

Aniruda Panwar vs Ministry Of Environment Forest And ... on 31 July, 2023

Item No. 1

(Court No. 2)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(Through Physical Hearing with Hybrid VC Option)
Original Application No. 622/2022

1. Aniruda Panwar S/o Late Ranveer Singh,
H.No. 12/287, Satabadi Nagar, Baraut, Baghpat,
Uttar Pradesh- 250611. ...Applicant

2. Rudro Chatterjee S/o Sumit Chatterjee,
A-30, Nizamuddin East, New Delhi- 110013 ...Co-Appllcant

Versus

1. Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan,
Jor bagh, Lodhi Colony,
New Delhi, Delhi 110003,
Secy_moe@nic.in, 011 20819308.

2. Central Pollution Control Board,
Parivesh Bhawan CBD-cum-office Complex,
East Arjun Nagar, Delhi-110032,
ccb.cpcb@nic.in,43102209.

3. Government of Uttar Pradesh,
Through its Chief Secretary,
1st Floor, Room No. 110, Lalbahadur Sastri Bhawan,
Uttar Pradesh Secretariat, Lucknow-226001,
csup@nic.in,0522-2289212.

4. Chairman State Environment Impact Assessment Authority,
199, Mandakini Enclave, Alaknanda,
New Delhi- 110019,
chairmn.seiaa.up@gmail.com,011-24695407

5. Uttar Pradesh Pollution Control Board,
TC-12V, Regency Rd, Vibhuti Khand,
Gomti Nagar, Lucknow,
Uttar Pradesh 226010,
feedback@uppcb.com 91-522-2720831.

6. Uttar Pradesh State Industrial,
Development Corporation (UPSIDC),
Complex, A-1/4 Lakhapur,
Kanpur-208024,
md@upsidc.com, 0512-2580906.

7. M/s- Punchakran Private Limited,
Address: - Plot No.-E-25 and E-26 UPSIDC,
O.A No. 622/2022

Aniruda Panwar Vs. MoEF & CC.

-2-

Industrial Area, Babrala, District,
Sambhal, Uttar Pradesh, eashfintax@gmail.com.

8. Shri Rajesh Kuimar,
M/s Punahchakran Pvt. Ltd.,
9/34, Avas Vikas -III, Ambedkar Puram,
Panki Road, kalyanpur, Kanpur, Uttar Pradesh,
eashfintax@gmail.com.

... Respondents

Counsel for the applicant

Mr. Satyaprakash, Advocate.

Counsel for the Co-applicant

Mr. Yashovardhan Oza, Advocate.

Counsel for the Respondents:

Ms. Asha Gopalan Nair, Advocate for respondent no. 1.
Mr. Anuj Bhandari, Advocate for respondent no. 2.
Mr. Pradeep Misra, Advocate for respondent no. 5.
Mr. Rajesh Raina, Ms. Irum Raina Advocates for respondent no. 6.
Mr. Utkarsh Sharma and Mr. Ankita Tiwari, Advocates for respondents
no. 7 and 8.

Present: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.

Reserved on: 21.03.2023

Date of Judgment: 31.07.2023

Application under section 18 (1) read with sections 14, 15 and 18 of
the National Green Tribunal Act, 2010

JUDGMENT

BY HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER

1. The applicant, aggrieved by Consent to Establish (CTE) dated 26.04.2022 granted by Respondent No.5- Uttar Pradesh Pollution Control Board (UPPCB) and Environmental Clearance (EC) dated 13.07.2022 granted by Uttar Pradesh State Environment Impact Assessment Authority (UPSEIAA) in favor of Respondent No. 7 M/s Punahchakran Pvt. Ltd. for establishing a Common Bio-Medical Waste Treatment Facility (CBWTF), in UPSIDA Industrial Area, Babrala, District, Sambhal, has filed O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

the present application under section 18 (1) read with sections 14, 15 and 18 of the National Green Tribunal Act, 2010 seeking the following reliefs:-

"i) Pass an order to inspect the documents of approval which was issued without following the proper norms.

ii) To Pass an order for not issue permission to grant consent to operate and revoke /cancel the Consent to Establish for new unit/expansion/diversification dated:- 26/04/2022 and Environmental Clearance dated 13/07/2022 .

iii) To pass an order to establish an expert committee to check and verify the legal status and details of approval taken by the Respondent No.7-8.

iv) To pass any such orders as the Hon'ble tribunal may deem fit and proper in the facts and circumstances of the case."

2. The applicant has submitted that Respondent No. 6- Uttar Pradesh State Industrial Development Authority (UPSIDA) allotted industrial plots No. E-25 and 26 in favour of Respondent No. 7 M/s Punahchakran Pvt. Ltd. for establishing CBWTF, which is a Hazardous unit falling under the Red Category of Industry, in UPSIDA Industrial Area, Babrala, District, Sambhal, which has been developed for Green Industries and marked as Green Zone. The applicant has referred to guidelines issued by the Ministry of Environment, Forest and Climate Change, Government of India (MOEF&CC) on 20.09.2021 and 01.04.2022 under Section-5 of the Environment (Protection) Act 1986 to Chairman, State Pollution Control Boards (SPCBs) and UT Pollution Control Committees (UTPCCs) requiring not to grant or renew CTE/CTO for project/activities covered in the schedule of the EIA Notification 2006 issued under Section-3 of the Environmental (Protection) Act,1986 where prior environmental clearance is required unless Environmental Clearance has been obtained and submitted that it is a case of mis-representation, complete disregard/utter violation and non-compliance of Bio-Medical Waste Management Rules, 2016, Revised Guidelines for Common Bio-Medical Waste Treatment Facilities issued by CPCB on 21.12.2016 (the CBWTF Guidelines, 2016) and guidelines issued by MOEF&CC on 20.09.2021 and 01.04.2022 with O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

respect to grant of Terms of Reference (ToR), CTE and EC for establishing CBWTF and UPPCB, UPSEIAA and UPSEAC have issued ToR & CTE on File No. 6497/ Proposal No. SIA/ UP/MIS/66542/ 2021 by violating the guidelines/instructions and illegally granted the impugned permissions to Respondent No.7. The Applicant has further submitted that as per the instructions

contained in Para No. 18 of the letter of allotment dated 15.09.2021 Respondent No. 7 shall not employ in unit any process generating smoke or fumes or involving use of chimney and any use of fossil fuel in the process which may cause atmospheric pollution and/or would not discharge liquid effluent which may be obnoxious by nature or cause pollution and the unit should not involve any significant emission of particles and/or gaseous substances in the air. In Para No. 28 thereof it is clearly mentioned that if it is found that Respondent No.7 has misrepresented or submitted wrong information for getting the allotment, the allotment shall be void and the entire amount deposited by the Respondent No.7 shall be forfeited. The Respondent No.7 has misrepresented and submitted wrong information for getting the allotment. The Respondents No. 2 to 6 have failed to redress the grievances of the residents of the locality on the issues of various environmental and pollution laws violations. Various complaints made and letters written by the residents of the locality for action against Respondent No. 7 and 8 proved futile.

3. Vide order dated 02.09.2022, notices were ordered to be issued to respondents no. 1 to 8. Vide order dated 10.10.2022, this Tribunal also stayed the establishment/operation of the CBWTF and ordered that no further steps for establishment/operation of the CBWTF shall be taken by the Project Proponent on the basis of impugned EC and CTE in its favour which shall remain in abeyance.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

4. Pursuant to notice, replies have been filed by Respondent no. 1 vide email dated 04.11.2022, by Respondent no. 2-CPCB vide email dated 07.10.2022, by Respondent no. 4 vide emails dated 08.10.2022 and 18.11.2022, by Respondent no.5 vide email dated 05.12.2022, by respondent no. 6 vide email dated 18.11.2022 and by Respondents no 7 and 8 vide email dated 08.10.2022.

5. Interim Application No. 314/2022 was filed by intervener applicant- Mr. Rudro Chatterjee for impleading him as Co-Applicant which was allowed vide order dated 06.12.2022 with liberty to file documents.

6. Documents were filed by the Co-Applicant vide email dated 14.12.2022. Additional replies were filed by Respondent No. 7-M/s Punchakran Pvt. Ltd. vide email dated 18.01.2023 and by Respondent No. 4-UPSEIAA vide email dated 13.02.2023.

REPLY FILED ON BEHALF OF RESPONDENT NO. 1-MOEF & CC

7. In its reply Respondent no. 1-MoEF & CC has submitted that Respondent No.1 issued an Environmental Impact Assessment (EIA) Notification no S.O. 1533 (E) dated 14.09.2006 (EIA Notification 2006) superseding the EIA Notification 1994 and constituted SEIAAs/SEACs in respective States/UTs under the provisions of the EIA Notification 2006. Respondent No.1 has, vide Notification No. S.O 637(E) dated 28.02.2014, authorized the SEIAAs to take necessary action against the violations, if any. The EC dated 13.07.2022 has been granted to the project in question by UPSEIAA, and all documents/reports related to grant of EC in question are with the UPSEIAA. In view of the same, the issues involved and contentions raised by the appellant ought to be replied

by UPSEIAA. REPLY FILED ON BEHALF OF RESPONDENT NO. 2- CPCB O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

8. Respondent no. 2-CPCB has, while referring to CPCB Guidelines, submitted in its reply that Municipalities or Corporations, Urban Local Bodies and Gram Panchayats have to provide or allocate suitable land for development of CBWTF in their respective jurisdictions as per CPCB Guidelines. As per CPCB Guidelines SEIAA is the prescribed authority for grant of EC and authority for grant of authorization and consents under the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 for setting up of CBWTF vests in SPCBs/UTPCCs. The CBWTF operator is required to obtain EC before any construction work or preparation of land. CPCB has vide letter dated 08.03.2018 also asked SEIAA/SEAC of all States and Union Territories to follow the CPCB guidelines. Respondent No.2 CPCB has also mentioned that as per directions dated 30.04.2020 issued by CPCB regarding Categorization of Industries, CBWTFs are categorized under Red category but as non-industrial operations as these are part of pollution control facilities.

REPLY FILED ON BEHALF OF RESPONDENT NO. 04-UPSEIAA

9. In its reply Respondent no. 4- UPSEIAA has submitted that Respondent No.7-M/s Punahchakran Pvt. Ltd. made an online application on 11.08.2021 for Terms of Reference (ToR) for "Common Biomedical Waste Treatment Facility (CBWTF) at Plot No. E-25 and E-26, UPSIDC Industrial Area, Babrala, District Sambhal, Uttar Pradesh vide Proposal No. SIA/UP/MIS/66542/2021 under 7(da) category of EIA notification 2006 (as amended). On 17.08.2022 auto grant standard Terms of Reference ("ToR") for EIA study for the proposed project was generated. The Project proponent made an online application on 18.02.2022 for EC. The hard copy of the application was received on 28.03.2022. The case was considered by SEAC in its 641st meeting dated O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

05.04.2022. During the meeting, the Project Proponent along with its consultant made presentation. SEAC discussed the matter and recommended grant of EC for the project with general and specific conditions. Subsequently, the case was considered in 590th SEIAA meeting dated 22.04.2022 wherein UPSEIAA referred back to SEAC in light of MOEF&CC, GoI OM F.No. 20/2/2020 HSMD dated 01.04.2022 regarding non-compliance of the Bio-medical Waste Management Rules, 2016 and revised CPCB Guidelines in the State of Uttar Pradesh by SEIAA and SEAC with respect to grant of EC for CBWTF and to analyse and deliberate upon the proposal and make their recommendations accordingly. Subsequently, the case was considered in 653rd SEAC meeting dated 12.05.2022. SEAC discussed the matter and recommended that Member Secretary, UPPCB may be asked to provide the gap analysis in the light of OM dated 01.04.2022 and also go through the complaint letter dated 07.05.2022 of Advocate Himanshu Saxena, Office no 10, Sector 15, Naya Moradabad. UPSEIAA noted the recommendation in 611th SEIAA meeting dated 26.05.2022. On such reference, Member Secretary, UPPCB Lucknow submitted the factual/Gap Analysis report vide letter no G38150/C-7/NOC-733/2022 dated 03.06.2022. SEAC discussed the matter in view of factual/gap analysis report provided by the Member Secretary, UPPCB in its 663th meeting dated 16.06.2022 and recommended grant of EC for the proposal along with EC conditions

as earlier stipulated in 641st SEAC meeting dated 05.04.2022. The case was considered in 625th SEIAA meeting dated 05.07.2022 wherein UPSEIAA agreed with recommendation of SEAC and granted EC Identification no. EC22B032UP160005 dated 13.07.2022 to the project subject to effective implementation of general and specific conditions imposed.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

REPLY FILED ON BEHALF OF RESPONDENT NO. 5-UPPCB

10. Respondent no. 5-UPPCB has submitted that the only allegation against Respondent No.5 UPPCB is that it has issued CTE before grant of EC which is against law. MOEF&CC issued a notification dated 14.03.2017 that no consent to operate (CTO) or occupancy certificate will be issued till the project is granted the EC. Order dated 20.09.2021 issued under Section 5 of the Environment (Protection) Act, 1986 also says that CTO cannot be granted or renewed unless EC is granted. Restriction under said notification/order is to grant of CTO and not to grant of CTE before grant of EC. The Project Proponent applied for CTE on 27.09.2021 and UPPCB granted conditional CTE on 26.04.2022 with condition that no construction shall be done at the proposed site without obtaining prior EC from UPSEIAA. UPPCB has not violated the notification/order issued by MOEF&CC.

REPLY FILED ON BEHALF OF THE RESPONDENT NO. 6-UPSIDA

11. In its reply respondent No.6 has denied the averment that the site in question falls in a "Green Area" and submitted that the site in question falls in an area where 'Red Category Industries' are not prohibited and that respondent No.6-UPSIDA made the allotment after taking cognizance of the fact that the proposed project is a Red Category project. The allotment was made to Respondent no. 7 on 15.09.2021 on application dated 13.08.2021 for 'Fabrication of Industrial Equipment (ETP/STP/WTP/C). As per rules, the allottee was free to make a change in project subject to condition no. 26 of the allotment letter dated 15.09.2021 which mentions that any reconstitution/ project change/ name change/ mortgage without prior approval in writing of the respondent no. 6/ UPSIDA shall result in an automatic cancellation of O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

the allotment. Subsequently an application dated 15.07.2022 was received in the office of the UPSIDA on 11.08.2022 for a change in the project while mentioning that the CBWTF has already been granted EC on 13.07.2022 and CTE from UPPCB has also been obtained on 26.04.2022. The allottee was advised on 13.09.2022 to submit an online application which was submitted on 15.09.2022. Respondent No.6 - UPSIDA was also informed by the allottee that the proposals are for setting up "Bio-Medical Waste Treatment Plant" which is a 'Red Category' industry and that there will be gaseous fumes and effluents which will be within the standards prescribed by UPPCB. Based on the said application UPSIDA has changed the project to 'Bio Medical Waste Treatment Plant' vide its letter no. SER 20220915/ 1003/ 38049/ 58850/ SIDC-A/ Babrala dated 19.09.2022. As per the UPSIDA Land Development and Building Regulations 2018, Polluting Industries are not prohibited in the instant Industrial Area. Condition no. 18 of the allotment order dated 15.09.2021

does not put any prohibition on discharge of emissions or effluents but binds the allottee that such emission/ effluents do no pollute.

12. In their reply respondents no. 7 and 8 have challenged the locus standi and bona fides of the applicant and submitted that the Applicant is not even a resident of District Sambhal, where the CBWTF is being established, but resides in District Baghpat, which is far away from the project site and there is no question of the Applicant being adversely affected in any manner by the establishment of the project. The Applicant did not submit any representation, highlighting his concerns, to the concerned authorities. The application is complete abuse of the legal process and has been deliberately filed in a manner so as to mislead and O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

prejudice this Tribunal and to derail the establishment of a project of great public importance for some ulterior motive best known to the Applicant. No question, leave alone a substantial question, pertaining to the protection and preservation of environment, has been raised in the present Original Application.

12.1 Respondents No.7 and 8 have also objected to maintainability of the application by submitting that impugned EC could be challenged only by way of filing an Appeal under Section 16 (h) of the National Green Tribunal Act, 2010 within a period of 30 days from the grant of the EC, which period could be extended by another sixty days only if sufficient cause was shown to this Tribunal for not having filed it within the original period of limitation. The Original Application has been filed by the Applicant on 17.08.2022 beyond the period of limitation prescribed for filing an Appeal and the challenge to EC has been cloaked in the garb of an Original Application instead of an Appeal to overcome the hurdle of limitation which is not permissible.

