

Item No. 02

Court No. 1

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

Original Application No. 325/2015

(With reports dated 01.10.2020 & 29.10.2020)

Lt. Col. Sarvadaman Singh Oberoi

Applicant

Versus

Union of India & Ors.

Respondent

Date of hearing: 18.11.2020

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

Applicant: Ms. Nivedita Sharma, Advocate in MA 26/2019, 252/2019
& 69/2020

Respondent: Mr. Raj Kumar, Advocate for CPCB
Mr. Pradeep Misra & Mr Daleep Dhyani, Advocate for UPPCB
Ms. Madhumita Bhattacharjee, Advocate for State of West Bengal
Mr. Rahul Khurana, Advocate for State of Haryana
Mr. Mukesh Kumar, Advocate for KSPCB
Ms. Jyoti Mendiratta, Advocate for GNCTD

ORDER

The Issue

1. The issue for consideration in the original application was identification, protection and restoration of water bodies in Gurgaon in Haryana. However, in the light of proceedings which took place, the scope of the application was extended to the entire State and then to the entire country, in the interest of protection of environment. This became necessary to give effect to the law laid down by the Hon'ble Supreme Court to which reference will be made later.

Procedural History

Order dated 20.07.2018

2. We may briefly mention the background of the proceedings. Vide order dated 20.07.2018, the Tribunal disposed of the original application

with direction for restoration of 123 water bodies in Gurgaon which were admittedly in the possession of the State in the first instance by assigning Unique Identification Number (UID) and making them free from encroachment. Further direction was to file compliance report.

3. While technically, the matter was disposed of with directions on 20.07.2018, as noted above, it remained pending for consideration of compliance report. The Tribunal considered the matter further vide order dated 10.5.2019 in the light of the compliance report filed by the State of Haryana.

Order dated 10.05.2019

4. The State of Haryana reported that it enacted a special law on the subject, namely, the *Haryana Pond and Waste Water Management Authority Act, 2018* (“Haryana Act”). The Haryana Act creates an Authority to deal with restoration of water bodies at the State level and also appoints District Level Officers for the purpose. The ponds are proposed to be connected to the canal network. It was also reported that the Gurgaon Metropolitan Development Authority (GMDA) had taken up the work of restoration of 123 water bodies in District Gurgaon.

5. The Tribunal noted the need for conservation of water bodies throughout India for healthy environment, particularly in the light of judgment of the Hon’ble Supreme Court in *Hinch Lal Tiwari v. Kamala Devi & Ors.* (2001) 6 SCC 496. The Tribunal observed that under Public Trust Doctrine, the State has to maintain and restore the water bodies. This *inter-alia* helps availability of water, protection of aquatic life, maintaining micro climate, recharge the ground water and e-flow of the rivers. In view of mandate of law laid down by the Hon’ble Supreme Court and the NGT Act, 2010, the Tribunal directed all States/UTs to

take up the task of restoration of the water bodies in their respective jurisdiction and the Chief Secretaries of all States/UTs to oversee the compliance in the course of monitoring compliance of waste management rules and other significant environmental issues for which separate directions were issued by this Tribunal (in OA 606/2018) in the light of directions of the Hon'ble Supreme Court. Further directions of this Tribunal (in OA 673/2018) related to remedial action for abatement of 351 identified polluted river stretches which were also to be monitored by the Chief Secretaries. A Central Monitoring Committee (CMC) comprising Secretary Ministry of Jal Shakti with CPCB and other authorities were to monitor compliance at National level. A status report was directed to be compiled and filed by the CPCB. Operative part of order dated 10.5.2019 is reproduced below:

“13. Thus, to give effect to ‘Precautionary’ principle and ‘Sustainable Development’ principle, we direct all the States and UTs to review the existing framework of restoration all the water bodies by preparing an appropriate action plan. Such action plans may be prepared within three months and a report furnished to the CPCB. The CPCB may examine all such plans and furnish its comments to this Tribunal within two months thereafter. The Chief Secretaries of all the States/UTs in the course of undertaking monitoring exercise in pursuance of the order of this Tribunal in *O.A No. 606/2018, Compliance of MSW Rules, 2016*, may also include restoration of water bodies as one of the items as the same is also incidental to waste management which are covered by orders in *O.A No. 606/2018, Compliance of MSW Rules, 2016*.

14. The CPCB may prepare and place on its website guidelines in the matter of restoration of water bodies in the light of above order within one month.

15. The matter may also be monitored by Central Monitoring Committee constituted in terms of order dated 08.04.2019 in *O.A No. 673/2018, News item published in “The Hindu” authored by Shri Jacob Koshy titled “More river stretches are now critically polluted: CPCB*, as this matter is connected to the steps required for remedying the polluted river stretches as already explained.”

