

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 8166/2017

U.P POLLUTION CONTROL BOARD

Appellant(s)

VERSUS

TAPESH BHARDWAJ & ORS.

Respondent(s)

O R D E R

The present appeal is directed against an order of the National Green Tribunal (NGT), which allowed the first respondent's application before it for directions.

The appellant - U.P. Pollution Control Board and the Mathura Cantonment Board (arrayed as respondent No.2 in this appeal) were issued certain directions to comply with the orders of the Tribunal in a previous case (Almitra H. Patel v. Union of India).

The impugned order among other contained directions with respect to compliance with the prescribed norms in regard to the Solid Waste Management Rules, 2016 (For short 'the Rules, 2016'). What is important is that the appellant - Board was directed to pay compensation of Rs.5 lacs. The Cantonment Board, on the other hand, is directed to pay compensation of Rs.10 lacs.

It is argued on behalf of the appellant - Board that the direction to pay environmental compensation was unwarranted since the Solid Waste Management Rules were brought into force only in 2016, when respondent No.1 approached the NGT. It is further contended that the said Rules provide a window period of two years

to enable the other authorities to comply with its term.

It is further submitted by Mr. Pradeep Mishra, learned counsel appearing for the appellant - Board that law, as it stood previously, was that prior sanction from the appropriate Government was necessary to prosecute statutory authorities, found wanting in compliance with pollution and environmental laws; further he also adds that this position changed in view of a recent decision of this Court.

Relying upon the observations made by the NGT and more particularly, averments made in the application before it that the problem of dumping solid waste is acute in the city of Mathura; where garbage was dumped even in the river bed, this imperiled the entire stretch of river exposing citizens and the surrounding environment to the hazard of ground water contamination. Counsel for the first respondent urged this Court not to interfere with the impugned order. Counsel for the Central Pollution Control Board (CPCB) also urges that the appeal should be dismissed and relies on a subsequent report (of 2019), which is on the record.

The directions of the NGT, *inter alia*, apart from requiring the appellant - Board to pay compensation of Rs. 5 lacs are as follows:

- a. U.P.PCB shall pay Environmental Compensation of Rs.5 lakhs.
- b. Mathura Cantonment Board shall pay Environmental Compensation of Rs.10 Lakhs.
- c. Both these Environmental Compensations shall be payable to the Central Pollution Control Board within two weeks and they shall utilize these funds with the permission of the Tribunal for betterment of the environment and for other purposes, as may be directed

by the Tribunal.

d. We hereby direct the Mathura Cantonment Board to submit application for consent to operate and for authorization, complete in all respects, within two weeks from today to the U.P.PCB, which shall process the same in accordance with law and dispose of the same within four weeks thereafter.

e. The Mathura Cantonment Board, within a period of three months from today would complete the construction of the wall between the river and the trenching site in question to ensure that under no circumstances the MSW should be permitted to enter directly or indirectly into the flood plain of the River or in River Yamuna.

f. The U.P.PCB shall issue complete and comprehensive directions in relation to the collection, transportation, segregation and dumping of waste at the site in question in accordance with the SMW Rules of 2016, within a period of four weeks as aforesaid, even if no application is submitted to it. There shall be complete segregation of waste into bio degradable and non bio-degradable waste.

g. Around the trenching site, the Cantonment Board shall provide green belt and also put barbed wires to ensure that no animals enter the trenching site.

h. All these conditions should be complied with within four weeks from today. The Cantonment Board is at liberty to approach the State Government requesting for financial assistance, if needed.

But this shall not be treated as a ground or reason for non compliance of the order of the Tribunal. All the above directions issued by the Tribunal shall be complied with by all the officers and authorities without any delay and default. In the event of non-compliance, the senior most officer shall be liable to be proceeded against, in accordance with law.

i. We hereby issue clear directions to the Mathura Cantonment Board, U.P.PCB, local authorities and the State Government to comply with all the directions contained in the judgment of the Tribunal in the case of Almitra H. Patel (supra) and Kudrat Sandhu (supra). They shall submit compliance report within six weeks from today.

j. We also direct all the above authorities and Boards to ensure that the directions of the Tribunal contained in the case of Manoj Mishra (supra) in

relation to prohibition on dumping of any waste in the river or the flood plain of River Yamuna or carrying on of any activity in that area, are complied with.

