

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

Original Application No.32/2014/EZ

Joydeep Mukherjee.

Vs

Chief Secretary, Govt. of West Bengal & Ors.

CORAM: **Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member**
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: **Applicant** : Mr. Joydeep Mukherjee, in person
Respondent Nos. 1, 3 to 6 : Mr. Bikas Kargupta, Advocate.
Respondent No. 2 : Ms. Arpita Chowdhury, Advocate.
Respondent No. 7, 8 : None.
Respondent No. 9 to 12 & 14: Mr. Pinaki Ranjan Chakraborti, Advocate.
Respondent Nos. 13 & 15 : Dr. Adish C. Aggarwala, Sr. Advocate.
Ms. Debanjana Roy, Advocate.
Mr. Chandra Nath Chattopadhyay, Advocate
Respondent No. 16 : Mr. Subir Kumar Roy, Advocate

Date & Remarks	Orders of the Tribunal
<p>Item No. 1 14th January, 2015.</p>	<p>Heard Ld. Advocates appearing for the parties.</p> <p>So far as private Respondents 9 to 11 are concerned, it is the submission of Id. Counsel appearing on behalf of them that brick fields are in operation with valid consent to operate from the West Bengal State Pollution Control Board. They are directed to file reply by 2 weeks, rejoinder by applicant & State Pollution Control Board by one week thereafter.</p> <p>Ms. Arpita Roy Chowdhury, Id. Counsel appearing on behalf of respondent No. 2 has filed affidavit today and copies of the same have been served to all the parties. Let the affidavit be kept on record. From the affidavit filed by Pollution Control Board, it appears that the statement made by Id. Counsel appearing for respondents Nos. 9 to 11 appears to be true.</p> <p>So far as respondent Nos. 12 and 14 are concerned, Id. Counsel appearing for them submits that the above respondents are operating the brick fields with valid consent to operate by the W.B. Pollution Control Board under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. In support of his contention Id. Counsel has failed to submit documents to satisfy the Tribunal. However, he</p>

submits that applications seeking consent to operate has been filed and as yet no consent to operate has been issued by Pollution Control Board. Having regard to such, as those respondents are operating Brick Kilns illegally on breach of **Section 21 of the Air (Prevention and Control of Pollution)** , they are restrained from operating the brick fields in any manner whatsoever. The District Magistrate is directed to take all steps & endeavours for compliance of this order. The aforesaid respondents are directed to file reply of the application, if any, in the form of affidavit. Time to file such affidavit by them is extended upto two weeks and rejoinder, if any within one week thereafter.

Dr. Adish C. Agarwala, Id Senior Advocate of Supreme Court of India is appearing for respondent Nos. 13 and 15. His submission is that units of respondent No. 13 was transferred to the unit of Respondent No. 15 on proper permission of the W.B. State Pollution Control Board and the respondent No. 15 after merger of the unit of respondent No. 13, has applied for consent to operate or renewal of the consent order as passed earlier on 5.1.2014. Such application is still pending before State Pollution Control Board. It is the further submission of him that earlier the consent to operate was valid till 30.04.2014. Ld. Counsel has filed affidavit on behalf of respondent No. 15 today. Let such affidavit be kept on record. In the said affidavit Ld. Counsel has taken the legal point of inaction by the West Bengal Pollution Control Board to grant necessary consent despite filing of the application seeking consent to operate that too prior to expiry of the earlier consent order.

To consider such submission, opportunity to oppose the said affidavit by the Pollution Control Board is granted by way of reply within two weeks and rejoinder, if any, in response to the aforesaid affidavit in reply by respondent Nos. 13 and 15 by one week thereafter. Appropriate order to be passed on the next date of hearing on the issue in question.

So far as respondent No. 16 is concerned, affidavit on behalf of it has been filed today annexing the document relating to consent to operate issued by the W.B. Pollution Control Board on 11.01.2012. The validity period of such consent to operate is till 30.01.2015. This document is annexed as Annexure-R/3 in the affidavit in reply. Let such affidavit be kept on record. Objection if any by Applicant & State Pollution Control Board by 2 weeks.

The respective respondents are at liberty to file rejoinder of the respective affidavit within two weeks, if any.

Status report and the answer of our query made in earlier order dated 01.12.2014 has been filed by the State Pollution Control Board. Let such report be kept on record. The applicant and other respondents are at liberty to file the rejoinder, if any, against this affidavit within two weeks from this day. It is the submission of Ms. Arpita Chowdhury, Id. Counsel appearing for W.B. State Pollution Control Board that District Land and Land Revenue Officer has not co-operated by supplying the relevant documents and papers despite letter written to him informing to take steps with regard to closure of the illegal operation of the brick fields. The District Land and Land Reforms Officer who is also Additional District Magistrate (LR) is directed to file affidavit answering as to why he has not taken any step to close down the brick fields who are operating without consent of the State Pollution Control Board. Such affidavit be filed within two weeks in the registry and copy to be served to the applicant, the Pollution Control Board and other Private respondents and they are at liberty to file appropriate rejoinder within one week thereafter. This affidavit will be considered on the next date of hearing. However, it is made clear that so far as the operation of brick field in respect of respondent no. 13 is concerned, which has now been merged with the brick field of respondent No. 15, the operation of which, however, shall not be disturbed by Pollution Control Board and the District Land and Land Reforms Officer or other District Administration till the finality of the issue as has been projected in the affidavit by those respondents. However, by this order, it does not mean that they will operate the kilns on violation of pollution norms. Pollution Control Board is at liberty to take steps if there is violation of pollution norms.

The Pollution Control Board is directed to dispose of the application filed by said respondent No. 15 seeking consent to operate which is said to be pending before them within a period of four weeks in accordance with law and on merit.

The Principal Secretary, Deptt. of Land and Land Reforms, Respondent No. 3 despite our direction has not filed any status report in the form of affidavit answering our queries made. Mr. Bikas Kar Gupta, Id. Counsel appearing for respondent No. 3 prays for some time to file such affidavit as a last chance. Time to file such affidavit is granted by three weeks. Rejoinder, if any, to such affidavit be filed within one week thereafter.

Concerned respondents are at liberty to file the reply of the affidavit filed by respondent No. 2, West Bengal Pollution Control Board wherein different remarks have been made by the District Land & Reforms Officer against their brick fields. That issue will be dealt with on the next date of hearing on exchange of affidavit amongst

the parties.

From the affidavit filed by respondent No. 2, it appears that there is no whisper about the maintenance of the pollution norms. The concerned respondents are operating the brick fields on violating the condition of use of fly ashes from BTPS at least 25% of the total raw materials. This fact did not find place in the affidavit in reply. Therefore, the respondents concerned are directed to explain the issue with reference to the affidavit of the West Bengal Pollution Control Board and they will answer as to why appropriate order should not be passed by the Tribunal due to breach of condition of use of fly ash in accordance with law including the order for closure of the units. This issue will be dealt with on the next date of hearing.

The Pollution Control Board, respondent No. 2 is directed to dispose of the application seeking consent to operate filed by respondent No. 12 and 14 which is pending within the time limit specified under Section 21 sub section 4 of **Air (Prevention and Control of Pollution) Act, 1981.**

Matter stands adjourned to 19.02.2015.

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Justice Pratap Kumar Ray, JM

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Prof. (Dr.) P. C. Mishra, EM