

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 vis-

à-vis 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 in so far 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.

High Court of Karnataka
Daily Orders of the Case Number : WP 46523/2012 for the date of order 13/12/2012

Honble Justice N.KUMAR AND B.V.NAGARATHNA
13/12/2012

Order in WP 46523/2012

NKJ & BVNJ:

13.12.2012 W.P.Nos. 46523/2012,

24739-40/2012, 30450/2012

On behalf of the respondents, a compliance report is filed setting out the various steps taken after the last date of hearing. We have heard the learned counsel for the parties and also the parties who are prosecuting this matter in person.

2. What emerges from their submission is, the problem is two fold. One is collection and transportation of the garbage every day and second is the garbage that is already transported and dumped in various landfills, its treatment and disposal.

3. It appears one of the main reasons for the problem in collecting and transporting garbage is the fight between the contractors. The notification issued calling for bids from various contractors for collection and removal of garbage is under challenge before this Court. That matter is listed on 3.1.2013 for final hearing. Probably, once that issue is sorted out, it would be easy for the Court to fix the responsibility of this collection and transportation of garbage on contractors vis-à-vis the BBMP and pass appropriate orders. Therefore, for the time being that is deferred.

4. In so far as the garbage already transported out of the City and lying in the landfills is concerned, that is causing a great problem to the villagers around those landfills and unless that garbage is duly treated and processed the problem cannot be solved. It is in this context, in the compliance report it is stated that the, State Government on 7.12.2012 has issued an order constituting a Technical Expert Committee to assess the technology proposed for the project for treating unsegregated Municipal Solid Waste lying in the landfill areas. The said Committee has to evaluate 36 proposals received by BBMP and submitted to the State Government with respect to Bio-Mining activities to handle the unprocessed garbage piled up at various land sites. That apart the BBMP has also constituted a Solid Waste Management Cell, headed by its Additional Commissioner, Solid Waste Management and comprising of 5 Chief Engineers. Sri M.R. Venkatesh, Chief Engineer, has been entrusted a specific duty of supervising the day to day disposal of Municipal Solid Waste Management in Bangalore City. In those circumstances, it is of utmost importance that the Technical Expert Committee would consider these 36 proposals and finalize the applicants who are entitled to set up these Bio-Mining activities at the earliest. The learned counsel for the State submits within 15 days from today they would finalize the proposals and issue appropriate orders so that further steps could be taken for setting up these units.

5. Learned counsel for the Corporation submitted in so far as Yelahanka Zone is concerned, the segregation of dry waste and wet waste is working comfortably. On 15th of this month a meeting is convened in Town Hall inviting NGOs, residential welfare associations and all persons who are interested in solving this problem to meet and chalk out a programme, where under, each household in every zone would voluntarily segregate the dry waste from wet waste so that the

said waste could be separated and avoid the problems which we are facing now.

6. It was also brought to the notice of the Court that, the main culprits are the commercial establishments, choultries and also massive residential complexes, where there is indiscriminate mixing of these plastic and its products with the wet waste. They are the bulk generators in the city. It is submitted that about 1,900 tonnes per day is generated by these bulk generators. They have to be treated as a separate class by the Corporation and they should take steps to see that they obey the law of the land meticulously, failing which appropriate action should be taken against them to recover the costs of such removal of the garbage including such coercive steps which will compel them to follow the Rules. It is in this context it is necessary to notice the Plastic Waste (Management and Handling) Rules, 2011. Rule 6 provides for plastic waste management which reads as under : -

6. Plastic Waste Management.-

The plastic management shall be as under:-

(a) recycling, recovery or disposal of plastic waste shall be carried out as per the rules, regulations and standards stipulated by the Central Government from time to time;

(b) recycling of plastics shall be carried out in accordance with the Indian Standard: IS 14534:1998 titled as Guidelines for Recycling of Plastics, as amended from time to time;

(c) the municipal authority shall be responsible for setting up, operationalisation and coordination of the waste management system and for performing the associated functions, namely:- (i) to ensure safe collection, storage, segregation, transportation, processing and disposal of plastic waste; (ii) to ensure that no damage is caused to the environment during this process; (iii) to ensure setting up of collection centres for plastic waste involving manufacturers; (iv) to ensure its channelisation to recyclers; (v) to create awareness among all stakeholders about their responsibilities; (vi) to engage agencies or groups working in waste management including waste pickers, and (vii) to ensure that open burning of plastic waste is not permitted;

(d) (i) the responsibility for setting up collection systems for plastic waste shall be of the municipal authority concerned and the said municipal authority may, for this purpose, seek the assistance of manufacturers of plastic carry bags, multilayered plastic pouches or sachets or of brand owners using such products;

(ii) the municipal authority may work out the modalities of a mechanism based on Extended Producers Responsibility involving such manufacturers, registered within its jurisdiction and brand owners with registered offices within its jurisdiction either individually or collectively, as feasible or setup such collection systems through its own agencies;

(e) recycler shall ensure that recycling facilities are in accordance with the Indian Standard: IS 14534:1998 titled as Guidelines for Recycling of Plastics and in compliance with the rules under the Environment (Protection) Act, 1986 as amended from time to time.

