

BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN
ZONE BENCH, KOLKATA —
Appeal NO. 06/2024/EZ

IN THE MATTER OF: -

M/s S. R. Solution

...APPELLANT

VERSUS

The State Environment Impact Assessment Authority & Ors.

...RESPONDENTS

REPLY OF THE APPELLANT TO COUNTER AFFIDAVIT

BY THE ^{BSPCB} ~~SEIAA~~:-

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Filed By:

Kumaresh Singh

Adv
13R/1889/2013

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'Radha Niwas', Patna Nagar
Road no 4A, Patna - 24
Bihar

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BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN
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REPLY OF THE APPELLANT TO COUNTER AFFIDAVIT
BY THE SEIAA:-

I, Santosh Kumar Ojha, male, aged 47 years , S/o late Sri Kameshwar Ojha at House No. 384/549A, East Lane of N.S.C., Sheikpura, P.O.- B.V. College, Patna- 800014, do hereby solemnly affirm and declare as under :-

1. That I am competent to affirm the present affidavit for and on behalf of the Appellant herein. I am well acquainted and conversant with the facts and circumstances of the instant case and as such I am competent to swear this affidavit. Copy of Registration Certificate of Sole Proprietorship.
2. That The Appellant has preferred the instant appeal with the following prayers:-
 - a) To cancel and/or quash and/or set aside the impugned order dated 13th March, 2024 by SEIAA (Annexure- A- 17 to the Memo of Appeal), passed in consequence of its Resolution in 52nd MoM dated 06th march, 2024 (Annexure- A- 16 to the Memo of Appeal) which per se was based on the recommendation of SEAC vides its MoM dated 27th February 2024 (Annexure A-11 to the Memo of Appeal), whereby the proposal of the Appellant Unit dated 31st May, 2022 (Annexure A-1 to the Memo of Appeal) for grant of Environmental Clearance (EC) for establishment of CBWTF at Patna



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has been rejected.

- b) To cancel and/or quash and/or set aside the Resolution in 52nd MoM of SEAA dated 06th march, 2024 (Annexure- A- 13 to the Memo of Appeal), whereby recommendation has been made to reject the application of the Appellant for grant of Environmental Clearance (EC) for establishment of CBWTF.
 - c) To cancel and/or quash and/or set aside the recommendation of SEAC vides its MoM dated 27th February 2024, whereby the proposal of the Appellant Unit dated 31st May, 2022 (Annexure A-1 to the Memo of Appeal) for grant of Environmental Clearance (EC) for establishment of CBWTF has been rejected.
 - d) Direct the respondents to consider the application of the Appellant for grant of EC for establishment of CBWTF from the stage 4 of Appraisal;
3. That at the outset it is submitted that the Counter Affidavit filed by the ~~SEAA~~^{BSPCB} is a near reiteration of the contents of the impugned order dated 13th March, 2024 by SEIAA, its Resolution dated 06th march, 2024 and the SEAC recommendation of rejection vide its MoM dated 27th February 2024, whereby the proposal/ application of the Appellant Unit dated 31st May, 2022 for grant of EC for establishment of CBWTF at Patna has been rejected. It is rather unfortunate that the Counter Affidavit has failed to reply the grounds raised in the Memo of Appeal for assailing the above order.
 4. That the para-wise reply to the counter affidavit is being filed herewith by the Appellant and set-out and traversed ad serialim. Any specific denial with regard to statement and/or allegations contained in the said Counter Affidavit shall not be construed as by admission.
 5. That with respect to the contents of paragraph 1 to 5 it is stated that the same needs no reply.



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6. That with respect to the contents of paragraph 6, 9, 10, 11 of the Counter Affidavit by the respondent Board it is submitted that the same are wrong and denied and it is rather unfortunate that para 2(e) of the Revised Guidelines for Common Bio-Medical Waste Treatment Facilities, 2016 (hereinafter 'the 2016 Guidelines') has been selectively quoted with an attempt to mislead the Hon'ble Tribunal. It is trite principle of law that statutes must be read as a whole in its context. The whole para 2 (e) of the 2016 Guidelines read thus,

*"The SPCB/PCC or concerned department in the business allocation of land assignment in the respective State Government or UT Administration may seek expression of interest from the proponents for development of new CBWTF (s) in the identified coverage area. **Upon allocation of site to the proponent, the proponent is required to take necessary approvals as required under the Environment (Protection) Act, 1986 for development of the new CBWTF in accordance with these guidelines.**"*

The underline and bold has been supplied and is not part of the original text. A bare perusal of the said clause 2(e) of the 2016 Guidelines would make it amply clear that EoI sought from proponents/ applicants for establishing new CBWTF is to be done when the land is being allocated by the government department/ local authority. The same can also be deduced from the flow chart provided in the said Guidelines.

