



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 258-259 OF 2021

PUNE MUNICIPAL CORPORATION ...APPELLANT(S)

VERSUS

**SUS ROAD BANER VIKAS MANCH
AND OTHERS ...RESPONDENT(S)**

WITH

CIVIL APPEAL NOS. 265-266 OF 2021

J U D G M E N T

B.R. GAVAI, J.

1. These Civil Appeals challenge the judgment and order dated 27th October 2020 passed by the National Green Tribunal, Principal Bench, New Delhi¹ in Original Application² No. 210 of 2020³ wherein the Tribunal disposed of the OA preferred by the Sus Road Baner Vikas Manch,

¹ Hereinafter referred to as the 'Tribunal'.

² Hereinafter referred to as OA

³ Earlier OA No. 34 of 2019 (WZ). Initially the OA was preferred before the Tribunal, Western Zone, and was subsequently transferred to the Principal Bench, New Delhi.

Respondent No. 1 herein, by directing the Pune Municipal Corporation⁴ to close the Garbage Processing Plant⁵ operated by Noble Exchange Environment Solution Pune LLP⁶, at Baner, Pune and to shift the same to an alternate location in terms of the guidelines issued by the Central Pollution Control Board⁷, within 4 months from the date of the order. Having directed the closure of the GPP, the Tribunal further granted liberty to the Maharashtra Pollution Control Board⁸ to recover environmental compensation on the basis of 'polluter pays' principle from the GPP for the entirety of the period during which the environmental norms were violated by the GPP. Seeking a review of the aforesaid order, the respondent-Concessionaire, the operator of the aforementioned GPP, filed a Review Application being No. 49 of 2020 which came to be dismissed by the Tribunal vide order dated 22nd December 2020. The said order is also under challenge in these present appeals.

2. We have two Civil Appeals before us. The first set of Civil Appeals being CA Nos. 258-259 of 2021 have been filed

⁴ Hereinafter referred to as the 'appellant-Corporation'.

⁵ Hereinafter referred to as the 'GPP'.

⁶ Hereinafter referred to as the 'respondent-Concessionaire'.

⁷ Hereinafter referred to as the "CPCB".

⁸ Hereinafter referred to as the "MPCB".

by the Pune Municipal Corporation. The second set of Civil Appeals being CA Nos. 265-66 of 2021 have been filed by Noble Exchange Environment Solution Pune LLP. For the sake of clarity and to avoid confusion, the parties will be referred to according to their positions in the first set of civil appeals.

3. The facts which give rise to the present appeals are as under:

3.1. Upon the municipal limits of the appellant-Corporation being extended to include Baner Balewadi, a Development Plan was drawn up in 2002 wherein land situated at Survey No. 48/2/1 in Baner Balewadi, Pune was reserved for the purpose of a GPP. In 2004, a public hearing was conducted for the purpose of drawing up a new development plan, subsequent to which, the Planning Committee of the appellant-Corporation submitted its report on 30th December 2004 to the General Body of the appellant-Corporation earmarking the aforesaid land for a GPP in the Draft Development Plan of 2005. The said Plan was submitted to the Government of Maharashtra on 29th November 2005

whereafter the Plan came to be sanctioned by the State Government vide Notification dated 18th September, 2008.

3.2. In the interregnum, while the aforesaid Plan was pending approval, in 2005, permission was sought for constructing a residential building being Tarai Heights at a site which was approximately 100 metres away from the earmarked land in Survey No. 48/2/1 and subsequently, in 2008, permission was sought for constructing another residential building being 52 Green Woods at a site which was approximately 140 metres away from the aforesaid earmarked land. In said fashion, over the years, permission for construction of similar such residential projects were sought in and around the earmarked portion of land. The last such permission was sought in 2019 for the construction of a residential building being Platinum 9.

3.3. Subsequent to the Development Plan of 2005 being sanctioned, the appellant-Corporation and the respondent-Concessionaire, Respondent No. 7 in the first appeal, entered into a Concession Agreement on 30th March 2015 for setting up an Organic Waste Processing Plant at the land situated at Survey No. 48/2/1. The purpose of the Concession

Agreement was to set up an operational waste-processing facility where pre-segregated, non-compacted organic waste received from the appellant-Corporation would be crushed into a slurry, after removing any non-biodegradable material, and the said slurry would be transported to a facility in Talegaon where raw biogas would be generated from the slurry. The Concession Agreement was for a period of 30 years.

