

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4564 OF 1988

Bombay Environmental Action Group

....Petitioner

V/s.

Union of India and Ors.

....Respondents

Ms. Rithika Ravikumar i/b. M/s. M.V. Jaykar & Co. for the petitioner.

Mr. Parag Vyas for respondent no.1.

Mrs. R.A. Salunkhe, AGP for the respondent nos.2 and 3.

Mr. Rajshekhar V. Govilkar for the respondent no.4.

Mr. Ruchir L. Tolat i/b. M/s. L.C. Tolat & Co. for the respondent no.8.

Mr. Vaibhav Gokhale a/w. Mr. Arun Unnikrishnan i/b. M/s. Crawford Baylay & Co. for the respondent no.19.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 12th JULY, 2018.

JUDGMENT [PER A.S. OKA, J.] :-

. The petitioner which is a society registered under the Societies' Registration Act, 1860 has filed this Writ Petition under Article 226 of the Constitution of India which is in the nature of a Public Interest Litigation. Initially a relief was claimed seeking a writ of mandamus against the 1st to 4th respondents (the Union of India, the State of Maharashtra, the District Collector of Raigad District, the Maharashtra Water Pollution Control Board) enjoining them to take action under

section 5 of Environment (Protection) Act, 1986 and/or section 133 of the Code of Criminal Procedure, 1973 for closing the factories of 5th to 7th respondents as the effluents released from the factories was a source of pollution. Subsequently, certain prayers were added. The first additional prayer is for ensuring that adequate Effluent Treatment Plants (for short 'ETPs') and effluent disposal pipelines are installed and made fully operational by various respondents. A writ of mandamus was sought directing all the industries to install separate electricity meters for their ETPs. Various other directions were sought against industries which are parties to the petition. A writ of mandamus was prayed for against the 2nd respondent/State of Maharashtra to grant clearance for the implementation for the underground drainage scheme of the Khopoli Municipal Council (for short 'the said Municipal Council'). In fact, various directions were sought regarding implementation of the said scheme against various authorities.

2. Various orders were passed from time to time by different Benches. The first of effective order is of 31st July, 1997 wherein certain directions were issued to the said Municipal Council as well as the State Government. A direction was issued to the State Government to file an affidavit stating the measures taken to ensure that tankers

carrying chemicals and other motor vehicles are not washed in Patalganga River. Various directions were issued to the Maharashtra Pollution Control Board (for short 'the Pollution Control Board') regarding Patalganga River. Another effective order is of 30th April, 2008 in which a statement of the learned counsel appearing for the petitioner was recorded that only two grievances subsist. The first grievance is regarding the tankers carrying chemicals being washed in Patalganga River and second was regarding the failure of the said Municipal Corporation to provide sewerage system. Further order passed on 24th June, 2008 records a statement of the petitioner that the grievance regarding tankers carrying chemicals being washed was no longer subsisting. The said order notes that the only issue remains to be considered is regarding the failure of the said Municipal Council to provide sewerage system. Certain directions were issued under the said order about the sewerage system. Subsequent direction was issued to the said Municipal Council to construct sewerage system within a period of one year from the date of receipt of the order. Progress reports were ordered to be filed after six months by the said Municipal Council.

3. We have heard the learned counsel appearing for the petitioner, the learned Assistant Government Pleader for the State of Maharashtra

and the Collector, the learned counsel appearing for the Union of India, the learned counsel for respondent no.24 as well as the learned counsel appearing for respondent no.8 – the said Municipal Council.

4. After having heard the learned counsel appearing for the parties, it is crystal clear that the said Municipal Council has not complied with the directions issued under order dated 24th June, 2008. There is an affidavit dated 21st April, 2018 filed by Chief Officer of the said Municipal Council. The affidavit notes that the order dated 24th June, 2008 was subjected to a challenge by the said Municipal Council by filing a Special Leave Petition which was dismissed by the Apex Court subject to certain observations made therein. The said affidavit notes that on 14th April, 2011, compliance affidavit was filed by the then Chief Officer of the said Municipal Council, a copy of which is annexed to the said affidavit.

