

Item Nos. 08 to 10

Court No. 1

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

(By Video Conferencing)

Original Application No. 270/2020
(Earlier O. A. No. 50/2017 (WZ))

(With affidavit dated 18.03.2021)

Anand Uttarkar

Applicant

Versus

The Municipal Corporation of the City
of Pune & Ors.

Respondent(s)

WITH

Original Application No. 269/2020
(Earlier O.A.No.194/2016 (THC)(WZ))
(M.A. No. 246/2017)

Dr. Harshwardhan Modak

Applicant

Versus

P.M.C. Pune & Ors.

Respondent(s)

WITH

Original Application No. 271/2020
(Earlier O.A. No. 32/2019 (WZ))

Sandip Aphale

Applicant

Versus

State of Maharashtra & Ors.

Respondent(s)

Date of hearing: 23.03.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. R.B. Mahabal, Advocate for Applicant in OA 269/2020
Mr. Asim Sarode, Advocate for Applicant in OA 271/2020

Respondent: Mr. Rahul Garg, Advocate for PMC
Ms. Manasi Joshi, Advocate
Mr. Subit Chakrabarti, Advocate
Mr. Aniruddha S. Kulkarni, Advocate
Ms. Gauri Kawade, Advocate

ORDER

1. This order will deal with the above three matters as all the three matter overlap and raise issue of violation of environmental norms by Rochem Separations Systems Pvt. Ltd. (RSPM) at Pune under a contract from the Pune Municipal Corporation (PMC). We may give brief pleadings and procedural history of the three matters as follows.

Original Application No. 270/2020 (Earlier O. A.No. 50/2017 (WZ))

2. The O.A. No. 270/2020 alleges illegality in operation of Waste to Energy Plant set up by RSPM resulting in pollution and generation of foul odour. Though PMC proposed to terminate the agreement, it has failed to do so. This has resulted in garbage being dumped in the premises in question which remains unprocessed. The garbage is not being converted to energy as was proposed under the agreement granted in favour of RSPM by the PMC.

3. The application was filed on 11.04.2017 and was admitted on 13.04.2017. Subsequently, matter was ordered to be heard with O.A. No. 269/2020 (second matter). Vide order dated 05.12.2017, the stand of the Maharashtra State PCB was considered that the compost in the premises was not of the requisite quality. The air quality was beyond norms. The Tribunal directed the RSPM to remove 25 truckloads of compost and to take the same to the sanitary landfill site. The matter was further considered on 05.09.2019 and RSPM was directed to mention whether the waste has been transported. Finally, vide order dated 13.10.2020, the matter was directed to be placed before the Principal Bench.

4. As per stand of the PMC in affidavit dated 22.06.2017, the RSPM is to generate electricity and Refuse Derived Fuel (RDF) on Build, Own, Operate and Transfer (BOOT) basis. Since, it failed to do so, penalty was imposed.

5. The stand of the State PCB dated 07.07.2017 is that there are violations of norms for which warning was issued to the RSPM.

6. The stand of the RSPM in its affidavit filed on 24.07.2017 is that it is functioning under agreement dated 07.07.2011 for waste management. It has invested Rs. 60-70 crores in the project. It is running Waste Processing Project and not Waste Disposal Project. It is processing 300-350 TPD of MSW for the last five years with the following sections:

- a. Current MSW intake.
- b. MSW- presorting and segregation.
- c. Gasification section and;
- d. Waste to energy section.

7. It is facing difficulty as there are no buyers for the RDF. The technology needs to be upgraded. Additional affidavit was filed by the said party on 10.11.2017 to the effect that it has received authorization under the Municipal Solid Wastes (Management and Handling) Rules, 2016 and also applied for consent to operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 on 17.08.2017. It segregates the waste and converts the same to energy by incineration. The RDF is sold to third parties for boilers or for captive consumption in manufacturing process.

8. The State PCB filed further affidavit on 25.04.2019 with regard to sampling of odorous gas finding that the parameters were marginally exceeding.

9. Further affidavit dated 08.01.2020 has been filed by the RSPM is that legacy waste is being removed.

10. Finally, we have the affidavit filed by the State PCB on 18.03.2021 on the issue of fire incident which took place on 07.03.2018 to the effect that garbage depot, plant and machinery were not affected by the fire. The reason for the fire was not identified.

