

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

M.A. No. 52 of 2014

IN

Original Application No. 2 of 2013

In the matter of:

1. Sarang Yadwakar
R/at: A-9, Pradnyangad Apartments,
S.No. 119/3, Sinhagad Road, Pune 411030
 2. Vivek Velankar
Presiden; Sajag Nagrik Manch,
(NGO Welankar Reg. No. E 5620),
O/at: 1200 Sadashiv Peth, Limaye Wadi, Pune 411030
 3. Parineeta Dandekar,
R/at: A2/405, Kanchanban Apartments,
Shivtirth Nagar, Kothrud, Pune 411038
 4. Dilip Jaywantrao Mohite,
R/at: B-28, Pradnyangad Apartments,
S.No. 119/3, Sinhagad Road, Pune 411030
 5. Sanjay Babanrao Bhosale,
R/at: 244, Bhawani Peth,
Mahatma Phule Marg, Pune 411042
 6. Narendra Sunderlal Chug,
R/at: 15/3, PWD Quarters,
Pimpri Colony, Pune 411017
- Applicants

Versus

1. The Commissioner
Pune Municipal Corporation.
Shivajinagar, Pune 411004
2. Chief Engineer,
Khadakwasla Irrigation Division,
Irrigation Department Gov. of Maharashtra,

Sinchan Bhavan, Barne Road,
Mangalwar Peth, Pune.

3. Maharashtra Pollution Control Board,
Through the Regional Officer Pune
Jog Centre, 3rd floor, Mumbai-Pune Road,
Wakadewadi, Pune 411003

.....Respondents

Counsel for applicant:

Mr. Asim Sarode, Advocate

Counsel for Respondents:

Mr. Rahul Jaun & Mr. Varun Mudgal, Adv for respondent no. 1

Mr. Arvind Avhad, Adv for respondent no. 2

Mr. Ranjeet Singh, Mr. Prashant & Mr. Kailash Pandey Advocates
for respondent no. 3

Mr. Mukesh Verma & Mr. A.D. Mohejarm R.O. Pune, Advocates for
respondent no. 4

Present:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. U.D. Salvi (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

Hon'ble Dr. R. C. Trivedi (Expert Member) (now Deceased)

ORDER

Per U.D. Salvi J. (Judicial Member)

Dated: 14th January, 2015

1. Variety of directions to the Respondents upon invoking the provisions under Section 25 and 26 r.w. Section 28 of the NGT Act, 2010 are solicited in the present application; mainly the applicants are seeking implementation/execution of the order/directions issued by us along with penal action against all those involved in failure to comply with the said

order/directions. Incidentally, the applicant is also seeking directions for cancellation of construction of all roads falling in flood plains of all rivers and shown in the Development Plan of Pune; and further for recovery of wasteful cost incurred on the construction of the road and to be incurred for removal of debris from all concerned persons and officers working for the Respondent, Pune Municipal Corporation.

2. The principal reason for seeking these directions, according to the applicant, is the acts of commission and omissions committed by the Respondents and concerned officials in disregard and breach of the directions passed by this Tribunal in Judgment delivered on 11th August, 2013 in Application No. 2/2013. The Respondent No.1- Pune Municipal Corporation undertook a project of construction of the road from Vitthalwadi to National Highway No. 4 Bypass and the appellant objected to this project inter-alia on the grounds that:

- a) The construction of the road falls in the river bed i.e. within the blue line thereby causing massive environmental, ecological and social damage.
- b) Construction undertaken under the garb of development plan as a draft development plan is banned as not been approved by the State Government.
- c) No permission to carry out such construction has been issued by irrigation Department.
- d) The construction requires permission from Archaeological Department it being the construction touching the Vitthalwadi Temple and its surrounding areas which are declared as

grade-1 heritage building and such permission has not been obtained.

