

Item No. 01

Court No. 1

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

(By Video Conferencing)

Original Application No. 351/2019

Raja Muzaffar Bhat

Applicant(s)

Versus

State of Jammu and Kashmir & Ors.

Respondent(s)

Date of hearing: 27.08.2020

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

Applicant(s): Mr. Sourabh Sharma, Advocate

Respondent(s): Ms. Shashi Juneja, Advocate for UT J&K

**ORDER**

1. The issue for consideration is prevention of unscientific dumping of waste and encroachment of Hokersar Wetland, Wular Lake and Kreentchoo-Chandhara Wetland in the Union Territory of Jammu & Kashmir. A factual and action taken report was sought from a joint Committee of Jammu & Kashmir Pollution Control Board ('State PCB'), Department of Wildlife Protection and Deputy Commissioners of Budgam, Srinagar and Bandipora.

2. The matter was last considered on 16.12.2019 in the light of the report dated 09.12.2019 filed by the joint Committee. The report mentioned the steps taken to prevent dumping of solid waste and to remove the encroachments, apart from other steps for conservation of the wetlands. It was stated that the demarcation of the boundary of the wetlands had been done and map of the demarcated line prepared. The

Tribunal also considered the Minutes of the Meeting held on 30.11.2019 wherein further decisions were taken for remedial action, to prevent menace to the environment. The Tribunal directed further steps in the matter and sought an action taken report.

3. Accordingly, the joint Committee has submitted its action taken report on 18.08.2020. The operative part of the report is as follows:-

*“That, progress achieved with respect to conservation measures taken in Hokersar Wetland Conservation Reserve, Wular Lake and Kreentchoo-Chandhara wetland Conservation Reserve is summarised as under:*

**A) Hokersar Wetland Conservation Reserve:**

1. *Integrated Management Action Plan (IMAP): Department of Wildlife Protection J&K has awarded study to formulate an integrated Management Action Plan for all the nine protected wetlands of Kashmir including Hokersar Wetland Conservation Reserve to the Water Resource Management Centre, National Institute of Technology Srinagar (NIT). The study shall adopt hydrological & biodiversity conservation mapping & modelling using GIS, RS & Hydro-informatics approach. The main focus will be on geospatial studies of these protected wetlands, geotechnical investigation with reference to hydrologic conditions etc. Hydrologic mapping pertaining to the inflow sources, their condition, water extents, outflows, etc. and the pollution control measures for maintaining the water quality and other wetland parameters. (Copy of the consent letter appended as annexure-C).*

**2. Additional Measures for Eviction of Encroachment:**

*As already submitted, that during last two decades human settlements have come up very closed to the perimeter of the Hokersar wetland particularly on Zainot, Hajibagh, Soibugh, Daharmullah and Narbal village side. Besides, heavy silt deposition has resulted in silting up of the marginal lands of the wetland. These silted patches/portions of the wetland are seasonally brought under paddy cultivation by the local population. Department of Wildlife Protection however, not recognizing this practice in the wetland has registered cases under Wildlife Protection Act, against accused for seasonal occupation of this portion of the wetland conservation reserve.*

*Department of Wildlife Protection has started a fresh drive against these encroachments and in the first instance 80 nos. of eviction notices (First & Second) under Section 36 (B), 27(3), 33(c), 51 & 52 of Indian Wildlife Protection Act, 1972 have been issued against 40 persons for encroaching a total aggregate area of 147 Kanala i.e*

7.35 Ha.at Hajibagh and Zainakot area. Copies of the First & Second notices served are appended as annexure — D 1.

Further, a fresh attempt of encroachment by way of earth filling near nallah number 2 & 5 of Hokersar Wetland was timely thwarted and got evicted in full. Cases under the provisions of Wildlife Protection Act 1972 stand lodged in the Police Station Soibugh District Budgam under FIR No: 285/19 Dated 28.09.2019 and FIR No 282/19 Dated 26.09.2019 under Section 188,447-AR-PC against 3 persons. Copies of the Pictures showing eviction drive conducted and copies of the FIR's are appended as annexure D2 & D3

3. Construction of drainage channel across Hokersar Wetland Reserve along age old alignment under flood management programme J&K and restoration of cross channels by Irrigation and Flood Control Department (Kashmir).

In pursuance of Government Order, No:230-FST of 2016 dated 01-09-2016 (copy appended as annexure E 1) construction of drainage channel across Hokersar Wetland Reserve along age old alignment as recommended by the standing committee of National Wildlife Board.

