

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 37

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4003 of 2006

Petitioner :- Re: Ganga Pollution

Respondent :- State Of U.P. And Others

Petitioner Counsel :- Vijay Chandra Srivastava,A.K. Gupta,A.K. Srivastava,Anil Tiwari,Arun Kumar,Arvind Agarwal,Baij Nath Yadav,Baleshwar Chaturvedi,D.B. Mishra,D.S. Mishra,Jagdish Tewari,K.C. Pandey,P.N. Mishra,S.K. Srivastava,S.K. Tyagi,Shailesh Singh,Sharad Kr. Srivastava,Sunita Sharma,V.B. Singh,V.C. Mishra,Vivek Mishra,Yogesh Krishna Mishra

Respondent Counsel :- C.S.C.,A.K. Mishra,Ajay Bhanot,Anjani Kumar Mishra,B.D. Shukla,C.L.Pandey,Chandan Sharma,Dr. H.N.Tripathi,H.N. Singh,H.P. Dubey,Hem Pratap Singh,Iqbal Ahmad,J.J.Munir,Jyotindra Misra, A.G.,Kashif Zaidi,M.C. Chaturvedi,M.C. Tripathi,M.K.Alam,Mohd.Khursheed Alam,Mridul Tripathi,N. Misra,Omprakash Yadav,P.S. Baghel,Pankaj Kumar Shukla,R.B. Shukla,Rajiv Lochan Shukla,Ravi Kant,S.A.

Lari,S.G.Hasnain, Addl.A.G.,S.M.A. Kazmi,S.P. Kesharwani,S.P. Singh,Saumya Misra,Suneel Dubey,T.M.Khan,Tahir Hussain,Tanmay Agarwal,Udain Nandan,Umesh Narain Sharma,Vivek Birla,Vivek Verma,W.A. Hashmi

Hon'ble Ashok Bhushan,J.

Hon'ble Arun Tandon,J.

Heard Sri Arun Kumar Gupta, Advocate the Amicus Curiae, Sri S.P. Kesharwani, Additional Chief Standing Counsel and Counsels for the Nagar Nigam, Allahabad Development Authority, Sri Shashi Nandan, Senior Advocate assisted by Sri Sudeep Harkauli, Advocate have been heard on behalf of M.H. Usmani.

It has been stated by the learned counsel for M.H. Usmani that the shop earlier constructed at G.P.O. by him is being demolished by the applicant himself, such demolition shall be completed today itself.

An affidavit has been filed by the Nagar Nigam bringing on record an order dated 26.09.2012 by which the Nagar Ayukt has directed that the shop/Gumti in front of G.P.O. be vacated within two days, failing which possession of the same shall be taken by force and the same shall be demolished.

Learned counsel for the applicant submits that the applicant had voluntarily vacated his shop, which was running in front of Central Administrative Tribunal, Civil Lines, on an assurance as recorded in the order dated 14.03.2012 to the effect that the applicant shall be permitted to place a kiosk opposite G.P.O. He submits that the Nagar Nigam has to honour the assurance and that he must be provided alternative site.

Counsel for the Nagar Nigam Sri S.D. Kautilya submits that no such assurance was held out to the applicant and the order dated 14.03.2012 only records his contention.

Be that it may. It is not disputed that the shop, which was in front of Central Administrative Tribunal, was voluntarily vacated by the applicant under the order issued on 14th March, 2012, it does record permission to install a Kiosk opposite G.P.O. on temporary basis till suitable site becomes available in consultation with A.D.A.

In view of the aforesaid facts, we direct that the Nagar Nigam must come up with an alternative place to be offered to the applicant where he can carry on his business. By the next date Nagar Nigam may take an appropriate decision in consultation with Allahabad Development Authority and place the same before this Court by means of an affidavit.

Sri S.P. Kesharwani, Additional Chief Standing Counsel submits that insofar as purchase of dredging machine is concerned, the purchase committee has already sent its recommendation to the State Government. The matter is pending before the State Government for approval. Insofar as proposal for installation of CCTV Cameras at various STPs and other installations at Kanpur Nagar is concerned, the same is also said to be pending approval before the State Government.

We are of the view that the State Government must take appropriate decision in respect of both the aforesaid matters at the earliest. The Chief Secretary of the State Government may ensure that appropriate decisions are taken in the above context and brought on record by means of an affidavit by the next date before us.

So far as prohibition on use of Polythene is concerned, a letter of the Deputy Secretary, Nagar Vikas Vibhag (Ganga Cell) dated 19.09.2012 has been brought on record. From the perusal of the same it appears that the matter has been sent for consideration to the Environment Department for taking necessary steps at its own level, as in respect of urban area of Allahabad the Nagar Vikas Department has already issued a notification prohibiting use of polythene within two kilometers from the banks of river Ganga.

A notification prohibiting use of polythene over limited area only has been issued. We feel that for the prohibition to be enforced effectively and comprehensively it is necessary to prohibit the use of polythene in the entire district of Allahabad specifically when Kumbh Mela is to commence within few months. It is appropriate that a notification banning use of polythene in the entire district be issued so that the river may be saved from the dangerous pollution caused by polythene, keeping in mind the huge number of pilgrims who are to visit Kumbh Mela. By the next date the State Government must issue a necessary notification banning use of polythene in the entire district of Allahabad. A copy of the same be brought on record by means of an affidavit. The Chief Secretary of the State may ensure that appropriate decision and notification is issued in this context.

Sri S.P. Kesharwani further submits that an affidavit has been filed indicating two places where Road Rotaries have to be constructed after the roads are widened. On certain roads, as has been mentioned in the affidavit of A.K. Dwivedi, Executive Engineer, Construction Division-I, Public Works Department, dividers are proposed to be constructed.

An affidavit of A.D.A. has been filed, eight places have been identified in paragraph 7 where Road Rotaries are proposed to be constructed.

Both Allahabad Development Authority as well as the Public Works Department may bring on record by means of an affidavit the details of measurement along with photographs of the roads where Rotaries and dividers are proposed to be constructed, for consideration by the next date. Learned Amicus Curiae has pointed out that despite several orders of the Court the repairs/restoration of the roads has not been undertaken by the various departments who are entrusted with the job. He submits that the progress in that regard is not satisfactory. He further submits that there being no proper cooperation between various departments, including the power corporation, the work is being hampered. He submits that looking to the ensuing Kumbh

Mela, since large number of works are to be undertaken involving large public finance, as well as for effective implementation of the projects the Divisional Commissioner be authorized to constitute a committee to monitor the progress and quality of works to be so undertaken. Looking to the ensuing Kumbh Mela, specifically the fact that large number of works involving huge public money are to be carried out, we direct the Divisional Commissioner, Allahabad to constitute a committee, which may be entrusted the work of supervision in respect of restoration of roads, nala, nalies as well as other development works and projects. The said committee shall be headed by the Divisional Commissioner himself.

Learned Amicus Curiae submits that all drains/Nalas of city of Allahabad are full of silt and unless they are cleaned, the pollution of the river could be adversely effected.

We are of the opinion that removing of the silt from the drains/Nalas in its entirety must be carried out on war footing.

Sri S.D. Kautilya, learned counsel for the Nagar Nigam informs that Nagar Nigam has already initiated steps for cleaning of the drains/Nalas.

We direct that work of removing the silt from drains/Nalas throughout the city of Allahabad must be completed by 31st October, 2012. The work should be undertaken on war footing. All encroachment, wherever they exist on drains/Nalas, should be removed with firmness and without any default. An affidavit be filed by the Nagar Ayukt himself along with photographs indicating the work done.

Sri Sudhanshu Srivastava, Advocate, who has filed Writ Petition No. 41310 of 2010, which has been tagged with this petition, submits that large number of idols of Goddess Durga are immersed every year in river Yamuna at Saraswati Ghat near Sangam, which adversely effects the quality of water and increases pollution in the river. He submits that the district administration and development authority be directed to take steps so that alternative sites are provided for immersion of idols of Goddess Durga to various Barwaries.

We direct the District Magistrate, Allahabad to hold a meeting with the officers of the Allahabad Development Authority as well as other concerned department, and with the representatives of the respective Durga Puja Barwaries for finding out the alternative places for immersion of Idols. A decision be taken and made effective for the ensuing Durga Puja. The decision and steps taken may be brought on record by means of an affidavit on the next date.

