

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 16280 of 2025

Between:

M/s. Hygiene Biomed Services,
Vijayawada, rep.by its Proprietor,
Sri Balla Durga Prasad

....PETITIONER

AND

State of Andhra Pradesh,
Department of Environment, Forest,
Science and Technology (Sec.VI) Rep. by its Special
Chief Secretary, Secretariat, Velagapudi,
Amaravati and 5 others

.....RESPONDENTS

DATE OF JUDGMENT RESERVED : 18.09.2025
DATE OF JUDGMENT PRONOUNCED : 22.01.2026
DATE OF JUDGMENT UPLOADED : 22.01.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the
fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

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! Counsel for the Petitioner : Sri S. V. S. S. Sivaram

Counsel for Respondent Nos.2 to 4 : Sri Y. Soma Raju

Counsel for Respondent No.5 : Sri Meka Rahul Chowdary

< Gist :

> Head Note:

? Cases Referred:

1. (1996) 5 SCC 647
2. (2019) 18 SCC 494
3. (2022) 12 SCC 401
4. 2022 SCC OnLine SC 639

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE MAHESWARA RAO KUNCHEAM**

WRIT PETITION No. 16280 of 2025

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri S. V. S. S. Sivaram, learned counsel for the petitioner, Sri Meka Rahul Chowdary, learned counsel for the 5th respondent and Sri Y. Soma Raju, learned counsel for respondents No.2 to 4.

2. The present writ petition has been filed under Article 226 of the Constitution of India to adjudge and declare the recommendations of the 3rd respondent in its 263rd meeting dated 30.05.2025 vide its minutes dated 03.06.2025 to issue Standard Terms of Reference (ToR) to the 5th respondent for relocation of its Bio Medical Waste Treatment Facility from Dharmavarappadu Thanda, Jaggayapeta Mandal, NTR District (Unit One) to Industrial Development Area (IDA), Kondapalli, NTR District, as illegal, arbitrary, irrational without jurisdiction, contrary to the Bio Medical Waste Management Rules 2016 (in short 'Waste Management Rules 2016'), the Revised Guidelines for Common Bio-Medical Waste Treatment and Disposal Facilities 2025 (in short 'Revised Guidelines 2025') as also The Environment Protection Act, 1986, Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control Pollution Act) 1981, besides being violation of the principles of natural justice and Articles 14 and 19 (1) (g) of the Constitution of India.

I. Facts:

3. The petitioner – M/s. Hygiene Biomed Services, Vijayawada, a Proprietor concern intended to establish a Common Bio Medical Waste Treatment Facility (in short 'CBMWTF') and purchased an extent of land measuring Ac.2.00 in Sy.No.112-1, Loya village, G. Kondur Mandal, Krishna District, Andhra Pradesh for a sum of Rs.70,00,000/- and obtained Environmental Clearance (EC) vide Proceedings in Order No.SEIAA/AP/KRI/IND/08/2017/384-421, dated 22.08.2020, valid for 7 years. The subsequent process of examining feasibility for establishment of the facility was kept under hold by citing pendency of Gap Analysis Report (GAR).

4. The petitioner's case is that the 5th respondent – M/s. Safe Environ Private Limited, represented by its Director, an existing CBMWTF operator, at Sy.No.164/1A, Dharmavarapupadu Thanda village, Jaggaiahpet Mandal, Krishna District (in short 'the Unit one') and having its another unit at S.No.4 A&B Chinakakani village, Mangalagiri Mandal, Guntur District, consistently opposed the establishment of new facilities, claiming sufficiency of existing facility. The 5th respondent obstructed the new applications for initiating proceedings before different Forums, though several irregularities and violations itself were on the part of the 5th respondent, viz., unauthorized installation and enhancement of incinerator capacities at its Units of Guntur and Krishna and it enhanced Effluent Treatment Plant (ETP) capacities without requisite approvals under the Environment Protection Act, Air Act, Water Act, BMW Rules and Guidelines. The petitioner's case is that the 5th respondent was initially permitted for

