

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION No. 32 (THC)/2013 (WZ)**

CORAM:

- 1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**
- 2. Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

- 1. DESHPANDE JANSAMSAYA NIWARAN SAMITI,**
Through its Secretary,
1401 Deshpande Layout, Wardhman Nagar,
NAGPUR-440008.
- 2. SURYANAGAR WELFARE SOCIETY,**
Through its Secretary,
Near, Baludyan, Surya Nagar,
NAGPUR-440008.
- 3. EAST WARDHMAN NAGAR SANSKRUTIK KRIDA
MANDAL,** through its Secretary, 148, Near
Samaj Bhavan, East Wardhman Nagar,
NAGPUR-440008.
- 4. WARDHMAN NAGAR SAHAKARI GRUHA
NRIMAN SAMITI LTD.** through its Secretary,
Wardhman Nagar, NAGPUR-440008.

- 5. WARDHMAN NAGAR SARVODAYA KENDRA,**
through its Secretary, Wardhman Nagar,
NAGPUR-440008.

....Applicants

A N D

- 1. THE STATE OF MAHARASHTRA,**
Through its Secretary,
Urban Development Department,
Mantralaya, MUMBAI-400032.
- 2. CORPORATION OF CITY OF NAGPUR,**
Through its Commissioner, Civil Lines
NAGPUR-440001.
- 3. DEPUTY DIRECTOR,**
Town Planning Department,
NAGPUR.
- 4. NAGPUR IMPROVEMENT TRUST,**
Through its Chairman,
Station Road,
NAGPUR-440001.
- 5. MAHARASHTRA POLLUTION CONTROL BOARD**
Through its Secretary,
Udoyg Bhavan, 6th Floor,
Civil Lines, Nagpur-440001.
- 6. THE COLLECTOR,**
Nagpur District,
Nagpur,

7. M/S HANJER BITOCH ENERGIES (P)LTD,

Through its authorized signatory

Shri. Rajesh s/o Madhukar Tadas, Nagpur.

Having its office 335, Shalimar

House Grant Road, Mumbai-400007

At Bhanewadi Ring Road, Nagpur

.....**Respondents**

Counsel for Applicant

Ms. Rihini Randive, Ms. Neha Pathak,

Mr. Asim Sarode, Mr. Vikas Shinde.

Counsel for Respondent(s):

Mr. Mulchandani.A.S. AGP for Respondent Nos,1,3.

Mr. S.M.Puranik for Respondent No.2

Mr. D.M.Gupte, Mrs. Supriya Dangare, for
Respondent No.5

Mr. Suhail Ismail PRO for Respondent No.6.

Mr. Shoeb Memon for Respondent No.7.

Date: April 22nd, 2014

J U D G M E N T

1. The present Application was originally filed as Public Interest Litigation (PIL) No.44 of 2011, in the Hon'ble High Court of Judicature of Bombay, Bench at Nagpur, which was transferred to this Tribunal vide High Court order dated October 9th, 2013. The present Application has been filed by five residential Colony Societies, seeking to ventilate their long standing grievances regarding improper and unscientific operations at the Bhandewadi Municipal Solid Waste

(MSW) dumping yard complex resulting in serious air and water pollution, posing a serious health hazard to the large and dense population, residing in the vicinity of said plant. The Applicants submit that area of Bhandewadi was reserved for MSW dumping yard since 1966. The subsequent development plans (DP) also show the area as compost yard. The Corporation of City of Nagpur (NMC) is utilizing said area for dumping of entire solid waste generated in the city. As a matter of fact, the Respondent No.2, i.e. NMC was expected to provide necessary processing and treatment plant for the solid waste and operate the same scientifically so that operations would not create pollution and health hazard. It is case of the Applicants that the Respondent No.2- NMC and its contractor – Respondent No.7, have not provided adequate machinery and plant for the said purpose and are not operating entire process of MSW management in scientific manner, in compliance with the Municipal Solid Waste (M&H) Rules, 2000, hereinafter referred as MSW Rules. The Applicants, therefore, claim that such unscientific operations of MSW management by the Respondent No.2 and Respondent No.7, is causing air pollution, odour nuisance, pollution of water, soil and groundwater, besides the adverse health impact on the nearby residents. The Applicants submit that they have regularly approached the Authorities including the Respondent No.2 – NMC, Respondent No.5- MPCB and the Respondent No.6, the Collector, pointing out such nuisance and pollution, however, the Authorities have failed to take necessary corrective measures to control air and water pollution.

2. The Applicants further submit that though Nagpur City generates about 800 MT of MSW daily, the processing and treatment was provided only to 600 MT. Further recycling plant provided at MSW facility was

guttled in fire thereby reducing treatment capacity significantly. The Applicants, therefore, submit that such improper and unscientific operations of MSW management by the Respondent No.2, and Respondent No.7, are continued in spite of regular complaints to the Authorities and also several Notices issued by the Regulatory Authority i.e. the Respondent No.5.

