

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

.....
**ORIGINAL APPLICATION No. 15/2020/EZ
(I.A. No. 195/2022/EZ)**

IN THE MATTER OF:

**Jaba Mukherjee,
W/o Abir Mukherjee,
Taibagicha, Hijli, West Medinipur,
Pin – 721306,**

....Applicant(s)

Versus

- 1. The Principal Secretary,
Department of Urban Development and Municipal Affairs of
West Bengal & Member Secretary, Regional Monitoring
Committee, Solid Waste Management,
Nagarayan, DF-8, Sector-I, Bidhnanagar,
Kolkata – 700064,**
- 2. The West Bengal Pollution Control Board,
Through Member Secretary, Department of Environment,
Govt. of West Bengal,
Paribesh Bhawan, 10A, Block-LA, Sector-III,
Bidhannagar, Kolkata,
Pin – 700106,**
- 3. District Magistrate, Paschim Medinipur,
Pin – 721101,**
- 4. Kharagpur Municipality,
Through Chairman,
P.O.-Kharagpur, District-Paschim Medinipur,
Pin – 721301,**

5. **Superintendent of Police, Paschim Medinipur,
Pin – 721101,**
6. **Gopali Gram Panchayat,
Village-Megurdihi, Post-Hiradihi,
Kharagpur – 721301,**
7. **Central Pollution Control Board,
Through Chairman,
Parivesh Bhawan, CBD-cum-Office,
Complex East Arjun Nagar, New Delhi,
Pin – 110032,**

....Respondent(s)

COUNSEL FOR APPLICANT:

Ms. Paushali Banerjee, Advocate

COUNSEL FOR RESPONDENTS :

**Mr. Sudip Kumar Dutta, Adv. for R-1,3 & 5,
Mr. Dipanjan Ghosh, Adv. for R-2,
Ms. Madhumita Bhattacharjee, Advocate a/w Mr. Mrinal Kanti
Ghosh, Advocate for R-4,
Mr. Surendra Kumar, Adv. for R-7,**

JUDGMENT

PRESENT:

**HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)
HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)**

**Reserved On:- September 23rd, 2022
Pronounce On:-September 29th, 2022**

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

JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard the learned Counsel for the parties and perused the documents on record.

2. The Applicant in this case has raised the question of illegal dumping of more than 70 MT of garbage per day on an open land on the cremation and burial grounds of Villages of Hiradihi, Kashiashol and Ambashol, which lie adjacent to the irrigation canal, causing pollution of the water and air thereby endangering the lives of the Applicant as well as other residents of the villages. It is stated that in gross violation of the report of the Committee constituted by the Tribunal in Original Application No. 606/2018, dumping and burning of solid waste is continuing without any segregation at source and without seeking Environmental Clearance.

3. Considering the allegations made in the Original Application, the Tribunal constituted a Committee comprising of the following Members:-

- (i) *The West Bengal Pollution Control Board (WBPCB);*
- (ii) *The District Magistrate, Paschim Medinipur;*
- (iii) *The Kharagpur Municipality; and*
- (iv) *Gopali Gram Panchayat, Village-Megurdihi, Kharagpur.*

4. The Committee was required to jointly inspect the area in question and verify the factual aspects and submit its report.

5. Notices were issued to the Respondents and responses have been filed.

6. The Counsel for the Applicant on a previous date had submitted that the “Environmental Sensitivity and Field Visit Report of Solid Waste Management Project under Kharagpur Municipality” filed along with the Original Application (at page 42 of the paper book) had emphasised violation of Siting Criteria in setting-up of Solid Waste Management Project in question at the present location. It was also pointed out that an irrigation canal is just 5 meters away from the Project and a pond exists at a mere 105 meters, etc.

7. Considering the submission made, the Tribunal directed that the Committee constituted by it to also look into this aspect of the matter and recommend suitable measures. Reference has also been made to the Original Application No. 514/2018 (*Vivek Kamboj & Anr. Vs. Union of India & Ors.*) where the Tribunal pointed out the deleterious effect of indiscriminate and rampant disposal of solid waste and the damage caused to the environment in monetary terms which was estimated at Rs. 148.46 crores by the Central Pollution Control Board.

8. An Inspection Report of an inspection carried out on 16.06.2020 has been filed along with the affidavit of the West Bengal Pollution Control Board, Respondent No.2. dated 06.07.2020. The Observations and Remarks of the Committee Report read as under:-

“Observations

A joint inspection comprising officials of Kharagpur SDO office, Kharagpur Municipality, representatives of Gopali GP and WBPCB officials was carried out at the project of SMW sanitary land fill site of Kharagpur Municipality. As per the Solid Waste Management Rule, 2016 of MoEF&CC, Paschim Medinipur District Authority has allotted the said land to Kharagpur Municipality for setting up of solid waste processing and final disposal facility of Municipal solid waste/garbage generated from different wards under the jurisdiction of Kharagpur Municipality.

