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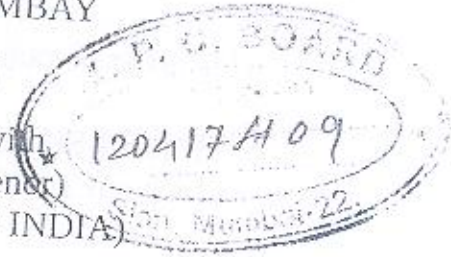
No.D.D.(W.P.) CO-7046422012

Dated 7-4-2012

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, CIVIL JURISDICTION

WRIT PETITION NO.3953 OF 2011 with
Civil Application No.1310/2011 (For Intervenor)
(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)



Mumbai Waste Management Ltd.(Ramky Group), Tal.Panvel,
Dist.:Raigad

.....Petitioner/s

V/s.

Secretary of Environment, Government of India, Ministry of Environment
& Forest, New Delhi & ors.

.....Respondent/s

To,

1. The Member Secretary,
Maharashtra Pollution Control Board,
Kalpataru Point, 2nd, 3rd & 4th Floor,
Opp. Cineplanet, Near Sion Circle,
Sion (E), Mumbai - 22.

2. The Secretary,
to the Government of India,
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi - 110 003

isshah
WHEREAS, the Petitioner has filed the above Petition under Article 226 of the Constitution of India praying to quash and set aside the order dated Nil passed by the Res.No.4 I.e. the Secretary, to the Government of Maharashtra, Department of Environment, Mantralaya, Mumbai and the order dated 11/12/2008 being Order No.MPCB/ROHQ/HSMD/TSDF/B-7446 and order dated 9/3/2009 both the orders passed by the Res.No.2 I.e. The Member Secretary, Maharashtra Pollution Control Board, Mumbai and etc;

AND WHEREAS, Rule was granted by this Court on 28/7/2011.

AND WHEREAS the said Petition came up for final hearing before this Court (CORAM : MOHIT S.SHAH, C.J. AND MRS. ROSHAN DALVI, J) on 16/3/2012.

AND UPON hearing Mr. Pradeep Sancheti, Sr. Advocate i/b. Vaishali Jain & P.V. Damodaran for Petitioner. Mr. S.N. Patil, AGP for Respondent No.4, Ms. Sharmila Deshmukh for Res. Nos. 2 & 3, Ms. Naveena Kumari for Res. No.1 UOI, Mr. C.M. Lokesh for Res. No.6, when this Court has passed the following order :-
(A true Copy of Court's order dated 16/3/2012 is enclosed herewith.)

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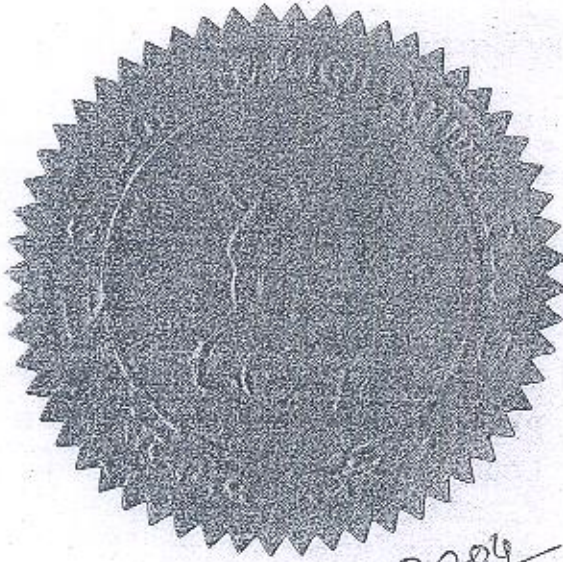
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: 2 :

IT IS ACCORDINGLY ordered that this Writ Petition with Civil Appln. are disposed of as stated in the accompanying Court's order. The directions given in the Court's order herein above shall be carried out and complied with scrupulously.

This order be punctually observed and carried into execution by all concerned.

WITNESS SHRI. MOHIT S. SHAH, CHIEF JUSTICE at Bombay, aforesaid this 16th day of March Two Thousand Twelve.