We may record that in view of the notification banning the use of polythene within two kilometers of river Ganga already enforced, the State officers have to necessarily ensure that no polythene is brought within the prohibited area nor is permitted to be thrown into the river.

Put up on 09.10.2012.

Order Date :- 28.9.2012

?Court No. - 37

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4003 of 2006

Petitioner :- Re: Ganga Pollution

Respondent :- State Of U.P. And Others

Petitioner Counsel :- Vijay Chandra Srivastava,A.K. Gupta,A.K. Srivastava,Anil Tiwari,Arun Kumar,Arvind Agarwal,Baij Nath Yadav,Baleshwar Chaturvedi,D.B. Mishra,D.S. Mishra,Jagdish Tewari,K.C.

Pandey,P.N. Mishra,S.K. Srivastava,S.K. Tyagi,Shailesh Singh,Sharad Kr. Srivastava,Sunita Sharma,V.B. Singh,V.C. Mishra,Vivek Mishra,Yogesh Krishna Mishra

Respondent Counsel :- C.S.C.,A.K. Mishra,Ajay Bhanot,Anjani Kumar Mishra,B.D. Shukla,C.L.Pandey,Chandan Sharma,Dr. H.N.Tripathi,H.N. Singh,H.P. Dubey,Hem Pratap Singh,Iqbal Ahmad,J.J.Munir,Jyotindra Misra, A.G.,Kashif Zaidi,M.C. Chaturvedi,M.C. Tripathi,M.K.Alam,Mohd.Khursheed Alam,Mridul Tripathi,N. Misra,Omprakash Yadav,P.S. Baghel,Pankaj Kumar Shukla,R.B. Shukla,Rajiv Lochan Shukla,Ravi Kant,S.A. Lari,S.G.Hasnain, Addl.A.G.,S.M.A. Kazmi,S.P. Kesharwani,S.P. Singh,Saumya Misra,Suneel Dubey,T.M.Khan,Tahir Hussain,Tanmay Agarwal,Udain Nandan,Umesh Narain Sharma,Vivek Birla,Vivek Verma,W.A. Hashmi

Hon'ble Ashok Bhushan,J.

Hon'ble Arun Tandon,J.

The Court has been informed about the death of Shri R.N. Trivedi, Senior Advocate, who was to appear in this Public Interest Litigation today.◆ Shri Trivedi was an eminent advocate, who has given great assistance to this Court in this Public Interest Litigations.◆ His submissions put in soft spoken words expressed his scholarly knowledge and had great persuasive value.◆ His death is not loss to this Court only but a loss to entire legal fraternity.

Heard Shri Arun Kumar Gupta, learned Amicus Curiae, Shri S.P. Kesarwani, Additional Chief Standing Counsel, Shri Jaideep Mathur and Shri S.M.A. Kazmi learned Senior Advocates, Shri A.K. Mishra for Allahabad Development Authority, Shri Shashi Nandan learned Senior Advocate assisted by Shri Sudeep Harkauli.

An affidavit has been filed by Nagar Nigam, Allahabad sworn by Shri S.L. Yadav in which he states that in pursuance of our order dated 8.9.2012, the officials of the Nagar Nigam along with the Vice Chairman of Allahabad Development Authority and Municipal Commissioner inspected the places. It has been stated that no land is available around Civil Lines area for adjustment of the shops, which was vacated from vicinity of Central Administrative Tribunal. It is, however, submitted that Nagar Nigam proposes to construct shops on the first floor of premises no. 30 M.G. Marg, wherein it is proposed to allot one shop to the owners of the Spicy Byte.◆ He submitted that steps shall be taken expeditiously and he further submitted that other shops to be constructed on first floor of premises No. 30 shall be allotted by auction to protect the revenue of Nagar Nigam.

Shri S.P. Kesarwani, Additional Chief Standing Counsel submitted that work order with regard to installation of C.C.T.V. Cameras at Kanpur Nagar has been issued by order dated 4.10.2012 and the work is proposed to be completed within two months.◆ He further submits that a notification dated 8th October, 2012◆ has been issued by which it has been notified that use or sale of polythene of thickness less than 40 microns is prohibited in the entire District of Allahabad.◆

Learned Amicus Curiae submitted that prohibition on use or sale of polythene shall not be effective measure to stop the use of polythene, unless manufacturing of polythene of thickness less than 40 microns is also not prohibited.

Shri S.P. Kesarwani may also seek instructions in this regard and file an appropriate affidavit. He may also give the justification as to why the prohibition of polythene of less than 40 microns has been ordered. In so far as, the dredging machine is concerned, an affidavit has been filed by the Irrigation Department.◆ Reference has been made to the letter dated 8th October, 2012 of the Superintending Engineer noticing that there being only one tender with regard to dredging machine, the matter has been referred to the State Government. The letter of the State Government dated 8th October, 2012 has also been placed before us addressed to the Engineer in Chief, Irrigation informing that the matter has been referred for obtaining opinion of the Finance Department.◆ The further development in this regard may be brought on record by means of an affidavit.

An affidavit on behalf of the District Magistrate, Allahabad has been filed by the Additional District Magistrate, Shri N.K. Singh. It has been stated in the affidavit that the meeting was convened by the District Magistrate with the office bearers of various Durga Pooja Committees and it has been stated that

there being insufficient time to make an alternate arrangement for immersion of idol this year. ♦ It has been decided as under:-

"That in view of the fact that festival of Durga Pooja is to begin very shortly and there is insufficient time to make any alternative arrangement for immersion of idols, it has been decided as under:-

♦♦♦♦♦♦♦♦ (i). As assured by the office bearers of Durga Pooja Committees/representatives of Barawaries, synthetic colours and plaster of paris shall not be used in making idols and instead natural colour and cotton shall be used and prior to immersion of idols in river Yamuna the flowers from the idols shall be taken out.

♦♦♦♦♦♦♦♦ (ii). As directed, the Sub-Divisional Magistrate of Tehsil Sadar, Tehsil Soraun, Tehsil Phoolpur and Tehsil Karchana (with respect to urban area) shall submit a report after survey as to availability of government land or gaon sabha land within a radius of 10 Kms of the city area which may be converted as a pond for immersion of idols."

Shri Sudhanshu Srivastava appearing for the Intervener has submitted that thousands of idols are being immersed in the river causing river pollution and the administration has to come up with an alternate site for immersion of idols. ♦ However, in ♦ so far as the ensuing Durga Pooja of 2012, which is to commence from third week of October, 2012, the time is too short to make an alternate arrangement and we are of the view that Administration may ensure that ♦ in the idols synthetic colours and plaster of paris be not used and in immersion the flowers, plastic materials and other things may not be permitted to be immersed in the river Yamuna. It has further been suggested that there are other places apart from Saraswati Ghat, namely, Boat Club and Shivala Ghat, where alternate arrangements can be made. Shri Gupta, learned Amicus Curiae has also filed an affidavit in which certain suggestions made by Bangali Welfare Association has been brought on record. A letter has also brought on record dated 1.10.2012 of ♦ Bangali Welfare Association addressed to the District Magistrate in which after noticing the river pollution, it has been stated that this year the plaster of paris and synthetic cloths and chemicals shall not be used and those, who uses the aforesaid materials shall be punished. It has further been stated in the letter that before the place of immersion, big containers be made available by the Administration so that all Flowers, Plastics and Synthetics be put in the containers so that it may not go into the river. Additional District Magistrate, who is present in the Court has informed that appropriate arrangements with regard to providing containers shall be made.

We have considered the issue of immersion of idols in the river Yamuna/Ganga. Every year thousands of Durga Pooja Barawari immerses their idols in the river, which causes river pollution and alternate arrangements for immersion has to be found out by the District Administration. The District Administration may find out an alternative site in the rural side, where a big pond or lake can be dug, providing an alternate place for immersion of idols and use of the said place for other purposes. An appropriate project may be prepared for this purpose by the Competent Authority, which shall be a permanent solution for every year, saving river pollution to some extent. We further direct that District Magistrate may obtain appropriate undertaking from all Durga Poojas of this year, so that to ♦ some extent, river pollution be controlled.

Learned Amicus-curiae has also referred to a news item as Annexure No. 5 to the affidavit, where the news has been published of death of a girl, namely, Subhi Srivastava, which was caused due to boulders, which were placed on the road. Learned Amicus Curiae submitted that the boulders were negligently placed on the road and no proper care was taken, which resulted in the death of the girl.

