

Sunaina vs State Of Punjab Through Its Chief ... on 29 July, 2022

Item No. 05

(Court No. 1)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Original Application No. 543/2022

Sunaina

Applicant

Versus

State of Punjab & Ors.

Respondent(s)

Date of hearing: 29.07.2022

CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER

Applicant: Ms. Sunaina, Applicant in person

ORDER

1. This Original Application has been filed under Section 14 and 15 of National Green Tribunal Act, 2010 raising grievance of pollution caused in river Ghaggar while passing through the villages Mandvi, Chaandu, Banarasi, Bopur, Aandaana, Fullad, Gamotta, Haande, Kuddni, Matouli, Khaddkan, Chichad kallan, Khannang, Nya Gaon, Uppad, Nae Wala, Theddi, Makoord Sahib.

2. We find that the issue of pollution of river Ghaggar has already been dealt with in detail in O.A. No. 138/2016 (TNHRC), Stench Grips Mansa's Sacred Ghaggar River and in the judgment dated 16.03.2021, after recording its finding on various aspects of the matter, Tribunal has constituted a Monitoring Committee to be oversighted by Chief Secretary.

3. Order dated 16.03.2021 refers to 351 polluted river stretches of the country in Priority-I category which included river Ghaggar also. The relevant extract of the judgment is reproduced as under:-

"8. We have heard learned Counsel for the parties present and considered the matter. Learned Amicus pointed out that while the recommendations of the Committee need to be accepted and directions issued in terms thereof, further directions are required

on some of the issues on which the Committee has not made any express recommendation. It is submitted that most of the existing STPs do not meet the faecal coliform parameters. The Committee has not adverted to the in-situ remediation, bio-medical waste, municipal waste management, flood plain zoning and mining activities. There is no opposition to the suggestion of learned Amicus.

9. We find that the recommendations of the Committee with respect to further action by the States of Himachal Pradesh, Punjab, Haryana and UT Chandigarh need to be acted upon with regard to setting up and maintaining treatment plants, use of treated water, use of sludge and septage management, in relation to industries, installation of STPs/treatment facilities in Hotels/Ashrams and Dharmshalas, water quality monitoring of the river and its tributaries, maintenance of environmental flow, action against identified polluters, law violators and officers responsible for failure and for vigorous monitoring. The concerned States also need to take remedial action for disposal of Bio-medical waste, compliance of Solid Waste Management (SWM) Rules, 2016, preparation of maps and zoning of flood plains, mining activity under supervision of the concerned authorities and in-situ remediation. The STPs need to be duly maintained and comply with the faecal coliform standards also. We do not find it necessary to refer to each individual recommendation of the Executing Committee already quoted above.

10. From the report of the Monitoring Committee, it can be seen that there are still huge gaps in capacity and functioning of the STPs, CETPs as well as the ETPs, reuse of treated water for irrigation, preventing dumping of Solid Waste, industrial pollution, preventing direct discharge of pollution in the drains and the rivers, irrigation scheme for using treated sewage water, in situ remediation of drains, maintaining e-flow of rivers and septage management. There is need to set up CCTV cameras, more monitoring stations, creating awareness and organizing health check-ups, apart from other administrative measures, as suggested by the Committee. This requires sustained efforts at different levels of the administration, local bodies, District Administration and of the State. Further action on the basis of the recommendations of the Committee will go a long way in restoration of the river. Accordingly, we direct acceptance of the recommendations of the Committee and further action on that basis. As river Ghaggar flows interstate, its water quality is required to be maintained at least of 'C' category, when it finally enters in the State of Rajasthan. There is need to conduct regular health checkups with reference to water born health ailments. Data of RTWQMS be placed on websites of SPCBs and CPCB. Drains carrying sewage, joining river Ghaggar and its tributaries, be intercepted and diverted to the STPs to control fecal coliform and to monitor micro-pollutants.

