

**IN THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI, AT NEW DELHI
APPEAL NO. 04 OF 2024
UNDER SECTION 14 AND SECTION 18 OF THE NATIONAL GREEN
TRIBUNAL ACT – 2010**

IN THE MATTER OF

INDOTECH WASTE SOLUTION

.....APPELLANT

VERSUS

STATE LEVEL ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY, UP AND OTHERS

.....RESPONDENTS

INDEX

Sl. No.	Particulars	Pages
01.	WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 07	02-13

DRAWN BY



Gaurav Kumar Bansal
Advocate
For
Respondent No. 07
A26, Basement
Jangpura Extension
New Delhi – 14

New Delhi
29/04/2024

**IN THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI, AT NEW DELHI
APPEAL NO. 04 OF 2024
UNDER SECTION 14 AND SECTION 18 OF THE NATIONAL GREEN
TRIBUNAL ACT – 2010**

IN THE MATTER OF

INDOTECH WASTE SOLUTION

.....APPELLANT

VERSUS

STATE LEVEL ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY, UP AND OTHERS

.....RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 07

In the present Appeal, Appellant has submits the following requests to this Hon'ble Court:

- To set aside the impugned orders dated 20/12/2023 (EC & CTE) issued by UPSEIAA and UPPCB in favor of Respondent No. 07
- To direct the authorities to produce the records pertinent to this matter.
- To initiate a disciplinary inquiry against the officials of Respondent No. 01 (UP SEIAA) and Respondent No. 04 (UPPCB), who are alleged to have misused the legal provisions under the EIA Notification 2006 and the Revised Guidelines of CPCB, ostensibly to provide undue advantages to Respondent No. 07.
- To award the costs of this appeal to the Appellant.
- To grant any other relief that the Hon'ble Tribunal deems fit and appropriate.

That in support of its appeal, appellant has made the following Submissions:

- A. The issuance of the Impugned Directions (EC and CTE) by the concerned authorities failed to consider the report by Special Secretary, Environment, Mr. Gaurav Verma IAS, indicating a significant oversight. (Refer to Para 1.3, Page 10)
- B. This Hon'ble Tribunal, in its judgment dated 31/07/2023 in O.A. 622 of 2022 titled 'Aniruda Panwar V/s MoEF & Ors,' pronounced that the permissions previously granted to R-7 were illegal, null, and void, thereby having no legal effect & ISSUES REGARDING RESUE OF ToR dated 17/08/2021 (Para 1.3, Page 10)
- C. Respondent No. 07 erroneously reported in its application dated 07/08/2023 that the facility was to be located on Plots E-25, E-26, and E-27, despite not having acquired Plot E-27. Furthermore, the ToR granted on 10/08/2023 was based on these incorrect and misleading submissions. (Refer to Para I, Page 12)
- D. The total land area of Plots E-25 and E-26 is 3601 sq meters, which contradicts the CPCB Guidelines stipulating a minimum requirement of 1 Acre for the development of a CBWTF. (Refer to Para I, Page 12)

E. The ToR granted on 17/08/2021, and subsequently on 10/08/2023, should be considered invalid, as their issuance is in direct contravention of the directives from the Hon'ble NGT. (Refer to Para III, Page 15)

F. The GAP Analysis Report dated 03/06/2022 is problematic for two reasons: it failed to mention the name of the Appellant, M/s Indotech Waste Solution as highlighted in the report prepared by Special Secretary, Mr. Gaurav Verma on 01/03/2023, and it does not align with the established rules. (Refer to Page 23)

In light of the above submissions, the appellant urges this Hon'ble Court to consider the gravity of the alleged oversights and misapplications of law as presented, and to adjudicate accordingly in favor of the appellant to uphold justice and legal integrity.

It is respectfully submitted that in view of the abovementioned submissions, Respondent No. 07 wishes to make the following submissions:

Regarding the Overlooked Special Secretary Report
(Impugned Directions EC and CTE):

With respect to the above allegation, Respondent No. 07 wishes to submit that the recommendations made in the report by the Special Secretary, Mr. Gaurav Verma IAS, have not yet been considered by the appellate authority and thus lack finality. Case of the answering Respondent is that relying on a report whose findings have not been adopted by the authority is invalid, hence the claim that the Environmental Clearance dated 20/12/2023 and Consent To Establish dated 20/12/2023 were issued without considering this report should be dismissed.