This Court, by its interim order dated 03.07.2017, stayed the direction of the Board. The Central Pollution Control Board (CPCB) was required to conduct an inspection and report to the Court by its order dated 27.08.2019. The report of the CPCB (dated 13.11.2019) lists out observations especially the deficiencies noted at the time of inspection and tellingly remarks that:

“Other Observations:

- As per Rule 15(y) of Solid Waste Management (SWM) Rules, 2016 “The local authorities and Panchayats shall make an application in Form -I for grant of authorization for setting up waste processing, treatment or disposal facility, if the volume of waste is exceeding five metric tons per day including sanitary landfills from the State Pollution Control Board or the Pollution control Committee, as the case may be.” Cantonment Board Mathura has applied for grant of the authorization for setting up a waste processing facility in Feb, 2017 (Annexure - II) but authorization has not been granted by the U.P. Pollution Control Board (UPPCB) till date.
  - As per SWM Rules, 2016, Buffer zone is defined as “zone of no development to be maintained around solid waste processing and disposal facility, exceeding 5 TPD of installed capacity. This will be maintained within total land area allotted for the solid waste processing and disposal facility.
    - As per CPCB Guideline on “Provision of Buffer zone around waste processing and disposal facilities”, for the purpose of addressing the required protection from adverse impacts, separation distance is measured from the tip of core SWM facility processing boundary, as the source of emission, to the nearest boundary of the property of sensitive receptors.
    - Land of 200-500 m from the boundary of the processing unit is excluded for setting up the facilities but it is mandatory outside the project site as “No development area” for 30 years.
    - No development area can be utilized for agriculture purpose.
- As measured from Google Earth app, separation distance from the tip of core SWM facility processing boundary and waste dumping area to River Yamuna is about 200 m out of which 70 m is from plant boundary to River Yamuna.

- Approximately 100-200 tons of mixed waste was found dumped in the dumping yard during the visit.
- Dumping yard is not properly lined and mixed solid waste collected is directly dumped on land which may cause leachate seepage to the ground water during rain. (Enclosed as Photo 1 of Annexure - I)
- It was observed that the segregation of waste was being performed manually and was not up to the mark. Workers segregating the waste were not wearing masks, safety shoes and gloves during the visit. (Enclosed as Photo 2 of Annexure)
- +80 mm waste residue was being dumped in an open and unlined pit inside the premises of the site (Enclosed as Photo 11 of Annexure I)
- No discharge from the trenching site was found meeting the river."

On the basis of those observations, remedial measures were suggested by the CPCB which included creation of a dumping yard for waste processing, building a boundary wall around the periphery forming a green belt of 10 mts width etc.

Having regard to the CPCB Report and the strange omission on the part of the Cantonment Board (arrayed as respondent No.2) to cause appearance, this Court is compelled to conclude that the concerns which led the NGT to issue directions, have not been addressed at all. Even if the appellant - Board's contentions that the Rules, 2016 provided a window period of two years were to be accepted, that period too had expired, when the inspection was conducted after this Court's order dated 27.09.2019.

In view of these circumstances, this Court is of the opinion that a case for interfering with the substantive directions of the NGT has not been made out. It is important to notice here that the Water (Prevention and Control of Pollution) Act, 1974 and the Air

(Prevention and Control of Pollution) Act, 1981 clothe the appellant - Board with sufficient power not only to issue orders but to take appropriate action including directing / withholding essential services such as supply of water and electricity or any other amenity. It is noteworthy that irrespective of the operation of the 2016 Rules, the nature of the waste dumping of the river bed called for action on the part of the appellant - Board which chose to be a mute bystander.

In view of the above discussion, this Court is of the opinion that the directions contained in the impugned order do not call for interference except modification of the quantum of compensation directed to be paid which is hereby reduced to Rs.1 lac insofar as the present appellant - Board is concerned.

In view of the submissions made by the appellant - Board with respect to its power to prosecute, we are of the opinion that now there is no impediment in that regard and suitable action may be initiated at the earliest.

The appeal is partly allowed in the above terms.

.....J.  
[K.M. JOSEPH]

.....J.  
[S. RAVINDRA BHAT]

NEW DELHI;  
AUGUST 26, 2021

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 8166/2017

U.P POLLUTION CONTROL BOARD

Appellant(s)

VERSUS

TAPESH BHARDWAJ & ORS.

Respondent(s)

( IA No. 43334/2017 - EXEMPTION FROM FILING O.T. and IA No. 43335/2017 - STAY APPLICATION)

Date : 26-08-2021 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH  
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Appellant(s) Mr. Pradeep Misra, AOR  
Mr. Daleep Dhyani, Adv.  
Mr. Suraj Singh, Adv.  
Mr. Manoj Kumar Sharma, Adv.  
Mr. Bhuwan Chandra, Adv.

For Respondent(s) Ms. Taruna Ardhendumauli Prasad, AOR  
Mr. Sarthak Chaturvedi, Adv.  
Mr. Vaibhav Maheshwari, Adv.  
Mr. Rohit Pandey, Adv.  
Mr. Varad Dwivedi, Adv.  
Ms. Vaishali Singh, Adv.  
Mr. Aadarsh Prakash, Adv.  
Mr. Prabhu Singh, Adv.

Mr. Saurabh Mishra, AOR  
Mr. Onkar Singh, Adv.  
Mr. Aditya Mishra, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is partly allowed in terms of the signed order.

Pending application stands disposed of.

(MEENAKSHI KOHLI)  
ASTT. REGISTRAR-cum-PS

(RENU KAPOOR)  
BRANCH OFFICER

[Signed order is placed on the file]