

(2016) 09 RAJ CK 0105
In the Rajasthan High Court
Case No : Civil Writ (Cw) No. 9215 of 2016

Ajay Kumar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

National Greens Tribunal Act, 2010 — Section 14

Water (Prevention and Control of Pollution) Act, 1974 — Section 24, Section 25

Citation : (2017) 7 FLT 108

Hon'ble Judges : Mr. Vijay Bishnoi, J.

Bench : Single Bench

Advocate : Mr H.R. Chawla, Advocate, for the Petitioner; Mr Sajjan Singh Rathore, Dr. P.S. Bhati-AAG, for the Respondent-State; Dr Pratishtha Dave, Advocate, for the Municipal Corporation; Mr RDSS Kharlia for Bhartiya Kishan Sangh, Rajasthan Pradesh as intervener, f

Final Decision : Disposed Off

Judgement

Mr. Vijay Bishnoi, J.—Facts leading to file this writ petition before this Court are that Bhartiya Kisan Sangh, Rajasthan Pradesh filed D.B. Civil Writ Petition (PIL) No.718/2009 before this Court raising grievances regarding issue of pollution of water in A minor canal, which passes through Sriganganagar district. In that writ petition several directions were issued by the Division Bench of this Court from time to time, however, ultimately the said D.B. Civil Writ Petition (PIL) No.718/2009 was transferred to the National 2. Green Tribunal (NGT) for adjudication vide order dated 21.04.2014.

2. In the meantime, Bhartiya Kisan Sangh, Rajasthan Pradesh filed Original Application Nos.86 to 89 of 2014 in relation to other minor canals of Sriganganagar district claiming that water in those minor canals are being polluted and, therefore, necessary directions be issued. Circuit Bench of NGT at Jodhpur on 10.07.2014 passed the following order in the above mentioned four original applications:

"July, 10.2014

Heard the Learned Counsel appearing for the Applicants. The learned counsel for the applicants point out that in respect of A- Minor Canal of Shri Ganga Nagar, the Hon''ble High Court of Jodhpur has passed certain interim directions after getting reports from Rajasthan Pollution Control Board and these four applications relate to similar four minor canals and the water in those minor canals are being polluted and in such circumstances, necessary directions be issued. Let Notice be issued to the respondents by Registered post/ acknowledgment due and Dasti as well. Requisite to be filed within 3 days.

Mr. Shishodia takes notice for Respondent nos. 8 to 10. Applicants to serve a copy of the applications to the learned counsel along with the copy of the documents today itself. Considering the allegations raised in the applications and the seriousness of the pollution being caused, we direct the Respondent No. 9 Rajasthan State Pollution Control Board to depute a team headed by a of senior officer to inspect the four minor canals and report about the nature of the canal, the pollution being caused, the sources of pollution and the remedial measures.

Let the report be filed by the next date of hearing; List the matters on 11th September, 2014."

3. The NGT thereafter in the above mentioned four original applications passed the various orders, wherein certain directions were have been issued. Some of the orders are reproduced hereunder:

"November 27, 2014

Heard. Perused.

Replies have been tendered by the Rajasthan Pollution Control Board along with the inspection report. The main grievance of the applicant is that the pollution is being caused in drinking water flowing through the minor canals namely Karnijavi, Baby distributaries of Ganga Canal, Mandi Minor Canal and Gharsana Canal.

Perusal of the inspection reports tendered by he Rajasthan Pollution Control Board reveals that the canals are flanked by strips of land having width of 60ft. each on both the sides which have been occupied by human habitation for the purposes of residence and commerce and their presence is contributing to the pollution of drinking water flowing through canals. It also reveals that at some places along these canals the inlets to discharge filthy water into the canals have been made and the platforms have raised over the canal. We also find from the reports that canal water is being used along the canal for washing purposes and the discharge there from again meets the canal water. There are also instances of throwing of garbage/solid waste in the canal quoted in the report.

State has yet to respond to the application Rajasthan Pollution Control Board shall handover copies of the inspection reports to Learned Counsel for the state.

It shall be the obligation of the state to go through the observations which have been noted in the inspection reports and to suggest measures to check the pollution of the canal water. However, in the meantime we direct the state to take all such effective measures to remove all the inlets discharging filthy substances or water into the canal and to remove all such platforms raised on the canal. This shall be a small step for curbing the pollution at this stage and we will consider the major remedies on getting the response from the state to the application. Compliance Report regarding the compliance of directions shall be filed by the State on the next date.

List the matter on 23rd January, 2015."

"January 23, 2015

In the earlier order of this Tribunal dated 27th November, 2015, the Tribunal relied upon a report filed by the Rajasthan Pollution Control Board. We have issued a direction to the State to go through the observations made by the Pollution Control Board in the inspection report and suggest the measures to be taken to check pollution of the canal water which relates to Karni (G.B.) Minor Canal, B.B. canal, Mandi Minor Canal and Gharsana (Anupgarh Bharnch) Canal.