3. After hearing the parties and upon considering the record of the case this Tribunal passed the following order vide the Judgment dated 11th July, 2013

“38. However, keeping in mind the public interest, that by imposition of certain conditions, environmental and ecological interests can be safeguarded, we would permit Respondent No. 1 to complete the project. Accordingly, we impose the following conditions subject to which the project could continue:

- (a) The interim order dated 4th January, 2013 and subsequent interim orders shall stand vacated and Respondent No.1 would be permitted to carry out and complete the project of building only 24 metre wide road from Vitthalwadi to NH-4 bypass as shown in Annexure R-2/ 1 strictly and subject to the conditions stated hereinafter.*
- (b) Respondent No.1 shall make every effort to realign the road to bring it as far as possible closer to and beyond the blue line, right from chainage of 0+400 to 1+750 of Exh. Annexure 2/1. It shall ensure to extend the least part of the project in the river bed/blue line.*
- (c) The road/project shall be constructed on elevated pillars alone in the area that falls within the blue line.*
- (d) We direct Respondent No.1 to remove the debris dumped at the present site and shift the same to the red line by following 1 in 25 years rule.*
- (e) A massive plantation should be undertaken on both sides of the river, also in the no-development zone by Respondent No.1 as well as the State Government of Maharashtra. Adequate protective measures should be undertaken to prevent flooding and submerging of the residential area along the proposed road.*
- (f) The conditions imposed by the Chief Engineer, Irrigation Department, vide his NOC dated 15th April, 2013 shall mutatis mutandis be part of the present directions. The same shall be read in aid and not in derogation to the conditions stated in this order.*
- (g) As already noticed and highlighted during the course of the hearing, a large number of structures have come up at and even inside the blue line of the river Mutha. Respondent No.1 itself has issued notice to some of such structures for demolition. Thus, in the peculiar facts and circumstances of the case, we further direct that Respondent No.1, 3 and 4 shall take appropriate steps against unauthorised constructions, if any, raised on and inside the blue line and pass order of demolition or such*

other order as is permissible in accordance with law. We also direct the said authorities to ensure that no encroachment is permitted and no construction in future is permitted on and inside the blue line of the river Mutha.

39. The imposition of the above conditions is necessary in the interest of environment and ecology. It is better to take precautions at this stage, even at the cost of additional expenses rather than to face floods, disaster, loss of person and property and irreversible damages to ecology and environment. The precautionary principle, which is a part of the law of the land of and is a Constitutional mandate in terms of Article 21, 48A and 51A(g) of the Constitution of India, that require the State to safeguard and protect the environment and wild life of the Country. It is expected of Respondent No.1 and 3 to anticipate and then prevent the causes for environmental degradation. Furthermore, no public interest would suffer by imposition of the above conditions. If the conditions imposed under this order are found to be onerous by the State, particularly, Respondent No.1 then they can even give up the project on river Mutha as an alternative road on the other side of the river has already been constructed to provide the connectivity. In the event that Department decides to give up the road project, it shall be incumbent on it to remove all debris from within the blue line that has been used to create the high rise road segment. It is stated to be a 100 ft. wide road on the left bank of the river Mutha giving connectivity with the same bypass. Thus, in the present case, Respondent No.1 has options and alternatives available to it while ensuring that both the public interest and the environment do not suffer.

40. The application is partly allowed to the above extent and with the directions aforesaid while leaving the parties to bear their own costs.

4. Quoting excerpts from paras 34 to 39 of the Judgment the applicant highlighted its basic command line that in order to allow unrestricted flow of river water all throughout every season the embargo on encroachment/construction on the flood plain of river Mutha within blue line as shown on the plan is necessary.
5. According to the applicant, the Judgment dated 11th July, 2013 has become final and binding on the respondents for the

reason of it not being challenged before the Hon'ble Apex Court nor any review of the said Judgment being sought before this Tribunal by any one of the parties thereafter. The Applicants further contend that not only the Respondents are in knowledge of the Judgment dated 11th July, 2013 passed in the present case but were also reminded of the actions expected from them in compliance of the directions passed in the said Judgment vide communications dated 7th August, 2013 and 17th July, 2013 addressed to the Respondent Nos. 1 & 3; and yet none of the Respondents took any steps/action in performance of their obligations under the said Judgment but in fact had/have started construction of a connecting road giving approach to the road ordered to be re-aligned vide Judgment dated 11th July, 2013 and have thus exhibited their contumacious attitude.

