

Item No.04

(Bhopal Bench)

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

(Through Video Conferencing)

Original Application No.81/2022(CZ)

Bhoma Ram Mali &Ors.

Applicant(s)

Versus

State of Rajasthan&Ors.

Respondent(s)

Date of hearing: 11.07.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant: Mr. Satyam Jain, Advocate and Mr. Bhomaram Mali,
applicant in person

For Respondent: Mr. Arvind Soni, Adv for RSPCB, Mr. Nishant Keshewani,
Advocate for Mr. Shoeb Hasan Khan, Advocate for State

ORDER

1. Heard Mr. Arvind Soni, Learned Counsel for Rajasthan State Pollution Control Board(hereinafter referred to as '**RSPCB**') and Mr. NishantKeshewani, Counsel for respondents 1,2, 3 and 5.

2. This Original Application (hereinafter referred to as '**OA**') under Sections 14(1) and 15(1), 18(1) and 19 of National Green Tribunal Act, 2010 (hereinafter referred as '**NGT Act, 2010**') has been filed by six applicants namely,Mr. Bhoma Ram Mali, Mr. Pukhraj Mali, Mr. Ashok Mali, Smt. Bhanwari Devi, Smt. Kamla and Smt. Rekha, alleging that they are owners of agricultural land, bearing Khasra No. 943 (now numbered as Khasra no. 1739/943 and 1746/943) admeasuring 9.3078 hectare, situated at Tehsil Pokaran, District Jaisalmer, State of Rajasthan.

3. It is pleaded that Municipal Council is a local body responsible for maintaining drainage, cleanliness, handling and management of solid

waste and discharge of sewage after its treatment following the standards prescribed under the provisions of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act, 1974**') and to comply the provisions of Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act, 1981**'), Environment Protection Act, 1986 (hereinafter referred to as '**EP Act, 1986**') and Solid Waste Management Rules, 2016 (hereinafter referred to as '**SWM Rules, 2016**'). However, respondent 5 has failed to observe its statutory duties and discharging untreated sewage on the open land of applicants damaging the same, rendering land and soil unfit for agricultural use.

4. OA was considered by Tribunal on 20.10.2022 and after noticing the grievance of applicants, Tribunal constituted a Joint Committee with the direction to visit the site and submit a factual report.

5. Joint Committee comprising Collector, Jaisalmer, SPCB and Municipal Council, Pokaran has submitted Joint Inspection report through RSPCB vide letter dated 18.11.2022. Committee members visited the site on 15.11.2022 and its observations and recommendation in the report are as under:

- *Pokaran City is a tehsil in the Jaisalmer District of Rajasthan State, India. Pokaran town has a total of approx. 30000 populations and source of water for Pokaran town is PHED supply.*
- *It was reported that Municipal Board, Pokaran has provided 30-35 % sewerage connectivity in the year 2011-2012 to the household of Pokaran town and terminal sewage treatment plant has not been provided for treatment of domestic sewage generated from the town.*
- *Alleged Khasra No. 1739/943 and 1746/943, Tehsil Pokaran, Dist, Jaisalmer, and Rajasthan was visited in presence of Sh. Bhom ram Mali, the applicant in the matter.*
- *The latitude and longitude of the alleged site are:- 26.9186567N and 71.9342485E.*
- *The above referred alleged site is near the Non-perennial river-Tolaberi River which passes through khasra number 942 as per the revenue record of Municipal Board, Pokaran and khatedhari land Khasra No. 1739/943 and 1746 /943 of Sh. Bhomaram Mali.*

- *As per the population density and record of water supplied to each household, the quantum of domestic waste water generated from Pokaran is 3.0- 3.5 MLD.*
- *During the inspection, it was reported by Representative of Municipal Board, Pokaran that domestic waste water generated from the Pokaran city is disposed through open Nalla & sewerage system which ultimately meet to natural catchment area of Tolaberi river which finally gets accumulated near the khatedari land of Sh. Bhomaram Mali. In the Monsoon season domestic waste water & storm water travels upto Rann area (Salty land) area of Pokaran.*
- *During inspection, domestic sewage was found in the surface runoff storm water accumulated in the natural catchment area of river Tolaberi which turns towards the downstream side to Rann area adjoining the land of petitioner.*
- *At the time of inspection it was reported by the Patwari, Pokaran about ownership of land on which domestic waste water was found accumulated. The details of lease holders & Naksha trace as provided by Patwari, Pokaran is enclosed as Annexure-II.*
- *During the inspection, it was reported by Representative of Municipal Board, Pokaran that the efforts to store the surface runoff storm water in to the 'Salam Sagar Talab' has been taken by the State. The amount of Rs 8.5 Cr. has been sanctioned for work of rejuvenation, beautification and development of 'Salam Sagar Talab' under Amrut. 2.0 in compliance of Amrut Sarovar Yojana. The Salam Sagar Talab is located at approximately 2.5 km away from alleged site and the proposed project would reduce significant amount of storm water accumulated in the petitioner land. Sanctioned order for the same is enclosed as Annexure-III.*
- *As per the available records, consent to establish for installation / lying of sewerage network in compliance of State Board's categorization dated 26/05/2016 has not been obtained by Municipal Board Pokaran. However the sewer network was laid by Municipal Board Pokaran in year 2011-12.*
- *The google earth imagery showing hatched area of the river Tolaberi, petitioner land etc are enclosed as Annexure-IV.*
- *The photographs taken during the visit are enclosed as Annexure-V.*
- *The maukafard of the joint committee is enclosed as Annexure-VI.*
- *It was reported by Representative of Municipal Board, Pokaran that currently they does not have any provision for construction of "Sewage Treatment Plant" and sewage generated from the city area is disposed through partial sewerage line through 09 old open drains existing in town which meets the seasonal Tolaberi river catchment area without any treatment. The untreated sewage" after accumulation at petitioner land travels downstream to near natural "Rann area in Pokaran town.*
- *Representative of Municipal Board, Pokaran has deliberated to the committee that as per the CPHEEO Manual, water supply level of 135 LCD is required to design sewerage system. Due to inadequate water supply level at Pokaran, the*

