

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

.....

ORIGINAL APPLICATION No. 80/2015/EZ

IN THE MATTER OF

1. Bimal Singh Karnawat
“Karnawat Building”
7, Khelat Ghosh Lane
P.S- Jorabagan
Kolkata-700 006
2. Nirmal Singh Karnawat
“Karnawat Building”
7, Khelat Ghosh Lane
P.S- Jorabagan
Kolkata-700 006
3. Piyusha Karnawat
“Karnawat Building”
7, Khelat Ghosh Lane
P.S- Jorabagan
Kolkata-700 006
4. Madhu Karnawat
“Karnawat Building ”
7, Khelat Ghosh Lane
P.S- Jorabagan
Kolkata-700 006

..... Applicants

Versus

1. West Bengal Pollution Control Board
Represented by its Member Secretary,
10A, Block-L, Sector-III
'Paribesh Bhavan'
Salt Lake City
Kolkata- 700098

2. The Officer in Charge
Jorabagan Police Station,
78, Nimtala Ghat Street
Kolkata- 700 006
3. The Director General, (SWM-I & II)
The Kolkata Municipal Corporation (CMC)
Building Office of DG (SWM),2nd floor
48, Market Street
Kolkata- 700 087
4. The Director/ Chief Inspector of Factories
New Secretariat Buildings, 8th floor
1, K.S.Ray Road
Kolkata- 700 001
5. M/s Meghraj Bhikhamchand
Represented by Ashok Kumar Daga & Anil Daga
7, Khelat Ghosh Lane,P.S- Jorabagan
Kolkata- 700 006
6. Ashok Kumar Daga
“Karnawat Building”
7, Khelat Ghosh Lane
P.S- Jorabagan
Kolkata-700 006
7. Anil Daga
“Karnawat Building”
7, Khelat Ghosh Lane
P.S- Jorabagan
Kolkata-700 006
8. The State of West Bengal
Through the Principal Secretary,
Department of Environment ,
Govt. of West Bengal
415/A, Poura Bhawan
FD Block, 4th floor Salt Lake City
Kolkata- 700 016
9. The Chief Manager, (License)
License Department,
1st floor,
5, S.N.Banerjee Road
Kolkata- 700 013

..... Respondents

COUNSEL FOR APPLICANTS:

Mr. Somnath Saha , Advocate
Mr. Anirban Ray, Advocate

COUNSEL FOR RESPONDENTS :

Mr. Sibojyoti Chakraborti, Advocate , Respondent No.1
Mr. Rajib Ray, Advocate, Respondent No.2,4 & 8
Mr.Gopal Chandra Das, Advocate, Respondent No. 3 & 9
Mr.Kallol Basu, Advocate and Mr. Nilanjan Pal, Advocate,
Respondent No. 5,6 &7

JUDGMENT

PRESENT:

Hon'ble Mr. Justice S.P.Wangdi, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

Reserved On: 31.08.2016
Pronounced On: 21.09.2016

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

Hon'ble Mr.Justice S.P.Wangdi, JM :

Respondent No.5, M/s Meghraj Bhikhamchand is a unit that manufactures HD and Plastic processed products and runs a Warehouse at premises No.7, Khelat Ghosh Lane, PS-

Jorabagan, Kolkata- 700 006, in a space measuring about 1300 sq.ft and 600 sq.ft. on the Ground and Mezzanine floor. The factory is run by Mr.Ashok Daga and Anil Daga , Respondents No. 6 and 7 respectively. The premises is owned jointly by the four applicants. It is stated that the factory of Respondent No.5,6 and 7 was being run for the last 40 years.

2. The Applicants alleged that the Respondent Nos. 6 and 7 have installed heavy machinery in the said premises which are used for manufacturing of HD and Polymer products on a large scale in the Brand name of the Respondent No.5. It is alleged that apart from the consumption of the electricity in the factory being very high, in the process of manufacturing HD and Polymers products, the factory pollutes the environment caused by the heat generated thereby resulting in emission of bad odour and fugitive toxic emissions like Carbon Monoxide, Chlorine, Hydrochloric Acid, Dioxin, Furans, Amines, Nitrides, Styrene, Benzene, CC14 and Acetaldehyde. Besides this, it is alleged that the use of heavy machinery causes noise pollution round the clock, the hazardous waste generated from the factory not managed, water around the factory highly polluted and contaminated with toxins generated by unauthorised disposal of plastic wastes, the air is polluted with

the Micro Plastic particles also generated in the factory and no fire safety measures are in place.