3.4. Subsequently, in compliance of the notification dated 14th August 2006, for the setting up of GPP, the respondent-Concessionaire sought Environment Clearance from the State Level Environment Impact Assessment Authority⁹ on 13th August 2015. Thereafter, pursuant to a public hearing the SEIAA granted Environment Clearance to the respondent-Concessionaire for establishment of Organic Waste Management Plant on 1st February 2016. The Environment Clearance accorded was to be valid for a period of 7 years.

3.5. In the meanwhile, on 2nd December 2015, the MPCB, Respondent No. 2 herein, granted authorization to the

⁹ Hereinafter referred to as 'SEIAA'.

respondent-Concessionaire to set up and operate a solid waste processing/disposal plant in accordance with the Municipal Solid Waste (Management and Handling) Rules, 2000¹⁰. The said authorization was valid till 31st December 2016.

3.6. The authorization granted by the MPCB was subsequently renewed on two occasions. On 4th May 2017, the MPCB further granted authorization to the appellant-Corporation to set up and operate waste processing/recycling/treatment/disposal facilities at various sites, 48 in total, including at the concerned site i.e. Survey No. 48/2/1, at Baner, Pune. The said authorization was to be valid till 31st December 2021. The authorization was renewed once again on 3rd August 2022 and the same is valid up till 31st July 2027.

3.7. In 2019, Respondent No.1-Sus Road Baner Vikas Manch, a registered Trust that had been established to protect the interests of the citizens residing at the Sus Road and Baner areas in Pune, preferred an OA being No. 34 of 2019 before the National Green Tribunal, Western Zone,

¹⁰ Hereinafter referred to as the '2000 Rules'.

seeking to restrain the respondent-Concessionaire from operating the aforementioned GPP at Survey No. 48/2/1 at Baner, Pune since the same had been established without following the procedure prescribed by law.

3.8. Deeming it appropriate to verify the factual details set out in the OA, the Tribunal vide its order dated 5th September 2019 constituted an expert committee comprising of the CPCB and the MPCB to inspect the GPP and the area in question, and to submit a report within a month.

3.9. In compliance of the aforesaid order, the CPCB and the MPCB conducted a joint inspection of the GPP and area in question. Subsequently, a report was submitted before the Tribunal wherein the joint inspection team had made several observations about the operational capacity of the GPP, its authorization status and certain procedural shortcomings.

3.10. Based on the Joint Inspection Report, the Tribunal vide the first impugned order dated 27th October 2020 held that the GPP was in violation of the right to clean environment of the inhabitants and was against the statutory norms. In that view of the matter, the Tribunal disposed of the OA in the aforementioned terms. While directing a shut-

down of the plant, the Tribunal further directed that the site in question might be used for the purpose of developing a bio-diversity park, for which purpose the site had been originally designated. The Tribunal further constituted a Joint Committee comprising of the CPCB, the MPCB, District Magistrate of Pune and the Municipal Corporation of Pune to monitor the subsequent course of action in light of the aforesaid decision.

3.11. Aggrieved thereby, the respondent-Concessionaire filed a Review Application before the Tribunal being Review Application No. 49 of 2020 which came to be dismissed vide second impugned order dated 22nd December 2020.

3.12. Being aggrieved thereby, the present statutory appeals have been filed under Section 22 of the National Green Tribunal Act, 2010¹¹.

4. We have heard Shri A.N.S. Nadkarni, learned Senior Counsel appearing on behalf of the appellant in CA Nos. 258-259 of 2021, Shri K. Parameshwar, learned Senior Counsel appearing on behalf of the appellant in CA Nos. 265-266 of 2021 and on behalf of respondent No.7 in CA Nos.258-259 of

¹¹ Hereinafter referred to as the “NGT Act”.

2021, Shri Ninad Laud, learned counsel appearing on behalf of respondent No.1 in both the matters and Shri Rahul Kaushik, learned Senior Counsel appearing on behalf of respondent No.2-MPCB in both the appeals.

5. Shri Nadkarni submitted that the Draft Development Plan 2002 for Pune city was sanctioned on 18th September 2008. He submitted that this was done after inviting and hearing objections under Section 28 of the Maharashtra Regional and Town Planning Act, 1966¹². He submitted that, at that stage, no objection was raised by anyone. He further submitted that the advertisement inviting Expression of Interest for setting up Waste Segregation and Processing Unit was published on 4th March 2014. He submitted that the Concession Agreement was entered into on 30th March 2015. It is submitted that the Waste Segregation Unit is set up within Pune city limits and the Processing Plant is situated at Talegaon that is outside the city limits. It is further submitted that the MPCB granted its authorization to set up and operate on 2nd December 2015 and the Environmental Clearance was also issued on 1st February 2016.

