Item Nos.10&11 Court No.1

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

Original Application No.82/2023/EZ
With
Execution Application No.03/2024/EZ
In
Original Application No.82/2023/EZ

IN THE MATTER OF:

Santoshpur Mitali Sangha,
Through its authorized Signatory,
Shri Avi Bag, Secretary,
Banerjee Para, Village – Santoshpur,
P.O. – Adi Kashimpur, P.S. Duttapukur,
North 24 Parganas,
Pin – 743248,

.... Applicant(s)

Versus

1. **State of West Bengal,**
Through the Chief Secretary,
Department of Environment,
5th Floor, Pranisampad Bhawan,
Block LB-II, Salt Lake, Sector-III,
Bidhannagar, Kolkata,
Pin – 700106,

2. **West Bengal State Pollution Control Board,**
Through its Member Secretary,
Paribesh Bhawan, 10A, Block-LA,
Sector-III, Bidhannagar,
Kolkata – 700106,

3. **Central Pollution Control Board,**
Through the Member Secretary,
Parivesh Bhawan, CBD-cum-Office Complex,
East Arjun Nagar,
Delhi – 110032,

4. **District Magistrate,** North 24 Parganas,
New Administrative Building,
Barasat, Kolkata,
Pin – 700124,

5. **Pradhan, Kashimpur Gram Panchayat,**
Bamunpara, Digha,

North 24 Parganas,
West Bengal – 743248,

6. **Block Development Officer**
Barasat-I Development Block,
Chhota Jagulia, North 24 Parganas,
West Bengal,
Pin – 700124,

7. **Suravi Sadan Gaushala,**
Through the President of Rajasthan Gokalyan Trust,
Santoshpur, Barasat, North 24 Parganas,
West Bengal – 743248,

8. **Rajasthan Gokalyan Trust,**
Through its President,
Santoshpur, Barasat,
North 24 Parganas, West Bengal
Pin – 743248,

.... Respondent(s)

Date of hearing and reserving of order: 12.08.2024

Date of uploading of order in NGT Website: 11.09.2024

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s) : Mr. Ritwick Dutta, Advocate (in Virtual Mode) a/w
Mr. Kaustav Dhar, Advocate

For Respondent(s) : Mr. Rajib Ray, Adv. for R-1, 4 & 6, (in Virtual Mode)
Mr. Ayush Kumar Dadhich, Advocate for R-2,
Mr. Dipanjan Ghosh, Advocate for R-3,
Mr. Amritam Mandal, Advocate a/w
Ms. Shipra Naskar & Mr. Sanjay Sadhu, Advs. for R-7 & 8,

ORDER

1. The allegation of the Applicant in the present Original Application is that the Respondent No.7 is illegally operating a 'Gaushala' in the name and style of 'Suravi Sadan Gaushala' under the Rajasthan Gokalyan Trust, Respondent No.8.

2. It is alleged that the said Gaushala Unit of Respondent No.7 operated by Respondent No.8, both hereinafter referred to as the Project Proponent, is operating for several years without a valid

Consent to Establish and Consent to Operate from the West Bengal Pollution Control Board.

3. It is also alleged that the Respondent No.7 Unit is operating in violation of the provisions of 'Guidelines for Environmental Management of Dairy Farms and Gaushalas' published by the Central Pollution Control Board in July, 2021 (hereinafter referred to as the Guidelines, 2021).

4. It is further alleged that the Respondent No.7 Gaushala is located within 60 meters and 80 meters from residential dwellings and schools instead of being located beyond 100 meters from the residential areas and, therefore, its siting is in violation of the Guidelines, 2021.

5. The allegation of the Applicant further is that dung and fodder residue are washed into the drains leading to clogging of the drains. It is stated that as per the Central Pollution Control Board Notification dated 07.03.2016, 'Dairy Farm' is listed under 'Orange' category and the requirement of obtaining Consent to Establish and Consent to Operate under the Air (Prevention and Control of Pollution) Act, 1981, and the Water (Prevention and Control of Pollution) Act, 1974, are mandatory for Red, Orange and Green category industries.

6. It is further stated that the Applicant had moved a RTI application before the West Bengal Pollution Control Board vide his letter dated 12.05.2023, seeking information regarding Consent to Establish and Consent to Operate granted to the Respondent No.7, Suravi Sadan Goshala, but the reply in response thereto dated 23.06.2023 merely states that 'no information is available regarding the matter'.

7. At the time of admission, this Tribunal constituted a fact finding Committee comprising of the following Members:-

(i) *Senior Scientist, West Bengal Pollution Control Board,*

(ii) *Senior Scientist, Central Pollution Control Board, and*

(iii) *District Magistrate, North 24 Parganas, or his nominee not below the rank of Additional District Magistrate,*

8. The Committee was required to visit the site in question and submit its report with regard to the allegations made in the Original Application and in case violations were found, the Committee was also required to suggest remedial measures as well as determine Environmental Compensation.

9. Along with the Original Application, the Applicant has filed photographs (Annexure-A/2), showing extremely filthy and unhygienic condition existing in the Suravi Sadan Gaushala, Respondent No.7, and the waste discharged therefrom.

10. Along with the Original Application, copy of the Central Pollution Control Board directions dated 07.03.2016 (Annexure-A/3) in the nature of 'Final Document on Revised Classification of Industrial Sectors under Red, Orange, Green and White Categories (February 29, 2016)' has been filed. Table G-3 thereof which is the Final List of Orange Category of Industrial Sectors has been issued and dairy and dairy products (small scale) have been included in the 'Orange' category at Item No.24 thereof and under the heading 'Remarks' it is characterized as 'water and air polluting both'.

11. Further guidelines have been issued by the Central Pollution Control Board known as 'Guidelines for Environmental Management of Dairy Farms and Gaushalas', (July, 2021), copy of

which has been filed from page 66 onwards of the paper book, already referred to hereinabove as 'Guidelines, 2021'.

12. Para 2 of the Guidelines, 2021, categorizes Dairy Farms and Gaushalas on the basis of number of bovine animals in a Dairy/Gaushala located in urban, peri-urban and rural area. Para 2.2 of the Guidelines, 2021, deals with Gaushalas having upto 100 animals, 1,000 animals and more than 1,000 animals which can be categorized as small, medium and large Gaushalas respectively. Para 2.2 of the Guidelines, 2021, reads as under:-

> ***"2. Categorization of Dairy Farms and Gaushalas***
>
> *…………………x…………….x…………………………x…………*
>
> ***2.2 Gaushalas***
>
> *Similarly, inventory received from SPCBs/PCCs for Gaushalas and it is analysed that 15-20 % Gaushalas having upto 100 animals and 80-85% Gaushalas having more than 100 animals. Therefore, Gaushala having upto 100 animals, 1000 animals & more than 1000 animals can be categorized as small, medium & large Gaushala, respectively. It has been analysed that 5055%, 5-10% and 35-45% Gaushalas located in urban, peri-urban & rural area, respectively."*

13. Para 3 of the Guidelines, 2021, deals with 'Environmental Issues in Dairy Farms and Gaushalas' and notes that major environmental issues of Dairy Farms and Gaushalas are related to disposal of dung and urinal waste water. It is stated that a bovine animal, on an average, weighs 400 kilograms and discharges 15-20 kilograms/day of dung and 12-14 litres/day of urine. It is also stated that solid wastes produced from Dairy Farms and Gaushalas are bovine dung, feed residue etc. which are organic and non-hazardous in nature but requires proper handling and disposal. Para 3 of the Guidelines, 2021, reads as under:-

"3. Environmental Issues in Dairy Farms and Gaushalas

Major environmental issues of Dairy farms and Gaushalas are related to disposal of dung and urinal wastewater. Poor handling & disposal of dung and wastewater causes water pollution & odour problem. A Bovine animal, on an average, weigh 400 kg and discharges 15-20 kg/day of dung and 12-14 litres/day of urine. Solid wastes produced from Dairy farms and Gaushalas are bovine dung, feed residue, etc. which are organic and non-hazardous in nature but requires proper handling and disposal."

14. Para 3.1.1 of the Guidelines, 2021, deals with Urban & Peri-Urban Area and notes that the issue of disposal of dung and waste water from Dairy farms is predominant in urban and peri-urban area where it is discharged in drains, leading to clogging, which ultimately reach to and pollute rivers; these clogged drains become breeding ground for mosquitoes thereby creating health hazards and odour nuisance; waste water is generated from floor cleaning, bathing of animals, urine etc. and disposed of without treatment into drains; dung produces many gases/compounds such as – Carbon Dioxide, Ammonia, Hydrogen Sulphide, Methane etc. which are emitted into the atmosphere and are responsible for odour. Para 3.1.1 of the Guidelines, 2021, reads as under:-

"3.1.1 Urban & Peri-urban Area

Majority of Dairy Farms are in clusters. Issue of disposal of dung & wastewater from Dairy farms is predominant in urban & peri-urban area where it is discharged in drains, leading to clogging, which ultimately reach to and pollute rivers. These clogged drains become breeding ground for mosquitoes creating health hazards and odour nuisance. Wastewater is generated from floor cleaning, bathing of animals, urine, etc. and disposed of without treatment into drains. Dung produces many gases/compounds such as carbon dioxide, ammonia, hydrogen sulphide, methane, etc. which emitted into atmosphere and responsible for odour."

