

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

APPLICATION NO.62 OF 2015

CORAM :

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)**

In the matter of:

SANDIP BADRINARAYAN KAYASTHA,

Residing at Alandi (Devachi),

Alandi, Taluka : Khed,

Dist: Pune.

APPLICANT

A N D

1. ALANDI MUNICIPALITY,

Through its Chief Officer,
Alandi Nagar Parishad Karyalaya,
Alandi Devachi, Tal. Khed,
Dist. Pune-412105.

2. PIMPRI CHINCHWAD MUNICIPAL CORPORATION.

Old Mumbai-Pune Highway,
Pimpri,
Pune-411 018.

3. Lonavala Municipal Council

Lonavala Municipal Council,
Lonavala.

4. MAHARASHTRA POLLUTON CONTROL BOARD,

Kalptaru Point, Sion Circle,
Sion (E),
Mumbai-400 022.

Through its Sub Regional Officer.

Having Regional Office at MPCB.

Jog Centre, 3rd Floor, Wakadewadi,
Pune-Mumbai Road,
Pune-411 003.

5. THE DISTRICT COLLECTOR, PUNE

Collectorate office,
Pune-411 001.

6. THE DIVISIONAL COMMISSIONER,

Pune Division, Council Hall,
Pune-411 001.

7. STATE OF MAHARASHTRA,

Through its Environment Department,
Having office at 15th Floor,
New Administrative Build,
Madam Cama Road, Mantralaya,
Mumbai-400 032.

8. DEPARTMENT OF URBAN DEVELOPMENT,

Through its Principal Secretary,
RoomNo.423 (main), Nagar Vikas Vibhag
Mantralaya, Mumbai-400 032.

9. THE OFFICE IN CHARGE,

Health Water and Sanitation,
Zilha Parishd, 1 Wellasly Road,
Camp, Pune-411 001.

.....**RESPONDENTS**

Counsel for Appellant(s):

**Mr. Asim Sarode Advocate a/w Alka Babaladi, Radhika
Deshpande for the Applicant.**

Counsel for Respondent(s):

**Mr. Ajay Gadegaonkar a/w Vilas Mahajan Advocates for
Respondent Nos.1,3.**

Mr. D.M.Gupte a/w Supriya Dangare for Respondent No.4.

**S.B.Vaidya Law Officer, Collectorate, Pune for Respondent
Nos.5,6.**

**Mr. Manisha S. Rairkar Advocate holding for Mr. Sanjeev J.
Raikar Advocate for Respondent No.9**

DATE : 1ST OCTOBER,2015

JUDGMENT

1. Sandip Badrinaryan Kayastha has filed this Application under Section 14(1) read with Section 18(1) of the National Green Tribunal Act, 2010, ventilating grievances against pollution of River 'Indrayani' at Alandi and also for incidental reliefs. For sake of convenience, we may refer him by his first name 'Sandip'.

2. Case of Sandip is that River 'Indrayani' is considered as holy and revered water-body where a large number of pilgrims throng on various religious occasions. River 'Indrayani' originates at Kurvande

village in the proximity of hill station of Lonavla, on Sahyadri Mountains and thereafter flows down through Kamshet, Talegaon, Dehu, Pimpri-Chichwad, Alandi and latter meets to confluent with River Bhima. At Alandi, there is “*Samadhi*” of Saint Dyaneshwar and at Dehu there is “*Samadhi*” of Saint Tukaram. There is pollution of River ‘Indrayani’ at Kamshet. A large number of pilgrims visit Alandi to take ‘Darshan’ of Dyaneshwar Samadhi and have deep in River ‘Indrayani’. The water of River ‘Indrayani’ is also used for drinking purpose by residents of Alandi. The State Government has proposed to grant 100% subsidy to residential accommodation (Dharamshals) for use of pilgrims, to construct toilets. This facility is, however, not being effectively used by Dharamshalas.

