

Item No. 08

Court No. 1

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

Original Application No. 654/2022

Priyadarshini Colony D, residence
Welfare Society

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 27.07.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Rahul Khurana, Advocate

Respondent: Mr. Daleep Dhyani, Adv. for UPPCB
Mr. Mukesh Verma & Mr. Ajay Singh, Advs. for Lucknow Nagar Nigam
Ms. Priyanka Swami, Adv. for Urban Development Deptt., State of UP

ORDER

1. The issue of violation of Solid Waste Management Rules, 2016 and unscientific dumping of solid waste and violation of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 have been raised in this application.

2. Grievance in this application is against violation of environmental norms in shifting the dumping zone and garbage lying on the dumping site i.e. Bandha Road, Faizzullaganj, Priyadarshini Colony, Sector-D, Lucknow. It is stated that such unscientific dumping of solid waste is resulting in foul and obnoxious smell in violation of Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986. The applicant has annexed

certificate dated 15.05.2022 issued by the Vardhaman Hospital, Lucknow that garbage site at Priyadarshini Colony was resulting in diseases. There is also a letter of Dr. Neeraj Bhora, MLA, UP Assembly dated 16.05.2022 addressed to Commissioner, Municipal Corporation, Lucknow forwarding the representation of the Welfare Association on the subject.

3. The matter was taken up by this Tribunal on 16.09.2022 and a Committee was directed to submit a factual and action taken report.

4. In compliance thereof, the Committee had submitted the report with following facts and observation:

“Observation found during Joint Inspection on dated 12-12-2022

- 1. The Municipal solid Waste Transfer Station, Puraniya is spread over an area of approx. 5485.7059 Sq.mt. where municipal solid waste collected at transfer station Puraniya is sent to Sivari main plant for MSW processing.*
- 2. The center is operated by M/s Eco green Energy Pvt. Ltd, Lucknow.*
- 3. The primary waste collection from door to door is carried out by operator of the center (M/ Eco green energy Pvt. Ltd.) in 19 wards of Nagar Nigam Zone-III. The Nagar Nigam Zone- III wards covers Mahanagar, Aliganj, MahaKavi Jai Shanker Prasad, Ayodhyadas-1, Ayodhyadas-2, Jankipuram-1&2, Faizullaganj 2&3, Nirala Nagar, Daliganj Mnkameswar, Begam Hazarat Mahal, Lala Lajpat rai, Kadam Rasool, Vivekanandpuri Triveninagar.*
- 4. As informed by the operator of station Nagar Nigam also collect the waste from nearby area of Zone 1 & 7 and Zone-3 from open dump side and send to transfer station Puraniya.*
- 5. The facility at transfer centre comprises of 70 E -rickshaw, Plazio-05, Tatazip-05, Bolero 05, containers-07, JCB-03, tractor & trolly-05.*
- 6. As informed by operator of the centre approx. 150 Tonn/day N,4unicipal Solid waste received from Nagar Nigam Zone III Wards from one lacks four thousand house hold {1,04,000 houses) through 70, e-Riksha, Mannual riksha-50, Pzio-05, Tatazip-05 etc.*
- 7. During inspection, approx.100 Tonn of waste was observed collected at transfer center, due to accumulation of huge quantity of waste at centre unpleasant odour felt at and transfer station.*

8. *The Puraniya transfer station is located adjacent to Pridarshini Nagar colony sector C&D, Sitapur Road, Lucknow.*
9. *During inspection, it was observed that boundary wall of the station has low height from all sides. Main gate of the station is often open which causes entry of animals around the waste collected.*
10. *Drainage system of the center was choked due to MSW, which need to clean regularly.*
11. *The waste transfer station has not obtained NOC from UPPCB for operation of centre.*
12. *The height of boundary wall and fencing around station sufficient but operator has not develop green belt around boundary wall.*
13. *During inspection, due to continuous movement of waste loading vehicles dust emission was also observed.*

Recommendations:-

1. *The facility may be directed for immediate disposal of waste accumulated at transfer station to main processing plant at Shivari.*
2. *Regular monitoring should be carried.*
3. *The operator should develop green belt around boundary wall.*
4. *The Nagar Nigam, sanitary inspector may ensure regular supervision of transfer station for regular lifting of waste collected at transfer centre to avoid the accumulation of waste. He shall also submit its report to The UPPCB on daily basis.*
5. *The operator of station may prohibit the entry of animals inside transfer station and maintain the drainage system of station.*

