

Item No. 01

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 972/2019

Bhanwar Lal Bhargava

Applicant

Versus

State of Rajasthan

Respondent

Date of hearing: 06.01.2022

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

Respondent(s): Ms. Padhmalakshmi Iyenger, AAG with Mr. B.S. Detha, Secretary,  
Local Self Department, Govt. of Rajasthan  
Mr. Nishant Awana, Advocate for RSPCB

**ORDER**

1. Issue for consideration is remedial action against discharge of untreated sewage and industrial effluents on the agriculture lands at village Nokha, District Bikaner, Rajasthan.
2. The matter has been considered by this Tribunal in the last more than two years by several orders, including orders dated 01.11.2019, 24.08.2020, 10.06.2021 and 21.09.2021. The Tribunal found failure of the State Authorities in ensuring compliance of judgment of the Hon'ble Supreme Court in *Paryavaran Suraksha case*<sup>1</sup> resulting in continuing

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<sup>1</sup> (2017) 5 SCC 326

water pollution. Still, there was inaction and indifference on the part of the State Administration to enforce the fundamental rights of the citizens to clean environment. Unfortunately, the situation has not improved despite critical observations of the Tribunal and inspite of directions requiring the senior officers of the Administration to remedy the situation and to remain present before the Tribunal in person with the compliance status reports.

3. In the last order, after referring to the earlier orders dated 24.08.2020 and 10.06.2021, the Tribunal observed that there was need for stringent action for enforcement of law. It was seen that inspite of order of this Tribunal, the Secretary Local Bodies failed to appear for which the Tribunal had to issue warrants. The Tribunal also directed the Chief Secretary, Rajasthan to remain present in person. The State was required to deposit Rs. 50 lakhs as interim compensation for restoration of water quality. Direction was also issued to the Chief Secretary to take actions against erring officers for continuous violations of the law. Since the Secretary, Local Bodies failed to appear by video conferencing. The Chief Secretary was also directed to remain present in person today. Operative part of the order is reproduced below:-

“1...xxx.....xxx.....xxx

*2. Thereafter, the matter was considered on 24.08.2020 and 10.06.2021 in light of reports filed by State PCB. In view of acknowledged failure of the State authorities to prevent water pollution in exercise of powers under the Water (Prevention and Control of Pollution) Act, 1974, and judgment of the Hon’ble Supreme Court dated 22.02.2017 in Paryavaran Suraksha Samiti Vs. Union of India<sup>2</sup> and orders of this Tribunal inter alia dated 22.02.2021 in O.A. No. 593/2017, Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors., the Tribunal gave last opportunity for compliance by last order. It was made clear that if the failure continued, the Secretary, Urban Development and Member Secretary, State PCB will be personally accountable in accordance with the statutory mandate of the NGT Act. The Member Secretary, State PCB and the Secretary, Local Government were required to remain present by Video Conferencing*

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

with the compliance status. The operative part of the order is reproduced below:

“2. Accordingly, the State PCB has filed its report on 16.06.2020 inter-alia stating as follows:-

“2. That in compliance of the directions passed by this Hon'ble Tribunal the officials of the State Board have inspected the disputed site, during the course of inspection it was found that the Municipal Board, Nokha has established Sewage Treatment Plant (STP) having capacity of 01 MLD. **The treatment plant was not operational and the untreated effluent was by-passed. There were other deficiencies which are mentioned in the detailed inspection report. The STP is not having Consent to Establish or Consent to Operate from the State Board. During the course of inspection, the officials have also collected the water samples for analysis. The photo copy of the inspection report dated 11.12.2019 and analysis report of the water samples are annexed herewith and marked as Annexure-1 (Collectively).**

3. That on the basis of inspection report and sample analysis reports, the State Board has issued show cause notice dated 28.02.2020 to the Executive Officer, Municipal Board, Nokha, Bikaner and OBH was also given for 30.03.2020, but due to COVID-19 pandemic the same could not take place. The photo copy of the show cause notice dated 28.02.2020 is annexed herewith and marked as Annexure-2. The State Board is taking further necessary action in the matter.”

