

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**M.A. No.706 of 2013
And
M.A. No.557 of 2013
In
Original Application No. 82 of 2013**

Aditya N. Prasad Vs. Union of India & Ors.

CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. SESHASAYANA Reddy, JUDICIAL MEMBER
HON'BLE DR. D.K. ARGAWAL, EXPERT MEMBER
HON'BLE DR. R.C. TRIVEDI, EXPERT MEMBER

Present:

Applicant: Mr. Aditya N. Prasad, Applicant along with Ms. Padmavati Dwedi and Ms. Sonya Ghosh and Mr. Nakul Verma

Respondent No. 2: Ms. Puja Kalra Advocate

Respondent No. 3&4: Mr. Balendu Shekhar, Advocate and Mr. S.C. Yadav, EE (Cont No. 4)

Respondent No. 5: Mr. Sanjay Dewan, Advocate with Mr. Rajeshwar Rao

Respondent No. 6: Mr. Sunil Satyarathi

Respondent No. 7: Mr. Jitendra Kr. And Mr. M. Dutta, Advocate

Respondent No. 8: Mr. P.L. Gautamm Advocate

Respondent No. 9: Mr. Sangram Patnaik, Advocate and Mr. Swamsidha, Advocate and Mr. Brij Lal, Dir. Horti. DDA

Respondent No. 10&12: Mr. D. Rajeshwar Rao, advocate

Respondent No. 11: Mr. Parivesh Singh, Advocate, Mr. S. Nanda Kumar, Advocate

Respondent No. 14: Mr. Amit Kumar, AIG on behalf of MoEF

Respondent No. 15: Mr. Sumeet Pushkarna with Ms. Meenakshi Midha, Advocate and Ms. Sara Sundaram
Mr. Ankur Gupta, Advocate for Delhi Metro Rail Corporation Ltd.

Date and Remarks	Orders of the Tribunal
Item No. 11 September 19, 2013	<p><u>M.A. No. 706 of 2013</u></p> <p>This is an Application filed under Section 26 of the National Green Tribunal Act, 2013 (for short 'NGT Act') praying for initiation of action for contempt against the Respondents and for consequent punishment in accordance with law.</p> <p>The case of the Applicant is that he had filed an Application under Section 18 (a) read with Sections 14, 15 and 17 of the NGT Act praying for various reliefs in relation to the environmental issues primarily relating to the trees, their deconcretization and maintenance in accordance with the provision of the law. The Tribunal vide its order dated 23rd April, 2013 <i>inter alia</i> had directed that the concerned authorities should deconcretize the trees all over NCT of Delhi. Thereafter, another Application was filed with a prayer</p>

that the deconcretization was being done in a manner which was further damaging the trees rather than providing them with a life. It was stated that the deconcretization work are being done recklessly by persons not fully skilled in that behalf and this was resulting in serious damage to the roots of the trees. On 08th August, 2013 the Tribunal passed the following Order

“It has been brought to our Notice that when deconcretization of the trees is being done by machines like JCB, damage has been done by the machines to the trees as their roots are exposed and trunks are damaged.

We direct the Authorities to ensure that damage done to the trees which was shown in the photographs, the same would be cured and damage would not occur forthwith in future. The person operating any machines for de-concretization shall ensure that no damage is caused to the trees and their roots are not left exposed.

We make it clear that if now in future it is shown before us that any damage is done to the stumps of trees or roots are exposed as a result of mechanical deconcretization of the trees, the person operating such machines and the Executive Engineer under whose jurisdiction that work is being carried out will personally be liable to pay compensation.”

Even after passing of the above Orders, it was reported widely that the trees were being damaged because of irresponsible and indiscriminate use of machines by unskilled persons and the trees were being felled. Thus, there was a violation of the Orders passed by the Tribunal and this resulted in filing the Application under consideration.

Along with this Application, Press cuttings were filed with photographs to show that the trees were deconcretized in a most improper manner and unscientifically and the trees were being cut and heavy trees like Peepal had been felled in CR Park.