6. Adverting to the Judgment dated 11th July, 2013, the applicant enumerated major instances of its disregard and breach as under:

1. No efforts made to re-align the road falling in the river bed within chainage 0+400 to 1+750 beyond blue line vide Exhibit Annexure 2/1.
2. Failure to remove the debris dumped within blue line and shift the same to the Red line.
3. Failure to undertake a massive afforestation/plantation programme.
4. Failure to implement the conditions imposed by the Chief Engineer, Irrigation Department i.e. reservation of additional area beyond flood plain and modification of the current development plan, removal of the Silt from the river bed and

afforestation programme to be undertaken by the PMC in the Green Belt to prevent further erosion and siltation.

To sum up, according to the applicants, there has been failure to comply with the directions at para 38 (b) (d) (e) and (f) of the Judgment.

7. The Respondents were duly served with the present application and they were granted time to file their responses.

The record reveals that the Respondent No. 1 in response to the present Application filed affidavits of Mr. Vivek Madhukar Kharwadkar, Additional City Engineer, Pune Municipal Corporation dated 6th March, 2014, 14th May, 2014 and 16th August, 2014 along with documents in support of the affidavits. The Respondent No. 2 responded through the Affidavit of Mr. Avinash Surve, Chief Engineer, Water Resources Department, Government of Maharashtra, dated 8th March, 2014. The Respondent No. 3 responded to the Application with an affidavit dated 4th March, 2014 of Mr. Mohekar its Regional Officer. Rejoinders dated 22/03/2014 and 27/08/2014 to the replies were filed by the applicants.

8. We have heard the parties at length and gone through the pleadings as well as the documents tendered on the record by the respective parties.

9. Evidently it is the Respondent No.1 who is actively engaged in the project of construction of the road in question. The Respondent No.2 has distanced itself from the activity undertaken at the site in question by making a statement in its reply that the Water Resources Department had already laid the conditions for issuance of NOC for construction of

river side road from Vitthalwadi to National Highway No. 4 bypass to the Pune Municipal Corporation; and now it is the responsibility of Pune Municipal Corporation, Respondent No. 1 to obey the orders issued by the Tribunal.

10. The Respondent No. 3 acknowledged that there were directions to the Respondents to take appropriate steps against the unauthorised construction, if any, constructed on and inside the blue line and to pass orders of demolition or such orders as permissible in accordance with law vide Judgment dated 11th July, 2013. The Respondent No.3 also acknowledged the facts of directions to the Respondents to ensure that no encroachment/construction in future was to be permitted on or inside the blue line of river Mutha. In this context the Respondent No. 3 averred that mandate under the law to Respondent Board was limited to the implementation of the provisions of the Environment (Protection) Act, 1986 and for the prevention and control of air and water pollution; and as such was dealing with matters concerning the grant of consent to establish and/or consent to operate the projects/industry, operations or processes and as such the activity complained of has not been within the business of the Board. However, the Respondent No.3 further added that on the inspection of the site on 28-02-2014, with maximum road was found completed and there was no construction activity found in bed of river Mutha during the visit except the minor civil work in progress. Besides the copy of the visit report

dated 28-02-2013 the Respondent No. 3 placed on record a copy of the letter dated 28-02-2014 addressed to the Commissioner Pune Municipal Corporation, Pune by its Regional Officer. It appears to be a reminder to the Pune Municipal Corporation to comply with the directions of the NGT-vide Judgment dated 11th July, 2013 and for taking action against unauthorised construction raised inside the blue line by issuing orders of demolition.

11. Learned Counsel for the Applicant submitted that the approach of this Tribunal while passing the Judgment dated 11th July, 2013 was to allow the free flow of the water in the river bed, particularly, in the area falling within the blue line, and for that purpose the Tribunal ordered the re-alignment of the road as far as possible closer and beyond the blue line right from chainage 0+400 to 1+750 as shown in Exhibit Annexure 2/1 and further directed the construction to be on elevated pillars alone in the area falling within blue line. Instead of doing this Learned Counsel for the Applicant submitted, the Respondent No.1 is bent upon keeping the road lying within the blue line as it is with inconsequential changes as suggested therein and this is clearly contumacious. He argued that it is now not open to any of the parties to tinker with the Judgment, which has reached finality and is binding on the parties, as it is out of the purview of the present Application dealing only with the contempt/disobedience of Judgment of this Tribunal. The Applicants questioned the

propriety as well as efficacy of options offered with the reply dated 16th August, 2013 vide rejoinder dated 27th August, 2014. The Applicants pointed out that all these options were depicted without giving detailed calculations of the storm water collected in particular basin at the particular point at peak rainfall and they completely defy the basic laws of nature and merely project a picture convenient to Respondent No. 1; and are bound to result in narrowing the river passage thereby causing flooding in the area.

