

Serial No. 11

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Before the National Green Tribunal, Eastern Zone
Bench, Kolkata
Original Application No. 84/2025/EZ

In the matter of:

Ravi Shankar Yadav

...Applicant

- Versus -

The West Bengal Pollution
Control Board and others

...Opposite Parties



**REJOINDER ON BEHALF OF THE PETITIONER
AGAINST THE COUNTER AFFIDAVIT OF THE
RESPONDENTS NO. 3 AND 4.**

I, Ravi Shankar Yadav, son of Late Sitaram Yadav, aged about 61 years, by occupation- business, by faith- Hindu, resident of 22, Strand Road, Kolkata - 700001, do hereby solemnly affirm and say as follows:-

1. I am the petitioner herein, and as such I am fully acquainted with the facts and circumstances of the case and I am competent to sign and affirm this affidavit.

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2. A copy of the aforementioned counter affidavit filed by the respondent no. 3 and 4 was served upon the Learned Advocate on record along with certain annexures. I have gone through the said counter affidavit filed by the respondent no. 3 and 4 and I have duly understood the meaning, content and purport thereof.

3. I am dealing with/constraining myself to those statements and allegations in the said counter affidavit which are pertinent for proper adjudication of the case made out in the instant application.

4. Before I deal with the said affidavit-in-opposition in seriatim, I state and contend as follows:

- a. The Fact finding committee established by this Hon'ble tribunal by the order dated May 14, 2025 was to file a report and for which District Magistrate, South 24 Parganas had filed an application for being added as a party respondent in the instant original application. The said application was allowed by order dated 18/08/2025 and the District Magistrate, South 24 Parganas was added as party respondent by this Hon'ble tribunal and directions were given to file the report within 2 weeks but in spite of passage of such time and as of September 17,



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2025, no such reports has been filed or served on to the applicant or his learned Advocate on Record. The report of the fact finding committee is essential for proper adjudication of the instant case and although the respondent numbers 3 and 4 in their counter affidavit state that the report annexed to their affidavit is of the fact finding committee but the same is just a minutes of the meeting of the field inspection and not a report. The said minutes has referred to the individual report of the Senior Environmental Engineer in-charge of Kolkata Regional Office, West Bengal Pollution Control Board and of the Executive Engineer, Building, Kolkata Municipal Corporation but inspite of the recommendations of the Senior Environmental Engineer in-charge of Kolkata Regional Office, West Bengal Pollution Control Board which makes it clear that there has been violations the fact finding committee has only suggest constant vigil. Even if for arguments sake the minutes is considered the report of the fact finding committee, the same has to be submitted before this Hon'ble Tribunal by the fact finding Committee. This action of not submitting the report by the fact finding committee is resulting in the delay in the proceedings during which time the construction is ongoing creating major nuisances at night. Since there is no order of stay the respondent no. 5 has in connivance with the respondent authorities, taking advantage of the absence of an order of stay on the construction, delaying the proceedings so that in the meantime the construction



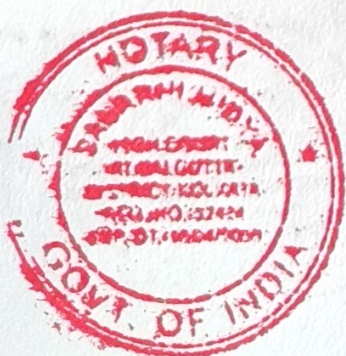
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can be completed at its whims and fancies at a cheaper and faster rate at the cost of the environment.

b. The applicant wanted to file the rejoinder after the fact finding committee had submitted its report before this Hon'ble Tribunal but given the aforesaid tactic employed the applicant is left with no choice but to deal with the counter affidavit of the Kolkata Municipal Corporation in this rejoinder, even though the report has not been filed but prays that this Hon'ble Tribunal may grant leave to the applicant to raise additional points against the counter affidavit after submission of the aforesaid report by way of an affidavit or otherwise.

c. The connivance of the respondent authorities and respondent number 5 is apparent from the fact that-

i) The inspection was conducted in the time period of 12 Noon, whereas the applicants original application focused on the impact of the construction happening even during the night. It is apparent from paragraph 21 judgment and order passed in *C. Palanisamy v. Chairman, Tamil Nadu Pollution Control Board* reported in 2021 SCC OnLine NGT 1021, that in case the construction work is permitted to be carried out during both at day and night then the inspection ought to be carried out at



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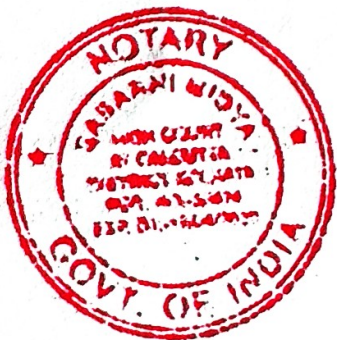
both the times as the density of pollution from a single source differs in the day from that of night. Schedule under rule 3 (I) and 4 (I) of the Noise Pollution (Regulation and Control) Rules, 2000 makes it apparent that the standard limit of noises is different from one type of place to the another and the margin of volume is always lesser in the night than the day. Thus, the permitted level of pollution at least so far as noise is concerned is totally different in day and night. The purported minutes is based on an inspection being undertaken at noon and as such cannot reflect **the true state of affairs as complained of by the applicant and as was sought for by this** Hon'ble Tribunal. Even the report of the West Bengal Pollution Control Board shows that the inspection was done by it at 11:45 AM to 12:30 PM on May 26, 2025 and there was no inspection during the night.