Today on behalf of the State a reply has been filed and the Learned Counsel appearing for the applicants has also filed an affidavit stating that the direction given by the Tribunal to take all effective measures to remove all inlets discharging filthy substances or water into the canal and to remove all such platforms raised on the canal has not been carried out at all. In the absence of compliance of the earlier direction by the Tribunal it is the contention of the Learned Counsel appearing for the applicant that some effective directions to be issued to the State to take appropriate measures. He has also produced the latest photographs to show that the earlier situation is still in existence. On seeing the photographs we are certainly alarmed the way in which the Canal is maintained by the state and filthy water is treated as water for drinking for the poor people of village. It is unfortunate that in spite of earlier direction, no compliance has been made by the State so far. However, the Learned Counsel appearing for the State would plead that due to certain election of panchayat, effective actions could not be taken and if a short time is given, a time bound scheme will be produced before the tribunal for its approval.

Considering the facts and circumstances of the case in order to give one more opportunity to the State government finally we pass the following order:

1. The State shall prepare a comprehensive and short term scheme with time frame for the purpose of preventing discharge of untreated effluent into the Canal.
2. The long term scheme for the purpose of removal of encroachments situated on the water bodies and the time frame.
3. In the mean we direct the State Pollution Control Board to inspect to find out

as to whether the drinking water stated to have been supplied after treatment meets the standard of drinking water and file a status report.

We direct the State which includes the Revenue Department and District Collector to provide safe drinking water to all the affected village by transporting drinking water, as the claim that raw water supplied to the PHED from the canal is treated before being supplied to people is not supported by any document about treatment measure provided in the area. Interim order passed by the Tribunal dated 27th November, 2015 shall continue to be in operation.

The learned Counsel appearing for the applicant brought to the Notice to this Tribunal that one Public Interest Litigation in W.P. No.718/2009 was transferred by the Hon"ble High Court of Rajasthan at Jodhpur in the order dated 21-04-2014. The registry shall find out the status of the said case and if the papers are transferred from the High Court in the mean time the said W.P. may be numbered as application and listed along with these matters.

Stand over to 20th March, 2015."

"May 15,2015

Heard. Perused.

Grievance that has been raised in the present applications is regarding the pollution caused in the water running through the distributories of Ganga Nahar Canal and Ganga Nahar itself. One of the WP No. 718/2009 which concerns the main Ganga nahar Canal and would have much to say on the larger perspective has been transferred from the High Court to us for its final disposal. However, the record has not yet reached us.

Considering the factors which have contributed to the pollution/ contamination of the canal waters in its distributories in question, we had directed the State to come out with the comprehensive shot term as well as long term schemes for the purpose of rendering the canal and its distributories free of encroachments on the water bodies and consequent contamination in given time frame. We had also directed the State Pollution Control Board to collect water samples from the distributories as well as the potable water rendered there-from, analyse the same and place before us the analysis reports.

Today, we have before us the compliance report dated 11th May, 2015 of the District Collector, Ganaga Nagar, analysis report filed by the Rajasthan State Pollution Control Board and additional affidavit of Mr. Rakesh Chander Mathur officer in charge Rajasthan State Pollution Control Board dated 15th May, 2015. It is revealed that the samples of water from the distributories could not be collected as there was no water in the distributories due to ongoing maintenance work and the analysis reports of the water samples drawn from the clean water reservoir are normal. It is also revealed that water in the clean water reservoir is the water which is treated and stored water collected from the water drawn from the distributories. No wonder, therefore, the analysis report would indicate that

everything in the clean water reservoir is normal. However, it will be of use to know what is the standard of the water running through the distributories, particularly, at the points where the water enters the populated area and leaves it. We therefore, direct the SPCB to collect water samples upstream the distributories in question where there is no population around and the water samples of downstream where the population is there around the banks of the distributories.

The state has come out with the long term planning to free distributories and canal from the menace of contamination. According to the State it will take six months time to construct waste water drains i.e. interceptor drains along the distributories of canal and would take one and a half years for removal of encroachments along the banks of the distributories and canal. Let the State place before us the steps they have taken for construction of waste water drains and removal of the encroachments before us on the next date of hearing.

In the meanwhile we direct the State/local authorities to impose damages or compensation of Rs. 1,000/- on a person found throwing waste or contaminating any distributory or canal water in any manner whatsoever per incidence and recover the same from such person by invoking polluter pays principle. If anyone resists the payment of such damages or compensation the case of such person shall be referred to us and such person shall be made to appear before us. Citizens shall be made aware of this direction imposing the compensation or the damages for contaminating water through publication of notices on Boards at prominent places, in news as well as on radio and T.V media.

Compliance report regarding publication of such notices shall be placed before us on the next date of hearing. The State and local authorities shall place before us the action taken report in respect of enforcement of the direction imposing the compensation or damages.

We request the Hon''ble High Court of Rajasthan judicature at Jodhpur to ensure the despatch and handing over of the records of WP No. 718/2009 to us before the next date of hearing. Our Registrar General to convey our request to the Hon''ble High Court.

