



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

SUO MOTU PUBLIC INTEREST LITIGATION NO. 3 OF 2023

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

**WITH
ORIGINAL SIDE
PUBLIC INTEREST LITIGATION (L) NO. 30283 OF 2023**

Amar Baban Tike	}	Petitioner
versus		
The State of Maharashtra & Ors.	}	Respondents

**WITH
PUBLIC INTEREST LITIGATION (L) NO. 30568 OF 2023**

Kaizin Cyrus Irani	}	Petitioner
versus		
The State of Maharashtra & Ors.	}	Respondents

Mr. Darius Khambata, Sr. Adv. Amicus curiae a/w
Mr. Tushar Hathiramani, Mrs. Vidhi Shah, Ms.
Shreenandini Mukhopadhyay in SMPIL/3/2023

Mr. Vivek Batra i/b Vertical Legal for Petitioner
in PIL(L)/30283/2023

Ms. Preeti Gokhale, for Petitioner in
PIL(L)/30568/2023

Mr. S. U. Kamdar, Sr. Adv. a/w Ms. Aditi Rungta i/
b Jeet Gandhi for Intervenor in IAL/31662/2023

Mr. Janak Dwarkadas, Sr. Adv. a/w Ms. Rishika
Harish, Sharad Bansal, Kanika Goeknka Ms.
Swagata Ghosh i/b Shardul Amarchand

Mangaldas for Intervenor, ' Vanashakti ' in SMPIL/3/2023

Dr. Birendra Saraf, A. G. a/w Mr. P. P. Kakade, GP, Mrs. Jyoti Chavan, Addl. GP , Mr. O. A. Chandurkar, Addl. GP., Mr. R. A. Salunke AGP, Mr. M. M. Pabale, AGP for State in SMPIL/3/2023

Dr. Birendra Saraf, A. G. With Smt. Jyoti Chavan, Addl G. P. For State in PIL(L)/30283/2023 and 30568/2023

Mr. G. S. Hegde, Sr. Adv. a/w Ms.P. M. Bhansali for MMRDA in SMPIL/3/2023

Dr. Milind Sathe, Sr. Adv. a/w Ms. Oorja Dhond and Ms. Kejali Mastakar i/b Mr. Sunil Sonawane for MCGM in SMPIL 3 of 2023

Ms.Oorja Dhond i/b Mr. S. K. Sonawane for the Respondent MCGM in PIL(L) 30283/2023 and 30568/2023

Mr. Suresh M. Kamble for Ulhasnagar Municipal Corporation in SMPIL/3/2023

Mr. Kedar Dighe a/w Ms. Archana D. Gaware for Pimpri Chinchwad Municipal Corporation in SMPIL/3/2023

Mr. Harvinder Singh Bansal, Executive Engineer, Pimpri Chinchwad Municipal Corporation, Present

Mr. Vishal P. Shirke for Parbhani City Municipal Corporation in SMPIL/3/2023

Mr. Jagdish G. Radwad (Reddy) for Panvel Municipal Corporation in SMPIL/3/2023

Mr. Jagdish G. Radwad (Reddy) for Slum Rehabilitation Authority in SMPIL/3/2023

Mr. Mayuresh S. Lagu a/w Mr. Shashank Dubey,
Mr. Sagar Patil, Apurva Mahadik for Mira Bhainder
Municipal Corporation in SMPIL/3/2023

Mr. Mandar V. Limaye for Thane Municipal
Corporation in SMPIL/3/2023

Mr. Tejesh Dande for Navi Mumbai Municipal
Corporation in SMPIL/3/2023
Mr. Abhay Jadhav, Law Officer present

Mr. Nitin V. Gangal a/w Ms. Prerna Shukla, Mr.
Ashok Kadam and Ms. Prapti Karkera for
Ahmednagar Municipal Corporation

Ms. Swati Sagvekar for Vasai Virar City Municipal
Corporation

Mr. Kush M. Lahankar i/b Mr. Abhijit Adagule for
Kohapur Municipal Corporation

Mr. Vikram N. Walawalkar for Sangli Miraj &
Kupwad Municipal Corporation

Mr. Y. R. Mishra for R. No. 5, U.O.I. in
PIL(L)/30283/2023

Mr. C. M. Lokesh for Central Pollution Control
Board, in SMPIL/3/2023 and PIL (L)/30283/2023

Dr. Birendra Saraf, A. G. i/b Ms. Jaya Bagwe for
MPCB in all matters

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

DATE: 10th NOVEMBER 2023

P.C.:

1. Heard.

2. Affidavits filed on behalf of Navi Mumbai Municipal Corporation, Kolhapur Municipal Corporation, Mira Bhaingar Municipal Corporation, Kalyan Dombivali Municipal Corporation, Ahmednagar Municipal Corporation, Ulhasnagar Municipal Corporation, Panvel Municipal Corporation, Vasai Virar City Municipal Corporation, Bhiwandi Nizampur City Municipal Corporation and affidavit filed on behalf of the Slum Rehabilitation Authority are taken on record.

