

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
Appeal No. 4 of 2024 (with IA 44/2024 and IA 97/2024)**

IN THE MATTER OF:

INDOTECH WASTE SOLUTION

... APPLICANT

VERSUS

UPSEIAA & ORS.

... RESPONDENTS

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WRITTEN SUBMISSIONS ON BEHALF OF APPELLANT:

1. The present appeal is being preferred against the Environmental Clearance and Consent to Establish both dated 20.12.2023 by the concerned Respondent/s in favour of the Respondent No.7, being violative of prevailing law, guidelines and rules and in contempt of the judgement dated 31/07/2023 in O.A.622 of 2022 titled Aniruda Panwar v/s MoEF & Ors., passed against the same respondents as also against the report filed by the Appellate Authority- Special Secretary Environment Sh.Gaurav Verma IAS vide letter 247 / वि० स० (जी)/23 दिनांक 01 मार्च 2023.
2. The very fact that the impugned permissions cannot hold under law and are liable to be declared as illegal, null and void as they were granted on the Terms of Reference (ToR) dated 17.08.2021, held to be illegal/ impermissible by this Hon'ble Tribunal in its judgement dated 31.07.2023. Even otherwise, it is an admitted position as R-7 vide fresh application bearing Proposal No. SIA/UP/INFRA2/439582/2023 applied/ submitted a proposal on 7/08/2023, and the concerned respondent granted ToR vide dated 10/08/2023; meaning thereby that the earlier application/ proposal SIA/UP/MIS/66542/2021 does no longer exists as also stated in the judgement 31/07/2023 that the applicant has to apply afresh as per law.
3. As submitted above, R-7 vide No. SIA/UP/INFRA2/439582/2023, on 7.08.2023 applied for grant of ToR & Environmental Clearance (EC) but misrepresented by mentioning Plot E-27 as part of the project (Annexure A-5; page 116) in the application form which was neither procured nor allotted to R-7. Similar case was in the O.A.622/2022 wherein the document was forged by applying fluid on the allotment letter of E-25 & E-26, issued by UPSIDA/R-6 to R-7, concealing the fact that the allotment of plots is for Fabrication of Industrial Equipment (ETP/STP/WTP/C) – Green Industry and not for establishing CBWTF – Red category Industry. It is on these improprieties that the earlier permissions were cancelled and declared null and void by the Hon'ble NGT in O.A.622/2022. Infact till date the category of plots E-25 & E-

26 are Fabrication of Industrial Equipment (ETP/STP/WTP/C) as it was categorically held in the judgement dated 31/07/2023 by this Hon'ble Tribunal - "... Even after allotment of Plots No. E-25 and E-26, situated in Babrala Industrial Zone for Fabrication of Industrial Equipment (ETP/STP/WTP/C), Respondent No.7 could not apply for grant of CTE and EC for establishment of CBWTF in the same **BEFORE** applying for a change in the intended use of the industrial plots to Respondent No.6 UPSIDA. It was stated that subsequent change of land use cannot validate EC/CTE granted illegally (Page 98-100 – paras 65-71). There is a categorical debarment for the specified land to be used for CBWTF by this Hon'ble Tribunal before getting the change of land use from UPSIDC. Therefore, the ToR dated 10/08/2023 and the impugned permissions dated 20/12/2023 granting CTE and EC could not have been granted on the forged and misleading application filed by R-7 by the concerned authority, which acted irrationally, illegally, against the mandated laws & in contempt of the judgement dated 31/07/2023 passed in O.A.622/2022.

4. The illegalities continued thereafter, the authorities in collusion with R-7 proceeded with the proposal and infact on 16/10/2023, Shri.Ajay Sharma, Member Secretary – UP PCB, made patently illegal and perverse representation before MS, CPCB seeking clarification regarding relaxation in the land requirement for establishing CBWTF. It is pertinent to note that in the said representation not only the data used is incomplete as the Gap Analysis dated 3/06/2022 does not include the details of the proposed plants in Kasganj & Bulandshehar, UP but interestingly did not find it necessary to attach the judgement dated 31.07.2023 passed in the matter by Hon'ble NGT. The same was not a genuine mistake or slip of sight as in the said representation deliberate contradictory interpretation, completely against the letter and spirit of judgement dated 31/07/2023 were made, falsely stating ***“..However, due to gap in certain procedural formalities their erstwhile EC and CTE became null and void but not illegal since all the procedure has been duly complied with...”***. It is quite evident that the judgement dated 31/07/2023, passed by Hon'ble NGT in para 78 was categorical in its finding that the CTE and EC being violative of CBWTF Guidelines 2016 are held to be illegal, null and void and to be of no effect. Nowhere it suggests that CTE and EC are not illegal since all the procedure has been duly complied with, as falsely stated by MS. UPPCB to MS, CPCB for obtaining illegal relaxation on land requirement. Not only this the details as

to the population in the area concerned were also deliberately concealed in the representation. **Clause 7 of the CPCB Guidelines describes land requirement**, which clearly states that a CBWTF shall be set up on a plot size of not less than one acre in all the areas. It also states that in case of upcoming or new CBWTFs (both in municipal limits with population more than 25 lakhs or in rural areas), the land area requirement may be relaxed. In the present matter the population in the given area is around 31,100 (Annexure A-12; page 163-165), meaning thereby that the relaxation cannot be applied as neither the land is a scarcity and the population is much less than the mandated 25 lakhs condition. Any relaxation of land based on the incorrect and incomplete submissions by the MS, UP PCB to MS, CPCB; not supported by mandated laws cannot be held to be valid. The improprieties did not stop there in the letter dated 16/10/2023; as it was also wrongly submitted against the mandated laws that CBWTF plant of R-7 will have the mandated 33% green belt and the same can be developed outside the project boundary again impermissible under law.

