

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

Original Application No. 200/2014
(M.A. No. 254/2018 & M.A. No. 872/2018)
(C.W.P. No. 3727/1985)

WITH

Original Application No. 668/2017
(Earlier M.A.No.923/2017 IN O. A. No. 200/2014)

WITH

M.A. No. 141/2016 & M.A. No. 337/2018

IN

Original Application No. 10/2015

WITH

Original Application No. 390/2018
(Earlier O.A. No. 44/2017 (EZ))

WITH

Original Application No. 34/2018

M.C. Mehta

Applicant(s)

Versus

Union of India &Ors.

Respondent(s)

With

M.C. Mehta

Applicant(s)

Versus

Union of India &Ors.

Respondent(s)

With

Indian Council for Enviro-legal Action

Applicant(s)

Versus

National Ganga River Basin Authority &Ors.

Respondent(s)

With

Tribunal on its Own Motion (SuoMotu)

Applicant(s)

Versus

State of Bihar &Ors.

Respondent(s)

With

Vikrant Tongad

Applicant(s)

Versus

Union of India &Ors.

Respondent(s)

Date of hearing: 14.05.2019

**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 Amicus Curiae: Ms. Katyayni, Advocate and
Mr. Aishani Singh, Advocate for Applicant

For Respondent(s): Mr. Varun Thakur and Mr. Brajesh Pandey,
Advocates and Dr. Praveen Kumar, Director
(Technical) for NMCG
Mr. Rahul Verma, AAG for State of Uttarakhand
Mr. Mukesh Verma, Advocate for UEPPCB
Mr. Pradeep Misra, Advocate for UPPCB
Mr. Santosh Kumar, Advocate for UPSIDC
Mr. Manish Paliwal, Mr. Vikas Kumar and Mr.
Aman Modi, Advocate in MA 872
Mr. Rashi Saeed, Advocate for CETP Banthar and
Unnao
Mr. Ruchir Batra, Advocate for Sitarganj CETP
Mr. I.K. Kapila, Advocate

ORDER

1. The issue for consideration relates to execution of directions of this Tribunal dated 10.12.2015 and 13.07.2017 with regard to prevention and remedying of pollution of river Ganga and action against the polluters. The said order dated 10.12.2015 divided the project of cleaning of river Ganga as follows:

Phase-I – Segment-A: Gomukh to Haridwar,
Segment-B:

Haridwar to Kanpur.

Phase-II: Kanpur Border to Uttar Pradesh Border.

Phase-III: UP Border to/till Jharkhand Border.

Phase-IV: Jharkhand Border to Bay of Bengal (West Bengal).

2. Order dated 10.12.2015 dealt with Phase-I-Segment-A. Remaining area has been dealt with by order dated 13.07.2017.
3. Main problem considered in the above orders is continuous illegal discharge of untreated sewage and industrial effluents in Ganga and its tributaries and the connecting drains, apart from the dumping of solid waste, bio-medical waste, hazardous waste, plastic waste, muck and other wastes. In addition to such discharge and dumping, there are issues of illegal encroachment, illegal sand mining, absence of steps for conservation of ground water, reuse of treated water and restoration of water bodies besides maintenance of e-flows. On testing of water samples, huge amount of pollution was found at several hotspots. The Water (Prevention and Control of Pollution) Act, 1974 requires stringent measures, including immediate closure of any polluting activity, prosecution and recovering compensation from the polluters for restoration of the damaged environment but the said provisions are not being fully enforced. Either the sewage or effluents are not being treated or the treatment equipment are not adequate. Though Uttarakhand Flood Plain Zoning Act, 2012 had been enacted, the same was not fully implemented. The Tribunal in its order dated 10.12.2015 noted that though the proceedings were pending since 1985 and various initiatives were taken at the government level, the pollution of river