establishment of CBMWTF with 70 kg/hr incinerator capacity at Guntur, but on 07.05.2007 the 5th respondent installed a 200 kg/hr incinerator without obtaining prior approval and also so reflected it in subsequent Consent for Operations (CTOs). Similarly, in CTO of Krishna Facility on 15.11.2006 Consent to Establish (CTE) application was made with installed capacity of incinerator at 70 kg/hr which was approved in 2007 with project cost of Rs.45 lakhs. But in the year 2009, in his CTO application, the 5th respondent mentioned the total treatable waste capacity of the unit as 270 kg/hr contrary to its CTE application approved for 70 kg/hr capacity. The Environmental Engineer also mentioned the incinerator capacity as 270 kg/hr in his report dated 30.11.2009 despite inspection. Further, in CTO renewal dated 26.05.2014 the 5th respondent mentioned the incinerator capacity as 100 kg/hr alternated between 270 kg/hr and 100 kg/hr (2009, 2011, 2014, 2017 renewals) which show the manipulations. In 2018, the 5th respondent sought correction of its CTO stating that the incinerator capacity was erroneously recorded as 100 kg/hr in the CTO renewal of 2014 instead of 270 kg/hr, which was said to be a typographical error. In view of such irregularities, the Joint Chief Environment Engineer (JCEE) recommended that the 5th respondent should obtain fresh Environment Clearance. But the Consent for Operation Committee (in short 'Committee') failed to consider the same and recommended for correction of CTO. The 5th respondent's water consumption quantities for effluent treatment was also altered and increased from 0.65 KLD to 2.0 KLD without securing any prior permission. The 5th respondent also expanded its operations without following

the mandatory statutory procedures and without grant of necessary permission for such expansion. Those illegalities and irregularities were also not reported by the Environmental Engineer though he was duty bound to do so. The 5th respondent was thus allowed to continue with unauthorized expansion and continuance of the facility.

5. The 5th respondent by application dated 19.04.2024 sought relocation of its facility from Dharmavarappadu Thanda, Jaggayyapeta Mandal, NTR District to Industrial Development Area (IDA), Kondapalli, NTR District. Its proposed facility is only 2.8 km from the location of the petitioner's proposed new facility, for which the petitioner had filed application for establishment at Sy.No.112-1, Loya village, G. Konduru Mandal, Krishna District. The petitioner therefore made representation dated 07.05.2024 opposing the relocation proposal of the 5th respondent unit one followed by representation, including, dated 06.05.2025 and 14.05.2025. The petitioner along with Andhra Pradesh Pollution Control Association (in short 'Association') being a Member of that Association also submitted the representation/complaint to respondents No.2 to 4. However, despite the representations and the objections, the 3rd respondent-State Level Environment Impact Assessment Authority (SEIAA) acting on the recommendations of the 4th respondent State Level Expert Appraisal Committee (SEAC) proceeded to recommend for issuance of Terms of Reference (ToR). The 3rd respondent treated the proposal of the 5th respondent as relocation asserting the there was no change in coverage area, bed strength, vide its recommendations in the Minutes of Meeting dated 03.06.2025 (Ex.P1).

Counter affidavit of the 2nd Respondent:

6. The 2nd respondent - Andhra Pradesh Pollution Control Board (APPCB) has filed the counter affidavit with respect to its role, the stand *inter alia* is as per the Guideline No.6 of Revised Guidelines for Common Bio-medical Waste Treatment and Disposal Facilities, "the location shall be decided in consultation with the State Pollution Control Board (SPCB)/ Pollution Control Committee (PCC). The 2nd respondent reviewed the issue in its CTE committee meeting dated 01.05.2025 and as per committee recommendations, the respondent No.2 addressed a letter to the 5th respondent and communicated the compliance of location criteria which was complied by the 5th respondent as per Regional Office & Zonal Office report for establishment/relocation of new CBWTF as per the CPCB guidelines for CBWTFs dated 12.04.2025. With respect to the petitioner, *inter alia*, it was submitted that the petitioner obtained EC vide letter dated 22.08.2020 to establish a common Biomedical Waste Treatment Facility at Loya (V), G.Konduru (M), NTR District with validity period of 7 years. The 2nd respondent informed that the 3rd respondent/4th respondent shall take suitable decision on the proposed site for relocation of the CBWTF of 5th respondent with same coverage area and treatment capacities, subject to outcome of court cases if any, in future.

Counter affidavit of the 5th Respondent:

7. The 5th respondent has also filed counter affidavit. He has raised the contention that the writ petition is liable to be dismissed being pre-mature as no final decision has been taken. It has been submitted that as per the

direction No.7 of the EIA notification, 2006, dated 14.09.2006, there are four (4) stages and presently the case is at the 2nd stage. The decision is yet to be taken. Alternatively, there is equally efficacious alternative statutory remedy under Section 16 of the N.G.T Act, if the recommendations at the 2nd stage are to be taken as final decision. The petitioner has no *locus standi*. The 5th respondent submitted that the counter is being filed only with respect to the preliminary objections on the maintainability of the writ petition and reserving the right to file an additional counter affidavit on the merits of the contentions if the occasion so arises.

