

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

(Through Physical Hearing with Hybrid VC Option)

Appeal No. 06/2022

(I.A No. 236/2022, I.A. No.29/2022 and I.A. No. 320/2024)

IN THE MATTER OF:

- 1. Mr. Prabhakar Rai,**
S/O Late Shri Swaroop Rai,
R/O Village Paharpur, Post Gotha Rasoolpur,
Deoria, Uttar Pradesh 274201.
Mob: 8052343612 [Email:raiprabhakar46@gmail.com](mailto:raiprabhakar46@gmail.com).
- 2. Mr. Anil Rai,**
S/O Shri Mahatam Rai,
R/O Village Paharpur, Post Gotha Rasoolpur,
Deoria, Uttar Pradesh 274201.
Mob: 9415048225 [Email:raianil8186@gmail.com](mailto:raianil8186@gmail.com).
- 3. Mr. Devendra Rai,**
S/O Late Shri Jangbahadur Rai,
R/O Village Paharpur, Post Gotha Rasoolpur,
Deoria, Uttar Pradesh 274201.
Mob: 9453677658.
- 4. Mr. Dalsingaar,**
S/O Shri Hardev Yadav,
R/O Village Paharpur, Post Gotha Rasoolpur,
Deoria, Uttar Pradesh 274201.
Mob: 7379403147.
- 5. Mr. Dayashankar Rai,**
S/O Late Shri Jayanti Rai,
R/O Village Paharpur, Post Gotha Rasoolpur,
Deoria, Uttar Pradesh 274201.
Mob: 9452975885.

...Appellants

Versus

- 1. Union of India,**
Through Secretary,
Ministry of Environment, Forest & Climate Change,
Indira Paryavaran Bhawan,
Jor Bagh Road,
New Delhi-110003.

Phone:11-24695287,
Email Address: yashvir@nic.in.

2. State Environment Impact Assessment Authority,

Through its Member Secretary,
Directorate of Environment, U.P,
Vineet Khand-I, Gomti Nagar,
Lucknow -226010.
Phone:91-522-2300541.
Email Address: msseiaaup@gmail.com.

3. Central Pollution Control Board,

Through its Member Secretary,
'Parivesh Bhawan', East Arjun Nagar,
Shahdara, Delhi-110032.
Phone: +91-11-22303655.
Email Address: mscb.cpcb@nic.in.

4. Uttar Pradesh Pollution Control Board,

Building. No. TC-12V,
Vibhuti Khand, Gomti Nagar,
Lucknow – 226010.
Phone: +91-522-272083.
Email Address: feedback@uppcb.com.

5. M/S JKN Purvanchal CBWTF Works,

Through its Authorised Representative,
R/O Village Paharpur, Post Gotha Rasoolpur,
Deoria, Uttar Pradesh 274201,
M: 9415408337
Email Address: cbpurvanchal@gmail.com.

6. State of Uttar Pradesh,

Through Chief Secretary,
Government of Uttar Pradesh,
101, B, Block, Lok Bhawan,
Email Address: csup@nic.in

7. District Magistrate, Deoria,

Collectorate Campus, Deoria,
Uttar Pradesh,
Email Address: dmdeo@nic.in

...Respondents

Counsel for the Appellants:

Mr. Abhishek Yadav and Mr. Saurabh Yadav, Advocates for the Appellant.

Counsel for the Respondents:

Mr. Gi. Gi. C. George and Mr. Dheeraj Singh, Advocates for respondents
no. 1, 6 and 7.

Ms. Priyanka Swami, Advocate for respondent no. 2.

Ms. Isha Arora, Advocate for respondent no. 3.

Mr. Daleep Dhyani, Advocates for respondent no. 4.

Mr. Dev Shukla, Advocate for respondent no. 5.

PRESENT:

HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Judgment Reserved on:- 29.04.2024

Judgment pronounced on :- 05.08.2024.

Appeal Under Section 16 of the National Green Tribunal Act, 2010.

JUDGMENT

PRONOUNCED BY: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI,
JUDICIAL MEMBER

1. The appellants, aggrieved by grant of Environmental Clearance (EC) No. EC21B032UP156759 dated 03.12.2021 by respondent no. 2-State Environment Impact Assessment Authority, Uttar Pradesh (UPSEIAA) in favour of respondent no. 5-M/S JKN Purvanchal CBWTF Works (Project Proponent) for setting up of the proposed Common Bio-Medical Waste Treatment Facility (CBWTF) at Khasra No.1006 Village Paharpur, Post Gotha Rasoolpur, District Deoria, Uttar Pradesh (the proposed site), have filed the present appeal.

Reliefs sought

2. The appellants have sought the following reliefs in the present appeal:-

"a) set aside Environment Clearance No. EC21B 032UP156759 dated 03.12.2021 the issued by the Respondent No. 2 in favour of the Respondent No. 5 common Bio-Medical Waste Treatment Facility at Khasra No. 1006 Village Paharpur, Post Gotha Rasoolpur, District Deoria, UP in violation of the Bio-

medical Waste Rules 2016 and also Revised Guidelines for Common Bio-medical Waste Treatment and Disposal Facilities framed by the CPCB on December 12, 2016;

b) direct the authorities/Respondents not to allow setting up a red category; common Bio-Medical Waste Treatment Facility at Khasra No. 1006 Village Paharpur, Post Gotha Rasoolpur, District Deoria, UP by the Respondent No.5 nearer to the primary health, ANM Centre, habitation, Devi Kali temple, primary School, Higher Secondary School, local playground; and

c) Pass such other order(s) which this Hon'ble Tribunal may deem fit and proper in the interest of justice."

Grounds of Challenge

3. The appellants have challenged the validity of the impugned EC on the grounds that the respondent no.5 submitted application dated 25.08.2020 for establishment of a CBWTF at the proposed site. Pursuant to the said application the respondent no.2 issued Terms of Reference with regard to the proposed site having geo-coordinates N-26°38'33.06" and E-83°44'56.75". The respondent no.5 applied for no objection from the office of the Divisional Director, Social Forestry Division, Deoria. In response thereto, the Divisional Director, Social Forestry Division, Deoria, vide letter dated 19.11.2020, granted NOC in favour of the Project Proponent for the land having Geo-coordinates N-26°38'48" and E-083°46'24" which is different from the proposed land mentioned in the Terms of Reference. The Project Proponent also obtained permission to use the agricultural land for other purposes by misrepresentation of facts. The process followed for grant of EC is thereby vitiated. The EC has been granted in violation of the Revised Guidelines for Common Bio-medical Waste Treatment and Disposal Facility issued by the CPCB on 21.12.2016 (CBWTF Guidelines 2016). The CBWTF is proposed to be set up within prohibited degree and distance near to the Primary Health Centre, ANM Centre, community playground, Primary School and a Higher Secondary School which exist within distance of 40 to 80 metres. The

houses of the residents of Village Paharpur are located at a distance of 100 to 150 meters approximately. Temple for worship of Devi Kali is situated at a distance of 80 meters from the proposed CBWTF. The proposed CBWTF is surrounded by other villages situated within a distance of 500 meters to 1 Km. The appellants have learnt that a Bio-Medical Waste Facility is operational at Gorakhpur at a distance of about 50 Kms. from Deoria, another at Khaleelabad at a distance of about 82 Kms. from Deoria and yet another at Ghazipur at a distance of about 128 Kms. from Deoria. A new CBWTF cannot be allowed to be set up/established within the coverage area of other CBWTF already treating and disposing of the medical waste generated in that particular area. The appellants and several other villagers submitted comprehensive representation to the respondent no. 2 and other authorities through post and also forwarded a copy on the official website of the respondent no.2 but the respondent no.2 failed to take the same into consideration. The appellant no.1 filed Writ Petition before the High Court which was disposed of on the ground that another case of the same nature was dismissed by the Hon'ble High Court on 24.06.2021. The proposed CBWTF will destroy the ecology and environment of the entire area, may spread diseases and will be detrimental to the health of general public at large besides affecting the cattle as well as flora and fauna in the vicinity and will defeat the fundamental right to live in a clean and pollution free environment guaranteed under Article 21 of the Constitution of India.

4. So far as the period of limitation is concerned, the appellants have pleaded as under:-

“the impugned environment clearance no. EC21B032UP156759 dated 03.12.2021 have been granted by the respondent no. 2 in favour of the respondent no. 5 which uploaded on the website of the respondent no. 2 only on null. Besides above, the Hon'ble Apex Court in Suo Moto Writ Petition No.3/20 extended

the period of limitation by excluding the period upto the date 28.02.2022. Thus the present appeal is within limitation provided for filing an appeal against the grant of EC.”

5. Vide order dated 18.02.2022, this Tribunal constituted a Joint Committee with direction to look into the grievances of the appellants and submit its report within three months. The relevant part of the order reads as under:

“2. In view of the above grievance of the applicant, it appears necessary to ascertain the factual position in the matter through a Joint Committee of the SEIAA, State PCB and District Magistrate-Deoria, Uttar Pradesh. The State PCB will be the Nodal agency for coordination and compliance. The joint Committee may meet within four weeks and undertake site visit and look into the grievance of the applicant. Factual and action taken report may be furnished within three months 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.”

6. Mr. Umesh Chandra Sharma, Member, SIAAC, who was nominated as Member of Joint Committee vide order no. 1085/Pra/A.No. 06 of 2022/22 dated 21.03.2022, could not join during visit of proposed CBWTF and meeting on 05.04.2022 due to which reason no report of the Joint Committee was prepared and filed before this Tribunal.

Action Taken Report filed by Regional Officer, UPPCB, Gorakhpur

7. Action taken report was filed by Mr. Pankaj Yadav, Regional Officer, UPPCB, Gorakhpur vide email dated 17.05.2022. Copies of Minutes of Meeting dated 05.04.2022 held under the Chairmanship of the District Magistrate, Deoria and inspection report dated 04.04.2022 of SDM, Deoria Sadar and Regional Officer, UPPCB, Gorakhpur were enclosed with above said action taken report. The relevant part of the report reads as under:-

“Action Taken Report in compliance of order dated 18.02.2022 passed by Hon’ble National Green Tribunal

Principal Bench New Delhi in Appeal No. 06/2022 (I.A. No. 29/2022) Prabhakar Rai and Others Vs. Union of India and others.

Background

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Action taken report

1. In Compliance of said order, U.P. Pollution Control Board (UPPCB) constitute a committee comprising of Member Secretary, SEIAA, District Magistrate Deoria and Regional Officer, Regional Office, U.P. Pollution Control Board, Gorakhpur vide letter no. H 72699/C-6/SA-658/2022, dated 11.03.2022. Copy of the said letter is annexed as annexure- 01.
2. Member Secretary, SEIAA, U.P. Nominated Sri Umesh Chandra Sharma, Member SEAC-1 as member of Joint Committee vide order no. 1085/Pra/A.No. 06 of 2022/22 dated 21.03.2022. Copy of the said order is annexed as annexure-02
3. In compliance of order, Joint Committee visited the site of proposed CBWTF situated at Arazi No. 1006 falling in village- Paharpur, Post- Gotha Rasoolpur, Tehsil & District- Deoria, U.P. on dated 04.04.2022. Nominated Joint Committee Member, SEIAA, UP Sri Umesh Chandra Sharma, was not present during site visit of proposed CBWTF.
4. In Compliance of said order, a meeting of Members of Joint Committee as mentioned in order was held on 05.04.2022 in Chairmanship of District Magistrate, Deoria. Proceeding of the meeting and site inspection report is enclosed as annexure-03.
5. As per site inspection report of Joint Committee, Distance of Primary Health Centre (Presently non-functional) from the proposed CBWTF is 166 meter.
6. As per site inspection report Joint Committee, Distance of nearest habitat/Population from proposed CBWTF is 184 meter.
7. A conditional consent to establish (CTE) for in question proposed CBWTF has been issued by UPPCB vide Letter No. 5008/UPPCB/Gorakhpur(UPPCBRO)/CTE/Deoria/2021, Dated 05.01.2022
8. State Level Environment Impact Assessment Authority, UP has issued Environment clearance Vide Letter No. MOEF&CC Proposal No-SIA/UP/MIS/55933/2021 & SEIAA, UP File No. 5790 Dated 03.12.2021
9. Point No. 6 (b) of Revised Guidelines for Common Biomedical Waste Treatment & Disposal Facility Dated

21.12.2016 of Central Pollution Control Board (CPCB), describes Location criteria of a CBWTF. As per Point 6 (b) of Location criteria a CBWTF can be located at a place reasonably far away from notified residential and sensitive areas and should have a buffer distance of preferably 500 m so that it shall have minimal impact on these areas. In case of non-availability of such a land the buffer zone distance from the notified residential area may be reduced to less than 500 m by SPCB/PCC without referring the matter to SPCB by prescribing additional control measures such as :-

- i. adoption of best available technologies (BAT) by the proponent of CBWTF;*
- ii. prescribing stringent standards for operation of the CBWTF by the SPCB/PCC;*
- iii. Adoption of zero liquid discharge by the CBWTF;*
- iv. In case of any complaints from the public, then CBWTF should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity. If SPCB/PCC is not in a position to resolve the issue relating to buffer zone while selecting the site for CBWTFs, in such a case, SPCBs/PCCs may refer the matter to CPCB.*

10. A conditional CTE to in question proposed CBWTF has been issued by UPPCB taking into consideration the provisions described in point no. 6 (b) of Revised Guidelines for Common Biomedical Waste Treatment & Disposal Facility dated 21.12.2016 of CPCB. In point no. 33 of CTE Dated 05.01.2022 issued by UPPCB to proposed CBWTF it has been clearly mentioned that concealing factual data or submission of false/fabricated data and failure to comply with any of the conditions mentioned in CTE may result in withdrawal of this CTE and attract action under the provisions of Law.

11. Precautionary special conditions has been imposed in the Environmental Clearance issued by SEIAA. UP and Consent to Establish issued by UPPCB with respect to the buffer zone as mentioned in the Revised Guidelines for Common Bio-Medical Waste Treatment and Disposal Facility Dated. 21.12.2016 of CPCB.

12. As no CBWTF was operational in the District- Gorakhpur, Deoria, Kushinagar and Maharajganj, hence in the light of Bio-Medical Waste Management and COVID-19 BMW in aforesaid districts, subjected CBWTF was allowed to establish. ”

8. The relevant part of Minutes of Meeting dated 05.04.2022 held under the Chairmanship of the District Magistrate, Deoria reads as under:-

“माननीय राष्ट्रीय हरित अधिकरण, नई दिल्ली में योजित अपील संख्या-6/2022, (I.A. No. 29/2022) प्रभाकर राय एवं अन्य बनाम यूनियन ऑफ इण्डिया एवं अन्य में पारित आदेश दिनांक 18.02.2022 के अनुपालन में दिनांक 05.04.2022 को आयोजित बैठक का कार्यवृत्त।

“माननीय राष्ट्रीय हरित अधिकरण, नई दिल्ली में योजित अपील संख्या-6/2022 (I.A. No. 29/2022) प्रभाकर राय एवं अन्य बनाम यूनियन ऑफ इण्डिया एवं अन्य में पारित आदेश दिनांक 18.02.2022 के अनुपालन में आज दिनांक 05.04.2022 को अधोहस्ताक्षरी के कैम्प कार्यालय पर बैठक आयोजित किया गया। बैठक में निम्नलिखित अधिकारीगण उपस्थिति हुए

1. जिलाधिकारी, देवरिया।
2. श्री कुँवर पंकज, अपर जिलाधिकारी (प्रशासन), देवरिया।
3. श्री सौरभ सिंह, उप जिलाधिकारी सदर, देवरिया।
4. श्री पंकज यादव, क्षेत्रीय अधिकारी, प्रदूषण नियंत्रण बोर्ड गोरखपुर।

श्री उमेश चन्द्र शर्मा, सदस्य एस०ई०ए०एसी बैठक में अनुपस्थित थे। इस संदर्भ में क्षेत्रीय अधिकारी द्वारा अवगत कराया गया कि श्री उमेश चन्द्र शर्मा को पत्राचार द्वारा आज की बैठक के सम्बन्ध में सूचना दी गयी थी (सलग्रक-1) किन्तु वह आने में असमर्थ रहे। कारण पूछने पर क्षेत्रीय अधिकारी द्वारा अवगत कराया गया कि श्री उमेश चन्द्र शर्मा से दूरभाष पर हुई वार्ता के अनुक्रम में यह बताया गया कि उनको अपने सम्बन्धित विभाग द्वारा नामित करने की कोई भी सूचना प्राप्त नहीं है।

जिलाधिकारी, देवरिया द्वारा कार्यालय आदेश संख्या-1071/आ०लि०-2022. दिनांक 02, अप्रैल, 2022 के माध्यम से श्री सौरभ सिंह उप जिला मजिस्ट्रेट सदर, देवरिया एवं श्री पंकज यादव, क्षेत्रीय अधिकारी, प्रदूषण नियम बोर्ड, गोरखपुर की संयुक्त टीम का गठन करते हुए शिकायती स्थलीय जाँच हेतु आदेशित किया गया। टीम द्वारा की गयी जाँच संलग्न है। (सलग्रक-2)

जाँच आख्या के आधार पर निम्नलिखित तथ्य प्रकाश में आये:

1. शिकायती स्थल से सामुदायिक स्वास्थ्य केन्द्र (वर्तमान में जर्जर एवं अप्रयुक्त अवस्था में) की दूरी 166 मीटर
2. प्रस्तावित स्थल से निकटतम आबादी की दूरी 184 मीटर

अतिरिक्त कथन

जिलाधिकारी द्वारा यह पूछा गया कि जब यह दूरी 500 मीटर से भी कम थी, तो इसका पर्यावरणीय स्वीकृति/अनापत्ति प्रमाण-पत्र इकाई को कैसे निर्गत किया गया? इस सन्दर्भ में क्षेत्रीय अधिकारी द्वारा यह अवगत कराया गया कि उनके द्वारा जो आख्या प्रेषित की गयी थी उसमें निकटतम आबादी लगभग 200 मीटर दर्शायी गयी थी। कॉमन बायो मेडिकल वेस्ट ट्रीटमेंट एण्ड डिस्पोजल फेसिलिटीज़ की नवीनतम गाइडलाइन के अनुसार यदि उद्योग की दूरी निकटतम आबादी से 500 मीटर से कम है तो निम्नलिखित शर्तों के साथ इकाई की स्थापना करनी होती है-

- (i) adoption of best available technologies (BAT) by the proponent of CBWTF,
- (ii) prescribing stringent standards for operation of the CBWTF by the SOCB/PCC
- (iii) adoption Zero liquid discharge by the CBWTF and
- (iv) in case of any complaints from the public, then CBWTF should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity. If SPCB/PCC is not in a position to resolve the issue

relating to buffer zone while selecting the site for CBWTFs, in such a case, SPCBs/PCCS may refer the matter to CPCB.

क्षेत्रीय अधिकारी द्वारा अवगत कराया गया कि प्रश्नगत इकाई को बोर्ड मुख्यालय के पत्रक संख्या-5008/UPPCB/Gorakhpur(UPCCBRO)/CTE/DEORIA/2021, दिनांक 05.01.2022 द्वारा सशर्त अनापत्ति प्रमाण-पत्र निर्गत किया गया है। उक्त के अतिरिक्त इकाई को दिनांक स्टेट लेवल इनवॉयनमेंट इम्पैक्ट एसेसमेंट अथारिटी, उत्तर प्रदेश के पत्रांक संख्या-MoEFCC Proposal no-SIA/UP/MIS/55933/2021 & SEIAA, UP, File no.-5790, के द्वारा पर्यावरणीय स्वीकृति निर्गत की गयी है। पर्यावरणीय स्वीकृति से पूर्व दिनांक 15.04.2021 को आहुत लोक सुनवाई का कार्यवृत्त संलग्न है। (संलग्नक-3) शिकायती स्थल की जाँच के समय उपस्थित प्रतिनिधियों द्वारा यह भी शिकायत की गयी कि उनको पूर्व में हुई लोक सुनवाई के सम्बन्ध में कोई सूचना नहीं थी एवं लोक सुनवाई के समय गांव के लोग कम थे, जबकि बाहर के लोग ज्यादा थे। इस पर क्षेत्रीय अधिकारी ने अवगत कराया कि दिनांक 15.04.2021 को सम्पन्न लोक सुनवाई की उपस्थिति पंजिका एवं वीडियोग्राफी संरक्षित है।”

9. The relevant part of the Inspection Report dated 04.04.2022 of SDM, Deoria Sadar and Regional Officer, UPPCB, Gorakhpur reads as under:-

“कार्यालय जिला मजिस्ट्रेट, देवरिया के आदेश दिनांक 02 अप्रैल, 2022 जिसमें मा० हरित अधिकरण के समक्ष योजित अपील सं०-06/2022 प्रभाकर राय बनाम यूनियन आफ इण्डिया व अन्य में ग्राम पहाड़पुर पोस्ट-गौठारसूलपुर तहसील व जिला देवरिया के आ०सं०-1006 पर कॉमन बायोमेडिकल वेस्ट ट्रीटमेंट एण्ड डिस्पोजल प्लान्ट स्थापित किये जाने के विरुद्ध माननीय अधिकरण के समक्ष प्रस्तुत शिकायत के निस्तारण में माननीय अधिकरण द्वारा पारित आदेश दिनांक 18.02.2022 तथा रिवाइज्ड गाइडलाइन्स फॉर कॉमन बायो मेडिकल वेस्ट ट्रीटमेंट एण्ड डिस्पोजल फैसिलिटी दिनांक 21.12.2016 में दिये गये निर्देश के क्रम में स्थलीय जाँच कर आख्या प्रस्तुत करने हेतु जो निर्देश प्राप्त हुआ था. उसके अनुपालन क्रम में दिनांक 02.04.2022 को गठित टीम की उपस्थिति एवं निर्देशन में स्थलीय एवं अभिलेखीय परीक्षण व आवश्यक पैमाइश की गई, जिससे निम्न निष्कर्ष प्राप्त हुए।

1. निर्माणाधीन CBWTE यूनिट से ग्राम की निकटतम आबादी जो शिकायतकर्ता श्री प्रभाकर राय का मकान है, कुल 184 मीटर की दूरी पर स्थित है। यही से ग्राम की आबादी प्रारम्भ हो जाती है।
2. ग्राम का सामुदायिक स्वास्थ्य केन्द्र जो जर्जर अवस्था में है तथा सामुदायिक शौचालय भी इसके सटे है, CBWTE केन्द्र से कुल 166 मीटर पर स्थित है।
3. CBWTE यूनिट से 1.5 किमी दक्षिण ग्राम भगवानपुर की आबादी स्थित है। पश्चिम 1 किमी की दूरी पर ग्राम सुरचक की आबादी स्थित है तथा पूरब लगभग 2 किमी पर ग्राम धनौती रजडीहा की आबादी स्थित है।

ग्रामीणों द्वारा यह बयान दिया गया कि उक्त बायोमेडिकल वेस्ट ट्रीटमेंट एण्ड डिस्पोजल प्लान्ट के निर्माण हेतु किसी भी प्रकार की लोक सुनवाई ग्रामीणों के समक्ष नहीं की गयी।”

Report of Mr. Umesh Chandra Sharma, Member SEAC

10. Mr. Umesh Chandra Sharma, Member SEAC, who was nominated as member of the Joint Committee and could not join at the time of proposed visit and the meeting as mentioned above, sent his report to Member Secretary, UPSEIAA with copy to District Magistrate, Deoria and Regional Officer, UPPCB, Gorakhpur. Copy of the report was filed by Regional Officer, UPPCB, Gorakhpur vide email dated 05.05.2022. The relevant part of the report is reproduced below:-

“X X X X
विषय : माननीय एन0जी0टी0 नई दिल्ली में योजित अपील संख्या-06/2022
(आई0ए0 नं0 - 29/2022) प्रभाकर राँय एवं अन्य बनाम यूनियन ऑफ
इण्डिया व अन्य में पारित आदेश दिनांक 18.02.2022 के अनुपालन में सम्बन्ध
में।

महोदय,

कृपया उपरोक्त विषयक अपने पत्र संख्या-पर्या/अ0सं0-06 आफ 2022, दिनांक 21.03.2022 का सन्दर्भ ग्रहण करने का कष्ट करें। जिसके माध्यम से माननीय एन0जी0टी0 के आदेश दिनांक 18.02.2022 के अनुक्रम अधोहस्ताक्षरी को गठित संयुक्त समिति का सदस्य नामित किया गया था। संयुक्त समिति द्वारा ग्राम-पहाडपुर, पोस्ट-गोधा रसूलपुर, तहसील एवं जिला देवरिया आराजी संख्या-1006 पर प्रस्तावित सी0वी0 डब्ल्यू0टी0एफ0 का स्थलीय निरीक्षण दिनांक 04.04.2022 को तिथि नियत की गई थी जिसकी सूचना अधोहस्ताक्षरी को क्षेत्रीय अधिकारी द्वारा दूरभाष पर प्राप्त हुई विभागीय पत्र समय से प्राप्त न होने कारण अल्प समय में अधोहस्ताक्षरी द्वारा प्रतिभाग किया जाना सम्भव नहीं हो सका था। अधोहस्ताक्षरी द्वारा दिनांक 28.04.2022 को क्षेत्रीय अधिकारी प्रदूषण नियन्त्रण बोर्ड गोरखपुर के प्रतिनिधि के साथ निरीक्षण किया गया जिसकी निरीक्षण आख्या विवरण निम्नवत है।

1. निर्माणाधीन सी0बी0डब्लू0टी0एफ0 ग्राम निकटतम आजादी जो शिकायतकर्ता श्री प्रभाकर राय का मकान है, कुल 184 मीटर की दूरी स्थित है। यहीं से ग्राम की आबादी प्रारम्भ हो जाती है।
2. ग्राम का सामुदायिक स्वास्थ्य केन्द्र जो जर-जर अवस्था में तथा सामुदायिक शौचालय भी इसके सटे है, सी0बी0डब्लू0टी0एफ0 की दूरी 166 मीटर पर स्थित है।
3. सी0बी0डब्लू0टी0एफ0 यूनिट में 1.5 किमी0 दक्षिण ग्राम-भगवानपुर की आबादी स्थित है। पश्चिम 1.0 किलोमीटर की दूरी पर ग्राम सुरचक की आबादी स्थित है तथा पूरब लगभग 2.0 किमी0 की दूरी पर धनौती रजडीहा की आबादी स्थित है।

उपरोक्त आख्या अवलोकनार्थ एवं अग्रिम कार्यवाही हेतु प्रेषित है।”

Reply on behalf of respondent no. 5-M/s J.K.N. Purvanchal CBWTF Works

11. Respondent no. 5- M/s J.K.N. Purvanchal CBWTF Works was notified about the appeal by Members of the Joint Committee and respondent no. 5- M/s J.K.N. Purvanchal CBWTF Works filed reply vide email dated 02.05.2022. The relevant part of reply reads as under:-

“Reply on behalf of project proponent:- M/s J.K.N. Purvanchal CBWTF Works, village Pahadpur Post Gotha Rasoolpur, District Deoria.

