

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO.176 OF 2012

Rajesh Madhukar Pandit & Ors. .. Petitioners.
Vs.
Nashik Municipal Corporation & Ors. .. Respondents.

**CIVIL APPLICATION NO.41 OF 2014
WITH
PUBLIC INTEREST LITIGATION NO.176 OF 2012**

Mahadu Bahiru Boarde & Ors. .. Applicants.
Vs.
Rajesh Madhukar Pandit & Ors. .. Respondents.

**WITH
WRIT PETITION NO.267 OF 2015**

Dilip Vasant Rao Sonawane & Ors. .. Petitioners.
Vs.
The State of Maharashtra & Ors. .. Respondents.

Mr.Pravatak S. Pathak for the Petitioner.
Mr.M.L. Patil for Respondent No.1.
Mr. R.B.Raghuwanshi i/b Ms.Rutuja Ambekar for Respondent No.3.
Mr. Upendra Lokegaonkar i/b Mr.N.R. Prajapati and
Mr.D.A.Nalawade for Respondent No.4.
Mr. Asadali Mazgaonwala i/b Kartikeya & Associates for Respondent
No.7.
Ms. Dakshaja Yeolekar i/b Little & Co. for Respondent No.6.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 30TH MARCH, 2017

P.C.

1. Learned counsel appearing for the petitioner after examination of all the interim directions issued by this Court and after going through the compliance affidavits/reports on record has tendered a detailed chart dated 27th March, 2017. We have

gone through the said chart with a view to understand the extent of non compliance of the interim orders passed by this Court from time to time.

2. Firstly we propose to deal with compliance which was required to be made by the State Government. There are two parts of the compliance to be made by the State Government. The first part is regarding providing police force. Clause 7 of the order dated 20th August, 2013 directs the Director General of Police, Maharashtra State to consider the proposal submitted by the Commissioner of Police of Nasik City for creation of additional posts of four Sub-Inspectors of Police and thirty Police Constables. Today, an affidavit of Shri Vijay Damodar Patil, Deputy Secretary, Home Department, Maharashtra State is tendered for dealing with the said direction. In the affidavit, it is claimed that a police force of four Sub-Inspectors of Police and 30 Police Constables has been deployed for performing the tasks of the Godavari River Protection force. It is stated that the said police personnel would continue to be deployed and same will not be withdrawn. As far as the direction for creation of the posts is concerned, it is stated that the State Government will take a decision at the earliest. Learned counsel appearing for the petitioners, on instructions, states that after the Kumbh Mela of 2015, it is noticed that the police force is not available. Learned Government Pleader tenders a copy of the order dated 29th March, 2017 regarding the deployment of police

personnel. The affidavit records that till the date of the affidavit, 1481 cases have been registered under the Maharashtra Police Act, 1951.

3. We direct the Divisional Commissioner to depute appropriate officers working in his office to make random visits to concerned areas to ascertain whether the police force as claimed by the State Government is being regularly deployed. Needless to add here that the officers nominated by the Divisional Commissioner will visit concerned areas without notice to any authority. Before the next date, at least 6-7 visits shall be made by the officials. The compliance report shall be filed in the form of an affidavit of the said officials before the next date.

4. The interim orders passed by this Court from time to time will indicate that on the basis of reports submitted by NEERI from time to time, comprehensive directions have been issued for implementation of the recommendations of NEERI. There is a scheme evolved under the form of the orders of this Court as well as recommendations of NEERI dealing with rejuvenation of River Godavari. In fact the orders passed from time to time by this Court along with the recommendations of NEERI for the rejuvenation of river Godavari. For implementation of the comprehensive scheme, the Nasik Municipal Corporation needs funds. There was a direction issued by this Court to the State Government to deal with