¹² **Hereinafter referred to as the “MRTP Act”.**

6. Shri Nadkarni submitted that the respondent No. 1 herein despite having knowledge of the reservation in the Development Plan, EC and grant of authorization for the Waste Segregation and Processing Unit, filed an OA seeking cancellation and revocation of EC only on 2nd March 2019. It is therefore submitted that the OA was filed belatedly almost after a period of three years from the date of grant of EC. It is therefore submitted that the OA was filed much beyond the period prescribed under Section 16 of the NGT Act. As such, the OA ought to be dismissed on the ground of limitation alone.

7. Shri Nadkarni further submitted that the learned Tribunal had mixed up the facts. Whereas the GPP reservation is in Plot No. 48/2/1 under the Development Plan, the Bio-diversity Park is in Plot No. 49 which is an adjoining plot. As such, the direction issued by the learned Tribunal to use Plot No. 48/2/1 for Bio-diversity Park is unsustainable.

8. Shri Nadkarni further submitted that the reservation for the GPP in the Draft Development Plan is since 2002 which was subsequently sanctioned in 2008. The residential

buildings had come up at a much later point in time. He submitted that only one project was commenced on 27th December 2005 whereas the second project was commenced on 25th March 2008 and all other projects that is 17 in number were commenced only from 2010 onwards that is much after sanction of the Development Plan.

9. Shri Nadkarni further submitted that the Environmental Clearance for the GPP was received on 1st February 2016 and the Plant was set up and commenced in the same year. He submitted that, at the relevant time, the 2000 Rules were in force. It is submitted that the Solid Waste Management Rules, 2016¹³ granted two years period for the migration and upgrading of the existing Plant to the 2016 Rules and as such, the provisions pertaining to the waste disposal came into force on 8th April 2018 i.e. after two years from the date of notification of the 2016 Rules.

10. Shri Nadkarni further submitted that the provisions as regards the buffer zones around waste processing and disposal facility came into force in 2017 and as such, would not apply to a plant which was conceived, set up and became

¹³ Hereinafter referred to as the “2016 Rules”.

functional in 2016. It is submitted that, even the 2016 Rules envisage decentralization of the process i.e. segregation at source. It is submitted that the present location of the GPP conforms to the requirement of the 2016 Rules inasmuch as only the waste generated from surrounding areas alone is segregated and crushed at the Baner Plant.

11. Shri Nadkarni further submitted that in pursuance of the observations made by this Court, the appellant-Corporation took steps to look for an alternative site, but it has not been possible to find out an alternative site on account of variety of reasons.

12. Shri Nadkarni further submitted that the reasoning given by the learned Tribunal that there was no consent of MPCB for establishment of the GPP is also unsustainable. It is submitted that, at the relevant time, the MPCB was not issuing a separate “consent to establish” under the Water Act, 1974 or the Air Act, 1981 but was issuing a composite authorization to “set up and operate” across the State. It is submitted that the circular issued by the MPCB dated 6th September 2021 would clarify this position. It is further submitted that the said practice was followed throughout the

State. Shri Nadkarni relies on the proceedings of the Minutes of the Consent Committee Meeting dated 9th November 2015.

13. Shri Nadkarni submitted that, since initially the authorization granted by MPCB on 2nd December 2015 was valid till 31st December 2016, the appellant-Corporation and the respondent-Concessionaire applied for renewal and the authorization, vide communication of the MPCB dated 4th May 2017, was renewed for a period of five years i.e. till 31st December 2021. It is submitted that, before the expiry of five years period which was to expire on 31st December 2021, the appellant-Corporation and the respondent-Concessionaire again applied for renewal of the authorization to set up and operate on 26th October 2021 and vide communication dated 3rd August 2022, the authorization to set up and operate was renewed till 31st July 2027. Not only that, but on 1st November 2022, consent to operate was also obtained as per notification dated 6th September 2021. The consent to operate has been further renewed till 30th September 2025.

14. Shri Nadkarni further submitted that the Joint Inspection Committee appointed by the learned Tribunal erroneously applied the 2016 Rules which did not apply to

the GPP which was conceived and became functional prior to 2016.

15. Insofar as the finding of the learned Tribunal regarding buffer zone is concerned, Shri Nadkarni submitted that the said buffer zone of 500 meters is to be maintained from land fill sites and does not apply to Waste Segregation Plant. Shri Nadkarni further submitted that the continuation of the Project was in the larger public interest. It is submitted that the GPP processes the organic waste generated in the western part of the city i.e., Aundh, Baner, Kothrud, Sinhadgad road and Katraj. It is submitted that, prior to commencement of the said Plant, the organic waste generated in the western part of the city was taken all the way to Hadapsar which is in the eastern part of the city. It is submitted that this led to foul odour and nuisance to public. It is therefore submitted that the impugned order of the learned Tribunal rather than subserving in public interest, would be detrimental to the public interest.