List the case on 10th July, 2015."

4. In the meantime, the record of the D.B.Civil Writ Petition (PIL) No.718/2009 was received by the NGT and the same was registered as Original Application No.323/2015 and the following orders were passed by the NGT in the Original Application Nos.86 to 89 of 2014 and 322/2015 filed by Bhartiya Kisan Sangh, Rajasthan Pradesh:

"August 21, 2015

The learned Counsel appearing for the RSPCB and the learned Counsel appearing for the State of Rajasthan were heard.

Learned Counsel appearing for the applicant submitted that he was not furnished with the compliance report dated 11-05-2015 submitted by the State of Rajasthan. The State of Rajasthan is directed to furnish copy of the report to the Applicant within two days from today.

By order dated 23.01.2015, the State was directed to prepare a comprehensive short term and long term scheme with the timeframe for the purpose of preventing discharge of untreated effluent into the Canal and a long term scheme for the purpose of removal of encroachments situated on the water bodies and the time frame. In the meanwhile, SPCB was directed to find out as to whether the drinking water stated to have been supplied after treatment meets the standard of drinking water and file a status report. This order was necessitated because of the pollution being caused on the Canal water relating to Karni (G.B.) Minor Canal, B.B. Canal, Mandi Minor Canal and Gharsana (Anupgarh Bharnch) Canal.

On 20.03.2015, it was represented by the learned Counsel appearing for the State of Rajasthan that the entire inlet to the canal which are causing pollution were plugged but the submission was disputed by the learned Counsel appearing for the applicant. Vide order dated 20.3.2015, the State was, therefore, directed to survey the entire area of the canal, identify the inlets and the platforms existing and demolished or removed and to file compliance/Status report on the next date.

Though, the learned Counsel appearing for the State submitted that such status report was submitted and relied on the compliance report dated 11.5.2015 submitted before the Tribunal on 15.05.2015, on perusing the report (no translated copy is submitted). Learned Counsel appearing for the State and the learned Counsel appearing for the RSPCB submitted that the said report does not contain the details as directed by the order dated 20.03.2015. The long term and short term plans were also not submitted on that day.

On 20-03-2015 it was observed that State should have come out with the comprehensive short term and long term scheme for the purpose of rendering the canal and the distributaries free of encroachments and consequent contamination in a given time frame and also for the purpose of removal of encroachments on the water bodies within the timeframe. Finding that the scheme as directed was not presented, it was directed to submit the same on the next date, warning that on failure "we will be constrained to impose a cost of Rs. 50,000/- to begin with".

Though, the case was listed on 15.05.2015 on that day also the comprehensive short term and long term plans were not submitted. Though, a compliance report dated 11.05.2015 was submitted on 15.05.2015 stating that it will take six months time to construct waste water drain i.e. drain along with the distributaries of the Canal and would take one and a half year for removing of encroachments along the banks and the distributaries of the Canal, the State

was directed to place the steps taken for construction of the drains and removal of encroachments on the next date of posting. Though, today the learned Counsel appearing for the State submitted that the report dated 15-05-2015 is the long term and short term plan, we find that it is not the long term or short term plan as directed by the previous order. Except stating that it will take six months and one and half years, what is actually the work to be carried out and what are the expenses and the details of the work are all absent in the said compliance report. Still the State was directed to place before the Tribunal the steps they have taken for construction of waste water drains and removal of the encroachments on the next date. The case was listed on 10.07.2015. On that day also the action report was not submitted and the State and local authorities were directed to place the action taken report on record on the next date of listing. Today also no report or action plan is produced.

The learned Counsel appearing for the State submitted that it is because of the pre-occupation of the staff in election work the report could not be submitted. As no action report was submitted in spite of the order passed by the Tribunal as early as on 23.01.2015, we find no justification for the failure based on the Panchayat/Municipal elections in the State.

In such circumstances, this is a fit case where the cost directed by the previous order should be awarded. Still at present, we do not direct payment of cost hoping that at least on the next date, the State would submit the long term and short term scheme as well as a report on the action so far taken. We find from the records that as early as on 13.02.2015, when the matter was pending before the Hon"ble High Court of Rajasthan, the learned Additional Advocate General had reported to the Court that 3.5 crores have been allotted to the project in respect of A-minor Canal. There is no report what on the works so far done. The State is bound to explain what happened to this 3.5 crores and how the amount was spent.

On the facts and circumstances of this case, we find that the presence of the District Collector, Ganga Nagar is necessary for issuing necessary direction on the next posting date. We direct the District Collector, Ganga Nagar to be present with all the relevant records on the next date on 9.10.2015.

We also make it clear that if the State at least now is not ready with the short term and long term scheme and the action taken report and make them available on the next date of posting. The cost which is deferred at present would be imposed.

List the matters on 9th October, 2015."

