

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

M.A. NOS. 482, 530 & 541 OF 2016

IN

ORIGINAL APPLICATION NO. 136 OF 2015

IN THE MATTER OF:

Madhumangal Shukla
390, Rangad Kunj, Bag Bundela,
P.O Vrindavan, Dist. Mathura

.....Applicant

Versus

1. Union of India
Through the Secretary
Ministry of Environment, Forests & Climate Change
New Delhi - 110003
2. Central Pollution Control Board
Through its Member Secretary
Parivesh Bhawan,
East Arjun Nagar,
New Delhi-110032
3. Uttar Pradesh Pollution Control Board
Through the Member Secretary
Picup Bhawn III Floor, Vibhuti Khand,
Gomti Nagar, Lucknow-2260001, U.P.
4. Irrigation Department, Uttar Pradesh
Through its Executive Engineer
Upper Ganga Canal, Irrigation Department
Civil Lines, Mathura
5. Nagar Palika Parishad, Vrindavan
Through its Executive Officer
Vrindavan, Mathura, Uttar Pradesh
6. Mandi Samiti, Mathura
Through its Secretary
Mandi Samiti, Mathura, Uttar Pradesh

7. Divisional Commissioner, Agra
Commissioner's Office, Agra
Uttar Pradesh

8. District Magistrate , Mathura
Civil Lines, Mathura
Uttar Pradesh

.....Respondents

COUNSEL FOR APPLICANTS:

Mr. Rahul Choudhary, and Ms. Meera Gopal, Advs.

COUNSEL FOR RESPONDENTS:

Mr. Mukul Singh, Adv. for Respondent No. 1

Mr. Rajkumar, Adv. and Mr. Bhupendra, LA for Respondent No. 2.

Mr. Pradeep Mishra and Mr. Daleep Kr. Dhyani, Adv. for Respondent No. 3.

Mr. S.K. Bhattacharya and Mr. K.R. Shukla Advs. for Respondents No. 5 & 8.

Mr. Abhishek Yadav, Adv. and Mr. Rahul Khurana, Adv. & Local Commissioner for Respondents No. 6 & 7

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 27th July, 2016

Pronounced on: 23rd August, 2016

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)

By this application we shall dispose of M.A. Nos. 482, 530 & 541 all of 2016, as they claim the same relief for recalling the order of the Tribunal dated 11th May, 2016 on somewhat similar grounds.

2. One Mr. Madhumangal Shukla had filed an application under Section 18(1) read with Sections 14&15 of the National Green

Tribunal Act, 2010 (for short 'the Act of 2010') submitting that there is only one land-fill site in Vrindavan which has been sold to Mandi Samiti, Mathura for setting up of a wholesale market.

3. As a result thereof all the Municipal Solid Waste (for short, "MSW") of Vrindavan was being dumped on different places and even on the banks of River Yamuna. The management of the MSW in Vrindavan was in complete violation of Municipal Solid Waste (Management and Handling) Rules, 2000 (for short Rules of 2000). According to the Applicant this problem had reached an alarming state. The unregulated dumping of MSW on the floodplain area of River Yamuna is a new development and is playing havoc with the floodplain. Thus, the Applicant prayed that the authorities should be directed to act strictly in accordance with the Rules of 2000 in relation to the collection, removal and dumping of the waste and garbage.

4. Appropriate new site for dumping of waste should be located in terms of the specifications of the Rules and till then Mandi Samiti Land should be continued as a dumping site. This application came to be disposed of by the detailed order of the Tribunal dated 11th May, 2016. The said order reads as under:-

The present application has been filed by the applicant with the prayer that the Municipal Solid Waste is being scattered everywhere i.e. street, open spaces and near the water bodies in violation of the Municipal Solid Waste (Management and Handling) Rules, 2000. Furthermore, the Municipal Solid Waste including plastic is being burnt in these areas. The littering of garbage, indiscriminate dumping and burning of

Municipal Solid Waste lying in different areas as afore indicated is in flagrant violation of Municipal Solid Waste rules of 2000. Burning of plastic and other waste is carcinogenic as it generates different toxic gases like dioxins and furans among other pollutants. Besides causing serious health hazard for the general public, it degrades the environment of the area. On the above facts, the applicant prays that the respondents be directed to strictly comply with the rules of 2000 and they should be prohibited from burning of any waste in open areas. They should also be directed to identify a proper dumping site for Municipal Solid Waste. When this application came up for hearing on 25-05-2015, the Tribunal had passed the following orders.

