

Item No. 03

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 228/2020
(Earlier O.A. No. 49/2016 (WZ))

WITH

Execution Application No. 45/2016(WZ)

Rohit Prajapati & Anr.

Applicant(s)

Versus

Secretary, MoEF & CC & Ors.

Respondent(s)

Date of hearing: 25.05.2021

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

Applicant: Mr. Rohit Prajapati, Applicant in person

Respondent: Mr. Maulik Nanavati, Advocate for the State of Gujarat

ORDER

1. Grievance in the application, originally filed before the Pune Bench on 07.04.2016, was against the *Vishwamitri Riverfront Development Project* (VRDP) at Vadodra, Gujrat, in violation of environmental norms. Broad averments of the applicants are that the project violated the EIA Notification, 2006, requiring prior EC, after assessment of the impact of the project on environment. The project in question adversely impacted the environment, particularly the Vishwamitri River wetlands, ravines, inter-connectivity with other water bodies, floodplains, flora and fauna, biodiversity, etc. The River consists of catchments, floodplains, tributaries,

ponds, river-bed and adjoining ravines which, along with the soils and vegetation on both sides, is the river's natural mechanism to retain the additional water, prevent floods and provide habitat for various species. River harbours and interacts with innumerable organisms like microbes, plants and animals. It is a natural, living organic part of a larger ecological system. River is also a network of tributaries, floodplains and ponds spread over its basin and the estuary. The *Vishwamitri* River originates from *Pavagadh* Hill, north-east of Vadodara City, has a unique ecosystem, bearing a plethora of beautiful ravines right from its beginning till its end. Of paramount importance in its ecology is the presence of the highly protected species, the Indian crocodile (*Crocodylus palustris*- Mugger Crocodile) and Turtles. The crocodiles, turtles and other species have been inhabiting and breeding in stretches of the Vishwamitri River for many years. This species is categorized as nationally 'vulnerable', subsequent to an assessment following IUCN criteria for threatened species (Molur and Walker 1998) and has the highest legal protection in India. It is listed in Schedule I to the Indian Wildlife (Protection) Act, 1972. The importance of this species is illustrated by the multiple legal and policy efforts which have been developed by the Government of India to protect the crocodile population. 'Indian Crocodile Conservation Project' was launched as early as the late 1960s. Subsequently, the crocodile and Turtle have been included in Appendix-I of Convention of International Trade in Endangered Species (CITES) and brought under Schedule-I of The Wildlife (Protection) Act, 1972. Any activity against the survival of the highly protected species, without approval by the State Wildlife Board/National Wildlife Board and the Government of India is illegal. The construction activity commenced on or about 25.10.2015 to which objections were raised. There were other illegal activities in the river, resulting in damage to the riverine ecology.

The activities included dumping of the solid waste, illegal constructions, etc. The flood water course changed because of illegal constructions. The T.P Scheme No.66 in Bhimnath Lake – a water body and was thus illegal. The map of the boundary of the lake was not complete.

2. The petition first came up for hearing on 28.04.2016 when notice was issued to the respondents i.e. MoEF&CC and the authorities of the State of Gujarat. Vide order dated 25.05.2016, this Tribunal restrained the Vadodara Municipal Corporation (VMC), from proceeding with the development activities within the area of VRDP project.

3. The stand of the VMC is that the project has not yet been finalized. It was only at conceptual stage. The project was to beautify and rejuvenate the river for the benefit of the general public. It will increase the flood carrying capacity, clean the river and protect the habitat of the wildlife. It will be integrated with the development of the city without any damage to the environment. A Consultant was hired for preparing the feasibility report. Based on the said report, a consultant was hired for the EIA report. Thereafter, EIA application was made to the SEIAA, Gujarat. However, later, a decision was taken to withdraw the application, before any activity was undertaken. Representation of the applicant was considered about the construction activity around the Vishwamitri River, unrelated to the project. Construction of bridge from Sama to Harni was necessary for connectivity of the two areas to reduce travel time. The said matter was pending before the Gujarat High Court and acquisition was stayed. Construction of retaining wall along the Sama-Savli road on the edge of Sama Talav was part of conservation process to beautify the pond which was subject matter of O.A No. 102/2015 before the Tribunal. Construction activity near Sanjay Nagar- Mangal Pandey Road including retention wall

