

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(Appeal No. 02/2023)

IN THE MATTER OF:

Dr. Mahadev Ganpati Mhetre

...Appellant

VERSUS

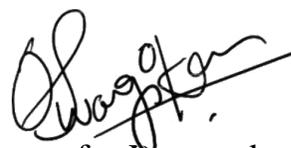
The Maharashtra Pollution Control Board, Etc

The Regional Director

...Respondents

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Advocate for Respondent No. 2

**BEFORE THE NATIONAL GREEN TRIBUNAL
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IN THE MATTER OF:

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The Regional Director

...Respondents

REPLY/SUBMISSIONS FILED ON BEHALF OF THE RESPONDENT

NO. 2

MOST RESPECTFULLY SHOWETH :

1. That the Respondent No. 2 is the original applicant in OA No. 04 of 2022 filed before Hon'ble NGT WZ Pune and said original application had been filed against the Appellant i.e. Mhetre Accident and Multispecialty Hospitals because the said hospital is running without the permission and consent from Respondent No. 1 i.e. Maharashtra Pollution Control Board (hereinafter referred as MPCB) and discharging untreated waste water into Municipal Corporation drain also said hospital failed to set up Sewage Treatment Plant.
2. Further after due completion of hearing the Hon'ble NGT WZ issued order dated 11.10.2022 with following directions:-

“15. We find that nothing has been mentioned by respondent No.1 /Project Proponent with respect to it not having CCA from

31.12.2019 till date as the same has been rejected by respondent Nos.5 and 6, as stated above. We are, therefore, of the view that Respondent No.1 is liable to pay the environmental compensation for the period 31.12.2019 till date as there is no CCA granted and the said facility is being run without proper authorization.

16. We, therefore, direct respondent Nos.5 and 6 – MPCB to assess the environmental compensation on the basis of the principle/formula which has been prescribed by the CPCB as stated in paragraph No.13 of their reply-affidavit, after giving an opportunity of hearing to respondent No.1 and the so quantified amount of environmental compensation be realized from respondent No.1 to be used for restitution of environment. We direct that the exercise of calculation of the environmental compensation shall be completed within a period of one month from today and thereafter, within one month, the same shall be realized from respondent No.1. If respondent No.1 does not obtain CCA even till the date of calculation of environmental compensation, thereafter respondent No.1's facility shall not be allowed to be continued. Besides that, the Maharashtra Pollution Control Board also shall proceed to prosecute respondent No.1 in accordance with law for the said violation.

17. The Original Application stands disposed of.”

Hereto annexed and marked as **Annexure- 'R-1'** is copy of Hon'ble NGT order dated 11.10.2022 in OA No. 04 of 2022.

3. That the Appellant has filed the captioned Appeal before the Hon'ble National Green Tribunal but clearly failed to mention that appeal is filed under exact which section of the National Green Tribunal Act, 2010 hence the said appeal should be dismissed with cost. That prima facie the captioned Appeal is totally misconceived and is based on false narration. Hence, it is submitted that the averments and allegations mentioned in present Appeal filed by the Appellant are denied in toto unless it is specifically admitted or reiterated hereunder and no part of the same may be deemed to have been admitted otherwise.
4. At the outset, the Respondent No. 2 denies everything that is contrary to what is stated therein and/or inconsistent therewith as if the same were set out herein in extenso and traversed.
5. The Respondent No. 2 shall now proceed to deal with the Appeal. The present Appeal is filed without proper jurisdiction and the Appellant has not filed appeal against the order dated 11.10.2022 issued by the Hon'ble NGT in OA No. 04 of 2022 before the Hon'ble Supreme Court, hence said order dated 11.10.2022 is accepted by the Appellant in spite of that he has filed said frivolous Appeal hence said Appeal should be dismissed.

PRELIMINARY SUBMISSION:

6. That the Appellant has filed said Appeal against the Environmental Compensation order amount of Rs. 50,45,625/- issued on dated

24.11.2022 by the Respondent No. 1, but said notice has been issued as per the compliance and directions of the order dated 11.10.2022 issued by the Hon'ble NGT in OA No. 04 of 2022 (hereinafter referred as 'said order'), and said environmental compensation notice has been issued after giving opportunity of personal hearing on dated 02.11.2022 and at the time of personal hearing the Appellant has not raised any objection against the said environmental compensation notice dated 24.11.2022 (hereinafter referred as 'EC Order').

7. That said Appeal is not filed as per the relevant provisions under the National Green Tribunal Act 2010, also the Appellant has not mentioned specific section under which said Appeal is filed hence said Appeal should be dismissed with cost.
8. That the Appellant has not attached the copy said order issued on dated 11.10.2022 issued by the Hon'ble NGT in OA No. 04 of 2022 along with the said Appeal.
9. That the Appellant has again mentioned the entire facts and circumstances of the Original Application 04 of 2022 by way said Appeal, hence if the all these facts are already discussed and decided by the Hon'ble NGT at the time of deciding the Original Application but the Appellant intentionally mentioned these facts by way of this Appeal hence said Appeal should be dismissed.

10. That as per the said order the Hon'ble NGT has specifically directed that the Appellant is liable to pay compensation for the period 31.12.2019 till date, but inspite of that by way of this Appeal the Appellant has stated in the ground that, to not holding compensation during Covid-19 period pandemic period and for the period before 10.12.2021 when show cause notice was issued, and for reasonable period thereafter required for installation of ETP, which is not allowed under the provision of Appeal before the NGT, the Appellant should have filed the appeal before the Hon'ble Supreme Court with these grounds, hence before the same forum the Appellant has filed the appeal to challenge the said order by the of said Appeal hence said Appeal is not maintainable and deserved to be dismissed.