8. The 5th respondent has also filed a memo dated 04.08.2025 annexing additional material papers, *inter alia*, the copy of some of the citations. He has also annexed the copy of the order dated 12.06.2025 of grant of term of reference, along with standard terms of reference for CBWT Facilities.

Reply affidavit of the Petitioner:

9. The petitioner has filed reply affidavit to the counter of the 5th respondent. The stand as in the writ petition has been reiterated. Further, with respect to the contention of the 5th respondent that the writ petition is premature, it has been submitted that the recommendation itself is without jurisdiction. The petitioner is not a third party. The petitioner is a project proponent who has invested huge amounts for purchase of the land to establish a Biomedical Waste Treatment Facilities. The petitioner had applied for environmental clearance. In principle permission was granted on 07.02.2018 which was challenged by the 5th respondent in W.P.No.11250 of 2018. That

writ petition was disposed of, holding that the permission granted in principle was not a permission to establish BWTF and directed the A.P. Pollution Control Board to consider the feasibility for establishment of BWTF strictly by adhering to the guidelines issued by the Central Pollution Control Board. Subsequent to that order the petitioner applied for environmental clearance for the proposed project which was granted on 22.08.2020 after the public hearing was conducted by the competent authority on 20.06.2019, which is valid for 7 years. The Gap analysis report has been recently submitted and the action plan is under consideration. With respect to the plea of alternative remedy, the stand taken by the petitioner is that the impugned proceedings are not amenable to challenge under the N.G.T Act at this stage and alternatively, even if the remedy be there, the alternative remedy is not an absolute bar to the writ petition as there are issues of lack of jurisdiction and violation of the principles of natural justice.

II. Submissions of the learned counsel for the petitioner:

10. Sri S. V. S. S. Sivaram, learned counsel for the petitioner submitted that the challenge is on the ground of violation of the principles of natural justice inasmuch as the objections raised by the petitioner, vide representation dated 14.05.2025, were not considered. He submitted that as per the Minutes of CFE Committee dated 18.02.2022 no new CBMWTF/EC applications can be considered until Gap Analysis Study is completed. The same would apply for relocation also. Hence the proposal of the 5th respondent to relocate also could not be processed without completion of Gap Analysis Study. He submitted that

a complaint dated 20.03.2025 against the 5th respondent with respect to errors in incinerator capacity filed before the CPCB, APPCB and SEIAA is still pending enquiry. If the allegations in the complaint are proved, stringent action must be taken against the 5th respondent and so until completion of the enquiry into those irregularities, neither establishment of new facilities in favour of the 5th respondent nor relocation of its unit one, could be recommended and based on such recommendations, ToR could not be permitted.

11. He submitted that the petitioner had clearly stated in the representation dated 14.05.2025 that the APPCB has been renewing CTO/HWA/BMW/authorization based solely on the annual reports of the facility instead of making actual inspection, which is not the correct procedure. From actual inspection only the irregularities would come to the notice. He submitted that the Bio Medical Waste Committee meeting dated 30.04.2025 failed to consider the complaint and CPCB/SEIAA directions and therefore, its recommendation should not be accepted. The relocation proposal of the 5th respondent was in fact intended to avoid legal scrutiny and to legitimize the illegally acquired capacities.

12. Learned counsel for the petitioner further submitted that the petitioner's specific case was that the revised guidelines for CBMWTF 2016 mandates minimum 75 km distance between the various CBMWTF facilities. So, the petitioner had purchased the land as aforesaid in the proposed location for establishment of new facility for which has had applied after ascertaining that no other CBMWTF was being operated within a radius of 75 km from the

petitioner's purchased land locality. The recommendation for the 5th respondent for relocation of its existing unit one from the place of its existence to the new place would adversely affect the petitioner's right of consideration in establishing a new facility inasmuch as now the distance from the new location of the 5th respondent facility Unit One, if allowed, would be only 2.8 km from the petitioner's place where he intends to establish the facility. He submitted that according to the Guideline No.8 (a) of the Revised Guidelines, 2016, a facility can operate upto a radial distance of 75 km from its unit. So, if the 5th respondent is allowed for relocation, any other new facility will have to be located outside the radius of 75 km. Then the petitioner would not be allotted any coverage area, as that area would then already be covered by the 5th respondent. But the said objection raised specifically has not been properly dealt with in the light of the Revised Guideline No.8 (a) of the Guidelines 2016.

