



**Non-Reportable**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 3798 OF 2019**

**Container Corporation of India Ltd.**

**... Appellant**

***Versus***

**Ajay Khera & Ors.**

**... Respondents**

**J U D G M E N T**

**ABHAY S. OKA, J.**

**FACTUAL ASPECTS**

1. The first respondent, a former Executive Director of the Central Warehousing Corporation, approached the National Green Tribunal (for short, 'the NGT') by filing an original application. The first respondent filed the original application under Section 14, read with Section 15 and Section 18(1) of the National Green Tribunal Act, 2010 and raised an important issue of the pollution created by the Inland Container Depot (for short, 'the said ICD') at Tughlakabad. It is alleged in the application that the said ICD is used by the

trucks/trailers not destined for Delhi and is used for delivery/pick up to and from locations outside Delhi. He pointed out that due to the inflow of a large number of trucks/trailers to the said ICD, the air pollution in Delhi NCR has substantially increased due to the emission from trucks/trailers. He contended that there are other ICDs around Delhi, and therefore, it is quite possible to divert the inflow of trucks/trailers to the other ICDs around Delhi NCR. The first respondent, thus, prayed for a direction to the appellant the Container Corporation of India Ltd. (for short, 'the Container Corporation') and the Railway Board to shift the operations of the said ICD at Tughlakabad which are not bound for Delhi to other locations outside Delhi. The second direction was to prohibit entry of containers/trailers at the said ICD, Tughlakabad, which are not bound for Delhi and only to utilise CNG run/battery operated Fork Lifts/empty Handlers and small vehicles, as also run electric trains rather than diesel locomotives in and out of the said ICD.

**2.** The appellant (The Container Corporation) contested the said application. It was pointed out that the movement of cargo destined for consumption in Delhi is made by railway lines which terminate inside the premises of the said ICD. If the use of the said ICD is diverted, it would mean that there would be more movement of cargo on roads from various ports in India to Delhi, which will increase the distance covered by the cargo trucks. This movement of cargo on the roads will lead to more pollution. A contention was raised

that the said ICD is ideally located to cater for the needs of the population of Delhi without disturbing the residential areas of Delhi.

**3.** The NGT passed interim orders on the application filed by the first respondent from time to time. By the impugned order dated 8<sup>th</sup> March 2019, the NGT passed an order directing the appellant to ensure that, in a phased manner, diesel vehicles stop visiting the ICD and shift to electric, hybrid and CNG vehicles. The Tribunal observed that the other alternative was to limit the entry of diesel vehicles only to the satellite terminals (ICDs) at Dadri, Rewari, Ballabhgarh, Khatuawas or any other ICD around Delhi. The Tribunal observed that this will ensure that diesel vehicles do not enter Delhi NCR. An outer limit of six months was fixed under the impugned order by the NGT to comply with the directions above. An action plan was ordered to be filed within one month.

**4.** On 22<sup>nd</sup> April 2019, this Court issued notice on the present appeal and directed that no coercive action shall be taken against the appellant based on the impugned order. On 10<sup>th</sup> February 2020, when this Court noticed that no solution was forthcoming, a direction was issued to the Environment Pollution (Prevention and Control) Authority ('EPCA') to look into the issues raised in the appeal and to file a report containing its recommendations. We may note here that EPCA has been set up under the orders of this Court to

protect and improve the quality of the environment in Delhi NCR.

**5.** Under the aforesaid direction of this Court, EPCA submitted a report way back on 30<sup>th</sup> June 2020. A response is filed by the first respondent to the recommendations contained in the said report. An affidavit has been filed by the Ministry of Railways, putting on record its stand concerning the recommendations contained in the report. Written submissions have been filed by the appellant containing its response to the recommendations of EPCA and setting out the steps taken by the appellant pursuant to the recommendations. The hearing before this Court was confined to the recommendations made by the EPCA. We have heard the learned counsel appearing for the parties on the said report.

**6.** The issue of pollution, particularly air pollution, has been a cause of concern for the last few decades. Air pollution directly affects the fundamental rights of the citizens guaranteed under Article 21 of the Constitution of India. The right to life guaranteed under Article 21 includes the right to live in a pollution-free environment. The issue of air pollution is of a great deal of importance to every citizen. Air pollution affects citizens' quality of life. It adversely affects health. This issue is more significant in the context of the severe air pollution faced by Delhi NCT and Delhi NCR areas during the last few years. For the last few months, the air quality index

in the said areas has been in the category of very unhealthy or hazardous.

**7.** Now, we turn to the report submitted by EPCA. By way of illustration, the report contains the figures of vehicles entering the said ICD in January 2020. The report records that 22,082 vehicles entered the said ICD, out of which 75% of the vehicles (16,562) were bigger vehicles using diesel, with an average capacity of 19 metric tons. Only 25% were CNG vehicles, having an average capacity of 6 metric tons. It records that the number of diesel vehicles entering the said ICD daily was 534. These figures must be appreciated in light of the pollution inventory done by the IIT, Kanpur, in 2016. The inventory revealed that the trucks entering Delhi contribute roughly half of the total pollution caused by the vehicles in the city. That is why this Court has repeatedly issued directions for preventing air pollution in Delhi NCR.