Ganga continues. Ganga Action Plan Programme was not a success on account of lack of proper implementation. It was noted that there were 143 drains and nalas in Segment-A of Phase-I. 77 drains were to be trapped. Hotels, Ashrams, etc. in the flood plains were serious source of pollution on account of waste being put into the river directly or through the sewage pipelines which were not treating the sewage. Directions in the order dated 10.12.2015 include collection and disposal of sewage, closing down of polluting industries, closing of hotels, dharamshalas and ashrams being run without STPs and without consent of the Pollution Control Boards, if they were releasing domestic waste or sewage into the river, prohibiting dumping of plastic and municipal waste, zoning of flood plains, treating 100 meters from middle of the river to be eco-sensitive and prohibited zone for any permanent or temporary activity, area from 100 meters to 300 meters to be treated as regulatory zone in hilly terrain, for plain terrain the area will be 200 meters and 500 meters instead of 100 meters and 300 meters, prohibited unregulated river bed mining, mechanized mining, prohibited dumping of bio-medial waste. General directions required collection of environmental compensation from defaulting industries, hotels, and even households depending upon the size and capacity of the establishments and use that fund for environmental restoration.

4. With regard to Segment-B of Phase-I, it was noted that 86 drains were joining the river Ganga directly or its tributaries which were being polluted by discharge of sewage or industrial waste. The matter of river flow was considered in view of need for maintaining

aquatic bio-diversity, recharge of ground water, purification of rivers and other allied issues. The Tribunal also discussed the issue of flood plains, Continuous Emission Monitoring System (CEMS), Online Monitoring System (OMS) and deficiencies of the regulatory bodies. Final directions vide order dated 13.07.2017 broadly relate to preventing discharge of untreated effluent in 86 drains. Specific directions were issued with regard to Jajmau, Banthar and Unnao where Common Effluent Treatment Plants (CETPs) were required to be properly operated to prevent any pollution. Flood plains were required to be identified and demarcated with restrictions against any development or construction within 100 meters from the edge of river and identification of no development/construction zone, regulatory zone, etc, prohibition against dumping of waste and recovery of compensation. Directions were also issued that minimum E-flows of river Ganga should not fall below 20% in the average monthly lean season, prohibiting extraction of ground water for industrial or commercial purposes without permission of the Central Ground Water Authority (CGWA) with total prohibition and regulation in critical, semi-critical or over-exploited areas. Though the orders specify the Committees to monitor the said orders with the prescribed timelines, such compliance has not taken place even after three years of passing of first order and about two years after passing of the first order.

5. The matter has also been monitored by this Tribunal from time to time in the last more than three years with regard to Phase-I -

Segment -A and for almost two years with regard to Phase-I - Segment B and other Phases.

6. Vide order dated 19.07.2018, status report furnished by the State of Uttarakhand was considered with regard to Phase-I, Segment-B. The National Mission for Clean Ganga (NMCG) is the nodal agency to implement the rejuvenation of river Ganga which includes compliance of directions of this Tribunal along with other concerned authorities. The Tribunal directed that District Magistrates heading the District Ganga Committees may furnish reports to the Executive Committee every fortnight and the Executive Committee may furnish its report to the Supervisory Committee once in every month. The Supervisory Committee may meet once in two months. The Principal Committee may meet once in three months. Any member of public may give their views to the said Committees and response to such views may be placed on the websites (of NMCG).
7. With regard to Phase-I Segment-B, vide order dated 27.07.2018, the Tribunal noted that the progress was inadequate inasmuch as tanneries were not meeting the standards of effluent discharge. 14 out of 86 drains have not been cleaned, issue of e-flows has not been addressed, ground water extraction was a matter of concern, water quality was getting deteriorated. The Tribunal directed the CPCB/SPCBs to regularly display the result of analysis of water samples drawn at various locations atleast at one place within 100 km and also display information of places where water is fit for consumption or fit for bathing. The Tribunal also noted that water from Haridwar to Kolkata was reported to be neither fit for

