

IN THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI, AT NEW DELHI  
ORIGINAL APPLICATION NO. 820 OF 2022  
UNDER SECTION 14 AND SECTION 18 OF THE NATIONAL  
GREEN TRIBUNAL ACT – 2010

**IN THE MATTER OF**

NAVEEN KUMAR

.....APPLICANT

**VERSUS**

UNION OF INDIA AND OTHERS

.....RESPONDENTS

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02/10/2023

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**WRITTEN SUBMISSIONS ON BEHALF OF APPLICANT**

By way of the present Original Application, applicant has prayed the followings before this Hon'ble Court:

- Direct Himachal Pradesh State Pollution Control Board to close the operation of Respondent No. 08
- Direct the Department of Town and Country Planning to take action against Respondent No. 08 as the same is operating in Non Conforming Area
- Direct the Himachal Pradesh State Pollution Control Board to act impose Environmental Compensation on the basis of Polluter Pays Principle.

It is respectfully submitted that applicant by way of the present Original Application requests this Honble Court to adjudicate upon the Substantial Questions of Law:

- a. Whether Himachal State Pollution Control Board can allow the operation of Shivalik Hospital without issuance of Authorization as provided under Rule 10 of the Bio Medical Waste Management Rules, 2016?
- b. Whether Himachal Pradesh State Pollution Control Board can allow the operation of Shivalik Hospital without issuance of Consent to Operate as provided under Water (Prevention and Control of Pollution) Act, 1974?
- c. Whether the Dept of Town and Country Planning, Himachal Pradesh can allow Shivalik Hospital in Non Confirming Area or in violation of Master Plan issued by Department of Town and Country Planning of State of Himachal Pradesh?

It is respectfully submitted that after filing of the present Original Application, the Himachal Pradesh State Pollution Control Board (hereinafter referred as HPSPCB) has issued Consent to Establish, Consent to Operate as well as Authorization under Bio Medical Waste Management Rules, 2016. That the same is also clear by way of the affidavit filed by Respondent No. 08 as well as the affidavit filed by Himachal Pradesh State Pollution Control Board.

That in view of the above, applicant wishes to argue the present Original Application on the following two issues:

- i. Regarding imposition of Environmental Compensation against Respondent No. 08 for operating its unit in absence of Consent to Operate and Authorization under Bio Medical Waste Rules 2016
- ii. Regarding Operation of Hospital by Respondent No. 08 in a Two Storey Building the Map of which is approved as a Residential Building by Town and Country Planning, Una

**Regarding imposition of Environmental Compensation against Respondent No. 08 for operating its unit in absence of Consent to Operate and Authorization under Bio Medical Waste Rules 2016**

It is respectfully submitted that Respondent No. 08 is a habitual offender as far as Green Laws of the Land is Concerned. That applicant wishes to apprise this Hon'ble Court on the following violations which Respondent No. 08 has committed while running its Hospital Unit:

- i. As stated in the Additional Affidavit, Himachal Pradesh State Pollution Control Board has issued following Notices to Respondent No. 08 for deposition of Fees with respect to

Authorization under Bio Medical Waste (Management & Handling) Rules, 1998:

**A.** Notice dated 21/06/2004 for deposition of Fees  
**(Annexure A1/2)**

**B.** Notice dated 02/08/2005 wherein again HPSPCB again directed Respondent No. 08 to deposit Fees under BMW Rules. **(Annexure A1/3)**

**ii.** That followings are the instances wherein Respondent No. 08 has operated its Hospital unit in absence of Authorization provided under Bio Medical Waste Rules:

**a.** Authorization letter dated 06/11/2006 issued under Bio Medical Waste Rules was valid till 31/03/2008. **(Annexure A1/4).**

The next authorization which HPSPCB issued in favor of Respondent No. 08 was on dated 30/12/2008.

It is clear from the above that Respondent No. 08 continued to operate its unit without Authorization under Bio Medical Waste rules from 31/03/2008 to 30/12/2008 i.e. approximately for more than 8 months.

**b.** Similarly, HPSPCB again issued Authorization under BMW Rules on dated 30/12/2008 and the same was valid for Respondent No. 08 till 31/03/2011. **(Annexure A1/5)**

The next authorization which HPSPCB issued in favor of Respondent No. 08 was issued on 31/12/2011.

It is clear from the above that again Respondent No. 08 operated its Hospital unit in absence of Authorization from 31/03/2011 to 31/12/2011 i.e. approximately more than 8 months.

