

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

(By Video Conferencing)

M.A. No. 26/2019

IN

Original Application No. 325/2015
I.A. No. 700/2019 & MA. No. 252/2019

(With Report dated 22.05.2020)

Lt. Col. Sarvadaman Singh Oberoi

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 01.06.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Respondent(s): Mr. Rajkumar, Advocate for CPCB
Mr. Shuvodeep Roy, Advocate for State of Assam

ORDER

1. This order is being passed in continuation of order dated 25.02.2020. The issue for consideration in the original application was identification, protection and restoration of water bodies in the State of Haryana. However, in the light of proceedings which took place, the scope of the application was extended to the entire country, in the interest of protection of environment.
2. The matter was last considered on 25.02.2020 in the light of the status report handed over during the hearing in pursuance of

earlier directions vide order dated 10.05.2019. Order dated 10.05.2019 *inter-alia* is as follows:-

- “2. This application was filed on 14.08.2015 before this Tribunal in the context of Gurgaon District and as per status report as on 09.03.2017 filed before this Tribunal on behalf of State of Haryana referred to in the order dated 20.07.2018, there are 1216 water bodies in the State of Haryana which are larger than 2.25 Ha and 123 water bodies which are in possession of the State in Gurgaon District while the total number of the water bodies are 641 (later corrected as 647) in Gurgaon District. The Tribunal directed that for 123 water bodies which are in possession of the State, steps be taken for their proper maintenance and restoration. **An exercise be undertaken in the entire State of Haryana to identify water bodies. On such identification, water bodies be assigned Unique Identification (UID) number and steps be taken for restoration.** Report was sought within six months.
3. Status report has been filed vide email dated 25.04.2019 by the Haryana Pond and Waste Water Management Authority (HPWWMA) stating that HPWWMA has been established under a State Act called the HPWWMA Act, 2018 notified on 23.10.2018 for development and protection of ponds and matters connected therewith. Pond has been defined as a tank or lake or any other inland water body having an area of 0.5 acre or more. The authority is to undertake survey and take steps for restoration of water bodies, PDMS (Pond Data management System) has been developed which can be accessed through “<http://hpwwma.org>”: DPMOs (District Pond Management Officers) are appointed for each District. As per PDMS data, 16306 ponds fall under the Panchayats and 265 ponds fall under the Urban Local Bodies. The same have been given UID numbers and work of development will be undertaken by DPD (Development and Panchayat Department). The work for connecting the ponds with the nearby canal network will be executed by the IWRD (Irrigation and water Resources Department). 200 most problematic and overflowing ponds will be addressed during 2019-20. 193 model ponds which are overlapping with the said 200 ponds will be developed in first phase for which a plan has been prepared.
4. The Gurgaon Metropolitan Development Authority (GMDA) has also given a report to the effect that water bodies in the District are owned by 20 different entities. Work of restoration of 123 water bodies was taken up which has been widened to improve 647 water bodies. In all 826 water bodies, as found as per record, the task involves identification and verification of data, review and categorization of water bodies, assigning UID numbers, preparation of maps and analysis of information in regard to size, restoration potential, etc. **20%**

of the water bodies are at risk due to discharge of untreated sewage, industrial effluents or waste water.

5. *Learned counsel for the applicant submits that not even a single water body has so far been taken up for restoration inspite of the exercise undertaken for identification of the water bodies. The steps for preventing dumping of solid waste or discharging of effluents are urgently required. The State of Haryana may take necessary steps in terms of the status report referred to in para 3 & 4 above as well as in the light of general directions which we propose to issue to all the States/UTs.*
6. ***There can be no dispute that the water bodies play significant role in recharge of ground water, preventing soil erosion, harnessing rain water and maintaining micro-climate in the area. Need for conservation and protection of water bodies is thus obvious. This requires involvement not only at the level of the State but also at the level of the community for which State needs to take initiative. The threat caused to the water bodies is by dumping of waste, discharge of effluents and encroachments. The steps required for restoration will include preparation and implementation of catchment area treatment plans, setting up of green belt and wherever viable setting up of bio-diversity parks around the water bodies, cleaning up of the garbage/debris and demarcation by the Revenue Department on identification survey and demarcation. Each water body is required to be given a geo-referenced-UID and an action plan is required for restoration and protection of each of the water bodies. In this view of the matter, need for conservation and protection of water bodies is not confined to the State of Haryana alone but extends to the whole country.***
7. ***The Hon'ble Supreme Court in Hinch Lal Tiwari v. Kamala Devi & Ors. (2001) 6 SCC 496 observed:***

