

Item No. 05

Court No. 2

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

Original Application No. 742/2022

Radhe Shyam Sehra

Applicant

Versus

State of Uttar Pradesh

Respondent

Date of hearing: 03.01.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Application is registered based on a complaint received by post

ORDER

1. This original application under Section 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010') has been registered pursuant to a letter petition dated 22.05.2022 received from Radhe Shyam Sehra, Rashtriya Mahasachiv of Paryavaran Kranti Mitra, Head Office-2/11, Zakir Nagar Batla House, Okhla, New Delhi and Camp Office at Gorakpur.

2. It is said that garbage heaps have been dumped on the flood plain on river Rapti by Nagar Nigam Gorakpur in violation of environmental norms. A large number of dumping stations have also been created in the city of Gorakpur. There is lot of decomposed garbage lying causing foul smell and creating unhygienic conditions which have also resulted in several deaths in the city of Gorakpur. Condition of Rapti river on account of unscientific disposal of solid waste and spread of diseases like Japanese

Encephalitis (JE) and Acute Encephalitis Syndrome (AES) at Gorakpur due to contaminated water was considered by this Tribunal in O.A. No. 116/2014, *Meera Shukla vs. Municipal Corporation, Gorakpur and Ors.* and after considering the entire matter in detail, Tribunal considered the action plan and current compliance status as was placed before it on that date on 13.09.2022 and various directions were issued which are reproduced as under:-

“8. In pursuance of above, an action plan with current compliance status has been filed on behalf of the State of UP by the Under Secretary, Environment:-

S. No.	Action Plan and Concerned Departments	Current Progress Status	Timeline	Remarks
1.	For the treatment of Sewage, establishment of STP in Nagar Palika Parishad, Khalilabad & NagarPanchayat, Maghar. (Urban Development & UP Jal Nigam-Urban)	<ul style="list-style-type: none"> ▪ Rs.578.88 Lacs each has been sanctioned for 32 KLD FSTP at Maghar and 32 KLD FSTP at Khalilabad. ▪ Rs. 72.36 Lacs has been released for each FSTP. ▪ Civil work has been finished. ▪ Overall Work progress in Khalilabad : 53 % and Maghar : 58 %. 	September, 2022	Bio-remediation of all 03 drains is being done. (Inlet BOD: 47 to 58 mg/L, Outlet BOD: 28 to 37mg/L). Copy of the Analysis Report is enclosed herewith and marked as Annexure No-5.

2.	<p>Establishment of 07 MLD CETP in Gorakhpur. (GIDA, Namami Gange & Urban Development)</p>	<ul style="list-style-type: none"> ▪ The Project has been approved by NMCG on 11.01.2022. ▪ Rs. 37 Cr. sanctioned (17 Cr by GIDA & 20 Cr by Awasthapana Vikas Kosh). 11.15 Acre land purchased. ▪ ToR for Environmental Clearance issued by SIEAA. EIA study completed and presented before 675th SEAC-2 on 21.07.2022. EC is under process. ▪ SPV is registered as GIDA CETP FOUNDATION. ▪ NMCG has directed SMCG to issue government orders for Re-structuring of Board of Directors of SPV. 	July, 2024	<ul style="list-style-type: none"> ▪ CETP of 7.5 MLD was proposed at GIDA. Third party assessment was conducted by IIT, Roorkee) and sanctioned by NMCG. ▪ CETP is proposed for further treatment of treated effluent flowing in Sariya Nala and to cater existing and upcoming industries within GIDA. ▪ ACS (Industries)/ Chair man, GIDA has appointed UPJN (Urban) as implementing agency for the preparation of Tender/Bid document and construction of CETP. ▪ GIDA has submitted the tender documents prepared by UPJN (Urban), Gorakhpur to NMCG for technical evaluation and vetting.
3.	<p>Tapping of all the drains falling into the Ramgarh Tal and Interim measures for the treatment of untapped drains falling in Ramgarh Tal. (UP Jal Nigam-Urban)</p>	<ul style="list-style-type: none"> ▪ Total Drains 24 (Tapped 07, Untapped 17) ▪ Tapping of 6 Minor drains and up – gradation of existing 15 MLD STP to 20 MLD. Intercepting sewer line completed. Overall physical progress is 83%. ▪ 11 minor drains (total discharge 1.537 MLD) will be treated at 30 MLD existing STP. Work for Intercepting sewer line is in progress. Over-all physical progress is 35%. 	<p>November, 2022</p> <p>May, 2023</p>	<p>Interim measure (Bio-remediation) for these 17 drains falling in Ramgarh Tal, is being carried out. (Inlet BOD : 70 to 86 mg/L, Outlet : BOD 62 to 76 mg/L). Copy of the Analysis Report is enclosed herewith and marked as Annexure No-6.</p>

5.	<p>Pollution of river Saryu due to untapped drains.</p> <p>(Namami Gange, & UP Jal Nigam-Rural)</p> <p>(UP Jal Nigam-Urban)</p>	<ul style="list-style-type: none"> ▪ Total No. of drains meeting in the River- 21 (Tapped- 5, Untapped- 16). ▪ A project for I&D of 15 drains and construction of 33 MLD STP at Ayodhya was approved vide NMCG letter dated 06.05.2021. LOA has been issued to firm on 30.12.2021. Financial arrangement is in the final stage and work will be started soon. ▪ DPR for I&D of Nirmalilcund Drain, is approved by State Level Technical Committee on 20.06.2022. Treatment is proposed in 33 MLD STP at Aydhya. 	<p>October, 2024</p> <p>October, 2024</p>	<p>Interim measures as bioremediation in 16 untapped drains are being done. (Inlet BOD: 107 to 125 mg/L, Outlet BOD: 26 to 29 mg/L).</p> <p>Copy of the Analysis Report is enclosed herewith and marked as Annexure No-8.</p>
6.	<p>Pollution of river Ghaghradue to untapped drains.</p> <p>(NamamiGange, & Jal Nigam-Rural)</p>	<ul style="list-style-type: none"> ▪ Total No. of drains- 19 (Untapped) Deoria — 02 Gorakhpur — 04 Mau — 04 Ambedkarnagar — 09 ▪ Proposed STPs- 03 ▪ DPR for I&D of 4 Drains and construction of 6 MLD STP at Barhalganj NP was Submitted to SMCG vide letter Dated 29.03.2022. Observations have been intimated by SMCG vide letter dated 11.04.2022. Revised DPR, after incorporating the observations will be submitted to SMCG by 10.08.2022. ▪ DPR for I&D of 4 Drains and construction of 2.5 MLD STP at NP, Dohrighat, Mau is Under preparation And will be Submitted to SMCG by 10.08.2022. 	<p>June, 2024</p> <p>Nov. 2024</p>	<p>Interim measures as bioremediation in 19 Untapped drains are being done. (Inlet BOD: 48 to 110 mg/L, Outlet BOD: 24 to 40 mg/L).</p> <p>Copy of the Analysis Report is enclosed herewith and marked as Annexure No-9.</p>