7. That it is further submitted that a statute is to be read as whole and in the same vein, it is pertinent to discuss the whole scheme of Para 2 of the 2016 Guidelines. The marginal note read thus,

Para 2 Criteria for development of a new Common Bio-medical Waste Treatment and Disposal Facility for a locality or region.

Prior to allowing any new CBWTF, following criteria or steps may be followed:



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Para 2 (a)- State PCBs are required to prepare to inventory wrt bio-medical waste once in five years and extrapolate coverage-area wise waste generation in the next ten years.

Para 2(b)- SPCB is required to conduct gap analysis wrt coverage area, projected bio-medical waste in next ten years and adequacy of existing treatment capacity within 75km radius.

Para 2(c)- SPCB shall identify coverage area and bring it to notice of the concerned department in the business allocation of land assignment. The department shall be responsible for providing suitable land.

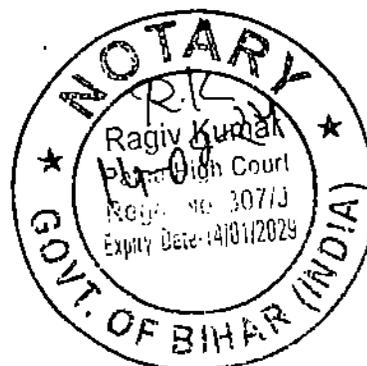
Para 2(d)- Alternatively, provides for establishment of CBWTF on the land procured by private entrepreneur.

Para 2(e)- SPCB may call for EOI from proponents. Upon allocation of site, the proponent is required to take steps for grant of approvals under EP Act 1986.

Para 2(f), (g) and (h) are not of relevance to the present matter.

In the light of the above, it is submitted that a bare perusal of the steps for establishment of CBMWTF as enumerated above, elucidates that clause 2(d) of the Guidelines, alternatively, provides for establishment of CBWTF on the land procured by private entrepreneur, but there is no requirement calling for EoI for seeking such proponents/applicants. Thus, it is clear from the Guidelines itself that the Appellant was not required to participate in the tender process more so when the Stage 3 of Public Hearing was duly completed.

8. That it is submitted that furthermore, as regards gap analysis, para 2(b) provides that, gap analysis it is to be done and projection of bio-medical waste to be generated in next ten years is to be done and adequacy of existing treatment

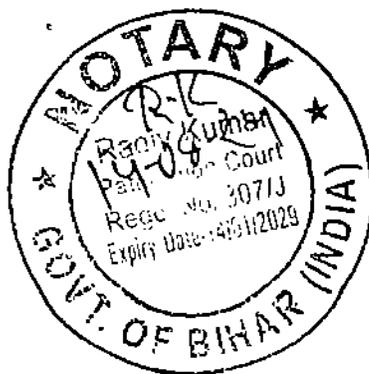


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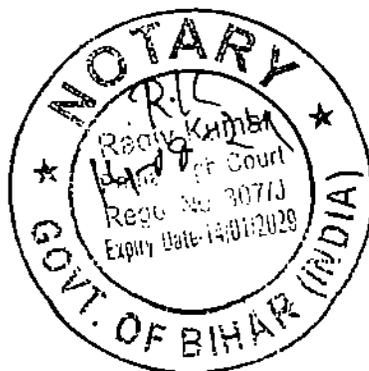
capacity is to be done within the 75 km radius. Thus, a bare reading evinces the fact that the sole purpose of gap analyses is to increase the nos. of CBWTF in a particular area depending upon the projection of the bio-medical waste generated.

9. That it is submitted that a complete reading of para 2 would suggest that three things, *firstly*, that EOI is to be sought only when the land is being allocated by the state and *secondly*, CBMWTF may allowed to be established on a land procured by private entrepreneur and *thirdly*, gap analysis is to be done to look into sufficiency of the existing facilities within the 75 km radius and further to provide for projection of waste generation in next ten years so that more facilities may be established.
10. That still further, with respect to gap analysis, it is pertinent to bring on record letter dated 10th October, 2023 issued by CPCB to all the SPCB. The said letter provides for the methodology for gap analysis. A bare perusal of the said methodology would make it amply clear that the intent and purpose of the gap analysis is to identify and examine the need for additional treatment capacity well in advance. The said methodology provides for data of existing bio-medical waste generation and also data with respect to extrapolation for the coming years within the prescribed coverage area of 75 km. It would appear from the same that the intent is to increase the number of CBMWTF within the range of 75 km depending upon the waste generation. Nowhere the methodology makes any indication for allowing a single CBMWTF to cater to waste treatment beyond the range of 75 kms. Therefore, allowing a single CBMWTF to treat waste by beyond the range of 75 km and more than 10,000 beds is impermissible as per the gap analysis.

