

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

.....

ORIGINAL APPLICATION NO. 596 OF 2016

IN THE MATTER OF:

Tapesh Bhardwaj
S/o Shri B.D. Sharma
R/o 1635, Barhpura Colony, Sadar Road,
Mathura, U.P.

....Applicant

Versus

1. UP State Pollution Control Board
Through its Member Secretary
Bldg. No. TC-12 V
Vibhuti Khand, Gomti Nagar
Lucknow-226010
2. Mathura Cantonment Board
Through its CEO
Cantonment Board Office,
Near Regimental Bazar,
Mathura Cantt,
Pin- 281001 (Uttar Pradesh)
3. District Magistrate Mathura
Mathura Collectorate
Mathura- 281001
4. Central Pollution Control Board
Through it's Member Secretary
CBD-Cum Office Complex
East Arjun Nagar
Delhi-1100032

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Rahul Kumar, Mr. Sarthak Chaturvedi, Mr. Shubham Jaiswal,
Adv.

COUNSEL FOR RESPONDENTS:

Mr. Pradeep Misra and Mr. Daleep Dhyani for Respondent No. 1
Mr. S. Wasmi A. Aadri and Mr. Zuhair Ahmad Khan and Mr. T.
Qadre, Adv. and Mr. M. M. Sharma for Respondent No. 2
Mr. Abhishek Yadav, Adv., for Respondent No. 3
Mr. Rajkumar, Adv. and Mr. Bhupendra Kumar, LA, CPCB
Mr. Dharendra Kumar Yadav, Adv. for State of U.P.

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE DR. AJAY A. DESHPANDE, EXPERT MEMBER

Reserved on: 8th March, 2017
Pronounced on: 13th April, 2017

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

FACTUAL MATRIX OF THE CASE

The applicant, who is a resident of Mathura, has invoked the jurisdiction of the National Green Tribunal (for short 'the Tribunal') under Section 14(1) of the National Green Tribunal Act, 2010 (for short 'Act of 2010'). It is the case of the applicant that he is actively involved and working towards protection of the environment. Mathura is a historic city and has a Cantonment Board constituted under Section 10 of the Cantonment Board Act, 2006 (for short 'Act of 2006'). The Cantonment Board has a duty to perform the functions of a Municipality and to implement the schemes of the Central Government regarding public health, hygiene etc. The Board also acts as a civic and administrative body like the local authorities. The Board also collects municipal solid wastes including polythene, plastic and other domestic and dangerous substances and dumps this waste/garbage on the river bed of River Yamuna. The Board does not have properly managed and constructed dumping site. By

their illegal acts, the Board is destroying the river bed by using it as a landfill site and is also throwing the waste into the river and making the water very toxic. The oxygen level in the River Yamuna in Mathura is close to zero and the landfill site created by the Cantonment Board is a huge contributor to this. The Board is causing destruction of the river bed and the flood plain of River Yamuna. The Uttar Pradesh Pollution Control Board (for short 'U.P. PCB') and other State authorities have turned a deaf ear and are not taking any action against the Board. These authorities are not implementing the pollution control measures in relation to pollution of water and air at these premises. The applicant to substantiate his claim, has filed photographs showing indiscriminate dumping of garbage, no proper scientific management thereof and this being at the flood plain is also polluting the river. The U.P. PCB has not taken note of such violations and that has further encouraged the Board to continue with its illegalities and causing serious pollution. The pollution includes contamination of water or such alteration of the physical, chemical or biological water or such discharge of any other liquid, gaseous or solid substance into water, directly or indirectly, as it may or is likely to create a nuisance or render such water harmful or injurious to public health and safety. By dumping of the garbage at the landfill site, there is leachate, causing serious pollution of the ground water. Resultantly, on one hand the fundamental rights of the applicants are being infringed, while on the other the authorities are failing to perform their constitutional and public law duty. On these facts, the applicant has prayed that the Board should be

directed to immediately remove garbage dumped at the river bed and they should be directed to comply with the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 within the limits of the Cantonment Board, Mathura and no garbage should be dumped at the site. The site ought to be maintained in accordance with the law in force.

