

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

Misc Application in Disposed of Cases No. 90/2023
In
Original Application No. 774/2022
(IA NO 677/2024, IA NO 672/2024 & IA NO 629/2024)

Gaurav Garg Applicant

Versus

Union of India & Ors. Respondents

WITH

Misc Application in Disposed of Cases No. 94/2023
In
Original Application No. 774/2022

Gaurav Garg Applicant

Versus

Union of India & Ors. Respondents

Date of hearing: 18.12.2024

**CORAM: HON’BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON’BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: None for the Applicant

Respondents: Ms. Priyanka Swami, Advocate for SEIAA, U.P.
Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocate for UPPCB-
Applicant in I.A. No. 677of 2024 (through VC).
Mr. Mohit Singhal, Advocate for CPCB.
Mr. Sunny Chaudhary and Mr. Sandeep Sharma, Advocates for
Project Proponent-Applicant in I.A. No. 672 of 2024.

ORDER

1. The applicant filed O.A. No. 774 of 2022 complaining about running of CBWTF by Respondent No. 8 without Environmental Clearance (EC) and in violation of environmental norms.

2. The above said O.A. was disposed of by this Tribunal vide order dated 02.03.2023. The relevant part of the order reads as under:-

“67. In these facts and circumstances of the case the application is disposed of with the directions to the Respondent No.8 to apply for EC within one month from the date of receipt of a copy of this order and (iii) to the UPPCB to allow the Respondent No.8 to run the CBWTF for at least three months till filing of the application and consideration of the same for grant of EC ex post facto, subject to extension in case of delay in disposal of the application for grant of EC.

68. The Questions raised by the applicant and enlisted by this Tribunal in the present order are answered in terms of the above discussion.

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

70. In case of any further delay in disposal of the application for grant of EC the Respondent No. 8-Project Proponent may apply to UPPCB for extension of the validity period of consents to operate and may also move this Tribunal by appropriate proceedings for such extension.

71. The Applicant shall also be at liberty to move this Tribunal by appropriate proceedings in case of violation of the BMWM Rules 2016, the CBWTF Guidelines 2016 EC/Consent Conditions and environmental norms.”

3. Alleging non-compliance of said order, M.A. No. 90/2023 was filed by the Project Proponent and M.A. No. 94/2023 was filed by the applicant.

4. In the course of hearing on 14.11.2024, this Tribunal was informed that the Project Proponent applied for Terms of Reference which was granted and thereafter the Project Proponent did not submit any further documents and that the Project Proponent did not apply for Environmental

Clearance on which this Tribunal passed order staying operation of the CBWTF. Relevant part of the order reads as under:-

“6. Thus, it is evident that order dated 02.03.2023 has not been complied with, yet respondent 8 is operating CBWTF without submitting any application within one month for grant of EC and in all subsequent date, an impression was given to us that the application for grant of EC is pending which has been submitted in compliance of the order of Tribunal dated 02.03.2023. The said stand taken in the earlier proceedings was nothing but a clear misrepresentation of the fact.

7. In these circumstances, we restrain respondent 8 from operating its CBWTF until further orders.”

5. The Project Proponent filed **Civil Appeal Nos. 13682-13683-2024, Synergy Waste Management Private Limited versus Union of India and others** before Hon’ble Supreme Court which was dismissed vide order dated 06.12.2024 with liberty to the Project Proponent to file an application for vacating interim order and this Tribunal was directed to consider the same on own merits without being influenced by what is recorded in order dated 14.11.2024. The Relevant part of the order reads as under:-

“ The impugned order is an interim order. The appellant can always apply for vacating the said order by filing an application before the National Green Tribunal.

We accordingly dispose of the appeals by granting liberty as aforesaid. If an application for vacating interim order is made, the same shall be considered on its own merits without being influenced by what is recorded in the impugned order.

The Appeals are accordingly dismissed.

Pending application(s), if any, shall stand disposed of.”

6. The Project Proponent has filed I.A No. 672/2024 for modification of order dated 14.11.2024 on the ground that in compliance of order dated 02.03.2024, the Project Proponent initiated the process to obtain EC within prescribed time limit in prescribed Form-I along with feasibility report

which is now pending at the stage of EIA report to be prepared by the Consultant in terms of Notification dated 14.09.2006. The Project Proponent has accordingly prayed for allowing the Project Proponent to operate the CBWTF.