12.2 Respondents No.7 and 8 have also denied the assertion made by the Applicant that the Babrala Industrial Zone has been set for green industries only and submitted that like other Industrial Zones, Babrala Industrial Zone caters to all types of industries ranging from categories M0 to M5 and covering all Industries falling in the Green, Orange and Red categories, which are adopted for environmental classification which fact is also evident from the list of Industries falling in the Babrala Industrial Zone. The applicant has deliberately concealed this fact and intentionally misrepresented that Babrala Industrial Area is only for Green category Industries in order to mislead this Tribunal and cause prejudice. The Applicant is seeking cancellation/revocation of CTE dated 26.04.2022, granted to Respondent No. 7 by the UPPCB which could be O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

challenged by filing appeal within 30 days before the Appellate Authority but The Applicant did not file any Appeal and has not furnished any explanation for not doing so.

12.3 Respondents no. 7 and 8 have submitted that application form dated 06.07.2021 had been submitted by Respondent No. 7 to UPSIDA but no allotment took place against the same. Subsequently two Application Forms were submitted by Respondent No. 7 to UPSIDA on 13.08.2021 for allotment of industrial plots. Allotment Letters dated 15.09.2021 were issued by

UPSIDA allotting Plots No. E-25 and E-26, in Babrala Industrial Area to Respondent No. 7. The Applicant has, without verifying the full facts, attached Application Form dated 06.07.2021 instead of applications dated 13.08.2021 with the Original Application and misrepresented facts. The Applicant also omitted the words 'Fabrication of Industrial Equipment (ETP/STP/WTP/C)' mentioned in the original document to create prejudice which fact needs to be viewed seriously by this Tribunal and the strictest possible action for the same needs to be taken against the Applicant. At the time of initially applying for the allotment of the industrial plot Respondents No. 7 and 8 proposed to set up a unit of Fabrication of Industrial Equipments, which is a Green category industry and the same was also indicated in the Application Form as well. The fact of setting up of a unit for Fabrication of Industrial Equipments was also mentioned in the Allotment Letters issued in favour of Respondent No. 7. On realizing that development of a CBWTF is the need of the hour during the ongoing Covid-19 pandemic, when huge quantities of biomedical waste are being generated and which pose a serious health risk to the public, if left untreated, Respondents No. 7 and 8, as per the common practice of change in the project being set up on an industrial plot in alignment with the changed commercial O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

considerations, decided to set up a CBWTF in said industrial plots and applied for requisite permissions for the same. When Respondent No. 7 informed UPSIDA of its intention to use the allotted industrial plots for the purpose of establishment of a CBWTF, they were informed that Respondent No. 7 should first get the requisite permissions from the UPPCB and the EC from SEIAA in relation to the same and then apply for a change in the intended use of the industrial plots to UPSIDA. Acting on the said direction, Respondent No. 7 applied for the grant of EC before UPSEIAA and for the grant of CTE before UPPCB. After processing of the Applications submitted by Respondent No. 7 in accordance with law, CTE was granted in its favour on 26.04.2022 and EC was granted on 13.07.2022. Immediately after the grant of EC, Respondent No. 7 addressed a letter to UPSIDA on 15.07.2022, requesting it to accord its consent for the change in the nature and category of the Industry being proposed to be set up by Respondent No. 7 on its Industrial Plots. In response thereto letter dated 13.09.2022 was addressed by UPSIDA to Respondent No. 7 that an application for change of project may be submitted by Respondent No. 7 online on the Single Window Portal of UPSIDA. Respondent No. 7 acted immediately on the said direction and submitted online application forms for change of project on the Single Window Portal of UPSIDA on 15.09.2022. The Applications submitted by Respondent No. 7 were processed by UPSIDA in accordance with law and the approval for change of project for Plots No. E-25 and E-26 was accorded by UPSIDA to Respondent No. 7, with the nature of the project being categorically mentioned as 'Bio Medical Waste Treatment Plant', on 19.09.2022. There has been absolutely no violation of any guideline either by the Respondent No. 7 or by the concerned authorities in the instant case.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

12.4 Respondents No. 7 and 8 have submitted that OM dated 20.09.2021 issued by MOEF&CC merely requires that at the time of grant of CTE the applicability of the EIA Notification be ascertained and no CTO be granted before grant of prior EC. Therefore, at the time of grant of CTE, all that is required to be done is the ascertainment of the applicability of the EIA Notification and stipulation of appropriate condition that EC, if applicable, shall be obtained prior to construction/

commencement of project/activity. Both the requirements have been followed in the case of Respondent No. 7. At the time of grant of CTE by UPPCB, the requirement of grant of EC was duly assessed and ascertained by UPPCB and it was clearly stipulated in Clause (2) of the Specific Conditions of the CTE dated 26.04.2022, granted by UPPCB in favor of Respondent No. 7, that 'no construction shall be done at the proposed site without obtaining prior Environmental Clearance from SEIAA, Uttar Pradesh'. Further, it was also stated in Clause (13) of the Specific Conditions that 'unit shall operate only after obtaining prior Consent to Operate and authorization from UPPCB'.

12.5 Respondents No. 7 and 8 have further submitted that the CBWTF project of Respondent No. 7 is one of the very first projects in the State of Uttar Pradesh in which Gap-Analysis was carried out by the authorities. Pursuant to letter dated 28.05.2022 written by UPSEIAA to UPPCB, Gap-Analysis was carried out by UPPCB and a report regarding the same was furnished to UPSEIAA by UPPCB on 03.06.2022. It was only after consideration of all relevant aspects and after following the relevant provisions contained in the Bio Medical Waste Management Rules, 2016 and guidelines issued by CPCB, including the provision pertaining to Gap-Analysis, that UPSEIAA deemed it fit to grant EC to Respondent No. 7 on 13.07.2022. Respondent No. 7 has also got the Certificate of O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

Registration and No Objection Certificate [Valid from 22.08.2022 to 21.08.2027] issued from the Uttar Pradesh Ground Water Department, in respect of the industrial plots in question. All clearances and permissions for CBWTF have been given in accordance with the legal and regulatory provisions and there has been no contravention or violation of any direction/guideline/legal provision. Till date, no construction related to the project has been done by Respondent No. 7 at the project site and the stage for obtaining a CTO has not even been reached as Respondent No. 7, as a responsible corporate entity, even after the grant of the EC, wanted to start the construction only after having obtained approval for change of project from UPSIDA, which was done only on 19.09.2022. Thereafter, when Respondent No. 7 wanted to start the construction activity, it was informed that an order dated 02.09.2022 has been passed by this Tribunal in the present Original Application, restraining Respondent No. 7 from taking any further steps for establishment /operation of the CBWTF. The manner of allotment of an industrial plot to Respondent No. 7 or the change in the project, proposed to be established on the same, is not within the jurisdictional purview of this Tribunal. No pollution is going to be caused by the operation of the CBWTF of Respondent No. 7 and all emissions are going to be within the norms prescribed by the regulatory authorities, with the same being ensured through regular monitoring by UPPCB.

12.6 Respondents No.7 and 8 have further submitted that the project being established by Respondent No. 7 in District Sambhal, Uttar Pradesh, is a project of great environmental and public importance. It is well known that biomedical waste has a serious adverse impact on water, soil, air quality, human health and the environment as a whole. A CBWTF, by treating the biomedical waste in a scientific manner, seeks to O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

minimize and virtually negate the damage caused to the environment and public health by biomedical waste, apart from creating employment opportunities for the local populace. In light of the increasing amounts of biomedical waste being generated in the country, especially after the

onset of the prevailing Covid-19 pandemic, there have been several calls for establishment of CBWTF in the country on an extremely urgent basis and it is in furtherance of the intention to alleviate the harmful effects of the bio-medical waste that Respondent No. 7 decided to establish a CBWTF in District Sambhal. The CBWTF being set by Respondent No. 7 shall be equipped with all the state-of-the-art machinery and best possible pollution abating equipment and technology. It shall be capable of ensuring that minimal impact is caused to the environment as a result of the operation of the plant and the emissions generated from the plant are going to be well within the prescribed norms. The CBWTF of Respondent No. 7 shall also be a Zero Liquid Discharge (ZLD) unit. The CBWTF is being set up by Respondent No. 7 on a site, where the establishment of such a project is not prohibited by law, and as evident from the Gap-Analysis report, the project shall cater to the existing shortfall between the rate of generation of biomedical waste and its treatment.

ADDITIONAL REPLY FILED ON BEHALF OF RESPONDENT NO. 7- M/S PUNCHAKRAN PVT. LTD.

13. In its Additional reply filed vide email dated 18.01.2023 Respondent no. 7-M/s Punchakran Pvt. Ltd. has while reiterating chronology of events submitted that the CBWTF being set by Respondent No. 7 shall be equipped with all the state-of-the-art machinery and best possible pollution abating equipment and technology. It shall be capable of ensuring that minimal impact is caused to the environment as a result O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

of the operation of the plant and the emissions generated from the plant are going to be well within the prescribed norms. The CBWTF of Respondent No. 7 shall also be a Zero Liquid Discharge (ZLD) unit.

14. We have heard learned Counsel for the parties and gone through the material on record carefully.

15. In their arguments learned Counsel for the parties have reiterated their stands taken in the replies filed on their behalf.

16. Written arguments have been filed by Co-Applicant vide email dated 21.03.2023, by respondent no. 7-M/s Punchakran Pvt. Ltd. vide email dated 16.03.2023 and by respondent no. 6-UPSIDA vide email dated 18.03.2023. In all fairness to them written arguments filed are reproduced hereunder:-

(i) WRITTEN SUBMISSIONS ON BEHALF OF CO-APPLICANT/ IMPLADER:

"WRITTEN SUBMISSIONS ON BEHALF OF CO-APPLICANT/ IMPLADER:

X X X X

1. The present matter concerns the deliberate concealment of vital and material information, documents and the violations of mandated provisions contained in Environment Protection Act, 1986 & Common Bio-Medical Waste Management

Rules, 2016 & Guidelines. Respondents 1 to 6 in the matter are intentionally & continuously ignoring & overlooking the illegalities and improprieties committed by private respondent 7/8 which are obligatory in nature and are to be strictly complied and processed while granting permissions and clearances in the matter. The concerned respondents - UP PCB, UP SEAC, UP SEIAA & CPCB, who are the experts and given the duty to scrutinize with utmost care and intense deliberations, despite having all the information supported with documents, in an evidence-based approach to evolve a total solutions methodology to save illegalities are till date supporting the wrong.

2. R-7/8 vide File No.6497/Proposal No.SIA/UP/MIS/66542/2021, applied online along with supporting documents with Parivesh portal-SEIAA, UP at <http://environmentclearance.nic.in/>, before the concerned O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

authorities/ Respondents herein for establishing Common Bio- Medical Waste Treatment Facility (CBWTF). The present matter is the classic case of collusion of concerned authorities with R- 7/8, using forged documents, mis-representation, violation, non- compliance of BMW Rules, 2016 and revised CPCB guidelines, for obtaining permissions with respect to grant of Terms of Reference (ToR), Consent to Establish (CTE) & Environment Clearance (EC) for establishing CBWTF in Babrala, UP.

3. Irregularities/violation committed by Respondents in granting permissions to R-7/8:

I. It's an admitted position by R-6 & R-7/8, that the allotment/ Expression of Intent by UPSIDC/ R-6 in favour of R- 7/8 to the plots E-25 & 26 is dated 15/09/2021 on the application form dated 13/08/2021. Two things are very important to point out here, firstly, as the entire process of applying for CBWTF is by filing online applications along with documents but in the present case the Application Form 13/08/2021 till date has never been filed before the Respondents in the online application form, pre-feasibility report and/ or EIA Report with Parivesh portal-SEIAA, UP at <http://environmentclearance.nic.in/> filed by R-7/8. Secondly, the online application dated 11/08/2021 pre-dates not only the allotment dated 15/09/2021 but also application form dated 13/08/2021. In other words, the legal ownership/ title of the plots E-25 & E-26 till 15/09/2021 are with UPSIDC/ R-6 & not with R-7/8, therefore, under law no application/ request for processing establishment of CBWTF can be initiated prior to 15/09/2021 in favor of R-7/8. In total violations of the Revised Guidelines for BMW Rules, on 11/08/2021, R-7/8 filed an online application for Grant of ToR, submission of EIA Report and Grant of EC without the land in picture but the same was allowed/ accepted without any objections/defects as the application is without any credible documents of land in support. In fact ToR was also granted on 17/08/2021 without desired land - legally

impermissible under mandated guidelines/laws. Response of R-7/8 dated 8/10/2022 at Page 68-Para 8 is relevant on this issue, wherein it was stated "That subsequent to two Application Forms submitted by R-7 to UPSIDA on 13.08.2021, for allotment of industrial plots, Allotment Letters dated 15.09.2021 were issued by UPSIDA to R-7, allotting Plot Nos. E-25 and E-26, situated in the Babrala Industrial Zone, to R-7. It is pertinent to mention that earlier, Application Form dated 06.07.2021 had been submitted by R-7 to UPSIDA but no allotment took place against the same". Therefore, it's an admitted position that the permission granted by other Respondents to R-7/8 for establishing CBWTF precedes allocation of land - totally against Clause 2 of the Revised Guidelines for Common Bio-medical Waste Treatment and Disposal Facilities - Criteria for development of a new Common Bio-medical Waste Treatment and Disposal Facility for a locality or region:

sub-clause (d): Alternatively, a CBWTF may also be allowed to be established on a land procured by an entrepreneur in accordance with the location criteria suggested under these guidelines.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

sub-clause (e): The SPCB/PCC or concerned department in the business allocation of land assignment in the respective State Government or UT Administration may seek expression of interest from the proponents for development of new CBWTF (s) in the identified coverage area. Upon allocation of site to the proponent, the proponent is required to take necessary approvals as required under the Environment (Protection) Act, 1986 for development of the new CBWTF in accordance with these guidelines.

The language used in the above applicable provisions is unambiguous and clear cut as the words used are "land procured"; "allocation of land" and "upon allocation of land", which clearly is not followed in this case and the correct legal position is suppressed by other Respondents before Hon'ble NGT. For CBWTF prior allocation of land is must before taking necessary approvals from authority. In this case the urgency of the involved respondents/ personnel is such that this basic and most vital requirement of legal ownership/ allocation of requisite land before allowing/ granting any permission was also ignored and violated to facilitate R-7/8.

II. In addition to above, it is not out of place to mention that as a matter of fact till date the requisite land is not available with and/or allotted to R-7/8. As per the allotment letters dated 15/09/2021 the total combined area available with R-7/8, for plots bearing E-25 & E-26 till date is only 3601 sq.mtrs. [E-25 is admeasuring 1801 sq.mtrs & E-26 -1800 sq.mtrs.] and the area required for establishing CBWTF is minimum 1 (one) Acre i.e. 4047 sq.mtrs. (approx.) as mandated under Revised Guidelines for Common Bio-Medical Waste Treatment Facilities by CPCB in Clause 7.

Clause 7) Land requirement: Sufficient land shall be ALLOCATED to the CBWTF to provide all requisite systems which include dedicated space for storage of waste (both treated and untreated), waste treatment equipment, vehicle washing bay, vehicle parking space, ETP, incineration ash storage provision, administrative room, space for DG Set etc.,

(a) Preferably, a CBWTF shall be set up on a plot size of not less than one acre in all the areas. However, a CBWTF can be developed in adjacent plots but cannot be set up in two or more different plots located in different areas. Separate plots can be permitted only for vehicle parking if located in the close vicinity of the proposed CBWTFs or the existing CBWTFs.

(b) In case of upcoming or new CBWTFs (both in municipal limits with population more than 25 lakhs or in rural areas), the land area requirement may be relaxed (but in any case not less than 0.5 acre) by the SPCB/PCC, with additional control measures such as zero liquid discharge, increase in stack height, stringent emission norms, odour control measures or any other measures felt necessary by the prescribed authority on case-to-case basis, only in consultation with CPCB.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

Babrula is not only urban area but the population is also not more than 30,000. It's not the case of any of the respondents that there was shortage of land in the Babrula, Industrial Area as there is ample land bank available nor there was any submission by the concerned authority that this issue was ever discussed, leave aside any official order/s. The respondents in the present matter, though filed their replies but interestingly all the respondents, pick and chose the issue/s as per their convenience and responded only to the limited issue/s, restricting themselves to one or the other issues and the onus for rest on the other authority and/or respondent. It is settled law, that if the replies are silent on the issue/s raised, it is considered as admission. Neither there is any response nor any document/s is/are annexed/ submitted to show the permission/order/direction/ consultation of UP PCB with CPCB in the matter, hence violation admitted.

