

2017 SCC OnLine NGT 778

Modified in *Narangs International Hotels (P) Ltd. v. Society for Protection of Chetna*, (2018) 9 SCC 499

National Green Tribunal
Principal Bench New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON, JAWAD RAHIM, JUDICIAL MEMBER AND BIKRAM SINGH SAJWAN, EXPERT MEMBER)

Appeal No. 60 of 2013 (THC)

In the Matter of:

Society for Protection of Culture Heritage, Environment, Traditions and Promotions of National Awareness (CHETNA) A-417-418, Som Dutt Chambers-I, 5-Bhikaji Cama Place, New Delhi-110066 ... Appellants;

Versus

1. The Union of India
(A) Through the Secretary Ministry of Civil Aviation, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-110003
(B) Through the Secretary Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex Lodhi Road, New Delhi-110003
2. The Director General of Civil Aviation Opp. Safdarjung Airport, Aurbindo Marg, New Delhi-110003
3. The Chairman Central Pollution Control Board Parivesh Bhawan CBD-cum-Office Complex East Arjun Nagar Delhi-110032
4. The Chief Operating Officer Delhi International Airport Ltd., Udaan Bhawan, Terminal 1 B, IGI Airport New Delhi-110037
5. Airports Authority of India (Service to be effected through Its General Manager (ATC) Rajiv Gandhi Bhawan Safdarjung Airport New Delhi-110003 ... Respondents.

And

Original Application No. 115 of 2013 (THC)

In the Matter of:

1. Bijwasan Gram Vikas Samiti A Society registered under the Societies Registration Act, 1960 Kh. No. 211/2, Near Railway Crossing Bijwasan Village, Delhi-110061 Through Mr. Chet Singh Rana, President, Bijwasan Gram Vikas Samiti Bijwasan, Delhi
2. Samalka Residents Welfare Association A Society registered under the Societies Registration Act, 1960, its Registered office at Hira Public School, Samalka Village, New Delhi Through Mr. Harbans Singh, President, Samalka Residents Welfare Association Samalka, Delhi
3. Pushpanjali Farms Owners & Residents Association A Society registered under the Societies Registration Act, 1960, its Registered office at A-8, Pushpanjali Farms, Bijwasan, Delhi-

110061 Through Mr. Vivek Mahna, President, Pushpanjali Farms
Owners & Residents Association Bijwasan, Delhi ... Applicants;

Versus

1. Union of India Through the Secretary Ministry of Civil Aviation, Rajiv Gandhi Bhavan, Safdarjung Airport, New Delhi-110003
2. The Secretary Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex Lodhi Road, New Delhi-110003
3. The Director General of Civil Aviation Opp. Safdarjung Airport, Aurbindo Marg, New Delhi-110003
4. The Chairman Central Pollution Control Board Parivesh Bhawan CBD-cum-Office Complex East Arjun Nagar Delhi-110032
5. The Chief Operating Officer Delhi International Airport Ltd., Udaan Bhawan, Terminal 1 B, IGI Airport New Delhi - 110037 ... Respondents.

And

Original Application No. 117 of 2013 (THC)

In the Matter of:

Indian Spinal Injuries Hospital Sector-C, Vasant Kunj Opposite
Vasant Valley School New Delhi-110070 ... Applicant;

Versus

1. Union of India Through the Secretary Ministry of Civil Aviation, Rajiv Gandhi Bhavan, Safdarjung Airport, New Delhi-110003
2. The Secretary Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex Lodhi Road, New Delhi-110003
3. The Director General of Civil Aviation Opp. Safdarjung Airport, Aurbindo Marg, New Delhi-110003
4. The Chairman Central Pollution Control Board Parivesh Bhawan CBD-cum-Office Complex East Arjun Nagar Delhi-110032
5. The Chief Operating Officer Delhi International Airport Ltd., Udaan Bhawan, Terminal 1 B, IGI Airport New Delhi - 110037 ... Respondents.

