

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPA No. 16828 of 2023
with
WPA No. 13843 of 2023**

**MikkyMegha Hospital Private Limited
and another
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. Syed E. Huda, Mr. Sounak Mookhopadhyay, Ms. Dipanwita Das
For the State in WPA 16828 of 2023	:	Mr. Tapan Kumar Mukherjee, Mr. Pinaki Dhole, Mr. Somnath Naskar
For the State in WPA 13843 of 2023	:	Mr. Pinaki Bhattacharyya, Mr. Sourav Chaudhuri, Ms. Anima Das Chakraborty
For the West Bengal Pollution Control Board	:	Ms. Sonal Sinha
For the respondent no.6	:	Ms. Reshmi Ghosh, Mr. Soumya Sarkar Chini
Hearing concluded on	:	26.07.2023
Judgment on	:	31.07.2023

Sabyasachi Bhattacharyya, J:-

1. The moot question which arises in the present writ petition is whether the renewal of the petitioners' licence, for operating a Diagnostic

Centre/Medical Facility, could be rejected by the respondent-Authorities on the ground of non-production of an agreement with respondent no.6, with regard to bio-medical waste management.

2. The respondent-Authorities place reliance on a notification dated March 28, 2016 issued by the Government of India, Ministry of Environment, Forest and Climate Change as well as the West Bengal Clinical Establishments (Registration, Regulation and Transparency), Rules, 2017 (hereinafter referred to, “as the 2017 Rules”). The Central Government notification dated March 28, 2016 formulates the Bio-Medical Waste Management Rules, 2016 (for short, “the 2016 Rules”).
3. Learned counsel for the petitioners argues that the petitioners produced a ‘No Objection’ Certificate from the Pollution Control Board, as required to be submitted for renewal of licence. However, the respondent-Authorities insisted on production of an agreement for bio-medical waste management.
4. It is clear from the communication dated July 12, 2023, by which the petitioners’ application for renewal of licence was cancelled, that the ground therefor was that the petitioner had failed to submit a valid agreement with any Common Bio-Medical Waste Treatment Facility approved by the West Bengal Pollution Control Board or to make any alternative arrangements duly approved by the Pollution Control Board for the treatment and disposal of the bio-medical waste generated from the petitioners’ Healthcare Facility.
5. The relevant statute governing the field is the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017

(in brief, “the 2017 Act”). As per Section 7(2)(e) of the said Act, no licence shall be granted in respect of a clinical establishment unless it has made such arrangements for disposal of bio-medical waste as may be prescribed. The respondents are justified in arguing that the same standards should be followed in case of renewal of license as well.

6. Section 2(1)(m) of the 2017 Act defines “prescribed” by rules made under the said Act.
7. In terms of Section 2(1)(m), the 2017 Rules have been notified *vide* Notification dated August 21, 2017, published in the Official Gazette.
8. Rule 21 under Chapter III of the same deals with Sanitation, Hygiene, Safety and Security.
9. Sub-rule (4) of Rule 21 provides that, in order to ensure sanitation and hygiene, the clinical establishment shall either obtain the authorization/licence/No Objection Certificate from Pollution Control Board under the Bio-Medical Waste (Management and Handling) Rules, 1998 (hereinafter referred to as, “the 1998 Rules”) and submit a copy of the same along with the application for new clinical establishment licence/renewal thereof, or submit a copy of application already submitted to obtain such authorization/licence/No Objection Certificate under such Rules.
10. In the present case, there is no dispute that the petitioner has produced, along with its application for renewal of licence, a No Objection Certificate from the Pollution Control Board.
11. The question which arises is whether the same amounts to sufficient satisfaction of Rule 21(4) of the 2017 Rules.

12. One of the options given in sub-rule (4) of Rule 21 is production of a No Objection Certificate from the Pollution Control Board, which has been complied with by the petitioner.
13. The question which arises next is, whether the said Certificate was under the 1998 Rules mentioned in sub-rule (4).
14. In such context, the Bio-Medical Waste (Management and Handling) Rules, 1998 acquires relevance. The said Rules were issued by the Government of India, Ministry of Environment, Forest and Climate Change.
15. However, *vide* Notification No. G.S.R. 343 (E) dated March 28, 2016, issued by the same Ministry of the Union Government, the Bio-Medical Waste Management Rules, 2016 (for short, “the 2016 Rules”) was promulgated. It is clearly stipulated in the said notification that the 2016 Rules have been made in supersession of the 1998 Rules.
16. Hence, by necessary implication, it is to be deemed that the 1998 Rules, referred to in Rule 21(4) of the 2017 Rules, should be read as the 2016 Rules, which has superseded the same.
17. It is interesting to note that the 2016 Rules were framed in exercise of the powers conferred by Sections 6, 8 and 25 of the Environment (Protection) Act, 1986 (in brief, “the 1986 Act”) and, thus, do not fall strictly within the purview of Section 2(1)(m) of the 2017 Act of West Bengal.
18. Yet, by virtue of Rule 21(4) of the 2017 Rules, framed under the 2017 Act, the provisions of the 1998 Rules and, hence, by implication the 2016 rules, have been imported as a part of the 2017 Rules, inasmuch

as the No Objection Certificate from the Pollution Control Board is concerned. **UP TO THIS**

19. Nothing in the 2016 Rules envisages a mandatory agreement for bio-medical waste management/disposal with any particular third party. There are several provisions in the 2016 Rules, which mandate that the operator of a particular institute duly take care of bio-medical waste management. The comprehensive provisions of the 2016 Rules, which have also been imported as part of the 2017 Rules by dint of Rule 21(4) of the 2017 Rules, lend validity to a No Objection Certificate issued by the Pollution Control Board issued under Rule 21(4).
20. In the present case, since the petitioners duly obtained a No Objection Certificate from the Pollution Control Board, a presumption of law arises that the petitioner has duly complied with the 2016 Rules. Hence, nothing in either the 2017 Rules or the 2016 Rules or the 2017 Act, for that matter, mandate the petitioners to produce a further agreement with any third party-agency regarding bio-medical waste management for a renewal of license.
21. Thus, the further insistence of the respondent-Authorities on the production of a valid agreement with a Common Bio-Medical Waste Treatment Facility approved by the Pollution Control Board is *de hors* the law not a valid ground for rejection of an application for renewal of licence to a Clinical Establishment under the 2017 Rules.
22. Hence, the ground of rejection of the petitioners' application *vide* communication dated July 12, 2023, is palpably *de hors* the law and is, thus, vitiated.

- 23.** Accordingly, WPA No. 16828 of 2023 and WPA No. 13843 of 2023 are allowed, thereby setting aside the rejection of the petitioners' applications for renewal of licence to run its Diagnostic Centre/Clinical Establishment. In view of production of a No Objection Certificate by the petitioners, it was the mandatory duty of the respondent-Authorities to grant renewal of the licence to the petitioners.
- 24.** Hence, the respondent-Authorities shall, within three weeks from date, grant a renewal of licence to the petitioner, irrespective of production of any further valid agreement with any Bio-Medical Waste Management Facility, including the respondent no. 6.
- 25.** Thus, the further requirement of the petitioners to produce an agreement with respondent no. 6 is deemed superfluous and redundant.
- 26.** There will be no order as to costs.
- 27.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)