“It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is

the best protection against knavish attempts to seek allotment in non-abadi sites.”

8. *The above observations advance the Public Trust Doctrine which is based on the principle that certain resources like air, water and forests have such great importance to the people as a whole that the same cannot be subject of private ownership. The same are gift of the nature and should be made freely available to the people. The Doctrine requires the State to protect such resources and not to permit them to be used for private or commercial purposes.¹ This concept is applicable to wetlands and all water bodies which is essential for protection of the environment. If the ponds and other such water bodies are not protected and conserved, this will in turn affect recharge of ground water, rain water harnessing and soil preservation.*
9. *Ground water conservation remains a challenge. This led the Hon'ble Supreme Court to direct constitution of the Central Ground Water Authority (CGWA) vide order reported in M.C Mehta v. Union of India & Ors, (1997) 11 SCC 312. The data compiled by the said authority shows that there are over exploited, critical and semi critical areas (OCS). The ground water is on the decline in the said areas. In this regard, it may be noted that vide order dated 11.07.2018 in W.P.C No. 4677/1985, M.C. Mehta v. Union of India and Ors., the Hon'ble Supreme Court noted the report of the Niti Ayog on "Composite Water Management Index", June 2018, in which it is stated, inter alia:*
- "In fact by 2020, 21 major cities, including Delhi, Bangalore and Hyderabad will be expected to reach zero groundwater levels, affecting access for 100 million people".*
10. *The Tribunal has, vide order dated 07.05.2019 in O.A No. 176/2015, Shailesh Singh Vs. Hotel Holiday Regency, Moradabad & Ors., directed the CGWA to prepare a policy for conservation of groundwater with a robust institutional mechanism for surveillance and monitoring with a view to enhance access to ground water for drinking purposes in OCS areas by way of appropriate replenishment practices which can be properly accounted and measured as well as to sustain the flood plains of rivers in terms of e-flows, augmentation of subterranean flows and preservation of other water bodies. The Tribunal also considered the matter in the context of Delhi, vide order dated 30.08.2018 in Original Application No. 496 of 2016, Tribunal on its own Motion Vs. Govt. of NCT of Delhi & Ors., and appointed a Committee headed by the former Judge of Delhi High Court to oversee the steps for conservation of ground water in Delhi. We also note the guidelines for National Lake Conservation Plan prepared by MoEF&CC in May 2008 as well as National Plan for Conservation of Aquatic Ecosystem (NPCA) prepared by*

¹ (1997) 1 SCC 388, M.C. Mehta vs Kamal Nath & Ors

MoEF&CC in November, 2016. Irrespective of the subject being covered by a particular State statute, **the protection of water bodies is an essential need for protection of environment as held in Hinch Lal Tiwari (Supra). Such requirement is covered by the 'Precautionary' principle as well as the 'Sustainable Development' principle which are required to be enforced by this Tribunal under Section 20 of the NGT Act, 2010.** The HPWWMA Act, 2018 covers only ponds having area of more than 0.5 acres. Thus ponds of lesser area have been left out of regulation under the said Act. This aspect needs to be addressed to the extent the same remains un-addressed not only in Haryana but throughout India to the extent the existing statutory framework or guidelines do not cover comprehensively the subject of restoration of all the water bodies. The definition of water body in the Haryana Act is as follows:

“the 'pond' means a tank or lake or any other inland water body having an area of 0.5 acre or more, whether it contains water or not, and mentioned in revenue records as talab, johar, tank or by any other name and includes green belt and the peripheral catchments areas, main feeder inlet and other inlets, bunds, weirs, sluices etc but does not include wet lands as notified by the Government from time to time.”

