

Item No. 01

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 544/2019

Dr. Kiran Ramdas Kamble & Anr.

Applicant(s)

Versus

State of Maharashtra

Respondent

Date of hearing: 11.02.2022

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

Respondent: Mr. Mahesh Pathak, Principal Secretary, UD, Govt. of Maharashtra
Mr. Mukesh Verma, Advocate for MPCB

ORDER

1. Question for consideration is the remedial action for failure of the Trimbakeshwar Municipal Council and other concerned authorities of the State of Maharashtra in preventing discharge of Municipal waste into river joining Godavari, in violation of judgement of the Hon'ble Supreme Court in *Paryavaran Suraksha v. UOI, (2017) 5 SCC 326*. The matter has been considered five times earlier – on 8.8.2019, 4.2.2020, 28.10.2020, 28.6.2021 and 16.9.2021 in the last more than two years, apart from orders in other cases on the subject, including an order in the presence of the Chief Secretary of the State on 24.01.2020 in O.A No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues. Each time finding apathy and noncompliance on the part of the authorities, directions were issued for

remedial action but unfortunately the situation remains unremedied to the detriment of environment and public health, forcing living beings to drink contaminated water resulting in water associated diseases at times leading to death, in flagrant violation of Constitutional mandate and binding directions of Hon'ble Supreme Court and this Tribunal, with no coercive action against such serious violators. Such lawless attitude of the authorities is disappointing and against human rights and we hope the authorities will realise their responsibility in the matter and remedy the situation. This unfortunate situation is continuing though Trimbakeshwar is holy place of great significance attracting devotees from all over the world, besides being the origin of river Godavari and lifeline of Maharashtra, Telangana, Andhra Pradesh, Chhattisgarh and Odisha.

Procedural History

2. Proceedings in this matter were initiated vide order dated 08.08.2019. A report was sought from the Collector, District Nasik and the State PCB. Report dated 10.10.2019 filed in pursuance of above acknowledged violations without remedial action. The Tribunal directed the Secretary, Urban Development (Local Bodies), Maharashtra to ensure preventing sewage being discharged into the river, taking necessary measures for proper functioning of STP. The matter has also been considered thereafter on 04.02.2020, 28.10.2020, 28.6.2021 and 16.09.2021. The Tribunal noted continuous violations permitting the untreated sewage to be discharged into the River is a criminal offence and also breach of mining directions of the Hon'ble Supreme Court. In view of gross carelessness and failure of the State Authorities, the Tribunal directed the Chief Secretary, Maharashtra to personally look into the matter and remedy the unsatisfactory state of affairs and also

take action against the erring officers. The State was directed to deposit a sum of Rs. 1 Crore as interim compensation with the Collector of the District for restoration of the water quality of River Godavari. Operative part of the order is reproduced below:-

“1to6.....xxx.....xxx.....xxx

7. No compliance report has been filed by the Chief Secretary, Maharashtra till date even though the matter was deferred five times i.e. 23.02.2021, 13.04.2021, 18.05.2021, 28.06.2021 and 16.09.2021. However, a ‘Compliance Report’ has been filed by the Joint Secretary, Urban Development which does not address the issue of either fixing accountability for the continued violation of law nor gives any information of stopping such violation. What is said to be ‘compliance’ is misleading. It only mentions either formal action or steps proposed which is almost same as mentioned earlier with hardly any further development though the matter has been taken up after almost one year. The State PCB has also utterly failed in discharging its statutory duty under the Water Act or prosecuting the violators or recovering compensation on ‘polluter pays’ principle to restore the damage to the water. No data has been furnished to water quality of the river at relevant point, output results of STP or arrangement to prevent pollution till proposed action is completed on a future date. No comprehensive plan to ensure that entire sewage of Trimbakeshwar and nearby areas is received at the STP with sewage utilization scheme so that no sewage enters into the river. There is nothing to show that steps have been taken to ensure that drains remain essentially as storm water drains and no garbage etc. is dumped. Water quality of river is not depicted. In view of importance of Trimbakeshwar, it is necessary to have proper environment management plan, duly executed and monitored by the Secretary, Environment and District Magistrate, Nasik. The table of alleged compliance is as follows:-

