

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

Original Application No. 710/2017
(I.A. No. 105/2019)

With

Original Application No. 711/2017
(M.A. No. 1497/2017 & M.A. No. 280/2018)

With

Original Application No. 712/2017

With

Original Application No. 713/2017

Shailesh Singh

Applicant(s)

Versus

Sheela Hospital & Trauma Centre, Shahjhanpur & Ors.

Respondent(s)

With

Shailesh Singh

Applicant(s)

Versus

Kailash Hospital and Heart Institute & Ors.

Respondent(s)

With

Shailesh Singh

Applicant(s)

Versus

Shri Ganga Charan Hospital (P) Ltd., Bareilly & Ors.

Respondent(s)

With

Shailesh Singh

Applicant(s)

Versus

Katiyar Nursing Home, Hardoi & Ors.

Respondent(s)

Date of hearing: 12.03.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Ms. Preeti Singh and Mr. Sunklan Porwal,
Advocates
For Respondent (s): Mr. Pratap Shanker, Mr. S. Shantanu, Mr.
Navin Chawla and Mr. Ramesh Jerath,
Advocates for R-3
Mr. Kamal Kumar and Mr. Mizan Siddiqui,
Advocates for R-2
Mr. Kamaljeet Singh, AAG for State of Punjab
Ms. Pinky Anand, ASG, Mr. Giji Gorge and Mr.
Hemant Arya, Advocates
Mr. Dinesh Jindal, LO, DPCC
Mr. Pradeep Misra and Mr. Daleep
Dhyani, Advocates for UPPCB
Mr. Rahul Verma, Addl. AG
Mr. Sriansh Prakash, Advocate for MoEF&CC
Mr. Suyash Singh, Vyom Raghuvanshi,
Advocates
Mr. Anant Agarwal and Ms. Sweta Rani,
Advocates
Ms. Nupoor Singal, Advocates for HSPCB
Mr. Mukesh Verma, Advocate for UEPPCB

ORDER

1. The issue raised in these applications is non - compliance of the provisions of Bio-medical Waste Management Rules, 2016 (BMW Rules).
2. Adverse consequences on the public health on account of improper management of the waste generated by the health care facilities (HCFs) are well known. Bio-medical waste is infectious and hazardous.
3. In the application, it is alleged that most of the hospitals are disposing of waste in haphazard and improper manner. Mandatory requirement of segregation, pre-treatment, safe

storage, training and immunization of health workers, occupational safety of health workers, health check-up, maintaining records, furnishing reports by the occupiers, operators, including transporters, is not taking place. Mandatory authorisation has not been taken by the HCFs. There is no monitoring mechanism. Even the prescribed authorities are not sending the requisite information to the Central Pollution Control Board (CPCB). No annual reports are placed on the websites as required. This results, *inter-alia* in followings diseases:-

<i>Infection Type</i>	<i>Transmission Path</i>
<i>Gastrointestinal infection</i>	<i>Faeces or/ and vomiting liquid</i>
<i>Respiratory infection</i>	<i>Respiratory secretions, saliva</i>
<i>Eye infection</i>	<i>Eye secretions</i>
<i>Genital infection</i>	<i>Genital secretions</i>
<i>Skin infection</i>	<i>Purulent secretions</i>
<i>Anthrax</i>	<i>Secretions of skin lesions</i>
<i>Meningitis</i>	<i>LCR</i>
<i>AIDS</i>	<i>Blood, semen, vaginal secretions</i>
<i>Haemorrhagic fevers</i>	<i>Biological fluids and secretions</i>
<i>Septicaemia</i>	<i>Blood</i>
<i>Viral Hepatitis type A</i>	<i>Faeces</i>
<i>Viral Hepatitis type B and C</i>	<i>Blood, biological fluids</i>

4. Further averments in the application are that inadequate bio-medical waste management also causes environmental pollution, unpleasant smell, growth and multiplication of vectors like insects, rodents and worms and may lead to the transmission of diseases like typhoid, cholera, hepatitis and AIDS through injuries from syringes and needles contaminated with various communicable diseases. The matter has been reported in the Newspapers. Specific reference has been made to the news article published in *Dainik Jagran* dated 06.10.2017 stating as follows:-

“That the Gautam Buddha Nagar is the only district where a survey of 66 hospitals was conducted in October 2017 where 23 were found doing their wilfulness in the management of Bio-medical waste. 18 hospitals of which have been issued notices by the Regional Officer, UPPCB, Guatam Budh Nagar.”

