Item No. 01 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 606/2018

Compliance of Municipal Solid Waste Management Rules, 2016
(State of Tripura)

Date of hearing: 07.05.2019

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):

For Respondent (s): Mr. Lalit Kumar Gupta, Chief Secretary, State of Tripura
Mr. Shailendra Singh, Special Secretary, Department of Science, Technology & Environment
Dr. Milind Ramteke, Director, Urban Development, Tripura
Mr. Manas Mukherjee, Member Secretary, PCB, Tripura
Mr. Shuvodeep Roy and Mr. Kabir Shankar Bose, Advocates

ORDER

1. The issue for consideration is status of compliance of orders of this Tribunal on the subject of solid waste management and allied issues.

I. PROCEEDINGS IN ALMITRA PATEL:

2. The matter arose before this Tribunal on transfer of proceedings in *Writ Petition No. 888/1996, Almitra H. Patel Vs. Union of India & Ors.*, by the Hon'ble Supreme Court, vide order dated 02.09.2014.

3. We may note that the issue has been subject matter of consideration before the Hon'ble Supreme Court in several proceedings, including in *Municipal Council, Ratlam vs. Vardhichand*[1] and *B.L. Wadhera v. Union of India and Ors.*[2] It has been categorically laid down that clean environment is fundamental right of citizens under Article 21 and it is for the local bodies as well as the State to ensure that public health is preserved by taking all possible steps. For doing so, financial inability cannot be pleaded.

4. The Hon'ble Supreme Court had appointed Barman Committee which gave report on 06.01.1998 and it was duly accepted. The same led to draft for management of MSW Rules, 1999 which were replaced by 2000 Rules and are now succeeded by 2016 Rules. The Hon'ble Supreme Court gave directions for proper management of municipal solid waste, *inter-alia*, vide orders dated 24.08.2000, 04.10.2004, 15.05.2007 and 19.07.2010.

5. All the States were parties before the Hon'ble Supreme Court and draft action plans were prepared which were to be updated, as per revised Rules.

6. It has been observed by the Hon'ble Supreme Court in *Almitra H. Patel and Anr. v. Union of India and Ors.*[3] that the local authorities constituted for providing services to the citizens are lethargic and insufficient in their functioning which is impermissible. Non-accountability has led to lack of effort on the part of the employees. Domestic garbage and sewage along

[1] (1980) 4 SCC 162
[2] (1996) 2 SCC 594
[3] (2000) 2 SCC 678

with poor drainage system in an unplanned manner contribute heavily to the problem of solid waste. The number of slums have multiplied significantly occupying large areas of public land. Promise of free land attracts more land grabbers. Instead of "slum clearance" there is "slum creation" in cities which is further aggravating the problem of domestic waste being strewn in the open. Accordingly, the Court directed that provisions pertaining to sanitation and public health under the DMC Act, 1957, the New Delhi Municipal Council Act, 1994 and Cantonments Act, 1994 be complied with, streets and public premises be cleaned daily, statutory authorities levy and recover charges from any person violating laws and ensure scientific disposal of waste, landfill sites be identified keeping in mind requirement of the city for next 20 years and environmental considerations, sites be identified for setting up of compost plants, steps be taken to prevent fresh encroachments and compliance report be submitted within eight weeks.

7. The Hon'ble Supreme Court again in *Almitra H. Patel and Anr. v. Union of India and Ors.*[4] while further reviewing the progress noted the following suggestions for consideration by the State Governments and Central Government and SPCBs/PCCs:-

> *"1. As a result of the Hon'ble Supreme Court's orders on 26.7.2004, in Maharashtra the number of authorizations granted for solid waste management (SWM) has increased from 32% to 98%, in Gujarat from 58% to 92% and in M.P. from NIL to 34%. No affidavits at all have been received from the 24 other States/UTs for which CPCB reported NIL or less than 3%*

[4] (2004) 13 SCC 538

authorisationsin February 2004. All these States and their SPCBs can study and learn from Karnataka, Maharashtra and Gujarat's successes.

2. All States/UTs and their SPCBs/PCCs have totally ignored the improvement of existing open dumps, due by 31.12.2001, let alone identifying and monitoring the existing sites. Simple steps can be taken immediately at almost no cost by every single ULB to prevent monsoon water percolation through the heaps, which produces highly polluting black run-off(leachate). Waste heaps can be made convex to eliminate standing water, upslope diversion drains can prevent water inflow, downslope diversion drains can capture leachate for recirculation onto the heaps, and disused heaps can be given soil cover for vegetative healing.

3. Lack of funds is no excuse for inaction. Smaller towns in every State should go and learn from Suryapet in A.P. (population 103,000) and Namakkal in T.N. (population 53,000) which have both seen dustbin-free 'zero garbage towns' complying with the MSW Rules since 2003 with no financial input from the State or the Centre, just good management and a sense of commitment.

4. States seems to use the Rules as an excuse to milk funds from the Centre, by making that a precondition for action and inflating waste processing costs 2-3 fold. The Supreme Court Committee recommended 1/3 contribution each from the city, State and Centre. Before seeking 70-80% Centre's contribution, every State should first ensure that each city first spends its own share to immediately make its wastes non-polluting by simple sanitizing/stabilizing, which is always the first step in composting viz. inoculate the waste with cowdung solution or bioculture and placing it in windrows (long heaps) which are turned at least once or twice over a period of 45 to 60 days.

5. Unless each State creates a focused 'solid waste management cell' and rewards its cities for good performance, both of which Maharashtra has done, compliance with the MSW Rules seems to be an illusion.

6. The admitted position is that the MSW Rules have not been complied with even after four years. None of the functionaries have bothered or discharged their duties to ensure compliance. Even existing dumps have not been improved. Thus, deeper thought and urgent and immediate action is necessary to ensure compliance in future."

8. After transfer of proceedings to this Tribunal on 02.09.2014, the matter was taken up from time to time and several directions were issued. Finally vide order dated 22.12.2016, after noticing that the SWM Rules, 2016 had been notified on 08.04.2016 which laid down elaborate mechanism to deal with the solid waste management, the Tribunal directed as follows:

"1. Every State and Union Territory shall enforce and implement the Solid Waste Management Rules, 2016 in all respects and without any further delay.

2. The directions contained in this judgment shall apply to the entire country. All the State Governments and Union Territories shall be obliged to implement and enforce these directions without any alteration or reservation.

3. All the State Governments and Union Territories shall prepare an action plan in terms of the Rules of 2016 and the directions in this judgment, within four weeks from the date of pronouncement of the judgment. The action plan would relate to the management and disposal of waste in the entire State. The steps are required to be taken in a time bound manner. Establishment and operationalization of the plants for processing and disposal of the waste and selection and specifications of landfill sites which have to be constructed, be prepared and maintained strictly in accordance with the Rules of 2016.

