

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

% Date of decision: January 22, 2018

+ W.P.(C) 10534/2016

PARAS WHITE GOLD AGRO INDUSTRIES Petitioner
Through: Mr. Sanjeev Narang, Adv.

versus

MUNICIPAL CORPORATION OF DELHI & ANR Respondents
Through: Mr. Gaurang Kanth, Adv. with Ms.
Eshita Baruah, Adv. for SDMC
Ms. Niti Jain, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. Present petition has been filed by the petitioner with the following prayers:

“It is therefore most respectfully prayed, that this Hon’ble Court may be pleased to:

(I) Issue a Writ, Order or Direction in the nature of mandamus directing the Respondents to implement the notification dated 20/10/2015 in letter and spirits and not to charge ECC on vehicles entering Delhi carrying ‘edible oil’ (an essential commodity) in compliance of order of Hon’ble Supreme Court dated 9/10/2015 to such effect; AND

(II) Pass such other order (s) as deemed fit by this Hon’ble High Court in the facts and circumstances of the case.”

2. It is the case of the petitioner that on October 9, 2015, Supreme Court in **IA. Nos. 365/2015 and 345/2015 in W.P.(C) 13029/1985** titled as **M.C. Mehta v. Union of India and Ors.** issued directions to Government of NCT

of Delhi / respondent no.2 to levy “*Environment Compensation Charge*” “(ECC)” on commercial vehicles entering Delhi and exempt vehicles carrying essential commodities from ECC. In compliance of the order of the Supreme Court, the Department of Environment, Government of NCT of Delhi issued notification dated October 20, 2015 exempting vehicles carrying food stuffs and oil tankers from ECC. The petitioner is based in Gwalior (Madhya Pradesh) and engaged in supply of edible oils to Delhi. On January 18, 2016, petitioner informed the MCD that vehicles carrying ‘edible oil’ an essential commodity are being subjected to ECC by toll agency which frustrates the mandate of the said notification. It is the case that MCD failed to take corrective steps and simply forwarded the matter to the Government of NCT of Delhi / respondent no.2. On September 20, 2016, petitioner had lodged repeat protest to MCD with request to stop ECC on exempted vehicles. Reference is also made to a representation dated September 26, 2016 on similar lines. It is the case of the petitioner that MCD simply forwarded the complaint to the toll agency for comments.

3. Respondent nos. 1 and 2 have separately filed their counter-affidavits. It is the case of the respondent no.1 that its role is limited to collection of toll tax and ECC / Green Tax in compliance of notification issued by the Special Secretary, Environment and transfer the same to the Transport Department, Government of NCT of Delhi on every Friday and the notifications on which the petitioner is seeking exemption has been issued by the Special Secretary (Environment), Government of NCT of Delhi and the respondent no.1 is only carrying out its duties and functioning in accordance with the order of the Apex Court and notification so issued by the Government of NCT of Delhi. Therefore, respondent no.1 does not possess the power to state what is taxable and what is not as it falls under the purview and power of GNCTD.

4. Respondent no.2 has filed a short affidavit wherein in Paras 4 to 8 the following has been stated:

“4. That for implementation of the Supreme Court order dated 09.10.2015 in Interlocutory Application No. 345 of 2015 & No. 365 of 2015 in Writ Petition (Civil) No. 13029/1985, an urgent meeting had been convened on 14-10-2015 under Chairmanship of Deputy Chief Minister, Delhi. The meeting was attended by the Minister (Transport), Minister (Industries / PWD) apart from various officers of the Govt. of NCT of Delhi.

5. That various action points emerging from the order of the Supreme Court regarding imposition of ‘Environment Compensation charge’ were discussed. Based on the discussion held in the meeting, Transport Department vide it’s letter dated 15.10.2015 requested Department of Environment to issue the requisite notification for the levy of Environment Compensation Charge under the relevant provisions of the existing Act / Rules / Regulation, if any, to be collected and deposited by the toll operators of MCD, as per the orders of the Hon’ble Supreme Court. The copy of the letter dated 15.10.2015 is enclosed herewith as Annexure R2-A.

6. That the Department of Environment issued the Notification F.No. 10(13) /Env./2015/6167-6189 dated 20.10.2015. As per this notification, Transport Department shall act as nodal department on the matter and for implementing the direction of Hon’ble Court and South Delhi Municipal Corporation (SDMC) has to ensure proper compliance of this notification from the toll collecting agency / concessionaire.