16. Shri Nadkarni submitted that, in any case, in order to address the concern of the respondents, the appellant-Corporation is in the process of installing portable

compactors with hook lifting mechanism to ensure that the reject waste generated does not touch the ground. It is submitted that the tenders for the same have already awarded to one M/s Global Waste Management and the installation of the machinery would be completed by December 2024. He further submitted that the construction of shed to cover the reject area would also be completed by December 2024. Shri Nadkarni further submitted that the appellant-Corporation would construct bitumen road to the Waste Segregation Plant and concrete the Reject Area immediately. This will in turn enhance the clean transfer of waste and avoid accumulation of water around the Waste Segregation Plant. He submitted that though the appellant-Corporation desired to do it earlier, it could not be done since the appellant-Corporation was facing objections from protestors due to pendency of the present proceedings.

17. Shri Parameshwar, learned Senior Counsel appearing on behalf of the respondent-Concessionaire also supported the submissions made on behalf of the appellant-Corporation. He submitted that the respondent-Concessionaire specializes in processing food waste with

cutting edge anaerobic digestion technology – a process in which microorganisms break down biodegradable waste to produce biogas and organic manure. He submitted that, when cleaned and purified to 96% purity, Bio CNG/CBG can replace fossil fuels such as LPG, diesel, petrol, etc. It is further submitted that the anaerobic digestion is an efficient and controlled biological process that productively utilises waste in an enclosed space, rather than dumping it in a landfill, which causes environmental harm through leaching, contamination of groundwater, risk of fires, etc. It is further submitted that Indian food waste is unique in its composition, with a high concentration of antibacterial ingredients like turmeric and spices, and greases such as ghee that cannot be broken down using conventional enzymes and cultures. He submitted that the respondent-Concessionaire, through years of research and experience, has successfully developed enzymes, cultures, and processes to biologically break down Indian food. It is submitted that the Project commissioned by the respondent-Concessionaire, as a matter of fact, is environment friendly inasmuch as it

converts the food waste into biogas which has also been used to run public transport buses in Pune City.

18. Shri Parameshwar submitted that, in order to carry out the conversion of food waste into biogas, the respondent-Concessionaire has established two plants – one in Baner and one in Talegaon. He submitted that the site at Baner is a waste processing facility where pre-segregated, non-compacted organic waste is received from the appellant-Corporation. The waste is segregated again to remove any non-biodegradable materials, and the residual organic waste is crushed to make a slurry. The slurry produced is then transported to a different site in Talegaon, which is about 34 kms away from Pune City, where raw biogas is generated from the slurry.

19. Shri Parameshwar submitted that though the reservation in the Draft Development Plan is of 2002 which was sanctioned in 2008, no challenge has been made in the OA challenging the reservation of this Plot as GPP. He therefore joins Shri Nadkarni in submitting that the impugned order passed by the learned Tribunal is not sustainable in law.

20. Shri Ninad Laud, learned counsel appearing on behalf of respondent No.1 in both the matters submitted that the checklist prescribed by the MPCB in 2003 would also apply to waste processing facility and the same is not restricted to landfill sites. He submitted that, as per the said checklist, no development zone of 500 meters is prescribed for Municipal Solid Waste Processing Plants and Landfill sites. He further submitted that a mere reservation in the municipal land will not absolve the appellant-Corporation of the environmental obligation. He submitted that the appellant-Corporation itself has sanctioned the plans of the buildings where the residents of respondent No.1 reside. Having sanctioned the Plans, the appellant-Corporation cannot run away from its duty of preventing pollution in the area on account of GPP.

21. Insofar as the contention that the MPCB was only granting authorization and not consent, Shri Laud submitted that merely because the MPCB was following a particular practice, it cannot absolve the appellant-Corporation of obtaining consent under the Water Act, 1974 or the Air Act, 1981 which are statutory requirements. Shri Laud submitted that the 2003 checklist is traceable to 2000 Rules.

22. Shri Laud further submitted that, a perusal of the Joint Inspection Committee Report itself would reveal that the Joint Inspection officials felt prevalence of odour in and around the plant premises. He further submitted that the Joint Inspection Committee also found that the segregation rejects has been transported in open truck without any cover. He has submitted that the said Report also suggests that such open carriage would cause nuisance during transportation. He therefore submitted that it is clear that the GPP was causing pollution in the area thereby making the life of the residents of respondent No. 1 miserable. He submitted that, not only that even the suggestions which are given by the National Engineering and Environment Research Institute¹⁴ have also not been implemented.

