

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

.....
APPEAL No. 07/2015/EZ

IN THE MATTER OF:

**Goutam Roy also known as Babla Roy,
Chairman, Sara Bangla Atasbazi Unnayan Samity,
a voluntary organization for the craftsman to
entrepreneur and traders' engaged in the
business of Atasbazi (Fireworks), having his office
at 51, B.R.B.Basu Road, Kolkata-700 001**

.....Appellant

V e r s u s

- 1. The State of West Bengal through
The Principal Secretary,
Government of West Bengal,
Department of Environment,
4th Floor, Poura Bhawan,
FD 415 A, Salt Lake City
Kolkata-700 106.**
- 2. The West Bengal Pollution Control Board,
Through its Member Secretary,
Paribesh Bhawan, 10A, Block-LA,
Sector-III, Bidhannagar,
Kolkata, PIN CODE: 700 098.**
- 3. The Director General of Police,
West Bengal, West Bengal Police
Directorate, Nabanna,
325, Sarat Chatterjee Road,
Howrah-711 102.**
- 4. The Commissioner of Police,
Kolkata Police Headquarters, Lalbazar,
Kolkata-700 001.**
- 5. Central Pollution Control Board,
Paribesh Bhawan, CBD-cum-office Complex,
East Arjun Nagar, New Delhi-110 032
Service through the Scientist D and
In-charge of the Zonal Office, Kolkata
Of the Central Pollution control Board,**

Southern Conclave, block 502,
5th & 6th Floors, 1582, Rajdanga Main Road,
Kolkata-700 107 (WB)

.....Respondents

COUNSEL FOR APPELLANT:

Mr. Abhigya, Advocate

Mr. Sarada Prasad Ray, Advocate

COUNSEL FOR RESPONDENTS :

Mr. Bikas Kargupta, Advocate for Respondents No.1,3 & 4

Mr. N.C.Bihani, Advocate and

Mr. Sibojyoti Chakraborti, Advocate for the Respondent No. 2

Mr. Surendra Kumar, Advocate for the Respondent No. 5

PRESENT:

Hon'ble Mr. Justice S.P.Wangdi, Judicial Member

Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

Reserved On: 7th March, 2017

Pronounced On : 22nd March, 2017

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1. Whether the Judgment is allowed to be published on the net? **Yes**
 2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**

J U D G M E N T

Per Justice S.P.Wangdi, J.M. :

This appeal filed under Section 16 read with Section 18 of the National Green Tribunal Act, 2010, is directed against Memo No. 942 3L/WBP-C(IX)/2013(Part-I) dated 02.11.2015 issued by the West Bengal, Pollution Control Board specifying maximum

permissible noise level of 90 dB(AI) for fire crackers at the time of bursting which is more stringent than the national standard of 125 dB(AI) in respect of fire crackers within the State of West Bengal.

2. In order to determine the question raised in the appeal, it will be useful to refer to the history leading to the present appeal being of relevance for the purpose. In the interest of brevity, prolixity is being avoided and only those facts which are necessary, have been set out as shall follow hereafter.

3. This is the fifth round of litigation on the question, first of which was decided by the Principal Bench of the NGT at Delhi vide order dated 21.08.2013 whereby a batch of appeals bearing Nos. 52 and 53 of 2013 and 43 to 45 of 2013 were disposed off with certain directions. Of these, one of the appeals was against the order dated 03.10.1997 issued by the West Bengal Pollution Control Board fixing 90 dB(AI) as the noise limit for fire crackers in the State of West Bengal. While quashing the order, it was directed in paragraph 37 of the judgement as follows :-

“37. We make it clear that the WBPCB is at liberty to take independent decision in accordance with the powers available under the Air (Prevention and Control of Pollution) Act, in consultation with the CPCB if the reduction of the noise level

emanating firecrackers is found necessary for certain specific reason having regard to the recipient quality thereof.”

4. Consequential to the above, the West Bengal Pollution Control Board issued a fresh order dated 09.10.2013 again fixing 90 dB(AI) as the emission limit of sound from fire crackers. Second round of litigation commenced when this order was challenged before the Tribunal in OA 321 of 2013 in its Principal Bench in Delhi which was eventually transferred to this Bench for disposal.