BY THE COURT,

For REGISTRAR
(Judl.-II)

Dated this day of 2012

Note : This Writ should be returned to this office after taking necessary note in your office register and after making an endorsement on the writ to that effect

NO.D.D.(W.P.)No.
Dated :

Copy forwarded with compliments for information and necessary action to :-

The Secretary, to the Government of Maharashtra, Department of Environment, Mantralaya, Mumbai - 32.

High Court, Appellate Side, }
Bombay, dated 2012 }
Vss/-

sd/-
For REGISTRAR,
(Judl.-II)

Urgent writ

~~THE ORIGINAL DOCUMENT~~

WP.3953.11 & WP.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3953 OF 2011
WITH
CIVIL APPLICATION NO.1310 OF 2011

Mumbai Waste Management Ltd.
(Ramky Group), A Limited Company,
Registered Under The Provisions of Indian
Companies Act, 1956, and having its local
office at: Plot No.P-32, MIDC, Taloja,
Taluka: Panvel, Dist: Raigad 410 208.
and having its Corporate office at:
6-3-1089/G/10 & 11, 1st floor, Gulmohar Avenue,
Raj Bhavan Road, Somajiguda, Hyderabad 500 082. ...Petitioner

Vs.

1. Secretary of Environment,
Government of India
Ministry of Environment & Forests
Paryavaran Bhavan, Cgo Complex
Lodhi Road, New Delhi 110 003.
2. Member Secretary
Maharashtra Pollution Control Board
having its office at : Kalpataru Point,
2nd, 3rd & 4th floor, Opp. Cineplanet,
Near Sion Circle, Sion (East), Mumbai 400 022.
3. The Chairman
Maharashtra Pollution Control Board,
having its office at: Kalpataru Point,
2nd, 3rd & 4th floor, Opp. Cineplanet,
Near Sion Circle, Sion (East), Mumbai 400 022.

4. The Secretary,
Department of Environment,
Government of Maharashtra,
Annex Building, 2nd floor, Mantralaya,
Mumbai 400 032.
 5. SMS Infrastructure Ltd.
(Ltd. Company Registered under
Company Act, 1956) having its registered
office at 267, Ganesh Phadnivs Bhavan,
Trikon Park, Dharampeth,
District: Nagpur 400010. And having its
common Hazardous Waste Treatment and
Disposal Facility Nandigaon near Pune and Nagpur.
 6. Chairman,
Central Pollution Control Board,
Parviesh Bhavan, East Arjun Nagar,
New Delhi 110032.
- ...Respondents

AND
WRIT PETITION NO.5846 OF 2011
WITH
CIVIL APPLICATION NO. 2051 OF 2011

SMS Infrastructure Ltd.
(Ltd. Company Registered under
Company Act, 1956) having its registered
office at 267, Ganesh Phadnivs Bhavan,
Trikon Park, Dharampeth,
District: Nagpur 400010. And having its
common Hazardous Waste Treatment and
Disposal Facility Nandigaon near Pune
and Nagpur.

...Petitioner

Vs.

1. The State of Maharashtra
Summons to be served to the Ld. Government
Pleader appearing for the parties) under the
Code of Civil Procedure.
 2. Secretary of Environment,
Government of India
Ministry of Environment & Forests
having its office at Paryavaran Bhavan,
Cgo Complex Lodhi Road, New Delhi 110 003.
 3. Member Secretary
Maharashtra Pollution Control Board
having its office at : Kalpataru Point,
2nd, 3rd & 4th floor, Opp. Cineplanet,
Near Sion Circle, Sion (East), Mumbai 400 022.
 4. The Chairman of Maharashtra Control Board,
having its office at: Kalpataru Point,
2nd, 3rd & 4th floor, Opp. Cineplanet,
Near Sion Circle, Sion (East), Mumbai 400 022.
 5. The Secretary,
Department of Environment,
Government of Maharashtra,
Annex Building, 2nd floor, Mantralaya,
Mumbai 400 032.
 6. Chief Executive Officer
Maharashtra Industrial Development
Corporation having its office at Andheri.
 7. Central Pollution Controal Board
Parivesh Bhavan, East Arjun Nagar
New Delhi, Delhi 110032.
- ...Respondents

