

Item Nos. 01&02

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No.07/2018(CZ)

M.Y. Chaudhary

Applicant

Versus

BMC & Ors.

Respondent(s)

With

Original Application No.77/2020(CZ)
(I.A. No.73/2021)

Aarya Shrivastava

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 28.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant:

Mr. Varun Raj Nair, Advocate in OA 07/2018(CZ)
Mr. Dharamvir Sharma, Advocate in OA 77/2020(CZ)

Respondent(s):

Mr. Sachin K. Verma, Advocate for State of Madhya Pradesh
Ms. Gunjan Chowksey, Advocate for R-5 in O.A. No. 77/2020
(CZ)
Ms. Parul Bhadoria, Advocate for MPPCB

ORDER

1. This order will deal with O.A. No. 07/2018 and O.A. No. 77/2020 as both the matters have been taken up together today as well as earlier, in view of common issue of pollution by discharge of sewage/effluents and encroachments of water bodies - Nawab Siddique Hasan Khan Talab, Motia Talab, Munshi Hasan Talab and Bhoj Wetland – a Ramsar site.

Facts and proceedings in OA 07/2018

2. O.A. No. 07/2018 was filed on 19.01.2018 raising the issue of damage to the *Nawab Siddique Hasan Khan Talab*. In the course of proceedings, issue of damage to adjoining water bodies - Motia Talab and Munshi Hasan Talab was also taken up. Report filed by the State PCB in July, 2020 mentions status of all the three water bodies. The OA was admitted on 25.01.2018. Main orders passed thereafter include orders dated 09.06.2020, 24.09.2020, 14.06.2021, 02.12.2021 and 16.02.2022. The issue of Motia Talab was also involved in O.A. No. 49/2021, *Ujjwal Sharma & Ors. v. State of Madhya Pradesh & Ors.*, which was disposed of on 15.12.2021 with directions to remedy the situation. Operative part of the order is reproduced below:-

“xxx.....xxx.....xxx

8. *Accordingly, we direct the authorities concerned and Municipal Corporation to expedite the matter and to comply the direction of the Joint Committee Report and to ensure that no sewage/untreated water be discharged into the water body and further to ensure that there shall not be any encroachment in the area of the water body, and in case it is found that there are encroachment or discharge of untreated water into the water bodies, the proper legal and remedial action must be initiated in addition to realization of Environmental Compensation.”*

3. There is thus overlapping to that extent.

4. Case of the applicant is that there is indiscriminate flow of solid waste and bio-medical waste into the lakes in question. The Bio-Medical waste is discharged by the Hospitals and Medical Facilities in the vicinity. The statutory authorities have failed to prevent dumping of waste and discharge of sewage and bio-medical waste. Vide order dated 09.06.2020, the Tribunal constituted a joint Committee of Collector, Chief Medical Officer and State PCB to verify the facts and furnish a factual report. Such factual report was furnished which was considered on 24.09.2020 which acknowledged discharge of untreated medical waste, sewage as well as other wastes into the lakes apart from encroachments. Referring to earlier orders of this Tribunal on the subject in respect of need for remedial measures to remedy such situation, the Tribunal directed further remedial action by the Municipal Corporation and levy environmental compensation on 'Polluter Pays' principle by CPCB and State PCB. Further reports furnished in compliance of order dated 24.09.2020 were considered by the Tribunal vide order dated 14.06.2021. The State PCB was directed to proceed further to realize the assessed compensation. Further orders will be referred to in later part of this order.

Facts and proceedings in OA 77/2020

5. O.A. No. 77/2020 was filed on 25.03.2020. Notice was issued on 08.09.2020. Further orders include orders dated 10.06.2021, 15.07.2021, 16.09.2021 and 02.12.2021.

