

**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. 310 of 2016, M.A. No. 315 of 2016& M.A. No. 508 of 2016)**

In

Original Application No.300 of 2013

And

M.A No. 646/2015,M.A No. 725/2015,M.A No. 836/2015& M.A No. 753/2016

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 MR. BIKRAM SINGH SAJWAN, EXPERT MEMBER**

**Present: Applicant
Applicant in M.A. 462/2016
Respondent No. 2, 5 & 8:**

**Respondent No. 1 :
Respondent No. 8 & 12**

**Mr. Rahul Choudhary and Ms. Meera Gopal, Advs.
Ms. ManaliSinghal and Mr. Santosh Sachin, Advs.
Ms. MamtaTandon, Adv. for Mr. Vivek Kumar Tandon, Adv.
Mr. B. V. Niren, Adv. for Ministry of Water Resources
Ms. Puja Kalra, Adv. for NDMC and SDMC
Mr. Mukul Singh, Adv. for MoEF& CC
Mr. BalenduShekhar and Mr. AkshayAbrol, Advs. for EDMC
Mr. A.K. Prasad and Mr. Panshul Chandra, Adv. for MoUD
Mrs. D. Bharati Reddy, Adv. for State of Uttarakhand
Mr. Amit Kumar Thakur, Adv. For Contractors Association
Mr. Narender Pal Singh, Adv.
Mr. Ravi P. Mehrotra and Mr. Abhinav Kr. Malik, Advs.
Mr. Bhupinder, LA, Central Pollution Control Board
Mr. Suryanarayan Singh, Sr. Addl. Advocate General, State
of Himachal Pradesh
Mr. Abhishek Yadav, Adv.
Mr. Ishwer Singh, Adv. for NMCG
Ms. SakshiPopli, Adv. with Ms. Juhifor NDMC
Mr. Anil Grover, AAG, Haryana with Mr. Rahul Khurana,
Adv. for State of Haryana
Mr. I. K. Kapila, Adv. for Okhla CETP
Proxy Counsel on behalf of Anchit Sharma, Adv. for Delhi
Cantonment Board
Mr. Rajiv Bansal, Mr. Kush Sharma and Ms. Arpita, Advs. for
DDA
Mr. SumeetPushkarna, Adv. with Mr. Siddhartha Nagpal,
Adv. Mr. B.M. Dhaul (Member) with Mr. Vikram Singh (CE)
for Delhi Jal Board
Mr. Satyajit Kumar, Adv. for Mr. Moni Cinmoy, Adv. for
DSIIDC
Mr. Rajkumar Adv. with Bhupinder Kr. LA CPCB**

	Date and Remarks	Orders of the Tribunal
	<p align="center">Item No. 18 to 20</p> <p align="center">August 05, 2016</p> <p align="center">A &ss</p>	<p align="center">By a detailed judgment dated 13th January, 2015 this Tribunal had directed the project of "Maily Se Nirmal Yamuna Revitalization Project, 2017" to be implemented without default and delays. At the very outset we may notice that said judgment had been pronounced after proper technical inputs from different levels, both within and outside the Government. The Tribunal had</p>

constituted a Principal Committee which was chaired by Secretary to the Government of India and in that Committee various Officers from all the relevant stake holders including DJB, DDA, NCT of Delhi, Ministry of Water Resources, MoEF and Professors of IITs and Delhi University were Members. Learned counsel appearing for the parties raised various contentions and were heard at length. In furtherance to the consultative process of stake holders adopted by the Tribunal Chamber meeting was held where high Officers of all stake holders were present. It was submitted that DJB is the only Authority empowered under law responsible for executing the works of laying down fresh sewer line, rehabilitation and maintenance of existing sewer lines, establishment of STPs and running such STPs appropriately in the entire NCT of Delhi. The DJB has prepared a project which was intended to clean drains of Delhi as well as River Yamuna. In fact, the judgment came to be delivered based on various suggestions put forward on behalf of the parties as well as views of the Principal Committee who suggested that the plans prepared by DJB were proper course of action to be adopted for cleaning of drains of Delhi and Yamuna River. This project was prepared to bring a higher degree of public health care and better environment and ecology. If the drain were cleaned only at the mouth of the drain where it joins the river then only the Yamuna would have been cleaned but the drains would have remained polluted, stinking and unhealthy having serious adverse impacts upon the health of the people of Delhi and on the environment and ecology. Fresh approach was

adopted to establish the requisite number of STPs at different points along with length of the drains to ensure that drains themselves are cleaned and the natural drains of Delhi carry only treated waste water or storm water rather than carrying sewage.