5. On 9th November 2015 when this appeal was taken up for the first time, the Tribunal catalogued the facts preceding the date of issuance of the impugned order dated 02.11.2015 which we may reproduce below being a succinct summarisation of the events although some may appear to be repetitive :

“The impugned notification in this appeal is dated 2.11.15 issued by the State PCB (annexed at page 19) by which the PCB has fixed the maximum permissible noise level of firecrackers at the time bursting as “must not exceed 90 db (A) impulse noise at five meter from the source”. The relevant portion of the order is quoted below :-

“ a) The maximum permissible noise level of the firecrackers at the time bursting within the State of West Bengal must not exceed 90 dB(A) impulse noise at five metre from the source;

b) There shall be a complete ban on bursting sound emitting firecrackers between 10 PM to 6 AM;

c) There shall be complete ban on bursting of any kind of firecrackers in silence zones;

d) There shall be complete ban on sale and use of firecrackers generating noise more than 90 dB(A) impulse at a distance of five metre in the State of West Bengal.”

This case has a chequered history. The Hon'ble Apex Court in the case of **Noise Pollution (V) In Re: with Forum, Prevention of Environmental & Sound Pollution –vs- Union of India, & Ors**, reported in (2005) 5 SCC 733 decided the permissible noise level at the time of bursting of fire crackers as 125 decibels impulse noise at 5 metres from the source and directed the respective State PCBs to consider and issue notification accordingly. All other States excepting the State of West Bengal notified the permissible noise level of firecrackers at the time bursting at 125 db while WB PCB fixed the said limit at 90 db by notification dt. 3.10.97 which was challenged in the Principal Bench of National Green Tribunal in Appeal Nos. 43 to 45 and 52 & 53 of 2013 wherein by a common judgement dated 21st August 2013, the earlier decision of the West Bengal Pollution Control Board on said issue was also included. However, the Principal Bench while disposing of the said appeals in the said Judgement observed in para 37 as under :

‘ 37. We make it clear that the WBPCB is at liberty to take independent decision in accordance with the powers available under the Air (Prevention and control of Pollution) Act in consultation with the CPCB if the reduction of the noise level emanating from firecrackers is found necessary for certain specific reasons having regard to the recipient quality thereof.”

In terms of the leave granted by the Principal Bench of NGT as aforesaid, the WBPCB issued a fresh order dt. 9.10.2013 again limiting the sound intensity of fire crackers at the time of bursting at 90 db impulse noise at five metres from the source. This notification was again challenged before the Principal Bench in OA 321/2013/PB/34/EZ which was ultimately decided by NGT, Eastern Zone Bench, Kolkata by order dt. 19th May 2015. By our said order, this Bench quashed the order of the PCB fixing 90 db as the maximum permissible limit of sound level at the time bursting in respect of the State of West Bengal at 90 db and directed as under :-

“ In view of the discussions made above, we quash the impugned order dt. 9.10.2013 issued by the State Pollution Control Board. The PCB is directed to issue fresh order strictly in terms of para 35 of the order of the Principal Bench within one month positively relating to amending of order dt. 3.10.1997 passed earlier by them.

The State Pollution Control Board is at liberty to make further study, collect new information and deliberate on the necessity of further reducing the sound level from the present limit of upto 125 decibel by an expert committee and take an independent decision, in accordance with the power available under Air (Prevention and Control of Pollution) Act, 1981 in consultation with CPCB, based on expert committee recommendation, if the reduction of noise level emanating from fire crackers is found necessary to safeguards the health of the recipient system. Such exercise may be completed by the State Pollution Control Board, if required, within six months.”

The judgement of this Bench was challenged by the PCB before the Hon'ble Apex court u/s 22 of the NGT Act in civil appeal No. 5750 of 2015. The Apex Court did not interfere with the judgement of this Bench but only directed to place the Expert Committee's report dt. 29th July 2015 before this Tribunal, which was placed before the Apex Court. Accordingly, a review petition was filed before this Tribunal registered as RA 9/2015/EZ.

While considering the said review petition in which the report of the expert committee dt. 29th July 2015 was annexed, we noticed that there was no finality reached by the committee fixing sound intensity level of firecracker save and except inviting for scientific study of reduced sound level emanating from fire cracker to safeguards the health of recipient system and for the purpose Acoustics Laboratory of Satyajit Roy Film and Television Institution, Kolkata was selected. Relevant portion of the report is quoted below :-

“ The committee further discussed regarding the non-availability of data and information that could respond to the repeated question of the Courts that is “ if the reduction of noise level emanating from the crackers is found necessary to safeguards the health of the recipient system. The committee therefore proposed that a study is required to be undertaken in this regard and Prof. Dulal Chandra Bose, Prof. Gangopadhyay and Prof Ghosal were bestowed with the responsibility to formulate the programme of the study which is supposed to be instituted at the Acoustics Laboratory of the Satyajit Ray Film and Television

Institute of Kolakata. The next meeting of the Committee will finalise on the modalities of the study.”