3. The Applicants further submit that the Respondent No.2–NMC is also operating Slaughterhouse activities at the same location directly discharging untreated effluents in Nagpur Municipal Corporation area. It is claimed that the Respondent No.5 MPCB has issued letters, Notices and in spite of that, the Slaughterhouse operations are being conducted irregularly in unscientific manner.

4. The Applicants further submit that though the MSW Rules provide for buffer zone of no development to be maintained around landfill site and it is desirable that minimum 500 mtrs buffer area should be marked in the development plan, the Respondent Nos.3 and 4, have failed to provide this buffer zone and thereby are causing significant residential growth in areas surrounding the dumping yard, which ultimately results in exposing large population directly to the air pollution and odour nuisance caused due to the dumping yard. The Applicants further submit that the Respondent No.2 – NMC had appointed the National Environment Engineering Research Institute (NEERI) to suggest improvements in the MSW management of the city and as per newspaper reports such report has been submitted with several recommendations including developing disintegrated MSW facilities in different areas of the city. The Applicants have, therefore, prayed for following:

(a) To direct the respondents to forthwith take steps to restrict the present Bhandewadi

Garbage Disposal Unit from polluting air and water in the vicinity.

(b) *To direct the respondent-Corporation to take steps to provide alternate site for shifting the said project beyond the city limit of Corporation;*

(c) *By an interim order direct the respondents to forthwith ensure that the problem pointed out in the instant petition does not continue to recur and take all such preventive steps so as to save the citizen from the health hazard pollution and take such preventive steps as are deemed necessary in the interest of justice during the pendency of the petition;*

(iv-a) Direct the respondents to place on record the steps taken in the matter and apprise the Hon'ble Court of the proposed action plan for shifting the Bhandewadi Garbage Disposal Unit outside the residential area.

(iv-b) Also direct the respondents to place on record the time schedule within which the proposed action plan would be implemented and taken to its logical end.

5. Respondent No.1- is the State Government through its Secretary, Urban Development Department, Mantralaya, Mumbai. It is informed by the Counsel that there is no affidavit filed by the Respondent No.1, even in the Hon'ble High Court. During hearing on March 26th, 2014, the learned AGP, appearing for the Respondent No.1, stated that he has instructions to inform that the Respondent No.1, do not have any role in the present Petition.

6. The Respondent No.3, i.e. Town Planning department, has filed affidavit through Shri. Avinash Munje, Deputy Director. Respondent No.3 submits that as per sanctioned revised development plan of Nagpur, in

Maouje Bhandewadi, some area is proposed for various user zones like residential, agriculture etc. Some of the area is reserved for specific common purposes such as site No.E-135, which is reserved for compost depot. The said site admeasuring about 36.5442 Ha is reserved for compost depot. Some part of the said site is also used for existing sewage treatment and sewage disposal work, which is further surrounded by agriculture zone. The affidavit goes on to submit that the said area is located quite away from the residential zone.

7. The Respondent No.4, filed two (2) affidavits; first on April, 23rd, 201 and subsequently on 5th May, 2012. The Respondent No.4, i.e. Nagpur Improvement Trust (NIT) submits that they have not regularized or given sanction to any layout under the scheme of regularization within 500m buffer zone from the compost depot. The Respondent No.4, further submits that they have not committed any violation of development plan and have ensured that the development and establishment of compost depot is as per the development plan. The Respondent No.4, further submits that they have carried out surveys of unauthorized constructions, which are not regularized under the Maharashtra Gunthewari Developments (Regularization, Up-gradation and Control) Act, 2001 and existing in vicinity of compost depot situated at Bhandewadi, Nagpur. It is further submitted that unauthorized layouts have come up in Bhandewadi and Wathoda within 500m radius of existing compost depot. These entire unauthorized layouts have come up prior to 1.1.2001. The list of such unauthorized development plots/structures was also submitted on record. Respondent-4 further submits that clarification was sought from NMC on January 6th, 2005, regarding maintaining buffer zone of 500m. The NMC has submitted its views on February 18th, 2005. The

Respondent No.4, further submits that in meantime two (2) layouts have been sanctioned, as per Gunthewari Act and subsequently, no other layout or structure has been sanctioned. The Respondent No.4, further submits that in the sanctioned development plan of 2001, for city of Nagpur, the buffer zone of 500m, is not shown around the compost depot and compost depot is established at the site shown in the development plan. The Respondent No.4, further submits that no relief has been claimed against them, and opposed the Application.

