BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

APPEAL NO. 63 OF 2012

In the matter of :

1. Haat Supreme Wastech Pvt. Ltd.,
   Village Bazida Jattan,
   Tehsil & District Karnal
   Through its Director,Sh.Jaspreet Singh

2. M/s Golden Eagle Waste Management Co.,
   Village Jasana, Tehsil & Distt. Faridabad
   Through its Proprietor Sh.Ashok Kumar

3. M/s Maruti Bio-medical Waste Plant,
   Village & P.O. Hetampura,
   Tehsil & Distt. Bhiwani
   Through its Partner,Sh.Kanshi Ram

4. M/s Divya Waste Management Co.,
   Vill. Kandela, Tehsil & Distt. Jind,
   Through its Proprietor Sh.Ishwar Gulia

.....Appellants

Versus

1. State of Haryana
   Through Financial Commissioner &
   Principal Secretary to Government,
   Health Department, Civil Secretariat,
   Chandigarh

2. The Central Pollution Control Board,
   Parvesh Bhawan, East Arjun Nagar,
   Delhi-110032, Through its Chairman

3. The Haryana State Pollution Control Board,
   C-II, Sector 6, Panchkula,
   Through its Chairman

4. M/s Vulcan Waste Management Co.
   Damdama Road, Bhondsi,
   Gurgaon

5. Delhi Pollution Control Committee
   4th Floor, ISBT Bldg., Kashmere Gate
   Delhi-110006

6. U.P. Pollution Control Board
7. IIIrd Floor, PICUP Bhawan
   Vibhuti Khand, Gomti Nagar
   Lucknow-226020

8. The Secretary,
   Ministry of Environment & Forests,
   Paryavaran Bhawan, CGO Complex,
   Lodhi Road, New Delhi-110003

.....Respondents

Counsel for Appellants :
Mr. Raktim Gogoi, Advocate
for Appellants No.1,3 & 4
Mr. Sumit, Advocate for Appellant No.2

Counsel for Respondents :

Mr. Narender Hooda, Sr. Addl. AG and
Mr. R.M. Tatia, Advocate for Respondents No.1&3.
Mr. S.L. Gundly with Mr. J.C.Chandra Babu,
Advocates, for Respondent No.2
Mr. N.P. Singh, Advocate and Mr. Dinesh Jindal,
Law Officer for for Respondent No. 3.

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr.D.K. Agrawal (Expert Member)
Hon'ble Mr. B.S. Sajwan (Expert Member)
Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated : November 28, 2013

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The following substantial question relating to environment and medico-legal jurisprudence of some public significance falls for consideration of the Tribunal in the present case:

> Whether or not the bio-medical waste disposal plants require Environmental Clearance (EC) in terms of the Environmental Clearance Regulation, 2006 (for short '2006 Notification').

2. Let us examine the factual matrix leading to the filing of the appeal under consideration and the question afore-referred. The appellants are running units of Bio-Medical Waste Treatment facility with due authorization granted to them as laid down in the Bio-Medical Waste (Management & Handling) Rules, 1998, (hereinafter referred to as the Rules of 1998). The prescribed authority for enforcement of the provisions of Rules of 1998 is the respective State Pollution Control Boards. The appellants had submitted applications for renewal of the authorization under Rule 5 of the Rules of 1998 to the prescribed authority, i.e. Haryana State Pollution Control Board-Respondent No.3. The Haryana State Pollution Control Board along with the representatives of the Central Pollution Control Board, Respondent No.2, inspected the premises of the appellants and pointed out certain shortcomings. The appellants were then issued notices dated 2nd August, 2012 by the Haryana State Pollution Control Board and were directed to deposit a sum of Rs. 5 lakhs each by way of bank guarantee to ensure compliance of the directions. The appellants deposited requisite bank guarantee of Rs. 5 lakhs each with the Haryana State Pollution Control Board. Subsequently, the Central Pollution Control Board issued another set of notices dated 31st August 2012/12th September, 2012 to the appellants calling upon them to deposit a bank guarantee of Rs.10 lakhs each and take steps to remove the deficiencies as mentioned therein. The notices issued by the Central Pollution Control Board are under challenge in this appeal.

3. As aforenoticed, all the appellants are running the plants, which handle, treat and dispose of bio-medical waste. According to these appellants, since they have the authorization from the Pollution Control Board and that they complied with all the requirements of law, the imposition of the conditions stated in the impugned orders, particularly those in relation to the furnishing of bank guarantees, are arbitrary and contrary to law. They pray that these impugned orders dated 31st August, 2012 and 12th September, 2012 be declared illegal, ultra vires, void and without jurisdiction and opposed to the Rules of 1998.

