

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

RA 09/2015/EZ

in

Original Application No. 321/2013/PB/34/EZ

West Bengal Pollution Control Board

Vs

Internatinal Marwari Association & Anr

CORAM: Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: Applicant of RA : Mr. Kabir Sekhar Bose, Advocate
Mr. Sibojyoti Chakraborti, Advocate
Respondent No. 1 : Mr. Subhashish Bhowmick, Advocate
Respondent No. 2 : Mr. Avinash Kankani, Advocate

Date & Remarks	Orders of the Tribunal
<p>Item No. 2 29th October, 2015.</p>	<p>This review application has been filed by the West Bengal Pollution Control Board seeking review of the order dt. 19.5.2015 passed by this Tribunal in OA 321/2013/PB/34/EZ on the ground that the Hon'ble Apex Court of India in Civil Appeal No. 5750 of 2015 wherein the said order of the Tribunal was challenged, passed a direction to the appellants/review applicant to request the Tribunal to consider the report of the Expert Committee dt. 29.7.2015.</p> <p>The original dispute is fixation of the upper limit of sound intensity during bursting of fire crackers. The PCB fixed the sound level to 90 db relating to bursting of fire crackers that was challenged in different proceedings and ultimately the Hon'ble Apex Court referred the matter to the NGT, Principal Bench, which upon hearing ld. advocates and considering the various issues with regard to noise level of fire crackers issued certain directions to the PCB, West Bengal. The judgement of the Hon'ble Supreme Court and judgements of different</p>

High Courts and order of Principal Bench have been discussed in our order dt. 19.5.2015 which reads as follows :-

“...This case has a chequered history. The impugned order was passed by the West Bengal Pollution Control Board dt. 9th Oct 2013 fixing maximum permissible noise level of fire crackers at the time of bursting upto 90 decibels. Earlier, the Principal Bench of the Tribunal considered similar matters (vide Appeal Nos. 43 to 45 and 52 & 53 of 2013) and passed a common judgement on 21st Aug 2013 wherein the earlier decision of the West Bengal Pollution Control Board on said issue was also included. The Principal Bench in its 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.”

Thus, the Principal Bench in its order quashed the order dt. 3.10.1997 passed by the WBPCB earlier and remanded the matter for fresh consideration by taking independent decision in accordance with the powers available under the Air (Prevention & Control of Pollution) Act, 1981 in consultation with CPCB.

It appears that while passing the order, the National Green Tribunal, Principal Bench considered the affidavit filed by West Bengal Govt. , and West Bengal Pollution Control Board, the policy draft enclosing expert opinion etc. to fix the noise level upto 90 decibel limit which was considered justified in West Bengal because it is a thickly populated State as well as the National Standard of 125 db stipulated by MoEF.

It appears that the 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 limit of fire crackers as 125 decibels.

In pursuance of the order of the Principal Bench, the PCB has passed a fresh order dt. 9.10.2013, which has been impugned in this OA. By the impugned order, however, admittedly the WB Pollution Control Board had not considered any new materials which were not placed before the National Green Tribunal Principal Bench in that case. But they relied upon the very old reports and technical expert reports, scientific report etc. which were also placed before the Principal Bench. It will be useful to quote the impugned order for better understanding of the matter :-

“Memo No. /1594/3L/WPB-B(III)/2013 (PART) Dated
09/10/2013

ORDER

WHEREAS the Hon’ble National Green Tribunal, by consent of the parties, clubbed together five appeals namely Appeal No. 43(The)/2013, Appeal No. 44(The)/2013, Appeal No. 45(The)/2015, Appeal No. 52 (The)/2013 and Appeal No. 53(The)/2013, filed by the manufacturers/traders of firecrackers and disposed of the matter by a common judgment dated 21.08.2013 inter alia holding that the West Bengal Pollution Control Board (WBPCB) is required to amend the order dated 03.10.1997 and reconcile the same in keeping with the Ministry of Environment & Forest (MOEF) Notification dated 05.10.1999 within one month , while giving the West Bengal Pollution Control Board “liberty to take independent decision in accordance with the powers available under the Air (Prevention & Control of Pollution) Act, 1998) 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.”

