

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

(By Video Conferencing)

Original Application No. 985/2019

(With report dated 14.07.2020)

In Re : Water Pollution by Tanneries at Jajmau, Kanpur, Uttar Pradesh

WITH

Original Application No. 986/2019

In Re : Water Pollution at Rania, Kanpur Dehat & Rakhi Mandi, Kanpur

Nagar, Uttar Pradesh

Date of hearing: 16.07.2020

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

Applicant(s): Ms. Katyani. Amicus

Respondent(s): Mr. Raj Kumar, Advocate for CPCB
Mr. Daleep Dhyani, Advocate for UPPCB
Mr. I.K Kapila, Advocate for U.P Jal Nigam

ORDER

1. This order is being passed in continuation of order dated 15.11.2019. This matter involves two issues. First issue relates to scientific disposal of Chromium dumps at Rania, Kanpur Dehat and Rakhi Mandi, Kanpur Nagar which have been in existence since 1976 and have *inter-alia* resulted in contamination of ground water, depriving the inhabitants of access to drinking water. Second issue relates to

legality of order dated 08.08.2019 passed by the Principal Secretary, Urban Development, Uttar Pradesh allowing Jal Nigam, Kanpur permitting discharge of untreated sewage containing toxic Chromium directly into the River Ganga. Further issue is water pollution by tanneries discharging untreated industrial effluents containing toxic Chromium into the irrigation canal through inadequately functioning CETP at Jajmau.

2. The status was reviewed on 15.11.2019 with reference to report of the CPCB dated 30.10.2019 and earlier proceedings before this Tribunal.

It was observed:

“11. *It is undisputed that Chromium dumps containing toxic hexavalent Chromium (as mentioned in the report of the CPCB quoted above) has been in existence since 1976 and requisite steps have not been taken so far to dispose of the same as per mandate of law. Chromium is considered to be an environmentally hazardous element and classified as class-A human carcinogen.¹ Hexavalent Chromium Cr (VI) is toxic and the World Health Organization (WHO) has classified it as carcinogenic and can cause stomach ulcers and cancers and severe damage to kidneys and liver.² The industries responsible for generating the said dumps were closed in the year 2005. The SPCB has assessed liability of environmental compensation of Rs. 280.01 crore only on 24.10.2019. There is no explanation why no such step was taken against the said industries earlier. We may note that this Tribunal has been issuing directions for shifting of the Chromium dumps but the State of UP has failed to do so. The direction of this Tribunal has already been quoted above from the order dated 22.08.2019 (para 24). Such directions were also issued earlier vide order dated 13.07.2017.*

12. ***From the above, it is clear that there is failure on the part of State of UP and its authorities in disposal of the Chromium dumps which is hazardous to the public health and the environment and the proposal now mentioned in the report of the Chief Secretary, UP is for in-situ remediation though earlier stand of the State of UP was to shift the Chromium waste to the Treatment Storage and Disposal Facility (TSDF) for hazardous***

¹ <http://www.isca.in/rjcs/Archives/v7/i7/7.%20ISCA-RJCS-2017-024.pdf>

² https://www.who.int/water_sanitation_health/waterquality/guidelines/chemicals/chromium.pdf

waste as per Hazardous Waste Management Rules, 2016. The fact remains that the problem has not been tackled for the last 43 years and it has resulted in contamination of ground water affecting the health and life of the inhabitants and fauna. Compensation has been assessed only in the year 2019 without it being clear whether there is a chance of actual recovery of the same. There is no explanation for earlier inaction by the State of UP and the UPPCB.

13. For this failure, under the Public Trust Doctrine, the State is liable to deposit the said assessed amount in an ESCROW account for restoration of environment and the public health in the area. Such deposit may be made within one-month from today. The amount may be spent after preparation of an action plan by the District Magistrates and the SPCB with the approval of the CPCB. The ESCROW account will be operated by the concerned District Magistrate in terms of action plan. The State will be at liberty to recover the amount from the erring industries and/or from the erring officers who failed to take necessary action.

For measures to be adopted to utilize the amount, it will require a credible study of the health issues in the area. This may be done by an Expert Committee comprising representatives from (1) S.N. Medical College, Kanpur, (2) PGI Lucknow, (3) RML Lucknow and (4) a nominee of Secretary, Health, Ministry of Health, Govt. of India. The nodal agency will be the Principal Secretary, Medical & Health, UP.

