

GUJARAT HIGH COURT

Hon'ble Judges: Sunita Agarwal and Aniruddha P. Mayee JJ.

En-cler Bio-medical Waste Private Limited Versus Gujarat Pollution Control Board

SPECIAL CIVIL APPLICATION No. 6504 of 2023 ; *J.Date :- SEPTEMBER 29, 2023

- [COMPANIES ACT, 1956](#)

Equivalent Citation(s):

2023 JX(Guj) 972 : 2023 AIJEL_HC 247506

JUDGMENT :-

ORAL JUDGMENT

JUSTICE SUNITA AGARWAL

1. Seeking to challenge the issuance of CTE, i.e. Consent to Establish, a Common Bio-Medical Waste Treatment Facility (in short CBWTF) at Navsari on the application of respondent Nos.4 and 5, the present petition has been filed challenging the action of respondent Nos.1 and 2, namely the Gujarat Pollution Control Board and the State Environment Impact Assessment Authority, Gujarat.

2. The facts in brief relevant to decide the controversy at hands are that the petitioner herein, namely En-cler Bio-Medical Waste Private Limited is a private limited company registered under the Companies Act, 1956, which is operating a CBWTF and claims to be serving approximately 2100 health care facilities in the South of Gujarat. The petitioner company claims to have set up a CBWTF at Vapi in the year 2017 and submits that the existing facility set up of the petitioner has treatment capacity of 9500 Kgs per day. However, the total bio medical waste generating from its member units comprising of 2174 health care facilities having 9271 beds strength is only 2300-2400 Kgs per day. It seems that respondent Nos.4 and 5 have made an application for setting up new CBWTF in Navsari region. The contention in the writ petition is that the site location of the proposed CBWTF of respondent Nos.4 and 5 is falling within the radius of 75 Kms from the petitioner's existing CBWTF. It is argued by the learned Senior Counsel appearing for the petitioner that for setting up a CBWTF, the following provisions of law are to be obeyed :-

(i) Environment Protection Act, 1986.

(ii) Environment Clearance Notification dated 14th September, 2006.

(iii) The Air (Prevention and Control of Pollution) Act, 1981 and Rules made thereunder.

(iv) The Water (Prevention and Control of Pollution) Act, 1974 and Rules made thereunder.

(v) Bio-Medical Waste Management Rules, 2016.

(vi) Guidelines for Common Bio- Medical Waste Treatment and Disposal Facilities issued by the Central Pollution Control Board under the Bio-Medical Waste Management Rules, 2016.

3. The Bio-medical Waste Management Rules, 2016 framed by the Central Government, Ministry of Environment, Forest and Climate Change in exercise of powers conferred by Sections 6, 8 and 25 of the Environment Protection Act, 1986 provides mandatory guidelines to ensure site selection, permission for establishment of CBWTF facility, as also its operations. As per said guidelines, there are four steps for setting up a new CBWTF as follows :-

(i) Selection of site for setting up of CBWTF.

(ii) Consent to Establish.

(iii) Prior Environment Clearance, and

(iv) Consent to operate.

The mandatory revised guidelines for CBWTF has been prescribed by the Central Pollution Control Board by a Notification dated 21.12.2016 under the Bio-Medical Waste Management Rules, 2016.

4. The issue raised in the instant petition is essentially pertaining to the subject of site selection for setting up a new CBWTF by respondent No.5. It is vehemently argued by the learned counsel for the petitioner that for selection of site, the State Pollution Control Board is required to conduct a 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 CBWTF in each coverage area of radius of 75 Kms. It is mandatory under the said guidelines for the State Pollution Control Board, based on the gap analysis, to prepare an action plan for development of new CBWTFs and submit to the Central Pollution Control Board. It further provides that in case, any coverage area requires additional treatment facility, in such a case, action may be initiated by the prescribed authority for allowing new CBWTF in that locality without interfering the coverage area of the existing CBWTF and beds covered by the existing CBWTF.

5. The contention of the petitioner is that the coverage area of new CBWTF sought to be established by respondent Nos.4 and 5 overlaps the coverage area of CBWTF established by the petitioner herein and only in case number of beds is exceeding 10,000 beds in a locality, i.e. coverage area of CBWTF already established and the existing treatment facility is not adequate, a new CBWTF may be allowed in such locality that too strictly in compliance to various provisions notified under the Environment (Protection) Act, 1986, to cater service only to such additional bed strength of the existing facility. All other objections raised in the present petition

have not been seriously pressed during the course of argument. It is vehemently argued based on the aerial distance of the locality that the existing CBWTF set up by the petitioner is at a radial distance of 63.8- 63.9 Kms from the proposed site of CBWTF to be established by respondent Nos.4 and 5. The submission, thus, is that the permission granted to respondent Nos.4 and 5 is in contravention to Clause 8 of the guidelines prescribed by the Central Pollution Control Board. It is also stated in the writ petition that the consent to establish has been granted by respondent Nos.1 and 2 and they are on the verge of granting further approvals in utter disregard to the rules and guidelines prescribed by Central Pollution Control Board.

