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## Case Comment: Manoj Mishra vs Delhi Development Authority

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### INTRODUCTION

The National Green Tribunal, or NGT, was formed on October 18, 2010, by the Central Government, under the National Green Tribunal Act 2010. Since then, the NGT has issued several decisions concerning environmental preservation and conservation. The government's major goal in establishing the NGT was to create a unique forum that could give quick and fair trials in environmental cases, however, the NGT's decisions have been widely criticized in the past. In the case of the Art of Living International Centre, NGT's attitude and handling of the matter were heavily questioned. The sole aim of this case study is to study and analyze the context, facts, concerns presented, and arguments on both sides. The Hon. Supreme Court in various cases has specifically used the "Polluter Pays Principle", to hold polluters liable for the pollution already caused<sup>1</sup>. In the present case<sup>2</sup>, a World Cultural Festival was held on the flood plains of the river Yamuna in New Delhi from 11<sup>th</sup> to 13<sup>th</sup> of March 2016. The event was

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<sup>1</sup> 'What is the polluter pays principle?' (LSE, 11 May 2018)

<<https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-polluter-pays-principle/#:~:text=The%20polluter%20pays'%20principle%20is,human%20health%20or%20the%20environment>> accessed 15 March 2022

<sup>2</sup> *Manoj Mishra v Delhi Development Authority* (2016)

organized by the NGO “Art of Living” founded by Shri Ravi Shankar, to celebrate 35 years of the organization since its inception in the year 1981. The National Green Tribunal was contacted in this matter even before the festival was to take place, and quite surprisingly the tribunal allowed permission to proceed with the event after paying damages. This move by the NGT acted as a weapon to the people who wish to damage the environment for personal benefits after compensating for the same.

## **FACTS OF THE CASE**

Manoj Mishra, a former Indian Forest Service officer and the convener of the campaign “Yamuna Jiye Abhiyaan”, filed Original Application (OA) No 65 of 2016 against the Delhi Development Authority (DDA) before the National Green Tribunal, Principal Bench, New Delhi, on February 8, 2016. The Art of Living (AOL) Foundation, the Ministry of Environment, Forest and Climate Change, and the Art of Living (AOL) Foundation was the other respondent parties to this OA. According to the petitioner, the Yamuna Flood Plains are environmentally endangered, yet the festival's decorations were stupendous. A 7-acre stage, billed as the world's largest and capable of holding 35,000 musicians and dancers, was built. New dirt tracks were erected, as well as 650 portable toilets dispersed across 1,000 acres. According to the organizers, 35 lakh people attended the event, with over 20,000 overseas guests. It was stated by the petitioner that this construction activity could adversely impact the river system. Thus, according to the applicant, an environmental impact assessment of the activity, which included construction work, was required. The petitioner also mentioned that the DDA wrongly permitted the Art of Living to hold the event on land in the riverbed/flood plain. This creates a hazardous precedent, as comparable disasters will wreak havoc on the ecology and deteriorate the river Yamuna and its flood plains. Because of these facts, as well as the fact that the event would cause irreversible damage to the flood plains and river, the petitioner approached the National Green Tribunal to urge that the existing construction work be suspended and that no activity on the Yamuna's flood plains is authorized. Shri Mishra also filed a formal complaint against the respondents with the Governor of Delhi on December 11, 2015, and then filed the current application with the NGT.

## ISSUES RAISED

- Whether Art of Living has caused irreversible environmental damage to the flood plains of Yamuna?
- Whether Art of Living is liable to pay any damages as a consequence of such adverse environmental impact and to restore the site to its pre-existing condition?

## RELEVANT LAWS

- Section 33A of the Water Prevention and Control of Pollution Act, 1974<sup>3</sup>.
- Section 6 of the Environmental Act, 1986<sup>4</sup>.
- Sections 15 and 17 of the National Green Tribunal Act, 2010<sup>5</sup>.

