

20.11.2023
Sl. No.4
srm/s.biswas/GB

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

W.P.A. No. 1374 of 2023
With
CAN 1 of 2023

M/s. Greenzen Bio Pvt. Ltd. & Anr.

Versus

The State of West Bengal & Ors.

Ms. Reshmi Ghosh,
Mr. Hillol Saha Podder

....for the Petitioners.

Mr. Subir Kumar Saha,
Mr. Momenur Rahman,
Ms. Bedashruti Bose

.....for State-respondents.

Mrs. Soumi Guha Thakurta

...for the Respondent No.6.

Mr. Rajarshi Dutta,
Mr. Piyush Agarwal,
Mr. Sourav Ganguly

...for the Respondent Nos.7 & 8.

Mr. Sankarsan Sarkar

...for the Respondent No.10.

Ms. Sutapa Sanyal,
Mr. Soumya Ray Chowdhury,
Mr. Debrup Bhattacharjee,
Mr. Ritesh Ganguly,
Mr. Utsa Podder

...for the Respondent No.12.

None appears on behalf of the respondent No.11.

As the parties are ready and affidavits have been

exchanged, the matter is taken up for final hearing. The documents relied upon by the respondent No.10 are already annexed to the affidavit of the respondent Nos.7 and 8.

The writ petition has been filed for a mandamus upon the respondent Nos.1, 2, 3 and 4 to withdraw and/or cancel and set aside the recommendation granted to M/s. S.N.G. Envirosolutions Private Limited, that is, the respondent No.10 who has been authorized to set up a Common Bio-Medical Waste Facility (CBWTF) at Tehsil Rajganj.

According to the petitioners, the said recommendations by the government and the consent to operate by the West Bengal Pollution Control Board, were given contrary to the Bio Medical Waste (Management and Handling) Rules, 1998 (hereinafter referred to as the said Rules).

The provision relied upon by the petitioners is Rule 7(3). The said rule states that no occupier shall establish onsite treatment and disposal facility, if service of a common bio medical waste facility is available at a radial distance of 75 kms.

Rule 7(4) states that in cases where common bio-medical waste facilities (CBWTF) are not available, the

occupiers can set up requisite bio medical waste treatment equipments, as stated in the said Rule.

Further reliance has been placed on the revised guidelines for common bio medical waste treatment facilities, especially the guideline No.8 which deals with coverage area of a CBWTF. Paragraphs 8(a) and 8(b) are quoted below for convenience:-

“8(a) A CBWTF located within the respective State/UT shall be allowed to cater healthcare units situated at a radial distance of 75 KM. However, in a coverage area where 10,000 beds are not available within a radial distance of 75 KM, existing CBWTF in the locality (located within the respective State/UT) may be allowed to cater the healthcare units situated upto 150 KM radius w.r. to its location provided the bio-medical waste generated is collected, treated and disposed of within 48 hours as stipulated under the BMW Rules.

b) In case, number of beds is exceeding >10,000 beds in a locality (i.e. coverage area of the CBWTF under reference) and the existing treatment capacity is not adequate, in such a case, a new CBWTF may be allowed in such a locality in compliance to various provisions notified under the Environment (Protection) Act, 1986, to cater services only to such additional bed strength of the SCFs located.”

It appears from the aforementioned provisions/guidelines that a CBWTF which is located in a state or a union territory shall be allowed to cater to health care units situated at a radial distance of 75 kms. However, in a coverage area where 10,000 beds are not available within a radial distance of 75 kms., the existing

CBWTF in the locality may be allowed to cater to the health care units situated up to a radial distance of 150 kms. with reference to its location, provided the bio-medical waste generated is collected, treated and disposed of within 48 hours as stipulated under the said Rules.

In case the number of beds exceed 10,000 in the locality (coverage area of CBWTF) and the existing treatment capacity is not adequate, in such case a new CBWTF may be allowed in such a locality to cater to the services of the additional beds.