The project prepared by DJB was subjected to internal technical scrutiny by DJB and other stake holders. Thereafter, the Power point representation was made in the presence of Principal Committee and the Members of the Tribunal as well, where-after based on the inputs and expert opinions received, DJB was asked to prepare final Project which was submitted to Principal Committee and the Principal Committee approved the project on its own and even in the Chamber meeting. Thereafter it was subjected to lengthy hearings before the Tribunal and various aspects of the Project were examined minutely and finally the judgment was pronounced for execution. In other words, having passed through exhaustive technical scrutiny and finally converted into the judgment of the Tribunal, all Authorities, Government whether State or Central, were required to implement the judgment with utmost sense of sincerity and complete the project in a time bound manner. DJB took some time and invited tender etc. In some of the Projects IIT Delhi were consulted but there was no effective progress and till today the judgment and the project have not even been taken in their correct perspective and remains un-executed. Rather there was a complete non-cooperation and shifting of blame between the stake holders, particularly, between Government Agencies, namely

NMCG, Ministry of Water Resources, DDA, Ministry of Urban Development and DJB, resulting in a complete deadlock in project implementation. It appears to the Tribunal that environment and public health has received least priority with the stake holders including the State Government and Central Government. The sufferer is the public of Delhi and the environment of NCT of Delhi. Different interim orders were passed but despite such orders, the things did not improve for the better. It is unfortunate that till today no work has been awarded for execution and all the works relating to laying of sewer line, rehabilitation of sewer line, establishment of STPs and other allied works have been at stand still for one reason or the other.

We are at pains to note that the Officers at the State Government and the Central Government, DDA and DJB have been sitting over the judgment and the directions contained thereunder which was neither permissible in law nor permitted under principle of administrative proprietary. Unfortunately objections were raised on frivolous and casual ground by the Departments and ultimately the judgment was made the subject matter of deliberation, whether to execute or not to execute the work. We must notice here that none of the stake holders either moved any application for clarification before the Tribunal or preferred any Appeal before the Hon'ble Supreme Court of India. On the contrary, all of them, time and again, on oath and otherwise, made statement that they were very desirous of implementing the judgment in its entirety as that was only solution to restore the river

Yamuna and drains of Delhi to their natural character. Restoration still continues to be an elusive dream for all concerned. We are really unable to understand the attitude of extreme non-cooperation, shifting of blame and continuous fault funding. All this has led to a complete deadlock which is evident from the various orders passed by the Tribunal. Since there was apparent violation of the orders of the Tribunal and no sincere efforts were made to execute the judgment, normally we could have taken recourse of passing coercive orders and even initiated the contempt proceedings against the various Officers of the various stake holders. However, in order to give a final opportunity before entering into the realm of coercive directions, the Tribunal once again held a consultative meeting of all the stake holders on 03rd August, 2016 where the following were present. :-

1. Dr. Amarjeet Singh, Special Secretary and (OSD), Ministry of Water Resources, RD & GR , Govt. of India
2. Mr. Durga Shankar Mishra, Additional Secretary Ministry of Urban Development
3. Mr. ArunGoel, Vice-Chairman, DDA
4. Dr. Rajat Bhargava, Mission Director, NMCG
5. Mr. Keshav Chandra, CEO, Delhi Jal Board
6. Prof. A.K. Gosain, Professor, IIT/ Delhi
7. Prof. Rakesh Khosa, IIT, Delhi
8. Prof. A.A. Kazmi, Professor, IIT, Roorkee
9. Dr. Mahesh Kumar, EM, DDA
10. Mr. B.M. Dhaul, Member, DJB
11. Mr. Vikram Singh, CE, Proj.-II, DJB

12. Mr. Kush Sharma, Mr. Siddhant Gupta and Mr. Rajiv Bansal, Advs. for DDA

13. Mr. Vivek Kumar Tandon, Adv.

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

Evidently high level Authorities/Officers from respective stake holders were present and various issues were deliberated upon. At the end of the deliberations, it became evident that the view of the Tribunal that there was complete non-cooperation between the stake holders, there was shifting of blame, fault finding and obstructive approach adopted by different Departments was correct and was the prime cause for non-execution of the Judgment. In order to provide final opportunity, the Tribunal, therefore, decided to pass the directions for immediate execution of the judgment. This case was listed today before Tribunal for passing of directions. We have again heard the Learned counsel appearing for the parties. Thus, we pass the following directions:-

