

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION NO.16 OF 2014**

with

APPLICATION NO.58 (THC) OF 2014

CORAM:

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(Judicial Member)
HON'BLE DR. AJAY A.DESHPANDE
(Expert Member)**

In the matter of:

1. SHRI. BAKERAO TUKARAM DHEMSE.
Chinchkhed Road, Pimpalgaon Baswant,
Taluka Niphad, District Nashik-422209.

2. SHRI. NIRMAL KASHINATH KAJALE,
Both of residents of village Pathardi,
Dist. Nashik.

..... **APPLICANTS**

VERSUS

1. THE MUNICIPAL CORPOTON,
Nasik- through its Commissioner,
Rajiv Gandhi Bhavan, Tilakwadi,
Nashik.

2. The STATE OF MAHARASHTRA,
Through the Secretary,
Department of Public Health & Environment,
Mantralaya, Mumbai-400 032.

**3. THE MAHARASHTRA POLLUTION CONTROL
BOARD,**
Through its Regional Office,
"Udyog Bhavan" 1st Floor, Trimbak Road,
MIDC Compound, Satpur, Nashik-422006.

4. NATIONAL ENVIRONMENT ENGINEERING,
Research Institute,
Nehru Marg,
Nagpur-440 020.

5. THE COLLECTOR OF NASHIK,
Shri. Vilas Patil
Old Agra Road, Near CBS,
Nashik-422009.

.....**RESPONDENTS**

APPLICATION NO.58 (THC) OF 2014

In the matter of: सत्यमेव जयते

1. NARAYAN S/O NAMDEO YADAV,
Age: Adult, Occ: Proprietor of
Saish Industries & Social Worker
R/o-A-3/2, Rathchakra Society
Indira Nagar, Nasik

2. JAGDISH S/O KONDAJI NAVALE,
Age: Adult, Occ: Hotel Owner & Service,
R/o- Pathardi Fata,
Bombay-Agra Road, Nasik.

.....**APPLICANTS**

VERSUS

1. THE MUNICIPAL CORPOTON,
Nasik- through its Commissioner,
Rajiv Gandhi Bhavan, Tilakwadi,
Nashik.

**2. THE MAHARASHTRA POLLUTION
CONTROL BOARD,**
Through its Regional Office,
“Udyog Bhavan” 1st Floor, Trimbak Road,
MIDC Compound, Satpur, Nashik-422006.

3. THE COLLECTOR OF NASHIK,
Shri. Vilas Patil
Old Agra Road, Near CBS,
Nashik-422009.

.....**RESPONDENTS**

Counsel for Applicant(s):

Mr. Balkrishna Joshi Advocate a/w Mr Deepak R. Hole, Mr Virendra V. Pethe for the Applicants.

Counsel for Respondent(s):

Mr. Sudhir S. Kotwal Advocate, a/w Mr. Khairnar S.S. Jr. Engineer NMC for Respondent No.1.

for Respondent No.2.

Mr D.M.Gupte a/w Supriya Dangare a/w Mr. Suresh R. Patel a/w Mr. S.G. Aher for Respondent Nos.2,3.

Mr. Saunil Kumar (NEERI) Nagpur.

Ujwala Pawar, DGP, Mr. Nilesh Jadhav Dy. Collector, Nashik for Respondent No.4.

DATE: NOVEMBER 9TH , 2015

COMMON J U D G M E N T

1. Both these Applications are being disposed of by common Judgment, inasmuch as the issues involved in both these Applications, are identical. One of the Application bearing No.58 (THC) of 2014, was originally filed before the Hon'ble High Court of Judicature at Bombay, bearing PIL No.96 of 2009. The Applicants claimed relief of shifting MSW site from village Pathardi to some other place within Nashik district for MSW plant, on the grounds that MSW plant site near village Pathardi, is mostly

unsuitable due to proximity of village locality. They alleged that village Pathardi is at a distance of only 2km from MSW plant and, therefore, foul smell is spread all over in the area, leachate flows from the plant in uncontrolled manner and causes health hazard to the residents of the village. They further allege that the MSW plant is not operated in accordance with the MSW Rules, 2000. They contended that there is no adequate and scientific STP installed at the MSW site. According to them, there is no arrangement for segregation of dry waste and wet waste for the purpose of composting and for the purpose of processing of MSW plant. Consequently, they submit that the site of MSW plant at village Pathardi, is required to be shifted at some other place, in order to avoid adverse environmental impact, health hazard and improper and mismanagement of the plant itself.