7. UPPCB has filed IA No. 677/ 2024 for modification of paras no. 2 and 3 of order dated 06.12.2024 on the grounds that in view of order dated 14.11.2024, the Project Proponent entered into Memorandum of Understanding with three CBWTFs of Mathura, Bareilly and Barabanki for treatment and disposal of bio-medical waste generated from the healthcare facilities attached to the Project Proponent and the Project Proponent sent letter dated 21.11.2024 to UPPCB that they have complied with order dated 14.11.2024. UPPCB issued order dated 29.11.2024 that consent granted to it vide order dated 16.10.2023 is suspended till further orders and bio-medical waste generated from all health care facilities attached to it be disposed of through CBWTF according to Bio-medical Waste Management Rules, 2016. The incinerator of CBWTF facility was sealed on 29.11.2024 after closure of the facility of the Project Proponent. The Project Proponent made arrangement for collection and transportation of bio-medical waste generated from healthcare facilities to other bio-medical waste treatment facilities at Mathura, Bareilly and Barabanki. Action taken by UPPCB is in consonance with the Bio-medical Guidelines issued by CPCB and the decision was taken *bona fide* and in good faith. Therefore, Paragraphs No. 2 and 3 of Order dated 06.12.2024 be modified to that extent.

8. On notice of both the above mentioned I.As. being given to the other Counsel for the parties appearing in the case, it has been stated that no replies to both the I.As. are to be filed.

9. We have heard learned counsels for the Respondents and have gone through the relevant record carefully.

10. 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 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government directed vide Notification no. S.O. 1533 (E) dated 14.09.2006 that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the 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 in the notification.

11. The schedule to the notification contains the list of projects and activities requiring prior environmental clearance. Para 7 of the Notification mentions four stages in prior environmental clearance process i.e., (i.) Screening, (ii.) Scoping, (iii.) Public Consultation and (iv.) Appraisal. Application for prior environmental clearance is required to be submitted in Form I which has four parts i.e., (i) Basic Information, (ii) Activity, (iii) Environmental Sensitivity, (iv) Proposed Terms of Reference for EIA Studies. Appendix III provides Generic Structure of Environmental Impact Assessment document. Appendix III A requires a summary of the full EIA Report with contents as mentioned therein. Appendix IV prescribes the

procedure for conduct of public hearing. Appendix V prescribes the procedure for appraisal.

12. This Tribunal considered the matter on 14.11.2024 and noted that Uttar Pradesh State Environment Impact Assessment Authority (UPSEIAA) filed compliance report with affidavit dated 23.10.2024 in which reference was made to Minutes of 846th UPSEIAA meeting dated 18.10.2024 whereby recommendation was made to grant terms of reference for CBWTF by adding certain conditions. Learned Counsel appearing for UPSEIAA stated that no further application of Project Proponent was pending giving rise to the impression that no application for grant of EC was ever submitted by the Project Proponent. The Public Relation Officer of the Project Proponent also admitted that no application for grant of EC was submitted. Thereupon this Tribunal observed that order dated 02.03.2023 had not been complied with yet the Project Proponent was operating CBWTF without submitting any application within one month for grant of EC and on all subsequent dates an impression was given that application for grant of EC was pending which had been submitted in compliance of order dated 03.03.2023 and this stand taken in the earlier proceeding was nothing but a clear misrepresentation of the fact.

13. In the course of hearing today, we put a question to learned counsel for UPSEIAA as to whether the applicant had applied for EC in accordance with EIA Notification dated 14.09.2006 and whether application for ToR was the only process for submission of application for EC to UPSEIAA or whether separate Forms were prescribed for making application for EC and application for ToR.

14. Learned counsel for UPSEIAA assisted by Mr. Anurag Yadav, Deputy Director, Directorate of Environment, Uttar Pradesh has submitted that

application in Form-I was submitted within 30 days at the scoping stage for ToR and after grant of ToR on 21.10.2024 another application is to be submitted with EIA report within 90 days.

15. It may be observed here that in the present case, as per report filed by the Member Secretary, UPSEIAA vide email dated 27.10.2023, the Project Proponent submitted application in Form-I for ToR on 01.04.2023 within 30 days from order dated 02.03.2023.

16. On the above said application ToR was granted which was last amended on 21.10.2024. As per information given by learned Counsel for UPSEIAA, the Project Proponent is to submit application with EIA report within 90 days which period is yet to expire and till date there is no default on the part of the Project Proponent. Since permitted period is yet to expire, application for EC submitted by the Project Proponent has to be treated as pending at next stage of submission of EIA report and cannot be said to have been disposed of and statement made by learned Counsel for UPSEIAA that no application is pending with UPSEIAA cannot be said to be correct statement of the factual position. Since EIA notification dated 14.09.2006 provides for submission of application for grant of EC in Form I and there is no other Form, the statement of Public Relation Officer of the Project Proponent that no application had been submitted for EC was not correct statement of the factual position.