4. The correctness and legality of the notices issued by the Respondent No.2 have been challenged on various grounds including that the said respondent had no jurisdiction to issue notices to the appellants inasmuch as the Central Pollution Control Board had no jurisdiction to issue such notices, particularly, with regard to asking for the bank guarantees. Another significant ground that had been taken by all the appellants is that the Central Pollution Control Board is acting in an arbitrary and discriminatory manner inasmuch as one M/s. Vulcan Management Company, Gurgaon-Respondent No.4, carrying on the same activity has been given clearance even though the said treatment plant does not adhere to the basic requirements of a bio-medical waste treatment plant. A 220 KV power line is standing in the middle of their plant and the power lines are crossing above the plant and is very close to the 100 ft. chimney of the unit. This unit does not have any boundary wall but has still been given consent. In addition to this

unit, even other bio-medical waste treatment units have been given consent, which are similarly placed. Respondent No.4 has also placed on record the order passed by the Respondent No.2 dated 2nd April, 2012 wherein the bank guarantee furnished by the Respondent No.4 was ordered to be released as Respondent No.4 had complied with all the conditions stipulated in the order passed by the Central Pollution Control Board. Respondents No.2 and 3 have contested the appeal. Respondent No.4 while denying the claim of arbitrariness of Respondent No.2 and grant of consent to it without proper basis, has specifically taken up the plea and raised the argument that all bio-medical waste treatment plants require EC from the competent authority under the Notification of 2006 and since none of the appellants have the EC, they cannot be permitted to function. Thus, according to the Respondent No.4, all these units ought to be closed and the issuance of notice by the Respondent No.2 threatening to invoke the provisions of Section 5 of the Environment (Protection) Act, 1986 (for short 'the 1986 Act') is valid, and has to be implemented without default. In the impugned notices, it has specifically been stated that when the officers of Respondent No.2 went to inspect the units of the appellant they found various deficiencies and, particularly, the fact that the chambers of the incinerators being used by these units were designed incorrectly and there were various deficiencies in relation to operation of incinerators in their respective units.

5. Since this was a basic and fundamental issue going to the very root of the matter and jurisdiction, thus, it was considered

appropriate by the Tribunal and to which all the learned counsel appearing for the parties consented that first and foremost the question framed by the Tribunal at the very opening part of this judgment be decided as a primary issue even before the appeals are heard on merits.

6. Now, we may proceed to record the stand taken by the respective parties before the Tribunal in relation to the question formulated above. According to the appellants, they do not require any EC as they had already obtained authorization in terms of Rule 8 of Rules of 1998 which specifically covers the field. Furthermore, according to them, the Hazardous Waste Rules 2008 (Rules of 2008) specifically exclude the bio-medical waste from its operation in terms of Rule 2(d) of the Rules of 2008. Any Entries in the Schedule of 2006 Notification, do not cover the bio-medical waste treatment plants. Thus, once these are covered by specific rules and they having complied with these rules, it is neither necessary nor required of them to obtain EC from any authority.

7. The stand of MoEF is that the units like that of the appellants require EC in terms of the Notification of 2006. Exclusion from the operation of Rules of 2008 would not take such units outside the rigors of the Act of 1986 which deals with hazardous substance as defined under Section 2 (e) of the Act of 1986 and, consequently, the Notification of 2006. This is even supported by the entries in Part C of Schedule III of the Rules of 2008.

8. Interestingly, Respondent No.4 took a somersault during the course of arguments and contended that the bio-medical waste plants are not covered under the Notification of 2006. The law requires such units to obtain authorization in terms of Rule 8 of the Rules of 1998 and no more. In this regard, the learned counsel then relied upon different rules of the Rules of 1998. The Central Pollution Control Board supported the stand taken by the MoEF that it is obligatory upon the units like the appellant's, to obtain the EC in terms of Notification of 2006 and refuted the contentions raised on behalf of the appellants as well as Respondent No.4.