3. The matter was last considered vide order dated 24.08.2020 and finding that the STP was not operational resulting in discharge of pollution in the open, the Tribunal directed the State PCB and the Municipal Board to take further steps in the matter in accordance with the directions of the Tribunal in the order dated 22.02.2021 in O.A. No. 593/2017, Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors. The order is based on **judgment of the Hon'ble Supreme Court dated 22.02.2017 in Paryavaran Suraksha Samiti Vs. Union of India**<sup>3</sup>, inter-alia as follows:-

“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**

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<sup>3</sup> (2017) 5 SCC 326

*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)**

4. 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.

5. In the compliance report filed by the State PCB on 05.04.2021, it is mentioned as follows:-

*"3) That the Executive Officer, Municipal Board, Nokha vide letter dated 25.01.2021 submitted the reply in response to Show Cause Notice dated 11.01.2021, stating that:-*

***a. The existing STP could not be repaired and operated due to non-availability of sufficient budget.***

*b. The existing STP of 1 MLD was not sufficient for the increased quantity of sewage generated due to increased population density, hence the new Sewage Treatment Plant of higher capacity is proposed.*

*c. The Municipal Board, Nokha has proposed 2 STP of 7 MLD and 4 MLD capacity at/near village-Madiya & at/near village-Charkara respectively. Municipal Board, Nokha has applied for Consent to establish to Board for above STPs."*

6. It appears that the officer who has filed the affidavit does not have the requisite knowledge of law and also responsibility of the State PCB. 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.

7. In view of above, we give last opportunity for compliance, failing which the Secretary of the concerned Departments i.e. Local Bodies/Urban Development/Local Self Department and the Member Secretary, State PCB will be held personally accountable, by way of coercive measures laid down under Section 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. The Tribunal will accordingly take such coercive measures as found appropriate, if the failure continued. Let the Member Secretary State PCB and concerned Secretary Local Self Govt. Rajasthan remain present in person by video conferencing with the compliance status."

3. In pursuance of above, the State PCB has filed its action taken report on 20.09.2021 as follows:-

- 1) That on the basis of inspection carried out, the State Board has filed criminal prosecution against the Municipal Council, Nokha and its officials on 13.08.2021, under section 43 and 44 of the Water Act, 1974. The photo copy of the criminal prosecution filed against Municipal Council, Nokha is annexed herewith and marked as **Annexure-1**.
- 2) That in compliance of the directions passed by this Hon'ble Tribunal, the State Board vide letter dated 02.07.2021 has requested the Principal Secretary, Department of Environment, Government of Rajasthan to recover environment compensation from Municipal Council, Nokha and deposit the same to CPCB in compliance of orders passed by the Hon'ble Tribunal in OA no. 593/2017 Paryavaran Suraksha Samiti Vs union of India & Others. The photo copy of the State Board letter dated 02.07.2021 is annexed herewith and marked as **Annexure-2**.
- 3) That the Executive Officer, Municipal Council, Nokha vide letter dated 17.09.2021 has informed that the Municipal Council, Nokha has submitted proposal for establishment of 2 STP's to RUIDSICO, Jaipur for approval. Further, till the establishment of the STP's mentioned herein, the Municipal Board has issued EOI dated 11.08.2021 for treatment of sewage waste by Bioremediation technology and will issue work orders at the earliest. The photo copy of the executive officer letter dated 17.09.2021 is annexed herewith and marked as **Annexure-3**."

4. The Member Secretary, State PCB is present by Video Conferencing but the Secretary, Local Government, Rajasthan is not present, either in person or through any representative. Nor there is any reason intimated for such absence.

5. We have heard the Member Secretary and find the action taken by the State PCB to be inadequate. While prosecution has been initiated against Municipal Council, compensation has not been assessed and recovered. Instead, Secretary, Environment has been asked to do so. In view of directions of the Hon'ble Supreme Court, the Member Secretary states that he will now take steps for compliance of the order of the Hon'ble Supreme Court to initiate prosecution against the persons responsible for failing to set up pollution control device, including Secretary, Environment and Secretary, Urban Development, forthwith. He will also take steps to recover compensation.