8. The Respondent No.2 i.e. Nagpur Municipal Corporation (NMC) has filed two (2) affidavits. In the affidavit dated November 29, 2011, it has been submitted that existing development plan of the city was sanctioned by the State Govt. in the year 2000, however, even prior thereto development plan for the city was prepared and accordingly, action for development and improvement of the city was taken. It is submitted that in Bhandewadi and in surrounding area, sewerage treatment as well as MSW treatment are being undertaken since past more than fifty (50) years. These lands were earlier outside city limits when acquired by the Respondent No.4 for the aforesaid purpose. And therefore it is the case of the Respondent-2 that when residential habitation was developed in the vicinity of this area, the habitants were completely aware of the fact that the present site was and is being used for specific purpose of sewage treatment and solid waste treatment and disposal. Respondent No.2 further submits that they have already erected MSW processing plant at Bhandewadi and have obtained appropriate authorization from the Maharashtra Pollution Control Board. It is claimed by the Respondent No.2, that this MSW processing plant is operating satisfactorily and therefore, allegations of air pollution, water pollution, bad odour, are denied by the Respondents. In paragraph 10 of

the affidavit, it is categorically denied that it is not correct to say that recycling plant was destroyed due to fire. However, the details of fire incident, losses and also effect on MSW processing have not been explained by the Respondents.

9. Respondent-2 further submitted a detailed affidavit on March 24, 2014, so as to show recent status of the MSW plant. The status of present sewage treatment, MSW processing and Slaughterhouse pollution can be gathered from the same. Respondent No.2, submits that the Corporation area is generating about 800 MT/D of MSW. The Corporation has been granted authorization by the MPCB under the MSW (M & H) Rules, 2000, for its MSW processing plant at Bhandewadi, which is valid till 30th April, 2017. The Corporation has awarded work of MSW processing and disposal to M/s Hanjer Biotech Energies (P) Ltd (Nagpur) by following due process of tendering from April 15th, 2009. This work order is for twelve (12) years, of which, first two (2) years were for construction and development activity and remaining ten (10) years are for operation and maintenance of site at Bhandewadi till 2021. The contractor was manufacturing compost, RDF, Plastic pellets etc. The remains of MSW processing which was of no use, was regularly shifted to SLF as per the norms. When an effort was made to increase plant's capacity to 600 MT/D, incident of fire took place in the plant area on 14.2.2012 due to which the Plastic and Recycling unit and part of segregation unit including machinery were totally destroyed. This incident severally affected functioning of the said plant. It is the contention of Respondent-2, Corporation that they had directed the operator to restore the plant to its sanctioned capacity on priority, however, the operator has not been able to restore the plant to its original capacity. It is claimed by

the Respondent No.2, that compost unit and RDF unit are now functional, whereas the Plastic unit is yet to be restored. The Respondent No.2, further submits that due to non-segregation of waste, two (2) other departments i.e. composting section as well as RDF section are also impacted. The incoming waste is, therefore, dumped in to available landfill in keeping with Rule-6 of the Schedule-II, of the MSW Rules, 2000, wherein it is permissible to dump unprocessed waste into the landfill site during the disruption period and therefore, it is claimed by the Respondent No.2, that presently about 200 MT/D of MSW is treated and the balance of about 600 MT/D mixed MSW is dumped into the landfill site. Therefore, there is no pollution caused due to the MSW management.

10. The Respondent No.2, admits that the MPCB has time and again issued notices/directions through communications dated 6.9.2010, 21.12.2010, 18.4.2011, 22.3.2012, 17.5.2013 etc. and claims that all of them have been duly complied by the Corporation and the operator, which is evident from the fact that MPCB has not taken further action on these notices/directions. The Respondent No.2, further claims that due to consistent follow up by the Corporation with the Operator, the Operator has now started taking steps to restore processing plant to its sanctioned capacity and the operator has brought new machinery at the site to increased processing capacity from 200 MT/D to 400 MT/D. Respondent No.2, further submits that they have submitted Bank Guarantee of Rs. 1 crore to the MPCB for compliance of various pollution control norms.

11. Respondent-7, the Operator of the MSW facility has also filed an affidavit which is basically in line with the affidavit of Respondent-2 Corporation, and therefore, we do not think it necessary to repeat the submissions.

12. Respondent No.2, further submits that though the Corporation is generating about 400 MLD of sewage, presently one sewage treatment plant of 100 MLD capacity is in operation since October 2001, however, due to hydraulic issues, the plant is not running to its full capacity and presently only 70 to 80 MLD sewage is being treated. The Corporation has awarded the work of augmentation of this STP from 100 MLD to 200 MLD recently. Further, the Corporation is constructing 130 MLD capacity STP at Bhandewadi for MAHAGENCO. Further, there is proposal to transport 24 MLD of sewage to the STP at MIHAN and therefore, the Corporation will have a capacity to treat about 354 MLD of sewage in coming years which will reduce water pollution.

13. Respondent No.2, submits that presently three (3) Slaughterhouses are in operation in the city area and the Respondent No.2, has proposed to develop environmentally sound Slaughterhouses in next 30 months as per the undertaking given to the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, which has been noted by the Bench in its order dated 25th September 2013.