Original Application No. 269/2020 (Earlier O.A.No.194/2016 (THC)(WZ)

11. This Application was received from the Bombay High Court on transfer. It seeks injunction against payment of tipping fee to RSPM. The application states that the unit was operational without Environmental Clearance (EC) and was not engaged in generation of electricity and Pyrolysis process, as stipulated. It was a source of nuisance. MSW is being supplied to the said company which contains RDF which is hazardous in nature. The gas generated is emitted in the air which is health hazard. There is no scientific disposal of the waste.

12. The matter has been dealt with by several orders in the last more than four years along with O.A. No. 270/2020 (First matter). It was finally directed to be listed before the Principal Bench.

13. The applicant has filed a written note on 03.11.2020 to the effect that the waste is being burnt resulting in damage to the environment. The unit does not have requisite consents under the Water Act, 1974 and the Air Act, 1981. It does not have requisite EC as per EIA Notification dated

14.09.2006 on the ground that it is exempted, being under the category of 'generating power from the waste'. Infact, no energy is being generated as claimed. RDF is being sold to persons who do not have permission to use RDF as fuel.

Original Application No. 271/2020 (Earlier O.A. No. 32/2019 (WZ))

14. This Application was filed in the year 2019 and was ordered to be heard along with the above two applications. The issue raised is about the siting of the plant in violation of MSW Rules, 2016. There is no buffer zone around the Waste Processing Facility. It is at Plot Nos. 88, 86, 87, 56, 57, 58 and 104 Phase-II Ramtekadi Industrial Estate, Hadapsar, Pune, close to residential area. In the vicinity of the Plant, there are three buildings in Survey No. 95 with 84 Flats. Permission to set up the plant has been given in violation of the law.

The Issue for consideration in all the three matters

15. Main contention raised on behalf of the applicants by learned Counsel Shri R.B. Mahabal and Shri Asim Sarode is that

- **the Plant in question is causing environmental hazard**
- **it is operating without requisite EC and consents**
- **Its location is not compliant with the statutory rules**
- **This requires remedial action for protection of environment, public health and rule of law**

16. As against the stand of the applicants, the stand of PMC is that there is a proposal to change technology and to set up additional plants which requires time. The stand of the RSPM is that it has requisite authorization and has applied for consents under the Water Act, 1984 and the Air Act,

1981. Thus, it is deemed to have the necessary consents. No EC is required.

17. As already noted, the matter has been pending for the last more than five years. **There is no scientific investigation about the ground status of compliance of norms in setting up and functioning of the plant, including norms with regard to location of the site, compliance of other statutory requirements, remedial action required and other incidental issues. To address the situation, there is need for an independent and credible Committee with concerned authorities and experts.**

Direction

18. Accordingly, we constitute an independent six-Members Committee headed by Justice S.M.Gavhane, former Judge Bombay High Court, presently available at Pune and comprising Central Pollution Control Board (CPCB), NEERI, IIT Mumbai, District Magistrate, Pune and Maharashtra PCB. CPCB and State PCB will jointly act as nodal agency for compliance. The Committee may visit the site and give its report to the Tribunal. The Committee will be free to take assistance of any other Expert/Institution. The Committee may ascertain compliance status of the waste processing plant in question on the ground in terms of location, functioning and statutory compliances and other incidental issues. The report may particularly mention the status of management of Rejects and RDF including waste/ rejects piled up in the Plant premises. The Committee may also mention the potential of fire incidents and whether the direction to remove 25 trucks of waste per day is being complied. The report may also mention waste generation in PMC areas, existing processing facilities, gaps in processing, quantity of waste being landfilled

and steps taken for Bio-mining of legacy waste. It may make recommendations for remedial action. The Chairman of the Committee will be paid consolidated amount of Rs. 3 Lakhs by the State PCB (out of consent funds available with it), apart from logistics for functioning of the Committee. The State PCB and the District Magistrate will provide the necessary logistics. Except for visit to the site once or twice or as found necessary, other proceedings can be conducted online which may be facilitated by the District Magistrate/State PCB. The report may be furnished on or before 31.05.2021 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 report may also be simultaneously placed on the website of the State PCB for comments, if any, by any of the parties to be filed before the next date. It will be open to any aggrieved party to give their view point to the Committee through the State PCB. If any illegalities or damage to the environment are found, the Committee may also suggest the quantum of compensation.

List for further consideration on 12.07.2021.

A copy of this order be forwarded to Justice S.M. Gavhane, former Judge Bombay High Court, presently available at Pune, CPCB, NEERI, IIT Mumbai, District Magistrate, Pune and the Maharashtra PCB by e-mail for compliance.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

March 23, 2021
Original Application No. 270/2020
(Earlier O. A. No. 50/2017 (WZ)
and other connected matters
SN