12. Learned Counsel appearing on behalf of Respondent No. 1 Pune Municipal Corporation submitted that 92 per cent of the work involving construction of retaining wall between chainage 0+450 to 1+750 was completed, and back filling and development of crust for the road was in progress till the time Stay on the work of construction of the road was imposed by the Tribunal and Rs. 15.34cr were spent on the said works before January, 2013; and it is not physically possible to re-align the road beyond the earlier marked blue line and the total expenses made on the construction would go waste. He further submitted, quoting the extracts from para 37 of the Judgment dated 11-07-2013, that the NGT has not ordered any demolition of the already constructed part of the road and as such it would be prudent to allow the completion of the balance part of the work i.e. back filling and road crust development in the said stretch and finishing of the road with

works like footpath, electrical work etc., so as to facilitate its opening for its intended use.

13. Learned Counsel appearing for the Respondent No. 1 submitted that as per the discharge calculation for blue and red line, the cross section area of the river in the given stretch is sufficient to accommodate the flood discharge; and due to construction of concrete retaining walls the river flow is channelized with its smooth surfaces increasing the discharge velocity of the water. Three options purportedly for managing the storm water vis. a vis. river flow as well as for the prevention of the possibility of locality getting inundated were also placed before us.

14. Patently, the effort of the Respondent No. 1 is to persuade us to have re-look at the directions passed vide Judgment dated 11th July, 2013 on the ground of feasibility in light of the options furnished now and likely waste of public funds on execution of the said directions. Significantly, the Respondent No.1 or for that purpose any of the Respondents have not challenged the Judgment dated 11th July, 2013 nor any Review of the said Judgment is sought before us. The Judgment has thus attained the finality and is binding on all parties. Needless to mention that what we are dealing with is an application for coercive action compelling the Respondents to execute the directions in the said Judgment and for penalising the Respondents for their contumacious behaviour. Keeping this in mind we are obliged to examine the Judgment

dated 11th July, 2013 and to ascertain obligations of the parties thereunder.

15. Pertinently, there is clear mention of the stage at which the construction in question was at the time it was halted due to stay in the parent application. At para No.5 of the Judgment, we have noticed that it was the case of the Respondent No. 4 Maharashtra Pollution Control Board in O.A 2/2013 that its field officer had visited the site in question on 27th January, 2013 and had observed that the construction of the road was in progress and nearly 40 percent of the work had been completed, but in view of the orders and the fact that permission of Irrigation Department had not been obtained, the construction work had been stopped. We had also noticed that neither permission has been granted nor any NoC issued by the Chief Engineer Irrigation Department, Government of Maharashtra in favour of the Respondent No. 1 Corporation for carrying out the project. We had also noticed in course of hearing of the said application on 14th February, 2013 that the applicant had placed on record letter dated 15th May, 2012 issued by the Assistant Executive Engineer, Pune Irrigation Circle, Pune stating that no permission from the Irrigation Department for the said project had been obtained, and the Chief Engineer, Irrigation Department who was present before us on that date, confirmed the said fact. The record reveals that on 4th January, 2013 we had injuncted the respondents in Application No. 2/2013 from putting any debris in or

raising construction on the river bed of river Mutha. The Respondents were duly served with the Notice of the application as well as the interim order passed. There has been no change in the interim order till the final order vide Judgment dated 11th July, 2013 was passed.