14. The Respondent No.5, i.e. MPCB is Regulatory Authority and responsible for implementation of the Water (P &CP) Act, 1974 and Air (P & CP) Act, 1981 and various Rules under the Environment (Protection) Act, 1986, including the MSW (M & H) Rules 2000, the Plastic (M & H) Rules, 2011. The MPCB has filed total three (3) affidavits and first one has been filed in all the Regional Officer, Nagpur on March 26th, 2012. Subsequently, the Sub-Regional Officer of MPCB has filed affidavits on January 28th, 2014 and March 25th, 2014. On perusal of all the three (3) affidavits, it is noticed that consistent stand of the MPCB, is that the Respondent No.2, i.e. Nagpur Municipal Corporation (NMC) is not complying

with provisions of the MSW Rules, 2000 for scientific disposal of MSW generated in the city and also, there is inadequate treatment provided for only about 80 MLD sewage out of total generation of sewage of about 400 MLD from the city area. MPCB has claimed to have time and again issued warning Notices, Show cause Notices and directions under the provisions of the above Acts and Rules, however, it is claimed by the MPCB that in spite of its best efforts, NMC has not complied with environmental norms. MPCB has further submitted that in view of continuance of non-compliances by the Respondent No.2, the Respondent Board is in process of initiating stringent action against NMC. The Regional Officer of MPCB, Nagpur, is said to be in process of collecting samples as per the provisions of Law from leachate section and also, prosecution Notices issued and based on non-compliances, a decision of filing of prosecution against NMC, is being considered. The earlier two (2) affidavits of MPCB show that only about 200 MT/D of MSW is being processed and disposed of out of total 800 MT/D and remaining MSW is dumped on the site in an unscientific manner, without segregation processing and disposal at the secured landfill site. Surprisingly, third affidavit clearly mentions that only 5% MSW is being processed at the time of visit on March 19th, 2014. Some of the non-compliances regularly observed by the MPCB are as under :

- The leachate collection system is not operated properly and leachate is finding its way into environment without any treatment.
- Smell of nuisance was observed in an around Bhandewadi area, burning of MSW was found observed.

- Landfill sites are not properly managed, as un-segregated waste is disposed in the same and also filled with water.
- No proper approach to leachate collection well and waste is dumped all over the plot without processing.
- The plant is not operating regularly, may be due to non-availability of power.

15. MPCB also submits that out of 400 MLD of sewage presently only 70 MLD is treated though work on another 130 MLD STP is in progress. The balance sewage is disposed in river 'Nag' without any treatment causing water pollution problem in the downstream, particularly at Gosikhurd dam. MPCB further submits that MPCB has granted consent on February 13th, 2013, to the Respondent No.2, to operate its Slaughterhouse at Bhandewadi with certain terms and conditions, wherein one of the conditions was to provide necessary treatment arrangements for Slaughterhouse within six (6) months. MPCB further submits that during visit on March 19th, 2014, untreated effluent arising from the Slaughterhouse containing blood was found to be discharged on the land.

16. Considering the documents on record and also arguments advanced by the learned Counsel, following issues arise for effective adjudication of the present Application.

1. Whether operations of MSW management and sewage treatment at Bhandewadi, are resulting into pollution affecting nearby areas and if yes, what is the scale of such pollution?
2. Whether the Regulatory Authorities have performed their role effectively to control the pollution and nuisance arising out of MSW management and sewage management?

3. Whether any specific directions are required to be given to the Authorities and also other Respondents for effective pollution control in Bhandewadi area?

17. It is an admitted fact that NMC area is generating about 800 MT/D of MSW. NMC is disposing the MSW generated in the city at a designated area at Bhandewadi, having total area of about 450 acres, which is located on fringes of the city since 1960s. The MSW Rules have been notified in the year 2000 and as per the Rules, a specific timeframe up to 2003, was given to the Municipal Bodies to develop scientific MSW management facilities. It is an admitted fact that NMC has not adhered to this time limit and only in 2008, tenders were called and operator was appointed for developing the MSW facility. This facility started its phase-wise operation in May, 2010 and in June, 2011 about 450 MT/D of MSW was processed and also, some of the waste accumulated at the site was collected together for its scientific closure. It is brought on record that NMC has created a facility of Secured land Fill (SLF) in the area of 23 acres and also created closure site at the dumping yard with a footprint of 25 acres which is now covered with green vegetation. Subsequently, somewhere in 2011-12, there was a fire incident and the waste processing plant was damaged. Consequently, only 200 MT/D of MSW is being processed and balance 600 MT/D, is disposed of either in secured landfill site without any segregation or is dumped in the premises. It is claimed by MPCB that even this 200 MT/D is not regularly treated as during many visits processing plant was partially or completely shut down due to power failure. The Respondent No.2, makes a statement that they are pursuing with the operator i.e. the Respondent No.7, for reinstallation of the machinery so that the plant is operated as per the tender conditions and only in

March, 2014, some machinery is arrived at the site for the purpose. When a specific inquiry was made, it was submitted that one more assembly line of machinery for 200 MT/D capacity is being reinstalled and thereafter, there will be a processing for about 400 MT/D. The Respondent Nos. 2 and 7, have cited many reasons for such a late reinstallation and have further submitted that they are planning a new project based on viability gap funding, which will be submitted to the Govt. of India for funding. Considering the above, it is found that the Respondent 2 and Respondent-7 are not operating the MSW processing and treatment plant in compliance with the MSW Rules and thereby causing pollution.

