

# Mr. Vivek Sheshrao Dhakane vs Maharashtra Tourism And Development ... on 28 April, 2023

BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE  
(By Video Conferencing)

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Original Application No. 72/2022 (WZ)

IN THE MATTER OF:

1. Mr. Vivek Sheshrao Dhakane  
R/at: House No. 6, Pagaria Colony,  
Opposite Goldie Cinema,  
Station Road, Bansilal Nagar,  
Aurangabad- 431 001.
2. Mr. Shrikant Madhukar Mahajan  
R/at: House no 10, Pagaria Colony,  
Opposite Goldie Cinema,  
Station Road, Bansilal Nagar,  
Aurangabad-431 001.

.....Applicant(s)

Versus

1. Maharashtra Tourism and Development Corporation,  
Principal Secretary,  
229A, Annex Building,  
Mantralaya, Mumbai- 400 032.
2. Maharashtra Tourism and Development  
Corporation, Senior Regional Manager  
Regional Office MTDC Holiday Resort, M.T.D.C.,  
Station Road, Aurangabad- 431 001.
3. Maharashtra Pollution Control Board  
ParyavaranBhavan, A-4/1, MIDC Area,  
Chikalthana, Near Seth Nandlal Dhoot Hospital,  
Jalna Road, Aurangabad - 431 210.
4. The Commissioner,  
Aurangabad Municipal Corporation,  
Main Building, Town Hall, behind Post Office,  
Aurangabad, Maharashtra 431 001.
5. The Commissioner of Police,  
C.P Office, Dr. B.R.Ambedkar Marg,  
Mill Corner, Aurangabad City,  
Maharashtra- 431 001.

6. The State of Maharashtra,  
Through its Chief Secretary,  
Raj Bhavan, Walkeshwar Road,  
Malabar Hill, Mumbai 400 035.

.....Respondent(s)

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Counsel for Applicant:

Mr. Asim Sarode, Advocate

Counsel for Respondent(s):

Ms. Anuya Sagare Kulkarni, Advocate for R-1 & 2/MTDC

Ms. Manasi Joshi, Advocate for R-3/MPCB

Mr. Aniruddha Kulkarni, Advocate for R-4/AMC & CPCB

PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)

Hon'ble Dr. Vijay Kulkarni (Expert Member)

Reserved on : 27.03.2023

Pronounced on : 28.04.2023

#### JUDGMENT

1. The present Application has been filed with the prayers that MTDC Resort, Aurangabad (Respondent Nos. 1 & 2) be directed to stop all such activities like marriage ceremonies, orchestra, functions that create noise pollution; penalty be levied from Respondent No. 1 for violations of law and various Judgments as well as Rule 26 of the National Green Tribunal Act, 2010 read with Rule 6 of the Noise Pollution Control Rules, 2000; contempt proceedings be initiated against Respondent Nos. 1 & 2 for violating various directions; Respondent No. 3/MPCB be directed to strictly maintain month-wise records of complaints regarding noise pollution and air pollution and prepare Action Taken Report regularly; the Commissioner, Aurangabad Municipal Corporation/Respondent No. 4 be directed to initiate action against incidents of noise pollution within the limits of Municipal Corporation and monitor zone-wise noise levels and Respondent No. 4 be also directed to submit zone-wise map defining Industrial, Commercial, Residential and Silence zones within the limits of AMC; Respondent No. 5/Commissioner of Police be directed to take cognizance against noise pollution related complaints and initiate criminal proceedings against the violators; Respondent No. 6/State of Maharashtra be directed to design SOP for coordinated work by all agencies including Municipal Corporations/Councils, Police and MPCB against noise pollution.

