

BEFORE THE NATIONAL GREEN TRIBUNAL, CENTRAL ZONAL BENCH, BHOPAL

Original Application No. 111/2013

Dr. Subhash C. Pandey Vs. Municipal Corporation, Bhopal & Ors.

**CORAM : HON'BLE MR. JUSTICE DALIP SINGH, JUDICIAL MEMBER
HON'BLE MR. P.S.RAO, EXPERT MEMBER**

PRESENT : Applicant : Dr. Subhash C. Pandey
Respondent No. 1 : Shri Asad Ullah Khan, Adv.
Respondent No. 2 : Shri Sachin K.Verma, Adv. with
Shri Ayush Dev Bajpai
Respondent No. 3 : Shri Shivendu Joshi, Adv. &
Shri Vishal Vijayvargiya, Adv. for
Shri Purushaindra Kaurav, Adv.
Shri R.R.Singh Sengar, AE, MPPCB
Regional Office, Bhopal
Rajasthan PCB : Shri Sandeep Singh, Adv.
Shri Rakesh Gupta, Execute Engineer,
RPCB, Jaipur

| Date and Remarks | Orders of the Tribunal |
|---|--|
| Order no. 3 11th December, 2013 | <p>This application has raised an important issue regarding non observance and flagrant violation of the Municipal Solid Waste (Management and Handling) Rules 2000 (hereinafter referred to as the 'MSW Rules, 2000') framed in exercise of the powers conferred under Section 3, 6 and 25 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986). Initially the application in question was confined to the non-observance of MSW Rules, 2000 by the Municipal Corporation, Bhopal (BMC) which was utilising the site at Village Bhanpura in Bhopal Municipal area for the aforesaid purpose. However, since the issue involved could not be confined just to the municipal area in Bhopal, the Tribunal decided to enlarge the scope of the proceedings by seeking information on the observance of the MSW Rules, 2000 in each of the three States of Rajasthan, Madhya Pradesh and Chhattisgarh falling within the jurisdiction of the Central Zonal Bench of the National Green Tribunal at Bhopal and by our order dated 31.10.2013 notices were issued to all the three States in question with a direction to furnish information regarding implementation and observance of the mandatory provisions of the MSW Rules, 2000 by the municipalities within the</p> |

**O.A. No.
111/2013**

**11th December,
2013**

respective States. Copy of this order was sent to the State Pollution Control Boards as well as the Chief Secretaries of all the three States.

In pursuance of our notice, Misc. Application No. 160 of 2013 has been filed on behalf of the BMC seeking time to furnish the required information and submit the reply within 15 days as it was stated that the officers concerned were busy with the election duty assigned and as such the reply could not be filed. M.A.no. 160/2013 is disposed of.

The prayer made in the application is accordingly allowed and two weeks' time is allowed to file the reply.

We find that only the PCBs of Madhya Pradesh and Rajasthan have submitted their replies which are ordered to be taken on record. The Learned Counsel appearing for the Chhattisgarh Environment Conservation Board (CECB) Shri Shivendu Joshi seeks further time to submit the reply on behalf of the CECB.

From the two replies which have been filed by the Rajasthan PCB and MPPCB, *prima facie* it goes to show that observance of the MSW Rules, 2000 is only there to be flouted. In both the cases, we find, *prima facie*, they were not followed up with prosecution of concerned Authorities/persons for violation of MSW Rules, 2000 under Section 15 of the Act of 1986 after notices under Section 5 of the Environment (Protection) Act, 1986 had been given. We also find that awareness about the existence of the MSW Rules, 2000 and their compliance, to a great extent is lacking and in some cases, even the awareness with regard to the responsibility for implementation and observance of the MSW Rules, 2000 is also lacking. Rule 4 of the MSW Rules, 2000 provides that every municipal authority shall be responsible for the implementation of the provisions of the Rules including providing infrastructure for collection, discharge, segregation, transportation as well as disposal of the municipal solid waste. Under

**O.A. No.
111/2013**

**11th December,
2013**

Rule 5 of the MSW Rules, 2000 the Secretary in charge of the Department of Urban Administration and Development in the concerned State shall be the overall responsible authority for the enforcement of the Rules and the District Magistrate or the Deputy Commissioner of the concerned District shall have the overall responsibility within the territorial limits of his/her jurisdiction.

