

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**WESTERN ZONE BENCH, PUNE AT PUNE**

ORIGINAL APPLICATION NO.34 OF 2019 (WZ)

IN THE MATTER OF:**Sus Road Baner Vikas Manch**

..... APPLICANT

VERSUS**Pune Municipal Corporation and Ors. .**

..... RESPONDENTS

WRITTEN SUBMISSIONS ON**BEHALF OF APPLICANT****MAY IT PLEASE THE HON'BLE TRIBUNAL**

Written Submissions on behalf of the abovenamed Applicant are as under: -

1. The Applicant has filed the present application to bring to the notice of this Hon'ble Tribunal the hardships faced by the residents of Sus Road & Baner areas in Pune on account of the air pollution caused by the Garbage Processing Plant at Survey No.48, Baner, Pune operated by the **Noble Exchange Environment Solution Pune** .
2. The Respondent No.7 (**Noble Exchange Environment Solution Pune**) has been allotted the land bearing Survey No.48, Baner, by the Respondent No.1. The said piece of land is located on a hillock and the machinery is installed by NEX on the slope of the said hillock. The machinery is placed in such a direction that the odour from the plant is spread in the entire area as it flows with the direction of the wind.
3. The said land was initially reserved for a bio diversity park as per the sanctioned development plan notified by the Respondent No.5. The Respondent No.1 has changed the reservation without holding any public hearing and without the consent of the residents residing nearby the plant.

4. The Applicant had enquired in January 2016 at the site regarding the construction of the plant. It was informed at the time to them that an Ice Factory is being set up at site. It was only after that the plant started functioning and the odour started spreading in the nearby area, the Applicant started gathering information pertaining to the said land. The Trucks loaded with garbage started parking the vehicles.
5. It was only after perusing the documents the Applicant came to know that Respondent No.7 was granted Environmental Clearance dated 1st February 2016 by the State Level Environment Impact Assessment Authority (SEIAA) and authorization dated 2nd December 2015 by the Respondent No.2.
6. The Applicant submits that; formality of Public Hearing was conducted by the Respondent No.2 at Village Ambi on 16th September 2015. The true intention of the public hearing was totally bypassed by the Authorities in collusion with Respondent No.7. This has caused a major problem for the citizens in the vicinity and has led to health hazards.
7. The Applicant had also approached the Respondent No.3 for redressal of their grievance. The officers of the Respondent No.3 had caused a visit to the garbage dumping plant and noted various discrepancies. In accordance to the visit of the official of the Respondent No.3 a notice dated 6th July 2017 was sent to Respondent No.7 under Section 5 of the Environment Protection Act, 1986.
8. The Hon'ble Tribunal issued certain directions in the Original Application No.606 of 2018 and formed certain committees to look into the issues of the MSW Rules, 2016. The Applicant in view of the said directions immediately addressed a detailed representation to the Committee for the West Zone as constituted by the Hon'ble Tribunal on 28th January 2019.
9. The Applicant submits that the plant of the Respondent No.7 was closed for almost 1.5 years. Suddenly from 1st February 2019, work has commenced at the plant and the Respondent No.7 is in the process to make the plant functional.

The odour has spread in the area and is causing tremendous hardships to the citizens. The Applicant had requested the Hon'ble Chairperson of the Committee for a hearing and also to issue directions if required to stay the operations. However, there has been no reply to the representation of the Applicant and hence has filed the present Original Application before this Hon'ble Tribunal.

10. It is submitted that considering the **Report of CPCB dated 10.10.2019** following are the important points required to be considered in the present Original Application –

- a. The plant is located in 1494 sq.m. having capacity to process 300MT of food waste per day (in Para 5 iv of the Report). As per the definition (7) prescribed in MSW Rules, 2016 no buffer zone is created by the Respondent No.7.
- b. The Respondent No.3 stated in the report (Para no.3(iii) of the Report) that the plant does not possess consent to operate and is operating after obtaining authorization from Respondent No.2 Maharashtra Pollution Control Board.
- c. There is no justification for Discharge of Effluents for the period from 17.12.2015 to 17.07.2017. The Domestic effluent is treated in septic tank and overflow is connected to sewerage system of PMC. Floor wash effluent is also channelized to the said sewerage system. Drainage system for channelizing effluent and run-off to the said sewerage system has been commissioned in March 2019. It is sufficient to conclude that the effluent was discharged in open from 17-12-2015 till 17-07-2017
- d. The report with some adverse observation (in Para No.5- v, vi, vii). The Respondent No.3 states in their report that “The Plant was found operational at the time of Visit and spraying of herbal fragrances through misting system installed across the boundaries of the site was also found operational. Further they have observed / stated that, **“Segregation rejects found being transported in open truck without any cover,**

such open carriage may cause odour nuisance during their transportation.”