The site is located within the land which is meeting point of Hiradihi, Kashiashol & Ambashol villages, Paschim Medinipur. Its front portion and one side are adjacent to local village Roads (figure1). Irrigation canal passes after natural embankment of width about 12ft. from one of its two remaining side walls (Figure 2). Ample greenery was present starting from outside of the back portion of the project site. The entire project area is surrounded by permanent boundary wall at its all sides (Figure4). Nearest water body (pond) exists at a distance of about 15m from its front boundary wall (Figure 3). Agricultural land is situated at a distance of about 35m from front boundary wall of the site. Two or three scattered dwellings were noticed within 40meter (Approx) of the boundary wall of the project site on the other side of the dry irrigation canal.

The villagers (complainants) raised allegation surrounding the joint inspecting team that this project site was earlier used by them as their burial ground as well as crematorium centre for the entire villagers. At present, Kharagpur Municipality was allotted the land measuring about 4 Acres (since 2016) for indiscriminate dumping of municipal solid waste resulting generation of unbearable

foul smell and breeding ground of insects and flies prevailed to its surrounding locality. The villagers were not able to reside their dwellings peacefully due to such unhealthy ambience. They also alleged that Kharagpur Municipality intentionally fires the garbage to reduce its volume creating black smoke and pollutes the ambient air.

During inspection, it was observed that the project site was not started to develop for proper municipal solid waste management facility as per law for treatment/final disposal of municipal solid waste/ garbage by Kharagpur Municipality. No permanent road is constructed within the premises of the site. Some boulder was found to spread unevenly to make metal road (figure 5) inside the premises for transportation of waste loaded vehicle. Dumping of solid waste/ garbage was found in scatter manner throughout the entire premises (Figure 5, 6 &7). There was no process of segregation of different types of waste. A pay loader was found there to move the garbage heap from a location to another location. Representative of this municipality informed at the time of inspection that local villagers were carrying out burial and cremation activity outside of the boundary wall of the project site.

It was monsoon time during present inspection and no burning of garbage was observed. Spontaneous firing may occur if CH₄ gas is generated from unscientific dumping of organic waste and the gas catches fire with O₂ of air in hot condition. Some stagnant water/liquid waste spillage was observed in the open ground beside the dumped garbage (Figure 9&10). There were flies within the project site. No leachate from the garbage dumping site was observed to be mixed with nearby water body or land for irrigation or irrigation canal. The irrigation canal was found dry and its bed was covered with green grass. No unbearable foul smell was felt in the surrounding locality generating from the project site due to dumping of solid waste.

It was known from representative of Kharagpur Municipality at the time of inspection that the implementation of project for treatment/ final disposal of solid waste / garbage generated from this municipal area was under progress and project work were held up due to COVID – 19 lock down period.

Remarks

(a) During inspection, it was observed that the project was not started to develop for proper municipal solid waste management facility as per law for treatment / final disposal of municipal solid waste / garbage by Kharagpur Municipality. Dumping of solid waste/ garbage was found in scatter manner throughout the entire premises. There was no process of segregation of different types of waste. It was known from representative of Kharagpur Municipality at the time of inspection that the implementation of the project for treatment / final disposal of solid waste / garbage generated from this Municipality was under progress and project was held up due to COVID – 9 lock down period.

(b) No spontaneous firing of dumped garbage by generation of CH₄ gas was observed at the time of inspection as it was monsoon time.

(c) No leachate from the garbage dumping site was observed to be mixed with nearby water body or land for irrigation or irrigation canal. The irrigation canal was found dry and its bed was covered with green grass.

(d) No unbearable foul smell was felt in the surrounding locality generating from the project site due to dumping of solid waste.

(e) Two or three scattered dwellings were noticed within 40 meter (approx) of the boundary wall of the project site on the other side of the dry irrigation canal.

(f) This project should obtain Environmental Clearance (EC) from the Competent Authority.”

9. The above report clearly indicates gross non-compliance on the part of the Kharagpur Municipality, Respondent No.2, in dealing with solid waste. The landfill site is situated 12 ft. from the irrigation canal wall and further the nearest water body is situated at a distance of a mere 15 meters from its boundary wall. Apart from there being violation of the Siting Criteria, other provisions of the Solid Waste Management Rules, 2016, have also obviously not been complied with even when the timelines prescribed in the rules have already expired. The report indicates that the area allotted for setting up of Solid Waste Processing Plant is being used as a dumpsite.

10. Schedule-I to the Solid Waste Management Rules, 2016, provides for the criteria for site selection. Para A (iv) to the Schedule provides that the landfill site shall be large enough to last for at least 20-25 years and shall develop 'land cells' in a phased manner to avoid water logging and misuse.