15. Para 3.2 of the Guidelines, 2021, deals with Gaushalas in Urban & Peri-urban Area and Rural Area.

16. Para 4 of the Guidelines deals with Methods for Disposal/Utilisation of Dung which reads as under:-

> ***"4. Methods for Disposal/Utilisation of Dung***
>
> *Majority Disposal of bovine dung is biggest challenge in dairy farms and gaushalas. However, bovine dung, if effectively utilised, can be a resource of manure & energy. Bovine dung may be used for many purposes i.e. for combustion (dung wood) or for producing biogas or as soil conditioner or as fertilizers or as material for wall plastering, etc. Following methods for disposal/utilisation of solid wastes (dung) may be adopted:*
>
> *a. Composting/Vermicomposting: Composting is a manure management practice to reduce impact on the environment. Composting is biological decomposition and stabilization of organic material. The process produces a final product that is stable, free of pathogens, reduced odours and can be applied on land as manure. Vermicomposting is method of preparing compost with use of earthworms that enriches soil quality by improving its physicochemical and biological properties. It is becoming popular as a major component of organic farming system.*
>
> *b. <u>Biogas/Compressed biogas (CBG) production</u>: Biogas plants are best way to handle dung waste. Biogas is generated in process of biodegradation of organic materials under anaerobic conditions which may be utilised for cooking and power generation. Biogas plant generated digested organic manure for crops. Biogas can be processed and filled in cylinders. Bio-gas may be further purified to remove hydrogen sulphide (H_2S), carbon dioxide (CO_2) & water vapour and compressed (known as Compressed Bio Gas, CBG) which has methane (CH_4) content of more than 90% as per BIS standard IS 16087:2016. CBG has calorific value and other properties similar to CNG and hence can be utilized as green renewable fuel as replacement of CNG in automotive, industrial and commercial areas.*
>
> *c. <u>Manufacture of dung wood or dung cake to be used as fuel:</u> Bovine dung can be used as*

fuel as a replacement of firewood. Bovine dung can be dewatered and converted to value added products such as logs, powder etc. by mechanized/semi-mechanized machines.

Following options for disposal/utilization of dung may be adopted by Dairy Farms and Gaushalas:

Sl. No.	***Dairy Farms/ Gaushalas***	***Methods for Disposal/Utilization of Dung***
1.	*Small Dairy Farms*	• *Composting/vermicomposting, or* • *Manufacture of dung wood/dung cake, or* • *Combination of both*
2.	*Medium Dairy Farms*	• *Combination of any of three methods for disposal/utilization of dung*
3.	*Large Dairy Farms*	• *Biogas/compressed biogas production or* • *Combination with any of remaining method*
4.	*Dairy Farms in Rural Area*	• *Composting/vermicomposting, or* • *Manufacture of dung wood/dung cake*
5.	*Dairy Farms in Cluster*	• *Common Biogas/compressed biogas production, and* • *Any of remaining method at individual level*
6.	*Small & Medium Gaushalas*	• *Combination of any of three methods for disposal/utilization of dung*
7.	*Large Gaushalas*	• *Biogas/compressed biogas production or* • *Combination with any of remaining method*

17. Para 5 of the Guidelines, 2021, lays down the guidelines for Waste Management in Dairy Farms. Para 5.1 lays down guidelines for Waste Management in Dairy Farms located in Urban & Peri-urban Area. Para 5.1 and its sub-paras 5.1.1, 5.1.2, 5.1.3 & 5.1.4, deal with Solid Waste Management, Wastewater Management, Air Quality Management and Siting Policy respectively, which read as under:-

"5. Guidelines for Waste Management in Dairy Farms

…………………x………………………x………………x………………

5.1 Guidelines for Waste Management in Dairy Farms located in Urban & Peri-urban Area

5.1.1 Solid Waste Management

Guidelines to be followed for management of solid wastes are as under:-

i. *Dung from floor of shed should be collected at regular interval, so as to keep floor clean. Surrounding areas should also be cleaned regularly to prevent obnoxious smell in area.*
ii. *Premises and its surrounding areas should be properly sanitized and disinfected, e.g. by sprinkling crushed lime.*
iii. *Dung & fodder residue etc. should not be washed into drains in order to avoid clogging of drains. Local bodies/corporations/SPCBs should ensure that untreated wastes are not discharged outside premises.*
iv. *Collected solid wastes should be stored properly for its utilization.*
v. *Small Dairy Farms may adopt dung for manufacture of dung wood/dung cake or composting/vermicomposting or combination of both methods for disposal/utilization of solid wastes. In case of cluster, biogas/compressed biogas production may be adopted for disposal/utilization of solid wastes in association with entrepreneurs or local dairy farmers association. Local bodies/corporations/SPCBs should facilitate Dairy farmers/entrepreneurs/NGOs in setting up of individual or common utilization facilities.*
vi. *Medium & Large Dairy Farms may adopt a combination of disposal/utilization methods like manufacturing of dung wood or biogas generation or vermicomposting. However, Large Dairy Farms may setup biogas/compressed biogas production facility either by themselves or in association with entrepreneurs.*
vii. *Domestic hazardous wastes (vaccines, vails, medicines, syringes, etc.) should be disposed as per provisions of "Solid Waste Management Rules, 2016". If they have their own medical facilities then wastes should be disposed as per provisions of "Bio-medical Waste Management Rules, 2016.*

5.1.2 Wastewater Management

Guidelines for management of wastewater are as follows:-

i. *Water should be judiciously used for bathing of bovines and other services including floor cleaning to contain wastewater quantity to 100 litres/day/bovine.*
ii. *Adequate infrastructure should be provided to ensure proper handling, treatment and disposal of wastewater. They may set-up individual or common treatment facilities where in cluster. Local bodies/corporations/SPCBs should facilitate Dairy farmers/ entrepreneurs/NGOs in setting up of individual or common treatment facilities.*
iii. *Wastewater should be adequately treated so as to meet standards as prescribed by SPCBs/PCCs.*
iv. *Flooring of shed should be properly paved (impervious) with a wastewater collection system. However, floor should not be slippery in order to ensure safety of animals.*

5.1.3 Air Quality Management

Guidelines for management of air quality/emissions are as follows:-

i. *Animal housing should be ventilated allowing sufficient supply of fresh air to remove humidity, dissipate heat and prevent build-up of gases such as methane, carbon dioxide, ammonia, etc.*
ii. *Good housekeeping practices like maintaining proper sanitary conditions, protecting dung from unwanted pests/insects should be followed in order to minimize odour nuisance.*
iii. *Floor, feeding, water and air spaces available for each animal should be adequate for standing, resting, loafing, movement, feeding, watering and ventilation. Space requirements should be provided as per Bureau of Indian Standards (BIS) (refer BIS: 12237-1987 given at Annexure-I).*
iv. *It is suggested to obtain ration advisory for improving/modifying quality and dosage of feed/forage/supplements from any of agricultural institutes/departments like Krishi Vigyan Kendra, State Dairy Department, Animal Husbandry Department, NDRI, NDDB, etc. in order to reduce enteric methane generations from livestock. It is beneficial to animal health/nutrition and reduced impact on environment.*

v. *Plantation of trees or green belts, wherever feasible, to provide a barrier against the spread of foul smell or noise originating from them.*

5.1.4 Siting Policy

Siting criteria will be applicable for new establishment. Existing establishments should take appropriate environmental friendly practices as per Guidelines. Dairy farm shall be setup as per siting policy/guidelines of local administration and may follow criteria as below:

i. It should be located in area wherever permissible and atleast 100 meters away from residential dwellings, health centres/hospitals & schools in order to avoid odour problem,

ii. At least 200 meters away from water spread area of major watercourses like Lake, canal and major drinking water sources,

iii. Away from flood plain area of River and areas having shallow groundwater.

iv. At least 5 meters of inter-se distance between two establishments (each establishment should provide 2.5 meters from each side) for ventilation should be provided and developed green belt.

18. Para 5.2 of the Guidelines, 2021, lays down guidelines for Waste Management in Dairy Farms located in Rural Area. Para 5.2 and its sub-paras 5.2.1, 5.2.2, 5.2.3 & 5.2.4, deal with Solid Waste Management, Wastewater Management, Air Quality Management and Siting Policy respectively, which read as under:-

5.2 Guidelines for Waste Management in Dairy Farms located in Rural Area

5.2.1 Solid Waste Management

i. Dung should be collected & stored properly for its utilization. It should be used as compost in field or in making dung wood or vermi-compost. Biogas production may be practiced wherein cluster as a source of energy for rural area.

ii. Dung & fodder residue should not be washed into drains in order to avoid clogging of drains and surrounding areas should also be cleaned regularly to prevent obnoxious smell in area.

iii. Provisions of "Solid Waste Management Rules, 2016" should be followed for disposal of domestic hazardous wastes (vaccines, vails, medicines, syringes, etc.).

5.2.2 Wastewater Management

i. Water should be judiciously used to contain wastewater quantity to 100 litres/day/ bovine.

ii. Floor should be paved and wastewater should be collected and utilized for agriculture purpose. Floor should not be slippery in order to ensure safety of animals.

iii. Wastewater should be adequately treated so as to meet standards as prescribed by SPCBs/PCCs.

5.2.3 Air Quality Management

i. Animal housing should be ventilated allowing sufficient supply of fresh air to remove humidity, dissipate heat and prevent build-up of gases.

ii. Good housekeeping practices should be followed in order to minimize odour nuisance.

iii. Floor, feeding, water and air spaces available for each animal should be adequate for standing, resting, loafing, movement, feeding, watering and ventilation. Space requirements should be provided as per Bureau of Indian Standards (BIS) (refer BIS: 11799-2005 given at Annexure-II).

iv. It is suggested to obtain Ration advisory for improving/modifying quality and dosage of feed/forage/supplements from any of agricultural institutes/departments like Krishi Vigyan Kendra, State Dairy Department, Animal Husbandry Department, NDRI, NDDB, etc. to reduce enteric methane generations from livestock.

v. Plantation of trees or green belts, wherever feasible, to provide a barrier against spread of foul smell or noise originating from them.

5.2.4 Siting Policy

Siting criteria will be applicable for new establishment. Existing establishments should take appropriate environmental friendly *practices as per Guidelines. Dairy farm shall be setup as per siting policy/guidelines of local administration.*

These should be located away from residential dwellings/hospitals/schools in order to avoid odour issue as per siting norms of local administration. It should be atleast 100 meters away from water spread area of major drinking water sources in order to avoid contamination of water bodies. These should be away from flood plain areas of River and areas having shallow groundwater.

