

ITEM NO.10+12

COURT NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 13029/1985

M.C. MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(1) IN RE: REPORT NOS. 72 AND 76 SUBMITTED BY EPCA (REGARDING BAN ON SALES AND USE OF FURNACE OIL AND PET-COKE IN NCR)

2) IN RE: REPORT NO. 71 AND 78 SUBMITTED BY EPCA (REGARDING COMPREHENSIVE ACTION PLAN FOR AIR POLLUTION CONTROL AND SUPPLEMENTARY REPORT ON THE COMPREHENSIVE ACTION PLAN WITH TIMELINES)

3) IA NO. 127792/2017 (APPLN. FOR DIRECTIONS FILED BY AMICUS CURIAE)

4) IA NO. 128349/2017 (APPLN. FOR DIRECTIONS FILED BY AMICUS CURIAE)

WITH

W.P. (C) No. 1109/2017 (PIL-W)

(FOR PERMISSION TO APPEAR AND ARGUE IN PERSON ON IA 119376/2017)

W.P. (C) No.1175/2017 (X)

(With appln. for stay)

W.P. (C) No.1174/2017 (PIL-W)

(With appln. for stay)

W.P. (C) No.1212/2017

Date : 13-12-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE DEEPAK GUPTA

Mr. Harish N. Salve, Sr. Adv. (A.C.) (NP)

Ms. Aparajita Singh, Adv. (A.C.)

Mr. A.D.N. Rao, Adv. (A.C.)

Mr. Siddhartha Chowdhury, Adv. (A.C.) (NP)

For Petitioner(s) Petitioner-In-Person

Mr. R.K. Kapoor, In-person

Mr. Gopal Subramaniam, Sr. Adv.

Mr. Jayant Bhushan, Sr. Adv.

Mr. Dhruv Mehta, Sr. Adv.

Mr. Gaurav Juneja, Adv.

Mr. Nawneet Vibhaw, Adv.

Mr. Sanjeev K. Kapoor, Adv.

for Khaitan & Co.

Mr. Kapil Sibal, Sr. Adv.

Mr. Basava Prabhu Patil, Sr. Adv.

Mr. Ajay Bhargava, Adv.

Ms. Vanita Bhargava, Adv.

Ms. Richa Bhargava, Adv.

Ms. Shweta Kabra, Adv.

for Khaitan & Co.

For Respondent(s) Mr. A.N.S. Nadkarni, ASG

UOI Mr. Amit Sharma, Adv.

Mr. Raj Bahadur, Adv.

Mr. S.W.A. Qadri, Adv.

Mr. D.L. Chidanand, Adv.

Mr. Ritesh Kumar, Adv.

Mr. Zaid Ali, Adv.

Mr. Saeed Qadri, Adv.

Mr. Ankit Sharma, Adv.

Mr. D.P. Pandey, Adv.

Mr. Gurmeet Singh Makker, AOR

CPCB Mr. Vijay Panjwani, AOR

Mr. Bikash Chandra, Adv.

Haryana Mr. Anil Grover, AAG Haryana

Dr. Monika Gusain, Adv.

Ms. Noopur Singhal, Adv.

Mr. Satish Kumar, Adv.

Mr. Sanjay Kr. Visen, AOR

Rajasthan

Mr. Tushar Mehta, ASG
 Mr. Shiv Mangal Sharma, AAG Rajasthan
 Mr. S.S. Shamsbery, AAG Rajasthan
 Mr. Amit Sharma, Adv.
 Mr. Sandeep Singh, Adv.
 Mr. Ankit Raj, Adv.
 Ms. Indira Bhakar, Adv.
 Ms. Ruchi Kohli, AOR

U.P.

Ms. Rachna Gupta, AOR
 Mr. Anil Kumar Sinha, Adv.
 Mr. Siddhant S. Malik, Adv.

Mr. Gopal Subramaniam, Sr. Adv.
 Mr. Akhat Hansaria, Adv.
 Mr. Amit K. Mishra, Adv.
 Mr. Mohit Singh, Adv.
 Mr. Pavan Bhushan, Adv.
 Mr. Ritesh Bajaj, Adv.

Dr. A.M. Singhvi, Sr. Adv.
 Mrs. Nandini Gore, Adv.
 Mr. Sandeep Narain, Adv.
 Mr. Aakarshan Sahay, Adv.
 Ms. Khushboo Bari, Adv.

Mr. Mukul Rohatgi, Sr. Adv.
 Mr. Sandeep Narain, Adv.
 Ms. Anjali Agarwal, Adv.
 for M/s. S. Narain & Co.

