

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

Execution Application No. 35/2019
IN
O. A. No. 150/2014
(With report dated 20.01.2020)

Ajay Sipahiya & Ors.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 12.02.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER**

For Applicant(s):

Mr. Rupinder Singh Suri, Senior Advocate
with Mr. Rohit K. Aggarwal, Ms. Dipika Jain,
Advocates

For Respondent(s):

Mr. Shubham Bhalla, Advocate for M.C.
Chandigarh
Mr. Anuj Bhandari, Advocate for CPCB

ORDER

1. This order is being passed in continuation of order dated 28.11.2019 on the subject of execution of order of this Tribunal dated 07.11.2017 dealing with the grievance for disposal of waste in Chandigarh. Earlier, the matter was dealt with inter-alia vide order dated 24.07.2017 in the context of unsatisfactory working of solid waste processing plant operated by M/s Green Tech Fuel processing plant run by M/s Jaiprakash Associates Limited under a contract dated 30.08.2005 from the Municipal Corporation, Chandigarh for 30 years. Disputes arose between the project

proponent and the Municipal Corporation, Chandigarh affecting waste management and consequential impact on environment.

This Tribunal directed:

“5. That the Project Proponent shall be entitled to tipping fee @ Rs. 500/- per MT on the quantum of waste received at the plant, for a period of nine months from today. Payment of this tipping fee which has already been agreed between the parties, shall be, without prejudice to the rights and contentions of the parties.

6. The Project Proponent shall invoke the arbitration clause in accordance with the terms of the contract, within four weeks from today. In the event the Project Proponent fails to invoke the arbitration clause in time, there shall be no liability on the Corporation to pay tipping fee after lapse of six weeks from today. If the arbitration is invoked and the Project Proponent file the arbitration claim for all its disputes then the tipping fee payment shall not be stopped, under any circumstances, by the Corporation.

7. If the entire waste upto 450 MT/day is brought to the plant of the Project Proponent by the Corporation or its agency, the same shall be received, dealt with and disposed of in accordance with rules.

8. The Project Proponent would be at liberty to upgrade its plant to the existing technology within three months from today, at their own costs.

9. The Corporation would be at liberty to move learned arbitrator for any relief that may be entitled to in law.

After expiry of the period of nine months and subject to the report of the Committee and final order of this Tribunal, the parties would take recourse to the remedy under the contract. That any person obstructing and not complying with the directions contained in this order, shall be liable to be personally prosecuted against in accordance with law, irrespective of his/her status.”

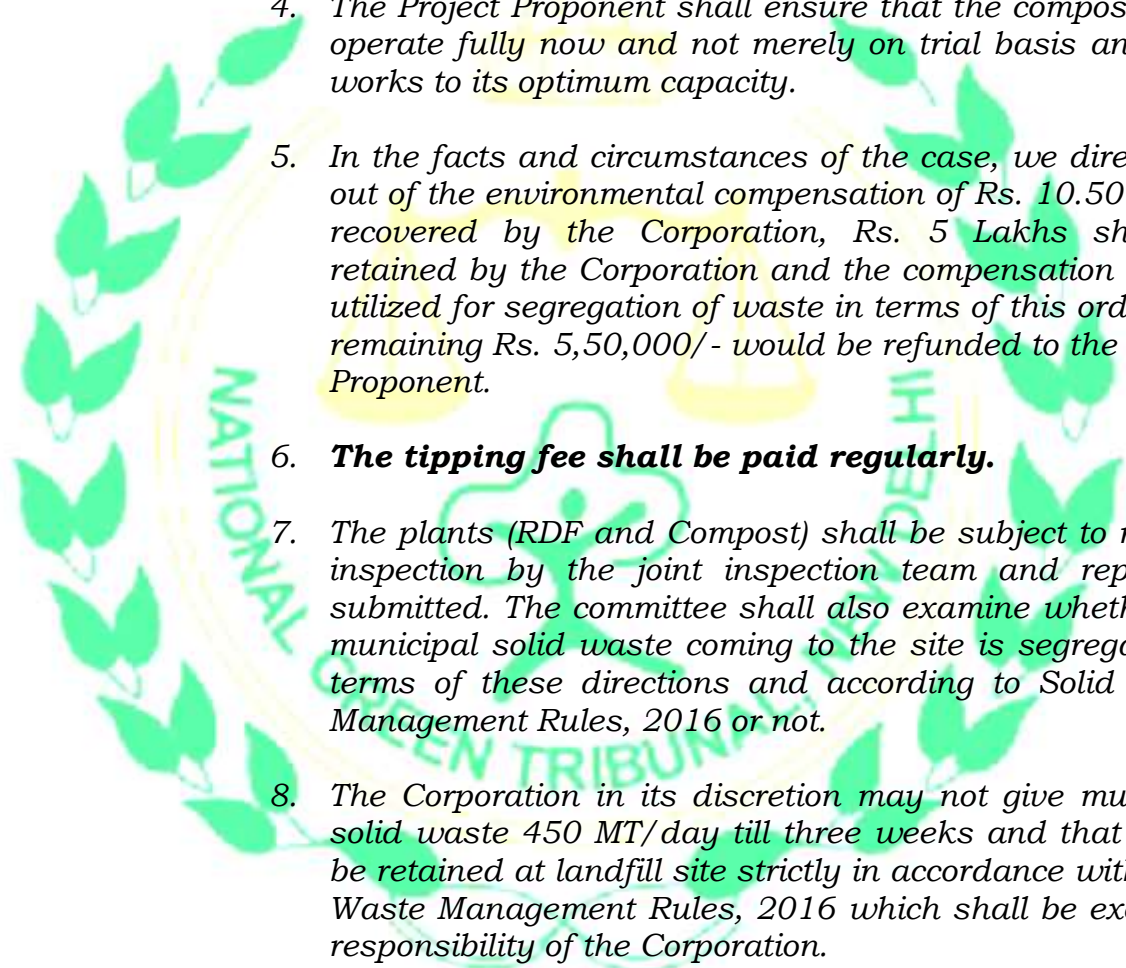
2. A Committee was also constituted to give a report to this Tribunal every two months.

