

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
O.A. No. 12/2015/EZ**

**JOYDEEP MUKHERJEE**

**VS**

**THE CHAIRMAN POLLUTION CONTROL BOARD & ORS**

**CORAM:** Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member  
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

**PRESENT:**

<b>Applicant</b>	<b>:</b>	<b>Mr. Joydeep Mukherjee, Advocate In person</b> <b>Mr. Subrata Mukherjee, Advocate</b>
<b>Respondent No. 1</b>	<b>:</b>	<b>Ms. Arpita Chowdhury, Advocate</b>
<b>Respondent No. 2 to 4</b>	<b>:</b>	<b>Mr. Bikas Kargupta, Advocate</b>
<b>Respondent No. 5</b>	<b>:</b>	<b>Mr. Gopal Chandra Das, Advocate</b>
<b>Respondent No. 6 &amp; 7</b>	<b>:</b>	<b>None.</b>

<b>Date &amp; Remarks</b>	<b>Orders of the Tribunal</b>
<b>Item No. 1</b> <b>8<sup>th</sup> October,</b> <b>2015.</b>	<p style="text-align: center;">Matter has appeared today on mentioning by the Id. Counsel appearing for the respective parties viz. Kolkata Municipal Corporation, the applicant Mr. Joydeep Mukherjee, Mr. Bikas Kargupta for State respondents and Ms. Arpita Chowdhury for State Pollution Control Board.</p> <p>Ld. Counsel appearing for the State respondents and Kolkata Municipal Corporation submit that on principle they are agreeable to comply with the order passed by this Tribunal on 6<sup>th</sup> October 2015 relating to the demolition of the unauthorized construction including the construction of makeshift toilets and khatalas from the river bank of the Adi Ganga. It is the submission made by them that the pollutants should be removed and the encroachment should be cleared. But having regard to</p>

the time granted by this Tribunal for complying with the order dated 6.10.2015 they are praying for more time to comply with the order for removing all encroachments and the pollutants from the Adi Ganga and to submit a scheme for rehabilitation of the people who have encroached the banks of the Adi Ganga and constructed the makeshift toilets as well as khatalas in the area in question on the ground of ensuing festive season viz. Durga Puja, Kali Puja etc. in West Bengal. Mr. Mukherjee, the applicant appearing in person also submits that some more time should be granted to the State Government and the Corporation to deal with the issue.

On 6<sup>th</sup> October 2015 we passed the order directing the demolition of the unauthorized construction viz. make shift toilets, khatalas etc. and to seal the sewerage lines which are discharging the pollutants directly into the bed of Adi Ganga having regard to the settled legal position and the statutory provision which inadvertently was not recorded in our earlier order.

Our order was passed considering the affidavit filed by Mr. Subhas Datta, Amicus Curie, annexing the different photographs numbering 61 which prima facie depicts a picture of environmental degradation, pollution of the area in question and thereby causing the Adi Ganga a breeding place of so many water borne diseases from different bacteria including the violation of the norms laid down in the **Water (Prevention & Control of Pollution) Act, 1974** and the **Air (Prevention & Control of Pollution) Act, 1981** by discharging the pollutants in the river Adi Ganga directly. The Kolkata Municipal Corporation is also responsible by discharging the sewerage directly to the Adi

Ganga.

The State of West Bengal and the KMC both are responsible and legally liable to restore the flow of water of Adi Ganga by removing all encroachments on river banks and cleaning the sedimented pollutants from the water body, Adi Ganga, which includes human and animal excreta and other materials. The KMC is also legally responsible to seal the outlets of sewerage which are discharging the sewerage without any treatment in the river Adi Ganga and thereafter in main course of Ganga. Such responsibility is arising from the constitutional mandate under Art. 48A read with Art. 51A(g) of the Constitution of India and article 21 of Constitution of India.