- | | | | |
|---|---|---|---|
| X | X | X | X |
|---|---|---|---|
1. *That the project initiated by the project proponent is in District Deoria, for the disbursal of medical waste in the three District adjacent to the proposed plant area, there is no plant exists nearby district except the proposed plant.*
 2. *That the NOC and environment clearance was granted by UP Pollution Control Board after the spot inspection and holding an open meeting at the location where the proposed plant is scheduled. Copy of open meeting held on 15.4.2021 is annexed herewith and marked as Annexure-1 to this reply.*
 3. *That it is submitted that at the time of the spot inspection the local villagers were also called for their opinion and after considering and redressing the grievances of the local resident, as well as the guide line enumerated in the rules framed by the Central Pollution Control Board, dated December 21, 2016, environment clearance and NOC was granted.*
 4. *That the applicant herein is the resident of village Paharpur, where the proposed plant is proposed, have enmity with the project proponent and in connivance with persons who had strong hold over the medical waste disposal plants, filed a writ petition before the Hon'ble Allahabad High Court being WP no.1094 of 2021 (Prabhakar Rai vs. State of UP and others), and raised the same questions, which is the subject matter of the present appeal again, the writ petition was dismissed with the cost of Rs. 1000/-. True copy of order dated 27.07.2021 is annexed herewith and marked as Annexure-2 to this reply.*
 5. *That another writ petition was also filed for the same cause of action by the Gorakhpur Kalyan Samiti, which was also the mouth piece of the rackets who runs the business of bio medical waste plant, this writ petition was also dismissed by the Court vide order dated 24.06.2021 on the ground of bonafide of the petitioners. Copy of order dated 24.06.2021 is being annexed herewith and marked as Annexure-3 to this reply.*
 6. *That the allegations with regard to the establishment of the unit near the human habitation is absolutely false, because several complaints has been made with regard to the location of the plant, and all the complaints was considered by the pollution control board UP, and to redress the grievances of the complainant, they issued a letter dated 24.3.2021 to the local*

office of the pollution controlee board at Gorakhpur, to make a spot inspection and submit a report. The local officer of the UP Pollution Control Board, visited the site and a spot enquiry was conducted by them, thereafter it is found that the distance between the plant and notified residential area is almost 200 meters, accordingly report was submitted on 20.04.2021. A true copy of the letters issued by the pollution control board and report submitted by the pollution control board, are annexed herewith and marked as Annexure No- 4

7. That the guidelines mentioned in Bio Medical Waste Treatment & Medical Facility-2016 was strictly followed, while granting the EC, further strict compliance of the directions with regard to the pollution control which includes deployment of the best available technology for the plant and bank guarantees were also provided by the project proponent. The project proponent submitted the required documents along with affidavit to comply with the all the conditions, provided/imposed upon him while granting the environment clearance and accordingly the environment clearance were granted vide order dated 3.12.2021. A copy of the affidavit submitted by the respondent and EC granted by Ministry of Environment is collectively annexed herewith as Annexure-5 to this reply.

8. That the applicant is acting on behest of the rackets who runs the business of bio medical waste plant, and do not want other persons to enter the business, and he has no concerned with the environmental depletion he merely acting on behalf of them to stop the plant by hook or crook, by abusing the process of law, approaching the different forum available in the State and Central level.

9. That there is nothing illegal or incorrect in granting the EC and NOC

to the plant of the project proponent as the same is the requirement of the area, there is no bio medical waste plant available in the area where medical waste can be processed, the bio medical waste of district Kushi Nagar, Maharajgaj, Deoria and Gorakhpur will be processed in this plant, because in these district, there is no bio medical waste plant exists. It is the needs of these district to establish bio medical waste plant so that the hospital can dispose off their medical waste without any delay.

10. That in the facts and circumstances as mentioned above, the present appeal may also be dismissed by this Hon'ble Tribunal in the interest of justice with heavy costs."

12. Vide order dated 25.05.2022, notices were ordered to be issued to respondents no. 1 to 3. By the above said order this Tribunal also directed that in the meanwhile, environmental clearance and consent to establish for the project shall remain in abeyance and the Project Proponent shall not take any further steps for establishment/operation of the CBWTF.

13. Pursuant thereto replies were filed by respondent no. 1-MoEF & CC vide email dated 16.09.2022, respondent no. 2 vide email dated 21.09.2022 and respondent no. 3 vide email dated 29.08.2022.

Reply on Behalf of the Respondent No.1-MoEF&CC

14. In its reply respondent no.1-MOEF&CC has submitted that it has issued an Environmental Impact Assessment Notification number S.O. 1533 E dated 14th, September 2006 (EIA Notification 2006) superseding the EIA Notification, 1994. The developmental projects in different parts of the country are regulated as per EIA Notification 2006 as amended from time to time. EIA Notification 2006 covers 38 projects/activities in its Schedule which require prior environmental clearance from MoEF & CC for matters falling under Category 'A' in the Schedule and the State Environment Impact Assessment Authority (SEIAA) at State level for matters falling under Category 'B' in the said Schedule, before starting any construction work, or preparation of land by the project management except for securing the land. CBWTFs are covered under entry 7(da) of the Schedule to the EIA Notification, 2006. All Bio-Medical Waste Treatment Facilities projects fall under category 'B' of the EIA Notification 2006 as amended and require appraisal by the State Level Expert Appraisal Committees (SEACs) and approval by the SEIAAs. EC dated 03.12.2021 has been granted to the project in question by UPSEIAA and all documents/reports related to grant of EC in question are with UPSEIAA and the issues involved and contentions raised by the appellant ought to be replied by UPSEIAA which is also empowered to take action against the violation, if any.

Reply on the behalf of respondent No. 02- UPSEIAA

15. The relevant part of reply filed by respondent no. 2-UPSEIAA vide email dated 21.09.2022 reads as under:-

“Reply on the behalf of respondent no. 2-State Level Environment Impact Assessment Authority, U.P. relating to grant of Environmental Clearance.

Preliminary Submissions

X X X X

3. That The SEIAA and SEAC, Uttar Pradesh have been constituted by Ministry of Environment and Forest & CC, Govt. of India vide notification bearing no. S.O 3338(E) dt. 16.10.2017 and subsequently reconstituted through notification bearing no. S.O. 2276(E) dated 11/06/2021

4. Directorate of Environment, Govt. of U.P. has been declared to function as Secretariat to these statutory bodies i.e. SEIAA and SEAC by State Government.

5. That All such project proposals received to the SEIAA, UP for Prior Environmental Clearance are dealt according to the EIA Notification, 2006 (as amended).

REPLY ON MERITS

1. That It is submitted that respondent no. 5 made an application online on 25.08.2020 for Terms of Reference (ToR) "Common Biomedical Waste Treatment Facility (CBWTF) at village- Paharpur, Post- Gotha Rasoolpur, Tehsil or District-Deoria-274201 (UP), M/s JKN Purvanchal CBWTF Works R/o Village Paharpur, Post Gotha Rasoolpur Deoria, Uttar Pradesh Vide Proposal No. SIA/UP/MIS/55933/2020 under 7(d) category of EIA notification 2006 (as amended). The case was considered by SEAC in its 490th meeting dated. 14.09.2020. During the meeting, the project proponent along with his consultant made presentation. The committee discussed the matter and recommended to issue the Terms of Reference (ToR) for the preparation of EIA. Copy of minutes of 490th SEAC, Meeting held on 14.09.2020 is being filed herewith and marked as Annexure no.01.

2. That subsequently, the case was considered in 409th SEIAA meeting dated. 01.10.2020 wherein the State Level Environment Impact Assessment Authority agreed with the recommendations of the SEAC to issue the additional ToR's to proposed project for conducting EIA studies. Copy of minutes of 409th SEIAA, Meeting held on 01.10.2020 is being filed herewith and marked as Annexure no.02.

3. That Further, SEIAA, vide letter no. 424/Parya/ SEAC/ 5790 / 2020 dated: 15/10/2020 issued Terms of Reference of the proposed project. Concerned copy of ToR letter dated 15/10/2022 is being filed herewith and marked as Annexure no.03.

4. That After the grant of ToR, a complaint letter dated 18.01.2021 of Dr Vinay Kumar Verma, Secretary, Medical Pollution Control Committee, Panki, Kanpur has been received regarding the Common Bio-Medical Waste Treatment Facility at Khasra No. 1006 Village Paharpur, Post Gotha Rasoolpur, District Deoria, UP. SEAC considered the said complaint dated 18.01.2021 in 523rd meeting dated 09.02.2021 and opined that "the complaint letter should be sent to CMO, Deoria & concerned RO, UP Pollution Control Board for providing the factual report regarding feasibility/requirement of Common Biomedical Waste Treatment Facility at the proposed site." Concerned copy of Minutes dated 09.02.2021 is being filed herewith and marked as Annexure no.04.

5. That subsequently, the complaint dated 18.01.2021 was considered in 452th SEIAA meeting dated. 25.02.2021 wherein the State Level Environment Impact Assessment Authority agreed with the recommendations of the SEAC that the complaint letter should be sent to CMO, Deoria & concerned RO, UP Pollution Control Board for providing the factual report regarding feasibility/requirement of Common Biomedical Waste Treatment Facility at the proposed site. Copy of minutes of 452th SEIAA, Meeting held on 25.02.2021 is being filed herewith and marked as Annexure no.05.

6. That Further, in continuation of 523rd SEAC meeting dated 09.02.2021 and 452th SEIAA meeting dated 25.02.2021, Directorate of Environment UP, has issued vide letter no. 840/Parya/samanay/2020 dated: 24/03/2021 to Member Secretary, UPPCB Lucknow. Concerned copy of letter dated 24/03/2022 is being filed herewith and marked as Annexure no.06.

7. That, Regional Officer, UPPCB Gorakhpur has submitted the factual report vide letter no 36A/NOC 176/2021 dated 20/04/2021. Concerned copy of letter dated 20/04/2021 is being filed herewith and marked as Annexure no.07.

8. That the Project proponent made an online application on 29/06/2021 for Environmental Clearance for Common Bio-Medical Waste Treatment Facility at Khasra No. 1006 Village Paharpur, Post Gotha Rasoolpur, District Deoria, U.P. The hard copy of the application was received on 02.09.2021. The case was considered by SEAC in its 568th meeting dated. 08.09.2021. During the meeting, the project proponent along with his consultant made presentation. The committee discussed the matter and recommended grant of Environmental Clearance for the project proposal along with general and specific conditions. Copy of minutes of 568th SEAC, Meeting held on 08.09.2021 is being filed herewith and marked as Annexure no.08.

9. That subsequently, the case was considered in 505th SEIAA meeting dated. 25.10.2021 wherein State Level Environment Impact Assessment Authority decided to grant Environmental Clearance to the project along with all the general and specific conditions as suggested by SEAC and also adding following one specific conditions along with it:-

"The unit shall strictly comply with CPCB guidelines for setting up the Common Bio-Medical Waste Treatment Facility (CBWTF)."

Copy of minutes of 505th SEIAA meeting held on 25.10.2021 is being filed herewith and marked as Annexure no.09.

10.That Further, SEIAA, issued Environmental Clearance for proposed project to effective implementation of general and specific condition imposed vide EC Identification no EC21B032UP156759 dated: 03/12/2021. Copy of Environmental Clearance letter dated 03/12/2021 is being filed herewith and marked as Annexure no.10."

Reply on behalf of respondent no. 03- CPCB

16. In its reply respondent no.3-CPCB has submitted that CPCB has issued revised guidelines for CBWTFs in 2016 laying down siting criteria for setting up of CBWTF in an area. These guidelines also stipulate about location and coverage of CBWTF. As per said guidelines, a CBWTF can be located at a place reasonably far away from notified residential and sensitive areas and should have a buffer distance of preferably 500 meters so that it shall have minimal impact on these areas. In case of non-availability of such land, the buffer zone distance from the notified residential area may be reduced to less than 500 meters by SPCB/UTPCC without referring the matter to the CPCB by prescribing additional control measures. If SPCB/UTPCC is not in a position to resolve the issue relating to buffer zone while selecting the site for CBWTF, in such a case, SPCB/UTPCC may refer the matter to the CPCB. As per Bio-Medical Waste Management Rules, 2016 (BMWM Rules, 2016), the CPCB guidelines are mandatory and are required to be followed prior to grant of permission to any new CBWTF and CPCB vide letter dated 08.03.2018 requested SEAC/SEIAA of all States to follow CPCB guidelines before granting EC to the Project Proponents. Respondent no. 2-CPCB is not aware about the permissions granted and cannot reply about the same and this Tribunal may pass such order as it deems fit.

Reply on behalf of respondent no. 04- UPPCB

17. In its reply respondent no.4-UPPCB has submitted that on 20.09.2020 the Project Proponent applied for Consent to Establish (CTE) the proposed CBWTF which was rejected due to reasons that the project is covered under EIA Notification 2006 issued by MOEF&CC and the EC has not been issued to the project by the competent authority. Thereafter, the Project Proponent applied for EC and as per the procedure the UPPCB issued a public notice dated 14.03.2021 which was got published in Dainik Jagran and Amar Ujala, Gorakhpur Edition on 25.03.2021. It was mentioned in the Public Notice that public hearing will be conducted in the premises of the Project Proponent by the Committee under the Chairmanship of the District Magistrate, Deoria on 15.04.2021. Accordingly Public Hearing was conducted but no objection was raised regarding establishment of the proposed CBWTF. Thereafter, the Project Proponent submitted the Environment Impact Assessment Report (EIA Report) and UPSEIAA granted EC on 03.12.2021. Thereafter, the Project Proponent again applied for CTE which was granted by UPPCB on 05.01.2022 in respect of the land having the same coordinates as mentioned in EC. While granting CTE several conditions were imposed for compliance of environmental laws as well as CPCB Guidelines 2016. Respondent no.4-UPPCB has further submitted that Primary Health Centre/ANM Centre are situated at a distance of 166 meters and are in dilapidated condition. The distance of residence of appellant no. 1 is about 184 meters and the village abadi starts from that place. The other villages on the south direction are beyond 1 Km. The playground, primary school, higher secondary school and temple are beyond 1 Km from the proposed site. Besides this, as per guidelines of UPPCB the Project Proponent has to develop a green belt in 1/3rd area alongwith its

boundary wall. Respondent no.4 has submitted that the appellants are not entitled to any relief.

**Counter Affidavit on behalf of Respondent No. 5-M/s. JKN
Purvanchal CBWTF Works**

18. Respondent no. 5-M/s. JKN Purvanchal CBWTF Works also filed counter affidavit vide email dated 30.08.2022. The relevant part of the counter affidavit reads as under:-

***“Counter Affidavit on behalf of respondent no. 5-JKN
Purvanchal CBWTF Works to the appeal preferred by the
appellants under Section 16 of the National Green
Tribunal Act, 2010.*”**

2. That at the outset, it is submitted that the present Appeal is an abuse of the process of this Hon'ble Tribunal and the same deserves to be dismissed with heavy costs. It is further submitted that the Appellants have not approached this Hon'ble Tribunal with clean hands and have misrepresented several vital facts before this Hon'ble Tribunal which is evident from the disparity between the submissions made by the Appellants in the present Appeal and the Report submitted by the Joint Committee vide email dated 17.05.2022.

3. That the legal impediments in entertaining the present Appeal are submitted hereinafter as Preliminary Objections & Submissions:

PRELIMINARY OBJECTIONS:

1. That the present Appeal is not maintainable as no condition as prescribed in the 'Revised Guidelines for Common Bio-Medical Waste Treatment and Disposal Facility' dated 21.12.2016 issued by CPCB have been violated. It is submitted that as per the said guidelines dated 21.12.2016, the buffer zone distance shall be calculated from the 'notified residential areas' and not from any individual residential premises.

2. That as per the report dated 05.05.2022 submitted by the Joint Committee, the residential areas of Village Bagwanpur, Surchak and Dhanauti Rajdiha are situated at a distance of 1.5 Kms, 1.0 Kms and 2.0 kms respectively from the proposed CBWTF and as such the requirement of having a preferable buffer zone of 500 m are clearly met in the present case.

3. That as per the report dated 05.05.2022 submitted by the Joint Committee, only the house of the Appellant No. 1 is situated at a distance of 184 meters from the proposed CBWTF and the same is not covered in the notified residential area therefore, the location criteria specified in the 'Revised

Guidelines for Common Bio-Medical Waste Treatment and Disposal Facility' has been duly complied.

4. *That the Primary Health Center situated at a distance of 166 meters is in a dilapidated condition and is currently non-operational therefore, the establishment of proposed CBWTF would not adversely affect the Primary Health Center in any manner, whatsoever.*
5. *That the criterion of having a preferable buffer distance of 500 m from notified residential areas and sensitive areas is discretionary and not mandatory and can be reduced to less than 500 m by prescribing additional control measures. It is submitted that in the present case also the Environmental Clearance (issued by the SEIAA, UP) and CTE (issued by UPPCB) granted to Respondent No. 5 are subject to precautionary special conditions.*
6. *That the proposed CBWTF will be equipped with state-of-the-art equipment which will operate in consonance with the standards of operation as prescribed by SPCB/ PCC. The equipment list and their capacity details are as under:*

Equipment	Installed Capacity	Number
Incinerator	250 Kg per hour	1
Autoclave	800 Kg per Batch	1
Shredder	150 Kg Per Hour	1
Chemical Disinfection Tank	1500 Ltr	1
Effluent Treatment Plant	1 LD	1

It is submitted that besides the above air pollution control devices viz. Wet Scrubber, Cyclone and Bag Filter will be installed and 8 Kilo Litres of wastewater per day will be treated Effluent Treatment Plant and treated water will be recycled.

7. *That the Appellants have deliberately with malafide intentions made false and misleading averments before this Hon'ble Tribunal. The disparity between the report dated 05.05.2022 submitted by the Joint Committee and the averments made by the Appellant are reproduced as under:*

Averments made by the Appellants	Action Taken Report by Joint Committee

PrimaryHealth Centre situated at a distance of 30- 40 meter from the proposed CBWTF.	PrimaryHealth Centre situated at a distance of 166 meter from proposed CBWTF and is non-functional.
ANM Centre situated at a distance of 30-40 meter from the proposed CBWTF.	No mention of any ANM Centre being located near the proposed CBWTF.
Community Playground situated at a distance of 30- 40 meter from the proposed CBWTF.	No mention of any Community Playground being located near the proposed CBWTF.
Residential houses of the local villagers situated at a distance of 100-120 meters from the proposed CBWTF.	House of the Appellant No1 situated at a distance of 184 meters from the proposed CBWTF and the residential areas of Village Bagwanpur, Surchak and Dhanauti Rajdiha are situated at a distance of 1.5 Kms, 1.0 Kms and 2.0 kms respectively from the proposed CBWTF.

8. That the Hon'ble High Court of Gujarat in Special Civil Application No. 12235 of 2017 has considered the same issue and has held as under:

"the biomedical waste has got to be processed in accordance with the rules and regulations laid down by the Central Pollution Control Board. If, according to the applicants, operating a BioMedical waste Process Unit is an evil, then ignoring the biomedical waste and allowing it to be disposed of without being processed, is a greater evil and would lead to more health hazard The importance of the Bio-Medical waste Process Unit should not be undermined, and in my view, the applicants are unnecessarily hyper in this regard. The private respondents have been put to the strictest of the terms for the purpose of functioning and operation of the unit and they can still be put to certain more terms to ensure that the same does not lead to any pollution. The revised guidelines for the Common Bio-Medical Waste Treatment and Disposal Facility, as issued by the C.P.C.B. itself, provide that the buffer zone distance from the notified residential area may be reduced to less than 500 meters by the State Pollution Control Board or the Pollution Control Committee without referring the matter to the C.P. C.B. by prescribing the additional control measures such as (i) adoption of best available technologies (BAT) by the proponent of CBWTF, (ii) prescribing stringent standards for

operation of the CBWTF by the SPCB/PCC;(iii) adoption of zero liquid discharge by the CBWTF and (iv) in case of any complaints from the public, then CBWTF should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity. If SPCB/PCC is not in a position to resolve the issue relating to buffer zone while selecting the site for CBWTFs, in such a case, SPCBs/PCCs may refer the matter to CPCB.

.....It is a settled law that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development. This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy. The adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development.

Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to sustainable development cannot be singled out. Therefore, the concept of sustainable development is to be treated as an integral part of life under Article 21. Weighty concepts like intergenerational equity, public trust doctrine and precautionary principle, which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development. To ensure sustainable development is one of the goals of the Environment (Protection) Act, 1986 and this is quite necessary to guarantee the right to life under Article 21.

If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of life under Article 21. Acknowledgment of this principle will breathe new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance with the directions under the Act."

PARAWISE REPLY:

That the contents of the Application unless specifically admitted in this reply may be deemed to be specifically denied.

1. That the contents of Para 1 of the Appeal are admitted to the extent that environment clearance dated 03.12.2021 is accorded to the answering Respondent after the due consideration and holding a public meeting where the

grievances raised by the Appellant and other persons were duly addressed. The Appellant herein is unnecessarily creating hindrance without having any concern to the public. Further, before considering the application of the deponent a public hearing was also held, by the ADM (F) Deoria. A true copy of newspaper publication for public hearing is annexed herewith and marked as Annexure R5/ 1.

2. That the contents of Para 2 of the Appeal are wrong and denied and in reply it is submitted that Biomedical Waste Management Rules, 2016 of common medical based treatment and disposal facilities provides the buffer area for the establishment of new plant and further Clause-8 (b) of the Rule clearly provides establishment of a new plant if the number of hospital beds exceed more than 10,000 in a nearby area. Admittedly, no CBWTF plant exist in district Gorakhpur, Deoria, Mahrajganj, Kushinagar and there are 19208 beds in the hospitals running in these 4 districts, thus, the case of the answering Respondent falls under Clause-8(b) of the new rules. It is further the admitted fact that there is no CBWTF established in Gorakhpur Mandal. A true copy of the RTI information as provided by UP Pollution Control Board with regard to the number of beds in above mentioned 4 districts is annexed herewith and marked as Annexure R5/2.

3. That the contents of paragraph no. 3 of the appeal are wrong and denied and in its reply it is submitted that in a joint committee inspection conducted on the direction of this Hon'ble Tribunal as per site inspection report of joint committee distance of primary health center (presently non-functional and is in dilapidated condition) from the proposed CBWTF is 166 Meter and further distance of nearest habitat/population from proposed CBWTF is 184 meter, thus the contention of the appellant that the proposed unit is at distance of less than 50 meter from primary health center and from community playground 100 meter is absolutely false. Further, while granting the permission, the conditions enumerated in clause 6 (b) were also imposed upon the answering Respondent and the deponent has complied with the same by submitting a bank guarantee of INR 2,50,000.00 against the condition mentioned in CTE, and prior to applying land use, requisite fee for land use conversion was deposited by the Respondent. The Respondent has also covered the area of the project by boundary wall so that no confusion could be created while measuring the distance from the project to the near habitat.

4. That the contents of Paragraph 4 of the appeal are matter of record and need no specific reply.

5. That the contents of Paragraph 5 of the appeal are wrong and denied. It is submitted that the Geo Co-ordination which was provided in the application form for getting NOC from the CET is the same one which was considered by the Divisional Director, Social Foresti Division, Deoria. Thus, NOC granted by the Divisional Director, Social Foresti Division, Deoria is well considered and after the site inspection which does not suffer from any infirmity.

6. That the contents of Paragraph 6 of the appeal are wrong and denied. It is submitted that the procedure provided under the UP Revenue Code, was duly followed and the reports of Lekhpal, Revenue Inspector, and Tehsildar was submitted

before the SDM, Deoria while allowing the application under section 81 of the Revenue Code. The contention of the Appellant that the misleading facts were produced is absolutely false and based on the conjectures and surmises, there is nothing which is misleading while getting the order dated 23.2.2021.

7. That the contents of Paragraph 7 of the Appeal are wrong and denied. It is submitted that a newspaper publication for the public meeting was issued by the UP-Pollution Control Board and the date for the public meeting was held on and within the ambit of the rules. A copy of orders passed by the UP-Pollution Control Board against the MPCC is annexed herewith and marked as Annexure R5/3.

The guidelines mentioned in the Bio Medical Waste Treatment Facility 2016 and further compliance of the direction with regard to the pollution control which includes deployment of best available technology for the plant was complied with alongwith furnishing of bank guarantees. It is submitted that the conditions were duly complied by the project proponent and an affidavit with regard to the compliance was also submitted by the project proponent.

10. That the contents of Paragraph 10 of the Appeal are wrong and denied and in its reply it is submitted that Appeal devoid of merit and is liable to be dismissed with cost.

REPLY TO GROUNDS:

In reply to the Grounds raised by the Appellants, it is submitted that all the grounds are reiteration of the facts and are devoid of any merits. Therefore, while placing reliance on the reply to the facts and in view of Preliminary Objections and Submissions, it is submitted that all the grounds are frivolous and devoid of any merits. It is important to mention that none of the ground mentioned in the Appeal can sustain and the Appeal under Section 16 of the National Green Tribunal Act, 2010 is liable to be dismissed with costs.”

19. Arguments were heard and judgment was reserved vide order dated 14.10.2022 but subsequently vide order dated 19.12.2022, the matter was ordered to be listed for further hearing. The relevant part of order dated 19.12.2022 reads as under:-

“3. We have gone through the material on record and have observed some deficiencies of information in the same. On perusal of the material on record we find that some material aspects, particularly, the aspects of prescribing of additional control measures, adoption of best available technologies and zero liquid discharge by the project proponent of CBWTF require further clarifications by learned Counsel for the parties/parties.”

20. This Tribunal observed vide order dated 27.01.2023 that the UPPCB and the Project Proponent have not mentioned in their report/reply the additional control measures adopted regarding (i) best available technologies (BAT) by the Project Proponent of the CBWTF; (ii) stringent standards prescribed by the UPPCB for operation of the CBWTF and (iii) adoption of zero liquid discharge by the CBWTF which were adopted for reduction of buffer zone distance to be less than 500 meters in the present case. UPPCB and the Project Proponent were directed to file additional replies/response in this regard.

Additional response filed by UPPCB

21. In compliance thereof Additional Response has been filed by UPPCB vide email dated 24.02.2023 the relevant part of which reads as under:

".....in Compliance of above order, Regional Office, U.P. Pollution Control Board, Gorakhpur has obtained reply from the Project Proponent. As per the details provided by the project proponent to control the spread of infection from wastes stored in the premises, the time limit for treatment and disposal of bio-medical waste is being reduced to 24 hours against the stipulated 48 hours as mentioned under the Bio Medical Waste Management Rules, 2016. The storage rooms shall be well ventilated and will be provided with 'fly catcher/killing device' and the storage rooms will be washed and cleaned every day to control the odour generated from the bio-medical waste. Spray of disinfectants like hydrogen peroxide or hypo will be done as soon as the bio-medical waste is received at the site.

During transportation the containers will be covered to prevent public exposure to odours and contamination. All the bio-medical waste will be stored in the non- chlorinated colour coded closed bags. A house keeping checklist will be made and monitored every day at 8 A.M. by the person responsible for collection of bio-medical wastes and a register will be maintained to keep the records such as name of the healthcare unit, the type and quantity of waste received, time at which the waste collected from the member HCF, signature of the authorized person from the healthcare unit etc.

The most common source of generation of pollutants in a common bio-medical waste treatment facility is the incinerator and as per the project proponent extra precaution will be taken to avoid any kind of leakage, pilferage, fugitive emission from the incinerator beyond 10 meters. Project proponent has proposed Waste Feeding by way of automatic system and the burning rate will be closely monitored and the waste will be fed in shifts so that it doesn't get piled up. As per the CPCB guidelines, chest area for the 50 kg/hr capacity incinerator shall be 0.75 sqm but in this case since the capacity is 250 kg/hr, therefore the chest area shall be 3.75 sqm but project proponent has proposed to keep the chest area 10% more so as to facilitate the easy burning of the waste. Furthermore as per the project proponent the incinerator chamber will always be in suction i.e., in negative (-) 1.5 to 2 mm w/c so as to ensure that no emission occurs outside the incinerator. Emergency vent will be provided in the incinerator on top so that in case of chamber in pressure it will operate automatically and release to the downstream absorption system. Periodic inspection of the chamber will be carried out every month and a separate record for the same shall be maintained at all times. Water sprinkling system will be installed to reduce the risk of adverse fugitive dust emission inside the building and to mitigate and control the emission from travelling outside the premises. Incinerator will always be operated by maintaining 99.9% combustion efficiency and there will be regular display of combustion efficiency on panel and it will be connected to CPCB/UPPCB online continuous monitoring server. Cost of the incinerator along with the instrumentation and auto control will be approx. 120 Lakhs.

Regular use of long lasting perfumes by spraying it inside the shed will be done to control the potential risk of generation of odour from the operation of the CBWTF. All the bio-medical waste will be stored in closed non chlorinated plastic bags and it will be ensured that the maximum storage time shall in no case exceeds 24 hours.

