

**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.**

**Respondent No. 3 & CECB : Shri Shivendu Joshi, Adv. for  
Shri Purushaindra Kaurav, Adv.  
with DPS Bundela, RO, MPPCB,  
BPL**

**Respondent No. 10: Shri Sunil Shrivastav, Advocate**

**State of Chhattisgarh : Shri S.S. Chauhan, Adv. with Dr.  
Rohit Yadav,**

**RSPCB : Shri Sandeep Singh, Adv.**

**MoEF : Shri Om S. Srivastav, Advocate**

<b>Date and Remarks</b>	<b>Orders of the Tribunal</b>
<b>Item No. 2 8<sup>th</sup> May, 2014</b>	<p>Applicant is present in person. As directed, the officers from the MoEF, Govt. of India, Urban Development Department of the State of Madhya Pradesh, Rajasthan and Chhattisgarh are present along with their respective counsel.</p> <p>The issue which has been raised in this petition pertains to the disposal of municipal solid waste as well as non-compliance of the Municipal Solid Waste(Management &amp; Handing) Rules, 2000 (in short</p>

referred to as MSW Rules) framed under the Environment (Protection) Act, 1986 more particularly the issue highlighted was in respect of landfill site at Bhanpur in Bhopal for which it was alleged that the aforesaid site is being utilised by the Bhopal Municipal Corporation in total disregard and violation of the provisions of the MSW Rules and in particular without there being permission accorded for the same by the State Pollution Control Board. As also, the fact that, in fact, the application was submitted for a separate site but the Bhopal Municipal Corporation is using the present site at Bhanpur dehors the provisions of the MSW Rules and without permission for the same. It has been alleged that as a result of non-observance of the Rules and the site being used without permission for dumping of municipal solid waste without segregation of either biodegradable or non-biodegradable hazard waste even bio-medical waste the site and the area around it has become not only filthy but an environment hazard for the people living around it and also it is resulting in smoke emissions as such waste seems burnt and continues fire rage unabated with emissions of heavy smoke as would be evident from some of the photographs submitted by the Applicant.

It is further stated that the situation at Bhanpur is so bad that it is virtually impossible even for the trucks to enter the same and often the material is being unloaded without being taken to the designated site. It has also been alleged that as a result of municipal solid waste the underground water has also become contaminated and has become unfit for human use and consumption.

This Tribunal after having issued notices, enlarged the scope of the application to get the response from the State of Madhya Pradesh with regard to selection of such landfill sites in the entire State of Madhya Pradesh as well as from the two other States of Rajasthan and Chhattisgarh falling within the jurisdiction of this Tribunal at the Central Zone Bench at Bhopal. The notices were issued to the States of Rajasthan, Chhattisgarh and Madhya Pradesh as it was felt that despite the MSW Rules having been brought into force by the publication in the official gazette in October, 2000 with the stipulated schedule programme under the provisions of the Rules this is for their implementation under Schedule-I, there was very little knowledge and awareness of the MSW Rules even with the authorities who were required to comply with the same and ensure their implementation.

In response to the notices issued, officers from all the three States have appeared and information with regard to the implementation of the Rules in their respective states, has been furnished by all the three States. Under the MSW Rules more particularly under Rules (4), (5) & (6), it is the responsibility of every municipality to ensure the implementation of the provisions of these Rules and take up infrastructure development as well as making provision for collection, storage, segregation, transportation, processing and disposal of municipal solid waste.

The aforesaid task mentioned in Rule (4) has to be done and carried out by making a formal application for operation of a facility for the aforesaid purpose in Form No. I for getting an authorization for setting up

the said waste processing and disposal facility including landfill sites from the State Pollution Control Board. The implementation is required to be carried out in accordance with the parameters and criteria laid-down in Schedule-II of the MSW Rules by the Municipalities.

The Municipal Authorities are also required to comply with Schedule I requirements for the implementation of MSW Rules which *inter alia* provided that waste processing and disposal facilities be set up by 31<sup>st</sup> December, 2003 or earlier. It was also provided that existing landfill sites were to be improved and brought in consonance with the provisions of these Rules by 31<sup>st</sup> December, 2001.

