

**BEFORE THE NATIONAL GREEN TRIBUNAL
NEW DELHI,
(PRINCIPAL BENCH)**

Original Application No. 2 of 2011

1. Gram Panchayat Totu (Majthai),
Tehsil and District, Shimla
Through its Authorized Representative
Sh. Uttam Singh Kashyap
R/o Village Baharatpur,
P.O. Totu, District Shimla, H.P.

2. Shri Chiranjiv Lal Kashyap,
Village and Post Office, Totu
Shimla-171011.

3. Shri Het Ram Sharma,
Village BHARYAL,
Post Office, Baheri Via Totu,
District Shimla (H.P.)

Applicant/Petitioner

Versus

1. State of Himachal Pradesh
Through Principal Secretary
(Urban Development)
H.P. Secretariat, Shimla-171002.

2. The Principal Secretary (Forests)
H.P. Secretariat
Shimla-171002.

3. The Municipal Corporation, Shimla
Through its Commissioner,
The mall, Shimla-171001.

4. Himachal Pradesh State Pollution Control Board
Through its Secretary,
Him Parivesh, New Shimla-171009.
5. The Deputy Commissioner, Shimla
Shimla-171001 (H.P.)
6. Union of India
Through Secretary
Ministry of Environment and Forests
Paryavaran Bhawan, CGO Complex,
Lohdi Road, New Delhi-110003.
7. Central Pollution Control Board (CPCB)
Through its Secretary, Parivesh Bhawan
CBD cum Office Complex,
East Arjun Nagar, New Delhi-110032.
8. Airport Authority of India
Through its Chairman,
Rajiv Gandhi Bhawan, Safdarjung Airport
New Delhi-110003.

Counsel for Applicants:

Mr. Vikas Mahajan

Counsel for Respondents:

Mr. Anil Nag
Mr. Aslam Mirza & Sonia Sharma
Mr. Anil Kumar Chandel
Ms. Neelam Rathore
Ms. Alpana Poddar
Mr. A.P. Vinod

JUDGMENT

PRESENT:

Justice A.S. Naidu (Judicial Member)

Dr. G.K. Pandey (Expert Member)

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Dated 11th October, 2011
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Justice A.S. Naidu

Gram Panchayat Totu through Shri Uttam Singh Kashyap and two other villagers of the said Village, situated in District Shimla of Himachal Pradesh, have filed this appeal under Section 18(1) read with Section 14, 15 and 19 of the National Green Tribunal Act, 2010, *inter alia* praying to restrain the Municipal Corporation, Shimla and Himachal Pradesh State Government from undertaking construction of the “Solid Bio-Waste Management Plant” at Village BHARYAL on TARA DEVI - TOTU BYE PASS about 9 kms away from Shimla Town and for other consequential reliefs.

2. To appreciate the issues in controversy, it would be prudent to state briefly the facts relevant for the said purpose. Way back in the year 1999, a Solid Bio-Waste Management Plant (hereinafter called as MSW, Plant) was installed by Shimla Municipality (hereinafter called M.C. Shimla) at a place commonly known as DARNI-KA-BAGICHA, Lalpass, Shimla. By afflux of time, the Township of Shimla grew all around the place consequently the MSW Plant became virtually situated in the middle of the town. The plant, unfortunately did not work satisfactorily, as a result of which, stench and foul smell emanated from the site and Polluted the surroundings, consequently the residents of the area were affected adversely due to the foul smell. The Municipality, it appears had entrusted the management of the plant to a private company which did

not possess the necessary technical know how to run the plant, consequently the entire area was polluted and it caused nuisance to general public at large.

3. In the year 2003, a Committee was constituted to shift the site of Solid Bio Waste Management Plant from DARNI-KA-BAGICHA to some other suitable place. The commissioner of M.C., Shimla and other officers visited several places around Shimla and selected two sites suitable for locating the MSW plant. After much deliberations, the Committee selected the site near village BHARYAL situated at TARA DEVI - TOTU BYE PASS for the said purpose, and a proceeding was drawn up on 2nd September, 2003. In consonance of the said decision, necessary steps were taken for obtaining allotment of lands and permissions from different authorities concerned, as per the Municipal Solid Waste (Management and Handling) Rules, 2000.

