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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PIL-CJ-LD-VC- NO. 36 OF 2020

Kishor Ramesh Sohoni	}	Petitioner
Vs.		
State of Maharashtra & Ors.	}	Respondents

Ms. Sadhna Kumar for Petitioner.

Mr. P.P. Kakade - Government Pleader with Mr. M.M. Pabale - AGP for State.

Mr. A.S. Rao for respondent no.2 (KDMC).

Ms. Sharmila Deshmukh for respondent no.3 (MPCB).

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV JAMDAR, J.**

JULY 24, 2020.

P.C.:-

1. In this PIL petition, the petitioner has raised an important issue. According to him, the bio-medical waste from

hospitals treating patients infected by COVID-19 are being dumped here and there without proper treatment thereof in consonance with the Bio-Medical Waste Management Rules, 2016 (hereinafter referred to as “the Rules of 2016”) as well as the guidelines framed by the Central Pollution Control Board (hereinafter referred to as “the CPCB) on June 10, 2020, titled “Guidelines for Handling, Treatment and Disposal of Waste Generated during Treatment/Diagnosis/Quarantine of COVID-19 Patients” (hereinafter referred to as “the said guidelines”).

2. The prayers in the PIL petition reveal the nature of relief claimed by the petitioner and hence, are quoted hereunder:-

“(a) Be pleased to direct the Respondent corporation to follow the Guidelines by the central Pollution Control Board in respect of COVID-19 bio medical waste.

(b) Be please to direct to stop dumping untreated COVID 19 Bio Medical waste in adharwadi Dumping Ground immediately.

(c) Be please to direct the state Government to make a statement regarding disposal COVID 19 bio medical waste within the State of Maharashtra as whether the Guidelines are followed.”

3. A preliminary objection to the entertainability of this PIL petition is raised by Ms. Sharmila Deshmukh, learned

advocate appearing for the Maharashtra Pollution Control Board (hereinafter referred to as “the MPCB”). According to her, the Rules of 2016 have been framed in exercise of the powers conferred by the Environment (Protection) Act, 1986 and having regard to the provisions contained in the National Green Tribunal Act, 2010 (hereinafter referred to as “the NGT Act”), the issue raised by the petitioner ought to be agitated before the National Green Tribunal constituted in terms of the NGT Act. For supporting such contention, she has relied on the decision of the Supreme Court reported in **(2012) 8 SCC 326** : *Bhopal Gas Peedith Mahila Udyog Sangathan and Ors. vs. Union of India and Ors.*

4. The submission of Ms.Deshmukh does not appear to be absolutely without substance. Having regard to the decision in *Bhopal Gas Peedith Mahila Udyog Sangathan* (supra) and the decision of the Supreme Court of more or less recent origin reported in **2019 SCC Online SC 322** : *Mantri Techzone Pvt. Ltd. vs. Forward Foundation and Ors.*, a remedy is indeed available before the National Green Tribunal which an aggrieved litigant may pursue for a decision in relation to environmental matters covered by Schedule I of the NGT Act. However, in every

proceedings where an objection is raised in regard to the authority of the Writ Court to entertain a concern/challenge pertaining to environmental matters, the nature of concern that is raised and/or subject matter of challenge laid together with the extent of fact-finding to be made by the Court for pronouncing its decision thereon, assumes importance. From the pleadings and the prayers, it needs to be discerned as to whether the primary concern of the petitioner is to have the environment protected and preserved by judicial interference, to the extent possible, or is it some other concern that is predominantly in his mind which he seeks the Court to immediately address. Here, in this PIL Petition, what appears to be the main and sole concern of the petitioner is to have the contagion, arising out of COVID-19, arrested rather than an immediate concern for protection and preservation of the environment. Considering that it is the paramount duty of the State to ensure that life of every citizen is taken care of and preserved and COVID-19 does not take any further toll, we are inclined to entertain this PIL petition as an exceptional case.

5. The Rules of 2016 in sections 4, 5 and 6 lay down duties of the “occupier” [as defined in rule 3(m)], the “operator of a common bio-medical waste treatment facility” [as defined in rule

3(n) and hereinafter referred to as “the operator”] and the “authorities” (as specified in Column 2 of Schedule III), respectively. Rule 7 deals with the manner and procedure for treatment and disposal of bio-medical waste with reference to Schedules I and II. Rule 8 imposes restrictions on dealing with bio-medical waste in the manner specified therein. These are the provisions, which are required to be adhered to by the “occupier”, the “operator” and the “authorities” without fail to secure healthy living conditions for all the citizens at all times and not only during an epidemic or a pandemic.

6. To control and ward off the contagion, the CPCB has issued the said guidelines for handling, treatment and disposal of waste generated during treatment/diagnosis/quarantine of COVID-19 patients. Not only are these guidelines to be adhered to in letter and spirit, any slip on the part of any “occupier” or “operator” would have to be dealt with in accordance with law by the “authorities”, who are statutorily mandated to keep a check on mishandling and/or negligence in treating bio-medical waste in accordance with what has been provided for in the Rules of 2016 as well as the said guidelines.

7. Ms. Kumar, learned advocate for the petitioner by referring to certain photographs, annexed to the PIL petition and the rejoinder affidavit as exhibits, seeks to contend that the provisions of the Rules of 2016 and the said guidelines are being observed in the breach in respect of bio-medical waste generated from facilities treating COVID-19 patients and steps for proper waste disposal are wanting.

8. The aforesaid contention has been sought to be refuted by Ms. Deshmukh and Mr. Rao, learned advocate appearing for the respondent no.2, Kalyan Dombivli Municipal Corporation (hereinafter referred to as “the Corporation”) by referring to their respective affidavits-in reply regarding the steps that have been taken to comply with the extant rules/guidelines.

9. From the affidavits that have been filed before this Court by the MPCB and the Corporation, it is evident that there is at least one instance, where bio-medical waste may not have been disposed of in the manner required and a show-cause notice had to be issued to the Corporation by the MPCB. Prima facie, this lends credence to the concern expressed by the petitioner that the extant rules/guidelines are not being followed exposing the citizens to jeopardy during the pandemic.

10. Mr. Rao has, however, submitted at this stage by way of clarification that the notice issued by the MPCB is in respect of general waste and not bio-medical waste.

11. Whether it was bio-medical waste or general waste is a matter to be considered by the MPCB, while it takes the proceedings initiated against the Corporation to its logical end. We refrain from expressing any opinion in regard thereto. However, there can be no gainsaying that the State, the Corporation as well as the MPCB owe an obligatory duty to discharge their respective functions in terms of the Rules of 2016 as well as the said guidelines framed by the CPCB; in view thereof, we direct that all the statutory functionaries, i.e., the relevant department(s) of the State, the Corporation as well as the MPCB shall take all such measures that are necessary to prevent the contagion arising out of improper handling of bio-medical waste from hospitals and care centres treating COVID-19 infected patients and to ensure that the same are treated and disposed of in the manner ordained by the extant rules/guidelines.

12. In the event the MPCB notices any further/other incident of bio-medical waste from hospitals and care centres

treating COVID-19 infected patients not being treated and disposed of in the manner required by the extant rules/guidelines, it shall not waste any time to take appropriate action against the persons/agencies responsible for such breach in the manner law requires it to act.

13. With these directions, this PIL petition stands disposed of. There shall be no order as to costs.

14. This order will be digitally signed by the Sr. Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

MADHAV JAMDAR, J.

CHIEF JUSTICE