	(Jal Nigam-Urban)	<ul style="list-style-type: none"> ▪ DPR for I&D of 8 Drains and construction of 15 MLD STP at Tanda, Ambedkarnagar <p>Was submitted to SMCG vide letter Dated 31.03.2022.</p> <p>Observations have been intimated by NMCG vide letter Dated 18.05.2022.</p> <p>Revised DPR, after Incorporating the Observations will Be submitted to SMCG by 10.08.2022.</p> <ul style="list-style-type: none"> ▪ Proposed STPs- 02 (DPR being prepared) <p>06 MLD at Gaura Barhaj NPP, Deoria under SBM 2.0.</p> <p>02 MLD at Itifatganj Nagar Panchayat, Ambedkarnagar under SBM 2.0.</p>	<p>Nov, 2024</p> <p>Nov, 2024</p> <p>Jan, 2024</p>	
7.	Identification, Selection & Establishment of Landfill site for MSW Processing plant in Gorakhpur. (Urban Development, Nagar Nigam, Gorakhpur & GDA)	<ul style="list-style-type: none"> ▪ 10.36 ha. land identified at Village Suthani & Bhati Rawat on Magahar Road and 8.45 ha. Land has been purchased. ▪ 500 TPD MSW Processing Plant has been sanctioned on 09.12.2021. 	January, 2023	<p>Work has been started.</p> <p>Construction of approach road to the plant has been completed but culvert is yet to be completed (PWD).</p> <p>Foundation work of Finished Product Godown, Curing Area, Machine Shed, Toilet Blok and Guard Room has been completed.</p> <p>Work for super Structure has been 60% completed and Rest works of construction are under progress.</p> <p>Overall physical progress is 40%.</p>

8.	<p>Identification of encroachments, eviction and Forestation in Flood Plain Zone of Rapti, Rohini, Saryu, Ghaghra, Aami, Rivers and Ramgarh Tal. (Irrigation/ District Administration/ GDA)</p>	<ul style="list-style-type: none"> ▪ Flood Plain Zone Has been notified for Rapti, Ghaghra, Saryu, Aami and Rohini rivers. ▪ Ramgarh Tal has Already been notified as wetland. 	<p>July 15 2023</p>	<p>Survey has been completed and no new encroachments found in Ramgarh Tal after notification of Wetland. 871.5 ha. Advance Soil Work has been Completed for plantations in 05 KM area on both sides of rivers Rapti, Rohini, Saryu, Ghaghra, & Aami. The plantation Work is under progress. Copy of the Report of Forest Department, UP is enclosed herewith and marked as Annexure No-10.</p>
9.	<p>For use of Environmental Compensation of Rs. 4.4115 Cr in the work of Environmental Protection by BRD Medical College. (Health & Education Department & BRD Medical College)</p>	<ul style="list-style-type: none"> ▪ STP/ETP in BRD Medical College, Gorakhpur is under Construction since January, 2021, having cost of Rs. 4.2 Cr. ▪ Rs.2.10 Cr has been released. About 19 % work Has been completed. (Agency- M/s UP Project Corporation Ltd (Construction Unit-14), Lucknow). ▪ Rest Rs. 2.10 Cr shall be sourced through imposed EC. ▪ A DPR is under preparation for up-gradation of sewer network costing Rs. 2.3115 in BRD Medical College. 	<p>August, 2022 (For STP/ETP)</p> <p>August, 2022 (For start of Sewer Network)</p>	<p>For utilization of EC, application is going to filed by Health and Education Department in Hon'ble NGT.</p>
10.	<p>Directions Industries to the at GIDA, Gorakhpur. (UPPCB)</p>	<ul style="list-style-type: none"> ▪ There are 50 Water polluting industries operational in GIDA, Gorakhpur. 	<p>June 15, 2022</p>	<p>UPPCB has issued Directions under section 33A of Water (Prevention and Control of Pollution) Act, 1974 to all 50 Industries for Installation of PTZ Camera at their discharge point with Access to UPPCB control Room.</p> <p>41 Industries have Installed the PTZ camera.</p> <p>03 industries are lying closed as and when The industries will</p>

				<p>Commence the production, the UPPCB will ensure the installation PTZ in these 03 units.</p> <p>03 Industries are not Using water for Industrial purposes however 01 unit is recycling the water in cooling.</p> <p>Those who have not Installed the PTZ camera, The show cause notices under section 33 A of Water (Prevention and Control of Pollution) Act, 1974 have been issued against them.</p>
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9. Apart from above, report of the High Level Committee has been separately filed on the issue of study of AES and remedial action. The report shows the current status as follows:-

“Current status of AES in Gorakhpur, Uttar Pradesh:

- Most of the AES affected districts are located in the eastern part of the state.
- A total of 31830 AES cases and 4639 deaths (CFR- 14.6%) were reported in the state of UP between 2010 and 2020. Of these, 3334 were caused by Japanese encephalitis virus (JEV) with 476 deaths (CFR 14.3%). In contrast, in the year 2021, the CFR due to JE and AES reduced to 3.27% and 3.41 % respectively against a CFR of 16.6% (JE) and 17% (AES) from 2010 to 2016.
- Although a marked reduction in number of both AES and JE cases are noticed in the state, the proportion of Scrub typhus cases out of total AES cases in the state from 2017 through 2021 has increased from 32% to 49% while the proportion of JE cases out of total AES cases has reduced from 18 to 11% in the same period.
- The number of villages marked as high risk for AES has reduced to 208 (in 2022) from 617 (in 2018).

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Vaccination

Gorakhpur experienced a massive outbreak of Japanese encephalitis in the year 2005 resulting in a large number of deaths. The Government of India initiated the vaccination for Japanese encephalitis soon after and over the years has resulted in a significant and dramatic decrease in JE cases. The vaccination programme continues for children and has a near 100% coverage. Record keeping of vaccinated children is important and meticulously followed.

