

Item No.01

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.83/2023/EZ

Ankur Sharma

Applicant(s)

Versus

The State of West Bengal & Ors.

Respondent(s)

Date of hearing: 02.08.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

For Applicant(s) : Mr. Ankur Sharma, in person (in Virtual Mode)

ORDER

1. Heard Mr. Ankur Sharma, the Applicant in person, present in Virtual Mode.
2. This Original Application has been filed by the Applicant alleging that within the Howrah Municipal Corporation, Hot Mix Plants are in operation near 'Dalal Pukur' on Mahendra Bhattacharya Road, which is an extension of N.S. Road and close to the house of the Applicant. It is stated that a new layer of asphalt has been applied on a small stretch of N.S. Road within the jurisdiction of the Howrah Police Station using Hot Mix technology.
3. It is further stated that on 19.07.2023 the Applicant noticed that hot mix asphalt was being brought on polluting three wheelers and was being laid on a stretch of the said Road and on enquiry it was informed that reconstruction of N.S. Road is being carried on and a Hot Mix Plant has been set-up near 'Dalal Pukur' on Mahendra Bhattacharya Road being the extension of N.S. Road.

4. It is stated that Applicant thereafter rushed to the Dalal Pukur and noticed a huge Hot Mix Plant had been set-up near the lake emitting thick black smoke in which plastic and wood were being used as fuel. The name of the contractor was not available anywhere through any display board to show that he has been engaged by the Howrah Municipal Corporation.
5. It is further stated that on 11.12.2022 while passing along Deshpran Shasmal/Panchanantala Road, Howrah, the Applicant noticed that gross pollution was being carried out by the Howrah Municipal Corporation due to the use of Hot Mix Plant emitting thick black smoke which was causing considerable air pollution in the area.
6. It is stated that thereafter the Applicant sent a complaint vide e-mail dated 20.07.2023 at 10:45 hours (Annexure-P-2 to the Original Application), to the Commissioner, Howrah Municipal Corporation and the West Bengal Pollution Control Board, but no action has been taken till date. It is also stated that another complaint letter vide e-mail dated 12.12.2022 at 11:45 PM was sent by the Applicant to the Commissioner, Howrah Municipal Corporation, copy of which has been filed at page no. 27 of the paper book. Photographs have also been filed as Annexure-P-1 & P-2 (page nos. 18, 19, 20, 21, 24 & 26) to the Original Application.
7. The Applicant has also referred to the directions given by the Tribunal in its order dated 02.05.2022 passed in Original Application No.171/2016/EZ with M.A. No. 57/2018/EZ (*Subhas Dutta Vs. State of West Bengal & Ors.*), wherein the Tribunal had taken note of emissions emerging from Hot Mix Plants. Para 13 of the order reads as under:-

13. Kolkata - Howrah twin Cities (in KMDA) are included in the nonattainment cities (NACs). They are required to execute Clean Air Action Plan, 2020 under NCAP which includes identification sources contributing to air pollution. The relevant information particularly relating to Hot Mix Plants with reference to short and medium term actions are given:

“1.5 Hot-mix plants for road construction and cement batching

Kolkata Municipal Corporation, as well as the Kolkata Metropolitan Development Area have been witnessing a boom. Greenfield projects, in terms of commercial, residential and mixed land-use area development, as well as expansion of existing areas has led to the intensive increase in emissions emerging from concrete batching as well as from asphalt mixing plants, known as hot-mix plants.

The Eastern Zone bench of the NGT took notice of the emissions emerging from these hot-mix plants, and in a series of orders dated 18 September 2018 and 01 October 2018, banned the operation of all Hot Mix plants within Kolkata and Howrah. The order also asks the state government, KMC, and the WB PWD to ‘adopt more environment friendly and cleaner methods for the purpose’. The KMC also moved the NGT on 01 October 2018 to get a 4-month window to continue to operate the KMC run hot-mix plants within Kolkata. The deadline of 31 January 2019 has been set for these plants by the KMC to finish the ongoing repair of roads across Kolkata and Howrah. However, it must be noted that the longer term plan of the KMC for its hotmix plants is to relocate these to areas such as Dum Dum and Rajarhat that are outside the jurisdiction of KMC. While this may suffice for the purpose of the NGT order, the emissions from these re-located plants, along with others within the KMDA will continue to affect air quality in the Kolkata-Howrah airshed. The KMC has begun implementation of this order, through the constitution of a panel of experts from WBPCB, IIT-Kharagpur, KMDA, Hooghly River Bridge Commissioners (HRBC) and KMC, with a mandate to monitor emissions from existing hot-mix plants,

and suggest technical, technological and other measures to reduce the emissions from this sector.

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3. BRICK KILNS, HOT-MIX PLANTS AND STONE CRUSHERS

Sr. no.	Action points	Agency responsible	Timeline
Short-term priority action			
3.1	There are about six brick kilns in close vicinity of the city. Enforce restrictions on operations of brick kilns within urban airshed zones during high pollution periods; allow only those brick kilns that comply with rectangular zig-zag design with induced draft or those with improved technology. Initiate phasing out of traditional brick kilns.	Dept. of land and Land Reform WBPCB, KMDA, HMC, Department of MSME	6 months
3.2	Relocate and discourage any hot-mix plants within Howrah boundaries. Shut down small and mobile hot-mix plants.	HMC, WB PWD, NHAI and other road operating agencies	Immediately
Medium-term action			
3.3	Identify and convert all brick kilns to rectangular design zigzag technology. If	Department of Land and Land Reform, WBPCB, CPCB, ICE and MSME	1 year