1. We reiterate that the judgment of the Tribunal dated 13th January, 2015 has attained finality and no stake holders or any officers of whatever rank or status he/ she may be, would have the right to sit over the correctness or otherwise of the judgment and whether or not to implement the project in its entirety as stated in the judgment. This judgment provides every smallest details in regard to laying of sewer line, upgradation, restoration of sewer systems and establishments of STPs. It also specifically provides the points where STPS are to be setup, the locations of interceptor sewage, how the

sewage and effluents are to be treated ensuring that such plants are as per prescribed parameters and finally that not more than 25% of the treated water should be back in the main drain or river Yamuna as the case may be. This is the judgment which runs into 298 pages. The Maps, drawings and technical details are duly recorded in the judgment and/or are annexed as part thereof. We are hereby constrained to observe that in the event of disobedience of these directions and judgment and any obstructive steps taken for preventing the effective execution of the judgment, the Tribunal would be compelled to issue coercive orders including imposition of costs, attachment of salary, fine and civil imprisonment to the offending persons, Authority or Officers and under no circumstances would we grant further extension for compliance of the directions.

2. In terms of the judgment and subsequent orders passed, Najafgarh and Delhi Gate drains were treated as Phase – I, of the project. These two drains contribute nearly 64% of pollution to Yamuna in NCT of Delhi. Thus, if these two drains and the feeder drains to these drains are trapped and sewage and effluents flowing through them are treated in accordance with the permissible standards, then the treated water is recycled and remnants brought back to river Yamuna then it would not only remove the pollution of river Yamuna but would also result in diluting the

existing polluting resulting from the drains other than the Phase – I. Thus, STPs to be constructed and installed on the drains leading to Najafgarh and Delhi Gate drains, and interceptor sewer lines to connect and finally convey sewage to STP for treatment and discharge into the drains for meeting the river ultimately in much cleaner form and without basic pollutants. The cost of this project has to be shared between DJB, NMCG, DDA and MoUD, Government of India.

3. The DJB has invited tenders for execution of the Phase – I of the Project. Let the tenders be finalized for the project for which the tenders have been invited or are in the process of being finalised. All the tenders that DJB shall execute from their own fund, can be proceeded further without any delay.

4. All the stakeholders do not lack funds, in fact, they have already earmarked funds for the project. This was clearly stated in the judgment dated 30th January, 2015. The DJB's current budget had been approved, where the funds have been specifically allocated for carrying out the works falling under the project of Phase-I. The Government of India has sanctioned Rs. 20,000 Crores for cleaning River Ganga and its tributaries and the amount required under the project has to be spent over the period of three years. The DDA/Ministry of Urban Development has also already committed the expenditure and it is only the approval of the project that is awaited.

5. However the projects where NMCG is required to provide funds, the same before finalization of tender would be placed before the Committee that will be constituted in terms of this order and that Committee would clear those projects for execution and NMCG would provide funds, thereafter, subject to terms and conditions contained in this order and DJB would execute the works thereupon.

6. One of the basic issues in relation to NMCG funded project is that as per latest policy of the NMCG, the projects are to be funded under annuity/Hybrid Annuity Mode. There was serious deliberation held on this policy in respect of Projects/ cases where the tenders have already been invited. There was also an objection that Annuity/Hybrid Annuity Mode is hardly a tried and tested approach and that it may not show satisfactory results. NMCG has adopted the system universally and now it is stated that the Cabinet on 06th January, 2016 has taken a policy decision that annuity/Hybrid Annuity Mode should be followed in executing the work in relation to cleaning of Ganga and its tributaries. This issue was considered at some length by the Tribunal in its order dated 3rd June, 2016. After a detailed discussion it was directed that the work falling under Phase-I of the project had to be completed by DBO mode. In this phase, the tenders have been invited and they have been practically finalized and are pending awarding of work. Money has been

spent, there is great investment of manpower, technical knowhow and the DPRs have been finalized. If, now, directions to the contrary were passed the project are likely to be delayed by more than a year. There will be a serious escalation in cost and the entire effort put in by DJB, the Technical Committee, the Principal Committee and the Tribunal would go waste. It was amongst others in these reasons that the order dated 3rd June, 2016 were passed. Still the obstructive attitude persisted and the orders remained unexecuted. Normally, the Tribunal could have issued coercive orders and/or Notice of contempt. However, in the interest of justice, it was decided to provide another opportunity to the stakeholders to implement the judgment. The decision taken by the Cabinet is prospective and cannot have the effect of upsetting a judgment of the Court or the Tribunal which had been passed on 13th January, 2015, nearly a year prior to the Cabinet decision. It is not a judgment simplicitor but a complete and comprehensive technical document as well. The judgment has attained finality now and the Officers have no discretion or right to obstruct the execution of the judgment. Furthermore, as discussed in our order dated 03rd June, 2016 as well as in order dated 06th June, 2016 serious researches about the implementation of annuity/Hybrid Annuity Mode in India is lacking. Still we had permitted NMCG and other stake holders to place on record relevant

material before the Tribunal that there are sufficient studies and material or executed works available in India to show that annuity/Hybrid Annuity Mode is the only approach to implementation of the projects of the nature covered in this judgement.