2. Bakerao filed Application No.16 of 2014, in this Tribunal, on similar grounds. His contention is that his agricultural land is abutting the plant and he has suffered all adverse impacts of mismanagement of MSW plant operated at Pathardi. It is his contention

that MSW plant is being run unscientifically, heaps of garbage are dumped at the site without segregation of dry waste and wet waste or waste which can be used for the purpose of composting. The contention of Bakerao further is that garbage is not being removed from the site by the Municipal authorities, so as to clear the area and, therefore, the MSW plant is causing health hazard and environmental degradation in the area. In other words, he has adopted pleadings of Namdeo Narayan and others, which were before the Hon'ble High Court in PIL mentioned above.

3. Before we may go to the pleadings of Nashik Municipal Corporation (NMC), it may be stated that NMC assured the Hon'ble High Court that suitable steps will be taken to follow mandate of the MSW Rules, 2000. Not only that but an affidavit was stamped in by the concerned authority to undertake and observe all the Rules and Regulations under the MSW Rules, 2000, by installation of equipment/ machinery, in particular timeframe.

4. Needless to say, NMC clearly admitted that MSW plant was not being operated scientifically and there were deficiencies, which

were required to be properly attended and cured in time point manner. Thus, it is also very much clear that NMC took a stand before the Hon'ble High Court that the MSW plant, will be updated and will be operated in such a manner that there will be no further room for any complaint regarding adverse impact on environment. Considering such affidavit of NMC, the PIL was disposed of by the Hon'ble High Court. In other words, site selection of NMC was accepted by the Hon'ble High Court on the terms based upon affidavit of NMC.

5. Now, we shall come to the pleadings of NMC, who is the main contesting Respondent in the present litigation.

6. By filing reply affidavit of Mr. Ramesh Pawar, the Superintendent Engineer, NMC, it is contended that the plant was properly managed and due care was taken to ensure that landfill site was being properly managed under the MSW (M & H) Rules, 2000. The NMC alleges that a large number of afforestation has been done around the plant, including flower beds, shrubs and other kind of trees, which would generate more Oxygen around the place. The main

contention of NMC is that the averments in the Application about alleged health problem, serious destruction and damage to environment, unhygienic condition, which caused serious problems to the life of inhabitants, are untrue. According to NMC, careful operations are required but the landfill site where domestic, commercial, industrial and hospital waste is dumped together and thrown in the compound, which has aggravated the problem, because such solid waste is not segregated outside and, therefore, animals like crows, vultures, and pigs enter in the compound and scatter generated waste, which gives rise to foul smell. The NMC MSW plant which is situated in Pathardi Shivar, in fact, was stated first kind of model plant in the State of Maharashtra and was also taken as sample by all over the country. Degradation is, however, caused due to passage of time, negligence of people, need of expansion and modernization, un-controlled permissions granted for construction activities, inability to handle segregation of bio-degradable material from non-bio-degradable and other inert material, in spite of serious and concerted efforts

by NMC and lack of awareness of the citizens, bad response of the citizens. The buildings which are allowed to be constructed ought to be made compulsory activity to grow trees, which will provide more Oxygen and will reduce RSPM. A detailed plan presented by the NMC is also placed on record.

7. The affidavit of Shri. Ankush Fulse, who appeared for Respondent No.3 (MPCB), reveals that the recommendations made by 'NEERI' have been verified with juxta position, as available on 3rd March, 2014. It is found that reject material is directly dumped on landfill site. It was found by the MPCB that due to manpower constraint the inert processing unit and RDF unit were not operating. Obviously, the units requiring due segregation of bio-degradable waste from other non-bio degradable waste, landfill site, which would be useful for composting i.e. garbage processing plant as well as operation of backlog of accumulated waste was not removed. It was also noticed that mechanical unit for inert processing and RDF unit were non-operating.