5. The applicant has also annexed photographs of dumping of bio-medical waste along with general solid waste at Sheela Hospital, Shahjahanpur, Dr. Wasim Hospital, Shahjahanpur and Govt. District Hospital, Shahjahanpur.

6. Reference has been made to Report of the CAG placed on the website in May, 2017 records failure on the part of Uttar Pradesh Pollution Control Board (UPPCB) as follows:-

“Inadequate facility of bio-medical waste (BMW) treatment. As per the report paragraph 2.1.9.5 there were 8,366 Health Care Establishments (HCEs) out of which 3,362 HCEs were operating without authorization. Total BMW generated in the State was 37,498 kg/day out of which only 35,816 kg/day was treated and disposed of. BMW of 1,682 kg/day was being disposed of untreated due to inadequate treatment facility. But UPPCB failed to monitor unauthorised operation and untreated disposal of BMW and did not take any action against the defaulters.”

The report further states that there is no proper monitoring mechanism. There is no monitoring of veterinary institutions and animal houses. This is one of the reasons for pollution of the rivers including Gaumati river in Lucknow and Ganges in Banaras. The UPPCB, as regulator, is a failure in the matter. 63 districts in the State of UP have no bio-waste treatment plants.

7. Vide order dated 15.11.2017, the Tribunal prohibited handing over of bio-medical waste to rag pickers. The State PCB and other official agencies were required to file data showing the status of compliance of the BMW Rules. In the course of time, this Tribunal also issued notices to the States of Punjab, Haryana and Uttarkhand. The States have filed some of the data on the subject but that data does not show full compliance.
8. On 06.02.2019, this Tribunal considered the data with respect to the State of UP and found that neither the data was complete nor the authorities of the State of UP were serious in handling

the situation. The Tribunal gave one month time to give complete data and also required furnishing of Performance Guarantee in the sum of Rs. 10 crores.

9. Accordingly, at the time of hearing, data of number of HCFs, authorised HCFs, unauthorised HCFs and the action taken against unauthorised HCFs has been given which is as follows:-

Sl. No.	Details	Govt. HCFs	Private HCFs	Total
1.	Total number of HCFs	5240	12784	18024
2.	Total number of HCFs Authorised	1089	6648	7737
3.	Number of application under process	4151	2038	6189
4.	Total number of HCFs without authorised	4151	6136	10287
5.	Action taken against the unauthorised HCFs	4151	338	4489
6.	Total number of notices given as CMOs for unauthorised HCFs	4151	3760	7911

10. As per the status report furnished today on behalf of State of UP, State Advisory Committee has been constituted, Manual on bio-medical waste management has been distributed, customised online software bio-medical waste management information systems (BMW MIS) have been developed, all divisional Additional Directors (ADs), Chief Medical Officers (CMOs), Chief Medical Superintendents (CMSs) have been sensitized on bio-medical waste management, checklist as well

as monitoring formats have been developed and disseminated, IEC materials on bio-medical waste management have been developed and distributed in all District –level hospitals and an automated bio-medical waste collections data system (ABCD) for real-time data on biomedical waste collection as well as tracking of CBWTF vehicles has been developed and is being pilot tested in Lucknow District. Steps have also been taken for safe collection sheds, allocation of budget for such collection, arrangement for deep burial pits and for pre-treatment laboratory have been made. Pre-treatment waste guidelines have also been issued. Phasing out of plastic bags, gloves and blood bags has been proposed. There will be segregation of bio-medical waste and other waste and training will be provided as per Rules. Immunization of health care workers and establishment of bar code system will be ensured, apart from other steps stipulated under various clauses of Rule 4 will be taken. Steps have also been taken under Schedule – III, Rule 6 and 9. An action plan has also been filed for bio-medical waste management.