Mr. Pradeep Sancheti, Sr. Advocate i/b. Vaishali Jain &

P.V. Damodaran for Petitioner in WP No.3953 of 2011

Mr. S.N. Patil, AGP for Respondent No.4 in WP No.3953 of 2011

Ms. Sharmila Deshmukh for Respondent Nos.2 & 3 in WP No.3953 of 2011
Ms. Naveena Kumai for Respondent No.1 UOI in WP No.3953 of 2011
Mr. C.M. Lokesh for Respondent No.6 in WP No.3953 of 2011

Dr. Mrs. Sadhana Mahashabde for Petitioner in WP No.5846 of 2011
Mr. S.N. Patil, AGP for Respondent Nos. 1 & 2 for State in WP. No.5846 of 2011
Mrs. Sharmila Deshmukh for Respondent Nos.3 & 4 in WP. No.5846 of 2011
Mr. C.M. Lokesh for Respondent No.7 in WP. No.5846 of 2011

CORAM : MOHIT S. SHAH, C.J. AND
MRS. ROSHAN DALVI, J.
Judgment reserved on : 24 January 2012
Judgment pronounced on : 16 March 2012

JUDGMENT (Per Roshan Dalvi)

1. Rule. Returnable forthwith.
2. The petitioners in these two petitions are competitors in the business of collection, treatment, storage and disposal of hazardous waste of various establishments in Maharashtra. They have been incorporated pursuant to the decision of the Government of Maharashtra to set up Waste Management Facilities (WMF) in the State of Maharashtra.
3. The State of Maharashtra would act through the Member - Secretary of the Maharashtra Pollution Control Board which is respondent No.2 in Writ Petition No.3953 of 2011 and respondent No.3 in Writ Petition No.5846 of 2011 (Respondent No.2).
4. Tenders were floated and bids were invited. Both the petitioners were given the award/consent to establish themselves as Hazardous

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Waste Treatment Storage and Disposal Facility (HWTSDF) in different areas and catering to different establishments.

5. The petitioner in Petition No.3953 of 2011 (Mumbai Waste Management Limited)(MWM) was issued the letter of award since 24 April 2001. The petitioner in Writ Petition No.5846 of 2011 (SMS Infrastructure Ltd.)(SMS) was issued the letter of consent on 27 October 2005. They have been allotted different areas in which to operate to take the hazardous waste of the establishments in their respective areas. The areas are determined upon certain geographical criteria. MWM has been essentially given the Westernmost belt of Maharashtra consisting of the Districts of Thane, Raigad, Ratnagiri and Sindhudurg outside Bombay. The SMS has been given the other Districts along with certain other waste management facilities (WMF).
6. Since MWM was issued the letter of award 4 years prior to SMS they would have had a larger area under their operations earlier. Part of those areas have been given to SMS upon more facilities being established for treatment of hazardous waste by the Government.
7. Whereas MWM has challenged the fixing of the territorial jurisdiction and the assignment of the areas of operation by the Government and claim that it is entitled to collect the hazardous waste of establishments outside the areas allotted to it, SMS has sought the directions of this Court in taking action against MWM for transgressing its limits and by encroaching upon the area of operation allotted to it. The main challenge of MWM is that under the rules in force in 2005 the consent to operate was not materially changed under the new rules of

2008 under which the Government sought to refix the territorial area of operation through the orders of respondent No.2.