- e. The waste processing facility has been installed at the slope of hillock which is against the MSW Rules, 2016. The wind speed is very high in slop of hillock resulted in odour spreads in the whole residential area. The odour control system is not working at the Plant.
- f. The guidelines of Respondents No.3 dated April 2017 state that the plant shall not be established within 200 meters of the nearest habitat. It is worthwhile to mentioned herein the Swadesh Green CHS is located at a distance of 100 meters from the plant is the worst affected on account of the odour emanating from the plant. There are 11 buildings located within 200 meters and also upcoming constructions.
- g. The said plant is also located at a distance of 16 kms from the Pune International Airport. NEX has not obtained any NOC from the Airport Authority of India, before the Commencement of the plant. The said act is in breach of the Rules, 2016.
- h. Joint committee and stated in their report dated 10.10.2019 in (4) Observations- (c) that **“THE OFFICIALS OF JOINT INSPECTION FELT PREVALENCE OF ODOUR IN AND AROUND THE PLANT PREMISES.”**

11. Thus relying on the said facts the Applicant submits that the plant of Respondent No.7 is illegally constructed and causing continuous damage to the environment is required to be demolished and heavy cost be imposed for the established defaults.

12. The Applicant is filing compilation of judgments to counter the Arguments.

- a. The Hon’ble Supreme Court in Lafarge Umiam Mining Private Limited v Union of India (2011) 7 SCC 338 (“Lafarge”) has upheld the decision to grant ex post facto clearances with respect to limestone mining projects in the State of Meghalaya. In Lafarge, the Court dealt with the question of whether ex post facto clearances stood vitiated by alleged

suppression of the nature of the land by the project proponent and whether there was non-application of mind by the MoEF while granting the clearances. While upholding the ex post facto clearances, the Court held that the native tribals were involved in the decision-making process and that the MoEF had adopted a due diligence approach in reassuring itself through reports regarding the environmental impact of the project. Chief Justice SH Kapadia speaking for the three judge Bench observed:

“119. The time has come for us to apply the constitutional “doctrine of proportionality” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of “margin of appreciation” in favour of the decision-maker would come into play.”

(Emphasis supplied)

- b. In *Electrotherm (India) Limited v Patel Vipulkumar Ramjibhai* (2016) 9 SCC 300, The Hon'ble Supreme Court dealt with the issue of whether an EC granted for expansion to the appellant without holding a public hearing was valid in law. Justice Uday Umesh Lalit speaking for the Bench held thus:

“19...the decision-making process in doing away with or in granting exemption from public consultation/public hearing, was not based on correct principles and as such the decision was invalid and improper.”

- c. In *Hanuman Laxman Aroskar vs. Union Of India* (2019) SCC Online SC 441, The Hon'ble Supreme Court on Public Hearing has observed that –

“G. Public Consultation

100 The importance of public consultation is underscored by the 2006 notification. Public consultation, as it states, is “the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate”. This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. Public consultation is a process which is designed to hear the voices of those communities which would be affected by the activity. They may be affected in terms of the air which they breathe, the water which they drink or use to irrigate their lands, the disruption of local habitats, and

the denudation of environmental eco-systems which define their existence and sustain their livelihoods.

101 Public consultation involves a process of confidence building by giving an important role to those who have a plausible stake. It also recognizes that apart from the knowledge which is provided by science and technology, local communities have an innate knowledge of the environment. The knowledge of local communities is transmitted by aural and visual traditions through generations. By recognizing that they are significant stakeholders, the consultation process seeks to preserve participation as an important facet of governance based on the rule of law. Participation protects the intrinsic value of inclusion.