AND WHEREAS the Hon’ble National Green Tribunal considered the application of WBPCB for extension of time and inter alia stated in its order dated 25.09.2013

that “while granting time and reiterating the final decision by this Tribunal, we make it very Clear that it is appreciable that the WBPCB makes independent decision within a period of four (4) weeks from today.”

AND WHEREAS in pursuance of the said orders of the Hon’ble National Green Tribunal (NGT) giving the liberty to take independent decision, the State Board made consultations with the Central Pollution Control Board as per provision of Sections 17(g) of the Air Prevention & Control of Pollution Act, 1981.

AND WHEREAS besides consultations with Central Pollution Control Board (CPCB), West Bengal Pollution Control Board (WBPCB) took into consideration the following facts spread over a period of more than fifteen years in order to take a judicious decision in the matter.

- (i) Increased population density, much higher traffic flow, increased ambient noise level that have been observed by the NGT in para 36 of the aforementioned order dated 21.08.2013.
- (ii) Recommendation of the report of the expert committee constituted by the Hon’ble High Court Calcutta, 1997 that firecrackers creating more than 90 dB(A) impulse noise at 5 meter from the source should not be allowed to be used or sold in the State of West Bengal.
- (iii) Resolutions of 102nd and 113th Board Meetings of the State Board held on 3.10.1997 and 2.11.1999 fixing a maximum of 90 dB (A) impulse noise of firecrackers burst at 5 meter distance.
- (iv) Order of Supreme court of India passed on 12.01.1998 in connection with S.L.P. (Civil) No. 19469/97(M/s) Mohan Fire Works and Anr. Vs. State of West Bengal and Ors.) and order of Supreme Court of India passed in connection with writ petition (Civil) No. 72/1998 (Re: Noise Pollution Implementation of Laws for restricting use of loudspeakers and High Volume producing sound system Vs., UOI).
- (v) Acceptance of noise standards of bursting

	<p>firecrackers i.e. 90 dB (A) (Impulse) from 6 meters in West Bengal by the Ministry of Environment and Forests vide their memo dated 26.09.2000.</p> <p>(vi) Noise Monitoring Data for four years before and after the WBPCB order of 1997 indicating that the average noise level on the Kali Puja and Diwali days decreased substantially after the order of the West Bengal Pollution Control Board restricting the crackers noise was issued. The recent noise data on the Kali Puja and Diwali days indicate that the decrease in noise level that occurred after the WBPCB's order of 1997 has sustained.</p> <p>(vii) The average population density of the State of West Bengal is 1029/KM² per kilometre square. In terms of the density of the population amongst the states and Union Territories of India. State of West Bengal stands in the front now.</p> <p>(viii) Orders of the Hon'ble High Court and Hon'ble Supreme Court of India wherein grave concerns have been expressed on the impact of noise in densely populated regions and ill effect of noise pollution (W.P. (C) No. 72/1998 with civil Appeal No. 3735 of 2005. Forum, Prevention of Env. & Sound Pollution –vs- Union of India & Another.</p> <p>(ix) The recommendations of the Expert Committee constituted by the Department of Environment, Government of West Bengal vide memo dated July 06,2011, the Expert committee consisted of scientists, ENT specialist and members of the civil society.</p> <p>(x) Strong protests from the civil society and NGOs against permitting the firecrackers noise level to 125 DB(A) at 5 meter distance which has amply been reflected through the print and electronic media.</p> <p>(xi) Report of the Technical Committee constituted by the Central Pollution control Board in 1989, wherein it was recommended to ban manufacture and sale of firecrackers generating noise level exceed 90 DB(A) (Impulse) at 5 meters distance from the point</p>
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

of bursting.

