

Item No. 04

(Court No.1)

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

(By Video Conferencing)

Original Application No. 614/2018

(With reports dated 20.03.2021 and 22.03.2021)

Lubna Sarwath

Applicant

Versus

Govt. of Telangana

Respondent

Date of hearing: 15.06.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent: Mr. Dhananjay Bajjal, Advocate for TSPCB

ORDER

1. Restoration of Bum-Rukn-ud-Dowla a historic heritage water body of around 104 acres, opposite National Police Academy, Shivrampally, Hyderabad, is the question for consideration. On receiving a complaint that water body was being destroyed by dumping of waste and sewage and encroachment, vide order dated 10.09.2018, this Tribunal directed the Urban Development Department of the State of Telangana and the State PCB to look into the matter.

2. Vide order dated 21.12.2018, it was noted that the State PCB had failed to take coercive measures against the polluters and the Urban Development Department of the State and the concerned local body had failed to perform their statutory obligations. Extracts from the said order are as follows:-

- “2. The above report shows failure on the part of the SPCB in taking appropriate coercive measures against the polluters. Even if polluters are not industry, it does not mean the SPCB cannot perform its duty of ensuring that the water body is kept free from pollution and no garbage is dumped or sewage is discharged therein. The SPCB has jurisdiction and authority to take action against the Municipal Body concerned as well as the inhabitants collectively or individually, apart from prosecution.
3. **Accordingly let the SPCB perform its statutory obligation by preparing an action plan in coordination with Urban Development Department and the concerned local body. The SPCB may initiate prosecution and assess the damages and recover the same from the concerned polluters. The Urban Development Department, Telangana, may provide necessary budget. Execution of the Action Plan be over seen by the SPCB jointly with the Urban Development Department, Telangana. For any failure, the Secretary of Urban Development Department, Telangana as well as the Chairman of State Pollution Control Board will be personally accountable.**
4. The Action Plan be prepared within two months with the target of restoring the water quality to prescribed level within next six months. An Interim Report may be furnished to this Tribunal before 31.03.2019.
5. The SPCB may furnish a copy of this order to the Urban Development Department, Telangana for compliance.”

3. The matter was then considered on 21.05.2019 in the light of report dated 03.04.2019 filed by the Urban Development Department of the State and finding that adequate steps had not been taken, remedial action was directed. The operative order is reproduced below:-

“2.

3. Report has been furnished vide e-mail dated 03.04.2019 by the State PCB which **does not show adequate steps taken for checking the sewage**. It is stated that encroachment has been removed and demarcation of the boundary of the lake has been done. There is a proposal to protect the lake with fencing. The Greater Hyderabad Municipal Corporation is planning treatment and remediation in consultation with NEERI. 4. In view of the above, **let further steps be taken that a report be now furnished by Secretary Urban Development Department, Telangana within two months by e-mail at ngt.filing@gmail.com.”**

4. The matter was last considered on 15.07.2020 in the light of the report dated 26.08.2019 of the Secretary, Urban Development Department mentioning that an action plan had been prepared which was to be completed by September, 2020. Accordingly, the matter was deferred for completing the action plan and filing a further status report.

5. In view of above direction, two reports have been filed - report dated 22.03.2021 by the State PCB and report dated 20.03.2021 by the Irrigation and CAD Department. The report of the State PCB is that the sewage streams are still joining the lake and the water quality is of 'E' category. Directions have been issued to the Hyderabad Metropolitan Water Supply & Sewerage Board (HMWS&SB), Deputy Commissioner, GHMC and the Superintendent Engineer, Hyderabad Lakes & Water Bodies Management Circle (HL&WBMC), Irrigation & Command Area Development Department (I&CADD) to submit action plan before this Tribunal.

The report of the Irrigation & CAD Department is as follows:-

“1. **Lake protection:**

Fencing was proposed the lake and fencing was partly erected to the lake, however the fencing was stopped due to legal issues and encounter of patta lands, dwellings are present in the FTL of tank which have caused hindrances to laying of fencing and hence fencing work was stopped.

