

Joydeep Mukherjee S/O Late ... vs Union Of India Through Secretary ... on 31 January, 2022

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel

Item No. 01

(Court No. 1)

BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH

(By Video Conferencing)

Original Application No. 10/2016/EZ

(with I.A. No. 12/2022 filed by the intervenor for directions)

Joydeep Mukharjee

Applicant

Versus

UOI & Ors.

Respondent(s)

Date of hearing: 31.01.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Applicant: Mr. Sujit Bhattacharya, Advocate
Mr. Amales Ray, Advocate, Applicant in I.A. No.12/2022/EZ

Respondent(s): Mr. Gora Chand Roy Choudhury, Advocate for R-1,
Mr. Surendra Kumar, Advocate for R-2,
Mr. Dipanjan Ghosh, Advocate for R-3,
Mr. Soumya Das Gupta, Advocate for R-4,
Mr. Ashok Kumar Banerjee, Sr. Advocate along with Ms. Paushali Banerjee, Advocate for R-5
Mr. Probal Kumar Mukherjee, Sr. Advocate along with Ms. Arpita Chowdhury, Advocate for R-6,

ORDER

1. Grievance in this application is against pollution of Mahananda, Jorapani and Phuleswari Rivers in Siliguri area in District Darjeeling, West Bengal. The matter has been pending since 2016 and has been monitored by this Tribunal in the last six years. The Tribunal passed various orders from time to time to prevent and remedy the pollution. Chief Secretary, West Bengal, Municipal Commissioner, Siliguri Municipal Corporation (SMC), Siliguri Jalpaiguri Development Authority (SJDA) and other Departments, including the Urban Development Department, Irrigation and Waterways Department were directed to plan and monitor remedial action. Apart from preventing and remedying pollution, directions were also issued to remove encroachments from the floodplain zones and recover compensation from violators.

2. The Tribunal conducted comprehensive review of progress vide order dated 20.09.2021, with reference to earlier directions and the compliance status brought on record. The Tribunal noted the disturbing state of affairs of continuing damage to the environment and public health. It was noted that there was continuous breach of directions of the Hon'ble Supreme Court in Paryavaran Suraksha Samiti Vs. Union of India¹ fixing outer limit of 31.03.2018 for completing all STPs in the country with a direction to initiate prosecution for such failure with further direction to this Tribunal to monitor compliance. Further, reference was made to order of this Tribunal dated 21.05.2020 in OA No. 593/2017, Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors., to effectuate the directions of the Hon'ble Supreme Court, requiring adherence to the laid down timeline for preventing untreated sewage/effluents into the rivers and for recovery of compensation for delay beyond the timeline. The Tribunal also noted the proceedings in OA No. 673/2018, In re: News item published in "The Hindu" authored by Shri Jacob Koshy titled "More river stretches are now critically polluted: CPCB, for remedial action of 351 polluted river stretches by preparing appropriate action plans for each of the said polluted river stretches with reference to laid down parameters through the River (2017) 5 SCC 326 Rejuvenation Committee (RRC), which was directed to be constituted in each State/UT. Such plans were to be got approved by CPCB and were to inter alia provide for preventing discharge of untreated waste in rivers, scientific handling of solid waste, bio-medical waste, e-waste, maintaining e-flow in the rivers, removing encroachments from catchment areas and floodplains, developing biodiversity parks, preventing over drawal of groundwater and checking illegal sand mining. The Tribunal also directed monitoring of compliance at the level of Chief Secretary of each State/UT.

Reference was also made to orders passed from time to time in OA No. 606/2018. In the said matter, the Chief Secretaries of all the States/UTs were required to remain present in person before the Tribunal with reference to steps taken in respect of identified issues of waste management and other environmental subjects.

