

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

M.A. NO.363/2016

In

APPLICATION No.65 of 2015

CORAM:

**Hon'ble Shri Justice U.D. Salvi
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

**Mira Bhayendar Municipal
Corporation**

Through its Commissioner,
Having office at: Opp. Chhatrapati
Shivaji Marg, Station Road,
Bhayendar (W), Dist. Thane.

**Applicant
(Original Respondent No.1)**

BETWEEN

1. Nagri Hakka Sangharsha Samiti

Through its President
James Isidore Colaso
Uttan Karaipada, P.O. Uttan,
Dist. Thane 401 106.

2. Sunny Clement Gadekar

Uttan Patan Bunder
P.O. Uttan, Bhayander (W)
Dist. Thane 401 106

.....Applicants

AND

**1. Mira Bhayendar Municipal
Corporation**

Having office at: Opp. Chhatrapati
Shivaji Marg, Station Road,
Bhayendar (W), Dist. Thane

2. Mira Bhayendar Municipal Corporation

Through its Commissioner,
Having office at: Opp. Chhatrapati
Shivaji Marg, Station Road,
Bhayendar (W), Dist. Thane.

3. Maharashtra Pollution Control Board,

Kalpataru Point, 2nd, 3rd, 4th Floor,
Opp. Cine Planet, Near Sion Circle,
Sion (E), Mumbai 400 022.

4. Regional Officer,

Maharashtra Pollution Control
Board,
Near Mulund Check Naka, Thane.

5. Department of Urban Development

Mantralaya, Mumbai 400 032.

6. Collector, Thane.

7. State Level Environment Impact Assessment Authority

15th Floor, New Administrative
Building, Mantralaya, Mumbai.

8. Ministry of Environment, Forest and Climate Change,

Govt. of India.

9. Central Pollution Control Board

Parivesh Bhavan, CBD cum office
Complex, East Arjun Nagar,
Delhi 110 032.

10. Union of India.

.....Respondents

Counsel for Applicant (M.A. No.363/2016) :

Mr. N.R. Bubna, Advocate,

Mrs. Ujwala Pawar, DGP & Ms. S.B. Vaidya-Pandit, Law
Officer, Collectorate, Pune and Mr. Sae Vadke, Law
Officer.

Counsel for Applicants (Application No.65/2015) :

Mr. Sunil Dighe, Advocate.

Counsel for Respondent Nos.3 and 4

Mrs. Supriya Dangare, Advocate

Counsel for Respondent No.9

Mr. Anand Kulkarni, Advocate.

Date:3rd February, 2017

ORDER

1. This Miscellaneous Application is filed by the Mira Bhayander, Municipal Corporation seeking following reliefs:

“The order dated 21st August 2015 and 27th October 2015 passed by this Hon’ble Tribunal in Application No. 65 of 2015 be recalled and modified to the extent of direction to applicant corporation to deposit sum of Rs. 70 crores in escrow with Divisional Commissioner and said direction be waived in the interest of justice”.

2. The applicant, Municipal Corporation submits that the Tribunal, by its order dated 21st July, 2015, directed the applicant to deposit sum of Rs. 70 crores (Rs. Seventy Crores) in escrow account with the Divisional Commissioner. The applicant Corporation challenged the aforesaid order in Hon’ble High Court of Bombay by filing Writ Petition No. 8445 of 2015 and Hon’ble High Court by its order dated 26th August, 2015 stayed the directions of the Tribunal regarding deposit of sum of Rs. 70 crores.

Thereafter, noting the non-compliance of the orders of Hon'ble High Court, the Tribunal by order dated 27th October, 2015 reiterated earlier directions which were again stayed by the Hon'ble High Court of Bombay by its order dated 07th December, 2015 in Civil Application No. 3184 of 2015 in WPP No. 8445 of 2015.

3. The applicant further submits that the Hon'ble High Court vacated the stay given to the NGT order on 21st September, 2016 and granted liberty to the applicant, either to approach the Apex Court with regard to the deposit of Rs. 70 crores or NGT for review of the its order.