102 The 2006 notification postulates:

(i) A public hearing at or in close proximity to the project site to ascertain the views of “locally affected persons”;

(ii) Obtaining written responses from “other concerned” individuals having a “plausible stake” in the environmental aspects of the project or the activity;

(iii) The duty of the SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time;

(iv) Placing on the website of the Pollution Control Board a summary of the EIA report in the prescribed format and the making available of the draft EIA report by the regulatory authority on a written request by any person concerned, for inspection;

(v) *The duty of the applicant to address all material concerns expressed during the process of public consultation;*

(vi) *The making of appropriate changes in the draft EIA and EMP; and*

(vii) *The submission of the final EIA report by the applicant to the regulatory authority for appraisal.*

Each of these features is crucial to the success of a public consultation process. Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions which affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential environmental effects.

103 Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. Each of these elements is crucial to the design features

of the 2006 notification. A breach will render the process vulnerable to challenge on the ground that: (i) significant environmental concerns have not been taken into account; (ii) there was an absence of a full disclosure when the EIA report was put up for consultation; and (iii) concerns which have been expressed by persons affected by the project have not been adequately dealt with or analysed.

104 The public consultation was held on 1 February 2015 at Mopa. Nearly 70 persons spoke on the occasion and 1,586 persons signed the attendance sheet.

1,150 representations were received. Some of the environmental concerns expressed during the public hearing are catalogued below:

(i) Mopa plateau has multiple water sheds and the discharge of water goes down to the rivers;

(ii) Nearly forty springs would be affected along with flora and fauna;

(iii) The public hearing had been conducted in an area where the land was barren and with no plantation;

(iv) The impact on river Chapora, which is within a 10 kilometre radius from the project, has not been adequately analysed;

(v) Mopa plateau has a natural mechanism for ground water recharge;

(vi) Protection of the Western Ghats is necessary, particularly with the view to not disturb flora and fauna;

(vii) *The EIA report has not been made available to the affected areas and Gram Panchayats in the buffer zone;*

(viii) *Local plantations would be affected;*

(ix) *The number of trees to be felled by the project proponent has not been specified in the EIA report;*

(x) *The Dodamarg Wildlife Sanctuary had been 'sanitized' by the High Court;*

(xi) *Forest clearance had not been obtained;*

(xii) *The sacred groves of the area have not been described, including the Barazan which will be lost;*

(xiii) *The slopes sustain cashew plantations with nearly forty lakh cashew trees resulting in an annual income of Rs Fifty crores; and*

(xiv) *No study has been carried out in the 10 kilometre radius falling in Maharashtra.*

105 These concerns are at the forefront of the debate in the present case. What is significant, is the manner in which they were projected before the EAC at its 149th meeting on 26 June 2015 where the project proponent made a presentation. The Minutes of the meeting recorded the following observations of the project proponent:

“x. Public Hearing was conducted on 01.02.2015 at Simechen Adven, Mopa, Goa. The major issues raised during public hearing and responses sought from the project proponent related to employment opportunities.”

(Emphasis supplied)

On the basis of a factual analysis, Ms Shenoy has submitted that only seven out of the 68 objections dealt with the issue of employment. Evidently, the project proponent failed to address the other significant concerns in the manner which is required by the 2006 notification.

106 In Utkarsh Mandal v Union of India⁵², the Delhi High Court has succinctly summarized the duty of the EAC to apply its mind to the objections raised in the course of public hearings:

“It is that body that has to apply its collective mind to the objections and not merely the MoEF which has to consider such objections at the second stage. We therefore hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negated. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary.”

107 Crucial objections and environmental concerns which were raised during the consultative process were reduced to a single issue by the project proponent before the EAC: the need for employment

opportunities. The project proponent failed in its duty to inform the EAC. The record does not indicate a critical appraisal or analysis by the EAC. The EAC was duty bound to apply its mind to the environmental concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by the EAC. The Minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before the EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 notification in this regard.

13. The Applicant therefore prays that the Application be allowed the Environmental Clearance dated 01.02.2016 may kindly be revoked as illegal and damages by way of environmental compensation may kindly be imposed upon the Respondent No.7.

Pune

Date: 18/9/2020

Advocate for Applicant