3. An affidavit as sworn by the Commissioner, Municipal Corporation of Greater Mumbai (MCGM) is taken on record. This affidavit mentions various steps stated to have been taken by the MCGM for mitigating the air pollution levels. However, as submitted by learned members of the Bar, we feel that something more needs to be done at the level of not only the authorities of the MCGM, but also by the other authorities as well. In the affidavit, it has been stated that a special squad, formed for ensuring implementation of the guidelines for mitigating the pollution, visited 1623 sites and notices have been issued to as many as 1065 sites, on account of non-compliance/inadequate compliance of the guidelines. The figures as shown by the MCGM in this affidavit itself speak volumes about the alarming situation of the air quality in the city. It has also been stated in the said affidavit, that the MCGM has set up a dedicated tab, as also a helpline number 8169681697 has been provided to enable the citizens to aid the Municipal Corporation to take action on violations of the guidelines.

4. Dr. Sathe, learned senior advocate representing MCGM, on instructions, submits that the MCGM, within the shortest possible time, would create a special website/mobile app and

shall publish emergency mobile number for listing of the complaints relating to air pollution. We hope that the website/mobile app shall be created forthwith and the emergency mobile number shall also be publicized in the newspapers and by all other means by the MCGM at the earliest. We direct similar steps to be taken by all the Municipal Corporations within the Mumbai Metropolitan Region (MMR).

5. Dr. Saraf, learned Advocate General has also submitted certain documents disclosing the steps taken by the Maharashtra Pollution Control Board (MPCB) and other State authorities to curb the high air pollution levels in the City of Mumbai and the surrounding areas. As per the said affidavit tendered by the learned Advocate General, steps have been taken by the Education Department to spread awareness amongst the students. Certain steps taken by the MPCB have also been highlighted.

6. Mr. Khambata, learned *Amicus Curiae* has furnished supplementary notes and two volumes of other papers which are also taken on record.

7. Dr. Sathe, learned Senior Advocate, apart from highlighting the steps taken by the MCGM, has also requested that in view of the steps so taken clause 7(f) of the directions issued in our order dated 6th November 2023 be modified and the transportation of the construction debris be permitted to be taken out of the construction site.

8. We have given our anxious consideration to the prayer made by Dr. Sathe, however considering the present pollution levels in the city, we do not feel it proper to modify the said

directions. The directions thus contained in paragraph 7(f) in our order dated 6th November 2023 shall continue to operate till 19th November 2023. If, however, the air quality does not improve, it shall be for the respective Municipal Corporations to impose a ban on transportation of debris outside the construction sites for a longer time.

9. Our attention has also been drawn to the directions issued by the Supreme Court in paragraphs 48.1, 48.3 and 48.6 of the judgment in the case of ***Arjun Gopal Vs. Union of India reported in (2019) 13 SCC 523.*** The said observations/directions made by the Hon'ble Supreme Court are extracted hereinbelow:

"48.1. The crackers with reduced emission (improved crackers) and green crackers, as mentioned in Suggestions II and III above only would be permitted to be manufactured and sold.

48.2. As a consequence, production and sale of crackers other than those mentioned in Suggestions II and III is hereby banned.

48.6. Barium salts in the fireworks is also hereby banned."

10. The Hon'ble Supreme Court in its order dated 30th October 2018 in the said case of ***Arjun Gopal Vs. Union of India reported in (2019) 13 SCC 499*** in paragraph 3.5 of the said order has observed that the Pan-India directions contained in the earlier case of Arjun Gopal (supra) shall be enforced by the police authorities and the directions in paragraph 48.16 in the earlier order passed in the said case, shall also be applicable throughout India, and directed all the authorities concerned to enforce the said directions. Further in paragraph 48.16 in

Arjun Gopal (supra) directions have been issued to all concerned that the authorities shall ensure that fireworks take place only during the designated time and at designated places. There are also directions contained in the said paragraph, to the effect that the authorities shall also ensure that there is no sale of banned crackers and in case any violation is found, the Station House Officer (SHO) of the police station concerned, shall be held personally liable for such violation and the same would amount to committing the Contempt of Court, for which such SHO would be proceeded against. We reiterate the aforementioned direction issued by the Hon'ble Supreme Court in **Arjun Gopal** (supra).

11. Thus, having regard to directions of the Hon'ble Supreme Court in paragraphs 48.14 and 48.16 of the order in **Arjun Gopal's** case (supra), we modify our direction 7(j) in the earlier order dated 6th November 2023 and provide that the time for bursting firecrackers shall be limited from 8.00 p.m. to 10.00 p.m. For ready reference, para 48.14 of the judgment in the case of **Arjun Gopal** (supra) is extracted hereinbelow: -

"48.14. On Diwali days or on any other festivals like *Gurupurab*, etc., when such fireworks generally take place, it would strictly be from 8.00 p.m. till 10.00 p.m. only. On Christmas eve and New Year's eve, when such fireworks start around midnight i.e. 12.00 a.m., it would be from 11.55 p.m. till 12.30 a.m. only."

