

Item No.03

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 63/2021(CZ)

Surendra Singh Shekhawat

Applicant

Versus

State of Rajasthan &Ors.

Respondent(s)

Date of hearing: 13.12.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

Applicant: Mr. Rahul Choudhary, Advocate

Respondent(s): Mr. Sandeep Singh Bhagel, Advocate for R - 3
Mr. Rohit Sharma, Advocate

ORDER

1. Prayer in this application is for protection of Anasagar wetland in Ajmer in view of directions of Hon'ble Supreme Court in *M.K Balakrishnan and Ors. v. Union of India and Ors., (2017) 7 SCC 810*.

2. Case of the applicant is that Anasagar wetland is a perennial fresh water body situated in the heart of Ajmer city, located between two hills named Bajrang Garh and Khobra Bherun. The area of the Anasagar wetland, as stated in Ajmer Smart City proposal, comes to about 1526 acres (about 617 ha). Further, the Satellite image shows the area of Anasagar wetland as 315 hectare. The applicant has referred to the

report filed by the MoEF&CC in O.A No. 351/2019, *Raja Muzaffar Bhat v.*

State of Jammu and Kashmir as follows:-

“According to the National Wetland Inventory and Assessment (NWIA) carried out through Space Applications Centre (SAC), Ahmedabad based on 2006-07 satellite data, a total 201503 nos. of wetlands have been mapped at 1: 50,000 scale which are >2.25 ha and cover an area of approx. 14.7 Million ha. Significant wetlands include the 42 nos. of Ramsar wetlands and other wetlands, nominated by States under The Wetlands (Conservation and Management) Rules, 2017. In the communication sent by Ministry, the states were requested to nominate 'significant wetlands and furnish data for the same as per the proforma circulated.”

3. It is stated that the authorities in the area are proceeding to damage the wetland by construction of pathways, reclamation of land by soil filling, construction of park and dumping of construction and other waste in Anasagar wetland. The State Wetland Authority has failed to take remedial action and National Wetland Authority has also failed to monitor compliance.

4. Vide order dated 19.08.2021, notice was issued by this Tribunal and a joint Committee was constituted, to give a factual report, as follows:

- i. Representative of MoEF&CC, (M.P.)
- ii. Representative of Central Pollution Control Board, (M.P.)
- iii. Representative of State Wetland Authority, Rajasthan
- iv. Rajasthan State Pollution Control Board

5. Accordingly, the joint Committee has given its report as follows:-

“About Anasagar Lake

*As per historical evidence, Anasagar Lake is a **man-made** lake which was constructed by King Annaraj in year 1135-1150. As per the information submitted by Executive Engineer, Water Resources Department, Division-II, Ajmer vide letter dated 24.9.2021 (**Copy of the letter is enclosed as Annexure-I**); the hydraulic details of Anasagar lake is as below:*

- *The catchment area of lake is - 70.55 Sq km (7055 Hectares)*

- Area of lake at full tank level is - 2.96 Sq Km (296 Hectares)
- Capacity to hold water is - 247.64 Mcft
- Full tank level is - 13 feet

Status of Anasagar as a Wetland

As per the provision of rule 3 of Wetlands (Conservation and Management) Rules, 2017 Anasagar Lake is not a Wetland. It is neither a wetland designated by the Government of India under the provisions of the Convention on Wetlands (Ramsar Convention) nor a notified wetland under Wetlands (Conservation and Management) Rules, 2017.

Declaration of boundary of Anasagar Lake

In exercise of the powers conferred by Section 4 of the Rajasthan Lake (Protection and Development) Authority Act 2015 (Act No. 5 of 2015), the Rajasthan State government on the recommendation of Rajasthan Lakes Development Authority has declared and specified lake area along with the boundaries of Anasagar lake and geographical area around it as protected area situated in revenue villages Thok, Teliyan and Kotda of Tehsil Ajmer, District Ajmer vide Government of Rajasthan, Local Self Government Department notification No. F.8 (Ga) (8) Rules / DLB / 2017 / 334 dated 30.10.2017 (**Copy of the Notification is enclosed as Annexure-II**). The area included in Lake and declared as protected area in village Thok & Kotda is 2054.88:16:16 (Bigha: Biswa: Biswansi) or 332.63 Hectares where 1 bigha equals to 1617 m² or 20 Biswa or 400 Biswansi.