9. The decline in environmental quality which was evidenced by increasing pollution levels, loss of vegetation cover and biological diversity, excessive concentration of harmful chemicals in the ambient atmosphere and in the food chains creating reasons for environmental accidents and threats to life support systems compelled the international community and more particularly, the Indian Legislature to enact the Act of 1986. This was an Act to provide for the protection and improvement of environment and various matters allied thereto. The Act of 1986 vested wide ranging powers in the Central Government to protect and improve the environment. The Central Government was expected to take various measures to achieve this object by planning and execution of nation-wide programme for prevention, control and abatement of environmental pollution. The Central Government, in discharge of its powers and functions can issue directives of varied kinds which even may include closure, prohibition and regulation of any

industrial activity or operation of the process. It may further direct the stoppage and supply of electricity, water and other services to the polluting units or the units which extend a potent threat of environmental pollution. Section 6 of the Act of 1986 imposes an obligation upon the Central Government to regulate environmental pollution and to frame rules for that purpose. Under Section 6(2)(a) of the Act of 1986, such rules shall be made for providing the standards of quality of air, water or soil for various areas and purposes and under Section 6(2)(c) of the Act of 1986, the Central Government is required to lay the procedures and safeguards for handling of hazardous substances. Besides Section 6, Section 25 of the Act of 1986 concerns itself with the powers of the Central Government to make rules to carry out the purposes of this Act and these rules could relate to any of such purposes and in particular to the matters enumerated under Clauses (a) to (j) of sub-section (2) of Section 25 of the Act of 1986.

10. In exercise of the above powers and particularly, with reference to Section 6, 8 and 25 of the Act of 1986, the Central Government enacted rules on various facets of environment which were of serious concern to give effect to the object and purpose of the Act of 1986. The Rules of 2008, the Municipal Solid Waste (Management and Handling) Rules, 2000 (for short the 'Rules of 2000) and the Rules of 1998 have been framed to handle, deal with and dispose of various kinds of wastes. The degradation and damage to the environment could be prevented by implementing such rules. These rules in turn refer to the Act of 1986 and the

definitions of various terminologies used in the Rules are more or less *paramateria* to the one provided under the Act of 1986. For instance, how the occupier would seek authorization for handling, disposal of bio-medical waste and the procedure for obtaining such authorization. Further, the rules provide the steps, precautions and kind of treatment plants which the occupier is expected to install for the purposes of receiving authorization.

11. Environment needs to be protected and its pollution controlled by the methodologies prescribed under the various laws in force. Act of 1986 defines 'environment' under Section 2(a) as follows:

> "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property."

12. It defines 'hazardous substance' under Section 2(e) as follows:

> "hazardous substance" means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment."

It also defines 'environmental pollutant' under Section 2(b) as under:

> "environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment."

13. The above three definitions cover a wide field and spectrum to which the principles of environmental jurisprudence are to be applied. Anything that affects the water, air and land and the inter-relationship which exists between them and the human beings and

other living creatures, plants, micro-organisms and property adversely is an environmental pollutant and has to be checked, prevented and controlled. The scheme and enforcement of law has to be framed with such objective in mind. The legislative intent in framing these expressions liberally is indicative of the fact that the law has to be applied stringently to all such subjects and matters which are likely to be environmental pollutants or hazardous substances which would cause harm to human beings and other living creatures etc.

14. The various rules referred to by us above operate in different fields in different operations or plants but the purpose of all these rules is common, i.e. prevention and control of pollution and to achieve a pollution-free environment.

15. The bio-medical waste by its very characteristic nature is a hazardous waste. Rule 2 of the Rules of 2008, deals with the application of these Rules. It provides that the Rules shall apply to the handling of hazardous waste as specified in the Schedule. However, Rule 2 of the Rules of 2008 itself uses negative language indicating the areas or wastes to which the Rules of 2008 would not be applicable despite the fact that the same may be a hazardous substance or waste. In terms of Rule 2(d) of the Rules of 2008, the application of these rules to the bio-medical waste covered under the Rules of 1998 shall be excluded. In other words, the Rules of 2008 would not be applied to the bio-medical waste covered under the Rules of 1998. The Rules of 2008 define 'hazardous waste' as follows: -

"(l) 'hazardous waste' means any waste which by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics causes danger or is likely to cause danger to health or environment, whether alone or when in contact with other wastes or substances, and shall include -

(i) waste specified under column (3) of Schedule-I,

(ii) wastes having constituents specified in Schedule-II if their concentration is equal to or more than the limit indicated in the said Schedule, and

(iii) wastes specified in Part A or Part B of the Schedule-Ill in respect of import or export of such wastes in accordance with rules 12,13 and 14 or the wastes other than those specified in Part A or Part B if they possess any of the hazardous characteristics specified in Part C of that Schedule;"

16. If one examines the definition of 'hazardous substance' under Section 2(e) of the Act of 1986 or the 'hazardous waste' under the Rules of 2008, one basic feature that emerges from a conjoint reading of the two is that substances or wastes by reason of physical, or physico-chemical, toxic or other characteristics which may cause harm or danger or is likely to cause the same to the living creatures or the environment. This means that the fine line of distinction linguistically provided for the expression 'waste' and substance' loses its significance as far as the basic characteristics and impact thereof is concerned.

