

Gupta and Sharad Singh Kumhre) had filed an Original Application being OA No. 67 of 2015 (CZ) praying for directions to preserve and protect the area known as Bajrang Nagar Pahadi in village Karondi in District Jabalpur, Madhya Pradesh.

3. It appears that on 19.10.2016 the learned NGT had appointed one of its Former Expert Member as a Court Commissioner and he was asked to submit a report. The Court Commissioner visited the site on 21.11.2016 and submitted his report on 08.12.2016.

4. In the report, the salient findings as were recorded by the learned Court Commissioner were thus:

- (i) That no trees were seen at the site in question, except for a number of bushes and shrubs;
- (ii) That already there was no development zone of 30 metres from the boundary of the Talab, including one Gokulpur Talab;
- (iii) That out of the 65 hectares of land, 48.50 hectares was reserved in development plan for residential purposes, 2 hectares for roads and 14.50 hectares for City Plantation.
- (iv) That the area of 48.50 hectares shown for residential purpose was belonging to Special Armed Forces.
- (v) That the area surrounding 12.32 square kilometers on south, south east and south west direction from the Gokulpur Talab, was a catchment area and any development surrounding the said area would obstruct the

free flow of water towards Gokulpur Talab and Narmada river.

- (vi) Finally, the Court Commissioner has recommended the development activities in Bajrang Nagar Pahadi should not be allowed as it lies in the catchment area of Gokulpur Talab and Narmada river. The Court Commissioner, therefore, suggested for declaring the said area as no development zone.

5. The learned NGT by the impugned judgment and order dated 20.03.2020 accepted the recommendation of the Court Commissioner as it is and declared an area within the distance of one kilometer surrounding the Gokulpur Talab as no development zone. Being aggrieved, the present appeals.

6. We have heard Shri Saurabh Mishra, learned Senior Counsel appearing for the State of Madhya Pradesh in CA Nos. 7664-7666 of 2021, Shri M.C. Dhingra, learned Senior Counsel appearing for the appellants in C.A. Nos. 7004-7005 of 2021 and Shri Raghav Sharma, learned counsel appearing for the Madhya Pradesh Pollution Control Board arrayed as party-respondent in the appeals.

7. It is submitted by Shri Mishra and Shri Dhingra that if the directions issued by the learned NGT are implemented, the entire developmental activities would come to a standstill. It is further submitted that the development plan for the city of

Jabalpur has considered all the aspects. It is further submitted that the specific objection of the State of Madhya Pradesh, that there is a direct and indirect catchment area, has not at all been considered by the learned NGT. It is submitted that while preparing the development plan, the Planning Authority has taken into consideration the aspect of the catchment area.

8. Though the original applicants/complainants before the learned NGT are duly served, no one has appeared on behalf of them. The respondent-Madhya Pradesh Pollution Control Board and the private respondents have supported the stand of the State Government.

9. It is pertinent to note that after the Court Commissioner submitted his report, the State of Madhya Pradesh had raised objections qua the said report. Further before the learned NGT, a reply was filed by the State, where in para 9 it was stated as under:

“The applicant has also alleged that the subjective land is the catchment area of Gokulpur pond as well as Narmada river. It is most humbly submitted that the catchment is defined as direct catchment and indirect catchment the direct catchment area is the area which is the main source of water for the water body whereas indirect catchment area could be a huge area which could be more than hundreds of

square kilometers because each and every surface on earth could be the catchment area for one or the other waterbodies therefore the subjective land may be considered as indirect catchment of Gokulpur pond as well as Narmada river but it could never be direct catchment of the same as while preparing the Jabalpur Development Scheme/Master Plan 2021 the survey pertaining to the natural water dispersal system was carried out and to show the natural water dispersal areas map was prepared which is part and parcel of the master plan. In the said flow map the subjective area is not shown as the direct catchment area of Gokulpur pond as well as Narmada River. The copy map of natural water dispersal system is marked and filed herewith as ANNEXURE-R-1/3.”

10. The reply clearly states that for every dispersal system there is direct and indirect catchment area, and that the nalas, streams and rivers form part of the direct catchment area.

11. Insofar as the indirect catchment area is concerned, the water is absorbed in the soil and percolates to the main rivers/lakes.

12. The reply would also reveal that while finalizing the Jabalpur Development Scheme/Master Plan for 2021, the survey was also conducted by the Planning Authority pertaining to the natural water dispersal system. The map of the natural water dispersal area is a part and parcel of the Master Plan.

13. The Master Plan did not show the area under

consideration as a direct catchment area of Gokulpur Talab as well as Narmada river. However, the learned NGT has not at all taken into consideration the objections raised by the State of Madhya Pradesh in the reply. The learned NGT has accepted the recommendation of the Court Commissioner as it is.

14. If the report of the Court Commissioner is to be accepted, an area admeasuring 12.32 square kilometers surrounding the lake will have to be declared as no development area and a substantial part of construction in the Jabalpur City itself would be affected.

15. The impugned order passed by the learned NGT does not depict any independent consideration but a mere acceptance of the report of the Court Commissioner as it is.

16. This Court, by an order dated 27.11.2024 passed in CA Nos. 9202-9203 of 2022 titled as ***“Benzo Chem Industrial Private Limited v. Arvind Manohar Mahajan and Others”*** has deprecated the practice of the NGT of basing its judgment on outsourced material. A tribunal is expected to carefully consider the material placed before it and the contentions raised on behalf of both the parties. It cannot discharge its function by merely relying on a

report of the Court Commissioner without even considering the stand of the parties before it.

17. On this short ground alone, the appeals are allowed. The impugned judgments and orders dated 20.03.2020 and 06.04.2021 passed by the learned NGT are hereby quashed and set aside.

18. Needless to add that the permission for development which was granted after obtaining the approval of the State Environment Impact Assessment Agency (SEIAA) would continue to operate. Further, if any specific period is provided for such activities, the time from the date of stay granted by the learned NGT till today, shall stand excluded.

19. Pending application(s), if any, shall stand disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(K.V. VISWANATHAN)

NEW DELHI;
NOVEMBER 28, 2024.