In the case of **Intellectual Forum Vs. State of A.P.** reported in 2006(3) SCC 575 in para 82 the Apex Court discussed the issue in detail about the conceptual idea and impact of Article 48A, Art.51A(g) in conjunction with Arts. 14, 19 and 21 of the Constitution of India. Para 82 of the said judgment reads as such:-

82. Article 48-A of the Constitution mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wildlife of the country. Article 51-A of the constitution enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. These two articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of

the Constitution and also the various laws enacted by Parliament and the State Legislatures.”

Public Trust Doctrine is also applicable in the instant case and keeping the said principle in mind we passed the order accordingly.

The Adi Ganga initially was the course of the river Ganga. But subsequently river course was changed. The Adi Ganga at the present moment has a direct connection with the river Ganga and as and when there is high tides and low tides in the river Ganga it carries that tides to Adi Ganga. Hence it is clear that all the pollutants from the Adi Ganga viz the human and animal excreta as is being discharged directly and the other pollutants as have been discharged by the Corporation and other organizations directly is being mixed with the water of river Ganga and it is spreading the disease in the entire area.

The Public Trust Doctrine is applicable in the instant case and it is included as a part of environmental jurisprudence which has got its origin from English Common Law and it is an integral part of sustainable development principle, the view expressed in the said Intellectual Forum (supra). The need of conservation of national resources, water and land and right to conservation thereof on application of Article 21, 48A & 51A(g)

of the Constitution of India was discussed in detail in the said judgment. Paragraphs 74 and 75 of the said judgment read as such :-

74. Another legal doctrine that is relevant to this matter is the Doctrine of Public Trust. This doctrine, though in existence from Roman times, was enunciated in its modern form by the US Supreme Court in *Illinois Central Railroad Co. V. People of the State of Illinois* where the Court held :

“ The bed or soil or navigable waters is held by the people of the State in their character as sovereign in trust for public uses for which they are adapted.

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The State holds title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State which does not recognise and is not in execution of this trust, is permissible.

What the doctrine says therefore is that natural resources, which include lakes, are held by the State as a “trustee” of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust. Though this doctrine existed in the Roman and English law, it related to specific types of resources. The US courts have expanded and given the doctrine its contemporary shape whereby it encompasses the entire spectrum of the environment.

75. The doctrine, in its present form, was incorporated as a part of Indian law by this Court in *M.C.Mehta v. Kamal Nath* and also in *M.I.Builders (P) Ltd. V. Radhey Shyam Sahu*. In *M.C Mehta, Kuldip Singh, J . ,* writing for the majority held : (SCC p.413, para 34)

“34. Our legal system ..... includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. .... The State as a trustee is under a legal duty to protect the natural resources.”

In the case of **M.C. Mehta Vs. Kamal Nath reported in 1997(1) SCC 388** the Apex Court adopted the Public Trust Doctrine within the ambit of environmental jurisprudence. In that case a Company named as Sand Motel Pvt. Limited constructed a construction at the bank of river Beas by encroaching the land and substantial portion of forest land. On that issue the Apex Court in the **M.C. Mehta (supra)** applied the **Public Trust Doctrine** by quoting from book of Prof. Joseph L. Sax namely “ Public Trust Doctrine in National Resource Law: Effective Judicial Intervention “ which was published in Michigan Law Review volume 68 Part-I page 471. The Apex Court applying the public trust doctrine in the said case had set aside the lease granted in favour of Sand Motel Pvt. Ltd. and directed the State of Himachal Pradesh to take over the area and restore it with its original natural condition. In the case of the **State (NCT of Delhi) Vs. Sanjoy**, reported in 2014(9) SCC 772 principle of public trust doctrine again was applied in conjunction with Arts. 14, 21, 48A and 51A(g) and it was held that the Public Trust Doctrine is the law of the land and State has duty and responsibility to protect trees, water and forest. In the case of **Karnataka Industrial Area Development Board Vs. Sri C. Kenchappa and Ors.** 2006(6) SCC 371 the Court discussed the concept of Public Trust Doctrine in paragraphs 83 to 89 wherein judgments earlier passed by the Apex Court in the case of **M.C. Mehta (supra)**, **Intellectual Forum (supra)** and the judgment passed by the Supreme court of California in **National Audubon Society Vs. Superior Court of Alpine County 33 CAL 3d 419** was considered and discussed.

