

Court No. - 49

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 Neeraj Tripathi, learned Additional Advocate General assisted by Sri Shashak Shekhar Singh for the State respondents, Sri H.N. Tripathi for U.P. Pollution Control Board, Sri Anoop Trivedi, learned senior counsel assisted by Sri Vibhu Rai for Prayagraj Development Authority, Sri

Ravi Prakash Pandey for Varanasi Development Authority, Sri Rakesh Pandey, Senior Advocate for Uttar Pradesh Project Corporation Limited, Sri S.D. Kautilya for Nagar Nigam, Prayagraj and Sri Rajesh Tripathi for the Union of India.

In compliance of our previous order dated 29.10.2021, several affidavits have been filed which we will advert to at appropriate places while dealing with different aspects. Before that, we would like to notice the stand taken by the Union of India in an affidavit dated 3.2.2021 filed by the Under Secretary, National Mission for Clean Ganga, Department of Water Resources River Development and Ganga Rejuvenation, Ministry of New Delhi (now called the Ministry of Jal Shakti). It discloses that National Mission for Clean Ganga is constituted under Section 3 of the Environmental (Protection) Act, 1986 vide notification dated 7.10.2016 to take measures for prevention, control and abatement of environmental pollution in river Ganga and to restore continuous adequate flow of water so as to rejuvenate river Ganga. It is nodal agency for implementation of the provisions of the said notification. The National Ganga River Basin Authority earlier constituted under the Environmental (Protection) Act, 1986 vide notification dated 20.2.2009 stands dissolved by the notification dated 7.10.2016. The NMCG is now under control of the Ministry of Jal Shakti, Government of India, New Delhi. It is pointed out that a memorandum of agreement with consortium of seven IITs was signed

in July, 2010 for preparation of Ganga River Basin Management Plan. The said consortium has prepared Ganga River Basin Management Plan and the recommendations made by it have been incorporated in Namami Gange Programme of Govt. of India. The notification dated 7.10.2016 also provides for the steps required to be taken towards long term interventions for River Basin Management i.e. sediment management and ensuring continuous (*aviral*) flow. It is categorically stated that in terms of the above notification the State Government and its agencies are responsible for ensuring that untreated/partially treated effluents are not allowed to be discharged in river/water. Clause 6 of the notification reads thus:-

“6. Prevention, control and abatement of environmental pollution in River Ganga and its tributaries.- (1) No person shall discharge, directly or indirectly, any untreated or treated sewage or sewage sludge into the River Ganga or its tributaries or its banks: Provided that where a local authority does not have, on the date of commencement of this Order, sewerage scheme or infrastructure for collection, storage, transportation and disposal of sewage or sewage sludge or such infrastructure is not functional on the said date in an area abutting the River Ganga or its tributaries, every such local authority shall, within a period, specified by National Mission for Clean Ganga from the date of commencement of this Order, develop such infrastructure or make such infrastructure functional, as the case may be, for collection, storage, transportation and disposal of sewage in the territorial area of the local authority.”

In the light of the above categorical stand of the Union, we now proceed to examine the issues.

Untapped Drains/Nalas:-

We have noted in our previous order that it was admitted by 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. that out of 74 drains/nalas in city of Prayagraj, 48 are still untapped, whereas 10 are temporarily tapped. In the said communication, he had requested for sanction of Rs. 1 crore for preparing DPR for tapping these drains/nalas and had further stated that it would require twenty four months to complete the construction of Sewage Treatment Plants from the date DPR is approved by National Mission for Clean Ganga (hereinafter referred to as “NMCG”). As the Additional Advocate General Sri Neeraj Tripathi was not in position to apprise the Court of the development that had taken place in last eight months, therefore we granted him time to file affidavits of Additional Secretary, Urban Development Department, Govt. of U.P., Lucknow and the Managing Director, U.P. Jal Nigam, Lucknow in regard to the steps taken for preparing DPR, obtaining approval of NMCG and arranging funds, by filing their personal affidavits.