3. It is alleged that the Plastic factory run by Respondent No.5,6 and 7 falls under “Ordinary Red” category of industry under Serial No.19 of the list of Industries “Manufacturing and processing of PVC granules and manufacturing of processed PVC products ” and that such category of industry is not permitted to be run in the areas falling under the Kolkata Metropolitan Area. It is further alleged that as the factory unit has not been granted ‘Consent or environmental clearance’, it is being operated in breach of the Air (Prevention and Control of Pollution) Act, 1981 , Water (Prevention and Control of Pollution) Act, 1974 and Noise Pollution (Regulation and Control) Rules 2000, the Environment (Protection) Act, 1986, the Municipal Solid Waste (Management and Handling) Rules, 2000 and the West Bengal Fire Services Act, 1950. It is alleged that on account of pollution caused by the factory run by Respondent No.5,6 and 7, the family members of the applicants have been made to suffer resulting in the death of three and illness to two others of its members. As per the applicants, even others in the local area are suffering from various diseases. The applicants allege that Respondents No. 1 to 4 are acting in

collusion with Respondent Nos.5,6 and 7 and no action has been taken on the complaints lodged by them.

4. Based primarily on the above facts and circumstances, the applicants have sought for the following directions :-

- a. The private respondent no.5,6 and 7 be directed to stop the operation of such manufacturing unit at the earliest.
- b. That the respondent no.1,2,3 and 4 be directed to take necessary steps to stop the functioning of such manufacturing unit.
- c. Such other or further order and/or orders as Your Lordship may deem fit and proper.”

5. In their joint Affidavit in Opposition, the Respondents No.5,6 & 7, while denying all material allegations made contained in the Original Application, have stated that their unit is situated on the ground floor of the house of the applicants who reside on the 2nd floor. That besides the unit run by them, another tenant on the same floor, namely M/s Daga Poly Container Private Limited, who runs a factory involving the use of the same type of machines and is manufacturing the same product as the Respondents. It is further stated that they have obtained all necessary licenses from the statutory authorities including certificate for ‘consent to operate’ dated 22/12/1997 which is valid till 30/09/2016 and certificate of Enlistment issued by the Municipal Commissioner,

Kolkata Municipal Corporation for workshop of non-food items- plastic goods (manufacturer and trading group) with its validity till 31/03/2016. It has been specifically pleaded that the unit uses virgin granules for manufacturing plastic jars and that the extra plastic material is ground and re-used in the process and no waste plastic is used as raw materials.

6. On 04/09/2015 when the matter first came up for hearing before us, direction was issued upon the West Bengal Pollution Control Board (WBPCB) to submit a status report on the next date and in the meanwhile, to take steps and measures in accordance with the law for protection of environment from the pollutants emitted by the unit of the Respondent Nos. 5,6 and 7

7. In compliance to the aforesaid direction, W.B.P.C.B, Respondent No.1, filed an affidavit placing on record, a report of inspection conducted by them on 22/09/2015 which contains following relevant information :-

“ 8. Inspection Reference : Boards letter Memo No.795-5L/WPB- 2015/M- 0068 dated 15.09.15.

10. Observation: This is a small, green category plastic jar Manufacturing unit having eight workers. The unit is situated at the ground floor of the complainant house(G+2). Complainant resides at the 2nd floor of the building. The unit has three blowing and three plastic grinding machines. The unit uses virgin granules for manufacturing of plastic jars. However, the rejected plastic

material was observed during inspection. During inspection the grinding machines were not in operation, but, all the blowing machine were found in operation. The unit has valid fire licence, trade licence and consent to operate certificate of the Board. The representative of the unit informed that the unit was operating since 1970. Mrs. Madhu Karnawat informed that they are suffering from the vibration generated from the machines.