"December 04, 2015

The Learned Counsel appearing for the Applicant and the Learned Counsel appearing for the state and the State Pollution Control Board were heard. The Learned Counsel appearing for Applicant submitted that in-spite of the earlier

directions, copy of the compliance report dated 11th May, 2015 has not been furnished and though another compliance report was filed on 08th May, 2015, its copy was also not served on the Applicant. We find there was specific direction in the order dated 21st August, 2015 to furnish copy of the compliance report dated 11th May, 2015 to the applicant. Even if there is no direction, when any petition or report is filed in a pending matter, that party is expected to give a copy to the opposite side. It is unfortunate that in spite of the directions, the State of Rajasthan has failed to comply with the directions. The Learned Counsel appearing for the State is directed to furnish copy of all the compliance reports to the Learned Counsel appearing for Applicants in the course of the day, without fail.

By the order dated 08th October, 2015 certain directions were issued. Firstly the State was directed to remove all the encroachments and fence the boundary of the land abutting the canal passing through the municipal areas. The Learned Counsel appearing for the State submits that a compliance report is being filed today, wherein it is disclosed that out of 1237 encroachments, 637 encroachers approached the Hon''ble High Court, and steps are being taken for removal of the remaining encroachments. The Learned Counsel appearing for Applicant points out that the Division Bench of Hon''ble High court of judicature of Rajasthan at Jodhpur in Civil Writ Petition (PIL) No. 12876/2011 (Ved Prakash Joshi v. State of Raj. & Ors.) by order dated 10th September, 2015 considered this aspect, in the light of the order passed by the Tribunal on 08th October, 2015. The order of the Hon''ble Division Bench reveals that it was represented by the State, before the Division Bench with regard to the removal of encroachment submitted that necessary order has already been passed by the National Green Tribunal (evidently order of this Tribunal dated 08th October, 2015) with regard to the removal of encroachments in Sriganganagar and in respect of the encroachments in other area, necessary steps to mark encroachment and removing the same is being taken. It is seen from the order that committee was constituted by the Divisional Bench to demarcate the encroachments and for removing the same and also to monitor the entire issue of removing encroachments from the city of Sriganganagar. It is clear that Division Bench has not passed any directions with regard to the encroachment being considered by the Tribunal. The Learned Counsel appearing for the Applicant submits that he is not aware of any independent petition stated by the Learned Counsel appearing for the State. A copy of the order passed by the Single Judge in S.B. Civil Writ Petition No. 11579 of 2015 dated 05th October, 2015 where under respondents are restrained from taking any coercive action against the petitioners therein, subject to condition with the petitioners shall undertake before that they shall not pollute and contaminate water flowing in B.B. Miner within one week was made available.

The compliance report sought to be filed today by the Learned Counsel appearing for the State does not disclose out of 639 encroachers who approached the Hon''ble High Court, order of stay was passed in how many cases. Though it is stated that stops as against the remaining encroachments are in progress, the

Learned Counsel appearing for the state disclosed that a single encroachment was removed so far. Therefore, even if the cases of 639 encroachment are taken as subjudice, there is no effective action as against the remaining encroachers. In view of the lethargic attitude and the in-action, it is necessary to give appropriate directions to see that the order passed by the Tribunal is implemented.

The Respondents are directed to remove all the encroachments within one month from today. We direct the District Collector, Sriganaganagar, Superintendent of Police, Sriganaganagar, Commissioner, Municipal Council, Sriganaganagar and the Secretary of Urban Improvement Trust and Superintendent to provide all assistance and also to monitor the removal of encroachments. We found that similar order was passed by the Division Bench in Civil Writ Petition (PIL) No. 12876/2011 (Ved Prakash Joshi v. State of Raj. & Ors.). The compliance report shall be submitted by 29th January, 2016 with advance copy to the Learned Counsel appearing for the Applicant in advance, so that the Applicant can put forth repose, if any to the compliance report.

The Order dated 08th October, 2015, further directs the State to issue show cause notice as to why the persons who are contributing to the pollution shall not be directed to pay compensation of Rs. 25,000/- for causing pollution and recover and amount and deposit the same in the Environmental Relief Fund. It was also directed that persons resisting the claim, shall be directed to be present before the Tribunal and a report is to be filed by the respondents on those aspects. The compliance report by the State only disclose that 261 Notices have been issued to the persons causing pollution on B.B. Distributary, 228 Notices were issued to those in Karniji Branch (GB Mr.), 231 Notices were issued to those in Baror Minor, 119 Notices were issued to those in Mandi Minor and 392 Notices were issued to those in Gharsana Minor. But the report does not disclose its result. The Learned Counsel appearing for the state submits that compensation was not paid by any notice though notices dated 16th October, 2015, were served. The copy of the Notice made available shows that it was a notice issued just to show that the order had been complied without complying the directions in letter and spirit. Notice does not disclose what the Noticees shall do and even if he is willing to pay, when the amount, is to be paid and if he is disputing when he has to appear before the Tribunal. We have no hesitation to hold that the Notice is not in compliance of the directions issued by the Tribunal. We are sorry to note this attitude. The state is directed to comply with the directions in letter and spirit, without failure as otherwise we will be constrained to take appropriate action.

