

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

Original Application No. 6/2012
(M.A. No. 641/2015, M.A. No. 1014/2016, M.A. No. 1016/2016
M.A. No. 1243/2016, M.A. No. 564/2017, M.A. No. 1148/2017,
M.A. No. 1237/2017, M.A. No. 333/2018, M.A. No. 347/2018 &
M.A. No. 811/2018)

WITH

M.A. No. 199/2015, M.A. No. 238/2015, M.A. No. 344/2015,
M.A. No. 512/2015, M.A. No. 513/2015, M.A. No. 692/2015,
M.A. No. 310/2016 & M.A. No. 508/2016

IN

Original Application No. 300/2013

WITH

Original Application No. 917/2018

Manoj Mishra

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

WITH

Manoj Kumar Misra & Anr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

WITH

**News item published in "The Times of India" Authored by
Jasjeev. Gandhiok
titled
"After Friday fanfare, Yamuna resembles decaying waste field"**

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 Ms. Meera Gopal,
Advocates

For Respondent (s): Mr. Narender Pal Singh, Advocate and Mr.
Dinesh Jindal, Law Officer for DPCC
Ms. Deep Sikha Bharti, Advocate for State of UP
Mr. Kush Sharma, Advocate for DDA
Mr. Ajay Jain and Mr. Brijesh Yadav, Advocates
for GNCTD
Mr. Mukul Singh, Advocate for MoEF&CC
Mr. Vivek Kumar Tandon, Advocate
Mr. Raj Kumar, Advocate for CPCB
Mr. I.K. Kapila, Advocate

ORDER

1. Interim report dated 16.01.2019 of the Monitoring Committee constituted by this Tribunal vide order dated 26.07.2018 to oversee the execution of directions issued for abatement of pollution in river Yamuna vide judgment dated 13.01.2015 reported in *2015 ALL (I) NGT REPORTER (I) (DELHI) 139* is taken on record. We note that there is also an earlier report of the Committee dated 22.10.2018 which was taken on record vide order dated 31.10.2018.
2. This Tribunal found dumping of debris and untreated effluents in river Yamuna and encroachments in the floodplains of the river. It was also found that there was failure of the statutory authorities to perform their duties, seriously prejudicing the public health, life and the environment.
3. The Tribunal noted in the earlier order dated 25.07.2018 that a sum of Rs. 20,000 Crores had already been provided under the planned expenditure to the NCT of Delhi out of which Rs. 2,031 Crores was earmarked for sewerage network and sewage treatment and disposal. The estimated expenditure for restoration projects was Rs. 4,000 Crores to be met from different heads of the planned expenditure. The statutory authorities were also entitled to recover the required amount on "Polluter Pays" principle from the identified polluters.
4. This Tribunal noted that inspite of several directions, the Government of NCT of Delhi and its authorities repeatedly failed to take necessary steps. Najafgarh drain caused 63% of Yamuna pollution which was to be tackled by the Delhi Jal Board (DJB), by installing STPs, interceptors and the sewerage lines. The repeated

failures of the authorities were summed up in the light of earlier proceedings before the Tribunal as follows:

“6. On 11th August, 2015, this Tribunal again found failure on the part of the authorities to take steps and imposed cost of Rs. 1 Lakh on the NCT Delhi to be recovered from the salary of erring officers from the concerned departments. Show cause notice was also issued to the concerned officers for their inaction. On 16th September, 2015, certain further directions were issued. On 06th April, 2016, information was sought about progress. On 09th May, 2016, statement on behalf of Delhi Jal Board was that 95% of the work had been completed but it is now stated that the statement was not correct. Direction for inspection was issued. With regard to financing of the project, it was noted on 03rd June, 2016 that the Delhi Jal Board could spend money out of Rs. 916 Crores available with it. The Delhi Development Authority was to provide the amount of Rs. 285.33 Crores. It was also observed that the work of this nature could be executed by ‘annuity mode’ as against the ‘Design Built Operate’ mode. However, first phase of the project was directed to be completed without the annuity mode as tenders had already been awarded. For Phase-II choice for annuity mode was given. On 05th August, 2016, the Tribunal again noted non-cooperation of the stakeholders for non-implementation of the project. Accordingly it was directed that the Delhi Jal Board may finalise the tenders for which funds had already been earmarked. A Committee was directed to be constituted to examine the tenders, the scope of tenders including the construction of new plant of 70 MGD and completing 15% of the incomplete work at Coronation Pillar. Delhi Jal Board was to spend Rs. 1309 Crores from its own budget. National Mission for Clean Ganga was to provide Rs. 900 Crores. The JICA project was to be executed forthwith. On 12th April, 2017, the progress was further reviewed and it was noted that no work had started for 7 STPs required to be constructed and the same are to be financed by the National Mission for Clean Ganga. On 19th May, 2017, it was noted that the work of 65% of river pollution of river Yamuna had been commenced by Delhi Jal Board by giving contract to Larsen & Toubro. It was to be completed by May, 2019. Three rehabilitation projects were also awarded to the contractors. On 24th July, 2017, certain further directions were issued. On 08th August, 2017, it was noted that the construction work of 14 STPs though awarded had not started. We are informed that even today the work has not started, allegedly on account of failure to measure the flow. On 21st November, 2017, the Tribunal noted the stand that the work had already started which was under three heads: (i) Coronation Pillar (ii) Rehabilitation of old peripheral sewer lines and (iii) Setting up of 14 STPs. 30% work was executed with regard to Coronation Pillar, 10-12% for Rehabilitation Project and 2% for the 14 STPs. Direction was issued to expedite the work. On 28th November, 2017, it was noted that National Mission for Clean Ganga had sanctioned Rs.45.20 Crores and released Rs. 45.20 Crores under the ratio of 70:30. The Delhi Jal Board was to spend Rs. 437 Crores and National Mission for Clean Ganga was to spend Rs. 515 Crores. Work of 9 STPs was awarded under one package and 5 STPs for another package.

7. On 06th December, 2017, it was noted that Delhi Jal Board was the executing agency for the work. It was directed that all the 14 STPs be financed by National Mission for Clean Ganga in the ratio of 70:30. Delhi Jal Board was directed to expedite the matter. JICA project to be continued to be funded in the ratio of 85:15. On 18th December, 2017, directions were issued with regard to Phase-II and Delhi Jal Board was directed to ensure that the 10 drains which have been trapped or intercepted be totally sealed to avoid any leakage to the river Yamuna. It was also directed that STP at Okhla be upgraded.

9. In spite of repeated directions in the last more than three years there is no meaningful progress at the ground level. It is undisputed that the work for 14 STPs has not even begun at site. We do not find any justification for this lapse. There is clear inference that the officer in charge for setting up the 14 STPs is either not competent enough to handle the situation or is not being allowed to proceed. We are informed that the present incumbent is posted since September, 2017. If present incumbent is not fit, the CEO of Delhi Jal Board can put in place a suitable officer who can take the responsibility to ensure that the work of 14 STPs positively commences on or before 01st December, 2018. Let an affidavit of CEO be filed within two weeks and the person to whom the responsibility is entrusted should also file affidavit and the steps taken by them. We are told by learned Senior Counsel that according to his instructions, Coronation Pillar Project is to be completed by April, 2019. This is in direct conflict with the timeline in the order of this Tribunal.

10. With regard to Coronation Pillar, it is stated that as per the terms of work awarded, the work was started in 12th October, 2016 and the same will be completed on 11th April, 2019 for which performance guarantee equal to the 5% of the cost of the work have already been taken. Trial period is upto December, 2019. It must be ensured that there is a proper and due monitoring and no situation arises for further extension granted on account of any lapse on the part of any authority or the contractor executing the work. This attitude is required in public interest particularly when the work was expected to be completed in March, 2017 on the directions of this Tribunal. With regard to Najafgarh drain it is stated that substantial work has been done and the same will be positively completed by 31st December, 2018. An affidavit to this effect be filed within two weeks by the person in charge who is looking after the said work. With regard to Phase-II, it is stated that 11 drains have been trapped and the effluents are being treated with regard to the said drains. With regard to remaining six drains which drain into Shahdara drain, it is stated that the work for trapping for 5 drains awarded will be completed in December, 2020 except for one which will be completed by 2018. We are surprised as to how such long date could have been given on the face of the timelines in the order of this Tribunal. As regards one drain no work has been started. It is stated that the land has not been provided. According to learned Counsel for Delhi Development Authority, no joint meeting took place and no initiative has been taken beyond writing a letter by the Delhi Jal Board. Let a joint meeting now take place on Monday at 11:00 AM in the office of the Delhi Development Authority. The land may be identified and further steps be taken to ensure that the work of the said drain

commences at the earliest. We make it clear that no objection of any technical nature shall be raised by the Delhi Development Authority and having regard to the fact that land is required for public utility and trapping of drains carrying untreated sewage which is a necessity for public health and an emergency, the land be positively given on or before 01st December, 2018."