Atleast 5 meters of inter-se distance between two establishments for ventilation, this space of 5 meters (2.5 meters from each side from each unit) shall be developed for green belt."

19. Para 6 of the Guidelines, 2021, lays down guidelines for Waste Management in Gaushalas. Para 6.1 deals with Solid Waste Management, para 6.2 deals with Water Management, para 6.3 deals with Air Quality Management, and para 6.4 deals with Siting Policy. Para 6 and its sub-paras read as under:-

"6. Guidelines for Waste Management in Gaushalas

Following guidelines are framed for management of wastes from Gaushalas located in urban, peri-urban & rural area. These guidelines are applicable to establishment which are discharging their wastes into environment. These establishments shall also follow existing laws, rules, guidelines, directions and standard operating procedures issued by different organizations.

6.1 Solid Waste Management

Guidelines to be followed for management of solid wastes are as under:-

i. Dung from floor of shed should be collected at regular interval, so as to keep floor clean. Surrounding areas should also be cleaned regularly to prevent obnoxious smell in area.

ii. Premises and its surrounding areas should be properly sanitized and disinfected, e.g. by sprinkling crushed lime.

iii. Dung & fodder residue etc. should not be washed into drains in order to avoid clogging of drains. Local bodies/corporations/SPCBs should ensure that untreated wastes are not discharged outside premises.

iv. *Solid wastes should be stored properly for its utilization in dung wood manufacturing or biogas generation or vermicomposting. In case of small & medium scale Gaushalas, a combination any of methods may be adopted for utilization of dung wherein large scale Gaushalas may setup biogas generation facility at its own or in partnership with entrepreneurs.*

v. *Domestic hazardous wastes (vaccines, vails, medicines, syringes, etc.) should be disposed as per provisions of "Solid Waste Management Rules, 2016". If they have their own medical facilities then the wastes should be disposed as per provisions of "Bio-medical Waste Management Rules, 2016".*

6.2 Wastewater Management

Guidelines for management of wastewater are as follows:-

i. *Dung Water should be judiciously used for bathing of bovines and other services to contain wastewater quantity to 50 litres/day/bovine. (As water utilized by Gaushala is less in comparison to Dairy Farm due to occasional bathing & mechanized floor cleaning).*

ii. *Adequate infrastructure should be set-up to ensure proper handling, treatment and disposal of wastewater. Local bodies/corporations/SPCBs should facilitate Gaushala owners/ entrepreneurs/NGOs in setting up of treatment facilities.*

iii. *Wastewater should be adequately treated so as to meet standards as prescribed by SPCBs/PCCs or utilized for various medicinal purpose.*

iv. *Flooring of shed should be properly paved (impervious) with a wastewater collection system. However, floor should not be slippery in order to ensure safety of animals.*

6.3 Air Quality Management

Guidelines for management of air quality/emissions are as follows:-

i. *Animal housing should be ventilated allowing sufficient supply of fresh air to remove humidity, dissipate heat and prevent build-up of gases.*

ii. *Good housekeeping practices like maintaining proper sanitary conditions, protecting dung from unwanted pests/insects should be followed in order to minimize odour nuisance.*

iii. *Floor, feeding, water and air spaces available for each animal should be adequate for standing, resting, loafing, movement, feeding, watering and ventilation. Space* *requirements should be provided as per Bureau of Indian Standards (BIS) (refer BIS: 11942-1986 given at Annexure-III).*

iv. *It is suggested to obtain Ration advisory for improving/modifying quality and dosage of feed/forage/supplements from any of agricultural institutes/departments like Krishi Vigyan Kendra, State Dairy Department, Animal Husbandry Department, NDRI, NDDB, etc. to reduce enteric methane generations from livestock.*

v. *Plantation of trees or green belts, wherever feasible, to provide a barrier against spread of foul smell or noise originating from them.*

6.4 Siting Policy

Siting criteria will be applicable for new establishment. Existing establishments should take appropriate environmental friendly practices as per Guidelines. Gaushala shall be setup as per siting policy/guidelines of local administration.

These should be located atleast 100 meters away from residential dwellings/schools/hospitals in order to avoid odour issue and away from the water spread area of major drinking water sources. These should be away from flood plain areas of River and areas having shallow groundwater. Atleast 5 meters of inter-se distance between two establishments for ventilation, this space of 5 meters (atleast 2.5 meters from each side from each unit) shall be developed for green belt."

20. Para 7 of the Guidelines, 2021, lays down the Regulatory/Monitoring Mechanism for Dairy Farms & Gaushalas, which reads as under:-

"7. Regulatory/Monitoring Mechanism for Dairy Farms & Gaushalas

i. *Local authorities/corporations should carry out inventory of Dairy farms and Gaushalas located in their jurisdiction in inventory performa given at Annexure-IV and same should be updated & shared with concerned SPCB/PCC on annual basis (calendar year wise).*

ii. *Local bodies/municipal corporations shall publish a public notice in newspapers and on their website for registration of*

Dairy farms and Gaushalas as per municipal laws. Registration may be done preferably through online mode and same may be displayed at their websites.

iii. *SPCBs/PCCs shall publish a public notice for Dairy farms & Gaushalas to obtain consent to establish and consent to operate under Water Act, 1974 as well as Air Act, 1981 as per the categorization of industries in Orange and Green Category, respectively.*

iv. *SPCBs/PCCs/local bodies/municipal corporations shall upload Environmental Guidelines on their website and also circulate to all Dairy farms and Gaushalas.*

v. *Concerned SPCBs/PCCs/local bodies/corporations should monitor dairy farms and gaushalas on regular basis to ensure proper disposal of bovine dung and wastewater to check compliance of environmental norms. SPCBs/PCCs will consider carrying capacity of surroundings while allowing a new establishment and laying down environmental norms.*

vi. *SPCBs/PCCs shall carry out environmental audit of atleast 2 Dairy farms and 2 Gaushalas, randomly selected from each district of State/UT and submit compliance and action taken report to CPCB on half yearly basis.*

vii. *SPCBs/PCCs shall submit status of compliance of guidelines by Dairy farms and Gaushalas located in their jurisdiction in form of report once in six months to CPCB for Audit purpose.*

viii. *CPCB shall carry out environmental auditing of 4 Dairy farms and 4 Gaushalas in each State/UT, randomly selected based on information received from SPCBs/PCCs on annual basis.*

ix. *In case of any violation of environmental norms under Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and Environmental (Protect) Act, 1986 by Dairy farms and Gaushalas, concerned SPCBs/PCCs should impose environmental compensation as per CPCB methodology for "Environmental Compensation to be levied on Industrial Units", for damaging the environment and in order to stop polluting activity and initiate prosecution for repeatedly polluting units.*

x. *SPCBs/PCCs should provide training and consultation to Gram Panchayat for implementation of guidelines in their jurisdiction. Gram Panchayat should ensure implementation* *of guidelines by Dairy farms and Gaushalas falling under their jurisdiction for handling and management of wastes.*

xi. Hands on practical trainings on environment/ waste management & treatment technologies, scientific feeding for enteric methane reduction, waste to wealth management programme, etc. should be provided to Dairy & Gaushala workers/ entrepreneurs by local bodies/ SPCBs/PCCs on regular interval."

21. As per the contents of the Original Application, the Respondent No.7, Suravi Sadan Gaushala, Rajasthan Gokalyan, is located at Village-Santosphpur, Barasat, North 24 Parganas. It is alleged that the Respondent No.7 Gaushala is located just about 80 meters away from the residential dwellings, 33 meters away from a Primary School (Kindergarten School) and 80 meters away from a Government School thereby grossly violating the Siting Policy as mandated in the 2021 Central Pollution Control Board's Guidelines.

22. It is also alleged that solid wastes generated from the Gaushala in question are discharged in complete violation of the Guidelines; the surrounding areas are not periodically cleaned as a result leading to tremendous obnoxious smell in the adjacent residential area; all urinal and bathing wastewaters are washed into the adjacent agricultural fields leading to clogging of drains; there is absolutely no adequate infrastructure for handling/treating and disposal of wastewater; no treatment facilities have been installed despite it being a large category Gaushala.

23. It is also alleged that an RTI application was filed by the Applicant before the West Bengal Pollution Control Board, vide his letter dated 12.05.2023, seeking information with regard to grant of Consent to Establish and Consent to Operate to the Respondent

No.7 Gaushala but the information provided by the West Bengal Pollution Control Board vide its reply letter dated 23.06.2023 is that:-

"As per records kept with the State Board, there is no information available regarding this matter"

It is, therefore, alleged that the Gaushala Unit of Respondent No.7 has not obtained any valid Consent to Establish or Consent to Operate from the West Bengal Pollution Control Board and is illegally operating the said Gaushala.