And

Original Application No. 90 of 2014 (M.A. No. 613 of 2014)

In the Matter of:

Neelam Sanjiv D-3/3016, Vasant Kunj New Delhi-110070 ...
Applicant;

Versus

1. The Directorate General of Civil Aviation Opp. Safdarjung Airport, Aurbindo Marg, New Delhi-110003
2. Airports Authority of India Rajiv Gandhi Bhawan Safdarjung Airport New Delhi-110003
3. Delhi International Airport Ltd., New Udaan Bhawan, Opp. Terminal 3, IGI Airport New Delhi - 110037
4. Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex Lodhi Road, New Delhi-110003 ... Respondents.

Appeal No. 60 of 2013 (THC), Original Application No. 115 of 2013 (THC), Original
Application No. 117 of 2013 (THC) and Original Application No. 90 of 2014 (M.A.
No. 613 of 2014)

Decided on November 24, 2017 [Reserved on: 20th November, 2017]

Counsel for Appellant/Applicants:

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Advocates

Mr. Balendu Shekhar, Advocate

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Counsel for Respondents:

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Mr. Sanjeev Ralli, Advocate with Mr. Dinesh Jindal, LO for DPCC

Mr. Ashwani Kumar, Sr. Advocate with Mr. Chaitanya Puri, Advocate

Mr. Abhishek Sharma, Advocates.

Mr. Raj Kumar, Advocate with Mr. Bhupender Kumar, L.A.

Mr. B.V. Niren, Mr. Prasouk Jain, Mr. Vinyak Gupta Advocate

Ms. Alpana Podder, Advocate for CPCB

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Mr. A.K. Prasad, Advocate

Mr. Rameeza Hakeem, Advocate

Mr. Alpha Phiris Dayal, Advocate

Mr. Atul Nanda, Sr. Advocate

Mr. Aayush Juneja & Mr. Anuj Aggrawal, Advocates

Mr. Yash Srivastava, Advocate

Mr. Rajat Barar, Advocate

Mr. Divya Prakash Pande, Advocate

Mr. Atul Chandra, Chief Flight Operations Instructor

JUDGMENT/ORDER

SWATANTER KUMAR, CHAIRPERSON: — By this common order, we shall dispose of the above four cases mentioned in the Appeal No. 60 of 2013, as common questions of law based on somewhat similar facts arise for consideration of the Tribunal in these cases. The Appellant/Applicant in all these appeal/applications had approached the High Court of Delhi at New Delhi by invoking Article 226 of the Constitution of India in the year 2009 and all these writ petitions came to be transferred to this Tribunal *vide* order dated 16th April, 2013 passed by the High Court of Delhi at New Delhi in terms of the judgement of the Hon'ble Supreme Court of India in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India* dated 9th August, 2012. Upon transfer, the writ petitions were renumbered as appeal/applications and were being heard together. We may refer to the facts giving rise to the appeal/applications before the Tribunal very concisely.

2. Writ Petition No. 9337 of 2009 was filed by the Society for Protection of Culture, Heritage, Environment, Traditions & Promotions of National Awareness, a Society registered under the Societies Act, 1960. In this writ petition, the Petitioner had prayed for quashing of the order dated 17th January, 2007 by which Respondent No. 1 had granted Environmental Clearance for construction of 3rd run way 11/29 at IGI Airport, New Delhi. Further, it was prayed that a prohibitory order be issued against the respondents to stop flying the aircrafts over the areas of Vasant Kunj, Masudpur and Rangpuri with immediate effect. The aircrafts should also be prohibited from landing at run way 11/29. The principal ground taken in the writ petition was that, within 100 meters of run way, there were schools, hospitals and residential colonies.

The takeoff and landing of aircrafts at the said run way and airport was causing serious noise pollution and was disturbing the life and sleep of the people around that area. This was in violation of the Noise Pollution (Regulation and Control) Rules, 2000. The noise level reached from 74 - 84 dBA in the areas of Vasant Kunj and around. The Environmental Clearance granted was without application of mind and was violative of the settled principles of environmental jurisprudence. The writ petition was contested by the official respondents including the Director General of Civil Aviation, CPCB and Airport Authority of India. They denied the allegations made in the writ petition and prayed that the writ petition be dismissed.

