

## **High Court of Karnataka**

**Daily Orders of the Case Number: WP 24739/2012 for the date of order 24/10/2013**

**Honble Justice N.KUMAR AND**

**B.V.NAGARATHNA**

**24/10/2013**

**Order in WP 24739/2012**

**24.10.2013 WP Nos.24739-24740/2012**

**C/w. WP Nos.46601/2012, 30450/2012,  
46523/2012**

**Sri. S. Kalyan Basavaraj, learned Assistant Solicitor General of India is present in the court. He filed a memo enclosing the order dated 11.10.2011 passed by the National Green Tribunal, New Delhi in OA No.2/2011 as well as the record of discussion of the Meeting held on 5.3.2012 for finalizing the draft of Municipal Solid Wastes [Management and Handling] Rules and the salient features of Municipal Solid Waste Management and Handling Rules, 2013. He submits the 2013 Rules are framed in compliance with the directions issued by the National Green Tribunal, New Delhi, by its order dated 11.10.2011.**

**Therefore, we looked into the aforesaid order. The said order came to be passed on the grievance made out by the villagers of Bharyal opposing the construction of Solid Bio Waste Management Plant in their village about nine kilometers from Shimla Town. In paragraph-10 of the said order, the grounds set out by them are set out. It reads as under:**

- 1. The Applicants 2 and 3 have (Bartandarna) grazing rights over the proposed land, and the same cannot be used for the MSW Plant.**
- 2. The proposed site where MSW Plant is going to be constructed is in close proximity to human habitation and as such, the same may pose health impacts to the villagers of Totu Gram Panchayat.**
- 3. The forest land which has been acquired for dumping of wastes shall have impact on ground and other water bodies.**
- 4. The Gram Panchayat has not given the NOC.**
- 5. The mandatory requirements stipulated in the Municipal Solid Waste (Management and Handling) Rules 2000 (MSW Rules,**

**2000) have not been followed.**

**6. No Objection Certificate has been obtained from the Airport Authority of India.**

**7. In discriminate felling of trees will effect the environment.**

**Expanding the said objections, learned counsel appearing for the villagers drew attention of the Tribunal to Schedule-III of the Municipal Solid Waste Management Rules, 2000 and contended that there is a clear violation of the criteria prescribed in schedule-III, more particularly, under clauses 8 and 10 of the said schedule.**

**Clauses 8 and 10 of the Schedule-III is also extracted in the order at paragraph-11 which reads as under:**

**8. The landfill site shall be away from habitation clusters, forest areas, water bodies, monuments, National Parks, Wetlands and places of important cultural, historical or religious interest.**

**10. Landfill site shall be away from airport including airbase. Necessary approval of airport or airbase authorities prior to the**

**setting up of the landfill site shall be obtained in cases where the site is to be located within 20 km of an airport or airbase.**

**After referring to the aforesaid provisions, the Tribunal observed as under at paragraph-29 and then it issued directions as contained in paragraph-30 which read as under:**

**29. Cumulative reading of Clause 8 and 9 of the siting criteria leads to an irresistible conclusion that provisions made there under are vague; as there is no indication with regard to the minimum distance to be maintained between the MSW Plant and either habitation clusters or forest areas or water bodies or mountains or national parks or wetlands or places of important cultural, historical or religious interest etc. In the absence of any specification with regard to the distance to be maintained between MSW Plant and other places enumerated above, it is difficult to insist to maintain a standard. The provisions being vague, cannot be otherwise insisted upon. Similarly, the exact area**

**of buffer zone is also required to be maintained around the proposed MSW site and near by human habitat, the said aspect is also not specified, there by leading to surmises and conjunctures.**

**30. For the reasons stated in the preceding paragraph we feel that the MOEF should review the MSW Rules, 2000, and make it more realistic and comprehensive in terms of the environmental requirement for protection of natural habitat, human settlement, water bodies and other sensitive areas etc, by specifying the minimum distance required to be maintained from the MSW Plant visa vise those areas. Prescribing minimum distance criteria of ecologically sensitive areas and human habitation etc. from the proposed site will go a long way towards preventive measures to avoid environmental ramification, including the problem of obnoxious / foul smell / odour associated with such other hazards. The precautionary principle as enunciated under Section 20 of the NGT Act vis-à-vis the authoritative pronouncement of the Honble Supreme Court, (Supra) requires**

