

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONE BENCH, BHOPAL**  
(Through Video Conferencing)

**Original Application No. 66/2021(CZ)**  
**(I.A. No. 62/2021)**  
**(I.A. No. 63/2021)**

Shameem Uddin

Applicant(s)

Versus

M/s Environment Protection Corporation, Sehore & Ors.

Respondent(s)

Date of hearing: **15.12.2021**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Appellant(s):

None.

For Respondent(s):

Mr. Rohit Sharma, Adv.  
Ms. Parul Bhadoria, Adv.  
Ms. Harshita Singhal, Adv.  
Mr. Rishab Singh Chauhan, Adv.  
Ms. Nimisha, Adv.

**ORDER**

1. The present Original Application No. 66 of 2021 has been filed against the incinerator being illegally operated by the Respondent No.1 in the name of M/s. Environmental Protection Corporation, Sehore without obtaining Environmental Clearance which is mandatory as per the EIA Notification, 2006 as amended till date.
2. The matter was taken up by this Tribunal on 03.09.2021 and a committee was constituted consisting of (i) Collector, Sehore (ii) A representative from Madhya Pradesh Pollution Control Board, with direction to visit and submit factual and action taken report. Committee visited the site and submit the report, which is as follows:-

*“During visit geographical coordinates, photographs and other relevant information were collected which are incorporated in the report. The main observation of the team is given below:*

1. GPS location of the Common Biomedical Waste Treatment Facility (CBWTF) Environment Protection Corporation, Sehore (EPC, Sehore) is recorded using a mobile-based GPS application. The recorded latitude and longitude are marked on the Google Map and photographs taken during the inspection are enclosed. The Google map of the site with duly marked locations of the CBWTF facility is attached.
2. The GPS coordinates of M/s Environment Protection Corporation, Village - Kasba, Indra Nagar, Sehore are 23.184876° N, 77.083993° E. The facility is situated in the south direction towards the outer periphery of Sehore town on Bhopal-Indore bypass road. Municipal solid waste disposal facility managed by Sehore Nagar Palika is situated adjacent to the CBWTF in the south-west direction of the facility.
3. Nagar Palika, Sehore has allotted a land of approx. 1.0 acres area to M/s Environment Protection Corporation, for establishment of CBWTF facility at Khasra No 1111/1, Village - Kasba, Indra Nagar, Sehore. Authorization for establishment under BMW Rules 1998 is issued by MPPCB on dated 28/07/2010. As per record the (CBWTF) facility was established in the Year 2011.
4. The land is covered by a 6 feet wall along its periphery. About 75-80% of the total land area is kept as an open space for plantation. Approximately 150 no. of trees are planted inside the premise on south side, whereas other three side are not having proper plantation.
5. As per information obtained from Google Earth, the CBWTF site is situated at a distance of approx. 400 meters from the nearest residential area. The Indore- Bhopal highway is approx 250 meters away on south direction.
6. Unit has provided BMW treatment facilities inside a covered shed of approx 300 sq. meters area on the north side of the plot in which all the facilities of CBWTF are installed inside the shed including waste storage area, following treatment units are found installed in the premises:
  - a) Incinerator Of 100 Kg/hr capacity with double chamber
  - b) Autoclave of 450 liters capacity Shredder of 40 Kg/hr capacity.
  - c) Sharp pit with covered top
  - d) Vehicle washing platform
  - e) Venturi scrubber with 30 meters stack
  - f) ETP for treatment of wastewater generated from venturi scrubber and vehicle washing
7. During inspection the committee observed the storage of biomedical waste received at the facility up to 13.10.2021. As per the record,

yellow category waste - 800.8 kg, red category waste — 171.6 kg, blue category 'waste — 102.96 kg and white category waste - 68.64 kg was kept for the treatment.