11. Para A (vii) to the Schedule provides that the landfill site shall be 100 meters away from river, 200 meter from a pond, 200 meter from Highways, Habitations, Public Parks and water supply wells and 20 km away from Airports or Airbase. However, in a special case, landfill site may be set up within a distance of 10 km away from the Airport/Airbase after obtaining no objection certificate from the civil aviation authority/Air force as the case may be. The

landfill site shall not be permitted within the flood plains as recorded for the last 100 years, zone of coastal regulation, wetland, critical habitat areas, sensitive eco-fragile areas.

12. The Tribunal observed that the municipality has not only violated the purpose for which the site had been allotted but also failed to comply with the requirement under rule 15(zh) of the Solid Waste Management Rules, 2016, by which the Local Authorities and Panchayat have been required to stop land filling or dumping of mixed waste soon after the expiry of the timeline prescribed therein, i.e., April, 2019, as specified under Rule 23.

13. The above Siting Criteria also appears to have been violated as per the report submitted by the Committee. In the above facts and circumstances, where there are large scale violations of the mandatory provisions of the Solid Waste Management, 2016, it was expected of the West Bengal Pollution Control Board to have exercised its statutory powers to ensure that such infractions do not happen by taking stringent measures against the concerned Municipality.

14. In view of the large scale environmental violations, the Tribunal directed the West Bengal Pollution Control Board to take necessary action under the Air (Prevention and Control of Pollution) Act, 1981, and the Water (Prevention and Control of Pollution) Act, 1974, against the Kharagpur Municipality, Respondent No.4, for violation of the Solid Waste Management Rules, 2016. The Kharagpur Municipality on its part was also directed to submit an

Action Plan for dealing with the solid waste/garbage dumped at the site in question including the legacy waste accumulated there. The Action Plan which shall include timelines for each of the aspects was required to be filed within 30 days, failure to comply with the directions would entail payment of Environmental Compensation, exemplary penalty, etc., as the Tribunal may deem it proper having regard to the fact that the Municipality has also overshoot the timeline prescribed statutorily under the rules. The Kharagpur Municipality was directed to file affidavit of compliance report within six weeks.

15. The Central Pollution Control Board has also filed its affidavit dated 22.07.2020, stating therein that as per Schedule IA (vii) of Solid Waste Management Rules, 2016 *“The landfill site shall be 100 meter from Highways, habitations, public parks and water supply wells and 20 km away from airports of airbase. However, in a special case, landfill site may be set up within a distance of 10 and 20 km away from the Airport/Airbase after obtaining no objection certificate from the civil aviation authority/Air Force as the case may be. The landfill site shall not be permitted within the flood plains as recorded for the last 100 years, zone of coastal regulation, wetland, critical habitat areas, and sensitive eco-fragile areas.”*

16. The Respondent No.2, West Bengal Pollution Control Board, has filed another affidavit dated 07.10.2020 stating therein that the Kharagpur Municipality, Respondent No.4, was found to be non-compliant in respect of compliance of Rule 22 Clause Nos. 1 to 10 of

Solid Waste Management Rules, 2016 and, therefore, the Kharagpur Municipality was held liable for payment of compensation and it was directed to pay Rs. 2,00,000/- (Rupees Two Lakhs only) per month. Further, the Kharagpur Municipality was directed to pay Rs. 1,00,000/- (Rupees One Lakhs only) for failure to commence remedial action for legacy waste) till compliance of the same. It was also directed that liability for payment of Environmental Compensation would be commenced from 01.07.2020 and the Municipality was directed to deposit the said amount through Demand Draft in favour of the West Bengal Pollution Control Board payable at Kolkata.

17. In response, the Kharagpur Municipality, Respondent No.4, has filed an Action Taken Report which is stated to be in compliance of the Tribunal order dated 15.10.2020.

18. The Member Secretary, West Bengal Pollution Control Board, also appeared before the Tribunal on 04.01.2021 in pursuance of the Tribunal's order dated 23.12.2020 and submitted that dumping of solid waste in the low-lying area has since been stopped and the process for establishment of Solid Waste Management Plant is presently at the final stage of the tender process.

19. The Tribunal, therefore, directed the Member Secretary, West Bengal Pollution Control Board, to file Action Taken Report within 15 days and if no tangible action is found to have been taken, appropriate coercive orders in the nature of detention of the Chairman of the concerned Municipality and civil imprisonment as

well as recovery of the amounts paid by the Municipality towards Environmental Compensation from the personal accounts of the Chairman and other responsible officers of the Municipality will be issued.

20. **I.A. No. 51/2021/EZ** was filed by the Kharagpur Municipality, stating therein that that the Government has identified the land measuring 5.00 acres at Mouza Sakpara, J.L. No. 80, Plot No. 324 under Kharagpur-I Block. Target for completion of various nature of works mentioned in the chart given in paragraph 4 thereof.

