

**Court No. - 39**

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**Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4003 of 2006**

**Petitioner :-** Re Ganga Pollution

**Respondent :-** State of U.P. and Others

**Counsel for Petitioner :-** Vijay Chandra Srivastava,A.K. Gupta,A.K. Srivastava,Amit Negi,Amit Shukla,Anil Tiwari,Arun Kumar,Arvind Agarwal,Ashfaq Husain,B.P. Singh Kachhawah,Baij Nath Yadav,Baleshwar Chaturvedi,D.B. Mishra,D.S. Mishra,Indramani Tripathi,Jagdish Tewari,K.C. Pandey,P.N. Mishra,Ravi Prakash Pandey,S.K. Srivastava,S.K. Tyagi,Shailesh Singh,Sharad Kr. Srivastava,Sunita Sharma,Surya Pratap Singh Parmar,Tarun Agarwal,Uttar Kumar Goswami,V.B. Singh,V.C. Mishra,Vivek Mishra,Yogesh Krishna Mishra

**Counsel for Respondent :-** C.S.C.,A.K. Mishra,Ajay Bhanot,Ajit Singh,Anjana Singh,Anjani Kumar Mishra,Anoop Trivedi,B.D. Shukla,Bheem Singh,C.L.Pandey,Chandan Sharma,Dr. H.N.Tripathi,H.N. Singh,H.P. Dubey,Hem Pratap Singh,Iqbal Ahmad,J.J.Munir,Jyotindra Misra A.G.,Kashif Zaidi,M.C. Chaturvedi,M.C. Tripathi,M.K.Alam,Mahesh Narain Singh,Manoj Kumar Singh,Mayank Agrawal,Mehboob Ahmad,Mohd.Khursheed Alam,Mridul Tripathi,N. Misra,Omprakash Yadav,P.S. Baghel,Pankaj Kumar Shukla,Prabhash Pandey,Pradeep Pandey,Pranjal Mehrotra,R.B. Shukla,Rajendra Kumar Misra,Rajesh Tripathi,Rajiv Lochan Shukla,Ravi Kant,S.A. Lari,S.D. Kautilya,S.G.Hasnain Addl.A.G.,S.M.A. Kazmi,S.P. Kesharwani,S.P. Singh,Santosh Kumar Shukla,Saumya Misra,Sudeep Harkauli,Sudhanshu Srivastava,Suneel Dubey,T.M.Khan,Tahir Husain,Tanmay Agarwal,Udai Chandani,Udayan Nandan,Umesh Narain Sharma,Vijay Kumar Rai,Vivek Birla,Vivek Verma,W.A. Hashmi

**Hon'ble Manoj Kumar Gupta,J.**

**Hon'ble Siddhartha Varma,J.**

**Hon'ble Ajit Kumar, J.**

Heard Sri A.K. Gupta, learned senior counsel, Amicus Curiae, Sri V.C. Srivastava, counsel for the petitioners, Sri H.N. Tripathi for U.P. Pollution Control Board, Sri Neeraj Tripathi, learned Additional Advocate General assisted by Sri Shashak Shekhar Singh and Sri Manu Ghildiyal for State respondents, Sri Anoop Trivedi, learned senior counsel assisted by Sri Vibhu Rai for Prayagraj Development Authority and Sri Satyavrat Sahai holding brief of Sri S.D. Kautilya for Nagar

Nigam, Prayagraj.

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The following affidavits have been filed in compliance of our previous orders dated 28.1.2021 and 9.02.2021:-

- (i) Affidavit of Special Secretary, Urban Development, Government of U.P., Lucknow on behalf of Department of Urban Development.
- (ii) Affidavit of Chairman, U.P. Pollution Control Board, Lucknow.
- (iii) Affidavit of Garrison Engineer (Project), Allahabad.
- (iv) Affidavit of Officer Incharge, Magh Mela, Prayagraj.

Sri Arun Kumar Gupta, Amicus has filed an application to bring on record certain facts. The petitioner in Civil Misc. Writ Petition No.4003 of 2006 has filed a supplementary affidavit to show that still there is no improvement in the quality of water of river Ganga and Yamuna. We shall deal with various aspects one by one.