Regarding the observations made by Honble National Green Tribunal in Judgment dated 31/07/2023 issued in Original Application No. 662 of 2022 & REUSE OF ToR DATED 17/08/2021

That in respect to the observations made by this Honble Court in Original Application No. 622 of 2022, Respondent No. 07 wishes to submit that while this Honble Tribunal found procedural irregularities and declared the EC and CTE null and void, it did not quash the ToR issued on 17/08/2021.

It is respectfully submitted that this Honble Court allowed Respondent No. 07 to reapply for EC and CTE, following legal and environmental guidelines, including those from the CPCB.

Further, it is also important to mention here that Ministry of Environment, Forests and Climate Change, Union of INDIA vide its Office Memorandum No. J-11013/41/2006-IA-II (I) part) dated 29/08/2017 stated that validity period of ToR for all the projects / activities is 3 years and for River Valley and HEP Projects is 4 years.

That thereafter the Ministry of Environment, Forests and Climate Change, Union of INDIA also issued a Gazette Notification vide S.O 751 (E) dated 17/02/2020 stating that the Terms of Reference for the project or activities except for River Valley and Hydro-electric projects, issued by the concerned regulatory authority, shall have the validity of 04 years from the date of issue.

It is also respectfully submitted in Agenda-1 of its 810th meeting SEAC -1 also discussed the issue about ToR dated 17/08/2021. For the sake of convenience of this Honble Tribunal relevant part of the same is reproduced herein: **(Page No. 1362 of Record provided by SEIAA)**

RESOLUTION AGAINST AGENDA NO-01

The committee noted that a complaint letter of Shri Chanderjeet Singh, Partner, M/s Indo Tech Waste Solutions dated 17/11/2023 have been received through email by the committee members.

The committee decided to share the aforesaid complaint letter with the Project Proponent/ Consultant. The Project Proponent/Consultant informed the committee that they will be able to give a written reply regarding the aforesaid complaints today itself, 20/11/2023. The committee deliberated that the case shall be taken after receiving a satisfactory reply in this regard.

The project proponent/ consultant has submitted a points-wise reply of the complaint letter dated 17/11/2023 made by the complainant. The point wise details are given below:

S. N.	Averment by the complainant	Response by the proponent against the averment
6	<i>The PP has also obtained ToR on the same documents which were submitted by the PP earlier and based upon the facts in the matter of O.A.622/2022 Hon'ble NGT was to pass an order to revoke and cancel all granted permission such as EC. CTE/CTO or any other permission based upon the granted EC</i>	<i>It is pertinent to mention that as per the MoEFCC OM dated 29 August 2017, and MoEFCC OM dated 08th June 2022, the terms of reference (ToR) and baseline study are valid.</i>

--	--	--

The committee opined that the proponent has obtained the requisite permission from CPCB for establishing the CBWTF on a plot size of less than one acre, ensuring the compliance with the directions of the Hon'ble NGT in Para 77, 78 and 79 of the order dated 31/07/2023 and considering the chronology of the facts and reply of the compliant letter.

After detailed analysis, the committee did not find any merit in the complaint and recommended the grant of environmental clearance for the project proposal along with standard environmental clearance conditions prescribed by MoEF&CC, Govt. of India.

Case of the answering Respondent is that SEAC in its meeting dated 20/11/2023 has already considered the issue regarding ToR dated 17/08/2021 and after getting satisfied that the same is valid has recommended the EC in favour of answering respondent.

It is also important to mention here that the appellant has also never challenged the validity of ToR dated 17/08/2021 in its appeal.

In view of the facts and circumstances mentioned above, case of the answering respondent is that Respondents has rightly recommended the EC dated 20/12/2023 in his favour and the present appeal is liable to be dismissed.

About the ToR dated 10/08/2023 and Misleading

Submissions:

On the issue of second ToR dated 10/08/2023, answering Respondent wishes to submit that they withdrew the ToR dated 10/08/2023 and the same is clear from the fact that the Environmental Clearance dated 20/12/2023 also mentioned earlier ToR dated 17/08/2021 only, thus rectifying any potential misleading information regarding the land plots.

Land Requirement and CPCB Guidelines:

That in response to the allegation regarding violation of Land Requirement criteria as provided under the CPCB Guidelines, answering respondent wishes to submit that the CPCB relaxed the land requirement from 1 Acre to 0.89 Acre with additional conditions.