21. The Tribunal, therefore, accepted the prayer of the Kharagpur Municipality and granted six months further time i.e., till 31.01.2022 to complete all the works as mentioned in paragraph 4 of the I.A. and the I.A. 51/2021/EZ was accordingly disposed of and the Municipality was directed to file a compliance report before the next date of hearing.

22. Thereafter, a compliance report dated 14.02.2022 was filed on behalf of the Respondent No.4 sworn by Smt. Tulika Datta Banerjee, Executive Officer, Kharagpur Municipality. The Nature of Works and Current Status as brought out in the report read as under:-

Sl. No.	Nature of Works	Current Status
1.	Segregation of waste at	Already started

	<i>source: Commencement of activities</i>	
<i>2.</i>	<i>To achieve the goal of 100% segregation at source</i>	<i>Partially achieved, 41% of the total household covered till date. only the wards situated in the jurisdiction of Railway and IIT authority are yet to be achieved.</i>
<i>3.</i>	<i>Identification of 'Motivators' for house to house awareness generation</i>	<i>Motivators for the entire municipality have been identified.</i>
<i>4.</i>	<i>Training to 'Motivators' and Conservancy Staff</i>	<i>All the workers related to SWM have been trained. Trained motivators are being known as Nirmal Sathi and Trained Conservancy Staff is being known as Nirmal Bandhue.</i>
<i>5.</i>	<i>IEC activities will include 'para meeting', house visits etc.</i>	<i>Entire EIA activity has already been completed. Coies of pictures showing Para meeting is also annexed hereto and marked as Annexure R4/ 12.</i>
<i>6.</i>	<i>Tagging of 'Motivators' and Conservancy Workers' mapping for house to house action, i.e.</i>	

(i) Awareness generation for citizen to ensure 100% source segregation by handholding/door to door demonstration and (ii) Preparation of micro-plan for the activities including detailed route map with complete line list of the households to be covered and transportation of waste upto the secondary point. (iii) Preparation of micro-plan for carrying the segregated waste from secondary point to processing point with detailed route plan with number of trips per day, trip roster along with vehicle type with GPS tracking system. (iv) Need assessment, identification and training of additional rag pickers for the	Prepared Prepared Prepared New workers have been engaged by municipality for material recovery.
---	---

	<i>processing plant</i>	
7.	<i>Additional Vehicles:</i> <i>Primary Vehicles:</i> (i) <i>To carry the waste in segregated manner an assessment for additional tricycle vans will be done and will be placed to SUDA for sanction.</i> (ii) <i>Primary transportation vehicles to be received from SUDA</i> <i>Secondary Vehicles:</i> <i>To make good the shortfall of vehicles from secondary transfer point to processing location outsourcing of additional vehicles for transportation of waste.</i>	<i>To carry the waste in segregated manner an assessment for additional Paddle Tricycle (PTC), Fuel Operated Tricycle (FOT) and Battery-operated Tricycle (BOT) has been done and placed to SUDA</i> <i>Total Nos. of Tricycle Vans received from SUDA till date are as follows</i> <i>PTC = 150</i> <i>FOT = 20</i> <i>BOT = 7</i> <i>Hiring of vehicle is not yet started. Currently present</i>

	<i>Vehicles will be hired on a day cost basis inclusive of fuel, manpower, maintenance, etc.</i> <i>(i) Preparation of estimates</i> <i>(ii) Completion of e-tender process</i> <i>(iii) Obtaining Administrative Approval and Financial Sanction (Expected date)</i> <i>(iv) Operationalization up to full scale</i> <i>[Note: Till this new system is introduced, the present fleet of vehicles are being and will be used up to the maximum potential]</i>	<i>fleet of vehicle is being used upto maximum potential.</i>
--	---	--

23. This Report showed incomplete works and, therefore, an oral prayer was made by Ms. Madhumita Bhattacharjee, learned Counsel appearing for Respondent No.4, Kharagpur Municipality, praying for six months further time for completion of all pending works and it was assured that the pending works shall be completed by 16.08.2022.

24. The Counsel for the Applicant, on the other hand, insisted that the solid waste was still being dumped at the site in question even though a site had been identified at Mouza-Sakkpara, J.L. No. 80, Plot No. 324 under Kharagpur-I Block.

25. The Tribunal, therefore, issued specific directions to the Kharagpur Municipality that there shall be no fresh dumping of solid waste and other wastes at the site in question and the Municipality was directed to file an Interim Compliance Report by 25.05.2022.

