

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE BENCH AT CHENNAI

ORIGINAL APPLICATION NO. 196 OF 2021

IN THE MATTER OF:

T.M. UMASHANKAR

...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

INDEX

S.NO.	PARTICULARS	PAGE NO.
1.	RESPONSE ON BEHALF OF THE APPLICANT TO THE REPORT DATED 30.11.2021 OF THE JOINT COMMITTEE CONSTITUTED BY THIS HON'BLE TRIBUNAL	1-10

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RESPONSE ON BEHALF OF THE APPLICANT TO THE REPORT DATED 30.11.2021 OF THE JOINT COMMITTEE CONSTITUTED BY THIS HON'BLE TRIBUNAL:

MOST RESPECTFULLY SHOWETH:

1. The Applicant had filed the present Application under Sections 14, 15 and 20 of the National Green Tribunal Act, 2010 raising a substantial question relating to the environment arising out of blatant and gross violation caused by Respondent No. 5 by running the Red Category Hazardous Facility i.e., Integrated Common Hazardous Waste Treatment Storage and Disposal Facility (hereinafter referred as **ICHWTSDF**) of Karnataka Waste Management Project illegally. The ICHWTSDF is spread in an area of 93.18 acres at Plot No. 7, 8, 9, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85 of Dobaspet Industrial Area, Pemmanahalli and Thimmanayakanahalli Village, Taluka Nelamangala, District Bangalore Rural which is running with Secured Landfill Facility of capacity 40,000 TPA and with Hazardous Waste Incineration Facility of capacity 5.5 Million kcal/hr. That through the above application the Applicant raised the following illegalities in operation of the TSDF facility:
 - a) That the ICHWTSDF is operating without obtaining Environment Clearance as required under EIA Notification, 2006 and operating in violation of Hon'ble Tribunal order dated 26.09.2019 wherein it was held that the

ICHWTSDF require prior Environment Clearance directed by this Hon'ble Tribunal;

- b) The ICHWTSDF is in violation of the locational criteria issued by Central Pollution Control Board, and Office Memorandum, dated 29.08.2016 issued by MoEF&CC which speaks about the distance criteria for setting up of Treatment Storage and Disposal Facility (TSDF);
 - c) The application also raises the issue of blatant violation of the Notification No. FEE 215 ENV 2000 dated 18.11.2003 known as the Tippagondanahalli Reservoir Notification ("TGR Notification") issued by the State of Karnataka as well as the siting criteria guidelines for TSDF issued by the Karnataka State Pollution Control Board. The TGR is built at the confluence of Arkavathi and Kumudvathi Rivers and is an important source of drinking water to the city of Bengaluru.
2. That this Hon'ble Tribunal had considered the issue at length by order dated 06.09.2021 and directed for a joint inspection report upon the allegations raised by the Applicant, where the Karnataka State Pollution Control Board will be the nodal agency:

"7. In order to ascertain the nature of violations committed by the 5th respondent and also the question regarding the environment compensation, if any, to be imposed for the alleged violation said to have been committed by the 5th respondent, we feel if appropriate to appoint a Joint Committee consists of (1) a Senior Scientist from MoEF&CC, Integrated Regional Office, Bangalore, (2) a Senior Scientist from Central Pollution Control Boards, Integrated Regional Office, Bangalore, (3) a Senior Scientist from Karnataka State Pollution Control Board and (4) a Senior Scientist from Indian Institute of Science, Bangalore to inspect the unit in question and submit a factual as well as action taken report, if there is any violation found.

8. The Committee is directed to ascertain (i) whether the 5th respondent unit had committed any violation of environmental laws in establishing and running the unit without obtaining necessary permission and in violation of the direction issued by the Principal Bench in O.A. No. 654 of 2019, (ii) On account of the violation committed, is there any damage caused to the environment, (iii) if any damage has been caused, the

Committee is directed to assess the environment compensation payable by the 5th respondent and also suggest the methodology by which damage caused to the environment can be restored."

