

**MAHARASHTRA POLLUTION CONTROL BOARD**  
**Policy & Law Division-I**

Sub : Order passed in the PIL Writ Petition  
No.2116/2005 filed by  
Shri Kirit Somaiya  
V/s  
State of Maharashtra & Ors.  
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Mr.Kirit Somaiya, EX-MP has filed the above Public Interest Litigation with a view to bring to the notice of Hon'ble High Court the abject apathy and utter negligence on the part of the Respondents to deal with the problem of Mithi river pollution and the lapses & omissions on the part of various Authorities while dealing with the illegal encroachment and unauthorized units, which have reduced the Mithi River to a gutter nullah. The following facts are brought to the notice of the court in the petition.

- a) It is stated that he has taken up the issue of large scale pollution of Mithi river, which caused constant floods on many parts of the constituency with Govt. Authorities. He had lodged a complaint with the Central Pollution Control Board informing that the Mithi river adjoining the Mumbai Airport flowing from East to West has become gutter nullah.
- b) All the nearby industries throwing their garbage in the Mithi river. MCGM has also failed to treat the sewage water, which flows in the Mithi river was itself over-polluted. He had several personal meetings with the other Authorities to discuss & pursue the matter, but, no concrete steps are taken till date. Unprecedented rain falls on 26/7/2005 received by the city of Mumbai, submerged several portion of the city of Mumbai. The worst affected areas were in & around Mith river.
- c) The total inaction on the part of the Respondents not responding to the reports, recommendations, directions & correspondence to remedy the pollution of Mithi river, even after a period of almost 2 years is unjust and unpardonable, inter-alia, because such delay is causing tremendous loss of life, livelihood, property, health & hygiene to thousands of citizens of Mumbai, living in & around the areas through which the Mithi river flows.
- d) It is, therefore, contended that the lapses & omissions on the part of the Respondents in not dealing with several unauthorized units & encroachments have reduced the Mithi river to a "Gutter Nullah" , shows abject, apathy towards the plight of the people living in & around the areas through which the Mithi river flows and presents the constant danger of repetition tragic events ensuing heavy rain falls on 26/7/2005.

- e) The petitioner therefore prayed for issue of a Writ of Mandamus or any other appropriate writ or direction, directing the Respondents to take concrete steps to implement their recommendations and directions made by the Govt. of India through MoEF and to remedy the large scale pollution of Mithi river in order to avert the future repetition of the tragic events ensuing heavy rain fall of 26/7/2005 in Mumbai. Further to direct the Respondents to take appropriate steps for dealing with several unauthorized units and encroachments and stop them from discharging their sewage water in the Mithi river and properly treat this sewage, if any discharge in the Mithi river at all and to take all other appropriate steps for the purposes of the protection of the Mithi river. The petitioner also prayed for an appointment of a Court Commissioner to oversee, supervise & superintend the work of Committee to be appointed consisting of senior officials of the Respondents to prepare a Plan of Action to clean the Mithi river and to deal with illegal encroachments expeditiously.

