

Item Nos. 02 to 05

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 558/2018
(Earlier O.A. NO. 164/2015 (SZ))

And

Original Application No. 557/2018
(Earlier O.A. NO. 164/2014 (SZ))

And

Original Application No. 559/2018
(Earlier O.A. NO. 130/2016 (SZ))

And

Original Application No. 556/2018
(Earlier O.A. NO. 299/2013 (SZ) (Suo Moto))

Jawaharlal Shanmugam

Applicant(s)

Versus

Tamil Nadu State Pollution Control Board & Ors.

Respondent(s)

WITH

P. Edwin Wilson

Applicant(s)

Versus

State of Tamil Nadu & Ors.

Respondent(s)

WITH

S. Muthumeena

Applicant(s)

Versus

The Principal Secretary, Environment & Forest,
Govt. of Tamil Nadu & Ors.

Respondent(s)

WITH

Tribunal on its own motion

Applicant(s)

Versus

The Principal Secretary, Environment & Forest,
Govt. of Tamil Nadu & Ors.

Respondent(s)

Date of hearing: 13.02.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

Mr. Jawaharlal Shanmugam, in person.

For Respondent (s): Mr. S.V. Vijay Prashanth, Advocate for State of Tamil Nadu
Ms. ME. Sarashwathy, Advocate for MoEF & CC

Mr. P. Varalakshmi, Advocate for Mr. Abdul Saleem, Advocate for TNPCB
Mr. Thanganila, Advocate for Corporation of Chennai.
Mr. D.S. Ekambaram, Advocate for Central Pollution Control Board
Mr. Pinaki Misra, Senior Advocate along with Mr. R. Rakesh Sharma, Advocate for PWD, State of T.N.

ORDER

1. The issue for consideration is the pollution of rivers Adyar, Cooum and Buckingham Canal in and around Chennai in the State of Tamil Nadu and repeated failure of regulatory authorities to perform their public duty resulting in large scale and continuous damage to the environment and public health. Further, question is what remedial action is required in the matter.
2. The proceedings were initiated on the basis of a news item dated 25.10.2013 titled "beach at Adyar estuary strewn with trash, rubble". This Tribunal, vide order dated 25.10.2013, issued notice to the Secretaries, Departments of Environment and Forests, Public Works Department (PWD), Commissioner, Chennai Corporation, Tamil Nadu Pollution Control Board (TNPCB) and Tamil Nadu Coastal Zone Management Authority (TNCZMA). Thereafter, Original Application No. 164/2014(SZ) was filed by P. Edwin on which notice was issued on 13.06.2014. Another application was filed by Jawaharlal Shanmugam on which notice was issued on 08.10.2015. S. Muthumeena also filed an application in the same matter on which notice was issued on 01.06.2016. All the four matters have been tagged for consideration and assigned new numbers at the Principal Bench.

3. Substance of the averments in the news item and the applications is as follows:

- (a) Passage of water in river Adyar is restricted to narrow passage because of congestion caused by garbage heaps. During monsoon, the flooded canal at congested areas allows the dirty water to enter nearby surrounding localities.
- (b) Entire canal stinks and is a breeding ground for diseases because of mosquitoes and flies.
- (c) Canal has dense growth of water Hyacinth and other bushy plants inside the canal impeding the movement of water.
- (d) Dirty water due to gravity and gradient flows from southern canal to Adyar River and eventually drains into it.
- (e) Pollution from canal is threat to safety and accentuates spreading of diseases such as malaria, dengue and filariasis, pigs roam around the entire stretch of canal aggravating the risk of swine flu.

