

Item No. 01

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

Original Application No. 64/2020(EZ)

Dakshinbanga Matsyajibi Forum

Applicant(s)

Versus

Inland Waterways Authority of India
& Ors.

Respondent(s)

Date of hearing: 19.10.2020

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

For Applicant(s): Mr. Ritwick Dutta, Advocate a/w Ms.
Meera Gopal, Advocates

For Respondent(s): None

ORDER

1. This application has been filed under Section 14 read with 15 of the National Green Tribunal Act, 2010. The applicant, who claims to work on welfare issues of small scale and artisanal fishing communities dependent upon the Hooghly river and the Sundarbans for their livelihood, states that frequent capsizing of barges carrying fly-ash on the Indo-Bangladesh Protocol Route which flows through the highly eco-sensitive and fragile Sundarbans in the State of West Bengal, has been the direct cause of adverse

impact of such incidents. It is stated that the riverine ecology has been disturbed due to such incidents as mostly old, worn out and dilapidated barges are being plied and that the activities are being undertaken in violation of CPCB guidelines issued in 2013.

2. Further although the Inland Waterways Authority of India, which is responsible for ensuring safe and proper transport of cargo on the said route, has admitted such facts, no measures has been taken to identify the responsible barge owners and initiate appropriate legal action against them as there is no mechanism to deal with such increasing incidents. Concededly the development of NW 97 (Sundarban waterways) has an adverse impact with regard to which the IWAI has recommended detailed study to be undertaken including sediment transport, siltation and environmental impact assessment. Although EIA is stated to have been undertaken for the Sundarbans Waterways and e-tender released by IWAI in 2018 for consultancy services for the EIA for National Waterway-97, no clearance had been obtained under the provisions of the CRZ Notification, despite the fact that the entire Sundarbans area falls

under the CRZ 1A and, therefore, ecologically highly sensitive. It is stated that even when there are frequent accidents leading to discharge and release of millions of tonnes of fly ash into the river and estuaries forming part of the Indo-Bangladesh Protocol Route, no action has been taken by the West Bengal Pollution Control Board or the IWAI for prevention of such incidents. Also no action has been taken against the polluters/the barge operators and owners. On the above facts and circumstances, the applicant has sought for the following release:-

- “i. Direct that an enquiry be conducted by an Expert Committee to be appointed by this Hon’ble Tribunal on the fly ash barge capsizing incidents that have happened in the last five years on the River Hooghly in West Bengal and investigate the reasons for the frequent capsizing of fly ash barges in the Hooghly and fix responsibility prepare a time bound action plan to prevent such occurrence.***
- ii. Direct the IWAI to identify the responsible barge owners and to hold IWAI as well as respective barge owners responsible for damage to environment, and direct for payment of environmental damages in accordance with the Polluter Pay Principle under Section 15 of the National Green Tribunal Act, 2010.***
- iii. Direct that a Biodiversity Impact Assessment be conducted by the National Biodiversity Board with full participation of the fisherfolk and other coastal communities dependent on River Hooghly under the provisions of Section 36 (4) of the Biological Diversity Act, 2002 on the impact and risk due to transport of fly ash through ecologically sensitive areas including the Sundarbans and CRZ-1 areas.***
- iv. Direct for a detailed study including sediment transport, siltation and environmental impact assessment needs to be carried out to confirm the available area for reclamation to minimize the impact on the ecological balance, as recommended***

and accepted by IWAI in its report titled “Final Technical, Economic & Financial Feasibility Report for Sundarban Waterways,” 2017;

v. Direct that until such an assessment is conducted, transportation of fly-ash and other harmful substances be restricted on this highly ecologically stretch passing through the Sundarbans, and alternative route be explored through the Bay of Bengal;

vi. Direct that IWAI, State Pollution Control Board and Forest Department jointly form a monitoring mechanism to check the safety standards for barges carrying fly ash including fixing an age limit for those allowed to enter Indian waters; in particular, that these agencies ensure that the CPCB Guidelines which state “Dedicated boats and barges should only carry fly ash containers for transportation of fly ash. Specially designed jetty with automatic loading and unloading system for transportation of fly ash from silo to container should be developed” are followed in letter and spirit.

vii. Direct that a time bound action plan is prepared and implemented to remove all the fly ash that has been deposited in the Hooghly River Network, including the fly ash that has been carried downstream in the river, and that the said plan is prepared and implemented in accordance with international best practices, and in a transparent manner with the involvement of the public and environmental groups;

viii. Direct for assessment of compensation and mechanism of disbursal of the same to the affected small scale and traditional fisherfolk communities who have suffered losses in terms of their livelihood due to the contamination and impact on the fish catch in the stretch in question due to the capsizing of the fly ash barges.”

3. We have heard Ld. Counsel for the applicant and have gone through the application and documents filed therewith and we are satisfied that substantial question relating to environment arises in this case which require to look into by the Tribunal.

4. Issue notice returnable in six weeks.
5. The Applicant to furnish requisites within one week from hence.
6. In the meanwhile, we deem it essential to constitute a Committee comprising of:-
 - i. The CPCB
 - ii. The State Pollution Control Board
 - iii. The PCCF Wildlife, Government of West Bengal
 - iv. District Magistrate, South 24 Parganas
7. The State Pollution Control Board shall be the nodal agency.
8. The Committee shall verify on the factual aspects set out in the application after physical verification of the area in question and submit a report. The Committee may examine the factors giving rise to the situation and suggest measures to prevent the occurrence of such incidents and also mitigation measures in respect of fly ash already spilt in the waterway.
9. Let the report be filed within two months from hence.

10. List on 21.12.2020

S.P. Wangdi, JM

Dr. Nagin Nanda, EM

19th October, 2020
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