- (xii) The guidelines of the US Occupational Safety and Health Administration (OSHA) and the phenomenon of virtually continuous impulsive noise produced by the firecrackers during the time of Kali Puja and Diwali.
- (xiii) Strong disapproval of holding the citizens captive listeners to unacceptable noise as pronounced by the Hon'ble High Court, Calcutta in connection with the Burrabazar Fireworks Dealers Association –Vs – Commissioner of Police, Calcutta and reiterated by Hon'ble Supreme Court in comprehensive judgement of 2005 (WP(C) No. 72 of 1998)

NOW THEREFORE under the circumstances, specific reasons and recipient quality described above and in exercise of the powers conferred under the Air (Prevention & Control of Pollution) Act 1981, in obedience to and in conformity with the order passed by the Hon'ble National Green Tribunal dated 21.8.2013 and 25.09.2013 in connection with aforementioned Appeals, it is hereby ordered that –

- a) The maximum permissible noise level of the firecrackers at the time of bursting within the State of West Bengal must not exceed 90 DB(A) impulse noise at five meters from the source.
- b) There shall be a complete ban on bursting sound emitting firecrackers between 10 PM and 6 PM
- 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 meters in the State of West Bengal.

This order shall take immediate effect.

Sd/- Member Secretary,
West Bengal Pollution Control Board "

On a bare perusal of the above order it appears that

the reasoning assigned in issuing the order was based upon the report of the technical committee constituted in 1989, guidelines and materials relied upon were not new but those were earlier placed and considered by the Principal Bench while passing its judgement. In the records filed by the PCB also nothing new has been stated nor any new materials have been disclosed. In fact the impugned order is based on old materials which is contrary to the direction of the Principal Bench as it was categorically directed in para 35 of the judgement that the PCB to amend its earlier order dt. 3.10.1997 and reconcile the same keeping with MoEF notification dt. 5.10.1999. The time limit granted to them to amend the earlier order was one month. Subsequently, extension of time was granted for two more months. But such amendment never saw the light of the day. The Pollution Control Board issued the impugned order in consultation with CPCB where no new materials have been considered to reduce the noise level upto 90 decibel.

It is settled legal position of law that when an issue is referred back for further consideration, it pre-supposes the idea that materials as were earlier placed before the court or Tribunal and already considered but were not sufficient to conclude in the matter. For this reason, the matter was remanded back to give a fresh look based on any new materials or study or expert opinion obtained afresh. This not having been done, the entire exercise is a futile one as it only repeats the earlier stand which was not accepted by the Principal Bench while passing the order for reconsideration. That apart reasoning as has been put forth is not new; it is mere repetition of the earlier reasons.

Reason is the heart beat of any order/decision of any administrator and/or any judicial person and without the same it becomes lifeless, vide **Raj Kishore Jha-vs-State of Bihar**, (2003)SCC 519. Right to information and right to be informed is a constitutional right coming under the purview of Art. 19(1) and 21 of the Constitution of India. Reliance may be placed in this context in the case of **Ravi S Naik –vs- Union of India**

reported in AIR 1994 SC 1558. It is also settled legal position that fairness in the administrative decision is the soul of good administration. No order should be passed mechanically without proper application of mind vide AIR 1979 SC 429.

Speaking order or reasoned decision is the essence of any good administration. Lord Denning, M.R. in **Breen –v- Amalgamated Engineering Union** (1971) 1 All ER 1148, p. 115h has observed “The giving reasons is one of the fundamentals of good administration”. In **Alexander Machinery (Dudley) Ltd. –v- Crabtree**, 1974 ICR 120 (NIRC) it was observed that “failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-maker to the controversy in question and the decision or conclusion arrived at.

It is also settled position that justice not only to be done but also appears to have been done. Such view has been taken by the Apex Court in the case M.P. Industries reported in AIR 1966 SC 671. In **State of WB & Anr –vs- Alpana Roy & Ors**, (2005) 8 SCC 296, it has been held as under by quoting from **State of Orissa –vs- Dhaniram Luhar**, (2004) 5 SCC 568 :-

“ Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi judicial performance.”

Similar view was expressed in the case of **SAIL –vs-**

Sales Tax Officer, Rourkela I Circle & Ors, (2008) 9 SCC 407.