4. The period of six months specified under Rule 6(b), 18, 23 of the Rules of 2016 has already lapsed. All the stakeholders including the Central Government and respective State Governments/UTs have failed to

take action in terms thereof within the stipulated period. By way of last opportunity, we direct that the period of six months shall be reckoned w.e.f. 1st January, 2017. There shall be no extension given to any stakeholders for compliance with these provisions any further.

The period of one year specified under Rule 11(f) 12(a), 15(e), 22(1) and 22(2) has lapsed. The concerned stakeholders have obviously not taken effective steps in discharging their statutory obligations under these provisions. Therefore, we direct that the said period of one year shall commence with effect from 1st July, 2017. For this also, no extension shall be provided.

Any State or Union Territory which now fails to comply with the statutory obligations as afore indicated shall be liable to be proceeded against in accordance with Section 15 of the Environment (Protection) Act, 1986. Besides that, it would also be liable to pay environmental compensation, as may be imposed by this Tribunal. In addition to this, the senior most officer in-charge in the State Government/Urban Local Body shall be liable to be personally proceeded against for violation of the Rules and orders passed by this Tribunal.

5. *The Central Government, State Government, Local Authorities and citizens shall perform their respective obligations/duties as contemplated under the Rules of 2016, now, without any further delay or demur.*

6. *All the State Governments, its departments and local authorities shall operate in complete co-ordination and cooperation with each other and ensure that the solid waste generated in the State is managed, processed and disposed of strictly in accordance with the Rules of 2016.*

7. *Wherever a Waste to Energy plant is established for processing of the waste, it shall be ensured that there is mandatory and proper segregation prior to incineration relatable to the quantum of the waste.*

8. *It shall be mandatory to provide for a buffer zone around plants and landfill sites whether they are geographically integrated or are located separately. The buffer zone necessarily need not be of 500 meters wherever there is a land constraint. The purpose of the buffer zone should be to segregate the*

plant by means of a green belt from surrounding areas so as to prevent and control pollution, besides, the site of the project should be horticulturally beautified. This should be decided by the authorities concerned and the Rules are silent with regard to extent of buffer zone. However, the Urban Development Manual provides for the same. Hence, we hold that this provision is not mandatory, but is directory.

We make it clear that buffer zone and green belt are essential and their extent would have to be decided on a case to case basis.

9. *We direct that the Committees constituted under Rule-5 would meet at least once in three months and not once in a year as stipulated under the Rules of 2016. The minutes of the meeting shall be placed in the public domain. Directions, on the basis of the minutes, shall be issued immediately after the meeting, to the concerned States, local bodies, departments and Project Proponents.*

10. *The State Government and the local authorities shall issue directives to all concerned, making it mandatory for the power generation and cement plants within its jurisdiction to buy and use RDF as fuel in their respective plants, wherever such plant is located within a 100 km radius of the facility.*

In other words, it will be obligatory on the part of the State, local authorities to create a market for consumption of RDF. It is also for the reason that, even in Waste to Energy plants, Waste–RDF–Energy is a preferred choice.

11. *In Waste to Energy plant by direct incineration, absolute segregation shall be mandatory and be part of the terms and conditions of the contract.*

12. *The tipping fee, wherever payable to the concessionaire/operator of the facility, will not only be relatable to the quantum of waste supplied to the concessionaire/operator but also to the efficient and regular functioning of the plant. Wherever, tipping fee is related to load of the waste, proper computerised weighing machines should be connected to the online system of the concerned departments and local authorities mandatorily.*

13. *Wherever, the waste is to be collected by the concessionaire/operator of the facility, there it shall be obligatory for him to segregate inert and C&D waste at source/collection point and then transport it in accordance with the Rules of 2016 to the identified sites.*

14. *The landfill sites shall be subjected to bio-stabilisation within six months from the date of pronouncement of the order. The windrows should be turned at regular intervals. At the landfill sites, every effort should be made to prevent leachate and generation of Methane. The stabilized waste should be subjected to composting, which should then be utilized as compost, ready for use as organic manure.*

15. *Landfills should preferably be used only for depositing of inert waste and rejects. However, if the authorities are compelled to use the landfill for good and valid reasons, then the waste (other than inert) to be deposited at such landfill sites be segregated and handled in terms of Direction 13.*

16. *The deposited non-biodegradable and inert waste or such waste now brought to land fill sites should be definitely and scientifically segregated and to be used forfilling up of appropriate areas and forconstruction of roads and embankments in all road projects all over the country. To this effect, there should be a specific stipulation in the contract awarding work to concessionaire/operator of the facility.*

17. *The State Government, Local Authorities, Pollution Control Boards of the respective States, Pollution Control Committees of the UTs and the concerned departments would ensure that they open or cause to be opened in discharge of Extended Producer Responsibility, appropriate number of centers in every colony of every district in the State which would collect or require residents of the locality to deposit the domestic hazardous waste like fluorescent tubes, bulbs, batteries, electronic items, syringe, expired medicines and such other allied items. Hazardous waste, so collected by the centers should be either sent for recycling, wherever possible and the remnant thereof should be transported to the hazardous waste disposal facility.*

18. *We direct MoEF&CC, and the State Governments to consider and pass appropriate directions in relation*

to ban on short life PVC and chlorinated plastics as expeditiously as possible and, in any case, not later than six months from the date of pronouncement of this judgment.

19. *The directions and orders passed in this judgment shall not affect any existing contracts, however, we still direct that the parties to the contract relating to management or disposal of waste should, by mutual consent, bring their performance, rights and liabilities in consonance with this judgment of the Tribunal and the Rules of 2016. However, to all the concessionaire/operators of facility even under process, this judgment and the Rules of 2016 shall completely and comprehensively apply.*

20. *We specifically direct that there shall be complete prohibition on open burning of waste on lands, including at landfill sites. For each such incident or default, violators including the project proponent, concessionaire, ULB, any person or body responsible for such burning, shall be liable to pay environmental compensation of Rs. 5,000/- (Rs. Five Thousand only) in case of simple burning, while Rs. 25,000/- (Rs. Twenty Five Thousand only) in case of bulk waste burning. Environmental compensation shall be recovered as arrears of land revenue by the competent authority in accordance with law.*

21. *All the local authorities, concessionaire, operator of the facility shall be obliged to display on their respective websites the data in relation to the functioning of the plant and its adherence to the prescribed parameters. This data shall be placed in the public domain and any person would be entitled to approach the authority, if the plant is not operating as per specified parameters.*

22. *We direct the CPCB and the respective State Boards to conduct survey and research by monitoring the incidents of such waste burning and to submit a report to the Tribunal as to what pollutants are emitted by such illegal and unauthorized burning of waste.*

