

Item No. 02

Court No. 1

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

(By Video Conferencing)

Original Application No. 750/2019

(With Report dated 18.02.2020)

Dr. Sanjay Rao & Ors

Applicant(s)

Versus

State of Karnataka

Respondent(s)

Date of hearing: 19.06.2020

**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. Darpan Kumar, Advocate for R-1

ORDER

1. The issue for consideration is the remedial action against pollution of Kithiganahalli lake situated behind Narayana Hrudayalaya Hospital, within remits of Bommasandra Pura Sabha, Anekal, Karnataka.
2. Vide order dated 25.09.2019, a factual and action taken report was sought from the Karnataka State Pollution Control Board ("State PCB").
3. Accordingly, a report has been filed on 18.02.2020 acknowledging the damage to the lake by unregulated discharge of sewage by the Municipal Council, Bommasandra through open drains. Sewage is also

flowing from the KIADB industrial area. The report finally states that as per proposed action plan, the Municipal Council has stated as follows:-

“1. With respect to handling of Municipal Solid Waste:-

- i. *Stopped the dumping of Solid waste into the Kittaganahalli Lake and the solid waste is being segregated at the source itself as wet waste and dry waste at the time of collecting from individual houses.*
- ii. *The wet waste is being collected separately in a small area of Government land of TMC Bommasandra limits and disposing to the nearby farmers to use as manure for gardening /growing crops.*
- iii. *The segregated dry waste is being collected separately and handed over to Sahas Waste Management Private Limited (SWMPL) an NGO and made MOU with them.*
- iv. *They have also stated that, they have stopped dumping of Municipal Solid waste on Government Lands and other roadside pathways.*
- v. *To find out a permanent solution regarding the disposal of Municipal solid waste generated from TMC Bommasandra, they have addressed a letter to the Tahsildhar, Anekal Taluk and Deputy Commissioner, Bangalore to allot land to set up the Scientific Municipal Solid waste processing Plant .Copy of the correspondence letters are enclosed as Annexure -XII.*

2. With respect to prevention of entry of sewage into the Kittaganahalli Lake:-

- i. ***Regarding stopping of entry of sewage into the Lake, they have already addressed a letter to the Karnataka Urban Water Supply and Drainage Board to submit DPR and to prepare action plan to provide Sewage Treatment Plant (STP). Copy of the correspondence letter with KUWSSB is enclosed for kind reference as Annexure —XIII.***
- ii. *Providing underground drainage system in the TMC Bommasandra limit was already over and requested Karnataka Urban Water Supply and Drainage Board authority to submit DPR to provide STP.*
- iii. *The Bommasandra Industries Association have proposed to rejuvenate the Kittaganahalli Lake. In this regard they have addressed a letter to TMC Bommasandra authority*

to give approval to start the rejuvenation of lake by clearing of earlier dumped Municipal Solid Waste in the Lake area and to clean the Lake water by natural means. In this regard, they have addressed a letter to TMC Bommasandra. Copy of the letter is enclosed for kind reference as Annexure-XIV.”

4. In view of the acknowledged illegal discharge of sewage in violation of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and solid waste in violation of the Municipal Solid Waste Management Rules, 2016 framed under the Environment (Protection) Act, 1986, criminal offence is being committed by the concerned authorities in not stopping the discharge of pollutants and garbage in the water bodies. The Hon'ble Supreme Court in *Paryavaran Suraksha case, (2017) 5 SCC 326* observed:

“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.”**

(emphasis supplied)

5. It is clear from the above that by 31.3.2017 all funds were required to be arranged for treatment plants to prevent untreated sewage or

effluent being discharged into the water bodies by Urban and Local Bodies Departments to be monitored by the Environment Department of the State. The PCB was directed to initiate civil and criminal action against the defaulters (including concerned erring Secretaries of the Govt. There are binding orders of the Hon'ble Supreme Court and this Tribunal on the subject of collecting and scientifically processing solid waste. The matter has been monitored by this Tribunal and several orders have been passed including two orders in the presence of Chief Secretary Karnataka, latest being order dated 20.02.2020 in O.A No. 606 of 2018 wherein earlier binding orders have been referred to. Failure of such important constitutional obligation by the Municipal Council as well as apathy and defiance of orders of this Tribunal and the Hon'ble Supreme Court by State authorities is at the cost of environment and public health and is very unfortunate for which prompt remedial actions must be taken and accountability of erring officers fixed. Only writing a letter as is said to have been done is not the compliance of law. The stand taken can hardly be said to be responsible one.

6. As earlier noted in order of this Tribunal dated 20.2.2020 in OA 606/2018, supra (para 32), compensation for damage on account of not removing legacy dump of garbage at Gurgaon was assessed by an Expert Committee to be around Rs.30 crore per year (in O.A. No. 514/2018, Vivek Kamboj & Anr. v. UOI & Ors). There is huge damage by discharge of untreated sewage in water bodies and preventing the same is the duty of State authorities as Trustees of people's rights. Such duty is being clearly breached.

7. In view of the above for the damage caused to the environment, the State of Karnataka and Municipal Council, Bommasandra are held liable

to pay interim compensation assessed on *ad hoc* basis at Rs. 15 Lakhs. The State of Karnataka is liable to pay Rs. 10 Lakhs and the Municipal Council, Bommasandra is liable to pay Rs. 5 Lakhs. Final compensation will be determined after hearing the State and the Municipal Council. If necessary, an expert Committee will be appointed. It is open to the State and the Municipal Council to recover the amount from the erring officers. The amount of interim compensation is liable to be deposited with the CPCB within one month and may be spent for restoration of the environment. The State PCB may initiate prosecution as directed by the Hon'ble Supreme Court.

8. Further remedial action may be taken expeditiously by the authorities and discharge of any pollutant in the water body be stopped forthwith. A compliance report may be filed by the concerned Additional Chief Secretary, Karnataka after coordinating with the concerned officers within three months 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.

List for further consideration on 04.11.2020.

A copy of this order be sent to the Chief Secretary Karnataka, Municipal Council, Bommasandra and State PCB by email. It is open to any State authority, the State PCB and the Municipal Council, Bommasandra to file their response before the next date to avail of the opportunity to contest the proceedings before this Tribunal.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Dr. Nagin Nanda, EM

June 19, 2020
O. A. No. 750/2019
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