

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 126/2017 (EZ)

Majhi Paragana Abhen Baisi

Applicant

Versus

Aligar Muslim University, Kishanganj & Ors.

Respondent(s)

Date of hearing: 18.02.2019

**CORAM : HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Rahul Choudhary, Mr. Sharan Balakrishna
and Ms. Sharon Mathew, Advocates

For Respondent (s): Mr. Surendra Kumar, Advocate for Respondent
Nos. 2, 3, 7 & 8.
Ms. Amrita Pandey, Advocate for Respondent
No. 4.
Mr. Ashok Prasad, Advocate for Respondent
Nos. 5 & 6

ORDER

1. Concern raised in this O.A. is the imminent threat to the environment and ecology by the construction of a centre of the Aligarh Muslim University proposed on the banks of river Mahananda, Kishanganj district in the State of Bihar. It is alleged that major portion of 224.02 acres of land transferred to the University for the purpose by the Government, falls on the river bed and the floodplains of river Mahananda. It is further alleged that the University authority, the respondent No. 1, has commenced with the work of constructing boundary wall as well as embankment on the river bed and the floodplains of the river which is likely to or has already caused the river to change its course. This according to Applicant is in gross violation of the River Ganga (Rejuvenation, Protection and Management) Authorities' Order, 2016 issued *vide* Notification No. SO 3187 (E) dated 7th October, 2016, more particularly, clause (3) of Para 6 thereof. It is stated that Mahananda river falls within the meaning of "tributary" of river

Ganga in terms of clause 3(ze) of the said order. It is also alleged that for the use in the ongoing construction, the Respondent No. 1 has been extracting minor minerals like sand and stone from the river bed and its bank in violation of the direction issued by the Supreme Court in *Deepak Kumar's* case as well as the Sustainable Sand Mining Management Guidelines, 2016, issued by MoEF&CC.

2. There are also other issues which the Applicant has raised, but the primary ones being those which have been alluded to above, we need not deal with those as being unnecessary for the purpose of disposal of this application.
3. On 21.07.2017, when the matter was heard for the first time, a *prima facie* case of violation of the river Ganga (Rejuvenation, Protection and Management) Authorities Notification, 2016 and the guidelines issued by the MOEF prohibiting mining of sand from the river bed, was found to have been made out. However, instead of passing an interim order of prohibition, direction was issued upon the District Magistrate, Kishanganj, Respondent No. 3, to carry out an inspection of the area in question and verify on the allegations contained in the O.A. and, if the allegations were to be found to be correct as regards the construction of the embankment as well as boundary wall or if any other work relating to the project were being undertaken on the river bed and the floodplains of the river Mahananda and also, if the respondent University or their agents or subordinates, were found to be excavating sand from the riverbed, to take immediate action be taken to prohibit such activities.
4. Directions were also issued upon the Respondent No. 5, National Ganga River Conservation Authority (NGRCA), to examine the matter in the light of the Notification dated 07.10.2016 and to undertake an inspection of the area forthwith and further, to act

under para 8 of the river Ganga (Rejuvenation, Protection and Management) Authorities Notification, 2016, if there was any truth in the allegations.

5. On 12.01.2018, affidavits filed on behalf of the Respondent No. 1, Aligarh Muslim University, State of Bihar, Bihar State Pollution Control Board, National Ganga River Conservation Authority and the Ministry of Water Resources were taken on record. Upon perusal of the affidavits, we noticed consistency in the stand that the area allotted to the Aligarh Muslim University falls in the floodplains of river Mahananda which admittedly is a tributary of river Ganga. In view of this, the Respondent No. 1 had been specifically directed to file its response to the affidavits and to make its stand clear. But before we deal with this aspect, we may refer to the report filed by the District Magistrate and other respondents.

6. In the report of the District Magistrate, it has been stated that the work of construction of embankment was being executed by the Water Resource Department, Government of Bihar, for protection of a proposed police line, Aligarh Muslim University, etc., from flooding. No construction was found at the spot. That the Aligarh Muslim University had informed that the construction of the boundary wall had been started on 10.03.2015 and completed on 31.03.2017 but further construction had been stopped awaiting decision in this O.A. The District Magistrate also reported that a proposal for construction of embankment on the banks of river Mahananda had been sent to the Water Resource Department, Government of Bihar by the Executive Engineer, Flood Control and Drainage Division, Kishanganj, after the area had experienced major flood in the previous year. No extraction of sand/stone was reported as per the Mining Officer, Purnea-cum-Kishanganj.