5. Mr. Sanjay Shinde, the Chief Officer of the said Municipal Council in his affidavit dated 21st April, 2018 has stated that Maharashtra Jeevan Pradhikaran (for short 'MJP') was appointed in the year 1981 to look after the work of underground sewerage scheme. The estimated cost was of Rs.1,46,00,000/-. The scheme was sanctioned by the State

Government. It is stated that in the year 1981, the Maharashtra Jeevan Pradhikaran started the work of the underground sewerage system in the Municipal area. It is pointed out as to how the estimated cost of the scheme to be implemented by the MJP went on increasing. It is pointed out that till the date of filing of the affidavit, the said Municipal Council has paid an aggregate amount of Rs.4,44,81,000/- to MJP. It is further stated that as the work was not completed, on 17th April, 2015, the General Body of the said Municipal Council passed a resolution resolving to obtain No Objection Certificate (NOC) from MJP for taking over and completing the work of the scheme. It is further stated that on 06th August, 2016 the said Municipal Council approved name of the project manager and consultant for the purpose of revising the Detailed Project Report (for short 'DPR'). It is pointed out that MJP refused to give NOC to the said Municipal Council. The Chief Officer has tendered an apology for not filing compliance affidavit earlier.

6. There is another affidavit filed by the Chief Officer on 20th June, 2018 recording readiness and willingness of the said Municipal Council to implement the sewerage system project in Khopoli town. It is stated that in the event, NOC is issued by MJP, the said Municipal Council was willing to complete the project. It is submitted that a proposal was

submitted by the said Municipal Council in January, 2015 to the Director of Municipal Administration.

7. Mr. D.K. Mahajan, Executive Engineer, MJP has filed an affidavit-in-reply today. It is recorded that under Maharashtra Sujal Nirmal Program, on 15th July, 2009, the State Government had sanctioned an amount of Rs.585.10 lakhs, out of which an amount of Rs.130 lakhs was allotted to the said Municipal Council and remaining Rs.455.10 lakhs was allotted to MJP for completing the gap works in the existing sewerage lines and raising of the height of existing man-holes. It is claimed that the work was almost completed except three gaps. It is stated that though an amount of Rs.455 lakhs was allotted to MJP, only a sum of Rs.409.59 lakhs was received by MJP, out of which a sum of Rs.354.76 lakhs has been already spent. It is stated that the balance of Rs.54.83 lakhs is available with MJP. Reasons are given for not completing the project. It is stated that MJP desires to finalize the tender which is still kept alive and the balance unspent amount after finalization of the bills will be deposited with the State Government. There is a reference to Modified Khopoli Sewerage Scheme under UIDSSMT which is prepared by MJP. However, as the said program expired, a proposal submitted to the Government was returned. There

is an assurance in the paragraph 6 of the affidavit by MJP that it will submit a revised scheme and DPR as per current District Schedule of Rates alongwith technical sanction to the State Government within a period of three months under Nagar Utthan Scheme.

8. The learned Government Pleader has tendered across the bar a chart showing standard operating procedure under the Maharashtra Suvarna Jayanti Nagar Utthan Mahabhiyan. The said chart is taken on record and marked as 'C1' for identification. There is a status report submitted today by the learned counsel appearing for the Pollution Control Board. It is claimed that various industries which are parties to the petition have provided their own valid effluent treatment solution and that the Pollution Control Board is monitoring the said industries. Inspection report are tendered on record which are annexed to the report.

9. The said Municipal Council has been constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "the said Act of 1965"). The mandatory duties and functions of the Municipal Councils under the said act of 1965 are incorporated under section 49. Clause (i) of sub-section 2 of

section 49 lays down that it is the duty of Municipal Council of constructing, altering and maintaining sewers, drainage works, sewerage works, etc. There is also an obligation under clause (c) of section 49 of cleansing sewers. Therefore, it is a mandatory obligation of the said Municipal Council to provide sewerage system in the area within its jurisdiction and to maintain the same properly.

10. As stated earlier, on 24th June, 2008 time of one year was granted to the said Municipal Council to provide the sewerage system. For various reasons, the said direction was not complied with. The said Municipal Council entrusted the work to MJP and it is an admitted position that the said work could not be completed by MJP. Thus, there is gross delay on the part of the said Municipal Council in complying with the directions issued by this Court. Now the said Municipal Council has shown willingness to complete the work provided MJP gives NOC. As disclosed in the affidavit of the Chief Officer, considering the delay involved, the cost of project went on escalating and as on today, there must be a further escalation. There cannot be any dispute about the mandatory obligation of the said Municipal Council of providing sewerage system and maintaining it. There are averments made in the petition and from the material on record, it is clear that there are large

industries within the limits of the said Municipal Council. Therefore, it is the duty of the said Municipal Council, MJP and the State Government to take prompt steps.

