

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO. 107 OF 2023/EZ

SOUMEN CHAKRABORTY

... Original Applicant



-Versus-

THE PRINCIPAL SECRETARY,
 ENVIRONMENT
 DEPARTMENT, GOVERNMENT
 OF WEST BENGAL & ORS.

... Respondents

AFFIDAVIT IN REPLY AND/OR EXCEPTION TO THE
COMMITTEE REPORT FILED BY THE WEST BENGAL
POLLUTION CONTROL BOARD

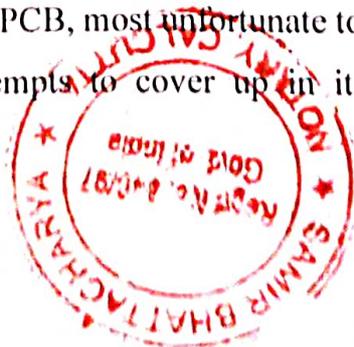
I, Soumen Chakraborti, son of Late Shyamapada Chakraborty, aged about – 48 years, by faith - Hindu, by occupation - Mechanic, Gopinath Bati, Gonna Dariapur, Dariapur, Purba Barddhaman, Gonna Dariapur, West Bengal – 713128 do hear by solemnly, affirm and state as follows :

1. I have been served with a copy of the committee report filed by the West Bengal Pollution Control Board(WBPCB) and have understood the meaning, contents and purport thereof. The

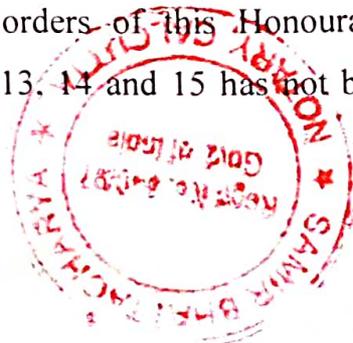
18 JAN 2024

report suffers from gross material irregularities on face, of deviation of the Order of NGT dated. 12-09-2023, inter alia, directing the formation and acting of the committee by 3 Members consists inter alia, of member/personnel 'not below the rank of Additional District Magistrate(ADM) to carry out inspection in terms of the said Order, whereas, neither District Magistrate nor Additional District Magistrate was present during Inspection at the subject premises. Rather, one Sribash Bhakta, Dy. DL&LRO, who is much below the rank of DM/ADM was present and inspected as a part of the 3 members' committee, and based on that inspection when the Report was prepared, the ADM and DL&LRO endorsed on the report in severe disregard and disrespect to the Order of NGT. Such conduct of ADM and DL&LRO of not remaining present in inspection and sending Dy. DL&LRO instead at his own choice and fancy, tantamount contumacious violation of Order of Hon'ble National Green Tribunal. Therefore, the inspection has clearly not been carried out in compliance to the direction of the Hon'ble Tribunal, hence may be considered non est and be not taken into account.

2. I say that from the said report it is evident that prior to this Hon'ble Tribunal taking judicial notice of this violation by the respondent numbers 13, 14 and 15, a rice mill used to be operated at the common premises sharing close vicinity where upon inspection, manufacturing of fly ash is found as being carried out, which WBPCB, most unfortunate to the interests of the Environment, attempts to cover up in its Report under dealing.

