

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 306/2016
(M.A. Nos. 562/2016 & 1237/2018)

With

M.A. No. 380/2017
(I.A. No. 08/2007)

In

W.P.(C) No. 462/1992

Social Action for Forest and Environment (SAFE) Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

(Earlier titled as D.K. Joshi Vs. Union of India & Ors.)

With

D. K. Joshi

Applicant(s)

Versus

Chief Secretary of U.P. & Ors.

Respondent(s)

Date of hearing: 02.03.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER**

For Applicant(s): Ms. Meera Gopal, Advocate

For Respondent(s): Ms. Priyanka Swami, Advocate for State of UP
Mr. Pradeep Mishra, Advocate for UPPCB
Mr. Shashank Bajpai, Advocate
Mr. Deep Shikha Bharati, Advocate for State of UP

ORDER

1. This order is being passed in continuation of order dated 29.07.2019. The issue for consideration is compliance of Solid Waste Management Rules, 2016, Hazardous and other Wastes (Management

and Transboundary Movement) Rules, 2016 and Bio-medical Waste Management Rules, 2016 in the city of Agra as well as the areas coming under the Cantonment Board, Agra and eco-sensitive zone of Taj Trapezium Zone.

2. On the last date, the matter was considered with reference to the earlier proceedings in the light of the reports dated 23.04.2019 and 27.07.2019 and it was observed:-

“5. The above reports show very little progress. The gaps noticed in the order dated 29.01.2019 have not been fully addressed. There is nothing to show that the gap with regard to treatment capacity of solid waste to the tune of 690 TPD as noted in para 10 of the order has been met, nor the gap of 156 MLD in water supply as noted in para 10 or treating 61% of untreated sewage which was being discharged into River Yamuna as noted in para 14, have been addressed. The performance guarantee to be furnished in terms of para 24 within one month of the order has not been furnished. Only 4 plea is that the matter is pending before the Hon’ble Supreme Court. It is not the case that any stay has been granted. In absence of stay, time bound direction in the order of this Tribunal is required to be complied with. Mere pendency of matter in the Hon’ble Supreme Court cannot by itself be a ground not to comply with the order of this Tribunal. Let the necessary steps be expeditiously executed and performance guarantee furnished in terms of para No. 24 of the order dated 29.01.2019 within two weeks, failing which the coercive measures will have to be taken. An affidavit of compliance may be filed in this regard.

6. A further compliance report may also be furnished on progress made in cumulative tabular form, indicating progress against each head month wise by 31.10.2019 by email at judicial-ngt@gov.in. The timeline must be prompt having regard to the serious implications on environment and public health on account of long time continued failure of State.

7. The applicant is at liberty to file response to the report.”

3. In view of above, status report has been filed by the State of U.P. on 23.10.2019. However, the status thereafter is not on record, though learned Counsel for the State submits that further steps have been taken in the last five months. The applicant has pointed out deficiencies in the matter of installation of bar screens at places on

the drains falling into Yamuna; segregation at source and door to door collection; transfer Stations; disposal of C&D waste and plastic waste; bio-mining of legacy waste and tapping and cleaning of sewage drains.

4. We may observe that non-compliance of rules relating to waste disposal results in damage to the environment and public health. Any failure needs to be visited with assessment and recovery of compensation for such damage from the persons responsible for such failure. A study was recently got conducted by CPCB, under orders of this Tribunal requiring such a study by a joint Committee comprising CPCB, NEERI and IIT, Delhi about the monetary cost of damage caused to the environment on account of existence of legacy waste dump site at Gurgaon (Bandhewadi) vide order dated 05.03.2019 in O.A. No. 514/2018. The report of the CPCB filed on 13.02.2020 is that damage on account of the said legacy waste dump site was Rs. 148.46 crore, on account of damage to the air quality, soil and water quality, climate change and disamenity (aesthetic). The damage has been assessed in terms of impact on health due to release of pollutants in air atmosphere, release of leachate into ground / surface water and soil, due to pollution from the landfill site, damage cost associated with climate change due to carbon di-oxide and methane, damage caused due to aesthetics loss, price depreciation due to disamenity cost etc.
5. Thus, monetary cost of every legacy dump site is expected to be huge depending upon the location, quantity of waste and area covered. Needless to say that there is huge cost for non-compliance of other provisions relating to waste management – Solid as well as Liquid. Loss to the environment and public health is taking place

not only on account of delay in clearing legacy waste but also for not complying with other provisions of the Rules resulting in huge gap in generation and processing of waste.

6. It may be necessary to determine such cost for delay in clearing legacy waste at every dump site as well as for delay in complying with other rules and failure to treat sewage and recover the same from the persons responsible for action in the matter.

7. Let all the issues be looked into and further action be taken, as already directed vide order dated 10.01.2020 while monitoring the issues relating to waste management etc., in the presence of the Chief Secretary, UP as follows:

“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, 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.

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 28¹ even though

¹ 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.

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. 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.

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."

8. Let further status report in the matter be filed by the Secretary Urban Development, Secretary Flood and Irrigation Department and CEO, UP Jal Nigam before the next date by e-mail at judicial-ngt@gov.in.
9. It may also be ensured that preventive steps are taken to prevent any incidents of fire in the garbage.

A copy of this order be sent to the Secretary Urban Development, Secretary Flood and Irrigation Department and CEO, UP Jal Nigam by email for compliance.

List for further consideration on 26.05.2020.

Adarsh Kumar Goel, CP

Dr. Nagin Nanda, EM

Siddhanta Das, EM

March 2, 2020

Original Application No. 306/2016 & connected matter

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