Sr. No.	Description	Previous submitted action plan	Compliance Report
A	Refurbishment of Existing STP (1 MLD)		
1.	Removal of Consent to operate STP by MPCB	<ul style="list-style-type: none"> • Trimbak Municipal Council to apply for renewal proposal and to get it done within 3 months 	<ul style="list-style-type: none"> • The Maharashtra Pollution Control Board has given consent vide their letter dated 09.09.2020 to operate STP. • The point is compiled.
2.	Providing flow meters to inlet and outlet to measure discharge of STP in consultation of MJP	<ul style="list-style-type: none"> • Trimbak Municipal Council to get it done within 3 months. 	<ul style="list-style-type: none"> • The Trimbak Municipal Council has installed flow meters at inlet and outlet to measure discharge of STP.

			<ul style="list-style-type: none"> The point is compiled.
3.	Making estimates for upgrading and repairing existing STP in consultation of MJP	<ul style="list-style-type: none"> Trimbak Municipal Council to get it done within 1 month. 	<ul style="list-style-type: none"> Trimbak Municipal Council has prepared estimates for upgrading and repairing existing STP in consultation of MJP. The point is compiled.
4.	Taking Technical Sanction for existing STP and Administrative Approval from Hon. Collector, Nashik	<ul style="list-style-type: none"> Trimbak Municipal Council to apply for renewal proposal and to get it done within 3 months. 	<ul style="list-style-type: none"> The Maharashtra Jeevan Pradhikaran has granted Technical Sanction for up-gradation and repairing of existing STP vide order dated 17.02.2021. The Collector, Nashik has given administrative approval for up-gradation and repairing of existing STP work of Rs. 1.07 Cr vide order dated 22.06.2021. The point is compiled.
5.	Completion of renovation work for existing STP	<ul style="list-style-type: none"> Trimbak Municipal Council to apply for renewal proposal and to get it done within 6 months from AA. 	<ul style="list-style-type: none"> Trimbak Municipal Council will complete the renovation and work of existing STP within 6 months i.e. before 31st December, 2021.
B	For Augmentation of STP Capacity - New scheme STP (5 MLD)		
6.	To make Land available for STP	<ul style="list-style-type: none"> Trimbak Municipal Council to make availability of land within 3 months. 	<ul style="list-style-type: none"> The Land for STP is reserved in Development Plan of Trimbak Municipal Council. The proposal for its acquisition is submitted to Collector, Nashik. The land will be acquired at the earliest.
7.	Seeking Technical Sanction for newly proposed Sewerage scheme from competent authority of MJP	<ul style="list-style-type: none"> Trimbak Municipal Council to apply for renewal proposal and to get it done within 3 months. 	<ul style="list-style-type: none"> The Maharashtra Jeevan Pradhikaran has granted Technical Sanction for new scheme of Rs. 34 Cr. on 23.06.2021.
8.	Administrative Approval to Trimbak City Sewerage scheme from State Urban Development Department under Maharashtra Suvarna Jayanti Nagarothan Mahaabhiyan Scheme	<ul style="list-style-type: none"> Timeline:- 31st August, 2020 	<ul style="list-style-type: none"> The State Level Project Sanctioning Committee has approved the Sewerage scheme of Rs. 34/- Cr for Trimbak City under Suvarna Jayanti Nagarothan Mahaabhiyan on 24.06.2021.

9.	Completion of work	<ul style="list-style-type: none"> • Trimbak Municipal Council to complete the project by 31st August, 2022 	<ul style="list-style-type: none"> • Trimbak Municipal Council will complete the project by 31st August, 2023.
10.	100%, treatment generation of Sewage and achieving effluent discharge standards for STP	<ul style="list-style-type: none"> • Trimbak Municipal Council to get it done within 6 months from completion of work 	<ul style="list-style-type: none"> • Trimbak Municipal Council will get it done within 6 months from completion of work.
11.	Utilization of treated sewage	<ul style="list-style-type: none"> • Trimbak Municipal Council to include this component in DPR 	<ul style="list-style-type: none"> • Trimbak Municipal Council has already included this work in the DPR of newly approved Sewage project.
		<ul style="list-style-type: none"> • The COVID-19 situation and restrictions has hampered the progress of compliance, but the Trimbak Municipal Council is committed to complete the works as per compliance report submitted herein above. 	
12.	Preparation of Standard DPRs for Sewage projects in State	<ul style="list-style-type: none"> • Maharashtra Jeevan Pradhikaran was directed to prepare Standard DPRs for Sewage Projects vide letter dated 25.11.2020. The Maharashtra Jeevan Pradhikaran has submitted draft of Standard DPR for Sewage Projects. The is being processed and will be provided to all cities to ensure uniform and timely preparation of DPRs. 	

