

Item Nos. 01

Court No. 1

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

Original Application No. 125/2017

(With report dated 20.09.2019)

Court on its own Motion

Applicant(s)

Versus

State of Karnataka

Respondent(s)

Date of hearing: 21.10.2019

CORAM:

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

Mr. Raj Panjwani, Sr. Advocate as Amicus

For Respondent(s):

Mr. Devraj Ashok, Advocate for State of
Karnataka
Mr. Attin Shankar Rastogi, Advocate for
MoEF&CC
Mr. Rajkumar, Advocate for CPCB

ORDER

1. The issue for consideration relates to contamination of water bodies at Bengaluru - Bellandur lake, Agara lake and Varthur lake, inter-alia, on account of discharge of untreated sewage and other effluents from residential/commercial/industrial buildings in violation of statutory provisions of the Water (Prevention And Control of Pollution) Act, 1974, particularly Section 25 thereof. The said water bodies have been subjected to severe pollution on account of inefficient management of solid waste as well as discharge of untreated sewage, apart from industrial effluents. Toxic snowy froth

was widely reported in the media having potential health hazard. The Bellandur lake is said to be 130 years old across 9,000 acres of land. The lake was habitat for several species of birds, reptiles and aquatic life which is now severely affected by pollution. This has also affected ground water recharge. Waste dumping has resulted in foul stench around the lake. The major cause for foam formation is considered to be the discharge of untreated sewage through open drains. Requisite de-silting of the lake has not been done from time to time nor have steps been taken to stop the flow of untreated sewage into the water bodies. There is also failure to prevent dumping of municipal solid waste and undertaking other requisite measures on 'Precautionary Principle', such as plantation around the Tank of the lake, fencing of the lake, providing screens in major storm drains to prevent carry over waste, construction of adequate STPs and other equipment.

2. The matter has been monitored by this Tribunal in the last five years by way of different orders.
3. Vide order dated 07.05.2015 in *Original Application No. 222/2014, The Forward Foundation Vs. State of Karnataka & Ors.*,¹ the Tribunal dealt with the issue of encroachments around drains called Rajakaluves resulting in pollution of the water bodies and affecting the ecologically sensitive area of the above lakes. The Tribunal noted the order of the Karnataka High Court in *Environment Support Group and Another V. State of Karnataka*² appointing a Committee headed by Hon'ble Mr. Justice N.K. Patil to suggest remedial action to remove encroachments. The Central Government issued an advisory on the subject. Certain Projects were still allowed to be developed within the

¹ 2015 ALL (1) NGT REPORTER (2) (DELHI) 81

² Writ Petition No. 817/2008

prohibited range from the water bodies. The projects included Information Technology Park, residential apartments, malls, hotels and office buildings with or without Environmental Clearance.

4. After consideration of the matter and noticing encroachment on land by the land-mafia or otherwise and violation of environment norms, the Tribunal constituted a Committee to inspect the projects where encroachment was alleged on wetland and Rajakaluves and to submit a report about the adverse impact on the environment. The project proponents Mantri Techzone Private Limited, formerly called Manipal ETA P Ltd. and Core mind Software and Services Private Limited were required to pay compensation for damage to the environment. The said issue is said to be pending before the Hon'ble Supreme Court in *Civil Appeal No. 4829 of 2014 and 4832 of 2015*.
5. The report in pursuance of the above order was considered and the matter was then dealt with by judgment dated 04.05.2016 in *Forward Foundation & Ors v. State of Karnataka & Ors*³ The Tribunal directed that distance specified in the said order be maintained for any construction near the Rajakaluves, maintaining buffer/clean zone as no construction zone. STPs be upgraded to ensure that no untreated sewage is discharged in the water bodies. Water requirement in construction and operation phase should be assessed in advance. With regard to the project proponents being required to pay compensation for the damage to the environment and other matters, further directions were issued for restoration of the damage to the environment and further conditions being incorporated for the Environmental Clearance already granted.

