

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

Original Application No. 06 of 2012

And

**(M.A. No.199 of 2015, M.A. No.238 of 2015, M.A. No.344 of 2015,
M.A. No. 512 of 2015, M.A. No. 513 of 2015, M.A. No.692 of 2015 &
M.A. No. 1091 of 2015, M.A. No.263 of 2016, M.A. No. 310 of 2016,
M.A. No. 315 of 2016, M.A. No. 462 of 2016 & M.A. No. 508 of 2016)**

In

Original Application No.300 of 2013

And

**M.A. No. 868 of 2014, M.A No. 441/2015, M.A No. 641/2015, M.A No. 646/2015,
M.A No. 627/2015, M.A No. 628/2015, M.A No. 630/2015, M.A No. 725/2015,
M.A No. 836/2015, M.A No. 942/2015, M.A No. 1053/2015 &
M.A No. 1077/2015**

In

Original Application No. 06 of 2012

IN THE MATTER OF:

Manoj Mishra Vs. Union of India &Ors.

And

Manoj Kumar Misra & Anr. Vs. Union of India & Ors.

And

Manoj Mishra Vs. Union of India &Ors.

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE DR. AJAY A. DESHPANDE, EXPERT MEMBER**

Present: Applicant

Respondent No. 1 :

Respondent No. 2, 5 & 8:

Respondent No. 6 & 7 :

Respondent No. 8 & 12

Mr. Rahul Choudhary, Adv.

Mr. Mukul Singh, Adv. for MoEF & CC

Mr. Vivek Kumar Tondon, Adv.

Mr. Abhishek Yadav, Adv. for State of U.P.

**Mr. Balendu Shekhar and Mr. Akshay Abrol, Mr.
Eishan Bahuguna, Adv.**

**Mr. Suryanarayana Singh, Sr. Addl. Adv.
General, State of HP**

**Mr. Ardhendumauli Kumar Prasad, Mr. Panshul
Chandra, Adv. for MOWR and MoUD/PNG**

Mr. Daleep Kr. Dhyani, Adv., for UAPCB

**Mr. Ravi P. Mehrotra and Mr. Abhinav Kr. Malik,
Adv.**

**Mr. Satyajit Kumar, Adv. Proxy for Mr. Moni Cinmoy,
Adv.**

Mr. Rajkumar, Adv. and Mr. Bhupendra Kumar, LA

**Ms. Manali Singhal, Mr. Santosh Sachin and Mr.
Rohit Kant, Adv. For Applicant DSCL(M. A. No. 462
of 2016)**

**Mr. Dinesh Jindel, LO for Mr. Narender Pal Singh,
Adv.**

Mr. I. K. Kapila, Adv. for Okhla CETP

Ms. Sakshi Popli, Adv. for NDMC

Mr. B. V. Niren, Adv. for Ministry of Water Resources

Mr. Ishwar Singh, Adv. for NMC

**Mr. Rajiv Bansal, Mr. Kush Sharma, Mr. Keshav
Datta, Adv.**

Mr. Aagney Sail, Adv. in MA No. 508/2016

**Mr. H.S. Phoolka, Sr. Adv. with Mr. Sumeet
Pushkarna and Mr. Siddhartha Nagpal, Adv. with Mr.
B.M. Dhau and Mr. S.C. Jain and Mr. B.M. Dhau,
Member Drainage for DJB**

Date and Remarks	Orders of the Tribunal
Item No. 07 to 09 June 03, 2016 A	There are some major and urgent issues which according to DJB requires determination in larger interest

of the public; operationalization of the STPs and the contractors who had executed the works. Therefore, this case was specially directed to be fixed during the Vacation.

We will now proceed to discuss different issues that calls for clarifications or further directions, to be issued by the Tribunal so as to meet the public interest while duly protecting the environmental interests. The judgment of the Tribunal dated 13th January, 2015 is at execution stage. The execution of the judgment is withheld and infact is stuck due to for inter departmental; inter governmental and imperfect planning by the DJB. Be that as it may, no fruitful purpose would be served by dealing with the defects, deficiencies and errors that have been committed by the various Authorities in the Government. Suffice it to note that we are completely dis-pleased with the manner in which execution of the judgment of the Tribunal dated 13th January, 2015 has been hampered whereas the same was accepted by the all concerned Authorities and an assurance had been given from time to time that same would be implemented without default and delay. By this order we wish to resolve the various controversies that have been raised inter-departmental; inter-state and the rival contentions raised at the Bar to ensure atleast henceforth the project which had been prepared by DJB approved by the Principal Committee and formed a part of judgment of the Tribunal, is implemented and gives the requisite results rather than lingering it on indefinitely and in a state of uncertainty.

Thus, we proceed to deal with the various contentions raised before the Tribunal. First and foremost is with regard to financing of the project. In terms of our judgment dated 13th January, 2015, there were three main contributories who were to finance the project that is Phase - I of "Maily Se Nirmal Yamuna Revitalization Project, 2017. They were DJB, DDA, Ministry of Urban Development and Namami Gange under the Ministry of Water Resources. More than a year has already gone but the requisite steps have not been taken by the executing agency that is DJB who express various limitations including finances. Vide order dated 09th February, 2016, we had directed DJB not to incur any expenditure except on maintenance, without specific orders of the Tribunal. According to them certain ongoing projects are hampered and the contractors were put to difficulties because of non-payment of dues. This aspect we would defer for the present and consider it after hearing the expert Members of the Committee.

