

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

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**M.A. NOS. 1502 OF 2017 AND 855 OF 2017  
IN**

**ORIGINAL APPLICATION NO. 594 of 2016**

**IN THE MATTER OF:**

Akash Vashishtha  
R-7, Raj Nagar  
Ghaziabad, UP- 201 001

.....APPLICANT

Versus

**1. Union of India**

Through the Secretary  
Ministry of Environment and Forests & Climate Change  
Indira Paryavaran Bhavan  
Jor Bag Road  
New Delhi 110003

**2. Ministry of Water Resources**

Through the Secretary,  
Shram Shakti Bhavan  
Rafi Marg,  
New Delhi- 110001

**3. State of Uttar Pradesh**

Through the Chief Secretary  
Secretariat 5<sup>th</sup> Floor,  
Govt. of UP  
Lucknow (U.P) - 226001

**4. Uttar Pradesh Irrigation Department**

Through its Engineer in Chief (Irrigation)  
Cantt Road, Udaiganj,  
Lucknow (U.P) - 226001

**5. Uttar Pradesh Jal Nigam**

Through its Managing Director,  
6, Rana Pratap Marg,  
Lucknow (U.P) - 226001

**6. Archaeological Survey of India**

Through its Superintending Archaeologist,  
Agra Circle, 22, The Mall,  
Agra (U.P)- 282001

**7. Mathura Vrindavan Development Authority**

Through its Chairman,  
32, Civil Lines, Mathura (U.P)- 282001

**8. Vrindavan nagar palika Parishad**

Through its Executive Officer,  
Chungi Chauraha, Vrindavan  
Mathura (U.P)- 282001

.....RESPONDENTS

**COUNSEL FOR APPLICANTS:**

Mr. Rahul Choudhary and Ms. Meera Gopal Advs.

**COUNSEL FOR RESPONDENTS :**

Mr. B.V. Niren and Mr. Vinayak Gupta, Advs for respondent no. 6  
Ms. Deep Shikha Bharti, Adv for State of Uttar Pradesh  
Mr. Mukul Singh Adv. For MoEF  
Mr. Ishwer Singh, Mr. Varun Thakur and  
Mr. Kumar Ajitabh, Advs. NMCG  
Mr. I.K. kapila Adv. For UP Jal Nigam  
Mr. S.K. Bhattacharya and Mr. Niraj Bobby Paonam, Advs.

**ORDER**

**PRESENT:**

**Hon'ble Mr. Justice U.D. Salvi (Acting Chairperson)**

**Hon'ble Dr. Nagin Nanda (Expert Member)**

**Per. U.D. Salvi J.**

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**Reserved on: 17<sup>th</sup> January, 2018**  
**Pronounced on: 31<sup>st</sup> January, 2018**

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1. The applicant in Original Application has moved this M.A. No. 1502 of 2017 for direction to stay the ongoing activity of concretization in River Yamuna in Vrindavan.

2. During the course of the hearing of M.A. No. 1502 of 2017 Learned Counsel appearing on behalf of one Mr. Vijay Kishor Goswami belonging to the family of priest (Sevait Chief Priest of the Radha Madan Mohan Temple, Vrindavan) drew our attention to M.A. No. 855 of 2017 moved for restraining the respondents from carrying out the work of putting metal sheets and sever lines along the ghats of Mathura abutting River Yamuna, and for further directions to remove the work done so far and restoring the river bed to its original position.
3. The main application has been filed for declaring the activity of construction work of River Front Development and laying of pipeline in river bed and flood plain of River Yamuna as illegal and for restoring of the river bed and flood plain of River Yamuna.
4. On 31<sup>st</sup> May, 2017, after the main application was responded to by the respondent no. 3- State of UP and Respondent no.4- Irrigation Department. We had permitted the work of sheet piling and dredging vide order dated 31<sup>st</sup> May, 2017.
5. The applicant Mr. Vijay Kishor Goswami in M.A. No. 855 of 2017 is also seeking recalling of the orders dated 16<sup>th</sup> May, 2017 and 31<sup>st</sup> May, 2017. On 16<sup>th</sup> May, 2017 we had passed the following directions:

*“The work will continue. However, no construction in the Ghats will be done.”*
6. On 31<sup>st</sup> May, 2017, learned Counsel appearing for the respondents upon instructions had made a statement that the State was not doing any other work except sheet piling work

and dredging connected therewith. We had reiterated that they will continue with the work only and no other work except this.

