

(2024) 01 CAL CK 0048

In the Calcutta High Court

Case No : W.P.A. No. 19804 Of 2023, IA No: CAN 1 Of 2023

M/S. Greentech Environ Management Private Limited And
Another

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 16-01-2024

Acts Referred:

Bio-Medical Waste Management Rules, 2016 — Rule 7(3)

Citation : (2024) 01 CAL CK 0048

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Reshmi Ghosh, Barnali Gantait, Somnath Ganguli, Kalpit Paul, N.C. Bihani, S. Mukherjee, Sutapa Sanyal, Soumya Roy Chowdhury, Debrup Bhattacharjee, Ritesh Kumar Ganguly, Utsa Podder, Reetobroto Kumar Mitra, Sankarsan Sarkar, Aditya Kanodia

Final Decision : Dismissed

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioner no.1 is a Common Bio-Medical Waste Treatment Facility (hereinafter referred to as "CBMWTF") and the petitioner no.2 is its Director. The present challenge has been thrown against an order issued by the Senior Special Secretary, Government of West Bengal, Health and Family Welfare Department, HS (MS) Branch dated August 11, 2023. By the said order, in supersession of all previous orders, the existing assignment of CBMWTFs as adopted in 2019 with respect to lifting, transportation, treatment and disposal of bio-medical wastes generated in different public health facilities across the State will be reallocated based on distance criteria as per Annexure – A thereto. All the health facilities in the State along with other entities generating bio-medical waste will be tagged with the existing and operational CBMWTF facilities authorised by the West Bengal Pollution Control Board with effect from August 18, 2023. The arrangement is to remain valid for six months and thereafter reviewing the

performance, further allocation may be done, if necessary. The zone-wise list of health facilities are specified in Annexure – B thereto.

2. The petitioners allege that by virtue of such reallocation, a large number of beds in the hospitals for which the petitioner no. 1 was working as a CBMWTF have been curtailed and allocated to respondent no. 7. It is argued that the same is violative of the Bio-Medical Waste Management Rules, 2016 (for short, "the 2016 Rules"), Rule 7(3) of which states that no occupier shall establish on-site treatment and disposal facility if a service of CBMWTF is available at a distance of 75 kms. It is argued that in terms of the said Rule, a CBMWTF is to be situated within 75 kms. of the hospital and the number of beds would be 10,000. In the event of deficiency of beds, at the most an area of 150 kms. radius from the treatment plant would be covered.

3. It is argued that the impugned order violates the distance norms. The respondent no. 7 is already overburdened and in view of the additional allocation of beds, would exceed the outer limit of 30,000, which is the authorised bed in respect of respondent no. 7 in terms of the permission given by the West Bengal Pollution Control Board (WBPCB). On the other hand, the petitioner no. 1 has a permissible limit of 20,000 beds. Although the petitioners are at present covering 20,390 beds, most of the said beds are inoperative and not billed by the petitioners.

4. Thus, it is contended that the impugned Order shall create a disparity and lopsided allocation, since the respondent no. 7 would work beyond its permissible capacity whereas the petitioner no. 1 would be deprived of several beds, although its contract is running till the year 2027.

5. Learned counsel for the petitioners also argues that the respondent no. 7 does not possess valid authorisation, that is, Consent to Operate, from the concerned Authority. That apart, the respondent no. 7 does not have sufficient facility to handle the additional waste allocated to it.

6. Learned counsel appearing for the respondent no. 7 contends that the said respondent has all along been in possession of a valid licence. Even on the date of affirmation of the writ petition on August 14, 2023, it had the requisite authorisation from the WBPCB vide Memo No. – 01/2S (BM) – 1632/2003 (P+-1) dated November 30, 2019 which was valid till November 30, 2023. The respondent no. 7 had applied for renewal within time on October 9, 2023 which was pending for some time but subsequently was allowed on December 27, 2023. Hence, the respondent no. 7 is not only in possession of a valid authorisation by the Pollution Control Board, but it had also acted bona fide at all material times in that regard.

7. Insofar as the radius of 75 kms., extendable to 150 kms., is concerned, it is argued that the concerned provisions of the 2016 Rules apply to "occupiers", who are the medical facilities/hospitals for whom the waste management takes place. Thus, Rule 7(3) is not binding on "operators" such as the petitioner and

respondent no. 7, as it merely stipulates that no occupier shall establish on-site treatment and disposal facility if a CBMWTF is available within 75 kms.

8. The stress of the 2016 Rules is on waste to be disposed of properly within 48 hours. The respondent no. 7 has sufficient units handle all the additional hospital beds allocated to it.