16. The Respondent No. 1 in clear terms revealed in his reply dated 11th February, 2013 that the Respondent No. 2 JNNURM was not funding the said project and the project was being operated through Pune Municipal Corporation through its own funding. This exhaustive reply invited the attention of Tribunal to various pros and cons of the project and ended with a prayer to allow the work of construction in question as delay in the work was resulting in huge loss to public account. According to the Respondent No.1, in deference to the interim orders the work of construction of the said project was halted. It therefore does not lie in the mouth of Respondent No. 1 now to say that 92 per cent of the work had/has been completed. If that is the case it is clear admission of the fact by necessary implication that there has been violation of the orders of this Tribunal and the Respondent No. 1 the Pune Municipal Corporation and its officials executing the work are responsible for it.

17. As regards the encroachments on the river bed, the consequent impediment to the flow of the water during normal times and during floods has its contribution to the inundation in the area. All the pros and cons of the construction in

question were gone through by this Tribunal and the Judgment was delivered.

18. Para 37 of the Judgment is reproduced herein below in order to reveal how this Tribunal had arrived at the conclusion to direct the construction of road in question on elevated pillars and for what purpose.

“37. These, amongst others, are a few disadvantages of the project in question besides there being logistic deficiencies like lack of permission or grant of improper permission. The need for the project is sought to be justified on the ground of larger public interest i.e. providing an alternative route to the commuters as well as to reduce vehicular pollution. It is expected to solve public transportation problem of about 5 lakh citizens who rely on the Sinhagad Road, as their main connectivity by the arterial road to the city. It is likely to reduce travel time as well as pollution level. On the contrary, the applicant’s main contention is that besides causing degradation of the environment, the intention of Respondent No.1 is to help the property grabbers unauthorisedly by reclaiming the land, falling even within the red/blue line and to give them undue advantage. In fact, the real intention of the respondent is to construct the road by compacting and earth filling and to facilitate selected private land owners to reclaim the river bed up to the road by converting no development zone inside the flood plain into residential zone. Of course, this allegation has been refuted by Respondent No.1. It is also argued on behalf of Respondent No.1 that raising construction on elevated pillars would prove much more expensive than its construction by compacting and earth filling. This argument does not impress us. If the Corporation-authorities have taken a

decision to take up the project in public interest, then it must also bear its cost and higher cost, if necessary and also unavoidable in the larger environmental interest. The authorities cannot be permitted to cause irreversible damage to the environment and ecology of the area and even expose the inhabitants of the vicinity to undue flood risks on the ground that the project is being taken up in public interest merely for providing an alternative road and for reducing the vehicular pollution. Firstly, Respondent No.1 has not placed any scientific data or analysis on record before us in support of its contention, even for the sake of arguments, that there would be reduction in environmental pollution and great convenience will accrue to the public by reduction in the travel time. Applying the principle of proportionality, even if an alternative route is provided, still the balance would tilt in favour of environment and we would still require Respondent No.1 to carry out the project subject to such conditions which would strive equitable balance between the development on the one hand and the environment on the other. If Respondent No.1 is of the firm view, and particularly in view of the NOC dated 15th April, 2013 having been issued by Irrigation Department, to carry out the project, then it has to be subject to such stringent conditions as would protect the environment and ecology as well as greater public interest by preventing floods etc. Keeping in view the above rival contentions and the facts of the present case, normally, we would have accepted the petition and prohibited carrying out the project any further with the specific demolition of the part of the road. The road can be raised by elevated pillars in the area that will fall within the blue line or inside the blue line. The construction of elevated pillars at that stage would neither obstruct the flow of the river nor narrow the flood

plain. Furthermore, it will also help the storm or drain water to freely join the river during larger part of the area.”

The Learned Counsel appearing for the applicant had chosen to refer to only few lines gone into making of such thinking without referring to its entire material contents.

19. The Respondent No.1 Pune Municipal Corporation was permitted to complete the project on conditions-which were or have been designed to provide safeguards to environmental and ecological interest. Learned Counsel appearing on behalf of the Respondent No.1 Pune Municipal Corporation has harped on the absence of direction to demolish the existing structure falling within blue line. This is merely intellectual acrobatics to run away from the very meaning of the directions given in the said Judgment and try to avoid obligations thereunder. Though, we have been conservative in use of the word but the directions at para 38(b) convey complete sense of how things ordered were to take shape. This direction requires the Respondent No.1 to make every effort to re-align the road to bring as far as possible closer to and beyond the blue line road from chainage 0+400 to 1+750 at Exhibit Annexure- 2/1 so as to ensure the extension of the least part of the project in the riverbed-Mutha or blue line. Word “Re-align” used in the direction is pregnant with meaning. If one refers to the Oxford Dictionary of English (3rd Edition, 2010) published by Oxford University one can find its meaning as “to change or restore to a different position or state”. Thus the

