

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPEAL No. 40/2014(WZ)**

**CORAM:**

**Hon'ble Mr. Justice V.R. Kingaonkar  
(Judicial Member)  
Hon'ble Dr. Ajay A. Deshpande  
(Expert Member)**

**B E T W E E N:**

- 1. Mr. Kashinath Laxman Dagale,**  
Age 67 yrs. Occu : Agriculturist,  
R/o. At Pahine, Post : Samundi,  
Taluka – Trimbakeshwar, Distt : Nasik.
- 2. Mr. Rajaram Madhukar Bodke,**  
Age 44 Yrs. Occu : Agriculturist,  
At : Kojuli, Post : Samundi,  
Taluka : Trimbakeshwar, Distt : Nasik,
- 3. Mr. Prakash Nivrutti Pehere,**  
Age : 25 years, Occn : Agriculturist,  
At Kojuli, Post : Samundi,  
Taluka : Trimbakeshwar, Distt : Nasik,  
**....Appellants**

**A N D**

**1. Maharashtra Pollution Control Board**

Having its Regional Office at Udyog Bhavan,  
Trimbak Road, MIDC Compound,  
Near ITI Signal, Nashik- 422 007.

**2. The Chief Officer,**

Trimbakeshwar Municipal Council,  
Near bus stand, Mahadevi Road,  
Taluka : Trimbakeshwar, Distt : Nashik

**...Respondents**

**Counsel for Appellant :**

Ms. Indrayani Patani, a/w.

Mr. Nilesh Kute, Adv.

**Counsel for Respondent No. 1:**

Mr. D.M. Gupte, Adv. w/

Mrs. Supriya Dangare, Adv.

**Counsel for Respondent No.2 :**

Mr. Sudhir S. Kotwal, Adv.

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**DATE : February 18<sup>th</sup>, 2015**

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**J U D G M E N T**

1. The Appellants have filed present appeal under Section 16 of the National Green Tribunal Act, 2010, challenging order dated 9-12-2014 of Maharashtra Pollution Control Board (MPCB)- Respondent No.1 granting Authorisation, under Municipal Solid Waste (Management and Handling) Rules 2000, (MSW Rules) to Trimbakeshwar Municipal Council (TMC)-Respondent No.2 for proposed Municipal Solid Waste Processing and Disposal Facility (MSW facility) at Gat No.49 of village Kojuli, Taluka Trimbakeshwar, District Nashik. The Appeal was filed on 18-12-2014. The Appellants claim to be residents of Pahine, Kojuli and Bhilmal villages which comprise a Common Group Panchayat. The Appellants submit that

they had challenged the resolution and decision of Respondent No.2 i.e. TMC for commencement of activity of MSW processing and disposal facility at Kajuli by filing PIL No.31/2009 before Hon'ble High Court of Judicature at Mumbai. The Hon'ble High Court vide order dated 11<sup>th</sup> April 2014, while noting that the Municipal Council has not even made an application for obtaining the authorisation for the proposed site, disposed of the petition, recording that at that stage, it was not necessary to entertain the petition and the same was disposed of being premature. The Hon'ble High Court also gave liberty to the Petitioners to challenge the authorisation if so, granted by MPCB, according to the Law, while keeping all contentions of the parties open.

**2.** The Appellants submit that there is a grazing land which is reserved and used by the villagers since long time at the proposed location of MSW facility. It is submitted that the proposed site is located more than 9km away from the limits of Trimbakeshwar Municipal Council. A part of the said property was acquired for the purpose of the MSW plant of TMC and accordingly, name of the Chief Officer, TMC is entered into record of rights. Appellants allege that there are alternative sites which have been found suitable by the Committee. However, for reasons best known to the Committee and MPCB, the Kojuli site has been finalized without assessing the environmental safety and risk