4. It has been brought to our notice that it is widely reported that Adyar and Cooum are two of the most polluted rivers to flow through any major urban agglomeration anywhere in the world.¹ Bearing the brunt of garbage, discharged sewage, defecation and encroachments on the banks, the Adyar river, once a thriving waterway, has been reduced to a stinking watercourse, with government agencies turning a blind eye to the damage meted out.² As such outfalls are prevalent across three major rivers in Chennai, including Adyar River, Cooum and Buckingham Canal and yet to be plugged, the Rs 600 crore river restoration project has made negligible progress since it was launched in 2015.³

¹ <https://timesofindia.indiatimes.com/city/chennai/old-sewage-plant-factoriesmake-polluted-adyar-toxic/articleshow/61921506.cms>

² <https://timesofindia.indiatimes.com/city/chennai/rampant-dumping-and-sewage-discharge-turns-adyar-river-into-cesspool/articleshowprint/62492857.cms>

³ <http://www.newindianexpress.com/cities/chennai/2018/dec/17/unchecked-flow-of-sewage-hits-river-restoration-plan-1912489.html>

5. The upper catchment of Cooum River is primarily rural and as it enters the peri-urban areas and Chennai City, the river is constrained in channels before draining into the Bay of Bengal. The Cooum River in its upstream rural areas shows issues of catchment degradation and tank siltation. There is also no minimum flow maintained in the river during the lean season. As the river flows through peri-urban areas and municipalities, there are increasing problems of water quality.
6. The highly polluted reputation of the river also leads to public apathy and disposal of solid waste on the river bed that impacts downstream water quality and oxygen levels in the water. When it enters the city, the river is basically an urban sewer receiving municipal and industrial wastewater and solid waste (especially near bridges) and refuse from slums. This results in the direct impact of polluted anoxic stretches, as well as raises public health (including from mosquito breeding in stagnant waters) and odour concerns and secondary groundwater pollution. The river mouth is subject to blockage by sand bars resulting from littoral drift creating a lack of tidal exchange in the river.⁴
7. This Tribunal has passed several orders in the last more than five years. Reference may be made to some of the significant orders.
8. On 27.05.2014, the Tribunal considered the photographic evidence on the level of pollution and noted apathy of the Corporation of Chennai and directed a status report to be furnished, failing which cost of Rs. 1 Lakh was to be imposed.
9. The status report was considered on 09.07.2014 and thereafter on 26.05.2015. The issues considered include removal of encroachments by the Corporation of Chennai and the PWD, solid waste management, creation of parks and waterways along with banks of the river. A time schedule for removing the encroachment was given by the PWD. The

⁴ http://www.chennaiivers.gov.in/Cooum-Restoration/about_cooum_river.html

Chennai River Restoration Trust (CRRT) mentioned projects undertaken for the restoration of the river which included treatment of the sewage being discharged by the residential colonies, removing encroachments and other restoration projects.

10. On 28.07.2015, after considering slow progress in the matter, the Tribunal directed the Chief Secretary to convene a meeting once in every two months.
11. On 09.09.2015, the Tribunal noted that the action plan for identifying encroachers and polluters and taking action will be implemented within 36 months from April 2015 which period is now over without much progress as promised in the action plan.
12. On 18.11.2015, the Tribunal noted that the project cost estimated was Rs. 1646.54 Crores. A sum of Rs. 604.77 Crores had already been allocated.
13. On 22.12.2015, the Tribunal noted the report of the Pollution Control Board that (i) M/s. Triguni Food Pvt. Ltd., (ii) M/s Skrill Aqua, (iii) M/s Shree Foods and (iv) M/s Chandra Foods situated on the banks of the Cooum River were discharging effluents into the river for which action had been initiated. Similar, action was record in the order of the Tribunal dated 23.12.2015 by Madras Fertilizer Limited, Respondent No. 12 having turnover of about Rs. 500 Crores per annum.
14. On the same pattern, five educational institutions were identified as polluters as recorded in the orders of this Tribunal dated 27.01.2016 and 19.02.2016, namely, (1) Dr. MGR University Research & Educational Institute Poonamallee High Road, Maduravoyal, Chennai.600 095, (2) Thai Moogambigai Dental College & Hospital, Golden GeorgeNagar, Mugappair, Chennai.600 107, (3) Thai Moogambigai Polytechnic College, Nerkundram Village, Maduravoyal Taluk, Tiruvallur District, (4) Dr. MGR University Educational and Research Institute University Phase II, Gents Hostel & 1st year Block Adyalampattu Village, Maduravoyal Taluk, Tiruvallur District and (5) Dr. MGR University Educational and Research Institute University