realignment of the road would necessarily involve demolition of certain things and construction of new thing. Its meaning is made more pronounce with directions c and d of para 38. These directions enjoin the Respondent No. 1 to construct the road/project falling within the blue line on elevated pillars and to remove the debris from the present site to the red line. Word “Debris” means pieces of rubbish or remains which are produce of break down. In the instant case, the demolition that would take place as a result of re-alignment of the road is bound to generate debris, which need to be shifted from the site within blue line to the red line.

20. We had also directed the Respondent No.1 to undertake the demolition of the structures which have come up at and inside the blue line of river Mutha vide direction (g) at para 38. It was also noticed that the Respondent No.1 had issued notice to some of the structures lying within the blue line of river Mutha for demolition. We, therefore, cannot have two standards one for the common man and other for the Respondent No.1 Pune Municipal Corporation. Anything, particularly the one which impedes the free flow of river water and is an invitation to a natural disaster, that falls within the blue line of river Mutha must go; and that was the intention of our Judgment.

21. The Applicant has invoked the Provisions of the Section 25 of the NGT Act, 2010. Section 25 of the NGT Act, 2010

speaks about the execution of the award or order or decision of the Tribunal in following words:

25. Execution of award or order or decision of

Tribunal- (1) *An award or order or decision of the Tribunal under this Act shall be executable by the Tribunal as a decree of a civil court, and of r this purpose, the Tribunal shall have all the powers of a civil court.*

(2) *Notwithstanding anything contained in sub-section(1), the Tribunal may transmit any order or award made by it to a civil court having local jurisdiction and such civil court shall execute the order or award as if it were a decree made by that court.*

(3) *Where the person responsible, for death of, or injury to any person or damage to any property and environment, against whom the award or order is made by the Tribunal, fails to make the payment or deposit the amount as directed by the Tribunal within the period so specified in the award or order, such amount, without prejudice to the filing of complaint for prosecution for an offence under this Act or any other law for the time being in force, shall be recoverable from the aforesaid person as arrears of land revenue or of public demand.*

Thus, the Tribunal either can exercise the powers of the civil court for procuring the execution of its orders as can be done for execution of the decree of a civil court or can transmit its order to a civil court having local jurisdiction for its execution as if it were a decree made by that court. In peculiar nature of the order/Judgment passed by us, it would be prudent to procure the execution of the said Judgment or order at our end by exercising the powers of a civil court in conjunction with the Provisions of NGT Act, 2010.

22. Perusal of the directions the compliance of which is to be procured would reveal that they are of the nature of mandatory injunction the enforcement of which can be procured by resorting to the provisions of Order XXI Rule 32 of the Code of Civil Procedure 1908. Order XXI Rule 32 lays down that where the party against whom decree for the injunction has been passed, has had opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by his detention in the civil prison or by the attachment, of his property, or by both. In case of the Corporation it permits enforcement of the decree by attachment of the property of the Corporation or with the leave of the court, by the detention of the Director or other Principal Officer thereof-in the instant case the Commissioner-or by both attachment and detention. There is also other mode of execution prescribed under Order XXI Rule 32(5) in lieu of or in addition to any of the processes mention therein, to procure the execution of the mandatory injunction. It enables the executing Court to appoint some other person to do the act required to be done at the cost of the Judgment-debtor- the respondent no. 1- Corporation herein.

