

**BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH, FARIDKOT HOUSE, NEW DLEHI
ORIGINAL APPLICATION NO. 329 OF 2015**

IN THE MATTER OF:-

Gram Panchayat Araba ... Applicant

Versus

State of Rajasthan and ors. Respondents

INDEX

L.D.O.H-24.11.2021
Order Reserved
PAGES

S.NO PARTICULARS

1) Written Submission by the Applicant

1 - 11

NEW DELHI

DATE: 02.12.2021



**DHARMVIDHI LEGAL SERVICES & SOLUTIONS
[JAIDEEP SINGH & KARTIK DABAS]**

Advocates for the Applicants

Tower 15/403, Commonwealth Games Village,
Akshardham, New Delhi-110092

Mobile No. 9711152428

E-mail: reachjai@gmail.com

1

**OA 329/2015 Gram Panchayat Araba VS State and Ors
: Written Submissions by the Applicants.**

The following submissions are being advanced to further supplement the pleadings already placed before the Hon. Court and may please be read as a part of the same, which are not being repeated for the sake of brevity.

The applicants express their gratitude to Hon. Justice Prakash Tatia and Dr. Ajit Pratap Singh for carrying out such detailed and meticulous studies, which have - in the short time available, and despite COVID disruptions; unearthed the various lapses and shortcomings which are leading to the modern-day disaster of the Rajasthan desert - poisoning of its water and soil by some unscrupulous elements who have no regard for human, animal or plant life of the state.

Their reports indeed confirm the various submissions made by the applicants before the Hon. Court. The applicants are ever more grateful to the Hon. Court for directing this inspection.

Genesis of the current litigation: River Jodhpur has been a seasonal river of Rajasthan, starting near Ajmer/Nagore and flows for over 150 Kms before merging with River Luni near Siwana in Barmer district of Rajasthan. Historically, its supposed to be an offshoot of River Saraswati, and ancient texts record that once upon a time the river was a major carrier of water, facilitating major crops like Wheat, Rice and Sugar cane, but upon the desertification of the area, it had become seasonal and only flowed during Monsoons.

The river flows adjoining to Jodhpur, now the second largest and one of the fastest growing cities of India with a population of 30 lakhs and rising. Jodhpur is a regional industrial hub, with a large number of textile dying and printing industry, steel industry etc but with woefully inadequate infrastructure to treat its effluents and sewage, which has been for decades being dumped into the river.

Approx. 300 Million litres of this toxic mix of heavy metals, poisonous chemicals and sewage being discharged daily has revived the flow, and the river has now become perennial, carrying

this deadly cocktail 60 kms downstream to villages of Doli Rajpura, Araba Purohitan, Araba Dudawatan, Doli Kalan etc.

What compounds the issue is encroachment on the river path, due to which, no path now exists for the river to flow on towards River Luni, as a result, large areas of agricultural lands belonging to the above villages are now submerged in this toxic cocktail of heavy metals and chemicals – leading to large scale and irreversible damage to the ecology of the area. This has made the soil unfit for agriculture and has poisoned the local water table making it unfit for human consumption. The villagers in the area are forced to buy drinking water and bring it in tankers from other parts of the state. There is a stench in the entire area, which makes it very difficult for the villagers to live in the area.

The toxic heavy metals travelling with the effluent have now entered the food chain, leading to very serious damage to human life, health, domestic cattle's, local wildlife including the endangered Chinkaras, Black Bucks, and all flora and fauna of the area. There is now a prevalence of diseases like Malaria, and Dengue, and rise in cases of Gastro-intestinal disorders and cancer in the area and district.

Aggrieved at Beaucroatic apathy and non-responsiveness of the various authorities in the Barmer and Jodhpur districts over years, the Gram Panchayat of the village Araba finally moved the Hon. National Green Tribunal in 2015 vide OA 329/2015.

Since then, despite numerous orders of the Hon. Court; the respondents – including the State Government of Rajasthan, Rajasthan State Pollution Control Board and others have continued to evade and mislead the Hon. Court in terms of action being taken through various limited, ineffective and half measures, which have led to the Hon. Tribunal to - through order dated 30/12/2018 impose a cost of Rs. 10 Lakhs on the State and impose a further cost of Rs. 1 Crore on RIICO and Rajasthan State PCB for their failure to contain the damage due to non regulation vide order dated 16/11/2018.

