

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

Original Application No. 515/2023
(IA No. 458/2024, IA No. 372/2024)

Ganga Pollution

Applicant

Versus

State of UP & Ors.

Respondent(s)

WITH

Original Application No. 516/2023

M/s Sundrop Colonigers Pvt. Ltd.

Applicant

Versus

State of U.P. & Ors.

Respondent(s)

WITH

Original Application No. 517 /2023

Gokul Chandra Sharma &Ors.

Applicant(s)

Versus

State of U.P. & Ors.

Respondent(s)

WITH

Original Application No. 518 /2023
(I.A. No. 06/2024)

Sri Math (Jagatguru Ramanand
Acharya Peeth) & Anr.

Applicant(s)

Versus

State of UP & Anr.

Respondent(s)

WITH

Original Application No. 519 /2023

Smt. Meena Mishra

Applicant

Versus

State of U.P.

Respondent

WITH

Original Application No. 520 /2023

Smt. Vimla Devi

Applicant

	Versus	
State of U.P.		Respondent
	WITH	
	Original Application No. 521 /2023	
Sarvamangla Adhyatma Yog Vidya Peeth		Applicant
	Versus	
Union of India & Ors.		Respondent(s)
	WITH	
	Original Application No. 522 /2023	
Shri Shri Guruji Tapasthali		Applicant
	Versus	
State of U.P. & Ors.		Respondent(s)
	WITH	
	Original Application No. 523 /2023	
Vinod Kumar Pandey		Applicant
	Versus	
State of U.P. & Ors.		Respondent(s)
	WITH	
	Original Application No. 524 /2023	
Ram Rekha Jaiswal		Applicant
	Versus	
State of U.P. & Ors.		Respondent(s)
	WITH	
	Original Application No. 525 /2023	
Pt. Ram Chandra Sharma		Applicant
	Versus	
State of U.P. & Ors.		Respondent(s)
	WITH	
	Original Application No. 526 /2023 (IA No. 288/2024)	
Ganga Sewa Abhiyan & Ors.		Applicant(s)
	Versus	

Union of India & Ors.

Respondent(s)

WITH

Original Application No. 527 /2023
(IA No. 296/2024 & IA No. 297/2024)

Kautilya Society & Anr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 19.09.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Amit Upadhyay, Mr. Akash Singh & Mr. Vaibhav Shukla, Advs. for Applicant in OA 515/2023

Respondent: Mr. Arvind Nagar, Senior Advocate (Through VC) with Mr. Sumeer Sodhi, Mr. Chaitanya Sharma & Mr. Siddharth Joshi, Advs. for R - 26 in OA 515/2023
Mr. Bhanwar Pal Singh Jadon, Adv. for the State of UP
Mr. Pradeep Misra & Mr. Daleep Dhyani, Advs. for UPPCB (Through VC)
Mr. Vibhav Misha, Adv. for Prayagraj Development Authority
Mr. Vikrant Pachnanda & Mr. Mukul Katyal, Advs. for MoEF & CC (Through VC)
Mr. Gigi. C. George & Mr. Shashank, Advs. for NMCG, CWC & Harish Chandra Institute
Mr. Amit Tiwari & Mr. Chetanya Puri, Advs. for Varanasi Development Authority in OA 527/2023 (Through VC)
Mr. Atif Suhrawardy, Adv. for CPCB in OA 515 & 526/2023 (Through VC)
Mr. Adarsh Kumar Tiwari & Mr. Ashutosh Mani Tiwari, Advs. for R - 25 (Through VC)
Mr. Shrish Chandra, Mr. Rishabh Kesarwani & Mr. Rishikesh Kumar, Advs. in I.A No. 288/2024

ORDER

1. These original applications have been registered on the basis of the Writ Petitions/Public Interest Petitions transferred by the Allahabad High Court in pursuance of the order dated 21.07.2023. The relevant part of the order of the High Court of Allahabad 21.07.2023 passed in Writ Petition (PIL) No. 4003/2006 is extracted below:

“16. Upon bare reading of the above provisions, we find that Section 14(3) of the Act, 2010 only provides a period of limitation of six months from the date of cause of action has arisen for the National Green Tribunal to entertain a petition, but proviso added to Sub-section 3 of Section 14 vests discretion in the National Green Tribunal to condone the delay, if sufficient cause is shown by the

party approaching it. We further find that Section 29 of the Act, 2010 clearly bars the jurisdiction of civil courts to entertain any matter which the National Green Tribunal is empowered to adjudicate upon and determine the questions arising therein. The civil courts' jurisdiction to settle the dispute that may be adjudicated upon by the National Green Tribunal has thus been clearly barred.

17. The aforesaid provisions, in our view, cannot be interpreted to mean that there would be bar for constitutional law court from transferring the matter already entertained on merits, to the National Green Tribunal at a later stage. It is always open for the court of law including Constitutional law Court to transfer the case to National Green Tribunal having jurisdiction qua the subject matter at any point of time, if it so chooses in its discretion.

18. In so far as the other objection that Clean Ganga Project or Ganga Action Plan/ Namami Gange Project can be better monitored at local level considering the importance of city of Prayagraj, Varanasi and Kanpur being religious and industrial cities is concerned, we are of the view that since Namami Gange Project is a National Level Project, it would involve several States and, therefore, it would be more appropriate that National Green Tribunal that has nationwide jurisdiction in ensuring that river does not get polluted from its source to its end (upstream and downstream) the project is monitored by it. The National Green Tribunal can better bind administration of various districts of various other States at the same time to ensure that Namami Gange Project ultimately achieves its object. While it is true that Magh Mela is organized every year in the city of Prayagraj and so also Ardhkumbh/ Kumbh Mela at every six years and Maha Kumbh at every 12 years but only for that, generally and broadly speaking, we should not invite a situation where our orders may come in conflict with that of National Green Tribunal begetting more and more confusion regarding its enforcement by agencies. After all it is the public interest that is to be served first and it hardly matters whether Clean Ganga or Namami Gange Project is monitored here by this Court or by the Green Tribunal. One is to see only where public interest would be better served and in our considered view, the National Green Tribunal being more equipped with powers relating to environmental laws under the Special Acts given in Schedule 1 of the National Green Tribunal Act 2010 covering areas nationwide, it would better serve public interest qua Clean Ganga/ Namami Gange Project and Clean Yamuna Project.

19. In view of the above, we find merit in the argument of learned Advocate General that this PIL petition and connected pending PIL petitions may also be transferred to be tagged with Original Application no. 200 of 2014 pending with the National Green Tribunal. In our view, we find support in the observations made vide paragraph nos. 40 and 41 by the Supreme Court in the case of Bhopal Gas Peedith Mahila Udyog Sangathan (supra).

20. However, at this stage, we may also hold that matters relating to illegal development activities being carried out against master plan of Prayagraj Development Authority, encroachment of public places, roadside lands, discharge of statutory duties by Municipal Corporations of different districts and municipalities, in the field of

civic administration and other 'incidental' and allied issues related to it, will still be cognizable by this Court. Likewise activities of Mela Authority, Prayagraj during Magh Mela, Ardhkumbh/ Kumbh and Mahakumbh may also be subject matter of monitoring by this court, if Public Interest Litigation petitions are filed by the aggrieved parties because these all would involve local issues relating to allotment of land, cleanliness in the Magh Mela area, basic amenities to be made available to kalpwasis etc., the requirement of sufficient water in river Ganga in Prayagraj and also if there arises any complaint in respect of administration of the Mela Authority, Prayagraj.

