

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

Original Application No. 65/2019  
(Earlier O.A.No.64/2016, O.A.No.473/2016,  
O.A.No.518/2018 & O.A.No.910/2018)

Gopeshwar Nath Chaturvedi

Applicant(s)

Versus

U. P. Pollution Control Board & Ors.

Respondent(s)

Date of hearing: 25.01.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent(s): Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB  
Mr. Amit Tiwari, Advocate for State of UP  
Mr. Rajkumar, Advocate for CPCB

**ORDER**

1. The question for consideration is compliance of the order of the Hon'ble Supreme Court dated 23.09.2013 in *SLP (Civil) No. (s) 4295/2011- M/s. Manoj Mini Rice Mill & Anr. Vs. State of U.P. & Ors*, directing implementation of the order of Division Bench of the Allahabad High Court, dated 13.08.2003 in *Smt. Mithlesh Jain Vs. State of U.P. & Others, 2003 (6) AWC 4742*, for **shifting the industrial activities in residential areas in the State of Uttar Pradesh for protection of environment**. The matter has been considered by this Tribunal in several orders in the last about three years.

2. Earlier orders of the Tribunal, *inter-alia*, include orders dated 17.05.2019, 30.10.2019 and 03.09.2020. The Tribunal has repeatedly noted the failure of the State in carrying out the orders of the Hon'ble Supreme Court passed more than seven years ago.

3. Directions vide order dated 17.05.2019 are as follows:-

*“6. We are of the view that it is the responsibility of the statutory authorities entrusted with the enforcement of law to devise appropriate strategies and not just to presume that secret violation of law cannot be checked and plead failure. The law enforcement agency has to endeavour to be a step ahead of the law violators. The actions taken have to be meaningful and stringent in such a situation having regard to the potential adverse effect on the health of the citizens by the polluting activities.*

*7. Let the Chief Secretary, Uttar Pradesh look into pleaded failure of the mechanism in the State and ensure remedial measures, including the regime for recovering compensation/damages on ‘polluter pays’ principle, apart from other coercive measures.*

*8. We have already held that the ‘Polluter Pays’ principle can be invoked by every agency entrusted with the responsibility of enforcement of environmental norms. It will be appropriate that such authorities are trained so that polluting industrial activities in residential areas can be dealt with sternly.*

*9. A further detailed report is required with regard to alleged illegal operation of polluting units at Mathura city as well as Jai Singh Pura/Guar Kendra by the same Committee. The nominee of the CPCB may be of a higher rank. It will be open to the applicant or any other aggrieved person to furnish requisite information to the Committee by way of a written representation or by way of oral representation during the inspection. The report may be furnished within three months by email at [nqt.filing@gmail.com](mailto:nqt.filing@gmail.com).*

*10. Further affidavit on behalf of the State of Uttar Pradesh may also be filed by email before the next date. A copy of the report may also be furnished to the applicant by email before filing before the Tribunal.”*

4. Directions vide order dated 30.10.2019 are as follows:-

“

- i. ETP installed in units are mainly equalization-cum settling tank and need to improve with proper maintenance regularly for better effluent treatment of waste water and compliance of norms.*
- ii. Unit must sent ETP sludge to TSDF for treatment as per norm.*
- iii. A Common Effluent Treatment Plant (CETP) in the Gaur Udyog Kendra is required to be set up keeping in view of the existing small/tiny units and future prospective.*
- iv. Till the CETP is constructed, Individual units in Gaur Udyog Kendra need to treat their effluent and the U.P Pollution Control Board should ensure that the effluents discharged by the industries meet the prescribed standards.*
- v. Logbooks were not maintained for water consumption, effluent discharge, sludge dispose off and chemicals utilization in units. Log Book should be maintained and need to be verified by local office of UPPCB.*

- vi. Good housekeeping needs to be maintained by the units to avoid the leakages/spillages during operations.
- vii. Units should install ACF (Activated Charcoal Filters) and MGF (Multi Grade Filters) to improve the quality of discharge effluent to comply the norms
- viii. Faucets and other Bathroom fittings manufacturing units need to install proper APCS (Air Pollution Control System) with wet scrubber to ensure emission of particulate matter within the standards limits through stack. Stack monitoring facility as per norms should be provided on stack for monitoring by UPPCB/CPCB.
- ix. Road maintenance of the Gaur Industrial area is not maintained properly; need to maintain it to reduce dust emissions etc.
- x. Solid waste in whole Gaur Industrial Area was not collected as per MSW Rules, 2016, need to collect and dispose off as per the MSW Rules, 2016.
- xi. Drainage maintenance in Gaur Industrial area was not proper, need maintenance urgently to remove the water logging in the area. It should properly treat before final disposal of sewerage and industrial effluent as per the norms.”

