

Item No.4

(Court No. 1)

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

Original Application No. 496/2023
(I.A. No. 655/2023
I.A. No. 720/2023 and I.A. No. 742/2023)

Satyendra Rawat

...Applicant

Versus

M/s Medical Pollution Control Committee & Ors.

...Respondents

Date of completion of hearing and reserving of order: 25.09.2023

Date of Pronouncement of order: 05.10.2023

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, 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**

Applicant(s) : Mr. D.N. Goburdhan, Senior Advocate with Mr. Anshul Gupta & Mr. Prakhar Bharadwaj, Advs. for Applicant

Respondent(s): Mr. B.B. Gupta, Senior Advocate with Mr. Biraja Mahapatra, Adv. for R – 1
Mr. Arvind Kumar, Adv. for UPPCB
Ms. Shilpi Satyapriya Satyam, Adv. for MoEF & CC (R - 2) (Through VC)
Mr. Saurabh Balwani, Adv. for CPCB (R - 4) (Through VC)

ORDER

1. In this Original application grievance has been raised against respondent no. 1 M/s Medical Pollution Control Committee, Khasra No. 84-85 Village Samwai, Tehsil Etmadpur, Agra, Uttar Pradesh in respect of

contravention of various statute, rules and guidelines relating to environment. The order dated 27.07.2023 granting consolidation consent to operate and authorization by CEO-1 has also been questioned. The respondent no. 1 is a company involved in treatment of Bio-Medical Waste and has set-up a facility at village Samwai referred to as "Bio-Medical Waste Unit". The unit is stated to be set-up very close to the residential houses of the villagers which allegedly has resulted into creation of unhygienic and unsanitary living conditions for the villagers. It is alleged that the unit does not treat the effluents carefully and leaves it open in the nearby area causing foul smell and the villagers are facing immense problems resulting into health hazards due to various emissions.

2. As per the stand of counsel for the respondent no. 1 the Consent to Establish was granted on 15.03.2004 and Consent to Operate was granted on 15.10.2004 and the same had expired on 24.11.2011, therefore the unit had stopped operating and again consent to operate has been granted in 2023.

3. The factual development from 2004 to 2011 has chequered history which is not relevant for the purpose of present controversy.

4. The respondent no. 1 had made an application dated 29.05.2023 for grant of consolidated consent to operate and/or authorization. The said application was duly considered by authorized officer "Pradeep Sharma CEO 4" (Chief Environment Officer-Circle 4) and by order dated 13.07.2023 noting the violations and deficiencies the CEO 4 had refused the consolidated consent to operate with a direction to respondent no. 1 to comply with the mandatory provisions of the Water (Prevention and Control) Act, 1974 and the Air (Prevention and Control of Pollution) Act 1981 and Hazardous and other Wastes (Management & Transboundary

Movement) Rules, 2016. Record further reflects that respondent no. 1 immediately thereafter had moved another application and within 14 days. The said application was considered by “Vivek Roy CEO-1” and he had granted the consolidated consent to operate and Authorization(referred as CCA) to the respondent no. 1.

5. The issue has been raised that the CEO-1 who has granted the CCA vide order 27.07.2023 had no jurisdiction to grant the CCA, hence the Tribunal by order dated 07.08.2023 had issued notice to all the respondents permitting them to file the reply within 6 weeks. Respective replies have been accordingly filed.

6. The main thrust of the argument of the learned counsel for the applicant is that the CCA has been granted to respondent no. 1 by order dated 27.07.2023 by CEO-1 which had no jurisdiction to entertain the application of the respondent no. 1 as the competent jurisdictional officer was CEO-4 who had earlier rejected the application. He has further submitted that the environment clearance is necessary for operating such a unit.

7. Learned counsel for the respondent no. 1 has opposed the O.A. by submitting that it's a motivated petition being filed by a competitor and that the order of the CEO-1 is an appealable order. The stand of the other official respondent is as against the grant of CCA by the CEO-1 to the respondent no. 1.