The District Magistrate may look into the aforesaid and take appropriate action against the guilty persons and take such civil or criminal action as may be required by law and also inform the Court about such action by means of an affidavit.

An affidavit has been filed by Shri A.K. Dwivedi, Executive Engineer, Construction Division-I, Public Works Department, Allahabad regarding proposed dividers to be constructed on four roads as mentioned in paragraph no. 3 of the affidavit and two rotaries as mentioned in paragraph no. 4 which is to be

constructed by Public Works Department. It has been prayed by Shri S.P. Kesarwani that appropriate dividers be permitted to be constructed.

Shri Gupta, learned Amicus Curiae submitted that the roads are not of that width on which permission for construction of dividers can be given. We are of the view that let a report be submitted by Learned Amicus Curiae and Shri S.P. Kesarwani, Additional Chief Standing Counsel, with the aid of PWD officers after inspecting all the four places, where dividers are proposed and two rotaries for which report shall be submitted by the next date.

Shri Jaideep Mathur, learned Senior Advocate assisted by Shri A.K. Mishra relying on affidavit filed by Amar Nath Upadhaya, Secretary of Allahabad Development Authority submitted that appropriate widening of places and removal of the transformers have been undertaken with regard to rotaries, which are proposed to be constructed. He has referred to eight rotaries in various places of the city and has annexed copy of the diagram and some photographs. We are of the view that learned Amicus Curiae may submit a report after inspecting the aforesaid places.

Shri S.P. Kesarwani, Additional Chief Standing Counsel may inspect the places of eight rotaries along with learned Amicus Curiae and the appropriate report be submitted by the next date.

An affidavit has been filed by the Sri S.L. Yadav, Legal Advisor of Nagar Nigam has been brought on the record. We are of the view that an appropriate affidavit be filed by the Nagar Ayukt or some other officials of the corporation, who are entrusted with the job. In the affidavit details of certain constructions of nalties or nalas around Hanuman Temple and other places have been referred. Reference has been made to certain difficulties faced while constructing nalties and nalas around Hanuman Temple. It is stated that certain objections were raised.

A letter of the Nagar Nigam dated 29th August, 2012 (Annexure No. 5) has been referred to, which letter reads that this Court in this Public Interest Litigation has issued directions for removal of unauthorized constructions. This Court directed that all unauthorized constructions obstructing the flow of water in nalties and nalas be removed. Even if, the obstruction is made by some shops, houses or temples the Nagar Nigam should ensure that the said unauthorized obstructions are removed and nalties and nalas be made in running condition to ensure that there are proper flow in Nalties and Nalas resulting in flow from sewer so as to mitigate the river pollution.

Two letters have also brought on record dated 3.9.2012 (Annexure No. 3) as well as letter addressed to the District Magistrate dated 29th August, 2012 (Annexure No. 5), where request has been made for removing the unauthorized constructions, we are of the view that when the constructions have been unauthorizignly made, it is the duty of the Nagar Nigam to take steps for its removal and District Administration has to provide necessary help including police help in the matter. We direct that Nagar Nigam may take appropriate steps with the help of Administration and ensure that unauthorized encroachments from nalties and nalas be removed and an affidavit to this effect may be filed by the next date.

It has also been pointed out to the Court that drains on both sides of Allahabad Junction are not in running condition, the Nagar Nigam may look into the matter and file an affidavit on the next date after removing encroachments from the drains of nalties and nalas.

The affidavit filed the M/s. Pancham Realcon Pvt. Ltd is taken on record. It is submitted by Shri S.M. Kazmi and Shri Jaideep Mathur that any date may be fixed with regard to hearing of the issue of 500 meter highest flood level. The said matter shall be heard on 6th November, 2012 at 2 p.m.

An affidavit filed by on behalf of Yeshu Darbar Trust is taken on record. Dr. H.N. Tripathi has filed an affidavit on behalf of U.P. Pollution Control Board, Kanpur, which is taken on record.

Shri M.A. Haseen has filed an affidavit on behalf of Mohd. Naseem Hashmi in which various photographs have been brought on record alleging unabated construction by Kyriya Yog Sansthan. It has been further stated that a Suit No. 1164 of 2010 has been filed in the Civil Court in which the application for grant of temporary injunction has not yet been decided.

Shri A.K. Mishra, learned counsel for Allahabad Development Authority submitted that Allahabad Development Authority has also appeared in the suit and is taking appropriate steps for early disposal of the matter. He submits that appropriate steps shall be taken by Allahabad Development Authority for disposal of the pending matter in the Civil Court. Shri A.K. Mishra, learned counsel for Allahabad Development Authority may also file reply to the affidavit of Mohd. Naseem Hashmi. The photographs as has been filed in the affidavit, may be looked into and present day status of the said construction may also be brought before the Court by photographs. We do not see any reason as to why the civil suit be not decided at an early date looking to nature of the dispute in the suit.

Sri Shailendra Kumar Singh appearing on behalf of Kyriya Yog Sansthan submits that he shall also file a reply to the affidavit filed by Mohd. Naseem Hashmi. He submits that the constructions which have been shown in the photographs do not relate to Kyriya Yog Sansthan and he shall file an appropriate affidavit to that effect.

List on 19th October, 2012 at 2 p.m. With regard to consideration of affidavits filed by P.W.D. And Allahabad Development Authority for constructions of rotaries and Dividers and affidavits of Nagar Nigam for removal of unauthorized constructions on nalties and nalas.

Order Date :- 9.10.2012

S.Prakash

HIGH COURT OF JUDICATURE AT ALLAHABAD

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Respondent Counsel :- C.S.C.,A.K. Mishra,Ajay Bhanot,Anjani Kumar Mishra,B.D.

Shukla,C.L.Pandey,Chandan Sharma,Dr. H.N.Tripathi,H.N. Singh,H.P. Dubey,Hem Pratap Singh,Iqbal Ahmad,J.J.Munir,Jyotindra Misra, A.G.,Kashif Zaidi,M.C. Chaturvedi,M.C.

Tripathi,M.K.Alam,Mohd.Khursheed Alam,Mridul Tripathi,N. Misra,Omprakash Yadav,P.S.

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Hon'ble Ashok Bhushan,J.

Hon'ble Arun Tandon,J.

Heard Shri Arun Kumar Gupta, learned Amicus Curiae assisted by Shri Shailesh Singh Advocate, Shri S.P. Kesarwani, Additional Chief Standing Counsel, Shri S.D.Kautilya on behalf of the Nagar Nigam, Shri Ashwani Kumar Mishra, counsel for the Allahabad Development Authority.

Shri K.N. Tripathi, Senior Advocate has put in appearance on behalf of the shopkeepers, who have their shops at premises Municipal No. 30 M.G.Marg, Civil Lines, Allahabad. He submits

that Nagar Nigam has filed an affidavit in this P.I.L. proposing to construct shops on the first floor of the existing shops at Municipal No. 30, M.G.Marg. He submits that shopkeepers of the existing shops have objections in raising of constructions on the first floor of their building. We find that an affidavit was filed by the Nagar Nigam, Allahabad proposing construction of shops on 1st floor at 30 M.G. Marg so as to adjust the owner of 'Spicy Bite' as he had himself removed his shop from the front of Gate of Central Administrative Tribunal on the asking of the Nagar Nigam. We however clarify that this Court has neither issued any directions for any such constructions nor is regulating the construction of the shops at 30, M.G.Marg. It is for the Nagar Nigam and other authorities to take a decision after considering all aspects of the matter. The applicants are at liberty to raise their objections before the authority concerned.

An affidavit has been filed by M.H.Usmani, owner of Spicy Bite praying that the Nagar Nigam may be asked to expedite the construction at the offered alternate site. The Nagar Nigam may expeditiously consider the issue of allotment at the alternate place. It goes without saying that any constructions by the Nagar Nigam at any place should be made only after the construction plan is approved by the Allahabad Development Authority.

