

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**PRINCIPAL BENCH, NEW DELHI****ORIGINAL APPLICATION NO. 502 OF 2023****IN THE MATTER OF:**

Society for Protection of Environment & Biodiversity ...Applicant

Versus

Union of India & Ors. ...Respondents

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PLACE: NEW DELHI

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**OBJECTIONS BY THE ORIGINAL APPLICANT TO THE ACTION
TAKEN REPORT DATED 22.11.2023 FILED BY THE RESPONDENT
NO. 2, CENTRAL POLLUTION CONTROL BOARD AND
COMPLIANCE AFFIDAVIT DATED 02.04.2024 FILED BY THE
RESPONDENT NO. 1, MINISTRY OF ENVIRONMENT, FOREST
AND CLIMATE CHANGE**

MOST RESPECTFULLY SHEWETH:

1. That this Original Application has been filed raising the substantial question of environment regarding the non-implementation of the 'Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products' ("Framework") issued by the Respondent No. 2, Central Pollution Control Board ("CPCB") way back in September, 2019. Pertinently, the said Framework was issued to remedy the gap in the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 ("HOWM Rules") in that the same does not clearly establish when a material generated from any production process should be considered as "by-product" or "waste".
2. That while recognizing that the issue raised through the present *lis* requires further consideration, this Hon'ble Tribunal issued Notice on 18.08.2023 and directed the Respondent No. 1 i.e. the Ministry of Environment, Forest and Climate Change ("MoEF&CC") to take immediate measures for proper implementation of the said Framework in consultation with the Respondent No. 2, CPCB, as well as the State Pollution Control Boards ("SPCB")/ Pollution Control Committees ("PCC"). The MoEF&CC was also directed to

act on whether the Framework can become part of HOWM Rules. Further, these directions were required to be completed by the MoEF&CC and CPCB within three months and, thereafter, action taken reports were directed to be filed within three months as well.

3. That an Action Taken Report was subsequently filed on 22.11.2023 by the Respondent No.2, CPCB as per the Order of this Hon'ble Tribunal dated 18.08.2023. In view of this, the Original Applicant herein was granted liberty vide Order dated 23.11.2023 to examine the CPCB Action Taken Report dated 22.11.2023 and file its Objections. Accordingly, the instant Objections are being filed by the Applicant herein.
4. That, at the outset, it is the submission of the Applicant that it reflects a really sad state of affairs that intervention of this Hon'ble Tribunal had to be sought for the implementation of a Framework which was issued under the Authority of the said Respondent No.2, CPCB which had after a ground assessment, concluded the requirement for such a framework. Further, despite categorial directions and Orders by this Hon'ble Tribunal, the Action Taken Report is extremely vague and bald and does not instill any confidence in the Authority. This Hon'ble Tribunal may kindly take note of the same and Order accordingly.
5. That it is submitted that the CPCB had informed all SPCBs/PCCs regarding the Framework as far back as on 23.09.2019 with a particular direction for its compliance. However, clearly it is only now after about four years and after initiation of the present proceedings that any attempt at a follow up has been made as to the extent of compliance of this Framework which is crucial to secure the proper implementation of the HOWM Rules.
6. That while the CPCB has submitted that it undertook a consultative meeting with the SPCBs/PCCs as well as the MoEF&CC on 09.11.2023 (the Minutes of which have been provided as Annexure – II/Page No. 140 of the Action Taken Report dated 22.11.2023 filed by CPCB), nothing has been mentioned about inclusion of the Framework within the HOWM Rules as per the clear directions of this Hon'ble Tribunal dated 18.08.2023 in the instant matter. Further, despite the MoEF&CC's presence in the consultative meeting, there has been no deliberation regarding the constitution of a Technical Review Committee as per the HOWM Rules which is duty bound to examine whether a material is a hazardous waste or not in case of a dispute.