13. Learned counsel for the petitioner submitted that considering the complaint of the petitioner dated 20.03.2025, the 3rd respondent had requested the 2nd respondent to verify the facts and take necessary action and furnish the action taken report, upon which the 2nd respondent formed a Committee to enquire into the complaints of the petitioner and before the Committee the petitioner and the 5th respondent appeared on 09.09.2025, but the said enquiry is still pending finalization. Instead of waiting for the report of the Committee, in a hasty manner, ToR had been permitted to the 5th respondent.

14. Learned counsel for the petitioner submitted that in fact the 5th respondent's application is for new project, as is evident from the copy of the

application, but overlooking those facts and contrary to the statutory mandate, the Terms of Reference has been issued on the recommendation of the Committee. Learned counsel submitted that according to the EIA notification, when an applicant seeks prior Environment Clearance as prescribed under Form-1 the application undergoes four stages, viz., (1) Screening; (2) Scoping; (3) Public Consultation; and (4) Appraisal. The application of the 5th respondent is at the second stage, i.e., at the stage of Scoping and at this stage, the Terms of Reference have to be conveyed to the applicant which generally includes only treatment capacities but not bed strength and coverage area. So, the Terms of Reference (ToR) issued by the 5th respondent is beyond the scope of the second stage, and the Terms of Reference (ToR), in fact are on the premise that the application of the 5th respondent is only for relocation, whereas it is for a new project. The stage for taking a decision on coverage area or bed strength or treatment capacities is only after issuance of Consent for Establishment (CFE).

15. Learned counsel for the petitioner submitted that the 3rd respondent issued the Minutes of Meeting dated 03.06.2025 incorrectly observing that the objections raised in the representation dated 14.05.2025 were raised previously vide representations which were already addressed. He submitted that the objections raised in the representation dated 14.05.2025 were substantially different from the previous objections and even if some of the previous objections were repeated, the Committee was under obligation to have considered at least those substantially different objections. He pointed out

during arguments the difference in the objections raised vide various representations, referring to the representation dated 14.05.2025 and the previous one. He submitted that one of the main objections of the petitioner was that the 5th respondent without following the statutory procedure enhanced its incinerator capacities and Effluent Treatment Plant Capacities and with respect to the same the enquiry was being conducted by the 2nd respondent SEIAA and therefore, the petitioner requested for await decision on the proposal of the 5th respondent for relocation of its unit one, till completion of enquiry.

16. Learned counsel for the petitioner further submitted that the 3rd respondent-SEIAA had no jurisdiction to consider the application of the 5th respondent for relocation for issuance of Terms of Reference (ToR). He submitted that the EIA notification does not provide for relocation and only states that Environment Clearance has to be secured for New Project or Expansion or Modernization of Existing Projects. Neither the statute nor the EIA Notification provide for procedure to relocate an existing facility. So, in the absence of specific procedure, the 5th respondent had to apply for fresh Environment Clearance (EC) as a new facility, without relying on its existing capacities, coverage area, Consent for Establishment (CTE) and Consent for Operation (CTO). The submission advanced is that for relocation of the facility, the existing capacities, coverage area, CTE and CTO cannot be relied upon but there should be fresh EC, as the location is being changed, and EC should be with respect to that area.

17. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in ***Vellore Citizens Welfare Forum v. Union of India***¹ and contended that the precautionary principle is etched into the environmental law of the country and that the State Government and Statutory Authorities must anticipate, prevent and attack the causes of environmental degradation and that when there are threats of serious and irreversible environmental damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. Placing on the aforesaid judgment, his submission is that, the 3rd respondent cannot be casual in its approach in issuance of ToR nor the Committee could make the recommendations, which in fact are threats to the environment and may result in environmental degradation.

III. Submissions of the learned counsel for the 5th Respondent:

18. Sri Meka Rahul Chowdary, learned counsel for the 5th respondent, submitted that the writ petition, challenging the decision of the 3rd respondent at its 263rd meeting held on 30.05.2025 to issue terms of reference to the 5th respondent for relocation of its Bio Medical Waste Treatment Facility from Dharmavarappadu Thanda, Jaggayyapeta Mandal, NTR District to Industrial Development Area, Kondapalli, NTR District, is premature and is not maintainable. He submitted that as per direction No.7 (i) of the EIA Notification, dated 14.09.2006, issuance of a prior environmental clearance is a 4-stage process i.e., Screening, Scoping, Public Consultation and Appraisal. He

