BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

M.A.No.148 of 2017

in

Application No: 118 of 2017

Sri Kommana Lakshmi Bala Ganeswara Rao,
Door No.4-13, Jagannaikulapalem
East Godavari District. .... Applicant

- Vs-

State of Andhra Pradesh
Rep. by its Chief Secretary, Secretariat
Amaravathi, Andhra Pradesh and 4 Ors. .... Respondents

COUNTER FILED BY THE 4th RESPONDENT

I, A. Ramarao Naidu, S/o Late A. Satyam Naidu, aged about 53 years holding post of Environmental Engineer, Andhra Pradesh Pollution Control Board, Regional Office, Plot No.2, IDA, Ramanayyapeta, Kakinada-533005. do hereby solemnly affirm and sincerely state as follows:-

1. I am the deponent herein and as such I am well acquainted with the facts of the case and competent to swear to this counter affidavit. I have been authorized to file this counter affidavit on behalf of the 2nd and 3rd respondents.

2. This respondent denies each and every averment made in the affidavit filed in support of the application as false and incorrect except those that are specifically admitted herein in this counter affidavit.

3. It is respectfully submitted that the instant application purported to be filed U/s 28 of the National Green Tribunal Act, 2010 is not at all maintainable and ought to be dismissed in limine. It appears that it is with certain ulterior objectives and motives that such a frivolous application has been filed before this Hon'ble Tribunal even without making any averments or allegations as to how and in what manner such application is maintainable.

4. It is respectfully submitted that the Application No.118 of 2017 came to be filed praying for a direction to the State Pollution Control Board not to allow the applications for establishment and operation of Bio Medical Waste Treatment Facilities (CBMWTFs) in the state of Andhra Pradesh to collect,

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transport, treat and safe disposal of Bio Medical Waste generated from the Hospitals / HCEs situated in the Districts of Andhra Pradesh without considering the full capacity of the existing common Bio Medical Waste Treatment facilities in operation and its potential enhancement of the production and the need for establishment of fresh common Bio Medical Waste Treatment facilities in the state of Andhra Pradesh as illegal, arbitrary, capricious, high handed, violation of law and justice and consequently to nullify the orders passed by this Board in favour of the 5th Respondent and such other common Bio Medical Waste Treatment facilities in the State of Andhra Pradesh.

5. It is respectfully submitted that while this Hon'ble Tribunal was of the view that such an application having a totally vague prayer was not at all maintainable, it was at the request of the Applicant certain observations came to be made by this Hon'ble Tribunal in the order dated 05.07.2017 that "It is always open to the State Pollution Control Board to implement the various guidelines framed by them for the purpose of granting consent for the Bio Medical Waste Treatment Facility (CBMWTF) and the application was disposed with a direction to the Board to strictly follow the guidelines and the guidelines framed by the Central Pollution Control Board in accordance with the Bio Medical Waste Treatment Management Rules, 2010 in respect of the installation and operation of the common Bio Medical Waste Treatment Facilities in the State of Andhra Pradesh.

6. It is respectfully submitted that in M.A.No.148 of 2017, it is not stated as regards any violations of the rules or guidelines and a false case is projected as though the conduct of Public hearing on 27.07.2017 would amount to non-compliance of the orders of this Hon'ble NGT without any averment as to how the same would be in violation of the orders of this Hon'ble Tribunal. Though the Applicant claims to be an individual aspiring for a post in the Andhra Pradesh Police Department, from the manner in which the present application has been filed goes to show that he is actually espousing the case of someone in the same line of business as that of a common Bio Medical Waste Treatment Facility and not a genuine or a bonafide litigant and that he has lent his name for such vested litigation with some ulterior motives. Such an application ought not to be entertained and deserves to be dismissed with exemplary costs.

7. With regard to the averment made in Paragraph 3 of the affidavit is denied as false. It is respectfully submitted that the steps that are being taken

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by the answering Respondent are in accordance with the law and the rules and which are in accordance with the directions of this Hon'ble Tribunal dated 05.07.2017 cannot be alleged to be in violation or as though there is an intention to give a go-by to the orders of this Hon'ble Tribunal so as to suit the claims of the business establishments or that any step is taken in contravention of the guidelines. The averments are as vague as could be and such application ought not to be entertained by this Hon'ble Tribunal.