14. With regard to supply of potable water in the affected areas, such supply should take care of not only drinking purposes but also other purposes. It is well known that adverse effect on health is not only by drinking contaminated water but also on account of bathing or cooking and also on account of it being part of the food chain. It is necessary to put the concerned inhabitants in the area to notice of adverse consequences of use of contaminated water and placing the data of contents of water quality on website of the State. The affected area should also be delineated and put in public domain.
15. PWS must be established as is said to have already been directed by the State expeditiously positively from 01.03.2020. Since in Rakhi Mandi pipe carrying potable water is already available, such supply may be made operational positively by 15.01.2020 i.e. within two months, which is the timeline proposed by the State itself in its affidavit.
16. With regard to illegal permission granted by the Principal Secretary, Urban Development on 08.08.2019 for release of large quantity untreated sewage directly into river Ganga on the ground of cleaning trunk sewer, the explanation furnished cannot be accepted as no assessment of pollution load and its constituents was made. It was not considered that the sewage/effluents had highly toxic Chromium content. Its impact on recipient water of river Ganga and the downstream

inhabitants who will use such water was not considered. The action taken cannot by any standards be considered to be a responsible action of a welfare State and shows total apathy for the environment and the health of the inhabitants and the rule of law.

Moreover, it is only after the order of this Tribunal that a decision has been taken to close operation of 122 tanneries which were discharging untreated industrial effluents with hazardous contaminants in irrigation channel through CETP and thereafter directly in the River Ganga as CETP did not have the requisite capacity. This action has been taken only on 01.10.2019. Tannery industries in India are contributing high Chromium contamination to the environment. These industries of India alone are reported to contribute about 2000-3000 tonnes of Chromium contamination to the environment in which Chromium concentration ranges from 2000- 5000 mg/L in the aqueous effluent.³

17. *The stand of the State of UP shows that it is being understood in certain quarters that during monsoon any pollution load, including sewage or any other polluting effluents can be discharged in the water bodies/rivers which is clearly against the mandate of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. The CPCB may need to issue an appropriate direction to ensure that such illegality does not take place anywhere in the country.*
18. *The State of UP has to be held liable to pay compensation to the extent of Rs. 10 Crores for violation of law affecting the environment and public health for illegally permitting discharge of sewage and other effluent containing toxic Chromium directly into river Ganga. The quantum of compensation is being fixed having regard to the magnitude and nature of pollutant. The report of the Chief Secretary in para 12 clearly accepts that the effluents of 122 operational tanneries now closed from 01.10.2019 was part of the discharge on account of stoppage of flow of effluents in CETP. Further in para 13 it is stated that UP Jal Nigam was allowed to discharge effluents into river Ganga pending cleaning of trunk sewer and non-functioning of STP. Annexure 9 to the affidavit which is a report of the Principal Secretary, Urban Development mentions that the trunk sewer of dia. of 2100x2300mm was required to be cleaned which had capacity to carry 100 MLD sewage to cluster of STP of 205 MLD capacity. Main sewer line was damaged by tanneries mixing industrial waste into domestic waste which increased load for treatment on STP. This led to mixing of Chromium in sewage water rendering sludge unusable and harmful for the agricultural fields. Liability of any authority undertaking hazardous activity having potential for injury to environment and public health is well known.⁴ Principles for determining*

³ Dhal B., Thatoi H.N., Das N. and Pandey B.D. (2013). Chemical and microbial remediation of hexavalent chromium from contaminated soil and mining/metallurgical solid waste: A review. *Journal of Hazardous Materials*, 250, 272-291

⁴ M.C. Mehta vs. Union of India 1987 (1) SCC 395

quantum are well settled.⁵ Compensation has to be approximate to the cost of restoration and where exact data is not available, broad approximation having regard to attending circumstances is permissible. We have fixed the quantum in the light of these well-known principles.

Even if adequate dilution was available, the pollution load that too loaded with toxic Chromium is undoubtedly bound to affect the water quality at one or other place and has potential to endanger the health and lives of people. The Principal Secretary, Urban Development had no legal jurisdiction to permit such illegality in violation of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974.

The UPPCB, unfortunately, has not taken any action against such illegality and against polluting 122 tanneries for a long time for which the UPPCB has to be held liable to pay compensation of Rs. 1 Crore.

The UP Jal Nigam is also liable for such neglect as it released untreated large quantity of sewage containing toxic Chromium in river Ganga. UP Jal Nigam is held liable for environment compensation of Rs. 1 Crore. The said amounts may be deposited with the CPCB within one month from today which may be overseen by the Chief Secretary, UP. The State of UP will be at liberty to recover the amount from the erring officers, apart from taking appropriate disciplinary or other departmental action in accordance with law.

