

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

Original Application No. 69/2019 (CZ)

Sharad Pareek

Applicant(s)

Versus

State of Madhya Pradesh
through District Collector, Jhabua.

Respondent(s)

Date of hearing: 16.12.2021

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s): None

For Respondent(s): Mr. Sachin K.Verma, Adv

ORDER

1. Heard the learned counsel for the parties and perused the records.
2. Grievance in this application is encroachment on the water bodies and public land in the village Udaipuriya of city Jhabua in the survey no. 198 situated in an old government drainage, in which as alleged some persons by cutting the trees and filling the drainage has constructed huts, and by this way the wide drainage has turned into a narrow drainage, resulting blockage in the free flow of water and threat to the environment. It is further alleged that due to blockage in the drainage system, there is a possibility of spreading of deadly diseases like Dengu, Malariya and entire area is suffering from such serious diseases. The matter was taken up on 01.07.2020 and Collector Balaghat with State Pollution Control Board were directed to submit a factual and action taken report.

3. The matter was taken up on 13.07.2020 and it was observed as follows :

“1. For the negligence of those to whom public duties have been entrusted, can never be allowed to cause public mischief. The collector is the representative of the State and it is his duty to protect the property of the State and the public and also to reply the matter with regard to the State subject. In spite of the order dated 03.03.2020 issued by this Tribunal to submit a report and call the Collector, he failed to comply the order and failed to submit a report. This is called failure of rule of law.

2. The collector is directed to submit a report positively on or before 13th October, 2020 and also to remain present on the date fixed to reply on the matter in issue.

3. It is to be noted that non-compliance of the order of the Tribunal be treated as disobedience and matter may be initiated for necessary punitive actions.”

4. Again the matter was taken up on 13.10.2020 and the Collector was directed to submit factual and action taken report with regard to the water bodies on the State land and action taken against the persons, who have encroached the land but nothing has been reported by the Collector. One *Anuvibhaygia Adhikari* (Revenue) has submitted the report with the facts that survey no. 198 area 2.15 hectare is recorded as government land/ drainage system but out of the total area .0075 hectare of land has been made subject of encroachment by 14 persons and in accordance with the provision contained in Section 248 of Madhya Pradesh Land Revenue Code, 1959 have been initiated and notice has been issued by the concerned *Tehsildar* against those persons. No progress has been reported by the Collector and nothing has been submitted by the authorities concerned with regard to the removal of encroachment and protection of water bodies.

5. The matter was taken up on 24th June, 2021 and after hearing the parties and perusal of records the Tribunal observed as follows:

“4. The matter of discharge of untreated water into the water bodies and encroachment on water bodies have been taken up by this Tribunal in Original Application No. 673/2018, In Re: News item published in The Hindu authored by *Shri Jacob Koshy*, titled—More river stretches are now critically polluted, the Tribunal observed as follows :

5. The Hon‘ble Supreme Court has 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 India¹.

“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 pending case of water management with this matter².

¹ State of Orissa v. Govt. of India, (2009) 5 SCC 492

² M.C. Mehta Vs UOI- W.P. (Civil) No. 13029/1985 dated 25.11.2019

7. The Water (Prevention and Control of Pollution) Act, 1974 (**Water Act**) prohibits use of any stream or well for disposal of polluted matter but this provision is certainly being held in breach without much consequences for the violators who are liable to be prosecuted and punished by imprisonment to uphold the rule of law and public health. Article 48A of the Constitution casts a duty on the State to protect and improve the environment. Article 51A imposes a fundamental duty on every citizen to protect and improve the environment. The Stockholm Declaration (1972) recommended prevention of pollution by adopting the Precautionary Principle, the Polluter Pays Principle and the principle of Sustainable Development. The Statement of objects and reasons for The Water Act is as follows:

The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanisation. It is, therefore, essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking water as well as for supporting fish life and for use in irrigation. Pollution of rivers and streams also causes increasing damage to the country's economy.

A Committee was set up in 1962 to draw a draft enactment for the prevention of water pollution. The report of the Committee was circulated to the State Governments and was also considered by the Central Council of Local Self-Government in September, 1963. This Council resolved that a single law regarding measures to deal with water pollution control, both at the Centre and at the State levels, may be enacted by the Union Parliament. A Draft Bill was accordingly prepared and put up for consideration at a joint session of the Central Council of Local Self-Government and the Fifth Conference of the State Ministers of Town and Country Planning held in 1965. In pursuance of the decision of the joint session, the Draft Bill was considered subsequently in detail by a Committee of Ministers of Local Self-Government from the States of Bihar, Madras, Maharashtra, Rajasthan, Haryana and West Bengal.

