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BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO. 107 OF 2023/EZ
INTERIM APPLICATION NO. OF 2024/EZ

Budhender Datta
Filed by
S. K. Datta
Advocate

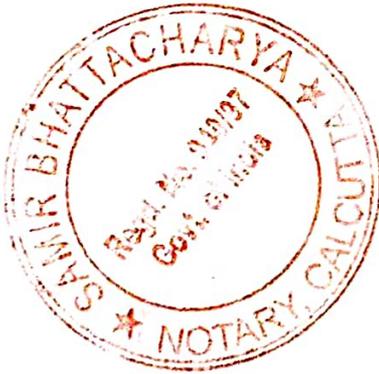
In the matter of:

Soumen Chakraborty, son of Late
Shyamapada Chakraborty,
Gopinath Bati, Gonna Dariapur,
Dariapur, Purba Barddhaman,
Gonna Dariapur, West Bengal –
713128.

... Original Applicant

-versus-

1. The Principal Secretary,
Environment Department,
Government of West Bengal,
having its address at 5th floor,
Pranisampad Bhavan, Block LB-
II, Salt Lake, Sector – III,
Bidhannagar, Kolkata - 700106. E-
mail - psecy.env-wb@gov.in,
Phone - 23352742.



03 MAY 2024

2. Chief Environment Officer,
Environment Department,
Government of West Bengal,

acting as/representing State Wetland Authority, having its address at 5th floor, Pranisampad Bhavan, Block LB- II, Salt Lake, Sector – III, Bidhannagar, Kolkata – 700106, Phone - 23355246, Email - environmentwb@gmail.com.

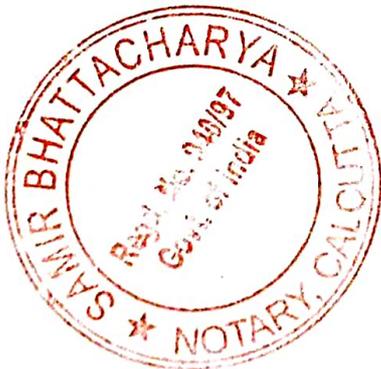
Bolebeb Anwar
Filed by
B. Bhattacharya
Advocate

3. Ministry of Environment, Forest & Climate Change (MOEF&CC) represented by its Deputy Director General, having its integrated Regional Office at 16-198, Sector-III, Salt Lake City, Kolkata-700106. E-mail :NA.

(Deleted vide order of the Hon'ble Tribunal Dated 12.09.2023)

4. West Bengal Pollution Control Board, represented by its Chairman, having its office at "paribesh Bhavan", 10A, Block - LA, Sector-III, Bidhannagar, Kolkata-700106, e-Mail: net.wbpcb-wb@bangla.gov.in, phone - 22023000.

5. The Chairman, West Bengal Pollution Control Board, "paribesh

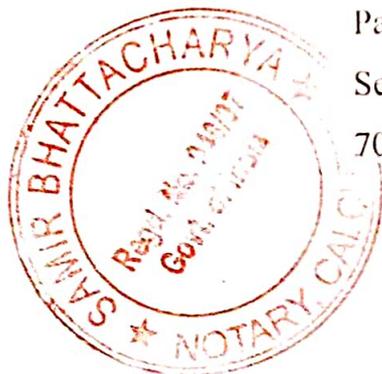


Bhavan", 10A, Block -LA, Sector-III, Bidhannagar, Kolkata-700106, e-Mail: nct.wbpcb-wb@bangla.gov.in, phone - 22023000.

6. Central Pollution Control Board (CPCB) represented by its Regional Director, having its office at 1582, Rajdanga Main Road, South End Conclave, 5th & 6th Floor, Kolkata-700107, E-mail - rdkolkata.cpcb@gov.in, Phone - 03324416003.

7. ADM and DL&LRO. District Purba Bardhaman, having its address at Burdwan Rajbati, BC Road, Bardhaman - 713104, E-mail: admprbdn.gnl-wb@gov.in, Phone - 0342-2662364.

8. Chief Engineer, West Bengal Pollution Control Board, Department of Environment, Government of West Bengal, Paribesh Bhawan, 10A, Block-LA, Sector-III, Bidhannagar, Kolkata-700106, E-mail: see2.wbpcb-



Buelhaddeb Anam
Filed by
Bhatnagar
Advocate

wb@bangla.gov.in, Phone - 033
2202 3000.