Department of Irrigation and Flood Control (Kashmir) has already completed construction of 30 M wide channel across Hokersar Wetland which increased the hydraulic efficiency of the channel during the floods besides bringing continuity in the water flow from Padshahi bagh to downstream Hokersar wetland. Construction of 30m wide channel has increased the life of the wetland

Statement showing Nallahwise Breakup of Quantities excavated and disposed off inside Hokarsar Wetland RD11950 to RD 13182 m is appended as annexure E 2

Statement showing Nallahwise Breakup of Quantities excavated and disposed off inside Hokarsar Wetland RD13182 to RD 16713 m is appended as annexure E3

Statement showing Nallahwise Breakup of Quantities excavated and disposed of inside Hokarsar Wetland construction of Right/Left side channels with retention Water basin for flood management is appended as annexure E4 Pictures showing Execution of Dredging works before and after in Hokersar Wetland by Irrigation and Flood Control Department (Kashmir) are as annexure E 5.

Map showing intervention by way of dredging at different spots is appended as Annexure E6.

Additional measures to collect solid waste from and within the wetland.

As already submitted, Hokersar wetland is strategically located in the suburbs of Srinagar city, falling in two Districts Budgam and Srinagar and is surrounded by 14 peripheral villages. Dumping of

*municipal solid waste is not being carried out in the Hokersar Wetland either by Srinagar Municipal Corporation or by the Budgam Municipal Committee. Wildlife Warden Wetland has reported that in the past there have been some incidents of dumping of solid waste in the peripheries of the Hokersar Wetland by some individuals, this practice however, was taken seriously and stopped immediately. Dumped solid waste on the periphery of Hokersar Wetland has been removed by the Department of Wildlife Protection by engaging lorries and excavators.*

*Photo feature of showing clearance of solid waste from the peripheries of Hokersar wetland at Soibugh are appended as Annexure - F1).*

*Further it has also been already submitted that In order to preserve and restore Hokersar Wetland and to maintain its nature and existence Deputy Commissioner/District Magistrate, Srinagar while exercising powers vested with him under section 144 Cr.PC has imposed complete ban on dumping of solid waste in and around Hokersar wetland within 500 Mtrs from the bank/margin/boundary of the wetland. Copy of the Order No:77-DMS/PS of 2019 Dated 12.07.2019 is appended as Annexure - F2.*

*Similarly District Magistrate, Budgam while exercising powers vested with him under section 144 Cr.PC has imposed complete ban on dumping of solid waste in and around Hokersar wetland within 500 Mtrs from the bank/margin/boundary of the wetland. Also, in the area there will be complete ban on any human activity which is detrimental to the existence of the Hokersar Wetland. Copy of the Order No: DCB/SM/ESTT/123 of 2019 Dated 15.07.2019 is appended as Annexure -F3.*

#### *5. Asian Water Bird Census - 2020.*

*Wetlands Division, Department of Wildlife Protection J&K conducted the annual Asian Waterfowl Census (AWC 2020) in 20 wetlands of the Kashmir valley on 15<sup>th</sup> & 16<sup>th</sup> of February 2020. The population estimation (count) was conducted simultaneously in all the major sites along with lesser known wetlands of the valley which includes Hokersar, Shallabugh, Hygam, Mirgund, Badinambal, Narkakar, Wullar Lake, Dal/ Nigeen Lake, Mananbal Lake and associated wetlands, Anchar lake, Khurwansar, Ahansar, Waskhur Sar, Shalar Sar, Gantimullah Reservoir and wetlands of Pampore District as well i.e. Manibugh, Kranchoo, Chatlum and Freshkhoori. 83 volunteers which include NGOs, bird lovers, students from Kashmir University and SKUAST (K) participated in this event along with all the field staff of Wildlife Divisions.*

*A total of 813043 number of birds belonging to 39 species were recorded in all the wetlands. Hokersar contributed 59% of the total birds count followed by Wullar Lake 14% and Dal Lake 11.8%. Common Teal (*Anas crecca*) with 203133 individuals (25% of total bird count) was the most abundant species followed by Northern Pintail (*anas acuta*) with 161327 birds (19.8%) and Eurasian Coot (*Fulica atra*) with 152208 individuals (18.7%). The seven bird species namely which include Common Teal (*Anas crecca*), Northern Pintail (*Anas acuta*) Eurasian Coot (*Fulica atra*) Mallard (*Anas platyrhchos*),*