- 3.1 The Ministry of Environment and Forests (MoEF), by letter dated 25th February, 2005, conveyed approval for diversion of 2.45 ha of forest land for non forestry purpose under Section-2 of the Forest Conservation Act, 1980, subject to the condition that Municipal Corporation shall carry on compensatory afforestation upon 5.0 ha of area and shall not fell more than 219 trees and 1055 saplings, existing at the site.

- 3.2 Himachal Pradesh State Pollution Control Board (HPSPCB) also issued a 'No-Objection Certificate (NOC)' for setting up MSW Plant subject to condition that requisite clearance would be obtained from the Airport Authority of India as well as Town and Country Planning Department.

- 3.3 By letter dated 30th June, 2006, the Airport Authority of India granted NOC for construction of MSW Plant, subject to condition that the height of the said plant would be maximum of 15 mtrs from ground so

that the proposed structure would not exceed 1565 mtr above sea level. The said permission was, however, valid for six months only.

The Special Area Development Authority (SADA) constituted under the Town and Country Planning Act, by its letter dated 24th June, 2008, also granted NOC for construction of the MSW Plant.

4. While matters stood thus, in the year 2009 unfortunately the MSW Plant which was situated at DARNI-KA-BAGICHA caught fire and the M.C. Shimla could not control the same. The fire continued for more than 72 hrs. and created an alarming situation all around. The obnoxious smell and smoke emanating from the dump site engulfed not only the surrounding areas but also the entire town, posing immense health risks, like respiratory ailments amongst the residents of the locality. It appears that the fumes and smoke arising from the fire threatened the residential houses situated in the surrounding areas and entered into the High Court premises, thereby causing disruptions in the day to day work. The incident was reported in a number of newspapers including The Indian Express, and Dainik Bhaskar. The Hon'ble High Court of Himachal Pradesh on the basis of newspaper reporting took *suo-motu* cognizance and registered CW PIL No.56 of 2009 and issued notices to M.C. Shimla, State Government and others. After hearing the parties and taking note of the situation, the Hon'ble High Court by order dated 22nd December, 2009, constituted a one man High Power Committee consisting of the Principal Secretary (Power), Government of HP and directed to submit a report. On 23rd December, 2009, the High Court observed as follows:

We are conscious of the fact that the present place of dumping of garbage is not suitable. It is on the by-pass road and it has already played havoc with the environment and ecology of the area.

Consequently, we direct the Forest Department through Additional Chief Secretary (Forest), Divisional Commissioner, Shimla and District Magistrate, Shimla to provide landfill site near the site where the new Bio-conversion plant has to be set up within a period of four weeks from today positively. This peremptory direction has been issued to protect the health of the entire town, which has been put to peril by the inept handling of the garbage by the functionaries of the Municipal Corporation, Shimla. The functionaries of the Himachal Pradesh Pollution Control Board shall render all assistance to the Municipal Corporation, Shimla in getting the new site by allowing all the permissions expeditiously.

It shall be open to the Municipal Corporation, Shimla to dump garbage as per the provisions of the Municipal Solid Wastes (Management and Handling) Rules, 2000 at the new landfill site after a period of one week of the handing over of the site by the district authorities. It is made clear that no person shall cause any hindrance in selecting and handing over the site of landfill and dumping of the garbage at the new site. Any hindrance / impediment / obstruction caused to the works of the Municipal Corporation, Shimla while dumping the garbage at the new landfill site shall amount to contempt of the Court and the persons shall be dealt with sternly.

(Emphasis supplied)

5. The case was thereafter taken up on 31st December, 2009. On the said date the High Court observed as follows:

A Sub-Committee was constituted to find out the site for landfill. A site was located by the Committee adjoining to the proposed Bio-Conversion Plant at Mauja Jungle Doam Bادهري

and BHARYAL, Tehsil Shimla (Rural), District Shimla. The revenue papers were sent by the Additional District Magistrate (P), Shimla to the Commissioner of Municipal Corporation, Shimla of the proposed landfill site for taking necessary steps to get forest clearance. The Divisional Forest Officer, Shimla has sent the communication to the Commissioner, Municipal Corporation, Shimla on 30th December, 2009. Out of 140-01 Bighas of land, 23-12 Bighas of land falls in Demarcated Protected Forest.