aspects associated with the proposed location. The Appellants claim that there is a major stream of Banganga river just adjoining to the said site and river Banganga is hardly 100m from the proposed site. The river-Banganga finally meets Vaitarana River, into upper Vaitarana dam. This entire catchment area of Vaitarana dam is classified as A-I zone by the River Regulation Policy of Government of Maharashtra. The Appellants claim that the present status of MSW management practices all over the country give rise to the serious apprehensions about the future state of affairs at the proposed site. The proposed site is also located in area surrounded by mountains and experience very heavy rain fall in monsoon for a very long duration. The Appellants submit that any mis-management or improper handling of the MSW at this site will result into contamination of Vaitarana dam which is the major source of drinking water for city of Mumbai. The Appellants further claim that with these apprehensions in mind, the State of Maharashtra has formulated the River Resolution Policy on precautionary principle and declared this area as A-I zone and placed stringent restrictions on developmental activities. The Appellants further claim that though the Detail Project Report (DPR) has recommended option 'C', at the same time the report also indicates that special environmental permission will have to be obtained in view of the applicability of the RRZ making it clear that

separate permission under RRZ is required for such or any project.

**3.** It is therefore the case of the Appellants that the MPCB while issuing the authorisation has not considered the environmental safety and risk aspects associated with the selection at the site and granted the authorisation without ascertaining the environmental impacts likely to be caused by activity at the proposed site. The Appellants also claim that the MPCB has granted this authorisation though the proposed site is located in the Western ghats and also there is “Aashramshala” located within 300m from the proposed site. The Appellants therefore, prayed for:

- 1)** The “no objection order” (NOC) of Respondent No.1 authorizing the Respondent No.2 to set up and operate waste processing and waste disposal facility at Gat No.49, village Kojuli, Tqluka Trimbakeshwar, District : Nashik be quashed and set aside.
- 2)** Be pleased to direct the Respondents to withdraw the project of garbage depot on the property bearing Gat No.49 at village Kojuli, Tqluka Trimbakeshwar, District Nashik.

**4.** Respondent No.1-MPCB has filed Affidavit and stated that MPCB has granted authorization to the proposed MSW processing and disposal facility subsequent to the identification of the site by the selection committee comprising of representatives of various departments who

visited various sites on 25-8-2007 and recommended the Kojuli site vide letter dated 29-8-2007. The affidavit also mentions that the authorization is granted after the approval of MSW committee constituted by the Board and apprehension by the Petitioners are considered in the conditions imposed in the authorization. The specific grounds raised by the Appellants have not been addressed by the MPCB, particularly related to applicability of the RRZ restrictions and also environmental safety and risks associated with the project. The learned counsel for MPCB Shri D.M. Gupte submitted that the MPCB has a very limited role in selection of the site as the selection of site is done by inter-departmental committee appointed by the Collector, comprising of representatives of GSDA, Revenue Department, Forest, Archaeology, Health etc. He therefore contends that such a decision of selection of MSW facility site is a well informed decision. He also contends that the Hon'ble High Court's order of disposing of the petition of Appellants has restricted the scope of Appeal only to the extent of Authorisation and therefore the issue of selection of site cannot be agitated now. In other words, it is his contention that MPCB's authorization is only limited to the process and technology approval and does not cover issue regarding selection of site which is an independent process. He further submits that the authorization has

been granted as per the application made by the TMC along with the DPR.

**5.** Respondent No.2-TMC filed an affidavit through Chief Officer, and resisted the Appeal. The TMC denied that the said site of the MSW facility is being used for the purpose of grazing cattle and submits that there are other areas in the vicinity where such grazing lands will be available. The TMC submits that the proposed site has been selected by inter-departmental Committee formed by the Collector after assessing various sites for their environmental suitability. This Committee has considered all relevant factors and thereafter has recommended the Kajuli site. The TMC submits that considering the specific location, it has proposed state of art waste processing unit, particularly comprising bio-methanation process and vermin-composting for biodegradable waste; and polycrack process for mixed plastic besides secured land-filling for remaining wastes/residues. TMC therefore submits that with such state of Art technology, it will be ensured that there is no water or air pollution due to the activities at the MSW facility and they have incorporated all the necessary environmental safeguards in the project proposal. It is the submission of TMC that based on the detail project report (DPR) which elaborately addressed all suggestions, the technical regulatory agency of MPCB have granted the authorization by incorporating necessary safeguards which