23. *That the directions contained in the judgment of the Tribunal in the case of 'Kudrat Sandhu Vs. Govt. of NCT &Ors', O.A. No. 281 of 2016, shall mutatis mutandis apply to this judgment and consequently to all the stakeholders all over the country.*

24. *That any States/UTs, local authorities, concessionaires, facility operators, any stakeholders, generators of waste and any person who violates or fails to comply with the Rules of 2016 in the entire country and the directions contained in this judgment shall be liable for penal action in accordance with Section-15 of the Environment (Protection) Act, 1986 and shall also be liable to pay environmental compensation in terms of Sections 15 & 17 of the National Green Tribunal Act, 2010 to the extent determined by the Tribunal.*

25. *That the State Governments/UTs, public authorities, concessionaire/operators shall take all steps to create public awareness about the facilities available, processing of the waste, obligations of the public at large, public authorities, concessionaire and facility operators under the Rules and this judgment. They shall hold program for public awareness for that purpose at regular intervals. This program should be conducted in the local languages of the concerned States/UTs/Districts.*

26. *We expect all the concerned authorities to take note of the fact that the Rules of 2016 recognize only a landfill site and not dumping site and to take appropriate actions in that behalf.*

27. *We further direct that the directions contained in this judgment and the obligations contained under the Rules of 2016 should be circulated and published in the local languages.*

28. *Every Advisory Committee in the State shall also act as a Monitoring Committee for proper implementation of these directions and the Rules of 2016.*

29. *Copy of this judgment be circulated to all the Chief Secretaries/Advisers of States/UTs by the Registry of the Tribunal. The said authorities are hereby directed to take immediate steps to comply with all the directions contained in this judgment and submit a report of compliance to the Tribunal within one month from the date they receive copy of this judgment."*

II. PREVIOUS PROCEEDINGS IN PRESENT MATTER:

9. The Tribunal in a review meeting on the administrative side with the CPCB and municipal solid waste management experts, on 23.07.2018 considered the matter in the light of annual report prepared by the CPCB in April 2018 under Rule 24 of the MSW Rules and noticed serious deficiencies. Accordingly, it was decided to take up the issue of execution of judgment dated 22.12.2016 in *Mrs. Almitra H. Patel &Anr. Vs. Union of India & Ors. (supra),* by way of interaction with all the States/UTs through video conferencing. For this purpose, meetings were held on 02.08.2018, 07.08.2018, 08.08.2018, 13.08.2018 and 20.08.2018.

10. At the conclusion of the interaction, the Tribunal declared that the mandatory provision of the Rules and directions should be implemented in a time bound manner. Following specific steps were required to be taken:

    i. Action plans were to be submitted by all the States to CPCB latest by 31.10.2018 and executed in the outer deadline of 31.12.2019 which should be overseen by the Principal Secretaries of Urban and Rural Development Departments of the States.

    ii. The States should have Monitoring Committees headed by the Secretary, Urban Development Department with the Secretary of Environment Department as Members and CPCB and State Pollution Control Boards (SPCBs) assisting the Committees.

    iii. They should have interaction with the local bodies once in two weeks.

iv. Local bodies are to furnish their reports to State Committees twice a month.

v. The State Committees may take a call on technical and policy issues.

vi. Local bodies may have suitable nodal officers. Bigger local bodies may have their own Committees headed by Senior Officers.

vii. Public involvement may be encouraged and status of the steps taken be put in public domain.

viii. The State Level Committees are to give their reports to the Regional Monitoring Committees on monthly basis.[5]

ix. Instead of every local body separately floating tenders, the standardized technical specifications be involved and adopted.[6]

x. Best practices may be adopted, including setting up of Control Rooms where citizens can upload photos of garbage which may be looked into by the specified representatives of local bodies, at local level as well as State level.

xi. It was directed that mechanism be evolved for citizens to receive and give information.

xii. CCTV cameras be installed at dumping sites.

xiii. GPS be installed in garbage collection vans. This may be monitored appropriately.[7]

11. Performance audit was to be conducted for 500 ULBs with population of 1 lakh and above initially, as suggested by the MoHUA as follows:

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[5]Para 21
[6] Para 22
[7] Para 23

	Key Parameters/ Indicators	Description of Parameters/Indicators for physical evaluation
1	**Door to Door Collection**	Door to door collection of segregated solid waste from all households including slums and informal settlements, commercial, institutional and other non-residential premises.
		Transportation in covered vehicles to processing or disposal facilities
2	**Source Segregation**	Segregation of waste by households into Biodegradable, non-biodegradable, domestic hazardous.
3	**Litter Bins & Waste Storage Bins**	• Installation of Twin-bin/ segregated litter bins in commercial & public areas at every 50-100 meters. • Installation of Waste storage bins in strategic locations across the city, as per requirement (Unless Binless) • Elimination of Garbage Vulnerable Points.
4	**Transfer Stations**	Installation of Transfer Stations instead of secondary storage bins in cities with population above 5 lakhs.
5	**Separate transportation**	• Compartmentalization of vehicles for the collection of different fractions of waste. • Use of GPS in collection and transportation vehicles to be made mandatory at least in cities with population above 5 lakh along with the publication of route map.
6	**Public Sweeping**	• All public and commercial areas to have twice daily sweeping, including night sweeping and residential areas to have daily sweeping.
7	**Waste Processing** • **Wet Waste** • **Dry Waste** • **MRF Facility**	• Separate space for segregation, storage, decentralised processing of solid waste to be demarcated • Establishing systems for home/decentralised and centralised composting • Setting up of MRF Facilities.
8	**Scientific Landfill**	• Setting up common or regional sanitary landfills by all local bodies for the disposal of permitted waste under the rules • Systems for the treatment of legacy waste to be established.
9	**C&D Waste**	Ensure separate storage, collection and transportation of construction and demolition wastes.
10	**Plastic Waste**	Implementation of ban on plastics below <50 microns thickness and single use plastics.

11	**Bulk Waste Generators (BWGs)**	Bulk waste generators to set up decentralized waste processing facilities as per SWM Rules, 2016.
12	**RDF**	Mandatory arrangements have to be made by cement plants to collect and use RDF, from the RDF plants, located within 200 kms.
13	**Preventing solid waste from entering into water bodies**	Installation of suitable mechanisms such as screen mesh, grill, nets, etc. in water bodies such as nallahs, drains, to arrest solid waste from entering into water bodies.
14	**User Fees**	Waste Generators paying user fee for solid waste management, as specified in the bye-laws of the local bodies.
15	**Penalty provision**	Prescribe criteria for levying of spot fine for persons who litters or fails to comply with the provisions of these rules and delegate powers to officers or local bodies to levy spot fines as per the byelaws framed.
16	**Notification of Bye Laws**	Frame bye-laws incorporating the provisions of MSW Rules, 2016 and ensuring timely implementation.
17	**Citizen Grievance Redressal**	Resolution of complaints on Swachhata App within SLA.
18	**Monitoring mechanism**	States/ULBs to update month wise targets/action plans on the online MIS.

