

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH AT NEW

DELHI

ORIGINAL APPLICATION NO. 820 OF 2022

IN THE MATTER OF:

NAVEEN KUMAR

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

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THROUGH


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WRITTEN ARGUMENTS ON BEHALF OF THE RESPONDENT NO.8 i.e. SHIVALIK

HOSPITAL.

PRELIMINARY ARGUMENTS:

1. The present Original Application has been filed by the Applicant Shri. Naveen Kumar out of malafide and to wreak vengeance as a close friend and relative of the Applicant i.e. Mr. TB Singh (Ex Principal Scientific Officer, Himachal Pradesh Pollution Control Board), was gotten arrested red handedly accepting a bribe of Rs. 3,70,000/- from the answering Respondent for granting Consents which the answering Respondent Hospital was even otherwise entitled to. The Applicant i.e. Shri. Naveen Kumar is a resident of Meerut (Uttar Pradesh) and Mr. TB Singh also belongs to UP having his house in Dehradun.
2. Despite having applied for Consent to Establish as well as Consent to Operate by way of an application complete in all respect along with requisite fees in the year 2018, the said Mr. TB Singh who was Principal Scientific Officer and was in charge of Una from the beginning started harassing the Respondent demanding money despite the fact that the

hospital was fully compliant. After being fed up the answering Respondent approached the State Vigilance & Anti-Corruption Bureau Himachal Pradesh and with their help a trap was laid and Mr. TB Singh was caught red handed accepting a bribe of Rs.3,70,000/- and was taken into custody (**Copy of the FIR 04/2022 against Mr. TB Singh @ Annexure-R/1 @ Page 34-36 of the Reply filed by Respondent No.8).**

3. It is submitted that it is under these circumstances that the said Mr. TB Singh has gotten this Original Application filed through his relative Shri. Naveen Kumar just to harass the answering **Respondent herein who in accordance with law is running a very small nursing home of 10 beds, wherein occupancy is hardly of 2-3 beds daily.** That the Respondent herein has also recently got to know that the then Principal Scientific Officer Mr. TB Singh purposely made sure that no communication in form of notices and letters issued by the Respondent Board, reached the Respondent herein.
4. **It is therefore humbly submitted that as on date, the Respondent Hospital has Consent to Establish as well as Consent to Operate and also Authorization under the Bio Medical Waste (Management) Rules, 2016 and is running the hospital in full compliance as per the prescribed norms. It is submitted that the delay in grant of the Consents as well as the Authorization was a result of lapse on part of the officers of the Respondent Board and hence the Respondent Hospital cannot be held accountable for the same.**
5. It is in the humble submission of the answering Respondent herein that there is an adequate appropriate Sewage Treatment Plant which is being run efficiently of capacity 3 KLD installed in the premises and the sample result of the same have found to be well within the prescribed limits as per the report dated 14.12.2022 of the Respondent Board. Further the allegation of the Applicant that the Respondent Hospital is discharging all its Bio Medical Waste outside the hospital is erroneous and without any evidence on record.

It is submitted that starting from the year 2014 till date, the Respondent Hospital has entered into Agreements with Bio Medical Waste Collection facilities for collection of Bio Medical Waste from the hospital and the same have been placed on record for the convenience of this Hon'ble Tribunal. It is pertinent to mention herein that the Applicant has not placed on record any evidence or any photo to establish or support his allegation that the Respondent Hospital is discharging all its Bio Medical Waste outside the hospital. It is therefore submitted that the allegations of the Applicant are only based out of personal rivalry and hence ought to be dismissed.

6. It is submitted that there arises no question of permanent damage or even say damage in the present case as the Respondent Hospital in its day-to-day operation is neither discharging any untreated effluent nor is disposing off its Bio Medical Waste outside the premises of the Hospital. It is hence submitted that there has been no environmental damage caused by the Respondent Hospital as well as that there is no evidence whatsoever to the effect that sewage/effluent as well as Bio Medical Waste is being discharged in open or otherwise.