The Respondent-Board had filed an Affidavit in Reply to the petition through Shri G.N. Mohite, Sub-Regional Officer, Mumbai-1 and holding charge of Regional Office, MPCB, Mumbai on 30/8/2005, sharing the concern of the petitioner about pollution of Mithi river and the steps required to be taken for cleaning up of the river. It was brought on record that there are large number of unauthorized industrial units / traders, who are involved in reprocessing of waste oil/ used oil, manufacturing of grease from waste oil, storage, handling & washing of drums and barrels containing toxic material in the vicinity of Mithi river, these unauthorized units are mainly located in the part of Dharavi, Mahim & Kurla area and on the banks of Mithi river. It was also reported that besides the discharge of untreated industrial / trade effluent, large quantity of untreated sewage is also disposed off by the residents residing on both the banks of Mithi river and nearby areas, mainly, unauthorized hutment dwellers. It was further informed in the Affidavit that the Municipal Corporation of Greater Mumbai has not provided requisite sewerage system followed by sewage treatment plants for proper collection, conveyance & treatment of sewage and there are many missing links, where sewage system is not placed or not functional including most part of Mithi river area. The Board had conducted survey of unauthorized / illegal units / traders, handling hazardous wastes oil / ferrous / non-ferrous scrap etc. in Kurla-Kalina Area in March, 2001 and identified 146 unauthorised industrial units / wastes oil/scrap traders carrying out their business on the banks of Mithi river. They were without proper license/s or NOC/s from the statutory Authorities. Some of them having the Shops & Establishment License. The MPCB consent has not been obtained by these unauthorized & illegal units. Since, these units are not in organized sector & in the Mumbai Municipal Corpn. area, the MCGM to initiate legal action against these units as they directly or indirectly pollute Mithi river by way of washing drums & throwing the oil sludge etc. MPCB also brought on record the observations regarding the water quality on the basis of the monitoring carried out in the year, 2001 & 2002, stating that the water quality was totally contaminated. The joint inspection was carried out by the MPCB with the CPCB in March, 2003, wherein it was observed that the nearby unauthorized industries are throwing garbage in the Mithi river, MCGM had diverted nullah carrying

Municipal sewage in the Mithi river resulting in contamination of the river water. The pollution was being caused by illegal activities such as oil processing, drum washing on the river's stretch from Kurla-Mahim, having tidal influence. The joint team recommended that a detailed survey has to be repeated to identify additional unauthorized units and to prepare a fresh / updated list of polluters, to clean the river, stop pollutional discharge, to provide adequate & suitable STP and a time bound action plan for necessary implementation involving various concerned authorities like MCGM, Collector, Mumbai & Suburb as well as MPCB.

Thereafter, MPCB engaged the expert services of M/s.Klean Environment Services Pvt. Ltd., Mumbai to monitor 20 points along the stretch of Mithi river, to collect & analysis samples and submit report by June, 2004 on the Mithi river water quality, sludge quality & quantity as well as short term & long term measures to control pollution of Mithi river. M/s.Klean Environment Consultants Pvt.Ltd. recommended short term & long term measures, i.e. immediate closure of all the unauthorized activities discharging wastes, provide proper garbage collection system to prevent dumping thereof into the river as short term measures and to plan for sewers on both the banks of the Mithi river with STPs at various locations, debris the entire length of Mithi river bed to improve its carrying capacity and to provide proper garbage collection stations for the benefit of hutment dwellers. It was proposed that further pollution of Mithi river was to be prevented and river was to be resorted to its original status with the help of MCGM , MMRDA, Collector, Mumbai & Suburb. Similarly, from the CRZ point of view, it was suggested to discuss the issue with MCZMA and Urban Development Deptt., Govt. of Maharashtra. M/s.Klean Environment Consultants Pvt.Ltd. was further assigned the study with reference to identify illegal industries and unlicensed activities, discharging industrial waste into Mithi river, collection of samples and to prepare comprehensive report. The Board has come to the conclusion that there is an urgent need to take remedial measures for cleaning up of the river and to increase the carrying capacity of Mithi river for free flow of water.

Hon'ble High Court of Judicature at Mumbai had issued directions to the petitioner on 17<sup>th</sup> Aug.2005 . Accordingly, the petitioner had placed on record a comprehensive action plan and also highlighted the original status of Mithi river along with the present status of the river as well as revival plan of the river. It was specifically suggested by the petitioner that the river can be revived provided the following steps are taken immediately.

- (I) Prevention of dumping of solid waste.
- (II) Desilting of the River
- (III) Stoppage of encroachment of hutment
- (IV) Control of domestic sewage
- (V) Prevention of illegal oil processors and industrial manufacturing and processing units,
- (VI) Widening of River, control of pollution and prevention of illegal diversions of the River by Air port authority and MMRDA.