This is to mention here that the complainant is the landlord of the building. In the ground floor of the said building there also exist another unit named M/s Daga Poly Container Pvt.Ltd. performing same type of operation using same type of machines. Both, M/s Meghraj Bhikham Chand and M/s Daga Poly Container Pvt.Ltd. are the tenants of the complainant. The area is predominantly residential with co-existence of different small industries and commercial establishments.

11. Remarks :

1. It is very difficult to measure the vibration and there is no standard or limit for vibration. Moreover, as there is a co-existence of similar type of industry, it is difficult to comment about the impact caused by the vibration of the alleged industry.
2. However, the unit may be directed to take proper measure to reduce the vibration generated from machines.
3. Action may be taken as deem fit and proper.”

8. The Officer-in-Charge of Jorabagan Police Station, Kolkata, who is Respondent No.2, also filed a report as directed vide the aforesaid Order dated 04/09/2015, relevant portion of which reads as follows :-

“03. That, earlier Jorabagan Police Station received complaint from the Writ Petitions that the Respondent No.5, M/s MEGHRAJ BHIKAMCHAND, along with

the Respondent No.6, ASHOK KR.DAGA and the Respondent No.7 ANIL DAGA are illegally occupying the some space in the ground floor and mezzanine floor of 7, Khelat Ghosh Lane, Kolkata- 700006 and illegally running a plastic product manufacturing factory at their occupied portion, without obtaining necessary permission from the competent authorities, thereby pollution the environment.

04. That, upon receipt of such complaint on enquiry was made which revealed that M/s Meghraj Bhikamchand is a proprietorship company owned by Ashok Kumar Daga, engaged in the business of manufacturing of plastic jars and containers having workshop at the ground floor of 7 , Khelat Ghosh Lane, Kolkata- 700 006. The unit is run at the said address for more than 40 years. The company is paying rent before the Ld. Rent Controller, Calcutta. It is also in possession of valid Trade Licence issued by KMC authorities, Certificate for 'Consent to Operate' issued by West Bengal Pollution Control Board, Licence issued by Deptt. Of Fire & Emergency Services, Govt. of West Bengal and also Licence from Directorate of Factories, Govt. of West Bengal . No complain was ever received at this PS by any other persons of the said locality about any pollution of environment caused by the workshop of the said company. Besides, upon physical verification of 7, Khelat Ghosh Lane, Kolkata- 700006 it was found that the instant Writ Petition had allowed running of another similar type of workshop owned by M/s. DAGA POLY CONTAINER PVT.LTD. situated at the ground floor of the said building just beside the workshop of M/S MEGHRAJ BHIKAMCHAND . ”

9. Status Report filed by the Chief Manager, License Department, Kolkata Municipal Corporation, in pursuance of the Tribunal Order dated 04/09/2015 read with Order dated 06/11/2015, confirmed the fact that Respondent No.5, 6 and 7 possessed valid license for running of power driven workshop of non-food items plastic goods manufacture .

10. The Director General (I&II) Solid Waste Management Department, Kolkata Municipal Corporation, in his turn also filed a status report in pursuance of the aforesaid two orders in respect of the position regarding Solid Waste Management of the questioned industrial unit. We may reproduce the report of inspection carried out by them on 29/10/2015 which reads as under :-

“ In connection with the above application, before the Hon'ble National Green Tribunal, alleging pollution of the neighbourhood of a plastic manufacturing unit operating in the name and style of M/s Meghraj Bhikhamchand, this is to report that :

The said manufacturing unit, a small scale one, manufacturing plastic bottles etc. is in operation at the premises 7, Khelat Ghosh Lane, Kolkata- 700006, under Ward NO.24 in KMC area. Another similar unit, in the name & style of M/s Daga Polycontainer, is also in operation at the same premises.

By spot inspection and verification at the surrounding area of the said manufacturing unit at premises 7, Khelat Ghosh Lane, no specific solid wastes- the possible effluent from the said manufacturing unit, like : plastic scraps, granules or particles etc. – were found stacked or littered.

It was observed and reported during inspection that the said manufacturing unit is recycling their solid wastes like plastic scraps etc. in their manufacturing process.

However, this Solid Waste Management Department has got no requisition from the said manufacturing unit for disposal of any segregated solid effluent from their unit.

