

BEFORE HONOURABLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH PUNE

Original Application No. 194(THC)/2016 (WZ)

(High Court PIL No. 18/2015
Civil Application No. 27/2015)

BETWEEN:

Dr. Harshwardhan Modak **Applicant**

VERSUS

Pune Municipal Corporation & Ors. **Respondents**

Next Date: 06.11.2020

SUBMISSION BY APPLICANT DR. HARSHWARDHAN MODAK:

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Filed by:

Place: **Pune**

Date: **30.10.2020**

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SUBMISSION BY APPLICANT DR. HARSHWARDHAN MODAK:

1. I, am Applicant Dr. Harshwardhan Modak, submitting this additional information as per the Daily Order dated **13.10.2020**, Point No.3; the Affidavit along with photographs of the burning of legacy waste on **07.03.2018, exactly when the verification was due.** This is against the Daily Order dated **05.12.2017** to dispose-off 3000 MT of legacy waste @25 Truck-loads/day. **[Ax. RJ-1, Page 9 ●]**

2. I say that irrespective of whether it is intentional OR accidental, Respondent No.5 has the civil vicarious liability of eventually polluting the environment, with or without their fault. In the first place, such a huge legacy waste ought not have been accumulated. The Respondent No.5 is being paid tipping fees for environmentally safe disposal of the waste in accordance with the 'Solid Waste Management Rules 2016' (SWMR-2016) OR at least 'Municipal Solid Waste Management Rules 2000' (MSWR-2000).

3. I say and submit that The Respondent No.5 has again repeated the same mischief of burning the accumulated legacy waste from March 2018 to October 2020, exactly when the verification is now as per Daily Order of 13.10.2020, Point No.5. The photographs of this new incidence are also enclosed, [Ax. RJ-2, Page 11 ●]

4. I say and submit that the basic PIL and then the remodelled Original Application is mainly against the Pune Municipal Corporation (Respondent No.1) and Rochem Green Energy Pvt. Ltd. (Respondent No.5) on following points:

- i.** The project ought to have taken 'Environmental Clearance' as per EIA Notification 14.09.2006 as per Category 7(i) as CMS-WMF and so also under Category 1(d) as Thermal Power Plant. But since it's generating power using MSW, it was eligible for exemption under 1(d) Note: (ii). However, 'Environmental Clearance' as 7(i) CMSWMF was always required. This is even more relevant as project never ever generated a single kW of power.
- ii.** **The Respondent No.5 always required 'Consent to Operate' from MPCB under Water and Air Act; and Authorization under Municipal Solid Waste Management Rules 2000. Although Authorization was taken, the Consents were neither applied for, nor obtained.**
- iii.** I say and submit that therefore the entire operation of the project at site is illegal, without 'Environmental Clearance' and 'Consent to Operate'.
- iv.** The Respondent No.5 has never operated the project scientifically as per the MSW Rules & conditions of the Authorization. It also did not operate to its full capacity of 700 Mt/day and even then, kept on charging Rs.300/day of tipping fees (for the waste handled). However, that also should not have been charged and paid, as operation is illegal and even non-compliant with provisions of Agreement & contradictory to **Direction No. 11 (p. 84) of NGT Order in matter, dated 22nd December 2016.**

- v. Hon'ble National Green Tribunal categorically as per Daily Order dated **5th December 2017** recorded the legacy waste of 3000 MT on site. It was directed to be disposed-off @25 truck-loads each day. However Respondent No.5 did not do that. Nothing was done. There is no formal verification and evidence of disposal of legacy waste by MPCB or PMC. On expiry of this period, the suspicious fire on-site on **7 March 2018**, was allowed to go on uncontrolled, encouraged, caused due to negligence or even otherwise, was caused to dispose-off this legacy waste. Thereafter, the Respondent No.5 claimed that there is no legacy waste. This fire caused huge air pollution, hazard, nuisance to neighboring residents and damage to environment. The enclosed photographs show the fire. Video Clip is also enclosed with the email and is available on link. **[Ax. ARJ-1 ●]** and the Google Drive Link is: <https://drive.google.com/drive/folders/1FB8UjFfIk1IW4zCsMEMRgcAKIsYWeKw?usp=sharing>
- vi. The Respondent No.5 is selling the RDF to industries that do not have permission to use RDF as fuel. RDF can be used only by those industries that have necessary specially designed boilers to avoid emission of Dioxins & Air Pollution Control Equipment to adequately treat the flue gases generated from burning of RDF. The RDF buyers are unknown.
- vii. **MPCB, Environment Department Govt. of Maharashtra and SEIAA-Maharashtra are negligent in allowing the establishment of project without 'Environmental Clearance' and without 'Consent to Operate'.**
- viii. **MPCB is negligent in allowing the uncontrolled sale of RDF to industries that don't have permissions & special boilers to use RDF as allowed fuel in their 'Consent to Operate'.**

