

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE
STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NOS.19727 AND 19821 OF 2016

W.P.No. 19727 OF 2016:

Between:

G.J. Multiclave (India) Pvt. Ltd.
Sy. No.179 & 181
Edulapally village, Kothur Mandal
Mahaboobnagar District rep., by its C.E.O. Dr. S. John Robert

.... Petitioner

And

The State of Telangana, rep., by its Secretary, Environment, Forest,
Science & Technology Dept, Secretariat, Hyderabad and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 01.08.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

RAMESH RANGANATHAN, ACJ

*** THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**
AND
***THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ **W.P.No. 19727 OF 2016:**

% Dated 01.09.2017

G.J. Multiclave (India) Pvt. Ltd., Sy. No.179 & 181,
 Edulapally village, Kothur Mandal, Mahaboobnagar District
 rep., by its C.E.O. Dr. S. John Robert

.... Petitioners

v.

\$ The State of Telangana, rep., by its Secretary, Environment,
 Forest, Science & Technology Dept, Secretariat, Hyderabad and
 others.

.... Respondents

! **Counsel for petitioners:** Sri R. Raghunandan, Sri S. Niranjan
 Reddy, Learned Senior Counsel, Sri Sri V.B. Subrahmanyam, and
 Ms. Gorantla Sriranga Pujitha.

^ **Counsel for respondents:** Additional Advocate General

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? Citations:

- 1) (2000) 3 SCC 40
- 2) 1989 Supp (2) SCC 465
- 3) (2007) 6 SCC 35
- 4) (2006) 4 SCC 327
- 5) (2006) 3 SCC 434
- 6) (2007) 2 SCC 365
- 7) AIR 1961 284
- 8) (1989) Supl (1) SCC 347
- 9) (2008) 3 SCC 321
- 10) (1982) 1 SCC 39
- 11) (1986) 3 SCC 615
- 12) AIR 1963 SC 1295
- 13) AIR 1967 SC 1836
- 14) AIR 1975 SC 2299
- 15) AIR 1967 SC 1170
- 16) (2014) 10 SCC 673
- 17) AIR 1951 SC 467
- 18) 1918 (1) KB 101
- 19) 2011 8 SCC 670
- 20) (Judgment of Civil Appeal No.990 of 1968 dated 15.07.1968)
- 21) (1969) 1 SCC 308
- 22) 1962 Suppl. (3) SCR 36
- 23) AIR 1986 SC 180
- 24) (1996) 5 SCC 281
- 25) (2012) 8 SCC 326
- 26) (2016) SCC online 1881 (Madras HC)
- 27) (1998) 8 SCC 1
- 28) (Order in W.P.No.19064 of 2015 dated 30.07.2015)
- 29) (SLP (Civil) No.27327/2013)
- 30) AIR 1997 SC 1125

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION NOS.19727 AND 19821 OF 2016

COMMON ORDER : (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

W.P. No.19727 of 2016 is filed by G.J. Multiclave (India) Private Limited and W.P. No.19821 of 2016 is filed by Medicare Environmental Management Pvt. Ltd questioning the order dated 28.05.2016, passed by the Telangana State Pollution Control Board (hereinafter referred to as the "TSPCB"), as arbitrary, illegal, in violation of principles of natural justice, without jurisdiction and as contrary to the Bio Medical Waste Management Rules, 2016 (hereinafter referred to as the "2016 Rules") read with the Central Pollution Control Board Guidelines for Common Bio Medical Waste Management treatment facilities. A consequential direction is sought to direct the respondents to permit the petitioners to collect, transport, treat and safely dispose of Bio Medical Waste generated from HCE hospitals situated in Hyderabad and Ranga Reddy Districts as per the earlier consent order granted in their favour.

Facts, to the limited extent necessary, are that both the petitioners are companies which have established a Common Bio Medical Waste Management Facility (hereinafter called the "facility") in Hyderabad for bio-medical waste treatment. They were granted consent for establishment by the A.P. Pollution Control Board, pursuant to which they established the facility. Earlier, as the existing facilities were found insufficient, the services of M/s. G.J. Multiclave (India) Pvt. Ltd was extended to Kurnool, Mahaboobnagar and Nalgonda Districts. Both the petitioners were

granted consent for operations by the TSPCB which later informed all the facilities operating in Hyderabad and Ranga Reddy Districts, by proceedings dated 28.05.2016, that they proposed to demarcate the operation areas, among the facilities in Hyderabad and Ranga Reddy Districts, based on the location of the Health Care Establishments; thereby particular operational areas were assigned to each of the existing facilities, and the other facilities were prohibited from operating in such areas. The petitioners claim that this proposal for demarcation of areas was sought to be implemented by the TSPCB without undertaking any study, and without calling for any expert report/recommendations; and the impugned proceedings were issued, at the behest of the Government of Telangana, only to favour the unofficial respondent i.e M/s. Sattva Global Services Pvt. Ltd.

Before examining the rival submissions put forth both against, and in support of, the impugned proceedings dated 28.05.2016, it is necessary to note, *albeit* in brief, the functions which the Bio Medical Waste Management Facilities discharge. Bio-Medical Waste is generated during diagnosis, treatment or immunisation of human beings or animals or research activities pertaining thereto. The purpose which Bio Medical Waste Management seeks to achieve is to provide safe and economically viable disposal of waste generated from medical diagnosis, treatment etc. The hospital waste, once generated, is required to be segregated, collected, transported, safely treated and disposed off without causing damage to human health and the environment. The Environmental Protection Act, 1986 (hereinafter called the “1986 Act”) and the Environmental Protection Rules, 1986

(hereinafter called the “1986 Rules”) provide the legal frame work for regulation of bio-medical waste. The Central Government also made the 2016 Rules for management of bio-medical waste which are required to be complied by all Health Care Establishments and bio-medical waste management facilities. These Rules prescribe the duties of health care establishments, and bio-waste management facilities, in the management, treatment and disposal of bio-medical waste.

It is the petitioners case that the TSPCB permitted additional facilities to be established for treatment of bio-medical waste in Medak and Nalgonda Districts in the year 2015; M/s. Sattva Global Services Pvt. Ltd. obtained consent for establishment and authorisation from the TSPCB on 11.12.2015, and have commenced their operations; the petitioners were informed, by the impugned order dated 28.05.2016, that the TSPCB proposed to demarcate the operational areas of each of the facilities in Hyderabad and Ranga Reddy Districts, based on the location of the Health Care Establishments; all the major areas i.e., Khairatabad, Secunderabad, Shamirpet and Qutbullapur Mandals, wherein a majority of the corporate hospitals, Government hospitals, commercial laboratories and diagnostic centres are concentrated, have been allotted to the unofficial respondent which is a new and inexperienced operator in the market; the petitioners representations, objecting to such a proposal, was of no avail; and the petitioners were left with no other alternative except to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

The subject matter of the impugned order dated 28.05.2016 relates to deficiencies and competition among the facilities, demarcation of the areas among the facilities operating in Hyderabad and Ranga Reddy Districts, to increase the regulatory mechanism, and to fix responsibility of the common bio-medical waste treatment facilities for proper handling of bio-medical waste. Directions were issued by the TSPCB purportedly under Rule 6 of the 2016 Rules, and under Section 5 of the 1986 Act. Among the letters referred to, in the said order dated 28.05.2016, are the representations from the facilities operating in Hyderabad and Ranga Reddy Districts, the representations of the petitioner in W.P. No.19821 of 2016 dated 09.06.2015, and the petitioner in W.P. No.19727 of 2016 dated 18.06.2015. Reference is also made therein to a series of meetings which were held with the representatives of all the four facilities on 11.01.2016, 21.01.2016, 12.02.2016 and 26.04.2016, and the representation of the Telangana CBMWTF Association dated 12.12.2015.

The impugned order dated 28.05.2016 records that, as per the Central Pollution Control Board (hereinafter called the "CPCB") guidelines, the facilities are permitted to establish their units in any area; however one facility is allowed to cater only upto 10,000 beds at the rate approved by the prescribed authority; the facilities are also not allowed to cater to health care establishments situated beyond a radius of 150 kms; if in any area 10,000 beds are not available, within a radius of 150 kms, another facility may be allowed to cater to the health care units situated outside the 150 kms radius; the Chairman, CPCB, in his letter dated 07.10.2009, informed that some of the States had not complied with the

guidelines for Common Bio Medical Waste Treatment Facilities, and Guidelines on the Design & Construction of Bio Medical Waste incinerators; the State Pollution Control Boards were requested to examine these issues while granting consent/authorisation, particularly with regards new facilities so as to ensure strict compliance with the bio-medical waste management handling Rules, 1998 (hereinafter called “1998 Rules), and the amendments made thereto; the status of implementation of the 1998 Rules were being constantly monitored by the Board by conducting special drives from time to time, based on complaints, adverse news items etc; based on the observations and violations noticed by the Board officials, during their inspection, the defaulting Health Care Establishments (HCE) and the facilities were reviewed; there has been a significant increase in the establishment of a number of hospitals, and the respective bed strength, from year to year requiring additional facilities to be permitted in this area; the TSPCB had permitted two facilities in the year 2015; an adverse news item was published in a Telugu daily on 25.05.2015 regarding lapses/information for implementation of the 1998 Rules; a review meeting was conducted on 30.05.2015 by the Government, in the chambers of the Minister of Environment and Forests, Science and Technology, with TSPCB officials and CBMWTFs Officials; while reviewing the lapses noticed in the GHMC area, the Principal Secretary to the Government, Environment and Forests, Science and Technology Department had instructed the TSPCB and CBMWTFs to work out the areas through which bio-medical waste from hospitals is transported, based on geographical locations, for smooth functioning of the

facilities; and the TSPCB was advised to divide the areas in Hyderabad and Ranga Reddy Districts, based on geographical locations, to avoid duplication of movement of vehicles, and to fix responsibility on particular facilities for effective monitoring.