Notably, despite various strong judicial orders and directions, the State and its various bodies have failed to bring any respite and relief to the applicants and dumping of sewage and effluents in the

river have continued unabated to the extent of 300 million litres very day, leading to the Hon. Chairperson of the Monitoring Committee to observe that the target of Zero liquid Discharge in the river Jojri remains a pipe dream even after a decade and half.

What is indeed worrisome is that despite years of assurances of action being taken against these polluting industries and the individuals behind them – who have absolutely no regard for human life and the law of the land; Little impact seems to be happening on the ground. This can only mean complicity of the very administration which is duty bound to take action against these polluting units.

In addition to the Jodhpur Industry, a lot of fly by night operators have been setting up illegal dyeing and allied factories (Often running them at night) in areas such as Bhandukalan – (operating inside despite closure signages outside premises), Salawas, Tanawada, Sobhato ki Dhani to name a few, and are operating with complete impunity and brazenly discharging chemicals in the river Jojri, absolutely unmindful of the devastating impact of their action downstream, which is today threatening thousands of lives. Indeed, without the complicity of the likes of Tehsildars, Local Police, Local Pollution control authorities etc, such impunity is not possible. It would not be wrong to state that a mafia is now enjoying a free run, getting unjust enrichment at the cost of hapless villagers of the area as well as city residents and causing irreversible damage to the ecology of the area in the process.

4. There are large scale reports of textiles being illegally brought into the city each night for washing and treating by truckloads – all of the wash then being dumped into the river – something of this magnitude can not happen with out the complicity of the police, toll officers etc.

Shockingly, the earlier report submitted by Dr. Ajit Pratap Singh in Compliance of order dated 23/10/2018 records that Dr. Singh found in many places during his surprise visits (page 10, 13 of the report) that the discharge found was many times higher than what was seen during the official visit. This is clearly a sabotage of the report and an attempt to mislead this court. This could not have happened without the active involvement of the pollution control

4

authorities in JPNT and State pollution control board/other machinery involved with organizing the visit. Strict action against such conniving officials is also prayed for this gross dereliction of duty shown by these individuals. Similar is the case where records are not being maintained by the authorities for almost a year which can only be to allow illegal discharge to continue (page 11).

Page 12 also records a finding of the data supplied not being accurate - this is again a sabotage.

The 2018 report records non installation of primary treatment plants, that various industrial areas of the city do not have properly laid out sewer systems, or a proper collection and segregation mechanism for effluents and other waste water from the industrial areas leading to ETP's and STP's - this represents a complex problem, created by a serious lacuna in the planning and execution by the state.

Subsequently, The final report dated 21st July 2021 by the monitoring committee further records on page 16 of the report that approx. 300 MLD of Sewage and Effluents are being discharged in the River Jojri, and is responsible for the serious environmental problem for hundreds of acres of Barmer and Jodhpur districts including the area around Village Araba.

It is humbly submitted that this deadly cocktail of untreated chemical effluent and sewage containing various poisons and heave metals is contaminating the ground water tables, thus through contaminated underground water, there is real danger of this pollution travelling long distances and effecting human and animal life across the state and perhaps as far out as the Rann of Kuuch where the River Luni falls into the Arabian Sea.

This is conclusive proof that between October 2018 - Dr. Ajit Singh's report to July 2021 no improvement has taken place, rather the illegal discharge has continued unabated and has gone up in the last few years from 200 MLD to 300 MLD now, showing gross negligence and complete apathy of the State Government, RSPCB, JPNT, and other state organs. It is thus clear that every possible violation of all key environmental principles and law is

happening, and this must invite the strictest penalties from the Hon. Court.

This is also blatant contempt of all court orders and directions, and in light of the fines imposed earlier, shows the callous attitude of the State and its office bearers. Additionally, repeated non compliance, non appearance and non cooperation by the state, and non prosecution of any defaulters till date clearly make it a case of willful default and complicity by the state into the large scale corruption without which the decade and half long inaction could not have been possible.

It is therefore prayed that these individuals be identified, and strictest action is taken against them. Therefore, The Hon. Tribunal is requested to pass a stringent order against the State and its various agencies responsible for these serious violations leading to irreversible damage to the ecology of the area, and levy a big compensation which may be directed towards rehabilitation of the effected area in terms of soil replacement, cleaning of the river and the areas water table and to put a complete stop on any discharges in the river – treated or untreated; along with any and all effluents.