3. Though, the Appellant/Applicants had prayed for interim orders which were not granted by the High Court. However, as noticed in the order dated 27th May, 2009, it was stated before the High Court by Respondent Nos. 1 and 4 that they would suggest some measures to reduce the noise pollution on account of 3rd run way at the International Airport. The matter remained pending before High Court until passing of order dated 16th April, 2013 by which the writ petition was transferred to the Tribunal and was registered as Appeal No. 60 of 2013 (THC).

4. Writ Petition No. 13675 of 2009 was filed by Bijwasan Gram Vikas Samiti. It was stated in this writ petition that serious noise pollution was being caused by the aircrafts at the international airport, New Delhi. The conditions of the Environmental Clearance granted to Respondent No. 5 had been violated and not complied with. It was further stated that the several mitigative measures to reduce the impact of noise pollution should have been taken by the respondents including orientation of the run way, proper scheduling of the aircrafts and use of acoustic noise absorbing materials and green cover development. The petitioner had prayed that the respondents should be directed to take necessary measures to mitigate the noise pollution caused by the aircrafts in run way 11/29 of the IGI Airport. This writ petition was transferred to the Tribunal *vide* order dated 16th April, 2013 and came to be registered as Original Application No. 115 of 2013 (THC) before the Tribunal.

5. Writ Petition No. 12719 of 2009 was filed by Indian Spinal Injuries Hospital, Vasant Kunj referring to the issue of noise pollution causing disturbance to the patients of hospitals, as it fell on the flight path of the aircrafts landing on run way 11/29, raising other similar grounds as well. It is specifically averred that reports of World Health Organization suggest that thousands of people around the world may be dying prematurely or succumbing to disease through the ill-effects of chronic noise exposure. According to the reports, investigations have revealed that the blood vessels, which feed the brain, dilate due to noise thereby causing headache. Besides these, other ill-effects of noise on the human body are in the form of galvanic skin response, ulcer formation, changes in intestinal motility, etc. According to the petitioner, the Vasant Kunj area is required to be protected as silence zone. Huge noise is generated by trafficking of the aircrafts to the domestic terminal and it is going to cause huge inconveniences. There are serious and critical patients in the hospitals and constant noise pollution causes serious health issues and hampers patient care in the hospital. On this premise, the Petitioner prayed in the writ petition that the order granting Environmental Clearance dated 17th January, 2007 be quashed. The aircrafts should stop flying over the densely populated areas of Vasant Kunj, Masudpur and Rangpuri and also the petitioner's hospital. No aircraft should be permitted to land on run way 11/29. *Vide* order dated 16th April, 2013 the said writ petition was transferred to the Tribunal and came to be registered as Appeal No. 117 of 2013 (THC).

6. Neelam Sanjiv, a resident of Vasant Kunj, filed an application under Section 14 and 15 of the National Green Tribunal Act, 2010 (for short, "Act of 2010") before the Tribunal directly and it was registered as Original Application No. 90 of 2014. Invoking the Precautionary Principle and Polluter Pays Principle, the Applicant prayed for night

curfew, restricting flight operations, framing noise abatement procedure plan to be followed at the IGI Airport, stopping aircraft landing on run way 11/29 and providing compensation for mental agony to the residents of Vasant Kunj.

7. Respondents in all these appeal/applications are common and as already noticed they have vehemently contested the same. It is prayed by the respondents that the grounds taken by the applicants are without any basis and the appeal/applications need to be rejected.