The Special Secretary, Department of Urban Development, Govt. of U.P., Lucknow has filed his affidavit dated 11.11.2021, in which the required details has have not been furnished, as it is alleged that in the past, Central Government project, namely “Namami Gange” was being implemented by the State Mission for Clean Ganga, coming under the

Urban Development Department. Now, the State Government has constituted a new department, namely Namami Gange and Rural Water Supply Department and State Mission for Clean Ganga, has been placed under administrative control of the newly constituted department. It has further been stated that the work relating to tapping of nalas and construction of STPs, has been assigned in Prayagraj to U.P. Jal Nigam (Rural). In such circumstances, it is suggested that Namami Gange and Rural Water Supply Department be impleaded in place of Urban Development Department for seeking necessary information.

Another affidavit has been filed by Managing Director, U.P. Jal Nigam (Urban). Accordingly to it, a DPR for interception and diversion of Rasoolabad Ghat drains and augmentation of Sewage Treatment Plants for Rs. 63,866.86 lakhs under Namami Gange Programme, had been prepared and submitted to Chief Engineer (Kanpur Region), U.P. Jal Nigam (Rural), Kanpur on 31.10.2021 for approval of DPR and allocation of funds by the Competent Authority. In the said affidavit also, it is admitted that as on date, there are still 48 drains which are untapped and 10 temporarily tapped, resulting in discharge of untreated sewage water directly into the two rivers. It has also been emphasized in the said affidavit that now U.P. Jal Nigam (Rural) has been designated as nodal agency for execution and maintenance of works relating to abatement of pollution in river Ganga, Yamuna and its

tributaries under Namami Gange Programme and therefore information be called for from the Principal Secretary, Namami Gange and Rural Water Supply Department and Managing Director, U.P. Jal Nigam (Rural), Lucknow.

Sri Neeraj Tripathi, learned Additional Advocate General, submitted that on account of the change in arrangement in respect of work pertaining to treatment of drains and construction of Sewage Treatment Plants under Namami Gange Programme, the required information has not been furnished to him and seeks further time and also prayed for impleadment of Principal Secretary, Namami Gange and Managing Director, U.P. Jal Nigam (Rural), Lucknow, so as to enable him to get relevant information.

The State of U.P. through Chief Secretary, is party to the instant petition, apart from various other departments. Administrative reshuffling or reallocation of work and responsibilities between different departments of the State could not be a valid reason for not furnishing the required information. If work and responsibility of any authority is assigned to another department, the direction would be binding on such department also and it was expected that the said department should have come forward to furnish the required information. We hope and trust that in future if there is any administrative reshuffling, the head of the said department will forthwith communicate to the new department regarding order/s passed

by this Court and the head of newly constituted department shall be responsible for ensuring compliance of our orders.

Sri Neeraj Tripathi, learned Additional Advocate General, informed us that a proposal for merging and interconnecting certain drains (KB1 and KB2) to Karelabagh STP, has been finalized for Rs. 8.84 crores. However, he is not in position to apprise the Court of the present status of the said project.

Having regard to the above, we permit impleadment of Additional Chief Secretary (Awas), Additional Chief Secretary (Nagar Vikas) and Principal Secretary, Namami Gange, U.P. Govt., Lucknow as party respondents to the instant petition and issue the following directions: -

- (a) The Union of India (seventh respondent) shall file affidavit of responsible officer disclosing the time, if any, fixed by NMCG under Proviso to Clause 6(i) of the Notification dated 7.10.2016.
- (b) The Chief Secretary, U.P. Govt., Lucknow shall issue a circular letter to all departments that as and when any information is sought by this Court from the State Government, the head of the department in possession of such information shall be responsible to furnish the information. No laxity on this aspect shall be allowed.
- (c) The heads of concerned departments shall file their personal affidavits: (i) disclosing the information required by our previous order dated 29.10.2021; (ii) the progress made in respect

of the DPR submitted by Superintending Engineer, IInd Circle, U.P. Jal Nigam (Rural), Prayagraj vide his letter dated 31.10.2021 and (iii) the status of project for merging and interconnecting certain drains to Karelabagh STP. We expect that the concerned department will take steps for setting up of Sewage Treatment Plant as per DPR at the earliest by seeking/arranging necessary approvals and finances and furnish specific details in this regard, along with their personal affidavits to be filed before the next date.

