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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on : 29.05.2023

+ W.P.(C) 2317/2023 & CM APPL. 8779/2023

PROF DR SANJEEV BAGAI & ORS. Petitioners

Through: Mr. Vivek Sibal, Sr. Advocate
with Ms. Anu Monga, Mr.
Rahul Goel, Mr. Shobhit
Sharma, Ms. Parul Parmar and
Mr. Paritosh Dhawan,
Advocates.

versus

DEPARTMENT OF ENVIRONMENT GOVT OF NCT OF
DELHI THROUGH ITS PRINCIPAL SECRETARY
(ENVIRONMENT AND FOREST) & ORS. Respondents

Through: Mr. Shadan Farasat, ASC for
GNCTD with Ms. Mreganka
Kukreja, Advocate.
Mr. Aditya N. Prasad (*Amicus
Curiae*) and Mr. Harsh
Vardhan, Advocate.
Mr. Anupam, Srivastava, ASC
GNCTD with Mr. Vasuh Misra,
Advocates for R-1, 3 and 5.
Ms. Sakshi Popli, Advocate for
DPCC.
Mr. Divya Prakash Pande, SC
for MCD.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).



1. At joint request, the petition is taken up for disposal.
2. This writ petition impugns the order dated 19.01.2023 passed by the National Green Tribunal ('NGT') in Original Application No. 911/2022. Mr. Vivek Sibal, the learned Senior Advocate for the petitioners seeks directions apropos the procedure adopted for pruning of trees under the Delhi Preservation of Trees Act, 1994 ('DPT Act') and the Guidelines for Pruning of Trees dated 01.10.2019 ('Guidelines'). The latter have been framed under the Delhi Preservation of Trees Rules, 1996.
3. He submits that the impugned order permitting pruning of trees, on the basis of the Guidelines is erroneous because such pruning is permitted without prior approval of and without even a site inspection or assessment of the tree(s) concerned by the relevant authority namely, the Tree Officer/Deputy Conservator of Forests ('DCF'). The Guidelines and the impugned order permit private parties/entities to prune trees even on land owned by the government (i.e. the MCD, DDA and PWD).
4. He refers to the judgment dated 16.03.2017 passed by the NGT (Western Zone) Bench, Pune in *Mr. Pradeep Indulkar vs. Municipal Corporation for the City of Thane and Ors.* in Application No. 157/2016 which has analysed a similar provision of law, regarding pruning of trees, under The Maharashtra (Urban Areas) Protection and Preservation Of Trees Act, 1975, and has discussed the issue as under:

“ ...

13. *The plants are thus inalienable component of*



'environment'. It is well known that plants, particularly, the trees, contribute generously to the environment in terms of maintaining delicate environmental balance, particularly, in terms of ambient air quality, and provide succor and shelter to other living creatures. The preamble to the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, reveals that the Act has been enacted to make better provisions for trees in the urban areas in the State by regulating felling of trees and providing for plantation of adequate number of new trees in those areas. The Act recognizes need for making better provisions for protection and Preservation of trees in the urban areas in the State in the face of growing urbanization and industrialization accompanied with indiscriminate felling of large number of trees in the urban areas. Thus, the object of this enactment to protect and preserve trees needs to be kept in mind while interpreting its provisions. It is correct that 'preservation of trees' as per Section 2(c) of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, includes 'other operations of survival and propagation of trees' and term "trimming or pruning" is nowhere defined in the said Act, but going by the Dictionary meaning 'trimming/pruning' involves 'cutting' as can be seen from the relevant text in the Oxford Dictionary of English, 3rd Edition, quoted hereunder:

Prune: verb [with obj] trim a tree, shrub, or bush) by cutting away dead or overgrown branches or stems, especially to increase fruitfulness and growth. Cut away (a branch or stem) in this way prune back the branches. Reduce the extent of (something) by removing superfluous or unwanted parts: the workforce was pruned. Remove (superfluous or unwanted parts) from something: Eliot deliberately pruned away details. Trim: verb (trim, trimming, trimmed) [with obj] 1. Make (something) neat or of the required size or



form by cutting away irregular or unwanted parts;

14. Section 2(c) of the said Act defines the phrase to 'fell a tree' in the following words: Section 2 (c) "to fell a tree" includes burning or cutting or [in any way damaging a tree;] On summarizing this definition, one can easily perceive that any act of damaging a tree amounts to felling of a tree. If trimming/pruning of a tree is done without taking a decision as to what wanted and unwanted parts of the tree are and what would be good or bad for proper growth and/or survival of the tree, it will do harm/danger than good to the tree. It is, therefore, essential before trimming/pruning is done to take an informed decision as to whether such trimming/pruning would in any way damage the tree and to what extent the tree can be trimmed or pruned without causing such damage.