As per the project proponent there will be two types of water mainly Process water and Wastewater. The process water will remain in circulation through the ventury scrubber / quenching column / absorption column and this water will not be allowed to be discharged outside and will be completely reused in the cooling water plant. Waste water generated from washing of vehicles will be collected in the Effluent Treatment Plant (ETP) and after treatment it will be used in the process as makeup water and no fresh water is used as makeup water. Hence the project will be operating entirely on the concept of Zero Liquid Discharge.

As per the project proponent, the project cost of the common bio-medical waste treatment facility is Rs. 380 Lacs, which include cost of incinerator with automation having spray system and Autoclave / Shredder / ETP / Air Pollution Control System / Civil works.

So based on the above facts and the proposal submitted by the Project Proponent, the proposal in principle seems to be adequate.

UPPCB has also obtained a bank guarantee of Rs- 2,50,000/- from the Project Proponent for ensuring the compliance of the conditions mentioned in the CTE dated 05.01.2022."

Additional Submissions filed by the respondent no.5

22. Additional submissions have also been filed by the respondent no.5 -Project Proponent vide email dated 25.02.2023 to bring on record the measures and technology adopted by respondent no. 5 to minimize any kind of pollution/ discharge which may result from the operation of the CBWTF. The relevant part of the same is reproduced as under:

"Additional Submissions on behalf of the respondent no. 5 in compliance to the order dated 27.01.2023 passed by this Hon'ble Tribunal.

X X X X

2. The Respondent No. 5 has already prepared comprehensive steps which shall be adopted by it once the CBWTF becomes operational considering the stringent measures prescribed by UPPCB to control effluent and liquid discharge.

The measures which the Respondent No. 5 seeks to adopt are enumerated as under:

(i) Potential of spread of infection from storage premises:

As regarding the potential for spread of infection from wastes stored in the premises, the time limit for treatment and disposal of bio-medical waste as stipulated under the Bio- Medical Waste Management Rules, 2016 is within 48 hours. However, we shall minimize this time period and ensure that the untreated bio-medical waste is not stored beyond a period of 24 hours. Furthermore, the storage rooms shall be well ventilated and shall be provided with 'fly catcher/killing device'. The storage rooms shall be washed and cleaned every day to regulate the odour generated from the bio-medical waste, spray

of disinfectants like hydrogen peroxide or hypo shall be done as soon as the bio-medical waste is received at the site. During transportation, the containers shall be covered in order to prevent exposure of public to odours and contamination. All the bio-medical waste shall be stored in the non-chlorinated colour coded closed bags. The house keeping checklist shall be made and monitored every day at 08 a.m. by the person responsible for collection of bio-medical wastes. He shall carry a register with him to maintain the records such as name of the healthcare unit, the type and quantity of waste received, time at which the waste collected from the member HCF, signature of the authorized person from the healthcare unit etc.

(ii) Applicability of the effective Pollution Control System:

The most common source of generation of pollutants in a common bio-medical waste treatment facility is the incinerator. In order to check the proliferation of poorly designed bio-medical waste incinerator, guidelines on "Design & Construction of Bio-medical Waste Incinerator" has been prepared and well documented in CPCB guidelines. However, extra precaution shall be taken to avoid any kind of leakage, pilferage, fugitive emission from the incinerator beyond 10 meters. It is most humbly submitted that entire process is in close loop from where the possibility of any leakage doesn't arise. Following measures have been proposed to be implemented for control of pollution inside the plant area:

a. **Waste Feeding:** *Waste Feeding by way of automatic system and closely monitoring the burning rate. Further it shall be ensured that the waste is feeded in shifts and that entire waste is not piled at once.*

b. **Use of Fuel:** *The fuel to be used shall be the low sulphur content i.e., High Speed Diesel shall be used.*

c. **Incinerator Chest Area:** *As per the CPCB guidelines chest area for the 50 kg/hr capacity incinerator shall be 0.75 sqm. In our case, the capacity is 250 kg/hr, therefore, the chest area shall be 3.75 sqm but we are proposing to keep the chest area 10% more so as to facilitate the easy burning of the waste.*

d. **Incinerator Chamber:** *The incinerator chamber shall always be in suction i.e., in negative (-) 1.5 to 2 mm w/c so as to ensure that no emission occurs outside the incinerator.*

e. **Emergency Vent:** *The emergency vent shall be provided in the incinerator on top so that in case of chamber in pressure it will operate automatically and release to downstream absorption system.*

f. **Inspection of Chamber:** *Periodical inspection of the chamber shall be carried out every month and a separate record for the same shall be maintained at all times.*

*g. **Scenario of adverse fugitive emission:** To reduce the risk of adverse fugitive dust emission inside the building effective water sprinkling system throughout the building shall be implemented to mitigate and control the emission from travelling outside the premises.*

*h. **Combustion Efficiency of incinerator:** Incinerator shall always be operated maintaining 99.9% combustion efficiency. Moreover, there shall be regular display of combustion efficiency on panel and it shall be connected to CPCB/UPPCB online continuous monitoring server. The combustion efficiency (C.E.) is computed as follows:*

$$\text{C.E.} = \text{CO}_2 + \text{CO} / \text{CO} * 100$$

*The proposed cost of the incinerator along with the instrumentation and auto control shall be approx. **120 Lakhs.***

*(iii) **Potential of odour control:** The potential risk of generation of odour from the operation of the CBWTF shall be minimized and controlled by the regular use of long lasting perfumes. The perfume shall be sprayed inside the shed to supersede the foul odour. All the bio- medical waste shall be stored in closed non- chlorinated plastic bags and it shall be ensured that the maximum storage time shall in no case exceed 24 hours instead of 48 hours as stipulated by the CPCB guidelines.*

*(iv) **Potential of discharge of waste water:** There is two types of water to be generated from the operation of the Common Bio-Medical Waste Treatment Facility which includes:*

*a. **Process Water***

The process water shall remain in circulation through the venturi scrubber/quenching column/absorption column. This water shall not be allowed to be discharged outside and shall be completely reutilised in system by cooling through the cooling water plant.

*b. **Waste Water***

The waste water shall be generated from washing vehicles and the same shall be collected in the Effluent Treatment Plant (ETP) and after processing and filtering it shall be used in the process as makeup water. It is pertinent to mention here that no fresh water is used in the make up water. The project shall be operating entirely on the concept of Zero Liquid Discharge.

The material balance of water is computed as under:

- Cooling Tower Evaporation Loss = 200 Ltrs/ hr
- Floors and vehicles washing/ staff bathing water = 200 Ltrs/ hr
- ETP Load = 200 Ltrs/ hr
- Process water in circulation = 10 m³/hour
- Required makeup water = 200 Ltrs/ hour

(v) **Plant Cost:** The project cost of the common bio- medical waste treatment facility of the answering respondent is 380 Lakhs. The bifurcation of the project cost is as under:

a. Cost of the Incinerator with automation and spray system = 120 Lakh

b. Cost of the autoclave/ shredder/ ETP/ Air Pollution Control System/ Civil Work = 260 Lakh

(vi) **Additional Safety Measures:**

a. On PLC Control Panel the permissible parameter shall be set to ensure that all are operational within the limit. In case of exceeding any parameter, alarm will sound and if the not correction within the stipulated time limit then the burner will shut off automatically. The system can also be monitored on UPPCB/CPCB server when the unit is operational.

b. Except incinerator body and chimney, all pollution control system like ducts/ venturi scrubber/ quenching column/ lime absorber/ activated carbon absorber shall be made of SS-316 to avoid any corrosion/leakage from body.

c. As per the Condition VIII of the environment clearance accorded to the unit, the project is required to provide solar power generation on roof tops of buildings, for the solar light system for all common areas, street lights, parking around the project area and same shall be maintained regularly. As Abadi is located towards North of the unit, the answering respondent for making additional partition shall install the solar panel at the North Side boundary facing south to protect any emission to travel beyond boundary.

d. In between Abadi and plant site, a Bagh is situated in 15 m width and 60 m length to safeguard direct entry of any emission from plant to abadi site. Abadi is located towards the North side of the unit and wind rising towards North is very exceptional.

e. Bank Guarantee of Rs. 2.50 Lakh has already been submitted to UPPCB dated 29.03.2022 against the performance guarantee.

3. That the Respondent No. 5, besides the above steps to be undertaken in the operation of CBWTF, is willing to comply with any other condition imposed by this Hon'ble Tribunal for the operation of the CBWTF."

23. This Tribunal observed in its order dated 27.02.2023 that as per material on record Primary Health Center (PHC) and Community Toilets are situated within the distance of 166 meters from the site where the

proposed Common Bio-Medical Waste Treatment and Disposal Facility (CBWTF) is to be established. The above said Primary Health Center and Community Toilets are stated to be in dilapidated condition and to have been abandoned. However, it is not clear whether the same have been permanently abandoned due to relocation. In view thereof, the State of Uttar Pradesh through Chief Secretary, Government of Uttar Pradesh and the District Magistrate, Deoria were impleaded by above said order as respondents no. 6 and 7.

Reply by the District Magistrate, Deoria

24. Pursuant to notice, reply has been filed by respondent no. 7-the District Magistrate, Deoria vide email dated 10.03.2023. In his reply the District Magistrate, Deoria has submitted as under :-

“विषय : मा० राष्ट्रीय हरित अधिकरण, नई दिल्ली में योजित O.A. No. 06/2022, प्रभाकर राय व अन्य बनाम यूनियन ऑफ इण्डिया व अन्य में पारित आदेश दिनांक 02.03. 2023 के अनुपालन के सम्बन्ध में।

मोहदय

X X X X
3- मा० अधिकरण के उपरोक्त आदेश के क्रम में स्थल का निरीक्षण मुख्य चिकित्साधिकारी, देवरिया व प्रदूषण नियंत्रण विभाग के अधिकारी द्वारा पुनः दिनांक 05.03.2023 को किया गया। उपरोक्त परिसर का निरीक्षण स्वयं अधोहस्ताक्षरी द्वारा भी दिनांक 10.03.2023 को मुख्य चिकित्साधिकारी के साथ किया गया।

उक्त निरीक्षण उपरान्त मुख्य चिकित्साधिकारी, देवरिया की संलग्न आख्या पत्रांक जाँच/2022-23/11591, दिनांक 06, मार्च, 2023 के द्वारा यह अवगत कराया गया है कि इंगित स्वास्थ्य उपकेन्द्र (Health Sub Center) वर्तमान में अत्यन्त जर्जर एवं ध्वस्तप्राय अवस्था (Dilapidated) में है, परन्तु इसे स्वास्थ्य विभाग द्वारा परित्यक्त (abandoned) घोषित नहीं कराया गया है। उक्त केन्द्र पर एक ANM (Auxiliary Nurse and Midwife) तथा एक C.H.O. (Community Health Officer) की तैनाती भी है, जिनके द्वारा स्वास्थ्य उपकेन्द्र पर बैठकर स्वास्थ्य कार्यक्रमों का संचालन कराते हुए स्वास्थ्य सम्बन्धी सेवाओं को निकटवर्ती ग्रामीणों को पहुंचाया जा रहा है। यह भी सादर अवगत कराना है कि उक्त परिसर में ही आयुष्मान भारत योजना के अन्तर्गत एक अतिरिक्त कक्ष भी निर्माणाधीन है, जिसे शीघ्र पूर्ण किया जाना प्रस्तावित है।

4- उपरोक्त उपकेन्द्र (Sub Center) परिसर के अन्दर ही स्थित सामुदायिक शौचालय के सम्बन्ध में जिला पंचायत राज अधिकारी, देवरिया द्वारा अवगत कराया गया है कि सामुदायिक शौचालय का निर्माण वर्ष 2020-21 में ग्राम पंचायत द्वारा केन्द्रीय वित्त आयोग मद से कराया गया है तथा वर्तमान में उक्त सामुदायिक शौचालय पूरी तरह प्रयोग योग्य है।

अतः उपरोक्त के क्रम में माननीय अधिकरण को सादर अवगत कराना है कि उपरिसन्दर्भित स्वास्थ्य उपकेन्द्र (Health Sub Center) वर्तमान में परित्यक्त

(abandoned) नहीं है और स्वास्थ्य विभाग उपरोक्त स्वास्थ्य उपकेन्द्र परिसर को भविष्य में और उपयोग में लाने हेतु प्रयासरत है।”

25. The District Magistrate, Deoria has enclosed copy of letter dated 06.03.2023 written by the Chief Medical Officer, Deoria to him. The relevant part of the above said letter reads as under:-

“विषय - राष्ट्रीय हरित प्राधिकरण नई दिल्ली में योजित ओ०ए० संख्या-06/2022, प्रभाकर राय व अन्य बनाम यूनियन ऑफ इण्डिया व अन्य में पारित आदेश दिनांक 02.03. 2023 के अनुपालन के सम्बन्ध में।

कृपया अपने पत्र संख्या कैम्प/1743/वाद/न्याया/2023 दिनांक 04.03.2023, जिसके द्वारा राष्ट्रीय हरित प्राधिकरण नई दिल्ली में योजित ओ०ए० संख्या 06/2022, प्रभाकर राय व अन्य बनाम यूनियन ऑफ इण्डिया व अन्य में पारित आदेश दिनांक 02.03. 2023 के सम्बन्ध में कार्यवाही किये जाने हेतु निर्देशित किया गया है, का संदर्भ ग्रहण करने का कष्ट करें।

उक्त के क्रम में सादर अवगत कराना है कि अधोहस्ताक्षरी द्वारा शिकायत स्थल के निकट स्थापित स्वास्थ्य उपकेन्द्र पहाड़पुर ब्लाक बैतालपुर, देवरिया का स्थलीय निरीक्षण किया गया। वर्तमान समय में भी उक्त क्षेत्र में एक ए०एन०एम० एवं सी०एच०ओ० की तैनाती है, जिसके द्वारा उपकेन्द्र क्षेत्र में स्वास्थ्य कार्यक्रमों का संचालन किया जा रहा है। वर्तमान समय में उपरोक्त स्वास्थ्य केन्द्र का भवन जर्जर अवस्था में है। परिसर में आयुष्मान भारत योजना के अन्तर्गत एक अतिरिक्त कक्ष का निर्माण कराया जा रहा है। अतिरिक्त कक्ष का निर्माण कार्यदायी संस्था यू०पी० सी०एण्ड डी०एस०-14 द्वारा कराया जा रहा है, जिसकी स्वीकृत लागत 5.85 लाख रू० है। निर्माण की भौतिक प्रगति 60 प्रतिशत है। कार्यदायी संस्था द्वारा अवगत कराया गया है कि एक महिने में अतिरिक्त कक्ष का निर्माण कार्य पूर्ण करा लिया जायेगा।

यह भी अवगत कराना है कि उक्त स्वास्थ्य केन्द्र में सामुदायिक शौचालय का निर्माण ग्राम सभा द्वारा कराया गया है, जो कियाशील अवस्था में है।”

26. This Tribunal considered the matter on 03.04.2023 and constituted a Joint Committee to look into the material aspects as mentioned therein. The relevant part of the order reads as under:-

“9. In the present case, environmental clearance dated 03.12.2021 was granted by SEIAA for setting up of Common Bio-Medical Waste Treatment and Disposal Facility in Khasra no. 1006 situated in village Paharpur, Tehsil and District Deoria. The EC has been challenged on the ground of being violative of the Revised Guidelines for Common BioMedical Waste Treatment and Disposal Facilities issued by CPCB on 21.12.2016. Admittedly, Community Health Center is situated at the distance of 166 meters and residence of applicant-Prabhakar Rai is situated at the distance of 184 meters from the proposed site and the proposed site does not have buffer zone of 500 meters as required by Guideline No. 6 of the Revised Guidelines for Common Bio-Medical Waste Treatment and Disposal Facilities prescribing the

location criteria. The case involves reducing of the buffer zone to less than 500 meters which is permissible with additional control measures as to (i) adoption of best available technologies (BAT) by the proponent of Common Bio-Medical Waste Treatment and Disposal Facility; (ii) prescribing stringent standards for operation of the CBWTF by the SPCB/PCC; (iii) adoption of zero liquid discharge by the Common BioMedical Waste Treatment and Disposal Facility and (iv) in case of any complaints from the public, then Common Bio-Medical Waste Treatment and Disposal Facility should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity. While granting Environmental Clearance (EC) and Consent to Establish (CTE) the SEIAA, Uttar Pradesh and UPPCB have not passed any specific orders regarding additional control measures as required by guideline no. 6 of the Revised Guidelines for Common BioMedical Waste Treatment and Disposal Facilities. In their replies, the concerned respondents and the Project Proponent have taken the stand that the Primary Health Center (Health Sub Center) is in dilapidated condition and is not being used but this stand is completely negated by the report of the District Magistrate, Deoria in which it has been mentioned that at present the Primary Health Center (Health Sub Center) is in dilapidated condition but the same has not been abandoned by the Health Department and one Auxiliary Nurse and Midwife (ANM) and one Community Health Officer (CHO) are posted there who are providing their services from above such center and one additional room is also being constructed under Ayushman Bharat Yojna which is likely to be completed within short period. Community Toilets were constructed in the campus of above said Primary Health Center (Health Sub Center) in the year 2020-2021 which are in use. Both the SEIAA, Uttar Pradesh and UPPCB have not specifically considered the aspect of the environmental impact of proposed setting up of the Common Bio-Medical Waste Treatment and Disposal Facility at the proposed site on functionality and user of Primary Health Center (Health Sub Center) and Community Toilets by the residents of the locality/nearby villages.

10. In the facts and circumstances of the case, we are of the considered view that it will be appropriate to constitute a Joint Committee to look into the aspects of (a) whether setting up of a Common Bio-Medical Waste Treatment and Disposal Facility in Khasra no. 1006 in village Paharpur Tehsil and District Deoria will have any adverse environmental impact on functionality and user of Primary Health Center (Health Sub Center) and Community Toilets and adjacent residential abadi and (b) whether additional control measures as to (i) adoption of Best Available Technologies (BAT) by the proponent of Common Bio-Medical Waste Treatment and Disposal Facility; (ii) prescribing stringent standards for operation of the Common BioMedical Waste Treatment and Disposal Facility by the UPPCB and (iii) adoption of zero liquid discharge by the Common Bio-Medical Waste Treatment and Disposal Facility will provide requisite protection against environmental pollution likely to be caused by proposed Common Bio-Medical Waste Treatment and Disposal Facility so as to justify reducing of buffer zone area to less than 500 meters; (c) whether in view of the adverse environmental impact and

likelihood of causing of environmental pollution, proposed Common Bio-Medical Waste Treatment and Disposal Facility needs to be re-located and if so whether any suitable land is available in the vicinity or can be provided by the concerned Department in the business allocation of land assignment/District Administration for setting up of Common BioMedical Waste Treatment and Disposal Facility in District Deoria.

11. Accordingly, we constitute a Joint Committee comprising of representatives of Regional Office of MoEF & CC at Lucknow, CPCB, SEIAA, Uttar Pradesh, UPPCB, Chief Medical Officer, Deoria and District Magistrate, Deoria and direct the same to undertake the requisite visits, carry out the rapid Environment Impact Assessment of the proposed Common Bio-Medical Waste Treatment and Disposal Facility, look into the grievances of the applicants, hear the Project Proponent and verify the factual position, specifically address questions at para 10 (a) to (c) above and submit its Report with its observations, recommendations and suggestions regarding remedial measures as the case may be within one month by email at judicialngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.”

Report of the Joint Committee

27. In compliance thereof report of the Joint Committee has been filed by Mr. R.K. Singh, Chief Environment Officer (Circle 6), UPPCB, Lucknow vide email dated 07.08.2023. The relevant part of the report is reproduced below:-

“Joint Inspection Report of M/s. J.K.N Purvanchal CBWTF Works in the matter of Prabhakar Rai& Ors Vs. Union of India & Ors In Appeal No. 06/2022.

Background

X X X X

*In compliance of NGT order, joint inspection of proposed site of **M/s J.K.N. Purvanchal CBWTF Works** (Hereafter referred as “The facility”) at Khasra No.- 1006, Village- Paharpur, Post- Gotha Rasoolpur, District- Deoria, U.P., have been carried out during May 17, 2023 by following team members-*

- 1. Sh. Jitendra Pratap Singh, District Magistrate, Deoria*
- 2. Dr. Rajesh Jha, Chief Medical Officer, Deoria*
- 3. Dr. A.K. Gupta, Scientist-E, Integrated Regional Office, MoEF & CC, Lucknow*

4. Sh. Runa Oraon, Scientist D, Regional Directorate, CPCB RD, Lucknow
5. Sh. Umesh Chander Sharma, SEIAA-UP
6. Sh. Pankaj Yadav, Regional Officer, UPPCB, Regional Office Gorakhpur

Salient observation and recommendation based on site inspection and available records are as under.

Observations:

1. *The proposed site for new Common Bio-Medical Waste Treatment and Disposal Facility (CBWTF) namely M/s J.K.N. Purvanchal CBWTF Works for handling and treatment of bio medical waste is located at Khasra No.- 1006, Village- Paharpur, Post- Gotha Rasoolpur, District- Deoria , Uttar Pradesh - 274201.*
2. *Environmental clearance granted to above project by SEIAA dated 03.12.2021 to M/s J.K.N. Purvanchal CBWTF Works for proposed CBWTF project with area of 5800 m² (1.43 acre), one rotary kiln incinerator of capacity 250 kg/hr, one autoclaves with capacity of 850 kg/batch, one shredder with capacity 150 kg/hr, one ETP with capacity 10 KLD, one sharp pit with capacity 200 litre and one Ash Pit with capacity of 10 m³. Copy of EC is attached as **annexure no-B**.*
3. *As per EC, proposed area for collection of Bio-medical waste is Deoria, Maharaj Ganj, Kushinagar and Gorakhpur, which cover 267 health care unit and 20,345 nos of beds which generated approx 7,629,375 kg/day biomedical waste.*
4. *The unit has obtained Consent to Establish (CTE) form UPPCB on dated 05.01.2022 with validity period 15.12.2026. Copy of CTE is attached as **annexure no-C**.*
5. *UPPCB has advertise in two local Hindi newspapers on 15.03.2021 namely Dainik Jagran & Amar Ujala, Gorakhpur edition for public hearing before granted Environmental Clearance. Public Hearing was held on 15.04.2021 at 11:00 AM at industry site. Copy of News Papers advertisement is enclosed as **annexure no.-D**.*
6. *Accordingly, public hearing was conducted on 15.04.2021 at 11:00 AM at industry site under the chairmanship of Sh. Umesh*

*Kumar Mangla, ADM (F/R), Deoria and provided information regarding proposed new CBWTF. A total 37 nos of person attends the Lok- Sunvayi. Copy of minutes of meeting of Public Hearing is attached as **Annexure-E**.*

*7. As per letter dated 09.04.2021 from Chief Medical Officer (CMO), Deoria to Director, Directorate of Environment, U.P., "No" CBWTF was operational within the radius of 135 Km from Deoria district and recommended to setup the new CBWTF at Village-Paharpur, District- Deoria. Copy of letter is attached as **Annexure No. F**.*

8. Besides, as per Google earth, nearest CBWTF which is located approx. 67 km (aerial distance) in District Sant Kabir Nagar and approx. 119 km (aerial Distance) at District Ghazipur from the proposed CBWTF (Copy of Google image is attached as Annexure G).

9. As per record available with UPPCB-RO Gorakhpur, the status of total beds in hospital located at Gorakhpur, Deoria, Maharajgaj and Kushinagar are 11575, 3758,1995 and 1880 respectively (as on July, 2022).

10. Bio-medical waste generated from district Deoria, Maharajganj, Kushinagar and Gorakhpur is mainly cater by M/s MPCC, Sant Kabir Nagar, facility, which is located more than 75 Km from proposed site of new CBWTF. Bio Medical Waste Generated from Health Care Units in Distt-Deoria also goes to M/s Silicon Welfare Society, Gazipur which is approx.. 119 kilometer (aerial distance) from the proposed CBWTF.

11. Revenue Department, Deoria has carried out survey of area. Copy of survey report/nazri naksha is annexed. At the time to field visit Chief Medical Officer, Distt-Deoria is informed that in the previous report Community Health Centre was mentioned is not Primary Health Centre, it is health sub centre now strengthened as Health and wellness centre is approx.. 46 m from the main gate of proposed facility. Polutry farms are approx.. 313 and 371 m from the boundary wall of the proposed site. Two pond are located within 340 m with area of 0.197 ha and 352 m with area of 0.69 ha. Additionally, one temple is also located within 100 meter from the main gate of the project. Besides, 213 house with around 1067 peoples are staying within 500m from the

proposed facility. In addition to above one kaccha nala is flowing adjacent (south direction) to proposed site. Copy of report and map is attached as **Annexure H**.

12. Committee observed that project proponent has setup oxygen plant (bottling) with capacity of 20 MT/day in same Khasra No. 1006, Village-Paharpur, Post-Gotha, Rasoolpur, District-Deoria, Uttar Pradesh-274201 with same name as M/s J.K.N. Purvanchal CBWTF works, which is found operational.

13. Oxygen plant had obtained CTE from UPPCB on dated 27.5.2021 and obtained first CTO from UPPCB on dated 30.12.2021, which is valid from 30.12.2021 to 31.12.2026 with production of 1500 cubic meter per day of oxygen from nitrogen. It is important note here that the above project has been setup during covid pandemic. (copy of CTO **is attached as Annexure I**).

14. As per Hon’ble NGT order, rapid Environment Impact Assessment of the proposed Common Bio-Medical Waste Treatment and Disposal Facility may be carried out by engaging any expert govt. institute likes NEERI, IIT, IITR etc.

15. During inspection committee also interacted with the local residents of the village.

16. As per order of Hon’ble NGT order dated 03.04.2023 in para 10, Observation of joint committee is as below:

	para 10	joint committee observations
a	whether setting up of a Common Bio-Medical Waste Treatment and Disposal Facility in Khasra no. 1006 in village Paharpur Tehsil and District Deoria will have any adverse environmental impact on functionality and user of Primary Health Center (Health Sub Center) and Community Toilets and adjacent residential abadi	Primary Health Center (Health Sub Center) is located approx. 46 m from the main gate of the facility. Hence, possibility of adverse environmental impact on functionality and user of Primary Health Center (Health Sub Center) could not be ruled out. However, installation of CBWTF incinerator adjacent to the bottling plant of oxygen may cause hazard.
b	whether additional control measures	

	<i>as to</i> <i>(i) adoption of Best Available Technologies (BAT) by the proponent of Common Bio-Medical Waste Treatment and Disposal Facility;</i> <i>(ii) prescribing stringent standards for operation of the Common Bio-Medical Waste Treatment and Disposal Facility by the UPPCB and</i> <i>(iii) adoption of zero liquid discharge by the Common Bio-Medical Waste Treatment and Disposal Facility will provide requisite protection against environmental pollution likely to be caused by proposed Common Bio-Medical Waste Treatment and Disposal Facility so as to justify reducing of buffer zone area to less than 500 meters</i>	<i>As above</i>
<i>c</i>	<i>whether in view of the adverse environmental impact and likelihood of causing of environmental pollution, proposed Common Bio-Medical Waste Treatment and Disposal Facility needs to be re-located and if so whether any suitable land is available in the vicinity or can be provided by the concerned Department in the business allocation of land assignment/District Administration for setting up of Common Bio-Medical Waste Treatment and Disposal Facility in District Deoria.</i>	<i>The joint committee has view to relocate the proposed CBWTF at new location meeting buffer zone of 500 m.</i>

Conclusion and Recommendations:

It is evident from above observation; Primary Health Center is located approx. 46 m from the main gate of the proposed facility. The project proponent has installed oxygen bottling plant in a part of khasra no. 1006 and proposed to install CBWTF in the remaining area of khasra no. 1006. Residential area (approx. population-1067 with 213 house), Primary Health Center, significant human habitation, pond, poultry farm and nala are located within 500m from the proposed site and installation of incinerator plant in the vicinity of oxygen plant may cause hazard. As informed by PP that significant land patch is available with close proximity of the proposed site, which may require to be used for CBWTF, if necessary. Hence, committee is of view that location of this CBWTF is not complying the norms laid by CPCB. Note- Above site was visited by earlier D.M. Sri Jitendra Pratap Singh, observation made by above committee is significant and there is no point for any deviation, forwarded for necessary action.”

