

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION(S)(CIVIL) NO(S). 4677/1985

M.C.MEHTA

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

([TO BE TAKEN UP AT 2:00 P.M.] 1) IN RE: TREES ACT AND 2) I.A. NO. 135709/2024 (APPLN. FOR DIRECTION ON BEHALF OF BHAVREEN KANDHARI) 3) IA NOS. 267661 AND 267966/2024 (APPLNS. FOR IMPEADMENT AND DIRECTIONS ON B/O INDERPURI RESIDENTS ASSN.) AND 4) IN RE: COMPLIANCE OF ORDER DT. 26.06.2024 AND 30.09.2024 NAMES OF FOLLOWING ADVOCATES MAY BE TREATED TO HAVE BEEN SHOWN IN THE LIST : MR. S GURU KRISHNA KUMAR, SR. ADVOCATE (A.C.) MS. ANITHA SHENOY, SR. ADVOCATE (A.C.) MR. A.D.N. RAO, SR. ADVOCATE (A.C.) MR. SIDDHARTHA CHOWDHURY, ADVOCATE (A.C.) PETITIONER-IN-PERSON MR. G.S. MAKKER, MR. AMRISH KUMAR, MR. M.K. MARORIA, MR. PRAVEEN SWARUP, MS. MANIKA TRIPATHY, MR. CHIRAG M. SHROFF, MS. MALVIKA KAPILA, MR. ANAND VERMA MR. MAYANK AGGARWAL MR. KARUNAKAR MAHALIK, MR. ZEESHAN DIWAN, MR. MANAN VERMA, ADVOCATES)

WITH Diary No(s). 57901/2024

Date : 19-12-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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Mr. Vishesh Goel, Adv.
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For the parties:

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UPON hearing the counsel the Court made the following
O R D E R

WRIT PETITION(CIVIL)NO.4677/1985

1. The first issue we are dealing with is about the implementation of the Delhi Preservation of Trees Act, 1994 (for short, “the 1994 Act”). At the outset, we must say that much can be said about the failure of all the concerned Authorities to implement the 1994 Act effectively. We have already flagged the issue of providing proper infrastructure to the Tree Officers and the Tree Authority.

2. After having perused the provisions of the 1994 Act, we must state here that the object of the 1994 Act is to preserve the trees and not to permit cutting or felling of the trees. Considering the object of the 1994 Act, it is evident that permission for felling or cutting of the trees can be granted only by way of an exception and not in a routine manner. The provisions of the 1994 Act reiterate the public trust doctrine, which enjoins the State to protect the natural resources, including the trees. On a conjoint reading of Articles 21, 48A and 51A(g) of the Constitution of India, it is apparent that the State is mandated to protect and improve the natural environment and safeguard the environment. Trees are a vital part of our environment. The precautionary principle requires the governments to anticipate, prevent, and remedy or eradicate the causes of environmental

degradation, including acting sternly against the violators. Illegal felling of even one fully grown tree hurts the environment and several human beings.

3. There are three major parts of the 1994 Act. The first part deals with the grant of permissions to fell the trees, the second part is about the duties of the Tree Authority, and the third part is about penalising the persons for committing breaches of the provisions of the 1994 Act. There are other provisions, such as the obligation of the owners of the lands to preserve the trees.

4. Today, we are taking up the issue regarding the grant of permissions by the Tree Officers under Section 8 read with Section 9 of the 1994 Act. We are of the view that considering the limited infrastructure available to the Tree Officers and the manner in which the provisions have been implemented, the work of granting permissions for tree felling must be supervised. We, therefore, direct that whenever a Tree Officer grants permission for the felling of 50 or more trees in accordance with Section 8 read with Section 9 of the 1994 Act, the said permission shall not be acted upon unless the same is approved by the Central Empowered Committee (for short, “the CEC”). Whenever the Tree Officers under the 1994 Act grant permission for the felling of 50 or more trees, immediately after granting such permission, the Tree Officers shall forward the entire record of the application along with a copy of the permission to the CEC. Upon receipt of the documents, it will be open for the CEC to call

upon the concerned Tree Officer to furnish additional information and additional documents.

