

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

Original Application No. 233 of 2015

In the matter of:

1. Ratneshwar Prasad Singh
S/o Late Sh. Nawal Kishor Singh
At-“Maa Gyatri Niwas”
Babutola
Banka- 813102

..... Applicant

Versus

1. Banka Municipality, Banka
Bihar- 813102
Through The Chairperson
2. Sub-Divisional Magistrate
District Banka, Bihar- 813102
3. District Magistrate
District H.Q. Banka
Bihar- 813102

.....Respondents

Counsel for appellant:

Mr. Praveen Agarawal and Mr. Rajesh
Ranjan Singh, Advocates for appellant

Counsel for Respondents:

Mr. Anup Kumar Sinha, Adv. for respondent
nos. 1 to 3

Present:

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Mr. Ranjan Chatterjee (Expert Member)

JUDGMENT

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

Reserved on: 14th March, 2016

Pronounced on: 9th May, 2016

1. Aggrieved by the construction of open drain as part of the sewerage system (Pukka Nala) abutting the property situate at ward no. 15 & 16, Babutola within the limits of Banka Municipality, Bihar, the applicant is seeking directions against the respondent no. 1-Banka Municipality, respondent no. 2-Sub-Divisional Magistrate, District Banka and respondent no. 3- District Magistrate, Banka, to remove the said construction and re-construct a proper sewerage system at such level as to allow the discharge of sewage from the houses of the local residents properly.
2. Briefly, the applicant contends that the Municipality has constructed the drain (Pukka Nala) negligently without carrying out proper survey of the area and planning pursuant to such survey; and this has created a situation, whereby the sewage discharged from the houses in the locality fails to flow in the drain it being constructed at higher level and thereby causes inundation of the Babutola locality with sewage and dirty water leading to health hazards.
3. The respondents responded to the notice issued and have contested the present application. The issue, as to whether any substantial question relating to environment and arising out of the implementation of the enactments specified under

Schedule I of the NGT Act, 2010, arose in the present case. After hearing the parties at some length we tried to explore a solution to the human problem involved in the present case not by answering the germane issue but by bringing about some settlement between the parties.

4. Considering the facts and circumstances in the present case we realised that the pragmatic solution to the problem was in getting the suitable gradient for un-obstructed flow of sewerage from the house of the applicant to the municipal drain flowing across the road; and this could be achieved on:

1. *Finding out an appropriate point for connection of the house drain to the municipal drain downstream.*
2. *The applicant putting up a drainage plan drawn for sanction to necessary construction through an architect with the municipality,*
3. *The municipality granting necessary construction permission thereupon in accordance with law.*
4. *Finally, the construction of drain in accordance with the sanctioned plan at the cost of the applicant/property owner.*

5. We asked the applicant to consider this solution. The respondent Municipal Corporation fairly agreed to implement the solution, as suggested. However, the applicant was not in favour of this solution vide order dated 11th December, 2015.

6. We have heard the parties. Perused the record and the written submissions furnished by them.

7. Learned Counsel appearing on behalf of the applicant tried to persuade us to subscribe to the view that the domestic sewage/sludge generated through the houses is “Municipal Solid Waste” and it is the obligation of the Municipality under Municipal Solid Waste Rules, 2000 to collect such municipal

solid waste and transport them through specially designed transport system/vehicle for its disposal. With reference to definition under Rule 3 (xiv), (xv) (xxiv) and Schedule II, of the Municipal Solid Wastes (Management and Handling) Rules, 2000 he contended that the Banka Municipal Corporation is under obligation to construct such sewage line which would allow sewage from his house and other houses in the locality to flow in the open drain without any difficulty.

8. In his written submission dated 16th March, 2016 he concisely submitted that the respondent no. 1- Banka Municipality has violated the provision of Rule 4 of the Municipal Solid Waste (Management and Handling) Rules, 2000 read with Schedule II Serial No. 4 made in exercise of the powers conferred by Section 3, 6 & 25 of the Environment (Protection) Act, 1986 as well as Section 25 read with Section 2 (e), (g) and (gg) of the Water (Prevention and Control of Pollution) Act, 1974. He further submitted that Section 33 of the National Green Tribunal Act, 2010 gave the said enactment over riding effect in relation to any other law and as such this Tribunal was not barred by Local Law such as Bihar Municipal Act, 2007. According to him, this Tribunal has power and jurisdiction to adjudicate in the present case, wherein the environmental issue is involved, either substantially or circumstantially, as every individual has right to healthy environment under Article 21 of the Constitution of India, and provide remedy to the victim of pollution and other environmental damage.

