


आदेश क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p style="text-align: center;"><b>Board of Revenue, Bihar, Patna</b> Pollution Appeal Case No.06 of 2023 Dist.: - Patna</p> <p><b>PRESENT: - Sri Chaitanya Prasad, I.A.S.,</b> <b>Chairman-Cum-Member.</b></p> <hr/> <p>Re-Sustainability Ltd - Petitioner/ Appellant</p> <p style="text-align: center;">Versus</p> <p>TheBihar State Pollution Control Board - Respondent/Opp. Party</p> <hr/> <p><b>Appearance :</b></p> <p><b>For the Appellant : Shri Suraj Samdarshi, Advocate</b> <b>For the Respondent : Abhimanyu Singh, Advocate, BSPCB</b></p> <hr/> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p>The instant appeal has been filed under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 read with Section 28 of the Water (Prevention and Control of Pollution) Act, 1974, challenging the validity and propriety of the order dated 16.01.2023 passed by the Bihar State Pollution Control Board (herein after referred to as the 'State Board') by which the 'Consent-to-Operate' application No. 5541106, dated 23.12.2021, has been rejected and further the appellant has been directed to stop all the activities at the project site.</p> <p>The factual matrix of the instant case is that the appellant with a view to establish Integrated 2 Hazardous Waste Treatment, Storage, Disposal ("TSDF") and Recycling Facility, purchased a parcel of land around November' 2012. Thereafter, the appellant obtained Consent-to-Establish from the State Board on 05.12.2012 contained in Memo No. B-1355 Environmental Clearance was granted to the appellant on 02.12.2015 subject to a Specific Condition that "Certification that project</p> <div style="text-align: right;">  </div>	

20-06-2024



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	<p>is not falling under flood plain area of Son River from Irrigation Department of the State shall be submitted by appellant before the commencement of work at site, to the MoEFCC. However, the construction work could not begin for some or other reason and the Consent-to-Establish dated 05.12.2012 given to the appellant by the State Board expired and accordingly on fresh application being made by the appellant the State Board granted Consent-to-Establish to the appellant vide its Memo No. B-7820, dated 23.12.2019. After expiry of one year from issuance of CTE, the State Board vide its letter dated 17.11.2021, directed the appellant to provide the latest progress report regarding the establishment of TSDF and the compliance of the CTE condition. The appellant submitted a progress report, wherein it was stated that construction of protection embankment will be carried out after construction of landfill is complete. The State Board found the progress report to be not satisfactory. In the meanwhile, the appellant also made complaint/informed the Department of Environment, Forest and Climate Change, Govt. of Bihar and the Mines &amp; Geology Department, Govt. of Bihar about the illegal sand mining which has taken place near the TSDF of the appellant. A public complaint was made to the State Board alleging therein that the appellants unit is located within the flood plain of river Sone and is not fulfilling the prescribed sitting criteria. In view of the aforesaid complaint, The State Board constituted a High Level 4 Member Committee comprising of three outside experts and the Member Secretary, Bihar State Pollution Control Board, to inspect the unit of the appellant and verify the allegations made in the complaint. The said committee inspected the unit of the appellant on 22.10.2022 and the committee found that the location of the appellant unit is not suitable for</p>	

