

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

Original Application No. 231/2014
WITH
Original Application No. 66/2015

Doaba Paryavaran Samiti

Applicant(s)

Versus

State of U.P & Ors.

Respondent(s)

(Letter received from Justice S.U. Khan in O.A. No. 231/2014)

Date of hearing: 25.07.2019

**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 Bansal, Advocate

For Respondent (s): Mr. Pradeep Misra, Advocate for UPPCB
Mr. Rajkumar, Advocate for CPCB
Mr. I.K. Kapila, Advocate for UP Jal Nigam

ORDER

1. The matter has been put up for consideration of a letter received vide e-mail dated 06.07.2019 from Justice S.U. Khan, former Judge Allahabad High Court heading a Committee appointed by this Tribunal vide order dated 08.08.2018 to oversee the compliance of directions of this Tribunal. In the letter it is *inter-alia* stated as follows:

“I first concentrated on supply of piped water to the villages near the Hindan River so that people of the said villages could avoid drinking contaminated water. I talked on telephone repeatedly to the concerned officers / employees from the top to the bottom; Chief Secretary, Principle Secretaries, Commissioners, Engineers and even the lowest level clerks. I admit that in spite of use of all the persuasive skills at my command, I have not been able to make any progress or achieve anything. My other priority was to find out the persons who suffered from such diseases which are mainly caused by drinking contaminated water and to compensate them. The efforts in this regard also met the same fate. The District level concerned authorities of the concerned districts could not find a single person to fit in the description”

2. Brief background of the matter may be noted. Grievance raised before the Tribunal was against pollution in Kali Nadi, Krishna and Hindan 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.”

3. Thereafter, vide order dated 15.03.2019 after considering the report of the Committee, the Tribunal observed:

“3. Accordingly, the Committee conducted its proceedings and a report has been filed before the Tribunal on 11.02.2019. The Committee found that discharge of untreated sewage and industrial effluents in Districts Muzaffarnagar, Shamli, Meerut, Baghpat, Ghaziabad and Gautam Budh Nagar is mainly responsible for the pollution of the river. It found that prosecution was initiated against 118 non-complying industries. Orders for closure were passed against noncompliant industries out of which 28 orders were revoked or suspended. Show cause notices were also directed to be issued to some of the polluting industries.

4. The Committee observed that it could not perform its functions with regard to health check on account of noncooperation of authorities and could not undertake awareness programme in absence of assistance of authorities. Hand pumps from which contaminated water is extracted and consumed are still functional. No measures have been taken by the authorities for supply of potable drinking water in the affected areas. No effort has been made to identify the victims for compensation.

5. The Committee has made recommendations. Concluding part of the report is 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.”

6. We also place on record our appreciation for the work undertaken by the Committee in-spite of all difficulties. 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. Since Justice S.U. Khan has expressed his inability to continue, we have no option except to relieve him from the assignment. As regards the recommendations in the letter with regard to payment of salary to a retired District Judge engaged by Justice S.U. Khan as secretary of the Committee, we leave it to the Chief Secretary of the State to deal with the same. Having regard to the fact that Justice S.U. Khan has not claimed any honorarium or facilities, it may not be difficult to make a distinction and accept the recommendations of Justice S.U. Khan with regard to the salary to be paid to the retired District Judge who was engaged as secretary. The said engagement is not by the State and is not strictly dealt with by the rules applicable to engagements by the State. Engagement is a short term engagement only for work of the Committee.
5. Though Shri Pradeep Misra, learned Counsel appearing on behalf of the Uttar Pradesh Pollution Control Board (UPPCB) states that piped water supply has been made available to 41 villages out of 148 and

further work is going on, the above letter records a finding to the contradictory. Let the same be verified and further action be taken.

6. Question is as to what is the substitute mechanism to monitor the compliance of directions in the order of this Tribunal dated 08.08.2018 and remedial action in the light of report of the Committee dated 11.02.2019 *inter-alia* requiring health check up, undertaking awareness programmes.
7. As noted in the order dated 08.08.2018, after noting the diseases in the area on account of water pollution affecting more than 1000 people and in view of the fact that on taking samples contamination was found, 124 industries were found to be non-compliant, meaningful remedial action was required. In view of the failure of the administration for a long time in protecting the public health by taking remedial steps, the Tribunal constituted the Committee headed by Justice S.U. Khan with representatives from Ministry of Environment, Forest and Climate Change (MoEF&CC) and the Central Pollution Control Board (CPCB) to propose time bound action plan and to suggest framework for implementation with a comprehensive, integrated and inclusive strategy with clear measurable indicators of progress and success.
8. Shri Misra, learned Counsel appearing on behalf of State of UP states that Action Plan has been prepared and approved by CPCB. The Tribunal think it is imperative that the Action Plan needs to be

implemented and for this budgetary provision needs to be made and specific timelines specified and action taken accordingly.

9. Considering that now Justice Khan has expressed his inability to continue, the Chief Secretary, Uttar Pradesh may suggest a substitute credible mechanism for implementation of the remedial action plan. Till then, the measures may be supervised by the Chief Secretary, UP. The status of execution of action plan for rejuvenation of the river Hindan be also furnished with timelines and budgetary scheme.

10. The Chief Secretary may also furnish information whether performance guarantee in the sum of Rs. 5 crores in terms of order of this Tribunal dated 15.03.2019 has been furnished and if not why.

List for further consideration on 02.09.2019.



Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

July 25, 2019
Original Application No. 231/2014 with
Original Application No.66/2015
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