

BEFORE THE NATIONAL GREEN TRIBUNAL
AT PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 911 OF 2022

IN THE MATTER OF:

PROF. DR. SANJEEV BAGAI & ORS. ...APPLICANTS

VERSUS

DEPARTMENT OF ENVIRONMENT,
GOVT. OF NCT OF DELHI & ORS. ...RESPONDENTS

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Proof of Service

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FILED BY



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merely for want of specific denial and nothing may be construed as being admitted on the ground of non-traverse.

PRUNING DONE ON 16.01.2023 THROUGH PRIVATE CONTRACTOR

2. Before delving with the Affidavit filed by Respondent/MCD, it is pertinent to mention that R18 had commenced pruning of trees in Vasant Vihar on 16.01.2023, on its own and through a private contractor and in absence of any officer from the MCD. Applicants, also enquired about the pruning of trees from the persons who were pruning trees (Mr. Chanderpal and Mr. Subhash) and were informed that the pruning is being undertaken under instructions from R18/ R13 (President of R18), they are only a contractor and MCD will collect the green waste on its own. Applicants also made detailed enquiry about presence of any of the officers/ officials of the MCD; but none were present. The driver/ Mr. Subhash of the “skylift” first stated that he is an employee of PWD and later stated it to be MCD and upon further probing stated that he is a private contractor (and stated that he is not aware about the employer). Applicants also tried to make an enquiry with the local Horticulture Nursery/ office of MCD (located next to 25 Palam Marg, Vasant Vihar) and the officials

present at the office/ nursery of the MCD Horticulture refused to give any information regarding recommencement of pruning of trees. It also appeared that the said officials of the MCD were not aware about re-commencement of pruning of trees by R18 by engaging a private contractor. The photographs of the pruning being undertaken on 16.01.2023 are annexed with this Rejoinder as **Annexure A Colly** herein. It is further submitted that the said undertaking of pruning by R18 (through its office bearers) by engaging private contractor is contrary to/ in breach/ violation of this Hon'ble Tribunal's order dated 03.01.2023 and establishes the scant regard for law and also directions of this Hon'ble Tribunal by R12 to R17 (office bearers/ managing committee members of R18).

VAGUE AFFIDAVIT OF RESPONDENT NO. 4

3. At the outset, it is submitted that the said Affidavit has been intentionally kept vague only to mislead this Hon'ble Tribunal and not bring out/ state the actual facts and law. Respondent no. 4 by not filing a detailed affidavit has tried to wriggle out of its responsibility of stating the correct law and procedure to be adopted by the Respondent no. 4/ Respondent no. 2 being officers

of Municipal Corporation of Delhi (“**MCD**”). MCD, which is one of the land owning agency ought to have stated in explicit terms its responsibility towards pruning of trees, action to be initiated for felling/ cutting of trees, and the approval that was to be procured from the Respondent no. 3/ DCF and also state in unclear terms the approval, if any, granted to Respondent no. 18 for undertaking pruning of trees and deployment of its officers to supervise such pruning. Respondent no. 4 has failed to state compliance with provisions of the Delhi Preservation of Trees Act, 1984 (“**DPT Act**”) and impact on the environment for excessive/ illegal pruning of trees (in other words shaving up to 80% leaves from the trees).

4. The said Affidavit mentions about record of the department i.e. MCD, however, no record is filed to show that regular pruning was carried out in Vasant Vihar apart from vague statements/ conjectures. It is also pertinent to note that as per said Affidavit, pruning was carried out under the supervision of mali, supervisor (Choudhary) and section officer of the area of Horticulture Department of MCD. However, no document substantiating the same has been filed by the Respondent no. 4 which clearly

indicates that the said averment is nothing but an afterthought only to cover its inaction/ lack of action (especially after receiving several communications from the Applicants regarding cutting, pruning, felling of trees).

5. It is also important to bring to the notice of this Hon'ble Tribunal that in the said Affidavit (**in para 7**), Respondent no. 4 states that pruning was done “...*on demand of RWA...*”, however, no record of the department is filed along with said Affidavit to validate the said claim. The said statement is also in contradiction to the affidavit filed by the Respondent no. 18. Respondent no. 4 has not stated whether any application was received by them from Respondent no. 18 prior to 18.11.2022 with a request to prune trees in Vasant Vihar and the action taken on any such application/ communication/ letter. Respondent no. 4 has also failed to state when was the application/ communication with respect to pruning of trees and/ or supervision was received by the Respondent no. 4.
6. The Applicants submit that the present Rejoinder is being filed by the Applicants in order to assist this Hon'ble Tribunal and to bring out the complete and correct set of facts with respect to the false,

misleading, frivolous and incorrect statements/ submissions raised in the said Affidavit.