The impugned order also records that the three facilities operating in Hyderabad and Ranga Reddy Districts, in their representations dated 09.06.2015 and 18.06.2015, had informed that the charges had decreased abnormally due to competition among the facilities; subsequently another adverse news item, on the facilities, was published in a Telugu daily on 15.07.2015 stating that they were not following the 1998 Rules regarding collection and disposal of bio-medical waste, due to competition among the facilities operating in Hyderabad and Ranga Reddy Districts; a review meeting was held by the Government on 07.09.2015, in the Chambers of the Hon'ble Minister, with officials of the TSPCB; the Hon'ble Minister had directed demarcation of areas among the facilities to avoid unhealthy competition among them, for effective implementation of the 1998 Rules, and to fix responsibility on each particular facility for the areas allocated to them, in accordance with the CPCB guidelines; the Telangana CBMWTF Association had addressed letter dated 12.12.2015 requesting division of areas, according to the bed strength of the facilities, to provide bio-medical waste services in Hyderabad and Ranga Reddy Districts, avoid unhealthy competition between the operators, and ensure equal rates across the State of Telangana; the TSPCB had undertaken the exercise of demarcation and allocation of the areas, among the four facilities that had obtained consent for operation from them, based on the proximity of the

location of the facilities limited to the bed strength of 10,000, as per the CPCB guidelines; a series of meetings were held by the officials of the TSPCB with representatives of the facilities which were permitted to operate in Hyderabad and Ranga Reddy Districts; from out of the four facilities two, including the unofficial respondent, had agreed in principle for demarcation of the area based on the facility location; however the other two (writ petitioners), which were established in 2000 and were catering to more than 10,000 beds, had opposed the proposal for demarcation of the areas, and had questioned the authority of TSPCB to direct demarcation; they had sought permission to operate and provide services, in the open competitive market, as per existing practices; they had opposed demarcation stating, among others, that they did not support the area distribution, as it restricted competition and favoured a specific new facility; the TSPCB was issuing bio-medical waste authorizations to the HCEs existing in Hyderabad and Ranga Reddy Districts with a condition that bio-medical waste shall be disposed of for treatment after disinfection and segregation between the four facilities; the HCEs, existing in Hyderabad and Ranga Reddy Districts, were tying up with all the facilities in operation as per their choice; as the TSPCB had earlier stipulated a condition for the HCE to tie up with any of the facilities permitted by the TSPCB, this had resulted in competition among the facilities; the TSPCB was facing difficulties in monitoring the services provided by the facilities, as it had permitted all the four facilities to cater to the HCEs in Hyderabad and Ranga Reddy Districts without demarcating their area of operations; all the facilities were operating, within each of the areas, causing

duplication; this had resulted in the inability of the TSPCB to fix responsibility on each facility to prevent dumping of bio-medical waste in municipal dump areas or in open areas; for effective implementation of the 2016 Rules, to fix responsibility on the facilities, and for an effective monitoring mechanism, the TSPCB had decided to allocate separate areas to each of the four facilities which were earlier permitted to operate in Hyderabad and Ranga Reddy Districts; demarcation of separate areas is based on the proximity of the location of the facility with respect to the bed strength of upto 10,000; after careful and detailed examination, the TSPCB decided to demarcate HCEs located in Hyderabad and Ranga Reddy Districts based on the proximity of hospitals, their geographical location as per the map, along with a statement showing the number of beds allocated to each facility within the upper limit of 10,000 beds as per CPCB guidelines; and four facilities were allocated the areas and bed strength as mentioned in the order.

The impugned order further records that a committee, consisting of the Principal Secretary, Ministry of Health and Family Welfare Department of the Government of Telangana, the Secretary, Environment, Forest, Science and Technology Department, and the Member Secretary, Telangana State Pollution Control Board, after detailed discussion and careful examination of the deficiencies, had observed that the present practice suffered from deficiencies; the regulatory mechanism should be strengthened, and responsibility should be fixed among the facilities, for proper handling of bio-medical waste; they had approved the proposal for demarcation of areas, and the respective

bed strength among the four facilities permitted to operate in Hyderabad and Ranga Reddy Districts; these steps were taken to ensure effective implementation of the 2016 Rules; in the exercise of its powers under Rule 6 of the 2016 Rules, and Section 5 of the 1986 Act, the TSPCB had directed the petitioners to restrict their services to HCEs located in the specified area as per the enclosed map limiting their bed strength to 10,000 beds; these directions were issued in order to (1) fix responsibility among the facilities, to ensure that each HCE located in the area was covered, and to take action against the facility, if any violation (dumping of bio-medical waste in municipal areas) was noticed; (2) to avoid unhealthy competition among the facilities, thereby regulating reduction in the price fixed by the prescribed authority for waste collection from the HCE; (3) avoid bidding for collection of waste from the facility; (4) reduction of price for collection of waste was hampering proper collection, transportation, treatment and disposal of bio-medical waste; (5) it would be easier for the facility to conduct training or awareness programmes for a particular area for proper segregation of bio-medical waste, to avoid its being mixed with municipal waste, and for better management of records as per the Rules; (6) to avoid duplication of vehicle movement in the same route by all the facilities, which was also cost effective to the facility; and (7) fixing of routes for movement of vehicles, allocated in a particular area to the specified facility, would ensure effective monitoring by GIS tracking.

By the impugned order the petitioners were directed to identify the HCEs, which were not covered in their respective area, and intimate the same to the TSPCB for immediate compliance.

They were also directed to conduct training classes to the HCE management and staff for handling bio-medical waste as per the Rules, to comply with the directions scrupulously as per the guidelines issued by the CPCB for the facilities, and to hand over a detailed list of the HCEs which were being catered to by the facilities outside their respective areas, with intimation to the HCEs. The petitioners were informed that failure to comply with these directions would result in action being taken under the provisions of the 1986 Act; and they should submit compliance status, on implementation of the impugned order, within 15 days along with route map, list of HCEs covered, and the number of beds being catered to.

Elaborate oral submissions were made on behalf of the petitioners by Sri R. Raghunandan and Sri S. Niranjan Reddy, Learned Senior Counsel. Written submissions have also been filed, on behalf of the petitioners, by Sri Sri V.B. Subrahmanyam, and Ms. Gorantla Sriranga Pujitha, Learned Counsel appearing on their behalf. The Learned Additional Advocate General, appearing on behalf of the respondents, supplemented his detailed oral submissions with written arguments. It is convenient to examine the rival submissions, urged by Learned Counsel on either side, under different heads.

I. NO POWER IS CONFERRED ON THE STATE POLLUTION CONTROL BOARDS, UNDER THE 2016 RULES, TO DEMARCATHE THE AREA OF OPERATIONS OF THE FACILITIES:

It is contended, on behalf of the petitioners, that Rule 6 r/w Schedule III Item No.6 of the 2016 Rules prescribes the powers/responsibilities of the State Pollution Control Board (the “SPCB” for short); the power to demarcate areas has not been

conferred on the SPCB thereunder; these Rules only authorize the TSPCB to initiate action against the facilities for violation of the Rules; the doctrine of *Expressio Unius Est Exclusio Alterius* would apply; Schedule III S.No. 6(i) relates to “inventorisation”, and does not include the power of demarcation; the power conferred under this provision merely enables the State Pollution Control Boards to make a list/inventory of data as provided therein; the power conferred on the State Pollution Control Board should be construed strictly; and the provisions of the 1986 Act r/w the 2016 Rules do not authorize demarcation of areas for operation among the facilities.

On the other hand, the Learned Additional Advocate-General would submit that the 2016 Rules were made in exercise of the powers conferred under Sections 6,8 and 25 of the 1986 Act; in exercise of the powers conferred by the 2016 Rules, and in order to regulate the mechanism, the TSPCB has undertaken inventorisation of the facilities, in Hyderabad and Ranga Reddy districts, by the impugned order; and the reasons for inventorisation, and consequential demarcation of areas among all the facilities, are detailed therein.

Section 6(1) of the 1986 Act enables the Central Government, by notification in the official gazette, to make rules in respect of all or any of the matters referred to in Section 3 thereof. Section 6(2)(c) enables such rules to provide for the procedure and safeguards for the handling of hazardous substances and clause (d) enables the Rules to provide for the prohibition and restriction on the handling of hazardous substances in different areas. Section 8 stipulates that no person shall handle or cause to be

handled any hazardous substance except in accordance with such procedure, and after complying with such safeguards, as may be prescribed. Section 25(1) of the 1986 Act enables the Central Government, by notification in the official gazette, to make rules for carrying out the purposes of the 1986 Act. A delegated power to legislate, by making rules “*for carrying out the purposes of the Act*”, is a general delegation without laying down any guidelines. It cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself. (**Kunj Behari Lal Butail v. State of H.P.**,¹). Section 25(2)(b) of the 1986 Act enables such rules to provide for the procedure in accordance with, and the safeguards in compliance with, which hazardous substances shall be handled or cause to be handled under Section 8.

The 2016 Rules were made by the Central Government in the exercise of its powers under Sections 6, 8 and 25 of the 1986 Act, and in supersession of the 1998 Rules. These rules, notified in the Gazette of India on 28.03.2016, apply to all persons who generate, collect, receive, store, transport, treat, dispose or handle bio-medical waste in any form including hospitals, nursing homes, clinics, dispensaries, veterinary institutions, animal houses, pathological laboratories, blood banks, ayush hospitals, clinical establishments, research or educational institutions, health camps, medical or surgical camps etc.

Rule 3(f) of the 2016 Rules defines “*bio-medical waste*” to mean any waste, which is generated during the diagnosis, treatment or immunization of human beings or animals or research activities

¹ (2000) 3 SCC 40

pertaining thereto or in the production or testing of biological or in health camps, including the categories mentioned in Schedule-I of the Rules. Rule 3(g) defines “*bio-medical waste treatment and disposal facility*” to mean 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. Rule 3(j) defines “*health care facility*” to mean a place where diagnosis, treatment or immunization of human beings or animals is provided irrespective of the type and size of the health treatment system, and research activity pertaining thereto. Rule 3(m) defines ‘*occupier*’ to mean a person having administrative control over the institution and the premises generating bio-medical waste, which includes a hospital, nursing home, clinic, dispensary etc. Rule 3(n) defines “*operator of a common bio-medical waste treatment facility*” to mean a person who owns or controls a common bio-medical waste treatment facility for the collection, reception, storage, transport, treatment, disposal or any other form of handling of bio-medical waste. Rule 3(o) defines “*prescribed authority*” to mean the State Pollution Control Board in respect of a State, and Pollution Control Committees in respect of Union territories.