7. From the photographs placed before us and the submission made on behalf of the parties as well as the plan of construction annexed to the affidavit dated 25<sup>th</sup> January, 2017 of the respondent nos. 3 and 4 at annexure R-1, we find that the sheet piling work is in progress along the bank of River Yamuna stretching from Kosi Drain to the proposed STP site and next to it on landward site along the ghat is interceptor drain pipeline from Kosi Drain to the proposed STP. This work is in the controversy in the present case. According to the applicant in main application, the respondents are doing the construction of 4 to 5 feet high concrete wall in the middle of the river detrimental to the aquatic life of the river and thereby causing irreparable damage to the eco-system of River Yamuna.

8. Learned Counsel Mr. Rahul Choudhary for the applicant submitted that the work in question is in violation of Section 24 of the Water (Prevention and Control of Pollution) Act, 1974 as well as in violation of Notification dated 7<sup>th</sup> October, 2016 issued by Ministry of Water Resources, River Development and Ganga Rejuvenation the work for the reason that is being carried out in active flood plain area of River Yamuna a tributary of River Ganga without prior permission/approval of the National Mission for Clean Ganga.

9. Learned Counsel appearing on behalf of Mr. Vijay Kishor Goswami in M.A. No. 1502 of 2017 after introducing us to the religious and historical importance of Ghats at Mathura-Vrindavan along the River Yamuna submitted that the applicant Mr. Goswami being concerned about declining water table in Vrindavan and the role of the under-belly of the Ghats in recharging of the ground water was prompted to move the present application to bring before us the fraud being played on the specious premise that the dredging was being done in the river in order to restore the river bed, while in fact the work in question is being carried out to reclaim the land and construct the road to favour the land sharks in the area under the garb of various civic projects. He submitted that the Government Authorities have constructed waste water drains along the banks of River Yamuna permitting the sewage to fall in River Yamuna. He pointed out from the definitions and the provisions-particularly para 6 and 42 in Notification dated 7<sup>th</sup> October, 2016 issued by Ministry of Water Resources River Development and Ganga Rejuvenation as to how River Yamuna being a tributary of River Ganga is covered by the said Notification which prohibits every person from carrying out construction of any structure, whether permanent or temporary for residential or commercial or industrial or any other purposes, in the active flood plain area particularly without the prior approval of the National Mission for Clean Ganga.

10. Learned Counsel appearing on behalf of the Ministry of Water Resources, River Development and Ganga Rejuvenation joined the Learned Counsel for the applicant in support of its legal contentions. He submitted that it is incumbent upon the respondent nos. 3 and 4 to seek a review of such construction so as to examine as to whether such constructions are causing interruption in the flow of water or pollution in River Ganga and its tributaries by the National Mission for Clean Ganga and upon such examination to decide whether the construction happens to be so and the same requires to be removed as per proviso to para 6 of the Notification dated 7<sup>th</sup> October, 2016 or not. He pointed out from para 42 that the type of construction undertaken by the respondent nos. 3 and 4 is in contravention of Provisions in para 42 of the Notification.

11. The nature of construction i.e. sheet piling work and laying of interceptor drain pipeline as seen in the photographs placed before us along the bank of River Yamuna tributary of Ganges and as more particularly revealed in the plan referred to herein above is not disputed.

12. Learned Counsel appearing on behalf of the respondent nos. 3 and 4 upon instruction from Mr. Sanjeev Kumar Tiwari Assistant Engineer, Irrigation Department explains that the interceptor drain is made of RCC pipes as seen in the photographs and is being laid along the ghats to intercept about six drains carrying sewage flowing directly into River Yamuna presently and to take the sewage so emptied directly in

River Yamuna to the proposed STP taking advantage of natural gradient available along the banks of River Yamuna from upstream to downstream. She further explains that sheet piling work involves driving of the iron sheets of 9mm -30mm parallel to each other to 6 meters depth and capping both the sheets on the top with RCC and this work is being done to protect the Ghats along the River Yamuna and not for the purposes of reclaiming the land as alleged.

