

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

Original Application No. 231/2014

Doaba Paryavaran Samiti

Applicant(s)

Versus

State of U.P & Ors.

Respondent(s)

Date of hearing: 20.09.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Gaurav Kr. Bansal, Advocate

For Respondent(s): Mr. Pradeep Misra, Mr. Daleep Dhyani,
Advocates for UPPCB
Ms. Deep Shikha Bharti, Advocate for State of
U.P
Mr. I.K Kapila, Advocate for U.P Jal Nigam
Mr. Raj Kumar, Advocate for CPCB

ORDER

1. The issue for consideration is that remedial measures for the industrial or other pollution in Kali Nadi, Krishni and Hindon Rivers resulting in diseases and deaths of inhabitants of the area. The Tribunal considered the matter in the light of site inspection by team of experts vide order dated 08.8.2018. After referring to certain studies, it was noted as follows:

“That more than 71 persons died from cancer and more than 47 persons are bed ridden in the Gagnoli village in Baghpat District in Uttar Pradesh. More than 1000 people are affected by diseases in the area. Inhabitants of 154 villages were affected. The polluting industries in question are sugar mills, distilleries, paper mills, electroplating, slaughter houses, wet blue hides, etc.

Reference was made to the fact that the issue had been highlighted in several newspapers and that this Tribunal found that there was contamination of ground water. On 16.01.2018, a Committee comprising representatives of the Central Pollution Control Board (CPCB), Uttar Pradesh Pollution Control Board (UPPCB), Uttar Pradesh Jal Nigam and Dr. A.B. Akolkar, former member of CPCB carried out a survey by testing the samples. The Committee found that 124 industries were not meeting the standards. The Tribunal observed that the State of Uttar Pradesh and UPPCB must perform their statutory duties and the District Magistrate should also take cognizance of the matter at the District level. The Tribunal constituted a Committee headed by Justice S.U. Khan, former Judge, Allahabad High Court with representatives of the CPCB and the Ministry of Environment, Forest and Climate Change as members to prepare time bound action plan to deal with the problem. The Chief Secretary, Uttar Pradesh was to provide logistics to enable the functioning of Committee.”

2. The Monitoring Committee gave its report on 11.02.2019 recommending as follows:

“Recommendation:

Committee is of the view that the action plans be implemented by all the concerned authorities in the State of Uttar Pradesh as per the time lines given in the finalised action plans keeping in view that the water quality of river Hindon at least meets the water quality criteria for bathing i.e., BOD < 3 mg/l and FC < 500 MPN/100 ml.

Closing statement:

The Monitoring Committee, before closure, would like to place on record that the authorities/ departments are taking the matter unresponsively despite clear direction by Hon'ble NGT that all concerned authorities would cooperate with the Committee.

In this view of the matter the Chief Secretary, State of Uttar Pradesh was moved by email on 07.01.2019 with request to urgently arrange a meeting to be necessarily attended by him along with the Principal

Secretary, Rural Development, Principal Secretary, Health, Principal Secretary, Environment and Chief Officer heading NIC in the State of Uttar Pradesh with liberty that any other officer whom he thought should also attend the meeting should also be directed to attend the said meeting with all-inclusive compliance report.

It was expressly mentioned in the mail that the departments, authorities and officers majorly responsible for compliance of the directions are not assisting this Monitoring Committee, as should be, and their approach is lackadaisical, which lackadaisicalness is enough to frustrate the basic object with which this Monitoring Committee has been constituted by Hon'ble NGT. The communication expressly communicated that the Monitoring Committee would submit its report to Hon'ble NGT before close of the current month. Therefore, the date, time and venue for the meeting be urgently fixed and communicated. The 'Venue' also because Hon'ble Chairman of this Monitoring Committee has not yet been provided any office at Lucknow though four months have already moved-out.

The Principal Secretary, Environment Department Uttar Pradesh, in response to the email communication of 07.01.2019, has vide letter no.NGT-19/55-Parya-2-2019-44(Writ)/2016, dated 29.01.2019 sent by email on 30th January, 2019 informed that the meeting has been fixed for 14.02.2019 in the office of the APC. This all over again illustrates the flippant attitude even of the principal bureaucrat.”

