

Item No. 01

(Court No. 1)

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

(By Video Conferencing)

Appeal No. 21/2022
(I.A. No. 108/2022 & I.A. No. 109/2022)

Acharya Shri Chander College of Medical
Sciences & Hospital (ASCOMS)

Appellant

Versus

J & K Pollution Control Board & Anr.

Respondent(s)

Date of hearing: 23.05.2022

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

Appellant: Mr. Kailash Vasdev, Senior Advocate with Mr. Shakeel Ahmed, Advocate

ORDER

1. This appeal has been preferred against order dated 14.01.2022 of the Appellate Authority (Commissioner/Secretary to Government, Forest, Ecology & Environment Department, Jammu), under the Bio-Medical Waste Management Rules, 2016. By the said order, levy of compensation of ₹70,85,000/-, by the State PCB, vide order dated 15.02.2021, has been upheld on polluter pays principle.

2. We have heard the learned Senior Counsel of the appellant and with his assistance gone through the record.

3. The appellant is a Medical College-cum-Hospital along with a nursing institute in private sector. It is running 500 bedded hospital and

has MBBS as well as Post-Graduation courses. In the process of its activities, medical and general waste are generated. It has appointed an authorized agency to handle such waste.

4. The State PCB conducted an inspection on 13.09.2012 and found following violations:-

“A. Bio-medical Waste Management in the hospital

1. *Labeling on the bins at some of the nursing stations was not proper. Label should be prominently visible and wash proof.*
2. *Present system of final disinfection at the incineration site i.e. chemical treatment of waste sharps (Cat.4) and solid waste (Cat. 7), may be replaced with Autoclave/Microwave, before shredding, as per specification laid down in the Bio-Medical Waste (Management & Handling) Rules, 1998 with amendments thereof.*

B. Incinerator

3. *Storage tank for collecting scrubbed water needs to be replaced. The waste water generated from the air pollution control device shall be properly handled so as to avoid any non-compliance of the regulatory requirements, as per the guidelines.*
4. *Log book/s for waste being incinerated, disinfected and shredded, should be permanently printed.*
5. *Present system of quantification of waste should be replaced with a digital weighing machine.*
6. *Adjacent to the incinerator room, there should be a waste storage area, which is properly ventilated and so designed that the waste can be stored in racks/colour-coded containers.*
7. *The floor and inner wall of the incinerator and storage rooms should have outer covering of impervious and glazed material, so as to avoid retention of moisture and easy cleaning.*
8. *Sewage treatment plant for liquid waste has not yet been installed.”*

5. The appellant gave reply dated 28.01.2013 claiming that remedial measures were taken. This was followed by letter dated 23.03.2013 giving the status as follows:-

“PRESENT STATUS

- *INCINERATION AREA: Autoclave for disinfection of category 4 & 7 waste has been added to replace the previous system of chemical treatment of this category of waste.*
- *Incinerator area has been made more presentable and functional by affixing glazed tiles.*
- *A new scrubber tank linked with tiles is being used in place of old tank which had grown obsolete.*
- *The shredder has been got overhauled to make it more efficient.*
- *RCC Encapsulation tank has been built for the disposal of 'sharps'.*
- *Cement concrete path has been developed around the incinerator for easy movement of the staff.*
- *The whole area has been landscaped with plantation to make it eco-friendly.*
- *Digital weighing machine has been provided to weigh the quantum of waste on daily basis and entry of same being done in the newly introduced log book.*
- *Labeling of collection bins has been done as desired.*
- *A general waste storage shed has been got constructed with a shutter to rule out any pilferage by rag pickers.*
- *Regular disposal of general waste is being ensured through a transportation vehicle.*
- *Genset: Deficiencies pointed out are in process of rectification (Photocopy enclosed).*
- *STP: the process for provision of this facility is being initiated.*
- *Plantation of the area around the site of general waste storage and nearby slopes has been done to give the whole area an eco-friendly look.*

It is pertinent to mention here that a few days back a surprise inspection of the hospital campus was conducted by a team from PCB. The members had pointed out dumping of general waste over the slopes on the periphery of the campus which has unfortunately happened due to sanction workers inadvertent negligence. It has already been taken care of and the whole area has again been made spic and span. We do hope that no such irregularity shall happen in future.