6. As earlier mentioned, contamination of water sources is a punishable offence under the Water (Prevention and Control of Pollution) Act, 1974 for the last 47 years. Under Section 25 of the Act, untreated discharge of sewage in any drain is prohibited and is criminal offence under Sections 42(2) and 44. Section 48 of the Act makes the Head of the Department liable for being punished for such

offence. As per directions of the Hon'ble Supreme Court in Paryavaran Suraksha case,<sup>4</sup> an outer limit of 31.03.2018 is fixed for completing the work of all STPs in the Country. The Court laid down the sources of budget and issued direction to initiate prosecution for continued failure with direction to the Tribunal to take steps for enforcement of the said direction. Accordingly, the Tribunal has passed several orders, including the order for recovery of compensation and entries in ACRs, after calling the Chief Secretaries of all States before the Tribunal in person.

7. We have already reproduced the order of the Hon'ble Supreme Court in earlier order quoted above. We may also refer to some orders on the subject passed earlier by the Tribunal:

**“Extracts from orders of this Tribunal in OA 593/2017:  
Order dated 21.05.2020**

26. Summary of directions:

- i. All States/UTs through their concerned departments such as Urban/Rural Development, Irrigation & Public Health, Local Bodies, Environment, etc. may ensure formulation and execution of plans for sewage treatment and utilization of treated sewage effluent with respect to each city, town and village, adhering to the timeline as directed by Hon'ble Supreme Court. STPs must meet the prescribed standards, including faecal coliform.

CPCB may further continue efforts on compilation of River Basin-wise data. Action plans be firmed up with Budgets/Financial tie up. Such plans be overseen by Chief Secretary and forwarded to CPCB before 30.6.2020. CPCB may consolidate all action plans and file a report accordingly.

Ministry of Jal Shakti and Ministry of Housing and Urban Affairs may facilitate States/UTs for ensuring that water quality of rivers, lakes, water bodies and ground water is maintained.

**As observed in para 13 above, 100% treatment of sewage/effluent must be ensured and strict coercive action taken for any violation to enforce rule of law. Any party is free to move the Hon'ble Supreme Court for continued violation of its order after the deadline of 31.3.2018. This order is without prejudice to the said remedy as direction of the Hon'ble Supreme Court cannot be diluted or relaxed by this Tribunal in the course of execution. PCBs/PCCs are free to realise compensation for violations but from 1.7.2020, such compensation must be realised as per direction of this Tribunal failing which the erring State PCBs/PCCs will be accountable.”**

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<sup>4</sup> (2017) 5 SCC 326



### **Order dated 21.09.2020**

*“11. The Tribunal has already issued directions vide orders dated 28.08.2019 and 21.05.2020 for ensuring that no untreated sewage/effluent is discharged into any water body and for any violation compensation is to be assessed and recovered by the CPCB so that the same can be utilized for restoration of the environment, complying with the principle of ‘Polluter Pays’ which has been held to be part of ‘Sustainable Development’ and part of right to life. Control of such pollution is crucial for environment, aquatic life, food safety and also human health. ..”*

### **From OA 673/2018**

Order dated 6.12.19:

6. *The Hon’ble Supreme Court noticed the level of degradation of rivers in India and apathy of the authorities as follows:*

***“58. Rivers in India are drying up, groundwater is being rapidly depleted, and canals are polluted. Yamuna in Delhi looks like a black drain. Several perennial rivers like Ganga and Brahmaputra are rapidly becoming seasonal. Rivers are dying or declining, and aquifers are getting over pumped. Industries, hotels, etc. are pumping out groundwater at an alarming rate, causing sharp decline in the groundwater levels. Farmers are having a hard time finding groundwater for their crops e.g. in Punjab. In many places there are serpentine queues of exhausted housewives waiting for hours to fill their buckets of water. In this connection John Briscoe has authored a detailed World Bank Report, in which he has mentioned that despite this alarming situation there is widespread complacency on the part of the authorities in India.<sup>5</sup>***