3. The Tribunal noted that there was utter failure in the State of West Bengal in complying with the environmental law. The Tribunal observed that instead of ensuring compliance, convenient future dates for compliance were being given, showing lack of sensitivity to public duties, to the detriment

of health of citizens of the State. Accordingly, the Tribunal directed the Chief Secretary, West Bengal to personally look into the matter, take remedial action against erring officers for violations and remain present in person with the status of compliance. The State was directed to deposit a sum of Rs. 2 crores as interim compensation on account of failure to comply with the law. The compensation was to be utilized for restoration of water quality of the rivers. The operative part of the order is reproduced below:

"xxxxxx.....xxx

13. We find the situation to be disturbing. Water pollution is a crime under the Indian Penal Code and the Water Act, to which a State governed by the Constitution cannot be a party, there being constitutional obligation on the State and its Authorities to protect the environment and public health. The matter assumes higher significance in view of the river being tributary of Ganga which has cultural and religious significance for the lives of the citizens in India. It is well known that out of reverence the Ganga water is consumed which, if polluted, adversely affects health.

14. As earlier mentioned, contamination of water sources is a punishable offence under the Water (Prevention and Control of Pollution) Act, 1974 for the last 47 years. Under Section 25 of the Act, untreated discharge of sewage in any drain is prohibited and is criminal offence under Sections 42(2) and 44. Section 48 of the Act makes the Head of the Department liable for being punished for such offence. As per directions of the Hon'ble Supreme Court in Paryavaran Suraksha case,² an outer limit of 31.03.2018 is fixed for completing the work of all STPs in the Country. The Court laid down the sources of budget and issued direction to initiate prosecution for continued failure with direction to the Tribunal to take steps for enforcement of the said direction. Accordingly, the Tribunal has passed several orders, including the order for recovery of compensation and entries in ACRs, after calling the Chief Secretaries of all States before the Tribunal in person. Specific directions of the Hon'ble Supreme Court and this Tribunal on the subject are reproduced below:

Extracts from the judgement of the Hon'ble Supreme Court in Paryavaran Suraksha Samiti Vs. Union of India, supra "7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50%, that of the State Government concerned (including the Union Territory concerned) is 25%. The balance 25%, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced).

The reason for the above prolonged period, for setting up "common effluent treatment plants", according to the learned counsel, is not only financial, but also, the requirement of land acquisition,

for the same.

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

10. Given the responsibility vested in municipalities under Article 243-W of the Constitution, as also, in Item 6 of Schedule XII, wherein the aforesaid obligation, pointedly extends to "public health, (2017) 5 SCC 326 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.

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

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

(emphasis supplied) Extracts from orders of this Tribunal in OA 593/2017 :

Order dated 21.05.2020

26. Summary of directions:

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

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

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

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

Order dated 21.09.2020 "11. The Tribunal has already issued directions vide orders dated 28.08.2019 and 21.05.2020 for ensuring that no untreated sewage/effluent is discharged into any water body and for any violation compensation is to be assessed and recovered by the CPCB so that the same can be utilized for restoration of the environment, complying with the principle of 'Polluter Pays' which has been held to be part of 'Sustainable Development' and part of right to life. Control of such pollution is crucial for environment, aquatic life, food safety and also human health. ..."

Order dated 6.12.19:

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

"58. Rivers in India are drying up, groundwater is being rapidly depleted, and canals are polluted. Yamuna in Delhi looks like a black drain. Several perennial rivers like Ganga and Brahmaputra are rapidly becoming seasonal. Rivers are dying or declining, and aquifers are getting over pumped.

Industries, hotels, etc. are pumping out groundwater at an alarming rate, causing sharp decline in the groundwater levels. Farmers are having a hard time finding groundwater for their crops e.g. in Punjab. In many places there are serpentine queues of exhausted housewives waiting for hours to fill their buckets of water. In this connection John Briscoe has authored a detailed World Bank Report, in which he has mentioned that despite this alarming situation there is widespread complacency on the part of the authorities in India.³ "4. We see Yamuna river virtually turned into a sullage. We take judicial notice of this situation. Similar is the position with Ganges. As it proceeds, industrial effluents are being poured in rivers. Sewage is also being directly put in rivers contributing to the river water pollution. We direct the Pollution Control Boards of the various States as well as the Central Pollution Control Board and various Governments to place before us the data and material with respect to various rivers in the concerned States, and what steps they are taking to curb the pollution in such rivers and to management as to industrial effluents, sewage, garbage, waste and air pollution, including the water management. We club the ending case of water management with this matter.⁴
XXX.....XXX.....XXX