12. The Regional Committees were to be headed either by former High Court Judges or by Senior Retired Officers and Apex Committees by a former Supreme Court Judge.[8] Common problems faced and suggestions were to be noted in tabular chart.[9] The Committees were to function for a period of one year subject to further orders.[10]

13. The matter was again taken up on 16.01.2019 in light of reports received from some of the Committees, especially from the State of Uttar Pradesh.

[8] Paras 18 and 20
[9] Para 14
[10] Para 18

14. It was noticed that timeline of two years had expired which was the period prescribed for steps 1 to 7 under Rule 22 and three years is to expire on 08.04.2019 which covers steps upto serial number 10. Since violation of Rules are statutory offences under the Environment (Protection) Act, 1986 and results in deterioration of environment, affecting the life of the citizens, it was noted that the authorities may be made accountable for their lapses and required to furnish performance guarantee for compliance or pay damages as had been directed in some of the cases.[11]

15. The Tribunal noted that solid waste management is of paramount importance for protection of environment, as the statistics paint a dismal picture of the environment in the country. The Tribunal had also referred to proceedings before it, relating to 351 polluted river stretches 102 non-attainment cities in terms of ambient air quality and 100 industrial clusters which are critically polluted as per data available with CPCB. The Tribunal had taken cognizance of such serious environmental issues and required the respective States to prepare time bound action plans and execute the same so as to restore water and air quality, as per prescribed norms.[12]

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[11]Para 20. Cases referred to in the said para are as follows:

- (a). All India Lokadhikar Sangathan vs. Govt of NCT Delhi & Anr, E.A No. 11/2017, Date of Order 16.10.2018;
  (b). Sobha Singh vs. State of Punjab & Ors. O.A. No. 916/2018, Date of Order 14.11.2018;
  (c). Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & Ors. O.A No. 110 (THC)/2012, Date of Order 04.01.2019;
  (d). Ms. Ankita Sinha vs. State of Maharashtra & Ors. O.A. No. 510/2018, Date of Order 30.10.2018,
  (e). Sudarsan Das vs. State of West Bengal & Ors. O.A. No. 173/2018, Date of Order 04.09.2018;
  (f). Court on its Own Motion vs. State of Karnataka, O.A. No. 125/2017, Date of Order 06.12.2018.

[12] Para 21. Cases referred to in the said para are as follows:

16. The Tribunal also noted that there was a need to conduct performance audit of statutory regulators so that they are manned by competent as well as credible persons and there is a regime of their accountability, as observed by Hon'ble Supreme Court. Failure to do so would be disastrous for the health of the citizens and defeat the very purpose of regulatory regime manned to protect the environment. Accordingly, it was held that the issues being interconnected, an integral approach was required in the matter for sustainable development. Coordination was required with different authorities of the State, which was not possible without involvement of the Chief Secretaries.[13]

- O.A. No. 110 (THC)/2012-Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & Ors.
- 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" dated 20.09.2018: wherein the Tribunal issued directions to prepare and implement Action Plans to rejuvenate and restore the 351 polluted river stretches.
- Original Application No. 681/2018, News Item Published in "The Times of India' Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15" dated 08.10.2018: wherein the Tribunal directed Action Plans to be prepared for the 102 non-attained cities to bring the standards of air quality within the prescribed norms.
- Original Application No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" dated 13.12.2018: wherein the Tribunal directed preparation of time bound Action Plans to ensure that all industrial clusters comply with the parameters laid down in Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.
- Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 dated 31.08.2018: wherein the Tribunal constituted Apex and Regional Monitoring Committees for effective implementation of MSW Rules, 2016.

[13]Paras 21 to 25. Cases referred to in the said paras are as follows:

- Aryavart Foundation v. M/s Vapi Green Enviro Ltd. & Ors, O.A. No.95/2018.
- https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf- India ranks 120th in 122 countries in Water Quality Index as per Niti Ayog Report, https://www.thehindu.com/sci-tech/energy-andenvironment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece- Most pollution-linked deaths occur in India, https://www.hindustantimes.com/india-news/delhi-world-s-most-polluted-city-mumbaiworse-than-beijing-who/story-m4JFTO63r7x4Ti8ZbHF7mM.html- Delhi's most polluted city, Mumbai worse than Beijing as per WHO; http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf- WHO Water Quality Index .
- News Item published in 'The Times of India' Authored by Shri. Vishwa Mohan Titled "NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15" O.A. No. 681/2018- http://www.greentribunal.gov.in/DisplayFile.aspx

17. The Tribunal also considered its experience of administrative interaction held on the subject on 04.12.2018 with the Committees appointed and found that the mechanism had not become as effective as expected.[14]

18. The Tribunal accordingly modified the mechanism of Committees. For the States, Member Secretaries of the SPCBs were made the Convener of the Committees. Secretaries of Urban Development, Local Bodies, Local Self-Government, Environment, Rural Development Health and representatives of CPCB, wherever CPCB office is existing were to be Members. The Committees were to work for six months or as may be considered necessary.[15]

19. The Committees constituted under the Rules were to work in tandem with the Committees constituted by the Tribunal. The CPCB was to prepare Standard Operating Procedure (SOP) for implementation of Clause J for dealing with the legacy waste. The Collectors were to have

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- https://www.ndtv.com/delhi-news/delhis-air-pollution-has-caused-of-death-of-15-000-people-study-1883022.
- Sudarsan Das vs. State of West Bengal & Ors. O.A. No. 173/2018 Order dated 04.09.2018
- Shailesh Singh vs. Hotel Holiday Regency, Moradabad & Ors. O.A. No. 176/2015, order dated 3.1.2019
- Aryavart Foundation v. M/s Vapi Green Enviro Ltd. & Ors O.A. No.95/2018, order dated 11.01.2019.

[14] Para 26.