Mr. Aman Lekhi, Sr. Adv.
 Mr. Vijay K. Sondhi, Adv.
 Ms. Amrita Singh, Adv.
 Mr. Arnab Sanyal, Adv.
 Mr. Himanshu Sharma, Adv.

Mr. Mohan Parasaran, Sr. Adv.
 Ms. Divya Swami, Adv.
 Ms. Prabha Swami, Adv.
 Mr. Nikhil Swami, Adv.

Ms. Uttara Babbar, Adv.
 Ms. Akanksha Choudhary, Adv.

Md. Bhavana Duhoon, Adv.

UPON hearing the counsel the Court made the following

O R D E R

IN RE: REPORT NOS. 72 AND 76 SUBMITTED BY EPCA
(REGARDING BAN ON SALES AND USE OF FURNACE OIL AND
PET-COKE IN NCR)

We have been taken through the affidavit filed by the Ministry of Environment, Forests and Climate Change (MOEF) through Mr. Ritesh Kumar Singh, Joint Secretary in the MOEF as well as another affidavit filed in IA NO. 128349/2017 in compliance of the orders dated 17.11.2017 and 04.12.2017.

We have heard Mr. A.N.S. Nadkarni, learned Additional Solicitor General appearing for the Union of India and Mr. Tushar Mehta, learned Additional Solicitor General appearing for the State of Rajasthan and we have also heard learned *amicus curiae*.

(1) Use of Pet Coke in Cement Industries

The view expressed by learned *amicus curiae* is that the cement industry uses pet coke in its kiln where limestone is ground and burnt till it forms clinker. In this process of calcination, limestone absorbs sulphur and, therefore, emissions are minimized. MOEF has notified emission standards for SO₂ and NO_x for cement industry. Consequently, permission can be given for use of pet coke in the cement industry.

This is acceptable to learned Additional Solicitor General appearing for the Union of India.

It is further submitted on behalf of the Union of India that pet coke should be utilized only in industries where sulphur is absorbed in the manufacturing process, for example, cement industry, gasification plants.

This is not objected to by learned *amicus curiae*.

However, it is suggested by learned *amicus curiae* that there is a need to set up a system to regulate the sale and use of pet coke to ensure that there is complete accountability and traceability with no opportunity for leakage.

This suggestion is accepted by the learned Additional Solicitor General appearing for the Union of India who says that a system of regulation for the sale and use of pet coke will be brought into force within four weeks on the outside.

(2) Use of pet coke in lime industry

It is submitted by learned *amicus curiae* that the limestone industry bakes the limestone to make *chuna* or slaked lime and pet coke is burnt in a kiln with limestone which absorbs the sulphur.

It is further submitted that most of the limestone industries are in the small scale sector and their operations are not regulated. It is also submitted that the final product is not regulated and, therefore, unlike cement its kiln temperature and manufacturing process cannot be guaranteed.

On 24th October, 2017, we had directed emission

standards with respect to five industries be finalized within a month.

It is stated by learned Additional Solicitor General appearing for the Union of India that preliminary standards have already been finalized with regard to four of these industries. With regard to the lime industry, the standards may be notified within a period of three months, i.e., on or before 31st March, 2018. Necessary field studies, etc. may be conducted on priority basis by the Central Pollution Control Board.

Learned Additional Solicitor General appearing for the Union of India has no objection to provide information to EPCA about the number of industries dealing with lime and the location and system proposed to be set up to strictly regulate the use of pet coke so that there is no leakage or misuse.

We expect the State Governments/Union Territories to cooperate and coordinate with the MOEF in this regard. The compilation of information and framing of regulations may be concluded within a period of four weeks from today and in any case before 31st January, 2018.

(3) Use of furnace oil should be permitted in thermal power plants

It is submitted by learned *amicus curiae* that the Ministry of Power and Natural Gas has requested the use of furnace oil for a period of one year till the power plants switch to using light diesel oil.

Since this is also stated on affidavit by MOEF, we accept the time line given by the MOEF and direct that the switchover may be completed within a period of one year from today and in any case before 31st December, 2018.

(4) Implementation of the December 2015 standards for thermal power plants, which were to be implemented by December, 2017.

We propose to take up this issue on the adjourned date.

We request Mr. Ritwik Dutta, learned counsel to be present on the next date of hearing and assist us.

List the matter for this issue on 1st February, 2018.

(5) Natural gas to be made available to power plants in NCR

(6) Natural gas to be made available for power plants and industries

(7) Measures to strengthen distribution of electricity in NCR region

The MOEF has requested for some time to look into Issue Nos. (5), (6) and (7) and get back to this Court.

Learned *amicus curiae* has no objection if six weeks time is given for this purpose.