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

12. It will be appropriate to note the crisis situation in the country on the subject of availability of potable water. The matter has been considered in the report of Niti Aayog on State of Orissa v. Govt. of India, (2009) 5 SCC 492 M.C. Mehta Vs Union of India- W.P. (Civil) No. 13029/1985 dated 25.11.2019 Composite Water Management Index (CWMI).⁵ Following further information also needs to be noted:

(i) India is suffering from the worst water crisis in its history and millions of lives and livelihoods are under threat. Currently, 600 million Indians face high to extreme water stress and about two lakh people die every year due to inadequate access to safe water⁶.

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 GDP⁷. As per the report of National Commission for Integrated Water Resource Development of MoWR, the water requirement by 2050 in high use scenario is likely to be a milder 1,180 BCM, whereas the present-day availability is 695 BCM. The total availability of water possible in country is still lower than this projected demand, at 1,137 BCM. Thus, there is an imminent need to deepen our understanding of our water resources and usage and put in place interventions that make our water use efficient and sustainable.

(ii) India is undergoing the worst water crisis in its history.

Already, more than 600 million people⁸ are facing acute water shortages. Critical groundwater resources

- which account for 40% of our water supply - are being depleted at unsustainable rates.⁹

(iii) Most states have achieved less than 50% of the total score in the augmentation of groundwater resources, highlighting the growing national crisis--54% of India's groundwater wells are declining, and 21 major cities are expected to run out of groundwater as soon as 2020, affecting ~100 million people¹⁰.

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

13. As per statistics mentioned before the Lok Sabha on April 6, 2018, waterborne diseases such as cholera, acute diarrhoeal diseases, typhoid and viral hepatitis continue to be prevalent in India and have caused 10,738 deaths, over the last five years since 2017. Of this, acute diarrhoeal diseases caused maximum deaths followed by viral hepatitis, typhoid and cholera.¹¹ 5 Niti Ayog on "Composite Water Management Index", June 2018, https://niti.gov.in/writereaddata/files/document_publication/2018-05-18-Water-Index-Report_vS8-compressed.pdf.

6Source: WRI Aqueduct; WHO Global Health Observatory 7Source: McKinsey & WRG, 'Charting our water future', 2009; World Bank; Times of India 8 Source: World Resource Institute 9 Source: World Resource Institute 10 Source: UN Water, 'Managing water under uncertainty and risk', 2010; World Bank (Hindustan Times, The Hindu).

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

14. As per 'National Health Profile' published by Central Bureau of Health Investigation, Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India, a total of 1535 Deaths due to Acute Diarrhoeal Diseases was reported during the year 2013.¹² Main Causes of Pollution of Rivers

15. As already noted, well known causes of pollution of rivers are dumping of untreated sewage and industrial waste, garbage, plastic waste, e-waste, bio-medical waste, municipal solid waste, diversion of river waters for various purposes affecting e-flow, encroachment of catchment areas and floodplains, over drawl of groundwater, river bank erosion on account of illegal sand mining. In spite of directions to install Effluent Treatment Plants (ETPs), Common Effluent Treatment Plants (CETPs), Sewage Treatment Plants (STPs), and adopting other anti-pollution measures, satisfactory situation has not been achieved. As per CPCB's report 2016¹³, it has been estimated that 61,948 million liters per day (mld) sewage is generated from the urban areas of which treatment capacity of 23,277 mld is currently existent in India. Thereby the deficit in capacity of waste treatment is of 62%. There is no data available with regard to generation of sewage in the rural areas.

