

Item No. 4

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

**Original Application No.93/2023(CZ)
(O.A.No.496/2022 - PB)**

Babulal Sahu

Applicant(s)

Vs.

State of Rajasthan & Ors.

Respondent(s)

Date of Hearing: **20.11.2023**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. A SENTHIL VEL, EXPERT MEMBER**

For Applicant(s):

None

For Respondent(s):

Shri Sandeep Singh Baghel, Adv.
Ms. Prachi Mishra, Adv. with
Ms. Rebecca Mishra, Adv.

ORDER

1. The issue raised in this application is discharge of untreated water into the historical Anasagar Lake of Ajmer (Rajasthan) contaminating the water quality of lake and causing serious pollution, posing serious health hazardous to the local residents.
2. Learned counsel appearing for the Municipal Corporation, Ajmer has informed that one STP of 13 MLD is functioning. The reply dated 10.05.2023 mentions that out of 13 sewer (nallah) allegedly connecting to the Anasagar Lake, Ajmer, 11 were diverted to the STP and dry weather flow was stopped reaching the Anasagar lake. In that reply it was disclosed that the work of connecting remaining two sewer terminating in Anasagar lake was underway.
3. It is further alleged that 13 nallah carry untreated wastewater from various colonies and place of Ajmer and dump into Anasagar Lake without any treatment, leading to severe pollution and environmental

damage violating the provision of Water (Prevention and Control of Pollution) Act, 1974 and causing various harmful effect such as:

- a. Water quality degradation : The nallahs carry a significant amount of untreated domestic and industrial wastewater, which contains pollutants like heavy metals, pathogens, and nutrients. These pollutants reduce the water quality of the lake, making it unfit for drinking and other domestic purpose.'
- b. Algae bloom : the nutrient-rich water from the nallahs promotes the growth of algae in the lake. This results in a dense mat of algae that can choke the lake and prevent sunlight from penetrating the water,. This, in turn, can lead to the death of aquatic plants and fish which had occurred recently.
- c. Eutrophication : the excess nutrient from the nallahs also promote eutrophication in the lake. This is a process where excessive plant growth leads to a depletion of oxygen in the water. This can result in the death of fish and other aquatic life..
- d. Odor and visual pollution : The dumping of untreated wastewater can cause an unpleasant odor around the lake, making it difficult for people to enjoy the surroundings. The floating garbage also reduce the aesthetic value of the lake, impacting the tourism potential of the region.
- e. Impact on biodiversity : the duming of untreated wastewater can impact the aquactic biodiversity of the lake, as many species of plants and animals cannot survive in polluted waters. Health hazards : the dumping of untreated wastewater can lead to the spread of water-borne diseases, putting the health of people at risk. This can have a significant impact on the well-being of the local community.

These nallahs in older time serves as a channels of rainwater which carries clean water from nagpahad and other catchments which in turn now converted into a ources of waste water dumping directly into Anasagar lake, this is mainly due to negligence of Ajmer Municipal Corporation, Ajmer Development Authority due to their poor land use changes, urbanization, encroachments on or near to these drains. The polluted water from Anasagar Lake flows into the Luni River, ultimately flowing into the marshy lands in Rann of Kutch Gujarat just before the basin of Arabian sea, leading to further pollution and damage to the environment and public health.

4. That in recent years pathway has been constructed along the boundary of the lake by the Smart City Ajmer and Ajmer Development Authority. However, after the construction of the pathway, various activities have sprung up along the lake, including the car workshops, marriage gardens, halls and restaurants it is important to note that even the Ajmer Municipal Corporation organize various fairs or Mela on this pathway. These activities are causing various negative effect on the lake, including the dumping of waste and untreated sewage. The waste water and garbage form these activities is also being discharged into the lake.
5. Superintending Engineer, Water Resources Circle, Ajmaer (Rajasthan) in its affidavit has submitted that vide letter 17.04.2023 District Magistrate Ajmer, Commissioner Nagar Nigam Ajmer, Regional Officer Rajasthan State Pollution Control Board Kishangarh Ajmer and Regional Officer State Wetland Authority, Environmental Department Ajmer was informed to ensure that no untreated sewage water should be discharged into the lake and remedial measures must be initiated and taken immediately. The Ajmer Municipal Corporation has admitted the fact that two sewer line nallah are still

terminating in Anasagar Lake and discharging the water/untreated water/sewage water into the lake.

