

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Misc Application in Disposed of Cases No. 106/2023
In Original Application No. 694/2022

Bhupinder Singh Applicant

Versus

Govt. of NCT of Delhi Respondent

Date of hearing: 05.08.2024

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: None
Respondents: Ms. Jyoti Mendiratta Advocate for GNCTD.
Mr. R. Bala Subramaniam, Senior Advocate (through VC) with
Mr. Ankur Mishra Advocate for Delhi Cantonment Board with Mr.
Kapil Goyal, CEO.
Ms. Manreet Kaur, Advocate for Respondent No. 4 with Mr. Ajay
Palia and Ms. Jasmeet Kaur, Directors.
Mr. Balendu Shekhar and Ms. Tanisha Samantha, Advocates for
DPCC.

ORDER

1. The Original Application (hereinafter referred to as 'OA') 694/2022 was registered on a letter petition dated 07.07.2022 sent by Bhupinder Singh complaining that Waste Treatment Facility set up in front of Gurudwara and Temple is emitting foul smell and causing air pollution posing serious health hazards to residents of the locality particularly children who are falling ill and having breathing problem.

2. Tribunal took cognizance of the matter in exercise of *suo-moto* jurisdiction and registered OA under Sections 14 and 15 of the National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') in

view of the law laid down by Supreme Court in “*Municipal Corporation of Greater Mumbai vs. Ankita Sinha &Ors.*” reported in (2022) 13 SCC 401.

3. Taking cognizance of the matter on 31.10.2022, Tribunal found it appropriate to obtain a factual report and for the purpose constituted a Joint Committee comprising Delhi Pollution Control Committee and District Magistrate (South-West), Delhi.

4. The said Committee was directed to submit factual report within one month.

5. Pursuant to order dated 31.10.2022, Joint Committed submitted report dated 01.12.2022 stating that said facility was installed by M/s. XAPER Waste Solutions Private Ltd. on behalf of Delhi Cantonment Board. Observations made by Joint Committee in respect to the functioning of the said facility are as under:

“ACTION TAKEN REPORT IN COMPLIANCE TO THE ORDER DATED 31.10.2022.

x x x x x x

4. Meeting of the Joint Committee on 11.11.2022

Sh. Bhupinder Singh informed the Joint Committee that due to Waste Processing Facility which is located opposite to Gurudwara and Mandir in Sadar Bazar, it is difficult to breathe due to smell from the Plant installed by M/s XAPER Waste Solutions Pvt. Ltd. on behalf of Delhi Cantonment Board. He also informed that the said problem is since establishment of the said facility.

Representatives of Project Proponent and Delhi Cantonment Board briefed to the Joint Committee about the waste processing facility of 20 TPD Capacity installed at Sadar Bazar, in Delhi Cantonment Area and measures taken for control of Smell / Odour from the Plant. It was informed that there is no requirement of presegregation of waste for processing the Municipal Solid Waste in the said facility which is based on aerobic decomposition of the waste. Aerobic decomposition of the waste releases majorly Carbon Dioxide instead of Methane and therefore smell/odour is not as bad as compared to methane. For suppression of smell /odour from the facility they are using

deodorizers which is sprayed naED one Anti-Smog Gun installed at the facility.

Representatives of DCB informed that the waste processing facility has been installed by M/s XAPER Waste Solutions Pvt. Ltd. The facility has been installed after the study on Pilot Plant at another location in Delhi Cantonment Area in consultation with Principal Scientific Advisor, Govt. of India. The said facility does not require pre-segregation and process mixed Municipal Solid Waste. The facility does not generate leachate. It was informed that three more such machines (Xaper Machines) of 20 TPD capacity each are proposed to be installed by DCB through M/s XAPER Waste Solutions Pvt. Ltd., at Kirby Place. It was also informed that DCB has already proposed for shifting of the existing 20 TPD Waste Processing Facility at Sadar Bazar to Kirby Place proposed site for additional three facilities as mentioned above and shifting may take 3-4 months after placing of order by DCB. Layout Plan of the site for installation of three new proposed machines (Xaper Machines) and one existing machine to be shifted from Sadar Bazar was also shown during the meeting and enclosed as **Annexure-II**.

5. Visit of Waste Processing Facility at Sadar Bazar, Opposite to Gurudwara and Temple, Delhi Cantonment, New Delhi.

After meeting in the Chamber of District Magistrate (New Delhi) on 11.11.2022, the Joint Committee along with participants in the said meeting including Sh. Bhupinder Singh visited the site of the Waste Processing Facility at Sadar Bazar, Opposite to Gurudwara and Temple, Delhi Cantonment, a Delhi -110010 on 11.11.2022.

