

(2014) 12 BOM CK 0123

In the Bombay High Court

Case No : Public Interest Litigation No. 176 of 2012

Rajesh Madhukar Pandit

APPELLANT

Vs

The Nashik Municipal Corporation

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 6

Water (Prevention and Control of Pollution) Act, 1974 — Section 24, 43, 49

Citation : (2015) 5 FLT 140

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Pravartak Pathak, Advocate for the Appellant; M.L. Patil, Advocate for the Respondent

Judgement

Abhay Shreeniwas Oka, J.—We have heard the learned counsel appearing for the parties on grant of further interim reliefs in the context of four compliance reports placed on record by the Committee appointed by this Court under the Chairmanship of the Divisional Commissioner as well as in the context of the final report submitted by the National Environmental Engineering Research Institute (NEERI). Another related issue canvassed is as regards the progress made in the matter of acquisition of lands for Gangapur STP and Pimpalgaon-Khamb STP. The other aspect on which parties are heard is as regards the action plan of Simhastha Kumbh Mela to be held in Nashik between July, 2015 to August, 2016. Another issue is regarding the allocation of funds for the Kumbh Mela and the release of funds by the Government of India for the purposes of Kumbh Mela. There were some submissions made on the implementation of the interim directions of this Court. The submissions made will have to be appreciated in the light of various earlier orders passed by this Court including a detailed interim order passed on 7th March, 2014.

2. Under clause 18 of order dated 7th March, 2014, a Committee headed by the Divisional Commissioner of Nashik was appointed by this Court for continuous

monitoring of the implementation of the interim directions issued by this Court. The Committee appointed by this Court was required to submit periodical reports to this Court after every two months as regards the implementation of the directions issued by this Court as well as the implementation of the recommendations of the NEERI. Total four reports have been submitted by the Committee headed by the Divisional Commissioner of Nashik. All the four reports are exhaustive reports recording in detail the actions taken by various public authorities involved including the Nashik Municipal Corporation. We must record our appreciation for the performance of the Committee headed by the Divisional Commissioner. We find that the Committee is efficiently monitoring the implementation of the directions of this Court as well as the recommendations of NEERI. We hope and trust that the Committee continues to do good work in future also. As the Committee is functioning efficiently, it is necessary for the Committee to set up a grievance redressal mechanism to enable the citizens to bring to the notice of the Committee the violations of law in relation to the river Godavari and the breaches of the orders of this Court. This will help the Committee to effectively monitor the entire process. To enable the citizens to understand the scheme adopted by this Court for rejuvenation of river Godavari, we propose to direct the Nashik Municipal Corporation to upload all the reports of NEERI and copies of relevant orders of this Court with its Marathi translation on its website.

3. For rejuvenation of river Godavari, a very important step is of setting up of Sewage Treatment Plans (STPs). There are two STPs agreed and proposed to be set up by the Nashik Municipal Corporation. The first one is at Gangapur and the second one is at Pimpalgaon-Khamb. As regards the STP at Gangapur, in the affidavit of Shri Bhimrao Abhiman Shinde, Deputy Collector (Land Acquisition) No. 2, Nashik, it is stated that the notification under Section 6 of the Land Acquisition Act, 1894 was issued on 28th October, 2014. It is stated that the Award will be declared on or before 31st December, 2014 subject to Nashik Municipal Corporation depositing the compensation amount. As regards the acquisition of land for setting up STP at Pimpalgaon, the affidavit notes that a declaration under Section 6 of the Land Acquisition Act, 1894 has been published on 17th September, 2014. It is stated that the Award under Section 11 of the Land Acquisition Act, 1894 will be finalised and declared on or before 15th January, 2015. We must note here that the outer limit in case of both acquisitions stated in the affidavit is subject to the Nashik Municipal Corporation depositing the compensation amount. The learned counsel appearing for the Nashik Municipal Corporation states that the requisite amount as demanded by the Deputy Collector (Land Acquisition) No. 2, Nashik has been already deposited. He states that there is no issue regarding deposit of compensation amount by the Municipal Corporation and needful will be done.

4. We accept the statements made by Shri Bhimrao Abhiman Shinde, the Deputy Collector (Land Acquisition) No. 2, Nashik in his affidavit.