6. Averments in the application are that Bhoj wetland is an ancient large man-made lake in central India. It was created in 11th Century by the King Bhoj with open area of 3,201 Sq. ha. at latitude 23°14' N Longitude 077° 20'E. It was recognized as wetland of international

importance and one of the Ramsar Sites. It is home to more than 700 species of diverse flora like zooplankton, phytoplankton, etc. The wetland is also an important site of avian fauna with more than 150 species of both migratory and resident birds. This rich biodiversity of this wetland has, however, been affected adversely in the last few years due to various anthropogenic pressures. As per Rules and orders of this Tribunal, no construction activity permissible within 50 meters of the FTL of the lake. The Bhopal Master Plan 2005 that, 50 meters open space shall be kept from the edge of the upper lake. The Wetland Rules prohibit construction in its catchment area. In violation thereof, large number encroachments have been permitted. No action has been taken inspite of orders of this Tribunal dated 17.12.2015 in O.A. No. 21/2013, *Dr. Alankrita Mehra v. UOI* and dated 19.07.2021 in O.A. No. 135/2014, *Subhash C. Pandey v. State of M.P.*

7. Vide order dated 10.06.2021, on further consideration of the matter in the light of the earlier proceedings and the pleadings, the Tribunal constituted a joint Committee comprising of the Collector, Bhopal, (M.P.), Municipal Commissioner, Bhopal, (M.P.) and MP State PCB to visit the site and file an action taken report on the following points:-

- “i. The total number of drains where untreated/sewage water is being discharged in the lake or river bodies in Bhopal.*
- ii. Total number of STPs installed there.*
- iii. Quantity of water being used by the residents in the city of Bhopal. iv. Total capacity to treat the water.*
- v. The gap between the use and capacity to treat.*
- vi. Future planning of the municipality to meet out the gap and make proper arrangements for treatment of the water.*
- vii. Action taken against the polluters who are discharging the water, sewage and untreated water into the river bodies and causing water pollution and contaminating the underground water.*

viii. *It is directed that Municipal Authorities to ensure that no solid waste be thrown into the open space and there should be no discharge of untreated/ sewage water into the water bodies or in the open space and anyone violating the norms.”*

8. The Tribunal also referred to earlier orders on the subject in the light of which remedial action was directed to be taken as follows:-

“1to11...xxx.....xxx.....xxx

12. *The Collector is directed to constitute a committee consisting one officer from the Revenue, One officer from the Municipal Corporation and one officer from the Wetland Authority and to direct them to demarcate the Wetland/Southern Part of the upper lake where there is allegation that there is encroachment on the basis of the records available in the Revenue Department or the Municipal Corporation especially entry of the record in the year, 1951 and take necessary legal action for removing the encroachment.”*

9. Thereafter the matter was considered on 15.07.2021 in the light of the report of the joint Committee mentioning number of encroachments and other violations which still existed. Accordingly, the Tribunal directed the concerned Authorities including the Municipal Corporation to take further action. Operative part of the order is reproduced below:-

“1to20...xxx.....xxx.....xxx

21. *Learned Counsel appearing for the Municipal Corporation has submitted that the Corporation is taking action against the violators of law and **they have identified the structures which are 227 in number but out of these structures some are permanent in nature, some are temporary and some are Kachha construction. So far as the temporary construction are concerned they have been removed and for the removal of the Pakka constructions, it requires policy decision and respondents has already initiated works for rehabilitation and redevelopment for providing houses to somewhere else under Pradhan Mantri Awas Yojna Housing for All mission. It is a matter of policy and the District Administration and Respondent No.3 has already acted on it and are in process of finalization of policy decision. To control the discharge of untreated water into the water bodies, the authorities are taking help of Amrut Yojna, Govt. of India and two schemes of the corporation have been approved for the stoppage of sewage water in to the upper lake, lower lake and Shahpura Lake of city of Bhopal and one scheme has been approved for the treatment of sewage in Kolar, Misrod, Jatkhedi, and Saliya Area. It is further argued on behalf of the Learned***

Counsel for the Bhopal Municipal Corporation that work order for the construction of Sewage Treatment Plant (STP), Sewage Pump House and laying of Sewage Pipe Lines in the catchment area of upper lake have been issued to the authorities concerned and the work is under process. It is further submitted that 72% of the work has been completed and rest of the work shall be completed within a time frame, but due to certain requirement of estimated fund and non availability of the workers during the Covid-19 period, the completion of work has been delayed. For removal of encroachments some logistic support and policy decisions are to be taken by the Competent Authority and the Municipal Corporation has approached to the Competent Authority for taking logistic support and also finalization of policy decisions for rehabilitation and removal of permanent structures.