The petitioner has suggested the actions to be initiated by the Air port authority, State Govt., MMRDA , Collector, Bombay Municipal Corporation and Maharashtra Pollution Control Board. The petitioner also recommended some directions in order to redress the problem of pollution and degeneration of the Mithi river caused by a variety of reasons such as the discharge of industrial effluents, oil, domestic waste, dumping, diversions etc. After hearing

all the respondents, Hon'ble High Court directed the respondents to identify all illegal, unlicensed commercial units on the banks of Mithi river and issued following directions to the Maharashtra Pollution Control Board.

- 1) The Maharashtra Pollution Control Board to identify all illegal, unlicensed commercial units on the banks of Mithi River. The concerned authorities are directed to give them notices within ten days from the date of order passed by the Hon'ble High Court.
- 2) To take all necessary steps to ensure a check on the daily discharge of waste, effluents, dumping activities and prosecute the offenders under the provisions of the Environment (Protection) Act 1986 and the Water Act 1974.
- 3) To file reply affidavit within three weeks from the date issuance of the aforesaid order.
- 4) MCGM is also directed to ensure that no new encroachments or industrial activities on the river bank are permitted. No new licenses for industrial activities on the bank of river shall be issued without the permission of the Court. MCGM to ensure that adequate numbers of temporary latrines are constructed to avoid people using the river/its banks as a public toilet.
- 5) Advocate General was directed to inform the Court on next date of hearing what steps have been taken by the high powered committee. The petitioners efforts on preparation of comprehensive action report appreciated by the Court.

The Board had filed the 2<sup>nd</sup> affidavit in compliance of the order passed by the Hon'ble Court dated 31/08/2005 about the steps and the actions taken by the Board, on 22/09/2005, which are reproduced as under :

- a) It is brought on record that 8 teams consisting of 28 Technical Officers, 4 Senior level Officers (Scientific, Legal & Technical) were constituted.
- b) The teams started survey along the banks of the Mithi river from its origin i.e . Vihar Lake upto confluence i.e. the place where the river meets the sea at Mahim. About 160 units were identified which were carrying out their activities without consent or authorization from the Maharashtra Pollution Control Board.

- c) The notices were issued with proposed directions to such units. After receipt of replies, the replied units were issued notices to attend the hearing. The units which have not replied to the show cause notices/proposed directions had been directed to closed down their activities M/s. Reliance Energy Ltd., and MCGM directed to disconnect electricity/water supply.
- d) The Board has also issued directions to the Municipal Corporation of Greater Mumbai to take steps, actions to prevent, abate and control pollution.

It was further submitted to the Court that the area of survey along the banks of Mithi river is a vast stretch of land and longer time will be require to complete the survey.

Thereafter, Hon'ble High Court of Judicature at Mumbai directed on 03/10/2005 the BMC, the Collector and other concerned public authorities to ensure that unauthorized encroachments be removed in accordance with Law and also to ensure meticulous compliance of its previous orders.

The Board had filed third affidavit in compliance of the order passed on 31/08/2005 and 03/10/2005, giving details of further actions initiated by it against illegal, unlicensed commercial units on the bank of river. The Board had issued directions of closure to the unauthorized units after giving an opportunity of hearing. M/s. Reliance Energy Ltd., and MCGM were directed to disconnect electricity/water supply. It was specifically reported that since M/s. Reliance Energy Ltd. had not disconnected electric supply as per earlier directions, prosecution notice was issued to it. It was also reported that the survey work is being continued.

Hon'ble High Court directed Mithi River Development and Protection Authority (MRDPA) to file an affidavit by its order dated 22/02/2006. Accordingly, the Member Secretary and Project Director Dr. Vikas Sadanand Tondwalkar filed affidavit. Thereafter, Hon'ble High Court has passed order on 1/03/2006 and directed the Collector, Mumbai suburban districts to ensure the removal of 3600 encroachers having their structures within 30 meters width on either side of the river by 31/05/2006 and also to rehabilitate them by that date. As regards the unauthorized industrial units identified by the Maharashtra Pollution Control Board, Hon'ble High Court directed the Board to take appropriate action including the closure of these industrial units as early as possible by observing the due process of law in that regard. Regarding the proposal of MRDPA to implement the Mithi river development works in two faces, Hon'ble High Court directed that the entire work which comprise of resettlement and rehabilitation of project affected persons, to be completed by 31/05/2006 and the work of deepening , widening and desilting of Mithi river shall be undertaken after the monsoon of 2006. Hon'ble High Court also directed the impleadment of the Reliance Energy Ltd., as party respondent.

