

Chaudhary Ompal vs State Of Haryana on 30 June, 2021

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel

Item No. 04

(Court No.1)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Original Application No. 212/2020

Chaudhary Ompal & Ors.

Applicant(s)

Versus

State of Haryana

Respondent

Date of hearing: 30.06.2021

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Respondent(s): Mr. Rahul Khurana, Advocate for HSPCB

ORDER

1. Grievance in this application is against discharge of untreated industrial effluents at Village Hamidi, District Yamunanagar. The drain carrying the effluent is connected to Dhanaura Escape, Village Dabkoli, Indri, which finally joins Yamuna. The said discharge is contaminating the ground water. The foul smell is affecting the inhabitants and the public health. The chemical discharge is also affecting the cattle and the agriculture fields.

2. Vide order dated 01.12.2020, an action taken report was sought from the State PCB and the District Magistrate, Yamunanagar.

Accordingly, a joint report has been filed by the District Magistrate, Yamunanagar and State PCB giving the gap in generation of sewage and treatment capacity. It has been acknowledged that untreated sewage is being discharged to the extent of 66 MLD into a drain which joins river Yamuna. It would be appropriate to reproduce the report which is as follows:-

"1...xxx.....xxx.....xxx That the grievance of the complainant/petitioner is about the discharge of the Ditch Drain carrying waste water of District Yamuna Nagar into River Yamuna via Dhanaura Escape and hence causing the contamination of underground water nearby to the complainant village Dabkoli Kalan in District Karnal and the wholesomeness of water in River Yamuna. The complainant also raised the issue regarding discharge of effluent in Dhanaura Escape from a distillery unit i.e. M/s RSL Distilleries Private Limited located at Village Chandrao, Tehsil- Indri, District Karnal.

2. That regarding discharge of effluent from a distillery unit i.e. M/s RSL Distilleries Private Limited located at Village Chandrao, Tehsil- Indri, District Karnal (under jurisdiction of Karnal Regional Office), it has been informed that recently a joint inspection of the said unit was conducted on dated 13.02.2021 by the CPCB team and unit was found operating on the production capacity of 113 KLPD against installed capacity of 120 KLPD and found operating on Zero Liquid Discharge (ZLD) and no observation regarding discharge outside the premises of the unit into Dhanaura Escape during inspection. The inspection report of CPCB is enclosed as per Annexure-R2.

3. That it has been stated in complaint that the sewage treatment plant at Hamidi is lying abandoned and non-operational. It is submitted that complainant is referring the old structure 25 MLD STP which already have been abandoned by the Public Health Engineering Department (PHED) and in place of that presently 02 nos. newly constructed and commissioned STP's of capacity 25 MLD & 20 MLD are operational.

That the total installed capacity of the operational 06 no. STPs in District Yamuna Nagar is 85.5 MLD and 01 no. STP of 10 MLD capacity is under construction with having estimated date of commissioning 31.07.2021. These STP's are installed and maintained by Public Health Engineering Department (PHED) and details of these STP's is submitted as under:-

Sr. No.	Capacity & Address of STP	Discharge Standards achieved (mg/ltr)	Remarks
1	25 MLD STP, at Radaur Road, Yamuna Nagar	pH 5.5-9.0 BOD-10 COD-50 TSS- 20 Total Nitrogen -10	Operational and achieving the discharge standards.
2	20 MLD STP at Radaur Road, Yamuna Nagar.	---do--	---do--

3	24 MLD at Parwaloo, Jagadhari	---do--	---do--
4	3 MLD STP at Chhachhrauli	---do--	---do--
5	3.5 MLD STP at Radaur, Yamuna Nagar	---do--	---do--
6	10 MLD STP at Baddi Majra, Yamuna Nagar.	---do--	---do--
7	10 MLD STP, Unit-2, Badi Majra	Under construction	Estimated date of commissioning is 31.07.2021.

That out of 06 nos. operational STP's, the treated discharge from 03 nos. STP's i.e. 25 MLD & 20 MLD STP's at Radaur Road, Yamuna Nagar and 3.5 MLD STP at Radaur, Yamuna Nagar is disposed of through Ditch Drain which is finally reaching to River Yamuna through Dhanaura Escape.