2. **Treatment of sewage water entering into lake:**

As part of the lake cleaning, the CSIR-NEERI has proposed their in-situ treatment for sewage entering into the lake and CSIR-NEERI was issued work order in the month of June 2019.

Subsequently, CSIR-NEERI teams have visited Bum-Rukh-Ud-Dowla Lake and have collected samples. However they have expressed some problems by vide letter dated 18.06.2020 (Annexure-I) stating that their work area need to be set up outside FTL of tank as their in-situ treatment should not be submerged inside water.

However as per site conditions, it is observed that the above requirement cannot be met as patta lands are existing inside / outside FTL of the tank. Hence, in view of the above, the NTD, I&CAD Dept., addressed a letter dated 19.06.2020 (Annexure-II) to the Dy. Commissioner, GHMC, Rajedranagar with a request to address Hyderabad Metropolitan Water Supply & Sewerage Board (HMWS&SB) for taking necessary arrangements to divert the sewage entering into lake. However, water hyacinth in the lake was removed by GHMC”

6. No report has been filed by the Secretary, Urban Development Department in terms of order dated 15.07.2020.

7. From the record, it is seen that first order was passed on 10.09.2018 and it was noted that the grievance against violation of Wetlands (Conservation and Management) Rules, 2010 and Water (Prevention and Control of Pollution) Act, 1974 called for remedial action. Again, on 21.12.2018 and 21.05.2019, the Tribunal noted that no adequate steps had been taken and Secretary, Urban Development Department of Telangana Government must take remedial action. Though, the Secretary, Urban Development Department did file report dated 26.08.2019 stating that action was being taken but even after almost two years, the situation has not improved. The State PCB has also failed to perform its statutory duty to the prejudice of environment, public health and the rule of law.

8. There is thus continuing violation not only of the statutory provisions but also judgment of the Hon'ble Supreme Court dated 22.02.2017 in *Paryavaran Suraksha Samiti v. Union of India*¹ directing that norms for generating funds for effective pollution control devices to prevent water pollution be finalized before 31.03.2017 and prevention of discharge of sewage be ensured by 31.03.2018 failing which the Secretary

¹ (2017) 5 SCC 326

of the concerned department of the State will be accountable. It was further directed that the State PCB must initiate civil and criminal action against the defaulters. This Tribunal was directed to monitor compliance. Based on the judgment of the Hon'ble Supreme Court, the Tribunal issued further directions from time to time to all the States including the State of Telangana requiring compliance and coercive measures in terms of monetary compensation and prosecution against the erring officers. Last order was passed on 22.02.2021 in O.A. No. 593/2017, *Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors.*

9. For ready reference the observations of the Hon'ble Supreme Court in above judgement are quoted below:-

“7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50%, that of the State Government concerned (including the Union Territory concerned) is 25%. The balance 25%, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up “common effluent treatment plants”, according to the learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

X.....X.....X.....

10. Given the responsibility vested in municipalities under Article 243-W of the Constitution, as also, in Item 6 of Schedule XII, wherein the aforesaid obligation, pointedly extends to “public health, sanitation conservancy and solid waste management”, we are of the view that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the municipalities (and/or local bodies) concerned, cannot be permitted to shy away from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243-X and 243-Y of the Constitution. It will be open to the municipalities (and/or local bodies) concerned, to evolve

norms to recover funds, for the purpose of generating finances to install and run all the “common effluent treatment plants”, within the purview of the provisions referred to hereinabove. Needless to mention that such norms as may be evolved for generating financial resources, may include all or any of the commercial, industrial and domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the State Government (Union Territory) concerned, through the Secretaries, Urban Development and Local Bodies, respectively (depending on the location of the respective common effluent treatment plant). The norms for generating funds for setting up and/or operating the “common effluent treatment plant” shall be finalised, on or before 31-3-2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the State Governments (or the Union Territories) concerned, shall cater to the financial requirements, of running the “common effluent treatment plants”, which are presently dysfunctional, from their own financial resources.