3. Thereafter, the Joint Committee has inspected the project site on 18.11.2021 and has filed a report dated 30.11.2021 based on the inspection of the project site. The Applicant is making following submissions/objections to the report:

THE REPORT FAILED TO CONSIDER THAT THE FACILITY IS OPERATING WITHOUT OBTAINING PRIOR ENVIRONMENT CLEARANCE:

THE FACILITY IS OPERATING IN COMPLETE VIOLATION OF THE ORDER OF THIS HON'BLE TRIBUNAL:

- i. The Joint Committee Report dated 30.11.2021 has failed to consider the fact that the unit is in operation without obtaining prior environment clearance as required under EIA Notification 2006 and as per the direction of this Hon'ble Tribunal passed *vide* order dated 26.09.2019 wherein it was held that the ICHWTSDF require prior Environment Clearance. The Joint Committee has just reiterated the discussions took place before the Expert Appraisal Committee. It is submitted that the Committee in the report has just recorded that "*EAC opined that the project proponent may approach the Hon'ble Tribunal for seeking clarification on further requirement of EC granted to the project proponent vide letter dated 19.09.2014*". It is submitted that the issue of the TSDF running without obtaining prior EC was earlier raised by the Applicant before the Hon'ble High Court of Karnataka in 2016, where upon hearing the matter, the Hon'ble Court transferred it before the Principal Bench of this Hon'ble Tribunal. In this regard, a Joint Committee was constituted and *vide* its report dated 07.08.2019, it was submitted that the EC was taken for incinerator and the same was being treated as EC for the TSDF. However, the Hon'ble NGT did not accept this contention of CPCB and hence directed the TSDF to comply with the law and to apply for obtaining the requisite EC within two months:

"6.It is further stated that while Environmental Clearance (EC) was taken for incinerator, the same EC was being treated as EC for TSDF which does not meet the mandate of the rules. However, it is suggested that at this stage, separate EC may not be directed to be required.

....

7. In view of above, while we do not interfere with the functioning of the TSDF, we direct that the TSDF must comply with the law and the requisite EC may be obtained. The project proponent may apply for EC within two months."

Thus, the Hon'ble Tribunal by its order dated 26.09.2019 has given the finding that the TSDF facility require Environment Clearance as required under EIA Notification, 2006 and the EC obtained for the incinerator cannot be treated as the EC for the TSDF as well, since it does not meet the mandate the rules.

- ii. The TSDF facility submitted an application for obtaining Environment Clearance on 08.01.2020. The application was considered by the Expert Appraisal Committee of the MoEF in 48th meeting on 28-29.01.2020. However, the project was delisted on 30.05.2020 from the site of the MoEF and was again relisted on 21.07.2020. Further, the timeline available on the website of Ministry shows that the project was finally delisted on 11.11.2020 and has never been considered again.
- iii. It is thus pertinent to note that the direction to obtain a fresh EC by the Tribunal is in itself evidentiary enough to show the necessity and the importance to obtain the Environmental Clearance by a facility before establishing. It is submitted that there is clear intentional disregard to the direction of the Hon'ble Tribunal by the facility, as, on this day the project is still illegally operating without valid Environment Clearance as mandated under EIA Notification, 2006 and also as directed in the order dated 26.09.2019 by this Hon'ble Tribunal. That the Joint Committee Report has erroneously failed to consider the orders passed by the Tribunal and instead reiterated the discussions of the EAC meetings.

- iv. It is submitted that the facility has deliberately disregarded the directions of the Hon'ble Tribunal and is still running in complete violation of the EIA Notification, 2006. The same has not been considered and appreciated in the Joint Committee report. Further, the report has also not imposed and assessed any compensation upon the facility for illegally running without EC, neither did it pass any direction on the closure of the facility for running unlawfully. It is also submitted that the report has failed to recommend the facility to obtain EC as directed by this Hon'ble Tribunal.

