

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

M. A. No. 09/2020  
In  
Original Application No. 06/2012  
(Filed by DMRC)

Manoj Misra & Anr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 30.01.2020

Date of uploading: 05.02.2020

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

**ORDER**

**M. A. No. 09/2020**

1. This application has been filed by Delhi Metro Rail Corporation (DMRC) in a disposed of matter being O.A. No. 06/2012 decided on 13.01.2015. Prayer in this application is that this Tribunal may permit the applicant to construct a bridge on the Yamuna flood plains under Phase – IV of the DMRC project.
2. By the above order dated 13.01.2015, this Tribunal dealt with the issue of remedial measures for control of pollution and other measures for rejuvenation of river Yamuna. The operative part of the order is as follows:-

“94. .... we hereby issue the following directions in the larger environmental and public interest:

- i. The Tribunal hereby accepts both the reports filed by the Expert Committees: first report dated 19th April, 2014, read with the gist of recommendations submitted by the Principal Committee on 2nd August, 2014, on the aspects of preservation, restoration and beautification of the banks of River Yamuna and the second report dated 13th October, 2014, read with its annexure, in relation to drainage system in Delhi, together with the Action Plan prepared by the DJB for revitalization of River Yamuna. Both these reports shall form integral part of this judgment. All the concerned authorities of NCT of Delhi, State of UP and State of Haryana shall implement the same without demur and default, expeditiously. The entire project contemplated under these reports and this judgment of the Tribunal shall be completed by 31st March, 2017.

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- v(a) Having given our considered view to the various reports placed on record, submissions made by the Learned Counsel appearing for the parties and the Experts, we are of the opinion that presently the flood plain should be identified for the flood of once in 25 years in the interest of ecology, biodiversity and the river flow. Thus, we direct accordingly and also direct that the DDA shall prepare a map in this regard and would physically demarcate the entire flood plain.

Above interim prescription of the flood plain is not rigid, but is subject to change, in the event any of the public authorities, including the MoEF&CC, moves the Tribunal, based upon some collected data or any other specific information in that regard.

- (b) **We direct and prohibit carrying on of any construction activity in the demarcated flood plain henceforth. We further direct the Principal Committee to identify or cause to be identified, all existing structures as of today which fall on the so identified and demarcated flood plain. Upon identification, the Principal Committee shall make its recommendations as to which of the structures ought or ought not to be demolished, in the interest of environment and ecology, particularly, if such structures have been raised in an unauthorised and illegal manner.**
- (c) **The Principal Committee may keep in mind that certain structures need to be protected, amongst other reasons, for their historical, mythological and heritage importance and/or are protected structures. The Committee shall clearly spell out**

**the regulatory regime that should be provided for dealing with such existing structure in the flood plain.**

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*xxiii.* **We constitute the 'Principal Committee' which shall be responsible and under whose supervision the directions contained in this judgment and the project reports shall be completely, effectively and expeditiously complied with. All concerned Authorities, Corporations, DJB and any other department, responsible for carrying out directives of this judgment, shall report the matters and submit the respective reports and data to the Principal Committee, for onward transmission to this Tribunal. The Committee shall file quarterly report of compliance before the Tribunal. The Committee shall consist of Special Secretary, MoEF&CC, Joint Secretary of Ministry of Water Resources, Chief Secretary, Delhi Administration, Vice Chairman, DDA, Commissioner of all the Corporations, Commissioner, DJB, Secretary, Department of Irrigation, NCT of Delhi, concerned Secretaries of the States of Haryana, Uttar Pradesh, Himachal Pradesh and Uttarakhand.**

**The four Members, namely, Professor C.R. Babu, Professor A.K. Gosain, Professor Brij Gopal and Professor A.A. Kazmi shall be the Members of the Principal Committee and shall be associated with commencement and completion of all the aspects of this project. The Delhi Jal Board along with Corporation under whose jurisdiction the required number of STP is to be constructed and established as well as the drains which are to be completed and made obstruction free shall be responsible for execution of the work as contemplated in the action plan, reports of the Committee and the judgment of the Tribunal. They shall work in tandem and under the supervision of the Principal Committee.**

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*xxviii.* **We grant liberty to all the parties, the applicants or even the public, to approach the Tribunal for any clarification or modification or for removal of any of the difficulties felt by them in implementation of the directions contained in this judgment and/or of the project reports."**

3. In the course of the judgment, the Tribunal considered the issue of flood plains as follows:-



“78. Improvement in the levels of pollution in river Yamuna, widening of the river carrying capacity of the main channel and taking of other remedial and preventive measures still may not completely and satisfactorily serve the object of attaining ‘Nirmal Yamuna’ unless the environmental flow of the river is maintained continuously. Respondent no. 7 (the Central Water Commission), Upper River Division, Government of India has filed a detailed affidavit in which it has been stated that as per entry 17 of list-II of 7th Schedule, Constitution of India, water is a State subject and reach of respondent no. 7 in this regard is advisory, promotional catalytically in nature.