7. The affidavit filed on behalf of the National Ganga River Preservation Authority, Respondent No. 5, reveals that an inspection was carried out by a team consisting of four members comprising of:

- i. Shri Faiz Ullah Khan, Enforcement Coordinaor, NMCG, Delhi
- ii. Shri Anup, Sr. Civil Engineer, SPMG – Bihar
- iii. Shri Ramji Sah, ADM, Kishanganj, Bihar
- iv. Md. Sajid Iqbal, Asst. Engineer, Flood Control and Drainage Division, Kishanganj, Bihar

8. As per the inspection report submitted by the aforesaid team, Kishanganj town including the proposed site for Aligarh Muslim University Centre lies in the floodplain of river Mahananda, where certain degree of flood protection has been provided in the form of embankments constructed by the Water Resource Department, Government of Bihar.

9. Section 3(u) of the NMCG Authority Order defines that river Ganga to mean and include all tributaries and, under Section 3(ze) of the Order, river Mahananda is one of the tributaries of river Ganga. Further as per Section 4(ix) of the said Order, “the bank of River Ganga and its flood plain shall be construction free Zone to reduce pollution sources, pressures and to maintain its natural ground water recharge functions.”

10. Further, provisions contained in Section 6 (3) of the said Order prohibits all types of constructions in the River Ganga, Bank of River Ganga or its tributaries or active floodplain area of River Ganga or its tributaries as would be evident from a bare reading of the provision reproduced below:

"No person shall construct any structure, whether permanent or temporary for residential or commercial or industrial or any other purposes in the River Ganga, Bank of River Ganga or its

tributaries or active flood plain area of River Ganga or its tributaries.

Provided that in exceptional circumstances like natural calamities or religious events or traditional locations, temporary structures can be raised after prior permission of the National Mission for Clean Ganga acting through the State Ganga Committee and the District Ganga Committee.

Provided further that in case any such construction has been completed, before the commencement of this Order, in the River Bank of River Ganga or its tributaries or active floodplain area of River Ganga or its tributaries, the National Mission for Clean Ganga shall review such constructions so as to examine as to whether such constructions are causing interruption in the continuous flow of water or pollution in River Ganga or its tributaries, and if that be so, it shall cause for removing them.

11. Section 42(g) of the said order provides that, every person, the State Ganga Committees, District Ganga Protection Committees, local authorities and other authorities shall obtain prior approval of the NMCG for any activity which contravenes the principles laid out in the said order.
12. It has been stated that in exercise of the powers conferred upon the NMCG under the NMCG Authority Order, directions under Section 5 of the Environment (Protection) Act, 1986, have been issued to the State Government and the concerned authorities *inter-alia* not to undertake any construction in the river Mahananda, its banks and active floodplain area without its prior approval.
13. Affidavit filed on behalf of the Principal Secretary, Water Resources Department, Government of Bihar, reiterates the facts stated on behalf of the District Magistrate in as much as work of construction of embankments has been started as per the approved alignment for future protection of University campus, the police line and its vicinity from floods, as it was very near to river Mahananda.
14. In its affidavit, except to state that it has not violated any norms and/or provisions undertaking that no environmental norms would

be violated and that no construction would be undertaken awaiting decision in this case, nothing has been stated by the University on the merits of the case. Since January, 2018 no further affidavit has been filed. Today, none has appeared on behalf of the University. This was also the case on the last date, i.e., 29.01.2019.

15. We have heard the Learned Counsel for the parties and perused the affidavits as well as the documents available on record.

16. In our view, considering the categorical stand of the NMCG Authority in their affidavit adumbrated earlier location of the project site for the Aligarh Muslim University Centre clearly appears to be in violation of the river Ganga (Rejuvenation, Protection and Management) Authority's Order dated 07.10.2016. Admittedly, no approval as required under Section 42(G) of the said Order appears to have been obtained before taking up the project.

17. Apart from the above, we find that directions have also been issued against the project under Section 5 of the Environment (Protection) Act, 1986 by the NMCG *vide* order dated 06.01.2017 in exercise of the powers conferred upon it. As a natural corollary, therefore, the proceedings instituted by the NMCG have to arrive at a logical conclusion. We accordingly direct the NMCG to conclude the proceedings expeditiously.

18. Needles to state that the Aligarh Muslim University and the other Authorities are at liberty to pursue the redressals available under the NMCG Authority Order.

19. We, however, direct that until the proceedings under river Ganga (Rejuvenation, Protection and Management) Authority's Order dated 07.10.2016 are completed and clearances as required under the relevant rules are granted, the Respondent No. 1 and other

authorities shall not proceed to take up the construction work or other activities in relation to the Centre.

20. With the above directions, this O.A. stands disposed of.

21. No order as to costs.

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