Monitoring and Evaluation

A very important aspect in health care is to monitor and evaluate the system periodically to understand the benefits, the gaps and plan further action. This also provides insights into the cost effectiveness of the adopted system.

- *An analysis of the total cases, laboratory confirmation of the disease, clinical outcome in terms of survival from the illness, mortality and morbidity is being undertaken. These are conducted at 3 levels – state nodal officer, district officer as well as by independent 3rd parties such as WHO, PATH and UNICEF to remove the bias.*
- *A feedback monitoring of 22,734 villages and 1,12,530 households revealed 79% families reported ASHA workers educated the family on prevention of encephalitis, 87% families were educated by ASHA workers on importance of early treatment in fever while 71% families reported ASHA workers educated them on use of 102 / 108 ambulance for transportation of AES case to the nearest healthcare facility.*
- *The marked reduction in AES cases from 4724 in 2017 to 1701 in 2021 with CFR reducing from 13.37 in 2017 to 3.41 in 2021 and the decrease in JE cases from 693 with CFR 13.4 in 2017 to 153 cases and CFR 3.27 in 2021 is significant.*
- *Sustained planning and efforts over past 5 years have resulted in – (i) Better understanding and perusal of environmental and personal cleanliness (ii) Change in health seeking behavior (iii). Improved utilization of public health care facilities at the peripheral and district level - reflecting faith generation in the public health care delivery mechanisms (iv) Convergence of activities towards a single goal – Bringing down the prevalence and incidence of Vector borne and communicable diseases. (v) This has given rich dividends in the form of substantial decrease in AES and JE incidence and mortality and has also resulted in reduced outbreaks of other diseases.*

Recommendations of the committee

The recommendations have been formulated based on the visits to the health centers and the tertiary hospitals, the information gathered from the conversations with the in-patient care takers and treating pediatricians, studying some of the case files for investigations and treatment, the documents provided by the respective health centers / institutes, the discussions with the public health specialist from PATH, state health officials and by referring to the recent publications from various studies on AES in this region. Based on the information gathered through these various means, it is apparent that the number of AES cases in Gorakhpur and areas around have reduced significantly over the past 5 years (Annexure III & IV, and Data sourced from IDSP, GOUP).

- *Although the pediatricians still encounter some AES cases, the etiological agents in the current times identified are scrub typhus (25%), followed by Japanese encephalitis virus (8%) and dengue (5%). The number of AES caused by enterovirus is only 0.02% (State epi-data).*
- *A policy change of treating a child with febrile illness with doxycycline and azithromycin to avoid any possibility of the child developing AES has paid huge dividends. An effectiveness study conducted on the prescribing doxycycline and azithromycin has reported tremendous benefits in reducing the number of AES cases (Thangaraj et al, 2020).*
- *A diagnostic algorithm is adopted to identify the pathogen causing AES. Samples wherein an infectious etiology is not identified may be tested for auto-immune causes (non-infectious). At the bottom of the algorithm, when no infectious or non-infectious etiology is identified, such samples may be subjected to next-generation sequencing. The ICMR-RMRC, Gorakhpur has been equipped with the infrastructure to carry out the detection and identification of unsuspected agents and novel pathogen discovery using metagenomic sequencing. All results need to be interpreted correctly and in consultation with the treating pediatrician / clinician.*
- *A robust referral system starting with every PHC / CHC linked to a district hospital has considerably reduced the burden on the main BRD hospital in Gorakhpur. Improvement of peripheral and district level healthcare facilities has decongested the tertiary healthcare resulting in prompt and better patient care and improved outcomes. Strengthening of peripheral health care may be continued with appropriate numbers of doctors and nurses depending on patient footfall and case load.*
- *Periodic audits pertaining to bio-medical waste management, biosafety and antimicrobial resistance are being carried out and need to be continued.*
- *Contact tracing of any positive case of AES is carried out to strategies targeted interventions.*
- *Surveillance of mites, mosquitoes, water bodies, STPs (as per notified standards), ETPs (as per notified standards) (BOD, COD, TSS, pH, CF) is being carried out and has to continue at defined times and in the event of any outbreak of notified pathogens.*
- *A system of sampling of potable water at the user end is in place and needs to be continued. This will ensure provision of safe water (pathogen and toxin free) at all times.*
- *Waste water can cause mosquito breeding. Necessary action should continue to avoid waste water logging and ensure its treatment.*

Closing the last mile on AES.

Through sustained inter departmental efforts spearheaded by the Health Department, Government of UP, the occurrence of AES in Gorakhpur over the years has radically reduced. This has been possible due to the untiring efforts on all fronts – medical, social, community and political. It is noteworthy that despite the last two years when the entire country was battling the COVID pandemic, with unrelenting efforts on all fronts by the Government of UP, there has been a noticeable decrease in the number of AES cases in the State.

The launching of the Dastak Campaign and Sanchari Rog Niyam Abhiyan, formulating State Guidelines on AES have been major steps to control the disease. A continued multi-sectoral approach with concerted and coordinated efforts, microplanning and unwavering commitment from the medical fraternity, Pollution Control Board, Animal Husbandry and Agriculture Sector, Health and Family Welfare Department has paid the dividend so far and will further reduce the occurrence of AES in Gorakhpur.

- *There are two institutions in UP, ICMR-RMRC in Gorakhpur and KGMU, in Lucknow that have been at the forefront of determining etiology of AES for the past four decades. These Institutes are well versed with the local epidemiological, ecological and environmental factors that have been behind the past outbreaks of AES in Gorakhpur.*
- *The Indian Council of Medical Research (ICMR) has been one of the foremost Institute that has assisted the Govt. of UP in the diagnosis, prevention and control. Indeed, it has established an advanced ICMR- **Regional Medical Research Centre, Gorakhpur (RMRC)** within the BRD Medical College at Gorakhpur. This centre is headed by a senior level scientist as its head and has amongst its staff experienced virologists, epidemiologists and vector biologists. Moreover, this centre over the years has accumulated an enormous amount of data pertaining to etiology, risk factors and immune response to JEV, enterovirus and scrub typhus.*
- *The Virology section of department of Microbiology at **King George Medical University (KGMU), Lucknow**, is yet another institution that has been providing extensive support to the Govt. of UP for investigation of AES outbreaks since 1978.*
- *In addition to these two institutes, the **All India Institute of Medical Sciences, Gorakhpur**, which started 2 years ago, is now a full fledge tertiary institute equipped with state of the art infrastructure and trained manpower to provide medical care as well as engage in programs related to surveillance and research.*

The Health Department of the Government together with the major Institutes may continue the surveillance and clinical, ecological and environmental monitoring of the situation to combat any future occurrence of AES in the State and formulate remedial measures including diagnostic strategies with a dynamic algorithm and treatment modalities.”