“Learned Counsel appearing for the respective Respondents may file their Replies within four weeks from today with advance copy to the Learned Counsel appearing for the Applicant who may file Rejoinder thereto, if any, within two weeks thereafter.

List on 22nd July, 2016.

In the meanwhile, we restrain the Corporation or any person from burning of Municipal Solid Waste or other waste in the open in any part of the Vrindhavan City as well as from dumping the waste on the river bed of Yamuna”.

As is evident from the above order, all concerned and, particularly the authorities in Vrindavan City, were directed not to dump any waste on the river bed of river Yamuna. Further, vide order dated 22-07-2015 they were directed to identify the site and prepare the same for transportation and dumping of MSW. Even the Officer of the respondent authorities were directed to be present before the Tribunal on 25-08-2015. The learned Counsel appearing for the Nagar Nigam had stated that the municipal waste dumped at the site has been removed. The Tribunal had granted liberty to the applicant to go and inspect the site. The applicant stated that the municipal waste was still being burnt indiscriminately at different places including the banks of the water bodies. As the applicant still persisted with his stand that there was indiscriminately dumping of municipal solid waste and even burning of the said waste, vide our order dated 23-03-2016 we had appointed Mr. Rahul Khurana, Advocate present in Court as a Local Commissioner who was permitted to visit the site and prepare the general report in relation to dumping and burning of Municipal Solid Waste. The Learned Local Commissioner as filed a very detailed report, and efforts put in by the Learned Local Commissioner is appreciated by the Tribunal. In the report of the Local Commissioner he has dealt with

different sites in the City of *Vrindavan* and has shown that there is indiscriminate dumping of Municipal Solid Waste besides it being burnt at different places. The report clearly shows that the authorities are failing to discharge their statutory and public law obligation. The photographs show that the administration and the municipal authorities of the city are aiding to worsen the situation rather than prevent and control the pollution and public health issues resulting from indiscriminate dumping Municipal Solid Waste. The photographs submitted by the Local Commissioner speak volume about the apathy on the part of the respondents. The photographs on record show that the right near the houses in the street, the Municipal Solid Waste particularly leaves are being burnt along with plastic. Even further, municipal solid waste has been dumped on the water bodies. In some places, the waste is being dumped in the middle of the street and sometimes even half of the road is covered with Municipal Solid Waste and such waste is being eaten by animal which contains very heavy quantity of plastic which is injurious to even the animal health. The dustbins have not been provided but wherever they have been placed they are not being maintained according to the rules. These bins are over-flowing and indiscriminately waste is being put into these bins causing environmental concerns. The respondents have filed their replies which are vague and infact factually incorrect. It has been stated that the site for disposal of municipal solid waste has been identified and some preparation are going on. The photographs submitted by the Local Commissioner clearly shows that the efforts of the respondents is hardly constructive towards remedy preventing and controlling of pollution, environmental and health hazard resulting from this activity. It is just and one simple pit that is being created, which on the face of it, is entirely insufficient for dumping of such huge quantity of waste.

The Rules of 2000 and provision of Environment (Protection) Act, 1986 read with Article 21 of the Constitution of India place constitutional, statutory and public law obligation upon the officers and the authorities to ensure clean air, clean environment and healthy surrounding for the people living in the various localities. These obligations are only being observed in breach. We see no reason why the authorities should have not taken effective and expeditious steps to remedy the wrong. The application is pending before the Tribunal now for the period of approximately a year, different orders were passed directing the

respondents to take appropriate measures but callousness on the part of the respondents and the concerned authority is evident from the records and, particularly, the report of the Local Commissioner. The Nigam and public authority concerned ought to have taken care that the Municipal Solid Waste is being collected, transported and disposed of in accordance with Municipal Solid Waste Rules, 2000 without default. We have no hesitation in observing that there is clear breach of duties, violation of Municipal Solid Waste Rules and slackness on the part of the respondents. Such public health matters cannot be ignored by the authority, that too persistently by the officers all the concerned authority, public body. They have failed to perform their functions and duties and have shown callousness even in obedience to the order of the Tribunal. The above indiscriminate dumping and burning are causing environmental degradation and serious adverse impact on human health. Consequently, we pass the following directions:-