5. The State Government will have to hand over the possession of both the acquired lands to Nashik Municipal Corporation as expeditiously as possible to enable the Nashik Municipal Corporation to immediately start the process of construction of STPs. The Nashik Municipal Corporation shall file an affidavit by the end of February, 2015 setting out the possible outer limit within which construction of STPs will be completed and the same will be made functional. The Committee headed by the Divisional Commissioner, Nashik shall monitor the progress of construction of STPs.

6. From July, 2015, the event of Simhastha Kumbh Mela will be held at Nashik and Trimbakeshwar. Traditionally, the Kumbh Mela is held after every 12 years. As per the estimate of the State Government, around 3 lakhs Sadhus and 1 crore devotees will take a holy bath in river Godavari on the second Shahi Snan which is scheduled on 13th September, 2015 which is one of the important days. First Shahi Snan is scheduled on 29th August 2015. Besides this important day, 37 auspicious days have been declared during the year long Kumbh Parva on which days lakhs of pilgrims are expected to take a holy bath in river Godavari. By a Government Resolution dated 28th December, 2012, the Apex Committee headed by the Hon"ble the Chief Minister, a High Power Committee and a District Level Committee have been constituted for the purposes of organisation and management of Simhastha Kumbh Mela. We must record here that there is already an "Action Plan to tackle forthcoming Kumbh Mela" submitted by NEERI in November 2013 incorporating various recommendations. There is already an order passed by this Court directing that recommendations of NEERI (except the recommendation discussed at item No. 6 of the third compliance report of the Divisional Commissioner) shall be implemented. If the recommendations of NEERI in the Action plan are not properly implemented during the Simhastha Kumbha Mela, there is every possibility that the Godavari river will get further polluted thereby defeating all the orders of this Court. While planning the organisation of Simhastha Kumbh Mela, all concerned authorities will have to abide by the directions issued by this Court under various orders passed in this PIL. We direct the State Government to bring to the notice of the Apex Committee, the High Power Committee and the District Level Committee constituted under the Government Resolution dated 28th December, 2012, the following aspects :-

A] A comprehensive interim order passed by this Court on 7th March, 2014 and all other relevant orders;

B] Constitution of the Committee headed by the Divisional Commissioner, Nashik for monitoring implementation of the orders of this Court;

C] Recommendations of NEERI report including the Action Plan to tackle forthcoming Kumbh Mela .

7. The Committees constituted under the Government Resolution dated 28th December, 2012 shall consider the aforesaid three aspects and ensure that

orders of this Court are not defeated. The Committees shall ensure that the recommendations made by NEERI for preventing and minimizing pollution during the Simhastha Kumbh Mela shall be implemented.

8. To enable all authorities to implement Simhastha Kumbh Mela, the other issue is regarding availability of necessary funds. There is an affidavit filed by Shri Vilas Balaram Patil, the District Collector on 4th July, 2014. The affidavit provides that total funds required for Simhastha Kumbh Mela 2015-16 are to the tune of Rs. 237.78 Crores. The maximum requirement out of the said funds is of the Nashik Municipal Corporation which is to the tune of Rs. 1052.61 Crores. The Nashik Municipal Corporation has already issued the work orders for the works to the tune of Rs. 669.61 Crores. The issue is regarding availability of funds.

9. There is a detailed correspondence made by the State Government with the Government of India requesting the Government of India for release of funds for the Kumbh Mela. There is a letter dated 15th May, 2014 addressed by the then Hon"ble Chief Minister of the State to the Deputy Chairman of the Planning Commission of India requesting for central assistance as the master plan was of Rs. 2378.78 Crores. In all the letters addressed on behalf of the State Government, it is pointed out that financial assistance to the tune of Rs. 1100 Crores was provided by the Government of India to the Government of Uttar Pradesh for conducting Kumbh Mela at Allahabad in the year 2012-13. It is pointed out that for the Kumbh Mela of 2003-04 at Nashik, the Government of India had rendered assistance. A request has been made repeatedly by the State Government to the Government of India to provide "untied one time central assistance" to ensure timely completion of activities required for safe, successful and smooth organization of the Kumbh Mela events. We had adjourned this Petition repeatedly to enable the learned Additional Solicitor General of India to take instructions as a grievance made was that the Government of India has not taken any decision for release of one time financial assistance on the request made by the State Government. The learned ASG has tendered a letter dated 19th November, 2014 addressed to him by the Director of (PCMP) of the Planning Commission. The said letter records that though organizing Kumbh Mela is a State subject, in view of importance of the event, the Government of India has been seized of the matter and is actively considering the proposal of the State Government. The letter records that urgency in the matter has also been noted, as the event is to be organized by mid year of the next year. It is stated that the Government of India remains committed to some assistance to the State and the decision in that regard will be finalized soon.