11. That the Appellant has prayed through the said Appeal that the EC order be quashed and in the alternative the said order be modify taking into consideration grounds mentioned and the Appellant be held not liable for compensation, that it is pertaining to note that, as per the said order issued on dated 11.10.2022 by the Hon'ble NGT in OA No. 04 of 2022 the directions related to environment compensation has been issued but inspite of that the Appellant through this Appeal has prayed for Appellant be held not liable for compensation, hence before the same forum the Appellant has filed the appeal to challenge the said order of said Appeal hence said Appeal is not maintainable and deserved to be dismissed.

12. That the Appellant has wrongly mentioned the name of Respondent No. 1 as Maharashtra Pollution Control Board, The Regional Director.
13. That the Appellant has filed a Review Application No. 01 of 2023 in Interlocutory Application 19 of 2023 in Original Application No. 04 of 2022 wherein the Appellant wants that period from 23.03.2020 to 28.03.2022 should be excluded from computation of environmental compensation but the said Review Application is rejected. Hereto annexed and marked as **Annexure- 'R-2'** is copy of Hon'ble NGT order dated 23.01.2023 in Review Application No. 01 of 2023 in Interlocutory Application 19 of 2023 in Original Application No. 04 of 2022.
14. That the Appellant claimed that he has filed the said Appeal under section 16 of the National Green Tribunal Act but he has stated all the facts, grounds and prayers as related to Appeal to Supreme Court under section 22 of the National Green Tribunal Act.

PARA-WISE REPLY:

15. With respect to Para No. 1.1 to 1.17, the contents therein are not admitted by the present Respondent No. 2. The Appellant has narrated again same facts which has already been discussed and taken into consideration in OA NO. 04 of 2022. The Appellant by way of said Appeal tried to reopen the facts and grounds which has already been

discussed and taken into consideration in OA NO. 04 of 2022 and based on the order also have been passed.

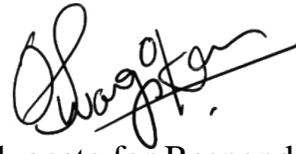
16. With respect to Para No. 1.18 to 1.28, the contents therein are not admitted by the present Respondent No. 2. The Appellant has narrated again same facts which has already been discussed and taken into consideration in OA No. 04 of 2022. Further the Appellant has made several excuses for non-application of renewal of consent, it is pertaining to note that the Mhetre Hospital has received the Bio-medical Waste Authorisation dated 13.06.2017 by the MPCB, and as per the said authorisation it is valid till the period 31.12.2019, further as per the specific terms “An application shall be made by the occupier/operator for renewal 3 months before expiry of earlier authorisation”, but the Appellant has failed to do so. Also, said authorisation is subject to compliance of the conditions. One of the main condition is the liquid and solid waste generated from the treatment activity shall be treated suitably by providing effluent treatment facility to conform the standard prescribed standards, but since the beginning the Appellant running his hospital with the providing effluent treatment facility and directly discharged the untreated waste effluents directly into the municipal drain which is clear violation of authorisation issued by the MPCB. Hereto annexed and marked as **Annexure- ‘R-3’** is copy of Bio-medical Waste Authorisation dated 13.06.2017 by the MPCB.

17. With respect to the contents of Grounds 3.1 to 3.9, the same are not admitted by the Respondent No. 2 and same are denied.

18. Thus, the Appeal is liable to be rejected. And permission be given to add, alter, or amend the reply and to file additional documents as and when required. Hence, this Reply.

Place: Sangli

Date: 13.03.2023



Advocate for Respondent No. 2



BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(Appeal No. 02/2023)

IN THE MATTER OF:

Dr. Mahadev Ganpati Mhetre

...Appellant

VERSUS

The Maharashtra Pollution Control Board, Etc

The Regional Director

...Respondents

AFFIDAVIT

I, Tanaji Ruikar, aged 42 years, Occ: Business, R/at Ruikar Wada, Udgaon Ves, Mali Galli, Miraj, District Sangli-416410, do hereby make an oath to swear as under –

1. That I am the Respondent No. 2 in the Appeal and I am well conversant with the facts and circumstance of the case and competent to file this affidavit.
2. The accompanying reply has been drafted under my instruction and the facts mentioned therein are true to my knowledge and the records obtained.

VERIFICATION

I, the above named deponent do hereby verify that the contents of Para 1 and of the above affidavit are true to my knowledge.

Hence signed and verified at Sangli on this 13th March 2023.