17. While the legislature in its wisdom has kept the 'bio-medical waste' outside the application of Rules of 2008, it has however, provided specific rules , i.e. the Rules of 1998 to deal with various facets of bio-medical wastes. These Rules co-relate to the provisions and object of the Act of 1986. As already stated, these rules contemplate issuance of authorization to a person or occupier for storing, dealing with, handling and disposal of bio-medical wastes. The Rules of 2000 also find their origin from the provisions

of the Act of 1986 and these Rules shall apply to every municipal authority responsible for collection, segregation, storage, transportation, processing and disposal of municipal solid waste, besides obtaining the authorization, a consent given by the Board or Committee to the operator of a facility. Besides, such projects, in terms of the Notification of 2006, under Entry 7 (i), also require the Environmental Clearance from SEIAA for establishing and operating common municipal solid waste management facility. In light of the above position and provisions of the Act and the Rules, now let us examine the principle of interpretation in that regard.

18. The Act of 1986 and the rules afore-referred, in particular Rules of 1998, are socio-welfare legislations as they have triple objects: firstly, they are welfare legislations inasmuch as they mandate the State to provide clean and decent environment. Secondly, they provide for remedies which could be invoked by different stakeholders and even by any aggrieved person and thirdly, the consequences of violating the environmental provisions including punitive actions. Thus, while interpreting the relevant provisions, these concepts have to be appropriately considered by the Tribunal. The object of these provisions being wholesome environment, the rule of reasonable constructions in conjunction with the liberal construction would have to be applied. While dealing with a social welfare legislation, the provisions and the words therein are to be given a liberal and expanded meaning. Of course, liberal construction does not mean that the words shall be forced out of their natural meaning but they should receive a fair

and reasonable interpretation so as to attain the object for which the instrument is designed and the purpose for which it is applied. Both the object and purpose of an Act in relation to its application are thus, relevant considerations for interpretation. The Courts have also permitted departure from the rule of literal construction so as to avoid the statute becoming meaningless or futile. In the case of *Surjit Singh v. Union of India* (1991) 2 SCC 87 and *Sarajul Sunni Board v. Union of India* AIR 1959 SC 198, the Supreme Court has also held that it is not allowable to read words in a statute which are not there, but where the alternative allows, either by supplying words which appear to have been accidentally omitted or by adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words. It is also a settled cannon that in case of a social or beneficial legislation, the Courts or Tribunals are to adopt a liberal or purposive construction as opposed to the rule of literal construction.

19. These well-known principles of interpretation have to be applied, but with caution. Construction favorable to achieve the purpose of enactment but without doing violence to the language is of paramount consideration. In the case of *Shivaji Dayanu Patil & Anr. v. Vatschala Uttam More* (1991) 3 SCR 26a, the Supreme Court while dealing with a beneficial provision of the Motor Vehicles Act, 1939 held as under:

> "It is thus evident that Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the

matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficient purpose underlying the enactment in preference to a construction which tends to defeat that purpose."

20. The doctrine of reasonable construction implies that the correct interpretation is the one that best harmonizes the words with the object of the statute. Lord Porter in *Bhagwan Baksh Singh (Raja) v. Secretary of State,* AIR 1940 Privy Council 82 stated "right construction of the Act can only be attained if its whole scope and object together with an analysis of its wording and the circumstances in which it is enacted are taken into consideration." The Tribunals will also keep in mind that the application of a given legislation to new and unforeseen things and situations broadly falling within the statutory provisions is within the interpretative jurisdiction of the courts. In the case of *Charan Lal Sahu v. Union of India* AIR 1990 SC 1480, the Hon'ble Supreme Court while dealing with the provisions of the Bhopal Gas leak disaster and directing the government to give interim relief to the victims as a measure in articulate premise from the spirit of the Act, declared this approach to the interpretation of the Act as constructive intuition which in the opinion of the court was a permissible mode of viewing the acts of the Parliament.