22. Accordingly, we direct the Respondents / Bhopal Municipal Corporation to finalise the matter and hold a meeting with the Officers responsible for taking decision and make a policy mechanism and submit Factual and Action Taken Report before the next date of listing.”

10. On 16.09.2021 both matters were considered together and further time was given for filing action taken report. Vide order dated 02.12.2021, the Tribunal framed following issues and required action taken report to be filed accordingly:-

“..xxx.....xxx.....xxx

i. Discharge of untreated water into the water bodies Motia Talab/ Hasan Talab for which, it is submitted that more than 95 percent of work of channelizing drains has been completed and the STPs are going to be functional from last week of December, 2021.

It has further been submitted that the Nalla / drains which are discharging untreated water into the water body/lake are tapped and regularly monitored, so that the untreated water should be diverted towards the STP and to ensure that no untreated water should be discharged into the river/lake.

The learned counsel appearing for the State Pollution Control Board has submitted that notices have been issued to the violators of law for realisation of environmental compensation in accordance with law.

ii Second issue involved in this application is encroachment for which the necessary steps are being taken by the Municipal Corporation/Local Authorities/Administration and the provisions for rehabilitation are in progress.”

11. Finally, on 16.02.2022, the matter was further considered. It was noted that 41 drains were discharging in untreated sewage/ effluents in the lake. 227 encroachments still existed, which were needed to be removed. Operative part of the order is as follows:-

“1. City of Bhopal is proud of being a city of lakes, but the facts are that more than 41 nallhas/passages/units are discharging untreated chemical sewage /polluted water into the pious lake, which is the largest source of water in the city of Bhopal. Encroachments, illegal constructions of residential and commercial establishments are another problems in addition to throwing of garbage and/or dumping them near the open space of the lake. Repeated directions were issued by the Hon’ble Supreme Court and this Tribunal but inspite of them in flagrant violation of laws of the land, polluted water in the form of sewage, hospital and household effluents and also solid waste have continued to be discharged/thrown in the water body/lake. Violation of law is not only by private persons but also due to failure of statutory bodies including the local bodies and the regulatory authorities in taking adequate steps. There is a total lack of positive actions or accountability which weakens the rule of law, as large scale violations go unaddressed despite repeated and multiple judicial orders.

2. India is already suffering from one of worst water crises in history and millions of lives and livelihood are under threat.

3. As informed by the Learned Counsel for the Municipal Corporation more than 227 encroachments are there and some of them are in nature of permanent constructions, in addition to that there are temporary and semi permanent constructions. This Tribunal after taking cognizance of them directed the authorities to take remedial actions but during the course of hearing the authorities/Learned Counsels are shifting the responsibility from one authority to another authority, though all the organs of administration are expected to protect the State property as well as environment for the good of people. They are being paid to do their legal duties and to protect the interest of the State. Negligence of those to whom public duties have been entrusted can never be allowed to cause public mischief.

4. In the report submitted by the State Pollution Control Board, it is submitted that two nallas i.e Idgah Hills and SBI nallahs have been intercepted now and diverted to STP Maholi Damkheda with the help of sewer line laid under ‘Amrit Project’ for the treatment of waste water. Construction and completion of some other STPs are under progress, but the narration of facts in the application that more than 41 hospital units are continuously discharging their chemical water/effluents have not been sufficiently explained by the Corporation. Respondent No. 5/Municipal Corporation vide action taken report submitted that letter have been addressed to the authorities for rehabilitation and redevelopment for providing houses to slum dwellers living at Bhadbhada i.e. Upper Lake and further

that their agitation and representations are made by some organisations. This Tribunal is not concerned with internal official correspondence of the authorities but intended to achieve the target and outcomes as enshrined in the Constitution wherein responsibility under Article 243-W is vested in the Municipalities, and the obligation extends to public health, sanitation, conservancy and solid waste management. The onus to operate the existing common effluent treatment plants or management of solid and liquid wastes rests on Municipalities and/or local bodies. Given the aforesaid responsibility, the Municipality cannot be permitted to shy away from discharging the onerous duty.