8. With regard to the averment made in Paragraph 4 of the affidavit is denied as false. It is respectfully submitted that there is absolutely no substance in those allegations. It is not even whispered as to how the alleged contravention has taken place and as to how the instant application is maintainable before this Hon'ble NGT.

9. It is respectfully submitted that the following facts for the appraisal of this Hon'ble NGT for the sake of completion of the record:

a) In the East Godavari District, M/s. EVB Technologies Limited, established a Common Bio Medical Waste Treatment facility at Kanavaram Village, Rajanagaram Mandal in the year 2004. They were handling bed strength of approximately 11087 Nos. covering 616 HCEs as of 23.09.2017. As per the information provided by the District Medical and Health Officer, East Godavari District, Kakinada, the bed strength in the East Godavari District was 17141 Nos. as on 25.05.2017. In as much as the bed strength had exceeded the 10,000 Nos., 2 applications were received by this Respondent Board for grant of CFE for a new Common Bio Medical Waste Treatment facility in the East Godavari District from M/s. M.C.V Eco Systems, Kadiyam Village and Mandal, East Godavari District and M/s. Godavari Bio Medical Management, Marripudi Village, Rangampetta Mandal, East Godavari District.

b) This Respondent Board rejected the CFE application of M/s. M.C.V.Eco Systems on 16.06.2015, under section 25 (4) (b) of the Water Act and under Section 21 (4) of the Air Act for the following reasons:

   i. As per the CPCB guidelines regarding coverage area of CBMWTF is that in any area, only one CBMWTF may be allowed to cater upto 10,000 beds at the approved rate by the prescribed authority. A CBMWTF shall not be allowed to cater healthcare

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units situated beyond a radius of 15 km. However, in an area where 10,000 beds are not available within radius of 150 km, another CBMWTF may be allowed to cater the healthcare units simulated outside the said 150 km.

ii. There is one CBMWTF presently operating in East Godavari District at Kanavaram Village, Rajanagaram Mandal, East Godavari District at a distance of about 20 Kms only from proposed CBMWTF. The bed strength of HCE in East Godavari District is only about 10,900 Nos.

c) M/s. M.C.V.Eco Systems approached the Hon'ble High Court of Telangana in W.P.No.45825 of 2016 wherein this Respondent Board undertook to consider their Application in accordance with the revised guidelines of Central Pollution Control Board under Bio-Medical Waste Management Rules, 2016.

d) Accordingly, this respondent Board re-considered/examined the CFE application for proposal of M/s.MCV Eco Systems to setup a Common Bio Medical Waste Treatment Facility at R.Sy.No.527/4, Kadiyam Village & Mandal, East Godavari District and after careful examination of CFE application of the industry rejected the proposal on 07.02.2017 under Section 25 (4) (b) of the Water Act and under Section 21 (4) of the Air Act for the following reasons:

i. As per notification S.O.1142 (e) dated 17.04.2015 of MoEF&CC which was issued as amendment to EIA Notification S.O.1533 (E) dated 14.09.2006, the CBMWTF shall obtain Environmental Clearance from SEIAA of Andhra Pradesh.

ii. There are small water bodies (Panchayat Cheruvu-3 Nos. of each about 3, 3 & 2 acres respectively) are existing at a distance of about 260 mtrs., 540 mtrs., & 750 mtrs., in the Northern direction of the site.

e) M/s. Godavari Bio Management, R. Sy.No.258, Marripudi, Village, Rangampeta Mandal, East Godavari District applied for establishment of new Common Bio Medical Waste Treatment Facility and the respondent Board rejected the CFE application on 17.12.2016 under Section 25 (4) (b) of the Water Act and under Section 21 (4) of the Air Act as the CBMWTF has not obtained the Environmental Clearance (EC). The Board issued in Principle Permission for the establishment of second Bio-medical Waste Treatment Facility at East Godavari District, with a condition that the facility shall obtain all the necessary clearances including Environment Clearance form

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MoEF&CC, GoI/SEIAA, AP under the relevant Environmental Laws in force as per the Notification S.O.1142 (E) date 17.04.2015 of MoEF&CC which was issued as an amendment to EIA Notification S.O.1533 (E) dated 14.09.2006, the CBMWTF shall obtain prior Environmental Clearance from the SEIAA, AP.

