

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 483/2016

Indian Council for Enviro-Legal Action & Ors.

Applicant(s)

Versus

Jammu and Kashmir State Pollution Control Board & Ors.

Respondent(s)

Date of hearing: 22.11.2018

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): Ms. Katyani, Ms. Mehak, Advocates

For Respondent (s): Mr. Dilip Pandit, Advocate along with Sh.
Agninder Bakshi, Ex. Eng.
G.M. Kawoosa, Advocate for J&K PCB& State
Mr. Rajkumar, Advocate for CPCB

ORDER

1. This application seeks direction to close down industries causing pollution, discharging effluents/waste into or near the River Basantar and operating without statutory consent. Direction has also been sought to remove encroachments upto 500 meters from the High Flood Line on both sides of River Basantar to stop projects or their extension on the river bed/floodplains and banks of the said river, to identify landfill sites for Municipal Solid Waste in District Samba, Jammu and Kashmir, to submit a list of hazardous industries in the State, to determine and recover compensation and disburse the same to the victims or utilize the same for restoration of the environment.
2. The applicants claim to be interested in protection of environment in the area in Samba District and the floodplains, river banks of the River Basantar which is a tributary of River Ravi by controlling pollution caused by the polluting industries. The applicants rely upon a report of the Central Pollution Control Board (CPCB)

submitted in February 2015, titled “River Stretches for Restoration of Water Quality” identifying the stretch from Samba to Chakmangarakwal as polluted river stretch. On account of pollution, the cattle grazing at the banks of the river have fallen sick and have died. Fish and other aquatic organisms have been found dead.

3. Industrial Growth Centre has been developed by State Industrial Development Corporation (SIDCO) which is an agency for promotion and development of medium and large scale industries. About 250 industries are manufacturing pesticides and chemicals and discharging effluents into or near the river in violation of the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the Hazardous Waste Rules, 2008. Degradation of environment is taking place on account of dumping of waste on the river bank. A research paper refers to a study of Physio Chemical Parameters of Basantar River and impact of Industrial waste on groundwater quality in vicinity of dumping site in Samba Town, Jammu & Kashmir, India. It was published in March 2016 in International Journal of Engineering Research & Technology. It mentions that the industrial complex in the vicinity of the bank of River Basantar has industries from which waste is generated and thrown into the river. The pollution is affecting the aquatic life and the inhabitants. The water of the river is not complying with the standards. Groundwater and the soil are also affected.
4. There is also a plan to set up a Krishi Vigyan Kendra (KVK) on the river bed/flood plain which will add to the pollution. Part of land has been allotted to Sher-e-Kashmir University, Jammu on the banks of the river. Development of river bed will increase risk of flood, add to vulnerability of structures, result in loss of wetland, biodiversity and micro-organisms, contaminate river water, decrease water holding capacity of the soil and reduce water level.

5. The applicants refer to Industrial Policy 2016 of the State Government. The object of the Policy is to encourage eco-friendly and environmentally sustainable industrial growth.
6. Reference has also been made to the judgments of the Hon'ble Supreme Court in *Hinch Lal Tiwari Vs. Kamala Devi and Ors.*¹, *Susetha Vs. State of Tamil Nadu*² and *Maharaj Singh Vs. State of Uttar Pradesh*³ highlighting the importance of material natural resources and their conservation on the doctrine of Sustainable Development. Reference has also been made to the Precautionary Principle enunciated in *M.C. Mehta Vs. Union of India*⁴ and *Indian Council for Enviro Legal Action Vs. Union of India and Ors.*⁵
7. In reply to the notice issued by this Tribunal, the Central Pollution Control Board has stated that it has already identified the river stretch from Samba to Chakmangarakwal as polluted river stretch in its report published in February 2015. Implementation of Hazardous Waste Rules is the responsibility of the State Pollution Control Board and the Municipal Council.
8. The State Pollution Control Board has stated that its endeavor is to enforce zero discharge of effluents by enforcing recycling of waste water after treatment by the ETP. The matter has also been taken up with MD, SIDCO for setting up of Common Effluent Treatment Plant (CETP) in all the Industrial Estates and Industrial Growth Centers and to re-circulate the waste water after tertiary treatment in CETP. It is also pressing hard for having Treatment Storage Treatment Facility (TSTF) for the site as identified. IGC Samba is one of the largest Growth Centers in the State. Encroachment should be removed in the river bed as it is harmful to the environment.

¹ (2001) 6 SCC 496 (Civil Appeal 4787/2001)

² AIR 2006 SC 2893

³ (1977) 1 SCC 155

⁴ 7 (1987) 4SCC 463

⁵ (1965) 5 SCC 281

9. The SIDCO has taken a stand that it has already initiated action for construction of CETP. There is no pollution caused to the river nor any air pollution is caused in District Samba. No toxic waste is discharged from the industrial centers. NOC has been obtained. Only after that lease deed is executed in favour of the industries. There is no dumping of waste at the banks of the river. Steps have been taken for the CETP by making DPR at a cost of Rs. 12.87 crores on 30.05.2013. Construction has been sanctioned on 10.07.2015. SEIAA has given online pre-feasibility report on 24.08.2016.