A true copy of the letter dated 10th October, 2023 is attached herewith and marked as Annexure- 18.



11. That with respect to the content of para 7 of the Counter Affidavit of the respondent Board, it is submitted that though there exists a CBWTF in Patna which also treats bio-medical waste from the nearby districts, but the said facility is running in complete violation of the relevant laws, rules and guidelines. M/s Sangam Mediverse is the said entity and it has been granted EC vide letter dated 10th January, 2020 without undergoing the tender process. (Annexure A-15 to the memo of Appeal). Moreover, in the light of clause 8(b) of the Guidelines one CBWTF is required for 10,000 health care facility beds whereas, Patna has more than 31477/- beds alone. Still further, the single CBWTF at Patna is handling bio-medical waste from total 6 districts totaling 45617 health care facility beds (Annexure A-2 to the memo of Appeal). Thus, it is submitted that the said CBWTF is not sufficiently handling the waste generated in and around and thus, more CBWTF is required. It is further submitted that the respondent board is in cahoots with the said entity and is thus trying to weed out any other entity including the Appellant.
12. That with respect to the contents of para 8 of the Counter Affidavit, it is submitted that the said document (Annexure 5/B of the C/A by Board) dated 30th September, 2022 affirms the contention of the Appellant as regards the fact that more CBWTF is required. Para 4 of the said document makes unequivocal recommendation for establishment more CBWTFs. Therefore, it is submitted that the respondent is also affirming the stand of Appellant and is contradicting itself that there is no further requirement of CBWTF and on that score alone, the instant Appeal is fit to be allowed.
13. That with respect to the contents of para 12, it is submitted that as regards the gap analysis, it is surprising the no data pertaining to it has been provided by the respondent Board and that furthermore, it is submitted that the respondent Board is using is wrongly using gap analysis to illegally benefit M/s Sangam Mediverse which is illegally running CBWTF by



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flouting all norms. The respondent Board is wrongly using the gap analysis by intentionally interpreting it against the Appellant, as has been sufficiently demonstrated in the previous paragraphs.

14. That it is submitted that with respect to the content of para 13 as regards requirement for participating in tender, the same is wrong and denied and has been sufficiently dealt with in the previous paragraphs.
15. That with respect to the contents of paragraph 14 it is stated that the same is wrong and denied. It is submitted that as per the established legal procedure provided in the 1st EIA notification dated 14th September, 2006 vide S.O. 1533(E), the Appellant made application for grant of EC and the same was considered by the respondents steps wise in accordance with the relevant laws and rules. The Appellant completed the first 3 stages, i.e. Screening, Scoping and Public Consultation and even submitted the Final EIA report, however, all of a sudden, when almost two years had passed from the date of application on 31st May, 2022, the application was rejected on manufactured and frivolous grounds not sustainable in the eyes of law simply to benefits others. Therefore, it is wrong and denied that the Appellant by-passed any legal procedure.

Moreover, it has been sufficiently demonstrated in the preceding paragraphs that neither the 1st EIA notification nor the 2016 Guidelines provide that EOI is not to be sought for from the entities which provided their own land, rather EOI is to be sought from only those entities to which land has been allocated by the state.

16. That it is submitted that in the light of the above the respondents have illegally rejected the Application of the Appellant and the said rejection is bad in law and the Applicant is fit for grant of EC for establishment of CBMWTF.

[Handwritten signature]
APPELLANT

[Handwritten signature]
14/8/24.

THROUGH

[Handwritten signature]
(*[Handwritten signature]*)

ADVOCATE



VERIFICATION

I the above named deponent, do hereby solemnly verify that the contents of the aforesaid affidavit are true and correct to the best of my knowledge and belief nothing has been concealed therefrom.

Verified at Patna on this day of August, 2024

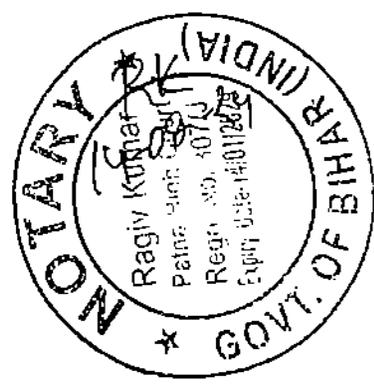
[Handwritten Signature]
DEPONENT
[Handwritten Signature]
14/8/24.