MPCB had filed its 4<sup>th</sup> Affidavit on 28/02/2006 through Shri. P. P. Nandusekar, the Principal Scientific Officer of the Board. In compliance of the orders passed by the Hon'ble Court on 31/8/2005, 3/10/2005 & 22/2/2006, giving the details of further actions initiated by the Respondent No.8 against the illegal, unlicensed commercial units on the banks of the Mithi river. The details can be summarised as under :

- a) The Respondent-Board has continued its survey and collected information about a list of unlicensed units identified by the MCGM and decided to follow the principles of natural justice by issuing the proposed directions first, then after receipt of the replies, to extend personal hearing to them and then to issue final directions including directions of closure & disconnection to the unauthorized units.
- b) Accordingly, proposed directions/show cause notices issued to the 200 unauthorized units. The 41 units which have not replied to the proposed directions, directed to close down their units with further directions of disconnection of electricity in case of failure. 66 notices unserved and therefore, it was decided to close down it till necessary documentary evidence about the compliance of notices produced.
- c) The Respondent-Board also issued directions to the Executive Vice Chairman of M/s.Reliance Energy Ltd., Mumbai -55, directing him to disconnect electricity supply to all such units, which are operating without consent of the Board in Khairane Road, Sakinaka, Mumbai, by giving them 15 days notice for producing consent documents of the Board and by following the principles of natural justice. M/s.Reliance Energy Ltd. communicated to the Board that the Board shall identify the industrial units located at Khairane Road, Sakinaka, Mumbai, which fall in the catchment area of Mithi river, a non-conforming zone and operating without mandatory consent / authorization from the Board.
- d) Therefore, the Board has decided to conduct the survey of 855 consumers of M/s.Reliance Energy Ltd. and to identify unlicensed units and accordingly, identified 530 units operating without consent.
- e) The Board has also issued directions to the MCGM to disconnect water supply to the unauthorized industrial units in the catchment of Mithi river, which are operating without consent of the Board on the Khairane Road, Sakinaka, Mumbai by giving 15 days time.
- f) Besides that, the Board had issued show cause notices to 157 industrial estates about the compliance of the provisions of the Water (P&CP) Act,1974, Air (P&CP) Act,1981 and Hazardous Wastes (M&H) Rules, 1989 as amended from time to time. Out of that, only 25 industrial estates have submitted their replies to the Board and remaining 132 industrial estates given final directions to submit the names of the defaulting units in their industrial estates within 30 days time.

- g) The Board has also engaged the services of M/s.Klean Environment Consultants Pvt.Ltd. for total survey and identification of the industries located in the catchments of Mithi river. The Draft Report submitted by M/s.Klean Environment Consultants Pvt.Ltd. identified 5700 units operating in Mithi river basin including the units identified by the MPCB & MCGM. The finalized report of the said agency being submitted to the Mithi River Development & Protection Authority for further necessary action. Since, the identified activities by M/s.Kale Environment Consultants Pvt. Ltd. is very large and the work is voluminous, it was submitted by the Board that one fullfledged technical personal for Mithi river alongwith supporting technical staff will have to be engaged.
- h) The Board has also pointed out the necessity to make provision for common effluent treatment plant for all regular units being operated in the said area and situated in the industrial estates. However, the decision can be taken after finalization of the report by the Mithi River Development & Protection Authority about providing CETP.
- i) The Board has also pointed out that the Board has started receiving a number of representations / replies / objections with request to grant further time to comply with the directions as well as for shifting of their activities within 30 mtrs. on the banks of Mithi river and beyond 30 mtrs., the activities requested for granting them necessary permission / consent, since, Mithi River Development & Protection Authority taken conscious decision to demolish the activities within 30 mtrs. from the banks of Mithi river. The Board has decided to refer the said proposal to the Mithi River Development & Protection Authority for further necessary orders.

