



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2885 OF 2025

BASAVRAJ
GURAPPA
PATIL

Green Gene Enviro Protection
And Infrastructure Limited
Vs.

.. Petitioner

The State of Maharashtra & Ors.

.. Respondents

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BASAVRAJ GURAPPA
PATIL

Date: 2025.12.25
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Mr. Zal Andhyarujina, Senior Advocate a/w Ms. Akanksha Aggrawal i/by Abhishek Mehta a/w Mr. Gaurav Raj Shrawat & Mr. Tushar Khatri, Advocates for the Petitioner.

Ms. P. H. Kantharia, GP a/w Mr. Vishal Thadani, Addl. Govt. Pleader for the Respondent No.1-State.

Mr. Jayprakash Sen, Senior Advocate a/w Mr. Vishwanath Patil, Ms. Nidhi Chauhan, Advocates for the Respondent No.2-MPCB.

Mr. Prashant Chavan, Senior Advocate a/w Ms. Komal Jadhav & Mr. Meet Vora i/by Navdeep Vora & Associates, Advocates for the Respondent No.3.

Mr. M. G. Bhangde, Senior Advocate a/w Mr. Shyam Dewani, Mr. Sumit Khanna & Mr. Chirag Chanani i/by Dewani Associates, Advocates for the Respondent No.4.

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**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

**RESERVED ON : 19th DECEMBER 2025
PRONOUNCED ON : 24th DECEMBER 2025**

Per, Shree Chandrashekhhar, CJ :

The Green Gene Enviro Protection and Infrastructure Limited (hereinafter referred as the “petitioner-company”) is aggrieved by the amendment in Circular bearing No.MPCG/RO(BMW)/Circular/B-92 dated 15th February, 2024. It has challenged the consequential change in its Consent to Operate (in short, “CTO”) issued on 12th June, 2025. The petitioner-company states that it is directly impacted by the insertion of clause 19 in the CTO dated 12th June

2025 by which the area of its operation has been restricted and reduced to almost negligible. According to the petitioner-company, the action of the respondent no.2-Maharashtra Pollution Control Board (hereinafter referred to as "MPCB") in incorporating Clause 19 in the CTO dated 12th June 2025 is illegal, arbitrary, discriminatory, unreasonable and a colourable exercise of power by it.

2. For easy reference, the Amended Circular dated 15th February 2024 is reproduced hereinbelow:-

Date: 15/02/2024

AMMENDMENT IN CIRCULAR

Sub: Amendment in Pre-processing/ Co-processing of Hazardous Waste in the State of Maharashtra.

Ref: 1. The Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016

- 2. CPCB Guidelines for Pre-Processing and Co-Processing of Hazardous and Other Wastes in Cement Plant as per H& OW (M & TM) Rules, 2016.*
- 3. Board Office Order vide No. MPCB/ROHQ/HSMD/TSDf/GK/B-3098 dtd. 14/05/2008*
- 4. CPCB Letter vide No. CP-21/1/2022-TECH-RD-PUNE-RD (Pune)/544 dtd. 18/04/2022*
- 5. Board's Circular vide No. MPCB/RO(BMW)/Circular/B-220823-FTS-0199 dtd. 23/08/2022.*
- 6. Approval of Office Note vide No. 231227-FTS-0017 dtd. 01/02/2024.*

The Board has issued the Circular regarding Pre-processing/ Co-processing of Hazardous Waste in the State of Maharashtra vide No. MPCB/RO(BMW)/Circular/B-220823-FTS-0199 dtd. 23/08/2022.

Thereafter the Board has received representation from Common Hazardous Waste Collection Treatment and Disposal Facility located at Ranjangaon and Butibort alongwith the copies of tri party agreement dtd. 13/08/2004 between Maharashtra Industrial Development Corporation (MIDC), Maharashtra Pollution Control Board (MPCB) and M/s. Shaktikumar M. Sancheti Limited (M/s. SMS).