9. Superintendent of Police, Purba
Bardhaman, having its address at
Kachhri Road, Badamtala,
Kalibazar, Bardhaman, West
Bengal – 713101, E-mail :NA.

10. District Magistrate, Purba
Bardhaman, having its address
Kachhari Road, Kalibazar Para,
Purba Bardhaman, West Bengal –
713101, E-mail: [dmpbrbdn.gnl-
wb@gov.in](mailto:dmpbrbdn.gnl-wb@gov.in).

11. Block Development Officer
(BDO) Ausgram – I, P.O. -
Guskara District – Purba
Bardhaman, West Bengal –
713128, Email – NA, Phone :
03452-255056.

12. The Pradhan, Dignagar – II,
Gram Panchayat, Village –
Gopinathbati, P.O. – Gonna
Dafiapur, District – Purba
Bardhaman, Pin – 713128, Email -
NA.



Buchhabes Anwar
Filed by
B. Bhattacharya
Advocate

13. The Principal Secretary, Food & Supplies Department (Govt. of West Bengal) having its address at 11/A, Mirza Ghalib Street, Khadya Bhawan, Block – B, Kolkata – 700087. Email: itcellfswb@gmail.com.

14. KM Agro Tech Private Limited, represented by its directors, a company having its registered office at Vill: Gopinathbati, P.O. Gonna, Dariapur, P.S. Ausgram, Purba Bardhaman, West Bengal - 713128
E-mail:

kmagrotechpvtlimited2012@gmail.com, Phone: 03452257735.

15. Pradip Shaw, Director of M/s. KM Agro Tech Private Limited, Son of Arjun Shaw, residing Near Forest Office, P.O. – Guskara, P.S. – Ausgram, District – Purba Bardhaman, Pin – 713128, E-mail: pradipshawbwn@gmail.com,
Phone: 9475346128.

16. Pritom Shaw, Director of M/s. KM Agro Tech Private Limited,



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Son of Pradip Shaw, residing at
Bimshaw Near Forest Office, P.O.
– Guskara, P.S. – Ausgram,
District – Purba Bardhaman, Pin –
713128, E-mail:
pritamshaw9live@gmail.com,
Phone: 9475266482.

17. District Controller (Food &
Supplies Department), Purba
Bardhaman, having its address
G.T. Road, West Bengal – 713101,
Email - NA.

18. The Managing Director, West
Bengal State Cooperative
Marketing Federation Ltd.
(Benfed), having its address
Southern Conclave, 3rd floor, 1582,
Rajdanga Main Road. Kolkata –
700107. Email: info@benfed.org,
Phone: +913324414366.

(Deleted vide order of the Hon'ble
Tribunal Dated 12.09.2023)

...Respondents

Buddhadeb Ankure, son of Ganesh
Ankure, residing at Village -
Gopinath Bati, P.O. – Gonna,

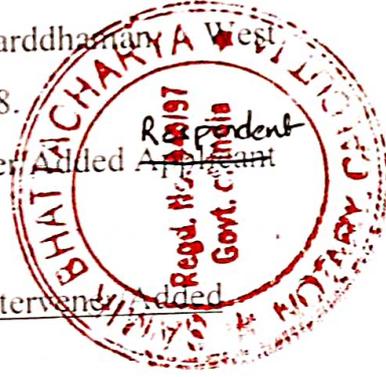


Buddhadeb Ankure
Filed by
Buddhadeb Ankure
Advocate

Dwariapur, Bardhaman, West

Bengal – 713128.

...Intervener, Added Applicant

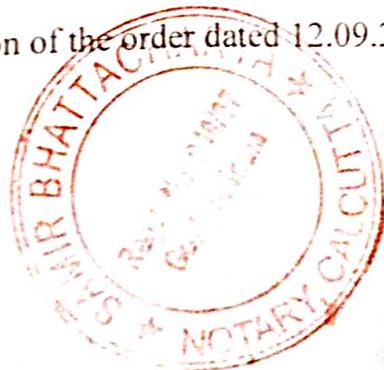


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The humble application on behalf of the Intervener, added