³ 2016 NGTR (2) PB 1

6. Vide order dated 06.12.2018, there was further comprehensive review of the ground situation in the light of earlier orders and report of the Committee appointed by this Tribunal headed by Sh. Raj Panjwani, Sr. Advocate dated 31.05.2018. The said Committee visited the site on 14-15 April, 2018 and noted various fire incidents on account of burning of garbage and the extent of discharge of untreated waste water. The lake was found covered with a thick green cover with patches of foul smelling water. There was huge mounds of the de-weeded hydrophytes along with plastic waste etc. There was no facility to do composting at the site. Wet compost had potential for further damage. Dumping of municipal solid waste particularly the C&D waste was taking place. CCTV cameras were installed at five places with the sign board prohibiting dumping of garbage. Eight home guards were also said to have been deployed apart from 18 marshals. Four watchtowers were being constructed. The conclusion of the Committee was that the authorities had neglected their duties and had done too little too late. Foam was being formed in the lakes due to sustained inflow of sewage. Large number of illegal immigrants had encroached the buffer zone on the lake. Untreated sewage was being discharged into the lake through storm water drains. Untreated sewage was flowing into the lake through Rajakaluves which had also been encroached.
7. The water quality had high level of “Oil and Grease (24.74 mg/l) high BOD, (148 mg/l) COD (315 mg/l) and Sulphide (4.0 mg/l). The Dissolved Oxygen is reported nil for all locations in Bellandur and Varthur lakes and their inlets.” The study by the Indian Institute of Science, Bangalore found heavy metals in the lakes, sediments and

water. 873 complexes were found to have been identified which required STPs of which 496 had established STPs. 326 projects did not have STPs, out of 326, 271 projects were discharging sewage in the sewers with permission of the BWSSB. The remaining 55 complexes did not have any STP. The direction of the Tribunal to remedy the situation had not been complied with in letter and spirit and untreated effluents and sewage indiscriminately continued to pollute the lakes.

8. Varthur Lake was downstream of Bellandur Lake which was the second largest lake of the city with catchment area of 279 sq. km. and 96 cascading interlinked lakes. The Committee observed a horrific site. A wide road had been constructed in the lake bed which was over a kilometer long with an average width of 15 mts. and a depth of 4 mts. by using the debris.

9. Finally, following recommendations were made:

*“1. The crux of the present environmental disaster is indiscriminate discharge of untreated sewage into the lakes. Admittedly, currently approximately 183 MLD, if not more, of untreated sewage is being discharged into the lake. **This is nothing short of a state of environmental emergency.** Consequently, it is of utmost importance that the under construction and planned STPs are commissioned on a war footing. **The Commission is of the view that there is no proper justification on the part of the authorities not to expedite the completion of the STPs as indicated particularly in respect of the 150 MLD K & C Valley STP.** The authorities (BWSSB, BDA and KSPCB) must mobilize all available resources to ensure that the STPs are commissioned as expeditiously as possible preferably by March 2019 or within such time as this Hon'ble Tribunal may deem fit.*

*2. Less Phosphorous means less weeds in the water body. **One of the major source of Phosphate are***

soaps and detergents. In several countries stringent limits have been specified for Phosphate in soaps and detergents as it leads to eutrophication of water bodies. MoEF &CC in conjunction with other ministries need to prescribe limits for Phosphorus in soaps and detergents by progressively reducing it to 2.2% of permissible phosphorous content. The STPs that are being set up and those which have already been set up must provide for treating/removing Phosphorous and Nitrogen nutrients.

