

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 306/2016
(M.A. No. 562/2016 & M.A. No. 1237/2018)

WITH

M.A. No. 380/2017
(Earlier I.A. No. 8/2007)

IN

W.P. (C) No. 426/1992 on the file of the Hon'ble Supreme Court)

Social Action for Forest
and Environment (SAFE)

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

(Earlier titled as D. K. Joshi Vs. Union of India & Ors.)

WITH

D.K. Joshi

Applicant(s)

Versus

Chief Secretary of U.P. & Ors.

Respondent(s)

Date of hearing: 29.01.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

Mr. Rahul Choudhary and Mr. Sharan
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Ms. Sanjana Srikumar, Advocate

For Respondent (s):

Mr. Sharad Chauhan, Advocate for R-12-23
Mr. Rajkumar, Advocate for Central Pollution
Control Board
Ms. Deep Shikha Bharati, Advocate for State
of Uttar Pradesh
Ms. Sakshi Popli, Advocate for Ministry of
Environment, Forest and Climate Change
Ms. Shoba Ramamourthy and Ms. Shilp
Vinod, Advocates for R-10

ORDER

1. The issue for consideration is compliance of Solid Waste Management Rules, 2016, Hazardous and other Wastes

(Management and Transboundary Movement) Rules, 2016 and Bio-medical Waste Management Rules, 2016 in the city of Agra as well as the areas coming under the Cantonment Board, Agra and eco-sensitive zone of Taj Trapezium Zone.

2. The matter was considered by the Hon'ble Supreme Court in D. K. Joshi Vs. State of Uttar Pradesh, 1999 (9) SCC 578. In the light of an Expert Committee Report, the Hon'ble Supreme Court constituted a Monitoring Committee headed by the Commissioner, Agra with District Magistrate, the CMO and a representative of UPPCB as Members, apart from other members.

3. I. A. No. 08/2007 was filed before the Hon'ble Supreme Court with the grievance that the situation had not improved with regard to solid waste management, sewerage and drainage system, and consequent pollution of river Yamuna. The quality of river Yamuna was not meeting the standards. The Hon'ble Supreme Court sought a status report and thereafter transferred the matter to this Tribunal on 23.02.2017.

4. This Tribunal considered the status report dated 04.07.2018 in O.A. No. 306/2016 to the effect that the problem still survived and 19 drains had not yet been connected to the STPs.

5. The Tribunal, in its order dated 12.10.2018, noted the photographs produced before it showing burning of municipal solid waste on the roads at Agra Cantonment Railway Station and heaps of uncleared garbage. The chocked drains were creating flood like situation. 50 % of sewerage system was not in working condition, untreated sewage was being dumped

into the open drains. Drainage system was 55 years old and was not workable.

6. The Tribunal observed that since the report of NEERI was 20 years old, an updated Expert report was required for which a Joint Committee was constituted comprising of representative of Central Pollution Control Board, a nominee of NEERI and the District Magistrate, Agra to ascertain the factual position with regard to drinking water supply, sewerage, drainage system and solid waste disposal. It was also noted that the problem at Agra was not an isolated problem. Similar problems were seen in other cities of Uttar Pradesh, particularly the cities noted by the Tribunal, including the city of Niwari considered in order dated 28.09.2018 in the case of Original Application No. 48 of 2016 - Vivek Tyagi Vs. State of U.P. & Ors. and the city of Gorakhpur noted in order dated 23.08.2018 in Original Application No. 116 of 2014 - Meera Shukla Vs. Municipal Corporation, Gorakhpur & Ors.

7. The Tribunal has constituted Monitoring Committees on the subject of compliance of Solid Waste Management Rules vide order dated 20.08.2018 in O.A. 606/2018. The issue of solid waste management has been reviewed recently vide order dated 16.01.2019 in the said case. The Tribunal noted large scale failure on the issue throughout India and required the presence of the Chief Secretaries of all the States and Union Territories before this Tribunal in person on specified dates to report progress on significant issues of environment as specified. The Chief Secretary of State of Uttar Pradesh has been required to be present before this Tribunal on 12.03.2019.