Finding and directions

10. There are two issues – control of EV and control of pollution which also to some extent is source of EV, apart from other diseases. While on the issue of control of EV, report of the Committee shows significant reduction in such cases due to sustained efforts in the last five years with recommendations requiring further measures. Let further action be taken in the light of recommendations of the Committee. Further, the State Authorities may take on Board experts from National Institute of virology, Pune and National Institute of Malaria Research, New Delhi for programs for preventing and remedying the situation. The steps in this direction may include control of floods and water logging breeding grounds for the vectors. Water, Sanitation and Hygiene (WaSH) programs for clean drinking water, sanitation and hygiene in urban and rural areas need to be implemented along with Swachh Bharat programs. If viable, mobile dispensaries equipped with necessary diagnostic and medical facilities may be introduced. Mass media including community radios may be established and utilized to create awareness regarding sanitation and health. Health Surveillance and monitoring including emergency services to be increased and expanded throughout the district.

11. Apart from control and remedying of EV, another significant issue which has been engaging attention of this Tribunal in the last eight years and on which progress is unsatisfactory is the issue of control of water pollution. The report of the State refers to future plans for CETP, for tapping of drains, control of River Saryu and connected drains, control of pollution in River Ghagra and connected drains, control of industrial pollution. This shows that water pollution is continuing and still there is no claim that it has been controlled. Rather, the issue is shown to be at planning stage in crucial aspects. From the data presented by the State itself, apart from past violations, continuing violations of discharge of untreated sewage into the drains, rivers and other water bodies is more than 50 MLD. As against reported generation of sewage in Gorakhpur to the extent of about 100 MLD, treatment is not more than 45 MLD. In fact the statistics in the report shows that much more untreated sewage is being discharged which is proposed to be controlled in distant future. We have thus to hold the State accountable for such violation atleast to the extent of discharge of 55 MLD in violation of law. Compensation on 'Polluter Pays' principle has to be determined for being utilised for restoration. As already noted in the order dated 30.03.2022, timeline fixed by the Hon'ble Supreme Court for having in place funding till 31.03.2018 and setting up requisite equipment till February, 2020 has long expired. The requisite remedial action in terms of judgement of Hon'ble Supreme Court has also not been taken. Citizens are suffering in a big way due to continuing water pollution in terms of water borne diseases which are at times fatal. There is also huge pollution of rivers including River Ganga. For ready reference it will be worthwhile to reproduce the extracts from earlier order dated 07.09.2021 as follows:-

“15. We have heard learned Counsel for Applicant, State of UP, State PCB and CPCB. From the compliance status reproduced above, it is seen that the authorities have merely paid lip service to the cause. The action taken is superficial without any meaningful impact on the ground. Untreated sewage is still being discharged unscientifically into the water bodies inspite of prohibition under the Water (Prevention & Control of Pollution) Act, 1974 and judgment of the Hon'ble Supreme Court in Paryavaran Surakhsha Samiti Vs. Union of India as

well as order of this Tribunal in O.A. No. 593/2017, Paryavarán Surakhsha Samiti Vs. Union of India. Contamination of water sources is a punishable criminal offence under the Water (Prevention and Control of Pollution) Act, 1974 for the last 47 years. Under Section 25 of the Act, untreated discharge of sewage any drain is prohibited and is in fact a criminal offence under Sections 42(2) and 44. Section 48 of the Act makes the Head of the Department liable for being punished for such offence. As per directions of the Hon'ble Supreme Court in Surakhsha case¹ an outer limit of 31.03.2018 is fixed for completing the work of all STPs in the Country for laying down the sources of budget and direction is to initiate prosecution for continued failure. This Tribunal has been directed to monitor compliance. We may refer to the specific directions of the Hon'ble Supreme Court and this Tribunal on the subject:

Extracts from the judgement of the Hon'ble Supreme Court in Paryavarán Surakhsha Samiti Vs. Union of India, supra

“7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50%, that of the State Government concerned (including the Union Territory concerned) is 25%. The balance 25%, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up “common effluent treatment plants”, according to the learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

x.....x.....x.....

10. Given the responsibility vested in municipalities under Article 243-W of the Constitution, as also, in Item 6 of Schedule XII, wherein the aforesaid obligation, pointedly extends to “public health, sanitation conservancy and solid waste management”, we are of the view that the onus to operate the existing common effluent treatment

¹ (2017) 5 SCC 326

plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the municipalities (and/or local bodies) concerned, cannot be permitted to shy away from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243-X and 243-Y of the Constitution. It will be open to the municipalities (and/or local bodies) concerned, to evolve norms to recover funds, for the purpose of generating finances to install and run all the “common effluent treatment plants”, within the purview of the provisions referred to hereinabove. Needless to mention that such norms as may be evolved for generating financial resources, may include all or any of the commercial, industrial and domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the State Government (Union Territory) concerned, through the Secretaries, Urban Development and Local Bodies, respectively (depending on the location of the respective common effluent treatment plant). The norms for generating funds for setting up and/or operating the “common effluent treatment plant” shall be finalised, on or before 31-3-2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the State Governments (or the Union Territories) concerned, shall cater to the financial requirements, of running the “common effluent treatment plants”, which are presently dysfunctional, from their own financial resources.