Action taken proposed-

- 1 *It is proposed to improve the functioning of Lucknow Municipal Corporation Transfer Station.*
- 2 *Detail project report for MRF cum Transfer Station prepared by Nagar Nigam, Lucknow, Tender process of required improvement work is under process. **As annexure-1***

5. The matter was considered on 20.01.2023 and this Tribunal observed as follows:

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9. Shri Mishra, learned Counsel for State PCB, however, stated that appropriate action would be taken by State PCB in due course of time. We find this situation to be highly dissatisfactory. A Statutory

Regulator, despite there being no obstruction, has failed in discharging statutory duties with due devotion and has not taken any action which it was under statutory obligation to do. This, inaction and apathy on the part of a Statutory Regulator, in fact, encourages violators of environmental laws and norms to continue with their violations with impunity. The situation is highly deprecable and has to be condemned. In fact, Member Secretary, UPPCB is liable to explain as to why he has not taken any action against the erring officials for the laxity shown by them.

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11. Further, operating transfer stations with holding capacity of 150 tonnes by itself seems to be unacceptable. Rather, steps need to be taken for immediate transportation of waste to the processing site. This issue needs to be clarified in the next report and status of such other transfer stations existing and their siting criteria.

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13. Further, Municipal Commissioner, Nagar Nigam, Lucknow shall file an affidavit to explain as to what further action has been taken in respect to the violations found by joint Committee in the report dated 06.01.2023 filed before Tribunal on 07.01.2023 and also action taken against company to whom operation of above Transfer Station has been given. Municipal Commissioner, Nagar Nigam, Lucknow shall also remain present before Tribunal on the next date. The Commissioner, Lucknow Nagar Nigam shall further provide report on overall status of the city to comply MSW Rules giving quantum of waste generation, installed and operational status of waste processing facilities and legacy waste which has to be remediated.”

6. In response to the questions raised in this application, the explanation of the respondents, State Authorities are that they have recommended termination of contract and actions are being taken. Further reference has been made that in future Material Recovery Facility is being provided and proposal of Bio-CNG plant and reviving compost plant which was idle, had been proposed.

7. The Municipal Corporation, Lucknow has submitted its compliance report on 25.07.2023 to the extent that in light of the proposal dated 26.04.2023 a ring-fenced account has been opened and an amount of Rs. 63.94 crores had been deposited for taking remedial actions in the disposal of solid waste and liquid waste. Except depositing the amount, no action

has been reported to be taken by the Municipal Corporation against the violators of law.

8. The issues raised in this application is non-compliance of the Solid Waste Management Rules, 2016 by the Municipal Corporation, Lucknow and inaction in the compliance of statutory obligation for providing clean environment and compliance of statutory norms by the Corporation.

9. During the course of hearing, learned Counsel appearing for the State PCB has submitted a report prepared by Mr. Sanjeev Pradhan, Environmental Engineer on 24.07.2023 with the facts that the transfer station of Priyadarshini Colony has been closed and for selection of site the process has been initiated. It is further reported that three proposed sites were under consideration after which the matter of two sites has been dropped due to certain disputes and the work order on third site will be completed in next three months.

10. The issues of solid as well as liquid waste management are being monitored by this Tribunal as per orders of the Hon'ble Supreme Court order dated 02.09.2014 in *Writ Petition No. 888/1996, Almitra H. Patel vs. Union of India & Ors.*, (with regard to solid waste management) and order dated 22.02.2017 in W.P. No. 375/2012, reported in (2017) 5 SCC 326, *Paryavaran Suraksha vs. Union of India*, with regard to liquid waste management (sewage). Other related issues which were taken up for monitoring include pollution of 351 river stretches, 122 non-attainment cities in terms of air quality, 100 polluted industrial clusters, illegal sand mining etc. However, later the Tribunal confined present proceedings only to issues of solid waste and sewage management. Before proceeding further, it may be mentioned that scope of present order is to compile and collate the background, data filed by the Chief Secretaries of all the

States/UTs and analysis and directions of the Tribunal on the subject of waste management in the country for further follow up action.