8. The Tribunal has also dealt with the matter of polluted river stretches in *News item published in "the Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB*¹. Direction to prepare an action plan to bring the water quality within the norms and for time bound execution has been issued. The States not filing action plans have been required to pay environmental compensation, as per the scale laid down in the order dated 19.12.2018.
9. We have also noted in order issued today in Original Application No. 6/2012, Manoj Mishra Vs. Union of India & Ors. that the State of Uttar Pradesh has failed to constitute an exclusive Monitoring Committee for the stretch of river Yamuna in the State of Uttar Pradesh, in compliance of order dated 26.07.2018. Instead, the State of UP has constituted a Committee of serving officers who have taken no interest and none of them contacted the Monitoring Committee for river Yamuna in Delhi even once. This aspect assumes significance in view of report that huge pollution is being caused in River Yamuna at Agra by dumping of garbage and sewage etc. as will be discussed hereinafter.
10. The report filed by the Central Pollution Control Board by e-mail dated 13.12.2018 shows that the Committee considered the earlier report of NEERI of February 2013 on the subject of Comprehensive Environmental Management Plan for Taj Trapezium Zone (TTZ) and, information provided by the UP Jal Nigam, Nagar Nigam Agra and Uttar Pradesh Jal Sansthan on the subject of solid waste disposal and drainage system. The Committee also undertook field visit and noticed

¹ O.A. No. 673/2018, orders dated 20.09.2018, 19.12.2018

that there is large gap with regard to treatment capacity of Solid Waste which is to the tune of 690 TPD. This quantity is being disposed of in landfill sites without any treatment.

11. The Recommendations of the Committee on this aspect are as follows:

“It is observed that the present practices adopted by Nagar Nigam are not in line with the Solid Waste Management Rules, 2016. Accordingly, based on the analysis of inputs /information provided and observations made during the review meetings and field visits, following measures are suggested for effective management of solid waste and compliance of said rules:

1. Discharge of MSW into river Yamuna through drains be stopped immediately by way of installation of bar-screens at appropriate places and removal of arresting through mechanical means. This can be managed with meagre amount or funds.

2. It is required to revise the byelaws in accordance with SWM Rules, 2016 as presently, there are no provisions for collection of user fee., tipping fee., spot fine for violations of rules and notification regarding prohibition or littering/waste burning.

3. As advised by the Committee during review meeting, the exercise/ practices adopted made by local bodies / authorities for management of solid waste at Indore can be studied and replicated at Agra. Salient features of Indore Model are attached as Annexure III.

4. Establishment of treatment facilities like Waste to Energy Plant and similar facilities associated with release of air emissions , may be considered in down-wind directions of the city based on wind-rose diagrams.

5. Information, Education and Communication (ICE) is the key for solid waste management.

6. NGOs or team of volunteers are required for creating mass awareness about segregation of wet and dry waste at source by individual/ bulk generator/ industrial units.

7. Door to Door collection of segregated solid waste and scheduling for collection shall be carried out.

8. Infrastructure of adequate capacity need to be developed for collection of segregated waste.

9. Transfer stations are to be optimized for effective conveyance system.

10. Optimization of waste bin size as per frequency of waste collection be undertaken. Frequency of collection should be high in commercial areas and to be well intimated to the

public. Evening cleaning and waste collection from commercial areas shall be initiated

11. Integrated Waste management in the city is required so that Wet, Dry and C&D waste can be processed separately.

12. Participation of existing manpower like rag pickers, recyclers, kabadis shall be ensured in waste management in an organised manner. Dry waste can be sorted by existing rag pickers to send to recyclers.

13. Bio-mining should be done for disposal or legacy solid waste in a scientific manner.

14. Mechanized sweeping shall be promoted on main paved road and manual sweeping at wards.

15. Other allied activities related to Swachhta such as nala cleaning, footpath, rotaries and left turns, green belts shall also be promoted.

16. Biometric attendance system, RFID based system for door to door collection of solid waste and GPS based tracking and monitoring of vehicles need to be provided.

17. Shifting of stray animals to stray shelter be attempted.

It is pertinent to mention that segregation of waste at source help to reduce load on centralised treatment facility (Waste to Energy Plant or landfill site). These practices also reduce CAPEX and OPEX cost of waste treatment facility. Na gar Nigam shall frame their action plan for segregation of waste to 100 % and disposing of solid waste at landfill not more than 5 %.”