#### **Untapped Drains/Nalas:-**

The Managing Director, U.P. Jal Nigam, Lucknow in his communication dated 20.2.2021 to Additional Chief Secretary, Urban Development, Vibhag-5, U.P. Govt. has admitted that out of 74 drains/nalas in city of Prayagraj, 48 are untapped and 10 are temporarily tapped. He had requested for sanction of Rs.1 crore for preparing detailed project report for tapping these drains/nalas. He has stated that four months would be required in preparing DPR and twenty four months to complete the project, from the date DPR is approved by National Mission for Clean Ganga (hereinafter referred to as "NMCG").

As the said communication is dated 20.2.2021 and since then, more than eight months have elapsed, we asked Sri Neeraj Tripathi, learned Additional Advocate General to apprise the Court of the steps taken in this behalf. However, he is not in a position to apprise the

Court about the latest development. He, however, assures the Court that he will personally follow the matter with the Government and would file fresh affidavit bringing on record the latest developments.

We hope and trust that the Additional Secretary, Urban Development Department, Govt. of U.P., Lucknow and the Managing Director, U.P. Jal Nigam, Lucknow shall take immediate steps for preparing DPR, if not already prepared, obtain approval of NMCG and sanction necessary finances, and progress made in this regard, shall be brought on record by means of their personal affidavits.

#### **Water Quality of the two Rivers:-**

A. We have noted in our previous order that there had been complaints that during night time, the sewerage treatment plants are shut down and the sewerage water is directly discharged in the rivers.

In the above backdrop, we called upon the U.P. Pollution Control Board to clarify whether any sampling of effluents from sewerage treatment plants is done during night time or not. In response thereto, an affidavit has been filed by the Chairman, U.P. Pollution Control Board, Lucknow dated 17.02.2021 stating that samples of water are not generally taken after sun set and before sun rise. It has further been stated that after the above query was made, samples were taken from the two rivers on 11.2.2021 after sun set and before sun rise and the test report shows no remarkable variation.

We are not ready to accept the said conclusion merely on basis of report of a single sample taken on 11.2.2021.

Dr. H.N. Tripathi, learned counsel appearing on behalf of U.P. Pollution Control Board very fairly submitted that if this Court directs, then samples from the two rivers shall be drawn at night at different times on regular basis and comparison shall be made with the test reports of samples drawn during day time.

We accept the suggestion and direct U.P. Pollution Control Board to act accordingly and bring on record its report in this behalf on the next date.

**B.** The affidavit filed on behalf of U.P. Pollution Control Board states that samples drawn from untapped nalas, which are being treated by process of bio-remediation, are found meeting the general standard prescribed for discharge of environmental pollutants in the river.

Sri A.K. Gupta, Amicus and Sri V.C. Srivastava vehemently disputed the correctness of the same and submitted that at the point of discharge of effluents from untapped nalas, which are being treated by so called process of bio-remediation, it is visible to naked eyes that there is discolouration of the water. It emits foul smell and water is not fit even for bathing. According to him, the samples are not drawn from the point where untreated nalas are meeting the rivers, but from midstream where the quality of water undergoes a significant improvement on account of mixing with the water coming from upstream.

Having regard to the above controversy, we sought suggestions from learned counsel for the parties. They are *ad idem* in suggesting that a Committee be constituted by this Court which may get samples drawn from different points and the samples be got tested from independent agencies, apart from U.P. Pollution Control Board.

We welcome the suggestion and accordingly we constitute a Committee for the said purpose comprising of the following:-

- i. Sri A.K. Gupta, Senior Advocate, Amicus Curiae
- ii. Sri V.C. Srivastava, Advocate
- iii. Sri J.N. Maurya, Chief Standing Counsel and Standing Counsel of U.P. Pollution Control Board.
- iv. Sri Rajesh Tripathi, Standing Counsel of Union of India
- v. Sri Manu Ghildiyal, Brief Holder of State of U.P.
- vi. Sri Chandan Sharma Advocate

A.D.M. City, Prayagraj will act as Co-ordinator of the said Committee and shall facilitate the Committee in all respect in discharging its functions. The Regional Officer, U.P. Pollution Control Board alongwith his team of technicians shall remain present when required by the Committee for drawing the samples. The Amicus shall fix time for drawing samples and the A.D.M. City and Regional Officer, U.P. Pollution Control Board shall provide all assistance to the Committee.