¹ (1996) 5 SCC 647

submitted that the decision to issue terms of reference for the proposed relocation by the 5th respondent is part of the second stage of the process. In the said process of Scoping, the State Level Expert Appraisal Committee (SEAC) determine detailed and comprehensive Terms of Reference (ToR) addressing all relevant environmental concerns for the preparation of an Environmental Impact Assessment (EIA) Report in respect of the project, for which prior environmental clearance is sought. He submitted that Terms of Reference (ToR) is a checklist outlining various aspects, and that by itself is not an environment clearance nor a document permitting a project proponent to establish or operate, creating a right on the 5th respondent. It is only a standardized document encapsulating the scope of Environmental Impact Assessment (EIA) study. Therefore, he submitted that the writ petition is filed at a pre-decisional stage. Challenging mere issuance of standard terms of reference is premature and liable to be dismissed on this ground.

19. Learned counsel for the 5th respondent further submitted that even if the terms of reference is to be considered as a final decision granting permission to relocate or establish or operate a project, the same was made in terms of the provisions of the Environment Protection Act, 1986 read with EIA Notification, 2006 dated 14.09.2006 and therefore, if the petitioner is aggrieved by such a decision he has an efficacious and alternative remedy available in terms of Section 16 of the National Green Tribunal Act, 2010. So, in the presence of the statutory remedy, the petitioner cannot invoke extraordinary jurisdiction under Article 226 of the Constitution of India.

20. Learned counsel for the 5th respondent further submitted that the petitioner has also no *locus standi* to maintain the writ petition to challenge ToR. He submitted that the petitioner is a third party and he has no vested rights in respect of the application made by the 5th respondent for issuance of prior environmental clearance and there is no question of infringement of fundamental rights of the petitioner, and therefore, grant of final decision, if so made by granting environmental clearance to the 5th respondent at the proposed relocation of the existing facility Unit One, the petitioner cannot maintain the writ petition. He submitted that the petitioner's case is that he intends to establish a common Bio Medical Waste Treatment Facility, which intention could not be considered as giving any right to the petitioner to assail the terms of reference issued to the 5th respondent.

21. Learned counsel for the 5th respondent placed reliance in ***Mantri Techzone (P) Ltd. v. Forward Foundation***² and ***Municipal Corpn. of Greater Mumbai v. Ankita Sinha***³ in support of his contentions.

IV. Points for consideration:

22. The following points arise for our consideration:

- A.** Whether the petitioner can maintain the writ petition?
- B.** Whether the impugned recommendations deserve to be interfered with at this stage of the proceedings in the exercise of the Writ Jurisdiction?

² (2019) 18 SCC 494

³ (2022) 12 SCC 401

V. Analysis/Consideration:

23. We have considered the aforesaid submissions advanced by the learned counsels for the parties and perused the material on record.

Point 'A':

24. We are of the view that *inter alia* the aspects, that the petitioner had already applied for establishment of the CBWT facilities which is under consideration at the place which the petitioner purchased; its distance from the site, where the relocation has been requested by the 5th respondent, and the effect of the impugned recommendations on the petitioner pending application for CBWT facilities, cannot be disputed. Further, once the petitioner's representation was rejected and his contention is that his representation has not been properly considered while making the recommendations in favour of the 5th respondent, we are of the view that it cannot be said that the petitioner is not a person aggrieved from the recommendations made in favour of the 5th respondent treating it a case of relocation or that the petitioner has no right of hearing or no *locus* to maintain the writ petition.

25. It is a different aspect that, challenging the recommendations made, this court may not interfere in the exercise of Writ Jurisdiction with the recommendations at this stage of the proceedings if the petitioner has got the opportunity to raise the challenge to those recommendations and to raise his grievances before the Competent Authorities under the same Notification 2016.

26. In ***Municipal Corpn. of Greater Mumbai*** (supra) the Hon'ble Apex Court has held that the NGT is not just an adjudicatory body but has to perform

wider functions in the nature of prevention, remedy and amelioration. The NGT has *suo motu* powers in discharge of its functions and that the functions of NGT and its role is different from various other Tribunals. The NGT is a specialized Forum not only as a like substitute for civil Courts but more importantly to take its environmental cases. It also exercises role as an appellate authority and is conferred with the responsibilities to discharge the role of supervisory body and decide the substantial questions relating to environment.