Apart from domestic sewage effluent, the treated trade effluent from 03 major industries i.e. M/s Ballarpur Industries Limited, M/s Saraswati Sugar Mills Ltd., Radaur Road, Yamuna Nagar & M/s Blue Craft Agro (P) Ltd., Radaur Road, Tehsil Jagadhri, Yamuna Nagar is also being discharged in Ditch Drain. The total discharge from these 03 industrial units is approx. 18 MLD.

3. That for survey and estimation of untreated discharge from District Yamuna Nagar reaching to ditch drain, a team comprising Officers of from PHED, Municipal Corporation, Yamuna Nagar and HSPCB has surveyed and quantified the discharge of untreated effluent falling into ditch drain. It was found that the discharge from 03 Nallah (Drain) i.e. (1) Radaur road nallah passing nearby Jammu colony, (2) Nallah at Radaur Road, near Jorian Gurudwara (3) Nallah at Hamida Head, were the sources where from the untreated discharge directly reaching to ditch drain. The discharge at these points has been measured on the basis of Weighted Average Method continuously for 5 days at three different times of a day as described below:-

Name of Peak Hour Flow Normal Hour Non-peak flow Nallah/Drain (MLD) Flow (MLD) Radaur road Nallah 58.41 45.41 17.35 passing Jammu colony Nallah at Radaur 22.43 17.38 4.30 Road near Jorian Gurudwara Nallah at Hamida 3.66 3.26 2.87 Head Total 84.50 66.05 24.52 That the average daily discharge comes out to be approx. 66 MLD from these three sources and falling into Ditch Drain which in turn reaching to River Yamuna through Dhanaura Escape. This 66 MLD discharge from 03 no. Nallah/Drain as mentioned above yet to be diverted/treated/tapped by the concerned authorities i.e. Municipal Corporation, Yamuna Nagar.

The HSPCB asked for action plan from the Municipal Corporation, Yamuna Nagar. It vide letter memo no. 229 dated 03.06.2021 has submitted proposal/recommendation to the ACS, Urban Local Bodies Department for installation of 75 MLD STP at Radaur Road, Yamuna Nagar. The copy of the proposal/recommendation of Municipal Corporation, Yamuna Nagar is enclosed as per

Annexure-R/3. "

4. The above report clearly establishes failure of the concerned statutory authorities in applying the law of the land. Discharge of untreated sewage/trade effluents in drains/river is criminal offence under the law of the land. The State has authority to prevent such offence and to proceed against the offender. The State authorities cannot themselves act illegally.

5. Vide order dated 27.01.2021 in O.A. No. 06/2012, Manoj Mishra v.

UOI & Ors., the Tribunal dealt with the issue of remedial action to prevent pollution of river Yamuna, including the stretch of river Yamuna in Haryana. Detailed directions therein require the State authorities to prevent such pollution but the authorities in the State are violating the said order which is an independent offence. Further, vide order dated 16.03.2021 in O.A. No. 138/2016 (TNHRC), Stench Grips Mansa's Sacred Ghaggar River, the Tribunal has directed remedial action by the State of Haryana for prevention of pollution of river Ghaggar. Apart from the said two cases, the Tribunal has considered the issue of 351 polluted river stretches, which include polluted river stretches in Haryana in O.A. 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"

wherein last order of the Tribunal dated 22.02.2021. Further, by the very same judgement, the Tribunal passed final order in OA 593/2017, in the light of the judgment of Hon'ble Supreme Court in Paryavaran Suraksha case¹ requiring requisite pollution control devices to prevent water pollution to be installed positively by 01.04.2018, failing which coercive measures are to be taken against the concerned Secretary of the State Government. The issue has also been gone into O.A. No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues and directions issued in the presence of Chief Secretary Haryana to ensure monitoring at the level of the Chief Secretary to prevent offence of pollution by State authorities for enforcement of rule of law and Constitutional obligation of providing pollution free environment to the citizens which is part of right to life.