Ms. Ghosh, learned Advocate for the petitioners vehemently urges this Court to take into consideration the authorization given by the West Bengal Pollution Control Board dated July 26, 2019. According to Ms. Ghosh, clause 8(b) should not be made applicable in this case even if the guidelines provide that beyond 10,000 beds, the authority may recommend establishment of CBWTF treatment plants to cater to the needs of the excess beds. The petitioners had been given authorization to cover 1077 healthcare facilities consisting of 15,000 beds within a radial distance of 150 kms. and the bio-medical waste allowed to be handled was 3750 kgs. per day. The treatment plant is being operated by the petitioners at Binnaguri, to cater to more than 10,000 beds on the basis

of the authorization, thus, clause 8 would not be applicable and the recommendation in favour of the respondent No.10 was arbitrary and contrary to the rules.

It is next submitted that clause 10(3) of the said Rules provides that every application for authorization shall be disposed of by the prescribed authority within a period of 90 days from the date of receipt of a duly completed application along with necessary documents, failing which, it shall be deemed, that the authorization was granted under the rules.

By application of the deeming clause, the contentions of the respondents in their affidavits-in-opposition to the effect that the petitioners' authorization had expired, is negated. The application for renewal has neither been rejected nor refused by the West Bengal Pollution Control Board.

Ms. Ghosh submits that according to the Pollution Control Board, the plant of the petitioners was capable of catering to the needs of the healthcare facilities, having total number of beds of 15,000. The subsequent recommendation in favour of the respondent No.10 was completely unfounded.

Affidavit-in-reply to the affidavit-in-opposition filed by the respondent No.7, has been relied upon

vehemently by Ms. Ghosh and it is submitted that on the basis of the Annual Report, 2022 which was submitted by the petitioners to the respondent No.7, the treatment capacity of the plant was 9184 kgs. per day, whereas, the quantity of medical waste which was allowed to be treated by the Pollution Control Board was 4835 kgs. per day. Therefore, the excess treatment capacity of 4349 kgs. per day, could not be ruled out and the same remained unutilized. If such is the position and the capacity of the treatment plant of the petitioners exceeds the requirement of the healthcare centres for waste disposal, there was no justification in allowing another treatment plant within a radial distance of 16.5 kms. from Binnaguri. Further, it is contended that unless there is a decision on the gap analysis upon proper consideration of the ground reality with specific findings of the authorities that the treatment capacity of the unit of the petitioners could not cover all the healthcare facilities within the radial distance of 75 kms., the recommendation to operate, in favour of the respondent No.10, is liable to be quashed.

According to Ms. Ghosh, there must be a formation of opinion with regard to the capacity of CBWTF before another plant is allowed to function within the radial distance of 75 kms. According to Ms. Ghosh, imposition of

environment compensation and the other directions of the Pollution Control Board, are not subject matters of the writ petition. The petitioners reserve their right to challenge those directions in an appropriate proceeding, before the appropriate forum. Such decisions and/or imposition of conditions, including the direction for payment of environment compensation by the Pollution Control Board, could not be a ground for the state authorities to recommend another operator.

Mr. Rahman, learned Advocate for the State-respondents submits that the petitioners had been rendering service to around 21,986 hospital beds, although the authorization was for 15,000 beds. This was the first violation. Secondly, the plant of the petitioners was located at Binnaguri, which is beyond the radial distance of 75 kms. from the eight districts in which the petitioners operate. Thirdly, the recommendation in favour of the respondent No.10 was not in violation of the rules. A transparent process to select the agency was conducted, by floating e-tenders. The entire area was divided into 13 zones with six existing sites and seven new proposed sites. The e-tender was floated on February 12, 2019. Four bidders participated, including the petitioner No.1. In accordance with the quality and cost based selection

methodology, two bidders were selected, i.e., SNG Mercantile Pvt. Ltd (T1) and M/s. Medicare Environmental Management Pvt. Ltd. (T2) after obtaining concurrence from the Finance Department, Government of West Bengal.