9. It is, thus, argued that the writ petition is frivolous and ought to be dismissed.

10. The WBPCB takes a stand that both the petitioner no. 1 and the respondent no. 7 have violated pollution norms, for which proceedings are pending against them. It is submitted that both the said entities are operating beyond their sanctioned capacity of beds. Whereas the respondent no. 7 has a capacity of 30,000 beds but is operating in respect of 33,404 beds, the writ petitioner no. 1 has a sanctioned capacity of 20,000 beds but is working in respect of 20,390 beds, which appears from the Annual Report on Bio-Medical Waste for the year 2022.

11. Learned counsel for the respondent no. 4-Authority endorses the claim of the respondent no. 7 that the distance rule is applicable not to "operators" but to "occupiers" and is not germane in the present context. It is argued that a High-Powered Committee was formed vide Memo No. 136 – H.S. (MS)/H.F./O/ H.S. (M.S.)/B.M.W. – 02/2022 dated August 23, 2022 to review bio-medical waste issues and fixation of rates for lifting, transportation and safe disposal of bio-medical wastes. The Committee, in its Meeting dated August 31, 2022, decided that the Health and Family Welfare Department of Government of West Bengal will allocate its hospitals to the existing CBMWTFs recognized by the WBPCB. As and when new plants come up with the authorisation of the Pollution Control Board, hospitals nearest to those will be assigned. The said decision ultimately resulted in issuance of the impugned Memo dated August 11, 2023.

12. Learned counsel for the respondent no. 4 contends that the proposed allocation is based on the distance criteria with the condition that as and when new plants come up, hospitals nearest to those will be assigned to them. As three new eligible CBMWTF plants came up, the number of authorised facilities increased from 6 to 9 and so the Health and Family Welfare Department had to reallocate the nearby CBMWTFs for lifting, transportation, treatment and disposal of bio-medical wastes considering the bed capacity of the plants as per decision taken in the meeting dated August 7, 2023.

13. It is argued that private hospitals are not under the purview of the Department of Health and Family Welfare and increase in number of beds by respondent no. 7 is absolutely an internal matter of the private hospitals and the respondent no. 7. It is argued that the bed capacity of respondent no. 7 is 30,000 per day whereas it has been allocated 13,588 beds per day for the Howrah District and part of the Kolkata District. On the other hand, the petitioner no. 1 has been allocated 7032 beds per day for the District of South 24 Parganas, Diamond Harbour health district and part of Kolkata, its capacity being

20,000 beds per day.

14. In terms of the distance criteria, the distance between the respondent no. 7 and SSKM Hospital, Kolkata is 12 kms. (approx.) whereas the distance between the petitioner no. 1's waste management unit and the said hospital is 46 kms. (approx.).

15. The added party discloses its own beds and relies on a judgment dated December 11, 2023 passed in WPA No. 20563 of 2023 where it was, inter alia, observed that the outer limit of coverage area is not mandatory but merely directory. In a judgment dated November 20, 2023 passed in WPA No. 1374 of 2023, it was observed that the guidelines do not prohibit establishment of more than operator for the purpose of removal of bio-medical waste within 75 kms. radius of the existing unit, if the authorities are of the opinion that the capacity of the existing unit could not cater to more than 10,000 beds.

16. Lastly, it is argued that the grievance raised in the present writ petition does not pertain to the order dated August 11, 2023 but is that the petitioner is getting less beds than respondent no. 7 and also the said respondent is getting more beds than its entitlement, which is a private dispute.

17. Heard learned counsel for the parties. The plinth of the arguments of the petitioner no. 1 is based on the provisions of the 2016 Rules.

"Occupier" is defined under Clause 3(m) of the Rules as a person having administrative control over the institution and the premises generating bio-medical waste, which includes a hospital, nursing home, clinic, etc., irrespective of their system of medicine and by whatever name they are called.

18. On the other hand, "operator of a common bio-medical waste treatment facility" under Clause 3(n) of the said Rules means a person who owns or controls a CBMWTF for the collection, reception, storage, transport, treatment, disposal or any form of handling of bio-medical waste.

19. The duties of the operator of such a facility have been stipulated in Clause 5 which includes taking all necessary steps to ensure that the bio-medical waste is disposed of without any adverse effect to human health and environment, ensuring timely collection of such waste from the occupier, etc.

20. Clause 7 provides for treatment and disposal. Sub-clause (3) of Clause 7 states that no occupier shall establish on-site treatment and disposal facility if a service of common bio-medical waste treatment facility is available at a distance of 75 kms.