***“4. We see Yamuna river virtually turned into a sullage. We take judicial notice of this situation. Similar is the position with Ganges. As it proceeds, industrial effluents are being poured in rivers. Sewage is also being directly put in rivers contributing to the river water pollution. We direct the Pollution Control Boards of the various States as well as the Central Pollution Control Board and various Governments to place before us the data and material with respect to various rivers in the concerned States, and what steps they are taking to curb the pollution in such rivers and to management as to industrial effluents, sewage, garbage, waste and air pollution, including the***

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<sup>5</sup> State of Orissa v. Govt. of India, (2009) 5 SCC 492

**water management. We club the ending case of water management with this matter.<sup>6</sup>**

xxx.....xxx.....xxx

11. In spite of above, in flagrant violation of law of the land, polluted water in the form of sewage, industrial effluents or otherwise has continued to be discharged in the water bodies including the rivers or the canals meeting the rivers. Violation of law is not only by private citizens but also statutory bodies including the local bodies and also failure of the regulatory authorities in taking adequate steps. There is no corresponding coercive action posing danger to rule of law when large scale violation of law is not being remedied. This leads to lawlessness.

12. It will be appropriate to note the crisis situation in the country on the subject of availability of potable water. The matter has been considered in the report of Niti Aayog on Composite Water Management Index (CWMI).<sup>7</sup> Following further information also needs to be noted:

- (i) India is suffering from the worst water crisis in its history and millions of lives and livelihoods are under threat. Currently, 600 million Indians face high to extreme water stress and about two lakh people die every year due to inadequate access to safe water<sup>8</sup>. The crisis is only going to get worse. By 2030, the country's water demand is projected to be twice the available supply, implying severe water scarcity for hundreds of millions of people and an eventual ~6% loss in the country's GDP<sup>9</sup>. As per the report of National Commission for Integrated Water Resource Development of MoWR, the water requirement by 2050 in high use scenario is likely to be a milder 1,180 BCM, whereas the present-day availability is 695BCM. The total availability of water possible in country is still lower than this projected demand, at 1,137BCM. Thus, there is an imminent need to deepen our understanding of our water resources and usage and put in place interventions that make our water use efficient and sustainable.
- (ii) India is undergoing the worst water crisis in its history. Already, more than 600 million people<sup>10</sup> are facing acute water shortages. Critical groundwater resources – which account for 40% of our water supply – are being depleted at unsustainable rates.<sup>11</sup>
- (iii) Most states have achieved less than 50% of the total score in the augmentation of groundwater resources, highlighting the growing national crisis—54% of India's

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<sup>6</sup> M.C. Mehta Vs Union of India- W.P. (Civil) No. 13029/1985 dated 25.11.2019

<sup>7</sup> Niti Ayog on “Composite Water Management Index”, June 2018, [https://niti.gov.in/writereaddata/files/document\\_publication/2018-05-18-Water-Index-Report\\_vS8-compressed.pdf](https://niti.gov.in/writereaddata/files/document_publication/2018-05-18-Water-Index-Report_vS8-compressed.pdf).

<sup>8</sup>Source: WRI Aqueduct; WHO Global Health Observatory

<sup>9</sup>Source: McKinsey & WRG, ‘Charting our water future’, 2009; World Bank; Times of India

<sup>10</sup> Source: World Resource Institute

<sup>11</sup> Source: World Resource Institute

groundwater wells are declining, and 21 major cities are expected to run out of groundwater as soon as 2020, affecting ~100 million people<sup>12</sup>.

(iv) With nearly 70% of water being contaminated, India is placed at 120th amongst 122 countries in the water quality index.