- ii) Surprisingly, the minutes of the filed inspection of the fact finding committee conducted on May 26, 2025 considers and quotes the inspection report of the West Bengal Pollution Control Board and also of the Executive Engineer, Building, Kolkata Municipal Corporation although they were all created at the same time.



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- iii) There has also been no measurement by the fact finding committee as to the amplitude of the noise coming out of the construction as appears from the purported minutes annexed to the counter affidavit although the same is required for reasons stated above. The report is bad in law as it reaches the conclusion that there is no dust or noise pollution although it suffers from the following lacunae a) the inspection was only made during the day having a permissible limit of noise pollution much more than night and b) the report never mentions the amplitude of noise. Further, the inspection report of the Senior Environmental Engineer in-charge of Kolkata Regional Office, West Bengal Pollution Control Board itself in the recommendations mentions "Construction area should be adequately barricaded to minimize the generation of dust and noise" and "Regular water sprinkling arrangement to be provided in order to mitigate fugitive emissions" which means that there has been clear violations of the conditions on which the Environmental Clearance has been granted as the Environmental Clearance granted to the project proponent specifically requires compliance with the measures specified in Environmental Clearance which includes, inter alia, water sprinklers to be put in place and dust mitigation measures be displayed prominently at the construction site for easy public



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viewing. The minutes of the fact-finding committee inspite of considering these recommendations held that there is no dust or noise pollution and to only maintain vigil. It is apparent from the aforesaid that the respondent authorities made this minutes and also the report of the Executive Engineer, Building, Kolkata Municipal Corporation in connivance with the respondent no. 5 to safeguard his private interest at the cost of the environment as it reaches a conclusion **without ascertaining various facts and thereafter, making recommendations; if there is no pollution then there is no need for any** recommendations.

- iv) As the alleged report itself mentions to install water sprinklers and adequate boundary wall to mitigate the dust which is a condition that has to be followed as per the Environmental Clearance, non-fulfilment of the same makes the clearance granted liable to be cancelled. There are several other measures which has been mentioned in the EC granted by the State Environmental Impact Assessment Authority as conditions to be fulfilled for the EC to stay in effect or power but the report fails to specify if they are being complied with or not.

- v) = The facts must be verified by documentary evidence, not just oral statements. The report of the Executive

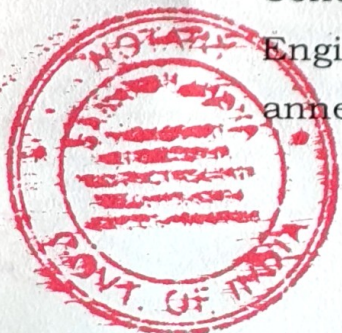


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Engineer, Building, Kolkata Municipal Corporation just records all the data from the verbal accords of the project proponent without duly examining the records and the documents relating to the facts of the present case as is required under Section 10 of the Environmental Protection Act, 1986 thereby making the report arbitrary and prejudiced against the interest of public at large and the environment.

5. With reference to the statements and/or allegations contained in paragraph nos. 1 to 4 of the counter affidavit filed by the respondent nos. 3 and 4, the same is vehemently denied and disputed save and except those which are matters of record.

6. With reference to paragraph no. 5 of the counter affidavit filed by the respondent nos. 3 and 4, I strongly object to the prayer of the respondent nos. 3 and 4 to adopt the alleged report annexed to the counter affidavit to be adopted by this Hon'ble Tribunal as this Hon'ble Tribunal had sought the report from the fact finding committee but only the Minutes of the Field Inspection of the committee is annexed and not the report. Two reports, one of the west Bengal Pollution Control Board and an individual report of the Executive Engineer, Building, Kolkata Municipal Corporation is annexed but not the report of the fact finding



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committee. If for arguments sake it is contended that the minutes itself is the report the same should be submitted by the fact finding committee before this Hon'ble Court as otherwise it amounts to, at the least, contempt of the order and directions of this Hon'ble Court.

7. With reference to paragraph no. 6 and 7 of the Counter Affidavit, I deny and dispute each and every allegations and statements made therein save and except what appears to be a matters of record and the respondents nos. 3 and 4 are put into strict compliance to prove the same. I deny and dispute the statement and/or allegation that there was no indication or exposure of environmental pollution due to dust and noise from the site. I state that there would not have been recommendations for the construction of adequate barricade to minimize generation of dust and noise, and regular water sprinkling arrangements. I state that the minutes and the reports as annexed with counter affidavit talk about various permission being granted but doesn't actually reflect any positive any positive action on the part of respondent authority and/or fact finding committee as formed by the order of this honorable tribunal to determine whether the condition against which various clearances and



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permissions have been granted are being complied with or not and there is also no measure on their part to determine the level of dust and noise pollution both during day time and night time. I repeat and reiterate the paragraphs in the original applications, and paragraph 4 above.

8. It is expedient in the interest of justice, to uphold the dignity of law by passing necessary directions to stop the construction on an interim basis and call for further inspection by an independent body and direct for implementation of the mitigating measures and to stop work at night to such an extent that the decibel levels at night are reduced to permissible limits.

9. The statements made in paragraphs 1 to 7 are true to my knowledge and the rest are my humble submission before the Hon'ble Court.

Ravi Shankar Yadav

Dependent

Identified by me

Dipanker Thakur
Advocate.



Solemnly Affirmed & Declared
before me on identification

Subramanian Notary
Reg. No. - 52424 Govt. of India
High Court at Calcutta

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