8. The incinerator is having double chamber loading system attached with PLC system for control of operations. The PLC system is used to control operations and also connected with temperature sensors and sensors for Real Time Monitoring (RTM) data. RTM sends the data to MPPCB server through internet connectivity. It is having temperature sensors to measure real time temperature in primary and secondary chamber'. The OCEM system is connected with computer and LED display. High Speed Diesel (HSD) is being used as fuel in the incinerator.
9. The operation of incinerator and feeding of BMW process is observed by the committee. The combustion in the incinerator takes place by burning of HSD through burners. The required temperature in primary and secondary chambers is found 850°C and 1050°C, respectively during inspection.
10. As per the documents provided during the inspection, a certificate of retention time of more than 2 seconds in the secondary chamber (as per CPCB Norms) has been provided by the manufacturer of the incinerator unit.
11. As informed by the representative of EPC, Sehore. approximately 800 kgs per day of yellow category waste is incinerated at the CBWTF. Since incineration is a batch based process, the total incinerable waste collected by the facility is disposed of in batches of 100 kg/hr capacity of the incinerator.
12. Facility operator informed that the data recorded during the process through Online Continuous Emission Monitoring System (OCEMS) is sent to CPCB and MPPCB server.
13. Committee observed that for air pollution control equipments as quencher, venturi scrubber, pack tower, mist eliminator are provided. The exit of the APC is connected to 30 meter high stack.
14. During the visit the team conducted stack emission monitoring to assess the performance of APCD. The emission results obtained are given in the table below:

S. No.	Location	PM (mg/Nm <sup>3</sup> )	NO <sub>x</sub> (mg/Nm <sup>3</sup> )	Remarks
01	Incinerator Stock	43.92	64	Results are within Prescribed norms
Standard limit		50	450	

15. *In stack emission CO and CO<sub>2</sub> were also measured to assess the combustion efficiency and the values are 0.00249% and 3.00% respectively. On the basis of that the combustion efficiency is 99.17% against the standard of at least 99.0%.*
16. *Water is used as a medium in the venturi scrubber to suppress the particulate matter from laden flue gases. The particulate matter trapped with the help of water is collected as sludge in the settling tank.*
17. *The major source of wastewater generation is floor washing, vehicle washing and water used in venturi scrubber. Unit has installed an ETP of capacity 3.5 KLD inside the CBWTF premise. The effluent from the venturi scrubber is drained in to ETP through open channel. The ETP comprises of collection tank, oil & grease trap, chemical dosing cum mixing tank, coagulation chamber, primary settling tank, secondary settling tank, pressure filter and activated carbon filter and sludge drying bed. Flow meters are not installed.*
18. *Sludge generated during the treatment of effluent and ash collected at the bottom of the combustion chambers is found stored. Incinerator ash and ETP sludge falls under hazardous waste category and as per manifest the HW is stored from 22/07/2021, which is more than 90 days permissible limit.*
19. *The logbook of incinerator and ETP are not maintaining properly.*
20. *One autoclave unit for disinfection of recyclable waste was found operational at the time of inspection. About 200 kgs/day of autoclavable waste is treated at the facility.*
21. *One shredder unit for shredding of plastic waste was found installed at the facility for the shredding of plastic waste.*
22. *Total 09 no. of covered are used for the transportation of bio-medical waste generated from the member health care facilities. The photographs of the vehicles are attached for ready reference.*
23. *As informed by the representative of the facility, approximately 1.5 tonnes of disinfected and shredded PPE kits were found stored in bags at the back of the facility. These are not disposed of as per CPCB guidelines. The PPE kit are kept stored from July 2021.*
24. *Unit has obtained consent under Water (Prevention and control of pollution) Act 1974 and Air (Prevention and control of pollution) Act 1981 with validity upto 22/02/2023 and Authorization under BMWM Rules 2016 with validity up to 22/02/2023.*

**Requirement of Environmental Clearance:**

25. *EIA Notification 2006 applicable from dated 14<sup>th</sup> September 2006, the Bio Medical Waste Treatment Facilities were not listed in the Schedule activities for which Environmental clearance was required. Ministry of Environment, Forest and Climate Change, New Delhi vide notification dated 17<sup>th</sup> April 2015 added the Bio Medical Waste Treatment Facilities under “7(d)(a)” of Schedule of EIA Notification 2006 to obtain environmental clearance. In light of above, now the CBWTFs are required to obtain Environmental clearance. It is observed that the retrospective applicability of the notification dated 17 April 2015 is not mentioned in the notification.*

26. *Unit has obtained authorization for establishment from Board under BMW Rules 1998 on dated 28/07/2010. Consent under Water (Prevention and control of pollution) Act 1974, Air (Prevention and control of pollution) Act 1981 and authorization under BMWM Rules 2016 is renewed upto 22/02/2023 vide Board letter dated 27/02/2020. As per record the (CBWTF) facility was established in the Year 2011, before the requirement of environmental clearance.”*

3. Respondent no. 1 has filed the reply on the matter of delay in filing the application and argued that the unit is in operation from 2011 and application has been filed in 2021 and beyond the scope of the Tribunal (being beyond 5 years under Section 15 of NGT Act, 2010).

