

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

Original Application No. 710/2017
WITH

Original Application No. 711/2017
WITH

Original Application No. 712/2017
WITH

Original Application No. 713/2017

(With report dated 15.11.2019)

Shailesh Singh

Applicant(s)

Versus

Sheela Hospital & Trauma Centre,
Shahjahanpur & 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: 22.01.2020

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

For Applicant(s):

Mr. Rabin Majumdar, Ms. Akansh Srivastava,
Advocates with Dr. BNP Singh

ORDER

1. The issue raised in these applications is non - compliance of the provisions of Bio-medical Waste Management Rules, 2016 (BMW Rules) by the States and UTs.
2. The matter was reviewed vide order dated 12.03.2019. It was noted that unscientific disposal of bio-medical waste had potential of serious diseases such as Gastrointestinal infection, Respiratory infection, Eye infection, Genital infection, Skin infection, Anthrax, Meningitis, AIDS, Haemorrhagic fevers, Septicaemia, Viral Hepatitis type A, Viral Hepatitis type B and C, etc. Such unscientific disposal also causes environmental pollution leading to 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 Tribunal referred 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 the management of Biomedical waste. 18 hospitals of which have been issued notices by the Regional Officer, UPPCB, GuatamBudh Nagar."

3. Reference was also made to the report of the CAG placed on its website in May, 2017 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.”

4. The matter was again reviewed on 15.07.2019 in the light of the report of the CPCB particularly with reference to inventory of HCFs and biomedical waste generation, operation of healthcare facilities without authorization, action by the States with no treatment & disposal facilities, implementation of Barcode system, constitution of State Level Advisory Committees, submission of Action Plans by State Governments, key performance indicators, Environmental Compensation for violation by the healthcare facilities and Environmental Compensation for common biomedical waste treatment facility.
5. The recommendations in the report were accepted. All the States/UTs were directed to take further action on that basis. The Tribunal also directed:-

“1to7 xxx xxx xxx

8. The States/UTs may furnish complete inventory of HCFs and BMW generation within two months and where the inventories are incomplete, the same may be completed. We place on record our disapproval of the inaction of States in furnishing the inventory studies as well as for incomplete inventories. It is regretful to note that 25% of identified HCFs have not even taken authorization from the concerned State PCBs in absence of which, monitoring of waste management is not taking place. The States which have not set up common treatment and disposal facility must do so within two months as per Rules. The States who have not furnished the information on the barcode system may also furnish such information at the earliest but not beyond two months. The

States which have not yet constituted State Level Advisory Committee may also do so within two months. The action plans and their execution must be carried out having regard to the key performance indicators. The States which have inadequate action plans, not satisfactory action plans, needing further actions must also do the needful within two months realizing their responsibility to the environment and public health which ought to be monitored directly by the Chief Secretaries in terms of order of this Tribunal dated 16.01.2019 in O.A. No. 606/2018 and further orders in the said matter. By the further order in the said matter in the case of all the States, directions were issued that Chief Secretaries may personally monitor compliance of environmental norms (including BMW Rules) with the District Magistrate once every month. The District Magistrates may conduct such monitoring twice every month. We find it necessary to add that in view of Constitutional provisions under Articles 243 G, 243 W, 243 ZD read with Schedules 11 and 12 and Rule 15 of the Solid Waste Management Rules, 2016, it is necessary to have a District Environment Plan to be operated by a District Committee (as a part of District Planning Committee under Article 243 ZD) with representatives from Panchayats, Local Bodies, Regional Officers, State PCB and a suitable officer representing the administration, which may in turn be chaired and monitored by the District Magistrate. Such District Environment Plans and Constitution of District Committee may be placed on the website of Districts concerned. The monthly report of monitoring by the District Magistrate may be furnished to the Chief Secretary and may be placed on the website of the District and kept on such websites for a period of one year. This may be made operative from 1.08.2019. Compliance of this direction may also be seen by the Chief Secretaries of the States/UTs. This may not only comply with mandate of law but provide an institutional mechanism for effective monitoring of environment norms. Needless to say that right to clean environment being part of right to life, such effective monitoring is a must. Such monitoring must include issues specified in the order of this Tribunal dated 16.01.2019, O.A No. 606/2018, Para 40 which is as follows:-

- "a. Status of compliance of SWM Rule, 2016, Plastic Waste Management Rules, 2016 and Bio-Medical Waste Management Rules, 2016 in their respective areas.
- b. Status of functioning of Committees constituted by this order.
- c. Status of the Action Plan in compliance vide order dated 20.09.2018 in the News Item published in "The Hindu" authored 25 by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB (Original Application No. 673/2018).
- d. Status of functioning of Committees constituted in News Item Published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with Multiple

