

Item No.09

Court No. 1

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

M.A. No. 26/2019
IN
Original Application No. 325/2015

Lt. Col. Sarvadaman Singh Oberoi

Applicant(s)

Versus

Union of India &Ors.

Respondent(s)

Date of hearing: 10.05.2019

**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): Ms. Nivedita Sharma, Advocate with Mr. Lt. Col. Sarvadaman Singh Oberoi, Applicant

For Respondent(s): Mr. Anil Grover, AAG, State of Haryana and Mr. Rahul Khurana, Advocate

ORDER

1. The issue for consideration in the original application is identification, protection and restoration of water bodies in the State of Haryana. However, in the light of proceedings which have taken place, we are of the view that the scope of the application needs to be extended to the entire country in the interest of protection of environment.
2. This application was filed on 14.08.2015 before this Tribunal in the context of Gurgaon District and as per status report as on

09.03.2017 filed before this Tribunal on behalf of State of Haryana referred to in the order dated 20.07.2018, there are 1216 water bodies in the State of Haryana which are larger than 2.25 Ha and 123 water bodies which are in possession of the State in Gurgaon District while the total number of the water bodies are 641 (later corrected as 647) in Gurgaon District. The Tribunal directed that for 123 water bodies which are in possession of the State, steps be taken for their proper maintenance and restoration. An exercise be undertaken in the entire State of Haryana to identify water bodies. On such identification, water bodies be assigned Unique Identification (UID) number and steps be taken for restoration. Report was sought within six months.

3. Status report has been filed vide email dated 25.04.2019 by the Haryana Pond and Waste Water Management Authority (HPWWMA) stating that HPWWMA has been established under a State Act called the HPWWMA Act, 2018 notified on 23.10.2018 for development and protection of ponds and matters connected therewith. Pond has been defined as a tank or lake or any other inland water body having an area of 0.5 acre or more. The authority is to undertake survey and take steps for restoration of water bodies, PDMS (Pond Data management System) has been developed which can be accessed through "<http://hpwwma.org>": DPMOs (District Pond Management Officers) are appointed for each District. As per PDMS data, 16306 ponds fall under the Panchayats and 265 ponds fall under the Urban Local Bodies. The same have been given UID

numbers and work of development will be undertaken by DPD (Development and Panchayat Department). The work for connecting the ponds with the nearby canal network will be executed by the IWRD (Irrigation and water Resources Department). 200 most problematic and overflowing ponds will be addressed during 2019-20. 193 model ponds which are overlapping with the said 200 ponds will be developed in first phase for which a plan has been prepared.

4. The Gurgaon Metropolitan Development Authority (GMDA) has also given a report to the effect that water bodies in the District are owned by 20 different entities. Work of restoration of 123 water bodies was taken up which has been widened to improve 647 water bodies. In all 826 water bodies, as found as per record, the task involves identification and verification of data, review and categorization of water bodies, assigning UID numbers, preparation of maps and analysis of information in regard to size, restoration potential, etc. 20% of the water bodies are at risk due to discharge of untreated sewage, industrial effluents or waste water.
5. Learned counsel for the applicant submits that not even a single water body has so far been taken up for restoration inspite of the exercise undertaken for identification of the water bodies. The steps for preventing dumping of solid waste or discharging of effluents are urgently required. The State of Haryana may take necessary steps in terms of the status report referred to in para 3 & 4 above as well as in the light of general directions which we propose to issue to all the States/UTs.

6. There can be no dispute that the water bodies play significant role in recharge of ground water, preventing soil erosion, harnessing rain water and maintaining micro-climate in the area. Need for conservation and protection of water bodies is thus obvious. This requires involvement not only at the level of the State but also at the level of the community for which State needs to take initiative. The threat caused to the water bodies is by dumping of waste, discharge of effluents and encroachments. The steps required for restoration will include preparation and implementation of catchment area treatment plans, setting up of green belt and wherever viable setting up of bio-diversity parks around the water bodies, cleaning up of the garbage/debris and demarcation by the Revenue Department on identification survey and demarcation. Each water body is required to be given a geo-referenced-UID and an action plan is required for restoration and protection of each of the water bodies. In this view of the matter, need for conservation and protection of water bodies is not confined to the State of Haryana alone but extends to the whole country.

7. The Hon'ble Supreme Court in *Hinch Lal Tiwari v. Kamala Devi & Ors.* (2001) 6 SCC 496 observed:

“It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables

people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.”

8. The above observations advance the Public Trust Doctrine which is based on the principle that certain resources like air, water and forests have such great importance to the people as a whole that the same cannot be subject of private ownership. The same are gift of the nature and should be made freely available to the people. The Doctrine requires the State to protect such resources and not to permit them to be used for private or commercial purposes.¹ This concept is applicable to wetlands and all water bodies which is essential for protection of the environment. If the ponds and other such water bodies are not protected and conserved, this will in turn affect recharge of ground water, rain water harnessing and soil preservation.

