

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO. 62 OF 2020

IN THE MATTER OF:

DAGADKHAN ASANGHATIT KAMGAR

VIKAS PARISHAD MAHARASHTRA

...APPLICANTS

VERSUS

STATE OF MAHARASHTRA & ORS.

...RESPONDENTS

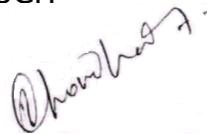
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THROUGH



RITWICK DUTTA



RAHUL CHOUDHARY MAITREYA GHORPADE

ADVOCATES

COUNSELS FOR THE APPLICANT

N-71, Lower Ground Floor,

Greater Kailash-I, New Delhi - 110048

Email: litigation.life@gmail.com

+91 9312407881

PLACE: PUNE

DATE: 20.08.2021

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AFFIDAVIT-IN-REPLY ON BEHALF OF APPLICANT IN RESPONSE TO REPORT
OF JOINT COMMITTEE CONSTITUTED VIDE ORDER DATED 29.09.2020

Most Respectfully Showeth:

1. The Applicants have filed the present application under Section 14 read with Section 15(3) as well as Section 20 of the National Green Tribunal Act, 2010 raising substantial question related to environment regarding illegal dumping of municipal solid waste by the Respondent Authorities at a dump site located on common land next to residential apartments and hutments of quarry workers at Wageshwarnagar in village Wagholi, Taluka Haweli, district Pune. It is submitted that the dumping on the impugned dump site is happening in violation of the Solid Waste Management Rules, 2016.
2. That vide order dated 29.09.2020 in the present Application, this Hon'ble Tribunal was pleased to constitute a committee to submit factual and action taken report within 6 weeks. This Hon'ble Tribunal therefore ordered accordingly:

*"5. We deem it just and proper to constitute a Committee consisting (i) Collector, Pune, (ii) Pune Metropolitan Region Development Authority (iii) Maharashtra State Pollution Control Board (PCB) and to direct them **submit a factual and action taken report. Report be submitted within six weeks.**"*

(emphasis supplied)

3. It is submitted that the Committee failed to do so within the stipulated time of six weeks as directed by this Hon'ble Tribunal vide order dated 29.09.2020. That the Committee however did undertake site inspection of the impugned dump site on 6.05.2021. That thereafter, a Report has been filed by the Joint Committee, which has been uploaded to the website of the Hon'ble National Green Tribunal as on 16.08.2021.
4. That the Applicant seeks to raise the following issues with regards to the contents of the said Report of the Joint Committee:

ADMISSION OF ILLEGAL DUMPING OF MUNICIPAL SOLID WASTE BEING DONE BY WAGHOLI GRAM PANCHAYAT

5. That the Applicant had previously submitted that the Respondent Authorities have been dumping unsegregated waste on the common land at Gatt No. 1419 (previously Gatt no. 2405) at village Wagholi in violation of the provisions pertaining to *inter alia* selection of landfill site as per the Schedule I (A) (vii) of the Solid Waste Management Rules, 2016 and "*Clarification of Buffer Zone Guidelines*" issued by Central Pollution Control Board dated 15.04.2019, which states:

"(vii) The landfill site shall be 100 meter away from river, 200 meter from a pond, 200 meter from Highways, Habitations, Public Parks and water supply wells and 20 km away from Airports or Airbase."

6. The Joint Committee Report has accordingly admitted such facts of illegal dumping of Municipal Solid Waste ('MSW') at the impugned dump site as on

Paras 1-5, Pg. 173. The said Report accordingly states as follows:

*"1) The **Municipal Solid Waste site is at Gat No. 1419** in Wagholi Grampanchayat and having total area almost 80R (i.e. 1.9 Acres).*

*2) Wagholi grampanchayat is very adjacent to Pune Municipal Corporation area ad also about **4.5 KM from runway of Lohgaon Airport.***

*3) This **MSW site is not approved** by site selection committee of District Collector, Pune*

*4) The **MSW site is in between the residential area.** Adjacent to the site at North and East side is slum area & at other side there are residential buildings.*