23. It is correct that while exercising the powers of the Civil Court for procuring the execution of our Orders we cannot go behind the directions passed in the Judgment and question its merits but we are obliged to pass orders on application of the Principles of sustainable development, the precautionary

principle and the polluter pays principle as enunciated in Section 20 of the NGT Act, 2010. On one hand there is fact situation that 92% of the work of construction of the road at the cost of Rs.15.34 crores drawn from public exchequer has been completed within blue line and on the other hand there is grave risk of impediment to the free flow of the river water which is an open invitation to natural calamities occasioned by un-precedented rainfall like those occurred in the States of Uttarakhand and Jammu & Kashmir of late. To our mind a balanced resolution of the problem of execution of our order can be achieved by giving such directions as may be necessary or expedient to give effect to our order and essentially to secure the ends of justice keeping in mind the said principles as per Rule 24 of the National Green Tribunal (Practices and Procedure) Rules, 2011. Needless to state that the discretion in matter of such kind remains un-fettered in view of the Provisions of Section 19 of the NGT Act, 2010, which frees the Tribunal from the shackles of Code of Civil Procedures and allows it to regulate its own procedure.

24. On this backdrop we are obliged to consider the options which in the opinion of the Respondent No. 1 are supposed to provide solution to safe discharge of peak flood in the locality i.e. stretch under consideration between chainage 0+400 to 1+750 beyond blue line vide Exhibit Annexure 2/1 without causing additional submergence. It would be pertinent to note that applicants examined the options suggested by the

Respondent No. 1 and have not only offered reply to these options but have also graphically illustrated the same; for the sake of clarity we reproduce the options together with applicants contention on technical viability of each one.

“OPTION NO.1

This option proposes construction of 2x2x1.5 M drain along the riverbed road on right bank. This said drain is expected to carry the storm water from right bank into the river.

CONCLUSIONS:

- I. Steeps rise in flood levels due to 25.89% reduction in carrying capacity.
- II. Inundation on right bank due to obstruction of the road to natural flow of storm water and flood water entering on the right bank flood plains.

OPTION NO. 2

This option proposes 2 box type culverts with gates openable only on one side i.e. towards flowing river to allow flow of storm water from right bank into the river. IN case of flood in the river, gates are expected to close under the pressure of flood water.

CONCLUSIONS:

- I. Steep rise in flood levels due to 25.89% reduction in carrying capacity.
- II. Inundation on right bank due to obstruction of the road to the natural flow of storm water. The storm water shall not flow into the river because the gates shall be closed due to the pressure of flood water.

OPTION NO. 3

This option suggests installing 1000 mm dia. pipes at two locations at 45° to the flow of river. Respondent No. 1 imagines that suction force shall be generated at the riverside end of the pipes which will suck the storm water from right bank. This is the most childish, ridiculous and bizarre proposal filed by

Respondent No. 1. No calculations with respect to flood water velocity required to generate the suction are given. It is practically impossible to create suction in 1000 mm dia. pipe just with the flow of flood water. In fact hydraulic pressure shall be generated in the pipes pushing the storm water back. No calculations with respect to the quantity of storm water collected per minute have been worked out. No calculation with respect to the quantity of water required to be sucked with the so called suction have been worked out.

CONCLUSION OF ALL 3 OPTIONS:

- I. Steep rise in flood levels due to 25.89% reduction in carrying capacity
 - II. Inundation on right bank due to obstruction of the road to natural flow of storm water and/or one way gates closed due to pressure of flood water. And flood water from river entering on the right bank flood plains.”
25. We at this stage like to remind the Municipal Corporation that an option was made available to give up the project on river Mutha, if for any reason the conditions imposed thereunder were found to be onerous, and also of the fact that the exceptions taken to the options by the applicants were not replied except raising a cry about the involvement of the public money and absence of explicit directions to demolish the work already completed. We are not impressed with the cry raised by the Municipal Corporation. However, on considering the involvement of public money and the powers we are vested with to pass such directions as are necessary or expedient to secure ends of justice, particularly, keeping in view the principles of sustainable development and precautionary

principle, we made attempts to search for a solution which would offer:

- a. Road stretch between the chainage 0+400 to 1+750 beyond blue line vide Exhibit Annexure 2/1 with **sufficient number of box culvert openings** all along such road so as to provide the reduction in original cross sectional area to the extent of around 26 percent as compared to the cross sectional area after the construction of road which would provide maximum free flow of river water without posing any danger of flooding.
- b. The strength of the road on embankment with such box culverts is not compromised and is capable of bearing the peak traffic load envisaged.

For this purpose we withheld the final verdict and gave opportunity to the Respondent No.1- Pune Municipal Corporation to place before us its sworn word offering such technically viable solution, particularly, with reference to sufficient number of box culvert openings with automatic gate flaps permitting storm water to flow freely into the river without any obstruction and at the same time achieve the maximum free flow of river water without posing any danger of flooding.