Having regard to the aforesaid concept of Public Trust

Doctrine and the constitutional provisions and the judgment of the Apex Court which is the law of the land on application of Art 141 of Constitution of India, we passed the order on 6<sup>th</sup> October, 2015 directing the State of West Bengal, Kolkata Municipal Corporation and its Municipal Commissioner for taking appropriate action for demolition of the unauthorised constructions, makeshift toilets which have been constructed in the river bed/bankwherefrom human excreta is being discharged directly to the Adi Ganga and from the 'Khatals' the cow and buffalo dung. The State cannot deny its constitutional duty and responsibility on application of Public Trust Doctrine to maintain the natural water course of river, lake etc. and they cannot allow anybody to pollute the water body, river, lake etc. The State is responsible to take all actions irrespective of any colour, creed etc. even if for removal of the unauthorised constructions as discussed in our earlier order, if it requires rehabilitation of the people who are un-authorizedly occupied the river banks of the Adi Ganga. State is also responsible to rehabilitate the people having regard to the principle of "human rights concept" and International Charter and Convention wherein India is a party. A welfare State is required to keep the environment clean and pollutants free at the same time to rehabilitate the people while in distress.

The Court of Law has the constitutional duty, particularly National Green Tribunal has the solemn duty to act in terms of the constitutional mandate particularly with reference to constitutional provision under Arts. 48A and 51A(g).

It is needless to say that it is the obligation of the Court when it perceives any project or activity as harmful or injurious

to the environment, which is one of the facets of right to life guaranteed under Article 21 of the Constitution of India, and not merely a statutory right. It is the duty of the Court to implement the constitutional provision in its letter and spirit by passing appropriate order. In the case of **Ananda Arya & Anr. Vs. Union of India**, reported in 2011(1) SCC 744, the Apex Court discussed the duty and obligation of the Court to deal with the issue in the constitutional angle. It is also a settled legal position that whenever a statutory provision is ignored, the court cannot become a silent spectator and it becomes a solemn duty of the court to deal with the person violating the law with heavy hand. Reliance is placed on the judgment passed in the case of **Sultan Sadik Vs. Sanjoy**, reported in 2004(2) SCC 377.

Having regard to the aforesaid judgments of the Apex Court as discussed and considering the submission made by respective Id. Counsels appearing on behalf of the Kolkata Municipal Corporation, the State Government, the applicant Mr. Mukherjee in person and Ms. Arpita Chowdhury appearing for the State Pollution Control Board, we are simply extending the time to implement the order dated 6<sup>th</sup> October, 2015 by two months and we further direct the State of West Bengal and KMC to submit a scheme with regard to the demolition of unauthorised constructions built on the river banks of the Adi Ganga by four weeks disclosing how they will deal with the issue and will clear the banks of the river Adi Ganga and pollutants therefrom. Chief Secretary, Govt. Of West Bengal and Municipal Commissioner, KMC both will submit scheme on this issue.

However, in our earlier order with regard to sealing of the sewerage outlets of the Corporation it to be done by the KMC by



three weeks. Submission of the scheme as directed above to be taken up on 12.11.2015. For effective adjudication of the matter the Principal Secretary, Environment and Forest Department, Govt. of West Bengal and the Kolkata Improvement Trust be added as party respondents . Registry is directed to take steps to make necessary endorsement adding them as party respondents in the cause title. Let this order be communicated by the Registry to the non-appearing respondents.

Mr. Subhas Datta, Amicus Curie who has filed the affidavit is directed to serve the copy of the same to Mr. Mukherjee, Id. Counsel appearing in person. The applicant is at liberty to submit any suggestion in terms of said affidavit on the next date of hearing.

**Matter stands adjourned to 12.11.2015.**

Justice Pratap Kumar Ray, JM

Prof. (Dr.) P. C. Mishra, EM