*5) The Wagholi gram panchayat is **utilizing this land since 1998-99 for dumping of MSW.**"*

(emphasis supplied)

7. The Applicant has previously submitted that families of 923 quarry workers consisting of about 4,000 persons reside at the North and East boundaries of the impugned dump site. The private residential apartments and worker hutments are within 50 metres of the impugned dump site, sharing common boundary wall with the impugned dump site. As per Para 2 of the Committee Report, it is clearly mentioned that the Lohgaon Airport is merely 4.5 KM away.
8. It is submitted such statements as recorded in Paras 3-5 are undeniable evidence of the violation of the abovementioned provisions of the Solid Waste Management Rules, 2016. It is submitted that Rule 15(h) and Rule 15(y) of the Solid Waste Management Rules, 2016 have also been violated by the Respondent Wagholi Gram Panchayat.
9. However, it is not only Respondent Wagholi Gram Panchayat that has violated the provisions of the Solid Waste Management Rules, 2016. That it has been submitted on **Para 10, Pg 14**, that the Respondent State Government has failed in its duty of identification of proper landfill site as per Rule 11 (f) and Rule 11(h) of the Solid Waste Management Rules, 2016. That furthermore, the District Collector is also responsible for such identification as per Rule 12(a) of the said Rules.

ILLEGAL DUMPING OF NON-SEGREGATED WASTE

10. The Applicant had previously submitted as on **Para 19, Pg 16**, that the Respondent Wagholi Gram Panchayat has been illegally dumping mixed and non-segregated waste at the impugned dump site in violation of Rules 15(b), 15(g) and 15(zh) of the Solid Waste Management Rules, 2016. The Applicant had also submitted that the MPCB have failed in their duty to ensure the safe handling and disposal of the domestic hazardous waste as per Rule 16(5) as all the waste generated is either burnt or dumped in an unsegregated manner.
11. The Joint Committee Report has accordingly admitted such the fact regarding dumping of non-segregated waste, as in **Paras 8 and 10, Pgs 173-174**. The said Report accordingly reads as follows:

"8) The MSW generation by Wagholi Gram Panchayat is 40 to 45 ton/day out of which 15-20 ton/day is wet waste and 20-25 ton/day is dry waste.

...

10) The unsegregated municipal solid waste to the tune of 1-2 tons was found dumped at site which is going to be lifted by agency for further treatment and disposal at different place."

12. That the dumping of non-segregated waste is a violation of the Solid Waste Management Rules, 2016, as well as the order dated 22.12.2016 of this Hon'ble Tribunal in *O.A. 199 of 2014 Almitra H. Patel v. Union of India and Ors.* as previously submitted on **Para 21, Pg. 17.**

FAILURE OF COMMITTEE TO PROVIDE COMPREHENSIVE ASSESSMENT

Illegal Burning of Waste

13. The Applicant had previously submitted that the illegally dumped waste was being burnt on a daily basis by the Respondent Authorities. That in support of such statements, the Applicant has annexed photographs showing indiscriminate burning of solid waste as at **Pgs. 33-34**, and **Pgs. 49-51**, as well as Times of India Newspaper Article dated 31.03.2019, at **Pg. 53.**

14. The Applicant has also submitted that the MPCB has failed to observe the number and nature of all waste burning incidents having taken place at the impugned dump site, as was directed by this Hon'ble Tribunal vide order dated 22.12.2016 of this Hon'ble Tribunal in *O.A. 199 of 2014 Almitra H. Patel v. Union of India and Ors.*

15. It is submitted that the same order dated 22.12.2016 clearly states that environmental compensation of Rs. 25000/- in each case of bulk waste burning. However, the same has not been factored in by the Committee Report, and no mention has been made with regards to any burning of waste. That such is a glaring inadequacy in the Joint Committee Report, as the issue of waste burning is highly detrimental to the ecology and surrounding environment, as well as has undoubtedly led to severe adverse health impacts on residents of adjoining lands.