2. In brief the facts of this case are that Respondent Nos. 1 & 2/MTDC Resort is situated next to Pagaria Colony, Station Road, Aurangabad. The Applicant (Mr. Vivek Dhakane), on behalf of all residents of Pagaria Colony is feeling aggrieved by the constant nuisance of noise pollution, has approached before this Tribunal. The MTDC Resort, Aurangabad is rented for various programmes and functions including marriages, orchestra and public meetings etc. While celebrating the said functions in the said Resort, loudspeakers, firecrackers, music bands and DJ etc. are being used,

raising the decibel level of noise more than 90 dB, which is measured by the residents of Pagaria Colony and the same is much higher than the permissible limits as per the Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter to be referred in short as 'Rules of 2000'). The said residential colony, consisting of more than 25 bungalows, is located in the main city of Aurangabad. There is a school named 'Nutan Vidyalaya' situated about 100 meters away from the MTDC Resort. The area falls in the definition of "residential area and silence zone" in accordance with Section 3(2) read with the Schedule of Rules of 2000. The definition of "Silence Zone" is given under Rule 3(5) of Rules of 2000, which provides "An area comprising not less than 100 meters around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these Rules". It is obvious that silence zone is not given any restricted meaning under the Rules but it is a zoning allowed to be carried out by the Competent Authority irrespective of existence of the location of an educational institute, hospitals or Courts.

3. Further, it is mentioned that above three places are to be considered as the places of Silence Zone irrespective of such declaration by the Competent Authority. In any residential area, the maximum noise level allowed is 55 dB in day time and 45 dB in night time. The noise level should not exceed 50 dB in day time and 40 dB in night time, as per the "Ambient Air Quality Standards in respect of Noise Schedule" of the Rules of 2000. Besides that the Respondent No. 1 does not have consent from the Competent Authority to carry out activities of Marriage Hall and Conference. The Respondent No. 4/Aurangabad Municipal Corporation had sent a Final Notice on 04.05.2022 before the initiation of legal action against the Manager, MTDC, Aurangabad, expressly stating there-in that several complaints have been received against them due to blatant violations of Rules of 2000 and failure to stop such illegal activities of noise pollution, which resulted in initiation of legal action under various laws by the Police Authorities.

4. It is further mentioned that the guidelines have been given by the Hon'ble Supreme Court in Civil Appeal No. 3614/2016, in pursuance to which Circular dated 24.11.2016 was published by the Maharashtra Pollution Control Board, providing there-in 'Guidelines for Marriage Hall/Lawns and Club Houses', where-in it is clearly mentioned that the Rules of 2000 along-with its amendments shall be strictly followed. Relevant portion pertaining to Noise pollution control measures is as follows:-

" Use of Loudspeakers/D.J. System/Dolby System in Marriage Halls/Lawns and Club House shall require prior permission of competent Authority, so as to avoid nuisance in nearby /surrounding area of Marriage 1-falls/Lawns and Club House. No one shall beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10.00 p.m and 6 a.m.).

Acoustic enclosure/ sound barriers shall be provided at Marriage Halls/ Club House and within the Lawn premises natural dense vegetation shall be done so as to maintain prescribed standards of noise at the periphery of Marriage Halls/ Club House and Lawn.

The peripheral noise level shall not exceed more than 5 dB (A) than the ambient air quality standards specified for the area in which it is used, at the boundary of private place. There shall be a complete ban on bursting sound emitting firecrackers between 10 pm and 6 am.

Noise Pollution (Regulation and Control) Rules, 2000 and its amendments there off shall be strictly followed."

5. The Applicant has measured the sound level of the Pagaria Colony during the marriages/orchestra/dhol-nagada being played in the premises of Respondent No. 1 on different days and on different times and it was noticed that the measurement of sound level is around 97dB during day time i.e. much above the prescribed limit. The MPCB has shown no interest in taking action on the complaint made by the Applicants, even Respondent No. 4/The Commission, AMC has also not followed their duty in containing the noise pollution within prescribed limit. The Applicants had made complaints on 17.12.2021 to all the relevant authorities noted in para no. 20 of the said application but to no avail and reminders there- of were also sent on 23.02.2022 and 24.02.2022 but even then, nothing happened.