Report of the Joint Committee comprising of DPCC & District Magistrate (New Delhi) on M/s XAPER Waste Solutions Pvt. Ltd. (Waste Processing Facility) at Sadar Bazar, Opposite to Gurudwara and Temple, Delhi Cantonment, New Delhi - 110010 is enclosed as **Annexure-III**.

Following are the brief of observations and information gathered by the Joint Committee from the Project Proponent / DCB officials during the visit on 11.11.2022 and mentioned in the said Report of the Joint Committee.

The Waste Processing Facility is having Sorting cum Composting Machine of 20 TPD capacity and other related Machinery installed in covered shed of size about 40 meter x 16.5 meter x 7.6 meter. Shed area is about 660 square meter. One Supervisor, 3 Skilled workers & 7 Semi / unskilled workers Have been reportedly deployed for the operation of the facility. The facility is located about 50 meter from the Gurudwara which is opposite to the facility across the road.

- (i) The Waste Processing Facility is being operated and maintained by M/s XAPER Waste Solutions Pvt. Ltd. During the visit the facility was not in operation. It was informed that the facility was not operated on the request of Gurudwara people due to Gurupurab since 06.11.2022.

- (ii) *One Anti-Smog Gun (ASG) found installed near the Conveyor Belt outside of the Shed used for receiving fresh Municipal Solid Waste. ASG was found operating during the visit and spraying towards road side.*
- (iii) *List of main Plant & Machinery installed at the facility as provided by the Project Proponent enclosed as Annexure-3 of the above mentioned Annexure- V and briefed below:*

Slow-Moving Feeding Conveyor (1No.), Pre-Sorting Trommel (1 No., Sieve Size 120 mm), Feeding Conveyor (5 No.), Forced Feeder (1 No. Sieve Size 80 mm), Accelerated Aerobic Decomposer (AAD) Bioreactor (1 No.), Combustible Conveyor (2No.), Hydraulic Compactor (2No.), Compostable Conveyor (3 No.), Compost Sieving System (1 No., Sieve Size 4 mm), Recyclable Storage Bin (3 No.), Receptacles (5 No.) and Control Panel (1 No.).

- (iv) *It was informed by the representative of the Project Proponent present during the visit that the facility is in operation since July, 2022. Summary of performance data of XAPER machine installed at the facility since 1st July, 2022 as provided by the Project Proponent enclosed as Annexure-4 of the above mentioned Annexure-V. As per the said data, Total 1314 Metric Tons of mixed waste was received at the facility since 01.07.2022 and 285.28 Metric Tons of (Combustible & Compostable) material was produced. Reduction in waste quantity was 1028.72 Metric Tons (78.28 %). Project Proponent claims that there is no Methane emission and Leachate generation from the said facility. It was informed that Compost generated from the Plant is used in Horticulture and Green Belt of the Delhi Cantonment Board area. Combustible fraction generated from the facility is disposed through IPCA etc. for use in cement factories.*
- (v) *Combustible material & Compost found stored within the facility. It was informed that Combustible material (About 10 Metric Tons) & Compost (About 5 Metric Tons) stored in the facility was produced after processing the mixed municipal solid waste in the said facility.*
- (vi) *The Joint Committee observed that though the Waste Processing Facility was not in operation however, smell /odour observed inside the facility during the visit.*

Some nearby residents present during the visit at the site also informed that when the plant operates they face smell/odour problem and the problem aggravates during night.

- (viii) *The Joint Committee also visited the new proposed site at Kirby Place near Drain / Unauthorized Settlements identified by ne for shifting the abovementioned existing Waste Processing Facility at Sadar Bazar and installation of three new proposed Xaper Machines. It was informed that DCB will provide separate approach road for entry at the*

proposed site. The location of the proposed site seems to be appropriate for said facilities.

6. *That as per the report of the Joint Committee, the Joint Committee is of the view that there is problem of smell / odour from the said facility and therefore recommends shifting of the said facility from the present location at Sadar Bazar in Delhi Cantonment to some other location / site already 'identified by Delhi Cantonment Board at Kirby Place near Drain. Delhi Cantonment Board to shift the said facility at the earliest at the most within 4 Months period. Till the said Waste Processing Facility is shifted, the Project Proponent should take necessary precaution and measures for controlling/ minimizing smell/ odour (by spraying deodorizers/ other control measures) from the said facility.*
7. *That Report of the Joint Committee comprising of DPCC & District Magistrate (New Delhi) including visit on 11.11.2022 of M/s XAPER Waste Solutions Pvt. Ltd. (Waste Processing Facility) at Sadar Bazar, Opposite to Gurudwara and Temple, Delhi Cantonment, New Delhi -110010 has been sent to DPCC, District Magistrate (New Delhi), the Chief Executive Officer, Delhi Cantonment Board and Director of Project Proponent (M/s XAPER Waste Solutions private Limited, Sodal-Saipur Road, Jalandhar, Punjab-144004) vide letter dated 25.11.2022.*

Copy of the letter of DPCC dated 25.11.2022 is enclosed as Annexure-IV.