In view of the above, we disposed of the RA with the following observations :-

“By our order dt. 19.5.2015 in the OA, we granted liberty to the PCB to reconsider the issue further by making further study, collect new information and deliberate on the necessity of further reducing the sound level from the present limit of upto 125 decibel by an expert committee and take an independent decision, in accordance with the power available under Air (Prevention and Control of Pollution) Act 1981 in consultation with CPCB based on expert committee recommendation, if the reduction of noise level emanating from the fire crackers is found necessary to safeguard the health of the recipient system.

On passing the judgement and order dt. 19.5.2015, this Tribunal became *functous officio* in the matter of fixation of sound level i.e. whether it should 90 db or not on the basis of their further study and analysis.

Hence, before parting with this matter, simply we observe that in terms of our order passed in the OA on 19.5.2015, the WBPCB is at liberty to pass appropriate order relating to fixation of sound intensity during bursting of fire crackers in the State of West Bengal in accordance with the power available to them under the Air Act as referred to above read with observations and findings of our judgement passed earlier. It is made clear that the decision of PCB on the said issue is kept open for challenge by anybody who would be aggrieved in accordance with law.”

Pursuant to the liberty granted by us the WBPCB has now issued the impugned notification dated 2.11.2015 fixing the maximum permissible sound level of fire crackers at the time of bursting at 90 db intensity level of sound at 5 metres from source as already stated above.

As it appears from the annexures to this Appeal (page 52) that after the order dt. 19.5.2015 was passed, the PCB constituted a Committee consisting of 8 experts viz.

1. Prof. Dulal Chandra Bose, ENT Specialist (Chairman)
2. Prof. Debasish Gangopadhyay, Professor of Physics (VC)
3. Dr. Santanu Panja, ENT Specialist (Member)
4. Dr. Siddhartha Biswas, Neurologist

5. Dr. Anirban Biswas, ENT Specialist
6. Prof. Debasis Ghosal, Head Sound Sec. Satyajit Roy F & T I
7. Sri Suna Mardi, Sr. Environmental Engineer, WBPCB
8. Dr. Debasis Chakraborty, Sr. Scientist, WBPCB

The terms of reference framed by the Board for consideration by the Expert Committee are as follows :-

TERMS OF REFERENCE :

TOR 1. Establish a laboratory situation of generation, measurement and calibration of impulsive noise of 90 to 125 db(A) measurable at distance of 4 and 5 metres.

TOR 2. Expose appropriate recipient system(s) at a distance of 4 and 5 metre from the noise sources of 90 and 125 db(A) and measure the impacts

TOR 3. Perform the experiments in suitable and appropriate outdoor ambient situation.

TOR 4. Consider relevant data and information in the scientific or regularity domain to formulate recommendations.

TOR 5 Submission of report with recommendation concerning requirement of noise level from 125 db(A), if any emanating from fire crackers to safeguard the health of recipient system.

TOR 6 Preparation and submission of the report with recommendation by 04 NOVEMBER 2015.

The first meeting of the Committee was held on 29th July 2015 to which we have already referred to. It was only a preliminary meeting where some decision and modality of collecting data were taken. As we have already held that no finality was reached in this meeting.

The second meeting was held on 9th September 2015. Although in the terms of reference it was indicated to establish a laboratory situation of generation, measurement and calibration of impulsive noise of 90 to 125 db(A) measurable at distance of 4 and 5 metres), also to expose appropriate recipient system at a distance of 4 and 5 metre from the noise sources of 90 db(A) and 125 db(A), measure the impacts as also to perform the experiments in suitable and appropriate outdoor ambient situation and to consider relevant data and information in the scientific or regularity domain to formulate domain etc. Strangely, in the meeting, **“the members of the committee felt that there were several studies conducted worldwide on ill effects of impulsive noise on human health, so there was no need of repeating the same exercise as it**

might take long time, may be a few years. In lieu of that the finding of published studies on effect of noise on all ages of people are being highlighted to all concerned to justify the decision of the committee.