[15] Para 28. Cases referred to in the said para are as follows:

- See order dated 198.9.2018 of this Tribunal in O.A No. 606/2018 to the effect that the non-official Chairperson will be pa9id consolidated amount equal to basic pay of the post held by the incumbent. A former Judge of Hon'ble Supreme Court will be entitled to Rs. 2.50 Lakhs per month. A former Judge of the High Court will be paid Rs. 2.25 Lakhs per month. On same pattern, remuneration may be fixed for any other retired Member.
- E.A. No.32/2016 order dated 15.11.2018- Clarifying that while the State may provide the logistics and other facilities, the financial aspects may be taken care of by the State Pollution Control Boards/Committees. The financial aspects will include the remuneration or other incidental expenses which may be increased with a view to effectively execute the directions of this Tribunal. Such expenses may include secretarial assistance, travel as well as cost incurred for any technical assistance.
- Apart from remuneration, all actual expenses incurred in taking assistance for secretarial working will be reimbursed by concerned PCB as already directed vide order dated 17.12.2018 E.A. No.32/2016, Amresh Singh v. Union of India & Ors.

monthly meetings, as per Rule 12 and submit reports to State Urban Development Departments, with a copy to State Level Committees.[16] CPCB has since prepared such SOP and circulated to the State Pollution Control Boards in February 2019. We are given to understand that such procedure has been successfully implemented at places such as Goa, Indore and Kumbhkonam.

20. Every State was to constitute a Special Task Force (STF) in each District with four members – one each nominated by the District Magistrate, Superintendent of Police, Regional Officer of the SPCBs and the District Legal Services Authority (DLSA) for awareness by involving educational, religious and social organizations, including local Eco-clubs. This was also to apply with regard to awareness in respect of other connected issues i.e. polluted rivers, air pollution, etc. In this regard, reference was made to directions of the Hon'ble Supreme Court requiring such awareness programmes to be undertaken.[17]

21. The Tribunal also referred to its order dated 19.12.2018, in Original Application No. 673/2018, for laying down scale of compensation to be recovered from each State/UT in failing to carry out directions of this Tribunal on the issue of preparing action plans for river stretches.

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[16] Para 32.

[17] Paras 35 and 36. Cases referred to in the said paras are as follows:

- O.A. No. 138/2016 order dated 27.08.2018
- O.A.No. 673/2018, order dated 20.09.2018
- Suo Moto Application No. 290/2017, order dated 24.10.2018
- O.A. No. 200/2014 order dated 29.11.2018
- (2004)1 SCC 571
- (2005)5 SCC 733

Similar pattern was proposed in case of failing to carry out directions in the present case.[18]

22. The Chief Secretaries/Advisor of all the States and UTs were required to appear in person and be ready on the following specific points:

> *"a. Status of compliance of SWM Rule, 2016, Plastic Waste Management Rules, 2016 and Bio-Medical Waste Management Rules, 2016 in their respective areas.*
>
> *b. Status of functioning of Committees constituted by this order.*
>
> *c. Status of the Action Plan in compliance vide order dated 20.09.2018 in the News Item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB (Original Application No. 673/2018).*
>
> *d. Status of functioning of Committees constituted in News Item Published in "The Times of India' Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15" dated 08.10.2018.*
>
> *e. Status of Action Plan with regard to identification of polluted industrial clusters in O.A. No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" dated 13.12.2018.*
>
> *f. Status of the work in compliance of the directions passed in O.A. No. 173 of 2018, Sudarsan Das v. State of West Bengal & Ors. Order dated 04.09.2018.*

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[18] Para 38. Cases referred to in the said para are as follows:

- Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & Ors O.A. No. 110(THC)/2012.
- News Item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB (O.A. No. 673/2018) vide order dated 19.12.2018- wherein this Tribunal held that compensation for damage to the environment will be payable by each of the States/ UTs at the rate of Rs. One Crore per month for each of the Priority- I and Priority- II stretches, Rs. 50 lacs per month for stretches in Priority- III and Rs. 25 lacs per month each for Priority- IV and Priority- V stretches.

g. *Total amount collected from erring industries on the basis of 'Polluter Pays' principle, 'Precautionary principle' and details of utilization of funds collected.*

h. *Status of the identification and development of Model Cities and Towns in the State in the first phase which can be replicated later for other cities and towns of the State."*

23. It was also directed that they may not nominate other officer for appearance before this Tribunal. However, they may seek change of date, with advance intimation.[19]

24. Further direction was for the State to display on their respective websites the progress made on the above issues.[20]Under Rule 14, the CPCB was directed to coordinate with the Committees.[21]

25. Accordingly, Chief Secretaries/Advisor of Himachal Pradesh, Haryana, Punjab, Uttarakhand, Delhi, Bihar, Odisha, Chandigarh, West Bengal, Maharashtra, Gujarat, Goa, Daman & Diu and Dadra and Nagar Haveli, Madhya Pradesh, Rajasthan, Meghalaya, Tamil Nadu, Karnataka, Mizoram, Kerala, Nagaland, Andhra Pradesh, Uttar Pradesh, Telangana, Puducherry, Chhattisgarh, Sikkim, Arunachal Pradesh, Manipur and Andaman & Nicobar Islands have already appeared before this Tribunal on 05.03.2019, 06.03.2019, 07.03.2019, 11.03.2019, 15.03.2019, 26.03.2019, 26.03.2019, 02.04.2019, 08.04.2019, 09.04.2019, 10.04.2019, 11.04.2019, 15.04.2019, 16.04.2019, 22.04.2019, 23.04.2019 24.04.2019, 24.04.2019, 25.04.2019, 25.04.2019, 26.04.2019, 26.04.2019, 29.04.2019,

[19] Paras 40 and 41
[20] Para 42
[21] Para 45

30.04.2019, 30.04.2019, 01.05.2019, 02.05.2019, 03.05.2019 and 06.05.2019 respectively and their reports were duly considered. Directions have been given for further course of action and they have been directed to appear in person again with status of compliance and progress after six months. This has become necessary to ensure that environment protection and restoration is given highest priority in view of serious challenge posed by deteriorated environment and largescale violations which are not satisfactorily dealt with by the administrative machinery of the Government. The Tribunal hopes and expects that continued involvement of Chief Secretaries/Advisor will result in improvement of the situation and lead to better protection of quality of air, water and environment and help public health. We may note that after order dated 16.01.2019 some of the issues referred to in Para 22 hereinabove have been dealt with by further orders of this Tribunal.[22] Directions issued while dealing with the case of State of Karnataka vide order dated 24.04.2019 include involvement of Central Monitoring Committee (CMC) constituted in terms of orders of this Tribunal dated 08.04.2019 in O.A. No. 673/2018, News item published in the "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" to monitor execution of Action Plans for rejuvenation of 351 polluted river stretches for monitoring of issues arising herein with Chief Secretaries of States/Union Territories being

[22](a). 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".

(b). dated 15.03.2019 in O.A. No. 681/2018, News Item Published in "The Times of India' Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15".

(c). Order dated 05.04.2019 in Sudarsan Das vs. State of West Bengal &Ors., O.A. No. 173/2018.

on board with representatives of Central Government mentioned therein. Remedying polluted river stretches is one of the issues for consideration herein being issue number (c) in para 22 above. Other issues in para 22 which are being gone into in present proceedings are integrally linked to said issue. The said direction is consistent with the spirit of cooperative federalism.

