

Item No. 06

Court No. 1

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

(By Video Conferencing)

Original Application No. 642/2022

Hari Prasad Sharma

Applicant

Versus

State of U.P.

Respondent

Date of hearing: 17.10.2022

**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  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

**Application is registered based on a complaint received by e-mail**

**ORDER**

1. Grievance in this application is against encroachment and pollution of a pond in Village Khuriavali, Araniya, Khurja, District Bulandshahr, UP which is also resulting in pollution of ground water.

2. Since waterbody performs significant environmental functions, the pond needs to be duly protected from any encroachment or pollution. In this regard, the Tribunal has already dealt with the matter *inter-alia* vide order dated 18.11.2020 in O.A. No. 325/2015, Lt. Col. Sarvadaman Singh Oberoi v. Union of India & Ors. as follows:-

*“16. We find that the steps taken so far can hardly be held to be adequate. As already noted, protection of water bodies serves great public purpose and is essential for protection of the environment. It*

helps not only aesthetics but also water availability, aquatic life, micro climate, recharge of ground water and maintaining e-flow of the rivers. Under the Public Trust Doctrine, the State has to act as trustee of the water bodies to protect them for the public use and enjoyment for current and future generations. We may note the observations of the Hon'ble Supreme Court on the subject which are as follows:

i. **State of T.N. v. Hind Stone, (1981) 2 SCC 205, at page 212:**

*“6. Rivers, Forests, Minerals and such other resources constitute a nation’s natural wealth. These resources are not to be frittered away and exhausted by any one generation. **Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation.**”*

ii. **Hinch Lal Tiwari v. Kamala Devi, (2001) 6 SCC 496, at page 500:**

*“13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature’s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution.”*

iii. **T.N. Godavarman Thirumulpad v. Union of India, (2002) 10 SCC 606, at page 628:**

*“...  
33. ... As was observed by this Court in M.C. Mehta v. Kamal Nath our legal system based on English common law includes the public trust doctrine as part of its jurisprudence. **The State is the trustee of all natural resources which are by nature meant for public use and enjoyment.** The public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. **The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.**”*

iv. **Intellectuals Forum v. State of A.P., (2006) 3 SCC 549, at page 574:**

*“75. In M.C. Mehta v. Kamal Nath & Ors. (1997) 1 SCC 388, Kuldip Singh, J., writing for the majority held:*

*“34. Our legal system ... includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. ... The State as a trustee is under a legal duty to protect the natural resources.”*

*76. The Supreme Court of California, in National Audubon Society v. Superior Court of Alpine Country also known as Mono*

Lake case summed up the substance of the doctrine. The Court said:

*“Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust.”*

*This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government’s general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources [Joseph L. Sax “The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention”, Michigan Law Review, Vol. 68, No. 3 (Jan. 1970) pp. 471-566]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine [ibid]:*

- 1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;**
- 2. the property may not be sold, even for fair cash equivalent;**
- 3. the property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources.”**

v. **Jitendra Singh v. Ministry of Environment & Ors., 2019 SCC Online 1510 pr 20**

*“....  
20. .... Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.”*

17. In NGT order dated 27.08.2020 in OA 351/2019, Raja Muzaffar Bhat vs. State of Jammu and Kashmir & Ors., it was observed:

*“... ..*

8. **One of the serious challenges is solid and liquid waste management, apart from encroachments. There are binding directions of the Hon'ble Supreme Court in Almitra H. Patel Vs. Union of India & Ors<sup>1</sup>. and Paryavaran Suraksha vs. Union of India<sup>2</sup> on the subject of scientific management of solid waste and sewage/effluents in accordance with the statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974, ('Water Act') Air (Prevention and Control of Pollution) Act, 1981, ('Air Act) and waste management rules framed under the Environment (Protection) Act, 1986 ('EP Act'). There is large scale non-compliance of the said statutory provisions which has led this Tribunal to consider the issue of river pollution in OA No. 673/2018, News item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" in view of acknowledged data of 351 polluted river stretches in the country. Apart from the said issue, large scale failure has been found in the matter of solid waste management as repeatedly recorded in O.A. No. 606/2018. The Chief Secretaries of all the States/UTs were required to remain present in person before this Tribunal for interaction and further planning. In O.A. No. 325/2015, Lt. Col. Sarvadaman Singh Oberoi v. UOI & Ors., the Tribunal has considered the issue of restoration of water bodies. In Original Application No. 593/2017, Paryavaran Suraksha Samiti & Anr. v. UOI & Ors., the issue of untreated sewage or effluent being discharged in water bodies have been taken up for consideration. There are several other matters dealing with the such issues, including coastal pollution, pollution of industrial clusters etc.**