9. The respondents replied to the submissions made on behalf of the applicant and filed their written submission dated 16th March, 2016. According to the Learned Counsel appearing for the respondent, the present controversy over the construction of the drain involves no such substantial question relating to environment including enforcement of legal right relating to environment which would arise out of implementation of any of the enactments specified in Schedule I of the NGT Act, 2010. According to him, controversy gave rise to the issue arising out of the Bihar Municipality Act, 2007 and the domestic sewage/sludge cannot be equated with Municipal Solid Waste as the distinction between the two is evident from the definitions of Municipal Solid Waste under the Municipal Solid Waste Rules, 2000 and sewage effluent under Water (Prevention and Control of Pollution) Act, 1974.

10. It is true that the Municipal Solid waste (Management and Handling) Rules, 2000 apply to every Municipal Authority responsible for collection, segregation, storage, transportation, processing and disposal of MSW vide Rule 2 therein. Rule 4 therein holds every Municipal Authority responsible for implementation of the provisions of the said rules within its territorial area, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of MSW and as such the respondent no. 1- Banka Municipality is no exception to it. Entry 1 in Schedule II under the said Rules requires the Municipality to organize

house to house collection of MSW. Entry 4 under the said Rules, as submitted by the Learned Counsel appearing for the applicant, obliges the Municipal Authority to use covered vehicles for transportation of the waste i.e. the MSW.

11. All said and done, a question would arise whether domestic sewage/sludge can be equated with the Municipal Solid Waste and the drainage system can be regarded as vehicle use for transportation of such waste. Rule III, XV defines Municipal Solid Waste as under:

(xv) "municipal solid waste" includes commercial and residential wastes generated in a municipal or notified areas in either solid or semi-solid form excluding industrial hazardous wastes but including treated bio-medical wastes;

12. Learned Counsel appearing for the applicant submitted that the sewage matter flowing from the house of the applicant can be solid or semi-solid residential waste and the municipal Authority is under obligation to transport this sewage through specially designed transport system like sewerage line/drainage preferably a covered one as per entry 4 in Schedule II under the said Rules. He invited our attention to definition of transportation appearing in Rule 3 (xxiv) of the said Rules which is reproduced as under:

(xxiv) "Transportation" means conveyance of municipal solid wastes from place to place hygienically through specially designed transport system so as to prevent foul odour, littering, unsightly conditions and accessibility to vectors"

13. Thus, Municipal Solid Waste is mainly characterised by solid or semi-solid form. Going by simple dictionary

meaning of the terms solid and semi-solid, it is not difficult to see with clarity what municipal solid waste is. Oxford Dictionary of English, Third Edition gives meaning of the terms as follows:

“Solid”- firm and stable in shape; not liquid or fluid

A substance or object i.e. solid rather than liquid or fluid.

Semi-Solid- Highly viscous.”

Obviously, the waste (commercial and residential waste including treated bio-medical waste but excluding industrial hazardous waste) that is not liquid or fluid or is highly viscous i.e. offering high resistance to the smooth flow as opposed to smooth flowing can only be regarded as Municipal Solid Waste. This meaning can further be better understood from the dictionary meaning of the terms “liquid and fluid” as given in Oxford Dictionary of English, Third Edition as follows:

“Liquid- A substance that flows freely but is of constant volume, having consistency like that of water and oil

Fluid- A substance that has no fixed shape and yields easily to external pressure; a gas or especially a liquid. *adjective* of a substance able to flow easily word as an adjective originates from Late Middle English from *fluere* ‘to flow’.

Essentially the physical characteristic, inability to flow easily or smoothly, differentiates the MSW from sewage which flows by gravity through sewers.

14. In our considered opinion, therefore, the difference or distinction between the Municipal Solid Waste and Domestic Sewage is manifest from the manner it is carried/moved for

treatment and disposal i.e. the sewage/sludge moves through sewerage lines with the force of gravity, propelled by flushing of water and MSW is collected and carried through the Transport System for its segregation, storage, processing and disposal as per its Management regime prescribed under Schedule II to the MSW Rules, 2000.