The above said representation were discussed before all technical HoD's of MPCB and also discussed with the expert Committee and it was decided to amend the Circular issued vide above reference No. 5 so as to

ensure the compliance with the legal binding of the agreement that has been executed between MPCB, MIDC and Operator (M/s. SMS) which is valid for a period of 20 years from the Commencement of Operations or till completion of full Closure of the site whichever is later. Therefore, the last Paragraph of Circular issued on 23/08/2022 is hereby amended and shall be read as follows:

- A) *While granting the consent to the industries located in the operational area of CHWTSDf at Ranjangaon and Butibori as per the Order issued by the Board vide referred at Sr. No3 following condition shall be incorporated till period of 20 years from the Commencement of Operations or till completion of full Closure of the site whichever is later:*

"Disposal of Hazardous waste for Co-processing shall be routed through pre-processing at CHWTSDf located at Ranjangaon and Butibori as per the area allocation."

- B) *While granting the consent to the industries located other than operational area of CHWTSDf Ranjangaon and Butibori following condition shall be incorporated: "Disposal of Hazardous Waste for Co-processing through any authorized pra processing facility".*

Besides above conditions, following two conditions shall also be incorporated in above A and B.

- 1) *Guidelines for Pre-Processing and Co-Processing of Hazardous and Other Wastes in Cement Plant as per H& OW (M & TM) Rules, 2016 prepared by Central Pollution Control Board shall be strictly followed.*
- 2) *Industry shall strictly follow the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.*

Other content of the Circular issued did. 23/08/2022 remains unchanged.

This is issued with the approval of the competent authority of the Board.

Sd/-

*(Dr. Avinash Dhakne, IAS)
Member Secretary"*

3. The petitioner-company is a company registered under the Companies Act, 1956. Before the petitioner-company became a private limited company, it was incorporated as "Gujarat Enviro Protection and Infrastructure (Aurangabad) Limited" and its name was later on changed to "Gujarat Enviro-Protection and Infrastructure (D and N.H.) Private Limited". The petitioner-company states that it is engaged in the business of pre-processing of

industrial hazardous waste for more than 15 years and has nine locations across the country. The petitioner-company gives details of its massive pre-processing activities, which it claims, cater to more than 10000 industries. The petitioner-company states that a piece of land was allotted to it by the Maharashtra Industrial Development Corporation (in short, "MIDC") on 10th March 2017 for the establishment of a pre-processing facility at Sangli in the State of Maharashtra. An order granting Consent to Establish (in short, "CTE") was issued by the MPCB to the petitioner-company for setting up a pre-processing facility. After this, there were amendments in the CTE and a consequential order was issued on 26th December 2022 for revalidation of the CTE. Following this, an order containing CTO was issued to the petitioner-company by the MPCB which is valid up to 31st May 2028. Under this CTO, the petitioner-company is permitted to pre-process 2,75,000 MT hazardous waste per annum and to manufacture (a) alternate fuel from organic incinerable hazardous waste (b) alternate fuel from inorganic hazardous waste (c) alternate fuel from non-hazardous waste. The Common Hazardous Waste Treatment, Storage and Disposal Facility (in short, "CHWTSDf") established by the petitioner-company started its operations and received hazardous waste as raw material from the industries across the State of Maharashtra and, in particular, from Ranjangaon and Butibori. However, the MPCB issued the Amended Circular dated 15th February 2024 whereby a condition was incorporated to the effect that the disposal of hazardous waste for co-processing shall be routed through CHWTSDf of the respondent no.4. About 16 months thereafter, the CTO granted to the petitioner-company was amended and Clause No.19 was unilaterally inserted therein, restricting the area of operation of the petitioner-company for collection of the hazardous waste. The petitioner-company further states that there are allegations of serious violations by the respondent no.4 made in

Original Application No.14 of 2025 filed before the National Green Tribunal, Pune. Objecting to amendment in the CTO, the petitioner-company made representation on 26th June 2025 which was not responded by the MPCB.