This was done primarily with the object of examining the possibility whether the remaining part of the project and in general it was possible to adopt annuity/Hybrid Annuity Mode for execution of works. In fact, we even permitted that Phase-II and rest of the project in the country the Annuity/Hybrid Annuity mode be adopted. The decision of the Cabinet taken on 06th January, 2016 is to be given effect prospectively and the subject to final decision of the Tribunal and there appears to be no useful purpose including saving public funds, if the work is not executed expeditiously as already decided particularly in relation to Phase – I. It will add avoidable burden on public exchequer. We are informed that competitive tender bids have already been received for most of the works but not yet awarded. Accordingly, we constitute the Committee of the following :-

- (1) Dr. Amarjeet Singh, (Special Secretary) & OSD, Ministry of Water Resources – Chairman;
- (2) Dr. Rajat Bhargava, Joint Secretary and Mission Director of NMCG – Member;
- (3) Mr. Keshav Chandra, CEO of DJB – Member;
- (4) Mr. Mahesh Kumar, Engineer Member of DDA

– Member;

(5) Prof. A.A. Kazmi, IIT Roorkee – Member;

(6) The Technical Member of DJB shall be Nodal Officer of the Committee.

7. This Committee will examine all the tenders that have to be awarded in relation to the projects which are to be funded by NMCG. This Committee would have a general control over the entire execution of Phase – I, even the project executed by DJB directly or with the aid of other Authorities. However, for the work awarded from its own funds the contract would be awarded by DJB on its own however, for the payment to the contractor would be made only after approval of the Committee in relation to satisfactory execution of the work and proper disbursement of payment from time to time. In other words, this Committee will exercise overall control for awarding, execution and payment, after satisfactory performance in relation to the projects funded by NMCG while the other projects funded by DJB itself, the committee will exercise its supervisory Authority in relation to the satisfactory execution and release of the payment.

8. The Delhi Jal Board had taken up, as part of Phase-I, two projects, namely, the rehabilitation of peripheral sewer line and laying of pipe line of the command area for capturing of sewage from Nilothi and Papan Kalan at the STP. These two projects are to be financed in terms of the judgement of the Tribunal by Delhi Development Authority/Ministry

of Urban Development. They have been stuck now for more than a year primarily because of non-cooperation and unreasonable obstructive approach adopted by different stakeholders. The project in relation to the first project of rehabilitation, Delhi Development Authority cleared it once and sent to the Ministry of Urban Development for sanctioning of the project and release of payment. However, it was returned on frivolous reasons, not supported by any substantive data based on proper estimation. However, that too lead to a great deal of delay in execution of the project. This project was referred to IIT, although during the meeting taken by DDA earlier, the professors attending the meeting from IIT, Delhi had expressed inability to give any opinion due to lack of expertise on the particular technology.

9. In the second project main dispute involved was the use of 'n' co-efficient. According to the Delhi Jal Board it has been fixed on the basis of CPHEEO manual while according to Indian Institute of Technology, Delhi and Delhi Development Authority the 'n' co-efficient should be different to ensure self-cleansing velocity of the sewage flow. Be that as it may, at this juncture now it is not significant for the Tribunal to go in to the question of appropriate n coefficient and accordingly we direct the Indian Institute of Technology, Delhi to submit a detailed report in relation the to reasons for not accepting 'n' co-efficient adopted by the Delhi Jal Board, reason for modification and solution thereto including cost

of the project. The detailed report on all aspects, including the use of CIPP technology for Rehabilitation project, should be submitted by IIT to the Delhi Development Authority within 60 days from the date of awarding of the work/or the date of payment made by the Delhi Development Authority. On received of payment of about Rs. 1 Crore 41 Lakh, the report of Indian Institute of Technology on both the projects shall be submitted within the period afore-allowed. The Delhi Development Authority within one week on submission of the report shall forward the projects to Ministry of Urban Development, who within two weeks thereafter, would take a final view on execution of the work in the manner suggested by Indian Institute of Technology, Delhi.

We make it clear that they will not sit over the judgment and the report submitted by the Indian Institute of Technology, Delhi and these projects would be accordingly approved and financed.