23. Shri Laud, in the alternative, submitted that, in the event this Court is inclined to hold that the GPP is entitled to continue its operations, the Court should issue stringent directions so that the residents are not compelled to suffer the pollution.

¹⁴ Hereinafter referred to as the “NEERI”.

24. Shri Kaushik, learned Senior Counsel appearing on behalf of the MPCB also accepts the position that, at the relevant time i.e. when the GPP commenced, the MPCB was following the practice of only granting authorization and only after its circular dated 6th September 2021, it has started granting consent. He therefore submitted that accordingly, the first consent was granted on 1st November 2022 and the second consent has been granted on 16th March 2024.

25. We have heard the learned counsel for the parties and also perused the materials placed on record.

26. A perusal of the proposed Land Use Map for village Balewadi, Baner which was notified on 31st December 2002 would reveal that in the said Plan, Plot No. 48/2/1 has been reserved for GPP. Plot Nos. 49/289/50 and 7 have been shown in Green Belt. The Draft Development Plan was published under Section 28(4) of the MRTP Act on 30th November 2005. In the said Plan also, Plot No. 48/2/1 has been shown as reserved for GPP. Plot Nos. 49/289/50 and 7 have been reserved for Bio-diversity Park (BDP). The Government of Maharashtra vide notification dated 18th September 2008 sanctioned the said Draft Development

Plan. It could thus clearly be seen that right from 2002, the Plot in question has been reserved for GPP. As already observed hereinabove, the first building was granted commencement certificate on 27th December 2005 whereas the second was granted commencement certificate on 25th March 2008 and all other, that is 17 buildings, have been granted commencement certificate only after 2008. It is thus clear that the commencement certificate insofar as the first building is concerned is also after the Draft Development Plan was statutorily notified. The commencement certificates insofar as all other buildings are also after the Draft Development Plan was sanctioned by the State Government. It is thus clear that the commencement certificates in respect of all the buildings are after the date on which the Plot was reserved for GPP.

27. The learned Tribunal while allowing OA of respondent No.1 has also come to a conclusion that the GPP is also in violation of Rule 20 of 2016 Rules. For considering the correctness of the said finding of the learned Tribunal, we will have to first consider as to which of the Rules are to be applicable to the said GPP.

28. It is the contention of the appellant-Corporation that the GPP would be covered by the 2000 Rules whereas it is the contention of the respondent No. 1 that the same would be covered by the 2016 Rules.

29. As per sub-rule (2) of Rule 1 of the 2016 Rules, the Rules were to be given effect from the date of their publication in the Official Gazette. The 2016 Rules were notified on 8th April 2016. As per Entry No. 7 under Rule 22 of the 2016 Rules, the time frame for establishment of necessary infrastructure for implementation of these Rules was to be created by the local bodies and other concerned authorities within a period of two years from the date of the said Rules coming into force. It is further to be noted that the application for authorization as per sub-rule (2) of Rule 4 of the 2000 Rules was made by the appellant-Corporation on 10th August 2015 in Form-I and the authorization was granted in Form-III of the 2000 Rules on 2nd December 2015. The processing plant also became operational on 17th December 2015. It is also to be noted that the SEIAA granted Environment Clearance in respect of the Organic Waste Management Plant at Talegaon, Dabhade after public hearing

on 1st February 2016. The GPP and the Organic Waste Management Plant at Talegoan, Dabhade are part of the same Concession Agreement which was entered into between the appellant-Corporation and the respondent-Concessionaire on 30th March 2015. It could thus clearly be seen that the application for grant of authorization, grant of authorization, grant of Environment Clearance by the SEIAA and the commencement of the project was all prior to 8th April 2016 i.e. the date on which the 2016 Rules came into force.

30. It will also be relevant to refer to the Preamble of the said 2016 Rules, which reads thus:

“Now, therefore, in exercise of the powers conferred by sections 3, 6 and 25 of the Environment (Protection) Act, 1986 (29 of 1986) and in supersession of the Municipal Solid Waste (Management and Handling) Rules, 2000, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules for management of Solid Waste, namely:-”

31. It could thus clearly be seen that the Preamble itself states that though the 2016 Rules are in supersession of the 2000 Rules, they will apply except as respect things done or omitted to be done before such supersession.