16. It is therefore submitted that the Respondent MPCB and Wagholi Gram Panchayat be directed to provide factual report as to the number and nature of

waste burning having been undertaken at the impugned dump site since the date of the said order of this Hon'ble Tribunal on 22.12.2016 in O.A. 199 of 2014 as above mentioned. A copy of the said order dated 22.12.2016 in O.A. 199 of 2014 is annexed herewith as **ANNEXURE A-11.**

Leachate formation

17. It is further submitted that the Committee has observed "*no leachates found in premises of MSW site*", as per Para 14, Pg 174. It is pertinent to note that the Inspection by the Committee was carried out on 6.05.2021. Thereafter, the monsoon season has caused large amounts of leachate formation in the impugned dump site. Photographs of leachate at Wagholi dump site as taken in August 2021 are annexed herewith as **ANNEXURE A-12.**

Insufficient Details Regarding Transfer of Solid Waste

18. It is submitted that the Committee Report on Paras 10-11, Pg. 174, provide insufficient details regarding the location of disposal of waste which is being lifted from the impugned dump site. That Paras 10-11 accordingly state:

"10) The unsegregated municipal solid waste to the tune of 1-2 tons was found dumped at site which is going to be lifted by agency for further treatment and disposal at different place.

11) This site is almost used as transfer station for MSW at Wagholi and at the said place no processing activity is being conducted."

19. However, no further information has been provided about the future dump site or the authority facilitating such transfer/disposal of the municipal solid waste.

20. That therefore, it is evident that the Committee has failed to carry out a comprehensive factual assessment of the situation and provide a report of the same before this Hon'ble Tribunal. That this Hon'ble Tribunal vide order dated 29.09.2020 had directed the Committee to submit "a factual and action taken report". However, the Committee has failed to do so.

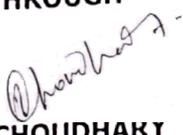
21. It is therefore submitted that this Hon'ble Tribunal may direct the authorities to remove the waste illegally dumped at the dump site and ensure restoration, as well as order for computation of environmental compensation payable.

Pass any such Order deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case.


APPLICANT


RITWICK DUTTA

THROUGH


RAHUL CHOUDHARY

MAITREYA GHORPADE

COUNSEL FOR THE APPLICANT

N-71, Lower Ground Floor,

Greater Kailash-I, New Delhi - 110048

Email:litigation.life@gmail.com

Ph: 93124 07881

VERIFICATION

I, Bastu Rege s/o Moti Rege, r/o Santulan Bhavan S.No. 55/2, Lane No. 7, Tuljabhavani Nagar, Nagar Road, Kharadi, Pune- 411014 do hereby solemnly affirm and state as under:

1. That I am the Applicant in the above titled Application and I am conversant with the facts and the circumstances of the case and competent to swear this affidavit.
2. That that the contents of the Application are true to my knowledge and/ or based on information, and/or the contents are based on the legal submission and/or inferences of facts, which I believe to be true.

Date: 20.08.2021

Place: PUNE.


APPLICANT

BEFORE THE NATIONAL GREEN TRIBUNAL,
WESTERN ZONAL BENCH SITTING AT PUNE
ORIGINAL APPLICATION NO. 62 OF 2020

IN THE MATTER OF:

DAGADKHAN ASANGHATTI KAMGAR

VIKAS PARISHAD MAHARASHTRA

...APPLICANTS

VERSUS

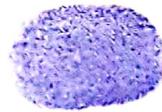
UNION OF INDIA & ORS.

...RESPONDENTS

AFFIDAVIT

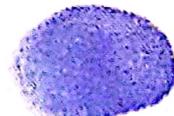
I, Bastu Rege s/o Moti Rege, r/o Santulan Bhavan S.No. 55/2, Lane No. 7, Tuljabhavani Nagar, Nagar Road, Kharadi, Pune- 411014 do hereby solemnly affirm and state as under:

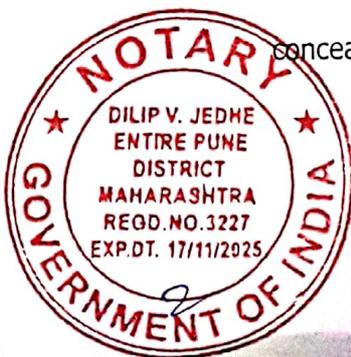
1. That I am the authorized representative of the Applicant in the above titled Original Application and am conversant with the facts and circumstances described in the present case and as such, I am competent to swear this affidavit.
2. That the contents of the accompanying Application are true and correct and nothing material has been concealed therefrom.

