

(2013) 01 DEL CK 0266

In the Delhi High Court

Case No : Writ Petition (C) No. 6976 of 2008

P.K. Nayyar and Others

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Citation : (2013) 6 AD 411 : (2013) 198 DLT 689

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : K.K. Rohatgi, for the Appellant; B.V. Niren, CGSC with Mr. Prasouk Jain, for UOI, Mr. Nishakant Pandey, for DJB, Mr. Ajay Verma, for DDA, Mr. Madan Gera, for R-7, Ms. Pinky Anand, with Ms. Natasha Saharawat and Ms. Ankita Mishra, for the Respondent

Judgement

V.K. Jain, J.—The waste generated by Hospitals, Nursing Homes, pathological labs etc., termed as Bio-medical Waste, is required to be disposed of in terms of the Rules framed by Government of India, in exercise of the powers conferred upon it by Sections 5, 8 & 25 of the Environment Protection Act, 1996, known as Bio-medical Waste (Management and Handling) Rules, 1998. Central Pollution Control Board, in the year 2003 issued guidelines for Common Bio-medical Waste Treatment Facility (CBWTF). The Government of NCT of Delhi established a Common Bio-medical Waste Treatment Facility at Okhla, in collaboration with respondent No. 7-M/s. Synergy Waste Management Pvt. Ltd. (hereinafter referred to as "M/s. Synergy"), on the land allotted to it by Delhi Development Authority and an Agreement dated 19th May, 2005 in this regard was signed between respondent No. 5 and the Government of NCT of Delhi. The facility was set up after obtaining consent from Delhi Pollution Control Committee on 9.6.2006. The said facility is meant for treatment and disposal of bio-medical waste collected from different Hospitals and Health Care Establishments and also has an Effluent Treatment Plant (Physico Chemical Treatment) for the treatment of waste water generated from the facility. The said facility is situated at a distance of about 30 meters away from a residential colony called Sukhdev Vihar.

The said facility collects, transport and treats Bio-medical Waste of 28 Delhi Government dispensaries and 29 Delhi Government Hospitals, free of costs, but charges tipping fees for collecting and treating the waste of 1500 clinics, nursing homes, dispensaries and hospitals. The residents of Sukhdev Vihar made representations against operation of the said facility, expressing serious concern with respect to adverse effect on their health due to operation of the said facility. A Committee was then constituted by Government of NCT of Delhi to (i) examine the Complaints received from the residents of Sukhdev Vihar against the said facility, (ii) suggests remedial measures in case the site was found appropriate, (iii) give justification, if any, for shifting the site keeping the CPCB guidelines in view and (iv) assessment and suggests criteria for selecting a new site so that similar situations do not occur. The Committee vide its report dated 15th January, 2008, inter alia, reported that (a) Health concerns of the nearby population could not be ruled out. (b) It may not be possible to shut down the incinerator without causing serious disruption of BMW Management of the city.

(c) Shifting of the said facility may be considered as an option, for which efforts have already been initiated, and

(d) Authorities may consider conducting an impact analysis in case of other incinerators operating near populated areas, and initiate further action as required.

It was recommended that the facility may continue till it is shifted to an alternative site.

2. Vide letter dated 20.2.2008, the Government of NCT of Delhi requested DDA to allot an alternative land of one acre for shifting this plant elsewhere in Delhi, away from residential and sensitive areas. However, since the said facility was not closed, this writ petition was filed by the residents of Sukhdev Vihar and adjoining area, seeking closure of the said facility primarily on the ground that being very close to densely populated residential colonies, it was creating poisonous and hazardous environment for the residents of those colonies, thereby adversely affecting their health and degrading environment for all times to come.

3. During pendency of the writ petition, a meeting was held in the chamber of Chief Secretary, Government of NCT of Delhi on 22.10.2008 to consider relocation of the said facility from near Sukhdev Vihar. In the meeting, the Secretary, Environment pointed out that the M/s. Synergy was violating the environmental norms. In a subsequent meeting held in the Chamber of the Chief Secretary, GNCTD, on 26.12.2008, it was decided that three sites i.e. half acre plot in Okhla, half acre plot in Nilothi and 1000 sq meters of land at Gazipur be located for setting up of Bio-Medical Treatment Facility. It was further decided that the facility being operated by respondent no. 7 be shifted to half acre plot in Okhla.