15. The extracts of scientific literature produced before us by the Applicant points out, that trimming is a most common activity that is undertaken routinely on ornamental trees for maximizing their benefits. Vide Ex. 'N1' a literature on assay titled as 'Pruning Mature Trees'. This literature further suggests that over pruning is dangerous inasmuch as it is one of the worst and most common mistake in tree maintenance vide Ex. 'N-1'. Reading of excerpts from the literature produced on 'Pruning Do's and Don'ts', 3rd edition, (Ex 'K-1') makes available the following material observations: "Regardless of the state of life, there is no harm in removing the portion of branches that are dead, broken, spilt, dying, diseased, or rubbing against each other. However, indiscriminately removing branches with live foliage can reduce tree health and encourage development of weak structure. Anytime live branches are removed, some live wood transitions to non-living wood behind even a well-executed pruning cut. This



must be balanced against the improved structure that results from structural pruning. Removing a few small diameter branches typically has little effect". Dangers of over Pruning: 1. Large or Profuse Cuts Lead to Decay Any cut made on a tree is a wound that must be healed. The fewer cuts made the better, smaller cuts throughout the tree's life are better than large cuts that should have been made many years ago when the tree was small. One large poorly made cut or too many cuts in the wrong places can ruin a tree for life.

...

17. Section 8 of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, stipulates restrictions on felling of trees in following terms: 8. (1) On and after the date on which this Act is brought into force in any urban area, notwithstanding any custom, usage, contract or law for the time being in force, no person shall fell any tree or cause any tree to be felled in any land, whether of his ownership or otherwise, (2) If [any person, including an officer of the urban local authority or an officer of the State Government or the Central Government, proposes] to fell a tree, he shall apply in writing to the [Tree Authority] for permission in that behalf. The application shall be accompanied by 3[the description of the tree and] a site plan, indicating the position of the tree required to be felled and the reasons therefore. [(3) (a) On receipt of such application, the Tree Authority shall cause the Tree Officer to personally inspect the tree and hold enquiry and submit a report to the Tree Authority within a period of thirty days from the date of receipt of such application. Adequate public notice shall be given by the Tree Officer by advertising in local newspapers as well as by affixing a notice on a conspicuous part of the tree that is required to be fell. Thereafter, the Tree Authority may give permission with or without conditions or refuse it, within a period



of sixty days from the date of receipt of the application. However, no tree shall be felled until fifteen days after such permission is given: Provided that, no such permission shall be refused if, in the opinion of the Tree Authority, the tree is dead, or diseased or wind-fallen, or it constitutes a danger to life or property, or obstructs traffic; and if any objection is received against such permission, the matter shall be placed before the Tree Authority for reconsideration, and a decision shall be taken within two weeks after giving a hearing to the person who has raised the objection. (b) A report of permissions granted by the Tree Authority for felling trees shall be submitted at least once in six months to the concerned urban local authority in whose jurisdiction the Tree Authority is functioning. (4) If the Tree Authority fails to inform the applicant of its decision within sixty days, from the date of the receipt of the application by it, or if the receipt of the application has been acknowledged by it within this period, from the date of acknowledgement of the receipt of the application, the permission applied for shall be deemed to have been granted. (5) Where permission to fell a tree is granted [Tree Authority] may grant it subject to the condition that the applicant shall plant another tree of the same or other [suitable local species] on the same site or other suitable place within thirty days from the date the tree is felled, or such extended time as the Tree Officer may allow in this behalf situated within that urban area, except with the previous permission of the Tree Officer. 18. In clear and unambiguous terms the law lays down that “no person shall fell a tree or cause any tree to be felled in any land whether of his ownership or otherwise situate within that urban area except with previous permission of the Tree Officer” and if any person including an Officer of the Urban Local Authority, State Govt. or Central Govt. proposes to fell a tree, he shall apply in writing to the Tree Authority for permission in that



behalf. An elaborate procedure to deal with such Application is prescribed by law in the manner aforesaid. Nowhere have we found under the said Act any provision exempting the Tree Officer to give a go-by to the said provisions of law for the purposes of felling of trees which includes, in our opinion, trimming/pruning of the trees whether in routine or otherwise.