Prohibited & restricted activities

In exercise of the powers conferred by section-5 of the Rajasthan Lakes (Protection and Development) Authority Act 2015 (Act No. 5 of 2015), the State Government has specified activities for protection and development of the Anasagar Lake situated in revenue village Thok Teliyan and Kotra of Tehsil Ajmer, District Ajmer: -

- Activities that shall be prohibited in the geographical boundaries of the Anasagar Lake and its protected area.
- Activities that may be carried out **in the boundaries** of the Anasagar Lake and its protected area after obtaining permission from the Rajasthan Lake Development Authority vide Government of Rajasthan, Local Self Government Development Notification No. F8(Ga) (8) Rules/DLB/2017/310 dated 30.10.2017 (Copy of the notification is enclosed as **Annexure-III**)

Construction of Promenades on Anasagar Lake

As per the Notification dated 30.10.2017 vide point (b) (xvi) "Construction of promenades for conserving boundaries of the lake" is an activity that may be carried out in the boundaries of the Anasagar Lake and its protected area after obtaining permission from the Rajasthan Lake Development Authority.

Permission of Rajasthan Lake Development Authority:

State Lake Conservation Authority and Local Self Government Department on recommendations of District Level Lake Conservation and development committee as per decision taken in meeting held on 03.03.2021 (Annexure-IV) has granted ex-facto permission vide meeting minutes No. P.1 (Jheel) DLB/21@1835&1852 dated 13.09.2021 (**Annexure-V**) to carry out following works including construction of pathway: -

- i. Development of Bird Park at Sagar Vihar Area Anasagar, Ajmer.
- ii. Strengthening of Bund at Anasagar Lake, Ajmer.
- iii. Supply Operation and Maintenance of Floater Boat for De-Weeding in Anasagar Lake with Cleaning Mechanism for thrash.
- iv. Designing, Providing, fixing commissioning and testing of floating bridge at Bandi River near STP Anasagar Ajmer.
- v. Renovation & Beautification of Sagar Vihar Paal, Ajmer.
- vi. Construction of Pathway around Anasagar from Sagar Vihar Paal (Near Vaishali Nagar Petrol Pump) to Regional College Pathway, Ajmer.
- vii. Construction of pathway around Anasagar from Shiv Mandir to Sagar Vihar Pal, Ajmer.
- viii. Development of pathway around Anasagar from Old Vishram Sthali to Rishi Udhyan.
- ix. Installation of Musical Fountain and Interactive Fountain in different Locations, Ajmer.

The progress made so far is as tabulated below:

S.No.	Project Name	Start Date	Stipulated date of completion/ Actual date of	Status	Brief Description of Work
1	Development of Bird Park at Sagar Vihar area Anasagar, Ajmer (RAJ-AJM- 154)	30.10.19	31.01.21	Work Completed	Nagar Nigam wet land in Sagar Vihar has been developed in to bird park for migratory birds by constructing boundary wall, fencing and mounds. Sagar Vihar Pal serves as a viewing gallery.
2	Strengthening of Bund at Anasagar Lake, Ajmer (RAJ-AJM-009)	22.12.17	29.02.20	Work Completed	Pathway for pedestrian has been developed at FTL from STP to Vishramsthal in 1300 m length.