13. Both the applications except the bald contentions therein do not elaborate as to how the pollution in River Yamuna would be caused by such work and/or what type of aquatic life in River Yamuna and ecosystem therein will be irreparably damaged. Both the applicants have not placed any material in that regard before us.

14. The relevant portion of Section 24 of Water (Prevention and Control of Pollution) Act, 1974 reads as under;

*“24. Prohibition on use of stream or well for disposal of pollution matter, etc. – (1) Subject to the provisions of this section –*

- (a) No person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (Whether directly or indirectly) into any [stream or well or sewer or on land]; or*
- (b) No person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.*

15. Having placed no concrete material before us regarding any impediment to the proper flow of River Yamuna or thing which tends to impede such flow, either directly or in combination with similar matters in a manner leading or likely to lead to a

substantial aggravation of pollution due to other causes or of its consequences, we have legitimate hesitation in accepting the contentions that rigour of Section 24 of the Water Act, 1974 will come into play. On the contrary we find from the submissions and the facts placed before us that the construction of interceptor drain to capture the sewage flowing into River Yamuna and take it to the STP downstream for treatment is the necessity of the present situation, may be created by uncontrolled and unregulated planning of the sewage system. However, a look at the said Notification dated 7<sup>th</sup> October, 2016, which has been issued by the Central Government in exercise of the power conferred by sub-section 1 read with clauses of section (i), (ii), (v), (vi), (vii), (viii), (ix), (x), (xii) and (xiii) of sub-section (2) and (30 of Section 3 and Sections 4, 5, 9, 10, 11, 19, 20 and 23 of the Environment (Protection) Act, 1986 for taking measures for protection and controlling of pollution in River Ganga and to ensure continuous adequate flow of water in River Ganga, makes it very clear that prior approval of National Mission for Clean Ganga for any activity specified in para 42 (a) to (g), particularly the activities which are contrary to the Principles laid down in para 4 therein is necessary to be obtained from National Mission for Clean Ganga. Para 4 of the Notification reads as under:

4. Principles to be followed for rejuvenation, protection and management of River Ganga-(1) The following principles shall be followed in taking measures for the rejuvenation, protection and management of River Ganga, namely;-

*(i) the River Ganga shall be managed as a single system;*



*(ii) the restoration and maintenance of the chemical, physical, and biological quality of the waters of River Ganga shall be achieved in a time bound manner;*

*(iii) the River Ganga shall be managed in an ecological sustainable manner;*

*(iv) the continuity of flow in the River Ganga shall be maintained without altering the natural seasonal variations;*

*(v) the longitudinal, lateral and vertical dimensions (connectivities) of River Ganga shall be incorporated into river management processes and practices;*

*(vi) the integral relationship between the surface flow and sub-surface water (groundwater) shall be restored and maintained;*

*(vii) the lost natural vegetation in catchment area shall be regenerated and maintained;*

*(viii) the aquatic and riparian biodiversity in River Ganga Basin shall be regenerated and conserved;*

*(ix) the bank of River Ganga and its flood plain shall be construction free Zone to reduce pollution sources, pressures and to maintain its natural ground water recharge functions;*

*(x) the public participation in rejuvenation, protection and management, revision and enforcement of any regulation, standard, effluent limitation plan, or programme for rejuvenation, protection and management shall be encouraged and made an integral part of processes and practices of River Ganga rejuvenation, protection and management.*

*(2) National Mission for Clean Ganga may, having regard to the needs of the people of the country, advances in technology and socio economic conditions of the people and to preserve the rich heritage of national composite culture, specify additional principles in addition to the principles specified under sub-paragraph (1)*

16. Learned Counsel appearing on behalf of the respondent no. 3 and 4 submitted that the work in question was started prior to said Notification dated 7<sup>th</sup> October, 2016 coming into force and as such no prior approval for the work undertaken was obtained by the said respondents. Proviso in para 6 of the Notification affords guidance in that connection as follows:

*6. Prevention, control and abatement of environmental pollution in River Ganga and its tributaries.- (1) No person shall discharge, directly or indirectly, any untreated or treated sewage or sewage sludge into the River Ganga or its tributaries or its banks:*

*Provided that where a local authority does not have, on the date of commencement of this Order, sewerage scheme or infrastructure for collection, storage, transportation and disposal of sewage or sewage sludge or such infrastructure is not functional on the said date in an area abutting the River Ganga or its tributaries, every such local*

authority shall, within a period, specified by National Mission for Clean Ganga from the date of commencement of this Order, develop such infrastructure or make such infrastructure functional, as the case may be, for collection, storage, transportation and disposal of sewage in the territorial area of the local authority.