Orders dated 25.02.2020 and 01.06.2020

6. The matter was then considered on 25.02.2020 in the light of the report of the CPCB. The report mentioned that CPCB had issued the necessary guidelines on the subject such as identification and geo-tagging of ponds and lakes, maintaining water quality as per norms and removing encroachments. It was further stated that the States had failed to give proper response and the requisite information. The Tribunal, on consideration, directed as follows:

“ ...
 3. In pursuance of the above, the learned counsel for the CPCB has handed over a status report during the course of hearing to the effect that indicative guidelines for restoration of water bodies have been uploaded on the website of the CPCB on 18.06.2019 but most the States have not submitted their action plans. Out of 435 locations monitored, 357 locations were not complying with the primary water quality criteria for bathing. CPCB constituted an expert committee vide order dated 28.08.2019 under the Chairmanship of MS, CPCB comprising, representatives of MoEF&CC, MoJS, MoHUA, IIT Delhi, officials of CPCB and DHWQM-I as member convener. First meeting of the expert Committee was held on 16.09.2019. The Tribunal has suggested following actions:

S. No.	Activity proposed	Organization Responsible
1	Identification and Geo-Tagging of Ponds or Lakes in the Country	NRSA, State Space Application Centre and Concerned State Departments
2	Assessment of Water Quality of Ponds or lakes.	Through Laboratories approved under E(P) Act, 1986 by the Concerned State Department /ULBs/ State Environment Dept./SPCB/PCC.
3	Prioritization of Ponds or Lakes for restoration in consultation with the respective SPCB.	State Environment Dept./SPCB /PCC.
4	Preparation and submission of action plans for restoration of prioritized Ponds or Lakes to CPCB for random scrutiny of proposed action plans.	State Environment Dept./SPCB /PCC.
5	Execution of approved action plans.	State Environment Dept./SPCB /PCC under the overall supervision of Principal Secretary, Environment Department.

The CPCB conducted a workshop on the subject on 30.01.2020.

4. *Learned counsel for the CPCB states that further progress in the matter is being monitored and a status report will be filed before the next date. It is stated that only 14 States/UTs have furnished information which is not complete while 22 States/UTs have not furnished any information.*

5. *Having regard to the significance of the issue and unsatisfactory response of the States as shown above, we direct that the information may be furnished by all the States/UTs by March 31, 2020 positively to the CPCB failing which the States will be liable to pay compensation at the rate of Rs. 1 lakh per month till information is furnished. Payment of compensation will be the responsibility of the Chief Secretaries of the respective States/UTs. **Since we are informed that plans for restoration furnished by some of the States run even upto ten years, we direct that the action plans should provide for commencement of the work by 01.04.2020 and conclusion by 31.03.2021. The CPCB will be at liberty to issue appropriate directions to all the States/UTs by for compliance. The Ministry of Jal Shakti is also at liberty to take further remedial action in the matter.***

7. Next order of the Tribunal is dated 1.6.2020 on consideration of the report dated 22.05.2020 filed by the CPCB giving information received from some of the States and seeking time on account of COVID situation. The Tribunal extended the time for completion of the action in terms of order dated 25.2.2020 by four months i.e. upto 31.07.2020, instead of 31.3.2020. It was further directed that capacity of the water bodies be increased to utilise surplus rain water and rain water harvesting structures be set up in the sub-watersheds utilizing the MGNREGA funds, involving the community at large including the panchayats which action may be coordinated by the District Magistrates, Department of Irrigation and Flood Control, Department of Rural Development/Urban Development/Local Bodies/Forests/Revenue etc. On both these aspects, the Tribunal sought report from the CPCB. The operative part of the order dated 1.6.2020 is reproduced below:

“
5. *Having regard to the fact situation noted above, we extend the time for the States to complete action in terms of order dated 25.02.2020 till 31.07.2020. The CPCB may thereafter file its report by 31.10.2020 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.

6. *However, we wish to add a further direction having bearing on the subject. We have already noted the significance of protection and restoration of water bodies for the environment. The protection of water bodies not only add to availability of water for different purposes, it also contributes to recharge of ground and maintaining e-flow in the rivers, is congenial to micro climate in sub-watersheds as well as enhancing the natural aesthetics. While the rain water harvesting is certainly important, **harvesting surplus water during excessive rains from any areas of catchment needs to be optimized by enhancing the capacity of the existing ponds/water bodies, creation of water harvesting structures in the sub-watersheds to the extent possible, apart from setting up of additional water bodies/water harvesting structures wherever viable, utilizing available funds including under MGNREGA and involving the community at large at every level.** Gram Panchayats can certainly play a significant role in the matter. Once adequate capacity enhancement of waterbodies takes place, excess flood/rain water can be channelized by using appropriate water harvesting techniques. This action needs to be coordinated by the District Magistrates in coordination with the Department of Irrigation and Flood Control or other concerned Departments such as Department of Rural Development/Urban Development/Local Bodies/Forests/Revenue etc. The District Magistrate may as far as possible hold a meeting of all the stakeholders for the purpose as per the District Environment Plan or Watershed Plan within one month from today. The District Magistrates may also ensure that as far as possible atleast one pond/water body must be restored in every village, apart from creation of any new pond/water body.”*

Today's proceedings

CPCB Report

8. Accordingly, a consolidated report has been filed by the CPCB on 29.10.2020 in two parts. Part A deals with the aspect of plans for restoration of water bodies and status of their execution while part B deals with the status of compliance of direction relating to water harvesting. **The CPCB report points out the need for making a proper and centralized inventory of water bodies, and assessment of their water quality; the absence of a single nodal agency to oversee the management of restoration of polluted water bodies, and water harvesting; and recommends that the relevant Central**

Ministries, especially MoJS, play an increased and major role in implementation and oversight.