24. In para 17 of the Original Application, the Applicant has filed the Laboratory Test Report of the wastewater effluents discharged from the Respondent No.7 Gaushala which shows that the level of Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), and Chemical Oxygen Demand (COD) are beyond the permissible limits as prescribed and permitted under the Environment (Protection) Rules, 1986. The Test Report as quoted in para 17 of the Original Application reads as under:-

Wastewater Effluents	***Test Results Observed***	***Standards as per EPR, 1986***
Total Suspended Solids (TSS)	***882***	*150*
Biochemical Oxygen Demand (BOD)	***382***	*100*
Chemical Oxygen Demand (COD)	***733***	*250*

25. The West Bengal Pollution Control Board, Respondent No.2, has filed affidavit dated 22.09.2023 bringing on record the Enquiry Report of the Committee constituted by the Tribunal of an enquiry

conducted on 29.08.2023 of M/s Survi Sadan Gaushala, Respondent No.7, located at Village-Santoshpur, P.S.-Duttapukur, District-North 24 Parganas, under Kashimpur Gram Panchayat. The Enquiry Report reads as under:-

"Enquiry report conducted in compliance of the directions contained in the solemn order of the Hon'ble NGT dated 04.08.2023 in connection with Original Application No. 82/2023/EZ

In compliance of the subject solemn order of the Hon'ble National Green Tribunal and in furtherance of your reference communication an enquiry has been conducted on 29.08.2023 M/s. Survi Sadan Gaushala, is located at Vill.-Santoshpur, P.S.-Duttapukur, Dist.-North 24 Parganas, under Kashimpur Gram Panchayat (Lat 22.77°N, Long 88.51°E),

Inspecting Officials:

1. *Smt. Shama Parveen, A.D.M. North 24 Parganas nominated by District Magistrate North 24 Parganas.*
2. *Shri Abhijit Pathak, Scientist – D, CPCB.*
3. *Shri Bimalendu Mal, Environmental Engineer, WBPCB.*

Person met during inspection:

On behalf of the Unit

1. *Shri B.K. Newatia, Trustee of Rajasthan Gokalyan*
2. *Shri Prakash Kedia, Doner of the trustee and others*

On behalf of the complainant

1. *Shri Avi Bag, Secretary of Santoshpur Mitali Sangha*
2. *Swami Santirupa Nanda and others*

That the following facts have surfaced during the enquiry:

1. ***Land records, possession and related matters:***

   a) *It has been found during the enquiry that the concerned Gauushala is situated within a well demarcated boundary comprising mostly of concrete brick walls leaving a very few portions of tin-sheet boundary towards the northern, north-western and north-eastern periphery of the Gaushala project* *compound. The entire land area may be stated to be comprised within the Gaushala.*

b) The Gaushala project compound appears to be comprised of the following schedule of land, elucidated in tabular form:

Sl. No.	***Mouza & J.L. No.***	***Involved Plots No.***	***Classification as per R.O.R.***	***Present Use***
1.	*Santoshpur, 89*	*233*	*Danga*	*Goushala*
2.	*Santoshpur, 89*	*234*	*Danga*	*Goushala*
3.	*Santoshpur, 89*	*235*	*Doba*	*Goushala*
4.	*Santoshpur, 89*	*236*	*Danga*	*Goushala*
5.	*Santoshpur, 89*	*237*	*Danga*	*Goushala*
6.	*Santoshpur, 89*	*238*	*Pukur*	*Goushala*
7.	*Santoshpur, 89*	*238/421*	*Pukur par*	*Goushala*
8.	*Santoshpur, 89*	*239*	*Bagan*	*Goushala*
9.	*Santoshpur, 89*	*240*	*Danga*	*Goushala*
10.	*Santoshpur, 89*	*242*	*Pukur*	*Goushala*
11.	*Santoshpur, 89*	*242/422*	*Pukur par*	*Goushala*
12.	*Santoshpur, 89*	*276*	*Danga*	*Goushala*
13.	*Santoshpur, 89*	*277*	*Doba*	*Goushala*
14.	*Santoshpur, 89*	*278*	*Bastu*	*Goushala*

c) The above schedules of plot are not recorded either in the name of the instant respondent no.7 or in the name of the instant respondent no.8 of the subject Original Application filed before, NGT.

They have not applied till date for recording their name and hence they are not raiyats in terms of section of W.B.L.R Act, 1955. Since as per the provisions of W.B.L.R. Act, 1955 and rules made there under, except a recorded raiyat none can apply for change of recorded classification (Conversion) of land, which also implies to the present case. The Respondents have neither applied for mutation nor conversion.

Remedial measures-The Respondents have been asked to apply for mutation forthwith and which may be done online. After mutation if allowed they have been asked to apply for conversion as per provisions of WBLR Act, 1955.

d) *The above schedule of lands has been recorded in the name of different raiyats. Copies of the plot information are enclosed herewith.*

e) *During the physical enquiry it has been observed that the nature of the plot nos. 277, 242, 238 and 282 bearing 'Doba', 'Pukur', 'Pukur' and 'Doba' as recorded classifications, have been physically altered by filling up of the same, which is in violation of Section 4 (C) of the W.B.L.R Act, 1955.*

f) *Notice/s as envisaged U/s 4 (C)(5) of the W.B.L.R Act, 1955 have been issued on directing the concerned raiyat/s to restore the recorded classification of the said water-body within a period of 7 days from issuance/receipt of said notice/s.*

Remedial measures- The Respondents will have to restore the waterbody. For waterbody the Act does not allow post facto conversion. Since as submitted by the respondents that the Goushala was constructed prior to 07.11.2017 and so as per the Act there is scope of allowing post facto conversion for the rest of the plots. So after mutation of all the plots and restoration of waterbody the respondents may apply for conversion through Form 1D as prescribed.

g) *It has been observed during the physical enquiry that boundary walls of concerned gaushala compound are bounded by locality, virtually leaving no gap between the gaushala and locality on the Western and Eastern side and leaves only a gap of 20 feet of a concrete/pucca road on the southern side. On the Northern, North-Western and North-Eastern side the compound boundary is adjacent to agricultural lands. It has also been observed that there are holes in the boundary walls which allows the overflowing waste water to pass over to the adjacent plots and which is the cause of public resentment.*

Remedial measures-The Respondents have been asked to close down all the holes in the boundary wall and take steps such that the waste does not flow over to adjacent agricultural tract.

The gradient of the compound is such that water flow will not be smooth if pumps are placed therein.

The respondents were asked to submit a concrete plan to the authorities of pollution control board and get it vetted. The team as has been formed will visit again after such plan is implemented in the field by the Respondents.

2. *Trade license issued: Description of trade "cow-farm", as documented in the trade licenses issued from Kashimpur G.P., which contradicts their verbal declaration that the gaushala is for charitable purpose and for looking after the deserted/disabled cows.*
3. *Violation of the provisions of Guidelines for Environmental Management of Dairy Farms and Gaushalas published by the Central Pollution Control Board in July, 2021 including CTE/CTO, Sewage disposal and locational hazard:*

The alleged site is a Gaushala namely M/s. Survi Gaushala, owned by Rajasthan Gokalyan, a charitable trust. The unit is engaged in taking care of old / sick / abandoned including miking and fertile cows. The unit is rearing the cows under shed. But many cows are being kept under the open sky in the fenced area. The unit has no valid Consent to Operate on the day of visit. As informed, the unit has submitted on line Consent to Operate application on 28/08/2023 just before the day of inspection. The unit uses submersible pump to extract ground water without permission from SWID or CGWA. Over all requirement of water is more than150 KLD, as per CPCB guide line.

The unit is operating since the year 2012 (as stated) located beside the Nilgunj Dutta Pukur Road. The land area of the unit is about 3.56 acre. Sri Ramkrishna Sarada Aashram is situated adjacent to eastern side of the unit which was established in 1999. A school having student capacity 70 is run by the Aashram. Distance between the Ashram Canteen and cow shade is merely about 10ft. Mitali Sangha and Santoshpur Primary school is situated at a distance of about 70m form the unit at the South-West side. Northern side and western side of the unit is agricultural / vacant land. Some portion of the unit is butted and bounded by brick wall but some major portion of the land is fenced with corrugated tin. At present, there are about 1500nos. of livestock (cows) [Bufflow-01, Calf- 220, Ox-280, Cow-1059] out of which milking cows are 120 in number.

The main source of generation of waste water is floor washing, bathing of livestock and urine output of livestock. As per CPCB guide line estimated solid waste and waste water generation for this unit rearing 1500 bovines are as under:
Cow dung: 22500 Kg/day: Maximum 30000 Kg/day.

The unit has installed an ETP (Effluent Treatment Plant) (which is under commissioning) for treatment of this waste water claimed to have a capacity of 40KLD, but the representative of the unit could not explain / show the drainage network by which the waste water leads to ETP. Gradient of most of the drainage system is opposite to the ETP. No such collection pit or transfer pit for transfer of waste water to ETP was found. No garland drain was observed to arrest surface generated waste water. However, the direct discharge of effluent into the outside farming land / pond was observed along the East to West boundary wall of cow shed. Majority of existing drains inside the premises was found clogged with slurry of cow dung and fodder waste. The unit has made unlawful provision to discharge of untreated waste water outside the boundary wall (North-East side and western side) through openings in the boundary wall.

At the part of fencing made by corrugated tin sheet there is ample scope to spill surface run off to adjacent farm land owned by villagers.

The industry claimed to produce Bio-gas from cow dung which is consumed in house. First hand observation in and around Bio-gas plant it appears that the plant is not designed properly and the operation of the same was discontinuous. The operator and management could not explain the mode of disposal of sludge from dung storage pit and mixer. The Bio-gas is stored in storage balloons which has safety issues too.

Very less quantity of dung is used for making cow dung cakes, which is solely manual. The residue of bio-gas plant and some cow dung is claimed to be utilized used for production of organic manure. However, no scientific composting or Vermi composting facility was observed. The cow dung is kept in heaves within the industry premises.

The unit generates Bio-Medical Waste during treatment of the livestock. The Bio-Medical Waste is not segregated and disposed in

compliance with the Bio-Medical Waste Management Rules, 2016. During inspection, unsegregated Bio-Medical Waste was found stored in plastic bags. It was also informed that these collected unsegregated waste are simply handed over to unauthorized collector without even crushing or cutting the injection niddle.
The unit has one DG set of capacity 63 KVA.

The unit has two chillers of capacity 500L each to store milk. As reported nearly 400L of milk is produced per day. Milk is distributed to the trustee members by single use plastic bottles. During inspection, it was observed that the unit has developed the low land inside the premises by depositing cow dung and other waste.

No records or diary for dead animals is maintained as informed.

Dumping / accumulation of cow dung slurry and waste water of the unit were found outside the boundary wall of the unit as well as in the open field of the complainant's agricultural / low lying land.
An odour quite characteristic to such firm was smelt from the adjacent localities also.

It was observed that, the gaushala is not having adequate tree coverage.

Environmental Compensation (EC) is not calculated in this report considering that

a) *Gaushala and Dairy farms was brought into the ambit of environmental legislation since July, 2020, however this particular unit is operating since, 2012. The field visit revealed that the unit has violated land uses and even damaged agricultural land by discharging untreated effluent.*

b) *One day site visit is not sufficient to assess the extent of damage of agricultural land and subsequent loss in crop production already done by the unit.*
Therefore, opinion of experts from Agricultural Department for detail damage assessment may be proposed before imposing the EC.

