

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****PRINCIPAL BENCH AT NEW DELHI****ORIGINAL APPLICATION NO. 253 OF 2023****IN THE MATTER OF:**

Raja Muzaffar Bhat

...Applicant

Versus

Union Territory of J&amp;K &amp; Ors.

...Respondents

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**RESPONSE TO REPORT OF JAMMU & KASHMIR POLLUTION CONTROL  
COMMITTEE DATED 30.09.2023 AND DISTRICT MAGISTRATE,  
POONCH****MOST RESPECTFULLY SHOWETH**

1. That the present Application was filed under Section 14 and Section 15 read with Section 20 of the National Green Tribunal Act, 2010 bringing to the notice of the Hon'ble Tribunal rampant and illegal disposal of solid and bio-medical waste on the banks of Poonch River, in the area falling between Sher-E-Kashmir Bridge (NH 144A) and the confluence of Poonch River and Belar Nala in Poonch Town, Union Territory of Jammu & Kashmir. Poonch River is a tributary of Jhelum River and towns such as Poonch, Sehra, Tatta Pani, Kotli and Mirpur are situated on its banks and the river water of Poonch is also a source of drinking water for the population living downstream.
2. That vide Order dated 13.04.2023, this Hon'ble Tribunal constituted a Joint Committee comprising of Jammu & Kashmir Pollution Control Committee and District Magistrate, Poonch directed it to submit a Report after verifying facts and take remedial action. Relevant part of the Order dated 13.04.2023 is reproduced below for reference:

*"2. Let the J&K PCC and District Magistrate, Poonch furnish a joint report in the matter after verifying facts and take remedial*

*action within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.*

*The J&K PCC will be the nodal agency for coordination and compliance. **The report may mention the steps taken to prevent such dumping and management of solid waste and bio-medical waste in the area. The Committee may look into the order of this Tribunal dated 20.10.2022 in O.A. No. 606/2018 and give compliance status with reference thereto in respect of the area in question.***

3. That Jammu & Kashmir Pollution Control Committee and District Magistrate, Poonch have submitted separate Reports furnishing details about the status on ground.

**PRELIMINARY SUBMISSIONS/ OBJECTIONS ON BEHALF OF THE APPLICANT**

**A. Fresh waste is still being dumped at the banks of River Poonch**

4. That it is the submission of the Applicant that fresh waste is being continuously dumped on the banks of River Poonch, which is clear from the photographs dated 03.10.2023 and 19.11.2023 taken by the Applicant. These photographs make it clear that waste (including solid and bio-medical waste) is still being dumped at the site and the authorities have failed to take any action to stop the same.
5. That the Reports filed by Jammu & Kashmir Pollution Control Committee and District Magistrate, Poonch have also failed to provide any information or take action on the fresh waste being dumped at the site.  
Copy of photographs dated 03.10.2023 and 19.11.2023 showing dumping of waste on the banks of River Poonch is annexed herewith as

**ANNEXURE A-1.**

6. That the authorities may be directed to ensure that no fresh dumping of waste is allowed to be done, to ensure that the area can be restored to its original position.

**B. No steps have been taken by the authorities to remove the waste from the site and no information on the same has been provided in the Report**

7. That the solid and bio-medical waste dumped at the site is still lying there and no steps have been taken to remove such waste from the banks of River Poonch.
8. That the Reports are also silent on whether any steps are proposed to be taken for removal of waste and restoration of the area.
9. That the Jammu & Kashmir Pollution Control Committee has stated in its Report that the first show-cause notice was issued to Municipal Council, Poonch on 25.07.2020. This makes it clear that the Pollution Control Committee was aware of the waste dumping since at least 25.07.2020. However, it failed to take any action to ensure that the waste at the site is removed and the area is restored to its original position.
10. That it is clear from the photographs annexed with this Response that huge heaps of waste are getting accumulated at the site, which is causing threat to environment and human lives.
11. That the Jammu & Kashmir Pollution Control Committee may be directed to take remedial measures to ensure that the dumped waste is not only removed but restoration of the area is also undertaken, to prevent further damage to the environment.