27. The law is well settled as in the aforesaid case of ***Municipal Corpn. Of Greater Mumbai*** (supra) cited by the learned counsel for the 5th respondent. At the same time, it is also well settled that the jurisdiction of this Court under Article 226 of the Constitution of India is not taken away by any Tribunal, including the NGT. Reference may be made to the judgment of ***Madhya Pradesh High Court Advocates Bar Association vs Union of India***⁴, in which the Hon'ble Apex Court clearly laid down that the National Green Tribunal under Section 14 and 22 of the NGT Act does not oust the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India.

28. Paragraph-45 of ***Madhya Pradesh High Court Advocates Bar Association*** (supra) is as follows:

“45. In consequence of the above analysis, our conclusions are,

⁴ 2022 SCC OnLine SC 639

A. The National Green Tribunal under Sections 14 & 22 of the NGT Act does not oust the High Court's jurisdiction under Article 226 & 227 as the same is a part of the basic structure of the Constitution.”

29. In ***Mantri Techzone (P) Ltd.*** (supra), upon which also learned counsel for the 5th respondent placed reliance, the Hon'ble Apex Court held that the NGT Act being beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading rather than one taking away the jurisdiction.

30. We are not taking away the jurisdiction of the National Green Tribunal by making any interpretation so as to oust its jurisdiction conferred on NGT. According to the learned counsel for the 5th respondent himself, the present is a case of consideration at the second stage and the final decision is yet to be taken and in his submission as well, at present there would be no remedy before the National Green Tribunal, but it is only if the recommendations are to be taken as decision, the remedy would be before the National Green Tribunal. We are not taking the recommendations, as final decisions of the competent Authority.

Point 'B':

31. From the aforesaid, it is evident that the petitioner was granted environmental clearance on 22.08.2020 for a period of seven years, which has yet not expired. Further, on the petitioner's application to establish a Biomedical Waste Treatment Facilities at the site which the petitioner purchased, the matter is pending consideration, in which the gap analysis report has been

submitted, as per the reply affidavit (para.4)(c). The 5th respondent filed the application for reallocation of its unit one to the place near to site purchased by the petitioner. The location of unit one of the respondent No.5 is at a place which as per the petitioner's case is within the radius of 75 kms. Recommendation has been made in favour of the 5th respondent treating it as a case of relocation.

32. Learned counsel for the petitioner submitted that it is not a case of relocation, as the Act, Rules, notifications do not provide for relocation and provides only for the environmental clearance for new project, expansion or modernization of the existing projects. He referred to the application of the 5th respondent to point out that it does not mention relocation. Learned counsel for the 5th respondent submitted that it is a case of relocation, but there is no column of relocation in the format and consequently the 5th respondent applied as per the format. He submitted that the relocation is permissible.

33. Learned counsels, however, after some arguments, as aforesaid, are not at issue with respect to the revised guidelines for common Biomedical Waste Treatment Facilities, which provide that if an existing project intends to relocate its facilities compliance of the relevant provisions notified under the Environmental Protection Act, 1986 have to be complied with.

34. Revised Guidelines for Biomedical Water Treatment Facilities dated 21.12.2016, Guideline No.5 Point.3 read as under:

“5) Environmental laws applicable for commissioning or operation of a CBWTF:

Operation of a CBWTF leads to air emissions as well as waste water generation as in case of an industrial operation. Most common sources of waste water generation in CBWTFs are vehicle washing, floor washing, and scrubbed liquid effluent from air pollution control systems attached with the incinerator/plasma pyrolysis. Incineration as well as DG Set is the general source of air emissions.

5.1.....

5.2.....

5.3 Environmental Clearance under EIA Notification 2006:

Ministry of Environment, Forest & Climate Change (MoEF & CC), notified amendment to the EIA Notification 2006 and published vide MoEF & CC Notification of S.O. 1142 (E) dated April 17, 2015. According to this notification, the 'bio-medical waste treatment facility' is categorized under the Item 7 (da) in the schedule, requiring 'environmental clearance' from the State Environment Impact Assessment Authority (SEIAA). Therefore, the CBWTF operator is also required to obtain 'Environmental Clearance (EC)' from the respective SEIAA or Ministry of Environment, Forest & Climate Change (MoEF & CC), as the case may be, before any construction work, or preparation of land by the projects management, which include the following:

- a) All new projects or activities pertaining to the bio-medical waste treatment facility; and
- b) Expansion and modernization with additional treatment capacity of existing bio-medical waste treatment facility (excluding augmentation of incineration facility for compliance to the residence time as well as Dioxins and Furans without enhancing the existing treatment capacity).
- c) **Any expansion or modification in the treatment capacity or relocation of the existing CBWTF (requires compliance to the relevant provisions notified under the Environment (Protection) Act, 1986 by the MoEF & CC."**

35. The Revised Guidelines for Common Bio Medical Waste Treatment Facilities provide that if an existing project intends to relocate its facility, compliance of the relevant provisions notified under the Environment Protection Act, 1986 have to be complied.