The order further directs removal of the existing structures in the area meant for maintenance of the canal finding that they cause contamination of the canal water. The state was directed to remove those structures and to place compliance report on the next date. The compliance report claims that there is no structure meant for canal maintenance contributing to contamination of

drinking water. The Learned Counsel appearing for the Applicant disputes this fact. In the light of the factual findings in the previous order we cannot agree with the said statement in the compliance report. We direct the Chief Engineer, WRD who is present today before the Tribunal to inspect the area on 11th December, 2015 at 10:30 A.M. The Applicant shall be present in the office of the Superintendent Engineer, WRD, Ganganagar the Chief Engineer along with applicant shall inspect the area. It is the duty of the Applicant to point out the alleged structures now disputed by the state. If the work is not over on that day it shall continue on the next day. If there is any such structure contributing the pollution and contaminating drinking water as found in the order dated 08th October, 2015, or interfering the maintenance of the canal, they shall be removed immediately.

An exhaustive compliance report shall be filed on the next date of hearing.

List on 29th January, 2016."

"April 07, 2016

In view of the fact that certain serious issues were involved in this case, as for instance encroachments on the canals providing drinking water, the State Government was directed to prepare a comprehensive short term and long term scheme with a time frame for the purpose of preventing discharge of untreated effluent into the canal and for removal of encroachment situated on the water bodies.

Thereafter the State Government had filed an affidavit on 08th October, 2015. Learned counsel appearing on behalf of the State Government had, on receiving of instructions from the Chief Engineer concerned, submitted that the portion where canal passes through densely populated localities, the canal could be covered with an arch type concrete covering so as to discourage any construction on it and protect the pollution of water flowing through it. It was also stated that on both sides of canal, the State had acquired land in order to have service road on one hand and an open space for the purpose of maintenance of the said canal on the other.

Further it was stated that the said land would be made free from of all encroachments and a fence along with its boundary would be raised to prevent further encroachments along the canals passing through the municipal areas.

The State Counsel on instruction submitted that all inlets into the canal have been plugged. Considering the aforesaid facts and submissions made by the parties, Tribunal had directed the State Government to issue notice to the persons from whose premises or whereabouts these inlets originated, to show cause as to why they should not be made to pay compensation of Rs. 25,000/- for causing pollution and the same be collected and deposited in Environment Relief Fund. Persons resisting these notices be asked to remain present before the Tribunal on the next date.

As the existence of the structures on the area meant for maintenance of the canal are also contributing to pollution and contamination of the drinking water, the State Government was directed to take immediate measures for removal of the such encroachments and a report in this regard was to be filed before the next date of hearing.

But when the matter came up on 4th December, 2016 not much improvement had been seen in the matter. Another bench of the Tribunal had given a detailed direction owing to incomplete compliance of the earlier order passed by the Tribunal. Compliance report filed on that day revealed that some of the encroachers had approached the Hon''ble High Court, apprehending that steps would be taken for their remove.

However, the Counsel for the applicant had brought to the notice of the Tribunal that a Public Interest Litigation is pending before the Division Bench of Hon''ble High Court of judicature of Rajasthan at Jodhpur in Civil Writ Petition (PIL) No. 12876/2011 (Ved Prakash Joshi v. State of Raj. & Ors.) and the same was considered on 10th September, 2015, in the light of the order passed by the Tribunal on 08th October, 2015. From the said order of the Hon''ble Division Bench it is revealed that the State Government had represented before the Hon''ble High Court with regard to the removal of encroachment by submitting that necessary orders has already been passed by the National Green Tribunal. By the order of the Hon''ble Division Bench, a committee was constituted to demarcate the encroachments for removal of the same and to monitor it.

Therefore, it was observed that the Hon''ble Division Bench has not passed any directions with regard to the encroachments issue which was being considered by the Tribunal. A copy of the order passed by the Single Judge in S.B. Civil Writ Petition No. 11579 of 2015 dated 05th October, 2015, where under respondents were restrained from taking any coercive action against the petitioners therein, subject to the condition that the petitioners shall undertake that they shall not pollute and contaminate water, was made available to the Tribunal.

It was observed by the Tribunal that in the compliance report, State did not disclosed as to out of 639 encroachers who had approached the Hon''ble High Court and how many had obtained interim relief by way of stay orders. Considering the overall facts and submissions made by the State Government, the Tribunal had observed that the even if case of 639 encroachers are taken as subjudice no effective action had been taken against the remaining encroachers.

In view of the lethargic attitude adopted by the State, it was felt necessary to pass appropriate order to see that Tribunal's order is implemented.

Thus it was ordered on 04th December, 2015, that all encroachments shall be removed within one month. The District Collector, Sriganganagar, Superintendent of Police, Sriganganagar, Commissioner, Municipal Council, Sriganganagar and the Secretary of Urban Improvement Trust were to provide all assistance and also to monitor the removal of encroachments.

