

BEFORE THE NATIONAL GREEN TRIBUNAL WESTERN ZONE

BENCH PUNE

E.A. 7/2022

IN

O.A. 190/2016

Maj. Gen. S.C.N. Jatar (Retd.) ... Applicant

Versus

The Municipal Corporation of City Pune... Respondents

**REJOINDER ON BEHALF RESPONDENT NO. 5 TO THE  
COUNTER-AFFIDAVIT OF RESPONDENT NO. 1**

I, Mr. Bipin Vijay Salunke, Age: 40 years, Occupation: Director Ecoman Enviro Solutions Pvt. Ltd., having office at: G 1002, Queenstown, Udyog Nagar, Chinchwad, Pune-411033, do state of solemn affirmation that:

1. I state that after going through the Counter Affidavit filed by Respondent nos. 1, I would like to bring some facts before this Hon'ble Tribunal which are necessary and relevant to adjudicate the present Application. I should not be deemed to admit anything which is contrary to or inconsistent with what is stated hereinafter in the absence of specific denial.
2. I say and submit that the contents in paragraph 1 to 5 are factual points and do not require the comment of the Respondent No. 5.
3. I say and submit that Respondent No. 1 in para 6 of its Counter Affidavit has mentioned that the Respondent No. 1 is responsible for collection, segregation, storage, transportation, processing and disposal of Municipal



Solid Waste as per Municipal Solid Waste (Management and Handling) Rule, 2000 which is true and correct.

4. I say and submit that the Respondent No. 1 in para 7 of the Counter Affidavit has stated that in order to implement the provisions of Municipal Solid Waste (Management and Handling) Rule, 2000, the Respondent No. 1 issued Tenders for design, supply, installation, commissioning, operation and maintenance of Microorganism based 24hrs. Composting Machine. The Respondent No. 1 further states that as per the tender it was the obligation of the Contractor that he should carry out Laboratory Testing of Compost. The Respondent No. 1 further mentions in the Counter Affidavit that according to the conditions in the tender document the ownership is totally of the Bidder. I say and submit that it is important to mention that no feasibility study was carried out by Respondent No. 1 for issuing the tenders for design, supply, installation, commissioning, operation and maintenance of Microorganism based 24hrs. Composting Machine. I say and submit that it is important to mention that no feasibility study was carried out by Respondent No. 1 for the locations chosen for installation of Microorganism based 24hrs. Composting Machine. I say and submit that it is important to mention that it was the duty of the Respondent No. 5 to process the organic waste to convert it into compost but at the same time as per the above-mentioned agreement the local authority (Respondent No. 1) bears the responsibility of collection, segregation and delivery of organic waste to the present Respondent (Respondent No. 5) and the present Respondent was supposed to process the same. It is further submitted that the role of the present Respondent is very limited in view of the agreement entered into. The Respondent No. 1 is the owner of the land, building, machinery of the plant and hence it is the Respondent No. 1 who has Consent to Establish and Consent to Operate from the Respondent No. 2 and hence it is clear that the Respondent No. 1 is responsible and liable for the alleged



nonperformance of the plant. Not only the statute but also the Agreement binds the Respondent No. 1 to be responsible and liable for the implementation of SWM Rules. I say and submit that the Respondent No. 1 never gave any letter or notice to Respondent No. 5 for carrying out Laboratory Testing of Compost or about the technology or output of the plant.

5. I say and submit that the Respondent No. 1 in para 8 further mentions that the work order agreement was executed with the Respondent no. 5 according to which the present Respondent was under obligation to carry out Laboratory Testing of the compost and the ownership of the compost was solely of the present Respondent. It is pertinent to note that the present Respondent has only provided its technical support with design, supply, installation, operation and maintenance of the plant. In other words, the present Respondent is acting as an 'Agent' of the Respondent No. 1 and hence the Respondent No. 1 is the authority responsible and liable for any loss and/or damage caused in view of Principle of "Vicarious liability".
  6. I say and submit that the Respondent No. 1 in para 11 of the Counter Affidavit has clearly mentioned that the Operator of a Facility means a person or entity who owns or operates a facility for handling solid waste which includes the local body and any other entity or agency appointed by the local body.
  7. I say and submit that the Respondent No. 1 by way of para 12,13 and 14 has mentioned the duties of the Respondent No. 1 and 2 as per Clause 15, 16 and 19 respectively of the Solid Waste Management Rule. Thus require no comments.
- I say and submit that the Respondent No. 1 in para 15 mentions that upon independent verification and upon satisfaction the Respondent No. 2 granted the Authorization under the MSW Rules, 2016 to operate the thermal compost plant. It is submitted that the Consent to Operate was