III. It is apposite to mention that the Respondents did not follow the OM dated 7/10/2014, while granting ToR wherein it was clearly mandated as follows:

The matter has been examined in this Ministry. The very purpose of introducing scoping stage in the EIA Notification 2005. was to guide preparation of site- specific comprehensive EIA/EMP reports so as to facilitate objective appraisal process. As per the process defined under the EIA Notification, 2006, the project proponent provides the requisite information in Form-1/1A and makes presentation before the concerned EAC/SEAC based on which the EAC/SEAC makes recommendation about the. TORs. Thus, it is for the EACs/SEACS to consider the proposal comprehensively at the

scoping stage itself and the requisite information/ studies should be sought from the proponent in one go while prescribing the TORs. While appraising the project, the concerned EAC/SEAC may satisfy itself that the ToRs have been properly addressed in the EIA/EMP reports and ensure that no fresh issues have been raised unless it turns out that the information provided by the project proponent at the time of scoping was wrong and misleading. In case the project proponent has given false or misleading information or data, the application for EC could even be considered for rejection under Clause 8(vi) of EIA Notification 2006. In rare cases where, during the appraisal process some new facts come to the notice of the EAC/SEAC and it becomes inevitable to go for additional studies/ seeking additional information from the proponent beyond the TOR'S, the same may be unambiguously reflected in the minutes of the meeting with complete justification, besides getting the additional studies conducted/ additional information obtained in a time bound manner..."

Copy of the OM dated 7/10/2014 issued by MoEF & CC vide F.No.22-83/2014-IA-III is ANNEXURE-I. IV. Now coming to the most important aspect of the matter, R-7/8 for obtaining permissions illegally from O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

respondents in the matter deliberately committed forgery/ concealment/ doctoring of documents in the matter. It is again the admitted position in the response filed by R-7/8 and R-6 that plots E-25 & 26 are allotted for the purpose of "Fabrication of Industrial Equipment (ETP/STP/WTP/C) - Green Category Industry" and NOT for establishing CBWTF - Red Category Industry. This vital piece of information/ fact was deliberately concealed from Respondents by R-7/8. It is stated that in the online application filed, the portion of the document where it was stated that the allotment of plots E-25 & 26 was for - Fabrication of industrial Equipment (ETP/STP/WTP/C) was maliciously and deliberately concealed/ covered/ hidden and the fabricated/ manufactured document was submitted online before the Respondents/ concerned authorities for obtaining permissions illegally. This forgery directly attracts Clause 8 - Grant or Rejection of Prior EC - Sub-clause (vi) of EIA Notification 14/09/2006, which clearly state as follows:

sub-clause (vi): Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis...."

Not only this deliberate concealment and forgery squarely falls under sub-clause (vi) of Clause 8 which makes the application bearing File No. 6497/ Proposal No.SIA/UP/MIS/66542/ 2021, liable for rejection and cancellation of prior environmental clearance granted on that basis to R-7/8 by Respondents but also amounts to criminal offence of tampering official records by R-7/8. It is pertinent to note that despite the said fact known to the Respondents, the respondent authorities even on

this legal issue, for the reasons best known to them, till date not responded in their replies neither have they submitted anything before this Hon'ble NGT about the implications of such forgery in the matter. The said act/s clearly indicated collusion on the part of Respondents with the private respondent 7 & 8. On this issue of forgery and doctoring of documents. Replies filed by R- 6 & R-7/8, are important. R-7/8 at Para 9-Pages 68 & 69, states as follows:

"...However, in a clear case of doctoring of documents, in order to create prejudice in the mind of this Hon'ble Tribunal, the Allotment Letter annexed by the Applicant as 'Annexure-B' to the present Application omits the words 'Fabrication of Industrial Equipment (ETP/STP/WTP/C)' mentioned in the original document. It is respectfully submitted that the said fact needs to be viewed seriously by this Hon'ble Tribunal and the strictest possible action for the same needs to be taken against the Applicant..."

Meaning thereby, that the same is un-pardonable and amounts to PERJURY punishable with strictest possible action. It is pertinent to mention here that the tampered document - allotment of plots E-25 & 26, are filed by the R-7/8 before the concerned respondents and are part of their File O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

No.6497/Proposal No.SIA/UP/MIS/66542/2021 i.e. online application with Parivesh portal-SEIAA, UP at <http://environmentclearance.nic.in/>. It is not out of place to mention here that the applicant herein, in the hearing dated 19/01/2023, with the kind permission of Hon'ble NGT, had an opportunity to establish the forgery and opened the File No. 6497/Proposal No. SIA / UP / MIS / 6 6 5 4 2 / 2 0 2 1 of R - 7 / 8 on the official website - <http://environmentclearance.nic.in/>, wherein the tampered/ doctored/ fabricated allotment letters dated 15/09/2021 for plots E-25 (Page 523-Vol I-A) & E-26 (Page 528-Vol I-A) were shown and the portion - Fabrication of industrial Equipment (ETP/STP/WTP/C) was deliberately concealed/ covered/ hidden. After disclosure of the said forgery, on 19/01/2023 learned counsel for R-4-SEIAA seeks time for filing copy of Environment Impact Assessment (EIA) Report before Hon'ble NGT, but till date just to suppress the facts from Hon'ble NGT and unlawful support for private respondent R7/8, only partial EIA Report is filed by R-4. It is apposite to state that the plots allotted for Fabrication of Industrial Equipment (ETP/STP/WTP/C) - Green Category Industry cannot be processed by Respondents for CBWTF and no ToR/ CTE/ EC/ permission etc. be given by the Respondents for establishing CBWTF on plot allotted for ETP/STP/WTP/C - Green Category Industry. Even R-6-UPSIDC, had clearly stated that the land in the industrial area Babrala, UP cannot be allotted to any applicant for CBWTF without prior NoC's. All these forgeries and manipulations were conspired by R-7/8 in collusion with other respondents just to circumvent the process of law and obtain permissions unlawfully in complete violation of mandated laws and OM's issued by MoEF.

Hon'ble Supreme Court in Hanuman Laxman Aroskar vs. Union of India, (2019) 15 SCC 401 observed that under EIA 2006, process of obtaining an EC commences from the production of information stipulated in Form 1/Form 1A; crucial information regarding particulars of proposed

project is sought to enable EAC or SEAC to prepare comprehensive ToR which applicant is required to address during the course of preparation of EIA.

Relevant observations in para 60 of judgment are as under:

"60. Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A....

The importance of correctness and transparency of the information and that any false statement or concealment of the same would be fatal, was particularly stressed by Hon'ble Court in para 62 of judgment, observing:

"62. The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Clause (vi) of paragraph 8 of the notification provides thus:

"Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

120. Hon'ble Supreme Court also referred and approved two judgments of this Hon'ble Tribunal in *Save Mon Region Federation vs. Union of India*, 2013 (1) All India NGT Reporter 1 and *Shreeranganathan K P vs. Union of India* 2014 SCC online NGT 15 wherein, on the basis of information furnished in Form 1, the deficiencies in EIA Report, process of appraisal etc., were considered in detail to find out whether EC was granted in accordance with law or not. Court distinguished an earlier judgment in *Lafarge Umiam Mining Private Limited vs. Union of India* 2011 (7) SCC 338 observing that it was the case under EIA 1994 when provisions of EIA 2006 were not applicable. Court said that decision was based on facts of that case, summarized by Court in *Hanuman Laxman Aroskar* (supra) in para 138 of judgment. It was also held that, relevant material,

if has been excluded for consideration or extraneous circumstances were brought in mind, there was a failure to observe binding norms under EIA 2006 and consequential serious flaw in the decision-making process, would amount to an illegal exercise and failure of statutory duty, so as to vitiate EC. In para 157 of judgment, importance of the correct and complete disclosure of information by PP in his application, Form 1 and Form 1A, and further consideration by Competent Authority has been discussed, as under:

"The 2006 Notification must hence be construed as a significant link in India's quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive."

V. Not only this, it is pertinent to mention here that while filing the online application vide File No. 6497/ Proposal No.SIA/UP/MIS/66542/ 2021, R-7/8 is under an obligation under EIA, 2006, to file an undertaking under oath/ Affidavit which reads as follows: "We, hereby give Undertaking that the data and information given in the application (for ToR/EC), enclosures and other document are true to the best of my knowledge and belief and we are aware that if any part of the of the data and information submitted is found to be false or misleading at any stage, the project will be rejected and the clearance given, if any, to the project, will be revoked at our own risk and cost." Copy of the affidavit is at Page-522 of Vol I-A. The very purpose of filing the undertaking before the authority is also vitiated by R-1 to 6, as till date no action has been taken in the matter. Needless to say, that even on this issue of forgery and doctoring of documents there is no submission/ arguments by Respondents, hence the same stands admitted.

VI. This Hon'ble Tribunal under its jurisdiction has ample power and scope to unearth the writ large improprieties committed by the proposed proponent M/s Punahchakran (P) Ltd. - R-7/8 herein for obtaining permissions unlawfully and also directions to the concerned authorities as to what actions have been taken against the R-7/8 till date in the matter. The very fact that even after clear knowledge and complete information, the concerned authorities are sitting over the said violations, deliberate concealment and/or submission of false and misleading information/ Affidavit and/or data; which the authorities are under legal compulsion to take stringent and punitive actions, means complete failure of law and order in the concerned departments. It is to be noted, as the entire process is online with Parivesh portal-SEIAA @ <http://environmentclearance.nic.in/>, any

additional/fresh document to be submitted in the case of CBWTF application an EDS (Essential Documents Sought) is issued by the concerned department raising queries/ concerns. It is only after the EDS that the proposed proponent can file the additional document clarifying/ responding to the queries raised by the department. In the matter of R-7/8, it is quite evident and surprising, that despite numerous anomalies and improprieties, there was never any occasion for the concerned authorities to raise even a single query/ EDS in the matter. Neither the department nor the proposed proponent ever considered it necessary to correct the records. Collusion with concerned officials/ authorities, with malafide intentions is clearly established in the present matter and the concerned respondent authorities completely ignored O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

the variances of the facts/ dates/ violation of applicable rules etc. in the matter and kept on granting permissions unlawfully exploiting their discretion. The same respondents in similar issues/ cases had withdrawn the Environment Clearance earlier recommended to the project proponent wherein it was found and observed that the facts/ information/documents/ affidavit provided by the applicant are based on false and misleading information but in the present matter special treatment is accorded to R-7/8. Copy of the Minutes of 678th SEAC-2 Meeting dated 08/08/2022 Agenda/Item No.13, wherein permissions were withdrawn is Annexure-II. Further, named Respondents are already holding an enquiry/ scrutiny against R-7/8 even after the issuance of Environment Clearance and filing of the present O.A. 622/2022 for violations of BMW Rules but the said information is also suppressed from the Hon'ble NGT which only shows ulterior motives and collusion between the parties. Copies of the Minutes of 674th SEAC-2 Meeting dated 20/07/2022; Minutes of 705th SEAC-2 Meeting dated 25/11/2022 and Minutes of 687th SEIAAC, UP Meeting dated 04/01/2023 [Annexure-III (colly)] available in public domain are few of the many instances wherein R-7/8 is under departmental scrutiny/ enquiry. The respondents be put to strict proof as to disclose what all enquiries are conducted and/or concluded in the matter pertaining of File No. 6497/ Proposal No.SIA/UP/MIS/66542/ 2021 and what all information/documents have been gathered in the matter as any further suppression of vital information will only amounts to defeating and/or obstructing the course of justice and abusing the process of law.

4. In the light of the facts and circumstances stated in the present matter, it is clearly established that the statute herein confers discretionary powers upon the Respondents for one purpose and it was/is used for some purpose other than the one that was decided/allowed/mandated, therefore, the authority exercised/ permission granted to R-7/8 cannot be regarded as a valid exercise of the powers and the same be rescinded by declaring it as ultra vires. Needless to state that the Hon'ble Apex Court, on numerous occasions held that power of discretion is not unlimited and is confined to the objective for which the law was enacted and while exercising its discretionary power if an authority turns a blind eye to relevant considerations, its acts will be considered null and void.

5. In respectful submissions, all the information/ documentation filed till date on the basis of which various permissions were granted to R-7/8 were/are always available with Respondent departments at <http://environmentclearance.nic.in/>- Parivesh portal-SEIAA, U.P., but for the reasons best known to Respondent/s, the actions and inactions in the present matter are only for illegal personal gains which cannot be held as lawful. The Hon'ble Apex Court in Indian Railway Construction Co.

Ltd. v. Ajay Kumar reported in (2003) 4 SCC 579, at paragraphs No.13 to 15, explained the manner in which discretionary power has to be exercised, while discharging an administrative function. It was held that in matters relating to administrative functions, if a decision is tainted by any vulnerability as such illegality, irrationality and O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

procedural impropriety, Courts should not hesitate to interfere, if the action falls within any of the categories stated supra.

6. Similarly, in State of NCT of Delhi v. Sanjeev, reported in (2005) 5 SCC 181, the Hon'ble Supreme Court while explaining the scope of judicial review of executive action has held that in the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.

7. Important/ moot questions that needs to be answered in the present matter are:

I. Whether in the light of the fact that there are deliberate concealment and forgery committed in the matter at every stage of scrutiny, the permissions granted to R-7/8 by the other Respondents in the matter are liable for rejection and cancellation as per EIA Notification 14/09/2006? II. Whether R-7/8, having filed two (2) false affidavits, firstly before Respondents in EIA Report (as mandate under EIA Notification of 2006) and secondly before Hon'ble NGT while filing reply dated 8/10/2022 to the application and instead wrongly charged applicant of forgery of documents before Hon'ble NGT amounts to 'Perjury' i.e. giving/ furnishing/ submitting intentionally false submissions by the person bound by law to submit/ furnish true facts, before the court of law?

III. Whether the offence of R-7/8 of intentionally giving false evidence/ submission and/or fabricating false evidence for the purpose of being used in any stage of a judicial proceeding be condoned in the present matter?

IV. Whether it is permissible under law to accept the online application & grant permissions for establishing CBWTF without procurement/ allocation/ ownership of land and/or credible document? More so in the light of the fact that the application form 13/08/2021 not only is after the online application dated 11/08/2021 but also till date not filed/ submitted by R-7/8 in their online application form and/ or EIA Report nor there is any EDS issued in the matter by respondents i.e. in other words not existed and/or in the record of Respondents.

V. Whether the guidelines of BMW and revised CPCB guidelines under 7(a) for the land requirement which says that a CBWTF shall be set up on a plot size of not less than (1) one acre (4047 sq. mtr.) in all the areas, be relaxed without any official order

in the matter/ without the examination & approval by concerned State Pollution Control Board (SPCB) /Pollution Control Committee (PCC) in consultation with CPCB, whereas in entire U.P. (1) one acre criteria is applicable? VI Whether the Respondents are authorised to compromise the mandated provisions of Environmental Laws, Common Bio O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

Medical Waste Management Rules, 2016 & Guidelines, EIA, 2006 etc. and process the online application for setting up CBWTF on the land allotted for 'Fabrication of Industrial Equipment (ETP/STP/WTP/C) and not for CBWTF? VII Whether the submission of online request for change of land use by R-7/8, to R-6 - UPSIDC, after the passing of stay order dated 02/09/2022, wherein it was clearly stated that "... In the meanwhile, no further steps for establishment/operation of the Common Bio-Medical Waste Treatment Facility shall be taken by the Project Proponent on the basis of impugned environmental clearance and CTE in its favour which shall remain in abeyance..." amounts to contempt of court?

8. It is to emphasize that the provisions contained in Bio- Medical Waste Management Rules, 2016, Environment Laws & guidelines are deliberately ignored & overlooked which are mandatory in nature & to be strictly followed while giving unlawful clearance to Respondent No.7/8. Respondents 1-6 must ensure strict compliance under the mandated rules, guidelines and directions and strict action be taken in the matter.

Case laws supporting the arguments:

- i. Hanuman Laxman Aroskar vs. Union of India, (2019) 15 SCC 401;
 - ii. Indian Railway Construction Co. Ltd. v. Ajay Kumar reported in (2003) 4 SCC 579;
 - iii. State of NCT of Delhi v. Sanjeev, reported in (2005) 5 SCC 181, the Hon'ble Supreme Court iv. Praveen Kakar & Ors. v/s MoEF&CC & Ors.
- (O.A.661/2018 order dated 4/07/2022);
- v. Missu Naseem &Anr v/s St. of Andhra Pradesh &Ors. (Crl Appeal 160/2022 dtd 01/02/2022);
 - vi. Chandramani Kanhar v/s State of Odisha (BLAPL No.4576 of 2020 order dated 21/12/2020)"

(ii) Note of WRITTEN ARGUMENTS ON BEHALF OF RESPONDENT NO. 7 "NOTE OF WRITTEN ARGUMENTS ON BEHALF OF X X X X

1) The present Original Application has been filed by the Applicant, at the behest of a competitor of Respondent No. 7, with ulterior motives with the sole intention of somehow delaying the establishment of the CBMWTF of Respondent No.