3	Supply Operation and Maintenance of Floater Boat for de-weeding in Anasagar Lake with Cleaning Mechanism for thrash (RAJ-AJM-099)	27.11.17	28.03.18	Work Completed	Floater boat has been procured and handed over to Ajmer Municipal corporation for De-Weeding and cleaning of Anasagar Lake.
4	Designing, providing, fixing, commissioning and testing of floating bridge at Bandi River near STP Anasagar Ajmer. (RAJ-AJM-102)	25.09.18	24.01.19	Work Completed	Floating bridge has been provided on Bandi river at Pathway for free and unobstructed flow of water.
5	Renovation & Beautification of Sagar Vihar Paal, Ajmer (RAJ-AJM-143)	22.01.20	31.05.21	Work Completed	Sagar Vihar Pal was constructed by Water Resources Department in year 1984. Pathway was developed under CSR. Renovation and beatification of Sagar Vihar Pal has been done. Pathway in approx. 200 m has been constructed. Sump and pumps have been provided to pump out water from low lying area. Also parking and public convenience have been provided.
6	Construction of Pathway around Anasagar from Sagar Vihar Paal (Near Vaishali Nagar Petrol Pump) to Regional College Pathway, Ajmer (RAJ-AJM-176)	18.12.20	17.12.21	WIP	Work of construction of Pathway at FTL along periphery of Anasagar lake from Sagar Vihar Pal to Regional college in approx. 2332 m length is in progress. 17 Nos. cross drainage have been provided for unobstructed flow of water into lake.
7	Construction of Pathway around Anasagar from near Shiv Mandir to Sagar Vihar Pal, Ajmer (RAJ-AJM-174)	21.11.20	19.11.21	WIP	Work of construction of Pathway at FTL along periphery of Anasagar lake from Shiv Mandir to Sagar Vihar Pal in approx. 960 m length is in progress. 5 Nos. cross drainage works have been provided for unobstructed flow of water into lake.
8	Development of Pathway around Anasagar from Old Vishram Sthali to Rishi Udyan (RAJ-AJM-187)	04.01.21	03.04.22	WIP	Work of construction of Pathway at FTL along periphery of Anasagar lake from Old Vishram Sthali to Rishi Udyan in approx. 1834 m length is in progress. Sufficient Nos. of cross Drainage works will be provided for unobstructed flow of water into lake.

9	Installation of Musical Fountain And Interactive Fountain in different Locations, Ajmer (RAJ-AJM-161)	20.11.20	15.08.21	WIP	Musical Fountain at three locations, Old Chaupati (floating), Regional college (floating) and Vishram Sthali park have been installed for recreation and attraction of tourist and for increasing beauty of the lake.
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Total length of circumference of Anasagar lake at Full Tank Level (FTL) is approximately 10363 m out of which pathway in approximately 4000 m already exist and balance length is taken up under Ajmer Smart City Mission as following (**Annexure-VI**):-

- i. Pathway from Anasagar STP to Vishram Sthali in approx. 1300 m has been completed.
- ii. Pathway from Shiv Mandir to Sagar Vihar Pal in approx. 960 m length is in progress.
- iii. Pathway from Sagar Vihar Pal to Regional college in approx. 2300 m length is in progress.
- iv. Pathway from Vishram Sthali to Rishi Udhyan is approx. 1800 m length is in progress.

Field Observations:-

1. As per the Notification dated 30.10.2017, the area included in Lake and declared as protected in village Thok and Kotda is 2054.88:16:16 (Bigha: Biswa: Biswansi) i.e. 332.63 Hectares. Area of the lake after construction of pathway shall be about 311.17 Hectares. Majorly, the pathway is constructed on the defined boundary of the lake, however the difference in the area declared in comparison to the area under peripheral pathway is due to the following reasons (**Annexure-VI**):

S.No	Location	Area (in Ha)	Reasons for Deviation
1.	Location-1	0.09	Due to Hon'ble High Court stay on Khasra No. 2067, Thok Teliyan in SB Civil Writ Petition No. 16272/2016.
2.	Location-2	3.18	Due to Hon'ble High Court stay on Khasra No. 326 and 327 in SB Civil Writ Petition No. 7480/2011 Govind Dyma V/s State of Rajasthan and Others. Due to Hon'ble High Court stay on Khasra No. 507 in SB CW Petition No. 1005/2021 Mukesh V/S State of Rajasthan and Others.

3.	Location-3	3.87	<p>Due to Hon'ble High Court stay on Khasra No. 227 and 228 in SB Civil</p> <p>Writ Petition No. 16260/16 Jitendra Singh & Others V/s State of Rajasthan and Others.</p> <p>Due to Hon'ble High Court stay on Khasra No. 235, 236 & 240 in SB CW</p> <p>15638/2011 Laxman Singh and Others V/S State of Rajasthan and Others.</p> <p>Due to Hon'ble High Court stay on Khasra No. 230,233 & 238 in SB Civil Writ Petition No. 11708/2011 Prabhu Dayal Vijay V/s State of Rajasthan and Others.</p> <p>Due to Hon'ble High Court stay on Khasra No. 245, 246, 247, 248 in SB CW 16095/2011 Sohanlal Kumawat V/s State of Rajasthan and Others.</p>
4.	Location-4	9.11	<p>Establishment of Colonies viz.</p> <p>Mahaveer Colony and Arihant Colony during the period from 1973-75 and due to Hon'ble High Court stay on</p> <p>Khasra No. 1076 in SB Civil Writ</p> <p>Petition No. 14667/2014 Kesar Bal and Others V/s State of Rajasthan and Others.</p>
5.	Location-5	4.60	<p>Establishment of 13 MLD Sewerage Treatment Plant during the period from 2013 -2015.</p>
6.	Location-6	0.6100	<p>Construction of Pathways at FTL level.</p>
Total		21.46	

