

Item Nos. 1B & 1C

Court No. 1

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

Original Application No. 561/2023

Rajiv Kumar Dubey

Applicant

Versus

MoEF

Respondent(s)

WITH

Original Application No. 670/2023

Lalit Gupta

Applicant

Versus

Union Territory of Chandigarh & Ors.

Respondent(s)

Date of completion of hearing and reserving of order: 02.05.2024

Date of Pronouncement of order: 16.05.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Sumit Babbar, Adv. for Applicant in OA 561/2023

Respondent: Mr. Neeraj Malhotra, Senior Advocate with Mr. Anil Tiwari, Mr. Nimish Kumar, Ms. Pranshu Singh & Mr. Upamanyu Ganguly, Advs. for Project Proponent  
Mr. Anuj Kumar Sharma, Adv. for CPCB  
Mr. Shubham Bhalla & Ms. Ragini Sharma, Advs. for R - 3 & 4 in OA 561/2023 & for R - 2 in OA 670/2023

**ORDER**

1. O.A. No. 561/2023 has been filed by the applicant with the prayer to seal the Common Biomedical Waste Treatment Facility (CBWTF) of the respondent no. 5.

2. The plea of the applicant is that respondent no. 5 has been issued the Environmental Clearance on 06.12.2017 imposing certain conditions and thereafter the CTO dated 31.01.2019 was issued with certain conditions but the official respondents, respondent no. 3 and 4 while

allowing the operation of Common Biomedical Waste Treatment Facility (CBWTF) of respondent no. 5 have failed to appreciate the criteria relating to land requirement, height of stack and inadequacy of green belt. Therefore, respondent no. 5 is operating in contravention of the CTO and in violation of the laws. Hence, following prayers have been made in the OA:-

- “a. Direct Respondent No. 01 and Respondent No. 02 to issue guidelines regarding development of GREEN BELT by Common Bio Medical Waste Treatment Facility.*
- b. Direct Respondent No. 01 to inspect the CBWTF operated by Respondent No 05 and forward the report before this Honble Court.*
- c. Direct the Respondent No. 04 to seal the Common Bio Medical Waste Treatment Facility of Respondent No. 05 as the same is operating without ENVIRONMENTAL CLEARANCE and as such is in violation of Environment (Protection) Act-1986, Bio Medical Waste Management Rules-2016, MoEF&CC Guidelines dated 17/04/2015 and CPCB Guidelines.*
- d. Direct Respondent No. 01 to entertain its power as prescribed under Section 05 of the Environment (Protection) Act-1986 and as such issue an Order to stop the supply of electricity, water and other services provided to the Common Bio Medical Waste Treatment Facility of Respondent No. 07.*
- e. Direct the Respondent No. 02 to inspect the COMMON BIO MEDICAL WASTE DISPOSAL FACILITY to calculate the ENVIRONMENTAL DAMAGE done by Respondent No. 05.*
- f. Impose exemplary environmental compensation against the Respondent No. 05 under the polluter pays principle as provided under Section 20 of the National Green Tribunal Act 2010.*
- g. Pass any such other or further order as this Hon’ble Tribunal may deems fit and proper in the facts and circumstances of the present case.”*

3. A reply on behalf of the CPCB, respondent no. 2 has been filed disclosing the requirement of Rules and Guidelines for setting up of CBWTF.

4. Respondent no. 3, SEIAA Chandigarh has filed the reply disclosing that the unit is located in a notified area in the city of Chandigarh and is

the only Common Biomedical Waste Treatment Facility available in the city and that respondent no. 5 is not operating in violation of the Environmental Clearance and further that the project is set up by the respondent no. 5 in an area of 0.5 acres keeping in mind the population of Chandigarh and that the guideline allows for a relaxation upto 0.5 acres being the minimum area for setting up the Common Biomedical Waste Treatment Facility.

5. Respondent no. 4, Chandigarh Pollution Control Committee has also filed the reply disclosing the compliance of the norms by respondent no. 5.

6. A separate reply has been filed by respondent no. 5 taking the stand that respondent no. 5 is in compliance with all the requisite norms.