3. *As per the reports submitted before the Hon'ble Tribunal, the authorities have already identified all the sewage and effluent entry points into the lake. **Therefore it is imperative that the authorities must simultaneously ensure that all the sewage generated in the catchment area is channelized and linked to the Rajakaluves for appropriate treatment by the STPs.***
4. *No further channelization and concretization of Rajakaluves.*
5. **All existing and new industries or commercial establishments or apartments / townships or institutions within the catchment area of the lakes must be made Zero Discharge.**
6. (a) *The authorities must conduct a survey in the buffer zone of the lake to identify the encroachments and appropriate exercise should be undertaken to remove them.*
(b) *Complete Fencing of lake area including the buffer zone to prevent any further mushrooming of illegal encroachments. As per the reports submitted by the Authorities before this Hon'ble Tribunal, the fencing work is currently in progress at a fast pace and should be completed by 30.06.2018. The authorities must abide by the said timeline.*
7. (a) *The Commission recommends that CCTVs should be installed at appropriate locations for ensuring that no C&D waste is dumped in the buffer zone area of the lake.*
(b) *Security Guards should be deployed at the most vulnerable locations to keep vigilance on illegal dumping of debris and to prevent encroachment activities.*
(c) *In case anyone is found to be dumping C&D waste or debris into the lake or its buffer zone, a penalty of Rs. 5 Lakhs be imposed for each offence in terms of the Order passed by this Hon'ble Tribunal on 19.04.2017.*

8. No new facility or expansion of existing facility, whether for commercial or non-commercial purpose, to be permitted within the territorial jurisdiction of Municipal Corporations of catchment area of the lake, which generates sewage, until the commissioning of the STPs except public toilets.
9. No new facility or expansion of existing facility within 75 meters (buffer zone) of Rajakaluves / SWDs to be permitted. No fresh permission or sanction ought to be given by the municipal authorities to any project or facility within the buffer zone.
- 10. Structures, between 30-75 meters of Rajakaluves, which have already been constructed prior to 07.05.2015 (Forward Foundation Judgment) but are uninhabited, not to be occupied without the prior permission of the Hon'ble Tribunal and in any event not until the commissioning of the STPs in order to prevent generation of more sewage.**
- 11. Structures between 30-75meters of Rajakaluves, which are under construction, be restrained from constructing further without the prior permission of the Hon'ble Tribunal and in any event not until the commissioning of the STPs.**
12. Permission or sanction or consent or EC for structures between 30-75 meters of Rajakaluves where construction was below 25% of the total built up area as on 07.05.2015 (Forward Foundation Judgment) be withdrawn. The Hon'ble Tribunal may issue appropriate directions and orders keeping in view the interests of the buyers who would eventually suffer financial loss.
13. Strict Compliance of environmental laws for apartments/ townships or commercial establishments:

Sl. No	Violation	Environmental Damage
1.	Where STP is required as per the EC/ Consent, but the facility has not constructed the STP despite generating sewage.	Rs. 10 Lakhs per month from the date of completion certificate or date of completion
2.	Where actual capacity of STP is less than the capacity as shown in the	Rs. 20,000/- per day from the date of inspection till

	EC/ Consent.	final upgradation.
3.	Where the number of flats/ units actually constructed is more than the number of flats / units disclosed to KSPCB while obtaining Consent.	Rs. 1 Lakh per unit per month from the date of construction until the grant of fresh requisite consent.
4.	Where STP is not functioning or parameters are not being met or untreated sewage is being bypassed from the STP or being otherwise diverted.	Rs. 5 lakhs per default.

All damages so collected to be deposited in a separate account to be maintained by CPCB and to be exclusively utilized for upgradation, control and management of sewage.

14. The estimated 480 MLD of sewage, which flows into Bellandur Lake eventually via Varthur Lake, finally discharges into South Pinakini River, a tributary of River Cauvery. **Hence, it would be advisable that the de-siltation process of Bellandur Lake commences after reasonably treated water has reduced the pollutants, which have proved to be ecologically fatal for the lake.** As per the material on record, admittedly the storage capacity of the lake has decreased by 71.45%. Once the quality of water has improved, it would be ecologically fair that the treated water flowing from Rajkaluves into Bellandur is diverted towards the waste were leading to Varthur Lake. Thereafter the task of de-silting and de-sedimentation ought to be undertaken. The process of de-silting and de-sedimentation would restore the original storage capacity and ecology of the lake.
15. **The Commission observed that the current exercise of de-weeding is not only slow but also futile as the growth rate of the weeds is much more than the rate at which is being removed due to unhampered inflow of nutrients through the sewage.** The Commission is of the view that the exercise of de-silting and de-weeding can be carried out simultaneously since the water content would be substantially reduced due to the diversion of treated water. Post completion of de-silting and de-sedimentation process, the diversion so created for treated water can be removed.
16. Post removal of waste from the Lake and from the Rajakaluves, the State ought to prepare a detailed project report with respect to disposal of the same.