6. Relevant extracts from some of the above orders are reproduced below:

(I) O.A. No. 06/2012, order dated 27.01.2021:

"23. Accordingly, we direct that in terms of directions of the Hon'ble Supreme Court and earlier orders of this Tribunal, henceforth the Chief Secretary, NCT of Delhi, in coordination with other authorities (such as, Additional Chief Secretary Urban Development, DDA, IDMC, DPCC, DJB) and the Chief Secretaries of Haryana and UP may personally monitor the progress, by evolving effective administrative mechanism to handle grim situation caused by years of neglect. Causes of failure of existing mechanism and remedial measures required be addressed in the light of reports of the Committee. This needs to be further overseen at National level by the Central

Monitoring Committee, headed by Secretary Jalshakti, which also includes NMCG and CPCB, in terms of earlier orders of this Tribunal. To give effect to the orders of the Hon'ble Supreme Court, the Tribunal has already directed constitution of River Rejuvenation Committees (RRCs) in all the States/UTs by order passed in OA No. 673 of 2018 in Re: News item published in "The Hindu" authored by (2017) 5 SCC 326 Shri Jacob Koshy titled "More river stretches are now critically polluted : CPCB, to be headed by the Environment Secretaries of States/UTs, to prepare and execute action plans for restoration of the polluted river stretches, under the oversight of the Chief Secretaries of the States/UTs. Such action plans are already in place. The RRCs of Delhi, Haryana and UP may accordingly monitor execution of the action plans with proper inter-departmental coordination, to remedy the polluted stretches of river Yamuna in their respective jurisdiction, subject to oversight of the Chief Secretaries on quarterly basis, who may thereafter give their quarterly reports to the Central Monitoring Committee (CMC) headed by the Secretary, Jal Shakti in terms of order dated 21.09.2020 in O.A. No. 673/2018, supra.

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

27. On the above pattern, the monitoring by the Committee headed by Justice Pritam Pal for the stretch of Yamuna in Haryana will also stand concluded, subject to the monitoring being now undertaken by and under the Chief Secretary, Haryana and filing of reports with the CMC, on same pattern as in Delhi."

(II) O.A. No. 138/2016 (TNHRC), order dated 16.03.2021:

"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."

(III) O.A. No. 673/2018 and O.A. No. 593/2017, order dated 22.02.2021:

"Conclusion:

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 Court². 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.³ If the offence is by a Government Department, Head of the Department is deemed to be guilty.⁴ 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 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 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 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."

(IV) O.A. No. 606/2018, order dated 28.02.2020:

"41. In view of above, consistent with the directions referred to in Para 29 issued on 10.01.2020 in the case of UP, Punjab and Chandigarh which have also been repeated for other States in matters already dealt with, we direct:

a. In view of the fact that most of the statutory timelines have expired and directions of the Hon'ble Supreme Court and this Tribunal to comply with Solid Waste Management Rules, 2016 remain unexecuted, interim compensation scale is hereby laid down for continued failure after 31.03.2020. The compliance of the Rules requires taking of several steps mentioned in Rule 22 from Serial No. 1 to 10 (mentioned in para 12 above). Any such continued failure will result in liability of every Local Body to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body from 01.04.2020 till compliance. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal. Final compensation may be assessed and recovered by the State PCBs/PCCs in the light of Para 33 above within six months from today.

CPCB may prepare a template and issue an appropriate direction to the State PCBs/PCCs for undertaking such an assessment in the light thereof within one month. b. Legacy waste remediation was to 'commence' from 01.11.2019 in terms of order of this Tribunal dated 17.07.2019 in O.A. No. 519/2019 para 285 even though

statutory timeline for 'completing' the said step is till 07.04.2021 (as per serial no. 11 in Rule 22), which direction remains unexecuted at most of the places and delay in clearing legacy waste is causing huge damage to environment in monetary terms as noted in para 33 above, pending assessment and recovery of such damage by the concerned State PCB within four months from today, continued failure of every Local Body on the subject of commencing the work of legacy waste sites remediation from 01.04.2020 till compliance will result in liability to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal. Final compensation may be assessed and recovered by the State PCBs/PCCs in the light of Para 33 above within six months from today.

c. Further, with regard to thematic areas listed above in para 20, steps be ensured by the Chief Secretaries in terms of directions of this Tribunal especially w.r.t. plastic waste, bio-medical waste, construction and demolition waste which are linked with solid waste treatment and disposal. Action may also be ensured by the Chief Secretaries of the States/UTs with respect to remaining thematic areas viz. hazardous waste, e- waste, polluted industrial clusters, reuse of treated water, performance of CETPs/ETPs, groundwater extraction, groundwater recharge, restoration of water bodies, noise pollution and illegal sand mining.

d. The compensation regime already laid down for failure of the Local Bodies and/or Department of Irrigation and The Chief Secretaries may ensure allocation of funds for processing of legacy waste and its disposal and in their respective next reports, give the progress relating to management of all the legacy waste dumpsites. Remediation work on all other dumpsites may commence from 01.11.2019 and completed preferably within six months and in no case beyond one year. Substantial progress be made within six months. We are conscious that the SWM Rules provide for a maximum period of upto five years for the purpose, however there is no reason why the same should not happen earlier, in view of serious implications on the environment and public health.