*shoveler (Spatuala clypeata) Gadwall (M. Strepera0 and Eurasian Wigeon (Marca spenelope) constituted 98.5% of the total birds counted during the AWC – 2020.*

*Copy of the Asian Water-bird Census Report is appended as annexure-G*

#### *6. Antipoaching Measures*

*During the Winter season every year, Wetlands of Kashmir receives lakhs of Migratory birds from across the world including Siberia, Central Asia and China. These birds are enlisted mostly in Schedule IV of the Wildlife Protection Act, 1972. By virtue of various provisions of this Act these birds receive complete protection against hunting, poaching, capturing and selling. These migratory birds however don't restrict their movements to the protected wetlands only where an institutional mechanism is in place to ensure conducive and protective environment is provided but also visit to other large number of unprotected sites as well. Usually it is here at these places poachers strike and kill these migratory birds in large numbers.*

*On the very onset of Migratory Birds season and till its culmination, Wetlands Division Kashmir, Department of Wildlife Protection J&K, remains alert on toes to ensure these birds are protected not only in the protected wetlands but outside as well.*

*Surprise raids are conducted by the field staff and poachers are being apprehended in large numbers along with arms, ammunition, tools, decoys and snares which are seized under the relevant provisions of Wildlife Act,1972 followed by lodging of the cases either in the Police stations or in the Court of Law having jurisdiction. Department has established a Central Control Room at Srinagar which is assigned the job of conducting raids and apprehending the culprits based on complaints received in this behalf.*

*Statement showing number of guns seized for the last three years is appended as annexure-H1*

*Pictures showing seized guns and other tools as antipoaching measures are appended as annexure- H2*

#### *7. Additional measures for Demarcation by way of fixing Demarcation Pillars.*

*That in continuation to what has been already stated, Department of Wildlife Protection J&K in joint collaboration with concerned Revenue Dept., Demarcation and photo interpretation Divisions of J&K Forest Department has been finally able to demarcate Hokersar Wetland Reserve. (copies of the digitally delineated maps of Hokersar Wetland are appended as annexures- I & J. Now as on date there has been substantial progress in fixing of demarcation boundary pillars at digitally delineated points. Pictures of boundary pillars being fixed along the demarcated peripheries of Hokersar are appended as annexure - K.*

The progress of demarcation is also being done in compliance of the orders of the Hon'ble High court of Jammu and Kashmir in PIL No. 02/2017 and C/W & PIL No. 08/2017 titled "Molvi Peer Noor – ul Haq v. Chief Engineer and Others.

#### 8. Education and Awareness.

People in general and those living in the fringes of Hokersar Wetland Conservation Reserve in particular are made to understand the concept of sustainable conservation of natural resources. Public discussions, shows and talks are held involving media both print and electronic. This has brought a change in the mindset of the people. A significant reduction in number of poaching cases has been recorded besides overexploiting natural resources has also gone down.

The role of education in public awareness programmes advocates strongly the need to engage participation of public and interactions with local communities and respond to their queries to make them feel more responsible towards conservation of wetlands.

As a sequel many programmes have been organised by Wildlife Division Wetlands, Department of Wildlife Protection. A photographic profile of different programmes organised is appended as **annexure-L**.

#### **B) Wullar Lake:**

##### **Solid Waste Management:**

As already submitted before the Hon'ble National Green Tribunal during previous hearing the dumping site at Zalwan stands closed and as reported by Municipal Committee Bandipora vide their letter No: MC/Bpr/Estt/20/1001-05 Dated: 04-08-2020. Copy appended as annexure — M. The dumping of solid waste is presently done at Bandipora Bund Side. The Site consisting of 35 Kanals of Land provided by district administration Bandipora which is 1650 ft away from periphery of Wular Lake. As asserted by municipal committee in the same letter referred above, the municipal committee in consultation with district administration have identified 20 Kanals of Land at Mader Kunan Bandipora for disposal of municipal solid waste. The revenue papers for the new site have been prepared, the new site is away from Wular Lake.

##### **Removal of encroachments:**

Wular conservation and Management Authority has started process of encroachment removal from the Lake. In the 1<sup>st</sup> phase eviction notices have been issued to 67 encroachers and with the active support of district administration 80 Kanals (i.e 4 ha) of encroached area has been evicted. The authority is also persuading the local community to voluntarily remove the encroachments. The authority will continue the eviction process which has now been started. List of encroachers in Wular Lake who have been issued notices for eviction is appended as annexure – N.