21. Keeping the legislative intent, object of the Act and the Rules and the purpose sought to be achieved, recourse to any of the above doctrines would be appropriate. Certainly, it is the obligation of the respective governments to prevent and control pollution on the one hand and provide clean environment to the public at large on the other. The industrial development cannot be permitted to ignore

environmental interests and damage the ecology or ambient environmental quality irretrievably. The units of plants which violate the prescribed standards and cause serious pollution, are to be dealt with strictly in accordance with the prescribed penal or other consequences which may even include the closure of a unit. The rules primarily provide a regulatory regime, i.e. required to be adhered to for the purposes of permissive industrial activity. All these regulatory regimes whether relating to municipal waste, hazardous waste or bio-medical waste, owe their allegiance to the substantive provisions and object of the Act of 1986. Reasonable construction is intended to provide a balance between the industrial development and the environment. Principle of constructive intuition would also have its application to the provisions of the Act, Rules and particularly the Notification of 2006 in relation to dealing with the entries provided in the Schedule. The liberal construction would help in giving a purposeful meaning and interpretation to the provisions of the Act and the Rules for attainment of the basic object, i.e. cleaner environment.

22. Now, we may proceed to examine as to what is the Bio-Medical Waste and if it is hazardous or otherwise. As far as Act of 1986 is concerned, it does not define as to what is a Bio-Medical Waste. However, the expression 'hazardous substance' has been defined under Section 2 (e) of the Act of 1986, which we have already referred above. The underlying feature of the definition is chemical or physico-chemical properties that are liable to cause harm to human beings and other living creatures including plants, micro-

organism, property or the environment. The Rules of 1998 define, under Section 3(5), the 'Bio-Medical waste' as waste which is generated during the diagnosis, treatment or immunization of human beings or animals or in research activities pertaining thereto or in the production or testing of biologicals, and including categories mentioned in Schedule – I of the same rules. Under these very Rules, the Bio-Medical Waste treatment facility is explained as a facility wherein treatment, disposal of bio-medical waste or process incidental to such treatment and disposal is carried out. As already noticed, Rules of 1998 deal with the handling, treatment and disposal of bio-medical waste for which an authorization under these Rules is granted. Also, hospital waste or health care waste should include any type of material generated in any healthcare establishment including aqueous and other liquid waste. Hospital waste is normally understood to be any solid, fluid or liquid waste material including its container and any other intermediate product which is generated during short term and long term care consisting observational, diagnostic, therapeutic and rehabilitative services for a person suffering or suspected to be suffering from disease or injury and for parturients or during research pertaining to production and testing of biological, during immunization of human beings. Hospitals wastes include garbage, refuse, rubbish and Bio Medical Waste. Waste management is one of the important public health and measures over the entire globe. Besides, other the hospital waste may even relate to body parts, organs, tissues, blood and body fluids along with soiled linen, cotton, bandage and plaster

casts from infected and contaminated areas and need great care. With the proliferation of blood borne diseases, more attention is being focused on the issue of infectious medical waste and its disposal. It may contain highly virulent pathogens some of which may cause epidemics. Moreover, since pathogens multiply, even a small spread may lead to much larger consequences. Proper management of hospital waste is essential to maintain hygiene, aesthetics and cleanliness and control over environmental pollution. Hospital waste has been classified into hazardous waste (10-25%) and non-hazardous waste (75-90%). Out of the hazardous waste, 15 to 18% is infectious while 5 to 7% are other hazardous wastes. Such other hazardous waste may include radioactive waste, discarded glass, pressurized containers, chemical waste, cytotoxic waste and incinerator ash which have to be disposed of in accordance with Rules of 1998. On the other hand, the non-hazardous waste which forms greater part of the hospital waste is dealt with as municipal dump and is liable to be disposed of in accordance with the Rules of 2000. The sharp bio-medical waste may also be infectious and can transmit diseases like Tetanus, AID, Hepatitis, etc. The sharp bio-medical waste including needles, hypodermic needles, scalpels and other blades, knives, infusion sets, saws, broken glass, are considered to be highly hazardous waste and can cause cuts or puncture wounds. Hospital waste has to be treated in different forms and methods. General waste which is non-hazardous, non-toxic and non-infectious, should be dealt with, and its disposal ensured by municipal authorities in

accordance with the Rules of 2000. On the other hand, the bio-medical waste has to be handled, treated and disposed of by installation of incinerator, deep burial and auto-clave, micro-wave treatment, shredding, securing the landfill while the radio-active waste management has to be undertaken as per the guidelines of BARC, and finally, the liquid and chemical waste should be handled with due caution. Thus, multifarious treatments are itself indicative of the fact that the bio-medical waste is not an expression which is capable of being understood in abstract. It must be taken together with various kinds of procedures, methodologies that are required to be adopted for dealing with different hospital wastes which fall within the head of bio-medical waste.