Having considered the relevant local provisions existing in the country and recommendations of the aforesaid Committees, the Government came to the conclusion

*that the existing local provisions are neither adequate nor satisfactory. **There is, therefore, an urgent need for introducing a comprehensive legislation which would establish unitary agencies in the Centre and States to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining or restoring wholesomeness of such water courses and for controlling the existing and new discharges of domestic and industrial wastes.***"

8. The Hon'ble Supreme Court has held in several matters that it is the duty of the State to ensure access to clean drinking water, which is part of Right to Life. The Hon'ble Court has repeatedly directed State bodies to enforce statutory provisions by municipal bodies and industries by stopping discharge of untreated sewage and effluents in rivers, and prevent water pollution in any form³. It was observed that water pollution causes serious diseases, including Cholera and Typhoid⁴. It was also observed that the educational institutions must teach at least for one hour in a week lessons relating to protection and improvement of environment, and suitable awareness programs be undertaken⁵. Likewise, the issue of Calcutta tanneries was considered in *M.C Mehta Vs. Union of India And Ors.*⁶, (Calcutta Tanneries' Matter). The tanneries were directed to be shifted by adopting the Precautionary Principle so as to prevent discharge of effluents in the River Ganga. In view of dangerous potential of pollution, it has been laid down that even the State cannot grant any exemption for discharge of pollutants in water in violation of Precautionary principle⁷.

9. In spite of the above, in flagrant violation of law of the

³ Orders dealing with pollution of

- river Pallar, *Vellore Citizen Welfare Forum v. UOI*, (1996) 5 SCC 647, *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (2001) 2 SCC 62 – 45
- river Noyyal, in *Tamil Nadu*, (2009) 9 SCC 737
- river Ganga, *M.C. Mehta V.UOI& Ors.* (1997) 2 SSC 411, (1988) 1 SCC 471

⁴ *M.C. Mehta (1988)*, *supra* n.6

⁵ *Id.*

⁶ *M.C. Mehta (1997)*, *supra* n.6

⁷ *M.V. Nayudu*, *supra* n. 6

land, polluted water in the form of sewage, industrial effluents or otherwise as also different forms of solid waste has continued to be discharged in the water bodies including the rivers or the canals/drains 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 adequate coercive action or accountability, weakening the rule of law when large-scale violations go unaddressed despite repeated multitude of judicial orders.

11. The following additional information as per reports in public domain (subject to verification) also need to be noted:

(a) India is suffering from the worst water crisis in 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 water⁸. Critical groundwater resources – which account for 40% of our water supply – are being depleted at unsustainable rates⁹. 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 GDP¹⁰. 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 water resources and usage and use interventions that make our water use efficient and sustainable.

(b) Most states have achieved less than 50% of the total score in the augmentation of

⁸ Source: WRI Aqueduct; WHO Global Health Observatory

⁹ Id.

¹⁰ McKinsey & WRG, 'Charting our water future', 2009

https://www.mckinsey.com/~media/mckinsey/dotcom/client_service/sustainability/pdfs/charting%20our%20water%20future/charting_our_water_future_full_report_ashx; World Bank; Times of India

groundwater resources, highlighting the growing national crisis—54% of India’s groundwater wells are declining, and 21 major cities are expected to run out of groundwater as soon as 2020, affecting ~100 million people¹¹.

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

(d) 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.¹²

(e) 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 2013.¹³

Main Causes and requisite Remedial Action for Rivers’ Pollution

12. *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,*

¹¹ Source: UN Water, ‘Managing water under uncertainty and risk’, 2010; World Bank (HindustanTimes, The Hindu).