11. The matter was taken by this Tribunal in OA No. 606/2018 and vide order dated 18.05.2023 following directions and observations were issued:

“4. Since non compliance was noticed on both counts from the issues raised before the Tribunal in various proceedings, the Tribunal took the matter again and passed order dated 31.08.2018, recording the extent of gaps and further action. Proceedings were registered afresh with updated status as OA – OA 606/2018 (main) and separate OAs with same number in respect of all States/UTs separately on the subject of waste management and ancilliary issues. The Tribunal constituted Monitoring Committees for six months and vide order dated 16.01.2019, the Tribunal sought personal presence of Chief Secretaries of all States and UTs on different dates with data of compliance status in respective State/UT.

5. On such interaction, it was found by various orders that large scale non-compliance of environmental norms was continuing which was reportedly resulting in deaths and diseases and irreversible damage to the environment. Directions for remedial action were issued which include constitution of a four member special task force in every district having – one each nominated by District Magistrate, Superintendent of Police, State Pollution Control Boards and District Legal Services Authority (DSLAs) for awareness about SWM Rules, 2016 by involving educational, religious and social organizations including local Eco-clubs. Involvement of DLSAs was subject to the approval of the National Legal Services Authority (NALSA) which is the apex body under the Legal Services Authorities Act, 1987. It was observed that Information, Education and Communication (IEC) programmes can go a long way for protection of the environment. Such program can be successful if network of Legal Services Authorities and Educational Institutions at every level is involved.

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16. From the above, it is seen that there was gap in generation and processing of solid waste to the extent of about 56400 TPD (about 60,000 TPD) and legacy waste figure was mentioned at 18.55 crore tones. On the issue of liquid waste management, the gap shown was 17.26 MLD. The data was however found to be not conclusive requiring further verification. The Tribunal in its order dated 30.11.2021 observed:-

“1to14....xxx.....xxx.....xxx

15. We also find that the report does not capture the entire data and correctness of data is not free from doubt. The same needs to be cross-checked. In particular, data for States of Bihar, Chhattisgarh, Himachal Pradesh, Sikkim and UT of Chandigarh, showing zero gap needs verification. The information is not available for all the million plus and State

capital cities, as was required in terms of earlier orders. Information needs to be verified particularly with regard to Aizawl, Kalyan Dombivali, Nagpur, Nasik, Navi Mumbai and Pune where the gap is shown to be zero, which does not prima facie appear to be correct.

16 & 17. xxx.....xxx.....xxx

18. We are of the view that hence forthwith proceedings in this matter need to cover Solid Waste Management and Sewage Management, these issues being crucial and required to be monitored by this Tribunal by the Hon'ble Supreme Court. Absence of management of waste results in adding to air and water pollution in a big way. All the legacy waste dump sites in the country need to be remediated to reduce methane gas, foul smell and leachate and also to release valuable land occupied by such sites which can be used for waste management/plantation or raising funds. Waste collected must be scientifically processed and disposed at the earliest in the interest of hygiene and public health. It needs to be ensured that instead of remediating the legacy waste sites, the garbage is not shifted to new sites which is not a solution to the problem. It only results in shifting the problem from one place to the other without any advancement of environment protection. What is necessary is that the garbage must be finally disposed of and land reclaimed. The authorities must move towards zero garbage at the end of the day by ensuring that instead of garbage being collected and dumped, it is taken to destination where it is finally processed scientifically and appropriately, except for reused/recycling of such residues as is possible. This is also the mandate of Swachh Bharat Mission, initiated by the Central Government. Similarly, sewage has to be scientifically treated to give effect to the mandate of Water (Prevention and Control of Pollution) Act, 1974 in the interest of availability of clean water in rivers and other waterbodies. Central Governments programmes also provide for initiatives on these subjects. On both aspects, compensation regime has been laid down which is necessary to enforce the rule of law and for protection of environment and public health. The compensation laid down has to be duly collected and utilized for restoration of environment, by being kept in a separate account. Accountability for the failures needs to be fixed by way of ACRs and departmental action as such failures result in crimes under the law of land and damage to public health. Such failure is also breach of Constitutional obligation to uphold the Right to Life. The country is committed to Sustainable Development Goals of providing clean air and safe drinking water.