TERM ‘FELLING’ INCLUDES ‘PRUNING’

7. In the said Affidavit, it has been categorically stated by Respondent no. 4 that for 15.7 centimetres “...*no permission is required.*”. The said statement is without any merits in view of the following:

- a) As per section 2 (h) of DPT Act, the term ‘felling is defined in an inclusive way to include ‘pollarding’/ ‘pruning’ (see: **Application No. 157 of 2016 titled as *Pradeep Indulkar v. Municipal Corporation for the city of Thane & Ors.; Hon’ble National Green Tribunal, Western Zone***). It is also submitted that ‘pollarding’ is a pruning system; therefore, covering pruning within the ambit of section 2(h) of the DPT Act.
- b) Section 8 of the DPT Act unambiguously states that “...no person shall fell or remove or dispose any forest produce in any land, whether in his township or occupancy or otherwise, **except without prior permission of the tree officer.**”.

c) Even the 'Form B', referred in the said Guidelines in terms of 'pruning', (clearly) only uses the term 'felling' and not 'pruning'. Therefore, a Form B that is required to be filled up by a land-owner (on whose land the tree that requires pruning) also refers to pruning in terms of 'felling'; which clearly establishes that even while framing the Guidelines it was understood that 'felling' covers and includes 'pruning'.

Thus, on the conjoint reading of DPT Act and said Guidelines, it is clear that the term 'felling includes 'pruning' and therefore for pruning of trees prior permission from the concerned horticulture department is mandatory.

8. Without prejudice to the above and without admitting, if the argument of Respondent no. 4 is admitted that no permission for pruning of trees up to 15.7 centimetres girth is required then it can only be concluded that the said Guidelines are not in conformity with the DPT Act. Although, it is mentioned that the Guidelines have been issued under the DPT Act; however the Guidelines do not mention the section/ provision under which the Deputy Conservator of Forests (HQ) has been authorised to issue such Guidelines. It is a settled principle in law that any authority/

government body cannot issue the guidelines/ notifications, if the governing/ parent statute does not provide for such a power. In other words, the power to issue guidelines cannot be arrogated by the Deputy Conservator of Forests (HQ), to itself if the parent statute does not expressly confer such power to the Deputy Conservator of Forests (HQ). Additionally, the Deputy Conservator of Forests (HQ), even if allowed (assuming and without admitting to the same), to issue such guidelines, cannot issue Guidelines which are de-hors the governing statute i.e. the DPT Act in the present case.

9. It is settled law that if the exercise of power is in the nature of subordinate legislation the exercise must conform to the provisions of the statute. All the conditions of the statute must be fulfilled. It is further well settled law that a notification/guideline cannot supersede the parent act.
10. It is also submitted that no person can be a judge in its own case; and therefore the interpretation of section 2(h) of the DPT Act and whether the Guidelines are in conformity of the DPT Act cannot be undertaken by the Respondent no. 4.

PROCEDURE FOR PERMISSION FOR PRUNING

11. Respondent no. 4 is trying to mislead the Hon'ble Tribunal by giving wrong interpretation to the said Guidelines issued by the Respondent no. 1. The steps to be followed in terms of the said Guidelines for pruning/felling of tree(s) is as follows:

Tabulation 1

CLAUSE 9	CLAUSES 10 & 11
<p>STEP 1</p> <p>If the tree is inside the house/premises which needs to be felled or pruned, then the said individual/general public/ society/ RWAs.</p>	<p>STEP 1</p> <p>If the tree is standing on Government land/ roads/ parks/ government property which needs to be felled or pruned.</p>
<p>STEP 2</p> <p>Application under Form B along with photographs, number of trees, etc. in question has to be sent to DCF/Tree Officer.</p>	<p>STEP 2</p> <p>Letter (on a plain piece of paper) to be sent to the Deputy Director (Horticulture) of the land-owning agency.</p>
N/A	<p>STEP 3</p> <p>The Deputy Director (Horticulture) of the land-owning agency shall forward it to the DCF by way of Form B.</p>
<p>STEP 4</p> <p>After receiving Form B, the DCF shall proceed with the inspection of the tree(s)</p>	
<p>STEP 5</p>	

After inspection, the permission or otherwise is communicated by concerned DCF within 60 days.