3. Sandip, further alleges that Alandi Municipal Council (AMC), has not taken due care and steps for disposal of Municipal Solid Waste (MSW). The garbage generated at the open space nearby the burial ground or crematorium, is directly thrown in River ‘Indrayani’. At a times, heaps of garbage are found burnt in the public open space nearby the burial ground. Smoke generated due to burning of garbage adversely affects health of residents of Alandi. The garbage, flowers,

leaves and like waste material thrown in River 'Indrayani' causes water pollution. Resultantly, water of River 'Indrayani' has become unpotable and requires due treatment for making it free from pollution. Though sufficient financial aid is made available by the State Government, Respondent No.1- AMC, failed to implement the Municipal Solid Waste - (Management & Handling) i.e. the MSW (M & H) Rules, 2000. The Temple-Trust at Alandi, gave 5Ha land for dumping of garbage and some waste-management related work. However, 'NOC' from concern authorities is not obtained by AMC and hence, the garbage dumping work and MSW disposal at that site could not be effected. Effluent discharged in water of 'Indrayani River' also has caused adverse impact on flora and fauna and apparently many fish-stock mortality is reported due to such a pollution. Considering laxity of Respondent No.1- AMC and other authorities, including Maharashtra Pollution Control Board (MPCB), and the Deputy Collector, Sandip, seeks implementation of the MSW (M & H) Rules, 2000 for dealing with problem of water pollution and MSW disposal at Alandi. He also seeks AMC to implement the MSW (M & H) Rules, 2000

and to install composting plant, incineration plant and landfill site.

4. By filing reply affidavit of Mr. Suryakant Doke, Regional Officer of MPCB, at Pune- Respondent No.4, would submit that it has granted provisional 'authorization' to AMC for development of secured landfill site and processing plant, vide letter dated 25th August, 2015, which is valid up to 31.12.2005, subject to certain compliance of provisions under the MSW (M & H) Rules, 2000, for establishment and commissioning of MSW facilities and subject to site clearance from the competent authorities. However, subsequently, AMC did not comply for renewal of authorization. It is stated that AMC generates MSW 5MT/per day. Still, however, it has not taken any effective steps for providing waste processing facility or for development of secured landfill site. According to Respondent No.4- MPCB, unsegregated MSW generated from Alandi area, is being dumped at the site for which 'provisional authorization' is granted to AMC, which situated on bank of River 'Indrayani'. Though, various directions were issued, yet, AMC has not taken effective steps for identification and acquiring of suitable site for the purpose of MSW disposal management and sewage

of untreated waste category. Thus, status of MSW management at Alandi, is not as per the MSW (M & H) Rules, 2000. It is further alleged that the MPCB is in process of filing criminal case under provisions of the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981, read with the MSW (M & H) Rules, 2000, against AMC in the Court of Chief Judicial Magistrate, Pune. The affidavit of MPCB elaborates the status of sewage collection and permission at various other places like Pimpri Chichwad, Talegaon Dabhade, Lonavla Municipal Council etc.

5. By filing reply affidavit of Shri. Vinayak Aundkar, Chief Officer, AMC- submitted that land Survey No.174, situated at about 3km away from AMC was selected and identified for MSW plant for implementation of the MSW (M & H) Rules, 2000. Accordingly, AMC submitted Application to the MPCB to carry out inspection and grant its approval for the site. The Collector, Pune by order dated 5th November, 2005, handed over possession of land Survey No.174, admeasuring about 10ha to AMC for establishment of the proposed MSW plant and bio-methanation plant. 'NOC' was also issued by the Archeological Department

