

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE, AT PUNE

ORIGINAL APPLICATION NO. 14/2020

Mohan Nanasaheb Kudale

...APPLICANT

V/s

Pune Municipal Corporation

And others

... RESPONDENTS

WRITTEN SUBMISSIONS TO
THE REPORT OF THE COMMITTEE

MAY IT PLEASE BE THE HON'BLE TRIBUNAL

1. The Applicant is in receipt of the report as filed by the Hon'ble Committee constituted by this Hon'ble Tribunal. The Applicant herein would like to reply to the said Committee by filing the present reply.
2. The Advocate for the Applicant attended the site inspection conducted by the Committee and had submitted a detailed representation to the Committee. The representation has been taken care of by the Hon'ble Committee in the present report. However, the observations made on the site, the Applicant would like to raise the same before this Hon'ble Tribunal for the kind consideration, as the same is of utmost importance for adjudication of the present application. The entry to site is restricted, therefore

villagers were not aware about the fact that the in spite of the order dated 11th July 2013 passed by Hon'ble High Court in Writ Petition No.5084 of 2013 the Respondent No.1 has gone ahead made the incinerator plant operational and have also operating Waste Segregation Plant and RDF Plant without obtaining any statutory permission at the site which at close proximity of River Mula Mutha River which is second most polluted river in Maharashtra. The matter relating to pollution in river Mula Mutha River is also pending before this Hon'ble Tribunal (OA No. 55/2015) in which various directions has been passed.

3. The Applicant states and submits that on 3rd May 2014 Urban Development Department, Government of Maharashtra rejected the application dated 2nd January 2014 made by Respondent No.1 for installation of Incinerator Plant at the aforesaid site. Urban Development Department, Government of Maharashtra stated that the said project was constructed without prior permission from Respondent No.2, the project is located **just 300 meters away from Mula Mutha River** and directed Respondent No.1 to dismantle the incinerator plant and shift it to a different location. No compliance of the said observation has been made by Respondent No.1 till date.

4. It is submitted that fact is admitted by the joint committee that the Incinerator plant was installed in the year 2013 without obtaining any statutory permission but became operation only from the month of July 2020 and have incinerated only 42 plants till date therefore the Joint Committee has observed that “During the site inspection it was observed that the project is located in close proximity (within 300 meters) of Mula Mutha River (one of the most polluted River in Maharashtra) and the residential buildings under construction. The project is surrounded by the residential projects. No buffer zone with thick green belt had been provided between the incinerator and residential buildings. *The installation of additional incinerator within close vicinity of residential buildings/ River even when the load is very less may not be justifiable*”.

5. The Applicant states that the Clarification issued by Ministry of Environment, Forest and Climate Change Ref No. D.O. No. 22-19/2017-IA-III clearly mentions that

“If the activities of incineration, RDF making and waste to energy plant are proposed along with the new site of Solid Waste

disposal/landfill, it is advisable to obtain an integrated prior environmental clearance for these projects.

*It has been seen that locating a landfill site or municipal solid waste disposal site is a contentious issue and there is a tendency to locate them far from the habitation but **near forest, rivers, ponds, wetland and low lying area** are critical from environmental point of view, it may not be appropriate to exempt this activity of municipal solid waste disposal site or land fill site from requirement of prior environmental clearance.* Hereto marked and annexed as Annexure 1. Is copy of clarification issued by MOEF&CC. In view of the above Respondent No. 1 have operated Incinerator Plant, Waste Segregation Plant and RDF making plant without obtaining prior environment clearance in spite of the site being only 300 mtrs away from Mula Mutha River and Residential Buildings. Copy of the letter dated 3rd July 2017 is annexed hereto and marked as **ANNEXURE – A-1.**

6. It is submitted that, the Committee has stated that, the incineration of dead plants was deliberated by the Respondent No.4 and the incinerator units are in general could be used for activities under Schedule 7 (d) and 7(i) of the Environment Impact Assessment

Notification, 2006. It is also stated by the Committee that, the incineration of dead animals would have similar environmental impacts and does not have an express provision under any Schedule of the Environment Impact Assessment Notification, 2006. The stand taken by the Respondent No.4 is just to create confusion as the plant is operated by a local body ignoring the provision of 7 (d) of the EIA Notification of 2006, which is commonly known as the Common Hazardous Waste Treatment, Storage and Disposal Facilities (TSDF) under which "all integrated facilities having incineration & landfill or "incineration alone".