23. The above scientific studies show that bio-medical waste is one of the more serious and hazardous pollutants and it can produce large number of infectious diseases which would be very harmful to the humanity at large. Their impact on public health can be very adverse and it is not only expected but is mandatory that such bio-medical waste is dealt with strictly in accordance with Rules of 1998 to ensure that bio-medical waste does not cause any injury to public health and environment. For this purpose and with this object it is important to give wide interpretation to the relevant entries to ensure appropriate checks in regard to dealing and disposal of bio-medical waste. Thus, an interpretation which would put greater checks and balances over this process would be in line with even the object of the Act of 1986.

24. Though, the Rules of 2008 under Section 2 (d) specifically exclude bio-medical waste which is covered under Rules of 1998 but still Part C of the Schedule III of the Rules of 2008 deals with the poisonous acute substances or wastes liable either to cause death or serious injuries or to harm health if swallowed or inhaled by skin contact. H 6.2, under Part C of the Schedule III to the Rules of 2008 deals with infectious substances being substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause diseases in animals or humans. These entries show that such kind of substances and wastes are hazardous and, therefore, have been shown under the list of 'hazardous characteristics. Where the Rules of 2008 specifically exclude the bio-medical waste covered under the Rules of 1998, there the Rules of 2000 also excludes untreated bio-medical waste from the ambit of municipal solid waste under Rule 3(xv). In other words, the Rules of 2008 would not apply to bio-medical waste and the Rules of 2000 would bring within its ambit only treated bio-medical waste. Thus the legislature has clearly postulated the field and the law which will regulate and govern the handling, treatment, management and disposal of bio-medical waste. The bio-medical waste wherever permitted to be handled, treated and disposed of in accordance with these Rules.

25. The Rules of 1998 formed a regulatory regime. It contemplates issuance of an authorization for the purposes of management, treatment, handling and disposal of bio-medical waste but certainly its provisions have to be construed and issuance of authorization

has to be in consonance with its parent Act, i.e. the Act of 1986. The question that needs to be answered now is that whether the establishment and operation of such a treatment plant covered under the Rules of 1998, requires environmental clearance in terms of the Notification of 2006.

26. The answer to this question from the above stated principles and provisions of the Act of 1986 and various Rules afore referred is that the environment clearance for establishment of a treatment, plant dealing with bio-medical waste would be necessary. It is for the reason that the field of operation of Rules of 1998 is different and distinct from the Notification of 2006 and primarily relates to regulatory measures, while the establishment and operation of the bio-medical waste plant would be dealt under the provisions of the Act of 1986 read with the Notification of 2006. The expression 'environment' as defined under the Act of 1986 would take within its scope, the activity of dealing with the bio-medical waste, particularly keeping in view the fact that it is a hazardous substance. The Notification of 2006 has been issued with reference to the provisions of the Act of 1986. Thus, it must find its construction and colour from the ambit of the Act and its object. Schedule to the Notification of 2006 deals with the various entries which in turn provide for kinds of projects that are sought to be established and operated and the competent authority which is to give environmental clearance for that purpose. At this stage we may refer to Entry 7(d) of the Schedule to the Notification of 2006, that reads as under:

7(d)	*Common hazardous waste treatment, storage and disposal facilities (TSDFs)*	*All integrated facilities having incineration and landfill or incineration alone*	*All facilities having land fill only*	*General condition apply*

27. A person who is interested in establishing and operating a plant under Entry 7(d) of the Schedule to the Notification of 2006, and is using an incinerator, alone or along with landfill, would fall under category 'A' project and therefore would require environmental clearance from the MoEF. Bio-medical waste undisputedly is a hazardous waste. Though covered under the Rules of 1998, a cumulative reading of the definition of 'hazardous substance' under the Act of 1986, 'hazardous waste' under the Rules of 2008 (particularly with reference to the Schedule) and the bio-medical waste and such treatment facility under the Rules of 1998 clearly show that the bio-medical waste is hazardous in nature. It may be a hazardous waste mixed with other kinds of wastes. We have already referred to the studies which show that hospital waste can consist of bio-medical waste, the municipal waste as well as other wastes. They collectively and individually are critically injurious to public health and environment. The object and purpose of the Act of 1986 and the Rules framed thereunder would be better served, if we give a liberal interpretation to the relevant provision, particularly entry 7(d) to include bio-medical waste and hold that it would require environmental clearance. The entry is wide enough and is intended to cover the bio-medical waste

facility as such an approach, even otherwise, would be in consonance with the legislative intent and scheme of Act of 1986.