9. We first consider **part A** of the report. It mentions that 24 States mentioned therein have provided information on the subject which has been compiled in Table 1 and 2 as follows:-

“Based on the information received from the States/UTs, State-wise status on Ponds, Lakes and Restoration of Water Bodies, State-wise Status on Inventorisation, Geo-Tagging, UIN Allocation, Water Quality Assessment, Action Plans for Restoration of Water Bodies Pond compiled and presented at Table 1 and Table 2 below.

Table 1. State-wise Status on Ponds, Lakes and Restoration of Water Bodies

S. No	Name of State/UT	Information submitted as Per the format circulated by CPCB	Identified Water Bodies				Total No. of Water Bodies Identified	Status on Restoration of Water Bodies		
			Lakes	Ponds	Tanks	Others (Pynes/Aahars/wells/Reservoirs etc.)		No. of Water Bodies Selected for Restoration	No. of Water Bodies Restored so far	No. of Water Bodies presently under Restoration
1	Andaman & Nicobar	No	-	-	-	-	37	-	-	-
2	Andhra Pradesh (Panchayati Raj and Rural Development Department, Municipal Administration & Urban Development (MA & UD) Department, Municipal Administration & Urban Development (MA & UD) Department, Irrigation Department)	No	-	-	1699	-	13171	9284	6608	781
3	Arunachal Pradesh	-	-	-	-	-	-	-	-	-
4	Assam	Yes	17	14	-	-	31	-	-	-
5	Bihar	Yes	-	50150	-	51437	101587	-	12867	24075
6	Chattisgarh (Department of Panchayat and Rural Development)	Yes	-	-	-	-	1658	68803	271110	-
7	Daman & Diu & Dadra & Nagar Haveli	Yes	1	5	-	-	6	-	-	-

S. No	Name of State/UT	Information submitted as Per the format circulated by CPCB	Identified Water Bodies					Status on Restoration of Water Bodies		
			Lakes	Ponds	Tanks	Others (Pynes/Aahars/wells/Reservoirs etc.)	Total No. of Water Bodies Identified	No. of Water Bodies Selected for Restoration	No. of Water Bodies Restored so far	No. of Water Bodies presently under Restoration
8	Delhi	Yes	-	-	-	-	256	49	4	-
9	Goa	Yes	9	-	-	-	9	4	-	-
10	Gujarat	Yes	1939	42119	-	-	44058	156	3	153
11	Haryana	Yes	3	16534	-	-	16537	10794	146	189
12	Himachal Pradesh	Yes	6	-	-	-	6	4	-	4
13	Jammu & Kashmir	No	-	2815	-	-	1230	-	-	-
14	Jharkhand	Yes	-	282	-	-	282	221	4	6
15	Karnataka	Yes	-	-	-	-	33350	-	-	-
16	Kerala	Yes	-	40000	-	-	40000	-	-	-
17	Lakshadweep	Yes	-	297	-	-	297	-	59	238
18	Madhya Pradesh	Yes	-	-	-	-	66438	-	-	-
19	Maharashtra	Yes	-	-	-	-	354	-	-	-
20	Manipur	Yes	4	14	-	-	18	-	-	-
21	Meghalaya	Yes	2	-	-	-	2	1	-	-
22	Mizoram	Yes	9	31	-	-	40	-	-	-
23	Nagaland	Yes	1	8	-	1	10	2	-	2
24	Odisha	Yes	1	8	-	2	11	2	1	-
25	Punjab	Yes	-	15715	-	-	15715	600	310	290
26	Puducherry	Yes	84	843	-	-	927	547	321	43
27	Rajasthan	No	-	-	-	-	-	12127	1963	6348
28	Sikkim	Yes	4	-	-	-	4	4	1	3
29	Tamil Nadu (Public Works Department (PWD), Director of Town Panchayats)	Yes	-	-	-	-	15658	1317	5986	1766
30	Telangana	Yes	-	-	-	-	46531	27631	21436	6195
31	Tripura	Yes	-	180	-	-	180	30	-	26
32	Uttar Pradesh	Yes	-	508	-	-	508	504	84	424
33	Uttarakhand	No	-	-	-	-	-	-	-	-
34	West Bengal	No	-	-	-	-	15000	-	-	-
Total			2080	169523	1699	51440	413911	132080	320903	40543