8. Perusal of record shows that at one point of time, Nashik Municipal Corporation (MNC),

took lead and started MSW as well as bio-medical waste project, which was considered as to the then first important and eco-friendly project, somewhere in 2010. The MSW project was working well for a considerable period. Nobody will deny that the landfill site was being duly organized till excessive load of garbage was dumped at the site over and above the plant capacity. There is no doubt about the fact that now fact situation is worst. There are heaps of garbage at the site. Heaps are mounting day by day. The stray-dogs are moving around and odour is emitting from the landfill site. It is true that some of the area of the city is newly developed and some industrial activities have come up in the recent past. NMC should not have permitted construction activity and industrial activities after evaluating accommodation available at the landfill site and the plant which is available. It is not the case that there is no plant at the site. The case is very simple. There is MSW treatment and processing plant available but this plant is made unworkable due to multi-faceted reasons. One of the main reasons is that presence of tons of garbage heaps over and above

the capacity and much of the machinery of the plant has become un-useful due to the fact that it has been depressed under the garbage and might have been rusted and could need more revamping and repairs.

9. We are of the opinion that in such a case more care is required to be taken by any Municipal Corporation/Municipal Council, to ensure that composting plant, landfill site, MSW plant like RDF plant and other such activities shall be designed for adequate capacity considering the possible expansion of city area and increase in waste quantity. In a group of Writ Petition No.1740 of 1998 with Civil Application No.9100 of 1998 with Civil Application No.6199 of 1999, the Hon'ble High Court in Para No.15 also given directions about Action Plan and time schedule for Treatment and Processing of Solid Waste as follows :

"Draft Minutes of the Order

- 1. For implementation of Solid Waste (Management & Handling) Rules, 2000 (MSW Rules) and for segregation, management, treatment and disposal of solid waste in the areas of various local authorities, throughout the State of Maharashtra following directions are given.*

2. For the aforesaid purpose, the State of Maharashtra shall be considered into four regions as follows :

- (1) Konkan, (2) Western Maharashtra,
- (3) Vidharbha and (4) Marathwada

3. The local authorities shall be divided into following categories :

(1) Urban Local Authorities :

(a) Municipal Corporations (b) Municipal Councils

(2) Other Authorities :

(a) Zilla Parishad (b) Taluka Panchayat and

(c) Village Panchayat

4. The following officers shall be designated as Nodal Officers/Authorized officers who will be incharge and responsible for implementation of the MSW Rules and these directions:

(1) Divisional Commissioner for the Districts within his jurisdiction;

(2) Municipal Commissioner / Additional Commissioner for Municipal Corporation areas;

(3) Chief Officer-Municipal Council;

(4) District Collector for the entire district in respect of all other local authorities.

5. (a) The Secretary Urban Development department (UDD) shall be overall incharge as per MSW Rules 2000 (Rule 5). The Secretary UDD in addition to being primarily responsible for implementation of MSW Rules shall also be responsible for supervising and monitoring functioning of all other authorities:

(b) The responsibility of the aforesaid Nodal Officers/Authorized Officers will include all issues relating to solid waste management from identification of the land fill site, dumping sites, waste treatment facility sites, obtaining requisite permissions from Maharashtra Pollution Control Board (MPCB), segregation and transport of solid waste the treatment of solid waste and all other related matters.

6. The general issues shall be classified on the basis of availability of facilities with local authority for the aforesaid purposes as follows :

- (a) local authorities which do not have designated / approved dumping site/land fill sites at all,*
- (b) the local authorities which have such sites available at present but are inadequate,*
- (c) the local authorities which have sites which are being operated as land fill sites/dumping grounds but are non-compliant with MSW Rules and MPCB authorization and*
- (d) the local authorities which do not have provisions of solid waste treatment facilities.*

Re: Local authorities which do not have the land fill sites/dumping ground :

7. (a) The authorized officer / local authority shall take steps for acquisition of notified / designated site for this purpose either in the Regional Plan or the Development Plan within a period of two weeks either under the provisions of Land Acquisition Act, 1894, Maharashtra Regional & Town Planning Act, 1966 or by mutual agreement with land owners.

