

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

Original Application No. 77/2020 (CZ)

Aarya Shrivastava

Applicant (s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 10.06.2021

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

For Applicant(s):

Mr. Dharamvir Sharma, Adv.  
Ms. Aarya Shrivastava

For Respondent(s):

Ms. Parul Bhadoria, Adv.  
Mr. Arvind Soni, Adv.

**ORDER**

1. By way of filing the present application, Conservation of Wet land of upper lake in 11<sup>th</sup> Century, Central India largest manmade water body situated in Bhopal has been raised. Bhoj Wet Land upper lake is an international acclaimed Wetland sites declared out of international agreement at Ramsar. Under rule (4) of the Wetlands (Conservation and Management) Rules, 2018 permanent nature of construction is restricted in wetlands But, in the instant case the illegal encroachments by constructing permanent nature concrete structures, hutments, etc has reached at the banks of lake, i.e., Encroachment on Wetlands. There is grave injustice caused to the Southern part of Upper lake, properly known Bhadbhada Bridge Bhopal. The Bhopal Master Plan 2005 (still applicable) defines Lakes as sensitive Zone should be kept open upto 50 meters from the edge of Upper Lake. Since, Competent Authority has failed to stop destruction of our lake by encroachment petitioner has no option other than approaching the Tribunal in the interest

of environment for present and future generation. Continuous Encroachment over wetland and Lake is substantial question relating to environment and wetland ecology falls well within the four corners and purview of this Tribunal.

2. The matter was taken up by this Tribunal on 08.09.2020 and notices were issued and report were called.
3. Madhya Pradesh Pollution Control Board has filed a reply. Allegation in this application is encroachment by constructing permanent concrete structure, hutments etc. at the bank of southern part of Upper Lake near Bhadbhada Bridge, Bhopal which is also known as Bhoj Wetland.
4. An inspection of the site was carried out by the officials of Regional Office, MPPCB, Bhopal with the officials of Municipal Corporation, Bhopal. During the inspection it was found that, there is a slum area within 50 meters of the current water level of upper lake having kaccha as well as pacca houses. The domestic sewage from the slum area flows towards the lake.
5. In addition to the above, few structures were found to be within 50 meters from the current water level near the new bridge i.e. pump house, old mosque (wherein the construction were is going on at first floor), temple (having kachha construction with shed), one old mosque (under renovation) and one old temple are present in the adjoining slum area.
6. The Article 39 E, 47 and 48 A of the Constitution of India cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment. It was by reasoned of the lack of effort on the part of the enforcement agencies, notwithstanding adequate laws being in placed, there are air pollution, water pollution and noise pollution in the city. One of the basic principle underlying environmental law is that of sustainable development. This principle requires such development to take place which is ecologically sustainable and the essential features of sustainable development are:- the Precautionary Principle (ii) the Polluter

Pays Principle and the authorities are duty bound to take necessary action on the point.

7. For the negligence of those to whom public duties have been entrusted and can never be allowed to cause public mischief.
8. We deem it just and proper to call a report on the matter in issue in present application, from a Joint Committee consisting of:-
  - a. The Collector, Bhopal, (M.P.)
  - b. Municipal Commissioner, Bhopal, (M.P.)
  - c. Madhya Pradesh Pollution Control Board, Bhopal (M.P.)
9. The Committee is directed to visit the place and submit the action taken report within four weeks. The State PCB will be the nodal agency for coordination and logistic support.
10. The report in the matter be filed by the Committee by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.
11. We also direct the Committee to submit a 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

and any violation of this order should be taken seriously in accordance with the order passed by the Principal Bench of this Tribunal in O.A. No. 148/2016: *Mahesh Chandra Saxena v. South Delhi Municipal Corporation & Ors.* vide order dated 21.05.2020, the relevant paras are quoted below for compliance:-

*“3. Vide order dated 03.08.2018, the matter was reviewed and after noting that in absence of functional ETPs/CETPs/STPs, untreated effluents were being discharged in water bodies leading to contamination of surface and ground water which causes various diseases and also has adverse consequence on aquatic organism due to decreased level of oxygen. The Tribunal directed the CPCB to prepare an action plan. Direction was also given for monitoring by a Committee of two officers – one each representing MoEF&CC and CPCB at least once in every month. CPCB was required to place the progress report every three months on the website and take penal action for failure by way of recovery of compensation for damage to the environment, apart from other steps.”*

*“4. Vide order dated 19.02.2019, after considering the status report furnished by the CPCB, based on the reports furnished by the States/UTs, this Tribunal after referring to orders passed in O.A NO. 673/2018 for remedial action in respect of 351 polluted river stretches, which had direct nexus with the steps for ETPs/CETPs/STPs and order passed in O.A No. 606/2018 requiring Chief Secretaries to monitor progress inter alia on the subject of control of pollution of the river stretches, directed that the Chief Secretaries may look into the subject of setting up and proper functioning of ETPs/CETPs/STPs in their respective States/ UTs. Further direction issued was to prepare a report on assessment of compensation on account of discharge of untreated sewage and dumping of solid waste, loss to ecological services due to illegal mining, deforestation, after taking inputs from expert bodies. The Tribunal also directed the CPCB to compile its monitoring report with regard to 97 CETPs (assuming the total number of CETPs in the country to be 97) installed in different States. CPCB was also directed to furnish its report in O.A. No. 95/2018, *Aryavart Foundation Vs. M/s Vapi Green**

*Enviro Ltd. & Ors. which concerned the issue of inadequate functioning CETP leading to water pollution.”*