Under the provisions of the Municipal Solid Wastes (Management & Handling) Rules, 2000 and the KMC Act, 1980, the operating manufacturing unit, creating solid waste effluent, can not dump or litter it and is required to provide separate receptacle for

collection and disposal by the Municipal authority, with deposition of relevant fees & charges, necessary.

Enclosed photographs taken during the inspection, dated 29.10.2015, submitted herewith this report.”

11. The Respondent No.1, West Bengal Pollution Control Board filed another affidavit on 08.01.2016 placing on record report of inspection carried out by them a second time on 31/12/2015. We may for the sake of convenience reproduce below the relevant portions of the report :-

“ Observation :

In continuation to our earlier inspection dtd.22.09.2015 the unit was re-inspected on 31.12.2015 and the observation are as follows :

- The unit is engaged in manufacturing of different types of plastic jars of different capacity in the range of 1 litre to 35 litres. The unit is located at the ground floor in a room of size of about 20 ft. X 50 ft. Of a (G +2) storied old building where complainant resides at 2nd floor. Another unit, in the name and style of M/s Daga Poly Container Pvt.Ltd. also exist adjacent to the alleged unit and the said unit is also performing the same type of activity and was also producing the same kind of product. In 1st floor of the building few rooms were found under lock and key and others are used for official purpose by M/s Daga Poly Container Pvt.Ltd.
- Plastic jar manufacturing activity is done by using three nos. of extruder machine with air blowing facility, operated by 4 HP individual electric motor. Apart from this there exist two nos. of shredding machine (operated by 1 HP & 2 HP electric motor) which are used for shredding the production rejects and end cuttings and finally it is blended with virgin granules (Halene H, High density polyethylene procured from Haldia Petrochemicals Ltd.) for

re-using the production rejects and one mixing machine (operated by 3 HP electric motor) which are used for mixing the raw materials.

- During inspection virgin plastic granules were being used as main raw materials along with a certain percentage of trimmed materials of the product.
- During inspection seven workers were working in the unit.
- The unit does not have any boiler.
- The charge materials i.e Virgin granules & production rejects are melted inside the electric heater of the extruder machine and the molten plastic are air blown within the dies to obtain the desired shape. The entire operation is being carried out within a closed system in order to avoid heat loss.
- No water is required in the process. So, there is no scope for generation of liquid waste.
- Complainant, Mr. Bimal Sing Karnawat informed that they are suffering from air, noise pollution and vibration effect.
- During inspection unit was in operation and noise level was measured and recorded (putting all machines in operation) from the complainant residence (2nd floor) in the range of 60 to 63 dB (A), where the ambient noise level was measured in the range of 55 to 57 dB(A)
- No characteristic objectionable smell of plastic could be felt from the complainant residence.
- No open burning of plastic or any scraps or combustion/incineration of plastic was observed in and around the unit premises.
- Unit has mounted the shredding machines over the rubber pad to reduce the vibration effect.
- Unit has provided fire extinguishers to prevent fire hazards
- Unit has submitted documents to this office on 04.01.2016 mentioning thereto that the unit has taken some steps to minimize the noise, generated from shredding machine.

Remarks :

1. Considering the raw materials and manufacturing process and its pollution potential this activity is considered as green category of industries.
2. Apart from manufacturing of plastic jars the unit has also the provision of trading of other

different plastic jars, bottles etc. which are bought from outside.

3. The charge materials are melted inside the electric heater of extruder machine. The manufacturing processes do not involve any fuel burning operation or combustion of material that generate fugitive emission.
4. The unit possess "certificate for registration as a small scale industrial unit" issued from Directorate Of Cottage And Small Scale Industries, Govt. of W.B."

12. The applicants by an Affidavit affirmed on 01/12/2015 made an exception to the earlier inspection report of the Pollution Control Board extracted above carried out by them on 22/09/2015 on various grounds but the one they laid stress upon was with regard to the observation that the unit of the Respondent Nos.5, 6 and 7 was small, green category plastic jar manufacturer unit having eight workers. For convenience we may reproduce the following portion of the exception as being relevant in view of the arguments placed at the time of hearing:-

" The Inspection report contains averment/observation

"During inspection virgin plastic granules were being used as main raw materials along with a certain percentage of trimmed materials of product".

Firstly 'trimmed materials of product' are not virgin granules but waste plastic.

