

BEFORE THE NATIONAL GREEN TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

M.A. No. 67 of 2014

IN

Original Application No. 5 of 2014

And

Original Application No. 6 of 2014

IN THE MATTER OF:

Latif Beg & Ors. Vs. MoEF & Ors.

And

Jyoti Mishra & Ors. Vs. MoEF & Ors.

ORDER/JUDGMENT

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE M. S. NAMBIAR, JUDICIAL MEMBER
HON'BLE MR. DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE MR. PROF. A. R.YOUSUF, EXPERT MEMBER
HON'BLE DR. R.C. TRIVEDI, EXPERT MEMBER**

Dated: 30th May, 2014

MSW BAREILLY CASE

1. On 03.01.2005, Respondent No.2, UPPCB granted a no-objection certificate in favor of Respondent No. 4, Municipal Corporation, Bareilly for setting up an integrated mechanical composting plant of 500 t/d capacity at village Razau Paraspur, in an area of 21.20 acres. On 28.03.2013, respondent no. 2 granted authorization to the respondent no. 4 for its MSW Plant at the same site. The said authorization expired on 31.12.2013. On its meeting held on 19.12.2012, State Level Environmental Impact Assessment Authority (SEIAA) agreed with the recommendation of the State Environmental Appraisal Committee (SEAC) and declared that

respondent no. 4 was not required to take Environmental Clearance for Municipal Solid Waste Project under EIA Notification of 2006. The validity and correctness of this letter was challenged before this Tribunal in Application No. 86/2013, a petition filed by Rayons-Enlighting Humanity, a society, in Application No. 99/2013 by the Invertis University (the same Applicant in Application 110 of 2014) and in Application 100 of 2014 by a group of residents of village Razau Paraspur, Bareilly. All these Applications were heard together and disposed of by the common judgment dated July 18, 2013. It was found that respondent no. 4 was required to take Environmental Clearance from SEIAA, being a category B project, before setting up and operating the MSW plant. It was also found that the plant is neither meeting the site specifications nor does it have incinerator to ensure proper treatment and volume reduction and disposal of municipal waste. Therefore, various directions were issued.

2. The said judgment was challenged before the Hon'ble Supreme Court in Civil Appeal 7215 of 2013. Vide order dated 13.09.2013, the Hon'ble Supreme Court granted special leave and passed the following order:

“By way of interim order, the directions as contained in Para 49 of the impugned judgment shall remain stayed”

3. Application No. 5 of 2014 is filed by the residents of the affected villages seeking an order directing the Respondents not to operate the MSW plant before obtaining EC clearance as per EIA Notification 2006 and fresh authorization as per Municipal Solid Waste (Management and Handling) Rules 2000 (in short MSW Rules 2000).

4. Application No. 6 of 2014 was filed by farmers of the village Razau Paraspur and Nariyawal claiming to be directly and substantially affected by the operation of the said plant seeking an order restraining Respondent No. 4 and M/S AKC Developers Ltd. (Respondent No. 5 in that Application) from operating the plant

without obtaining Environmental Clearance and from raising fresh or further construction on the site of the plant. The Invertis University filed the Application No. 110 of 2014 seeking almost identical reliefs against the Respondent No. 4 who is impleaded therein as Respondent No. 3.

5. As the Hon'ble Supreme Court of India has already stayed operation of the directions contained in para 49 of the Judgment dated 18th July, 2013 of the Tribunal, and the matter is subjudice before that Court, in these Applications before us we, would not deal with any contention or matter that directly or indirectly arises for consideration of the Hon'ble Supreme Court of India in the Appeal pending before that Court. We shall confine ourselves only to the subsequent events *de-hors* the contentions raised in that case. Be that as it may, the Applicants are contending that the Respondent No. 4 cannot operate the MSW plant without obtaining an authorization as provided under the MSW Rules and as they have not obtained the consent under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974, they cannot legally continue to operate the plant without obtaining the authorization and consent. It was also contended that the leachates are being sprayed over the solid waste for the purpose of composting and it causes serious pollution. Taking into consideration these submissions we directed the CPCB to inspect the premises making it clear that the CPCB shall send its team for inspection of the project and the inspection shall be conducted jointly by Respondent No. 2, UPPCB and the CPCB, especially in relation to the leachates, collection, treatment and disposal on the site in question. Pursuant to the directions the CPCB and UPPCB conducted a joint inspection on 5-4-2014 and submitted a joint inspection report highlighting the various deficiencies as follows:

- a. Construction of drains inside the premises has not been found for discharge of any rainy water.*

- b. The height of the wind rose of Bio Composting Plant has been found about 4 mts. Whereas in normal conditions the height of the same should be 01 to 1.5 mts. Anaerobic position has been found inside the windrows.*
- c. Some wet organic waste has been found outside Bio Composting Yard. Drains all around Bio Composting Yard to collect the leachates have not been made.*
- d. After the wind rose, Maturation Yard has not been constructed.*
- e. Plastic waste has also been found in Land Filling Area, which shows that segregation of plastic waste from inert waste is not being done properly.*
- f. Tanks have been made for collection of leachates waste, but no arrangements have been made for treatment of leachates waste.*
- g. Foul smell has been found near the plant.*
- h. Plant has been found operated without valid authorization. It is known that vide Letter No.F42119/C8/MSW/02/14 dated 29.04.2014 of the Board's headquarters the authorization for said plant has been rejected.*

6. It has been observed in the report that the Plant does not have valid authorization for its operation. It is to be noted that the Plant had authorization only till 31.12.2013 which was issued by UPPCB. The Municipal Corporation applied to the UPPCB in November, 2013 for extension of the authorization and the Regional Officer of the UPPCB had submitted a report stating that it is for the Regional Office of UPCC to take a decision. But the consent was not granted.

7. It is thus clear that the Respondent No.4 is not having any valid authorization and consent for the operation of the MSW Plant. The leachates was spread over the waste for bio-compost. The bio-compost yard was not circled by lined drains for collection of leachates or surface run off. The compaction/consolidation was not done as per SLF specification prescribed under the rules. Moreover, plastic waste was disposed of in the SLF indicating that proper segregation was not carried out. The leachates collection sumps were

not covered and were filled with rain water. The joint report further reveals that required adequate facility for treatment of leachates generated should be provided so that treated leachates quality shall confirm to the standard prescribed in MSW Rules 2000, and proper drainage system are required to be built along the periphery of the compost yard. So also provision for proper drainage system, separate storm water drainage and catch pit for the leachates in the premises are essential to prevent contamination of ground water. Based on the above, UPPCB declined the authorization sought for by the Respondent No.4.

8. When this Report was filed, learned Counsel appearing for respondent no. 4 submitted that they are willing to take such remedial measures as have been stated by the Board in their report within a prescribed time frame. However, a further joint inspection was again carried out on 27.05.14 by UPPCB and CPCB and it is reported that the deficiencies were not fully complied with. We may also notice that it is the undisputed case before us that even now the excess municipal waste is being dumped at another site which is at Bhakadganj which is far away from the vicinity of any residential area or even offices etc. This site was also being used prior to the commencement of the present plant.

9. Learned Senior Counsel appearing for respondent no.4 made available photographs showing the constructions being carried out on the periphery of the site and submitted that out of the total length of drain along boundary which is 910 m, excavation work of 300 m was over and 90 m construction was completed and out of the total length of drain along the shed, which is 1050m, excavation of 260 m was over and 90m construction base was over and 30 labourers are working on the site and the entire work would be over within a period of one month. Learned Senior Counsel argued that their MSW plant is one of the best in India and closing down the same would go against the sustainable development and therefore they be permitted to operate the plant.