26. Thereafter, an affidavit dated 23.05.2022 has been filed on behalf of the Respondent No.4, sworn by Smt. Tulika Datta Banerjee, Executive Officer, Kharagpur Municipality, bringing on record an Interim Compliance Report. Paras 3 to 7 of the affidavit read as under:-

“3. Therefore, in compliance with the direction passed by this Hon’ble Tribunal, Kharagpur Municipality is not using the said place as dumping ground. However, the Municipality has to use the available vacant site which is reclaimed by way of biomining and bioremediation for processing of fresh waste. There is no other land available for this purpose. A copy of the photographs showing the reclaimed land after bio-mining the legacy waste is already annexed as ANNEXURE R4/2 to the compliance affidavit of Respondent No. 4 herein filed on 14.02.2022.

4. It is most respectfully submitted that Urban Development & Municipal Affairs Department has given Administrative Approval and Financial Sanction (AA&FS) for construction of concrete approach road towards Solid Waste Management Plant of this municipality for an

amount of Rs.1,47,84,489/- vide Memo No. SUDA-15014(17)/1/2022-ENGG SEC(SUDA)-SUDA/7810 dated 07.03.2022.

5. It is most respectfully submitted that State Urban Development Agency (SUDA) has given work order to Simoco Telecommunication (South Asia) Limited & M/s. Environ Solution vide Memo No. SUDA-787/2020/7865 dt. 09.03.2022 for design, built, finance, operation and transfer of municipal wet waste processing facility, setting up Semi-Automatic Material Recovery Facility for Dry waster and construction of Sanitary Land fill site along with operation and maintenance for 10 years. The agency has started the preliminary work which is likely to be completed by 15.06.2022.

6. It is further submitted that the Municipality vide its Memo No. 728/KM dated 05.04.2022 has issued no objection letter to Simoco Telecommunications (South Asia) Limited for formation set up, design, building structure, operation and other related works regarding SWM project at Hiradihi.

7. That 50% of the household has been covered under house-to house collection of segregated waste.”

27. The Tribunal, therefore, observed that this affidavit does not show compliance; it does not even show interim compliance. On the one hand, the Municipality states that vacant land site is required for Biomining and Bioremediation for processing of fresh waste but in the next line it is stated that no land is available for this purpose. If no land is available, we wonder, how Biomining and Bioremediation work is going to be accomplished by the Kharagpur Municipality.

28. In the affidavit, it is also stated that work order has been issued to one Simoco Telecommunication (South Asia) Limited & M/s Environ Solution on 09.03.2022 to design, build, finance operation and transfer of municipal wet waste processing facility, setting up of Semi-Automatic Material Recovery Facility for dry waste and construction of sanitary land fill site along with operation and maintenance for 10 years. It is further stated that 50% of households have been covered under house-to-house collection of segregated waste. This is a very poor record, if the Municipality has been able to cover only 50% of the households. Timeline for the next 50% has not been given.

29. The Kharagpur Municipality was, therefore, directed to file a detailed Compliance Report mentioning the works undertaken by it, how much work has been completed and likely date of completion (timelines) for each item of work. Specific information with regard to bio-mining of legacy waste and availability of open space may be mentioned in their affidavit.

30. Accordingly, affidavit dated 21.09.2022 has been filed by the Respondent No.4, sworn by Smt. Tulika Datta Banerjee, Kharagpur Municipality, and in para 6 onwards, an 'Action Taken Report' for Wet Waste (Biodegradable Waste) has been outlined.

31. It is stated that the process of Aerobic Composting Method, analysis will be carried out to examine the organic volatile content of the Wet Waste (Biodegradable Waste) and Biomethanation Plant will be installed and the Municipality is keeping an option of

handling 15 tonnes per day ('TPD' for short) of wet waste i.e., biodegradable waste, for biomethanation and is proposing to set-up a Biogas Plant of 15 TPD.

32. This shows that as of today, even a Biomethanation Plant has not been installed and the matter is still at the proposal stage and that the Municipality will, therefore, require time till 31.01.2023 for setting-up of the Biomethanation Plant as stated in the affidavit.

33. Thereafter, the process for Aerobic Composting, Use of Inoculums, Proposed Infrastructure and the Windrow Platform, Steps for Processing Waste etc. has been outlined in the affidavit.

34. In our opinion, pages after pages of the affidavit have been wasted by the Municipality only trying to explain the day to day procedure of how the waste is to be treated, which is quite irrelevant for the purposes of the present case. Concrete action on the ground with regard to the setting-up of Biomethanation Plant, Waste Plant or Biogas Plant process has not been stated.

35. Under the heading 'Action Taken for Dry Waste (Non-Biodegradable Waste)', it is stated in the affidavit that the total waste generated in the Kharagpur Municipality is 126 TPD, total Dry Waste (Non-Degradable Waste) is 40% i.e., 50.6 Tonnes. It is also stated that the total area considered for Dry Waste (Non-Biodegradable) is (i + ii) i.e., 414 square meters (294 sqm + 120 sqm). The Municipality has only 16187.4257 square meters or 4 acres of land at present and there is no other land of this size

available with the Government for handing over to the Municipality and this site is also being used by the Municipality for processing the segregated waste.