*“5. In the light of directions of this Tribunal dated 19.02.2019, the CPCB furnished reports dated 30.05.2019 updated on 19.07.2019 and 14.08.2019 giving the status of setting up of ETPs/ CETPs/STPs with regard to methodology for assessment of environmental compensation and monitoring of CETPs. The reports were considered exhaustively vide order dated 28.08.2019. Before we advert to the observations of this Tribunal with regard to the reports, we may refer to the observations on the main issue:*

*1. The issue for consideration is establishment and functioning of ETPs/CETPs/STPs to prevent untreated sewage/effluents being discharged in water bodies, including rivers and canals meeting such rivers or otherwise. The magnitude of the problem is well acknowledged. In the year 1962 GoI set up a Committee for prevention of water pollution. The recommendations led to enactment of the Water (Prevention and Control of Pollution) Act, 1974 (“Water Act”) in pursuance of Article 252 of the Constitution. The Water Act provides for the constitution of a Central Board and State Boards/Committees. No polluted matter can be discharged into a stream or well or on land, and no industry, operation or process can be established and no out-let for discharge of sewage used without consent of the State Board. The Water Act provides powers to give directions for closing any such activity as well as for prosecution. Power to give directions implicitly includes recovery of compensation on ‘Polluter Pays’ principle.*

*2. In spite of above statutory regime we are faced with serious problem of water pollution. The Hon’ble Supreme Court noted<sup>1</sup> that the water pollution caused serious diseases, including Cholera and Typhoid. Water pollution could not be*

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<sup>1</sup> (1988) 1 SCC 471

*ignored and adequate measures for prevention and control are necessary. Polluting industries were directed to be shifted on 'Precautionary' principle. It is not necessary to refer to all the judgments of the Hon'ble Supreme Court dealing with the significance of water and need to prevent pollution of water. We may only refer to the observations that everyone has right to have access to drinking water in quantum and equality equal to the basic needs. This is fundamental to life and part of Article 21.*<sup>2</sup>

**4. We may note that discharge of untreated effluents and sewage is the principal cause of water pollution in the country as noted in cases relating to pollution of rivers.<sup>3</sup> Similarly, in the case of 100 polluted industrial clusters being dealt with by this Tribunal<sup>4</sup>, water pollution is one of the factors polluting the said industrial clusters. As already noted, official data of CPCB is to the effect that 351 river stretches in the Country are polluted. The Tribunal held that remedial action for restoration of the said river stretches is necessary.<sup>5</sup> In the said order, it was observed:**

*“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, encroachments of catchment areas and floodplains, over drawl of groundwater, river bank erosion on account of illegal***

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<sup>2</sup> APPCB vs. Prof. M.V Nayudu (2001) 2 SCC 62 at para 3, 4, State of Orissa Vs. Government of India (2009) 5 SCC 492, at para 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 overpumped. Industries, hotels, etc. are pumping out groundwater at an alarming rate, causing sharp decline in the groundwater levels.**”

<sup>3</sup> O.A No. 673 of 2018 this Tribunal is considering remedial action to rejuvenate 351 polluted river stretches. Therein, other cases of river pollution are mentioned thus “This Tribunal also considered the issue of pollution of river Yamuna, in Manoj Mishra Vs. Union of India, river Ganga in M.C. Mehta Vs. Union of India, river Ramganga which is a tributary of river Ganga in Mahendra Pandey Vs. Union of India & Ors., rivers Sutlej and Beas in the case of Sobha Singh & Ors. Vs. State of Punjab & Ors., river Son in Nityanand Mishra Vs. State of M.P. & Ors., river Ghaggar in Stench Grips Mansa's Sacred Ghaggar River (Suo-Moto Case)”, river Hindon in Doaba Paryavaran Samiti Vs. State of U.P. & Ors., river Kasardi in Arvind Pundalik Mhatre Vs. Ministry of Environment, Forest and Climate Change & Ors., River Ami, Tapti, Rohani and Ramgarh lake in Meera Shukla Vs. Municipal Corporation, Gorakhpur & Ors., rivers Chenab and Tawi in the case of Amresh Singh Vs. Union of India & Ors. and Subarnarekha in Sudarsan Das Vs. State of West Bengal & Ors. and issued directions from time to time”.

<sup>4</sup> O.A No. 1038/2018

<sup>5</sup> O. A No.673/2018, order dated 08.04.2019

***sandmining. In spite of directions to install Effluent Treatment Plants (ETPs), Common Effluent Treatment Plants (CETPs), Sewage Treatment Plants (STPs), and adopting other anti-pollution measures, satisfactory situation has not been achieved. Tough governance is the need of the hour. If pollution does not stop, the industry has to be stopped. If sewage dumping does not stop, local bodies have to be made accountable and their heads are to be prosecuted. Steps have to be taken for awareness and public involvement.”***

*“16. It is in this background that the present report needs to be appraised and further directions given. As regards the Environmental compensation regime fixed for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. With regard to setting up of STPs, while we appreciate the extensive work of the CPCB based on information furnished by States/UTs, the challenge remains about verification of the said data on the one hand and analysis of the steps taken and required on the other. There is already a database available with the CPCB with regard to ETPs, CETPs, STPs, MSW facilities, Legacy Waste sites. This needs to be collated and river basinwise macro picture needs to be prepared by the CPCB in terms of need for interventions, existing infrastructure and gaps therein. The States have given timelines which need to be effectively monitored both by the CPCB and the Chief Secretaries in terms of its execution.”*

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

according to law. It is made clear that encroachment on the public land is not right of anyone. The Statutory Authorities, Collector concerned is duty bound to implement the rule of law and execute the rule and legal provisions in accordance with law and ensure that there should not be any encroachment on public property. In case encroachment is found, the same may be removed immediately according to law. Further report be filed within fortnight.

List it on **15<sup>th</sup> July, 2021**.

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

June 10<sup>th</sup> 2021  
O.A. No. 77/2020 (CZ)  
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