

Item No.01

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 172/2016/EZ
(with M.A 01/2017/EZ M.A 124/2017/EZ
I.A. No. 59/2021/EZ I.A. No. 60/2021/EZ)

Sajay Laloo

Applicant

Versus

State of Meghalaya & Ors.

Respondent(s)

Date of hearing: 07.03.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. AMIT STHALEKAR JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA EXPERT MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr.Vivek Singh, Advocate

Respondent(s): Mr. Surendra Kumar, Advocate for R-10
Mr. Anirudh Bhattacharya, Advocate for R-1, 4, 6, 8 & 9
Dr. Ankit Todi, Advocate for R-2,3 & 5

ORDER

1. Prayer in this application is against failure of the State authorities in preventing pollution of river *Myntdu* in Meghalaya by discharge of sewage/garbage/muck, removing unauthorized encroachment from its flood plains and stopping illegal sand and stone mining activities in and around the river.

2. According to the applicant, the river is of great significance for Meghalaya. It encircles Jowai on three sides and flows across Jowai and then through Leshka (where a Hydro Project Dam is being constructed) to reach a village Borghat, within Jaintia Hills, before finally entering

Bangladesh. The river is subjected to heavy pollution. The pollution was highlighted in 2007 due to heavy acid content. Human waste and effluents from mines are regularly dumped into the river. Cars are washed beside the river. The media reports to that effect have been annexed. It is further stated that the Central Pollution Control Board (CPCB) published status of water quality in India which also confirms pollution of the river in question. This polluted river stretch is falling in priority V with BOD ranging from 3.0 to 6.0 mg/l. The water also contains heavy metals. Pollution level is continuously increasing due to inaction of the Municipal Board Jowai as well the State PCB and other State authorities in breach of public trust doctrine. The applicant has also annexed photographs and a copy of representation calling upon the authorities to take further action. Media reports show that the colour of the river had turned dark due to pollution. There was heavy amount of fecal coliform and heavy metals.

3. The application was filed on 30.11.2016. It first came up for hearing before the Eastern Zone Bench on 21.12.2016 when notice was issued to the respondents - the authorities of State of Meghalaya i.e. State PCB, Forest Department, Tourism Department, Jowai Municipal Board and also CPCB. Some of the respondents have filed their respective affidavits. The State PCB acknowledges that there is organic pollution due to discharge of untreated sewage and trade effluents but the affidavit does not indicate any action taken. The Forest Department has submitted that open mines are located within a span of less than 200 meters from the river but direction has been issued to ensure ban on mining. CPCB has stated that the authorities in State have to take remedial action as follows:

- a. *Untreated wastewater should not be discharged into river system.*
- b. *Sewage collection should be done through a proper conveyance system so that the entire sewage is collected and treated.*
- c. *Sewage Treatment plant shall be equipped with D.G. set which can be used in case of power failure, to ensure that the treatment is not interrupted.*
- d. *Suitable treatment shall be given so that treated effluent meets the prescribed standard as notified in General Standards for Discharge of Environmental Pollutants into inland surface, public sewers, land for irrigation, marine coastal areas under Schedule-VI of The Environment (Protection) Rules, 1986.*
- e. *Bio - medical rules should be implemented for prevention of discharge of hospital related waste into the river system.*
- f. *To prevent illegal encroachment all stakeholder agencies, make mechanism.*
- g. *Guidelines issued on idol immersion must be implemented by SPCBs and local authorities.*
- h. *Mass awareness programme should be organized to make the masses aware on maintaining the quality of the river water.”*

4. The Jowai Municipal Board has stated that it has practically no source of income to remedy the situation. Its garbage dumping ground has already reached saturation point. Waste management treatment plant to be funded by the Central Government is to be set up for which DPR was prepared. Similarly, CETP is to be set up. The Board has issued order under Section 144 Cr.P.C, prohibiting dumping of waste in the river. Directions have also been issued to stop car washing. The autonomous District Council has also been asked to take measures to protect the river.

5. The State of Meghalaya in its reply has acknowledged that waste is being dumped into the river and illegal mining is being conducted. The urban planning is poor and hygienic conditions are not ensured. There are rampant unauthorized constructions. Industries have been set up close to the river bed as there is no policy of the State on the subject. No

treatment plants to check pollution have been set up, as directed by the Hon'ble Supreme Court in *Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors.*¹The autonomous District Council, which is the competent authority, has been asked to take further measures. By affidavit filed on 16.08.2021, State has mentioned constitution of RRC and preparation of action plan for remedying the pollution of the river as per orders of this Tribunal in OA No. 673/2018. According to later affidavit of State PCB, quality of river water is satisfactory.

6. The matter has been taken up on several occasions and continued violations of law have been recorded inter-alia in orders dated 27.02.2017, 10.04.2017, 04.09.2017, 26.10.2017, 27.11.2017, 19.01.2018, 07.07.2021, 17.08.2021, 24.09.2021, 24.11.2021 and finally on 19.01.2022. Noticing the violations, the Tribunal directed remedial measures. Some of the specific directions may be referred to.

