

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

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**M.A. NO. 773 OF 2014
AND
ORIGINAL APPLICATION NO. 139 OF 2014**

IN THE MATTER OF:

Mohali Industry and Commerce Association
Through its President Nikhil Saraf,
D-178, Industrial Focal Point,
Mohali, Punjab

.....Applicant

Versus

1. State of Punjab
Through its Secretary,
Department of Local Government,
Civil Secretariat, Punjab,
Chandigarh-160 001
2. Municipal Corporation,
Through its Chairman
Mohali, Municipal Bhawan,
Sector 68, Mohali-166 062
Punjab
3. Punjab Pollution Control Board,
Through its Chairman
Vatarvaran Bhawan, Nabha Road,
Patiala-147001,
Punjab
4. Senior Superintendent of Police,
Mohali, Punjab.
5. People's Welfare Association (Regd.)
Through its General Secretary,
Sh. S.S Jaspal,
762, Sector-60, Mohali, Punjab

.....Respondents

Counsel for Applicant:

Mr. Neeraj Madan, Advocate
Mr. Paviter Singh for Mr. Nikhil, Advocates

Counsel for Respondents:

Mr. Anil Soni and Ms. Saakshi Agrawal, Advocates for Respondents No. 1 & 4

Mr. Sanju Soni, Advocate for Respondent No. 2.

Mr. Nitin Kaushal and Mr. Rahul Meena, Advocate for Respondent No. 3.

JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

Reserved on 11th December, 2014

Pronounced on 13th January, 2015

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The applicant is a registered society vide Registration Certificate dated 10th November, 2010. The aims and objects of the applicant body include creating awareness among people on climate change, global warming and green energy resources and to facilitate abatement and mitigation of harmful emissions and facilitate creation of pollution free environment.

2. The applicant approached the Tribunal by filing the present application under Sections 14 and 15 read with Section 18 of the National Green Tribunal Act, 2010 (for short 'the NGT Act') against the pollution and environmental degradation caused by the illegal dumping of industrial and Municipal Solid Waste (for short 'MSW') by the Municipal Corporation, Mohali (for short 'the Corporation') in rivulet "Patiala Ki Rao" and in the surrounding areas. Serious environment and health hazards are apprehended and there is

constant fear of epidemic during the rainy season, apart from foul smell and stink emanating from this illegal dumping ground. On this premise, the prayer is that the Corporation be directed to immediately stop illegal dumping of Mohali's industrial, municipal, medical and toxic waste and garbage in the rivulet of "Patiala Ki Rao", at Sector 74, Mohali and the surrounding areas. They shall be directed to clean and remove all illegal dumping at the site in question. Notice of this application had been issued to the respondents. All the respondents have filed their replies. It is not necessary for us to reproduce the averments made in these replies. Suffices it to note that vide our order dated 7th August, 2014 we had constituted a Committee of Senior Officer of the State of Punjab from Environment Ministry, Environmental Engineer of Punjab Pollution Control Board, a Senior Officer of the Corporation and a Senior Officer of Urban Development Ministry, State of Punjab to visit the site and submit a report in regard to the status of the site in question and dumping of MSW on such site. On 29th September, 2014, when the matter came up before the Tribunal, it was noticed that the authorities would get in touch with each other; particularly the Punjab Pollution Control Board and effective steps will be taken to remedy the shortcomings that had been pointed out by the Committee in its report submitted to the Tribunal. For compliance thereof the matter was adjourned. Thereafter, a detailed affidavit was filed on behalf of the Corporation, submitting the details of the project and the measures that the Corporation proposes to take not only to dump the MSW but also other wastes in accordance with

the Municipal Solid Waste (Management and Handling) Rules, 2000 (for short 'Rules of 2000') and other cognate provisions.