7. That vide its Order dated 18.08.2023, this Hon'ble Tribunal had also directed the Respondent No. 2, CPCB, to take the advice of the Technical Expert Committee and to provide a prescribed form for application of identification of an alleged by-product as required under the Framework. Pertinently, such exercise was directed to be completed within three months. However, despite such clear directions the only action taken by the CPCB as per its Report dated 22.11.2023 has been the issuance of a direction that the application form prescribed by the Gujarat SPCB may be circulated and considered for adoption by all SPCBs/PCCs. The CPCB then sought another month for such finalization. However, to the best of the Applicant's knowledge and the information available in the public domain, no further update has been noted in this regard. It is, thus, humbly submitted that the Application Form may be placed on record, if at all the same has been finalized.
8. That further, while the CPCB had directed compliance with the Framework to all thirty-five SPCBs/PCCs, no information has been shared at all for the sixteen States/Union Territories of Andhra Pradesh, Arunachal Pradesh, Bihar, Chhattisgarh, Goa, Manipur, Meghalaya, Nagaland, Uttar Pradesh, Uttarakhand, West Bengal, Chandigarh, Delhi, Daman, Diu & Dadra & Nagar Haveli and Lakshadweep. Despite no information having been provided by the SPCBs/PCCs in these States/Union Territories, there is not a whisper of any further action on the part of the CPCB to ascertain the status of implementation of the Framework for these States/Union Territories in its Action Taken Report dated 22.11.2023.
9. That for the States/Union Territories of Delhi, Lakshadweep, Mizoram and Andaman & Nicobar, it appears that the CPCB has simply accepted their submission regarding non-requirement to form Technical Expert Committees ("TEC") or even to comply with the Framework since no hazardous waste generating units exist within their territorial limits. However, it is pertinent to add that this is a wrong understanding on the part of the Respondent No. 2 since the directions of the CPCB as well as the Framework do not carve any exceptions to its applicability.
10. That a status update has been provided to the CPCB by the SPCBs/PCCs of Telangana, Assam, Gujarat, Haryana, Himanchal Pradesh, J&K, Jharkhand, Karnataka, Kerala, Maharashtra, Madhya Pradesh, Mizoram, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Andaman & Nicobar and Puducherry. A perusal of the information provided would make it evident that:

- i. Only nine SPCBs/PCCs have adopted the Framework and constituted the TEC. However, even amongst these nine, the only SPCB securing some degree of implementation of the Framework is for the State of Gujarat which has constituted a TEC and has issued a format for receiving applications for categorization of a material as a by-product. However, while the Gujarat SPCB has stated that many materials have been declassified as a by-product, no reasons or specifics have been shared in this regard. Additionally, no information has been supplied on the number of applications received, how many stood rejected, grounds for such rejections and the timelines being followed for carrying out the assessments.
- ii. The SPCB for the State of Madhya Pradesh has stated that the only application it received was for Cryolite, which got rejected, no reason has been provided for such rejection;
- iii. While the SPCBs for the States of Kerala, Tamil Nadu, Puducherry, Chhattisgarh and Jharkhand have informed that they are in the process of forming a TEC, it is unclear whether any timeline has been fixed for such constitution.

That the Original Applicant herein humbly submits that the CPCB in its Action Taken Report dated 22.11.2023 has failed to reflect whether it intends on examining the functioning of the TECs, as formed, to ascertain their adherence to the Framework of 2019.

11. That, further, in the consultative meeting dated 09.11.2023, the CPCB directed all SPCBs/PCCs to furnish the following details by 14.11.2023:
 - i. The TEC, as constituted;
 - ii. In Case SPCBs have not constituted the TEC, the timeline for its constitution;
 - iii. Copy of GPCB's application form for receiving applications for classification of material as by-product, so that the same may be reviewed and circulated to the rest of the SPCBs; and
 - iv. List of materials for which applications have been received for categorization as by-product and materials classified as by-product.

However, while the aforesaid information was required to be submitted by SPCBs/PCCs to the CPCB by 14.11.2023 and the CPCB's Action Taken Report was only filed on 22.11.2023, CPCB has failed to reflect any

particulars in its Action Taken Report dated 22.11.2023 that would indicate the necessary or rather any substantial effort towards securing compliance with the Framework.