A joint report by the learned Amicus Curiae and the Additional Chief Standing Counsel has been filed today which is taken on record. It has been informed that inspection of the various roads and crossing was made by them, sufficient space is available for construction of rotaries. The roads have been widened sufficiently so as to have dividers. Learned Amicus Curiae however pointed out that along with the constructions of rotaries, construction of footpath along the roads for the entire length of the road is necessary. We record that in absence of footpath along the entire length of the road is a must. No divider or rotary can be constructed without there being a footpath along the entire length of the road. The pedestrians have the first right on the road. Hence, before construction of any rotary or divider, construction of footpath is a must. We emphasise that construction of rotaries and dividers shall be effected only after footpath are provided throughout the length of the roads on which such constructions have to be made. There should be no complaint that such dividers and rotaries have been constructed without there being a footpath along the road.

In an earlier affidavit filed by the A.D.A. as well as the P.W.D., guidelines provided by the Indian Road Congress in the matter of construction of dividers and rotaries have been detailed. We direct that the said guidelines shall be strictly followed and the Chief Engineer of the Public Works Department (P.W.D.) as well as the concerned authority of the Allahabad Development Authority. They shall ensure that constructions of dividers and rotaries is made in accordance with the said guidelines.

Learned Amicus Curiae has further pointed out that the rotaries to be constructed should not exceed 2 feet or 2 feet in height so that the visibility at the cross section is not effected. We further direct that the rotaries shall not exceed the prescribed height so that the visibility across the roads is not hampered. No statue shall be installed at the rotaries.

Shri S.P. Kesarwani has filed an affidavit on behalf of the Urban Development Department, Government of U.P., Lucknow. It has been stated that the Government of India vide notification dated 04.02.2011 has framed Plastic Waste (Management and Handling) Rules, 2011 and in part (c) of Rule 5 a condition has been imposed that no person shall manufacture, stock, distribute or sell any carry bag made of virgin or recycled or compostable plastic, which is less than 40 microns in thickness. The State Government has only adopted the said thickness in its

notification banning use of polythene in Allahabad. The State has referred the issue to the Secretary, Ministry of Environment and Forest, New Delhi on 15.10.2012 for clarifying the technical reasons for prohibiting the use and sale of polythene of less than 40 microns in thickness only.

We are of the opinion that the district authorities shall not be effectively able to control the use of polythene if the ban is restricted to polythene of less than 40 microns thickness. There may be great difficulty in judging the thickness of the polythene every time at every place. The Apex Court has already opined that polythene is worse than an Atom Bomb and another Division Bench of this Court has already banned all kinds of polythene in district Mathura.

We feel that, for effective monitoring the ban on use of polythene bags etc., there should be no restriction on the thickness of polythene used. We, therefore, direct that till further orders issued, there shall be complete ban on use and sale of polythene bags and use of polythene as packing material for food stuff etc. in the entire district of Allahabad. The District Magistrate, the Nagar Nigam, the A.D.A., officers of the Pollution Control Board and the Magh Mela Adhikari shall ensure strict compliance of this order and in no case polythene bags shall be permitted to be used in the city of Allahabad. The Commissioner of the Division has hold a meeting of all the responsible officers for effective compliance of the said ban.

We further direct the officers of the U.P. Pollution Control Board, Allahabad to draw samples of water at Yamuna and Sangam at Allahabad and report its quality after chemical analysis, both before the immersion of Idols of Durga and after such immersion. The report shall be filed by the next date fixed.

Shri S.P. Kesarwani in pursuance to the earlier direction issued qua death of Shubhi Srivastava, informs that a magisterial enquiry has been directed and shall be completed by 17.10.2012 by the District Magistrate. Let the report of the enquiry be brought on record by means of an affidavit by the next date fixed.

Learned Amicus Curiae has pointed out that despite the orders of this Court qua no construction on the road pattries, several constructions have been made in clear violation thereof by the authorities at Allahabad as well as private persons. Shri S.k.Garg, Advocate has filed an application stating therein that certain construction adjacent to Rotary Park, Thornhill Road have been made. We direct that the Municipal Commissioner shall look into the complaint and all unauthorized constructions on the road pattries where ever found, shall be demolished without exception.

An affidavit on behalf of the Irrigation Department has also been filed by Shri S.P. Kesarwani enclosing a copy of the letter dated 18.10.2012 with regard to purchase of dredging machine for Kumbh Mela. The outcome of the proceedings may be brought on record by the next date fixed.

Shri S.D.Kautilya on behalf of the Municipal Commissioner, Nagar Nigam, Allahabad has filed an affidavit stating therein that 11 nalas are in the process of being cleaned. Shri S.D.Kautilya has informed that Nagar Nigam has programmed the cleaning of nalas and removal of encroachment and the work shall be completed by 31.10.2012.

In our opinion the work of cleaning of the drains and nalas must be done on war-footing and appropriate direction has been issued earlier. We insist upon the Nagar Ayukt as well as the district administration to ensure that all the drains and nalas through out the city must be cleaned by 31.10.2012. The silt shall be removed and shifted to a suitable place by 31.10.2012.

The encroachment shall also be removed without any favour uniformly during the same period. The Nagar Ayukt shall file his personal affidavit along with the photographs on the next date depicting the drain and nalas which have been cleaned as well as the unauthorized constructions which have been removed.

Learned Amicus Curiae has pointed out that electric crematorium at Daraganj is not working since last four months. Learned Counsel for the Nagar Nigam informs that the aforesaid fact is in the knowledge of the Municipal Commissioner and appropriate steps shall be taken within one month from today for the crematorium to be made operational. A report in that regard may be brought on record by the next date fixed.

We have also been informed that the Divisional Commissioner has forward certain proposal, for disposal of unclaimed dead bodies of human being/animals which are thrown in the river ganges, to the State Government. Learned Additional Chief Standing Counsel may also file an affidavit disclosing the decision taken by the State Government on the proposal by the next date fixed.

An affidavit disclosing the status of installation of C.C.T.V. Cameras at Kanpur may also be filed by the next date.

Shri V.C. Srivastava, Advocate submits that in view of the ensuing Dussehra, the A.D.A. and the Nagar Nigam be directed to take appropriate steps for immediate repair of those roads from where the Ram Dal procession has to move. He also points out that near Parade Ground dirty water has been accumulated. Let the authorities take note of the said fact and take appropriate action at the earliest.

List on 06.11.2012.

Dated : 19.10.2012

VR/PIL (WP) 4003/06

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4003 of 2006

Petitioner :- Re: Ganga Pollution

Respondent :- State Of U.P. And Others

Petitioner Counsel :- Vijay Chandra Srivastava,A.K. Gupta,A.K. Srivastava,Anil Tiwari,Arun Kumar,Arvind Agarwal,Baij Nath Yadav,Baleshwar Chaturvedi,D.B. Mishra,D.S. Mishra,Jagdish Tewari,K.C. Pandey,P.N. Mishra,S.K. Srivastava,S.K. Tyagi,Shailesh Singh,Sharad Kr. Srivastava,Sunita Sharma,V.B. Singh,V.C. Mishra,Vivek Mishra,Yogesh Krishna Mishra

Respondent Counsel :- C.S.C.,A.K. Mishra,Ajay Bhanot,Anjani Kumar Mishra,B.D.

Shukla,C.L.Pandey,Chandan Sharma,Dr. H.N.Tripathi,H.N. Singh,H.P. Dubey,Hem Pratap

Singh,Iqbal Ahmad,J.J.Munir,Jyotindra Misra, A.G.,Kashif Zaidi,M.C. Chaturvedi,M.C.

Tripathi,M.K.Alam,Mohd.Khursheed Alam,Mridul Tripathi,N. Misra,Omprakash Yadav,P.S.

Baghel,Pankaj Kumar Shukla,R.B. Shukla,Rajiv Lochan Shukla,Ravi Kant,S.A.

Lari,S.G.Hasnain, Addl.A.G.,S.M.A. Kazmi,S.P. Kesharwani,S.P. Singh,Saumya Misra,Suneel

Dubey,T.M.Khan,Tahir Hussain,Tanmay Agarwal,Udain Nandan,Umesh Narain Sharma,Vivek

Birla,Vivek Verma,W.A. Hashmi

Hon'ble Ashok Bhushan,J.

Hon'ble Arun Tandon,J.

1.Heard Sri C.B. Yadav, learned Additional Advocate General for the State, Sri S.P. Kesarwani, Additional Chief Standing Counsel, Sri Dr. H. N. Tripathi, learned counsel for U.P. Pollution Control Board, Allahabad, Sri Ashwani Kumar Mishra, learned counsel for the Allahabad Development Authority and Sri Arun Kumar Gupta, learned Amicus Curiae.