6. Since it is a admitted fact that untreated sewage water is being discharge into the Anasagar Lake. Thus, in view of the parameters laid down by the Central Pollution Control Board which was submitted in the Original Application No. 606/2018 for assessment and realization of compensation @ per day, per nallah is required to be assessed and realized. The relevant paras of 606/2018 are quoted below :

“I. Environment Compensation to be levied on Industrial Units

Recommendations

The Committee made following recommendations:

To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, band c, Environmental Compensation may be calculated based on the formula "EC= Pl x N x Rx S x LF", wherein, Pl may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. Sand LF may be taken as prescribed in the preceding paragraphs.

In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.

The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others {Writ Petition {Civil} No. 375 of 2012}, directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.

EC is not a substitute for taking actions under EP Act, Water Act or Air Act. Infact, unitsfoundpolluting should be closed/prosecuted as per the Acts and Rules.

II. Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP)

in NCR.

Table No. 2.1:Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	State Of Air Quality	Environment al Compensatio n ()
Industrial Emissions	<i>Severe +/Emergency</i>	<i>Rs 1.0 Crore</i>
	<i>Severe</i>	<i>Rs 50 Lakh</i>
	<i>Very Poor</i>	<i>Rs 25 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 10 Lakh</i>
Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	<i>Target Date</i>	<i>Rs 1.0 Crore</i>
ii. Non functional	<i>Very poor to Severe +</i>	<i>Rs 50.0 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 25.0 Lakh</i>
Construction sites (Offending plot more than 20,000 Sq.m.)	<i>Severe +/Emergency</i>	<i>Rs 1.0 Crore</i>
	<i>Severe</i>	<i>Rs 50 Lakh</i>
	<i>Very Poor</i>	<i>Rs 25 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 10 Lakh</i>
Solid waste/ garbage dumping in Industrial Estates	<i>Very poor to Severe +</i>	<i>Rs 25.0 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 10.0 Lakh</i>
Failure to water sprinkling on unpaved roads		
a) Hot-spots	<i>Very poor to Severe +</i>	<i>Rs 25.0 Lakh</i>
b) Other than Hot-spots	<i>Very poor to Severe +</i>	<i>Rs 10.0 Lakh</i>

III. Environmental Compensation to be levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules:

Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	<i>Min. 2000 Max. 20000</i>	<i>Min. 1000 Max. 10000</i>	<i>Min. 100 Max. 1000</i>
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	<i>Min. 2 Max. 20</i>	<i>Min. 1 Max. 10</i>	<i>Min. 0.5 Max. 5</i>

TableNo.3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 1.0 Max. 10.0	Min.0.5 Max.5.0	Min.0. 1 Max.1. 0

Environment Compensation for Discharge of Untreated/Partially Treated Sewage by Concerned Individual/Authority:

BIS 15-1172:1993 suggests that for communities with population above 100,000, minimum of 150 to 200 lpcd of water demand is to be supplied. Further, 85% of return rate (CPHEEO Manual on Sewerage and Sewage Treatment Systems, 2013}, maybe considered for calculation of total sewage generation in a city. CPCB Report on "Performance evaluation of sewage treatment plants under NRCD, 2013", describes that the capital cost for 1 MLD STP ranges from 0.63 Cr. to 3 Cr. and O&M cost is around Rs. 30,000 per month. After detail deliberations, the Committee suggested to assume capital cost for STPs as Rs. 1.75 Cr/MLD (marginal average cost). Further, expected cost for conveyance system is assumed as Rs. 5.55 Cr./MLD (marginal average cost) and annual O&M cost as 10% of the combined capital cost. Population of the city may be taken as per the latest Census of India. Based on these assumptions, Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

$$EC = \text{Capital Cost Factor} \times [\text{Marginal Average Capital Cost for Treatment Facility} \times (\text{Total Generation} - \text{Installed Capacity}) + \text{Marginal Average Capital Cost for Conveyance Facility} \times (\text{Total Generation} - \text{Operational Capacity})] + \text{O\&M Cost Factor} \times \text{Marginal Average O\&M Cost}$$

$$x (\text{Total Generation} - \text{Operational Capacity}) \times \text{No. of Days for which facility was not available} + \text{Environmental Externality} \times \text{No. of Days for which facility was not available}$$