(b) The process of selection and acquisition of sites including taking possession shall be completed expeditiously and not later than six weeks in accordance with, the guidelines prescribed in the Government

Resolution dated 5th October 2012, Annexure-1 as well as GR dated 26th August, 2003.

(c) The selection of site shall take into consideration appropriateness and suitability of site from viewpoint of CRZ Notification, EIA Notification and other Environmental Laws including Forest Laws as applicable.

(d) Wherever the Local Authority has an approved authorized site for land fill / dumping, the local authority shall immediately take steps to make it operational for that purpose within a period of 4 weeks.

(e) On selection, identification and acquisition of sites, the local authorities shall make the

appropriate application not later than two weeks after taking possession of site, to the Pollution Control Board under Rule 6 of MSW Rules for authorization.

(f) The MPCB shall process the application and grant the authorization in accordance with the provisions of Air Act and Water Act and MSW Rules 2000 preferably within a period of two weeks end not later than from receipt of application complete in all respects.

(g) On the aforesaid compliances the site shall be used by the concerned local authorities for land fill /dumping strictly in accordance with the MSW Rules 2000 and authorization granted by MPCB.

(h) The Nodal Officers/Authorized Officer shall monitor periodically the operation of such sites and compliance with MSW Rules and MPCB authorization on fortnightly basis and make report and take remedial measures to ensure compliance.

(i) In case there are no designated / notified sites the State Government shall assist such Local authority to identify, select and acquire the requisite site and notify or designate the same for land fill/ dumping of MSW. The State Government shall initiate steps for this purpose preferably within two weeks from this order and complete the process as per statutory provisions for designation of the site.

(j) In case the site designated within the area of local authorities is encroached upon the local authorities shall initiate action for removal of encroachment within two weeks, including but not limited to, in accordance with the relevant Municipal law or the Maharashtra Land Revenue Code as the case may be for eviction of such unauthorized encroachers. In the event of such actions being taken no Court or authority in the State shall entertain any application or proceedings or suit in respect of such eviction and any such proceeding shall be filed only in this Court.

(k) In case there are any proceedings pending / orders passed in respect of any sites within the jurisdiction of Local Authority, such authority shall immediately take steps to get the stay orders vacated and / or bring it to the notice of this Court for appropriate directions.

Re: Local authorities which have inadequate facilities:

8. (a) The local authority will assess the need for the sites by taking into account the existing population and growth of population upto at least next 30 years.

(b) The local authorities shall take steps for selection, identification and acquisition of additional sites by following the directions in the preceding paragraph under the heading "Re : Local authorities which do not have the land fill sites / dumping grounds."

Re: The Local authorities which have facilities which are noncompliant with MSW Rules 2000 and MPCB authorization:

9. The MPCB shall make report in respect of each of the designated dumping site within jurisdiction of all Municipal Corporations, Municipal Councils and Panchayats to ensure Compliance with MSW Rules and these directions and directions of the Supreme Court. This exercise to be completed within a period of 8 weeks.

10. All dumping sites which do not comply with MSW Rules and other governing applicable laws and these directions and the sites which are not designated as per rules shall be discontinued and closed within a period of three months or an acquisition of new site whichever is earlier.

11. All sites which have exceeded their capacity shall be closed down as per procedure under MSW Rules.

Re: The Local authorities which do not have waste processing facilities:

12. The Local authorities shall take steps for treatment of solid waste in accordance with MSW

Rules either through themselves or through an identified agency.

13. The Municipal Corporations and Councils shall adopt measures as per Schedule III of MSW Rules to ensure :

(i) Segregation of Municipal Solid Wastes

(ii) Setting up facilities for processing biodegradable wastes by composting, vermi composting, anaerobic digestion or any other biological processing

(iii) Eventual elimination of landfilling requirements for biodegradable wastes

(iv) The State Government shall take decision on the pending proposals / applications made by the local authorities for grant of lands on lease or otherwise, or grant of NOC etc. within a period of 45 days from date of this order.

(v) The Local authorities which have not made such applications shall do so within a period of 4 weeks to the State Government and the State Government shall take a decision thereon within 45 days thereafter. 14. Sites for composting, Verme Composting etc.