9. **There is discussion in the media about inadequacy of monitoring of action for restoration of lakes, wetlands and ponds which is certainly necessary for strengthening the rule of law and protection of public health and environment<sup>3</sup>. Several directions have been issued by the Hon'ble Supreme Court in M.K. Balakrishnan and Ors. v. UOI & Ors.<sup>4</sup>**

18. We also note that the Ministry of Urban Development, Government of India, Central Public Health and Environmental Engineering Organization (CPHEEO) has issued an advisory on **"Conservation and Restoration of Water Bodies in Urban Areas"**<sup>5</sup> in August, 2013 which need to be followed. The matter was also considered by the Standing Committee on Water Resources (2015-16), Sixteenth Lok Sabha. Its Tenth Report has been published by the Ministry of Water Resources, River Development and Ganga Rejuvenation under the heading **"Repair, Renovation and Restoration of Water Bodies-Encroachment on Water Bodies**

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<sup>1</sup> (2000) 2 SCC 679

<sup>2</sup> (2017) 5 SCC 326

<sup>3</sup> <https://gradeup.co/lakes-in-india-i-4b99dc80-f6ce-11e7-9d78-07a242af4480>

<http://www.saconenvis.nic.in/publication/Lake%20Protection%20and%20Management%20of%20Urban%20Lakes%20in%20India.pdf>

[http://www.worldlakes.org/uploads/Management\\_of\\_lakes\\_in\\_India\\_10Mar04.pdf](http://www.worldlakes.org/uploads/Management_of_lakes_in_India_10Mar04.pdf)

<sup>4</sup> (2017) 7 SCC 805

<sup>5</sup> <http://mohua.gov.in/upload/uploadfiles/files/Advisory%20on%20Urban%20Water%20Bodies.pdf>

**and Steps Required to Remove the Encroachment and Restore the Water Bodies”<sup>6</sup>** in August, 2016. Further, the **“Guidelines for the Scheme on Repair, Renovation and Restoration (RRR) of Water Bodies under PMKSY (HKKP)”<sup>7</sup>** have been published by the Ministry of Water Resources, River Development and Ganga Rejuvenation, Govt. of India in June, 2017. The said report also provides useful material to be looked into by the enforcement agencies.

19. As regards, report of the CPCB on the subject of rain water harvesting, it appears that CPCB has not appreciated the direction of this Tribunal on the subject. While rain water harvesting may be required in all buildings and other places in urban areas, in the present context, the Tribunal has directed setting up of such facilities in sub water sheds along ponds for utilization of surplus rain water for restoration of the ponds which have become dry and for augmenting other ponds.

20. There is, thus, need for continuous planning and monitoring at National, State and District levels. Suggestions and observations of CPCB and the Oversight Committee need to be acted upon.

21. As suggested by the CPCB, a single agency needs to be set up in every State/UTs within one month. This work may either be assigned to the Wetland Authority of the State or the River Rejuvenation Committee or to any other designated authority such as the Secretary, Irrigation and Public Health/Water Resources. It is made clear that if the State Wetland Authority is to be assigned the task of protection of all water bodies, this task will be in addition to the normal functioning of the State Wetland Authority under the Wetland (Conservation and Management) Rules, 2017. Such nodal agency must call a preliminary meeting on the subject with all the District Magistrates on or before 31.01.2021 to take stock of the situation and to plan further steps. Thereafter, a regular meeting may be held for periodic monitoring at the District level as well as the State level with the identified targets of proper and scientific identification and protection of all water bodies, assigning unique identification number, removing encroachments, preventing dumping of waste, maintaining water quality and restoration by taking other appropriate steps, involving the Panchayats and the community, utilizing the financial resources available from different sources. Steps taken need to be documented and compiled and reported to a central authority, preferably the CPCB. This Tribunal has already constituted a CMC to be headed by the Secretary, MoJS with the assistance of CPCB and other authorities to monitor remedial action for 351 polluted river stretches. Restoration of water bodies is also a connected issue which can be monitored by the same Committee atleast thrice a year at the national level.”

3. In view of above, District Magistrate, Bulandshahr may look into the matter and take remedial action in accordance with law.

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<sup>6</sup> [http://164.100.47.193/lsscommittee/Water%20Resources/16\\_Water\\_Resources\\_10.pdf](http://164.100.47.193/lsscommittee/Water%20Resources/16_Water_Resources_10.pdf)

<sup>7</sup> [http://pmksy-mowr.nic.in/documents/RRR\\_PMKSY\\_Guidelines\\_2017.pdf](http://pmksy-mowr.nic.in/documents/RRR_PMKSY_Guidelines_2017.pdf)

The application is disposed of.

A copy of this order along with the copy of complaint may be forwarded to District Magistrate, Bulandshahr by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

October 17, 2022  
Original Application No. 642/2022  
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