19. The public streets vest in the Corporation Respondent No.1 by virtue of Section 202 of the Maharashtra Municipal Corporations Act, 1949 and as such it is for Respondent No.1 Corporation which is an Urban Authority as per Section 2(g) of Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 to move an Application for the purposes of felling a tree on the public street, which includes its trimming/pruning as aforesaid to the Tree Authority for permission in that behalf....”

5. The said judgment also held the Municipal Corporation, Thane and the Tree Officer liable to pay environmental compensation and directed that some costs be paid. It also directed, *inter alia*, as under:

“22...

3.Respondent No.1 shall take necessary steps to ensure that census of trees adopting modern technology in digitized framework with geo tagging is duly completed within a reasonable period.

4.Respondent No.1 Thane Municipal Corporation shall evolve the procedure for dealing with the proposals of tree felling, including trimming/pruning of trees and maintaining its record keeping in view the procedure suggested by the Pune Municipal Corporation (PMC) in PIL No.93 of 2009 (Deepak Balkrishna Vahilkar



*and Anr. v. The State of Maharashtra and Ors.)
within two (2) months...”*

6. The learned Senior Advocate for the petitioner states that of the four directions passed by the NGT, directions (1) and (2) were set aside and the direction (3) and (4) were upheld by the Supreme Court by order dated 30.09.2019 passed in Civil Appeal No. 8946/2017. The Supreme Court’s order reads, *inter alia*, as under:-

“...We uphold directions Nos. 3 and 4 by which Municipal Corporation was directed to evolve a fair procedure to deal with the proposal of felling of trees including trimming and pruning of trees. However, directions 1 and 2 are set aside in the facts and circumstances of the case...”

7. The court agrees with the petitioner’s contention that the methodology and rationale of the order of the NGT in *Mr Pradeep Indulkar v. Municipal Corporation for the City of Thane* should be applied in the present case as well and NGT directions nos. 3 and 4, as upheld by the Supreme Court be followed and adopted for Delhi as well. GNCTD should evolve a fair procedure to deal with the proposal for felling of trees, including their trimming and pruning.

Analysis:

8. Section 8 of the Act prohibits felling of trees in Delhi, except by express prior permission of the Tree Officer. Under the Act, permission for felling, cutting or removal of the trees is granted by the Tree Officer on an application made under section 9. The said section stipulates that permission would not be refused in the



six circumstances enumerated therein. The grant of permission envisages the examination of: i) the trees at the site i.e. obtaining a prior view; ii) assessing the overall and specific situation obtaining at the site and thereafter iii) application of mind by the Tree Officer. In effect, for each such permission/application, a proper assessment would need to be carried out at the site.

9. Currently, application for such felling of trees is made in accordance with Rule 4 of the Guidelines. The format prescribed in Form-B requires the applicant to specify for each tree which is sought to be felled: i) its girth measured at a height of 1.35 metres from ground level, ii) the intended use of felled trees, iii) the purpose of land after felling of trees, as well as iv) appreciation of the species-wise number of trees existing at the site, amongst others. For verification of the detailed data as is to be provided in terms of the prescribed format, it would require the Tree Officer to visit the site and assess the factual position.
10. There may be occasions where rare species of trees may be sought to be felled. The more solitary a tree, the greater its significance. Therefore, the responsibility of protecting and nurturing the solitary tree is far greater upon the Tree Officer and the authorities concerned. A tree is a living being. It must be given, at least a “last look” and accorded a final inspection before a decision is taken to permit its felling or sanctioning extensive amputation of its live branches. In this regard, this court has noted and directed, in its order dated 28.04.2022 in Cont.Cas(C) 851/2021, *inter alia*, as under:-



