

IN THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

APPEAL NO. 06 OF 2022

IN THE MATTER OF:

Prabhakar Rai & Others

...Appellants

Versus

Union of India & Others

...Respondents

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Place: Delhi
Date: 26.08.2022


(V.P. Yadav)
Scientist-F
Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar
Delhi- 110032

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
APPEAL NO. 06 OF 2022**

IN THE MATTER OF:

Prabhakar Rai & Others

...Appellants

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**REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 3, CENTRAL
POLLUTION CONTROL BOARD**

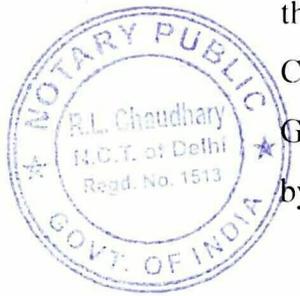
I, V.P. Yadav S/O Shri. Ramashraya Yadav, aged about 56 years, working as Scientist-F in Central Pollution Control Board, Parivesh Bhawan, East Arjun Nagar, New Delhi, do hereby solemnly affirm and declare as under:

1. That I am fully conversant with the facts of the case and hence, competent and authorized to depose and swear the present affidavit as under:

PARA WISE REPLY:

2. That the averments made in Para 1 is mere statement about the petitioner and the grant of Environmental Clearance dated 03.12.2021 for setting up of Common Biomedical Waste Treatment at Khasra No.1006 village Paharpur Ghotha Rasulpur District Deoria, Uttar Pradesh. Hence, no comments to offer by this answering respondent.

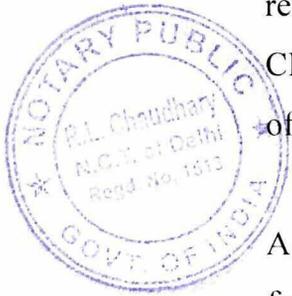
3. That the averments made in Para 2 is mere statement about the notification of Biomedical Waste Management Rules, 2016 (hereinafter will be called as BMWM Rules, 2016) and Revised guidelines for Common Biomedical Waste



Treatment and Disposal Facility (hereinafter will be called as CBWTF) issued by Central Pollution Control Board (hereinafter will be called as CPCB) i.e. Respondent No. 03. Hence, no comments to offer by this answering respondent.

4. That the averment made in paragraph 3 is regarding grant of Environmental Clearance by Respondent No. 02 to set up CBWTF at location which is approximately 30-40 m from a Primary health Centre, ANM Centre, Community Playground and 100-120 m from the residential houses of the local villagers. It is also stated that there is Primary school, Higher secondary school, Temple and other residential construction existing near site.

In this regard, it is humbly submitted that this answering respondent issued revised guidelines for CBWTFs in 2016 citing the criteria for setting up of CBWTF in an area. These guidelines also stipulate about location and coverage of CBWTF.



As per said guidelines, a CBWTF can be located at a place reasonably far away from notified residential and sensitive areas and should have a buffer distance of preferably 500 meters so that it shall have minimal impact on these areas. In case of non-availability of such land, the buffer zone distance from the notified residential area may be reduced to less than 500 meters by State Pollution Control Board/Pollution Control Committee (hereafter will be referred to as SPCB/PCC) without referring the matter to the CPCB by prescribing additional control measures such as (i) adoption of best available technologies (BAT) by the proponent of CBWTF; (ii) prescribing stringent standards for operation of the CBWTF by the SPCB/PCC; (iii) adoption of zero liquid discharge by the CBWTF and (iv) in case of any complaints from the public, then CBWTF should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity. If SPCB/PCC is not in a position to resolve the

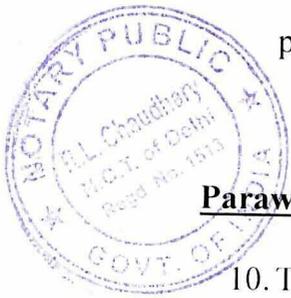
issue relating to buffer zone while selecting the site for CBWTF, in such a case, SPCB/PCC may refer the matter to the CPCB.

It is also to humbly submit that the criteria for setting up of new CBWTF in a locality or region has also been given under aforesaid CPCB revised guidelines.