15. Section 2 (g), (g)(g) defines sewage effluent and sewer in following words:

2 (g) "Sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

(gg) "Sewer" means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;

This clearly demonstrates that sewage is what flows either in open or closed sewer which is merely a conduit or channel and not in "vehicle" carrying sewage. Sewer is thus an apparatus to facilitate movement of sewage effluent by gravity. Whereas the term "vehicle" means a contraption especially self propelled/powered which actually carries things/substance therein from one place to another and is part of management of MSW prescribed under Schedule II of MSW Rules, 2000. If sewage from household is to be considered as MSW its management would entail its handling during collection, segregation, storage, transportation, processing and disposal as envisaged in the said Schedule. As a corollary thereto, a much deprecated and humanly demeaning practice of manual scavenging of faecal matter would have to become

indispensable component of MSW management. This is not intended and meant by the Statute.

Municipal Solid waste is thus a distinct substance vis-a-vis. the domestic sewage/sludge.

16. Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 spells out restrictions on the new outlets and new discharges and its regulations in following terms:

25. Restrictions on new outlets and new discharges- (1)

Subject to the provisions of this section, no person shall, without the previous consent of the State Board-

(a) establish or take any steps to establish any industry, operations or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

provided that a person in the process of taking any steps to establish any industry, operations or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may-

a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being-

(i) in case referred to in clause (a) and (b) of sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

- (ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and
- (iii) that the consent will be valid only for such period as may be specified in the order.
- and any such conditions imposed shall be binding on any person establish or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or
- b) refuse such consent for reasons to be recorded in writing.
- (5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or an treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on as application for its consent in respect of such establishment, such outlet or discharge.
- (6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.
- (7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.
- (8) For the purposes of this Section and Section 27 and 30-
- (a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;
- (b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so

previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

17. Closer scrutiny of Section 25 of the Water Act, 1974 reveals that the State Boards regulate establishing of any industry, operations or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land; or bringing in use any new or altered outlet for the discharge of sewage. Essentially therefore, the treatment of sewage or trade effluent and its ultimate discharge is a subject matter of Regulation by State Boards. Sub-Section 2 of Section 25 of the Water Act, 1974 further makes it obligatory upon the persons seeking such consent to make an application in such form and with such particulars along with fee as may be prescribed. Perusal of the Rules framed under the Water Act, 1974 i.e. The Water (Prevention and Control of Pollution) Rules 1975 and Form-XIII prescribed thereunder for seeking consent under Section 25 of the Water Act, 1974 clearly reveals that what is sought to be regulated is not the construction of the sewer or drains meant for carrying sewage/sludge but the effluent quantity, quality and mode of its discharge/disposal. Para- 12 of Form XIII quoted hereunder of the application gives a material dimension of the subject matter.

12. (a) State daily maximum quantity of effluents and mode of disposal (sewer or drains or river.)

Also attach analysis report of the effluents. Type of effluent quantity in kilolitres, mode of disposal.

(i) Domestic.

(ii) *Industrial.*

(a) *Quality of effluent currently being discharged or expected to be discharged.*

(b) *What monitoring arrangement is currently there or proposed.*

18. Thus Water Act, 1974 is designed to regulate quantity and quality of discharge and its mode of disposal. Para- 13, 14, 15 and 16 of the Form XIII quoted hereunder are pointer to the regulatory regime envisaged under the Water Act.

13. State whether you have any treatment plant for industrial, domestic or combined effluents.

Yes/No

If yes, attach a description of the process of treatment in brief. Attach information on the quality of treated effluent vis-à-vis the standards.