- *It was observed that the decrease in the area due to construction of Pathways (Location-06) is only 0.6100 Hectares whereas area of about 08.51 Hectares has been increased after construction of Pathways from A1-A6 (**Annexure-IX**).*
- *Most of the reduction of area (20.85 Hectares) has happened due to stays in various High Court Writs (Location 1- 4), establishment of old colonies (Location 4) and construction of STP (Location-05) prior to notification by Rajasthan Lake Development Authority vide Government of Rajasthan, Local Self Government Development Notification No. F8(Ga) (8) Rules/DLB/2017/310 dated 30.10.2017.*

- It is pertinent to mention that the work of construction of pathways around Anasagar Lake is in coherence with the powers conferred by section-5 of the Rajasthan Lakes (Protection and Development) Authority Act 2015 (Act No. 5 of 2015) to the State Government which has specified activities for protection and development of the Anasagar Lake.

2. During site inspection it was found that, on the peripheral pathway sufficient numbers of cross drainage structures have been provided for unhindered flow of water. Hence there is no obstruction to flow of water. The details of cross drainage structures are as below (**Annexure-VI**):-

Name of the Stretch	Length of Stretch (in Meter)	No. of Cross drainage structures provided
Shiv Mandir to Sagar Vihar Pal	960	05
Sagar Vihar Pal to Regional College	2300	17
Anasagar STP to Vishram Sthali	1300	One Floating bridge

3. Pathway is constructed majorly at periphery of lake at FTL. Construction procedure is being explained by a schematic diagram (**Annexure -VIII**). At first good earth is being dumped at periphery of lake and then foundation excavation is done. The excavated earth is also stacked towards lake to hold water; a temporary track is formed towards Lake for movement of man and machinery. A RCC wall is constructed towards lake. A masonry wall is constructed parallel to RCC retaining wall. The width of pathway including thickness of both walls is 4.5 m. After construction of both the walls, the good earth used for forming temporary track is lifted and filled inside both the walls and extra earth and silt is also removed from lake side so that water touches the RCC wall. The good earth filled inside both the walls is compacted and then stone flooring is done.

During site visit, it was observed that the pathway construction work was carried out as per the planned construction procedure. No dumping of construction and demolition waste/other earth material was found.

4. Seven wonder park is being constructed on Khasra No. 288, 289, 290, 291 and 292 of Thok Teliyan, Tehsil Ajmer of Ajmer Development Authority for promotion of tourism. The land where Seven Wonder Park is being developed is well outside the protected area of lake as shown in attached map (**Annexure-IX**).

5. *During site visit it was observed that Sagar Vihar bird park has been developed which has become a good destination for migratory birds. By doing this work around 2.65 Hectares of Government land has been protected from encroachments and the area has been naturally developed as birds friendly site.*

*Photographs taken during the field visit are enclosed as **Annexure-X.***

Conclusion

1. ***Anasagar Lake is not a Notified Wetland under Wetlands (Conservation and Management) Rules, 2017 or Ramsar Convention, hence violation of Wetland Rules is ruled out.***
2. ***The construction of concretized pathway around Anasagar Lake has not been done after filling up the submerged area of wetland.***
3. ***During the visit as such no violation of any of the provision of Rajasthan Lakes (Protection and Development) Authority Act, 2015 was found; while doing construction works, permission of Rajasthan Lake Development Authority has been sought as per rule.***
4. ***No dumping of the construction materials within the submergence area and in the high flood line of the wetland and in the zone of influence was found. No dumping of soil and other earth material for filling up and reclaiming the wetland was found. Rather after construction of pathways the silt from the Lake bed has been removed which will increase the water holding capacity.***
6. ***Wonder Park is being developed outside protected area of Lake. So the issue raised by the applicant about construction of Wonder Park after reclaiming the wetland area in front of Maheshwari Public School, Vaishali Nagar, Ajmer is factually incorrect.”***

6. We have heard learned Counsel for the parties and considered the above report. To the extent the report rules out applicability of the 2017 Rules, the same cannot be accepted in view of judgement of Hon'ble Supreme Court in *M.K Balakrishnan and Ors.*(Supra), since the wetland in question is part of inventory in the Atlas. For ready reference, direction of the Hon'ble Supreme Court is reproduced below:-

“ Accordingly, we direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of India. The Union of India will identify and inventories all these 2,01,503 wetlands with the assistance of the State Governments and will also communicate our order to the State Governments which will also bind the State Governments to the effect that these identified 2,01,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010, that is to say:

4.