12. In our order dated 6th November 2023, a Committee of the **Director, National Environmental Engineering Research Institute (NEERI)** and **Principal Secretary, Public Health, Government of Maharashtra**, was constituted to supervise

and monitor the steps taken by the Municipal Corporations and the State on daily basis. It was also directed that the Commissioners of the Municipal Corporations shall submit daily reports to the said Committee regularly and further that in case the Committee finds it appropriate, it would be open to the Committee members to tender suggestions to the Municipal Corporations.

13. Having regard to the relevant factors, we modify the constitution of the said Committee. The reconstituted Committee shall comprise of the following: -

- (i) **An expert in the field of environment, preferably in the field of air pollution to be nominated by Director NEERI;**
- (ii) **An expert on air pollution to be nominated by the Director of Indian Institute of Technology, Mumbai; and**
- (iii) **Mr. Sudhir Shrivastav, former Additional Chief Secretary Home and Chairman, MPCB.**

14. The MCGM is directed to provide all secretarial assistance to the said Committee. All the Municipal Corporations in the Mumbai Metropolitan Region shall submit daily reports on the steps being taken to curb pollution and on the levels of pollution in their respective areas. It will be open to this Committee to tender suggestions to the respective Municipal Corporations, if the Committee finds it appropriate in any given circumstances. The Committee shall prepare weekly reports based on the daily reports submitted to it, by the respective Municipal Corporations, along with its own comments. The reports shall be

submitted to this Court through the Registrar General of this Court.

15. All the above directions shall be equally applicable and enforceable by the Municipal Corporations/Councils and Panchayats falling within the Mumbai Metropolitan Region.

16. Mr. Khambata, learned *Amicus Curiae* has drawn our attention to a draft report submitted by a team comprising of experts from Indian Institute of Technology, Mumbai and NEERI (CSIR), which was submitted in November 2021. The said report forms part of Volume II of the documents submitted by the learned *Amicus Curiae*. The said report is based on a study commissioned by MPCB in relation to Air Quality Monitoring, Emission Inventory and Source Appointment Studies for Ten Cities in the State of Maharashtra in the context of its observations in regard to the pollution issues in relation to Mumbai city. The learned *Amicus Curiae* has taken the Court through various portions of the report and has submitted that the said report may form basis of all future actions in so far as the same relates to the air pollution in Mumbai.

17. Responding to Mr. Khambata's contention, the learned Advocate General, on instructions received from the officials of the MPCB has submitted that the said draft report submitted in respect of Mumbai city, by the said study group has been sent for peer review and is presently lying with the Central Pollution Control Board (CPCB).

18. In the above circumstances, we direct that the draft report shall be finalised by the authority concerned at the appropriate level, be it the Ministry in the Central Government or any officer

in the CPCB. Mr. Y. R. Mishra, learned counsel, who appears for Union of India and Mr. C. M. Lokesh, who appears for CPCB shall apprise the authorities concerned (UoI and CPCB) of this order forthwith. We expect that final decision on the draft report is taken within 6 (six) weeks from today. We also direct that once the draft report is finalised, based on that, concrete steps would be required to be taken, to implement appropriate measures, to meet the challenges posed on account of rising air pollution levels, in the city of Mumbai.

19. Our attention has also been drawn to a Central Legislation, namely, the Act 29 of 2021, the "**Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021.**" The said enactment by the Parliament has been made to provide for constitution of the Commission for air quality management in the National Capital Region (NCR) and adjoining areas for better co-ordination, research, identification and resolution of problems surrounding the air quality index and for matters connected therewith or incidental thereto.

20. We have gone through the various provisions of the said Act and the statutory scheme contained therein. By the said enactment, so far as the NCR is concerned, a statutory commission has been constituted with wide ranging powers and functions. The constitution of the said statutory commission is *interalia* aimed at research, identification and resolution of problems surrounding the air quality index and for other incidental matters in the national capital region.

21. We request the learned Advocate General to suggest to the Government of Maharashtra, to consider framing such legislation so as to establish a statutory regime, on the issues of air quality

management in the city of Mumbai are dealt in a more scientific and effective manner. In our opinion to have such legislation would certainly be a need of the time, so as to have an effective and a robust regime in controlling the ever increasing menace of air pollution, the city of Mumbai is facing. The city needs to be catered on such aspects considering its international significance.

22. Mr. Dwarkadas, learned senior advocate appearing for Vanashakti, an NGO, submits that vehicular pollution is one of the major contributions to the air pollution. He states that MPCB had commissioned a study for Mumbai Metropolitan Region, on the causes and the chaos, on account of vehicular pollution, which was conducted by Mr. Satish Sahastrabuddhe, a Former Transport Commissioner, State of Maharashtra. The learned Advocate General shall bring on record the said report, as well, by the next date of listing.

23. The Municipal Commissioner of the Mumbai Municipal Corporation shall take steps to immediately inform the present order to the members of the newly constituted committee, so that the functioning of the committee shall start immediately at the premises and the requisite infrastructure, which may be made available either by the MCGM or the State Government. All the Municipal Corporations in the Mumbai Metropolitan Region are directed to submit day-to-day air pollution reports to the said committee by email or as may be permitted by the Committee.

24. Stand over to **11th December 2023 at 3.30 p.m.**

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)