26. Vide order dated 05.03.2019, dealing with State of Himachal Pradesh, it has been directed that the Apex Committee is to conclude its proceedings by 30.04.2019 and furnish its final report. Thereafter, monitoring at apex level can be done by MoEF&CC and CPCB in terms of Rules 5 and 14 of the SWM Rules respectively and direction of this Tribunal vide order dated 22.12.2016 [Para 43(9)]. However, the State Level Committees as directed by the Tribunal headed by retired Judges and the Chief Secretaries will continue including the State and District Level Committees. After expiry of the term of the Committees after 16.07.2019, the Chief Secretary may take a decision whether such Committees are required to continue further. The direction is being issued as the Chief Secretaries have taken over the monitory.

27. Apart from carrying out studies by the State, CPCB has been directed to explore preparation of Annual Environment Plan for the country giving status of compliance of environmental norms and gaps, if any. In the process, undertaking of assessment of damage to the environment in monetary terms may be considered so that by applying 'Polluter Pays' principle the cost of damage is recovered from identified polluters.

This concept is necessary for effective enforcement of environmental rule of law. CPCB may be at liberty to involve such other agencies as it may consider necessary.[23]

28. CPCB has been further directed vide order dated 24.04.2019[24] to explore undertaking carrying capacity study of all eco sensitive areas and such areas where scientific evidence has established violation of environmental norms in the form of non-attainment cities, polluted river stretches and critically polluted industrial clusters and suggest remedial measures, having regard to the directions passed by this Tribunal, *inter-alia*, in *Anil Tharthare Vs. The Secretary, Envt. Dept. Govt. of Maharashtra & Ors.*,[25]*Ajay Khera Vs. Container Corporation of India Limited & Ors.*[26] and *Westend Green Farms Society Vs. Union of India & Ors.*[27] It was directed that such exercise may be carried out with respect to all the States.

III. <u>PRESENT PROCEEDINGS:</u>

29. In pursuance of above, Mr. Lalit Kumar Gupta, Chief Secretary, Tripura is present in person.

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[23] Vide order dated 23.04.2019 in O.A. No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2018 (State of Tamil Nadu).

[24] Vide order dated 24.04.2019 in O.A. No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2018 (State of Karnataka).

[25]Para 33 of the order wherein the Tribunal directed constitution of a five Members Expert Committee to carry out carrying capacity study of the area for relevant environment parameters and impact of such expansion on already congested and stressed areas.

[26] Para 18 of the order wherein the Tribunal directed assessment of carrying capacity for the NCT of Delhi as well as other major cities particularly 102 non-attainment cities within reasonable time, preferably in one year. The assessment would specifically study capacity in terms of number of vehicles, extent of population, extent of nature of different activities – institutional, industrial and commercial etc.

[27] Para 28 of the order wherein the Tribunal directed carrying capacity assessment to regulate activities violating environmental laws.

30. A status report has been filed on 08.04.2019 on behalf of State of Tripura indicating status of compliance of order dated 16.01.2019. The compliance report indicates some of the steps taken for solid waste management. Status of compliance of Plastic Waste Management Rules, 2016, Bio-medical Waste Management Rules, 2016, polluted river stretches and air polluted cities have also been mentioned.

31. Some steps claimed to have been taken by the State of Tripura, as stated in the status report, are:

i. In compliance with Rule 11 of SWM Rules, 2016, Solid Waste Management Policy has been prepared by the Urban Development Department and notified on 09.10.2018.

ii. The State Government has already allocated Rs. 3.50 Crores for procurement of various equipment for door-to-door solid waste collection and source segregation through women SHG groups such as tri-cycle push-carts, blue and green coloured bins for segregated collection of non-biodegradable and bio-degradable solid waste from door to door respectively, 1.1 cubic meter green bins for storage of collected bio-degradable solid waste for its transportation to the solid waste processing plants/ Vermi compost units for processing.

iii. Process has been initiated to set up Effluent Treatment Plant (ETP) at selected 12 Public Health Facilities for pre-treatment of the laboratory waste, microbiological waste, blood samples and

blood bags through disinfection or sterilization on-site in the manner as prescribed by the World Health Organization (WHO) or National AIDS Control Organization (NACO) guidelines as per Rule 4(c).

iv. In Tripura, there are total 171 Industrial units identified as Hazardous Waste Generating Units. As per available date, the quantity of Hazardous Waste generated in the State is 272.62 MTPA. However, since the data is old, the Chief Secretary directed in the meeting on 26.03.2019 that a fresh survey for inventorisation of hazardous and other waste shall be undertaken, with assistance of expert organization, where necessary.

v. Comprehensive inventorisation of the industrial units in the catchment area of the identified 6 polluted river stretches has been completed. Show-cause notices have been issued to industries running without valid consent/ authorisation. All the industrial units have been directed to set up ETPs. Necessary handholding support is to be provided by Tripura State Pollution Control Board (TSPCB).

32. From perusal of the compliance report and after hearing submissions of the State, we find that steps required to be taken under Rule 22 of the Solid Waste Management Rules, 2016 have not yet been fully completed. It is not clear whether the local bodies have submitted their annual reports to the State Pollution Control Board (SPCB) under Rule

24 and whether SPCB has submitted consolidated annual report to the Central Pollution Control Board (CPCB) under the said Rules. We have also found the steps taken for plastic waste management and bio-medical waste management to be inadequate.

33. From the compliance affidavit furnished by the Chief Secretary, huge gap is noticed in the steps taken and the steps required to be taken in terms of the Rules and for ensuring sustainable development. Unless such steps are taken, the unsatisfactory state of environment in the country in general and in the State in particular may not improve.

34. We take note of some of the articles published in the media. Information in the said articles needs to be cross checked and remedial measures taken, if necessary. It is reported as follows.

a) A newspaper article[28] states that in 2004, the Tripura State Pollution Control Board (TSPCB) had conducted a study and observed that more than 1,000 toilets along the Howrah discharged human excreta into the river. The bacterial contamination (coliform) ranged up to 1,800 most probable number per 100 ml, against the standard limit of 500[29].

b) As reported in the newspaper article[30], poor policy management and mushrooming of pathology labs is hindering safe disposal of biomedical waste in Tripura. Despite being the first Indian state to

[28] DownToEarth-https://www.downtoearth.org.in/news/one-river-dried-agartala-eyes-another-3056
[29] https://www.downtoearth.org.in/news/one-river-dried-agartala-eyes-another-3056
[30] DownToEarth-https://www.downtoearth.org.in/news/unmanaged-waste-in-tripura-2037

set up biomedical waste management system from collection to final disposal, even at the Primary Health Centre level, Tripura has failed to regulate the same[31].