5. In light of the above facts, we further direct the authorities concerned to do their duties sincerely, fairly and to protect the State land from further encroachments and to remove the encroachments in accordance with law and further direct not to allow discharge of untreated sewage/house hold/ chemical effluents into the water bodies, and not to discharge sewage and chemical effluents into the lake like Bada Talab/Chhota Talab/Motia Talab and many other water bodies situated in the heart of the City of Bhopal.

6. We further direct the authorities for effective coordination to take further remedial actions and action taken report with time bound action plan be submitted before the next date of listing i.e. 28.02.2022.

7. Copy of the order be forwarded to the Chief Secretary, State of Madhya Pradesh for information and taking necessary action.”

Further consideration today and directions

12. In pursuance of above, action taken reports have been filed by the State PCB, State of MP, Bhopal Municipal Corporation and Collector, Bhopal. Reports are as follows:-

O.A. No. 07/2018 (CZ)

13. The report filed by the State PCB is that compensation has been assessed against 8 hospitals as follows:-

S. No.	Hospital Name	Environmental Compensation (Rs. In Lakh)
1.	Nishat Hospital, 42, Opp. Motia Talab, Tajul Masjid, Bhopal	92500/-
2.	Unique Hospital, 77, Opp. Motia Talab, Tajul Masjid, Bhopal	92500/-
3.	Balaji Children Hospital, 75, Motia Talab, Tajul Masjid, Bhopal	38250/-

4.	ABM Hospital, Opp. Motia Talab, Tajul Masjid, Bhopal	138750/-
5.	City Care Centre, 77, Opp. Motia Talab, Tajul Masjid, Bhopal	138750/-
6.	Sanjeevani Day Care Centre, Opp. Motia Talab, Tajul Masjid, Bhopal	34687/-
7.	L.B.S. Hospital 73, Opp. Motia Talab, Tajul Masjid, Bhopal	462500/-
8.	Central Hospital & Research Centre 77, Opp. Motia Talab, Tajul Masjid, Bhopal	138750/-

14. Report further mentions that the environmental compensation has also been assessed against the Municipal Corporation for discharging untreated sewage as follows:-

Non Compliance									
ULB Name	District	Rule 22 of SWM Rules, 2016		Legacy Waste disposal compensation (Rs. In lakh)	Bioremediation of drains		Commencement of STP installation		Total (Rs. In Lakh)
		S. No. of Non-compliance	Compensation in (Rs. In Lakh)		No. of drains	Compensation (Rs. in Lakh)	No. of STPs	Compensation in (Rs. In Lakh)	
Bhopal	Bhopal	9	60	0	66	1980	18	540	2580

15. The status of sewage management in Bhopal is mentioned as follows:-

- “3. Official of MPPCB and Bhopal Municipal Corporation, Bhopal further inspected the site on dated 27.01.2022. Under the AMRUT Project in Bhopal city, 35 drains have been fully intercepted and diverted for treatment to STPs. 15 nos. of drains have been connected to sewage network system which will be treated in STPs to be commissioned by March, 2022. No discharge was observed in 07 drains and they were found dry. About 18 drains will be connected sewage system under AMRUT (sewage) 2.0 Scheme of the Central Government at the earliest by the Bhopal Municipal Corporation.
4. In Bhopal city, total 13 nos. of STPs are operational including 05 STPs set up under AMRUT project and 05 additional STPs are under-construction under AMRUT project.”