21. We may add here that in order to ensure speeding up of the work of tapping of drains in the city of Prayagraj and ensuring that untreated sewage water does not flow into rivers during Magh Mela, Ardhkumbh/Kumbh/Mahakumbh Mela, such matters may be taken up by this Court during such period even if such issues may overlap a little bit with pending matters before National Green Tribunal, but for this limited mela purposes. This Court would certainly not shirk away from its constitutional duty in entertaining petitions during Mela period as object is only there to ensure that Clean Ganga and Yamuna water is available for bathing purposes for Kalpwasis during one of the world's largest religious congregation held here at Prayagraj during the month of Magh.

22. Again city drainage system, its maintenance and supply of clean and potable water to the residents of the city are local issues, and needed to be addressed locally for better administration of justice so as to serve public interest. The Constitutional Law Courts, like, High Courts having their territorial jurisdiction in respect of cities and districts cannot be denied access in the name of larger environmental issues falling within the domain of National Green Tribunal and, therefore, this Court upon being approached, in exercise of its extra ordinary power under Article 226 of the Constitution will certainly be intervening to set right things by asking local bodies and local administration to discharge their duties cast upon them under statutes. Our power of judicial review of legislative action and/ or administrative action does not get divested altogether with Constitution of National Green Tribunal, even under parliamentary legislation. Reiterating doctrine of basic structure of the Constitution as conceived of by Supreme in Kesavanand Bharti's case , the 9 Judges bench in L.Chandra Kumar v. Union of India and Others(AIR 1997 SC 1125) held that "the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court (Supreme Court) under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure." The Court further held that "power vested in the High Courts to exercise judicial superintendence over the decision of all Court and Tribunals within their respective jurisdiction is also part of the basic structure of the Constitution" and "this is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."

23. Accordingly, we are of the considered view that these above local issues of Prayagaj and other districts of Uttar Pradesh may well still be within the jurisdiction of this Court and will not be in any manner having any conflict with the issues that are subject matter of

adjudication before the National Green Tribunal in OA No. 200 of 2014.

24. We have examined the records of the other Public Interest Litigation petitions that are connected and pending and we find that prayers in most of them are either relating to Prayagraj where the sanction of map has been refused by the development authority on account of places, where constructions are sought to be raised, falling within 500 meters of HFL (High Flood Level) as this Court under its order dated 19.08.2011 has restrained every construction activity within this limit; and in some of Public Interest Litigations, the demolition notices have been challenged as the areas fall within the prohibited distance of 500 meters from rivers Ganga and Yamuna of district Prayagraj and within the prohibited distance of 200 meters from the both side of banks of river Ganga in city of Varanasi.

25. In our view, all these above issues since are related to conserving and maintaining flood plane zones of the two rivers Ganga and Yamuna in various districts of Uttar Pradesh, these would fall within the subject matter of pending O.A No. 200 of 2014 before the National Green Tribunal.

26. We have also considered the grievance of the M/s Omaxe Pancham Realcom Pvt. Ltd., Prayagraj, respondent no. 26 who has moved a miscellaneous recall application in respect of an order of this Court dated 19th August, 2011 that restrains any construction activity within 500 meters from high flood level at the bank of rivers Ganga and Yamuna in the city of Allahabad/ Prayagraj.

27. In the above regard, we find that even the National Green Tribunal has passed an order on 13th July, 2017 in the pending O.A No. 200 of 2014 while dealing with solid waste management and its dumping in relation to areas that may fall within flood plain zones in respect of State of Uttarakhand, the National Green Tribunal has already issued directions to the public authorities, Nagar Nigams and Municipalities etc. to ensure that even temporary sites to be used as dumping ground should not be within 500 metres distance from the end of the flood plane of river Ganga or its tributaries. The Tribunal in its order dated 13.07.2017 under direction no. (v) has observed that “ the area beyond 100 meters and less than 300 meters would be treated as regulatory zone in the hilly terrain, for which State will comply with the above directions. The area upto 200 meters shall be prohibited area in the plain terrain and more than 200 meters and less than 500 meters would be treated as regulatory zone. Area/ River bank/ flood plain 2 kms upstream to Rishikesh and till border of the State of Uttarakhand towards U.P. in river Ganga would be treated as plain terrain while upstream the above hilly terrain”. Even though in respect of State of U.P. there appears to be no such direction by the Tribunal under the order, but in our considered view, since Tribunal is dealing with the matter and certain directions have been issued to the State Government of Uttar Pradesh, U.P. Jal Nigam, U.P. Pollution Control Board and Central Pollution Control Board, Uttar Pradesh, the Tribunal would be in a better position to appreciate the controversy regarding 500 meters from High Flood Zone as prohibited area for raising any temporary or permanent structure. Thus it will be within the domain of the