2. An application has been filed on behalf of M/s Anant Packagers and four others praying for recalling of the order dated 19.10.2012 so far as it imposes ban for use and sale of polythene bags and use of polythene as packing material for food stuff etc. in the entire city of Allahabad.

3. Sri U. N. Sharma, Senior Advocate has submitted that the rules had already been framed, namely, Plastic Waste (Management and Handling) Rules, 2011 which itself contains ample protection. However, the said rules are not properly implemented by the authorities who are entrusted with their implementation. He has further submitted that complete ban shall cause hardship.

4. Sri C.B. Yadav, learned Additional Advocate General for the State has also submitted that for ensuing Kumbh, the distribution of milk in the area shall also suffer certain hardship unless some alternative measures are not permitted. He has referred to a Division Bench judgement of Delhi High Court in Writ Petition (Civil) No. 883 and CM 4355 of 2009 (All India Plastic Industries Association and others Vs. Government of NCT of Delhi) decided on 14.07.2009 that use and storage of plastic bags have been permitted in the NCT of Delhi in some exempted categories.

5. Sri Arun Kumar Gupta, learned Amicus Curiae seeks time to submit his objection to the application submitted on behalf of M/s Anant Packagers and four others. Sri C.B. Yadav, learned Additional Advocate General for the State may also submit his reply, if any, to the application submitted by M/s Anant Packagers and four others. Learned counsel for the parties may also bring on record relevant materials with regard to biodegradable plastic and they may file appropriate affidavit within three weeks.

6. An affidavit has also been filed on behalf of the Urban Development Department bringing on record the progress report with regard to the installation of C.C.T.V. Cameras at STP and CETP at Kanpur. An affidavit with regard to purchase of dredging machine has also been filed by the Irrigation Department in which the reference of meeting held on 5th November, 2012 has also been given. In the affidavit filed by Urban Development Department, in para 3, it has been stated that work pertaining to installation of C.C.T.V. Cameras is to be completed by 07.12.2012. Let an affidavit giving the details of completion of installation be brought on record.

7. In so far as the purchase of dredging machine is concerned, we are of view that State should take urgent steps so that dredging machine may be available for use in the Kumbh Mela and all the steps pertaining to dredging machine should be completed by 30.11.2012.

8. An affidavit on behalf of the District Magistrate has also been filed bringing on the record the Magisterial enquiry report in the matter of death of Kumari Subhi Srivastava.

9. An affidavit of Additional City Magistrate-II, Allahabad has been filed in which report dated 31.10.2012 has been annexed which is the report pertaining to Magisterial inquiry with regard to the death of student Kumari Subhi Srivastava with certain recommendations which have been made in the report dated 31.10.2012. We direct that the appropriate action as suggested in the report be taken and follow up of report be also brought on record.

10. Sri C.B. Yadav, Additional Advocate General has submitted that the District Magistrate shall also take action by informing all Educational Institutions and other institutions to implement the recommendations given in the report.

11. Dr. H. N. Tripathi, learned counsel has filed an affidavit of Regional Officer, U.P. Pollution Control Board, Allahabad bringing on record the report of Chemical Analysis of water quality of river Yamuna at Allahabad before the immersion of Idols of Goddess Durga and after such immersion. The report contains the analysis report for 23.10.2012, 24.10.2012 and 25.10.2012. The report indicates that the water quality has deteriorated after the immersion of the idols. We have already indicated in the earlier order passed in this writ petition that appropriate step be initiated so that by the next year, when the time of immersion comes there shall be a pond/ place available outside the city.

12. Learned Additional Advocate General has brought to the notice of this Court that the S.D.M. of Tehsils Sadar, Sorano, Phoolpur and Karchchana have been informed to find out a suitable

place where a pond can be constructed and the said report is still awaited. We direct that the appropriate report be obtained immediately and necessary project in that concerned be prepared and submitted to the Government for approval.

13. An affidavit has also been filed by Nagar Nigam, Allahabad annexing therewith certain photographs for cleaning of drains, a perusal of which indicates that certain works have been undertaken but there are garbage still required to be immediately removed from the places.

14. Sri S.D. Kautilya, learned counsel for the Nagar Nigam, Allahabad has submitted that a request has been sent to Principle Secretary, Nagar Vikas U.P. Government to provide the nala cleaning machines from Nagar Nigam, Kanpur, Lucknow and Varanasi for one month to Nagar Nigam, Allahabad so that the work of nala cleaning may be completed before Kumbha 2012. It has submitted by learned counsel for Nagar Nigam that it is not possible to manually clean the drains and necessary cleaning machine may be required. It is submitted by learned counsel for Nagar Nigam that a request letter has been sent on 25.10.2012 in the office of Special Secretary, Nagar Vikas Vibhag, Section-1, U.P. Sashan, Lucknow to make available necessary machines. A bare perusal of the letter indicates that Nagar Nigam has made a request for making available the said machine from nearby Nagar Nigam i.e. Kanpur, Lucknow and Varanasi. We are of the view that cleaning of drains is a permanent work for which the machines should be available to the Nagar Nigam, Allahabad itself. Learned counsel for the Nagar Nigam submitted that appropriate proposal for purchase of necessary machine shall be submitted to the State Government within three days.

15. Learned Additional Advocate General, who is present in the Court, has stated that the State Govt. shall take appropriate action urgently within two weeks and communicate its decision to the Nagar Nigam regarding machine for cleaning. Learned counsel for the Nagar Nigam submitted that the removal of the encroachment on the road patari is in progress and appropriate step has been taken by Nagar Nigam. It has also been pointed out by Amicus Curiae that on Thornhill Road there at various places huge sand is accumulated for sale to the public. Learned Additional Advocate General shall intimate the District Authorities to take appropriate action in this regard and file an affidavit of compliance report by the next date. Learned Amicus Curiae has also pointed out with regard to the encroachment near Mahatama Gandhi Marg.

16. Learned counsel for the Nagar Nigam has also pointed out that with regard to some unauthorized constructions there are interim orders shall operative, from the Civil Court. We are of view that the Nagar Nigam must bring on record by means of an affidavit all such order of injunctions for perusal of the Court so that appropriate direction in this regard may be issued. We further clarify that with regard to those unauthorized encroachment where there is no injunction, the Nagar Nigam shall proceed to take immediate action for removal of the encroachments. We have been informed that encroachments over drains, nallis and road patties are being removed in a selective manner. Encroachments made by influential people are left untouched especially on the road from Tulsi Chauraha to Hindu Hostel, Elgin Road in the Civil Lines area and around Nayya Marg. We clarify that there should be uniform removal of encroachments and the Nagar Ayukt shall file an affidavit by next date disclosing reason as to why certain encroachments are not being removed.

17. It has been pointed out by Sri B.B. Paul, learned counsel for the applicant, that certain transformers are still on the road which have not yet been removed and they are still on the road. We observe that the U.P. Power Corporation shall take appropriate step and as and when Nagar Nigam informs about any transformer which is causing hindrance to the smooth flow of traffic or in the cleaning of drains, appropriate action may be taken by the Power Corporation. All the said transformers which are on the road patari may be removed at the earliest.

18. An affidavit has also being filed by Allahabad Development Authority. In paragraph 4 of the affidavit reference has been made with regard to the construction of Rotary at Andhawa More which is said to beyond the limits of Nagar Nigam, Allahabad. We clarify that there is no

restriction by this Court with regard to the Andhawa Mode, however, the construction of Rotary, should be made along with the road patari on the crossing.

19. In the affidavit of U.P. Pollution Control Board an inspection report has been brought on record which is carried out by the officers of the Pollution Control Board of 130 MLD and it has been mentioned in the report that near 130 MLD STP three unsecured ponds have been constructed in which disposal of sewage is undertaken. We direct the concerned units of U.P. Pollution Control Board and the Jal Nigam to take appropriate steps in that regard and take remedial steps immediately.

20. Sri M.A. Haseen, learned counsel for the intervener has stated that with regard to Noorulla Road construction of the road has not yet been completed. Learned Additional Advocate General for the State has stated that the said condition of the road shall be intimated to the authorities concerned.

21. Learned Amicus Curiae has also pointed out that the State Government has taken some decision for establishment of leather park at Bilaur, District Kannauj.