ARGUMENTS AND DEFENCE TO THE CONTENTIONS RAISED BY THE APPLICANT:

Argument 1 of the Applicant: Regarding imposition of Environment Compensation against Respondent No.8 for operating its unit in absence of Consent to Operate and Authorization under Bio Medical Waste Rules, 2016.

Our Defense:

1. The Allegation of the Applicant regarding Respondent No.08 being a habitual offender is false and hence denied. It is submitted that the Applicant is trying to mislead the court by stating false and fabricated facts. The notices as mentioned by the Applicant issued by the Board for deposition of fees, are with regards to the 5 bed Hospital run by the Respondent No.08 at a different

location other than the location which is the subject matter of the present Application. It is necessary to mention herein that the notice dated 21.06.2004 and 02.08.2005 as mentioned by the Applicant was issued by the concerned Authority for the earlier 5 bedded hospital situated near Old Bus Stand, Una. It is submitted that all the contentions raised and documents relied upon by the Applicant from 2004 till 2011 are with respect to the 5 bedded hospital run by the Respondent No.08 at a completely different location altogether.

2. It is submitted that the Respondent No.8 in the year 2011, decided to shift the hospital location from Old Bus Stand, Una to near Police Line, Jhalera, Una. It is necessary to mention herein that in the two storeyed building near Police Line, Jhalera, Una (that is the subject matter of the present Application) only a small makeshift laboratory/consultancy was set up by the Respondent No.08 initially whereas the rest of the premises was being solely used only for residential purpose upto the year 2013. Further, to initiate the process of setting up the 10 bedded hospital in the said premises, the Respondent No.8 submitted FORM-1 before the concerned authority for obtaining authorization under the Biomedical Waste (Management and Handling Rules), 1998. It is submitted that the Respondent No.8 wanted to have all the permissions before setting up the said 10 bedded hospital which indicates the intention of the Respondent No.8 to run the hospital as per law. As stated by the Applicant, the Authorization was granted by the Board on 31.12.2011 which was valid upto 31.03.2014.

3. That further renewal of Authorization was granted to the Respondent No.08 on 21.03.2015 which was valid till 31.03.2017. In the interregnum, the Ministry of Environment, Forest & Climate Change, Government of India in suppression of Bio-medical Waste (Management & Handling) Rules, 1998 vide notification dated 28.03.2016 revised and issued Bio-Medical Waste Management Rules, 2016 and as per Rule 10 of these revised rules the Health Care Facilities (HCFs) were required to obtain Consent under the Water (Prevention and Control of

Pollution) Act, 1974. It is submitted that due to the aforementioned change, there was acute chaos and confusion with respect to permissions/consents/authorizations required or not required, due to which there was a slight delay in applying for renewal of Authorization, but the Respondent herein submitted an application dated 19.08.2018 for renewal of Authorization under Biomedical Waste (Management) Rules, 2016. It is submitted that the application submitted by the Respondent herein for renewal of Authorization under Biomedical Waste (Management) Rules, 2016 was complete in all respects and the requisite fees was also paid by the Respondent herein. **(Copy of Renewal Application @ Annexure-R/7 @ Page 48-50 of the Reply filed by the Respondent No.08)**. It is submitted that there was no reply whatsoever by the State Pollution Control Board on the application for renewal of authorization submitted by the Respondent herein. That as per Rule 10(3) of the Biomedical Waste (Management) Rules, 2016 since there was no reply to the application for renewal of authorization, the Respondent herein was deemed to be operating with the authorization of the State Board. Thus, legally speaking the hospital in question had deemed authorization in view of Rule 10(3) of the Biomedical Waste (Management) Rules, 2016. That Rule 10(3) of the Biomedical Waste (Management) Rules, 2016 is reproduced herein for your ready reference:

"10(4) Every application for authorization shall be disposed of by the prescribed authority within a period of ninety days from the date of receipt of duly completed application along with such necessary documents, failing which it shall be deemed that the authorization is granted under these rules."