11. *Just in the manner suggested hereinabove, for the purpose of setting up of “common effluent treatment plants”, the State Governments concerned (including, the Union Territories concerned) will prioritise such cities, towns and villages, which discharge **industrial pollutants and sewer, directly into rivers and water bodies.***
12. *We are of the view that in the manner suggested above, **the malady of sewer treatment, should also be dealt with simultaneously.** We, therefore, hereby direct that “sewage treatment plants” shall also be set up and made functional, within the timelines and the format, expressed hereinabove.*
13. ***We are of the view that mere directions are inconsequential, unless a rigid implementation mechanism is laid down.** We, therefore, hereby provide that the directions pertaining to continuation of industrial activity only when there is in place a functional “primary effluent treatment plants”, and the setting up of functional “common effluent treatment plants” within the timelines, expressed above, shall be of the Member Secretaries of the Pollution Control Boards concerned. **The Secretary of the Department of Environment, of the State Government concerned (and the Union Territory concerned), shall be answerable in case of default. The Secretaries to the Government concerned shall be responsible for monitoring the progress and issuing necessary directions to the Pollution Control Board concerned, as may be required, for the implementation of the above directions.** They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data and shall furnish the same to the Bench of the jurisdictional **National Green Tribunal.***

14. *To supervise complaints of non-implementation of the instant directions, the Benches concerned of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The abovementioned case files will be listed periodically. **The Pollution Control Board concerned is also hereby directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.***

X.....X.....X.....

16. *It however needs to be clarified, that the instant directions and time lines, shall not in any way dilute any time lines and directions issued by Courts or Benches of the National Green Tribunal, hitherto before, wherein the postulated time lines would expire before the ones expressed through the directions recorded above. **It is clarified, that the time lines, expressed hereinabove will be relevant, only in situations where there are no prevalent time line(s), and also, where a longer period, has been provided for.***

(emphasis supplied)

10. The above directions of the Hon'ble Supreme Court are time bound and also deal with the sources of funding. There is further direction of this Tribunal to monitor. The timeline for completion of requisite STPs is 31.03.2018 after which coercive measures are to be taken against the concerned local bodies as well as the Secretaries of the concerned Department of the State.

11. In view of such serious failure and continued violations of law which is a criminal offence punishable with imprisonment, is also contempt of orders of the Hon'ble Supreme Court and violation of directions of this Tribunal, coercive measures need to be taken against the erring Secretary to the Government as well as against the PCB.

12. In view of binding judgment of the Hon'ble Supreme Court, the plea of budget cannot be taken to justify continued violation of the Water Act and citizen's right to clean environment. In absence of any other source of funds, funds are to be raised from the citizens in the area as directed by

the Hon'ble Supreme Court and for failure concerned erring officers are to be proceeded against.

13. In view of above, while giving last opportunity for compliance, we require the Secretary of the concerned Departments, i.e., Local Bodies/Urban Development/Local Self Department and the Member Secretary, State PCB to remain personally present by video conferencing on the next date to show cause way of coercive measures laid down under Sections 25 and 26 of the National Green Tribunal Act, 2010 (NGT Act). Under Section 26 of the NGT Act, violation of order of this Tribunal is a criminal offence punishable with imprisonment upto three years and fine upto Rs. 10 crores. Under Section 25 of the NGT Act, 2010, the order is executable at the decree of the Civil Court. Under Section 51 of the Code of Civil Procedure, 1908, there is provision for civil imprisonment or any other order. Any other order can include stopping of salary of the erring officers. While giving compliance status, it may be made clear that the sewage being discharged into lake stands diverted to the destined STP, the treated sewage was being utilised and the water quality of lake sewage being discharged into lake stood diverted to destined STP and treated sewage is utilised and water quality of lake had improved to at least category 'C'.

List for further consideration on 21.10.2021.

A copy of this order be forwarded to the Chief Secretary, Government of Telangana and the State PCB for being conveyed to the concerned Officers by e-mail to facilitate the compliance of the above order.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

June 15, 2021
Original Application No. 614/2018
AVT