13. As per statistics mentioned before the Lok Sabha on April 6, 2018, waterborne diseases such as cholera, acute diarrhea diseases, typhoid and viral hepatitis continue to be prevalent in India and have caused 10,738 deaths, over the last five years since 2017. Of this, acute diarrhoeal diseases caused maximum deaths followed by viral hepatitis, typhoid and cholera.<sup>13</sup>

14. As per 'National Health Profile' published by Central Bureau of Health Investigation, Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India, a total of 1535 Deaths due to Acute Diarrhoeal Diseases was reported during the year 2013.<sup>14</sup>

### **Main Causes of Pollution of Rivers**

15. As already noted, well known causes of pollution of rivers are dumping of untreated sewage and industrial waste, garbage, plastic waste, e-waste, bio-medical waste, municipal solid waste, diversion of river waters for various purposes affecting e-flow, encroachment of catchment areas and floodplains, over drawl of groundwater, river bank erosion on account of illegal sand mining. In spite of directions to install Effluent Treatment Plants (ETPs), Common Effluent Treatment Plants (CETPs), Sewage Treatment Plants (STPs), and adopting other anti-pollution measures, satisfactory situation has not been achieved. As per CPCB's report 2016<sup>15</sup>, it has been estimated that 61,948 million liters per day (mld) sewage is generated from the urban areas of which treatment capacity of 23,277 mld is currently existent in India. Thereby the deficit in capacity of waste treatment is of 62%. There is no data available with regard to generation of sewage in the rural areas.

xxx.....xxx.....xxx

33. We may note the observations of the Hon'ble Supreme Court:

**"26. Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of**

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<sup>12</sup> Source: UN Water, 'Managing water under uncertainty and risk', 2010; World Bank (Hindustan Times, The Hindu).

<sup>13</sup> <https://www.indiaspend.com/diarrhoea-took-more-lives-than-any-other-water-borne-disease-in-india-58143/>

<sup>14</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106612>

<sup>15</sup> [http://www.sulabhenvi.nic.in/Database/STST\\_wastewater\\_2090.aspx](http://www.sulabhenvi.nic.in/Database/STST_wastewater_2090.aspx) July 16, updated on December 6, 2016

**such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.<sup>16</sup>**

xxx.....xxx.....xxx

**“61. .... If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large-scale cannot take place without connivance of the officers concerned. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens.”<sup>17</sup>**

xxx.....xxx.....xxx

35. *Vide order dated 22.08.2019 in Original Application 200/2014, dealing with the pollution of river Ganga, the Tribunal issued directions and laid down coercive measures to be taken for discharge of untreated sewage in river Ganga:-*

“16. xxx.....xxx.....xxx

**17. Wherever the work has not commenced, it is necessary that no untreated sewage is discharged**

<sup>16</sup> INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION Vs. UNION OF INDIA AND OTHERS (1996) 5 SCC 281

<sup>17</sup> M.C. Mehta v. Union of India, (2006) 3 SCC 399 – Public functionaries

**into the River Ganga. Bioremediation and/or phytoremediation or any other remediation measures may start as an interim measure positively from 01.11.2019, failing which the State may be liable to pay compensation of Rs. 5 Lakhs per month per drain to be deposited with the CPCB. This however, is not to be taken as an excuse to delay the installation of STPs. For delay of the work, the Chief Secretary must identify the officers responsible and assign specific responsibilities. Wherever there are violations, adverse entries in the ACRs must be made in respect of such identified officers. For delay in setting up of STPs and sewerage network beyond prescribed timelines, State may be liable to pay Rs. 10 Lakhs per month per STP and its network. It will be open to the State to recover the said amount from the erring officers/contractors.**