10. On 27.02.2018, the SIDCO was required by this Tribunal to obtain instructions about quality of effluents being discharged. Report has been filed on 13.03.2018 that out of 210 total industrial units, 44 units required ETPs which has since been done.

11. However, in the report filed by the Jammu and Kashmir State Pollution Control Board (J&KSPCB) on 15.03.2018, it is stated that water quality is better in upstream of IGC and is deteriorated in downstream IGC Samba which may be due to untreated domestic effluents as well as effluents coming out from IGC Samba.

12. We have heard the learned Counsel for the parties and perused records.

13. During the course of hearing, learned Counsel for the J&KSPCB has handed over "Compliance Report" to the effect that there is no STP in place to treat the domestic sewage from Samba town which is being discharged into the river Basanter. Waste water from Industrial Estate is also discharged into the river. Municipal body has been asked to set up STP of adequate capacity. Closure of 23 defaulting units at IGC Samba for non-compliance has been ordered but seven orders were withdrawn, on compliance. Consent to three industries has been kept in abeyance on account of absence of pollution control devices. Out of 140 units, 33 units are in red category and 107 in orange category. Effluents generating units

have been directed to install digital flow meters with the ETPs. Monitoring of air quality, ground water, surface water was carried out. Ambient air quality was found to be exceeding permissible limits due to heavy traffic load, open burning and other factors. Water sample exceeded the permissible limit in respect of important parameters such as Alkalinity, Hardness, Potassium, level of Calcium. Sewage waste water exceeded the standard limit for majority of parameters leading to increased pollution level in the River Basanter. Early setting up of Common STPs is required. A copy of letter dated 25.10.2018 addressed to the Municipal Council, Samba has been annexed to the effect that raw sewer was getting discharged into the river near IGC Samba and a CSTP was required to be installed.

14. A perusal of the above shows that the stand of SIDCO is misleading and is contradicted not only by the report of the Central Pollution Control Board but also the report of the J&KSPCB. SIDCO has denied any amount of pollution but the SPCB, after testing of samples, ordered closure of 23 defaulting units (out of which 07 orders have been withdrawn), which clearly means that atleast 16 industrial units were found to be creating pollution. It is also shown that 33 units are in red category and 107 are in orange category. The water sample and ambient air quality are exceeding the limits. Sewer waste water is exceeding the standard limits for majority of parameters. The minutes of the meeting conducted by the J&KSPCB dated 21.08.2018 further show that Treatment Storage Treatment Facility (TSTF) for treatment of hazardous waste is pending for more than a decade. The CETP has not been installed. Untreated sewage waste and industrial effluents are being discharged in the river on account of delay in establishment of CETP and STP, which is clearly illegal and detrimental to the environment.

15. The above material, which is unchallenged, shows clear violation of environmental laws and also failure of the statutory authorities to

take adequate action. In spite of the findings of the J&KSPCB, there is nothing to show that any prosecution has been initiated or any other coercive measures have been taken against the units which were found to be polluting, except closure of some of them after longtime. For the past pollution, no amount of compensation for damage to the environment or the inhabitants has been recovered. It can hardly be disputed that in the course of upholding and protecting environment, on 'Polluter Pays' principle, the Pollution Control Board is entitled to and must have a provision, followed by action, for recovering adequate amount of compensation, apart from any other penal or any other action.

16. Accordingly, we direct as follows:

- i. The SIDCO must set up TSDF and CETP within six months, failing which SIDCO will be liable to pay an amount of Rs. 5 Crores every three months by way of deposit with the Central Pollution Control Board for being spent on restoration of environment. For the past failure in more than one decade, SIDCO is held liable to pay compensation of Rs. 5 Crores which may be deposited within one month from today with the Central Pollution Control Board for restoration of the environment.
- ii. Municipal Council, Samba is held liable to pay compensation of Rs. 10 Lakh for the past failure in installing STP and for discharging untreated sewage in the river. Same amount will be payable for failure to install STP after six months, i.e., at the rate of Rs. 10 Lakh per month.
- iii. The J&KSPCB is directed to take appropriate coercive measures, including prosecution for the violations. It may be ensured that flood plains /river bed are free from encroachment and no garbage is dumped in the river.
- iv. Any surviving issue with regard to non-compliance of Solid Waste Management Rules, 2016 will stand covered by order of

this Tribunal dated 20.08.2018 in O.A. No. 606 of 2018 and can be dealt with by the Committees constituted in terms of the said order.

- v. It will be open to the concerned authorities to recover the amount from the erring officials/polluters.
- vi. We also direct that the Committee already constituted by this Tribunal vide order dated 24.08.2018, *Execution Application No. 32/2016 in Original Application No. 295/2016 Amresh Singh Vs. Union of India & Ors*, headed by Justice J.R. Kotwal retired Judge, Jammu & Kashmir High Court, will act as Oversight Committee in the matter with the modification that only other Members will be the State Pollution Control Board and the Central Pollution Control Board. The Nodal Agency will be the State Pollution Control Board for coordination. If any additional expenses are to be incurred for functioning of the Committee, the State Pollution Control Board will provide such funds, as may be directed by the Chairman of the Committee.

17. The application is disposed of.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

November 22, 2018

DV