consumption nor for bathing and it was found that the situation at Jajmau, Unnao and Banthar had not been improved, all the drains have not yet been trapped. The Tribunal held that the progress was not upto expectation and considered it appropriate to constitute a Monitoring Committee headed by a former Judge of Allahabad High Court to take stock of the actions taken so far with clear measurable indicators of progress and success. The action plan may include creation of bio-diversity parks. The Committee may involve educational institutions for awareness. NMCG was directed to take action plan from the concerned States with regard to Phases-II, III and IV from the States of Bihar, Jharkhand, West Bengal and remaining part of Uttar Pradesh. Such Action Plan should cover interception and diversion of drains carrying sewage to STP, laying of sewage network, utilization of treated sewage, securing compliance from industries in the catchment of the drains, ground water regulation, flood plain regulation, rain water harvesting system, good irrigation practices. SPCBs were to furnish list of industries having potential for causing pollution of river Ganga in Phases II to IV.

8. On 29.11.2018, the Tribunal considered progress with regard to Phase-I, Segment-A and Segment-B on STPs, CETPs, tapping of drains, compliance of MSW Rules, setting up of bio-digesters and sewerage network, improvement in water quality, unregulated ground water extraction, e-flow, public involvement and awareness. The Tribunal observed that decentralized processing facility should be provided close to the source of generation of waste. Issues of

scientific disposal of waste, protection of flood plains, checking illegal mining etc may be monitored for which a Monitoring Committee for the area falling in Segment-A of Phase-I was to be headed by Justice U.C. Dhyani, former Judge of Uttarakhand High Court.

9. On 11.03.2019, reports received from the Committees with regard to Segments A and B of Phase-I were considered. It was specifically noted as follows:

“8. We also note that directions of the Tribunal dated 13.7.2017 relating to interception of drains, construction of sewage treatment plants, setting up of common effluent treatment plant at Jajmau, Unnao and Banthar remain un-complied till date. CETPs at Jajmau, Unnao and Banthar are not meeting the stipulated standards which is deemed to be violation by all the tanneries. Since NMCG and UP State have failed to ensure setting up of CETP at Jajmau and upgradation at Unnao and Banthar, we direct NMCG, CPCB and UPPCB to examine whether tanneries who are members of such CETP are to be closed till compliant CETPs are set up. The directions of this Tribunal are clear. Unless and until the sewage and industrial effluents are diverted for their treatment and e-flow is maintained, water quality improvement in Segment ‘B’, Phase-I cannot be achieved. Therefore, failure in execution of plan for the segment in time may call for coercive action.”

10. It was noted that Action Plans with regard Phases-II, III and IV had not been filed and the affidavit filed by the NMCG presented a dismal picture. There was no justification for delay in filing the action plans. Last opportunity was given to take further steps and file action plans indicating interception and diversion of drains to the STPs, utilization plan for treated sewage, demarcating flood plain zones, preventing encroachments, specifying e-flow applicable to UP,

Bihar, Jharkhand and West Bengal. The Tribunal referred to a study on sanitation status of 97 Ganga Towns. The Tribunal directed NMCG to take steps to rectify the deficiencies.

11. Today's hearing is focused on the issue of consideration of further progress in Segments A and B of Phase-I as well as other Phases.

SEGMENT-A,PHASE-I

12. Report dated 09.05.2019 received from Justice U.C. Dhyani shows steps taken for tapping of drains. It is stated that some STPs are still under construction and STPs at some important locations are non-compliant.

13. In view of the said report, Uttarakhand Pollution Control Board needs to prohibit discharge of any sewage or industrial effluents either directly into river Ganga or its tributaries in view of statutory prohibition under the Water (Prevention and Control of Pollution) Act, 1974, apart from orders of this Tribunal. Any failure must result in deterrent compensation being recovered from the persons/authorities responsible for discharge of untreated sewage/effluents into the river. Such compensation must be deterrent and adequate to recover the cost of restoration. This is necessary to ensure that polluting of river Ganga is no longer a profitable activity. Repeated directions of the Hon'ble Supreme Court and this Tribunal in the last 34 years should not remain on paper. The Committee constituted by the Tribunal may identify persons responsible for failure including the officers and authorities of the State Government.