the proposal of the Nasik Municipal Corporation. Today, learned Government Pleader has tendered across the bar a copy of the communication dated 24th June, 2016 issued to the Commissioner of Nasik Municipal Corporation by the State Government. It is taken on record and marked "S-1" for identification. The said communication records that a proposal was forwarded to the Central Government. It is stated that the Central Government by the letter dated 26th February, 2016 informed the State Government to utilise its own funds or generate finance by approaching ADB and secure necessary funds for implementation of the project. However, by the said communication dated 26th February, 2016 the State Government has recorded that the funds are not available and therefore, the Municipal Corporation should follow up the matter with Urban Development department for seeking funds. In fact, the same letter records the directions of the Central Government that the State Government should spend amounts from its own funds for the scheme or procure the same from the financial institutions. Notwithstanding the said directions of the Central Government, now the State Government wants the Municipal Corporation to follow up the matter with the Urban Development department for securing finance. Thereafter a detailed proposal dated 22nd July, 2016 was again submitted by the Municipal Corporation. The break up of the amount of Rs.521.26 crores needed is also set out in the said proposal. A request was made to make a budgetary provisions for the project. Another request was made to implement

the directions of the Central Government. A specific request was also made that the State Government should implement the said directions and make the funds available by approaching the financial institutions.

5. Vide order dated 7th March, 2014 this Court has already held that it is the duty and constitutional obligation of the State Government to protect and improve the environment. From the communication dated 24th June, 2016 it is clear that the State Government has refused to release any amount for the project of the rejuvenation of River Godavari. Apart from the fact the said communication shows that the State is not willing to abide by its Constitutional obligations, the State Government does not want to support the activity of the rejuvenation of River Godavari. The Central Government directed the State Government to procure finance from the financial institutions. Instead of taking up the matter with the financial institutions, the State Government has shifted entire burden on the Municipal Corporation. Moreover, the proposal dated 22nd July, 2016 is still pending with the State Government and no decision is yet taken thereon.

6. We direct the Government Pleader to supply a copy of this order as well as the copies of all the relevant orders passed by this Court to the Chief Secretary of the State. We direct the Chief Secretary of the State to file his own affidavit or an affidavit of any

Senior Officer making the stand of the State Government very clear as to whether the State Government is interested in implementation of the project of rejuvenation of River Godavari. We may note here that the committee appointed under the orders of this Court headed by the Divisional Commissioner is functioning for last about three years and monitoring implementation of the interim orders passed by this Court. We may also note that the State Government has not challenged the interim directions issued by this Court. Therefore, by filing the affidavit as aforesaid, the State Government must make it clear whether it wants to support the scheme of the rejuvenation of River Godavari. The said scheme cannot be implemented unless the State Government makes available adequate funds to the municipal corporation, may be even in a phasewise manner. But, today, there is a complete refusal on the part of the State Government to provide even a single farthing for the project.

7. Our attention was invited to an order dated 20th March, 2017 passed by the Division Bench of the High Court of Uttarakhand. Paragraph 19 of the said order read thus :

“19. Accordingly, while exercising the parens patrie jurisdiction, the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal

persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna. The Director NAMAMI Ganges, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand are hereby declared persons in loco parentis as the human face to protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries. These Officers are bound to uphold the status of Rivers Ganges and Yamuna and also to promote the health and well being of these rivers.”

In fact, in paragraph 20, a direction was issued that the learned Advocate General of the State shall appear in all legal proceedings to protect the interest of Rivers Ganges and Yamuna. In paragraph 18, the Division Bench observed that there is utmost expediency to give legal status as a living person/legal entity to both rivers i.e. Ganga and Yamuna in the rights of the provisions of Articles 48-A and 51A(g) of the Constitution of India”.

8. We direct the Chief Secretary or the officer nominated by him to make the stand of the State Government very clear by

filing an affidavit on or before 18th April, 2017. We make it clear that no further time will be granted to the State Government. If the State Government fails to file an affidavit, apart from initiating appropriate proceedings, this Court will be free to draw appropriate inference on the basis of failure to file an affidavit. We make it very clear that unless the State Government makes available adequate funds, no progress can be made in the implementation of the orders of this Court which have become final as of today.

9. Now we come to the compliance made by the Maharashtra Industrial Development Corporation (for short 'MIDC'). Paragraph 31 of the order dated 7th March, 2013 read thus :

“31. We direct the MIDC to ensure that CETP is set up in Satpur and Ambad Industrial Areas as expeditiously as possible. We make it clear that even if the user industries are not willing to bear the cost of CETP, the MIDC shall take steps on its own for setting up CETP. The Action Taken Report shall be filed by the MIDC within a period of three months from today on the aspect of setting up CETP”.