6. From the above stated facts noted from the record of the petition and in light of submissions made by the learned counsel for the petitioner, it is relevant to note that till date proceedings for allotment of the site to the respondent Nos.4 and 5 is not completed. There is no consent to operate as on date. It is further relevant to note that the petitioner herein has filed objections before the competent authority in the shape of representation to agitate its grievances that the proposed site of respondent Nos.4 and 5 is overlapping the area of operation of the petitioner.

7. As against this, the private respondent No.5 has filed an affidavit-in-reply to rebut the assertions made in the writ petition and contend that as against existing 40,000 beds in the Surat and Navsari area, as compared to bio-waste generated in the said area, there are only two treatment facilities available in Surat. There is a need of another CBWTF as there is a huge surge in the biomedical waste, and existing gap, but the petitioner company and another operators managed to continue to operate by manipulating the actual number of beds and health care facilities available in their coverage area. As regards the contention of the petitioner that no gap analysis for coverage area has been conducted before accepting the application of respondent Nos.4 and 5 herein, it is contended in the affidavit of respondent No.5 that the Minutes of 626th meeting of the respondent No.5 has been placed on record to assert that the report of gap analysis of Surat as well as Navsari districts have been received which clearly show that there are huge gaps in Surat and Navsari region. A preliminary objection has been raised by the learned counsel appearing for respondent No.5 with regard to the maintainability of the writ petition on the ground that the reliefs claimed are covered under the provisions of the National Green Tribunal Act, 2010 and the writ petition is barred by Sections 14, 15 and 16 of the said Act as also for the remedy of appeal provided under the provisions of Rule 16 of the Bio-medical Waste Management Rules, 2016.

8. In the counter affidavit filed on behalf of respondent No.2, namely the Gujarat State Environment Impact Assessment Authority, it is stated that the regulatory authority is legally obliged to consider and decide any application made to it for grant of prior environment clearance by any party proposing to entertain activity or project specified in Category B in the Schedule to the notification. The application filed by respondent Nos.4 and 5 has been accepted on the portal for the same being found to be complete. However, there is no application of mind by the State Environment Impact Assessment Authority either on the correctness of the information fed by the applicant at the time of filing the online form or the

permissibility or legitimacy of the project or activity for which the application has been made online. It is stated that the stage for considering the application to verify the correctness of the information furnished and to examine the permissibility of granting the clearance with the proposed activity or project by the regulatory authority has yet not reached. The present petition is premature, inasmuch as, it has been filed prior to consideration of the application by the statutory authority, which in law is obliged to consider the same.

9. It is then stated that the aspects highlighted by the petitioner in the present petition shall be taken into account and examined by the regulatory authority while considering the application. However, the contention of the petitioner that no party has right to make an application for grant of prior environment clearance for setting up a CBWTF and new treatment and disposal facility should not be permitted within the radius of 75 Kms of the existing facility cannot be a reason to entertain the present petition. Rather the exceptions can be made as per own submission of petitioner, in cases where number of beds in the health care facility within the service area exceeds 10,000 beds and the existing facility does not have capacity to treat bio-medical waste generated in the area.

10. It is further stated that a gap analysis study has been conducted and its report has been prepared by an independent agency. Such report bears data on the bio-medical waste being generated at the present from the existing health care facilities and mentions estimate increase in the bio-medical waste generating over the next ten years. The report also considers the capacity of the petitioner and the quantum of waste presently being processed by the petitioner at its facility. Regulatory authority shall take into consideration the gap analysis report and the objections submitted by the petitioner at the time of deliberating upon the application of the respondent No.5 in addition to other material necessary for arriving at an informed and reasoned decision and make conclusion in accordance with law. An assertion has been given in the affidavit of respondent No.2 that all the relevant aspects of the matter will be taken care of.

11. Having noted the above, we reach at the conclusion that as on date of the filing of the writ petition, no cause of action can be said to have arisen justifying the action of the petitioner to approach this Court. Mere acceptance of the application form made on the online portal, by a party desirous of and intending to obtain an environment clearance for a particular project, no indefeasible right of the petitioner can be said to have been infringed. In any case, the filing of the present petition seems to be an effort to stall the processing of the application filed by respondent Nos.4 and 5 which is at its nascent stage. This apart, in case the petitioner is aggrieved by any of the decision of the prescribed authority under the Bio-Medical Waste Management Rules, 2016, the remedy before it is to approach the Secretary (Environment) to the State Government in appeal invoking the provisions of Rule 16 of the Rules, 2016.

12. From the above noted facts, it is evident that only preliminary clearance has been granted and final decision has yet not been taken. In the said scenario, we do not find any good ground to entertain the present petition. However, in view of the

stand taken by the respondent No.2 in the affidavit-inreply filed by it, we deem it fit and proper to dispose of the present petition with the observation that the mandatory requirement for setting up a CBWTF in the area in question shall be strictly adhered to by the respondents, in accordance with the provisions of the Bio-Medical Waste Management Rules, 2016. Any deviation from the mandatory requirement of the said rules or the guidelines issued by the Central Pollution Control Board would amount to contravention of provisions of Section 6 of the Environment (Protection) Act, 1986. The representation moved by the petitioner raising grievances with respect to the clearance given to respondent Nos.4 and 5 shall be duly considered by passing a reasoned and speaking order strictly in accordance with law before granting final approval/clearance to respondent Nos.4 and 5.