11. As already noted, the general issue of restoration of 351 river stretches, including the rivers in question has been separately dealt with in OA 673/2018, (In Re: News item published in "The Hindu"

authored by Shri Jacob Koshy, titled "More river stretches are now critically polluted: CPCB"). The matter was last considered on 22.02.2021 in the light of report of the CPCB and the Central Monitoring Committee (CMC), headed by the Ministry of Jalshakti, in pursuance of earlier orders in the said matter. The matter was considered with OA 593/2017, in pursuance of directions of the Hon'ble Supreme Court in (2017) 5 SCC 326, requiring all the States in the country to ensure requisite water treatment devices in time bound manner by 31.3.2018, after which coercive measures must be taken. Following the orders of the Hon'ble Supreme Court, the Tribunal directed that the River Rejuvenation Committees and the Chief Secretaries of all States/UTs must ensure preventing of any pollution of the rivers by enforcing the statutory law and norms and Constitutional obligation of providing pollution free environment. The said directions are:

"37. In view of the above, we are of opinion that the monitoring by the Tribunal cannot be unending and must now be taken over by the concerned authorities. The roadmap stands laid out. Action plans have been prepared for remediation of all the 351 identified polluted river stretches. Gaps have been identified for ETPs/CETPs/STPs (including modular STPs wherever necessary). Timelines are clear. Sources of funding are clear in the Supreme Court order. HAM model is also available as per Govt. of India Policy mentioned in the report of the CMC. Alternative conventional methods of bio/phytoremediation are also available as mentioned in the report of the CMC. Existing treatment capacity is not fully utilised. New projects, already ongoing or those yet to commence need to be expedited. Consequences for delay in terms of compensation and administrative measures have been clearly mentioned. The river rejuvenation committees in the States/UTs, as per directions of the Chief Secretaries may perform their obligations accordingly which may be monitored by the Central Monitoring Committee, headed by Secretary, Jal Shakti, as directed earlier.

38. We find that the monitoring mechanism introduced as per directions of this Tribunal in the form of RRCs at the States level and CMC at the Central level is to an extent identical to the monitoring mechanism laid down under the River Ganga Rejuvenation, Protection and Management Authorities Notification 2016. However, mechanism under the 2016 notification being statutory and exhaustive, it will be better that the same is adopted for all the river stretches as issues involved are common. The Empowered Task Force on river Ganga headed by Union Minister of Jal Shakti may exercise all powers and discharge all functions in relation to all the polluted river stretches in the same manner as the functions entrusted to it under the River Ganga 2016 order for control of pollution and rejuvenation of polluted river stretches. This is necessary so that the Nation/Central Monitoring Mechanism can be effective, in view of continuing failure of statutory mechanism under the Water Act for preventing pollution of water, resulting in pollution of almost all the rivers and water bodies in the country, posing serious threat to availability of potable water for drinking purposes as well as for safety of food chain. Hardly any accountability has been fixed for such serious failures. It will be open to the MoJS to issue any further appropriate statutory order to give effect to the above directions under the EP Act.

The National/Central Mechanism may enforce the earlier directions of this Tribunal for collecting compensation for the failure to commence or complete the projects for setting up of sewage treatment equipments or taking steps for interim remediation measures. This is necessary for accountability for the failure to obey the law. The compensation so assessed may be deposited in a separate account to be used for rejuvenation of the polluted river stretches in the same manner as directed in the case of Ganga quoted above. As directed vide order dated 19.12.2018 in OA 673/2018, responsibility to pay compensation on behalf of the States/UTs will be of the Chief Secretaries. As per scheme of the NGT Act, every order of NGT is executable as a decree of Civil Court¹. Further, failure to comply order of the NGT is an offence punishable with imprisonment upto three years or fine upto Rs. 10 crores with additional fine for continuing offence after conviction.² If the offence is by a Government Department, Head of the Department is deemed to be guilty.³ Cognizance of the offence can be taken by a Court on a complaint of Central Government or any other person who has given notice to the Central Government or its authorized representative. The complaint can be filed before a Court of Magistrate of first class. It is, thus, necessary in view of continuing violation of NGT order, requiring payment of compensation to reiterate the direction of responsibility for payment of compensation, to be of the Chief Secretaries and in default, their liability to be proceeded against for coercive measures for execution or by way of prosecution as per NGT Act, 2010.

39. Our directions are summed up as follows:

(i) In the light of observations in Para 38 above, MoJS may devise an appropriate mechanism for more effective monitoring of steps for control of pollution and rejuvenation of all polluted river stretches in the country.

The said mechanism may be called "National River Rejuvenation Mechanism" (NRRM) or given any other suitable name. NRRM may also consider the observations Section 25 of the NGT Act, 2010 read with Section 51 of the CPC providing for mode of execution which include civil imprisonment.

Section 26 Section 28 with regard to setting up of National/State/District Environment Data Grid at appropriate levels as an effective monitoring strategy.