“Table 2. State-wise Status on Inventorisation, Geo-Tagging, UIN Allocation, Water Quality Assessment, Action Plans for Restoration of Water Bodies Pond

S. No	Name of State/UT	Information submitted as per the format circulated by CPCB	Inventory Status as Reported by States/UTs	Status on Geotagging	Status on UIN Allocated	Status on Assessment of Water Quality of Water Bodies in the State	Prioritisation based on Designated Best Use Criteria or Bathing Criteria Compliance	Preparation & Submission of Action Plans	Proposed Timelines for Restoration	Water Bodies under the Custody of Concerned Authorities in the State/UT
1	Andaman & Nicobar	No	Yes	No	No	Not Provided	Not Provided	Not required as per A & N UT	Not Provided	Port Blair Municipal Council & Andaman Public Works Department.
2	Andhra Pradesh	No	Yes	Yes	No	No	No	No	Not Provided	Panchayati Raj and Rural Development Department ,Irrigation Department, Municipal Administration & Urban Development (MA & UD) Department, Municipal Administration & Urban Development (MA & UD) Department,
3	Arunachal Pradesh	No	No	No	No	No	No	Being prepared for 3 lakes	-	Department of Environment & Forest
4	Assam	Yes	Yes	No	No	Yes	No	No	-	Environment and Forest Department, Government of Assam

5	Bihar	No	Yes	Yes	No	No	No	No	-	<i>Environment and Forest Department , Minor Water Resources Department Govt. of Bihar and Rural Development Department, Govt. of Bihar</i>
6	Chhattisgarh	Yes	Yes	Yes	Yes	Not provided	Yes	Yes (Pilot Project)	-	<i>Department of Panchayat and Rural Development, Urban Administration and Development Department</i>
7	Daman & Diu & Dadra & Nagar Haveli	Yes	Yes	No	No	No	No	Yes	Not provided	<i>Daman Municipal Council, District Panchayat, Daman</i>
8	Delhi	Yes	Yes	Yes	No	No	No	Yes	-	<i>DDA, BDO/REV. (PANCHAYAT), EDMC, SDMC, NORTH MCD, DJB, PWD, CPWD, ASI, FOREST, DELHI ARCHAEOLOGICAL DEPTT., DELHI WAKF BOARD, DUSIB, DSIDC, JNU and IIT</i>
9	Goa	Yes	Yes	NO	Not provided	Yes	Yes	Yes	March 2021	<i>Goa State Wetland Authority (GSWA) , Goa State Pollution Control Board (GSPCB) ,</i>
10	Gujarat	Yes	Yes	In Progress	No	No	No	No	-	<i>Panchayat Department, Revenue Department , Water Resources Department), and Urban Development Department)</i>

11	Haryana	Yes	Yes	Yes	Yes	Partial	Partial	Yes	2020-2024 (14 Ponds)	<i>The Haryana Ponds and Waste Water Management Authority (HPWWMA), Irrigation & Water Resources Dept. Development & Panchayats Department of Urban Local Bodies and Govt./Educational Institutes</i>
12	Himachal Pradesh	Yes	Partial	No	No	Yes	Yes	Yes	2020-21	<i>Himachal Pradesh State Wetlands Authority (HPSWA), HPSPCB, RD & UD, H.P. Forest Department</i>
13	Jammu & Kashmir	No	Partial	No	No	No	No	No	-	<i>Forest Department, Wildlife, Soil & Water Conservation Department, Revenue Department, Jammu Municipal Corporation, DERS/Revenue</i>
14	Jharkhand	Yes	Yes	In progress	In progress	No	No	Yes		<i>Urban Development and Housing Department</i>
15	Karnataka	Yes	Yes	Yes	Yes	Partial	Partial	No	-	<i>Bengaluru Water Supply & Sewerage Board (BWS&SB), Bengaluru Development Authority (BDA) & Cauvery Neeravari Nigama Limited (C>NNL).</i>
16	Kerala	Yes	Yes	Yes	Yes	Partial	No	Yes	30.03.2022	<i>Irrigation Design and Research Board (IDRB), Irrigation Design and Research Board (IDRB), ULBs</i>
17	Lakshadweep	Yes	Yes	No	No	Yes	Yes		September. 2020	-
18	Madhya Pradesh	Yes	Yes	Yes	Yes	Partial	Partial	Partial	2020-22	<i>The Environmental Planning and Coordination Organization (EPCO)</i>

