pursuant to the order passed by this Court on 04.11.2019 have been placed on record by the Chief Secretary, which we take on record, in which a suggestion has been made to offer financial support in the form of operational cost of crop residue management equipment to play a positive role to achieve zero stubble burning. It has been proposed that the amount of Rs. 100/-

per quintal would come to Rs. 2000-2500/- per acre. It was also stated that there is a crop of approximately 24 quintals per acre.

Be that as it may, we direct, in the facts and circumstances of the case, to take care of the stubble, which has not been burnt by the small and marginal farmers in the States of Punjab, Haryana and Western Uttar Pradesh and to provide them financial support, quantified amount at Rs. 100/- per quintal of Non-Basmati Paddy, shall be given to those farmers within seven days from today by the State Governments to those who have not burnt the stubble.

The Central Government has provided the Scheme of Promotion of Agricultural Mechanization in the States of Punjab, Haryana, Uttar Pradesh and NCT of Delhi for the period of 2018-19 and 2019-20 with a total outlay of Rs.1151.80 Crores for in-situ Crop Residue Management such as Super Straw Management System for Combine Harvesters, Happy Seeders, Hydraulically Reversible MB Plough, Paddy Straw Chopper, Mulcher, Rotary Slasher, Zero Till Seed Drill and Rotavators are promoted with 50% subsidy to the individual farmers and 80% subsidy for establishment of Custom Hiring Centres of these machines. The Central Government has disbursed its 100% share of funds amounting to Rs. 269.38 Crores, Rs. 137.84 crores, Rs. 148.60 Crores and Rs. 28.51 Crores to the States of Punjab, Haryana, Uttar Pradesh and Central Agencies respectively.

It appears from the statements made by the Chief Secretary to the State of Punjab and Mr. Charanpal Singh Bagri, learned counsel appearing for the farmers that most of the farmers burning stubble are of the category of small and marginal farmers in the State of Punjab and the Cooperative Societies give the machines on hire

basis, which cannot be afforded by the small and marginal farmers. We have been assured by the Chief Secretaries to the State of Punjab, Haryana, Utter Pradesh that they will be dedicating certain machines for the use of small and marginal farmers. Even operational expenses shall be borne by the State Governments for the time being till the methodology/policy is devised to provide proper facilities of machines dedicated to small and marginal farmers in each of the States. Let roadmap be prepared for that purpose as it is this class of farmers who requires a support as it is by way of compulsion and short duration of time between two crops and they cannot afford the machines which are valuable, having high cost and there is so much small gap between two crops that they are forced to burn stubble in the circumstances.

As projected by the Chief Secretary that the Government is not able to provide financial support to these small and marginal farmers, cannot be accepted. Agriculture is the backbone of the economy of this country. Its interest cannot be overlooked and self-created bankruptcy cannot rescue it when the State has the obligation towards the agriculture. The Central Government is providing the money. The State Government has contributed to it. They cannot ignore the interest of the small and marginal farmers. It is the bounden duty of the Central as well as the State Government to ensure the interest of these class of farmers is catered and they have the facilities of farming and harvesting by modern machines. It should not be prerogative of the chosen few, those who have the money, means and power to afford these luxuries. It is absolutely necessary that poor farmers are equally provided

with the modern facilities which are necessary to prevent such incidents of stubble burning and the State Governments' self-created bankruptcy or paucity of funds cannot be a guise, not to discharge its obligation, as laid by this Court in "*Municipal Council, Ratlam Vs. Vardhichand & Ors.*", reported in AIR 1980 SC 1622. We have issued the directions to the various States in accordance with the spirit of the aforesaid decisions.

The Central Government has also its role to play in the matter. In spite of releasing the funds, constituting High Level Committee, submitting report to the Court on the basis of which this Court has passed the order on 29.01.2018, nothing happened to prevent the stubble burning and it has increased this year. Stubble burning took place last year also. That was enough to put on guard the machinery of various Governments, but they did not act in the real earnest. That is why, the incident of stubble burning for want of proper policy has taken place in utter disregard to Court's order. Even the suggestions which were made in the Report, which had been considered by this Court in January, 2018 that Rs. 100/- to be provided as incentive, could not be finalised is nothing but the pathetic state of affairs in which we are put as on today. The total apathy is writ large.

The authorities, concerned Committees, the State Governments ought to have acted to discharge their duties. Directive Principles of the State Policy have been left out of the purview of the Courts for the reason that the State Governments should have full freedom to implement those in the manner it so desires and the Courts may not become the hurdle in implementing the schemes when

they have found expression in various schemes. The schemes cannot be permitted to remain dead letter as futility of such schemes is injurious to the very rule of law and can create anarchy. When schemes have been framed, they are to be implemented and we fully agree with the submission raised by the Attorney General for India that for this pathetic state of affairs, officers cannot escape from their responsibility and liability. They have to be held liable for their inaction and for the situation which is being created every year. When we come to the responsibility of the officers, obviously, each and every incumbent manning the State Government also becomes responsible to take steps in the positive direction. To punish farmers is not an ultimate solution. To provide them the basic facilities, amenities and modern equipment is the call of the day, which has not taken place and the benefits which are being given to the cooperative societies are being usurped mostly by the big farmers. Small and marginal farmers are still not able to reap the fruits of these schemes/machines. We are assured by the Chief Secretaries that they will be looking into this aspect and definitely taking action for allocating these machines to small and marginal farmers. Let them consider at present even without charging anything from them. We direct the State Governments to dedicate these machines, modern equipment for the service of small and marginal farmers for the time being even if necessary free of cost. Let concrete steps be taken and action taken report be submitted to this Court within a period of one month from today by the concerned State Governments.