36. *Vide order dated 28.08.2019, the Tribunal held:-*

“15. xxx.....xxx.....xxx

“16. xxx.....xxx.....xxx

**17. As already noted, prevention of pollution of water is directly linked to access to potable water as well as food safety. Restoration of pristine glory of rivers is also of cultural and ecological significance. This necessitates effective steps to ensure that no pollution is discharged in water bodies. Doing so is a criminal offence under the Water Act and is harmful to the environment and public health. ‘Precautionary’ principle of environmental law is to be enforced. Thus, the mandate of law is that there must be 100% treatment of sewage as well as trade effluents. This Tribunal has already directed in the case of river Ganga that timelines laid down therein be adhered to for setting up of STPs and till then, interim measures be taken for treatment of sewage. There is no reason why this direction be not followed, so as to control pollution of all the river stretches in the country. The issue of ETPs/CETPs is being dealt with by an appropriate action against polluting industries. Setting up of STPs and MSW facilities is the responsibility of Local Bodies and in case of their default, of the States. Their failure on the subject has to be adequately monitored. Recovery of compensation on ‘Polluter Pays’ principle is a part of enforcement strategy but not a substitute for compliance. It is thus necessary to issue directions to all the States/UTs to enforce the compensation regime, latest with effect from 01.04.2020. We may not be taken to be condoning any past violations. The States/UTs have to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies. On failure of the States/UTs, the States/UTs themselves have to pay the requisite amount of compensation to be**

**deposited with the CPCB for restoration of environment. The Chief Secretaries of all the States may furnish their respective compliance reports as per directions already issued in O.A. No. 606/2018.”**

8. **We note that the Chief Secretary of Rajasthan appeared in person twice before this Tribunal in O.A. No. 606/2018 dealing with the issue of Solid Waste Management and other environmental issues. The Tribunal directed remedial measures to comply with the law to be monitored at the level of the Chief Secretary by constituting a special cell, directly attached to the office of the Chief Secretary. On directions of the Hon’ble Supreme Court in Paryavaran Suraksha case, supra, the Tribunal has been monitoring the directions to ensure that all pollution control devices to prevent water pollution are in place within the outer limit of 31.03.2018 and for failure to do so, accountability under the Civil and Criminal Law is fixed.** The Tribunal has also laid down the scale of compensation @Rs. 10 lakhs per month for delay in setting of STP and Rs. 5 lakhs per month for delay in providing interim remediation measures in the manner mentioned in the orders quoted above, without prejudice to the statutory liability. There is also direction to record adverse entries in the ACRs of the Officers who are responsible for the delay. Unfortunately, in the present case, the orders delaying the remedial action include higher officers but no adverse entries in the ACRs are made nor prosecution initiated, as per direction of the Hon’ble Supreme Court, by the Rajasthan State PCB. This is dangerous trend to violate the law and to disrespect the rule of law which calls for stringent action if rule of law is to prevail. Continuing violations of orders of this Tribunal is further offence under Sections 26 and 28 of the NGT Act.

9. **In view of above grim situation, we are of the opinion that stringent action is required for enforcement of law. While the Member Secretary, State PCB may proceed with the proposal to initiate prosecution against the concerned officers and recovery of compensation, we direct the Chief Secretary, Rajasthan to forthwith look into the matter personally and take remedial action against erring officers for continuously committing and enabling the violation of law and binding orders of the Hon’ble Supreme Court and this Tribunal. The Chief Secretary may also ensure that a copy of this order is kept in ACR Folders and Personal files of the concerned erring officers. This order is without prejudice to prosecution of the concerned Officers for past and for continuing violation of the statutory provisions and orders of the Hon’ble Supreme Court and this Tribunal. Pending setting up of complete sewerage system, there have to be appropriate interim measures to bring down pollution load which may not require tendering/DPR process. The Urban Department and PCB with involvement of any Agency/Institution, may put such interim efforts in place immediately.**

10. **The Chief Secretary, Rajasthan may remain present in person by Video Conferencing on the next date along with**

**action taken report. The State of Rajasthan may deposit a sum of Rs. 50 lakhs as interim compensation with the Collector of the District which may be utilized for restoration of water quality of the area to be adjusted against the liability for compensation in terms of orders already passed.**

**11. Since the Secretary, Local Bodies has failed to appear by Video Conferencing in compliance with order dated 10.06.2021, we are forced to issue show cause notice requiring him to explain why action be not taken for such failure by appearing in person on next date. To secure his presence by Video Conferencing, we issue Bailable Warrants to be executed by the SSP Jaipur through the concerned Police Officer in the sum of Rs. 5,000/-."**

4. In pursuance of above, an affidavit of compliance has been filed by the Nagar Nigam, Bikaner. No affidavit has been filed by the Secretary, Local Bodies or the Chief Secretary, as directed. The Chief Secretary has chosen not to appear defying the direction for personal appearance by video conferencing. No explanation nor advance information on inability to attend with the reasons is furnished for such violation which amounts to a criminal offence under section 26 of the National Green Tribunal Act, 2010, apart from serious breach of duty. We deprecate this attitude of the Chief Secretary, which calls for coercive measures, including direction for filing prosecution. This aspect will be considered further in due course, unless amends are made.