(vii) any other activity likely to have an adverse impact on the ecosystem of the wetland to be specified in writing by the Authority constituted in accordance with these rules.”

7. Thus, irrespective of Rajasthan Lake Development Authority under Rajasthan Lakes (Protection and Development) Authority Act, 2015, direction of Hon’ble Supreme Court, Wetland (Conservation and Management) Rules, 2010 will apply.

8. This Tribunal has dealt with the issue earlier vide order dated 25.11.2021 in O.A No. 351/2019, *Raja Muzaffar Bhat v. State of Jammu and Kashmir*, directed as follows:-

“1. The issue for consideration initially considered in this application was prevention of unscientific dumping of waste and encroachment of Hokersar Wetland, Wular Lake and Kreentchoo-Chandhara Wetland in the Union Territory of Jammu & Kashmir. By later orders, scope of consideration was extended to protection of all wetlands in the country in the light of observations of the Hon’ble Supreme Court that 2,01,503 wetlands that have been mapped by the Union of India should continue to remain protected on the same principles as were formulated in Rule 4 of the Wetlands (Conservation and Management) Rules, 2010. It was further observed that conservation of wetlands is of immense ecological importance. The Hon’ble Supreme Court did not appreciate that the Central Government was attempting to abdicate its responsibility under the Environment (Protection) Act, 1986 in favour of the State Governments.

2. Order of the Hon’ble Supreme Court dated 3.4.2017 in M.K. Balakrishnan & Ors. v. Union of India & Ors.¹ as follows:

¹(2017) 7 SCC 805

“17. Be that as it may, for the reasons given below, we are compelled to direct that **the Wetlands (Conservation and Management) Rules, 2016 should be notified on or before 30-6-2017**. We are compelled to issue this direction since the matter has been pending with the Union of India for the last almost a year and there has to be some finality to the publication of the Rules. The comments/suggestions have been given by all stakeholders such as the State Governments including its organisations, individuals and civil society organisations. That being the position, there is obviously a great deal of interest in the Rules being formulated and notified. Under these circumstances, there is no justification why the Union of India should not have taken prompt action and constituted the Committee much earlier for the purposes of finalising the Rules. Finally, **the conservation of wetlands is of immense ecological importance**.

18. The learned counsel for the Union of India says that all efforts will be made to ensure compliance with this direction and to ensure that the Rules are notified on or before 30-6-2017. We are sure that both the Committee as well as the Union of India will take into consideration the comments and suggestions offered by the State Governments and its organisations, individuals and civil society organisations before taking a final decision.

19. With regard to the Central Wetlands Regulatory Authority, we are told that its term is expiring on 14-2-2017. We have been informed by the learned counsel for the Union of India that the Central Wetlands Regulatory Authority will be notified on 13-2-2017. The Union of India is bound by the statement made by the learned counsel for the Union of India, which statement has been made on instructions received by him from an officer of the Ministry of Environment, Forest and Climate Change.

20. In our order dated 31-1-2017 [Set out in paras 11 to 13, above.], we had required the Union of India to tell us the steps taken to preserve the 26 wetlands covered by Ramsar Convention, 1971. **The affidavit that has now been filed by the Union of India merely gives the disbursement of amount made by the Union of India from time to time. What specific steps have been taken including how the funds made available have been utilised and what is the impact of those steps have not been adverted to. We must have specific details. We direct the Union of India to file an affidavit within four weeks positively giving required specific details.**

21. The learned counsel for the petitioners has drawn our attention to an additional affidavit filed by the Union of India on or about 9-9-2014. The additional affidavit contains an information brochure “National Wetland Inventory & Assessment”. **This brochure indicates on p. 11 thereof that 2,01,503 wetlands have been mapped at 1:50,000 scale. All these wetlands have an area of more than 2.25 ha. As a first step, the “brief documents” with regard to these**

2,01,503 wetlands should be obtained by the Union of India from the respective State Governments in terms of Rule 6 of the Wetlands (Conservation and Management) Rules, 2010. We are told that obtaining these “brief documents” may take some time. We are inclined to grant adequate time for this purpose. The Union of India should follow this up with the State Governments and inform us of the time-frame on the next date of hearing.