Place: Sangli

ADVOCATE FOR THE APPLICANT

DEPONENT

Noted & Registered
at Serial Numbers

13 MAR 2023

13 MAR 2023

BEFORE ME,

ADV. VAIBHAV K. MORE
ADVOCATE & NOTARY
GOVT. OF INDIA REG. NO. 15734
SHANIWAR PETH, MIRAJ - 416 410



Item No.2

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

ORIGINAL APPLICATION NO.04 OF 2022 (WZ)

Tanaji Ruikar

.....Applicant

Versus

Mhetre Accident and Multispeciality
Hospital and others

....Respondent(s)

Date of hearing: 11.10.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Omkar Wangikar, Advocate

Respondents : Mr. Aniruddha Kulkarni, Advocate for R-2
Mr. Rahul Garg, Advocate for R-3/CPCB
Mr. Vilas Jadhav, Advocate for R-5 and R-6 (MPCB)
Mr. Abdulrahiman Tamboli, Advocate for R-7

ORDER

1. This application is moved seeking direction to respondent Nos.5 and 6 (MPCB) to take necessary action against respondent No.1/Project Proponent. It is further prayed that respondent Nos.5 and 6 be directed to close down respondent No.1/hospital and its pathological laboratory in pursuance of warning notice dated 21.10.2021 issued by respondent No.6 and show-cause notice dated 10.12.2021 issued by respondent No.5. Further it is prayed that an expert committee be appointed to quantify the environmental losses done by respondent No.1 by its activities and the same may be recovered from respondent No.1.

2. The facts of this case, in brief, are that respondent No.1 is running a multispeciality hospital and pathological laboratory by name "Mhetre Accident & Multispeciality Hospital". The applicant/complainant has alleged that respondent No.1 is dumping biomedical waste backside of

the hospital and discharging untreated waste water from the hospital into the Municipal Corporation drain. The applicant immediately visited the office of respondent No.6 and filed a complaint dated 11.10.2021 pointing out that respondent No.1 was running the said facility without permission from MPCB and dumping biomedical waste outside the hospital and discharging untreated waste water into Municipal Corporation drain. It is further stated in the application that it is mandatory to set up a Sewage Treatment Plant by respondent No.1 but the same has not been done. Respondent No.6 had taken cognizance of the complaint and visited the hospital of respondent No.1 on 18.10.2021 and prepared a joint inspection report dated 18.10.2021 and in this report (Annexure "B" to the application), following lapses were noticed:-

- “(i) The biomedical waste authorization was not renewed after 31.12.2019 since last two years;
- (ii) The Sewage Treatment Plant (STP) was not provided and rather the sewage was connected with drainage line provided by the Municipal Corporation;
- (iii) Biomedical waste report was not maintained”

3. Pursuant to the above infirmities, respondent No. 6 issued a notice dated 21.10.2021 to respondent No.1 mentioning therein the following non-compliances.

- “(i) The respondent No.1 has not provided separate isolated/storage arrangement for final storage of biomedical waste, segregation of bio-medical waste carried out under red and yellow bags only. Not provided Blue and White bags for storage of category wise waste.
- (ii) As per the record, biomedical waste authorization of respondent No.1 was expired/valid till 31.12.2019, also the respondent No.1 failed to renew the said

authorization and now operating the said hospital without obtaining valid biomedical waste authorization.

- (iii) Respondent No.1 has not provided treatment for the waste water generated from hospital, pathology laboratory activity. Also not maintained the record regarding liquid waste/biomedical waste disposal.
- (iv) Record regarding biomedical waste annual report, daily biomedical waste generation/its disposal, training provided to the staff, valid biomedical waste authorization etc. not maintained.
- (v) Respondent No.1 having membership of CBMWTSDF, Sangli for scientific disposal of biomedical waste, but record regarding daily disposal of biomedical waste not maintained.
- (vi) It is mandatory on respondent No.1 part to provide training to all the staff which are dealing/handling biomedical waste. Respondent No.1 has failed to comply the same.”

4. Respondent No.1 failed to comply with the above non-compliances. Hence second notice was issued by respondent No. 6 to respondent No.1 on 10.12.2021 for violation of Environment Protection Act, 1986 and Bio-Medical Waste (M&H) Rules, 2016. Thereafter respondent No.6 failed to take necessary action against respondent No.1 for illegally disposing biomedical waste by dumping it backside of the hospital. Hence, the present application with above prayers has been moved.

5. On the first date of hearing i.e. 18.02.2022, a Joint Committee was constituted to place before us factual and action taken report within six weeks, pursuant to which the Joint Committee has submitted following report after they visited respondent No.1:-

- “> The hospital is in operation having 30 Beds (Working).
- > The hospital is having Biomedical waste authorization granted on 13.07.2017 valid up to 31.12.2019. A copy of said authorization dated 13.7.2017 is enclosed and marked as Annexure-II
 - > Thereafter Mhetre Accident & Multispecialty Hospital has submitted application online for further renewal of Biomedical Waste Authorization vide no. 0000037779. Which is under process as the Board has consequently issued Warning Notice and Show Cause Notice.
 - > The Respondent No 1 has provided combined Sewage Treatment Plant having capacity 9+1=10 CMD consisting of Primary, Secondary and Tertiary treatment for treatment of domestic and laboratory effluent. The stabilization work of Sewage Treatment Plant (STP) is under progress. The said hospital has made provision for use of treated effluent for gardening purpose. The joint vigilance sample of untreated effluent is collected for analysis.
 - > As per the Biomedical Waste Management Rule, 2016 hospital has provided colour coded bags & containers for segregation and storage of Biomedical waste in wards and rooms and separate storage area for municipal solid waste.
 - > Provided dedicated final storage room with Biohazard symbol for storage of segregated Biomedical waste.
 - > Maintained daily record of Bio-medical waste generation and handed over to M/s. Surya Central Treatment Facility (CBMWTSDF, Sangli) for final treatment and disposal.
 - > No any kind of discharge of untreated effluent into outside the hospital premises observed.
 - > No any storage & dumping of Biomedical waste outside the hospital premises is observed during the visit. As scientific storage room has been provided.
 - > Hospital is having certificate under Bombay Nursing Home Registration Act, 1949 for 30 beds issued on 31/05/2021 which is valid up to 31/03/2024 and also obtained membership of Common Biomedical Waste, Treatment, Storage, Disposal Facility (i.e M/s. Surya Central Treatment Facility, MIDC Miraj) which was valid up to 31.03.2022. The copies are enclosed and marked as **Annexure-III**
 - Shri. Tanaji Ruikar has filed complaint against the Respondent No 1 vide letter dated 11/10/2021. The said compliant has been investigated in the year 2021 and accordingly show cause notice was issued to Respondent No 1 vide letter dated 10.12.2021 on the grounds of noncompliance observed. A copy of said Show Cause Notice dtd. 10-12-2021 is enclosed & marked as **Annexure-IV**.
 - The photographs showing the details of Effluent Treatment Plant/Sewage Treatment Plant (ETP/STP) storage room, waste segregation facility and joint inspection of committee were taken on record. The Copies are enclosed & marked as **Annexure-V.**”