8. ***From the above, it is seen that there is no compliance in terms of orders of the Hon'ble Supreme Court or of this Tribunal of taking action against the erring officers for violation of law which is criminal offence or for preventing the continuing pollution of water or recovering compensation in terms of order of this Tribunal dated 24.01.2020 passed in the presence of the Chief Secretary, Maharashtra. There is no explanation for such gross dereliction of duty by the authorities in the State of Maharashtra resulting in continuous violation of the binding statutory/constitutional and statutory obligations including the judgment of the Hon'ble Supreme Court and orders of this Tribunal.***

9. ***Contamination of water sources is a punishable 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 in 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 Suraksha case¹ 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:***

¹(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.”²

“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

² State of Orissa v. Govt. of India, (2009) 5 SCC 492

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.³

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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 Composite Water Management Index (CWMI).*⁴ *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 water⁵. 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 GDP⁶. 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 695BCM. The total availability of water possible in country is still lower than this projected demand, at 1,137BCM. 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 people⁷ are facing acute water shortages. Critical groundwater resources – which account for 40% of our water supply – are being depleted at unsustainable rates.⁸*
- (iii) *Most states have achieved less than 50% of the total score in the augmentation of groundwater resources, highlighting the*

³ M.C. Mehta Vs Union of India- W.P. (Civil) No. 13029/1985 dated 25.11.2019

⁴ 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.

⁵Source: WRI Aqueduct; WHO Global Health Observatory

⁶Source: McKinsey & WRG, ‘Charting our water future’, 2009; World Bank; Times of India

⁷ Source: World Resource Institute

⁸ Source: World Resource Institute

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 people⁹.

(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.¹⁰

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 2013¹¹

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. In spite 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 2016¹², 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.

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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

⁹ Source: UN Water, ‘Managing water under uncertainty and risk’, 2010; World Bank (Hindustan Times, The Hindu).

¹⁰ <https://www.indiaspend.com/diarrhoea-took-more-lives-than-any-other-water-borne-disease-in-india-58143/>

¹¹ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106612>

¹² http://www.sulabhervis.nic.in/Database/STST_wastewater_2090.aspx July 16, updated on December 6, 2016

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 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.¹³

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“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.”¹⁴

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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 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***

¹³ INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION Vs. UNION OF INDIA AND OTHERS (1996) 5 SCC 281

¹⁴ M.C. Mehta v. Union of India, (2006) 3 SCC 399 – Public functionaries

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.”

10. *Only feeble plea put forward by the learned Counsel for the Municipal Council, Nasik is that it does not have adequate funds and that due to COVID, remedial action could not be taken. It is well settled that pollution free environment being a fundamental right, plea of absence of funds is not sustainable. Further, pollution only aggravates the COVID and other diseases. Instead of being justification for inaction against pollution, the situation calls for more stringent action to control the pollution in the interest of public health.*

11. ***In view of above, the stand of the authorities of Maharashtra is unfortunate. It shows lack of sensitivity to public duties and respect for binding law and orders of the Hon'ble Supreme Court and this Tribunal. Continuing violation of law, resulting in denial of right of the citizens to clean environment and also potential for damage to public health is against the rule of law guaranteed under the Constitution. Inaction of the authorities is like saying "we do not respect law, crime is permissible and we are party to it". Water pollution results in deaths and diseases and preventing it is as important obligation as preventing any other crime, to protect health of the citizens. Water pollution also results in depriving living creatures of source of drinking water.***