The Hon. Tribunal is prayed to direct Central Pollution Control Board to calculate the actual cost of replacement of the effected agricultural soil and underground water. This is significant as to restore the Income of the villagers dependent on agriculture, and to restore fresh water supply to the area.

Given the large scale damage done and the magnanimity of the issue, a radical approach is now needed to prevent further damage and to reverse some of the damage done to the ecology.

The suggested measures would include implementation of all 17 recommendations of the monitoring committee’s interim and Final reports as listed on page numbers 2 to 5 of the final report dated 21/07/2021 in a time bound action plan covering all remedial actions over short term (Immediate), medium term (0-6 months) and long terms measures (> 6 months) reportable to this Court.

Additional suggestions by the applicants are as follows:

- a) Replacement of up to a meter of the topsoil of the effected area to restore agriculture, and ways to clean the water resources like wells, ponds, and ground water of the area : under the intergenerational equity principle.
- b) Compensation and Restitution to the effected people living in the area of Gram Panchayat Araba and adjoining villages whose land and water has been polluted and who are faced with health hazards due to this pollution. Direction to State revenue officials to provide information on the exact Khatas and landholdings of the affected area, direction to the District collectors to provide information and data on the people resident in the area who the compensation could be disbursed to – Under the Polluter pays principle.
- c) Complete ban on any discharge into the river – zero liquid discharge status.
- d) Relocation of all Steel, Textile, dying and printing and all other polluting industries in Jodhpur, Pali and Barmer districts to a common industrial area in each district with connectivity to CETP, ZLD, RO and other plants to ensure zero discharge into the rivers Jojri Luni, Bandi and any other river, and to prevent disposal of sewage, effluents etc on land.
- e) Cancellation of all leases and licenses and shutting down of defaulting industry till they are relocated to the common Industrial areas.
- f) Direction to the state to notify a singular agency dealing with all Industry approvals, a singular Industry Policy, SOPs and Operational methodologies, singular standards – all to be in compliance to all current environmental laws, orders of the Hon. Supreme Court and Hon. NGT.
- g) Removal of all encroachments; and Dredging of the river path ahead of village Araba to allow reconnection; and flow of the river further onto River Luni, and then onto the Arabian Sea via the Ran of Kutch area.

h) In the possibility of the above not being possible, laying of underground pipelines to allow for the flow out of the accumulated water, and to prevent future accumulation of the river water and flooding of the area of the villages close to Araba.

i) Dredging of the river path between Jodhpur to Araba to remove/replace the river bed soil which is laden with the toxic chemicals flowing through it.

j) Direction for registration of FIR's and cases against various defaulters under stringent sections like 304 / 308, and cognizance of environmental poisoning as Culpable Homicide, strict punishments to be given out. This is needed as current sections like 269, 270 IPC etc are not proving to be dissuasive, and is leading to impunity by the polluters who are taking minor fines as regular cost of operations.

k) Strict action against Revenue, PCB, and Police officials of Jodhpur, Pali and Barmer districts of the affected areas for dereliction of duty in turning a blind eye and not taking any action against polluters operating in their area. Notably, Illegal dyeing and washing operations have been running from Sealed premises as well, with authorities turning a blind eye towards them.

l) Detailed investigation by an independent agency like CBI into the real "Big Fish" culprits behind the repeated environmental violations and non action of State authorities against the violators, arrest and prosecution of those perpetrating this crime against humanity, and flora and fauna of the area - including the endangered Chinkaras Black Bucks, Domestic Animals.

m) Direction to CPCB to also calculate and provide to the Hon. NGT restitution costs (Based on the CPCB methodology for calculation of Assessing Environmental Compensation), to the Applicants and victims of this pollution who have lost their livelihood based on agriculture to damage to their agricultural lands, who have been denied clean drinking water, and are being made to suffer on various accounts arising out of the pollution caused to their villages.

8

n) Piped fresh and clean potable water supply to each house in the Araba cluster suffering from polluted ground water.

o) AT a bare minimum, the following compensation claim for the above restitution to the victims is being suggested which has been arrived at using the formula provided by CPCB for the purpose.

$$EC = PI \times N \times R \times S \times LF$$

Where,

$$EC = PI \times N \times R \times S \times LF$$

EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

a) **IF 2015 – the year of filing of the OA is to be taken.**

$$PI (80) \times Days (2190) \times R (500) \times S (1.5) \times LF (2) = Rs. 26,28,00,000.$$

b) **If 15 year period covering all complaints and start of the pollution reaching the area is to be considered**

$$PI (80) \times Days (5475) \times R (500) \times S (1.5) \times LF (2) = 657000000$$

As per the recommendation of CPCB in their Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund, on page 6 : “

6. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.
7. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for

9

2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.