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

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

"26. Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that

it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106612> http://www.sulabhenvi.nic.in/Database/STST_wastewater_2090.aspx July 16, updated on December 6, 2016 containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.¹⁴ xxx.....xxx.....xxx

"61. If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large-scale cannot take place without connivance of the officers concerned. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens." ¹⁵ xxx.....xxx.....xxx

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

"16. xxx.....xxx.....xxx

17. Wherever the work has not commenced, it is necessary that no untreated sewage is discharged into the River Ganga. Bioremediation and/or phytoremediation or any other remediation measures may start as an interim measure positively from 01.11.2019, failing which the State may be liable to pay compensation of Rs. 5 Lakhs per month per drain to be deposited with the CPCB. This however, is not to be taken as an excuse to delay the installation of STPs. For delay of the work, the Chief Secretary must identify the officers responsible and assign specific responsibilities. Wherever there are violations, adverse entries in the ACRs must be made in respect of such identified officers. For delay in setting up of STPs and sewerage network beyond prescribed timelines, State may be liable to pay Rs. 10 Lakhs per month per STP and its INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION Vs. UNION OF INDIA AND OTHERS (1996) 5 SCC 281 M.C. Mehta v. Union of India, (2006) 3 SCC

399 - Public functionaries network. It will be open to the State to recover the said amount from the erring officers/contractors.

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

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17. As already noted, prevention of pollution of water is directly linked to access to potable water as well as food safety. Restoration of pristine glory of rivers is also of cultural and ecological significance. This necessitates effective steps to ensure that no pollution is discharged in water bodies. Doing so is a criminal offence under the Water Act and is harmful to the environment and public health. 'Precautionary' principle of environmental law is to be enforced. Thus, the mandate of law is that there must be 100% treatment of sewage as well as trade effluents. This Tribunal has already directed in the case of river Ganga that timelines laid down therein be adhered to for setting up of STPs and till then, interim measures be taken for treatment of sewage. There is no reason why this direction be not followed, so as to control pollution of all the river stretches in the country. The issue of ETPs/CETPs is being dealt with by an appropriate action against polluting industries. Setting up of STPs and MSW facilities is the responsibility of Local Bodies and in case of their default, of the States. Their failure on the subject has to be adequately monitored. Recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance. It is thus necessary to issue directions to all the States/UTs to enforce the compensation regime, latest with effect from 01.04.2020. We may not be taken to be condoning any past violations. The States/UTs have to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies. On failure of the States/UTs, the States/UTs themselves have to pay the requisite amount of compensation to be deposited with the CPCB for restoration of environment. The Chief Secretaries of all the States may furnish their respective compliance reports as per directions already issued in O.A. No. 606/2018."

15. We note that the Chief Secretary of West Bengal appeared in person twice before this Tribunal in O.A. No. 606/2018 dealing with the issue of Solid Waste Management and other environmental issues. The Tribunal directed remedial measures to comply with the law to be monitored at the level of the Chief Secretary by constituting a special cell, directly attached to the office of the Chief Secretary. On directions of the Hon'ble Supreme Court in Paryavaran Suraksha case, supra, the Tribunal has been monitoring the directions to ensure that all pollution control devices to prevent water pollution are in place within the outer limit of 31.03.2018 and for failure to do so, accountability under the Civil and Criminal Law is fixed. The Tribunal has also laid down the scale of compensation @ Rs. 10 lakhs per month for delay in setting of STP and Rs. 5 lakhs per month for delay in providing interim remediation measures in the manner mentioned in the orders quoted above, without prejudice to the statutory liability. There is also direction to record adverse entries in the ACRs of the Officers who are responsible for the delay. Unfortunately, in the present case, the

orders delaying the remedial action include higher officers but no adverse entries in the ACRs are made nor prosecution initiated, as per direction of the Hon'ble Supreme Court, by the West Bengal State PCB. This is dangerous trend to violate the law and to disrespect the rule of law which calls for stringent action if rule of law is to prevail. Continuing violations of orders of this Tribunal is further offence under Sections 26 and 28 of the NGT Act.