19	Maharashtra	Yes	No	Partial	No	No	No	Yes	-	WaterResources Department, ULBs
20	Manipur	Yes	Yes	Yes	Partial	Yes	Yes	No	-	Environment & Climate Change, Water Resources Department, Public Health & Engineering Department, Trade, Commerce and Industries, Manipur Pollution Control Board and Loktak Development Authority
21	Meghalaya	Yes	Yes	No	No	Yes	No	Yes	-	Meghalaya SPCB, Tourism Department, Department of Fisheries, Department of Forest and Environment
22	Mizoram	Yes	Yes	Yes	No	No	No	No	-	Irrigation and Water Resources Department, Govt. of Mizoram
23	Nagaland	Yes	Yes	No	No	No	No	Yes	31.03.2022	Public Health Engineering Department, Nagaland Pollution Control Board and Dimapur Municipal Corporation
24	Odisha	Yes	Yes	Yes	No	No	No	Yes	March, 2022	Orissa Wetland Development Authority, Water Resources Department
25	Punjab	Yes	Yes	Yes	Yes	No	No	Yes	-	Department of Rural Development & Panchayats (DRDP), Department of Local Government, Punjab Pollution Control Board (PPCB) and Directorate of Environment and Climate Change (DECC), Department of Science, Technology & Environment (DSTE), Government of Punjab
26	Puducherry	Yes	Yes	Yes	Yes	No	No	Yes	-	Irrigation Division of the Public Works Department and the village ponds lies with the respective Municipalities and Commune Panchayats Under the Local Administration Department.

27	Rajasthan	No	No	No	No	No	No	No	No	<i>Water Resources Department, Government of Rajasthan</i>
28	Sikkim	Yes	Yes	Yes	No	No	No	No	-	<i>Forest & Environment Department</i>
29	Tamil Nadu	Yes	-	-	-	-	—	-	-	<i>Public Works Department (PWD)</i>
30	Telangana	Yes	Yes	Partial	No	Partial	No	Yes	One Year	<i>Hyderabad Municipal Water Supply & Sewerage Board (HMWS&SB), Irrigation & CAD Department (I&CAD) and Hyderabad Metropolitan Development Authority (HMDA (L&P)).</i>
31	Tripura	Yes	Yes	Yes	No	Partial	No	Yes	Dec, 2020	<i>ULBs/ Urban Development Department, Department of Science Technology & Environment (DSTE), Tripura State Pollution Control Board (TSPCB), Horticulture & Forest Department, District Administration</i>
32	Uttar Pradesh	Yes	Yes	Yes	No	No	No	No	-	<i>Forest Department, Auraiya, Government of Uttar Pradesh</i>
33	Uttarakhand	No	-	-	-	-	—	-		
34	West Bengal	No	-	-	-	-	--	-	31.12.2020	<i>Fisheries, P&RD, L&LR & Urban Development, DST, Department of IT, DoE</i>

10. The CPCB has observed that the information given by the States/UTs was not scientific. Proper inventories were required to be made. Water quality was required to be monitored. Instead of different departments dealing with the issue, single agency was required to be set up as a nodal agency for restoration of all water bodies in the States/UTs. It was also necessary to constitute Wetland Authority in every State/UT as per Wetland (Conservation and Management) Rules, 2017. The said authority can be given responsibility for restoration of water bodies or a separate body for the purpose can be set up on a pattern of Haryana, Madhya Pradesh and Mizoram. The Ministry of Jal Shakti can provide assistance in the light of programmes undertaken by the Government of India like AMRUT, Smart City, MGNREGA and other programmes.

11. It will be appropriate to reproduce the observations and suggestions of the CPCB:-

“2.5 Observations and suggestions of CPCB

- *23 States & 4 UTs have provided information as per the format circulated by CPCB.*
- *Based on the information received from the States/UTs, there are Lakes- 2,080 (11 States and 2 UTs), Ponds- 1,69,523 (13 States and 4 UTs), Tanks- 1,699 (1 State), Others like pynes, aahars, reservoirs etc. - 1,51,440 (3 States), Total number of water bodies identified as - 4, 13,911 (25 States and 6 UTs), Total number of identified water bodies selected for restoration- 1,32,080 (17 States and 02 UTs), Total number of identified water bodies already restored- 3, 20,903 (13 States and 3 UTs), Total number of identified water bodies presently under restoration- 40,543 (14 States and 2 UTs).*
- *It appears, number of water bodies identified by the States/UTs as reported is not scientific and therefore **States/UTs have to carry out proper inventory of water bodies using Geological Survey Maps of India (reconnaissance survey) or using any other available technologies like Remote Sensing.***
- *For prioritization of all the identified water bodies is possible only after **assessment of water quality** of all the water bodies.*

Presently, water quality of water bodies are monitored by the State Water Resources Department/Agricultural Department/Fisheries Department/Public Health Engineering Departments apart from Central Water Commission (CWC), Central Pollution Control Board (under National Water Quality Monitoring Programme). **Therefore, all the water bodies to be assessed for water quality for prioritisation and for restoration. Also, there is a need to pool all the water quality data under /NOIA -WRIS Portal under National Water Informatics Centre as it facilitates policy decision.**