11. *The above definition shows that only ponds of area of more than 0.5 acres are sought to be restored under the statutory provisions of the said Act. While in terms of the orders of the Hon'ble Supreme Court in Hinch Lal Tiwari (Supra) even ponds of lesser area will be covered for being protected and restored. This is also imperative in terms of the concern raised in the order of Hon'ble Supreme Court dated 11.07.2018 in W.P.C Nos. 4677/1985, M.C. Mehta vs. Union of India &Ors. for conservation of ground water. If all water bodies including ponds of lesser area than 0.5 acre are not covered, this will affect the environment including recharge of ground water, harnessing of rain water, prevention of soil erosion and maintaining the micro climate. We may, however, clarify that focus may be on ponds, etc. recorded in the revenue record.*
12. **We may note that there are 351 polluted river stretches in India identified as such by the CPCB which need remediation. The matter is being considered by this Tribunal in Original Application No.673/2018, News item published in "The Hindu" authored by Shri Jacob Koshy titled "More river stretches are now critically polluted : CPCB. In O.A. No. 148/2016, Mahesh Chandra Saxena Vs. South Delhi Municipal Corporation &Ors., vide order dated 10.05.2019, it was observed that reuse of treated sewage water as well as restoration of water bodies are connected to ground water conservation, which in turn is connected to remedying the pollution of polluted river stretches.**

13. Thus to give effect to 'Precautionary' principle and 'Sustainable Development' principle, we direct all the States and UTs to review the existing framework of restoration all the water bodies by preparing an appropriate action plan. Such action plans may be prepared within three months and a report furnished to the CPCB. The CPCB may examine all such plans and furnish its comments to this Tribunal within two months thereafter. The Chief Secretaries of all the States/UTs in the course of undertaking monitoring exercise in pursuance of the order of this Tribunal in O.A No. 606/2018, Compliance of MSW Rules, 2016, may also include restoration of water bodies as one of the items as the same is also incidental to waste management which are covered by orders in O.A No. 606/2018, Compliance of MSW Rules, 2016.

14. The CPCB may prepare and place on its website guidelines in the matter of restoration of water bodies in the light of above order within one month."

3. On consideration of the status report filed before the Tribunal on

25.02.2020. The Tribunal observed:-

"3. In pursuance of the above, the learned counsel for the CPCB has handed over a status report during the course of hearing to the effect that indicative guidelines for restoration of water bodies have been uploaded on the website of the CPCB on 18.06.2019 but most the States have not submitted their action plans. Out of 435 locations monitored, 357 locations were not complying with the primary water quality criteria for bathing. CPCB constituted an expert committee vide order dated 28.08.2019 under the Chairmanship of MS, CPCB comprising, representatives of MoEF&CC, MoJS, MoHUA, IIT Delhi, officials of CPCB and DH-WQM-I as member convener. First meeting of the expert Committee was held on 16.09.2019. The Tribunal has suggested following actions:

S.No.	Activity proposed	Organization Responsible
1.	Identification and Geo-Tagging of Ponds or Lakes in the Country	NRSA, State Space Application Centre and Concerned State Departments
2.	Assessment of Water Quality of Ponds or lakes.	Through Laboratories approved under E(P) Act, 1986 by the Concerned State Department/ULBs/State Environment Dept./SPCB/PCC.
3.	Prioritization of Ponds or Lakes for restoration in consultation with the respective SPCB.	State Environment Dept./SPCB/PCC.
4.	Preparation and submission of	State Environment Dept./SPCB/PCC.