12. ***In view of seriousness of the situation and long continuing failure and neglect by the State authorities, we direct Chief Secretary, Maharashtra to personally look into the matter and take remedial action against erring officers in the light of binding orders of the Hon'ble Supreme Court and this Tribunal. The Chief Secretary may also ensure that a copy of this order is kept in ACR folders and personal files of the concerned erring officers. This order is without prejudice to prosecution of the concerned Officers for past and for continuing violation of the statutory provisions and orders of the Hon'ble Supreme Court and this Tribunal and liability under the polluter pays principle. We also direct the State of Maharashtra to deposit a sum of Rs. 1 crore as interim compensation with the Collector of the District which may be utilized for restoration of water quality of the river Trimbakeshwar, District Nasik.***

13. ***The Chief Secretary, Maharashtra may remain present in person by Video Conferencing on the next date along with action taken report."***

3. In pursuance of above, the Chief Secretary, Maharashtra has filed letter dated 10.02.2022 expressing inability to remain present in person today. However, an action taken report has been filed by the Chief Secretary on 06.01.2022. Principal Secretary, Urban Development

Department is present in person. The action taken report in tabular form is as follows:-

Sr. No.	Point	Action taken Report and Current Status
1	Refurbishment of Existing STP (Capacity 1 MLD) in the area of Trimbakeshwar Municipal Council	<ul style="list-style-type: none"> • The Trimbak Municipal Council completed the work of refurbishment of the existing 1 MLD STP through Maharashtra Suvarn Jayanti Nagarothan Mahabhiyan (District Level). This work costs to the tune of Rs.0.94 Cr and the entire cost is paid by the Government of Maharashtra. • Now, this STP is working properly.
2	Augmentation of STP Capacity through New Scheme (Capacity 5 MLD)	<ul style="list-style-type: none"> • A sewage project of Rs. 34.60 Cr with additional 5MLD STP capacity is sanctioned by the State Government on 24th June, 2021 under Maharashtra Suvarn Jayanti Nagarothan Mahabhiyan. • The issue of availability of land for STP has been resolved by the Trimbak Municipal Council and Collector, Nashik. Accordingly, the land for STP is purchased by the Trimbak Municipal Council. • The Trimbak Municipal Council has completed tendering and work order is issued on 02.12.2021. • The work of the project has been started and the expected date of completion of said sewage project is August, 2023. • The funding pattern of this scheme is 90% State and 10% ULB. According, the State Government has already released first instalment of Rs. 10.20 Cr to the Trimbakeshwar Municipal Council on 15.11.2021. • Similarly, Trimbakeshwar being in the tribal sub-plan area, the 10% of ULB share to be raised is being provided to the Trimbak Municipal Council from Tribal Sub Plan. Thus, this sewage scheme is 100% funded by the State Government.
3	Interim compensation of Rs. 1.0 Cr	<ul style="list-style-type: none"> • This Hon. Tribunal has directed the State Government of Maharashtra to deposit a sum of Rs.1 Cr as interim compensation with Collector of District Nashik for utilization of the restoration of water quality of the river at Trimbakeshwar, District Nashik. • Accordingly, the State Government has deposited Rs.1 Cr to the District Collector, Nashik on 15.11.2021. • The District Collector, Nashik has come up with pre-ozonization treatment at existing STP for restoration of water quality of the river at Trimbakeshwar.

