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Case Analysis on Hauz Khas Eateries Case by IRAC Method

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ABSTRACT

The environment is the critical part of one's life. The habitat we live in, the surroundings all of that is impactful in our live. The famous area in heart of South Delhi, that is the Hauz Khas which was once, considered as the hub of restaurants, bars, clubs cafes and eateries. The night life here was one of the most hyped. The recent case of Hauz Khas Eateries being closed on the order of high court was all over. This happened in the beginning of year 2020, in the month of February the judgement came to close approximately 120 outlets in the area. The area was one of the narrowest and the steepest. The restaurants were one on the another with no, "no objection certificate" making it not legal. There were no boilers, ventilation system, the water was also drawn from ground water without the permission of the competent authorities and no effluent plant treatment. The other problem which arose was the area was so thin, that if any emergency arises to call the fire brigade, then it would not be possible to let it in the lane. The case was earlier filed in the national green tribunal and then one writ was filed in high court followed by the public interest litigation. So, the national green tribunal also directed to close 33 eateries, rest were directed to develop effluent plant treatment before starting the outlet again and were fined too. The special committee was also established by the same court to supervise and monitor the working. The case study mainly focuses on the environmental issues associated along with the analysis of environmental laws being infringed. Lastly, the conclusion is drawn towards to help the unemployed people due to this decision by creating an environment friendly eatery hub.

I. PUBLIC INTEREST LITIGATIONS FILED

- PANKAJ SHARMA v. SOUTH DELHI MUNICIPAL CORPORATION AND ORS
(High Court Of Delhi), W.P.(C) 1393/2013 | 03-02-2020
- ANUJA KAPUR v. UNION OF INDIA & ORS
(High Court Of Delhi), W.P.(C) 258/2017 | 03-02-2020

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BENCH: Hon'ble Chief Justice D. N. Patel & Hon'ble Mr. Justice C. Hari Shankar

II. FACTS

The two Public Interest litigations were filed by the social activist based in Delhi named Pankaj Sharma and the other one was filed by the Advocate Anuja Kapur who is also a criminal psychologist. Both of these Public Interest Litigations aimed to the closure of 120 eateries in Hauz Khas which were illegally constructed and there were certain mal practices going on as pointed out by the petitioners. There was a case which was filed prior to these petitions before the **National Green tribunal**, in the matter of *Pankaj Sharma V/s MoEF & Anr. (Member Secretary of the Delhi Pollution Control Committee)*. In this case before the National Green Tribunal it was highlighted by the petitioner that there are more than 20,000 eateries which are not established as according to the provisions of Water Prevention and Control of Pollution Act 1974 and the Air Prevention and control of Pollution Act 1981. The main arguments between all the cases were regarding the improper sewage system, steep road, overcrowding and no place for the entry of fire extinguisher. The other major aspect here was no objection certificate no being granted to the operating eateries. The case was decided by the National Green Tribunal in 2013, when the said petitioner moved to the high court and the judgement by the high court was delivered in 2017 to close large number of cafes and bars in Hauz Khas Village. The Public Interest Litigation was truly for the benefit of environment which will also serve to be good in coming years but it made 700 people lost their jobs who were employed under these food outlets.

The main purpose was that the said business was being run without procuring the requisite permission, licenses and NOC from the concerned authorities as stated by Pankaj Sharma.² Whereas the other petitioner Advocate Anjua Kapur stated to impose complete ban on illegally violation of law, in convenience with local police NDMC and Mafia's on that Hauz Khas area. South, Delhi.³

III. PROCEDURAL HISTORY:

The case was first filed in the National Green Tribunal situated in New Delhi by Pankaj Sharma in 2013, in that case the competent authority that is the Delhi Pollution Control Committee.

It was questioned regarding the operations of these restaurants which did not have proper

² <https://www.legitquest.com/case/pankaj-sharma-v-south-delhi-municipal-corporation-and-ors/196B7> (Aug 20, 2020, 2.09pm)

³ <https://www.legitquest.com/case/anuja-kapur-v-union-of-india--ors/196B74> (Aug 29, 2020, 5.10pm)

Effluent Treatment Plant and still were working. They were directed to inspect and submit the report in which they named the cafes who had the proper system, some of them which were in establishing of the same and lastly those which were not having the same. The direction was given by the National Green Tribunal to the café to not operate till full implementation of the Effluent Treatment Plant and proper drainage system for health hazards. Meanwhile the writ petitions were filed in the high court by the two different petitioners which were brought light upon.

IV. ISSUES

The main issue here was to establish good environment for well-being general public. The other issue was aimed to the removal of Mafia gang in the area. The ban on the violation of law, illegal construction and not obtaining of the no objection certificate, but still working. The allegations were laid down that these restaurants were not in-accordance with the governmental rules, laws and policies. The improper implementation of the sewage and drainage system. The other parts of concerned were the absence of Effluent Treatment Plant and improper disposal mechanism. The other issue was the fact that the village was steep, had narrow roads which in case of mishappening or emergency would not lead the fire extinguisher to enter. This might lead to the major disaster and a threat to numerous lives. The restaurants, cafes and bars were also taking potable water from the ground without prior approval of the competent authority which in court's view was not permissible. The claims were mailed by the respondents that they used to take water from Delhi Jal Board portable water bottles, but it was not the same for all. There were numerous restaurants on one another, four or five stories which had several mal practices going on in the light of eatery. The basic aim of these social activists was to protect the environment, the people and eliminate the mafia concept of the area.