Four number of samples from each point shall be drawn. One set shall be used by U.P. Pollution control Board for testing and the report thereof shall be supplied to this Court in a sealed cover on or before the next date. Two set of each sample shall be sent for testing to I.I.T., Kanpur and I.I.T., B.H.U. One set of each sample shall be preserved and shall be produced before this Court on the next date of hearing.

We request the Director, I.I.T. Kanpur and Director, I.I.T., B.H.U. to assist the Court in getting the samples tested and submit report in a sealed cover directly to this Court through the Registrar General so as to be available on or before the next date.

**Electric Crematorium and Shifting of Burial places which are in close vicinity of bathing Ghats:-**

(A) We have been informed by learned Amicus Curiae that there are two electric crematorium in Allahabad and most of the time, they are non-functional. However, Sri Neeraj Tripathi, learned Additional Advocate General, after seeking information, stated that both the crematoriums are in working condition at the present moment.

It is not disputed before us that many a times, one or the other electric crematorium is non-functional. Moreover, when there is power rostering or fault in the electric supply system, the crematoriums are thrown unoperational because of lack of alternative source of power. We have also been informed that the premises where these electric

crematoriums are located do not have proper arrangement for sitting, drinking water, lavatory and it dissuades a person from availing the services of electric crematorium.

It is high time when the Government and Nagar Nigam should act in coordination with each other in improving the quality of infrastructure of electric crematoriums so that more and more people are attracted to avail the said service instead of burying the bodies on open ghats, adding to the gradual depletion of forest cover and pollution in the two rivers.

We accordingly direct the Nagar Ayukt, Nagar Nigam, Prayagraj to forthwith make proper arrangements for non-stop running of electric crematoriums. There should be proper backup arrangement for power supply, basic amenities for sitting, drinking water and toilets. The Nagar Ayukt shall file his personal affidavit disclosing the steps taken by him in compliance of the above direction. We also call upon the Nagar Ayukt, Nagar Nigam Prayagraj and Additional Secretary, Urban Development, to take up the issue on urgent basis and submit a report to this Court in respect of the measures which they propose to take so as to improve the infrastructure of the two crematoriums.

**(B)** The Amicus Curiae informed us that burial place at Rasoolabad is just next to the bathing ghat. There is another burial ground on Phaphamau side which is also very near the bathing ghat. Similar is the situation at various other places along the river bed of Ganges. The ashes after burial are washed into the river Ganga.

We require the Nagar Nigam Prayagraj and Prayagraj Development Authority, Prayagraj to apprise the Court of any scheme or plan framed by them in this behalf and how they intend to tackle the problem.

**Unauthorized Constructions along the bed of the two Rivers:-**

(A) The Amicus has pointed out that the Irrigation Department had constructed a five kilometers long and thirty meters wide canal by digging sand bed of river Ganga, opposite the city side of Varanasi. Several crores rupees was spent in constructing the same. The said structure got washed away during recent rains in the month of July and August, 2021. It had disturbed the entire eco system of river Ganges, apart from resulting in wastage of precious public money. In support of his contention, he has placed reliance on a news item published in “Hindustan Times” (Annexure-2 to his application). He further submitted that at Lalita Ghat, Varanasi, a pukka platform measuring about 150 meters in length is coming up along the river Ganges by constructing a wall in the river bed and dumping the debris generated during execution of Kashi Corridor Project. According to him, various experts, environmentalists and conservators have opined that it will not only destroy the eco system of the river but will enhance pollution by creating artificial barrier where there would be stagnant water. It will interfere with the natural crescent shape of Ganga at Varanasi and will also result in erosion of the ghats.

Sri Neeraj Tripathi, learned Additional Advocate General seeks time to bring on record the complete facts on the above aspects.

Having regard to the submissions made, we require the General Manager, Irrigation Department to file his personal affidavit giving complete facts in respect of the construction of the canal in the bed of the river Ganga which was allegedly washed away during recent monsoon. We also direct the Vice Chairman, Varanasi Development Authority and District Magistrate, Varanasi to file their personal affidavits giving details of the pukka constructions which have been made or are underway or are proposed in or along the bed of the river Ganga in District Varanasi, by the next date.