21. In its revised guidelines for CBMWTFs, the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change, Government of India stipulated in Clause 8(a) that a CBMWTF located within the respective State/ Union Territories shall be allowed to cater to health care units situated at a radial distance of 75 kms. However, in a coverage area where 10,000 beds are not

available within the said distance, the existing unit in the locality may be allowed to cater to health care units situated up to 150 kms. radius with respect to its location provided the bio-medical waste generated is collected, treated and disposed of within 48 hours as stipulated under the BMW Rules.

22. Thus, Clause 8(a) of the Central Pollution Control Board guidelines do not stipulate any specific or mandatory bar either to more than one CBMWTF unit to operate within the same area, nor is any restriction imposed to the number of beds which can be catered to by each unit. The stress is on proper treatment and disposal of the waste within 48 hours. Even Clause 8(7) of the 2016 Rules provides that untreated human anatomical wastes, animal anatomical waste, soiled wastes and bio-technological wastes shall not be stored beyond the period of 48 hours.

23. The prescribed authority for implementation of the provisions of the Rules as per Clause 9 thereof shall be the State Pollution Control Boards in respect of States.

24. A careful perusal of the 2016 Rules shows that the restriction of operation within 75 kms. is imposed on the "occupier", that is, the medical facility or hospital. Such restriction is not regarding allocation of work to "operators" or CBMWTFs but in establishing on-site treatment and disposal facility by the occupier itself if a waste treatment facility is available within 75 kms.

25. Since the functional authority of implementation is the State Pollution Control Boards within the States, the guidelines issued by the Central Pollution Control Board are directly not applicable in the present case. In the present case, keeping the 2016 Rules in view, the respondent-Authorities issued the impugned order dated August 11, 2023. The said order is not for the purpose of curtailing any particular operator's number of beds or allot additional beds to some other operator but to accommodate the additional facilities which have come up in the meantime. It is also to be noticed that the arrangement is only on experimental basis for six months after which there shall be a review of the performance to decide if further reallocation is necessary. Such action is absolutely within administrative discretion. Taken in such context, the allocations thereunder cannot be faulted.

26. The petitioners' grievance is that the respondent no. 7 has been allocated more beds than the petitioners, which is not based on the infringement of any specific legal right of the petitioners or contravention of any legal bar by the authorities. The discretion lies with the authorities to allocate the number of beds as per its requirements. In fact, the impugned allocation cannot be said to be unreasonable, since the respondent-Authorities have clearly cited the distance criteria to be in favour of the respondent no. 7, since the respondent no. 7's unit is situated within 12 kms. from the SSKM hospital at Kolkata to which it caters, as opposed to 46 kms. Distance of the petitioner no. 1's unit from the same hospital.

27. Thus, there is no palpable illegality or discrimination evident from the decision-making process of the respondent-Authorities. Rather, the impugned order was backed up by decisions taken by a High-Powered Committee formed vide Memo dated August 23, 2022 to review the bio-medical wastes issues and fixation of rates. The Committee in its meeting dated August 31, 2022 took the decision upon taking inputs from the relevant stakeholders. Such administrative decision on the part of the authorities do not afford any ground of judicial interference since no perversity or arbitrariness has been shown in the said decision.

28. The petitioner no. 1 has further alleged that more beds than the capacity of the respondent no. 7, as authorised by the WBPCB, has been allocated. However, it has been admitted in the same breath that the petitioner no. 1 has also been allotted more than its capacity of 20,000 beds. The petitioner no. 1 has sought to explain away such excess by arguing that it is not billing for all the beds, since most of them are vacant at any given point of time. There is no reason why the same logic is not applicable to the respondent no. 7. In fact, the number of beds may very well be fluid, since at the time of allocation of CBMWTF units for particular hospitals, the exact number of beds lying vacant cannot be factored in. Moreover, the exact number is always fluid in respect of the hospitals, as patients come and go. Thus, only a general approximation can be done while allocating medical facilities to particular operators under the 2016 Rules.

29. Also, the State rightly argues that the allocations for State hospitals are within the upper sanctioned limits of the petitioner and respondent no. 7 and it is only those hospitals and not private medical facilities which are governed by the 2016 Rules.

30. The West Bengal Pollution Control Board is the appropriate authority to take due measures in case of violation of pollution norms by the operators and it has already taken steps both against the petitioner and the respondent no. 7 in that regard.

31. However, the petitioner has no locus standi to seek intervention from the Court in the exclusive domain of the Executive in allocating business to operators under the 2016 Rules in absence of any contravention of the said Rules.

32. In such view of the matter, I do not find any illegality or irregularity in the impugned order dated August 11, 2023.

33. Hence, WPA No. 19804 of 2023 is dismissed on contest without, however, any order as to costs.

34. CAN 1 of 2023 is disposed of accordingly.

35. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.