14. Wherever STPs are non-compliant, stringent action must be taken and every polluting activity must be stopped till adequate remedial steps are taken.
15. NMCG may ensure compliance with regard to prevention and removal of encroachments, maintenance of e-flows, afforestation and setting up of bio-diversity parks, ground water regulation, sand mining regulation. State of Uttarakhand may ensure that no illegal camping takes place on the banks of river Ganga and its tributaries. We may make specific mention of alleged illegal camping at Piyani village in District Pauri Garhwal towards Neelkanth road. Policy of e-flows may be clearly spelt out by the State of Uttarakhand. The State may have its own effective mechanism to monitor e-flows.

SEGMENT-B, PHASE-I

16. Report dated 30.04.2019 shows that all the 86 identified drains have still not been trapped. There is overflow/leakage at Kanpur. Chromium and other metals are still being discharged by the leather industries at river Ganga at Jajmau, Banthar and Unnao. CETPs are not meeting the stipulated standards. Activities of members of CETPs must be straight-away closed till CETPs are compliant and only treated effluents should be allowed to discharge into river Ganga or its tributaries after reuse of treated effluents.
17. Report received vide e-mail dated 01.05.2019 shows that while the CPCB suggested closure of non-compliant units, the UPPCB and the NMCG opposed the same. We are surprised at the attitude of the UPPCB and the NMCG which is in violation of orders of this Tribunal and the mandate of law. Concerned officers of the UPPCB

and the NMCG are liable to be proceeded against by way of coercive measures. Accordingly, we overrule the views of the UPPCB and the NMCG and upheld the view of CPCB and direct immediate closure of all the polluting discharges by such industries into the river Ganga or its tributaries. Compliance of this direction may be ensured by the UPPCB. The Member Secretary of the UPPCB may remain present in person before this Tribunal on the next date along with compliance report and explanation for violating the directions of this Tribunal and not carrying out the responsibilities statutorily required under the Water (Prevention and Control of Pollution) Act, 1974.

18. As already directed, all the 86 drains falling in Segment-B of Phase-I may be tapped so that no untreated effluent goes into the river Ganga. Action may be taken against any individual or establishment discharging pollutants in the drains/river by way of closure of such activity, prosecution and recovery of deterrent compensation which is adequate to meet the cost of restoration.
19. We also direct the State of UP to provide requisite funds to the CPCB for remediation of Chromium dumps at Kanpur Dehat, Khanpur and RakhiMandi. Proper e-flows may be ensured from the Narora Barrage by the NMCG and the State of UP and a compliance status may be furnished.

PHASES-II TO IV

20. Affidavit filed by the NMCG on 30.04.2019 annexing action plans for the States of UP, Bihar, Jharkhand and West Bengal does not show concrete plans with prompt timelines and action for prohibiting

pollution and taking punitive and remedial action against the polluters. It was directed that NMCG in co-ordination with State Governments of Bihar, Jharkhand, West Bengal and part of Uttar Pradesh to file Action Plan for river Ganga and its tributaries with firm timelines after carrying out detailed field assessments of pollution loads. It was also directed that action plan to cover interception and diversion of drains carrying sewage to STP, utilization of treated sewage, securing compliances from industries located within catchment area of river system, ground water regulation, flood plain regulation, rain water harvesting, good irrigation practices to conserve water, etc. The NMCG has not filed the precise information about the status of projects planned and executed between Kanpur to Ganga Sagar. Thus, the affidavit of the NMCG is of no assistance. Learned Counsel appearing for the NMCG is not ready and is merely dependent on Dr. Praveen Kumar, Director (Technical), NMCG who is also not competent to assist this Tribunal. During the interaction, we find his approach to be to help the polluters instead of remedying the pollution which is the mandate of law and the orders of this Tribunal. The NMCG may take remedial action so that assistance of a suitable person is provided to this Tribunal with precise information failing which this Tribunal may consider coercive measures against the NMCG. The concerned States may also take the matter seriously and ensure assistance to this Tribunal with precise information either through senior officers or through Counsel. No Counsel is present on behalf of the States of Bihar,

Jharkhand and West Bengal. It is the responsibility of all the five States to ensure that water quality at every point meets the standards and if there is a violation, the violators are proceeded against in accordance with law by way of prosecution, closure of polluting activities and payment of compensation for the damage to the environment.

