

Item No. 02 (Pune Bench)

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

(Through Video Conferencing)

Original Application No. 167/2017 (WZ)
(I.A. No. 99/2018)

Dr. Harishchandra Purshottam Natu & Ors. Applicant(s)

Versus

The Executive Engineer, Irrigation Dept., Sindhudurg
& Ors. Respondent(s)

Date of hearing: 09.10.2020

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Applicant(s): Mr. Rahul Choudhary, Ms. Kanika Sood and Mr. Maitreya Ghorpade, Advocates and Mr. OM Karkeni, Advocate

For Respondent(s): Mrs. Supriya Dangare, Advocate for R-1,3 &5
Mr. Vijay Anand Rao Adhav, Advocate for R-2
Mrs. S.B. Vaidya, Advocate for R-4
Collector, Sindhudurg, In person for Respondent
Maharashtra Tourism Development Corporation,
In-person for Respondent

ORDER

1. The matter was taken up on 18.06.2020 and this Tribunal observed as follows:

1. *“The concept of rule of law is that the State is governed, not by the Ruler, or the nominated representative of the people but by the law. The Constitution of India intended for India to be a country governed by the rule of law. It provides that the constitution shall be the supreme power in the land and the legislative and the executive derive their authority from the Constitution. For the negligence of those to whom public duties have been entrusted, can never be allowed to cause public mischief.”*

These lines are necessary to quote in the circumstance where in spite of the directions issued by this Tribunal in the above application, the Collector of District Sindhudurg failed to report with regard to detailed project report and the NIT issued in respect of the work connected with the skywalk within his jurisdiction. The District Collector, Sindhudurg had been directed to ascertain the extent of the work executed in respect to the skywalk in question and to measure inward distance of the skywalk from the maximum flood line of the lake and submit a report before the next date, which was the issue involved in the present application. The Tribunal dealt with the matter vide order dated 18.03.2020 and observed as under:

- 2. When these directions were not complied with, vide order dated 26.11.2019 the District Collector, Sindhudurg was directed to be present before us on the next date and to file report in terms of the aforesaid directions. The MTDC had also not filed a copy of the DPR and NIT. Order dated 26.11.2019 would reveal that the State Environment Department had been directed to file an affidavit giving specific information as to whether the water body had been declared as a wetland or not under the Central Wetland Rules. On the next date i.e., 13.02.2020, none of the directions were found to have been complied with. The District Collector, Sindhudurg also failed to appear despite specific direction to do so. These indicate clear defiance on the part of the District Collector, The MTDC and the State of Maharashtra.*
- 3. We, therefore, direct personal presence of the Managing Director, MTDC and Secretary Environment Department on the next date along with all the necessary records. Issue Bailable Warrant against the District Collector, Sindhudurg against PB and SB of Rs. 50,000 to the satisfaction of the SHO, Sindhudurg Police Station, who shall ensure his presence on the next date.”*
- 4. The present application is filed to raise substantial question relating to environment arising out of damage and destruction of the Dhamapur lake, a wetland, in Sindhudurg District, and its biodiversity by various activities such as construction of skywalk within the lake, diesel boating activities and water pollution from domestic activities such as washing of clothes as well as Ganpati idol immersion. The construction of the above project as alleged has been carried out in complete*

violation of the No-objection Certificate granted for the purpose. It has also been alleged that the project must have been carried out 2.5 kms from circumference of the lake and 30 meters from the maximum flood line.

- 5. Collector concerned is present on Video Conference and stated that due to the reason that his predecessor joined the refresher training course and later on due to COVID-19 lockdown, the required report was not sent within time. She apologizes for this and learned counsel representing the Collector made a request to cancel the bailable warrant issued against the Collector. In light of the above facts, the bailable warrant issued against the Collector, Sindhudurg is cancelled and the Collector is advised to comply the Rule of Law and to act according to law in light of the report with regard to subject matter of this application.*
- 6. Learned counsel for respondent no. 6 has submitted that the amount as was payable vide order dated 02.07.2018 has not been paid till date for which Mr. Vijay Anandrao Adhav, Advocate for Respondent no. 2 had made a request to reconsider it and to give certain time to deposit the amount. The amount as directed be deposited within three weeks.*
- 7. The report as stated by the Collector is just submitted which is on record. Thus put with the report on the next date of hearing.*
- 8. List on 18.08.2020.”*

2. The matter was again taken up on 18.08.2020 and it was observed as follows:

- “1. In light of the previous order the Collector attended the proceedings and informed that there are certain violations with regard to the skylark and there is a construction in site of about 7 meter towards the lake. The Collector is directed to submit a further factual and action taken report.*
- 2. It is to be noted that in light of the report, if anything is found in violation of rules, the Collector is at liberty to proceed in accordance with law and to do the needful*

and report. It is further submitted that the proceedings with the notification of wetland is 2 with the Government. The matter may be finalised and reported before the next date of hearing.