16. In view of above, the stand of the Authorities of West Bengal in just giving convenient dates for future action without accountability for the offences already committed and which will continue till proposed action is taken is untenable in law and shows lack of sensitivity to public duties and respect for binding law and orders of the Hon'ble Supreme Court and this Tribunal, to the prejudice of right of the citizens to clean environment with potential for deaths and diseases. Water pollution is also resulting in depriving living creatures of source of drinking water. No data has been furnished about water quality of the river at relevant point, output results of functioning STP or arrangement to prevent pollution till proposed action is completed on a future date. No comprehensive plan is shown to ensure that entire sewage is received at the STP with sewage utilization scheme so that no sewage enters into the river. There is nothing to show steps taken to disinfect sewage, with all safety in terms of protecting aquatic life and impairment of water quality entering into the river, for removing faecal coliform. It may be noted that the stretch of river Mahananda is in the list of 351 polluted river stretches as per data compiled by the CPCB. In respect of the said polluted river stretches, this Tribunal in OA 673/2018, News item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are not critically polluted:

CPCB" directed preparation of river rejuvenation plan by the River Rejuvenation Committee constituted under the orders of this Tribunal. Such a plan has been prepared with timelines. The progress thereof has not been indicated.

17. In view of the above, we direct Chief Secretary, West Bengal to forthwith look into the matter personally and take remedial action against erring officers for continuously committing and enabling the violation of law and binding orders of the Hon'ble Supreme Court and this Tribunal. The Chief Secretary may also ensure that a copy of this order is kept in ACR Folders and Personal files of the concerned erring officers. This order is without prejudice to prosecution of the concerned Officers for past and for continuing violation of the statutory provisions and orders of the Hon'ble Supreme Court and this Tribunal.

18. The Chief Secretary, West Bengal may remain present in person by Video Conferencing on the next date along with action taken report. The State of West Bengal may deposit a sum of Rs. 2 crores as interim compensation with the Collector of the District which may be utilized for restoration of water quality of the river."

4. Accordingly, an 'action taken report' has been filed by the Chief Secretary, West Bengal on 14.01.2022 mentioning some of the steps taken on the subject. The status of compliance mentioned in the report is that out of 88 encroachments, 43 have been removed and the remaining are to be removed in phases. There are initiatives for solid waste management, plantations, bank protection works. The report annexes the report of the Joint Committee giving the status at the time of

inspection as under:

"The summary of the visit is given below:-

The committee conducted an inspection and carried out sampling of river Mahananda at 5 locations as discussed in the presence of all the concerned Departments starting from a downstream area and proceeding upstream at the following five points:

The results of surface water samples of River Mahananda are presented as Annexure - I. Human settlements were observed on the opposite bank of first sampling point (downstream) at Porajhar Rail Bridge. Illegal dwellings/encroachment was observed on the opposite bank of the river at Shitalpara ghat, with drains carrying domestic effluents falling into the river. The river in this stretch was mainly observed to be used for bathing, washing and fishing purposes.

Domestic effluents drained into the river at Mahananda Bridge near Suryasen Park, Siliguri. Few khattals (cattle sheds) were observed along with heavy encroachment on the opposite bank. Usage of the river for multitude of purposes viz. washing, bathing and immediate disposal of waste was observed in this stretch.

At Laxmi Colony Dasarathpally, human settlements were present on both sides of the river and the river stretch was being used extensively for bathing and washing. The riverbank was littered with garbage and waste. At Prakashnagar, Salugara area the river water appeared pristine with no visible waste being dumped in the river or usage of the river for anthropogenic activities except for sporadic usage for bathing.

xxxxxx.....xxx B) Assess the number of Effluent Treatment Plants (ETPs) or Common Effluent Treatment Plants (CETPs) and Sewerage Treatment Plants (STPs) required to treat the untreated sewage and sullage flowing into the Mahananda river.

The report from the Siliguri Jalpaiguri Development Authority reflects that the Department is working for two no. of STPs, one to be constructed on the left bank of Mahananda river and another STP to be constructed at river Jorapani and river Fuleswari. The DPR for 02 nos. of STP have been submitted to UD& MA Department of West Bengal.

An agency was engaged to prepare DPR so that the existing but incomplete STPs can be made operational taking into consideration the present situation (Population, Waste water generation etc).

On the basis of the said DPR a tender was floated (NIT 126/Engg/2020-2021 of SJDA) for amount of Rs.60,16,27,610.00. Technical evaluation of the tender shows there are three eligible bidders for the work. Financial part of the work has not been processed yet due to non availability of AA&FS from the authority.