ENVIRONMENTAL CLEARANCE FOR INCINERTOR CANNOT BE TREATED AS CLEARANCE FOR LAND FILL- VIOLATION OF EIA NOTIFICATION:-

- v. That the EC obtained for the incinerator cannot be considered as the EC for the landfill facility because the landfill facility is an independent activity falls under 7(d) "**Common hazardous waste treatment, storage and disposal facilities (TSDFs)**" to the schedule of the EIA Notification, 2006. Further, the said activity was not form part of the assessment and studies conducted for the EC granted for incinerator and therefore, the impugned land fill facility by the project proponent requires mandatory fresh assessment including cumulative studies under the provisions of EIA notification before the commencement of the operation.
- vi. Despite to the above, the Landfill activity is an operation of dumping hazardous and toxic waste in a site which would cause grave environmental damage and put the lives of the people under peril on the event of non-compliance of EIA notification. Therefore, the EIA notification as well as the guidelines of CPCB has categorically stated that the operation of landfill facility being a red category activity requires several significant studies prior to the commencement of the activity. The aforementioned facts were overlooked by the present committee which would certainly affects the environment in large.

**THE REPORT FAILED TO CONSIDER THAT THE FACILITY IS RUNNING
IN VIOLATION OF THE TGR NOTIFICATION, 2003:**

- vii. That the Joint Committee report stated that "*there was no mining, quarrying and stone crushing activities were being carried out in the TSDF and hence the establishment is not in violation of Tippagondanahalli Reservoir catchment area Notification*". It is pertinent to note that the Joint Committee completely failed to consider the condition for Zone-1 of the TGR Catchment Area as per the TGR Notification 2003, which states that, *No person shall dispose solid as well as liquid waste in this area without scientific processing*. Since, the unit has not obtained prior EC, hence, it is operating in an unscientific manner and causing gross violation to the 2003 Notification.
- viii. Thus, the setting up of the ICHWTSDF at present site is in violation of the Notification No. FEE 215 ENV 2000 dated 18.11.2003 known as the Tippagondanahalli Reservoir Notification issued by the State of Karnataka. The TGR is built at the confluence of Arkavathi and Kumudvathi Rivers and is an important source of drinking water to the city of Bengaluru. That there are various zones provided under the Notification. The notification prescribes a graded approach towards protection of the reservoir. To ensure this, the entire 1453 km² of the catchment area around the reservoir has been declared as an eco-sensitive area and the activities are regulated to ensure that the quality and quantity of the water in the reservoir are not adversely affected. It is submitted that the unit of Respondent No. 5 falls in Zone 1 of the TGR Catchment Area and that the site in question is located in the catchment area of TGR at Somapura, Nelamangala Taluka, District Bengaluru Rural, where unscientific disposal of solid as well as liquid waste is restricted.

THE JOINT COMMITTEE REPORT IS SILENT ABOUT THAT THE FACILITY HAS OPERATED THE PLANT WITHOUT CONSENT FROM 1.07.2016 TO 31.7.2019:

- ix. That NOC under the Air Act 1981 and Water Act 1974 is mandatory requirement which any project proponent has to fulfill. In this matter, Consent of the Karnataka State Pollution Control Board was valid up to 30.06.2016. However, next Consent was issued on 30.10.2020 for a period valid from 1.08.2019 to 30.06.2021, hence, clearly indicating the fact that the facility has operated illegally without Consent from 1.07.2016 to 31.07.2019. That the report is completely silent and failed to appreciate this illegality by the facility of Respondent No. 5.
- x. In this regard, it is pertinent to note that the Circular No. F.No.J-11013/41/2006-IA-II(I) dated 21.11.2006 of the Ministry of Environment and Forest clearly states that Applications received for NOC by the SPCB before 14.09.2006, will have to obtain EC by 30.07.2007:

"iii. Applications received for NOC by the State Pollution Control Boards before 14th September 2006 may be considered as per provisions of the said Acts. However, they will have to obtain the environmental clearance from the relevant Authority by 30th June 2007, if the category requires EIA Clearance as per the new Notification. In such cases, the unit can meanwhile carry on with the commencement of their project activities. Projects not seeking clearance under EIA Notification, 2006 by 30th June 2007 will be treated as violation cases under Section 15 of Environment (Protection) Act, 1986."