Rule 5 of the 2016 Rules relates to the duties of the operator of a common bio-medical waste treatment and disposal facility and, thereunder, it is the duty of every operator, among others, to (a) 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 human health and the environment, in accordance with the Rules and

guidelines issued by the Central Government or the Central Pollution Control Board, (b) ensure timely collection of bio-medical waste from the occupier as prescribed under the Rules, (c) establish bar coding and global positioning systems for handling of bio-medical waste within one year, (d) inform the prescribed authority immediately regarding the occupiers which are not handing over segregated bio-medical waste in accordance with the Rules, (e) provide training for all its workers involved in handling of bio-medical waste at the time of induction, and at least once a year thereafter, (f) assist the occupier in training conducted by them for bio-medical waste management, and (k) allow occupiers, who are giving waste for treatment to the operator, to see whether treatment is carried out as per the Rules.

Rule 6 relates to the duties of authorities and, thereunder, the authority specified in column (2) of Schedule-III shall perform the duties as specified in column (3) thereof in accordance with the provisions of the Rules. Rule 7 relates to treatment and disposal. Rule 7(1) requires bio-medical waste to be treated and disposed of in accordance with Schedule-I, and in compliance with the standards provided in Schedule-II by the health care facilities and common bio-medical waste treatment facility. Rule 7(2) requires the occupier to hand over segregated waste as per Schedule-I to the common bio-medical waste treatment facility for treatment, processing and final disposal. Under the proviso thereto, the highly infectious bio-medical waste generated shall be pre-tested by equipment like autoclave or microwave. Rule 7(3) prohibits an occupier from establishing on-site treatment and disposal facility, if the service of a common bio-medical waste treatment facility is

available at a distance of 75 kilometers. Rule 7(4) stipulates that, in cases where the service of the common bio-medical waste treatment facility is not available, the occupiers shall set up requisite bio-medical waste treatment equipment like incinerator, autoclave or microwave, shredder prior to commencement of its operations as per the authorization given by the prescribed authority. Rule 7(5) stipulates that if any person, including an occupier or operator of a common bio-medical waste treatment facility, intends to use new technologies for treatment of bio-medical waste, other than those listed in Schedule-I, he shall request the Central Government for laying down standards or operating parameters.

Rule 8 relates to segregation, packaging, transportation and storage, and Rule 8(1) stipulates that no untreated bio-medical waste shall be mixed with other waste. Rule 9 relates to the prescribed authority and, sub-rule (1) thereof, prescribes that the authority, for implementation of the 2016 Rules, shall be the State Pollution Control Boards with respect to the States, and the Pollution Control Committees with respect to Union territories. Rule 9(2) stipulates that the prescribed authority, for enforcement of the provisions of the Rules in respect of all health care establishments including hospitals, nursing homes, clinics, dispensaries, veterinary institutions etc., shall be the Director-General, Armed Forces Medical Services who shall function under the supervision and control of the Ministry of Defence. Rule 9(3) stipulates that the prescribed authorities shall comply with the responsibilities as stipulated in Schedule-III of the Rules.

Rule 18 relates to the liability of the occupier and the operator of a facility and, under sub-rule (2) thereof, the occupier or operator of the common bio-medical waste treatment facility shall be liable for action under Sections 5 and 15 of the 1986 Act in case of any violation. Schedule-I relates to bio-medical waste categories, and the segregation, collection, treatment, processing and disposal of bio-medical waste. Schedule-III is the list of prescribed authorities and their corresponding duties.

As the dispute, in the present cases, relates to the jurisdiction of the TSPCB to demarcate areas, and restrict services to be provided by the facilities to health care establishments, within the area demarcated and allocated to them, it is necessary to note the powers conferred on various authorities, such as the Ministry of Environment and Forest, the Central Pollution Control Board, the State Government and the State Pollution Control Boards under Schedule III of the 2016 Rules as are detailed in the table below:

Sl. No.	Authority	Corresponding Duties
1	Ministry of Environment, Forest and Climate Change, Government of India	(i) Making policies concerning bio-medical waste management in the country including notification of Rules and amendments to the Rules as and when required. (ii) Providing financial assistance for training and awareness programmes on bio-medical waste management related activities to for the State Pollution Control Boards or Pollution Control Committees. (iii) Facilitating financial assistance for setting up or up-gradation of common bio-medical waste treatment facilities. (iv) Undertake or support operational research and assessment with reference to risks to environment and health due to bio-medical waste and previously unknown disposables and wastes from new types of equipment. (v) Constitution of Monitoring Committee for implementation of the rules.

		(vi) Hearing Appeals and give decision made in Form-V against order passed by the prescribed authorities. (vii) Develop Standard manual for Trainers and Training. (viii) Notify the standard or operating parameters for new technologies for treatment of bio medical waste other than those listed in Schedule-I.
2	Central Pollution Control Board	(i) Prepare guidelines on bio-medical waste management and submit to the Ministry of Environment, Forest and Climate Change. (ii) Co-ordination of activities of State Pollution Control Boards or Pollution Control Committees on bio-medical waste. (iii) Conduct training courses for authorities dealing with management of bio-medical waste. (iv) Lay down standards for new technologies for treatment and disposal of bio-medical waste (Rule 7) and prescribe specifications for treatment and disposal of bio-medical wastes (Rule 7). (v) Lay down criteria for establishing common bio-medical waste treatment facilities in the country. (vi) Random inspection or monitoring of health care facilities and common bio-medical waste treatment facilities. (vii) Inspection and monitoring of health care facilities operated by the Director General, Armed Forces Medical Services (Rule 9). (viii) Undertake or support research or operational research regarding bio-medical waste.
3	State Government of Health or Union Territory Government or Administration	(i) To ensure implementation of the rule in all health care facilities or occupiers. (ii) Allocation of adequate funds to Government health care facilities for bio-medical waste management. (iii) Procurement and allocation of treatment equipments and make provision for consumables for bio-medical waste management in Government health care facilities. (iv) Constitute State or District Level Advisory Committees under the District Magistrate or Additional District Magistrate to oversee the bio-medical waste management in the Districts. (v) Advise State Pollution Control Boards or Pollution Control Committees on implementation of these Rules. (vi) Implementation of recommendations of the Advisory Committee in all the health case

		facilities.
4	State Pollution Control Boards or Pollution Control Committees	(i) Inventorisation of occupiers and data on bio-medical waste generation, treatment and disposal. (ii) Compilation of data and submission of the same in annual report to Central Pollution Control Board within the stipulated time period. (iii) Grant and renewal, suspension or refusal cancellation or of authorization under these rules (Rule 7, 8 and 10). (iv) Monitoring of compliance of various provisions and conditions of authorization. (v) Action against health care facilities or common bio-medical waste treatment facilities for violation of these rules (Rule 18). (vi) Organizing training programmes to staff of health care facilities and common bio-medical waste treatment facilities and State Pollution Control Boards or Pollution Control Committees Staff on segregation, collection, storage, transportation, treatment and disposal of bio-medical wastes. (vii) Undertake or support research or operational research regarding bio-medical waste management. (viii) Any other function under these rules assigned by Ministry of Environment, Forest and Climate Change or Central Pollution Control Board from time to time. (ix) Implementation of recommendations of the Advisory Committee. (x) Publish the list of Registered or Authorized (or give consent) Recyclers. (xi) Undertake and support third party audits of the common bio-medical waste treatment facilities in their State.

By the impugned order, the area of operations of each of the facilities has been prescribed. The power to so prescribe falls within the ambit of *“laying down the criteria for establishing common bio-medical waste treatment facilities in the country”* which, under clause 4(v) of Schedule-III, is a duty required to be performed only by the Central Pollution Control Board, and not by the State Pollution Control Boards. Inventorisation of occupiers and data on bio-

medical waste generation, treatment and disposal is an exercise undertaken to prepare a list of occupiers i.e., a list of health care facilities wherein bio-medical waste is generated. The power conferred under clause 6(iv) on the State Pollution Control Board is to monitor compliance of the provisions of the Act and the Rules, and the conditions of authorization; and, under clause 6(v), to take action against common bio-medical waste treatment facilities for violation of the Rules.

While the State Pollution Control Board has been conferred the power to monitor compliance of various provisions and conditions of authorization, such a power does not bring within its fold exercise of the power to demarcate areas, as such a power is conferred, by clause 4(v), on the Central Pollution Control Board. As shall be detailed hereinafter, the CPCB has not fixed any particular area within which these facilities are required to operate. Consequently the question of the petitioners having failed to comply with the provisions of the Act, and the conditions of authorization, by operating beyond the demarcated areas does not arise. As the CPCB has not demarcated the area of operations of each of these facilities, these facilities cannot also be said to have violated the provisions of the Act, the Rules and the conditions of authorization in operating beyond the areas demarcated by the TSPCB. While the petitioners failure to adhere to the provisions of the Act and the Rules, and the conditions of authorization, for proper disposal of bio-medical waste would enable the TSPCB to take action against them, that does not confer on the TSPCB the power to demarcate the area of operations nor can it be said to be

incidental to their power to monitor compliance of the provisions of the Act, the Rules and the conditions of authorization.

This question can be examined from another angle also. The very fact that the rule making authority has conferred the power to lay down the criteria for establishing common bio-medical waste treatment facilities on the CPCB under clause 4(v) of Schedule-III of the 2016 Rules, can only mean that such a power has not been conferred on, or such an obligation entrusted to, the State Pollution Control Boards. The maxim “*expressio unius est exclusio alterius*” means that expression of one thing is the exclusion of another. Mention of one thing implies the exclusion of another. When certain persons or things are specified in a law, an intention to exclude all others from its operation may be inferred. (**Gram Panchayat v. Director, Consolidation of Holdings**²).