1. There is clear air and environment pollution, bad odour and public nuisance resulting from this activity and indiscriminate breach of MSW Rules, 2000 in every possible way This would attract the provision of Section 15 and 17 of NGT Act, 2010. We therefore impose environmental compensation of Rs. 5 lac on the Deputy Commissioner of *Vrindavan*, District Mathura , Rs. 5 lac on the Nagar Palika Parishad , *Vrindhavan*.

2. The UPPCB claims that it had issued notices to the authority but still they failed to take steps. The UPPCB have also failed to discharge their statutory function and failed to carry out supervision and take action in accordance with Air Act and Municipal Solid Waste Rules, 2000. Thus we impose environmental compensation of Rs. 1 lac. on the UPPCB i.e. respondent No. 3.

3. We further impose cost of Rs. 50,000/- which shall be recovered in the first instance from the State/ District Administration and Respondent No. 5 and equally share this amount. This shall be subsequently recovered from the salary of erring officers of Respondent No. 1, Respondent No. 5 and Respondent No. 8.

4. The amount shall be recovered after holding departmental enquiry. Besides recovery, the Respondent particularly the concerned Secretary of the State of U. P. is also directed to take disciplinary action against the erring officers and the staff. If there is any private agency engaged by the public authority for collection, transportation and dumping of waste,

appropriate action shall also be taken against the said private authority in accordance with law.

5. We further direct the concerned respondent to completely develop the site at Mart road, *Vrindavan* site for dumping of MSW within four weeks from today and submit the compliance report on setting up for waste processing plant in accordance with rules.

6. We may notice that despite the fact that there are averments made in the affidavit, no effective steps has been taken till today.

7. There shall be total prohibition on dumping and/or burning of Municipal Solid Waste in any street at any place near the water bodies, market or residential areas. The waste shall be collected by the local authorities on daily basis and dumped at the site strictly in accordance with Municipal Solid Waste, Rules, 2000.

8. With the above directions this application stands disposed of, with no order as to costs. The entire cost of compensation should be deposited with Central Pollution Control Board within two weeks from today. In the event of default the concerned Head of the Department shall be liable for action in accordance with law.

9. We enhance the fee of the Local Commissioner of Rs. 20,000 to Rs. 30,000/- in addition to the expanses. We are informed that the respondents have still not paid the fee of the Local Commissioner. The fee shall be paid within one week from today. Liberty to the Local Commissioner to mention the matter if the fee is not paid. If there is default, the Executive Officer of Respondent No. 5 shall be present before the Tribunal.

10. We also hereby prohibited the use of carry bags and other plastic waste in the entire city of *Vrindhavan*. The State has already issued prohibitory order which should be effectively comply in this area.

Accordingly, Original Application No. 136 of 2015 stands disposed of without any order as to costs.

M.A. Nos. 399/2015, M.A. No. 1003/2015 & M.A. No. 1143/2015

In view of the fact that the main Application stand disposed these Applications do not survive consideration and the same are disposed of without any order as to costs.

Accordingly, M.A. Nos. 399/2015, 1003/2015 and 1143/2015 stand disposed of without any order as to costs.

The Applicants are the Respondents No. 3, 5 and 8 in the Original Application for recalling of the order of the Tribunal dated 11th May, 2016.

