

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

APPEAL NO. 06 OF 2022

IN THE MATTER OF:-

Prabhakar Rai & Ors

..... Appellants

Versus

Union of India & Ors.

..... Respondents

NDOH-29.04.2024

I N D E X

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**JKN PURVANCHAL CBWTF WORKS
Respondent No. 5**

Through



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PLACE: NEW DELHI

DATED: 28.04.2024

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**BRIEF WRITTEN SUBMISSIONS ON BEHALF OF
RESPONDENT NO. 5 M/S JKN PURVANCHAL CBWTF WORKS**

MOST RESPECTFULLY SHOWETH:

1. That the present Appeal is not maintainable as no condition as prescribed in the 'Revised Guidelines for Common Bio-Medical Waste Treatment and Disposal Facility' dated 21.12.2016 issued by CPCB have been violated. It is submitted that as per the said guidelines dated 21.12.2016, the buffer zone distance shall be calculated from the 'notified residential areas' and not from any individual residential premises.
2. That as per the report dated 05.05.2022 submitted by the Joint Committee, the residential areas of Village Bagwanpur, Surchak and Dhanauti Rajdiha are situated at a distance of 1.5 Kms, 1.0 Kms and 2.0 kms respectively from the proposed CBWTF and as such the requirement of having a preferable buffer zone of 500 m are clearly met in the present case.
3. That the criterion of having a preferable buffer distance of 500 m from notified residential areas and sensitive areas is discretionary and not mandatory and can be reduced to less than 500 m by

prescribing additional control measures. It is submitted that in the present case also the Environmental Clearance (issued by the SEIAA, UP) and CTE (issued by UPPCB) granted to Respondent No. 5 are subject to precautionary special conditions.

4. **PROJECT DESCRIPTION:**

- 4.1 That the proposed CBWTF will be equipped with state-of-the-art equipment which will operate in consonance with the standards of operation as prescribed by SPCB/ PCC.

The equipment list and their capacity details are as under:

Equipment	Installed Capacity	Number
Incinerator	250 Kg per hour	1
Autoclave	800 Kg per Batch	1
Shredder	150 Kg Per Hour	1
Chemical Disinfection Tank	1500 Ltr	1
Effluent Treatment Plant	1 LD	1

It is submitted that besides the above air pollution control devices viz. Wet Scrubber, Cyclone and Bag Filter will be installed and 8 Kilo Litres of wastewater per day will be treated Effluent Treatment Plant and treated water will be recycled.

Since the initial stage, UPPCB has proposed the implementation of the Best Available Technology, moreover, a complaint was lodged by the Common Bio-Medical Waste Treatment Facility Association through their legal advisor Mr. Suresh Yadav dated 13.11.2020. In furtherance of the complaint:

- i) Site inspection was carried out by the team of Regional Office, UPPCB and the findings of the visit were submitted to the head office in an inspection report on 29.12.2020. [Ref no: 975/NOC/176/2020]. In the report, it has been recommended by the UPPCB for the adoption of the best available technology. A true copy of the report dated 29.12.2020 is already on record as Annexure R5/2.
 - ii) At the time of granting of the CTE it was recommended by the Regional Office, UPPCB on the online portal of Nivesh Mitra / vide letter dated 08.01.2021 that there shall be deployment / adoption of the Best Available Technology. A true copy of the letter dated 08.01.2021 is already on record as Annexure R5/3.
 - iii) Furthermore, certain special conditions with regard to the adoption of the best available technology have been mandated in the environment clearance and the consent to establish granted to the project. These include measures with respect to stringent emission norms, stack height, use of effective air pollution control devices, etc. in addition to standards for prevention and control of water pollution.
- Cost of Project: 380 Lacs.
 - **Pollution Load:**
 - (i) Incineration capacity: 250kg/hr
 - (ii) During the operation emission is continuous so the minimum unit is per second.
 - (iii) Waste Burning rate per second = 69.44 gms/sec
 - (iv) Oxygen/Air required: = 0.5Cumeter/sec

- Keeping 15% excess oxygen to ensure complete burning.
- Pollutants 69.44 gm burnt per second are diluted with air/oxygen by 204 times in the system only.
- The downstream system consists of a venturi scrubber/quenching column/ activated carbon column/ caustic absorber. The Pollutants like NO_x, SO_x, Particulate matter, and organic compounds get absorbed in absorbers and allow free oxygen-mixed air to release through the stack of height 30 meters.
- Continuous online emission monitoring is mandatory to monitor the release.
- Water Pollution: The concept of zero liquid discharge has been adopted so there is no question of the release of water from the unit.
- Spillage: Waste is stored in non-chlorinated bags in room size 10' x 15'. No loose bags are to be kept inside the room.
- Maximum storage time in plant 12 hours.

