

Item No. 03

Court No. 1

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

(By Video Conferencing)

Original Application No. 116/2014
(I.A. No. 195/2022)

Meera Shukla

Applicant

Versus

Municipal Corporation, Gorakhpur & Ors.

Respondent(s)

Date of hearing: 13.09.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Ms. Katyayni, Advocate
Mr. Mukesh Verma, Advocate for Applicant (BRD Medical College)
in I.A 195/2022

Respondent(s): Ms. Garima Prashad, AAG with Ms. Priyanka Swami, Advocate for
the State of UP
Mr. Raj Kumar, Advocate for CPCB
Mr. Daleep Dhyani, Advocate for UPPCB

ORDER

1. The issue for consideration is the remedial action against contamination of water bodies and ground water, specially Ramgarh Lake, Ami, Rapti and Rohani Rivers in and around District Gorakhpur, Uttar Pradesh.

2. According to the applicant, contaminated water results in Enterovirus (EV) which is brain fever, similar to Japanese Encephalitis (JE) and Acute Encephalitis Syndrome (AES). Gorakhpur has history of death of hundreds of children at BRD Medical College, Gorakhpur though majority of patients may come from different parts of eastern UP and Bihar outside

Gorakhpur. Such disease at times proves fatal and if patient survives patients suffer serious mental disabilities. Sources of virus are also said to be piggeries, water birds and livestock which is further accelerated by contaminated water. However, water pollution is certainly source of various diseases even apart from the said diseases and is thus made punishable criminal offence under the Water Act, 1974. It is a matter of regret that enforcement of law in this regard has been and continues to be highly inadequate, to the prejudice of public health. Remedial action required is prevention and control of industrial pollution, sewage management, removing encroachments, enforcement of Solid Waste and Bio Medical Waste Rules for which orders have already been passed in detail on earlier hearings.

Procedural History

3. The matter has been pending for the last about eight years and orders for compliance of norms have been repeatedly passed. Progress was exhaustively reviewed vide order dated 23.08.2018. The Tribunal noted the allegation that Ramgarh Lake and the Ami, Rapti and Rohani Rivers in and around District Gorakhpur were severely polluted on account of discharge of untreated sewage and industrial effluents. It was also noted that the steps required to prevent contamination of water bodies and groundwater were not being taken. **This was affecting the farmers and inhabitants, flora, fauna and ecology of area and causing degradation of the environment. 103 water bodies are under threat. There was no proper management of solid waste and no designated scientific sanitary landfill. There was encroachment of the Ramgarh Taal. Common Effluent Treatment Plant (“CETP”) had not been set up. Industries were not complying with the environmental norms. There was high**

organic load in River Ami and Rapti. Sugar and Distillery units were also causing pollution. 557 persons died in the year 2012. About 50,000 persons died in the last 30 years. It was also noted that Ami, Rapti and Rohani Rivers are the tributaries of Ghaghara which ultimately terminated into River Ganga. For public health at Gorakhpur, clean water supply was necessary, apart from cleaning of water bodies and other steps for protection of environment.

4. The Tribunal issued directions for the purpose and a Monitoring Committee was constituted headed by a former Judge of Allahabad High Court with representatives of the Central Pollution Control Board ("CPCB"), Uttar Pradesh Pollution Control Board ("UPPCB") and State Jal Nigam to oversee compliance of directions of this Tribunal already issued on the subject of closing the sources of contaminated water (like handpumps) and taking steps for supply of potable water, to ensure proper waste management and deal with other issues mentioned above. The Committee was to carry out inspection of the industries causing pollution of water bodies, drains and rivers in the area and Effluent Treatment Plants ("ETPs"), Sewage Treatment Plants ("STPs"), CETP and Solid Waste Management ("SWM") sites. **Action plan was required to be prepared for solid waste processing, proper functioning of ETPs and CETP and also for making available potable water to the inhabitants, apart from undertaking rehabilitation program for compensating the victims who had suffered. The Committee was to furnish reports to this Tribunal for further action.**

5. As noted earlier, the matter has been dealt with thereafter on several dates in the light of reports received from the Committee from time to time. **The Tribunal passed directions with regard to installation of STPs and**

CETP by Gorakhpur Industrial Development Authority (“GIDA”), closure of industries operating illegally, adding to the pollution of the Rivers or their tributaries, shifting of construction activities from the floodplain zones/catchment area, unscientific disposal of municipal and other wastes. The orders include orders dated 25.10.2018, 17.12.2018, 07.03.2019, 29.04.2019, 19.07.2019, 27.09.2019, 16.6.2020, 12.01.2021, 07.09.2021 and finally on 30.03.2022.

Last order dated 30.03.2022

6. After reviewing the progress as emerging from report dated 21.02.2022 filed on behalf of the Chief Secretary, UP and also report of the Oversight Committee (OC)¹ dated 03.12.2021, the Tribunal found that there was serious failure on the part of the authorities in controlling water pollution. The timelines fixed by the Hon’ble Supreme Court for setting up of requisite sewage/waste water Treatment Plants by the Judgment reported in *Paryavaran Suraksha Samiti Vs. Union of India*² had expired long back but in violation of the said timeline, necessary treatment plants have not been set up resulting in continuing pollution to the detriment of environment and public health. The said judgement is dated 22.2.2017 and fixed timeline of 31.3.2018 for finalizing funding arrangements and three years for installing the requisite systems. The Tribunal accordingly directed putting in place a comprehensive action plan for preventing and remedying pollution. The Tribunal also directed that a High-Level Expert Team may undertake visit to the area to study the problem of Enterovirus (EV) and suggest remedial measures. The discussions and directions in the said order are reproduced below:-

“9. We have heard the learned counsel for the applicant and the

¹constituted by this Tribunal for monitoring compliance of certain orders of this Tribunal in the State of UP headed by Justice S.V.S. Rathore, former Judge of Allahabad High Court

²(2017) 5 SCC 326

officers present in person in the light of status reports on record quoted above.

