

Item No. 01

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 178/2017/EZ

(M.A. No. 01/2018)

With

Execution Application No. 02/2018/EZ

In

Original Application No. 178/2017/EZ

Mahanoy River Safety Society

Applicant(s)

Versus

State of Bihar & Ors.

Respondent(s)

Date of hearing: 31.07.2020

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

For Applicant(s): Ms. Paushali Banerjee, Advocate

For Respondent(s): Mr. Keshav Mohan and Mr. Surendra
Kumar, Advocates for Respondent No. 1.
Ms. Amrita Pandey, Advocate for
Respondent No. 2.
Mr. Gora Chand Roy Choudhury,
Advocate for MoEF&CC.
Mr. Ashok Prasad, Advocate for
Respondent No. 7.

ORDER

1. Case taken up by video conference on *Vidyo App*.

2. This case was first taken up on 11.12.2019. It pertains to questions relating to allegation of constructions on the banks of river Mahanoy, district Munger, Bihar in violation of the distance criteria and its deleterious effect on the river and the environment. It is also stated that the construction work had converted the river Mahanoy virtually into a cesspool due to discharge of untreated water. Report was thus called for *vide* order dated 11.12.2017 from the Bihar Pollution Control Board (State PCB) and the District Magistrate, Munger after inspecting the area in question and verifying the facts stated in the Original Application.
3. Report filed by the Committee reflected questions that required to be dealt with by the State Respondents in the light of the Rules, if any, prescribing the distance criteria for constructions to be undertaken on the river banks. By order dated 18.02.2019, we had indicated the primary question for determination in the case, i.e., as to whether the building of Block and Anchal office of the BDO in Tetiya Bambar, Munger district, Bihar, has been constructed within the impermissible limits of the river and as to whether there was any rules framed by the State Government prescribing criteria for constructions on the

river banks. The learned Counsel for the State appearing on 18.02.2019 was not in a position to inform us as to whether there was any Government Notification prescribing such criteria. He was thus directed to seek instructions and, if such a Notification did exist, to place it before us on or before the next date.

4. On the next date, however, adjournment was sought for by the State seeking 10 more days' time to so. Accordingly, the case was listed on 11.03.2019. However, on 11.03.2019 it was submitted the Government Counsel that no such rules had been framed. On 22.07.2019, which was the next date fixed, further time was granted to the State of Bihar to file an additional affidavit on the same question. On 26.08.2019 also no such rule was placed before us. However, we had indicated that Bihar Building By-Laws, 2014 did exist and under Rule 22(2) thereof there were certain criteria laid down. Going by the said prescription, we had noted that the constructions fell within the prohibited area of 100 meters. Time was then sought for by the learned Counsel and was accordingly listed on 16.09.2019. On 16.09.2019, again adjournment was sought for and accordingly the case was listed on 25.11.2019. On

25.11.2019, although it was stated on behalf of the State that an affidavit had been filed it was not found in the records and accordingly direction was issued to do so. 21.01.2020 the case was further adjourned on the ground of the bereavement in the family of the learned Counsel for the Applicant. The case was then listed on 03.02.2020. On 03.02.2020, the State was directed to file a better affidavit, as a report submitted earlier by the District Magistrate, Munger, containing critical facts had not been dealt with. Although the case was then listed on 23.03.2020, it has come up before us only today, i.e., 31.07.2020. However, we find that the affidavit as directed has still not been filed. Instead, the Learned Counsel appearing for the State today rather unapologetically seeks for further time taking the prevailing situation caused by the pandemic as the reason for the failure. Such a plea is clearly untenable and misleading having regard to the fact that the lockdown in the State even according to the Learned Counsel commenced only with effect from 31.03.2020 and the 09 dates granted for submission of affidavit fell much earlier, the last of which was on 23.03.2020.

5. We thus find the approach of the State Government to be quite defiant and unacceptable. Repeated adjournments and failure to comply with orders of the Tribunal irrefutably leads us to draw an unmistakable conclusion that there is a deliberate attempt on the part of the State to subvert the course of the proceedings that calls for institution of appropriate proceedings against the authority/authorities responsible for the infraction. However, before proceeding to do so, we grant a final opportunity to the State to file the affidavit as called for *vide* order dated 03.02.2020 without fail before the next date. We make it clear that failure to do so even on the next date shall entail payment of heavy costs and other coercive orders as may be deemed necessary apart from forfeiture of the right to file the affidavit.

6. It may be noted that the orders passed by the Tribunal are enforceable as a decree and is executable in terms of Section 51 of the Code of Civil Procedure, 1908 which would include civil imprisonment, withholding/attachment of salaries of those responsible and other coercive orders.

7. A copy of this order be transmitted forthwith to the Chief Secretary, Government of Bihar, with a direction to ensure compliance of this order.

8. List on 15.09.2020.

S.P. Wangdi, JM

Dr. Nagin Nanda, EM

31st July, 2020
O.A. No. 178/2017/EZ
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