Secondly 'production rejects' which are not virgin granules are being reused in manufacturing process. It clearly says the unit reprocessing waste plastic.

CATEGORY

Industries under "**ORANGE**" Category

ITEM NO. 37 Reprocessing of waste plastic
(excluding PVC)

Industries under “**GREEN**” Category

ITEM NO. 54 Polythene & plastic processed products manufacturing (excluding manufacturing & reprocessing of PVC granules and manufacturing of reprocessed PVC products and reprocessing of waste plastic) .

So, if the inspector found reprocessing of waste plastic then the unit must be de-listed from ‘GREEN’ category. But her report categorically says that the unit having ‘CONSENT TO OPERATE’ from DIC, West Bengal under ‘GREEN CATEGORY.’

Thirdly, it not been understood that the inspector is specifically making observation that “virgin plastic granules were being used as main raw materials” the word “**MAIN**” indicates that other than virgin some non-virgin or scrap/rejected/waste plastic are being used as raw materials in the manufacturing process.

Therefore as the manufacturing unit is using the waste-plastic and /or re-using the waste plastic (comes out from its own manufacturing unit) the same process and operation must be categorised “**ORANGE**” Category, but strictly not under ‘GREEN’ category.”

13. Thus from the pleadings, the inspection reports and the other records placed before us, it indisputably leads us to conclude that the only question that would require determine in this case is as to whether the unit is engaged in “Manufacturing and reprocessing of PVC granules and manufacturing of reprocessed PVC products” under item no.19 of the List of Industries under “ORDINARY RED” Category or “reprocessing of waste plastic (excluding PVC) under item No.37 of the list of industries under ‘Orange Category’ ”.

14. Mr. Anirban Ray, Ld. Advocate appearing on behalf of the applicants also confined himself on the above question as he fairly conceded that this was the moot question to be decided in the case which would then decide the fate of the application.

In his arguments, he urged that the case of the applicants was that as the Respondent Nos.5, 6 and 7 were engaged in manufacturing of products involving use of waste plastic, it fell within the 'Ordinary Red' category under item 19, i.e, manufacturing and reprocessing of PVC granules and manufacturing of reprocessed PVC products. It was alternatively argued that if the unit did not fall within the Ordinary Red Category, it certainly fell within Orange Category under Item no.37 which provides for reprocessing of waste plastic (excluding PVC). In support of his arguments Ld. Counsel referred to the report of the W.B.P.C.B dated 22/09/2015 and emphasised upon the words "However, the rejected plastic material is ground and reused in the process," that of the KMC on their inspection dated 29.10.2015 and the report of the WBPCB dated 31/12/2015 of their second inspection.

15. As per Mr. Ray, the various reports extracted above would clearly indicate that the unit was engaged in

reprocessing of waste plastic and, therefore, undeniably would fall under item No.37 of "Orange Category". He would then refer to Clause 3 of the Additional Conditions in the conditions of the "consent to operate" granted to the unit which requires the unit to use only virgin plastic granules for its production. It was urged that from the reports of the PCB and the KMC, it undoubtedly revealed that the unit was in breach of the Additional Condition of the "Consent to Operate" and was, therefore, liable for the consequences provided under the terms and conditions of such consent. Mr. Ray also dwelt on other aspects, but in our considered opinion those appear to be more academic than of substance and quite irrelevant for disposal of the case and, therefore, need not delay ourselves on those.

16. Mr. Kallol Basu, Ld. Advocate appearing for the Respondent Nos. 5,6 and 7 on the other hand submitted that the application was manifestly barred by the law of limitation for the reasons that the Applicants were aware of the fact that the Respondents had been granted "consent to operate" as far as on 20th December, 1997, and, therefore, all the time aware of its terms and conditions, but had chosen to file the case only in the year of 2015. The bonafidies of the application was also questioned as admittedly there was another unit of the

same kind being run on the ground floor of the very premises owned by the applicants but, they had chosen to proceed only against those Respondents attributing the alleged pollution to them.

17. Mr. Basu further contended that the malafides in the present proceeding can be gathered from the fact that applicants have refused to accept rent for the premises from these respondents compelling them to deposit it before the Rent Controller. It is urged that in the present proceedings, it was not the categorisation of the industry but was rather the report of the PCB that was being assailed by the applicants.