(i) These sites shall also comply with these directions and MSW Rules (Schedule IV)

(ii) MPCB shall prescribe cap on storage of wet garbage to be treated at these sites so that the site does not become a dumping ground

(iii) These sites shall also comply with the Rules for storage of garbage as permitted by MPCB under MSW Rules

(iv) In the event of non-compliance of these directions MSW Rules and parameters as regards, storage of wet garbage limit of storage and operation of composting or Verme compost plant, the same shall be closed down and shall not be re-operated until MPCB reports remedial measures and its compliance.

15. General :

Action Plan for Treatment and Processing of Solid Waste

<i>Sr. No</i>	<i>Action Plan Details</i>	<i>Time Schedule</i>
1	<i>To develop mechanism for collection, segregation (at source/site) and transportation to processing facility and landfill site.</i>	<i>Within 2 months after possession of land.</i>
2	<i>To settling up and commissioning of waste processing facility.</i>	
	<i>(a) Selecting technology</i>	<i>Within 2 months after possession of land.</i>
	<i>(b) Preparation of detailed project report,</i>	<i>Within 2 months after selection of technology.</i>
	<i>(c) Obtaining clearance from MCZMA/MOEF</i>	<i>Within 4 months from submission of the proposal by the ULB.</i>
	<i>(d) Inviting tenders and appointment of Agency.</i>	<i>Within 2 months after obtaining clearance from MCZMA/MoEF.</i>
	<i>(e) Issuance of Work Order with the time frame & necessary conditions by Municipal Authority</i>	<i>Within 1 month.</i>
	<i>(f) Settling of MSW processing facility & making it operational.</i>	<i>Within 18 months from the date of work order.</i>
	<i>Development & Commissioning of secured landfill site</i>	<i>Within 18 months from the date of work order.</i>
3	<i>Development & Commissioning of secured landfill site.</i>	<i>Within 12 months from the date of work order.</i>
4	<i>Closure of cell & its monitoring for at least next fifteen years as per Rules.</i>	<i>After exhausting capacity of the existing cell.</i>
5	<i>Improving of existing facility.</i>	
	<i>(a) Closure of existing dump site if required as per MSW Rules.</i>	<i>Within 16 months.</i>
	<i>(b) Setting up and commissioning of waste processing facility if not available at existing site.</i>	<i>Within 24 months.</i>
	<i>(c) Improvement in the existing waste processing facility and secured landfill site in accordance with the MSW Rules.</i>	<i>Within 6 months.</i>
	<i>(d) Development of new secured landfill site at existing site if not available.</i>	<i>Within 12 months.</i>
6.	<i>(a) Application for Authorization</i>	<i>As per Rules.</i>

	<i>by Municipal Authority (Rule 4(2))</i>	
7.	<i>(b) Grant of a authorization for processing facility and landfill site (Rule 6(2))</i>	<i>As per Rules.</i>



NGT

“16. In the Solid Waste/Garbage Management following issues shall be considered for long term and future planning by Local Authorities State and Central Government and Pollution Control Boards :

- i) Daily operations and maintenance of Dumping and Landfill sites.*

ii) Daily operation and maintenance of Waste Treatment Facilities of Biodegradable wastes.

iii) Fire protection during dump levelling.

iv) Garbage Bio-mining

v) Closure of sites which have attained their maximum capacity.

vi) Use of closed landfill sites as per MSW Rules.

vii) Subsequent land use.

viii) Water consumption for capping.

ix) Methane Generation.

x) Encouraging the Local authority to adopt these measures and comply with the direction to earn Carbon credits.

17. The local bodies may assign the above work to private entrepreneurs who will undertake this work in entirety including acquisition of land as well as installation of treatment plants.

18. The local authority/corporation shall issue directions to the residents for solid waste segregation of garbage as per rules and take steps for its compliance.

19. The State Government/Local Authorities shall give due and top priority for establishing/setting up common facilities or landfill/dumping sites/processing facilities.