22. Learned Additional Chief Standing Counsel may file an affidavit bringing the details of the said schemes by the next date giving details of the allotments, if any.

23. An affidavit has also been filed on behalf of Yog Satsang Samiti/Kriya Yog Satsang Samiti in reply to the counter affidavit filed by Sri Mohammad Nasim Hashmi, which is taken on record.

24. An application has been filed by Sri Sudeep Harkauli, Advocate that steps for allotment of alternate site for M/s Spicy Bite has not yet been taken. We had already observed in our earlier order that steps for alternative site be expeditiously taken.

25. List on 06.12.2012 at 2:00 PM.

Order Date :- 6.11.2012

petitioner :- Re: Ganga Pollution

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Vijay Chandra Srivastava, A.K. Gupta, A.K. Srivastava, Amit Negi, Anil Tiwari, Arun Kumar, Arvind Agarwal, Bajj Nath Yadav, Baleshwar Chaturvedi, D.B. Mishra, D.S. Mishra, Jagdish Tewari, K.C. Pandey, P.N. Mishra, S.K. Srivastava, S.K. Tyagi, Shailesh Singh, Sharad Kr. Srivastava, Sunita Sharma, Tarun Agarwal, V.B. Singh, V.C. Mishra, Vivek Mishra, Yogesh Krishna Mishra

Counsel for Respondent :- C.S.C., A.K. Mishra, Ajay Bhanot, Anjani Kumar Mishra, B.D. Shukla, C.L. Pandey, Chandan Sharma, Dr. H.N. Tripathi, H.N. Singh, H.P. Dubey, Hem Pratap Singh, Iqbal Ahmad, J.J. Munir, Jyotindra Misra, A.G., Kashif Zaidi, M.C. Chaturvedi, M.C. Tripathi, M.K. Alam, Mehboob Ahmad, Mohd. Khursheed Alam, Mridul Tripathi, N. Misra, Omprakash Yadav, P.S. Baghel, Pankaj Kumar Shukla, R.B. Shukla, Rajendra Kumar Misra, Rajiv Lochan Shukla, Ravi Kant, S.A. Lari, S.G. Hasnain, Addl. A.G., S.M.A. Kazmi, S.P. Kesharwani, S.P. Singh, Saumya Misra, Suneel Dubey, T.M. Khan, Tahir Husain, Tanmay Agarwal, Udain Nandan, Umesh Narain Sharma, Vivek Birla, Vivek Verma, W.A. Hashmi

Hon'ble Ashok Bhushan, J.

Hon'ble Arun Tandon, J.

This is an application on behalf of Smt. Abhilasha Gupta Nandi, Mayor of Allahabad praying for a direction to the State Government to implement the guidelines laid down by the Apex Court in the case of Maharashtra Ekta Hawkers Union versus Municipal Corporation of Greater Bombay dated 09.09.2013 passed in Civil Appeal No. 4156 of 2002.

This Public Interest Litigation is with regard to prevention of pollution in river Ganga and has

been nominated to this Bench.

We are of the view that the application need not be entertained in this P.I.L. The issues raised by means of the present application may be agitated before making an appropriate petition before the Court hearing P.I.L. Application is rejected.

An affidavit has been filed on behalf of Manoj Srivastava referring to the orders passed by this Court on 09.10.2012 and 06.11.2012 respectively. With regard to immersion of Idols by Durga Puja Barawari in the Ganga and Yamuna in the city of Allahabad. This Court after hearing learned counsel for the Intervenor and the learned Amicus Curiae had issued various directions under the said orders. At that time an affidavit was filed by the Additional District Magistrate and it was stated that the time left was too short to make any arrangement permission may be granted to immerse the idols in the river Ganga and Yamuna in that year i.e. 2012. However, it was stated on behalf of the administration that in the next year i.e. 2013 the immersion of idols shall not be permitted in the river Ganga and Yamuna and some other suitable arrangements shall be made well in advance. These facts have been recorded in the Court's order dated 09.10.2012. The Court in its subsequent order dated 06.12.2012 had also noted the report of the U.P. Pollution Control Board that the quality of water deteriorated after immersion of idols in the rivers.

Today when the case was called out neither the Chief Standing Counsel nor the Additional Chief Standing Counsel is present. Although it was informed that the Additional Chief Standing Counsel shall assist the Court in this matter. No affidavit has been filed on behalf of the State disclosing the compliance of the assurance given in 2012.

Shri Manu Ghildyal, brief holder has informed the Court that certain places have been identified for immersion of idols this year.

An appropriate affidavit by the District Magistrate must be filed giving the details of arrangements made for this year by the next date fixed. We direct that no immersion of idols shall take place in river Ganga or Yamuna. It is for the administration to identify the suitable places for immersion of idols other than the rivers.

An affidavit has also been filed on behalf of U.P. Pollution Control Board with reference to Waste Plastic (Management and Handling) Rules, 2011. It is stated that the role of the U.P. Pollution Control Board is only to register the industries. It is for the municipal authorities to take necessary action in the matter of disposal etc. of plastic works.

Counsel for the Nagar Nigam has also been served a copy of the affidavit. Surprisingly no one is present on behalf of the Nagar Nigam also. Nagar Nigam may file an affidavit within two weeks giving details of projects in operation qua disposal of waste plastics as per the Waste Plastic (Management and Handling) Rules, 2011.

Inspection report of STP's at Kanpur and Allahabad has been filed. Certain deficiencies have been pointed out in the report. Let an affidavit be filed by the Managing Director, U.P. Jal Nigam in reply disclosing the steps taken to remove the deficiencies.

Shri M.A.Haseen, Advocate has filed an affidavit on behalf of Mohd. Nasim Hashmi. Along with the affidavit he has filed several photographs of the area which were submerged by the river Ganges in recent floods.

Counsel for the Allahabad Development Authority as well as the learned Amicus Curiae may file a reply to the affidavit.

Learned Amicus Curiae has pointed that the Sluice Gates at Salori, Mori Gate and near Beli

have not been completely repaired.

Learned Standing Counsel may file an affidavit giving details of steps taken in this regard.

Put up on 4th October, 2013 at 2:00 p.m.

Name of Shri A.P.Paul, Advocate appearing on behalf of the A.D.A. shall be shown in the list.

Dated :30.09.2013

VR/PIL/4003/06

?Court No. - 37

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4003 of 2006

Petitioner :- Re: Ganga Pollution

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Vijay Chandra Srivastava,A.K. Gupta,A.K. Srivastava,Amit Negi,Anil Tiwari,Arun Kumar,Arvind Agarwal,Baij Nath Yadav,Baleshwar Chaturvedi,D.B. Mishra,D.S. Mishra,Jagdish Tewari,K.C. Pandey,P.N. Mishra,S.K. Srivastava,S.K. Tyagi,Shailesh Singh,Sharad Kr. Srivastava,Sunita Sharma,Tarun Agarwal,V.B. Singh,V.C. Mishra,Vivek Mishra,Yogesh Krishna Mishra

Counsel for Respondent :- C.S.C.,A.K. Mishra,Ajay Bhanot,Anjani Kumar Mishra,B.D. Shukla,C.L.Pandey,Chandan Sharma,Dr. H.N.Tripathi,H.N. Singh,H.P. Dubey,Hem Pratap Singh,Iqbal Ahmad,J.J.Munir,Jyotindra Misra, A.G.,Kashif Zaidi,M.C. Chaturvedi,M.C. Tripathi,M.K.Alam,Mehboob Ahmad,Mohd.Khursheed Alam,Mridul Tripathi,N. Misra,Omprakash Yadav,P.S. Baghel,Pankaj Kumar Shukla,R.B. Shukla,Rajendra Kumar Misra,Rajiv Lochan Shukla,Ravi Kant,S.A. Lari,S.G.Hasnain, Addl.A.G.,S.M.A. Kazmi,S.P. Kesharwani,S.P. Singh,Saumya Misra,Suneel Dubey,T.M.Khan,Tahir Husain,Tanmay Agarwal,Udain Nandan,Umesh Narain Sharma,Vivek Birla,Vivek Verma,W.A. Hashmi

Hon'ble Ashok Bhushan,J.

Hon'ble Arun Tandon,J.

Shri Ramesh Upadhyya, learned Chief Standing Counsel appearing for the State has made a request that the matter may be adjourned for today and be taken up on Monday i.e. 07/10/2013, to enable the State to file an affidavit as directed by this Court on 30/9/2013.