(2) No person shall discharge, directly or indirectly, any untreated or treated trade effluent and industrial waste, biomedical waste, or other hazardous substance into the River Ganga or its tributaries or on their banks:

Provided further that where an industry or industrial area management does not have, on the date of commencement of this Order, industrial effluent treatment scheme or infrastructure for collection, storage, transportation and disposal of trade effluents industrial waste, bio-medical waste, or other hazardous substance, etc. or such infrastructure is not functional on the said date in an area abutting the River Ganga or its tributaries, every such industry or industrial area management shall, within a period so specified by the National Mission for Clean Ganga from the date of commencement of this Order, develop such infrastructure or make such infrastructure functional, as the case may be, for collection, storage, transportation and disposal of trade effluent and industrial waste, bio-medical waste, or other hazardous substance in the jurisdiction of the industry or industrial area management.

(3) No person shall construct any structure, whether permanent or temporary for residential or commercial or industrial or any other purposes in the River Ganga, Bank of River Ganga or its tributaries or active flood plain area of River Ganga or its tributaries:

Provided that in exceptional circumstances like natural calamities or religious events at traditional locations, temporary structures can be raised after prior permission of the National Mission for Clean Ganga acting through the State Ganga Committee and the District Ganga Committee: Provided further that in case any such construction has been completed, before the commencement of this Order, in the River Bank of River Ganga or its tributaries or active flood plain area of River Ganga or its tributaries, the National Mission for Clean Ganga shall review such constructions so as to examine as to whether such constructions are causing interruption in the continuous flow of water or pollution in River Ganga or its tributaries, and if that be so, it shall cause for removing them.

(4) No person shall do any act or carry on any project or process or activity which, notwithstanding whether such act has been mentioned in this Order or not, has the effect of causing pollution in the River Ganga.

(5) It shall be the duty of the National Mission for Clean Ganga, every Specified State Ganga Committee or specified District Ganga Protection Committee, local authority and all other authorities and persons to disseminate widely and bring to public notice, using various means, information captured in reports and the aforesaid measures in the local language in every village, town, city and other areas abutting River Ganga and its tributaries.

17. There is complete prohibition on discharge directly or indirectly, of any untreated or treated sewage/sludge into River Ganaga or its tributaries or its banks; and no person can construct any structure for residential or commercial or industrial or any other purposes in the tributaries of River Ganga or active flood plain or thereof. Proviso in para 6 deals with completed structure before the commencement of the Notification by making provision for review of such construction and its removal in case upon examination it is found that such construction are causing interruption in the continuous flow of water or pollution in River Ganga or its tributaries.

18. It is seen from the principles to be followed for rejuvenation, protection and management of River Ganga that the River Ganga shall be managed as a single system in an ecologically sustainable manner. Though the work in question has not been completed it would be prudent keeping in mind the principles of Sustainable Development and Precautionary Principle-particularly when all the pertinent facts regarding impediment of river flow, pollution and consequent damage to the eco-system have not been placed before us, to have the entire project of construction undertaken by the respondent nos. 3 and 4 reviewed by the National Mission for Clean Ganga. However, considering the submissions made on behalf of the respondent nos. 3 and 4 that no reclamation of the land is being undertaken and only capping of the sheet piling work is

being done to protect the banks of River Yamuna and to intercept the sewage lines to take the intercepted sewage line for carrying sewage to STP downstream, it appears prima facie that the balance of convenience is in favour of the respondent nos. 3 and 4. We, therefore, pass the following order:

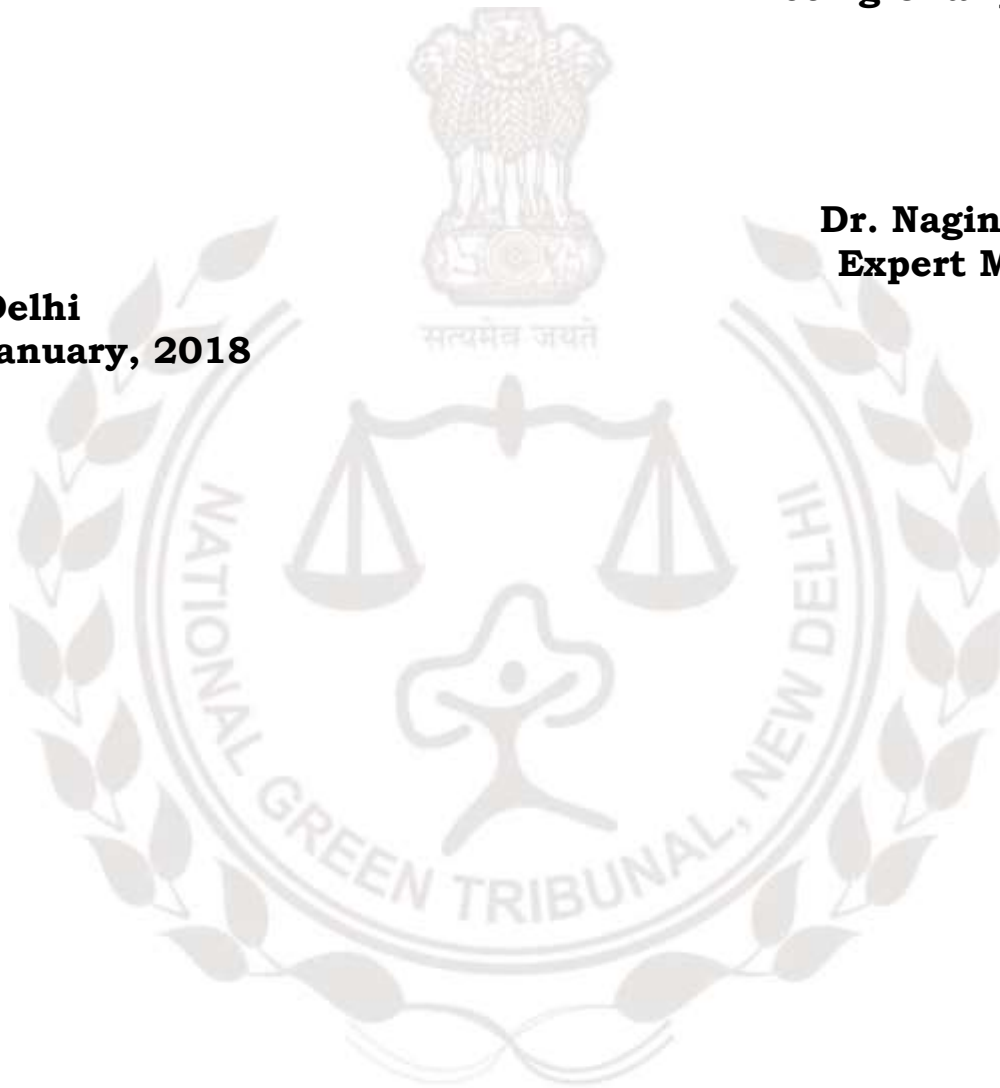
1. The applications are partly allowed. The work carried out and undertaken by the respondent no. 3 and 4 shall be subject to the review done by the National Mission for Clean Ganga and the respondent nos. 3 and 4 shall not claim any equity in that regard and remove the same, if required by National Mission for Clean Ganga to do so at their cost and expenses.
2. The National Mission for Clean Ganga shall review the said work carried out and undertaken by the respondent nos. 3 and 4 along the Ghats of Mathura and Vrindavan as aforesaid without being influenced by any of the observations made by us within three months.
3. Liberty granted to NMCG to call for any information, data or expert opinion as is found necessary by it.
4. Liberty granted to the applicants as well as respondent nos. 3 and 4 to make representation along with such relevant material in support thereof to National Mission for Clean Ganga within two weeks.

5. M.A. No. 1502 of 2017 and M.A. No. 855 of 2017 stands disposed of accordingly.

**U.D. Salvi**  
**Acting Chairperson**

**Dr. Nagin Nanda**  
**Expert Member**

**New Delhi**  
**31<sup>st</sup> January, 2018**



**NGT**