- Presently, various departments in the States/UTs are custodians of water bodies **therefore there is a need that all the States/UTs need to designate a 'single agency' as a nodal agency to ensure restoration of all polluted stagnant water bodies in the respective State/UT in consultation with the concerned departments.** Such a nodal agency also may co-ordinate with the respective State Pollution Control Board (SPCB) in the State or Pollution Control Committee (PCC) in the respective UT for ensuring timely compliance to Hon'ble NGT directions in the matter.
- Presently, States Governments /UT Administrations are required to constitute Wetland Authority in the respective States/UTs under the Wetland (Conservation and Management) Rules, 2017. The wetland authority may be given responsibility of restoration of water bodies or a nodal agency or a separate body may be designated as done in case of Haryana (Haryana Pond Waste Water Management Authority), Madhya Pradesh (The Environmental Planning and Coordination Organization (EPCO) and Mizoram (Irrigation and Water Resource Department).
- Presently, water bodies are undergoing restoration of water bodies under the various schemes like financial support of Ministry of Jal Shakti or State schemes (like Mission Kakatiya in case of Telangana). Therefore, Ministry of Jal Shakti being nodal Ministry for Water Resources in the country, there is a need to integrate with the programmes such as 'National Lake Conservation Programme, National Wetland Conservation Programme, Ministry of Water Resources Programmes like 'Repair, Renovation & Restoration of Water bodies with Domestic/External Assistance which are undertaken by Government of India, Central Sector Schemes like AMRUT, Smart City, MGNREGA or any other programmes for restoration of water bodies in the country.”

12. **Part B of the report** deals with the status of rain water harvesting systems. The report mentions that meetings of joint Committee comprising the CPCB and the Ministry of Jal Shakti were held to comply with the directions of this Tribunal. Information was sought from all the

States/UTs. Only 25 States/UTs have provided information. The information has been compiled as follows:-

- “
- *As regards provisions for Rain Water Harvesting in Building Bye-laws, 11 States viz. Arunachal Pradesh, Haryana, HP, Karnataka, Madhya Pradesh, Maharashtra, Meghalaya, Odisha, Punjab, Tamil Nadu, Tripura and 3 UTs viz Delhi, J&K, Puducherry have provisions for RWH in Building Bye-laws. Two States viz. Assam and Mizoram have communicated that there are no provisions for RWH in Building Bye-laws yet.*
 - *Multiple organizations are implementing Rain Water Harvesting in the States /UTs.*
 - *None of the States/UTs have provided time frame for installation of Rain Water Harvesting structures on all Government and Private buildings that require Rain Water Harvesting systems/structures in accordance with Building Bye-Laws.”*

13. Finally, the CPCB has given following suggestions:-

“7.0 Suggestions

- *As multiple agencies or State Departments/UT Administration Departments are involved in implantation of policies related to Rain Water Harvesting (RWH), information provided by different departments of the State/UT are not corroborating with each other leading to confusion. All the States/UTs shall nominate single Nodal Department for implementation of policies relating to rain water harvesting system.*
- *Every ULBs should have one Rain Water Harvesting cell in place to regulate and monitor the Rain Water Harvesting related activities effectively.*
- *Ministry of Housing & Urban Affairs (MoHUA), Central Ground Water Authority (CGWA) and Department of Water Resources (DoWR), Ministry of Jal Shakti (MoJS) should play a major role in ensuring implementation of policies relating to rain water harvesting in the Country with a mutual co-ordination and for providing requisite guidance and necessary initiatives for ensuring compliance to Hon'ble NGT orders passed in the matter of Tribunal in its Own Motion Vs Government of NCT of Delhi & Ors in OA No 496/2016 in connection with Rain Water Harvesting and Ground water recharging for water conservation.*
- *Presently, provisions for Rain Water Harvesting (RWH) Systems are incorporated mainly under Building Bye-Laws by the States/UTs/ULBs. There is a need to enact legislation/law by*

various States/UTs as done by Tamil Nadu to make RWH measures mandatory.”

UP Oversight Committee Report

14. The Oversight Committee constituted by this Tribunal for the State of UP, headed by Justice SVS Rathore, former Judge, Allahabad High Court, has filed a separate report giving the compliance status in the State, in a tabular form, as follows: -

“V. SUMMARY OF COMPLIANCE STATUS IN O.A 325/2015 AS PER ORDER DATED 1.06.2020

O.A. 325/2015 (in re: M.A NO. 26/2019 in Original Application No.325/2015, I.A. No. 700/2019 & MA. No. 252/2019)					
S. No	<i>Directions by Hon'ble NGT</i>	Concerned Department	<i>Compliance status July</i>	<i>Compliance status August</i>	Compliance status September
1	<p><i>Action Plan including the following:</i></p> <ol style="list-style-type: none"> 1. Number of identified water bodies 2. Location details 3. Water quality status 4. Compliance status with respect designated value 5. Identified water bodies. 6. Prioritization to be sent to CPCB by 31.07.2020 	UPPCB	<p>Partially complied</p> <p><i>On behalf of UPPCB, it has been submitted that Action Plans are being prepared by all the districts and will be sent to CPCB before the deadline i.e. by 31.07.2020.</i></p>	<p>Partially Complied</p> <p><i>Action plans have not been submitted</i></p>	<p>Partially Complied</p> <p><i>Action plans have not been submitted</i></p>