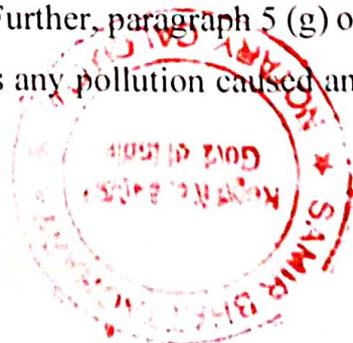


3. By an order dated 12th September, 2023, passed in the instant application this Hon'ble Tribunal was pleased to constitute a committee to furnish a report upon inspection being made and suggest penalties and/or punishment for violation of any environmental laws. A copy of such order dated 12th September, 2023 is annexed hereto and marked as "A".
4. It would appear from the committee report submitted by the respondents that despite taking notice of the fact that a rice mill is operated from the same premises where manufacturing of fly ash bricks is carried out no penalty and/or punishment has been recommended in the said report. The inspection to the rice mill has been carried out without any notice and beyond the knowledge of the Applicant, and without affording any opportunity to the applicant (the actual complainant) to remain present during the carrying out of inspection. Hence, the inspection conducted and report prepared, in absence of the applicant, is in clear violation of the basic principles of natural Justice, and cannot bind the applicant in any manner. Rather, the report contains factual information without any support or substantial document being annexed, which are incorrect to the knowledge of the petitioner.
5. It is pertinent to mention that the activity of the rice mill has only been temporarily/shortly non functional immediately upon getting the notice of the instant application. Even on the date of inspection the rice mill operation was purposely closed so that the production of rice and contamination of the same with the air borne fly ash, can be bypassed to take place before the committee. In fact, despite the orders of this Honourable Tribunal the respondent numbers 13, 14 and 15 has not been



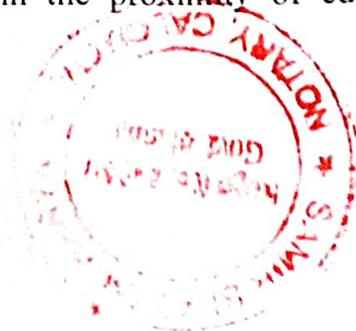
given inspection of the rice mill which would have helped in ascertaining the effect of the degree of pollution on the edible rice grains. From the Report it is clear that on the day of inspection Rice Mill was closed and not operational but all relevant document relating to rice mill was available before the authority, which shows the ploy and suspicious ulterior motive on its face. In any event no document has been annexed in support of contention of para 5(a) hence the petitioner does not get any opportunity to consider or comment upon the same, without prejudice to its rights and contentions. Even para 5(e), (f) are surprisingly written as the observation/finding of the committee, however without disclosing any source or basis of the same. The biasness of the committee in preparation of the Report is apparent and should not be considered or valued on this ground alone, without prejudice to the other available. Para 5(g) is an unilateral observation made/recorded, in absence of the applicant and is vague and malafide on its face, also without any basis for alleged expression used for making observation as 'no extra storing or dumping of fly ash...' as observed in para 5(g). The report therefore sans any credibility from its plain reading. Any allegation contrary to or inconsistent with hereinabove are denied and disputed as if they are set out here in and denied in seriatim.

6. The report only states how the factory manufacturing fly ash bricks operate but does not state whether all the parameters mandated by law are being complied to prevent any pollution/contamination and/or consequential adulteration of produced rice with the molecule of fly ash. Further, paragraph 5 (g) of the report is silent on whether there is any pollution caused and its



effects thereof on the rice grains which is kept in a close proximity.

7. The committee report is also silent as to whether the respondent no. 13 was able to obtain trade licences for a rice mill and necessary licence or permission to run a fly ash factory, inter alia, informing the concerned authority before obtaining such license or permission that a rice mill is already operating in full swing from the said premises, and if not done so, whether the respondent no. 13 has misled and/or suppressed material information before such licencing authority concerned.
8. Para 7 of the report suggests some eyewash recommendations to indirectly suggest and recommend the operation of rice mill and production of Rice and activity of fly ash brick manufacturing can be mutually continued from the same compound at a radial distance of 50 metre in between. The report has been prepared in most mechanical, casual manner and by turning a closed mind and shut eyes, towards the most crucial aspect that a rice mill and manufacturer of fly ash bricks operation are being done from the same premises in close proximity to each other. There is no mention whether the rice grains produced by such rice mill may or have been contaminated by fly ash pollutant due to the operation of the fly ash brick manufacturing.
9. It has been stated in paragraph 6 c) and 6 d) that consent to operate is not required as manufacturing fly ash bricks comes under "white category" but does not state whether such operations can be carried out in the proximity of edibles,



eventually leading up to consumption of such pollutants by the consumers of such edibles.