3. It is the common stand taken on behalf of all the respondents that Mohali shall form part of the Model MSW Management Plan, 2014 as it is one of the eight clusters carved out for the entire State of Punjab. They would establish the MSW plant expeditiously and in any case, within a period of two and a half years. Once this plant is established, all grievances raised by the applicant would cease to exist and there will be no adverse impact on environment. They further submit that the land that had been acquired for construction of the project had to be released from notification as the result of the judgment of the Supreme Court in the case of *Gurinderpal Singh & Ors. v. State of Punjab & Ors.*, Civil Appeal No. 10181/2013 decided on 11th November, 2013. The Supreme Court in that case, while following the principle stated in *Sri Radhey Shyam (Dead) through L.Rs. and Ors. vs. State of U.P. and Ors.*, (2011) 5 SCC 553, stated that "while 'eminent domain' is a right inherent in every sovereign to take an appropriate property belonging to the citizens in public use, but waiver of compliance to the mandate of Section 5-A of the Land Acquisition Act, 1894 in terms of Section 17(1) and 17(4) of the Land Acquisition Act, 1894, has to be exercised sparingly and strictly in accordance with law. The satisfaction of the government is subjective, but, is a condition precedent to the exercise of power under Section 17(1). The exclusion of the rule of '*audi alteram partem*' embedded in Sections 5(1) and (2) in terms of Section 17(1), is not warranted as a routine

and has to be strictly complied with in accordance with law”. Thus, in that case, the order for acquisition of land under the ‘urgency clause’ was set aside with liberty to Government to initiate fresh process for acquisition of land.

5. The State Government has taken steps for acquiring the land afresh and in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No.30 of 2013). The land has been acquired at Village Samgauli, Tehsil Dera Bassi, Distt. S.A.S. Nagar. The acquisition is likely to be completed shortly, and in any case not later than one year from now. The kind of objections that have been raised by the applicant are quite similar to the ones raised before the Tribunal in the case of *People for Transparency through Kamal Anand v. State of Punjab*, Application No. 40 (THC) of 2013, decided on 25th November, 2014. Even though, the objections of the applicant presently are in relation to a site which is temporary and the grievance raised by the applicant may not be entirely incorrect or unjustified, but fact of the matter is that till the time the MSW Plant comes up under the general scheme afore-noticed, the MSW has to be collected, dumped and disposed of in accordance with the Rules of 2000. All authorities concerned are expected to take all precautions so as to ensure that health of the people at large is not adversely affected in any case whatsoever. This would require certain directions to be passed by the Tribunal which must be adhered to by all the authorities concerned.

6. One of the contentions raised before us on behalf of the applicant is that, even after filing the present application, no effective steps have been undertaken by the authorities to remedy the wrongs existing at the dumping site in question. We have already noticed that certain shortcomings were pointed out by the Committee appointed by the Tribunal and other authorities concerned, including the Corporation, which was directed to comply with the observations of the Committee. They have made positive attempts and in any case, have assured the Tribunal now that they shall not permit any degradation of environment and endangering of public health, as a result of the dumping at the site.

7. One of the aspects of the present case is that the industrial waste and other wastes from the industrial area is not being collected by the Corporation and is not being dealt with in accordance with the MSW Rules of 2000. It is not only desirable but essential that the Corporation, in discharge of its statutory obligation must ensure proper collection and disposal of waste from the industrial area as well.

8. The Principle of 'Sustainable Development' leads to some inconvenience and does cause adverse effect on the environment. But so far such impact or effect on environment is retro-gradable or is not irretrievable within the concept of sustainable development, it should be permitted, particularly when it is in the larger public interest and for such time till lawful alternative becomes available. Till the time the MSW Plant is established and made operational, some site has to be used as a dumping site in accordance with the

Rules of 2000. The present site has been used for this purpose now for a considerable time. Surrounding developments and residential complexes have come up subsequently. Thus, we do not find it a fit case for issuing prohibitory orders, rather, it falls in the class of cases where the Tribunal should pass regulatory directions within the ambit and scope of Sections 14 and 15 of the NGT Act in light of the principles enunciated under Section 20 of the NGT Act.