7. It is relevant to mention that the Applicant is a resident of District Baghpat, whereas the project of Respondent No. 7 is being established in District Sambhal and nothing has been stated in the Original Application to show as to how the Applicant is aggrieved by the establishment of the project of Respondent No. 7.

O.A No. 622/2022

Aniruda Panwar Vs. MoEF & CC.

2) A perusal of the Original Application reveals that it is full

of misrepresentation and a blatant attempt has been made to mislead this Hon'ble Tribunal. A projection has been sought to be made in the Original Application that there are large scale violations of environmental norms which have taken place in the establishment of the CBWTF of Respondent No. 7, with the Original Application founded on three primary grounds. The first ground which has been urged in the Original Application is that the Babrala Industrial Zone, in which the project of Respondent no. 7 is proposed to be established, is meant only for green industries, with no document being annexed in support of the said contention. The second ground taken in the Original Application is that there has been violation of Order/Guidelines dated 20.09.2021, issued by MoEF&CC in the present case and the third ground is that Office Memorandum dated 01.04.2022, issued by MoEF&CC in respect of compliance with Bio Medical Waste Management Rules, 2016 and guidelines issued by CPCB, with regard to grant of Environmental Clearance for CBWTF, has been violated.

3) It has been made evident from the pleadings and arguments of Respondent No. 7, as well as those of the official Respondents, that all the grounds taken in the Original Application are absolutely baseless and unfounded, with the clear intention of the Applicant, in deliberately taking these fallacious grounds, being to somehow mislead this Hon'ble Tribunal into believing that a prima facie case of violation of environmental norms exists and securing an ex-parte interim order to restrain the Respondent No. 7 from establishing the CBWTF, with the Applicant also succeeding in the said design and securing, through misrepresentation, an ex-parte interim order from this Hon'ble Tribunal on 02.09.2022, and thereby delaying the establishment of the CBWTF of Respondent No. 7 by more than six months.

4) It has been made abundantly clear to this Hon'ble Tribunal by UPSIDA, as well as Respondent No. 7, that the Babrala Industrial Zone is meant for all categories of industries, with the list of industries, along with categorization, being furnished by UPSIDA to this Hon'ble Tribunal [at Pages 883-

885] and an illustrative list also being contained at Pages of the Reply filed by Respondent No. 7 [Pages 70-72]. Further, contents of Paragraphs 17 to 22 of the Reply of Respondent No. 7 [Pages 76-79], which are not being repeated for the sake of brevity, clearly demonstrate as to how the

order/guidelines dated 20.09.2021 and OM dated 0.04.2022, issued by MoEF&CC, have been fully complied with in the present case.

5) It is relevant to mention that during the course of final arguments, all the grounds taken in the Original Application were not even urged by the Applicant and an entirely new case was sought to be made out, by way of an Intervention Application, also filed at the behest of the same competitor. It is respectfully submitted that the filing of the Intervention Application at an advanced stage of the case and an attempt to raise new grounds and create confusion was also done to further delay the project of Respondent No. 7. However, in the interest of complete justice, Respondent No. 7 shall also be O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

responding to the grounds raised for the first time through the Intervention Application.

6) Two principal grounds have been taken in the Intervention Application by the Intervenor, with the first ground being that the CBWTF of Respondent No. 7, being established over an area of about 0.75 Acres, is violative of the Land Requirement of One Acre stipulated in Clause 7 (a) of the Guidelines issued by CPCB in December, 2016 in relation to CBWTF's. The second ground advanced by the Intervenor is that the Terms of Reference, in respect of the CBWTF of Respondent No. 7, having been issued on 11.08.2021, before the allotment of land on 15.09.2021, were wrongly issued, thus vitiating and setting at naught the entire process of issuance of the Environmental Clearance in favor of Respondent No. 7.

7) It is respectfully submitted that the Applicant/Intervenor is again deliberately misleading this Hon'ble Tribunal and seeking to create confusion through the above said submissions, which are without any basis in law. Clause 7 (b) of the 2016 CPCB Guidelines, in relation to CBWTF's, clearly states that in respect of upcoming CBWTF's, the requirement of land may be relaxed to 0.5 acres, with additional control measures such as zero liquid discharge, increase in stack height, stringent emission norms etc. being stipulated, which, as shall be evident from the EC granted in favor of Respondent No. 7, has been done in the instant case, after due application of mind by the regulatory agencies.

8) Further, in so far as the issue of Terms of Reference [TOR], in respect of the project of Respondent No. 7, being issued before allotment of land to Respondent No. 7, is concerned, the chronology leading to the same been explained in detail in the Additional Reply filed by the Respondent No. 7 before this Hon'ble Tribunal, with a List of Dates also being attached to this Note, for the convenience of this Hon'ble Tribunal, as Annexure-1.

9) Even though there was some confusion prevailing in the mind of Respondent No. 7 as to the nature of the industry which it wants to set up, there was no confusion regarding the setting up of an industry and the identification of the plots for the same, with the plots in question and the project site always being Plot Nos. E-25 and E-26, situated in the Babrala Industrial Zone. The first round of Applications for Allotment, submitted by Respondent No. 7 on 06.07.2021, did not result in an allotment to Respondent No. 7, due to certain shortcomings in the Applications, with the same being rejected on 12.08.2021, after the Respondent No. 7 had already applied for issuance of TOR on

11.08.2021. However, the second round of Applications for Allotment, submitted by Respondent No. 7 for the very same plots, culminated in allotment taking place on 15.09.2021.

10) It is apposite to mention that Clauses 6 and 7 of the EIA Notification, 2006 make it explicitly clear that the only requirement which is required to be fulfilled, at the stage of applying for issuance of Terms of Reference, is the identification of the site on which the project is proposed to be established, and not ownership or acquisition of the land, and the said O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

exercise had been duly completed in the instant case, with Plot Nos. E-25 and E-26, situated in the Babrala Industrial Zone, having been identified by Respondent No. 7. At no stage in the entire process has there been a change in the project site in the instant case and thus, there is no question of there being any violation of the EIA Notification. It is also pertinent to point out that the issuance of TOR is an automated process and constitutes a preliminary step in the entire process of issuance of Environmental Clearance, with no condition of ownership or vesting of land being mandated at that stage.

11) Once the Respondent No. 7 had finalized that it wants to establish a CBWTF on the allotted plots, it immediately met the officials of UPSIDA and informed them of its intention to do so, with a response being given by UPSIDA that since the plots are situated in an Industrial Area, there is no bar in establishing a CBWTF in the area and that UPSIDA can consider the change in the intended use of the industrial plot at a later date, once Respondent No. 7 has obtained the Environmental Clearance for establishing the CBWTF on the said plots.

12) The Lease Deeds in relation to the two plots were registered on 25.09.2021, thus crystallizing the ownership of Respondent No. 7 over the said plots. Respondent No. 7, after fulfilling the formalities and preparation of the EIA Report, submitted the Application for grant of Environmental Clearance only on 18.02.2022, with the ownership of the land having vested in Respondent No. 7 a long time before that date.

13) Thereafter, the Application for grant of the Environmental Clearance, submitted by Respondent No. 7, was considered by SEAC and SEIAA in several meetings and after consideration of all aspects, including the Gap Analysis Report dated 03.06.2022, the EC was granted in favor of Respondent No. 7 on 13.07.2022. After the grant of the EC, the Respondent No. 7 immediately applied to UPSIDA for change in the intended use of the land on 15.07.2022, much before the order dated 02.09.2022 passed by this Hon'ble Tribunal. Thereafter, UPSIDA sent a response to Respondent No. 7, asking it to apply for the change in land use on its Single Window Online Portal, which was done by Respondent No. 7 and after due consideration, change in land use was permitted by UPSIDA on 19.09.2022, in terms of its rules.

14) It is clear from the above submissions that there has been no violation whatsoever of any environmental norm in the present case and it is only because of the various attempts on the part of the Applicant/Intervenor to mislead this Hon'ble Tribunal and misrepresent before it that the project of Respondent No. 7 has ended up getting heavily delayed and irreparable loss has been

caused to Respondent No. 7. In such circumstances, it is respectfully prayed that the present Original Application, as well as the Application for Intervention, may be dismissed with heavy costs, so as to make sure that projects of public importance, like that of Respondent No. 7 in the present case, are not delayed because of cases filed due to motivated considerations."

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

(iii) WRITTEN ARGUMENTS ON BEHALF OF RESPONDENT NO. 6/ UPSIDA "BRIEF SYNOPSIS/ WRITTEN ARGUMENTS ON BEHALF OF RESPONDENT NO. 6/ UPSIDA X X X X A. U.P.S.I.D.C. Industrial Area, Babrala, Distt, Sambhal, Uttar Pradesh is mentioned in Government Gazette at page 871 of the documents filed by UPSIDA being an industrial area of the UPSIDA (please see S.no. 78 at page 875).

B. U.P.S.I.D.C. Industrial Area, Babrala, Distt, Sambhal, Uttar Pradesh is not meant for Green Category Industries only. That the Industrial area, Babrala, Distt. Sambhal, Uttar Pradesh Industrial is an approved Industrial Area where industrial proposals falling in category M-0 to M-5 are not disallowed in any form. Polluting Industries as per the By-Laws fall in the M-0 and M-1 category. The Bio-Medical Waste Handling facilities falls in the Red category and are allowed within this Industrial Area which houses and has allowed to house many other industries from the Red Category. Please refer to pages 883 to 885 where all the industrial plots are mentioned with their numbers and shows that all categories of the industries are conducting their business in Babrala Industrial Area including Red Categories ones. C. vide allotment letter dated 15-09-2021, the allotment was made by UPSIDA to the Respondent no. 7 on an application dated 13-08-2021 for 'Fabrication of Industrial Equipment'. please refer to Annexure U-2 page 249.

D. That as per rules, the allottee is free to make a change in project. Kindly refer to serial no. 1 at page 877 where Regional Manager has been given power to change the project as per rules.

E. An application dated 15.07.2022 was received in the office of the UPSIDA on 11.08.2022 through which the respondent no. 7 and 8 applied for a change in the project/ product and category of activity to a "Bio-Medical Waste Handling Facility". ANNEXURE U-4 at page 262.

F. It was informed by the allottee that the Combined Bio- Medical Waste Handling Facility has already been granted an E.C. under the E.I.A. notification of 2006 on 13.07.2022 and the consent to establish by the U.P. Pollution Control Board on 26.04.2022 has also been obtained.

G. The allottee was advised by the answering Respondent/ UPSIDA on 13.09.2022 to submit an online application which was submitted online on 15.09.2022 before the UPSIDA again. ANNEXURE U-5 and U-6 pages 263-269.

O.A No. 622/2022

Aniruda Panwar Vs. MoEF & CC.

H. UPSIDA was also informed by the allottee that the

proposals are for setting up "Bio-Medical Waste Treatment Plant" which is a 'Red Category' industry and that there will be gaseous fumes and effluents which will be within the standards prescribed by the Pollution Control Board. Based on the application as above, the UPSIDA has changed the project to 'Rio Medical Waste Treatment Plant' vide its letter no. SER 20220915/1003/38049/58850/SIDC-A/Babrala dated 19.09.2022 ANNEXURE U-7. pages 270-273.

I. Copy of certificate from UPSIDA regarding permissibility of industry of classes Mo to M5 in Babrala Industrial Area is annexed as ANNEXURE U-8. page 274.

J. Please refer to UPSIDA Land Development And Building Regulations, 2018 page 901- clause 2.1.3 (e) says that all plots in existing industrial development shall qualify in sub use zone Mo-M5.

K. Please also refer to page 904- table A. at page 907, sr. No. 48 Industries (General industries/mixed (polluting and non-polluting both) are mentioned for Mo categories of Industries.

L. Kindly refer to Operating Manual of UPSIDA (pages 1055 to 1200) Please refer to page 1072 Chapter dealing with Allotment/ Documentation/ Possession. Wherein at page no. Clause 2.19 deals with Change of Project page 1086. which clearly stipulates that allottee can change the industrial project at any stage after allotment by submitting the required documents.

M. It is humbly submitted that as per the Answering Respondent's Land Development and Building Regulation 2018, M-o category includes industries (General Industries/ mixed polluting and non-polluting both) and M-1 includes polluting industries. The copy of the relevant extract of the Land Development and Building Regulation, 2018 of the UPSIDA is ANNEXURE U-9. page 275-294.

N. That the respondent no. 7 has therefore been allotted plot no. E-25 and E-26, Industrial Area, Babrala for setting up Bio- Medical Waste Treatment Facility after taking into consideration that the proposal falls in the Red Category and that the gaseous emissions and effluents shall be treated to the standards prescribed by the Board."

CREDENTIALS/BONAFIDES AND LOCUS STANDI OF THE APPLICANT

17. The question which first arises for adjudication in the present case is whether the Applicant has locus standi and cause of action to file the O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

application and has filed the same bona fide for protection of environment or the application has been filed at the instance of rivals of Respondent No. 9 with ulterior motive to stall setting up of CBWTF by Respondent No. 9.

18. The learned Counsel for the Respondents No. 7 and 8 have challenged the credentials and bona fides of the Applicant and argued that the Applicant is not even a resident of District Sambhal and not being a resident of the locality is not personally affected in any manner by operation of the CBWTF and has no locus standi and cause of action as no public interest is involved in stopping

setting up of CBWTF and it is not in the interest of principles of natural justice and reasonableness to entertain interested litigation filed in collusion with and at the behest of interested parties. The opponents of the Respondents No. 7 and 8 are bent upon destroying its business and frivolous attempts have been made by instituting false complaints and cases at their behest. Fabulous and private interests should not be allowed to masquerade as genuine claims and this Tribunal must be cautious when examining locus standi and must look into the bona-fides of the applicant. The jurisdiction of this Tribunal may not be allowed to be misused by interested litigants for their ulterior motives and the application may be dismissed on this ground.

19. On the other hand, learned Counsel for the Applicant has argued that the Applicant has raised substantial questions relating to environment while pointing out serious violations of the MOEF&CC order dated 20.09.2021 and Office Memorandum dated 01.04.2022 and the CBWTF Guidelines 2016 in Public Interest and the application is maintainable in view of settled law governing Public Interest Litigation.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

20. Admittedly, the Applicant is not a resident of District Sambhal and is not residing in the vicinity of Babrala Industrial Area where the CBWTF is to be setup and cannot be said to be personally affected in any manner by operation of the CBWTF. The argument that present application has been filed at the instance of business rival for ulterior motive to stall the project ex-facie appears to be sound but such allegations can be easily made against the Applicant by the Project Proponent almost in every case and in the absence of any cogent material such allegations cannot merit acceptance. In the present case there is no cogent material as to the Applicant acting at the instance of business rivals of Respondent No.9. This Tribunal cannot lose sight of the fact that right to life includes within its sweep right to clean and healthy environment which cannot be denied and has to be protected and implemented in the fullest measure by all the instrumentalities of the State as well as the Project Proponents. The Applicant has raised substantial questions relating to environment while pleading serious violations of the MOEF&CC Notification dated 17.04.2015 and MOEF&CC order dated 20.09.2021 and Office Memorandum dated 01.04.2022 and the CBWTF Guidelines 2016 in Public Interest. In order to file and maintain any public interest litigation the applicant is not required to be resident of the locality and to be personally affected by the mischief/wrong complained against. In view of settled law governing Public Interest Litigation for enforcement of fundamental rights including the fundamental right to clean and healthy environment, the Applicant must be considered to have locus standi and cause of action to file the present application in public interest for protection of environment. Even otherwise, this Tribunal is empowered under the provisions of the National Green Tribunal Act, 2010 to take cognizance of questions relating to environment arising out of implementation of the enactments O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

specified in Schedule I to the National Green Tribunal Act, 2010 suo motu as held by Hon'ble Supreme Court in Municipal Corporation of Greater Mumbai v. Ankita Sinha (2021) SCC Online SC 897: Law Finder Doc Id # 1890858: 2021 AIR (Supreme Court) 5147) and in view thereof this Tribunal can adjudicate upon the questions involved in the present case regarding compliance with

the statutory provisions, order/office memorandum issued by MoEF & CC and CPCB Guidelines.

LIMITATION AND MAINTAINABILITY

21. The question which next arises is whether the application is within limitation and maintainable in the present form.

22. The learned Counsel for Respondents No. 7 and 8 have submitted that remedy against grant of CTE and EC was filing of appeal and the application filed after expiry of the period prescribed for filing of the appeal is not maintainable.

23. The learned Counsel for the Applicant and Co-Applicant have submitted that application filed on 19.08.2022 for setting aside CTE dated 26.04.2022 and EC dated 13.07.2022 is within limitation and is maintainable.