The information that has been provided by all the three States shows that in each of the States the position on ground is far from what is required under the Schedule I to the MWS Rules though the rules having been brought in force in the year 2000 and compliance was to have been achieved by December 2003 but could not be achieved in any of the three States, though more than ten years have since elapsed and there appears to be no urgency either with the State Governments or the Central Government to ensure their compliance.

Though the above task was entrusted to the Municipal Authorities yet the responsibility of the Municipalities did not end there and the Municipal Authorities were required to furnish Annual Reports in Form No. II appended to the MSW Rules to the Secretary-in-Charge, Department of Urban Development of the State to the District Magistrate or Deputy



Commissioner concerned as provided under the sub-rule 4 of Rule 4. This information was required to be furnished in Form No. 2 appended to the Rules.

A perusal of Form No. II appended to the MSW Rules goes to show that each Municipality was required to give total details regarding quantity of waste generated per day, the total quantity of waste collected per day and the total quantity of waste processed including composting vermiculture pelletization and by any other means. Likewise, they were also required to furnish the information regarding quantity of waste disposed by landfill site, number of landfill sites used, and also with regard to the facilities available at the landfill sites and whether weigh bridge facilities are available whether the area is fenced, whether lighting facilities were provided at the sites etc.

A perusal of the MSW Rules requiring the furnishing of such information to the Secretary to the Government, Deptt. Of Urban Development / District Collector / Deputy Commissioner necessarily entailed that it required the said authority to go through the said information provided in Form No. II and wherever the Municipalities were found wanting or non-compliant or lacking the infrastructure the State Government or the authorities concerned had to intervene by providing necessary assistance or guidance as the case may be.

However, during the course of hearing, it was found that unfortunately such information as was required by sub-rule (4) of Rule 4 to be furnished by concerned Municipality to the Secretary/District

Collector/Deputy Commissioner was not at all being complied with and the information was not being furnished in accordance with the provisions of the Rules in the Form No. II. When such information was not at all being furnished by the Municipalities, the issue of the same being dealt with at the level of the State Government or the District Administration also did not arise and no effort was made to call for the above information from all Municipalities. The aforesaid aspect, therefore, remained in total neglect. It is only because of public spirited persons like the Applicant that such issues are highlighted and brought before this Tribunal.

The issue with regard to disposal of municipal solid waste its proper handling in accordance with the Rules is of utmost concern to every citizen and is a part of the fundamental right guaranteed under Article 21 of the Constitution of the right to clear environment as has been held by the Hon'ble Supreme Court in the case of *Ratlam Municipal Corporation and B.L. Wadhwa Vs. Union of India 1996 SCC (2) 594* to name a few. We, therefore feel it necessary that all the Municipal Corporations and Municipalities within the States of Rajasthan, Madhya Pradesh and Chhattisgarh, if they had not submitted Form No. II as required by sub-rule (4) of MSW Rule 4 shall within 30 days of the communication of this order by the Principal Secretary, Urban Development of the respective States to the District Collector, submit the aforesaid information to the State Government/Deputy Commissioner. On receipt of the aforesaid information in Form No. II from the Municipalities concerned, the concerned authority shall immediately proceed to deal with the same as required by Rule 5 and 6

of the MSW Rules and ensure compliance of the rules.

We also noticed that under Rule 8 of the MSW Rules, the State Pollution Control Boards were required to prepare and submit an Annual Report by 15<sup>th</sup> September of every year to the Central Pollution Control Board with regard to the implementation of these Rules and the Central Pollution Control Board is required to prepare and consolidate the Annual Review Report on the management of municipal solid waste and forward the same to the Central Government along with its recommendations by 15<sup>th</sup> of December every year. Whether such reports were being sent to the Central Pollution Control Board and what would be the quality of such reports when the information was totally lacking in the Form No. II to be furnished by the Municipalities and the Municipalities not even being aware and not having the resources for complying with the MSW Rules the sending of these report under Rule 8 by the State appears to be only a formality. During the course of hearing, it was pointed out that for the effective implementation and compliance of these Rules, the Municipalities of the States majority of them being only small Municipalities, did not have the kind of resources required for implementation of the provisions of the MSW Rules which required as provided under Schedule II and III sufficient funds and resources have to be made available to the Municipalities to ensure compliance. Some of the States like Madhya Pradesh submitted that they had drawn up a plan and sought assistance from the Centre by submitting proposal to the Finance Commission to the extent of rupees 3600 crores for the foresaid purpose. This is just an example to illustrate the amount sought and required by the