19. In view of above, continued failure of Rule of Law must be remedied in terms of mandate of orders of the Hon'ble Supreme Court in Writ Petition No. 888/1996, Almitra H. Patel Vs. Union of India & Ors. and Paryavaran Suraksha vs. Union of India, followed by orders of this Tribunal. It is necessary that Chief Secretaries continue the monitoring and interact with this Tribunal periodically by video conferencing. Accordingly, we lay down following further schedule for personal appearance

of the Chief Secretaries, by Video Conferencing, with the status of compliance in respect of each of the States/UTs on the subject of Solid Waste Management and Sewage Management. The data to be furnished should cover all categories of areas in the State – big cities, towns and villages.

20. The hearing on each of above dates will commence at 10:30 a.m. sharp. The Chief Secretaries may not delegate the responsibility. As far as possible, they may adjust other work for which long advance notice is being given. In case adjustment is found difficult for any unforeseen reason, request for change of date may be mailed by e-mail at judicial-ngt@gov.in.

21. All the States/CPCB may undertake process of verification of data after having interaction on video conferencing with the concerned States/UTs within one month. The Secretaries, Environment, Urban Development Department and Irrigation Department may also coordinate with the Member Secretaries of State Legal Services Authorities in all State/UTs in the light of background mentioned in paras 3 and 4 above for the awareness programmes on the subject.”

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27. Idea of environmental compensation is to require remediation, fix accountability for the past failures and ensure restoration in enforcing citizens’ right to clean environment and protect public health. It is hoped this step, if duly implemented, will help providing clean environment and achieve sustainable development goals and add to efforts of preventing climate change.

28. The Tribunal also directed filing of further six monthly status reports to be taken up for directions, if necessary and subject to such exercise, the proceedings were closed with the hope that further directions may not be necessary in case compliance takes place.

J. Summing up

29. We have noted the gaps in generation and processing of waste and need to address the same in the interest of protection of environment and public health. Such gaps exist even after monitoring of issue of solid waste management from 1996 to 2014 by the Hon’ble Supreme Court and for the last nine years by this Tribunal as far as solid waste is concerned and monitoring of issue of water pollution for decades by the Hon’ble Supreme Court in the context of Ganga, Yamuna and other rivers and water bodies by discharge of sewage and other waste, apart from industrial pollution. There are policies of Central Government like swachh bharat and Namami Gange. Still, there are mountains of garbage generating methane and other gases which are source of pollution causing diseases and deaths, apart from occupying huge valuable public resource. Segregation of biodegradable waste and its processing closest to the point of generation is a task which requires good governance and according of high priority. Similarly, preventing sewage discharge into the sources of drinking water has to receive highest priority. Such discharge results in scarcity of drinking water for all living beings

apart from degradation of environment and damage to public health. Gaps in compliance have been noted earlier. The Hon'ble Supreme Court vide order dated 22.2.2017 in Paryavaran Surakhsha fixed three year deadline for waste water treatment systems which has been monitored by the Tribunal in the last six years. Discharge of sewage in drains leading to rivers, lakes, sea or in water bodies and lands has led to serious damage to environment and public health and needs to be addressed on war footing, using indigenous technology wherever viable or such other technology but no drop of sewage can be mixed in drinking water. Timelines are deviated without accountability. There is no justification of any further delay having regard to adverse impact on humanity and citizens' right of access to drinking water. Sewage continues to be mixed in sources of drinking water to the detriment of public health and environment for which earnest efforts are required in the highest level of administration. There was no dearth of technology and no justification of repeated and unending extensions of timelines without fixing accountability for past delays.

30. Some of the observations which have been repeated in most of the orders in view of gaps still existing in almost all States/UTs except Goa, Lakshadweep and Dadra and Nagar Haveli & Daman and Diu and for instance, the order dated 11.05.2023 relating to State of Uttarakhand is as follows:

Use of reclaimed land occupied by legacy waste sites

32. As already mentioned earlier, legacy waste dump sites have resulted in huge damage to the environment and population residing in the vicinity of such dump sites who have suffered in safety, health and comfort. For compensating them for such damage, particularly at flat terrain, one third of land occupied by legacy dump sites (on reclamation) needs to be reserved for dense forest and in the process of afforestation, Campa Funds can be utilized in accordance with the provisions of Compensatory Afforestation Fund Management and Planning Authority Act, 2016 (CAMPA Act). One third of reclaimed land out of the said dump site needs to be reserved for integrated waste management facilities. Remaining one third can be used for any other purpose, consistent with the above purposes, including a part of it being utilized for monetizing, if funding is required for tackling the legacy waste. Legacy waste clearance has to be in minimum further time as laid down statutory timelines have already expired and serious damage is taking place. It may be noted that remediation of legacy sites may be one time affair and such situations should not arise in future. User of land, to be reclaimed, needs to be declared in advance so that further steps can be taken in that direction. This is in line with order of this Tribunal dated 11.10.2022 in OA No. 300/2022, In re: News item published in News 18 dated 26.04.2022 titled "Delhi: Massive Fire at Bhalswa Dump Yard, Fourth This Year; 13 Fire Tenders on Spot".

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Adhering to the timelines

46. Since the issue has been pending since long and there are adverse effects of continuing delay on environment and public health, it cannot be a matter of satisfaction that some steps are taken till the entirety of the problem is tackled on war footing. Planning has to be to resolve the problem without any further delay, in shortest possible time. Whatever timeline is laid down, it should not be breached. If breached, adverse consequences for such failures must follow on the designated accountable officers instead of loose-ended processes.

Need for compliance of statutory duties by specified authorities under SWM Rules and monitoring by NMCG and MoUD for centrally assisted/sponsored schemes

50. Under the Solid Waste Management Rules, 2016, statutory authorities for various actions have been specified. Under Rule 5, a Central Monitoring Committee (CMC) is to be constituted headed by the Secretary, MoEF&CC with representation from Ministries of Urban Development, Rural Development, Chemicals and Fertilizers, Agriculture, CPCB, State PCBs/PCCs, Urban and Rural Development Departments, Urban Local Bodies and Towns from the of the States, FICCI, CII and subject experts. The CMC is to meet once in a year.

The Ministry of Urban Development has to coordinate with the States/UTs under Rule 6 for periodic review and formulation of National Policy and strategies and taking other measures. Under Rule 7, the Department of Fertilizers, Ministry of Chemical and Fertilizers (MoCF) have to provide market development assistance for compost and promote marketing of such compost. MoCF has to comply with Hon'ble Supreme Court's order dated 1.9.2006 in WP(C) No. 888/1996 and ensure that instructions given to the fertilizer companies on 2.6.2008 and 18.6.2012 on co-marketing of compost from city garbage with chemical fertilizers as a 'Basket approach' be complied with. Further, MoCF may review its subsidy fertilizer policy considering Rule 8(g) of the Solid Waste Management Rules, 2016 and the media report. Under Rule 8, Ministry of Agriculture has to evolve mechanism for utilization of compost. Under Rule 9, Ministry of Power has to decide compulsory purchase and tariff issues. Under Rule 10, Ministry of New and Renewable Energy Sources has to facilitate infrastructure creation and provide for subsidy. Under Rule 11, the concerned Secretaries of Urban Development have to prepare State Policy and Management strategies and the Town Planning Department has to ensure setting up waste processing and disposal facilities and take other enumerated actions. Under Rule 12, the District Magistrates have to identify suitable lands and review performance of local bodies. Under Rule 13, the Secretaries of Panchayats have also to perform similar duties. Under Rule 14, CPCB is to coordinate with State PCBs and formulate standards of ground water, ambient air quality, noise, etc. Under rule 15, local authorities have to prepare solid waste management plans, collection of waste and coordination with the other stakeholders for enumerated steps. Under Rule 16, the SPCBs/PCCs have to enforce the rules and monitor

compliances. Under Rule 17, there are duties of private bodies, including the manufacturers to be monitored by the State Bodies. The timelines are provided in Rule 22 for various steps. Last timeline of 5 years from the Rules expires on 7.4.2021. There is also provision for audit and submitting of annual report under Rule 24. Since there has been large scale non-compliances of the said rules, all the concerned authorities need to review the progress and perform their responsibility in accordance with law. The MoEF&CC has to finally monitor compliance, as already mentioned.

