

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

**Original Application No. 65 of 2016
(M.A. No. 130 of 2016 & M.A. No. 166 of 2016)**

And

**Original Application No. 76 of 2016
(M.A. Nos. 144 of 2016)**

And

Original Application No. 81 of 2016

And

Original Application No. 108 of 2016

IN THE MATTER OF : -

Manoj Misra Vs. Delhi Development Authority &Ors.

And

Pramod Kumar Tyagi Vs. Art of Living International Center &Ors.

And

Anand Arya Vs. Delhi Development Authority &Ors.

And

Ojasvi Party Vs. Ministry of Environment & Forest &Ors.

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER
HON'BLE DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE MR. BIKRAM SINGH SAJWAN, EXPERT MEMBER**

Original Application No. 65 of 2016

Present: **Applicant:** Mr. Sanjay Parikh, Sr. Adv., Mr. Ritwick Dutta, Adv., Mr. Rahul Choudhary. Ms. Meera Gopal, Mr. Anand Arya Adv. and Swami Omji Mukesh Jain

Respondent No. 1: Mr. Rajiv Bansal, Mr. Kush Sharma and Mr. Sagar Mehrotra, Ms. Arpita, Mr. Jasmeet Singh Adv. for DDA, Mr. Attin Shankar Rastogi, Mr. Amit Yadav

Respondent No. 2: Mr. Tarunvir Singh Khehar, Adv., Mr. Joseph and Mr. Benashaw Soni for GNCTD

Respondent No. 4: Ms. Savitri Pandey, Adv. and Mr. Naveen Chawla for Irrigation Deptt.

Respondent No. 6: Mr. B. V. Niren and Mr. Ishwer Singh for MOWR
 Mr. Rahul Pratap, Adv and Mr. Amit Bansal, Adv. for MoEF
 Mr. ADN Rao, Mr. Sudipto Sircar, Mr. Annam Venkatesh, Ms. Ankita Chadha for DMRC
 Mr. Balendu Sekhar, Adv., Mr. Eishaan Bhuguna, Mr. Akshay Abrol and Mr. Amit Bansal for EDMC

Original Application No. 108 of 2016

Present: **Applicant:** Swami Om Ji and Mr. Mukesh Jain

Respondent No. 1: Mr. Attin Shankar Rastogi and Mr. Amit Yadav
 Mr. Tarunvir Singh Khehar, Adv.
 Mr. Rajiv Bansal, Mr. Kush Sharma and Mr. Keshav Datta, Ms. Arpita, Mr. Naveen Chawla, Adv. for DDA
 Mr. B. V. Niren for EDMC
 Mr. Balender Shekher, Adv., Mr. Akshay Abrol, Adv., Mr. Eishaan Bahuguna, Adv., Mr. Amit Bansal, Adv.

	Date and Remarks	Orders of the Tribunal
	Item Nos. 02 to 04 March 09, 2016	The arguments in the case have just concluded. In the facts and circumstances of the case and keeping in view the urgency involved in the <i>lis</i> , it is

required of the Tribunal to pass a short order giving its conclusions, reasons for which would be provided by a detailed judgment subsequently.

Having heard the parties at length, perusing the records produced, the three Reports submitted by the Principal Committee constituted by the Tribunal in the main Yamuna matter, Prof. A.K. Gosain and MoEF respectively as well as the pleadings of the parties, we pass the following order recording our conclusions:-

1. For the reason of delay and laches on the part of the applicant in approaching the Tribunal and for the reason of *fait accompli* capable of restoration and restitution, we are unable to grant the prayer of prohibitory order and a mandatory direction for removal of construction and restoration of the area in question to the applicant at this stage. The principles, as stated in the judgment of the Tribunal in the case of *S.P. Muthuraman v. Union of India and Ors.* (2015) ALL (I) NGT Reporter (2) (Delhi) 170, can be squarely applied to the facts and circumstances of the present case. We may notice that the interim stay against the said judgment of the Tribunal has been declined by the Hon'ble Supreme Court vide its order dated 23rd November, 2015 in that case. The applicant had written to the Lt. Governor of Delhi on 11th December, 2015 but filed the present application

only on 8th February, 2016. In the meanwhile, the *Vyakti Vikas Kendra - India* (the 'Foundation') had substantially completed the construction work on the flood plains and allied areas which would squarely fall within the jurisdiction of this Tribunal.