Response to the Report of the Joint Committee filed by respondent no. 5

28. Response to the report of the Joint Committee has been filed by respondent no. 5-Project Proponent vide email dated 12.10.2023. The relevant part of the reply to report of Joint Committee by respondent no. 5 is reproduced below:-

“RESPONSE ON BEHALF OF RESPONDENT NO. 5, M/S JKN PURVANCHAL CBWTF WORKS TO THE REPORT OF THE JOINT COMMITTEE CONSTITUTED IN TERMS OF ORDER DATED 03.04.2023 PASSED BY THE HON’BLE NATIONAL GREEN TRIBUNAL, NEW DELHI IN APPEAL NO. 06 OF 2022
X X X X

2. That as per the available revenue records, the total land area of Khasra No. 1006 is 10,880 sqm [1.088 hectares]. This land is bifurcated into three parts and all parts are separated by boundary.

FIRST PART:

The first part has been allocated for the oxygen bottling plant in an area of 2450 sqm;

SECOND PART:

The second part is meant for the CBWTF in an area of 5800 sqm.

THIRD PART:

The third part is a vacant land admeasuring 2630 sqm, left for future consideration.

It is worth mentioning here that the CBWTF is located in the middle of Khasra no. 1006.

*3. That the geo-coordinates of the part of Khasra no. 1006 on which CBWTF is proposed are **26°38'33.06 N** and **83°44'56'75 E**. The area dedicated to CBWTF is 5800 sqm.*

4. The answering Respondent in order to have complete environment friendly CBWTF, have setup / shall be setting up an oxygen bottling plant since purging oxygen in the incinerator of a bio-medical waste treatment facility. The use of an oxygen bottling plant significantly increases combustion efficiency.

- **Enhanced Combustion:** Oxygen is a crucial component for combustion, and by introducing additional oxygen into the incinerator, the combustion process is enhanced. The increased availability of oxygen allows more complete and efficient burning of the waste materials, resulting in higher temperatures and improved combustion performance.

- **Reduced Emissions:** When the combustion process is efficient, it leads to reduced emissions of harmful pollutants. Purging oxygen into the incinerator helps to ensure that the waste materials are thoroughly combusted, leaving negligible unburned or partially burned particles behind. This significantly lowers the emissions of pollutants such as dioxins, furans, and other hazardous substances.

- **Faster Burning:** The introduction of extra oxygen into the incinerator facilitates a faster burning process. This is important in a bio-medical waste treatment facility, where the volume of waste generated can be substantial. With faster burning, the incinerator can handle a larger amount of waste in a given time, increasing the overall capacity and efficiency of the facility.

- **Improved Heat Transfer:** Oxygen enhances the heat transfer process within the incinerator. The increased oxygen concentration creates a more efficient combustion reaction, generating higher temperatures. These elevated temperatures optimize heat transfer efficiency from the burning waste to the surrounding environment, increasing thermal energy recovery and reducing energy losses.

- **Enhanced Safety:** A properly purged incinerator, with a higher oxygen concentration, helps to prevent the accumulation of unburned waste and combustible gases within the system. This reduces the risk of explosions or other hazardous situations, improving the overall safety of the bio-medical waste treatment facility.

Therefore, by utilizing an oxygen bottling plant to purge oxygen into the incinerator, the CBWTF of the answering Respondent can achieve a higher level of combustion efficiency. Without oxygen purging the combustion efficiency remains at 90% but with the introduction of oxygen purging, it goes up to 99.99%. This results in reduced emissions, faster burning, improved heat transfer, and enhanced safety, contributing to an effective and environmentally friendly waste treatment process.

5. This Joint Committee has wrongly observed some facts in Para 12 and 13 of the Report. Paragraphs 12 and 13 are reproduced herein below for ready reference:

12. Committee observed that project proponent has set up oxygen plant bottling with capacity of 20 Mt per day in same Khasra No. 1006, Village Paharpur, Post-Gotha Rasoolpur, District- Deoria, Uttar Pradesh- 274201 with same name as Mrs JKN Purvanchal CBWTF works, which is found operational.

13. Oxygen plant has obtained CTE from UPPCB on dated 27.05.2021 and obtained first CTO from UPPCB on dated 30.12.2021 which is valid from 30.12.2021 to 31.12.2026 with production of 1500 cubic metre per day of oxygen and nitrogen. It is important to note here that the above projects have been set up during COVID Pandemic.

It is submitted that the answering Respondent does not produce oxygen from the air but purchases liquid oxygen and the same is compressed under pressure and filled in the bottles. The whole system undergoes a pressure of 15kg/cm². So, there arises no question of mixing any kind of hazardous material.

Furthermore, the answering Respondent is not into production or storage of Nitrogen, hence the fact pertaining to Nitrogen is wrong and misleading.

6. That the district administration has taken buffer zone distance from the first gate of the factory and not from the place where the incinerator is proposed, which is in contravention of Guideline No. 6 of Common Bio-Medical Waste Treatment Facility dated December 21, 2016. The same is reproduced herein below:

“buffer zone represents a separation distance between the source of pollution in CBWTF and the receptor - following the principle that the degree of impact reduces with increased distance”.

Hence, the buffer zone distance should be taken from the source of emission.

8. That the report of the joint committee suggested relocating the CBWTF so that the buffer zone criteria of 500 meters is met. It is submitted that the Google Earth image depicting the location of the CBWTF plant and respective distance has been obtained for considering the relocation of the CBWTF plant within the vicinity

of Khasra No. 1006. The distance after relocation as depicted by the google earth image is:

- ANM Sub-center – 307 meters
- Prabhakar Rai's residence – 268 meters

The Google Earth images attached alongwith marked distances is annexed herewith and marked as **Annexure R5/1**.

9. That the Joint Committee Report has not made any observation on specific points raised / directed by this Hon'ble Tribunal.

The We deem it appropriate to brief the Hon'ble tribunal with these observations:

- **UPPCB has not passed specific order for the adoption of the Best Available Technology:**

RESPONSE:

Since the initial stage, UPPCB has proposed the implementation of the Best Available Technology, moreover, a complaint was lodged by the Common Bio-Medical Waste Treatment Facility Association through their legal advisor Mr. Suresh Yadav dated 13.11.2020. In furtherance of the complaint:

i) Site inspection was carried out by the team of Regional Office, UPPCB and the findings of the visit were submitted to the head office in an inspection report on 29.12.2020. [Ref no: **975/NOC/176/2020**]. In the report, it has been recommended by the UPPCB for the adoption of the best available technology. A true copy of the report dated 29.12.2020 is annexed herewith and marked as **Annexure R5/2 (COLLY)**.

ii) At the time of granting of the CTE it was recommended by the Regional Office, UPPCB on the online portal of Nivesh Mitra / vide letter dated 08.01.2021 that there shall be deployment / adoption of the Best Available Technology. A true copy of the letter dated 08.01.2021 is annexed herewith and marked as **Annexure R5/3**.

iii) Furthermore, certain special conditions with regard to the adoption of the best available technology have been mandated in the environment clearance and the consent to establish granted to the project. These include measures with respect to stringent emission norms, stack height, use of effective air pollution control devices, etc. in addition to standards for prevention and control of water pollution.

- **Whether the proposed CBWTF will cause any adverse impact on the ANM sub-center/toilet /nearby Abadi during its operational phase.**

RESPONSE:

The committee has not conducted rapid EIA. However, the Respondent No. 5 has conducted the assessment of the anticipated increase in pollution load, which is summarized as below:

(a) ANM (sub-center) – It is the point from which pollutants are generated and stored inside the room to hand over to the service provider. So, this unit is a beneficiary of the proposed CBWTF facility, as it is nearer to the source of generation.

Revised CPCB Guidelines 2016, Pg No 08:

“As far as possible, the CBWTF shall be located near to its area of operation in order to minimize the transportation distance in waste collection, thus enhancing its operational flexibility as well as for ensuring compliance to the time limit for treatment and disposal of bio-medical waste as stipulated under the BMWM Rules (i.e., within 48 hours)”

(b) Toilet- It is adjacent to the sub-center mainly for staff or visitors.

Pollution Load:

- (i) Incineration capacity: 250kg/hr*
- (ii) During the operation emission is continuous so the minimum unit is per second.*
- (iii) Waste Burning rate per second = 69.44 gms/sec*
- (iv) Oxygen/Air required: = 0.5 Cumeter/sec*

- *Keeping 15% excess oxygen to ensure complete burning*
- *Pollutants 69.44 gm burnt per second are diluted with air/oxygen by 204 times in the system only.*
- *The downstream system consists of a venturi scrubber/quenching column/ activated carbon column/ caustic absorber. The Pollutants like NO_x, SO_x, Particulate matter, and organic compounds get absorbed in absorbers and allow free oxygen-mixed air to release through the stack of height 30 meters.*
- *Continuous online emission monitoring is mandatory to monitor the release.*
- *Water Pollution: The concept of zero liquid discharge has been adopted so there is no question of the release of water from the unit.*
- *Spillage: Waste is stored in non-chlorinated bags in room size 10' x 15'. No loose bags are to be kept inside the room.*
- *Maximum storage time in plant 12 hours.*

Noise:

- *No heavy machines are required so noise level is negligible.*

SUBMISSION:

Therefore, it can be concluded that the quantity of waste generated is so negligible that it will not create any pollution in nearby areas. Reference is drawn to the Notification of Ministry of Environment, Forest and Climate Change dated 17th September 2015 [S.O. 1142 (E)]

It is submitted that in the Schedule of the List of Projects or Activities requiring prior Environmental Clearance forming part of the EIA Notification having S.O. 1533(E) the requirements for storage mentioned under respective entries is as under:

Entry No. 7(d) and 7 (da) of the schedule mention the common bio-medical waste treatment facility.

Entry 7(d): Common hazardous waste treatment with incinerator.

This storage time is 6 months for incinerable waste, pesticides, hazardous liquid, industrial toxic material, untreated effluent of factories etc. It is submitted that under this entry there is no relaxation in the buffer zone of 500 metres.

Entry 7(da): Common bio-medical waste treatment facility.

The storage time is not beyond 48 hours from the time of generation of waste to its disposal. As the storage time is very limited which is either passed in keeping the same at the source or travel, the relaxation has been provided in the notification for reducing the buffer zone below 500 metres.

It is important to mention here that if the CBWTF is situated in the notified industrial area, there is no requirement of any buffer zone even in the event when the habitats are working in the nearby units.

Hence, the level of gravity can well be ascertained in the cases under Entry 7(d) and 7(da).

It is submitted that the CBWTF is not a pollution-generating unit, rather it is a pollution control facility, which aims at treating the hazardous bio-medical waste generated from the healthcare units.”

29. Arguments were heard on 16.10.2023 and order was reserved but vide order dated 11.01.2024 the matter was ordered to be relisted for hearing as some material aspects of the case had not been adverted to/referred to at the time of arguments and the matter required for due elucidation/consideration of the same.

30. In view of the facts and circumstances of the case, this Tribunal considered response of UPSEIAA, CPCB and UPPCB to the observation made in the report of the Joint Committee to be essential for just and proper adjudication of the questions involved in the case and by order dated 06.02.2024 granted one month time to them for filing of their response in this regard. UPPCB was also directed to provide information about other CBWTF established in residential area and also as to adverse environmental impact of the same if any reported.

31. In compliance thereof replies have been filed by Chief Environmental Officer (Circle-6), UPPCB vide e-mail dated 11.03.2024, by UPSEIAA vide email dated 16.04.2024 and by Scientist F, CPCB vide email dated 26.04.2024.

Reply filed by UPPCB

32. The relevant part of the reply filed by Chief Environmental Officer (Circle-6), UPPCB filed vide email dated 11.03.2024 is reproduced as below:

“ Response on behalf of Respondent no-4, Uttar Pradesh Pollution Control Board, in compliance to the order dated 06.02.2024 passed by Hon'ble NGT Principal Bench, New Delhi in Appeal No. 06 of 2022 (I.A. No. 29/2022) In the matter of Prabhakar Rai & Ors Versus Union of India & Ors.

Response			
X	X	X	X

3. That further in pursuance to recommendation of the Joint Committee Report, vide letter dated 07.03.2024, Uttar Pradesh Pollution Control Board has issued a show cause notice under section 27(2) of The Water (Prevention and Control of Pollution) Act, 1974 and under section 21(4) of The Air (Prevention and Control of Pollution) Act, 1981 against the Common Bio-Medical Waste Treatment Facility (hereafter referred as CBWTF) in question for revoke/cancel of the consent to establish dated

05.01.2022. The copy of the letter dated 07.03.2024 is being attached herewith as Annexure No.-1 to this Response.

4. That as per the information obtained by the Regional Officers of the Uttar Pradesh Pollution Control Board, there are 28 CBWTFs are operated within the State of U.P., in which no CBWTF is established in the residential area.

5. That the site of CBWTF in question i.e. M/s JKN Purvanchal CBWTF Works, Pharpur, Gotha Rasoolpur, Deoria (UP) was inspected by the officials of Regional Office, UP Pollution Control Board, Gorakhpur on 02.03.2024, in which the no works has been found for the establishment of said CBWTF. A copy of the Inspection report dated 02.03.2024 along with photographs is being attached as Annexure No.-2 to this Response.”

Reply filed by UPSEIAA

33. The relevant part of reply filed by UPSEIAA vide email dated 16.04.2024 reads as under:-

“Reply on behalf of respondent no. 2-State Level Environment Impact Assissment Authority, U.P, in compliance to order dated 06.02.2024 passed by Hon’ble Tribunal.

X X X X
3. That it is pertinent to mention here that, SEIAA gone through the report of joint committee received in the office vide letter no. H98915/C6/Gen658/06/2022 (IA No. 29/2022) dated 07.08.2023 and accepted the report of the joint committee. Accordingly SEIAA agrees with the findings of the joint committee. Copy of minutes of 803th SEIAA meeting held on 05.03.2024 is being filed herewith and marked as Annexure No.01 to this response.”

Reply filed by CPCB

34. The relevant part of reply filed by Scientist F, CPCB filed vide email dated 26.04.2024 is reproduced as below:

“RESPONSE ON BEHALF OF RESPONDENT No. 3, CENTRAL POLLUTION CONTROL BOARD AS PER ORDER DATED 06.02.2024

X X X X
10. That, Joint Committee has submitted its report wherein it has been reported that Wellness Centre is at 46 meters (from main gate of the CBWTF site); two Poultry Farms at 313 meters and 371 meters (from boundary wall of the CBWTF site); two ponds at 340 meters and 352 meters (from boundary

wall of CBWTF site); one temple at 100 meters (from main gate of CBWTF site) and 213 houses with around 1,067 people within 500 meters from the CBWTF site. These fall within recommended buffer zone of 500 meters stipulated under CPCB guidelines for CBWTFs.

It is humbly submitted that operation of CBWTF may have adverse environmental impact in case the CBWTF is not operated in environmentally safe manner. The Joint Committee has also reported that the Project Proponent has informed that significant land patch is available with close proximity of the proposed site under reference which may require to be used for CBWTF, if necessary. Municipalities or Corporations, Urban Local Bodies and Gram Panchayats have mandate to provide or allocate suitable land for development of CBWTF in their respective jurisdictions as per the guidelines of Central Pollution Control Board, as stipulated under Schedule III of Biomedical Waste Management Rules, 2016.

11. That, in view of the aforementioned facts and circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass such or further orders as it may deem fit in the given circumstances of the case."

35. Respondent no. 5 has filed I.A. No. 320/2024 vide email dated 18.07.2024 for vacation of stay order dated 25.05.2022 and permitting respondent no. 5 Project Proponent to commence operation in the CBWTF Plant. The relevant part of the I.A. is reproduced below:-

"It is pertinent to mention here that the Respondent No. 05/Project Proponent has brought sufficient materials on record to establish that it shall be using the best available technology and modern techniques to ensure that no adverse impact either to the environment or the local residents is caused as a result of its operations.

It is further pertinent to mention here that the waste treatment facilities like the present one are indispensable for treatment of bio-medical wastes especially in light of the fact that the CBWTFs in the nearby districts have been underperforming and EC have already been imposed on them as a result of their improper functioning.

7. That the further stay of the operations of the CBWTF established by the Respondent No. 5/ Project Proponent would result in heavy economic losses besides damage to the environment as the CBWTFs in the nearby district have not been functioning adequately."

36. We have heard arguments addressed by the learned Counsel for the parties and have gone through the material on record carefully.

Credentials/bonafides and locus standi of the appellants

37. Mr. Dev Shukla, learned Counsel for respondent no. 5 has challenged the credentials and bona fides of the appellants and argued that the appellants, who are residents of village Paharpur where the proposed CBWTF is to be set up, have enmity with the Project Proponent. The appellants are acting on behest of persons, who have strong hold over the medical waste disposal plants and run the business of bio medical waste plant and do not want other persons to enter the business. The appellants have filed the appeal to stop the proposed CBWTF by hook or crook, by abusing the process of law, approaching the different forum available in the State and Central level and the appellants have no concern for the environment. Learned Counsel for respondent no. 5 has further argued that **Public Interest Litigation (PIL) no. 840/2021** titled as **Gorakhpur Kalyan Samiti Vs. State of U.P. and others** was also filed for the same cause of action by the Gorakhpur Kalyan Samiti which was dismissed by the Hon'ble Allahabad High Court vide order dated 24.06.2021 on the ground of bonafides of the petitioner. Appellant no. 1 filed **Public Interest Litigation (PIL) no.1094 of 2021** titled as **Prabhakar Rai vs. State of UP and others** before Hon'ble Allahabad High Court raising the same questions which have been raised in the present appeal which was dismissed vide order dated 27.07.2021 with costs of Rs. 1000/-. The jurisdiction of this Tribunal may not be allowed to be misused by interested litigants for their ulterior motives and the appeal may be dismissed on this ground.

38. On the other hand, Mr. Abhishek Yadav and Mr. Saurabh Yadav, learned Counsels for the appellants have argued that the appellants being aggrieved from EC granted by UPSEIAA have filed present appeal bonafide raising substantial questions relating to environment while

pointing out serious violations of the CBWTF Guidelines 2016 in Public Interest and the appeal is not liable to be dismissed on the ground of bonafides of the appellants being doubtful.

39. Admittedly, the appellants are residents of village Paharpur where the proposed CBWTF is to be set up and will be affected by adverse environmental impact of the proposed CBWTF on environment, habitation and flora and fauna in the vicinity. Being aggrieved persons within the meaning of Section 16 of the NGT Act 2010, the appellants have the right to file appeal against the impugned EC granted by UPSEIAA in favour of respondent no. 5. In the present case there is no cogent material as to the appellants acting at the instance/behest of business rivals of respondent no.5. The appellants have raised in public interest substantial questions relating to environment arising out of the implementation of the Bio-Medical Waste Management Rules, 2016 (BMWM Rules 2016) regarding violation of CBWTF Guidelines 2016. This Tribunal cannot lose sight of the fact that right to life includes within its sweep right to clean and healthy environment which cannot be denied and has to be protected and implemented in the fullest measure by all the instrumentalities of the State as well as the Project Proponents.

40. In these facts and circumstances, the appellants must be considered to have locus standi and cause of action to file the present appeal in public interest for protection of environment and the bonafide of the appellants cannot be doubted.

41. Even otherwise, this Tribunal is empowered under the provisions of the NGT Act 2010 to take cognizance of questions relating to environment arising out of implementation of the enactments specified in Schedule I to the NGT Act 2010 suo motu as held by Hon'ble Supreme Court in

Municipal Corporation of Greater Mumbai v. Ankita Sinha (2021) SCC Online SC 897: Law Finder Doc Id # 1890858: 2021 AIR (Supreme Court) 5147) and in view thereof this Tribunal can adjudicate upon the questions involved in the present appeal regarding compliance with the CPCB Guidelines 2016.

42. It may be observed here that **Public Interest Litigation (PIL) no. 840/2021** titled as **Gorakhpur Kalyan Samiti Vs. State of U.P. and others** and **Public Interest Litigation (PIL) no.1094 of 2021** titled as **Prabhakar Rai vs. State of UP and others** were dismissed by Hon'ble Allahabad High Court. However, in **Public Interest Litigation (PIL) no. 840/2021** titled as **Gorakhpur Kalyan Samiti Vs. State of U.P. and others** Hon'ble Allahabad High Court, vide order dated 24.06.2021, declined to cause any indulgence at the instance of petitioner society by doubting its bonafide as registration of the society had expired on 24.04.2020 and there was no whisper in the petition regarding extension of its registration. **Public Interest Litigation (PIL) no.1094 of 2021** titled as **Prabhakar Rai vs. State of UP and others** was dismissed by Hon'ble Allahabad High Court vide order dated 27.07.2021 by noticing that UPPCB had refused CTE on 15.01.2021 and that earlier **Public Interest Litigation (PIL) no. 840/2021** titled as **Gorakhpur Kalyan Samiti Vs. State of U.P. and others** had been dismissed on 24.06.2021 and considered the instant PIL to be misuse of jurisdiction of the Court. The environmental issues raised in the present appeal were not specifically heard and finally decided on merits in both the cases with the consequence that the principle of *res-judicata* is not applicable and orders passed by Hon'ble Allahabad High Court do not bar the adjudication of environmental issues raised in the present appeal

particularly so when the present appeal has been filed in exercise of right of appeal conferred by the Section 16 of the NGT Act 2010.

Limitation and Maintainability

43. The question which next arises is whether the appeal is within limitation and maintainable in the present form.

44. Mr. Dev Shukla, learned Counsel for respondent no. 5 has submitted that appeal filed on 01.02.2022 against EC granted by UPSEIAA on 03.12.2021 is time barred and not maintainable.

45. On the other hand Mr. Abhishek Yadav and Mr. Saurabh Yadav learned Counsels for the appellants have submitted that in view of the order dated 10.03.2022 passed by Hon'ble Supreme Court in Suo Moto Writ Petition No. 03/2020 the appeal is within limitation and maintainable.

46. Section 16 of the NGT Act 2010 permits any person aggrieved by the order or decision or direction or determination mentioned therein to file an appeal before this Tribunal within a period of 30 days from the date of communication thereof to him. Proviso to Section 16 of the NGT Act 2010 permits this Tribunal to allow the appeal to be filed within a further period not exceeding 60 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

47. Hon'ble Supreme Court of India vide order dated 10.01.2022 passed on M.A. No. 21/2022 and M.A. No. 665/2021 in Suo Motu Writ Petition (C) No. 03/2020 restored order dated 23.03.2020 and in continuation of subsequent order dated 08.03.2021, 27.04.2021 and 23.09.2021 directed that the period from 15.03.2020 till 28.02.2022

shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

48. In view of the above order the appeal filed on 01.02.2022 challenging EC dated 03.12.2021 must be held to be within limitation and the argument as to the application being time barred and not being maintainable is devoid of any merit.

Other submissions by learned Counsels for the parties

49. Mr. Abhishek Yadav and Mr. Saurabh Yadav, learned Counsels for the appellants have argued that respondent no. 2-UPSEIAA has granted EC in favour of the Project Proponent within prohibited degree and distance in violation of the location criteria for setting up CBWTF under the CBWTF Guidelines 2016 issued by CPCB for the best reasons known to it. The appellants made representation against the setting up of the proposed CBWTF categorically stating that the proposed CBWTF is at the distance of 30-40 meters from the Primary Health Centre, ANM Centre, Community Playground and Primary School, Higher Secondary School, Temple and other residential constructions exist nearer to the site in question which is surrounded by other villages which are located at a distance of 700-800 meters from the site in question. Despite representations by the appellants, respondent no. 2 proceeded further and granted EC without giving any reasons and imposing any additional measures for relaxation of requirement of buffer zone of 500 meters for setting up of CBWTF in the residential area.

50. Learned Counsel for the appellants have further argued that no objection certificate dated 19.11.2020 was granted by the Divisional

Director, Social Forestry Division, Deoria in respect of land with different geo-coordinates far away from the land coordinates of which were mentioned in the Terms of Reference and permission for change of land use was obtained by respondent no. 5 for other purposes without specifically mentioning the purpose to be that of setting up of CBWTF which vitiates the entire proceedings for grant of EC.

51. Learned Counsel for the appellants have further argued that operation of the CBWTF will emit obnoxious and poisonous gases and will have adverse impact on the surrounding ecology, environment, health of the local villagers, their cattle and flora and fauna in the vicinity. CPCB has also submitted response about proposed CBWTF having adverse environmental impact in the residential area. Learned Counsel for the appellants have accordingly submitted that the impugned EC being violative of CBWTF Guidelines 2016 may be set aside.

52. Mr. Gi. Gi. C. George and Mr. Dheeraj Singh, learned Counsels for respondents no. 1, 6 and 7, Ms. Priyanka Swami, learned Counsel for respondent no. 2, Ms. Isha Arora, learned Counsel for respondent no. 3- CPCB and Mr. Daleep Dhyani, learned Counsel for respondent no. 4 have argued that the report of the Joint Committee constituted by this Tribunal vide order dated 03.04.2023 is accepted/agreed to by said respondents and orders as deemed fit may be passed by this Tribunal.

53. Mr. Dev Shukla, learned Counsel for Respondent No. 5 has argued that no CBWTF exists in Districts Kushi Nagar, Maharajgaj, Deoria and Gorakhpur and bio medical waste generated in these Districts will be processed in the proposed CBWTF. NOC was granted by the Divisional Director, Social Forestry Division, Deoria regarding the proposed site. Permission for change of land use was granted by the

Competent Authority in respect of the proposed site on due consideration of the relevant facts and there was no misrepresentation regarding the same.

54. Learned Counsel for respondent no. 5 has further argued that pursuant to complaints the Regional Officer, UPPCB visited the site and conducted a spot enquiry and found that the distance between the plant and notified residential area is about 200 meters and submitted report dated 20.04.2021. EC was granted by UPSEIAA and CTE was granted by UPPCB by following the prescribed procedure and in compliance with CBWTF Guidelines 2016. Relaxation of the requirement of buffer zone of 500 meters for setting up of CBWTF in residential area was granted by imposing special conditions/prescribing additional control measures with regard to the pollution control including deployment of the best available technology, stringent standards and zero liquid discharge and submissions of bank guarantees. The Project Proponent submitted the required documents along with affidavit to comply with all the conditions imposed on him.

55. Learned Counsel for respondent no.5 has submitted that the proposed CBWTF will not have any adverse impact on environment and habitation in the vicinity and the appeal being without any merit may be dismissed in the interest of justice with heavy costs.

56. Respondent no. 5 also filed written arguments vide email dated 29.04.2024 and in fairness to respondent no. 5, the brief written submissions filed by respondent no.5 are reproduced below:-

**“BRIEF WRITTEN SUBMISSIONS ON BEHALF OF
RESPONDENT NO. 5 M/S JKN PURVANCHAL CBWTF
WORKS**

X

X

X

X

1. That the present Appeal is not maintainable as no condition as prescribed in the ‘Revised Guidelines for Common Bio-Medical Waste Treatment and Disposal Facility’ dated 21.12.2016 issued by CPCB have been violated. It is submitted that as per the said guidelines dated 21.12.2016, the buffer zone distance shall be calculated from the ‘notified residential areas’ and not from any individual residential premises.
2. That as per the report dated 05.05.2022 submitted by the Joint Committee, the residential areas of Village Bagwanpur, Surchak and Dhanauti Rajdiha are situated at a distance of 1.5 Kms, 1.0 Kms and 2.0 kms respectively from the proposed CBWTF and as such the requirement of having a preferable buffer zone of 500 m are clearly met in the present case.
3. That the criterion of having a preferable buffer distance of 500 m from notified residential areas and sensitive areas is discretionary and not mandatory and can be reduced to less than 500 m by prescribing additional control measures. It is submitted that in the present case also the Environmental Clearance (issued by the SEIAA, UP) and CTE (issued by UPPCB) granted to Respondent No. 5 are subject to precautionary special conditions.

