

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

**MA 274/2015/EZ & MA 275/2015/EZ  
IN**

**Original Application No. 02/2015/EZ**

**M/S MA DEVIKA BRICK FIELD  
M/S MA BRICK FIELD**

**VS**

**Joydeep Mukherjee & Ors**

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

**PRESENT:** Applicant of MAs : Mrs. Debanjana Ray Chaudhuri, Advocate  
Original Applicant : None  
Respondent No. 1 : Mr. Sibjyoti Chakraborty, Advocate  
Respondent Nos. 2 to 6 : Mr. Bikas Kar Gupta, Advocate  
Respondent No. 7 to 10 : None

<b>Date &amp; Remarks</b>	<b>Orders of the Tribunal</b>
<b>Item No.17 &amp; 18 15<sup>th</sup> October, 2015.</b>	<p style="text-align: center;">Both these MAs are taken up together since common facts and question of law are involved.</p> <p style="text-align: center;">Heard the Id. advocate for the applicants of MAs and Id. adv. for the State respondents, Mr. Bikas Kargupta.</p> <p>Earlier, we directed the DL &amp; LRO, Purba Midnapur, Tamluk to file an affidavit answering his jurisdiction to grant consent to operate certificate with retrospective effect. From the records available before us it is revealed that consent to operate order was passed on 6.5.2015 by the said officer as delegatee of the WB PCB for a period from 1.6.13 to 31.5.2018. An affidavit has been filed in terms of our earlier order dt. 22.9.2015 by one Smt. K. Radhika liyer holding the post of DL &amp; LRO and ADM, Purba Midnapur. Mr. Kargupta, Id. adv. has referred to para 7 of the affidavit to point out that no retrospective effect was given.</p>

However, it is seen that the application seeking consent to operate was filed on 4.9.14 by the applicant. The decision was taken to grant the consent on 6.5.15. Earlier consent to operate expired on 31.5.13. Hence, it is quite evident that despite illegal operation of the brick field of the applicant for about 16 months, consent to operate was extended giving retrospective effect from 7.6.13. The paragraph referred to reads as follows :-

“ 7. That the undersigned is banked upon to say that the consent to operate certificate renewed by the office of the District Land & Land Reforms Officer, Purba Medinipur was not given for retrospective effect mere it was renewed in response to the application filed by Swapan Kumar Giri, the prop of M/s Maa Devika Brick field and in compliance of the said order issued by the West Bengal Pollution Control Board, mentioned herein above and annexed as Annexure-B “

It appears that consent order was issued on 6.5.15 which is annexed at page 6 of the application. It is issued under memo No. 1768 which states that consent to operate under section 25 and 26 of the Water (Prevention and Control of Pollution) act 1974 and Section 21 of the Air (Prevention and control of Pollution) act, 1981 as amended and rules and orders made thereunder hereby granted consent to MAA Brick Field (Respondent N. 275) for the period 1.6.13 to 31.5.18. Admittedly, the application for consent to operate was filed on 4.9.14. Therefore, it is quite evident that consent was granted when there was not even an application seeking consent to operate before the delegatee of the PCB. This is also the case with MA DEVIKA BRICK FIELD OF MA 274/2015/EZ.

Therefore, it clearly depicts a picture where validity of the operation of the unit was given effect from 1.6.13 when there was no application filed by the applicant. In our view this action of giving such order does not come under four corners of the aforesaid two Acts. The said officer has no jurisdiction to grant any consent to operate from an earlier date when in fact no application for renewal was pending. The renewal application was filed later on. This is a serious breach of the

statutory provision. The said officer being the creature of the statute and a delegatee of the PCB, cannot go beyond the statutory provision and his or her jurisdiction. Consent to operate is always effective prospectively or at best from the date of filing application for such consent. It can never be from a retrospective date which practically has happened in this case.

In view of the breach committed by the said officer, we are of the opinion that appropriate step should be taken against the officer, who has signed the consent letter.

The said officer is directed to file affidavit answering the point as to why appropriate fine shall not be imposed upon him/her by two weeks to the Registry. The said officer/present officer holding the post is also directed to recall the order of the consent to operate issued in favour of the applicants herein giving its effect from 1.6.2013 and to issue fresh consent to operate order correcting the date of effect for which the applicants are entitled to.

Mrs. Ray Chaudhury, Id. adv. for the applicants submits that the applicants are agreeable to pay the penalty for operating the unit without consent to operate for the period 1.6.13 till the date of application seeking fresh consent to operate on 4.9.14.

However, in the present MA nothing has been mentioned on that issue regarding payment of penalty. Hence, leave is granted to file supplementary affidavit on this issue. **The matter will be considered on 27.10.2015.**

This common order will govern both the MAs viz. MA 274/2015/EZ and MA 275/2015/EZ.

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Justice Pratap Kumar Ray, JM

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

