

ENVIRONMENTAL DAMAGE AND DOCTRINE OF SUSTAINABLE LIVING: A CASE COMMENT OF MANOJ MISRA V. DELHI DEVELOPMENT AUTHORITY & OTHERS

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Introduction & Overview

“The greatest threat to our planet is the belief that someone else will save it.”

–Robert Swan

In order to resolve the conflicts between environment and development and to promote sustainable living among the human beings various legal norms and doctrines has been evolved at national and international sphere since 1972 to till date in achieving the sustainable development goals, to eradicate and prevent climate disasters.³ The legal norms of Stockholm Declaration, Rio Declaration, Conference of Parties and other international legal instruments as well as national legal norms such as the law of the land i.e. Constitution of India and plethora of Environment Protection Laws provides the exhaustive framework for the protection, preservation and improvement of natural environment as well as access to judicial remedy and effective adjudication of environmental disputes by the national judicial forums. The Indian Parliament in 2010 enacted the National Green Tribunal Act and it provides the establishment of National Green Tribunal (hereinafter used as NGT) for the effective and expeditious disposal of environmental disputes relating to environmental protection, preservation, improvement and conservation of forests, biodiversity and other natural resources for realizing goals of sustainable development.⁴

In this case the researcher is going to analyze the scope and ambit of the judgment of the NGT and the principle set by the NGT in this case is how far reasonable, just and fair and the effect of the judgment in present visage and overall impact on environmental litigations and disputes.

Ambit & Scope of the Art of Living Foundation Case

The link between environment preservation, economic development and social and cultural activities has become a matter of utmost important at the national as well as international sphere over the four and more decades. There is no doubt that Indian judiciary played an active role in developing the environmental jurisprudence since 1980. The present research is to examine the scope and ambit of the Arty of Living Case and the role and contribution of NGT for ensuring green justice and sustainable development goals.

Some cultural or religious events are often burdensome to the environment if the event is not organized in an appropriate place and in an appropriate manner. Cultural events coupled with lethal activities have continued

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³ Mirza Juned Beg and Mohd Sufiyan Khan, *Environmental Jurisprudence in India* 120 (Book Rivers Publications, Lucknow, 2022).

⁴ Anis Ahmad and Sonal Singh, “Role of National Green Tribunal with Special Reference to Sustainable Development in India: A Legal Analysis” 46:1 *Indian Bar Review* 177 (2019).

to affect the environment in a negative way. The Cultural event organized by the Art of Living Foundation at the fragile flood plain of Yamuna have caused severe environmental and ecological damage. Initially, in this case the NGT had levied Rs 5 crores as green compensation. Subsequently, NGT had appointed an expert committee noted that the damages would cost over Rs 42.02 crores and it was also estimated that restoration could take up to 10 years. The expert committee had found that about 420 acres of floodplains of the Yamuna had suffered adverse ecological impact and loss of wetlands, vegetation and biodiversity.

The “*polluter pays principle*” has been explicitly used by the Supreme Court in various cases for making polluters liable for the pollution already caused.⁵ The approach of concerned authorities in this case for granting permission to go forward with the celebration of Art of Living Festival after paying compensation was shocking and such an attitude of authorities was found to provide confidence and courage to those who wish to damage the natural-environ for their own benefits and then pay for it.

Facts of the Case

The applicant is a retired Indian Forest Service officer and is the convener of the campaign “*Yamuna Jiye Abhiyaan*”, and has been active in raising various environmental issues. The Respondent No. 3 named ‘**Art of Living Foundation**’ is a Non-Governmental Organization founded in the year 1981, by *Shri Ravi Shankar* having more than 156 countries as a member, which basically offers self-development programs based on breathing techniques, yoga and meditation. To celebrate the 35 years of organisation, a three-day cultural event named the ‘*World Cultural Festival*’ was organised by the Respondent No. 3 from 11th to 13th March, 2016 at the fragile floodplains of river Yamuna in New Delhi. Applicant stated that the Respondent No. 3 for the celebration of festival had undergone illegal dumping and construction in the active flood plains of river Yamuna. A stage of about 7-acre was built, capable of holding 35000 musicians & dancers. New dirt tracks were erected including 650 portable toilets dispersed across 1,000 acres. Alarmed with the consequences of celebration the applicant has wrote to the Lt. Governor of Delhi on 11thDecember, 2015 highlighting about the celebratory sense when 35 lakh people will gather at an already troubled river bed. According to the reports, the Respondent No. 1 i.e. Delhi Development Authority (herein after referred as DDA) had improperly enabled Respondent No. 3 to use the flood plain for the event. The act sets a wrong precedent, as repeated request for similar events will lead to major environmental damage and worsening of the river Yamuna and its flood plains.

Issues:

1. Whether there is failure of Constitutional and Legal duty by the concerned authorities towards Environ Conservation?
2. Whether the Respondent No. 3 has triggered severe injury to the fragile flood plain of the river Yamuna specifically on biological, ecological, environmental level?