In the present, we are only concerned with the financial liability of the respective stake holders for completing Phase - I of the project. DJB besides having funds from previous budget, it has available with it Rs. 1976 crores for water and sewer, for the year 2016-2017. Out of this budget Rs. 1060 is for water and Rs. 916 crores for sewer, subject to the orders that may be passed by the Tribunal. Subsequently, we would direct DJB to start working on the tenders that have been invited by it and finalize it by spending money out of which Rs. 916 crores for sewer and partly from the amount of water. It

should be entitled to incur expenditure independently for maintenance and etc. which is its regular feature. The DDA shall provide to DJB the amount of Rs. 285.33 crores for the proposal for rehabilitation of peripheral sewer line, at South West Delhi, and North West Delhi the sewer/ discharge of which flowing into the Najafgarh drain and supplementary drain thereto. This DPR and/ or proposal has already been approved by the DDA and has been submitted to the Ministry of Urban Development, a meeting of which is stated to be fixed on 07th June, 2016. Learned counsel appearing for DDA has shown a letter to us about fixing of the meeting at 11.00 AM. Let the Secretary, MoUD hold the meeting and take a final view. We direct that after taking the final a sum of Rs. 285.33 shall paid through DDA, who would disbursed the same to DJB (in proportion as per the policy and decision of Namami Gange under the Ministry of Water Resources).

We expect the Secretary to take a final view expeditiously and also keeping in view the fact that this is part of the main judgment of the Tribunal dated 13th January, 2015. After DJB have incurred the above expenditure and also received the money from DDA and utilize the same, it shall raise demand from Namami Gange (Ministry of Water Resources) for payment of the balance amount for completing Phase – I of the project. The Ministry shall pay the said amount subject to complete control over the expenditure, as already directed in the judgment.

At this stage, one of the contentions raised on behalf of the MoUD, Government of India, in January, 2016, is

that the work of this nature relate to cleaning of river Ganga and Yamuna should be executed by annuity Mode as against the DBO (Design Build operated). The judgment is dated 13th January, 2015 while the decision of the Government of introducing the annuity mode is of 06th January, 2016. No Administrative decision of the Government can overrule the judgment of the Court and Tribunal and in any case not retrospectively. Such decision would be considered prospectively, if at all. We are of the considered view that introduction of the annuity mode should be fully supported by Expert opinion. Therefore, we direct Ministry of Water Resources and the DJB to examine the implementation of the technical and financial feasibility of implementing the annuity mode. Whether market exist therefor? Further there are stake holders who are interested in performing such projects on annuity mode. Such study of these expert bodies have become important in view of the rival contentions raised on their behalf. DJB in one of the meeting of stake holders before the Tribunal had even stated that they have carried out study of annuity mode and it is not practical to be implemented for financial limitation and the interest of the stake holders. Infact according to them there did not exist sufficient market. Therefore there would not be fair competition to finalise by this mode.

This was however not accepted by the Ministry of Water of Resources. According to them the annuity mode is successful and can show better results of maintenance, operationalization and return. Liability is upon the Project Proponent as he invest the money initially and gets it on

the basis of deferred payment. Be that as it may. We will not take a final view on this aspect unless the report dully supported by data, details and comprehensive in all respect is placed before the Tribunal.

For the time being we direct the first Phase of the project to be carried on and be completed in terms of the judgment dated 13th January, 2015 without recourse of the annuity mode at present. It is also for the reason that tenders have been already invited and some of the technical and financial bids have been opened and examined. If the entire project is stopped at this stage and the Authorities are directed to revert to annuity mode, it would result in delay of one year in completing the project and it would increase the cost of the project itself. Therefore, we reiterate that the judgment dated 13th January, 2015 – the first Phase would be completed on basis of DBO for which the tender have already been invited and is at the stage of finalization. The DJB shall take steps for awarding the contract in accordance with law and would also obviously be subject to the strict compliance of the Judgment dated 13th January, 2015 and under this order.

However for Phase –II of the same project as well as for Ganga it will be for the Ministry of Water Resources to show that the annuity mode is more beneficial and can achieve better results. We would direct that all the projects thereafter should be taken on annuity mode.

All the stake holders are directed to provide finance now, without any further delay.

Still another DPR which have been submitted by the

DJB to DDA relates to Laying of Peripheral sewer line in command area of Nilothi and Pappan Kala STPs with estimated cost of Rs. 83.37 crore. There is objection raised by IIT Delhi, merit of which is contested by Learned counsel appearing for DJB. According to DJB they have prepared the DPR in addition to manual and it relates to CPHEEO manual (Central Public Health & Environmental Engineering Organization) in relation to n co-efficient separately after hearing the experts.

In relation to the project which are ongoing as well as 4 STPs which fall under Phase – I. The Technical Experts appointed by the Tribunal have submitted the report to this Tribunal. Some objection are being raised with regard to the correctness of the report. Before we can further finalise and allow the DJB to deal with this project including financial disbursement, we would like to hear the experts on the same.

We request the expert Prof. A.K. Gosain and Prof. AA. Kazmi and Member Secretary of CPCB to be present before Tribunal on 06th June, 2016.

We are certainly not satisfied the way in which STPs at Delhi Gate has been constructed and put to operation. We would be passing separate direction in that behalf because there is clear conflict on account of the stand taken by the DJB and the report of the Expert Committee.

List this matter on 06th June, 2016.

.....,CP
(Swatanter Kumar)

		<p>.....,JM (Raghuvendra S. Rathore)</p> <p>.....,EM (Dr. Ajay A. Deshpande)</p>
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