2. To this application filed by the applicant, the U.P. PCB while denying the averments made, has taken a specific stand that the Cantonment Board is a municipality and is under a responsibility of proper disposal of Municipal Solid Waste (MSW) in the area under its jurisdiction. The total area of the land is 3.08 hectares out of which it is stated that 0.49 hectares of land is being used for dumping. The trenching ground is open all around and has no boundary wall and the waste is scattered in the open. There is no proper arrangement for segregation, storage, processing, disposal and treatment at the site. Only 10 pucca pits measuring 10' x 3' x 1' are made but their operation and maintenance is not proper. The replying respondent issued notices dated 10.05.2016, 19.11.2016 and 28.12.2016 to Chief Executive Officer Mathura Cantonment Board to take proper action for disposal of MSW. Inspection was carried out on 24.12.2016 and report has been annexed. 3.05 tons of MSW disposed everyday (Mentioned in Inspection Report).

3. It is denied that the U.P. PCB has turned a blind eye towards this problem. In fact, according to the U.P. PCB, it had taken

appropriate steps and even served notices upon the Cantonment Board. The Board has not obtained authorization from the U.P. PCB for waste processing and disposal facility, which they are obliged to obtain and file application in the prescribed Form 1 under Rule 4(2). Non-compliance of these provisions is a penal offence under Section 15 of the Environmental Protection Act and there is a penalty. However, no penal action has been taken by the U.P. PCB so far against the Cantonment Board.

4. In letter dated 29th December, 2016 the Cantonment Board replied, stating that the land is recorded in the General Land Register of the Board in category 'C' as Survey No. 205A, 205B and 211 as trenching and dumping ground. The District Magistrate, Mathura has also filed affidavit on the similar lines. However, he has stated that River Yamuna is 100 meters away on the eastern side, Village Damodarpura 500m away on the Southern Side. The dumping ground is 1 km away from the dairy farm of veterinary college and is open all around and no boundary wall has been erected. Solid waste is scattered in the open. No proper arrangement for storage, segregation, processing, disposal and treatment of solid waste at the site is made. The said respondent has sent a letter to the Chief Executive Officer, Mathura Cantonment Board on 12th January, 2017 stating that in the past three notices dated 10th May, 2016, 19th November, 2016 and 28th December, 2016 have been served to them by the Regional Officer of the U.P. PCB and they were directed to take appropriate action and that the said directions should be strictly obeyed.

5. The Central Pollution Control Board (CPCB) has submitted that there is violation on the part of the Cantonment Board and the said Board is expected to take action under the provisions of the Water Act and the Air Act. They have prayed that the Tribunal should issue appropriate directions for implementation and compliance of the Solid Waste Management Rules, 2016, not only in the Cantonment Board but in the entire city of Mathura.

6. The Mathura Cantonment Board filed its detailed reply taking up the plea that the application was not maintainable against it and the application also did not disclose any cause of action. The application is based upon newspaper reports without any supporting material or evidence. It is averred that the Board was established in 1835 and the total area of the Board is 2678 acres with total population being 25,603 and total households being 1906. The local municipal body is governed by Cantonment Act, 2006 and is entitled to get grants under Central and State Government scheme for social welfare, public health, hygiene etc. However, it has not received any grant from the State Government. It is subsisting on funds available with it and upon the normal service charge received from Central Government. It is maintaining public health and hygiene to the best level as compared to nearby municipal locality and the area of Cantonment is apparently clean. Since the inception of the Board, the land is earmarked for dumping of waste known as trenching ground. It is situated in Sy. No. 205/A, 205/B and 211, covering area 9.492 acres and 2.50 acre. The maximum output of solid waste