2. It needs to be stated that the Applicant has not raised any challenge to the permission dated 30th June, 2015 granted by DDA and letters of other Authorities stating that no permission was required by the Foundation from them, although they had been placed on record and relied upon during the course of hearing. This factor would place the Applicant at some disadvantage though his application would not be liable to be dismissed on this ground alone.

3. This Tribunal is primarily dealing with the ecological, environmental and biodiversity damage done to the river and the flood plains by the activity of the Foundation and the environmental consequences of holding such an event. We are not strictly concerned with the cultural event that is proposed to be held from 11th to 13th March, 2016.

4. We are unable to accept the contention raised on behalf of the DPCC that it was not obligatory upon the DPCC to grant and/or refuse the consent to the Foundation for making such construction and

the manner in which it would deal with the sewerage, Municipal Solid Waste generated and the source of water supply for holding such a huge gathering at the event in question. In any case, it was expected of the Board to issue appropriate directions in exercise of its statutory powers. On the true construction of Section 25 read with Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, we have no hesitation in holding that DPCC has failed to discharge its statutory obligation despite the fact that the Foundation had submitted an application for obtaining its consent. The Board has failed to exercise due diligence and in fact it has exercised its authority improperly in taking a stand that no orders were called from the Board in the facts and circumstances of the case. Thus, we impose costs of Rs. 1 lakh on DPCC.

5. The Foundation has submitted its application to various authorities for obtaining permission for holding the event. It has not obtained any permission as yet from the Police Department, Fire Department and from the Ministry of Water Resources, River Development and Ganga Rejuvenation, which undisputedly, in terms of the Notification dated 31st July, 2014 is the Authority responsible for conservation, development, management and control of water pollution of River

Yamuna. All these authorities have failed to exercise due diligence in fulfilment of their public duties.

We also state here that the information provided by the applicant was incomplete, vague and uncertain since it did not provide any specific data, supporting documents, comprehensive plan with regard to carrying on of such a huge construction, levelling activity and also construction of other approach roads, pontoon bridges, ramps, parking and a huge stage admeasuring 40 ft. high, 1000 ft. long and 200 ft. wide to any of the Authorities. This must lead to drawing of adverse inference against the Foundation. We would have expected the Foundation to disclose its entire project besides holding of the cultural activity to all the concerned authorities. Even on that count, the Foundation would be liable to pay compensation.

6. Certain material deficiencies/discrepancies have been pointed out by the Police Department of Delhi in its letter dated 01st March, 2016 and letter of PWD dated 08th March, 2016. We direct the Foundation to comply with the safety, construction stability and other requirements of all the concerned authorities as well as obtain permission from the Police Department, Fire Department and also fulfil other requirements stated in the letter of the Police Department. We also do not accept the

contention of the MoEF&CC that it was not required for the Foundation to seek Environmental Clearance for the project relating to all matters of construction etc. as afore-referred. The stand of MoEF&CC is contrary to the Notification, particularly with respect to development of an area of more than 50 ha. as contained in the EIA Notification, 2006

7. It is the consistent view of the Experts and is sufficiently evident from the documents placed on record that the flood plains have been drastically tampered with while destroying the natural flow of the river, reeds, grasses, natural vegetation on the river bed. It has further disturbed the aquatic life of the river and destroyed water bodies and wet lands on the flood plains, which were in existence, as noticed in our judgment in the case of *Manoj Misra vs. Union of India and Ors.*, OA No.6 of 2012 decided on 13th January, 2015. Furthermore, they have constructed ramps, roads, compaction of earth, pontoon bridges and other semi-permanent or temporary structures etc. even without the permission of the concerned authorities including Ministry of Water Resources. The permission granted by Government of NCT of Delhi is of no consequence as it is not the competent authority for rights over the river and in any case, it was a permission for only flood situation as is evident

from the bare reading of the permission. In fact, that is the stand of Government of NCT of Delhi itself before the Tribunal.