Phase II, Ladies Hostel, Adyalampattu Village, Maduravoyal Taluk, Tiruvallur Dist. Other 12 industries so identified and noted in the order dated 19.12.2013 are:

- i. M/s. Sterling Water Services, 107, West Cooum Road, Chindadripet, Chennai.600 002.
 - ii. M/s. Star Bikes, 101, West Cooum Road, Chindadripet, Chennai.600 002
 - iii. M/s. TVS Sai Hari Motors, 82, West Cooum Road, Chindadripet, Chennai.600 002.
 - iv. M/s. Kaveri Water Wash, 85, Cooum Road, Chindadripet, Chennai.600 002.
 - v. M/s.Sharp Service Station, Old. No.587, P.H. Road Aminjikarai, Chennai 600 107.
 - vi. M/s. Madha Galvanizing, 122, West Cooum Road, Chindadripet, Chennai 600 002.
 - vii. M/s. Limra Electroplating, 118, West Cooum Road, Chindadripet, Chennai 600 002.
 - viii. M/s. KCF Water Service, No.30B, 31, West Cooum Road, Chindadripet, Chennai 600002.
 - ix. M/s. GRK Water Service, 79, West Cooum Road, Chindadripet, Chennai 600 002.
 - x. M/s. Sai Auto Garage, No.55 -1/4-C, Aminjikarai, Chennai 600 107.
 - xi. M/s. Car Care Service, No.587, P.H. Road, Aminjikarai, Chennai 600 107.
 - xii. M/s. GRK Water Service, 75, West Cooum Road, Chindadripet, Chennai 600 002.
15. All the alleged polluters were impleaded as parties from time to time.
16. On 16.03.2016, the Tribunal noted that pollution was being caused by the educational institutions for period ranging upto 26 years and the authorities had failed to take any action. Added Respondent Nos. 20 to 24 were required to pay a sum of Rs. 40 Lakhs in the first instance to the CRRT.
17. Vide order dated 27.10.2016, the Tribunal noted that some of the encroachers have been removed and some amount had been spent for mechanised removal of silt.
18. On 25.01.2017, the Tribunal noted further steps for restoration. It was also noted that illegal structures were being constructed without permission of the Costal Zone Management Authority.
19. On 15.03.2017, the Tribunal noted the progress of sub-projects under the control of the PWD. Thereafter on 27.04.2017, it was noted that the

projects worth Rs. 150.21 Crores had been initiated and some other works were in process.

20. On 04.10.2017, a joint inspection of the affected stretches was directed to be conducted by the TNPCB, Chennai Metro Water & Sewage Board (CMWSSB) and PWD. It was noted that restoration projects will be ready by January 2018.
21. On 24.09.2018, the Tribunal noted that the pace at which the work was being undertaken has been far from satisfaction. Accordingly, latest status report was required to be indicated.
22. On 31.10.2018, specific report was sought on the following issues:-
 - (i) discharge of untreated effluents;
 - (ii) discharge of untreated sewage;
 - (iii) removal of encroachments and
 - (iv) de-silting on Adyar and Cooum Rivers and Buckingham Canal.
23. The reports produced were found to be vague with no tangible action. Out of 26,300 encroachments, only 408 had been removed. The departments were recalcitrant and the delay was caused on extraneous grounds. Accordingly, the Chief Secretary was directed to look into the matter and a penalty of Rs. 2 crore was imposed on the PWD Department. Since the inland Waterways Authority of India required the water bodies being handed over to it free of encroachments, the Tribunal directed the Chief Secretary, Tamil Nadu to deal with the said issue.
24. Finally, on the last date on 07.01.2019, status report dated 14.12.2018 was considered which was to the effect that CRRT has taken strenuous efforts for revamping Cooum and Adayar rivers in Phase – I and II. The action plan involved removal of encroachment, plugging of sewer in-falls, construction of pumping stations, sewage treatment plants, widening and deepening of waterways etc. for which a sum of Rs. 104.74 Crores had been allocated. Encroachment issue was also to be dealt with the Tamil Nadu Slum Clearance Board.