c) A recent report[32] reads that 16 states have a rural population of more than one lakh depending on metal contaminated water, and Tripura is one of such states.[33] Samples of water collected from public water supply pipeline distributing treated water from Collegetilla Water Treatment Plant in Agartala, was in December 2018, found to be highly contaminated.[34]

d) The Government of Tripura had until July 2017, received Rs. 104 Crores from the Centre, for Swachh Bharat Abhiyan. However, until October 2018, sanitation coverage in the state was still below 80%.[35]

e) In July 2016, the Hon'ble High Court of Tripura had asked the state government to take effective measures to monitor noise pollution and take counter-measures in accordance with the law.[36]

f) Due to rampant industrialization and urbanization in the 8 states that make up the northeast, air pollution is increasing at an alarming rate. Tripura has air quality under control, but 7 deaths were reported in 2016 due to acute respiratory infection.[37]

35. On behalf of CPCB, some data has been furnished in respect of State of Tripura and the same is summarized as under:-

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[31] https://www.downtoearth.org.in/news/unmanaged-waste-in-tripura-2037
[32] Integrated Management Information System (IMIS) of the Ministry of Drinking Water and Sanitation
[33] https://www.thehindubusinessline.com/news/4-cr-rural-indians-drink-metal-contaminated-water/article26323628.ece dated February 20, 2019
[34] http://www.enewstime.in/promass-tripura-e-coli-scare-agartala-people-asked-to-drink-boiled-water/ dated December 20, 2018
[35] https://swachhindia.ndtv.com/northeast-rural-sanitation-improvement-urban-areas-falter-25149/ dated October 1, 2018
[36] https://www.northeasttoday.in/tripura-high-court-cracks-down-on-noise-pollution/ dated July 18, 2016.
[37] http://tripura4u.com/v2/?p=9275 dated May 6, 2019

1	**Solid Waste Management**	Number of towns to be covered : 20 Local Bodies : 20 Waste Generation : 433.2MTPD Collected : 372.50MTPD Treated : 148.40MTPD Landfilling : 224.1 MTPD
2	**Plastic Waste Management**	Waste Generation : 28.5 TPA
3	**Biomedical Waste**	No of Hospitals : 1890+ Authorizations granted : 342 Waste Generation : 1607 kg/d Treatment : 1582.88 kg/d Common Bio-medical waste Treatment Facilities : 1 No. of Captive Facilities : 749
4	**Polluted River Stretches**	P(V)- 06 Burigaon, Gumti,Haora, Juri, Khowai, Manu Total : 6
5	**Air Quality Management**	There is no city from Tripura in the list of non-attainment cities.
6	**Industrial Clusters**	No PIA (Polluted Industrial Area) was identified/monitored during 2018 by CPCB
7	**ETP, CETP, STPs**	**ETPs** No. of industries which require ETP : 22 No. of industries having functional ETP: 13 No. of industries complying : 13 **STPs** No. of STP : 17 No. STP complying: 17 No. of under construction/ proposed STPs: 05 **CETPs** No. of CETP :01 No. of CETPs complying : 01 No. of CETPs non-complying : 01

36. Some of the serious challenges to the protection of environment in the State of Tripura have been considered by this Tribunal in its orders.[38]

[38] Order dated 14.08.2018 in Ashwani Kumar v. Union of India, O.A. 432/2015
Order dated 19.02.2019 in Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors., O.A. No. 593/2017

37. These facts have been brought to the notice of the Chief Secretary so that necessary action is considered and taken.

38. Needless to say that improvement in environment is not only inalienable duty of the State, but is also necessary for sustainable development which is essential for the health and well-being of citizens as well as for intergenerational equity. These principles require that all human activities should be conducted in such a way that the rights of future generations to access clean air and potable water are not taken away. At the cost of repetition, it may be mentioned that water is being polluted because of discharge of untreated sewage and effluents. Air pollution is result of failure to manage solid waste and to prevent other causes leading to air pollution. There are also other issues like deterioration in groundwater level, damage to forests and wild life, unscientific and uncontrolled sand mining etc. Unsatisfactory implementation of law is clear from the fact that inspite of severe damage, there is no report of any convictions being recorded against the polluters, nor adequate compensation has been recovered for damage caused to the environment. Steps for community involvement are not adequate. There is reluctance even to declare some major cities as fully compliant with the environment norms. The authorities have not been able to evolve simplified and standard procedure for preparing project reports and giving of contracts. There is no satisfactory plan for reuse of the treated water or use of treated sewage or waste and for

segregation and collection of solid waste, for managing the legacy waste or other wastes, etc.

39. Since we have found huge gap in steps taken and steps required to be taken to remedy the unsatisfactory state of environment, we had an interaction with the Chief Secretary about the way forward. The gap in the mandate of law on the one hand and actual compliance with law on the other has manifested itself in the form of polluted water, air and land. Its actual measurement in terms of monetary value or the loss on account of adverse impact on public health and environment or otherwise in terms of number of deaths or diseases does not appear to have been duly and exhaustively undertaken by the official machinery so far for the country or for any particular area. The private reports mention number of deaths and diseases. Death by pollution may be comparable to an offence of homicide and any disease on that account may be likewise comparable to attempt to murder or grievous hurt. Polluter is, thus, liable to be dealt with in the same manner as a person committing any other heinous crime as per law of the land. Mere fact that such polluter creates wealth or employment does not make the offence less serious. The statutory framework prohibits polluting activity and provides for penal consequences. Further, the 'Polluter Pays' principle requires compensation to be recovered to meet the cost of remedying the adverse impact of pollution. Governance of such laws can be held to be satisfactory if the magnitude of punishment of law violators corresponds to the extent of violation of law and the compensation recovered is adequate to meet the cost of damage. There

is enough evidence of pollution but no data is shown of corresponding convictions or recovery of adequate compensation for restoration of environment. This calls for authentic study of the extent of damage to the environment and to the public health so that policy makers and law enforcers can bridge the gap.

40. In case extent of convictions for the environment related offences do not correspond to the extent of crime, paradigm shift in policies and strategies for implementation of law may need to be considered. Similarly, the mechanism for recovery of compensation may need to be revised on that pattern. Such review of policy cannot be left to the local bodies or the Pollution Control Boards but has to be at highest level in the State and further review at the national level. As noted in some of the studies, the ranking of the country in compliance of environmental norms needs to be brought to respectable higher position which may be possible only if there is change in policies and strategies for implementation of necessary norms at every level in right direction. The scale of compensation needs to be suitably revised so that the same is deterrent and adequate to meet the cost of reversing the pollution.

41. Authentic data is required to be compiled which is necessary for proper policy making. The Rules provide for such data to be collected at the state level as well as at the national level. If such data is not furnished timely from ground level with all the requisite details, the policy making remains deficient. Since none of the States is fully compliant with the mandate of statutory waste management rules under various headings, as already noted, remedial measures are necessary. We consider it

necessary to observe that at least some major cities/towns/villages be first developed as model and thereafter successful experiment replicated in remaining cities/towns/villages.

