

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
O.A.NO. 199 OF 2014**

IN THE MATTER OF:

ALMITRA H PATEL

APPLICANT

VERSUS

UNION OF INDIA AND ORS.

RESPONDENTS

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FILED BY*Abhishek Roy*

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PROCESSES**

1. That this Hon'ble Tribunal vide its Order dated 25.05.2016 had permitted the various parties and the State Governments to study the issue as to whether Solid Waste Management Rules 2016 provide a procedure to be adopted for dealing with the Municipal Solid Waste right from the point of collection, segregation, transportation and its conversion into RDF or energy. Hence, the Applicant submits her submissions on the said issue which is set out hereinafter.

**SWM RULES 2016 PROVIDE FOR WET WASTE TO BE
COMPOSTED AND COMBUSTIBLE RESIDUE FOR WASTE
TO ENERGY**

2. The Applicant submits that the excellent new Solid Waste Management Rules 2016 (hereinafter referred to as the '**Rules**') have not only made it compulsory to separately collect at the doorstep and separately transport wet waste for composting etc

and dry waste for recycling, but also have very progressive guidelines for productive use of combustible residues through Refuse Derived Fuel (hereinafter referred to as '**RDF**') for Waste To Energy (hereinafter referred to as **WTE**).

The said Solid Waste Management Rules 2016 fully endorse the latest global trend towards a Circular Economy, defined in Wikipedia, in contrast to a Linear Economy which is a 'take, make, dispose' model of production. It is an industrial economy that produces no waste and pollution, by design or intention, and in which material flows are of two types: biological nutrients designed to reenter the biosphere safely [eg composting] , and technical nutrients, which are designed to circulate at high quality in the production system [recycling and RDF].

3. Thus Section 15 (zi) of the Rules allow only the "non-usable, non-recyclable, non-biodegradable, non-combustible and non-reactive inert waste and pre-processing and post-processing rejects and residues from waste processing facilities to go to sanitary landfill and ... every effort shall be made to recycle or reuse the rejects to achieve the desired objective of zero waste going to landfill."

These Rules in Section 21 ban landfilling of wastes with over 1500 kilocalories per kg of energy value.

4. The Applicant submits that as there is a lot of misunderstanding of the suitable feedstock for WTE especially by burn technologies like incineration, the situation is clarified. This clarification is

necessary because countrywide, foreign promoters of WTE are trying to lure cities into signing up for their technology by assuring them that their process will accept Mixed Waste and there is no need to bother about segregation. The Applicant submits that this is clearly against the Rules and an attempt to undermine the law of our land. This had happened 16 years ago too, when US-funded agencies went around saying land-filling of mixed wastes was the cheapest option, undermining the specific ban on this in the new MSW Rules 2000.

In neither case is there any understanding of Indias national imperative to produce more organic manure to revitalize Indias carbon-depleted soils, ruined by over-subsidy and hence over-use of urea which destroys soil fertility. Organic manure is in such short supply, with tractors replacing cattle etc, that the Government of India has in March 2016 announced a Rs 1500 per ton Compost Marketing Assistance scheme.

5. This Hon'ble Tribunal has also farsightedly and in the national interest directed, in its order dated 20.03.2015 in captioned matter in OA 199 of 2014, at Direction No 7: "There would be complete segregation of the waste at the site into wet and dry waste without fail. No wet waste would be directly put into the incinerator or for power generation, except specifically permitted. The wet waste shall be composted scientifically through approved techniques. The composted waste shall be transported and incentives be provided to farmers to use it as a fertilizer."

Further this Hon'ble Tribunal vide its order dated 20.03.2015 in captioned matter in OA 199 of 2014 at Direction 11 also observed that "...first effort should be made for composting of wet waste."

RELEVANT PROVISIONS IN SWM RULES 2016

6. In keeping with these orders, the new SWM Rules 2016 also endorse the same directions in many Sections cited hereinafter under four heads: Composting, Recyclables, Combustibles for WTE, Landfill and Chlorinated Plastics

1. **COMPOSTING**

The Applicant submits that Sub Sections (6) (7) and (8) of Section 4 -(Duties of Waste Generators) of the SWM Rules 2016 provide that "... The biodegradable waste shall be processed, treated and disposed of through composting or biomethanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the local body."