4. That since the Ministry of Environment, Forest & Climate Change, Government of India in suppression of Bio-medical Waste (Management & Handling) Rules, 1998 vide notification dated 28.03.2016 revised and issued Bio-Medical Waste Management Rules, 2016 and as per Rule 10 of these revised rules the Health Care Facilities (HCFs) were required to obtain Consent under the Water

(Prevention and Control of Pollution) Act, 1974, the Respondent herein submitted an Application for obtaining Consent to Establish and Consent to operate. It is submitted that the application submitted for obtaining the Consent to Establish as well as the Consent to Operate was complete in all respects and the requisite fees was also paid by the Respondent herein. **(Applications @ Annexure-R/6 @ Page 44-47 of the Reply filed by the Respondent No.08)**. It is submitted that there was no reply whatsoever by the State Pollution Control Board on the application for Consents submitted by the Respondent herein. That as per the provisions of the Water (Prevention and Control of Pollution) Act, 1974, since there was no reply to the application for Consents, the Respondent herein was deemed to be operating with the consent of the State Board. Thus legally speaking the hospital in question had deemed consent in view of Section 25(7) of the Water (Prevention & Control of Pollution) Act, 1974. That Section 25(7) of the Water (Prevention & Control of Pollution) Act, 1974 is reproduced herein for your ready reference:

*"25(7)The consent referred to in sub-section (1) shall, unless given or refused earlier, **be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.**"*

5. It is in the humble submission of the answering Respondent herein that in all this duration, there was no reply by the State Pollution Control Board accepting or rejecting or pointing out deficiencies in the application for Consents under Water (Prevention and Control of Pollution) Act, 1974 as well as in application for renewal of authorization under Bio Medical Waste (Management) Rules, 2016 submitted by the Appellant herein. Thus, the Respondent herein was legally operating with deemed Consents as per Section 25(7) of the Water (Prevention & Control of Pollution) Act, 1974 and deemed Authorization as per Rule 10(3) of the Biomedical Waste (Management) Rules, 2016.

6. That it is pertinent to mention herein that in the month of September 2019, the Respondent herein at the recommendation of the Mr. TB Singh who was at that time Principle Scientific Officer with the Respondent Board, installed a Sewage Treatment Plant of capacity 3 KLD in the premises. It is in the humble submission of the answering Respondent herein that not only did Mr. TB Singh (Ex Principle Scientific Officer with the Respondent Board) advise to install Sewage Treatment Plant but also asked the Respondent herein to apply again for the Consents under the Water (Prevention and Control of Pollution) Act, 1974 online as there was no reply by Respondent Board on the previous Application submitted by the Respondent Board in 2018. That blindly following the advice of Mr. TB Singh, the Respondent herein re-submitted an application online for grant of Consents under the Water (Prevention and Control of Pollution) Act, 1974. It is submitted that along with the application made online, Mr. TB Singh also asked the Respondent herein to re-pay the fees from 2018 onwards. It is submitted that the Respondent herein paid an amount of Rs. 5000/- towards consent fees **(Receipt @ Annexure-R/13 @ Page 69 of the Reply filed by the Respondent No.08)**.

7. It is pertinent to mention herein that even after re-applying for the consents under the Water (Prevention and Control of Pollution) Act, 1974 online, there was no reply whatsoever from the Respondent Pollution Control Board. It is submitted that on enquiring about the same from Mr. TB Singh (Ex Principle Scientific Officer with the Respondent Board), Mr. TB Singh demanded money in form of bribe from the Respondent herein for grant of Consents and also questioned the Respondent herein as to why the Sewage Treatment Plant was not installed from a favorite vendor of Mr. TB Singh and was rather bought and installed from some other place. That in light of the same the Respondent herein made a police complaint against Mr. TB Singh for demanding bribe for the release of Consent Certificates and an FIR being FIR No.04/2022 under Section 7 of Prevention of Corruption Act, 1988 was also registered against the then Chief Scientific Officer Mr. TB Singh by the State Vigilance & Anti-Corruption Bureau

Himachal Pradesh and the said Mr. TB Singh was caught red handed accepting Rs. 3,70,000/- and was arrested. It is submitted that the matter is still under investigation by the State Vigilance & Anti-Corruption Bureau Himachal Pradesh.