Remedial Measures:

Industry has to comply with all applicable Environmental legislation requirements, including permission for ground water extraction.

Drainage inside the premises shall be redesigned ensuring collection and diversion of the waste water to ETP.

Entire boundary wall shall be ensured as leak proof. All the intentional discharge holes in wall shall be sealed immediately.

The capacity of ETP as stated by unit is seemed to under-capacity considering the quantity of waste water generation.

Cow dung is to be removed frequently to minimize the chances of mixing of cow dung with waste water.

Capacity of bio-gas plant is to be increased and the unit may explore to provide the CBG (Compressed Bio Gas) filling system.

Scientific cow dung composting plant is to be adopted and the product is to be disposed of in regular interval.

Bio-Medical Waste is to be disposed in compliance with Bio Medical Waste Management Rules, 2016.

Good housekeeping and cleanliness are to be maintained."

26. Along with this affidavit, the West Bengal Pollution Control Board has filed copy of the Consent to Operate dated 21.09.2023 (Annexure-R2), granted to the Respondent No.7, M/s Survi Sadan Gaushala, Village-Santoshpur, North 24 Parganas.

27. The Respondent No.8, Rajasthan Gokalyan Trust, has filed affidavit dated 08.12.2023 stating that it is a charitable trust registered under the Income Tax Act, 1961. It is stated that the Rajasthan Gokalyan Trust does not exist by that name and that the name of the entity is 'Rajasthan Gokalyan'. It is also stated that one of the objectives of the Trust is to serve and look after cows to arrange for their hay and grass and spread awareness of cow protection. It is also stated that to open a Gaushala, the Trust purchased land

measuring about 1.0745 acres situated at Mouza-Santoshpur, P.S. Barasat, District-North 24 Parganas, within Kashimpur Gram Panchayat, by a registered Deed of Conveyance dated 20.11.2010. It is stated that the said Gaushala was initially started with 16 cows and currently the total area of the Gaushala is about 3.06 acres and the number of cows rehabilitated thereafter is about 1600 including calves and ox. It is stated that solid waste of the Gaushala is converted into cow dung cakes and distributed among the patrons for their use in havans etc. It is also stated that a Bio-gas Plant was installed within the premises of the Gaushala and is running for the last six years and the solid waste of the cows as raw material is used to generate bio-gas and electricity in the Bio-gas Plant. It is stated that the excess solid waste is converted into manure through vermi-compost process, and for manufacturing of cow dung cakes and cow dung logs. It is also stated that for handling wastewater generated in the Gaushala, an Effluent Treatment Plant has been set-up and with the increase in the number of cows, the capacity of the Effluent Treatment Plant has also been increased from time to time and the present Plant has the capacity to treat 40,000 litres of wastewater. It is also stated that after receipt of the Original Application, the Trust for the first time came to know that Consent to Operate is required for a Gaushala in accordance with the 2021 Guidelines and accordingly the Trust applied for Consent to Operate with the West Bengal Pollution Control Board on August 28, 2023, and has also deposited Rs.2,98,000/- (Rupees Two Lakhs Ninety Eight Thousand only) towards fee and on 21.09.2023 Consent to Operate was granted in the name of the Gaushala of the Trust.

28. We may at the outset observe that ignorance of law is no defence.

29. It is a well settled principle of jurisprudence that ignorance of law cannot be set up as a defence. In (1975) 4 SCC 378, (The Swdeshi Cotton Mills Co. Ltd. Vs. The Government of U.P. & Ors.), the Hon'ble Supreme Court in para 3 thereof held as under:-

> ***"3.** We do not think that in this case it is necessary for us to consider whether Article 226 can be used for challenging the validity of the orders passed prior to January 26, 1950. But we are in agreement with the High Court on the other two grounds. As mentioned earlier, the impugned assessments were made in 1949. The writ petition was filed in 1956. The explanation given by the petitioner for this long delay is that he did not know the correct legal position and he came to know about the same after the decision of the Allahabad High Court in the Commissioner of Sales Tax, U.P. v. Modi Food Products Ltd. Every individual is deemed to know the law of the land. The courts merely interpret the law and do not make law. Ignorance of law is not an excuse for not taking appropriate steps within limitation. Therefore the argument that the appellant did not know the true legal position is not one that can be accepted in law. That part, even after the High Court rendered its decision in Modi Food Products' case the petitioner did not move the High Court for over several months. There is no satisfactory explanation for that delay. That being so, the High Court was fully justified in refusing to exercise its discretion under Article 2226 of the Constitution in favour of the appellant."*

30. In (2005) 4 SCC 295, (*Bharat Electronics Ltd. Vs. Dy. Commissioner of Commercial Taxes (Assets) & Anr.*), the Hon'ble Supreme Court in para 8 held as under:-

> *"**8.** We see no substance in these submissions. Ignorance of law is no excuse. Once the notifications stood quashed, the dealers were found to collect tax @ 6%. Even otherwise, it is difficult to believe that parties in the trade do not know the prevailing rate of tax."*

31. In (2008) 11 SCC 502, (*Board of Directors, Himachal Pradesh Transport Corporation & Anr. Vs. K. C. Rahi*), it was held in para 8 as under:-

> *"**8.** In the instant case we have been taken through various documents and also from the representation dated 19-10-1993 filed by the respondent himself it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice. In the representation submitted by him on 19-10-1993 the subject itself reads "DEPARTMENTAL ENQUIRIES". It is stated at the Bar that the respondent is a law graduate, therefore, he cannot take a plea of ignorance of law. Ignorance of law is no excuse much less by a person who is a law graduate himself."*

32. In (2019) 3 ICC 762, 2019 SCC OnLine Cal 1870, (*Debabrata Dutta Vs. Joy Gopal Saha & Ors.*), the Hon'ble High Court of Calcutta held as under:-

> *"**13.** It is further argued that the only ground taken by the petitioner in his application for condonation of delay was ignorance of law, which is not a valid ground in law for condonation of delay. In this context, learned senior counsel cites a judgment reported at (1975) 4 SCC 378 [The Swadeshi Cotton Mills Co. Ltd. Vs. The Government of U.P.], wherein it was held that ignorance of law was not an excuse for not taking appropriate steps within limitation. The explanation given by the petitioner in the said case for the long delay was that he did not know the correct legal position and came to know about the same after a decision of the Allahabad High Court. The Supreme Court held that every individual is deemed to know the law of the land and courts merely interpret the law and do not make law. Therefore, the argument that the appellant did not know the true legal position, was not one that could be accepted in law.*

__14.__ Learned senior counsel next cites a judgment of a single bench of the Allahabad High Court reported at 1983 SCC OnLine All 254 [Ram Prasad v. D.D.C.], wherein a learned Single Judge held that ignorance of law was not excuse and the benefit of Section 5 of the Limitation Act was not available on the ground of ignorance of law. It was further held that if the appellant in that case did not know the law, it was necessary for him to communicate all the facts to his counsel so that he might take all the legal steps.

__15.__ learned senior counsel next cites a judgment of the Punjab and Haryana High Court, reported at 2013 SCC OnLine P&H 22717 [Vijay Kumar v. Swarna Rani], for the same proposition, that ignorance of law is not an excuse for condoning delay. The petitioner in the said case was having the services of a lawyer at his disposal and the court held that it did not lie in his mouth that he was ignorant about the period of limitation.

__16.__ Lastly, learned senior counsel cites the judgment of a co-ordinate bench of this court, reported at (2018) 3 CHN 461 [Mithun @ Akhtar Ali v. Sk. Aziz Haque], wherein it was reiterated that ignorance of law cannot be an excuse for the litigant. In the said case, it was further held that Section 5 of the Limitation Act had not applicability to Section 7(1) of the 1997 Act and the court was justified in striking out the defence under Section 7(3) of the said Act."

33. In the affidavit of the Respondent No.8, the allegations of environmental degradation have been denied. Allegations with regard to Siting Criteria being in violation of the Siting Policy has also been denied. It is also denied that the urine or bovine bathing wastewater is washed into any agricultural field or there is any ecological degradation of agricultural field. It is disputed that the cow dung of 22,500 kilograms/day for 1500 bovines is generated and it is stated that the cow dung being generated in the Gaushala varies from 10,000 kilograms to 12,000 kilograms per day for 1560 cattle (including cows, calves and ox). It is further stated that the estimated wastewater generated, as per the guidelines, is to the

tune of 1,68,000 litres per day which is also for the dairy farm whereas water usage in the Gaushala is in the range of 40,000 litres per day. Thus, the figure of wastewater generated being 1,68,000 litres per day is disputed. It is also stated that as per the daily meter reading, the maximum requirement of water is 40 KLD and 10 KLD of wastewater is recycled through the Effluent Treatment Plant and, therefore, the observation that overall requirement of water is more than 150 KLD as per the Inspection Report is disputed.

34. With regard to the remedial measures recommended by the Committee, the steps taken by the Gaushala in question have been outlined in para 28 of the affidavit which read as under:-

> "**28**. ……………………… x……………….x……………….x…………….
>
> a. *Steps are being taken for required permissions for extraction of ground water. To the best of the knowledge of the respondent no 8, such permission is not required for domestic use, i.e. for cleaning, washing and consumption (including for cattle). The respondent no 8 shall seek necessary guidance on the matter, from the concerned authorities.*
>
> b. *The drainage inside the premises has been repaired whenever required and as morefully mentioned in paragraphs hereinabove the entire waste water is being collected and/or diverted to Effluent Treatment Plant (ETP).*
>
> c. *The entire boundary wall has been repaired and the holes in the boundary wall have been sealed. The said holes were not discharge holes but holes due to damage in the boundary wall.*
>
> d. *The capacity of ETP is 40 KLD. The total water requirement is 30 KLD from ground water and 10 KLD from recycled water aggregating to 40 KLD. Hence, the capacity of ETP is not under-capacity.*
>
> e. *Cow dung is being removed every hour. The report does not suggest as a frequency of removal. In case, the frequency needs to be increased, the answering respondent undertakes to increase the same as suggested by the committee in future.*

f. The answering respondent is in the process of installing an additional biogas plant. The vendor has already been selected and it is expected that the additional biogas plant will be operational by June 2024.

g. The answering respondent is in the process of installing a dewatering machine so that the slurry from the biogas plant can be dewatered and dried to form compost. The water separated from the dewatering plant will be in turn used again for the biogas plant. Since the entire cow dung will be used in the biogas plant after installation of the additional plant, cow dung composting plant would not be required. As a temporary measure, the answering respondent is installing a temporary vermicompost plant."