9. Ground water conservation remains a challenge. This led the Hon'ble Supreme Court to direct constitution of the Central Ground Water Authority (CGWA) vide order reported in *M.C Mehta v. Union of*

¹(1997) 1 SCC 388, M.C. Mehta vs Kamal Nath & Ors

India & Ors, (1997) 11 SCC 312. The data compiled by the said authority shows that there are over exploited, critical and semi critical areas (OCS). The ground water is on the decline in the said areas. In this regard, it may be noted that vide order dated 11.07.2018 in *W.P.C No. 4677/1985, M.C. Mehta v. Union of India and Ors.*, the Hon'ble Supreme Court noted the report of the Niti Ayog on "Composite Water Management Index", June 2018, in which it is stated, *inter alia*:

"In fact by 2020, 21 major cities, including Delhi, Bangalore and Hyderabad will be expected to reach zero groundwater levels, affecting access for 100 million people".

10. The Tribunal has, vide order dated 07.05.2019 in *O.A No. 176/2015, Shailesh Singh Vs. Hotel Holiday Regency, Moradabad & Ors.*, directed the CGWA to prepare a policy for conservation of groundwater with a robust institutional mechanism for surveillance and monitoring with a view to enhance access to ground water for drinking purposes in OCS areas by way of appropriate replenishment practices which can be properly accounted and measured as well as to sustain the flood plains of rivers in terms of e-flows, augmentation of subterranean flows and preservation of other water bodies. The Tribunal also considered the matter in the context of Delhi, vide order dated 30.08.2018 in *Original Application No. 496 of 2016, Tribunal on its own Motion Vs. Govt. of NCT of Delhi & Ors.*, and appointed a Committee headed by the former Judge of Delhi High Court to oversee the steps for conservation of ground

water in Delhi. We also note the guidelines for National Lake Conservation Plan prepared by MoEF&CC in May 2008 as well as National Plan for Conservation of Aquatic Ecosystem (NPCA) prepared by MoEF&CC in November, 2016. Irrespective of the subject being covered by a particular State statute, the protection of water bodies is an essential need for protection of environment as held in *Hinch Lal Tiwari (Supra)*. Such requirement is covered by the 'Precautionary' principle as well as the 'Sustainable Development' principle which are required to be enforced by this Tribunal under Section 20 of the NGT Act, 2010. The HPWWMA Act, 2018 covers only ponds having area of more than 0.5 acres. Thus ponds of lesser area have been left out of regulation under the said Act. This aspect needs to be addressed to the extent the same remains un-addressed not only in Haryana but throughout India to the extent the existing statutory framework or guidelines do not cover comprehensively the subject of restoration of all the water bodies. The definition of water body in the Haryana Act is as follows:

“the ‘pond’ means a tank or lake or any other inland water body having an area of 0.5 acre or more, whether it contains water or not, and mentioned in revenue records as talab, johar, tank or by any other name and includes green belt and the peripheral catchments areas, main feeder inlet and other inlets, bunds, weirs, sluices etc but does not include wet lands as notified by the Government from time to time.”

11. The above definition shows that only ponds of area of more than 0.5 acres are sought to be restored under the statutory provisions of the said Act. While in terms of the orders of the Hon'ble Supreme Court in *Hinch Lal Tiwari (Supra)* even ponds of lesser area will be covered for being protected and restored. This is also imperative in terms of the concern raised in the order of Hon'ble Supreme Court dated 11.07.2018 in *W.P.C Nos. 4677/1985, M.C. Mehta vs. Union of India &Ors.* for conservation of ground water. If all water bodies including ponds of lesser area than 0.5 acre are not covered, this will affect the environment including recharge of ground water, harnessing of rain water, prevention of soil erosion and maintaining the micro climate. We may, however, clarify that focus may be on ponds, etc. recorded in the revenue record.

12. We may note that there are 351 polluted river stretches in India identified as such by the CPCB which need remediation. The matter is being considered by this Tribunal in *Original Application No.673/2018*, News item published in "The Hindu" authored by Shri Jacob Koshy titled "More river stretches are now critically polluted : CPCB. In O.A. No. 148/2016, *Mahesh Chandra Saxena Vs. South Delhi Municipal Corporation &Ors.*, vide order dated 10.05.2019, it was observed that reuse of treated sewage water as well as restoration of water bodies are connected to ground water conservation, which in turn is connected to remedying the pollution of polluted river stretches.

13. Thus to give effect to 'Precautionary' principle and 'Sustainable Development' principle, we direct all the States and UTs to review the existing framework of restoration all the water bodies by preparing an appropriate action plan. Such action plans may be prepared within three months and a report furnished to the CPCB. The CPCB may examine all such plans and furnish its comments to this Tribunal within two months thereafter. The Chief Secretaries of all the States/UTs in the course of undertaking monitoring exercise in pursuance of the order of this Tribunal in *O.A No. 606/2018, Compliance of MSW Rules, 2016*, may also include restoration of water bodies as one of the items as the same is also incidental to waste management which are covered by orders in *O.A No. 606/2018, Compliance of MSW Rules, 2016*.
14. The CPCB may prepare and place on its website guidelines in the matter of restoration of water bodies in the light of above order within one month.
15. The matter may also be monitored by Central Monitoring Committee constituted in terms of order dated 08.04.2019 in *O.A No. 673/2018, News item published in "The Hindu" authored by Shri Jacob Koshy titled "More river stretches are now critically polluted : CPCB*, as this matter is connected to the steps required for remedying the polluted river stretches as already explained.
16. A copy of this order be sent to the Chief Secretaries of all the States and Union Territories and the CPCB by email.

List for further consideration on 09.12.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

May 10, 2019
M.A. No. 26/2019
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