36. At this stage, we would refer to the notification dated 14.09.2006 on the subject of grant of prior environmental clearance. We would refer to paragraphs 6, 7 and 8 in particular of the Notification dated 14.09.2006, for ready reference, which are reproduced as under:

“6. Application for Prior Environmental Clearance (EC):-

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.”

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:-

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:-

- Stage (1) Screening (Only for Category ‘B’ projects and activities)
- Stage (2) Scoping
- Stage (3) Public Consultation
- Stage (4) Appraisal

I. Stage (1) - Screening:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project. The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

II. Stage (2) - Scoping:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub- group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and activities listed as Category 'B' in Item 8 of the Schedule

(Construction/Township/Commercial Complexes /Housing) shall not require Scoping and will be appraised on the basis of Form 1/ Form 1A and the conceptual plan.

(ii) The Terms of Reference (TOR) shall be conveyed to the applicant by the Expert Appraisal Committee or State Level Expert Appraisal Committee as concerned within sixty days of the receipt of Form 1. In the case of Category A Hydroelectric projects Item 1(c) (i) of the Schedule the Terms of Reference shall be conveyed along with the clearance for preconstruction activities .If the Terms of Reference are not finalized and conveyed to the applicant within sixty days of the receipt of Form 1, the Terms of Reference suggested by the applicant shall be deemed as the final Terms of Reference approved for the EIA studies. The approved Terms of Reference shall be displayed on the website of the Ministry of Environment and Forests and the concerned State Level Environment Impact Assessment Authority.

(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.

III. Stage (3) - Public Consultation:

(i) “Public Consultation” refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category ‘A’ and Category B1 projects or activities shall undertake Public Consultation, except the following:-

(a) modernization of irrigation projects (item 1(c) (ii) of the Schedule).

(b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.

(c) expansion of Roads and Highways (item 7 (f) of the Schedule) which do not involve any further acquisition of land.

(d) All Building or Construction projects or Area Development projects and Townships (item 8).

e) all Category 'B2' projects and activities.

f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.

(ii) The Public Consultation shall ordinarily have two components comprising of:-

(a) a public hearing at the site or in its close proximity- district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;

(b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

(iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45(forty five) of a request to the effect from the applicant.

(iv) in case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days,

(v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have,

decide that the public consultation in the case need not include the public hearing.

(vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.

(vii) After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

IV. Stage (4) - Appraisal:

(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the

regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.

(ii) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iii) The appraisal of an application shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1 A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days .The prescribed procedure for appraisal is given in Appendix V ;

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to

this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.

8. Grant or Rejection of Prior Environmental Clearance (EC):

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.

(iii) In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iv) On expiry of the period specified for decision by the regulatory authority under paragraph (i) and (ii) above, as applicable, the decision of the regulatory authority, and the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be public documents.

(v) Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.”

37. Briefly stated, as per para-6 of the Notification, dated 14.09.2006, an application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed with the Notification and Supplementary Form 1A, if applicable, as given in Appendix II. As per para-7 (i) of the Notification, which deals with environmental clearance process for New Projects, there are

four stages. Para-7 (ii) deals with prior environmental clearance process for expansion or modernization or change of product mix in existing projects. Para-7 (ii), also provides for Applications in Form-I, consideration by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee, including preparation of Environment Impact Assessment (EIA) and public consultations and appraisals.

38. As per para-7, the applications at Stage-I will be screened. In Stage-II, there is scoping which refers to the process by which the Expert Appraisal Committee (EAC) in the case of Category 'A' projects or activities, and State Level Expert Appraisal Committee (SEAC) in the case of Category 'B' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity, for which prior environmental clearance is sought. The detailed process of scoping is prescribed. Stage-III of Public Consultation, in this Stage, *inter alia*, the public consultation have two components. A public hearing for ascertaining concerns of local affected persons, and also obtaining responses in writing from the concerned persons having a plausible stage in the environmental aspects of the project or activity. The public hearing is to be conducted by the State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC) concerned in the specified manner, which has to forward the

proceedings to the regulatory authority concerned. The detailed procedure for public consultation has been specified and after completion of the public consultation, the appraisal is made in Stage-IV by the Expert Appraisal Committee in the manner laid down.

