

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SUO MOTU PUBLIC INTEREST LITIGATION NO. 3 OF 2023

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High Court of Judicature at Bombay on its Own Motion	}	Petitioner
	}	
versus		
The State of Maharashtra & Ors. & Ors.	}	Respondents
	}	Respondents

**WITH
INTERIM APPLICATION NO. 17225 OF 2023
IN
SUO MOTU PUBLIC INTEREST LITIGATION NO. 3 OF 2023**

Awaaz Foundation & Anr.	}	Applicants
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In the matter between:

High Court of Judicature at Bombay on its Own Motion	}	Petitioner
	}	
versus		
The State of Maharashtra & Ors.	}	Respondents

**WITH
INTERIM APPLICATION NO. 7804 OF 2024
IN
SUO MOTU PUBLIC INTEREST LITIGATION NO. 3 OF 2023**

Jan Mukti Morcha	}	Applicant
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In the matter between:

High Court of Judicature at Bombay on its Own Motion	}	Petitioner
	}	
versus		
The State of Maharashtra & Ors.	}	Respondents

Mr. Darius Khambata, Sr. Adv. Amicus curiae a/w Mrs. Vidhi Shah and Ms. Shreenandini Mukhopadhyay.

Mr. Janak Dwarkadas, Sr. Adv. a/w Ms. Rishika Harish, Mr. Sharad Bansal Ms. Kanika goenka i/b. Shardul Amarchand Mangaldas for Intervenor (Mr. Stalin Dayanand).

Mr. Dhairyasheel Sutar a/w. Mr.Kiran G. Kulkarni, Ms. Anjali Shaw, Mr. Deepak Jain and Ms. Latika Kabad for the applicant/intervenor in IA/7804/2024

Ms.Sarita Khanchandani, applicant-in-person/intervenor in IAST/16095/2024

Mrs. Jyoti Chavan, Addl. Govt. Pleader, Mr.O. A. Chandurkar, Addl. Govt. Pleader and Mrs. G. R. Raghuwanshi, AGP, for State.

Mrs. Jyoti Chavan, Addl.GP with Ms. Jaya Bagwe for MPCB.

Mr. G. S. Hegde, Sr. Adv. a/w Ms. P. M. Bhansali for MMRDA.

Dr. Milind Sathe, Sr. Adv. a/w Mr. Joel Carlos and Mr.Pradeep M. Patil i/b. Mr. Sunil Sonawane for MCGM.

Mr. Minesh Pimple, DMC (Env't.) and Mr. Sunil Sardar, Ex. Eng. (Env't.), BMC Officers, present in Court.

Mr. A. S. Rao for Kalyan Dombivli Municipal Corporation.

Mr. Kedar Dighe for Pimpri Chinchwad Municipal Corporation.

Mr. Jagdish G. Radwad (Reddy) for Slum Rehabilitation Authority and for Panvel Municipal Corporation.

Mr. Mandar V. Limaye for Thane Municipal Corporation.

Mr. Suresh M. Kamble for Ulhasnagar Municipal Corporation.

Mr. Tejesh Dande for Navi Mumbai Municipal Corporation.

Mr. Y. R. Mishra a/w. Mr. Sachidanand T. Singhy for respondent No. 5, UoI.

Mr. Abhinandan B. Vagyani i/b Mr. C. M. Lokesh for respondent No. 8 (CPCB).

Dr. Birendra Saraf, Senior Advocate i/b Ms. Jaya Bagwe for MPCB.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
G. S. KULKARNI, J.**

DATE : 20th JUNE 2024 (At 3.00 p.m.)

PC:

INTRIM APPLICATION NO. 7804 OF 2024:

- 1.** Since larger issues of public interest are the subject matter of this Suo Motu PIL petition, it will not be possible to take up individual grievances.
- 2.** Accordingly, learned counsel for the applicant in Interim Application No. 7804 of 2024 seeks leave to withdraw the interim application with liberty to take appropriate legal recourse for redressal of its grievances which may be available in law.
- 3.** Leave granted. The interim application is dismissed as withdrawn with liberty as prayed for.