19. We may now sum up our directions as follows:

- i. *The State of UP is held liable for failing to take any action for shifting of Chromium dumps at Rania and Rakhi Mandi which resulted in damage to the environment and the public health for the period from 1976 till date. The amount of compensation in this regard is held to be the amount assessed by the UPPCB to be recovered from the erring industries. Till such recovery, the State itself must pay the amount by way of transfer to an ESCROW account. The amount is to be utilized for restoration of the environment and the public health in the area in the manner mentioned earlier. The State of UP is at liberty to recover the amount from the erring industries or erring officers as already mentioned in para 13 above.*

⁵ Sterlite Industries (India) Ltd. v. Union of India (2013) 4 SCC 575 : ¶ 47, T.N. Godavarman Thirumulpad v. UOI & Ors. (2006) 1 SCC 1 : ¶ 1, Indian Council for Enviro-Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212 : ¶ 67, Vellore Citizens Welfare Forum v. UOI , (1996) 5 SCC 647 : ¶ 11 to 13, M.C. Mehta v. Kamal Nath (1997) 1 SCC 388 : ¶ 10 , Public Trust Doctrine, ¶ 24, M.C. Mehta v. UOI & Ors., W.P (C) No. 13029/1985 order dated 24.10.2017, MCD v. Uphaar Tragedy Victims Association (2011) 14 SCC 481 : ¶ 99, 100, Vadodra Municipal Corporation v. Purshottam v. Murjani & Ors. (2014) 16 SCC 14 : ¶ 17 and M. C. Mehta & Anr. v. Union of India (1987) 1 SCC 395 : ¶ 32.

- ii. *The State of UP must take further steps for disposal of the hazardous Chromium dumps as per directions of this Tribunal dated 22.08.2019 quoted above, failing which it will be liable to pay compensation as mentioned in the said order.*
- iii. *State of UP is held liable to pay environmental compensation of Rs. 10 crores for damage to the environment for permitting discharge of untreated sewage containing toxic Chromium into river Ganga directly vide its order dated 08.08.2019. The State of UP is at liberty to recover the amount from the erring officers apart from taking action against the persons responsible in the manner as already mentioned in para 18 above. The UPPCB is held liable to pay sum of Rs. 1 crore for ignoring illegal discharge of sewage and other effluent containing toxic Chromium directly into river Ganga and taking action after a long time inspite of earlier proceedings before this Tribunal. UP Jal Nigam is held liable to pay sum of Rs. 1 crore for releasing untreated large quantity sewage containing toxic Chromium in river Ganga. These amounts may be deposited with the CPCB within one month which may be overseen by the Chief Secretary, UP. UPPCB is at liberty to recover the amount from the erring industries.*
- iv. *The State of UP may take steps for supply of potable water to the inhabitants of the area and other steps as already mentioned in paras 13 to 15 above.*
- v. *The Expert Committee in terms of para 13 above may conduct the health survey within three months.*
- vi. *CPCB may issue appropriate directions to ensure that no authority allows discharge of polluted sewage or polluted effluents directly into a water channel or stream in violation of law even in monsoon and also the standards for faecal coliform are duly maintained.*

20. *Compliance report of the above directions may be filed by the Chief Secretary, UP before the next date by e-mail at judicial-ngt@gov.in.”*

3. Accordingly, a report has been filed on 04.02.2020 on behalf of the Chief Secretary, U.P followed by a further report dated 11.06.2020. The CPCB has filed its report on 14.07.2020.

4. The report of the Chief Secretary, U.P is that an action plan has been prepared for restoration of the environment and certain steps have been taken for supply of water to the inhabitants. Further report dated 11.06.2020 is that the matter of remediation is at the tender stage. The report of the CPCB is of a general nature.

5. The fact remains that the chromium dump containing toxic chemicals has not been shifted to the TSDF as required under the law for which failure of the State of U.P is continuing inspite of repeated directions showing lack of sensitiveness on the part of the concerned officers. Hazard to public health and environment continues. The process of remediation can only start only after shifting of the waste to operational TSDF.

6. Having regard to the seriousness of the consequences for continued delay on one pretext or other, we direct the Chief Secretary, U.P to ensure prompt action on priority basis in a time bound manner which may be personally monitored by the Chief Secretary, U.P. The Committee constituted by this Tribunal headed by Justice S.V.S. Rathore, former Judge of the Allahabad High Court may also oversee the compliance of this direction and give its independent report by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. It is made clear that the Tribunal may have no other option except to take coercive measure for any further default by the State of U.P. Compliance status as on 31.10.2020 may be reported to this Tribunal before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

A copy of this order be sent to the Chief Secretary, U.P., the State PCB and Justice S.V.S. Rathore, former Judge of the Allahabad High Court by email.

List again on 08.01.2021.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

Dr. Nagin Nanda, EM

July 16, 2020
Original Application No. 985/2019 with
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