

Item No. 01

Court No. 1

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

Appeal No. 03/2023

Medical Pollution Control Committee

Appellant

Versus

State of Uttarakhand & Ors.

Respondent(s)

Date of hearing: 06.03.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Appellant: Mr. Divya Prakash Pande with Ms. Sakshi Popli, Advocates

ORDER

1. This Appeal has been preferred against grant of Environmental Clearance (EC) by SEIAA, Uttarakhand in favour of Respondent No. 5, M/s Bharat Environment Solutions for proposed Common Bio Medical Waste Treatment Facility (CBMWTF) at Khasra No. 923 to 1002, Village Kodarna, Tehsil Narendra Nagar, District Tehri Garhwal, Uttarakhand. The EC is subject to laid down conditions applicable at pre-construction Phase, Construction Phase, Operation Phase and for entire life of project. Further, duties/responsibilities of CBMWTF and Urban Local Bodies in the area have also been specified.

2. Case of the appellant is that the activity in question is 'red' category which is not permissible in Doon Valley in view of Doon Valley Notification dated 01.02.1989. The appellant filed W.P. (M/S) No. 1586/2020 before

the Uttarakhand High Court challenging CPCB circular dated 30.04.2020 for treating Common Bio-Medical Waste Treatment Facilities (CBMWTF/CBWTF) as non-industrial operations. The same has been disposed of on 06.12.2022 with liberty to prefer Appeal before this Tribunal under Section 16(h) of NGT Act. Review Petition against the said order has been dismissed by the High Court on 15.02.2023.

3. We have heard learned Counsel for the applicant and perused the records.

4. Contentions raised on behalf of the appellant are these. EC has been granted without application of mind. The area is within Doon Valley and within 10 km of Reserved Forest where no 'red' category establishment is permissible. CPCB Guidelines dated 21.12.2016 prohibit a facility within radial distance of 75 kms of an existing facility. The appellant being an existing facility within 75 kms, EC could not be granted without gap analysis, as per Revised Guidelines of CPCB. The CPCB circular classifying the activity as non-industrial is in conflict with Doon Valley Notification dated 01.02.1989 as revised on 06.01.2020. The same cannot be given effect to.

5. We have duly considered these submissions but we are not able to agree with the same.

6. Doon Valley Notification dated 01.02.1989 was issued in the wake of judgment of the Hon'ble Supreme Court dated 30.08.1988 in *Rural Litigation & Entitlement Kendra v. State of U.P & Ors., (1989) Supp 1 SCC 504* due to devastating effect of mining in the area. Certain activities such as mining were prohibited while several other activities were permitted subject to grant of EC even if such activity was not in the EIA Notification

dated 14.09.2006 specifying activities for which EC is required. The said Notification was amended on 06.01.2020 replacing the Annexure to the Notification dated 01.02.1989 listing permissible activities, thereby removing the restriction except those laid down under circular of CPCB dated 07.03.2016, followed by circular dated 30.04.2020, Annexure-A-2. By the said circular, certain activities have been mentioned in Annexure-2 to the circular as non-industrial activities. Serial No. 6 of this Annexure is as follows:

Covered under Red Category of Industries earlier				
Sl. No.	Sl. No. (as per CPCB Document)	Industry Sector	Pollution Index	Remarks
1 to 5.....xxx.....xxx.....xxx				
6	-	Common treatment and disposal facilities (CETP, TSDF, CBMWTF, effluent conveyance project, incinerator, MSW sanitary land fill site)		<p>i. All such facilities are classified as Red but special category projects as these are parts of pollution control facilities.</p> <p>ii. In case of CETP, the categorization will depend upon the category of member industries being served.</p>

7. We find that there is no conflict in the circular dated 30.04.2020 and Doon Valley Notification dated 01.02.1989. Even if activities of the waste treatment are hazardous, since waste generation cannot be prevented, the treatment thereof is a compulsion.

8. Contention that no facility can be allowed within 75 kms distance of the facility set up by the appellant can also not be accepted. This aspect has been considered in recent order of this Tribunal dated 23.01.2023 in

M.A. No. 98/2022 in OA No. 180/2021, Mukul Singh vs. State of Uttar Pradesh & Ors., as follows:-

“12. Record of discussion of meeting conducted by the CMC held on 09.05.2022 (Annexure 7 to the report) shows suggestions to modify existing guidelines on the issue of CBMWTFs for better compliance. At the moment only one CBMWTF is allowed in radius of 75 KMs and upto 1000 beds to enable service provider fair return on investment. Important suggestion of Odisha and Punjab PCBs is to reduce limit of 75 km radius for CBMWTF to 40 or 50 km decrease mandatory requirement of 1000 beds for CBWTF facility approx. 500 beds to achieve the aim of ‘One district, one Facility’. After all, fair return to investor is not to take precedence over compliance as is being understood in certain quarters. Relevant extract the discussion in the meeting is as follows:

“5. On the aspect of operation of CBWTFs, the representative of Odisha PCB and Punjab PCB suggested that the limit of 75 km radius for CBMWTF should be further reduced to 40 or 50 km radius, as a prescription of radius in small states allow a player to create monopoly in the area for BMW management. Further, it was also suggested that the mandatory requirement of 1000 beds for CBWTF facility should be decreased to approx. 500 beds to achieve the aim of ‘One district, one Facility’. However, the CMC and other stakeholders noted that the proposal needs further discussion among various entities engaged in BMW management.”

13. No decision appears to have been taken on such important suggestion. It is well known that inadequate number of treatment Facilities are not able to cater to large areas and large number of beds as it makes daily collection and treatment difficult. This gap results in unscientific disposal of bio-medical waste to the detriment of public health. In this regard, we may refer to observations of the Tribunal in order dated 15.12.2022 in OA No.900/2022, M/s Rainbow Environments Pvt. Ltd. vs. State of Punjab & Ors., as follows:

8. In above background, guidelines on the subject are to be understood. Object of guidelines being to ensure effective treatment of bio medical waste for protection of environment and public health and not merely to advance business interest of a Facility by creating monopoly, prime concern is bridging of gap in compliance of norms for which free play in joints has to be allowed to the statutory prescribed authority under the BMW Rules to take effective measures for better compliance and coverage, including availability of a Facility close to generation of waste and efficiency of existing Facility. ...”

14. Thus, **with a view to ensure protection of environment, we find it necessary to direct that pending further decision of the CMC in the matter, radius for permission for additional**

CBMWTFs will stand reduced to 40 km of existing Facility and number of 1000 beds will stand reduced to 500 beds for addition of a Facility, as suggested by Odisha and Punjab State PCBs. State PCBs will be entitled to further reduce the gap, if found necessary in a fact situation, for ensuring better compliance. Principle of one district one facility cannot be universal as there may be big districts which may require more than one Facility or there may be small districts which may have to be dealt with differently.”

9. With regard to the project being within 10 kms of the Reserved Forest, we find that order of SEIAA dated 30.06.2020 laying down Terms of Reference for Environment Impact Assessment specifically require study of impact of the project and radial distance of 10 kms from the project site. There is nothing to show adverse impact of the project.

We thus, do not find any merit in the appeal which is dismissed.

Needless to say that if there is any violation of environmental norms or EC or consent conditions, it will be open to the aggrieved party to take remedies as per law.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

March 06, 2023
Appeal No. 03/2023
SN