12. On the subject of water supply, the gap is found deficit of 156 MLD for which action plan has been prepared.

13. The recommendations on the subject of water supply are as follows:-

“1. Looking into water quality of river Yamuna, there is need to assess the water quality of influent after mixing of Ganga and Yamuna water and to upgrade the treatment facility so as to meet the norms of BIS drinking water.

2. Besides treatment facility, there is huge gap in coverage of water supply. Out of 100 wards, only 18 wards have 100 % water supply whereas 27 wards are also identified having no water supply pipelines. Hence, it is required that water supply network shall be laid in all 100 wards to have 100 % coverage and optimal use of treated water.

3. There is need to improve the collection efficiency to meet their fiscal deficit with IT enabled collection and billing system.

4. Losses and leakages in water distribution system be minimized by regular monitoring and corrective measures.

5. Water Safety Plan for Agra city water supply be prepared and implemented.”

14. On the subject of Drainage, Sewerage and STPs, the gap is found to be 60 %. To that extent, the city is un-sewered and 216 MLD i.e 61 % of untreated sewage is being discharged into river Yamuna. The action plan has been suggested and following recommendations have been made:-

“1. Untapped drains shall be tapped within time frame line and accordingly, adequate treatment capacity for treatment of sewage from drains shall be developed.

2. Water quality of some of the drains may vary largely which needs to be assessed properly before designing sewage treatment facility.

3. Drains having low organic and hydraulic load may be explored so that natural treatment system like in-situ treatment/ constructed wetlands/ bio-remediation/oxidation pond may be adopted for such drains.

4. The quality of treated sewage can be further improved (if required) using bioremediation/ phyco-remediation /constructed wetlands technologies which are cost prohibitive and does not require power or any major infrastructure.

5. The performance of the STPs is interlinked with the influent quality and operating parameters of the treatment process. A synergy between the two is essential for optimum performance of the STPs which was found lacking in most of the STPs as the operators do not possess the required experience and knowledge to operate such plants. An IT based system synergising the operating parameters with the influent quality will help in improved and steady performance of STPs. In nearly all the plant, the sewage is generally pumped from intermediate pumping stations which are managed manually. For better

management of flow into the STPs, incorporation or IT Technology needs to be probed.

6. New STPs shall be developed considering new standards for treated effluent or (wage. (copy or standards attached at Annexure-V)”

15. The action plan has also been suggested for municipal solid waste management.

16. Final summary of recommendations is as follows:-

“In view of the inputs/ information provided, observations made during review meetings and field visits and finally based on the materials facts available, following facts emerge:

- 1. The city of Agra doesn't have adequate basic civic amenities in respect of water supply. sewerage . sewage treatment and solid waste management. The gaps have been clearly mentioned in the respective sections.*
- 2. As a result, all the components or the environment viz. air . surface water. land and inhabitants of the city are exposed to varying degree or pollution and threat.*
- 3. The respective departments require additional man-power. capacity building and funds to overcome the problem of environmental degradation and restore normal conditions.*
- 4. The time-lines estimated/ quoted by respective departments for execution of the projects are required to be firm.*
- 5. The departments are also facing difficulties in getting necessary environmental clearances due to temporary moratorium in TTZ area which restricts establishment/ expansion or even treatment facilities such as CETP, STP, BMWTF and Waste to Energy Plants (WTE) etc.*

In view of the above, subject-wise recommendations & suggestions have already been made in the respective sections for compliance at the level concerned stake-holders. Other specific recommendations are as follows:

- I. Adequate funds may be sanctioned by appropriate authorities so that the projects related to establishment or SW management. Sewerage. STPs and Water supply may be executed without further delay. Realistic time-lines for their execution be fixed considering the gravity of problem.*
- 2. Mechanical filters be installed immediately at appropriate places in the drains discharging their waste-waters directly into river Yamuna so as to remove large objects, such as rags, plastics and polythene bags containing MSW. This can be managed with small amount of funds.*
- 3. Issue of Environmental Clearances for establishment or treatment facilities which help in abatement of pollution. may be resolved quickly. Thereafter, these treatment plants like Waste to Energy Plant and similar facilities associated with release or air emissions may be considered in down-wind directions of the city based on wind-rose diagrams.*
- 4. Deployment of trained manpower and capacity building or existing Staff may be undertaken so that all projects can be executed at the earliest “.*

17. We accept the above report to which there is no objection and direct the State of Uttar Pradesh to immediately take steps in terms of the recommendations in the report.