According to Mr. Rahman, Rule 8(a) and (b), do not prohibit the state authorities from recommending other agencies to operate healthcare treatment facilities, in case an existing operator cannot cater to more than 10,000 beds within the radius of 75 kms. The petitioner No.1 was authorized to serve 15,000 beds within a radius of 150 kms. and considering the existing requirement, the government exercised its authority and jurisdiction, to set up a few more zones for creation of waste management facilities. The respondent No.10 was the successful bidder in the bidding process. The T1 bidder put forward an agreement with the T2 bidder, for utilizing the latter's infrastructure for lifting and treatment of bio medical waste and until they could set up their own plant. The agreement between the T1 and T2 bidder was filed with the government. The plant has been set up by the respondent No.10 and is functional. According to Mr. Rahman, the writ petition should be dismissed as the

petitioners do not have any cause of action to file the same.

Mr. Dutta, learned Advocate appearing on behalf of the Pollution Control Board submits that the petitioner No.1 was granted consent to establish on March 10, 2008 for a capacity of 15,000 beds. Thereafter, on August 5, 2019, the period was extended up to December 31, 2022. The consent to operate was valid up to December 31, 2022. The treatment plant is located at Fulburi Canal Road and the petitioner No.1 was allowed to cater to 1077 healthcare facilities within a radius of 150 kms. having a capacity of 15,000 beds and to lift waste upto 3750 kgs. There are more than 23,000 beds across the said area and there is no other CBWTF to cater to such centres, for collection, transportation, treatment and disposal of bio-medical waste. In the annual report which was filed by the petitioners as per Rule 13 of the Rules, it was found that the petitioner No.1 was catering to 23,320 beds, i.e., in excess of the authorization. The plant of the petitioners was also operating beyond 150 kms. radius, in violation of the authorization. The services of the said plant also rendered at Kaliachak Dristi Eye Hospital, which was far beyond the 150 kms., from the unit at Binnaguri.

At a meeting held on August 31, 2022, by the Department of Environment, Government of West Bengal in the presence of the Principal Secretary, Government of West Bengal, Chairman of the State Level Advisory Committee, bio-medical waste management and the respondent No.8, a decision was taken to authorize at least two facilities per district and three facilities for bigger districts, in order to collect, treat and dispose of bio-medical wastes.

The Central Pollution Control Board vide letter dated December 7, 2022, intimated the respondent No.8 that the Rules did not restrict more than one such facility at one location and the revised guidelines of the Central Pollution Control Board, did not restrict installation of a new facility in a given coverage area, if the existing facility did not have adequate capacity to handle the waste that was generated. Further, a meeting of the State Level Advisory Committee for bio-medical waste management in West Bengal, was held on February 6, 2023, when the officials of the respondent No.6 were requested to take appropriate action to enhance the number of designated facilities in the State.

The respondent No.7 caused an inspection of the unit of the petitioner No.1 on November 21, 2017 and found

that the autoclave, the shredders and the insinator of the unit, were not in operation. Untreated bio-medical waste was lying in the premises, in violation of Rules.

The representative of the petitioners informed the respondent No.7 that the autoclave was not in operation for more than 15 days.

On the findings during the inspection, a complaint case under Section 200 of the Code of Criminal Procedure against the petitioners was filed before the learned Additional Chief Judicial Magistrate, Jalpaiguri for issuance of process and for conviction of the accused persons who were guilty of commission of offence under Sections 15 and 16 of the West Bengal Environment Protection Act 1986 read with the relevant Rules. The complaint case is pending before the appropriate court.

Second inspection of the unit was conducted on September 24, 2018 and the environmental compliance notice was issued upon the petitioners by the respondent No.7. The petitioner No.1 was further directed to execute a bank guarantee, valid for 12 months from such direction, in favour of the respondent No.7, as an assurance for compliance of the environmental norms and proper functioning of the pollution controlling system.

The third inspection was carried out by the respondent No.7 on July 26, 2019 and it was found that the non-compliances by the petitioners continued. The respondent No.7, by an order dated August 31, 2019, imposed environmental compensation of Rs.15,22,500/- upon the petitioner No.1, for non-compliance of the environmental norms. Further direction was issued to furnish a bank guarantee of Rs.15,00,000/-.