25. The Tribunal recorded its dissatisfaction with the report and found the Authorities to be lethargic in performing their duties in protecting the water bodies and the environment. PWD was directed to submit a time bound action plan in the matter. PWD was also required to show as to why Performance Guarantee of Rs. 10 crores be not directed to be furnished for implementing such time bound action plan.
26. Accordingly, an affidavit has been filed on behalf of State of Tamil Nadu dated 11.02.2019 stating the Eco Restoration Plan had been prepared for restoration of the Cooum River which is to be implemented in three phases in eight years. Major activities will be completed in three years. Sanction for 60 sub-projects at the cost of Rs. 604.77 Crores was granted on 13.01.2015. The progress was reviewed and the plan is called Integrated Cooum River Eco- Restoration Project.
27. The plan was reviewed on 01.02.2019 by the Chief Secretary. PWD is responsible for river channelling flow including de-silting, forming of baby canal and bio-engineering to stabilise the bunds. The Greater Chennai Corporation is to deal with the park development, developing walkways, removal of solid waste and fencing. CMWSSB has to provide interceptors and diversion pipelines and modular STPs along the river. Commissionerate of Municipal Corporation will deal with the park development, removal of solid waste and fencing in Thiruverkadu Municipality. The Department of Rural Development (DRD) will deal with the removal of solid waste, fencing and developing vegetation in Adyalampattu, Seneerkuppam, and Vanagaram Village Panchayats. A review meeting dated 01.02.2019 was chaired by the Chief Secretary and attended by the Departments of Municipal Administration and Water Supply Department, Housing and Urban Development Department, Public Works Department, Environment and Forest Department, Chennai Rivers Restoration Trust, Greater Chennai Corporation, Town Panchayats, District

Collectors Thiruvallur and Chennai District and Chief Engineer, Water Resources Department.

28. A separate action plan has been filed by the PWD stating that there are major Waterways flowing through the Chennai City viz. Cooum and Adayar Rivers and Buckingham canal. CRRT had undertaken strenuous efforts for restoration of the Cooum and Adayar Rivers in Phase I and II respectively which involves abatement of pollution, eviction of encroachments, plugging of sewer in-falls, providing interceptors and diversion arrangements, modular sewage treatment plants, widening and deepening of waterways etc. Projects worth Rs. 93.97 Crores and Rs. 104.31 Crores had commenced or are to be taken up soon. Summary of encroachments is as follows:

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SL. No.	Waterway	No of Encroachments identified	No of Encroachments Evicted so far	Balance to be evicted
1.	Cooum River	13592	8962	4630
2.	Adayar River	10347	4161	6186
3.	Buckingham Canal	26300	408	25892
	Total	50239	13531	36708

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29. It is further stated that periodic review is undertaken by the Chief Secretary, Tamil Nadu/Chairperson, CRRT. The encroachers are to be provided houses for which loan will be raised from the Asian Development Bank. Thus, Performance Guarantee was not required to be taken as the State has to look into the rehabilitation of encroachers along with the restoration of the rivers.
30. During the course of hearing, learned counsel for State of Tamil Nadu has handed over extracts speech of Deputy Chief Minister in the course of the

budget speech to the effect that a sum of Rs. 4647.50 Crores has been sanctioned for the houses of the poor family.