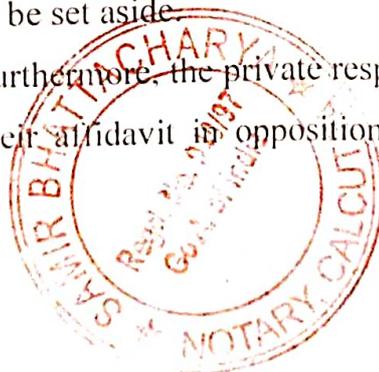
Applicant Abovenamed

1. By an order dated 18.03.2024, the Hon'ble National Green Tribunal was pleased to allow the applicant herein to be impleaded as party, inter alia, to agitate its cause relating to the identical environmental issue, in the present proceedings, to subserve the interest of Justice. Photocopy of the order dated 18.03.2024 is annexed hereto and marked with the letter "A".
2. Upon such impleadment, as aforesaid, the present applicant wrote to the petitioner for cause paper of the matter which were delivered to the applicant on 19.03.2024.
3. Upon perusal of those documents supplied, the applicant, inter alia, came across a document being the committee report prepared and filed, by virtue of order of this Hon'ble Tribunal dated 12.09.2023.
4. Upon perusal of the entire pleadings including such committee report filed by the West Bengal Pollution Control Board (WBPCB) your petitioner has come across the various points of serious discrepancies, impacting the very root of the subject matter involved herein, which are in violation of the order dated 12.09.2023.



5. The report suffers from gross material irregularities on its face, inter alia, directing the formation and functioning of the special committee to be setup with 3 Members. Consisting of inter alia, of a member who shall not be below the rank of an Additional District Magistrate(ADM) to carry out inspection in terms of the said Order. A copy of such order dated 12th September, 2023 is annexed hereto and marked as "B".
6. However, it is seen from the committee report dated 30.11.2023 that neither the District Magistrate nor the Additional District Magistrate was present during the inspection at the subject premises. Instead, one Mr. Sribash Bhakta, Dy. DL&LRO, who is much below the rank of the DM/ADM was present at the time of inspection as a part of the 3 members' committee.
7. It is surprising that based on that arbitrary inspection, at the time of preparation of the Report, the ADM and DL&LRO endorsed on the report in blatant disregard and disrespect of the Order of this Hon'ble Tribunal. Such conduct on the part of the ADM and DL&LRO of staying absent at the time of inspection, as per the direction of this Hon'ble Tribunal, and instead sending the Dy. DL&LRO at his own choice and fancy, tantamount contumacious violation of the Order of Hon'ble National Green Tribunal. Therefore, the inspection has been conducted in blatant violation of the direction of the Hon'ble Tribunal, and therefore, the committee report and its findings are liable to be set aside.
8. Furthermore, the private respondents have also admitted in their affidavit in opposition that they are running a rice

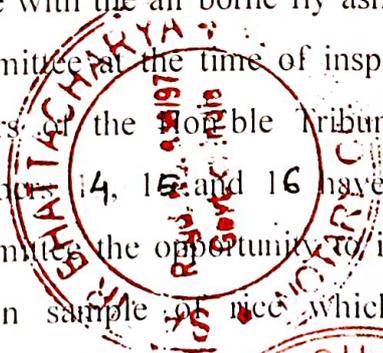
Budhadak Anken
 filed by
 B. S. Chakravarty
 A. S. Chakravarty



mill inside the common premises and the special committee has also reflected the same in its committee report and despite the same, no penalty and/or punishment or atleast recommendation of immediate closure of fly-ash brick manufacturing unit has been recommended in the said report. Further, the report contains factual information without any support or substantial document being annexed, which are unreliable and incorrect based on the knowledge of the applicant.

9. It is pertinent to highlight the factual aspect of the rice mill not running on the particular day of the inspection, which fact completely undermines the inspection and its outcome as the effects of the fly-ash brick manufacturing upon the rice mill and its production activity has not been recorded. The report of the special committee cannot be relied upon as the primary purpose of setting up the special committee was for studying the same.

10. It is pertinent to mention that the activity of the rice mill has only been temporarily non-functional. On the date of inspection the rice mill operation was purposely closed so that the production of rice and the contamination of the same with the air borne fly ash, was not witnessed by the committee at the time of inspection. In fact, despite the orders of the Honorable Tribunal the private respondent number 4, 15, and 16 have not provided the special committee the opportunity to inspect the rice mill and to obtain sample of rice which would have helped in ascertaining the effect of the degree of pollution on the edible rice grains.