Shri A. K. Gupta, learned Amicus Curiae is present in the Court.

As prayed, put up on 07/10/2013, at 2 P.M.

Order Date :- 4.10.2013

ase :- PUBLIC INTEREST LITIGATION (PIL) No. - 4003 of 2006

Petitioner :- Re: Ganga Pollution

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Vijay Chandra Srivastava,A.K. Gupta,A.K. Srivastava,Amit Negi,Anil Tiwari,Arun Kumar,Arvind Agarwal,Baij Nath Yadav,Baleshwar Chaturvedi,D.B. Mishra,D.S. Mishra,Jagdish Tewari,K.C. Pandey,P.N. Mishra,S.K. Srivastava,S.K. Tyagi,Shailesh Singh,Sharad Kr. Srivastava,Sunita Sharma,Tarun Agarwal,V.B. Singh,V.C. Mishra,Vivek Mishra,Yogesh Krishna Mishra

Counsel for Respondent :- C.S.C.,A.K. Mishra,Ajay Bhanot,Anjani Kumar Mishra,B.D. Shukla,C.L.Pandey,Chandan Sharma,Dr. H.N.Tripathi,H.N. Singh,H.P. Dubey,Hem Pratap Singh,Iqbal Ahmad,J.J.Munir,Jyotindra Misra, A.G.,Kashif Zaidi,M.C. Chaturvedi,M.C. Tripathi,M.K.Alam,Mehboob Ahmad,Mohd.Khursheed Alam,Mridul Tripathi,N. Misra,Omprakash Yadav,P.S. Baghel,Pankaj Kumar Shukla,R.B. Shukla,Rajendra Kumar Misra,Rajiv Lochan Shukla,Ravi Kant,S.A. Lari,S.G.Hasnain, Addl.A.G.,S.M.A. Kazmi,S.P. Kesharwani,S.P. Singh,Saumya Misra,Suneel Dubey,T.M.Khan,Tahir Husain,Tanmay Agarwal,Udain Nandan,Umesh Narain Sharma,Vivek Birla,Vivek Verma,W.A. Hashmi

Hon'ble Ashok Bhushan,J.

Hon'ble Arun Tandon,J.

Affidavit filed on behalf of the District Magistrate, Allahabad is taken on record.

This Court in its order dated 06.11.2012 had recorded the stand of the district administration, that in the year 2013 alternate site shall be found out for the purposes of immersion of idols after Durga Puja.

We therefore directed that State to find out suitable alternative place for immersion of idols before next Durga Puja festival so that immersion of idols is avoided in the river Ganga and Yamuna.

In the affidavit, which has been filed today, it is mentioned that the number of the idols, which have been installed in the district of Allahabad at various Durga Pooja Pandal, are thousands in number.

Certain correspondence between the authorities has also been brought on record.

After examining the affidavit of the District Magistrate we find that hardly any effective steps have been taken in past one year so as to arrange for suitable alternative places for immersion of idols. The date for immersion of idols is fixed well in advance, the administration has failed to carry out the assurance given to the Court in the previous year and as recorded in our order dated 06.11.2012.

Sri Ramesh Upadhyay, learned Chief Standing Counsel suggested that idols may be permitted to be dipped in the river and then taken out to be kept in containers and then transported to places out the city area.

The suggestion does not appear to be practicable. We further apprehend that introduction of such a practice for the first time may result in adversely affecting the sentiments of the followers and may create a serious law and order problem. Even otherwise all pollutants in the idols would enter the river once the idol is dipped in the river water. We directed on 30th September, 2013 that no idols' immersion shall be permitted in this year in river Ganga and Yamuna. We see no reason to relax the said direction.

We are of the view that the administration must find out alternate appropriate places with sufficient water and provide necessary facilities, including the route, road lights etc. for immersion of the idols.

Let the State take all steps in that regard for providing all the necessary facilities so that the idols of Durga Pooja Pandals are immersed at places other than river Ranga and Yamuna.

We repeat that no idols immersion shall take place in river Ganga and Yamuna.

Apart from immersion in river Ganga and Yamuna other places may be identified, developed and provided for by the district administration for the purpose.

We further direct that the State Government may issue appropriate direction to the district administration of all other districts, from where river Ganga and Yamuna flow, to ensure that suitable alternate places for immersion of idols are provided from next year. Immersion of idols in river Ganga and Yamuna must be stopped from 2014 throughout the State. The State Government must also provide necessary infrastructures in that regard to all the districts including the district of Allahabad, including release of funds.

Affidavit, pertaining to the STPs, filed today by the State is taken on record.

The issue in that regard shall be considered on the next date.

Order Date :- 7.10.2013

Petitioner :- Re: Ganga Pollution

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Vijay Chandra Srivastava,A.K. Gupta,A.K. Srivastava,Amit Negi,Anil Tiwari,Arun Kumar,Arvind Agarwal,Baij Nath Yadav,Baleshwar Chaturvedi,D.B. Mishra,D.S. Mishra,Jagdish Tewari,K.C. Pandey,P.N. Mishra,S.K. Srivastava,S.K. Tyagi,Shailesh Singh,Sharad Kr. Srivastava,Sunita Sharma,Tarun Agarwal,V.B. Singh,V.C. Mishra,Vivek Mishra,Yogesh Krishna Mishra

Counsel for Respondent :- C.S.C.,A.K. Mishra,Ajay Bhanot,Anjani Kumar Mishra,B.D. Shukla,C.L.Pandey,Chandan Sharma,Dr. H.N.Tripathi,H.N. Singh,H.P. Dubey,Hem Pratap Singh,Iqbal Ahmad,J.J.Munir,Jyotindra Misra, A.G.,Kashif Zaidi,M.C. Chaturvedi,M.C. Tripathi,M.K.Alam,Mehboob Ahmad,Mohd.Khursheed Alam,Mridul Tripathi,N. Misra,Omprakash Yadav,P.S. Baghel,Pankaj Kumar Shukla,R.B. Shukla,Rajendra Kumar Misra,Rajiv Lochan Shukla,Ravi Kant,S.A. Lari,S.G.Hasnain, Addl.A.G.,S.M.A. Kazmi,S.P. Kesharwani,S.P. Singh,Saumya Misra,Suneel Dubey,T.M.Khan,Tahir Husain,Tanmay Agarwal,Udain Nandan,Umesh Narain Sharma,Vivek Birla,Vivek Verma,W.A. Hashmi

Hon'ble Ashok Bhushan,J.

Hon'ble Arun Tandon,J.

This application was called on a mention being made by the counsel for the applicant, namely Bangali Welfare Association, Allahabad.

By means of this application certain directions in the matter of immersion of idols after Durga Puja have been prayed for.

We had issued certain directions under orders dated 07.10.2013.

Sri Suresh Singh, Additional Chief Standing Counsel may file an affidavit of the District Magistrate, Allahabad indicating as to what exact steps have been taken/shall be taken by the date of immersion in terms of the directions issued by us on 07.10.2013 so that proper place is made available for immersion of idols with sufficient quantity of water.

On his request put on Friday i.e. 11.10.2013 at 2.00 p.m.

Order Date :- 9.10.2013

Petitioner :- Re: Ganga Pollution

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Vijay Chandra Srivastava,A.K. Gupta,A.K. Srivastava,Amit Negi,Anil Tiwari,Arun Kumar,Arvind Agarwal,Baij Nath Yadav,Baleshwar Chaturvedi,D.B. Mishra,D.S. Mishra,Jagdish Tewari,K.C. Pandey,P.N. Mishra,S.K. Srivastava,S.K. Tyagi,Shailesh Singh,Sharad Kr. Srivastava,Sunita Sharma,Tarun Agarwal,V.B. Singh,V.C. Mishra,Vivek

Mishra, Yogesh Krishna Mishra

Counsel for Respondent :- C.S.C., A.K. Mishra, Ajay Bhanot, Anjani Kumar Mishra, B.D. Shukla, C.L. Pandey, Chandan Sharma, Dr. H.N. Tripathi, H.N. Singh, H.P. Dubey, Hem Pratap Singh, Iqbal Ahmad, J.J. Munir, Jyotindra Misra, A.G., Kashif Zaidi, M.C. Chaturvedi, M.C. Tripathi, M.K. Alam, Mehboob Ahmad, Mohd. Khursheed Alam, Mridul Tripathi, N. Misra, Omprakash Yadav, P.S. Baghel, Pankaj Kumar Shukla, R.B. Shukla, Rajendra Kumar Misra, Rajiv Lochan Shukla, Ravi Kant, S.A. Lari, S.G. Hasnain, Addl. A.G., S.M.A. Kazmi, S.P. Kesharwani, S.P. Singh, Saumya Misra, Suneel Dubey, T.M. Khan, Tahir Husain, Tanmay Agarwal, Udain Nandan, Umesh Narain Sharma, Vivek Birla, Vivek Verma, W.A. Hashmi

Hon'ble Ashok Bhushan, J.

