

Item No.05

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)

Original Application No. 33/2014(EZ)

Subhas Datta

Applicant(s)

Versus

State of West Bengal&Ors.

Respondent(s)

Date of hearing: 27.11.2018

CORAM : **HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER**
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): Mr. Subhas Datta, Applicant in person

For Respondent (s): Mr. Abhratosh Majumdar, Senior Advocate for R-1

Mr. T.M. Siddiqui, Advocate

Mr. Bikas Kargupta, Advocate

Mr. Nilotpai Chatterjee, Advocate

Mr. Bikas Kargupta, Advocate for R-2

Mr. Gora Chand Roy Choudhury, Advocate for R-4

Ms. S. Roy, Advocate

Mr. Kallol Guhathakurta, Advocate for R-8

Mr. Shamba Dutta, Advocate

Mr. Surendra Kumar, Advocate for CPCB

ORDER

1. The present proceeding has been instituted for execution of judgment of this Tribunal dated 11.08.2016 in Original Application No. 33/2014(EZB).
2. The case pertains to the alarming adverse air quality of Kolkata City which was stated to be highly polluted during the period commencing from mid-October to February end. By the judgment, the recommendations made by the Expert Committee appointed by the Tribunal had been directed to be complied with in addition to the suggestions made by the applicant. Reference in this regard may be made to paragraphs 35 to 39 of the judgment. A compliance report was also directed to be filed on 07.02.2017.
3. When the matter came up before us for consideration of the compliance report submitted by the State Government, we had

noticed that the directions as contained in the judgement had not been complied with and in fact in our order dated 16.08.2017, we had expressed our deep disappointment with the State Government's approach on the matter and the unnecessary delay being caused in dealing with it.

4. The principal reason for the bad ambient air quality in the city of Kolkata and Howrah was identified to be auto emission apart from road dust, construction activities, burning of municipal waste and industrial wastes including plastics, population of DG sets and industrial emissions. We had noted that the State had failed to take any effective measures to control the source of such emission. Specific directions had also been issued for phasing out vehicles which were more than 15 years old apart from taking other measures as a step to deal with the menace.
5. We had further observed that even the Hon'ble Supreme Court was in seizin of such matter apart from the NGT (PB) with regard to the question of serious deleteriousness of auto emission. We had also referred to the directions of the Hon'ble Supreme Court by which introduction of EURO-VI standard vehicles was called for from the year 2020 and the orders of the Tribunal in furtherance of the orders passed by the Hon'ble Supreme Court for phasing out old vehicles.
6. The affidavits filed by the State respondents had been considered even on 25.01.2018 and we had expressed that the so called compliance were far from being satisfactory. We had thus directed the state respondents to deal with each of the points by filing a better affidavit. We had noticed, as would be apparent from order dated 25.01.2018, that the level of SO_2 , $\text{PM}_{2.5}$, NO_2 and PM_{10} in the city of Howrah was far in excess of the permissible standards.
7. Referring to the case of *Vardhaman Kausik Vs. Union of India & Ors.*, O.A. No. 95/2014, we had directed the State respondents to

introduce some mechanism and instruments to check emissions of moving overloaded heavy vehicles in order to collect the true data of emission as it was not possible to do so in stationary vehicles. The State Respondents had also been reminded of the need to convert all commercial transport vehicles to CNG which was also the subject matter in Original Application No. 56/2015/EZ. This was followed by order dated 24.04.2018 when the Additional Chief Secretary, Department of Transport was also present as directed vide order dated 19.04.2018. Even on that day, the affidavit of the Additional Chief Secretary was not correctly filed. However, we had taken it on record for dealing with the matter in substance rather than in form.

8. As a fallout of the previous proceedings and the report of the Additional Chief Secretary, Department of Transport, we had directed that the Department should file a data on the number of vehicles which were 15 years old plying in the city of Kolkata in the first instance.
9. On the prayer of learned Additional Advocate General, the National Informatics Centre (NIC) was also impleaded as party as it would be in possession of the data pertaining to various vehicles plying in the city and Mr. Tapan Kr. Das, Senior Technical Director, NIC who was present had accepted the notice on behalf of the Centre.
10. Unfortunately, inspite of more than seven months having elapsed after the order dated 24.04.2018, no tangible action taken by the State has been placed before us. The State Pollution Control Board has remained blissfully silent in spite of the fact that it is the primary responsibility of the Board as a regulatory authority to ensure that the ambient air quality is maintained within the permissible limit. In the meanwhile, it is an undeniable fact that the ambient air quality has deteriorated. In *M.C. Mehta Vs. Union of*

*India*¹ has been held that decline in quality of environment reflects failure of the authorities to perform their obligation under the Constitution and the mandate of laws. If the regulatory authorities either connive or act negligently by not taking prompt action to prevent, avoid or control damage to environment, natural resources, people's health and property, the principle of accountability for restoration and compensation have to be applied. We may refer to *M.C. Mehta vs. Union of India*² in this regard. Apart from this, the Hon'ble Supreme Court has also laid down that the accountability cannot be restricted to the polluter alone but also upon the governmental agencies who are responsible for enforcement of the laws to prevent pollution.

11. Mr. Abhratosh Majumdar, learned Additional Advocate General who is present for the State Government prays that he may be permitted to file a comprehensive affidavit dealing with all aspects as per directions contained in the judgement. While allowing the prayer, we are of the view that the State respondents cannot be let off without paying a reasonable sum as environmental compensation for the continued lapse on its part and in permitting the ambient air quality to deteriorate resulting in the people having to suffer serious hazards of health for all these years.
12. We accordingly direct the State of West Bengal to pay a sum of Rs. 5 Crores as interim environmental compensation which shall be deposited with the Central Pollution Control Board. The amount shall be deposited within a period of two weeks from hence, failing which it shall entail further compensation of Rs. 1 crore per month of delay. This is being imposed following the 'Polluter Pays' Principle in terms of Section 20 of the National Green Tribunal Act, 2010 and also the laws alluded to above.

¹(1996) 6 SCC 12
²(2004) 12 SCC 118

13. Let the respondents file the affidavit as prayed for by Mr. Majumdar before the next date by serving advance copies on the applicant, Mr. Subhas Datta. We make it clear that the Tribunal shall not brook any further delay in complying with the directions.
14. List again on 8th January, 2019.

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

November 27, 2018
DV