10. As mentioned in earlier orders, serious failure on the part of the authorities in controlling water pollution appears to be continuing. Samples of water conclusively establish continuing pollution. Contributors to pollution are not merely private industries but also State authorities who have to manage the sewage. This is not only in violation of law and policies of Central and State Governments but also specific directions of the Hon'ble Supreme Court and this Tribunal on the issue of sewage management. **The timelines now proposed are beyond the timelines laid down by the Hon'ble Supreme Court with no adverse consequences for such serious offence, continuing for long. Mere future proposals giving distant timelines, without accountability for strict compliance and stringent monitoring mechanism are not by itself enough. Component of coliform has been withheld by the authorities. Even then high level of pollution is depicted. The industries have been discharging toxic industrial waste into the drains secretly as shown by water samples and confirmed by Director NMCG. Regulatory authorities have so far been able utter failure in enforcing the law and their accountability needs to be fixed as it has resulted in huge damage to public health and environment. Untreated sewage is still being discharged in the water bodies and rivers, as shown by the water samples. Though the State Authorities claim to have taken steps for tapping of the drains falling into the lake and into the rivers which are tributaries/sub-tributaries of river Ganga, with the support of funds provided by National Mission for Clean Ganga (NMCG) and also to establish CETP to control industrial pollution, situation so far remains far from satisfactory, calling for further action in mission mode with stern approach at the highest level in the administration, in the interest of public health and safety of citizens and for protection of environment. Water quality must be shown to be compliant with the statutory norms. Since these are primarily governmental functions, it is for the State to set its house in order. Access to potable water has to be ensured, being part of right to life. Deaths diseases relatable to pollution have to be prevented. Health surveys need to be conducted. As an adjudicatory body, we certainly express our dissatisfaction with the present grim situation. Mere fact that situation is claimed to have improved is not enough so long as violation of law is continuing. High level of sensitivity is expected in dealing with human rights. The State exists for welfare of citizens and minimum guaranteed constitutional rights must be enforced. It is no satisfaction that some steps have been taken till pollution is completely stopped and health of the citizens and source of water secured under public trust doctrine. Since we are assured by the Chief Secretary and the Additional Chief Secretaries that situation will receive serious attention henceforth, we hope and expect meaningful, prompt and continuous action. Serious concern is deaths of children and diseases in the area of which contamination of water is a possible cause. Thus, the projects proposed in the form of CETP/STPs need to be implemented on war footing so as to show**

result on the ground and to comply with the directions of the Hon'ble Supreme Court. Mere sanction of projects can be no satisfaction in the grim situation since long beyond binding timelines, with no action against violators. Simultaneously, effective measures are required against scientific management of bio-medical and solid waste. Comprehensive water management strategies need to be adopted in view of unchecked industrial and domestic pollution. The State has also to ensure access to potable water by taking suitable measures for drinking purposes using treated water for secondary purposes. Further steps required are to protect flood plains of the rivers by identifying and demarcating flood plain zones in respect of perennial and non-perennial rivers/drains, undertaking fencing, plantations and other measures. Encroachment from the flood plains zones need to be removed. Since it has been reported that industrial pollution is discharged in the water bodies in the night stealthily, the action plan needs to have provision for stringent vigilance using appropriate technology such as CCTVs and oversight by the statutory regulators – the State PCB, the Local Police and other agencies of the administration. There is also need for awareness about the treatments for the diseases on account of water pollution.

11. We note with regret that the proposed timelines stretching upto April 2023 to September, 2024 which are in contempt of orders of Hon'ble Supreme Court and may result in crime continuing. FPZs of the rivers whether perineal or non-perineal need urgent demarcation. Encroachments need to be removed and environmental flow maintained. Water quality of is to be improved to class B. STPs are to be fully utilised with 100 percent household connections. Treated sewage is to be utilised by the industries and bulk users and necessary tie ups are to be made by Industrial Development Corporations and with other concerned Agencies. In this context, Tribunal has directed vide order dated 09.03.2022 in OA No. 29/2020(WZ), Suraj Pradip Ajmera vs. Aurangabad Municipal Corporation as follows:

“10. During the hearing, suggestion has emerged that an interaction be held at the level of Chief Secretary, Maharashtra with inclusion of Secretary, Urban Development, Maharashtra and Technical Experts as may be decided by them including from IIT, Bombay, Regional Officer, CPCB and Member Secretary, State PCB to consider possibility of laying pipeline upto the industrial area for transporting treated sewage to the industrial areas so that the same can be utilized for industrial purpose. Industries Association may be associated in the project of sewage treatment and can bear a part of the cost out of Corporate Social/Environmental Responsibility, depending upon the financial capacity of the member industries. This may result in a permanent and long-lasting cheaper solution. If successful, this experiment may be tried appropriately at such other locations in the State as found appropriate and also customized different locations. The Committee may also study such models elsewhere in the country which reportedly have been successful. The Committee may also consider any other

viable strategies for sewage treatment and interception and diversion of sewage, use of appropriate effective and economical technology, making group housing societies Zero Liquid Discharge (ZLD) by recycling treating sewage, after treatment in decentralized manner and utilizing the treated sewage for horticulture, flushing, cleaning or other nondrinking purposes. This strategy may help in augmenting availability of potable water particularly in drought affected areas of Aurangabad Region in Maharashtra where potable water had to be transported by trains in the past. The Secretary, Urban Development may act as nodal agency who may call for a meeting within one month.”

12. Thus, overall integration of Action Plans is to be ensured by monitoring at the Chief Secretary level with involvement of RRC in the State. CPCB needs to monitor STPs in the context of Ramgarh lake, river Ami, Rapti, Ghagra, Rohini and to assess compliance with respect to Fecal coliform and sewage utilisation plan.

13. To sum up, our directions are :

- i. Comprehensive action plan may be put in place under the supervision of the Chief Secretary covering all aspects of preventing and remedying pollution to be executed by a special task force which needs to be constituted with defined responsibilities and monitorable parameters preferably within one month. The Chief Secretary, UP may undertake visit to Gorakhpur personally to take stock of the ground situation with other concerned officers/stake holders at the earliest. Thereafter, execution of action plan may be monitored by a special cell attached to the Chief Secretary Office, in the light of time bound specific targets.**
- ii. The Chief Secretary may furnish a comprehensive report covering all the issues especially for Ramgarh tal, Ami and other rivers in quantifiable terms giving the status of compliance as on 30.06.2022 by 15.07.2022 with a copy to the Oversight Committee.**
- iii. We request Oversight Committee to continue to monitor the compliance measures in the light of orders of this Tribunal. The Oversight Committee may also give its report by 30.07.2022 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.**
- iv. In the light of suggestion during the hearing, we also direct that a high level team headed by an Expert on Neurovirology may also undertake a visit to the area within one month, accompanied by nominees of Central Pollution Control Board (CPCB), Indian Council of Medical Research (ICMR), Animal Husbandry and Medical Health and Family Welfare Departments, UP. The Additional Chief Secretary, Environment Department, UP will act as nodal agency to facilitate such visit. He may organize the visit of the Committee within one month. Necessary expenses will be borne out of consent funds of the State**

PCB. District Magistrate, Gorakhpur may provide logistics at local level. The team may undertake study of the problem and suggest remedial measure which may include diagnosis and treatment strategies. The Committee would be at liberty to take assistance from any other expert/institution. The Committee may give its report 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 within two months with a copy to the Chief Secretary, UP to enable the State Administration to take remedial measures in the light of the said report. We request Director, All Indian Institute of Medical Sciences (AIIMS) to nominate a suitable expert for this purpose within one week. The Additional Chief Secretary (Environment) UP may follow up with the Director AIIMS and other concerned for nominations forthwith.

