

Item No. 02

(Court No.1)

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

(By Video Conferencing)

Original Application No. 134/2015

(With report dated 22.06.2021)

Friends through its General Secretary

Applicant

Versus

Ministry of Water Resources

Respondent

Date of hearing: 29.06.2021

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. Rahul Choudhary, Advocate

Respondent: Mr. Attin Shankar Rastogi, Advocate for MoEF&CC
Mr. Raj Kumar, Advocate for CPCB
Mr. Dileep Poolakkot, Advocate for R-5
Ms. Sakshi Popli, Advocate for DJB

ORDER

1. The issue for consideration is execution and enforcement of order of this Tribunal dated 20.5.2019, passed on consideration of an Expert Committee report dated 30.4.2019. The subject matter dealt with vide order dated 20.5.2019 is the permissibility of use of Reverse Osmosis (RO) system where Total Dissolved Solids (TDS) level is below a particular threshold and where RO system destroys minerals rendering use of RO treated water harmful for human health. Further question dealt with is preventing undue wastage of water rejected in the process.
 2. Operative part of the order dated 20.5.2019 is reproduced below:

"(i) The MoEF&CC may issue appropriate notification prohibiting use of RO where TDS in water is less than 500 mg/l and wherever RO is permitted, a requirement is laid down for recovery of water be more than 60%. Further provision be laid down for recovery of water upto 75% and use of such RO reject water for purposes such as utensil washing, flushing, gardening, cleaning of vehicles and floor mopping.

(ii) Appropriate directions in the matter may be issued. The Notification/Policy to be notified may also provide for a mechanism for public awareness about ill effects of demineralized water on public health and for effective enforcement requiring the concerned Local Bodies/Municipal Corporations/Municipalities/ Panchayats and institutions like Public Health Engineering Department (PHED)/ Jal Nigam / Jal Boards etc. be required to display water quality at regular intervals, particularly TDS concentration component by an appropriate mechanism.

(iii) Above regulatory regime may ensure regulating consumption and use of low TDS water by requiring manufacturers to maintain minimum TDS concentration to 150 mg/l or the minimum levels of calcium and magnesium.

(iv) Directions be issued for enforcement of Extended Producers Responsibility by the manufacturers for disposal of cartridges and membranes and requiring the manufacturers to provide proper labeling on the purifier specifying that the unit should be used if TDS is more than 500 mg/l. 3v) MoEF&CC may file an affidavit of compliance by e-mail at judicial-ngt@gov.in within one month.

(vi) The Expert Committee constituted by this Tribunal vide order dated 20.12.2018 along with Central Ground Water Authority may collect and provide data with regard to availability of ground water and its usage in 21 cities mentioned in the report of NITI Aayog and furnish a report to this Tribunal within one month by e-mail at judicial-ngt@gov.in. The said report may be placed in the file of O.A. No. 176/2015 which is listed on 04.07.2019.”

3. On appeal having been preferred against the above order, following order was passed by the Hon'ble Supreme Court on 22.11.2019 in Civil Appeal No. 8935-8937 of 2019, *Water Quality India Association (WQIA) v. Friends & Ors.:*

“Having heard learned senior counsel appearing for the parties, we are of the view that since the appellant states that it has abundant material in its possession to point out to the Ministry before any notification is issued, it may do so within a period of 10 days from today.

The Ministry must consider this material together with all other material, before it arrives at any conclusion, which then ultimately is put in the form of the notification that has been ordered to be issued.

The civil appeal stands disposed of accordingly.”

4. Thus, the Hon'ble Supreme Court did not interfere with the order of this Tribunal except for consideration of the material before issuance of notification. Unfortunately, even after two years the notification, as directed, has still not been issued for untenable reasons. Even today, further extension of time is sought for which we do not find any justification.