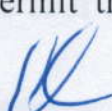




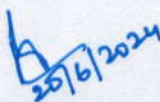

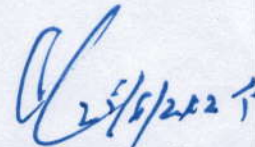
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	<p>installation and operation of TSDF as it is located in the confines (flood plain) of the river Sone fluvial belt.</p> <p>The State Board in light of the findings of the Committee, issued a show cause notice to the appellant as to why its CTO application be not rejected? In reply to the aforesaid show-cause notice the representative of the appellant appeared before the Chairman of the State Board on 28.12.2022 and filed a detailed reply. After hearing the appellant and considering the reply filed by the appellant the Chairman of the State Board passed the impugned order dated 16.01.2023, by which the CTO application of the appellant was rejected.</p> <p>The learned counsel of the appellant submits that as per the provisions of the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008, and especially Rule 18 it is mandatory statutory duty of each State Government to ensure the establishment of TSDF and also the Hon'ble NGT, New Delhi, in O.A. No. 804 of 2017 vide its order dated 30.07.2018 has specifically directed for setting up of TSDF. He further submits that the appellant was granted Environmental Clearance on 02.12.2015 in which a specific condition was imposed that the appellant shall submit a certificate that the project is not falling under the flood plain area of Son River and he further submits that the Water Resource Department, Govt. of Bihar, has vide its letter dated 27.11.2018 has opined that the major portion of the land in the State of Bihar happens to be plain land and hence, it is practically not possible to define flood plain area and the said authority (Water Resource Department, Govt. of Bihar) has clearly further recommended that the TSDF may be established with construction of proper flood protection embankment. It is further submitted that the TSDF of the appellant has</p>	





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	<p>been notified by the Department of Environment, Forest and Climate Change, Govt. of Bihar, vide its notification dated 15.11.2019, in exercise of the powers under Rules 13(6) and Rule 21 of the Rules, 2016. It is also stated that as per the Criteria-2001 issued by the CPCB for establishment of TSDF, the unit of the appellant is as per the sitting criteria and at a minimum distance of 500 meter from the river. Further it is demonstrated from the State Board inspection report dated 07.08.2022 that Flood Protection Embankment along the stream side is completed at a level of more than 2.5 meters (about 8 ft.) and work is in progress at the time of inspection and the landfill site is elevated from the ground level by 2 meter all around. He then refers to the Criteria for Hazardous Waste Landfills (HW Landfill) issued by the Central Pollution Control Board and submits that 7 landfills can be constructed within flood plain of secondary or major river with properly designed protection embankment. In view of above, it is vehemently submitted by the appellant that the rejection of CTO application of the appellant solely based on the findings of the inspection dated 22.10.2022 and inspection report dated 04.12.2022 is not justified and in teeth of the criteria laid down by CPCB and the finding of the inspection reports of the State Board itself. On the other hand, the learned counsel of the State Board submits that the facility of the appellant is to deal with hazardous waste therefore it will be inherently danger to permit such an activity at the present site and hazardous waste may escape and get mixed with river water which may cause irreversible damage and affect the river water and aquatic life and the environment. Further, he submits that, it is admitted position that sand mining has taken place around the facility and at present water of Sone River 8 is reaching the facility and therefore to permit the facility to</p> 	



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	<p>operate at the present site when the facility will be dealing with Hazardous waste and Hazardous Chemical. Heard both the parties and examined the record. It is stand of the appellant that the criteria laid down for establishment of such units also permits establishment of such units in flood plain area with proper embankment and the State Board in its inspection report dated 07.08.2022 has recorded a finding that Flood Protection Embankment along the stream side is completed at a level of more than 2.5 meters and therefore to reject the CTO solely based on findings of inspection dated 22.10.2022 and inspection report dated 04.12.2022 and not considering the matter in totality is grossly illegal and improper.</p> <p>The main concern of the State Board is that at present water of Son River is reaching the appellant unit and therefore hazardous waste may escape and get mixed with river water which may cause 9 irreversible damage and affect the river water and aquatic &amp; human health, downstream. The appellant authority is of the view that the matter may be remanded back to the State Board for considering the grant of Consent-to-Operate afresh, after carrying a fresh inspection and also verifying the design and strength of the embankment constructed by the appellant and after directing improvement in the embankment, if so required. In view of the above discussion this appeal is disposed of accordingly.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end; margin-top: 20px;"> <div style="text-align: center;">   <b>Secretary</b>        Environment, Forest &amp;        Climate Change Department,        Bihar.     </div> <div style="text-align: center;">   <b>Additional Chief Secretary</b>        Industries Department, Bihar.     </div> <div style="text-align: center;">   <b>Chairman-Cum-Member</b>        Board of Revenue,        Bihar.     </div> </div>	