

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order reserved on : 10.04.2013

Order pronounced on: 16.04.2013

+ **W.P.(C) 9337/2009**

**SOCIETY FOR PROTECTION OF CULTURE HERITAGE
ENVIRONMENT TRADITIONS AND PROMOTIONS OF**

NATIONAL AWARENESS Petitioner

Versus

UOI & ORS. Respondents

+ **W.P.(C) 12719/2009**

INDIAN SPINAL INJURIES HOSPITAL Petitioner

Versus

UOI & ORS. Respondents

+ **W.P.(C) 13675/2009**

BIJWASAN GRAM VIKAS SAMITI & ORS. Petitioners

Versus

UOI & ORS. Respondents

Through : Mr. Sanjeev Anand, Ms. Renu and Mr. Anubha
Surana, Advs. for petitioners in **W.P.(C) 9337/2009**

Ms Anjana Gosain and Mr T. Mitra, Advs. for AAI in
W.P.(C) 9337/2009 and for AAI in **W.P.(C)
12719/2009**

Ms. Maneesha Dhir and Ms Mithu Jain Advs. for
petitioners in **W.P.(C) 12719/2009**

Mr Jayant Bhushan, Sr. Adv. with Mr Atul Sharma,
Mr Milanka Chaudhury, Mr Abhishek Sharma, Mr.
Amit Ojha and Mr. Manu Sahni, Advs for DIAL

Mr. Darpan Wadhwa, Adv. for NCT of Delhi in
W.P.(C) 13675/2009

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. Section 3 of the Environment (Protection) Act, 1986 empowers the Central Government to take such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution. Section 6 of the said Act empowers the Central Government, *inter alia*, to make rules providing for the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas. Section 25 of the said Act empowers the Central Government to make rules for carrying out the purposes of this Act. Rule 5 of the Environment (Protection) Rules, provides that the Central Government may take into consideration, *inter alia*, the maximum allowable limits of concentration of various environment pollutants (including noise) for an area, while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas. In exercise of the aforesaid powers, the Central Government framed rules called the Noise Pollution (Regulation and Control) Rules,

2000. Rule 3(1) of the said Rules provides that the ambient air quality standards in respect of noise for different areas zones shall be such, as is specified in the Schedule annexed to these rules. Clause (3) of the said Rules provides that the State Government shall take measures for abatement of noise, including the noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules. Rule 4 (1) provides that the noise levels in any area/ zone shall not exceed the ambient air quality standards in respect of noise as specified in the Schedule.

As per the Schedule to the said Rules, the following are the ambient air quality standards in respect of noise:

Area Code	Category of Area/Zone	Limits in dB(A) Leq*	
		Day Time	Night Time
(A)	Industrial Area	75	70
(B)	Commercial Area	65	55
(C)	Residential Area	55	45
(D)	Silence Zone	50	40

Note.-

1. Day time shall mean from 6.00 am to 10.00 pm
2. Night time shall mean from 10.00 pm to 6.00 am.
3. Silence Zone is an area comprising not less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority.

4. Mixed categories of areas may be declared as one of the four above mentioned categories by the competent authority.

*dB(A) Leq denotes the time weighted average of the level of sound in decibels on Scale A which is relatable to human hearing.

A “decibel” is a unit in which noise is measured.

“A”, in dB(A) Leq, denotes the frequency weighting in the measurement of noise and corresponds to frequency response characteristics of the human ear.

Leq: It is energy mean of the noise level over a specified period.

2. Vasant Kunj is a residential colony developed by the Delhi Development Authority stated to be having about 20,000 residential flats inhabited by more than 60,000 persons. The said area is stated to have more than 20 schools besides Jawaharlal Nehru University and various institutions including Indian Spinal Injury Centre, Fortis Hospital and Apollo Hospital Centre. The area also has a number of shopping malls. The case of the Society for Protection of Cultural Heritage Environment Traditions and Promotions of National Awareness, the petitioner in W.P(C) No.9337/2009 is that though the noise level in the area of Vasant Kunj is roughly between 74 to 84 dB(A) due to the noise created by over flying of aircrafts and as per the report submitted by the Chairman, Airport Association, the noise level touches up to 99 decibels at the time the aircraft approaches for landing and crosses 98 decibels at the lateral stage. This is also the case of the petitioner that the noise pollutants created by aircrafts is causing noise and affecting the health of the residents of the Vasant Kunj and nearby area, thereby violating their fundamental rights to lives and liberty guaranteed under Article 21 of the

Constitution, besides, contravening the Noise Pollution (Regulation and Control) Rules, 2000. The petitioner has accordingly sought, *inter alia*, directions to the respondents to stop flying of Aircrafts over these areas. The petitioners are also seeking direction to the respondent to immediately provide noise barriers along with the runways at the IGI Airport. They have also sought quashing of granting environment clearance for construction of 3rd runway at IGI Airport, New Delhi.