5. That the averments made in Paras 4 & 5 are regarding permissions namely ToR and No Objection Certificate obtained by the Project Proponent from Respondent No. 02 and Social Forestry Division. This answering respondent is not aware about such permissions and hence no comments to offer by this answering respondent.
6. That the averment made under Para 6 states that the Project Proponent obtained permission to use agricultural land for any other purposes is based on misinterpretation and incorrect facts and therefore Environmental Clearance granted in favour of the project proponent vitiates for obtaining permission on the basis of wrong misleading and incorrect facts. In this regard, it is humbly submitted that this answering respondent is not aware about such permission and hence no comments to offer by this answering respondent.
7. That the averment made under Para 7 is regarding comprehensive representations made by Appellant and several other Villagers to Respondent No. 02 and other Authorities. In this regard, it is humbly submitted that that this answering respondent is not aware about such representations and hence no comments to offer by this answering respondent.
8. That the averment made in Para 8 mere mentions about the Writ Petition filed by Appellant No. 01 under Public Interest Litigation before Hon'ble High Court of Allahabad which has been disposed of on the ground that another case of the same nature was dismissed by the

Hon'ble High Court on 27.07.2021. Hence no comments to offer by this answering respondent.

9. That the averment made under Para 9 is regarding grant of Environmental Clearance by Respondent no. 2. In this regard, it is humbly submitted that this answering respondent is not aware about grant of such Environmental Clearance to Respondent No. 05. However, it is pertinent to mention that as per BMWM Rules, 2016, the CPCB guidelines citing the criteria for setting up of new CBWTF in any region is required to be followed prior to grant of permission to any new CBWTF.



Parawise Reply of Grounds:

10. That with regard to the averments made under Para i to viii, this answering respondent humbly submits that the Biomedical Waste Management Rules, 2016 notified under Environment (Protection) Act, 1986 stipulates about the scientific practices required to be followed for treatment and disposal of biomedical waste so that it has no adverse effect on human health and environment. Further, the answering respondent has issued revised guidelines for Common Biomedical Waste Treatment Facilities to ensure effective implementation of said Rules. It is pertinent to mention that as per BMWM Rules these guidelines are mandatory.

Further, the answering respondent revised guidelines for CBWTFs stipulate about the criteria for setting up of any new CBWTF in locality or region and location criteria for CBWTFs. These criteria are required to be followed prior to allow new CBWTF. In this regard, the answering respondent vide letter dated 08.03.2018 requested State Expert Appraisal Committee (SEAC) / State Environment Impact Assessment Authority (SEIAA) of all States to follow CPCB guidelines before granting Environment Clearance to the Project

Proponents. Copy of said CPCB letter dated 08.03.2018 is given at **Annexure I.**

11. That averment made under Para 10 is regarding the Appellant and hence no comments to offer by the answering respondent.

12. In view of the supra stated facts and circumstances, it is most respectfully prayed that this Hon`ble Tribunal may be pleased to pass such or further orders as it may deem fit.



DEPONENT

विजय प्रकाश यादव / Vijay Prakash Yadav
निदेशक/ Director
केंद्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
पर्यावरण, वन एवं जलवायु परिवर्तन विभाग, भारत सरकार
(Mo Environment, Forest & Climate Change, Govt. of India)
परिवेश भवन, पूर्वी अर्जुन नगर, दिल्ली-110032
Parvesh Bhawan, East Arjun Nagar, Delhi-110032

VERIFICATION

Verified at on this 26th day of August, 2022 that the contents of the above reply affidavit are correct to the best of my knowledge and belief. Nothing material has been concealed therein.

DEPONENT

विजय प्रकाश यादव / Vijay Prakash Yadav
निदेशक/ Director
केंद्रीय प्रदूषण नियंत्रण बोर्ड
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परिवेश भवन, पूर्वी अर्जुन नगर, दिल्ली-110032
Parvesh Bhawan, East Arjun Nagar, Delhi-110032

ATTESTED

NOTARY PUBLIC
GOVT. OF INDIA
26 AUG 2022

Annexure-I

By Speed Post

F.No.:B-31011/BMW(50)/2018/WM-1/

To

18165-18223

March 08, 2018

All State
SEIAA/SEAC

Sub: Implementation of CPCB revised Guidelines for Common Bio-medical Waste Treatment Facilities (CBWTF) - reg.

Sir,

Central Pollution Control Board (CPCB) has been receiving representations from Common Bio-medical Waste Treatment Facilities (CBWTF) operators/ CBWTF Association of India regarding grant of Environmental Clearance by State Environmental Impact Assessment Authority (SEIAA)/ State Expert Appraisal Committee (SEAC) for setting up new CBWTF without following the provisions of CPCB's revised guidelines for Common Bio-medical Waste Treatment Facilities (CBWTFs) especially w.r.to criteria for setting up of new CBWTF, land requirement and coverage area of CBWTF. In this connection, it is to inform that the said CPCB's revised guidelines stipulates following clauses which are required to be complied for setting up of new CBWTF:

1. Gap analysis conducted by the State Pollution Control Boards/Pollution Control Committees w.r.to bio-medical waste generation with its projection over 10 years and the adequacy of the existing CBWTFs with coverage area of 75 Km.
2. Land requirement of not less than one acre to setup any CBWTF. In case of new CBWTF the land requirement may be relaxed (not less than 0.5 acre) by the SPCB/PCC.
3. Coverage area vis-à-vis CBWTF located within the respective State/UT shall be allowed to cater healthcare units situated at a radial distance of 75 KM with 10, 000 beds. If 10,000 beds are not available within radial distance of 75 Km, existing CBWTF may be allowed to cater the healthcare units situated upto 150 KM radius.