⁵ <http://www.indiaenvironmentportal.org.in/files/Yamuna%20flood%20plain%20Art%20of%20Festival%20Judgement.pdf>, (accessed on 21st September, 2022).

3. Whether the Respondent No. 3 is accountable to compensate as a consequence of such adverse environ-impact and to refurbish the flood plain to its original condition?

Arguments Advanced: The major arguments advanced was that:

1. The Applicant prayed before the Tribunal that the the on-going construction work should be stopped and no activity should be permitted on the flood plains of river Yamuna in Delhi.
2. The Applicant also prayed for the environmental impact assessment. It was also requested that Respondent No. 3 should be fined heavily for environ-dilapidation and be ordered to restore the entire flood plain to its original shape.

Defence:

1. Independent replies were filed by different Respondent wherein the Respondent No. 1 has stated that on 18thSeptember, 2015a meeting of the High Powered Committee was conducted in relation to the specific direction given by the NGT to DDA regarding fragile flood plain in this judgment. It was decided to take site visit of eastern and western banks of river Yamuna. There was the site visit from 2nd to 4th October, 2015. No debris or construction material was found in the flood plains under the control of the DDA. The inspection was videorecorded by the DDA.
2. Respondent No. 1 vide letter dated 20th March, 2015 has granted approval for the holding of event but letter it was withdrawn in following words:
“.....Reference to this office letter of even No. 932 dated 20.03.2015 wherein permission was granted for holding of World Cultural Festival. It is to inform that the land permitted in the reference is in active at Yamuna River Flood Plains. NGT (National Green Tribunal) has banned all type of activities in Yamuna River Flood Plains, therefore, the permission granted is with-drawn. In this context, you are requested, that you may propose any other site for solemnizing World Cultural Festival instead of the land in Yamuna river flood plain.”
3. Respondent No. 3 requested for the withdrawal of letter and assured about not doing any activity which will result in the violation of tribunal directions or cause any kind of pollution.
4. The Respondent No. 1 vide letter dated 30thJune, 2015has given permission under following conditions:
 - a) *“.....That safe and sufficient distance will be maintained from the hedge of the river water and no activity shall be carried out in the immediate vicinity of the river.*

- b) *In a proposal it was stated that only eco-friendly stuff will be utilize by the foundation and same will be cleared instantly after the Art of Living Festival and not a single stuff will be dumped at the fragile fold plan.*
- c) *That VVKI shall obtain all the requisite permissions, sanctions, approvals from the various authorities for celebrating the festival and if VVKI fail to obtain any such approval, sanction permission than shall be liable to indemnify and keep DDA indemnified against all injuries.*
- d) *The festival will be hosted by VVKI between 11th to 13th March, 2016 and it is possible there will be a huge audience during the Festival and therefore it is the duty of the VVKI to make sufficient arrangements for toilets etc. and the waste from the same shall not be discharged into the Yamuna.*
- e) *Any other conditions which shall be notified on later day connected with the policy for the temporary allotment of the land shall be adhered by the VVKI.*⁶
5. In case, it is observed that any of the above conditions or any condition lay out by the other authorities as per para 3 above is violated, the permission shall be withdrawn.”
6. In addition to it the Respondent No. 2 i.e. the Ministry of Environment Forest and Climate Change (hereinafter referred as MoEF&CC) filed reply stating that it comes under the jurisdiction of Ministry of Water Resources (hereinafter referred as MoWR) and River Development and Ganga Rejuvenation as river Yamuna is the tributary of river ganga and the task for the protection of flood plain is also allotted to the MoWR. It was also pleaded that as per the EIA notification there was no need of approval from MoEF&CC as the concerned event required a small construction.
7. Respondent No. 3 argued that the same has taken all the required approval from different regulatory bodies and vide letter dated 14thDecember, 2015 addressed to Respondent No. 1 stating that debris/construction material is spread over 12 to 30 acres at the world cultural festival venue and the same should be removed by the respondent no 1 for the levelling of ground. The Respondent No. 1 reverted that the debris may be removed by the Respondent No. 3 and regarding levelling they should consult directions of the Tribunal.

Role of NGT in this Case

Misra’s plea highlighted the encroachment and illegal construction activities on the banks of the Yamuna river, leading to severe pollution. The river is considered a lifeline and a sacred river by the

⁶Manupatra, p 4, Para 9,available at, <https://www.manupatrafast.in/PrintEmailDoc/PrintMultipleDoc.aspx?i=0,608496&flag=2>,(accessed on 22/04/2023).

people in northern India. The NGT, after hearing the plea, appointed a committee to inspect and assess the condition of the river banks. The committee found that the government agencies had violated various environmental laws, including the Water Act, the Air Act, and the Environment Protection Act. The committee also found that untreated sewage and industrial effluents were being discharged into the river, causing health hazards for the people living nearby. The NGT, on the basis of the committee's report, directed the government agencies to stop construction activities on the river bank, remove encroachments, and ensure that the sewage treatment plants are functioning properly. The NGT also imposed a ban on any construction activities within the 100-meter buffer zone of the river.