18. The Chief Secretary, State of Uttar Pradesh has been directed to remain present in person on 12.03.2019 to report on various environmental issues. The present issue may also be covered by the Chief Secretary in his report. He may call a meeting of all concerned persons to acquaint himself and monitor the progress and furnish a report during the personal hearing.

19. The concerned authorities may also furnish their progress report to the Monitoring Committee constituted by this Tribunal in O.A. No. 606/2018 headed by Justice Devi Prasad Singh, former Judge, High Court of Allahabad.

20. The Tribunal vide its order dated 20.09.2018 passed in O.A. No. 673/2018 has constituted a River Rejuvenation Committee (RRC) comprising of Directors of Environment, Urban Development, Industries and Member Secretaries of the SPCBs. The Chief Secretary may also take cognizance of the said subject in his report as already directed.

21. 'Polluter Pays' principle can be applied by every regulatory authority and compensation can be and must be recovered from every polluter and the amount which is to be recovered spent for the restoration of the environment.²

²(a) *Compliance of Municipal Solid Waste Management Rules, 2016* order dated 16.01.2018 in O.A. No. 606/2018- wherein this Tribunal constituted Apex & State Level Monitoring Committees to ensure compliance of Solid Waste Management Rules, 2016 across the country. While noting lack of awareness and apathy of authorities, the Tribunal observed that 'Polluter Pays' principle must be applied on every polluter to control environmental degradation.

(b) *Aryavart Foundation v. M/s Vapi Green Enviro Ltd. & Ors* (O.A. No.95/2018) order dated 11.01.2019- wherein this Tribunal reiterated that 'Polluter Pays' principle is ingrained in the environmental jurisprudence of the country as well as statutory mandate under Section 20 of the NGT Act, 2010.;

(c) *Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & Ors* (O.A No. 110 (THC)/2012) order dated 04.01.2019- wherein this Tribunal held that it is necessary that the state machinery is required to compensate for their negligence and failure which may act as deterrent against the officers who

Mere passing of orders by the Tribunal is of no value unless the same are faithfully executed. Execution is in the hands of the authority. As executing court, it is not only the right but also the duty of this Tribunal to take such measures as may ensure compliance. Mode of execution is laid down in CPC (Section 51), i.e., arrest and detention, appointment of a receiver or in such manner as nature of relief may require. There are provisions for prosecution, including of heads of departments of the Government. On 'Polluter Pays' principle, damages can be recovered not only from the polluters but also from the State functionaries who collude with the polluters. The authorities have not been fully successful in their performance of duties to protect environment.

22. On Precautionary Principle also, to ensure that statutory authority do not continue to ignore their duties of taking action of protecting the environment, this Tribunal instead of permitting pollution to continue can require Performance Guarantee to be furnished. The present is a fit case where such power must be exercised.

23. It will be in the fitness of things, having regard to the facts and circumstances of the case that the authorities are required to furnish performance guarantee.

24. In view of grave situation affecting the public health in a big way and failure of authorities in discharging their duties, we direct the State of Uttar Pradesh to furnish a performance guarantee in the sum of Rs. 25 crores to the satisfaction of the Central Pollution Control Board to comply with the timelines in the action plan to be submitted,

neglected their basic duty of protecting the environment or colluded with the polluters and law violators. This is required not only as a part of principle of 'polluter pays' which applies not only to actual polluters but also to those who collude with polluters or enable pollution to be caused and also for the negligence of public duties, adversely affecting the citizens.

consistent with the earlier orders of this Tribunal in O.A. No. 606/2018 and O.A. 673/2018 within one month. This arrangement is an interim arrangement pending further consideration of the matter. The State of Uttar Pradesh may also take appropriate undertaking from Jal Nigam, Nagar Nigam, District Magistrate and Jal Sansthan to take their respective responsibility.

25. The State of Uttar Pradesh is at liberty to determine the liability of the erring officers and the polluters and take appropriate action against them. The concerned State authorities may take steps to recover appropriate compensation from the identified polluters in accordance with law and furnish an action taken report within three months to the Tribunal by e-mail at ngt.filing@gmail.com.

List these matters for further consideration on 12th March, 2019 along with O. A. No. 606 of 2018.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 29, 2019
Original Application No. 306/2016
JG