in the Cantonment area is 3 to 4 tonnes. The waste is treated as per MSW Rules, i.e., the waste is collected from door to door by Rickshaw in a container and the waste is unloaded at the garbage collection point. The waste is transported to the trenching ground by a covered vehicle. At the trenching ground the waste is segregated into biodegradable and non-biodegradable waste. The non biodegradable waste is taken by rag pickers and the biodegradable waste is treated and composted. Presently, the waste is being disposed of about 100 to 150 metres away from the river bank of Yamuna. The biodegradable waste treatment pits are made of cement concrete and the floor of the chambers and walls are of bricks and cement. The total length of chambers is 35 feet, width 10 feet and 3 feet depth. There are 10 chambers. The trenches for non-biodegradable waste are 400 to 500m away from the River Bank. There is hardly any non-biodegradable waste left, as the rag pickers and contractors take away polythene, glass etc. The trenches are below the ground and are 5 feet deep, 20 feet in length and 6 feet wide. Yamuna River is 100 m away from the trenching ground and there is no chance of the waste going into the river. The cantonment area does not have any slaughter houses, industries or hospitals and therefore, the waste that comes to the trenching ground is non-toxic. No incident where waste has mixed with Yamuna River has been referred to or noticed. Even during the rainy season when the Yamuna is at its highest level, the water does not touch the trenching ground boundary. Apparently, the Board is taking action for construction of boundary wall parallel to the river bank so that the waste is not mixed with

river water. The respondent claims that the petition is actuated by extraneous considerations. It is following all the rules. The Board *vide* its letter dated 23rd November, 2016 requested the Uttar Pradesh Pollution Control Board to inspect the trenching ground and inform them if any further action is required for treatment of waste. The Board has submitted all details of the trenching ground to the Pollution Control Board. The trenching ground is situated about 6-7kms away from the city.

7. In addition to the above reply, the Board also filed an additional affidavit dated 6th March, 2017 stating therein that there are new developments that had taken place in the matter. It is submitted that out of the total area, 2.50 acres is being used for treatment of waste at present. Although, the waste never got mixed with the river water, as a precautionary measure a boundary wall has been erected on two sides of the trenching ground in order to avoid the waste going into River Yamuna. With respect to notices issued by the Regional Officer U.P. PCB, respondent no. 2 submitted replies on 18th May, 2016, 23rd November, 2016 and 28th January 2017. *Vide* letter dated 31 January, 2017, the Cantonment Board requested U.P. PCB to conduct the inspection of the trenching ground in accordance with the Rules. Respondent no. 2 is following all the rules and norms and there is no violation committed by the Board. They are keeping the area neat and clean and the application is baseless.

8. From the above pleadings of the parties and the documents on record, the only question that falls for consideration and

determination of the Tribunal is whether the Cantonment Board is discharging its statutory and public law obligations, in dealing with the municipal solid waste generated in the cantonment area, in accordance with the provisions of law. If the above is answered in the negative, then all the consequences in law shall follow and directions are required to be issued.

9. The objection taken by the Cantonment Board is that the present application is not maintainable, no cause of action has arisen in favour of the applicant and that the application is actuated by extraneous considerations and needs to be rejected at the very threshold. It is an admitted case, that the Cantonment Board is dealing with the MSW generated in the cantonment area and it includes both bio degradable and non-bio degradable waste. The site which is termed as 'trenching site' is 100 mtr away from the banks of River Yamuna. Furthermore, the trenching site that has been constructed has been found to be improper and is not being maintained in accordance with rules. Not only this, the trenching site is being used as a landfill and dumping site, without authorization from the Pollution Control Board.

10. The applicant is a resident of the city of Mathura and has approached the Tribunal praying for reliefs stated in the application, which squarely fall within the ambit and scope of the provisions of the Act of 2010. The Pollution Control Board itself has found that there is non-compliance of the statutory provisions and it is undisputable that the pleas taken by the Cantonment Board are

without any substance, in fact and in law and which should therefore, be rejected.