10. With regards to paragraph 6 f) of the report I say that the committee could not have come to the conclusion that there was no health impact, visibly evident, or that there was no deposition of particulars without conducting a sample testing of the leaves, soil and any other surface. In any event, the spirit of the order dated 12th September, 2023 was also to ascertain whether the pollution caused in the premises would eventually lead to ingesting the pollutants by the consumers of rice being produced at the premises. The committee, it is most humbly stated, stood misguided by the fact that at the time of inspection it was observed that water being sprayed through water sprinkler on raw fly ash so the same cannot be air borne, assuming though not admitting the same was found as being done, but the committee cannot ensure the same as sufficient measure or the same would continue at all material point of time in other normal days, nor the committee cannot hold the same as appropriate preventive or remedial measure for the business of production of rice to continue sharing the same compound more importantly in a radial distance of around 50 metre in between.

11. In such circumstances, I say that the report filed by the committee on affidavit is vague and filed without affording the applicant an opportunity to remain present during the inspection and in deviation to the Order dated 12th September, 2023, besides being biased and malafide. No reliance, therefore, should be placed on such report.



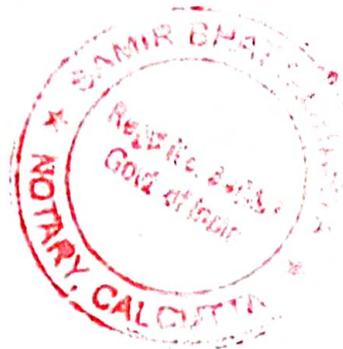
12. The statements made in paragraph 1 to 10 are true to my knowledge and those made in paragraph 11 are my respectful submission before this Hon'ble Tribunal.

Soumen Chakraborty
Deponent

Identified by me

Khondh Saminl Haq
Advocate

VERIFICATION



I, Soumen Chakraborti, son of Late Shyamapada Chakraborty, aged about – 48 years, by faith - Hindu, by occupation - Mechanic, Gopinath Bati, Gonna Dariapur, Dariapur, Purba Barddhaman, Gonna Dariapur, West Bengal – 713128, do verify that I am the applicant in the instant application and I am well acquainted with the facts and circumstances of the instant case and the statements contained in paragraph 1 to are true to my knowledge and rests are my humble submission before the Learned Tribunal.

Soumen Chakraborty
DEPONENT

Prepared in my chamber
Khondh Saminl Haq
Advocate



Solemnly Affirmed and
Declared before me U/S
CPC / U/S 207 (C) CrP

18 JAN 2024

18.1.24

Samir Bhattacharya
Notary, Govt. of India
Regd. No.-940/97
City Civil Court, Calcutta

Item No.01

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.107/2023/EZ

Soumen Chakraborty

Applicant(s)

Versus

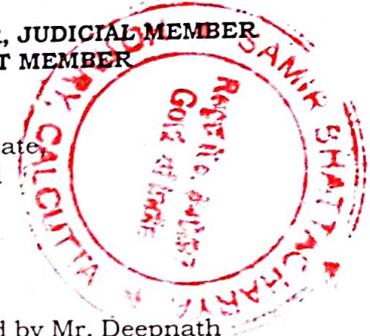
The Principal Secretary, Environment Department,
Government of West Bengal & Ors.

Respondent(s)

Date of hearing: 12.09.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

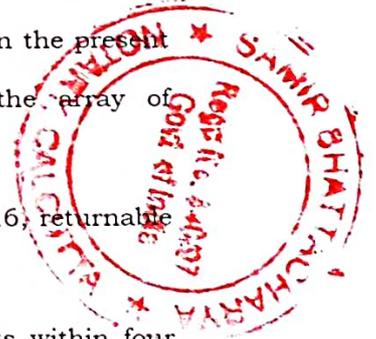
For Applicant(s) : Mr. Samiul Haque, Advocate a/w
Mr. Deepnath Roychowdhury, Advocate
Mr. Saunak Sengupta, Advocate and
Mr. Bhaskar Dwivedi, Advocate