**8.** A positive feature recorded in the EPCA report is that the total quantity of goods transiting through the said ICD from 2014-15 has gradually decreased. In the financial year 2014-15, the total quantity of goods entering ICD was 4,26,144 TEUs, which was reduced to 3,10,399 in the financial year 2019-2020. One TEU is equivalent to the carrying capacity of a 20-foot-long container. The submission made across the Bar is that the downward trend continues.

**9.** Broadly, the EPCA considered three issues:

- a.** The feasibility of shifting to CNG/electric/hybrid vehicles as directed by the NGT by the impugned order;
- b.** The issue of restricting and reducing the entry of non-destined diesel vehicles at the said ICD and the issue of diverting non-destined diesel vehicles to nearby ICDs; and
- c.** The problem created by congestion and lack of adequate parking facilities at ICDs.

**10.** Before we deal with the recommendations and the stand taken by the parties, it is necessary to understand the significance of an ICD or a dry port in the transportation and logistics chain. An ICD is a facility created in an inland part which serves as a containerised cargo handling hub for imports and exports of the region. It is an intermodal terminal that provides direct connectivity to a seaport. The customs department recognises it as an extended part of the seaports. It serves as a facility that offers services for handling and temporarily storing import/export-laden containers. It is connected to ports via railway transport. All facilities, such as obtaining custom clearances, cargo aggregation, cargo storage and other storage identical to a marine port, are available at these dry ports. In short, ICDs enable access to cargo handling facilities of a port at the doorstep of the importers and exporters. It also allows the consolidation of the cargo closer to its origin or destination to reduce the fragmented

movement and multiple handling of the cargo. As is brought on record, there are two establishments of the Customs Department in the said ICD, and there is a connection of railway lines available in the ICD itself.

**11.** Now, coming to the recommendations of the EPCA, while accepting the need to shift vehicles to cleaner fuels like CNG/Hybrid/Electric, the EPCA observed that there are limitations in the technology. It is noted that no alternative fuel technology is available for the category of heavy-duty vehicles used for transporting containers. It is observed that the availability of alternative fuel in long-distance travel across India is often a constraint. Therefore, the EPCA recommended using BS-VI heavy-duty diesel vehicles as they are substantially cleaner than BS-IV heavy-duty vehicles. Therefore, a suggestion was made that the Ministry of Transport and Highways should come out with an effective and robust policy for the scrapping of heavy-duty diesel vehicles and their replacement with BS-VI vehicles. In his response, the first respondent stated that the above recommendation must be accepted with a rider that exploring other fuel sources, including CNG/Hybrid/Electric, should continue. Indeed, technology is ever-improving. Therefore, while adopting the aforesaid recommendation, we must clarify that a constant endeavour needs to be made to ascertain whether better fuel sources can be successfully utilised for the heavy-duty vehicles which enter the said ICD.

**12.** On the second issue, the EPCA noted in the report that seven such facilities, including the said ICD, are near Delhi. Based on the figures incorporated in the report, it is noted that only the said ICD and the ICD at Rewari are being utilised to the extent of 60% or more of their capacity, while the others remain underutilised. Therefore, EPCA recommended that the appellant should formulate a plan for optimal utilisation of ICDs around Delhi, which will eventually reduce the use of said ICD.

**13.** We may note another reason why the said ICD is preferred. It is brought on record that some of the central laboratories, drug controller offices, etc., are located in Delhi, where the lab testing of the imported goods is done before clearance from customs. Therefore, a recommendation was made to direct the appellant to work with certified agencies and laboratories to extend their services to the ICDs outside Delhi so that the infrastructure in other ICDs around Delhi does not remain underutilised by exporters/importers.

**14.** Regarding parking for the trucks and trailers, the report records that the facility for parking 940 trucks/trailers is available, but parking is still haphazardly made, leading to congestion and pollution.

**15.** In the first respondent's response to the recommendations, it is pointed out that the initial capacity of the said ICD was only 1,26,000 TEUs. However, the said ICD has operated with 4,50,000 TEUs. Reliance was placed on



the provisions of the Handling of Cargo in Areas Regulation, 2009, which provide that safe, secure and spacious premises for loading, unloading, handling and storing of the cargo for the projected capacity has to be set up by the user agency to the satisfaction of the Commissioner of Customs. A grievance has been made that data showing the implementation of the said Regulations has not been placed on record.