As regards to the technical summary of the STPs:-

Rehabilitation of 15 MLDSTP II (left bank of Mahananda) comprise modification of pond inlet and outlet, dividing anaerobic pond to allow de-sludging, facultative pond-2 to be divided to ensure maturation pond, infrastructure development of staff quarter, laboratory cum office building, chlorination building, guard room etc. and construction of intercepting chamber, diversion sewer (8.7 km approx), interception and diversion channel, 11 major drains which carry almost 60% of waste water generated from the and 44 are to be intercepted and a diversion channel to be constructed to collect the waste water at the sewage pumping station.

Rehabilitation of 24 MLD STP III (Right/Left bank of Jorapani-Fuleshwari river) comprise modification of pond inlet and outlet, dividing anaerobic pond to allow de-sludging, facultative pond-2 to be divided to ensure maturation pond, infrastructure development of staff quarter, laboratory cum office building, chlorination building, guard room etc. and construction of intercepting chamber, diversion sewer, interception and diversion channel, and 4 major cross drains of varying width discharge waste-water from ward No. 20, 28, 34, 35 into the Jorapani- Fuleshwari river.

The constraint that is being faced by SJDA is that the proposed sewer line alignment along Mahananda left bank and along the Jorapani- Fuleshwari river is encroached by the slum dwellers. A meeting was held by the Commissioner, SMC in presence of CEO (SJDA) and DM, Darjeeling to discuss the issue of encroachment and clearing of alignment. The clearing will be made in stretches according to the progress and development of the interception and diversion work.

In addition, they have informed that STP-I on the right bank of Mahananda is still in a planning stage and awaiting suitability report from the UD & MA Department, Govt. of West Bengal about the identified land. Details have been enclosed as Annexure -II.

xxxxxx.....xxx Recommendation of the Committee

1. The action plan of Siliguri Municipal Corporation reveals that action to deal with the illegal encroachment issues have been initiated in the year 2021 and the remaining earmarked encroachments are to be removed in a phase wise manner within 180 days.

2. Siliguri Municipal Corporation will remove encroachment that has been identified by the irrigation Waterways Department for completion of bank protection work which is expected within May 2022.

3. The irrigation and Waterways Department have initiated the execution of bank protection work in 2018 and this work is expected to be completed within May 2022 provided encroachments that prove to be land encumbrances are removed by SMC.
4. Regarding the operation of STP 2 and STP 3 the committee recommends SJDA to implement the operation of STP 2 and STP3 as earliest as possible. For STP 1 the committee recommends SJDA to initiate the process of construction of STP 1.
5. The timelines mentioned in the Action Plan along with the budget submitted by the different stakeholders for rejuvenation of the polluted stretch of the River Mahananda should be strictly followed."

It is further mentioned in the report that the remediation of legacy waste will take further 12 to 16 months with an estimated project cost of Rs. 18.66 crores to be executed with the help of Kolkata Metropolitan Development Authority (KMDA). However, there is no mention regarding setting up or existence of waste processing plants to process day-to-day waste generation to avoid the situation resulting to legacy waste.

5. We have duly considered the matter. We find that the report is vague in absence of specific data and the timelines as well as accountability for the past failures. There is no mention of the damage to the environment in monetary terms on account of continuous failure to prevent pollution and violations. There is nothing to show demarcation of the floodplain zones, as required. Though one of the reasons for failure to remove encroachments is orally explained to be inability to provide any alternative place to 'poor' encroachers, policy of rehabilitation or of permitting encroachers to occupy eco sensitive public places till such rehabilitation is carried out has not been placed on record. It is difficult to understand how public places can be allowed to be occupied illegally without any accountability and to the detriment of public health and environment?