36. We are rather surprised that from year 2020 till date only assurances have been given by the Kharagpur Municipality for providing alternative site for dumping of waste and processing of waste. All that is stated in the current affidavit of the Municipality is that the Municipality has only 4 acres of land and no land is available!

37. Thereafter, it is stated that for processing of Non-Recyclable Dry Waste (Non-Biodegradable), steps are still in the pipeline. Thereafter, a list of expected vendors has been given which will use the recyclable dry waste. All this information also is completely irrelevant for purposes of this case and is, in our opinion, but an eyewash and demonstrates complete laxity on the part of the Municipality in the matter of processing and disposal of solid waste, liquid waste, e-waste, plastic waste etc. in an Original Application which is pending since 2020 and where in the past only assurances have been given that the work would be completed.

38. Timeline of 31.01.2022 has already expired. Thereafter again timeline was extended on the request of the Municipality till 16.08.2022. Now timeline is being sought till 31.01.2023, but till date nothing has been done and all that is stated is that basic infrastructure i.e., boundary wall, worker shed, arrangement of water by sinking deep tube well, toilet and washroom for workers,

inside roads has been constructed by the Municipality and approach road will be re-constructed within a very short period as the Government approval has already been received and tendering process is going on. Plant for processing will be set-up by the agency (SIMOCO).

39. It is also stated that 55% of the households have been covered for door to door segregated waste collection and segregated waste so collected will be processed at the site in question as mentioned in the Original Application. However, for 45% of the garbage generated the same is brought at Hiradihi Processing Plant for segregation and is immediately segregated within 24 hours and sent for processing and further time of 31.01.2023 has been sought for achieving the target of 100% coverage of door to door segregated garbage collection. The Hiradihi landfill site along with Kashiashol and Ambashol is already situated in violation of the Siting Criteria.

40. We find that this affidavit is totally silent with regard to the segregation and processing of 126 TPD daily waste that is generated in the Municipality of which the Dry Waste (Non-Biodegradable) alone is 50.6 tonnes i.e., 40% of the total waste.

41. We cannot accept this fabulous contention of the Kharagpur Municipality that 55% of waste is being segregated and processed at the site and 45% is being transferred to Hiridihi Processing Plant. In the entire affidavit it has not been stated as to how may trammels or ballistic separators have been set-up by the Municipality at the landfill site and when we deeply questioned Ms. Madhumita

Bhattacharjee, learned Counsel appearing for the Municipality, she stated that the work of segregation is being done manually. This is a shocking disclosure that 126 tonnes of garbage is being generated by the Municipality per day and yet the Municipality in two years has not cared to even set-up adequate number of trammels and ballistic separators for segregation and biomining of solid waste, biodegradable waste, non-biodegradable waste, e-waste, plastic waste and other wastes. Even after expiry of previous timeline of January 2022 and August 2022 and even today further six months time is being sought. This shows complete irresponsibility on the part of the Kharagpur Municipality and lack of seriousness for treatment of municipal waste which is in flagrant violation of Solid Waste Management Rules, 2016. The affidavit does not even disclose how much plastic waste or e-waste is being generated by the Municipality per day.

42. The Hon'ble Supreme Court in (2017) 5 SCC 326 (*Paryavaran Suraksha Samiti & Anr. Vs. Union of India*) has held as under:-

“13. We are of the view, that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We therefore hereby provide, that the directions pertaining to continuation of industrial activity only when there is in place a functional “primary effluent treatment plants”, and the setting up of functional “common effluent treatment plants” within the time lines, expressed above, shall be of the Member Secretaries of the concerned Pollution Control Boards. The Secretary of the Department of Environment, of the concerned State Government (and the concerned Union Territory), shall be answerable in case of default. The concerned Secretaries

to the Government shall be responsible of monitoring the progress, and issuing necessary directions to the concerned Pollution Control Board, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data, and shall furnish the same to the Bench of the jurisdictional National Green Tribunal.

14. To supervise complaints of non-implementation of the instant directions, the concerned Benches of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The above mentioned case files, will be listed periodically. The concerned Pollution Control Board is also hereby directed, to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.

15. Liberty is granted to private individuals, and organizations, to approach the concerned Bench of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions.

16. It however needs to be clarified, that the instant directions and time lines, shall not in any way dilute any time lines and directions issued by Courts or Benches of the National Green Tribunal, hitherto before, wherein the postulated time lines would expire before the ones expressed through the directions recorded above. It is clarified, that the time lines, expressed hereinabove will be relevant, only in situations where there are no prevalent time line(s), and also, where a longer period, has been provided for.

17. It would be in the interest of implementation of the objective sought to be achieved, to also require each

concerned State(and each, concerned Union Territory) to make provision for “online, real time, continuous monitoring system” to display emission levels, in the public domain, on the portal of the concerned State Pollution Control Board. We are informed, that at least three State Governments have already adopted the aforesaid measures. Such measures shall be put in place by all the concerned State Governments(including, the concerned Union Territories), within six months from today.