51. In view of continuing huge gap in solid and liquid waste generation and treatment, it is high time that Ministry of Housing and Urban Development (MoUD) and National Mission for Clean Ganga (NMCG) who have programmes like Swachh Bharat Mission (SBM – Urban 2.0) , AMRUT 2.0 , Swachh Bharat Mission (Grameen) and River Cleaning, appropriately monitor compliance of waste management norms by concerned States/UTs and take remedial action on their part. Central Funding and State budgetary provisions need to be adequately allocated and apportioned keeping in view of environment compensation which is based on the restoration work estimate. While granting/disbursing funds to States/UTs, execution mechanism for centralized tendering at the State level to overcome delays at each city/town level may be considered. This may facilitate timely utilization of funds. MoEF&CC and CPCB may continue monitoring as per MSW Rules and the Water Act. MoUD and NMCG may also note the gaps reported by the States and UTs in solid and liquid waste management. MoUD may further consider to render proper financial and technical support to States and UTs.”

12. Perusal of the reports submitted by the State PCB and Municipal Corporation, Lucknow reveals that the Municipal Corporation is still at the stage of planning and preparing proposals. No remedial measures have been taken for compliance of environmental rules. A precise information was sought on:

- i. Quantum of waste generation.
- ii. Quantity of waste processed.
- iii. Remediation of legacy waste.
- iv. Provision of collection, segregation and transportation.

13. No concrete information has been furnished by the Municipal Corporation, Lucknow which shows lack of sincerity and non-compliance of orders. There are reported foul smell, blockage of drains throughout city, leachate discharge and piling of garbage at transfer stations but no

remedial action has been taken by the authorities concerned. The deposit of public fund from one account to another account or expenditure from the State exchequer is no compliance of environmental rules. It is simply shifting the responsibility and utilization and playing with the funds of the State.

14. As argued by the learned Counsel appearing for the State PCB previously the contract was given to M/s Eco green Energy Private Limited and there was a complete failure in the waste management and Municipal Corporation, Lucknow has not taken any action against the agency. No details have been provided as to how much amount from the State exchequer was paid to the M/s Eco green Energy Private Limited and how much money was utilized for collection, segregation and disposal of the waste. Simply, finalization of tender has no relation with the waste management. The door-to-door collection and transportation of waste is not proper and legacy waste which has been dumped at Shivari processing plant and nearby landfill had not been disposed of till date. Thus, it is not evidenced from the report on how much gap is existing in waste processing and unprocessed waste resulting to legacy waste everyday. Further, more transfer stations are planned which perhaps are not required, rather collected waste need to be immediately transported to processing sites which may be on de-centralized or centralized basis.

15. In its report, the only thing which has been narrated repeatedly is the finalization and process of tender or DRP. There is further proposal that at the Siwari New Leachate Treatment Plant provided by the Government for its consent and tender has been floated for disposal of unprocessed waste at that place and further that Lucknow Municipal Corporation has prepared the DPR for the capacity enhancement of existing 100 TPD C&D waste plant at Mohanlal Ganj to 300 MT per day.

This is all the preparation of DPR and the process of disposal of the legacy waste or solid waste has not been properly taken by the authorities concerned and in this way the Lucknow Municipal Corporation is not properly discharging its statutory obligation by providing clean environment to the citizens and it is violation of MSW Rules, 2016 and violation of orders of the Hon'ble Supreme Court passed in **Writ Petition No. 888/1996, Almitra H. Patel Vs. Union of India & Ors.**, wherein it has been said that handling of solid municipal waste is a perennial challenge and would require constant efforts and monitoring with a view to making the municipal authorities concerned accountable, taking note of dereliction, if any, issuing suitable directions consistent with the said Rules.

16. During the course of hearing, learned Counsel appearing for the Lucknow Municipal Corporation has further filed copy of the termination notice dated 06.07.2023 containing following facts:

“In view of the above-mentioned facts and your company's unequivocal intention to not to abide by the terms of the Concessionaire Agreement as evident by your various replies and the correspondence exchanged between us, the Lucknow Municipal Corporation is constrained to terminate the said Concessionaire Agreement with your company as per all the relevant provisions of the agreement between us.

Therefore, the Selectee Concessionaire Agreement dated 21st March, 2017 is hereby terminated with effect from the termination date which shall be 06th September 2023 albeit Lucknow Municipal corporation reserve it's right to take appropriate action/decision for early take back of project assets, if situation demand so, and the performance security as subsisting is hereby directed to be appropriated. The Termination Payment payable as estimated under clause 12.2 (c) (iii), read with 12.2 (f) (ii) is Rs 12.62 Crore, the shortfall payments for the bills submitted and approved/ the bills not submitted by you are approximately 22.00 Crore whereas the damages to be recovered from you under clause 12.4 and calculated on account of various non-performance is Rs. 309.97 Crore. The summary of calculations is tabulated below and the details of computation are attached as annexure to this notice.