(d) The newly impleaded respondents shall also disclose the time frame within which all remaining drains will be tapped and the steps which have been taken to achieve the said objective.

(e) It is evident from the status report brought on record along with affidavit of Managing Director, U.P. Jal Nigam (Urban) that large part of tapped drains are overflowing. This means that the STPs to which these drains are connected, require immediate augmentation of the capacity. We call upon the newly impleaded respondents to disclose their plan for addressing the said issue and the time frame within which it will be redressed.

We notice that different departments, nodal and executing agencies are represented through different counsel and amongst whom there is no coordination, resulting in a lot of confusion. If the Additional Advocate General is representing the State, we expect that

he should have full instructions, at least in respect of all matters falling under the purview of State Government or its instrumentalities. The Chief Secretary, U.P. Govt., Lucknow shall examine the said aspect and issue required directions to obviate confusion and effective representation of the stand of the Government before this Court.

Water Quality of the two Rivers:-

(A) An affidavit has been filed by Regional Officer, U.P. Pollution Control Board, Prayagraj, stating that in compliance of our previous order, samples of water of two rivers were taken after sunset and before sunrise and the analysis test reports have been brought on record. When we pointed out to Dr. H.N. Tripathi, learned counsel appearing on behalf of U.P. State Pollution Control Board that the test reports do not specify the prescribed parameters and therefore the Court is finding it difficult to assess whether the test samples meet the prescribed norms or not, he submitted that he will file additional report specifying the prescribed norms and clearly disclosing which parameter is not according to the prescribed norm. He fairly conceded that according to his instructions, some of the parameters do not meet the prescribed norms. We accordingly direct the State Pollution Control Board to file supplementary report specifying the prescribed norms and also clearly mention which parameter is at variance with the prescribed norm.

(B) By our last order, having regard to the stand of the State respondents that discharge from drains which are being treated by

process of bio-remediation and effluents from STPs, are according to prescribed norms and the divergent stand of the Amicus and the petitioners that it is not as per prescribed norms, we constituted a committee to collect samples from different points with the assistance of the U.P. Pollution Control Board and to send one set of each sample for testing to IIT, Kanpur and IIT, BHU. One set was required to be tested by U.P. Pollution Control Board and one set of each sample was directed to be preserved, to be produced before this Court as 'check sample'.

In compliance of the said direction, seven set of samples were drawn. One set of sample has been produced before us in sealed bottles by the Regional Officer of the U.P. Pollution Control Board. These samples on our direction have been kept in a wooden box by the Bench Secretary in our presence. We direct him to hand over the box to the Registry for safe custody of the 'check samples', for production before this Court as and when required.

The report from IIT, Kanpur is still awaited and we have been informed that there is a request for some more time being granted to enable it to complete the tests and submit the desired report. We accept the request and permit submission of report in sealed cover through Registrar General by the next date. The other two reports from U.P. Pollution Control Board and IIT, BHU shall remain in sealed cover and shall be opened on the next date along with the report of IIT, Kanpur.

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

(A) Nagar Ayukt, Nagar Nigam, Prayagraj has filed his personal affidavit in purported compliance of our previous order dated 29.10.2021. After going through the said affidavit, we find that it is completely vague, evasive and conveys an impression that relevant facts and information is being withheld. In spite of the direction issued by us in our previous order that there should be proper arrangement for non-stop running of electric crematoriums which would include backup arrangement from power supply and basic amenities for sitting, drinking water and toilets, all that has been stated is that the “supply/backup” of electric power is round the clock and installation of generator set is in progress. No documentary evidence has been brought on record to establish that there is any arrangement for 24 hours' power supply. On the contrary, the report of Chief Engineer, Nagar Nigam, Prayagraj, annexed with the affidavit, show that steps are now being taken for installation of generator sets to ensure uninterrupted running of crematoriums. The time frame within which the generator sets will be installed, has not been disclosed. What steps have been taken in that direction, has also not been disclosed.