Schedule-III of the 2016 Rules assigns different duties to different authorities, and these duties do not overlap. Once the CPCB prescribes the criteria for establishing common bio-medical waste treatment facilities, which would include prescribing the area within which these facilities should operate, the concerned facility would be obligated to adhere to such criteria, and it is only thereafter would the State Pollution Control Boards be entitled to monitor compliance of operations within each such demarcated area by each such facility, or to take action against them if they operate beyond the area demarcated in their favour. It is not in dispute that no such criteria has been laid down by the CPCB till date and, in the absence of such criteria being prescribed, it is not open to the TSPCB to take upon itself the task of demarcating the

² 1989 Supp (2) SCC 465

areas within which each of these facilities should carry on their operations. Demarcation of areas, by the TSPCB under the impugned order dated 28.05.2016, within which each of the facilities are required to operate, is *ultravires* the 2016 Rules and is without jurisdiction.

II. NO POWER IS CONFERRED ON THE STATE POLLUTION CONTROL BOARDS, BY THE CENTRAL GOVERNMENT, TO DEMARCATe AREAS:

It is contended, on behalf of the petitioners, that Section 3 r/w Section 5 of the 1986 Act gives power to the Central Government to issue directions for the purposes of the Act; in the exercise of its powers under Section 23 of the 1986 Act, the Central Government, vide notification in S.O.No.372(E) dated 10.04.2001, delegated its powers, *“to issue directions to any industry or any local or other authority, for violation of the standards and rules relating to bio-medical waste”*, to the Andhra Pradesh State Pollution Control Board (APSPCB); the State Pollution Control Board, a delegated authority under Section 23 of the Act r/w the notification in S.O.No.372(E) dated 10.04.2001, cannot demarcate areas, as no such power has been conferred on it under the 1986 Act or under the 2016 Rules; the SPCB, being a creation of the statute (Section 4 of the Air Prevention and Control of Pollution Act, 1981), should act within the powers conferred on it; under the notification in S.O.No.372(E) dated 10.04.2001, the SPCB has been conferred the power to issue directions to any industry or any local or other authority for violation of the standards and rules relating to bio-medical waste; a delegatee must exercise its powers strictly within the four corners of a statute; delegated power cannot be so exercised as to bring into existence substantive rights, obligations

or disabilities not contemplated by the provisions of the Act itself; the impugned order dated 28.05.2016 is beyond the delegated power conferred on the TSPCB, and is without jurisdiction; the power exercised, under the impugned order, is not for the purposes of *“issuing directions to any industry or any local or other authority for the violations of the standards and rules relating to bio-medical waste”*; the impugned order is without sanction of law, and cannot be traced to Section 5 of the 1986 Act; the power to demarcate areas of operation, for each facility, cannot be inferred when it has not been expressly provided for; the 1986 Act, the 2016 Rules and the notification in S.O. No. 372(E) dated 10.04.2001 do not expressly authorize the TSPCB to demarcate and assign areas of operation to each facility; the Notification in S.O.No.372(E) does not confer power on the TSPCB to pass the impugned order; it only authorises the TSPCB to issue directions for violation of standards and rules relating to bio-medical wastes, hazardous chemicals, industrial solid waste and municipal solid waste including plastic waste notified under the 1986 Act; since there are no violations, the said notification is not applicable to the present case; and where a statute contemplates such a power to be exercised by the executive, it should be expressly provided for as in the Sugar Cane Control Order, 1960.

On the other hand, the Learned Additional Advocate General, appearing on behalf of the TSPCB, would submit that, in the instant case, the competent authority ie the Chairman, TSPCB, having noticed the serious violations (as is referred to in the impugned order), has undertaken the regulatory mechanism; the Legislature, in its wisdom, has used different expressions in

several enactments like closure, prohibition and regulation; while the first two are specific in terms, the word “regulation” is a generic term, and it would take within its ambit several regulatory factors or directions which may not amount to prohibition or closure; the instant demarcation of areas, amongst the four operators, is one such regulatory measure; in a case where the PCB had insisted on Bank Guarantees being furnished for complying with the conditions of CFE and CFO, the same was challenged by way of an appeal before the National Green Tribunal (the matter went from Odisha State); the National Green Tribunal considered the matter at length, particularly in the light of the regulatory power vested in the PCB; though the power to insist on a Bank Guarantee was neither traceable to the Regulations nor to the Rules made by the Central Government, the National Green Tribunal, after considering Section 31-A of the Air Act and the relevant provisions on this aspect, had upheld the action of the Board.

While examining the aforesaid contentions, it must be borne in mind that a delegatee must exercise its powers within the four corners of the statute; the power of a sub-delegatee is more restricted; a delegatee cannot act in violation of a statute; a sub-delegatee cannot exercise any power which is not meant to be conferred upon him by reason of the statutory provisions; and it must conform to the provisions of the regulations and the Act.

(Kurmanchal Institute of Degree and Diploma v. Chancellor, M.J.P. Rohilkhand University³; Kerala Samsthana Chethu

³ (2007) 6 SCC 35

Thozhilali Union v. State of Kerala⁴; Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group⁵; State of Kerala v. Unni⁶; State of Orissa v. Chakobhai Ghelabhai and Co.⁷; Shroff and Co. v. Municipal Corpn. of Greater Bombay⁸ and LIC of India v. Retired LIC Officers Assn.,⁹).

Chapter II of the 1986 Act relates to the general powers of the Central Government. Section 3, thereunder, confers power on the Central Government to take measures to protect and improve the environment. Under sub-section (1) thereof, subject to the provisions of the 1986 Act, the Central Government has been conferred the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment, and preventing, controlling and abating environmental pollution. The measures which the Central Government is empowered to take are, among others, those included in Section 3(2) of the 1986 Act. Section 3(3) enables the Central Government, if it considers it necessary or expedient so to do for the purposes of the 1986 Act, by order published in the Official Gazette, to constitute an authority or authorities for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under the 1986 Act, and for taking measures with respect to such of the matters referred to in Section 3(2) as may be mentioned in the order. Subject to the supervision and control of the Central Government, and the provisions of such

⁴ (2006) 4 SCC 327

⁵ (2006) 3 SCC 434

⁶ (2007) 2 SCC 365

⁷ AIR 1961 284

⁸ (1989) Supl (1) SCC 347

⁹ (2008) 3 SCC 321

order, such authority or authorities are entitled to exercise the powers or perform the functions or take the measures mentioned in the order, as if such authority or authorities had been empowered by the 1986 Act to exercise those powers or perform those functions or take such measures.

Section 5 relates to the power to give directions and thereunder, notwithstanding anything contained in any other law but subject to the provisions of the 1986 Act, the Central Government may, in the exercise of its powers and performance of its functions under the 1986 Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. Under the Explanation thereto, the power to issue directions under Section 5 includes the power to direct (a) the closure, prohibition or regulation of any industry, operation or process; or (b) stoppage or regulation of the supply of electricity or water or any other service.

Section 23 of the 1986 Act relates to the powers of delegation and thereunder, without prejudice to the provisions of Section 3(3), the Central Government may, by notification in the official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under the 1986 Act, except the power to constitute an authority under Section 3(3), and to make rules under Section 25, as it may deem necessary or expedient to any officer, State Government or other authority.

In the exercise of the powers conferred by Section 23 of the 1986 Act, the Central Government, vide notification in S.O.

No.372(E) dated 10.04.2001, which was published in the Gazette of India on 12.04.2001, delegated the powers vested in it under Section 5 of the 1986 Act to the Chairman of the State Pollution Control Boards (as mentioned in the table thereunder) to issue directions to any industry, municipal corporation, municipal council, cantonment board or any local or other authority. The said Notification reads thus:

“ MINISTRY OF ENVIRONMENT AND FORESTS NOTIFICATION
New Delhi, the 10th April, 2001

S.O. 372 (E) -- In exercise of the powers conferred by Section 23 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby delegates the powers vested in it under section 5 of the said Act to the Chairman, State Pollution Control Board / Committees as given in the Table below, to issue directions to any industry or any local or other authority for the violations of the standard and rules relating to bio-medical waste, hazardous chemicals, industrial solid waste and municipal solid waste including plastic waste notified under the Environment (Protection) Act, 1986, subject to the conditions that the Central Government may revoke such delegation of powers or may itself invoke the provisions of Section 5 of the said Act, if in the opinion of the Central Government such a course of action is necessary in the public interest.”

The power conferred on the SPCBs, under notification No.S.O.No.372(E) dated 10.04.2001, is a power delegated to it by the Central Government under Section 23 of the 1986 Act. The delegation is of the power vested in the Central Government under Section 5 of the 1986 Act. Such delegation of power must be confined strictly within the limits authorised by the instrument by which the power was delegated. Exercise of the delegated power by the TSPCB is limited to the extent of the delegation specified in S.O.No.372(E) dated 10.04.2001, and not beyond.

If, under the impugned order dated 28.05.2016, directions had been issued to the facilities for violation of either the standards or the rules relating to bio-medical waste, then the

SPCB, which passed the impugned order, would be held to have had the power to do so. The Rules, which are applicable, are the 2016 Rules which came into force on its publication in the Gazette of India dated 28.03.2016, and as noted hereinabove do not confer power on the TSPCB to demarcate areas within which these facilities are required to operate. In the absence of any such prescription in the rules, the question of its violation does not arise. The power to issue the impugned order is therefore not referable to the delegated power, to issue directions for violation of the rules, under S.O. No.372(E) dated 10.04.2001. As shall be detailed hereinafter, no standards were prescribed by the CPCB relating to demarcation of areas when the impugned order dated 28.05.2016 was passed by the TSPCB. Consequently the impugned order dated 28.05.2016 also travels beyond the powers delegated to the State Pollution Control Boards, under S.O. No.372(E) dated 10.04.2001, to issue directions for violation of the standards relating to bio-medical waste.

While the power conferred on the Central Government, under Section 5 of the 1986 Act, is no doubt wide and includes the power to direct the closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of any service, such power, under Section 5 of the 1986 Act, is conferred on the Central Government and not on the State Pollution Control Boards. It is wholly unnecessary for us, therefore, to examine whether the word 'regulation', in Explanation (a) to Section 5 of the 1986 Act, brings within its ambit the power to demarcate areas amongst the facilities also, as the power to do so has been exercised, in the present case, not by the Central Government

under Section 5 of the 1986 Act, but by the TSPCB. While the power of delegation, conferred on the Central Government under Section 23 of the 1986 Act, would include the power to delegate the power to issue any of the directions as is referred to in Section 5 of the 1986 Act (apart from the power to constitute an authority under Section 3(3) and the power to make rules under Section 25), the question which necessitates examination is whether or not the power to regulate the facilities, or to prescribe regulatory measures such as demarcation of areas of operations among all the facilities, has been delegated by the Central Government to the State Pollution Control Boards.