16. The report filed by the Municipal Corporation gives the list of 41 hospitals and mentions that notices have been issued by the Municipal Corporation to the said 41 hospitals for the violations. The list is as follows:-

S. No.	Name
1.	<i>Kilkari Children Hospital</i>
2.	<i>Sardar Patel Polyclinic and framesets</i>
3.	<i>Nature Hospital and trauma center</i>
4.	<i>Aram Clinic</i>
5.	<i>Dr. Jayant Yadav</i>
6.	<i>Care and Smile Dental Care</i>
7.	<i>Astha Orthopedic Day Care Centre</i>
8.	<i>Nobal Diagnostic</i>
9.	<i>Samdhan Pathology and Diagnostic and Digital X-Ray</i>
10.	<i>Dr. Richa Diagnostic centre</i>
11.	<i>Air Horizon Travels</i>
12.	<i>Dr. Anil Balecha Skin Expert</i>
13.	<i>High -tech care and laser center</i>
14.	<i>Smile maker dental clinic</i>
15.	<i>Indian Bank</i>
16.	<i>Shilpa Dodani</i>
17.	<i>Hamidia Multi Care Hospital</i>
18.	<i>Banwari Laborites</i>
19.	<i>Shubham Hospital</i>
20.	<i>Bhopal Care Hospital</i>
21.	<i>ABM Multi Specialties Hospital</i>
22.	<i>Silver Line Hospital</i>
23.	<i>Dr. Paith Lab</i>
24.	<i>Central Hospital</i>
25.	<i>City care Hospital</i>
26.	<i>Sanjivni D-care</i>
27.	<i>Manas Blook Bank</i>
28.	<i>Unik Hospital</i>
29.	<i>Arthroped lab and clinic</i>
30.	<i>Balaji Children Hospital</i>
31.	<i>Parak Pathology Lab</i>
32.	<i>Ishkripa Endoscopy</i>
33.	<i>LBS Heart Hospital</i>
34.	<i>LBS Emergency Hospital</i>
35.	<i>Richa Diagnostic</i>
36.	<i>Ashirwaad Medical Shop</i>
37.	<i>Yashoda Hospital</i>
38.	<i>Dr. Tankwal Nose Neck Center</i>
39.	<i>Paith Care Diagnostic</i>
40.	<i>Dr. Lal Paith Lab</i>
41.	<i>Paras Hospital</i>

17. The report of the Collector is on the issue of removal of encroachments. It mentions that letter has been written to the Municipal Corporation for the purpose. The Commissioner, Department of Urban Administration and Collector, Bhopal are coordinating to obtain revenue record to verify the title of the encroachers who have made representation seeking opportunity of hearing and to be rehabilitated, for protection of the water body in question.

O.A. No. 77/2020

18. Report filed by the State of MP on 28.02.2022 is to the effect that steps have been taken to remove encroachments by writing letters to the concerned Officers. The matter is to be coordinated by the Commissioner, Urban Administration and Development through District Collector to obtain record pertaining to encroachments to take a decision on the representation of the alleged encroachers. Bhopal Municipal Corporation will provide opportunity of hearing to them. Report is reproduced below:-

“2. In compliance to the direction passed by the Hon'ble Tribunal the commissioner Department of Urban Administration and Development, State of MP Bhopal has written a letter dated 26/02/2022 to the district collector Bhopal pertaining to the steps taken by the Bhopal Municipal Corporation. It is noteworthy to mention over here that for carrying out survey of juggi, dwellers, verification, selection of beneficiary, margin money, full amount preparation of file and bank linkage proceedings, the Superintendent Engineer, Bhopal Municipal Corporation has appointed Assistant Engineer Mr Sachin Sahu from the Lake Conservation Cell of Bhopal Municipal Corporation to carry out above mentioned task, further for removal of encroachments, the Additional Commissioner, Bhopal Municipal Corporation has already written a letter to Sub Divisional Officer, TT Nagar, Bhopal which was not provided till date. The copy of the letter dated 26/02/2022 and letter dated 25/11/2021 are collectively marked and filed herewith as ANNEXURER/ 11.