S.no	Description	Termination payment	Damages to be recovered
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		(Rs. in lacs)	(Rs. in Lacs)
1.	<i>Termination payment equals to 70% of Book value of Fixed assets to be paid to concessionaire</i>	1262.086	
2.	<i>Shortfall payments to concessionaire for the bills submitted and approved/the bills not submitted by concessionaire</i>	2200	
3.	<i>Damages to be recovered by Lucknow Municipal corporation from Concessionaire</i>	-	30996.93
	<i>Net amount to be recovered from concessionaire</i>	Rs. 27534.84 Lacs	

You are hereby called upon to henceforth abide by the Clause 12.2 (d)(i) of concession agreement which says "until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities", failing which, keeping in view the interest of public at large Lucknow Municipal Corporation will be compelled to take back the fixed assets by adopting due processes of Law for smooth functioning of solid waste management in city and will also be compelled to take Civil and/or Criminal Legal action against your company. You are also directed to abide by Clause 12.2 (d)(iii) of concession agreement and complete the formalities of handing over of project Facilities to Lucknow Municipal Corporation free from any Encumbrance and also ensure to make the payment due to Lucknow Municipal Corporation as mentioned in above Table. Moreover, it is made clear that LMC have replied and addressed all your previous correspondences, letters and grievances through this Termination Notice."

17. This a letter correspondence between the Lucknow Municipal Corporation and the contractor. The contents of the above notice reveal that there are non-compliances to defined agreement listed below:

- "A. Door-to-door collection of MSW*
- B. The primary storage of collected door-to-door MSW*
- C. Secondary collection and transportation of MSW, including street sweeping waste, drain silt*
- D. Development, construction and operation and maintenance of the MSW processing Facility with composition as one of the main processes including segregation*
- E. Development, construction and operation and maintenance of the landfill facility*
- F. Post closure Activities of landfill facility*
- G. Collection, transportation, processing and disposal of the MSW littered within the Concession Area as on COD*
- H. Assist ULB in public education/ Awareness Campaign related to MSW*
- I. Collection of the user Charges, on behalf of ULB as determined by the ULB from the time to time.*

- J. Develop and implement a Complaint Redressed system.*
- K. Development, financing, operation and maintenance of the Project.*
- L. Augmentation of equipment/ vehicle, capacity enhancement and provision of ancillary facilities required to implement the Project during the Concession Period.*
- M. Deployment of adequate and qualified manpower for construction, operation and maintenance management of the Project*
- N. Procure and /or provide any other required support services and facilities required for the project and”*

18. This Tribunal is concerned with the compliance of the environmental rules and it is for the Municipal Corporation to execute it or to ensure the compliance through any agency. It is a matter between Municipal Corporation and the agency and this Tribunal has nothing to intervene in the matter being contractual matter. Since there are violations of environmental rules, thus, environmental compensation must have to be assessed and realized according to the rules and to be realized by violator of law.

19. 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. The conduct shown in the present proceedings are picture of fragrant violation of law and rules made by the state by the executive functionaries in violating rules.

20. The action and conduct of the Officer concerned is not only disregard to the law but it is negation of the authority of the State by the public official doing the act and expending the budget in accordance with their

wishes. An action specifically punitive action does lie for doing what the legislature has authorized if it is done negligently carelessly and in violation of the law. Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. Any act by any officer in violation of the rules is abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury. 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 power 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. Compensation or damage as explained earlier may arise even when the officer discharges his duty mala-fidely and not in accordance with the guidelines, when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against

it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook.

21. Absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The Rule of Law means that the decisions should be made by the application of known principles and rules, such decisions should be predictable and the citizens should know where he is. If decision is taken without any principle or without any rule, it is unpredictable and such decision is the anti-thesis of a decision taken in accordance with the Rule of Law. Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. 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.

22. 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.

