

Item No. 05

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 39/2022
(I.A. No. 116/2022)

Dharampal Singh & Anr.

Applicant(s)

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 08.07.2022

**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**

Applicant: Mr. R. Venkatraman, Advocate

Respondent: Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocates for UPPCB

ORDER

1. Grievance in this application is against discharge of sewage, solid waste, bio-medical and other waste into the pond in village Atta Dallu Patti Chindauri, District Meerut in the periphery of the Upper Ganga Canal. According to the applicant, there was proposal for digging up of drain for proper disposal of sewer but the same has not been given effect. Ground water of village is getting contaminated, resulting in overdose of organic and inorganic pollutants into the ground water upto the depth of 200 meters. There is foul odour in the village and disease like cholera, tuberculosis, jaundice and diarrhea are being spread.

2. Vide order dated 10.02.2022, the Tribunal sought a factual and action taken report from District Magistrate, Meerut and State PCB. The joint Committee has filed its report dated 13.05.2022 acknowledging discharge of pollutants in the pond and also encroachments. Remedial actions is said to have been taken to prevent over flow of waste water in the pond and also by way of de-silting the pond.

3. From the above, it is clear that there is need for further action. Quality of the water has not been verified to ascertain steps required to maintain water quality by preventing discharge of untreated waste and using waste treatment processes. Apart from restoring water quality, there is need to remove encroachment, including *bunding*.

4. Environmental significance of water bodies for aesthetics, water recharge, availability of water for cattle as well as micro climate and other purposes is well acknowledged. Considering this, in the light of earlier judgments of Hon'ble Supreme Court, this Tribunal has issued directions for taking maintenance of pond seriously. Reference may be made to order dated 18.11.2020 in *O.A. 325/2015, Lt. Col. Sarvadaman Singh Oberoi v. UOI & Ors.*, as follows:-

“1to15...xxx.....xxx.....xxx

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.....xxx.....xxxx.....xxxx

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”**¹ 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

¹ <http://mohua.gov.in/upload/uploadfiles/files/Advisory%20on%20Urban%20Water%20Bodies.pdf>

*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 and Steps Required to Remove the Encroachment and Restore the Water Bodies**”² in August, 2016. Further, the “**Guidelines for the Scheme on Repair, Renovation and Restoration (RRR) of Water Bodies under PMKSY (HKKP)**”³ 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.”*

5. In view of above, further action may be taken under the supervision of the District Magistrate, Meerut. Constant vigil be maintained for preserving the pond free from encroachment and pollution. If any grievance survives, it will be open to any aggrieved party to take remedies afresh in accordance with law.

The application is disposed.

A copy of this order be forwarded to District Magistrate, Meerut and State PCB by e-mail for compliance.

I.A. No. 116/2022 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

July 08, 2022
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² http://164.100.47.193/lsscommittee/Water%20Resources/16_Water_Resources_10.pdf

³ http://pmksy-mowr.nic.in/documents/RRR_PMKSY_Guidelines_2017.pdf