7. The applicant has filed rejoinder to the said replies.

8. The connected OA No. 670/2023 was registered on the basis of the letter petition raising the complaint about operation of respondent no. 5 in violation of the conditions imposed in EC and CTO and in violation of the environmental norms.

9. In O.A. No. 670/2023, the Tribunal by order dated 12.01.2024 had formed a joint Committee with a direction to the Committee to visit the site, look into the grievances of the applicant, verify the factual position particularly compliance of Biomedical Waste Management Rules, 2016 and take appropriate remediation action by following due course of law and giving opportunity of being heard to the Project Proponent. In terms of the direction of the Tribunal, the joint Committee has filed the inspection report dated 20.03.2024 in O.A. No. 670/2023.

10. Learned Counsel for the applicant submits that respondent no. 5 does not have the requisite minimum land, therefore, he cannot be permitted to operate and EC has wrongly been issued. He has also submitted that the stack height of respondent no. 5 is 30 mtrs. which is not in consonance with the EC condition and that the EC condition in this regard has been violated. He has further submitted that respondent no. 5 has not developed the green area to the extent of 33% which is the requirement of the Rule. In support of his submission, he has placed reliance upon the order of the Tribunal dated 31.07.2023 passed in O.A. No. 622/2022 in the matter of *Aniruda Panwar and Anr. vs. Ministry of Environment, Forests and Climate Change & Ors.* and has submitted that setting up of all the CBWTF with an areas of less than 0.5 acres cannot be permitted.

11. Learned Counsel for respondent no. 5 has opposed the OA by submitting that while granting EC, the issue of availability of land was considered and noted and EC is not under challenge and even otherwise, the limitation for challenging the EC has expired, therefore, this issue cannot be opened. He has further submitted that respondent no. 5 is the only Biomedical Facility in Chandigarh and that having an area less than one acre or 0.5 acres is only a technical breach which has not caused any environmental harm. He has submitted that there is no violation of EC condition. He has further submitted that in the EC and the Office Memorandum (OM) which was operating at the time of issuance of EC, there is no condition of having 33 % green area. He has further submitted that now the stack height has been increased to 35 mtrs.

12. Learned Counsel for the respondent, State Pollution Control Board and SEIAA have also opposed the OA.

13. We have heard learned Counsel for the parties and perused the record.

14. The Biomedical Waste Management Rules, 2016 were notified by Central Government exercising the powers conferred by Sections 6, 8 and 25 of the Environment (Protection) Act, 1986. Biomedical Waste means any waste which is generated during the diagnosis, treatment, or immunization of human beings or animals, or research activities pertaining thereto or in the production or testing of biological or in health camps including the categories mentioned in Schedule I appended to the Rules. Biomedical Waste Treatment and Disposal Facility is defined to mean any facility wherein treatment, disposal of Biomedical Waste or process incidental to such treatment and disposal is carried out and include Common Biomedical Waste Treatment Facilities.

15. In the present case, the applicant has come up with the prayer C for sealing the Biomedical Waste Treatment Facility of respondent no. 5 on the ground that it is operating without Environmental Clearance but on the perusal of the record we find that the respondent no. 5 was issued the Environmental Clearance on 06.12.2017 by State Environment Impact Assessment Authority, Chandigarh and the same has been placed on record by the applicant himself as Annexure-A2 to the OA. Hence, there is inherent contradiction in the plea taken in the OA itself.

16. The record reflects that EC was granted to respondent no. 5 on 06.12.2017, whereas a challenge has been raised by the applicant by filing the OA almost after four and a half year that too without questioning the EC. The respondent no. 5 has been granted the CTE thereafter on 24.08.2018 and CTO on 31.01.2019 and neither the CTE is under challenge nor the CTO has been questioned. Hence, such a belated

challenge even without challenging the EC cannot be entertained at this stage.