“4. Let a further action taken report be filed covering all above aspects and also clearly indicating remedial action against not sending ETP sludge to TSDF and other serious deficiencies, including drainage maintenance in the industrial area.

5. Apart from the above remedial action at Mathura, implementation of order of the Hon’ble Supreme Court referred to in para 1 above, requiring shifting of industrial activities from residential areas in the entire State of UP is significant for protection of environment. It appears that the State authorities are not giving due consideration to the said issue. The affidavit filed on behalf of the State fails to even advert to the same.

**6. The Hon’ble Supreme Court has repeatedly directed shifting of industrial activities from residential areas.<sup>1</sup> In M.C Mehta v. Union of India (2004) 6 SCC 588, it was observed that such activities affect right to life of the inhabitants. A monitoring committee was constituted headed by Chief Secretary to ensure implementation. Again, in M. C Mehta v. Union of India (2006) 3 SCC 399, disapproving the scheme to regularize industrial activities in residential areas, the municipal corporation was directed to seal the premises used in violation of the permitted user, which seal could be removed only after filing of the undertaking that such premises will be used only for authorized purpose.**

7. This Tribunal, vide order dated 06.08.2019 in O.A No. 681/2018, News item published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with multiple timelines to clean air

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<sup>1</sup> (2004) 6 SCC 588 Para 68 and 69  
(2006) 3 SCC 399 Para 68

in 102 cities dealing with the remedial action to control air pollution, observed:

*“One of the causes of air pollution is growth of unplanned industrial activities in residential areas. At some places, such activities though prohibited, have been regularized without regard to environmental norms. The same can no longer be allowed to continue and **provision has to be made for closing/shifting as per law laid down in M.C. Mehta vs. Union of India, (2004) 6SCC 588. The master plans need to be reviewed and wherever such activities are against existing or new norms, the same need to be closed/shifted.**”*

The Tribunal directed as follows:

*“IV. Concerned States may evolve enforcement mechanism for closing/shifting of industrial units other than household industries from residential/non-conforming areas in the light of law laid down in M.C. Mehta vs Union of India, (2004) 6SCC 588.”*

8. Vide order dated 09.07.2019 in O.A No. 359/2019, Mohammad Yusuf Abdullah Shaikh & Ors v. State of Maharashtra & Ors, this Tribunal observed:

**“9. Polluting Industries cannot be allowed in a residential area, Town Planning authorities have to adopt and enforce appropriate regulatory measures.<sup>2</sup> Land holding authorities must be held accountable for their failure. Similarly, wherever polluting activities found, steps have to be taken to stop such activities and to recover compensation and restoring the environment. Regulatory authorities must perform their duties.<sup>3</sup> Reference may also be made to some of the orders of this Tribunal dealing with somewhat similar situations.<sup>4</sup>”**

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<sup>2</sup> M.C Mehta v. Union Of India [(2004) 6 SCC 588] Hon'ble Supreme Court held, All industrial units that have come up in residential/non-conforming areas in Delhi on or after 1-08-1990 shall close down and stop operating.

<sup>3</sup> 7 Techi Tagi Tara v. Rajendra Singh Bhandari [(2018)11 SCC 734] Hon'ble Supreme Court discussed several issues pertaining to the expert and professional appointments to the SPCBs and stated that, “The concern really is not one of a lack of professional expertise there is plenty of it in the country, but the lack of dedication and willingness to take advantage of the resources available and instead benefit someone close to the powers that be. With this couldn't care less attitude, the environment and public trust are the immediate casualties. It is unlikely that with such an attitude, any substantive effort can be made to tackle the issues of environmental degradation and issues of pollution.”

<sup>4</sup> i) Satish Kumar v. Union of India & Ors. (Original Application No. 56(THC)/2013, order dated 03.12.2018) The Tribunal directed, Delhi Government to deposit a sum of Rs. 25 Crores towards the cost of damage to the environment for its failure to regulate the activities of illegal industrial clusters.

ii) News item published in “The Times of India” authored by Paras Singh Titled “Ignoring NGT orders, Mayapuri ‘graveyard’ spews toxic fumes”(Original Application No. 807/2018, Order dated 29.01.2019) The Tribunal observed that, to uphold the Rule of Law and accountability of those who are trustees of environment, it is necessary that the state machinery is required to compensate for their negligence and failure which may act as a deterrent against the officers

9. It will be appropriate that consistent with the directions of the Hon'ble Supreme court and this Tribunal, the State of UP takes further appropriate action to implement the order of the High Court as affirmed by the Hon'ble Supreme Court referred to in Para 1 above and files an appropriate compliance affidavit before the next date.

10. A copy of this order be also sent to the Committee constituted by this Tribunal dated 21.10.2019 in Original Application No. 670/2018, Atul Singh Chauhan v. Ministry of Environment, Forest and Climate Change & Ors. headed by Justice S.K Singh, former Judge of the Allahabad High Court. The said Committee may also monitor remedial measures in the matter and furnish a report to this Tribunal by email [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in).”