39. The regulatory authority, thereafter, has to consider the recommendations of Expert Appraisal Committee or State Level Expert Appraisal Committee concerned and follow the further procedure. Though as per para-8 (ii) the regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, but that is the normally. In our view, the role of the regulatory authority shall not be bound by the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee. The regulatory authority may also disagree with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee for the reasons recorded, and then the Expert Appraisal Committee or State Level Expert Appraisal Committee has to consider the observations of the regulatory authority and furnish its views on the same. The decision of the Regulatory Authority shall be final. The Regulatory Authority has also got the power under Para-8 (vi) that, in case of deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application, to reject the application and also to cancel the prior environmental clearance, if granted.

40. Learned counsel for the petitioner submitted that attributing existing coverage area and bed strength to the 5th respondent in the new location will have serious implication on the petitioner's facility inasmuch as the 5th respondent is presently catering to coverage area of 140 km, and by attributing the same existing coverage area, the 5th respondent will continue to operate the entire area of Krishna District leaving the petitioner with nothing. Therefore, the 3rd respondent ought not to have attributed coverage area at the stage of Terms of Reference (ToR).

41. The matter is pending before the competent authority for appropriate decision. As per the guidelines as reproduced above the stage No.4 'appraisal' is yet to be reached. In that stage also, the petitioner will have the opportunity of hearing. The contentions as raised before the authority rejecting the representation and making the recommendations in favour of the 5th respondent, may be re-agitated at the 4th stage before the competent authority. Additionally, any other objection as permissible under the law can also be taken before the said authority. It goes without saying that those objections are required to be considered by the competent authority before taking a final decision, independently and inconsonance with the principles of natural justice i.e due opportunity of hearing to the petitioner as well as to the 5th respondent and by passing a reasoned order. The grievance of the petitioner that all the objections raised in the representations were not considered while making the recommendations in favour of the 5th respondent, if it be so, they

can also be considered and re-considered in the 4th stage by the competent authority.

42. Though both the learned counsels submitted that the 3rd stage of public consultation is not relevant for the reasons that the third stage is a public consultation for all the categories – A and Category-B1 project or activities but except in the cases exempted as mentioned under 'the third stage' itself, *inter alia* in Clause-B that all the projects or activities located within the industrial estates or parts Item 7(c) of the Schedule approved by the concerned authorities and which are not disallowed in such approvals, but we are of the view that such aspect of the applicability of the 3rd stage 'the public consultation' which is an important stage under the notification, should also be considered by the competent authority if the exemption thereunder is attracted or not to the present case and for such exemption of 'Public Consultation', if applicable, cogent reasons should also be recorded.

43. Learned counsel for both the sides submitted that there are four stages under the notification and the present is at the 2nd stage. So, the recommendations are not the final decision. The final decision is yet to be taken.

44. There cannot be any dispute on principles or the proposition of law, as laid down by the Hon'ble Apex Court in the case of **Vellore Citizens' Welfare Forum** (Supra) relied upon by the learned counsel for the petitioner, that, while the industries are vital for country's development, but having regard to pollution caused by them, principle of sustainable development has to be

adopted as a balancing concept, and that aspect can also be seen by the competent authority.

VI. Conclusions:

45. We hold that the petitioner has the *locus* and being aggrieved from the recommendations made in favour of the 5th respondent can maintain the writ petition. But, as there is alternative remedy to raise his grievance, at this stage, and the final decision is yet to be taken by the authority under the 4th stage, in which the petitioner shall have the opportunity of hearing in terms of the notification itself, we are not inclined to enter into the merits of the recommendations made for ToR, at this stage of the proceedings, but to meet the ends of justice, We are inclined to dispose of the writ petition finally with certain directions.

VII. Result:

46. In the result, the competent/regulatory authority shall take appropriate decision in accordance with law in the pending matter, considering the objections of the petitioner as also of the 5th respondent, with due opportunity of hearing to them including the consideration if the stage 3 of 'public consultation' would be attracted or exempted under the notification. It shall also keep in view whether it is a case of establishment of a new facility at the instance of the 5th respondent or it is a case of relocation of its unit one, and in either case to pass a reasoned Order, on the relevant considerations *inter alia* the Guidelines for Bio-Medical Waste Treatment and Disposal Facilities, 2016.

47. The decision shall be taken within a period of 6 (six) months from today.

48. The writ petition is disposed of with the aforesaid observations and directions. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

Date: 22.01.2026
Dsr

Note:

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