	<i>action plans for restoration of prioritized Ponds or Lakes to CPCB for random scrutiny of proposed action plans.</i>	
5.	<i>Execution of approved action plans.</i>	<i>State Environment Dept./SPCB/PCC under the overall supervision of Principal Secretary, Environment Department.</i>

The CPCB conducted a workshop on the subject on 30.01.2020.

4. *Learned counsel for the CPCB states that further progress in the matter is being monitored and a status report will be filed before the next date. It is stated that only 14 States/UTs have furnished information which is not complete while 22 States/UTs have not furnished any information.*

5. ***Having regard to the significance of the issue and unsatisfactory response of the States as shown above, we direct that the information may be furnished by all the States/UTs by March 31, 2020 positively to the CPCB failing which the States will be liable to pay compensation at the rate of Rs. 1 lakh per month till information is furnished. Payment of compensation will be the responsibility of the Chief Secretaries of the respective States/UTs. Since we are informed that plans for restoration furnished by some of the States run even upto ten years, we direct that the action plans should provide for commencement of the work by 01.04.2020 and conclusion by 31.03.2021. The CPCB will be at liberty to issue appropriate directions to all the States/UTs by for compliance. The Ministry of Jal Shakti is also at liberty to take further remedial action in the matter.***

6. *A copy of this order be sent to the CPCB and Chief Secretaries of all the States/UTs and Ministry of Jal Shakti by email for compliance.”*

4. Accordingly, CPCB has filed its further response on 22.05.2020 seeking further time on account of Covid-19 Pandemic. The State of Assam has also filed an application seeking further time by the States in furnishing information in terms of the paragraph 5 of the order dated 25.02.2020 quoted above. The Report dated 22.05.2020 inter-alia states as follows:-

“2.2 Response received from State/UTs:

After the latest NGT order dated 25.02.2020, CPCB has circulated a detailed format seeking information on no. of identified water bodies, location details, water quality status, compliance status w.r.t. designated best use, identified water bodies which require restoration, prioritization of water bodies requiring restoration, detailed action plans for restoration of identified polluted water bodies in light of the indicative guidelines circulated by CPCB to all the States/UTs.

Till 21.05.2020, 20 States (viz. Arunachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Odisha, Punjab, Sikkim, Telangana, Tripura) and 03 UTs (viz., Delhi, Puducherry and Lakshadweep) have responded out of which only 09 States viz., Bihar, Haryana, Himachal Pradesh, Jharkhand, Kerala, Maharashtra, Meghalaya, Odisha and Tripura and 02 UTs viz., Puducherry and Lakshadweep have provided information as per the format circulated by CPCB. State-wise status of information received by CPCB as on 21.05.2020 is detailed in the table below:

Sl. No.	Name of the State/UT	Date of receipt of response from the States/UTs subsequent to the order dated 25.02.2020 and a format circulated by CPCB vide letter dated 06.03.2020	Whether received information is as per the format circulated by CPCB (Yes/No)	Remarks
1.	Arunachal Pradesh	21.05.2020	No	
2.	Bihar	15.05.2020	Yes	
3.	Delhi	14.03.2020 and 27.03.2020	No	Sought time for submission of information
4.	Goa	06.05.2020	No	Information 'Nil'
5.	Gujarat	19.03.2020 and 11.05.2020	No	Sought information from the concerned departments