4. The applicant submits that it has finalized the technical details of the proposed Solid Waste Management facilities at Uttan in consultation with IIT Mumbai and published the tender notice accordingly on 21st September, 2016. The applicant submits that the tender notice had to be republished and the process for selection of the bidder is now in advance stage. The applicant further submits that the financial position of Municipal Corporation is precarious and it will not be just possible for the Corporation to spare Rs. 70 crores to be deposited in escrow account. The applicant has, therefore, prayed for recall and modification of the extent of the direction to deposit sum of Rs. 70 crores in this escrow account with the Divisional Commissioner.

5. In response to this, the original applicants have filed their response by affidavit dated 24th November, 2016 and strongly opposed the Miscellaneous Application. The original applicants submit that though the original directions of the Tribunal were passed on 21st July, 2015, the Corporation has failed to take any concrete measures to set up a new facility contemplated by it at Village Sakwar, District Thane. The original applicants further submit that in the intervening period, the Corporation is continuing with unscientific dumping of the Solid Waste at the Uttan site where regular incidences of fire are reported. They also alleged mis-management of dumping and also state that dumping of the unsegregated waste is causing nuisance and odor problems, besides leachate, particularly in the rainy season. The original respondents alleged that due to the non-viability of the proposed project, no private party is coming forward to bid for the proposed facility as the proposed bidders are having severe apprehensions of feasibility of the project as conceived by the Corporation. They also alleged that the Corporation is now abandoning their original proposal as assured to Tribunal and also the High Court, to set up a new facility at village Sakwar District Thane and proposes to have a short term facility at Uttan only. Learned counsel appearing for applicants further submits that the

Mira Bhayander Municipal Corporation is the most rapidly expanding and growing urban area and, therefore, there will be significant increase in the waste generation every day. Learned Counsel for the applicants, therefore submitted that till the time the scientific facility is developed for solid waste management, the residential and commercial building development including grant of commencement and occupation certificates/permissions shall be prohibited by the Tribunal. He cited the example of Kalyan Dombivali Municipal Corporation where the High Court of Mumbai had imposed such restrictions. The original applicants, therefore, strongly opposed the present Miscellaneous Application.

6. The matter was heard at length on 10th January, 2017. We had called Collector Thane being responsible authority and in-charge of the District for implementation of the MSW Rules, to appear before us. Collector Thane fairly stated that he had advised the Corporation to seek leave of the Tribunal to reduce the deposit amount and also to deposit the amount in installments. He further submits that the Corporation has its own internal governing mechanism whereby a view has been taken that no deposit can be paid in terms of the order of the Tribunal. He further submitted that it has been recently revealed that the land at Sakwar, where originally new

MSW facility was proposed, is a forest land. He therefore submits that it will be necessary for the Corporation to obtain the forest clearance as per Forest Conservation Act, 1980 before any activity is undertaken at Sakwar site.

7. We have also heard learned Counsel appearing for the Corporation and also learned Commissioner of the Corporation. Learned Commissioner of the Corporation revealed that the total revenue of the Corporation is about 450 crores and the present population of the corporation is 8.20 lakhs, which generates about 500 tons of the solid waste every day, and presently the waste is dumped at Uttan site. The Learned Commissioner further revealed that they are trying to collect the segregated waste at source, and further the Corporation is taking all required measures to ensure that there is no pollution or nuisance from the waste dumping. He further submitted that in view of the financial position and also the resolution of the General body, the Corporation is unable to agree to the suggestions of the Collector, even to pay in installment or even request for the reduction of the deposits.

8. The learned Commissioner further revealed that in the re-tendering process, they have received only one bid and they are negotiating with the bidder for the

facility of 350 tons per day capacity that is based on composting technology. He further revealed that the bidder had initially quoted about Rs. 1000 per ton as a tipping fee, which is successfully negotiated and reduced nearly up to Rs. 750 per ton. Similarly, the cost of the project has been substantially reduced from Rs. 23 crores to about Rs. 17 crores. He further submits that the tender will be finalized in next one month and the work will be executed in next 6 to 8 months. He, therefore, requested for recall of the order. He, however, submitted that the exact time frame for execution of MSW facility cannot be given, as procedural formality of approval of Corporation is yet to be completed.