5. The CEC will carefully consider the applications and all relevant aspects and will decide whether the permission deserves to be granted or whether any modification is required to the permission or the terms and conditions imposed under the permission. We make it clear that while granting permission to fell 50 or more trees, unless the case is exceptional, a condition should be imposed that unless compliance is made with the requirement of planting trees by way of compensatory afforestation, actual tree-cutting work shall not be undertaken. After receiving orders of the CEC, the Tree officers shall amend the orders passed by them to give effect to the order of the CEC. What will prevail will be the order of the CEC.

6. The CEC, after examining the entire case, shall be empowered either to allow or reject the application, to allow the application partly or to modify the terms and conditions on which permission is granted by the Tree Officer. After the Tree Officer passes an order granting permission, copies thereof shall not be provided to the applicant. Only after the CEC passes an appropriate order, the Tree Officer will supply the copy of his order as amended by the CEC to the concerned applicant.

7. Our attention is invited to sub-Section (4) of Section 9 of the 1994 Act which introduces a deeming fiction. We direct the Tree

Officers to ensure that a decision on every application is taken within sixty days from receipt, as provided in sub-Section (3) of Section 9. We also direct that as soon as an application is received under Section 9, the Tree Officers shall forward copies to the CEC so that the CEC can ensure that sub-Section (4) of Section 9 does not operate. For the time being, in the exercise of our jurisdiction under Article 142 of the Constitution of India, we direct that no one shall act upon the deemed permission under sub-Section (4) of Section 9 without prior consent of this Court.

8. We direct the Tree Officers to inform every applicant as soon as the application is received that even if the Tree Officer grants permission, the same shall not be acted upon unless the application is vetted and cleared by the CEC. As soon as the application is made, the Tree Officer shall issue a communication to the applicant that under no circumstances will the applicant be entitled to take benefit of sub-Section (4) of Section 9 of the 1994 Act because of the directions mentioned above issued by us under Article 142 of the Constitution.

9. The *proviso* to sub-Section (3) of Section 9 reads thus:

“9. Procedure for obtaining permission to fell, cut, remove or dispose of, a tree.-

(3)...

Provided that no permission shall be granted to any person from the same area on more than two occasions during the same year subject to a maximum area of one hectare at a time.”

10. If the Tree Officer finds that a second application is made in the same year in respect of the same area for the felling of trees and if the total number of trees covered by the first and second applications exceeds 49, the directions issued as above will apply to the second application even if the permission sought by the second application is in respect of fewer than 50 trees and the permission granted on the second application shall not be acted upon unless the same is vetted and approved by the CEC as directed above. We also direct that the Tree Officers shall not entertain any application under Section 9 of the 1994 Act unless there is a declaration supported by documents about the number of applications made under Section 9 of the 1994 Act in that particular year regarding the same property. We also clarify that on the requisition being made by the CEC, the project proponent or the applicant who makes an application under Section 9 of the 1994 Act shall be bound to appear before the CEC.

TREE CENSUS

11. The most vital obligation of the Tree Authority under Section 7(b) of the 1994 Act is to carry out the census of the existing trees and obtain, whenever necessary, declarations from all owners or occupants about the number of trees in their lands. Though the 1994 Act is 30 years old, unfortunately, this important duty has not been performed by the Tree Authority. We must highlight the importance of carrying out the census of the existing trees. Unless the data of existing trees is available, it will be impossible for any of the Authorities to ascertain whether anyone has engaged in illegal tree