6. On the same day, the directions were also issued to send notices to the respondents, which were served on them and respondent No.3-CPCB has submitted its reply wherein it is submitted that in compliance with the order dated 12.03.2019 of this Tribunal passed in O.A. No.710 of 2017 (Shailesh Singh Vs. Sheela Hospital & Trauma Centre, Shahjahanpur & Ors.), it has prepared the guidelines for “imposition of Environmental Compensation Charges against Healthcare Facilities and Common Biomedical Waste Treatment Facilities” outlining a formula for imposing environmental compensation on health care facilities and also on Common Biomedical Waste Treatment Facilities for violations of provisions of BMW Rules, 2016. This environmental compensation is based on health risk, type of healthcare facility, size of operations, collection, handling, storage, transportation and disposal of biomedical waste. It is further submitted that the present health facility of respondent No.1 falls in Red category, which requires a consent to be obtained under the Water Act and the Air Act from the concerned State Pollution Control Board.

7. The respondent No.1/Project Proponent, in his reply-affidavit, has submitted that he is running the hospital in question on a small scale of five beds prior to 2016, which was later on converted into 30 beds with effect from 05.12.2016. He had obtained last authorization from respondent No.6 by order dated 13.06.2017, which was valid upto 31.12.2019. Respondent No.6 had granted an extension to the validity of authorization vide circular dated 06.05.2021 in pursuance of the Government of India order dated 24.03.2020 and orders issued from time to time. He had already obtained membership of M/s Surya Central Treatment Facility for Biomedical Waste and was sending regularly segregated biomedical waste daily as per the established

practices for the collection, segregation and scientific disposal thereof. The respondent No.1 had received a show-cause notice dated 10.12.2021 on 14.12.2021. Thereafter, he immediately started taking effective steps to comply with the points raised in the said notice. Respondent No.1 has long back joined its sewage after proper disinfection thereof with the prevailing practices since the beginning i.e. Sodium Hypchlorite with soap and detergents are being used to clean up and disinfect liquid waste with the use of certain chemicals. Almost all 100 hospitals are connected to the sewerage line of the Sangali Municipal Corporation except two which have provided separate STPs and then have again connected treated sewage to the sewerage line.

8. According to Respondent No.1, he has already taken membership of Common Bio-Medical Waste Treatment Storage Disposal Facility (CBMWTSDF). He applied for renewal of authorization on 24.10.2021 and also appointed an expert in the field to provide and install STP and other necessary arrangements. Prior to that, he had already arranged for septic tank followed by the clean-up arrangements. Said authorization was under consideration by the MPCB. Since beginning the common facility was collecting the BMW from various hospitals. Recently, the MPCB asked to provide STPs to various hospitals and then respondent No.1 immediately has taken steps regarding the same as per the CPCB guidelines. Now the STP is completed and completion certificate is already submitted before respondent Nos.5 and 6. Lastly, he has stated that no substantial question pertaining to environment arises in the present case and therefore, the Original Application may be dismissed.

9. Respondent Nos.5 and 6 have filed reply-affidavit in which they have submitted that as per the non-compliances, the MPCB had

issued warning notice to respondent No.1 on 21.10.2021. The Health Care Establishment (HCE) of respondent No.1 was causing adverse impact even on human health and surrounding environment. Respondent No.1 had obtained bio-medical authorization on 13.07.2017 which was valid upto 31.12.2019. Thereafter, an application was moved for its renewal which had been rejected by the Board. The facility of respondent No.1 is located in the jurisdiction of Sangli-Miraj-Kupwad City Municipal Corporation having the water supply connection and there are two bore wells out of which one is in operation. The hospital has not produced no objection certificate from Central Ground Water Authority (CGWA). The officials of respondent Nos.5 and 6 visited respondent No.1-hospital and after verifying the non-compliances which were observed during their visit, respondent Nos.5 and 6 issued directions dated 11.05.2022 under the Environment (Protection) Act, 1986 and Bio-Medical Waste (Management and Handling) Rules, 2016 and under Section 33 of the Water Act and Section 31A of the Air Act. Respondent Nos.5 and 6 have produced on record the inspection report dated 24.02.2022 as Annexure-E, wherein it is observed that earlier bio-medical waste authorization was valid till 31.12.2019. Thereafter the same could not be renewed. The bio-medical waste annual report was not submitted. One D.G. set was provided and stack height was found to be inadequate. It is further submitted by the answering respondents that the construction and installation of sewage Treatment Plant was completed. However, the stabilization of Effluent Treatment Plant/Sewage Treatment Plant was under final stage at the time of inspection. As per the Biomedical Waste Management Rules, 2016, respondent No.1 has provided colour coded bags and containers for segregation and storage in wards and rooms and separate storage area

for municipal solid waste was provided. The daily record of biomedical waste generation was maintained. The biomedical waste was handed over to M/s Surya Central Treatment Facility for final treatment and disposal. It is submitted that during the visit, no discharge of untreated effluent was observed outside the facility and no storage and dumping of biomedical waste was observed outside the premises of respondent No.1.