It is admitted in the affidavit that electric crematorium at Shanker Ghat is not functioning. We may note at this stage that on the last date of hearing when this fact was sought to be emphasised by learned

Amicus before this Court, it was refuted by the respondents and now only when an affidavit has been sought, it came to be admitted that one of the electric crematorium is not functioning. In the affidavit, it is further stated that tender is being floated for supply and installation of defective parts to make the crematorium functional but the time frame within which it will be made functional and the specific details of the steps taken has again not been disclosed. We caution the concerned respondent that in future, if such kind of vague and incomplete information is furnished, we would be compelled to recommend for appropriate action being taken against the official responsible for the same.

The report of Chief Engineer states that steps are being taken to invite e-tenders for setting up Green Crematorium at Rasoolabad Ghat, which will reduce the use of firewood by 40%. Again, the details of the said project, the stage of the project, whether approval from competent authorities, if any, has been taken in that regard or not, has not been disclosed. Likewise, in respect of drinking water, it is stated that the same is available at the site, without giving any details in respect thereof. It is also clear that after passing of the previous order, the Nagar Nigam had deputed certain Class IV staff for sanitization and cleaning of the crematoriums.

Sri S.D. Kautilya, learned counsel appearing on behalf of Nagar Nigam, Prayagraj tried to contend that on account of religious beliefs,

people are reluctant to avail the services offered by the electric crematoriums and thus tried to explain the lapses on part of Nagar Nigam in ensuring proper running of the two electric crematoriums.

We do not appreciate the mindset with which the Nagar Nigam is handling the issue. No doubt, on account of religious beliefs, few people avail the services of electric crematoriums, but we feel that if proper facilities are provided at the electric crematoriums and people are educated and made aware of the advantages and disadvantages of use of electric crematoriums, more and more people will be attracted to avail the facilities. It is high time when the Nagar Nigam, Prayagraj should give up its old mindset and take immediate steps for improving the infrastructure of the two electric crematoriums and launch campaign for spreading awareness amongst general public in respect of the advantages in availing the services of electric crematoriums. We direct the Additional Chief Secretary, Nagar Vikas, U.P. Govt., Lucknow to examine the matter and place before this Court its plan in respect of improvement of the infrastructure of the two electric crematoriums and the time frame within which it will be implemented.

(B) Regarding shifting of burial places, despite a specific direction to disclose plan in this respect, the affidavit filed is silent. We require the Additional Chief Secretary, Nagar Vikas to also disclose if there is specific scheme or plan in that regard and how they intend to tackle the problem.

Unauthorized Constructions along the bed of two Rivers:-

(A) The Vice Chairman, Varanasi Development Authority, Varanasi has filed an affidavit stating that the regulation of construction in or along the bed of river Ganga in district Varanasi is now being regulated in accordance with the provisions of Sri Kashi Vishwanath Special Area Development Board Varanasi Act, 2018 and is outside the purview of the regulated area falling under the Urban Planning and Development Act, 1973. It is also stated that no pucca construction has been carried out nor is underway in or along the river Ganga in district Varanasi except in so far as it was permitted by order dated 27.7.2012 in PIL No.31229 of 2005. Sri Ravi Prakash Pandey, learned counsel for Varanasi Development Authority submitted that Sri Kashi Vishwanath Special Area Development Authority would be in position to furnish other details.

We accordingly permit impleadment of Sri Kashi Vishwanath Special Area Development Authority as a party respondent to the instant petition. Let notices be issued to the said respondent returnable by the next date. The Authority shall file its affidavit through its Chief Executive Officer giving details of the schemes and all constructions which are proposed or are underway in and around river Ganges in district Varanasi.

(B) Superintending Engineer, Irrigation Workshop, Circle I, Kanpur Irrigation Department, U.P., has filed his affidavit in respect of the

information sought regarding construction of canal in river Ganga on the opposite side of the city of Varanasi. It is stated that the District Magistrate by letter dated 21.11.2000 informed the Additional Chief Secretary, Irrigation Department, U.P., Lucknow that there was deposit of huge quantity of silt on the eastern side of river Ganga, which is creating extra pressure on the ghats situated on western side and resulting in erosion of Assi Ghat, Samne Ghat and Raj Ghat. Therefore, he had recommended for making a channel by dredging and removing sand at the eastern side. In the said letter, it has also been informed that earlier there was a tortoise sanctuary on the eastern side and the said area was a prohibited area for undertaking any kind of activity. However, the said restriction has now been removed and the sanctuary has been shifted to other place. Consequently, there would be no hindrance in executing the project. In pursuance thereof, the State Level Flood Control Council in its 53rd meeting, sanctioned a plan with an outlay of Rs. 1195.76 lakhs and it was got executed by U.P. Project Corporation Ltd. It is also stated that according to the information furnished by U.P. Project Corporation Ltd., there had been no disturbance of ecosystem, nor wastage of public money.