14. State details of solid wastes generated in the process or during waste treatment.

Description Quantity Method of collection Method of disposal

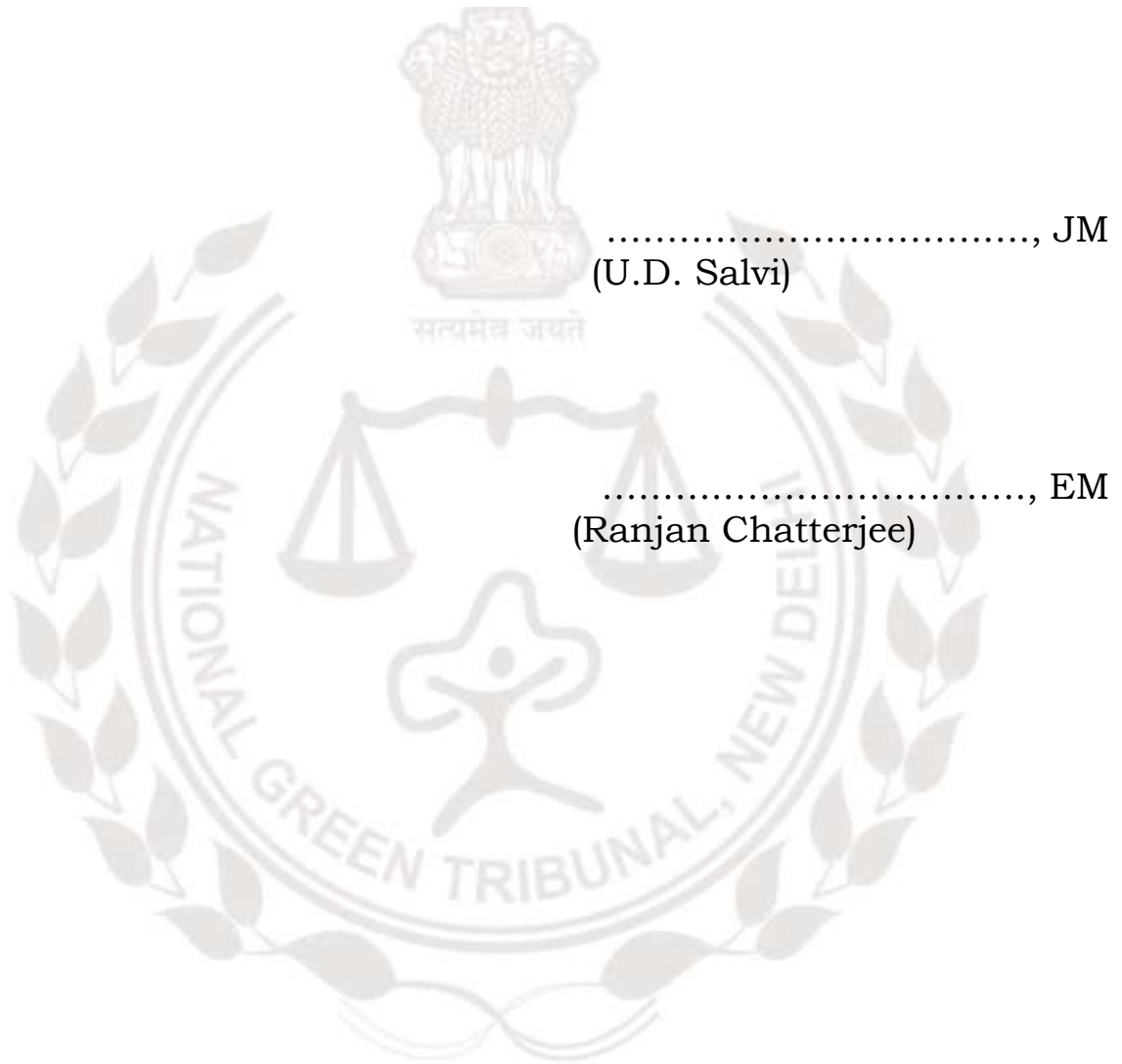
15. I/we further declare that the information furnished above is correct to the best of my/our knowledge.

16. I/we hereby submit that in case of change either of the point of discharge or the quantity of discharge or its quality, a fresh application for CONSENT shall be made and until such CONSENT is granted no change shall be made.

19. What the applicant is urging in the present case is change in the construction of open drain meant to carry the domestic sewage from locality in question. This is not what the provision under Environment (Protection) Act, 1986 and the Water Act, 1974 both are designed to regulate. Learned Counsel appearing on behalf of the respondent- Municipal Corporation rightly pointed out that this field is governed by the Bihar Municipality Act, 2007 and the remedy for the applicant lies there. We therefore, do not see any issue or question that

would arise out of the implementation of any of the enactments specified in Schedule I of the NGT Act, 2010.

20. In our considered view this application therefore deserves to be dismissed with no order as to cost. O.A. No. 233/2015 stands dismissed accordingly.



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

....., EM
(Ranjan Chatterjee)

NGT