Fourth inspection was held once again and it was found that the direction of the Pollution Control Board had not been complied with. The petitioners neither paid the environmental compensation nor furnished the bank guarantee. Several complaints were filed by M/s. Neotia Healthcare Initiative Limited, Siliguri, inter alia, stating the failure of the facility to collect the biomedical waste from the unit.

On the fifth inspection, it was found that all the biomedical waste was heaped up in front of the unit of the petitioners and the area looked like a dumping ground of waste material. The capacity of the plant was not only inadequate, but also extremely poor. Rather, the plant was operating without a valid consent since January 2023, which was again a violation of the rules. It has been stated that the petitioners failed to submit any document in

support of the prayer for renewal of the lease agreement. Despite two notices, the petitioners failed to pay the environmental compensation and furnish the bank guarantee. Accordingly, directions were issued upon the petitioners, by extending the time up to April 30, 2023 to regularize the consent to operate and submit environmental compensation and also the bank guarantee.

As the petitioners failed to comply with all the directions within the stipulated period, i.e., April 30, 2023, a recovery proceeding was initiated under the Bengal Public Demand Recovery Act, 1993 on May 30, 2023.

It also appears that the lease agreement for the unit was not extended. When the petitioners applied for a renewal, the respondent No.7 had asked the petitioners to upload the relevant documents including a valid lease agreement in respect of the land on which the unit was situated. The petitioners failed to upload the documents. The unit operated without authorization. Hence, a show cause notice was issued to the petitioners as to why regulatory action should not be taken against the petitioner No.1. The petitioners were directed to submit a response within June 15, 2023. The response was submitted, in which it was stated that the petitioners were unable to obtain any extension of the lease from the land

owner, as there was an order of status quo in respect of the land, passed by the National Company Law Tribunal, Kolkata. The petitioners prayed for withdrawal of the order imposing environmental compensation as also the direction to furnish bank guarantee. The petitioners were informed by the respondent No.7 that such prayer could not be allowed. It also appears from the affidavit, that numerous complaints had been received against the unit, which led to the decision of the Pollution Control Board to issue a show cause notice upon the petitioners. Such contentions have been elaborately narrated with supporting documents in the affidavit-in-opposition.

Mr. Sarkar, learned advocate appearing on behalf of the respondent No.10, submits that the petitioners do not have any locus to maintain the writ petition as the petitioners do not have any authorization or consent from the Pollution Control Board, to operate the unit.

Moreover, Mr. Sarkar places emphasis on the guidelines and submits that the guidelines do not totally prohibit the State authorities from establishing other units within 75 kms. radius from the existing unit. As the existing unit was unable to operate at the optimum level and did not have the consent to operate, the

recommendation in favour of the respondent No.10 should not be interfered with.

It is further submitted by Mr. Sarkar that unless the consent to operate was renewed by the Pollution Control Board and the directions of the Pollution Control Board were either reversed or set aside by the appellate forum, the writ petition should be dismissed as not maintainable. Mr. Sarkar also raises the question of alternative remedy.

Ms. Sanyal, learned advocate appearing on behalf of the respondent No.12 submits that in the agreement between the Director of Health Services, Hospital and Administration Branch, Directorate of Health Service, Government of West Bengal and the petitioners, a specific clause had been inserted, as Clause 20 thereof. According to the said clause, if the agency which had been allowed to operate as CBWTF, either failed to operate as allowed or the performance was unsatisfactory or the agency did not hold an authorization from the West Bengal Pollution Control Board, the operator could be changed without any prior notice. It is also submitted that the plant will soon be operational. Moreover, the said plant is beyond 75 kms. from Binnaguri. Hence, there cannot be any cause of action against the respondent No.12.