7. That as per the communication received from Department of Transport, Govt. of NCT of Delhi based on the meeting taken by Environment Pollution (Prevention and Control) Authority (EPCA) with Transport Department, Municipal Corporation, Traffic Police and other concerned Department on 21.10.2015, Department of Environment, Govt. of NCT of Delhi, had issued the Notification dated 30.10.2015 regarding exemption of items from levy of Environment Compensation Charge. The said letter clearly stated that it has

been decided to exempt those vehicles carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum products. The copy of the letter dated 26.10.2015 annexed herewith as Annexure R2-B.

8. *That in the above mentioned facts and circumstances, it is submitted that this department has issued the notification as per clarification received from Department of Transport, GNCTD in consultation of EPCA for necessary compliance to Hon'ble Supreme Court's Order dated 09.10.2015."*

5. Mr. Sanjeev Narang, learned counsel appearing for the petitioner would submit that the Supreme Court in its order dated October 9, 2015 has directed the imposition of ECC by the Delhi Government except in the case of (a) passenger vehicles and ambulances (b) on vehicles carrying essential commodities, i.e., food stuffs and oil tankers. He has also drawn my attention to the notification dated October 20, 2015 wherein the vehicles carrying food stuffs and oil tankers were exempted. He stated, the notification dated October 20, 2015 was subsequently clarified vide notification dated October 30, 2015 to mean the vehicles carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum products. According to him edible oil being food stuff, need to be read into it. This according to him, because the Supreme Court order does not limit the various food stuffs. He also relied upon Section 2 (A) of the Essential Commodities Act, 1955 by virtue of which the essential commodity has been defined to mean commodities included in Schedule to the Act. The Schedule to the Act stipulates essential commodity to be food stuffs including "*edible oil seeds and oils*". That apart, it is his submission that on July 1, 2016, Additional Commissioner (F&S), Government of NCT of Delhi had also sent a letter to the Secretary (Environment), Govt. of NCT of Delhi pointing out that under the Essential Commodities Act, 1955, "*food stuffs including edible oil seeds*

and oils” were essential commodities and vide notification dated March 16, 2003, notification dated May 15, 2002 was amended and the word “*and edible oils*” was substituted by “*edible oils, pulses, gur, wheat products (namely maida, rava, suji, aala, resultant atta and bran) and hydrogenated vegetable oil or vanaspati*”. On this ground also, the edible oil need to be included in the notification. He also relied upon the judgment of this court in the case of ***Narela Food Processing Industries Welfare Association (Regd.) v. Govt. of NCT of Delhi and Ors. W.P.(C) 7211/2016*** decided on July 17, 2017 to contend that this Court in that case has read “*food grains*” to include Pulses. This Court vide the said judgment has held that vehicles carrying pulses would not be subject to levy of ECC. He seeks a similar relief in this case as well inasmuch as the edible oils must be exempted from levy of ECC.

6. On the other hand, Ms. Niti Jain, learned counsel appearing for the respondent no.2 apart from reiterating the stand taken by respondent no.2 in the counter-affidavit would state respondent having issued the notification dated October 30, 2015 had exempted only vehicles carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum products from levy of ECC and later vide notification dated January 15, 2016, eggs and ice, and nothing more. That apart, Supreme Court in its order dated August 20, 2017 in an application before it in ***M.C.Mehta Vs. Union of India and Ors.***, included salt. It is her submission except the food stuffs named in the notification(s) i.e. October 30, 2015 and February 15, 2016, nothing more should be read into them. She stated, respondents are strictly bound by the said notification. According to her, if plea of the petitioner is accepted all the food stuffs need to be included, but that discretion has been left to the Government. She seeks the dismissal of the writ petition.

7. Having heard the learned counsel for the parties, before I deal with the submissions made by the counsel for the parties, it is important to note that Supreme Court in its order dated October 9, 2015 has with regard to ECC directed as under:

“Learned Amicus Curiae Shri Harish Salve, learned Solicitor General Shri Ranjit Kumar and Shri Dushyant Dave, learned Senior Counsel appearing for the Government of NCT of Delhi have jointly suggested that ECC ought to be imposed by the Delhi Government at the following rates:

- (i) Category 2 (light duty vehicles etc.) and Category 3 (2 axle trucks) Rs.700/-*
- (ii) Category 4 (3 axle trucks) and Category 5 (4 axle trucks and above) Rs.1300/-*

The above charge shall not be imposed on

- (a) Passenger vehicles and ambulances.*
- (b) On vehicles carrying essential commodities, that is, food Stuffs and oil tankers.*

The charge will be collected by the toll operators without any deduction and handed over to the Delhi Government on every Friday. The Delhi Government shall furnish accounts of the receipts and the expenditure incurred to EPCA and to this Court each quarter.”