8. **Requirement of Consent under the Air & Water Acts and Authorization under the Solid Waste Management Rules, 2016.**

- (i) *As per the provisions of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25/ 26 of the Water (Prevention and Control of Pollution) Act, 1974, as amended to date, Delhi Cantonment Board / Project Proponent (M/s Xaper Waste Solutions Pvt. Ltd) were required to obtain Consent to Establish and Consent to Operate under the said Air & Water Acts from DPCC in respect of the above mentioned Waste Processing Facility.*
- (ii) *As per the provisions of Rule 15 of the Solid Waste Management Rules, 2016 (Duties and responsibilities of local authorities and village Panchayats of census towns and urban agglomerations). The local authorities and Panchayats shall:*

“Rule 15 (y) make an Application in Form I for grant of Authorisation for setting up waste processing, treatment or disposal facility, if the volume of waste is exceeding five metric tonnes per day including sanitary landfills from the State Pollution Control Board or the Pollution Control Committee, as the case may be”
- (iii) *As per the provisions of Rule 19 (3) of the Solid Waste Management Rules, 2016 (Criteria for Duties regarding setting-up solid waste processing and treatment facility):*

“The operator of the facility shall obtain necessary approvals from the State Pollution Control Board or Pollution Control Committee”.

- 9.** *That DPCC vide letter dated 16.08.2021 had informed the Local Authorities / Municipal Corporations in Delhi including Delhi Cantonment Board referring the above mentioned provisions under the Air & Water Acts and Solid Waste Management Rules, 2016 regarding requirement of Consent to Establish, Consent to Operate under the Air & Water Acts and Authorization under the Solid Waste Management Rules, 2016. However Neither Delhi Cantonment Board nor Project Proponent (M/s Xaper Waste Solutions Pvt. Ltd) has applied for Consent to Establish and Consent to Operate under the Air & Water Acts and Authorisation under the Solid Waste Management Rules, 2016 to DPCC in respect of above mentioned facility.*
- 10.** *That in view of the Report of the Joint Committee comprising of DPCC & District Magistrate (New Delhi) and also considering the provisions of the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and Solid Waste Management Rules, 2016, DPCC has issued a Show Cause Notice (i) Under Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 & Under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and (ii) Under Section 5 of the Environment (Protection) Act, 1986 read along with the Solid Waste Management Rules, 2016 to the Chief Executive Officer of Delhi, Cantonment Board and Director of XAPER Waste Solutions Private Limited (Project Proponent) on 30.11.2022 giving them 15 days time for reply.*

Vide said show cause notice following directions have also been issued to Delhi Cantonment Board and XAPER Waste Solutions Private Limited (Project Proponent).

- (i) To shift Waste Processing Facility of 20 TPD Capacity at Sadar Bazar, Opposite to Gurudwara and Temple, Delhi Cantonment, New Delhi -110010 from its present location at Sadar Bazar in Delhi Cantonment to some other location / site already identified by Delhi Cantonment Board at Kirby Place within four months period i.e. by 31st March, 2023.*
- (ii) Till the abovementioned Waste Processing Facility shifted to the new location, the Project Proponent (XAPER Waste Solutions Private Limited) shall take necessary precaution and measures for controlling/minimising smell/odour (by spraying deodorizers/other control measures) from the said facility.*
- (iii) Delhi Cantonment Board / XAPER Waste Solutions Private Limited shall obtain prior Consent to Establish under the Air & Water Acts before Shifting and Establishing the abovementioned facility at the new location and also obtain Consent to Operate under the Air & Water Acts and Authorisation under the Solid Waste Management Rules,*

2016 from DPCC before starting the operation at new location.”

6. Report clearly shows that statutory Consents under Water(Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act, 1974**') and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act, 1981**') was not obtained and there was also violation of Solid Waste Management Rules, 2016 (hereinafter referred to as '**SWM Rules, 2016**') read with Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**').