work for the establishment of FSTP has been taken under CM Budget Announcement 2022-23. As per the work order issued for FSTP. 20 KLD capacity FSTP shall be established at the cost of Rs 9.37 Cr (including Operation & Maintenance of FSTP for 10 years including supply, testing of vehicle mounted suction machine for faecal sludge desludging). The FSTP has been designed to cater the requirement for entire population of Municipal Board, Pokaran.

- *As per the report dated 24/09/2021 of Tehsildar Pokaran, the site was inspected by the Patwari on 24/09/2021 and it was reported that domestic sewage of Pokaran reaches alleged Khasra No. 1739/943 and 1746/943, Tehsil Pokaran, Dist, Jaisalmer after flowing through river Tolaberi and waste water gets accumulated. Copy of the report of Tehsildar is enclosed as Annexure-VII. But no relief could be provided to the petitioner.*
- *During the inspection, discussions were made on diversion of sewage and storage in temporary lagoons near the main trunk near Rann area so that untreated domestic does not flow in downstream side towards the land of petitioner for temporary relief to applicant.*
- *It was reported by the representative of Pokaran Municipal Board that civil work of maintenance/ re-construction of old open drain (existing) of approx. 8-9 Km in length in Pokaran town and construction of new closed channel for conveyance of domestic sewage toward the downstream side of Rann is proposed.*
- *During the inspection it was directed by Regional Officer, Pollution Control Board that Pokaran Municipal Council should immediately work for sewerage conveyance system and installation of Sewage Treatment Plant in Pokaran town.*

RECOMMENDATIONS

After carrying out the inspection, the committee recommends the following:-

1. *That a Sewage Treatment Plant (STP) of adequate capacity should be provided for treatment of domestic waste water generated from Pokaran which shall be a long term project.*
2. *The Construction work of proposed FSTP should be expedited and the provision of necessary infrastructure for efficient Septage management including de-sludging of septic tanks, transportation should be developed for the entire city as per CPHEEO norms.*
3. *That for immediate relief to the petitioner, it is proposed that the domestic sewage from the main trunk should be disposed on temporary lagoons (proposed)/ wetlands near Rann area of Pokaran.*
4. *That the proposed proposals of Municipal Council, Pokaran regarding civil work of maintenance / re-construction of old Open drain (existing) of approx. 8-9 Km in length in Pokaran town and construction of new closed channel for conveyance of domestic sewage toward the downstream side of Rann should be implemented / considered on immediate basis.”*

6. After the report was submitted, some replies have been filed by the respondents.

7. Reply dated 05.04.2023 has been filed on behalf of respondents 2 and 5. It is said that respondents 2 and 5 have taken all adequate measures to maintain cleanliness in the city and discharge untreated sewage of the city properly. So far as establishment of sewage water treatment plant is concerned, representatives of Municipal Board, Pokaran have deliberated with Committee. As per CPHEEO Manual, water supply level of 135 LPCD is required to design sewerage system. Due to inadequate water supply level at Pokaran, work for establishment of FSTP has been taken under CM Budget Announcement 2022-23. As per the work order issued for FSTP, 20 KLD capacity FSTP shall be established at the cost of Rs. 9.37 Crores (including operation and maintenance of FSTP for 10 years including supply, testing of vehicle mounted suction machine for faecal sludge desludging).

8. Proposal for sanction of the funds has been submitted by Executive Officer, Nagar Palika, Pokaran to Director, Local Bodies vide letter dated 21.03.2023. In reference to the report of Joint Committee, it is said that domestic sewage of Pokaran reaches the land of the applicants after flowing through river Tolaberi and waste water gets accumulated thereat.

