

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
ORIGINAL APPLICATION NO. 8(THC)/2013**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

- 1 Indian Medical Associations
Aurangabad Branch,
Near Shanti Mandir, Aurangabad,
Through : Its Member,
Dr. Devdutta Palnitkar
- 2 Dr. Deepak Pardeshi,
Aged 37 years, Occn : Medical Practice,
R/o. Trimurti Chowk, Jawahar Colony,
Aurangabad

....Applicants

V E R S U S

- 1 **The Union of India,**
(Copy to be served on the
Standing Counsel for the
Union of India, High Court,
Bench at Aurangabad.
- 2 **The State of Maharashtra**
(Copy to be served on
Government Pleader, High Court,
Branch at Aurangabad)
- 3 **Maharashtra Pollution Control Board,**
Having its office at Bombay,
Through : Its Member Secretary,

- 4 **The Sub Regional Officer,**
Maharashtra Pollution Control Board,
MIDC, Chikalthana,
Behind Dhoot Hospital, Jalna Road
Aurangabad
- 5 **Advocate General of Maharashtra,**
High Court Annexe Building,
Fort, Bombay.

...Respondents

Counsel for Applicant:

Absent - Nemo

Counsel for Respondent No.1 :

Shri K.D. Ratnaparkhi,

Counsel for Respondent No.3,4 & 7 :

Mr. D.M. Gupte, Adv. w/

Ms. Supriya Dangre

DATE : 22nd January, 2014

J U D G M E N T

1 This Application has been registered upon transfer of the Writ Petition No.3461 of 2002 by the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad vide its order dated 1st October 2013. The Application has been mainly filed to challenge the Government of Maharashtra Resolution dated 20th April 2000, stipulating authorization fees under the Bio Medical Waste (Management and Handling) Rules 1998, notified under the Environment (Protection) Act 1986, to be paid by the Health Care Institutions.

2 The Applicant No.1 is the Indian Medical Association which is a registered Association formed and registered under

the Bombay Public Trust Act 1950. The Applicant No.2 is a practicing Medical Professional. The brief contentions of the Application are as under :-

Ministry of Environment and Forest, Government of India (Respondent No.1) have enacted Environment (Protection) Act 1986 with an objective to provide “an enactment of a general legislation on environment protection which *inter-alia*; should enable co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health”.

3 The Central Government has notified the Bio Medical Waste (Management and Handling) Rules 1998 (hereinafter referred as “BMW Rules”) for Environment sound management and handling of the Bio Medical Waste in the country. The said Rules provide for effective segregation, collection, transport, treatment and disposal of the Bio Medical Waste in a scientific manner. The Rules have been made applicable to all the institutions and individuals who generate the various types of Bio Medical Waste as defined in the said Rules. These Rules further require the occupier, as defined in the Rules, to make application in the prescribed form to the Prescribed Authority

for obtaining the necessary authorization under the provisions of these Rules. As per Rule 7 of the BWM Rules 1998, as amended, the State Pollution Control Board have been notified as the Prescribed Authority for the enforcement of the provisions of these Rules. Under Rule 8 of the BMW Rules, as per Sub-clause (3), every application in form (1) for grant of authorization shall be accompanied by fees as may be prescribed by the Government of State or Union Territory. State Government of Maharashtra has issued the impugned Notification dated 20th April 2000 under these provisions of the Rules which is under challenge in the present application.

4 The Applicants submit that the reference of the Levy of Fees in Clause (3) of Rule 8 of BMW Rules is outside the power, jurisdiction and authority of the Respondents. The Applicants further state that the Environment (Protection) Act 1986 and the provisions there under do not authorize the Respondents to levy the fees and therefore, the Applicants further state that purported empowerment under Rule 8(3) of the BMW Rules to prescribe fees is *ultra virus* the Statute and Rule making powers of the Respondents. The Applicants submit that Environment Department, Government of Maharashtra had earlier stipulated the Fees under Rule 8(3) of the BMW Rules vide the Government Resolution dated 9th March 1999 which have been subsequently revised vide the impugned Government Resolution. The Applicants further

claim that they have made representation to the State Government clearly mentioning that there is abnormal increase in the fees for smaller hospitals and the fees are reduced for the larger hospitals. The Applicants further submit that there is no special benefit, service or privilege to the Medical practitioners/professionals wanting the increase in the fees and rendition of services and there is no rational under-laying in charging of high fees for BMW authorization. The Applicants further submit that the Applicants are under compulsion to pay fees at increased rates purportedly under statutory powers and without consent of the payer. The Applicants further submit that there is no nexus in increasing and charging of the fees for authorization and the service rendered.