As is evident from the Notification, in S.O.372(E) dated 10.04.2001, the Central Government has not delegated all its powers, to issue directions under Section 5 of the 1986 Act, to the State Pollution Control Boards. The power delegated under the Notification, in S.O.372(E) dated 10.04.2001, is not even the power to prescribe standards and rules relating to bio-medical waste, but only to issue directions to an industry for violation thereof. As noted hereinabove, it is only if such standards and rules, relating to demarcation of areas of operations among the facilities, are prescribed, can the State Pollution Control Board be said to have been delegated the power to issue directions in case any industry violates such standards and rules. In the absence of prescription, there cannot be any violation of such standards and rules. Consequently the TSPCB lacks authority, under the Notification in S.O.No.372(E) dated 10.04.2001, to issue any directions for violation of non-existent standards and rules.

Section 3 of the Essential Commodities Act, 1955 provides for the regulation and prohibition of the production, supply and distribution of essential commodities by the Central Government. Section 5 of the said Act authorizes the Central Government to delegate its powers under Section 3 to such State government or authority. Section 6 of the Sugar Cane (Control) Order, 1960 incorporates a specific provision authorizing the Central Government to reserve any area, where any sugar cane is grown for a factory, after taking into consideration several factors enumerated therein. Unlike the Sugar Cane (Control) Order which specifically authorises the executive to exercise the power of regulation/ demarcation, such a power has not been expressly conferred on the State Pollution Control Boards under S.O.No.372(E) dated 10.04.2001.

III. DOES THE IMPUGNED ORDER DATED 28.05.2016 VIOLATE THE PETITIONERS FUNDAMENTAL RIGHTS UNDER ARTICLE 19(1)(G) OF THE CONSTITUTION?

It is contended, on behalf of the petitioners, that their fundamental right, to carry on their trade/business under Article 19(1)(g), is subject only to the reasonable restrictions prescribed under Article 19(6); the impugned order dated 28.05.2016, demarcating areas, infringes the fundamental right of the Petitioners guaranteed under Article 19(1)(g); the restriction on a fundamental right, without sanction of law, does not qualify as a “reasonable restriction” permitted under Article 19(6); executive action, without the sanction of law, does not qualify as a reasonable restriction which can justifiably curtail fundamental rights; the respondents have failed to discharge the onus to establish that the said order is backed by an express mandate of

law/sanction of law; and the impugned order ought to be struck down as not being a “reasonable restriction” under Article 19(6) of the Constitution.

On the other hand the Learned Additional Advocate General would submit that, by the impugned order passed by the TSPCB, the right guaranteed under Article 19(1) (g) of Constitution of India is not affected; even otherwise, the right guaranteed under Article 19(1)(g) is not absolute; the State is entitled to impose reasonable restrictions in line with Article 19(6) of Constitution of India; and the power of the State, to impose reasonable restrictions in the instant case, is traceable to the provisions of the 1986 Act, and the power delegated to it by the Central Government in this regard.

Under Article 19(1)(g) of the Constitution, a citizen has the right to carry on any occupation, trade or business, and the only restriction on this right is the authority of the State to make a law imposing reasonable restrictions under clause (6). (**Bishambhar Dayal Chandra Mohan v. State of U.P.**,¹⁰). The freedom guaranteed under Article 19(1)(g) is not free of restrictions or limitations. Normally the restrictions can be in two different forms – one is by way of a reasonable restriction to which the right is made subject to by the Constitution itself, while the other would be by virtue of a law that may be enacted by the State. The right to carry on business is not an absolute right but is a conditional right and is subject to such restrictions as may be placed.

The fact that the petitioners have the fundamental right, under Article 19(1)(g) of the Constitution of India to carry on the business of operating the facility, is not in dispute. Article 19(6)

¹⁰ (1982) 1 SCC 39

stipulates that nothing in Article 19(1)(g) shall affect the operation of any existing law in so far as it imposes, or to prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the rights conferred by the said clause. In view of Article 19(6), the fundamental right to carry on business, under Article 19(1)(g), is subject to any law already made or which the State may make. Such law must, however, fulfil the twin conditions of (a) being in the interest of the general public, and (b) the restrictions imposed thereby being reasonable. Environmental laws prescribe restrictions on the establishment of such facilities and require them to obtain Consent for Establishment (CFE), and the Consent for Operations (CFO), from the State Pollution Control Boards. The petitioners-facilities have been granted consent, both for establishment and for operations, by the State Pollution Control Board.

The expression “reasonable restriction” in Article 19(6) signifies that the limitation imposed on a person, in the enjoyment of the right, should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general principle of reasonableness can be laid down as applicable in all cases. Any restriction, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness and, unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of

Article 19, it must be held to be wanting in that quality.

(Bishambhar Dayal Chandra Mohan¹⁰).

Any law, which is made under clauses (2) to (6) of Article 19 to regulate the exercise of the right to the freedoms guaranteed by Article 19(1)(a) to (e) and (g), must be “a law” having statutory force and not a mere executive or departmental instruction. **(Bijoe Emmanuel v. State of Kerala¹¹).** Regulations, which have no statutory basis but are merely executive or departmental instructions framed for guidance, is not ‘a law’ which the State is entitled to make under clause (6) of Article 19 in order to regulate or curtail the fundamental rights guaranteed by Article 19(1)(g). **(Kharak Singh v. State of U.P.¹²; Bijoe Emmanuel¹¹).**

The State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. The contention that, by virtue of Article 162, the State or its officers may, in the exercise of its executive authority, without any legislation in support thereof, infringe the rights of citizens merely because the legislature of the State has the power to legislate, in regard to the subject on which the executive order is issued, is not tenable. Every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority. **(Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi¹³; Smt Indira Nehru Gandhi v. Raj Narain¹⁴; Bishambhar Dayal**

¹¹ (1986) 3 SCC 615

¹² AIR 1963 SC 1295

¹³ AIR 1967 SC 1836

¹⁴ AIR 1975 SC 2299

Chandra Mohan¹⁰; State of M.P. v. Thakur Bharat Singh¹⁵).

The State or its officers, in the absence of express legislation, cannot, in the exercise of their executive authority, infringe the fundamental rights of citizens, as such actions of the State will not qualify as a reasonable restriction for curtailing fundamental rights of citizens (**Bishambar Dayal Chandra Mohan¹⁰; Bijoe Emmanuel¹¹**).

No restrictions can be imposed, on the exercise of the fundamental right to carry on business under Article 19(1)(g), by way of executive instructions which do not have the force of law, or by way of an administrative order. “Law” must possess a certain form. It must contain a clear mandate/explicit command which may be prescriptive, permissive or penal. It must also seek to achieve a clearly identifiable purpose. While the form itself, or absence thereof, is not determinative, and its impact has to be considered as a lending or supporting force, the disclosure of a clear mandate and purpose is indispensable. (**Gulf Goans Hotels Company Ltd. v. Union of India¹⁶**).

It is also essential that what is claimed to be a law must be notified or made public in order to bind the citizen. Natural justice requires that, before a law can become operative, it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be

¹⁵ AIR 1967 SC 1170

¹⁶ (2014) 10 SCC 673

acquired with the exercise of due and reasonable diligence. (**Harla v. State of Rajasthan**¹⁷; **Gulf Goans Hotels Company Ltd.**¹⁶).

Acts of Parliament or the State Legislatures are publicly enacted. The debates are open to the public and the acts are passed by the accredited representatives of the people who, in theory, can be trusted to see that their constituents know what has been done. They also receive wide publicity. Not so orders of an authority. There must be promulgation and publication in their cases. The mode of publication can vary. But reasonable publication of some sort there must be. (**Johnson v. Sargent & Sons**¹⁸; **Harla**¹⁷; **Gulf Goans Hotels Company Ltd.**¹⁶). The mode of publication must be as prescribed by the statute. In the event the statute does not contain any prescription, and even under the subordinate legislation there is silence in the matter, the law will take effect only when it is published through the customarily recognized official channel, namely, the official gazette (**Harla**¹⁷; **Gulf Goans Hotels Company Ltd.**¹⁶).

A government policy may acquire the "force of 'law'" if it conforms to a certain form possessed by other laws in force, encapsulates a mandate, and discloses a specific purpose. (**Gulf Goans Hotels Company Ltd.**¹⁶). All executive actions, of the Government of India and the Government of a State, are required to be taken in the name of the President or the Governor of the State concerned. [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the President or the Governor of a State are required to be authenticated in the manner specified in the Rules made by the President or the

¹⁷ AIR 1951 SC 467

¹⁸ 1918 (1) KB 101

Governor. [Articles 77(2) and 166(2)]. Unless an order is expressed in the name of the President or the Governor, and is authenticated in the manner prescribed by the Rules, the same cannot be treated as an order on behalf of the Government. (**State of Uttaranchal v. Sunil Kumar Vaish**¹⁹; **Gulf Goans Hotels Company Ltd.**¹⁶). While even guidelines may, in certain situations, have the force of law, if they fail to satisfy the essential and vital parameters/requirements of law, the same cannot be enforced to the prejudice of the petitioners. (**Gulf Goans Hotels Company Ltd.**¹⁶).

As shall be detailed hereinafter, the guidelines issued by the Central Pollution Control Board, which were in force when the impugned order was passed, do not confer any power on the TSPCB to demarcate the areas within which alone these facilities must operate. Neither the 1986 Act nor the 2016 Rules, or for that matter the Central Pollution Control Board guidelines, confer any power on the TSPCB to demarcate the area of operations of each of these facilities. The impugned order passed by the TSPCB dated 28.05.2016, demarcating the area of operations of each of these facilities, is not a “law” within the meaning of Article 19(6) of the Constitution of India as it neither contains a clear mandate/explicit command which is either prescriptive, permissive or penal nor does it seek to achieve a clearly identifiable purpose. It is merely an administrative order issued specifically to the petitioners herein. As the impugned order dated 28.05.2016 places restrictions on the petitioners’ fundamental right to carry on business under Article 19(1)(g), and as it does not have the force of

¹⁹ 2011 8 SCC 670

law, the impugned order dated 28.05.2016 is liable to be struck down as ultra-vires Article 19(1)(g) of the Constitution of India.