- v. NMCG may monitor compliance of terms and conditions applicable to the sanctioned CETP.**
- vi. CPCB may monitor functioning of STPs. It may also assess the performance of bio-remediation works being executed on different drains and location in terms of efficacy and in view of the revised guidelines of NMCG titled “Revised Monitoring Protocols for in-situ bio-remediation projects for drain treatment” and give further suggestions/ recommendations for necessity and improvements and file its independent report.**
- vii. UP PCB may continue to monitor the rivers in question as well as Ramgarh Tal, particularly with reference to Fecal Coliform bacteria.**
- viii. UPPCB may ensure that industries in the catchment of the rivers and the Ramgarh Tal in GIDC do not discharge effluents into the water bodies and ensure compliance with conditions of sanction for the CETP by NMCG.”**

7. There was a slight modification vide order of 26.04.2022 to the effect that instead of nominee from AIIMS, nominee of NIMHANS was to be included in the High-Level Team.

Today’s consideration and further orders

8. In pursuance of above, an action plan with current compliance status has been filed on behalf of the State of UP by the Under Secretary, Environment:-

S. No.	Action Plan and Concerned Departments	Current Progress Status	Timeline	Remarks

1.	For the treatment of Sewage, establishment of STP in Nagar Palika Parishad, Khalilabad & NagarPanchayat, Maghar. (Urban Development & UP Jal Nigam-Urban)	- Rs.578.88 Lacs each has been sanctioned for 32 KLD FSTP at Maghar and 32 KLD FSTP at Khalilabad. - Rs. 72.36 Lacs has been released for each FSTP. - Civil work has been finished. - Overall Work progress in Khalilabad : 53 % and Maghar : 58 %.	September, 2022	Bio-remediation of all 03 drains is being done. (Inlet BOD: 47 to 58 mg/L, Outlet BOD: 28 to 37mg/L). Copy of the Analysis Report is enclosed herewith and marked as Annexure No-5.
2.	Establishment of 07 MLD CETP in Gorakhpur. (GIDA, Namami Gange & Urban Development)	- The Project has been approved by NMCG on 11.01.2022. - Rs. 37 Cr. sanctioned (17 Cr by GIDA & 20 Cr by Awasthapana Vikas Kosh). 11.15 Acre land purchased. - ToR for Environmental Clearance issued by SIEAA. EIA study completed and presented before 675th SEAC-2 on 21.07.2022. EC is under process. - SPV is registered as GIDA CETP FOUNDATION. - NMCG has directed SMCG to issue government orders for Re-structuring of Board of Directors of SPV.	July, 2024	- CETP of 7.5 MLD was proposed at GIDA. Third party assessment was conducted by IIT, Roorkee) and sanctioned by NMCG. - CETP is proposed for further treatment of treated effluent flowing in Sariya Nala and to cater existing and upcoming industries within GIDA. - ACS (Industries)/ Chairman, GIDA has appointed UPJN (Urban) as implementing agency for the preparation of Tender/Bid document and construction of CETP. - GIDA has submitted the tender documents prepared by UPJN (Urban), Gorakhpur to NMCG for technical evaluation and vetting.

3.	Tapping of all the drains falling into the Ramgarh Tal and Interim measures for the treatment of untapped drains falling in Ramgarh Tal. (UP Jal Nigam-Urban)	- Total Drains 24 (Tapped 07, Untapped 17) - Tapping of 6 Minor drains and up – gradation of existing 15 MLD STP to 20 MLD. Intercepting sewer line completed. Overall physical progress is 83%. 11 minor drains (total discharge 1.537 MLD) will be treated at 30 MLD existing STP. Work for Intercepting sewer line is in progress. Over-all physical progress is 35%.	November, 2022 May, 2023	Interim measure (Bio-remediation) for these 17 drains falling in Ramgarh Tal, is being carried out. (Inlet BOD : 70 to 86 mg/L, Outlet : BOD 62 to 76 mg/L). Copy of the Analysis Report is enclosed herewith and marked as Annexure No-6.
4.	Tapping of Drains falling in River Rapti. (Namami Gange, & UP Jal Nigam-Rural) (UP Jal Nigam-Urban)	- Total drains -15 (09 drain in Rapti and 06 in Rohini, a tributary of Rapti). - DPR for I&D of 8 drains of Rapti and 44 MLD STP was submitted to SMCG vide letter dated 22.06.2022. Observation have been intimated by SMCG vide letter dated 06.07.2022. Revised DPR, after incorporating the observations will be submitted to SMCG by 10.08.2022. 10 MLD STP with I&D works (01 Drain of Rapti) is approved by State High Power	September, 2024 September, 2024	Interim measure (Bio-remediation) has been started for 05 drains (by NEERI) and work for phyto-remediation in 10 drains has been awarded to NEERI Nagpur. Bio-remediation of all 05 drains is being done. (Inlet BOD: 68 to 88 mg/L, Outlet BOD: 52 to 74 mg/L). Copy of the Analysis Report is enclosed herewith and marked as Annexure No-7.