18. We also note that subsequent to directions issued by the MPCB on 17.5.2013, MPCB has also issued directions to NMC on 28.5.2013, in compliance with the comprehensive directions of the Hon'ble High Court of Bombay dated 2.4.2013 regarding MSW management in Maharashtra. The action plan shown vide the said order is reproduced below:

Action plan for Metropolitan Cities/ Other Municipal Corporations /"A" Class Municipal Council as per Municipal Solid Waste (Management & Handling) Rules 2000.

Sr No.	Action plan Details	Time Schedule
1	Identification of new secured landfill site if required as per need of Rules by a) Development Authorities and handover the site to the concerned Municipal Authorities in area of their jurisdiction (such	Municipal Authorities to identify various sites and to submit proposal to District Magistrate and Deputy Commissioner within three months (for corporation and A class area)

	as Port, railway,) (please refer schedule III (I) & submission of proposal) b) Elsewhere, Municipal Authorities shall identify the landfill site and submit proposal.	
2	Approval of site by District Collector Committee as per GR of Water Supply & Sanitation Department.	The District Magistrate/ Deputy Commissioner for Corporation and "A" Class Municipal Councils area to approve the proposal. Submitted by the Municipal Authority within two months .
3	Final clearance of landfill site with possession of site, by the concerned Municipal Authority.	Submission of proposal of transfer of land to Govt by Collector.

19. The sewage treatment in Municipal areas in the country is one of the neglected area in the urban development process. As per the report on Performance Evaluation of Sewage Treatment plants under NRCD published by CPCB (2013), most of the cities in the country do not either have adequate sewage treatment capacity or that the installed capacity is also not being operated properly. Most of major states have less than 20% of their sewage duly treated. This is not a good scenario for developing country like India, as untreated sewage is having significant environmental impacts and financial burden, including health impacts, effects on agriculture, groundwater pollution, surface water pollution, besides greenhouse emissions and therefore, it is high time that urban development should necessarily prioritize the sewage collection and treatment system. Though the governments, of late, are giving some considerations to sewage treatment, time has come to

give priority to sewage treatment to ameliorate the negative impacts of untreated sewage, particularly in view of dwindling fresh water sources. It is true that most of the present sewage treatment plants are energy and capital/recurring cost expensive and also, require skilled operations. However, with new technologies, use of appropriate technology and adoption of new financial recovery models recurring cost of such treatment can be reduced on principle of reuse and recycle. Nagpur City was one of the first Cities which have tied up with power generation Company to provide its treated sewage for cooling purpose thereby commercializing the sewage treatment. However, presently, out of 400 MLD swage generation, only 70 to 80 MLD is being treated and another 130 ML/D may be treated from next year. NMC could not give any time frame commitment for balance quantity of sewage. It is also mentioned that this untreated sewage is finally discharged directly in 'Nag' river, which ultimately drifts to Goshikhurd Dam. This is not at all happy state of affairs from environmental stand point of view.

20. MPCB has not brought on record the performance of the sewage treatment plant in its affidavit, though it was specifically asked to do so. We have therefore gone through the documents filed with the affidavit related to Water quality results submitted by MPCB. We have noticed that MPCB has collected in all eight (8) samples in last few years of which results of 5 samples are not meeting the prescribed norms. More importantly, the critical parameter of BOD (limit <50mg/lt) is varying from 18 to 320 mg/lt while exceeding the standards 4 times. This data clearly shows that the STP of designed capacity of 100 MLD, and which is being operated at 70-80 MLD is not being operated

properly, resulting into such variations in qualitative treatment of sewage.

21. It is an admitted fact that the Respondent No.2 – NMC is operating three (3) Slaughterhouses in the City of Nagpur and one of which is at Bhandewadi is adjoining to MSW facilities. MPCB has clarified that though they have given conditional consent to operate the Bhandewadi Slaughterhouse for a limited period till the new Slaughterhouse is developed by the Respondent No.2, the Respondent No.2 is under obligation to provide and install/commission necessary pollution control system at the existing Slaughterhouses. MPCB has reported that there is inadequate pollution control system at the unit and effluents mixed with animal blood is disposed in environment without treatment. During argument, NMC officials, who were present, also admitted that there is no effluent treatment provided at the existing Slaughterhouses. However, they claim that as per the Hon'ble High Court's order, they are developing new project within thirty (30) months. We have perused the order of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench dated 25th September 2013, which is reproduced below:

“As stated earlier, the respondent no.6 Maharashtra Pollution Control Board has already granted its technical approval by the communication dated 12/7/2013. We treat the statement made in the affidavit of the respondent no.1 Corporation as an Undertaking to this Court and the respondent no.1 Corporation has to ensure the project is completed within thirty months as undertaken by it. “

22. It is clear from the above order that Hon'ble High Court has directed for development of new slaughterhouse as per the undertaking given by the

Respondent-2, Corporation. The order in no way has given liberty to Respondent-2 to operate their existing slaughterhouse without any Effluent treatment and without complying existing Rules. And therefore, the contention of by Respondent No.2, regarding the reason for non-providing of ETP at the slaughterhouse, is unacceptable and hence is rejected.