5. Irrespective of the argument about formation of SPV Rochem Green Energy Pvt. Ltd. (Respondent No.5), all the later correspondence, notices, warnings & all such communications in respect defaults in the MSW Project from not only Respondent No. 1, but other Respondents too, had been addressed to Respondent No. 5 only & nowhere they have shifted the responsibility to the so called SPV. Thus Respondent No. 5 cannot run away from this litigation, stating it to be in wrong name & identity.

6. Applicant had originally filed a PIL in High Court of Bombay, which got transferred to NGT by the order of Hon. High Court. Hence Respondent No. 5 cannot deem it to be in contravention of relevant clauses of NGT Act & time barred.

7. The Respondent No. 5 tries to exploit the fact that Applicant No. 1(Dr. H. M. Modak) was previously associated with Respondent No. 5 & not only assisted the same in setting up the project, but also submitted several environment related communications under his own signature. Respondent No. 5 thankfully acknowledges that Applicant No. 1 is expert in Environment & Pollution Control. Applicant No. 1 hereby points out that the fact that he was earlier associated with Respondent No. 5 was never hidden & the same is clarified at the outset vide Para 4 of the Modified Application. Had this fact been treated as having malafide intentions, it would have never sustained at the Application stage in original PIL to Hon. High Court itself. Applicant No. 5 wishes to point out that Applicant No.1's submissions made about several environmental related issues were part of his duty at the time prevailing & the same were during the time of setting up of the project. However entire present Application is related to the later part of Project i.e. operational part, wherein Applicant No. 1 was not in the service of Respondent No. 5 & wherein Respondent No. 5 contravened various environmental laws. Since Applicant No. 1 is an expert in environment & pollution control, he realized its

grave consequences to the citizens of Pune & thought of bringing the same to justice as a citizen of Pune. Respondent No.5 by trying to classify the entire application into an attempt of harassment & defamation is an attempt to run away from the responsibility & thus may be ignored by Hon. Tribunal as an escape attempt of an accused. Applicant can in fact be treated as whistleblower, which is vindicated by the various notices & warnings issued by Respondents 4 & 1(MPCB & PMC).

8. Respondent 1 & Respondent 5 signed a concession agreement for treatment & disposal of MSW generated by Respondent 1. Various clauses imposed certain responsibility for this activity. Respondent 5 has totally defaulted on the same as evidenced by notices & warning issued by Respondent 1, obtained under RTI. In spite of this Respondent 1 did NOT confiscate performance bank guarantee.

9. Under same agreement Respondent 1 paid tipping fee to Respondent 5 for disposal of MSW with generation of electricity. Respondent 5 never generated any electricity out of the set up. In spite of this Respondent 1 kept paying tipping fee & never recovered such fraudulently paid tipping fee. The payment of tipping fee to Respondent No. 5 is in contravention of **Direction No. 11 (p. 84) of NGT Order in matter, dated 22nd December 2016**, since in that direction NGT desires that tipping fee should only be paid, if there is efficient & regular functioning of the plant, which is hardly the case here.

10. Respondent 1 obtained Environmental Clearance by misleading & cheating the relevant committee by claiming it to be a Power Plant from MSW. However, since it never ever produced electricity from the set up, as evidenced from copies of replies under RTI from electricity board & Respondent 1, it follows that exemption claimed was fraudulent.