 *B. Rege*
DEPONENT

VERIFICATION

Verified on this 20th of August, 2021 that the contents of the above mentioned affidavit are true and correct and nothing material has been concealed therefrom.

 *B. Rege*
DEPONENT



BEFORE ME
[Signature]
20/8/21
DILIP V. JEDHE
NOTARY
GOVT. OF INDIA
NOTED & REGISTERED
AT SR. NO 274/2021
date : 20/8/2021

Corrected Judgment(Vide order dated: 02nd January, 2017)**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

ORIGINAL APPLICATION NO. 199 OF 2014**IN THE MATTER OF:**

1. Mrs. Almitra H. Patel
Convener, INTACH Waste Network
Residing at No. 50, Kothnur
Bangalore 560 077
2. Capt. J.S. Velu,
Organiser, Exnoraintach Clean India Campaign
Having his address
C/o Anjanappa, No. 2
Oil Mill Road, Satipalya
Lingarajapuram,
Bangalore 560 084

.....Applicants

Versus

1. Union of India
Through the Secretary (Health)
Ministry of Health and Family Welfare
Government of India
Having his office at Nirman Bhavan
New Delhi.
2. The State of Andhra Pradesh
Through the Chief Secretary
Having his office at
The Vidhan Sabha
Hyderabad 500 486
3. State of Assam
Through the Chief Secretary
Having his office at
The Secretariat
Dispur 781 005
4. The State of Bihar
Through the Chief Secretary
Having his office at
The Patna Secretariate
Patna – 800 015

exhaustive but merely illustrative. It would depend primarily on geographical, financial and other conditions as stipulated above. Irrespective of the fact that which technology is adopted by a State, it is absolutely essential that the State should prepare complete and comprehensive action plan for management, for processing and for disposal of its solid municipal waste in accordance with the Rules. Every State has spent considerable money and manpower but without any desired results. Any further delay in proper enforcement of such action plans in accordance with the Rules is likely to prove disastrous for environmental protection and public health. It is, therefore, necessary for this Tribunal to issue comprehensive directions to ensure effective and expeditious implementation of the Rules of 2016 and which would also bridge the gaps in these Rules. Thus, we issue the following directions in the interest of the environment and public health:

1. Every State and Union Territory shall enforce and implement the Solid Waste Management Rules, 2016 in all respects and without any further delay.
2. The directions contained in this judgment shall apply to the entire country. All the State Governments and Union Territories shall be obliged to implement and enforce these directions without any alteration or reservation.
3. All the State Governments and Union Territories shall prepare an action plan in terms of the Rules of 2016 and the directions in this judgment, within four weeks from the date of pronouncement of the judgment. The action

plan would relate to the management and disposal of waste in the entire State. The steps are required to be taken in a time bound manner. Establishment and operationalization of the plants for processing and disposal of the waste and selection and specifications of landfill sites which have to be constructed, be prepared and maintained strictly in accordance with the Rules of 2016.

4. The period of six months specified under Rule 6(b), 18, 23 of the Rules of 2016 has already lapsed. All the stakeholders including the Central Government and respective State Governments/UTs have failed to take action in terms thereof within the stipulated period. By way of last opportunity, we direct that the period of six months shall be reckoned w.e.f. 1st January, 2017. There shall be no extension given to any stakeholders for compliance with these provisions any further.

The period of one year specified under Rule 11(f) 12(a), 15(e), 22(1) and 22(2) has lapsed. The concerned stakeholders have obviously not taken effective steps in discharging their statutory obligations under these provisions. Therefore, we direct that the said period of one year shall commence with effect from 1st July, 2017. For this also, no extension shall be provided.