10. Learned Counsel for Applicant submitted that when respondent no 4 did not obtain the consent and is not having the EC clearance and the report submitted by the joint inspection team establish that the deficiencies are not fully complied with, they cannot be permitted to operate the plant. Learned Counsel appearing for the Applicant relied on the decision of the Apex court in Bangalore Medical Trust V.s B.S Buddappa and Ors. (1991) 4 SCC 54) and argued that financial gain cannot be at the cost of the public welfare and no one howsoever high can arrogate to himself or assume, without any authorization express or implied, in law a discretion to ignore the Rules and therefore, respondent no 4 cannot be allowed to continue the operation of the plant without the authorization, consent and complying with the mandatory requirement under the law. The learned counsel also placed reliance on the decision of the Hon'ble Supreme Court in Research Foundation for Science and Technology, National Research Policy vs. UOI ((2005) 10 SCC 510) wherein their Lordships directed that units operating without any authorization or in violation of the conditions of the authorization issued under the Hazardous Waste Rules 1989 shall be closed forthwith.

11. Rule 4 of the MSW Rules 2000 clearly provides the responsibility on Municipal authority to obtain the authorization. As per the said rule the Municipal authority or an operator of the facility shall make an application in Form 1, for grant of authorization for setting up waste processing and disposal facility, including landfill, from the State Board. Rule 4 reads:

“ The waste processing or disposal facilities shall include composting, incineration, pelletisation, energy recovery or any other facility based on state-of-the-art technology duly approved by the Central Pollution Control Board.”

12. It is not even disputed by Respondent No. 4 that they are not possessed of any consent and authorization by the competent authority which had been granted to them by the Board subject to compliance of the conditions. Apparently, Respondent No. 4 has

failed to comply with such conditions. Respondent No. 4 also does not have the approval of its facility from the Central Pollution Control Board.

Schedule IV of MSW rules provides the standards for composting treated leachates and incineration, which reads as follows:

“The waste processing or disposal facility shall include composting, incineration, pelletization, energy recovery or any other facility based on the State of Art Technology duly approved by the CPCB.” Respondent no.4 has no case that they obtained any approval from the CBCB on the technology of the plant as provided under the said schedule.

13. The Reports submitted by the joint inspection team establish that there are various deficiencies which would result in causing pollution and in spite of the duration of the dispute, the deficiencies were not cured. It is clear that pollution is being caused by the leachates which are hazardous to the neighboring residents as well as adversely affecting the quality of the ground water.

14. It is thus clear that respondent no4 has not obtained the requisite consent and authorization from the State PCB and is also not having the approval of CPCB on the art of the technology adopted. It is very clear that pollution is being caused by disposal of leachates in an unscientific manner. The rules and regulations are binding on all including the Respondent No.4. In the name of Public Welfare, respondent no.4 cannot be permitted to operate the MSWM plant violating the rules and regulations. Violation of rules and regulations and operating its plant without authorization cannot be countenanced by the Tribunal, in the light of the law clearly enunciated by the Hon’ble Supreme Court of India in the case of Bangalore Medical Trust V.s B.S Buddappa and Ors. (supra) and Research Foundation for Science and Technology Vs. Union of India (supra) Larger public interest and public health must take precedence over the claim by Respondent No. 4. More so when

Respondent No. 4 had ample time to make up for the deficiencies and take all anti pollution measures. The conduct of the Respondent No. 4 itself disentitles it from any discretionary relief from the Tribunal.

In such circumstances we have no other option but to direct closure of the MSW Plant of Respondent No. 4 which we do hereby Order. The Respondent No. 4 is at liberty to cure all the deficiencies pointed out by the joint inspection team and approach the Pollution Control Board for the requisite consent and authorization. In that event it is for the Board to take appropriate decision in accordance with law. If the Board grants the consent and authorization to Respondent No 4, it is entitled to resume operation of the plant in accordance with law subject to the order that may be passed by the Hon'ble Supreme Court

....., CP
(Swatanter Kumar)

.....,JM
(M. S. Nambiar)

.....,EM
(Dr. D.K. Agrawal)

.....,EM
(Prof. A.R. Yousuf)

.....,EM
(Dr. R.C. Trivedi)



NGT