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Bullachinje 1-

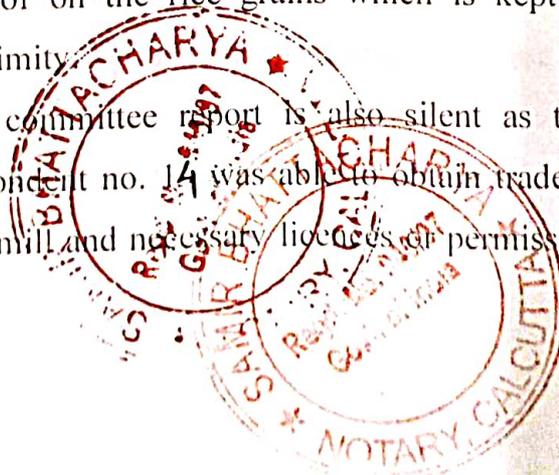
11. That, it is clear from the Report that on the day of inspection the Rice Mill was closed and not operational but all relevant documents relating to the rice mill was available before the special committee, which shows the ploy and suspicious ulterior motive on its face. As a local resident the applicant continuously witnessed/witnessing that the rice mill and fly-ash brick manufacturing unit is operating almost every day. Even para 5(e), (f) are surprisingly written as the observation/finding of the committee, however without disclosing any source or basis for the same. The biasness/ill-motive of the committee in preparation of the Report is apparent and should not be considered or valued on this ground alone.

12. The contents of Para 5(g) is a unilateral observation made/recorded, in absence of the applicant and is malafide on its face, without any basis for making such observation of 'no extra storing or dumping of fly ash...' as observed in para 5(g). Therefore, the report is sans any credibility from its plain reading.

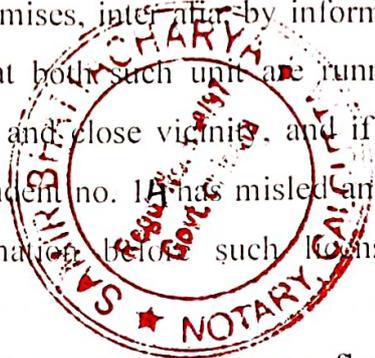
13. The report states how the unit manufacturing fly ash bricks operates, but does not state whether all the parameters mandated by law are being complied to prevent any pollution/contamination also the consequential contamination of rice. Further, the report remains silent on whether there is any pollution caused and its effects thereof on the rice grains which is kept in very close proximity.

14. The committee report is also silent as to whether the respondent no. 14 was able to obtain trade licences for a rice mill and necessary licences or permission to run a fly

Budhadeb Anjan
Filed by
S. S. Chatterjee
Advocate

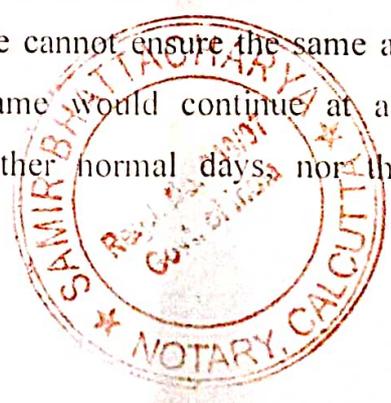


ash factory within same premises, inter alia, by informing the concerned authority that both such units are running within a common premises and close vicinity, and if not done so, whether the respondent no. 1A has misled and/or suppressed material information before such licensing authority concerned.



15. It is stated in the report that consent to operate a fly-ash brick manufacturing unit is not required as the same comes under "white category", however, the report does not state whether such operations can be carried out simultaneously of both the units in such close proximity of manufacturing of eatable, to be consumed by the consumers.

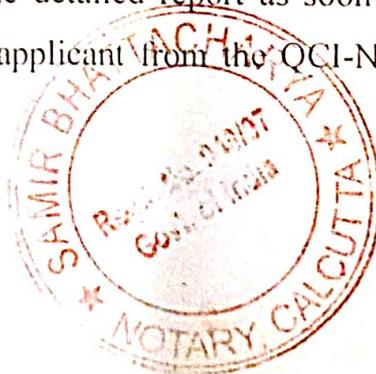
16. Surprisingly, the report cannot make any statements that there is no health impact, visibly evident, or that there is no deposition of fly-ash without conducting any sample testing of the surroundings including the effects of fly-ash contamination on rice, and as the rice mill was not functioning on the day of inspection, there is no conclusion which can be drawn as to the same. As the spirit of the order dated 12th September, 2023 was to ascertain whether the pollution caused in the premises leads to ingestion of 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 was being sprayed through sprinklers 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



Budhadeb Annu
Filed by
Shubhangi
Advocate

committee cannot hold the same as appropriate preventive or remedial measure so as to continue the business of production of rice by sharing the same compound more importantly in a radial distance of around 50 meters or less in between.