**C. No action has been taken and no information has been provided in the Reports on segregation of waste as per the Solid Waste Management Rules, 2016**

12. That the Reports filed by Jammu & Kashmir Pollution Control Committee and District Magistrate, Poonch are silent on the steps taken to comply

with the provisions of Solid Waste Management Rules, 2016 with respect to segregation and scientific disposal of waste.

13. That the Reports also do not provide any information on the steps taken for handling of bio-medical waste such that there is no adverse impact on the environment.
14. That the Solid Waste Management Rules, 2016 makes it a duty of waste generator to undertake segregation of waste in the following manner:

*"4. Duties of waste generators.-*

*Every waste generator shall,-*

*(a) segregate and store the waste generated by them in three separate streams namely bio-degradable, non-biodegradable and domestic hazardous wastes in suitable bins and handover segregated wastes to authorised waste pickers or waste collectors as per the direction or notification by the local authorities from time to time."*

15. That the Bio-Medical Waste Rules, 2016 makes it a duty of the waste generator to ensure that all bio-medical waste is handled with no adverse impact on environment and human health:

*"2...*

*(m) "occupier" means a person having administrative control over the institution and the premises generating bio-medical waste, which includes a hospital, nursing home, clinic, dispensary, veterinary institution, animal house, pathological laboratory, blood bank, health care facility and clinical establishment, irrespective of their system of medicine and by whatever name they are called;*

*...*

*4. Duties of the Occupier.- It shall be the duty of every occupier to- (a) take all necessary steps to ensure that bio-medical waste is handled without any adverse effect to human health and the environment and in accordance with these rules.*

16. That the Reports have failed to clarify the present status of handling of solid and bio-medical waste as per the provisions of the Solid Waste Management Rules, 2016 and Bio-Medical Waste Rules, 2016 respectively.

**D. Jammu & Kashmir Pollution Control Committee should take action under Section 15 of the Environment (Protection) Act, 1986 for contravention of provisions of Solid Waste Management Rules, 2016 and Bio-Medical Waste Management Rules, 2016**

17. That the Solid Waste Management Rules, 2016 and Bio-Medical Waste Rules, 2016 are issued in exercise of the powers conferred by sections 3, 6 and 25 of the Environment (Protection) Act, 1986. Therefore, contravention of the Rules is a contravention of Environment (Protection) Act, 1986, which is punishable under Section 15 of the Act. Section 15 reads as follows:

*“15. Penalty For Contravention Of The Provisions Of The Act And The Rules, Orders And Directions.-*

*(1) **Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.***

*(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be*

*punishable with imprisonment for a term which may extend to seven years."*

(Emphasis supplied)

18. That Section 15 of the Environment (Protection) Act, 1986 provides that any contravention of the provisions of the Act will be punishable with imprisonment for a term of five years with fine which may extend to one lakh rupees.
19. That the Jammu & Kashmir Pollution Control Committee ought to take action against Municipal Council, Poonch in accordance with Section 15 of Environment (Protection) Act, 1986.

**E. That the Jammu & Kashmir Pollution Control Committee has filed the Report on the basis of a site inspection done 01.11.2022 (more than one year back)**

20. That the Report mentions that environmental compensation to the tune of Rs. 81 lakhs has been imposed on Municipal Council, Poonch for the period from 25.07.2020 till 01.11.2022. This was done on the basis of a site inspection done on 01.11.2022 by the Jammu & Kashmir Pollution Control Committee.
21. It is the submission of the Applicant that the Report does not provide information on the current status of waste dumping and has relied upon a site inspection done more than one year back.
22. That Jammu & Kashmir Pollution Control Committee may be directed to conduct a site visit and provide information on the status on ground along with the remedial measures that are required to be taken.

