

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)**

Original Application No. 171/2016/EZ
(M.A. No. 57/2018/EZ)

Subhas Dutta

Applicant(s)

Versus

State of West Bengal

Respondent(s)

Date of hearing: 09.11.2021

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

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

For Respondent(s): Mr. Sibojyoti Chakraborty, Advocate for R-1 & 2,
Mr. Dipanjan Ghosh, Advocate for R-3,
Mr. Gora Chand Roy Choudhury, Advocate for R-4,
Mr. Partha Sarathi Mullick, Advocate for R-5,
Mr. Mr. Ashok Kuamr Banerjee, Sr. Advocate a/w
Ms. Paushali Banerjee, Advocate & Mr. Sibojyoti
Chakraborty, Advocate for R-6,
Mr. Surendra Kumar, Advocate for CPCB

ORDER

1. Mr. Subhas Datta, the Applicant in person is present.
2. Mr. Sibojyoti Chakraborty, learned Counsel is present for Respondent Nos. 1 & 2, State Respondents, Govt. of West Bengal, Mr. Dipanjan Ghosh, learned Counsel is present for Respondent No.3, West Bengal Pollution Control Board, Mr. Gora Chand Roy Choudhury, learned Counsel is present for Respondent No.4, Ministry of Environment, Forest and Climate Change, Mr. Partha Sarathi Mullick, learned Counsel is present for Respondent No.5, Kolkata Metro Rail Corporation Limited, Mr. Ashok Kumar Banerjee, learned Senior Counsel assisted by Ms. Paushali Banerjee, learned Counsel and Mr. Sibojyoti Chakraborty, learned Counsel is present for Respondent No.6, Kolkata Municipal Corporation and Mr. Surendra Kumar, learned Counsel is present for Central Pollution Control Board.

3. An affidavit dated 15.07.2019 has been filed by the Central Pollution Control Board, annexing thereto the views/comments of the Central Pollution Control Board (page no. 400 to the paper book). Mr. Surendra Kumar, learned Counsel submits that these are the proposed guidelines for the benefit of the Tribunal.
4. We find that these guidelines do not mention any date on which they have been notified although they were presented before the Tribunal through an affidavit dated 15.07.21019. We, therefore, direct the Regional Director, Central Pollution Control Board, Regional Office, Kolkata, to be present before the Tribunal on the next date of listing to assist the Court.
5. A compliance report dated 21.05.2021 (page no. 844 to the paper book) has been filed on behalf of the Respondent No.6, Kolkata Municipal Corporation, and in paragraph 3 thereof it is stated that the West Bengal Pollution Control Board has collected samples from both the Hot Mix Plants i.e. M/s Asphaltum Department (KMC), Palmer Bazar Road, Kolkata and M/s Asphaltum Goragacha Plant (KMC), Goragacha Road, Kolkata, and submitted its report on 01.03.2021 which show that no pollution is being caused by any of these plants.
6. However, an affidavit dated 30.06.2021 (page 850 of the paper book) along with analysis reports of gaseous emission dated 01.03.2021 (857 of the paper book) has been filed on behalf of the Respondent No.3, West Bengal Pollution Control Board. Item No. 32 under the heading 'Others' mentions SO_x & NO_x (to be submitted by recognized lab). The question is that if there is no report of SO_x & NO_x on record, how could the Kolkata Municipal Corporation have filed an affidavit stating that no pollution has been caused by the aforesaid two Hot Mix Plants. Thus, the affidavit of Kolkata Municipal Corporation is based on misleading facts. We, therefore, impose a personal cost of Rs. 5,000/- (Rupees Five Thousand Only) on Mr. Parag Bhushan Bhattacharyya, Executive Engineer (Mechanical), Goragacha Asphaltum Plant, Kolkata Municipal Corporation for having filed the misleading affidavit without caring to

examine the report of 01.03.2021 (page 857 of the paper book). The said amount of cost shall be paid through demand draft in the office of the Tribunal within two weeks. An affidavit of compliance showing the particulars of the demand draft be placed before the Tribunal on the next date of listing.