		Steering Committee in meeting dated 09.03.2022.DPR for 30 MLD - STP with sewer network & house connection (03 Drains of Rohini) is approved by State Level Technical Committee on dated 20.06.2022. 03 Drains of Rohini covered in Gorakhpur Sewerage Scheme (Sub-Zone C2, Part-1) which includes 10 MLD STP has been sanctioned under AMRUT in Dec., 2021. Work Progress is 15%.	March, 2024	
5.	Pollution of river Saryu due to untapped drains. (Namami Gange, & UP Jal Nigam-Rural) (UP Jal Nigam-Urban)	- Total No. of drains meeting in the River- 21 (Tapped- 5, Untapped- 16). - A project for I&D of 15 drains and construction of 33 MLD STP at Ayodhya was approved vide NMCG letter dated 06.05.2021. LOA has been issued to firm on 30.12.2021. Financial arrangement is in the final stage and work will be started soon. - DPR for I&D of Nirmalilcund Drain, is approved by State Level Technical Committee on 20.06.2022. Treatment is proposed in 33 MLD STP at Aydhya.	October, 2024 October, 2024	Interim measures as bioremediation in 16 untapped drains are being done. (Inlet BOD: 107 to 125 mg/L, Outlet BOD: 26 to 29 mg/L). Copy of the Analysis Report is enclosed herewith and marked as Annexure No-8.

6.	Pollution of river Ghaghradue to untapped drains. (NamamiGange, & Jal Nigam-Rural)	▪ Total No. of drains- 19 (Untapped) Deoria — 02 Gorakhpur — 04 Mau — 04 Ambedkarnagar — 09 ▪ Proposed STPs- 03 ▪ DPR for I&D of 4 Drains and construction of 6 MLD STP at Barhalganj NP was Submitted to SMCG vide letter Dated 29.03.2022. Observations have been intimated by SMCG vide letter dated 11.04.2022. Revised DPR, after incorporating the observations will be submitted to SMCG by 10.08.2022. ▪ DPR for I&D of 4 Drains and construction of 2.5 MLD STP at NP, Dohrighat, Mau is Under preparation And will be Submitted to SMCG by 10.08.2022.	June, 2024 Nov. 2024	Interim measures as bioremediation in 19 Untapped drains are being done. (Inlet BOD: 48 to 110 mg/L, Outlet BOD: 24 to 40 mg/L). Copy of the Analysis Report is enclosed herewith and marked as Annexure No-9.
	(Jal Nigam-Urban)	▪ DPR for I&D of 8 Drains and construction of 15 MLD STP at Tanda, Ambedkarnagar Was submitted to SMCG vide letter Dated 31.03.2022. Observations have been intimated by NMCG vide letter Dated 18.05.2022. Revised DPR, after Incorporating the Observations will Be submitted to SMCG by 10.08.2022. ▪ Proposed STPs- 02 (DPR being prepared) 06 MLD at Gaura Barhaj NPP, Deoria under SBM 2.0. 02 MLD at Itifatganj Nagar Panchayat, Ambedkarnagar under SBM 2.0.	Nov, 2024 Nov, 2024 Jan, 2024	

7.	Identification, Selection & Establishment of Landfill site for MSW Processing plant in Gorakhpur. (Urban Development, Nagar Nigam, Gorakhpur & GDA)	10.36 ha. land identified at Village Suthani & Bhati Rawat on Magahar Road and 8.45 ha. Land has been purchased. 500 TPD MSW Processing Plant has been sanctioned on 09.12.2021.	January, 2023	Work has been started. Construction of approach road to the plant has been completed but culvert is yet to be completed (PWD). Foundation work of Finished Product Godown, Curing Area, Machine Shed, Toilet Blok and Guard Room has been completed. Work for super Structure has been 60% completed and Rest works of construction are under progress. Overall physical progress is 40%.
8.	Identification of encroachments, eviction and Forestation in Flood Plain Zone of Rapti, Rohini, Saryu, Ghaghra, Aami, Rivers and Ramgarh Tal. (Irrigation/ District Administration/ GDA)	- Flood Plain Zone Has been notified for Rapti, Ghaghra, Saryu, Aami and Rohini rivers. - Ramgarh Tal has Already been notified as wetland.	July 15 2023	Survey has been completed and no new encroachments found in Ramgarh Tal after notification of Wetland. 871.5 ha. Advance Soil Work has been Completed for plantations in 05 KM area on both sides of rivers Rapti, Rohini, Saryu, Ghaghra, & Aami. The plantation Work is under progress. Copy of the Report of Forest Department, UP is enclosed herewith and marked as Annexure No-10.

9.	For use of Environmental Compensation of Rs. 4.4115 Cr in the work of Environmental Protection by BRD Medical College. (Health & Education Department & BRD Medical College)	▪ STP/ETP in BRD Medical College, Gorakhpur is under Construction since January, 2021, having cost of Rs. 4.2 Cr. ▪ Rs.2.10 Cr has been released. About 19 % work Has been completed. (Agency- M/s UP Project Corporation Ltd (Construction Unit-14), Lucknow). ▪ Rest Rs. 2.10 Cr shall be sourced through imposed EC. ▪ A DPR is under preparation for up-gradation of sewer network costing Rs. 2.3115 in BRD Medical College.	August, 2022 (For STP/ETP) August, 2022 (For start of Sewer Network)	For utilization of EC, application is going to filed by Health and Education Department in Hon'ble NGT.
10.	Directions Industries to the at GIDA, Gorakhpur. (UPPCB)	▪ There are 50 Water polluting industries operational in GIDA, Gorakhpur.	June 15, 2022	UPPCB has issued Directions under section 33A of Water (Prevention and Control of Pollution) Act, 1974 to all 50 Industries for Installation of PTZ Camera at their discharge point with Access to UPPCB control Room. 41 Industries have Installed the PTZ camera. 03 industries are lying closed as and when The industries will Commence the production, the UPPCB will ensure the installation PTZ in these 03 units. 03 Industries are not Using water for Industrial purposes however 01 unit is recycling the water in cooling. Those who have not Installed the PTZ camera, The show cause notices under section 33 A of Water (Prevention and Control of Pollution) Act, 1974

				have been issued against them.
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9. Apart from above, report of the High Level Committee has been separately filed on the issue of study of AES and remedial action. The report shows the current status as follows:-

“Current status of AES in Gorakhpur, Uttar Pradesh:

- *Most of the AES affected districts are located in the eastern part of the state.*
- *A total of 31830 AES cases and 4639 deaths (CFR- 14.6%) were reported in the state of UP between 2010 and 2020. Of these, 3334 were caused by Japanese encephalitis virus (JEV) with 476 deaths (CFR 14.3%). In contrast, in the year 2021, the CFR due to JE and AES reduced to 3.27% and 3.41 % respectively against a CFR of 16.6% (JE) and 17% (AES) from 2010 to 2016.*
- *Although a marked reduction in number of both AES and JE cases are noticed in the state, the proportion of Scrub typhus cases out of total AES cases in the state from 2017 through 2021 has increased from 32% to 49% while the proportion of JE cases out of total AES cases has reduced from 18 to 11% in the same period.*
- *The number of villages marked as high risk for AES has reduced to 208 (in 2022) from 617 (in 2018).*

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Vaccination

Gorakhpur experienced a massive outbreak of Japanese encephalitis in the year 2005 resulting in a large number of deaths. The Government of India initiated the vaccination for Japanese encephalitis soon after and over the years has resulted in a significant and dramatic decrease in JE cases. The vaccination programme continues for children and has a near 100% coverage. Record keeping of vaccinated children is important and meticulously followed.

