

**BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN
ZONE BENCH, PUNE**

APPEAL NO.1/2014 (WZ) MA No.12/2014, & 27/2014

Vanshakti & Anr V/s Mun. Corpn of Greater Mumbai & Ors.

**CORAM: HON'BLE SHRI JUSTICE V.R. KINGAONKAR, JUDICIAL MEMBER
HON'BLE DR. AJAY A. DESHPANDE, EXPERT MEMBER**

**Present: Applicant/ Appellant : Gayatri Singh Adv
: Mr.Stalin D.
Respondent No.1 : Deepak Radge w/
Sameer Khale & Rahul Garge Adv
Respondent Nos.2 to 4 : D.M. Gupte Adv w/
Mrs. Supriya Dangre Adv
Respondent No.5 : R. Neharu Adv
Respondent No.6 : Saket Mone i/b Vidhi partners**

Date and Remarks	Orders of the Tribunal
Item No.6 February 12, 2014 Order No.3	<p>We have heard Learned Counsel for the parties. The Respondent No.1 and Respondent No.6, have sought modification in the interim order passed by this Tribunal or declamping of the said order dated January 15, 2014.</p> <p>By the order dated January 15, 2014, we directed that reclamation and landfilling shall not be done at the disputed site till the next order. We also directed the MCZMA to verify the present status and give separate report if necessary for implementation of the order.</p> <p>Having heard learned Counsel for the parties and on perusal of the record, we find that the MoEF, has approved 65.96 H area for the purpose of MSW facility to be provided by the Respondent No.1. The Respondent No.1 has appointed Respondent No.6, as an operator to conduct activity of said facility.</p> <p>We have also noticed that earlier there were various rounds of litigations between the parties and the matter had churned here and there from one Court to another. We need not record details of all the litigations and the details of directions given by the Hon'ble High Court of Bombay or the Hon'ble Supreme Court in the earlier litigations. It would suffice to mention that the parties were relegated to the MoEF for the purpose of re-hearing of the matter and the MoEF was directed to issue afresh orders. The MoEF eventually issued impugned order dated November 4, 2013.</p> <p>The order of the MoEF, which is being questioned and</p>

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challenged in the Appeal, directs the Respondent No.1, to submit proposal for change of technology to implement the MSW Rules and the SEIAA, Maharashtra was requested to expedite the processing of the proposal for consideration of the said change in the technology.

We are informed that the SEIAA has not yet approved proposal for change in the technology, though it is in process.

The impugned order rendered by the MoEF further shows that the site inspection was carried out through the Regional Office of the MoEF, Bhopal. Based on the site inspection report a Show Cause Notice dated July 25, 2013, was issued to the Respondent No.1. Respondent No.1 was directed to maintain *Status Quo Ante*. The inspection report is also placed on record. So, it *prima facie* appears that the observations in the inspection report are not completely wiped out, by giving any tangible reasons, by the MoEF. In other words, the said inspection report can be taken into account while passing any modified order in the matter.

The said inspection report *prima facie* shows that the Respondent No.1 constructed surrounding compound wall of 12 ft height around the entire area of 141.77Ha. It also appears that in spite of directions given by the Authorities, the said wall has not been demolished by the Respondent No.1. We may notice that from the MSW Rules (Schedule-III) and particularly conditions enumerated at Sr. No.11, reads as follows:

“11. Landfill site shall be fenced or hedged with proper gate to monitor incoming vehicles or other modes of transportation. “

In our opinion, the landfill site need not be closed by means of boundary walls in as much as the same will obstruct inflow of free air, as well as there will be no egress and ingress of free passage for air to dispel the odour emanating from the MSW. The boundary wall is therefore *prima facie* illegal and impermissible. Not only that but it is possible that construction of such boundary wall may enhance the height and level of the ground at the site and water from the CRZ area from south side and surrounding area, may gush inside the landfill site in question, which will cause environmental damage.

We find that the Respondent No.1 has also not complied with other directions, which are indicated in the joint inspection

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report. The record shows *prima facie* that the infrastructure activities like roads were under progress in excess of limits of 65H. It was also noticed that the construction of landfill site was in progress for which rampant reclamation was being carried out, although the landfill site is being developed as per EIA.

Considering all above relevant aspects of the matter, we deem it proper to modify the earlier order dated January 15, 2014 in the following terms:

The Respondent No.1 may carry out the activities permissible as per the directions of the MoEF only to the extent of area of 65.96H, which is identified and described under the orders of the MoEF, without any kind of excess reclamation and only after demolition of surrounding compound wall. Unless the wall is demolished, no activity shall be carried out within the said area. The demolition of wall shall be verified by the MCZMA and the Appellants and if any dereliction is noticed, the concerned officer of the Respondent No.1 will face penal action under Section 26 of the National Green Tribunal Act, 2010 of which pre-warning shall be issued by the learned Counsel of the Respondent No.1 to the concerned department. The same kind of warning be issued by the Respondent No.1 to the operator for likely penal action under Section 28 of the NGT Act, 2010.

The Respondent No.1 shall not undertake any activity of the MSW disposal or construction or levelling at the site without approval of proposal for change of technology by the SEIAA. The excess landfilling or reclamation activity as noticed during course of joint inspection also shall be immediately removed and such excess land shall be restored within period of three (3) weeks at the cost of Respondent No.1 before this modified order is brought into operation.

Stand over to 13th March, 2014.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay A. Deshpande)