

Item No.3

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

APPEAL NO. 04 OF 2023 (WZ)

Pune Municipal Corporation

.... Applicant

Versus

Maharashtra Pollution Control Board

....Respondent

Date of hearing: 31.01.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Rahul Garg, Advocate along with Ms. Nisha Chavan,
Chief Law Officer, PMC

Respondent : Ms. Manasi Joshi, Advocate

ORDER

1. This appeal has been preferred against the order dated 09.01.2023 by which the respondent – MPCB has directed the appellant to deposit an amount of Rs.1,82,41,900/- towards the assessment of damage already caused to the environment. This very order also contains that the respondent – MPCB had issued prosecution notice to the appellant on 18.11.2022 after referring to appellant's replies dated 13.12.2022 and 28.12.2022 and that the appellant had failed to comply with the Solid Waste Management Rules, 2016.

2. The learned counsel for the appellant has brought to our notice the position of law in this respect as regards criminal responsibility of the appellant by drawing our attention to Rule 19 sub-rule (5) of the Solid Waste Management Rules, 2016, which reads as follows:-

“(5) The operator of the facility shall be responsible for the safe and environmentally sound operations of the solid waste processing and

or treatment facilities as per the guidelines issued by the Central Pollution Control Board from time to time and the Manual on Municipal Solid Waste Management published by the Ministry of Housing and Urban Affairs and updated from time to time.”

3. Thereafter, the learned counsel has drawn our attention to the order of this Tribunal (Principal Bench) passed in Original Application No.190/2016 (WZ) wherein the following order was passed:-

“2. The application was filed on 11.01.2017 and has been dealt with in the last five years by several orders. On 12.01.2017, the Tribunal issued notice to the respondents, including PMC and Maharashtra State PCB who have filed their respective replies. On 09.08.2021, the Tribunal noted that plants operated by Respondent No. 5 – Ecoman Enviro Solutions Pvt. Ltd. were closed in June 2018 and the said service provider was blacklisted by PMC. Vide order dated 27.08.2021, the Tribunal also impleaded CPCB as a party so as to consider the guidelines issued on the subject. On 07.12.2021, the Tribunal noted that the PMC has filed suit for recovery of Rs.9,71,20,087.76/- for the violations. Stand of CPCB is that standards are specified in the Rules and the facilities are to be setup by the local authorities in the light of the guidelines on the subject. Further affidavit has been filed by the CPCB mentioning various guidelines issued by it.

3. We have heard learned Counsel for the parties. It remains undisputed that there has been violation of statutory Rules in composting process undertaken by the PMC through a service provider. Though PMC is said to have terminated the contract and blacklisted the contractor, the State PCB needs to take appropriate action for violation of the Rules by way of initiating prosecution and recovery of compensation on ‘Polluter Pays’ principle. We also direct CPCB to have interaction with all the State PCBs/PCCs on the subject of waste composting processes in the interest of rule of law and protection of environment and public health, including MSW Rules, 2016.”

4. After passing of the aforesaid order, an Execution Application No.07/2022(WZ) has been filed before this Tribunal which is pending and the next date of hearing was fixed as 21.11.2022 (which has been thereafter fixed to 23.02.2023). In paragraph No. 4 of the order dated 28.09.2022 passed by us in the said Execution Application, following observation has been made:-

“From the side of Respondent No.2/MPCB Ms. Manasi Joshi, Learned Counsel has appeared and apprised that she wants to file reply affidavit, for which four weeks’ time is allowed and no more. As per the order which is sought to be executed, it was the MPCB which had to initiate prosecution against the defaulting contractors

and also to recover the compensation on the basis of Polluter Pays Principle.”

5. Having drawn our attention to the above paragraph of our order, it is submitted by the learned counsel for the appellant that the respondent – MPCB is initiating prosecution against the Municipal Commissioner of the appellant – PMC by designation, although as per Rule 19 sub-rule (5) of the Solid Waste Management Rules, 2016, it is the operator of the facility who shall be responsible for the safe and environmentally sound operations of the solid waste process and/or treatment facilities as per the guidelines laid down by the Central Pollution Control Board and the operator in this case is the contractor, namely M/s Ecoman Enviro Solutions Pvt. Ltd. Hence, it is prayed that the impugned order needs to be set aside.

6. From the side of the respondent – MPCB, learned counsel Ms. Manasi Joshi has appeared and vehemently opposed the admission of this appeal saying that as far as the prosecution of the appellant is concerned, notice was issued for the prosecution on 18.11.2022 to which response was given by the appellant on 13.12.2022 and 28.12.2022. Since thereafter one month has expired, the present appeal against prosecution is not maintainable and that no delay condonation application has been moved.

7. The matter requires consideration by us because in our order passed in Execution Application No.07/2022(WZ), it has been specifically stated by us that the MPCB had to initiate prosecution against the defaulting contractors.

8. Since we have to decide the issue as to whether the prosecution can be initiated against the appellant – Pune Municipal Corporation or against the contractor, we admit this appeal to that extent and direct the respondent to file its reply within a week.

9. Till next date, no further proceeding shall be taken up by the respondent – MPCB as regards prosecution of the appellant.

10. Since learned counsel Ms. Manasi Joshi has already appeared on behalf of the respondent – MPCB in this matter, she waives service of notice after admission on behalf of the respondent.

11. Put up this matter on 27.02.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 31, 2023
APPEAL NO.04/2023 (WZ)
npj