is quite evident with the terms and conditions attached to the authorization letter. The TMC further submits that as per the MSW rules, it is the responsibility of every Municipal Authority to provide MSW processing and disposal facility and even, Hon'ble High Court has passed several directions in this regard. The MPCB has also issued notices to Respondents for early implementation of MSW facility as per MSW Rules. The Respondent-2, therefore, submits that it is legal responsibility of the Respondents to provide the MSW facility to ensure the compliance of environmental laws and therefore, there is a urgency to provide such facility at the earliest. The TMC further submits that the proposed site is near river Banganga which is not a notified river as per RRZ policy and therefore, the RRZ restrictions are not applicable at the proposed site. The Respondent No.2 submits that it prepared a detail project report through College of Engineering, Pune and has necessary funds available to implement the project immediately. Considering the public interest involved, the TMC prays for dismissal of the Appeal so that the work on this proposed project can be commenced immediately.

**6.** Heard learned Counsel for parties. We have carefully gone through the record.

**7.** Considering the documents on record and also arguments advanced by Ld. Counsel for the parties, we are

of the opinion that following points need to be resolved for final adjudication of the present Application.

- 1) Whether the Authorization issued under MSW Rules, 2000 includes approval for site of MSW processing and disposal facilities?
- 2) Whether the proposed site is located in western ghat area and affected by RRZ Policy?
- 3) Whether necessary environmental safeguards have been considered while issuing the authorization?
- 4) Whether the authorization is granted as per the provisions of the law or it is necessary to set aside or quash the same ?

8. Before dealing with the above points and contentions of the parties, we would like to note that the MSW Rules were framed way back in the year 2000 in pursuance to the proceedings in 'Almitra Patel' matter, in the Hon'ble Apex Court. Though these Rules envisaged a certain time frame for improving the existing landfill sites and also provision of new MSW facilities for urban areas, even after nearly fifteen (15) years the Trimbakeshwar town is not having a scientific MSW facility. Trimbakeshwar town is a religious place and after every twelve (12) years, a huge congregation of the pilgrims on the occasion of Kumbhmela is held here. In spite of such historic importance of town, it is an admitted fact that TMC is not able to dispose its Municipal Solid Waste in a scientific and environmentally sound manner. The issue of

Municipal Solid Waste has been dealt by Hon'ble Supreme Court as well as Hon'ble High Court of Judicature at Bombay and several directions have been passed. In spite of all such directions, the MSW Management in most of the cities in Maharashtra is not as per the norms set out in the MSW Rules 2000. The role of scientific and environmentally safe MSW Management and disposal in the urban public health is well documented and therefore, it is necessary for Municipal body to take urgent steps to scientifically manage and dispose the MSW in an environmentally sound manner.

**Point No.1 :**

9. The MPCB granted the authorisation to the proposed MSW facility at Gat No.49 of village Kojuli for setting a MSW facility including MSW processing, waste disposal facility and scientific land-filling of 10 (ten) M.T./day of MSW by bio-methanation process and vermin-composting for biodegradable waste and polycrack process for mixed plastic with certain terms and conditions. The counsel for Respondent Nos.1 and 2 argued that the Kojuli site was selected by inter-departmental committee in year 2007 only and such selection of site does not form part process for grant/refusal of authorisation. They also claim that the site has been selected in year 2007 and therefore the decision cannot be challenged now. However, such submission or objection has not been raised in reply

affidavits. Even so, in the interest of Justice, in this context, we would like to refer to the relevant regulations in the MSW Rules 2000 which are as under :

**Rule 3(ii)** : *‘Authorisation means the consent given by the Board or Committee to the “operator of a facility”.*

Though the word “consent” is not defined in the MSW Rules, a reference can be drawn to the provision of grant of “consent” as in Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981. It is an accepted fact that the “consent” under Water and Air Act is site specific.