28. Treatment of bio-medical waste would require much larger management mechanism and guidelines, which may fall squarely outside the limitations of the Rules of 1998. Bio-medical waste being hazardous by its very nature has two aspects: First, the individual and cumulative impact of establishing and operating such a plant upon the environment and secondly, the regulatory regime that would cover the collection, handling and disposal of the bio-medical waste. The Rules of 1998 do not comprehensively deal or are even expected to deal with the former, as its paramount object is to deal with the latter. The likelihood of injury to human health and environment during the handling, treatment and disposal of bio-medical waste has a very wide spectrum and would necessarily attract the provisions of the Act of 1986 and the Notification of 2006. There is no doubt that the authorization under the Rules of 1998 is a condition precedent to the handling, treatment and disposal of bio-medical waste, but as already indicated, it is a regulatory regime while its substantive origin is under the environmental laws and compliance therewith would also be necessary. We must thus take a view that as a principle, such plants would be covered under the Entry 7(d) of the Schedule to the Notification of 2006. The expression "common hazardous waste" is indicative of waste which may contain more than one element of hazardous waste. As we have already clarified, the hospital waste

contains a variety of wastages even under the head 'bio-medical waste'.

29. The WHO has classified various hazardous wastes in relation to health care or bio-medical waste like infectious waste coming from laboratory culture, waste from isolation wards, tissue swabs, pathological waste, pharmaceutical waste, genotoxic waste, waste with heavy metal and radio-active material. All these wastes, though generated from health care waste, are still not specifically covered under the Rules of 1998 but still may have to be handled, treated and disposed of by treatment facilities established in accordance with the Rules of 1998.

30. Another aspect that may be considered by the Tribunal in the same direction is that the definition of bio-medical waste under Rule 3(5) of Rules of 1998 is an inclusive definition, and therefore, very wide in its meaning and application. The schedule referred to in the definition takes into account the frequently available bio-medical waste and how the same should be treated. Still, there could be bio-medical waste beyond the scope of Schedule I which would have to be considered as such in view of the provisions of Rule 3(5) of the said rules and specific conditions and guidelines may have to be prescribed for handling such bio-medical waste.

31. The Rules of 1998 have limited field or sphere of operation in comparison to the provisions of the Act of 1986 and the Notification of 2006 which operate and control the environment at micro as well as macro levels. To put appropriate checks and ensure adherence to

law by the plants which are dealing with such bio-medical hazardous wastes and substances, it has to be considered and held that they are required to take environmental clearance under the provisions of the Notification of 2006.

32. In the backdrop of the above discussion, now we would revert to the facts of the case in hand. It is not in dispute that the appellant-units are carrying on the activity of handling, treatment and disposal of bio-medical waste and have obtained authorization under the Rules of 1998. The inspecting team that visited the premises of the appellants, specifically noticed the following:

> "Whereas the inspection was conducted by the representative of Central Pollution Control Board and Regional Officer of the Board on 19.05.2012, and the team pointed out following shortcomings.
>
> (i) **Infrastructure:-** Fire Fighting provision is not provided at all the salient points within the facility. Sign Board with contact details provide at the entrance of the facility, bio hazard symbol not provided. The shed under which treatment equipment provided is not as per CPCB guidelines and requires improvement (w.r.t "the tiled floor and side walls, proper drainage, collection etc).
>
> (ii) Treatment Equipment:-
>
> (a) **Incinerator:-**
>
> - As per recording system of the incinerator, the recording system indicates that the temperature maintained is ranging from C in primary and secondary chambers respectively.
> - Measuring devices for measuring 'negative draft' to be maintained in primary chamber, air flow rate in combustion chambers and pressure drop across wet scrubber is not attached with the incinerator and its APCD, due to which negative draft maintained within the primary chamber of the incinerator and the air supply during combustion process and pressure drop across venture could not be assessed.
> - Only electrical panel attached with the incinerator.