7. Vide order dated 24.11.2021, the Tribunal noted that as per earlier orders of this Tribunal, referred to in the said order, the Municipal Board was required to pay compensation of Rs. 10 lac per month for not setting up of STP and Rs. 5 lac per month for not taking interim remedial measures with effect from 01.04.2020, apart from stopping the pollution. The compensation amount was to be credited to a separate account with the Environment Department for restoration of the environment. The Tribunal also noted that other steps for setting up requisite STPs and waste management systems were required to be taken to enforce the right of citizens to clean environment under the Constitution. The Tribunal directed the State to ensure that there is no unscientific dumping of garbage into the river. District Magistrate was directed to

¹(2017) 5 SCC 236

visit the site and ensure that no muck dumping is done by the contractors of PWD.

8. In the last order dated 19.01.2022, the Tribunal noted the affidavit of Jowai Municipal Board and issued directions to the Deputy Commissioner, West Jaintia Hills, Principal Secretary, Urban Affairs Department, Govt. of Meghalaya to take remedial measures. CEO Jowai Municipal Board was directed to remain present in person.

9. In above background, we have heard learned Counsel for the appearing parties and duly considered the matter for further orders.

10. According to learned Counsel for the applicant, there is not much improvement in the ground situation. Pollution of the river is still taking place by dumping of waste and muck during road construction. Illegal mining and encroachments are also continuing.

11. There is no satisfactory rebuttal of the above stand. Thus, the situation is far from satisfactory. There can be no two views about need for protection of the river by preventing dumping of waste, muck, mined material, and untreated sewage in violation of Water Act, 1974 and binding orders of Hon'ble Supreme Court inter alia in Paryavaran Suraksha, supra and orders of this Tribunal inter alia in OA 597/2017 and OA 673/2018. Sewage has to be treated and the treated water to be utilized for suitable non-drinking purposes. Waste has to be properly remediated. Mining being hazardous has to be with due safeguards and due permissions. Encroachments are to be removed. Failure to do so is breach of public trust doctrine obligating the State authorities to protect environment and public health. Failure of such duties affects water quality and contaminated water may be consumed by living beings and

also used for irrigation, affecting food safety. Continued failure requires a coordinated approach, which is not visible from the stand of different authorities in the present case. There is nothing to show any coordination meetings at the level of Chief Secretary in terms of directions of this Tribunal in OA No. 606/2018. Leisurely process of DPR etc. is said to be pending without any accountability and adverse action against erring irresponsible officers, even though the deadline of 31.03.2018 fixed by the Hon'ble Supreme Court in *Paryavaran Suraksha (supra)* has long gone by. Similarly, all statutory timelines for solid waste management have long expired. To uphold rule of law and right to clean environment and public health, accountability for failure has to be fixed, particularly when the proceedings have been pending before this Tribunal for more than five years and several directions have been issued by the Tribunal in the last five years, yet there is continued violation of law.

12. The results of water sample analysis filed by the CPCB and the State PCB indicate that the tributaries of *Myntdu* river are highly polluted in terms of BOD and Fecal Coliform and Total Coliform. However, there is no clear gap analysis on sewage and solid waste management nor a clear road map to control discharge of effluents, including acidic effluents, regulation of mining activities and removal of encroachment in the catchment and flood plain zone of the river. Estimated sewage generation in Jowai is reported to be 3.0 MLD with zero treatment. Merely acquiring more land for dumping of solid waste is no solution. Instead, emphasis has to be on processing the same, rejects being managed with zero or minimal landfilling. There is no mention about legacy waste and its remediation which cannot be wished away.

13. Accordingly, we direct the Chief Secretary, Meghalaya to forthwith hold a meeting with all concerned departments, including Urban Affairs Department, Environment Department, Mining Department, District Magistrate and Jowai Municipal Board. Interaction may also be held with the statutory regulators – State PCB, SEIAA and Regional Officer of CPCB to take stock of the situation and to prepare remedial action plan. Compensation directed to be paid may be credited to a separate account and utilized as per action plan. Coercive action be taken against erring officers in terms of judgement of the Hon'ble Supreme Court and orders of this Tribunal.

14. Though this Tribunal, vide order dated 19.01.2022 had directed the CEO, Jowai Municipal Board to remain present in person but today neither he is present nor any explanation has been given by him explaining his absence. We, therefore, require the CEO, Jowai Municipal Board to furnish his explanation through the Chief Secretary, Meghalaya, for such default.

15. We expect a tangible action on the ground within next three months considering that reasonable timelines are already over with integration of all aspects, including the budgetary support. The process may be monitored at the level of the Chief Secretary and a report of status of compliance as on 30.06.2022 be filed before the Registrar, Eastern Zone Bench of NGT at Kolkata by 15.07.2022 by e-mail. The matter will now be listed for further hearing on 18.07.2022 when Chief Secretary, Meghalaya along with other concerned officers, including CEO, Jowai Municipal Board may remain present before the Tribunal, by video conferencing for further interaction.

List for further consideration on 18.07.2022.

A copy of this order be forwarded to the Chief Secretary, Meghalaya and CEO, Jowai Municipal Board by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Saibal Dasgupta, EM

Prof. A. Senthil Vel, EM

March 07, 2022
Original Application No. 172/2016/EZ
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