4. It has further **been submitted** that:-

*“2. The contents of Para No.2 of the facts of the case are admitted to the extent that the Environmental Clearance is required for operating the Bio-Medical Waste Processing unit but it is also pointed out that the question of obtaining Environment Clearance for CBWTFs has been introduced by way of amendments in the E.I.A. Notification, 2006 dated 17.04.2015 and the issue of obtaining Environmental Clearance cannot have a retrospective effect in terms of the legal mandate of law, At this juncture, it is noteworthy to specify that the unit of the Respondent no. 1 is operating since 2011. Whereas, the law pertaining to obtaining of Environment Clearance was introduced on 17.04.2015. Moreover, the Central Pollution Control Board which is a statutory organization of MOEF had issued a detailed guidelines for CBWTFs in December 2016, wherein there is a separate head for*

*applicable environmental laws for operating CBWTFs. Under Clause 5.3 it is very specifically mentioned that EC would be required only in case of new establishments, expansion and modernization with additional treatment capacity of CBWTF or any expansion or modification in existing CBWTF. The relevant abstract of the guidelines issued by CPCB is produced as under:-*

*5.3. Environmental Clearance under EIA notification 2006 Ministry of Environment, Forest & Climate Change (MoEF&CC), notified amendment to the EIA Notification 2006 and published vide MoEF&CC Notification of S.O. 1142(E) dated April 17, 2015. According to this notification, the 'bio-medical waste treatment facility' is categorized under the Item 7 (da) in the schedule, requiring 'environmental Clearance' from the State Environment Impact Assessment Authority (SEIAA). Therefore, the CBWTF operator is also required to obtain 'Environmental Clearance (EC), from the respective SEIAA or Ministry of Environment, Forest & Climate Change (MoEF&CC), as the case may be, before any construction work, or preparation of land by the projects management, which include the following:*

- a) All new projects or activities pertaining to the bio-medical waste treatment facility; and*
- b) Expansion and modernization with additional treatment capacity of existing bio-medical waste treatment facility (excluding augmentation of incineration facility for compliance to the residence time as well as dioxins and Furans without enhancing the existing treatment capacity).*
- c) Any expansion or modification in the treatment capacity or relocation of the existing CBWTF (requires compliance to the relevant provisions notified under the Environment (Protection) Act, 1986 by the MoEF&CC.*

*3. The contents of para 3 of the facts of the case, the Applicant has referred the Judgment dated 28.11.2013 passed by the National Green Tribunal in Appeal No. 63/2012 - Haat Supreme Wastech Vs State of Haryana and Ors. whereas subsequently Hon'ble National Green Tribunal in the matter of OA No. 169/2016 - D. Swami Vs. Karnataka Pollution Control Board & Ors. has dwelled upon the issue regarding the retrospective effect of obtaining Environment Clearances for CBWTFs. The*

relevant abstract of the Judgment is reproduced hereunder for the kind convenience of this Hon'ble Tribunal:-

*Para 34 : The fact that Respondent No.-3 was having a valid consent to establish granted on 24.11.2011, a consent to operate which valid up to 30.06.2016 and was also having a valid authorization under BMW Rules, 2016 is not disputed. The fact that they were subsequently renewed and in such circumstances, we hold that the applicant in the application has only contented that Respondent no. 3 has not obtained prior EC, as the project of CBWTF was included under Entry 7 (da) and not on the basis that prior EC is necessary under entry 7(d) as originality stood before the amendment dated 17.04.2015 and at present there is valid consent under the water & air act and also authorization under BMW Rules, 2016 is not disputed as the amendment under S.O. 1142 (E) notification dated 17.04,2015 is only prospective and not retrospective, the CBWTF run by Respondent No. 3 cannot be directed to be closed for want of EC. As Respondent No. 3 is having valid consent to operate under the water and air act and also the authorization under BMW Rules 2016, we find no merit in the application. The application is dismissed with no order as to cost.*