The affidavit does not disclose whether the permission of National Mission for Clean Ganga was obtained before executing the work. It has also not been disclosed whether any impact assessment was done before sanctioning the project, nor the place to which the

tortoise sanctuary has been shifted and also whether due permission from the authorities in that regard was taken or not. We may note at this stage that the tortoise sanctuary as informed by learned Amicus was developed on the eastern side having regard to the fact that tortoise is natural scavenger. The fact that in Varanasi, pyres are lit for performing last rites round the clock, the tortoise was proving to be a boon in maintaining the quality of water of river Ganga.

The fifth, seventh and the newly impleaded respondents, as well as the executing agency, namely U.P. Project Corporation Ltd. Lucknow are directed to file their affidavits on the above aspects, making all relevant disclosures by the next date.

(C) The Vice Chairman, Prayagraj Development Authority, Prayagraj has filed his affidavit categorically stating that there is no project of the Development Authority which is falling within the prohibited area visualized under order dated 22.4.2011. It is further stated that Nav Prayagam Yojna was abandoned by the Authority in the year 2012 and presently there is no scheme in such name. He has further stated that there is another scheme which was approved in the year 2017, which is not falling within the prohibited area visualized under order dated 22.4.2011. However, the name of the said scheme nor its details has been furnished nor any attempt has been made to show that how the said scheme allegedly approved in the year 2017 does not fall within the prohibited area specified under order dated 22.4.2011.

We, therefore, direct the Vice Chairman, Prayagraj Development Authority to file his personal affidavit by the next date bringing on record the details of the said scheme and showing its exact location and distance vis-a-vis the two rivers on a site plan to justify the stand taken before this Court.

The second aspect regarding private constructions/development in and around the two rivers in violation of order dated 22.4.2011 is fairly admitted in the affidavit filed by the Vice Chairman, P.D.A. A list of 15 such constructions/ developments has been annexed. More time has been sought for conducting thorough survey to identify such constructions and to place complete list before this Court.

Sri Anoop Trivedi, learned senior counsel appearing on behalf of PDA submitted that in view of the fact that there are many such constructions, the Authority be granted more time to conduct survey and produce the list alongwith all other details. He has assured the Court that complete details shall positively be placed before this court by the next date.

Having regard to the submission made and assurance extended by learned senior counsel appearing on behalf of PDA, we grant further time for completing the exercise and for furnishing the details, by means of personal affidavit of the Vice Chairman, PDA by the next date. We once again reiterate that the survey shall be carried out by the PDA in a fair and non-discriminatory manner and it shall eschew

adopting double standard.

Sale and Re-cycling of Plastic Bags and other items:-

The Commissioner, Prayagraj Division, Prayagraj has filed his affidavit annexing therewith order dated 8.11.2021, whereby a Committee comprising of A.D.M. City, Prayagraj, Additional Municipal Commissioner, Nagar Nigam, Prayagraj and Superintendent of Police (City), Prayagraj has been formed to oversee the implementation of ban on plastic carry bags in pursuance of Government Order dated 15.7.2018. At this stage, we may remind that by our previous order, the Commissioner, Prayagraj Division, Prayagraj was assigned with the task of supervising the implementation of the notification dated 15.7.2018. We hope and trust that he will discharge the responsibility with all seriousness and not merely act as a conduit for submitting status report of the Committee to this Court. He shall file his personal affidavit disclosing the steps taken by him in this respect by the next date.

As jointly prayed, list on 6.12.2021 at 02:00 p.m.

Order Date :- 12.11.2021
Jaideep/SL

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