5. We may now give the background. The matter was being considered by this Tribunal since 2015. On 20.12.2018, having regard to the concern that the 80% of the potable water was being unnecessarily wasted and in absence of remineralization, use of RO system was resulting in adversely affecting health, an Expert Committee with the representatives from Ministry of Environment, Forest and Climate Change (MoEF&CC), Central Pollution Control Board (CPCB), Bureau of Indian Standard, IIT Delhi and NEERI was constituted. Based on the report dated 30.04.2019 by the said Expert Committee, this Tribunal, vide order dated 20.05.2019, held that where the TDS in the water was less than 500 mg/l, use of RO be prohibited. Wherever RO is to be permitted, condition of recovery of water to the extent of more than 60% be required. Further provision should be for enhancement of recovery of water upto 75% in phased manner in future and reuse thereof for permissible purposes. After passing order dated 20.5.2019, the matter was considered on 23.09.2019 and it was observed:-

“The MoEF&CC has still not complied with the same and, instead, has filed an affidavit inter-alia as follows:

It is humbly prayed that in order to delineate the appropriate provisions for effective compliance of the Hon'ble NGT directions 8 months time is required which includes 4 months for Inter-ministerial, stakeholders consultation and finalization of draft notification, 2 months for wide circulation of draft notification for inviting public comments and 2 months for incorporation of public comments and thereafter finalization of the notification. Accordingly, the Hon'ble Tribunal may kindly grant 8 months time.

The above prayer appears to be unreasonable and delaying the matter to the detriment of public interest. Though the applicant suggests that delay will advance commercial interest of those benefitted by delay, we do not propose to go into such allegation in absence of any clear evidence. The fact remains that order of the Tribunal is based on report of Expert Committee which also comprised representative of MoEF&CC and is enforceable without permission of any other authority with penal consequences. Accordingly MoEF&CC may now issue the necessary notification in the light of direction already issued in accordance with the report of the Expert Committee and cover not only the subject of recovery of RO reject water in domestic and commercial use but also in industrial process.

With regard to the further direction requiring the Committee, along with Central Ground Water Authority (CGWA), to collect and provide data with regard to availability of groundwater and its usage in 21 cities mentioned in the report of NITI Aayog and furnish a report to this Tribunal, CPCB has, in their letter dated 01.08.2019, stated that CGWA is not furnishing the information in spite of being required to do so. Let the CGWA do the needful positively within one week failing which the Member Secretary of CGWA will be liable to pay Rs. 1 Lakh as costs. Further necessary report by the Expert Committee be furnished to this Tribunal within one month.7.

The Member Secretary, CGWA and the concerned Joint Secretary, MoEF&CC may remain present in person along with compliance reports on the next date.”

6. The matter was thereafter considered on 04.11.2019 in light of status report filed on behalf of MoEF&CC. The Joint Secretary, MoEF&CC was present in person in terms of order of this Tribunal dated 23.09.2019. The Tribunal found that there was no reason for non-compliance and delay was detrimental to public health and environment. It was further observed that coercive measures were called for. However, last opportunity was granted with further observation that coercive

measures may be taken on the next date. The operative part of the order is reproduced below:-

"5. Accordingly a status report as on 31.10.2019 has been filed on behalf of the MoEF&CC. Mr. Jigmet Tookpa, Joint Secretary and Mr. Sundeep, Scientist 'F' are present in person on behalf of MoEF&CC.

6. The status report filed by the MoEF&CC is as follows:-

"In order to ensure the compliance of the directions passed by the Hon'ble Tribunal the Ministry after having consultation with expert institutions like IIT BIS, NEERI, CPCB and examining the legal formalities the Ministry has asked CPCB to frame holistic policy for use of RO Technology in the Country and submit draft notification. However, the draft notification has not been received till date.