8. MWM has relied upon the letter of award dated 24 April 2001 and the allotment of land on 99 years of lease granted to it in December 2001. Consequent thereto it entered into leave and license agreement with MIDC on 24 April 2002, through its holding Company, being one M/s Ramky Finance and Investments Pvt. Ltd. (RFIPL) which will be referred to as MWM itself. Consequently, MWM claimed the status of a special purpose vehicle. It got installed the required infrastructure being an incinerator, landfill and stabilization facilities and became functional by October 2002. The consent for establishment was granted to it by respondent No.2 on 2 January 2002. There was a further consent granted to it to operate a common facility for treatment and disposal of composite hazardous waste on 20 July 2002. A further consent to operate order was issued by respondent No.2 in favour of the MWM on 14 November 2002. That came to be renewed on 8 December 2003 and thereafter on 8 April 2005. Until then SMS was not its competitor.
9. MWM has claimed that these orders were passed under the Hazardous Waste (Management and Handling) Rules 1989 (1989 Rules) which had fixed the territorial jurisdiction and operational area and assigned the area of operation to each Common Hazardous Waste Treatment, Storage and Disposal Facility. Sub Rule 2 of Rule 5 of the 1989 Rules came to be amended on 20 October 2005. Respondent No.2 reassigned the jurisdiction and operational areas of all the Waste Management Facilities on 14 May 2008. MWM has not challenged the amendment of 2005 and has accepted the reassignment of the operational

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areas made thereunder until 14 May 2008.

10. MWM claims that on 24 September 2008 the Central Government through respondent No.4 promulgated new rules being Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 (2008 Rules). It claims that under those new rules respondent No.2 was denuded of the power to fix/refix the territorial area of operation of the waste management facilities. MWM claims that under 2008 Rules respondent No.2 is only the monitoring authority to set up the facilities, but not to allocate/reallocate the territorial jurisdiction.
11. On 11 December 2008 respondent No.2 refixed the jurisdiction and working areas of the various Waste Management Facilities. One M/s. Reliable Enterprises was authorised to collect hazardous waste from various establishments mentioned in the Schedules 1 and 2 of the order of respondent No.2 dated 25 January 2009 and its further letter dated 27 January 2009. Respondent No.2 by its letter dated 9 March 2009 called upon MWM to comply with its order dated 11 December 2008 refixing the area of operation of MWM. MWM challenged that order in appeal provided under the 2008 Rules. Since no order was passed, a Writ Petition in that behalf came to be filed being Writ Petition No.625 of 2010 in which respondent No.4 as the appellate authority was directed to hear and decide the appeal within a specified time. The appeal came to be rejected which is challenged in Writ Petition No.3953 of 2011.
12. Respondent No.2 issued a letter of consent to establish the Waste Management Facility of SMS on 27 October 2005. SMS was allotted a specified area to operate. The area came to be modified under a

modified area allocation order on 11 December 2008. SMS claims its rights under the order/letter of consent/allotment. It claims that MWM has transgressed therein and has challenged the transgression by encroachment within its territory.

13. Both the parties are competitors. Both have alleged certain facts denied by the other with regard to the management of their plants with their respective clients who are the establishments amenating hazardous waste which is sought to be treated by them. We cannot go into the disputed questions of facts.
14. All that is required to be adjudicated in this petition is whether the action of respondent No.2 of the order modifying the allocated areas and refixing the jurisdiction of the two facilities being the two petitioners in the above petition is validly made under the 2008 Rules or whether it is in excess of jurisdiction and their authority.
15. The 2008 Rules have not been challenged. They are only sought to be interpreted. MWM has set out the relevant rule 5 of the 1989 Rules as also the 2008 Rules in its petition. The Rules run thus:

Sec.	1989 Rules	2008 Rules
5(1)	Hazardous waste shall be collected, treated, stored and disposed off only in such facilities <u>as may be authorized</u> for this purpose.	Every person who is engaged in generation, processing, treatment, package, storage, transportation, use collection, destruction, conversion, offering for sale transfer or the like of the hazardous waste <u>shall require obtaining an authorization</u> from the State Pollution Control Board.