“

Based on such report , the PCB has issued the impugned notification dt. 2.11.2015 fixing the permissible sound limit of firecrackers at the time bursting at 90 db(A). In our view, this action of the PCB is not in consonance with our earlier direction nor in terms of the direction of the Principal Bench of NGT passed in earlier proceedings because no new data has been placed on record. It may be noted that the Central Pollution Control Board issued notification fixing the maximum sound level for firecrackers at the time of bursting at 125 db(A) for All States and the State of West Bengal has fixed this limit at 90 db(A). Of course liberty was given to the State PCBs to do so but based on new data and justifying the lower decibel level of the maximum sound intensity level than the level already applicable to all other States. In this case, although they lowered the limit but no fresh data has been collected excepting the noise level data in Kolkata and the expert committee set up for the purpose did not follow the terms of reference fixed by the PCB. The expert committee only relied on findings published earlier on effect of noise on all ages by different authorities all over the world on the ground that collecting fresh data will be time consuming.”

6. It would be apparent from the aforesaid order that we had taken a prima facie view that the action of the State PCB in issuing the impugned order dated 2.11.2015 fixing the permissible sound limit of fire crackers at the time of bursting at 90 dB (A), was not in consonance with the

earlier directions issued vide order dated 29.10.2015 by which the notification dated 9.10.2013 had been quashed.

7. The present appeal has been filed challenging the impugned order dated 2.11.2015 essentially on the ground that the State PCB has failed to comply with the specific directions issued by the Principal Bench of NGT in its judgement dated 21.8.2013 quashing the earlier notification 3.10.97 on the subject. It is alleged that the State Board was required to keep in mind the national standard formulated and announced by the Central Govt., consult the Central Board and accumulate the quality of the recipient system through an expert committee before making more stringent standard than the one specified under the Environment Protection Rules, 1986. It is alleged that the expert committee constituted by the State PCB was mandated to make further studies and collect new information apropos the quality of the recipient system in West Bengal. However, the committee in its meeting held on 29.7.2015 considered only the noise data of the State Board and the Central Pollution Control Board without any reference to the quality of the recipient system. The data of Kalipuja event being the only aspect taken into consideration by the committee, was irrelevant for the

purpose of laying down more stringent standard of sound emission level in the State. Even in the second meeting held on 9.9.2015, the said expert committee proceeded to address on the studies conducted worldwide on the ill effects of impulsive noise on human health but remained oblivious of the quality of the recipient system in the State. It is thus alleged that the decision to specify standard of noise emission by in the impugned order dated 2.11.2015, is *de hors* rule 3(2) of the Environment protection Rules, 1986 and Sec. 17(g) of the Air (Prevention & Control of Pollution) Act, 1981 and, therefore, arbitrary.

8. The respondent No. 2 i.e., the Member Secretary, West Bengal State Pollution Control Board, in his affidavit defended the impugned notification by stating that the directions issued by the Tribunal and the one issued by the Principal Bench had been duly complied with. The essential defence has been set out in paragraph 18 of the affidavit-in-opposition which we may reproduce below :-

“18. That with regard to the statements made in paragraph 33, 34,. 35, 36, 37, 38 and 41 the deponent states that the Order dated 02.11.2015 has been issued by the State Board after taking into consideration the order dated 29-10-2015 passed in Review Application No. 09/2015/EZ, in connection with O.A. No. 321/2013/PB/34/EZ wherein liberty was given to the West Bengal Pollution Control Board, to pass appropriate order relating to fixation of sound intensity during bursting of fire crackers in the State of West Bengal in consultation with Central Pollution Control Board and in accordance with the powers available under the Air (Prevention

and Control of Pollution) Act, 1981 and read with the observations and findings of the Tribunal in the judgment passed earlier. In fact, an expert committee has been constituted comprising of experts and considering their recommendations as mentioned in the foregoing paragraph consultation with the Central Pollution Control Board has also been made prior to issuance of this order. Be it mentioned that the outcome of studies conducted worldwide on ill effects of impulsive noise on human health have been detailed in the minutes of committee meeting held on 09-09-2015 which has been mentioned in the foregoing paragraphs. It is the accepted fact that the human physiological systems are similar irrespective of race and religion etc. Therefore, these results should be applicable for the people living in West Bengal as well as other states in India.

Further, it is stated that the appellant has considered the 'Kali Puja' to be an irrelevant event, it is in the 'Kali Puja' and 'Diwali', season the firecrackers are mostly bursted which creates maximum noise pollution.