Further, it is submitted that after receiving the draft notification from CPCB, the same will be further examined by the Ministry on the aspects of Monitoring Mechanism for compliance of the notification, Institutional Framework for monitoring and implementation of the notification, identification of stakeholders and their roles and responsibilities for various functions, legal sanctity, etc. for consideration. As issuing notification is a policy related matter, comprises features of multi-dimensional in character which inter alia, include complex geographical spread, varied users i.e. commercial, residential, etc. Hence, region wise detailed consultation will be required before notification.

It is also submitted that in view of the intricacy of the matter a progress report on monthly basis will be submit by the Ministry before the Hon'ble Tribunal."

7. During the hearing, the officers present have not shown any valid reason for non-compliance beyond what is mentioned above which stand has no merit. As already noted, delay in compliance of order is causing harm to public health and environment in terms of expert committee report to which MoEF&CC is a party.

8. The above stand clearly shows failure of concerned Officers to comply with the directions of order of this Tribunal dated 20.05.2019. The said order is a binding decree under Section 25 of the National Green Tribunal, Act 2010 and the Officers of MoEF&CC are liable to be proceeded against for non-compliance. Section 26 provides for punishment by way of imprisonment for such failure.

9. Accordingly, we give last opportunity to comply with the directions already issued latest by 31.12.2019 failing which from 01.01.2020, the concerned officer(s) in-charge in MoEF&CC for carrying out the directions of this Tribunal will not be entitled to draw salary till the order of this

Tribunal is complied. Further coercive measures may be considered on the next date.

10. A copy of this order be also sent to the Secretary, MoEF&CC for compliance by e-mail.

11. We note that CGWA has given the requisite data to CPCB and CPCB has filed its report on the subject of checking wastage of ground water and connected issue. This aspect will be gone into in O.A. No. 176/2019 fixed for hearing on 28.11.2019.

7. Inspite of above, when the matter was taken up on 10.01.2020, prayer was made for granting further four months' time on the ground of procedures to be followed. The Tribunal directed that further action be completed within two months and compliance report be filed. Thereafter, the matter was taken up on 13.07.2020 when more time was sought on the ground of lockdown.

8. The matter has been now taken up after almost one year of the last order and after almost two years of the original order dated 20.05.2019. The status report filed by the MoEF&CC on 22.06.2021 mentions constitution of certain Committees and taking of certain procedural steps and prays as follows:-

"Due to COVID-19 pandemic the Ministry is working 50 per cent strength and it is requested to kindly grant further three months of time from the date of BIS FAD 30 next meeting for publication of notification on Water Purification System. It is also submitted that this Ministry will submit a compliance-cum-status report on the progress made on regular basis before the Hon'ble Tribunal."

9. The applicant has opposed the stand of the MoEF&CC. It is submitted that there is no intention of the MoEF&CC to comply with the orders of this Tribunal. No further timeline has been mentioned. Period of three months is made dependent upon publication of some Notification by the BIS for which no date is mentioned. It is also pointed out that

proposed Notification is non-compliant with the orders of this Tribunal as shown by the following table:

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<i>Recommendations of the committee (that were accepted by Hon'ble Tribunal) and directions passed by the Hon'ble Tribunal, vide order dated 20.05.2019</i>	<i>Provisions of the Draft Notification issued by the Ministry of Environment Forest and Climate Change dated 03.02.2020</i>
<p><i>Recommendations</i></p> <p>ii. Water purifier market shall be classified based on the TDS level of water being supplied /available in the area so that right technology / product may be deployed based on the input water TDS.</p> <p><i>Directions of the Tribunal</i></p> <p>"The MoEF&CC may issue appropriate notification prohibiting use of RO where TDS in water is less than 500 mg/l and wherever RO is permitted, a requirement is laid down for recovery of water be more than 60%.</p>	<p>C. REGUUTION ON USE OF MEMBRANE BASED WATER PURIFICATION SYSTEM (MWPS)</p> <p>1. Installation or use of MWPS shall be prohibited, at the Point of Use or at the Point of Entry for purification of supplied water which is subjected to conventional flocculation, filtration and disinfection process or is from any sources which are in compliance with acceptable limit for drinking water prescribed by Bureau of Indian Standard 10500:2012 - Drinking Water Specification, provided</p> <p>No explicit mention that the water purification system should be based on TDS level and that the TDS level should be less than 500.</p>
<p><i>Recommendations</i></p> <p>"Concerned Local Body like Public Health Engineering Department (PHED)/ Jal Nigam/ Municipal Corporations/Jal/Board/ Municipalities, as the case may be, shall inform consumers about water sources and quality including TDS concentration of water being supplied through billing instrument. This must be made mandatory.</p> <p><i>Directions of the Tribunal</i></p> <p>Appropriate directions in the matter may be issued. The Notification/Policy to be notified may also provide for a mechanism for public awareness about ill effects of demineralized water on public health and for effective enforcement requiring the concerned Local Bodies/Municipal Corporations/Municipalities/ Panchayats and institutions like Public Health Engineering</p>	<p>6. State Pollution Control Boards,iv. Shall create public awareness through advertisement, publication, posters or by other means with regard to the followings: (a) Suitability of MWPS for purification of water in quality terms (b) Judicious use of MWPS water (c) Potential use of Reject water from MWPS (d) Responsibility of consumer or user to return the used or discarded element only to dealers of deliver at designated collection centres (e) Address of dealers and designated collection centres.</p> <p>8. Central Pollution Control Boardiii. Shall create public awareness through advertisement, publication, posters or by other means with regard to the followings: (a) Suitability of MWPS for purification of water in quality terms (b) Judicious use of MWPS</p>

<p><i>Department (PHED)/ Jal Nigam / Jal Boards etc. be required to display water quality at regular intervals, particularly TDS concentration component by an appropriate mechanism.</i></p>	<p>water (c) Potential use of Reject water from MWPS (d) Responsibility of consumer or user to return the used or discarded element only to dealers of deliver at designated collection centres (e) Address of dealers and designated collection centres.</p> <p>No mention as to ill effects of demineralized water and display of water quality at regular intervals particularly TDS</p>
<p><i>Directions of the Tribunal iii. Above regulatory regime may ensure regulating consumption and use of low TDS water by requiring manufacturers to maintain minimum TDS concentration to 150 mg/l or the minimum levels of calcium and magnesium.</i></p>	<p>That no mention of the consumption and use of low TDS water by requiring manufacturers to maintain minimum concentration of 150mg/l. That the Notification explicitly fails to mention the minimum levels of Calcium /magnesium.</p> <p>It is also noteworthy to mention that the FSSAI has also set the minimum standards for Calcium (Ca) and Magnesium (Mg) in Drinking Water as 20 mg/l and 10 mg/l respectively, vide Notification dated 30.10.2019, titled "The Food Safety and Standards (Food Products Standards and Food Additives) fourth Amendment Regulations, 2019".</p>

10. Further submissions of the applicant by way of response filed on 10.07.2020 are reproduced below:

- I. *That with respect to the clause "Applicability" given in the draft Notification, it is submitted that the Hon'ble Tribunal had directed specifically with regard to Reverse Osmosis (RO) Water Purification System, but the draft notification has only come up with the term Membrane Based Water Purification System (MWPS). That the Hon'ble Tribunal final Notification to explicitly use the word "Reverse Osmosis (RO)" along with MWPS in compliance with the directions of the Hon'ble Tribunal.*
- II. *That with respect to the "environmentally sound management of discarded element" under "ix" of the Definition clause, It is submitted that the disposal of the parts like Membranes/Cartridges/Media etc. Contain deposits of hazardous and harmful things like heavy metals, chemicals, pesticides and Radio Active substances like Uranium depending upon the location of installation. Therefore the disposal of the same should be in accordance with the CPCB*

Hazardous waste Management Rules, 2016, instead of Plastic Waste Management Rules, 2016.