18. The instant writ petition stands disposed of, in the aforesaid terms.”

43. The Principal Bench of the National Green Tribunal in Original Application No. 606/2018 has also issued the following directions:-

“xxxxxx.....xxx

41. In view of above, consistent with the directions referred to in Para 29 issued on 10.01.2020 in the case of UP, Punjab and Chandigarh which have also been repeated for other States in matters already dealt with, we direct:

- a. In view of the fact that most of the statutory timelines have expired and directions of the Hon’ble Supreme Court and this Tribunal to comply with Solid Waste Management Rules, 2016 remain unexecuted, interim compensation scale is hereby laid down for continued failure after 31.03.2020. The compliance of the Rules requires taking of several steps mentioned in Rule 22 from Serial No. 1 to 10 (mentioned in para 12 above). **Any such continued failure will result in liability of every Local Body to pay compensation at the rate of Rs. 10 lakh per**

month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body from 01.04.2020 till compliance. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal. Final compensation may be assessed and recovered by the State PCBs/PCCs in the light of Para 33 above within six months from today. CPCB may prepare a template and issue an appropriate direction to the State PCBs/PCCs for undertaking such an assessment in the light thereof within one month.

- b. Legacy waste remediation was to 'commence' from 01.11.2019 in terms of order of this Tribunal dated 17.07.2019 in O.A. No. 519/2019 para 28 even though statutory timeline for 'completing' the said step is till 07.04.2021 (as per serial no. 11 in Rule 22), which direction remains unexecuted at most of the places and delay in clearing legacy waste is causing huge damage to environment in monetary terms as noted in para 33 above, pending assessment and recovery of such damage by the concerned State PCB within four months from today, continued failure of every Local Body on the subject of commencing the work of legacy waste sites remediation from 01.04.2020 till compliance will result in liability to

pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal. Final compensation may be assessed and recovered by the State PCBs/PCCs in the light of Para 33 above within six months from today.

c. Further, with regard to thematic areas listed above in para 20, steps be ensured by the Chief Secretaries in terms of directions of this Tribunal especially w.r.t. plastic waste, bio-medical waste, construction and demolition waste which are linked with solid waste treatment and disposal. Action may also be ensured by the Chief Secretaries of the States/UTs with respect to remaining thematic areas viz. hazardous waste, e-waste, polluted industrial clusters, reuse of treated water, performance of CETPs/ETPs, groundwater extraction, groundwater recharge, restoration of water bodies, noise pollution and illegal sand mining.

d. The compensation regime already laid down for failure of the Local Bodies and/or Department of Irrigation and Public Health/In-charge Department to take action for treatment of sewage in terms of observations in Para 36 above

will result in liability to pay compensation as already noted above which are reproduced for ready reference:

- i. Interim measures for phytoremediation/ bioremediation etc. in respect of 100% sewage to reduce the pollution load on recipient water bodies – 31.03.2020. Compensation is payable for failure to do so at the rate of Rs. 5 lakh per month per drain by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2020.*
- ii. Commencement of setting up of STPs – 31.03.2020. Compensation is payable for failure to do so at the rate of Rs. 5 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2020.*
- iii. Commissioning of STPs – 31.03.2021. Compensation is payable for failure to do so at the rate of Rs. 10 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2021.*
- e. Compensation in above terms may be deposited with the CPCB for being spent on restoration of environment which may be ensured by the Chief Secretaries' of the States/UTs.*

- f. *An 'Environment Monitoring Cell' may be set up in the office of Chief Secretaries of all the States/UTs within one month from today, if not already done for coordination and compliance of above directions which will be the responsibility of the Chief Secretaries of the States/UTs.*
- g. *Compliance reports in respect of significant environmental issues may be furnished in terms of order dated 07.01.2020 quarterly with a copy to CPCB."*

Timeline given for compliance was 31.03.2020. The Respondent Municipality cannot feign ignorance of the directions given by the Principal Bench of the National Green Tribunal which directions were *in rem*.

44. Mrs. Sutanuka Santra, Health Officer, Kharagpur Municipality had filed affidavit dated 14.10.2020, bringing on record the 'Action Plan' with timelines. There is nothing on record to show that these timelines have been completed till date.

45. Mr. Arun Kumar Samanta, Executive Officer, Kharagpur Municipality, had filed affidavit dated 21.12.2020, completely denying that there was any chance of water contamination from the channel in the southern side of the dumping ground since it remains dry even in the rainy season and it is not connected to the nearby agricultural fields. It is also stated that the Solid Waste Management Plant is going to be in an area maintaining the required distance laid down in the Solid Waste Management Rules. These facts stand controverted by the Inspections Report on record.