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Monitoring and Evaluation

A very important aspect in health care is to monitor and evaluate the system periodically to understand the benefits, the gaps and plan further action. This also provides insights into the cost effectiveness of the adopted system.

- *An analysis of the total cases, laboratory confirmation of the disease, clinical outcome in terms of survival from the illness,*

mortality and morbidity is being undertaken. These are conducted at 3 levels – state nodal officer, district officer as well as by independent 3rd parties such as WHO, PATH and UNICEF to remove the bias.

- A feedback monitoring of 22,734 villages and 1,12,530 households revealed 79% families reported ASHA workers educated the family on prevention of encephalitis, 87% families were educated by ASHA workers on importance of early treatment in fever while 71% families reported ASHA workers educated them on use of 102 / 108 ambulance for transportation of AES case to the nearest healthcare facility.
- The marked reduction in AES cases from 4724 in 2017 to 1701 in 2021 with CFR reducing from 13.37 in 2017 to 3.41 in 2021 and the decrease in JE cases from 693 with CFR 13.4 in 2017 to 153 cases and CFR 3.27 in 2021 is significant.
- Sustained planning and efforts over past 5 years have resulted in – (i) Better understanding and perusal of environmental and personal cleanliness (ii) Change in health seeking behavior (iii). Improved utilization of public health care facilities at the peripheral and district level - reflecting faith generation in the public health care delivery mechanisms (iv) Convergence of activities towards a single goal – Bringing down the prevalence and incidence of Vector borne and communicable diseases. (v) This has given rich dividends in the form of substantial decrease in AES and JE incidence and mortality and has also resulted in reduced outbreaks of other diseases.

Recommendations of the committee

The recommendations have been formulated based on the visits to the health centers and the tertiary hospitals, the information gathered from the conversations with the in-patient care takers and treating pediatricians, studying some of the case files for investigations and treatment, the documents provided by the respective health centers / institutes, the discussions with the public health specialist from PATH, state health officials and by referring to the recent publications from various studies on AES in this region. Based on the information gathered through these various means, it is apparent that the number of AES cases in Gorakhpur and areas around have reduced significantly over the past 5 years (Annexure III & IV, and Data sourced from IDSP, GOUP).

- Although the pediatricians still encounter some AES cases, the etiological agents in the current times identified are scrub typhus (25%), followed by Japanese encephalitis virus (8%) and dengue (5%). The number of AES caused by enterovirus is only 0.02% (State epi-data).
- A policy change of treating a child with febrile illness with doxycycline and azithromycin to avoid any possibility of the child developing AES has paid huge dividends. An effectiveness study conducted on the prescribing doxycycline and azithromycin has reported tremendous benefits in reducing the number of AES cases (Thangaraj et al, 2020).

- *A diagnostic algorithm is adopted to identify the pathogen causing AES. Samples wherein an infectious etiology is not identified may be tested for auto-immune causes (non-infectious). At the bottom of the algorithm, when no infectious or non-infectious etiology is identified, such samples may be subjected to next-generation sequencing. The ICMR-RMRC, Gorakhpur has been equipped with the infrastructure to carry out the detection and identification of unsuspected agents and novel pathogen discovery using metagenomic sequencing. All results need to be interpreted correctly and in consultation with the treating pediatrician / clinician.*
- *A robust referral system starting with every PHC / CHC linked to a district hospital has considerably reduced the burden on the main BRD hospital in Gorakhpur. Improvement of peripheral and district level healthcare facilities has decongested the tertiary healthcare resulting in prompt and better patient care and improved outcomes. Strengthening of peripheral health care may be continued with appropriate numbers of doctors and nurses depending on patient footfall and case load.*
- *Periodic audits pertaining to bio-medical waste management, biosafety and antimicrobial resistance are being carried out and need to be continued.*
- *Contact tracing of any positive case of AES is carried out to strategies targeted interventions.*
- *Surveillance of mites, mosquitoes, water bodies, STPs (as per notified standards), ETPs (as per notified standards) (BOD, COD, TSS, pH, CF) is being carried out and has to continue at defined times and in the event of any outbreak of notified pathogens.*
- *A system of sampling of potable water at the user end is in place and needs to be continued. This will ensure provision of safe water (pathogen and toxin free) at all times.*
- *Waste water can cause mosquito breeding. Necessary action should continue to avoid waste water logging and ensure its treatment.*

Closing the last mile on AES.

Through sustained inter departmental efforts spearheaded by the Health Department, Government of UP, the occurrence of AES in Gorakhpur over the years has radically reduced. This has been possible due to the untiring efforts on all fronts – medical, social, community and political. It is noteworthy that despite the last two years when the entire country was battling the COVID pandemic, with unrelenting efforts on all fronts by the Government of UP, there has been a noticeable decrease in the number of AES cases in the State.

The launching of the Dastak Campaign and Sanchari Rog Niyamtran Abhiyan, formulating State Guidelines on AES have been major steps to control the disease. A continued multi-sectoral approach with concerted

and coordinated efforts, microplanning and unwavering commitment from the medical fraternity, Pollution Control Board, Animal Husbandry and Agriculture Sector, Health and Family Welfare Department has paid the dividend so far and will further reduce the occurrence of AES in Gorakhpur.