23. Considering the above status of pollution control systems and compliance of pollution control norms. We are of considered opinion that Respondent Nos.2 and 7 are jointly responsible for operating MSW processing plant in violation of MSW rules, 2000. We are also of the opinion that Respondent No.2, NMC has failed to provide the necessary sewage treatment plants for Nagpur Municipal areas and also, necessary ETP for the slaughterhouse at Bhandewadi. Based on submissions of MPCB, we are inclined to answer the Issue no 1 referred above in affirmative.

24. We desired to ascertain the environmental damage and impact caused due to non-compliance of Respondent Nos. 2 and 7 in operations of MSW facility, STP and also, the slaughterhouses. With this aspect in mind, we had asked MPCB to submit the details of air and water quality assessment done by the MPCB during pendency of this petition/Application. MPCB has filed some information in its last affidavit, and noted that MPCB has done ambient air monitoring, related to MSW operations at the project site, total 4 times since 2010, of which 3 samples are of 2013. The results indicate that the RSPM values are ranging from 307-627 microgm/m³. Though RSPM is specifically not referred in MSW Rules, the National Ambient Air Quality Standards, 2009 prescribe the RSPM norms at < 100 microgm/m³. It is also noted that during entire pendency of this petition, MPCB has not carried out ambient air quality monitoring

in the surrounding residential areas, and also, the complainant's residential areas. MPCB could have used scientific air quality monitoring techniques using specific air quality markers, for assessing the contribution of MSW operations on ambient air quality in the vicinity. MPCB is the specially created scientific and technical organization under environmental laws, and is expected to deal with public grievances in most appropriate scientific manner, and therefore we expected MPCB to come with complete information on ambient monitoring of water and air, so that the impact assessment could have been possible. The MSW Rules provide for a definite monitoring frequency of environmental parameters and plant performance, and cast the responsibility of such monitoring on MPCB. However, MPCB has failed to adhere to such prescribed frequency and also process of monitoring. In the absence, of such data, we find it difficult to assess the damages.

25. In the absence of factual information available, the Tribunal has to decide on guess work (uncertainty) about the environmental damages due to unscientific operations of MSW facility and STP. The Apex court in "A.P. Pollution Control Board vs Prof.M.V. Nayudu (Retd.) & Others" has held that:

Uncertainty becomes a problem when scientific knowledge is institutionalized in policy making or used as a basis for decision-making by agencies and courts. Scientists may refine, modify or discard variables or models when more information is available; however, agencies and Courts must make choices based on existing scientific knowledge. In addition, agency decision making evidence is generally presented in a scientific form that cannot be easily tested. Therefore, inadequacies in the

record due to uncertainty or insufficient knowledge may not be properly considered....

The 'uncertainty' of scientific proof and its changing frontiers from time to time has led to great changes in environmental concepts during the period between the Stockholm Conference of 1972 and the Rio Conference of 1992. In Vellore Citizens' Welfare Forum vs. Union of India and Others [1996 (5) SCC 647], Hon'ble Apex Court referred to these changes, to the 'precautionary principle' and the new concept of 'burden of proof' in environmental matters. Kuldip Singh, J. after referring to the principles evolved in various international Conferences and to the concept of 'Sustainable Development', stated that the Precautionary Principle, the Polluter pays Principle and the special concept of Onus of Proof have now emerged and govern the law in our country too, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes, such as the Water Act, 1974 and other statutes, including the Environment (Protection) Act, 1986, these concepts are already implied. The learned Judge declared that these principles have now become part of our law.

26. We may high-light the fact that, admittedly, the MSW facility is not being operated to its rated capacity of 800 MD/day since the incident of fire (February 2012) and is presently only 200 MT/day of MSW is processed, though this is also challenged by MPCB. By a simple arithmetic, considering claim of the Respondent Nos. 2 and 7 that 200 MT/D MSW is processed and 200 MT/d is inert waste, it is seen that about 400 MT/d MSW is disposed of without any treatment and processing in an unscientific manner, since the date of fire i.e. February 14th 2012. Though this inert waste is also mixed with

