

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No.4549 OF 2009

(Mrs. Kirti Atul Nipankar and others Vs. The State of Maharashtra and other)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Anand Parchure, Advocate for Petitioner.
Shri D.P. Thakare, Addl.GP with Shri S.Y. Deopujari, GP for
respondent Nos.1,2,4 & 5.
Shri C.S. Kaptan, Senior Advocate (Member of the Court
Appointed Committee).
Shri Vitthal Kedare CO, M.C. Lonar present in person.
Shri Khairnar, D.F.O. (Wild Life) Akola, present in person.
Shri S.S. Sanyal, Advocate for intervenor.
Shri N.B. Kalwaghe, Advocate for intervenor.
Shri A.C. Dharmadhikari, Advocate (Amicus curiae)
Smt. Gouri Venkatraman, Advocate for NEERI
Shri Aurangabadkar, ASGI for Union of India.

CORAM : Sunil B. Shukre & Anil S. Kilor, JJ.

DATE : 6th July, 2020.

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

Heard Shri C.S.Kaptan, learned Senior Advocate and Member of the Court appointed Committee along with other Advocates namely Shri Anand Parchure, Shri A.C. Dharmadhikari, Shri S.S. Sanyal and also Shri S.Y. Deopujari, learned Government Pleader and others had made IN-SITU inspection of Lonar Lake on 17.6.2020. The inspection report has now been placed on record. We have perused the same and we find that the situation

obtaining at and around Lonar Lake is really pathetic. The pathetic situation has arisen, as we can see from the history of this PIL and what has been pointed out to us by the learned Senior Advocate and also all the Advocates including the Government Pleader assisting this Court, mainly because of the indifference rather callous indifference of many of the authorities responsible in their own way for conservation and preservation of Lonar Crater Lake. The primary responsibility in this regard, as we find from the record, is upon the shoulder of Collector, Buldhana and it is followed by the Chief Officer, Municipal Council, Lonar and P.W.D. officials. We also find that only department which is taking the whole matter seriously and also making effort for complying with various directions being issued by this Court from time to time is the Forest Department and it appears to us that now the Forest Department has almost been alienated by the other authorities and the result is the pathetic situation obtaining at and around Lonar Crater Lake.

Shri Kaptan, learned Senior Advocate pointed out that nothing is happening in the Court Appointed Committee and he has raised several issues regarding the inaction of this Committee as well as non-implementation of various directions issued by this Court to this Committee. We would request the learned Senior Advocate to place on record his views in the matter and we would also request him to furnish a copy of his written views to the Chairman of the Court Appointed Committee, the Collector and also learned counsel appearing in this

matter on or before next date.

Shri Anand Parchure, learned Advocate submits that two issues of immediate concern are: open defaecation by citizens of Lonar at various spots including the area where Sewage Treatment Plant (STP) is located and discharge of sewage water of entire Lonar city freely into Lonar Crater Lake.

Shri Sanyal, learned Advocate agrees and so also Shri Deopujri, learned Government Pleader.

Smt. Gauri Venkatraman, Advocate representing NEERI submits that new proposal has already been submitted by the NEERI to Municipal Council, Lonar for re-vamping of Sewage Treatment Plant and also increasing its capacity from the present 500 KLD (Kilo Liter per day) to 1000 KLD way back in November 2019.

Shri Kalmegh, learned counsel for the Municipal Council, Lonar submits that necessary action has already been taken by the Municipal Council in this regard. However, details of the action so far taken have not been placed on record and we would direct Chief Officer, Municipal Council, Lonar to submit the same to this Court on or before next date. Shri Kalmegh, learned counsel further submits that some location with the name “Good Morning Spot” has been identified by the Municipal Council, Lonar to regulate the activity of open defaecation. We would request Shri Kalmegh to elaborate in writing the concept of “Good Morning Spot” invented by the Municipal Council, Lonar. We have made one query to Shri Kalmegh about the plan of action of Municipal

Council, Lonar to immediately stop the free-flow of sewage water emanating from Lonar city into Lonar Crater Lake and it appears to us that presently Municipal Council, Lonar does not have any such plan in its mind. It is necessary that the sewage water is prevented from flowing into Lonar Crater Lake immediately and it is diverted to some relatively safer spot for the time being. We direct Chief Officer, Municipal Council, Lonar to stop the flow of sewage water into Lonar Lake within three days from the date of the order and divert it to some other safer spot and submit his report to this Court on or before next date. It may be noted by the Chief Officer, Municipal Council, Lonar that if this direction is not complied with by him or the Municipal Council, Lonar within the time prescribed, serious view shall be taken and we would not hesitate in initiating contempt action against the officer and other persons found responsible for disobeying the direction so issued by this Court. If any such breach should occur, apart from contempt action, this Court would also direct the concerned Inspector empowered under the Environmental Protection Act and Water Conservation Act to file a complaint for taking cognizance of the offences that would be committed because of such breach.