10. No-one has appeared from the side of respondent No.1/Project Proponent. However, the written submissions have been found to have been filed on behalf of it.

11. Heard the arguments of learned counsel appearing for the respective parties.

12. The learned counsel for respondent Nos.5 and 6 vehemently argued that the authorization of respondent No.1 was valid till 31.12.2019 and the application for its extension was rejected vide order dated 27.04.2022, for which reliance is placed on page 202 of the paper-book. It is, however, submitted that despite rejection of authorization, respondent No.1 is still continuing the operations without there being valid authorization. When enquired as to why action was not taken pursuant to the rejection of the authorization, it was stated by the learned counsel that the prosecution has to be initiated and the environmental compensation is required to be realised from respondent No.1 for the period beginning from 31.12.2019 till date, as the facility is being run without any valid authorization.

13. The learned counsel for the applicant has argued that the Effluent Treatment Plant (ETP) and Sewage Treatment Plant (STP) were not installed in the facility of respondent No.1 since beginning and

therefore, the environmental compensation should be calculated since the beginning of the facility.

14. In order to understand the argument of respondent No.1/Project Proponent, we have left with no option but to go through the written submissions made by it wherein it is submitted that it had taken steps to comply with the visit report dated 21.10.2021 and show-cause notice dated 21.12.2021 by complete review of existing prevailing practice of direct disposal of disinfected effluent after conventional treatment of septic tank followed by soak pit, which is still adopted for treatment in small towns not having sewerage system. Since sewerage system is available in Miraj, after conventional treatment, the disinfected effluent was discharged in sewerage system. Now, respondent No.1 has provided separate combined STP with proper collection, segregation and storage of BMW Management system. All other compliances have been reported and those have been verified by the Joint Committee and MPCB as well separately. After the warning notice/letter dated 21.10.2021, respondent No.1 had immediately applied for Combined Consent & Authorization (CCA) on 24.10.2021 and taken immediate steps to provide combined ETP/STP for treatment of waste water and also for dedicated BMW-Management. The analytical report was collected from the inlet during stabilisation period of combined STP/ETP. Regarding borewell water, the same is being used for domestic purpose and not for clinic. As per Public Notice issued by CGWA, respondent No.1 has deposited an amount of Rs.10,000/- and made online application.

15. We find that nothing has been mentioned by respondent No.1/Project Proponent with respect to it not having CCA from 31.12.2019 till date as the same has been rejected by respondent Nos.5 and 6, as stated above. We are, therefore, of the view that

respondent No.1 is liable to pay the environmental compensation for the period 31.12.2019 till date as there is no CCA granted and the said facility is being run without proper authorization.

16. We, therefore, direct respondent Nos.5 and 6 – MPCB to assess the environmental compensation on the basis of the principle/formula which has been prescribed by the CPCB as stated in paragraph No.13 of their reply-affidavit, after giving an opportunity of hearing to respondent No.1 and the so quantified amount of environmental compensation be realized from respondent No.1 to be used for restitution of environment. We direct that the exercise of calculation of the environmental compensation shall be completed within a period of one month from today and thereafter, within one month, the same shall be realized from respondent No.1. If respondent No.1 does not obtain CCA even till the date of calculation of environmental compensation, thereafter respondent No.1's facility shall not be allowed to be continued. Besides that, the Maharashtra Pollution Control Board also shall proceed to prosecute respondent No.1 in accordance with law for the said violation.

17. The Original Application stands disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

October 11, 2022
Original Application No.04 of 2022
npj

Item No.2

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

INTERLOCUTORY APPLICATION NO.19 OF 2023 (WZ)
IN
REVIEW APPLICATION NO.01 OF 2023 (WZ)
IN
ORIGINAL APPLICATION NO.04 OF 2022 (WZ)

Dr. Mahadev Ganpati Mhetre

.... Applicant

Versus

Shri Tanaji Ruikar and others

.... Respondents

Date of hearing: 23.01.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Makarand B. Kulkarni, Advocate

Respondents : ---

ORDER

1. By this application, the review applicant has sought condonation of delay in filing the Review Application though the number of days of delay has not been stated in paragraph No.8 of the application. It is prayed by the applicant that the delay in filing the Review Application, by which he has prayed to get the order of this Tribunal dated 11.10.2022 passed in Original Application No.4 of 2022 (WZ) reviewed, has occurred on account of the applicant not being aware of the procedure because he was under impression that the total period to move the application for review was 90 days. It appears from the pleadings in the said application that some wrong advice was given by the Advocates because of which this delay has occurred. On being asked as to how-many days' delay the applicant has

sought to be condoned, the learned counsel for the applicant has apprised us that it is 59 days which needs to be condoned.

