

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
IN
OA. No.84/2022

IN THE MATTER OF:

T.V. George

.....APPLICANT

VERSUS

The Chairman, Railway Board,
Ministry of Railway & ORS.

.....RESPONDENTS

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Filed by:-

Ashok Prasad

(ASHOK PRASAD, ADVOCATE)
Counsel for Ministry of Railway

Dated: 21/01/2023
Place: Kolkata

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

SL. No. 44/2022
Date 03-01-23

IN
OA. No.84/2022

IN THE MATTER OF:

T. V. George

.....APPLICANT

-VERSUS-

The Chairman, Railway Board,
Ministry of Railway Board & Ors.

.....RESPONDENTS



**A REPLY FILED ON BEHALF OF THE RESPONDENT NO.1 & 2
TO THE REJOINDER FILED BY THE APPLICANT, IN OA. NO.
84 OF 2022.**

I, Dilip Kumar Singh S/o Sri Ram Singh, aged about, 52
years, by Religion-Hindu, by Occupation-Service, having

office at Divisional Railway Manager/Alipurduar Jn./N. F. Railway do hereby solemnly affirm and declare as under: -

1. That, I am, in the capacity of Divisional Railway Manager, Alipurduar, North East Frontier Railways, Alipurduar, West Bengal, and as such, competent to file the present affidavit. I am fully conversant with the facts of the case and hence, competent to depose and swear the present reply /additional affidavit as under:

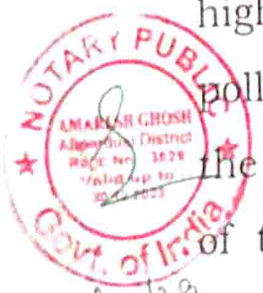


08/05/23

2. That I have read a copy of the rejoinder filed by the applicant and have understood the meanings, contents and purports thereof.

3. That, by the rejoinder inter alia, the applicant arraying the State Pollution Control Board of improper selection of the Constituent Members to the Inspection Committee and thereby to reject its

Inspection Report but equally has also raising contentions against the railway of running the Dalgaon siding at without CTO and thereby soliciting this Hon'ble Tribunal to impose heavy penalty/cost on the railway. In this regard, your humble deponent begs to submit that railway being respondents No. 1 & 2 in the array, has already submitted the counter affidavit as well as the additional affidavit highlighting all the actions taken for mitigating pollution in the area with the prescribed norms of the State Pollution Control Board but in compliance of the Hon'ble Tribunal's solemn directives/orders passed in this regard.



08/05/23

4. Now, the Deponent begs to proceed to submit before this Hon'ble National Green Tribunal, Eastern Zone at Kolkata Bench of the contentions/averments raised by the applicant in his Rejoinder against the Respondent No. 2. In fact, the applicant has not gone through the affidavits filed on behalf of the railway

respondents as well as has not seized of the ground report about the effective actions initiated by the railway for full control of the dust pollution in the area, Instead the applicant projecting all the resolvable problems in a never ending way.

5. That, the deponent begs to state that, Dalgoan railway siding was established long before the year 1975 and since then, the siding is playing an important logistic role in the growth of revenue of the central government as well as become vital factor for employment generation in the locality together with development in business activities in the area. It is also notable that, the Abadi area of the Birpara is expanding toward the railway area in a haphazard manner augmenting the present clamorous phenomenon. Since, the siding is involving a greater public interest, stopping of its operation will be entailed an irreparable loss of government revenue as well as the railway working. Further, it is stated that the deponent's matter is concerned to a railway siding as a part of railway systems and activities,



which can be treated apart from other establishments like the Industries and Factories that produce hazardous fume and disbursements. The soil dusts are coming into air due to plying of heavy trucks and dumpers over the unpaved, non cemented roads are only tamable and soluble problems by taking comprehensive measures which are now, effectively been checked, to say in greater clarity, already been adopted measures for controlling of dust pollution in the august guidelines of the State Pollution Control Board and in pursuance to the solemn Orders and Directives passed by the Hon'ble Tribunal, Eastern Zone time to time.