4. On the other hand, the MPCB states that there was a Memorandum of Understanding executed on 6th April 2001 between the MIDC, MPCB, MOEF and Trans Thane Creek Waste Management, Navi Mumbai. There was also an agreement between the MIDC and M/s Ramky Finance and Investments Private Limited, Hyderabad executed on 16th May 2001. The MPCB further states that a Tripartite Agreement was signed on 13th August 2004 between the MIDC, MPCB and M/s Shaktikumar M. Sancheti Limited (in short, "Sancheti Limited"). Pursuant to the said Tripartite Agreement, the Sancheti Limited set up two Special Purpose Vehicles, namely, Maharashtra Enviro Power Limited (in short, "MEPL") for Ranjangaon and Vidarbha Enviro Power Limited (in short, "VEPL") for Butibori and obtained CTE on 27th October 2005 and CTO on 17th November 2008 for the SPVs. Consequent thereon, the areas allocation order was issued on 11th December 2008 by the MPCB for setting up the CHWTSDF facility. In its counter affidavit, the respondent no.4 reiterates the validity of the Tripartite Agreement and states that it has an exclusive right to collect hazardous waste from the industries located under the allocation order dated 11th December 2008.

5. The CTO dated 12th June 2025 in which clause 19 was incorporated contains the following details:-

"Date: 12/06/2025"

*No:- Format 1.0/CC/UAN No.MPCB-
CONSENT AMMENDMENT-0000015229/CO/2506000070
To,
M/s Green Gene Enviro Protection and
Infrastructure Pvt. Ltd., Plot No. 8-18,
Shalgaon Bombalewadi Industrial Area,*

Sangli, Tal. & Dist. Sangli

Sub: Amendment in Consent to Operate under RED category with overriding effect on the existing consent to operate granted by the Board Vide Ref. (1).

Ref: 1. Consent to Operate granted by the Board vide No. Format 1.0/CC/UAN No.MPCB-CONSENT-0000154554/CO/2306001944 dated 26/06/2023 valid up to 31/05/2028.

2. Minutes of Second Meeting of the Consent Committee held on 08/05/2025.

Your application No. MPCB_CONSENT AMMENDMENT_0000015229 Dated 29.11.2024

For: grant of Consent to Operate under Section 26 of the Water (Prevention & Control of Pollution) Act, 1974 & under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and Authorization under Rule 6 and Rule 18(7) of the Hazardous & Other Wastes (Management & Transboundary Movement) Rules 2016 is considered and the consent is hereby granted subject to the following terms and conditions and as detailed in the schedule I, II, III & IV annexed to this order:

1. The consent to operate is granted for a period up to 31/05/2028
2. The capital Investment of the project is Rs.45.08 Crs. (As per C.A Certificate submitted by industry)
3. Consent is valid for the manufacture of:

Sr No	Product	Maximum Quantity	UOM
Products			
1	Alternate fuel from Organiz Incinerable Hazardous Waste	160000	MT/A
2	Alternate Fuel from Inorganiz Hazardous waste	55000	MT/A
3	Alternate Fuel from Non-hazardous Waste	60000	MT/A

4. Conditions under Water (P&CP), 1974 Act for discharge of effluent:

Sr No	Description	Permitted (in CMD)	Standards to	Disposal Path
1.	Trade effluent	15	As per Schedule-I	Treated effluent shall be 100% recycled to achieve zero liquid discharge.
2.	Domestic effluent	13	As per Schedule-I	On land for gardening.