We find that the PCBs, in their correspondence, several times, have drawn the attention of the Commissioner and the Principal Secretary of the Urban Administration and Development Department in Rajasthan and Madhya Pradesh States regarding the implementation of the MSW Rules, 2000 and in Madhya Pradesh, a meeting was held in the year 2009 presided over by the Principal Secretary, Department of Housing & Environment and certain decisions by way of resolution were recorded in the Minutes of the Meeting held in April, 2009. But the implementation with regard to the same has not been seen on ground.

The MSW Rules, 2000 under Rule 8 provide for the State Pollution Control Boards to send their Annual Report to the Central Pollution Control Board. Since, in our previous order we have not issued notice to the CPCB, we would direct issuance of notice to the CPCB and the Learned Standing Counsel for CPCB Shri Sandeep Singh is directed to accept notice on behalf of the CPCB. Rule 8 of the MSW Rules, 2000 requires the CPCB to prepare a consolidated Annual Review Report with regard to the observance of the Rules and make its recommendation to the Central Government. We would, therefore, direct the CPCB through its Counsel that while submitting their reply, to place before the Tribunal the action taken by way of their recommendations under Rule 8 and what action the CPCB has taken if it found non-observance, non-compliance and violation of the Rules 2000 in various States by the municipal authorities.

**O.A. No.
111/2013**

**11th December,
2013**

We find from the replies that have been filed on behalf of the PCBs in Rajasthan and Madhya Pradesh that despite attention of the Government being drawn through the Principal Secretaries, Urban Administration and Development Department, it appears that the importance regarding observance and compliance of the MSW Rules, 2000 has not percolated down and the Government does not appear to be sensitized to the aforesaid issues as in the cases of several environmental issues which directly affect the people of the State. The mandate of Article 48(A) has to be understood by all the concerned and the State cannot just stand and be a silent spectator by contending that they have framed the Rules under the Environment (Protection) Act, 1986 and it is for the local authorities (municipalities) to comply. The responsibility under Rule 5 is of the State Government. The observance and compliance of the MSW Rules, 2000 requires setting up of designated sites in accordance with the procedure prescribed under the Rules and the preparation of the said sites in the manner provided under the Rules with requisite infrastructure and human resources as well as financial grant, wherever necessary, since most of the local authorities are now dependent on the State grants with limited resources at their own command. It would be the responsibility of the State, in our opinion, not only to issue directions for the observance and the compliance of the Rules but at the same time provide necessary finances required for man power requirement, infrastructure, equipment, etc. to the local authorities as some of them may not be having requisite resources of their own and insufficient funds cannot be an excuse for compliance of the Law.

From the information which has been furnished by the MP Pollution Control Board in their reply, we find that initially the Bhopal Municipal Corporation was granted permission provisionally vide letter of the MP Pollution Control Board dated 23.11.2004 to operate the waste