The other relevant provisions in SWM Rules 2016 in this regard are as follows:

Section 7 (1) "The Department of Fertilizers through appropriate mechanisms shall

(a) provide market development assistance on city compost, and (b) ensure promotion of co-marketing of compost with chemical fertilizers in the ratio of 3 to 4 bags : 6 to 7 bags by the fertilizer companies to the

extent compost is made available for marketing to the companies."

Section 8 "The Ministry of Agriculture through appropriate mechanisms shall ...

(b) propagate utilization of compost on farm land"

Section 12 "The District Magistrate or District Collector or... Deputy Commissioner shall ...

(b) review the performance of local bodies at least once in a quarter on segregation, processing, treatment and disposal and take corrective measures ..."

Section 13 (1) "The Secretary-in-charge of Village Panchayats or Rural Development Department... shall have the same duties... [as above]"

Section 14 "The Central Pollution Control Board shall ...

(f) monitor through State Pollution Control Boards or State Pollution Committees the implementation of these rules by local bodies"

Section 15 "The local bodies and Panchayats shall...

(q) transport segregated biodegradable waste to the processing facilities like compost plant, biomethanation plant or any such facility.

(v) facilitate construction, operation and maintenance of ... solid waste processing facilities ... such as (a) biomethanation, microbial composting, vermi-composting, anaerobic digestion or any other appropriate processing for bio-stabilisation of biodegradable wastes."

2. **RECYCLABLES**

The Applicant respectfully submits that for management of dry waste also, this Hon'ble Tribunal anticipated and endorsed the recycling effort, and observed in the order dated 20.03. 2015 at Direction No 8: "the remaining MSW ... shall be further segregated into recyclable and un-recyclable waste, particularly plastic and other wastes.... and can be provided to the persons or the firms authorised for handling recyclable plastic and allied waste or for making RDF."

This Hon'ble Tribunal in its judgment in Captain Mall Singh v. Punjab PCB and Ors. also directed that "Particularly the plastic would not be put into the dump pits and will be recycled".

This is reflected in the SWM Rules 2016 Section 15, the relevant portion of which is reproduced hereunder for the sake of convenience :

Section 15....."The local bodies and panchayats shall

(r) transport non-biodegradable waste to the respective processing facility or material recovery facilities or secondary storage facility.

(zc) educate workers including contract workers and supervisors for door to door collection of segregated waste and transporting the unmixed waste during primary and secondary transportation to processing or disposal facility.

(zg) (iv) practice segregation of waste into bio-degradable, non-biodegradable (recyclable and combustible), sanitary waste and domestic hazardous wastes at source"

3. **COMBUSTIBLES FOR WASTE TO ENERGY**

The Applicant respectfully submits that this Hon'ble Tribunal in the captioned matter in its order dated 20.03. 2015 at Direction 8 observed that : "it would be seen whether un-recyclable plastic or other waste can be used for the purposes of construction of roads or such allied activity, where it is scientifically permissible. Whatever is still found to be un-recyclable, the same shall be put into incinerators for disposal."

The relevant portion of Section 15 and the other relevant Sections of the SWM Rules 2016 in this regard is reproduced hereunder for the sake of convenience:

Section 15 "The local bodies and Panchayats shall...

(v) facilitate construction, operation and maintenance of ... solid waste processing facilities ... such as (b) waste to energy processes including refuse derived fuel for combustible fraction of waste or supply as feedstock to solid waste based power plants or cement kilns."

Section 18 "All industrial units using [solid] fuel and located within one hundred km from a solid waste based refuse derived fuel plant shall make arrangements within six months from the date of notification of these rules to replace at least five percent of their fuel requirement by refuse derived fuel so produced."

Section 21 (1) "Non recyclable waste having calorific value of 1500 Kcal/kg or more shall not be disposed of on landfills and shall only be utilized for generating energy either or through refuse derived fuel or by

giving away as feed stock for preparing refuse derived fuel."

Section 21 (2) "High calorific wastes shall be used for co-processing in cement or thermal power plants."

Thus it is abundantly clear that only non-compostable and non-recyclable combustibles are permitted WTE feedstock and not unprocessed mixed waste,

4. **LANDFILLING**

Section 15 of the SWM Rules 2016 provides that "The local bodies and Panchayats shall...

15 (zh) stop landfilling or dumping of mixed waste...

