

Item No.14

Court No. 2

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 610 of 2017
(M. A. No. 1176 of 2017, 1499 of 2017, 1501 of 2017,
751 of 2018, 752 of 2018 & 853 of 2018)

Manjinder Singh Sirsa Applicant(s)
Versus
Union of India &Ors. Respondent(s)

Date of hearing: 17.01.2019

CORAM :

HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER

For Applicant(s)
For Respondent(s)

Mr. S.S. Ahluwalia, Advocate
Mr. Dhruv Madan and Mr.
Anirudh Sharma, Advocates for
R-7, 15 & 20
Mr. Ajay Jain and Mr. Pranay
Jain, Advocates for GNCT of
Delhi
Mr. Karanveer Singh, Advocate
for Noticee No. 21
Mr. Dinesh Jindal, LO for
DPCC
Mr. Mukul Singh, Advocate for
MoEF
Mr. LalitBhasin and Ms.
ChandniSadana, Advocates for
R-5
Mr. Aditya Sharda, Advocate
for R-21 & 26

ORDER

Heard the Learned Counsels for the parties.

In sum and substance, the case of the applicant is that the Respondent-Government Authorities should prevent and curb indoor air pollution in restaurants and bars. Further, according to the applicant Delhi Pollution Control Committee should take action under the relevant

provision of Air (Prevention and Control of Pollution) Act, 1981 against such persons who have been polluting indoor ambient air quality in restaurants and bars. The Learned Counsel for the applicant has emphasised on the fact that Hookah is a hazardous substance. In support of his argument, the Counsel for the Applicant has extensively read the provision of Air (Prevention and Control of Pollution) Act, 1981 and also certain reports/studies which are placed on record.

On the other hand, the Counsel for the Respondent while confronting the arguments made by the Applicant submits that the type of Hookah used in the restaurants is not hazardous because a special type of substance is used in it, only for flavours and not the tobacco. Therefore, it has been submitted by the respondent that the application filed by the applicant does not deserve any relief from this Tribunal under the NGT Act, 2010.

Having heard the Learned Counsels for the parties and a look to the material placed on record, we are of the considered opinion that the first and foremost question arising in this case, which we have also pointed out to the Counsel for the Applicant, is that even if use of Hookah in a restaurant is hazardous which is the appropriate forum to pass orders of restraining the respondents.

We have before us a decision given by a Division Bench of the High Court of Delhi in the case of World Lung Foundation-South Asia through its President Vs. New Delhi Municipal Council through its Chairperson & Ors. (W.P. (C) 4579/2012) wherein similar issues were raised and the same were dealt with at length. The primary argument raised, there, was that Hookah is covered under Schedule Tobacco Products as mentioned under Section 3 (p) of COTPA. After considering the issue and the relief sought by the petitioner therein, the Hon'ble Division Bench of the High Court of Delhi decided the petition with the following directions:

“(i) direct the New Delhi Municipal Council, the North Delhi Municipal Corporation, the South Delhi Municipal Corporation, the East Delhi Municipal Corporation and any other Municipality having jurisdiction in Delhi to incorporate in the licenses issued by it to Hotels, Restaurants, Eating Houses and Food Joints etc., a condition requiring such licensees to comply with the provisions of the COTPA and the Rules framed thereunder and with a further condition that breach thereof shall entail cancellation of the license. The Delhi Police which though had incorporated such conditions as aforesaid, to continue to incorporate the same;

(ii) the aforesaid shall apply to the future licenses issued as well as to the existing licenses and also to the renewal of the licenses;

(iii) we further direct the Municipalities as well as the Delhi Police to, upon finding any violation by any of the Hotels, Restaurants, Eating Houses and Food Joints of the provisions of the COTPA or the Rules framed thereunder, immediately in accordance with law, cancel the license and take such other steps as may be necessary / required in law.”

Since the passing of the said order in the year 2012, it is well settled that the authorities concerned while

issuing licences etc. to hotels, restaurants, eating houses etc. a condition is required to be incorporated in it for compliance of the provision of COTPA and the rules framed thereunder. In case of breach of such provisions, it would entail cancellation of license.

Therefore the question which arise is, as to whether Hookah is covered under the Schedule Tobacco Products as defined in the COTPA, if so, does this Tribunal has jurisdiction to deal with such issues or it is to by some other forum. It has been settled since long by this Tribunal, through larger Bench that its jurisdiction is in respect of dispute relating to environment which are falling under the Acts as enumerated in Schedule 1 of the Act. As COTPA is not one of those Schedule statute, the Tribunal does not have jurisdiction to consider the issue involved in the present case.

It would be relevant to mention here that Delhi Pollution Control Committee has specifically stated in its reply that the provision of Air (Prevention and Control of Pollution) Act, 1981 does not apply on indoor air quality as till date MoEF/CPCB has not framed any standards for indoor air quality. Suffice it to say that the reports and studies referred to by the Counsel for the Applicant may be based on scientific formulas but breach or violation of any environmental law would come into play only when the standards prescribed by MoEF or CPCB

are violated. It is only in such a situation that it can be said that there is violation of environmental law namely Air (Prevention and Control of Pollution) Act, 1981.

Thus, we are of the considered view that this Tribunal does not have the jurisdiction as COTPA does not come within the purview and scope of the jurisdiction envisaged under National Green Tribunal Act, 2010. The issue has been thoroughly considered and set at rest by the Hon'ble High Court of Delhi, in the aforesaid case, wherein detailed directions have been given to the competent authorities concern to incorporate restrictions/conditions and in breach of it, appropriate actions are to be taken by the authorities including Delhi Police. However, before concluding we would like to recommend/suggest MoEF & CC to also look into and examine the effect of Hookah in respect of indoor air pollution. In case their view is in the affirmative then they should come out and prescribe standards for it so that the issue can be dealt with by the authorities, if there is violation of those standards.

With the aforesaid observation, Original Application No. 610 of 2017 stands disposed of, with no order as to cost.

M. A. No. 1176 of 2017, 1499 of 2017, 1501 of 2017, 751 of 2018, 752 of 2018 & 853 of 2018

These Applications do not survive for consideration as the main application itself stands disposed of.

M. A. No. 1176 of 2017, 1499 of 2017, 1501 of 2017, 751 of 2018, 752 of 2018 & 853 of 2018 stand disposed of accordingly.

Raghuvendra S. Rathore, JM

Dr. Satyawan Singh Garbyal, EM

January 17, 2019
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