**Response to the Report of Jammu & Kashmir Pollution Control Committee**

23. That the Jammu & Kashmir Pollution Control Committee has submitted a Report stating the following points:

- i. That the Report admits that as per site inspection conducted on 01.11.2022, solid waste was still being dumped at the banks of River Poonch which is damaging the environment and is a serious health hazard for locals;
  - ii. That as per the Polluter Pays Principle, environmental compensation amounting to Rs. 81 lacs was imposed on Municipal Council, Poonch for violation for the period 25.07.2022 to 01.11.2022;
  - iii. That Municipal Council, Poonch is in the process of establishment of solid waste management facility, however no work has started in it.
24. That the Applicant has the following objections/ submissions to the Report of Jammu & Kashmir Pollution Control Committee-
- A. The environmental compensation computed in the Report is insufficient because the violation of dumping of solid and bio-medical waste is still continuing**
25. That the Report mentions that environmental compensation to the tune of Rs. 81 lakhs has been imposed on Municipal Council, Poonch for the period from 25.07.2020 (date on which the Show Cause Notice was issued) till 01.11.2022 (date of inspection at the site).
26. It is the submission of the Applicant that the Report does not account for the continuing violation that is taking place by dumping of solid waste and bio-medical waste at the banks of the river till date. This violation has taken place even after 01.11.2022 (the date till which violation was calculated by the Pollution Control Committee).
27. That however, the amount of environmental compensation is not calculated adequately as fresh dumping of waste is still continuing at the site and is adding to the already dumped waste.

**B. No solid waste management facility has been set-up till now even though the process of setting-up the plant in Poonch had started in 2019**

28. That the Report states that the Municipal Council, Poonch filed an Application to review the imposition of Rs. 81 lakhs as environmental compensation. This was filed on the ground that they are in the process of setting up a solid waste management project for management of waste.
29. At the outset, it is submitted that the environmental compensation has been imposed for past violations by Municipal Council, Poonch done by dumping of waste at the banks of River Poonch. Any subsequent setting up of a waste management project does not absolve the Municipal Council from compensating for the environmental degradation caused due to its past violations.
30. That it is also pertinent to mention as per their own admission, the Municipal Council, Poonch had started that the process of setting-up of a waste management project in 2019 and despite passing of more than 4 years, no progress can be seen. Due to such lackadaisical approach of Municipal Council, dumping of waste at the banks of River Poonch is causing environmental degradation and posing a serious health hazard for the locals.

**C. The Report fails to provide compliance status as per the Order of this Hon'ble Tribunal in Original Application No. 606 of 2018**

31. That the Order dated 13.04.2023 of this Hon'ble Tribunal had directed the Joint Committee to look into the Order dated 20.10.2022 in Original Application No. 606 of 2018 (In respect of Union Territory of Jammu & Kashmir) and provide the compliance status. Relevant part of the Order is reproduced below:

*"The J&K PCC will be the nodal agency for coordination and compliance. **The report may mention the steps taken to prevent such dumping and management of solid waste and bio-medical waste in the area. The Committee may look into the order of this Tribunal dated 20.10.2022 in O.A. No. 606/2018 and give compliance status with reference thereto in respect of the area in question.**"*

32. That however, the Report of Jammu & Kashmir has failed to provide any update on the compliance status with respect to the directions given in the Order dated 20.10.2022 in Original Application No. 606 of 2018.

**D. The Report has failed to provide information on any remedial action taken on dumping of bio-medical waste**

33. That in the Original Application, the Applicant had raised the issue of dumping of solid waste as well as bio-medical waste on the banks of River Poonch. However, the Report filed by the Jammu & Kashmir Pollution Control Committee has only stated that environmental compensation was imposed for dumping of solid waste and makes no mention of the bio-medical waste being dumped on the banks of River Poonch.
34. That the environmental compensation imposed on Municipal Council, Poonch was also only with respect to solid waste dumping and not for dumping bio-medical waste.
35. That the waste dumped at the banks of the river contains hazardous, toxic bio-medical waste, which can cause grave risk to human health.  
Copy of photographs showing presence of bio-medical waste at the banks of River Poonch is annexed herewith as **ANNEXURE A-2.**
36. That the Report has not provided a complete picture of the ground status as the solid waste and bio-medical waste are getting mixed together due to lack of segregation. Bio-medical waste is hazardous in nature and its

indiscriminate dumping poses a higher risk than solid waste. Therefore, imposition of environmental compensation is required for dumping of bio-medical waste as well.