Consequently, the Divisional Forest Officer, Shimla Forest Division is directed to process the case for seeking clearance as per the contents of letter dated 30.12.2009 under the Forest Conservation Act, 1980 with the Ministry of Environment and Forests. The same shall be processed within a period of two weeks from today and thereafter, the Ministry of Environment and Forests shall accord necessary permission within a period of four weeks.

(Emphasis supplied)

6. The *Suo-motu* case was again taken up for hearing by the High Court on 19th March, 2010. On the said date, Hon'ble High Court on the basis of the affidavit dated 31st December, 2009 filed by the DFO Shimla, observed that in-principle approval has been conveyed by the Conservator of Forests (Central) Chandigarh, to the Commissioner, M.C. Shimla, granting forest clearance to set up Waste Management Plant at the approved site subject to payment of compensatory afforestation etc. The High Court further directed that, if M.C. Shimla, is in financial difficulty, the State Government shall ensure that the amount shall be deposited on behalf of the Municipality within the date fixed. The High Court also invited suggestions with regard to proper management and disposal of the wastes of Shimla Town or any other related issues.

7. The Hon'ble High Court, as would be evident from the orders referred to *supra* as well as other orders, constantly monitored, installation of MSW Plant at village BHARYAL, situated at TARA DEVI TOTU BYE PASS, and issued more than one directions to the Government and other authorities to provide the site and also to issue necessary 'No Objection Certificates' within a stipulated time. Hon'ble High court also went one step further and directed that no person should cause any hindrance in selecting and handing over of the site of landfill and dumping of the garbage at the new site to M.C. Shimla. It was further directed that any hindrance / impediment / obstructions caused to the workers of M.C. Shimla with regard to dumping of garbage at the new site shall amount to contempt of that Court and the person shall be dealt with sternly and that no Civil Court shall grant an order of injunction to stall over the work of the project. The Hon'ble High Court also **directed the M.C. Shimla to follow the provisions of The Municipal Solid Waste (Management and Handling) Rules 2002.**

8. In consonance with the directions issued by the Hon'ble High Court, M.C. Shimla applied to the Airport Authority of India (AAI) on 2nd January, 2010 for extension of the validity period of the NOC granted by the AAI earlier. All necessary documents for the said purpose were enclosed to the said application. In the meanwhile by order dated 3rd February, 2010, MoEF accorded approval for diversion of 9.9123 ha of forest land for the purpose of setting up **landfill site**.

9. While matter stood thus the residents of Gram Panchayat Totu (Majthai) Panchayat approached the High Court, inter alia assailing the action of M.C. Shimla, and challenging the construction of the Solid Bio-waste Management Plant at village **BHARYAL** on TARA DEVI TOTU BYE PASS. The said application was registered as CWP No.1739 of 2010. On 7th January, 2011, a prayer was made by the Petitioner to

withdraw the Writ Petition seeking liberty to pursue the remedy elsewhere. Consequently, the writ petition was disposed of granting the liberty as prayed for.

10. It is pertinent to note that after obtaining the liberty, the **Residents of Gram Panchayat Totu** have not approached this Tribunal, on the other hand Gram Panchayat Totu (Majthai) represented through its authorized representative Shri Uttam Singh Kashyap along with two other persons claiming to be the residents of village which is situated in the proximity of the proposed site have filed this application, inter alia assailing construction of the SBWM at Village BHARYAL mainly on the following grounds:

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.

11. Expanding the objections raised, Mr. Vikas Mahajan, Learned Counsel for the Applicant, drew our attention to Schedule-III of the MSW Rules 2000 and submitted that there is fragrant violation of the citing criteria prescribed in Schedule-III more particularly under Clause 8 and 10 of the said schedule.

For appreciating the arguments advanced by Mr. Mahajan, it would be necessary to refer to some of the requirements to be followed for setting up a landfill site as stipulated under Schedule-III of the MSW Rules, 2000, i.e. :-

Clause-1: In areas falling under the jurisdiction of Development Authorities it shall be the responsibility of such Development Authorities to identify the landfill sites and hand over the sites to the concerned municipal authority for development, operation and maintenance. Elsewhere, this responsibility shall lie with the concerned municipal authority.

Clause-2: Selection of landfill sites shall be based on examination of environmental issues. The Department of Urban Development of the State or the Union territory shall co-ordinate with the concerned organizations for obtaining the necessary approvals and clearances.

Clause-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.

Clause-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.