5. **DISTANCE:**

- 5.1 That the Biomedical Waste Management Rules, 2016 of common medical based treatment and disposal facilities provides the buffer area for the establishment of new plant and further Clause-8 (b) of the Rule clearly provides establishment of a new plant if the number of hospital beds exceed more than 10,000 in a nearby area. Admittedly, no CBWTF plant exist in district Gorakhpur,

Deoria, Mahrajganj, Kushinagar and there are 19208 beds in the hospitals running in these 4 districts, thus, the case of the answering Respondent falls under Clause-8(b) of the new rules. It is further the admitted fact that there is no CBWTF established in Gorakhpur Mandal.

5.2 In a joint committee inspection dated 05.05.2022 conducted on the direction of this Hon'ble Tribunal as per site inspection report of joint committee distance of primary health centre (presently non-functional and is in dilapidated condition) from the proposed CBWTF is 166 Meter and further distance of nearest habitat/population from proposed CBWTF is 184 meter.

5.3 That as per the available revenue records, the total land area of Khasra No. 1006 is 10,880 sqm [1.088 hectares] and its length is 250 meters. This land is bifurcated into three parts and all parts are separated by boundary.

FIRST PART:

The first part has been allocated for the oxygen bottling plant in an area of 2450 sqm;

SECOND PART:

The second part is meant for the CBWTF in an area of 5800 sqm.

THIRD PART:

The third part is a vacant land admeasuring 2630 sqm, left for future consideration.

It is worth mentioning here that the CBWTF is located in the middle of Khasra no. 1006.

5.4 That the geo-coordinates of the part of Khasra no. 1006 on which CBWTF was proposed are **26°38'33.06 N** and **83°44'56'75 E**. The area dedicated to CBWTF is 5800 sqm.

5.5 That the concerned authority have taken buffer zone distance from the first gate of the factory and not from the place where the incinerator is proposed, which is in contravention of Guideline No. 6 of Common Bio-Medical Waste Treatment Facility dated December 21, 2016. The same is reproduced herein below:

“buffer zone represents a separation distance between the source of pollution in CBWTF and the receptor - following the principle that the degree of impact reduces with increased distance”.

Hence, the buffer zone distance should be taken from the source of emission.

5.6 That the report of the joint committee suggested relocating the CBWTF so that the buffer zone criteria of 500 meters is met. It is submitted that the Google Earth image depicting the location of the CBWTF plant and respective distance has been obtained for considering the relocation of the CBWTF plant within the vicinity of Khasra No. 1006. The distance after relocation as depicted by the google earth image is:

- ANM Sub-center – 307 meters
- Prabhakar Rai’s residence – 268 meters

That as per the District Magistrate, Deoria letter dated April 05, 2022, the distance between the CBWTF unit and the Primary health care centre is 166 meter and the health care centre is in a

dilapidated condition. Further, the distance between the CBWTF unit and the nearest habitation is 184 meter. But now, as per the revised plan, keeping same geo-coordinates, the back side land will be utilized for the establishment of the CBWTF unit and it is significant to mention that this land is situated on the same Khasra no. 1006.

That the Respondent no 5 is ready to give an undertaking on affidavit affirming that he may not be allowed to operate the CBWTF unit if the buffer zone distance from the source of emission to Prabhakar Rai residence is less than 268 meter and from ANM subcentre is less than 307 meters.

6. **OXYGEN PLANT:**

6.1 The Respondent No. 5 has setup an oxygen bottling plant. It is submitted that the Respondent does not produce oxygen from the air but purchases liquid oxygen and the same is compressed under pressure and filled in the bottles. The whole system undergoes a pressure of $15\text{kg}/\text{cm}^2$. So, there arises no question of mixing any kind of hazardous material.

Furthermore, the answering Respondent is not into production or storage of Nitrogen.

It is submitted that purging oxygen in the incinerator of a bio-medical waste treatment facility significantly increases combustion efficiency. The benefits of Oxygen for the CBWTF are as under:

- **Enhanced Combustion:** Oxygen is a crucial component for combustion, and by introducing additional oxygen into the

incinerator, the combustion process is enhanced. The increased availability of oxygen allows more complete and efficient burning of the waste materials, resulting in higher temperatures and improved combustion performance.