22. The apprehension expressed by the learned counsel for the petitioners is that with the passage of time there is a possibility that some of the wetlands may disappear. On a reading of the information brochure, this apprehension is not unfounded.

23. Accordingly, we direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of India. The Union of India will identify and inventorise all these 2,01,503 wetlands with the assistance of the State Governments and will also communicate our order to the State Governments which will also bind the State Governments to the effect that these identified 2,01,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010, that is to say:

“4. (1)(i) reclamation of wetlands;

(ii) setting up of new industries and expansion of existing industries;

(iii) manufacture or handling or storage or disposal of hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 notified vide S.O. No. 966(E), dated 27-11-1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms / Genetically Engineered Organisms or Cells notified vide GSR No. 1037(E), dated 5-12-1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 notified vide S.O. No. 2265(E), dated 24-9-2008;

(iv) solid waste dumping:

Provided that the existing practices, if any, existed before the commencement of these Rules shall be phased out within a period not exceeding six months from the date of commencement of these Rules;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements:

Provided that the practices, if any, existed before the commencement of these Rules shall be phased out within a period not exceeding one year from the date of commencement of these Rules;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these Rules;

(vii) any other activity likely to have an adverse impact on the ecosystem of the wetland to be specified in writing by the Authority constituted in accordance with these Rules.”

24. *The learned counsel for the Union of India has shown us a chart of proposals/brief documents that have already been received by the Union of India under Rule 6 of the Wetlands (Conservation and Management) Rules, 2010. The total number of wetlands covered in this document are 1683. Many of these proposals/brief documents received by the Union of India contain deficiencies which have already been identified in the document handed over to us. **The Central Wetland Regulatory Authority will take up the rectification of deficiencies with the State Governments with promptitude and ensure that all these deficiencies are removed and complete proposals/brief documents are furnished within the next about one month so that the Central Wetlands Regulatory Authority is in a position to take a final decision with regard to these 1683 wetlands and their notification, if required, on or before 31-3-2017.”***

3. Further, vide order dated 04.10.2017, the Hon'ble Supreme Court in *M.K. Balakrishnan, supra* observed:

“We have heard learned counsel for the petitioner and the learned Additional Solicitor General.

We have been informed that the Wetland Rules have since been notified and they are now called the Wetlands (Conservation and Management) Rules, 2017. These Rules have come into force on the date of publication in the official gazette, that is, 26th September, 2017.

*Learned counsel for the parties say that they have very serious objections to some of these Rules. **It is submitted that it appears that the Central Government has abdicated its responsibility under the Environment (Protection) Act, 1986 and instead of delegating its powers, it has abdicated its power in favour of the State Governments. We have also been informed that the Central Wetlands Regulatory Authority has since been disbanded and the State Wetlands Authority and the National Wetlands Committee have been constituted under Rules 5 and 6 of the new Rules.***

With regard to the expenditure on Ramsar Convention sites, we have been informed by learned Additional Solicitor General that the audited accounts have so far been received from the States of West Bengal, Madhya Pradesh and Odisha. Audited accounts have not been

received from any other State with regard to the Ramsar Convention sites.

*We have also been informed that apart from Ramsar Convention sites, **further funds have been given to the States and the Union Territories for conservation of wetlands. No audited accounts have been received in regard to these funds disbursed as well as their expenditure by the State Governments and the Union Territories.***

With regard to the brief documents required to be furnished under the old Rules, it appears that only ten States and one Union Territory have responded. It appears that there is now no necessity of brief documents under the new Rules. We make it clear that this does not mean that the earlier brief documents already submitted can be discarded completely. The contents of these brief documents will still be followed as far as the implementation of the Wetlands (Conservation and Management) Rules, 2017 is concerned.