5. Accordingly, vide order dated 26.07.2018, in exercise of powers under Section 25 of the National Green Tribunal Act, 2010 read with Section 51 C.P.C., the Tribunal constituted a Monitoring Committee to oversee preparation of the action plan and its execution. Interim report dated 16.01.2019 has been furnished, as already noted.

6. The Committee has noted that though seriousness has now begun, the DJB, the Delhi Municipal Corporations, the Public Works Department and the Irrigation and Flood Control (I&FC) were not taking responsibility with respect to the pollution of the drains. The Executive Engineers of Municipal Corporation are required to be made accountable for the polluted portion of the drains in their jurisdiction. There was need to link online monitoring system with the servers of the Central Pollution Control Board (CPCB) and the Delhi Pollution Control Committee (DPCC). Out of 459 MGD of treated water only 89 MGD was being reused. The river quality had deteriorated on account of idol immersions in a big way. Chromium content has increased by 11 times the prescribed standards, Iron concentration shot up 71 times, Nickel and Lead content has significantly increased. River immersion of idols should be replaced altogether on the lines of Gujarat example for which officials of Delhi Government should visit Surat. There is need for coordination with the Monitoring Committee of Haryana and also lack of cooperation by the State of Uttar Pradesh. The State of Uttar Pradesh has constituted a Committee of serving officers who were already having multifarious responsibilities and none of them contacted the Monitoring Committee for river Yamuna in Delhi even once.

7. The report of the Committee has considered the following aspects:

- “
- i. Environmental Flow*
 - ii. DDA and Demarcation of the Flood Plains and Conservation Activities*
 - iii. Quality of River water*
 - iv. Sewage Treatment Plants*
 - v. Interceptor Sewer Project (ISP)*
 - vi. Repair and maintenance of Drains*
 - vii. Industrial Pollution and CETPs*
 - viii. Sewage and Faecal Sludge Management*
 - ix. Online Monitoring of STPs, CETPs and Yamuna*
 - x. Use of treated Waste Water*
 - xi. Idol Immersion*
 - xii. State of Haryana and pollution of the Yamuna*
 - xiii. State of Uttar Pradesh and Pollution of the River*
 - xiv. Creating Public Awareness Through Information Dissemination Strategies”*

8. The Committee considered feasibility of creating wetlands on the floodplains, harvesting rain water, utilizing treated water, creation of off-channel reservoir for the purpose of ground water recharge. On the subject of demarcation of floodplains, detailed observations have been made which are mostly to be implemented by the DDA. There is need for mechanism to stop dumping of debris on the floodplains, installation of Electronic Surveillance System, removal of encroachment from the floodplains, Aerial Mapping to track debris, to set up check posts to track transportation of debris and recovery of environmental compensation from the polluters. There is need to set up more water quality monitoring stations, action plan for improvement of existing STPs, up-gradation of existing STPs, setting up new STPs to bridge the capacity gap between sewage generation and treatment, need for interceptors, repair and maintenance of drains, improvement of CETPs, setting up of sewerage network for unauthorised colonies to deal with the sewage generated therein which was presently being dumped largely in the river Yamuna. Faecal content and coliform count of the river was upto 6,400 times

above the prescribed standards. Only 14% of the 1797 colonies had sewage pipelines.

9. We also take on record the letter dated 23.01.2019 of the Committee sent to this Tribunal. The said letter shows a glaring picture of the inaction and apathy of the authorities, particularly the DDA. The letter states that the floodplains of the river had been encroached upon and construction was being done day and night. The Monitoring Committee accordingly issued directions for demolition of unauthorised constructions that had been raised in contravention of the Judgment of the Tribunal dated 13.01.2015 in *Manoj Mishra Vs. UOI & Ors.*¹ Although several hundred encroachments have been removed, in the absence of removing the debris side by side and failure to construct fencing specially authorised by the Monitoring Committee, the encroachers had quickly rebuilt the tenements. The whole exercise of carrying out demolitions thus turned out to be infructuous. The failure of DDA to remove the debris as was ordered by the Monitoring Committee and to secure the area by erecting barbed wire fencing resulting in repossession of the area by those evicted on 22.12.2018, 02.01.2019 and 03.01.2019 which was brought to the notice of the Vice Chairman, DDA by the Monitoring Committee vide letter dated 22.01.2019. The casual attitude of the Lands Department of DDA is serious cause of concern.