Needless to say, the State Board received complaints with regard to noise pollution this year also from various parts of the state.

Deponent further states that in terms of the Air Act 1981, noise is also an air pollutant and under this Act State Board has ample power to issue directions u/s 31A. Hence the order dated 02.11.2015 is a valid one and not liable to be set aside."

9. After having set out the essential facts and rival contentions of the parties, the question that requires to be determined is as to whether the respondent No. 2, i.e., State PCB, has complied with the direction of the Hon'ble Principal Bench of NGT reproduced earlier and also the directions issued by this Bench in order dated 29.10.2015 in RA 07 of 2015 extracted above which, for the sake of brevity, are not repeated.

10. In the judgement dated 21.08.2013 under paragraph 37, the Principal Bench left it open for the State PCB to take

independent decision in accordance with the powers available under the Air (Prevention & Control of Pollution) Act, 1981 in consultation with the Central Pollution Control Board (CPCB) if the reduction of noise level emanating from fire crackers was found necessary “for certain specific reasons having regard to the recipient quality thereof.”

11. Vide order dated 19.5.2015 passed in OA 321/2013/EZ we had quashed the impugned notification dated 09.10.2013 said to have been issued in pursuance of the direction issued by the Hon'ble Principal Bench on the ground that specific reasons had not been given as to why 90 dB(AI) was specified as the noise limit of fire crackers at the time of bursting but had only relied upon the old materials that had already been considered by the Principal Bench while passing the judgement dated 21.8.2013 referred to earlier and directed the State PCB to issue fresh order/notification strictly in terms of paragraph 37 of the order within one month positively.

12. Pursuant to the above decision dated 19.5.2015 in OA No. 321 of 2013, the State PCB constituted an Expert Committee consisting of 8 experts, the details of which have already been set out above and, therefore, suffice it to say that it was headed by Prof. Dulal Chandra Bose. As many

as 8 terms of reference were made to the committee for consideration while making its recommendation. This also having been dealt with earlier, need not be stated again to avoid repetition.

13. In the Review Application No. 7 of 2015 which was taken up by the Tribunal pursuant to the order of the Hon'ble Supreme Court to consider the report of the expert committee as decided in its meetings held on 29.7.2015 and 9.9.2015, it was found that the committee had actually not arrived at a final decision to recommend the sound intensity of fire crackers at the time of bursting at 90 dB except to propose scientific studies to be undertaken by the acoustic laboratory of Satyajit Ray Film & Television Institute, Kolkata. This would be evident from the concluding part of the Committee's recommendations contained in the minutes of the meeting held on 1.7.2015 which, though had been noted in the order dated 9th November, 2015 but, being of significance for the disposal of this case, it is repeated below once again :-

“ The committee further discussed regarding the non-availability of data and information that could respond to the repeated questions of the Court(s), that is, “... if the reduction of noise level emanating from fire crackers is found necessary to safeguards the health of the recipient system”. The committee therefore proposed that a study is

required to be undertaken in this regard and Prof. Dulal Chandra Bose, Prof. Gangopadhyay and Prof. Ghosal were bestowed with the responsibility to formulate the programme of the study which is supposed to be instituted at the Acoustics Laboratory of the Satyajit Ray Film and Television Institute of Kolkata. The next meeting of the committee will finalise on the modalities of the study.”

The review application was thus disposed of with the direction upon the State PCB to consider the issue further after making further studies, collecting new information and deliberating on the necessity of reduction of the noise level from the existing 125 dB(A) through an expert committee and thereafter take independent decision in accordance with the power available under the Air (Prevention & Control of Pollution) Act, 1981 in consultation with the CPCB which should be based on the recommendation of the expert committee having regard to recipient system of the State.

14. As already recorded in our order dated 9.11.2015, in its first meeting held on 29.7.2015, the committee had deliberated only on preliminary matters and certain decisions taken on the modality of collecting data. In its second meeting held on 9.9.2015, the Committee, instead of dealing with various terms of reference made to it by the State PCB in the notice dated 01.07.2015, arrived at a decision that there was no need of making further studies in

view of several such studies conducted world- wide on the ill effects of impulsive noise on human health. Even the recommendation made by it in the minutes of its first meeting to carry out further studies at the acoustics Laboratory of the Satyajit Ray Film and Television Institute was given a go by.