f) M/s. Godavari Bio Management approached the Regional Office of this Respondent Board at Kakinada with a request to conduct the Public hearing by their request letter dated 20.06.2017. Accordingly, conducting of the public hearing was facilitated by this Respondent Board and the public hearing was held on 28.07.2017. The Joint Collector and the Additional District Magistrate, East Godavari District supervised the entire public hearing proceedings. The minutes of the public hearing along with the representations received from the public were sent to the Member Secretary, SEIAA on 07.08.2017.

g) In the meanwhile, M/s. M.C.V. Eco Systems filed Application No. 257 of 2017 before this Hon'ble Tribunal praying for the declaration that the action of the Respondent in considering the Application for CFE made by M/s. Godavari Bio Management as illegal and the said application is pending before this Hon'ble Tribunal.

h) M/s. M.C.V. Eco Systems moved the High Court at Telangana by way of W.P.No. 5720 of 2018 as regards for considering the application of the M/s. Godavari Bio Management. The Hon'ble High Court disposed the W.P.No. 5720 of 2018 and passed an order dated 07.03.2018 stating that "The A.P. State Pollution Control Board to examine the petitioner's request for their grant of consent, to establish a unit at the identified site, in accordance with the guidelines framed either by the Ministry of Environment, Forest and Climate Change or the Central Pollution Control Board, and communicate their opinion to the petitioner within two weeks from the date of receipt of their application. It is made clear that the views expressed by the Board would relate only to the site, where the unit is sought to be located, in terms of Rule 17 (2) of the 2016 Rules, and shall not be constructed either as grant of, or refusal to grant, consent for establishment of the unit as it is only if, and after, the State Level Impact Assessment Authority gives its approval for prior environmental clearance, would the question of grant of consent for establishment arise".

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i) As per the Hon'ble High Court order, the Board officials inspected the alternative site of M/s. M.C.V. Eco Systems and furnished the site inspection remarks to M/s. M.C.V. Eco Systems on 27.03.2018. However, M/s. M.C.V. Eco Systems has not submitted Consent for Establishment application to the respondent Board for the alternative site for establishment of CBMWTF.

j) M/s. M.C.V. Eco Systems approached the Hon'ble High Court in W.P.No.27717 of 2018 to direct the respondent Board to issue "in principle permission" to the M/s. M.C.V. Eco Systems for establishing Common Bio Medical Waste Treatment Facility, at Sy. No. 55,56/1, Srungadhara (V), Sankavaram (M), East Godavari District.

k) The Board could not issue in-principle permission Petitioner to establish a 2nd CBMWTF for East Godavari District in its new location i.e at Sy. No. 55,56/1, Srungadhara (V), Sankavaram (M), East Godavari District as: (i) the Board already issued in- principle permission to M/s. Godavari Bio Management to establish a CBMWTF at Sy. No. 258, Marripudi (V), Rangampeta (M), East Godavari District which was received earlier; and (ii) permitting a 3rd CBMWTF in East Godavari District is not possible, in view of the CPCB guidelines.

l) Environmental Clearance was granted to M/s. Godavari Bio Management on 15.10.2018. Thereafter on 30.10.2018, the CFE application was received from M/s. Godavari Bio Management. Subsequently, CFE was issued to the Godavari Bio Management on 30.11.2018 after following all the norms and conducting the survey as per the requirements. The said proponent, M/s. Godavari Bio Management submitted the establishment plan schedule for commencement of the common Bio Medical Waste Treatment facility by August, 2019. M/s. Godavari Bio Management requested the Board for extension of validity of CFE. The Board issued Extension of CFE to M/s. Godavari Bio Management up to 31.12.2021.

m) In the light of the fact that the application of M/s. Godavari Bio Management for the Environmental Clearance was in the advanced stage, even as of May, 2018 and in principle permission had been given to them that the application of M/s. M.C.V. Eco Systems was not considered. M/s. M.C.V. Eco Systems filed W.P.No. 27717 of 2018 before the Telangana High Court as against the grant of in principle permission to M/s. Godavari Bio Management.

10. It is respectfully submitted that from the narration of the above facts, it is clear that this Respondent Board had followed the guidelines in the matter of

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considering the application for grant of CFE for establishment of a common Bio Medical Waste Treatment facility and that there is no violation of the said rules and the order of this.

11. It is submitted that this respondent craves leave of this Hon'ble Tribunal to raise additional counter in the course of proceedings, if required.

In the above circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above M.A.No.148 of 2017 in Original Application No.118 of the 2017 and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.