8. It is not in dispute before the Tribunal that the (Environmental Clearance) EC is required by the respondent no. 1. Therefore, we need not refer to the judgments relied upon in this regard.

9. The application dated 29.05.2023 initially filed by the respondent no. 1 for consolidated consent to operate and/or authorization (CCA) was considered by the CEO-4 and was rejected by assigning following reasons:

1. *“The site of the plant was inspected by the Officers of the UPPCB Agra and as per the inspection report the plant was not in operation and found in depleted state.*
2. *The CBWTF unit was directed to obtain the CTE before establishing the plant and machinery at the site vide Board letter no. H-04920/C-4/BMW-1972017 dated 27.06.2017.*

The Consolidated Consent to Operate and/or Authorisation hereinafter referred to as the CCA (Consolidated Consent & authorization) Application under section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 as amended, under section 21/22 of Air (Prevention & Control of Pollution) Act, 1981 as amended and Authorization under the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 is hereby refused. Further, you are hereby informed to comply with the mandatory provisions of Water Act 1974, Air Act 1981 and HWM Rules 2016.

This order is issued with the approval of competent authority.”

10. By the above order the appellant was also required to comply with the mandatory provisions of the relevant Acts.

11. The circular of the Uttar Pradesh State Pollution Control Board relating to division of territorial jurisdiction under different circle and regional offices, as reproduced below is not in dispute:-

Area divided under different circles and Regional Offices			
Name of the Circle	Name of the Circle Officer	Regional Offices Under different Circles	Districts under Different Regional Offices
Circle-1	Shri Vivek Roy Chief Environment Officer	1. Ghaziabad 2. Gautam Buddh Nagar (Noida) 3. Greater Noida	1. Ghaziabad, Hapur 2. Gautam Budh Nagar (Noida) 3. Greater Noida
Circle-2	Shri Rajendra Singh Chief Environment Officer	1. Kanpur Nagar 2. Kanpur Dehat 3. Jhansi 4. Banda 5. Prayagraj 6. Sonebadra	1. Kanpur Nagar, Farrukhabad 2. Kanpur Dehat, Kannauj, Auraiya 3. Jhansi, Jalaun, Lalitpur, Oral 4. Banda, Hamirpur,

			Chitrakoot, Mahoba 5. Prayagraj, Fatehpur, Kaushambi 6. Sonebadra Mirzapur
Circle-3	Shri Ghanshyam Chief Environment Officer	1. Meerut 2. Saharanpur 3. Muzaffar Nagar	1. Meerut, Bagpat 2. Saharanpur 3. Muzaffar Nagar, Shamli
Circle-4	Shri Pradeep Sharma Chief Environment Officer	1. Agra 2. Mathura 3. Aligarh 4. Firozabad 5. Bulandshahar	1. Agra 2. Mathura 3. Aligarh, Etah, Hathras, Kasganj 4. Firozabad, Mainpuri, Etawah 5. Bulandshahar
Circle-5	Dr. Ram Karan Chief Environment Officer	1. Lucknow 2. Unnao 3. Raebareli	1. Lucknow, Barabanki, Lakhimpur, Khiri, Sitapur 2. Unnao, Hardoi 3. Raebareli, Sultanpur, Amethi, Pratapgarh
Circle-6	Shri R.K. Singh Chief Environment Officer	1. Gorakhpur 2. Ayodhya 3. Azamgarh 4. Basti 5. Vasanasi	1. Gorakhpur, Deoria, Maharajganj, Kushi Nagar 2. Ayodhya, Bahraich, Gonda, Ambedkar Nagar, Shravasti 3. Azamgarh, Ballia, Mau 4. Basti, Siddharth Nagar, Balrampur, Sant Kabir Nagar 5. Varanasi, Sant Ravidas Nagar (Bhadohi), Jaunpur, Chandauli, Ghazipur
Circle-7	Shri Vivek Roy Chief Environment Officer	1. Moradabad 2. Bijnore 3. Bareilly	1. Moradabad, Rampur, Sambhal 2. Bijnore, Amroha 3. Bareilly, Shahjahanpur, Pilibhit, Badaun