Thereafter, the Board has filed 5<sup>th</sup> Affidavit in compliance of the order passed by the Hon'ble High Court on 1/3/2006 after scrutiny of the 5700 identified units by M/s.Klean Environment Consultants Pvt.Ltd. The observations of the Board reported as under :

- a) The report has included not only industries, operations or processes generating effluents but also included private markets, motor garages, the residential complexes, convention centers, commercial complexes, hotels/eating houses, hospitals & dispensaries as well as offices also.
- b) The report also included industrial estates and other activities therein, such as, canteens, tea stalls etc. in the said industrial estates.
- c) The report covered not only the operations on the banks of river but also the operations, processes & other activities in the catchment area of Mithi river, which covers from the origin of Vihar lake upto Mahim creek. It includes the activities identified at a distance less than 50 mtrs., 50 mtrs to 100 mtrs., 100 mtrs. to 200 mtrs., 200 mtrs. to 500 mtrs. and more than 500 mtrs.

- d) It was specifically pointed out in the Affidavit filed by the Board that Mithi River Development & Protection Authority has decided to remove the encroachment on the banks of Mithi river upto 30 mtrs. only and therefore, beyond 30 mtrs. from the banks of Mithi river, the activities will have to be regulated by grant of consent / authorization under the provisions of the Water (P&CP) Act,1974, the Air (P& CP) Act,1981 and the Hazardous Wastes (M&H) Rules, 1989 as amended from time to time.
- e) Therefore, the Board has issued one public notice in the daily newspapers such as 'DNA', 'Maharashtra Times' in the month of March, 2006 directing all the industrial activities within the catchment area of Mithi river, which generates liquid effluent, hazardous waste and gaseous emissions to file with the Board, the documents giving details about their activities including treatment & disposal of their wastes, grant / refusal of consent/authorization from the Board within a week's time from the date of publication of the notice, failing which, their activities will be treated as unauthorised & illegal and the Board will issue appropriate final directions.
- f) It is also suggested that the encroachment upto 30 mtrs. on the banks of Mithi river will have to be first of all concentrated for taking action for shifting and then beyond 30 mtrs. for securing environment compliance.

The Board has thus filed five Affidavits giving the details about actions initiated by it and finally has reported that since, Mithi River Development & Protection Authority has decided to remove encroachment upto 30 mtrs. from the banks of the Mithi river and MCGM is taking action for removal of such encroachment, it will be more appropriate to intensify actions upto 30 mtrs only for removal of encroachment and beyond 30 mtrs. to secure environment compliance. The Board has therefore given stay orders to the directions of disconnection of electricity / water supply beyond 30 mtrs. vide letter dt.12/4/2006 addressed to the Asstt.Commissioners, MCGM, Kurla & Bandra, Mumbai and Dy.General Manager, M/s.Reliance Energy Ltd., Electric House, Santacruz (E), Mumbai-400 055. Since, the unprecedented heavy rains of 26<sup>th</sup> July, 2005, have created havoc in the catchment area of Mithi river, the issues raised in the above Public Interest Litigation are very much important and therefore, Hon'ble High Court is monitoring the implementation of action points decided by the various authorities including MPCB.

Shri R.V. Govilkar, Sr.Counsel is being assisted by Shri D. T. Devale, Sr.Law Officer and Shri S.K. Purkar, Law Officer as well as Shri P.P.Nandusekar, Principal Scientific Officer, Shri B.D. Kude, Regional Officer-Mumbai, Shri G.N. Mohite & Shri B.D. Wadde, Sub-Regional Officers and 9 other teams constituted by the Board to complete the survey and to take action in compliance of the various orders passed by the Hon'ble High Court.