- 11. Just in the manner suggested hereinabove, for the purpose of setting up of “common effluent treatment plants”, the State Governments concerned (including, the Union Territories concerned) will prioritise such cities, towns and villages, which discharge **industrial pollutants and sewer, directly into rivers and water bodies.***
- 12. We are of the view that in the manner suggested above, **the malady of sewer treatment, should also be dealt with simultaneously.** We, therefore, hereby direct that “sewage treatment plants” shall also be set up and made functional, within the timelines and the format, expressed hereinabove.*

13. **We are of the view that mere directions are inconsequential, unless a rigid implementation mechanism is laid down.** We, therefore, hereby provide that the directions pertaining to continuation of industrial activity only when there is in place a functional “primary effluent treatment plants”, and the setting up of functional “common effluent treatment plants” within the timelines, expressed above, shall be of the Member Secretaries of the Pollution Control Boards concerned. **The Secretary of the Department of Environment, of the State Government concerned (and the Union Territory concerned), shall be answerable in case of default. The Secretaries to the Government concerned shall be responsible for monitoring the progress and issuing necessary directions to the Pollution Control Board concerned, as may be required, for the implementation of the above directions.** They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data and shall furnish the same to the Bench of the jurisdictional **National Green Tribunal.**

14. To supervise complaints of non-implementation of the instant directions, the Benches concerned of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The abovementioned case files will be listed periodically. **The Pollution Control Board concerned is also hereby directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.**

X.....X.....X.....

16. It however needs to be clarified, that the instant directions and time lines, shall not in any way dilute any time lines and directions issued by Courts or Benches of the National Green Tribunal, hitherto before, wherein the postulated time lines would expire before the ones expressed through the directions recorded above. **It is clarified, that the time lines, expressed hereinabove will be relevant, only in situations where there are no prevalent time line(s), and also, where a longer period, has been provided for.”**

(emphasis supplied)

Extracts from orders of this Tribunal in OA 593/2017 :

Order dated 21.05.2020

26. Summary of directions:

- i. All States/UTs through their concerned departments such as Urban/Rural Development, Irrigation & Public Health, Local Bodies, Environment, etc. may ensure formulation and execution of plans for sewage treatment and utilization of treated sewage effluent with respect to each city, town and village, adhering to the timeline as directed by Hon'ble Supreme Court. STPs must meet the prescribed standards, including faecal coliform.

CPCB may further continue efforts on compilation of River Basin-wise data. Action plans be firmed up with Budgets/Financial tie up. Such plans be overseen by Chief Secretary and forwarded to CPCB before 30.6.2020. CPCB may consolidate all action plans and file a report accordingly.

Ministry of Jal Shakti and Ministry of Housing and Urban Affairs may facilitate States/UTs for ensuring that water quality of rivers, lakes, water bodies and ground water is maintained.

As observed in para 13 above, 100% treatment of sewage/effluent must be ensured and strict coercive action taken for any violation to enforce rule of law. Any party is free to move the Hon'ble Supreme Court for continued violation of its order after the deadline of 31.3.2018. This order is without prejudice to the said remedy as direction of the Hon'ble Supreme Court cannot be diluted or relaxed by this Tribunal in the course of execution. PCBs/PCCs are free to realise compensation for violations but from 1.7.2020, such compensation must be realised as per direction of this Tribunal failing which the erring State PCBs/PCCs will be accountable."

Order dated 21.09.2020

"11. The Tribunal has already issued directions vide orders dated 28.08.2019 and 21.05.2020 for ensuring that no untreated sewage/effluent is discharged into any water body and for any violation compensation is to be assessed and recovered by the CPCB so that the same can be utilized for restoration of the environment, complying with the principle of 'Polluter Pays' which has been held to be part of 'Sustainable Development' and part of right to life. Control of such pollution

is crucial for environment, aquatic life, food safety and also human health. ..”

From OA 673/2018

Order dated 6.12.19:

6. The Hon’ble Supreme Court noticed the level of degradation of rivers in India and apathy of the authorities as follows:

“58. Rivers in India are drying up, groundwater is being rapidly depleted, and canals are polluted. Yamuna in Delhi looks like a black drain. Several perennial rivers like Ganga and Brahmaputra are rapidly becoming seasonal. Rivers are dying or declining, and aquifers are getting over pumped. Industries, hotels, etc. are pumping out groundwater at an alarming rate, causing sharp decline in the groundwater levels. Farmers are having a hard time finding groundwater for their crops e.g. in Punjab. In many places there are serpentine queues of exhausted housewives waiting for hours to fill their buckets of water. In this connection John Briscoe has authored a detailed World Bank Report, in which he has mentioned that despite this alarming situation there is widespread complacency on the part of the authorities in India.²

“4. We see Yamuna river virtually turned into a sullage. We take judicial notice of this situation. Similar is the position with Ganges. As it proceeds, industrial effluents are being poured in rivers. Sewage is also being directly put in rivers contributing to the river water pollution. We direct the Pollution Control Boards of the various States as well as the Central Pollution Control Board and various Governments to place before us the data and material with respect to various rivers in the concerned States, and what steps they are taking to curb the pollution in such rivers and to management as to industrial effluents, sewage, garbage, waste and air pollution, including the water management. We club the ending case of water management with this matter.³

XXX.....XXX.....XXX

² State of Orissa v. Govt. of India, (2009) 5 SCC 492

³ M.C. Mehta Vs Union of India- W.P. (Civil) No. 13029/1985 dated 25.11.2019

11. In spite of above, in flagrant violation of law of the land, polluted water in the form of sewage, industrial effluents or otherwise has continued to be discharged in the water bodies including the rivers or the canals meeting the rivers. Violation of law is not only by private citizens but also statutory bodies including the local bodies and also failure of the regulatory authorities in taking adequate steps. There is no corresponding coercive action posing danger to rule of law when large scale violation of law is not being remedied. This leads to lawlessness.

12. It will be appropriate to note the crisis situation in the country on the subject of availability of potable water. The matter has been considered in the report of Niti Aayog on Composite Water Management Index (CWMI).⁴ Following further information also needs to be noted:

- (i) India is suffering from the worst water crisis in its history and millions of lives and livelihoods are under threat. Currently, 600 million Indians face high to extreme water stress and about two lakh people die every year due to inadequate access to safe water⁵. The crisis is only going to get worse. By 2030, the country's water demand is projected to be twice the available supply, implying severe water scarcity for hundreds of millions of people and an eventual ~6% loss in the country's GDP⁶. As per the report of National Commission for Integrated Water Resource Development of MoWR, the water requirement by 2050 in high use scenario is likely to be a milder 1,180 BCM, whereas the present-day availability is 695 BCM. The total availability of water possible in country is still lower than this projected demand, at 1,137 BCM. Thus, there is an imminent need to deepen our understanding of our water resources and usage and put in place interventions that make our water use efficient and sustainable.
- (ii) India is undergoing the worst water crisis in its history. Already, more than 600 million people⁷ are facing acute water shortages. Critical groundwater resources – which account for 40% of our water supply – are being depleted at unsustainable rates.⁸
- (iii) Most states have achieved less than 50% of the total score in the augmentation of groundwater resources, highlighting the growing national crisis—54% of India's groundwater wells are declining, and 21 major cities

⁴ Niti Ayog on “Composite Water Management Index”, June 2018, https://niti.gov.in/writereaddata/files/document_publication/2018-05-18-Water-Index-Report_vS8-compressed.pdf.