Given the serious dereliction of duty shown by the state and its various agencies and given the large scale damage to the ecology of the area spread across hundreds of acres, loss of income for the past decade and half, which is expected to continue in the near foreseeable future, grave risk to human, plant and animal health arising out of poisoning of the ground water and entering of heavy metals and poisonous chemicals in the food chain, the applicants are praying for a 8 fold increase in the compensation as per above quoted para 6 of CBCP report.

Hence Restitution Amount claimed :

$$\text{PI (80) X Days (5475) X R (500) X S (1.5) X LF (2) = 65,70,00000 X 8 = Rs. 525,60,00000}$$

Case law relied Upon:

Hon. Supreme Court of India in the matter of MC Mehta VS Union of India 1988 SCC (1) 471, has observed – *“Larger interests of the people lie in the environmentally sound economy and not in haphazard and unsystematic economic growth. The synthesis of environment and economic imperative popularly called sustainable development must become a reality and not just remain a slogan. Man has to tap natural resources for economic, scientific, social and industrial development. The larger interests of the nation in industrial growth necessitate such exploitation but economy must not be at the cost of ecology. Industry must not mean genocide but human good. There is need for striking a proper balance between development and protection of environment.”*

Justice Krishna Iyer and Justice Chinappa Reddy in Ratlam Municipality v. Vardichand (1980) 4 SCC 162 remarked that:

Industries cannot be allowed to run at the expense of public health. The dilemma between environment protection and developmental process has been removed with the theory of sustainable development.

10

In People United for Better Living in Calcutta-Public v. State of W.B AIR 1993 CAL 215 court observed that :

In a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment as otherwise there would be development but no environment, which would result in total devastation, though, however, may not be felt in present but at future point of time, but then it would be too late in the day, however, to control and improve the environment; there should be proper balance between the protection of environment and development process. The society shall have to prosper, but not at the cost of environment and in the similar vein, the environment shall have to be protected but not at the cost of the development of the society and as such a balance has to be found out and administrative actions ought to proceed accordingly.

In M.C. Mehta v. Union of India, wherein river Ganga flowing through Kanpur was being polluted by sewage and trade effluents of tanneries through 17 nallahs, making the water toxic and hazards for health.

In this case, Supreme Court held that:

To set up primary treatment plant is necessary for every industry. The court further held that Just like an Industry that does not pay minimum wages to its workers cannot be allowed to exist, an industry which fails to set up a primary treatment plant be not permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tanneries to the river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure.

M.P. Rambabu v. Divisional Forest Officer 2001 SCC ONLINE AP 638 The AP High Court dealt with the problem of salinity of underground water. The salinity was feared to have been caused by digging bore wells and excessive use of agricultural lands for aquaculture. The court held that

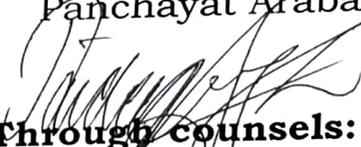
11

“Deep underground soil and water belong to the State in the sense that the doctrine of public trust extends to them. Manifestly, their use is subject to the State regulation even in absence of specific law. The holder has the right of user for a purpose for which the suprajacent land is held. If, he uses for a different purpose and causes pollution to underground water or soil, the State can interfere and prevent contamination .”

In Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars Protection Association and Others, (2009) SCC 737, 2009 SCC ONLINE SC 1988 Apex Court held that

“Such Industries cannot escape responsibility to meet out the expenses of reversing the ecology. They are held bound to meet the expenses of removing the sludge of river and also for cleaning the dam. Court further held that the principles of “Polluter pays” and “Precautionary principle” have to be read along read along with the doctrine of sustainable development .”

For Applicants Gram
Panchayat Araba


Through counsels:

Dharmvidhi Legal Services & Solutions

[Jaideep Singh & Kartik Dabas]

Advocates for the Petitioners

15-403, Commonwealth Games Village Akshardham,

Delhi-110092

Mobile No. 9711152428, reachjai@gmail.com