It was noticed by the Tribunal that similar order had been passed by the Division Bench in Civil Writ Petition (PIL) No. 12876/2011 (Ved Prakash Joshi v. State of Raj. & Ors.)

The compliance report was to be filed by 29th January, 2016. The State Government was also directed to issue notice to the persons who were contributing to the pollution as to why they should not pay compensation of Rs. 25,000/- and the same be deposited in Environment Relief Fund. It was also ordered that those who resist such claim, shall be directed to be present before the Tribunal.

The learned counsel for the applicant made available the copy of the notices issued to the persons causing pollution, to show that order of the Tribunal has not been complied with in letter and spirit. Tribunal observed that the notices do not disclose as to what the noticees had to do and even if he is willing to pay, where the amount was to be paid and if he is disputing then when he has to appear before the Tribunal. The Tribunal clearly observed as under that the notices issued are not in compliance of the directions of the Tribunal.

"We are sorry to note this attitude. The state is directed to comply with the directions in letter and spirit, without failure or otherwise we will be constrained to take appropriate action."

Directions were further given for removal of existing structures in the area meant for maintenance of the canal as they were causing contamination of canal water. Again the State was directed to file a compliance report.

Today also a compliance report has been filed by the Executive Engineer, Water Resources, North Division, Sri Ganganagar. Being concerned with the gravity of the matter as well as past directions given by the Tribunal and in the manner in which compliance had been made by the respondents, as reflected from various compliance reports, we thought it proper to have an affidavit in the matter from the senior responsible officer who was present in the court, namely Chief Engineer, Water Resources so as to give us the complete details. We believe that when the Executive Engineer had filed the compliance report based on official record that the relevant record must also be with him.

However, on the perusal of the affidavit filed by the Chief Engineer today, it is reflected that complete details in respect of the action taken by the Government in pursuance to the directions issued by the Tribunal, are falling short then what was required. In respect of collecting the compensation from the encroachers, one of the methods that could have been adopted by the Administration was under Public Debt Recovery.

Before proceeding further in this matter and observing in respect of the compliance report placed before us, we deem it just and proper to give one more opportunity to the Counsel for the State, who has made a request for filing another response to the compliance report submitted today.

Learned Counsel for the applicant may file the counter affidavit to the affidavit filed by the officer today, positively by the next date of hearing. Thereafter, the question of compliance of directions passed by the tribunal as well as the present matter would be considered and if need arises appropriate action shall be taken against the concerned, where upon consequence under law shall follow. It may be noted that in respect of both the compliance reports, the respondents were clearly asked and to which they agreed, the same has been filed with full responsibility.

List this matter on 26th April, 2016 at Principal Bench, New Delhi."

"July 22, 2016

In view of the facts of the case and seriousness of the matter, detail orders were passed on 7th April, 2016 and 26th April, 2016 for the purpose of removing encroachments from Indira Gandhi Canal, Ganganagar and recovering penalties from for polluting the water meant for drinking. The Tribunal was compelled to order for appearance of the District Collector, in the month of May. Subsequently, steps in regard to the earlier directions passed by the Tribunal were taken and additional affidavit has been filed on behalf of the respondent which reveals that some steps for taking action against such encroachers were taken in the first week of July, 2016 and thereafter the schedule was redrawn for 20th July, 2016. On the strength of the aforesaid schedules framed by the respondent it is being submitted before us that steps are being taken by the District Administration for removing the encroachments. It is an admitted position that no recovery of compensation has been made so far from the encroachers. In all, there are 1000 odd encroachers on the site in question and it is submitted that about 100 odd have approached the Court for seeking interim orders. About 300 encroachers are said to have been removed from the site. The question is whether such encroachers have resettled on the site in question or not. The response by the counsel concern is not very convincing.

Such being the state of affairs in a serious matter like this where drinking water of the public at large is being polluted and the banks of the canal are being encroached, the District Administration is still moving at snail's speed. This Tribunal therefore, has no other option but to call the head of the District Administration. Accordingly, the District Collector, Ganga Nagar is directed to appear before the Tribunal on the next date of hearing with complete information and record which is relevant to the present proceedings.

It shall be the responsibility of the Executive Engineer, who is present in Court to convey to the District Collector about passing of the order by the Tribunal today.

List this matter on 30th September, 2016."

5. Pursuant to the directions issued by the NGT from time to time, the Authorities of Water Resources Department, Government of Rajasthan issued notices to several persons including petitioner(s) in this petition with a direction

to remove encroachments from the area of the water body. Against the said action of the respondents, this writ petition has been filed.

6. After hearing learned counsel for the parties at length, this Court is prima facie of the view that since the State Authorities are taking action pursuant to the directions given by the NGT from time to time, by passing the orders which have already been referred herein above, it would be appropriate for the persons aggrieved with the action of the respondents to approach the NGT, which has already ordered that any person resisting the action of the State Authorities be directed to present before the NGT. The Court has expressed the above prima facie view looking to the fact that in the matters regarding the pollution and environment protection, as per section 14 of the National Green Tribunal Act, 2010, the NGT has jurisdiction to hear all the civil cases, in which substantial question relating to environment in respect of acts mentioned in Schedule-I is involved. The issues raised by the Bhartiya Kisan Sangh, Rajasthan Pradesh before the NGT relates to the provisions of Water (Protection and Control of Pollution) Act, 1974 and the Environment Protection Act, 1986, which finds place in Schedule-I.