and the Assistant Director, Town Planning and Senior Geologist, as well as the Airport Authority and the S.D.O, Junnar for use of that land (Survey No.174). AMC thereafter requested MPCB vide letter dated July 31st, 2008, submitting Form Nos. 1 and 2 to grant 'consent'. Before process could be completed Shri. Dnyaneshwar Maharaj Sanstha Committee, Alandi, filed a suit bearing R.C.S. No.1544 of 2009 against AMC, the Collector and the Revenue Circle Officer for declaration that land Survey No.174, is owned by said Sanstha and possession delivered by the Collector to AMC, is illegal and as such, is liable to be restored in favour of Shri. Dnyaneshwar Maharaj Sanstha Committee, Alandi. In that suit, the Civil Court directed the parties to maintain 'status quo'. AMC has incurred expenditure of lakhs of Rupees for construction of internal road etc. and part of construction of MSW Plant. Since much time was being consumed in the Civil Court matter, the land Survey No.193 was obtained on lease basis, for construction of the MSW Plant, under an agreement between Deosthan and AMC, entered on July 23rd, 2014. The AMC, thereafter, appointed M/s Primove Infrastructure Development Consultant to prepare feasibility report

and detail project report. It has entered into an agreement with M/s Green Great and M/s Unity Green Solution Pvt. Ltd. to establish MSW Plant near crematorium abutting River 'Indrayani'. The Action-plan, so prepared is also placed on record along with the feasibility report.

6. By way of rejoinder, Sandip filed his affidavit on 11th July, 2015, indicating that AMC has used JCB machine for removing garbage from nearby the crematorium situated on bank of River 'Indrayani'. His affidavit purports to show that garbage and soil is being dumped within redline area of River 'Indrayani'. He alleges that by such acts, free-flow of 'Indrayani River' is being obstructed. Consequently, he reiterates the prayers and allegations made in his Application.

7. We have heard learned Advocates for the parties. We have carefully perused the record. Material issues, which require determination are as follows:

i) Whether AMC has failed to comply with the MSW (M & H) Rules, 2000?

ii) Whether due to illegal and uncontrolled dumping of garbage in 'Indrayani River' at Alandi, water pollution is caused, which AMC

and other authorities have failed to control, so as to effectively make natural flow of water free of pollution by taking stern actions against polluters?

8. Let it be noted that there is industrial area at Pimpri-Chinchwad and Talwade. Some of the industries discharge untreated effluents in River 'Indrayani'. It is stated by Shri. Suryakant Doke, Regional Officer of MPCB that nine (9) defaulting industries were directed to close-down their industries due to alleged discharge of effluents, which caused pollution of river. It appears that there are local sources like 'Dharm-shalas' 'Mangal-Karyalayas' (marriage halls), and places of congregation, which also generate garbage and MSW.

9. There is no dispute about the fact that MSW facility is not made available at Alandi and AMC, Alandi, did not take serious steps to establish the MSW plants. The documents on record go to show that Alandi town is situated on bank of River 'Indrayani', in Khed Taluka (district: Pune). Every fortnight, more than one lac people undertake bathing at Alandi River Ghat. Estimated sewage generation of Alandi town is 8.1 MLD/per day. No sewage treatment facility is developed in the said town. There are about 500-600

Dharm-shalas located within Alandi town. Analytical result of Alandi sewage line, indicates that BOD level is 177 mg/1 and COD -287 mg/1, which obviously, goes to show that untreated sewage is being discharged in River 'Indrayani', while it passes through the town.

10. From discussion so far made, it is explicit that case of Sandip, is more corroborated by the Reports of MPCB and actions taken by the MPCB against some of the industries. So also, the photographs filed at page No.29, indicate pathetic picture of heaps of garbage dumped at the bank of 'Indrayani', which were being found removed after filing of the Application. There is no escape from conclusion that AMC has failed to implement the MSW (M & H) Rules, 2000. The reasons and excuses for non-compliances by AMC, may be of plural nature, but the fact remains that MSW facility is unavailable in the town. So also, it is conspicuous that due to drifting and dumping of garbage, including solid waste in River 'Indrayani', pollution of river water is being increased day-in and day-out. There is urgent need to purify the water of 'Indrayani', which is the River most revered by pilgrimages, in this region.