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Solemnly affirmed at, Kakinada
Andhra Pradesh on this the
26th day of June, 2021 and
Signed his name in presence

BEFORE ME

ADVOCATE, Kakinada

VERIFICATION

I, A. Ramarao Naidu, S/o Late A. Satyam Naidu, holding post of Environmental Engineer, Andhra Pradesh Pollution Control Board, Regional Office, Plot No.2, IDA, Ramanayyapeta, Kakinada-533005 the 4th Respondent, do hereby verify that what are all stated above are true and correct to the best of my knowledge, information and belief.

Verified at Kakinada on this the 26th day of June, 2021.

4th Respondent

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- Vs-

State of Andhra Pradesh
Rep. by its Chief Secretary, Secretariat
Amaravathi,
Andhra Pradesh and 4 Ors. .... Respondents

COUNTER FILED BY THE 4th RESPONDENT

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ADVOCATE
STANDING COUNSEL FOR GOVERNMENT OF ANDHRA PRADESH
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Phones : 0866-2436217,Website : http//appcb.ap.nic.in

ఆంధ్రప్రదేశ్ కాలుష్య నియంత్రణ మండలి
ఆర్ నెం. 4455
14 JUN 2018
అజెండా అనెక్స్, కాకినాడ

BY REGISTERED POST WITH ACKNOWLEDGEMENT DUE

BY RPAD

Order No.1/APPCB/KNL /KDP/ HO/CBMWTF/2018-9 84 **Dt. 28.05.2018**

Sub:- APPCB - UH:IV – BMW - M/s MCV Eco Systems (CBMWTF), Sy.No.55,56/1, Srungadhara, Sankavaram (M), East Godavari District - In-Principle Permission for establishment of CBMWTF in East Godavari District - Recommendations of Technical Committee – Communicated - Reg.

Ref:- 1. M/s MCV Eco Systems request letter dt 11.04.2018.
2. Minutes of 15th Bio Medical Waste Technical Committee Meeting held on 22.05.2018.

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M/s MCV Eco Systems (CBMWTF) vide reference 1st cited seeking In- Principle permission for Establishment of Common Bio Medical Waste Treatment Facility (CBMWTF) in East Godavari District.

M/s. M.C.V Eco Systems applied for CFE on **25.05.2015** at RO: Kakinada, APPCB to setup a Common Bio Medical Waste Treatment Facility at R.Sy.No.527/4, Kadiyam Village & Mandal, East Godavari District CFE application was rejected in **16.06.2015.** M/s. M.C.V Eco Systems is not approached SEIAA for Environmental Clearance (EC) and also not applied for In-Principle permission at that point of time.

Later M/s. Godavari Bio Management, D.No.2-31, Peddada (Village), Pedapudi (Mandal), East Godavari District submitted a letter on 20.06.2016 requested for issue of preliminary acceptance for Establishment of a Second Common Bio medical treatment facility at Syno.258, Manipudi(V), Rangampeta(M),East Godavari District for obtaining Environmental Clearance from SEAC & SEIAA Committee. Subsequently, Board issued In-Principle permission to M/s. Godavari Bio management, on **16.08.2016.**

M/s. MCV Eco Systems filed a Writ Petition No.45825 of 2016 in the Hon'ble High Court of Judicature at Hyderabad. As per the Hon'ble High Court of Judicature at Hyderabad, the Judgment in the Writ Petition No.45825 of 2016 it was directed that the CFE application of M/s. M.C.V Eco Systems, R.Sy.No.527/4, Kadiyam Village & Mandal, East Godavari District was once again considered. Again the application was rejected for not having Environmental Clearance.

M/s. MCV Eco Systems again filed a case in the Hon'ble High Court bearing No W.P No 5720 of 2018. The Hon'ble High Court disposed off the case and passed an order as mentioned below:

> "The A.P. State Pollution Control Board to examine the petitioner's request for their grant of consent, to establish a unit at the identified site, in accordance with the guidelines framed either by the Ministry of Environment, Forest and Climate Change or the Central Pollution Control Board, and communicate their opinion to the petitioner within two weeks from the date of receipt of their application. It is made clear that the views expressed by the Board would relate only to the site, where the unit is sought to be located, in terms of Rule 17(2) of the 2016 Rules, and shall not be construed either as grant of, or refusal to grant, consent for establishment of the unit as it is only if, and after, the State Level Impact Assessment Authority gives its approval for prior environmental clearance, would the question of grant of consent for establishment arise."