12. That it has been submitted by the Respondent No. 2, CPCB, that two Letters dated 10.11.2023 and 17.11.2023 had been issued by it to SPCBs/PCCs subsequent to the consultative meeting dated 09.11.2023. However, the same have not been placed on record. This Hon'ble Tribunal may direct the CPCB to produce the same.
13. That it is evident from the Action Taken Report dated 22.11.2023 filed by the Respondent No. 2, CPCB, that there is nothing on record to establish that the compliance of this Framework is being actively overseen as also to establish what is being done to secure further implementation post the consultative meeting dated 09.11.2023. Thus, there is still no clarity as to what extent the implementation of the Framework is being monitored by the CPCB. Given the extent of non-compliance with the Framework despite the lapse of four years since its issuance, it is difficult to imagine that a lone consultative meeting with only some SPCBs/PCCs in attendance would ensure proactive compliance of the Framework for identification of by-products that is crucial for the holistic implementation of the HOWM Rules.
14. That there has also been no deliberation or clarification in the CPCB's Action Taken Report dated 22.11.2023 regarding the issue of conformity with the Framework of imported materials that are apprehended to be a hazardous waste but which may get misclassified or sold as a by-product. In this regard, the Original Applicant had even produced (at Annexure A/3 of the instant Original Application, Page 58) tabulated data available with the Indian Chemical Council on various chemicals which have observed a surge in imports since December, 2017.
15. That there is also a lack of clarity on whether any monitoring is being undertaken to ensure that industrial units generating hazardous wastes do not pass off such hazardous wastes as by-products in violation of the Framework. A lack of management with regard to miscategorized by-products would invariably cause huge impact on the land and water environment of the country at large.
16. That the Applicant submits that the Respondent No. 2, CPCB, has been absolutely lackadaisical with regard to the ensuring the implementation of the

- 'Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products' that had been issued way back in September, 2019, under its own authority. It has submitted a bald Action Taken Report, which may be dealt with accordingly by this Hon'ble Tribunal.
17. That it is humbly submitted that the compliance affidavit dated 02.04.2024 filed by the MOEF&CC does not mention any steps taken by it to consider the possibility of making the Framework a part of the HOWM Rules. It may be noted that the Hon'ble Tribunal had directed the Respondent No 1, MOEF&CC, in paragraph 6 of the order dated 18.08.2023, to *inter alia* "act on whether Framework can become the part of HOWM Rules". On 23.11.2023, this Hon'ble Tribunal granted time of two weeks to the MOEF&CC to file its response to the direction issued in paragraph 6 of the said order. Subsequently, the MOEF&CC was again granted liberty to file its response and place its stand vide order dated 02.02.2024.
18. That despite the repeated and categorical directions of this Hon'ble Tribunal, the MOEF&CC has failed to accord any serious consideration to this issue. This is evident from the fact that in its compliance affidavit, the MOEF&CC has failed to disclose any deliberations or consultative meetings conducted, or any other proactive steps undertaken by it to ensure stronger implementation of the Framework by incorporating it within the HOWM Rules.
19. That the contention of the MOEF&CC that - responsibility for ensuring *on-ground* implementation of the Framework rests with SPCB's and State Governments because they are "nodal agencies" responsible for enforcement and implementation of the HOWM Rules, is equally misleading and incorrect because the Framework is yet to be made a part of the HOWM Rules by the MOEF&CC. The compliance affidavit filed by the MOEF&CC is also conspicuously silent with respect to the issue of incorporating Framework within the HOWM Rules.
20. That it is also pertinent to note the Hon'ble Tribunal, in its order dated 18.08.2023, had expressly directed the MOEF&CC - "*to clarify and take immediate measures for proper implementation of the Framework on identification of material generated from industrial process as waste or by-product and to submit an action taken report before this Tribunal.*" Therefore, it is incumbent upon the MOEF&CC to ensure proper implementation of the Framework and it cannot shy away from its responsibility under the guise of SPCB's and State Governments being

nodal agencies under the HOWM Rules, especially in light of the aforesaid directions of this Hon'ble Tribunal.