2. Before passing order on merits on delay condonation, we tried to know from the learned counsel for the applicant as to what is the ground set up by him in Review Application to get the impugned order reviewed, it is stated by him that the order of the Hon'ble Apex Court passed in Suo Motu Writ Petition (C) No.3 of 2020 in which the limitation in all proceedings before the Courts/Tribunals was extended, has not been considered by this Tribunal while passing the impugned order. On the basis of the said order, no punitive action could be ordered between the period from 23.03.2020 to 28.03.2022, while this Tribunal has directed in the impugned order dated 11.10.2022 that respondent No.1 (present applicant) is liable to pay the environmental compensation for the period from 31.12.2019 till the date of that order as there was no CCA. Therefore, as per the argument of the learned counsel for the review applicant, he wants that the period from 23.03.2020 to 28.03.2022 should be excluded from computation of environmental compensation.

3. As regards the delay condonation, as per Rule 22 of the National Green Tribunal (Practices and Procedure) Rule, 2011, the period prescribed to move an application is 30 days only and there is no provision therein which prescribes for condonation of delay beyond those 30 days.

4. The learned counsel for the applicant has relied upon the judgment of this Tribunal passed in Review Application No.02/2016 and Misc. Application No.63/2016 in Appeal No.58/2015 and Appeal No.20/2016 and Misc. Application No.266/2016, on 04.05.2016 wherein in paragraph Nos.7 to 10 have been relied upon, which are quoted herein below:-

“7. In contradistinction to the language of Sections 14 and 16 of the NGT Act, the language of Rule 22(1) of the Rules of 2011 does not put any restriction on the outer limit of period whereupon the

Tribunal would lose its jurisdiction to condone the delay. From the language of the provisions and the above stated principles it would emerge that Section 14 and 16 are mandatory while that of Rule 22(1) is directory. Reference can be usefully made at this stage to the factors which have to be considered while deciding whether the time limit provided in the Act is directory or mandatory which are provided in interpretation of statutes by P.M. Bakshi 2013 at Page 468 as follows:

“The under mentioned factors have to be considered in deciding whether the time limit provided in the Act is directory or mandatory:-

- 1. The general scheme of the Act and the context of the other provisions.*
- 2. Whether the time limited is insisted upon as a protection for safeguarding the right of property of a person.*
- 3. Whether the statute relates to performance of a public duty by a public officer.*
- 4. Whether serious general inconvenience or injustice to persons who have no control over those entrusted with the duty would arise if the provision is held mandatory and not directory.*
- 5. Whether such a decision would not promote the main object of the legislature.*
- 6. Where the statute itself expressly provides for the result of non compliance with the statutory provision, what can reasonably be held to be the intent of the Legislature.”*

8. The distinction in language of Rule 22(1) of the Rules of 2011 and Sections 14 and 16 of the NGT Act is clear and unambiguous and has to be given its appropriate meaning. Once there is clear linguistical distinction between the above mentioned provisions it will not be proper for the Tribunal to give interpretation to these distinct provisions on the touchstone of same principles. In the case of Kaushlya Rani v. Gopal Singh (AIR 1964 SC 260) the Supreme Court while laying emphasis on the fact that if the special or local law expressly excludes the applicability of Section 5, it would stand displaced but if the language necessarily does not specify exclusion or by necessary implication then it will not be possible to displace the application of Section 5 of the Limitation Act. The Supreme Court was dealing with Sub Section 4 of Section 417 of the Code of Criminal Procedure, 1898 and held that the language does not suggest exclusion, much less an express exclusion of Section 5 of the Limitation Act. When in the normal course of events the language of the Section does not create a legal impediment in applying the provisions of Section 5 of the Limitation Act, then in law it will not be permissible to infer exclusion of Section 5 of the Limitation Act and when the provision of Section 5 becomes applicable to Rule 22 (1) of the Rules of 2011 then the Tribunal would have the Jurisdiction to condone the delay beyond the prescribed period of limitation of 30 days.

9. We may refer to the judgment which would further administrate that if legislature has used such language then the provisions of Section 5 of the Limitation Act would be attracted.

10. In view of the above stated position of law we are of the considered opinion that the provisions of the Section 5 of the Limitation Act, 1963 would come to the rescue of the applicant in getting the delay condoned beyond the specific period of limitation as provided under Rule 22 (1). In view of the settled principle of law stated by the Tribunal in the case of Sunil Kumar Samanta v. West Bengal Pollution Control Board (supra), the above conclusion would be of no avail to the applicant who asks for condonation of delay, in excess of the prescribed period of limitation (90 days) under Section 14 & 16 of the NGT Act.”

5. Based on above, it is argued that the delay condonation application is maintainable even beyond 30 days in case of admissibility of Review Application.

6. As against this, we would like to rely upon the judgment of the Hon'ble Apex Court in **Sridevi Datla Vs. Union of India and others; (2021)5 SCC 321**, in paragraph No.19 of which, following is held :-

“19. There can be no dispute that the period of limitation set out in a special law, which provides for remedies and appeals, has to be construed in its terms and without reference to the [Limitation Act](#), if it contains specific provisions delineating the time or period within which applications or appeals can be preferred, and confines the consideration of applications for condoning the delay to a specific number of days. Undoubtedly, in such cases, the [Limitation Act](#) would be inapplicable. There are several previous judgments of this court holding that where periods of limitation are prescribed under special laws, appeals that exceed the period granted and are within the extended period of limitation in the special law, can be entertained at the discretion of the tribunal, or court concerned and the Limitation Act would not apply upon expiry of such extended period. This Court holds that there is merit in the contention of the Union that the provisions of the Limitation Act are inapplicable. This is, however, not dispositive of the issue; the next question is whether there is merit in the appellant's argument that NGT should have considered the issue of whether the appeal was filed within the extended period prescribed under the proviso to Section 16 i.e. within sixty days after the expiration of the initial 30 days period, required in the main provision.”