15. Based on such report of the Committee, the State PCB proceeded to issue the impugned order dated 2.11.2015 once again fixing the permissible limit of fire crackers at the time of bursting at 90 dB(AI).

16. It will, thus, be evident that the State PCB did not deem it necessary to comply with the directions of the Principal bench issued vide its judgement dated 21.8.2013 and by this Bench by our order dated 29.10.2015 in RA 7/2015/EZ which were necessary to be complied with by them before issuing the impugned notification.

17. During the pendency of the case on 19.04.2016 a supplementary affidavit was filed by the State PCB placing on record studies carried out by the Satyajit Ray Film and Television Institute, Kolkata between December 2015 and February 2016. The studies and experiment carried out by the Institute filed with the supplementary affidavit reveal that the terms of reference which had been made by the State

PCB and which were necessary to be considered before issuance of the impugned notification, had then been complied with.

18. This was followed by another supplementary affidavit that was filed on 7.3.2017 by the State PCB placing on record order dated 02.03.2017 issued by them re-affirming the impugned order dated 2.11.2015 in view of the report of the Expert Committee filed with the supplementary affidavit dated 19.04.2016.

19. We are now faced with the question as to whether the subsequent act of the State respondents in carrying out the experiments and studies mandated to be carried out prior to the issuance of the final order, can cure the inherent defect in the impugned notification. In our considered view it would certainly not. We find it difficult to fathom the reason for such tearing hurry of the State PCB in proceeding to issue the impugned notification even before the directions of the Tribunal and the other actions mandated by its own notice dated 1.7.2015 had been complied with. The action of the State PCB, in our view, reflects obduracy on its part in insisting upon the sound limit even by going to the extent of violating the order of this Tribunal. It is no doubt true that direction of the Government to fix the sound limit either

above or below 125 dB(AI) as prescribed by Item 89, Schedule I, Table 15 of the Environment Protection Rules, 1986, has been upheld by the Hon'ble Supreme Court. The matter would also indisputably fall within the policy domain of the respective States and ordinarily questions of policy cannot be a subject matter of judicial review. However, it is also trite that if the State Policies are contrary to statutory or constitutional provisions or are arbitrary or irrational or in abuse of power and not informed with reason, those can be struck down as *ultra vires*.

20. This would be evident even from sub-rule (2) of Rule 3 of Environment Protection Rules, 1986 which provides that “ Notwithstanding anything contained in sub-rule (1), the Central Board or a State Board may specify more stringent standards from those provided in (Schedules 1 to IV) in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons therefor, in writing.”

(Underlining supplied)

21. The directions issued by the Principal Bench and by this Tribunal referred to earlier were in the light of this provision. Therefore, when the impugned notification was issued, the mandatory requirement provided in the

aforesaid provision of the Rules and the directions of the Tribunal were not complied with thereby rendering the policy decision as inchoate and *ultra vires* the rules and the directions.

22. Mr. N.C.Bihani, Ld. Advocate for the State PCB would strenuously urge that the expert committee headed by Dr. Dulal Ch. Bose had taken note of the subsequent event of Kalipuja of 2014 which, as per him, is a new data. This submission only deserves to be rejected as the other mandatory directions and requirements under the rules for considering the recipient system had not been complied with. That apart, the result of the studies carried out by the experts in the Satyajit Ray Film and Television Institute, Kolkata, also did not form the basis of the decision in issuing the impugned order.

23. For the aforesaid reasons, we have no hesitation in holding that the impugned order dated 2.11.2015 is *ultra vires* the rules and directions, and, therefore, liable to be quashed.

In the circumstances, the other contentions raised by the parties need not be dealt with being irrelevant and purely academic.

24. We accordingly, quash the impugned order dated 2.11.2015 notwithstanding the doctrine of useless formality and consequently, order dated 02.03.2017 re-affirming the impugned order also stands quashed and set aside. However, it is left open to the WBPCB, respondent No. 2, to take an appropriate decision in accordance with the powers vested in it under the statutes as per directions of the Principal Bench referred to earlier and of this Bench vide order dated 29.10.2015 in RA 7/2015/EZ. We also make it amply clear that the WBPCB while taking such decision, shall be at liberty to take into consideration materials already available including the studies and experiments that have been carried out as recommended by the Expert Committees constituted by it.

25. No order as to costs.

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Mr. Justice S.P.Wangdi , JM

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

**Kolkata,
Dated, 22nd March, 2017**