8. It is submitted that the Consent to Operate under Water (Prevention and Control of Pollution) Act, 1974 pursuant to the second application submitted in 2021 was eventually granted to the Respondent Hospital on 16.08.2022 and is valid till 31.03.2027. (**Consent to Operate dated 16.08.2022 @ Annexure-R/17 @ Page 74-77 of the Reply filed by the Respondent No.08**). Also, the Respondent Board has granted the renewed Authorization dated 12.12.2022 under the Bio Medical Waste (Management) Rules, 2016 to the Respondent Hospital and the same is valid till 31.03.2027. (**Renewed Authorization dated 12.12.2022 @ Annexure-R/18 @ Page 78-81 of the Reply filed by the Respondent No.08**).

Argument 2 of the Applicant: Regarding Operation of Hospital by Respondent No.08 in a 2 Storey Building the Map of which is approved as a Residential Building by Town and Country Planning, Una.

Our Defense:

1. That it is pertinent to mention herein that in respect of the provisions of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh, as per Clause/regulation 7.2.1.1 of Sr. No. 7.2.1 (Residential Use) the uses permitted in the area earmarked for Residential Use are Residences, **Hospitals**, Boarding Houses, Nurseries, Kindergartens and Schools, Clinics, Social and cultural Institutions, Public Utilities and buildings, except service and storage yards, agricultural gardens, nurseries and green houses, any neighborhood recreational uses including clubs and other semi-public recreational uses, accessory uses clearly incidental to residential uses which will not create a nuisance and eco-hazard. Relevant provision is reproduced herein below for the ready reference of this Hon'ble Tribunal:

"7.2.1.1 Uses Permitted- Residences, Hospitals, Boarding-Houses, Nurseries, Kindergartens and Schools, Clinics Social and Cultural Institutions, Public utilities and buildings, except service and storage yards; agriculture gardens, nurseries and green houses, any neighborhood recreational uses; including clubs and other semi- public recreational uses; accessory uses clearly incidental to residential uses which will not create a nuisance and eco-hazard."

Further as per Clause/Regulation 7.1.(ii) of Sr. No. 7.1 (General Regulations) mixed land use is not prohibited unless otherwise a particular land use is hazardous. Relevant provision is reproduced herein below for the ready reference of this Hon'ble Tribunal:

"(ii) General land use in the development plan has been contemplated for specified use. However, mixed land use shall not be prohibited unless otherwise a particular land use is hazardous in nature to the predominated use and fulfils the regulations fixed for the same."

Therefore, it is humbly submitted that the Respondent herein is not running the hospital in violation of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh.

2. In recent past, a small portion was added in the premises and as an abundant precaution, though not required, the Respondent herein applied to the Department of Town and Country Planning, Una for change of building use (hospital site) and composition of additional construction of garage situated on the right side of the hospital. It is submitted that the Special Area Development

Authority, Una granted completion permission vide letter dated 19.01.2023
(Complete Permission vide letter dated 19.01.2023 @ Annexure-R/20 @ Page 86
of the Reply filed by the Respondent No.08).

THROUGH


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PROOF OF SERVICE

NAVEEN KUMAR VS UNION OF INDIA & ORS

11

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 2 attachments (7 MB)

NAVEEN KUMAR VS UNION OF INDIA & ORS WA.pdf; NAVEEN KUMAR VS UNION OF INDIA & ORS Reply.pdf;

Dear Sir/ma'am

Please find attached herewith a scanned copy of the Reply and Written Arguments on Behalf of Respondent No. 8. in the captioned matter. i.e. NAVEEN KUMAR VS UNION OF INDIA & ORS (OA.820 of 2022)

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