When the matter was brought before the National green Tribunal, they in the end had made a committee to regular the functioning of the establishment of Effluent Treatment Plant in context to Water Prevention and Control of Pollution Act 1974 and Air Prevention and Control of Pollution Act 1981. Whereas the high court gave the direction to close 120 eateries.

V. RULES

The rules according to the establishment of the business is such that the occupier under Section 25(4) of the Water Prevention & Control of Pollution Act, 1974 and according to Section 21 of Air Prevention & Control of Pollution Act, 1981, and according to the Rules

and Orders mentioned for the business to be laid or formation of any café, eatery or bar, the authorized occupier shall operate or at least carry out the industry or activity (herein the café, restaurant or pubs) to make discharge of the effluents and emissions. The Section 25 (5) of the Water Prevention & Control of Pollution Act, 1974 was also highlighted here with the factors to the appropriate disposal of the waste management. If the said section not executed as the it states then the person liable for the same and shall be caught against the charges to put up the treatment system for the purpose of abating or spreading pollution and nuisance. The authorities giving the consent to such harmful practice shall also be considered for the same.

The National Green Tribunal under this particular case as filed by the Pankaj Sharma also appointed a committee who shall be carrying out periodic inspections, supervise and suggest the appropriate means and various ways to be followed to run the restaurants or the bars. But lastly, the ban was imposed by the Delhi High Court after hearing the case regarding the illegal construction of these place and for the well-being of the people along with the environment at large.

VI. ANALYSIS OR APPLICATION

The writ petition of mandamus was filed by Pankaj Sharma in High Court under section 226 to refrain these eateries to carry out their business. The request under prayer was to immediate, prompt and appropriate legal action of sealing and demolition against the illegal and unauthorized construction. On the other hand Anuja Kapur claimed impose complete ban on illegally violation of law, succeeding to establish good environment for well-being general public.

In 2013, when the matter was presented before the National Green Tribunal, the respondents pleaded with respect to Article 19(1)(g) "Freedom to carry out business" as their defence. But this issue was not able abrogating their business, instead it was about the business to be done in the right place, legally and in the right manner with the rules. The eateries which were pointed out by the court to be closed, their water and electricity was directed to be cut on the immediate basis. Approximately 11 restaurants were highlighted to be working only after they have established the Effluent Treatment Plant, as per the committee they were working on it. The time was given to them but they were fine of Rs 10,000 and were asked to deposit the same in the legal aid account of the tribunal. The other point which was put forward by the opposite party was that in so far as it relates those restaurants which were concerned as the level of pollution was not of serious nature and that the restaurants have at last realised

that the Delhi Pollution Control Committee is the authority and they are bound to seek permission from it, conditional permission granted would not amount to violation of law. Furthermore they added that they found that not complying with the standards of boiler and the air pollution level is not within prescribed limit. In contrary to that court held that those belonging to the authorised authority which is responsible, if are not working as according to the norms and parameters of environment then they also be treated in the same category as of the defaulter. The tribunal also made a different committee within this case, to supervise the same problem.

VII. CONCLUSION

This issue was a big one, it appeared to be lavish lane which was earlier a village. The lane was indeed steed and the arguments put before the court were absolutely right were as the opposition did not have much concrete defence to stand on. The court's judgement regarding closure of 120 illegal eateries were absolutely right in terms of law and environment. The problem of fire extinguishers not accessible was a major one, boiler and ground water issues succeeding it. This judgement has a lot of benefits but the only drawback which makes approximately 700 people jobless. The main aspect which was highlighted here was had it been permitted the installation of Effluent Treatment Plant in the restaurants run illegally in residential areas, it would amount to permitting the commercial activities in the residential area which would give the wrong idea to people. The other part which in my opinion was strongly declared was reference given to the Water Prevention and Control of Pollution Act 1974, that the court is not hesitant to hold that by permitting a defaulter to act as per the provisions of law, the same can never be taken to be as perpetuation of environmental hazard in that area. Hence, the court was just and not at all biased to the government officials, instead they were told that if they were found being ignorant of these areas they will be treated at defaulters too. The right step was taken by tribunal as the appointment of the new committee was done under this judgement of National Gren Tribunal as the Delhi Pollution Control Committee only has 26 scientist which are less than in number which are needed.

Lastly, I would like to suggest that to over the people who have been unemployed due to this judgement the government should make the complex in the suitable area. The area should be accessible to all, and the place shall be given to the eatery owners and the norms of the government shall be followed. The suggestion is in context to the benefit of all, the environment friendly place or norms and environment and no loss to the restaurant owners.

VIII. REFERENCES

1. <http://www.indiaenvironmentportal.org.in/files/Hauz%20Khas%20restaurants%20NGT%2025Sep2013.pdf>
2. <https://www.outlookindia.com/website/story/shutters-down-deserted-lanes-delhis-hauz-khas-village-is-fighting-for-survival/302429>
3. https://www.stjohns.in/images/standarduploads/JCYzEc_5.%20Air%20&%20Water%20Acts%20concent.pdf
4. <https://timesofindia.indiatimes.com/>