26. Ultimately, an additional supplementary affidavit dated 3rd November, 2014 was filed by the Respondent No. 1 Corporation before us on 11th November, 2014. The respondent no. 1 undertook not to permit in future any building construction activities within the blue line and to initiate forthwith the process of minor modifications DC Regulations under Section 37(1) of MRTP Act, 1966 to prohibit any such further building construction. The respondent no.1 further stated that the construction of the minor bridge and

retaining wall along the embankment has prevented flooding and erosion due to flood water in low lying residential area vide photograph at Exhibit No. 2. According to the respondent No.1 the combination of retaining wall and proposed culverts shall ensure to the inhabitants in the area a protection from inundation both resulting from release of flood water and run off of storm water. As regards the proposed culverts, the supplementary affidavit merely talks about discussion with the experts and the movement of proposals from Executive Engineer, Irrigation Department Khadakwasla, Pune to Superintendent Engineer, CDO Irrigation Department, Nasik and onward to the Superintending Engineer, Koyana Design Circle, Pune and nothing more.

27. A fact, therefore, remains that there is hardly any technical merit in the proposal of constructing box culverts to achieve dual purpose of preventing inundation in the residential area and at the same time allow maximum free flow of river Mutha. Hollowness of the assertions made by the Respondent No. 1 Corporation is also evident from the photograph taken by the applicant in 2011 and referred to in the reply dated 17th November, 2014 filed by the applicant no. 1 Sarang Yadwakhari. More over a fact cannot be over-looked that the river bed road which is obstructing the flow of river is situated only 7 km downstream of group of 4 dams having storage of 31 TMC and discharge capacity of 1,28,899 Cu. Sec. It would, therefore, be a grave folly to compromise public

safety and environmental protection for public funds which have been mis-utilised contrary to the mandate of law for construction within blue line on the river bed.

28. We are therefore left with no alternative but to pass following directions in execution of our directions vide Judgment dated 11th July, 2013.

1. The Respondent No.1 Pune Municipal Corporation shall remove all the debris dumped including embankments constructed at the present site particularly, within blue line right from chainage from 0+400 to 1+750 of Exhibit Annexure 2/1 and shift the same to red line by following 1 in 25 year Rule, within three months beginning of the work being made for such removal within 15 days from the date of this order.
2. The Chief Engineer, PWD of the state of Maharashtra is appointed to do the work of removal of debris dumped including embankment constructed as referred to in clause 1 above on failure of the Respondent No.1, Pune Municipal Corporation to do so as directed in execution of the directions passed in Judgment dated 11th July, 2013, and such work shall be carried out by the PWD under the direct supervision of its Chief Engineer, who shall be held personally liable for conduct of said execution.
3. On failure of the Respondent No. 1- Corporation to act the Public Works Department of the State of Maharashtra shall carry out the said work of removal referred to herein above in execution of the directions passed in Judgement dated 11th July, 2013 under the direct supervision of Chief Engineer of the Department, who shall be held personally responsible for conduct of the said execution.
4. Cost and expenses incurred shall be recovered from the respondent no. 1- Pune Municipal Corporation and shall be defrayed from their account accordingly.

5. We hope and trust that these directions shall be carried out in letter and spirit in the interest of both the environment and public at large. We, therefore, do not see any reason to dwell on the issue of contempt. However we may like to warn all concerned that the penal consequences under NGT Act, 2010 shall follow in the event of the failure to comply with the directions of this Tribunal, and the applicant, for that matter anyone, can initiate proceedings as per section 30 of the NGT Act, 2010.

6. M.A. No 52 of 2014 is disposed of accordingly.

We may note with profound grief that one of the Hon'ble Member of this Bench Hon'ble Dr. R.C. Trivedi who heard this Application along with us, parted company for heavenly abode leaving us to pen this Judgment and accordingly, we have done so.

....., CP
(Swatanter Kumar)

....., JM
(U.D. Salvi)

....., EM
(Dr. D.K. Agrawal)

....., EM
(Prof. A.R. Yousuf)

NGT