SUO MOTU PIL NO. 3 OF 2023:

- 4.** Heard Mr. Khambata, learned Senior Advocate (*Amicus*), Mr. Janak Dwarkadas, learned Senior Advocate, Dr. Milind Sathe, learned Senior Advocate representing the respective parties and Ms. Jyoti Chavan, learned State Counsel.

5. Certain observations were made and directions given in our earlier order dated 18th March 2024.

6. An exhaustive affidavit-in-reply has been filed by the Joint Director (Air Pollution Control), Maharashtra Pollution Control Board, Mumbai (hereinafter referred to as the **MPCB**) giving in detail the actions taken by its authorities in its endeavor to mitigate the air pollution.

7. Mr. Khambata, has submitted a note, which has been filed considering the affidavit filed by the MPCB, dated 18th June 2024. The said note is taken on record. He has drawn our attention to paragraph 11 of our order dated 18th March 2024 which refers to conducting pollution audit of the industries. The order records averments made by the MPCB on the said date regarding paucity of staff needed for conducting effective pollution audit and further mentions that the MPCB has approved a new staffing pattern for recruiting staff of 1310 in number which would include technical, scientific, administrative and accounts staff for the entire State of Maharashtra and that the said proposed staffing pattern needs to be sanctioned by the State Government. The Court, noticing the said facts, directed that the said proposal shall immediately be

sent to the Government which shall be scrutinized and appropriate decision in this regard shall be taken at the earliest. We have, however, been informed that the matter is still pending with the State Government and the final decision has yet not been taken. On instructions, however, learned State Counsel has submitted that final decision on the said proposal is likely to be taken within a month. We, thus, hope and trust that within this period the Government shall take its decision taking into account the relevant factors, most importantly, the problem of paucity of staff being faced by the MPCB which is hampering the steps for taking up various measures for mitigating the air pollution; conducting pollution audit is only one of such measures.

8. The Court had also directed that the MPCB shall immediately take further steps to initiate the process of pollution audit as per the roadmap submitted in the affidavit filed earlier. The Court also observed that the process can commence by taking up red category industries in the first phase. In the affidavit filed by the MPCB, dated 18th June 2024, it has been stated that it has carried out pollution audit of 191 highly polluting industries located in the Mumbai Metropolitan Region (hereinafter referred to as the **MMR**)

and has taken appropriate steps on the basis of non-compliances observed during the audit. The affidavit gives the details of the action taken. In addition, the affidavit further states that the MPCB has directed the red category industries to submit the self-pollution audit report, in compliance whereof, most of the industries have submitted their self-pollution audit report to the Board and that the Board is planning to carry out third party audit of these 191 highly polluting industries initially and later on 10% to 20% remaining red category industries will also be covered by third party audit to the self-audit report, randomly. In the affidavit, the MPCB has also stated that for conducting third party audit of self-audit reports submitted by red category industries, proposals have been called from various institutions.

9. In our opinion, third party audit of self-audit reports submitted red category industries is a welcome step and thus, we direct that this shall be entrusted to some institution/experts in respect of not only 191 red category industries but in respect of all such red category industries situated in MMR in a phased manner. Based on the reports of the third-party audit, if any action is required, the same shall also be ensued as per the

requirement of law. We also direct that the third-party audit in respect of all red category industries shall be completed within a period of six months, however, we provide that if MPCB faces any difficulty in meeting this deadline, they may approach the Court seeking extension of time, of course, by way of giving reasons for such indulgence and not as a matter of course.

10. Mr. Khambata has referred to some excerpts of the report submitted by the Experts which is available at pages 1131 to 1133 of the affidavit filed by the MPCB, dated 18th June 2024. He has drawn our attention that the Experts have suggested to upgrade the mobile laboratories with state-of-the-art real-time chemical characterization facilities allowing the Source Apportionment (SA) studies. The report of the Experts also suggests that IIT Bombay has discussed these aspects with NEERI and MPCB and has submitted a proposal to MPCB for consideration. Certain other suggestions have also been given in the said report; such as ward wise identification of the largest contributors to pollutants in each ward.