21. We direct the States of Uttarakhand, Bihar, Uttar Pradesh, Jharkhand and West Bengal to place the status of water quality in the respective States on their websites and update the same on monthly basis indicating fitness of water at various places for drinking/bathing purposes. The CPCB may indicate water quality of river Ganga at boundaries of the said States on its website. As already directed, flood plains may be duly demarcated; encroachments prohibited and removed, bio-diversity parks set up and afforestation undertaken. The CPCB along with MoEF&CC to develop guidelines for setting up of bio-diversity parks. The CPCB can take the services of an external expert who has successfully guided DDA to set up bio-diversity park in Yamuna flood plain near Delhi. It would be appropriate if MoEF&CC and respective States examine handing over of such flood plain to the respective Forest Department of States for such activities. Such guidelines may be followed with respect to all the rivers in the country which may be monitored by Director General of Forest in MoEF&CC. Time bound Action Plans be furnished by the NMCG and the States. The same may also be placed on the respective websites for information of the

citizens who have attachment with the river Ganga for social or religious or development reasons.

22. Before parting with this order, we may note that river Ganga has been declared to be National River and has distinct significance for the country. Even a drop of pollution in the river Ganga is a matter of concern. Attitude of all the authorities has to be stringent and depict zero tolerance to pollution of river Ganga. 'Precautionary' principle needs to be in full play for preventing and prohibiting any polluting activity. No amount of wealth generation or commercial or industrial activities can get priority over cleanliness of river Ganga. Any individual or establishment violating the environmental norms with respect to river Ganga must be strictly dealt with under the law and special cells must be created in the concerned States to monitor such action on daily basis. Such action can be a model to deal with the pollution of all other rivers in the country. It is a matter of regret that as per report of the CPCB, 351 river stretches are polluted in the country which is a matter being dealt with by this Tribunal in O.A. No . 673/2018, News item published in 'The Hindu' authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB". The Tribunal has directed the Chief Secretaries of all the States/UTs to monitor this aspect along with other important issues and appear before this Tribunal in person with the progress reports. Till date, the Chief Secretaries/Administrators of 32 States/UTs out of 36 States/UTs have appeared in person. This Tribunal has directed highest level monitoring to deal with the situation at the State level as

well as National level. Vide order dated 08.04.2019, this Tribunal has directed setting up of Central Monitoring Committee comprising senior representatives of the Central Government with all the Chief Secretaries of States/UTs. River Ganga needs attention at highest level. We hope that this seriousness will be realized by the concerned States, NMCG and Ministry of Water Resources and steps will be taken in right earnestness in compliance of order of this Tribunal dated 10.12.2015 with regard to Segment-A of Phase-I (in State of Uttarakhand), and 13.07.2017 with regard to Segment-B of Phase-I (in the State of UP), Phase-II (in the State of UP), Phase-III (in the States of Bihar and Jharkhand) and Phase-IV (in the State of West Bengal) as enough time has already passed after the orders of this Tribunal. Every time the progress has been found to be unsatisfactory. The Tribunal will now have no option but to take more stringent measures unless satisfactory remedial action is taken.

Copies of this order be sent to the concerned States and the NMCG by e-mail for compliance.

List for further consideration on 29.05.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

May 14, 2019
Original Application No. 200/2014
(M.A. No. 254/2018 & M.A. No. 872/2018)
(C.W.P. No. 3727/1985) and other connected matters
A