35. During the pendency of the proceedings, the Tribunal by its order dated 02.04.2024 had directed the Respondent Nos.7&8 to take immediate steps to clear all the bovine waste which may have poured out into the adjoining area outside the boundary of the Gaushala within one month and file affidavit of compliance. The order dated 02.04.2024 reads as under:-

"ORDER

1. Ms. Shipra Naskar, learned Counsel files Vakalatnama on behalf of the Respondent Nos.7 & 8; the same is taken on record.

2. We have heard the learned Counsel for the parties in part.

3. Considering the Report of the Committee of an Inspection/Enquiry conducted on 29.08.2023, we are of the view that in the interregnum a boundary wall to the Gaushala needs to be constructed on an urgent basis to ensure that there is no outflow of cow dung, bovine urine, sewage, waste water into the adjoining areas.

I.A. No.12/2024/EZ:-

4. This Interlocutory Application has been filed by Respondent No.8 with the prayer that he may be provided police assistance in the erection of the boundary wall along the periphery of the Suravi

Sadan Gaushala in Mouza-Santoshpur, P.S.-Barasat, District North 24 Parganas.

5. The allegation in his Interlocutory Application is that the local persons are preventing him from construction of the boundary wall with the result that some of the findings noted in the Committee Report are being rendered unimplementable.

6. Mr. Ritwick Dutta, learned Counsel for the Applicant of the Original Application states that the Applicant has no objection if boundary wall is permitted to be constructed in the interregnum. Learned Counsel also suggested that construction of boundary wall would not suffice unless a proper drainage/garland drain is also constructed to contain the flow of sewage/slush/bovine urine and bovine waste etc.

7. We, therefore, allow the I.A. No.12/2024/EZ and direct the Respondent Nos.7 & 8 to construct a boundary wall of adequate height ensuring impermeability of sewage/slush/bovine urine/bovine waste from flowing to the outside. The said respondents shall also construct a garland drain to contain the outflow of bovine sewage, urine, cow dung etc. 8. Let the said construction of boundary wall and garland drain be constructed within two months i.e. ***by 31.05.2024****.*

9. I.A. No.12/2024/EZ is accordingly disposed of.

10. We also find that the Enquiry Committee had conducted enquiry on 29.08.2023 and thereafter, Consent to Operate (CTO) was granted to the Respondent Nos.7 & 8, Gaushala, on 21.09.2023. The Report clearly mentions that 150 KLD of water is being utilized by the Gaushala whereas the Consent to Operate (CTO) has been granted only for 40 KLD. We wonder whether the West Bengal Pollution Control Board had taken the Committee Report into consideration before granting Consent to Operate (CTO).

11. We are also of the view that since the Consent to Operate (CTO) was granted on 21.09.2023, a fresh Inspection Report is required from the West Bengal Pollution Control Board with regard to the compliance of the conditions mentioned in the Consent to Operate (CTO) particularly with reference to the findings of the Enquiry Committee of the enquiry dated 29.08.2023.

12. We, therefore, direct the West Bengal Pollution Control Board to carry out its fresh inspection by 07.06.2024 particularly bearing in mind the compliances of the conditions given in the Consent to Operate with reference to the CPCB guidelines dated July, 2021 and the Report should be submitted by the first week of July, 2024.

13. Mr. Suman Dutt, learned Counsel for the Respondent Nos.7 & 8 further submitted that since the Gaushala is located in a rural area there is no adequate drainage system and, therefore, disposal of the slush, slurry and bovine urine after treatment would still remain a problem for which suggestions have to be given by the West Bengal Pollution Control Board.

14. The submission Mr. Suman Dutt, learned Counsel for Respondent Nos.7 & 8 has been disputed by Mr. Ritwick Dutta, learned Counsel for the Applicant. Considering the same, we direct the West Bengal Pollution Control Board to consider this aspect of the matter while filing their additional affidavit along with fresh Inspection Report.

15. Mr. Ritwick Dutta, learned Counsel for the Applicant further submitted that all the slush, slurry, cow dung and bovine waste has already spread to the adjoining areas in the absence of a proper boundary wall or through holes in the existing wall which need to be cleared immediately considering that monsoon is not far off.

16. We, therefore, direct the Respondent Nos.7 & 8 to take immediate steps to clear all the bovine waste which may have poured out into the adjoining area outside the boundary of the Gaushala within one month and file affidavit of compliance with photographs by the next date of listing.

17. List on 08.07.2024.*"*

36. Accordingly, the Respondent Nos.7&8 have filed affidavit dated 29.07.2024 titled 'Compliance Affidavit' stating that the directions given by the Tribunal in its order dated 02.04.2024 have been complied with or are on the verge of completion and if compliance is

taking a long time it is because hinderances are being deliberately caused by the Applicant with the help of local persons of the area. It is also stated that the adjoining areas where initially a very small quantity of bovine waste may have scattered had already been restored and the boundary wall has also been constructed along the periphery of the Gaushala and the Garland Drain had also been fully executed and constructed by the said Respondents. Photographs have also been filed as Annexure-B (colly) in support of the averments.

37. In the affidavit, it is also stated that despite onset of rainy season, there is no pouring of bovine waste into the adjoining areas. The purported actions which are stated to have been taken by the Respondent Nos.7&8 have been outlined in para 7 of the affidavit which are as under:-

> *"**7.** ....x...............x..............x.....................x............*
>
> *i) Reconstruction of the drainage network internally running through the Gaushala including the Garland Drain for maintaining the proper slope towards the effluent treatment plant for ensuring collection and diversion of waste water to effluent treatment plant has already been completed as per the order of the Hon'ble Tribunal and a very minimum portion of such construction work of the garland drain is remaining which could be completed within a very short period of time.*
>
> *ii) The construction of the boundary wall of the entire boundary of the Gaushala had duly been constructed along with the drainage system in such a way that the waste water does not flow outside the boundary wall and do not pollute the adjoining land of the Gaushala and*

further extra efforts have been taken by the respondents No.7 & 8 to fill up all the holes in the boundary wall so that there arises no question what so ever for the waste water to flow outside the Gaushala under any circumstances and further the height of the boundary wall was raised to such an extent that under no situation and /or under no emergency condition during the monsoon no rain water could flow outside the Gaushala.

iii) *The respondents No.7 & 8 had further constructed few underground collection sumps for holding the waste water and settling of the solid waste and after such waste water is settled, it is being sent to the effluent treatment plant for further treatment.*

iv) *The external drainage line is yet to be laid down by the Local Panchayat Authority, though through external drainage, cow dung may not be permitted to be discharged, external drainage is required for discharge of overflow of rain water and filtered water from ETP. The respondents No.7 & 8 have deployed dedicated workers for removal of cow dung on a regular basis and that the slurry of Bio Gas Plant is collected by the local people and used as fertilizer.*

v) *The respondents No.7 & 8 had already taken initiative to clear and restore the adjoining areas wherein minimal waste water and bovine waste may have poured and as of date, there is no waste water and/or bovine waste in the adjoining areas which would be evidenced from the latest photographs as being taken by the respondents No. 7 & 8 is annexed hereto as* ***Annexure "C"****."*

38. The Applicant has filed rejoinder affidavit dated 07.08.2024 in response to the compliance affidavit of the Respondent Nos.7&8 dated 29.07.2024, disputing the claim of the said Respondents that no bovine waste is poured out into the adjacent area. It is stated that despite passage of almost three months, since the order of the Tribunal dated 02.04.2024, no action has been taken by the said Respondents to clear all the bovine waste poured out into the adjacent agricultural land. In support of the contention that there is significant accumulation of cow dung in the adjacent agricultural field, photographs dated 26.07.2024 have also been filed as Anneuxre-A-1 (pages 286-287) to the affidavit.

39. It is stated that a 15 feet bamboo stick was inserted into the ground and the entire length of the stick was submerged in cow dung sludge and slurry as would be seen from the photographs which indicate that accumulation of bovine sludge and slurry reaches a depth of approximately 15 feet at the very least.

40. The stand of the Applicant further is that the compliance affidavit of the Respondent Nos.7&8 is silent with regard to the following crucial information:-

> *"a. The total quantity of cow dung and waste removed in terms of tonnage and truckloads;*
>
> *b. The date on which necessary actions were taken to remove the cow dung from the adjacent land;*
>
> *c. The details of the location where the removed cow dung is dumped;*
>
> *d. The agency engaged to remove such huge amount of cow dung from the adjacent land;*
>
> *e. Photographs showing the pre-removal and post removal status of the area."*

41. The Applicant has also filed Execution Application No.03/2024/EZ alleging non-compliance of the order of the Tribunal dated 02.04.2024. In the said Execution Application, the West Bengal Pollution Control Board, Respondent No.2, has filed affidavit dated 28.06.2024 and along with this affidavit, an Inspection Report of an inspection of the premises in question, carried out on 03.06.2024, has been filed. The Inspection Report reads as under:-

"WEST BENGAL POLLUTION CONTROL BOARD
Barrackpore Regional Office

Inspection Report

Introduction: *With reference to the Order of the Hon'ble NGT, Eastern Zone Bench, Kolkata, in reparation to OA No. 82/2023/EZ and I.A. No. 12/2024/EZ, M/s Survi Sadan Gaushala, located at Vill- Santoshpur, P.O.- Adikashipur, P.S.- Duttapukur, 24 Pgs (N)-743248, under Kashimpur Gram Panchayat, was inspected on 03.06.2024.*

Inspecting Officials:

1. *Shri Arun Das, Asst. Environmental Engineer, WBPCB*
2. *Shri Suman Ghorai, Asst. Environmental Engineer, WBPCB*

Person met during inspection:

On behalf of the Goshala.