Alternatively;

$$EC \text{ (Lacs Rs.)} = [17.5 \{ \text{Total Sewage Generation} - \text{Installed Treatment Capacity} \} + 55.5 \{ \text{Total Sewage Generation} - \text{Operational Capacity} \}] +$$

$$0.2(\text{Sewage Generation-Operational Capacity}) \times N + \text{Marginal Cost of Environmental Externality} \times (\text{Total Sewage Generation-Operational Capacity}) \times N$$

Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Quantity of Sewage is in MLD

xxx.....xxx.....xxx

Environment Compensation to be Levied on Concerned Individual/Authority for Improper Solid Waste Management:

Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

$$EC = \text{Capital Cost Factor} \times \text{Marginal Average Cost for Waste Management} \times (\text{Per day waste generation-Per day waste disposed as per the Rules}) + \text{O\&M Cost Factor} \times \text{Marginal Average O\&M Cost} \times (\text{Per day waste generation-Per day waste disposed as per the Rules}) \times \text{Number of days violation took place} + \text{Environmental Externality} \times N$$

Where;

Waste Quantity in tons per day (TPD)

N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Simplifying;

$$EC \text{ (Lacs Rs.)} = 2.4(\text{Waste Generation} - \text{Waste Disposed as per the Rules}) + 0.02 (\text{Waste Generation} - \text{Waste Disposed as per the Rules}) \times N + \text{Marginal Cost of Environmental Externality} \times$$

$$(\text{Waste Generation} - \text{Waste Disposed as per the Rules}) \times N$$

xxx.....xxx.....xxx

- (i) SPCBs/PCCs may ensure remedial action against non-compliant CETPs or individual industries in terms of not having ETPs/fully

compliant ETPs or operating without consent or in violation of consent conditions. This may be overseen by the CPCB. CPCB may continue to compile information on this subject and furnish quarterly reports to this Tribunal which may also be uploaded on its website.

(ii) **All the Local Bodies and or the concerned departments of the State Government have to ensure 100% treatment of the generated sewage and in default to pay compensation which is to be recovered by the States/UTs, with effect from 01.04.2020. In default of such collection, the States/UTs are liable to pay such compensation. The CPCB is to collect the same and utilize for restoration of the environment.**

(iii) *The CPCB needs to collate the available data base with regard to ETPs, CETPs, STPs, MSW facilities, Legacy Waste sites and prepare a river basin-wise macro picture in terms of gaps and needed interventions.*

13. *Directions in order dated 06.12.2019:*

“XII. Directions:

45. *We now sum up our directions as follows:*

- i. *100% treatment of sewage may be ensured as directed by this Tribunal vide order dated 28.08.2019 in O.A. No. 593/2017 by 31.03.2020 at least to the extent of in-situ remediation and before*

the said date, commencement of setting up of STPs and the work of connecting all the drains and other sources of generation of sewage to the STPs must be ensured. If this is not done, the local bodies and the concerned departments of the States/UTs will be liable to pay compensation as already directed vide order dated 22.08.2019 in the case of river Ganga i.e. Rs. 5 lakhs per month per drain, for default in in-situ remediation and Rs. 5 lakhs per STP for default in commencement of setting up of the STP.

ii. Timeline for completing all steps of action plans including completion of setting up STPs and their commissioning till 31.03.2021 in terms of order dated 08.04.2019 in the present case will remain as already directed. In default, compensation will be liable to be paid at the scale laid down in the order of this Tribunal dated 22.08.2019 in the case of river Ganga i.e. Rs. 10 lakhs per month per STP.

iii. We further direct that an institutional mechanism be evolved for ensuring compliance of above directions. For this purpose, monitoring may be done by the Chief Secretaries of all the States/UTs at State level and at National level by the Secretary, Ministry of Jal

Shakti with the assistance of NMCG and CPCB.