7. It is submitted that, the Respondent No.3 herein had granted the land to the Respondent No.1 vide letter dated 9th November 1983 for exclusive use of erection of cattle shed. The Respondent No.1 has intentionally not utilised the land for the construction of cattle shed, whereas, it has utilised the said land for the construction for integrated waste disposal site including incineration plant, RDF making plant and waste segregation plant.
8. Be that as it may, the Respondent No.2 had rejected the application for grant of consent to establish of the Respondent No.1 for

installation of the incineration. However, Respondent No. 2 for the reasons best known to them have granted consent to operate directly for the incineration plant.

9. It is submitted that, the Hon'ble High Court of Bombay in PIL No. 185/2015 had recorded that, the Urban Development Ministry had written letter to the Respondent No.3, that, in case if the Respondent No.1 fails to construct the cattle shed at the said land, the land shall be reverted to the Government within a period of 6 months. Copy of the said order is annexed hereto and marked as ANNEXURE – A-2. Decision of the State Government is pending on the said issue till date.

10. It is submitted that, during the visit it was observed that, the Respondent No.1 has commenced operation of an illegal Waste Segregation Plant, RDF Plant opposite the incineration unit. It is submitted that, the Respondent No.1 has not received any sort of authorisation from any of the authorities for operation of the said RDF Plant. In view of the above as Waste Segregation Plant, RDF Plant and the Incineration plant, the said shall be considered as

integrated plants and are thus required to obtain an environmental clearance under the Environment Impact Assessment Notification, 2006. The Respondent No.1 has deliberately not sought permissions and authorisations as the same would require Public Hearing. During the Public Hearing the project will definitely be opposed and hence, the illegalities of the Respondent No.1 will come to a grinding halt. Aerial distance of the site is not more than 150 meters from the residential buildings.

11. The Applicant submits that Hon'ble NGT, Principal Bench in its Judgement dated 25th April, 2013 in Application No. 15/2013 in the matter of Satpal Singh & Ors. VS Municipal Council Gardhiwala & ors. It is observed that "The Provisions of Rule (3)(xv) of The Municipal Solid Waste (Management & Handling) Rules 2000 defines solid waste as follows:

(xv) "Municipal Solid Waste includes commercial and residential waste generated in a municipal or notified area in either solid or semi-solid form excluding industrial hazardous wastes but including treated bio-medical wastes"

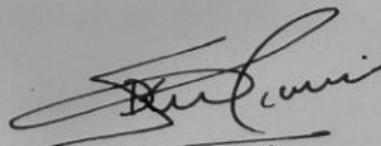
The carcasses and remains of dead animals are thus part of Municipal Solid waste which are to be handled and managed as per the Municipal Solid Handling) Rules, 2000.

12. The Applicant states that recently the Hon'ble Supreme Court in the case of Ambelic Pharmaceuticals v. Rohit Prajapati and others with the bench comprising of Justice D. Y. Chandrachud and Justice Ajay Rastogi had passed a judgement observing that "Ex Post Facto Environment Clearance is unsustainable in law." Because naturally one cannot ascertain what the likely consequences are after the damage is already done and the projects proponents also have been proactively concealing violations.
13. Thus, from the observations of the Committee, it is clearly stated that the Plant is illegal and thus required to be relocated at a different site by the Respondent No.1 after obtaining a prior Environment Clearance. The Applicant further submits that when the law protector becomes the law violators, how law will be protected. The basic principle of rule of law is to follow rule/ law and not to break or violate it. For the negligence of those to whom public duties have been entrusted can never be allowed to cause public mischief. Public servants if committing wrong in discharge

of statutory functions and later on if it was found not be in accordance with law within the knowledge of the officer concerned then it cannot be said to be the work and duty within the definition of State Act. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of powers results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it.