3. The Commissioner Department of Urban Administration and Development, State of MP Bhopal has now coordinating with the District Collector Bhopal to obtain the revenue record pertaining to the title of encroachers as the encroachers have made the representation that the land in question under encroachment belongs to Waqf Board MP, now after obtaining the revenue records pertaining to the title of the land in question, the nominated Assistant Engineer Bhopal Municipal Corporation will provide the opportunity of personal hearing to the encroachers/ juggi dwellers and thereafter on the basis of verification, the rehabilitation work

will be carried out at the earliest. The Bhopal Municipal Corporation will be submitting the time bound action plan before this Hon'ble Tribunal.

4. The District Administration as well the Nodal Department is extending all the required corporation and assistance to the Bhopal Municipal Corporation for the rehabilitation of juggi dwellers and the other encroachers from the lower lake (chota talab) Bhopal to conserve and protect the water body, under the direction of this Hon'ble Tribunal."

19. An action taken report has also been filed by State PCB which covers both matter has already been reproduced above.

20. We have heard learned Counsel for the parties and perused the reports of the PCB, Corporation and the Collector.

Observations, Findings and Directions

21. We find the situation to be extremely unsatisfactory. There appears to utter neglect of constitutional obligation by the State Authorities, to the prejudice of environment and public health. Dumping of bio-medical and other waste and discharge of untreated sewage into the water bodies is a great hazard to public health and crime under the law of the land. Such water may be consumed by human or other living beings and also used for irrigation, affecting food safety, apart from damaging the flora and fauna in the area, including the aquatic life. Discharge of sewage is also blatant contempt of Supreme Court directions in Judgment dated 22.02.2017 in *Paryavaran Surakha Samiti vs. Union of India, (2017) 5 SCC 326*. Further, encroachments involve violation of statutory Rules, particularly Rule 4 of the Wetland (Conservation and Management) Rules, 2017. There is also undoubted violation of Water (Prevention and Control of Pollution) Act, 1974, Environment (Protection) Act, 1986 and Rules framed, Madhya Pradesh Town and Country Planning Act, 1973, Madhya Pradesh Municipal Corporation Act, 1956 and Bhopal Master Plan 2005. Any construction in catchment area upto 50 mtrs of the drain is illegal.

The enforcement of Rule 4 for protecting the catchment area is not dependent on title to the property and even an owner is not permitted to raise construction in such 'No Construction Zone'. The lawlessness prevailing, as depicted from undisputed documents and findings in the reports of the statutory authorities need to be remedied on war footing by stringent action with the involvement of higher authorities of the State so as to enforce rule of law and restore environment and protect public health. Measures to be taken may include management of sewage by way of treatment and reuse. Help of Industries, who may use treated sewage for industrial purposes, may also be explored on such pattern at some places. This may require laying of pipelines to connect treated sewage to the industrial area, if adequate treatment facilities are not otherwise available with the Corporation. Demarcation of catchment area needs to be ensured with reference to the revenue record and summary action needs to be taken to remove encroachments and instead to develop green belts along the drains, lakes and the Wetland. Further, the lakes need to hold sufficient water and lake water quality has to be maintained at least which may allow aquatic life to thrive. This is constitutional obligation of the State. Since inter-departmental coordination issues arise and matter has remained neglected for long, including for about four years, inspite of pendency of the matter before the Tribunal, oversight and involvement of highest administrative authority in the State has become necessary.

22. Accordingly, we direct the Chief Secretary, Madhya Pradesh to forthwith call a meeting of concerned Departments particularly Public Health, Irrigation, Environment, Urban Development and Revenue Departments. The Environment Department can be the nodal agency, unless otherwise directed by the Chief Secretary. Apart from the said concerned Departments, the statutory regulators – the State PCB and