States such as Madhya Pradesh which has 360 Municipalities in the State in the State for effective implementation of the Rules. It was pointed out that such resources are not available with the local municipalities and even with the State Government and assisting the Municipalities to this extent is not possible by the State Govt. The position of other States is no different financially. During the course of hearing, it was also submitted that most of the Municipalities have hardly any revenue resources of their own or whatever little source are available by way of collection of minor taxes are not even sufficient for payment of salary of staff. In such a situation, the full implementation of the MSW Rules which has not yet been achieved, is not a surprise. The Deputy Director (Hazard Substances Management), MoEF also submitted that so far as the Ministry of MoEF is concerned it is only concerned with regard to the taking of the information furnished by the State Pollution Control Boards through the Central Pollution Control Board with regard to the implementation of the Rules and making its recommendations to the Central Government. However, so far as any assistance etc. which may be required for the implementation of the Rules is something for the Ministry of Urban Development, Govt. of India and Finance Ministry and the Finance Commission to provide for.

Looking to the facts and circumstances which have been brought on record, some of the points which stand out are that despite more than 10 years having been elapsed for implementation of the MSW Rules as the scheduled period/last date of setting up of waste processing and disposal facilities expired in December, 2003, the MSW Rules have not been



implemented in the States as required by law with the kind of resources available with them and the helplessness of the States expressed by them we do not find that the MSW Rules can be fully implemented if such directions are issued to the State Government for their implementation. However, from the replies and the information furnished by the various States it is clear that efforts are being made now as the issue has been highlighted through the Applicant by bringing the matter to the notice of the Tribunal and the notices having been issued to all the three States that selection and preparation of landfill sites in the major Municipalities in the State has been taken up.

We find that the present system itself may not be sufficient to deal with the issue of management and handling of municipal solid waste as at present it is only being dealt with on the question of incurring of expenditure. During the course of hearing, it was also brought to our notice that various technologies are available and reference of the same can also be found under Sl. No. 5 of Schedule II where while requiring processing of municipal solid waste it was suggested to the Municipal Authorities to adopt suitable technology to make use the municipal solid waste and minimise the burden on the landfill. This is something which is required to be taken up on an urgent basis by all the concerned authorities. Moreover, by adopting the technologies available what is at present an expenditure incurring problem can be connected to as a resource generating asset.

The Government of India though have been provided for such measures to be adopted by the Municipal Authorities, yet it would require

much more by way of assistance in the form of information as well as knowhow with regard to technology and seek assistance from the agencies which deal with such technology or who have developed the same for the said purpose and furnish this information to the State and take steps to encourage the same. The State Governments shall necessarily seek necessary assistance from the Government of India or directly from such agencies by contacting them and take effective measures for bringing to the use of such technology for processing of municipal solid waste to their advantage and the benefit of the people rather than keeping the issue only as an expenditure incurring issue and making it pollute the environment when not being treated in the desired manner.

While granting the time to the Municipalities to submit the required information in Form No. II to the District Administration within 30 days, we also direct the State Governments to create cells for obtaining necessary knowhow with regard to the available technology for the beneficial use for processing the municipal solid waste and taking advantage of the same. The officer as well as the counsel from the State of Chhattisgarh pointed out that in Chhattisgarh they had successfully adopted the PPP Model for dealing with the problem with regard to municipal solid waste disposal and the same is working successfully in some of the municipal areas where it has been utilised. The need, therefore, is of finding solutions by the State Government in consultation with the Central Government and technical experts for developing such technology and finding solutions which are practical.