*5. The contents of para No. 5 of the facts of the case are not denied in totality. The respondent no. 1 is operating its Plant legally after obtaining all the requisite permissions and the issue with respect to obtaining environment clearance raised by the applicant is per-se not applicable on the respondent no. 1. Moreover, the grant of authorization and consent by Madhya Pradesh Pollution Control Board is in itself proving the fact that the unit of the respondent no. 1 is operating legally, as the authorization and consent by MPPCB is accorded only after verifying the legalities of the issue in question.*

*9. The contents of the Para No. 9 of the facts of the case are denied and in this regard, it is clarified that the guidelines issued by the Central Pollution Control Board referred in this paragraph are being misconstrued by the applicant. First and foremost, the CPCB guidelines referred in this Para have admittedly being issued on 21.012.2016, whereas, the plant of the respondent no. 1 is in operation since 2011 and thus, the retrospective effect of the distance criteria/ location criteria cannot be made applicable on the respondent no. 1. In this regard it is noteworthy to highlight the following observations of the Hon'ble High Court of Madhya Pradesh:*

*Gokuldas Pagaria vs Parmanand (AIR 1967 MP 265), Hon'ble High Court of Madhya Pradesh has held that :*

*“The Rule of construction of statutes in that no statute, unless it be a statute dealing with procedure only, should be construed to have a retrospective operation unless it so provides either expressly or by necessary implication or intendment and a statute is not be construed to have greater retrospective operation than its language renders necessary. When a statute deprives a person of his right to sue or affects that right, its retrospective must clearly be expressed.”*

*In the case of Bhagerath Sharma vs. the State of Madhya Pradesh, a divisional bench of the Hon'ble High Court of Madhya Pradesh observed that (Writ Petition No. 5395/2014) :*

*“of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law looks forward not backward.*

*As was observed in Philips vs. Eyre [(1870) LR QB 1], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.”*

*Perusal of the above observations would clearly highlight the fact that the location criteria as alleged by the applicant is not applicable on the plant of the respondent no. 1. Moreover, the Sehore Municipal Council had notified and demarcated an integrated site for treatment and disposal of various categories of waste such as Municipal Waste, Compositing Facility Waste, Plastic Waste, Compositing Facility Waste etc. The CBWTF of the respondent no. 1 treating Bio-Medical Waste is an inclusive part of this integrated site*



*declared and demarcated by the Municipal Council Sehore. The photographs of the entrance of this entire site, wherein, the landfill site of Municipal Council, Sehore, Compositing plant, Plastic Waste treatment Plant and the Bio-Medical Waste treatment Plant of the Respondent no. 1 are located is annexed. Moreover, even in the existing as well as the proposed Master Plan of Sehore, this entire area has been separately shown as an area for treatment of waste.”*

4. Learned counsel for the applicant has filed objection on the factual report to the effect that there are violation of rules and the committee has not submitted the factual report correctly.
5. We have gone through the report for the committee and the rules in light of the notification issued by the MoEF with the applicability of the amended rules and are of the view that the notification is not of retrospective effect. Further the recommendations submitted by the joint committee requires to be complied with, and accordingly we direct the respondent to comply the recommendations submitted by the joint committee which are enumerated as follows :-

1. Plantation along the periphery of the plant, especially on remaining three sides of the premise should be done.
2. The shredded and disinfected PPE kits waste stored at the back of the facility should be disposed of in a scientific manner as specified in the CPCB guidelines.
3. Annual health check-up of the CBWTF staff shall be ensured by the proprietor of the facility.
4. Regular maintenance of the equipment installed at the facility to be done so as to keep the emissions under the specified standards.
5. The CBWTF shall ensure regular compliance of all the conditions as specified in the CPCB guidelines and the consent granted, and proper treatment of the bio-medical waste collected from the member healthcare facilities shall be ensured.

6. State Pollution Control Board is directed to enforce and supervise the compliance of the joint committee report.

Accordingly, **Original Application No. 66/2021 alongwith I.A. No. 62/2021 & I.A. No. 63/2021 are finally disposed of.**

**Sheo Kumar Singh, JM**

**Arun Kumar Verma, EM**

15<sup>th</sup> December, 2021  
O.A. No. 66/2021(CZ)  
PN