17. *The Commission is of the view that after achieving the above, the authorities must install adequate number of water fountains in order to sustain ecology of the lake water.*
18. **The Commission recommends constitution of a Task Force of experienced senior officers consisting of BDA, KSPCB, Minor Irrigation Department, Lake Development Authority, CPCB and a Professor from IIS for strict and timely implementation of the present recommendations.** *The Task Force can be headed by an independent individual preferably a former Expert Member of the Hon'ble Tribunal who may, after taking assistance of the other members, submit monthly action taken reports to this Hon'ble Tribunal.*
19. *The approximately over 1.5 km road laid upon the lake bed and within the boundary of Varthur lake by dumping of C & D debris should be removed forthwith. The entire project including laying of pipeline as per work order was to be completed within 24 months from June 2016.*
20. **Hon'ble Tribunal may order an independent enquiry to examine the guilt of the officers involved in the dumping of thousands of Cubic meter of C & D debris on the Varthurlake bed for an ostensible object of laying of pipeline.**
21. **Apparently there is absolute non-compliance of Construction and Demolition Waste Management Rules, 2016.** *The concerned authorities in compliance with the said rules should identify appropriate suitable sites for deposit of C & D debris. All environment clearances granted prior to or after the notification of the C & D Rules 2016 must comply with the same."*

(Emphasis added)

10. This Tribunal accepted the report and recorded that there was a serious failure on the part of the State of Karnataka and its Authorities in protecting the lakes by keeping it clear and free from encroachments. Accordingly, the Tribunal directed:

“25. There is thus, clear need to require the State and the BBMP to forthwith perform their duties to remedy the situation by preparing the requisite action plan, providing funds. In spite of admitted grave situation, the State/BBMP have not taken any coercive measures against polluters or the concerned officers for their failure. No prosecution is shown to have been launched. No serious steps are shown to have been taken to remedy the situation. Thus, the State and BBMP are also liable to pay compensation for the past failure. We have heard detailed submissions on the subject as well as quantum of the amount to be paid/set apart and the mechanism to be followed.

26. Accordingly, having regard to the facts and circumstances, we find it appropriate and necessary to issue following directions:

- i. Recommendations of the Committee dated 31.05.2018 may be carried out with a view to ensure that no polluted waste water is discharged into the water bodies and no solid waste is dumped therein. The encroachments from catchment areas must be removed. Karnataka SPCB in consultation with the CPCB may set up Real Time Water Quality Monitoring Systems in three lakes at appropriate locations to monitor parameters which are critical like Dissolved Oxygen, Ammonia and others. The online data may be displayed for information. The activities around the three lakes may also be monitored by using drones and satellite imageries.
- ii. Overall responsibility to carry out these directions will be of the Additional Chief Secretary, Urban Development (UD), Karnataka and the BBMP. An action plan be prepared by the State/BBMP forthwith, within one month from today, indicating the timelines for the actions including

the budgetary provisions and same should be placed on the website of State UD and BBMP. Execution of such plan may be completed by 30.06.2019.

iii. The compliance of the above directions will be overseen by a Committee as follows:

A. Justice Santosh Hegde, former Judge, Supreme Court of India – Chairman

B. Professor T.V. Ramachandra, Indian Institute of Science, Bangalore- Member

C. Nominee of Central Pollution Control Board who should be a senior level officer- Member

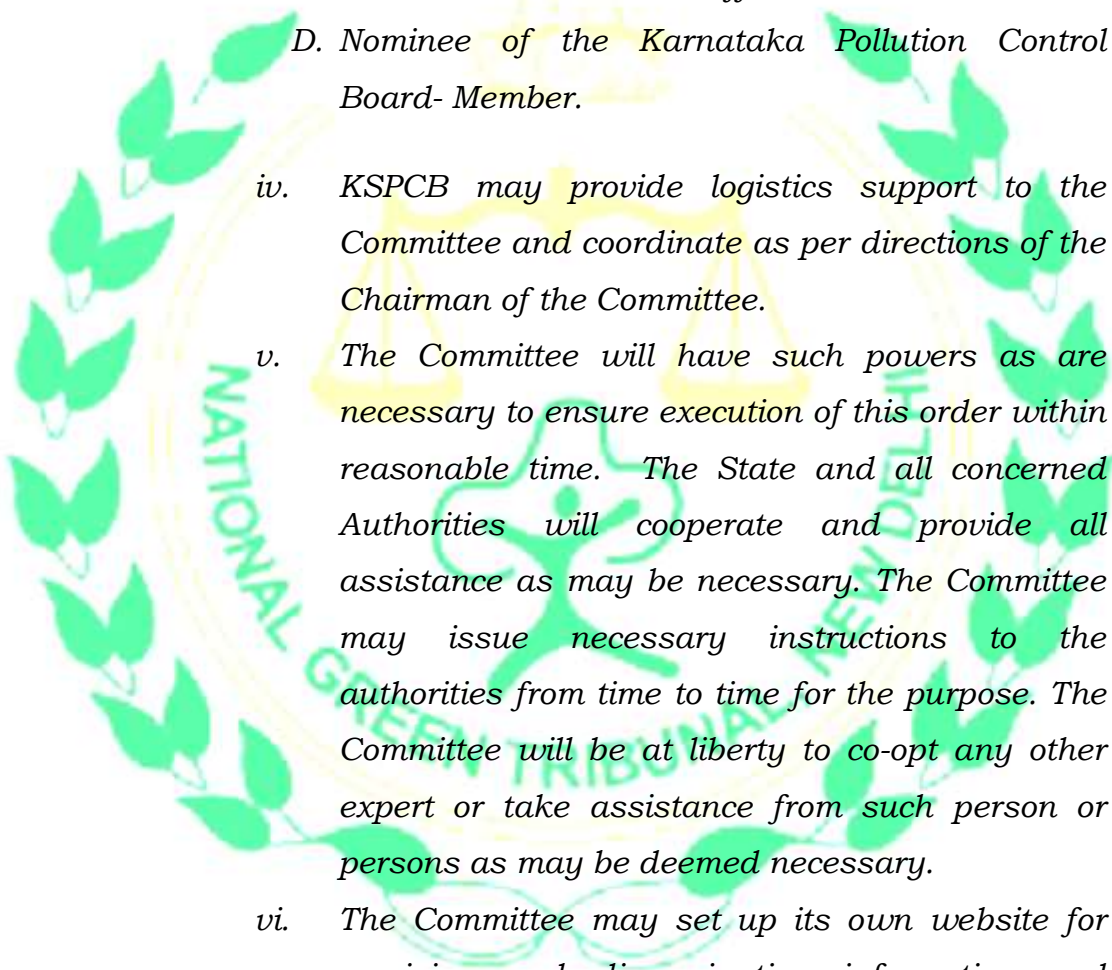
D. Nominee of the Karnataka Pollution Control Board- Member.

iv. KSPCB may provide logistics support to the Committee and coordinate as per directions of the Chairman of the Committee.

v. The Committee will have such powers as are necessary to ensure execution of this order within reasonable time. The State and all concerned Authorities will cooperate and provide all assistance as may be necessary. The Committee may issue necessary instructions to the authorities from time to time for the purpose. The Committee will be at liberty to co-opt any other expert or take assistance from such person or persons as may be deemed necessary.

vi. The Committee may set up its own website for receiving and disseminating information and suggestions, including inviting volunteers, as may be deemed proper. Achievements may be put on website so that the same can be replicated wherever relevant.

vii. The Committee may oversee the timelines in the action plan to be prepared by the State UD of Karnataka/ BBMP.