79. Development and regulation of floodplain of rivers falls within the purview of the State. Floodplain is an integral part of river system even though it is used only occasionally to pass down flood flows. When floodplain is not occupied by water it forms part of the land system providing possibilities of carrying on some restricted activity. It is not possible to provide uniformity in the extent of floodplains with respect to different rivers as well as its various reaches.

80. Floodplain zoning has been accepted as an important nonstructural strategy for flood management. The basic concept of floodplain zoning is to regulate land use of floodplains to restrict damage caused due to floods. The floodplain zoning, therefore, aims at determination of locations so that flood damages are reduced to minimum. **A very restrictive activity can be allowed in that area. It is not only to protect the areas from damage resulting from floods and failure of water protective measures, but is also useful in reducing the damage caused due to drainage congestion, particularly in urban areas.** The Commission claims to have prepared a model bill relating to floodplain zoning. This model bill provides for different categories based of priorities in floodplain. Following are the recommended priorities:

1. “Defense installations, industries, public utilities like hospitals, electricity, installations, water supply, telephone exchanges, aerodromes, **railway stations**, commercial centres, etc. buildings should be located in such a fashion that they are above the levels corresponding to a 100 years frequency or the maximum observed flood levels. Similarly, they should also be above the levels corresponding to a 50 years rainfall and the likely submersion due to drainage congestion.

2. Public institutions, government offices, universities, public libraries and residential areas. Buildings should be above a level corresponding to a 25 year flood or a 10 year rainfall with stipulation that all buildings in vulnerable zones should be constructed on columns or stills as indicated above.

3. Parks and playgrounds. Infrastructure such as playgrounds and parks can be located in areas vulnerable to

*frequent floods. Since every city needs some open areas and gardens, by restricting building activity in vulnerable areas, it will be possible to develop parks and play grounds, which would provide a proper environment for the growth of the city.”*

81. *According to this affidavit, the National Water Policy – 2012 provides that conservation of rivers, river corridor, water bodies and infrastructure should be undertaken in a scientifically planned manner through community participation. Encroachments and diversion of water bodies must not be allowed and wherever it has taken place, it should be restored to the extent feasible and maintained properly. Despite declaration of floodplains, demarcation has all along been a matter of concern.*

82. *The floodplain must be demarcated, kept free from any permanent developments and wherever it is possible, it should be restored to its original position.*

83. *Keeping in view the fact that various developments have taken on the floodplain of river Yamuna and to a larger extent they have adversely affected the river flow, its ecology and bio-diversity, we would direct that floodplain zoning should be taken with reference to the flood of once in 25 years, as against other suggested figure of more years. It is important to demarcate the floodplain on this basis immediately, to protect it from any encroachments or development activities, which as already discussed and requested by the High Powered Committee, would adversely affect the ecology and environment.*

84. *Thus, it is necessary to call upon the authorities to demarcate the floodplain for the flood of once in 25 years and to prohibit any kind of development activity in the area in question. Furthermore, the Committee should consider restoration of the area and wherever necessary, even demolish the properties, which are likely to be dangerously exposed to the flood and are even affecting the ecology and bio-diversity and flow of the river.*

85. *Environmental flow of river identifies the minimum flow which the river should maintain round the year. If no water or minimum desired level of water is maintained in River Yamuna through-out the year, then it would not help the cause of environment. The flow of the river would by itself keep the river and environment healthier and also cause dilution to the requisite levels, even if some extent of pollutants enter the river. The carrying capacity of the river has a direct co-relation to the availability of quantity of water. We have also noticed that water of river Yamuna in Delhi NCR is released at Tajewala. At Tajewala, the river is divided into two canals, which go through different parts of State of Haryana and ultimately join river Yamuna and Ganga. The water released in river Yamuna passing through NCT Delhi is low or negligible except in monsoon period. Thus, it adds to*



the concentration of the pollution and adds to the environmental degradation. This has to be prevented. Thus, we direct the Chief Secretaries of NCT of Delhi and State of Haryana to have a meeting with the Principal Committee and fix the quantity of water that should be released through-out the year to maintain the environmental flow of river Yamuna throughout the year to ensure prevention and control of pollution.