**O.A. No.
111/2013**

**11th December,
2013**

process and waste disposal facilities at Village Jhirnia, Revenue Survey No. 115 near Narsingharh Main Road and at no point of time permission, provisionally or otherwise, was granted for the present site at Village Bhanpura which is being utilised for the aforesaid purpose. The Member Secretary, MP Pollution Control Board shall explain by way of supplementary affidavit in what circumstances the present site is being allowed to utilise at Bhanpura contrary to the permission granted for Jhirnia site in the year 2004. It must further, come in the reply that why when no extension for utilising the site at Jhirnia for which provisional authorisation was granted on 23.11.2004, was sought after 31.10.2007 was the present site being used for this purpose. In such circumstances why the Secretary, Urban Administration & Development Department, Madhya Pradesh; Commissioner, Urban Administration & Development Department, Madhya Pradesh and Municipal Commissioner, Bhopal Municipal Corporation be not dealt in accordance with the provisions of Section 5 read with Section 15 of the Environment (Protection) Act, 1986 and also made personally liable and fined apart from the provisions of Section 15 of the Act 1986 for their wilful neglect to observe the Rules of 2000 as well as for total contravention and violation of the provision of the Act and the Rules in this behalf despite having been informed under Section 5 of the Act of 1986. They would be at liberty to submit their replies in writing by 30.01.2014. Let notices be issued to the above officers in their personal capacity to show cause-

From the reply submitted by the Rajasthan Pollution Control Board we find that despite deficiencies having been pointed out by the Member Secretary and notices under Section 5 of the Environment (Protection) Act, 1986 issued in the letters dated 10.08.2011, filed as Annexure R-10 and R-11, both, the then Commissioner of Municipal Corporation, Jaipur and Principal Secretary, Urban Development & Housing Department, Rajasthan State at the relevant time in August, 2011

**O.A. No.
111/2013**

**11th December,
2013**

shall show cause as to what compliance they have made to the points which have been raised in the letter of the Pollution Control Board and if not why they should not be personally held responsible and proceeded with in terms of Section 15 of the Environment (Protection) Act to be punished with imprisonment and fined as provided under the Act.

Since we find that matters pertaining to the management and observance of the MSW Rules, 2000 is not receiving adequate attention, with a view to impress upon the respective State Governments as well as Pollution Control Boards which are the watch dogs under the provision of the Environment (Protection) Act, 1986 for observance and compliance of Rules 2000 and as overall responsibility lies with the Pollution Control Boards, for the protection of environment, their Member Secretaries and the Zonal Officers of the Central Pollution Control Board alongwith the Principal Secretary, Urban Administration and Development Department of all the three States i.e. Rajasthan, Madhya Pradesh & Chhattisgarh to appear in person and submit information on each of the Municipalities in the State showing the following :

The name of municipality, the District in which the said municipality is situated in the State, the nature and category of the municipality, status with regard to compliance and observance of the MSW Rules, 2000 pointing out deficiencies, if any, observed during the last inspection and what steps the Local Authority as well as the State Government intends to take for the implementation and observance of the MSW Rules, 2000 in that behalf including providing financial assistance to each of the municipalities and necessary technical knowhow in that behalf and any other information which the Pollution Control Board/ State Government wishes to furnish with regard to the local authority / municipality.

Above all, in respect of each municipality the information shall also be furnished whether the present site has the approval of the

**O.A. No.
111/2013**

**11th December,
2013**

Pollution Control Board and the necessary Environmental Clearance in that behalf has been obtained and the duration for which the permission subsists, if at all permission has been obtained and whether any application with regard to the location / creation of the site is still pending with the Pollution Control Boards and what is the status of the application submitted by the local authority/municipality.

On the next date of hearing the Principal Secretaries, Urban Administration Development Department of all the three States shall remain present personally, as well as the Member Secretaries of all the three Pollution Control Boards alongwith the concerned Zonal Officers of the Central Pollution Control Board. The replies and the information which have been sought hereinabove shall be filed by 30.01.2014, positively.

The Registrar is directed to send copy of this order to the Chief Secretaries of Rajasthan, Chhattisgarh & Madhya Pradesh States as well as the Member Secretaries, State Pollution Control Boards of Rajasthan, Chhattisgarh & Madhya Pradesh States and the Zonal Officers of the Central Pollution Control Board in these three States for compliance of the above directions.

The matter be listed on **03.02.2014**.

.....JM
(DALIP SINGH)

.....EM
(P.S.RAO)