⁵Source: WRI Aqueduct; WHO Global Health Observatory

⁶Source: McKinsey & WRG, ‘Charting our water future’, 2009; World Bank; Times of India

⁷ Source: World Resource Institute

⁸ Source: World Resource Institute

are expected to run out of groundwater as soon as 2020, affecting ~100 million people⁹.

(iv) With nearly 70% of water being contaminated, India is placed at 120th amongst 122 countries in the water quality index.

13. As per statistics mentioned before the Lok Sabha on April 6, 2018, waterborne diseases such as cholera, acute diarrhoeal diseases, typhoid and viral hepatitis continue to be prevalent in India and have caused 10,738 deaths, over the last five years since 2017. Of this, acute diarrhoeal diseases caused maximum deaths followed by viral hepatitis, typhoid and cholera.¹⁰

14. As per 'National Health Profile' published by Central Bureau of Health Investigation, Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India, a total of 1535 Deaths due to Acute Diarrhoeal Diseases was reported during the year 2013.¹¹

Main Causes of Pollution of Rivers

15. As already noted, well known causes of pollution of rivers are dumping of untreated sewage and industrial waste, garbage, plastic waste, e-waste, bio-medical waste, municipal solid waste, diversion of river waters for various purposes affecting e-flow, encroachment of catchment areas and floodplains, over drawl of groundwater, river bank erosion on account of illegal sand mining. In spite of directions to install Effluent Treatment Plants (ETPs), Common Effluent Treatment Plants (CETPs), Sewage Treatment Plants (STPs), and adopting other anti-pollution measures, satisfactory situation has not been achieved. As per CPCB's report 2016¹², it has been estimated that 61,948 million liters per day (mld) sewage is generated from the urban areas of which treatment capacity of 23,277 mld is currently existent in India. Thereby the deficit in capacity of waste treatment is of 62%. There is no data available with regard to generation of sewage in the rural areas.

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33. We may note the observations of the Hon'ble Supreme Court:

⁹ Source: UN Water, 'Managing water under uncertainty and risk', 2010; World Bank (Hindustan Times, The Hindu).

¹⁰ <https://www.indiaspend.com/diarrhoea-took-more-lives-than-any-other-water-borne-disease-in-india-58143/>

¹¹ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106612>

¹² http://www.sulabhervis.nic.in/Database/STST_wastewater_2090.aspx July 16, updated on

“26. Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.”¹³

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“61. If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large-scale cannot take place without connivance of the officers concerned. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens.”¹⁴

¹³ INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION Vs. UNION OF INDIA AND OTHERS (1996) 5 SCC 281

¹⁴ M.C. Mehta v. Union of India, (2006) 3 SCC 399 – Public functionaries

xxx.....xxx.....xxx

35. *Vide order dated 22.08.2019 in Original Application 200/2014, dealing with the pollution of river Ganga, the Tribunal issued directions and laid down coercive measures to be taken for discharge of untreated sewage in river Ganga:-*

“16. xxx.....xxx.....xxx

17. **Wherever the work has not commenced, it is necessary that no untreated sewage is discharged into the River Ganga. Bioremediation and/or phytoremediation or any other remediation measures may start as an interim measure positively from 01.11.2019, failing which the State may be liable to pay compensation of Rs. 5 Lakhs per month per drain to be deposited with the CPCB. This however, is not to be taken as an excuse to delay the installation of STPs. For delay of the work, the Chief Secretary must identify the officers responsible and assign specific responsibilities. Wherever there are violations, adverse entries in the ACRs must be made in respect of such identified officers. For delay in setting up of STPs and sewerage network beyond prescribed timelines, State may be liable to pay Rs. 10 Lakhs per month per STP and its network. It will be open to the State to recover the said amount from the erring officers/contractors.**

36. *Vide order dated 28.08.2019, the Tribunal held:-*

“15. xxx.....xxx.....xxx

“16. xxx.....xxx.....xxx

17. **As already noted, prevention of pollution of water is directly linked to access to potable water as well as food safety. Restoration of pristine glory of rivers is also of cultural and ecological significance. This necessitates effective steps to ensure that no pollution is discharged in water bodies. Doing so is a criminal offence under the Water Act and is harmful to the environment and public health. ‘Precautionary’ principle of environmental law is to be enforced. Thus, the mandate of**

law is that there must be 100% treatment of sewage as well as trade effluents. This Tribunal has already directed in the case of river Ganga that timelines laid down therein be adhered to for setting up of STPs and till then, interim measures be taken for treatment of sewage. There is no reason why this direction be not followed, so as to control pollution of all the river stretches in the country. The issue of ETPs/CETPs is being dealt with by an appropriate action against polluting industries. Setting up of STPs and MSW facilities is the responsibility of Local Bodies and in case of their default, of the States. Their failure on the subject has to be adequately monitored. Recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance. It is thus necessary to issue directions to all the States/UTs to enforce the compensation regime, latest with effect from 01.04.2020. We may not be taken to be condoning any past violations. The States/UTs have to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies. On failure of the States/UTs, the States/UTs themselves have to pay the requisite amount of compensation to be deposited with the CPCB for restoration of environment. The Chief Secretaries of all the States may furnish their respective compliance reports as per directions already issued in O.A. No. 606/2018."