11. Secondly, it is evident that set up under agreement between Respondent 1 & 5 is a common municipal solid waste facility, which does require prior environment clearance. But this fact was concealed by Respondents 1 & 5 from the committee. Thus entire project is being operated WITHOUT any environmental clearance.

12. Respondents 1 & 5 merely obtained Authorization under MSW Rules 2000 for this set up. However they never applied for & obtain Consent to establish & consent to operate. In spite of notices to that effect from Respondent 4, both Respondents 1 & 5 ignored this matter & continued operating without these clearances.

13. Respondent 4 issued several show cause notices & warnings, at various times, for creating air & water pollution at the site of operation. However, Respondent 1 & 5 never set up any air & water pollution control systems & kept on operating flagrantly.

14. Respondent 5 has admitted that it is converting MSW into RDF & selling the same for boilers of various industries. RDF is nothing but concentrated & dried MSW. Thus burning the same into any boiler must be done in keeping with CPCB guidelines to control air pollution to avoid formation of dioxins & furans. However the boilers to which this RDF is sold as fuel has no such provision to comply with CPCB guidelines. Hence it automatically follows that Respondent 1 & 5 have given rise to serious air pollution consisting of toxic emission of dioxins & furans at various geographical locations in India. This has caused serious environmental damage in India.

15. During the course of this litigation at NGT Pune bench, Respondent 5 made attempt to bypass an interim order to shift huge quantity of legacy waste & compost out of the site by setting the same on fire & passing the incident as accident. Matter is published in many newspaper reports. But during this incident, it

has caused to openly burn the MSW & created huge air pollution & emission of dioxins & furans. This severe air pollution has created environmental damage.

16. Thus, in view of the above points, the prayer of Applicant against Respondent 1 & 5, are not only justifies, but also qualify for imposing heavy penalty towards severe environmental damage from air pollution throughout India, caused due to their illegal uncontrolled activities of selling RDF as fuel for boilers, non-compliant with CPCB guidelines.

REJOINDER AGAINST THE ADDITIONAL AFFIDAVIT

08.01.2020 BY RESPONDENT NO.5 RECEIVED VIA EMAIL

17. The above affidavit contains few annexure, giving figurative details of MSW received, compost generated & lifted out of site & RDF generated & sold to various parties etc.

18. Annex. C-1 contains the specific data in tabular format about MSW received & compost generated & shifted on various dates.

19. If we look at random dates, we will notice that there is curious mis-representation of the facts.

20. We have picked at random following ten dates, which indicate the MSW received & compost generated & shifted. It will illustrate that every day they were receiving certain quantity of MSW, which was immediately got converted into compost & same was immediately got shifted out of site.

21. However, process of composting, especially demands first separation of biodegradable portion of MSW received. Secondly it must undergo microbiological reaction in presence of air & moisture to convert biodegradable matter into compost. This

requires considerable time period & under no circumstances can it be done within 24 hrs, also accounting for the time taken for separation of biodegradable portion from MSW.

22. The figures in Annex C-1 provided by Respondent 5, illustrate that activity of separation of biodegradable portion & its conversion into compost took place merely within 24 hrs & everyday they were not only generating compost & also providing them to farmers.

23. The figures chosen are for October, when actually no cultivation activity happens & farmers in Maharashtra are known to harvest sugar cane or other Kharif crops, when no compost is needed in fields.

24. Thus, submission of such figures raises severe doubts.

Sr. No	Date	PMC MSW MT	Compost Generated MT	Compost lifted MT
215	1.10.2018	112.805	31.6	30
216	2.10.2018	0	0	0
217	3.10.2018	106	29.0	25
218	4.10.2018	157.92	44.2	40
219	5.10.2018	141.62	39.7	32
220	6.10.2018	139.9	39.2	40
221	7.10.2018	73.415	20.6	20
222	8.10.2018	171.355	48.0	50
223	9.10.2018	149.77	41.9	50
224	10.10.2018	167.935	47.0	45
	TOTAL	1220.72	341.2	332

25. I say and submit that as if this is less, The Respondent No.5 has once again caused the fire on the dumping ground due to negligence, deliberate carelessness, and cost-free method of getting rid of the huge legacy waste. There was additional fire

incidence again on 18.10.2020. The photographs of that are enclosed as [Ax. **RJ-2 ●**]. This has resulted in huge damage to environment, air pollution in the surrounding environment and causing nuisance to more than 10000 residents in the surrounding 2 km radius.