3. List on 09.10.2020.”

3. This application has been filed against the violation of the no objection certificate granted by respondent no. 1, Irrigation Department for the construction of the skywalk within the Dhampur Lake by Respondent No. 2. It was constructed in violation of condition no. 1, 4 and 5 of the no objection certificate granted which specifically stated that the construction will be 30 metres from the maximum flood line. Further the construction was in violation of these conditions and had ingressed inside the water body causing water pollution and destruction of natural biodiversity. The respondent no. 1 has submitted the affidavit and reply and admitted to the extent that the construction, sky walk is an average 7.0 metres inside from the edge of reservoir water level. Slab of sky walk at an average 1.0 metre maximum flood level. It was further directed by this Tribunal vide order dated 2nd of July 2018 to deposit Rs. 1.5 crore with bio diversity board against the mitigation measures which would be necessary for reversing the adverse impact on the ecology and loss of bio diversity of the lake and the amount was to be deposited by the PWD but still have not been deposited. During the course of the hearing a conversation arose between

the respondent as to who will be the person to deposit the amount. Since, order has been passed against the respondent no. 2 who was the project proponent thus responsibility to pay the amount is with the PWD department. Since the amount has not been deposited thus we direct that the account of the PWD be seized to the extent of 1.5 crore rupees till the amount is deposited to the biodiversity Board, in light of the order dated 2nd of July 2018.

4. It is to be noted that vide order dated 18.08.2020 the Collector was directed to take necessary actions and do the needful in accordance with the law but in spite of the fact that the collector has submitted that the construction was illegal, the Collector has permitted the illegality to be continued and not taken any action. Collector is the public representative of the State and the Centre and also the person responsible to execute the law and ensure the existence of the rule of law. The Collector has simply submitted a report and not taken any action. It is the collector who is responsible for any activity within the territory of the district and if anything is done against the violation of rules or against the violation of the environment or against the order of any authority competent to pass an order, it is the collector who is responsible for that. Accordingly, a show cause notice be issued to the Collector why action should not be initiated against him for not taking

any action with regard to the illegality committed by the officers concerned.

5. Rule 4(v) of the wet land conservation and management rule 2017 states that any construction of the permanent nature within 50 metre of the high flood level is prohibited. It is further provided that the wet land shall be conserved and managed in accordance with the principles of wise use as determined by the wet land authority. The perusal of the report submitted by the Collector reveals that the construction of a permanent nature and is 7 metre inside from the edge of the full reservoir flood level which would mean it is in the water body itself. Thus the construction is in violation of Rule 4(v) Wet land Rule 2017 which expressly prohibits such construction. Hon'ble the Supreme Court in the matter of Peoples united for better living in Kolkata Vs. East Kolkata Wet Land Management Authority and others reported in 2017 SCC online had directed for the removal of illegal construction within the East Kolkata Wet land in the following way.

“13. That it is submitted that this Hon’ble Tribunal in the matter of People United for Better Living in Calcutta v. East Kolkata Wetland Management Authority and Ors. reported in 2017 SCC OnLine 68 had directed for the removal of illegal structures within the East Kolkata Wetland:

"In view of the established fact that the Respondents No. 3 and 8 have encroached upon the protected East Kolkata Wetland, we leave it upon the Respondent No. 1 to take appropriate steps to remove all illegal 235 structures in exercise of its powers vested in it under clauses (b) and (c)

of Sec. 4 of the East Kolkata Wetlands (Conservation and Management) Act, 2006 and further to consider imposition of appropriate penalty upon the Respondents No. 8 & 3 under Sec. 18 of the Act. However, we make it clear that the EKWMA while taking such steps shall follow the due process of law.

The entire process for removal of illegal structures of the Respondents No. 3 and 8 shall be completed within three months without fail."

14. That furthermore, the Hon'ble Supreme Court in M/s Vaamika Island v. Union of India and Ors. reported in (2013) 8 SCC 760 upheld the order of the High Court of Kerala directing for demolition of structures in the Vembanad Backwater, which is the second largest wetland in India and held that any violation of notifications for the protection of the environment cannot be condoned:

"23. We are of the considered view that the above direction was issued by the High Court taking into consideration the larger public interest and to save the Vembanad Lake which is an ecologically sensitive area, so proclaimed nationally and internationally. The Vembanad Lake is presently undergoing severe environmental degradation due to increased human intervention and, as already indicated, recognizing the socio-economic importance of this waterbody, it has recently been scheduled under "vulnerable wetlands to be protected" and declared as CVCA. We are of the view that the directions given by the High Court are perfectly in order in the above mentioned perspective.

24. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of CRZ Notifications 1991 and 2011 are perfectly in tune with the decision of this Court in Piedade Filomena Gonsalves v. State of Goa and Others (2004) 3 SCC 445, wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned." (emphasis supplied)

15. That further, this Hon'ble Tribunal in a recent order dated 27.08.2020 passed in O.A. No. 351/2019 titled Raja Muzaffar Bhat v. State of Jammu and Kashmir & Ors. has also held that there is an inadequacy of monitoring of action of restoration of wetlands which is necessary to be

executed for public health and strengthening the environment rule of law:

7. Conservation of wetlands in general and Ramsar sites in particular is a significant aspect of protection of environment. To give effect to the Sustainable Development and Precautionary Principles, which have been held to be part of right to life and are to be statutorily enforced by this Tribunal under Section 20 of the National Green Tribunal Act, 2010, effective action plan and its execution is imperative.

9. There is discussion in the media about inadequacy of monitoring of action for restoration of lakes, wetlands and ponds which is certainly necessary for strengthening the rule of law and protection of public health and environment. Several directions have been issued by the Hon'ble Supreme Court in M.K. Balakrishnan and Ors. v. UOI & Ors.

10. Wetland (Conservation and Management) Rules, 2017 contain elaborate provisions for protection of Wetlands and National and State Wetland Authorities have been set up. However, the fact remain that the wetlands are facing serious challenge of conservation as shown by the present case and other cases which are the Tribunal dealing with from time to time.

16. That the Hon'ble Supreme Court in M.K. Balakrishnan and Ors v. Union of India and Ors reported in (2017) 7 SCC 810 has specifically directed for the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 for all 2,01,503 wetlands identified in the "National Wetland Inventory & Assessment" and held that no construction of a permanent nature in the past 10 years will be allowed:

23. Accordingly, we direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of India. The Union of India will identify and inventories all these 2,01,503 wetlands with the assistance of the State Governments which will also bind the State Governments to the effect that these identified 2,01,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010, that is to say:

4.(1)(i) reclamation of wetlands;

...

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these Rules;

Thus, the present construction took place in 2015-2016 and will be covered by this decision and must be removed.

17. in light of the above orders as well as the rules framed under the Wetlands (Conservation and Management) Rules 2017, it is submitted that the illegal construction within the Dhamapur wetland is therefore liable to be demolished.

18. That furthermore, the Hon'ble Supreme Court in Mantri Techzone Pvt. Ltd. v. Forward Foundation reported in 2019 (18) SCC 494 while directing for the demolition of illegal constructions within wetlands, had ordered for the restoration of the area to its original condition. The Hon'ble Supreme Court has held that this Hon'ble Tribunal has wide powers of restoration and all orders must be governed by the principles in Section 20 for taking restorative measures for the environment: "42. The Tribunal also has jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment. 43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment. 44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the

Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. ... 60...All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.”

6. When the law protector becomes the law violators, how law will be protected. The basic principle of rule of law is to follow rule/ law and not to break or violate it. For the negligence of those to whom public duties have been entrusted can never be allowed to cause public mischief. Public servants if committing wrong in discharge of statutory functions and later on if it was found not be in accordance with law within the knowledge of the officer concerned then it cannot be said to be the work and duty within the definition of State Act.
7. The action and construction is not only disregard to the law but it is negation of the authority of the State by the public official doing the act and expending the budget in accordance with their wishes. An action specifically punitive action does lie for doing what the legislature has authorized

if it is done negligently carelessly and in violation of the law. Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. Any act by any officer in violation of the rules is abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty mala-fidely and not in accordance with

the guidelines, when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook.

8. Absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The Rule of Law means that the decisions should be made by the application of known principles and rules, such decisions should be predictable and the citizens should know where he is. If decision is taken without any principle or without any rule, it is unpredictable and such

decision is the anti-thesis of a decision taken in accordance with the Rule of Law. Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury.

9. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of powers results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it.
10. In the case reported in (200) 6 SCC 125, it was held that in the matter of granting largesse, Government has to act fairly and without even any semblance of discrimination.

Law on this subject has been very clearly laid down by this court in the case of RamanaDayaramShetty v. International Airport Authority of India. A three Judge Bench in the said decision has recognized that the Government, in a welfare State, is in a position of distributing largesse in a large measure and in doing so the Government cannot act at its pleasure, and held:

- i) That Government action be based on standards that are not arbitrary or unauthorised.
- ii) The government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licenses only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual.

11. Accordingly in lights of the facts we direct as follows:

- i. Collector, Sindhudurg is directed to take necessary steps to remove the obstruction and illegality which has been committed in violation of the wetland act as mentioned above.
- ii. The account of PWD, Sindhudurg which is a respondent no. 2 in this matter is attached with the limit of 1.5 crores and Respondent no. 2 is directed to deposit the amount to the

authorities concerned as directed above for taking remedial measures.

iii. The Collector, Sindhudurg is directed to ensure the compliance of both the orders and submit the compliance report by way of filing affidavit personally before the date of listing and list on 29.10.2020.

Sheo Kumar Singh, JM

Dr. Satyawan Singh Garbyal, EM

October 09, 2020
Original Application No. 167/2017 (WZ)
N&AG