Shri Kaptan, learned Senior Advocate pointed out that in one of the meetings held by the Court Appointed Committee at Buldhana, Shri Vikas Kharge, Principal Secretary, Forest was present and when it was pointed out to him that the post of Range Forest Officer

(in short, “R.F.O.”) was lying vacant, he had taken a decision that within one month, that is, by the end of August 2019, Range Forest Officer would be appointed. He points out that presently there is no R.F.O. and necessary directions are required in this regard. Shri Deopujari, learned Government Pleader submits that R.F.O. was indeed appointed but it so happened that the Officer so appointed came under the trap of Anti Corruption Bureau as a result of which he has now been placed under suspension. He submits that he would inform the concerned authority for providing substitute Range Forest Officer immediately. We direct Principal Secretary, Forest to ensure that substitute Range Forest Officer is appointed on or before next date.

At this stage, it has been pointed out to this Court by representative of Forest Department through the Government Pleader that even the post of Assistant Conservator of Forest (ACF) is lying vacant as no officer has been posted to fill up the vacancy, which is posing many difficulties to Forest Department in performing several tasks and operations relating to preservation and development of Lonar Cretar Lake. We accept the submission and direct Principal Secretary, Forest to ensure that vacant post of ACF is filled up by providing a suitable officer on or before next date.

Shri Parchure, learned Advocate submits that this Court had already made a request to the Municipal Council, Lonar to submit a copy of the agreement it has made with Maharashtra Jivan Pradhikaran regarding

operation and maintenance of STP at Lonar and till date copy of the agreement has not been furnished either to the Court or to any of the Advocates. We direct Chief Officer, Municipal Council, Lonar to furnish copy of the agreement to the learned Senior Advocate, other learned counsel appearing in this matter, learned Government Pleader and also to this Court on or before next date.

Shri Aurangabadkar, learned Assistant Solicitor General of India submits that as directed by this Court, Geological Survey of India has conducted survey of the pink water phenomenon of Lonar Crater Lake and it is slated to submit its report within a week's time. He further submits that the land for establishing a Weather Monitoring Station has been identified and the machinery is also ready but because of the present lock down, machinery has not yet reached the site. He submits that as soon as transportation is permitted, the machinery would be dispatched and installed at the land identified in this regard.

Shri Dharmadhikari, learned counsel submits that he has submitted a report to this Court on 25.6.2020 in which he has raised several points. The copy of this report, however, has not been produced before us today. We would go through the same and issue orders, if necessary, in respect of those points. He also submits that along with the report, he has submitted to the Court samples of impact ejecta debris. We are yet to see the samples, but we would be certainly interested in having a look at these samples along with learned Senior Advocate,

learned Government Pleader and all the Advocates appearing in this matter. This would be possible on the next date and we would request registry officials to keep these samples ready for inspection by we all on the next date.

Smt. Gauri Venkatram, learned Advocate submits that samples of pink water of Lonar Crater Lake are being analyzed and analysis is required to be done repeatedly and therefore, NEERI needs some more time to furnish its report in the matter. She submits that hopefully by 11th July, 2020 the report would be ready and would be submitted to this Court. We grant further time to NEERI to submit its report in the matter. Afterall, analysis is scientific, based on prescribed protocol and would take its own time as several time consuming chemical processes are involved. NEERI is at liberty to submit its report as soon as it is ready and we would expect that the report is submitted to this Court on or before next date. We would request Shri Deopujari, learned Government Pleader to take up the issue of submission of analytical report with Agarkar Research Institute, Pune as its report is still awaited. It would be better that even Agarkar Research Insitute, Pune submits its report on or before next date. Smt. Gauri Venkatraman has submitted that NEERI authorities have found that design it provided for Sewage Treatment Plant (STP) at Lonar was some what modified by the Maharashtra Jivan Pradhikaran and NEERI had pointed out this fact way back in the year 2013. She makes a request for grant of permission to NEERI to

submit its report on affidavit in this regard before this Court.

We find that now even Maharashtra Jivan Pradhikaran and NEERI not parties hitherto, would be necessary parties to be added in this petition and, therefore, we direct that Maharashtra Jivan Pradhikaran as well as NEERI be added as party respondents in the matter.

Necessary amendment be carried out within a week's time and thereafter Maharashtra Jivan Pradhikaran and NEERI would submit their respective affidavits with regard to the points raised in today's hearing, which have been noted in this order.

Leave is granted to serve the notice upon these authorities through their respective counsel.