32. It will be relevant to refer to the following observations of this Court in the case of ***State of Punjab v. Harnek Singh***¹⁵, wherein this Court after considering the earlier decisions has observed thus:

“**16.** The words “anything duly done or suffered thereunder” used in clause (b) of Section 6 are often used by the legislature in saving clause which is intended to provide that unless a different intention appears, the repeal of an Act would not affect anything duly done or suffered thereunder. This Court in *Hasan Nurani Malak v. S.M. Ismail, Asstt. Charity Commr., Nagpur* [AIR 1967 SC 1742] has held that the object of such a saving clause is to save what has been previously done under the statute repealed. The result of such a saving clause is that the pre-existing law continues to govern the things done before a particular date from which the repeal of such a pre-existing law takes effect. In *Universal Imports Agency v. Chief Controller of Imports and Exports* [AIR 1961 SC 41 : (1961) 1 SCR 305] this Court while construing the words “things done” held that a proper interpretation of the expression “things done” was comprehensive enough to take in not only the things done but also the effect of the legal consequence flowing therefrom.”

33. It can thus be seen that this Court has in unequivocal terms held that the term “things done” was comprehensive enough to take in not only the things done but also the effect of the legal consequences flowing therefrom.

¹⁵ (2002) 3 SCC 481 : 2002 INSC 84

34. In the present case, as already discussed hereinabove, the application for authorization, the grant of authorization, the grant of Environment Clearance by the SEIAA and the commencement of the GPP all have taken place prior to 8th April 2016 i.e. the date on which the 2016 Rules came into force. As such, we hold that the learned Tribunal has grossly erred in observing that the GPP in question was covered by the 2016 Rules.

35. The next finding of the learned Tribunal is with regard to the consent under the Water Act or the Air Act. A perusal of the Minutes of the 11th Consent Committee Meeting of 2015-16 held on 9th November 2015 would clearly reveal that the MPCB was following the practice of granting authorization under the 2000 Rules which covers all the aspects of the consent. As such, MPCB did not find it necessary to cover such processing plant for the consent management.

36. It will be relevant to refer to the Circular issued by the MPCB dated 6th September 2021, which reads thus:

“Board is receiving applications from solid waste Management Facilities and ULBs for grant of consent for installation and operation of the facility.

As there is no comprehensive categorization of all Solid waste processing operations/activities in modified CPCB categorization for Solid Waste Management, Board is not granting the consent for Solid Waste Management Facility/operations/activities.

Presently, Board is granting authorization under The Solid Waste Management rules, 2016, for setting up and operation of solid waste management facilities.

The Board in its 176th meeting held on 25/02/2021 passed resolution on consent management for solid waste processing plants / facilities and decided to grant Consent to Establish/Operate for Solid Waste Management facilities.

The Consent fees is charged as per Env. Dept. GoM GR dated 25.8.2011 to individual/Integrated Solid Waste Management facility depending upon type of ULB. The term of consent for Red, Orange, and Green category of Industry is one, two and three years respectively".

Local Bodies to pay the consent fees to the Board as per the statement given below.

- Urban Local Bodies-

Sr. No.	Urban Local Body	Fees
1.	Municipal Corporation	Rs.1,00,000/-
2.	Municipal Council Class-A	Rs.50,000/-
3.	Municipal Council Class-B	Rs.5,000/-
4.	Municipal Council Class-C	Rs.2,000/-

- Other than Local Body-

Individual	Based on gross
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Operator/Industry installing MSW based processing plant.	capital investment as per prevailing rules for industries.
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- Delegation of powers to various authorities for grant of consent will be as per "revised delegation of powers for consent Management" issued vide Office Order No. 12, Dated-23/12/2020.

Therefore, all Ros and SROs are hereby directed to communicate all local Bodies/Cantonment Boards of Concern area of jurisdiction for submission of application to obtain Consent to Establish/Operate for setting up and operation of existing as well as proposed solid waste management facilities.”

37. It could thus be seen that prior to 6th September 2021, the MPCB was not granting Consent for Solid Waste Management facility/operations/activities. The MPCB was granting authorization for setting up and operation of solid waste management facilities. Only in the meeting dated 25th February 2021, a Resolution was passed on consent management and it was decided to grant Consent to operate for Solid Waste Management Facilities. Vide the said communication, all ROs and SROs were directed to communicate to all local Bodies/Cantonment Boards of concerned areas for submission of applications to obtain Consent to establish/operate for setting up and operation of

existing as well as proposed Solid Waste Management Facilities.

38. Admittedly, after the said date i.e. 6th September 2021, the Consent to Operate was granted by the MPCB on 1st November 2022. The said Consent to Operate has been further renewed till 30th September 2025 and authorization to set up and operate has been granted till 31st July 2027. It can thus clearly be seen that the MPCB started granting Consent only after 6th September 2021 and prior to that, it was only issuing a composite authorization. We find that the learned Tribunal has failed to take this into consideration and as such, the finding in that regard also deserves to be set aside.