It is thus submitted that the facility of Respondent No. 5 is in complete violation of the Circular of the MoEF because the TSDF facility submitted its application for obtaining Environment Clearance on 08.01.2020 and till date no EC has been granted. Also, no necessary action has been taken by the concerned authorities, hence, due to the nonchalant attitude of the

respondent authorities, the facility is running in full swing with all the illegalities.

- xi. Furthermore, the report also stated that fact that the CFO beyond 01.07.2016 was refused by Karnataka State Pollution Control Board *vide* letter dated 06.02.2018 in view of non-submission of Environment Clearance. However, the same was revoked and the next Consent was issued again on 30.10.2020. It is submitted by the Applicant that the Joint Committee report is completely silent about the reason behind such revocation as the facility is still operating without obtaining any Environment Clearance.

JOINT COMMITTEE REPORT ADMITTED THAT THE FACILITY HAS FAILED TO COMPLY WITH THE LOCATION CRITERIA FOR THE LANDFILL SITE:

- xii. That the Central Pollution Control Board has issued guidance document for setting up of TSDF in 2001. Para 2.0 of the document states *that a landfill site shall be at least 500 m from a notified habitat area and a zone of 500 m around a landfill boundary should be declared a non-development buffer-zone after the landfill location is finalized*. That in this regard, an Office Memorandum, F.No.23-122/2016-HSMD is also issued by Ministry of Environment, Forest & Climate Change dated 29.08.2016 which speaks about the distance criteria for setting up of Treatment Storage and Disposal Facility (TSDF). The OM further speaks about the CPCB Guidance Document i.e., "Criteria for Hazardous Waste Landfill of 2001" which prescribes the locational criteria in terms of distance of location of TSDF from lake/pond, river, flood plain, highways, Public Park, habitations etc.
- xiii. The Joint Committee report herein observed and accepted the fact that *"500 m around the landfill boundary is not declared as non-development buffer zone after landfill location finalization till date"*, thereby brazenly flouted the CPCB Guidelines of 2001.

xiv. It is further submitted by the Applicant that there are two villages i.e., Thimanayakanhalli Village which is situated 200 meters from the unit and the Pemmanahalli Village which is situated 150 meters from the unit. Furthermore, the Google Earth images taken by the Applicant clearly shows the presence of human habitation within 500 meters of northeast and northwest corner of the unit which clearly shows the unit is operating in complete violation of the 2001 guidance document.

Copies of the Google Earth images are annexed and marked as **Annexure- A/6, Page No. 115 & 116** in the Original Application.

The Applicant seeks to bring few issues before this Hon'ble Tribunal:

xv. That as per the Office Memorandum issued by Ministry of Environment Forest and Climate Change dated 16.04.2009, all SPCBs/PCCs have to create Escrow Account and thereby deposit 5% of the annual turnover of landfillable waste. As per the terms of agreement the facility is required to deposit every year in the Escrow Account from the commencement of the operation of TSDF i.e., June, 2008. However, the TSDF facility has first deposited in the year 2017. Further, the facility has failed to pay the interest amount since 2008. That this gross violation has not been considered in the Joint Committee Report.

xvi. The Applicant here submits that he was present during the site inspection and specifically raised the issue of contamination of ground water and surface water as the facility is operating in an unscientific manner in gross violation of the EIA Notification, 2006. But the report has completely failed to state the stance taken by the Applicant.

4. Thus, in light of the above facts and observations, it is clear that the TSDF facility of Respondent No. 5 is operating in complete violation of the law and earlier directions of this Hon'ble Tribunal. Also, the Joint Committee Report is silent and failed to consider the various illegalities of the Respondent No. 5. Thus, the Hon'ble Tribunal may pass appropriate order to facilitate closure of the

TSDF of Respondent No. 5 and thereby imposing environmental compensation considering above submissions of the Applicant.



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