

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

(By Video Conferencing)

Original Application No. 102/2019

(With report dated 11.06.2020)

Ashish Kumar Dixit

Applicant(s)

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 24.07.2020

**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**

Applicant(s): Mr. Rahul Choudhary, Advocate

Respondent(s): Mr. Pradeep Misra, Mr. Daleep Dhyani, Advocates for UPPCB

ORDER

1. The Issue for consideration is the punitive action against illegal operation of marriage halls, nursing homes, clinics, hospitals, commercial complexes, hotels and other commercial establishments without requisite prior NOC/Consent to Operate from the Uttar Pradesh Pollution Control Board (UPPCB) in the Districts of Banda, Mahoba and Chitrakoot, in clear violation of the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974, the Environment (Protection) Act, 1986, Biomedical Waste Management Rules, 2016 and Solid Waste Management Rules, 2016. Some of the issues stand covered by order dated 23.07.2020 in *O.A No. 400/2017, Westend Green Farms Society v. Union of India & Ors.*

However, in view of earlier orders in the present matter, further order specific to the present matter has to be passed.

2. The matter was last considered on 15.07.2019 in the presence of the Member Secretary, UPPCB. His presence was required under the earlier order on account of inaction in dealing with large scale violations of environmental laws as mentioned in the said orders. The Tribunal observed:-

- “6. On being questioned, the Member Secretary states that **staff available and officers available are inadequate**. It is stated that a sum of Rs. 25 Crores is collected under the ‘Consent Head’ which is spent for salary. Further amount of Rs. 14 Crores towards environment restoration is available but there is no plan for utilizing the said amount. **The fact remains that the UPPCB is pleading incapacity to discharge its statutory responsibility even if it may result in lawlessness.**
7. The above sorry state of affairs must be set right and an important regulator meant for protection of environment and public health **cannot simply plead such incompetence**. A plan be prepared for utilizing the environment restoration fund with the approval of CPCB within one month. **The expenditure may include hiring of experts and consultants, expanding air and water quality monitoring network, procurement of scientific equipments, undertaking restitution remediation and specialized studies on contaminated sites so that there is effective oversight for enforcement of law. Under no circumstances these funds be spent on salaries, logistics etc.**
8. **Let the Chief Secretary, UP review the situation and furnish a report in the matter** within one month from today by e-mail at judicialngt@gov.in.

A further compliance report may be filed by the UPPCB before the next date by e-mail at judicial-ngt@gov.in.”

3. **No report has been furnished by the Chief Secretary, U.P in terms of the above direction.** The State PCB has filed its report on 11.06.2020 which is far from satisfactory.

4. The report of the State PCB proposes to spend the environment restoration fund *inter alia* on **establishment of pollution control rooms** which is in a way a capital investment. What is required in terms of orders of this Tribunal is to spend the environmental restoration fund for the purpose it is meant for, viz., for restoration of the environment such as strengthening vigilance mechanism, setting up of laboratories, for monitoring of environment, coordination with the District Magistrates to prepare District Environment Plans, hiring of experts and consultants, undertaking remediation and study of contaminated sites etc. We may recall observations of the Hon'ble Supreme Court in dealing with Compensatory Afforestation (Campa) Fund in T.N.Godavarman v. UOI, (2014) 6 SCC 150 that such funds be spent as per plan to be approved by the National Campa Advisory Council (NCAC) for purposes such funds are raised and not for governmental functions.

5. Accordingly, we direct the State PCB to revisit its plan. The CPCB may oversee preparation of such action plan in the light of earlier orders¹ of this Tribunal. The Chairman and Member Secretary may have a meeting (physical or online) with Chairman and Member Secretary of the State PCB within one month. Plan may be finalized, with the approval of CPCB, within two months. All other State PCBs and PCCs may also prepare similar action plans for restoration of environment and implementation of District Environment Plans, in coordination with CPCB. CPCB may also prepare such plan for utilization of funds

¹¶ 17(iii), Order dated 28.08.2019, OA 95/2018, Aryavart Foundation v. M/s Vapi Green Enviro Ltd. & Ors.

¶ 12, Order dated 06.08.2019, OA 681/2018, News item published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with multiple timelines to clean air in 102 cities to be released around August 15"

¶ 12, Order dated 05.11.2019, OA 639/2018, Shailesh Singh v. State of Haryana & Ors.

¶ 33, Order dated 10.07.2019, OA 1038/2018, News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels"

¶ 20(viii), Order dated 26.08.2019, OA 804/2017, Rajiv Narayan v. Union of India & Ors.

¶ 8 & 9, Order dated 15.07.2019, OA 710/2017, Shailesh Singh v. Sheela Hospital & Trauma Center

available with it. CPCB may file compliance report to this effect within four months 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 CPCB and the State PCB by email for compliance.

List for further consideration on 15.10.2020.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

July 24, 2020
Original Application No. 102/2019
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