8. In view of the approach that we propose to adopt while dealing with these cases, it is not necessary for us to notice the rival contentions raised before the Tribunal in a greater detail. It is pertinent to note that the applications were argued on different occasions and finally the parties commonly conceded before the Tribunal that the controversies between parties would fall in a narrow compass, namely:

- (a) Taking mitigation measures for controlling noise pollution at the IGI Airport, New Delhi;
- (b) Expert Body be appointed to suggest erection of appropriate barriers for control of noise pollution and for taking other remedial measures;
- (c) The aircrafts should be restricted from applying reverse thrust upon landing as it results the maximum noise level;
- (d) There should be night curfew on flight operations atleast between 10:00 pm to 05:00 am and/or the same should be regulated.

9. Within the ambit and scope of the above limited issues, the matter was heard by the Tribunal on different dates. It is pertinent to note that the present cases were not approached by the learned Counsel appearing for either parties as adversarial litigation, submissions were made objectively in order to provide constructive resolution to the issues raised before the Tribunal. The order of Delhi High Court dated 16th April, 2013 was assailed before the Hon'ble Supreme Court of India. However, the Hon'ble Supreme Court of India declining to interfere in the order of High Court of Delhi directed the Tribunal to dispose of the matter within six months and also directed that the parties to the proceeding would not claim any interim order before the Tribunal. Accordingly, hearing of the cases were expedited.

10. Amongst other directions, the Tribunal had also directed IIT Delhi to submit a detailed report before the Tribunal in relation to construction of sound barriers around the boundary of the airport and other allied subjects. The Ministry of Environment, Forest & Climate Change (for short, "MoEF&CC) had also filed a report before the Tribunal in furtherance to the order dated 27th January, 2016. Ministry of Civil Aviation had also filed documents in relation to mitigating factors to reduce the noise pollution in the area of domestic airport and the international airport. A statement was also filed showing the steps taken for mitigation of the noise levels while taking into consideration the comments submitted by the Appellant/Applicants. *Vide* order dated 16th September, 2016, the Tribunal had directed the matter to be heard in relation to need and extent of mitigation measures that should be taken by the stakeholders along with suggestions made by the Appellant/Applicants and arguments should be confined to those aspects. Delhi International Airport received recommendations from IIT and took liberty from the Tribunal to file the same with affidavit *vide* order dated 29th March, 2017. However, further time was prayed for completion of the report by IIT Delhi which was granted *vide* order dated 12th May, 2017 and IIT Delhi was directed to expedite the report in furtherance to the scope of the work which it was given specifically to do. Further extension was granted *vide* order dated 17th July, 2017. The interim report was filed before the Tribunal on 6th September, 2017 and final report was placed on record on 21st September, 2017. Thereafter, the matter was heard on merit within the ambit and scope, as recorded in the orders of the Tribunal.

11. As already noticed, the fundamental issue which required to be adjudicated by

the Tribunal was with regard to mitigation measures or steps that were required to be taken by the official respondents as well as other stakeholders. IIT report was also subject matter of the deliberation and consideration before the Tribunal. From the reports filed by the MoEF&CC and Director General of Civil Aviation, it was evident that considerable and effective mitigation measures have been taken to reduce the noise level in that area.

12. The provision of Section 20 of the Act of 2010, requires the Tribunal to apply Principle of Sustainable Development, Precautionary Principle and Polluter Pays Principle, where the cases involving substantial environmental issues before the Tribunal are to be decided.