**Response to Report of District Magistrate, Poonch**

37. That the District Magistrate, Poonch has stated the following in its Report:
- i. That there is no dumping of bio-medical waste as the Medical Department has signed an MOU with Anmol Healthcare, Jammu and it collects bio-medical waste from healthcare institutions;
  - ii. That steps have been taken to resolve the issue of dumping of solid waste;
  - iii. That land at Ward No. 11, Mohalla Shankar Nagar, Poonch has been identified for construction of solid waste management project, however, no work has started.
38. That the Applicant has the following objections/ submissions to the Report of District Magistrate, Poonch-
- A. The Report wrongly states that no bio-medical waste is being dumped at the site**
39. That the Report wrongly states that no bio-medical waste is being dumped on the banks of River Poonch. The Applicant has visited the site on multiple occasions and noticed hazardous bio-medical waste being dumped at the site. This is clear not only from the photographs dated 13.12.2022 (annexed as ANNEXURE A-2 at Page 52-53) but also from photographs dated 03.10.2023 and 19.11.2023 (annexed with this Response) which show bio-medical waste still being dumped at the banks of the river.
40. That the authorities have failed to take any action to remove the waste and restore the area.

**B. The Report provides no information on the MoU signed with Anmol Healthcare, Jammu, therefore, it is not clear if the waste is being scientifically managed**

41. That the Report of District Magistrate, Poonch states that for scientific disposal of bio-medical waste, an MoU has been signed with Anmol Healthcare, Jammu which collects bio-medical waste from healthcare institutions.
42. It is the submission of the Applicant that if waste was being scientifically managed by Anmol Healthcare, disposal of such waste at banks of River Poonch would not be taking place. Strict action is required to be taken to ensure that the waste is scientifically disposed off.
43. That the Report has also failed to provide details of the MoU signed with Anmol Healthcare, Jammu to ascertain the manner undertaken to process the waste and the amount of waste processed in the previous years. This will help understand the efficacy of disposal of bio-medical waste.

**C. No concrete steps have been taken to resolve the issue of dumping of solid waste**

44. That the Report mentions that steps such as construction of compost pit, development of greenery, usage of bio-culture and enzymes and usage of leachate have been taken to ensure scientific disposal of solid waste.
45. It is submitted that no update has been provided on the status of implementation of these steps and therefore, the efficacy of such steps cannot be judged.
46. That it is clear from the photographs annexed with this Response that dumping of waste is still ongoing, which is posing as a health hazard and causing severe environmental degradation.
47. Therefore, strict action is required to be taken to ensure that no waste is unscientifically dumped.

**D. The site chosen for setting up the solid waste management project should comply with the siting criteria provided under Solid Waste Management Rules**

48. That the Report states that land at Ward No. 11, Mohalla Shankar Nagar, Poonch has been identified for construction of solid waste management project, however, no work has started.
49. It is the submission of the Applicant that while setting up the solid waste management project, the siting criteria provided under the Solid Waste Management Rules, 2016 should be complied with, to ensure that no hindrances come in the way of grant of permission for setting up the project.
50. In light of the above facts and circumstances, this Hon'ble Tribunal may pass appropriate directions.

Through



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Place:- Delhi

Dated:- 29.11.2023

Photographs dated 03.10.2023 showing dumping of solid and bio-medical waste at the banks of River Poonch





PHOTOGRAPHS DATED 19.11.2023 SHOWING WASTE DUMPS AT THE BANK OF RIVER POONCH





t.c.

*Handwritten signature*

Photographs showing bio-medical waste dumped at the banks of River Poonch



t.c.

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