felling or cutting. Therefore, we direct the Tree Authority constituted under the 1994 Act to immediately undertake the census of the existing trees in terms of clause (b) of Section 7 of the 1994 Act. The Tree Authority shall appoint the Forest Research Institute (FRI), Kaulagarh Road, PO. I.P.E. 248195, Dehradun, Uttarakhand, as an Authority to carry out census in terms of clause (b) of Section 7 of the 1994 Act. The Tree Authority, as well as the FRI, shall take guidance from the following three experts: Shri Ishwar Singh, a retired IFS Officer; Shri Sunil Limaye, a retired IFS officer; and Shri Pradip Kishen, an ecological gardener. The Tree Authority, the FRI and the three experts shall act as a team. The funds required for carrying out the activities in terms of clause (b) of Section 7 of the 1994 Act shall be provided by the Government of India on the requisition being made by the Tree Authority. The Tree Authority shall immediately pass a formal order appointing the FRI and the aforesaid three experts. After holding meetings with FRI and the three experts, the Tree Authority shall file an affidavit before this Court setting out the manner and mode in which the census of the existing trees shall be carried out. The affidavit will also indicate the necessary timelines. The said affidavit shall be filed on or before 10th February, 2025, which shall be considered at an appropriate stage. We make it clear that all the Departments of the State Government, as well as the Government of India, shall assist the Tree Authority and FRI in carrying out the census work. Needless to add, while carrying out the census work, the second part of clause (b) of Section 7 of getting a declaration from

the owners and occupants shall be given effect. It will be open for the Government of India to utilise the Compensatory Afforestation Fund to meet the expenses of the trees census.

12. Coming back to the issue of granting permissions under Section 9 of the 1994 Act, we reiterate what we have stated earlier. The basic function and duty of the Tree Authority and the Tree Officers is to preserve the trees and, therefore, only in case of necessity and for good reasons that the permissions for cutting or felling of trees can be granted. It is obvious that the Tree Officer cannot grant permissions mechanically. Firstly, the Tree Officers will have to apply their mind after visiting the site whether the felling or trans-location of the trees as sought by the applicant is really necessary. The Tree Officers will make an effort to save as many trees as possible. This is the first satisfaction that the Tree Officers must record. Secondly, the Tree Officers cannot pass a mechanical order of compensatory afforestation. They will have to decide the type of trees which should be planted and also at which place. If the applicant has offered a particular land for compensatory afforestation, the Tree Officers will have to examine the site and, thereafter, apply their mind to which category of trees should be planted which are suitable for that land. While doing so, the Tree Officers shall consider whether, by pruning or by some other methods, the trees can be saved from felling. These are the broad considerations that the Tree Officers must consider while dealing with the applications for the felling of trees. However,

what we have laid down is not exhaustive. It will always be open for the CEC to lay down additional guidelines for consideration of the Tree Officers.

13. We reiterate that it will be the duty of the Tree Officers to implement all the suggestions/directions issued by the CEC.

14. The affidavits filed by the Tree Officers indicate that in the past, a number of permissions have been granted for the felling of trees. We direct the concerned Tree Officers to undertake a systematic exercise of ascertaining whether compliance with the conditions on which the tree felling was permitted has been made. The Tree Officers will also have to ascertain whether the plantations made by way of compensatory afforestation have survived. We grant time till the end of February 2025 to all the Tree Officers to complete this exercise. A comprehensive report shall be prepared by the State Government after collating the reports submitted by the Tree Officers so that this Court can initiate action. Needless to add, wherever the Tree Officers find that the breaches of the terms and conditions have been committed on which the permission for cutting or felling of trees was granted, the Tree Officers shall initiate action as provided in Chapter VI of the 1994 Act.

15. As in the earlier orders, we had flagged the issue of making available the proper infrastructure to the Tree Authority and the Tree Officers. At the appropriate stage, the CEC may ascertain whether the

infrastructural machinery provided to the Tree Authority and the Tree Officers is adequate and submit a report in that behalf to this Court. The report on that behalf shall be submitted by the CEC in the first week of March 2025.

16. Our attention is invited to Section 29 of the 1994 Act. Whenever the State Government exercises the powers under Section 29, we make it clear that the order under Section 29 shall not be given effect unless it is vetted and approved by the CEC. The orders will be subject to the orders passed by the CEC.