11. It is stated that, nearly 3 to 4 MT of MSW is generated everyday and the site in question is the only site where both bio degradable and non-bio degradable waste is being dumped. The applicant has filed photographs on record that show indiscriminate dumping of waste at the site in question, which is also very close to the River. The photographs also show that there is burning of MSW including non-bio degradable waste. The photographs have been taken along with the newspaper of the day and it shows that there is huge quantity of waste that has been put on fire and is generating injurious gases which can also be carcinogenic. The only defense taken by the Cantonment Board is that they have trenches and the waste is being handled in accordance with rules and they are not at fault. They claimed to have informed the Pollution Control Board seeking advice as to what further steps are required to be taken by the Cantonment Board in order to prevent and control the pollution. Of course, additional plea of non-availability of funds is being also raised.

12. We may note here again that the additional affidavits and photographs filed by the applicant show the waste thrown indiscriminately at the site in question and not being put properly into the alleged trenches, which in any case lack basic features in accordance with the Rules. The photographs also showed that animals like cows, buffalo, ox/bulls etc. are consuming bio

degradable and other waste at site in question. To put it simply, there is indiscriminate, illegal, unscientific dumping of waste. There is no boundary wall that can stop animals from coming in and going out of the site. The waste is being burnt openly and thus, causing air pollution. The U.P. PCB has taken up a specific plea that they had served notices after inspecting the sites upon the Cantonment Board and had pointed out the deficiencies to them time and again but it was of no consequence. At this stage, it may be relevant for us to refer to the report of the inspection conducted by the U.P. PCB on 24th December, 2016. The translated inspection report placed on record reads as under:

“Inspection report of municipal solid waste dumping site of Cantonment Board, Mathura regarding O.A. No. 596/2016; Tapesh Bhardwaj Vs. U.P. Pollution Control Board.

In pursuance to the above subject, inspection of municipal solid waste dumping site of Cantonment Board, Mathura has been done by the undersigned on 24.12.16. At the time of inspection Shri Pramod Kumar, Sanitary Inspector was present as representative. The report is as follows:

Dumping site is situated on 3.08 hectare private land of Cantonment Board, out of which 0.49 hectares of land is stated to be in use. In the east direction of the site the distance of Yamuna River is approximately 100meters. In the southern direction of the site village Damodarpura is situated at a distance of 500 meters. The dumping site is situated at a distance of 500 meters. The dumping site is situated at a distance of approximately 1.0 kilometer before dairy farm of veterinary college. The site is open from all around and no arrangement of boundary wall etc. is there. At the dumping site, the solid waste has been found scattered here and there. No proper arrangement of segregation, storage, processing and disposal and treatment of solid waste has been found. For converting the garbage into compound manure, 10 pucca pits measuring 10' x 3' x 1' are established, operation and maintenance of which

has not been found proper at the time of inspection. It has been informed by the representative present that approximately 3.05 tons municipal solid waste is disposed everyday.

For compliance of Municipal Solid Waste Rules, 2000 notices have been issued from time to time earlier to Cantonment Board. Vide letter No. 152/S-30/16 dated 10.05.16 and letter No. 1108/S-30/16 dated 19.11.16 (copy enclosed) of this office notices have been issued for authorization and submitting annual report which have not been complied with by the Cantonment Board. Again notice has been issued vide letter No. 1577/S-30/16 dated 28.12.2016 (copy enclosed) of this office. At the time of inspection photographs of dumping site were also taken which are enclosed with the report. The annual report, form-4 of Cantonment Board and document relating to the land is enclosed.

The report is submitted for perusal.”

13. The Board had issued notices dated 10th May, 2016, 19th November, 2016 and 28th December, 2016 to the Chief Executive Officer, Mathura Cantonment Board which required them to take appropriate action. In these notices deficiencies were pointed out. There was complete lack of discharge of responsibilities by the Cantonment Board in relation to transportation and disposal of the MSW. The inspection report and the photographs filed on record also show that there is complete disregard of the MSW Rules of 2000 and in any case there is complete non-compliance of the SWM Rules of 2016.