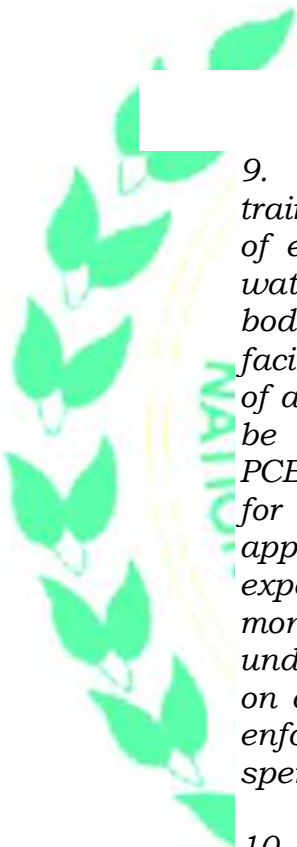
timelines to Clear Air in 102 Cities to be released around August 15” dated 08.10.2018

e. Status of Action Plan with regard to identification of polluted industrial clusters in O.A. No. 1038/2018, News item published in “The Asian Age” Authored by Sanjay Kaw Titled “CPCB to rank industrial units on pollution levels” dated 13.12.2018.

f. Status of the work in compliance of the directions passed in O.A. No. 173 of 2018, Sudarsan Das v. State of West Bengal & Ors. Order dated 04.09.2018.

g. Total amount collected from erring industries on the basis of ‘Polluter Pays’ principle, ‘Precautionary principle’ and details of utilization of funds collected.

h. Status of the identification and development of Model Cities and Towns in the State in the first phase which can be replicated later for other cities and towns of the State.”



9. Further important issues flagged for monitoring include training programs for the officers concerned with enforcement of environment norms at the ground level, reuse of treated water, recharge of ground water, conservation of water bodies.¹It has been brought to our notice that State PCBs are facing certain handicaps in performing their functions for want of adequate staff and infrastructure. While this is a matter to be reviewed by concerned Chief Secretaries, the State PCBs/PCCs are free to prepare and execute appropriate plans for utilizing the environment restoration fund with the approval of CPCB. The expenditure may include hiring of experts and consultants, expanding air and water quality monitoring network, procurement of scientific equipment, undertaking restitution remediation and specialized studies on contaminated sites so that there is effective oversight for enforcement of law. Under no circumstances these funds be spent on salaries, logistics etc.

10. The compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs.

11. It is made clear that if even after two months the States/UTs are found to be non-compliant, the compensation will be liable to be recovered from the said States/UTs at the rate of Rs. 1 Crore per month till the non-compliance continues.

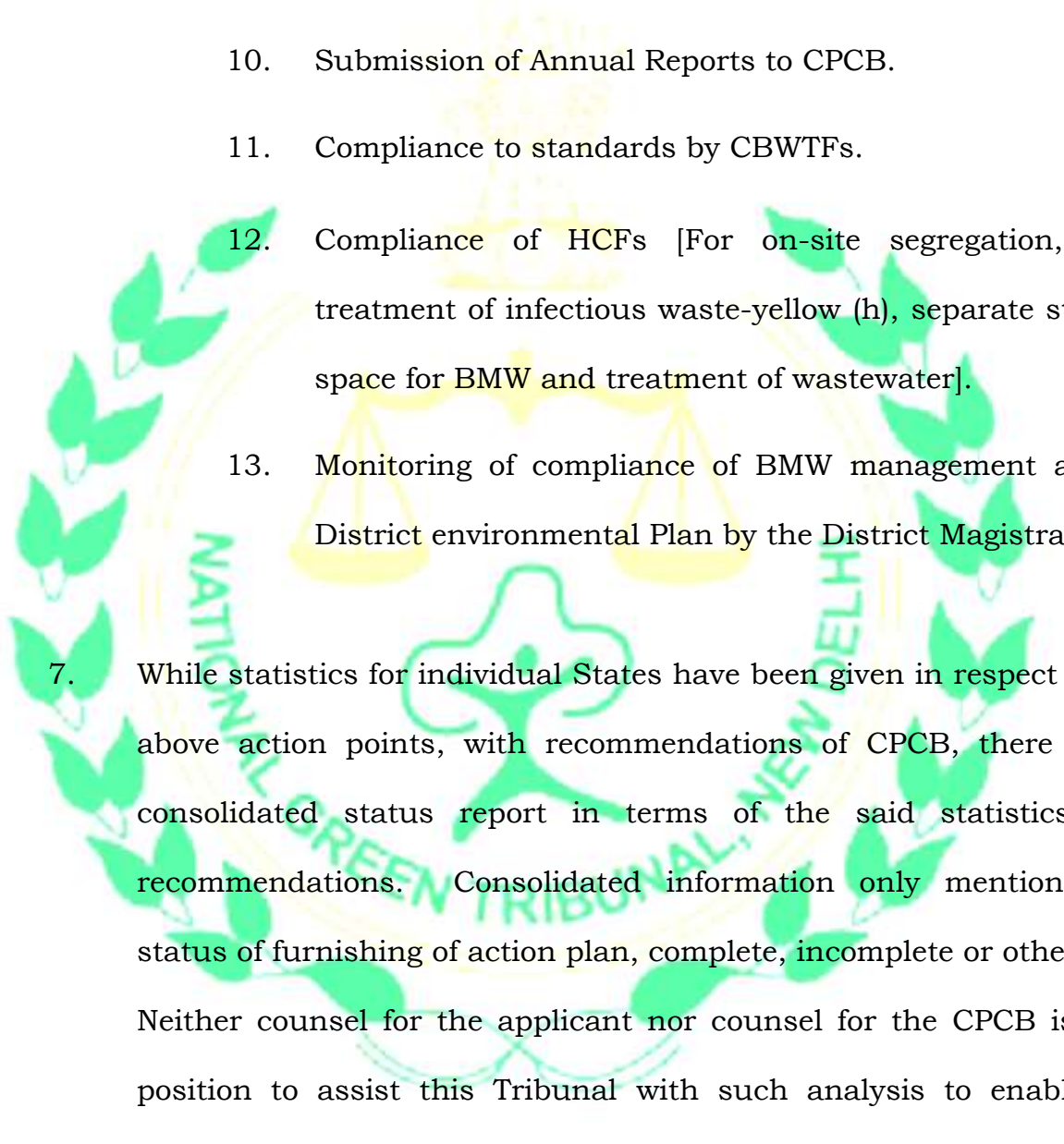
12. The CPCB may file further progress report in the matter after coordination through the concerned authorities of the States, including the State Boards/other Health Departments.