31. We have heard Mr. Jawaharlal Shanmugam, applicant in person and learned counsel for the concerned authorities.
32. The applicant in person submitted that the pollution of rivers Adyar, Cooum and Buckingham Canal in and around Chennai is a well known fact and is established on record. The problem is also acknowledged by the authorities as recorded in several orders of this Tribunal starting from 27.5.2014. They have not been vigilant in preventing the pollution of the river all these years and have failed to observe the Precautionary Principle for protection of environment. The authorities have also not fully implemented the Polluter Pays Principle. Though an action plan was produced before this Tribunal as a result of repeated directions, the same has not been complied within 36 months from April 2015 as undertaken before this Tribunal. The Local Body, which is under constitutional obligation to maintain hygiene and prevent untreated sewage being discharged in water bodies has also failed in its duties for a long period. The order dated 06.02.2015 shows that untreated effluents are being discharged in Buckingham Canal by not only private persons but also government undertakings named therein. Having regard to track record of repeated failures in the past, stand now taken by the State of Tamil Nadu that it will implement eco-restoration plan within eight years and the major activities will be completed in three years should not be taken at its face value. The action of the State authorities is not consistent with the constitutional obligations under Articles 21, 48A and 51A of the Constitution to prevent pollution of water and air. The Tribunal may, therefore, require the State of Tamil Nadu to deposit a suitable amount towards interim compensation for damage to the environment and also take a performance guarantee to ensure that present action plan is

implemented within timelines given by the State. An Expert study may also be got conducted in the meantime.

33. Learned counsel for the State of Tamil Nadu, however submitted that the State is now serious as the matter has been reviewed by the Chief Secretary with the persons of senior functionaries of the State. Timelines have been laid down and funds have been allocated.

34. We have duly considered the question and find that there is pollution of the rivers and there has been repeated failure of the State of Tamil Nadu in its duties. Remedial action is required.

35. The apathy and failure of State of Tamil Nadu and its authorities in protecting the environment for the last many years is clear from facts already noted. It is alienable responsibility and duty of the State to provide clean environment to the citizens. Such duty cannot be linked to any other duty. Nor inaction for such failure be justified on the ground of availability of budget or other commitments. Pollution of water deprives the citizens of most essential need of potable water. Failure to provide equipment to treat sewage and permitting untreated sewage and pollutants in water bodies is criminal offence under the law of the land. Anyone permitting or being party to it is liable.

36. In this regard, it is apt to refer to the judgement of the Hon'ble Supreme Court dealing with the issue of control of pollution in river Pallar in Tamil Nadu. The Hon'ble Supreme Court, in *Vellore Citizen' Welfare Forum Vs. Union of India*, (1996) 5 SSC 647, observed:

“13. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of it people and the improvement of public health as among its primary duties and,

in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. Protection and improvement of environment and safeguarding of forests and wildlife.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

51-A. (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.”

37. Again, in *Tirupur Dyeing Factory Owners Association Vs. Noyyal River Ayacutdars Protection Association &Ors.*,⁵ directions were issued to check pollution in river Noyyal in the State of Tamil Nadu. A Committee headed by a former Judge of the High Court was appointed to assess the extent of damage and to identify the victims. Based on the said report, direction to cover damages and to stop pollution were issued by the High Court. Upholding the said directions, it was observed that if the pollution is not checked, the industrial activity has to be closed; cost for restoration has to be recovered from those responsible for the pollution.
38. In spite of directions in several Judgments, discharge of untreated sewage and industrial effluents in rivers and water bodies is continuing at a large scale. Sewage treatment capacity is disproportionate to the sewage generated.
39. We have adverted to the inadequacy of environment regulatory mechanism in general and need for its revamp for meaningful environment protection and required the State machinery to be made accountable for its failure.⁶

⁵ (2009) 9 SCC 737

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- a. *Aryavart Foundation vs. M/s. Vapi Green Enviro Ltd. & Ors.*, O.A. No. 95/2018, order dated 11.01.2019; wherein this Tribunal noted inadequate performance of PCBs and directed for their performance audit.
- b. *Compliance of Municipal Solid Waste Rules 2016*, O.A. No. 606/2018, order dated 31.08.2018 – wherein this Tribunal has constituted State-wise Committees to ensure effective implementation of SWM Rules, 2016
- c. *Threat to life arising out of coal mining in south Garo Hills district Vs. State of Meghalaya & Ors.*, O.A. No. 110 (THC)/2012, order dated 04.01.2019- wherein this Tribunal laid down that state authorities colluding with polluters are equally liable to pay environmental compensation