42. Though environment is priceless and no amount of compensation may be sufficient for real restoration of environment to its pristine glory, the 'Polluter Pays' principle requires cost of restoration to be recovered which should be deterrent and also include Net Present Value (NPV) for environmental services forgone forever. Though such compensation is to be primarily recovered from polluters, where authorities fail to implement law and recover compensation on account of collusion or inaction, such authorities can also be made accountable and required to pay compensation. Strong central mechanism of auditing the compliance of environmental laws by the States and the Union Territories (UTs) is necessary. We are also of the view that to encourage enforcement of environmental laws, cognizance of performance or otherwise need to be taken by authorities allocating funds. Incentives can be given to encourage compliance and those deficient in compliance may be required to comply as a condition for getting grants or part of such grants. Such a policy may be a step in the right direction for achieving sustainable development goals. We take note of discussion on the subject in the minutes of National Development Council held on 01.10.1990.[39] Therein a formula called "Gadgil – Mukerjee" formula is referred to envisaging grants to meet environmental problems. We may add that while such grants may be

[39]http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg_state_finan0106.pdf

necessary, there may be a condition requiring measurable and demonstrable improvement in time bound manner as a condition for the grant. Accordingly, vide order dated 24.04.2019 a copy of this order has been sent to Niti Aayog, Finance Commission and MoEF&CC to consider the observations, particularly in this para.

43. One major hurdle in compliance of the Rules is lack of institutional training mechanism. Scheme of Rules and strategies for implementation, including technology to be used, best practices to be employed need to be identified. Resource persons, target group of persons to be trained, location at which training is to be undertaken need to be worked out.

44. It is also necessary to have an Environment Plan for the country as well as for the States which may identify and publish gaps in compliance of environmental law and indicate action plan to remedy the same. Compliance of environmental norms also requires carrying capacity study not only of eco-sensitive areas but also areas where violation of environmental laws has clearly surfaced out based on scientific data published by CPCB such as non-attainment cities in terms of air quality, critically polluted industrial clusters on account of air/water pollution, polluted river stretches etc. Drastic remedial measures may be necessary to deal with the same which should not merely be responsive but proactive by way of planning population density, vehicle numbers, nature and quality of vehicles, nature and quality of activity to be allowed. Absence of such measures may render it difficult to

meaningfully implement the accepted norms of 'Sustainable Development' or 'Intergenerational Equity'. Such planning is part of 'Precautionary' principle. 'Polluter Pays' principle can be meaningfully implemented only when assessment of damage is realistic and compensation recovered matches the extent of damage. As per census of India 2011, there are 475 places with 981 overgrowths (OGs) have been identified as Urban Agglomeration (UA). The number of total towns in India is 7,935 (Statutory Towns 4,041 + Census Towns 3,894). There are total 6,166 Urban Agglomeration/towns which constitutes the urban frame of the country. During FY 2017-2018, out of 35 SPCBs/PCCs only 16 SPCBs/ PCCs reported the status of Solid Waste Management Rules, 2016.[40] In view of these statistics, emergent and stringent measures are required for compliance of environmental norms.

45. We discussed with the Chief Secretary the above unsatisfactory situation of environment and about need for having an effective monitoring cell directly attached to the office of the Chief Secretary with experts in environment and related issues to assist the Chief Secretary.

46. The presence of Chief Secretary before this Tribunal was directed with an expectation that there will be realization of seriousness at the highest level which may percolate in the administration.

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[40] Annual report of CPCB for the year 2017-18 accessible at: http://cpcb.nic.in/uploads/hwmd/MSW_AnnualReport_2017-18.pdf

IV. DIRECTIONS:

47. In view of above, after discussion with the Chief Secretary, following further directions are issued:

i. Apart from Agartala, which has been declared as Model city, atleast three villages in every District may be notified on the website within two weeks from today as model cities/towns/villages which will be made fully compliant within the next six months. Remaining cities, towns and villages of the State may be made fully compliant in respect of environmental norms within one year.

ii. A quarterly report be furnished by the Chief Secretary, every three months. First such report shall be furnished by August 10, 2019.

iii. The Chief Secretary may personally monitor the progress, atleast once in a month, with all the District Magistrates.

iv. The District Magistrates may monitor the status of compliance of environmental norms, atleast once in two weeks.

v. The District Magistrates or other Officers may be imparted requisite training.

vi. Estimate of value of environmental degradation and cost of restoration be prepared and compensation be planned and recovered from polluters for environmental restoration and restitution on that basis.

vii. Performance audit of functioning of all regulatory bodies may be got conducted and remedial measures be taken, within six months.

viii. Introduction of a policy of giving ranking, based on performance on the subject of environment and giving of rewards or other incentives on that basis to individual areas, localities, institutions or individuals may be considered. This may also include encouraging students or other citizens significantly contributing to the cause of environment. The best practices may be evolved, if necessary, in the light of experiences on the subject. This may help in educating and involving public at large which may help in enhancing of environmental laws.

ix. The Chief Secretary may remain present in person before the Tribunal with the status of compliance in respect of various issues mentioned in para 22 as well as any other issues discussed in the above order on 27.11.2019. It is made clear that Chief Secretary may not delegate the above function and the further requirement of appearance before this Tribunal to anyone else. However, it will be open to him to change the date, by advance intimation by e-mail at ngt.filing@gmail.com to adjust their convenience.

48. The issue of recovery of damages from the States for their failure to comply with the environmental norms, including the statutory rules and orders of this Tribunal, will be considered will be considered later.

The Tribunal may also consider the requirement of performance guarantee of a particular amount in case progress achieved is not found to be satisfactory.

49. There is need to develop an institutional training mechanism involving technical, social and environmental issues for training of officers concerned with enforcement of environment norms at ground level. Training may be ongoing process at national level, State level and other appropriate levels as may be found necessary. Accordingly, CPCB has been directed to prepare such program[41]indicating persons required to be imparted training, subjects of training, resource persons, location of training, duration of training programmes etc. CPCB will be free to coordinate with available training institutions for use of infrastructure such as judicial academies, police academies, administrative academies, forest academies etc. as may be found viable. CPCB will be free to utilize funds collected by way of environmental compensation for this purpose also in same manner as for carrying capacity study and also take help from State Boards or any institution.

A copy of the compliance report furnished by the Chief Secretary be sent to CPCB as already directed vide order dated 24.04.2019 for the State of Karnataka (*supra*).

[41]Vide order dated 22.04.2019, in O.A. No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2018 (State of Meghalaya).

Put up the report which may be received on 14.08.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

May 7, 2019
Original Application No. 606/2018