39. The next contention is that the Checklist issued by the MPCB which was published in 2003 would also apply to the GPP. The learned counsel for respondent No. 1 submitted that the said Checklist specifically prescribes that no development zone of 500 metres was required to be kept from the boundary of the landfill site. Further relying on the Checklist, the learned counsel submitted that the buffer zone of 500 metres was required to be kept from the Solid Waste

Processing Plant as well. A perusal of the said Checklist would reveal that the requirement of no-development zone or a buffer zone is only with regards to landfill sites. It can further be seen that the Schedules framed under Rules 6 (1)(3) and 7 (2) of the 2000 Rules prescribe separate Schedules for landfill sites on one hand and Composting, Treated Leachates and Incineration by waste processing or disposal facilities on the other hand. From the said Schedule-III which is applicable to landfill sites, it can be seen that under clause 9, a buffer zone of no-development is required to be maintained around the landfill site and the same shall be incorporated in the Town Planning Department's land use plans. However, insofar as the Standards for Composting, Treated Leachates and Incineration are concerned, the same read as under:

“3. In order to prevent pollution problems from compost plant and other processing facilities, the following shall be complied with, namely :-

- i. The incoming wastes at site shall be maintained prior to further processing. To the extent possible, the waste storage area should be covered. If, such storage is done in an open area, it shall be provided with impermeable base with facility for collection of leachate and surface water run-off into lined drains

leading to a leachate treatment and disposal facility;

ii. Necessary precautions shall be taken to minimise nuisance of odour, flies, rodents, bird menace and fire hazard;

iii. In case of breakdown or maintenance of plant, waste intake shall be stopped and arrangements be worked out for diversion of wastes to the landfill site;

iv. Pre-process and post-process rejects shall be removed from the processing facility on regular basis and shall not be allowed to pile at the site. Recyclables shall be routed through appropriate vendors. The non-recyclables shall be sent for well designed landfill site(s).

v. In case of compost plant, the windrow area shall be provided with impermeable base. Such a base shall be made of concrete or compacted clay, 50 cm thick, having permeability coefficient less than 10^{-7} cm/sec. The base shall be provided with 1 to 2 per cent slope and circled by lined drains for collection of leachate or surface run-off;

vi. Ambient air quality monitoring shall be regularly carried out particularly for checking odour nuisance at down-wind direction on the boundary of processing plant.”

40. We are therefore of the considered view that the contention of the learned counsel for respondent No. 1 that under the 2000 Rules, a buffer zone is required to be

maintained insofar as the GPP is concerned is without substance.

41. We further find that the finding of the learned Tribunal that initially the plot where GPP was constructed was reserved for Bio-diversity Park is also erroneous and factually incorrect. As discussed hereinabove, the plot in question has been reserved for the GPP since inception and it is only the adjoining plot which was reserved for the Bio-diversity Park.

42. We are therefore of the considered view that the learned Tribunal has erred in allowing the OA of the respondent No. 1 and directing closure of the GPP. Apart from that, we find that the closure of the GPP in question rather than subserving the public interest, would be detrimental to public interest. If the GPP in question is closed, the organic waste generated in the western part of Pune city would be required to be taken all the way throughout the city to Hadapsar which is in the eastern part of the city. This will undoubtedly lead to foul odour and nuisance to the public.

43. It will be relevant to refer to clauses (q) and (v) of Rule 15 of the 2016 Rules, which read thus:

“**15.** Duties and responsibilities of local authorities and village Panchayats of census towns and urban agglomerations.- The local authorities and Panchayats shall,-

.....

(q) transport segregated bio-degradable waste to the processing facilities like compost plant, bio-methanation plant or any such facility. Preference shall be given for on site processing of such waste;

.....

(v) facilitate construction, operation and maintenance of solid waste processing facilities and associated infrastructure on their own or with private sector participation or through any agency for optimum utilization or various components of solid waste adopting suitable technology including the following technologies and adhering to the guidelines issued by the Ministry of Urban Development from time to time and standards prescribed by the Central Pollution Control Board. Preference shall be given to decentralized processing to minimize transportation cost and environmental impacts such as-

a) bio-methanation, microbial composting, vermi-composting, anaerobic digestion or any other appropriate processing for bio-stabilisation of biodegradable waste;

b) waste to energy processes including refused derived fuel for combustible fraction of waste or supply as feedstock to solid waste based power plants or cement kilns;”

44. It can thus be seen that the 2016 Rules also give preference to the on-site processing of the waste. It also emphasizes preference to be given to decentralized

processing to minimize transportation cost and environmental impact. It has been submitted on behalf of the appellant-Corporation that 48 such GPPs have been commissioned throughout the city of Pune wherein the non-compacted, organic waste is segregated to remove any non-biodegradable materials and the residual organic waste is crushed to make a slurry. The said slurry is then transported to a site in Talegaon where raw biogas is generated from the slurry. At the Talegaon plant, biogas is produced which is used for providing fuel to the public transport buses. As such, the entire Project is environmentally friendly.