2	Identification and geo tagging of ponds	Dept. of Rural Development, Dept. of Forest, U.P.	Partially Complied Rural Development Commissioner, Shri Ravindra Naik informed the Oversight Committee that Identification of ponds is being done and restoration/Rejuvenati on work is in process. Representative of the Department of Forest informed that a list of all the wetlands (under its authority) with geo reference has been prepared. The Committee noted that such a list is to be provided and steps have to be taken to assign a unique ID to every water body.	Partially Complied Wetland inventory list available on website of Uttar Pradesh Environment Compliance Portal.	Partially Complied Under MGNREGA, 240649 ponds have been identified and restored till 15.09.2020.
3	Steps for restoration of water bodies	Dept. of Minor Irrigation, Rural Development and Panchayati Raj	Partially Complied Vide meeting dated 25.06.2020, the Representatives from Minor Irrigation Dept. And Rural Development, Panchayati Raj Informed that Continuous steps are being taken up for identification and restoration of ponds. The best practices with reference to restoration of water bodies being implemented in Mathura and Gautam Budhh Nagar were Discussed in detail. Such steps to be Implemented in other parts of the State.	No further progress reported	No further progress reported

15. The Committee has thereafter made following recommendations:-

“VII. RECOMMENDATIONS BY OVERSIGHT COMMITTEE

1. Hon'ble NGT had asked that Action Plans may be prepared by 31st March, 2020. Uttar Pradesh has so far not prepared its Action Plan despite extension of time by

Hon'ble NGT till 31.07.2020. The Oversight Committee was informed by the Commissioner, Rural Development during the review meeting that Action Plan is under preparation. In the State of Uttar Pradesh, water bodies/ponds are looked after by the newly created Department of Namami Gange and rural water supply. In each village, village ponds are maintained by Village Panchayat under the Panchayati Raj Department. The Forest Department also is involved in identification, development and maintenance of wetlands in the State. The construction and repair work on these ponds and water bodies is done under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), which is run by the Rural Development Department. These ponds are filled by Irrigation Department from their canals during summer season. **So, it is quite clear that a holistic Action Plan has to be prepared. It has to have components of all these Departments. The Action Plan prepared by the Rural Development Department alone would not suffice. It would be in the fitness of things if the Chief Secretary, UP calls a meeting of all these Departments, asks all of them to survey these water bodies, identify each and every water body in each village, geo-tag it, assign a UID number and then get the Action Plan prepared allocating the role of each Department. This Action Plan should also have a component regarding continuous assessment of water quality of these water bodies to be done by State Pollution Control Board. The action plan also should indicate the prioritization of the work as to which work would be taken at what time; budgetary allocations have to be done and specific time-lines have to be fixed. Only then a meaningful Action Plan would be prepared. The statement of Rural Development Department that so far 2,40,469 water bodies have been restored under MGNREGA is a general statement of works done under the MGNREGA scheme right since its inception rather than the result of a well coordinated action plan based on a state level synchronised geo-tagged survey of all the water bodies. The Chief Secretary may, in compliance of Hon'ble NGT directions, call all these Departments and get the Action Plans prepared on the above lines within the time-lines stipulated by Hon'ble NGT.**

2. The Forest Department may be directed to plan out afforestation activities on the banks of these water bodies. This year the Forest Department's target of afforestation for the entire state is planting of 25 crore trees. This afforestation plan on the banks of these water bodies can be taken up as an important component of that programme and targets can be given Panchayat-wise to the respective departments right now so that they can plan all activities over the year in a sustainable manner.

3. ***The District Magistrates have been directed to take up one pond per village this year. This programme may be included in the District Environment Plan to be monitored by the District Magistrates on a monthly basis. The list of one pond per village may be collected from the districts by the Rural Development Department/Namami Gange Department and it may be made a part of the Action Plan for this year. Funds for the activity may be allocated by budgetary grant from the budget heads of the respective Departments. Alternatively, MGNREGA funds from Rural Development Department may be allowed for conducting these works. Another option is use of devolution funds by the respective Panchayats for maintaining these ponds. Annual District Plan based on this list may be prepared indicating the names of the water bodies to be rejuvenated, the budgetary allocation for each water body and their respective time-lines. These should be monitored on a regular basis by the District Magistrates as part of the District Environment Plan on a monthly basis. Periodical reports of implementation of these Action Plans may be sent at the Headquarters to Chief Secretary through respective Principal Secretaries of various Departments who may further intimate it to Hon'ble NGT.***
4. *CPCB should explain why it has not issued notice for compensation at the rate of Rs. 1 lakh/per month beyond the deadline of 31.07.2020 on each district for non-compliance of Hon'ble NGT direction regarding submission of action plan.*
5. ***The Committee also recommends that active efforts be made in close coordination with technical bodies to tap excess runoff of rivers/canals during rainfall season to recharge old water bodies and retain water in new ponds to be constructed specifically for the purpose.. Such simple interventions have been taken up in district Mathura, Uttar Pradesh to increase groundwater level and rejuvenate water bodies (refer Annexure VI).The Mathura experiment may be technically vetted by some technical body under the Ministry of Water Resources, Govt of India.***
6. ***Development of Bio Diversity Parks in the vicinity of rivers lead to continuous recharge of aquifers and maintenance of E Flow of the rivers. It has been put to notice that project of Biodiversity parks was submitted to NMCG but could not get approved due to shortage of funds. The Committee recommends re-formulation of project by Forest Department after in-depth analysis of such projects in other states viz. Wetland park in Delhi and taking technical advice from experts.***