Public Health/In-charge Department to take action for treatment of sewage in terms of observations in Para 36 above will result in liability to pay compensation as already noted above which are reproduced for ready reference:

i. Interim measures for phytoremediation/ bioremediation etc. in respect of 100% sewage to reduce the pollution load on recipient water bodies - 31.03.2020. Compensation is payable for failure to do so at the rate of Rs. 5 lakh per month per drain by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f.

01.04.2020.

ii. Commencement of setting up of STPs -

31.03.2020. Compensation is payable for failure to do so at the rate of Rs. 5 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f.

01.04.2020.

iii. Commissioning of STPs - 31.03.2021.

Compensation is payable for failure to do so at the rate of Rs. 10 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f.

01.04.2021.

e. Compensation in above terms may be deposited with the CPCB for being spent on restoration of environment which may be ensured by the Chief Secretaries' of the States/UTs.

f. An 'Environment Monitoring Cell' may be set up in the office of Chief Secretaries of all the States/UTs within one month from today, if not already done for coordination and compliance of above directions which will be the responsibility of the Chief Secretaries of the States/UTs.

g. Compliance reports in respect of significant environmental issues may be furnished in terms of order dated 07.01.2020 quarterly with a copy to CPCB."

7. It is well acknowledged that water pollution severely affects the health of the citizens, affects the food chain and water availability, apart from other consequences. The law of the land makes discharge of pollution in water sources punishable criminal offence. Having regard to the fact that large number of deaths and diseases take place on account of water pollution, the offence of water pollution in practical terms is as serious as causing homicide or grievous hurt. Laws have been enacted to give effect to the international obligations to uphold the principle of 'Sustainable Development' which includes 'Precautionary' principle as well as 'Polluter Pays' principle which this Tribunal is also mandated to implement under Section 20 read with Section 15 of the National Green Tribunal Act, 2010.

Clean environment is part of fundamental rights and inalienable constitutional obligation of the State. Sources of funding have been identified in the Hon'ble Supreme Court judgment. However, in spite of all statutory framework, the public authorities unfortunately continue to fail in discharge of their constitutional and statutory duties. Under the directions of this Tribunal, different Departments have been required to be coordinated by the Chief Secretary at the State level and by the District Magistrates at the District level. There has also been National level coordination by the Ministry of Jal Shakti to share the best practices.

Ways and means are available for bridging the gap of waste generation and treatment including hybrid annuity models and other models for septage management, discussed in above orders of this Tribunal. It is a matter of regret that inspite of repeated directions, the problem remains unattended to the detriment of public health and public interest. In a recent order dated 18.06.2021 in O.A. No. 887/2019, Sukhwanti v. State of Haryana & Ors., the Tribunal found serious failure in treatment of sewage at Barwala, District Hissar. Relevant extract is quoted below:

"8. Accordingly, let further steps be taken to ensure compliance and report be filled by PCB in coordination with Urban and Public Health Departments owning the STP. Improvement in water quality be ensured by making the pollution control device effective. The compensation recovered may be utilized for restoration of the environment by preparing an action plan with the approval of the State PCB. Further action may be initiated by the Public Health Engineering Department which may be overseen by the State PCB. A report about the compliance status as on 31.08.2021 on all aspects may be filed before the next date. Secretary UD may also file a report on overall status of performance of existing STPs, particularly with reference to compliance with FC, utilisation of treated sewage, mode of disposal of effluents, Consents granted by PCB and the gaps between Sewage generation and treatment. The reports may be filed 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."