**Rule 6 :(1)** : - - - - -

**(2)** : *The State Board or the Committee, after the receipt of application from the municipal authority or the operator of a facility in Form I, for grant of authorization for setting up waste processing and disposal facility including landfills, shall examine the proposal taking into consideration the views of other agencies like the State Urban Development Department, the Town and Council Planning Department, Air Port or Air Base Authority, the Ground Water Board or any such other agency prior to issuing the authorization.*

**(3)** : *The State Board or the Committee shall issue the authorization in Form III to the municipal authority or an operator of a facility within forty-five days stipulating compliance criteria and standards as specified in Schedules II, III and IV including such other conditions, as may be necessary.*

**(4)** : - - - - -

**(5)** : - - - - -

**10.** The Schedule-III of the MSW Rules gives the specification of the landfill sites which includes site

selection, facilities at site, specification for landfill etc. The relevant provisions are as under :

**Schedule III : Site Selection :**

1. *In areas, falling under the jurisdiction of 'Development Authority', it shall be the responsibility of such Development Authority to identify the landfill sites and hand over the sites to the concerned municipal authority for development, operation and maintenance. Elsewhere, this responsibility shall lie with the concerned municipal authority.*
2. *Selection of landfill sites shall be based on examination of environmental issues. The Department of Urban Development of the State or the Union territory shall co-ordinate with the concerned organisations for obtaining the necessary approvals and clearances.*
3. -----
4. -----

**11.** Reading these provisions conjointly, it is abundantly clear that the concerned environmental regulatory authority has the mandate of approving the site based on environmental considerations. It is further noted that the common MSW facilities have been covered under the EIA notification 2006 and the CPCB directions dated 4<sup>th</sup> June, 2012 brings the MSW facilities in the consent regime of the state Boards. The State Board is therefore required to *examine* the proposal received from Municipal authority taking into consideration views of other agencies prior to issuing the authorisation. Needless to say such enabling

provision makes it mandatory for the State Board to assess the adequacy and also suitability of the proposed site before granting authorisation for the MSW facility.

The 'Authorisation' is defined as "Action of Authorising" in Law of Laxicon, while "to Authorise" has been defined as "to give formal approval to, to sanction, approve, countenance" and also "To empower, to give a right or authority to act. To endow with authority or effective legal power, warrant, or right. To permit a thing to be done in the future. It has a mandatory effect or meaning, implying a direction to act." The 'Authorisation' is defined by Free Dictionary as 'official permission or approval' and also "Act of conferring legality or sanction or formal warrant".

It is evident from these definitions that the Authorisation is an important legal sanction permitting some certain specified activity with collection of rules imposed by such Authority. Environmental Authorisation under Environmental (Protection) Act, 1986 is one of the most important regulatory tool available with the Authorities, as they set out the conditions for the activities 'carrying' with them great environmental risks. Each authorisation is expected to be individually tailored for the activity it authorises, and can impose specific conditions on the conduct of the activity.

Another important term used in these rules is “examination”. Definition of the word “examination” is given in The Law Laxicon is “*Weighing, balancing; search, minute inspection; investigations; inquiry; and investigation made in order to form a judgment*”

Thus the examination does include inquiry, investigations in order to form a judgment. The use of word “examination” in MSW Rules, 2000, therefore, shows comprehensive efforts that are involved while arriving at a decision or judgment, by following basic principles of administrative decision making. This examination in the present case of grant of MSW authorisation may include identification of environmental hazards and safety concerns, appraisal of the technology being proposed as a part of facility, environmental setting near the proposed site, fixation of emission standards amongst other parameters which may vary from site to site. Though the counsel for Respondent Nos.1 and 2 refer to the inter-departmental committee for selection of site, they have not placed any record regarding constitution of such committee or its mandate particularly with reference to the provisions of MSW Rules. It is also submission of TMC that their site in TMC area have been rejected by MPCB which itself clearly establish that the MPCB has a controlling regulatory role in approval of MSW facility site. We are, therefore, not inclined to accept the arguments of

the learned counsel that the selection of site is not governed by the authorisation which is under challenge. Accordingly, we are of the considered opinion that the Authorisation under MSW rules includes approval to the proposed site of MSW facility. The Point No.1 is, therefore, answered in the **Affirmative**.