Mrs. Guha Thakurta, learned advocate for the Central Pollution Control Board, submits that although rules have been framed by her client, the State Pollution Control Board and the State respondents are the authorities who are empowered by the rules to decide the eligibility criteria and grant recommendation in favour of operators, in accordance with rules.

Having heard the learned advocates for the respective parties, this court finds that in the writ petition which was filed sometime in June, 2023, the steps taken by the West Bengal Pollution Control Board in respect of the unit of the petitioners, has not been mentioned. The non-compliances by the unit, are galore.

The fact that the application for renewal of consent to operate was pending, as the agreement with the land owner had neither been renewed nor extended, is vital. The maintainability of a writ petition at the behest of an agency which was not authorized by law to operate, is answered in the negative. The petitioners have violated the rules and relevant proceedings are pending.

The guidelines do not prohibit establishment of another operator for the purpose of removal of biomedical waste within 75 kilometres radius of the existing unit, if the authorities are of the opinion that the capacity of the

existing unit could not cater to more than ten thousand beds.

It also appears that the Pollution Control Board had held several inspections and found that the petitioner No.1 was operating after expiry of the authorization and beyond the capacity authorized. Negligence in performance of the job was detected. Heaps of bio-medical waste had been discovered near the unit which had not been treated and disposed of in accordance with the rules and guidelines.

The deeming clause with regard to renewal would not apply. In the affidavit-in-opposition filed by the respondent nos.7 and 8, it has been categorically mentioned that when the petitioners applied for the renewal, the respondent No.7 had asked the petitioners to upload relevant documents, which had not been done. Secondly, on five occasions, orders were passed with certain directions for compliance of the rules, which the petitioner No.1 failed. Accordingly, a complaint case under the relevant law was also filed alleging criminal offence. A show cause notice has also been issued with regard to failure and non-compliance of the petitioners.

This Court finds that not only there are proceedings initiated in the criminal court by the Pollution Control

Board against the petitioners for non-compliance of the rules and for allowing biomedical waste to be heaped up in the locality without any treatment whatsoever, the authorization of the petitioners had also expired. The authority has decided to proceed against the petitioners in accordance with the relevant laws and compensation for violation of the norms has also been imposed.

Under such circumstances, as of now, the petitioners do not have either any authority or legal right to operate its own unit. The bio-medical wastes discharged, have to be collected, treated and disposed of in accordance with the rules and there are more than 23,000 beds in the area. The law also does not prohibit setting up of a separate unit, if the authorities are of the opinion that the existing plant is not capable of handling the waste in the area or had performed poorly. The authority can also set up units even if the petitioners' unit is in operation, if the existing capacity of the unit to cater to beds in excess of 10,000, is inadequate. The petitioners have not been able to show any evidence that the authorities had violated the law and the recommendation in favour of the respondent No.10 was either arbitrary or discriminatory. The estimates of the beds in 2008 when the petitioners were recommended, cannot be the same at present. The State-respondents had

assessed the capacity and the increased requirement and had decided to establish seven more units by a tendering process. The petitioners also participated. The authorization/capacity which was given to the petitioners to cater 15,000 beds, expired and there is ample evidence before this Court, filed by way of affidavits by the Pollution Control Board, the State-respondents as also the respondent Nos.3 and 4, indicating that other units are required to be established for proper management of biomedical wastes which had not been done effectively and the matter required expert handling. Secondly, if the biomedical wastes had been lying around in a heap, as was found near the plant of the petitioners without proper treatment, the same was cause of health and environmental hazard and is a serious lapse. Such situation is required to be avoided.

Records have been placed, which show that the entire process of selection was held by a tendering process and the T1 was recommended to operate the plant. This Court, does not find any reason to pass any orders in this writ petition. If the petitioners' case is regularized and the petitioners obtain an authorization to operate after all the proceedings are over, the petitioners may approach the

authorities for necessary orders. However, the challenges in the writ petition are baseless and unfounded.

Accordingly, the writ petition is disposed of without any orders.

In view of the disposal of the writ petition, the connected application has become infructuous and the same is disposed of accordingly.

However, there shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)