**and mandates that the MoEF should prescribe criterias which are workable, unambiguous and not vague. This Tribunal therefore, call upon the MoEF to critically review the MSW Rules, 2000 and make it more pragmatic, and workable. The said exercise may be completed within a period of six months. Copy of this direction be communicated to MoEF.**

**However, the Tribunal upheld the decision to set up Municipal Solid Waste Plant at Village Bharyal in Tara-Devi Totu Bye-pass, but directed that the said Plant is to be set up after following mandatory requirement stipulated in Municipal Solid Waste [Management and Handling] Rules, 2000 and after complying with other legal requirements. Therefore, the said direction is insofar as Schedule-III of Rules, 2000 is concerned. However, Schedule II deals with management of Municipal Solid Waste where how the collection of Municipal Solid Waste is to be set up, how segregation of the municipal solid waste is to be done and storage of municipal solid waste, transportation of the same, processing and**

**disposal are clearly set out. They have not said nothing in respect of the subject covered in Schedule II, as that was not the subject matter of the proceedings before them at all.**

**It is pointed out though the definition of the word segregation in 2000 Rules is retained in the 2013 Rules, they have omitted the Schedule-II itself. The effect of deletion of Schedule-II would be segregation of solid waste at the source is given a go by. The segregation of solid waste was prescribed on the basis of the recommendations of the Expert Committee as well as in pursuance of the directions issued by the Supreme Court in more than one case. Accepting the said Rules, it is submitted the authorities throughout the country have spent considerable amount in educating the citizens of this country the need to segregate the waste at source. In Bangalore, sufficient money is spent by the Bruhat Bangalore Mahanagara Palike by way of advertisements in Press, in electronic Media and even by holding public meetings. In fact, to store segregated waste, places are**

**selected in each ward and provision is made for collection of dry waste and removal of dry waste once in three days and transportation of the same. At this juncture of time, without any reason, justification or complaint against this well established system, curiously, in the 2013 Rules, Schedule-II is deleted giving an impression that it is not obligatory any more to segregate the waste at source. It is a clear case of misreading the order. It is in that context, the court wanted to know the reasons.**

**To the proposed draft rules, the petitioners have filed objections. Considering all the objections by the authorities is one thing, but on the basis of Rules of 2000, acting on the same, the court has passed orders from time to time to implement the said rules in particular, segregation of solid waste at source. In pursuance of the orders passed by this court, the Bruhat Bangalore Mahanagara Palike also has taken steps, spent considerable money and even citizens of Bangalore have come to know what their responsibility is and it is heartening to note**

**that we are getting positive response from them. It is submitted the same position prevails throughout the State of Karnataka.**

**It is in this context, the authorities are at liberty to consider all objections, take note of what we have stated in this order and also orders passed in this case as well as the orders passed by the Apex Court pursuant to which these Rules are framed and finalize the draft. But, before giving effect to the same, it shall be placed before this court for scrutiny.**

**This order is necessary because in 2013 Rules, Rule-9 provides for waste collection, segregation, storage, transportation and processing giving an impression before waste collection there is no segregation. Segregation is done after waste collection. If segregation is to be made after collection, it involves public money. In order to avoid this liability on the public, the Rules wanted the public to segregate the waste and then it is to be collected by the authorities. If effect is given to that provision, it would undo what has been done in the last decade and in**

**particular in Bangalore for the last one year in pursuance of the directions issued by this order. It is impermissible in law.**

**Therefore, the order passed on 11.10.2013 directing the authorities to keep the draft rules on hold is modified i.e., they can proceed to consider the objections and then prepare yet another draft rules and thereafter they shall place it before the court. They shall not give effect to 2013 Rules in the light of the observations made above.**

**At this juncture, we feel it necessary to have interaction with the Expert Committee which has submitted a report and therefore we request them to make themselves free on 25.10.2013 at 2.30 pm so that after interaction with them we can hear learned counsel appearing for the parties and pass appropriate orders. The Commissioner of Bruhat Bangalore Mahanagara Palike is requested to inform other Committee Members and see that they are present on 25.10.2013 at 2.30 pm.**

**A copy of this order may be furnished to  
learned counsel for the parties forthwith.**

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