- III. That as per the recommendation of the Expert Committee Report, provisions should be made by the Water Purifier manufacturers for online digital display of the instant TDS concentration of treated water and this may also be mentioned in the final Notification.*
- IV. The Expert Committee Report recommends that RO reject with TDS concentration can be used for utensils washing, flushing, gardening, and cleaning of vehicles and floor mopping if the TDS level in it is below 2100 mg /l In view of this, the Zero Liquid Discharge norm may be made mandatory in all types of RO systems if the TDS level of the RO reject is more than 2100 mg/l as it may be harmful and hazardous, and the same may kindly be directed to be included in the final Notification.*
- V. That with Respect to the Schedule, the Hon'ble Tribunal may kindly direct the following:*
- The definition of the inlet water quality should be changed in compliance with the directions passed by the Hon'ble Tribunal in the present matter on 20/05/2019, that is, if the TDS level of the inlet water is less than 500 mg/I, the RO systems — whether domestic or commercial — shall not be used.*
 - The compliance dates and recovery efficiency mentioned in the Schedule should also be changed as follows:*

Class	Recovery efficiency of permeates with compliance dates
Domestic Category	>60%- with the Commencement Notification >75%- 5 th June 2021 Almost 100 % or to conform to the Zero Liquid Discharge, within three years from the date of final Notification.
Commercial Category	>80%- with the Commencement Notification >90%- 5 th June 2021 Reject from RO purifier may further be fed to evaporator to achieve Zero Liquid discharge (ZLD)
Industrial Category	>85%- with the Commencement Notification >90%- 5 th June 2021 Reject from RO purifier may further be fed to evaporator to Achieve Zero Liquid discharge (ZLD).

11. Learned Counsel for the applicant submits that by deliberately delaying compliance of directions of this Tribunal, affirmed by the Hon'ble Supreme Court, the MoEF&CC is in contempt of the Hon'ble Supreme Court also. Further, delay is merely advancing commercial interest of RO companies at the cost of public interest and the rule of law.

12. While it is for the applicant to take contempt proceedings for violation of the order of the Hon'ble Supreme Court for which we do not express any view, it is difficult to reject the stand of the applicant that there is gross unexplained delay in compliance of order of this Tribunal which has attained finality and delay is prejudicing the public interest and the rule of law. The spirit of the order of the Hon'ble Supreme Court, in giving only ten days' time to the appellant for objections, was that the appropriate Notification will be issued within a reasonable time. The compliance was not to be left to any other department as is being done. It was not expected that MoEF&CC will take years in finalizing the matter. Thus, seeking repeated adjournments and extensions is against the letter and spirit of the direction of the Hon'ble Supreme Court mentioned above and against the rule of law.

13. It may be noted that high TDS requiring RO is found in ground water. Considering huge wastage of water as rejects in the use of RO, such use merely advancing commercial interests need at the cost of loss of valuable water which needs to be checked. This purpose is defeated by inordinate delay by MoEF&CC. This amounts to acting against the interest of the environment. Instead of permitting ROs, conductivity and TDS in water can be regulated and controlled by coordination of concerned regulators – MoJS with agencies supplying water like PHED/Water Supply and Sewerage/Municipal Body/ Jal Nigam etc.

saving huge amount of water which is being unduly wasted in the process of use of ROs against public interest.

14. Accordingly, we direct the MoEF&CC to ensure further action positively before the next date irrespective of steps by any other department which may delay the matter for indefinite period, failing which the Tribunal will be left with no other option except to take coercive measures personally against the concerned officers. The Secretary MoEF&CC is directed to identify the concerned dealing officers and put them to notice of this order. Their names be furnished to this Tribunal before the next date so that they can be made accountable for upholding public interest and the rule of law.

List for further consideration on 29.10.2021.

A copy of this order be forwarded to the Secretaries, MoEF&CC and MoJS by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

June 29, 2021
Original Application No. 134/2015
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