In our order dated 15.6.2020, we had issued several directions to the Collector, Buldhana, P.W.D., Buldhana and Municipal Council, Lonar. We had also directed these authorities to submit their reports on affidavit to this Court, but none of them has so far complied with these directions. These directions related to shifting of Lonar- Kinhi Road which is presently passing through the eco-sensitive zone containing a cover of impact ejecta debris, carrying out of environmental impact assessment by the P.W.D. before starting construction of Lonar-Kinhi Road and obtaining of clearances from the environmental authority for construction of this road. Other directions related to Collector, Buldhana taking immediate steps to protect ejecta blanket material against

possible thefts and pilferage and submit her report to this Court. No report inspite of the directions given by this Court has been submitted by the Collector, Buldhana. Adding salt to the injury, it now transpires that no instructions whatsoever in this regard have been given by the Collector to the learned Government Pleader. This only emphasises the seriousness of the statement made by the learned Senior Advocate and everybody assisting this Court at the beginning of the hearing. The statement has been that the situation obtaining at Lonar Crater Lake is really pathetic. The Municipal Council was also directed to submit its report regarding requirements of Maharashtra Jivan Pradhikaran for making STP functional. However, this report has not been filed on record. Many more directions have been issued by this Court to various authorities in our order dated 15.6.2020. Hardly those directions have been complied with.

In view of above, we find that now the time has come for this Court to take serious cognizance of the failures and failings on the part of officers responsible for preserving, conserving and maintaining Lonar Crater Lake in every respect. At the very beginning of the hearing, a grievance was also expressed regarding indifference shown by the Collector, Buldhana, which is evident from repeated absence of Collector Buldhana at the time of crucial hearings of this case before the Court and also at the time of inspection visit made by this Court on 22nd February, 2020 and by the learned Senior Advocate and other Advocates on 17.6.2020. As regards absence of Collector

on 17.6.2020 during the course of IN-SITU inspection, there is an explanation furnished by Shri Deopujari. The explanation is about the urgent situation which had arisen on that day on account of emergence of new hot spot in Buldhana district and the need for Collector, Buldhana to address the problems arising therefrom on priority. We can understand the priority and, therefore, we would have no blame to put on about the absence of the Collector on 17.6.2020. But, the Collector, Buldhana has not given any satisfactory or acceptable explanation about her absence on previous occasions. Even today, Collector, Buldhana could have taken part in this hearing through video conferencing. In fact, before the last hearing was held in this matter, this Court had suggested that the Collector, Buldhana would always be welcome to assist this Court through video conference, but alas, no initiative was ever taken in this regard by the Collector, Buldhana. All these facts would only cumulatively provide substance to the statement made at the beginning of this Court by all concerned and the cause behind it noted earlier in this order.

As stated by us, time has come now to act and hold responsible and accountable the officers concerned for their failings. This is also because of the fact that in **Part IVA** of the **Constitution of India** vide Article 51A, fundamental duties have been imposed upon every citizen which duties now are being brazenly flouted by some of the officers carrying these duties with them. The relevant fundamental duties which we would like to mention here

are as follows :

“(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence.”

We are of the prima-facie view that the Collector, Buldhana a district level representative of the Government of Maharashtra, has failed in discharging these fundamental duties in the recent past, thereby owing an explanation to this Court, for dislodgment of the prima-facie impression. At the same time, we would also appreciate the efforts taken by these authorities including the Collector, Buldhana in the past for improving and reforming the situation which obtained there much earlier. It was only during the interregnum, because of the indifference or neglect on the part of some of these authorities that the situation has turned really bad. Here, we would again mention that it is the fundamental duty of all of us to act in the matter and protect, preserve and improve this unique water body, a natural wonder, much more than a public property, and also develop scientific temper and spirit of inquiry by encouraging and promoting world-class scientific research of the water body, its properties, life present in the water body and entire geology of the area.

We, therefore, direct that on the next date of

hearing, all the responsible officers and heads of the Departments shall remain present through video conference before this Court, and would submit their ***respective reports/replies on affidavit ensuring compliances*** in terms of various directions issued by this Court from time to time and in particular on 15.6.2020 and also today. If any officer remains absent on that day, or the reports/replies of compliances are not filed, the matter shall be viewed seriously and if required, ***coercive order*** would be passed by this Court against the officer responsible for the ***deliberate absence and/or breach of directions of this Court.***

Leave is granted to the learned Senior Advocate, learned Government Pleader and all Advocates to physically inspect the record of the petition on the date/s convenient to each of them.

Leave is granted to Shri Anand Parchure to amend the petition through his Clerk.

Liberty is also granted to file on record written submissions/replies/affidavit to everybody assisting the Court in the matter.

Stand over to 22nd July, 2020.

This order be uploaded on the official website and also be communicated to the learned counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

JUDGE

DWW