10. With regard to State of Haryana, the suggestions of the Monitoring Committee of the Haryana have been noted as follows:

"The Haryana State Pollution Control Board to regularly monitored the stand alone STPs and CETPs for compliance of the provisions of Water (Prevention and Control of Pollution) Act, failing which appropriate action may be taken under Section 33-A of Water (Prevention and Control of Pollution) Act, 1974 further action against those units operating in the non-conforming areas and discharging untreated effluent may be

¹ O.A. No. 06/2012

taken immediately, under the provision of Section 33-A of Water (Prevention and Control of Pollution) Act, 1974.

Haryana Shahari Vikas Pradhikaran (HSVP) to expedite the modification/up-gradation of existing CETPs and start operation of new CETPs to reduce the water pollution load from the industries to the receiving drains consequently reducing the pollution load in the River Yamuna

Haryana Industrial State Infrastructure Development Corporation (HSIIDC) to conduct a survey of the Industrial Areas and install CETPs wherever required in such industrial clusters.

Urban Local Bodies Department to submit detailed action plan for laying of Sewage Network in approved residential areas and diversion of Sewage from unapproved areas so that the same could be monitored for expeditious action.

Considering the impact which the pollution generated in Haryana has on the quality of water in Yamuna, it is recommended that NGT issues appropriate directions as suggested above for effective time bound implementation of projects”

11. With regard to State of Uttar Pradesh, it has been suggested that there are issues of (i) identification, demarcation, protection and rejuvenation of Yamuna floodplain abutting Delhi; and (ii) prevention and control of pollution entering Yamuna from UP. There is need for trapping drains, setting up STPs, taking action against industries not meeting the environmental standards, as well as action against industries operating in nonconforming areas and releasing effluent into drains joining Yamuna. There is need for an Action Plan for achieving ZLD. The Jal Nigam was asked to coordinate with DJB to ascertain the drains that are proposed to be tapped under ISP to avoid duplication. We have noted grim situation of pollution of Yamuna at Agra based on Expert Committee report in our order today in Original Application No. 306/2016.

12. Since the recommendations of the Committee are based on objective data and are in the interest of environment, the same are accepted.

There is no objection by any of the States, who are duly represented and are conversant with the facts.

13. Accordingly, we direct the NCT of Delhi, the State of Haryana as well as the State of Uttar Pradesh to issue appropriate directions to the concerned authorities to act upon the above recommendations, fixing specific accountability and timelines.

14. The issue of pollution of River Yamuna has been pending for more than thirty years. Unfortunately, there is no satisfactory progress. Failure of authorities is affecting life and health of citizens and threatening the existence of major River which also affects River Ganga. Precautionary as well as remedial actions are utmost significant. Efforts of this Tribunal and the Committee will be a waste if the Governments of NCT, Haryana and Uttar Pradesh fail to take identified steps in time bound manner. In the light of track record of laxity, stringent conditions must be laid down for prompt and faithful compliance.

15. The situation is grim. Access to clean air and water is part of access to life.² No activity with which adversely affects laid down in air and water standard can be allowed to continue at any cost. No regulatory authority can remain mute spectator and must play proactive role in exercising their powers to sternly prevent such pollution. Any failure has to be dealt with strongly. It is a matter of serious concern that compliance of environment norms is not satisfactory and result is large scale deaths and diseases and serious damage to air, water and earth.³ As per CPCB report, 351 river stretches in the country are polluted, 102 cities are classified

² Indian Council for Enviro Legal Action v. Union of India & Ors. (1996) 3 SCC 212