7. Because the Hon'ble Apex Court has settled the law on this point in the matter under the National Green Tribunal Act, 2010, we would like to reproduce Section 19 sub-section (4) clause (f), which is as follows:

19.Procedure and powers of Tribunal –

(1) *****

(2) *****

(3) *****

(4) *The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-*

(a) to (e) *****

(f) *reviewing its decision;*

(g) to (k) *****

8. Further under sub-section (4) of Section 4 read with Section 35 of the National Green Tribunal Act, 2010, the National Green Tribunal (Practices & Procedure) Rules, 2011 have been framed. Rule 22 thereof is as follows:-

“22. Application for review. – (1) *No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.*

(2) *A review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order, unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by Tribunal sitting at any other place.*

(3) *Unless otherwise ordered by the Tribunal sitting at the concerned place, a review application shall be disposed of by circulation and the Tribunal may either dismiss the application or direct notice to the opposite party.*

(4) *When an application for review of any judgment or order has been made and disposed of, no further application for review shall be entertained.*

(5) *No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise, and also those which are sworn on the basis of the legal advice.*

(6) *The counter affidavit in review application shall also be on a duly sworn affidavit wherever any averment of fact is disputed.”*

9. In view of the law laid down in **Sridevi Datla Vs. Union of India and others** (supra), the provisions of the Limitation Act would not

be applicable in computation of period of limitation, particularly there being no provision for condoning delay beyond thirty days under Rule 22 of the National Green Tribunal (Practices & Procedure) Rules, 2011. We find that the application which has been moved by the Review Applicant is not maintainable for seeking condonation of delay.

10. In the result, the application (I.A. No.19/2023) is rejected. Consequently, the Review Application No.01/2023 (WZ) also stands dismissed being time barred.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 23, 2023
I.A. NO.19/2023 (WZ)

MAHARASHTRA POLLUTION CONTROL BOARD

REGIONAL OFFICE, KOLHAPUR

Phone : 0231-2652952 /2660448

Udyog Bhawan Near Collector Office,

Fax : 0231-2652952

Email : rokolhapur@mpcb.gov.in

Kolhapur - 416003

Visit At : <http://mpcb.gov.in>



LETTER OF BIO-MEDICAL WASTE AUTHORISATION

[Authorisation for Generation, Collection, Reception, Segregation, Disposal of Bio-Medical Wastes under Rule 7(4)]

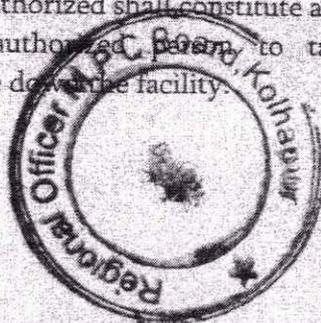
I. File number of authorisation and date of issue

RO-KOLHAPUR/BMW_AUTH/1706600239/22/17. Date-13/06/2017

- II. M/s. Mhetre Hospital is hereby granted an authorisation for generation of biomedical waste on the premises situated at, Timber Area Miraj, Tal. Miraj, Dist. Sangli.
- III. This authorisation shall be in force for a period up to 31.12.2019. An application shall be made by the occupier/operator for renewal 3 Months before expiry of earlier authorisation.
- IV. This authorisation is issued subject to compliance of the conditions stated below and to such other conditions as may be specified in the Rules for the time being in force under the Environment (Protection) Act, 1986.
- V. No of Beds: 30.

Terms and Conditions of authorisation

1. The authorized Person shall comply with the provisions of the Environment (Protection) Act, 1986, and the Rules made there under.
2. The authorisation shall be produced for inspection at the request of an officer authorized by the prescribed authority.
3. i) The authorized person shall not rent, lend or sell the biomedical waste or facility.
ii) The authorized person can transfer the BMW generated at above premises to the "Transporter" or "Operator of Facility" authorized by MPCB under Bio-Medical Waste Management Rules, 2016 for collection, transportation, treatment and/or disposal of BMW generated.
4. Any unauthorized change in equipment or working conditions as mentioned in the application by the person authorized shall constitute a breach of this authorisation.
5. It is the duty of the authorized person to take prior permission of the prescribed authority to close down the facility.



(Handwritten signature)

6. The authorization is granted for generation of Bio-Medical Waste (BMW) in waste categories and quantities listed here in below :

Sr. No.	Category	Quantity	UOM	Treatment & Disposal
1	Cat 7 Solid Waste (item contaminated with blood)	14	Kg/M	Bio medical Waste shall be sent to Common BMW Treatment & Disposal facility authorized by MPCB
2	Cat 4 Waste Sharp	5	KG/M	
3	Cat 6 Solid Waste	12	Kg/M	
4	Cat 1 Human Anatomical Waste	15	Kg/M	
5	Cat 5 Discarded Medicines and Cytotoxic drug	10	Kg/M	
6	Cat 8 Liquid Waste	40	Lit/day	