**Point No.2 :**

**12.** The Appellants have claimed that the proposed site is in the western ghat area and affected by the RRZ Policy. Learned Counsel for MPCB made a statement that as per the MoEF Notification notifying the Western Ghat area, none of the three (3) villagers i.e. Pahine, Kojuli and Bhilmal are included in the notified area under the western ghat Notification where certain restrictions have been imposed. The learned counsel for Appellants did not press for this contention further. The learned counsel for MPCB further states that though the river Banganga is located about 100m from the proposed location, the site is more than 3 km. from the back waters of Vaitarana dam. He therefore admits that the proposed site is located in A-1 zone as classified by the RRZ Notification. The learned counsel also relied on Clause 12(c) of the RRZ Notification which gives an exemption for allowing the development of MSW facility 500m away from the river flood lines. Considering this exemption, it is MPCB's stand that though the site is located within the RRZ notified area,

however, the MSW facility is allowed as per the exemption given in the Notification itself. We have perused the affidavit of MPCB and could not locate any pleadings as far as both these grounds of Appeal raised by the Appellant. The affidavit is cryptic and the matter was left to the learned counsel to argue during the final hearing. Considering these submissions, we are of the opinion that no record has been placed before the Tribunal to show that the proposed site is located in western ghat area, where certain restrictions on development activities have been imposed under environmental regulations. Further, the proposed location can be used for the purpose of MSW processing and disposal site considering the exemption provided by the RRZ Policy. The point No.2 is therefore, answered in the **Negative**.

**Point No.3 and 4 :**

**13.** The learned counsel for Respondent No.1 and 2 argued that they have prepared the detail project report (DPR) through independent expert Institute i.e. College of Engineering, Pune for scientific development of the proposed facility. We have gone through the report which has identified three (3) options for the treatment of MSW facility:

Option 'A' : Collection of un-segregated MSW in TMC area and then transporting the entire quantity to

Kojuli site where the MSW processing, treatment and disposal will be carried out.

Option 'B': Un-segregated MSW will be collected from the TMC limits and segregated at the existing location within the TMC limits. Subsequently, the assorted waste will be taken to Kojuli for differential treatment and disposal.

Option 'C': Un-segregated MSW will be collected from the TMC limits and segregated at the existing location within the TMC limits. The biodegradable component will be treated by vermin-composting and biomethanation at the existing site at Trimbakeshwar and only non biodegradable waste to be transported to Kojuli for polycrack process and scientific landfill.

The COEP report has recommended option 'C' as it involves less dependency as far as transportation is concerned which reduces cost of entire project significantly. The report also mentions that the TMC has already processed a case for permission of biomethanation plant in the existing site within TMC limits which may be developed ensuring zero discharge policy. The waste generated in the form of slurry can be used as inoculums in the vermin-composting unit.

**14.** The learned counsel for Respondent No.1 submits that the MPCB has already refused their application for biomethanation and vermicomposting unit in the existing site at Trimbakeshwar as the same is within 100m from Godavari river and is not allowed as per RRZ Policy. Therefore, the TMC has selected option 'A' in view of the

provisions of RRZ policy. The learned counsel for Respondent No.2 also agreed to such statements and further states that in view of the peculiar site conditions, MPCB has incorporated necessary safeguards in the authorisation. Perusal of such authorisation, however, contradicts such submissions as the authorisation letter itself has multiple errors and it is apparent that most of the conditions are just reproduced from the Rules. The authorisation does not mention size or capacity of the project unit processes. It also does not give any implementation schedule which is evident from *Schedule-I* which is mentioned in the authorisation. Be that as it may be, the provisions of MSW Rules are very comprehensive and will be necessarily applicable for ensuring compliances thereof.