5 The Applicants also submit that the Bio Medical Waste cannot be termed as hazardous substance as contemplated and envisaged in Environment (Protection) Act 1986 and Bio Medical Waste (Management & Handling) Rules and the Applicants therefore, pray for following prayers among others :-

(b) It be declared that impugned rule 8(2) of the BMW Rules purportedly framed under the provisions of sections 6, 8 and 25 of the Environment (Protection) Act, 1984 is ultravires to the Environment (Protection) Act, 1986 and the same be quashed and set aside as ultravires constitution, statute and illegal and void and that the same is unenforceable and still born.

(c) It be declared that change in criteria of fees structure and the quantum of levy of fees made under impugned

Government Resolution dated 20-4-2000 bearing No.ENV/2000/280/ADM No.20/TAN KA 3 are ultravires the constitution of India and ultravires to the Environment Act & the BMW Rules and are illegal and void.

(d) By issue of writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari, the impugned Government Resolution dated 20-4-2000 bearing No.ENV/2000/280/ADM No.20/TAN KA 3 be quashed and set aside and be declared as ultravires the Constitution of India, ultravires the Environment Act & Rules and is unenforceable and still born and illegal and void.

6 During the hearing, on November 11, 2013, the Tribunal had directed Maharashtra Pollution Control Board (MPCB) to serve the notices to the Applicants and accordingly they were served. The Applicant failed to appear but a letter from Secretary of Indian Medical Association, Aurangabad, dated 4-12-2013 addressed to the Tribunal was placed on record, and the contents of the letter are reproduced below:

“We came to know from The office of Sub regional Officer, MPCB, Aurangabad that the Writ Petition filed by us before the Aurangabad bench of Bombay High Court in 2001 with regard to the registration fees charges from doctors and health institutions has been transferred and will be heard before the Hon’ Western Zone bench of the National Green Tribunal at Pune.

We have so far not received any notice from the Hon’ble Western Zone bench of the National Green Tribunal at Pune.

However, we wish to state that the issue of fees for registration with the pollution control board charged from doctors and health institutions was amicably settled after we held discussion with the Hon’ble Minister of state for Environment at that time. Most of our members have already

registered with the Pollution Control Board after agreeing with the new fees structure.

We therefore do not have any grievance in this regard at present.”

7 Still, however, the Tribunal wanted to examine the issues raised in this Application and requested the Counsel for MoEF to advise on the issue. Mr. Ratnaparkhi, Counsel for MoEF explained that the BMW Rules have been framed in exercise of the powers conferred by Section 3, 6 and 25 of Environment (Protection) Act 1986. He further mentions that Section 3 of the Environment Protection Act is very broad and Rule 3(1) is reproduced below :-

“Subject to the provisions of this Act, the Central Government shall have the powers to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of Environment and preventing, controlling and abating Environmental Pollution.”

The sub-Rule (2) lists out various measures without prejudice to the generating of the provisions of Sub-section (1) referred above”.

8 He further explained that Rule 6 empowers the Central Government to make Rules in respect of all or any of the matters referred to in Section 3. Further Section 25 also authorize the Central Government to make Rules for carrying out the purpose of this Act which includes setting the standard, the procedure, the authorities etc. He, further explains that these powers defined under sections 3, 6 and 25 clearly enable

and authorise the Central Government to stipulate the provision of fees under the Rules notified under the Environment (Protection) Act. He further submits that, in any case, for effective implementation of the Rules, the Enforcement Authority will definitely require resources which need to be raised using the principle of Polluter Pay's and he, therefore, submits that there is no illegality in the provision stipulating fees of authorization under the Bio Medical Waste Rules 1998.

9 The MPCB has also filed an Affidavit and elaborately explained the role of MPCB in implementation of BMW Rules. It is submitted by MPCB that the Respondent/Board is supposed to cause visits, inspections and sampling in order to ensure the compliances of the various stages of BMW (Management & Handling) Rules i.e. segregation, collection, transportation, treatment and disposal. The Respondent Board needs to make necessary inquiries while processing the authorization applications and carry out necessary administrative work for effective enforcement and compliance of the BMW Rules. The MPCB further submits that the fees are charged as per the provisions of Rule 8(3) of BMW Rules as notified by the State Government. MPCB further submits that though the revised fee structure was notified on 20th April 2000, the State Government through Environment Department, Government of Maharashtra has reviewed this fees structure considering the various representation received in this regard

and revised fees structure has been notified vide Government Resolution dated 10th April 2003 which is placed on record. The MPCB further submits that the State Government has considered various representations and the present fees structure vide Govt. Resolution dated 10th April 2003 is based on number of beds. MPCB therefore, that the present application may be dismissed as infructuous as the contentions of the Applicants have already been considered by the State resulting into revised fees structure as notified vide G.R. dated 10th April 2003.