- iv. For above purpose, a meeting at central level must be held with the Chief Secretaries of all the States/UTs at least once in a month (option of video conferencing facility is open) to take stock of the progress and to plan further action. NMCG will be the nodal agency for compliance who may take assistance of CPCB and may give its quarterly report to this Tribunal commencing 01.04.2020.*
- v. The Chief Secretaries may set up appropriate monitoring mechanism at State level specifying accountability of nodal authorities not below the Secretary level and ensuring appropriate adverse entries in the ACRs of erring officers. Monitoring at State level must take place on fortnightly basis and record of progress maintained. The Chief Secretaries may have an accountable person attached in his office for this purpose.*
- vi. Monthly progress report may be furnished by the States/UTs to Secretary, Ministry of Jal Shakti with a copy to CPCB. Any default must be visited with serious consequences at*

every level, including initiation of prosecution, disciplinary action and entries in ACRs of the erring officers.

vii. As already mentioned, procedures for DPRs/tender process needs to be shortened and if found viable business model developed at central/state level.

viii. Wherever work is awarded to any contractor, performance guarantee must be taken in above terms.

ix. CPCB may finalize its recommendations for action plans relating to P-III and P-IV as has been done for P-I and P-II on or before 31.03.2020. This will not be a ground to delay the execution of the action plans prepared by the States which may start forthwith, if not already started.

x. The action plan prepared by the Delhi Government which is to be approved by the CPCB has to follow the action points delineated in the order of this Tribunal dated 11.09.2019 in O.A. No.06/2012.

xi. Since the report of the CPCB has focused only on BOD and FC without other parameters for analysis such as pH, COD, DO and other recalcitrant toxic

pollutants having tendency of bio magnification, a survey may now be conducted with reference to all the said parameters by involving the SPCB/PCCs within three months. Monitoring gaps be identified and upgraded so to cover upstream and downstream locations of major discharges to the river. CPCB may file a report on the subject before the next date by e-mail atjudicial-ngt@gov.in.

- xii. Rivers which have been identified as clean may be maintained.”*

(emphasis supplied)

14. Directions in order dated 29.06.2020:

“XII. Directions:

45. We reiterate our directions in order dated 6.12.2019 in the present matter, reproduced in Para 38 above, read with those in order dated 21.5.2020 in OA 873/2017 and direct CPCB and Secretary, Jal Shakti to further monitor steps for enforcement of law meaningfully in accordance with the directions of the Hon’ble Supreme Court and this Tribunal. The monitoring is expected with reference to ensuring that no pollution is discharged in water bodies and any violation by local bodies or private persons are dealt with as per mandate of law as laid down in orders of the Hon’ble Supreme Court and this Tribunal without any deviation from timelines. The higher authorities must record failures in ACRs as already directed

and recover compensation as per laid down scale. Every State/UT in the first instance must ensure that at least one polluted river stretch in each category is restored so as to meet all water quality standards up to bathing level. This may serve as a model for restoring the remaining stretches.”

23. As discussed above the damage to environment is directly linked to public health and neglecting compliance of Environmental norms results in deaths and injuries. Violation of environmental norms needs to be taken as seriously as preventing crimes of homicide and assaults. It is more serious as the victim may be wide spread and unidentified. The consequences may even affect the future generation. The compliance status is directly linked to effectiveness of the monitoring which requires that the key office bearers of statutory regulators and oversight bodies are qualified competent and reputed specially dedicated to such work instead of devoting part time while simultaneously holding other position. In view of the above, we are of the opinion that the monitoring by the Tribunal cannot be un-ending. The road map stand laid out. Action plans have been prepared for remediation of polluted rivers, river stretches. Gaps have been identified for ETPs, STPs, CETPs and timelines are clear. The authorities must now take ownership for compliance. The River Rejuvenation Committees in the State as per directions of the Chief Secretary may perform their obligation accordingly which may be monitored by the Central Monitoring Committee headed by the Secretary, Jal Shakti. The monitoring mechanism introduced in the form of RRC at the State level and the CMC at the Central level is to be and exactly identical to the monitoring mechanism laid down under the River Ganga Rejuvenation, Protection and Management Authorities Notification, 2016.”

