



## NATIONAL GREEN TRIBUNAL AND THE ART OF LIVING CASE: A CASE OF MISSED OPPORTUNITY

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Environment protection became a focal point in the early seventies at the international level and since then, there is an increased awareness among the international community. The need to protect environment started from the Stockholm Declaration in 1973, with specific recognition of climate change in United Nations Framework Convention on Climate Change (UNFCCC), 1992 to the 2017 Conference of the Parties (COP 23) in Bonn, Germany. As an outcome of these deliberations, several concepts got infused into the broader spectrum of international environmental law. These concepts have permeated into domestic laws around the world and are now being applied by the courts in finding resolutions to issues relating to environmental degradation.

In India, the National Green Tribunal Act, 2010 established the National Green Tribunal (NGT) with an objective to exclusively consider cases related to certain legislations which regulate environment and its management. It is the only law in India which specifically recognises the concepts of sustainable development, precautionary principle and polluter pays principle.<sup>1</sup> This paper analyses a recent order of the NGT in applying the polluter pays principle.

NGT's recent decision<sup>2</sup> with respect to pollution of Yamuna flood plains by the Art of Living Foundation is considered to be a controversial case where the Tribunal applied absolute liability principle and polluter pays principle in making the foundation responsible for the pollution.

The Art of Living (AOL) Foundation conducted the World Cultural Festival from March 11-13, 2016 on the banks of the river Yamuna. Before the festival, an environmentalist, Mr. Manoj Mishra, had approached the NGT and sought stoppage of the ongoing construction for the event in Yamuna flood plains citing irreversible environmental degradation. The NGT allowed the conduct of the festival citing *fait accompli* even after an inspection by an appointed expert who also reported massive damage to the plains. Initially, the Tribunal imposed a fine of Rs. 5 crores on the AOL Foundation. However, an NGT appointed expert panel recommended a fine of Rs. 42 crores for the physical and biological rehabilitation of the flood plains. But the Tribunal in its final decision held the AOL foundation responsible for the damage caused and directed the already paid fine of Rs. 5 crores to be utilised for restoration activities by the Delhi Development Authority (DDA). It also held the DDA responsible for failing to do its statutory duties.

The liability on AOL Foundation was based upon absolute liability principle and polluter pays principle. But the question is on the interpretation of the polluter pays principle.

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<sup>1</sup>S. 20 of the National Green Tribunal Act, 2010, Tribunal to apply certain principles: - The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

<sup>2</sup>*Manoj Mishra v. DDA*, Original Application no. 65 of 2016, (M.A. No. 130 of 2016) dated 7<sup>th</sup> December 2017.

This decision is potentially damaging since such a mechanical application of the principle will set a bad precedent. It clearly gives an impression that as long as you can pay, you can pollute. Such an interpretation is widely discredited and the Supreme Court has also categorically rejected such an argument. In *Research Foundation for Science v. Union of India*,<sup>3</sup> the Supreme Court has clearly explained that “the polluter pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes... The principle also does not mean that the polluter can pollute and pay for it.”

The polluter pays principle has been explicitly used by the Supreme Court in various cases for making polluters liable for the pollution already caused.<sup>4</sup> But in this case, the NGT was approached even before the conduct of this festival and it was the Tribunal which granted the permission to go forward with the festival after paying up. Such an approach seems to give a prospect for all those who want to degrade the environment for their own purposes and settle it by compensation. The same case could have also been made to be a deterrent example for those who wanted to pollute if the NGT had given an exorbitant amount as compensation. Even the expert panel appointed by the NGT had suggested more amount to be charged as fine, but the Tribunal missed an opportunity for negative interpretation of polluter pays principle, which would have brought a positive outcome in the long run.

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<sup>3</sup>(2005) 13 SCC 186.

<sup>4</sup>*MC Mehta v. Kamal Nath*, 1997 (1) SCC 388, *Vellore Citizens' Welfare Forum v. Union of India*, AIR 1996 SC 2715; *Indian Council for Enviro- Legal Action v. Union of India*, J.T. 1996 (2) 196.