13. Keeping in view the facts and circumstances of the present case, the Tribunal has to apply Principle of Sustainable Development and Precautionary Principle. The Precautionary Principle mandates all the stakeholders to take such precautions as would not only prevent any further increase in the noise level but would also reduce the noise pollution in that area. It is nobody's case before the Tribunal that the noise levels in that area are strictly within the prescribed levels. The Principle of Sustainable Development would require a balance to be struck between the environmental protection in relation to noise pollution and other substantive State Policies founded on socio-economic principles, public good and necessity. In the present day, the globe has turned into one big family and the distances from one country to another, from one State to another, from one city to another are covered in short durations, thus, making it necessary that the effective transportation means are provided not only to the people of India but also to the entire global community. Providing an effective, efficient and resourceful airport is also the obligation of State, while equally it is the obligation of the State to ensure compliance to the prescribed noise levels. The Tribunal has to strike a balance between the two and permit the State to carry on an activity which is in the interest of the country and the public at large and is not entirely derogatory to the interest of environment. The rights of people are subject to the restrictions which have to be reasonable. To say that airport should be shut for the entire night would neither be in consonance with the Principle of Sustainable Development nor would it be an option open to the State in the peculiar circumstances prevailing internationally today. Rather every effort should be made by the State and other stakeholders and they must take all mitigation measures to ensure that the noise levels are brought to the possible minimum extent. It is on record before us that nearly 80 to 82 flights takeoff or land every hour at the Delhi domestic/international airport, this shows the extent of air traffic that the airport is handling and to put a prohibition or a night curfew would not be rational and would not be in line with the doctrine of Sustainable Development. It is not established before us at this stage that the stakeholders particularly the official respondents are not taking adequate steps to mitigate the noise levels at the airport and its surrounding areas.

14. The authorities have agreed to implement the report and recommendations of IIT Delhi in all respects. It was contended by the Appellant/Applicants that the noise barriers being constructed at the boundary of the airport should be of greater height and not the height that has been suggested. This is a matter which should be examined by the Expert Body keeping in view the technical and security aspects. The respondents have not raised any objections and have assured the Tribunal that they would consider the suggestions objectively and if necessary take opinion of the Expert Body including IIT Delhi and take appropriate steps in this regard.

15. In relation to applying of reverse thrust, Director General of Civil Aviation has produced its senior most technical officer before the Tribunal, who fairly stated that application of reverse thrust alongwith brakes after landing is a judgemental decision that has to be made by the Pilot keeping in view various conditions like weather, length of the run way, passenger load of the aircraft and other attendant

circumstances. According to him, depending on the length of run way, it would be possible to permit landing without applying reverse thrust, but there cannot be absolute direction in that behalf and it could at best be an advisory issued by the authority. Thus, even in this behalf, the stand of the respondents appears to us to be reasonable and not arbitrary. This would help to some extent in reducing the noise level. All these issues and also the submission/suggestions of all the parties before the Tribunal were examined.

16. Upon due consideration of the matters in issue, we pass the following order and directions:

1. We decline the prayer of the Appellant/Applicants in all these cases for imposition of night curfew on landing or taking off of aircrafts at the airport and more particularly on run way no. 11/29.
2. We also decline the prayers of the Appellant/Applicants for issuances of directions to the Central Government and other official respondents for providing sound proofing of the houses in the colonies, falling on the flight pathway of aircrafts while landing and taking off.
3. We direct all the official respondents to take all mitigating measures for reducing noise pollution in terms of the report submitted by MoEF and as even proposed by these very respondents themselves, expeditiously.
4. The official respondents shall act in furtherance to the report of IIT in relation to construction of sound barriers, which report of IIT is accepted by the Tribunal.

However, if any, variations are suggested and the official respondents consider it proper to carry out such variations on the ground of safety, security and height of the sound barrier walls, the same may be implemented after discussion with the team of IIT. The sound barriers should be constructed at the earliest and in accordance with report.

5. The official respondents shall ensure providing of a green belt around the boundary wall of the airport, while keeping the safety and security both in mind. The plantations shall be of the species which would only grow to the permissible height or would be maintained at the permissible height only.
6. The official respondents may issue an advisory to all the airlines whose aircrafts land at the runway of the IGI and domestic Airport, New Delhi to ensure 'judgment based' use of reverse thrust keeping in view weather, length of run way, wind, and other attendant circumstances to reduce the noise level particularly at the time of landing of aircrafts.
7. All the coaches/buses and other vehicles plying at the airport should be CNG and must comply with the prescribed emission standards. Non-CNG buses/coaches or other vehicles plying at the airport, should be converted to CNG within six months from today.

17. While leaving the parties to bear their own costs, we dispose of all these appeal/applications with the above terms.

18. In view of the order in the main appeal/applications, all miscellaneous applications also stand disposed of as having become infructuous.