Tribunal to pass appropriate orders and, therefore, in our considered view, it would be more appropriate for the National Green Tribunal to consider the miscellaneous recall application of respondent no. 5 and pass appropriate order.

28. We, therefore, do not see any prejudice going to be caused to the respondent no. 26 in the event matter is transferred to the National Green Tribunal, New Delhi . It will remain open for the respondent no. 26 to move appropriate application before the National Green Tribunal for early disposal of miscellaneous recall application, if so advised.

29. In view of above, the transfer application moved by the State of Uttar Pradesh stands granted. The Public Interest Litigation No. 4003 of 2006 and other connected pending petitions and PIL petitions are transferred to National Green Tribunal, New Delhi.

30. Registrar General is to ensure that all the records are transmitted to the National Green Tribunal, within a fortnight while retaining a copy of the entire order-sheet and the leading PIL petition in one set. The respective parties are directed to appear before the National Green Tribunal, New Delhi and pursue their matter there.

31. We also find that large number of PIL petitions are being listed with this PIL petition, even though those Public Interest Litigation petitions have been disposed of by this Court previously giving liberty to the petitioners to move their application in the main Public Interest Litigation petition being no. 4003 of 2006 .

32. Registry is accordingly directed to detag the decided PIL petitions and consign them to records.”

2. The main issue involved in these petitions relates to defining/demarcating the Flood Plain Zone of River Ganga especially in reference to the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016.

3. The State of U.P has filed the Report dated 13.09.2024 taking the following Stand relating to the demarcation of Flood Plain:

“10. It is important to submit that the demarcation of the floodplain zone has been conducted with consideration of a 100-year spread, using the Hybrid Methodology. This approach utilizes a 100-year return period flood, which is estimated through flood frequency analysis of the annual maximum flood discharge data from available G&D (Gauge and Discharge) sites over the relevant periods. The estimation is conducted using hydraulic modeling- HEC-RAS, the flood frequency analysis is calculated using the L- Moment Ratio method and 37 years of data obtained through satellite imagery using Landsat data. The Hybrid Methodology was chosen because both satellite analysis and modeling have inherent limitations.

Specifically, satellite data may not capture the full extent of flood events, and model results are subject to the quality of the Digital Elevation Model (DEM). True copy of the methodologies is annexed herein as ANNEXURE R7.”

4. The above stand reflects that the exercise has been undertaken for demarcation of flood plain having due regard to Clause 3 (f) of the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016.

5. NMCG has also filed the response dated 11.09.2024. The response of the NMCG states that the Ministry of Jal Shakti has constituted a Committee by O.M dated 28.11.2022 and that the Committee has proposed the division of flood plain into three zones for urban settlement and two zones for rural settlement and that the NMCG has advised all the concerned States in Ganga Basin for demarcation, delineation and notification of flood plains and removal of encroachments from the river bed/flood plain in accordance with the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016. The stand of NMCG in this regard is as under:

“10. In order to enable States to undertake scientific assessment of flood plains and its zoning, need of technical guidelines on the subject has been felt. Accordingly. DoWR, RD&GR, Ministry of Jal Shakti constituted a Committee, vide O.M. Z-5/03/2106-FM-MOWR/2569-79 dated 28,11,2022, under Member (RM). CWC for formulation of 'Technical Guidelines on Flood Plain Zone. (Annexure.3). The Committee took into consideration practices which are being followed in other countries wherever regulation of flood plain has been enacted and enforced. The Committee has submitted its report to the DoWR, , RD&CR which is under consideration of Government.