4. PROJECT DESCRIPTION:

- 4.1 That the proposed CBWTF will be equipped with state-of-the-art equipment which will operate in consonance with the standards of operation as prescribed by SPCB/ PCC.

The equipment list and their capacity details are as under:

Equipment	Installed Capacity	Number
Incinerator	250 Kg per hour	1
Autoclave	800 Kg per Batch	1
Shredder	150 Kg Per Hour	1
Chemical Disinfection Tank	1500 Ltr	1
Effluent Treatment Plant	1 LD	1

It is submitted that besides the above air pollution control devices viz. Wet Scrubber, Cyclone and Bag Filter will be installed and 8 Kilo Litres of wastewater per day will be treated Effluent Treatment Plant and treated water will be recycled.

Since the initial stage, UPPCB has proposed the implementation of the Best Available Technology, moreover, a complaint was lodged by the Common Bio-Medical Waste Treatment Facility Association through their legal advisor Mr. Suresh Yadav dated 13.11.2020. In furtherance of the complaint:

- i) Site inspection was carried out by the team of Regional Office, UPPCB and the findings of the visit were submitted to the head office in an inspection report on 29.12.2020. [Ref no: 975/NOC/176/2020]. In the report, it has been recommended by the UPPCB for the adoption of the best available technology.

A true copy of the report dated 29.12.2020 is already on record as Annexure R5/2.

ii) At the time of granting of the CTE it was recommended by the Regional Office, UPPCB on the online portal of Nivesh Mitra / vide letter dated 08.01.2021 that there shall be deployment / adoption of the Best Available Technology. A true copy of the letter dated 08.01.2021 is already on record as Annexure R5/3.

iii) Furthermore, certain special conditions with regard to the adoption of the best available technology have been mandated in the environment clearance and the consent to establish granted to the project. These include measures with respect to stringent emission norms, stack height, use of effective air pollution control devices, etc. in addition to standards for prevention and control of water pollution.

- *Cost of Project: 380 Lacs.*
- *Pollution Load:*
 - (i) Incineration capacity: 250kg/hr*
 - (ii) During the operation emission is continuous so the minimum unit is per second.*
 - (iii) Waste Burning rate per second = 69.44 gms/sec*
 - (iv) Oxygen/Air required: = 0.5Cumeter/sec*
- *Keeping 15% excess oxygen to ensure complete burning.*
- *Pollutants 69.44 gm burnt per second are diluted with air/oxygen by 204 times in the system only.*
- *The downstream system consists of a venturi scrubber/quenching column/ activated carbon column/ caustic absorber. The Pollutants like NO_x, SO_x, Particulate matter, and organic compounds get absorbed in absorbers and allow free oxygen-mixed air to release through the stack of height 30 meters.*
- *Continuous online emission monitoring is mandatory to monitor the release.*
- *Water Pollution: The concept of zero liquid discharge has been adopted so there is no question of the release of water from the unit.*
- *Spillage: Waste is stored in non-chlorinated bags in room size 10' x 15'. No loose bags are to be kept inside the room.*
- *Maximum storage time in plant 12 hours.*

5. DISTANCE:

5.1 That the Biomedical Waste Management Rules, 2016 of common medical based treatment and disposal facilities provides the buffer area for the establishment of new plant and further Clause-8 (b) of the Rule clearly provides establishment of a new plant if the number of hospital beds exceed more than 10,000 in a nearby area. Admittedly, no CBWTF plant exist in district Gorakhpur, Deoria, Mahrajganj, Kushinagar and there are 19208 beds in the hospitals running in these 4 districts, thus, the case of the answering Respondent falls under Clause-8(b) of the new rules. It is further the admitted fact that there is no CBWTF established in Gorakhpur Mandal.

5.2 In a joint committee inspection dated 05.05.2022 conducted on the direction of this Hon'ble Tribunal as per site inspection report of joint committee distance of primary health centre (presently non-functional and is in dilapidated condition) from the proposed CBWTF is 166 Meter and further distance of nearest habitat/population from proposed CBWTF is 184 meter.

5.3 That as per the available revenue records, the total land area of Khasra No. 1006 is 10,880 sqm [1.088 hectares] and its length is 250 meters. This land is bifurcated into three parts and all parts are separated by boundary.

FIRST PART:

The first part has been allocated for the oxygen bottling plant in an area of 2450 sqm;

SECOND PART:

The second part is meant for the CBWTF in an area of 5800 sqm.

THIRD PART:

The third part is a vacant land admeasuring 2630 sqm, left for future consideration.

It is worth mentioning here that the CBWTF is located in the middle of Khasra no. 1006.

5.4 That the geo-coordinates of the part of Khasra no. 1006 on which CBWTF was proposed are 26°38'33.06 N and 83°44'56'75 E. The area dedicated to CBWTF is 5800 sqm.

5.5 That the concerned authority have taken buffer zone distance from the first gate of the factory and not from the place where the incinerator is proposed, which is in contravention of Guideline No. 6 of Common Bio-Medical Waste Treatment Facility dated December 21, 2016. The same is reproduced herein below:

“buffer zone represents a separation distance between the source of pollution in CBWTF and the receptor - following the principle that the degree of impact reduces with increased distance”.

Hence, the buffer zone distance should be taken from the source of emission.

5.6 That the report of the joint committee suggested relocating the CBWTF so that the buffer zone criteria of 500 meters is met. It is submitted that the Google Earth image depicting the location of the CBWTF plant and respective distance has been obtained for considering the relocation of the CBWTF plant within the vicinity of Khasra No. 1006. The distance after relocation as depicted by the google earth image is:

. ANM Sub-center – 307 meters

. Prabhakar Rai's residence – 268 meters

That as per the District Magistrate, Deoria letter dated April 05, 2022, the distance between the CBWTF unit and the Primary health care centre is 166 meter and the health care centre is in a dilapidated condition. Further, the distance between the CBWTF unit and the nearest habitation is 184 meter. But now, as per the revised plan, keeping same geo-coordinates, the back side land will be utilized for the establishment of the CBWTF unit and it is significant to mention that this land is situated on the same Khasra no. 1006.

That the Respondent no 5 is ready to give an undertaking on affidavit affirming that he may not be allowed to operate the CBWTF unit if the buffer zone distance from the source of emission to Prabhakar Rai residence is less than 268 meter and from ANM subcentre is less than 307 meters.

6. OXYGEN PLANT:

6.1 The Respondent No. 5 has setup an oxygen bottling plant. It is submitted that the Respondent does not produce oxygen from the air but purchases liquid oxygen and the same is

compressed under pressure and filled in the bottles. The whole system undergoes a pressure of 15kg/cm². So, there arises no question of mixing any kind of hazardous material.

Furthermore, the answering Respondent is not into production or storage of Nitrogen.

It is submitted that purging oxygen in the incinerator of a bio-medical waste treatment facility significantly increases combustion efficiency. The benefits of Oxygen for the CBWTF are as under:

- *Enhanced Combustion: Oxygen is a crucial component for combustion, and by introducing additional oxygen into the incinerator, the combustion process is enhanced. The increased availability of oxygen allows more complete and efficient burning of the waste materials, resulting in higher temperatures and improved combustion performance.*

- *Reduced Emissions: When the combustion process is efficient, it leads to reduced emissions of harmful pollutants. Purging oxygen into the incinerator helps to ensure that the waste materials are thoroughly combusted, leaving negligible unburned or partially burned particles behind. This significantly lowers the emissions of pollutants such as dioxins, furans, and other hazardous substances.*

- *Faster Burning: The introduction of extra oxygen into the incinerator facilitates a faster burning process. This is important in a bio-medical waste treatment facility, where the volume of waste generated can be substantial. With faster burning, the incinerator can handle a larger amount of waste in a given time, increasing the overall capacity and efficiency of the facility.*

- *Improved Heat Transfer: Oxygen enhances the heat transfer process within the incinerator. The increased oxygen concentration creates a more efficient combustion reaction, generating higher temperatures. These elevated temperatures optimize heat transfer efficiency from the burning waste to the surrounding environment, increasing thermal energy recovery and reducing energy losses.*

- *Enhanced Safety: A properly purged incinerator, with a higher oxygen concentration, helps to prevent the accumulation of unburned waste and combustible gases within the system. This reduces the risk of explosions or other hazardous situations, improving the overall safety of the bio-medical waste treatment facility.*

Therefore, by utilizing an oxygen bottling plant to purge oxygen into the incinerator, the CBWTF of the answering Respondent can achieve a higher level of combustion efficiency. Without oxygen purging the combustion efficiency remains at 90% but with the introduction of oxygen purging, it goes up to 99.99%. This results in reduced emissions, faster burning, improved heat transfer, and enhanced safety, contributing to an effective and environmentally friendly waste treatment process.

The installation of the incinerator plant in the vicinity of the oxygen plant cannot cause any health hazard. The Respondent refutes the fact that the Oxygen Bottling Plant could cause health hazard it is founded on an unscientific and illogical interpretation. Common Bio Medical Waste Treatment Facility is not a hazard for oxygen plant since now almost every district hospital, after the onset of covid-19 has oxygen plant and bio-medical waste stored in gallery and hospital wards.

7. **PLANTATION:**

It is submitted that there is already thick plantation of 20 meters width on three sides i.e village side, Sub Centre ANM Side and south side). The plantations are Bamboo Tree, Eucalyptus and Teak Plant with height of 15-20 ft.

8. **APPLICABLE LAW:**

8.1 Revised Guidelines for Common Bio-Medical Waste Treatment

and Disposal Facilities, 2016

Para 6:Location criteria

In the context of these guidelines, buffer zone represents a separation distance between the source of pollution in CBWTF and the receptor - following the principle that the degree of impact reduces with increased distance. The following parameters may be considered for ascertaining buffer distance on case-to-case basis:

- (i) potential for spread of infection from wastes stored in the premises.*
- (ii) applicable standards for pollution control and the relative efficiency of the existing incinerators and emission control systems,*
- (iii) potential of fugitive dust emission from incinerators,*
- (iv) potential for discharge of wastewater*
- (v) the potential for odour production,*
- (vi) the potential for noise pollution,*
- (vii) the risk posed to human health and safety due to exposure to emissions from incinerator,*
- (viii) the risk of fire and*
- (ix) Significance of the residual impacts such as bottom ash and fly ash.*

As far as possible, the CBWTF shall be located near to its area of operation in order to minimize the transportation distance in waste collection, thus enhancing its operational flexibility as well as for ensuring compliance to the time limit for treatment and disposal of bio-medical waste as stipulated under the BMW Rules(i.e., within 48 hours). Also, the location of the CBWTF should be in conformity to the CRZ Norms and other provisions notified under the Environment (Protection) Act,1986. The location shall be decided in consultation with the State Pollution Control Board (SPCB)/ Pollution Control Committee (PCC). The location criteria for development of a CBWTF are as follows:

- (a) A CBWTF shall preferably be developed in a notified industrial area without any requirement of buffer zone (or)*
- (b) A CBWTF can be located at a place reasonably far away from notified residential and sensitive areas and should have a buffer distance of preferably 500 m so that it shall have minimal impact on these areas. In case of non-availability of such a land, the buffer zone distance from the notified residential area may be reduced to less than 500 m by SPCB/PCC without referring the matter to CPCB by prescribing additional control measures such as (i) adoption of best available technologies (BAT) by the proponent of CBWTF; (ii) prescribing stringent standards for operation of the CBWTF by the SPCB/PCC; (iii) adoption of zero liquid discharge by the CBWTF and (iv) incase of any complaints from the public, then CBWTF should prove that the facility is not causing any*

adverse impact on environment and habitation in the vicinity. If SPCB/PCC is not in a position to resolve the issue relating to buffer zone while electing the site for CBWTFs, in such a case, SPCBs/PCCs may refer the matter to CPCB.

(c) The CBWTF can also be developed as an integral part of the Hazardous Waste Treatment Storage and Disposal Facility (TSDF) subject to obtaining of necessary approvals from the authorities concerned including 'environmental clearance' as per Environmental Impact Assessment 2006 and further amendments notified under the Environment (Protection) Act, 1986, provided there is no CBWTF exist within 150 KM distance from the existing TSDF.

It is submitted that the storage time for CBMW is not beyond 48 hours from the time of generation of waste to its disposal. As the storage time is very limited which is either passed in keeping the same at the source or travel, the relaxation has been provided in the notification for reducing the buffer zone below 500 metres.

It is further important to mention here that if the CBWTF is situated in the notified industrial area, there is no requirement of any buffer zone even in the event when the habitats are working in the nearby units.

It is submitted that for Hazardous Waste Treatment, Storage and Disposal Facilities, which is mentioned in entry 7(d) of Notification dated 14.09.2006 S.O 1533(E) of Ministry of Environment and Forests mandated the minimum buffer zone of 500metres, however, in the case of CBWTF, the relaxation of distance is provided for.

It is further submitted that the CBWTF is not a pollution-generating unit, rather it is a pollution control facility, which aims at treating the hazardous bio-medical waste generated from the healthcare units.

8.2 Notification dated 14.09.2006 S.O 1533(E) of Ministry of Environment and Forests provides for activities requiring Prior Environmental Clearance.

Till 2015, the CBWTF did not form the part of Schedule, however, by an amendment notification dated 17.09.2015 [S.O. 1142 (E)], Bio Medical Waste Treatment facilities was inserted as Entry 7(da).

8.3 The UPPCB has stated that there are CBWTFs operated within the state of U.P., in which no CBWTF is established in the residential area.

The answering respondent vehemently denies this averment of the UPPCB. The perusal of precedents set forth by this Hon'ble Tribunal in the O.A. No. 273/2020 in the case of Rakesh Kumar & Anr. Vs. Union of India & Ors. [Popularly referred to as the Sushila Bio-Medical Waste Treatment Facility case] provides a clear stance on the matter. In the said case, grievance was that the CBWTF unit is contrary to the siting guidelines. The contention was that the said CBWTF unit was close to the habitation and a school was present at a distance of 150 m from the site. However, the said case was disposed of by the principal bench of the Hon'ble NGT vide its order dated 11.08.2021 adjudicating in favour of the CBWTF unit and the unit is functional since then.

8.4 The Hon'ble High Court of Gujarat in Special Civil Application No. 12235 of 2017 has considered the same issue and has held as under:

“the biomedical waste has got to be processed in accordance with the rules and regulations laid down by the Central Pollution Control Board. If, according to the applicants, operating a Bio Medical waste Process Unit is an evil, then ignoring the biomedical waste and allowing it to be disposed of without being processed, is a greater evil and would lead to more health hazard. The importance of the Bio-Medical waste Process Unit should not be undermined, and in my view, the applicants are unnecessarily hyper in this regard. The private respondents have been put to the strictest of the terms for the purpose of functioning and operation of the unit and they can still be put to certain more terms to ensure that the same does not lead to any pollution. The revised guidelines for the Common Bio-Medical Waste Treatment and Disposal Facility, as issued by the C.P.C.B. itself, provide that the buffer zone distance from the notified residential area may be reduced to less than 500 meters by the State Pollution Control Board or the Pollution Control Committee without referring the matter to the C.P.C.B. by prescribing the additional control measures such as (i) adoption of best available technologies (BAT) by the proponent of CBWTF; (ii) prescribing stringent standards for operation of the CBWTF by the SPCB/PCC; (iii) adoption of zero liquid discharge by the CBWTF and (iv) in case of any complaints from the public, then CBWTF should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity. If SPCB/PCC is not in a position to resolve the issue relating to buffer zone while selecting the site for CBWTFs, in such a case, SPCBs/PCCs may refer the matter to CPCB.

.....It is a settled law that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of “sustainable development. This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy. The adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development.

Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to sustainable development cannot be singled out. Therefore, the concept of sustainable development is to be treated as an integral part of life under Article 21. Weighty concepts like intergenerational equity, public trust doctrine and precautionary principle, which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by

ensuring sustainable development. To ensure sustainable development is one of the goals of the Environment (Protection) Act, 1986 and this is quite necessary to guarantee the right to life under Article 21.

If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of life under Article 21. Acknowledgment of this principle will breathe new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance with the directions under the Act."

9. That it is respectfully submitted that the CBWTF being set by Respondent No. 5 shall be equipped with all the state-of-the-art machinery and best possible pollution abating equipment and technology. It shall be capable of ensuring that minimal impact is caused to the environment as a result of the operation of the plant and the emissions generated from the plant are going to be well within the prescribed norms. The CBWTF of Respondent No. 5 shall also be a Zero Liquid Discharge (ZLD) unit.

In the light of the above-mentioned submissions, it is most respectfully prayed that the Hon'ble Tribunal may be pleased to reject the Application and permit the establishment of the Bio-Medical Waste treatment facility."

Environmental Significance of CBWTF as pollution control facility

57. Before considering the submissions made by the learned Counsels for the parties, significance of CBWTF as Pollution Control Facility and relevant statutory frame work and environmental norms may be noticed.

58. Introduction embodied by Guideline I of the CBWTF Guidelines 2016 encompasses the background and environmental significance of CBWTF and the relevant part of the same reads as under:-

"1. Introduction

A Common Bio-medical Waste Treatment and Disposal Facility (CBWTF) is a set up where biomedical waste generated from member health care facilities is imparted necessary treatment to reduce adverse effects that this waste may pose on human health and environment. The treated recyclable waste may finally be sent for disposal in a secured landfill or for recycling. According to the Bio-medical Waste Management Rules, 2016, "bio-medical waste treatment and disposal facility" means any facility wherein treatment, disposal of bio-medical waste or processes incidental to such treatment and disposal is carried out, and includes common bio-medical waste treatment facilities and "operator of a common bio-medical waste treatment facility" means a person who owns or controls a Common Bio-medical

Waste Treatment and Disposal Facility (CBWTF) for the collection, reception, storage, transport, treatment, disposal or any other form of handling of bio-medical waste.

The Bio-medical Waste Management Rules, 2016 (hereafter referred as BMWM Rules) restricts occupier for establishment of on-site or captive bio-medical waste treatment and disposal facility, if a service of common bio- medical waste treatment and disposal facility is available within a distance of seventy-five kilometer, as installation of individual treatment facility by health care facility (HCF) requires comparatively high capital investment. In addition, it requires separate dedicated and trained skilled manpower and infrastructure development for proper operation and maintenance of treatment systems. The concept of CBWTF is not only addresses such problems but also prevents proliferation of treatment technologies in a particular town or city. In turn, it reduces the monitoring pressure on regulatory agencies. By running the treatment equipment at CBWTF to its full capacity, the cost of treatment of per kilogram bio-medical waste gets significantly reduced. Its considerable advantages have made CBWTF popular and proven concept in most part of the world.

The CBWTFs are also required to set up based on the need for ensuring environmentally sound management of bio-medical waste keeping in view the techno-economic feasibility and viable operation of the facility with minimal impact on human health and environment.

Since 1998, the CBWTF as an option for treatment of bio-medical waste also been legally introduced in India. Considering the likely impacts that may cause to the patients undergoing treatment because of operation of the captive treatment equipment within the health care facilities (HCFs), now the Bio-medical Waste Management Rules, 2016 restricts the Occupier (i.e., HCF) for ensuring treatment and disposal of generated bio-medical waste through a CBWTF, located within a distance of 75 KM. Further, these rules eased the bottleneck in upbringing the CBWTF by making department in the business allocation of land assignment in the State or UT administration responsible for providing a suitable site (s) within its jurisdiction.

The concept of CBWTF is also being widely accepted in India among the healthcare units, medical associations and entrepreneurs. In order to set up a CBWTF to its maximum perfection, care shall be taken in choosing the right technology, development of CBWTF area, proper designing of transportation system to achieve optimum results etc. Key features of CBWTF have been addressed in the subsequent sections.

To facilitate the treatment and disposal of bio-medical waste generated from the HCFs, at present (as per Annual Report 2014 submitted by the SPCBs/PCCs), there are 192 no. of CBWTFs in operation and 33 no. of CBWTFs are under construction. Also, the Bio-medical Waste Management Rules, 2016 mandates that the operator of a CBWTF authorised by the prescribed authority is required to take all necessary steps to

ensure that the bio-medical waste collected from the occupier is transported, handled, stored, treated and disposed of, without any adverse effect to the human health and the environment, in accordance with the BMW Rules and the guidelines issued by the Central Government or the Central Pollution Control Board (CPCB) from time to time.”

Statutory Framework

59. The Government of India framed the Biomedical Waste (Management & Handling) Rules, 1998 (BMW Rules 1998) for providing a regulatory frame work for management of bio-medical waste generated in the country. The Government of India reviewed the BMW Rules 1998 and framed the Bio Medical Waste Management Rules, 2016 (BMW Rules 2016) to implement the rules more effectively and to improve the collection, segregation, processing, treatment and disposal of the bio-medical wastes in an environmentally sound manner thereby, reducing the bio- medical waste generation and its impact on the environment.

60. The statutory frame work under BMW Rules 2016 was summarised by this Tribunal in judgment dated 04.12.2023 passed in **Appeal No. 05/2023 (CZ)** titled as **M/s. J.K. Medical Waste Management System Vs. Madhya Pradesh State Environment Impact Assessment Authority and others**. The relevant part thereof reads as under:-

“75. Rule 1(2) of BMW Rules, 2016 provides that the said Rules shall come into force on the date of their publication in the Official Gazette. Rules have been published in the Gazette of India (Extraordinary) Part II-Section 3-Sub-section (i) dated 28.03.2016 and hence came into force on the said date.

76. Rule 2 talks of application and sub-rule (i) says that BMW Rules, 2016 shall apply to all persons who generate, collect, receive, store, transport, treat, dispose, or handle bio-medical waste in any form including hospitals, nursing homes, clinics, dispensaries, veterinary institutions, animal houses, pathological laboratories, blood banks, Ayush hospitals, clinical establishments, research or educational institutions, health

camp, medical or surgical camp, vaccination camp, blood donation camp, First-Aid rooms of schools, forensic laboratories and research labs. The above description shows that all kinds of entities handling bio-medical waste in the broadest possible manner have been included to attract BMW Rules, 2016 and even this description is inclusive and not exhausted. However, certain categories are excluded from the application of BMW Rules, 2016 which are specifically stated in Rule 2(2) and the same are as under:

“2. Application. -

(2). These rules shall not apply to, -

- (a) radioactive wastes as covered under the provisions of the Atomic Energy Act, 1962(33 of 1962) and the rules made there under;*
- (b) hazardous chemicals covered under the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 made under the Act;*
- (c) solid wastes covered under the Municipal Solid Waste (Management and Handling) Rules, 2000 made under the Act;*
- (d) the lead acid batteries covered under the Batteries (Management and Handling) Rules, 2001 made under the Act;*
- (e) hazardous wastes covered under the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 made under the Act;*
- (f) waste covered under the e-Waste (Management and Handling) Rules, 2011 made under the Act; and*
- (g) hazardous micro organisms, genetically engineered micro organisms and cells covered under the Manufacture, Use, Import, Export and Storage of Hazardous Microorganisms, Genetically Engineered Micro organisms or Cells Rules, 1989 made under the Act.”*

77. Rule 3 is a definition clause and defines various terms used in BMW Rules, 2016. For our purposes, the definition of ‘authorisation’, ‘authorised person’, ‘bio-medical waste’, ‘bio-medical waste treatment and disposal facility’, ‘handling’, ‘health care facility’, ‘occupier’, and ‘operator of a common bio-medical waste treatment facility’ are relevant and reproduced as under:

(c) “authorisation” means permission granted by the prescribed authority for the generation, collection, reception, storage, transportation, treatment, processing, disposal or any other form of handling of bio-medical waste in accordance with these rules and guidelines issued by the Central Government or Central Pollution Control Board as the case may be;

(d) “authorised person” means an occupier or operator authorised by the prescribed authority to generate, collect, receive, store, transport, treat, process, dispose or handle bio-medical waste in accordance with these rules and the guidelines issued by the Central Government or the Central Pollution Control Board, as the case may be;

(f) “bio-medical waste” means any waste, which is generated during the diagnosis, treatment or immunisation 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 these rules;

(g) “bio-medical waste treatment and disposal facility” means any facility wherein treatment, disposal of bio-medical waste or processes incidental to such treatment and disposal is carried out, and includes common bio-medical waste treatment facilities;

(i) “handling” in relation to bio-medical waste includes the generation, sorting, segregation, collection, use, storage, packaging, loading, transportation, unloading, processing, treatment, destruction, conversion, or offering for sale, transfer, disposal of such waste;

(j) “health care facility” means a place where diagnosis, treatment or immunisation of human beings or animals is provided irrespective of type and size of health treatment system, and research activity pertaining thereto;

(m) “occupier” means a person having administrative control over the institution and the premises generating biomedical waste, which includes a hospital, nursing home, clinic, dispensary, veterinary institution, animal house, pathological laboratory, blood bank, health care facility and clinical establishment, irrespective of their system of medicine and by whatever name they are called;

(n) “operator of a common bio-medical waste treatment facility” means a person who owns or controls a Common Bio-medical Waste Treatment Facility (CBMWTF) for the collection, reception, storage, transport, treatment, disposal or any other form of handling of bio-medical waste;”

78. Rule 4 talks of duties of occupier i.e., the person having administrative control over the institution and premises generating bio-medical waste.

79. Rule 5 gives in details duty of operator of a CBWTF and since the same are relevant for the present case, we find it appropriate to reproduce as under:

“5. Duties of the operator of a common bio-medical waste treatment and disposal facility. - It shall be the duty of every operator to –

(a) take all necessary steps to ensure that the bio-medical waste collected from the occupier is transported, handled, stored, treated and disposed of, without any adverse effect to the human health and the environment, in accordance with these rules and guidelines issued by the Central Government or, as the case may be, the central pollution control board from time to time;

(b) ensure timely collection of bio-medical waste from the occupier as prescribed under these rules;

(c) establish bar coding and global positioning system for handling of bio- medical waste within one year;

(d) inform the prescribed authority immediately regarding the occupiers which are not handing over the segregated bio-medical waste in accordance with these rules;

- (e) provide training for all its workers involved in handling of bio-medical waste at the time of induction and at least once a year thereafter;
- (f) assist the occupier in training conducted by them for bio-medical waste management;
- (g) undertake appropriate medical examination at the time of induction and at least once in a year and immunise all its workers involved in handling of bio-medical waste for protection against diseases, including Hepatitis B and Tetanus, that are likely to be transmitted while handling bio-medical waste and maintain the records for the same;
- (h) ensure occupational safety of all its workers involved in handling of bio-medical waste by providing appropriate and adequate personal protective equipment;
- (i) report major accidents including accidents caused by fire hazards, blasts during handling of bio-medical waste and the remedial action taken and the records relevant thereto, (including nil report) in Form I to the prescribed authority and also along with the annual report;
- (j) maintain a log book for each of its treatment equipment according to weight of batch; categories of waste treated; time, date and duration of treatment cycle and total hours of operation;
- (k) allow occupier, who are giving waste for treatment to the operator, to see whether the treatment is carried out as per the rules;
- (l) shall display details of authorisation, treatment, annual report etc on its web-site;
- (m) after ensuring treatment by autoclaving or micro waving followed by mutilation or shredding, whichever is applicable, the recyclables from the treated bio-medical wastes such as plastics and glass, shall be given to recyclers having valid consent or authorisation or registration from the respective State Pollution Control Board or Pollution Control Committee;
- (n) supply non-chlorinated plastic-coloured bags to the occupier on chargeable basis, if required;
- (o) common bio-medical waste treatment facility shall ensure collection of biomedical waste on holidays also;
- (p) maintain all record for operation of incineration, hydroor autoclaving for a period of five years; and
- (q) upgrade existing incinerators to achieve the standards for retention time in secondary chamber and Dioxin and Furans within two years from the date of this notification.”