23. In the case reported in AIR 1975 SC p. 2260, Hon'ble Supreme Court interpreted the rule of law as under:

"205. Rule of Law postulates that the decisions should be made by the application of known principles and rules and in general such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is not predictable and such decision is the antithesis of a decision taken in accordance with the rule of law."

94. In the case reported in (2011) 6 SCC 508: NOIDA Entrepreneurs Association. Vs. NOIDA and others, Hon'ble Supreme Court while emphasising for maintenance of rule of law in the country observed that public bodies or the State instrumentalities are trustees of the public property and their action must be in conformity with the Statutory provisions and also should be just and fair, to quote relevant portion:

"38. The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse etc., acts as a trustee and, therefore, has to act fairly and reasonably. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. Every holder of a public office is a trustee.

40. The Public Trust Doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of

colourable exercise of power. The Rule of Law is the foundation of a democratic society. (Vide: M/s. Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr., AIR 1975 SC 266; Ramana Dayaram Shetty v. The International Airport Authority of India & Ors., AIR 1979 SC 1628; Haji T.M. Hassan Rawther v. Kerala Financial Corporation, AIR 1988 SC 157; Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. & Ors., AIR 1991 SC 537; and M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu & Ors., AIR 1999 SC 2468)." 95. A country should not be ruled by men but should be ruled by law. It means, the State action must conform to statutory provisions. The power must flow from Rules, Regulations and statutory provisions. In absence of powers conferred by the statutory provisions, State or its instrumentalities cannot divest a person from his or her property or abridge or dilute the right protected by Articles 14 and 21 of the Constitution of India safeguarding life, liberty livelihood or quality of life."

Similar view has been taken by the Supreme Court in Ambica Quarry Works etc. Vs. State of Gujarat & Ors., AIR 1987 SC 1073; and Commissioner of Police, Bombay Vs. Gordhandas Bhanji, AIR 1952 SC 16. In both the cases, the Apex Court relied upon the judgment of the House of Lord in Julius Vs. Lord Bishop of Oxford, (1880) 5 AC 214, wherein it was observed as under:-

"There may be something in the nature of thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom

the power is reposed, to exercise that power when called upon to do so.”

In Commissioner of Police (supra), the Apex Court observed as under:-

“Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.....An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor it be evaded, performance of it can be compelled.”

In Dr. Meera Massey Vs. Dr. S.R. Mehrotra & Ors., AIR 1998 SC 1153, the Apex Court observed as under:-

“If the laws and principles are eroded by such institutions, it not only pollutes its functioning deteriorating its standard but also exhibits.....wrong channel adopted.....If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed. If the institutions perform dedicated and sincere service with the highest morality it would not only up-lift many but bring back even a limping society to its normalcy.”

The Supreme Court has taken the same view in Ram Chand & Ors. Vs. Union of India & Ors., (1994) 1 SCC 44, and held that “the exercise of power should not be made against the spirit of the provisions of the statute, otherwise it would tend towards arbitrariness.” A Constitution Bench of the Hon'ble Supreme Court in Ajit Singh (II) Vs. State of Punjab & Ors., (1999) 7 SCC 209 held that any action being violative of Article 14 of the Constitution is arbitrary and if it is found to be de hors the statutory rules, the same cannot be enforced.

24. In view of the above, we are of the considered opinion that every statutory provision requires strict adherence, for the reason that the

statute creates rights in favour of the citizens, and if any order is passed de hors the same, it cannot be held to be a valid order and cannot be enforced. As the statutory provision creates legal rights and obligations for individuals, the statutory authorities are under a legal obligation to give strict adherence to the same and cannot pass an order in contravention thereof, treating the same to be merely decoration pieces in his office.

25. Accordingly, we direct the Municipal Commissioner, MC Lucknow alongwith Principal Secretary, Urban Development, Govt. of Uttar Pradesh to remain present on the next date of hearing through video conference with all records and factual report as narrated above with the planning of disposal of legacy waste and day-to-day disposal of waste (Para 14). An action taken report be filed by the Municipal Commissioner, MC Lucknow within three weeks by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

List the matter on 28.08.2023.

A copy of this order be forwarded to Principal Secretary, Urban Development, Govt. of Uttar Pradesh and Municipal Commissioner, MC Lucknow by e-mail for compliance.

Sheo Kumar Singh, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

July 27, 2023
Original Application No. 654/2022
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