Relying upon various decisions of the Hon'ble Apex Court and other High Courts, one of us, Justice Pratap Kumar Ray, while sitting in Hon'ble Calcutta High Court rendered elaborate decisions on the issues of speaking order, right to information and non-application of mind in the following cases :-**General Manager, South Eastern Rly. –vs- Shyam Lal Roy, 2012(2) SLR 293 (Cal), Sudhir Kumar Saha –vs- State of West Bengal & Ors, 2010(1) SLJ (Cal) and Madhusudan Mondal –vs- State of W.B & Ors, 2010(1) CLJ (Cal) 222.**

In terms of the judgements as discussed above, we have scanned very carefully the impugned order dt. 9.10.2013 as passed by the PCB in pursuance of the direction of NGT, Principal Bench in the group of cases referred to above. It appears that the Principal Bench sent back the matter to the Pollution Control Board to take an independent decision in accordance with powers available under the AIR (Prevention & Control of Pollution) Act in consultation with 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. It is curious that while passing the impugned order the PCB relied on old materials which were already considered by the Principal Bench and the Bench thought it proper to remand the matter to the PCB for fresh consideration. It also noticed that no specific reason has been shown to arrive at the conclusion. In the counter affidavit also the PCB has reiterated the same reasons as were placed before the Principal Bench. As there was no new materials or reasons and as it appears that there was total non-application of mind in passing the impugned order, in our view, this order is not in strict compliance with the Principal Bench directions as contained in para 35 of its order dt. 21st Aug 2013 (annexure-P7) to amend the earlier order dt. 3.10.1997 and reconcile the same in keeping with the MoEF notification dated 5.10.99.

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 OA stands allowed and disposed of accordingly. There will be no order as to costs.

On bare perusal of said order it is quite clear that we disposed of the OA directing the PCB to make further study collecting new information, 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 the Air Act, 1981 in consultation with CPCB based on expert committee recommendation, if the reducing of noise level emanating from firecrackers is found necessary to safeguards the health of the recipient system. In the said order, we quashed the order dt. 9.10.2013 that was issued by the WBPCB limiting the sound level of fire crackers to 90 decibel and to issue fresh notification in terms of NGT Principal Bench order within one month.

Instead of implementing the order, they challenged the order of the Tribunal by filing an appeal u/s 22 of NGT Act before the Hon'ble Apex Court which was registered as Civil Appeal No. 5750 of 2015. By the order dt. 21.8.2015 the Hon'ble Apex court disposed of the civil appeal which reads as follows :-

“ This appeal is directed against the judgement and order passed by the National Green Tribunal, Eastern Zone Bench, Kolkata in Original Application No. 321/2013/EZ dated 19.05.2015.

We are informed by Shri Mukul Rohatgi, learned Attorney General that the West Bengal Pollution Control Board (for short “the Board”) has passed yet another order dated 16.07.2015. If that is so, the appellant is at liberty to bring the order dated 16.07.2015 to the notice of the National Green Tribunal and request the Tribunal to reconsider their earlier order dated 19.05.2015. Ordered accordingly.

The Civil appeal is disposed of. “

Subsequently, another order was passed by the Hon'ble Apex Court on 18.9.2015 in IA 2 of 2015 arising out of said civil appeal No. 5750/2015 which was already disposed of. The said order reads as follows :-

“ The prayer made in the interlocutory application No. 2 of 2015 is allowed and the order dated 21.08.2015 is corrected to the extent that “the report of the Expert Committee dated 29.07.2015 be considered by the National Green Tribunal”.

Ordered accordingly.”

Having regard to the aforesaid orders, WBPCB has filed an affidavit in connection with disposed of OA as referred to above and we granted leave to file appropriate application in terms of order of the Hon'ble Apex court. Accordingly, the matter has been listed as review application.

The Expert Committee report dt. 29.7.2015 as was directed to be considered by the Apex Court has been annexed. On perusal of the said report we find that in the last paragraph it is observed that due to

non-availability of data and information, the committee could not respond to the question i.e. if the reduction of noise level emanating from fire crackers is found necessary to safeguards the health of the recipient system. The said para reads as follows :-

“ 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.”

Having regard to the expert committee report dt. 29.7.2015, it appears that no positive conclusion has yet been reached on the question of sound intensity of the fire crackers , whether it should be 125 db as applicable in other States of India or of a lower db to be applicable for West Bengal only.

Lastly, having regard to the order of the Hon'ble Supreme Court, we find nothing in the expert committee report for our reconsideration.

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.

With this observation, **the application stands disposed of.** No order is passed as to costs.

Registry will deliver certified copy of this order to the parties, if any application for such is filed.

.....
Justice Pratap Kumar Ray, JM

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