16. Even though the grievance has been continuing for the last seven years as earlier mentioned, only progress mentioned is that on 02.06.2021, a letter has been sent to the Additional Project Director, SMCG, Lucknow which by no standard can be held to be a responsible meaningful progress. Even with regard to CETP, only progress is sanction of funds in the meeting held on 22.06.2021. There is no remedial action against erring officers by way of adverse entries in their ACRs in terms of directions of this Tribunal and also for initiating prosecution against them. It is not mentioned how those discharging pollution in water bodies are being dealt with. Such violators are in no way less than offenders causing deaths and injuries. The offences committed in preventing water pollution are so serious in nature that the Parliament has laid down minimum sentence for such violations. It is a well-known fact that significant number of deaths and diseases take place on

account of water borne diseases. Sources of drinking water cannot be allowed to be polluted. It is as important as security of citizens against other offences. If the authorities fail, the statutory regulators have to initiate prosecution but in the present case the State PCB appears to be a failure in enforcing the law against the violators. The officers of the State PCB need to be held accountable for such violations. Similarly, on the subject of establishment of landfill site for processing of the waste, only progress made is initiation of process for sanction of DPR which infact is no compliance at all for prevention of offences relating to pollution. With regard to tapping of drains falling in the lake, it is stated that action for tapping of all the drains will be taken but neither any timeline has been fixed nor any meaningful action plan has been placed on record. It is stated that in respect of some of the drains, project has been sanctioned on 30.03.2021 and tender has been invited which again shows sorry state of affairs and lack of sensitivity as merely doing so does not end the pollution and the offences relating to violation of environmental laws thus, continues unabated. On the subject of tapping of drains falling in river Rapti, the situation remains equally disappointing. Environmental Compensation assessed for serious violation remains uncomplied, defeating the mandate of 'Polluter Pays' principle. There is no justification, explanation or clarification given regarding the same. We are not repeating our observations with regard to other issues but the situation is extremely unsatisfactory and disappointing. It is further evidenced from the report of the OSC and of the Chief Secretary that reckless disposal of sewage and trade effluents has already resulted in rivers Rapti and Ghagra being categorised as polluted rivers identified by CPCB. These rivers are not fit for bathing and the value of such deterioration of natural resources is not even recognised. Further damage on account encroachment of catchment of Ramgarh Tal and river flood plain zones of Ami, Rapti and Ghagra is continuing. Thus, pending further action, continuing encroachments must be forthwith stopped by strict enforcement of Flood Plain Zone regulations, including for the Ramgarh lake. It is also surprising that how UP PCB is permitting industries to operate in violation of Water Act. It appears that, out of around 266 industries in GIDA area, there are 55 water polluting industries. It has not been made clear whether these industries have their own ETPs meeting the laid down stipulated standards. If so, why CETP is required. If not, how industries are continuing in violation of law. Regarding meeting norms by the existing 30 mld and 15 mld STPs, the compliance with respect to Fecal coliform has to be ascertained, considering that recipient system has rivers and lake, which are sources of drinking water by humans and other living beings. SPCB ought

to have mentioned about the performance of remediation which is said to have started on some drains.

17. We confronted learned Counsel for the State with the situation but he has not been able to give any response except to say that the Chief Secretary should own the responsibility and take stringent action against the erring officers for non-compliance of law, for protection of environment and public health. What has stopped the Chief Secretary to take the action is not known to us.

18. With utter disappointment with the attitude of the concerned officers of the State of UP, we direct the Chief Secretary to now take meaningful and stringent action for compliance of law and hold the erring officers accountable in the same manner as any other violators of law in a system governed by rule of law. Adverse entries must be made in their ACRs and if there is no change in their attitude towards performance of their duty, the criminal prosecution needs to be launched against them in the same manner as against any other violators. We hope that the Chief Secretary realizes his responsibility and acts promptly. We direct the Chief Secretary to remain present in person by Video Conferencing on the next date with his action taken report along with the concerned accountable officers i.e., Additional Chief Secretaries of Urban Development/Irrigation & Water Resources/ Department of Infrastructure & Industrial Development /Revenue/Medical Education Department of Uttar Pradesh, who may explain why they be not personally dealt with as per law for the serious violations and dereliction of duty at the cost of public health. The report of Chief Secretary needs to be affirmative considering the matter has been going on for more than seven years. There is need for time bound committal execution plan on treatment and utilisation of treated sewage, ensuring each household connection to sewers, proper management of fecal septage (material from Septic tanks), interception of drains to destined STPs, justifying necessity of CETP and basis of permitting existing industries, economic losses on account of pollution of rivers and the lake, removal of encroachments and further prevention and cutting down tendering business to avoid delays. CPCB may also examine the proposal in view of existing status of industries and ascertain necessity of CETP and situation which will prevail till CETP is set up. There should be mechanism to monitor progress at the level of the Secretary concerned and monthly progress be placed on the website of the District Magistrate/ State portal. It may also be assessed that how much loss is being incurred (in qualitative and quantitative terms) on account of inaction/delayed action damaging the Rivers and the Lake.”

12. From the report filed on behalf of the State, it is not clear as to the number of industries for whom CETP is planned. Water quality does not show positive results after Bio-remediation work. The fecal coliform and fecal coliform counts are much above the prescribed standards

13. We also note that in recent cases the Tribunal has fixed financial liability under 'Polluter Pays' principle for discharge of untreated sewage in water bodies at the rate of Rs. 2 Crores per MLD. Such orders have been passed inter alia in respect of West Bengal on 01.09.2022, in respect of NOIDA and DJB dated 03.08.2022, in respect of Ghaziabad dated 06.09.2022 and in respect of Maharashtra dated 08.09.2022. It will suffice to refer to the latest order dated 08.09.2022 in O.A No. 606/2018, Compliance of MSW Rules, 2016 in respect of Maharashtra as follows:-

“xxxxxx.....xxx

45. In our recent order dated 01.09.2022 in O.A No. 606/2018 (in respect of State of West Bengal), considering scale of compensation adopted in earlier cases including in OA No. 1002/2018, *Abhisht Kusum Gupta vs. State of Uttar Pradesh & Ors.*, compensation was determined @ Rs. 2 Crore per MLD for untreated liquid waste and in OA No. 286/2022 for unprocessed legacy waste compensation was fixed @ Rs. 300 per MT to be utilized for restoration measures, including preventing discharge of untreated sewage and solid waste treatment/processing facilities, as per appropriate mechanism for planning and execution that may be evolved, within three months. Operative part of the said order is reproduced below:-