“...7. The previous order shows that the Tree Officer has permitted a fully grown tree to be cut down. It was possibly about 25-30 years age having a girth of roughly 200 cms. It was abutting the road and a private land as seen in the photographs. For some reason, the Tree Officer chose not to see reason in retaining the fully-grown tree, which had been a part of the neighbourhood for decades and added to the ambience and the environment. He has permitted the cutting down of the tree. The Tree Officer will explain whether he inspected the site and assessed the tree before granting permission to cut it. It has to be borne in mind that permission is sought under the Delhi Tree Preservation Act, in which "preservation" of trees is the primary objective. The Tree Officer is repository of public faith and trust, that trees which form an essential part of people's lives are not allowed to be cut needlessly or wantonly. The statutory duty cast upon the Tree Officer necessarily requires assessment of the necessity to cut a tree for the project for which the permission is sought. A site visit would be prudent. The shortage of Tree-Officers, necessary support staff, cannot be an excuse for granting permission for cutting down trees in the city. The adverse environmental impact of such denudation is all too well-known. Compensatory afforestation if at all carried out, on the fringes of the city, far-removed from the congested areas of human habitation, where the sole decades-old-tree once stood as a carbon-sump-cum-fresh oxygen generator-cum-shade provider-cum-visual respite from the ever increasing concretization; the geographically distant and nascent compensatory plantation can hardly be of any respite or actual compensation. In any case, it will take decades for the compensatory forests to be of any reckonable benefit. In this capital city with its ever-burgeoning populating, the cacophony of voices and rampant commercialization of every other street - robbing the residents of the familiar ambience of their residential neighbourhood, the ever-increasing motor-



vehicular traffic, the choking air-pollution and the ever-creeping concretization, trees hold out as welcome and assuring living entities of hope, sanity, environmental redemption and even companionship. The more solitary the tree, the greater its significance. Therefore, the responsibility of protecting and nurturing the solitary tree is far greater upon the Tree Officer and the authorities concerned. Photographs of remnants of the cut tree are reproduced hereunder:



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8. In the circumstances, it would be appropriate that the Tree Officer(s) give due consideration to transplantation of each tree which is sought to be cut, before granting any further permission for cutting of trees. This would entail inspection of the trees which are sought. The reason for grant or denial of permission would have to be spelt out in the order of the Tree Officer along with photographs of each tree.”



11. Since section 9(2) of the Act mandates upon the Tree Officer to inspect the tree and conduct an enquiry as may be requisite, a visit to the site is imperative for assessing the situation comprehensively. In this regard, the court has observed on 10.05.2023 as under:

“3. With each redevelopment of a house or building, abutting city streets, if applications are moved by the land-owning agency such as the PWD, DDA, Municipal Corporation of Delhi, Cantonment Board, etc. for cutting of trees in front of private houses, in order to facilitate construction of new building/houses, and permission to cut the trees is granted simply on the averment that the trees were coming in the way of reconstruction, then sooner or later the city will be bereft of tree-lined avenues and a large part of its green cover. In a way this would be a creeping legalised genocide of trees and Delhi would soon resemble nothing but a mass of concrete. Paragraphs 9 and 10 of the aforesaid guidelines are ex facie incongruent with the provisions of the Delhi Preservation of Trees Act, 1994. In case there is an exigency for cutting down trees for large public projects or if it is absolutely necessary to cut down trees on a private entity’s application, it will require the Tree Officer to personally inspect the site, assess the situation, apply his mind and if required, permit the cutting of a tree but only after having first exhausted all possibility of saving the tree and ensuring its transplantation, along with compensatory afforestation.”

(Emphasis supplied)

12. Section 33 of the DPT Act, gives powers to the Government to give directions, general or special, to the Tree Officers and other



officers, regarding the discharge of their functions and for effectively carrying out actions in support of the objectives of the Act. The Guidelines for Pruning of Trees are essentially an informal administrative handbook to assist the Officers of Department of Forests and Wildlife. They are not a part of any statute. They do not carry a statutory flavour or character. The sole objective of the DPT Act, is preservation of trees. The granting of permission for cutting, girdling, lopping, pollarding, etc. of trees is to be strictly regulated and such permission is not to be granted for the asking. Yet the Guidelines permit cutting/pruning of branches of trees having a girth/circumference upto 15.7 cms. How did this figure come about? What is the scientific basis for reaching that figure? What is the justification for applying the same thickness of branches to all species of trees in Delhi? Some trees may have slim trunk girth. For such specific species and otherwise too, the entire tree could well be wantonly pruned to reduce to a mere pole-like structure, as has been done to some trees in this case. Photographs of some instances of *ex facie* unjustified pruning were reproduced in the previous order dated 11.04.2023, they are reproduced hereunder too:-