<p>5(2) Every occupier handling, or recycler recycling, hazardous waste shall make <u>an application</u> in Form 1 to the Member Secretary, State Pollution Control Board or Committee, as the case may be or any Officer designated by the State Pollution Board or Committee <u>for the grant of authorization</u> for any of the said activities.</p> <p>Provided that an occupier or a recycler not having a hazardous waste treatment and disposal facility as his own and is <u>operating in an area under the jurisdiction assigned by the State Pollution Control Board or Committee</u>, as the case may be, for a common Treatment, Storage and Disposal facility</p>	<p>The hazardous waste shall be collected, treated, recycled, re-processed, stored or disposed off only in such facilities <u>as may be authorized by</u> the State Pollution Control Board for the purpose.</p>
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16. We may mention that much would fall upon the authority of respondent No.2 in granting the authorisation to the facilities. It would be appropriate to understand the meaning of the concept of authority and authorisation. The terms 'authority' and 'authorisation' are defined in Concise Oxford English Dictionary Indian Edition at page 88 thus:

"authority (pl. authorities) 1. the power or right to give orders and enforce obedience. 2. a person or organization exerting control in a political or administrative sphere."

"authorize or authorise give official permission for or approval to - DERIVATIVES authorization"

Similarly the term 'authorize' is defined in Black's Law Dictionary Eighth Edition at page 143 thus:

"authorize, vb. 1. To give legal authority; to empower <he authorized the employee to act for him>. 2. To formally approve; to sanction <the city authorized the construction project> - authorization"

Similarly Advanced Law Lexicon by P. Ramanatha Aiyar 3rd Edition 2007 reprint at page 411 defines 'authorise' thus:

"Authorise. To empower; to give right or authority to act; to clothe with authority, warrant or legal power. [S.67(d), T.P Act (4 of 1882)]"

It further sets out the meaning of authorise as:

" 'TO AUTHORISE' means 'to give formal approval to, to sanction, approve, countenance.'"

The meaning of authorized as:

"Authorized" means "permitted" or "directed"

Consequently, the term authority at page 414 is shown to be

"Authority (In administrative law) is a body having jurisdiction in certain matters of a public nature"

Consequently at page 411 the authorisation is shown to be the action authorising by the very example cited under Rule 2(c) of the Hazardous Waste (Management and Handling) Rules 1989 requiring the permission in the requisite form 2. Consequently, authorisation is shown

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to be the action of authorising by way of the permission granted by the prescribed authority for the generation, collection, reception, storage, transportation, treatment, disposal and/or any other form of handling of bio-medical waste in accordance with these rules and any guidelines issued by the Central Government [Rule 3(3) of the Batteries (Management and Handling) Rules 2001].

17. It is contended by Mr. Sancheti, learned Counsel on behalf of MWM that the rules are hugely different and the new rules of 2008 has denuded the power of respondent No.2. It is sought to be explained that since the proviso of the Sub Rule 2 of the Rule 5 of 1989 Rules relating to the assignment of the area of operation of the facility is not expressly mentioned in Sub Rule 2 of Rule 5 of the 2008 Rules, the power must be taken to have been impliedly taken away. It is contended that in the 2008 Rules respondent No.2 is not vested with any power to assign or fix an area of operation of the waste management facilities.
18. Consequentially the argument is that 2008 Rules grant the power upon respondent No.2 only to monitor the setting up of the facilities, but not to allocate the areas of operation. It is argued that that is essential not to stifle competition or create monopoly and allow the market forces to operate. It is also contended that by allocating the areas the MWM's facility has remained unutilised though it can be availed of by various establishments nearer to MWM than by SMS in terms of distance.
19. We do not find authority of respondent No.2 denuded under the new rules. Under 2008 rules the person engaged in the collection of hazardous waste has to obtain authorisation from respondent No.2 in the

State of Maharashtra as much as respondent No.2 would authorise such facility to collect waste under the old rules by an application made in a specified format in that behalf. Not only the collection and treatment, but recycling reprocessing, storage and disposal of the waste by such facilities would be only as per the authorisation of respondent No.2 in the State of Maharashtra. Only the proviso with relation to the assignment of the area of operation is not expressly incorporated in the new rules. However, since the very collection as also the treatment, recycling, reprocessing, storage and disposal is under the authorisation of respondent No.2, the area of such operation would fall impliedly within the jurisdiction and authority of respondent No.2 to grant and authorise.