17. We clarify that the directions issued under this order will apply to all the pending applications under Section 8, read with Section 9 of the 1994 Act.

18. At the appropriate stage, we will take up the issue of strict implementation of the other provisions of the 1994 Act.

19. At this stage, we may note that for dealing with different issues, different dates have been assigned. We modify our earlier orders and direct that the issues shall be considered on the following dates:

Sl. No.	Issue	Date Given for Hearing
1.	IA No. 267661/2024 and 267966/2024 (application for intervention/impleadment and appropriate orders/directions on behalf of Manan Verma)	17.01.2025
2.	IA No. 77503 and 82069/2024 (applications for directions and permission on behalf of Indian Oil Corp): Counsel for A seeks further time for	17.01.2025

	instructions. Posted finally.	
3.	IA No. 230937 and 230939/2024 (application for setting aside order interim relief): Issue notice to the MCD and other parties.	17.01.2025
4.	To consider Report No. 189 of the Monitoring Committee. [regarding replacement of Mr. Nand Kishore Gupta]	17.01.2025
5.	IA No. 203618/2024: Direct MCD to respond to Para 6 of the affidavit dt. 06.12.24 within a period of 1 month.	17.01.2025
6.	IA No. 204094 and 218090/2024: Direct MCD to respond to Para 6 of the affidavit dt. 06.12.24 within a period of 1 month.	17.01.2025
7.	IA No. 140093 and 140094/2019: SC directed the applicant to implead Delhi Urban Shelter Improvement Board through its Chief Executive Officer as a party respondent to the application. Issue notice to the added party.	17.01.2025
8.	IA No. 181186 and 181193/2022: We grant time to the Delhi Government till the end of the year.	17.01.2025
9.	The Deputy Commissioner admits that 140 trees planted have not survived. Delhi Police to plant 280 plants of various species at an identified suitable land and will submit a proposal to the CEC. If CEC is satisfied with the location, it should decide the species of trees planted and communicate it to the Delhi Police. Exercise to be completed by 24.01.2025. For Compliance.	31.01.2025
10.	SC directs CEC to verify the correctness of the statements made in the affidavit of Shri Manoj Kumar, Chief Engineer including the rate of survival.	31.01.2025
11.	In Re: NBCC (Construction of Craft Complex, Vasant Kunj): Compliance affidavit is not clear about how many trees were felled or the number of trees planted by way of compensatory afforestation.	31.01.2025
12.	In Re: NBCC (Construction of CBI Housing Complex): A green belt of trees along with the boundary of the proposed site adjacent to the Sanctuary has not been made. CEC will verify	31.01.2025

	compliance regarding creation of percolation pond in terms of order dt. 09.08.18. CEC shall file an affidavit by 24.01.2025	
13.	In Re: Directorate of Revenue Intelligence: CEC shall look into all aspects of compliance with various terms and conditions of the order dt. 08.02.23 and submit a report by 24.01.25.	31.01.2025
14.	In Re: Ministry of Defence (Navy): CEC will examine the conditions for permitting right of way to lay 2500 meters long optical fibre cable.	31.01.2025
15.	In Re: JNU and MCD: JNU and MCD have not complied with directions contained in order dt. 06.09.24 and 25.10.24. For Compliance.	31.01.2025
16.	In Re: Report No. 192: DDA and MCD have not complied with the directions contained in para 25 of order dt. 25.10.24.	31.01.2025

20. If the CEC faces any difficulty as regards the implementation of the directions issued above, the CEC is free to submit a report to seek necessary clarification or further directions.

DIARY NO(S). 57901/2024

21. We permit the petitioner to file an additional affidavit within a period of three weeks from today.

22. To be listed on 17th January, 2025 at the end of the cause list.

**(ASHISH KONDLE)
COURT MASTER**

**(AVGV RAMU)
COURT MASTER**