other biodegradable waste for dumping in the landfill, making the entire quantity contaminated. So, even with a very conservative estimate about 12000 MT/d MSW is disposed unscientifically causing pollution. The sewage treatment is also at @ 70 MLD against the generation of 400 MLD. The STP performance is also not consistent and complying at all times. The slaughterhouse does not have ETP and is being operated without pollution control systems. These are tale telling facts and circumstances. It is obvious that such operations occurred as a result of improper management of such plants by the Respondent Nos. 2 and 7. The operations of MSW facility, STP and slaughterhouse in the present state itself are of such nature that no separate proof for of “negligent act” on part of the Respondent Nos.2 and 7 is required to be adduced. This is a case in which Principle of *Res ipsa loquitur* is applicable. We have no hesitation, therefore, in holding that the Respondent Nos.2 and 7 are committing a gross negligence which has resulted into present state of MSW facility. Further, we also hold that Respondent No.2 is not operating the STP operations and also slaughterhouse operations scientifically as per pollution control norms. Both the above acts of Respondent Nos.2 and 7 are resulting into discharge of environmental pollutants in the environment and also in the surrounding area. Needless to say, the Respondent Nos.2 and 7 are liable to restore the environment as well as to pay adequate environmental damages. The remedy as available under Section 18 of the National Green Tribunal Act is inclusive of restitution and compensation. The adjudication by the National Green Tribunal has to be done on Polluter Pay’s Principle as enumerated in Section 20 of the National Green Tribunal Act 2010. We hold, therefore, that the Application will have to be allowed for

the reliefs claimed and proper measures should be taken to avoid future similar incidents.

27. MSW Rules, 2000 is one of the important environmental regulations in the urban development scenario in the country, and when the Country is experiencing the rapid urbanization, these rules are very important to maintain hygienic environment in the city area. The Rules envisage a structured approach to this complex social and technical problem, and therefore have identified two specific authorities under the rules. Under Rule 5 of the said Rules, the Secretary- in charge of Urban development ministry in the state is the overall Supervisory Authority for Metropolitan cities and District Magistrate for all cities in respective districts. The SPCBs are also responsible for grant of Authorization, and monitoring the compliance of standards regarding the ground water, ambient air, leachate quality and compost quality as specified in the Rules. The Municipal bodies are responsible for waste management as per the provisions of Rules.

28. Counsel for Respondent No.1 submitted, on instructions, that the Respondent No.1, does not have any role in the present Application. We were surprised with this statement and asked him to peruse the Rules. It has been submitted by MPCB that Respondent No.1 has prepared an Action plan for treatment and processing of MSW and its scientific disposal in the State, in compliance with the orders of Hon'ble High Court of Bombay on 2/4/2013. All the Municipal bodies are working under the supervision of the Urban Development Ministry. We therefore reject the contention of Respondent No.1 that it does not have any role in the present Application.

29. Respondent-6 Collector, has filed any affidavit and even represented in the present Application. Perusal

of the MSW Rules show that Collector being District Magistrate has the over-all responsibility of implementation of Rules in the respective District. We are surprised due to apathy shown by the Respondent No.6 in dealing with such critical environmental issue, affecting human health.

30. Unscientific operations of the MSW facilities are expected to have significant impacts in the surroundings due to odour pollution, air pollution and water/soil pollution. Considering these aspects, the MSW Rules, 200 have provisions related to nearby habitation and development. The Schedule-III has two relevant clauses which are reproduced below for clarity:

1. The landfill site shall be away from the habitation clusters, forest areas, water bodies, monuments.....
2. A Buffer Zone of no-development shall be maintained around the land-fill site and shall be incorporated in the Town Planning Department's land use plans.

However, these clauses relate to site selection, as a part of specifications for the Landfill sites, and the Authorities are required to examine its applicability and relevance during the operation stage of the Landfill. It has already been submitted by the Respondent No.4, that there is no buffer i.e. no-development zone shown in the revised DP of Nagpur. Moreover, it is averred that development of such a buffer zone is likely to get some opposition from the local residents, as their development rights will be affected. We are also aware of the difficulty that if the MSW facilities are strictly operated as per the Rules, there will not be any need of buffer zone. However, considering the present status of MSW management at Nagpur, we are skeptical as to when and how the MSW

operations will strictly be as per the Rules. It is therefore necessary that the Authorities shall examine whether the buffer zone as envisaged in Schedule III of the MSW Rules can be identified, as per the provisions of Law.

31. During hearing, we inquired about the capacity of secured landfill site and it was informed by the concerned officers of Respondent No.2, that the original secured landfill capacity was of about seven (7) years period, considering intake of about 600 MT/D of MSW, that will be processed and reused and only about 200 to 250 MT/D will find its way to secure landfill site. They further informed that with the present scenario about 600 MT/D MSW is now dumped in secured landfill, life of secured landfill will be considerably lowered. The Tribunal also inquired about the action taken by the Respondent No.2, against the operator i.e. the Respondent No.7, for non-complying with the contractual obligations to treat 800 MT/D of MSW and it was informed that NMC has penalized him and has also issued Notices. When persistently inquired about the nature and scale of the penalty, it was reluctantly informed by officers of the Respondent No.2 that penalty of Rs.5,000/- or so has been imposed on the operator. Considering the fact that nonperformance of obligations by the operator is resulting in disposal of about 600 to 800 MT/D MSW every day in complete violation of directions of the Apex Court, Hon'ble High Court, MSW Rules and other Environmental Laws the penalty is only a paper scare. We fail to understand the rationale of NMC in charging such penalties and letting the operator free in spite of grave contractual violations.