Hon'ble Arun Tandon, J.

Re: Modification Application No. 301922 of 2013.

Heard Shri A.K. Gupta, learned Amicus Curiae, Shri Daya Shanker Mishra, and Shri Saurabh Basu for the Bengali Welfare Association, Allahabad, Shri S.P. Gupta, learned Advocate General and Shri Ramesh Upadhyay, learned Chief Standing Counsel for the State.

An application has been filed on behalf of the Bengali Welfare Association, Allahabad, making following prayer.

"It is therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to reconsider the aforementioned facts for the immersion of the Goddesses Durga and to permit the Barwaris to perform the immersion of Goddess Durga as per their rituals and traditions till there is no proper alternative arrangement provided by the District Administration and further permit the representatives of all barwaris to be impleaded as necessary parties and allow them to be heard, otherwise the petitioner shall suffer an irreparable loss and injury."

Shri Daya Shanker Mishra, and Shri Saurabh Basu appearing for the Bengali Welfare Association, Allahabad, submitted that the idols of Goddess Durga have been traditionally immersed in the river Yamuna and in spite of the order of this Court passed last year on 09/10/2012, no alternative arrangement has been made by the State.

The matter relating to immersion of Goddess Durga for this year was heard on 30/9/2013 and 07/10/2013 by the Court. On 07/10/2013, an affidavit was filed on behalf of the District Magistrate, duly sworn by Sunil Kumar, Additional City Magistrate-1st, Allahabad.

After hearing the learned Chief Standing Counsel and the learned Additional Chief Standing Counsel following order was passed on 07/10/2013:

"Affidavit filed on behalf of the District Magistrate, Allahabad is taken on record.

This Court in its order dated 06.11.2012 had recorded the stand of the district administration, that in the year 2013 alternate site shall be found out for the purposes of immersion of idols after Durga Puja.

We therefore directed that State to find out suitable alternative place for immersion of idols before next Durga Puja festival so that immersion of idols is avoided in the river Ganga and Yamuna.

In the affidavit, which has been filed today, it is mentioned that the number of the idols, which have been installed in the district of Allahabad at various Durga Pooja Pandal, are thousands in number.

Certain correspondence between the authorities has also been brought on record.

After examining the affidavit of the District Magistrate we find that hardly any effective steps have been taken in past one year so as to arrange for suitable alternative places for immersion of idols. The date for immersion of idols is fixed well in advance, the administration has failed to carry out the assurance given to the Court in the previous year and as recorded in our order dated 06.11.2012.

Sri Ramesh Upadhyay, learned Chief Standing Counsel suggested that idols may be permitted to be dipped in the river and then taken out to be kept in containers and then transported to places out the city area.

The suggestion does not appear to be practicable. We further apprehend that introduction of such a practice for the first time may result in adversely affecting the sentiments of the followers and may create a serious law and order problem. Even otherwise all pollutants in the idols would enter the river once the idol is dipped in the river water. We directed on 30th September, 2013 that no idols' immersion shall be permitted in this year in river Ganga and Yamuna. We see no reason to relax the said direction.

We are of the view that the administration must find out alternate appropriate places with sufficient water and provide necessary facilities, including the route, road lights etc. for immersion of the idols.

Let the State take all steps in that regard for providing all the necessary facilities so that the idols of Durga Pooja Pandals are immersed at places other than river Ranga and Yamuna.

We repeat that no idols immersion shall take place in river Ganga and Yamuna.

Apart from immersion in river Ganga and Yamuna other places may be identified, developed and provided for by the district administration for the purpose.

We further direct that the State Government may issue appropriate direction to the district administration of all other districts, from where river Ganga and Yamuna flow, to ensure that suitable alternate places for immersion of idols are provided from next year. Immersion of idols in river Ganga and Yamuna must be stopped from 2014 throughout the State. The State Government must also provide necessary infrastructures in that regard to all the districts including the district of Allahabad, including release of funds.

Affidavit, pertaining to the STPs, filed today by the State is taken on record.

The issue in that regard shall be considered on the next date."

In support of the modification application, it has been contended by the learned counsel for the applicant that the Court may allow the immersion of idols of Goddess Durga and other idols this year also in the river Yamuna/Ganga. It is submitted that religious sentiments and feelings of large number of persons are involved, hence the immersion be permitted in the river Yamuna/Ganga.

The matter regarding immersion of Goddess Durga was taken a year before on which date an application was also filed by the Bengali Welfare Association, Allahabad as well as by the District Administration, where categorical statements were made that the immersion of idols be permitted in the year 2012 in the river and from the next year, the immersion of idols be made at suitable alternative place as determined by the administration. The Administration was directed by the Court to find out suitable alternative place and provide parking/lights for safe and convenient immersion of idols. The court is dismay to note that in spite of the order passed by the Court, the Administration has not taken appropriate steps in that regard.

When the matter was earlier heard on 07/10/2013, it was suggested that certain places are in

the process of identification for providing alternative arrangement. It is a matter of common knowledge that the establishment of Durga Puja Barwaris are increasing day by day. It was pointed to the Court that at least 103 Durga Puja Pandals are in the city itself and minimum of five idols are there in each Barwaris. There are large number of places in the State of U.P. and other places where there are no river and immersion of idols is undertaken at those places in ponds. In the Villages also where there are no river, idols of Goddess Durga are immersed in the pond. Last year, the State Administration as well as the Bengali Welfare Association, Allahabad, had sought permission of the Court for immersion of the idol of Goddess Durga in the river Ganga/Yamuna for the year 2012 by filing an affidavit that from this year (2013) no immersion shall take place in river Yamuna/Ganga .

When the matter is taken up after a year, the Court is being asked to go backward and take steps back. The order was passed by the Court keeping in mind the ever increasing river pollution and to save the river Ganga/Yamuna. It is the responsibility of the State to provide safe and proper place not only for immersion of idols but also to provide all help with regard to all persons who practice different faith and religions. All necessary facilities are required to be provided by the State and the State cannot take benefit of its own inaction and come to the Court and say that they have not performed their duties and the Court may take a step backward. The Court does not appreciate the stand taken by the State. As noted in our earlier orders, in the last year before immersion and after immersion, the water was got analysed by the U.P. Pollution Control Board, and it was found after immersion that the quality of the water has deteriorated. Thus, it cannot be an issue that immersion of large number of idols running into thousands shall not pollute the water.

After hearing the parties, the Court had taken a decision that idols of Goddess Durga will not be immersed in the river Ganga/Yamuna this year. We see no justification to recall/relax our order. It is the duty of the Administration to provide alternative suitable place including ponds and other facilities for safe and convenient immersion of idols.

We direct that necessary details for immersion of all the idols be published in the local newspapers of Allahabad on Sunday i.e. 13/10/2013 so that all Pandals/Barwaris may come to know the places identified for immersion of idols and convenience regarding traffic/parking. We direct the Director General of Police, and Principal Secretary, (Home) to ensure that the entire process of immersion of idols is safely and conveniently undertaken including all traffic restrictions and safe way to all the Durga Puja Barwaris.

During the course of hearing, it has been suggested that pond across the river Ganga at Phaphamau has been identified. It has been stated by Shri Daya Shanker Mishra, learned Senior Advocate that there are no proper way to reach the said pond. It is for the administration to provide all necessary arrangements at that place for immersion of idols including way, parking place, jetty and lights.

We, direct that this order be brought to the notice of the Director General of Police, and Principal Secretary, (Home) and the Chief Secretary of the State to ensure all necessary arrangements to be made in this regard. The District Administration and the State may ensure that all proper and necessary arrangements are made in this regard.

The application is disposed of accordingly.

Order Date :- 11.10.2013

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