12. The respondent no. 1 is located in district Agra, which falls under Circle-4, hence Chief Environment Officer, Circle 4(CEO-4) had the jurisdiction to decide the application for consolidated consent to operate, who had rejected the same by order dated 13.07.2023 assigning due reasons. Nothing has been pointed out by counsel for respondent no. 1 to show as to how Chief Environment Officer, Circle 1 (CEO-1) Vivek Roy had assumed the jurisdiction and decided the subsequent application of the respondent no. 1, which was for a District not under his circle and which was filed immediately after rejection of the earlier application by order

dated 13.07.2023. The earlier order of the CEO-4 for 13.07.2023 was an appealable order but instead of filing an appeal respondent no. 1 filed a fresh application within 11 days on 24.07.2023 which was immediately allowed by CEO-1 by order dated 27.07.2023 within 3 days of filing the application.

13. The reply of respondent no. 5-Uttar Pradesh Pollution Control Board further makes it clear that CEO-1 had acted illegally while passing the order dated 27.03.2023. The reply filed by respondent no. 5-UPPCB before this Tribunal states that:-

“it is submitted that the online consolidated Consent to Operate and Authorization here in after referred to as the CCA (Consolidated Consent & authorization) (Fresh) under Section-25 of the Water (Prevention & Control of Pollution) Act, 1974 and under Section-21 of the Air (Prevention & Control of Pollution) Act, 1981 and Authorization under Rule-6(2) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 notified under Environment (Protection) Act, 1986 was issued to M/s Medical Pollution Control Committee, Khasra No.-84, 85, Sewai, Tehsil Etmadpur, District Agra vide letter No. 189548/UPPC/Agra (UPPCBROJ/CTO/both/AGRA/2023 dated 27/07/2023 by Respondent no.-6 Shri Vivek Roy, Chief Environmental Officer, Circle-1, U.P. Pollution Control Board, Lucknow. Shri Vivek Roy, UPPCB pulled the file from the online portal of Regional Officer, UPPCB, Agra in an unauthorized manner before the field verification report and recommendation could be placed on the portal by the Regional Officer, UPPCB, Agra. This CTO was issued to the unit without giving any opportunity to Regional Officer, UPPCB, Agra to submit his field verification report / recommendation and compliances pertaining to various notices issued to the concern unit. Moreover, this CTO was issued without the recommendation and knowledge of Member Secretary (Respondent no.-5).

A letter for explanation was issued to Shri Vivek Roy, Chief Environmental Officer, Circle-1, U.P. Pollution Control Board, Lucknow vide letter no. H00102/Law/474/23 dt. 30.08.2023 but the concerned officer who is also Respondent No.-6 of this O.A. has not submitted the satisfactory reply in this regard. The letter dt. 30.08.2023 issued to Shri Vivek Roy, Chief Environmental Officer, Circle-1, U.P. Pollution Control Board, Lucknow is enclosed as Annexure- VI to this reply.”

14. Thus the above stand of UPPCB makes it clear that respondent no. 6 CEO-1, Sh. Vivek Roy had pulled the file from the online portal of the Regional officer UPPCB, Agra in an-authorized manner and had granted the

permission even before placing on portal the verification report and recommendation.

15. The respondent no. 7, Regional Officer, UPPCB in its reply before the Tribunal has also taken the stand that the CTO and authorization was issued by respondent no. 6 Sh. Vivek Roy without inspection report/recommendation of the Regional Officer, UPPCB.