IV. IS THE IMPUGNED ORDER DATED 28.05.2016 CONTRARY TO THE CPCB GUIDELINES?

It is contended, on behalf of the petitioners, that the TSPCB had limited the boundaries of operations of all the facilities by the impugned order contrary to the CPCB guide lines which are mandatory; the TSPCB has not been conferred the power of demarcation/bifurcation of the area of operations; sanction from the CPCB has not been obtained by the TSPCB; the impugned order is contrary to the CPCB guidelines under which one facility can cater upto 10,000 beds within a radius of 150 Kms; if the bed strength is more than 10,000, another facility may be provided; though there is no proper inventory, the TSPCB has not only restricted the jurisdiction of the facilities, but has also defined their area of operations, which is in violation of the mandatory guidelines of the CPCB; if, for any reason, the bed strength falls below 10,000, the petitioner-facility cannot extend its jurisdiction since it is prescribed and fixed by the impugned order; the impugned order creates a situation where the existing facility would not only suffer business loss, but there would be no further scope to enhance its jurisdiction upto 150 KM; this would result in taking away the benefit conferred by the CPCB guidelines; even if any excess bed strength is available, the same can be allotted to a new facility, but cannot be adjusted from the jurisdiction of the existing facility which has been providing services since long; though Ranga Reddy and Hyderabad districts fall within a radius of 150 Kms of the petitioners facility, other service providers were granted permission to establish units; such units are also

operating, along with the petitioners, in the same area; each of them have clients (Hospitals) of their own; the action of the TSPCB, being “damnum sine injuria”, cannot be justified on the ground that a maximum of 10,000 beds are prescribed for each facility; Rule 6 of the 2016 Rules, Section 5 of the 1986 Act, and the amendments thereto do not permit the TSPCB to restrict the services of a facility contrary to the CPCB guidelines; or to bifurcate areas within a 150 km radius.

The Central Pollution Control Board framed guidelines for Common Bio-medical Waste Treatment Facilities. Clause “D” of the CPCB Guidelines relates to the coverage area of the facility and reads as follows :

“ In any area, only one CBWTF may be allowed to cater up to 10,000 beds at the approved rate by the Prescribed Authority. A CBWTF shall not be allowed to cater healthcare units situated beyond a radius of 150 km. However, in an area where 10,000 beds are not available within a radius of 150 Km, another CBWTF may be allowed to cater the healthcare units situated outside the said 150 km.”

The guidelines for common bio-medical waste treatment facilities, laid down by the Central Pollution Control Board, prescribe the coverage area of each facility; and requires, in any area, for only one facility to be allowed to cater upto 10,000 beds at the rate approved by the prescribed authority. It prohibits the facility from being allowed to cater to health care units situated beyond a radius of 150 km. However, in an area where 10,000 beds are not available within a radius of 150 km, another facility may be allowed to cater to the healthcare units situated outside the said 150 km. In terms of the aforesaid guidelines issued by the Central Pollution Control Board, each of the facilities, including the petitioners herein, are required to cater only upto 10,000 beds at

the rate approved by the prescribed authority. Within the prescribed radius of 150 km, a facility is free to provide services to such healthcare establishments which desire to avail their services provided they do not cater beyond 10,000 beds, and do not exceed the rate approved by the prescribed authority. The respondents are not taking action against the petitioners herein for catering beyond 10,000 beds in health care establishments. It is not in dispute that all the healthcare establishments, which the petitioners-facilities serve, are situated within the permissible radius of 150 km.

In the absence of any stipulation in the CPCB guidelines, regarding the manner in which the health care establishments in an area, (within a radius of 150 KM having more than 10,000 beds), should be allotted among the existing facilities, it is for the health care establishments to choose the facility to which they should entrust the task of collection of bio-medical waste. In an unregulated market, the best available service provider would be chosen by the health care establishments concerned. While the upper limit of 10,000 beds per facility cannot be breached, the facilities from which services should be secured, is for the health care establishments to decide. These are all matters of agreement between the health care establishments and the facility concerned and, in the absence of any guidelines being prescribed by the Central Pollution Control Board in this regard, the TSPCB cannot prescribe the area within which, and the health care units to which, each of these facilities should provide their services.

V. DO THE CPCB GUIDELINES HAVE THE FORCE OF LAW?

It is contended, on behalf of the petitioners, that the Central Pollution Control Board (CPCB) Guidelines, prescribing the coverage area of 10,000 beds for each Bio-Medical Waste Treatment facility, is not a “law”; reliance placed by the TSPCB on the guidelines issued by the CPCB prescribing the coverage area of 10,000 beds for each bio-medical waste treatment facility, to justify the impugned order of demarcation of areas, is misplaced; these guidelines are mere suggestions issued by CPCB to the State Pollution Control Board, and are not statutory in nature; they do not have the force of law; and they cannot be relied upon by the TSPCB to enforce obligations which would cause prejudice to the petitioners.

As noted hereinabove, Rule 6 of the 2016 Rules relates to the duties of the authorities, and the authorities specified in Column (2) of Schedule III are required to perform the duties specified in Column (3) thereof. The CPCB has been entrusted the duty, in the table referred to in Schedule-III, of preparing guidelines for bio-medical waste management, and submit it to the Ministry of Environment, Forests and Climate Change; and to lay down the criteria for establishing common bio-medical waste treatment facilities in the Country. While the power conferred on the CPCB to prepare guidelines on bio-medical waste management, is referable to Schedule-III of the 2016 Rules which are statutory in character, the said power to prepare guidelines is circumscribed by the requirement of such guidelines being submitted to the Ministry of Environment, Forests and Climate Change. It does appear that the guidelines are submitted to the Central Government for it to exercise its powers under Section 5 of the 1986 Act to issue

directions to industries in this regard. It is only if the CPCB guidelines have the force of law, can they be enforced in proceedings under Article 226 of the Constitution of India. While Schedule III of the 2016 Rules requires the CPCB to lay down guidelines for establishing common bio-medical waste management treatment facilities in the country, and it does appear that, on such criteria being laid down, it would be obligatory for these facilities to adhere to such criteria, it is wholly unnecessary for us to dwell on this aspect as to whether these guidelines have the force of law, since no guidelines were prescribed by the CPCB in this regard when the impugned order dated 28.05.2016 was passed by the TSPCB.

VI. EFFECT OF THE NEW DRAFT GUIDELINES ON THE IMPUGNED ORDER DATED 28.05.2016:

It is contended, on behalf of the petitioners, that a conjoint reading of all sub-clauses in Clause 6 of the CPCB Guidelines, with regards Common Bio-Medical Waste Treatment Facilities, as sought to be amended by the Draft Guidelines dated 26.02.2014 issued by the CPCB make it clear that additional beds can only be allotted to a new facility, and the existing area of operation cannot be split up and allotted to different facilities.

The revised draft “Guidelines for Common Bio-medical Waste Treatment Facilities”, which is made available in the official website of the Central Pollution Control Board, and which were not in force when the impugned order dated 28.05.2016 was passed, reads as follows:

3) ENVIRONMENTAL LAWS APPLICABLE FOR ESTABLISHMENT OF A CBWTF:

Prior to allowing any new facility, the regulatory authority is required to conduct inventory with regard to the bio-medical waste

generation, as well as existing bio-medical waste treatment capacities. In case it is found that additional treatment capacity is required for a particular locality, in such a case action may be initiated by the prescribed authority for allowing additional treatment capacity in the form of a new CBWTF in the particular locality without interfering the coverage area of the existing CBWTF in that locality as per these guidelines.

Clause 6 thereof, which relates to the suggested coverage area for development of a facility is as follows: (i) Considering the economic viability and feasibility, and to have minimal impact on the environment, in any area only one CBWTF may be allowed to cater upto 10,000 beds at the approved rate by the prescribed authority; (ii) the CBWTF shall not be allowed to cater to healthcare units situated beyond a radius of 150 km; however, in an area where 10,000 beds are not available within a radius of 150 km, the existing CBWTF in the locality may be allowed to cater to the healthcare units situated outside the said 150 km, provided there is no other facility in the next 150 km region; (iii) in case, the number of beds exceeds more than 10,000 in a locality, in such a case, one more CBWTF may be allowed in such locality to cater services only to such additional bed strength in HCEs; and, in such a case, the area of influence shall be prescribed by the State Pollution Control Board.

Clause 6(iii) provides for a situation where the number of beds in a locality exceed 10,000; and in such a case one more facility, in addition to the existing facility, may be allowed in such a locality to service only such additional bed strength in healthcare facilities and, in which event, the area of influence shall be prescribed by the State Pollution Control Board. After these draft guidelines are brought into operation, it may possibly enable in State Pollution Control Board to prescribe the area of operation of

the new facility to service the additional bed strength in the health care establishments in the locality, without interfering with the services rendered to health care establishments by the existing facilities. In any event, the revised draft guidelines framed by the CPCB were not in force when the impugned order dated 28.05.2016 was passed. The earlier guidelines, which were in force when the order dated 28.05.2016 was passed, did not permit the TSPCB to prescribe the area of operations of each of these facilities i.e., to demarcate the areas within which the facilities are required to operate.

VII. WAS THE IMPUGNED ORDER DATED 28.05.2016 PASSED IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE AND DOES IT FALL FOUL OF ARTICLE 14 OF THE CONSTITUTION?