				<i>in the State</i>
6.	<i>Haryana</i>	<i>20.05.2020</i>	<i>Yes</i>	
7.	<i>Himachal Pradesh</i>	<i>20.03.2020, 27.04.2020 and 20.05.2020</i>	<i>Yes</i>	
8.	<i>Jammu & Kashmir</i>	<i>20.05.2020</i>	<i>No</i>	<i>Sought time for submission of information</i>
9.	<i>Jharkhand</i>	<i>19.05.2020</i>	<i>Yes</i>	
10.	<i>Karnataka</i>	<i>11.05.2020</i>	<i>No</i>	<i>Karnataka SPCB vide letter dated 16.03.2020 submitted information submitted by BWS & SB, Cauvery Niravari Nigama</i>
11.	<i>Kerala</i>	<i>19.05.2020</i>	<i>Yes</i>	<i>Kerala SPCB vide letter dated 17.03.2020 submitted information as per guidelines of CPCB</i>
12.	<i>Lakshadweep</i>	<i>21.03.2020</i>	<i>Yes</i>	
13.	<i>Madhya Pradesh</i>	<i>06.05.2020</i>	<i>No</i>	<i>Sought time for submission of information</i>
14.	<i>Maharashtra</i>	<i>31.03.2020</i>	<i>Yes</i>	
15.	<i>Manipur</i>	<i>30.03.2020</i>	<i>No</i>	<i>Sought time for submission of information</i>
16.	<i>Meghalaya</i>	<i>18.05.2020</i>	<i>Yes</i>	

17.	Mizoram	22.05.2020	No	
18.	Odisha	14.05.2020	Yes	
19.	Punjab	31.03.2020 and 06.04.2020	No	Sought time for submission of information
20.	Puducherry	21.05.2020	Yes	
21.	Sikkim	23.04.2020	No	But provided on-going activities with regard to wetlands
22.	Telangana	23.03.2020	No	
23.	Tripura	27.03.2020	Yes	”

5. Having regard to the fact situation noted above, we extend the time for the States to complete action in terms of order dated 25.02.2020 till 31.07.2020. The CPCB may thereafter file its report by 31.10.2020 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.
6. However, we wish to add a further direction having bearing on the subject. We have already noted the significance of protection and restoration of water bodies for the environment. The protection of water bodies not only add to availability of water for different purposes, it also contributes to recharge of ground and maintaining e-flow in the rivers, is congenial to micro climate in sub-watersheds as well as enhancing the natural aesthetics. While the rain water harvesting is certainly important, harvesting surplus water during excessive rains from any areas of catchment needs to be optimized by enhancing the capacity of the existing

ponds/water bodies, creation of water harvesting structures in the sub-watersheds to the extent possible, apart from setting up of additional water bodies/water harvesting structures wherever viable, utilizing available funds including under MGNREGA and involving the community at large at every level. Gram Panchayats can certainly play a significant role in the matter. Once adequate capacity enhancement of waterbodies takes place, excess flood/rain water can be channelized by using appropriate water harvesting techniques. This action needs to be coordinated by the District Magistrates in coordination with the Department of Irrigation and Flood Control or other concerned Departments such as Department of Rural Development/Urban Development/Local Bodies/Forests/Revenue etc. The District Magistrate may as far as possible hold a meeting of all the stakeholders for the purpose as per the District Environment Plan or Watershed Plan within one month from today. The District Magistrates may also ensure that as far as possible atleast one pond/water body must be restored in every village, apart from creation of any new pond/water body.

7. Action taken in this regard may be compiled at State level and reports furnished to the Chief Secretaries of the States by the concerned District Magistrates. Consolidated report of the State may thereafter be forwarded to the CPCB preferably by 31.08.2020 and CPCB may cover this aspect also in its meeting.

A copy of this order be sent to CPCB, Chief Secretaries, State PCBs/ PCCs of all States/UTs for being forwarded to all the District Magistrates and other concerned Departments and further

action in above terms. The District Magistrates may thereupon forward this order to all the levels of Panchayati Raj in their respective Districts.

The Chief Secretaries may also forward this order to their respective Extension/ Public Relation Departments for awareness and publicity.

A copy of this order be forwarded to the Ministry of Jal Shakti for appropriate action at their level by e-mail.

List for further consideration on 18.11.2020



Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Dr. Nagin Nanda, EM

June 1, 2020
O. A. No. 325/2015
A