**16.** The recommendations made by EPCA have been summarised on pages 14 and 15 of the report, which reads thus:

**“On the issue of shift to CNG/Hybrid/Electric**

**3.1** May consider that shift to CNG/Hybrid/Electric, however desirable, is not feasible in this segment of vehicles. May instead direct the Ministry of Road Transport and Highways (MoRTH) to present an effective and robust policy for scrappage of heavy-duty diesel vehicles and replacement with BS VI vehicles, which are substantially cleaner and will greatly reduce pollution in the entire airshed.

**On the issue of restricting growth of heavy-duty vehicles at ICD/TKD**

**3.2** May consider directing CONCOR to give a plan for the optimal utilisation of the inland container depots garlanding Delhi and what will be proposed increase in throughput in these depots in the coming years and consequently how the reduction in throughput in ICD/TKD will be operationalised.

**3.3** May direct CONCOR to work with certifying agencies and laboratories to work out the necessary extension of their services to the inland container depots outside Delhi so that business can utilise this infrastructure with convenience.

**On the issue of parking**

**3.4** May consider directing CONCOR to provide a time-bound plan for upgrading the parking/holding area by optimizing on the space it has inside the depot and to work with agencies to provide adequate holding space outside the depot.”

**17.** We may mention here that the appellant, the first respondent and Ministry of Railways have, in principle, agreed that the recommendations of EPCA need acceptance. After perusing the pleadings, affidavits, and documents on record, we are of the view that the recommendations must be accepted and implemented in terms of the directions that we propose to issue.

**18.** However, timelines will have to be fixed. As regards recommendation 3.1, we propose to grant the Ministry of Road Transport and Highways six months to come out with a policy on the replacement of heavy-duty diesel vehicles with BS-VI vehicles. While we do so, we make it clear that with ever-advancing technology, constant endeavour to explore the availability of other fuel resources that could be used for heavy-duty vehicles should always continue.

**19.** Regarding recommendation 3.2, we propose to direct the appellant to formulate a comprehensive plan within six months from today. Regarding recommendation 3.3, the appellant will have to approach various authorities which have provided laboratories in Delhi to set up similar facilities near the other ICDs around Delhi NCR.

**20.** Regarding recommendation 3.4, in the written submissions, the appellant has brought on record that the appellant had appointed an expert agency, KPMG, to make recommendations on the problem of congestion and parking inside the said ICD. A copy of KPMG's report is placed on record with an assurance that the appellant is undertaking measures to implement the recommendations made by KPMG.

**21.** Before we part with the judgment, we must say something about an option mentioned by the NGT in paragraph 7 of the impugned order. The NGT has *inter alia* observed that there is an option to restrict the entry of diesel vehicles in the said ICDs at Tughlakabad by diverting these vehicles to the ICDs at Dadri, Rewari, Ballabgarh, Khatauwas or any other ICD around Delhi so as to control the pollution in Delhi NCR, as if only the people living in Delhi NCR alone are entitled to pollution free atmosphere and not those living in other parts of the country. Such an observation by the NGT is in complete ignorance of the fact that citizens living in other parts of the country other than Delhi NCR also

have a fundamental right to a pollution free environment as guaranteed by Article 21 of the Constitution of India. Such a fundamental right is equally enforceable by all and is not confined to the people of Delhi NCR. The NGT while protecting/safeguarding the above fundamental right of the people of Delhi NCR cannot allow infringement of the same fundamental right of the citizens living outside Delhi NCR. The observation of the NGT is totally unjustified and unwarranted.

**22.** Hence, we dispose of the appeal by passing the following directions in substitution of the directions in the impugned order:

- a.** After examining recommendation 3.1, the Union of India shall formulate a policy of phasing out heavy-duty diesel vehicles and replacing them with BS-VI vehicles. The Union of India shall formulate appropriate policy on this behalf within six months from today;
- b.** Though the Union of India is a party through the Ministry of Environment, Forest and Climate Change, the Ministry of Road Transport and Highways is not formally made a party. We, therefore, direct the Registry to forward a copy of this order to the Secretary of the Ministry of Road Transport and Highways.
- c.** The process of exploring the possibility of finding better sources, including CNG/Hybrid/Electric, for the use of heavy-duty vehicles shall continue;

- d. The plan for optimal utilisation of ICDs around Delhi, in terms of recommendation no. 3.2 shall be formulated by the appellant within six months from today. In the meanwhile, the appellant will coordinate with all the official agencies to enable the setting up of central laboratories near ICDs around Delhi NCR;
- e. We direct the appellant to implement the recommendations made by KPMG in February 2021 for improving the parking management of vehicles in the said ICD. We grant time of six months to the appellant to implement the recommendations of the KPMG;

**23.** The appeal is disposed of on the above terms.

**24.** Though we are disposing of the appeal with the above directions, we make it clear that this Court will monitor the implementation of the above directions. Therefore, we direct that this appeal be listed on 31st July 2024 for reporting compliance by the appellant and the Ministry of Transport and Highways.

.....J.  
(Abhay S. Oka)

.....J.  
(Pankaj Mithal)

**New Delhi;  
January 11, 2024.**