18. Mr. Basu further contended that whether the terms “reuse of rejected plastic material” referred to in the first inspection report of the state PCB, ‘trimmed materials of the product’ and ‘production rejects’ in its 2nd report and, ‘recycling their solid waste like plastic scraps etc. in their manufacturing process’ mentioned in the report of the KMC, would fall within the meaning of “Plastic Waste” stands clarified by the definition of “Plastic Waste” contained in Rule 3 (m) of the Plastic Waste (Management and Handling) Rules 2011. It was asserted that since the aforesaid terms would not fall within the meaning of “ plastic product such as carry bags, pouches or multilayered plastic pouch or sachet etc. which

have been discarded after use or after their intended life is over”, the interpretation being sought to be given by the Ld. Counsel for the applicants was clearly erroneous. He would also submit that the points raised in the oral arguments on behalf of the applicants were beyond the pleadings contained in the Original Application wherein in para 8 the foundational case of the applicants has been set out.

19. We have heard Learned Counsel for the parties, considered the pleadings, the documents on record and the notes on arguments submitted by the Learned Counsel. As already noted, the only contention that was strongly urged on behalf of the Applicants was that the residue materials generated in the manufacturing process by the factory, i.e., the Respondent No.5, are plastic waste the use of which would bring the unit under item no.19 of the list industries under category A of the siting policy framed by the West Bengal Pollution Control Board. The question that would then arise thereafter is that, if the Respondent No. 5 falls under such category as alleged, would it make the Respondent No.5 liable to stop its operations as prayed for by the Applicants.

20. As submitted by Mr. Kallol Basu, the crux of the Applicant's case has been set out in paragraph 8 of the OA

which for the sake of convenience and better appreciation, is reproduced below:-

“ 8. The applicants further state that the Polythene, (HD) & plastic processed products manufacturing unit (excluding manufacturing & reprocessing of PVC granules and manufacturing of reprocessed PVC products and reprocessing of waste plastic) is under “ORDINARY RED” Category (in List of Industries) as published by West Bengal Pollution Control Board. This ‘ORDINARY RED’ is not permitted to establish and/or run in Municipal areas falling under the category of Kolkata Metropolitan Area (KMA). The instant plastic factory falls under the list of industries “ORDINARY RED” being Sl.No. 19 ‘ Manufacturing & processing of PVC granules and manufacturing of processed PVC products’. Whereof, even outside KMA Consent to Establish (NOC) by West Bengal Pollution Control Board is mandatory.

As the said factory within KMA, is illegal even though there is no such

- (A) ‘ Consent’ or NOC and /or
- (B) Environmental clearance

has been granted in favour of said factory/ Respondent No.5. So it is very much clear that the said Plastic Factory in the name and style of Private Respondent No.5 is operating its business activities in a residential area/KMA in the said premises in breach of the stipulations and norms laid down in Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974, The Noise Pollution (Regulation and Control) Rules, 2000, the Environment (Protection) Act, 1986, the Municipal Solid Waste (Management and Handling) Rules, 2000 & the West Bengal Fire Service Act, 1950.”

21. As would be evident from the above, the digression in the case of the Applicant during the oral arguments is unmistakable. However, before entering into merits of the case, we may observe that although objection on

the point of limitation was raised on behalf of the contesting Respondents 5 to 7, it was not seriously pressed by Mr. Kallol Basu, the Learned Counsel representing them. We, therefore, shall not dwell on this aspect notwithstanding the strenuous arguments advanced by Mr. Anirban Ray, Learned Counsel for the Applicants to assail the objection.