7. The Kolkata Municipal Corporation has also filed an Action Taken Report purportedly in compliance of the National Green Tribunal order, Annexure-A (page no. 424 of the paper book). The relevant extract of the Intermediate Action Taken Report (page no. 426 of the paper book) reads as under:-

Intermediate Action Taken Report

- *KMC is going to install Batch Mix Plant of 12 MT/Hrs. Capacity outside the Jurisdiction of Kolkata Municipal Corporation. Process for possessioning of land from Land & Land Reform Department, Govt. of West Bengal and preparation of estimate for Boundary Wall including Gate is under process. Work Order for procurement of Batch Mix Plant is issued. Commissioning of same Batch Mix Plant is expected to be started after 18 months from July 2019.*
- *KMC, at present has 3 (three) nos. milling machines and is going to purchase another 2 (two) nos. milling machine. Work order for which is issued. The procurement will take 6 (six) months from July 2019.*
- *KMC is going to procure 2 (two) nos. Pot-holes Mending Machines which is Eco-Friendly for which Work Order is expected to be issued by July 2018. The procurement will take 6 (six) months from July, 2019.*
- *KMC, at present has 2 (two) nos. Paver Machines and is going to purchase another 1 (one) no. Paver Machine for which Work Order is already issued. The procurement will take 6 (six) months from July 2019.*
- *Central Road Research Institute (CRRI), New Delhi has already submitted Technical Report along with the B.O.Q. for "Implementation of Environment Friendly Road Construction Technology at D.P.S. Road from junction of Prince Anwar Shah Road to junction of Abdul Rasul Avenue and from the junction of Abdul Rasul Avenue to junction of Hazra Road – Phase – I as Pilot*

Project” which is under process and the same is expected to be started from May 2020.

- *CRRI has advised to KMC that Hot-Mix Technology is not a obsolete one and Single Technology cannot be selected in place of Hot-Mix Technology considering the different technical parameters for different types of City Roads. As per their report, there are several numbers of Eco-friendly Technologies namely (i) Cold Mix Technology, (ii) Half-warm Technology, (iii) White Topping Technology, (iv) Concrete Pavement Technology, (v) Micro-surfacing Technology.*

CRRI has also advised that Cold-Mix Technology cannot be used as wearing course on major thorough fare of the city considering the high traffic density for commercial vehicles. From their study for the Pilot Project as stated above, it is reported that due to higher CVPD (more than 4500) and traffic loading (about 100 msa), construction of wearing course is not permitted using Cold-Mix Technology as per IRC:SP:100-2014.

- *As per their advise, KMC has already started to use Col-Mix Technology for preparation of Base Course (preparation of Bituminous Macadam) at different inner roads of the city on trial basis. The Cold-Mix is generated by using Concrete Mixture Machine at Site with the application of Bituminous Emulsion of MS Type along with the Stone Aggregates and Stone Grits. But, the instant base course has been covered with pre-mix as wearing course which his produced from Drum-mix TyPE Asphaltic Plant. The locations are (i) North Purbachal Main Road in Ward No. 106, (ii) Netai Nagar Road in Ward No. 109, (iii) Mukundapur Main Road in Ward No. 109, (iv) Road in front of AMRI Hospital, Mukundpur, in Ward No. 109. The photographs are Annexed herewith.*
- *KMC has already started construction rigid pavement at Canal West Road near Sealdah Railway Stack Yard as their no underground utilities are existing. Photographs before commencement of the work and during execution of the work are annexed for ready reference.*

Moreover, KMC has also taken a programme to develop the distressed inner roads of the Ward within the Kolkata Municipal Corporation where the level of crust of the carriage way have been significantly higher than that of entrances of the abating premises by using of Brick type Concrete Blocks after milling the raised portion of the carriage way.

- *IIT, Kharagpur has been entrusted for “Implementation of Environment Friendly Road Construction Technology at Sarat Bose Road & Guru Saday Road” and they have completed all technical tests and traffic survey and their final recommendation is expected to be submitted very shortly.*

Dy. CE(R/M) OSD (R) DG (Mech.) DG (Roads)”

8. Since this report is of July, 2019, we would like the Kolkata Municipal Corporation to file a fresh affidavit stating the action taken as per the Action Taken Report and the current status of compliance with regard to the recommendations made in the earlier order of the Tribunal.
9. We, further direct the West Bengal Pollution Control Board to file a fresh affidavit stating the SO_x & NO_x reports of both the Hot Mix Plants i.e., M/s Asphaltum Department (KMC), Palmer Bazar Road, Kolkata and M/s Asphaltum Goragacha Plant (KMC), Goragacha Road, Kolkata, before the next date of listing.
10. The parties shall exchange their affidavits among themselves at least one week before the next date fixed.
11. **List on 20.12.2021.**

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B. Amit Sthalekar, JM

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Saibal Dasgupta, EM

November 09, 2021
Original Application No. 171/2016/EZ
(M.A. No. 57/2018/EZ)
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