12. After combined reading of clauses 5 to 11 of the said Guidelines it is clear that:
- a) **For “regular pruning”**: no permission is required. However, same is to be done by civic agencies at regular intervals and not on the asking of any person/ individual/ RWA and not by any private individual (see clause 5).
 - b) **For “light pruning and heavy pruning”**: permission is mandatory (see clause 5). However, pruning can only be done by land-owning agency if it is standing on the government land (see clause 7).
13. It is important to note that **clause 5** has no bearing on **clauses 9 to 11** as **clauses 9 to 11** clearly states that **if the individual, RWA, etc. wants to get the trees pruned then they have to apply for permissions which will be granted after inspection.** Whereas, ‘no permission’ for ‘regular pruning’ in clause 5 is only for civic agencies (MCD, DDA, etc. as it is their duty to prune the trees at regular interval). Even if for the sake of argument (without admitting) it is to be assumed that pruning of trees is completely/ wholly covered under Clause 5; then there is **no** purpose of having

Clause 9 to 11 in the Guidelines (because clauses 9 to 11 will never get triggered/applied by any civic agency). Further, the civic agencies and concerned land-owing agency apart from pruning to be done at regular intervals might not know as to in which area the pruning is to be done or in which area pruning was conducted by the land owing agency/ property owner and to what extent the trees were pruned unless the individual, RWA, etc. applies for permission. Thus, it is crystal clear that inspection followed by permission by concerned DCF is mandatory in terms of the said Guidelines to prune the trees.

DUTY OF LAND OWING AGENCIES TO CARRY OUT PRUNING

14. It is an admitted position that in the present case pruning of trees was being carried out on the land owned by either MCD or Public Works Department (“PWD”) or Delhi Development Authority (“DDA”). In terms of clause 7 of the said Guidelines, pruning is to be done by the concerned land owing agency and not by any private individual. Therefore, the contention of Respondent no. 4 that pruning was carried out under the supervision of “...*Mali, Supervisor (Choudhary) and Section House Officer of the area of*

Horticulture Department South Zone/ MCD.” is of no avail as it was the duty of land owing agency to carry out pruning and not of any private contractor. Even otherwise, no record has been filed to show that pruning was carried out under any supervision and no statements have been made with respect to cutting and felling of trees in Vasant Vihar (which were in the knowledge of Respondent no. 4).

**CONTRADICTION IN THE STAND OF RESPONDENT NO. 4
AND RESPONDENT NO. 18**

15. From the bare perusal of the said Affidavit and reply of Respondent no. 18 dated 02.01.2023 (“**Reply**”) it is evident that the stand of Respondent no. 4 in the said Affidavit and stand of Respondent no. 18 in the said Reply is contradictory to each other. The statements made therein are nothing but an afterthought.

NO RESPONSE TO THE COMPLAINTS OF THE APPLICANTS

16. It is pertinent to submit that Applicant No. 1 had filed a complaint dated 28.10.2022 before the Respondent no. 2, Respondent no. 4 and Respondent No. 11 apart from officer of MCD stating that the trees have been cut/ felled without prior permission of the concerned department (**Annexure A-2** of the Original

Application). However, no response from the side of the Respondent no. 2/MCD to the said complaint was received by the Applicant No. 1. Further, the said Affidavit is completely silent about the said complaint dated 28.10.2022. In terms of section 22 of the DPT Act it is the duty of every officer (including Police and Department of Horticulture) to inform Respondent no. 3 about any violation of section 8 of the DPT Act. Therefore, the Applicants having already complained of the illegal acts of cutting and felling of trees, barely 40 meters away from the MCD's Horticulture office, Respondent no. 4 ought to have stated the same on the Affidavit and merely not sought the directions of this Hon'ble Tribunal to file a detailed affidavit, if directed. Respondent no. 4 being an officer of Department of Horticulture, MCD is bound to state facts and law in unambiguous and unbiased manner before this Hon'ble Tribunal.

17. Moreover, Applicant no. 3 (on 21.11.2022) had filed an application under the Right to Information Act, 2005 with MCD (South) seeking the information with respect to permissions granted to Respondent no. 18 for pruning of trees from 2018 to 2022, etc (**Annexure A-5** of the Original Application). However,

no response to the said RTI has been received and even the said Affidavit does not whisper about the same.

18. Apart from the above, 2 complaints dated 21.11.2022 (**Annexure A-6** of the Original Application) and 28.11.2022 (**Annexure A-10** of the Original Application) were also written by the Applicants to the Respondent no. 4 and Respondent no. 2 to look into the illegal acts of pruning of trees being carried out in Vasant Vihar. However, even the same went to deaf ears which clearly indicates that Respondent no. 4 is trying to hide its own inaction/ lack of action.