45. The approach of respondent No. 1 appears to be that such a Facility though could be established in the vicinity of the other buildings, it should not be established in their backyard. The Division Bench of the Bombay High Court in the case of *Bhavya Height Co-operative Housing Society Ltd. v. Mumbai Metropolitan Region Development Authority and Others*¹⁶ had an occasion to consider a similar situation, wherein the High Court observed thus:

“**36.** To this affidavit there are sketch plans annexed prepared by the Petitioner's architects.

¹⁶ 2019 SCC OnLine Bom 1075

These propose that the Monorail Station staircase be shifted to a point to the south, *directly in front of Rehab Building No. 5*. In other words, it would prima facie seem that this is the classic NIMBY principle — Not In My Back Yard. For what the Petitioner seems to be suggesting is that it is perfectly all right if the lives of the residents of the seven-storey slum rehab building (all previously slum dwellers) are endangered by the same staircase, but the Petitioner's members' interest must remain paramount. We cannot and do not countenance any such submission.”

46. We agree with the said observations of the High Court.

47. We are therefore of the considered view that the impugned judgment and order of the learned Tribunal deserves to be quashed and set aside and the OA of the respondent No. 1 is to be dismissed.

48. In the result, the appeals are allowed. The impugned judgments and orders dated 27th October 2020 passed by the learned Tribunal in OA No. 210 of 2020 and dated 22nd December 2020 in Review Application being No. 49 of 2020 are quashed and set aside. OA No. 210 of 2020 filed by respondent No. 1 is also dismissed.

49. However, before we part with the judgment, we find it necessary to caution the appellant-Corporation as well as the respondent-Concessionaire that they should take necessary

steps so that the residents residing in the nearby buildings do not have to suffer on account of foul odour. The NEERI, in its Report, had made the following recommendations:

“Recommendations:

Based on the observations and good engineering practices, following suggestions are offered:

Plant A:

- The slurry making area needs proper cover in the hopper area to reduce odour / foul smell,
- A suitable odour control system / misting system (e.g carbon filters, etc) needs to be installed immediately,
- Better material of construction and design could be employed to avoid corrosion problems and frequent shut downs,
- The space is too congested for capacity enhancement. PMC may think of additional/alternative space,
- The food bags need to be stored properly before using them.
- Slurry sampling and analysis needs to be done frequently to understand the decomposition of food waste and control it to the level so that maximum methane can be produced in the Talegaon plant.
- The technology provider must also look into reducing the transporting cost between slurry making facility at Baner and Talegaon plant by finding an optimum slurry density.”

50. We direct the appellant-Corporation and the respondent-Concessionaire to ensure that all the aforesaid

suggestions made by NEERI should be strictly complied with. We further direct the appellant-Corporation to install the portable compactors with hook mechanisms so as to ensure that the reject waste does not touch the ground by 31st December 2024.

51. The appellant-Corporation is further directed to construct bitumen road to the Waste Segregation Plant and concrete the reject area which will enhance clean transfer of waste and avoid accumulation of water around the Waste Segregation Plant.

52. We further direct the appellant-Corporation as well as the respondent-Concessionaire to construct a shed so as to cover the reject area by 31st December 2024.

53. We further direct the appellant-Corporation/respondent-Concessionaire to carry out plantation with thick density so that there would be a green cover on all the sides of the GPP.

54. A perusal of the sanctioned plan would reveal that, on one side, there is a reservation for the Bio-diversity Park. As such, the plantation would be required to be done to cover the three sides.

55. Insofar as the Bio-diversity Park is concerned, we direct the State Government to consider the possibility of growing Miyawaki forests so as to provide green lungs to the nearby areas.

56. We further direct the NEERI to conduct an environmental audit of the GPP every six months and in turn, the appellant-Corporation and the respondent-Concessionaire are directed to ensure that the suggestions made in the said audit are strictly complied with.

57. Pending application(s), if any, shall stand disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(PRASHANT KUMAR MISHRA)

.....**J.**
(K.V. VISWANATHAN)

NEW DELHI;
SEPTEMBER 12, 2024.