3. The above report was considered vide order dated 15.03.2019. The Tribunal accepted the report and directed as follows:

“6. We accept the report and direct the Chief Secretary, Uttar Pradesh to provide requisite logistics to the committee so that the committee can oversee the implementation of the action plan. The State of Uttar Pradesh may also take measures recommended and suggested by the Committee. We place on record our displeasure for the attitude of the State of Uttar Pradesh as, found in the report. We direct that the State of Uttar Pradesh may file its action taken report in the matter, particularly about the logistics provided to the Committee including the

venue for conducting proceedings within one month by e-mail at ngt.filing@gmail.com.

8. In view of serious failure of the State of Uttar Pradesh so far and alarming situation of pollution of the River, affecting public health, we find it necessary to require furnishing of performance guarantee in the sum of Rs. 5 crores to the satisfaction of the CPCB by the State of Uttar Pradesh to the effect that action plan will be implemented within six months from today. On failure, the amount will be forfeited.

9. The Chief Secretary may personally look into the issue of availability of potable water to the affected inhabitants.”

4. Again, the matter was taken up on 25.07.2019 on receipt of a letter from Justice Khan expressing his inability to continue. The Tribunal relieved him from the assignment but directed that the Chief Secretary, UP may suggest a credible mechanism and pending such suggestion the Chief Secretary may supervise the measures to be adopted. Status of execution of action plan with the budgetary provisions and specific timelines was required to be furnished. The Tribunal also sought information about compliance of order dated 15.03.2019 requiring furnishing of performance guarantee.

5. During the hearing today, “compliance status” has been filed. With regard to status of piped water supply, it is stated that out of 148 villages, water supply has been made available in 41 villages. This information is same as noted in the order dated 25.07.2019 with no further progress. With regard to the remaining villages, the work is still pending at various stages. The chart annexed with the status report is as follows:

S.N.	District	No. of Villages	Covered with PWS	Ongoing PWS	DPR of PWS sanctioned	Tender Invited	Tender Approved	Re-tendering /under tender process	DPR Sent to H.Q. for approval
1	Saharanpur	1	0	0	1	1	-	1	-
2	Meerut	10	4	1	3	3	3	-	2
3	Ghaziabad	1	0	0	1	1	1	-	-
4	Shamli	29	7	0	15	15	5	10	6
5	Muzaffarnagar	56	9	3	29	29	3	26	15
6	Baghpat	51	21	1	20	20	16	4	8
	Total	148	41	5	69	69	28	41	31

Note: 1. In Village-Biral (Distt. Baghpat) land not made available by District Authority hence DPR cannot be prepared.
2. In Distt. Shamli single DPR prepared for two villages (Hiranwada & Lado mazri).”

6. The above chart shows that various DPRs are pending for approval with the State Level Committee. In 107 villages, no water supply has been ensured. There is no information to rule out that the source of supply of water i.e. hand pumps is unsafe. In this regard, the information in the status report is as follows:

*“As per information provided by U.P. Jal Nigam it is verified that all functional 8782 hand pumps have been tested in stressed area. Out of these only 1088 hand pumps were found giving contaminated water all the 1088 hand pump have been uprooted. The status of hand pump is enclosed and marked as **Annexure-I**. As per U.P. Jal Nigam verification report potable water is sufficiently available in 41 villages out of stressed 148 villages. The status of piped water supply schemes in 148 villages is enclosed and marked as **Annexure-II**.”*

7. With regard to the health survey, the status report is as follows:

“Health Department of Uttar Pradesh has been directed to organise regular health check up camps in stressed

*villages with wide publicity of the same and to provide medical treatment to sufferers on priority basis. As per Health Department report dated 18-09-2019, Health Checkup Camps were organised in the villages of stressed area situated on the bank of River Hindon. Door to Door Health checkup has also been conducted for sufferers as mentioned in the list of petitioners. Report received from Health Department is enclosed and marked as **Annexure-IV**. The summary of information received from Health Department regarding organisation of camps, no. of identified seriously/cancer patient and most affected villages is enclosed and marked as **Annexure-V**.”*

8. The information furnished does not mention about the water quality of water provided by the existing hand pumps as 1088 hand pumps which were providing contaminated water have been uprooted. With regard to health check-up camps, the report shows that there are large number of serious patients, many of whom are cancer patients, but no remedial action is mentioned except to say that serious patients have been referred to higher medical hospitals. The result of such reference is not mentioned. It is not clear whether any effective treatment has been actually given or they continue to suffer as before. It is necessary to ensure that causes of such serious diseases and deaths are remedied.