9. Before dealing with this issue, we will like to reproduce our order dated 21st July, 2015 which records the background and reasons which influenced the Tribunal while issuing the order:

“We have gone through the orders passed by the Hon’ble High Court in PIL No. 182/2009 alongwith other PILs and PIL No.36 of 2007 alongwith other Writ Petition (PIL) No. 231/2009. We have also perused Govt. Resolution dated 14-12-2010 which is outcome of Judgment of PIL No. 231/2009. State Government directed that Mira Bhayander Municipal Corporation shall suspend the resolution dated 14-12-2010 for shifting of existing MSW operations from village Pali, Uttan to village Varsove.”

From the records, it appears that Mira-Bhayander Municipal Corporation could obtain relevant consent/permission from the competent authorities for shifting of MSW from Pali to village Sakwar.

The Applicant and MPCB have no objection whatsoever, for collection and shifting of the MSW site

to Sakwar. It appears that now the only legal impediment is to obtain due permission from Forest Department for the new site at Sakwar. CCF from the concerned forest division is requested to complete the process as per Law at the earliest and in any case within period of three (3) months hereafter on suitable terms and conditions such cost of afforestation/plantation shall be paid by the Mira-Bhayander Municipal Corporation, compensatory forest land etc. as may be deemed necessary.

Prima-facie, it appears that there is about 500 Tons/day of MSW dumped at the present site of Pali(Uttan), District Thane. It is until the process of completing the tendering of installation of incineration and/composting plant, MSW disposal in landfill site etc. which is said to be likely activity undertaken on BoT basis and scheduled in eighteen (18) months after commencement thereof, it is but natural that in the intervening period of more than 18 (eighteen) months, the MSW dumping at the present site will continue and same problem will be faced by the villagers of the Pali regularly.

It is stated by the learned Advocate for Mira-Bhayander Municipal Corporation that after the order of Hon'ble High Court, Bombay, there was no agitation/objection by residents of village Pali and transportation of the MSW is going on in peaceful manner. According to learned Advocate Shri Dighe, the villagers do not want health problem to increase and they are more interested for the disposal of the MSW in scientific manner which shall not affect their health nor at the cost of any problem of the air pollution or the emission of foul smell and water pollution.

As per statement of Dy. Commissioner Shri Sambhaji Panpatte, Mira-Bhayander Municipal Corporation, the incineration plant to be installed at Sakwar may be installed at estimated cost of Rs.150/- (Rs. One hundred fifty) crores and an assured output of electricity generation will be of 5 mega watt which will be sold by the operator, and certain tipping fees, will be paid by Corporation.

We are of the opinion that such long process and the time gap may aggravate problem of the Applicants and therefore, it is necessary to make certain stop gap arrangement for which Mira-Bhayander Municipal Corporation is required to take appropriate steps with consultation with MPCB. MPCB is on record that though the site at Pali is authorised, the MSW Rules are not being followed by Corporation on a regular basis and there is total non-compliance of MSW Rules. Under the circumstances, we direct Mira-Bhayander Municipal Corporation to deposit amount of Rs.70/- (Rs. Seventy) crores with the Divisional Commissioner, Kokan Division in the escrow account.

The amount of Rs.70/- (Rs. Seventy) crores shall be deposited with Divisional Commissioner, Mira-Bhayander Municipal Corporation within period of four (4) weeks and if the amount is not deposited, within the time frame stated above, the Divisional Commissioner shall instruct the authority or Collector to take appropriate steps for recovery of the amount, as if it is the amount due on the Land Revenue Code or that the Divisional Commissioner or the Collector are also at liberty to take further steps as permissible under the Municipal Laws including taking over of the Corporation affairs administration inasmuch as the MPCB has proposed prosecution of the Corporation. The amount if paid, the compliance report be submitted to the Tribunal alongwith copy of the Compliance Report within above time.”