How will rule of law be enforced by the State, if law is to be allowed to be violated on selective basis at the whims and fancies of individual authorities, in absence of any clear policy? While poor may be helped out of resources of the State, can it justify damage to public health and rare natural resources belonging to the people and not to the State as such of which the State is 'trustee' on behalf of the people. Further, there is no data of solid and liquid waste generation and scientific disposal. How deprivation of potable water is factored in with so called helping poor people to illegally occupy floodplains? The State has not explained balancing of damage to the environment as against helping poor people by allowing them to continue illegal encroachments. Coherent and transparent policy on vital environmental issues is not visible in the report of the Chief Secretary in absence of which it is difficult to appreciate the oral stand of the State, contrary to the mandate of the Constitution. If there are admitted violations, multipronged approach to remedy the same, backed by monitorable action plans with timelines and budgetary support are inevitable mandate of good governance. Humanitarian considerations pleaded for permitting law violations may be poor substitute for good governance at the cost of environment and public health. As already noted, stretch of River Mahananda from Siliguri to Binaguri is one of the polluted river stretches identified as such by CPCB. It falls in category of Priority II, having BOD range 6.5 - 25 mg/l. Further, there are two STPs

of 15 and 24 MLD which needs to be upgraded apart from additional STP to enhance the treatment capacity. 11 drains are reported to be discharging sewage waste water into the river. The water quality of the river is poor as is evident from the report of the West Bengal State PCB. Fecal Coliform is to the extent of 1,74,000 MPN/100 ML.

6. Although an amount of Rs. 2,00,00,000/- (Rupees Two Crores only) has been paid by the Siliguri Jalpaiguri Development Authority (SJDA) to the District Magistrate, Darjeeling for restoration of water quality of the rivers in the District, no action plan for implementation of the same has been submitted along with the affidavit of the Chief Secretary, Govt. of West Bengal. This needs to be carried out urgently.

7. In I.A. No. 12/2022, there is a grievance of failure to execute action plan for rejuvenation of polluted river stretch of Mahananda River, non-

eviction of illegal encroachments, failure to prevent dumping of waste on the bank of the River and attempt to permit encroachment and other commercial activities on the river bank in violations of environmental norms and orders of this Tribunal including orders dated 16.07.2021 and 20.09.2021 in O.A. No. 53/2021, Ms. Jyotsna Agarwal v. UOI & Ors. The operative part of the order dated 20.09.2021 in the matter is reproduced below:-

"1&2...xxx.....xxx.....xxx

3. The matter came up for consideration on 16.07.2021 and while issuing notice to the respondents which include the regulators and concerned authorities of the State of West Bengal, the Tribunal directed constitution of a Committee to assess the level of pollution, the number of pollution control devices required, the number of encroachers, extent of damage caused to the flood plain of the river and the remedial measures required. The Tribunal also directed the Committee to compute the cost of damage on 'polluter pays' principle. The directions are as follows: -

"11. In the meantime, we consider it appropriate to constitute a committee comprising the following Members:-

(i) Senior Scientist from Central Pollution Control Board, Regional Office, Kolkata.

(ii) Senior Scientist from West Bengal State Pollution Control Board.

(iii) District Magistrate, Darjeeling.

(iv) Scientist from the Integrated Regional Office of Ministry of Environment, Forest and Climate Change, Bhubaneswar/ Kolkata.

(v) Representative from River Rejuvenation Committee, West Bengal Environment Department. The West Bengal State Pollution Control Board shall be the Nodal Office

for all logistic purposes.

12. This committee shall conduct an inspection of the area in question and submit its report on the following issues:-

(i) Assess the level of pollution in Mahananda river by carrying out water analysis test with reference to Potential of Hydrogen (pH), Total Suspended Solids (TSS), Biological Oxygen Demand(BOD), Chemical Oxygen Demand (COD), total coliform & faecal coliform. Samples may be taken from different stretches of the river for analysis of the above parameters.

(ii) Assess the number of Effluent Treatment Plants (ETPs) or Common Effluent Treatment Plants (CETPs) and Sewerage Treatment Plants (STPs) required to treat the untreated sewage and sullage flowing into the Mahananda river.

(iii) Assess the number of encroachers and area of encroachment in the banks of the Mahananda river and indicate a possible time line for their removal.

(iv) Assess the damage caused to the flood plain of the river on account of encroachment & dumping of solid waste and sewage.

(v) Assess the environmental compensation on account of the damage caused to the river and the flood plain.

(vi) Recommend remedial measures including creation of a bio-diversity park/tree planting on the banks of the river Mahananda to prevent further encroachment & pollution.