5. It is surprising to note the repeated plea that the State has no funds which is resulting in permitting water pollution and noncompliance with the provisions of the Water Act and directions of the Hon'ble Supreme Court requiring waste water treatment plants to be positively in place by 31.3.2018, failing which prosecution of erring authorities must be initiated. Since this Tribunal was directed to monitor, directions for levy of compensation for the default have been issued, quoted earlier, which are being blissfully ignored by the State of Rajasthan to the detriment of public health and rule of law. Such plea also flies in the face of observations of

the Hon'ble Supreme Court in *Municipal Council, Ratlam v. Vardichan*, (1980) 4 SCC 162 that "Where directive principles have found statutory expression in Do's and Dont's, the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and **the plea of poor finance will be poor alibi when people in misery cry for justice**. The dynamics of the judicial process has a new "enforcement" dimension not merely through some of the provisions of the criminal procedure code (as here), but also through activated tort consciousness. **The officers-in-charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal**". This has been reiterated inter alia in *M.C. Mehta (Stubble Burning & Air Quality) v. Union of India*, (2020) 7 SCC 530 by stating: "This Court in *Municipal Council, Ratlam v. Vardichan* has held they have to take proper and positive action in this direction. **It is their bounden duty to provide civic amenities, and also to see that self-created bankruptcy does not come in the discharge of the statutory obligation which are necessary for existence of human life.**"

6. There is no explanation for continuing failure and inaction against erring officers, as already directed by the Hon'ble Supreme Court and this Tribunal.

7. Relevant extracts from the affidavit dated 04.01.2022 filed on behalf of local self Government Department of Rajasthan are reproduced below:-

**"3. It is submitted that due to the non-availability of an adequate budget the Municipal board was unable to deposit the amount of 50 lacs. Therefore, a loan of Rs. 50/- lacs has been obtained by the Municipal Board from RUDSICO in order to comply with the direction of this Hon'ble Tribunal which will be repaid with the EMI of each month consisting of an amount of Rs. 5 lacs. After**



*availing loan, the same has been deposited with District Collector as directed by the Hon'ble Tribunal. A true copy of the loan sanction letter is annexed and marked as Annexure R-1.*

*A true copy of the disbursement letter of the amount of Rs 50 lacs is annexed and marked as Annexure R-2.*

*A true copy of the deposit receipt of Rs 50 lacs is annexed and marked as Annexure R-3.*

*4. It is submitted that in compliance with the Hon'ble Tribunal direction the Municipal Board to ensure that no untreated sewage or effluent is discharged into any water body the board has given work order dated 23.11.2021 for repair to all water retaining structures, replacement of E & M items and commissioning of 1 MLD STP at Nokha to achieve effluent parameters stipulated for existing STP on MBBR technology. A true copy of the officer order dated 23.11.2021 is annexed and marked as Annexure R-4.*

*5. It is submitted that in order to restrict the water pollution the Municipal Board also issued order on 23.11.2021 for supply installation and commissioning of floating surface aerator at ponding near 1 MLD STP. A true copy of the officer order dated 23.11.2021 is annexed and marked as Annexure R-5.*

*6. It is submitted that as per the work orders dated 23.11.2021 the work will be completed within 4 months and presently work in progress.*

*7. It is submitted that as per the work order awarded to the M/s Malvika Technical Services the cost to commissioning of floating surface aerator at the pond is Rs. 34,15,000 and as per the work order awarded to M/s Chem Eco Engineers the cost of special repair of all water retaining Structure of 1 MLD STP is Rs.79,99,262.*

