

Item No. 02

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 180/2021

Mukul Kumar

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 27.07.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Vivek Singh, Advocate

ORDER

1. Grievance in this application is against violation of Biomedical Management Rules, 2016 (BMW Rules) by Respondent No. 7, SP Green Light Environment Waste Management LLP (SPGLEWML), Bareilly, UP, in operating a Common Biomedical Waste Treatment (CBWT) Facility situated at village Saalpur Navadiya Pargana, Miranpur Katra, Tehsil Tilhar, District Shahjahanpur, UP.

2. The applicant has referred to media reports to the effect that the Facility in question is non-compliant with the BMW Rules read with the Guidelines for handling and treatment and disposal of waste generated during treatment/diagnosis/quarantine of Covid-19 patients, issued by CPCB, revised from time to time. It is further stated that as per media reports, huge dumps of Covid-19 waste including PPE kits /gloves/other biomedical waste were dumped in an open area inside the premises of a

300 beds government Covid hospital in Bareilly. These heaps also include swab collection kits, IV tubes and other such biomedical waste in huge numbers. Kits found disposed of inside and outside the hospital were not from the hospital facilities but collected from other places and dumped outside and inside the hospital premises. Stray animals were found foraging the waste and also scattering it around. PPE kits were being burnt within the hospital premises, without following guidelines for proper disposal. The smoke emanating from the same caused serious breathing problems to the patients inside the 300 bed Covid hospital. The biomedical waste generated from Districts Bareilly, Rampur, Pilibhit and Badauan is being collected and disposed of by Respondent No. 7 unscientifically without being transported to proper destination for scientific handling. Small vehicles are being used by Respondent No. 7 to collect biomedical waste from various private and Government hospitals, clinics, Covid-treatment Centres in Districts Bareilly, Rampur, Pilibhit, Moradabad and Badauan. Big Truck is then sent to Shahjahanpur. The smaller vehicles, in which the waste is collected from the surrounding Districts, never go to the Facility to be sanitized and disinfected and are parked in the Government hospital premises. The GPS data from the data tracker in the smaller vehicles will confirm that these vehicles never go to the Facility and are thus not disinfected and sanitized. They do not even complete their cycle of collecting waste from HCF and directly taking them to the plant in Shahjahanpur. The State Authorities are permitting biomedical waste to be collected over a radius of 150 kms from other Districts like Moradabad, Badauan, Rampur and Pilibhit and to be transferred etc. in the premises of a Government Hospital in Bareilly and then taken to the CBTWF which is located in Shahjahanpur. The CBTWF Shahjahanpur is located 85 kms away from Bareilly. This is very hazardous to residents in Bareilly. Bareilly has three medical colleges, one 300 bed Super Specialty Government

Hospital (which was declared as Covid Hospital), one District Hospital and one mental hospital and several health clinics and nursing homes, all of which generate biomedical waste.

3. The applicant has further stated that as per the license granted to Respondent No. 7, they are entitled to collect waste from a radius of 75 kms. However, the license conditions are being violated and waste collected over a radius of 150 kms is being collected and transported. Rampur is 125 kms away from the CBTWF facility in Shahjahanpur. Rampur District has more than 300 Health Care Facilities, including two Government Hospitals, seven community health centres, five primary health centres. The community health centres and the primary health centres are each 30-40 kms away from the District hospitals. Only one vehicle is being used to collect all the biomedical waste generated in Rampur. There is only one vehicle being used in Badauan, Pilibhit and Moradabad respectively. Each of these Districts have over 300 registered Health Care Facilities. These districts are 125-150 kms away from the Shahjahanpur facility. It is not possible to collect waste from all premises every day but the vehicles are not sent for sanitization and do not complete their route which can be verified from the GPS data required to be maintained by the respondents. The vehicles are parked and waste is off-loaded to the Truck in Bareilly.

4. The applicant has further stated that under Rule 4, it is the duty of the occupier of the facility to ensure that biomedical waste is handled without any adverse effect on human health and environment. Rule 4 further mandates that every occupier should ensure that there is no secondary handling or inadvertent scattering of spillage by animals. Rule 4(b) further provides that biomedical waste is to be directly transported from the premises of hospital etc. to the facility. Rule 4(g) enjoins the

occupier to ensure that training is provided to all health care workers. Rule 4(1) mandates that occupiers are to ensure the occupational safety of the health care workers and other involved in handling of biomedical waste by providing appropriate and adequate personal protective equipments. Rule 5 states that the duties of the operator of the CBWT Facility. Rule 7 mandates that the biomedical waste is not to be disposed of in the premises of the occupier i.e. hospitals etc. Rule 8 mandates that no untreated biomedical waste is mixed with other waste. The operator is to ensure compliance with Bar Code and GPS requirements. Under Clause 12(b) of the Revised Guidelines for CBWTF, the vehicles are required to be owned by the Facility. The CBWTF cannot use contracted vehicles. Every time a vehicle is unloaded, the empty waste containers are required to be washed properly and disinfected under the guidelines. Under Rule 12, the State Government is to ensure compliance with the Rules by the CBWTF. Under Rule 14, records relating to collection, storage, transportation, handling etc. are required to be maintained by the operator.