40. We have also noted unsatisfactory state of environment threatening lives and causing deaths and diseases in India.⁷
41. The regulatory authorities created under the pollution laws are required to take stringent measures against causing of pollution expeditiously and wherever necessary, to prosecute the polluters and prohibit any polluting activities. The polluters must be required to pay the cost of restoration of the environment. For such failure, the authorities concerned may also be responsible.
42. It is a matter of serious concern that compliance of environment norms is not satisfactory and the result is large scale deaths and diseases and serious damage to air, water and earth.⁸ As per CPCB report, 351 river stretches in the country are polluted, 102 cities are classified as non-attainment cities in terms of ambient air quality, there are 100 industrial

d. 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, order dated 20.09.2018- wherein this Tribunal constituted River Rejuvenation Committees to prepare and execute Action Plan in time bound manner for rejuvenation of polluted river stretches: wherein this Tribunal dealt with the issue of compliance of judgement in M.C Mehta v. UoI (2004) 6 SCC 588 directing shifting of industries. The Tribunal again noting inaction of concerned authorities imposed environmental compensation and directed preparation of Action Plan for compliance of PWM Rules.

e. Sobha Singh & Ors. Vs. State of Punjab & Ors., O.A. No. 10/2014, order dated 24.07.2018; The Tribunal while considering the issue of pollution in River Sutlej and River Beas, on account of untreated industrial waste, directed State of Punjab to pay a sum of Rs. 50 crores for its failure to take any action against the environmental degradation.

f. Court on its own Motion Vs. State of Karnataka & Ors., O.A. No. 125/2017, order dated 06.12.2018: wherein this Tribunal while noting contamination to water bodies at Bengaluru-Bellanduru lake and inaction of concerned authorities directed them to pay compensation for degradation to environment.

⁷ Ibid. (a) and (b) wherein this Tribunal has placed reliance of the following studies to reflect the degradation of environment-
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-and-environment/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-mumbai-worse-than-beijing-who/story-m4JFTO63r7x4Ti8ZbHF7mM.html>- Delhi's most polluted city, Mumbai worsen than Beijing as per WHO;
http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf- WHO Water Quality Index.

⁸ As per some studies (the Lancet Commission Report on Pollution and Health) 2.51 million that took place in India in 2015, ranking India No. 1 in pollution related deaths. Pollution has been responsible for the most non-communicable disease deaths. In 2015, all forms of pollution combined were responsible for 21% of all deaths from cardiovascular disease, 26% of deaths due to heart disease, 23% due to stroke, 51% to chronic obstructive pulmonary disease, and 43% due to lung cancer. Pollution was also responsible for these times as many deaths as AIDS, tuberculosis, and malaria combined. <http://www.thehindu.com/sci-tech/energy-and-environment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece>

clusters, there is wide gap in compliance of statutory rules for waste disposal, which issues are subject matter of proceedings before this Tribunal.⁹ Though rivers involved in the present case are not in the list of 351 polluted river stretches compiled by CPCB, the fact remains that the same are polluted and action taken by the authorities is not adequate.

43. Stern approach is, thus, required against the polluters as well as statutory authorities conniving or colluding with the polluters. The statutory authorities are trustees of the people and if their failure results in harm to the citizens or to the environment, the Court/Tribunal has to adopt strict approach to make them accountable so that such action acts as deterrent to prevent further harm.
44. To uphold the Rule of Law and accountability of those who are trustees of environment, it is necessary that the state machinery is required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. This is required not only as a part of Principle of 'Polluter Pays' which applies not only to actual polluters but also to those who collude with polluters or enable pollution to be caused and also for the negligence of public duties, adversely affecting the citizens. While actual damages may be determined on the basis of objective data, if available, absence of precise data is not a

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- a. Original Application No. 673/2018, News item published in 'The Hindu' authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" dated 20.09.2018 : wherein the Tribunal issued directions to prepare and implement Action Plans to rejuvenate and restore the 351 polluted river stretches.
- b. 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
- c. 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.
- d. 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.

