

Item No. 02

(Court No. 1)

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

(By Video Conferencing)

Appeal No. 23/2022
(I.A. No. 121/2022)

Chief Executive Officer, Municipal Council, Sopore

Appellant

Versus

Jammu & Kashmir Pollution Control Board

Respondent

Date of hearing: 25.05.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Appellant: Mr. G.M. Kawoosa, Advocate

ORDER

1. This appeal has been preferred by the Municipal Council, Sopore, J&K, against order of the State PCB dated 24.11.2020 levying compensation of ₹130.46 Lakhs (Rupees One Crore Thirty Lakh and Forty Six Thousand Only) on 'Polluter Pays' principle. As per impugned order, the State PCB found illegal and unscientific dumping and disposal of solid waste in the area of the Municipal Council. Show cause notice was issued to the Municipal Council on 26.06.2020 alleging dumping of waste in forest land, on flood plain of Jhelum and buffer zone of Wular lake but no plausible reason was given for non-compliance. The reply of the Council dated 18.07.2020 is as follows:-

“Apropos to the above subject and reference, it is to state that:

01. *The spot where the waste is being dumped is state land not forest land and the Govt. has the right to use the land for public purposes. Since the spot is far beyond the buffer zone (200 meters from the bank of the lake is taken as its buffer zone). Therefore, there is nothing wrong in using the spot for public interest.*

02. *As already stated the land in question is not forest land, it does not fall in the notification issued by WUCMA notifying the areas around the lake as it is located downstream at approximately 1.9 kms down the western bank of the lake under no circumstances can run off water from this spot even enter the lake as that is physically impossible.*

03. *The apprehension of the J&K Pollution Control Board is not physically possible because the water from the spot in question nor any run-off water from the spot can ever find its way into the lake nor in the Jhelum River simply because it's not physically possible.*

04. *This is an admitted fact that the Wular Lake is a Ramsar site and needs to be protected and preserved in every ecological aspect. However, as already stated the MC Sopore is not dumping the waste in the lake at all nor does the garbage being dumped at waste at the spot in question can ever have any chance of getting carried into the lake simply due to the natural non-breacheable barrier.*

05. *Any direction to compel the MC Sopore to stop the use of the said land for the said purpose will lead to untold problem and suffering for the people of Sopore town as there is no alternate suitable land available for the said inescapable necessity. Therefore, any such direction will jeopardize the genuine and perfectly legal interest of the people of Sopore Town.*

i). The area where the said spot is located is an extensively built up area though all such premises are sufficiently away from the site in question. Besides, two army camps, a PDC office, a school building and many forest huts and tourist huts, there are large sized habitations existing much more closer to the lake and the Jhelum River. These habitations include Sheer Colony and Ningli where hundreds of houses have been built and are being built. It is very strange that the WUCMA authorities and other departments have had no objection to such construction activities and the resultant fall out on the local area which they are now projecting as very eco-fragile one only to prevent the administration from one of the most inevitable and imperative use of the said land. It is to wonder that if the area is so eco-fragile as is being presented by WUCMA and forest authorities now, how such extensive building up of the area has been allowed to happen.

ii) *The spot in question is low lying besides being sufficiently away both from the Wular Lake and the Jhelum River. The spot is also located on the downstream from the Wular Lake. Therefore, there is no chance of the garbage being dumped at the spot ever finding its way into either the said lake or the said river. Even during the catastrophic flood in 2014 water from the river did not spill over into the said spot nor does water from the said spot ever get spilled over into the river. Therefore, the premise that the MC Sopore is converting the wetland into a dumping spot is totally whimsical and misleading.*

iii) *The spot in question does not fall in the catchment area of the lake as it is located downstream from the lake and consequently any run-off from this spot can never enter the lake.*

iv) *Further the catchment area of Wular Lake is very vast and includes major chunks of district Bandipara and sizeable part of district Baramula. The said area is also densely populated and accordingly among other things these areas are also inescapably in need of proper spots for dumping the waste as is getting regularly generated from these habitations. Obviously, land for such purpose is also to be found in the same localities/areas and it can neither be expected nor would it be possible to shift the waste of these areas at anywhere far and out.*

v) *It is, however, admitted that the disposal of the waste has to be same as afoot. The area is being fenced and also a preliminary detailed proposal for the scientific disposal of the waste including setting up of the necessary machinery and other facilities at the site has been framed.*

Currently, the waste at the site is being properly buried underground as the spot otherwise also needs filling up as it is low lying and water gets often stagnated in it and can become a breeding ground for various pests and vectors. The disposal of the waste is being done in such a way that there is no nuisance being caused on this account.

Therefore, it is prayed that no coercive directions may be passed as the same would hinder the administration and the MC Sopore from the legitimate and inevitable use of the said land and may subject the public of Sopore to grave inconvenience and trouble.”

2. Considering the above reply, further show cause notice was issued on 10.08.2020 proposing to levy compensation, as follows:-

*“It is immaterial whether the dumping site is a forest land, State land, Private land or even proprietary land of the Municipal Committee, as **Municipal Waste cannot be disposed of in the manner in which Municipal Committee Sopore is currently doing.** Municipal Committee Sopore has failed to obtain mandatory and statutory permission from the Board viz consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and mandatory Environmental Clearance under EIA Notification (G.O.I.) 2006 has also not been obtained. **With respect to the assertion that the dumping site is low lying, it is emphasized that same is all the more objectionable as contamination of ground water by adopting crude methods of waste disposal is for gone conclusion in such cases. It is for the Municipal Committee Sopore to find out alternate and suitable land fill site, develop it on scientific lines and operate the same only with due permission of the Board. Rest habitation and built-up area around the water body cannot be considered as permission by the Municipal Committee Sopore to dump the waste is the near vicinity of the water body.***

Methods of disposal of the waste at present site of dumping is pathetic and detrimental for the ecology of the area and cannot be permitted by any stretch of imagination on any compelling grounds that Municipal Committee may put forth.

Since your response is tacit admission of commission of offence by the Municipal Committee Sopore under laws governing environmental protection and no legally tenable justification/cause has been put forth for dumping of the waste at given site, and thus both the responses fade into insignificance, which are accordingly dismissed.

Necessary orders for levying of Environmental Compensation shall accordingly follow as warranted under rules and approved guidelines of Hon’ble National Green Tribunal in this regard.”

3. Reply to the said show cause notice was that matter was pending in the High Court and alternatives for scientific disposal of waste were being explored. The State PCB, however, held that mere pendency of matter in the High Court was not enough and in view of admitted violation in disposal of waste, the appellant was held liable to pay compensation.

4. We have heard learned Counsel for the appellant. It is submitted that the dumping of waste was not on forest land and it was beyond the catchment area of the lake or buffer zone of the river. However, it is undisputed that disposal of waste is not in accordance with the SWM

Rules 2016, which require segregation, processing and disposal of different category waste and its scientific disposal in the manner laid down. In the present case compliance of the said rules is not even claimed. Waste is being unscientifically dumped in low lying areas, in violation of the manner provided under the Rules and having potential for damage to the environment and public health.

5. In view of above, no ground is made out to interfere with the levy of compensation. However, the compensation amount, if recovered, may be utilized for restoration of environment, as per District Environment Plan, prepared in pursuance of order of this Tribunal in *O.A. No. 360/2018, Shree Nath Sharma vs. Union of India & Ors.*

Accordingly, the appeal is disposed of.

In view of order in the main matter, I.A. No. 121/2022 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

May 25, 2022
Appeal No. 23/2022
AVT