22. Thus moving on to the merits of the case confined to the premises set out earlier, Mr. Anirban Ray would contend that the reports of the WBPCB and the KMC referred to earlier indubitably established that the Respondents 5, 6 and 7 were using plastic waste for manufacture of their product. Assailing the finding of the WBPCB in respect of the Respondent No.1 on its first inspection conducted on 22.09.2015 that the unit was a small, green category plastic manufacturing unit, he would urge that contrary to such finding, the unit was of the Orange category as per the siting policy framed by the West Bengal Pollution Control Board in item 37 thereunder, i.e., Reprocessing of waste plastic (excluding PVC). It was contended that the finding of the WBPCB that the unit was using virgin granules as raw materials in its report on the second inspection of the unit carried out on 31.12.2015, was belied by the fact that in that very report it had been observed that end products and end cuttings were blended with virgin

granules. Referring to the observation that rejected plastic material is ground and reused by the unit in the first report of the WBPCB, it was argued that rejected plastic material could not be considered as virgin granules since, as per the Learned Counsel, once virgin granules are subjected to the process of manufacture it loses its virgin character and that rejects of the product after the process of manufacture can only be considered as plastic waste within the meaning of "plastic waste" defined in Rule 3(m) of the Plastic Waste (Management and Handling) Rules, 2011 and certainly not "virgin plastic" as defined under Rule 3(o) of the said Rules.

These are the substantive arguments placed by Anirban Ray, Learned Counsel for the Applicant.

23. We already set out the essence of the brief submissions of Kallol Basu, Learned Advocate, on behalf of the contesting Respondents which we may not repeat for the sake of brevity except to observe that the contentions of the Learned Counsel for the Applicants on the interpretation of the aforesaid provisions of the Rules on the facts and circumstances alluded to by him were seriously contested.

24. Upon hearing the Counsel for the parties, we find that the only question that requires to be decided is as to whether the terms 'rejected plastic material' which is reused

referred to by the WBPCB in their first report, 'recycling their solid wastes like plastics etc.,' in the report of the KMC and 'production rejects and end cuttings' or 'production rejects' or 'trimmed materials of the product' in the second report of the WBPCB is 'plastic waste'. The "Plastic Waste" is defined under Rule 3(m) of the Plastic Waste (Management and Handling) Rules, 2011 which reads as under:-

" (m) 'Plastic Waste' means any plastic products such as carry bags, pouches or multilayered plastic pouch or sachet etc., which have been discarded after use or after their intended life is over ".

25. In our considered opinion, what the WBPCB and the KMC found in the factory of the contesting Respondents during their inspections noted earlier would not fall within the meaning 'plastic waste' as obviously those were neither plastic product such as carry bags, pouches or multilayered plastic pouch or sachet etc., which have been discarded after use or after their intended life was over. The reports of the WBPCB specifically mention that the unit uses virgin *granules* for manufacturing of plastic jars. Of course, it has been stated that rejected plastic material is ground and reused in the process but, it has also been observed that '*No use of the plastic waste as raw material was observed during inspection*'. This observation of the PCB, in our opinion, was

undoubtedly made with specific reference to Rule 3(m) of the Plastic Waste (Management and Handling) Rules, 2011.

26. It would thus appear from the above, the terms used in the reports of the WBPCB and the KMC to describe the materials reused in the manufacturing process by the unit relied upon heavily by the Learned Counsel for the Applicants, would certainly not bring those within the meaning of 'Plastic Waste' defined under Rule 3(m) of the Plastic Waste (Management and Handling) Rules, 2011. Naturally, therefore, the industry in question would neither fall under item 19 of 'Ordinary Red Category' i.e , "Manufacturing and reprocessing of PVC granules and manufacturing of reprocessed PVC products" nor under item 37 of 'Orange Category' i.e "Reprocessing of Waste Plastic (excluding PVC)" as contended on behalf of the Applicant. We rather find that it squarely falls under item 54 of the Green Category under item viz., "Polythene & plastic processed products manufacturing (excluding manufacturing and reprocessing of PVC granules and manufacturing of reprocessed PVC products and reprocessing of waste plastic)".

27. Thus, in view of these findings on the fundamental and the only issue in the case that called for determination by us, other questions raised by the Applicants

need not be gone into as being irrelevant and peripheral and, in any case, would suffer consequential rejection in view of the finding on the principal issue. We may also observe having regard to the undisputed report of the Officer-in-Charge, Jorabagan Police Station, the WBPCB and the KMC in their reports that there is another factory unit named M/s Daga Poly Container Pvt. Ltd. located on the same floor as the Respondent No.5 manufacturing the same products, attributing the alleged pollution only on the Respondent No.5 appears to be quite curious giving rise to serious doubts on the bonafides of the Applicant's case.

In the result the Original Application is dismissed with 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, 21st September, 2016.**