granted to the Respondent No. 1 which is not mentioned by the Respondent No. 1 in order to mislead the Hon'ble Tribunal.

9. I say and submit that in O.A. 190/2016 Maj. Gen. S.C. Jatar (Retd.) Vs. PMC the Respondent No. 1 tried to push the burden of non-compliance on the present Respondent in order to save itself from being held liable for the violation. It is submitted that the Order dated 3.2.2022 nowhere mentioned that the Respondent No. 2 should not take action against the Respondent No. 1 if found guilty of violation and directed the Respondent No. 2 to take appropriate action for violation of Rules by way of initiating prosecution and recovery of compensation on "Polluter Pays Principle."
10. It is pertinent to note that abiding by the Order of the Hon'ble Tribunal, the Respondent No. 2 initiated prosecution Notice against the Respondent No. 1 as the Respondent No. 2 held the Respondent No. 1 liable being the operator/owner of the plants.
11. I say and submit that the case mentioned by the Respondent No 1 in para 22 of the Counter Affidavit is not applicable in the present matter. The Respondent No. 1 mentions a portion of the said judgement which mentions that "under the principle it is not the role of government to meet the cost involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the tax payers." It is submitted that even though the Respondent No. 1 is owner of the said plants, the Respondent No. 1 by citing the said case wants to shy away from paying the compensation for violation and push the responsibility over to the present Respondent.
12. I say and submit that the Respondent No. 1 in para 23 of the Counter Affidavit states that the Respondent No. 1 had not received any prior show cause notice, nor any hearing was afforded to the Respondent No. 1. The Respondent No. 1 also states that the Respondent No. 1 was not



provided any opportunity to respond before coming to the erroneous conclusion. It is important to mention that the Respondent No. 2 only after the directions of this Hon'ble Tribunal vide order dated 3.2.2022 issued the prosecution notice against the Respondent No. 1.

13. I say and submit that it is very wrongly mentioned by the Respondent No. 1 in para 25 of the Counter Affidavit that "as per the order passed by this Hon'ble Tribunal in OA No. 190 of 2016 and orders passed in EA No. 07 of 2022 it was the MPCB which had to initiate prosecution against the defaulting Contractor and also to recover the compensation on the basis of Polluter Pays Principle." As the Order nowhere mentions that the prosecution has to be initiated against the Contractor. The intention of Respondent No. 1 to wrongly mention facts is to mislead the Hon'ble Tribunal.

14. The Respondent No. 1's contention that the present Respondent is the owner/operator of the facility is not correct and shows the intention of the Respondent No. 1 to transfer its burden of paying the compensation for violation onto the present Respondent.



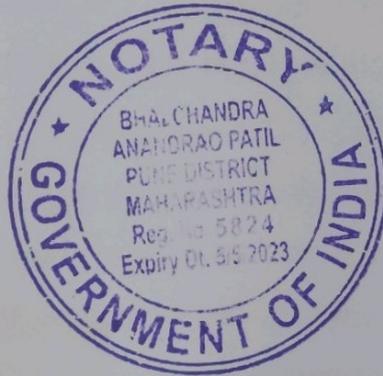
Solemnly Affirmed on this the 17<sup>th</sup> day of April, 2023 at Pune.

Respondent no. 5

I know the Affiant



Advocate



**BEFORE ME**  
*Bhalchandra Anandrao Patil*  
**BHALCHANDRA ANANDRAO PATIL**  
**NOTARY**  
**GOVT. OF INDIA**  
*17-4-2023*