11. The real question is in what manner the MSW (M & H) Rules, 2000, ought to be implemented. Under

provisions of the said Rules, primary responsibility is on the Collector to oversee implementation of the Rules, in the context of Municipal Council, which falls within his jurisdiction. Needless to say, Respondent No.5- the District Collector, is under legal obligation to ensure that the MSW (M & H) Rules, 2000 are implemented by AMC. Fortunately, for AMC and Respondent No.5, District Collector, such a suitable site was identified a way back. The land bearing Survey No.174, was, in fact, delivered in possession of AMC to establish the MSW plant, including incineration plant, composting plant, processing plant etc. AMC was granted 'NOC' by the concern Authorities. It is important to note that land Survey No.174, is the Government land, being 'Gairan' and is only 3km away from Alandi. The land was allotted by the Collector to AMC. There is no dispute about the fact that land Survey No.174, is suitable for the purpose of project to be implemented. The project report is also prepared by AMC for implementation of MSW plan. The land Survey No.174, might have been involved in the civil dispute at the relevant time, but possession was already given to AMC, as stated in the affidavit of Shri. Vinayak Aundkar, Chief Officer of AMC. The Civil Court did not

pass any injunction order but directed “*status quo*” which already was changed due to the delivery of possession of said land to A.M.C by the Collector. The Civil Judge, Senior Division, Pune has now, no jurisdiction in view of Section 29(2) of the NGT Act, 2010, to settle the dispute or entertain any question relating to restitution of property, damages or environment damage and no injunction in respect of any action can be issued. Section 29 (2) of Chapter- V, of the NGT Act, 2010, reads as follows:

Section 29. Bar of jurisdiction.

1) ***

2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment shall be granted by the civil court.

12. Having regard to bar of jurisdiction, the order of Civil Court to maintain ‘Status quo’ is of no avail and

may be treated as “not an impediment” in the way of proceedings for establishment of the MSW plant in land Survey No.174, because, said land is identified by the Collector and handed over to AMC. If at all, Deosthan has any claim, it can only seek relief under the Land Acquisition Act, in case, if it is so permissible.

13. The present arrangement for disposal of garbage in land Survey No.193, owned by Deosthan and obtained by AMC on leave and licence basis, may be continued for purpose of installation of MSW processing plant. Still, however, it is necessary to shift the remaining activity like bio-methanation, composting and filling etc. of MSW treatment plant at allocated land Survey No.174, which is identified and approved by the Collector. After the lease period is over, AMC will have to shift the entire MSW facility site to 10Ha land bearing Survey No.174, allotted for such purpose, in accordance with the action plan, which is already prepared. Thus, the present arrangement be deemed as only stop-gap arrangement until shifting of the plant (MSW) to Survey No.174, with continuity of consent to operate/approval to use the said land for installation of MSW plant. We may mention here that the Hon'ble High Court has already directed vide

order dated 2.4.2013, in the context of Writ Petition No.4542 of 2010, along with Civil Application No.9199 of 1998 and similar other Applications (**Sadashiv Shivaram Jadhav Vs Ambarnath Municipal Council and Ors, M/s Ramtek Industries vs State of Maharashtra and Ors etc.**) to implement the MSW (M & H) Rules, 2000. The Hon'ble High Court has set out a programme for such implementation of the Rules.

14. We are also of the opinion that the MPCB is duty bound to ensure that the industries in the industrial area, situated in the proximity of River 'Indrayani' be not allowed to discharge effluents in the river and stern action shall be taken, including closure of such industries, without any soft attitude. We have noticed that actions like forfeiture of Bank Guarantee and giving mere directions are treated as "affirmative action" instead of complete closure by sealing of machinery of the industry and taking over the industry by putting locks and shutting down everything. The industries which are found discharging effluents and contaminate water of River 'Indrayani', be directed to pay amount of Rs.5Lakhs each, which may vary in accordance with nature of quantity of effluent, as per the report of MPCB. The compliance report of MPCB, shall be submitted after

collecting analysis report of effluent of outlet of the industries at each quarter. Thereafter, we may hear say such polluting industries before proposed action of imposing penalty on basis of 'Polluter pay's Principle'.