¹² <https://www.indiaspend.com/diarrhoea-took-more-lives-than-any-other-water-borne-disease-in-india-58143/>

¹³ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106612>

- *over drawl of groundwater,*
- *river bank erosion due to number of anthropogenic reasons, such as illegal sand mining.*

20 . This Tribunal noted that data compiled by CPCB on polluted river stretches classified such river stretches in five categories:

(a) Criteria for Priority I

- Monitoring locations exceeding BOD concentration 30 mg/L has been considered as it is the standard of sewage treatment plant and in river it appears without dilution. (River locations having water quality exceeding discharge standards for BOD to fresh water sources).*
- All monitoring locations exceeding BOD concentration 6 mg/L on all occasions.*
- Monitoring locations exceeding 3 mg/L BOD are not meeting desired water quality criteria but does not affect to Dissolved Oxygen level in water bodies. If BOD exceeds 6mg/L in water body, the Dissolved Oxygen is reduced below desired levels.*
- The raw water having BOD levels upto 5 mg/L are does not form complex chemicals on chlorination for municipal water supplies. Hence the water bodies having BOD more than 6 mg/L are considered as polluted and identified for remedial action.*

(b) Criteria for Priority II

- Monitoring locations having BOD between 20-30 mg/L.*
- All monitoring locations exceeding BOD concentration 6 mg/L on all occasions.*

(c) Criteria for Priority III

- Monitoring locations having BOD between 10-20*

mg/L.

ii. All monitoring locations exceeding BOD concentration 6 mg/L on all occasions.

(d) Criteria for Priority IV

i. Monitoring locations having BOD between 6-10 mg/L.

(e) Criteria for Priority V

i. Monitoring locations having BOD between 3-6 mg/l.

ii. Locations exceeding desired water quality of 3mg/l BOD.

31. Vide order dated 22.08.2019¹⁴, this Tribunal issued directions and laid down coercive measures to be taken to restrain discharge of untreated sewage in river Ganga:

16As already observed by this Tribunal including in the order dated 14.05.2019 that River Ganga being National River with distinct significance for the country, even a drop of pollution therein is a matter of concern. **All the authorities have to be stringent and depict zero tolerance to the pollution of River Ganga. Wherever STPs are not operating, immediate bioremediation and/or phyto-remediation may be undertaken if feasible. To avoid procedural delay of tender processes, etc. specifications and norms for undertaking such activities may be specified in consultation with the CPCB as was earlier directed in our order dated 29.11.2018.** Performance guarantees may be required to be furnished for ensuring timely performance. It needs to be ensured that setting up of STPs and sewerage network to be completed and carried out so as to avoid any idle capacities being created. Performance guarantees may be taken for preventing such defaults.

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

¹⁴ O.A. 200/2014, dealing with the pollution of river Ganga

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.

15. With regard to works under construction, after 01.07.2020, direction for payment of environmental compensation of Rs. 10 lakhs per month to CPCB for discharging untreated sewage in any drain connected to river Ganga or its tributaries and Rs. 10 lakhs per month to CPCB per incomplete STP and its sewerage network will apply. Further with regard to the sectors where STP and sewerage network works have not yet started, the State has to pay an Environmental Compensation of Rs. 10 lakhs per month after 31.12.2020. The NMCG will also be equally liable for its failure to the extent of 50% of the amount to be paid. Till such compliance, bioremediation or any other appropriate interim measure may start from 01.11.2019.”

VIII. Order dated 28.08.2019, in pursuance of Hon'ble Supreme Court judgment in (2017) 5 SCC 326, for 100% treatment of sewage by 31.3.2018

32. In *Paryavaran Suraksha Samiti v. UOI*, (2017) 5 SCC 326, the Hon'ble Supreme Court held:

“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 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.**

(emphasis supplied)

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 realize compensation for violations but from 1.7.2020, such compensation must be realized as per direction of this Tribunal failing which the erring State PCBs/PCCs will be accountable.

ii. The CPCB may study and analyse the extent of reduction of industrial and sewage pollution load on the environment, including industrial areas and rivers and other water bodies and submit its detailed report to the Tribunal.

iii. During the lockdown period there are reports that the water quality of river has improved, the reasons for the same may be got studied and analysed by the CPCB and report submitted to this Tribunal. If the activities reopen, the compliance to standards must be maintained by ensuring full compliance of law by authorities

statutorily responsible for the same.

iv. Accordingly, we direct that States which have not addressed all the action points with regard to the utilisation of sewage treated water may do so promptly latest before 30.06.2020, reducing the time lines in the Action Plans. The timelines must coincide with the timelines for setting up of STPs since both the issues are interconnected. The CPCB may compile further information on the subject accordingly.

v. Needless to say that since the issue of sources of funding has already been dealt with in the orders of the Hon'ble Supreme Court, the States may not put up any excuse on this pretext in violation of the judgment of the Hon'ble Supreme Court."