8. Vide order dated 09.06.2021 in O.A. No. 490/2019, T. S. Singh v.

State of Uttar Pradesh, the Tribunal observed serious lapses and sheer negligence for preventing pollution of River Sai by not taking action to control disposal of sewage, the Tribunal observed and directed as follows:

"9. We may refer to the specific directions of the Hon'ble Supreme Court and this Tribunal on the subject:

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, 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) xxx.....xxx.....xxx

11. Thus, even after all possible opportunities, there is either inability to understand simple legal position or unwillingness to comply with the directions of the Hon'ble Supreme Court and this Tribunal out of defiance. Above statement shows that for making STP, which is said to have been 95% complete 11 years back, and allotted funds having been misappropriated, operation will require 12 months after award of work. There being no firm date of award of work, timeline given has no practical meaning. It is also not being delinked from NMCG. Thus, in effect the stand is that it will never be done as NMCG has no fixed commitment of providing funds sought within reasonable time. Already 11 years have gone by. In our view this is irresponsible behaviour of the officer who perhaps knows nothing about the value of environmental norms and effect of violation on public health, food safety, aquatic life and over-all environment. The river stretch is loaded with daily disposal of 8.5 MLD sewage effluent causing septicity of the river on account of high fecal coliform and BOD. In spite of mandate of the Water Act, 1974 and the judgement of the Hon'ble Supreme Court in Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors, supra, fixing deadline of 31.3.2018 for taking all necessary steps to ensure treatment of sewage before discharge in water bodies, there is no willingness of some officers to even take small step to prevent discharge of pollution in water sources and untenable excuses are raised. This attitude has led to large number of water bodies, including most revered river Ganga remaining polluted. As already mentioned, River Sai involved in the present case is also a tributary of Ganga. The stretch of river Sai between Unnao to Jaunpur is falling under category P-V. UP PCB has not provided feed-back to the OC on formulation of Sai Action Plan and functioning of RRC. Further, PCB has failed to provide water quality data of river Sai, as directed vide order dated 07.10.2020.

12. The above serious defiance may call for stringent action when violation of order of the NGT itself is criminal offence under Section 26 of the NGT Act, 2010 punishable with sentence upto three years

and fine upto rupees ten crore. It is also executable as decree of Civil Court under Section 25 of the NGT Act read with Section 51(d) CPC, including by civil imprisonment.

13. Taking a lenient view in the matter and giving last opportunity for remedial action, factoring in the pandemic and the plea that the officer has been given this charge since February, 2021, but to uphold public interest and rule of law, we direct imposing of cut of Rs. 1,000/- per month from the salary of the officer till compliance, with further warning of more stringent action unless there is compliance and change in attitude towards compliance of law. If compliance is ensured and affidavit filed to the satisfaction of this Tribunal before the next date, the Tribunal may consider restoring the cut and refunding the deducted amount. The Member Secretary, UP PCB may explain why action be not taken for failure of the PCB pointed out hereinabove - not providing water quality data of Sai, functioning of RRC and reporting the progress to the Chief Secretary. The PCB may also report further progress in the matter of recovery of compensation assessed and initiation of prosecution proposed."

9. It is high time that the authorities at all levels, particularly at the higher of level of the Chief Secretary, accord high priority to the subject and come out with a comprehensive plan covering the entire State to ensure bridging of gap between the waste generation and waste treatment, in the light of the repeated directions of this Tribunal.

10. This Tribunal constituted a Monitoring Committee comprising of former Judge of Punjab and Haryana High Court and a former Chief Secretary of the State whose term expired on June 30, 2021. Vide order dated 25.06.2021 in O.A. No. 360/2018, Shree Nath Sharma v. UOI & Ors., the term has been extended for six months. As shown by the said order, the stand of the State was that an effective alternative mechanism for monitoring of environmental issues has already been evolved and thus the Committee was unnecessary. However, the said mechanism can be held to be effective only when such issues are being efficiently tackled.

Unfortunately, as against the claim of effective monitoring mechanism, serious violations of continuing nature throughout the State are being brought before this Tribunal.

11. Accordingly, we direct the Chief Secretary, Haryana to review the situation and take remedial measures in the matter to uphold the rule of law and for protection of public health. A report of status of compliance on the subject may be furnished by the Chief Secretary, Haryana before the next 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 may mention the status of interception of discharge of sewage and trade effluents into Ditch drain/Dhanaura escape and steps taken to prevent discharge of sewage into Yamuna or storm water drains/ canals, status of diversion of drains carrying sewage to the STPs and steps taken on review of working of department of Urban Development/Local bodies and the River Rejuvenation Committee on the subject.

List for further consideration on 07.10.2021.

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

Adarsh Kumar Goel, CP Sudhir Agarwal, JM M. Sathyanarayanan, JM Brijesh Sethi, JM Dr. Nagin Nanda, EM June 30, 2021 Original Application No. 212/2020 A