- Tamper proof PLC with, mechanized feeding system is not attached with the incinerator and manual feeding of waste is in practice.
- Stack height provided by the facility is only about 20 m and is not as per BMW Rules and the stack monitoring provided for the stack attached with the incinerator is not as per CPCB guidelines.
- Only water is used for scrubbing of incinerator gases which may not effective to control emission from incinerator.
- The facility does not have online measuring devices/flue gas analyser such as CO2. O2 and CO during the incineration operation as per CPCB guidelines.
- Upon opening of the charging door, fugitive omissions are coming out of the primary chamber due to the inadequate draft within the incinerator.
- Recording system attached with the facility is having graphical recording provision.

(b)**Autoclave, Shredder and Plastic container cutter:-**

- Autoclave installed by the facility is connected with the graphical recording system for recording operational maintained during the sterilization of waste using autoclave and only attached with the pressure gauge.
- There is no mechanical waste feeding provision with the autoclave installed in the facility tin loading of waste for treatment and for unloading of treated waste.
- Facility claims that the plastic waste after ensuring treatment by autoclaving is sold to the local vendor but not to the registered recycler.
- Validation test not conducted regularly so as to assess efficacy of the autoclave and records neither maintained.
- Plastic container cutter need to be provided with safety provision to avoid any injury to the waste handling worker as its blade is open in condition.

iii) **Effluent Treatment Plant:-**

- ETP is not provided with pH meter to know the pH levels of treated wastewater.
- The sequence of unit operations of the existing ETP is not proper and there is no Bio-logical treatment unit operation to ensure proper treatment prior to its recirculation in APCD.
- Also, there is no flow meter attached with the water supply line of the tube well to estimate water consumption per day.

iv) **Transportation vehicle and vehicle/container washing platform:-** A washings-platform provided for washing of vehicle/containers is not having proper provision for

collection of wash water, spill if any and further treatment through ETP.

v) Waste Sharp pit/incineration ash storage pit and DG set:- Covered ash pit provided for storage of incinerator ash generated within the facility. However, there is no waste sharp pit. DG Set is not having adequate attack height as per DG Set norms."

33. Besides noting the above deficiencies and shortcomings, the report has made a specific reference to the use of incinerator by the project proponents in relation to treating the bio-medical waste. It will be useful to notice at this stage that one of the project proponents, M/s Golden Eagle Waste Management Co. has even filed an affidavit challenging the grant of sanction/authorization by the Board to Respondent No.4. In this affidavit, it is averred that the land of the said respondent is a fertile and agriculturally vibrant, with human habitations on all sides, having private houses, management institute, health care service centre and tribal hutments in large number in its vicinity. A medical waste incinerator releases into the air a wide variety of pollutants including dioxins, furans, metals such as lead, mercury, cadmium, particulate matter, acid gases, etc. These emissions have serious adverse consequences on safety, public health and environment

34. The averments made before us are partially supported by the inspection conducted by the Board. Taking into account the cumulative effect and substance of these averments and the report, it is clear that despite the authorization, there is a serious challenge to the operation of these plants. They can prove injurious to human

health and environment. Use of the incinerator along with the landfills or independently would attract the provisions of Entry 7(d) of the Schedule to the Notification of 2006 in the light of the provisions of the Act of 1986. There is no occasion for the Tribunal to take the scope of Entry 7(d) as unduly restrictive or limited. It may be given its wide meaning and the Tribunal should adopt the principle of constructive intuition to give it a wider meaning to attain the primary object and purpose of the Act in question. Such an interpretation would serve the public interest in contrast to the private or individual interest. The environmental clearance would help in ensuring a critical analysis of the suitability of the location and its surroundings and a more stringent observation of parameters and standards by the project proponent on the one hand and impact on public health on the other.

35. For the reasons afore-stated, we sustain the objection taken by the respondents concerned and hold that the bio-medical waste treatment plants are required to obtain environmental clearance in terms of Entry 7(d) of the Notification of 2006. Having recorded the above finding, while keeping these petitions pending, we direct all the appellants and the respondents (project proponents) to obtain environment clearance in terms of site location, potential environmental impacts and proposed environmental safeguards from MoEF in accordance with law. If such applications are filed

Before MoEF, the same shall be dealt with and disposed of expeditiously.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

B.S. Sajwan
Expert Member

Dr. R.C. Trivedi
Expert Member

New Delhi
November 28, 2013