15. In the result, the Application is allowed. The Respondents are directed to implement the MSW (M & H) Rules, 2000, programme by submitting details of implementation in phased manner. The programme be prepared as per the directions of the Hon'ble High Court, as shown below:

15. General:

Action Plan for Treatment and Processing of Solid Waste

Sr. No	Action Plan Details	Time Schedule
1	To develop mechanism for collection, segregation (at source/site) and transportation to processing facility and landfill site.	Within 2 months after possession of land.
2	To settling up and commissioning of waste processing facility.	
	(a) Selecting technology	Within 2 months after possession of land.
	(b) Preparation of detailed project report,	Within 2 months after selection of technology.
	(c) Obtaining clearance from MCZMA/MOEF	Within 4 months from submission of the proposal by the ULB.
	(d) Inviting tenders and appointment of Agency.	Within 2 months after obtaining clearance from MCZMA/MoEF.
	(e) Issuance of Work Order with the time frame & necessary conditions by Municipal	Within 1 month.

	Authority	
	(f) Settling of MSW processing facility & making it operational.	Within 18 months from the date of work order.
	Development & Commissioning of secured landfill site	Within 18 months from the date of work order.
3	Development & Commissioning of secured landfill site.	Within 12 months from the date of work order.
4	Closure of cell & its monitoring for at least next fifteen years as per Rules.	After exhausting capacity of the existing cell.
5	Improving of existing facility.	
	(a) Closure of existing dump site if required as per MSW Rules.	Within 16 months.
	(b) Setting up and commissioning of waste processing facility if not available at existing site.	Within 24 months.
	(c) Improvement in the existing waste processing facility and secured landfill site in accordance with the MSW Rules.	Within 6 months.
	(d) Development of new secured landfill site at existing site if not available.	Within 12 months.
6.	(a) Application for Authorization by Municipal Authority (Rule 4(2))	As per Rules.
7.	(b) Grant of a authorization for processing facility and landfill site (Rule 6(2))	As per Rules.

The Hon'ble High Court of Bombay in the above said order gave further directions:

“16. In the Solid Waste/Garbage Management following issues shall be considered for long term and future planning by Local Authorities State and Central Government and Pollution Control Boards :

- i) Daily operations and maintenance of Dumping and Landfill sites.

- ii) Daily operation and maintenance of Waste Treatment Facilities of Biodegradable wastes.
- iii) Fire protection during dump levelling.
- iv) Garbage Bio-mining
- v) Closure of sites which have attained their maximum capacity.
- vi) Use of closed landfill sites as per MSW Rules.
- vii) Subsequent land use.
- viii) Water consumption for capping.
- ix) Methane Generation.
- x) Encouraging the Local authority to adopt these measures and comply with the direction to earn Carbon credits.

17. The local bodies may assign the above work to private entrepreneurs who will undertake this work in entirety including acquisition of land as well as installation of treatment plants.

18. The local authority/corporation shall issue directions to the residents for solid waste segregation of garbage as per rules and take steps for its compliance.

19. The State Government/Local Authorities shall give due and top priority for establishing/setting up common facilities or landfill/dumping sites/processing facilities.

20. Whenever permission is required under the provisions of Environment Impact Assessment (EIA notification), Coastal Regulation Zone (CRZ Regulation), River Regulation Zone Policy (RRZ) (RRZ Policy), Forest Laws etc. such authorities shall process and consider the applications made by Local Authority/Designated agency, expeditiously within a period of 4 weeks or as per the time limit prescribed in the relevant rules.

21. It is clarified that whenever there is a statutory period prescribed for processing of any application grant of clearance etc. the period prescribed therein shall be applicable.

16. The programme be submitted by AMC with due approval of the MPCB and District Collector, Pune within period of four (4) weeks. AMC to pay costs of Rs.10,000/- to Applicant-Sandip, as litigation costs.

The Application is accordingly disposed of, in terms of above directions.

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(Justice V. R. Kingaonkar)

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(Dr.Ajay A. Deshpande)

DATE: 1ST OCTOBER, 2015
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