In the present case, Respondent No. 07 has set up his CBWTF in two plots i.e. E25 and E26 of Babrala Industrial Area, Babrala, District Sambhal.

Answering Respondent has learnt from the information uploaded on the OFFICIAL WEBSITE OF DISTRICT SAMBHAL (<https://sambhal.nic.in/demography/>) that as per 2011 Census, total population of District Sambhal was around 2192933 (around 22 Lakh).

Further, it is also important to mention here that vide its letter dated 19/09/2022, **Uttar Pradesh State Industrial Development Authority (UPSIDA)** changed the nature / category of PROJECT LAND as 'BIO MEDICAL WASTE TREATMENT PLANT'.

Case of the applicant is that after getting satisfied that **(a)** Estimated population of District Sambhal must have crossed 25 Lakhs atleast in the recent years from 22 Lakhs (as per 2011 Census) and **(b)** UPSIDA vide its letter dated 19/09/2022 changed the nature of two Industrial Plot i.e. E25 and E26 allotted to answering respondent from 'UNIT FOR FABRICATION OF INDUSTRIAL EQUIPMENTS' to 'BIO MEDICAL WASTE TREATMENT PLANT', the UPSEIAA and UPPCB rightly and lawfully issued Environmental Clearance dated 20/12/2023 and Consent to Establish dated 20/12/2023 respectively, hence the appeal filed by appellant is liable to be dismissed.

Further, it is also important to mention here that Appellant has never prayed for the quashing of CPCB letter dated 17/11/2023.

Gap Analysis Report Concerns:

Appellant by way of its Appeal has alleged that UP Pollution Control Board and the UP State Environment Impact Assessment Authority has failed to conduct the required Gap Analysis.

Further, the appellant is also aggrieved by the fact that the GAP ANALYSIS REPORT has not included its name as observed by the Report dated 01/03/2023 issued by Special Secretary Mr Gaurav Verma.

On the above mentioned aspect, answering respondent wishes to make the following submissions:

- i. It is respectfully submitted that Central Pollution Control Board has filed its affidavit in the present case and has stated that as per CPCB guidelines for CBWTF, prior to allow new CBWTF, State Pollution Control Boards are required to conduct GAP ANALYSIS with respect to coverage area of the BIO MEDICAL WASTE GENERATION and also projected over a period of next ten years, adequacy of existing treatment capacity of the CBWTF in each coverage area of radius 75 km.

- ii. That Uttar Pradesh State Pollution Control Board vide its letter dated 03/06/2022 submitted the GAP ANALYSIS REPORT wherein it has been specifically mentioned that there is a Gap of 2280.55 kg in the Bio Medical Waste generated from the said covered districts and the capacity of the bio medical waste management systems in the said Districts.

It is also important to mention here that SEAC in its 810th meeting also considered the said fact and taking into consideration the said huge gap, recommended EC in favour of Respondent No. 07. **(Page 1362 of the Record provided by UPSEIAA)**

- iii. That after being getting satisfied with GAP ANALYSIS REPORT issued by UPPCB, UPSEIAA has issued the Environmental Clearance dated 20/12/2023.
- iv. That as far as grievance of appellant that name of their CBWTF i.e. INDOTECH SOLUTION PRIVATE LIMITED has not been included in GAP ANALYSIS report despite of the observation of Gaurav Verma Committee Report, answering respondent wishes to submit that the observations made in Report dated 01/03/2023 are of recommendatory nature only and till date the Appellate Authority has

not accepted the said recommendations, hence UPPCB has rightly not included the name of Appellant CBWTF.

- v. One more important fact which Answering Respondent also wishes to highlight is that till date neither the UPSEIAA has granted any Environmental Clearance in favour of Appellant nor UPPCB has issued any Consent to Operate, hence the recommendation of Special Secretary, Environment to include the name of Appellant CBWTF in absence of EC and CTE is not only irrational and arbitrary but is also illegal.

In view of the submissions made above, answering respondent requests this Honble Court to dismiss the appeal with costs.

Drawn and Filed By



Gaurav Kumar Bansal
Advocate
For
Respondent No. 07
A26, Basement
Jangpura Extension
New Delhi – 14

New Delhi
29/04/2024