6. It is further mentioned that the Principal Bench of NGT recently around 03.03.2022 had issued directions/guidelines regarding all hotels, restaurants in Haryana and that without sewage treatment plant, no hotel and resort would be run and that all such resorts and hotels would require permission under provisions of Water (Prevention and Control of Pollution) Act, 1974. Therefore, the Applicants also seek relief to be allowed along- with the other prayers made by them. A reference is also made of the Judgment delivered in Dr. Mahesh Vjyay Bedekar v. State of Maharashtra (2016 SCC OnLine Bom 8894), where-in specific and elaborate directions are given in case of failure of concerned authorities to implement the Rules of 2000, which are as follows:-

" a. Appropriate redress mechanism shall be created by all Municipal Corporations for receiving complaints in accordance with Rule 7 of the Noise Pollution Rules.

b. In case of any complaint received by the authority as regards to non-compliance with the Noise pollution rules the concerned authority shall set criminal law in motion by taking recourse to Section 19(b) of the Environment Protection Act. c. That State Government to take action against authorities constituted under the Noise Pollution Rules in the event of their failure to take prompt action as contemplated by Rule 7(2) and Rule 8 of Noise Pollution Rules as the failure on their part results to violation of fundamental rights under Article 21."

7. A reference is also made of other landmark Judgment such as Forum, Prevention of Environmental and Sound Pollution v Union of India and Others (2005 5 SCC 733), Original Application No. 53/2015 (Vivek Sheshrao Dhakane v Maharashtra Tourism Development Corporation and Others). In Original Application No. 53/2015, it was clearly directed to the Respondent No. 1/MTDC that not only in Aurangabad but elsewhere also, they will stop such illegal activities, particularly, so-called "Wedding Tourism" concept. Against the said Judgment, appeal

was heard by the Hon'ble Apex Court and the said Judgment was upheld. Since November, 2021, Respondent No. 1/MTDC Resort, Aurangabad is going against the order passed by the NGT, Western Zone, which amounts to grievous civil contempt under Section 2 (b) of the Contempt of Courts Act, 1971 and also the same being willful disobedience of the Judgment passed by the Hon'ble Supreme Court of India. A reference is also made of the Judgment passed by the NGT in O.A. No. 08/2015 (Sujal Sahakari Gruha Rachana Sanstha Maryadit v The Commissioner Pune and Others), where-in it was laid down that "d) there shall not be any use of loud speakers and bursting of fire crackers at the marriage halls/lawns without specific written permission from the competent authority contemplated by Rules of 2000 or any other law for time being in force in that regard". A reference is also made of the Judgment of NGT passed in Western Green Farms Society v Union of India (2021 SCC Online NGT 3), where-in, in the matter of excess noise pollution and violation of environmental norms by restaurants/ hotels/motels/ banquets etc., it was held that the conduct of such functions must not disturb other citizens' right to peaceful and clean environment and it was mandated that the unit shall obtain permission from designated authorities as per provisions of Rules of 2000 and that the unit shall comply with the provisions specifically of Rule 5 and Rule 6 of Rules of 2000. Remedial action for restoration of environment and compensation for the victims was directed in the said case, hence the above prayers have been made.

8. This matter was first heard by us on 26.08.2022 and notices were directed to be issued to the Respondents.

9. Service affidavit has been filed, as per which service of notice upon all the Respondents is found to be sufficient.

10. From the side of Respondent No. 3/MPCB, a reply affidavit dated (nil) has been filed, where-in it is submitted that it is obligatory for the Respondent No. 1 to obtain Consent to Operate under Section 25 & 26 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 because as per the CPCB categorization, the said industry falls under consent regime. The Answering Respondent visited the site of Respondent No. 1 on 12.10.2022 to verify the compliance as per the CPCB guidelines and following were found:-

"

i). The said Resort/Hotel is in operation with 82 nos. of room; 15 nos. of rooms were occupied and there was no any event being held at the time of visit.

ii). The Resort is in operation without obtaining consent from the Board.

iii). The Resort has not provided STP for the treatment of generated wastewater and at present untreated sewage is discharged into municipal sewerage collection system.

iv). The Resort has not provided organic Waste Converter (OWC) for disposal of MSW waste and presently generated MSW is disposed to Municipal Ghantagadi.

- v). The Resort has not provided Rainwater Harvesting system.
- vi). The Resort has installed DG sets of capacity 125 and 33 KVA with acoustic enclosure.
- vii). The Resort has provided fire safety arrangement with 40 nos of fire extinguishers.
- viii). The Resort has provided parking facility within resort area.
- ix). The Resort has installed LED lights in street and rooms.
- x). The Resort is using water supplied by the Municipal Corporation.
- xi). The Resort has provided ducting arrangement to the kitchen burner by using fuel as LPG."