11. The State Government will have to also examine whether an amount of Rs.354.76 lakhs is really spent by MJP on the project. If the State Government is satisfied that an amount to the said extent is not spent, the State Government will be justified in issuing directions to the MJP to return the unspent amount to either the said Municipal Council or to the appropriate authority of the State Government.

12. In the affidavit of Mr. D.K. Mahajan filed on behalf of MJP, it has shown willingness to submit revised scheme and DPR as per current District Schedule of Rates alongwith technical sanction with the State Government within a period of three months. It is claimed that MJP is willing to do the work. It is not possible to accept the said request as MJP has delayed the execution of the work which has resulted into substantive escalation of the cost of the project. The learned AGP has stated that 85% contribution will come from the State Government and 15% will have to be borne by the said Municipal Council.

13. As regards industries within the limits of the said Municipal Council, the compilation tendered today by the Pollution Control Board shows that the said Board is monitoring the said industries and frequent inspection is being carried out. The Pollution Control Board will have to carry out inspection at regular intervals with a view to ensure that the pollution, if any, created by the said industries, remains under check. Needless to add that the Pollution Control Board is under an obligation to take action against the industries which create pollution.

14. We, accordingly, dispose of the petition by passing the following order :-

(i) We direct the Maharashtra Jeevan Pradhikaran (MJP) to provide the revised scheme and a Detailed Project Report (DPR) as per current District Schedule of Rates. The revised scheme and DPR shall be submitted by MJP within a period of three months from today to the said Municipal Council which in turn will submit it to appropriate authority of the State Government ;

(ii) Technical sanction to the said scheme and DPR shall be issued by the Chief Engineer, Water Supply Project of the State Government to the MJP within a period of four months from today ;

(iii) Within a period of four months from today, the proposal shall be submitted to the Director of Municipal Administration. Thereafter, the State Government shall approve the project and DPR with modifications, if any, as expeditiously as possible and in any event, within a period of two months from the date on which DPR is submitted in the office of the Director of Municipal Administration ;

(iv) After financial and administrative approval to the scheme/project is granted by the State Government, immediate steps shall be taken for releasing the first installment of the funds payable by the State Government ;

(v) The appropriate officer of the Urban Development Department will look into the aspect as to whether expenditure of Rs.354.76 lakhs is already incurred by MJP. If the State Government is satisfied that lesser amount is spent, necessary directions for refund shall be issued by the State Government to MJP within a period of three months from today ;

(vi) MJP shall be entitled to adjust the charges for making a revised scheme and DPR from the alleged excess amount of Rs.54.83 lakhs. If any amount remains balance after adjusting the charges of the MJP, the

same shall be refunded to the said Municipal Council ;

(vii) If the petitioner seeks information from the Pollution Control Board about the action, if any, taken against the polluting industries or factories, necessary information shall be furnished to the petitioner on an application being made by the petitioner. After getting the information, the petitioner can always make appropriate representation to the appropriate authorities ;

(viii) While granting administrative approval, the State Government shall set outer limit for completing the work so that the said Municipal Council is bound by the said outer limit ;

(ix) Considering the fact that the project has been unreasonably delayed, we held that it is the responsibility of the State Government to monitor the implementation of the project by the said Municipal Council and to ensure that the project is implemented and completed within the time span provided for the sanction granted by the State Government ;

(x) We make it clear that in view of the above directions, NOC of MJP to enable the Municipal Council to implement the project will not be

necessary as the Municipal Council is entitled to implement the scheme ;

(xi) Rule is made partly absolute on above terms.

(xii) Compliance affidavit shall be filed by MJP on or before 17th December, 2018. For considering the compliance affidavit, petition shall be listed on 20th December, 2018 under the caption of 'directions'.

(xiii) The State Government shall file Compliance affidavit on or before 19th December, 2018. For considering the said compliance affidavit, the petition shall be listed on 20th December, 2018.

(xiv) We make it clear that any delay on the part of MJP or the State Government will result into initiation of action under Contempt of Court Act, 1971.

[RIYAZ I. CHAGLA, J.]

[ABHAY S. OKA, J.]