12. Mr. Mahajan further, alleged that as the site is situated in the close proximity of the airport there is always a chance of accidents due to bird hit and as such NOC from Airport Authority is a mandatory requirement. To make the long story short, Mr. Mahajan, submitted that the M.C. of Shimla has not adhered to any of the requirements set forth in the MSW Rules, 2000, and the construction and commissioning of the MSW Plant and Land Fill site at Village BHARYAL, is illegal contrary to mandatory

provisions of law and may be stopped in the greater interest of the public in general.

13. After receiving notice the respondents had appeared and filed their returns. Respondent 3 the Municipal Corporation Shimla has filed a detailed reply enclosing several documents. An additional counter affidavit was also filed by the said Respondent repudiating the allegations made by the Applicant. According to Respondent No.3 way back in the year 2003, it was felt that the area i.e Darni-Ka–Bagichal, Lalpani, Shimla, where the solid waste management plant was situated had become thickly populated, several residential colonies having been set up in the vicinity by afflux of time. The M.C. Shimla, therefore, proposed to shift the plant to a distance place. The committee set up for the purpose after visiting several sites finally selected the village BHARYAL as a suitable place and accordingly steps were taken for allotment of Government land. Necessary applications were filed before competent authorities for allotment of land and granting permission to convert the said land for non-forestry purpose. After considering the suggestions, the Ministry of Environment and Forests, Government of India granted necessary permission to divert the forest land for the purpose of setting up of the Solid Waste Management Plant at the site in question. The M.C. Shimla had also obtained NOC from the Himachal Pradesh State Pollution Control Board as well as Airport Authority of India for the Bio-composting plant only. However, necessary authorization for landfill site has not yet been given by HPSPCB or others. The permission granted by the Airport Authority of India was, however, only valid for 6 (six) months.

Unfortunately due to certain bottlenecks, the construction of MSW Plant at BHARYAL, could not proceed till 2009, when the unfortunate incident of fire hazard took place at the existing site i.e. DARNI-KA-BAGICHA. Consequent upon the fire hazard, the High Court took *suo-motu* cognizance and directed M.C. Shimla to take prompt steps to shift the

MSW Plant to the new location i.e Village BHARYAL within a stipulated time. Consequent upon the direction issued by the Hon'ble High Court, M.C. Shimla took steps on war footing and went ahead with the work of construction of the Municipal Solid Waste Plant at village BHARYAL. According to Respondent No.3 all steps necessary under MSW Rules, 2000 have been duly complied with by the Municipal Corporation and the allegations leveled are not only unfounded but also false and frivolous.

14. In course of hearing Mr. Nag, Learned Counsel for the Municipal Corporation submitted that the proposed plant is an ultra modern one and is technically sound. It is able to take care of the day to day collection of solid waste from Shimla and shall cater for coming 20 years. The processing plant is capable of handling the waste materials collected daily in the landfill site which would be converted to compost. Hardly there would be any leftover at the site. Thus the possibility of birds getting attracted may not arise. Further according to Mr. Nag there would be zero discharge of effluent from the processing plant and as such, there is no possibility of water bodies / streams situated nearby being contaminated. Further, the plant is going to be established over the lands belonging to Government and the allegation that Petitioners 2 & 3 have grazing right over the land is unfounded and incorrect.

15. Mr Nag further submitted that the Municipal solid Waste Plant is exempted from rigorous EIA Notification, 2006 and the requirements / restrictions stipulated therein are not applicable. But then on verification, it was found that as per Schedule -7(i), the State Level Environment Impact Assessment Authority (SEIAA) has to grant environment clearance and no exemption whatsoever to MSW Plant has been contemplated. It, further, appears that M.C. Shimla has not yet taken environment clearance for the plant from SEIAA though the same is a mandatory requirement as per EIA Notification, 2006.