PARA WISE REPLY

1. The contents of para 1 of the Affidavit under Rejoinder are a matter of record and needs no reply. The averments made in the Original Application and the preliminary submissions herein may be read as part and parcel of the present Rejoinder and the same are not repeated herein for the sake of brevity and to avoid repetition.
2. The contents of para 2 of the Affidavit under Rejoinder are a matter of record and needs no reply. The averments made in the Original Application and the preliminary submissions herein may

be read as part and parcel of the present Rejoinder and the same are not repeated herein for the sake of brevity and to avoid repetition.

3. The contents of para 3 of the Affidavit under Rejoinder are a matter of record and needs no reply. However, it will be pertinent to submit that a detailed reply to the Original Application must be filed before this Hon'ble Tribunal to bring out the true and correct statements/ facts for just proper adjudication of the Original Application. The averments made in the Original Application and the preliminary submissions herein may be read as part and parcel of the present Rejoinder and the same are not repeated herein for the sake of brevity and to avoid repetition.
4. The contents of para 4 of the Affidavit under Rejoinder need no reply. It is submitted that mere vague denial is no denial.
5. The contents of para 5 of the Affidavit under Rejoinder are a matter of record and needs no reply.
6. The contents of para 6 of the Affidavit under Rejoinder are wrong, false and are vehemently denied. It is denied that no permission is required for regular pruning of trees up to 15.7 cm girth. The

averments made in the Original Application and the preliminary submissions herein may be read as part and parcel of the present Rejoinder and the same are not repeated herein for the sake of brevity and to avoid repetition.

7. The contents of para 7 of the Affidavit under Rejoinder are wrong and vehemently denied. It is denied that on the demand of the RWA concerned the exercise of regular pruning has been undertaken/carried out under the supervision of Mali, Supervisor (Choudhary) and Section House Officer of the area of Horticulture Department South Zone/ MCD. It is further denied that regular pruning of the trees up to 15.7 cm girth was being carried out or that for regular pruning no permission is required. The averments made in the Original Application and the preliminary submissions herein may be read as part and parcel of the present Rejoinder and the same are not repeated herein for the sake of brevity and to avoid repetition.
8. The contents of para 8 of the Affidavit under Rejoinder are denied for being false and motivated. It is denied that during 21.11.2022 and 20.12.2022, pruning was carried out under any supervision of MCD. The photograph claimed to be attached as Annexure-A

Colly has neither been filed by the Respondent no. 4 nor supplied to the Applicants. The averments made in the Original Application and the preliminary submissions herein may be read as part and parcel of the present Rejoinder and the same are not repeated herein for the sake of brevity and to avoid repetition.

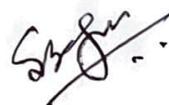
9. The contents of para 9 of the Affidavit under Rejoinder are not in the knowledge of the Applicants and hence are specifically denied. Respondent No. 4 is put to strict proof of the same. The averments made in the Original Application and the preliminary submissions herein may be read as part and parcel of the present Rejoinder and the same are not repeated herein for the sake of brevity and to avoid repetition.

PRAYER

In view of above facts and circumstance it is most respectfully prayed that this Hon'ble Tribunal may

- (a) Strike-off the Affidavit filed by Respondent no. 4 and direct them to file a detailed affidavit on all issues as highlighted in the Original Application and/or
- (b) Allow the prayers sought by the Applicants in the Original Application.

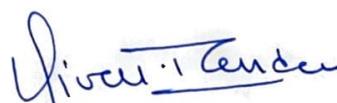
Pass such other further order/s as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case. ,



APPLICANT NO. 1



APPLICANT NO. 2



APPLICANT NO. 3

THROUGH



ANU MONGA
ANANTLAW

ADVOCATE FOR THE APPLICANT
SOLICITORS AND ADVOCATES

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AFFIDAVIT

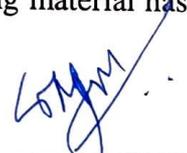
I, Prof. Dr. Sanjeev Bagai aged about 57 year, S/o Late Mr. M.K. Bagai, having its residence at 43 Poorvi Marg, Vasant Vihar, New Delhi-110057, do solemnly state and affirm as under:

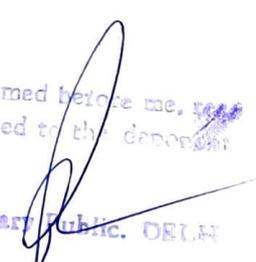
1. That I am a citizen of the country and Applicant No. 1 in the present case and I am fully conversant with the facts and circumstances of the present case. I am therefore competent to depose to the present affidavit.
2. That the contents of the accompanying rejoinder are true and correct to my knowledge and the submissions made herein are on the basis of the legal advice received by me and are believed to be true and correct. No part of it is false and nothing material has been concealed therefrom. The accompanying rejoinder may kindly be read as part of the present affidavit.