13. Priorities need to be planned. The first step is to ensure that no pollutant is discharged into the river or drains connected thereto. Projects of setting up and upgradation of STPs including setting up of interceptors, laying of sewerage line network etc. have to be completed within strict timelines. Pending such action, immediate bioremediation and/or phytoremediation or any other alternative remediation measure may be undertaken as an interim measure. Pollution of river or water bodies is a criminal offence which needs to be checked by setting up ETPs/CETPs/STPs. The Hon'ble Supreme Court has directed¹⁵ that establishment and proper functioning of ETPs/CETPs/STPs in the country be ensured. This is to enforce the right of access to water. It has been noted by the Hon'ble Supreme Court that water pollution is the cause of various diseases and also affects food safety apart from affecting the environment as such. Following the said judgment, this Tribunal has directed¹⁶ that —All the local bodies have to ensure 100% treatment of the generated sewage and in default to pay compensation

¹⁵ (2017) 5 SCC 326

¹⁶ Order dated 28.08.2019 in Paryavaran Suraksha Samiti & Anr. V.UOI& Ors., O.A No. 593/2017

which is to be recovered by the States/UTs, with effect from 01.04.2020. In default of such collection, the States/UTs are liable to pay such compensation. The CPCB is to collect the same and utilize for restoration of the environment. While dealing with the pollution of river Ganga, this Tribunal directed:

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.

With regard to works under construction, after 01.07.2020, direction for payment of environmental compensation of Rs. 10 lakhs per month to CPCB for discharging untreated sewage in any drain connected to river Ganga or its tributaries and Rs. 10 lakhs per month to CPCB per incomplete STP and its sewerage network will apply. Further with regard to the sectors where STP and sewerage network works have not yet started, the State has to pay an Environmental Compensation of Rs. 10 lakhs per month after 31.12.2020. The NMCG will also be equally liable for its failure to the extent of 50% of the amount to be paid. Till such compliance, bioremediation or any other appropriate interim measure may start from 01.11.2019¹⁷.

¹⁷ O.A No. 200/2014 order dated 22.08.2019

I. Directions:

47. We now sum up our directions as follows:

i. 100% treatment of sewage may be ensured as directed by this Tribunal vide order dated 28.08.2019 in O.A. No. 593/2017 by 31.03.2020 atleast to the extent of in-situ remediation and before the said date, commencement of setting up of STPs and the work of connecting all the drains and other sources of generation of sewage to the STPs must be ensured. If this is not done, the local bodies and the concerned departments of the States/UTs will be liable to pay compensation as already directed vide order dated 22.08.2019 in the case of river Ganga i.e. Rs. 5 lakhs per month per drain, for default in in-situ remediation and Rs. 5 lakhs per STP for default in commencement of setting up of the STP.

ii. Timeline for completing all steps of Action Plans including completion of setting up STPs and their commissioning till 31.03.2021 in terms of order dated 08.04.2019 in the present case will remain as already directed. In default, compensation will be liable to be paid at the scale laid down in the order of this Tribunal dated 22.08.2019 in the case of river Ganga i.e. Rs. 10 lakhs per month per STP.

iii. We further direct that an institutional mechanism be evolved for ensuring compliance of above directions. For this purpose, monitoring may be done by Chief Secretaries of all the States/UTs at State level and at National level by the Secretary, Ministry of Jal Shakti with the assistance of NMCG and CPCB.

iv. For above purpose, a meeting at central level must be held with the Chief Secretaries of all the States/UTs atleast once in a month (option of video conferencing facility is open) to take stock of the progress and to plan further action. NMCG will be the nodal agency for compliance who may take assistance of CPCB and may give its quarterly report to this Tribunal commencing 01.04.2020.

v. The Chief Secretaries may set up appropriate monitoring mechanism at State level specifying accountability of nodal authorities not below the Secretary level and ensuring appropriate adverse entries in the ACRs of erring officers. Monitoring at State level must take place on fortnightly basis and record of progress maintained. The Chief Secretaries may have an

accountable person attached in his office for this purpose.