14. The U.P. PCB may have served notices but that is not sufficient compliance on part of the PCB. It is required to take appropriate steps including issuance of directions under Section 5 of the Environment (Protection) Act, 1986, Section 31A of the Air Act and Section 33A of the Water Act and even launch criminal proceedings

against the officers of the Board. There was not only persistent default by the Cantonment Board but the PCB also had knowledge about it. Therefore, we are also of the considered view that the U.P. PCB has failed to take appropriate steps and timely action. In fact, there is complete non-compliance of the statutory functions on their part. The Board is required to act expeditiously in the interest of environment and public health. Open burning of waste is heinous as far as air pollution is concerned. The Board so far has over looked such events and has permitted the Cantonment Board to violate the law with impunity.

15. The Chief Executive Officer of the Cantonment Board instead of taking appropriate actions to remedy the problem, *vide* his letter dated 31st January, 2017 wrote to the U.P. PCB stating that they should inspect the site and send the report to them. We fail to understand that under which authority of law he wrote such a letter to the U.P. PCB. The U.P. PCB did not take effective steps, despite there being undisputable evidence to show that there were continuous violations was being committed by the Mathura Cantonment Board and no action was taken to remedy them by making up for the deficiencies and to prevent and control the pollution being caused at the trenching site in different ways including air pollution, water pollution, ground water pollution, injury to public health and animals and mixing of the waste with the river. The river is hardly 100 meters away from the site in question. It is unimaginable that a river like Yamuna during the rainy season would not get flooded and the water would not reach the dumping site and

take within its flow the MSW which includes as already stated, both biodegradable and non-biodegradable waste. Thus, there is direct pollution of the river. The stand taken that the wall is being constructed between the flood plain of the river Yamuna and the site in question to prevent the waste getting mixed with the river itself shows that the waste is going to the river and thus causing serious pollution.

16. In terms of Section 10 of the Cantonment Act, 2006, the Mathura Cantonment Board shall be deemed to be a municipality under clause (e) of Article 243P of the Constitution for the purposes of matters mentioned therein, particularly, in relation to public health, hygiene, welfare, sanitation, education etc. In any case, the Central laws in relation to environment would be completely operative and effective. The responsibility placed upon the Cantonment Board, being a municipality are unequivocal and definite. The Cantonment Board cannot shirk from its responsibility or even shift its responsibility to any other authority on the grounds of finances. No document has been placed on record to show that the Cantonment Board ever demanded any funds from the State or any other Competent Authority for the purposes of improving the site. It never submitted any detailed project report in that regard to the State Government or any other authority. What to talk of taking proper and effective steps in accordance with law, the Cantonment Board even failed to apply for consent to operate and authorization under the SWM Rules of 2016. It is only after notices were issued in this application, that for the first time in the year 2017, the Cantonment

Board bothered to submit an application which even as per the Board, was incomplete and did not provide all the information. The District Magistrate, Mathura has fully supported the case of the applicant and it is specifically pleaded that there is complete violation of the laws and there is indiscriminate dumping of MSW at the site in question.

17. The problem of MSW is not confined to Mathura Cantonment Board or Mathura city but it is a national problem. It requires collective, progressive and effective steps to be taken before the MSW is managed and disposed of in accordance with the law in force. This Tribunal had the occasion of dealing with the issue of MSW management and disposal at all India level in the case of *Almitra H. Patel v. Union of India and Ors.* (O.A. No. 199 of 2014) and in the case of *Kudrat Sandhu v. Govt. of NCT & Ors.* (O.A. No. 281 of 2016), particularly, in relation to Delhi. Delhi itself generates nearly 14,100 MT of waste everyday and these judgments provide the mechanism, methodology and measures that are required to be taken by all the stakeholders for managing and disposing of the MSW in an environment friendly manner and in consonance with the SWM Rules of 2016. In relation to dumping of any waste including MSW and C&D waste in the river or on the flood plain, the Tribunal issued comprehensive directions and completely prohibited dumping of any such waste in the flood plain, much less in the rivers. In the case of *Manoj Misra v. Union of India* (O.A. No. 300 of 2013) any kind of construction within the flood plain is prohibited. The stakeholders were directed to take stringent action against the persons who were