**15.** The counsel for Appellants raised apprehension that any improper MSW processing and handling at the proposed site is likely to cause water pollution of Vaitarana river. She also contended that the proposed site experience very heavy rainfall and there are serious chances of contamination of water in the rainy season. We find merit in this argument and wanted Respondent Nos.1 and 2 to show specific measures proposed to mitigate such concerns based on precautionary principle. MPCB mentions that conditions have been laid down for standards of compost as well as the treated leachate. It is

observed from the standards as stipulated in condition 11(v) of the Authorisation that standards have been specified for various modes of effluent disposal like inland waters, public sewer and land disposal, with a note that while discharging treated leachate into inland surface waters, quantity of leachate being discharged and quantity of the dilution water available in the receiving water body shall be given due consideration. What can be interpreted from such condition is that MPCB has allowed the TMC to choose its mode of disposal of leachate by just mentioning the disposal standards. This is not keeping in tune in principle of precautionary principle. The MPCB, being the technical organisation, is expected to assess the pollution load and then, specify the safeguards while considering the impacts on the surrounding environment. And therefore, we find that such environmental safety measures have not been properly evaluated and incorporated in the authorisation. No documents were placed either by MPCB or the TMC to show technical details of pollution control arrangements proposed, including details of leachate collection, treatment and disposal; landfill design and layout; plantation, so on and so forth. It is also not stated in affidavits as to why the recommendations of CoEP for Option-‘C’ was circumvented and Option-‘A’ was selected and its environmental implications. The MPCB affidavit only states that the Authorisation is issued on the

recommendations of MSW Authorisation committee and approval of Member Secretary. However, no such record is placed on affidavit. The close reading of the site selection committee minutes of 2007 also indicate that the recommendations are subject to views of Irrigation and Forest Department and it is not on record that such recommendations have been obtained before grant of Authorisation.

**16.** Hon'ble Principal Bench of NGT in Rayons-Enlightening Humanity Vs MoEF and others in Application No. 86 of 2013 have elaborately dealt the issue of sustainable development and principles thereof. It has observed that:

*43. In Susetha v. State of Tamil Nadu AIR 2006 SC 2893, the Supreme Court observed that the doctrine of sustainable development is not an empty slogan. It is required to be implemented taking the pragmatic view and not on ipse dixit of the Court. Following the same principle, it cannot more so applied on an administrative authority or a Corporation vested with the statutory obligation of providing environmental protection to the residents under its jurisdiction. Sustainable development means that the richness of the earth's bio-diversity would be conserved for future generations by greatly slowing or if possible halting extinctions, habitat and ecosystem destruction, and also by not risking significant alterations of the global environment that might – by an increase in sea level or changing rainfall and vegetation patterns or increasing ultraviolet radiation – alter the opportunities available for future generations. Sustainable development has been defined in many ways but the most frequently*

quoted definition is from the Brundtland Report which states as follows:‘

i. “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: The concept of needs, in particular the• essential needs of the world’s poor, to which overriding priority should be given; and The idea of limitations imposed by the state of• technology and social organisation on the environment’s ability to meet present and future needs.”

44. The concept of sustainable development is rooted in this sort of systems thinking. It helps us to understand ourselves and our world. The problems we face are complex and serious – and we can’t address them in the same way we created them.

45. While applying the concept of sustainable development, one has to keep in mind the “principle of proportionality” based on the concept of balance. It is an exercise in which courts or tribunals have to balance the priorities of development on the one hand and environmental protection on the other. So sustainable development should also mean the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a ‘reasonable person’s test. (Refer Research Foundation for Science and Technology and Natural Resource Policy v. Union of India (2007) 9 SCR 906; Narmada Bachao Andolan v. Union of India (2000) 10 SCC 664; Chairman Barton: The Status of the Precautionary Principle in Australia (Vol.22) (1998) (Harv. Envtl. Law Review, p. 509 at p.549- A) as in A.P. Pollution Control Board v. Prof. M.V. Nayuder (1999) 2 SCC 718; and M.C. Mehta v. Union of India, AIR 2004 SC 4016. At this stage, we may usefully refer to a very recent judgment of the Supreme Court in the case of G.

