

To,

The Registrar
National Green Tribunal
New Delhi

Subject: O.A. No. 861 of 2022 - Rejoinder to report filed by the Joint Committee in case title Kuldeep Singh Khaira & ors. Vs. State of Punjab & ors.

Sir,

I am enclosing herewith my rejoinder to the status report filed by JOINT Committee in the aforesaid OA.

Kindly allow it to be placed on records

Yours Sincerely,



(Kuldeep Singh Khaira)
Applicant No. 1 in person
Mobile: 985554433
Dated: 16-02-2023



(Er. Kapil Dev)
Applicant No. 2 in person
Mobile: 9872007872

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

Original Application No. 861 of 2022

Kuldeep Singh Khaira & ors.

.....Applicants

Versus

State of Punjab & ors.

--- Respondents

Rejoinder to the Report submitted by Punjab Pollution Control Board (Nodal Officer) on behalf of Joint Committee constituted by this Hon'ble Tribunal vide orders dated 25-11-2022

Respectfully Sheweth,

PRELIMINARY SUBMISSIONS:

The Applicants humbly submits that the report prepared by the Joint Committee is incomplete and has been prepared to protect the influential persons and MCL (Respondent No. 6) from legal punishment for their act of contamination to Water Body/Stream. Further, the Joint Committee has deliberately and wrongly mentioned that there are no encroachments done on Banks of Sidhwan Canals by some private persons/violators. The provisions being made by MCL are incomplete and insufficient to prevent the polluters to dump the garbage into Sidhwan Canal.

GROUNDS:

1. That the Joint Committee has taken provisions of The Water (Prevention & Control of Pollution) Act, 1974 in a casual way to implement the law on common man only but has deliberately spared the main polluter i.e. the Municipal Corporation, Ludhiana who is

deliberately and continuously dumping the garbage on Bank of Sidhwan Canal since last many years. Further, Mr. Gurpreet Singh Gogi, MLA took his private vehicle (Mohindra Thar) on bed of Sidhwan Canal during cleaning by MCL & has driven on the Canal bed being cleaned by MCL but no action is taken by the Executive Engineer of Sidhwan Canal Division, Irrigation Department (Respondent No. 5) against him as per law.

2. That the Joint Committee has failed to identify the encroachments done whereas the encroachments can be seen adjoining to Illegal impugned Secondary dump on bank of Sidhwan Canal AND by residential buildings towards their rear side & others and even has not explain extent of "No Activity Zone along Sidhwan Canal" in its report submitted to this Hon'ble Tribunal. Further, despite letters issued by Respondent No. 5 (Executive Engineer, Sidhwan Canal Division, Irrigation Department) in the past, the Respondent No. 6 MCL has failed to shift the dump from Bank of Sidhwan Canal. Further, despite submission of written application by the petitioners, the Irrigation Department has not registered FIR against the Municipal commissioner & other concerned officials u/s 24 & 48 (read with 43) of The Water (Prevention & Control of Pollution) Act, 1974. **It is well known fact that as per Section 48 of the Water (Prevention & Control of Pollution) Act, 1974, when an offence under this act has been committed by any department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.**
3. That the MCL has failed to collect door to door garbage from localities situated near Lohara Bridge constructed at Sidhwan Canal & has failed to install Garbage Bins at Road Junctions on Sidhwan Canal Bank to prevent dumping of garbage in Sidhwan Canal.
4. That the MCL is fixing Chain Link Fence with height of 2 metres (6'6" feet) only whereas to prevent dumping on garbage into Budha Nallah, same department is fixing Chain Fence upto height of 3 meters (10 feet). The two Meter height is not sufficient to minimise the dumping of Garbage into Sidhwan Canal by any violator.
5. That the MCL has deployed some Marshals and members of NGOs at certain places during day time but such practise is mere an eyewash as maximum garbage is dumped during late evening hours or early morning. It is pertinent to submit here that debris of building construction material is found to be dumped in Sidhwan Canal which indicated that the such

illegal activities goes during night hours. Such practice is temporary and **thus, Night Vision CCTV Cameras should have been installed along Sidhwan Canal Road to identify the violators.**

6. That instead starting the cleaning of Sidhwan Canal from Sanghowal Bridge, the MCL started cleaning the canal against the direction of flow of Water. Since the task is incomplete, now the garbage dumped from Sanghowal Bridge to Gill Bridge will flow along with the water and spread at entire stretch cleaned by MCL, thus MCL will have to clean entire stretch.