11. Further, it is mentioned that as per the Govt. Resolution dated 21.04.2009 issued by the Environment Department, it is Home Department, who is the competent authority for monitoring noise pollution, in this regard, the copies of the GRs dated 21.04.2009 & 24.05.2017 have been enclosed. The Answering Respondent had issued a Show Cause Notice to the Respondent No. 1 vide letter dated 14.10.2022.

12. Besides that, today the learned Counsel for the Answering Respondent has provided us a copy of the Notification issued by the Urban Development Department dated 04.09.2018, which contains schedule of such locations of premises of the building, which are notified to be Silence Zone, which are 42 in number.

13. From the side of Respondent Nos. 1 & 2/MTDC, a reply affidavit dated 19.11.2022 has been filed, where-in it is submitted that the Answering Respondent is a responsible Government company, dedicated for expanding tourism in Maharashtra and is managing efficiently numerous well-established resorts and restaurants all across the State, which is providing employment opportunities to local people. In course of time, the Respondents have also started Weddings and Events as one of their commercial activities, as the same is demand of time. The said activities are being done by all similar Tourism establishments. With the time progressing, the Respondents ought to have changed their commercial plans, which they did and the same is not illegal. The lawn in the tourist accommodation is given on rent for the wedding ceremony and it is wrong to say that the same is being misused. The playing of DJ and bursting of firecrackers are forbidden by the Answering Respondent but they are not aware about the bursting of firecrackers, which are being done outside the premises. The lawn of the Answering Respondent is about 103 Meters away from the residence of the Applicants and not 10 feet, as stated by the Applicant. The distance between the 'Nutan Vidyalaya' and Respondent's Resort is 175.35 Meters and that the said School has already declared that they have no issues due to the Respondent conducting ceremonies and to that effect, a letter has also been annexed.

14. It is further submitted in this affidavit that the Aurangabad Municipal Corporation had declared 42 places as Silence Zone in the city of Aurangabad in the year 2011, where-in the Respondent's

Resort is not mentioned, although it is situated in one of the most busiest roads and the main road leads towards the Railway Station, which is crowded commercial area, which has never been declared as Residential Zone and/or Silence Zone. The Answering Respondent does not have a Hall available for wedding ceremony and/or reception. The Answering Respondent's Resort has a capacity of only 50 people for meetings and/or conferences and it does not have sound system, projector, stage, etc., rather there is arrangement only of table and chair. Open lawn/space is available with it having capacity of 500 persons, which is approximately 800 Sq. Mtrs. A study report in the context of noise pollution has been prepared by some Environmental Scientists in Aurangabad city, which is attached as Annexure 'C'. According to which in the year 2010, the noise intensity in the said area is measured around 74 to 86 dB on working days, as the same area is the main city. The Answering Respondents never received any such complaints from anyone till the date. The Applicants are biased against the Answering Respondent. It would be lawful and practically correct if the proper Sound level tests are conducted with the help of experts in all the time periods/situations and that this Tribunal cannot rely on the Sound Level Tests taken by the Applicant. All the allegations made by the Applicant in the application have been denied para-wise.

15. In respect of the Judgment passed by the Hon'ble Supreme Court dated 29.04.2016, which has clarified the Order passed by the NGT, the Answering Respondent had sought an opinion from Ashutosh Kumbhkoni, Advocate General for State of Maharashtra, where-in opinion has been expressed that "It is open for the corporation to provide its facilities for conducting wedding reception and other similar ceremonies, albeit after obtaining all requisite permissions from all the appropriate authorities, in accordance with law".

16. The Applicant by way of rejoinder dated 28.12.2022 has submitted that the National Green Tribunal in its Judgment delivered in Original Application No. 53/2015, has clearly held as follows:-

"The map placed on record is an authenticated Municipal Corporation map. The communication accompanied by the map shows that the education institute by the name Nutan Vidyalaya is of 60 meters from the Holiday Camp. It follows that the area of MTDC is within the Silence Zone and naturally it must fall within domain of Noise Pollution (Regulation and Control) Rules, 2000 as stated above. The MTDC cannot disregard the Rules under Schedule appended to the Noise pollution Regulation and Control Rules, 2000."