For the damage caused to the environment, ecology, biodiversity and aquatic life of the river, the Foundation should be held liable for its restoration in all respects. In that regard and in exercise of our powers under Sections 15 and 17 of the NGT Act, 2010 we impose an Environmental Compensation, initially of Rs. 5 crores. This amount would be paid by the Foundation prior to the commencement of the event. This amount would be adjusted towards the final compensation determined to be paid by the Foundation for restoration work. We hereby direct the Principal Committee constituted under the judgment, to submit a report within four weeks from today, in relation to the steps required to be taken for restoration, restitution and rejuvenation of the flood plains to its original status. It will also state the approximate cost that would have to be incurred for such restoration and restitution. We further direct that the entire area in question shall be developed as a biodiversity park in terms of our judgment in the case of *Manoj Mishra* (supra). The cost thereof shall be paid by the Foundation and DDA in the proportion as would be directed

by the Tribunal finally. The Foundation shall, by tomorrow, file an undertaking before the Tribunal that it would, within two weeks from date of demand by DDA, pay the balance amount for restoration, as directed by the Tribunal.

The Principal Committee would be entitled to engage such other experts as it needs to assess the cost factor.

We also constitute a Committee of the representatives of DPCC, MoEF&CC and Member Secretary, CPCB, who shall immediately inspect the site and issue directions by tomorrow in relation to the source of water, collection and disposal of the Municipal Solid Waste and sewerage generated during the event and also issue directions to ensure that there is no further environmental degradation or adverse impact on public health. They shall also issue directions with regard to the source of water and source of power and its utilization thereof. These would be treated as directions issued under Section 33A of the Water Act and Section 6 of the Environmental (Protection) Act, 1986 and would be binding upon the Foundation and all public authorities involved in the case.

8. The permission granted by the DDA dated 30th

June, 2015 is a vague permission, which, in fact, is the very basis of the case of the Foundation. However, irrespective of that, we find that the said permission is not in consonance with the orders of the NGT and in fact is in excess of the powers vested in DDA which runs contrary to the spirit of the judgment of the Tribunal. This cannot be termed as a recreational activity *simplicitor*. Cultural activity could be recreational but the entire construction of ramps, roads, accumulation of debris, alteration of the natural topography and removal of natural vegetation from the flood plains, cannot be said to be recreational. It is a complete project in itself and the DDA ought to have applied its mind. Strangely, it has neither conducted inspection of the site prior to the grant of permission nor during operation or subsequent thereto. Consequently, we impose a cost of Rs.5 lacs on DDA for its defaults and non-performance of its statutory functions.

9. We also direct that the DDA shall not, in future, issue such permission and any permission issued by the DDA or any State/Authority in relation to flood plain of River Yamuna, shall be subject to the orders of the Tribunal.

10. The learned counsel appearing for the Foundation has given an undertaking to the Tribunal that it will not release any kind of Enzymes into River Yamuna, its tributaries or any

water bodies henceforth without obtaining due permission of CPCB and DPCC.

The amount stated above shall be deposited with DDA and shall be maintained in a separate account.

The above directions are issued, while leaving the parties to bear their own costs, for which the detailed reasons, as already stated, shall follow.

.....,CP
(Swatanter Kumar)

.....,JM
(M.S. Nambiar)

.....,EM
(Dr. D. K. Agrawal)

.....,EM
(B.S. Sajwan)