4. A team headed by Dr. T.K. Joshi of Maulana Azad Medical College inspected

the site which was identified for the facility of M/s. Synergy in Okhla Sewage Treatment (STP) Complex. The Committee recommended that the proposed identified site was suitable for such kind of facility and accordingly recommended the same.

5. A meeting was then held in the Office of Chief Secretary, GNCTD on 14.5.2010 which was also attended by Mr. Neeraj Aggarwal, Director of respondent no. 7 company. As per the minutes, Mr. Aggarwal stated that he was not in a position to shift the facility from its present location due to various reasons/apprehension. He further stated that on account of the reasons/apprehensions stated by him, he was no more interested to operate the plant and expressed desire to withdraw from the contract. It was also recorded that the Chief Secretary asked Mr. Aggarwal to continue to operate the site till a new site was set up.

6. In the meeting held in the office of Chief Secretary, GNCTD on 20.4.2010, it was decided that land in STP, Okhla was fit for shifting the facility near Sukhdev Vihar operated by M/s. Synergy being 800 meters away from the residential area and considering that the said land was for co-terminus use and approved in Master Plan, 2021. It was further decided that M/s. Synergy will be issued notice to shift this plant from the present site within a month failing which the contract may be cancelled and allotted to another entity as per rules.

7. W.P. (C) No. 5683/2010 has been filed by M/s. Synergy, seeking quashing of the decision taken in the meeting held on 14.5.2010, to shift the facility near Sukhdev Vihar to STP Okhla, inter alia, on the ground that (i) the agreement between the petitioner in the said writ petition and Government of NCT of Delhi is valid till 2015, (ii) the facility being operated by it is not hazardous for environment or residents of Sukhdev Vihar and (iii) the plant meets all the prescribed standards. It is also claimed in the writ petition that the Director of the company never expressed desire to withdraw from the contract and to this extent minutes of the meeting held on 14.5.2010 are not correctly recorded.

8. As per the guidelines of Central Pollution Control Board (CPCB), the Common Bio-Medical Waste Treatment Facility (CBWTF) should be located at a place reasonably far away from residential and sensitive areas so that it has minimal impact on these areas. It was noted in the guidelines that such a facility will require minimum of one acre area and, therefore, preferably should be set up on a plot size of not less than one acre.

9. In Master Plan for Delhi, 2021, notified on 07.02.2007, hazardous waste processing viz. hospital/medical/industrial waste is amongst the industries, manufacturing of which shall be prohibited within National Capital Territory of Delhi. Accordingly, it is included in the prohibited/negative list of industries.

10. In Vellore Citizens Welfare Forum Vs. Union of India and others, , the Supreme Court, inter alia, held that the onus to prove is on the actor or developer to show that his action is environmentally benign and the State must attempt "precautionary principles" to ensure that unless an activity is proved to

be environmentally benign in real and practical terms, it has to be presumed to be environmentally harmful.

It is not in dispute that bio-medical waste is a hazardous waste which can be highly injurious to human life. That precisely appears to be the reason for its being included in the list of prohibited/negative list of industries. Admittedly, incinerators are used in the facility meant for disposal bio-medical waste. This has also been noted in the guidelines issued by Central Pollution Control Board (CPCB) on treatment of common bio-medical waste and installation of incinerator is a mandatory requirement for such plants. Incineration is a controlled combustion from where waste is completely oxidized and harmful microorganisms present in it are destroyed/denatured under high temperature. The summary of "Epidemiological Studies on Adverse Health Effects Associated with Incineration" would show that medical waste incinerators are a leading source of dioxins and mercury in the environment and there is link between incinerator emissions and adverse health impacts on incinerator workers and residents living around the incinerators. The following conclusions were drawn in the said summary with respect to adverse health effects of incinerators:-

A research into health effects caused by the Waste Incinerator in Sint-Niklaas (Belgium) was carried out and serious health effects on account of use of waste incinerator were brought out in the study, a copy of which has been filed by the petitioner in CWP No. 6976/2008. A study carried out in respect of Natick Labs' Medical Waste Incinerator found that medical waste incinerator are major source of dioxin, which is a group of persistent very toxic chemicals and exposure to dioxin can lead to serious health effects, as brought out in the study. It is a potent cancer causing agent and can cause reproductive harm even at very low exposure levels. The documents filed by the petitioner in CWP No. 6976/2008 show that hospital incinerators have been closed down at a number of places so as to protect public health from the serious health effects they can cause. We need not delve further into this aspect since this was not the case of any of the parties before us that use of incinerators cannot have serious health effects on the human beings living in the vicinity of or near the place where they are used.