work/works/acts and activities was in pursuance of Notification dated 27.01.2014 for development of slum area which was upheld by the Gujarat High Court in Writ Petition (PIL) No. 170 of 2014. The said order was affirmed by the Division Bench and later by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 22522 of 2014. Applications were also filed before the High Court by the residents being Civil Application No. 17025 of 2014 and Special Civil Application No. 17142/2014 which were dismissed by Single Bench and later Letters Patent Appeal No. 1401 of 2014 was dismissed by the Division Bench. Special Leave to Appeal (Civil) No. 5839 of 2015 was dismissed by the Hon'ble Supreme Court on 22.09.2015. Another Letters Patent Appeal No. 915 of 2015 was dismissed on 07.05.2015 and Special Leave Petition (Civil) (CC) No. 6394 of 2016 was dismissed on 11.04.2016. With regard to construction in the river bed, Writ Petition (PIL) No. 90 of 2016 was filed in which no interim order was granted. With regard to destruction of historical sites and features in Sanaynagar, levelling land for construction project near Narhari Hospital, construction work near Bhimnath Bridge and filling of Bhimnath Talav, dumping of debris and discharge of untreated sewage in the river, the Corporation has denied the allegations.

4. The applicant also filed Execution Application alleging violation of interim order being E.A No. 45 of 2016 (WZ).

5. Both the matters were last considered on 06.10.2020 when the Pune Bench directed the matter to be transferred to the Principal Bench. Accordingly, the matter has been listed today before this Bench. We have heard learned counsel for the parties and perused the record.

6. We find that apart from the main issue with regard to construction of VRDA project without requisite EIA, several issues have also been

raised. Under Rule 14 of the NGT (Practices and Procedures) Rules, 2011, an application has to be based on 'single cause of action' or causes of action 'consequential to one another'. Admittedly, the project in question against which the applicant had the grievance has been given up. Other issues illegal constructions affecting the riverine ecology of Vishwamitri River, according to the VMC are independent of the said project. However, Shri Maulik Nanavati, learned counsel appearing for the VMC as well as other Authorities of the State of Gujarat states that all grievances of the applicant will be duly addressed and if any particular grievance remains, the applicant can take remedies independently, in accordance with law. It is submitted that some of the grievances are sub judice before the High Court and some grievances are covered by judicial orders. The applicant however submits that all constructions and other issues are incidental to the VRDP and once VRDP given up status quo ante needs to be restored.

7. We have considered the rival contentions. Vishwamitri River is one of 351 identified polluted river stretches, identified as such by the Central Pollution Control Board. The issue of rejuvenation of the said polluted river stretches has been exhaustively considered by this Tribunal in OA 673/2018. The Tribunal directed constitution of a River Rejuvenation Committee in each State/UT to prepare and execute an action plan for restoration of each of such polluted stretches to give effect to the rule of law in a time bound manner. Such action plans have been prepared and approved by the CPCB and their execution is to be overseen by the Chief Secretary in the State and Central Monitoring Committee headed by the Secretary, Ministry of Jalshakti at the National level. The action plan is to address the issues relating to demarcation, protection of flood plain zone and maintaining minimum environment flow. The other consequential and incidental issues like sewage treatment, management of waste,

preventing encroachment, etc. are also covered by the action plan. Demarcation of the entire flood plain zone of the river needs to be undertaken. Further, steps are required for plantation and maintaining the integrity of the river in totality. While directing consideration of all the issues by the applicants, we reiterate the direction for implementation of the “*Vishwamitri River Action Plan*” including the steps for removal of unauthorised structures, demarcation and protection of flood plain zone and other action points as per the river restoration plan. They may give a consolidated representation within two weeks listing all pending issues on which consideration and action be completed by the concerned authorities within three months. The applicants will be at liberty to take appropriate remedy if any further grievance survives.

8. In view of the above, leaving the remedy of the applicants open, as above, O.A No. 228/2020 (Earlier O.A. No. 49/2016 (WZ)) and Execution Application No. 45/2016(WZ) will stand disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

May 25, 2021
Original Application No. 228/2020
(Earlier O.A. No. 49/2016 (WZ))
WITH Execution Application No. 45/2016(WZ)
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