5. *Conditions under Air (P & CP) Act, 1981 for air emissions:*

<i>Sr. No.</i>	<i>Stack No.</i>	<i>Description of stack/ source</i>	<i>Number of Stack</i>	<i>Standards to be achieve</i>
1	S-1	Sigma Machine	1	As per Schedule-II
2	S-2	Tank Farm Area	1	As per Schedule-II
3	S-3	Solid HW Storage Shed	1	As per Schedule-II
4	S-4	Dryer (Process Stack)	1	As per Schedule-II
5	S-5	DG Set (500 KVA)	1	As per Schedule-II
6	S-6	DG Set (62.5 KVA)	1	As per Schedule-II

6. *Non-Hazardous Wastes:*

<i>Sr No</i>	<i>Type of Waste</i>	<i>Quantity</i>	<i>UoM</i>	<i>Treatment</i>	<i>Disposal</i>
1	STP Sludge	2	Kg/ Day	Drying	Use as manure for plantation

7. *Conditions under Hazardous & Other Wastes (M & TM) Rules 2016 for Collection, Segregation, Storage, Transporation, Treatment and Disposal of hazardous waste:*

<i>Sr No</i>	<i>Category No./Type</i>	<i>Quantity</i>	<i>UoM</i>	<i>Treatment</i>	<i>Disposal</i>
1	26.1 Process Waste sludge/residues containing acid, toxic metals, organic compounds	2000	Kg/ M	---	Reuse in Process
2	33.1 Empty barrels/ containers/liners contaminated with hazardous chemicals/wastes	1000	No/ M	---	Sale to Authorized Recycler
3	35.3 Chemical sludge from waste water treatment	4	Kg/ Day	---	Reuse in Process

8. *The Board reserves the right to review, amend, suspend, revoke this consent and the same shall be binding on the industry.*
9. *This consent should not be construed as exemption from obtaining necessary NOC/permission from any other Government authorities.*
10. *Project Proponent shall provide online monitoring system for minitoring BOD & SS parameters to STP outlet.*
11. *Project Proponent shall strictly follow guideline for pre-processing and co-processing of Hazardous & Other Wastes in Cement Plants*

published by Central Pollution Control Board as per H & OW (M & TBM) Rules, 2016.

12. *This consent is issued pursuant to the decision of the Second Meeting of the Consent Committee of the Board held on 08/05/2025.*
13. *Industry shall apply for renewal of this Consent 60 days prior to the validity of this consent.*
14. *The industry shall obtain permission from Directorate of Industrial Safety & Health (DISH).*
15. *Project Proponent shall sent details of pre-processing waste disposal on monthly basis to Regional Officer & Sub-Regional Officer regularly.*
16. *Project Proponent shall accept the Hazardous Waste only from those industries having disposal path mentioned in their consent for pre-processing only.*
17. *The industry shall comply with the conditions stipulated in the Authorization granted by the Board vide No.MPCB/RO(BMW)/HSMD/AUTH/23/H & OW/87 dated 18/10/2023 valid upto 30/09/2028.*
18. *This consent is issued with an overriding effect on the existing Consent to Operate granted by the Board vide No. Format 1.0/CC/UAN No. MPCB-CONSENT-0000154554/CO/2306001944 dated 26/06/2023 valid up to 31/05/2028.*
19. *The industry shall collect/accept the Hazardous Waste from the industries located in the area other than the area allotted to M/s Maharashtra Enviro Power Limited (M/s Shaktikumar M. Sancheti Limited), Ranjangaon Pune and Butibori, Nagpur until the agreement of MEPL, SMS with MIDC and MPC is in to force.*

This consent is issued on the basis of information/documents submitted by the Applicant/Project Proponent, if it has been observed that the information submitted by the Applicant/Project Proponent is false, misleading or fraudulent, the Board reserves its right to revoke the consent & further legal action will be initiated against the Applicant/Project Proponent.”

6. Mr. Zal Andhyarujina, the learned senior counsel for the petitioner-company submitted that the action of the MPCB to unilaterally amend the CTO granted to the petitioner-company is in gross violation of the rules of natural justice. The learned senior counsel referred to “*Director General of Foreign Trade & Anr.*”¹ to submit that certain rights have accrued in favour of the petitioner-

1. *Director General of Foreign Trade & Anr. v. M/s Kanak Exports & Anr.* (2016) 2 SCC 226

company and any variation in the CTO issued to it without hearing the petitioner-company is liable for interference on the ground of violations of natural justice. The conditions imposed under Clause 19 of the CTO dated 12th June 2025 is unreasonable restriction imposed on the right of the petitioner-company to carry on trade or business throughout the country. The incorporation of Clause 19 in the CTO issued to the petitioner-company is contrary to the Rules which envisages trans-boundary operations. Moreover, the Tripartite Agreement has lost its force after coming into force of the Rules and, more than that, the CTE and CTO granted to the respondent no.4 for pre-processing/co-processing of hazardous waste were not contemplated under the Tripartite Agreement.