- *There are two institutions in UP, ICMR-RMRC in Gorakhpur and KGMU, in Lucknow that have been at the forefront of determining etiology of AES for the past four decades. These Institutes are well versed with the local epidemiological, ecological and environmental factors that have been behind the past outbreaks of AES in Gorakhpur.*
- *The Indian Council of Medical Research (ICMR) has been one of the foremost Institute that has assisted the Govt. of UP in the diagnosis, prevention and control. Indeed, it has established an advanced ICMR- **Regional Medical Research Centre, Gorakhpur (RMRC)** within the BRD Medical College at Gorakhpur. This centre is headed by a senior level scientist as its head and has amongst its staff experienced virologists, epidemiologists and vector biologists. Moreover, this centre over the years has accumulated an enormous amount of data pertaining to etiology, risk factors and immune response to JEV, enterovirus and scrub typhus.*
- *The Virology section of department of Microbiology at **King George Medical University (KGMU), Lucknow**, is yet another institution that has been providing extensive support to the Govt. of UP for investigation of AES outbreaks since 1978.*
- *In addition to these two institutes, the **All India Institute of Medical Sciences, Gorakhpur**, which started 2 years ago, is now a full fledge tertiary institute equipped with state of the art infrastructure and trained manpower to provide medical care as well as engage in programs related to surveillance and research.*

The Health Department of the Government together with the major Institutes may continue the surveillance and clinical, ecological and environmental monitoring of the situation to combat any future occurrence of AES in the State and formulate remedial measures including diagnostic strategies with a dynamic algorithm and treatment modalities.”

Finding and directions

10. There are two issues – control of EV and control of pollution which also to some extent is source of EV, apart from other diseases. While on the issue of control of EV, report of the Committee shows significant reduction in such cases due to sustained efforts in the last five years with recommendations requiring further measures. Let further action be taken

in the light of recommendations of the Committee. Further, the State Authorities may take on Board experts from National Institute of virology, Pune and National Institute of Malaria Research, New Delhi for programs for preventing and remedying the situation. The steps in this direction may include control of floods and water logging breeding grounds for the vectors. Water, Sanitation and Hygiene (WaSH) programs for clean drinking water, sanitation and hygiene in urban and rural areas need to be implemented along with Swachh Bharat programs. If viable, mobile dispensaries equipped with necessary diagnostic and medical facilities may be introduced. Mass media including community radios may be established and utilized to create awareness regarding sanitation and health. Health Surveillance and monitoring including emergency services to be increased and expanded throughout the district.

11. Apart from control and remedying of EV, another significant issue which has been engaging attention of this Tribunal in the last eight years and on which progress is unsatisfactory is the issue of control of water pollution. The report of the State refers to future plans for CETP, for tapping of drains, control of River Saryu and connected drains, control of pollution in River Ghagra and connected drains, control of industrial pollution. This shows that water pollution is continuing and still there is no claim that it has been controlled. Rather, the issue is shown to be at planning stage in crucial aspects. From the data presented by the State itself, apart from past violations, continuing violations of discharge of untreated sewage into the drains, rivers and other water bodies is more than 50 MLD. As against reported generation of sewage in Gorakhpur to the extent of about 100 MLD, treatment is not more than 45 MLD. In fact the statistics in the report shows that much more untreated sewage is being discharged which is proposed to be controlled in distant future. We

have thus to hold the State accountable for such violation atleast to the extent of discharge of 55 MLD in violation of law. Compensation on 'Polluter Pays' principle has to be determined for being utilised for restoration. As already noted in the order dated 30.03.2022, timeline fixed by the Hon'ble Supreme Court for having in place funding till 31.03.2018 and setting up requisite equipment till February, 2020 has long expired. The requisite remedial action in terms of judgement of Hon'ble Supreme Court has also not been taken. Citizens are suffering in a big way due to continuing water pollution in terms of water borne diseases which are at times fatal. There is also huge pollution of rivers including River Ganga. For ready reference it will be worthwhile to reproduce the extracts from earlier order dated 07.09.2021 as follows:-

*“15. We have heard learned Counsel for Applicant, State of UP, State PCB and CPCB. **From the compliance status reproduced above, it is seen that the authorities have merely paid lip service to the cause. The action taken is superficial without any meaningful impact on the ground. Untreated sewage is still being discharged unscientifically into the water bodies inspite of prohibition under the Water (Prevention & Control of Pollution) Act, 1974 and judgment of the Hon'ble Supreme Court in Paryavaran Surakhsha Samiti Vs. Union of India as well as order of this Tribunal in O.A. No. 593/2017, Paryavaran Surakhsha Samiti Vs. Union of India. Contamination of water sources is a punishable criminal 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 any drain is prohibited and is in fact a 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 Surakhsha case³ an outer limit of 31.03.2018 is fixed for completing the work of all STPs in the Country for laying down the sources of budget and direction is to initiate prosecution for continued failure. This Tribunal has been directed to monitor compliance. We may refer to the specific directions of the Hon'ble Supreme Court and this Tribunal on the subject:***

³ (2017) 5 SCC 326

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)

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. .."

From OA 673/2018

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.⁴

“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.⁵

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

⁴ State of Orissa v. Govt. of India, (2009) 5 SCC 492
⁵ M.C. Mehta Vs Union of India- W.P. (Civil) No. 13029/1985 dated 25.11.2019

Composite Water Management Index (CWMI).⁶ 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 water⁷. 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 GDP⁸. 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 people⁹ are facing acute water shortages. Critical groundwater resources – which account for 40% of our water supply – are being depleted at unsustainable rates.¹⁰*
- (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 people¹¹.*
- (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.¹²*

⁶ 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.

⁷Source: WRI Aqueduct; WHO Global Health Observatory

⁸Source: McKinsey & WRG, ‘Charting our water future’, 2009; World Bank; Times of India

⁹ Source: World Resource Institute

¹⁰ Source: World Resource Institute

¹¹ Source: UN Water, ‘Managing water under uncertainty and risk’, 2010; World Bank (Hindustan Times, The Hindu).

¹² <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 2013.¹³

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. Inspite 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 2016¹⁴, 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

¹³ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106612>

¹⁴ http://www.sulabhenvi.nic.in/Database/STST_wastewater_2090.aspx July 16, updated on

*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 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.*¹⁵

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.”*¹⁶

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

¹⁵ INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION Vs. UNION OF INDIA AND OTHERS (1996) 5 SCC 281

¹⁶ M.C. Mehta v. Union of India, (2006) 3 SCC 399 – Public functionaries

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 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:-*

“15. xxx.....xxx.....xxx

“16. xxx.....xxx.....xxx

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."