- **Reduced Emissions:** When the combustion process is efficient, it leads to reduced emissions of harmful pollutants. Purging oxygen into the incinerator helps to ensure that the waste materials are thoroughly combusted, leaving negligible unburned or partially burned particles behind. This significantly lowers the emissions of pollutants such as dioxins, furans, and other hazardous substances.
- **Faster Burning:** The introduction of extra oxygen into the incinerator facilitates a faster burning process. This is important in a bio-medical waste treatment facility, where the volume of waste generated can be substantial. With faster burning, the incinerator can handle a larger amount of waste in a given time, increasing the overall capacity and efficiency of the facility.
- **Improved Heat Transfer:** Oxygen enhances the heat transfer process within the incinerator. The increased oxygen concentration creates a more efficient combustion reaction, generating higher temperatures. These elevated temperatures optimize heat transfer efficiency from the burning waste to the surrounding environment, increasing thermal energy recovery and reducing energy losses.

- **Enhanced Safety:** A properly purged incinerator, with a higher oxygen concentration, helps to prevent the accumulation of unburned waste and combustible gases within the system. This reduces the risk of explosions or other hazardous situations, improving the overall safety of the bio-medical waste treatment facility.

Therefore, by utilizing an oxygen bottling plant to purge oxygen into the incinerator, the CBWTF of the answering Respondent can achieve a higher level of combustion efficiency. Without oxygen purging the combustion efficiency remains at 90% but with the introduction of oxygen purging, it goes up to 99.99%. This results in reduced emissions, faster burning, improved heat transfer, and enhanced safety, contributing to an effective and environmentally friendly waste treatment process.

The installation of the incinerator plant in the vicinity of the oxygen plant cannot cause any health hazard. The Respondent refutes the fact that the Oxygen Bottling Plant could cause health hazard it is founded on an unscientific and illogical interpretation. Common Bio Medical Waste Treatment Facility is not a hazard for oxygen plant since now almost every district hospital, after the onset of covid-19 has oxygen plant and bio-medical waste stored in gallery and hospital wards.

7. **PLANTATION:**

It is submitted that there is already thick plantation of 20 meters width on three sides i.e village side, Sub Centre ANM Side and south side). The plantations are Bamboo Tree, Eucalyptus and Teak Plant with height of 15-20 ft.

8. **APPLICABLE LAW:**

8.1 Revised Guidelines for Common Bio-Medical Waste Treatment and Disposal Facilities, 2016

Para 6: Location criteria

*In the context of these guidelines, **buffer zone represents a separation distance between the source of pollution in CBWTF and the receptor** - following the principle that the degree of impact reduces with increased distance. The following parameters may be considered for ascertaining buffer distance on case-to-case basis:*

- (i) potential for spread of infection from wastes stored in the premises.*
- (ii) applicable standards for pollution control and the relative efficiency of the existing incinerators and emission control systems,*
- (iii) potential of fugitive dust emission from incinerators,*
- (iv) potential for discharge of wastewater*
- (v) the potential for odour production,*
- (vi) the potential for noise pollution,*
- (vii) the risk posed to human health and safety due to exposure to emissions from incinerator,*
- (viii) the risk of fire and*
- (ix) Significance of the residual impacts such as bottom ash and fly ash.*

As far as possible, the CBWTF shall be located near to its area of operation in order to minimize the transportation distance in waste collection, thus enhancing its operational flexibility as well as for ensuring compliance to the time limit for treatment and disposal of bio-medical waste as stipulated under the BMWM Rules(i.e., within 48 hours). Also, the location of the CBWTF should be in conformity to the CRZ Norms and other provisions notified under the Environment (Protection) Act,1986. The location shall be decided in consultation with the State Pollution Control Board (SPCB)/ Pollution Control Committee

(PCC). The location criteria for development of a CBWTF are as follows:

(a) A CBWTF shall preferably be developed in a notified industrial area without any requirement of buffer zone (or)

*(b) 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 (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 electing the site for CBWTFs, in such a case, SPCBs/PCCs may refer the matter to CPCB.*

(c) The CBWTF can also be developed as an integral part of the Hazardous Waste Treatment Storage and Disposal Facility (TSDF) subject to obtaining of necessary approvals from the authorities concerned including 'environmental clearance' as per Environmental Impact Assessment 2006 and further amendments notified under the Environment (Protection) Act, 1986, provided there is no CBWTF exist within 150 KM distance from the existing TSDF.