5. Vide last order dated 03.09.2020, the Tribunal dealt with the report of the Oversight Committee dated 28.08.2020 giving the current status of control of pollution in the industrial area at Mathura as well as the status of shifting industries from the residential areas as follows:-

“1to4...xxx.....xxx.....xxx

5. In view of above, the Oversight Committee has filed its report dated 28.08.2020 giving the current status of pollution abatement as follows:

<b>S.No</b>	<b>Issues</b>	<b>Current Status and Decision taken by the Committee</b>
1.	Status of installation of ETP & CETP	The Industries are maintaining existing ETP as per discharge norms and also submitting report from NABL accredited laboratories. Industrial Area Association of Gaur Kendra has proposed CETP on PPP model.

who neglected their basic duty of protecting the environment or colluded with the polluters and law violators.

iii) Aryavart Foundation vs. M/s. Vapi Green Enviro Ltd. &Ors. (Original Application No. 95/2018, order dated 11.01.2019) The Tribunal stated that, lack of effective governance in the present case is patent from absence of steps for prosecution of the guilty persons or recovery of damages for restoration of the environment which is primary responsibility of the SPCB. Appointment process does contribute to such ineffectiveness. iv) All India Lokadhikar Sangathan Vs. Govt. of NCT of Delhi & Ors. (Original Application No. 159/2013, order dated 16.10.2018) The Tribunal directed the Delhi Government to pay a sum of Rs. 50 Crores as compensation for damage caused to the environment by allowing the operation of stainless steel pickling industries covered in prohibited/negative list of the industry as per Master Plan of Delhi 2021.

2.	<i>Status of treatment and disposal of ETP sludge</i>	<i>36 industries which have shifted their plants to designated industrial areas are collecting the sludge of ETP properly and sending the sludge to TSDFs of M/s Ramkey and M/s Bharat Oil.</i>
3.	<i>Maintenance of logbooks</i>	<i>The industries have maintained logbooks to keep the records of consumption, effluent discharge, sludge disposed of and chemicals utilizations.</i>
4.	<i>Status of installation of Activated Charcoal Filter (ACF) and Multi Grade Filter (MGF)</i>	<i>26 units have installed ACFs and MGFs and 16 units are under process of installation.</i>
5.	<i>Status of installation of Air Pollution Control System (APCS)</i>	<i>Taps, cocks and other bathroom fittings manufacturing units need to install proper APCS with wet scrubber to control emission of particulate matter within the standard limits through stack. The industries have started improvement to maintain air quality by installing APCS. RO UPPCB Mathura has issued notices to non-complying units.</i>
6.	<i>Road maintenance of Gaur Industrial Area.</i>	<i>So far, no work has taken place in this regard. RO UPPCB Mathura has issued notice to PWD on 22.01.2020.</i>
7.	<i>Disposal of solid waste and municipal waste of whole of Gaur Industrial Area.</i>	<i>A notice has been given to Nagar Nigam by RO UPPCB Mathura on 22.01.2020.</i>
8.	<i>Drainage maintenance in Gaur Industrial Area.</i>	<i>No work has taken place though RO UPPCB Mathura has given notice to Jal Nigam and Mathura Vrindavan Development Authority for necessary action.</i>
9.	<i>Environmental compensation</i>	<i>RO UPPCB Mathura has not mentioned about environmental compensation that he has levied on non-complying units, nor has he mentioned about the enforcement work including</i>

		closure/seizure of the non-complying units.
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6. With regard to shifting of industries in residential areas in UP:  
 “Hon NGT had directed that the compliance affidavit should mention not only about Mathura but also about shifting of industries from residential areas throughout the State of Uttar Pradesh. **Compliance affidavit does not appear to have been filed by the State so far in this regard by the Chief Secretary, UP. The Committee is also not aware of any institutional enforcement mechanism set up by the State in this regard. Incidentally, the subject of town planning, and preparation and enforcement of Master Plan in the State of Uttar Pradesh, unlike other States, is looked after by the Housing Department, which is separate from Urban Development Department. The Committee is not aware of any steps taken by the Housing Department to review the existing master plans in the light of NGT orders. The Principal Secretary, Housing may review the Master Plans of all the major cities and make adequate provisions in the Master Plans for ensuring that such activities do not take place within the residential areas. The Chief Secretary may file his compliance affidavit as directed by the Hon NGT.**”

7. The Committee concludes with following recommendations:

**“Regarding Mathura:**

- (1) In Gaur Industrial Area, the proposal of CETO on PPP basis may be pursued actively.
- (2) The pending work of drainage maintenance in Gaur Industrial Area should be completed within a month by MVDA.
- (3) There needs to be improvement in MSW Management of Gaur Industrial Area by Nagar Nigam.
- (4) PWD should repair the potholes in the Gaur Industrial Area Road within a month.
- (5) UPPCB may ensure cent percent compliance of pollution abatement measures and realize EC from non-compliant units.