13. How can there be justification for such pruning? These are glaring examples of misuse of the generous permission granted under the Guidelines to prune trees/tree branches having a girth upto 15.7 cms. Had the Tree Officer been accorded an occasion



to inspect these trees before they were pruned, perhaps the hapless trees would not have suffered their current fate. Was it examined or ascertained by the Tree Officer or for that matter by any authority, whether the branches of the many trees which were pruned, were dead, diseased, dying, split, broken or constituted a threat to life or property or obstructed traffic? Was it ascertained whether the extensive and possibly indiscriminate, cutting of branches with 'live foliage' would not adversely affect the health of the trees? Was it examined, ascertained or estimated that the trees had been or could be over-pruned? If the answer to the last question is in the affirmative, then the sequiter dangers that would afflict the health and life of the fully-grown trees should have been minimized. Was it inspected if there was concretization around the tree-trunk, which could be affecting or had compromised their health and stability, therefore, the pruning of such trees would neither be advisable nor prudent? The answer to all these fundamental and relevant questions is in the negative. The Guidelines ride roughshod over all these concerns and grant a general permission for pruning of tree branches having a girth of upto 15.7 cms. The occasion to the Tree Officer to inspect or assess the health of the trees, the necessity or justification for pruning has been sought to be scuttled and taken away by the Guidelines. What is the scientific methodology employed to measure that the pruning was done only upto a girth 15.7 cms and not beyond, is not known or specified. Evidently, it is a mere guesswork. An estimation. The Guidelines are not a statutory



enactment or an amendment of the statute. They cannot abridge the mandate of the statute. Even a Regulation or Rule, which are creatures of a statute cannot limit, undo or transgress the powers, objective and mandate of the statute itself.

Conclusion:

14. Under the Act there is no sanction for the 15.7 cms girth of a tree branch to be cut. Therefore, this figure is incongruous with the statutory requirements as mandated under sections 8 and 9 of the DPT Act. The so-called permission granted under the Guidelines seek to over-reach the statute. The Guidelines, are in conflict with the DPT Act, they are arbitrary and illegal. Consequently, the permission for pruning, presumed to be or granted under the Guidelines would be of no consequence and shall always be *non-est*. Therefore, the Guidelines permitting regular pruning of branches of trees with girth upto 15.7 cm without specific prior permission of the Tree Officer are hereby set aside. The only permission that can be granted for pruning, etc. is under section 9 of the Act.
15. In view of the above, no pruning of trees will be permitted in Delhi except in accordance with the DPT Act. It will be open to the respondents to frame guidelines and/or rules as may be requisite.
16. As regards, the petitioner's reservations apropos the personal observations about him in the impugned order, the court is of the view that in the light of substantive orders having been passed in this petition, the personal observations stand superseded and



would be of no relevance. They stand expunged. The learned counsel for the petitioner says, upon instructions, that in view of the above, he would seek to withdraw his petition before the NGT. The petitioner would always have the liberty to pursue all remedies as may be available to him in law.

17. As regards the complaints and specific grievances in this case, the learned counsel for the Tree Officer submits that he has received instructions as well as copies of the record of the proceedings on various dates before the Tree Officer. He assures the court that the matters will be expeditiously proceeded with in accordance with law.
18. In W.P (C) 12271/2022 titled *Rajiv Dutta vs. GNCTD & Ors.*, this court had directed that complainants and public spirited persons who bring to the notice of the Tree Officer, DCF, any harm to trees or breach of statute or would be “*required to be heard apropos complaint made or otherwise be kept informed throughout the proceedings...*”. There should be no denial of natural justice in proceedings initiated before the Tree Officer. Therefore, apropos the conduct of *quasi-judicial* proceedings, imparting of refresher courses, to the Tree Officers, DCF would be of some assistance. The GNCTD is directed to arrange refresher training courses as maybe requisite, which would also cover the conduct of hearings through hybrid mode, e-filing of petitions, replies, etc., for the benefit of Tree Officers, DCF and other Officers of the Department, at the Delhi Judicial Academy, within four weeks of receipt of this order.



19. The petition stands disposed-off in terms of the above.

NAJMI WAZIRI, J

MAY 29, 2023

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HIGH COURT OF DELHI



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