FACTS/REPLY IN DETAILS:

It is a well-known fact that the Sidhwan Canal originates from Main Neelon Canal at Doraha and enters City area from Sanghowal Bridge to Bridges at Lohara - Gill Road -Pakhowal Raod - Sarabha Nagar – Ferozpur Road – Ayali Kalan onwards. Since the Joint committee through Nodal Agency Punjab Pollution Control Board has submitted report based upon incomplete facts, the reply from Point No. 3.2 of the Report is submitted as under:

Reply to Point No. 3.2: That the Irrigation Department had issued letters to MCL to shift the dump by specifically mentioning in it that water gets contaminated due to falling of Plastics due to wind (i.e. indirect falling of garbage) & it causes restriction to flow of water stream too. **However, the Joint committee which comprised of Irrigation Department (Respondent No. 5) has tried to defend the Respondent No. 6 MCL by wrongly mentioning in the Report that no garbage is thrown into Canal.** The translated copy of letter No. 4182-83 dated 27-06-2022 issued by Executive Engineer, Sidhwan Canal Division, Ludhiana is produced herewith as **Annexure PR-1. It is well known fact that as per Section 48 of the Water (Prevention & Control of Pollution) Act, 1974, when an offence under this act has been committed by any department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.**

Reply to Point No. 4.0: That the MCL has completely failed in solid Waste Management and despite warning by the NGT Monitoring Committee during visit in April 2022 for shifting of Illegal Secondary Dumps situated at Bajwa Nagar & Sherpur Chowk road, the dumps are still

not shifted by it. The than Municipal Commissioner Mr. Pradeep Sabharwal had said that they has requested GLADA to provide the land and dump at Sherpur chowk would be shifted soon but the garbage is still being dumped at the location. The Applicants have conducted peaceful protest at this illegal dump site at Bank of Sidhwan Canal in the month of February 2022 but MCL didn't wake up from deep slumber. Thus, the letters by MCL have been merely eyewash to escape from legal punishment for damage to the Environment already done by it only.

Reply to 5.0: Besides private polluters, as already humbly submitted by the Applicants, the MCL (Respondent No. 6) is main accused in polluting the Sidhwan Canal as dumping of garbage on Banks of Sidhwan Canal by MCL gives excuse to other private polluters also.

- a) Though due to petition filed by the Applicants with this Hon'ble tribunal, the MCL might be shifting the dump in future but it is lawful duty of Irrigation Department to register FIR u/s 24 read with section 43 of The Water (Prevention & Control of Pollution) Act, 1974 against Municipal Commissioner & other concerned officials of MCL for contaminating the Water body indirectly by dumping Garbage on Banks of Sidhwan Canal. The Applicants had submitted another complaint on 02-01-2023 with the Executive Engineer, Sidhwan Canal Division, Ludhiana to register FIR against them under the Act but no action has been taken by him till date.
- b) The MCL has started cleaning the Sidhwan Canal from opposite direction of flow of Water Current and with incomplete task till release of water by Irrigation Department, the garbage laying at bed of Sidhwan Canal from Gill Bridge to Sanghowal Bridge will spread on stretched cleaned by MCL too. Thus, the MCL will have to do the cleaning of 60-70% of stretch already cleaned by it.
- c) The Chain fencing being installed along Sidhwan Canal is just 2 meter in height which is insufficient to minimise the garbage to be thrown by Polluters. It is pertinent to submit here that MCL is installing 3 Meter High Chain Fence along Budha Nallah (Dariya) to prevent dumping of Garbage. The Applicants have prayed to this Hon'ble tribunal for directions to MCL for installation of Chain Link Fence as 3 Meters and have raised the issue through Print Media in December 2022 and also sent representation to MCL on 05-02-2023 to increase the height of Chain Fencing but MCL has not acted on it till date.

Reply to Point No. 6.0: The Applicants welcome the action taken by Irrigation Department & MCL on Polluters but the Irrigation Department has failed to take action against MCL for contaminating the Water Body (Sidhwan Canal) by continuing to dump garbage at Illegal Secondary Dump on banks of Sidhwan Canal near Gill Bridge, it was duty of Irrigation Department to register FIR against MCL under the provisions of The Water (Prevention & Control of Pollution) Act, 1974. Further the MLA Mr. Gurpreet Singh Gogi had taken his Vehicle (Mohindra Thar) at Sidhwan Canal Bed on 07-02-2023 and it was driven on Sidhwan Canal Bed but no action has been taken against him by Irrigation Department till date. From action taken only against the common man indicates that the law is being implemented as per their whims and fancies only.