80. Rule 6 deals with the duties of the authorities and says that the Authority specified in column (2) of Schedule-III shall perform duties as specified in column (3) thereof, in accordance with the provisions of the Rules.

81. Rule 7 talks of treatment and disposal of bio-medical waste. It says that bio-medical waste treated and disposed of in accordance with Schedule I, and in compliance with the standards provided in Schedule-II by the Health Care Facilities and CBWTF. The said Rule lays down various provisions for treatment and disposal of bio-medical waste to be observed by Health Care Facility as also CBWTF and we find it appropriate to reproduce the same as under:

7. *Treatment and disposal.* - (1) *Bio-medical waste shall be treated and disposed of in accordance with Schedule I, and in compliance with the standards provided in Schedule-II by the health care facilities and common bio-medical waste treatment facility.*

(2) *Occupier shall hand over segregated waste as per the Schedule-I to common bio-medical waste treatment facility for treatment, processing and final disposal: Provided that the lab and highly infectious bio-medical waste generated shall be pre-treated by equipment like autoclave or microwave.*

(3) *No occupier shall establish on-site treatment and disposal facility, if a service of common bio-medical waste treatment facility is available at a distance of seventy-five kilometer.*

(4) *In cases where service of the common bio-medical waste treatment facility is not available, the Occupiers shall set up requisite biomedical waste treatment equipment like incinerator, autoclave or microwave, shredder prior to commencement of its operation, as per the authorisation given by the prescribed authority.*

(5) *Any person including an occupier or operator of a common bio medical waste treatment facility, intending to use new technologies for treatment of bio medical waste other than those listed in Schedule I shall request the Central Government for laying down the standards or operating parameters.*

(6) *On receipt of a request referred to in sub-rule (5), the Central Government may determine the standards and operating parameters for new technology which may be published in Gazette by the Central Government.*

(7) *Every operator of common bio-medical waste treatment facility shall set up requisite biomedical waste treatment equipments like incinerator, autoclave or microwave, shredder and effluent treatment plant as a part of treatment, prior to commencement of its operation.*

(8) *Every occupier shall phase out use of non-chlorinated plastic bags within two years from the date of publication of these rules and after two years from such publication of these rules, the chlorinated plastic bags shall not be used for storing and transporting of bio-medical waste and the occupier or operator of a common bio- medical waste treatment facility shall not dispose of such plastics by incineration and the bags used for storing and transporting biomedical waste shall be in compliance with the Bureau of Indian Standards. Till the Standards are published, the carry bags shall be as per the Plastic Waste Management Rules, 2011.*

(9) *After ensuring treatment by autoclaving or micro waving followed by mutilation or shredding, whichever is applicable, the recyclables from the treated bio-medical wastes such as plastics and glass shall be given to such recyclers having valid authorisation or registration from the respective prescribed authority.*

(10) *The Occupier or Operator of a common bio-medical waste treatment facility shall maintain a record of recyclable wastes referred to in sub-rule (9) which are auctioned or sold and the same shall be submitted to the prescribed authority as part of*

its annual report. The record shall be open for inspection by the prescribed authorities.

(11) The handling and disposal of all the mercury waste and lead waste shall be in accordance with the respective rules and regulations.”

82. Rule 8 made provision for segregation, packaging, transportation and storage of bio-medical waste. Rule 9 deals with ‘prescribed authority’ for implementation of provisions of BMWM Rules, 2016. The Regulator i.e., the ‘Prescribed Authority’ under Rule 9 for implementation of BMWM Rules, 2016 are SPCBs in respect of States and SPCCs in respect of Union Territories. However, in respect of health care establishments to which the Rules apply, belong to Armed Forces under Ministry of Defence, the Prescribed Authority is Director General, Armed Forces Medical Services who is required to function under the supervision and control of the Ministry of Defence. Rule 9(3) says that the prescribed authorities shall comply with the responsibilities as stipulated in Schedule III of these Rules.

83. Rule 10 lays down the procedure for authorization and different provisions are made for authorization to be issued for bedded Health Care Facility and non-bedded Occupiers. Rule 10(1) provides that the authorization for non-bedded occupiers shall be one time and if after receipt of completed application along with all necessary documents, no objection is raised by the prescribed agency within a period of 90 days, the authorization in such cases for non-bedded occupiers shall be deemed to have been granted. However, in respect of bedded Health Care Facility and operator of a CBWTF, Prescribed Authority shall grant provisional authorization in Form III and validity of such authorisation shall be synchronized between bedded Health Care Facility and operator of a common facility with the validity of consent. In case of any change in bio-medical waste generation, handling, treatment and disposal for which authorisation was earlier granted, the occupier or operator is required to intimate to the Prescribed Authority about the change or variation and has to submit a fresh application in Form II for modification of the conditions of authorisation vide Rule 10(4).

84. Rule 11 talks of an Advisory Committee, constitution whereof is prescribed. Sub-rule (3) says that the Advisory Committee shall meet at least once in six months and review all matters related to implementation of the provisions of BMWM Rules, 2016 in the State and Armed Forces Health Care Facilities, as the case may be.

85. Rule 12 talks of monitoring of implementation of the rules in Health Care Facilities. MoEF&CC is authorized for review of the implementation of the Rules in the country once in a year. CPCB however, is required to monitor implementation of the Rules in respect of all Armed Forces health care establishments under Ministry of Defence.

86. State Government or Union territory Administration are required to constitute District Level Monitoring Committee in the districts under the Chairmanship of District Collector or District Magistrate or Deputy Commissioner or Additional District Magistrate to monitor compliance of the Rules in the health care facilities generating bio-medical waste and in CBWTF where bio-medical waste is treated and disposed. District Level Monitoring Committee is required to submit its report once in six months to State Advisory Committee with a copy to SPCB or SPCC concerned for taking necessary action.

87. Rule 13 talks of 'Annual Report' to be submitted by every Occupier or Operator of CBWTF and the same is required to be submitted on or before 30th June of every year.

88. Rule 14 talks of maintenance of records for a period of 5 years in accordance with the Rules and Guidelines issues by Central Government or CPCB or the prescribed authority, as the case may be.

89. Rule 15 says that in case of any major accident at any institution or facility or any other site while handling bio-medical waste, the authorised person shall intimate immediately to the Prescribed Authority about such accident and forward a report within 24 hours in writing regarding remedial steps taken in Form I.

90. Rule 16 provides right of appeal against order made by the Prescribed Authority, if any person is aggrieved by such an order, and the limitation of filing Appeal.

91. Rule 17 makes provision for making a site available for CBWTF and says that the department in the business allocation of land assignment shall be responsible for providing suitable site for setting up of CBWTF. The selection of the site shall be made in consultation with the Prescribed Authority, other stakeholders and in accordance with Guidelines published by MoEF&CC or CPCB.

92. Rule 18 lays an obligation/liability on the occupier and operator of a facility and reads as under:

"18. Liability of the occupier, operator of a facility. - (1) The occupier or an operator of a common bio-medical waste treatment facility shall be liable for all the damages caused to the environment or the public due to improper handling of bio-medical wastes.

(2) The occupier or operator of common bio-medical waste treatment facility shall be liable for action under section 5 and section 15 of the Act, in case of any violation."

93. After promulgation of BMWM Rules, 2016, Guidelines 2003 had to be re-considered and require a new set of Guidelines consistent with BMWM Rules, 2016. Consequently, CPCB issued new set of Guidelines with reference of BMWM Rules, 2016 and titled the same as "Revised Guidelines for CBWTF" vide circular dated 21.12.2016"

CPCB Guidelines

61. The CPCB issued Revised Guidelines for Common Bio-Medical Wastes Treatment and Disposal Facilities (the CBWTF Guidelines) on 21.12.2016. Said guidelines were prepared, as mentioned in Guideline No. 1 of the CBWTF Guidelines 2016, with an aim to have uniformity in ensuring site selection, allowing and establishment of a state-of-the-art CBWTF, operation as well as verification of compliance to the BMW Rules 2016 throughout the country. However, the other aspects which were not covered under said guidelines and which needed attention were left for suitable action by the prescribed authority in the interest of protection of the environment in consultation with MoEF & CC/CPCB.

Applicability of CPCB Guidelines

62. Guideline No. 4 of the CBWTF Guidelines 2016 specifies applicability of the guidelines and the same reads as under:

*"4) Applicability of these guidelines
These guidelines are applicable to all the upcoming or new CBWTFs. In case of the existing CBWTFs, these guidelines shall be applicable in case
(a) the existing CBWTFs desires to expand or enhance the existing treatment capacity
(or)
(b) the existing CBWTFs desires to modernize the existing treatment equipment with the new equipment with enhancement in the existing treatment capacity."*

CPCB Guidelines are mandatory

63. It may be observed here that, as also mentioned in CBWTF Guidelines 2016, these guidelines are mandatory under the BMW Rules 2016 with effect from the date of issuance and cannot be ignored/violated by SEIAAs, SPCBs or UTPCCs. In **Appeal No. 05/2023 (CZ)** titled as **JK Medical Waste Management System Vs. SEIAA MP**

and others this Tribunal has held the CBWTD Guidelines 2016 to be statutory, enforceable and binding.

SEIAA/SPCB/UTPCC are bound to comply with CPCB Guidelines

64. MoEF & CC issued Office Memorandum dated 01.04.2022 addressed to Member Secretary, CPCB, Member Secretary, UPPCB and Chairman, State Level Environment Impact Assessment Authority, Uttar Pradesh which reads as under :-

“Subject:-Alleged Non-Compliance of Biomedical Waste Management Rules, 2016 and Revised CPCB Guidelines in the State of Uttar Pradesh by SEIAA and SEAC with respect to grant Environmental Clearance for CBWTF-regarding.

Reference may kindly be made to a representation received from M/s Paryavaran Bachao Welfare Society, Agra regarding alleged Non Compliance of Biomedical Waste Management Rules, 2016 and Revised CPCB Guidelines in the State of Uttar Pradesh by SEIAA and SEAC while according Environmental Clearance for CBWTF in the State. A copy of the representation is attached for reference.

2. The communication highlights that the SEIAA and SEAC of Uttar Pradesh is not taking into consideration the Bio-medical Waste Management Rules, 2016 and Revised CPCB Guidelines provisions while according Environmental Clearance for CBWTF.

3. In view of the above, it is requested to kindly examine the matter as per provisions stipulated under Biomedical Waste Management Rules, 2016 and respective CPCB guidelines. It is to emphasize here that the provisions contained in guidelines may be strictly followed while giving clearance to new facilities through Gap-Analysis. Further, CPCB may ensure the compliance through regular monitoring. An Action Taken Report may also kindly be provided to the Ministry.”

CBWTF requires prior Environmental Clearance

65. The Central Government in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of

rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O. 60 (E) dated the 27.01.1994, except in respect of things done or omitted to be done before such supersession, directed that on and from the date of publication of Notification no S.O. 1533 (E) dated 14.09.2006 the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to said notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified said notification.

66. Para 2 of EIA notification dated 14.09.2006 (as amended), which lays down requirements of prior EC, reads as under:

" 2. Requirements of prior Environmental Clearance (EC):- *The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:*

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.”

67. The MoEF & CC vide notification No. S.O.1142 (E) amended the EIA Notification 2006 in view of the Judgment passed by the Principal Bench of this Tribunal in **Appeal No. 63 of 2012** titled as **Haat Supreme Wastech Pvt. Ltd. & Ors. Vs. State of Haryana & Ors.** By the amendment Entry 7(da) was inserted after Entry 7(d) in the Schedule. The said amendment notification reads as under:-

“S.O.1142(E).*-In exercise of the powers conferred by sub section (I) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule(4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments to the notification of the Government of India, in the Ministry of Environment and Forests number S.O. 1533(E), dated the 14th September, 2006 after dispensed with the requirement of notice under clause(a) of sub-rule(3) of the said rule 5 in public interest, namely:-*

In the said notification, in the Schedule, after item 7(d) and the entries relating thereto, the following item and entries shall be inserted, namely:-

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>“7(da)</i>	<i>Bio-Medical Waste Treatment Facilities</i>	<i>-</i>	<i>All projects</i>	<i>-</i>

68. Guideline No.5 of the CBWTF Guidelines 2016 also reiterates the legal requirement of obtaining EC for commissioning or operation of a CBWTF and the same reads as under:

"5) Environmental laws applicable for commissioning or operation of a CBWTF

Operation of a CBWTF leads to air emissions as well as waste water generation as in case of an industrial operation. Most common sources of waste water generation in CBWTFs are vehicle washing, floor washing, and

scrubbed liquid effluent from air pollution control systems attached with the incinerator/plasma pyrolysis. Incineration as well as DG Set is the general source of air emissions.

5.1 Any other approvals (such as Land Use /Change in Land Use as applicable) required from the concerned authorities under various laws have to be complied with by the proponent of the CBWTF prior to development of a CBWTF.

5.2 Consents under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as well as Authorization under the BMWM Rules, 2016

The project proponent of the CBWTF is required to obtain 'Consent to Establishment' under Rule 25 of the Water (Prevention and Control of Pollution) Act, 1974 and under Rule 21 of Air (Prevention and Control of Pollution) Act, 1981, from the respective prescribed authority i.e. SPCB/PCC. Upon installation of the requisite equipment, the CBWTF Operator is also required to obtain authorization under BMWM Rules, 2016 co-terminus with consent to operate under Water (Prevention and Control of Pollution) Act, 1976 & Air (Prevention and Control of Pollution) Act, 1981 from the respective SPCB/PCC prior to commencement of the CBWTF.

5.3 Environmental Clearance under EIA Notification 2006

Ministry of Environment, Forest & Climate Change (MoEF & CC), notified amendment to the EIA Notification 2006 and published vide MoEF & CC Notification of S.O. 1142 (E) dated April 17, 2015. According to this notification, the 'bio-medical waste treatment facility' is categorized under the Item 7 (da) in the schedule, requiring 'Environmental Clearance' from the State Environment Impact Assessment Authority (SEIAA). Therefore, the CBWTF operator is also required to obtain 'Environmental Clearance' from the respective SEIAA or Ministry of Environment, Forest & Climate Change (MoEF& CC), as the case may be, before any construction work, or preparation of land by the projects management, which include the following:

- a) All new projects or activities pertaining to the bio-medical waste treatment facility; and*
- b) Expansion and modernization with additional treatment capacity of existing bio-medical waste treatment facility (excluding augmentation of incineration facility for*

compliance to the residence time as well as Dioxins and Furans without enhancing the existing treatment capacity).

c) Any expansion or modification in the treatment capacity or relocation of the existing CBWTF (requires compliance to the relevant provisions notified under the Environment (Protection) Act, 1986 by the MoEF & CC."

69. Even though CBWTF is categorized by the CPCB as Red Category Industry but the CPCB has issued letter dated 30.04.2020 clarifying that CBWTF may be considered as non-industrial activity/facility.

Criteria for development of a new CBWTF

70. Guideline No. 2 of the CBWTF Guidelines 2016 lays down the Criteria for development of a new CBWTF for a locality or region as under:-

"2. Criteria for development of a new Common Bio-medical Waste Treatment and Disposal Facility for a locality or region.

Prior to allowing any new CBWTF, following criteria or steps may be followed:

(a) Prescribed authority under the BMWM Rules, 2016 [i.e., State Pollution Control Board (SPCB) in the respective State or Pollution Control Committee (PCC) in the respective Union Territory Administration] is required to prepare an inventory or review with regard to the bio-medical waste generation at least once in five years in the coverage areas of the existing bio-medical waste treatment and disposal facility. The prescribed authority is also required to extrapolate the coverage-area wise bio-medical waste generation for the next ten years.

(b) SPCB/PCC is required to conduct gap analysis w.r.to coverage area of the bio-medical waste generation and also projected over a period of next ten years, adequacy of existing treatment capacity of the CBWTF in each coverage area of radius 75 KM, as given in Annexure-I.

All the SPCBs and PCCs shall conduct the gap analysis and based on the gap analysis, action plan for development of new CBWTFs is required to be prepared and submitted to MoEF & CC & CPCB within six months' time. In case of States/UTs, where no CBWTF is available, in such a case, SPCB/PCC being prescribed authority under the BMWM Rules is required to submit the detailed proposal to MoEF & CC/MoH & FW through the respective

State Government or UT Administration. Also, the option of forming association by the group of health care facilities (HCFs) to develop their own CBWTF also be encouraged following these guideline. In case, any coverage area requires additional treatment capacity , in such a case, action may be initiated by the prescribed authority for allowing a new CBWTF in that locality without interfering the coverage area of the existing CBWTF and beds covered by the existing CBWTF.

(c) SPCB/PCC shall identify the coverage area, which require additional treatment facility and bring it to the notice of the concerned department in the business allocation of land assignment in the respective State Government or UT Administration. The department in the business allocation of land assignment shall be responsible for providing suitable site in the identified coverage area for setting up of a CBWTF, in consultation with the prescribed authority (i.e., SPCB/PCC), other stakeholders and in accordance with these guidelines issued by CPCB from time to time.

(d) Alternately, a CBWTF may also be allowed to be established on a land procured by an entrepreneur in accordance with the location criteria suggested under these guidelines.

(e) The SPCB/PCC or concerned department in the business allocation of land assignment in the respective State Government or UT Administration may seek expression of interest from the proponents for development of new CBWTF (s) in the identified coverage area. Upon allocation of site to the proponent, the proponent is required to take necessary approvals as required under the Environment (Protection) Act, 1986 for development of the new CBWTF in accordance with these guidelines.

(f) In the absence of expression of interest by any proponent, then SPCB/PCC shall insist health care facilities to form association and to develop its own CBWTF in line with these guidelines or to have captive treatment facilities for ensuring treatment and disposal of generated bio-medical waste as stipulated under the BMWM Rules, 2016.

(g) In case of any regulatory action including closure of any existing CBWTF is inevitable, the respective SPCB/PCC may take action under the BMWM Rules including for making alternate arrangement to ensure safe disposal of the bio-medical waste generated from the member health care facilities of such default CBWTF through CBWTF located nearby.

(h) In case of hilly areas considering the geography, only one CBWTF with adequate treatment capacity may be developed covering at least two districts to cater treatment services to the HCFs located in the respective Districts. The selection and allocation of site etc., should be done as per

the criteria suggested under these guidelines. The treatment charges to be prescribed by the respective SPCB/PCC in consultation with the State Advisory Committee.”

Statutory obligations of SPCB in the respective State or PCC in the respective Union Territory Administration

71. In view of Guideline No. 2 of the CBWTF Guidelines 2016, SPCB in the respective State or PCC in the respective Union Territory Administration, being the prescribed authority under the BMW Rules 2016, is under following statutory obligations:-

- (i) to prepare an inventory or review with regard to the bio-medical waste generation **at least once in five years** in the coverage areas of the existing bio-medical waste treatment and disposal facility;
- (ii) to extrapolate the coverage-area wise bio-medical waste generation for the next ten years;
- (iii) to conduct gap analysis with regard to coverage area of the bio-medical waste generation and also projected over a period of next ten years and adequacy of existing treatment capacity of the CBWTF in each coverage area of radius 75 KM;
- (iv) to prepare action plan based on the gap analysis for development of new CBWTFs and submit to MoEF & CC & CPCB within six months' time;
- (v) to submit the detailed proposal to MoEF & CC/MoH & FW through the respective State Government or UT Administration in case of States/UTs, where no CBWTF is available;
- (vi) to encourage the option of forming of association by the group of health care facilities (HCFs) to develop their own CBWTF by following CBWTF Guideline 2016;
- (vii) to initiate action for allowing a new CBWTF in any coverage area requiring additional treatment capacity without interfering in the coverage area of the existing CBWTF and beds covered by the existing CBWTF;
- (viii) to identify the coverage area which require additional treatment facility and bring it to the notice of the concerned department in the business allocation of land assignment in the respective State Government or UT Administration (which shall be responsible for providing suitable site in the identified coverage area for setting up of a CBWTF, in consultation with SPCB/PCC, other stakeholders

and in accordance with the guidelines issued by CPCB from time to time);

- (ix) to allow alternately a CBWTF to be established on land procured by an entrepreneur in accordance with the location criteria suggested under these guidelines; and
- (x) to take regulatory action including closure under the BMWM Rules against defaulting CBWTF and make alternate arrangement to ensure safe disposal of the bio-medical waste generated from the member health care facilities of such defaulting CBWTF through CBWTF located nearby.

Statutory Obligations of the SPCB/PCC or concerned department in the business allocation of land assignment in the respective State Government or UT Administration

72. Rule 17 of the BMWM Rules 2016, which makes the provision for allocation of site for CBWTF, reads as under:-

“17. Site for common bio-medical waste treatment and disposal facility.-(1) Without prejudice to rule 5 of these rules, the department in the business allocation of land assignment shall be responsible for providing suitable site for setting up of common bio-medical waste treatment and disposal facility in the State Government or Union territory Administration.
(2) The selection of site for setting up of such facility shall be made in consultation with the prescribed authority, other stakeholders and in accordance with guidelines published by the Ministry of Environment, Forest and Climate Change or Central Pollution Control Board.”

73. In view of Rule 17 of BMWM Rules 2016 and Guideline No. 2 of CBWTF Guidelines 2016, concerned Department in the business allocation of land assignment in the respective State Government or UT Administration is under statutory obligations to provide suitable site in the identified coverage area for setting up of a CBWTF, in consultation with SPCB/PCC, other stakeholders and in accordance with the guidelines issued by CPCB from time to time.

74. Guideline No. 2 of CBWTF Guidelines 2016 also imposes following obligations on SPCBs/PCCs or concerned Department in the business

allocation of land assignment in the respective State Government or UT Administration:-

“(i) to seek expression of interest from the proponents for development of new CBWTF (s) in the identified coverage area; and

(ii) to require the proponent upon allocation of site to take necessary approvals as required under the Environment (Protection) Act, 1986 for development of the new CBWTF in accordance with the CBWTF Guidelines 2016.”

75. In case of absence of expression of interest by any proponent, SPCB/PCC has to insist on the health care facilities to form association and to develop its own CBWTF in accordance with CBWTF Guidelines 2016 or to have captive treatment facilities for ensuring treatment and disposal of generated bio-medical waste as stipulated under the BMWM Rules, 2016.

76. The question which arises is whether the SPCB in the respective State or PCC in the respective Union Territory Administration is required to prepare an inventory or review the coverage areas and conduct gap analysis and adequacy of existing treatment capacity of the CBWTFs, prepare action plan based on the gap analysis for development of new CBWTFs **only once in five years from the date of commencement of CBWTF Guidelines 2016 or once in every five years from the date of commencement thereof.**

77. The use of expression **“at least once in five years”** instead of the expression **“at least once within five years”** in Guideline 2 of CBWTF Guideline 2016 unmistakably, unambiguously and inevitably leads to the inference that the expression has to be given literal interpretation that such review/gap analysis **has to be done once in every five years.** Had

it been otherwise the expression “**at least once within five years**” would have been used in the guideline. Consequently, the SPCBs in the respective States or PCCs in the respective Union Territory Administration are bound to carry out such review/gap analysis once in every five years.

78. It is pertinent to mention here that CPCB issued letter dated 10.10.2023 to all the Member Secretaries of SPCBs/PCCs regarding methodology to conduct gap analysis with respect to generation and treatment of biomedical waste. The relevant part of the letter reads as under:-

“Sub: Regarding methodology to conduct gap analysis with respect to generation and treatment of biomedical waste -reg.

X X X X

It is to inform that State Pollution Control Boards/Pollution Control Committees are required to conduct gap analysis with respect to generation and treatment of biomedical waste in respective State/UT. A format for conducting gap analysis is given in CPCB guidelines for Common Bio-medical Waste Treatment Facilities. Few State Boards have prepared gap analysis report adopting their own methodology. The matter was also discussed in Central Monitoring Committee meeting on 18.07.2023 wherein need for adopting uniform methodology was emphasised. Hence, to avoid the ambiguity and to adopt uniform procedure, CPCB has prepared a methodology to conduct gap analysis (Copy attached herewith for ready reference).

In view of above, it is requested to-kindly conduct gap analysis with respect to generation and treatment of biomedical waste in your State/UT using the aforesaid methodology and report may be submitted to CPCB within one month.”

79. The relevant part of the letter laying down the methodology reads as under:-

“Methodology to Conduct gap analysis with respect to generation and treatment of biomedical waste

Guidelines for Common Biomedical Waste Treatment Facilities was prepared by CPCB with an aim to have uniformity in ensuring site selection, allowing and establishment of a state-of-the-art Common Biomedical Waste Treatment Facilities (CBWTFs), operation as well as verification of compliance to the BMWM Rules, 2016 throughout the country. As per the said guideline, SPCB/PCC is required to prepare an inventory or review with regard to the bio-medical waste generation at least once in five years in the coverage areas of the existing CBWTF and conduct gap analysis as per format given in Annexure-I of the guideline.

To avoid the ambiguity and maintaining the uniformity for conducting gap analysis a methodology is suggested for estimating generation, treatment of biomedical waste and its extrapolation in the State and coverage area of CBMWTF. It is elaborated in following table.

S. No.	Parameters	Details
1.	Coverage area of CBWTF	Up to 75 km
2.	No. of HCFs (Bedded and non-bedded)	In Number
3.	No. of Beds covered	In Number
4.	Total biomedical waste generation (in Kg/day)	The generation may be calculated considering following factors: a) Generation from Bedded hospital (in absence of availability of required information biomedical waste generation may be taken as 274 grams per bed) b) Biomedical waste generated from non-bedded HCFs and other sources also be considered
5.	Extrapolate the biomedical waste generation for next years	Extrapolation may be based on factors such as population growth of the districts/cities covered by CBWTF, Rate of increase in number of HCFs/beds in past years etc. as decided by SPCB in consultation with Health department and CBMWTF associations.
6.	Total existing treatment capacity (in Kg/day) (Sum of Incineration Capacity and Autoclave/Microwave/Hydroclave Capacity)	For calculation of existing treatment capacity, maintenance time may be considered for calculating operational hours of equipment as below: a) Operational Hours for static incinerator 20 hrs/day b) Operational hours for Rotary incinerator 22 hrs/day c) 18 cycle per day for autoclave The actual capacity may be considered as 90% of available capacity keeping 10% margin for diverted/extra waste etc.

7	Total Biomedical Waste treated and disposed (Kg/day)	Sum of all categories of biomedical waste treated and disposal.
8	Gap between total extrapolated biomedical waste generation (for next 10 years) and existing biomedical waste treatment capacity	Extrapolate the biomedical waste generation minus total existing treatment capacity

Based on the above data, the gap between existing treatment capacity and need of additional treatment capacity should be examined after carrying out gap analysis at coverage area/city level and State level.”

Requirement of inventory or review of the coverage areas of the existing bio-medical waste treatment and disposal facilities in the State of Uttar Pradesh

80. UPPCB has not produced any material on record to show that it has prepared inventory or reviewed the coverage areas of the existing bio-medical waste treatment and disposal facilities and conducted gap analysis in the State of Uttar Pradesh during the last five years.

81. UPPCB is directed to prepare an inventory and carry out review with regard to the bio-medical waste generation in the coverage areas of the existing bio-medical waste treatment and disposal facilities; conduct gap analysis with regard to coverage area of the bio-medical waste generation and adequacy of existing treatment capacity of the CBWTFs in each coverage area of radius 75 KM and to prepare action plan based on the gap analysis for development of new CBWTFs within three months from the date of receipt of a copy of this order.

Land area requirement under CBWTF Guidelines 2016

82. Guideline No.7 of the CBWTF Guidelines 2016, which specifies land requirements for setting up a CBWTF, reads as under:

“7. Land requirement

Sufficient land shall be allocated to the CBWTF to provide all requisite systems which include dedicated space for storage of waste (both treated and untreated), waste treatment equipment, vehicle washing bay, vehicle parking space, ETP, incineration ash storage provision, administrative room, space for DG Set etc.,.

(a) Preferably, a CBWTF shall be set up on a plot size of not less than one acre in all the areas. However, a CBWTF can be developed in adjacent plots but cannot be set up in two or more different plots located in different areas. Separate plots can be permitted only for vehicle parking if located in the close vicinity of the proposed CBWTFs or the existing CBWTFs.