10. The Government of India will have to take appropriate decision on the request made by the State Government for release of one time assistance as expeditiously as possible preferably before the end of January, 2015. Availability of adequate funds will be necessary for implementation of the Action Plan of NEERI. We are informed that usual practice is that the State spends the amount and one time assistance is received by way of reimbursement. Therefore, the

State will have to ensure the availability of necessary funds notwithstanding the pendency of the proposal before the Central Government.

11. As regards the Kumbh Mela, we are conscious of the fact that more than a Crore pilgrims may be visiting Nashik and Trimbakeshwar at a given time. There is every possibility that such large gathering will adversely affect the efforts to control and curb the pollution of the river Godavari. The Nashik Municipal Corporation and all concerned authorities associated with Simhastha Kumbh Mela will have to ensure that arrangements are made around river Godavari for providing large receptacles at various places for the collection of garbage. Arrangements will have to be made for lifting of garbage from the receptacles at frequent intervals. Similarly, large number of additional Kalash will have to be made available for collection of organic material like Nirmalya. The Nashik Municipal Corporation will have to erect banners, flexes and boards in different parts of the City and near different entry points in the City requesting pilgrims and visitors to take all steps to keep the Godavari clean. The boards shall contain an appeal not to throw garbage and organic material in the river. The boards will also record that efforts are being made to reduce the pollution of river Godavari and to rejuvenate the same under the orders of this Court. An appeal should be made to all concerned to co-operate for keeping Godavari free of pollution. Such boards shall be in Marathi as well as Hindi languages.

12. As regards recommendations of NEERI, we must hold that the recommendations of NEERI will have to be implemented by all concerned. However, one issue arises as regards implementation of recommendations of NEERI. Clause 6 of the third compliance report of the Committee appointed by this Court notes an important action taken/ submission on a particular recommendation of NEERI. The issue is of taking an important step to restrict the inputs of pollution in river stream upto Odha Barrage. The action suggested is that this Court should issue a directive to the Water Resource Department of the State Government to reinstate the condition on the seventh and eighth Respondents to lift the treated effluent directly from the outlets of the respective STPs located in the Nashik City. In fact, the same suggestion has been made by the Superintending Engineer to the Chief Engineer of the concerned Department in the letter dated 9th October, 2014. The said suggestion is to issue directions to the Nashik Municipal Corporation not to release treated effluent into Godavari river by directing the seventh Respondent to lift the water directly from STP outlet. This step is required to be taken to avoid the pollution of the river Godavari. On this aspect, seventh and eight Respondents will have to be heard.

13. The learned counsel appearing for the Petitioner has pointed out that notwithstanding the directions of this Court, on the occasion of Dussehra, various vehicle owners and drivers took large number of vehicles near the river and used the river water to wash the vehicles. He has relied upon the photographs to show that large organic material and Nirmalya was lying on the bank of the river Godavari. He has pointed out that in some areas, barricades have not been

erected and that is the reason why the vehicles are able to reach near the river.

14. The learned counsel for the Petitioners pointed out that provisions of Section 24 and Section 43 of the Water (Prevention and Control of Pollution) Act, 1974 and urged that the Pollution Control Board will have to play a proactive role as cognizance of the offences under the said Act can be taken only on a complaint made by an authorised officer of the Maharashtra Pollution Control Board. He urged that a direction needs to be issued to the Pollution Control Board to take stringent action. He submitted that the relevant penal provisions under the Indian Penal Code as well as Bombay Police Act, 1951 are not sufficiently deterrent. He submitted that even the penal provisions in the Maharashtra Prevention of Defacement of Properties Act, 1995 are not stringent. He submitted that the State Government will have to revisit the said enactments and provide for stringent punishment/penalty.