3. Thereafter, on 07.11.2017, the application was disposed of inter-alia with the following directions:

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2. *The Project Proponent shall first clear the 5000 MT of mixed waste that is lying within its premises and this should be completed within three weeks from today as agreed by the Project Proponent. Though the Corporation has fixed shorter time, we grant last opportunity for that purpose. The Corporation shall deploy machines and manpower to segregate the waste at the site of the Project Proponent by Monday positively and there shall be mechanical and manual segregation of the deposited waste for expeditious and effective action.*
 3. *The Corporation shall endeavour that the waste is segregated at source before it is delivered at the site of the Project Proponent in terms of Solid Waste Management Rules, 2016.*
 4. *The Project Proponent shall ensure that the compost plant operate fully now and not merely on trial basis and RDF works to its optimum capacity.*
 5. *In the facts and circumstances of the case, we direct that out of the environmental compensation of Rs. 10.50 Lakhs recovered by the Corporation, Rs. 5 Lakhs shall be retained by the Corporation and the compensation will be utilized for segregation of waste in terms of this order and remaining Rs. 5,50,000/- would be refunded to the Project Proponent.*
 6. ***The tipping fee shall be paid regularly.***
 7. *The plants (RDF and Compost) shall be subject to regular inspection by the joint inspection team and report be submitted. The committee shall also examine whether the municipal solid waste coming to the site is segregated in terms of these directions and according to Solid Waste Management Rules, 2016 or not.*
 8. *The Corporation in its discretion may not give municipal solid waste 450 MT/day till three weeks and that would be retained at landfill site strictly in accordance with Solid Waste Management Rules, 2016 which shall be exclusive responsibility of the Corporation.*
 9. *The Project Proponent would be at liberty to approach State of Punjab, State of Haryana and State of Himachal Pradesh for disposal of RDF, but it must be ensured without any further delay at the site.*

With above directions Original Application No. 150 of 2014 stands disposed of. No order as to cost.”

4. The project proponent moved this Tribunal by way of an Execution Application. Vide order dated 18.09.2019, the Tribunal sought a

report from a joint Committee comprising of Chandigarh Pollution Control Committee (CPCC), Ministry of Environment, Forests and Climate Change (MoEF&CC), Central Pollution Control Board (CPCB) and a Professor from Punjab Engineering College, Chandigarh. The report received on 14.10.2019 was considered on 28.11.2019 as follows:

“3. Accordingly, such a report had been filed on 14.10.2019 with the following observations:

“i. It was noticed by the committee that unprocessed mixed waste to the tune of 25000 MT approximately was lying in the processing plant premises resulting in inadequate operational space. It was also noticed that the waste has been pushed to the premises wall which has resulted into spill over to the adjoining forest area.