21. That assuming arguendo that *on-ground implementation* of the Framework is indeed the prerogative of SPCB's and State Governments, the compliance affidavit does not specify as to whether, and to what extent, the monitoring of such compliance is being actively overseen by the MOEF&CC.
22. That it is accordingly prayed that the Respondent No. 1, MoEF&CC shall ensure the implementation of the Framework and direct the SPCBs/PCCs to submit their action taken reports and make the same public such that there is clarity regarding which are the substances that are being categorized as 'wastes' and which are being categorized as 'by-products'. Such directions may be issued under Section 5 of the Environment (Protection) Act, 1986 in order to ensure compliance.

For this act of kindness, we are duty bound and pray.

FILED ON: 09.04.2024
DRAWN ON: 08.04.2024
PLACE: NEW DELHI

DRAWN BY:



Eisha Krishn, Gitanjali Sanyal & Surya Gupta

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SETTLED BY:

Mr. Sanjay Upadhyay

Senior Advocate

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PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 502 OF 2023

IN THE MATTER OF: -

Society for Protection of Environment
and Biodiversity (SPENBIO)

...Applicant

VERSUS

Union of India & Ors.

...Respondents

AFFIDAVIT

I, Sri Prasoon Pant, aged about 48 years, S/o Late Prof. Mahesh Chandra Pant, R/o 17 D, 108 Konark Enclave, Vasundhara, Ghaziabad, Uttar Pradesh – 201012, ^{presently at New Delhi} do hereby solemnly affirm and state as under:

1. That I am the Policy Director and Programme Planner as well as the authorized representative of the Society for Protection of Environment and Biodiversity (SPENBIO), which is the Applicant in the above captioned Original Application. Further, I am familiar with the facts and circumstances of the case and am competent to swear this Affidavit.
2. That I have read and understood the contents of the accompanying Common Objection and the same has been drafted by my counsel on my instructions and nothing material has been concealed therefrom.

J. Pant

DEPONENT

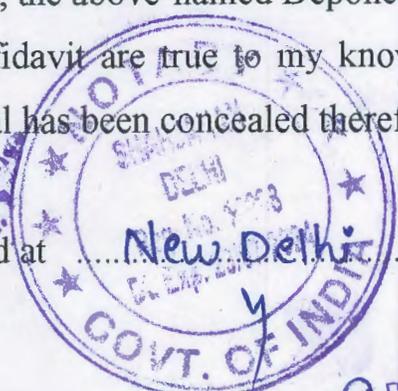
VERIFICATION:

08 APR 2024

I, the above-named Deponent do hereby verify that all the facts mentioned in the Affidavit are true to my knowledge and no part thereof is false and nothing material has been concealed therefrom.

Verified at New Delhi On this day of April, 2024

Surya
9/76357
2020
I identified the Deponent who has signed/put in my presence.



08 APR 2024

CERTIFIED THAT THE DEPONENT
SHRI SRI PRASOON PANT
S/o Late Prof. Mahesh Chandra Pant
has solemnly affirmed before me and
that the contents of the Affidavit which
he has sworn to & signed are true and
correct to the best of my knowledge.

67



J. Pant

DEPONENT



Service in SPEnBIO Vs. Union of India & Ors. [OA. No. 502 of 2023/PB]

1 message

ELDF <eldflegal@gmail.com>

Tue, Apr 9, 2024 at 11:11 AM

To: sakshi popli <sakshipopli@gmail.com>

Cc: Eisha Krishn <eisha@eldfindia.com>, Gitanjali Sanyal <gitanjali@eldfindia.com>, Surya Gupta <surya@eldfindia.com>

Dear Ma'am

Please find the attached copy of the Objections by the Applicant to the Action Taken Report dated 22.11.2023 filed by the Respondent No. 2, Central Pollution Control Board and Compliance Affidavit dated 02.04.2024 filed by the Respondent No. 1, Ministry of Environment, Forest and Climate Change.

Thanks & Regards

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Sameer Manher*Clerk**Enviro Legal Defence Firm**29, Presidential Estate LGF,**Nizamuddin East New Delhi – 110013**Ph. No. 011-40573181***Objections SPEnBIO.pdf**

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