- viii. *The State of Karnataka will transfer an amount of Rs. 500 crores in an Escrow Account for execution of the action plan within one month from today.*
- ix. *The State of Karnataka will deposit a sum of Rs. 50 crores by way of interim compensation for restoration of the environment with the CPCB. For delay, an interest @ 12% will be payable.*
- x. *The BBMP will be required to deposit a sum of Rs. 25 crores in this regard to CPCB separately in the same manner as (ix).*
- xi. *Out of the amount so deposited, a sum of Rs. 10 crores will be transferred by CPCB to the Karnataka PCB. The SPCB will defray all expenses of the Committee to provide logistics or otherwise.*
- xii. *The amount can be recovered by the State/BBMP from polluters and the erring officers.*
- xiii. *The State of Karnataka will furnish a Performance Guarantee to the CPCB to execute the action plan in a time bound manner, subject to the timelines being approved by the above Committee. The Performance Guarantee will undertake to pay amount of Rs. 100 crores for the failure in the execution of the action plan before 30.06.2019.*
- xiv. *The State of Karnataka must identify and declare the persons responsible for executing the action plan and any failure in their performance should be recorded and considered favourably or otherwise for their career progression.*
- xv. *Similar exercise as (xiv) may be undertaken to identify officers responsible for failure in the past. Such exercise may be completed within three months from today.*
- xvi. *Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste*

management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.

xvii. MoEF&CC may specify limit for phosphorus in soaps and detergents to prevent damage to the environment and public health.”

11. The matter has been put up for consideration in the light of interim report of the Committee dated 27.05.2019 and final report dated 20.09.2019.

12. Sh. Raj Panjwani, Sr. Advocate, on being asked by this Tribunal, has prepared a brief analysis of the report in the light of directions of this Tribunal and comments of the Committee. We have gone through the analysis report furnished by the learned Amicus. Learned counsel for the State of Karnataka is not equipped with the relevant information to respond to the report though matter was earlier adjourned for the purpose. We are of the view that once the matter was listed before this Tribunal, the learned counsel should have taken all the instructions and collected all the information for proceeding in the matter.

13. Be that as it may, from the analysis presented by learned Amicus and perusal of report of the Committee there is patent non-compliance in critical areas by the State and its Authorities. Beyond saying that the work was in progress, there is no specific information of the status of

STPs to be constructed with learned counsel for the State. The Committee has noticed from the submissions made by the State PCB that treated water was being allowed to flow into the UGB network to mix with the sewage and then to flow into the STP to get recycled for the second time without any purpose. Fencing of the lake area to prevent encroachments has not been done. The illegal colony in the lake belt has not been shifted. CCTV cameras and watch towers have not been installed. Marshals and watchmen have not been deployed. There is no information about maintenance of buffer zones at the lakes and Rajkaluves. Compensation already determined has not been recovered on a specious plea that notification was to be issued which is wholly unnecessary to comply with the binding orders of this Tribunal. De-silting and de-weeding has not been done as directed. Road was illegally constructed within the lake by dumping C&D debris which has not been removed. There is no information about setting up of Real Time Water Quality Monitoring Systems. There is no information about action taken against the erring officers. There is also non-compliance with regard to deposit of Rs. 25 Crores by BBMP and furnishing of performance guarantee in the sum of Rs. 100 Crores by the State of Karnataka for which there is no explanation. It is not necessary to set out all the deficiencies in compliance of directions of this Tribunal. Suffice it to say that the State of Karnataka has shown lack of concern on such a sensitive matter in spite of stringent orders of this Tribunal which is not conducive to the rule of law.

14. In view of the above, we direct that the deficiencies in compliance be rectified forthwith and compliance ensured in terms of order dated 06.12.2018.

15. Having regard to the significance of the issue involved and repeated failures of the State and its Authorities, we direct the Additional Chief Secretary (Urban Development), Karnataka, Commissioner, BBMP, Commissioner, BDA, Chairman, BWSSB and the Member Secretary, State PCB to remain present on the next date with the compliance reports and explanation why coercive action including civil imprisonment be not ordered for the violations of the orders of this Tribunal.

16. A copy of this order be sent to the Additional Chief Secretary (Urban Development), Karnataka, Commissioner, BBMP, Commissioner, BDA, Chairman, BWSSB and the Member Secretary, State PCB by email for compliance.

List for further consideration on 27.11.2019.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

October 21, 2019
Original Application No. 125/2017
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