The case of *Manoj Misrav. Delhi Development Authority & Others* highlighted the need to protect and preserve the environment and the importance of strict enforcement of environmental laws. The case also emphasized the role of citizens in protecting the environment and holding government agencies accountable for their actions

Compliance of Environmental Norms in Art of Living Foundation Case

International environmental norms are the set of treaties, convention, agreements, declarations and principles that reflect the global collective effort to manage our transition to the Anthropocene by resolving our most serious ecological issues including climate change, ozone depletion, loss of biodiversity, eventually disappearance of endangered species and mass extinction of wildlife, etc.⁷ The national environmental protection legal framework is also advocating the same thing. The national and international judicial system also played a pro-active role and evolved numerous environmental doctrines and principles to protect environment and ensure green justice. The doctrine of sustainable development stated that the present generation would meet their needs without compromising the ability of future generation to meet their own needs.⁸ The Supreme Court of India evolved the concept of absolute liability⁹, precautionary principle¹⁰, polluter pays principle¹¹ and public trust doctrine¹² etc., for environmental injury to provide speedy and effective remedy to the victim of pollution or to stop the activity before it has been initiated. In this particular case the

⁷ David Hunter, "International treaties and principles protect the environment and guard against climate change", American Bar Association, available at https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol-19---issue-1/international-environmental-law/#:~:text=International%20environmental%20law%20is%20the,and%20mass%20extinction%20of%20wildlife., (accessed on 27th April, 2023).

⁸ G.H. Brundtland, Report of the World Commission on Environment and Development, *Our Common Future*, 43 (1987).

⁹ *M.C. Mehta v. Union of India* (Oleum Gas Leakage Case), AIR 1987 SC 965.

¹⁰ *Vellore Citizen Welfare Forum v. Union of India*, (1996) 5 SCC 647.

¹¹ *Indian Council of Enviro-Legal Action v. Union of India*, (1996) 3 SCC212; *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Ors.*, AIR 1999 SC 812.

¹² *M.C. Mehta v. Kamal Nath & Others* (1997) 1 SCC 388.

respondents were failed to comply environmental norms set by the State. Conducting activities on the fragile riverbed resulted into adverse environmental and ecological impact, affecting existing flora and fauna, and also extinction of endangered species. Man cannot survive on the earth without trees, plants and animals, etc. Thus, environment is the natural system on which we depend. These types of events should be conducted at the place which have less or minimal environmental damage. The authorities and organization must choose some alternatives in future for conducting this kind of event.

Concluding Remark

The right to organise any cultural event is not within the jurisdiction of NGT but the injury caused to the environment is a matter of question and same can be dealt by the tribunal in accordance with the law. It should be noted that NGT was meant for the purpose of protecting the environment and it should have a Zero tolerance attitude towards Environment perpetrator.¹³

As the DDA directed for taking Preventive and Precautionary Principle, if still some damage occurs then they cannot get away with the responsibility. Holding **Art of Living Foundation** liable for causing environmental degradation of the fragile flood plain of river Yamuna by the tribunal is valid and appropriate as per the *Polluter Pays Principle*. Sum of five crores rupees which was deposited to the DDA was the preventive approach and the same cannot be said as implied *“Pay and Pollute Ideology”*. Therefore, the Precautionary Principle and Polluter Pays Principle are essential features of ‘Sustainable Development’ and have been accepted as part of the law of the land under Article 21, 48A and 51A (g) and also provide statutory mandate under Section 21 of the Environment (Protection) Act, 1986. We have no hesitation in accepting these principles as an environmental jurisprudence of the country because these principles are also accepted as a part of the Customary International Law.¹⁴

Therefore, that amount should be used for restoration/restitution of the site. Further on taking into account of the Hon’ble Supreme Court and Delhi High Court judgements no permission should be granted for holding similar event on the Yamuna river flood plain.

Whereas in this case, it is undoubtedly noticeable how various concerned authorities put out the responsibility on each other for their own failure in prevention and protection of environment and its biodiversity. This case is also being severely critiqued for the attitude being used by DDA for allowing the festival to occur even after serious evidence of environ-degradation and failure of legal duties by the concerned authorities.

¹³Sheetal Sharma, “National Green Tribunal v. The Art of Living Foundation”, available at: <https://lawfoyer.in/national-green-tribunal-vs-the-art/>, (accessed on 28th April, 2023).

¹⁴Aruna Venkat, Environmental Law and Policy 54 (PHI Learning Pvt. Ltd., New Delhi, 2011).