(b) In case of upcoming or new CBWTFs (both in municipal limits with population more than 25 lakhs or in rural areas), the land area requirement may be relaxed (but in any case not less than 0.5 acre) by the SPCB/PCC, with additional control measures such as zero liquid discharge, increase in stack height, stringent emission norms, odour control measures or any other measures felt necessary by the prescribed authority on case-to-case basis, only in consultation with CPCB."

Whether proposed CBWTF meets land area requirement under CBWTF Guidelines 2016

83. The question which arises as to whether the proposed CBWTF meets land area requirements under the CBWTF Guidelines 2016.

84. Under Guideline 7 of the CBWTF Guidelines 2016 the land area required for establishing CBWTF is minimum 1 Acre (4047 sqm approximately). In the present case respondent no.5 has provided land measuring 5800 sqm out of Khasra No. 1006 measuring 1.088 hectares equalling 10,880 sqm which has been bifurcated by respondent no.5 into three parts, first part of 2450 sqm being under the oxygen bottling plant; second part of 5800 sqm having been allocated for the proposed CBWTF and third part measuring 2630 sqm lying vacant for future consideration. It is thus evident that the proposed CBWTF meets the land area requirements under CBWTF Guidelines 2016.

Location Criteria under CBWTF Guidelines 2016

85. Guideline No.6 in the CBWTF Guidelines 2016 embodies the location criteria for CBWTF and the same reads as under:

"6) Location criteria

In the context of these guidelines, buffer zone represents a separation distance between the source of pollution in CBWTF and the receptor - following the principle that the degree of impact reduces with increased distance. The following parameters may be considered for ascertaining buffer distance on case-to-case basis:

- (i) potential for spread of infection from wastes stored in the premises.*
- (ii) applicable standards for pollution control and the relative efficiency of the existing incinerators and emission control systems,*
- (iii) potential of fugitive dust emission from incinerators,*
- (iv) potential for discharge of wastewater*
- (v) the potential for odour production,*
- (vi) the potential for noise pollution,*
- (vii) the risk posed to human health and safety due to exposure to emissions from incinerator,*
- (viii) the risk of fire and*
- (ix) Significance of the residual impacts such as bottom ash and fly ash.*

As far as possible, the CBWTF shall be located near to its area of operation in order to minimize the transportation distance in waste collection, thus enhancing its operational flexibility as well as for ensuring compliance to the time limit for treatment and disposal of bio-medical waste as stipulated under the BMWM Rules (i.e., within 48 hours). Also, the location of the CBWTF should be in conformity to the CRZ Norms and other provisions notified under the Environment (Protection) Act, 1986. The location shall be decided in consultation with the State Pollution Control Board (SPCB)/ Pollution Control Committee (PCC). The location criteria for development of a CBWTF are as follows:

- (a) A CBWTF shall preferably be developed in a notified industrial area without any requirement of buffer zone (or)*
- (b) A CBWTF can be located at a place reasonably far away from notified residential and sensitive areas and should have a buffer distance of preferably 500 m so that it shall have minimal impact on these areas. In case of non-availability of such a land, the buffer zone distance from the notified residential area may be reduced to less than 500 m by SPCB/PCC without referring the matter to CPCB by prescribing additional control measures such as (i) adoption of best available technologies (BAT) by the proponent of CBWTF; (ii) prescribing stringent standards for operation of the CBWTF by the SPCB/PCC; (iii) adoption of zero liquid discharge by the CBWTF and (iv) in case of any complaints from the public, then CBWTF should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity. If SPCB/PCC is not in a position to resolve the issue relating to buffer zone*

while selecting the site for CBWTFs, in such a case, SPCBs/PCCs may refer the matter to CPCB.

(c) The CBWTF can also be developed as an integral part of the Hazardous Waste Treatment Storage and Disposal Facility (TSDF) subject to obtaining of necessary approvals from the authorities concerned including 'EC' as per Environmental Impact Assessment 2006 and further amendments notified under the Environment (Protection) Act, 1986, provided there is no CBWTF exist within 150 KM distance from the existing TSDF."

86. It may be observed here that setting up of CBWTF on land measuring 1 acre- 4047 sq.mtrs. (approx.) in residential area with buffer zone of 500 meters is the general rule and reduction of requirement of buffer zone of 500 meters is an exception to be granted by prescribing additional control measures such as (i) adoption of best available technologies (BAT) by the proponent of CBWTF; (ii) prescribing stringent standards for operation of the CBWTF by the SPCB/PCC; (iii) adoption of zero liquid discharge by the CBWTF and (iv) in case of any complaints from the public, then CBWTF should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity.

87. We are of the considered view that the provision made for reduction of buffer zone requirement of 500 metres in residential area is vague and does not contain sufficient objective parameters for exercise of the discretion. Presumably all CBWTF will be required to adopt best of the technologies available. In any case this condition requires grading of all available technologies permissible for adoption by the Project Proponents of CBWTF but no such grading describing best technology available seems to have been done. Similar will be the case regarding condition of prescribing stringent standards for operation of the CBWTF by the SPCB/PCC which would require mentioning of standards prescribed and also what would constitute stringent standards to be prescribed for relaxation. If condition of zero liquid discharge is

prescribed for all CBWTF then the same would not qualify as valid rational criteria for relaxation of the buffer zone requirement. Similarly, the question as to whether the proposed CBWTF will have any adverse impact on environment and habitation in the vicinity has to be considered before grant of EC by SEIAA and CTE by SPCB/UTPCC and cant not be left to any proof of there being no such adverse impact by the Project Proponent after setting up of the CBWTF. Further there is no mention as to the maximum extent to which reduction of requirement of buffer zone of 500 meters in residential area will be permissible on adoption of such special conditions. These aspects have to be looked into by CPCB for appropriate review/modification by specifying additional control measures for reduction of requirement of buffer zone of 500 meters in residential area and also the maximum extent to which reduction of buffer zone requirement will be permissible.

Coverage area of CBWTF

88. Guideline No.8 of the CBWTF Guidelines 2016, which deals with coverage area of CBWTF reads as under:-

“8) Coverage area of CBWTF

Suggested coverage area for development of a CBWTF is as follows:

a) A CBWTF located within the respective State/UT shall be allowed to cater healthcare units situated at a radial distance of 75 KM. However, in a coverage area where 10,000 beds are not available within a radial distance of 75 KM, existing CBWTF in the locality (located within the respective State/UT) may be allowed to cater the healthcare units situated upto 150 KM radius w.r.to its location provided the bio-medical waste generated is collected, treated and disposed of within 48 hours as stipulated under the BMWM Rules.

b) In case, number of beds is exceeding >10,000 beds in a locality (i.e., coverage area of the CBWTF under reference) and the existing treatment capacity is not adequate, in such a case, a new CBWTF may be allowed in such a locality in compliance to various provisions notified under the Environment (Protection)

Act, 1986, to cater services only to such additional bed strength of the HCFs located.

c) In case of hilly areas, considering the geography, only one CBWTF with adequate treatment capacity may be developed covering atleast two districts to cater treatment services to the HCFs located in the respective Districts. The selection and allocation of site etc. should be done as per the criteria suggested under these guidelines. The treatment charges to be prescribed by the respective SPCB/PCC in consultation with the State Advisory Committee to be constituted under the BMWM Rules by the respective State Government or UT Administration.”

Whether proposed CBWTF complies with the CBWTF Guidelines 2016 prescribing location criteria and coverage area of CBWTF

89. The question which arises is whether the proposed CBWTF complies with the CBWTF Guidelines 2016 prescribing location criteria and coverage area of CBWTF.

90. In its report the Joint Committee constituted by this Tribunal vide order dated 03.04.2023 has mentioned that as per record available with Regional Officer, UPPCB, Gorakhpur, the number of total beds in hospitals located at Gorakhpur, Deoria, Maharajgaj and Kushinagar is 11575, 3758, 1995 and 1880 respectively (as on July, 2022). Bio-medical waste generated from Districts Deoria, Maharajganj, Kushinagar and Gorakhpur is being catered/covered by M/s. MPCC, Sant Kabir Nagar, facility, which is located more than 75 Km from proposed site of new CBWTF. Bio Medical Waste Generated from Health Care Units in District Deoria also goes to M/s Silicon Welfare Society, Ghazipur which is approximately 119 kilometers (aerial distance) from the proposed CBWTF.

91. Guideline 8 (a) of CBWTF Guideline 2016 permits CBWTF to cater healthcare units situated at a radial distance of 75 KM. However, in a coverage area where 10,000 beds are not available within a radial

distance of 75 KM, existing CBWTF is allowed to cater the healthcare units situated upto 150 KM radius with regard to its location provided the bio-medical waste generated is collected, treated and disposed of within 48 hours as stipulated under the BMWM Rules 2016.

92. It may be observed that total number of beds in hospitals located at Gorakhpur is 11575 which requires setting up of CBWTF at Gorakhpur itself.

93. Guideline No. 6 of the CBWTF Guideline 2016 mandates that as far as possible, the CBWTF shall be located near to its area of operation in order to minimize the transportation distance in waste collection, thus enhancing its operational flexibility as well as for ensuring compliance to the time limit for treatment and disposal of bio-medical waste as stipulated under the BMWM Rules (i.e., within 48 hours).

94. We find no justification for not setting up any CBWTF at Gorakhpur when total number of beds in hospitals located at Gorakhpur is 11575 which requires setting up of CBWTF at Gorakhpur itself particularly so when CBWTF Guidelines 2016 prefer treatment near source of generation.

95. It may be added here that total number of beds in hospitals located at Deoria, Maharajgaj and Kushinagar is 3758, 1995 and 1880 respectively (as on July, 2022). The total number of beds in hospitals located at Deoria, Maharajgaj and Kushinagar being less than 10,000 did not justify setting up of CBWTF at Deoria. We find no justification for addition of total number of beds in hospitals located at Gorakhpur to total number of beds in hospitals located at Deoria, Maharajgaj and Kushinagar for the purpose of allowing setting up of CBWTF at Deoria. Merely because Gorakhpur is within aerial distance of 75 kilometers from

Deoria is no valid ground for setting up of CBWTF at Deoria for treating bio-medical waste generated in Gorakhpur which requires setting up of CBWTF at Gorakhpur itself.

96. No doubt CBWTF Guidelines 2016 allow alternately a CBWTF to be established on land procured by an entrepreneur in accordance with the location criteria suggested under CBWTF Guidelines 2016 but in the present case such permission ought to have been granted for setting up of CBWTF in Gorakhpur near to the source of generation of biomedical waste and grant of permission for setting up of CBWTF in Deoria for treating quantity of bio-medical waste generated by hospitals having 11575 beds in Gorakhpur was not legal and valid.

97. In these facts and circumstances setting up of proposed CBWTF at Deoria violates the CBWTF Guidelines 2016 prescribing location criteria and coverage area of CBWTF.

98. UPPCB was statutorily bound on conducting of gap analysis and identifying requirement of additional CBWTF for treatment of bio-medical waste generated in Gorakhpur and surrounding Districts to request the concerned Department in the business allocation of land assignment in the Uttar Pradesh Government to allot suitable site in the identified coverage area for setting up of a CBWTF at Gorakhpur and the concerned department in the business allocation of land assignment in the Uttar Pradesh Government was statutorily bound to allot suitable site in the identified coverage area for setting up of a CBWTF in Gorakhpur.

99. The concerned Department in the business allocation of land assignment in the Uttar Pradesh Government is directed to allot suitable land in the identified coverage area for setting up of a CBWTF in Gorakhpur and UPPCB and the concerned department in the business

allocation of land assignment in the Uttar Pradesh Government are directed to seek expression of interest from the proponents for development of new CBWTF in the identified coverage area of Gorakhpur and to proceed further for setting up of a new CBWTF in Gorakhpur in accordance with CBWTF Guidelines 2016.

100. It may be observed here that even though the proposed CBWTF with 5800 sq.m. (1.43 Acre) area meets the land requirement but the same does not have buffer zone distance of 500 meters from the notified residential area. Guidelines 6 (b) permits reduction of buffer zone distance by reduction to less than 500 meters without referring the matter to the CPCB by prescribing additional control measures.

101. Question arises as to whether any additional control measures as required by Guideline 6 (b) of CBWTF Guidelines 2016 were prescribed at the time of issuance of EC by UPSEIAA and grant of CTE by UPPCB for reduction of requirement of buffer zone of 500 meters in residential area.

102. In the present case UPSEIAA issued EC vide Letter No. MOEF&CC Proposal No-SIA/UP/MIS/55933/2021 and SEIAA, UP File No. 5790 Dated 03.12.2021 in favour of the respondent no.5. For facility of reference the same is reproduced as under:-

***"Reference- MoEFCC Proposal no- SI UP
WIIS/55933/2021 & SEIAA, U.P File no- 5790***

***Sub: Environmental Clearance for Proposed Project
Common Bio-medical Waste Treatment Facility at
Khasra No.-1006 Village-Paharpur, Post- Gotha
Rasoolpur, District-Deoria U.P, M/s. JKN Purvanchal
CBWTF Works.***

Dear Sir,

This is with reference to your application / letter dated 25-08-2020, 09-09-2020, 29-06-2021 & 02-09-2021 on above

mentioned subject. The matter was considered by SEAC in meeting held on 08-09-2021 and SEIAA in meeting held on 25-10-2021.

A presentation was **made by the project proponent along with their** consultant M/s Gaurang Environmental Solutions Pvt. Ltd to SEAC on 08-09-2021.

Project Details informed by the Project Proponent and their Consultant

The project proponent, through the documents and presentation gave following details about their project-

1. The Environmental clearance is sought for Common Bio-medical Waste Treatment Facility at Khasra No.-1006, Village-Paharpur, Post- Gotha Rasoolpur, District-Deoria, U.P., M/s AN Purvanchal CBWTF Works.
2. The terms of reference in the matter were issued by SEIAA, U.P. vide fetter no. 424/Parya/SEAC/5790/2020, dated 15/10/2020.
3. The public hearing was conducted on 15/04/2021 and the final EIA report was submitted by the project proponent on 29/06/2021.
4. The total plot area of the project is 5800 sq.m. (1.43 Acre).
5. Land use details:

S.No.	Description	Area (m ²)	Percentage
1	Plant area	1400.0	24.13
2	Office area	630.0	10.86
3	Green area	3033.0	52.29
4	Open area	737.0	12.70
	Total	5800.0	100.0

6. Salient features of the project:

Items	Details
Project Name	Common Bio-Medical Waste Treatment Facility (CBWTF), Deoria
Location	Khasra no 1006, Village Paharpur, Post-Gotha Rasoolpur, Tehsil or District-
Promoter	M/s. JKN PURVANCHAL CBWTF WORKS
Project/ Plot area	5800 sq.m. (1.43 acres)
Proposed areas to be catered	Deoria, Maharajganj, Kushinagar and Gorakhpur districts of Uttar Pradesh

	<i>Health care units: 267</i> <i>No. of beds: 20345</i> <i>Biomedical waste : 7,629.375</i> <i>ke/dav</i>			(approx.)
<i>Project capacity</i>	<i>S. N.</i>	<i>Particular</i>	<i>Area/Capacity</i>	<i>Nos.</i>
	1.	Plot Area	5800 sq.m.	--
	2.	Incinerator	250 kg/hour	1
	3.	Autoclave	850 kg/batch	1
	4.	Shredder	150 kg/hour	1
	5.	ETP	10 KLD	1
	6.	Sharp pit	200 Litre	1
	7.	Ash pit	10 Cu.m	1
<i>Geo-coordinates</i>	26°38'33.06"N			
<i>Project Cost</i>	Rs.380 Lakh			
<i>Power Requirement & Source</i>	32 KW <i>Source:Uttar Pradesh State Electricity Distribution Company Limited or DG Set</i>			
<i>Power backup</i>	DG Set — 32 kVA- 1 No.			
<i>Water Requirement &</i>	Fresh water: 10 KLD			
	<i>Treated Water : 6.0 KLD</i> <i>Total water demand : 16 KLD</i> <i>Source : Ground water</i>			
<i>Waste water generation</i>	<i>Process effluent: approx. 6.7 KLD Dome effluent: approx. 1.5 KLD</i>			
<i>Effluent Treatment Plant & disposal</i>	<i>ETP Capacity: 10 KLD</i>			
	<i>ETP Sludge: disposed of to authorized TSDF</i>			
<i>Fuel Requirement</i>	HSD <i>Incinerator: 35 litres per hour</i>			
<i>Manpower Requirement</i>	38 Persons Skilled: 05 Semi-skilled: 33			
<i>Green Area</i>	2436 sq. m. i.e. 42% of the total project area			
<i>EMP Budget</i>	<i>Capital cost : Rs. 26.5 Lakh</i>			
	<i>Recurring cost : Rs. 9.0 Lakh</i>			

7. The project proposal falls under category-7(da) of EIA Notification, 2006 (as amended).

Based on the recommendations of the State Level Expert Appraisal Committee Meeting (SEAC) held on 08-09-2021 the State Level Environment Impact Assessment Authority (SEIAA) in its Meeting held 25-10-2021 and decided to grant the Environmental Clearance for proposed project along with subject to the effective implementation of the following conditions:-

I. The unit shall strictly comply with the CPCB guidelines for setting up the Common Bio-Medical Waste Treatment Facility (CBWTF).

II. Proposed CBWTF shall comply with the revised guidelines issued by CPCB on December 21st 2016 with respect to location criteria.

III. In case, the number of beds is exceeding >10,000 beds in a locality and the existing treatment capacity is not adequate, in such a case, a new CBWTF may be allowed in such a locality in compliance with various provisions notified under the Environment (Protection) Act, 1986, to cater services only to such additional bed strength of the HCFs.

IV. Statutory compliance:

1. The project proponent shall obtain forest clearance under the provisions of the Forest (Conservation) Act, 1986, in case of the diversion of forest land for non-forest purpose involved in the project.

2. The project proponent shall obtain clearance from the National Board for Wildlife, if applicable.

3. The project proponent shall prepare a Site-Specific Conservation Plan & Wildlife Management Plan and be approved by the Chief Wildlife Warden. The recommendations of the approved Site-Specific Conservation Plan / Wildlife Management Plan shall be implemented in consultation with the State Forest Department. The implementation report shall be furnished along with the six-monthly compliance report. (in case of the presence of schedule-I species in the study area)

4. The project proponent shall obtain Consent to establish/Operate under the provisions of the Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1974 from the concerned State Pollution Control Board/ Committee.

5. Transportation and handling of Bio-medical Wastes shall be as per the Biomedical Wastes (Management and Handling) Rules, 2016 including section 129 to 137 of Central Motor Vehicle Rules 1989.

6. The project shall fulfil all the provisions of hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016 including collection and transportation design etc and also guidelines for Common Hazardous Waste Incineration — 2005, issued by CPCB Guidelines of CPCB/MPPCB for Bio-medical Waste Common Hazardous Wastes incinerators shall be followed.

7. The project proponent shall obtain the necessary permission from the Central Ground Water Authority, in case of drawl of ground water/from the competent authority

concerned in case of drawl of surface water required for the project.

8. A certificate of adequacy of available power from the agency supplying power to the project along with the load allowed for the project should be obtained.

9. All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department shall be obtained, as applicable by project proponents from the respective competent authorities

V. Air quality monitoring and preservation:

1. The project proponent shall install an emission monitoring system including Dioxin and furans in monitor stack emission with respect to standards prescribed in Environment (Protection) Rules 1986 and connected to SPCB and CPCB online serves and calibrate these systems from time to time according to equipment supplier specification through labs recognised under Environment (Protection) Act, 1986 or NABL accredited laboratories.

2. Periodical air quality monitoring in and around the site including VOC, HC shall be carried out.

3. Incineration plants shall be operated (combustion chambers) with such temperature, retention time and turbulence, to achieve Total Organic Carbon (TOC) content in the slag and bottom ashes less than 3% or their loss on ignition is less than 5% of the dry weight of the material.

4. Ventur iscrubber (alkaline) should be provided ith the incinerator with stack of adequate height (Minimum 30 meters) to control particulate emission within 50 mg/h4113.

5. Appropriate Air Pollution Control (APC) system shall be provided for fugitive dust from all vulnerable sources, so as to comply with prescribed standards. All necessary air pollution control devices (quenching, Venturi scrubber, mist eliminator) should be provided for compliance with emission standards.

6. Masking agents should be used for odour control.

VI. Water quality monitoring and preservation:

1. The project proponent shall install effluent monitoring system vs I h respect to standards prescribed in Environment (Protection) Rules 1986 through labs recognized under Environment (Protection) Act, 1986 or NAB I accredited laboratories.

2. Waste water generated from the facility shall be treated in the ETP and treated waste water shall be reused in the APCD connected to the incinerator. The water quality of treated effluent shall meet the norms prescribed by State Pollution Control Board. Zero discharge should be maintained,

3. *Process effluent/arty waste water should not be allowed to mix with storm water.*
4. *Total fresh water use shall not exceed the proposed requirement as provided in the project details. Prior permission from the competent authority shall be obtained for use of fresh water.*
5. *A sewage Treatment Plant shall be provided to treat the wastewater generated from the project. Treated water shall be reused within the project*
6. *A certificate from the competent authority for discharging treated effluent/ untreated effluents into the Public sewer/ disposal/drainage systems along with the final disposal point should be obtained.*
7. *The leachate from the facility shall be collected and treated to meet the prescribed standards before disposal.*
8. *Magnetic flow meters shall be provided at the inlet and outlet of the ETP & all ground water abstraction points and records for the same shall be maintained regularly.*
9. *Rain water runoff from; the hazardous waste storage area shall be collected and reated in the effluent treatment plant.*

VII Noise monitoring and prevention:

1. *The ambient noise levels should conform to the standards prescribed under E(P)A Rules, 1986 viz. 75 dB(A) during daytime and 70 dB(A) during night-time.*

VIII Energy Conservation measures:

1. *Provide solar power generation on roof tops of buildings, for the solar light system for all common areas, street lights, parking around the project area and maintain the same regularly;*
2. *Provide LED lights in their offices and esidential areas.*

IX. Waste management:

1. *Incinerated ash shall be disposed of at approved TSDF and MoU made in this regard shall be submitted to the Ministry prior to the commencement.*
2. *The solid wastes shall be segregated as per the norms of the Solid Waste Management Rules, 2016.*
3. *A certificate from the competent authority handling municipal solid wastes should be obtained, indicating the existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from the project.*
4. *Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Rules, 2016*

5. *No landfill site is allowed within the CBWTF site.*
6. *The Project proponent shall not store the Hazardous Wastes more than the quantity that has been permitted by the CPCB/SPCB.*

X. Green Belt:

1. *Green belt shall be developed in the 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.*

XI. Public bearing and Human health issues:

1. *Feeding of materials/Bio-medical waste should be mechanized and automatic no manual feeding is permitted.*
2. *Proper parking facility should be provided for employees & transport used for collection & disposal of waste materials.*
3. *Necessary provision shall be made for fire-fighting facilities within the complex.*
4. *An emergency preparedness plan based on the Hazard identification and Risk Assessment (HIRA) and Disaster Management Plan shall be implemented.*
5. *An emergency plan shall be drawn in consultation with SPCB/CPCB and implemented in order to minimize the hazards to human health or the environment from fires, explosions or any unplanned sudden or gradual release of hazardous waste or hazardous waste constituents to air, soil or surface water.*
6. *Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile SW, safe drinking water, medical health care, creche etc. The housing may be in the form of temporary structures to be removed after the completion of the project.*
7. *Occupational health surveillance of the workers shall be done on a regular basis.*

XII Corporate Environment Responsibility:

1. *The project proponent shall comply with the provisions contained in this Ministry's OM vide F.No. 22-65/20174A.11 I dated 1st May 2018, as applicable, regarding Corporate Environment Responsibility.*
2. *The company shall have a well laid down environmental policy duly approved by the Board of Directors. The environmental policy should prescribe standard operating*

procedures to have proper checks and balances and to bring into focus any infringements/deviation/violation of the environmental / forest /wildlife norms/ conditions. The company shall have defined system of reporting infringements / deviation / violation of the environmental / forest / wildlife norms / conditions and / or shareholders / stake holders. A copy of the board resolution in this regard shall be submitted to the MoEF&CC as a part of the six-monthly report.

3. A separate Environmental Cell both at the project and company head quarter level, with qualified personnel shall be set up under the control of senior Executive, who will directly to the head of the organization.

4. Action plan for implementing EMP and environmental conditions along with the responsibility matrix of the company shall be prepared and shall be duly approved by the competent authority. The year-wise funds earmarked for environmental protection measures shall be kept in a separate account and not be diverted for any other purpose. Year rise progress of implementation of action plan shall be reported to the Ministry/Regional Office along with the Six Monthly Compliance Report.

5. A self-environmental audit shall be conducted annually. Every three years third-party environmental audit shall be carried out.

XIII Miscellaneous:

1. The project proponent shall prominently advertise it at least in two local newspapers of the District or State, of which one shall be in the vernacular language within seven days indicating that the project has been accorded environment clearance and the details of MoEFCC/SEIAA website where it is displayed

2. The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.

3. The project proponent shall upload the status of compliance with the stipulated environment clearance conditions, including results of monitored data on their website and update the same on half-yearly basis.

4. The project proponent shall submit six-monthly reports on the status of the compliance of the stipulated environmental conditions on the website of the Ministry of Environment, Forest and Climate Change at the environment clearance portal.

5. The project proponent shall submit the environmental statement for each financial year in Form-V to the concerned

State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently and put on the website of the company.

6. The criteria pollutant levels namely; SPM, RSPM, SP, NOx (ambient levels as well as stack emissions) or critical sectoral parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.

7. The project proponent shall inform the Regional Office as well as the Ministry, the date of financial closure and final approval of the project by the concerned authorities, commencing the land development work and start of production operation by the project.

8. The project authorities must strictly adhere to the stipulations made by the State Pollution Control Board and the State Government.

9. The project proponent shall abide by all the commitments and recommendations made in the EIA/EMP report,. commitments made during Publichearings and also that during their presentation to the Expert Appraisal Committee.

10. No further expansion or modifications in the plant shall be carried out without prior approval of the Ministry of Environment, Forests and Climate Change (McEF&CC).

11. Concealing factual data or submission of false/fabricated data may result in revocation. of this environmental clearance and attract action under the provisions of the Environment (Protection) Act, 1986.

12. The Ministry may revoke or suspend the clearance if the implementation of any of the above conditions is not satisfactory.

13. The Ministry reserves the right to stipulate additional conditions if found necessary. The Company in a time-bound manner shall implement these conditions.

14. The Regional Office of this Ministry shall monitor compliance with the stipulated conditions. The project authorities should extend full cooperation to the officer (s) of the Regional Office by furnishing the requisite data/information/monitoring reports.

15. The above conditions shall be enforced, inter-alia under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016 and the Public Liability Insurance Act, 1991 along with their amendments and rules and any other orders passed by the Hon`ble Supreme Court of India / High Courts/NGT and any other Curt of Law relating to the subject matter.

16. Any appeal against this EC shall lie with the National Green Tribunal, if preferred, within 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.

Concealing factual data and information or submission of false/fabricated data and failure to comply with any of the conditions stipulated in the Prior Environmental Clearance attract action under the provision of Environmental (Protection) Act, 1986.

This Environmental Clearance is subject to ownership of the site by the project proponents in confirmation with approved Master Plan for Gorakhpur. In case of violation; it would not be effective and would automatically be stand cancelled.

The project proponent has to ensure that the proposed site is not a part of any no-development zone as required/prescribed/identified under law. In case of the violation this permission shall automatically be deemed to be cancelled. Also, in the event of any dispute on ownership or land use of the proposed site, this Clearance shall automatically be deemed to be cancelled.

Further project proponent has to submit the regular 6 monthly compliance report regarding general & specific conditions as specified in the E.C. letter and comply the provision of EIA notification 2006 (as Amended).

These stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification, 2006 including the amendments and rules made thereafter."