1. *Mr. Sanjoy Maskara, Donor of the Trust*
2. *Mr. Ashis Das, Manager*

Introduction:

- *This is a Gaushala namely M/s Survi Sadan Gaushala, owned by Rajasthan Gokalyan, a charitable trust. The unit is engaged in taking care of old/sick/abandoned including milking and fertile cows. The products of the unit are milk, cow dung cake and vermi-compost.*

- *Earlier there were 1500 nos. of livestock. It was informed by the unit representative that some cows have been sent to their unit located elsewhere. Presently, there are about 950 nos. of livestock out of which milking cows are less than 100 in number (as stated).*
- *The wastewater including the cattle urine and floor wash water of the unit is collected in multi-compartment underground collection sump which function as gravity settler through drains. The wastewater after settling is treated in Effluent Treatment Plant (ETP) comprising chemical dosing cum equalization tank, settling tank, multigrade filter and fabric filter. The treated water then is collected in an overhead tank.*
- *The treated water is reused for floor washing, animal bathing etc. The water after reuse is again treated in the same manner as described above.*
- *The unit consumes about 40 KL fresh water (as make up water) per day for drinking, cooking and washing purposes. This excludes the reused treated water.*
- *The cattle dung is used in the bio-gas plant and dung cake manufacturing. Bio gas generated from the bio-gas plant is used for cooking food of the staff and others. The unit has also purchased a de-watering plant to quickly remove the water content from the cattle dung.*

Statutory compliance: *The unit has obtained consent-to-operate of the Board which is valid up to 31.07.2030.*

Compliance Status in lieu of the findings of the Enquiry Committee of the enquiry dated 29.08.2023 as well as compliance of the conditions of consent-to-operate of the State Board:

1. *Major work for reconstruction/renovation of internal drainage network including garland drain for maintaining the proper slope towards the ETP for ensuring collection and diversion of waste water to ETP has been completed. Construction/renovation work of the remaining portion was going on.*

2. *Brick boundary wall with foundation has been constructed along with drainage system such that the waste water flows towards the ETP, thus reducing the possibility of any waste*

water flowing outside the premises. No holes in the wall were observed.

3. *The unit has constructed few underground collection sumps within the drainage line for holding of waste water and settling of the solid waste and the waste water after settling is sent to ETP for further treatment.*

4. *The unit representative informed that they have deployed dedicated workers for removal of cow dung, regularly. The quality of housekeeping of cow shed has been improved.*

5. *The capacity of the bio-gas plant is yet to be enhanced. The unit representative expressed that they have plan for increasing the capacity of bio-gas plant.*

6. *The cattle dung is used in the bio-gas plant and dung cake manufacturing. The unit is in the process of installing de-watering plant to quickly remove the water content from the cattle dung.*

7. *The unit is yet to install vermin-composting plant.*

8. *Agreement has been made with common Bio-medical Waste Disposal facility for disposal of Bio-medical waste. The unit has not applied for Bio-medical Waste Authorization.*

9. *The unit is yet to obtain permission for extraction of ground water as stated by the unit representative.*

10. *The unit consumes approx. 40 KL fresh water per day. This is the make up water as the treated water is reused.*

11. *The unit representative informed that the sludge of Bio-gas Plant is collected by the local people and used as a fertilizer.*

12. *The unit representative informed that the housekeeping will further improve once the construction/renovation activities (boundary wall, drains etc.) are completed."*

42. Referring to this Inspection Report, the contention of the Applicant is that the Committee has recorded a finding that the Gaushala Unit is yet to obtain permission for extraction of ground water. It is

stated that the earlier Joint Committee Report has noted that the Unit uses submersible pumps to extract ground water as the overall requirement of water is more than 150 KLD. This clearly shows that the Respondent Nos.7&8 are extracting ground water of at least 150 KLD without obtaining any permission from the State Water Investigation Directorate or the Central Ground Water Authority. We find that the compliance affidavit of the Respondent Nos.7&8 is silent with regard to obtaining permission from the State Water Investigation Directorate or the Central Ground Water Authority, even though the said Respondents on their own admission show that their total water requirement is 30 KLD from ground water.

43. The Applicant has further submitted that the previous Joint Committee Report had given a categorical finding that the capacity of the Effluent Treatment Plant (ETP) is under capacity considering the quantity of waste water generation but the compliance affidavit of the Respondent Nos.7&8 is silent in this regard also and does not show anything with regard to upgradation of the ETP.

44. It is further stated that though the subsequent Inspection Report of 03.06.2024 mentions that the Unit has constructed few underground collection sumps within the drainage line for holding waste water and settling of the solid waste and settling of solid waste and waste water after settling is sent to ETP for further treatment but the photographs of 26.07.2024 show that the underground sumps constructed by the Respondent Project Proponent is insufficient. It is stated that though more than four months have passed after the order of the Tribunal dated 02.04.2024, no action has been taken by the Respondent Project

Proponent to clear all the bovine waste poured out into the adjacent agricultural land.

45. The contention of the Applicant further is that as per findings of the Inspection Committee in its Report dated 03.06.2024, the Respondent Project Proponent have about 950 livestock cattle, out of which 100 are milking cows but the capacity of the Bio-gas Plant is yet to be enhanced. It is, therefore, clear that in the absence of enhancement of the Bio-gas Plant, the excess bovine waste/cow dung which is not processed is allowed to pour outside the premises i.e. into the adjacent agricultural land, and there is no inhouse capacity to process the said waste.

46. We have heard the learned Counsel for the parties and perused the documents on record.

47. The Inspection Report of the inspection carried out on 29.08.2023 under the orders of the Tribunal clearly records that the Gaushala in question is demarcated by a boundary of concrete brick walls 'leaving' a very few portions of tin-sheet boundary towards the Northern, North-Western and North-Eastern periphery of the Gaushala Project compound.

48. The Inspection Report further shows that during physical enquiry, it was observed that nature of the Plot Nos.277, 242, 238 and 282 are 'Doba', 'Pukur', 'Pukur' and 'Doba', respectively and have been physically altered by filling-up of the same in violation of Section 4 (C) of the West Bengal Land Reform Act, 1955 ('the Act, 1955' for short). It is also noted that notices under Section 4 (C) (5) of the Act, 1955, have been issued directing the concerned raiyats to restore the recorded classification of the said water body within a period of 7 (seven) days from issuance/receipt of the said notice.

The Inspection Report clearly directs that the Respondents Project Proponent will have to restore the water body, since the Act, 1955, does not allow post-facto conversion, though according to the said Respondents the Gaushala in question was constructed prior to 07.11.2017 and, therefore, there may be scope for allowing of the post-facto conversion but steps in this regard have to be taken in terms of the provisions of the Act, 1955. We find that the compliance affidavit of the Respondent Project Proponent is silent in this regard.

49. The Inspection Committee further noted that while there is no gap between the Gaushala and the locality on the Western and Eastern sides but there is a 20 feet wide gap towards the concrete/pucca road on the Southern Side; on the Northern, North-Western and North-Eastern sides, the compound boundary is adjacent to agricultural land; there are holes in the boundary walls which allows the overflowing waste water to pass over the adjacent plots which is the cause of public resentment.

50. It is further noted by the Inspection Committee in its Inspection Report that many cows are being kept under the open sky in the fenced area; the Gaushala concerned has no valid Consent to Operate as on the day of visit (i.e., 29.08.2023); the Unit has submitted an online Consent to Operate application on 28.08.2023 just one day before the date of inspection; the Unit uses submersible pump to extract ground water without permission from the State Water Investigation Directorate or the Central Ground Water Authority and overall requirement of water is more than 150 KLD as per Central Pollution Control Board Guideline.

51. It is also noted by the Inspection Committee that the Unit has been operating since 2012 as per Respondents Project Proponent themselves; there is a Sri Ramkrishan Sarada Aashram situated adjacent to the Eastern side of the Unit which was established in 1999 and the distance between the Ashram Canteen and cowshed is merely 10 feet; Mitali Sangha and Santoshpur Primary School is situated at a distance of 70 meters from the Unit to the South-West side and Northern side and Western side of the Unit is agricultural/vacant land. The Committee also noted that at present there are about 1500 livestock (cows), [Bufflow-01, Calf-220, Ox-280, Cow-1059], out of which the number of milking cows is 120. The Project Proponent has itself admitted having 1560 heads of cattle, i.e., cows, calves and oxen.

52. The Inspection Committee has also noted that as per the Central Pollution Control Board's Guidelines, 2021, the estimated solid waste and waste water generation for this Unit rearing 1500 bovines is as under:-

Cow Dung: 22500 kg/day; Maximum 30000 kg/day,

Waste Water Generation: 168000 L/day; Maximum 171000 L/day,

53. It is also noted by the Inspection Committee that the Unit has installed Effluent Treatment Plant (ETP) (which is under commissioning) for treatment of this waste water claimed to have a capacity of 40 KLD but the Unit could not show any drainage network by which the waste water would lead to the said ETP; Gradient of most of the drainage system is opposite to the ETP; there is no collection pit or transfer pit for transfer of waste water to ETP; no Garland Drain was observed to arrest surface generated waste water; direct discharge of effluent to the outside farming

land/pond was observed along the East to West boundary wall of the cowshed; majority of the existing drains inside the premises was found clogged with slurry of cow dung and fodder waste; the Unit has made unlawful provision for discharge of untreated waste water outside the boundary (North-East side and Western side) through openings in the boundary wall.