[Handwritten Signature]
FILED BY
14/08/24

ADVOCATE OF THE Appellant

PLACE: Patna

DATE: 14/08/2024



Sl No. 2289 Dated 14/8/24 3

AFFIDAVIT

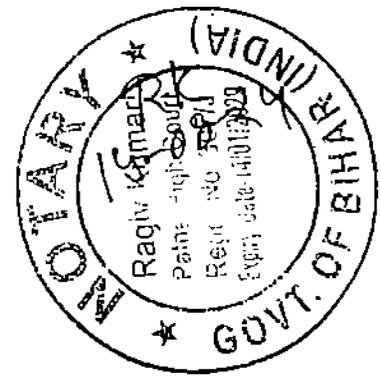
I, Santosh Kumar Ojha, male, aged 47 years, S/o late Sri Kameshwar Ojha at House No. 384/549A, East Lane of N.S.C., Sheikpura, P.O.- B.V. College, Patna- 800014, do hereby solemnly affirm and say as follows:

1. I am competent to affirm the present affidavit for and on behalf of the Appellant herein. I am well acquainted and conversant with the facts and circumstances of the instant case and as such I am competent to swear this affidavit. Copy of the board resolution is annexed hereto.
2. The statements contained in paragraphs 1. To 2.15 of the foregoing petition are true to my knowledge and those contained in paragraphs 3.614 thereof are based on information derived from records and believed to be true and those contained in paragraphsthereof are my humble submissions before this Hon'ble Court.

Prepared in my Office and identified by me

Remonel Singh
Advocate
14/8/24

श्री संतोष कुमार ओजha
Deponent
Shu
14/8/24



I identify the Deponent who Signed/L in my presence
Remonel Singh
Advocate
14/08/24
BR/1889/24

Santosh K. Ojha
Sri/Smt. who is identify by Sri. *K. Singh*
Advocate solemnly affirmed and
declare before me
Ragiv Kumar
14-08-2024
Ragiv Kumar
Reg. No. 307
Notary Public Advocate
Patna High Court Patna

By Speed Post

F. No. B-31011-BMW (3398)-2023-WM-I

October 10, 2023

4933-68

To

The Member Secretary,
All SPCB and PCC

Sub: Regarding methodology to conduct gap analysis with respect to generation and treatment of biomedical waste -reg.

Sir/Madam,

It is to inform that State Pollution Control Boards/Pollution Control Committees are required to conduct gap analysis with respect to generation and treatment of biomedical waste in respective State/UT. A format for conducting gap analysis is given in CPCB guidelines for Common Bio-medical Waste Treatment Facilities. Few State Boards have prepared gap analysis report adopting their own methodology. The matter was also discussed in Central Monitoring Committee meeting on 18.07.2023 wherein need for adopting uniform methodology was emphasised. Hence, to avoid the ambiguity and to adopt uniform procedure, CPCB has prepared a methodology to conduct gap analysis (Copy attached herewith for ready reference).

In view of above, it is requested to kindly conduct gap analysis with respect to generation and treatment of biomedical waste in your State/UT using the aforesaid methodology and report may be submitted to CPCB within one month.

Yours faithfully,

(V. P. Yadav)

Director & Head

Waste Management -I Division

Encl. As above

Copy to:

1. PS to 'MS'

For kind information of 'MS' please

(V. P. Yadav)

MS Singh
18/10/2023

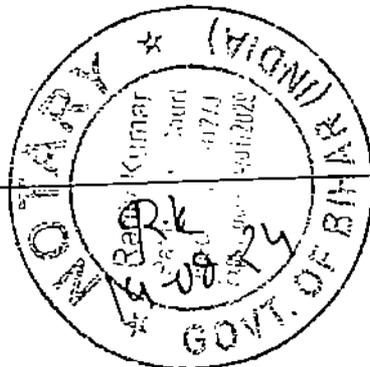


Methodology to Conduct gap analysis with respect to generation and treatment of biomedical waste

Guidelines for Common Biomedical Waste Treatment Facilities was prepared by CPCB with an aim to have uniformity in ensuring site selection, allowing and establishment of a state-of-the-art Common Biomedical Waste Treatment Facilities (CBWTFs), operation as well as verification of compliance to the BMW Rules, 2016 throughout the country. As per the said guideline, SPCB/PCC is required to prepare an inventory or review with regard to the bio-medical waste generation at least once in five years in the coverage areas of the existing CBWTF and conduct gap analysis as per format given in Annexure-I of the guideline.