Applicants therefore prays that,

- A. heavy penalty of Rs.50 lakhs be imposed towards damage to environment and air pollution caused damaging the air quality in 2 km radius (750 Acre of land affecting 10000 people).
- B. All tipping fees paid so far should be taken-away as no disposal is done scientifically
- C. Penalty should be imposed on the Respondent No.5 for operating the CMSWMF without 'Environmental Clearance' and 'Consent to Operate' for last 8 years.
- D. Penalty should be imposed for selling the RDF to industries who do not have 'Consent to Operate' to use RDF as fuel and necessary Air Pollution Control Equipment to control the pollution from such RDF burning.



Place: **Pune**
Date: **30.10.2020**

Dr. Harshwardhan Modak
APPLICANT

Ax. RJ-1

Hon'ble National Green Tribunal passed the Daily Order dated 5th December 2017 directing to dispose-off 3000 MT of legacy waste @25 Trucks/day. However, Respondent No. 5 disposed it by way of fire on 7th March 2019.





Video of this above incidence is also available, (and stored on the link below) which was taken from the neighbouring building :

<https://drive.google.com/drive/folders/1FB8UjFfFIk1IW4zCsMEMRgcAKIsYWeKw?usp=sharing>

Ax. RJ-2

Dr. Modak on Fire incidence & Contempt of court by Rochem at Hadapsar Industrial estate

Harsh Modak <drmodak2007@gmail.com>

19 October 2020 at 14:32

To: RO Pune <ropune@mpcb.gov.in>,
srompcbpune2@gmail.com, sropune1@mpcb.gov.in,
pswanavdi.pune@nic.in, Swm M <swm@punecorporation.org>,
Swm Admin <swmadmin@punecorporation.org>,
info@rochemindia.com, env.mantra@gmail.com
Cc: Raghunath Mahabal <mahabal60@gmail.com>
Subject: Contempt of Honorable National Green Tribunal (NGT)
court order by Rochem Separations Systems (I) Pvt. Ltd
(Rochem), Pune Municipal Corporation (PMC) and its associates.

Sir/Madam:

This is to inform you that the above mentioned company is a solid waste processing unit operating at Ramtekdi Industrial Estate, Hadapsar, Pune. The mentioned company receives municipal solid waste from PMC which is to be processed and disposed as per the contract between PMC and Rochem.

We have been observing that the plant has not been following any environmental norms. In fact it has been turned in to a garbage dump yard. Today we see the garbage lying in and around the facility of Rochem most of which is unprocessed for months.

All are aware that a case is filled in NGT (Application No. 50/2017 (WZ) and Original Application No. 194(THC)/2016 (WZ) (CA 27/2015)) by Mr. Anand Uttarkar and Dr. Harshawardhan Modak respectively. An order was passed by the Honorable NGT to remove the waste and stop dumping further. Even today the order has not been followed and much more waste is dumped. This is in contravention and contempt of Honorable court order. Further at plot no. 87 (old vermin compost plant) is used as an open dumping ground.

We have been repeatedly saying that the facility is holding far more processed and unprocessed waste in Honorable NGT. Yesterday i.e. 18th of October we witnessed a fire outbreak again.

I urge all the responsible bodies mentioned below to take severe action against the non compliance. The area is badly polluted causing severe foul smell and unhygienic conditions.

I earnestly request you to kindly take an immediate action & oblige.

Best Regards,

Modak

Dr. Harshvardhan Modak

CC:

Wanawadi Police Station

The Municipal Corporation of the City of Pune

Maharashtra Pollution Control Board

Rochem Separations Systems (I) Pvt. Ltd

Environment Department

**Site Photographs personally taken by
Dr H M Modak on 19 October 2020**





Incidence of Fire on 18 October 2020
(Photo obtained from neighbour resident)