20. MWM has accordingly challenged the reassignment of the areas of operation of the facilities excluding that of MWM.

21. It may be mentioned that the facility may, at a given time, be a monopolist of the trade in a given area. Exigencies of the business and the extent of waste disposal and treatment would require the monopoly to be tampered and diluted. This would be the incidence of any trade or business upon the demand for such trade or business increasing in a given economic sector. It is common knowledge, and judicial notice is required to be taken of the fact, that industries amenating hazardous chemical wastes and effluents and requiring proper management for its collection, treatment, recycling and disposal have increased manifold in recent years in keeping with economic advancement and trade in such chemicals. The facilities for collection, treatment, disposal etc., of the waste are, therefore, more demanded by such economic situation. Consequently, more facilities would be established and would enter upon

such trade. The work of collection, treatment, management and disposal of the chemical effluents would be better managed by more facilities in a given area as required by the economic situation. The monopoly of a facility may, therefore, be denuded. It may give way to a duopoly and later a perfectly competitive market. Of course, market forces determining the business of these facilities would be expected to play a role as in all other trades and businesses. However, it is the duty of the Central Government to see that the relevant departments of the State Government monitor the operations of the effluent treatment and waste disposal facilities. It is in that behalf that the monitoring and supervisory role of respondent No.2 would be required. Consequently, the facilities would require obtaining the authorisation from respondent No.2 as such monitoring authority in the State of Maharashtra. Respondent No.2 would monitor the activities from the collection to the disposal of the effluent waste of hazardous chemicals. In the course of such monitoring the area of operation also may be fixed. Consequently, the re-fixing of the areas under 2008 Rules by the order dated 11 December 2008 does not come up for challenge on the ground of it being a case of an act in excess of jurisdiction of respondent No.2.

22. Of course upon such areas being fixed for the respective facilities, if the establishments who are the clients of the facilities have any particular objection or grievance against the facilities they may be able to challenge the allotment of those facilities to them upon making out a case before respondent No.2 and applying to respondent No.2 of being given the service of another facility. It is not for the facilities themselves to challenge the area of operation since they have to work specifically under the authorisation granted by respondent No.2 as the competent authority

monitoring their activities from collection to disposal of the hazardous waste.

23. It is also argued that distance from the establishments to the facility is a relevant factor which is not considered whilst allocating the area of operation. Certain illustrations have been provided to show the distance between facilities and the establishments making affluent wastes which may impact transporting costs and risks in transporting. Whereas under the policy of respondent No.2 the facility is required to be within a distance of 100 Kms from the establishment creating hazardous waste, some establishments at more than that distance have been allotted to SMS and others.

24. The distance between the two facilities may be one of the criteria for determining the area of allocation. However, the area can also be determined upon other reasonable criteria being the regionwise allocation of various facilities as is sought to be done. The area of allocation granted to MWM which are in the Westernmost 4 Districts of Maharashtra, therefore, does not suffer from the ills of unreasonableness of the criteria for allocation. Such an allocation is prima facie shown to be made upon a reasonable criteria for the classification of Districts which fall within the area of allocation of MWM and similarly other areas of allocation of other such facilities. MWM has not shown any unreasonable classification such as would grant the area of allocation of establishments beyond its reach. The area allocation could have been challenged had that been the case. That having not been done we do not see how we can exercise our writ jurisdiction to quash or set aside the orders of respondent No.2 dated 11 December 2008 and 9 March 2009 or

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order of respondent No.4 in appeal therefrom dated 29 January 2011.
Hence the consequent direction of MWM not to encroach upon the area
allotted to other facilities is in fact required to be passed as prayed for by
SMS.

ORDER

1. Writ Petition No.3953 of 2011 is dismissed. Rule discharged.
2. The petitioner in Writ Petition No.3953 of 2011 shall not encroach upon the area of operation allotted by respondent No. 2 to any other facility except its own.
3. Rule is granted in Writ Petition No.5846 of 2011 to the above extent.
4. The above CAs are disposed of accordingly. *AK*

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High Court, Appellate Side
Bombay *R. S. Jadhav*
29/3/2012