24. In the present case UPPCB granted CTE dated 26.04.2022 for establishment of CBWTF subject to grant of EC. UPSEIAA granted EC for establishment of CBWTF on 13.07.2022. The cause of action to challenge CTE and EC arose on grant of EC. The present application has been filed under Section 18 (1) read with Section 14, 15 and 18 of the National Green Tribunal Act, 2010. The period of limitation for Application under Section 14 of the National Green Tribunal Act, 2010 is six months and the period of limitation for application under Section 15 O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

of the National Green Tribunal Act, 2010 is five years. The present application filed on 19.08.2022 cannot be said to be time barred. In case the relief sought is considered to be in the nature of appeal, the application can be converted into appeal. The application is accordingly converted into appeal. When so converted appeal filed on 19.08.2022 is within permissible limitation period of 30 days coupled with period of 60 days which can be and is extended by this Tribunal in view of sufficient ground made out by the material on record. Accordingly, the appeal filed on 19.08.2022 within 90 days from grant of EC by UPSEIAA on 13.07.2022 must be held to be within limitation. Consequently, the argument as to the application being time barred and not being maintainable due to format thereof is devoid of any merit. ENVIRONMENTAL SIGNIFICANCE OF CBWTF AS POLLUTION CONTROL FACILITY

25. Before proceeding further it may be observed that project of Respondent No.7 is for setting up a CBWTF. Introduction embodied by Guideline I of the CBWTF Guidelines 2016 encompasses the background and environmental significance of CBWTF and the relevant part of the same reads as under:-

"1. Introduction A Common Bio-medical Waste Treatment and Disposal Facility (CBWTF) is a set up where biomedical waste generated from member health care facilities is imparted necessary treatment to reduce adverse effects that this waste may pose on human health and environment. The treated recyclable waste may finally be sent for disposal in a secured landfill or for recycling.

According to the Bio-medical Waste Management Rules, 2016, "bio-medical waste treatment and disposal facility" means any facility wherein treatment, disposal of bio-medical waste or processes incidental to such treatment and disposal is carried out, and includes common bio-medical waste treatment facilities and "operator of a common bio-medical waste treatment facility"

means a person who owns or controls a Common Bio-medical Waste Treatment and Disposal Facility (CBWTF) for the collection, reception, storage, transport, treatment, disposal or any other form of handling of bio-medical waste.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

The Bio-medical Waste Management Rules, 2016 (hereafter referred as BMWM Rules) restricts occupier for establishment of on-site or captive bio-medical waste treatment and disposal facility, if a service of common bio- medical waste treatment and disposal facility is available within a distance of seventy- five kilometer, as installation of individual treatment facility by health care facility (HCF) requires comparatively high capital investment. In addition, it requires separate dedicated and trained skilled manpower and infrastructure development for proper operation and maintenance of treatment systems. The concept of CBWTF is not only addresses such problems but also prevents proliferation of treatment technologies in a particular town or city. In turn, it reduces the monitoring pressure on regulatory agencies. By running the treatment equipment at CBWTF to its full capacity, the cost of treatment of per kilogram bio-medical waste gets significantly reduced. Its considerable advantages have made CBWTF popular and proven concept in most part of the world.

The CBWTFs are also required to set up based on the need for ensuring environmentally sound management of bio-medical waste keeping in view the techno-economic feasibility and viable operation of the facility with minimal impact on human health and environment.

Since 1998, the CBWTF as an option for treatment of bio- medical waste also been legally introduced in India. Considering the likely impacts that may cause to the patients undergoing treatment because of operation of the captive treatment equipment within the health care facilities (HCFs), now the Bio-medical Waste Management Rules, 2016 restricts the Occupier (i.e., HCF) for ensuring treatment and disposal of generated bio-medical waste through a CBWTF, located within a distance of 75 KM. Further, these rules eased the bottleneck in upbringing the CBWTF by making department in the business allocation of land assignment in the State or UT administration responsible for providing a suitable site (s) within its jurisdiction.

The concept of CBWTF is also being widely accepted in India among the healthcare units, medical associations and entrepreneurs. In order to set up a CBWTF to its

maximum perfection, care shall be taken in choosing the right technology, development of CBWTF area, proper designing of transportation system to achieve optimum results etc. Key features of CBWTF have been addressed in the subsequent sections. To facilitate the treatment and disposal of bio-medical waste generated from the HCFs, at present (as per Annual Report 2014 submitted by the SPCBs/PCCs), there are 192 no. of CBWTFs in operation and 33 no. of CBWTFs are under construction. Also, the Bio-medical Waste Management Rules, 2016 mandates that the operator of a CBWTF authorised by the prescribed authority is required to take all necessary steps to ensure that the bio-medical waste collected from the occupier is transported, handled, stored, treated and disposed of, without any adverse effect to the human health and the environment, in accordance with the BMW Rules and the guidelines issued by O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

the Central Government or the Central Pollution Control Board (CPCB) from time to time."

STATUTORY FRAMEWORK

26. The Government of India made the Biomedical Waste (Management & Handling) Rules, 1998 (which were published vide Notification number S.O. 630 (E) dated 20.07.1998) for providing a regulatory frame work for management of bio-medical waste generated in the country. The Government of India reviewed the Biomedical Waste (Management & Handling) Rules, 1998 and made the Bio Medical Waste Management Rules, 2016 to implement the rules more effectively and to improve the collection, segregation, processing, treatment and disposal of the bio- medical wastes in an environmentally sound manner thereby, reducing the bio- medical waste generation and its impact on the environment.

27. Rule 17 of the Bio-Medical Waste Management Rules 2016, which makes the provision for allocation of site for CBWTF, reads as under:-

"17. Site for common bio-medical waste treatment and disposal facility.-(1) Without prejudice to rule 5 of these rules, the department in the business allocation of land assignment shall be responsible for providing suitable site for setting up of common biomedical waste treatment and disposal facility in the State Government or Union territory Administration. (2) The selection of site for setting up of such facility shall be made in consultation with the prescribed authority, other stakeholders and in accordance with guidelines published by the Ministry of Environment, Forest and Climate Change or Central Pollution Control Board."

CPCB GUIDELINES

28. The CPCB issued Revised Guidelines for Common Bio-Medical Wastes Treatment and Disposal Facilities (the CBWTF Guidelines) on 21.12.2016. Said guidelines were prepared, as mentioned in Guideline 1 of the CBWTF Guidelines 2016, with an aim to have uniformity in ensuring site

selection, allowing and establishment of a state-of-the-art O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

CBWTF, operation as well as verification of compliance to the Bio-Medical Waste Management Rules, 2016 throughout the country. However, the other aspects which were not covered under said guidelines and which needed attention were left for suitable action by the prescribed authority in the interest of protection of the environment in consultation with MoEF & CC/CPCB.

APPLICABILITY OF CPCB GUIDELINES

29. Guideline No. 4 of the CBWTF Guidelines 2016 specifies applicability of the guidelines and the same reads as under:

"4) Applicability of these guidelines These guidelines are applicable to all the upcoming or new CBWTFs. In case of the existing CBWTFs, these guidelines shall be applicable in case

(a) the existing CBWTFs desires to expand or enhance the existing treatment capacity (or)

(b) the existing CBWTFs desires to modernize the existing treatment equipment with the new equipment with enhancement in the existing treatment capacity."

CPCB GUIDELINES ARE MANDATORY

30. It may be observed here that, as also mentioned in CBWTF Guidelines 2016, these guidelines are mandatory under the Bio-medical Waste Management Rules, 2016 with effect from the date of issuance and cannot be ignored/violated by SEIAAs, SPCBs or UTPCCs. SEIAA/SPCB/UTPCC ARE BOUND TO COMPLY WITH CPCB GUIDELINES

31. MoEF & CC issued Office Memorandum dated 01.04.2022 addressed to Member Secretary, CPCB, Member Secretary, UPPCB and Chairman, State Level Environment Impact Assessment Authority, Uttar Pradesh which reads as under :-

O.A No. 622/2022

Aniruda Panwar Vs. MoEF & CC.

"Subject:-Alleged Non-Compliance of Biomedical Waste

Management Rules, 2016 and Revised CPCB Guidelines in the State of Uttar Pradesh by SEIAA and SEAC with respect to grant Environmental Clearance for CBWTF-regarding. Reference may kindly be made to a representation received from M/s Paryavaran Bachao Welfare Society, Agra regarding alleged Non Compliance of Biomedical Waste Management Rules, 2016 and Revised CPCB Guidelines in the State of Uttar Pradesh by SEIAA and SEAC while according Environmental Clearance for CBWTF in the State. A copy of the representation is attached for reference.

2. The communication highlights that the SEIAA and SEAC of Uttar Pradesh is not taking into consideration the Bio-medical Waste Management Rules, 2016 and Revised CPCB Guidelines provisions while according Environmental Clearance for CBWTF.

3. In view of the above, it is requested to kindly examine the matter as per provisions stipulated under Biomedical Waste Management Rules, 2016 and respective CPCB guidelines. It is to emphasize here that the provisions contained in guidelines may be strictly followed while giving clearance to new facilities through Gap-Analysis. Further, CPCB may ensure the compliance through regular monitoring. An Action Taken Report may also kindly be provided to the Ministry."

CRIETERIA FOR DEVELOPMENT OF A NEW CBWTF

32. Guideline No. 2 of the CBWTF Guidelines 2016 lays down the Criteria for development of a new CBWTF for a locality or region as under:

"2. Criteria for development of a new Common Bio-medical Waste Treatment and Disposal Facility for a locality or region. Prior to allowing any new CBWTF, following criteria or steps may be followed:

(a) Prescribed authority under the BMWM Rules, 2016 [i.e., State Pollution Control Board (SPCB) in the respective State or Pollution Control Committee (PCC) in the respective Union Territory Administration] is required to prepare an inventory or review with regard to the bio-medical waste generation at least once in five years in the coverage areas of the existing bio-medical waste treatment and disposal facility. The prescribed authority is also required to extrapolate the coverage-area wise bio-medical waste generation for the next ten years.

(b) SPCB/PCC is required to conduct gap analysis w.r.to coverage area of the bio-medical waste generation and also projected over a period of next ten years, adequacy of existing treatment capacity of the CBWTF in each coverage area of radius 75 KM, as given in Annexure-I. O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

All the SPCBs and PCCs shall conduct the gap analysis and based on the gap analysis, action plan for development of new CBWTFs is required to be prepared and submitted to MoEF & CC & CPCB within six months' time. In case of States/UTs, where no CBWTF is available, in such a case, SPCB/PCC being prescribed authority under the BMWM Rules is required to submit the detailed proposal to MoEF & CC/MoH & FW through the respective State Government or UT Administration. Also, the option of forming association by the group of health care facilities (HCFs) to develop their own CBWTF also be encouraged following these guideline. In case, any coverage area requires additional treatment capacity, in such a case, action may be initiated by the prescribed authority for allowing a new CBWTF in that locality without interfering the coverage area of the existing CBWTF and beds covered by the existing CBWTF.

(c) SPCB/PCC shall identify the coverage area, which require additional treatment facility and bring it to the notice of the concerned department in the business allocation of land assignment in the respective State Government or UT Administration. The department in the business allocation of land assignment shall be responsible for providing suitable site in the identified coverage area for setting up of a CBWTF, in consultation with the prescribed authority (i.e., SPCB/PCC), other stakeholders and in accordance with these guidelines issued by CPCB from time to time.

(d) Alternately, a CBWTF may also be allowed to be established on a land procured by an entrepreneur in accordance with the location criteria suggested under these guidelines.

(e) The SPCB/PCC or concerned department in the business allocation of land assignment in the respective State Government or UT Administration may seek expression of interest from the proponents for development of new CBWTF (s) in the identified coverage area. Upon allocation of site to the proponent, the proponent is required to take necessary approvals as required under the Environment (Protection) Act, 1986 for development of the new CBWTF in accordance with these guidelines.

(f) In the absence of expression of interest by any proponent, then SPCB/PCC shall insist health care facilities to form association and to develop its own CBWTF in line with these guidelines or to have captive treatment facilities for ensuring treatment and disposal of generated bio-medical waste as stipulated under the BMWM Rules, 2016.

(g) In case of any regulatory action including closure of any existing CBWTF is inevitable, the respective SPCB/PCC may take action under the BMWM Rules including for making alternate arrangement to ensure safe disposal of the bio-medical waste generated from the member health care facilities of such default CBWTF through CBWTF located nearby.

(h) In case of hilly areas considering the geography, only one CBWTF with adequate treatment capacity may be developed covering at least two districts to cater treatment services to the HCFs located in the respective Districts. The selection and O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

allocation of site etc., should be done as per the criteria suggested under these guidelines. The treatment charges to be prescribed by the respective SPCB/PCC in consultation with the State Advisory Committee."

CBWTF REQUIRE PRIOR ENVIRONMENTAL CLEARANCE

33. The Central Government in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O. 60 (E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, directed that on and from the date of publication of Notification no S.O. 1533 (E) dated 14.09.2006 the required construction of new projects or

activities or the expansion or modernization of existing projects or activities listed in the Schedule to said notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified said notification.

34. Para 2 of EIA notification dated 14.09.2006 (as amended), which lays down requirements of prior EC, reads as under:

"2. Requirements of prior Environmental Clearance (EC):-

The following projects or activities shall require prior EC from the concerned regulatory authority, which. shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

O.A No. 622/2022

Aniruda Panwar Vs. MoEF & CC.

(i) All new projects or activities listed in the Schedule to this notification;

[(ii)Expansion, modernization or any change in the produce mix or raw material mix in existing projects or activities, listed in the Schedule to this notification, resulting in capacity beyond the threshold limits specified for the concerned sector in the said schedule, subject to condition and procedure provided in the sub- paragraph (ii) of paragraph7]."

35. The MoEF & CC amended the Notification dated 14.09.2006 in view of the Judgment dated 28.11.2013 passed by the Principal Bench of this Tribunal in Appeal No. 63 of 2012. By the amendment Entry 7(da) was inserted after Entry 7(d) in the Schedule. Entry 7(da) provided that CBWTF would be required to obtain EC from the MOEF&CC. The said notification reads as under:-

"S.O.1142(E).-In exercise of the powers conferred by sub section (I) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule(4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments to the notification of the Government of India, in the Ministry of Environment and Forests number S.O. 1533(E), dated the 14th September, 2006 after dispensed with the requirement of notice under clause(a) of sub-rule(3) of the said rule 5 in public

interest, namely:-

In the said notification, in the Schedule, after item 7(d) and the entries relating thereto, the following item and entries shall be inserted, namely:-

(1)	(2)	(3)	(4)	(5)
"7(da)	Bio-Medical Waste Treatment Facilities	-	All projects	-

36. Guideline 5 of the CBWTF Guidelines 2016 also reiterates the legal requirements for commissioning or operation of a CBWTF which reads as under:

"5) Environmental laws applicable for commissioning or operation of a CBWTF O.A
No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

Operation of a CBWTF leads to air emissions as well as waste water generation as in case of an industrial operation. Most common sources of waste water generation in CBWTFs are vehicle washing, floor washing, and scrubbed liquid effluent from air pollution control systems attached with the incinerator/plasma pyrolysis. Incineration as well as DG Set is the general source of air emissions.

5.1 Any other approvals (such as Land Use /Change in Land Use as applicable) required from the concerned authorities under various laws have to be complied with by the proponent of the CBWTF prior to development of a CBWTF.

5.2 Consents under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as well as Authorization under the BMWM Rules, 2016 The project proponent of the CBWTF is required to obtain 'Consent to Establishment' under Rule 25 of the Water Act and under Rule 21 of the Air Act, from the respective prescribed authority i.e. SPCB/PCC. Upon installation of the requisite equipment, the CBWTF Operator is also required to obtain authorization under BMWM Rules, 2016 co-terminus with consent to operate under Water (Prevention and Control of Pollution) Act, 1976 & The Air Act from the respective SPCB/PCC prior to commencement of the CBWTF.

5.3 EC 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 'EC' from the State Environment Impact Assessment Authority (SEIAA). Therefore, the CBWTF operator is also required to obtain '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."

LOCATION CRITERIA FOR CBWTF

37. Guideline No.6 in the CBWTF Guidelines 2016 embodies the location criteria for CBWTF and the same reads as under:

O.A No. 622/2022

Aniruda Panwar Vs. MoEF & CC.

"6) Location criteria

In the context of these guidelines, buffer zone represents a separation distance between the source of pollution in CBWTF and the receptor - following the principle that the degree of impact reduces with increased distance. The following parameters may be considered for ascertaining buffer distance on case-to-case basis:

- (i) potential for spread of infection from wastes stored in the premises.
- (ii) applicable standards for pollution control and the relative efficiency of the existing incinerators and emission control systems,
- (iii) potential of fugitive dust emission from incinerators,
- (iv) potential for discharge of wastewater
- (v) the potential for odour production,
- (vi) the potential for noise pollution,
- (vii) the risk posed to human health and safety due to exposure to emissions from incinerator,
- (viii) the risk of fire and

(ix) Significance of the residual impacts such as bottom ash and fly ash.