9. Reply dated 05.04.2023 has been filed by respondent 4 wherein substantially the averments made in OA are not disputed. With reference to Joint Committee report it is said that respondent 4 has issued a letter dated 10.01.2023 requiring respondent no. 5 to show cause as to why legal action under provisions of Water Act, 1974 be not initiated. Executive Officer Nagar Palika, Pokaran was also directed to take appropriate action regarding discharge of untreated domestic sewage in

the catchment area of Tolaberi river which ultimately gets accumulated near the khatedari land of applicants. However, no reply has been given by respondent 5 of the said letter.

10. Member Secretary, RSPCB also sent a letter dated 07.02.2023 to Secretary, Local Self Government (LSG), State of Rajasthan, requesting to review the matter relating to discharge of untreated domestic waste water of Pokaran City in natural catchment area of Tolaberi River and had requested the concerned officials to take prompt action. Pursuant thereto, Director, Local Bodies, Rajasthan vide letter dated 14.03.2023 has directed Executive officer, Municipal Board, Pokaran to take prompt action as per the order of the Tribunal and submit compliance report within three days.

11. The report and replies were considered by Tribunal on 06.04.2023. It was found that admittedly there was discharge of untreated sewage water in the open land belong to the applicants affecting it adversely and damaging crops causing financial loss to the applicants. Besides there were many violations of environmental laws as also WaterAct, 1974.

12. Tribunal, therefore, directed RSPCB to calculate environmental compensation against violators on the principle of "Polluter Pays" and further directed to calculate environmental compensation and damage caused to the applicants and submit a report before the next date of hearing.

13. On behalf of respondent 1,2,3 and 5, a reply dated 30.05.2023 has been filed stating that there is a proposal of establishment of 20 KLD capacity FSTP at the cost of Rs. 9.37 Crores. The accumulation of untreated waste water at the applicants land is not disputed and it is said that it had accumulated after flowing through river Tolaberi.

14. A separate compliance report has been filed by RSPCB stating that Regional Officer has proposed environment compensation of Rs. 65,75,000/- upon Municipal Board, Pokaran for discharge of untreated waste/sewage in river Tolaberi which ultimately gets accumulated on the applicants land damaging agricultural land and soil of the applicants and also surface as well as ground water.

15. No reply by respondent 5 disputing the fact that it is not treating the domestic and municipal sewer in the area of Pokaran and actually discharging untreated sewage in river Tolaberi which is ultimately reaching and accumulating to open land including the agricultural land of the applicants damaging the same ecologically and causing even otherwise pollution has been filed. It is also causing health hazards to the people at large and particularly, the inhabitants in the area.

16. Learned Counsel appearing for Municipal Board, Pokara could not give any justification as to why environmental compensation proposed by Regional Officer, RSPCB vide letter dated 15.05.2023 (annexured R3/1 to the compliance report of RSPCB) may not required to be paid by it for the offence it is committing by discharging untreated sewage and polluting not only the surface water of river Tolaberi but also due to over flow of the sewage water and accumulation on the agricultural land of applicants, the said land soil and ground water are being damaged.

17. The law is well settled that no discharge of untreated sewage is permissible in any stream unless requisite treatment is made and the water quality is improved as per the prescribed standards under the provision of Water Act, 1974 and if any person commits, breach, besides acting under Water Act, 1974, it is also liable to pay environmental compensation on the principle of 'Polluter Pays'.

18. If environmental laws are violated by any person or authority, by application of polluters pay it is bound to pay environmental compensation for the damage and the person who suffers on account of such violation is also entitled to get compensation.

19. In the facts and circumstance of the matter and in view of the discussions made above, we allow this Original Application and direct respondent 5 to pay environmental compensation of Rs. 65,75,000/- as proposed by Regional Officer, Jaisalmer vide letter dated 15.05.2023 and deposit the same with RSPCB, within two months. Respondent 5 is also restrained from discharging any untreated sewer(municipal and domestic), as the case may be, in river Tolaberi or on any open area of private parties. discharge of treated sewage shall be made only after treatment of the sewage water meeting the standards prescribed under the provision of Water Act, 1974.

20. Applicant's land is more than 9 hectares which is a big chunk of land and which is the basic source of livelihood for the applicants. We therefore direct that they shall be entitled to compensation of Rs. 20 lakhs which shall be paid by RSPCB from the amount of environmental compensation deposited by respondent 5, as directed above.

21. The remaining amount of compensation shall be utilized by RSPCB for restoration of environment as per restoration plan. In this regard, an action plan shall be prepared by a Joint Committee comprising RSPCB, Collector, Jaisalmer and DFO, Jaisalmer within two months. As per the said plan, remaining amount of compensation shall be spent by respondent 5 within further six months and a final compliance report shall be submitted before Registrar of Central Zone Bench, Bhopal by e-mail at ngtczbbho-mp@gov.in preferably in the form of searchable

PDF/OCR Support PDF and not in the form of Image PDF, who shall, if find necessary for any further order, place the matter before the Bench. The report shall be submitted by 15.04.2024.

22. With the above direction, OA is allowed in the manner as aforesaid.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

July 11, 2023
Original Application No. 81/2022(CZ)
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