We have been informed by the Chief Secretary of the State of

Punjab that they have ordered certain machines to be purchased in the month of July, August and September, 2019. They are receiving the requisite machines everyday. We expected and it was required that steps should have been taken timely for procuring these machines and to make them available before the harvesting season came for the crop. Now we expect the State Governments to procure the machines as early as possible and submit a report in this regard within four weeks from today.

It was suggested by the Attorney General that it would be appropriate to direct the concerned Ministries of the Central Government as well as the State Governments involved in the matter to prepare a comprehensive plan to take care of the situation. It is a welcome suggestion and we accept it. We direct the Ministry of Agriculture, Ministry of Environment and Forests and the States of Punjab, Haryana and Uttar Pradesh and the Government of NCT of Delhi to prepare a comprehensive scheme to take care of environmental issues and all such ancillary issues taking care of providing small and marginal farmers with modern equipment and let such a scheme be prepared not only for these States but for various other States where such facilities are lacking and are required to be provided. For that, modalities may be worked out as per the scheme to be framed by the Central Government in collaboration/consultation with the various State Governments. Let it be done within three months from today and the report of the steps to be taken be submitted to this Court.

For the time being, we direct the States of Punjab, Haryana and Uttar Pradesh to disburse the money and they should not wait

for or write letters to the Central Government to give certain funds for this purpose. Let it be released forthwith and any non-compliance of the same would be viewed seriously, is made clear to the concerned Chief Secretaries, who are present in this Court.

We will take a final call on the aspect of finance also when we consider the detailed report to be submitted by the State Government and after hearing the other stake holders, including the Central Government.

It has been pointed out by the learned counsel appearing for the farmers that certain petitions are pending. As prayed jointly, CWP No. 23799 of 2017 titled as "*Bhartikisan Union Vs. Union of India and Others*" and CWP No. 15582 of 2018 titled as "*Charanpal Singh Bagri Vs. Union of India & Ors.*" filed by the farmers in the High Court of Punjab and Haryana, they are transferred to this Court for being heard along with this matter.

We have heard the Chief Secretary of Delhi also and have pointed out the tables extracted in the order dated 04.11.2019 passed by this Court there are various factors which are contributing to the pollution in Delhi such as construction and demolition, open dumping of waste, garbage, unpaved roads/pit, road dust, garbage burning and traffic congestion. It is apparent from the table extracted in the order dated 4.11.2019 that contribution to large extent is made by the aforesaid factors and stubble burning in the other States has contributed to 40% to 44% only. It is the shocking state of affairs that in the National Capital of Delhi there are unpaved roads/pits. We have not been able to take care of the road dust in spite of spending huge amount every year,

open dumping and waste, garbage burning is still taking place. Basically, the Corporation and the Government of NCT of Delhi has failed to prepare a proper scheme in this regard. When the garbage/waste can be managed in Pune and Indore very effectively, why we cannot have a waste management scheme in Delhi, particularly when it is the capital city and face of India. This is reflective of a total apathy of the officers and lack of planning and non-accountability for the money spent, which is responsible for the situation in which we are put today. It is only the Monitoring Committee which is doing its job effectively, otherwise position would have been much worse. We expect all the authorities to take care of the situation, we request the Monitoring Committee also to look into these aspects and compliance is made. We authorize them to look into these aspects, whether orders of this Court in this regard are being appropriately carried out or not and submit a report to this Court.

It has been assured by the Chief Secretary of the NCT of Delhi that most of the aspects will be taken care of within seven days. They have made a consultation with the IIT Expert on the pressure with which water to be sprinkled on the roads and chemicals to be used so as to settle the dust. We hope and trust that the statement made by the Chief Secretary is carried out in true letter and spirit and let a compliance report in this regard be filed in this Court, taking the steps not only with respect to these works but various hot spots which have been pointed out with respect to Delhi by the Government of NCT of Delhi, with respect to other places such as Faridabad, Gurugram etc., we direct the concerned

Chief Secretary to the States to take care of those hot spots and to submit a compliance report of the needful. With respect to unpaved roads/pits, there should ideally be no pits/potholes as they are cause of various accidents and accidental deaths. There are uncovered chambers also which are left. Unpaved roads have also contributed to the pollution and dust. Let a concrete plan in this regard, notwithstanding colony is legal and has been handed over or not, be prepared and submitted to this Court by the Government of NCT of Delhi in collaboration with and consultation of the various corporations and time frame for that be also stated. In how much time they are going to improve the road conditions. Pits/potholes be taken care of positively within three weeks from today.

Let the case be listed on 15.11.2019.

(JAYANT KUMAR ARORA)
COURT MASTER

(PRADEEP KUMAR)
COURT MASTER