In view of the compliance of all instructions issued regarding bio-waste management already complied and reviewed by the surprise "inspection team" from Pollution Control Board (who had shown satisfaction in this context), it is requested that Biomedical waste management authorization may kindly be extended in our favour."

6. Further letter dated 27.01.2016, mentions as follows:-

- “1. **Emergency & Central Laboratory:** Proper segregation and labeling are being followed strictly.
2. **Blood Bank:** Steps have been taken to avoid mixing of Bio-medical waste with general waste.

3. **Wards:** *The segregation at the source of Bio-medical waste in wards is strictly adhered to.*
4. **Incineration Area:** *Keeping in view the wind direction and velocity the incinerator is installed at high level on a hilltop for handling of bio-medical waste. The chimney is also raised to the reasonable height which in our opinion is not hampering the surrounding ecology.*
5. *Our hospital authorities are in regular touch with the Jammu Municipal Corporation for further improvement in the disposal of general waste. In this connection a letter has also been sent to the Commissioner Municipal Corporation Jammu on 23rd January, 2016, a copy of which is enclosed for ready reference.*
6. **Sewage Treatment Plant (STP):** *The sewerage treatment plant (STP) has been completed masonry work to link the drainage areas with the plant are in progress. The same stands duly verified by the inspection team on 17.02.2015.*
7. *Self-Monitoring report (SMR) of incinerator is being submitted shortly. SMR report of STP will be presented as soon as it becomes operational. As per, norms of Pollution Control Board, the work of DG set is in progress.”*

7. Letter dated 03.12.2019 is as follows:-

“We are in receipt of your Notice issued vide letter No. SPCB/LSJ/780/2019/1378-79 dated 22.11.2019 in which you have mentioned about the lacunae in our healthcare facilities regarding generating, collecting, receiving, storing, treating and disposing of bio-medical waste.

*The undersigned intends to inform you that the **STP plant has been successfully installed and the ETP is undergoing process of installation which is likely to be completed in 10 days’ time and thereafter we would like to make a mock drill run for another couple of days so that our people are properly trained in running the STP and ETP.** In this connection, I would make an earnest request to your goodself that by the end of December, i.e. 31st of December, 2019, we would be fully prepared and properly trained for handling of the aspects of bio-medical waste including the treatment, so we may be allowed time till 31.12.2019.*

I hope our request will be acceded to and will be given the time as desire. I assure you that we will not be seeking any extension thereafter and shall follow the protocol as set by the J&K Pollution Control Board in letter and spirit.”

8. The State PCB considered the matter as follows:-

*“Whereas, reports about **illegal, unscientific and environment unfriendly manner of handling and disposal of the Bio Medical Waste, including sewage by the management of Acharya Shri Chander College of Medical Sciences and***

Hospital By-pass sidhra, Jammu were received with photographic evidence and the matter was accordingly taken up with the Director, Acharya Shri Chander College of Medical Science & Hospital, By Pass sidhra Jammu, through series of communications but no tangible change on the ground was noticed.

Whereas, a report was also received from the Regional Director, PCB, Jammu in this regard vide No. PCB/RDJ/BMW/4835 dt. 10.11.2020 with photographic evidence confirming that **no improvement on the ground has been brought about by the concerned Health Care Facility and the Bio-Medical Waste continues to be dumped in a haphazard and unscientific manner, along with discharge of untreated sewage.**

Whereas, on continuous failure on the part of the Director, Acharya Shri Chander College of Medical Science & Hospital vide No. SPCB/LSJ/780/2019/1947-1951 dt. 28.01.2020, calling upon him, there under, to show reasons within fifteen (15) days as to why Environmental Compensation be not levied upon him for the said serious violations of environmental laws.