8. Pursuant thereto, a notification dated October 20, 2015 was issued by the Government of NCT of Delhi, Para 1 of which reads as under:-

“F.No.10(13)Env/2015/6167-6189-in compliance with the order dated 09.10.2015 of Hon’ble Supreme Court in Interlocutory Application No. 345 of 2015 & No. 346 of 2015 in Writ Petition (Civil) NO. 13029/1985, the Government of NCT of Delhi hereby levies Environment Compensation Charge

(ECC) on the light and heavy duty commercial vehicles on the following rates:

- (i) Category 2 (light duty vehicles etc.) and
Category 3 (2 axle trucks) Rs.700/-*
- (ii) Category 4 (3 axle trucks) and
Category 5 (4 axle trucks and above) Rs.1300/-*

However, this Charge shall not be me imposed on the following:

- (iii) Passenger vehicles and ambulances.*
- (iv) On vehicles carrying essential commodities, that is, food Stuffs and oil tankers”*

9. Thereafter, Government of NCT of Delhi has issued a notification dated October 30, 2015 which reads as under:

***"DEPARTMENT OF ENVIRONMENT
NOTIFICATION***

Delhi, the 30th October, 2015

No. F.1(13)/Env/2015/6345-6372.- *In the meeting taken by Enviroment Pollution (Prevention and Control) Authority (EPCA) with Transport Deptt. GNCTD, Municipal Corporation, Traffic Police & Others on 21.10.2015, it has been decided to exempt the vehicles carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum products from levy of the Environment Compensation Charges. As such, the last sentence of first para of the Notification No. F.1-(13)/Env/2-15/6167-6189 Dated 20.10.2015 issued in compliance of the order dated 9.10.2015 of Hon“ble Supreme Court in Interlocutory Application No. 345 of 2015 & No. 365 of 2015 in Writ Petition (Civil) No. 13029/1985 “(b) On vehicles carrying essential commodities, that is, food stuffs and oil tankers” will be taken to mean “(b) the vehicles carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum products”.*

Dr. ANIL KUMAR, Spl. Secy.(Environment)"

By this notification, respondent no.2 has exempted the vehicles from ECC those carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum products, and by another notification dated February 15, 2016, has exempted the vehicles carrying eggs and ice. In a subsequent order on August 28, 2017 in **IA. No. 71853/2017 and 71856/2017** in the same matter, i.e., **M.C. Mehta (supra)** the Supreme Court while considering whether the vehicles carrying salt should be exempted from Environment Compensation Charges, has held as under:

“In the application, it is stated that salt is also a food item, therefore, it should be exempted from the Environment compensation Charge.

There is no opposition to this application, as indeed there cannot be, since it cannot be doubted that salt is a food item.

Under the circumstances, the Government of National Capital Territory of Delhi should issue a notification exempting salt from the Environment Compensation Charge.

IA. Nos. 71853 and 71856/2017 are accordingly allowed.”

10. The submission of the learned counsel for the petitioner that since the definition of food stuffs includes edible oil seeds and oils in terms of the Schedule to Section 2 (A), the vehicles carrying edible oils should also be exempted from the ECC does not appeal to the court. The Supreme Court had left it to the Government of NCT of Delhi to issue a notification and pursuant to that, Government of NCT of Delhi initially issued a notification dated October 20, 2015 and thereafter clarified the words “*vehicles carrying essential commodities, i.e., food stuffs and oil tankers*” to mean “*vehicles carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum*

products”. In other words, Government of NCT of Delhi has limited the foods stuffs to mean which have been reflected in the notifications dated October 30, 2015 / February 15, 2016. Further if the plea of the petitioner is accepted then all the vehicles carrying food stuffs need to be exempted. Even the inclusion of the “salt” was pursuant to the directions of the Supreme Court vide order dated August 28, 2017. This Court has neither jurisdiction nor can sit over the decision of the appropriate authority and direct inclusion of vehicles carrying edible oils from exemption. The reliance placed by the learned counsel for the petitioner, on the decision of the Coordinate Bench of this Court in the case of ***Narela Food Processing Industries Welfare Association (Regd.) (supra)*** is misplaced as the same shall not be applicable in the facts of this case, as the limited issue in that writ petition was whether the word “*grains*” in the notification dated October 30, 2015 include pulses. The Coordinate Bench of this Court has held the word “*grains*” include pulses. This is not a case on interpretation of terminology used in the notification dated October 30, 2015 as was in the case of ***Narela Food Processing Industries Welfare Association (Regd.) (supra)***. In view of my aforesaid discussion, this Court is of the view that the prayer sought for by the petitioner in the present petition cannot be granted by this Court.

The present petition is without any merit. The same is dismissed.

CM No. 41376/2016 (for stay)

In view of the order passed in the writ petition, the application has become infructuous and dismissed as such.

V. KAMESWAR RAO, J

JANUARY 22, 2018/jg