

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

R.A. 48/2016/EZ
IN
Original Application No. 04/2016/EZ

MADHUSUDAN BISWAS
Vs
**WEST BENGAL POLLUTION CONTROL
BOARD & ORS**

CORAM: Hon'ble Mr. Justice S.P.Wangdi, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: Applicant : Mr. U.Datta, Advocate
Mr.P. Sinha Roy, Advocate
Respondents No.1 & 2 : Mr. Dipanjan Ghosh, Advocate
Respondents No. 3 to 6 : Mr. Bikas Kargupta, Advocate

Date & Remarks	<u>ORDER</u>
Item No. 1 11 th January, 2017	<p style="text-align: center;">Heard.</p> <p>This application seeks for a review of the order dated 22.01.2016 dismissing OA 4/2016/EZ <i>in liminie</i>.</p> <p>Mr. Datta strongly urged that the Tribunal had committed a grave error of law apparent on the face of the record in dismissing the OA summarily holding that the religious rights and practices guaranteed under Articles 25 and 26 of the Constitution of India would be infringed if the relief sought for in the OA was granted, firstly, on the ground that the OA was preferred by none other than a Hindu to reign in ever mounting pollution hazards being created by the present system</p>

of cremation resorted to by the majority of the people of the Hindu community and, secondly, that it overlooked the fact that the provisions of Art. 25 and 26 were subject to health, public order, morality and other provisions of Part-III of the Constitution of India including right to pollution free environment.

Upon hearing the learned counsel for the applicant and on perusal of the impugned order dated 22.1.2016 as well as the various averments and pleadings contained in both the OA and the RA, we find that in the OA, the applicant has questioned the wisdom of continuing with one of the ancient practices of the communities to cremate bodies which is considered to be an essential practice of the faith professed by them. This would be apparent from the following averments contained in the Review Application :-

“ 3. That your petitioner/applicant states that due to the ever increasing adverse climatic impacts of an age old custom of cremation observed mostly by Hindus and Sikhs after the death of anyone of the family members, slowly but steadily causing huge damage and degradation of environment in this state or country as a whole due to the ever increasing huge upsurge of carbon aerosols being the second largest human made contribution to the global warming after carbon-dioxide beside the increase of leave of brown carbon and also the green house gas emissions and large scale deforestation each and every

year with unfailing regularity.

4. That your petitioner/applicant being an educated, rational, law abiding and environmentally conscious citizen most humbly state and submit that situations are no better so far as the electrical crematoriums are concerned since these are mostly situated on the banks of rivers or water body and are causing since these are mostly situated on the banks of rivers or water body and are causing enormous pollution to them with the ashes besides consuming huge amount of electricity by the state for progress maintenance and development of civilization.

That it is worthwhile to mention that there are several recent newspaper reports available in the internet speaking volume for either the concern of Pollution Control Board in several states like Oddissa, Maharastra, Tamilnadu or the concern for the environmental forums for immense adverse climatic impacts caused by the running of even traditional electric crematorium far less the wooden pyres. Their non-maintenance and mal-function are rampant almost everywhere in our country and particularly in our state itself including the petitioner's locality. Unfortunately no steps are being taken by the appropriate authorities for rectification and/or stoppage of the same despite notices for demand of justice send by your petitioner/applicant and his Ld. Advocate from time to time." (*Underlining Supplied*).

In view of the aforesaid facts and circumstances we do not find any error of law apparent on the face of

the record in the impugned order dated 22.1.16, the relevant portion of which reads as follows :-

“Having heard the Id. Adv. and having regard to the prayers made in this OA, we are of the view that such types of prayers cannot be entertained or adjudicated by this Tribunal. The applicant has prayed for stoppage of cremation either by fire woods or by electric crematorium and for creating public awareness through campaigns against the present system of cremation of the dead bodies and for direction in favour of decomposition of dead bodies by eco-friendly burials. In view of different systems of burials by different community prevalent in the country and considering the constitutional rights for performance of religious rights by the citizens, this kind of direction, as prayed for, cannot be issued.”

It may further be observed that the jurisdiction of this Tribunal is circumscribed by Sec. 14 of the NGT Act, 2010 wherein it is provided that the Tribunal shall have jurisdiction over all civil cases where substantial question relating to environment, including enforcement of any legal right relating to environment, is involved and such question arises out of implementation of the enactments specified in Schedule I of the Act. On a bare reading of the pleadings reproduced above, indisputably the question raised is quite nebulous and general in nature.

For the reasons stated above, the Review

Application stands dismissed.

No order as to costs.

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Justice S.P.Wangdi, JM

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