ORDER

1. Heard Mr. Samiul Haque, learned Counsel assisted by Mr. Deepnath Roychowdhury, Mr. Saunak Sengupta and Mr. Bhaskar Dwivedi, learned Counsel appearing on behalf of the Applicant.
2. The Applicant has filed this Original Application alleging that the Respondent Nos.14, 15 and 16 or the Directors of the Respondent Nos.14 Firm, earlier known as M/s. Koner & Maroti Agro Tech Private Limited, now known as KM Agro Tech Private Limited, are operating Rice Mill and are also stacking fly ash and manufacturing fly ash bricks on a commercial scale within the same area from where it is operating the Rice Mill producing rice for consumption.
3. The allegation is that the Respondent Nos.14, 15 and 16 are carrying on business of dumping fly ash and manufacturing of fly ash bricks without necessary license and without statutory clearances for the same thereby endangering human health and safety in the area due to air borne particles of fly ash.

4. It is also alleged that the entire activities of the Respondent Nos.14, 15 and 16 are being carried out in violation of the Fly Ash Rules framed by the Ministry of Environment, Forests and Climate Change (MoEF&CC).
5. In our opinion, matter requires consideration.
6. Issue notice to the Respondents, returnable within four weeks.
7. Mr. Sudip Kumar Dutta, learned Counsel who is present in the Court, accepts notice on behalf of the Respondent Nos.1,2,7,9,10,11,13 and 17, State Respondents, Government of West Bengal.
8. Mr. Dipanjan Ghosh learned Counsel who is appearing (in Virtual Mode), accepts notice on behalf of the Respondent Nos.4, 5 and 8, West Bengal Pollution Control Board.
9. Mr. Ashok Prasad, learned Counsel who is present in the Court, accepts notice on behalf of the Respondent No.6, Central Pollution Control Board.
10. Respondent Nos.3, Ministry of Environment, Forests and Climate Change (MoEF&CC) and 18, West Bengal State Cooperative Marketing Federation Ltd. are not necessary parties in the present Original Application and shall be deleted from the array of Respondents.
11. Issue notice to the Respondent Nos.12, 14, 15 and 16, returnable within four weeks.
12. All the Respondents shall file their counter-affidavits within four weeks.
13. Considering the allegations made, we deem it appropriate to constitute a Committee comprising of the following members: -



- i) Senior Scientist / Environmental Engineer, West Bengal Pollution Control Board;
 - ii) Senior Scientist, Central Pollution Control Board;
 - iii) Representative of the District Magistrate, Purba Bardhaman not below the rank of Additional District Magistrate (ADM)
14. The Committee shall visit the site and submit its Report within three weeks.
 15. The West Bengal Pollution Control Board shall be the Nodal Office for all logistic purposes and shall file the Committee Report on affidavit.
 16. In case violations are found, the Committee shall recommend penalty as well as Environmental Compensation and also suggest remedial measures, if any.
 17. Learned Counsel for the Applicant shall serve e-copy/soft copy of the Original Application along with all its annexures upon Mr. Sudip Kumar Dutta, Mr. Dipanjan Ghosh and Mr. Ashok Prasad, learned Counsel for the Respondents within 24 hours.
 18. **List on 13.10.2023.**

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B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

September 12, 2023,
Original Application No.107/2023/EZ
SKB



BEFORE THE NATIONAL GREEN
TRIBUNAL EASTERN ZONE
BENCH

ORIGINAL APPLICATION NO.

107 OF 2023/EZ

In the matter of:

Soumen Chakraborty
... Original Applicant

-Versus-

The Principal Secretary,
Environment Department,
Government of West Bengal &
Ors.

...Respondents

AFFIDAVIT IN REPLY

KHONDKER SAMIUL HAQUE

Advocate

High Court at Calcutta

8/2b, Abdul Halim Lane, 2nd floor,
Kolkata – 700016,
Mob.: 9748552595

E-mail:

haque.samiul.sh@gmail.com

Enrollment no. : WB/2283/2013