

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

O.A. No. 24/2014/EZ

&

M. A. 81/2015/EZ

SUBHAS DATTA

VS

GOVT. OF WEST BENGAL & ORS

CORAM: Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: Applicant : Mr. Subhas Datta, Advocate in person
Respondent No.1 : None.
Respondent No. 2 & 3 : Mr. C.S. Banerjee, Advocate
Respondent No. 4 : Mrs. Arpita Chowdhury, Advocate
Respondent No. 5 : Mr. Surendra Kumar, Advocate
Respondent No.6 : Mr. Bikas Kargupta, Advocate.

Date & Remarks	Orders of the Tribunal
Item No. 3 28th August, 2015.	Perused Registry's note dated 27.08.2015. From the annexure at page 269 viz. letter dated 30.06.2015 issued by Environmental Engineer, Durgapur Regional Office, it appears that the validity of consent to operate, which was expired on 31.12.2014, has been extended upto 31.12.2015 by considering the application and necessary order was passed on 30.06.2015. Hence it appears that from 1.01.2015 to 29.06.2015 there was no consent to operate from State Pollution Control Board to run the Bakreshwar Thermal Power Station by Respondent No. 3. The language used by the Environmental Engineer in the said letter that consent to operate issued earlier is extended for a period upto 31.12.2015 means that the period when there was no consent to operate w.e.f. 1.01.2015

to 29.06.2015 was regularized by the said Engineer. In view of such position, the Member Secretary, State Pollution Control Board and the concerned Engineer are directed to file affidavit answering issue as to whether the PCB has the power to issue an order under statutory provision of the law, relating to extension in the manner as has been done in this case by Environmental Engineer issuing a letter dated 30.06.2015 giving retrospective effect of the order of consent to operate. These affidavits to be filed by Member Secretary and concerned Engineer within 15 days positively serving the copy of the same upon the applicant and other co-respondents.

Ld. Counsel Mr. C.S. Banerjee appearing on behalf of Respondent Nos. 2 & 3 prays for adjournment on behalf of his Ld. Senior Advocate Mr. Lakshmi Gupta. Despite our direction passed on 27.07.2015 no supplementary affidavit has been filed by Respondent No. 3 answering the point II on issue as to why the project proponent viz. respondent No 3 would not be liable to pay a penalty/compensation of Rs.5.0 crores for causing environmental degradation by putting fly ash to the river Chandrabhaga and Bakreshwar and also causing severe injury to the environment and the entire locality and inhabitants thereof and the animals who are dependent on the river water. When admittedly there was no consent to operate w.e.f. 1.01.2015 then mere pendency of the application seeking consent to operate will not give licence to the project proponent to operate their industrial unit violating the environmental norms and on proposed construction of the second ash pond when the existing as per their statement one can cater the need of accommodating the fly ash as is being generated from 5 x

210 MW power plants. It appears that the Respondent No. 3, who is an authority under Article 12 of the Constitution and is a public authority being State Govt. undertaking which is supposed to act as a model industrialist to run an industry without polluting the environment, acted otherwise. Respondent No. 3 is avoiding to answer the points as raised by us in our earlier order dated 13.07.2015.

Ld. Counsel appearing for the PCB further prays for 15 days time to clarify the points as above. Prayer is allowed. The affidavits to be served upon the respective parties prior to filing the same to the registry. The respective parties are at liberty to file objection of the affidavit, if they so desire before the final date of hearing.

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Mr. Dutta, the applicant appearing in person submits that he is not inclined to proceed with the M.A. Hence without going into the merit of the issue this Miscellaneous application stands dismissed as withdrawn.

Matter stands adjourned to 15.09.2015.

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Justice Pratap Kumar Ray, JM

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