ground not to undertake the exercise of determining such damages based on legal principles, including *res ipsa loquitur*, having regard to common course of events etc. The environment is priceless. These principles are settled in decisions of Hon'ble Supreme Court.¹⁰

45. We have already noted that 'Polluter Pays' Principle can be applied by every regulatory authority and compensation can be and must be recovered from every polluter and the amount which is to be recovered spent for the restoration of the environment.¹¹ Mere passing of orders by the Tribunal is of no value unless the same are faithfully executed. Execution is in the hands of the authority. As executing court, it is not only the right but also the duty of this Tribunal to take such measures as may ensure compliance. Mode of execution is laid down in CPC (Section 51), i.e., arrest and detention, appointment of a receiver or in such manner as nature of

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- a) Sterlite Industries (India) Ltd. v. Union of India (2013) 4 SCC 575: ¶ 47- To the effect that compensation must be deterrent having regard to paying capacity and magnitude of the polluter.
- b) T.N. Godavarman Thirumulpad v. UOI & Ors. (2006) 1 SCC 1: ¶ 1- That protection of environment is responsibility of the State.
- c) Indian Council for Enviro-Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212: ¶ 67 and Vellore Citizens Welfare Forum v. UOI, (1996) 5 SCC 647: ¶ 11 to 13- Polluter Pays Principle extends not only to compensate harm to the victim but also to the environment.
- d) M.C. Mehta v. Kamal Nath (1997) 1 SCC 388: ¶ 10 -Public Trust Doctrine, ¶ 24 Imposition of exemplary damages to be paid by polluter as a measure of as deterrence.
- e) M.C. Mehta v. UOI & Ors., W.P (c) No. 13029/1985 order dated 24.10.2017, Supreme Court: Liability of public functionaries for inaction.
- f) MCD v. Uphaar Tragedy Victims Association (2011) 14 SCC 481: ¶ 99, 100- Principles of Private Tort do not control failure of State functionaries. Damages can be punitive and exemplary. Cost to cost method may not be applied in all situations.
- g) Vadodra Municipal Corporation v. Purshottam v. Murjani & Ors. (2014) 16 SCC 14: ¶ 17 - monetary liability can be fastened for failure of statutory duty.
- h) M. C. Mehta & Anr. v. Union of India (1987) 1 SCC 395 : ¶ 32 -measure of compensation to be co-related to magnitude and capacity of enterprise, compensation must have deterrent effect

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- a. Compliance of Municipal Solid Waste Management Rules, 2016 order dated 16.01.2018 in O.A. No. 606/2018.
- b. Aryavart Foundation v. M/s Vapi Green Enviro Ltd. & Ors (O.A. No.95/2018) order dated 11.01.2019- wherein this Tribunal reiterated that 'Polluter Pays' Principle is ingrained in the environmental jurisprudence of the country as well as statutory mandate under Section 20 of the NGT Act, 2010.
- 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) order dated 04.01.2019- wherein this Tribunal held that it is necessary that the state machinery is required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. This is required not only as a part of principle of 'polluter pays' which applies not only to actual polluters but also to those who collude with polluters or enable pollution to be caused and also for the negligence of public duties, adversely affecting the citizens.

relief may require. There are provisions for prosecution, including of heads of departments of the Government.