It is submitted that the storage time for CBMW is not beyond 48 hours from the time of generation of waste to its disposal. As the storage time is very limited which is either passed in keeping the same at the source or travel, the relaxation has been provided in the notification for reducing the buffer zone below 500 metres.

It is further important to mention here that if the CBWTF is situated in the notified industrial area, there is no requirement of

any buffer zone even in the event when the habitats are working in the nearby units.

It is submitted that for Hazardous Waste Treatment, Storage and Disposal Facilities, which is mentioned in entry 7(d) of Notification dated 14.09.2006 S.O 1533(E) of Ministry of Environment and Forests mandated the minimum buffer zone of 500meters, however, in the case of CBWTF, the relaxation of distance is provided for.

It is further submitted that the CBWTF is not a pollution-generating unit, rather it is a pollution control facility, which aims at treating the hazardous bio-medical waste generated from the healthcare units.

- 8.2 Notification dated 14.09.2006 S.O 1533(E) of Ministry of Environment and Forests provides for activities requiring Prior Environmental Clearance.

Till 2015, the CBWTF did not form the part of Schedule, however, by an amendment notification dated 17.09.2015 [S.O. 1142 (E)], Bio Medical Waste Treatment facilities was inserted as Entry 7(da).

- 8.3 The UPPCB has stated that there are CBWTFs operated within the state of U.P., in which no CBWTF is established in the residential area.

The answering respondent vehemently denies this averment of the UPPCB. The perusal of precedents set forth by this Hon'ble Tribunal in the O.A. No. 273/2020 in the case of ***Rakesh Kumar & Anr. Vs. Union of India & Ors.*** [Popularly referred to as the Sushila Bio-Medical Waste Treatment Facility case] provides a

clear stance on the matter. In the said case, grievance was that the CBWTF unit is contrary to the siting guidelines. The contention was that the said CBWTF unit was close to the habitation and a school was present at a distance of 150 m from the site. However, the said case was disposed of by the principal bench of the Hon'ble NGT vide its order dated 11.08.2021 adjudicating in favour of the CBWTF unit and the unit is functional since then.

- 8.4 The Hon'ble High Court of Gujarat in Special Civil Application No. 12235 of 2017 has considered the same issue and has held as under:

“the biomedical waste has got to be processed in accordance with the rules and regulations laid down by the Central Pollution Control Board. If, according to the applicants, operating a Bio Medical waste Process Unit is an evil, then ignoring the biomedical waste and allowing it to be disposed of without being processed, is a greater evil and would lead to more health hazard. The importance of the Bio-Medical waste Process Unit should not be undermined, and in my view, the applicants are unnecessarily hyper in this regard. The private respondents have been put to the strictest of the terms for the purpose of functioning and operation of the unit and they can still be put to certain more terms to ensure that the same does not lead to any pollution. The revised guidelines for the Common Bio-Medical Waste Treatment and Disposal Facility, as issued by the C.P.C.B. itself, provide that the buffer zone distance from the notified residential area may be reduced to less than 500 meters by the State Pollution Control Board or the Pollution Control Committee without referring the matter to the C.P.C.B. by prescribing the 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 CBWTFs, in such a case, SPCBs/PCCs may refer the matter to CPCB.

.....It is a settled law that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of “sustainable development. This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy. The adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development.

Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to sustainable development cannot be singled out. Therefore, the concept of sustainable development is to be treated as an integral part of life under Article 21. Weighty concepts like intergenerational equity, public trust doctrine and precautionary principle, which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development. To ensure sustainable development is one of the goals of the Environment (Protection) Act, 1986 and this is quite necessary to guarantee the right to life under Article 21.

If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of life under Article 21. Acknowledgment of this principle will breathe new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance with the directions under the Act.”

9. That it is respectfully submitted that the CBWTF being set by Respondent No. 5 shall be equipped with all the state-of-the-art machinery and best possible pollution abating equipment and

technology. It shall be capable of ensuring that minimal impact is caused to the environment as a result of the operation of the plant and the emissions generated from the plant are going to be well within the prescribed norms. The CBWTF of Respondent No. 5 shall also be a Zero Liquid Discharge (ZLD) unit.

In the light of the above-mentioned submissions, it is most respectfully prayed that the Hon'ble Tribunal may be pleased to reject the Application and permit the establishment of the Bio-Medical Waste treatment facility.

**JKN PURVANCHAL CBWTF WORKS
Respondent No. 5**

Through



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