¹See order dated 17.05.2019, O.A. No 606/2018, Para No. 27 (vi, vii, viii)

13. *The Chief Secretaries may furnish their respective compliance reports as per orders passed in O.A No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016.”*

6. The CPCB has filed further report dated 15.11.2019 which sets out the reports from different States/UTs with reference to the following action points:-

1. Complete inventory of HCFs generating biomedical waste.
2. Authorization to all non-bedded HCFs like clinics, laboratories, research institutes as well as veterinary hospitals etc. identified in inventory of HCFs within 3 months.
- 3(i). Adequate number of Common Facilities and to cover all HCFs in the State. [Also to ensure adequate number of Common Biomedical].
- 3(ii). Restriction of Deep Burial pits [should be permitted only if necessary and to ensure that they are constructed as per standards given under BMWM Rules, 2016.]
4. Constitution of State and District Advisory Committees.
5. Barcodes system in every HCF and CBWTFs.
6. Monitoring of Healthcare Facilities other than hospitals/clinics – Veterinary Hospitals, Animal Houses, AYUSH Hospitals, blood banks, Pathological labs etc.
7. Availability of adequate infrastructure with SPCBs/PCCs to monitor compliance.

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- 8(i). Training and Capacity Building of officials of health Department and SPCBs.
 - 8(ii). Training and Capacity Building of Healthcare workers in HCFs.
 9. Installation of OCEMS by CBWTFs as a tool for self-monitoring and compliance verification by SPCBs/PCCs.
 10. Submission of Annual Reports to CPCB.
 11. Compliance to standards by CBWTFs.
 12. Compliance of HCFs [For on-site segregation, pre-treatment of infectious waste-yellow (h), separate storage space for BMW and treatment of wastewater].
 13. Monitoring of compliance of BMW management as per District environmental Plan by the District Magistrates.
7. While statistics for individual States have been given in respect of the above action points, with recommendations of CPCB, there is no consolidated status report in terms of the said statistics and recommendations. Consolidated information only mentions the status of furnishing of action plan, complete, incomplete or otherwise. Neither counsel for the applicant nor counsel for the CPCB is in a position to assist this Tribunal with such analysis to enable the Tribunal to proceed further. Deficiencies noticed by the CPCB from the reports received from the States need to be identified and conveyed to the respective States for remedial action forthwith and follow up action taken by said States preferably within one month from today.

8. Let a proper analysis of the reports of the States/UTs be prepared in terms of statistics under different heads and recommendations for further action and counsel who wish to appear should be in a position to provide meaningful assistance and not just remain present without a purpose. The same may be filed within two months from today by e-mail at judicial-ngt@gov.in.

List for further consideration on 14.04.2020.