## ARGUMENTS FROM THE PARTIES

### PETITIONER

Initially, the petitioners' counsel argued that the Art of Living Centre had caused significant damage to the Yamuna River system in preparation for their mega-event, that the event would cause even more damage if it were allowed to take place, and that Art of Living had even failed to follow the guidelines outlined in the Yamuna judgment.<sup>6</sup> According to the petitioner, an environmental impact assessment of the activity, which included building work, was required. According to reports, the DDA erroneously allowed Art of Living to utilize land in the riverbed/flood plain for the event. It's a dangerous precedent because if such incidents continue to occur, the river Yamuna and its flood plains would suffer significant environmental damage and degradation. Finally, the applicant contended that, given the High Court of Delhi's decision in the matter of Times Global Village, an environmental impact assessment should have been conducted before allowing such an event, demonstrating the failure of the relevant authorities. The petitioner requested that all current construction work

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<sup>3</sup> Water Prevention and Control of Pollution Act, 1974, s 33A

<sup>4</sup> Environment Act, 1986, s 6

<sup>5</sup> National Green Tribunal Act, 2010, s 15 and S 17

<sup>6</sup> *Manoj Mishra v Union of India & Ors.* (2010)

should be halted and that no activity be permitted on the flood plains or along the Yamuna River in Delhi, as well as that an exemplary fine is imposed on the DDA and the Art of Living International Centre, and that immediate efforts be made to restore the river flood plain to its pre-existing status.

## **RESPONDENT**

The Delhi Development Authority (DDA) contended that it had been meticulous in carrying out its responsibilities, as well as in respect to the project under the High-Powered Committee's scrutiny. It further claimed that the region was not entirely under its control. The Ministry of Environment, Forests and Climate Change contended that because the Yamuna is a tributary of the Ganga, it falls within the jurisdiction of the Ministry of Water Resources, River Development, and Ganga Rejuvenation ('MoWR'), which also has responsibility for floodplain conservation. It was also added that since the event required minor and temporary construction, approval for the same was not required to be taken from the Ministry of Environment, Forests, and Climate Change. The Art of Living International Centre claimed to have received all essential permits and permissions from several regulatory agencies. It further claimed that the Yamuna verdict did not apply to them since it was not a party to the application, especially since it had already obtained all other licenses. It further claimed that the High-Powered Committee set up to analyze environmental effects had made incorrect findings, and that agricultural operations, debris dumping, and other activities had already devastated the floodplains long before. They had also filed an affidavit detailing several environmental activities that the said respondent had carried out in various states. The respondents lodged a preliminary objection, stating that the Applicant had wrongly designated Art of Living International Centre as a respondent instead of Vyakti Vikas Kendra-I, which is Art of Living International Centre's representative organization and through which all works are launched. As a result, it sought that the application is dismissed due to an essential party's misjoinder or non-joinder.

## JUDGEMENT OF NGT

Despite an inquiry by an assigned expert who also indicated severe damage to the plains, the NGT allowed the festival to take place based on *fait accompli* (something that has already been done). The Tribunal said that they are unable to accept the petitioner's request for a restriction order and a mandatory direction for the removal of construction and restoration of the area in issue at this time due to the petitioner's delay in approaching the tribunal and a *fait accompli* susceptible of restoration and restitution. The Tribunal also found that, while Art of Living had applied to various authorities for permission to hold the event, it was yet to receive approval from the Fire Department, Police Department, or the Ministry of Water Resources, which, according to the Notification dated July 31, 2014, is the authority responsible for Yamuna conservation, development, management, and protection. All of these institutions have failed to fulfill their public responsibilities with due attention. The Tribunal rejected MoEF & CC's claim that the foundation is not required to acquire its approval since MoEF & CC's stance contradicts the Notification, particularly when it comes to the development of an area larger than 50 hectares, as stated in the EIA Notification, 2006<sup>7</sup>. Based on expert views and data on file, the Tribunal observed that the flood plains had been substantially tampered with, causing damage to the river's natural flow, reeds, grasses, and natural vegetation on the riverbed. The river's marine creatures have been further disturbed, and the flood plains' water bodies and wetlands have been destroyed. The Tribunal on March 9<sup>th</sup> 2016 issued an interim order where it held the Foundation accountable for the restoration of the environmental damage it has caused to the river's flood plains. Also, exercising powers under sections 15 and 17 of the National Green Tribunal Act, 2010, the Tribunal imposed a fine of Rs. 5 Crore on the Foundation and a fine of Rs. 5 Lakh on the DDA for failing to perform its duties and the tribunal found out gross violations.

The Tribunal gave its final verdict on the 7<sup>th</sup> of December 2017 where it held the Art of Living foundation accountable for the environmental damages caused to the Yamuna flood plains and that it would be responsible for restoring the flood plains limited to the area allotted to it

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<sup>7</sup> Environment Impact Assessment, 2016

for conducting the event. It also added that the DDA would be free to ask for additional compensation from the foundation if needed to complete the restoration work.