11. The next question which comes up for consideration is as to whether the facility being run by M/s. Synergy is near or far away from residential localities such as Sukhdev Vihar. According to the petitioners, the distance between the said facility and their colony is less than 30 metres. This was not disputed by the learned counsel appearing for the Government of NCT of Delhi. The plea taken by M/s. Synergy is that the distance between their facility and Sukhdev Vihar is about 40 metres. The Committee held by Dr. T.K. Joshi, in its report dated 27.04.2009, acknowledged that the distance of the facility of M/s. Synergy from Sukhdev Vihar was about 30 metres. Be that as it may, the distance between the facility of M/s. Synergy and Sukhdev Vihar, whether it is 30 metres or it is 40 metres, in our opinion, cannot be said to be a safe distance in the sense that it is not likely to adversely affect the health of residents of Sukhdev Vihar and/or

nearby habitats. In fact the decision of the Government of NCT of Delhi, which is a partner in this venture, to shift it from the present site, is also an acknowledgement that being in the close proximity of the residential colonies such as Sukhdev Vihar, the facility is likely to cause damage to the environment and adversely affect the health of the nearby residents.

12. It is by now settled proposition of law that the right to live in an environment free from pollution is a facet of fundamental right of life and liberty, guaranteed under Article 21 of the Constitution. Article 48-A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. u/s 2(b), "environmental pollution" means any solid, liquid or gaseous substance present in such concentration may be, or tend to be, injurious to environment. Section 2(e) defines "hazardous substance" as any substance or preparation which, by reason of its chemical or physio-chemical properties or handling, is liable to cause harm to human being, other living creatures, plants, micro-organism, property or the environment. Section 3 refers to the extensive process of the Central Government to take measures to protect and improve environment. Sub-clause (2) permits measures to be taken (see clause (v)) by imposing "restriction of areas in which industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.

In AIR 1991 420 (SC) , the Supreme Court observed that the right to live is a fundamental right which includes right to enjoyment of pollution free water and air for full enjoyment of life and if anything endangers or impairs the quality of life in derogation of laws, a citizen has right to have recourse to Article 32 for removing the pollution of water or air which may be detrimental to the quality of life. In M.C. Mehta Vs. Union of India (UOI) and Others, , the Apex Court noticing that there has been accelerated degradation of environment, reiterated that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free air for the enjoyment of life. It was further observed that the most vital necessities such as air, water and soil having regard to the right of life under Article 21, cannot be permitted to be misused and polluted so as to reduce the quality of life of others. In M.C. Mehta Vs. Union of India and others [2002 (2) SCR 963], a Three Judges Bench of Supreme Court held that Article 39(e), 47 and 48-A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment. In A.P. Pollution Control Board Ii Vs. Prof. M.V. Nayudu (Retd.) and Others, , the Apex Court noted that the concept of healthy environment as a part of the fundamental right to live developed by it was finding acceptance in various countries side by side with the right to develop.

13. It was contended by the learned counsel for M/s. Synergy that there are several hospitals situated in densely populated localities which are using

incinerators and there is no reason why this particular facility should be singled out for shifting from its present site. The scope of the present petition is confined to the facility being operated by M/s. Synergy. We have no material on record as to which hospitals are using incinerators. Those hospitals are not a party to this petition. Therefore, in this petition, we cannot go into the use of incinerators, if any, in the hospitals situated in residential localities. In any case, use of incinerators in other hospitals cannot be a justification for the M/s. Synergy to continue to operate the facility which is likely to adversely affect the health of the nearby residents.