10. This order faced scrutiny of the Hon'ble High Court in the Writ Petition No. 8445 of 2015 as aforesaid. The Hon'ble High Court of Bombay disposed of the Writ Petition No.8445 of 2015 on 21st September, 2016 as follows:

“(3) Having regard to the progress made in the matter till this date, we are of the opinion that so far as the deposit of Rs. 70 crores is concerned, the interim order of stay continues till the end of November 2016. So far as the stay of the proceedings in the application pending before the NGT, Bench at Pune is concerned, we vacate the said order and the proceedings can proceed further before the NGT, Bench at Pune. Meanwhile, it is left to the writ petitioner either to approach the Apex Court with regard to the deposit of Rs. 70 crores or the NGT for review of its order in the light of progress made by the writ petitioner so far as establishment of solid Waste Disposal units” (emphasis supplied)

11. It can be seen from the above that the applicant Corporation was given the liberty either to approach the Apex Court or the NGT for review of its order in light of the progress made by the Writ Petitioner. Interestingly, the applicant had filed this miscellaneous application for recall/modification of the order and not for the review.

12. Be that as it may, it will now be necessary to see the progress made by the Municipal Corporation in terms of the compliance of the Solid Waste Management Rules and also its assurances given to the Tribunal and Hon'ble High Court. In July 2015, the Corporation had submitted that they are finalizing the shifting of the existing dumping site from Pali Uttan to village Sakwar and proposing installation of incineration and compost plants costing Rs.150 crores on BOT basis to be completed in 18 months. The Corporation had also submitted that about 500 tons of MSW is dumped presently at Pali Uttan.

13. In this context the order of the Hon'ble High Court dated 26th August, 2015 staying the Tribunal directions dated 21st August, 2015, which reads as under, is pertinent:

“Learned counsel for the petitioner –Municipal Corporation places on record the statement dated 26th August 2015 signed by the Deputy Municipal Commissioner indicating that the Municipal Corporation shall run the Solid Waste Disposal System in accordance with the directions/instructions of the Maharashtra Pollution Control Board and the at the Municipal Corporation is also making an endeavor to shift or to set up another Solid Waste Disposal facility at Sathvara Village in Vasai Taluka after the State Government and other authorities grant the necessary permissions and approvals for this purpose”.

14. We have perused the Technical Report of the IIT dated 19th January, 2016 produced with the affidavit dated 12th December, 2016. This report is mainly based

on the data and the criteria submitted by the Corporation particularly with regard to content of the waste generated, quantity of the waste generated and also the level of the segregation to be achieved. The Report highlights the serious condition prevailing due to fires and leachet from existing dumps. The presence of several heavy metals including Nickel, chromium, Zinc etc is reported in leachet, with serious apprehensions of ground water and soil pollution, which is a serious risk considering very heavy rainfall and hilly terrain at the site. The Report also deals with strategies for old waste by stabilization of slopes-surface drainage- leachete management-landfill management- final soil cover- route as a part of capping process. The new waste is proposed to be treated by composting-RDF-landfill route. Without going into further details, it can be seen that IIT Report has flagged serious concerns about the existing scenario, however, the Corporation has not taken any urgent steps to ameliorate these problems on war footing, but instead, is taking its own time to even implement immediate corrective steps as pointed out by IIT and also MPCB, and taking a plea of a comprehensive facility proposal tendering.

15. We have also perused the said tender document that is placed on record. The tender is for development and operation of the MSW facility for a period of 5 years.

It is not clear how the facilities like secured land-fill which are required to be designed for longer period of about 25 years can be developed and financially attributed to such short term contract. Be that as it may, the perusal of tender document prima facie does not show technical details of plant like capacity, composting, RDF etc.