9. With reference to remedial action for treatment of sewage gap in River Hindon, report furnished is as follows:

“The information provided by U.P. Jal Nigam regarding the budgetary provisions for the establishment of new and additional 3 STPs for the treatment of sewage gap in River Hindon is as under:

“

District/City	Status of DPR &	Status	of	Estimated date
---------------	-----------------	--------	----	----------------

& Capacity of STP	Estimated cost	approval of DPR & funding agency	of completion
Saharanpur (93.65 MLD)	Under preparation by WAPCOS	—	—
Budhana (10 MLD)	DPR prepared, Amount Rs. 48.76 Crore	DPR approved, NMCG	24 months from date of sanctioned (date of sanction is 18-02-2019)
Muzaffarnagar (22 MLD)	DPR prepared, Amount Rs. 231.79 Crore.	DPR approved, NMCG	24 months from date of sanctioned (date of sanction is 21-01-2019)

10. As already noted, there is no justification for such a long delay in completing project of urgent nature which results in continuing discharge of untreated sewage which is a criminal offence under the Water (Prevention and Control of Pollution) Act, 1974. It may be noted that such situation has been disapproved and this Tribunal has directed not only that such projects must be promptly completed but also pending completion of such projects, interim arrangement by way of phyto-remediation or bio-remediation or any other alternative remediation must be ensured failing which compensation for damage to the environment is liable to be paid by the agency responsible for such failure¹.

11. We note that environment compensation of approximately Rs. 9.40 Crores has been assessed against 230 defaulting water pollution

¹ Original Application No. 6/2012, Manoj Mishra v. Union of India & Ors. Order dated 11.09.2019, Original Application No. 200/2014, M.C. Mehta v. Union of India & Ors Order dated 22.08.2019 and Original Application No. 593/2017, Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors., Order dated 28.08.2019

sources but it is not clear whether the said amount has been recovered and utilized for restoration of the environment. Though the status report refers to the monitoring mechanism which is said to have been evolved, there are no reports about its actual working and effectiveness. It is thus necessary that such progress report is placed in public domain specifically giving the water quality and improvements therein quality every month so that remedial action is taken against failures, if any, in such monitoring or if there is a success in such monitoring, such success may be replicated in other places.

12. In spite of repeated directions by this Tribunal over a long time, the DPRs are still at the approval stage. The tender process is still pending with regard to various villages in respect of work of such urgent nature as supply of water in the area where large number of deaths and diseases have taken place in absence of clean ground water. Direction of this Tribunal with regard to furnishing of performance guarantee has not been complied with. Even without complying with the order, waiver of such requirement is sought without any justification. There is no report from the Chief Secretary in terms of order dated 25.07.2019.

13. We are of the opinion that appropriate action is required to be taken against the persons who have delayed the DPRs and the tender process and those who have violated the order requiring furnishing the performance guarantee without any valid reason by way of entries in their service records and otherwise. As already noted, the State failed to provide requisite cooperation to Justice Khan Committee on account of which Justice Khan sought to be and was relieved. The

State has also failed to make suitable alternative mechanism to deal with the sensitive issue. In this background, the whole process now needs to be supervised by the Chief Secretary till alternative credible mechanism is established and adequate effective prompt action is taken.

14. Let the Chief Secretary, Uttar Pradesh look into the matter within three weeks from today, take action against erring officers and ensure further remedial action is taken in terms of augmenting water supply to such villages rather than whole issue getting stuck up in cumbersome bureaucratic procedures. The Chief Secretary may also examine the possibility of sending such high powered committee which approves the DPRs to the area in question for expediting approvals so that work is not delayed inordinately. Compliance report may be filed by the Chief Secretary before the next date by email at judicial-ngt@gov.in. In the event the Chief Secretary is unable to ensure the above, we may have no choice but to summon the Chief Secretary to remain present in person.
15. A copy of this order be sent to Chief Secretary, Uttar Pradesh by e-mail.

List again on 21.10.2019.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

September 20, 2019
Original Application No. 231/2014
AK