14. As regards the terms of the contract between M/s. Synergy and Government of NCT, the said agreement can have no bearing in a matter of this nature and it cannot come in the way of this Court, directing shifting of the facility, in exercise of its power under Article 226 of the Constitution, so as to protect the life and health of the residents of the nearby localities. At the time of setting up this facility, M/s. Synergy was fully aware not only of the provisions of Master Plan, prohibiting such industry in Delhi, but also of the potential ill-effects such a facility can have on the health of the nearby residents. Therefore, the company cannot avoid the loss, if any, which may be caused to it on account of shifting of the said facility. In the event of there being a conflict between public interest and private interest, it is the later, which must necessarily yield to the former, and we have no doubt in our mind that it is not in public interest that this facility should continue to operate from its present site.

15. The next question which comes up for consideration is as to whether the said facility should be closed down or shifted to a suitable location, and in that case where the facility being operated by M/s. Synergy is to be shifted. Disposal of Bio-medical waste being a statutory requirement in terms of Bio-Medical Waste (Management and Handling) Rules, 1998 and otherwise being necessary in order to avert the damage which such waste, if it remains undisposed of, is likely to cause, the attempt should be to shift the facility to a site where it is not likely to endanger or otherwise adversely affect the health of the nearby residents. As noted earlier, Master Plan of Delhi prohibits setting up of such facilities in NCT of Delhi. During the course of arguments, the learned counsel representing NCT of Delhi did not bring to our notice any provision of Master Plan permitting relaxation of the prohibition with respect to setting up of such an industry in Delhi. Since the facility being operated by M/s. Synergy was set up in collaboration with Government of NCT of Delhi on the land allotted by Delhi Development Authority which is entrusted with the responsibility of administering Master Plan for Delhi, it is for the Government if otherwise possible to identify a suitable site, in consultation with Delhi Development Authority and DPCC, where the facility being operated by M/s. Synergy can be shifted. It would be for the Government to consider amendment of Master Plan or obtain its relaxation if otherwise permitted in law in case a suitable place outside the territory of NCT of Delhi is not available for shifting of this facility. This is a mandatory requirement of the guidelines issued by CPCB, that such

facility should be far away from residential and sensitive areas. This requirement needs to be strictly complied while identifying a suitable site for shifting the facility of M/s. Synergy. During the course of arguments, we were informed by the learned counsel for the Government of NCT of Delhi that even in respect of the site which the Government had identified for shifting of this facility, there was protest from the residents of the nearby colonies to the setting up of the facility on that site. We say nothing on this aspect except that the Government while shifting the facility would ensure that it is shifted to a site which conforms to the provisions of Master Plan for Delhi unless a relaxation of the relevant provision of Master Plan is permissible and is obtained. The Government shall also ensure that the site where the facility is shifted is at such a place where it is not likely to pose any risk to human life and which meets all the requirements of the guidelines issued by CPCB with respect to such facilities.

16. During the course of arguments, it was contended by the learned counsel for M/s. Synergy that the site where the facility is shifted should not be less than one acre in area in view of the requirement of CPCB guidelines in this regard. When this submission was made, we pointed out to the learned counsel for M/s. Synergy that the area presently occupied by their facility is much less than one acre and having set up the facility on a lesser area, they have no legal right to ask for a bigger plot. It also appears to us that the requirement of at least one acre of land for setting up of such facility may only be the desirable area for setting up such a facility and not a mandatory requirement. However, it is for the Government to take a view in this regard, in consultation with CPCB/DPCC. We, therefore, direct respondent No. 2 Government of NCT of Delhi and respondent No. 7 M/s. Synergy Waste Management Pvt. Ltd. to shift the bio-medical waste disposal facility, being operated near Sukhdev Vihar, to a suitable site. The site suitable for shifting of the said facility in terms of this order would be identified by the Chief Secretary, Government of NCT of Delhi, within three months from today in consultation with DDA and DPCC and the facility in question would be shifted within three months thereafter, i.e., within 06 months from today. M/s. Synergy is permitted to continue to operate the facility at the present site till it is shifted to a new site in terms of this order, or 06 months from today, whichever is earlier. If necessary, any further direction with respect to the shifting of the said facility, in terms of this order, will be sought from this Court.

Both the petitions stand disposed of in terms of this order.