Copy of the relevant portion of the CPCB's revised guidelines for CBWTFs are enclose for your ready reference.

In view of the above, it is requested to follow the criteria for setting up of new CBWTF, as well as the provision for location & coverage of CBWTF as laid down under CPCB's revised guidelines for CBWTF before allowing new CBWTF for ensuring proper treatment & disposal of Bio-medical waste.

Yours faithfully,



(A.Sudhakar)

Member Secretary

Encl.: As Above

Copy to:

- (i) Joint Secretary, Ministry of Environment, Forest & Climate Change
3rd Floor, Prithvi Wing
Indira Parvayaran Bhawan
Jor Bagh Road, New Delhi- 110003 : For kind information, please
- (ii) PS to 'CCB' : For kind information of 'CCB', please

Handwritten notes and signatures at the bottom of the page, including a signature and the number 6.

(A.Sudhakar)

Item No.3

(Court No. 2)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH**

(By Video Conferencing)

Appeal No. 06/2022
(I.A. No. 29/2022)

Prabhakar Rai & Ors.

Appellants

Versus

Union of India & Ors.

Respondents

Date of hearing: 25.05.2022

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Appellant: Mr. Abhishek Yadav and Mr. Saurash Yadav,
Advocates

Respondent: Mr. Pradeep Mishra, Advocate for UPPCB

ORDER

1. The grievance in the present appeal is regarding a Common Bio-Medical Waste Treatment and Disposal Facility (CBWTF) which is stated to have been allowed to be set up in contravention of the guidelines for sitting criteria at Arazi No.1006 falling in Village Paharpur, Post – Gotha Rasoolpur, Tehsil and District Deoria, UP. It is submitted that the Environment Clearance has been granted without fulfilling the prerequisites provided in the “Revised Guidelines for Common Bio-medical Waste Treatment and Disposal Facility” dated 21.12.2016 issued by CPCB. The activity proposed by the project proponent is a hazardous activity and being established near to human habitation. The Unit is in close proximity of less than 50 meters from the Primary Health Centre,

ANM Centre and is at 100 meters from the house of the Appellant No.1 and other residents of the Village.

2. Vide order dated 18.02.2022, this Tribunal constituted a Joint Committee comprising of SEIAA, State PCB and District Magistrate-Deoria, Uttar Pradesh to visit the site, look into the grievances of the appellant and submit factual and action taken report.

3. In pursuance thereof the Joint Committee has submitted report vide email dated 17.05.2022. In its report the Joint Committee has made the following observations:-

“Action taken report

1. *In Compliance of said order, U.P. Pollution Control Board (UPPCB) constitute a committee comprising of Member Secretary, SEIAA, District Magistrate Deoria and Regional Officer, Regional Office, U.P. Pollution Control Board, Gorakhpur vide letter no. H 72699/C-6/SA-658/2022, dated 11.03.2022. Copy of the said letter is annexed as annexure-01.*

2. *Member Secretary, SEIAA, U.P. Nominated Sri Umesh Chandra Sharma, Member SEAC-1 as member of Joint Committee vide order no. 1085/Pra/A.No. 06 of 2022/22 dated 21.03.2022. Copy of the said order is annexed as annexure-02*

3. *In compliance of order, Joint Committee visited the site of proposed CBWTF situated at Arazi No. 1006 falling in village- Paharpur, Post- Gotha Rasoolpur, Tehsil & District-Deoria, U.P. on dated 04.04.2022. Nominated Joint Committee Member, SEIAA, UP Sri Umesh Chandra Sharma, was not present during site visit of proposed CBWTF.*

4. *In Compliance of said order, a meeting of Members of Joint Committee as mentioned in order was held on 05.04.2022 in Chairmanship of District Magistrate, Deoria. Proceeding of the meeting and site inspection report is enclosed as annexure-03.*

5. *As per site inspection report of Joint Committee, Distance of Primary Health Centre (Presently nonfunctional) from the proposed CBWTF is 166 meter.*

6. As per site inspection report Joint Committee, Distance of nearest habitat/Population from proposed CBWTF is 184 meter.