As far as possible, the CBWTF shall be located near to its area of operation in order to minimize the transportation distance in waste collection, thus enhancing its operational flexibility as well as for ensuring compliance to the time limit for treatment and disposal of bio-medical waste as stipulated under the BMW Rules (i.e., within 48 hours). Also, the location of the CBWTF should be in conformity to the CRZ Norms and other provisions notified under the Environment (Protection) Act, 1986. The location shall be decided in consultation with the State Pollution Control Board (SPCB)/ Pollution Control Committee (PCC). The location criteria for development of a CBWTF are as follows:

(a) A CBWTF shall preferably be developed in a notified industrial area without any requirement of buffer zone (or)

(b) A CBWTF can be located at a place reasonably far away from notified residential and sensitive areas and should have a buffer distance of preferably 500 m so that it shall have minimal impact on these areas. In case of non-availability of such a land, the buffer zone distance from the notified residential area may be reduced to less than 500 m by SPCB/PCC without referring the matter to CPCB by prescribing additional control measures such as (i) adoption of best available technologies (BAT) by the proponent of CBWTF; (ii) prescribing stringent standards for operation of the CBWTF by the SPCB/PCC; (iii) adoption of zero liquid discharge by the CBWTF and (iv) in case of any complaints from the public, then CBWTF should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity. If SPCB/PCC is not in a position to resolve the issue relating to buffer zone while selecting the site for CBWTFs, in such a case, SPCBs/PCCs may refer the matter to CPCB.

(c) The CBWTF can also be developed as an integral part of the Hazardous Waste Treatment Storage and Disposal Facility (TSDF) subject to obtaining of necessary approvals from the authorities concerned including 'EC' as per Environmental Impact Assessment 2006 and further amendments notified under the Environment (Protection) Act, 1986, provided there is no CBWTF exist within 150 KM distance from the existing TSDF."

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

38. Even though CBWTF is categorized by the CPCB as Red Category Industry but the CPCB has issued letter dated 30.04.2020 clarifying that CBWTF may be considered as Non-Industrial Operations (Activities/ Facilities/ Infrastructure/ Services). For facility of reference relevant part of the same is reproduced as under:

"SUB: DIRECTIONS UNDER SECTION 18(1)(b) OF THE WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION & CONTROL

OF POLLUTION) ACT, 1981 REGARDING HARMONIZATION or CLASSIFICATION OF INDUSTRIAL SECTORS INTO RED, ORANGE, GREEN AND WHITE CATEGORY.

x x x x NOW THEREFORE, in view of the above and exercising the powers conferred to Chairman, Central Pollution Control Board under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974, and 18(1)(b) of the Air (Prevention & Control of Pollution) Act, 1981, all the SPCBs/PCCs are directed to:

i. Adopt the categorization finalized by CPCB for following sectors- a. Scrapping Centres (for End of Life of Vehicles and other scraps such as plant and machineries, structural material, railway coaches and wagons etc.).

b. Used Cooking Oil (UCO) collection centers. c. Compressed/Refined Bio-Gas Production from Bio- degradable Wastes.

d. Railway Stations.

ii. Consider the sectors given at Annexure-II under Non- Industrial Operations (Activities/Facilities/ Infrastructure / Services).

x x x x."

The relevant part of Annexure-II attached with the abovesaid letter reads as under:-

"List of Non-Industrial Operations (Activities/Facilities /Infrastructure/Services)			
x	x	x	x
6	-Common treatment and disposal facilities (CETP, TSDF,		

CBMWTF, effluent conveyance project, incinerator, MSW sanitary land fill site) x x x x O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

i. All such facilities are classified as Red but special category projects as these are parts of pollution control facilities.

x x x x."

39. In view of Guideline 6(b) of the Revised CPCB Guidelines 2020 a CBWTF can be developed in a notified industrial area without any requirement of buffer zone and CBWTF is also exempted from public hearing under para 7 (i) III stage 3 (1) (b) of EIA Notification 2006. In the present case Respondent no. 6 UPSIDA has submitted

that Babrala Industrial area is not meant for green category industries only and CBWTF and other industries falling in Red Category are allowed in Babrala Industrial area therein.

STATUTORY OBLIGATION OF SPCB/PCC TO CONDUCT GAP ANALYSIS AND PREPARE ACTION PLAN AND OBLIGATION OF MUNICIPALITY/GRAM PANCHAYAT TO ALLOCATE LAND FOR SETTING UP CBWTF.

40. Guideline 2 of the CBWTF Guidelines 2016 mandates SPCB/PCC to conduct gap analysis with respect to coverage area of the bio-medical waste generation and also projected over a period of next ten years, adequacy of existing treatment capacity of the CBWTF in each coverage area of radius 75 KM, as given in Annexure-I. SPCB/PCC has to identify the coverage area, which requires additional treatment facility and bring it to the notice of the concerned Department in the business allocation of land assignment in the respective State Government or UT Administration.

The Department in the business allocation of land assignment is subjected to an obligation of providing suitable site in the identified coverage area for setting up of a CBWTF, in consultation with the prescribed authority (i.e., SPCB/PCC), other stakeholders and in accordance with the CBWTF Guidelines issued by CPCB from time to time. The SPCB/PCC or O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

concerned Department in the business allocation of land assignment in the respective State Government or UT Administration has to seek expression of interest from the proponents for development of new CBWTF

(s) in the identified coverage area. In the absence of expression of interest by any proponent, then SPCB/PCC has to insist health care facilities to form association and to develop its own CBWTF in line with the CBWTF Guidelines 2016 or to have captive treatment facilities for ensuring treatment and disposal of generated bio-medical waste as stipulated under the Bio-Medical Waste Management Rules, 2016. Upon allocation of site to the proponent, the proponent is required to take necessary approvals as required under the Environment (Protection) Act, 1986 for development of the new CBWTF in accordance with the CBWTF Guidelines, 2016.

ALTERNATIVE PROVISION FOR PERMITTING AN ENTREPRENEUR TO SET UP CBWTF

41. Guideline 2 of the CBWTF Guidelines 2016 alternately permits that a CBWTF may also be allowed to be established on land procured by an entrepreneur in accordance with the location criteria suggested under the Revised CPCB Guidelines 2016.

WHETHER ALLOCATION OR PROCUREMENT OF LAND IS A CONDITION PRECEDENT FOR EC/CTE

42. The question which arises is whether Allocation or procurement of land is condition precedent for filing application for grant of EC and CTE/CTO for establishment of CBWTF.

43. The learned Counsel for the Applicant and Co-applicant has relied on the use of expressions allocation of suitable site and procurement of land as laying down that allocation of suitable site or procurement of land O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

is condition precedent for filing application for grant of EC and CTE/CTO for establishment of CBWTF.

44. The learned Counsel for the Respondents No. 7 and 8 have relied on para 6 and 7 of EIA Notification in support of submission that mere identification of land without ownership is sufficient for initiating the process for grant of EC and CTE.

45. Para No. 6 of the EIA Notification 2006 (as amended) is reproduced as under:-

"6. Application for Prior Environmental Clearance (EC):-

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, and in Form 1M for mining of Minor Minerals up to five hectare under Category B2 Projects, as given in Appendix VIII, before commencing any construction activity, or preparation of land, or mining at the site by the Project Proponent. The Project Proponent shall furnish along with the application, a copy of the pre-feasibility project report. In addition to Form 1, Form 1 A and Form 1 M, and in case of construction projects or activities (item 8 of the Schedule), a copy of the conceptual plan shall be provided instead of pre-feasibility report.]

46. No doubt in para 6 of EIA notification the Project Proponent is required to submit application seeking prior EC after identification of prospective site but Guideline 2 of the CBWTF Guidelines 2016 mandates the Project Proponent to submit application for requisite approvals after allocation of land by Department in the business allocation of land assignment in the respective State Government or UT Administration or procurement of land by the Project Proponent in accordance with the location criteria suggested under the Revised CPCB Guidelines 2016. Guideline 2 of the CBWTF Guidelines 2016 being later in point of time and O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

special provision with respect to CBWTF will override the provisions made in para 6 of EIA Notification in this regard.

47. Guideline 2 of the CBWTF Guidelines 2016 leaves no room for doubt that allocation of land by Department in the business allocation of land assignment in the respective State Government or UT

Administration or procurement of land by an entrepreneur in accordance with the location criteria suggested under the Revised CPCB Guidelines 2016 is a condition precedent for filing of application for grant of EC and CTE/CTO for establishment of new CBWTF in accordance with the CBWTF Guidelines 2016.

48. In the present case Respondent No.7 submitted application dated 06.07.2021 to Respondent No.6 for allotment of plots No. E-25 and E-26, situated in Babrala Industrial Area for establishment of CBWTF.

49. Respondent No.7 submitted application dated 11.08.2021 to UPSEIAA for issuing Terms of Reference (TOR) for establishment of CBWTF in plots No. E-25 and E-26 situated in Babrala Industrial Area.

50. Respondent No.7 had merely identified and applied for but had not procured Plots No. E-25 and E-26, situated in Babrala Industrial Area before submitting application for Terms of Reference (TOR) for establishment of CBWTF in plots No. E-25 and E-26, situated in Babrala Industrial Area.

51. Application dated 06.07.2021 submitted by Respondent No.7 for allotment of plots No. E-25 and E-26, situated in Babrala Industrial Area for establishment of CBWTF was rejected by Respondent No. 6 UPSIDA on 12.08.2021 on the ground that "as per regulations of the Authority (Mo) O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

rules the proposed Project is not permissible in Industrial area so that proposal cancelled".

52. Subsequently, Respondent No.7 submitted applications dated 13.08.2022 for allotment of industrial plots No. E-25 and E-26, situated in the Babrala Industrial Area for setting up a unit of Fabrication of Industrial Equipment (ETP/STP/WTP/C) (a Green category industry). On said applications Respondent No.6 UPSIDA allotted Plots No. E-25 and E- 26, situated in Babrala Industrial Area to Respondent No. 7 on 15.09.2021 for setting up a unit of Fabrication of Industrial Equipment (ETP/STP/WTP/C).

53. Since Plots No. E-25 and E-26 situated in Babrala Industrial Area were allotted by Respondent no.6 UPSIDA to Respondent No. 7 for setting up a unit of Fabrication of Industrial Equipment (ETP/STP/WTP/C), the same could not be put to any other use by Respondent no. 7 without prior approval in writing of Respondent no. 6 UPSIDA as provided by condition No. 26 of the allotment letters dated 15.09.2021 which reads as under:-

"26. Any Re-constitution/Project Change/Name Change/Mortgage without prior approval in writing to the corporation shall result in automatic cancellation of the allotment"

54. Respondent No. 7 could not apply for grant of CTE and EC for establishment of CBWTF in plots No. E-25 and E-26, situated in Babrala Industrial Area before procurement of the same as mandatorily required by CBWTF Guidelines 2016. Further, even after allotment of plots No. E- 25

and E-26, situated in Babrala Industrial Area for setting up a unit of Fabrication of Industrial Equipment (ETP/STP/WTP/C), Respondent No. 7 could not continue with its application for grant of EC and CTE for establishment of CBWTF in plots No. E-25 and E-26, situated in Babrala O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

Industrial Area before approval of change of land use by Respondent No. 6 UPSIDA.

55. In the present case Respondent No.5 UPPCB granted consent to establish CBWTF in plots No. E-25 and E-26, situated in Babrala Industrial Area on 26.04.2022 before grant of EC with condition that no construction shall be done at the proposed site without obtaining prior Environmental Clearance from UPSEIAA.

WHETHER CTE CAN BE GRANTED BEFORE GRANT OF EC

56. The question which arises is whether CTE can be granted by UPPCB for project/activity which requires prior EC before grant of EC by MOEF&CC/SEIAA.

57. Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 reads as under:-

"21. Restrictions on use of certain industrial plants.--(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-

section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, [***] such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled: Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:--

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause

(ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;

(v) such other conditions as the State Board may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant [***] in an air pollution control area immediately before the date of declaration of such area as an

air pollution control area, the period so specified shall not be less than six months:

Provided further that--

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the prior approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

58. Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 reads as under:-

"25. Restrictions on new outlets and new discharges.--(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,--

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988 (53 of 1988), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.] (3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may--

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being--

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an

application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.] (7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,--

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects to nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

59. There is no requirement in the above quoted statutory provisions for grant of environmental clearance before grant of consent thereunder. The learned Counsel for the Applicant and the Co-Applicant have claimed the CTE to be violative of MoEF & CC order F. No. IA3-22/19/2021-IA.III [E 164361] dated 20.09.2021. The relevant part of the above said order is reproduced below:-

"Sub: Directions under Section 5 of the Environment (Protection) Act, 1986 to not grant or renew CTO unless Environment Clearance, as applicable, has been obtained - regarding.

Whereas, prior Environmental Clearance is a statutory requirement for project/activities covered in the schedule of the EIA Notification 2006, issued under section 3 of the Environment (Protection) Act, 1986.

2. And whereas, obtaining the consents under Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 is mandatory for all industrial units in Red., Orange and Green categories.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

3. And whereas, the grant of EC and Consents are requirements under different statutes and are not inter- dependent and can be carried out as a parallel process.

4. And whereas, many a times it has been observed that while industrial units are in possession of valid 'Consent to Establish' (CTE)/ 'Consent to Operate' (CTO) issued by State Pollution Control Boards (SPCBs)/ UT Pollution Control Committees (UTPCC), however, they have not obtained the Environmental Clearance (EC), even though it was required as per provisions of EIA Notification 2006.

5. And whereas, it has been observed that this situation is arising because majority of the SPCBs/ UTPCCs are issuing CTE/CTO to projects without ascertaining the applicability of prior EC to projects/ activities, resulting in an avoidable situation of closure for even those industries also who seek to carry out their activities following due procedure.

6. Now therefore, it in exercise of powers conferred by section 5 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government, hereby directs that all SPCA/ UTPCC shall:

i. Ascertain the applicability of EIA Notification at the time of grant/renewal of CTE and stipulate appropriate condition for obtaining Environmental Clearance (EC), if applicable, before construction/ commencement of project/activity.

ii. Ensure that the project proponent possesses a valid Prior EC in terms of the extant EIA Notification, if applicable, at the time of grant/renewal of CTO and no CTO shall be granted or renewed unless EC, if applicable, has been obtained.

7 This is issued with the approval of the Competent Authority."

60. What the above quoted order mandates is (i) that at the time of grant of CTE applicability of EIA Notification 2006 is to be ascertained and appropriate condition for obtaining prior EC has to be incorporated and (ii) that CTO shall not be granted or renewed unless EC, if applicable, has been obtained. It is evident from a bare reading of the above quoted order that the same does not bar grant of CTE subject to EC.

61. It may also be added here that MoEF & CC also issued OM dated 21.11.2006 clarifying that no NOC from the State- Government /SPCB is required for Environmental Clearance Process. Consent to Establish (NOC) O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

and prior Environmental Clearance are separate legal requirements, any project proponent has to fulfill. NOCs required under the Water (Prevention and Control of Pollution) Act 1974 and the Air (Prevention and Control of Pollution) Act, 1981 are mandatory requirements under those Acts and

will have to be taken as required and do not require to be linked to environmental clearance.

62. In view of the above CTE granted by UPPCB subject to grant of EC by UPSEIAA cannot be said to be illegal on the ground of the same having been granted before grant of EC by UPSEIAA.

WHETHER EC/CTE ARE DEPENDANT ON PERMISSIBLE LAND USE

63. The question which next arises is whether UPPCB could grant CTE and UPSEIAA could grant EC for establishment of CBWTF in plots No. E- 25 and E-26, situated in Babrala Industrial Area allotted/leased out to Respondent No. 7 on 15.09.2021 for setting up a unit of Fabrication of Industrial Equipment (ETP/STP/WTP/C).

64. UPPCB could not grant CTE on 26.04.2022 and UPSEIAA could not grant EC for establishment of CBWTF (a Red Category industry) on Plots No. E-25 and E-26, situated in the Babrala Industrial Area allotted to Respondent No.7 for setting up a unit of Fabrication of Industrial Equipment (ETP/STP/WTP/C) (a Green Category industry) and grant of CTE by UPPCB on 26.04.2022 and grant of EC by UPSEIAA on 13.07.2022 for establishment of CBWTF (a Red Category industry) on Plots No. E-25 and E-26, situated in Babrala Industrial Zone allotted to Respondent No.7 for setting up a unit of Fabrication of Industrial Equipment (ETP/STP/WTP/C) (a Green Category industry) by itself shows complete non application of mind which vitiates the entire process with illegality. Consequently, CTE dated 26.04.2022 granted by UPPCB and EC O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

dated 13.07.2022 granted by UPPCB for establishment of CBWTF (a Red Category industry) on Plots No. E-25 and E-26, situated in Babrala Industrial Zone allotted to Respondent No.7 for setting up a unit of Fabrication of Industrial Equipment (ETP/STP/WTP/C) (a Green Category industry) were not legal and valid.