(f) the concerned municipal authority shall ensure that the residues generated from recycling processes are disposed of in compliance with Schedule II (Management of Municipal Solid Wastes) and Schedule III (Specification for Landfill Sites) of the Municipal Solid Wastes (Management and Handling) Rules, 2000 made under the Environment (Protection) Act, 1986, as amended from time to time;

(g) the municipal authority shall incorporate the said rules in the Municipal bye laws of all the Urban Local Bodies;

(h) the municipal authority shall encourage the use of plastic waste by adopting suitable technology such as in road construction, co- incineration etc. The municipal authority or the operator intending to use such technology shall ensure the compliance with the prescribed standard including pollution control norms prescribed by the competent authority in this regard.

7. A perusal of the aforesaid provision makes it very clear that it is the municipal authority which is responsible for setting up, operationalisation and coordination of the waste management system and for performing the associated functions as set out in clause (c). In discharging the said responsibility, clause (d)(i) provides for their seeking the assistance of manufacturers of plastic carry bags, multilayered plastic pouches or sachets or of brand owners using such products. Further, the municipal authority has to work out the modalities of a mechanism based on Extended Producers Responsibility involving such manufacturers and brand owners either individually or

collectively, as feasible or setup such collection systems through its own agencies. The municipal authority shall also encourage the use of plastic waste by adopting suitable technology such as in road construction, co-incineration, etc.,

8. Therefore, a statutory obligation is cast on the BBMP under the Rules. However, it appears the authorities have not given proper attention to these statutory obligations which are cast upon them. Learned counsel appearing for the Corporation submits by the next date of hearing they will place on record the steps which are taken as contemplated in Rule 6 of the aforesaid Rules, so that a satisfactory remedy could be found for this plastic waste management.

9. In the aforesaid circumstances, it is appropriate that the BBMP shall entrust to one of its officials the responsibility of keeping track of all these bulk generators, how these garbage is segregated and transported and to see that there are no complaints and if there are any complaints, to look after such complaints. Learned counsel for the Corporation submitted that, within 2 days an official will be appointed who will be exclusively in charge of bulk generators, collection, removal and transportation of this garbage, who will be present in Court on all the dates of hearing and answer the questions put by the Court.

10. At this stage it is needless to point out, for the successful implementation of this plastic waste management or even this garbage, the cooperation and assistance of every citizen of the city is a must. No doubt it is encouraging to see many of the public spirited people are coming out of their houses and trying to help the city being kept clean. But, unless everyone show the same interest, concern, it is not possible to achieve this uphill task. One of the reasons for non-cooperation may be the ignorance. Therefore, it is of utmost importance for the Corporation as well as the State to take appropriate steps to inform the citizenry of the city continuously about the need to segregate this dry waste and wet waste and how it should be disposed of and in what manner the Corporation authorities would assist them in its disposal. As most of the people are addicted to television, it would be appropriate that the authorities would see that the message is sent to every house through such publicity so that after realizing their responsibility the people would not only cooperate with the BBMP but also discharge their fundamental duties in keeping the city clean and to segregate this waste in the manner suggested by the Corporation, so that it is easy to remove the waste from their houses. Having regard to the magnitude of the problem, the amount involved in clearing the garbage, any amount spent on this advertisement would be negligible. Immediate steps have to be taken to see that this propaganda is done and that people are made aware of their duties and responsibilities.

11. It is pointed out from the news report found in Deccan Herald on 15.11.2012 the garbage is dumped in Subramanyapura Lake in Uttarahalli in Bangalore South Constituency. It is stated that, over the last one month, hundreds of truckloads of garbage were dumped on the embankment. Local residents objected, but were bullied into silence by the garbage contractors. In fact, a photograph of the truck carrying the garbage, dumping is also published. The Corporation to have its say in the matter.

Call on 8.1.2013.

High Court registry is directed to furnish a carbon copy of this order to all the authorities.

(N. KUMAR)

JUDG

(B V NAGARATHNA)

JUDGE

ckl/-

High Court of Karnataka Daily Orders of the Case Number : W P 46601/2012 for the date of order 11/10/2013

Honble Justice N.KUMAR AND B.V.NAGARATHNA 11/10/2013 order in W.P.46601/2012

A Memo is filed by the petitioners in W.P.No.46523/2012 enclosing a copy of the Draft Municipal Solid Waste (Management and Handling) Rules, 2013, which the Central Government proposes to issue in supersession of Municipal Solid Waste (Management and Handling) Rules, 2000.