3. W.P(C) No.12719/2009 has been filed by Indian Spinal Injuries Hospital which is a hospital situated in Vasant Kunj area. The case of the petitioner is that the sound emitted by the aircrafts flying over the hospital is in the range of 75 dB(A) to 84 dB(A) which is clearly beyond the prescribed limits, as a result of which the in-house patients of the hospital are constantly suffering from noise pollution caused by the low flying of the aircrafts. The prayer made in this petition is also identical to the prayers made in W.P(C) No.9337/2009.

4. W.P(C) No.13675/2009 has been filed by Bijwasan Gram Vikas Samiti and others on similar allegations. Bijwasan also is an area nearby the IGI Airport. The prayer made in this petition is to direct the respondents to take necessary measures to mitigate the noise pollution caused by the aircrafts.

5. The National Green Tribunal Act, 2010 came into force on 18.10.2010. The Act provides for establishment of a Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal under the said Act. Section 14 of the Act, to the extent it is relevant, provides that the Tribunal shall have the jurisdiction over all civil cases where a

substantial question relating to environment, including enforcement of any legal right relating to environment, is involved and such question arises out of the implementation of the enactments specified in Schedule I. Sub section (2) of the said Section provides that Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) settle such disputes and pass order thereon. Section 15(1) of the said Act provides that the Tribunal may, by an order, provide, (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule 1, including accident occurring while handling any hazardous substance, (b) for restitution of property damaged and (c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

Schedule-I of the said Act includes the Environment (Protection) Act, 1986 as well as the Air (Prevention and Control of Pollution) Act, 1981. The expression “air pollutant” has been defined in the later Act to mean any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injuries to human beings or other living creatures or plants or property or environment. ‘Air pollution’ has been defined in Section 2(b) to mean the presence in the atmosphere of any air pollutant.

6. It would be seen from a perusal of Section 14 of the National Green Tribunal Act, 2010 that before a matter can be brought to the Tribunal, it should fulfill two requirements. Firstly, it should involve a substantial question relating to environment and secondly, such question

should arise out of the implementation of one or more of the Acts specified in Schedule-I to the Act.

7. Considering the provisions of Environment Protection Act, 1986, The Environment Protection Rules, 1986 and the Noise Pollution (Regulation and Control) Rules, 2000 as also the definition of noise pollutants given in the Air (Prevention and Control of Pollution) Act, 1981, it can hardly be disputed that these petitions involve a substantial question relating to environment including enforcement of legal rights relating to environment and such questions arise out of the implementation particularly of the Environment (Protection) Act, 1986. If the noise level in Vasant Kunj, Bijwasan and other areas in the vicinity of Terminal-III of IGI Airport exceeds the limits laid down in the Schedule, that would be substantial question relating to environment and also amount to violation of the provisions of Environment (Protection) Act, 1986. Thus, these petitions fulfill the twin requirements of Section 14 of the National Green Tribunal Act, 2010. Had these petitions been filed after constitution of National Green Tribunal, the said Tribunal would have jurisdiction to hear and decide these petitions and pass appropriate orders thereon. The Tribunal would have also the power to provide one or more reliefs envisaged in Section 15 of the National Green Tribunal Act, 2010.

8. Vide its order dated 9.8.2012 passed in IA No.62-63/2011 in Civil Appeal No.3187-88/1988, the Supreme Court, *inter alia*, directed as under:

“39. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environment laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.”

9. Considering the above referred decision of the Supreme Court and the issues involved in these petitions, as discussed hereinbefore, we are of the view that these petitions should be transferred to the National Green Tribunal. In our opinion, such an order would only subserve the interest of justice. We ordered accordingly. Registry is directed to send the entire record of these petitions to the Registrar of National Green Tribunal within one week.

V.K.JAIN, J

CHIEF JUSTICE

APRIL 16, 2013

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