

Item No. 05

Court No. 1

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

(By Video Conference)

Original Application No. 120/2022/EZ

Subhas Datta

Applicant(s)

Versus

State of West Bengal &Ors.

Respondent(s)

Date of hearing: 07.02.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant(s): Mr. Subhas Datta, applicant in person (in Virtual Mode)

Respondents: Mr. Sudip Kumar Dutta, Advocate for R-1, 2, 4 & 6 (in Virtual Mode)
Mr. Dipanjan Ghosh, Advocate for R-3
Ms. Hera Nafis, Advocate for R-5 (in Virtual Mode)
Mr. Sibojyoti Chakraborty, Advocate a/w Mr. Prithwish Basu, Advocate for R-7

ORDER

1. Grievance in this application is against failure to conserve and maintain a large water body in Kolkata at the Western side of Science City, at 8, 19 and 20, East Topsia Road, Kolkata which is the buffer zone of the East Calcutta Wetland, only Ramsar site of the State. The Kolkata Municipal Corporation (KMC) has given a license for use of part of the water body for commercial purposes shown by following display boards at the entrance of the water body:

a) Orchid Banquets and Garden, Weeding, Events & Expo.

b) Calcutta Boating and Hotel Resorts (P) Ltd.

2. Various functions are organized by setting up temporary and permanent tents/shades/pandals. Such activities harm the aquatic/marine lives of the water-body to the detriment of environment and ecology of the area. No Environment Impact Assessment (EIA) has been conducted. The commercial activities have not been brought under the consent mechanism in terms of orders of this Tribunal dated 10th September, 2015 in OA No. 57/2015.

3. Vide order dated 6.9.2022, considering the grievance, the Tribunal issued notice to the respondents, including KMC and Respondent No. 5 - Calcutta Boating and Hotel Resorts (P) Ltd., the Project Proponent (PP). The Tribunal also constituted a joint Committee to ascertain impact of activities in question on the environment and also to test the water quality of the water body. The constitution of the Committee was as follows:

- a) *Mr. Kalyan Rudra, Chairman, West Bengal Pollution Control Board,*
- b) *Mr. Tapas Gupta, Chief Technical Adviser, West Bengal Pollution Control Board,*
- c) *Mr. Subrata Ghosh, Chief Engineer, West Bengal Pollution Control Board.*

4. The Committee visited the site and its report has been annexed to the affidavit filed by the State PCB dated 14.11.2022. According to the said report, water quality of the water body was beyond the norms and that the PP has been granted consent by the State PCB, subject to additional conditions. The observations and recommendations in the report are reproduced below:

“The observations of the Committee are as follows :-

1. *The premises at 11A/1J, East Topsia Road, Kolkata-700046, KMC Ward No. 66 is used for conducting various social ceremonies. There are five banquet halls (venues) that*

are rented out for such purpose. The land area as declared by the unit is 40,220 sq. metres.

2. There is a water body of approx. 75 bighas (privately owned as claimed by the unit representative) within the premises. For the purpose of conducting the social ceremonies temporary bamboo structures/platforms are erected in the water body. A layout of the site is enclosed.
As informed, the water body is used for pisciculture and the average fish production is about 5000 to 6000 kg/month.
3. As per the Consent to Operate issued by Board, the total gathering capacity, when all five banquets are in use, is approx. 1800 persons.
4. The kitchens attached to the banquets have no permanent cooking arrangements. Liquid effluent is discharged to KMC drain and solid waste is disposed through KMC.
5. Water sampling was done on 23.09.2022 from various points of the water body and test reports are enclosed. Sampling could not be done at the location of the temporary structure due to presence of the bamboo structures.
As per "Designated Best Use Water Quality Criteria" recommended by the Central Pollution Control Board, the desired pH value for the propagation of wildlife and fisheries is between 6.5 to 8.5 and the desired Dissolved Oxygen level is 4mg/l or more. The reported DO levels are over 5 mg/l but pH values are marginally above 8.5.

The BOD levels are higher than 3 mg/l and Coliform counts are also high. Therefore, as per the Water Quality Criteria, the water is not fit for bathing and drinking.

6. Consent to Operate obtained from the West Bengal Pollution Control Board is valid upto 31/08/2027 (copy attached). The Consent has been issued with the following additional conditions:-
 - a. All precautions to be taken to ensure that the water body within the premises is not polluted, that pisciculture is not affected and that the wholesomeness of the water body is maintained.
 - b. Cooking is not permitted. Only precooked food is to be brought and reheated before serving. Effluent Treatment Plant (ETP) and stack with suction hood (over cooking ovens) to be installed prior to undertaking any cooking activity in future.
 - c. Compliance with GoWB order dt. 27th June 2022, regarding ban on Single Use Plastic (SUP), to be ensured.
7. The unit has produced copies of Trade License, Property Tax Assessment Certificate from Kolkata Municipal Corporation and Fire License from the Fire Department, Govt. of West Bengal (copies attached).
8. During inspection, the committee has advised the unit to dismantle the temporary bamboo structures in the water body.

Recommendation :-

1. *The temporary bamboo structures with canopy prevent light penetration and this can have an adverse effect on the phytoplankton productivity and the Dissolved Oxygen (DO) levels of the water body. Therefore the unit may be directed to dismantle all bamboo structures in the water body.*
2. *Water quality of the water body shall be monitored by the unit on half-yearly basis.”*
5. The PP has also filed its response and submitted that it is complying with the environmental norms.
6. We have learned Counsel for the parties, perused the record and considered the issue arising in the matter.
7. Having regard to independent fact-finding report, quoted above, which shows that the State PCB has granted consent which requires all precautions to be adopted, directions which appear to be called for to protect the environment and enforce sustainable development principle are that due surveillance be maintained by the State PCB. The PP must follow best practices necessary for protection of water body which may be overseen by the State PCB and KMC. One such measure will be floating water mixing devices driven by solar panel for enhancement of oxygen in the lake. Further, the State Wetland Authority may look into the issue of applicability of compliance of the Wetland Rules, 2017 in the light of judgement of Hon'ble Supreme Court in *M.K Balakrishnan and Ors. v. Union of India and Ors., (2017) 7 SCC 805* and order of this Tribunal dated 25.11.2021 in *O.A No. 351/2019, Raja Muzaffar Bhat v. State of Jammu and Kashmir*.

The application is disposed of.

A copy of this order be forwarded to State PCB, KMC and State Wetland Authority by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

February 07, 2023
Original Application No. 120/2022/EZ
DV