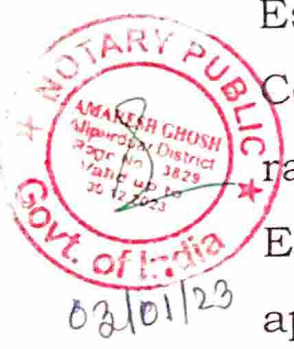
09/01/23

The measures taken by the railway in the particulars given by the State Pollution Control Board but under the solemn directives of the Hon'ble Tribunal are doing very effective in controlling the dust pollution in the area and hopping for more steps and measures for taming the pollution while the matter is till subjudice before this Hon'ble Tribunal for direction and decision. Hence, the prayer of the applicant for closure/stopping of

loading at the siding is nothing but an intrigue against the greater public interest is liable to be rejected.

6. That, Dalgaon railway siding is since been operating from before the year 1975, that is, well before the advent of the relevant Environmental Acts, as such, Railway is operating the siding as a part of the railway systems without permission to Establish/Operate from the concern State Pollution Control Board due to reason stated above. However, railway without contradicting the relevant Environmental Provisions has already submitted application to the State Pollution Control Board by depositing the required statutory fee for obtaining permission of CTO to the siding. In this context, the relevant provisions of the Air (Prevention & Control of Pollution) Act, 1981 may profitably be quoted as under-

- a) Section-19 of the Air Act which reads “(1) The state Government may, after consultation with the State Board, by notification in the



Official Gazette, declare in such manner as may be prescribed, any area or areas within the State as air pollution control area or areas for the purposes of this Act". As such, can, by notification in the Official Gazette, alter, reduce and declare a new air pollution control areas.

b) Section-21 of the AIR ACT, 1981 says "(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board ,establish or operate any Provided that a person operating any industrial plant in an air pollution control area immediately before the commencement of Section- 9 of the Air (Amendment) Act 1947, for commencement, may continue to do so for a period of three months from such commencement or, if he has, made an application for such consent within the said period of three months, till disposal of such application. (2) Provided that, any person, Immediately before the declaration of any area as an air pollution control area,



operates in such area any industrial plant such person shall make the application under this sub-section within such period (being not less than three months from the

date of such declaration) as may be such application, he shall be deemed to be operation such industrial plant with the consent of the State Pollution Control Board until consent applied for has been refused”.

7. That, from reading above, it is garnered as that,

i) to carry out the purport and intention of the relevant Environmental Acts, the State Government has to declare any area with consultation the State Pollution Control Board as **Pollution Control Area** and thereof prescribe the air standard and rules for operating any industry, manufacturing plants in the area, for violation of which may led to imposition of penalty upon the violator.



ii) Further it is stated that, the railway siding is not falling under the definition of Industry Act or Factory Act either which may not producing poisonous air pollutants and disbursements. Present phenomenon is said to be coming due to the

multi plying of trucks on the unpaved congested road as well as haphazard expansion of the Birpara Township towards the vicinity of the railway lines. More so, the Dalgaon siding is opened and operating as a part of the Railway System. However, railway without contradicting the relevant Environmental Provisions has already been submitted application to the State Pollution Control Board by depositing the required statutory fee for obtaining permission of CTO to the siding.

iii) The rules and measures have yet to be prescribed by the concern State Pollution Control Board for granting CTO.



iv)The subject matter is now being under survey and inquiry by the State Pollution Control Board to determine the air pollution under the solemn directions and orders of this Hon'ble Tribunal. The fruitful and effective actions and measures taken by the respective stakeholders are already been

submitted before the Hon'ble Tribunal by way of affidavits and now, becoming part of record and proceeding before the Hon'ble Tribunal.



In the count above, the inculcation of the applicant for imposing heavy penalty upon the Railway, for operating siding without CTE/CTO is baseless and mere a perturbing one, as such, liable to be rejected limine.

Para-wise Reply to the Rejoinder

8. That, with regard to statements made in para- 1, 2 & 3, the answering deponent begs to submit no reply in this regard as the contentions are against about non administration of the environmental rules by the State Pollution Control Board.