## ANALYSIS

From the Judgement of the Tribunal, we can make out that the liability of the Art of Living Foundation was based on the principles of absolute liability and polluter pay principle. The question is how the polluter-pays concept should be used. This decision has the potential to be harmful since a mechanical application of the principle will set a bad precedent. It proves beyond a shadow of a doubt that you can pollute as long as you are financially capable to compensate for the damage caused. However, this interpretation is widely considered to be flawed, and the Supreme Court has also expressed its disapproval. The Supreme Court in the case of *Research Foundation for Science v Union of India*<sup>8</sup> has categorically observed that the polluter pay principle means that the producer of commodities or other items bears the cost of avoiding or remediating any pollution generated by the process. Furthermore, the concept does not mean that the polluter may pollute without being held accountable. In various rulings, the Supreme Court has explicitly used the polluter pay principle to hold polluters liable for the pollution they have already caused. In this case, however, the NGT was contacted before the event's conduct, and the Tribunal allowed permission to proceed with the festival following payment of the punishment. People who want to ruin the environment for their interests and compensate for it appear to have a road forward with this method. The amount of the compensation awarded by the NGT is another topic of debate because it is an expert tribunal that only deals with environmental matters. The original settlement, as established by the Tribunal's Expert Committee, was Rs 120 crore. Later, the sum was decreased to Rs 28.73 crore, which was assessed by the committee as the amount necessary to restore the compacted soil to its previous state. Finally, the Tribunal ordered the organizers to pay a deposit of Rs 5 crore, of which Rs 25 lakh must be paid in advance as a condition of organizing the event. The compensation that the NGT imposes aids in environmental rehabilitation. The tribunal, as an expert body, is supposed to appropriately assess the amount of compensation while taking

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<sup>8</sup> *Research Foundation for Science Technology and Natural Resource Policy v Union of India* (1995)

scientific uncertainty into account. As a result, the ordinary man, environmental activists, aggrieved parties, and polluters all have the right to expect that the amount of compensation will be more or less equal to the magnitude of harm suffered because the tribunal is staffed by technically qualified specialists. Furthermore, it is unclear if the attendance of high-ranking officials at the event impacted the tribunal's decision to reduce the compensation sum by such a substantial amount.

Although the NGT has the competence to evaluate environmental consequences, this instance reveals that it is highly unwilling to do so. The Expert Committee criticized the organizers for destroying the whole floodplain and removing the indigenous vegetation. The terrain is also "completely barren" of water bodies, and "no vegetation cover was evident whatsoever," according to the report. Surprisingly, the onus was put on the organizers, even though illicit agriculture had been practiced in the area for a long period before the event's planning had begun. Thus, it is crystal clear that the vegetation of the floodplains was cleared for practicing agriculture. Surprisingly, after completing thorough research on the same floodplain in 2013, the same Expert Committee had concluded that there was no natural vegetation in the region and that its biodiversity had already been seriously degraded. At that time, they had also submitted a report to the NGT titled "Restoration and Conservation of River Yamuna", where they had mentioned that the river's life-sustaining capability has already been gone, and "the flowing water, the river bed, the floodplain forest, and grassland ecosystems are locally extinct." As a result, the floodplain had lost its natural functions. Surprisingly, the NGT overlooked this inconsistency. Why would the organizers be held exclusively accountable for the floodplain's devastation if it had already been poisoned for so long? It's difficult to comprehend why the prior report was not taken into account when the order was passed in this case. Another flaw in the NGT's decision is that it did not hold the Delhi Development Authority (DDA) or any other government institution responsible. The authorities had to get permission from several authorities before they could host the event. Although the licenses were issued erroneously, the Tribunal should have sanctioned them for issuing them. Furthermore, why was the DDA or any other government body exonerated of responsibility

for the "destruction of all vegetation" since the area's ecosystem was in such disarray previous to the occurrence?

## CONCLUSION

The case is intriguing, and the NGT has been chastised for its dealing with the case. The tribunal was established to give actual form to the state's commitment to our care for the environment, and it is possibly the most significant and powerful entity in the country for deciding disputes involving environmental concerns and damages. The tribunal's primary purpose, in my opinion, should be to safeguard the environment. However, despite knowing that the Yamuna floodplains are significantly harmed from an environmental aspect, the organizers were able to proceed with the event, knowing full well that the floodplains' health would deteriorate much worse after such a large event. This decision has set a negative precedent since it encourages environmental degradation based on the 'pay and pollutes' concept. Also, the implementation of the Polluter Pays Principle must be worked upon. Seeing a polluter punished instills trust and a sense of justice in society, as well as deterring future polluters from putting the environment at risk.