(B) The Amicus Curiae has also informed the Court that Prayagraj Development Authority has launched Nav Prayagam Yojna at Naini near new Yamuna bridge, along the bank of river Yamuna which is directly in violation and contempt of order of this Court dated 22.4.2011. He submitted that there are some other projects also being planned by Prayagraj Development Authority along the bed of two rivers, falling within the prohibited area as per order dated 22.4.2011. He submitted that to the best of his knowledge, the above projects have been launched even without obtaining approval from NMCG. He further submitted that according to news items, the Prayagraj Development Authority, Prayagraj knowing fully well that the said land lies within the prohibited area and remains covered by water during monsoon season, had sought change of land use of the said land from the State Government and it is also in clear contempt of the order of this Court.

Learned counsel for Prayagraj Development Authority is not in a position to make any submission and seeks time to file affidavit on the said aspect.

We direct the Vice Chairman, Prayagraj Development Authority to file his personal affidavit disclosing the details of the projects which are proposed or are underway or have been completed within the prohibited area as per order dated 22.4.2011. In case, there is any such project, it shall be clarified whether approval of NMCG was taken in respect thereof or not. It shall also be clarified whether the State Government was apprised of the restraints under order dated 22.4.2011 while seeking approval of the projects from the State Government.

(C) The Amicus further submitted that a large number of private builders are illegally carving out plots along the river bed which lies within the prohibited area and are selling the same. He submitted that thousands of pukka houses have come up along both sides of the two rivers. The officials of Prayagraj Development Authority are turning

their blind eyes and not taking any action.

We also require the Vice Chairman, Prayagraj Development Authority to get a survey carried out for identifying such houses which have been constructed in violation of the prohibition placed by order dated 22.4.2011 and submit the list thereof alongwith his personal affidavit to be filed in the matter. We expect that the survey shall be carried out in a fair and non-discriminatory manner and double standard shall not be adopted in respect of any construction/person.

(D) The Amicus also submitted that in order to assist the Court, whenever any information is sought from the Prayagraj Development Authority or Nagar Nigam, Prayagraj or the office of District Magistrate, Prayagraj, the same is not made available. He submitted that on account of the said reason, he is unable to render proper assistance to this Court.

We expect from these authorities that henceforth they shall provide all assistance to the Amicus, so that he is in position to provide proper assistance to the Court.

**Sale and Recycling of Plastic bags and other items:-**

The Officer Incharge, Magh Mela, Prayagraj has filed his affidavit disclosing the efforts made by the authority to check, supply, sale and use of plastic bags in Mela area. It is noteworthy that the State Government by a notification dated 15.7.2018 has prohibited use, manufacture, sale, distribution, storage, transport, import and export of all kinds of plastic carry bags of thickness less than 50 microns w.e.f. 2.10.2018. We find that the said notification is not being implemented in its true spirit. Learned counsel for the Nagar Nigam, Prayagraj apprised us on the previous date that the Nagar Nigam is not able to enforce the same, as it was not getting proper assistance from the District administration and police authorities.

We accordingly direct the Commissioner, Allahabad Division, Allahabad to constitute a team comprising of a official of district administration not below the rank of A.D.M., officer of the police not below the rank of S.P. and officer of Nagar Nigam to supervise and implement the ban. The Commissioner shall call for status report from the said team on a fortnightly basis and shall personally supervise the implementation of the notification dated 15.7.2018 and shall file affidavit of compliance before this Court on the next date.

List on 12.11.2021 at 02:00 p.m.

**Order on Civil Misc. Application N0.283188 of 2017**

On behalf of Harish Chandra Research Institute, Chhatnag Road, Jhunsi, heard Sri M.C. Chaturvedi, learned senior counsel assisted by Sri Ravi Prakash Pandey for the applicant.

He seeks time to file affidavit disclosing the actual distance of the building under construction from the limit prescribed under order dated 22.04.2011. Accordingly, he is granted time to make the said disclosure, by filing supplementary affidavit by the next date.

**Order Date :- 29.10.2021**

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(Ajit Kumar, J.) (Siddhartha Varma, J.) (Manoj Kumar Gupta, J.)