11. What is shown to have been done is too little and too late. Most of the steps are still at proposal stage and not at implementation stage. Only action claimed to have been taken against the violators appears to be that notice has been issued which by itself may be of no consequence unless further follow up action is promptly concluded.

12. In view of the seriousness of consequence of failure to comply with BMW Rules on the health of the citizens, stern action is called for such as prosecution, recovery of deterrent compensation to ensure that violation of Rules of such significance does not remain a profitable activity. The regulatory authorities cannot rest content by lip sympathy to the cause by environment protection. Admittedly, not a single person is shown to have been convicted even after the authorities have found large scale violation. No compensation is shown to have been recovered from the violators. No scale of compensation has been laid down. Even action plan on these subjects is not to be found. Without punishment of the guilty and visiting the guilty with serious consequences in a prompt manner, there can be no meaningful rule of law.

13. The problem of non-compliance of BMW Rules may not be confined to the State of UP alone or to the States of Punjab, Haryana and Uttarakhand. Such failure is widespread throughout.

14. Rule 13 of the BMW Rules require every occupier or operator of common bio-medical waste facility to submit its annual report to the prescribed authority. The prescribed authorities are to send information to the CPCB on or before 30th July every year. The CPCB is to give a report to the Ministry of Environment,

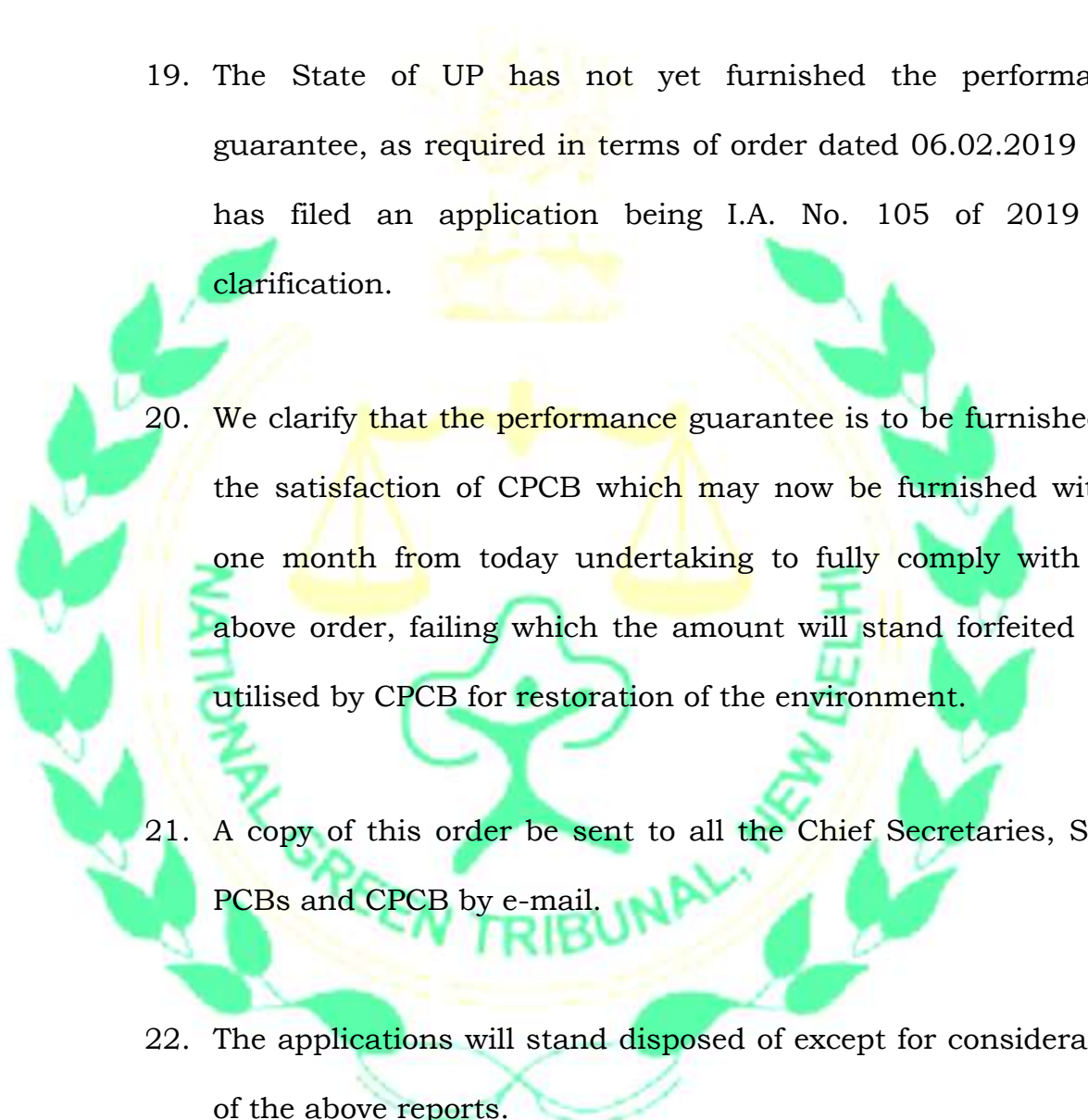
Forest and Climate Change (MoEF&CC) on or before 31st August every year. The reports are to be made available online on the website of occupiers, State PCBs and CPCB.