	<i>any FCBT natural draft kilns are found they need to be converted to induced draft kilns with rectangular zigzag design.</i>		
3.4	<i>Prescribe design specifications for improved kilns and ensure compliance checking of conversion. Ensure provision of infrastructure in terms of viewing platform and chimney emission testing point for compliance.</i>	<i>CPCB, WBPCB, Department of ICE, MSME</i>	<i>1 year</i>
3.5	<i>Establish a protocol for using cleaner fuels & technology for asphalt mixing and minimizing the number of hot-mix plants.</i>	<i>MoRTH, HMC, WB PWD, NHAI and other road operating agencies</i>	<i>2 years</i>

8. We find that the Tribunal while disposing of the said Original Application had constituted a Joint Committee comprising of; (i) Secretary Environment, Government of West Bengal, (ii) Secretary Transport, Government of West Bengal, (iii) Secretary Urban Development, Government of West Bengal, (iv) Secretary Local Bodies, Government of West Bengal, (v) Central Pollution Control Board, and (vi) State Pollution Control Board, to prepare/update Action Plan for Kolkata Metropolitan Area for control of air pollution with Secretary Environment, Government of West Bengal, as the

Nodal Agency for compliance. This Joint Committee was directed to come up with an updated plan within three months. Para 16 of the order reads as under:-

“16. In the light of above discussion, we direct constitution of a joint Committee comprising Secretary Environment, Secretary Transport, Secretary Urban Development, Secretary Local Bodies, (all West Bengal Govt), CPCB and State PCB to prepare/update action plan for Kolkata metropolitan Area for control of air pollution. Secretary Environment will be nodal agency for compliance. The joint Committee may meet within one month and finalise/update its plan within three months. It may consider outline of suggested plans in the order dated 8.10.2018, quoted in para 11 and 12 above and other plans finalised by AQMC in respect of NACs in the State of West Bengal, in pursuance of the said order. It will be open to any stake holder to put forward suggestions for consideration of the Committee. The Committee will also be free to interact with any other expert/institution/department on the subject.”

9. The two orders of the Tribunal dated 18.09.2018 and 01.10.2018 referred to in para 13 of the final order of the Tribunal dated 02.05.2022 read as under:-

“(Order dated September 18, 2018)

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2. The affidavits filed by the respondents in reply to the application appear to contain statements which are unsatisfactory and grossly wanting of compliance of the directions issued in Original Application No.33/2014. This would be evident from the supplementary affidavit filed by the applicant on 24.11.2017 which illustrates the brazen violation of the directions. Hot mix plants appears to be in use rampantly for road repairs and also use of fossil fuel in the heart of the city of Kolkata adding tremendously to the already polluted air.

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4. We, therefore, direct the state respondents, the State Public Works Department and the Kolkata Municipal Corporation to ensure that the use of Hot Mix Plants and burning of fossil fuel is discontinued for road construction and repair forthwith and

adopt more environment friendly and cleaner methods for the purpose as already directed earlier.”

“(Order dated October 01, 2018)

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4. We reiterate our order dated 18.09.2018 and direct closure of all Hot Mix Plants failing which exemplary penalty of not less than Rs. 5 lakh shall be imposed upon the Kolkata Municipal Corporation and other authorities apart from taking appropriate steps against the erring officers for non-compliance of the directions.”

10. It is alleged that in spite of the directions given in the final order of the Tribunal, nothing has been done till date.
11. In our opinion, matter requires consideration.
12. Issue notice to the Respondents, returnable within four weeks.
13. Mr. Sudip Kumar Dutta, learned Counsel appearing (in Virtual Mode), accepts notice on behalf of the Respondent Nos.1&2, State Respondents, Government of West Bengal.
14. Mr. Dipanjan Ghosh, learned Counsel appearing (in Virtual Mode), accepts notice on behalf of the Respondent No.3, West Bengal Pollution Control Board.
15. Ms. Amrita Pandey, learned Counsel appearing (in Virtual Mode), accepts notice on behalf of the Respondent No.4, Howrah Municipal Corporation.
16. All the Respondents shall file their counter-affidavits within four weeks.
17. Considering the allegations made, we deem it appropriate to constitute a Committee comprising of the following Members:-
 - (i) Senior Scientist, West Bengal Pollution Control Board,
 - (ii) Senior Scientist, Central Pollution Control Board,
 - (iii) Principal Secretary, Department of Environment, Govt. of West Bengal, or his nominee of a senior rank, and

- (iv) Municipal Commissioner, Howrah Municipal Corporation, or his nominee of a senior rank,
18. The Committee shall visit the site in question within 10 days and submit its report within a further period of two weeks on affidavit. The Committee shall, in case violations are found, not only determine the Environmental Compensation against the violator but shall also recommend disciplinary action against the officer responsible for disregarding the orders of the Tribunal.
19. The Howrah Municipal Corporation shall be the Nodal Office for all logistic purposes.
20. The West Bengal Pollution Control Board shall file the Report of the Committee on affidavit.
21. The Applicant shall implead the Central Pollution Control Board in the array of Respondents as Respondent No.5 within 24 hours.
22. Mr. Surendra Kumar, learned Counsel who is present in Court, accepts notice on behalf of the newly added Respondent No.5, he shall also file his counter-affidavit within four weeks.
23. The Applicant shall serve e-copy/soft copy of the Original Application along with all its annexures upon Mr. Sudip Kumar Dutta, Mr. Dipanjan Ghosh, Ms. Amrita Pandey and Mr. Surendra Kumar, Counsel for the Respondents within 24 hours.
24. **List on 04.09.2023.**

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B. Amit Sthalekar, JM

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Prof. A. Senthil Vel, EM

August 02, 2023,
Original Application No.83/2023/EZ
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