We also find from the Schedule I to the Rules that the authorities are also required to “to carry out identification of landfill sites for use and making sites ready for operations”. This would necessarily entail the exercise for anticipation of the projected population growth in each municipal area on a future cut-off date with also the projected increase of municipal solid waste generated in such municipal area during such period. The municipal solid waste should also to be categorised not only into biodegradable and non-biodegradable categories but also into solid municipal waste as well as liquefied municipal waste and orders would also to be issued with regard to disposal of plastic waste, e-waste as well as hazardous waste and therefore each shall have to be dealt with separately as required under the respective rules. The need therefore is also to create awareness with regard to the handling of such waste and the segregation of the same at the source of generation i.e. at the household level or at the other points of its generation. Massive drive would therefore have to be carried out for creating awareness and also providing assistance for separate collection of each type of waste which is generated both at the domestic level, at commercial sites industrial level and at institutional levels wherever such waste is generated. Without creating effective awareness and without ensuring the participation of the people at large in the aforesaid task, it would not be possible merely for the authorities to carry out the implementation of the aforesaid Rules. Needless to say that for infrastructure and development finances shall have to be provided. How this can be achieved is something we would expect from each of the State

Governments and they should to come forward and submit their proposals in turn to the Central Government. It is unfortunate that after framing of the rules no effective monitoring has been carried out. We expect respective States to carry out the aforesaid task of identifying the issues based upon the information supplied by the respective Municipalities and also by conducting workshops at different levels for finding solutions to the aforesaid problems. The State Pollution Control Boards shall also provide necessary assistance to the State Governments in this behalf and joint ventures of holding workshops in consultation with the experts in the field both in private sector or Government or Public Sector, can also be taken up by the States.

An affidavit has been filed by Shri Virender Singh, Senior Project Officer, Project Evaluation Office, Planning Commission, Govt. of India. In Para 6, it has been submitted that role of the Planning Commission is to recommend policies, strategies and schemes in various sectors including urban sector in Five Year Plans and in accordance with such recommendations, it facilitates programme implementation like JNNURM in consultation with various Central Ministries and based on availability of funds as well as absorption capacity of the schemes and also guided by the outlay for the concerned scheme allocates annual budget to the Ministries. It has further been submitted that there is no direct involvement with regard to the implementation of the programmes and schemes by the Planning Commission. In the affidavit it has also been stated that urban services pertaining to municipal solid waste management are State Subject but the



Govt. of India launched JNNURM in 2005 with an outlay of Rs.66,085 crores with the objective of assisting the States to improve delivery of urban services in cities and to undertake urban reforms.s Learned counsel for the Planning Commission submitted that in accordance with the schemes and plan submitted by the respective States, the Planning Commission on consideration of the same and evaluation of the each new scheme makes allocation in the plan by way of consolidate outlays.

In view of the above, this Tribunal directs the counsel to submit information of the aforesaid three States whether any allocation from the Planning Commission was sought for implementation of the MSW Rules and any scheme submitted to the Planning Commission as well as amount sought by each State for the same. In case such scheme was submitted, the response of the Planning Commission on the said amount so desired by each State for the implementation of MSW Rules and the amount so allocated by the Planning Commission in the consolidated amount sanctioned to each State, may be furnished. The aforesaid information be filed by the Planning Commission in the form of an affidavit and each State shall also file their respective affidavits giving the above information along with the manner in which and the project for which these amounts were utilised.

The matter shall be listed on 1<sup>st</sup> October, 2014.

**M.A. No. 219/2014**

This M.A. has been filed by the State of Madhya Pradesh indicating that an amount of Rs. 20,000/- has been paid to the Applicant and the

document by way of receipt be taken on record. The Applicant also acknowledges the receipt of the amount.

The M.A. is allowed and stand disposed of.