ii. Due to continuous delivery of unsegregated waste by MCCC and incapability of plant to process the waste, the condition of the plant and the surrounding is subject to further deterioration.

iii. The committee has submitted its reports to the Hon'ble NGT in compliance of the order dated 24.07.2017 in OA no. 150/2014 in the matter of Ajay Sipahiya & Ors. Vs. Union of India & Ors. Regarding the segregation, collection, transportation, processing and disposal of MSW in Chandigarh vide reports dated 28.07.2017, 11.08.2017, 26.09.2017, 26.10.2017, 30.11.2017, 26.03.2018, 24.08.2018, 14.12.2018 and 29.04.2019. the reports are annexed.”

4. From the above it is clear that unprocessed mix waste to the tune of 25,000 MT is lying unprocessed which is a hazard to the environment. The said waste must be processed by the Municipal Corporation, Chandigarh on the pattern of orders of this Tribunal relating to Ahmedabad dated 02.07.2019 in Original Application No. 113/2019, Amit M. Panchal, Advocate v. State of Gujarat, relating to Delhi dated 17.07.2019 in Original Application No. 519/2019, News item published in “The Times of India” Authored by Jasjeev Gandhiok & Paras Singh Titled “Below mountains of trash lie poison lakes” and relating to Gurugram dated 10.07.2019 in Original Application No. 514/2018, Vivek Kamboj & Anr. v. Union of India & Ors.

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7. *The work in the present case may be completed on same pattern as far as possible by 31.03.2020. Appropriate number of remedial equipments may be deployed for bioremediation which may be either done by hiring the equipments or otherwise. With regard to the current and future waste, the same may be segregated in terms of earlier order of this Tribunal for which arrangement has to be made by Municipal Corporation, Chandigarh.*
8. **We are informed that the Committee constituted by the Tribunal in Original Application No. 606/2018 to oversee the compliance of Solid Waste Management Rules, 2016 headed by Justice Pritam Pal is still in operation. Ms. Urvashi Gulati, Former Chief Secretary, Haryana was later added as a member of the Committee. The said Committee may oversee the compliance and furnish a report.**
9. **The issue of functioning of the plant at optimum capacity in terms of earlier orders may also be worked out with the guidance and supervision of the above Committee. An interim report may be furnished by the oversight Committee on or before 31.01.2020. A copy of the report submitted to this Tribunal may also be given to the Municipal Corporation, Chandigarh for its response, if any before the next date. The applicant may also be allowed access to the said report.”**

5. We may note that the issue of solid waste management and other significant environmental issues are being dealt with in O.A. No. 606/2018. In the said matter, Chief Secretaries of all States/UTs were required to remain present in person for monitoring execution of orders of this Tribunal on crucial environmental issues. Administrator of UT Chandigarh appeared on 10.01.2020. Following order was passed:

“36. We accordingly direct:

- a. *In view of the fact that most of the statutory timelines have expired and directions of the Hon’ble Supreme Court and this Tribunal to comply with Solid Waste Management Rules, 2016 remain unexecuted, compensation scale is hereby laid down for continued failure after 31.03.2020. The compliance of the Rules requires taking of several steps mentioned in Rule 22 from Serial No. 1 to 10*

(mentioned in para 12 above). Any such continued failure will result in liability of every Local Body to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body from 01.04.2020 till compliance. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal.

- b. Legacy waste remediation was to 'commence' from 01.11.2019 in terms of order of this Tribunal dated 17.07.2019 in O.A. No. 519/2019 para 28¹ even though statutory timeline for 'completing' the said step is till 07.04.2021 (as per serial no. 11 in Rule 22), which direction remains unexecuted at most of the places. Continued failure of every Local Body on the subject of commencing the work of legacy waste sites remediation from 01.04.2020 till compliance will result in liability to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal.
- c. Further, with regard to thematic areas listed above in para 20, steps be ensured by the Chief Secretaries in terms of directions of this Tribunal especially w.r.t. plastic waste, bio-medical waste, construction and demolition waste which are linked with solid waste treatment and disposal. Action may also be ensured by the Chief Secretaries of the States/UTs with

¹ The Chief Secretaries may ensure allocation of funds for processing of legacy waste and its disposal and in their respective next reports, give the progress relating to management of all the legacy waste dumpsites. Remediation work on all other dumpsites may commence from 01.11.2019 and completed preferably within six months and in no case beyond one year. Substantial progress be made within six months. We are conscious that the SWM Rules provide for a maximum period of upto five years for the purpose, however there is no reason why the same should not happen earlier, in view of serious implications on the environment and public health.

respect to remaining thematic areas viz. hazardous waste, e-waste, polluted industrial clusters, reuse of treated water, performance of CETPs/ETPs, groundwater extraction, groundwater recharge, restoration of water bodies, noise pollution and illegal sand mining.