Whereas, though commitments were made by the Director, Acharya Shri Chander College of Medical Science & Hospital, for the scientific disposal of Bio-Medical Waste, yet **no concrete action was taken to honor the commitments and violation of laws continued unabatedly and as a sequel thereto, the case was recommended for Levying of Environment Compensation by Regional Director, Pollution Control Board Jammu vide No. PCB/RDJ/PSO/2020/07 dt. 31.08.2020.**

Whereas, the case was critically examined by the Technical Advisory Committee (TAC) constituted in the Board for expert examination of the such cases related to levying of environmental compensation, which also recommended levying of the Environmental Compensation and worked out the quantum of the compensation for violation of Bio Medical Rules and failure of treating the waste were generated in the hospital due to non-operation of STP and not seeking consent under Water (Prevention and Control of Pollution) Act, 1974.

Now, therefore, based on the directions of the Hon'ble NGT issued from time to time for such violations and in view of foregoing back ground, an Environmental Compensation to the tune of Rs. 1,37,34,800/- (Rs. One Crore Thirty Seven Lac Thirty Four Thousand and Eight Hundred only) with details given herein below, is hereby levied upon the Director, Acharya Shri Chander College of Medical Science & Hospital, By-Pass Sidhra, Jammu:-

- i) Rs. 70,85,000/- (Rs. Seventy Lac Eighty Five Thousand only) for violation of Bio Medical Waste Management Rules, 2016 from the date of issuance of the show cause notice i.e. 28.01.2020 upto 10.11.2020 i.e. last verification report of default.

ii). *Rs. 66,49,800/- (Rs. Sixty Six Lac Forty Nine Thousand and Eight Hundred Only) for violation of Water (Prevention and Control of Pollution) Act, 1974 from the date of issuance of show cause notice i.e. 20.04.2013 upto 23.07.2020 i.e. last verification report of default.*

Accordingly, the Director, Acharya Shri Chander College of Medical Science & Hospital, By-Pass Sidhra, Jammu is hereby directed to deposit a sum of Rs. 1,37,34,800/- (Rs. One Crore Thirty Seven Lac Thirty Four Thousand and Eight Hundred only) as Environmental Compensation in the Environmental Compensation Fund Account No. 0023040510000001 of the Board in J&K Bank, within 45 days and on lapse of above said period, interest @12% on the compensation amount shall accrue, at his risk and responsibility.”

9. Against the above order, appeal was filed before the Appellate Authority with the plea that photographic evidence should not have been acted upon. This stand was opposed by the State PCB by submitting that there were continuous violations of environmental norms. The Waste Facility was operational without requisite consent and steps were not taken for removal of waste. The appellant could not avoid responsibility on the ground that it has appointed another agency. Steps were taken and proposed for improvement but past violations were never disputed. Thus, photographic evidence stood substantiated not only by site visit but remained undisputed in view of claim for compliance in future, without disputing past violations.

10. Learned Senior Counsel for the appellant has referred to the correspondence showing the stand of the appellant that it had taken steps in the matter.

11. We are unable to accept the submission. From the stand of the appellant itself, it is clear that there were violations. By letter of the appellant dated 03.12.2019, it was stated that process of installation was underway which was yet to be completed meaning thereby the violations of untreated discharge of sewage/effluent remained undisputed till

stp/etp became functional. Even if there was subsequent compliance, accountability for past violation could not be avoided. Further contention that photographs cannot be looked into by the State PCB in support of its allegation of violation can also not be accepted as the violations have been verified on the ground and not denied. Further plea that another agency had been appointed is also not enough to exonerate the appellant, once there are violations. Agency is of the appellant and default of the Agency is default of the appellant.

The appeal is dismissed.

All pending I.A.s also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

May 23, 2022
Appeal No. 21/2022
AVT