9. Having given our serious consideration to the various aspects of this case, we dispose of this application with the following directions: -

1. The Corporation and all other concerned authorities shall ensure completion of acquisition proceedings at the earliest and in any case not later than one year from today, as prayed by the Learned Counsel appearing for these authorities. This land is being exclusively acquired for establishment of the MSW Plant under the Model MSW Management Plan, 2014 as this plant would fall under one of the eight clusters in which the entire State of Punjab has been divided by the authorities concerned. The scheme of formation of eight clusters has already been upheld by the Tribunal in its judgment in the case of People for Transparency (supra).
2. The MSW Plant shall be completed and made operational by all concerned as expeditiously as possible and in any case not later than January 2017, i.e. two years from today.

3. The directions passed and the plan accepted by the Tribunal in the case of People for Transparency (supra) shall *mutatis mutandi* operate and apply to this case, as well as that order shall be treated as integral part of these directions.
4. The present site in question would be treated as a 'temporary dumping site'. On this site, the Corporation and all other concerned authorities shall collect, segregate, dump and dispose of the MSW and other waste strictly in accordance with the Rules of 2000 and/or other relevant Rules.
5. There shall be door to door collection of the municipal waste and it shall be manually segregated at the collection points as well as at the loading points and finally at the dumping site.
6. The waste that is recyclable shall be given to licensed persons who are entitled to recycle plastic and other waste. Every effort would be made to send this plastic waste and other allied waste that could be used as fuel, to such industry and units which can consume such waste as fuel. Remnant garbage and MSW shall be dumped at the site in question after constructing proper pits with proper lining. The waste shall be covered by soil. There shall be spray of disinfectant at regular intervals to ensure that there is no foul smell emanating or the environment is not contaminated in any manner, whatsoever.

7. Collection of waste from door to door and from the transportation points shall be carried out by the Municipal Corporation regularly and without default. For the above, the Municipal Corporation would be entitled to prepare a schedule of environmental charges which every household, commercial, institutional or industrial units and/or any other person, living in and/or occupying any building, would be liable to pay, depending upon the area occupied by such person and approximate waste generated. The authorities will ensure provision of a green belt/temporary boundary wall around the temporary site.
8. The Municipal Corporation shall be liable to collect the MSW and all other wastes from the industrial area in accordance with the Rules of 2000 as afore-indicated.
9. The Corporation shall provide dustbins of distinct colours preferably green, red and black with appropriate signage upon it describing the kind of waste that can be put into that dustbin. For instance plastic bottle may be shown on one while the wet biodegradable waste like vegetables, remnant of fruits etc., food be shown on others. This must be provided in the entire residential and industrial area falling under the jurisdiction of the Mohali Municipal Corporation. This would help pre-segregated collection of municipal waste at source.
10. The Corporation shall fix responsibilities on concerned officers of the area, to ensure compliance of these directions.

11. The Head of the Corporation shall report compliance of these directions to the Secretary (Environment), State of Punjab and Secretary, local bodies, State of Punjab, who in turn, shall inspect the temporary site in question, as well as observe the progress of completion of project, in accordance with the Rules of 2000.
12. In the event of default in compliance of these directions, we would be compelled to pass coercive orders in accordance with the provisions of the NGT Act and the Code of Civil Procedure, 1908.
13. We grant liberty to the applicant or any other person to approach the Tribunal in the event of persistent defaults on the part of the Corporation and/or other concerned authorities.

With the above directions, this application stands disposed of with no orders as to costs.

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10. This application does not survive for consideration as the Original Application No. 139 of 2014 stands finally disposed of.

Consequently, this application stands dismissed as having become infructuous.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

Prof. A.R. Yousuf
Expert Member

New Delhi
13th January, 2015

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