**Regarding State:**

The Principal Secretary, Housing may review the Master Plans of all the major cities and make adequate provisions in the Master Plans for ensuring that such activities do not take place within the residential areas.

Instead of leaving it to every Development Authority to make separate provisions in their master plans, Model Bylaws could be prepared by the State Government and directions could be issued by the State Government to all the Development Authorities to adopt them.

The provisions could include a ban on opening new industries in the master plan area of the Authority, provision of relocation

*of existing industries in that area and provision of a standing enforcement mechanism which may have representation from other departments like Power Department, Pollution Control Board, Industries Department and Urban Development Department to increase the efficacy of this regulatory mechanism.*

*In fact, provisions could be made for a no-residence buffer zone in future industrial area to obviate such situations of residential areas developing in the vicinity of industries.”*

**8. From the above report, it appears that the State has failed to comply with the order of the Hon’ble Supreme Court passed 7 years ago, in spite of various further orders of this Tribunal requiring such compliance. Learned counsel for the State, however, states that steps have been taken though the same are not on record.**

**9. It is high time that the State enforces the order of the Hon’ble Supreme Court and orders of this Tribunal, if it has any respect for the rule of law. Let further steps be taken expeditiously and the status report as on 31.12.2020 placed on record in the form of an affidavit of the concerned Principal Secretary of the State of UP. The Oversight Committee may also give its independent report in the matter. The reports be furnished before the next date 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.”**

6. Accordingly, further report has been filed by the Oversight Committee on 20.01.2021 making following recommendations:-

**“Recommendations**

*In view of the above we recommend as follows:*

- 1. Oversight Committee feels that so far very little compliance has been done regarding up-gradation of ETPs. In general, the implementation progress is very slow. UPPCB needs to continuously monitor the progress and increase enforcement in cases of non-compliance.**
- 2. The work of construction of CETP has not started yet. It was informed to this committee in its meeting on 23.01.2020 that proposal has been prepared on PPP Model and it was directed that CETP should be installed within next three months. However till date no progress has been made in this regard. CETP may be installed in a time bound manner failing which the industrial area may be shut down.**



3. *The compliance of the concerned departments is also not forth coming. UPPCB may review the compliance and issue EC in case of non-compliance without any further delay.*
4. *The State Government may be directed to prepare a plan for construction of 'eco-industrial parks' in which the existing industries should have a symbiotic relations with each other i.e waste of one industry can be a raw material for another industry. There should be proper waste treatment facilities in all the industrial areas. Industries Department should incorporate it in their Industrial Policy. No new industrial areas be permitted without CETPs. Existing industrial areas should be given fixed timeframe to construct CETPs failing which they be shut down. UPSIDA be asked to make immediate provisions in their Industrial Areas. Suitable provisions be made in Industrial Policy for Private Industrial Parks.*
5. *UPPCB may also look into the possibilities of creating buffer zones around the industrial areas so that the effects of waste or accidental industrial spills etc. can be minimized on the local population.*
6. *6 Housing Department should make provisions in Urban Master Plans banning new industries in residential areas, shifting of existing industries away from residential areas. Power Department, Pollution Control Department, Industries Department and Urban Development/ Housing Department may be part of a standing mechanism to execute these shifting plans."*

7. The report shows disappointing state of affairs as the compliance has been very little and very slow. The State PCB has failed to continuously monitor the progress which needs to be done. CETP has still not been constructed. 'Polluter Pays' principle is not being effectively applied. The State has not prepared the necessary policy of constructing eco industrial parks with proper waste management facilities and buffer zones around the industrial areas. The Master Plans need to be reviewed to prohibit industries in the industrial areas for effective compliance of mandate of the Constitution for providing pollution free environment to the inhabitants. As repeatedly observed, **pollution crimes adversely affect public health and are as serious as crimes of assaults or bodily**

**injuries and need to be taken with same seriousness as law and order situation. Failure to enforce environmental norms is at par with creating lawlessness.** These observations are being made with the hope that higher authorities in the State will realize their responsibility to the citizens and enhance higher level monitoring for effective enforcement of law.

8. Let further steps in the matter be monitored by the Chief Secretary, UP by appropriate mechanism at the level of the State.

The application is disposed.

A copy of this order be forwarded to the Chief Secretary, UP, Principal Secretary, Housing, U.P., the State PCB by e-mail. The Principal Secretary, Housing, UP may forward copy of the order to the concerned Development Authorities and District Magistrates in the State.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

January 25, 2021  
O.A. No. 65/2019  
A