Any State or Union Territory which now fails to comply with the statutory obligations as afore indicated

shall be liable to be proceeded against in accordance with Section 15 of the Environment (Protection) Act, 1986. Besides that, it would also be liable to pay environmental compensation, as may be imposed by this Tribunal. In addition to this, the senior most officer in-charge in the State Government/Urban Local Body shall be liable to be personally proceeded against for violation of the Rules and orders passed by this Tribunal.

5. The Central Government, State Government, Local Authorities and citizens shall perform their respective obligations/duties as contemplated under the Rules of 2016, now, without any further delay or demur.
6. All the State Governments, its departments and local authorities shall operate in complete co-ordination and cooperation with each other and ensure that the solid waste generated in the State is managed, processed and disposed of strictly in accordance with the Rules of 2016.
7. Wherever a Waste to Energy plant is established for processing of the waste, it shall be ensured that there is mandatory and proper segregation prior to incineration relatable to the quantum of the waste.
8. It shall be mandatory to provide for a buffer zone around plants and landfill sites whether they are geographically integrated or are located separately. The buffer zone necessarily need not be of 500 meters wherever there is a land constraint. The purpose of the buffer zone should be

to segregate the plant by means of a green belt from surrounding areas so as to prevent and control pollution, besides, the site of the project should be horticulturally beautified. This should be decided by the authorities concerned and the Rules are silent with regard to extent of buffer zone. However, the Urban Development Manual provides for the same. Hence, we hold that this provision is not mandatory, but is directory.

We make it clear that buffer zone and green belt are essential and their extent would have to be decided on a case to case basis.

9. We direct that the Committees constituted under Rule-5 would meet at least once in three months and not once in a year as stipulated under the Rules of 2016. The minutes of the meeting shall be placed in the public domain. Directions, on the basis of the minutes, shall be issued immediately after the meeting, to the concerned States, local bodies, departments and Project Proponents.
10. The State Government and the local authorities shall issue directives to all concerned, making it mandatory for the power generation and cement plants within its jurisdiction to buy and use RDF as fuel in their respective plants, wherever such plant is located within a 100 km radius of the facility.

In other words, it will be obligatory on the part of the State, local authorities to create a market for

consumption of RDF. It is also for the reason that, even in Waste to Energy plants, Waste–RDF–Energy is a preferred choice.

11. In Waste to Energy plant by direct incineration, absolute segregation shall be mandatory and be part of the terms and conditions of the contract.
12. The tipping fee, wherever payable to the concessionaire/operator of the facility, will not only be relatable to the quantum of waste supplied to the concessionaire/operator but also to the efficient and regular functioning of the plant. Wherever, tipping fee is related to load of the waste, proper computerised weighing machines should be connected to the online system of the concerned departments and local authorities mandatorily.
13. Wherever, the waste is to be collected by the concessionaire/operator of the facility, there it shall be obligatory for him to segregate inert and C&D waste at source/collection point and then transport it in accordance with the Rules of 2016 to the identified sites.
14. The landfill sites shall be subjected to bio-stabilisation within six months from the date of pronouncement of the order. The windrows should be turned at regular intervals. At the landfill sites, every effort should be made to prevent leachate and generation of Methane. The stabilized waste should be subjected to composting,

which should then be utilized as compost, ready for use as organic manure.

15. Landfills should preferably be used only for depositing of inert waste and rejects. However, if the authorities are compelled to use the landfill for good and valid reasons, then the waste (other than inert) to be deposited at such landfill sites be segregated and handled in terms of Direction 13.
16. The deposited non-biodegradable and inert waste or such waste now brought to land fill sites should be definitely and scientifically segregated and to be used for filling up of appropriate areas and for construction of roads and embankments in all road projects all over the country. To this effect, there should be a specific stipulation in the contract awarding work to concessionaire/operator of the facility.
17. The State Government, Local Authorities, Pollution Control Boards of the respective States, Pollution Control Committees of the UTs and the concerned departments would ensure that they open or cause to be opened in discharge of Extended Producer Responsibility, appropriate number of centers in every colony of every district in the State which would collect or require residents of the locality to deposit the domestic hazardous waste like fluorescent tubes, bulbs, batteries, electronic items, syringe, expired medicines and such

other allied items. Hazardous waste, so collected by the centers should be either sent for recycling, wherever possible and the remnant thereof should be transported to the hazardous waste disposal facility.