7. In D.B.Civil Writ Petition No.10986/2015 - Balotra Water Pollution Control & Research Foundation Trust (BWPCRT) v. State of Rajasthan & Ors. decided on 08.10.2015, the orders passed by the NGT in an original application raising issue regarding the pollution and environment in the territorial jurisdiction of Balotra Municipal Board were under challenge. The Division Bench in D.B. Civil Writ Petition No.10986/2015 has observed as:

"As per the Act of 2010 a remedy is available to the petitioner by way of filing an appeal before Hon"ble the Supreme Court of India as per Section 22. The submission of learned counsel is that availability of statutory remedy under the Act of 2010 does not bar writ jurisdiction as the Tribunal exceeded its jurisdictional authority by issuing the interim directions without examining the question pertaining to limitation. On examination of all relevant legal and factual issues, we do not find any merit in the argument advanced.

On enforcement of the Constitution on January 26,1950, the citizens of our country received a strong shield of fundamental and constitutional rights - the rights personal as well as collective. Part-III of the Constitution, that covers the fundamental rights, ensures right to equality, right to freedom, right against exportation, right to freedom of religion and cultural and educational rights. Some of the rights given are attached to each and every "person" irrespective of their citizenship. The other parts of the Constitution confers several constitutional rights to the citizens of India. All these rights would have been of no meaning, if adequate safeguard would have not been given to enforce and protect such rights. Under Article 32 of the Constitution of India, remedy to ensure and protect fundamental rights is given as a fundamental right, but a very broad discretion is given to High Courts under Article 226 of the Constitution of India to issue prerogative writs, orders and directions within their territorial jurisdiction to

ensure enforcement, extension and protection of the fundamental, constitutional and other legal rights of the subjects. The remedy given under Article 226 being discretionary is subject to several checks. The checks mostly are self imposed and as a rule of policy with a view that extraordinary remedy should always be exercised in extraordinary circumstances only. The remedy given must not be treated at par or alike other statutory remedies. A prominent self-imposed restriction in exercise the discretion given under Article 226 of the Constitution is the principle of exhausting all other statutory remedies before approaching writ court. It is a rule of convenience and discretion and does not oust the jurisdiction of a writ court, but indicates a caution in exercising extraordinary constitutional authority. The deviation from this principle is permissible if the relief is sought with well founded allegation of violation of fundamental rights, if the right has been or being threatened to be infringed by a law which itself is ultra-vires, if there is a complete lack of jurisdiction in the officer or the authority issuing impugned order or action, if there is flagrant violation of principles of natural justice, if the prevention of public injury and vindication of public justice requires the extraordinary recourse and if the court is satisfied that the remedy available is not efficacious enough to protect the injury caused or may be caused. This principle applies with more vigour, if a party is seeking a writ in the nature of certiorari to get an order passed by judicial or quasi judicial authority set aside.

Hon"ble Supreme Court while dealing with this aspect of the doctrine of exhausting all other remedies before approaching writ court in the case of State of U.P. v. Mohammad Nooh, reported in AIR 1958 SC 86, held as under:-

"11. On the authorities referred to above it appears to us that there may conceivably be cases-and the instant case is in point-where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court"s sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it."

The law laid down by Hon''ble the Apex Court in *State of U.P. v. Mohammad Nooh* (supra) still holds the field and in view of the law laid down a writ in the nature of certiorari can be issued even if a remedy of appeal/revision is available on arriving at a conclusion that an inferior court or Tribunal of first instance has committed an error so patent that may not be cured or obliterated by adopting the other statutory remedy. The doctrine of availability of alternative remedy may also be ignored, if the inferior court or Tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings of a writ in the manner that is contrary to the rules of natural justice.

The petitioner herein seeks a deviation from the doctrine of exhausting all other remedies before approaching writ court with allegation that the tribunal under the orders impugned exceeded jurisdiction vested with it as the original applicant is barred by limitation and further the issue agitated in this regard has yet not been decided.

True it is, an objection about filing of the original application within the limitation prescribed is pending consideration before the Tribunal and in light of the law laid down by Hon''ble Supreme Court in *Foreshore Cooperative Housing Society Limited v. Praveen D. Desai & Ors.* (supra), a plea of limitation concerns the jurisdiction of court that tries the proceedings. A writ court, if arrives at the conclusion that the order passed by the subordinate court or tribunal lack jurisdiction, then deviate from the principles to avail alternative remedy, but it is always within the discretion of the court and the court even on arriving at the conclusion that the order is without jurisdiction and is also in breach of fundamental right may insist upon a party to avail alternative remedy, if that is efficacious. The eventualities given to deviate from the principle under discussion does not put any obligatory duty to invoke writ jurisdiction, but a discretion only.