10 On perusal of the records and also submissions made by MoEF and MPCB and also, the communication from the Applicants' organization that the issue is now settled, the Tribunal is required to see whether, in fact Law allows the authority to charge the authorization fees and also contention raised that the Bio Medical Waste is not a hazardous waste will have to be considered.

11 The Tribunal is aware that the Tribunal is not having powers similar to the powers of the High Courts, conferred by the Constitution under Article 226, to issue *mandamus writ* to declare certain Notification as *ultra virus*.

12 Still, however, we would like to note a judgment of Hon'ble Karnataka High Court regarding charging of fees in "Fr.Muller's Hospital, Rep. by Vrs. The Member Secretary And Others, AIR 2004 Kant 342" wherein it is held that:

“18. Article 265 of the Constitution mandates that no tax should be levied or collected without the authority of law. Such mandate is equally or a fortiori applied to delegated legislation. The letter of the law should be strictly adhered to when such levy is by the delegated authority. It has been well recognized that taxing power can be exercised only by the Legislature. The levy of fee is part of taxing power though on a lesser scale. If the constitutional mandate even for levy of taxes is that it cannot be without the authority of law the scrutiny in respect of justification of fee by the prescribed authority can only for stricter and not to the contrary. There cannot be any levy either by implication or intent. The levy should be specific, permitted and authorized in law. If these principles are applied the provisions of Sub-rule 3 of Rule 8 cannot withstand the scrutiny of any of the tests evolved in the context of levy of fee by a delegated authority. There is no express provision in the Act enabling the Central Government to frame Rules providing for levy of fee as is levied as per letter dated 26th July 1999 issued by the State Government based on the notification dated 20th July, 1998, Annexure C issued by the Central Government. The provisions of Sub-rule 3 of Rule 8 are clearly ultra-virus the Act and as such cannot be sustained.”

19 In the result, the notification levying the fee as per notification dated 26-7-1999 and the other consequential show causes notices issued to the individual petitioners calling upon them to comply with this requirement as also the proposed action under Section 15 of the Act are also not sustainable and these notices are quashed by issue of Writ of certiorari.”

13 Hon’ble Principal Bench, National Green Tribunal in its Judgment delivered in the Application No.63/2012 has already clarified the issue whether Bio-medical waste is a hazardous waste and the relevant paras are reproduced for ready reference :

27. A person who is interested in establishing and operating a plan under entry 7(d) of the Scheduled to the Notification of 2006 and is using an incinerator, alone or along with the landfill, would fall under category 'A' project and therefore, would require Environmental Clearance from MoEF. Bio Medical Waste undisputedly, is a hazardous waste though covered under Rules of 1998, a cumulative reading of the definition of "hazardous substance" under the Act of 1986, "hazardous waste" under Rules 2008 (particularly with reference to the schedule) and the Bio Medical Waste and such treatment facilitate under the Rules of 1998 clearly show that BMW is hazardous in nature- - -

14 We also note that the Chairman, Central Pollution Control Board had issued directions U/s. 18(1)(b) of Water (Pollution and Control Board) Act 1974 to all State Pollution Control Boards vide letter No.B-29012/1/2012/ESS/1540 dated 4-6-2012, to consider the Health Care Establishment (as defined in Bio Medical Waste Rules) as Red category activity under provisions of the Water (Pollution and Control Board) Act 1974 and Air (Pollution and Control Board) Act 1981 and to bring them under consent regime. The Counsel for MPCB made statement on instructions that MPCB has started granting separate consent to the Health Care Establishments under the provisions of Water and Air Act. It is to be noted that the SPCB charge separate consent fees for the consent under the Water Act and Air Act 1981. The Health Care Establishment also needs an authorization under the BMW Rules 1998 by payment of authorization fees. Considering the above facts, the Tribunal is of the considered opinion that this matter needs to be reviewed by the MoEF for bringing uniformity in approach of the concerned

Authorities and avoid double financial burden in view of levy of above two different fees.

15. Accordingly, we direct the MoEF to take a review in the matter and do the needful.

16 Considering the above, the Application is partly granted to the above extent though allowed to be withdrawn with liberty to the Applicants to approach the proper Forum to challenge the fees for Authorisation under the Bio Medical Waste (M & H) Rules, if so advised. The Application is accordingly disposed off. No costs.

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

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

NGT