M.A. NO. 482 OF 2016

5. This application-M.A. No. 482 of 2016 has been filed on behalf of the Nagar Palika Parishad, Vrindavan i.e. Respondent no. 5. The Advocate for the Respondent no. 5 states that he was busy in the Supreme Court, and after finishing his matter from the Supreme Court when he came to the Tribunal he came to know that the Board was over and the above order had been passed. The matter was mentioned and the Tribunal was pleased to direct them to file an independent application. It is also averred that unfortunately the Executive Officer, Nagar Panchayat Farah who was having an additional charge of the Nagar Palika Parishad, Vrindavan was dealing with the matter earlier was transferred on 6th April, 2016. The new Executive Officer of the Nagar Palika Parishad took over the charge of Nagar Palika Parishad, Vrindavan and has no knowledge of the proceedings before the Tribunal. The non-appearance of the Counsel and the parties was inadvertent and was of no gain as a result of non-appearance and, therefore, it is prayed that the order dated 11th May, 2016 be recalled.

M.A. NO. 530 OF 2016

6. Similarly, M.A. no. 530 of 2016 has been filed on behalf of the District Magistrate, Mathura Respondent No. 8 for recalling of the order dated 11th May, 2016. In this application, it has been stated that the District Magistrate is entrusted with a wide range of duties in the jurisdiction of the district. He works as Collector, as District Magistrate, as Deputy Commissioner/District Commissioner and discharge various duties. There are 16 local bodies like Mathura, Vrindavan, Koshi Kala, Farah, Chomuha, Nandgaon etc. In addition to looking after these local bodies the District Magistrate also looks after the Transportation, Environment and PWD.

7. It is stated that unfortunately the Advocate for Respondent no. 8 never informed the District Magistrate that the affidavit has to be filed in the aforesaid matter and that the Executive Officer of Vrindavan, Shri Ram Ashray who was looking after the matter was routinely transferred in April and this resulted in non-filing of his affidavit as the new incumbent had to familiarize with the matter. The District Magistrate has issued orders to all the departments to strictly observe the orders of the Tribunal and strictly observe the Rules regarding the MSW.

Different authorities and organisation every year undertake to clean the entire Parikarma Marg. The Report submitted by the Commissioner was biased and it should not be accepted.

8. The visit of the Commissioner during Holi, when people from all parts of the country visit Krishna Bhoomi and thus, it is not true depiction of the state-of-affairs. The Executive Officer, Respondent no. 5's report is reliable and could be looked into by the Tribunal. There are number of Safai Karamcharis and daily wagers who have been appointed to ensure the cleanliness. The DPR of the solid waste management is already under the consideration of the State Government.

9. Necessary directions may be issued for augmenting the income which can be utilized for development work. Thus, the cost imposed is very harsh and the District Magistrate did not deserve such treatment as he was sincerely doing his work.

Thus, it is prayed that the order be recalled and the cost be waived.

M.A. NO. 541 OF 2016

10. The third application, M.A. no. 541 of 2016 praying for the same relief of modification of order dated 11th May, 2016 was filed by Respondent no. 3-Uttar Pradesh Pollution Control Board (for short, "UPPCB"). In this application, it has been stated that the complaints were received by the Pollution Control Board and it issued notice to the Municipal Authorities to remove the scattered waste from different points and to take appropriate action. The Pollution Control Board is not responsible for any degradation of environment and they have performed their functions regularly.

Thus, the order dated 11th May, 2016 should be modified and environmental compensation imposed upon the Board should be waived. Along with the application, notices issued to the Executive Officer of Nagar Palika Parishad, Mathura dated 30th December, 2008, 29th January, 2015, 10th June, 2015 and 20th January, 2016, have been annexed to substantiate its stand.

11. We will proceed to discuss all these three applications together. It is evident from the order of the Tribunal dated 11th May, 2016 that dumping of the MSW and littering of garbage was a very serious problem in Vrindavan. The most serious aspect was burning of MSW and plastic together which would be carcinogenic. The MSW, garbage and plastic particularly was being managed in complete violation of the Rules of 2000. The waste was being dumped even on the riverbed of Yamuna. This was raising serious issues in relation to environment and public health.