throwing the MSW or any other waste on the flood plain or in the rivers. All these judgments and the directions contained therein shall *mutatis mutandis* apply to the present case and they should be read in conjunction with and not in contradiction to the present judgment.

18. In light of the above discussions, we have no hesitation in holding that the U.P. PCB as well as the Mathura Cantonment Board have miserably failed to protect the environment and discharge their statutory and public law obligation in accordance with the law in force. For this reason, they are liable to pay Environmental Compensation in terms of Section 15 and 17 of the NGT Act. Thus, we direct that the U.P. PCB shall pay Rs. 5 Lakhs as Environmental Compensation while the Cantonment Board shall pay Rs. 10 Lakhs as Environmental Compensation for causing continuous air, water, ground water pollution and causing injury to the public health and environment. They have also failed to seek permission for the use of trenching ground under the law in force and operating it without the consent of the Board or without any authorization and in complete violation and disregard of the SWM Rules, 2016. Therefore, we dispose of this application with following order and directions:

- a. U.P. PCB shall pay Environmental Compensation of Rs. 5 Lakhs.
- b. Mathura Cantonment Board shall pay Environmental Compensation of Rs. 10 Lakhs.
- c. Both these Environmental Compensations shall be payable to the Central Pollution Control Board within two weeks and they shall utilize these funds with the permission of the Tribunal for

betterment of the environment and for other purposes, as may be directed by the Tribunal.

- d. We hereby direct the Mathura Cantonment Board to submit application for consent to operate and for authorization, complete in all respects, within two weeks from today to the U.P. PCB, which shall process the same in accordance with law and dispose of the same within four weeks thereafter.
- e. The Mathura Cantonment Board, within a period of three months from today would complete the construction of the wall between the river and the trenching site in question to ensure that under no circumstances the MSW should be permitted to enter directly or indirectly into the flood plain of the River or in River Yamuna.
- f. The U.P. PCB shall issue complete and comprehensive directions in relation to the collection, transportation, segregation and dumping of waste at the site in question in accordance with the SMW Rules of 2016, within a period of four weeks as afore-stated, even if no application is submitted to it. There shall be complete segregation of waste into bio degradable and non-bio degradable waste.
- g. Around the trenching site, the Cantonment Board shall provide green belt and also put barbed wires to ensure that no animals enter the trenching site.
- h. All these conditions should be complied within four weeks from today. The Cantonment Board is at liberty to approach the State Government requesting for financial assistance, if needed.

But this shall not be treated as a ground or reason for non-compliance of the order of the Tribunal. All the above directions issued by the Tribunal shall be complied with by all the officers and authorities without any delay and default. In the event of non-compliance, the senior most officer shall be liable to be proceeded against, in accordance with the law.

- i. We hereby issue clear directions to the Mathura Cantonment Board, U.P. PCB, local authorities and the State Government to comply with all the directions contained in the judgment of the Tribunal in the case of *Almitra H. Patel* (supra) and *Kudrat Sandhu* (supra). They shall submit compliance report within six weeks from today.
 - j. We also direct all the above authorities and Boards to ensure that the directions of the Tribunal contained in the case of *Manoj Mishra* (supra) in relation to prohibition on dumping of any waste in the river or the flood plain of River Yamuna or carrying on of any activity in that area, are complied with.
19. The application is accordingly disposed of with no order as to costs.

Swatanter Kumar
Chairperson

Raghuvendra S. Rathore
Judicial Member

Ajay A. Deshpande
Expert Member

New Delhi
13th April, 2017