³ As per some studies (the Lancet Commission Report on Pollution and Health) 2.51 million that took place in India in 2015, ranking India No. 1 in pollution related deaths. Pollution has been responsible for the most non-communicable disease deaths. In 2015, all forms of pollution combined were responsible for 21% of all deaths from cardiovascular disease, 26% of deaths due to heart disease, 23% due to stroke, 51% to chronic obstructive pulmonary disease, and 43% due to lung cancer. Pollution was also responsible for these times as many deaths as AIDS, tuberculosis, and malaria combined. <http://www.thehindu.com/sci-tech/energy-and-environment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece>

as non-attainment cities in terms of ambient air quality, there are 100 industrial clusters, there is wide gap in compliance of statutory rules for waste disposal, which issues are subject matter of proceedings before this Tribunal.⁴

16. We have already noted that '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.⁵ 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

⁴ (a). Original Application No. 673/2018, News item published in 'The Hindu' authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" dated 20.09.2018 : wherein the Tribunal issued directions to prepare and implement Action Plans to rejuvenate and restore the 351 polluted river stretches.

(b) Original Application No. 681/2018, News Item Published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15" dated 08.10.2018: wherein the Tribunal directed Action Plans to be prepared for the 102 non-attained cities to bring the standards of air quality within the prescribed norms.

(c) Original Application No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" dated 13.12.2018 : wherein the Tribunal directed preparation of time bound Action Plans to ensure that all industrial clusters comply with the parameters laid down in Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.

(d) Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 dated 31.08.2018: wherein the Tribunal constituted Apex and Regional Monitoring Committees for effective implementation of MSW Rules, 2016.

⁵ (a) Compliance of Municipal Solid Waste Management Rules, 2016 order dated 16.01.2018 in O.A. No. 606/2018.

(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 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.

of duties to protect environment. On Precautionary Principle, 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.

17. We have noted repeated failure on part of Delhi Government. There is serious failure of DDA. We have also noted pollution being caused and failure of UP Government in controlling the same particularly at Agra as found by the Expert Committee report in O.A. No. 306/2016 which supports the stand in the report of the Committee in the present case that the State of UP needs to take strong measures and also needs to revamp the Committee for Yamuna to be manned by serving or retired officers who can devote exclusive time on the subject. There is also failure of State of Haryana in monitoring STPs and CETPs operating in non-conforming areas discharging untreated effluents in river Yamuna apart from discharge of untreated sewage impacting the quality of water of Yamuna.

18. It will be in the fitness of things that having regard to the facts and circumstances of the case, the NCT Delhi and States of Haryana and UP are required to furnish performance guarantee.

19. Let the NCT of Delhi, the State of Haryana and the State of Uttar Pradesh furnish Performance Guarantee for compliance of the above directions to the satisfaction of the CPCB in the sum of Rs. 10 Crores each within one month from today. For any failure, personal responsibility will be of the Chief Secretaries of the respective States. DDA may furnish Performance Guarantee in the sum of Rs. 50 Lakhs to ensure performance on its part to the

satisfactory of the CPCB. Responsibility to comply will be of Vice Chairman, DDA personally.

20. Let the Chief Secretary furnish further report in the matter on 11.03.2018 on which date the Chief Secretary is to appear in person in Original Application No. 606/2018 need not be listed on 11.04.2019, the scheduled date.

21. The report may be put up on the websites of National Green Tribunal, CPCB, Government NCT of Delhi, Government of Haryana and the Government of Uttar Pradesh and may be kept on the said websites for atleast one month for any meaningful suggestions to the concerned Committees.

22. We suggest that the Committee may also consider the following besides fixing timelines in Action Plan with respect to issues as contained in para-7 *supra*:

- i. Fixing a timeline for securing a report from National Institute of Hydrology, Roorkee on environmental flow from Hathnikund to Agra preferably by 30.04.2019.
- ii. Developing river front preferably of 2 kms. by a stipulated date.
- iii. Collect information about biodiversity status of river Yamuna.
- iv. Require DPCC to recover compensation from authorities of defaulting STPs.
- v. DPCC may also be required to recover damages for delay from agencies delaying action required on their part for setting up of STPs or taking other steps for intercepting the drains by the stipulated date.
- vi. DPCC may require to take coercive measures of prosecuting, prohibiting and compensating for non-maintaining CETPs standards by the concerned CETP operator or the concerned member.

23. The Committee may give its further report as and when there is any further development in the matter by e-mail at ngt.filing@gmail.com or by May 20, 2019 whichever is earlier.

Put up for consideration on 28.05. 2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 29, 2019

Original Application No. 6/2012 and other connected matters
DV