*Finally, with regard to the satellite images, **we are told that the Space Application Centre would require between 12 to 18 months to make an inventory of 1,75,740 wetlands as they exist today. We make no comment on this but request learned Additional Solicitor General to re-check with the Space Application Centre since the wetlands are diminishing in our country at a very fast rate. It is very likely that many more will disappear by the time the task is completed by the Space Application Centre.***

*We make it clear and reiterate that in terms of our order dated 8th February, 2017, **2,01,503 wetlands that have been mapped by the Union of India should continue to remain protected on the same principles as were formulated in Rule 4 of the Wetlands (Conservation and Management) Rules, 2010.***

Learned counsel for the parties may file their objections to the new Rules within a period of two weeks. We direct that only one set of objections should be filed and both learned counsel should sit together and arrive at some consensus on the objections.

We further direct the State Governments that have not complied with earlier orders or directions given by the Central Government should do so within a period of four weeks from today failing which we will be constrained to require the presence of the Chief Secretaries of the State Governments in addition to imposition of heavy costs keeping in mind the necessity of conserving whatever water bodies are left in the country.

List the matter for further directions and for hearing on the objections to the new Rules on 9th November, 2017.

We would require the presence of a senior officer of the Ministry of Environment, Forests and Climate Change, Government of India to be present in Court on the next date of hearing so that any questions that may be raised can be answered immediately. Needless to say, the senior officer who should be present in Court should be well-versed with the subject. The files on the basis of which the new Rules have been framed may also be kept ready for perusal when the matter is taken up.”

4. Thus, the Hon'ble Supreme Court, apart from directing the High Courts where Ramsar Convention sites are located to monitor the management of such sites, also directed application of Rule 4 of the Wetland (Conservation and Management) Rules, 2010 to 2,01,503 wetlands already mapped by the Central Government. It was further directed that the Central Government will identify and inventorise the said wetlands with the assistance of the State Governments and communicate the order of the Hon'ble Supreme Court to the State Governments who will be bound by the said order. Rule 4 in question provides for protection of wetlands against any incompatible activity, including encroachment and dumping of waste which is to be ensured by the State Wetland Authorities.

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17. The suggestion of the applicant is that significant wetlands need not be limited to 363 and more wetlands on examinations be added to the list from time to time for better protection by preparing appropriate action plans under the programme for protection of the significant wetlands. Further, apart from figure of 2.01 lakh wetlands already mapped, to which the Wetland Rules, 2017 are applicable even if no separate Notification in terms of 2017 Rules in view of directions of the Hon'ble Supreme Court in M.K. Balakrishnan, supra, it may be possible to identify more such wetlands. Infact, the report of the MoEF&CC itself mentions that some States have already identified larger number of wetlands than earlier mapped. In UP itself, 133484 wetlands are entered in the Revenue Records which are being protected by the State. On the same pattern, all the States/UTs need to map all available wetlands in their jurisdiction and file report with the National Wetland Authority so that National Wetland Authority can prepare an exhaustive inventory of wetlands in the country and extend protection to all such wetlands. These suggestions need to be considered by the MoEF&CC.

18. District Environment Plan of each District in terms of order of this Tribunal dated 05.07.2021 in OA 360/2018, Shree Nath Sharma vs. Union of India & Ors. should also cover the wetlands in the District. If necessary, the said plans be revised accordingly by the District Magistrates concerned by providing that the core activity for conservation and protection of wetlands may primarily focus on not discharging of sewage, disposal of solid waste and other wastes, preventing siltation, demarcation of wetlands/flood protection zone and removal of encroachments. There should be regular monitoring of water quality under water quality

management programme at strategic locations (around 10 locations) to ensure that it is compliant with TC/FC norms. Water quality of the wetlands with respect to BOD needs to be less than 3 mg/l, faecal coliform should meet norms and contamination due to toxic constituents either directly or through runoff from the catchment should be prevented. Biodiversity of the wetlands needs to be maintained. Monitoring of steps for compliance of Rules in relation to such Wetlands ought to be at District level by the District Magistrate, at State level by State Wetland Authority and at National level by National Wetland Authority. We are confident that such initiatives in monitoring will go a long way in protecting the Wetlands which have significant environmental functions.”

9. In view of above, the State Wetland Authority, Environment Department of Rajasthan and the District Magistrate, Ajmer may take further remedial action in accordance with law.

The Application is disposed of.

A copy of this order be forwarded to the State Wetland Authority, Environment Department of Rajasthan, Director, Environment, Rajasthan and the District Magistrate, Ajmer by email for compliance.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

Dr. Arun Kumar Verma, EM

December 13, 2021
Original Application No. 63/2021(CZ)
AB