15. Hence, we issue further interim directions as under :-

(i) These further interim directions will be in continuation of the earlier directions issued on 7th March, 2014 and all other orders passed by this Court which are operative till today;

(ii) We direct the seventh and eighth Respondents to file affidavits dealing with the issue of lifting the treated effluent directly from the outlets of the STPs located in the Nashik City. The said Respondents are free to incorporate various suggestions for preventing pollution of river Godavari. Even the State Government shall file an affidavit on this aspect. The affidavits shall be filed on or before 9th January, 2015. The Petition shall be listed on 17th January, 2015 under the caption of "Directions" to consider the affidavits;

(iii) We direct the State Government to forthwith bring to the notice of the Apex Committee, the High Power Committee and the District Level Committee constituted under the Government Resolution dated 28th December, 2012, the following aspects :-

A] The comprehensive interim order passed by this Court on 7th March, 2014 and all other relevant orders including this order;

B] The existence of the Committee headed by the Divisional Commissioner, Nashik for monitoring implementation of the orders of this Court;

C] Recommendations of NEERI in all the reports including the Action Plan to tackle forthcoming Kumbh Mela.

(iv) The Committees constituted under the Government Resolution dated 28th December, 2012 shall consider the aforesaid three aspects and ensure that orders of this Court are not defeated;

(v) We direct that the recommendations of NEERI in all reports including the final report as well as the Action Plan to tackle forthcoming Kumbh Mela shall be implemented by all the concerned save and except the issue which will be

considered on the next date;

(vi) We direct the Union of India to take appropriate decision on the proposal submitted by the State Government for release of one-time financial assistance for Simhastha Kumbh Mela to be held at Nashik and Trimbakeshwar during the year 2015-16 as expeditiously as possible and preferably on or before 28th February, 2015;

(vii) We accept the statements made in the affidavit dated 7th November, 2014 filed by Shri Bhimrao Abhiman Shinde, the Deputy Collector (Land Acquisition) No. 2, Nashik as regards the outer limit for completing the acquisition of the lands for setting up STPs at Gangapur and Pimpalgaon-Khamb. The State Government shall endeavour to hand over the possession of both the lands needed for both STPs to the Nashik Municipal Corporation as expeditiously as possible and in any event on or before 15th February, 2015. The Nashik Municipal Corporation shall file an affidavit by the end of February, 2015 setting out the possible outer limit within which construction of STPs will be completed and the same will be made functional. The Committee appointed by this Court shall monitor the construction and commissioning of STPs at Gangapur and Pimpalgaon-Khamb;

(viii) The State Government shall consider of amending the Bombay Police Act and Defacement Act providing for stringent punishments/penalties for various violations;

(ix) The Committee appointed by this Court shall consider the issue of erecting barricades for preventing entries of the vehicles near the Godavari river and shall issue appropriate directions to the Nashik Municipal Corporation;

(x) The Nashik Municipal Corporation shall ensure that during the Simhastha Kumbh Mela arrangements are made around the river Godavari for providing large receptacles at various places for the collection of garbage. Arrangements shall be made for lifting of garbage from the receptacles at frequent intervals. Similarly, adequate number of additional large size Kalash shall be made available for collection of organic material like Nirmalya;

(xi) During Kumbh Mela, the Nashik Municipal Corporation shall display banners, flexes and boards in different parts of the City and near different entry points of the City informing pilgrims and visitors that they are under an obligation to take steps to keep the Godavari clean and free of pollution for maintaining its sanctity . The boards shall contain an appeal not to throw garbage and organic material in the river. The boards will also record that efforts are being made to reduce pollution of river Godavari and to rejuvenate the same under the orders of this Court. An appeal shall be made to all concerned to co-operate for keeping river Godavari free of pollution. The Appeal shall incorporate that stringent action shall be taken against those who violate laws. Such boards shall be in Marathi as well as Hindi languages;

(xii) We direct the third Respondent to take prompt steps for filing complaints under Section 49 of the Water (Prevention and Control of Pollution) Act, 1974 for violations of the provisions of the said Act in relation to river Godavari. The action taken report in the form of an affidavit shall be filed before the end of February 2015;

(xiii) The Committee constituted under the orders of this Court shall set up a grievance redressal mechanism to enable the citizens to bring to the notice of the Committee the violations of law in relation to the river Godavari and the breaches of the orders of this Court. However no citizen will have right of hearing before the Committee and the Committee is not expected to pass a reasoned order on each complaint. The Committee shall take appropriate steps within a period of one month. The details of the redressal mechanism shall be made available on the website of the Nashik Municipal Corporation;

(xiv) We direct the Nashik Municipal Corporation to upload on its website all the NEERI reports as well as copies of relevant orders of this Court as well as Marathi translation of the said orders.