17. In such circumstances, it is humbly prayed that the report filed by the committee on affidavit is vague and filed without proper assessment and even without any sample testing in true sense to ascertain the allegation as to contamination and the preparation of such report in deviation to the Order dated 12th September, 2023, besides being biased and mala fide. No reliance, therefore, should be placed on such report.
18. It is further prayed that it is the need of the hour that Your Honour may pass appropriate directions for conducting a fresh inspection with notice upon the original applicant and the present petitioner and all other parties to the proceeding and preparation of a technical report with adequate sample upon vivid inspection so as to maintain the unbiased nature and outcome of such inspection.
19. The applicant, in the interest of justice has taken steps for conducting necessary inspection for a detailed report from one competent, reputed and a QCI-NABET accredited organization having expertise in the field who continues to discharge its function in several cases upon being appointed by various judicial forum. The applicant hereby craves leave to submit the detailed report as soon as the same is obtained by the applicant from the QCI-NABET accredited organization.



Beedhadeb Anken
 Filed by
 Beedhadeb Anken

20. There is a strong prima facie case in favour of the applicant herein.
21. The balance of convenience and/or inconvenience is in favour of passing order as prayed for herein.
22. Unless an order is passed as prayed for herein, the applicant will suffer irreparable loss and injury.
23. This application is made bonafide and for the ends of justice.

In the circumstances, your petitioner prays for the following reliefs:-

- a) An order for setting aside the committee report dated 30.11.2023 filed by the West Bengal Pollution Control Board (WBPCB) on the grounds stated hereinabove;
- b) An order for conducting a fresh inspection with notice upon the all parties and preparation of a technical report with adequate sample upon vivid inspection so as to maintain the unbiased nature and outcome of such inspection.
- c) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.



And your applicant, as in duty bound, shall ever pray.

Beedhadesh Omer
 Filed by
 Beedhadesh Omer
 Advocate

VERIFICATION

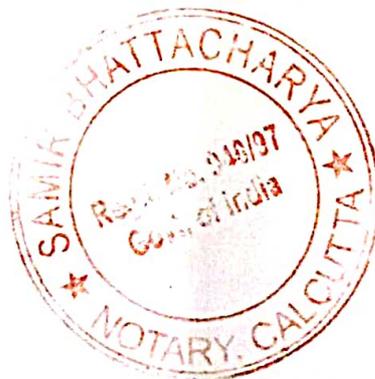
I, Buddhadeb Ankure, son of Ganesh Ankure, aged about – 38 years, by faith – Hindu, residing at Village - Gopinath Bati, P.O. – Gonna, Dwariapur, Barddhaman, West Bengal – 713128, do verify that I am the applicant in the instant application and I am well acquainted with the facts and circumstances of the instant case and the statements contained in paragraph 1 to 16 are true to my knowledge and rests are my humble submission before the Learned Tribunal.

Buddheb Ankure

DEPONENT

Prepared in my chamber

Sapali Bhattacharya
Advocate

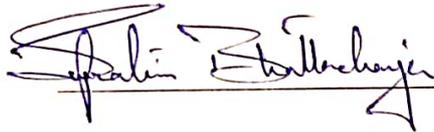


AFFIDAVIT

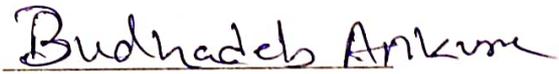
I, Buddhadeb Ankure, son of Ganesh Ankure, aged about – 38 years, by faith – Hindu, residing at Village - Gopinath Bati, P.O. – Gonna, Dwariapur, Bardhaman, West Bengal – 713128, do hereby solemnly state and affirm as follows:-

1. That I am the applicant in the instant application and am well acquainted with the facts and circumstances of the instant case and I am competent to affirm this affidavit.
2. That the statements contained in paragraph 1 to/6 are true to my knowledge and rests are my humble submission before the Learned Tribunal.

Prepared in my chamber

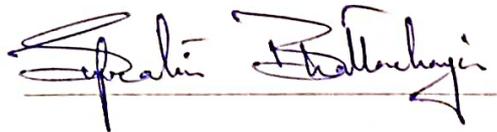


Advocate



Deponent

Identified by me



Advocate



03 MAY 2024

Solemnly Affirmed and Declared before me U/S 109 CPC/U/S297 (C) CRPC





Notary

Samir Bhattacharya
Notary Govt. of India
Regd. No. - 940 / 97
CITY CIVIL COURT, CALCUTTA

16

Annexure - A'

Item No.07

Court No.1

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

Original Application No.107/2023/EZ
(I.A. No.13/2024/EZ)

Soumen Chakraborty

Applicant(s)

Versus

The Principal Secretary,
Environment Dept. Govt. of West Bengal & Ors.