“Conclusion about quantum of compensation

49. In the light of above and considering damage to the recipient environment, we hold that apart from ensuring compliance at the earliest, compensation has to be paid by the State for past violations. The amount of compensation is fixed @ Rs. 2 crore per MLD (at which rate compensation has been levied against Noida and DJB in OA No. 1002/2018, *Abhisht Kusum Gupta vs. State of Uttar Pradesh & Ors.*, referred to in para 48 above for detailed reasons mentioned therein). As noted earlier, **gap in generation and treatment in West Bengal, as per data furnished is 1490 MLD. Thus, under this head, liability of the State of West Bengal is to pay compensation of Rs. 2980 crores, rounded off to Rs. 3000 crore in view of continuing damage. For failure to process solid waste, unprocessed legacy waste being 1.20 crore MT, compensation is assessed @ Rs. 300 per MT (at which approximate rate compensation has been awarded in OA No. 286/2022 against Municipal Corporation, Ludhiana, for the reasons given therein). This works out to Rs. 366 crore but adding 134 crore for continuing addition of unprocessed waste @ 13469.19 TPD, the total amount is rounded off to Rs. 500 crore. Thus, final amount of compensation under the two heads (solid and liquid waste) is assessed at Rs. 3500 crores which may be deposited by the State of West Bengal in a separate ring-fenced account within two months, to be operated as per directions of the Chief Secretary and utilised for restoration measures, including**

preventing discharge of untreated sewage and solid waste treatment/processing facilities, as per appropriate mechanism for planning and execution that may be evolved, within three months. If violations continue, liability to pay additional compensation may have to be considered. Compliance will be the responsibility of the Chief Secretary.”

46. *Following the above pattern, we determine compensation payable by the State of Maharashtra. In respect of **gap in treatment of liquid waste/sewage i.e. 5420.33 MLD, compensation works out to Rs. 10840.66 crores and compensation for un-remediated legacy waste to the extent of 3,94,19,287 works out roughly to about Rs. 1200 crores. We round off the compensation amount @ Rs. 12,000/- crores which may be deposited by the State of Maharashtra in a separate ring-fenced account within two months, to be operated as per directions of the Chief Secretary and utilised** for restoration measures. The restoration measures with respect to sewage management would include setting up of sewage treatment and utilization systems, upgrading systems/operations to ensure utilization of their full capacities, ensuring compliance of standards, including those of fecal coliform and setting up of proper fecal sewage and sludge management in rural areas. With regard to solid waste management, the action plan would include setting up of required waste processing plants and remediation of left out 84 sites. Bio-remediation/bio-mining process need to be executed as per CPCB guidelines and the stabilized organic waste from biomining as well as from compost plants need to comply with laid down specifications. Other material recovered during such processes are to be put to use through authorized dealers/handlers/users. This restoration plan needs to be planned and executed in a time bound manner without further delay. If violations continue, liability to pay additional compensation may have to be considered. Compliance will be the responsibility of the Chief Secretary.*

47. *Award of above compensation has become necessary under section 15 of the NGT Act to remedy the continuing damage to the environment and to comply with directions of the Hon’ble Supreme Court requiring this Tribunal to monitor enforcement of norms for solid and liquid waste management. Moreover, without fixing quantified liability necessary for restoration, mere passing of orders has not shown any tangible results in the last eight years (for solid waste management) and five years (for liquid waste management), even after expiry of statutory/laid down timelines. Continuing damage is required to be prevented in future and past damage is to be restored.”*

Liability for compensation on polluter pays principle

14. *In the light of above, we determine the liability of State of U.P for discharge of 55 MLD sewage into rivers at Gorakhpur at Rs. 110 Crores. As already noted, water pollution is also one of the sources of EV. Further, for failure to process solid waste, on scale applied in other cases, compensation is to be fixed. As per information given during the hearing, there is unprocessed legacy solid waste is 3.8 lakhs MT at two sites. Applying the scale of compensation followed in case of Maharashtra,*

compensation comes to Rs. 11.40 crore which is rounded off at Rs. 10 crores. Thus, total compensation is determined at Rs. 120 crores.

15. *The compensation amount may be deposited by the State (which may be ensured by the Chief Secretary) within one month in a ring-fenced account under the control of the Divisional Commissioner, Gorakhpur to abide by directions of the joint Committee who may plan and execute remedial measure so as to achieve norms preferably within six months, failing which further compensation may have to be levied.*

16. *We constitute a six-member joint Committee for above purpose to be headed by ACS, U.D, UP, with Regional Director, CPCB, Regional Officer, MoEF&CC, Member Secretary, State PCB, nominee of PCCF, (HoFF), U.P and Municipal Corporation, Gorakhpur. The Committee may meet within one month and update action plan for prevention and remediation of pollution so as to achieve tangible results within six months. Steps will include operationalization of CETPs, interception and diversion of drains to the respective STPs, to be set up and commissioned, maintaining Floodplain zones of rivers, lakes in question and also Ramgarh Tal, preventing encroachment, ensuring plantation and desilting of the Tal and other associated activities. Work may not be held up on account of avoidable procedures and timelines should not change. The proceedings of the Committee may be held online or offline as may be found viable except for site visits. Proceedings may be uploaded on the website to enable public participation. If the industries are still non-compliant in terms of pollution norms, the State PCB may take action in accordance with law. The Committee will be free to coordinate and interact with other departments/experts/institutions/other stakeholders. Additionally, CPCB and State PCB may jointly carry out field investigation on commissioning of CETP and utilization of CETP, prospective members of CETP and functioning and performance of STPs. Result thereof may be looked into by the Committee for further course of action.*

17. *An action taken report may be filed with the Registrar General of this Tribunal within six months 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. If necessary, the Registrar General may place the matter for further direction before the Tribunal.”*

3. Since to monitor pollution of Rapti River, this Tribunal has already constituted a six Member joint Committee comprising Additional Chief Secretary, Urban Development, UP, Regional Director, CPCB, Regional Officer, MoEF&CC, Member Secretary, UPPCB, nominee of PCCF (HoFF) UP and Municipal Corporation, Gorakhpur, in our view, issue raised in this matter can also be looked into by the said Committee and it shall examine the matter and take remedial action and include the action taken and particularly with reference to remediation of existing dumpsites, clearing of unauthorized dumpsites and setting up of adequate waste processing

facilities equivalent to current waste generation therein in pursuant thereto with regard to the complaint raised in the matter in the report which is required to be submitted pursuant to order dated 13.09.2022 passed in Meera Shukla (Supra).

4. With the above direction, this Original Application is disposed of.

5. A copy of this order be forwarded to Additional Chief Secretary, Urban Development, UP, Regional Director, CPCB, Regional Officer, MoEF&CC, Member Secretary, UPPCB, nominee of PCCF (HoFF) UP and Municipal Corporation, Gorakpur by e-mail for compliance.

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

January 03, 2023
Original Application No. 742/2022
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