16. Admittedly the MSW plant situated at DARNI-KA-BAGICHA was found to be not suitable by the High Court of Himachal Pradesh. The said conclusion was arrived at after due consideration of several factors and on the ground that by afflux of time residential accommodations have developed all around the place and consequently the dumping site had been surrounded by several commercial and residential houses and that the same is situated in the middle of Shimla Town. Unfortunately, the said dumping yard caught fire and thereby caused a great deal of environmental hazards in the locality. After being satisfied that the dumping yard cannot be permitted to continue any further at DARNI-KA-BAGICHA the High Court constituted a High Power Committee and directed to submit a report as to why there is delay in setting up of Bio-Conversion Plant at the new site i.e. at Village BAHRYAL on TOTU-TARA DEVI BYE PASS Road. Fact remains that the site for setting up an ultra modern, technically sound bio-conversion plant at BHARYAL was selected way back in the year 2003, but then due to certain administrative bottle necks, the plant could not be set up at the new site. Considering all the facts and circumstances and the menace created by the existing dump yard at DARNI-KA-BAGICHA the High Court, by their order dated 28th December, 2009, directed the Forest Department and the District Magistrate, Shimla to provide landfill site near the new bio-conversion plant (BHARYAL) within a period of four weeks from the date of the order positively. The High Court also directed Himachal Pradesh Pollution Control Board to render all assistance to M.C. Shimla in setting up the new site by allowing all permission expeditiously. The High Court also directed the M.C. Shimla to dump garbage as per the provisions of the Municipal Solid Waste (Management and Handling) Rules 2000 at the new landfill site after a period of one week of the handing over of the site by the District Authorities.

17. Perusal of different orders passed by High Court of Himachal Pradesh in CW PIL No. 56/2009 reveals that the High Court is monitoring

the entire project of shifting MSW Plant from DARNI-KA-BAGICHA to BHARAL, in as much as the High Court has constituted a High Level Committee, approved the selected site at BHARYAL, directed different authorities like State Government, MoEF, State Pollution Control Board, Airport Authority of India etc. to diligently and expeditiously consider the permissions sought for by the M.C. Shimla for using forest lands for non-forest purpose, payment of conversion fees, granting NOC by different authorities etc. It, further, appears that M.C. Shimla had complied with the orders passed by the High Court and has not only deposited the requisite fees for diversion of forest lands, but also agreed to the condition that it would adhere to afforestation over 5 ha of land and plant more than 219 trees and 1055 saplings in consonance with the stipulations made.

18. The Hon'ble High Court had realized that the question of shifting of MSW Plant and installing the same at village BHARYAL is of great importance and therefore granted opportunities to all the parties to putforth their submissions / observations before deciding and approving the site selected by the High Level Committee at BHARYAL. It is pertinent to note that none of the present Applicants appeared or raised any objection before the High Court.

19. Even other-wise, Rule-4 (four) of the MSW Management and Handling Rules, 2000 casts an obligation on every Municipal authority for implementation of the provisions of the rules and for any infrastructure development of collection, storage, segregation, transportation, processing and disposal of MSW. Rule-7 of the aforesaid rules stipulates that any Municipal Solid Waste generated in a city or a town, shall be managed and handled in accordance with the siting criteria and procedure laid down in Schedule-II of the said rules.

Sub-Rule-II of Rule-7 specifies that the waste processing and disposal facilities to be set up by the Municipal Authority on their own or

to an operator of a facility submit specification and standards as specified in Schedules-III and IV (sick).

20. Being conscious of the aforesaid procedure, while selecting the site for installation of MSW Plant and **fill up area** at village BHARYAL, the High Court had specifically directed that the M.C. Shimla shall adhere to the provisions of MSW Management and Handling Rules, 2000.

21. Protection of Environment is the Paramount duty of all concerns. In the case of **Vellore Citizens Welfare Forum V/s Union of India reported in AIR 1996 SC 2715**, the Apex Court considered various constitutional provisions including Articles 47, 48-A, 51-A(g) and came to the conclusion that it is the duty of the State to protect and preserve the ecology, as Article 21 of the Constitution guarantees protection of life and personal liberty and every person has a right to pollution free atmosphere. Therefore, the “precautionary principle” has to be adopted to protect the rights of the inhabitants guaranteed under Article -21 of the Constitution.

Similar view was also expressed in the case of **People’s Union for Civil Liberties v/s Union of India and another, (1973) 3 SCC 433**. In the said case the Supreme Court further observed that environment and ecology are national assets and has to be protected by all means.