WHETHER SUBSEQUENT CHANGE OF LANDUSE CAN LEGALISE AND VALIDATE EC AND CTE ILLEGALLY GRANTED EARLIER

65. The question which next arises is whether subsequent approval of change of user of Plots No. E-25 and E-26, situated in Babrala Industrial Zone allotted to Respondent No.7 for Fabrication of Industrial Equipment (ETP/STP/WTP/C) by Respondent No.6 UPSIDA for establishment of CBWTF can legalize and validate the CTE granted by UPPCB and EC granted by UPSEIAA for establishment of CBWTF on the same.

66. Even after allotment of Plots No. E-25 and E-26, situated in Babrala Industrial Zone for Fabrication of Industrial Equipment (ETP/STP/WTP/C), Respondent No.7 could not apply for grant of CTE and EC for establishment of CBWTF in the same before applying for a change in the intended use of the industrial plots to Respondent No.6 UPSIDA. CTE dated 26.04.2022 and EC dated 13.07.2022 granted for establishment of CBWTF in Plots No. E-25 and E-26, situated in Babrala Industrial Area before change of user thereof for establishment of CBWTF were not legal and valid not being consistent with the permissible use of the above said plots. Subsequent approval of change

of user of Plots No. E-25 and E-26, situated in Babrala Industrial Area allotted to Respondent No.7 from Fabrication of Industrial Equipment (ETP/STP/WTP/C) to establishment of CBWTF cannot legalise and validate the CTE granted by UPPCB and EC granted by UPSEIAA illegally for establishment of CBWTF on the same before change of land use.

O.A No. 622/2022

Aniruda Panwar Vs. MoEF & CC.

WHETHER CONCEALMENT/IGNORING OF MATERIAL FACT
VITIATES THE PROCESS FOR GRANT OF EC/CTE

67. The question which arises is whether respondent No.9 concealed material facts from UPPCB and UPSEIAA and UPPCB and UPSEIAA also ignored the material facts or whether the applicant has tampered with the documents and tried to mislead this Tribunal to the prejudice of Respondent No.7.

68. In the present case Respondent No.7 has not produced any cogent material on record to show (i) that Respondent No.7 informed UPPCB and UPSEIAA at the time of apply for CTE and EC that UPSIDA had rejected its application for allotment of plots no. E-25 and E-26 situated in Babrala Industrial Area for setting up of CBWTF on the ground of the same not being permissible there and (ii) that plots No. E-25 and E-26 situated in Babrala Industrial Area had been allotted to it by UPSIDA for setting up Industrial Fabrication Equipment (ETP/STP/WTP/C). In the absence of such evidence Respondent No.7 must be held to have suppressed material facts from UPPCB and UPSEIAA. UPPCB and UPSEIAA must also be held to have ignored material facts in this regard that as on 26.04.2022 when CTE was granted by UPPCB and on 13.07.2022 when EC was granted by UPSEIAA to Respondent No.7 for establishment of CBWTF, establishment of CBWTF was not permissible in plots No. E-25 and E-26 situated in Babrala Industrial Area which had been allotted by Respondent no. 6 UPSIDA to Respondent No.7 for setting up Industrial Fabrication Equipment (ETP/STP/WTP/C).

69. Concealment of material information by Respondent No.7 and impermissibility of land use for establishment of CBWTF at the time of grant of CTE and EC cannot be casually brushed aside. Miscellaneous O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

Conditions imposed by EC dated 13.07.2022 stipulate the legal consequence thereof and the relevant parts thereof are reproduced as under:-

"11. Concealing factual data or submission of false/fabricated data may result in revocation of this environmental clearance and attract action under the provisions of the Environment (Protection) Act, 1986.

X X X X "Concealing factual data and information or submission of false/fabricated data and failure to comply with any of the conditions stipulated in the Prior Environmental Clearance attract action under the provision of Environmental (Protection) Act, 1986.

This Environmental Clearance is subject to ownership of the site by the project proponents in confirmation with approved Master Plan for Sambhal. In case of violation; it would not be effective and would automatically be stand cancelled. The project proponent has to ensure that the proposed site is not a part of any no-development zone as required/prescribed/identified under law. In case of the violation this permission shall automatically be deemed to be cancelled. Also, in the event of any dispute on ownership or land use of the proposed site, this Clearance shall automatically be deemed to be cancelled."

70. Since Respondent No. 7 concealed the information that UPSIDA had rejected its application for allotment of Plots No. E-25 and E-26 situated in Babrala Industrial Area for setting up of CBWTF on the ground of the same not being permissible there and that above said plots had been allotted to it by Respondent No. 6 UPSIDA for setting up Industrial Fabrication Equipment (ETP/STP/WTP/C), EC dated 13.07.2022 stood automatically cancelled in view of the above conditions.

71. It may be observed here that in the present case there is no cogent evidence to show that the applicant has tampered with the documents and tried to mislead this Tribunal to the prejudice of Respondent No.7 and no action is, therefore, required to be taken against the Applicant. WHETHER EC AND CTE GRANTED ARE VIOLATIVE OF LAND AREA REQUIREMENT O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

72. It may also be observed here that the area required for establishing CBWTF as mandated under CBWTF Guidelines 2016 is minimum 1 Acre- 4047 sq.mtrs. (approx.) but as per the allotment letters dated 15.09.2021 the total combined area of plots No. E-25 and E-26 situated in Babrala Industrial Area is only 3601 sq.mtrs. as plot No. E-25 is measuring 1801 sq.mtrs and plot No. E-26 is measuring 1800 sq.mtrs. and the question which arises is whether CTE and EC for establishment of the CBWTF of Respondent No. 7 are also violative of the Land Requirement of 1Acre stipulated in Guideline 7 of CBWTF Guidelines 2016.

73. Guideline 7 of the CBWTF Guidelines 2016 which specifies land requirements for setting up a CBWTF, reads as under:

"7. Land requirement Sufficient land shall be allocated to the CBWTF to provide all requisite systems which include dedicated space for storage of waste (both treated and untreated), waste treatment equipment, vehicle washing bay, vehicle parking space, ETP, incineration ash storage provision, administrative room, space for DG Set etc.,.

(a) Preferably, a CBWTF shall be set up on a plot size of not less than one acre in all the areas. However, a CBWTF can be developed in adjacent plots but cannot be set up in two or more different plots located in different areas. Separate plots can be permitted only for vehicle parking if located in the close vicinity of the proposed CBWTFs or the existing CBWTFs.

(b) In case of upcoming or new CBWTFs (both in municipal limits with population more than 25 lakhs or in rural areas), the land area requirement may be relaxed (but in any case not less than 0.5 acre) by the SPCB/PCC, with additional control measures such as zero liquid discharge, increase in stack height, stringent emission norms, odour control measures or any other measures felt necessary by the prescribed authority on case-to-case basis, only in consultation with CPCB."

74. Guideline 7 of the Revised CPCB Guidelines 2020 requires that preferably, a CBWTF shall be set up on a plot size of not less than 1 acre in all the areas. A CBWTF can be developed in adjacent plots but cannot be set up in two or more different plots located in different areas. Separate O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

plots can be permitted only for vehicle parking if located in the close vicinity of the proposed CBWTFs or the existing CBWTFs. Guideline 7 empowers SPCB/PCC to relax requirement of land area to not less than 0.5 acre in case of upcoming or new CBWTFs in municipal limits with population more than 25 lakhs or in rural areas (i) with additional control measures such as zero liquid discharge, increase in stack height, stringent emission norms, odour control measures or any other measures felt necessary by the prescribed authority on case-to-case basis and (ii) only in consultation with CPCB. On a reading of said guideline it appears that the land area requirement can be relaxed in case of upcoming or new CBWTFs in municipal limits with population more than 25 lakhs or in rural areas and land area requirement cannot be relaxed in case of upcoming or new CBWTFs in municipal limits with population less than 25 lakhs. Further such relaxation of land area requirement is subject to two conditions (i) stipulation of Additional control measures such as zero liquid discharge, increase in stack height, stringent emission norms, odour control measures or any other measures felt necessary and (ii) consultation with CPCB.

75. It may be observed here that setting up of CBWTF on land measuring 1 acre- 4047 sq.mtrs. (approx.) is the rule and relaxation of land requirement for setting up CBWTF over land measuring less than 1 acre - 4047 sq.mtrs. (approx.) is an exception. Such relaxation has to be for exceptional reasons and cannot be granted by rule of thumb without considering all relevant facts and circumstances to see whether there is in fact any exceptional ground for such relaxation. Needless to say that the land requirement of 1 acre-4047 sq.mts. (appx.) has been worked out for establishment of a new CBWTF keeping in view the infrastructure requirements for the same. While there may be some legitimate O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

constraints regarding availability of land in residential areas, the land requirement of 1 acre-4047 sq.mts. (appx.) can be easily met by seeking allotment of plot of requisite size in an industrial area and generally speaking there may hardly be any valid reason for relaxation of land requirement for

setting up of CBWTF in Industrial area. UPPCB and SEIAA cannot grant relaxation of land area requirement just for the sake of asking and are legally bound (i) to lay down additional control measures over and above the standard control measures and (ii) to have requisite consultation with CPCB before granting relaxation of land area requirement.

76. In the present case UPPCB granted CTE dated 26.04.2022 and UPSEIAA granted EC dated 13.07.2022 which may be scrutinized to ascertain whether there is compliance in this regard. For this purpose CTE dated 26.04.2022 and EC dated 13.07.2022 are reproduced as under:-

(i) CTE by UPPCB "Ref No. - 138098/UPPCB/Moradabad(UPPCBRO)/CTE/BHIM NAGAR/2021 Dated:- 26/04/2022 To, Shri SARVESH KUMAR SACHAN M/s PUNAHCHAKRAN PRIVATE LIMITED Plot No.- E-25, 26 UPSIDC, Industrial Area, Babrala, Tehsil-

Gunnour, Distt- Sambhal 244255 BHIM NAGAR Subject:- Consent to Establish for New Unit/Expansion/ Diversification under the provisions of Water (Prevention and control of pollution) Act, 1974 as amended and Air (Prevention and control of Pollution) Act, 1981 as amended. Please refer to your Application Form No.- 13611107 dated - 27/09/2021. After examining the application with respect to pollution angle, Consent to Establish (CTE) is granted subject to the compliance of following conditions :

1. Consent to Establish is being issued for following specific details :

O.A No. 622/2022

Aniruda Panwar Vs. MoEF & CC.

- A- Site along with geo-coordinates :
- B- Main Raw Material :

Main Raw Material Details

Name of Raw Material	Raw Material Unit Name	Raw Material Quantity
Incinerator of 250kg, Auto clave of 1000 kg per batch, Shredder of 150 kg per hour	Metric Tonnes/Day	.

C- Product with Capacity :

Name of Product	Product Detail Product Quantity
-----------------	------------------------------------

D- By-Product if any with Capacity:

By Product Detail

Name of By Product	Unit Name	Licence Product capacity	Install Product Capacity
--------------------	-----------	--------------------------------	-----------------------------

2. Water Requirement (in KLD) and its Source:

Source of Water Details		
Source Type	Name of Source	Quantity (KL/D)
Ground Water (Within Premises)	BORE WELL	9.0

3. Quantity of effluent (in KLD):

Effluent Details	
Source Consumption	Quantity (KL/d)
Domestic	1.0
Industrial	8.0

4. Fuel used in the equipment/machinery Name and quantity (per day):

Fuel Consumption Details		
Fuel	Consumption (tpd/kld)	Use
Diesel	0.100	Use in dg set
Diesel	4.8	Use in Incinerator

5. For any change in above mentioned parameters, it will be mandatory to obtain Consent to Establish again: No further expansion O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

or Modification in the Plant shall be carried out without prior approval of U.P. Pollution Control Board.

For any change in above mentioned parameters, it will be mandatory to obtain Consent to Establish again. No further expansion or modification in the plant shall be carried out without prior approval of U.P. Pollution Control Board.

2. You are directed to furnish the progress of Establishment of plant and machinery, green belt, Effluent Treatment Plant and Air pollution control devices, by 10th day of completion of subsequent quarter in the Board.
3. Copy of the work order/purchase order, regarding instruction and supply of proposed Effluent Treatment Plant/Sewerage Treatment Plant /Air Pollution control System shall be submitted by the industry till 25/04/2027 to the Board.
4. Industry will not start its operation, unless CTO is obtained under water (Prevention and control of Pollution) Act, 1974 and Air (Prevention and control of Pollution) Act, 1981 from the Board.
5. It is mandatory to submit Air and Water consent Application, complete in all respect, four months before start of operation, to the U.P. Pollution Control Board.
6. Legal action under water (Prevention and control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 may be initiated against the industry With out any prior information in case of non compliance of above conditions.

Specific Conditions:

- 1) This Consent to Establish is valid only for CBWTF in district Sambhal at Plot No. E-25, 26 UPSIDC Industrial Area, Babrala, Tehsil Gunor. The capacity of the CBWTF is incinearator 250 kg/hr with ventury scurubber as APCS and stack height 30 meter from ground level and autoclave 1000 kg per batch and shredder 150 kg/hr.
- 2) No construction shall be done at the proposed site without obtaining prior environmental clearance from State level environment impact assessment authority, Uttar Pradesh
- 3) Unit shall install ETP of 10 KLD and shall reuse the treated effluent in cleaning of ventury scrubber.
- 4) No effluent is allowed to discharge outside the premises.
- 5) The water requirement of the unit is 9 kld out of which 8 kld shall be used for industrial purpose and 1 kld for domestic usage.
- 6) The Industrial effluent shall be 7.8 kld which shall be treated through ETP of 10 KLD and the treated effluent 7 kld shall be reused in process, floor washing and scrubber.
- 7) Unit shall obtain registration under Section 10 and 11 of UP Ground Water (Management and Regulations) Act 2019.

8) Unit shall install electromagnetic flow meter at the borewell and outlet of ETP.

9) Unit shall install web camera at the ETP and online effluent monitoring system at the outlet of ETP and ensure the connectivity with the server of CPCB and UPPCB.

10) Unit shall provide port hole, ladder for emission monitoring and also install online emission monitoring system at the stack of O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

incinerator and also ensure the connectivity with the server of CPCB and UPPCB

11) Unit shall install DG sets of 32 KVA, 32 KVA and 10 KVA with acoustic enclosure and stack height as per norms specified under Environment (Protection) Rules 1986.

12) Unit shall comply with the provisions of Rule 5 of Bio Medical Waste Management Rules 2016.

13) Unit shall Operate only after obtaining prior Consent to Operate and authorization from UPPCB.

14) Unit shall comply the provisions of Water (Prevention and Control of Pollution) Act 1974 as amended, Air (Prevention and Control of Pollution). Act 1981 amended and Environment (Protection) Act 1986, and direction issued by Hon'ble National Green Tribunal, New Delhi and Hon'ble Courts in OA no. 200/2014 MC Mehta vs Union of India and others.

15) The overall noise levels in and around area shall be kept well within the standards by providing noise control measures including acoustic hoods, silencers, enclosures etc, on all sources of noise generation. The ambient noise level shall conform to the standards under the Environment (Protection) Act 1986, viz. 75 dBA(day time) and 70 dBA(night time)

16) Unit shall make temporary storage facility for storage of hazardous waste in the premises before it will send to TSDF as per the provisions of Hazardous and Other Waste (Management and Transboundary Movement) Rules 2016.

17) Unit shall dispose the Hazardous Waste i.e. incineration Ash, Waste oil, and ETP Sludge through TSDF.

18) Unit shall dispose plastic/glass generated from auto calving and microwaving process through authorized recycler.

19) Unit shall establish Miyawaki Forest in premises so as to use the treated effluent within the unit premises. The area may be worked out which should be in consonance with the quantity of effluent.

20) Unit shall submit Bank guarantee of Rs. 30,000/- which is 10 percent of total bank guarantee of Rs. 3,00,000/- for establishment of Miyawaki Forest, Hence the unit shall submit bank guarantee of Rs. 3,30,000/- (Rs. Three Lakh Only) within 15 days from the date of issue of this order for the

compliance of above conditions. Please note that consent to Establish will be revoked, in case of, non compliance of any of the above mentioned conditions. Board reserves its right for amendment or cancellation of any of the conditions specified above. Industry is directed to submit its first compliance report regarding above mentioned specific and general conditions till 26/05/2022 in this office. Ensure to submit the regular compliance report otherwise this Consent to Establish will be revoked.