7. *Hon'ble NGT vide order dated 14.07.2020 in O.A.985/2019 had directed CPCB to issue strict directions to ensure that no authority allows discharge of polluted sewage or polluted effluents directly into a water channel or stream even during the monsoon season. Though orally CPCB representative in the meeting confirmed issuance of some memo to this effect by them, the Oversight Committee is not aware of any such directions available in public domain. CPCB may comply with Hon'ble NGT's orders with a copy to the Oversight Committee.*

8. ***Success story of rejuvenation of river Tamsa in Ayodhya should be circulated among all the District Magistrates and they should be asked to identify and take up similar activities, with the involvement of local public, that may help in improvising the water bodies/rivers / groundwater or environment in any manner that too with the minimum financial burden.***

9. ***The concept of floating islands can be replicated in several water bodies of the State. Moreover, floating barriers can also be used to capture trash in water bodies. In the year 2015, Alpha MERS developed an indigenous design of floating trash barrier for controlling hyacinth and trash from flowing in water. The barrier made of steel and aluminium with a high tensile strength claims to have an ability to survive in both polluted water bodies and change in water levels. For the first time in November 2017 these barriers were deployed in Cooum river in Chennai. Currently, the barriers have been deployed at eight locations in Cooum river (NDTV, 2018)***

10. ***Use of bio-plastics/bio-degradables in every sector viz. domestic and industrial sectors is a viable solution to prevent rivers and water bodies from choking and warding off adverse implications on biodiversity. The State government may develop plans for switching to bio-plastics/bio-degradables at macro level within six months.***

13. ***Restoration of ponds, lakes require involvement from all stakeholders especially local people. Community participation must be encouraged and campaigns be started in areas to restore, conserve water bodies. Ansupa Lake in Odisha has been restored by sincere efforts of Self Help Groups in the area.”***

Analysis and Directions

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*¹. and *Paryavaran Suraksha vs. Union of India*² 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 environment³. Several directions have been issued by the Hon’ble Supreme Court in *M.K. Balakrishnan and Ors. v. UOI & Ors.*⁴”**

¹ (2000) 2 SCC 679

² (2017) 5 SCC 326

³ <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

⁴ (2017) 7 SCC 805

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”**⁵ 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 and Steps Required to Remove the Encroachment and Restore the Water Bodies”**⁶ in August, 2016. Further, the **“Guidelines for the Scheme on Repair, Renovation and Restoration (RRR) of Water Bodies under PMKSY (HKKP)”**⁷ 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.

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

⁶ http://164.100.47.193/lsscommittee/Water%20Resources/16_Water_Resources_10.pdf

⁷ http://pmksy-mowr.nic.in/documents/RRR_PMKSY_Guidelines_2017.pdf

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.

Directions

22. Accordingly, we dispose of this application with following directions:

- (i) All States/UTs may forthwith designate a nodal agency for restoration of water bodies, wherever no such agency has so far been so designated.
- (ii) Under oversight of the Chief Secretaries of the States/UTs, the designated nodal agency may
 - a. Hold its meeting not later than 31.1.2021 to take stock of the situation and plan further steps, including directions to District authorities for further course of action upto Panchayat levels and to evolve further monitoring mechanism as well as Grievance Redressal Mechanism (GRM).
 - b. Submit periodical reports to the CPCB/Secretary Jal Shakti, Government of India. First such report may be furnished by 28.02.2021.
- (iii) The CMC for monitoring remediation of 351 polluted river stretches, headed by the Secretary, MoJS may monitor the steps for restoration of water bodies by all the States periodically, atleast thrice in a year. First such monitoring may take place by 31.3.2021.
- (iv) The CMC may give its action reports to this Tribunal in OA 673/2018 and first such report may be furnished preferably by 30.4.2021 by e-mail.

23. Any individual grievances may be first raised before the appropriate GRM or by moving the concerned District Magistrate which may be looked into on merits.

The application stands disposed of accordingly.

A copy of this order be forwarded to the Secretary, MoJS, CPCB, the Chief Secretaries of all the States/UTs and all District Magistrates by e-mail for compliance.

All pending I.A.s and M.A.s will stand disposed of.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

November 18, 2020
Original Application No. 325/2015
SN