5. Surprisingly another serious impropriety was committed as the concerned authority not only proceeded with the application SIA/UP/INFRA2/439582/2023 which ought to be dismissed on the ground of false submissions and misrepresenting plot E-27 as part of the project for establishment of CBWTF; arbitrarily and illegally vide Minutes of 810th SEAC-1 Meeting dated 20/11/2023, recommended Environment Clearance taking into consideration earlier Terms of Reference dated 17/08/2021 which holds no legal sanctity and letter of relaxation dated 17/11/2023 by CPCB based on deceitful interpretation of judgement 31/07/2023 by MS, UP PCB and violation of mandated guidelines and rules prevalent in the matter (Annexure A-10; page 142-153). Needless to state that any further permission/s granted based on ToR dated 17.08.2021, is not only beyond the jurisdiction of the concerned respondents and is in direct conflict and contempt of directions passed by this Hon'ble Court; and will automatically become non-est, void, having no legal effect whatsoever. The present matter concerns the deliberate concealment of vital and material information, documents and the violations of mandated provisions contained in Environment Protection Act, 1986 & Common Bio-Medical Waste Management Rules, 2016 & Guidelines. Respondents 1 to 5 in the matter are intentionally & continuously ignoring & overlooking the illegalities and improprieties committed by private R-7 along with

concerned officials which are obligatory in nature and are to be strictly complied and processed while granting permissions and clearances in the matter.

6. The plea taken by the private respondent that the permissions were granted on the earlier ToR and the subsequent ToR was withdrawn are not only irrelevant but also unsubstantiated being non-supportive of mandated Guidelines and prevalent Rules and Regulations. The date of submission of fresh application i.e. 7/08/2023 and the subsequent orders/ unlawful relaxation etc. are important in the present matter as the judgement dated 31/07/2023 clearly states that the applicant shall be at liberty to apply again for grant of EC and CTE for establishment of CBWTF **AFTER** procuring addition land in Babrala Industrial Area or seek relaxation of land requirement in accordance with law and in case any such application is filed by R-7 again UPPCB and UPSIAA shall be bound to dispose of the same **strictly not only in accordance with the statutory provisions/ environmental norms but also CPCB Guidelines**. Not only the procedure was flouted but also the environmental norms and CBCB Guidelines were violated while proceeding with the proposal No. SIA/UP/INFRA2/439582/ 2023 & the impugned permissions were granted in the teeth of judgement dtd. 31/07/2023.
7. This Hon'ble Tribunal under its jurisdiction has ample power and scope to unearth the writ large improprieties committed by the R-7/ M/s Punahchakran (P) Ltd., in collusion with other respondents. The very fact that even after detailed complaints well before time and clear knowledge and complete information, the concerned authorities are sitting over the said violations, deliberate concealment and/or submission of false and misleading information/ data; which the authorities are under legal compulsion to take stringent and punitive actions, means complete failure of law and order in the concerned departments.
8. **The Hon'ble Apex Court in Indian Railway Construction Co. Ltd. v. Ajay Kumar reported in (2003) 4 SCC 579, at paragraphs No.13 to 15,** explained the manner in which discretionary power has to be exercised, while discharging an administrative function. It was held that in matters relating to administrative functions, if a decision is tainted by any vulnerability as such illegality, irrationality and procedural impropriety, Courts should not hesitate to interfere, if the action falls within any of the categories stated supra.

9. Similarly, in *State of NCT of Delhi v. Sanjeev, reported in (2005) 5 SCC 181*, the Hon'ble Supreme Court while explaining the scope of judicial review of executive action has held that in the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.

IMPORTANT LIST OF DOCUMENTS WITH PAGE NUMBERS

- *Impugned EC dated 20.12.2023 – Pages-32-39*
- *Impugned CTE dated 20.12.2023 – Pages 40-44*
- *Report dated 1/03/2023 – Pages 45-51 (relevant pages 50/51)*
- *Judgement dated 31.07.2023 in O.A.622 of 2022 – Pages 52-115*
Page 89-92 – paras 49-54: Procurement of land is a condition precedent.
Page 98 – paras 63-64: EC/ CTE are dependent on permissible land use.
Page 98-100 – paras 65-71: Subsequent change of land use cannot validate EC/CTE granted illegally.
Page 101 – paras 75: Minimum land requirement of 1 acre.
- *Fresh application for CBWTF on E-25/26/27 by PP – Page 116*
- *ToR dated 10/08/2023 – Pages 118/119*
- *Minutes of 810th SEAC-1 Meeting dated 20.11.2023 – Pages 143/145*
- *False/ misleading representation dated 16.10.2023 – Pages 154-162*

Case laws supporting the arguments:

- i. *Hanuman Laxman Aroskar vs. Union of India, (2019) 15 SCC 401;*
- ii. *Indian Railway Construction Co. Ltd. v. Ajay Kumar reported in (2003) 4 SCC 579;*
- iii. *State of NCT of Delhi v. Sanjeev, reported in (2005) 5 SCC 181, the Hon'ble Supreme Court*
- iv. *Praveen Kakar & Ors. v/s MoEF&CC & Ors. (O.A.661/2018 order dated 4/07/2022);*
- v. *Missu Naseem & Anr v/s St. of Andhra Pradesh & Ors. (Crl Appeal 160/2022 dtd 01/02/2022);*
- vi. *Chandramani Kanhar v/s State of Odisha (BLAPL No.4576 of 2020 order dated 21/12/2020)*

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