22. In the case of **M.C. Mehta V/s Union of India (2004) 12 SCC 118**, the Apex Court explained the scope of “precautionary Principle” and observed that it requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment. Similar view has been reiterated in the case of **Tripur Dyeing Factory Owners Association V/s Noyyal River Ayacutdars Protection Association & Ors. AIR 2010 SC 3645**

23. There is no quarrel to the legal proposition that if a particular act has to be done by a Statutory Authority, the same has to be done only in accordance with the Provisions of the Statute, or not at all. In the case in hand, after hearing Learned Counsel for the parties and going through the records, we find that there has been lapses on the part of M.C. Shimla, which has not obtained proper clearance form the Statutory Bodies like AAI, Concerned Gram Panchayat, Town and Country Planning Department, DSEIAA and Himachal Pradesh State Pollution Control Board etc. Further, it appears that the guidelines and the siting criteria, required to be followed for locating MSW facilities, and Land Fill site have not been sacrosanctly followed, under the provisions of MSW Rules, 2000. The rules stipulate that prior Environmental Clearance is required to be obtained as per the provisions of EIA notification but the same has not been obtained from the State Environmental Impact Assessment Authority (SEIAA). The submissions of Mr. Nag that such permission is not necessary as the committee constituted by MoEF had recommended not to insist permission with regard to MSW, is not correct either on fact or in law. Thus submission of Mr. Nag in this regard cannot be accepted.

24. To us it appears that the project in hand is in a "*Faite Accompli*" situation as the construction work has already started as per the direction of the Hon'ble High Court. **But then**, as stated earlier the High Court has not directed the Project Proponent i.e. M.C. Shimla not to comply with the required statutory Provisions, on the other hand the Hon' High Court has clearly directed M.C. Shimla to follow the provisions of MSW Rules, 2000.

25. In view of the circumstances narrated above, we are of the conscious view that the site for locating MSW plant at BHARYAL having been accepted / approved by the Hon'ble High Court of Himachal Pradesh in CW PIL No.56 of 2009, the said fact cannot be gone into by

us or re-agitated before this Tribunal once again more so because the same has attained finality.

26. It is evident that the Hon'ble High Court of Himachal Pradesh had allowed enough opportunity to all the parties to put forth their grievances with regard to site in question. None of the Applicants appeared before the High Court and raised any objection with regard to the viability of the Project and its location, consequently they are stopped from agitating the questions which could have been raised before the Hon'ble High Court but was not raised.

27. In the above circumstances, we are not inclined to interfere with the decision to install the MSW Plant and Land Fill site by M.C. Shimla at village BHRYAL on TARA DEVI-TOTU BYE-PASS. However, we direct the Project proponent i.e. M.C. Shimla to obtain all the statutory permissions and NOC as stipulated in MSW Rules, 2000 read with EIA Notification, 2006 and 2009, before commissioning of the MSW Plant and Landfill site. M.C. Shimla is also directed to ensure that necessary preventive and control measures are adopted / implemented to avoid any adverse impact on the environment specially on the ground water and surface water bodies, keeping in mind the provisions of Article 12 of the Constitution of India, which mandates enjoyment of Pollution free air and water.

28. Before parting we feel called upon to refer to some of the lacunas which have crept into the MSW Rules, 2000 in course of time. Admittedly the siting criteria plays a very vital role in installation of MSW plant. The Rules for the said purpose were framed more than 10 years back. Some of the rules are so vague and in-descriptive that they create confusion and not solutions. For better understanding it would be Prudent to refer to:-

Clause-8 of Schedule-III which provides specifications for land fill site and reads as follows:

“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.

Clause-9 of sitting selection criteria of the same Schedule stipulates as follows:

“A buffer zone of no-development shall be maintained around landfill site and shall be incorporated in the Town Planning Department’s land use plans.”

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 other wise 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 Hon'ble 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.

31. We therefore, dispose of this Original Application upholding the decision to set up the MSW Plant and Landfill site at Village BHARYAL in TARA-DEVI TOTU BYE PASS and direct the Project Proponent, Municipal Corporation Shimla to set up the said plant only after following the mandatory requirement stipulated in Municipal Solid Waste (Management and Handling) Rules, 2000 as well as after obtaining EC under the provisions of EIA Notification, 2006 as amended in 2009 before commissioning of the MSW facilities. We also direct the M.C. Shimla to plant at least two times of the trees i.e. 219 x 2 and double the saplings i.e. 1055 x 2 of the same species which have been felled by the project proponent to maintain ecological balance.

Dr. G.K Pandey
Expert Member

Justice A.S. Naidu
Judicial Member

Durga Malhotra
11th October, 2011