11. That as per the report, a river's floodplain is the low-lying land adjacent to a river and is prone to flooding and generally conforms to a flood of frequency of one in a hundred years. To minimize the damages due to floods and to protect the pristine nature of the river. there is a need to regulate the activities ill the flood plain of the river. The report proposes flood-plain zoning conforming to flood of frequency of one in a hundred years. However, considering areas conforming to one in hundred year flood will be huge, especially in plain and flat areas. The Committee proposed that the entire flood

plain area further needs to be divided in different zones depending upon its proximity to the river banks, type of developmental activities that can be permitted and the nature of settlement in the area i.e. rural. or urban.

12. That the Committee has proposed division of flood plain into 3-zones for urban settlement and into 2-zones for rural settlement:

- Prohibited Zone: with limits conforming to 5-year return period flood
- Regulatory Zone: with extent up to 25-year return period flood beyond extent of prohibited zone.
- Warning Zone: with extent up to 100-year return period flood beyond extent of Regulatory Zone (for urban areas only).

13. That the DoWR, RD & GR, Ministry of JaI Shakti has sought comments/observations from State Govts on the report, as cited at Para 12 above. Thus. it is submitted that the matter is under deliberations of the Ministry. (Annexure-4),

14. That the NMCG, from time to time, has been advising all the states governments in Ganga basin for demarcation, delineation and notification of river flood plains and removal of encroachment from the riverbed/floodplain of the river Ganga and its tributaries in accordance to the provisions of the River Ganga (Rejuvenation, Protection and Management) Authorities Order. 2016. In this context, a letter written to Ganga basin states on 06.08.2024 is placed at Annexure-5”

6. The Action Taken Report of the State includes the Flood Plain Zone delineation from Unnao to Balia progress report as annexure R-6 prepared by National Institute of Hydrology. The said report discloses the progress in tabulated form as under:

“

SN	Task/Component	Month					
		Aug	Sep	Oct			
1.	Inception Report	Completed					
2.	Data collection and Processing	Under progress (1m contour data from SOI is under progress)					
3.	Flood frequency analysis	Completed					
4.	Flood plain zoning based on the JRC Satellite images of past 37 years (1984-2021)	Completed					
5.	Flood Plain Demarcation based on Satellite Data/Images						
6.	HEC RAS model setup (Calibration/validation)						
7.	Finalization of hydraulic model results						
8.	Submission of interim findings discussion, ground truthing/ result verification						

9.	<i>Demarcation of flood plain based on hybrid approach</i>						
10.	<i>Submission of draft Report</i>						
11.	<i>Submission of final Report</i>	* "					

*Final report will be submitted after incorporating the comments received from the sponsoring agency.

7. Learned Counsel for the State has submitted that the draft of the final report will be submitted by NIH to the State by 15.10.2024 and the report will be finalized by the State by 30.10.2024.

8. Hence, we require the State to file the progress report by 07.11.2024.

9. I.A. No. 372/2024 notices were issued on 16.08.2024 and it has been pointed out that the Reply on behalf of NMCG and State is still awaited. Let the same be filed within a period of four weeks. Rejoinder, if any be filed within one week thereafter.

10. I.A. No. 288/2024 filed in O.A. No. 526/2024 is an application for intervention, I.A. No. 296/2024 filed in O.A. NO. 527/2023 is an application for impleadment and I.A. No. 297/2024 filed in O.A. NO. 527/2023 is an application for modification of the order dated 27.07.2012.

11. Issue notice on these I.As. Applicants are directed to serve copies of these I.As to the Counsel for the Respondents within one week. Respondents may file their response within four weeks thereafter.

12. List on 12.11.2024

Prakash Shrivastava, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

September 19, 2024
O.A. No. 515/2023 with
connected matters
HB..