5. It is further stated that CPCB has also developed Covid-19 waste tracking software named "Covid19BMW" to monitor Covid-19 related biomedical waste and to compile the data through electronic system. The software tracks Covid-19 related bio-waste at the time of generation, collection and disposal. Guidelines for handling, treatment and disposal of waste generated during treatment/ diagnosis/ quarantine of Covid-19 patients, have been issued by CPCB. The said guidelines were revised in July 2020 pursuant to the directions issued by this Tribunal in O.A. No. 72/2020. As per the guidelines, separate record is to be maintained for waste generated from Covid-19 wards. Further, Covid-19 waste generated from quarantine centres etc. is to be handed to the waste collector engaged by the CBTWF operator at the doorstep. Under clause (d) of the guidelines,

the duties of the CBWTF are prescribed. Guidelines for monitoring compliance of CBWTF by State PCBs/PCCs, have been issued by the CPCB. The said guidelines were issued pursuant to directions to this Tribunal in O.A. No. 110/2020, *In re: News item published on 01.07.2020 in the local daily named "The Hindu" titled "Ramky Group accused of dumping biomedical waste in the open in Hosur."*

6. The applicant has also referred to order of this Tribunal dated 23.04.2020 in O.A. No. 72/2020, *In Re: Scientific Disposal of the biomedical waste arising out of Covid – 19 treatment-compliance of BMW Management Rules, 2016.* Operative part of order is as follows:-

"Disposal of COVID-19 waste in general bins so as to be part of municipal waste or unscientific handling sewage and other liquid waste without safeguards can also be hazardous. There is also need to incorporate best practices in the light of further experience and new thoughts emerging from time to time, apart from continued supervision and monitoring, compiling data in an online format, use of electronic /digital manifest system to track and log COVID-19 waste from all sources, preventing its accidental spillage, analyzing the data for strategic planning and the feedback by creating necessary software, to the extent viable.

There is also need for creating awareness about the precautions and steps to be taken by all handlers and workers as well as citizens, making a model plan, to be adopted locally by the Panchayat, Sub-division, District and State authorities with such further changes as may be necessary in local conditions. Health of all operators has been protected and preventive measures taken. There is need for orientation/training of persons responsible for compliance in Local Bodies and Health department by an online mechanism besides providing them with adequate protective gear. CPCB has to take lead and coordinate with media as well as the concerned Central/State departments.

Let the Chief Secretary of States/UTs by coordinating the activities of State's concerned departments like of Urban Development, Health, Irrigation & Public Health also closely monitor the scientific storage, transport, handling, management and disposal of COVID-19 waste as its unscientific handling poses a grave threat environment and health of people. At the national level, let a high level task team of Ministry of MoEF&CC, Health UD, Jal Shakti, Defence and CPCB supervise the handling and scientific disposal of COVID-19 waste in accordance with the guidelines.

Let the State Departments of Environment and PCBs/PCCs ensure compliance of Biomedical Waste Management Rules, 2016 and furnish action take report to CPCB and CPCB take further steps and furnish a consolidated report to this Tribunal of the steps taken and

the ground status as on 31.5.2020. The report may be furnished by 15.06.2020.”

7. The matter was further considered in the light of CPCB and oversight committee report and further follow up action was directed vide order dated 18.01.2021 as follows:

“8. In view of above, further follow up action may be taken by all the States and UTs, which may be further monitored by the CPCB. The Chief Secretaries of all the States/UTs may, while reviewing the COVID situation, also review the status of compliance of the COVID related Bio-medical Waste Management at least once in every month, till the situation so requires.

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11. The report is accepted and further action may be taken in terms of the recommendations by the concerned authorities in the State of UP, which may be monitored by the Chief Secretary, UP. Apart from the action to be taken in the State of UP, all the States/UTs may take further follow up action in terms of para 8 above which may be reviewed by the Chief Secretaries of all the States/UTs and also monitored by the CPCB at the national level.”

8. It may also be mentioned that the issue of compliance of BMW Rules was considered by this Tribunal in OA 710/2017, *Shailesh Singh v. Sheela Hospital & Trauma Centre, Shahjahanpur & Ors.* The Tribunal directed preparation of District Environment Plans and bridging the gaps found in compliance of the Rules, after reviewing the progress in terms of earlier orders. Order dated 18.01.2021 in the said matter held as follows:

“5.As already noted, vide order dated 15.7.2019, direction was issued for preparation of District Environment Plans as per Articles 243G, 243W and 243ZD read with Schedules 11 and 12 of the Constitution. The District Magistrate as head of the District Planning Committee was to monitor compliance of environmental norms, including Bio Medical Waste Management Rules once every month and send a report to the Chief Secretary. Relevant part of the order is extracted below:

“We find it necessary to add that in view of Constitutional provisions under Articles 243 G, 243 W, 243 ZD read with Schedules 11 and 12 and Rule 15 of the Solid Waste Management Rules, 2016, it is necessary to have a District Environment Plan to be operated by a District Committee (as a part of District Planning Committee under Article 243 ZD) with representatives from Panchayats, Local Bodies, Regional Officers, State PCB and a

suitable officer representing the administration, which may in turn be chaired and monitored by the District Magistrate. Such District Environment Plans and Constitution of District Committee may be placed on the website of Districts concerned. The monthly report of monitoring by the District Magistrate may be furnished to the Chief Secretary and may be placed on the website of the District and kept on such websites for a period of one year. This may be made operative from 1.08.2019.”