54. The Committee in its Inspection Report has also noted that the Unit claimed to produce Bio-gas from cow dung which is consumed in house but on first hand observation in and around the Bio-gas Plant, it appeared that the Plant was not properly designed and the operation of the same was discontinued; the operator and management could not explain the mode of disposal of sludge from dung storage pit and mixer; the Bio-gas is stored in storage balloons which has safety issue too. It is also noted that there was no scientific composting or vermi-composting facility and the cow dung is kept in heaps within the premises.

55. The Committee has also noted that the Unit generates Bio-Medical waste during treatment of livestock but the bio-medical waste is not segregated and disposed of in compliance with the Bio-Medical Waste Management Rules, 2016; during visit unsegregated bio-medical waste was found stored in plastic bags; it was informed during inspection that this collected unsegregated waste is simply handed over to unauthorized collector without even crushing or cutting the injection needles and no records or diary has been maintained for recording dead animals.

56. The Inspection Committee has further noted that dumping/accumulation of cow dung slurry and waste water of the Gaushala was found outside the boundary wall of the Unit as well

as in the open field of the complainant's agricultural/low lying land; there was no adequate tree coverage in the Gaushala in question; the Unit has violated land use and even damaged agricultural land by discharging untreated effluent. The Inspection Committee has suggested remedial measures in its report, which have already been extracted hereinabove.

57. The subsequent Committee Report of an inspection carried out on 03.06.2024 has noted that the capacity of the Bio-gas Plant is yet to be enhanced; the Unit is in the process of installing dewatering plant to quickly remove the water content from the cattle dung; the Unit is yet to install vermi-composting plant; the Unit has not applied for Bio-Medical Waste Authorization and the Unit is yet to obtain permission for extraction of ground water as informed by the representative of the Unit.

58. Thus, the Inspection Reports clearly show that the Unit is in clear violation of the Guidelines for Environmental Management of Dairy Farms and Gaushalas as published by the Central Pollution Control Board in July, 2021. The compliance affidavit filed by the Respondent Project Proponent only mentions construction of Garland Drain to contain the outfall of bovine sewage, urine, cow dung etc. and though the Project Proponent, Respondent Nos.7&8, has filed photographs along with its compliance affidavit but the photographs filed by the Applicant which are all dated 26.07.2024 present a very different picture and the photographs of this land is adjacent to the corrugated boundary wall of the Gaushala as would be very clear from the photographs itself.

59. We may now advert to the Central Pollution Control Board Notification dated 07.03.2016. The Central Pollution Control Board

has issued Notification dated 07.03.2016, copy of which has also been filed with the Original Application, whereby industries have been categorized under the following heads – Red, Orange, Green and White, bringing on record the Final Document on Revised Classification of Industrial Sectors under Red, Orange, Green and White Categories dated 29.02.2016 and it mandates that all industries shall be categorized accordingly including industries to which Consent mechanism of the State Pollution Control Boards would be applicable. This classification would be used by the State Pollution Control Boards as also Pollution Control Committees for grant of Consents to industries. The Notification further provides that there shall be no necessity of obtaining Consent to Operate for White Category of industries implying thereby that industries falling in the Red, Orange and Green categories would be subject to the Consent mechanism of the State Pollution Control Board. As already noted hereinabove, Dairy and Dairy Products have been categorized as Orange Category industries and, therefore, are subject to Consent mechanism of the State Pollution Control Board and would require Consent to Establish and Consent to Operate from the State Pollution Control Board.

60. The stand of the Respondents, Project Proponent, in their affidavit that after receipt of the Original Application the Trust for the first time came to know that Consent to Operate is required for a Gaushala in accordance with the 2021 Guidelines, is no defence for not applying for and obtaining a Consent to Establish and Consent to Operate under the 2016 Guidelines.

61. We may note that the Consent mechanism for Dairy and Dairy Farms and Gaushalas did not come into existence for the first time

under the Central Pollution Control Board's Guidelines of July, 2021, and merely because the said Guidelines under the heading Regulatory/Monitoring mechanism for Dairy Farms and Gaushalas states that State Pollution Control Boards/Pollution Control Committees shall publish a notice for Dairy Farms and Gaushalas to obtain Consent to Establish and Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974, as well as Air (Prevention and Control of Pollution) Act, 1981, as per categorization of industries in the Orange and Green categories respectively, it merely reiterates the mandatory requirement of Consent to Establish and Consent to Operate under the Guidelines of 2016.

62. There is another aspect of the matter. The Project Proponent in the present case was expected to be aware that the Gaushala having more than 1560 heads of cattle would be a heavy polluter and, therefore, the Project Proponent was expected to have taken all remedial measures and necessary steps to check environmental pollution.

63. The Hon'ble Supreme Court in (1996) 5 SCC 647 (Vellore Citizens' Welfare Forum Vs. Union of India & Ors.) has held that the Precautionary Principle and Polluter Pays Principle have been accepted as part of the law of the land. Paras 13, 14, 15 & 16 of the judgment read as under:-

> *"**13.** The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:*
> *"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people*

and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

> *48-A. Protection and improvement of environment and safeguarding of forests and wildlife.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.*
>
> *51-A. (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."*

Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are : the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

14. *In view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.*

15. *Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khanna's opinion in A.D.M. v. Shivakant Shukla, Jolly George Varghese case and Gramophone Co. case.*

16. *The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone's commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, fourth edition published in 1876. Chapter XIII, "Of Nuisance" depicts the law on the subject in the following words:*

> *"Also, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, 'sic utere tuo, ut alienum non leadas'; this therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance.*
>
> *… With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of 'doing to others, as we would they should do unto ourselves'."*

64. The Polluter Pays Principle was propounded by the Hon'ble Supreme Court in (1996) 3 SCC 212 (*Indian Council for Enviro-Legal Action & Ors. Vs. Union of India & Ors.*), to fasten liability for defraying the cost of remedial measures. The task of determining the amount required for carrying out remedial measures, its recovery/realization and task of undertaking the remedial measures was placed in this regard upon the Central Government. In para 65 of the judgment, the Hon'ble Supreme Court held that once the activity carried out is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. Para 65 of the judgment reads as under:-

> *"**65**. On consideration of the two lines of though (one adopted by the English courts and the other by the Australian High Court), we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. We are convinced that the law stated by this Court in Oleum Gas Leak case is by far the more appropriate one-apart from the fact that it is binding upon us. (We have disagreed with the view that the law stated in the said decision is obiter.) According to this rule, once the activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable are while carrying on his activity. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity: (SCC p.421, para 31)*
>
> *"….can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully of not".*

The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise (carrying on the hazardous or inherently dangerous activity) alone has the resource to discover and guard against hazards or dangers-and not the person affected and the practical difficulty (on the part of the affected person) in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise."

65. Further in para 67 of the judgment, the Hon'ble Supreme Court held that the responsibility for repairing the damage caused is that of the offending industry. Para 67 of the judgment reads as under:-

> *"**67**. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" principle.*
>
> *"The Polluter Pays principle demands that the financial costs of preventing and remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'Polluter Pays' principle was promoted by the Organisation for Economic Cooperation and Development (OECD) during the 1970s when there was great public interest in environmental issues. during this time there was demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the Polluter Pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed.*
>
> *Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the*

underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme [(1987) OJC 328/1] makes it clear that 'the cost of preventing and eliminating nuisances must in principle be borne by the polluter', and the Polluter Pays principle has now been incorporated into the European Community Treaty as part of the new articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play in all the policies of the community, and that action is to be based on three principles: the need for preventing action; the need for environmental damage to be rectified at source; and that the polluter should pay."

Thus, according to this principle, the responsibility for repairing the damages is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realization and task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, RPCB or such other agency or authority, as they think fit."

66. In (2005) 13 SCC 186 (*Research Foundation For Science (18) Vs. Union of India & Anr.*), the Hon'ble Supreme Court held that producer of goods or other items should be responsible for cost of preventing or dealing with any pollution that the process causes. Para 29 of the judgment reads as under:-

*"**29**. The polluter-pays principle basically means that the producer or goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately*

tangible. The principle also does not mean that the polluter can pollute any pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case."

67. The Respondents, Project Proponent, in the present case while establishing his Unit was expected to be fully aware of the environmental outfall of his Project and a duty was cast upon him to take all remedial measures before commencing the Project.

68. On a conspectus of facts and documents on record and the Guidelines laid down by the Central Pollution Control Board towards Environmental Management of Dairy Farms and Gaushalas, 2021, we are satisfied that the Respondents, Project Proponent, are in clear violation of the Guidelines, 2021, as well as of the prescribed environmental norms, such as, *inter-alia,* operating without a valid Consent to Operate which was applied for only after filing of the Original Application and obtained on 21.09.2023; extracting ground water without requisite permission; violating Siting Criteria, among others, and are, therefore, liable for payment of Environmental Compensation for present and past violations.

69. We accordingly dispose of this Original Application as well as Execution Application with a direction to the West Bengal Pollution Control Board, Respondent No.2, to compute Environmental Compensation against the Respondents, Project Proponent, strictly as per law by issuing the Project Proponent a show cause notice and giving an opportunity of showing cause and filing reply to the same. Let this exercise be carried out within a period of two months.

70. We further direct the West Bengal Pollution Control Board to inspect the Gaushala in question at the end of the two months to ensure compliance of the remedial measures suggested by the Committee.

71. So far as illegal conversion of land use by the Respondents, Project Proponent, converting 'Doba' and 'Pukur' land is concerned, the District Magistrate, North 24 Parganas, is directed to take appropriate action against the Project Proponent in accordance with law within a period of two months for restoration of the land in question as Doba and Pukur.

72. I.As., if any, stand disposed of accordingly.

73. There shall be no order as to costs.

....
B. Amit Sthalekar, JM

....
Dr. Arun Kumar Verma, EM

August 12, 2024,
Original Application No.82/2023/EZ
With
Execution Application No.03/2024/EZ
In
Original Application No.82/2023/EZ
AK