17. On the basis of above, it is apparent that the area of MTDC/Respondent No. 1 is in silence zone as per the Rules of 2000, 'Nutan Vidyalaya' being just 60 mtrs. away from the Municipal Corporation.

18. In the rejoinder affidavit dated 02.02.2023, the Respondent Nos. 1 & 2/Project Proponent have stated that non-obtaining of consent from the MPCB is not an intentional act, the same is an inadvertent mistake, which is cured by them. As regards the facts brought to the notice of this Tribunal by the Respondent No. 3/MPCB that a sewage is being discharged presently into the Municipal Sewage Collection System, apparently, there is no necessity for the separate STP to be established by the Respondent No. 1. However, the Respondent No. 1 has not decided to install

various Bio-Digesters and also Bio-Toilets, Digesters and Bio Gas Units for which it had invited the quotations. As regards the Organic Waste Converter (OWC) and rain water harvesting system to be put in place, the same are additional facilities, which would be provided in course of time by them.

19. Further, it is submitted that it is apparent that the area in question has not been declared to be 'Silence Zone' as per the Notification dated 04.09.2018 issued by the Urban Development Department. It is further submitted that the photographs of the Google Earth would clearly show the aerial distance. The resort is spread over an area admeasuring about 9629.10 sq. mtrs., therefore, it is impossible that the distance between the school and the resort would be 60 meters.

20. The Central Pollution Control Board (CPCB) has also filed reply affidavit, which does not provide any light in respect of present dispute, rather placed before us only position of rules and regulations.

21. We have heard the arguments of the learned Counsel for the parties and perused the record.

22. From the pleading of the Applicants, the main grievance appears to be that the Applicants are suffering from noise pollution, which is emanating from the Respondent No. 1/MTDC Resort, which is said to be located within Silence Zone and the same is defined under Rule 3(5) of the Rules of 2000. The distance between the MTDC Resort and the 'Nutan Vidyalaya' being within 100 mtrs. of the MTDC Resort and in that locality, the Applicants are also falling. Therefore, we have to decide following issues on the basis of records.

(i). Whether the allegation made by the Applicants with respect to distance of 'Nutan Vidyalaya' from the MTDC Resort being less than 100 mtrs. and falling within the area of silence zone, is correct?

(ii). Whether the MTDC Resort should be allowed to host functions of marriage ceremony and other seminars/conferences etc.? and

(iii). Any other relief.

23. With respect to issue no. (i), we have to decide as to whether the 'Nutan Vidyalaya', in the vicinity of which the Applicants are residing, is falling within 100 mtrs. from the MTDC premises and whether the allegations levelled by the Applicants that they are hosting marriage ceremonies and other functions from which huge noise pollution is emanating, in this regard, our attention is drawn by the learned Counsel for the Applicants to the Judgment of this Tribunal delivered in Original Application No. 53/2015 (Vivek Sheshrao Dhakane v Maharashtra Tourism Development Corporation and Others), para no. 9 of which has been cited above. It has been clearly held there-in that the map which was placed on record, which authenticated by the Municipal Corporation, would show that the institution by the name 'Nutan Vidyalaya' was found to be within 60 mtrs. from the Holiday Camp i.e. MTDC premises and therefore, the same is found within silence zone, the distance being less than 100 mtrs. and it was held that the MTDC is not disregarding the Rules of 2000.



24. Based on this, it has been vehemently argued by the learned Counsel for the Applicants that this finding has not been set aside so far by any of the higher forums, therefore, it cannot be left open to the Respondent Nos. 1 & 2/Project Proponent to dispute this finding at this stage.