7. The Learned Counsel for the Respondent No. 1 & 3 has filed the status report with the facts that in light of the order passed by the Hon’ble Supreme Court of India in case of *M.K. Balakrishnan vs. Union of India, MoEF&CC* in W.P. No. 230/2001 that wetlands

include ponds, tanks, canals, creeks, water channels, reservoirs, rivers, streams and lakes. In view of the same, the State of Rajasthan is now making endeavor to declare the lake as wetland.

However, vide Local Self Government Department of Government of Rajasthan Notification dated 30.10.2017, the State Government on the recommendation of the Rajasthan Lakes Development Authority had already declared specific area along the boundaries of the Anasagar lake as protected area authorized under section 4 of the Rajasthan Lakes (Protection and Developed) Authority Act, 2015. It is a matter of record that the Lake is already notified as a protected category under the Rajasthan Lakes (Protection and Development) Authority Act, 2015.

8. In view of the above, the State Authorities have to proceed in accordance with law.

9. So far as the discharge of untreated/sewage water into the lake/pond is concerned the Learned Counsel for the Respondent/Municipal Corporation Ajmer has filed the affidavit, which is defective on following points :

- i. Learned Counsel has submitted that he filed this affidavit yesterday (i.e. on 19.11.2023) while the date printed is (20.11.2023).
- ii. Learned Counsel has submitted that it is a clerical mistake and it should be 02.11.2023, which is again factual incorrect.
- iii. The part of the affidavit filed by Shri Om Prakash Sahu posted as Duty Engineer, Municipal Corporation, Ajmer is again fictitious because there is no date on it.
- iv. The status of the STP report, which was prepared by the Executive Engineer, Municipal Corporation, Ajmer (page no. 135) simply reveals that the BOD >150 while treated effluent parameter is < 10 in every item they have stated the figure as > or < which means that no analysis was done by the competent authority and forged report has been filed.
- v. The authority reporting is not empowered to chemical examination of the above quality.
- vi. The sample taken was not sent to the any Accredited Laboratory as per rules. The date, quantity, sample method, person taking the samples and other procedure have not been followed and does not reflect in the report.

10. In view of the above, the Chief Municipal Commissioner is directed to take necessary departmental/disciplinary action against the person submitting the report i.e. Executive Engineer, Municipal Corporation, Ajmer (Rajasthan) according to the rules and submit the action taken report before the next date of hearing.
11. The fresh analysis according to the rules be submitted within 10 days with an affidavit.
12. Learned Counsel for the Respondent No. 1 &3/ Ms Prachi Mishra has submitted that the connectivity of the nallah to the STP was reported to the High Court and date of connectivity as narrated in the report and order is 05.07.2023. It is admitted fact that there are violation of Water (Prevention & Control of Pollution) Act, 1974 and it's violation be calculated in accordance with the Original Application No. 606/2018 w.e.f. 01.04.2020 to the date of violation of rules i.e. till 05.07.2023.
13. Accordingly, the State Pollution Control Board is directed to calculate the environment compensation @ of 25000/- per day/per nallah or @ applicable in State of Rajasthan, according to the parameters laid down by the Central Pollution Control Board or @ applicable in the State w.e.f. 1st April, 2020 as fixed by Hon'ble Supreme Court of India as quoted in Original Application No. 606/2018 and after providing an opportunity of hearing to the Municipal Corporation submit the Action Taken Report.

List it on **19th January, 2024.**

Sheo Kumar Singh, JM

Dr. A Senthil Vel, EM

20th November, 2023
O.A. No. 93/2023 (CZ)
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