15. In view of the above, we direct all the States and Union Territories to ensure that reports in terms of Rule 13 are furnished to the CPCB positively within one month or on or before 30th April, 2019 for the period the reports are due as per rules. The CPCB may furnish a status report of compliance of BMW Rules after proper analysis to this Tribunal within one month thereafter by e-mail at ngt.filing@gmail.com. It is made clear that any failure in this regard will result in the defaulting States being required to pay compensation to be deposited with the CPCB at the rate of Rupees one Crore per month after 01.05.2019. All the States may also prepare their respective action plans for compliance of Rules within one month and furnish the same to the CPCB. The CPCB may give its comments on the action plan to this Tribunal within one month thereafter by e-mail at ngt.filing@gmail.com.

16. The Tribunal while considering the matter of degradation of environment on account of failure of compliance of environmental norms, in its order dated 16.01.2019 in Original Application No. 606 of 2018, directed the Chief Secretaries of all the States to remain present in person after acquainting themselves with the status of compliance of various Rules,

including BMW Rules. So far, five Chief Secretaries have appeared in person for the States of Himachal Pradesh, Haryana, Punjab, Uttarkhand and Delhi. It has been found that there is no satisfactory compliance of the said Rules in the said States. The Chief Secretaries have been directed to monitor such compliance personally atleast once in a month and furnish a quarterly report to this Tribunal and to appear again after six months.

17. The CPCB has undertaken an exercise to prepare a scale of compensation to be recovered from the polluters for violations vide order dated 03.08.2018 in Original Application No. 593 of 2017, *Paryavarana Suraksha Samiti & Anr. Vs. Union of India & Ors.* CPCB has filed reports before this Tribunal in regard to compensation for not setting up ETP, CETP, STP which matter was considered vide order dated 19.02.2019. CPCB may now also undertake study and prepare a scale of compensation to be recovered from violators of BMW Rules within one month from today. This will not debar the State PCBs from performing their duty of recovering compensation from the polluters or laying down their own scale which should not less than the scale fixed by CPCB. The scale must be deterrent rendering violation of Rules to be non-profitable and which should be adequate to remedy the situation.

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18. The State of UP may modify its action plan in the light of above observations and furnish its report to the CPCB within one month. CPCB may furnish its comments on the revised action plan within one month thereafter.
19. The State of UP has not yet furnished the performance guarantee, as required in terms of order dated 06.02.2019 and has filed an application being I.A. No. 105 of 2019 for clarification.
20. We clarify that the performance guarantee is to be furnished to the satisfaction of CPCB which may now be furnished within one month from today undertaking to fully comply with the above order, failing which the amount will stand forfeited and utilised by CPCB for restoration of the environment.
21. A copy of this order be sent to all the Chief Secretaries, State PCBs and CPCB by e-mail.
22. The applications will stand disposed of except for consideration of the above reports.

List for consideration of reports on 15.07.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

March 12, 2019
Original Application No. 710/2017 and other connected matters
(I.A. No. 105/2019)

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