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11. *From the above it is seen that there are huge gaps in the compliance of authorization regime. In some of the States, compliance is ranging from 17% to 38% only. We also note underutilization of the common bio-medical facilities at many places. Adequacy of facilities and their siting may need review. Such facilities must obtain requisite Environmental Clearance (EC). Recycling of waste will only be through authorized recyclers. As observed earlier, it is utmost necessary to ensure that hazardous bio-medical waste is not mixed with the general waste. CPCB needs to review the compliance status from time to time, atleast once in every quarter and issue directions based on the observations from the reports received.*

12. *CPCB may ensure that for strict compliance of the rules, the compensation regime is duly applied against the defaulters, following due process. Standards of handling of BMW need to be duly complied. The authorities must ensure that waste is disposed of only through authorized agencies, common facilities are located as per siting guidelines and they must have EC. There should be no pilferage by unauthorized recyclers. Adequate number of common bio-medical facilities should be set up. The Chief Secretaries of all the States/UTs may oversee compliance atleast every quarter in terms of direction of this Tribunal vide order dated 16.01.2019 in O.A. No. 606/2018 followed by further orders. The Chief Secretaries may inter-alia ensure that authorization is secured by every health care facility in their respective jurisdiction and also there is adherence to the norms. Similarly, the District Magistrates may, at their level, take necessary steps in their Districts, in accordance with the District Environmental Plans. As found by the Oversight Committee for UP, ETPs are either not provided or are not functional in various health care facilities as required under the Rules. Compliance in this regard may be ensured in all States/UTs. While permitting deep burials, it may be ensured that ground water contamination does not take place.*

13. *Apart from the above general directions applicable to all the States/UTs, the UP State PCB may look into the compliance status of the Hospitals, who are parties in O.A. Nos. 710/2017, 711/2017, 712/2017 and 713/2017, and give a report to the Oversight Committee for UP, headed by Justice S.V.S. Rathore, a former Judge High Court of Allahabad within two months.”*

9. The District Environment Plan prepared for Bareilly, filed by Oversight Committee in OA 360/2018, *Shree Nath Sharma v. Union of India & Ors.*, does not make any mention on details of Bio-medical waste

on quantification, regulation enforcement, Common treatment facilities, and others. District Magistrate, Bareilly needs to get proper management plan on the subject.

10. Further, in view of the significance of compliance of BMW Rules and the violations alleged, we find it necessary to verify the facts and status of compliance to consider whether any direction is required by this Tribunal under Section 15 of the NGT Act for protection of the environment. Further, compliance status needs to be ascertained at other places in the State of UP and the country.

11. Accordingly, we direct as follows:

- i) District Magistrate, Bareilly may update District Environment Plan by including the subject of compliance of BMW Rules in the light of para 9 above.
- ii) A four-member joint Committee comprising CPCB, State PCB, District Magistrate, Bareilly and the Nodal Officer, Biomedical Waste Department of Medical and Health, Kaiserbagh, Lucknow, UP. may ascertain the status of compliance of BMW Rules, 2016, orders of this Tribunal dated 23.04.2021 in O.A. No. 72/2020 and order dated 19.03.2021 in O.A. No. 110/2020 and the CPCB Guidelines on the subject. The Committee may also look into the GPS data of the vehicles used by the Facility. The joint Committee may furnish its report within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The State PCB will be the nodal agency for coordination and compliance.

- iii) The Oversight Committee constituted by this Tribunal to monitor compliance of directions of this Tribunal on environmental issues in the State of UP, headed by Justice SVS Rathore, former Judge of the Allahabad High Court, may furnish a report about the compliance status in the State of UP within two months by e-mail in same manner as in above direction.
- iv) CPCB may compile information about compliance status of Rules, orders of this Tribunal referred to earlier and CPCB guidelines by organizing VC interaction with the PCBs/PCCs and Health Departments of all the States/UTs. Such Video conference may be held within one month and report furnished to the Tribunal within three months by e-mail in same manner as in above direction.

A copy of this order be forwarded to the CPCB, State PCB, District Magistrate, Bareilly, Nodal Officer, Biomedical Waste Department of Medical and Health, Kaiserbagh Lucknow, UP, Health Secretaries of all the States/UTs, all District Magistrates, PCBs and PCCs and Justice SVS Rathore, former Judge Allahabad High Court.

List for further consideration on 08.12.2021.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

July 27, 2021
Original Application No. 180/2021
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