25. On the other hand, from the side of Respondent Nos. 1 & 2, the learned Counsel has laid much emphasis on the Notification dated 04.09.2018, issued by the Urban Development Department pertaining to notifying Silence Zones, which stipulates 42 places to fall under Silence Zone in the said Notification, in which MTDC does not find mention. At this point, we had clarified to the learned Counsel for the Applicants that since the Silence Zone is to be determined in respect of educational institutions, hospitals and Courts and 'Nutan Vidyalaya' being one of the educational institutions in the vicinity of which the Applicants are said to be residing and hence he wanted that we should give finding that the said zone falls within a Silence Zone. We find that even 'Nutan Vidyalaya' also does not find mention in this schedule appended to this Notification dated 04.09.2018. But we are of the view that despite the fact that this Notification is of the period subsequent to the period when Judgment in Original Application No. 53/2015 (Supra) was delivered, which has given categorical finding to the effect that 'Nutan Vidyalaya' would be treated to fall within Silence Zone, we hold that the said finding still holds good, as the same has not been set aside by any of the higher forums. We cannot hold that the said finding should not be respected by us in our present Judgment, therefore, we have to go by that finding and hold that this is already decided matter and that the 'Nutan Vidyalaya' is found to fall within Silence Zone and consequently, the Applicants who are living in the said vicinity, would also be treated to be residing in Silence Zone and therefore, the MTDC/Respondent Nos. 1 & 2 must be held responsible to be maintained the noise level prescribed under the Rules of 2000. This issue is decided accordingly.

26. With respect to issue no. (ii), we have to decide as to whether, the MTDC Resort should be allowed to host functions of marriage ceremony and other seminars/conferences etc., in this regard, our view is that the legal opinion has come on record from the side of Advocate General, which clearly states that as per the Judgment of Hon'ble Supreme Court delivered on 29.04.2016, there would be no bar for the Respondent Nos. 1 & 2 to provide facilities for conducting wedding, reception and other similar ceremonies, although it would be subject to their seeking requisite permissions from all appropriate authorities. Therefore, we do not have any better arguments advanced from the side of the Applicants to controvert this finding nor has any argument been raised from their side, therefore, we go by this opinion and hold that the Respondent Nos. 1 & 2 cannot be restrained from holding such functions, obviously, the same would be allowed to be held subject to all pre-requisite permissions and further subject to the noise pollution levels to be maintained as prescribed under Rules of 2000. We decide this issue accordingly.

27. During argument, it is vehemently emphasised from the side of learned Counsel for the MPCB that Respondent Nos. 1 & 2 have not taken any consent from the MPCB to run the facility, despite the fact that it falls in the consent regime.

28. From the side of the learned Counsel for the Applicants, it is being said that the said lacuna/fault on their part was not deliberate and that they have already applied for the same, which is acknowledged by the learned Counsel for the Respondent no. 3/MPCB but the fact remains that it is

yet to be ascertained as to since when the consent regime was applicable and for how long the Respondent Nos. 1 & 2 have been violating the consent conditions. Therefore, this period has to be computed by the MPCB and adequate environmental compensation has to be levied from them. In this regard, we direct the MPCB that they shall give opportunity of hearing to the Respondent Nos. 1 & 2 and even Applicant may appear before it and after giving opportunity of hearing to these parties, they shall decide the period of violation for not obtaining consent and arrive on quantum of the environmental compensation to be calculated as per guidelines prescribed by the CPCB in the case of Paryavaran Suraksha Samiti and Ors. vs. Union of India (UOI) and Ors. (Original Application No. 593/2017) within a period of two months from the date of Judgment and thereafter within 15 days, the amount shall be deposited by the Respondent Nos. 1 & 2 with the MPCB, which shall be utilized for the improvement of the environment in the local area within next 6 months. Report to this effect shall be uploaded on MPCB website. Within one month of this order, MPCB shall create separate section on Utilization of EDC funds and upload reports on utilization of EDC in this section.

29. Further, we direct that looking to the fact that compliance with noise standards has to be maintained consistently, bank guarantee may be taken of adequate amount by the MPCB, in order to ensure that the noise standards are not exceeded by the Respondent Nos. 1 & 2 all through as per the standard prescribed under law and in case any violation thereof is found, an amount may be forfeited proportionately. MPCB will act in co-ordination with the police in this regard.

30. With the above directions, we dispose of this application accordingly.

31. All connected applications, if any, also stand disposed of.

Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM April 28, 2023 Original Application No. 72/2022 (WZ) P.kr.