List Issue Nos. (5), (6) and (7) on 1st February, 2018.

Ban on Import of Pet Coke

We may note that the MOEF has stated on affidavit that a ban on the import of pet coke is under

consideration in view of the environmental hazards due to its use. It appears that some discussions are taking place with the Ministry of Petroleum and Natural Gas as well as the Director General of Foreign Trade.

We expect the MOEF to expeditiously take a final decision after consulting the stakeholders as well as EPCA in this regard.

List the matter on this issue on 1st February, 2018.

In view of the orders passed above, nothing further survives in Report Nos. 72 and 76 and they stand disposed of.

IA NO. 128349/2017 (APPLN. FOR DIRECTIONS FILED BY AMICUS CURIAE)

In view of the above orders, nothing further survives in this application, which is accordingly disposed of as infructuous.

W.P.(C) No.1175/2017, W.P.(C) No.1174/2017 and W.P.(C) No.1212/2017

In view of the above orders, nothing further survives in these petitions, which are accordingly disposed of as infructuous.

Affidavit filed by MOEF

In paragraph 15 of the affidavit filed by MOEF, an impression is sought to be created that this Court passed the order dated 24.10.2017 without any prior notice.

This is not borne out from the record of the case.

However, learned counsel appearing for the States of Rajasthan, Uttar Pradesh and Haryana have volunteered to

file an affidavit of the Chief Secretary withdrawing the suggestion sought to be made that the order dated 24.10.2017 passed by this Court was without prior notice to these States.

The affidavits be filed within two weeks.

IN RE: REPORT NO. 71 AND 78 SUBMITTED BY EPCA (REGARDING COMPREHENSIVE ACTION PLAN FOR AIR POLLUTION CONTROL AND SUPPLEMENTARY REPORT ON THE COMPREHENSIVE ACTION PLAN WITH TIMELINES)

As far as Report Nos.71 and 78 filed by EPCA are concerned, the MOEF has no objection to notifying the recommendations made therein.

However, the Society of Indian Automobile Manufacturers (SIAM) has objection to Point Nos.2.2.1 and 2.2.2. This will be considered on the next date of hearing.

There are certain time lines which have been mentioned in the reports. These may be discussed by the MOEF with EPCA within two weeks. Since the MOEF has no objections to the recommendations made (except as regards the time lines), the recommendations made in these two reports may be notified, publicized and implemented by the MOEF at the earliest. The objections of SIAM are kept open for consideration.

List these reports on 25th January, 2018.

We make it clear that the directions that we have given should not be understood as limited only to NCR Region. Since air pollution is apparently a nation-wide

problem, the MOEF will look into the matter and necessary steps taken and notifications issued will be made applicable to the entire country.

IA NO. 127792/2017 (APPLN. FOR DIRECTIONS FILED BY AMICUS CURIAE) and W.P.(C) No. 1109/2017

Learned Additional Solicitor General has taken us through the affidavit filed on behalf of MOEF in response to the interlocutory application filed by learned *amicus curiae*.

It is stated in the affidavit that a High Level Task Force has been set up to look into the issue of stubble burning and actions to discourage crop residue burning. Some technological options have also been discussed and it is expected that the Sub-Committee of the Task Force will submit its report to the Task Force by 15th December, 2017.

We find from reading of the affidavit that no one concerned with health issues such as medical doctors or other professionals from medical institutions has been involved in the discussions. It is a matter of common knowledge that air pollution can cause serious health hazards apart from adverse health effects. As a result of these health hazards and adverse health effects, there is bound to be an economic loss so far as the affected persons are concerned and the entire country due to hospitalization and other attendant expenses including loss of man-hours of work. Economic activity and health

are interlinked.

In our opinion, it would be appropriate if the High Level Task Force also takes the assistance of professionals, particularly from the medical profession as well as agricultural scientists and also those who are well-versed with issues pertaining to the economic impact of adverse health effects due to air pollution. It is better to have a comprehensive and holistic view of the problem caused by air pollution rather than a half-baked response.

Learned Additional Solicitor General says that this view will be placed before the Chairperson of the High Level Task Force so that the involvement of civil society can be seriously considered since it is not only an issue which affects some people, but it affects the entire city and the NCR Region apart from other parts of the country.

List the matters on 24th January, 2018.

W.P.(C) No. 13029/1985

With regard to the status of funds available due to various orders passed by this Court, list the matter on 15th December, 2017. We expect the authorities in CAMPA to render all assistance to learned *amicus curiae* in this regard.

(SANJAY KUMAR-I)
AR-CUM-PS

(KAILASH CHANDER)
COURT MASTER