PUNE

DATE 26/10/2020



ADVOCATE FOR THE APPLICANT

अजय नारायण झा
AJAY NARAYAN JHA, IAS



सचिव
भारत सरकार
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Secretary
Government of India
Ministry of Environment, Forest and Climate Change

D.O.No. 22-19/2017-IA-III

3rd July, 2017

Dear Shri. Mishra,

Please refer to the D.O. letter No. Q-15014/2/2017-CPHEEO dated 14.02.2017 requesting to revisit the process of prior environmental clearance for Solid Waste Management Treatment and Processing Facilities.

2. The matter has been examined by the Expert Group constituted in the Ministry in its meeting held on 14.06.2017. The Expert Group has submitted its recommendations. The recommendations of the Expert Group have been examined in the Ministry.
3. The Environment Impact Assessment Notification, 2006 in the Schedule at item 7(i) mentions Common Municipal Solid Waste Management Facility (CMSWMF) as Category B project for which State Environment Impact Assessment Authority (SEIAA) is empowered to appraise the project for grant of prior environmental clearance.
4. The municipal solid waste management involves various steps like door to door collection, segregation, composting, refuse derived fuel (RDF) making, waste to energy generation through waste to energy plants and disposal in scientific landfills. The above activities, except landfill site, if proposed as standalone activities are not covered under item 7(i) of EIA Notification, 2006, hence do not require prior environmental clearance. In case the activities of composting, RDF making and waste to energy plant (up to capacity of 15 MW) are proposed at an existing landfill site, they do not attract the provisions of the EIA Notification, 2006.
5. If the activities of incineration, RDF making and waste to energy plant are proposed along with the new site of solid waste disposal/ landfill, it is advisable to obtain an integrated prior environmental clearance for these projects.

contd...2/-

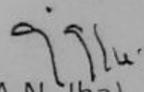


6. It has been seen that locating a landfill site or municipal solid waste disposal site is a contentious issue and there is a tendency to locate them far from the habitation but near forest, rivers, ponds, wetlands and low lying areas etc. which are ecologically sensitive sites and require proper environmental management. Since, the forests, rivers, ponds, wetland and low lying areas are critical from environmental point of view, it may not be appropriate to exempt this activity of municipal solid waste disposal site or landfill site from the requirement of prior environmental clearance.

7. I believe this will expedite the achievement of the objectives of the Swachh Bharat Mission.

With regards,

Yours sincerely,


(A.N. Jha)

Shri Durga Shankar Mishra
Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110011.



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ANNEXURE - A-2. 10-pil189-15.doc

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.189 OF 2015

Nilsh S. Goud

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.Prasad Kulkarni for the Petitioner.

Mr.M.M. Pabale, A.G.P. for the State - Respondent.

**CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.****DATE : 3RD MAY, 2019.****P.C. :-**

1. It is unfortunate that for a writ petition filed in the year 2015 resulting in notice be issued to the respondents on 23rd October, 2016 and service effected, till date counter affidavit has not been filed by the respondents.
2. We are left with no option but to treat the averments made in the public interest litigation to be correct on account of non-traverse thereof.
3. Filed in public interest and referring to an allotment order dated 9th November, 1983 annexed as Annexure "A" to the public

interest litigation, it is pleaded that the land referred to in the letter was allotted by the State Government through the Collector, District Pune to the Municipal Corporation, Pune with a direction that within six months the Corporation shall construct cattle sheds on the land allotted, failing which the land shall revert to the Government. It is pleaded that within six months time granted by the Collector, the Corporation did not erect cattle shed on the land and in the year 2012 passed a resolution to set up an incinerator on a part of the land. The said decision of the Corporation has been annexed as Annexure "E" to the public interest litigation.

4. On aforesaid noted pleadings, prayer made in the public interest petition is to direct the State Authorities to take back possession of the subject land for the reason the Pune Municipal Corporation has failed to comply with the condition of allotment incorporated in the letter of allotment annexed as Annexure "A".

5. In view of the fact that the petitioner has made good the pleadings in the petition with reference to the documents, source whereof is the State Government, we dispose of the petition directing the Collector, District Pune to treat the petition as a representation to him and after hearing the Pune Municipal Corporation, pass necessary orders. If the Collector finds that the condition of the allotment has been breached, he shall pass necessary directions.



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Compliance shall be made by the Collector within three months from today.

(N.M. JAMDAR, J.)

(CHIEF JUSTICE)