7. Per contra, Mr. Jayprakash Sen, the learned senior counsel for the respondent no.2-MPCB submitted that the Amended Circular has been issued under Rule 16 of the Hazardous And Other Wastes (Management and Transboundary Movement) Rules, 2016 (in short, "HWM Rules") and under the general power of superintendence. The learned senior counsel contended that there is no challenge to the Tripartite Agreement dated 13th August 2004 and those agreements are subsisting and binding on the MPCB and MIDC. Moreover, the petitioner-company has adequate avenues to collect the hazardous waste for pre-processing from as many as 13 districts. Mr. M. G. Bhangde, the learned counsel for the respondent no.4 referred to Clause 11 of the Tripartite Agreement and submitted that the said agreement shall remain enforceable for 20 years from the commencement of operations by the respondent no.4 or till the completion of full closure of the site. It is further submitted that the MPCB is under a contractual obligation to adhere to the terms and conditions under the Tripartite Agreement and it could not have permitted the petitioner-company to collect hazardous waste from the

area allocated to the respondent no.4. Clause 11 of the Tripartite Agreement provided as under:

11. TERM OF THE AGREEMENT

- A) *Unless otherwise provided for, the Active Term of the Agreement shall commence on the Agreement Date and shall, continue for a period of 20 years from the Commencement of Operations or till completion of full Closure of the site whichever is later.*"

8. Mr. Zal Andhyarujina, the learned senior counsel responded to the objection taken by the respondents that the writ petition is not maintainable as the petitioner-company has alternate remedy under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. With reference to the decisions in "*Whirlpool Corporation*"² and "*Harbanslal Sahnia & Anr.*"³, the learned senior counsel contended that the challenge to the amended circular cannot be adjudicated by the statutory authority and the writ petition is maintainable as the amended circular is illegal, arbitrary and without jurisdiction. The statutory clearances issued to the petitioner-company and the establishment of its CHWTSDf shall give rise to legitimate expectation as the petitioner-company acted on the basis of the statutory permissions granted to it and changed its position.

9. The doctrine of promissory estoppel is well accepted in common law jurisdictions and its nature, scope and extent are well crystallized and forms part of precedent law in India. In "*Allegheny College*"⁴, Cordozo, J. observed as follows :-

"14. ... There promissory estoppel has been applied against the Government where the interest of justice, morality and common fairness clearly dictated such a course. We shall refer to these cases when we discuss the applicability of the doctrine of equitable estoppel against the Government. Suffice it to state for the present that the doctrine of promissory estoppel has been taken much further in the United States than in English and Commonwealth jurisdictions and in some States at least, it has been used to reduce, if not to destroy, the prestige of consideration as an essential of valid

2. *Whirlpool Corporation v. Registrar of Trade Marks & Ors.* (1998) 8 SCC 1

3. *Harbanslal Sahnia & Anr. v. Indian Oil Corporation Ltd. & Ors.* (2003) 2 SCC 107

4. *Allegheny College v. National Chautauqua County Bank* 246 NY 369 : 57 ALR 980 (1927)

contract. Vide Spencer Bower and Turner's Estoppel by a Representation (2d) p. 358 There are also numerous cases where the doctrine of promissory estoppel has been applied against the government".