86. There is unanimity amongst all the stakeholders appearing before the Tribunal including the Expert Members in making the submission that there should be one organisation for looking after the entire project and all departments, corporations and authorities should be answerable and work through that organisation or body. **That body should implement the entire project and should oversee the functioning, performance and execution of all the segments of this project. It is in view of this that we have constituted a 'Principal Committee' where more or less all concerned departments are represented or individual department like DDA, NCT of Delhi, Department of Irrigation, DJB, corporations and any other body or authority responsible for executing the work or any part thereof would be answerable and work under the direct supervision of the 'Principal Committee'. All permissions sought for by the respective departments are required to be dealt with utmost expeditiousness, for ensuring timely completion of the project. The 'Principal Committee' shall submit reports to the Tribunal every quarter in relation to execution and progress of the project.**

87. Now let us revert to the developments on the banks of River Yamuna. On a Flood Plain, rampant construction is prohibited under the law. A regulated activity could be carried on, only with the approval of the concerned authorities. The DDA had proposed a plan for prohibition, restoration and beautification of the Flood Plain of River Yamuna which has been found to be prejudicial to the environment and ecology, as well as to the flow of the river. Besides these defects, the Expert Committee has also pointed out that there could be heavy floods in Delhi, if the proposal of the DDA was implemented. For these reasons, besides the ones recorded in the Expert Committee's report, of which the DDA itself was a party, we do not approve of implementation of the DDA plan, but would accept the report of the Expert Committee and direct the river bank/Flood Plain to be kept in the manner as indicated in the report. We direct that walkways will be provided on the outer extreme of the Flood Plain of the River Yamuna, away from the embankments, with green area around providing a space and environment which is safe for walkers. In this judgment, of which the reports of the Expert Committee are an integral part, we have applied the precautionary principle by directing various steps which are required to be taken by the authorities, including prohibitory orders in relation to dumping and throwing of waste of any

kind in the drains in the River Yamuna to protect the environment. We have evoked the Polluter Pays Principle requiring the industrial clusters to contribute towards establishment of CETPs. Similar directions in regard to the contribution by residents for establishment of STPs wherever the State feels the need for that purpose. In any case, maintenance of CETPs and STPs should be a burden that is required to be shared by the industries and residents of Delhi. They have the fundamental duty to protect the environment, not only on the Polluter Pays Principle but even on the correct analysis of Article 51A(g) of the Constitution. There is a rapid growth in the construction and industrial activity in the city causing further and more serious pressures on the environment and infrastructures in the city. If the authorities are permitting such growth then they have to impose restrictions to regulate the same as well as incur such costs which are necessary for preventing irretrievable injury to the environment and ecology of River Yamuna in Delhi. The sustainable development would certainly require all these authorities and residents of Delhi to act with reasonable caution and restrictions on the one hand and contribute towards protection, improvement and restoration of the environment on the other.

88. Subject to any law coming into force, we have already stated that flood of once in 25 years would be considered for defining and demarcating the flood plain. No development/construction activity, except that is stated herein, would be permitted in the Flood Plain of River Yamuna. No authority or person before us has even taken up the plea that why development/construction activity cannot be carried on in other parts of NCR, Delhi. As of now, sufficient land is available, may it is expensive, but that cannot be a ground for destroying the ecology, environment and biodiversity of River Yamuna of Delhi. The result of indiscriminate, unregulated and uncontrolled development activity are widely visible and felt by each and every one in Delhi. It would not only be unwise, but may prove fatal, if such approach is continued any further.”

(highlighting by us)

4. It is well settled that it is not be open to this Tribunal to pass any further order at variance with the judgment, in exercise of inherent power.<sup>1</sup> Liberty given in terms of para 94 (xxviii) is confined to clarification of a confusion and not to allow variation of the order. This Tribunal is not an authority to allow or disallow any particular project when such issue is required to be dealt with by concerned

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<sup>1</sup> Dwaraka Das v. State of M.P., (1999) 3 SCC 500 Para 6

statutory authorities in the first instance.<sup>2</sup> However, issues arising out of orders of this Tribunal, to the extent the same have not attained finality, can be gone into by this Tribunal.