20. Whenever permission is required under the provisions of Environment Impact Assessment (EIA notification), Coastal Regulation Zone (CRZ Regulation), River Regulation Zone Policy (RRZ) (RRZ Policy),

Forest Laws etc. such authorities shall process and consider the applications made by Local Authority/Designated agency, expeditiously within a period of 4 weeks or as per the time limit prescribed in the relevant rules.

21. It is clarified that whenever there is a statutory period prescribed for processing of any application grant of clearance etc. the period prescribed therein shall be applicable.

10. The issue is, however, not only related to maintenance of the MSW plant but also the priority to the governance of MSW (M & H) Rules, 2000. In spite of these specific directions of the Hon'ble High court giving elaborate time bound directions, based on the understanding of the concerned authorities, all the authorities including Urban Development, Municipal Corporation, MPCB and Collector, failed to comply with such directions. Such non-compliance is leading to unhygienic conditions; both within the city limits as well as the MSW dumping areas, and such waste management practices pose serious environmental concerns including health effects and environmental degradation in terms of air pollution, soil pollution and water pollution. In our humble opinion, it is now necessity of the time that

requires stringent measures to be adopted in order to protect environmental degradation not only in Municipal limits of any town, but also within limits of Municipal Corporation. In our opinion, this is high time that no permission shall be granted to the Housing Project, Construction Activities or Industrial Activities, within the Municipal premises and also, for farm houses and other such constructions at least, up till distance of 500m from the plant of MSW, which we have referred to above. Secondly, the industrial units ought to be directed to implement a part of internal segregation of MSW, bio-degradable waste and to construct composting plant as well as incineration plant within its own premises, at its own cost. Thirdly, as we see from the map which is placed on record the plant of NMC is in the proximity of Farm House. It is but natural that the area of farm house by the side of Municipal road, is likely to develop one day or the other and more MSW will be generated without causing any loss to the owner of the farm house. Naturally, the farm house activity also requires some kind of check and balance, though all the farm houses cannot

be stalled if they are not likely to endanger the environment. The immediate action required in the present case, is to take away excessive load of heaped garbage and streamline the work of plant by carrying repairs/renovation and thereafter to ensure that no excessive garbage dumping activity will be allowed. May be NMC will be required to employ some temporary/contractual staff members to protect the area during night hours and some employees during day hours, with weapons as may be need.

11. In the result, we allow the Application with following directions:

- i) NMC shall give work of contract to remove and dispose at least 2/3rd garbage heaped at the SLF with proper use of air masks to avoid unhygienic environment and strong odour problem to such workers. This work shall be completed in next four (4) months.
- i) The Collector and Concerned Gram panchayats are prohibited under Mandamus not to issue any construction permission to any Farm house / Societies/ commercial Project or like activities situated within 500m of the Plant, unless, they are provided with their own MSW management, including composting plant/SLF plant,

STP etc, which will avoid additional burden on the NMC MSW plant in question.

ii) NMC shall not issue any construction permission to any residential, commercial or industrial project within Municipal Corporation limits, unless and until, there is a provision shown in the approved map and in case of ongoing projects, the actual verification through an Architect, is carried out, before grant of Occupancy Certificate, to the effect that there is due provision for adequate internal STP, internal plant for Composting, internal plant for incineration and internal minimum greenery/plantation/afforestation, which shall be at least, in five number per person for one residential unit. Such restriction shall be applicable till the MSW plant is made functional as per MSW rules for a continuous period of six (6) months.

iii) The Farm House activity shall not be allowed within Municipal limits and no residential permission shall be granted to any construction activity, which is likely to enhance load on MSW facilities.

iv) These directions will take effect immediately w.e.f. 26th November, 2015 and in the meanwhile, the Chief Secretary, State of Maharashtra shall

promulgate all the directions stated above to the concerned Authorities and copy of this order be issued to the Collector, Pune as well as Commissioner, Pune by the Law Officer of Collectorate, Pune through their PAs, without fail and by the concern officer of the MPCB to all the concerned Authorities by email or by any other authentic mode.

The Applications are accordingly disposed of.
No costs.

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(Justice V. R. Kingaonkar)

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(Dr.Ajay A. Deshpande)

PUNE
DATE: NOVEMBER 9TH 2015.
HkK.

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