Reply to Point No. 7.0:

- a) As per reply to point No. 4.0

- b) The Joint committee has deliberately & wrongly not mentioned that No encroachment was observed on the Banks of Sidhwan Canal in the City Limits whereas the encroachments has been done near Illegal Secondary dump by some private persons & even they are running illegal Fish Market on Banks of Sidhwan Canal. Further, there is encroachment over land along Sidhwan Canal done by some residential houses towards their rear side towards Sidhwan Canal. There are many more encroachments done by some private persons but the Joint Committee wants to avoid removing such encroachments. Two Photograph depicting the encroachment done by private persons is submitted with main petition as Annexure P-4


- c) That large number of migrant labours enters Sidhwan Canal to collect valuable things from time to time and photograph of same has already been submitted along Main Petition by the applicants as Annexure P-2. Further, as already submitted, the MLA Sh. Gurpreet Singh Gogi took his vehicle Thar into Sidhwan Canal which is also an Act of Trespassing but no action has been taken under the Act by Irrigation Department till date.


Hon'ble sir, as per Article 14 of the constitution of India, the law is equally applicable on all and it is fundamental duty of each and every citizen to protect the Environment. Such responsibility increases by manifolds when any citizen takes charge as an Authority but the Joint Committee has failed to submit actual and factual facts before this Hon'ble Tribunal and have tried to save officials of Municipal Corporation Ludhiana by wrongly mentioning the facts as submitted above. Further, the Executive Engineer, Sidhwan Canal Division of Irrigation Department has failed to register FIR against Municipal Commissioner & other concerned officials of MCL till date. The remedies being adopted by MCL are insufficient to minimise the dumping of garbage into Sidhwan Canal. The applicants humbly pray to this Hon'ble Tribunal as under:

PRAAYER

1. That directions may kindly be issued to Executive Engineer to initiate proceedings against the Municipal Commissioner and other concerned officials of Municipal Corporation Ludhiana under the provisions of Section 24 (read with Section 43) of The Water (Prevention & Control of Pollution) Act, 1974.
2. That the directions may kindly be issued as per prayer submitted in Main Petition O.A. No. 861 of 2022 by the Applicants.
3. Any other as deemed to be fit by this Hon'ble Tribunal.

Date: 16-02-2023
Place: Ludhiana


Kuldeep Singh Khaira
(Applicant No. 1 in person)


Er. Kapil Dev
(Applicant No. 2 in person)

(PUNJABI TO ENGLISH TRANSLATION OF LETTER ISSUED TO MCL BY EXECUTIVE ENGINEER,
SIDHWAN CANAL DIVISION, LUDHIANA)

Number: 4182-83/1-R

Dated: 27-06-2022

To,

The Commissioner.
Zone-C,
Municipal Corporation
Ludhiana

Subject: Regarding Garbage Dump near Sidhwan Canal (Pillar No. 59075 Right side)

Reference: Letter No. 149/M/22 dated 27-05-2022 issued by Sub Division Officer, Sidhwan Canal Division, Ludhiana

Sir,

With reference to above mentioned subject, the Sub division Officer of Sidhwan Canal Sub-Division has reported regarding subject matter that Garbage dump has been made on Bank of Sidhwan Canal near Right of Pillar No. 59075.-. Due to this garbage dump, Public also throws garbage into Sidhwan Canal. And due to wind, the polythene bags from garbage dump falls into Sidhwan Canal. The Water gets contaminated due to this reason. And it caused restriction to flow of the water stream. It was written in this regard to your office earlier too. But the garbage dump has not been removed till date. Water gets polluted due to falling of garbage into the Canal. Due to which there is risk of spreading diseases in Ludhiana City and there is danger to Sidhwan Canal Banks due to restriction in flow of water of Sidhwan Canal and can cause threat to lives and financial loss.

Keeping in view of the above, it is written to you that Garbage dump made on right side of Pillar No. 59075 on Sidhwan Canal be removed so as to avoid any mis-happening in future.

- SD/--

Executive Engineer
Sidhwan Canal Division
Ludhiana

Cc

Sub Division office of Sidhwan Canal Sub Division is informed regarding their letter No. 149/M/22 that efforts be made to shift the garbage dump in cooperation with the concerned office and information regarding any action be informed to this office.