10. In "*M/s. Motilal Padampat Sugar Mills Co. Ltd.*"⁵, the Hon'ble Supreme Court held that the promise made by a party to another party through his words or conduct which is intended to create legal relations or affect a legal relationship to arise in future and knowing or intending that it would be acted upon by the other party to whom the promise is made and, in fact, so acted upon by the other party shall be binding on the party making the promise. It was further held by the Hon'ble Supreme Court that the party making such a promise would not be entitled not to honor his promise, if it would be inequitable to allow him to do so having regard to the dealings between the parties.

11. This is well settled that the doctrine of promissory estoppel may be applied against the government and its instrumentality where it is necessary to prevent manifest injustice. This doctrine cannot be invoked to compel the government or even a private party to perform something which is prohibited by law, but then, there is nothing on record or even argued before us that the CTO granted to the petitioner-company did not entitle it in law to carry its operations throughout Maharashtra or even beyond its boundaries. In "*Delhi Cloth and General Mills Ltd.*"⁶, the Hon'ble Supreme Court held that if a party has changed or altered his position by relying on the assurance or representation made by the other party, there is no need to prove any damage, detriment or prejudice to the party asserting the estoppel. There is a series of judgments laying down the true import and expanse of the doctrine of promissory estoppel which is sometimes called equitable estoppel and we do not feel it necessary to catalogue all such judgments on the points.

5. *M/s.Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh & Ors.* (1979) 2 SCC 409

6. *Delhi Cloth and General Mills Ltd. v. Union of India* (1988) 1 SCC 86

12. The option of the petitioner-company to receive hazardous wastes from the industries located in the State of Maharashtra has been restricted under the Amended Circular. Mr. Zal Andhyarujina, the learned senior counsel for the petitioner-company rightly submitted that the MPCB intends to create monopolistic situation in favour of the respondent no.4 inasmuch as the industries located in 15 zones are mandatorily required to supply their wastes to the CHWTSDf operated by the respondent no.4 for pre-processing/co-processing. For setting up of pre-processing facility at Sangli, the petitioner-company obtained No Objection Certificate and Consent to Operate. The said CTE was re-validated on 26th December 2022 with two amendments dated 18th August 2018 and 22nd March 2021. The petitioner-company established its pre-processing facility with huge investment of Rs.77.21 crores with a permission for pre-processing hazardous wastes and other wastes approximately 2,75,000 MT per annum. The petitioner-company gives details of its total turn over and states that more than half of its turn over comes from the hazardous wastes received from the industries located in Ranjangaon and Butibori. The MPCB has no jurisdiction to curtail the business activities of the petitioner-company by restricting the area of its operation. After the amendment in CTE, the petitioner-company shall be left with just 10% of the geographical area in the State of Maharashtra and its area of operation has been restricted to Palghar, Thane, Mumbai Suburban, Mumbai City, Raigad, Ratnagiri and Sindhudurg.

13. The MPCB cannot take refuge to the Tripartite Agreement to issue the Amended Circular incorporating a clause which has no relation whatsoever with the duty and obligation under the Rules. The Amended Circular dated 15th February 2024 has no sanctity in law and cannot be enforced *qua* the petitioner-company to curtail its rights to receive the hazardous wastes and other wastes for pre-

processing/co-processing from the industries located in the State of Maharashtra. The impugned Circular is illegal, arbitrary and discriminatory and infringes the right of the petitioner-company under Article 19(1)(g) of the Constitution of India.

14. The HWM Rules are framed in exercise of the powers by the Central Government under sections 6, 8 and 25 of the Environment (Protection) Act, 1986. These rules have been framed for the management of hazardous and other wastes as specified in the Schedules to the Rules. The expression “transboundary movement” has been defined to mean any movement of hazardous or other wastes from an area under the jurisdiction of one country to or through an area under the jurisdiction of another country or to or through an area not under the jurisdiction of any country, wherever at least two countries are involved in the movement of hazardous and other wastes. The occupier of any factory or premises is responsible for safe and environmentally sound management of hazardous and other wastes. There are other responsibilities of the occupier which are provided under Rule 4 of the HWM Rules. The Department of Industry in the State or any other government agency authorized in this regard by the State Government has been entrusted with the responsibility to ensure earmarking or allocation of industrial space or shed for recycling, pre-processing and other utilization of hazardous or other wastes in the existing or upcoming industrial park and industrial clusters. There are other responsibilities of the State Government such as preparation of integrated plan for effective implementation of the Rules, undertaking annual monitoring and ensuring safety and health of workers etc. which are indicated under Rule 5 of the HWM Rules. There is a requirement under Rule 6 that every occupier of the facility who is engaged in handling, generation, collection, storage, packaging, transportation etc. of the hazardous and other wastes shall obtain an authorization from the State