46. On Precautionary Principle, to ensure that statutory authority do not continue to ignore their duties of taking action of protecting the environment, this Tribunal instead of permitting pollution to continue can require Performance Guarantee to be furnished. The present is a fit case where such power must be exercised.
47. In view of consistent failure of the State so far, we are tentatively inclined to require the State of Tamil Nadu to pay a sum of Rs. 100 Crores as compensation for damage to the environment with the Central Pollution Control Board (CPCB) for the past failures in preventing damage to environment. The amount may be used for restoration of environment. However, before taking a final view, we constitute a joint Committee comprising of representatives of CPCB, Indian Institute of Sciences, Bangalore, Madras School of Economics, NEERI and the State Pollution Control Board. The Committee may assess the causes and quantum of damage to the environment as well as further steps required for restoration of environment which are not covered in the action plan. The Tamil Nadu Pollution Control Board will be the nodal agency to coordinate and comply with the orders of the Tribunal. The Committee may give its report within three months.
48. We further direct that performance guarantee be furnished by the State of Tamil Nadu to the satisfaction of CPCB within one month to complete the restoration work within the specified time lines.
49. Our above order is consistent with earlier directions in similar matters. The Tribunal dealt with the issue of 351 polluted river stretches in the country and required action plans to be prepared to bring the water quality within

the prescribed standards in a time bound manner.¹² The Tribunal vide its order dated 19.12.2018 directed that non-adherence to the timeline shall make the States liable to pay environmental compensation at the rate of Rs. 1 crore per month for Priority I and II stretches, Rs. 50 lacs per month for Priority III stretches and Rs. 25 lacs per month each for Priority IV and Priority V stretches.¹³

50. In *Threat to life arising out of coal mining in south Garo Hills district Vs. State of Meghalaya & Ors.*, O.A. No. 110 (THC)/2012, this Tribunal held the State of Meghalaya liable to pay a sum of Rs. 100 crores for damage to the environment. In *Sobha Singh & Ors. Vs. State of Punjab & Ors.*, O.A. No. 916/2018, (earlier O.A No. 101/2014) order dated 14.11.2018, this Tribunal held the State of Punjab liable to pay sum of Rs. 50 crores for damage to the environment. In *Court on its own Motion v. State of Karnataka & Ors.*, O.A. No. 125/2017, order dated 06.12.2018, the State of Karnataka and the Bruhat Bengaluru Mahanagara Palike was required to pay Rs. 50 crores and 25 crores respectively, apart from furnishing performance guarantee, apart from requiring transfer of Rs. 500 crore to an Escrow account. These are only some of the instances. This approach has been felt necessary in view of seriousness of environment degradation and consistent failure of the authorities. No doubt, in the present case, a sum of Rs. 2 crores has been required to be paid earlier and notice was issued to show cause why performance guarantee may not be required to be furnished in the sum of Rs. 10 crore. After comprehensive hearing today, we are of the view that the magnitude of the damage to the environment is huge and there has been a long history of consistent failures of the State of Tamil Nadu and its authorities. The quantum of compensation to be recovered for the past failure and the amount of performance guarantee to be taken is required to the above extent to ensure compliance in future.

¹² Order dated 23.9.2018 in O.A No. 673/2018

¹³ Order dated 19.12.2018 O.A No. 673/2018

51. The Chief Secretaries of all the States have been required to appear in person before this Tribunal on specified dates to report the progress in the said matter along with the progress on other significant issues of environment protection including solid waste management, sewage management, polluted air in cities and polluted industrial clusters.¹⁴
52. The Chief Secretary of Tamil Nadu has been required to remain present before the Tribunal on 23.04.2019. We direct the Chief Secretary to be ready with the progress in the present matter as well which is impacting large number of inhabitants living in the catchments of these river systems.
53. CPCB may collect holistic data for other stretches comprehensively so that further action to remedy pollution can be effectively taken.
54. We also direct that the Committee headed by Chief Secretary which met on 01.02.2019 may continue to meet fortnightly for a period of next three months and thereafter on monthly basis to review the progress in the matter. Quarterly reports may be furnished to this Tribunal on the progress in the matter by e-mail at ngt.filing@gmail.com.
55. The first such report may be furnished on or before 31.05.2019 by e-mail at ngt.filing@gmail.com.
- The applications stand disposed of.
- Reports received may be put up for consideration as and when received.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

¹⁴ Order dated 16.12.2018 in O.A No. 606/2018

Dr. Nagin Nanda, EM

February 13, 2019

Original Application No. 558/2018

(Earlier O.A. NO. 164/2015 (SZ) and other connected matters)

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