(ii) Chief Secretaries of all States/UTs and PCBs/PCCs must work in mission mode for strict compliance of timelines for commencing new projects, completing ongoing projects and adopting interim phyto/bio-remediation measures, failing which compensation in terms of earlier orders be deposited with the MoJS, to be utilised in the respective States as per action plan to be approved by the NRRM. Other steps in terms of action plans for abatement of pollution and rejuvenation of rivers, including preventing discharge or dumping of liquid and solid waste, maintaining eflow, protecting floodplains, using treated sewage for secondary purposes, developing bio-diversity parks, protecting water bodies, regulating ground water extraction, water conservation, maintaining water quality etc. be taken effectively. The process of rejuvenation of rivers need not be confined to only

351 stretches but may be applicable to all small, medium and big polluted rivers, including those dried up.

(iii) The Chief Secretaries of all States/UTs may personally monitor progress at least once every month and the NRRM every quarter.

(iv) Directions of this Tribunal in earlier order, the last being dated 21.9.2020 are reiterated.

(v) The NRRM and the Chief Secretaries of all the States/UTs may take into account the observations in Paras 24 to 38 above.

(vi) In view of discussion in para 38 above, it is made clear that accountability for failure to comply with the direction for payment of compensation will be of the concerned Chief Secretaries under Sections 25, 26, 28 and 30 of the NGT Act, 2010. The MoJS or any other aggrieved person will be free to take remedies by way of initiating prosecution or execution."

12. The case in hands has been pending for the last almost seven years and after transfer to this Tribunal for about five years. There have been several orders passed finding pitiable condition of the river and the drains connected thereto due to inadequate steps by the administration to perform its obligation. The Monitoring Committee, constituted by this Tribunal, first of statutory regulators (like CPCB, State PCB) and later with a former Judge of the High Court, a former Chief Secretary of the State and a former Member Secretary of the State PCB, has functioned for more than two years. Monitoring by the Tribunal or the Tribunal appointed Committee cannot be a permanent feature. It is only a last resort for some period. It is finally for the States to take ownership of the subject and take stern measures and evolve effective monitoring mechanism to remedy the situation to give effect to its Constitutional obligation to provide clean environment to the citizens and protect natural and scarce environmental resources like water, air and soil for current and future generations. Violators of environmental norms need to be sternly dealt with in the same manner as other criminals threatening the safety of the citizens.

13. Accordingly, as already directed earlier, the ownership of the issue may now be taken over by the respective Chief Secretaries, who may, having regard to seriousness of the issue, affecting health and environment, personally monitor progress of compliance atleast once in a month and also evolve an appropriate administrative mechanism to handle the grim situation. We may also note that the RRCs headed by Environment Secretaries in all the States/UTs have already been directed to prepare and monitor execution of action plans for the polluted river stretches on continuous basis. The RRCs of concerned States may accordingly monitor execution of action plans for Ghaggar river, in continuation of 7th report of the Monitoring Committee, referred to above, subject to overall oversight of the respective Chief Secretaries. The Chief Secretaries while reviewing the status of various issues may focus on timely completion of the ongoing works. Quarterly reports be sent by the Chief Secretaries to the CMC in terms of the order dated 22.02.2021 in OA 673/2018 which deals with the subject of restoration of 351 polluted river stretches, including the rivers in question.

14. We place on record our appreciation for the significant contribution of the Committee in monitoring the control of pollution of river Ghaggar and setting a direction by its recommendations. With the taking over of further monitoring by the concerned Chief Secretaries, the proceedings of the Committee on the subject will stand concluded subject to further monitoring being continued by the State Authorities as above. Consistent with earlier directions, the Chief Secretaries may also hold joint meetings periodically to share best practices and strategies on this complex and long ending issue.

15. However, we request the Monitoring Committee to render such further assistance as may be considered necessary by the Chief Secretaries and found possible by the Committee in the transitional period. The Committee may continue to monitor other important issues, as requested by the Tribunal, for some more time and give its reports to 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.

16. Before parting, we also place on record our appreciation for the valuable services rendered by learned Amicus by utmost dedication and sincerity.

The application is disposed of."

4. In view thereof, since the matter is already dealt with by our order in O.A. No. 138/2016 (TNHRC), we find no reason to raise the same issue again without any new facts. The applicant may take appropriate steps for execution of the above order, if it is not being properly implemented by appropriate authorities.

With the above observations, this application is disposed of.

Sudhir Agarwal, JM Prof. A. Senthil Vel, EM July 29, 2022 Original Application No. 543/2022 SN