Pollution Control Board by making an application under Form-1 which shall be accompanied with (i) consent to establish (ii) consent to operate and (iii) self certified compliance report in case of renewal of authorization.

15. Rules 4 and 5 of the HWM Rules are reproduced as under :-

“4. Responsibilities of the occupier for management of hazardous and other wastes.-

(1) For the management of hazardous and other wastes, an occupier shall follow the following steps, namely:

- (a) prevention;*
- (b) minimization;*
- (c) reuse,*
- (d) recycling;*
- (e) recovery, utilisation including co-processing;*
- (f) safe disposal.*

(2) The occupier shall be responsible for safe and environmentally sound management of hazardous and other wastes.

(3) The hazardous and other wastes generated in the establishment of an occupier shall be sent or sold to an authorised actual user or shall be disposed of in an authorised disposal facility.

(4) The hazardous and other wastes shall be transported from an occupier's establishment to an authorised actual user or to an authorised disposal facility in accordance with the provisions of these rules.

(5) The occupier who intends to get its hazardous and other wastes treated and disposed of by the operator of a treatment, storage and disposal facility shall give to the operator of that facility, such specific information as may be needed for safe storage and disposal.

(6) The occupier shall take all the steps while managing hazardous and other wastes to-

- (a) contain contaminants and prevent accidents and limit their consequences on human beings and the environment; and*
- (b) provide persons working in the site with appropriate training, equipment and the information necessary to ensure their safety.*

5. Responsibilities of State Government for environmentally sound management of hazardous and other wastes. - (1) Department of Industry in the State or any other government agency authorised in this regard by

the State Government, to ensure earmarking or allocation of industrial space or shed for recycling, pre-processing and other utilisation of hazardous or other waste in the existing and upcoming industrial park, estate and industrial clusters;

(2) Department of Labour in the State or any other government agency authorised in this regard by the State Government shall-

(a) ensure recognition and registration of workers involved in recycling, pre-processing and other utilisation activities;

(b) assist formation of groups of such workers to facilitate setting up such facilities;

(c) undertake industrial skill development activities for the workers involved in recycling, pre-processing and other utilisation;

(d) undertake annual monitoring and to ensure safety and health of workers involved in recycling, pre-processing and other utilisation.

(3) Every State Government may prepare integrated plan for effective implementation of these provisions and to submit annual report to the Ministry of Environment, Forest and Climate Change, in the Central Government."

16. The provisions under Rule 6 to grant authorization for managing hazardous and other wastes, the power to suspend or cancel authorization under Rule 7, the power to extend the period for storage of the hazardous and other wastes under proviso to Rule 8, the power to authorize utilization of the hazardous and other wastes under Rule 9, do not contemplate any power in the State Pollution Control Board to restrict the area of operation of the industry. The provisions under Chapter III captioned as "Import and export of hazardous and other wastes" visualized transboundary movement of hazardous and other wastes. Rule 16 contemplates the role of the State Pollution Control Board to monitor the setting up and operation of the common or captive treatment, storage and disposal facility. Such monitoring by the State Pollution Control Board is also guided by the technical guidelines issued by the Central Pollution Control Board from time to time. Rule 16 of HWM Rules further provides that the operator of common facility or occupier of a captive facility shall

be responsible for safe and environmentally sound operation of the facility. The operator shall maintain records of hazardous and other wastes handled by them in Form-3. It shall file annual return in Form-4 to the State Pollution Control Board on or before 30th day of June. The State Pollution Control Board shall monitor the setting up or operation of the captive treatment and storage and disposal facility. However, there is no indication under the HWM Rules that the State Pollution Control Board can restrict the area of operation of an occupier of captive facility or operator of a common facility.