- d. *The compensation regime already laid down for failure of the Local Bodies and/or Department of Irrigation and Public Health/In-charge Department to take action for treatment of sewage in terms of observations in para 31 above will result in liability to pay compensation as already noted above.*
- e. *Compensation in above terms may be deposited with the CPCB for being spent on restoration of environment which may be ensured by the Chief Secretaries' of the States/UTs.*
- f. *An 'Environment Monitoring Cell' may be set up in the office of Chief Secretaries of all the States/UTs within one month from today, if not already done for coordination and compliance of above directions which will be the responsibility of the Chief Secretaries of the States/UTs.*
- g. *Compliance reports in respect of significant environmental issues may be furnished in terms of order dated 07.01.2020 quarterly with a copy to CPCB."*

6. We have considered the report of the Committee dated 20.01.2020 in terms of order dated 28.11.2019 which is as follows:

"2.2 Observations of the Monitoring Committee

During visit on 18.1.2020, the following observations have been made:

About 25,000 MT un-segregated and un-processed solid waste is lying dumped within the premises of the Municipal Solid Waste Processing Plant. Photograph showing the big heap (about 25000 MT) of un-segregated solid waste is mentioned as per plate 1 given below:



Plate-1: Heap of unprocessed solid waste lying in the premises of the SWM Plant

Presently, the project proponent is lifting about 75 MT from the old dumped waste and 150 MT fresh waste (received from the Municipal Corporation, Chandigarh) for processing to convert into RDF, compost and inert material.

About 40 MT waste is generated in the form of inert material during RDF manufacturing and 102 MT is generated in the form of inert material during compost manufacturing. These inert materials are sent to the Municipal Solid Waste dumping site, Dadu Majra, U.T. Chandigarh resulting in increase in the height of the dumping site day by day.

Because of non-maintenance of available machinery (ballistic separator, trammels, air density separators, rotary dryers, hot air generator), the processing efficiency has been reduced.

The representative of the processing plant informed that due to paucity of funds, the plant is not being operated at optimum capacity.

During both the inspections of the monitoring committee i.e. on 14.1.2020 and 18.1.2020, only old furnace was found in operation, which is being operated at low temperature (400° C) resulting in generation of dioxin and furan gases in the environment, whereas, the new Thermax make furnace, which is operated at 1000° C and may eliminate the production of dioxin and furan gases, was not in operation.

In the Solid Waste processing Plant, for the control of gaseous emissions, the project proponent has installed cyclonic separator followed by venturi scrubber and carbon bed scrubber. However, the representative of CPCC claimed that they have monitored the stack of the Solid Waste Processing Plant number of times and the value of dioxin has

been found beyond the permissible limits at every time.

The Monitoring Committee was informed by the representative of the Solid Waste Management Plant that out of 150 MT material being received at Plant site, only 20-25 MT material is segregated and the remaining 125-130 MT is non segregated material.

The inert material lying at site (claimed by the representative of the SWM Plant) was found containing some portion of RDF which could have been recovered by the plant operator.

The present 25000 MT solid waste, lying dumped at site, has occupied most of the space of the plant and it has become difficult for the movement of the vehicles within the premises of the plant.

2.2 Recommendations of the Monitoring Committee

- 1. The Municipal Corporation, Chandigarh shall remove about 25000 MT old unprocessed solid waste material, occupying lot of space of the Solid Waste Processing Plant, within the time schedule as directed by the Hon'ble NGT in its order dated 28.11.2019.**
- 2. During the meeting with the Municipal Corporation, Chandigarh and Chandigarh Pollution Control Committee on 14.1.2020, the Commissioner, Municipal Corporation, Chandigarh had informed that out of 3.70 Lakh households of Chandigarh, source segregation of solid waste has been started in 1.60 Lakh households and in the remaining households, source segregation shall be started by 30.6.2020. Accordingly, the Monitoring Committee directed the Municipal Corporation, Chandigarh to start 100 source segregation of solid waste in all the wards of the Municipal Corporation Chandigarh by 30.6.2020. Therefore, the Municipal Corporation Chandigarh shall make immediate arrangements to deliver segregated solid waste of 1.6 lacs households to the Solid Waste Processing Plant so as to enable it to process the same effectively.**
- 3. The Municipal Corporation, Chandigarh may make some provisions for giving processing fee to the project proponent to enable it to run the plant effectively and optimally.**