17. It is thus evident that the factual position presented to this Tribunal on 14.11.2024 suffered from misrepresentation of facts.

18. In any case as per direction given by Hon'ble Supreme Court I.A. filed by the Project Proponent is to be considered on its own merit without being influenced by order dated 14.11.2024.

19. In view of the factual position that the Project Proponent submitted application for grant of EC in Form-I on 01.04.2023 within 30 days from order dated 02.03.2023 for ToR whereupon ToR was granted which was last amended on 21.10.2024 and the Project Proponent has to submit EIA report within period of 90 days and the Project Proponent cannot be said to be in default, the application for grant of EC has to be treated as pending and cannot be said to have been disposed of. In view of deemed pendency of the above said application for grant of EC the Project Proponent is entitled to operate CBWTF till disposal of its application for EC by UPSEIAA.

20. It follows from above discussion that submissions made by learned Counsel for UPSEIAA and admission made by the Public Relation Officer of the Project Proponent on 14.11.2024 amounted to mis-representation of facts as application submitted in Form I for grant of **terms of reference** was in fact the application for grant of **prior environmental clearance** and there was no separate Forms for submission of application for grant of **prior environmental clearance** and submission of application for grant of **terms of reference**. Consequently, order dated 14.11.2024 has been passed by this Tribunal on misrepresentation of facts and order dated 14.11.2024 requires modification to that extent.

21. In view of the above discussed factual position and order dated 02.03.2023 passed by this Tribunal, the Project Proponent is entitled to operate CBWTF till disposal of its application for EC by UPSEIAA. Consequently, I.A No. 672/2024 filed by the Project Proponent is allowed and the Project Proponent is allowed to operate CBWTF till disposal of its application for EC by UPSEIAA.

22. So far as I.A No. 677/2024 filed by UPPCB is concerned, it may be observed that vide order dated 09.10.2023, this Tribunal directed UPPCB to grant Consent to Operate to the Project Proponent till disposal of its application for grant of EC by UPSEIAA till further orders to the contrary. UPPCB granted Consent to Operate to the Project Proponent till disposal of its application for grant of EC by UPSEIAA. Said Consent to Operate was suspended by UPPCB on 29.11.2024 in view of order dated 14.11.2024 passed by this Tribunal. In view of our order here-in-above whereby I.A. No. 672/2024 has been allowed and the Project Proponent is allowed to operate CBWTF till disposal of its application for EC by UPSEIAA, order dated 14.11.2024 and subsequent order dated 06.12.2024 based thereupon do not survive and stand modified with consequent modification of para no. 2 and 3 of order dated 06.12.2024 to that extent and **I.A No.677/2024** filed by UPPCB is disposed of accordingly.

23. However, in the present case two significant questions arise as to (i) whether UPPCB can grant expansion of scope of activities of a CBWTF without EC from UPSEIAA and (ii) whether in case of closure of a CBWTF, alternative arrangement for management of common bio-medical waste is to be made by UPPCB or by the concerned Project Proponent against whom closure order is passed.

24. Before passing any further order in respect of these two questions, we grant opportunity to the parties including UPPCB and the Project Proponent to make submissions in this regard.

25. I.A. No. 629/2024 was filed for exemption of the Chairman of UPSEIAA from personal appearance. Vide order dated 06.12.2024, personal appearance of Chairman, UPSEIAA and Member Secretary, UPSEIAA was dispensed with and the application stood disposed of

accordingly but the application has been listed today again as it was not so specifically mentioned in order dated 06.12.2024. **I.A No.629/2024** be treated to have been disposed of vide order dated 06.12.2024 whereby Chairman and Member Secretary, UPSEIAA were granted exemption from personal appearance.

26. List on 10.01.2025 for further consideration.

27. Responses by the parties including UPPCB and the Project Proponent with reference to the questions mentioned above be filed at least one week before the date of hearing.

28. A copy of this order be sent to the applicant, the Project Proponent, the Member Secretary, UPSEIAA and the Member Secretary, UPPCB for information/compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

December 18, 2024
M.A in Disposed of Cases No. 90/2023
In Original Application No. 774/2022
(IA NO 677/2024, IA NO 672/2024, IA NO 629/2024)
& connected matter.