#### **C) Kreentchoo-Chandhara Wetland:**

### **Solid Waste Management**

*It has been already submitted that there is no dumping of municipal solid taking place in or in the fringes of this wetland. However, stray incidents of dumping of garbage at some spots by some locals is reported at times, which is taken serious by the Department and got removed/cleared by the staff. In order to maintain its wetland characteristics and conserve as a home to migratory birds, District Magistrate, Pulwama while exercising powers vested with him under section 144 Cr.PC has imposed complete ban on dumping of solid waste in and around Kreentchoo-Chandhara wetlands within 500 Mtrs from the bank/margin/boundary of the wetland.*

*In order to ensure that the whole wetland which is comprising of more than 60 ha including the portion under Wildlife Department is conserved for posterity and ecological and other services rendered by this wetland sustains for long the proposal submitted by the Wildlife Department vide No: RWLW/K/Estt /2019-20/957-61 Dated:01-11-2019 has been agreed upon by the Divisional Commissioner Kashmir and the process for handing over balance left over area comprising of 53.60 ha has been initiated. Copy of correspondence from Additional Commissioner Kashmir vide No: Div.Com /RA-Hokersar wetland/62/2019 Dated 27/ 11/2019 is appended as annexure – P.”*

4. The applicant has filed response to the report giving certain suggestions as follows:-

#### **I. Hokersar**

- *That it is in collaboration with Rural Sanitation Department Wildlife Conservation Department could undertake solid waste management around Hokersar wetland and adjoining villages Soibugh, Sharifabad and Hajibagh. There are enough funds available under Swachh Bharat Mission Gramin (SBM Gramin) for such activities but unfortunately the money is not being utilized as no DPRs have been prepared by Govt. nor have been consultant agencies hired by Rural Development Department for this work.*
- *That effective watch and ward system needs to be made available by J&K Wildlife Conservation Department to prevent dumping of solid waste in and around Hokersar*
- *Respondents should be directed to spend funds under Solid Liquid Resource Management programme available under Swachh Bharat Mission Gramin (SBM Gramin).*
- *The Applicant agrees that dredging is being done for removing silt from Hokersar but this is not a permanent solution for Waste and its Management. The Wildlife Dept. must get associated with Rural Sanitation for this purpose. It is stated*

*that this Hon'ble Tribunal should direct Secretary Rural Development J&K Govt. to look into the issue and direct Rural Sanitation Department accordingly.*

- *It is stated that the Waste Management should not be a one or two day show for purpose of taking photos but it should be a continuous process. It is suggested that there be Information Education and Communication (IEC) activities around Hokersar invoking NGOs and panchayats. under SBM Grameen Solid Liquid Resource Management component. In Hokersar area hardly any IEC or waste management work done by Govt.*
- *Funds remain utilized by District Administration Budgam for Solid Waste Management which needs to be addressed.*
- *No consultant Agencies have been hired to make DPRs for Solid Liquid Resource Management in rural areas of Kashmir which needs to be done urgently as per Swachh Bharat Mission Gramin (SBM Gramin) program.*

## **II. Wullar lake**

- *It would be highly desirable if this Hon'ble Tribunal appoints an independent Non Governmental Expert as Court Commissioner to facilitate the determination of the real questions in controversy and the false statements being made by the Respondents.*

## **III. Kreentchu Chandhara wetland**

- *To protect, preserve and conserve Wullar, Hokersar and Kreenchu Chandhara lakes wetlands it would be expedient to associate Srinagar Municipal Corporation, Directorate of Urban Local Bodies Kashmir and Department of Rural Development / Rural Sanitation with all the activities related to the collection, segregation and treatment of solid waste near Wetlands which includes lakes, rivers, streams and Irrigation canals.*
- *It is further prayed that in order to ascertain the factual position in the light of submission made herein before some wetland expert may kindly be appointed as Commissioner belonging to any reputed institution or CPCB, NGO at the expense of Union Territory of Jammu & Kashmir through the Department of Environment, Forest & Wildlife Conservation and Housing and Urban Development Department (HUDD).*

5. The applicant has also annexed photographs showing unscientific dumping of garbage.

6. Let further action be taken by the joint Committee headed by the Divisional Commissioner, Kashmir. The above suggestions be duly considered and acted upon, to the extent found viable.

7. Conservation of wetlands in general and Ramsar sites in particular is a significant aspect of protection of environment. To give effect to the Sustainable Development and Precautionary Principles, which have been held to be part of right to life and are to be statutorily enforced by this Tribunal under Section 20 of the National Green Tribunal Act, 2010, effective action plan and its execution is imperative.