17. The first ground of challenge is that respondent no. 5 does not have requisite minimum land. The issue of availability of land was considered by SEIAA while issuing the EC, Annexure-A2 where it had duly taken note of the availability of land with respondent no. 5. If there was any error in issuing the EC on the ground of non-availability of the minimum land, then the applicant was required to challenge the EC as per law. The plea of the applicant is that the CPCB Guidelines of 2016 in Clause 7 (a) require a plot size of not less than 1 acre and Clause 7(b) provides for relaxation upto 0.5 acres in case of upcoming or new CBWTF both in municipal limits with population more than 25 lakhs or in rural areas with additional control measures in consultation with the CPCB. Such a plea was available to the applicant in case if he had challenged the EC by taking recourse to appropriate remedy within time.

18. Learned Counsel for the appellant has placed reliance upon the order of the Tribunal in O.A. No. 622/2022 in the matter of *Aniruda Panwar and Anr. vs. Ministry of Environment, Forests and Climate Change & Ors.* but for the reason of delay in raising the challenge benefit of said order is not available to him.

19. So far as the issue of developing green belt is concerned, the reliance of the Counsel for the applicant is on condition no. 7 of Standard EC Conditions for Project/Activity 7(da): Biomedical Waste Treatment Facilities as provided in the Office Memorandum dated 04.01.2019 which reads as under:-

**“VII. Green Belt**

- i. *Green belt shall be developed in area as provided in project details, with native tree Green belt shall be developed in an*

*area equal to 33% of the plant area with a native tree species in accordance with CPCB guidelines. The greenbelt shall inter alia cover the entire periphery of the plant.”*

20. In the present case, the EC was issued on 06.12.2017 much prior to the issuance of OM of 2019 and the EC does not contain any condition of developing a green belt on 33% area. At the time of issuance of EC, the OM of 2016 was enforced wherein the provision of developing the green belt was as under:-

**“m) Green Belt**

*The open area available within the CBWTF shall be developed into green belt.”*

21. Hence, the plea of the applicant that by not developing 33% area as green belt, respondent no. 5 has violated EC conditions, cannot be accepted.

22. The next ground raised by the applicant is that respondent no. 5 has not complied with the condition of EC in respect of the stack height of 35 mtrs. The general condition contained in the EC dated 06.12.2017 in this regard is as under:-

**“VI.** *The Air Pollution Control Devices should be put in place to ensure compliance of emission standards as prescribed in Bio-Medical Waste Management Rules, 2016. Stack height shall be 35 m above the ground level.*

23. The stand of respondent no. 5 is that in the CTE dated 24.08.2018 issued by Chandigarh Pollution Control Committee (Annexure-R4 to its reply), the minimum height of the stack was mentioned as 30 mtrs. from ground level, but Counsel for respondent no. 5 does not dispute that the condition of EC relating to stack height is to be complied with. His further submission is that now the stack height has been increased to 35 mtrs. In this regard, he has placed reliance upon the report of the joint Committee submitted in the connected matter.

24. The fact that the stack height has been increased to 35 mtrs. is required to be ascertained. Admittedly, earlier the stack height was 30 mtrs. which has now been stated to be increased to 35 mtrs., hence, respondent no. 5 had violated the condition of having the minimum stack height of 35 mtrs. provided in the EC in past. Thus, appropriate EC is required to be imposed upon it for the past violation.

25. Hence, we direct the Chandigarh Pollution Control Committee to carry out the inspection of respondent no. 5 premises within four weeks and ascertain the stack height in the unit and if it is found to be 35 mtrs., then ascertain as to when the stack height was increased from 30 mtrs. to 35 mtrs. If there was past violation in respect of stack height, the CPCC will assess the Environmental Compensation for the same and pass appropriate order after giving opportunity of hearing to respondent no. 5 within the period of 3 months from today.

26. In view of the above analysis, we find no ground to accept the prayer of the applicant for directing closure of respondent no. 5 unit. Hence, we dispose of the Original Applications directing the Chandigarh Pollution Control Committee to take action in terms of the observations made above for imposing the EC for not adhering to the condition of minimum stack height.

27. The OAs are accordingly disposed of.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

May 16<sup>th</sup>, 2024  
Original Application No. 561/2023 &  
Original Application No. 670/2023  
SN