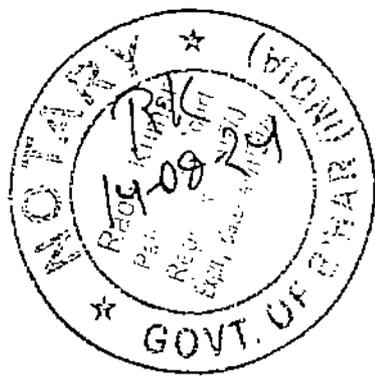
To avoid the ambiguity and maintaining the uniformity for conducting gap analysis a methodology is suggested for estimating generation, treatment of biomedical waste and its extrapolation in the State and coverage area of CBMWTF. It is elaborated in following table.

S. No.	Parameters	Details
1.	Coverage area of CBWTF	Up to 75 km
2.	No. of HCFs (Bedded and non-bedded)	In Number
3.	No. of Beds covered	In Number
4.	Total biomedical waste generation (in Kg/day)	The generation may be calculated considering following factors: a) Generation from Bedded hospital (in absence of availability of required information biomedical waste generation may be taken as 274 grams per bed) b) Biomedical waste generated from non-bedded HCFs and other sources also be considered
5.	Extrapolate the biomedical waste generation for next years	Extrapolation may be based on factors such as population growth of the districts/cities covered by CBWTF, Rate of increase in number of HCFs/beds in past years etc. as decided by SPCB in consultation with Health department and CBMWTF associations.
6.	Total existing treatment capacity (in Kg/day) (Sum of Incineration Capacity and Autoclave/Microwave/Hydroclave Capacity)	For calculation of existing treatment capacity, maintenance time may be considered for calculating operational hours of equipment as below: a) Operational Hours for static incinerator 20 hrs/day b) Operational hours for Rotary incinerator 22 hrs/day



		c) 18 cycle per day for autoclave The actual capacity may be considered as 90% of available capacity keeping 10% margin for diverted/extra waste etc.
7.	Total Biomedical Waste treated and disposed (Kg/day)	Sum of all categories of biomedical waste treated and disposal.
8.	Gap between total extrapolated biomedical waste generation (for next 10 years) and existing biomedical waste treatment capacity	Extrapolate the biomedical waste generation minus total existing treatment capacity

Based on the above data, the gap between existing treatment capacity and need of additional treatment capacity should be examined after carrying out gap analysis at coverage area/city level and State level.





भारत सरकार
GOVERNMENT OF INDIA

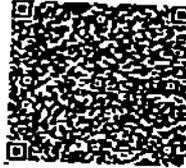


संतोष कुमार ओझा

Santosh Kumar Ojha

जन्म तिथि/ DOB: 12/02/1977

पुरुष / MALE



4848 0296 5236

मेरा आधार, मेरी पहचान



भारतीय विशिष्ट पहचान प्राधिकरण
UNIQUE IDENTIFICATION AUTHORITY OF INDIA

पता:

Address:

आत्मज: कामेश्वर ओझा, शिव
मंदिर के पास, ऐनियो,
पटना,
बिहार - 803201

S/O: Kameshwar Ojha, Near Shiv
Mandir, Ainio, Patna,
Bihar - 803201

4848 0296 5236

MEERA AADHAAR, MERI PEHACHAN

संतोष कुमार ओझा
14/8/24



FORM III
[Rule 3]
Certificate of Registration

1. Registration Mark and Number : P.T/ TBSE_REG/2019/02039
2. Name of Establishment : S R SOLUTION
3. Full Postal address of the Establishment : EAST OF N.S.C. SHEIKHPURA, P.O-
B.V.COLLEGE, PATNA
4. Location of the Establishment : WARD NO-5, C.NO-251, H.NO-
384/549A
5. Type of Business, trade or profession carried on : Others
6. Name and designation of the Manager or Agent or any other person in the immediate charge or control of the establishment : SANTOSH KUMAR OJHA, PROP
7. Name and designation of other persons having interest as employer in the establishment :

S. No.	Name and Percentage	Designation
1.	SANTOSH KUMAR OJHA, S/O- KAMESHWAR OJHA	PROP
2.		
3.		
4.		
5.		
6.		

8. Maximum number of persons to be employed on any day : 2

This is to certify that the establishment, the particulars of which have been given above, has been registered under the Bihar Shops and Establishment Act, 1953 on: 20/02/2019

Date : 20/02/2019

Digital Signature

रिजिस्टर गुप्त रजिस्टर
S R Solution
14/8/24.