In the case in hand original applicant Shri Digvijay Singh, preferred a petition for writ before a Division Bench of this Court with an allegation of violation of Article 21 of the Constitution of India, but looking to the remedy provided under the Act of 2010 the same was transferred to the tribunal. Chapter-III of the Act of 2010 relates to jurisdiction, powers and proceedings of the Tribunal. As per Section 14 of the Act of 2010, the Tribunal have original jurisdiction to hear all civil cases in which a substantial question relating to environment in respect of the acts mentioned in Schedule-I is involved. The Tribunal acts as the first fact finding authority and exclusively hears all applications raising concerned with respect to substantial question relating to environment. The jurisdiction vested with the Tribunal is very wide and that covers not only damage already caused, but even the matter proposed to prevent any damage i.e. expected to be caused in case certain activities resulting in degradation of environment are not stopped immediately. In view of Section 14 of the Act of 2010 there is no doubt that the cause agitated by the original applicant is within the jurisdiction of the Tribunal. The only question is with regard to filing of the application within the limitation

prescribed. The Tribunal possess ample power to condone the delay specially in the circumstance that the case of original applicant is that his cause is of recurring nature. In view of it, it shall be too far fetched to say that the Tribunal lack jurisdiction patently. The Tribunal passed the orders impugned after hearing the parties and, therefore, there is no allegation of violation of principles of natural justice. The Tribunal is headed by the persons having deep knowledge of law and also having expertise in relation to the environmental issues. The allegation of the petitioner while questioning correctness of the orders impugned is based on violation of Article 19 of the Constitution of India, but in our opinion i.e. yet to be adjudicated and that, in the case in hand, is in confrontation with the fundamental right enshrined under Article 21 of the Constitution of India as claimed by the original applicant. The remedy given by the legislature to the Supreme Court as per Section 22 of the Act of 2010 is with a caution that even appeal may be filed on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 and that indicates intention of the legislature for minimal interference with the orders passed by the Tribunal. The remedy given under Section 22 of the Act of 2010 by no stretch of imagination can be termed and treated as not efficacious to meet the injury, if any caused to the petitioner, and if that involves any ground as required to invoke Section 100 of the Code of Civil Procedure.

The most important aspect of the matter is that the remedy provided under the Act of 2010 is before the Hon''ble Supreme Court of this country. The Tribunal as per Section 20 of the Act of 2010 is under statutory obligation to apply the principles of sustainable development, the precautionary principle and the polluter pay principle. Instant one is a case where an admitted polluter is demanding the shield of fundamental right to protect his business which is subject to statutory conditions. It is also relevant to notice that Section 29 of the Act of 2010 puts a bar upon civil courts to entertain any appeal in respect of any matter which the Tribunal is empowered to determine. Though a writ court is not subjected to Section 29 *ibid*, but the underline principle suggests that even the writ court should be extremely slow in entertaining any issue which is under the jurisdiction of the Tribunal, as such, we do not think that the instant one is a case where a deviation from a well settled rule of policy is desirable.

Having considered all these aspects of the matter we are not at all inclined to invoke writ jurisdiction vested with us in the instant matter. The writ petition is dismissed accordingly."

[Emphasis supplied]

8. At this stage, counsel appearing for the petitioner(s) has prayed that the petitioner(s) may be allowed to withdraw this writ petition with liberty to approach the NGT by moving appropriate application/representation. It is also prayed that sufficient time be granted to the aggrieved persons to approach the NGT and till that time, the respondents- State authorities be directed not to take any coercive action against them.

9. Counsels appearing for the State and other respondents and appearing for the Bhartiya Kisan Sangh, Rajasthan Pradesh as intervener also submit that they have no objections if the petitioner(s) is/are allowed to withdraw the writ petition with the liberty to approach the NGT within the stipulated period.

10. In such circumstances, the petitioner(s) is/are allowed to withdraw the writ petition with the liberty as prayed for.

11. Hence, this writ petition is dismissed as withdrawn with the liberty to the petitioner(s) to approach the NGT by way of filing appropriate application/representation in the Original Application Nos.86 to 89 of 2014 and 322/2015. Such application/representation shall be filed by 31st December, 2016. Till 31st December, 2016, the State authorities are restrained from taking any coercive action against the petitioner(s).

12. Counsel for the petitioner(s) are little apprehensive that the NGT may not entertain the application/representations while treating them as barred by limitation.

13. This Court is of the opinion that the NGT possess ample power to condone the delay and it is expected that while entertaining the application/representations filed by the aggrieved persons, the NGT will consider that the delay has been caused in approaching to it as the writ petition was pending before this Court. It is requested that the NGT may consider the application/representations filed by petitioner(s) sympathetically.

14. It is made clear that after 31st December, 2016, the State would be free to proceed in accordance with further directions/orders passed by the NGT in the matters.

15. Stay petition is disposed of.