*8. It is submitted that since the existing STP of 1 MLD was not sufficient for the increased quantity of sewage generated due to increased population, the new Sewage Treatment Plant of higher capacity has been proposed by Municipal Board. Accordingly, the Municipal Board has proposed 2 STPs of 7 MLD and 4 MLD capacity near village Madiya and village Charkara respectively. The Proposed STPs site area has been surveyed by Municipal Board for assessing the availability of adequate area. This land is suitable for establishing the proposed STPs and future expansion. The area available shall be adequate for the proposed STP as well as for the expansions till design period.*

*9. The Comprehensive DPR for the proposed 2 STPs of 7 MLD and 5 MLD capacities has been prepared which has been approved by Asian Development Bank (ADB). Timelines for the proposed project are as under.*

- i. A&F sanction: 11th January, 2022*
- ii. Approval of bid document from ADB: 31st January, 2022*
- iii. Invitation of Bids: 15th Feb., 2022*
- iv. Letter of Acceptance: 31st May, 2022*
- v. Work Order: 30th June, 2022*
- vi. Likely to be completed by June 2024*

*Salient features of the above sewerage project is that the project estimated cost Rs. 55.50 Cr, Two STPs (7MLD & 5MLD), Sewer line length 7.73 Km., Rising Main 2.62 Km. Annexure R-6.*

*10. It is submitted that till the composition and commissioning of proposed STPs by RUIDP and in view of the need to prevent pollution in the immediate term alternate arrangement has been made by Municipal Board for the treatment of sewage through surface aerator.*

*11. The Municipal Board also taking others precautionary measures to prevent the discharge of untreated sewage in water body and undertaking time to time cleaning and maintenance of sewage pipelines so that no issues like sewage clogging and sewage pipe breakage could cause insanitation in its municipal area.”*

8. Contrary to the timeline fixed by the Hon'ble Supreme Court in *Paryavaran Suraksha* case supra, requiring requisite treatment plants to be placed by 31.03.2018, long timelines have been proposed without any accountability for the delay. Status of other cities in the State is not shown. In fairness, relevant data should have been given or atleast a statement should have been made that no untreated sewage was being discharged. This monitoring was directed by the Tribunal to be at the level of the Chief Secretary but nothing is mentioned on this aspect. That is why Tribunal intended to interact with Chief Secretary to find out ways and means for ensuring compliance with the law and directions of the Hon'ble Supreme Court particularly to cut down time taking process in this particular case and replicate to other places also. Such attitude of the State Authorities is not an act of good governance but of continued defiance of law and obligation to provide clean environment to the citizens. Decision of Chief Secretary not to appear even by video conferencing, failure to file an affidavit of compliance or to take any action against the erring officials for continued violations despite the direction of this Tribunal, is thus unfortunate. Only explanation orally furnished by the Counsel is that he is to retire at the end of the month. This can be no justification for neither filing an affidavit nor appearing by video conferencing. If a Chief Secretary

is to retire, he cannot stop working before retirement. If he has such disability, in the interest of administration, he should make way for other who can perform.

9. Accordingly, we direct the current and incoming Chief Secretaries, Rajasthan to take immediate remedial measures in the light of above observations and in compliance of directions in the order dated 21.09.2021, in coordination with concerned officers and file a report of compliance within two months 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. The status of compliance of judgment of the Hon'ble Supreme Court in Paryavaran Suraksha case, supra, in the State of Rajasthan may be indicated in the affidavit. Steps be taken to shorten the process of DPR, and reduce time for execution of work and providing requisite technical assistance at the District level for compliance at the level of towns in the State. Progress achieved in the town in question may also be specified. The affidavit be filed by the Chief Secretary personally. If there is further default, the Tribunal may have to consider coercive measures, including attachment of salaries of erring senior officers. The Chief Secretary, Rajasthan is directed to positively remain present in person by video conferencing on the next date.

List for further consideration on 05.05.2022.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

January 06, 2022  
Original Application No. 972/2019  
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