*Sundarrjan v. Union of India & Ors. Civil Appeal No. 4440 of 2013 (Arising out of S.L.P. (C) No. 27335 of 2012), Civil Appeal No. 4441 of 2013 (Arising out of S.L.P. (C) No. 27813 of 2012), Civil Appeal No. 4442 of 2013 (Arising out of S.L.P. (C) No. 29121 of 2012) and Civil Appeal No. 4443 of 2003 (Arising out of S.L.P. (C) No. 32013 of 2012) decided on 6th May, 2013 The Court, while referring to the principles of balance inbuilt in the concept of sustainable development, elaborated the principles as follows:*

*“228. I have referred to the aforesaid pronouncements only to highlight that this Court has emphasized on striking a balance between the ecology and environment on one hand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of "some inconvenience". It is not comparable to the loss caused to property. I have already emphasized upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the inter-generational interests. Needless to emphasize, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or deprivation of some benefit of different nature relatively would come within the compartment of*

*smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of "some" can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution."*

**17.** It is on record that the recommendation for selection of process option A as per DPR prepared by COEP was based on the restrictions placed by the RRZ notification. Though, the TMC seems to have some land within TMC area, it had proposed to collect un-segregated MSW from the city area and transport it as it is, to the Koluji site for further processing, treatment and disposal. We can observe that such practice of shifting the entire problem of MSW to the doorsteps of nearby villages is causing opposition from these villagers, who are of the opinion that the MSW is the problem created by the city and the city itself has to resolve it. We also find a merit in such argument. We do not find any efforts of TMC for segregation of MSW while collecting or even after collecting within city area. Further, the localised measures like composting, biomethanation etc for such segregated waste like from hotels, restaurants, vegetable markets etc can be easily taken up, which will reduce the MSW quantity

which needs further treatment and disposal. What we find is the proposed action plan envisages just shifting the problem of MSW handling and disposal away from the city limits. The Respondents have not been able to demonstrate before us by any cogent and reliable evidence that the project in question has been duly examined and authorisation incorporate adequate environmental safeguards, in view of peculiar aspects related to site in question. The MSW project is a necessity in view of the regulatory requirement and also, from public health point of view for the citizens of Trimbakeshwar town, but at the same time if the plant is developed without proper environmental appraisal, then there is a likelihood of environmental pollution and health effects for the villagers and also, large population in view of the Vaitarna lake. Thus when we apply the principle of balance between the public health and the development of the proposed project, the answer necessarily has to tilt against the development of this plant at the site in question, as the precautionary principle is not followed while grant of authorization.

**18.** It is well settled now that the principle of sustainable development takes within its ambit the application of the 'principle of proportionality' and the 'precautionary principle'. In other words, one must, while permitting development, not only ensure that no substantial damage is caused to the environment but also

take such preventive measures which would ensure no irretrievable damage to the environment even in future on the premise on intergenerational equity. It is a fact that, we are a developing country, and therefore, have to take somewhat liberal approach towards development but certainly not by compromising the environmental interest. The precautionary principle can be explained to say that it contemplates that an activity which poses danger and threat to environment is to be prevented. Prevention is better than cure. It means that the environmental regulatory authorities are supposed to anticipate and then prevent the causes of environmental degradation. The likelihood of danger to the environment has to be based upon scientific information, data available and analysis of risks. Ecological impact should be given paramount consideration and it is more so when resources are non-renewable or where the end result would be irreversible. The principle of precaution involves anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. Again it is based on scientific uncertainty.

**19.** Another interesting development on the subject took place on 3.2.15 when the government of Maharashtra notified its decision to cancel the RRZ notification. Though the final hearing took place on 4-2-2015, such development was not brought to the notice of the Tribunal.

This fact will surely could have bearing on the entire conceptualisation of the project.

**20.** Summing up the above discussions, we are of the opinion that the Authorisation to the proposed MSW site has been given by MPCB without proper examination of the facts and circumstances associated with the project, and also, without adequate environmental safeguards duly incorporated in the Authorisation. What is observed is that many of the important environmental aspects such as implementation schedule, leachate management, landfill safety aspects etc have been left unattended though MPCB was expected to prescribe the environmental standards, based on precautionary principle.

**21.** Resultantly, the Appeal is allowed and the impugned Authorisation given by MPCB is set aside. No costs.

....., **JM**  
**(Justice V. R. Kingaonkar)**

....., **EM**  
**(Dr. Ajay. A. Deshpande)**

**Date : February 18<sup>th</sup>, 2015.**