- c. That HPSPCB vide its letter dated 31/12/2011 again issued Authorization under BMW Rules in favor of Respondent No. 08 and the same was valid upto 31/03/2014. **(Annexure A1/8)**

The HPSPCB issued the next Authorization only on dated 21/03/2015, which clearly shows that from 31/03/2014 till 21/03/2015 Respondent No. 08 operated its unit in absence of Authorization under BMW Rules i.e. approximately for around 01 years Respondent No. 08 operated its unit in violation of Green Laws.

- d. Similarly, Authorization letter dated 21/03/2015 which HPSPCB issued in favor of Respondent No. 08 was valid upto 31/03/2017. **(Annexure A1/12)**

HPSPCB has issued the subsequent Authorization under BMW Rules only in the year 2022 i.e. on dated 12/12/2022. It is clear from the above that Respondent No. 08 continued operation of its Unit from 31/03/2017 till 12/12/2022 i.e. from more than 5 years.

- e. That apart from the above after the issuance of letter dated 27/07/2017 issued by HPSPCB, Respondent No. 08 obtained the Consent to Operate only in the year 2022 i.e. on dated 16/08/2022. It is clear from the above that for more than 05 years, Respondent No. 08 operated its Unit without NOC under Water (Prevention and Control of Pollution) Act, 1974.

Hence, it is crystal clear from the above that Respondent No. 08 at various point to time, has operated its Hospital Unit not only in violation of BMW Rules but also in absence of NOC required under Water (Prevention and Control of Pollution) Act, 1974.

That as per Section 20 of the National Green Tribunal 2010, this Honble Tribunal by way of applying ‘POLLUTER PAYS PRINCIPLE” has the jurisdiction to impose Environmental Compensation on Respondent No. 08.

That in view of the fact that Respondent No 08 has operated its Unit in absence of (a) Authorization under BMW Rules as well as (b) Consent to Operate as provided under Water (Prevention and Control of Pollution) Act, 1974, applicant requests this Honble Court to direct Central Pollution Control Board and Himachal Pradesh State Pollution Control Board to impose Environmental Compensation on Respondent No. 08.

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

That applicant by way of the present Original Application has stated that Respondent No. 08 is running its 10 bedded hospital in a residential building hence is operating its unit in a Non Confirming Area and in violation of Master Plan.

That vide its affidavit filed on dated 10/01/2023, the District Magistrate, Una has stated the following:

“That in reply to Para No. 3 (j) of the Original Application it is submitted that as per the report received from the Assistant Town Planning, Sub Division Town Planning Office Una, District Una (H.P) vide his office letter no. SADA (Una) Case No. BP-630/2007-334 dated 05/12/2022 (copy annexed as Annexure R-III), the Development Plan for UNA Planning Area was approved by the Government of Himachal Pradesh vide Notification No. TCP – F (5)-7/96 dated 23/04/97. The development Plan of Una Planning area is valid till March 2023.

As per Development Plan of Una Planning Area the land falling under Shivalik Hospital situated at Mohal Jhalera has been earmarked for residential use..... **He has further reported that the building maps for the construction of Two Storeyed Residential Building at Khasra No. 1546 / 14, 1546/15. 1546/16. 1546/21,**

1546/23 as per jamabandi for the years 2003-04 of Mohal Jhalrea Tehsil and District Una (H.P) were approved vide No. SADA (Una) BP-630/2007-659 dated 22/11/20227 in the name of Shri Krishna Dass, Shri Akshay Kumar Kumar Son of Shri Krishnan Das and Smt Anupama w/o Sh Akshay Kumar. ....

**...The Shivalik Hospital is running in the building for which said maps were approved. The necessary directions under the Provisions of TCP Act, 1977 have been issued to the proprietor of the Hospital vide No. SADA (Una) – Case No. BP-630 / 2007 – 333 dated 01/12/2022.**

It is crystal clear from the above that Respondent No. 08 is running its unit in a residential building which as per Master Plan is not permitted, hence is operating in a Non Confirming Area.

Applicant wishes to apprise this Honble Court that in Original Application No. 1038 / 2018 titled as 'In re: News item published in 'The Asian Age'' authored by Sanjay Kaw titled ' CPCB to rank Industrial Units on Pollution Levels' {2022 SCC Online NGT 2957} this Honble Court observed as following:

“169. The principle of 'polluters pay' has to be applied to nonconforming / non complying industrial units and appropriate action which includes closer and imposition of environmental compensation has to be taken by the concerned statutory regulators as it is the statutory responsibility and obligation conferred upon them by legislature. Statutory regulators can't

wriggle out of this obligation under any pretext or explanation they cannot compromise with the environment at the best of polluting industries.”

Thus in view of the above mentioned circumstances, the present petition be allowed in terms of the prayer made in the petition.

**DRAWN BY**



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