7. A conditional consent to establish (CTE) for in question proposed CBWTF has been issued by UPPCB vide Letter No. 5008/UPPCB/Gorakhpur(UPPCBRO)/CTE/Deoria/2021, Dated 05.01.2022

8. State Level Environment Impact Assessment Authority, UP has issued Environment clearance Vide Letter No. MOEF&CC Proposal No-SIA/UP/MIS/55933/2021 & SEIAA, UP File No. 5790 Dated 03.12.2021

9. Point No. 6 (b) of Revised Guidelines for Common Biomedical Waste Treatment & Disposal Facility Dated 21.12.2016 of Central Pollution Control Board (CPCB), describes Location criteria of a CBWTF. As per Point 6 (b) of Location criteria a CBWTF can be located at a place reasonably far away from notified residential and sensitive areas and should have a buffer distance of preferably 500 m so that it shall have minimal impact on these areas. In case of non-availability of such a land the buffer zone distance from the notified residential area may be reduced to less than 500 m by SPCB/PCC without referring the matter to CPCB by prescribing additional control measures such as :-

- a. adoption of best available technologies (BAT) by the proponent of CBWTF;
- b. prescribing stringent standards for operation of the CBWTF by the SPCB/PCC;
- c. Adoption of zero liquid discharge by the CBWTF; and
- d. In case of any complaints from the public, then CBWTF should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity. If SPCB/PCC is not in a position to resolve the issue relating to buffer zone while selecting the site for CBWTFs, in such a case, SPCBs/PCCs may refer the matter to CPCB.

10. A conditional CTE to in question proposed CBWTF has been issued by UPPCB taking into consideration the provisions described in point no. 6 (b) of Revised Guidelines for Common Biomedical Waste Treatment & Disposal Facility dated 21.12.2016 of CPCB. In point no. 33 of CTE Dated 05.01.2022 issued by UPPCB to proposed CBWTF it has been clearly mentioned that concealing factual data or

submission of false/fabricated data and failure to comply with any of the conditions mentioned in CTE may result in withdrawal of this CTE and attract action under the provisions of Law.

11. Precautionary special conditions has been imposed in the Environmental Clearance issued by SEIAA. UP and Consent to Establish issued by UPPCB with respect to the buffer zone as mentioned in the Revised Guidelines for Common Bio-Medical Waste Treatment and Disposal Facility Dated. 21.12.2016 of CPCB.

12. As no CBWTF was operational in the District- Gorakhpur, Deoria, Kushinagar and Maharajganj, hence in the light of Bio-Medical Waste Management and COVID-19 BMW in aforesaid districts, subjected CBWTF was allowed to establish. ”

4. The Member Secretary, SEIAA along with RO, UPPCB visited the site on 28.04.2022 and submitted report vide email dated 05.05.2022 mentioning that house of Mr. Prabhakar Rai is situated at the distance of 184 meters, Primary Health Center (in dilapidated condition) and Community toilets are situated at the distance of 166 meters and residential areas of Villages Bagwanpur, Surchak and Dhanauti Rajdiha are situated at the distance of 1.5 KMs, 1.0 KM and 2.0 KM respectively from the proposed CBWTF.

5. Learned Counsel for the appellant have submitted that the Project Proponent was granted environmental clearance by SEIAA on 25.10.2021 inter alia with the condition that CBWTF project shall comply with the revised guidelines issued by CPCB on 21.12.2016 with respect to location criteria. Conditions for relaxation of the location criteria have been specifically mentioned in point 6 (b) of the above said guidelines. While granting conditional consent to establish to the proposed CBWTF, no reason has been assigned by UPPCB for relaxation of the location criteria. Simply because there is no CBWTF in the area does not by itself justify relaxation of the location criteria. There is no mention as to how

the issue relating to buffer zone was resolved while selecting the site for CBWTF. At the time of inspection of the site by the Joint Committee, the villagers claimed that no public hearing was given regarding establishment of the CBWTF. Therefore, the environmental clearance and consent to establish are liable to set-aside.

6. The averments made in the appeal raise substantial questions relating to environment and validity of environmental clearance and consent to establish granted to the proposed CBWTF.

7. The Project proponent has been notified about these proceedings by the Joint Committee and has also filed reply through email dated 02.05.2022.

8. Mr. Pradeep Mishra, Advocate has appeared on behalf of respondent no. 4-UPPCB. On being questioned regarding status of the project learned Counsel for respondent no. 4-UPPCB has submitted that CTO is yet to be issued. Reply specifically responding to all material averments made in the appeal be filed by respondent no. 4-UPPCB within one month.

9. Let notices be also issued to respondents no. 1 to 3 requiring them to file replies specifically responding to all material averments made in the appeal within one month.

10. The appellant is directed to take requisite steps for service of notices on the respondents No.1 to 3 and file affidavit regarding the same by email at judicial-ngt@gov.in within seven days.

11. List the matter for further consideration on 29.08.2022.

12. In the meanwhile, environmental clearance and consent to establish for the project shall remain in abeyance and the Project Proponent shall not take any further steps for establishment/operation of the CBWTF.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

May 25, 2022
Appeal No. 06/2022
AG