It is submitted, on behalf of the petitioners, that the rationale of 'proximity' adopted by the TSPCB, in demarcating and allocating areas of operation to each facility, does not satisfy the test of a permissible classification under Article 14; the impugned order suffers from non-application of mind; demarcation of areas, among the facilities does not have any rationale nexus with the object sought to be achieved; while 'proximity' was sought to be made the basis for demarcation, the table, submitted to this Court, would demonstrate that several areas which are proximate to one operator have been allotted to another; the impugned order is in violation of principles of natural justice as it was issued without notice, and without calling for objections on the proposed areas of demarcation for each facility; even if it were to be assumed that the TSPCB has the power to issue an order, for demarcation of areas, it is not in dispute that no notice of the areas, proposed to be demarcated and allotted to each facility has been issued by the

TSPCB; the impugned order is vitiated on the ground of non-adherence to the proper procedure, and non-compliance with principles of natural justice; the manner in which the areas were proposed to be demarcated among the facilities was not known to the petitioners, and their objections were not invited by the TSPCB; in issuing an administrative order/ executive order, which causes prejudice to a person and has civil consequences, the authority must follow the proper procedure, and must comply with principles of natural justice; the contention that notice was issued by the TSPCB to the petitioners for violation of the rules, and hence action was necessitated for demarcation of areas is baseless; the notice issued by the TSPCB pertains only to the operation of the facilities by the petitioners, and does not pertain to violation in collection/disposal of bio-medical waste; the CFO issued to the petitioner is still in force; and without assigning any reason or affording any opportunity to them, and in the absence of violation of the prescribed conditions, the TSPCB cannot restrict their area of operations contrary to the CFO.

On the other hand the Learned Additional Advocate-General would submit that, while undertaking the process of demarcation of areas between the four operators, the Competent Authority has ensured that each of them got 10,000 beds as per the Guidelines, for Common Bio-Medical Waste Treatment Facility, published by the CPCB which deals with the 'Coverage Area'; all the four facility operators were put on notice through e-mail on 11.2.2016, before demarcation of the areas, intimating the date of the meeting for demarcation of the areas among them; all the four operators received the said notices, and participated in the meeting; the

respondent authority has not violated principles of natural justice; and after elaborate consideration of all issues, during the review meetings at the highest level, the impugned order was passed.

The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the authority, and the rules under which it functions. (**Suresh Koshy George v. University of Kerala**²⁰; **Purtabpore Co. Ltd. v. Cane Commr. of Bihar**²¹). Where the Statute is silent as to the manner in which the power conferred should be exercised by the authority acting under it, exercise of power will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of disposal provided, the objective criteria, if any, to be adopted, the effect of the decision on the person affected, and other indicia afforded by the Statute. The mere fact that the Act in question or the relevant Regulations do not make it obligatory on the authority to call for an explanation, and to hear the person concerned, is not conclusive of the question whether the authority has to act in compliance with the rules of natural justice when exercising its power under the statute. (**Board of High School and Intermediate Education U.P., Allahabad v. Ghanshyam Das Gupta**²²; **Purtabpore Co. Ltd.**²¹).

While it does appear that the facility operators were intimated of the date of the meeting, for demarcation of the areas,

²⁰ (Judgment of Civil Appeal No.990 of 1968 dated 15.07.1968)

²¹ (1969) 1 SCC 308

²² 1962 Suppl. (3) SCR 36

neither were they put on notice nor were they given an opportunity of being heard regarding the actual area within which they were required to operate. Failure of the TSPCB to do so, has no doubt caused the petitioners substantial prejudice, as they are now required to cater to health care establishments not of their choice, or for that matter of the health care establishments, but to render service to health care units which were being catered to by others.

While geographical location of each of these facilities, and their proximity to the health care units, is said to be the basis for demarcation of the areas, the petitioners contend that it is not so, and have placed a table before us in support of their submission that the exercise of demarcation of areas, undertaken by the TSPCB, is irrational, and does not satisfy the test of a valid classification under Article 14 of the Constitution of India. Though geographical location, and proximity of the facilities to the health care establishments, can form the basis of a valid classification, the question which necessitates examination is whether the actual allocation of HCEs among the facilities satisfies the geographical location and proximity tests, for it is only then can the allocation of HCEs, among all the facilities, be said not to fall foul of Article 14 of the Constitution of India. While it would be wholly inappropriate for us, in proceedings under Article 226 of the Constitution of India, to take upon ourselves the task of allotment of health care establishments among each of these facilities, and stipulate the HCEs to whom these facilities should provide the service of collection of bio-medical waste, we are satisfied that no such exercise could have been undertaken by the TSPCB either, more so without putting each of these facilities on notice of the

proposed health care establishments to whom they would be required to render services, informing them of the basis on which these health care establishments are proposed to be distributed among the existing facilities, and giving them an opportunity of being heard, before demarcating the area of operations of each of these facilities. It is evident, therefore, that the impugned order is also in violation of principles of natural justice.

VIII. LETTER ADDRESSED BY THE ASSOCIATION OF FACILITY OPERATORS IS OF NO CONSEQUENCE:

Learned Additional Advocate General would submit that, from out of the four facility operators, two have given their consent for demarcation; and it is a matter of record that the Association, on behalf of the Petitioners, has requested, vide its letter dated 12.12.2015, that areas be specified to avoid unhealthy competition and equal rates across the State of Telangana. On the other hand, it is contended, on behalf of the petitioners, that the letter dated 12.12.2015 said to have been submitted by the Telangana CBMWTF Association, requesting the TSPCB to bifurcate the areas by specifying the areas to the facilities (CBMWTFs) for providing services at Hyderabad and Ranga Reddy Districts, has not been approved by the petitioners, nor were the petitioners a party to the said letter; and, hence, no reliance can be placed on the said letter to non-suit the petitioners.

While it does seem that the petitioners are members of the Association which appears to have requested the State Government to demarcate the area of operations among the facilities, the petitioners have invoked the jurisdiction of this Court complaining of violation of their fundamental rights under Articles

14 and 19(1)(g) of the Constitution of India. As the fundamental rights guaranteed under the Constitution cannot be waived (**Olga Tellis v. Bombay Municipal Corporation**²³), the respondents cannot be heard to contend that the petitioners have waived their rights. Even otherwise, the exercise undertaken by the TSPCB, for demarcation of areas, is without jurisdiction. Consent, that too of an Association of facility operators, would not confer jurisdiction on the TSPCB to demarcate areas in the absence of such a power being conferred on it either by the 1986 Act or the 2016 Rules, or even by the CPCB guidelines.

IX. IS THE TSPCB JUSTIFIED IN TAKING ACTION ON THE COMPLAINTS RECEIVED AGAINST PETITIONERS?

Learned Additional Advocate-General would submit that the Central Pollution Control Board, by its letter dated 7.10.2009, informed that some States are not complying with the “Guidelines for Common Bio-Medical Waste Treatment Facilities”, and the “Guidelines on Design and Construction of Bio-Medical Waste Incinerators”; the SPCBs were requested to examine the above issues, while granting consent for operation to the facility operators; in this background, the TSPCB has constantly monitored these issues, conducting special drives from time to time, based on complaints and adverse news items etc; it has noticed several violations on the part of the operators, and has then reviewed the matter; and all these facts have been stated in the impugned order itself.

It is no doubt true that, for a more effective control and monitoring of Environmental laws, the High Courts must shoulder greater responsibilities in tackling environmental issues which

²³ AIR 1986 SC 180

arise or pertain to the geographical areas within their respective States; and the primary effort of the Court, while dealing with environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of such laws (**Indian Council For Enviro-Legal Action v. Union of India**²⁴), that would not mean that jurisdiction can be conferred on the TSPCB which neither Parliament in enacting the 1986 Act, nor the Central Government in making the 2016 Rules, have chosen to confer on them. It is the duty of the High Court, in exercise of its powers of judicial review, to also ensure that the State and its instrumentalities function within the limits of the power conferred on them by Legislation – plenary and subordinate, and do not exceed their jurisdiction.

All that we are called upon to examine in these Writ Petitions is the validity of the exercise undertaken by the TSPCB to demarcate areas within which each of these facilities are required to operate. Violation of the provisions of enactments relating to environmental protection, or the Rules made thereunder, or the conditions subject to which consent was accorded by the State Pollution Control Board for establishment of the facility or for it to carry on its operations, would undoubtedly call for action being taken against the defaulting facilities by the TSPCB, after complying with the principles of natural justice. Suffice it to make it clear that the order now passed by us is confined only to an examination of the issue regarding exercise of power by the TSPCB to demarcate the areas within which the facilities are required to

²⁴ (1996) 5 SCC 281

operate. This order would not preclude the TSPCB from taking action against the errant facilities for violation, if any, of the provisions of environmental laws/the rules made thereunder/and the conditions subject to which consent was accorded for establishment and for operation of these facilities.

X. ALTERNATIVE REMEDY:

Learned Additional Advocate-General would submit that the Writ Petition as filed is not maintainable, as an effective alternative remedy is provided under Section 5-A of the Environment (Protection) Act, 1986, read with Sections 14 and 16(g) of the National Green Tribunal Act, 2010 (the “2010 Act” for short); the National Green Tribunal (“NGT” for short) has been conferred the power and jurisdiction to adjudicate upon any directions issued under the enactments mentioned in Schedule-I of the National Green Tribunal Act, 2010 (**Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India**²⁵); and following the said Judgment, a Division Bench of this Court, in W.P.No.19064 of 2015 dated 30.07.2015, had refused to entertain the Writ Petition, and had directed the Petitioners therein to avail the alternative remedy under the 2010 Act.

It is contended, on behalf of the petitioners, that Section 5A of the 1986 Act is not an effective remedy in the present case; availability of an alternate remedy is not a bar for entertaining a writ petition under Article 226 of the Constitution in three contingencies; all the three contingencies, under which a writ petition may be entertained by the High Court, are fulfilled in the present case; the petitioners have not violated any rule or direction

²⁵ (2012(8) SCC 326

relating to the environment; Sections 14 and 16(g) of the 2010 Act r/w Section 5 of the 1986 Act are inapplicable to the facts of the present case; the NGT does not have jurisdiction over the subject matter; the impugned order is neither referable to Section 5 of the 1986 Act nor to Rule 6 of the 2016 Rules; and the remedy of an appeal is, therefore, not available under Section 5-A of the 1986 Act, or under Sections 14 or 16(g) of the 2010 Act.