**M.A. No. 218/2014**

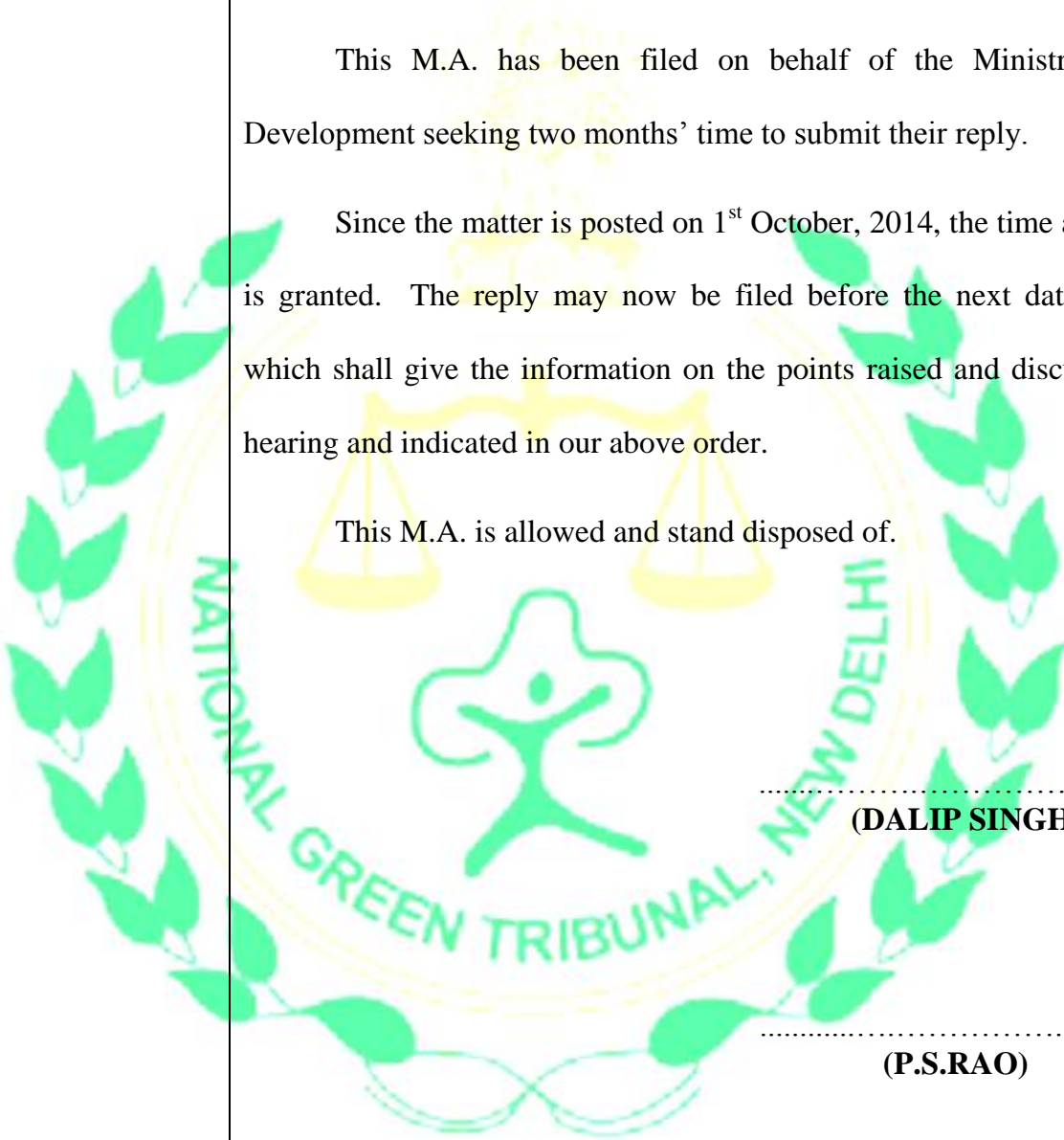
This M.A. has been filed on behalf of the Ministry of Urban Development seeking two months' time to submit their reply.

Since the matter is posted on 1<sup>st</sup> October, 2014, the time as prayed for is granted. The reply may now be filed before the next date of hearing which shall give the information on the points raised and discussed during hearing and indicated in our above order.

This M.A. is allowed and stand disposed of.

.....,JM  
(DALIP SINGH)

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



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