17. The MPCB contends that under Clause 8 of the Tripartite Agreement, it has the obligation to ensure that the hazardous waste generated by the industries as per the consent issued by it are consigned to the TSDF facility and its decision shall be final in case of any variation in the quantum of waste generation. Furthermore, it is not supposed to encourage any other TSDF either inside or outside the MIDC area and it cannot issue consent to any other TSDF within the same catchment areas. Clause 11 of the Tripartite Agreement provides the term of the agreement. It is provided thereunder that the active term of the agreement date shall commence on the date of agreement and shall continue for a period of 20 years from the commencement of operation or till completion of full closure of the site whichever is later. According to the MPCB, the CTO issued in favor of the petitioner-company did not reflect the obligation of MPCB under the Tripartite Agreement dated 13th August 2004 and, therefore, the Amended Circular was issued on 15th February 2024. The MPCB refers to the CTO dated 13th November 2024 issued to M/s. Synergy Techno Ventures LLP which restricted the area of operation for that entity and the said industry was permitted to collect the hazardous waste from the industries located from the area other than the area allocated to MEPL. A similar restriction has been

imposed to the petitioner-company under the amended CTO issued to it on 12th June 2025.

18. However, this is necessary to indicate that the MPCB did not produce all materials and information to the Court. In the course of the hearing, Mr. Jayprakash Sen, the learned senior counsel for the MPCB informed the Court that there are 12 other similar industries which are operating in the State of Maharashtra but their details etc. are not pleaded in the counter affidavit. It is not stated by the MPCB that the area of operation of the other industries were restricted even prior to issuance of the Amended Circular. This is also not indicated that all industries except the petitioner-company continue to route their hazardous wastes or other wastes for recycling through the facility set up by the respondent no.4 in all those years. Long back, the Privy Council observed in *“Murugesam Pillai”*⁷ that *“a practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of onus of proof, and failing accordingly to furnish to the Courts the best material for its decision”*.

19. The Circular dated 23rd August 2022 was merely a replica of the provisions under the Rules and nothing more. The said Circular was an innocuous publication which was intended to make aware the stakeholders their duty while carrying out operations under the Rules. It can be very well assumed that the Circular dated 23rd August 2022 was issued with a view to make the operating industries aware about the restrictions under the Rules. However, the Amended Circular dated 15th February 2024 is illegal and without jurisdiction inasmuch as it confines the area of operation for the petitioner-company and provides that the disposal of hazardous wastes for pre-processing/co-processing shall be routed through CHWTSDf located

7. *Murugesam Pillai v. Manickavasaka Desika Gnana Sambandha Pandara Sannadhi & Ors.* 1917 SCC OnLine PC 1

at Ranjangaon and Butibori. The Central Government in its wisdom did not provide a power in the State Pollution Control Board to issue guidelines. The MPCB is to act within four corners of the Rules. The field for issuing any Circular, guidelines etc. is occupied by the Central Government and the MPCB has no jurisdiction to issue a Circular contrary to the provisions under the Rules and to impede the free movement of trade and business. The Amended Circular is not issued to clarify the provisions under the Rules for the benefit of the stakeholders or to secure effective compliance with the provisions thereunder. A Circular could never be intended to be used as an instrument of circumvention and subversion of the provisions under the Rules. The amended Circular dated 15th February 2024 is not statutory in nature and it has no legal effect, sanctity or sanction.

20. For the aforesaid reasons, the Circular dated 15th February 2024 and Clause 19 in the CTO issued to the petitioner-company on 12th June 2025 are quashed.

21. Writ Petition No.2885 of 2025 is allowed in the aforesaid terms.

[GAUTAM A. ANKHAD. J.]

[CHIEF JUSTICE]