Today, a compliance report is handed over by learned Advocate representing MIDC which is marked 'S-2' for

identification. It records that there is a proposal to set up CETP for Satpur and Ambad Industrial area. Accordingly, an Agreement to Lease is executed by MIDC granting lease of Plot No.P-30 admeasuring 8900 sq. mtrs. to Metal Finishers Association (for short 'MFA'). The allotment of the said land is made to enable MFA to set up the CETP to cater the need of both the industrial areas. In fact, the report shows that MFA had undertaken to complete the project. The report shows that no progress whatsoever has been made and even the DPR is not finalised.

10. Thus, even going by the report, the MFA has committed breach of the undertaking given to MIDC. As directed in paragraph 31, the MIDC should have taken steps on its own for setting up CETP. However, that has not been done. There is complete inaction on the part of MIDC for last more than three years. We propose to grant final opportunity the to MIDC to file a fresh compliance report by 18th April, 2017. There is a report filed on behalf of Maharashtra Water Pollution Control Board by Shri Rajendra Patil. Paragraph 2 of the report shows that 164 defaulting industries were identified. However, we find that action has been taken only in respect of 119 industries. It is stated that 18 industries have been ordered to be kept closed.

11. As regards filing of complaint under Section 49 of the Water (Prevention and Control of Pollution) Act, 1974 ('Act of 1974')

the learned counsel appearing for Pollution Control Board stated that recently complaints have been received from the Commissioner and show cause notices have been issued to 12 industries. He stated that hearing on show cause notices has been fixed tomorrow. The learned counsel appearing for the petitioner is right in submitting that action under Section 49 of the Act of 1974 will have to be taken not only in relation to defaulting industries but also against the erring citizens.

12. As regards CETPs operated by individual industries, we find that a list of 201 industries which are effluent generating industries in Satpur and Ambad industrial areas. However, it is not said as to how many industries have CETPs. We are not satisfied with the compliance report filed by the Pollution Control Board. We grant time to the Pollution Control Board to file appropriate compliance report by 18th April, 2017.

13. We must make it very clear that if we find that there is non compliance with material directions issued from time to time, now action under the Contempt of Courts Act, 1971 will have to be initiated.

14. There is another issue on which there are no interim directions issued. Our attention is invited to the order dated 24th December, 2014 passed in PIL No.8 of 2012 which inter alia deals

with the issue of rejuvenation of River Chandrabhaga. In the said order, this Court had relied upon recommendation of NEERI which says that activity such as construction of “temporary pendols” and other structures should not be permitted on the river bed or by the side of river bed. The said directions are reiterated in the order dated 5th March, 2015 after dealing with arguments based on violation of Article 25 of the Constitution of India which was canvassed by some of the groups of warkaris. In the peculiar facts of the case, the directions issued by this Court not to permit construction of any “temporary structures” on the river bed was modified by the First Court by the order dated 15th July, 2015 and an exception was carved out for one year.

15. We also propose to issue the directions to the Municipal Corporation to take action of demolition in respect of illegal structures erected in the river bed and on both sides of banks of river Godavari passing through Nasik city.

16. We direct the State Government, Pollution Control Board and MIDC to file compliance affidavits/reports by 18th April, 2017.

17. The Divisional Commissioner, who is heading the Committee appointed by this Court shall depute responsible officers working in his office to visit concerned areas with a view to ascertain whether the police personnel deputed are on duty

and are available. The officers appointed by the Divisional Commissioner shall visit concerned areas without notice to the police or any other authority. The affidavits/reports of the said officers shall also be filed on or before next date.

18. The Nasik Municipal Corporation and State Government shall ensure that the river bed of River Godavari is not used for erection of temporary pendols or any other structure or shelter or any other prohibited activity. The Municipal Corporation shall carry out survey to ascertain whether there are any illegal structures erected on the river bed and abutting both the sides of river bed. If any illegal construction are found, the municipal corporation shall take appropriate action of demolition of illegal structures after following due process of law and after giving an opportunity of being heard to the affected persons.

19. We clarify that the interim direction issued as aforesaid in relation to the river bed will apply to areas falling within blue line.

20. Place the petition under the caption of "For directions" on 21st April, 2017 at 1 pm.

(A.K. MENON, J.)

(A.S. OKA, J.)