9. That, with regard to contentions made in para- 4, 5, & 6, the answering respondent begs to submit that, admittedly, the volume of transportation of dolomite at Dalgaon Siding is increasing due to growth of the railway's logistic business allotment. In this respect, the deponent begs to reiterate as under-

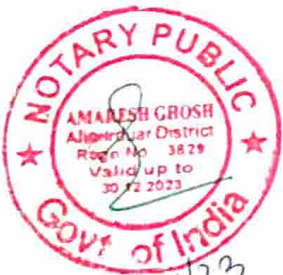
a) The importance of the Dalgaon siding is very high to which, the applicant has also admitted in his rejoinder. As such, the siding is playing the role of greater public interest i.e. in the growth of Government revenue. Further, as per direction of the Hon'ble Tribunal, the State Pollution Control Board had constituted the high level committee to see and enquiry into the complaints of pollution in the area.

b) The committee carried out the ground inspections on 01.09.2022 and 02.09.2022 and submitted its report and the State Pollution Control Board has submitted their report by way of Additional Affidavit before this Hon'ble



Tribunal inter alia reflecting the Committee Reports of the findings. Railway has also submitted their affidavits highlighting the measures taken for prevention of pollution as per directives of this Hon'ble Tribunal dated 29.09.2022.

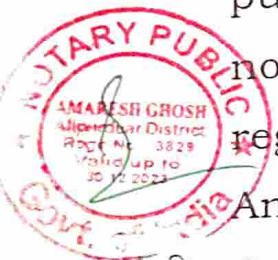
- c) Since, the matter has remained subjudice of this Hon'ble Tribunal, and on the other, railway has applied for CTO on 16.06.2022 as well as has simultaneously been executing the all out remedial measures to check the dust pollution. There is no report of air particles exceeding the Air Standard, there is no justification of stopping of loading and unloading of dolomite at Dalgaon siding at the irreparable loss of public money. In fact, railway needed continuation of the siding but in the same intention, has bowed to have tackled the pollution by strict adherence to the Environmental and Pollution Rules.



02/01/23

In regard to alternative siding i.e. at Mujnai Railway Station, is also on the card, for which the District Authority of the concern has been proposed for acquisition of land.

10. That, with regard to statement made in para-7 of the rejoinder, the answering deponent begs to submit that stopping of loading/unloading at the railway siding is a Government policy decision since the Dalgaon siding is a part of the Railway's System involving a greater public interest, as such, the divisional level authority is not competent to take independent decision in this regard. However, vide letter dated 04.08.2022, Annexure R/2 to rejoinder, the West Bengal Pollution Control Board had suggested some remedial actions and measures to the railway with the directions such as, not to operate siding without obtaining CTO from the Board and to submit proposal for alternative siding in place of the Dalgaon, for examining the Environmental Impact Study. Moreover, the issue of operation/non-operation of the siding is itself has been challenged before the Hon'ble Tribunal by way the present Original Application, in that count, stopping of



02/03/23

operation/non-operation of the siding is itself has been challenged before the Hon'ble Tribunal by way the present Original Application, in that count, stopping of loading of dolomite at Dalgaon siding does not arise in the present position of the case. As the CTO was already applied for on 16.06.2022 along side, shifting of the Dalgaon siding to other alternative sites are also been on the anvil. In this regard, the concerned District

Administration has been proposed for acquisition of land and the rests measures suggested by the State Board have fully been complied with by the railway.



02/06/23

11. That with regard to statement made para 7(iv), the answering deponent beg to submit that, in the circumstances stated in the foregoing para ... of this reply, the penal actions proposed against the Respondent No. 1 & 2 under section 15 & 17 of the Environmental Protection Act, 1986 don not attract in to the present case of the respondent No. 1 & 2 at all. Further, it is pertinent to submit herein that whereas, as measures could be initiated by the

and wealthy atmosphere people living the area. As such, it is also equal duty of the applicant, being a whistle blower to the benevolent cause of the society, required to co-operate with the Government Organizations to mitigate the problems, stead of canvassing for imposition of heavy penalty upon the railway for not obtaining CTO of the siding. In the same count, the vocal inculcation of applicant for closing of the Dalgaon siding together with demand for shifting of the same to other is not sustainable in view of the opposed to the greater public interest too. In fact, railway is to continue the siding on the greater public interest with motto of "sustainable development" and so, taking all the remedial Measures for controlling the pollution in the area but with strict adherence to the Environmental Norms.



12. That, in the, circumstances above and for the end of justice, your humble deponent shall ever pray.

VERIFICATION

Verified at Alipurduar on this 3rd of January, 2023,
that the contents of the above affidavit are true and correct to
the best of my knowledge. No part of it is false and nothing
material has been concealed there from.

Identified by me.
Geeta Kundu
Advocate
3.1.22

Dilip Kumar Singh
DEPONENT

मंडल रेल प्रबंधक,
Govt Railway Manager
02 सी. एल. / N.F. Railway
गिरिपुर जं / Alipurduar Jn