Prima facie being satisfied of merit of the averments made in the Application, Notices were issued to Respondent

Nos. 1, 3 and 4 and said Respondents have filed their Replies. In the Replies, it has been stated that officials had taken help of the drill machines to break and deconcretize the surroundings of tree bases. Further, it was stated that the trees had fallen on account of heavy down pour of rain on 17th August, 2013. According to these Respondents, no fall was attributable to them and the tree deconcretization work was being carried out for the entire area which was in the jurisdiction of the South, Municipal Corporation of Delhi.

The Forest Department has filed a Reply. It will be useful to refer to Para 6 of the Affidavit filed by the Forest Department, which reads as under :-

“The deponent submits that immediately on the basis of the above said newspaper reporting the deponent through his DCF (South) got the matter investigated in respect of felling of two trees in CR Park, Sheikh Sarai and Panchsheel Enclave. It has been noticed that concretization of the tree has been done around stump at ground concrete surface level. Deconcretization using machines exposed the shallow root system which resulted into falling of tree due to leaching effect on soil. The Tree Officer has issued the notice to Executive Engineer Civil Division – I, Lajpat Nagar Central Zone whose irresponsible attitude towards deconcretization around the tree using machine at CR Parks resulted into death of tree. Copy of inspection note of DCF (South) and notices are attached at Annexure-1, 2 & 3.”

It may be further noticed that on 24th August, 2013, inspection note was prepared by the Forest Department after issuing the Notice to the South, MCD stating that on 19th August, 2013 primary inspection was conducted and two Peepal trees were found fallen. In this Report further facts as follows were noticed: (i) that the root system of the tree was suffocated due to concreting around the stem of the tree leaving very little soil (2) further work of deconcretization should have been carried out in the presence of atleast one Horticulturalist from Horticulture Wing of South, MCD.

It is also noticed in this Report that the roots were exposed further because of deconcretization.

From the conjoint reading of the Applicants Affidavit and the record, it appears that the averment made in the Reply Affidavit of the Respondent, South, MCD that it was because of heavy rain fall on 14th August, 2013 the trees had fallen is primarily incorrect.

According to the Forest Department, trees had fallen on subsequent date. It is not clear as to why no person from the Horticulture Wing of the MCD was present at the time of deconcretization, if the roots were found to be exposed, and why proper steps were not taken to protect further damage to the tree. It is not even stated in the Affidavit as to whether Technicians operating drilling machines had sufficient experience of deconcretization of trees. The Orders of the Tribunal, particularly Order dated 08th August, 2013 were passed on the premise of precautionary principle and it was expected of the Authorities who were clearly involved in use of the machines for deconcretization to had used such machines carefully so as to ensure that no damage was caused to the trees. This direction of the Tribunal has been violated by the South MCD to say the least with impunity. Trees are part of the environment and they need greater protection in the interest of protecting the environment.

In view of the above discussion, we have no hesitation in coming to the conclusion of South MCD has failed to discharge its statutory function in accordance with law as well as has flouted the Orders of the Tribunal, particularly dated 08th August, 2013. In view of the above, we find that it is not a case of civil imprisonment for violating the order of the Tribunal. However, in exercise of powers vested under Section 28 read with Section 15 of the NGT Act, we direct and impose cost of Rs. 50,000/- as compensation to be paid by the Corporation at the first instance, for causing damage to the trees and the environment. However, the said cost shall be recovered from all the Officers Most Senior to Most Junior, involved in the process of deconcretization of the trees in the CR Park in proportion to their responsibility. Furthermore, we further direct the South MCD to do compensatory afforestation by planting 20 trees in ratio of 1:10 for each fallen tree in CR Park and to file its proof on record. We also direct that in future the deconcretization will

be done in consultation with the Horticulture Department of concerned Authority, wherever necessary.

Learned counsel appearing for South MCD submits that large number of trees have been deconcretized by the Corporation in compliance of the Order of the Tribunal.

We do appreciate such efforts.

This Application is accordingly disposed of.

Original Application No. 82 of 2013

Learned counsel appearing for the respective Respondents pray for further time to file compliance Report in terms of our Order. Let the Reports be filed by each of the Department within one week from today.

M.A. No.557 of 2013 and Original Application No. 82 of 2013 list on 08th October, 2013

.....,CP
(Swatanter Kumar)

.....,JM
(U.D. Salvi)

.....,JM
(B.S. Reddy)

.....,EM
(Dr. D.K. Agrawal)

.....,EM
(Dr. R.C. Trivedi)