12. Keeping in view the problem of management of waste and its adverse impacts in mind, the Tribunal, vide its order dated 25th May, 2015, after parties were served and had put in appearance, passed an order restraining the Corporation and/or any other person from burning MSW or other waste in open in any part of Vrindavan city as well as dumping the waste on the riverbed. However, despite the order of the Tribunal, these activities continued and even the waste and the plastic were being burnt anywhere and everywhere in Vrindavan. All the Respondents had put in appearance and had filed their respective replies after taking

adjournment. In fact, a video had been produced before the Tribunal showing that the directions of the Tribunal for removing the waste from the site in question had not been complied with. The Municipal Authorities had not lifted the waste even from a location near the water body. Again a direction was issued to dispose of and dump the waste in accordance with Rules. All the Respondents had been appearing on different dates including 29th September, 2015, 3rd November, 2015, 30th November, 2015, 21st December, 2015, 28th January, 2016 and 23rd March, 2016. When the matter was being heard on 23rd March, 2016, photographs were again placed before the Tribunal showing that there was indiscriminate dumping of MSW as well as burning. It was noticed that the photographs do not depict proper state-of-affairs and the problem of waste burning was very serious. There was an objection raised by the Nagar Palika Parishad, Mathura and had stated that it was taking steps. Consequently, the Tribunal appointed a Local Commissioner with the Direction to visit different places in Vrindavan and report to the Tribunal the correct position with regard to dumping and burning of the Municipal Solid Waste. The Commissioner submitted a report which clearly showed that the waste and garbage was being dumped indiscriminately at different places and there was also burning of such waste which resulted in passing of the order dated 11th May, 2016, where environmental compensation was imposed upon district administration as well as the Nagar Palika Parishad, Mathura. The cost was also imposed upon the UPPCB.

13. Reverting back to the three applications, we may notice that in the replies nothing has been stated by any of the Applicants to show that there has been any improvement or that they had prior to the passing of the order dated 11th May, 2016 carried out the directions of the Tribunal in their true spirit and substance. They placed no document to show that there was no dumping in Vrindavan and there was no burning of MSW or plastic. The dates of hearing before the Tribunal prior to 11th May, 2016, clearly, required time and again the authorities to file their affidavits, which they fail to do so without any justifiable cause. Mere transfer of officer cannot constitute sufficient ground for non-compliance of the orders of the Tribunal. Even the new officer who had taken over in April as stated in this application, could have filed the affidavit within the time allowed by the Tribunal and there was no reason for the authorities to await till 11th May, 2016 and then not appeared before the Tribunal. The reason given by the learned Counsel appearing for the parties that one of them was busy in the Supreme Court when the case was called out before the Tribunal is again not a valid cause. It is the obligation of the Counsel to make appropriate arrangement to attend the case in which the Counsel has been engaged. At this stage we may notice that the Order dated 11th May, 2016 was dictated in open court and as stated the case was listed at item no. 56. The Ld. Counsels who were present and appearing for different parties had submitted their arguments. This obviously had taken considerable time of the Tribunal on that date still the counsel appearing for the applicant Respondent was not

present before the Tribunal. In fact, the order sheet does not show that the matter was mentioned and liberty to file an application was granted by the Tribunal to the Counsel.

14. As far as the UPPCB is concerned, we are even shocked the way the Board has conducted its affairs in relation to control of pollution arising from dumping and burning of solid waste. As already noticed, it has placed on record notice of 2008, 2013, 2015 and 2016. It appears to be a kind of routine matter for the Board to issue such notices at regular interval and take no further action on the basis of such notices. The Board is a statutory body and required to perform statutory functions to prevent and control pollution is its primary duty. It cannot shift the blame to other authorities only on the ground that the public authorities are required to collect and dispose of the MSW. If the authorities were failing to perform their functions and it was becoming a regular source of pollution and adverse impacts to public health, it was obligatory upon the Board not to just formally serve notices but to take them to their logical conclusion by issuing orders for non-compliance in terms of the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986, and if necessary, even prosecution could have been launched against the persons who were persistently defaulting in performing of their functions and causing pollution. Dumping of waste near the water bodies as well as in the open and particularly the burning of the waste causes very

serious pollution of air and water both. There is certainly definite degradation of environment. The present applications have been filed without any substance. They have been primarily filed to avoid the liability arising from the order of the Tribunal dated 11th May, 2016. Even now, there is not a single document, scheme or guidelines filed by any of the Respondents, district administration, Nagar Palika and the UPPCB to show individually or collectively that they have attempted to resolve the issue of dumping and burning of MSW in Vrindavan. The report of the Local Commissioner discloses the pathetic state-of-affairs prevailing in Vrindavan even on the banks of River Yamuna. This cannot be ignored much less overlooked. The callousness on the part of the Respondents no. 5 and 8 is even evident from the fact that both of them were absent on 11th May, 2016. Though, the UPPCB was represented and has prayed only for waiver of cost imposed upon them.