18. We direct MoEF&CC, and the State Governments to consider and pass appropriate directions in relation to ban on short life PVC and chlorinated plastics as expeditiously as possible and, in any case, not later than six months from the date of pronouncement of this judgment.
19. The directions and orders passed in this judgment shall not affect any existing contracts, however, we still direct that the parties to the contract relating to management or disposal of waste should, by mutual consent, bring their performance, rights and liabilities in consonance with this judgment of the Tribunal and the Rules of 2016. However, to all the concessionaire/operators of facility even under process, this judgment and the Rules of 2016 shall completely and comprehensively apply.
20. We specifically direct that there shall be complete prohibition on open burning of waste on lands, including at landfill sites. For each such incident or default, violators including the project proponent, concessionaire, ULB, any person or body responsible for such burning, shall be liable to pay environmental compensation of Rs. 5,000/- (Rs. Five Thousand only) in case of simple

burning, while Rs. 25,000/- (Rs. Twenty Five Thousand only) in case of bulk waste burning. Environmental compensation shall be recovered as arrears of land revenue by the competent authority in accordance with law.

21. All the local authorities, concessionaire, operator of the facility shall be obliged to display on their respective websites the data in relation to the functioning of the plant and its adherence to the prescribed parameters. This data shall be placed in the public domain and any person would be entitled to approach the authority, if the plant is not operating as per specified parameters.
22. We direct the CPCB and the respective State Boards to conduct survey and research by monitoring the incidents of such waste burning and to submit a report to the Tribunal as to what pollutants are emitted by such illegal and unauthorized burning of waste.
23. That the directions contained in the judgment of the Tribunal in the case of '*Kudrat Sandhu Vs. Govt. of NCT & Ors*', O.A. No. 281 of 2016, shall *mutatis mutandis* apply to this judgment and consequently to all the stakeholders all over the country.
24. That any States/UTs, local authorities, concessionaires, facility operators, any stakeholders, generators of waste and any person who violates or fails to comply with the Rules of 2016 in the entire country and the directions

contained in this judgment shall be liable for penal action in accordance with Section-15 of the Environment (Protection) Act, 1986 and shall also be liable to pay environmental compensation in terms of Sections 15 & 17 of the National Green Tribunal Act, 2010 to the extent determined by the Tribunal.

25. That the State Governments/UTs, public authorities, concessionaire/operators shall take all steps to create public awareness about the facilities available, processing of the waste, obligations of the public at large, public authorities, concessionaire and facility operators under the Rules and this judgment. They shall hold program for public awareness for that purpose at regular intervals. This program should be conducted in the local languages of the concerned States/UTs/Districts.
26. We expect all the concerned authorities to take note of the fact that the Rules of 2016 recognize only a landfill site and not dumping site and to take appropriate actions in that behalf.
27. We further direct that the directions contained in this judgment and the obligations contained under the Rules of 2016 should be circulated and published in the local languages.

28. Every Advisory Committee in the State shall also act as a Monitoring Committee for proper implementation of these directions and the Rules of 2016.
29. Copy of this judgment be circulated to all the Chief Secretaries/Advisers of States/UTs by the Registry of the Tribunal. The said authorities are hereby directed to take immediate steps to comply with all the directions contained in this judgment and submit a report of compliance to the Tribunal within one month from the date they receive copy of this judgment.
44. With the above directions, this application and all other miscellaneous applications shall stand disposed of without any order as to cost.

Swatanter Kumar
Chairperson

U.D. Salvi
Judicial Member

Bikram Singh Sajwan
Expert Member

Ajay Deshpande
Expert Member

New Delhi
22nd December, 2016

T. C.



Annexure A-12







T. C.

Amal