16. Even though the grievance has been continuing for the last seven years as earlier mentioned, only progress mentioned is that on 02.06.2021, a letter has been sent to the Additional Project Director, SMCG, Lucknow which by no standard can be held to be a responsible meaningful progress. Even with regard to CETP, only progress is sanction of funds in the meeting held on 22.06.2021. There is no remedial action against erring officers by way of adverse entries in their ACRs in terms of directions of this Tribunal and also for initiating prosecution against them. It is not mentioned how those discharging pollution in water bodies are being dealt with. Such violators are in no way less than offenders causing deaths and injuries. The offences committed in preventing water pollution are so serious in nature that the Parliament has laid down minimum sentence for such violations. It is a well-known fact that significant number of deaths and diseases take place on account of water borne diseases. Sources of drinking water cannot be allowed to be polluted. It is as important as security of citizens against other offences. If the authorities fail, the statutory regulators have to initiate prosecution but in the present case the State PCB appears to be a failure in enforcing the law against the violators. The officers of the State PCB need to be held accountable for such violations. Similarly, on the subject of establishment of landfill site for processing of the waste, only progress made is initiation of process for sanction of DPR which infact is no compliance at all for prevention of offences relating to pollution. With regard to tapping of drains falling in the lake, it is stated that action for tapping of all the drains will be taken but neither any timeline has been fixed

nor any meaningful action plan has been placed on record. It is stated that in respect of some of the drains, project has been sanctioned on 30.03.2021 and tender has been invited which again shows sorry state of affairs and lack of sensitivity as merely doing so does not end the pollution and the offences relating to violation of environmental laws thus, continues unabated. On the subject of tapping of drains falling in river Rapti, the situation remains equally disappointing. Environmental Compensation assessed for serious violation remains uncomplied, defeating the mandate of 'Polluter Pays' principle. There is no justification, explanation or clarification given regarding the same. We are not repeating our observations with regard to other issues but the situation is extremely unsatisfactory and disappointing. It is further evidenced from the report of the OSC and of the Chief Secretary that reckless disposal of sewage and trade effluents has already resulted in rivers Rapti and Ghagra being categorised as polluted rivers identified by CPCB. These rivers are not fit for bathing and the value of such deterioration of natural resources is not even recognised. Further damage on account encroachment of catchment of Ramgarh Tal and river flood plain zones of Ami, Rapti and Ghagra is continuing. Thus, pending further action, continuing encroachments must be forthwith stopped by strict enforcement of Flood Plain Zone regulations, including for the Ramgarh lake. It is also surprising that how UP PCB is permitting industries to operate in violation of Water Act. It appears that, out of around 266 industries in GIDA area, there are 55 water polluting industries. It has not been made clear whether these industries have their own ETPs meeting the laid down stipulated standards. If so, why CETP is required. If not, how industries are continuing in violation of law. Regarding meeting norms by the existing 30 mld and 15 mld STPs, the compliance with respect to Fecal coliform has to be ascertained, considering that recipient system has rivers and lake, which are sources of drinking water by humans and other living beings. SPCB ought to have mentioned about the performance of remediation which is said to have started on some drains.

17. We confronted learned Counsel for the State with the situation but he has not been able to give any response except to say that the Chief Secretary should own the responsibility and take stringent action against the erring officers for non-compliance of law, for protection of environment and public health. What has stopped the Chief Secretary to take the action is not known to us.

18. With utter disappointment with the attitude of the concerned officers of the State of UP, we direct the Chief

Secretary to now take meaningful and stringent action for compliance of law and hold the erring officers accountable in the same manner as any other violators of law in a system governed by rule of law. Adverse entries must be made in their ACRs and if there is no change in their attitude towards performance of their duty, the criminal prosecution needs to be launched against them in the same manner as against any other violators. We hope that the Chief Secretary realizes his responsibility and acts promptly. We direct the Chief Secretary to remain present in person by Video Conferencing on the next date with his action taken report along with the concerned accountable officers i.e., Additional Chief Secretaries of Urban Development/Irrigation & Water Resources/ Department of Infrastructure & Industrial Development /Revenue/Medical Education Department of Uttar Pradesh, who may explain why they be not personally dealt with as per law for the serious violations and dereliction of duty at the cost of public health. The report of Chief Secretary needs to be affirmative considering the matter has been going on for more than seven years. There is need for time bound committal execution plan on treatment and utilisation of treated sewage, ensuring each household connection to sewers, proper management of fecal septage (material from Septic tanks), interception of drains to destined STPs, justifying necessity of CETP and basis of permitting existing industries, economic losses on account of pollution of rivers and the lake, removal of encroachments and further prevention and cutting down tendering business to avoid delays. CPCB may also examine the proposal in view of existing status of industries and ascertain necessity of CETP and situation which will prevail till CETP is set up. There should be mechanism to monitor progress at the level of the Secretary concerned and monthly progress be placed on the website of the District Magistrate/ State portal. It may also be assessed that how much loss is being incurred (in qualitative and quantitative terms) on account of inaction/delayed action damaging the Rivers and the Lake.”

12. From the report filed on behalf of the State, it is not clear as to the number of industries for whom CETP is planned. Water quality does not show positive results after Bio-remediation work. The fecal coliform and fecal coliform counts are much above the prescribed standards
13. We also note that in recent cases the Tribunal has fixed financial liability under ‘Polluter Pays’ principle for discharge of untreated sewage in

water bodies at the rate of Rs. 2 Crores per MLD. Such orders have been passed inter alia in respect of West Bengal on 01.09.2022, in respect of NOIDA and DJB dated 03.08.2022, in respect of Ghaziabad dated 06.09.2022 and in respect of Maharashtra dated 08.09.2022. It will suffice to refer to the latest order dated 08.09.2022 in O.A No. 606/2018, *Compliance of MSW Rules, 2016* in respect of Maharashtra as follows:-

“xxxxxx.....xxx

45. In our recent order dated 01.09.2022 in O.A No. 606/2018 (in respect of State of West Bengal), considering scale of compensation adopted in earlier cases including in OA No. 1002/2018, *Abhisht Kusum Gupta vs. State of Uttar Pradesh & Ors.*, compensation was determined @ Rs. 2 Crore per MLD for untreated liquid waste and in OA No. 286/2022 for unprocessed legacy waste compensation was fixed @ Rs. 300 per MT to be utilized for restoration measures, including preventing discharge of untreated sewage and solid waste treatment/processing facilities, as per appropriate mechanism for planning and execution that may be evolved, within three months. Operative part of the said order is reproduced below:-