103. In the present case UPPCB issued CTE vide Letter No. 5008/UPPCB/Gorakhpur(UPPCBRO)/CTE/Deoria/2021, dated 05.01.2022 in favour of the respondent no.5. For facility of reference the same is reproduced as under:-

"Sub : Consent to Establish for New Unit/Expansion/Diversification under the provisions of Water (Prevention and control of pollution) Act, 1974 as amended and Air (Prevention and control of Pollution) Act, 1981 as amended.

Please refer to your Application Form No.- 14428104 dated - 16/12/2021. After examining the application with respect to pollution angle, Consent to Establish (CTE) is granted subject to the compliance of following conditions :

1. Consent to Establish is being issued for following specific details :

A- Site along with geo-coordinates : 26038'33.06"N83 044'56.75"E

B- Main Raw Material :

Main Raw Material Details		
Name of Raw Material	Raw Material Unit Name	Raw Material
NA	Metric Tonnes/Day	0

C- Product with capacity :

Product Detail	
Name of Product	Product Quantity
Common Bio-Medical Waste Treatment Facility	150

D- By-Product if any with capacity :

By Product Detail			
Name of By Product	Unit Name	Licence Product Capacity	Install Product Capacity
NA	Metric Tonnes/Day	0	0

2. Water Requirement (in KLD) and its Source:

Source of Water Details		
Source Type	Name of Source	Quantity (KL/D)
Ground Water (within premises)	Borewell	10.0

3. Quantity of effluent (in KLD)

Effluent Details	
Source Consumption	Quantity (KL/D)
Domestic	2.0
Others(Wash	8.0

4. Fuel used in the equipment/ machinery Name and Quantity (per day) :

	Fuel Consumption Details	
Fuel	Consumption(tpd/kld)	Use

5 For any change in above mentioned parameters, it will be mandatory to obtain Consent to Establish again. No further expansion or modification in the plant shall be carried out without prior approval of U.P. Pollution Control Board.

For any change in above mentioned parameters, it will be mandatory to obtain Consent to Establish again. No further expansion or modification in the plant shall be carried out without prior approval of U.P. Pollution Control Board.

2. You are directed to furnish the progress of Establishment of plant and machinery, **green** belt, Effluent Treatment Plant and Air pollution control devices, by 10th day of completion of subsequent quarter in the Board.

3. Copy of the work order/purchase order, regarding instruction and supply of proposed Effluent Treatment Plant/Sewerage Treatment Plant /Air Pollution control System shall be submitted by the industry till 15/12/2026 to the Board.

4. Industry will not start its operation, unless CTO is obtained under water (Prevention **and control of Pollution) Act, 1974** and Air (Prevention and control of Pollution)Act, 1981 from **the Board**.

5. **It is mandatory to submit** Air and Water consent Application,complete in all respect, four months before start of operation, to the U.P. Pollution Control Board.

6. Legal action under water (Prevention and control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act,1981 may be initiated against the industry With out any prior information, in case of non compliance of above conditions.

Specific Conditions:

1. This CTE of M/s JKN PURVANCHAL CBWTF WORKS is valid for establishment of Common Bio Medical Waste Treatment Facility (CBWTF) at Khasra no-1006, Village-Pahadpur, Post-Gotha Rasoolpur, District-Deoria.

2. This CTE is valid for common facility for Bio medical waste treatment through double chambered Incinerator 250 Kg/Hr, Autoclave 850 Kg/batch, Shredder 150 Kg/Hr, Chemical disinfected tank 1500 liter/batch, Sharp pit-200 liter and Ash pit-10 Cu.m as proposed.

3. The CBWTF shall comply the conditions mentioned in the Environmental Clearance under the Environment (Protection) Act, 1986 issued vide SEIAA letter dated 03.12.2021.

4. CBWTF shall install necessary APCS like venturi scrubber, 30 meter high stack for controlling the emissions from incinerators.

5. **CBWTF shall strictly comply with the CPCB guidelines for setting up the Common Bio Medical Waste Treatment Facility.**

6. CBWTF shall install ETP of capacity-10.0 KLD for treatment of industrial effluent and domestic effluent shall be treated through septic tank.

7. CBWTF shall provide the arrangement for storage of incinerator ash as per CPCB guidelines and shall obtain membership of Common TSDF for disposal of incineration ash.

8. CBWTF shall comply with the emission Standard for treatment and disposal of Biomedical waste by incineration as per Schedule-II of BMW Rules 2016.

9. Transportation and handling of Bio-medical Wastes shall be as per the Biomedical Waste (Management and Handling) Rules, 2016.

10. Record w.r.t. operational parameter of autoclave such as temperature pressure etc. as well as records for validation test conducted to check efficiency of autoclave shall be maintained.

11. Incinerator shall be operated in accordance with Bio-Medical Waste Management Rules, 2016 w.r.t. maintenance of Temperature for primary and secondary chamber of incinerator.

12. Incinerator Ash shall be disposed through TSDF and Log books/records shall be maintained properly for generation and disposal of incinerator Ash.

13. **The water generated from scrubbing system of incinerator shall be treated through ETP and treated water shall be recycled for scrubbing purpose and for irrigation in the premises. No effluent shall be discharged directly or indirectly outside the premises.**

14. The proponent shall submit adequacy of proposed Water Pollution Control System and Air Pollution Control System done by reputed technical Institution like IIT/NPC etc.

15. Discarded medicine shall be disposed in incinerator as per BMW Rule, 2016 and sharp pit shall be provided for disposal of waste sharp as per CPCB Guidelines.

16. The CBWTF shall comply with the Bio Medical Waste Management Rules 2016 and annual report shall be submitted.

17. The CBWTF shall comply with the provisions of Hazardous and Other waste (Management and Trans boundary Movement) Rules, 2016.

18. The facility shall ensure bar coding system to be adopted by member of healthcare facility in accordance with Bio Medical Waste Management Rules 2016.

19. The CBWTF shall obtain the CGWA permission for withdrawal of ground water and also comply with the CGWA guidelines for recharging of ground water.

20. The Facility shall develop and maintain green belt as per the guidelines issued by the Board vide office order dated 16/02/2018, which is available on Board's Website-www.uppcb.com.

21. Separate space for untreated Bio Medical Waste shall be provided by facility as per CPCB guidelines/Bio Medical Waste Management Rules 2016.

22. Comprehensive safety measures must be followed in handling of wastes and the staff must be properly trained.

23. CBWTF shall install Online Continuous Emission Monitoring System and Online Continuous Effluent Monitoring System with data connectivity to CPCB server before commissioning of the plant.

24. Onsite emergency plan approved by the competent authority shall be submitted to board.

25. Project shall install at least 0.5 meter from roof level along with acoustic enclosures on DG set of capacity 32 KVA for use of backup power.

26. The dust emission from the construction sites will be completely controlled and all precautions will be taken as per the provisions of Construction & Demolition Waste Management Rules 2016.

27. CBWTF shall comply the provisions of Environment (Protection) Act 1986, Water (Prevention and Control of Pollution) Act, 1974 as amended, Air (Prevention and Control of Pollution) Act, 1981 as amended. CBWTF shall operate the plant after taking CTO under the provisions of Water Act 1974 and Air Act 1981 from the Board.

28. Project shall comply with the provisions of SWM Rules 2016 and provide facility for safe disposal of generated solid waste in housing project area.

29. Construction Work/installation of plant and machinery for the establishment of CBWTF shall be started after obtaining the Environmental Clearance under the Environment (Protection) Act, 1986.

30. The CBWTF shall comply with the Guideline of CPCB and shall only cater to beds which are in addition to 10,000 beds admissible to pre-existing CBWTFs located within 75 km radius.

31. CBWTF shall comply with the relevant provisions of Environmental Laws.

32. To ensure the compliance of CTE condition from 1 to 31 a Bank Guarantee of Rupees 2,50,000/- (Two Lacs Fifty Thousand only) in the prescribed format shall be submitted to the Board within 15 days, otherwise this CTE will be automatically revoked.

33. Concealing factual data or submission of false/fabricated data and failure to comply with any of the conditions mentioned above may result in withdrawal of this CTE and attract action under the provisions of Law.

Please note that consent to Establish will be revoked, in case of, non compliance of any of the above mentioned conditions. Board reserves its right for amendment or cancellation of any of the conditions specified above. Industry is directed to submit its first compliance report regarding above mentioned specific and general conditions till 05/02/2022 in this office. Ensure to submit the regular compliance report otherwise this Consent to Establish will be revoked.”

104. In Action taken Report filed by Mr. Pankaj Yadav, Regional Officer, UPPCB, Gorakhpur vide email dated 17.05.2022 it has been mentioned in para no. 10 that “ **a conditional CTE to in question proposed CBWTF has been issued by UPPCB taking into consideration the provisions described in point no. 6 (b) of Revised Guidelines for Common Biomedical Waste Treatment & Disposal Facility dated 21.12.2016 of CPCB**” and it has been mentioned in para no. 11 that “**Precautionary special conditions have been imposed in the Environmental Clearance issued by SEIAA,UP and Consent to Establish issued by UPPCB with respect to the buffer zone as mentioned in the Revised Guidelines for Common Bio-Medical Waste Treatment and Disposal Facility dated. 21.12.2016 of CPCB**”.

105. However, we find that there is no reference in EC issued by UPSEIAA or CTE granted by UPPCB that the proposed CBWTF is not having buffer zone distance of 500 meters from residential area and that there is reduction of the requirement of buffer zone of 500 meters in residential area in the case what to speak of prescription of additional control measures for reducing the buffer zone distance from the residential area as mandated under Guideline 6 (b) of the CBWTF Guidelines 2016.

106. Respondent no.5 has submitted that since the initial stage, UPPCB has proposed the implementation of the Best Available Technology. A complaint dated 13.11.2020 was lodged by the Common Bio-Medical Waste Treatment Facility Association through their legal advisor Mr. Suresh Yadav. In furtherance of the complaint site inspection was carried out by the team of Regional Office, UPPCB and the findings of the visit were submitted to the head office in an inspection report on 29.12.2020. In the report, it has been recommended by the UPPCB for the adoption of the best available technology. At the time of granting of the CTE it was recommended by the Regional Office, UPPCB on the online portal of Nivesh Mitra / vide letter dated 08.01.2021 that there shall be deployment / adoption of the Best Available Technology. Furthermore, certain special conditions with regard to the adoption of the best available technology have been mandated in the environment clearance and the consent to establish granted to the project. These include measures with respect to stringent emission norms, stack height, use of effective air pollution control devices, etc. in addition to standards for prevention and control of water pollution.

107. However, we are of the considered view that prescription of additional control measures for reducing buffer zone distance from residential area in EC and CTE was essential and any subsequent explanatory description thereof by respondent no. 5 does not meet the requirement of Guideline 6 (b) of the CBWTF Guidelines 2016.

108. Consequently, EC issued by UPSEIAA and CTE granted by UPPCB, which do not prescribe any additional control measures for relaxation of the requirement of buffer zone of 500 meters in residential area, are illegal being violative of location criteria mandated in Guideline 6 of CBWTF Guideline 2016 and are of no consequential effect.

109. The question which arises is as to whether the proposed CBWTF if set up in residential area (without prescription of additional control measures for reduction of requirement of buffer zone of 500 meters) will have any adverse impact on environment and habitation in the vicinity due to reduced buffer zone distance from residential area.

110. In the present case this Tribunal, vide order dated 06.02.2024, sought information from UPPCB regarding CBWTF set up in residential area and also as to adverse environmental impact of the same if any reported.

111. In its response filed vide email dated 11.03.2024 UPPCB has mentioned in para 4 that ***“as per the information obtained by the Regional Officers of the Uttar Pradesh Pollution Control Board, there are 28 CBWTFs are operated within the State of Uttar Pradesh in which no CBWTF is established in the residential area”***. Consequently, there is no instance and cogent material available to sustain the submission that setting up of CBWTF with

relaxation of buffer zone requirement will not have any adverse impact on environment and habitation in the vicinity.

112. In the course of hearing of the appeal vehement efforts have been made by learned Counsels for UPSEIAA, UPPCB and respondent no.5 - Project Proponent to establish that in fact additional control measures have been prescribed by UPSEIAA and UPPCB for reduction of the requirement of buffer zone of 500 meters in residential area and that proposed CBWTF will not have any adverse impact on environment and habitation in the vicinity but the same are not supported by material on record.

113. In Joint Inspection Report dated 04.04.2022 of SDM, Deoria Sadar and Regional Officer, UPPCB, Gorakhpur enclosed with Action Taken report filed by Mr. Pankaj Yadav, Regional Officer, UPPCB, Gorakhpur and in the report sent by Mr. Umesh Chandra Sharma, Member, SEAC to Member Secretary, UPSEIAA with copy to District Magistrate, Deoria and Regional Officer, UPPCB, Gorakhpur it is mentioned (i) that house of appellant Prabhakar Rai, from which abadi (habitation) of village starts, is situated at the distance of 184 meters from proposed CBWTF; (ii) that Community Health Centre (in dilapidated condition) and Community Toilets are situated at the distance of 166 meters from proposed CBWTF and (iii) that abadi (habitation) of village Bhagwanpur in the South is at the distance of 1.5 KMs, abadi (habitation) of village Surchak in the West is at the distance of 1 KM and abadi (habitation) of village Dhanauti Rajdeeha in the East is at the distance of 2KMs from the proposed CBWTF.

114. In both the above mentioned reports it was not mentioned as to whether Community Health Centre, which was stated to be in

dilapidated condition, has been abandoned and whether the same has been relocated elsewhere.

115. This Tribunal vide order dated 27.02.2023 sought report from the District Magistrate, Deoria who in compliance thereof has filed report that Health Sub Centre, which is in dilapidated condition, has not been abandoned and one Auxiliary Nurse and Mid-wife and one Community Health Officer are posted there who are providing services from above said Health Centre. One additional room is under construction under Ayushman Bharat Yojna. Community Toilets have been constructed in the Year 2020-21 by Gram-panchayat under Central Finance Commission Grant.

116. The Joint Committee, constituted by this Tribunal vide order dated 03.04.2023, has submitted in para no. 11 of its report that “...**Health and wellness centre is approx.. 46 m from the main gate of proposed facility. Poultry farms are approx. 313 and 371 m from the boundary wall of the proposed site. Two pond are located within 340 m with area of 0.197 ha and 352 m with area of 0.69 ha. Additionally, one temple is also located within 100 meter from the main gate of the project. Besides, 213 house with around 1067 peoples are staying within 500 m from the proposed facility. In addition to above one kaccha nala is flowing adjacent (south direction) to the proposed site**”. The Joint Committee has observed in para no. 12 of its report that “...**project proponent has setup oxygen plant (bottling) with capacity of 20 MT/day in same Khasra No. 1006, Village-Paharpur, Post-Gotha, Rasoolpur, District-Deoria, Uttar Pradesh-274201 with same name as M/s. J.K.N. Purvanchal CBWTF works, which is found operational**”. The Joint Committee has observed in para no. 13 of its report that “...**Oxygen plant had obtained**

CTE from UPPCB on dated 27.5.2021 and obtained first CTO from UPPCB on dated 30.12.2021, which is valid from 30.12.2021 to 31.12.2026 with production of 1500 cubic meter per day of oxygen and nitrogen”.

117. It may be observed here that at the initial stage of hearing of this appeal there was misrepresentation of facts as these facts which have been disclosed in the reports of the District Magistrate, Deoria and Joint Committee constituted by this Tribunal vide order dated 03.04.2023 were not disclosed in the reports filed by Mr. Pankaj Yadav, Regional Officer, UPPCB, Gorakhpur and Mr. Umesh Chander Sharma, Member, SEAC.

118. The Joint Committee, constituted by this Tribunal vide order dated 03.04.2023, has opined in para no. 16 (a) that **“...Primary Health Center (Health Sub Center) is located approx. 46 m from the main gate of the facility. Hence, possibility of adverse environmental impact on functionality and user of Primary Health Center (Health Sub Center) could not be ruled out. However, installation of CBWTF incinerator adjacent to the bottling plant of oxygen may cause hazard.”** and observed in conclusion and recommendations as under:-

“Conclusion and Recommendations:

It is evident from above observation; Primary Health Center is located approx. 46 m from the main gate of the facility. The project proponent has installed oxygen bottling plant in a part of khasra no. 1006 and proposed to install CBWTF in the remaining area of khasra no. 1006. Residential area (approx. population-1067 with 213 house), Primary Health Center, significant human habitation, pond, poultry farm and nala are located within 500m from the proposed site and installation of incinerator plant in the vicinity of oxygen plant may hazard. As informed by PP that significant land patch is available with close proximity of the proposed site, which may require to be used for CBWTF, if necessary. Hence, committee is of view that

location of the CBWTF is not complying the norms laid by CPCB.

Note- Above site was visited by earlier D.M. Sri Jitendra Pratap Singh, observation made by above committee is significant and there is no point for any deviation, forwarded for necessary action.”

119. Respondent no. 5 filed response to the report of the Joint Committee constituted by this Tribunal vide order dated 03.04.2023.

120. Even though on submission of the report of the Joint Committee and submission of response by UPPCB and respondent no.5 to the same judgment was reserved but this Tribunal considering response of UPSEIAA, UPPCB and CPCB to be necessary relisted the matter for seeking their response.

121. In its response filed vide email dated 16.04.2023 UPSEIAA has submitted that UPSEIAA has, vide minutes of 803th SEIAA meeting held on 05.03.2024, accepted the report of the Joint Committee and agreed with the findings of the Joint Committee.

122. CPCB has submitted in its response filed by email dated 26.04.2024 that operation of CBWTF may have adverse environmental impact in case the CBWTF is not operated in environmentally safe manner.

123. It may be observed here that in its response UPPCB has not submitted any specific response expressing its agreement/disagreement with observations/recommendations made in the report of the Joint Committee regarding non-compliance by the proposed CBWTF with location criteria and relocation of proposed CBWTF and has made vague submission that in pursuance to recommendation of the Joint Committee Report vide letter dated

07.03.2024, UPPCB has issued a show cause notice under section 27(2) of the Water (Prevention and Control of Pollution) Act, 1974 and under section 21(4) of the Air (Prevention and Control of Pollution) Act, 1981 against the CBWTF in question for revoking/cancelling the consent to establish dated 05.01.2022 which implies its acceptance of the report of the Joint Committee.

124. Respondent no.5 has submitted that (i) the district administration has taken buffer zone distance from the first gate of the factory and not from the place where the incinerator is proposed, which is in contravention of CBWTF Guidelines 2016 that **“buffer zone represents a separation distance between the source of pollution in CBWTF and the receptor - following the principle that the degree of impact reduces with increased distance”** and the buffer zone distance has to be taken from the source of emission; and (ii) that on relocation of the CBWTF plant within the vicinity of Khasra No. 1006 the distance of ANM Sub-center is 307 meters and distance of Prabhakar Rai's residence is 268 meters.

125. However, even with the said increased distances relied upon by respondent no.5 which are far less than prescribed buffer zone distance of 500 meters, adverse environmental impact caused by territorial proximity is neither significantly reduced nor materially remedied.

126. Respondent No.5 has submitted that (i) respondent no. 5 does not produce oxygen from the air. Respondent no. 5 purchases liquid oxygen which is compressed under pressure and filled in the bottles. The whole system undergoes a pressure of 15kg/cm² and there is no question of mixing any kind of hazardous material. Respondent no.5 is not into production or storage of Nitrogen. Hence the fact as to

production of Nitrogen is wrong and misleading; and (ii) that purging oxygen in the incinerator of a bio-medical waste treatment facility significantly increases combustion efficiency enhances the heat transfer process facilitating a faster burning and creates a more efficient combustion reaction, generating higher temperatures, which leads to reduced emissions of pollutants such as dioxins, furans, and other hazardous substances and reduces the risk of explosions or other hazardous situations, improving the overall safety of the bio-medical waste treatment facility and the oxygen plant is an added advantage to smooth running of CBWTF.

127. Respondent no.5 has submitted that the committee has not conducted rapid EIA. Respondent no. 5 has conducted the assessment of the anticipated increase in pollution load. ANM (sub-center) is the point from which pollutants are generated and stored inside the room to hand over to the service provider and is a beneficiary of the proposed CBWTF facility which is nearer to the source of generation. Toilets adjacent to the sub-center are mainly for staff or visitors. With Incineration capacity: 250kg/hr Waste Burning rate per second = 69.44 gms/sec and Oxygen/Air 0.5Cumeter/sec and keeping 15% excess oxygen to ensure complete burning Pollutants are diluted with air/oxygen by 204 times in the system only. The downstream system consists of a venturi scrubber/quenching column/ activated carbon column/ caustic absorber. The Pollutants like NO_x, SO_x, Particulate matter, and organic compounds get absorbed in absorbers and allow free oxygen-mixed air to release through the stack of height 30 meters. Continuous online emission monitoring is mandatory to monitor the release. The concept of zero liquid discharge has been adopted so there is no question of the release of water from the unit. Waste is stored in non-chlorinated bags in

room size 10' x 15'. No loose bags are to be kept inside the room. Maximum storage time in plant is 12 hours. No heavy machines are required so noise level is negligible. The quantity of waste generated is so negligible that it will not create any pollution in nearby areas. Respondent no.5 has submitted that the CBWTF is not a pollution-generating unit, rather it is a pollution control facility, which aims at treating the hazardous bio-medical waste generated from the healthcare units.

128. We are of the considered view that the mere fact that CBWTF is a pollution control facility does not justify installation thereof in violation of location criteria by ignoring the adverse impact of the same on environment and habitation in the vicinity. Respondent no. 5 has mentioned in detail the pollution control measures to be taken in setting up the proposed CBWTF but said control measures were not considered by UPSEIAA at the time of grant of impugned EC and by UPPCB at the time of grant of impugned CTE.

129. It is evident from the report submitted by the Joint Committee constituted by this Tribunal vide order dated 03.04.2023 that possibility of adverse impact on environment and habitation in the vicinity cannot be ruled out.

130. Respondent no.5 obtained CTE on 27.5.2021 and CTO on 30.12.2021 from UPPCB, which is valid from 30.12.2021 to 31.12.2026 for production of 1500 cubic meter per day of oxygen from nitrogen. This fact was not mentioned in the Action Taken Report filed by UPPCB on 17.05.2022.

131. Joint Committee constituted by this Tribunal vide order dated 03.04.2023 has opined that installation of CBWTF incinerator in close

proximity to oxygen plant may cause hazard. The Joint Committee constituted by this Tribunal vide order dated 03.04.2023 has recommended relocation of the proposed CBWTF at new location meeting buffer zone of 500 meters.

132. UPSEIAA in its meeting held on 05.03.2024 accepted the report of the Joint Committee and agreed with the findings of the Joint Committee. In its response filed by email dated 26.04.2024 CPCB has submitted that operation of CBWTF may have adverse environmental impact in case the CBWTF is not operated in environmentally safe manner.

133. In the above discussed facts and circumstances of the case, we do not find any valid and cogent reason to disagree with the conclusion recorded by the above said Joint Committee that proposed CBWTF is not complying the norms laid by CPCB and discard the recommendation made by the above said Joint Committee for relocation of the proposed CBWTF on that ground.

134. It may be observed here that this Tribunal is mandated by Section 20 of the National Green Tribunal Act to apply precautionary principle which is intended to ensure that a substance or activity posing a threat to the environment is prevented from adversely affecting the environment even if there is no conclusive scientific proof of linking that substance or activity to environmental damage. **(see Vellore Citizen's Welfare Forum Vs. Union of India (1995) 5 SCC 647; M. C. Mehta Vs, Union of India (2004) 12 SCC 118).**

135. In the totality of the facts and circumstances of the case precautionary principle also warrants that the proposed CBWTF is not set up at the proposed site and is relocated to land meeting the

location criteria and coverage of CBWTF as mandated by CBWTF Guideline 2016.

136. In support of his submissions learned Counsel for respondent no.5 has relied on the observations made by Hon'ble Gujarat High Court in **Special Civil Application No. 12235/2017** titled as **Uttarsanda Grampanchayat and other Vs. State of Gujarat and others** (which have been reproduced in detail as part of written submissions filed by respondent no. 5) and observation made by this Tribunal in order dated 11.08.2021 passed in **O.A. No. 273/2020** titled as **Rakesh Kumar & Anr Vs. Union of India & Ors.**

137. In **Special Civil Application No. 12235/2017** titled as **Uttarsanda Grampanchayat and other Vs. State of Gujarat and others** the consent granted by Gujarat Pollution Control Board (GPCB) for establishing Bio-Medical Waste Processing Unit was challenged *inter alia* on the ground that there is a residential society located at a distance of about 242 meters from the unit in which 25 families are residing. Hon'ble Gujarat High Court rejected the Civil Application while observing *inter alia* that the stringent standards (under Guideline 6 (b) of CBWTF Guidelines 2016) prescribed are more or less taken care of in the consent order of the GPCB and this issue could be looked into further by the GPCB, if need be.

138. In **O.A. No. 273/2020** titled as **Rakesh Kumar & Anr Vs. Union of India & Ors** EC was challenged on the ground that the proposed CBWTF was closed to habitation and school. Initially impugned EC was suspended by UPSEIAA on the ground of concealment of facts regarding school and other environmental sensitive area etc., by the Project Proponent but subsequently EC was restored with additional

conditions. This Tribunal imposed costs on the Project Proponent for concealment of facts and also constituted a Joint Committee to consider additional conditions to be imposed for protection of environment and disposed of the appeal accordingly.

139. However, the facts and circumstances of the present case are entirely different as discussed in this Judgment hereinabove and observations made in **Special Civil Application No. 12235/2017** titled as **Uttarsanda Grampanchayat and other Vs. State of Gujarat and others and O.A. No. 273/2020** titled as **Rakesh Kumar & Anr Vs. Union of India & Ors** are not applicable to the facts of present case and are not of any help to respondent no.5.

140. In these facts and circumstances of the case the appeal is allowed and impugned EC granted by UPSEIAA and CTE granted by UPPCB in favour of the respondent no. 5 are declared to be illegal and are set aside.

141. I.A No. 236/2022 was disposed of vide order dated 14.10.2022. Since appeal has been allowed by this Tribunal I.A. No.29/2022 for grant of interim stay order and I.A. No. 320/2024 for vacation of stay order have become infructuous and are disposed of accordingly.

142. In view of peculiar facts and circumstances of the case the parties are left to bear their own costs.

143. However, in view of the statutory provisions and guidelines referred to in the Judgment herein above following directions are issued:-

- (i) UPPCB is directed to prepare an inventory and carry out review with regard to the bio-medical waste generation in the coverage areas of the existing bio-medical waste treatment and

disposal facilities; conduct gap analysis with regard to coverage area of the bio-medical waste generation and adequacy of existing treatment capacity of the CBWTFs in each coverage area of radius 75 KM and to prepare action plan based on the gap analysis for development of new CBWTFs as mandated by Guideline No. 2 of the CBWTF Guidelines 2016 within three months from the date of receipt of a copy of this order;

(ii) the concerned Department in the business allocation of land assignment in the Uttar Pradesh Government is directed to allot suitable land in the identified coverage area for setting up of a CBWTF in Gorakhpur and other identified areas as mandated by Rule 17 of the BMW Rules 2016 and Guideline No. 2 of the CBTWT Guidelines 2016 within three months from the date of receipt of a copy of this order; and

(iii) UPPCB and the concerned department in the business allocation of land assignment in the Uttar Pradesh Government are directed to seek expression of interest from the proponents for development of new CBWTF in the identified coverage area of Gorakhpur and other identified areas after allotment of suitable site and to proceed further for setting up of a new CBWTF in Gorakhpur in accordance with CBWTF Guidelines 2016 within six months from the date of receipt of a copy of this order.

144. Compliance reports regarding compliance with above directions be submitted within 15 days from expiry of the period of six months through email 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.

145. A copy of this Judgment be sent to the appellants for information and the Chief Secretary, Government of Uttar Pradesh, Member Secretary, UPPCB and respondent No.5 by email for requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

August 05th, 2024
AG