- vi.** Monthly progress report may be furnished by the States/UTs to Secretary, Ministry of Jal Shakti with a copy to CPCB. **Any default must be visited with serious consequences at every level, including initiation of prosecution, disciplinary action and entries in ACRs of the erring officers.**
- vii.** As already mentioned, procedures for DPRs/tender process needs to be shortened and if found viable business model developed at central/state level.
- viii.** Wherever work is awarded to any contractor, performance guarantee must be taken in above terms.
- ix.** **CPCB may finalize its recommendations for Action Plans relating to P-III and P-IV as has been done for P-I and P-II on or before 31.03.2020. This will not be a ground to delay the execution of the Action Plans prepared by the States which may start forthwith, if not already started.**
- x.** **The Action Plan prepared by the Delhi Government which is to be approved by the CPCB has to follow the action points delineated in the order of this Tribunal dated 11.09.2019 in O.A. No. 06/2012.**
- xi.** Since the report of the CPCB has focused only on BOD and FC without other parameters for analysis such as pH, COD, DO and other recalcitrant toxic pollutants having tendency of bio magnification, a survey may now be conducted with reference to all the said parameters by involving the SPCB/PCCs within three months. Monitoring gaps be identified and upgraded so to cover upstream and downstream locations of major discharges to the river. CPCB may file a report on the subject before the next date by e-mail at judicial-ngt@gov.in.
- xii.** Rivers which have been identified as clean may be maintained.

44. We may reiterate that the authorities' generic, vague and repeated stand over the decades, that some steps are being taken, or proposed to be taken in future, is untenable. This is so because such piecemeal action or remote planned action, which ultimately fails to stop or prevent water bodies' pollution nor result in punitive action against violators,

cannot condone the continuing crime and damage to the environment. Indeed, also as repeatedly observed by the Hon'ble Supreme Court, the same stand, culpable inaction, and passing-the-buck' approach has continued since decades¹⁸, and the situation only continues to worsen, much to the detriment of valuable human and other life. For current and continuing violations, action must be taken according to law by way of recovery of compensation, closing polluting activity and other measures. Violators must be brought to justice. Not doing so by the authorities may lead to inference of collusion with law violators and demonstrate a lack of commitment to public duties entrusted to the statutory and oversight authorities.

6. *The perusal of report reveals that no action has been taken by the Collector, Jhabua for removal of encroachment and in this way he failed to perform his duties sincerely and properly. The property of the State, Public properties are in the custody and protection of concerned Collector and he is duty bound to protect the property of State and further to protect the natural water body. It is known fact that the problem of the water is serious in the State of Madhya Pradesh and the drinking water is also being supplied by the source of water i.e. river, ponds. There is a complete violation of Water Act (Prevention and Control of Pollution) Act, 1981, thus strong action is required to be taken against the violators and property of the State, should be immediately protected according to law.”*

6. The Collector, Jhabua was directed to submit the Action Taken Report and the plan for protection of the land in question and also to take necessary

¹⁸ **M.C. Mehta** (2015), Para 15, supra, Para **Error! Reference source not found.**; **M.C. Mehta** (2006), Para 61, supra note **Error! Bookmark not defined.**; **M.C. Mehta** (2019), Para 15, note **Error! Bookmark not defined.**

action for the removal of the encroachment.

7. The perusal of the report reveals that the matter for removal of the encroachment against the 14 violators of the law are pending in Revenue Court under Section 248 of Madhya Pradesh Land Revenue Act, 1959 in Revenue case No. 629, 642 and the case is listed before the concerned court for disposal according to law.
8. Learned counsel for the State has submitted that Action Taken Report by the Collector, Jhabua has been submitted just yesterday to the effect:
 - a. In compliance to the Hon'ble Tribunal's order dated 28.07.2021, encroachment of 14 people were marked of the land measuring 0.075 hectare from the total area of 0.251 hectare of survey no. 198. Removal orders were also passed by the Competent Authority under section 248 of M.P. Land Revenue Code.
 - b. To execute the orders of Competent Authority, a team was constituted comprising Tehsildar, Chief Municipal Officer, Nagar Palika Jhabua, Revenue Inspector and local Patwari. On 10.12.2021 the team removed all 14 encroachments of survey no. 198, measuring 0.2510 hectare of village Udaipuria Dist Jhabua. It is humbly submitted that after cleaning of the Sewar Channel, earlier position was restored.
 - c. It is humbly submitted that as per the orders of this Hon'ble Tribunal, there is no encroachment or obstruction in free flow of sewar channel which was situated at survey no. 198, patwari halka no. 53 of village Udaipuria District, Jhabua.
9. In view of the above facts, we are of the view that since the matter is pending before the Competent Revenue Court, further action shall be taken in accordance with the decision of the concerned court. Accordingly, we direct the Collector, Jhabua to ensure the removal of encroachment according to law subject to decision of the concerned court.

The Original Application No. 69 of 2019 is finally disposed of accordingly.

List it on **28th July, 2021.**

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

December 16th 2021
O.A. 69/219(CZ)
PU