11. Learned Counsel representing the MPCB, on instructions, has submitted that these recommendations, specially, the

recommendation in respect of upgradation of mobile van laboratory is under consideration, however, it may involve huge expenditure.

12. Having regard to the concern relating to the air pollution in the entire MMR, we direct that the recommendations made by the Committee of Experts available at page 1131 to 1133 of the affidavit of MPCB, dated 18th June 2024, shall be acted upon, specially regarding upgradation of mobile van laboratories. The MPCB shall make appropriate arrangements for allotting the funds to meet the expenditure required for the said purpose and if there be any need, it may seek financial assistance from the State Government, which shall be provided forthwith and shall not be denied.

13. Mr. Khambata has also drawn our attention to the minimum requirement of number of Air Monitoring Stations. According to him, the number of such Air Monitoring Stations are not as per the norms prescribed by the Central Pollution Control Board (hereinafter referred to as the **CPCB**). The MPCB is, thus, directed to give details of the number of Air Monitoring Stations required for the MMR as per the calculations prescribed by the CPCB. It

shall also provide the details of such Air Monitoring Stations set-up and presently working in the MMR. We also direct the learned Counsel representing the CPCB to clearly state by way of an affidavit, to be filed before the Court, as to what exactly are the norms regarding the number of Air Monitoring Stations.

14. Mr. Khambata has also expressed his concern about the recommendations made by the Expert Committee constituted by this Court, embodied in its Minutes dated 9th May 2024 relating to traffic. The said recommendations are extracted hereinbelow:

"B. Traffic related recommendations:

1. *Respective planning authorities shall explore option of tolls without barriers on similar lines of ATAL setu. Tender condition of the toll operators regarding the maximum length of traffic at the tolls to exempt from the toll, can be checked. Issue directions to MMRDC for the implementation of this recommendation.*
2. *Identify points of traffic congestion in Mumbai city and MMR and implement suitable steps for addressing the issue."*

15. We, thus, call upon the authorities responsible for traffic management to file an affidavit giving details of the action taken to implement the said recommendations.

16. Mr. Janak Dwarkadas, learned Senior Advocate has drawn our attention to various provisions of Environment (Protection) Act 1986 and has submitted that the directions issued by the MPCB

under Section 5 of the 1986 Act are not only binding on all concerned but it is also the statutory duty of the MPCB to ensure that such statutory directions are followed. He has invited our attention to one such order issued by the MPCB on 7th March 2024, wherein certain directions have been issued which include identification of hot spots in MMR including Mumbai City for taking concentrated efforts for control of air pollution. The said order also states that only Navi Mumbai and Bhiwandi Nizampur Corporation have submitted data. He has also stated that though the said order issued under Section 5 of the 1986 Act clearly states that the strict implementation of approved action plan under NCAP (National Clean Air Program) is to be ensured, however, no such directions are being implemented and accordingly, there has been failure on the part of the MPCB in discharge of their statutory duties. He has also referred to the compliance report prepared by the Environment Department of the Brihanmumbai Municipal Corporation in respect of the directions issued under Section 5 of the 1986 Act and has submitted that for ensuring the directions issued under Section 5 of the 1986 Act, immediate visit in case of deterioration of Air Quality Index (AQI) is to be ensured. The said compliance report states that the Mumbai Air App has been

developed to enable the citizens to lodge air pollution complaints in their vicinity, however, this Application is working only on android operating system which deprives the citizens having apparatus with IOS. The said compliance report also mentions that the Corporation has engaged IIT Kanpur to install low-cost air quality sensors in Mumbai, however, no details have been provided as to whether such low-cost air quality sensors have been installed and are operating or not.

17. We, thus, direct that Municipal Corporation, by filing an affidavit by the next date of listing, to clarify the aforesaid issues and clearly state the action taken in this regard.

18. In respect of the issues and concerns expressed in this order, the MPCB and Municipal Corporation and other authorities shall file their respective affidavits after serving a copy thereof upon the learned *Amicus* and Mr. Janak Dwarkadas, learned Senior Advocate and other learned Counsel representing the respective parties in the matter.

19. Stand over to **26th July 2024, at 3.00 pm.**

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)