Objections and Suggestions are called for on the proposals contained in the draft Notification. The

petitioners have filed their objections. The Rules of 2000 was made by the Central Government in pursuance of the directions issued by the Hon'ble Apex Court in the public interest litigation. Prima facie, the proposed Rules run counter to the earlier Rules especially in so far as segregation of the solid waste at source is concerned. However, the learned counsel appearing for the Central Government is not present. Petitioner to furnish a copy of this Memo along with Annexures to the Assistant Solicitor General of India Sri.Kalyan Basavaraj to have a say of the Central Government on the next date of hearing. Till such time, the draft Rules shall be kept on hold. The learned Government Advocate submitted, the Government has already preferred an appeal in the case of Subramanyapura Lake and infact it was listed for preliminary hearing today. It did not reach and now it is adjourned to 31.10.2013. A memo is filed on behalf of the Corporation, pointing out that all the temporary contracts granted in respect of 41 packages are all terminated. It on 24.10.2013 for further orders.

<http://thanal.co.in/blog/ministry-of-environment-and-forests-withdraws-controversial-proposal-to-modify/>

Ministry of Environment and Forests withdraws controversial proposal to modify

Posted on **November 13, 2013** by **Shibu**

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From **Environment Support Group – Bengaluru**

Ministry of Environment and Forests withdraws controversial proposal to modify Municipal Solid Waste Management Rules

The Additional Solicitor General Mr. Kalyan Basavaraj representing the Indian Environment and Forest Ministry appeared before the Division Bench of the Karnataka High Court constituted by Justice Mr. N. Kumar and Justice Mrs. B. V. Nagarathna today and submitted that the Ministry has withdrawn its proposal to comprehensively amend the existing Municipal Solid Waste Management Rules, 2000 and replace it with its 2013 version. It may be recalled that Environment Support Group had drawn the attention of Justice Mr. Kumar and Justice Mrs. Nagarathna that the 2013 Draft Rules were highly regressive and worked against progressive initiatives undertaken in Bangalore and Karnataka under the direction of the Karnataka High Court and that the Draft Rules also promoted the highly dangerous municipal solid waste incineration technologies.

In response to these submissions the Court restrained the Ministry from modifying the existing Municipal Solid Waste Management 2000 Rules by its 24th October order. The Court issued this order as it found that the Ministry's move to comprehensively amend the exist law governing municipal solid waste management and replace them with new Rules promoted the regressive approach of collecting waste without segregation at source and thus leading to a series of problems that not only increased the cost of waste management but also created a variety of environmental and public health impacts. This the Court found "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" of the Court, which had strenuously worked to ensure implementation of progressive features of the Municipal Solid Waste Management Rules, 2000.

Justice Mr. Kumar and Justice Mrs. Nagarathna have recorded the submission of the Ministry in their order today.

[Find land in all Assembly segments to set up waste units, High Court tells BBMP](#)

<http://www.thehindu.com/news/cities/bangalore/find-land-in-all-assembly-segments-to-set-up-waste-units-high-court-tells-bbmp/article5348064.ece?homepage=true>

The Karnataka High Court on Wednesday asked the Bruhat Bangalore Mahanagara Palike (BBMP) Commissioner to identify a suitable place in each of the 28 Assembly constituencies in the city to set up municipal solid waste (MSW) processing units.

A Division Bench comprising Justice N. Kumar and Justice B.V. Nagarathna issued the direction while hearing a batch of public interest litigation (PIL) petitions on the garbage problem.

The Bench said that after its [recent visit to some waste collection centres](#) and processing units, along with members of the solid waste management expert committee, it believed that setting up waste processing units in each Assembly constituency would reduce the cost incurred in transporting waste to distant landfills. Besides, it would ensure that residents of the city's outskirts are not affected by Bangalore's waste.

The Commissioner was asked to file a report on dry waste collection centres already set up or in the process of being set up.

SUGGESTIONS SOUGHT

The Bench also asked the BBMP Commissioner, members of the expert committee and others to file statements on the advantages and disadvantages of both suggested models of waste collection — segregation at source and collection without segregation — including the cost involved in both.

The judges advised the Commissioner to consider the possibility of introducing a two-bin system for collecting dry and wet waste from each household, instead of collecting them in polythene covers.

COST OF PACKAGES

They sought details on the cost of collection and transportation of garbage in areas covered under 41 garbage packages before and after discontinuation of services of private contractors upon expiry of their term.

The Bench said it would visit a landfill and biomethanisation centre at Yelahanka early next month before issuing final orders on the petitions.

Meanwhile, Assistant Solicitor General of India Kalyan Basavaraj informed the Bench that the Ministry of Environment has withdrawn the draft MSW Management Rules 2013, which was proposed to replace the exiting Rules, 2000. He said the Ministry would issue a fresh draft as per the directions of the court and submit a notification for court's perusal.