16. As per the statement of the Commissioner the proposed facility is for 350 tons whereas by the own admission of the Corporation and as also reported by IIT, the generation of waste in Municipal area is 500 tons per day and this entire waste is presently unscientifically dumped at Uttan. Therefore, it is not clear what will be the fate of the remaining solid waste of 150 MT/day. The proposed facility is based on BOT basis and is based on segregation, composting and secured landfill treatment route. It is also expected that the existing dumps of waste will also be disposed as part of the project. Secondly, the tipping fees are based on the waste received at the facility and are not linked to performance of the plant in any way. The learned Commissioner submitted that the performance guarantee of Rs. 60 lakh will be taken from the BOT operator to ensure the efficient performance of the plant.

17. The Mira Bhayendar Corporation is rapidly developing residential area. The Corporation area also accommodates several industrial pockets in organized and unorganized sector. The rapid increase in urbanization has definitely put stress on the existing environmental infrastructure. The MPCB has also accorded the authorization to the existing facility at Pali for 460 metric tons per day capacity. In view of all the discrepancies in the information particularly related to the change of the MSW disposal sites, generation of the municipal solid waste, composition of the waste particularly the silt and industrial waste and also the extra ordinary dependency of the compliance of the BOT operator, we are of the considered opinion that though the proposed project is aimed to solve a part of the MSW disposal problems, the successful implementation of the project is riddled with significant uncertainties. Though at this stage, we are not inclined to question of the bonafide of the Corporation, the uncertainties involved in successful implementation of the plant will necessary prevail and will have to be looked into by the Tribunal in the interest of the environment on precautionary principle.

18. It is not disputed that the scientific and safe collection, treatment, processing and disposal of the solid

waste is the responsibility of respondent no.1 as per the environment statutes. The Maharashtra Pollution Control Board has already issued them an authorization for disposal of 460 metric tons per day of solid waste with certain terms and conditions. The MPCB affidavit dated 10th November, 2016 highlight the level of non-compliance right from improper segregation to unscientific disposal (dumping) of the MSW at the existing site. MPCB has submitted that they have issued several directions to Corporation to comply with the MSW rules. Undoubtedly, every day of non-compliance is leading to environmental degradation and resultant pollution of water and air in the surrounding area.

19. The main contention of the Corporation for non-payment of deposit is financial constraints and also development of proposed project on BOT basis. We have taken a judicial note that the revenue of the Corporation is about 450 crores per annum and the Corporation is one of the fastest growing urban areas in Mumbai metropolitan area. In our considered view, the Corporation cannot abdicate its statutory responsibility of solid waste management, which is a public health issue for financial constraints and expediency. Non-availability of funds cannot be an excuse for non-performing the statutory duties.

20. Under all these circumstances, keeping in mind the precautionary principle, we are not inclined to recall our order dated 21st July, 2015 to deposit Rs. 70 crores in the escrow accounts. However, considering the change of technology from the incineration to composting as proposed in the IIT Report which according to the Municipal Commissioner, will be costing about Rs.17 crores, though the same is only for 350 tons as against the actual generation of 500 tons, we are inclined to modify our order as stop gap arrangement, subject to outcome of the proposed venture and direct as follows:

- a) The Mira Bhayendar Municipal Corporation shall deposit Rs. 20/- crores in escrow account of Divisional Commissioner within next two weeks to ensure that the proposed plant is commissioned and operated within next eight months as stated by the Commissioner.
- b) We direct that if the Corporation fails to issue the work order for establishing such plant for one reason or other, Collector Thane shall execute this project as if being executed by the Corporation itself and ensure that the project is commissioned within next nine months without fail.
- c) We further direct that in case, the Corporation fails to issue work order for the same project within one month, the Corporation is hereby restrained to issue any occupation certificate or commencement certificate for any new residential

and commercial building projects within the municipal limits, based on the precautionary principle till the time project is so developed and executed.

- d) Corporation shall submit a proposal for scientific disposal for the remaining 150 Mt/Day of solid waste by the next date.

21. M.A. 363/2016 is disposed of accordingly without any order as to costs.

....., **JM**
(Justice U.D. Salvi)

....., **EM**
(Dr. Ajay.A. Deshpande)

Place: Pune
Date : 3rd February, 2017

NGT