“Conclusion about quantum of compensation

49. In the light of above and considering damage to the recipient environment, we hold that apart from ensuring compliance at the earliest, compensation has to be paid by the State for past violations. The amount of compensation is fixed @ Rs. 2 crore per MLD (at which rate compensation has been levied against Noida and DJB in OA No. 1002/2018, *Abhisht Kusum Gupta vs. State of Uttar Pradesh & Ors.*, referred to in para 48 above for detailed reasons mentioned therein). As noted earlier, **gap in generation and treatment in West Bengal, as per data furnished is 1490 MLD. Thus, under this head, liability of the State of West Bengal is to pay compensation of Rs. 2980 crores, rounded off to Rs. 3000 crore in view of continuing damage. For failure to process solid waste, unprocessed legacy waste being 1.20 crore MT, compensation is assessed @ Rs. 300 per MT (at which approximate rate compensation has been awarded in OA No. 286/2022 against Municipal Corporation, Ludhiana, for the reasons given therein). This works out to Rs. 366 crore but adding 134 crore for continuing addition of unprocessed waste @ 13469.19 TPD, the total amount is rounded off to Rs. 500 crore. Thus, final amount of compensation under the two heads (solid and liquid waste) is assessed at Rs. 3500 crores which may be deposited by the State of West Bengal in a separate ring-fenced account within two months, to be operated as per directions of the Chief Secretary and utilised for restoration measures, including preventing discharge of untreated sewage and solid waste**

treatment/processing facilities, as per appropriate mechanism for planning and execution that may be evolved, within three months. If violations continue, liability to pay additional compensation may have to be considered. Compliance will be the responsibility of the Chief Secretary.”

46. Following the above pattern, we determine compensation payable by the State of Maharashtra. In respect of **gap in treatment of liquid waste/sewage i.e. 5420.33 MLD, compensation works out to Rs. 10840.66 crores and compensation for un-remediated legacy waste to the extent of 3,94,19,287 works out roughly to about Rs. 1200 crores. We round off the compensation amount @ Rs. 12,000/- crores which may be deposited by the State of Maharashtra in a separate ring-fenced account within two months, to be operated as per directions of the Chief Secretary and utilised** for restoration measures. The restoration measures with respect to sewage management would include setting up of sewage treatment and utilization systems, upgrading systems/operations to ensure utilization of their full capacities, ensuring compliance of standards, including those of fecal coliform and setting up of proper fecal sewage and sludge management in rural areas. With regard to solid waste management, the action plan would include setting up of required waste processing plants and remediation of left out 84 sites. Bio-remediation/bio-mining process need to be executed as per CPCB guidelines and the stabilized organic waste from biomining as well as from compost plants need to comply with laid down specifications. Other material recovered during such processes are to be put to use through authorized dealers/handlers/users. This restoration plan needs to be planned and executed in a time bound manner without further delay. If violations continue, liability to pay additional compensation may have to be considered. Compliance will be the responsibility of the Chief Secretary.

47. Award of above compensation has become necessary under section 15 of the NGT Act to remedy the continuing damage to the environment and to comply with directions of the Hon’ble Supreme Court requiring this Tribunal to monitor enforcement of norms for solid and liquid waste management. Moreover, without fixing quantified liability necessary for restoration, mere passing of orders has not shown any tangible results in the last eight years (for solid waste management) and five years (for liquid waste management), even after expiry of statutory/laid down timelines. Continuing damage is required to be prevented in future and past damage is to be restored.”

Liability for compensation on polluter pays principle

14. In the light of above, we determine the liability of State of U.P for discharge of 55 MLD sewage into rivers at Gorakhpur at Rs. 110 Crores. As already noted, water pollution is also one of the sources of EV. Further, for failure to process solid waste, on scale applied in other cases,

compensation is to be fixed. As per information given during the hearing, there is unprocessed legacy solid waste is 3.8 lakhs MT at two sites. Applying the scale of compensation followed in case of Maharashtra, compensation comes to Rs. 11.40 crore which is rounded off at Rs. 10 crores. Thus, total compensation is determined at Rs. 120 crores.

15. The compensation amount may be deposited by the State (which may be ensured by the Chief Secretary) within one month in a ring-fenced account under the control of the Divisional Commissioner, Gorakhpur to abide by directions of the joint Committee who may plan and execute remedial measure so as to achieve norms preferably within six months, failing which further compensation may have to be levied.

16. We constitute a six-member joint Committee for above purpose to be headed by ACS, U.D, UP, with Regional Director, CPCB, Regional Officer, MoEF&CC, Member Secretary, State PCB, nominee of PCCF, (HoFF), U.P and Municipal Corporation, Gorakhpur. The Committee may meet within one month and update action plan for prevention and remediation of pollution so as to achieve tangible results within six months. Steps will include operationalization of CETPs, interception and diversion of drains to the respective STPs, to be set up and commissioned, maintaining Floodplain zones of rivers, lakes in question and also Ramgarh Tal, preventing encroachment, ensuring plantation and desilting of the Tal and other associated activities. Work may not be held up on account of avoidable procedures and timelines should not change. The proceedings of the Committee may be held online or offline as may be found viable except for site visits. Proceedings may be uploaded on the website to enable public participation. If the industries are still non-compliant in terms of pollution norms, the State PCB may take action in accordance with law. The

Committee will be free to coordinate and interact with other departments/experts/institutions/other stakeholders. Additionally, CPCB and State PCB may jointly carry out field investigation on commissioning of CETP and utilization of CETP, prospective members of CETP and functioning and performance of STPs. Result thereof may be looked into by the Committee for further course of action.

17. An action taken report may be filed with the Registrar General of this Tribunal within six months 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. If necessary, the Registrar General may place the matter for further direction before the Tribunal.

Subject to above, the application is disposed of.

A copy of this order be forwarded to the ACS, U.D., UP, Regional Director, CPCB, Lucknow, Regional Officer, MoEF&CC, Lucknow, Member Secretary, State PCB, PCCF (HoFF), U.P and Municipal Corporation, Gorakhpur by email for compliance.

I.A. No. 195/2022

This Application has been filed by the BRD Medical College which in substance seeks review of the earlier orders, requiring payment of compensation for the violation of Bio medical Waste Management Rules. We do not find any substance in the application which is dismissed. The State PCB is free to take remedial action against the violations, in accordance with law, also considering non-deposit of compensation in terms of orders of this Tribunal.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

September 13, 2022
Original Application No. 116/2014
(I.A. No. 195/2022)
SN+AB