15. The Act of 2010 does not contain any specific provision for recalling/modification of the order per se. It is only Section 19 (4)(f) of the Act that vest the Tribunal with the power to review its own decisions, orders, directions etc. In terms of Section 19(1), the Tribunal shall not be bound by the provisions of the Code of Civil Procedure. It would evolve its own procedures in accordance with the Principle of Natural Justice. Even if, we apply the provisions of the Order 9 Rule 13 or Principles analogous thereto in exercise of inherent powers we entertain these applications still they do not

satisfy the basic requirements of Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure. Even applying the general principles of Law of Natural Justice and Equity the application which satisfy the Judicial conscious of the Tribunal that a sufficient cause exists for modification/recalling of the order dated 11th May, 2016. The Supreme Court of India in the case of *Arjun Singh v. Mohindra Kumar*, AIR 1964 SC 993 explained the difference between “good cause” and a “sufficient cause. It was stated that every “sufficient cause” is a “good cause” and vice versa. However, difference exists that the requirement of “good cause” is complied with a lesser degree of proof that of “sufficient cause”. It is also true that good and/or sufficient cause has to be examined on the facts of a given case and it is not possible to state any straitjacket formula in that regard. Still, in the case of *Basawaraj & Ors. V. the Spl. Land Acquisition Officer (2013) 14 SCC 81* the Supreme Court of India held that “sufficient cause” is the cause for which defendant could not be blamed for his absence. A “sufficient cause” has to be adequate or answer the purpose intended. Therefore, the word sufficient embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of reasonable standard of a cautious man. Wherever, a litigant “remained inactive”, “did not act diligently” and the application lacks bonafide the Court will not treat it as a sufficient cause.

The legislative intent of not setting aside an *ex parte* order on the mere asking is sufficiently demonstrated in the second proviso to Rule 13 of Order 9. It specifically stipulate that any irregularity in service of summons would not be a grant for setting aside the *ex parte* it is satisfied that the defendant had notice of the date of hearing of the suit and had sufficient time to appear. This aspect completely gets satisfied in the present case in as much as admittedly the applicant respondent had sufficient time to appear before the Tribunal and make an appropriate arrangement of requesting somebody to appear for him, none of these steps were taken by the respondents for reasons best known to itself.

As stated, in the Supreme Court of India it was item no. 6. In the normal course of events the matter would have finished earlier and there was sufficient time for a counsel to appear before the Tribunal well in time. The Tribunal is expected to return a finding that there was sufficient cause for absence of respondent no. 5 and 8. As far as respondent no. 5 is concerned, the application does not disclose any good cause which lies in sufficient cause which would call for recalling of the order. As far as Respondent no. 8 is concerned it has given no reason for its absence on 11th May, 2016, all it has done is to give implausible explanations for non filing of the affidavits.

16. We find that these applications are without substance and in fact they even lack bonafide. The question involved in the present case is not a dispute interse the private parties it is a matter of

larger public interest relating to public health and environment. The respondent cannot repeatedly harm the public health and environment by not acting in accordance with their statutory and public law obligation.

17. For these reasons, we see no ground to modify and/or recall the order dated 11th May, 2016. Consequently, all these applications are dismissed with no order as to costs. However, we grant 2 weeks time to all the Respondent Applicants to comply with the Order/Judgment dated 11th May, 2016 and pay the requisite amount.



Swatanter Kumar
Chairperson

M.S. Nambiar
Judicial Member

Raghuvendra S. Rathore
Judicial Member

A. R. Yousuf
Expert Member

Bikram Singh Sajwan
Expert Member

New Delhi
23rd August, 2016