13. It is made clear that if the violation of environmental norms are found, the Committee shall compute the cost of environmental damage as well as the cost to be recovered from the polluter/polluters and the penalty and also whether criminal proceedings have been initiated against the alleged violators or not. The committee shall also look into the pollution of the flood plain zone of river Mahananda.

14. The committee shall submit its report on affidavit at least one week before the next date fixed."

4. Unfortunately, the Committee has not given any report, as directed. No response has been filed by any of the authorities. This shows sheer insensitivity to the concerns for health of the citizens and constitutional obligation to protect environment.

5. We have considered the overlapping issue today in a separate matter - O.A. No. 10/2016/EZ, Joydeep Mukharjee v. UOI & Ors., relating to pollution of Mahananda river and issued directions requiring the Chief Secretary, West Bengal to take remedial measures and remain present in person

via video conferencing with the compliance report on 17.01.2022.

6. In view of above, the West Bengal Pollution Control Board, who is the Nodal Office of the Committee constituted by the above order, may now give its report to the Chief Secretary, West Bengal, who may take further action in the light of prayers in the application, directions already issued in the last order quoted above as well as order passed today in O.A. No. 10/2016/EZ."

8. The applicant in I.A. 12/2022 has pointed out that though there is an action plan for river Mahananda, duly approved by CPCB prior to 07.02.2020, the same remains on paper. The plan provides for demarcation and protection of flood plain zones but even that part remains un-complied. There is a fear of collapse of Mahananda bridge which may create a catastrophic situation for Siliguri Town. Mahananda Bachao Committee had taken up the matter with the authorities unsuccessfully.

Report of the State PCB to the Chief Secretary, in pursuance of earlier order, is merely a paper work with no meaningful action. There is no assessment of damage caused to the flood plain and to the river. There is no effective measure to setup bio-diversity parks.

9. We have interacted with the Chief Secretary, present in person, and express our disappointment with the sorry state of affairs prevailing with practically no meaningful progress in the matter in the last six years of monitoring by this Tribunal. We hope that in the interest of public health, environment and Rule of Law stringent measures will be taken to remove encroachers, have a transparent and well defined policy in protecting eco-

fragile areas, have monitorable action plan with responsibility, timeline, budget, authentic data and graphs showing progress in the course of the time. Needless to say, protection of environment and providing clean environment is basic right of citizens under the Constitution of India and failure to ensure such minimum compliance of basic rights will be clear failure of rule of law.

10. We hope the State of West Bengal will realize its responsibility and take effective measures to prevent and remedy pollution of the river stretch in question, including steps for protecting the flood plain zone keeping it free from any future encroachment, removing the existing encroachment and also for scientific treatment of solid and other waste in terms of binding directions of the Hon'ble Supreme Court in Paryavaran Suraksha case, supra and Almitra Patel & Anr. v. UOI & Ors.¹⁶ The State must ensure beautification of river banks and create bio-diversity parks at appropriate locations. There is need to compile data of sewage generation, existing treatment capacity, gap in generation and treatment, utilization of treated sewage, performance of STPs particularly with reference to Fecal Coliform and the timelines, with budgetary support on the other activities as per the river action plan. The issues relating to bio-mining to remediate legacy waste may be dealt with expeditiously, which may include, setting up of waste processing plant commensurate with daily waste generation.

11. In view of long past failure, the compliance needs to be monitored not only at the level of District Administration on continuous basis but also at the level of Chief Secretary of the State atleast once

in a month in coordination with all concerned Departments. Monthly progress in the matter needs to be placed on the website of the State of West Bengal for information of all stake holders and general public.

Let the status of compliance as on 30.04.2022 be placed on record before this Tribunal 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.

List for further consideration on 09.05.2022.

(2000) 2 SCC 679 A copy of this order be forwarded to the Chief Secretary, West Bengal for compliance by e-mail.

Adarsh Kumar Goel, CP Sudhir Agarwal, JM B. Amit Sthalekar, JM Saibal Dasgupta, EM Dr. Vijay Kulkarni, EM Dr. Afroz Ahmad, EM January 31, 2022 Original Application No. 10/2016/EZ DV + A