Subsequently, M/s. M C V Eco Systems filed the application at Head office dt 14.03.2018 for a **new site Sy.No.55,56/1, Srungadhar(V), Sankarvaram(M), East Godavari District (at a different location from the earlier site i.e. at** R.Sy.No.527/4, Kadiyam Village & Mandal, East Godavari District). In this regard, the Board already submitted the views as per the CPCB guidelines on site vide lr dt 27.03.2018 as per the court directions.

M/s MCV Eco Systems (CBMWTF) vide letter dt. 11.04.2018 requested the Board for issue of In-Principle permission for establishment of CBMWTF in East Godavari district. The issue was discussed in the 15th Bio-Medical Technical Committee meeting held on 22.05.2018.

The committee opined that the Environmental Clearance application of M/s Godavari Bio Management in the advanced stage. Hence one month time shall be given to M/s Godavari Bio Management for obtaining the Environmental Clearance from the SEIAA,A.P and submit to this office.

Sd/-
MEMBER SECRETARY

To

1. **M/s. Godavari Bio Management, D.No.2-31, Peddada (Village), Pedapudi (Mandal), East Godavari District.**

Copy to:

1. The JCEE, APPCB, **Zonal Office-Visakhapatnam** for information and necessary action.
2. The EE, APPCB, **Regional Office- Kakinada** for information and necessary action.

//T.C.F.B.O//

28/5/18

Joint Chief Environmental Engineer
UH-IV

18 JAN 2017

ANDHRA PRADESH POLLUTION CONTROL BOARD
Paryavarana Bhavan, A-III, Industrial Estate,
Sanathnagar, Hyderabad-500 018
Phone : 040-23887500 Website : www.appcb.ap.nic.in

BY RPAD

Lr.No. 1/APPCB/ HO/UH-IV/BMW/CBMWTF/2016- **Date: 17.12.2016**

Sub:- APPCB – UH:IV - BMW– Single Desk Portal - M/s. Godavari Bio Management, R.Sy.No.258, Marripudi (Village), Rangampeta (Mandal), East Godavari – CFE application – Rejected - Reg.

Ref:- 1. T.O.Lr.No.1/APPCB/HO/UH-IV/BMW/In-Principle/2016, dated 16.08.2016
2. CFE application received at RO-Kakinada on 14.10.2016.
3. EE:RO –KAKINADA verification report received on 28.11.2016.

* * *

The Board is in receipt of application submitted by M/s. Godavari Bio Management, R.Sy.No.258, Marripudi (Village), Rangampeta (Mandal), East Godavari vide reference 2nd t cited seeking Consent for Establishment (CFE) for setting up a Common Bio Medical Waste Treatment Facility (CBMWTF) under Water Act and Air Acts.

The Board issued **In Principle Permission** for the establishment of second Bio Medical Waste Treatment Facility at East Godavari district, with a condition that the facility shall obtain all the necessary clearances including Environmental Clearance from MoEF&CC, GoI / SEIAA, AP under the relevant Environmental Laws in force.

It is to inform that as per notification S.O.1142 (E) dated 17.04.2015 of MoEF&CC which was issued as an amendment to EIA Notification S.O.1533 (E) dated 14.09.2006, the CBMWTF shall obtain prior Environmental Clearance from the SEIAA, AP. Therefore you are required to obtain Environmental Clearance and then approach APPCB for CFE.

Hence, your Consent for Establishment (CFE) application for setting up a Common Bio Medical Waste Treatment Facility under Water Act 1974 and under Air Act, 1981 is hereby **rejected** under section 25(4) (b) of the Water Act and under section 21 (4) of the Air Act as the CBMWTF have not obtained the Environmental Clearance.

The facility shall not start construction activities without obtaining CFE of the Board.

Sd/-
MEMBER SECRETARY

To
M/s. Godavari Bio Management,
R.Sy.No.258, Marripudi (Village),
Rangampeta (Mandal),
East Godavari District.
E-mail: ypr.mba@gmail.com

Copy to:
1. The JCEE, APPCB, **Zonal Office-Visakhapatnam** for information and necessary action.
2. The EE, APPCB, **Regional Office- Kakinada** for information and necessary action.

// T.C.F.B.O. //

21/12/16

Joint Chief Environmental Engineer
Unit Head-IV