If the Indian Institute of Technology suggests alterations of these two works then Delhi Jal Board would take steps to invite fresh tenders, if necessary, and execute the work with utmost expeditiousness. The committee constituted would supervise inviting of tenders by the Nodal Officer and progress of all activities from time to time. There was some controversy raised before the Tribunal in relation to the work to be executed at Coronation Pillar where presently three plants of 10

MGD are in existence. These plants are of old technology and are more than 15 years old and they have turned incapable of treating sewage to prescribed standards. The Delhi Jal Board has proposed construction of new plant of 70 MGD as the load is likely to increase by 40 MGD. The sewer network to bring the additional sewage at Coronation Pillar is under execution and we were informed that 85% work has already been executed and the remaining 15% would be completed at the earliest. The result would be that once the new plant of 70 MGD is commenced at Coronation Pillar, one of the old plant of 10 MGD would be upgraded/renovated so as to achieve STP standards now prescribed for various parameters including COD, BOD and TSS. These two STPs will take care of the total load at Coronation Pillar which would be 80 MGD in future as against the load of 70 MGD presently expected to come. This project has already been appraised and technically vetted by the Indian Institute of Technology, Roorkee. Thus after hearing all those present in the meeting, namely, Delhi Jal Board, National Mission for Clean Ganga and all other officials we direct that all will abide by this decision including the Ministry of Water Resources. The finances would be shared by the three bodies as indicated and in proportion to that as indicated in the Judgment of the Tribunal. As already stated Delhi Development Authority and Delhi Jal Board would implement projects of Rs.

285 Crore and Rs. 80 Crore respectively or at their reduced cost as the case may be. Besides that, Delhi Jal Board will spend Rs. 1390 Crores from its own budget and National Mission for Clean Ganga would provide about Rs. 900 Crores. Initially, the National Mission for Clean Ganga had provided for a budget of Rs. 1666 Crore which has, after inviting tenders come down to Rs. 1250 Crores. Excluding the Operation and Maintenance part which is Rs. 300 Crores approx. Rs. 900 Crore is to be funded by National Mission for Clean Ganga over a period.

10. The JICA Project of Delhi Jal Board which formed part of Phase-I, would be executed without any further delay and the committee constituted would give priority to this aspect. The committee would consider the DPR for JICA project as well and direct release of the payment of the consultants, including pending payment if any.

11. We direct that all the above directions shall be carried out without default and within the period allowed in this order. No officer, regardless of his/her status, shall disobey or cause delay in implementation of these directions. Not only shall the matter be viewed seriously, the failure to do so would result in passing of coercive orders, imposition of heavy costs, attachment of salary, civil imprisonment and initiation of contempt proceedings against the defaulting officers personally. The committee constituted under these directions would act with utmost expeditiousness

and the Special Secretary and OSD to Ministry of Water Resources would submit a compliance report within four weeks from today.

List all these matters on 19th September, 2016.

M.A. Nos. 462/2016 and 315/2016 in Original

Application No. 300 of 2013

In these Miscellaneous Applications issues were raised for release of payment to the contractors who had executed different works of laying down of sewer lines. These works relate to the construction of STP and laying of new sewer lines and interceptor drains. The contention of the Learned Counsel appearing for various applicants is that they have executed the work already satisfactorily for which they are demanding payments, and that the remaining part of the project they will be in a position to execute only after payment is made for the work done. The Learned Counsel appearing for Delhi Jal Board upon instructions submits that works have been executed and if directed the payment can be made to these contractors. During the proceedings that had taken place certain facts came to the notice of the Tribunal that raised certain doubts in regard to the satisfactory completion of work and genuineness of the payment disbursed in some of the cases. We do not propose to comment on that aspect any further at this stage. In any case, Tribunal has no independent sources for verifying the execution of the work satisfactorily or otherwise and whether the payment should be made or not. Therefore we direct that a separate committee be constituted for this purpose, which

will be as follows:-

1. CEO, Delhi Jal Board, (Chairman), Technical Officer nominated by the National Mission for Clean Ganga, Engineer Member, Delhi Development Authority or his nominee and Technical Member, Delhi Jal Board. The Technical Member, DJB shall be the Nodal Officer. This committee would verify or get verified, to its satisfaction, if the works have been completed or not, or the extent of work that needed to be completed, only after that would recommend for the payment to the contractor. We do expect that the committee would be able to act expeditiously, in the interest of work and contractors who are performing the work.

Accordingly, M.A. Nos. 462/2016 **and 315/2016** in Original Application No. 300 of 2013 stand disposed of without any order as to costs.

.....,CP
(Swatanter Kumar)

.....,JM
(Raghuvendra S. Rathore)

.....,EM
(Bikram Singh Sajwan)