Respondent(s)

Date of hearing: 18.03.2024

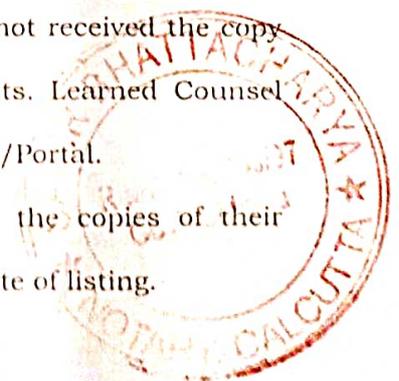
**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : Mr. Deepnath Roy Choudhury, Advocate a/w
Mr. Saunak Sengupta, Advocate (in Virtual Mode),
Mr. Khondher Samiul Haque, Advocate,
Mr. Bhaskar Dwivedi, Advocate and
Mr. Rahul Naskar, Advocate

For Respondent(s) : Mr. Sudip Kumar Dutta, Adv. for R-1,2,7,9,11,13&17(in Virtual Mode),
Mr. Dipanjan Ghosh, Advocate for R-4, 5 & 8,
Mr. Ashok Prasad, Advocate for R-6,
Mr. Md. Karim Warsi, Advocate a/w
Mr. Arpita Mondal, Advocate and
Mr. Md. Rahim Waris, Advocate for R-14 to 16,
Mr. Kaushik Bhatta, Advocate a/w
Mr. Supratim Bhattacharjee, Advocate (in I.A. No.13/2024/EZ)

ORDER

1. Mr. Deepnath Roy Choudhury, learned Counsel appearing on behalf of the Applicant prays for and is granted further four weeks time for filing rejoinder affidavit.
2. Mr. Md. Karim Warsi, learned Counsel appearing on behalf of the Respondent Nos.14 to 16, states that he has not received the copy of the affidavit filed by the State Respondents. Learned Counsel may download the same from the NGT Website/Portal.
3. The Counsel for the parties shall exchange the copies of their affidavits among themselves before the next date of listing.
4. **List on 08.05.2024.**



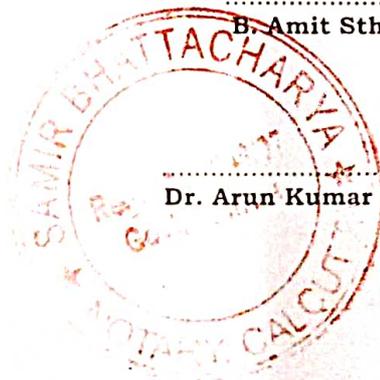
I.A. No.13/2024/EZ:-

1. This Interlocutory Application has been filed by the Applicant-Buddhadeb Ankure, to allow the Applicant to intervene in the present proceedings.
2. The only objection raised by Mr. Md. Karim Warsi, learned Counsel for the Respondent Nos.14 to 16, Private Respondents, is that the representation made by the proposed intervener was sent on 02.01.2024 which was received in the Office of the District Magistrate, Purba Bardhaman on 05.01.2024.
3. Mr. Kaushik Bhatta, learned Counsel for the Intervener Application submits that the Applicant-Buddhadeb Ankure, was not aware that there was an Original Application No.107/2023/EZ pending in the Tribunal and, therefore, he submitted a representation before the District Magistrate, Purba Bardhaman on 02.01.2024 but when he came to know that the Original Application is already pending on the same issue, he has filed the Intervener Application to highlight certain additional grounds relating to environmental violations by the Respondent Nos.14 to 16.
4. Mr. Deepnath Roy Choudhury, learned Counsel for the Applicant states that he has no objection if the Intervener Application is allowed.
5. We, accordingly, allow the I.A. No.13/2024/EZ.

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

March 18, 2024,
Original Application No.107/2023/EZ
(I.A. No.13/2024/EZ)
MN



18

Annex - B'

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: -

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- 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

INTERIM APPLICATION NO. OF

2024/EZ

In the matter of:

Soumen Chakraborty
... Original Applicant

-Versus-

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

...Respondents

INTERIM

APPLICATION

SUPRATIM BHATTACHARJEE

Advocate

High Court at Calcutta

6, OLD POST OFFICE STREET,

ROOM NO. 72, 2ND FLOOR,

KOLKATA – 700001

(TEMPLE CHAMBERS)

Mob.: 8617252806

E-mail:

bhattacharjeesupratim@gmail.com

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