32. Though MPCB has been issuing Notices/directions to NMC about improper MSW management and also regular visits, and even of Member Secretary in May, 2013, have noted non-compliance, no serious legal action

has been initiated. Now, MPCB has allegedly considering filing of prosecution against the Respondent No.2. We find it difficult to justify such delayed response from MPCB and more particularly when such large quantity of waste is being disposed of in the environment without any treatment, and there are violations of the MSW Rules and orders of Hon'ble High Court.

33. MPCB is a special organization created under the provisions of Water and Air Acts and is expected to perform a scientific and technical role in implementation of environmental regulations. The MSW rules specifically mandate MPCB to monitor the environmental quality in view of MSW facility operations. Section 17 of Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 prescribe the mandate of SPCBs, which clearly shows the scientific and technical functions of the Board besides the enforcement responsibilities. Considering these provisions in mind, we called upon the MPCB to submit environmental quality data related to MSW facility operations to assess the environmental impacts. Being a special scientific organ created under environmental statutes, MPCB is expected to assist this Tribunal with scientific data, analysis and research. However, in this case, we regret to note absence of scientific support through data and information made available by MPCB. We therefore feel it necessary that the MPCB shall develop its capacity in environmental monitoring and assessment with emphasis on research based, latest scientific and analytical tools, as envisages in Section 17 of Water and Air Acts. The Water and Air Acts have provisions, giving MPCB specific powers coupled with certain duties as envisaged more specifically in Section 17 of Acts, and Section 33 of Water Act, and Section 31 of Air Act. We are not inclined to elaborate on these legal

provisions and the organizational approach when an institution is bestowed with certain powers coupled with duties, as they are well documented. We therefore urge the MPCB through its Chairperson to examine this aspect thoroughly for developing a specialized group within the organization which will focus on scientific and technological research, analysis and interpretation of environmental data, new and clean technologies, besides scientific dissemination of information. We hope that MPCB will consider the above suggestion in proper perspective.

34. Considering the above, the present Application is partly allowed in following terms,

- a. The Secretary, Urban Development, Government of Maharashtra, shall review the MSW management status in Nagpur city within next four (4) weeks to prepare a specific action plan and shall ensure that the MSW processing plant is operational to its original capacity of 550MT/d (200+200+150) within sixteen (16) weeks without fail, and waste accumulated at the site is also properly processed and treated in a time bound program.
- b. In the meantime, Secretary, Urban Development, Government of Maharashtra and Commissioner NMC, shall take suitable steps to identify suitable agency to perform this work if the operator fails to achieve the time limit, at the cost and risk of the operator.
- c. Chief Secretary, Maharashtra shall cause to enquire into above mismanagement of MSW by Respondent Corporation and more particularly, as to why the MSW processing

and treatment plant at Nagpur was not put back in operation to its full capacity immediately after the fire incident, and also, whether appropriate penal action as per contract was taken against the operator for the non-performance, within three (3) hereafter months, and take further necessary action.

- d. Secretary, Urban Development shall examine and decide the need and extent of the buffer no-development zone aspect as per the MSW Rules, in the present case, in particular and also, as a common strategy for all municipal areas in three (3) months hereafter. MPCB shall provide all scientific assistance including specialized monitoring data, if required, for this purpose.
- e. MPCB shall conduct monthly monitoring as per MSW Rules and STP performance at the cost of Respondent Nos. 2 and 7, and submit the reports to Secretary Urban Development and Collector, Nagpur on monthly basis till the MSW Rules are complied with. MPCB is at liberty to take necessary action, including the prosecution/s as indicated, against the non-compliances as per provisions of law.
- f. Respondent Nos.2 and 7 shall deposit Rs. 20 lakhs each with Collector, Nagpur within 4 weeks as environmental damages for not operating the MSW processing plant to its capacity since February 2012 till date. Collector Nagpur shall use this money for environmental programs like plantations, health camps etc. in the localities in the

vicinity of MSW plant within two (2) years hereafter.

- g. In Case, Respondent Nos. 2 & 7 fail to deposit the above amounts in time, The Collector of Rajkot (Gujarat) shall recover amount of Rs.25 lakhs from Respondent initially by issuing a show cause notice of fifteen (15) days and if no response is received, then immediately by issuing Warrant of Recovery and causing attachment of the property of the said Project Proponent, which may be sold in auction. The properties be attached as stock and barrel for the purpose of such sale, including the Machinery, Shares and the concerned Bank Accounts, may be directed to be frozen..
- h. Respondent No.2 shall install and operate ETP for slaughterhouse within 3 (three) months hereafter, else MPCB may ensure closure directions for this slaughterhouse for non-compliance. MPCB shall depute its senior officer dealing with the subject to visit the existing unit in next 1 week and give technical assistance to Respondent No.2 about feasibility of treating the effluent in the existing STP and also, proper management of solid waste generated in the unit.

The Application is accordingly disposed of. No costs.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay.A. Deshpande)



NGT