(ii) EC granted by UPSEIAA "Reference- MoEFCC Proposal no- SIA/UP/MIS/66542/2021 & SEIAA, U.P File no-6497 Sub: Environmental Clearance for Proposed of Common Bio- Medical Waste Treatment Facility (CBWTF) at Plot No. E - 25 O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

and E-26, UPSIDC Industrial Area, Babrala, Sambhal, U.P., M/s Punahchakran Private Limited.

Dear Sir, This is with reference to your application / letter dated 11-08-2021, 18- 02-2022, 28-03-2022, on above mentioned subject. The matter was considered by 641th SEAC in meeting held on 05-04-2022 and 625th SEIAA in meeting held on 05-07-2022.

A presentation was made by the project proponent along with their consultant M/s Gaurang Environmental Solutions Pvt Ltd to SEAC on 05-04-2022.

Project Details Informed by the Project Proponent and their Consultant The project proponent, through the documents and presentation gave following details about their project -

1. The environmental clearance is sought for Common Bio- Medical Waste Treatment Facility (CBWTF) at Plot No. E - 25 and E-26, UPSIDC Industrial Area, Babrala, Sambhal, U.P., M/s Punahchakran Private Limited.

2. The standard terms of reference in the matter were issued through online portal on 17/08/2021.

3. The proposed project is exempted from Public hearing as per para 7(i) III stage (3)(i)(b) of EIA notification, 2006 & MoEF&CC O.M. dated 27.04.2018 since the site is located in UPSIDC Industrial Area.

4. Final EIA report submitted by the project proponent 18/02/2022.

5. Project brief:

Items	Details		
Project/ Plot area	3601 sq. m. (0.89Acre).		
Geo coordinates of the site	Point	Latitude	Longitude
	A	28°16'40.29"N	78°25'57.23"E
	B	28°16'41.49"N	78°25'59.36"E
	C	28°16'39.78"N	78°26'0.67"E
	D	28°16'38.65"N	78°25'58.48"E
Proposed areas to be	Sambhal, Badaun, Aligarh, Hathras, Kasganj and Etah		

catered with no of healthcare facilities	districts of Uttar Pradesh			
	Health care units	:	2357	
	No. of beds	:	23417	
Project capacity	Biomedical waste	:	8,818.9	kg/day (approx.)
	S. N.	Particular	Area/Capacity	Nos.
		Autoclave	1000 kg/batch	1

Project Cost	281.25 Lakh
Power Requirement & Source	32 KW Source : Uttar Pradesh State Electricity Distribution Company limited

O.A No. 622/2022

Aniruda Panwar Vs. MoEF &

Power backup	DG Set -- 32 kVA- 1 No. DG Set --10 kVA- 1 No.
Water Requirement & Source	Fresh water : 9.5 KLD Treated Water : 6.5 KLD Total water demand : 16.0 KLD Source : Ground water

Waste water generation Process effluent: approx. 6.4 KLD Domestic effluent: approx. 0.6 KLD
Effluent Treatment Plant ETP Capacity: 10 KLD & disposal ETP Sludge: disposed off to nearest
authorized TSDF Fuel Requirement HSD Incinerator : 35 litre per hour DG set : 5 litre per hour
Manpower Requirement 38 Persons Skilled: 05 Semi-skilled: 33 Green Area 1,188.33 sq. m. i.e. 33%
of total project area EMP Budget Capital cost : Rs. 59.50 Lakh Recurring cost : Rs. 10.0 Lakh Cost
for EMP-Social : 5.7 Lakh

6. Land Use details:

S. No.	Particulars	Area (sq. m)	%
--------	-------------	--------------	---

7. Machinery Details:

S. N.	Particular	Area/Capacity	Nos.
1	Plot Area	3601 sq. m.	--

8. o. The project proposal falls under category-7(da) of EIA Notification, 2006 (as amended).

Based on the recommendations of the. State Level Expert Appraisal Committee Meeting (SEAC) held on 05-04-2022 the State Level Environment Impact Assessment Authority (SEIAA) in its Meeting held 05-07-2022 and decided to grant of environmental clearance on the proposal as above along with specific conditions and following standard environmental clearance conditions:

I. Proposed CBWTF shall comply with the revised guidelines issued by CPCB on December 21st 2016 with respect to location criteria. The proponent/consultant shall submit the certified O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

documents regarding the compliance of location criteria/bed details of HCFs by the competent authority and CMO.

II. In case, the number of beds is exceeding >10,000 beds in a locality and the existing treatment capacity is not adequate, in such a case, a new CBWTF may be allowed in such a locality in compliance with various provisions notified under the location. Environment (Protection) Act, 1986, to cater services only to such additional bed strength of the HCFs.

III. Project Proponent should adopt 01 village & development them as model village.

IV. Statutory compliance:

1. The project proponent shall obtain forest clearance under the provisions of the Forest (Conservation) Act, 1986, in case of the diversion of forest land for non-forest purpose involved in the project.

2. The project proponent shall obtain clearance from the National Board for Wildlife, if applicable.

3. The project proponent shall prepare a Site-Specific Conservation Plan & Wildlife Management Plan and be approved by the Chief Wildlife Warden. The recommendations of the approved Site-Specific Conservation Plan / Wildlife Management Plan shall be implemented in consultation with the State Forest Department. The implementation report shall be furnished along with the six-monthly compliance report. (in case of the presence of schedule-I species in the study area)

4. The project proponent shall obtain Consent to establish/Operate under the provisions of the Air (Prevention & Control of Pollution) Act, 1981 and the Water

(Prevention & Control of Pollution) Act, 1974 from the concerned State Pollution Control Board/ Committee.

5. Transportation and handling of Bio-medical Wastes shall be as per the Biomedical Wastes (Management and Handling) Rules, 2001 including section 129 to 137 of Central Motor Vehicle Rules 1989.

6. The project shall fulfill all the provisions of hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016 including collection and transportation design etc and also guidelines for Common Hazardous Waste Incineration -- 2005, issued by CPCB Guidelines of CPCB/MPPCB for Bio-medical Waste Common Hazardous Wastes incinerators shall be followed.

7. The project proponent shall obtain the necessary permission from the Central Ground Water Authority, in case of drawl of ground water / from the competent authority concerned in case of drawl of surface water required for the project.

8. A certificate of adequacy of available power from the agency supplying power to the project along with the load allowed for the project should be obtained.

9. All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department shall be obtained, as applicable by project proponents from the respective competent authorities V. Air quality monitoring and preservation:

1. The project proponent shall install an emission monitoring system including Dioxin and furans in monitor stack emission with O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

respect to standards prescribed in Environment (Protection) Rules 1986 and connected to SPCB and CPCB online serves and calibrate these systems from time to time according to equipment supplier specification through labs recognized under Environment (Protection) Act, 1986 or NABL accredited laboratories.

2. Periodical air quality monitoring in and around the site including VOC, HC shall be carried out.

3. Incineration plants shall be operated (combustion chambers) with such temperature, retention time and turbulence, to achieve Total Organic Carbon (TOC) content in the slag and bottom ashes less than 3% or their loss on ignition is less than 5% of the dry weight of the material.

4. Venture scrubber (alkaline) should be provided with the incinerator with stack of adequate height (Minimum 30 meters) to control particulate emission within 50 mg/Nm³.

5. Appropriate Air Pollution Control (APC) system shall be provided for fugitive dust from all vulnerable sources, so as to comply with prescribed standards. All necessary air pollution control devices (quenching, Venturi scrubber, mist eliminator) should be provided for compliance with emission standards.

6. Masking agents should be used for odour control. VI. Water quality monitoring and preservation:

1. The project proponent shall install effluent monitoring system with respect to standards prescribed in Environment (Protection) Rules 1986 through labs recognized under Environment (Protection) Act, 1986 or NAB L accredited laboratories.

2. Waste water generated from the facility shall be treated in the ETP and treated waste water shall be reused in the APCD connected to the incinerator. The water quality of treated effluent shall meet the norms prescribed by State Pollution Control Board. Zero discharge should be maintained.

3. Process effluent/any waste water should not be allowed to mix with storm water.

4. Total fresh water use shall not exceed the proposed requirement as provided in the project details. Prior permission from the competent authority shall be obtained for use of fresh water.

5. A sewage Treatment Plant shall be provided to treat the wastewater generated from the project. Treated water shall be reused within the project.

6. A certificate from the competent authority for discharging treated effluents into the Public sewer/ disposal/drainage systems along with the final disposal point should be obtained.

7. The leachate from the facility shall be collected and treated to meet the prescribed standards before disposal.

8. Magnetic flow meters shall be provided at the inlet and outlet of the ETP & all ground water abstraction points and records for the same shall be maintained regularly.

9. Rain water runoff from the hazardous waste storage area shall be collected and treated in the effluent treatment plant.

VII. Noise monitoring and prevention:

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

1. The ambient noise levels should conform to the standards prescribed under E(P)A Rules, 1986 viz. 75 dB(A) during daytime and 70 dB(A) during night-time.

VIII. Energy Conservation measures:

1. Provide solar power generation on roof tops of buildings, for the solar light system for all common areas, street lights, parking around the project area and maintain the same regularly;
2. Provide LED lights in their offices and residential areas IX. Waste management:

1. Incinerated ash shall be disposed of at approved TSDF and MoU made in this regard shall be submitted to the Ministry prior to the commencement.
2. The solid wastes shall be segregated as per the norms of the Solid Waste Management Rules, 2016.
3. A certificate from the competent authority handling municipal solid wastes should be obtained, indicating the existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from the project.
4. Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Rules, 2016
5. No landfill site is allowed within the CBWTF site.
6. The Project proponent shall not store the Hazardous Wastes more than the quantity that has been permitted by the CPCB/SPCB.

X. Green Belt:

1. Green belt shall be developed in the area as provided in project details, with native tree Green belt shall be developed in an area equal to 33% of the plant area with a native tree species in accordance with CPCB guidelines. The greenbelt shall inter alia cover the entire periphery of the plant.

XI. Public bearing and Human health issues:

1. Feeding of materials/Bio-medical waste should be mechanized and automatic no manual feeding is permitted.
2. Proper parking facility should be provided for employees & transport used for collection & disposal of waste materials.

3. Necessary provision shall be made for fire-fighting facilities within the complex.
4. An emergency preparedness plan based on the Hazard Identification and Risk Assessment (HIRA) and Disaster Management Plan shall be implemented.
5. An emergency plan shall be drawn in consultation with SPCB/CPCB and implemented in order to minimize the hazards to human health or the environment from fires, explosions or any unplanned sudden or gradual release of hazardous waste or hazardous waste constituents to air, soil or surface water.
6. Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile STP, safe drinking water, O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

medical health care, creche etc. The housing may be in the form of temporary structures to be removed after the completion of the project.

7. Occupational health surveillance of the workers shall be done on a regular basis.

XII. Corporate Environment Responsibility:

1. The project proponent shall comply with the provisions contained in this Ministry's OM vide F.No. 22-65/2017-IA.1I I dated 1st May 2018, as applicable, regarding Corporate Environment Responsibility.
2. The company shall have a well laid down environmental policy duly approved by the Board of Directors. The environmental policy should prescribe standard operating procedures to have proper checks and balances and to bring into focus any infringements/deviation/violation of the environmental / forest /wildlife norms/ conditions. The company shall have defined system of reporting infringements / deviation / violation of the environmental / forest / wildlife norms / conditions and / or shareholders / stake holders. A copy of the board resolution in this regard shall be submitted to the MoEF&CC as a part of the six-monthly report.
3. A separate Environmental Cell both at the project and company head quarter level, with qualified personnel shall be set up under the control of senior Executive, who will directly to the head of the organization.
4. Action plan for implementing EMP and environmental conditions along with the responsibility matrix of the company shall be prepared and shall be duly approved by the competent authority.

The year-wise funds earmarked for environmental protection measures shall be kept in a separate account and not be diverted for any other purpose. Year rise progress of implementation of action

plan shall be reported to the Ministry/Regional Office along with the Six Monthly Compliance Report.

5. A self-environmental audit shall be conducted annually. Every three years third-party environmental audit shall be carried out. XIII. Miscellaneous:

1. The project proponent shall prominently advertise it at least in two local newspapers of the District or State, of which one shall be in the vernacular language within seven days indicating that the project has been accorded environment clearance and the details of MoEFCC/SEIAA website where it is displayed
2. The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.
3. The project proponent shall upload the status of compliance with the stipulated environment clearance conditions, including results of monitored data on their website and update the same on half-yearly basis.
4. The project proponent shall submit six-monthly reports on the status of the compliance of the stipulated environmental conditions on the website of the Ministry of Environment, Forest and Climate Change at the environment clearance portal.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

5. The project proponent shall submit the environmental statement for each financial year in Form-V to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently and put on the website of the company.
6. The criteria pollutant levels namely; SPM, RSPM, SP, NO_x (ambient levels as well as stack emissions) or critical sectoral parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.
7. The project proponent shall inform the Regional Office as well as the Ministry, the date of financial closure and final approval of the project by the concerned authorities, commencing the land development work and start of production operation by the project.
8. The project authorities must strictly adhere to the stipulations made by the State Pollution Control Board and the State Government.

9. The project proponent shall abide by all the commitments and recommendations made in the EIA/EMP report, commitments made during Public hearings and also that during their presentation to the Expert Appraisal Committee.

10. No further expansion or modifications in the plant shall be carried out without prior approval of the Ministry of Environment, Forests and Climate Change (MoEF&CC).

11. Concealing factual data or submission of false/fabricated data may result in revocation of this environmental clearance and attract action under the provisions of the Environment (Protection) Act, 1986.

12. The Ministry may revoke or suspend the clearance if the implementation of any of the above conditions is not satisfactory.

13. The Ministry reserves the right to stipulate additional conditions if found necessary. The Company in a time-bound manner shall implement these conditions.

14. The Regional Office of this Ministry shall monitor compliance with the stipulated conditions. The project authorities should extend full cooperation to the officer (s) of the Regional Office by furnishing the requisite data/information/monitoring reports.

15. The above conditions shall be enforced, inter-alia under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016 and the Public Liability Insurance Act, 1991 along with their amendments and rules and any other orders passed by the Hon'ble Supreme Court of India / High Courts/NGT and any other Court of Law relating to the subject matter.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

16. Any appeal against this EC shall lie with the National Green Tribunal, if preferred, within 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.

Concealing factual data and information or submission of false/fabricated data and failure to comply with any of the conditions stipulated in the Prior Environmental Clearance attract action under the provision of Environmental (Protection) Act, 1986. This Environmental Clearance is subject to ownership of the site by the project proponents in confirmation with approved Master Plan for Sambhal. In case of violation; it would not be effective and would automatically be stand cancelled.

The project proponent has to ensure that the proposed site is not a part of any no-development zone as required/prescribed/identified under law. In case of the violation this permission shall automatically be deemed to be cancelled. Also, in the event of any dispute on ownership or land use of the proposed site, this Clearance shall automatically be deemed to be cancelled.

Further project proponent has to submit the regular 6 monthly compliance report regarding general & specific conditions as specified in the E.C. letter and comply the provision of EIA notification 2006 (as Amended).

These stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification, 2006 including the amendments and rules made thereafter"

77. In the present case UPPCB and UPSEIAA have not (i) specifically granted any relaxation of land area requirement (ii) stipulated additional control measures and (iii) made any consultation with CPCB. Therefore, CTE granted by UPPCB and EC granted by SEIAA for establishment of CBWTF on plots No. E-25 & E-26 situated in Babrala Industrial Area with combined area of 3601 sq.mtrs. instead of one Acre-4047 sq.mtrs.

(approx.) without grant of any relaxation, without stipulation of additional control measures and without consultation with CPCB are illegal being violative of Guideline 7 of the Revised CPCB Guidelines 2020 which is mandatory.

O.A No. 622/2022 Aniruda Panwar Vs. MoEF & CC.

78. In view of the above the application converted to appeal is allowed and CTE and EC being violative of CBWTF Guidelines 2016 are held to be illegal, null and void and to be of no effect.

79. However, the Applicant shall be at liberty to apply again for grant of EC and CTE for establishment of CBWTF after procuring additional land in Babrala Industrial Area or seek relaxation of land requirement in accordance with law and in case any such application is filed by Respondent no. 7 again UPPCB and UPSEIAA shall be bound to dispose of the same strictly not only in accordance with the statutory provisions /environmental norms but also CPCB Guidelines.

80. A copy of this order be supplied to the applicant and respondents by email for information/compliance.

Arun Kumar Tyagi, JM Dr. Afroz Ahmad, EM July 31, 2023 AG