		<ul style="list-style-type: none"> The preliminary proposal is submitted to Maharashtra Jeevan Pradhikaran for technical sanction. The said proposal will be implemented after technical sanction.
4	Action against concerned erring officers	<ul style="list-style-type: none"> The Collector, Nashik and Member Secretary Maharashtra Jeevan Pradhikaran have submitted report that none of the officials from their organization are responsible for delay in making arrangements of sewage treatment in Trimbakeshwar. However, the State Government has identified following officers as erring officers- <ol style="list-style-type: none"> Mr. Pravin Nikam, the then Chief Officer, Trimbak Municipal Council. Mrs. Chetana Kerure, the then Chief Officer, Trimbak Municipal Council. Mr. Sanjay Jadhav, Chief Officer (Present), Trimbak Municipal Council. Mr. Umesh Rathod, the then Engineer, Trimbak Municipal Council. Mr. Abhijeet Inamdar, Engineer (present), Trimbak Municipal Council. The State Government has initiated disciplinary proceedings against these 5 officers/ engineers and show cause notices have been issued to them.
5	Keeping copy of NGT order dated 16.09.2021 in the ACR folders and personal files of concerned erring officers.	<ul style="list-style-type: none"> As per directions of this Hon. Tribunal, a copy of the order dated 16.09.2021 has been placed in the ACR folders and personal files of the concerned erring officers mentioned at point no. 4
6	Preparation of Standard DPRs for Sewerage Projects in the State.	<ul style="list-style-type: none"> Government of Maharashtra through Urban Development Department has directed the Maharashtra Jeevan Pradhikaran to prepare a Standard DPR (Detail Project Report) for sewage Projects in the State. Accordingly, Maharashtra Jeevan Pradhikaran has submitted the Standard DPR for sewage Projects. The said Standard DPR is in the process of acceptance and on acceptance it will be provided to all ULBs.

4. The Municipal Council Trimbakeshwar has also filed an affidavit giving the analysis report of the water quality from the STP which is operational. However, the annexures do not specify location of sampling i.e. inlet/outlet. Water quality of receiving water body i.e. river Godavari and pollution load being carried by the two drains (Neelganga Nalla and Mhatarrood Nalla) have also not been provided, as required in terms of earlier order of this Tribunal.

5. It is seen that generation of sewage is in the range of 4.5 – 5.0 MLD while arrangement for treatment is only for 1 MLD sewage. **Remaining untreated sewage is being discharged into the river which is not fit even for bathing purpose as per primary water quality criteria but may be drunk by human and other living beings to the detriment of their health and** in violation of environmental laws and judgment of the Hon'ble Supreme Court in *Paryavaran Suraksha case*¹⁵ followed by directions of this Tribunal referred to above. We place on record our strong disapproval to the ki human conduct of the State of Maharashtra and its concerned officer for such situation and proposing action by August, 2023 inspite of repeated orders of this Tribunal in the last more than two years. We have not found any reason why such action could not have been taken earlier in view of Supreme Court orders of 2017 and why erring officers are not being prosecuted as directed by the Hon'ble Supreme Court. Disciplinary action appears to be an eye wash and wholly inadequate and not against senior officers who are real culprits for the situation. Regretfully, the authorities do not appear to have taken the trouble even to read the order. The report filed is incomplete. Information on cleaning of drains used for dumping sewage and garbage has not been given. Details of quantity of sewage generated from adjoining areas and the progress on underground sewerage needs to be ascertained so as to ensure remedial action. Comprehensive plan for Trimbakeshwar has to be in place, as directed earlier. No response has been given on these significant aspects.

6. Confronted with such failures, the Principal Secretary, UD, who is present by video conferencing has assured the Tribunal that immediate

¹⁵ (2017) 5 SCC 326

interim arrangements will be made to prevent untreated sewage being discharged into the river, pending permanent solution by way of setting up necessary STPs and directions earlier issued will now be complied with.

7. The Tribunal holds that direct discharge of sewage containing both organic and inorganic pollutant into the river Godavari is highly detrimental to the ecology and environment. The polluted water may also have serious negative impact on ecologically sensitive Madhmeshwar Birds Sanctuary in the area which is a Ramsar Site created from the backwater of dam on Godavari in Nashik District.

8. Let the Chief Secretary, Maharashtra ensure satisfactory action in the light of abovesaid observations, including meaningful coercive action against erring officers which may include prosecution, apart from disciplinary action as per directions of the Hon'ble Supreme Court, quoted earlier. Compliance affidavit of status as on 30.04.2022 be filed before 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. The District Magistrate, Nasik may, in coordination with concerned stakeholders, prepare and execute action plan for utilization of Rs. 1.0 crore deposited by the State Government for improving the environment consistent with the District Environment Plan. The Chief Secretary, Maharashtra may remain present in person on the next date by video conferencing.

List for further consideration on 18.05.2022.

A copy of this order be forwarded to the Chief Secretary, Maharashtra and District Magistrate, Nasik by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

February 11, 2022
Original Application No. 544/2019
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