DEPONENT

VERIFICATION

Verified at New Delhi on this 19 day of JAN, 2023 that the contents of the present affidavit are true and correct to my knowledge and nothing material has been concealed therefrom.


DEPONENT

Solemnly affirmed before me, 
over & explained to the deponent

Notary Public, DELHI

11 7 JAN 2023



*Am
Solemnly affirmed before me,
who has signed in my presence*

**BEFORE THE NATIONAL GREEN TRIBUNAL
AT PRINCIPAL BENCH, NEW DELHI
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IN THE MATTER OF:

PROF. DR. SANJEEV BAGAI & ORS. ...APPLICANTS

VERSUS

DEPARTMENT OF ENVIRONMENT,
GOVT. OF NCT OF DELHI & ORS. ...RESPONDENTS

AFFIDAVIT

I, Rajit Kumar aged about 70 year, having its residence at A-10/7, Vasant Vihar, New Delhi-110057, do solemnly state and affirm as under:

1. That I am a citizen of the country and Applicant No. 2 in the present case and I am fully conversant with the facts and circumstances of the present case. I am therefore competent to depose to the present affidavit.
2. That the contents of the accompanying rejoinder are true and correct to my knowledge and the submissions made herein are on the basis of the legal advice received by me and are believed to be true and correct. No part of it is false and nothing material has been concealed therefrom. The accompanying rejoinder may kindly be read as part of the present affidavit.

Rajit Kumar
DEPONENT

VERIFICATION

Verified at New Delhi on this 11 day of JAN, 2023 that the contents of the present affidavit are true and correct to my knowledge and nothing material has been concealed therefrom.

Rajit Kumar
DEPONENT



Solemnly affirmed before me, read
over & explained to the deponent

Rajit Kumar
Notary Public. DELHI

11 JAN 2023

*I am
I solemnly affirm the deponent is the person
who has signed in my presence*

**BEFORE THE NATIONAL GREEN TRIBUNAL
AT PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 911 OF 2022**

IN THE MATTER OF:

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VERSUS

DEPARTMENT OF ENVIRONMENT,
GOVT. OF NCT OF DELHI & ORS. ...RESPONDENTS

AFFIDAVIT

I, Vivek Tandon aged about 59 year, having its residence at E-9/9, Vasant Vihar, New Delhi-110057, do solemnly state and affirm as under:

1. That I am a citizen of the country and Applicant No. 3 in the present case and I am fully conversant with the facts and circumstances of the present case. I am therefore competent to depose to the present affidavit.
2. That the contents of the accompanying rejoinder are true and correct to my knowledge and the submissions made herein are on the basis of the legal advice received by me and are believed to be true and correct. No part of it is false and nothing material has been concealed therefrom. The accompanying rejoinder may kindly be read as part of the present affidavit.

Vivek Tandon
DEPONENT

Identify the deponent/executioner who has signed in my presence

VERIFICATION

Verified at New Delhi on this 17 day of JAN, 2023 that the contents of the present affidavit are true and correct to my knowledge and nothing material has been concealed therefrom.

Vivek Tandon
DEPONENT



solemnly affirmed before me, read over & explained to the deponent

[Signature]
Notary Public, DELHI

17 JAN 2023









Service E-mail - Rejoinder filed by the Applicants to the Reply on Respondent/MCD

Shubham Khanna <Shubham.khanna@anantlaw.com>

Tue 1/17/2023 4:07 PM

To: dir-hort-sdmc@mcd.nic.in <dir-hort-sdmc@mcd.nic.in>

Cc: Anu Monga <anu.monga@anantlaw.com>; Shobhit Sharma <shobhit.sharma@anantlaw.com>; Paritosh Dhawan <paritosh.dhawan@anantlaw.com>

Dear Sir/Ma'am

This is in reference to the matter - Prof. Dr. Sanjeev Bagai & Ors v. Department of Environment GNCTD & Ors. [O.A. No. 911 of 2022] which is listed before Hon'ble National Green Tribunal, New Delhi on 19.01.2023.

Please find attached Rejoinder filed by the Applicants to the Reply filed by you dated 02.01.2023 for your reference and necessary action/compliance.

Best regards,

Shubham Khanna
Advocate

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