State Wetland Authority may also be associated. The meeting may take cognizance of the grim situation and prepare a broad roadmap for the course of action to be adopted with stringent timelines, budgetary support and identified and accountable authorities for performing the tasks identified and also monitoring mechanism. The joint Committee may ensure compliance of rule of law, protection of environment and public health and restoration of public assets from the encroachers, acting in collusion with concerned authorities, to the detriment of public interest. It may be ensured that henceforth no illegal constructions take place, pending action against the past violations. Wherever found necessary, CCTV cameras be installed. Water quality of water bodies be restored by preventing dumping of waste and discharge of effluents/sewage. Water quality monitoring has to be on regular basis, exploring possibility to keep water bodies aerobic for maintenance of oxygen and for atleast Class 'C' Water Quality criteria. It is sad to note that Health providers appear to be spreading diseases by dumping biomedical waste in water bodies, as found by the statutory regulators in the reports filed before this Tribunal. Health care establishments need to have either captive social and liquid water management facilities or common facilities in accordance with Bio-Medical Waste Management Rules, 2016.

23. We are also disappointed with the attitude so far adopted by the State PCB in not levying realistic compensation as per law laid down by the Hon'ble Supreme Court *inter-alia* in *M. C. Mehta & Anr. v. Union of India*¹, *Sterlite Industries (India) Ltd. v. Union of India*², *Goel Ganga*

¹ (1987) 1 SCC 395

² (2013) 4 SCC 575

*Developers India Pvt. Ltd. v UOI*³ and *Mantri Techzone Pvt. Ltd. V. Forward Foundation and Ors.*⁴. The compensation must include element of deterrence with reference to the financial capacity of the violator, considering cost of restoration and other factors which in the present case have been ignored for reasons best known to the State PCB. Wetland Authority appears to be disregarding its statutory obligation under Rule 4 of the Wetland Rules, 2017 of demarcating the wetland and maintaining the catchment area free of encroachment. Similar failures are patent on the part of the Municipal Corporation and other concerned authorities. We hope the statutory authorities will realize their constitutional and statutory obligations under the 'Public Trust Doctrine' of protecting the water bodies/lakes/wetlands in question and taking meaningful stringent action against the violators, including the hospitals who instead of providing health facilities have become source of destroying the health of a citizens and are not being made accountable for reasons best known to the authorities. The hospitals in question may be given last opportunity of compliance, failing which the consents granted to them may be cancelled and criminal cases registered against their managements, as per law.

24. Since, we are directing the statutory authorities to exercise their statutory powers following due process, we do not consider it necessary to issue notice to individual violators who have remedy of approaching this Tribunal by way of an Appeal or otherwise, if they are aggrieved. Various directions of this Tribunal have already been quoted in detail in earlier orders of this Tribunal and are not being repeated.

³ (2018) 18 SCC 257

⁴ 2019 SCC online SC 322, Para 43-47

25. It is also made clear that public hearing to the encroachers has to be of summary nature in the form of written submissions and record which can be verified from the Revenue Department in a joint meeting of concerned authorities, followed by summary procedure with police help under the relevant statutory provisions, for protecting the assets of the State and protection of environment and public health.

26. The Chief Secretary, Madhya Pradesh may file a consolidated action taken report mentioning the steps taken by various authorities within three 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. The report inter-alia may include the status of :-

- (i) Sewage treatment and utilization, including in-situ remediation.
- (ii) Interception and diversion of sewage/sullage drains to STP and returning completely treated water for recharging of water bodies to maintain water levels, maintaining water quality.
- (iii) Maintaining flood plain level of lakes free from any further encroachments and removing existing encroachments, as per directions given above, to enforce the law of the land.
- (iv) Regular Monitoring mechanism to oversee progress of execution in tandem with State Level Wetland Authority
- (v) Steps for mass awareness, involving citizens in conservation programme.

27. The report may also be placed on the website of the State PCB for being accessed by all stakeholders for their comments/response, if any, before this Tribunal on the next hearing.

List for further consideration on 25.07.2022.

A copy of this order be forwarded to the Chief Secretary, Madhya Pradesh by e-mail for compliance.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Sudhir Agarwal, JM

Dr. Arun Kumar Verma, EM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

February 28, 2022
Original Application No.07/2018(CZ)
& Original Application No.77/2020(CZ)
(I.A. No.73/2021)
SN