7. Commanding Officer, Delhi Cantonment Board has filed short affidavit dated 17.02.2023 giving details of the steps taken to avoid inconvenience to the people as under:-

- “a. The machine is housed in a large closed shed of size about 660. Square meter, located within a properly walled compound, cutting it off from the rest of the area, at the extreme end of eastern lank of Sadar Bazar, Delhi Cantt. This facility is being operated and maintained by, M/s XAPER Waste Solutions Pvt. Ltd.*
- b. A separate entry and exit has been created so as not to cause any inconvenience to the citizens*
- c. To avoid occurrence of any foul smell, de-odorizers are being used regularly during the processing of waste by the machine.*
- d. A dedicated anti-smog gun has been installed for spraying de-odorizers along the adjacent road to ensure there is no particulate pollution arising out of the site.*
- e. Periodical inspection of the site is carried out by the officials of the Board and the premises are maintained hygienically without spill over at any place.*
- f. To ensure the vehicles carrying the municipal waste do not enter the Sadar Bazar Road, a separate ingress/egress has been created on Tigris Road. No vehicle carrying waste to the machine site plies on Sadar Bazar Road.”*

8. It is also stated that as per the directions of Delhi Pollution Control Committee (hereinafter referred to as '**DPCC**'), Delhi Cantonment Board has already decided to shift the plant to some other suitable location and has identified an area in 'Kirby place'.

9. Joint Committee report dated 01.12.2023 and Short affidavit of Delhi Cantonment Board dated 17.02.2023 were considered by Tribunal on 20.02.2023 and noticing the stand taken by Delhi Cantonment Board that it has decided to shift the facility to some other place which will be done within four months i.e. by 30.09.2023, Tribunal accepted the report of Joint Committee and disposed of the OA vide judgment dated 20.02.2023 with the following direction:

“8. The Report of the Joint Committee is accepted and the present application is disposed of with the directions to the Delhi Cantonment Board and the Project Proponent M/s XAPER Waste Solutions private Ltd. to comply with the recommendations made by the Joint Committee and directions issued by the DPCC vide notice dated 30.11.2022 and shift the facility as undertaken at the earliest but not latest by 30.09.2023 and to file an Action Taken Report within two weeks thereafter by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF, before the learned Registrar General, National Green Tribunal, Principal Bench, New Delhi who may, if necessary, put up the matter before the Bench for further directions.”

10. An Action Taken Report in compliance of the directions given in the above judgment was required to be submitted by concerned authorities with the Registrar General of Tribunal.

11. Action Taken Report dated 11.09.2023 was submitted by Delhi Cantonment Board which was registered as M.A. 106/2023. It was stated therein that Delhi Cantonment Board has directed service Provider M/s. XAPER Waste Solutions Pvt. Ltd. to obtain necessary

Consent from DPCC under Air Act, 1981 and Water Act, 1974 to operate the waste processing facility and also seek prior consent for shifting of the same. However, said direction with regard to shifting has not been complied by Service Provider and plant could not be shifted due to unavoidable circumstances. It is stated that plant is non-functional since March, 2023 and Delhi Cantonment Board tendered an undertaking that it shall not make the plant functional till it is shifted/relocated to some other suitable location.

12. This **M.A No. 106/2023** came up for consideration before Tribunal on 18.10.2023. Finding that directions of Tribunal and undertaking given earlier as recorded in order dated 20.02.2023 were not complied with, notices were issued to Commanding Officer, Delhi Cantonment Board, Delhi Pollution Control Committee, District Magistrate, Delhi and M/s M/s XAPER Waste Solutions Pvt. Ltd.

13. Replies have been filed by Delhi Cantonment Board and M/s M/s XAPER Waste Solutions Pvt. Ltd and some action taken reports have also been filed.

14. Various orders were passed from time to time.

15. Now, a report dated 02.08.2024 has been filed by Delhi Cantonment Board stating that public notice inviting objections from general public regarding decision to shift sorting composting machine from Tigris Road to Kirby place was issued on 13.05.2024. Public notice was also published in daily newspaper 'Dainik Jagran' and 'Hindustan Times' dated 14.05.2024. No objection was received

by Delhi Cantonment Board pursuant to above notice. After expiry of time granted for filing objections, Delhi Cantonment Board floated tender for comprehensive operation and maintenance of Sorting Composting Machine (20 TPD) for three years and a tender was published on 22.06.2024. It is stated that tender for operation of plant is still continuing and in the meantime, construction of hall measuring 15mtr X 10 mtr has started on 20.06.2024 at the place where the plant is to be shifted and shall be completed by 15.09.2024.

16. Learned Senior counsel, Sh. R. Bala Subramaniam appearing for Delhi Cantonment Board assisted by Mr. Ankur Mishra, Advocate stated at the Bar that by end of September, 2024, plant shall operate at new assigned place and till then at the present place i.e. Tigris Road, the plant shall not be operational at all.

17. In view thereof, we dispose of this M.A No. 106/2023 by directing Delhi Cantonment Board to complete the process by 30.09.2024 and submit a compliance report with Registrar General of this Court within next 15 days, who, if finds necessary, may place matter before the Bench for further orders.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

August 05, 2024

Misc Application in Disposed of Cases No. 106/2023

In Original Application No. 694/2022

AB