16. The respondent no. 2, Ministry of Environment Forest and Climate Change has also disclosed in paragraph 22 of its reply before the Tribunal that the consolidated consent and authorization granted by UPPCB dated 27.07.2023 was incomplete as principle regulation for grant of authorization to CBWTF operator is Bio-Medical Waste Management Rules, 2016 and not Hazardous and Other Waste (Management and Transboundary Movement) Rules 2016. The respondent no. 2 in its reply before the Tribunal has pointed out the following illegalities in the impugned CCA dated 27.07.2023.

“22. That in the instant case, CCA i.e., consolidated consent and authorization is granted under Section-25 of the Water (Prevention & Control of Pollution) Act, 1974, and under Section-21 of the Air Prevention & Control of Pollution) Act 1981, whereas the Authorization is granted under Rule-6(2) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 notified under Environment (Protection) Act, 1986. That the consolidated consent and authorization granted by UPPCB dated 27-07-2023 appears to be incomplete as the principal regulation for grant of authorization to a CBWTF operator is the Bio-Medical Waste Management Rules, 2016, and not Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

23. That the authorization under provisions of Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016 does not authorize the CBWTF operator to handle, collect, treat, and dispose of BMW. However, the CCA mentions compliance with BMWM Rules, 2016 as a condition, and specific conditions have also been mentioned for BMW management. Additionally, the linkage of treatment or disposal methods mentioned in BMWM Rules, 2016 like standards of Autoclaving (Part-3, Schedule-II), segregation of color-coded waste streams, and effluent standards (Part-8, Schedule-II) are not included in the CCA. Similarly, other treatment methods like

chemical disinfection/ heat sterilization, as may be applicable, are also not mentioned in the UPPCB letter dated 27.07.2023.

*24. That, the answering respondent has also issued D.O. letters to the Chairman of UPPCB; SEIAA, Uttar Pradesh, and Principal Secy., Government of Uttar Pradesh to intervene and ensure gap analysis studies & compliance to BMW Rules 2016/ CPCB guidelines, these provisions must become one of the fundamental grounds of granting ECs/ Consent/ Authorization to HCFs/ CBWTFs. Also, ensure effective monitoring of CBWTFs within their jurisdiction and come under the ambit of the Online Continuous Emission Monitoring System and connect with the CPCB server. In case of insufficient BMW treatment capacity, proper gap analysis be undertaken, and new facilities may be allowed. Further, non-compliant entities be penalized and asked to deposit requisite environmental compensation. Copy of the D.O. Letters dated 14.10.2022 and 18.10.2022 are also annexed herein as **Annexure- 10 (COLLY).**”*

17. The above analysis clearly reveals that the CCA dated 27.07.2023 has been granted by the respondent no. 6 CEO-1 Vivek Roy exceeding his jurisdiction and in contravention with the laws. Since, the issue is in respect of passing of an illegal order by an authority exceeding his jurisdiction, therefore it can be very well be examined in the present O.A. The allegation that the petition is a motivated petition or remedy of appeal is available does not come in the way of examining such a gross illegality by the Tribunal. That apart we find that the allegation of motivated petition in the light of the present facts remain unsubstantiated.

18. In spite of an opportunity, the respondent no. 6-CEO-1 has not filed any reply before the Tribunal and has not disclosed as to how he had pulled out the application from the portal and decided it by granting CCA to respondent no. 1.

19. The reply of the respondent no. 5 reveals that letter of explanation was issued to respondent no. 6 on 30.08.2023 but no satisfactory reply has been submitted. In the said circumstances, if the authorities are prima facie satisfied about misconduct then they should not hesitate in initiating departmental action against the respondent no. 6.

20. The Tribunal considering the above situation by order dated 07.08.2023 had stayed the operation of the order dated 27.07.2023.

21. In view of the above analysis, we find that the Consolidated Consent to Operate and/ or authorization dated 27.07.2023 issued by the respondent no. 6 to the respondent no. 1 cannot be sustained and is hereby set aside.

22. The O.A. is accordingly, allowed.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

September 25th, 2023
O.A. No. 496 of 2023
N