In examining the question whether the petitioners have an effective remedy under Section 5A of the 1986 Act read with Sections 14 and 16(g) of the 2010 Act, it is necessary to consider, in the first instance, whether there exists such an alternate remedy; and secondly, even if such an alternate remedy is available, would it disable this Court from entertaining these writ petitions under Article 226 of the Constitution of India. Section 5-A of the 1986 Act provides for an appeal to the NGT and, thereunder, any person aggrieved by any directions issued under Section 5 of the 1986 Act, on or after the commencement of the 2010 Act, may file an appeal to the NGT (which is established under Section 3 of the 2010 Act) in accordance with the provisions of the said Act.

Chapter III of the 2010 Act relates to the jurisdiction, powers and proceedings of the NGT established under Section 3 of the said Act. Section 3 relates to the establishment of a Tribunal and confers power on the Central Government, by notification, to establish, with effect from such date as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the 2010 Act. Section 14(1) stipulates that the NGT

shall have jurisdiction in all civil cases where a substantial question relating to the environment (including enforcement of any legal right relating to the environment) is involved, and such question arises out of the implementation of the enactments specified in Schedule I. Among the enactments specified in Schedule I is the Environmental Protection Act, 1986, at serial No.5 thereof.

Section 14(2) of the 2010 Act requires the NGT to hear disputes arising from the question referred to in Section 14(1), and settle such disputes and pass orders thereon. Section 16 confers appellate jurisdiction on the NGT and, thereunder, any person aggrieved by any direction issued, on or after commencement of the 2010 Act under Section 5 of the 1986 Act, may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the NGT. Under the proviso thereto, the NGT may, if it is satisfied that the appellant is prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under Section 16 within a further period not exceeding sixty days. The NGT has both original as well as appellate jurisdiction. Apart from the bar of jurisdiction of civil courts under Section 29, the 2010 Act is also given overriding effect over any other law under Section 33. (**Vellore Citizens Welfare Forums v. Union of India**²⁶).

The order, impugned in this writ petition, is dated 28.05.2016 and was subjected to challenge by way of a writ petition filed before this Court on 20.06.2016 within the 30 day period, prescribed in Section 16 of the 2010 Act, for preferring an

²⁶ (2016) SCC online 1881 (Madras HC)

appeal to the NGT. The 30 day period expired soon after 28.06.2016. The 60 day period, prescribed under the proviso to Section 16 of the 2010 Act, has also expired and, as on date, the statutory remedy under Section 16 of the 2010 Act is no longer available to the petitioners herein.

Learned Additional Advocate General would, however, contend that, since the statutory remedy of invoking the jurisdiction of the NGT was available when the writ petition was entertained by this Court under Article 226 of the Constitution of India, and as the petitioners chose to file a writ petition under Article 226 instead of availing the statutory remedy under Section 16 of the 2010 Act, the petitioners cannot take advantage of their own failure to invoke the jurisdiction of the NGT, and be heard to contend that they are now disabled from invoking the appellate jurisdiction of the NGT under Section 16 of the 2010 Act.

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has the discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that, if an effective and efficacious remedy is available, it would, normally, not exercise its jurisdiction. But the existence of an alternative remedy does not operate as a bar in at least three contingencies. The extraordinary remedy under Article 226 of the Constitution of India can be invoked, despite the availability of an alternate statutory remedy, in cases where (a) the writ petitions are filed for enforcement of any of the fundamental rights, (b) where there has been a violation of the principles of natural justice, and (c) where the order or proceedings are wholly without jurisdiction (**Whirlpool**

Corporation vs. Registrar of Trademarks²⁷). On the ground that all the aforesaid conditions are fulfilled in the present case and, therefore, mere existence of an alternate remedy under Section 5A of the 1986 Act is not a bar for entertaining the writ petition under Article 226 of the Constitution of India, the petitioners have invoked the jurisdiction of this Court.

In **Bhopal Gas Peedith Mahila Udyog Sangathan**²⁵, a three Judge bench of the Supreme Court held that, keeping in view the provisions and scheme of the 2010 Act, particularly Sections 14, 29, 30 and 38(5), it could safely be concluded that environmental issues and matters covered under Schedule – I of the NGT Act, should be instituted and litigated before the National Green Tribunal; and such approach may be necessary to avoid the likelihood of conflict of orders between the High Courts and the NGT. The Supreme Court directed that all the matters instituted, after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act, shall stand transferred and can be instituted only before NGT as this would help in rendering expeditious and specialised justice in the field of environment to all concerned. In **M/s. Bulk Drug Manufacturers Association v. Central Pollution Control Board, New Delhi**²⁸, a Division bench of this Court held that there was a remedy of an appeal under Section 28 of the Water Act, against the impugned proceedings which was concerned with the monitoring steps on the preventive principles governed by the Air, Water and the Environment (Protection) Acts.

²⁷ (1998) 8 SCC 1

²⁸ (Order in W.P.No.19064 of 2015 dated 30.07.2015)

In **Adarsh Co-operative Housing Society Limited v. Union of India**²⁹), the Supreme Court, by an interim order dated 10.3.2014, stayed the operation of paragraphs 40 and 41 of its decision in **Bhopal Gas Peedith Mahila Udyog Sangathan**²⁵]. However, the application was withdrawn on 11.8.2014. (**Vellore Citizens Welfare Forums**²⁶).

It is no doubt true that the Supreme Court, in **Bhopal Gas Peedith Mahila Udyog Sangathan**²⁵, has held that, in all matters falling within the ambit of the National Green Tribunal, it is only the jurisdiction of the National Green Tribunal which can be invoked; and the petitioners should not be permitted to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The fact, however, remains that the power of judicial review, conferred on the High Court under Articles 226 and 227 of the Constitution of India, is part of the basic structure of the Constitution (**L. Chandra Kumar v. Union of India**³⁰), and therefore such a power cannot be negated or circumscribed or obliterated even by a constitutional amendment made in exercise of the powers conferred under Article 368 of the Constitution, far less by Legislation – plenary or subordinate. The judgment in **“Bhopal Gas Peedith Mahila Udyog Sangathan”** can, therefore, only be understood as requiring any person, aggrieved by the order passed by the State pollution control board, to ordinarily invoke the jurisdiction of the NGT under the 2010 Act and for the High Court, while exercising its extra-ordinary jurisdiction under Article 226 of the Constitution, to bear in mind the existence of such an alternate remedy while deciding whether or not to exercise

²⁹ (SLP (Civil) No.27327/2013

³⁰ AIR 1997 SC 1125

discretion under Article 226 of the Constitution of India to entertain the Writ Petition. The observations in the aforesaid judgment cannot be understood as the statutory provisions of the 1986 Act or the 2010 Act barring exercise of the jurisdiction under Article 226 of the Constitution of India, as that would fall foul of the seven judge bench judgment of the Supreme Court in **L. Chandra Kumar**³⁰. As the seven judge bench judgment in **L. Chandra Kumar**³⁰ was not noticed by the three judge bench of the Supreme Court in **Bhopal Gas Peedith Mahila Udyog Sangathan**²⁵, the High Court would be bound by the law declared in **L. Chandra Kumar**³⁰. We must, therefore, express our inability to agree with the submission of the learned Additional Advocate General, appearing on behalf of the State of Telangana, that the jurisdiction of this Court, under Article 226 of the Constitution of India, is barred because of the existence of an alternate statutory remedy under the provisions of the 1986 Act read with the provisions of the 2010 Act.

XI. OTHER CONTENTIONS:

It is submitted, on behalf of the petitioners, that the TSPCB is not a delegated authority under S.O. No. 372(E) dated 10.04.2001 as the said notification expressly confers powers of delegation only on the SPCBs specified therein, which includes the Andhra Pradesh State Pollution Control Board (APSPCB); the power of the Central Government, to prescribe the maximum area of operations for service providers, cannot extend to specifying a particular area within which a particular service provider should operate; the TSPCB did not find any deficiencies in the petitioners units at any point of time; the impugned order was passed to make

room for a newcomer to grab the entire business; as a result, the petitioners will have to approach Hospitals which are the clients of other service providers; another facility i.e M/s. Roma Industries was granted CFE on 16.02.2015 permitting them to collect bio-medical waste from HCEs, located in Hyderabad and Ranga Reddy Districts, along with the other three facilities including the petitioners; though CFE was granted in favour of M/s. Roma Industries, long before M/s. Sattva Global Services Pvt. Limited, the impugned order was passed without considering the same, and completely ignoring M/s. Roma Industries; if this fact is taken into consideration, the entire exercise undertaken by the TSPCB would be rendered futile; G.O.Ms.No.148 dated 18.12.2000 prohibits setting up of any new air polluting industry in and around the biotechnology park; the site was allotted to M/s. Sattva Global Services Pvt Ltd in express violation of GO Ms. No. 148 dated 18.12.2000, as their processing facility is located in the biotechnology park; the action of the TSPCB in favouring and benefiting the M/s. Sattva Global Services Pvt Ltd, to the prejudice of other facilities, and in violation of government orders, is malice in law; and the TSPCB should have favourably considered the objections of the facilities, as is recorded in the impugned order, as it is in accordance with the CPCB guidelines.

As we have held that the impugned order passed by the TSPCB violates the petitioners fundamental rights under Article 19(1)(g) of the Constitution of India, it is without jurisdiction, and is in violation of principles of natural justice, it is wholly unnecessary for us to examine any of the afore-said contentions. Suffice it to make it clear that we have not expressed any opinion

on the above-mentioned contentions and they are left open, if need be, to be agitated in appropriate legal proceedings.

XII. CONCLUSION:

For the reasons stated hereinabove, the impugned order of the TSPCB dated 28.05.2016 is set aside as ultra-vires the 2016 Rules, without jurisdiction, in violation of principles of natural justice and as it violates the petitioners fundamental rights under Article 19(1)(g) of the Constitution of India. The Writ Petitions are allowed. However, in the circumstances, without costs. Miscellaneous Petitions, if any pending, are also closed.

RAMESH RANGANATHAN, ACJ

U.DURGA PRASAD RAO, J

Date: 01.09.2017.

Note: L.R. copy to be marked.
B/o
MRKR/CS