4. *The Municipal Corporation, Chandigarh shall engage the services of experts of IIT Roorkee/ IIT Delhi to assess the efficiency of the machinery available with the Solid Waste Processing Plant within 15 days and the work may be allotted to the institution within next 10 days. In case, after study/assessment, it is observed that the machineries installed at plant site require repairs/renovation, the same may be carried out by Solid Waste management plant within 3 months.*

The Municipal Corporation, Chandigarh shall also get expert opinion about conversion of existing RDF plant into waste to energy plant.

5. *The project proponent (Solid Waste Processing Plant) shall use and operate only Thermax make furnace, which is operated at 1000° C (at this temperature, the toxic gases like furan and dioxin are almost eliminated) to generate hot air for the removal of moisture of the solid waste. The repairing of this Thermax make furnace may be done within 15 days. The other old furnace operating at low temperature (400° C) shall not be used in any circumstance.*

6. *The project proponent shall modify/rectify the air pollution control device under the guidance of reputed technical organization to bring the dioxin parameter within the permissible limits.”*

7. Substance of the report is that the waste is lying dumped in the premises of the plant. Processing efficiency of the plant has been reduced on account of non-maintenance of the machinery. Plant is not being operated to its optimum capacity. Thermax make furnace was not in operation. The Committee recommended removal of the waste material by the Corporation and to deliver segregated solid waste to the plant. The Corporation may make provisions for processing fee. The Corporation may engage services of experts to assess the efficiency of the machinery available with the plant. Thermax make furnace may be repaired within 15 days. The project proponent may modify air pollution control device.

8. While the *inter-se* dispute between the Corporation and the project proponent may be settled at appropriate forum, the basic

responsibility for disposal of waste lies with the Corporation. The same may be discharged directly or through one or the other contractor/project proponent/concessionaire. We are informed that in accordance with the terms of the agreement, Secretary, Local Government passed an order on 05.08.2019 which is subject to further arbitration proceedings. The project proponent has moved the High Court under Section 11(5) of the Arbitration and Conciliation Act, 1996 and the matter is pending at that stage. We do not express any opinion on merits of the said dispute. Concern of this Tribunal is only compliance of the Municipal Solid Waste Management Rules, 2016 by the Corporation by using such mechanism as may be viable. It is for the Corporation to take a decision whether the contract assigned to the project proponent is viable or satisfactory or not and if not, what alternative arrangement is to be made. Corporation must ensure that solid waste management takes place appropriately and expeditiously without endangering the life of people. If it is not possible for the Corporation and the contractor to work together under the existing or revised contract terms, the Corporation must make alternative arrangement within one month from today. It is clear that order of this Tribunal dated 24.07.2017 was an *ad-hoc* arrangement based on agreement during the hearing which was to operate for nine months. The said order is not for indefinite period. Commercial aspects of transaction are not the concern of this Tribunal. Terms on which work is to be executed are to be prescribed or revised by the Administration as per exigencies as per law. Rights of contractor are to be adjudicated at an appropriate forum other than this Tribunal. This Tribunal has to go into the issue of

compliance of environmental norms for which responsibility to the citizens is that of the Administration. We are, thus, not expressing any opinion on rights of contractor but only with regard to rights of citizens to clean environment.

9. In view of above, only order which needs to be passed is that the Corporation may take steps for ensuring proper disposal of garbage itself or by any other mechanism. It may take a call on the question of continuing or not continuing the present contract within one month from today to ensure that rights of the citizens to clean environment are protected and constitutional obligation of the Corporation to ensure clean environment and to comply with the Solid Waste Management Rules, 2016 is carried out. If present contract is not workable, an appropriate alternative arrangement may be made. Situation of waste not being scientifically disposed of should not continue on account of pendency of an administrative decision. The Committee headed by Justice Pritam Pal, former Judge of Punjab and Haryana High Court may oversee the compliance of these directions and furnish a further report after one month by e-mail at judicial-ngt@gov.in.

List again on 24.04.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

February 12, 2020
Execution Application No. 35/2019
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