8. One of the serious challenges is solid and liquid waste management, apart from encroachments. There are binding directions of the Hon'ble Supreme Court in *Almitra H. Patel Vs. Union of India & Ors*<sup>1</sup>. and *Paryavaran Suraksha vs. Union of India*<sup>2</sup> on the subject of scientific management of solid waste and sewage/effluents in accordance with the statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974, ('Water Act') Air (Prevention and Control of Pollution) Act, 1981, ('Air Act) and waste management rules framed under the Environment (Protection) Act, 1986 ('EP Act'). There is large scale non-compliance of the said statutory provisions which has led this Tribunal to consider the issue of river pollution in OA No. 673/2018, *News item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB"* in view of acknowledged data of 351 polluted river stretches in the country. Apart from the said issue, large scale failure has been found in the matter of solid waste management as repeatedly recorded in O.A. No. 606/2018. The Chief Secretaries of all the States/UTs were required to remain present in

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<sup>1</sup> (2000) 2 SCC 679

<sup>2</sup> (2017) 5 SCC 326

person before this Tribunal for interaction and further planning. In O.A. No. 325/2015, *Lt. Col. Sarvadaman Singh Oberoi v. UOI & Ors.*, the Tribunal has considered the issue of restoration of water bodies. In Original Application No. 593/2017, *Paryavaran Suraksha Samiti & Anr. v. UOI & Ors.*, the issue of untreated sewage or effluent being discharged in water bodies have been taken up for consideration. There are several other matters dealing with such issues, including coastal pollution, pollution of industrial clusters etc.

9. There is discussion in the media about inadequacy of monitoring of action for restoration of lakes, wetlands and ponds which is certainly necessary for strengthening the rule of law and protection of public health and environment<sup>3</sup>. Several directions have been issued by the Hon'ble Supreme Court in *M.K. Balakrishnan and Ors. v. UOI & Ors.*<sup>4</sup>

10. Wetland (Conservation and Management) Rules, 2017 contain elaborate provisions for protection of Wetlands and National and State Wetland Authorities have been set up. However, the fact remain that the wetlands are facing serious challenge of conservation as shown by the present case and other cases which are the Tribunal dealing with from time to time. Secretary, MoEF&CC heads the National Wetlands Committee with 18 other Members for integrated management of wetlands, monitoring implementation of the Rules and other allied functions. The Committee is statutorily required to meet once in six months. The State Wetlands Authorities are headed by Environment

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<sup>3</sup> <https://gradeup.co/lakes-in-india-i-4b99dc80-f6ce-11e7-9d78-07a242af4480>

<http://www.saconenvis.nic.in/publication/Lake%20Protection%20and%20Managemen%20of%20Urban%20Lakes%20in%20India.pdf>

[http://www.worldlakes.org/uploads/Management\\_of\\_lakes\\_in\\_India\\_10Mar04.pdf](http://www.worldlakes.org/uploads/Management_of_lakes_in_India_10Mar04.pdf)

<sup>4</sup> (2017) 7 SCC 805

Ministers of the States with Chief Secretaries as Vice Chairperson and 16 other members. Likewise, the Union Territories Wetland Authorities are headed by the Chief Secretaries. They are required to statutorily plan and oversee necessary action for management of the Wetlands. In spite of high level authorities in place, there are widespread grievances of failure to manage some of the important wetlands, as in the present case and another matter dealt with today relating to Sambhar Lake in Jaipur.

11. Accordingly, the report received from the Joint Committee, showing the extent of challenges faced by the Wetlands in question, may also be forwarded to the Secretary, MoEF&CC and the CPCB as a feedback for further planning and action on the pattern of the problems depicted in the report.

12. We also direct that the National Wetlands Committee may compile data of status of compliance of environmental norms in respect of all significant wetlands in the country to ensure remedial action. The State PCBs/PCCs and State/UT Wetland Authorities in India may give the status of management of wetlands in their respective States to the Secretary, MoEF&CC within three months. On that basis a joint Committee of the Secretary and Chairman CPCB may give a consolidated report to this Tribunal before the next date by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

13. A copy of this order be forwarded to the Divisional Commissioner, Kashmir, Secretary, MoEF&CC and CPCB. Copies of this order be also forwarded to all the State PCBs/PCCs, State/UT Wetland Authorities, Chief Secretaries of all the States/UTs for further necessary action.

List again on 21.01.2021.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

August 27, 2020  
Original Application No. 351/2019  
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