5. In view of above, question is whether present application is barred by the principle of finality, the Tribunal having become *funtus officio* after the judgment.

6. Learned counsel for the applicant submitted that the application is in pursuance of the recommendation of the Principal Committee constituted by this Tribunal within the purview of order of this Tribunal in terms of directions in para 94(xxiii) read with 80 and 86 quoted above. Hence, no variation of the order is involved. The order of the Tribunal permits the Principal Committee to make exception to the general direction against any construction on the flood plains and, to this extent, this Tribunal continues to remain in *seisin* of the matter even after the judgment since recommendations of the Principal Committee constituted by this Tribunal is required to be placed before this Tribunal in terms order dated 13.01.2015 itself. On merits, it is submitted that the Principal Committee has considered necessity of the project in public interest and mitigation measures during construction and operational phase and recommended the project for approval by this Tribunal, subject to the conditions laid down in terms of proceedings of the Committee meeting held on 13.09.2019 under agenda No. 2. The construction will not cause any change in flow conditions or cause difficulty in the barrage upstream or Signature Bridge downstream. Conditions laid down are:-

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<sup>2</sup> Orders of NGT dated 25.07.2019 in M.A. No. 181/2019 & 17.12.2019 in M.A. No. 244/2019 in respect of RRTS project



*“After detailed deliberation by the Principal Committee on the merits and de-merits of the project, the Committee recommended the proposal for approval of Hon’ble NGT, subjected to fulfillment of following conditions by DMRC:*

- i. All the construction activities should be carried out with minimum effect on the flood plains.*
- ii. Restoration of the flood plain that may be impacted adversely or otherwise by the construction of bridge alignment in the Yamuna flood plain/ pillars.*
- iii. The muck/debris generated should be disposed off scientifically and no dumping shall be allowed on the flood plains.*
- iv. Compensation of the trees to be cut during construction/ operational phase of the project to be carried out by DMRC without fail.*
- v. Failure to abide by any conditions thereof will lead to withdrawal of permissions.*

*In order to have a better understanding, Principal Committee recommended that Department of Water Resources, RD&GR, Ministry of Jal Shakti may be requested to carry out an integrated morphological study of river Yamuna in Delhi stretch, for evaluating the impact created by the existing bridge/ metro/ railway projects and the proposed projects, individually as well as cumulatively on afflux created and its impact on flood levels”.*

7. Learned counsel has also referred to order of the Hon’ble Supreme Court dated 13.07.2019 in W.P. (C) No. 13029/1985, *M.C. Mehta v. Union of India* as follows:-

*“Let phase IV of Delhi Metro project be implemented forthwith, project is important and cannot brook any delay. For its implementation there is no objection. We order that the work of Phase IV Delhi Metro be started forthwith.*

*For sorting out one or two differences between Union of India and Govt. of NCT of Delhi, which remains, list the matter on 19.07.2019.”*

8. We have given due consideration to the issue. As already observed above, while the modification of order of this Tribunal may not be permissible after the judgment, recommendations of the Principal

Committee, within the purview of original order, can certainly be considered by this Tribunal, subject to any legal objection to the project and compliance of statutory requirements. The order of the Hon'ble Supreme Court does not deal with the issue of permissibility of the project and it is not conclusive of the issue before this Tribunal.

9. We may now consider the recommendations of the Principal Committee constituted by this Tribunal. We are conscious that the Tribunal does not have any assistance to any rival viewpoints to deal with the present issue so as to go into any possible objection to legality - substantive or procedural. Having regard to the nature of the project and opinion of the Principal Committee, we do not see any *prima facie* objection to the project. The same must, however, comply with legal requirements and procedures.

We may also observe that to ensure further environmental safeguards for river Yamuna and its flood plains on account of such activities in future, besides individual evaluation of such projects on environmental yardstick, Cumulative Impact Assessment is required to be carried out. The Cumulative Impact Assessment would be able to capture holistic picture in terms of impact of such future developmental activities and the required mitigation measures. The Principal Committee may also consider setting up of artificial wetlands, bio-diversity parks and other necessary mitigation measures, including phyto-remediation at the mouth of drains leading to the river, at the cost of project proponents. The study may be got conducted by Principal Committee, by apportioning the cost

amongst project proponents based on quantum of development and their environmental footprints.

The application is disposed of accordingly.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

February 05, 2020  
M. A. No. 09/2020 in O.A. No. 06/2012  
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