(zi) allow only the non-usable, non-recyclable, non-biodegradable, non-combustible and non-reactive inert waste and pre-processing and post-processing rejects and residues from waste processing facilities to go to sanitary landfill and the sanitary landfill sites shall meet the specifications as given in Schedule I, however, every effort shall be made to recycle or reuse the rejects to achieve the desired objective of zero waste going to landfill."

The Applicant respectfully submits that this Hon'ble Tribunal in order dated 20.03. 2015 in the captioned matter in Direction 8 observed that : "The waste left in the incinerators shall be collected and disposed of in accordance with The Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008. It is obvious that the amount of remnant waste would be the least."

Unfortunately this Applicant submits that the above direction of this Hon'ble Tribunal is nowhere being done or even factored into WTE proposals of consultants or promoters, and needs to be reiterated by this Hon'ble Tribunal.

5. **CHLORINATED PLASTICS**

Section 3 (1) 11 of the SWM Rules 2016 provide that , "combustible waste means non-biodegradable, non-recyclable, non-reusable, non hazardous solid waste having minimum calorific value exceeding 1500 kcal/kg and excluding chlorinated materials like plastic, wood pulp, etc".

In 3 (1) 38 "refuse derived fuel (RDF) means fuel derived from combustible waste fraction of solid waste like plastic, wood, pulp or organic waste, other than chlorinated materials,..."

The Applicant submits that it is virtually impossible in a processing facility to remove PVC bottles, caps, labels and stationery, which is why despite the useful clauses above on use of combustibles, the Haryana SPCB insists that all Karnal compost plant plastics shall be landfilled, in contravention of both this Hon'ble Tribunal's orders and SWM Rules 2016. Similarly TNSPCB puts a cap of maximum 15% plastics in RDF to cement plants, although plastics are preferred by them for high calorific value.

Therefore the Applicant submits that it is necessary to make the combustible fraction safer to use by phasing out use-and-throw PVC applications, otherwise WTE itself would be in jeopardy.

For this reason, PVC is required to be phased out in medical applications. It should be phased out in short-life consumer items also.

PRAYERS

In light of the aforesaid the Applicant submits and prays for the following Directions from this Hon'ble Tribunal to all local bodies through their respective State / UT governments :

1. WTE projects be approved on the following conditions:
 - a. Energy balance, Mass balance and Water balance shall be submitted with the initial proposal for consideration and form part of the agreement
 - b. No commitment in the agreement shall be made for mixed waste or waste of any specific calorific value
 - c. No unprocessed wet waste or recyclables shall form part of the feedstock
 - d. No commitment for guaranteed supply of waste in excess of 85% of their current total waste generation as minimizing residual waste is a key objective of SWM.
 - e. Incinerator ash shall be sent to hazwaste landfill at the operators cost.

2. All SPCBs / PCCs shall not only permit but encourage supply of combustibles including mixed plastics as RDF to nearby industries, power plants and cement plants.

3. Union of India, Respondent No.1 herein shall phase out with clear timelines the use of PVC in all packaging, hoardings/banners, use-and-throw and short-life items.

FILED BY:

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**NEW DELHI
DATED: 30.07.2016**

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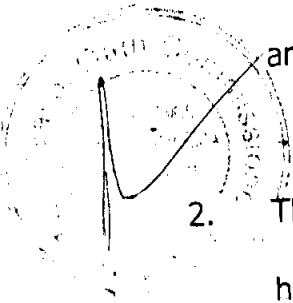
RESPONDENTS

AFFIDAVIT

I, Almitra H. Patel, W/o. Hoshang C Patel, aged 84 years, R/o. 50 Kothur, Bagalur Road, Bangalore - 560 077, ^{Present Delhi.} do hereby solemnly affirm and state as under: -

1. That I am the Applicant in captioned matter and am well conversant with the facts and circumstances of the present case and as such am competent to depose by way of this Affidavit.

2. That I have read the contents of the present submissions which have been drafted under my instructions and state that all the facts stated therein are true and correct to the best of my knowledge and belief.



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ASA

DEPONENT

VERIFICATION

Verified on this _____ day of _____ 2016 that the contents of the above affidavit are true and correct to my knowledge, that no part of it is false and that nothing material has been concealed therefrom.

Al Alab

DEPONENT



Signature of Notary Public

Signature of Dependent

30 JUL 2016

30 JUL 2016