7. The liquid/solid waste generated from the treatment activity (from laboratory and washing, cleaning, housekeeping and disinfecting activities) shall be treated suitably by providing effluent treatment facility to conform the standards prescribed in Schedule V of said Rules and the Environment (Protection) Act, 1986.
8. (i) BMW shall be treated and disposed of in accordance with Schedule I; and in compliance with the standards prescribed in Schedule V of said Rules.
(ii) You shall setup requisite BMW treatment facilities like incinerator, autoclave / Microwave, shredder etc., at the disposal side in accordance with the BMW rules. You shall disposed of the duly treated BMW and incineration ash in secured land fill site at your own premises / at MSW secured land fill site of Municipal Council authorized by MPCB and duly earmarked for disposal of treated BMW / at common H.W. treatment & disposal facility setup as per the Hazardous Waste (M & H) Rules, 1989 as amended and authorized by MPCB.
9. (i) BMW shall not be mixed with other wastes or reused, recycled or sold in any form.
(ii) BMW shall be segregated into containers / bags at the point of generation in accordance with Schedule-II prior to storage, treatment and disposal. The containers shall be labeled according to Schedule III.
(iii) If a container containing BMW is to be transported from the premises where BMW is generated to any waste treatment facility outside the premises, the container shall, apart from the Label prescribed in Schedule III, also carry information prescribed in Schedule IV and shall be transported by authorized Transporter only.



- (iv) Notwithstanding anything contained in the Motor Vehicles Act, 1988 or Rules there under, BMW shall be transported only in such vehicle as may be authorized for the purpose by the competent authority as specified by the Government.
- (v) No untreated BMW shall be kept stored beyond a period of 48 hours.
10. Standards for waste autoclaving:
- The autoclave shall be dedicated for the purposes of disinfecting and treating bio-medical waste,
- (I) When operating a gravity flow autoclave, medical waste shall be Subjected to:
- (i) a temperature of not less than 121 C° and pressure of 15 pounds per Square inch (psi) for an autoclave residence time of not less than 60 minutes; or
 - (ii) a temperature of not less than 135 C° and a pressure of 31 psi for an autoclave residence time of not less than 45 minutes; or
 - (iii) a temperature of not less than 149 C° and a pressure of 52 psi for an autoclave residence time of not less than 30 minutes.
- (II) When operating a vacuum autoclave, medical waste shall be subjected to a minimum of one pre-vacuum pulse to purge the autoclave of all air. The waste shall be subjected to the following.
- (i) a temperature of not less than 121 C° and a pressure of 15 psi for an autoclave residence time of not less than 45 minutes; or
 - (ii) a temperature of not less than 135 C° and a pressure of 31 psi for an autoclave residence time of not less than 30 minutes; or
- (III) Medical waste shall not be considered properly treated unless the time, temperature and pressure indicators indicate that the required time, temperature and pressure were reached during the autoclave process. If for any reasons, time temperature or pressure indicates that the required temperature, pressure or residence time was not reached, the entire load of medical waste must be autoclaved again until the proper temperature, pressure and residence time were achieved.
- (IV) *Recording of operational parameters.*- Each autoclave shall have graphic or computer recording devices which will automatically and continuously monitor and record dates, time of day, load identification number and operating parameters throughout the entire length of the autoclave cycle.
- (V) *Validation test: Spore testing.* - The autoclave shall completely and consistently kill the approved biological indicator at the maximum design capacity of each autoclave unit. Biological indicator for autoclave shall be *Bacillus stearothermophilus* spores using vials or spore strips, with at least 1×10^4 spores per milliliter. Under no circumstances will an autoclave have minimum operating

parameters less than a residence time of 30 minutes, regardless of temperature and pressure, a temperature less than 121 C° or a pressure, less than 15 psi.

(VI) Routine Test.—A chemical indicator strip/tape that changes color when a certain temperature is reached can be used to verify that a specific temperature has been achieved. It may be necessary to use more than one strip over the waste package at different location to ensure that the inner content of the package has been adequately autoclaved.

11. Every 'Authorized Person' shall submit an Annual Report to the prescribed authority in Form-II by 31st January every year including information about the categories and quantities of BMW handled during the preceding year.

12. (i) Every 'Authorized Person' shall maintain records related to the generation, collection, reception, storage, transportation, treatment, disposal and/or any form of handling of BMW in accordance with these Rules and any guidelines issued.

(ii) All records shall be subject to inspection and verification by the prescribed authority at any time.

13. When any accident occurs at any institution or facility or any other site where BMW is handled or during transportation of such waste, the authorized person shall report the accident in Form III to the prescribed authority forthwith.

14. The Occupier will obey all the lawful instructions issued by the Board Officers from time to time.

15. HCE shall comply with the E-Waste (Management) Rules, 2016.

16. HCE shall comply with the Bio-Medical Waste Management Rules, 2016.

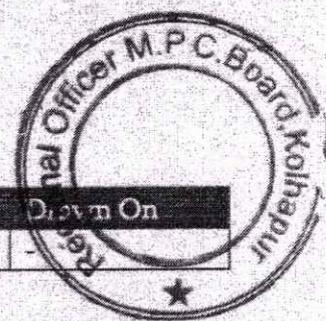
For and on behalf of the
Maharashtra Pollution Control Board

(Dilip K. Khedkar)
Regional Officer, Kolhapur

To,
M/s. Mhetre Hospital
Timber Area Miraj,
Tal. Miraj, Dist. Sangli.

Authorization Fees Received:

Sr. No.	Amount	DD. No.	Date	Drawn On
1	7500/-	TXN1701003904	30.01.2017	-



Copy to:-
Sub Regional Office, Sangli