46. Another affidavit dated 18.01.2021 was filed by Mr. Arun Kumar Samanta, Executive Officer, Kharagpur Municipality, stating therein that 90 MT per day of total waste has been segregated into two parts as biodegradable and non-biodegradable and 34 rag pickers have been organised to pick up non-biodegradable waste from the dumpsite. For installation/setting up of Solid Waste Management Plant for fresh waste, tender has already been floated and last date of submission of tender was 05.01.2021. Whether the alternative Solid Waste Management Site has become operation or not has not been stated in the subsequent affidavits and, in fact, what is stated is that the segregated waste is still being carried out to the Hiradihi dumpsite which was already found to be in violation of the Siting Criteria under Solid Waste Management Rules, 2016.

47. In this affidavit, it is also stated that garbage is being dumped in low lying area at the outskirts of the Municipality for the last few months for which apology has been sought. In fact, the Executive Officer of the Municipality should not have allowed dumping of garbage and municipal waste in the outskirts of the Municipality except in the area identified as a landfill site for such garbage disposal as per the Siting Criteria under the Rules, 2016.

48. In this affidavit, the provisions of Schedule IA of the Solid Waste Management Rules, 2016 regarding Siting Criteria have been mentioned and it is stated that it has been decided to shift the SLF Plant site to another place for which a Land Searching Committee

headed by Additional District Magistrate (LR), Paschim Medinipur has been constituted.

49. In para 6 of the affidavit, timelines for completion of the various works has also been given which reads as under:-

<i>Nature of Work</i>	<i>Bio Mining of legacy waste and land reclamation of the dumpsite</i>	<i>Searching of separate land for setting up of SLF</i>	<i>Set up of Material Recovery Facility</i>	<i>Installation of SWM Plan for fresh waste</i>
<i>Probable date of completion</i>	<i>24.09.2021 as per work order issued by implementing agency i.e., Kolkata Metropolitan Development Authority</i>	<i>15.07.2021</i>	<i>15.08.2021</i>	<i>15.08.2021</i>

50. In none of the subsequent affidavits has it been stated that these works proposed have been completed within the timelines or not.

51. We find that the Kharagpur Municipality has made a complete mockery of the judicial process by disregarding its own timelines and assurances given to the Tribunal and further acting in gross violation of the Solid Waste Management Rules, 2016, E-Waste Management Rules, 2016, Plastic Waste Management Rules, 2016, Medical Waste Management Rules, 2016 etc.

52. We, therefore, direct the Chief Secretary, Government of West Bengal, to record adverse entries against the Chairman and also the concerned Executive Officers of the Kharagpur Municipality, who were holding the said post at the relevant point of time and have filed affidavits giving timelines for completion of works, for violation of the provisions of the Environment (Protection) Act, 1986 and Solid Waste Management Rules, 2016. Copy of this judgment shall be placed before the Chief Secretary, Govt. of West Bengal, for necessary compliance.

53. We further direct the Respondent No.4, Kharagpur Municipality, to complete all its pending works by **31.01.2023**.

54. We also find that neither the affidavit of the West Bengal Pollution Control Board, Respondent No.2, nor the affidavits of the Municipality disclose anywhere whether the Environmental Compensation of Rs. 2,00,000/- (Rupees Two Lakhs) per month has been deposited by the Kharagpur Municipality with the West Bengal Pollution Control Board.

55. We, therefore, direct that in case the Environmental Compensation of Rs. 2,00,000/- (Rupees Two Lakhs) per month as directed by the West Bengal Pollution Control Board vide its direction dated 23.09.2020, has not been deposited, the same shall be deposited by the Kharagpur Municipality within 15 days. We further direct that the Kharagpur Municipality shall continue to deposit environmental compensation of Rs. 2,00,000/- (Rupees Two Lakhs only) per month till completion of all the works.

56. Ms. Bhattacharjee further submitted that land has been made available by the Airforce Base Kharagpur vide their letter dated 15.11.2021 (page no. 210 of the paper book) but perusal of this letter shows that the same is subject to the following conditions:-

“(a) The site to be utilized only for the disposal of treated garbage in the form of a biodegradable waste.

(b) The site is to be utilized to fill up the existing low lying areas and the level of treated garbage waste is not to be rise above ground level.”

Thus, the land which has been made available by the Airforce Base, Kharagpur, to the Kharagpur Municipality, is to be utilized only for the disposal of treated garbage in the form of biodegradable waste. It does not speak of non-biodegradable waste or e-waste or plastic waste or other wastes.

57. We expect the Kharagpur Municipality to strictly comply with the Solid Waste Management Rules, 2016, for treatment of municipal waste within the timeline so granted by the Tribunal. A compliance report shall be filed by the Municipality by **15.02.2023** before this Tribunal.

58. With the aforesaid directions, the Original Application No. 15/2020/EZ is disposed of.

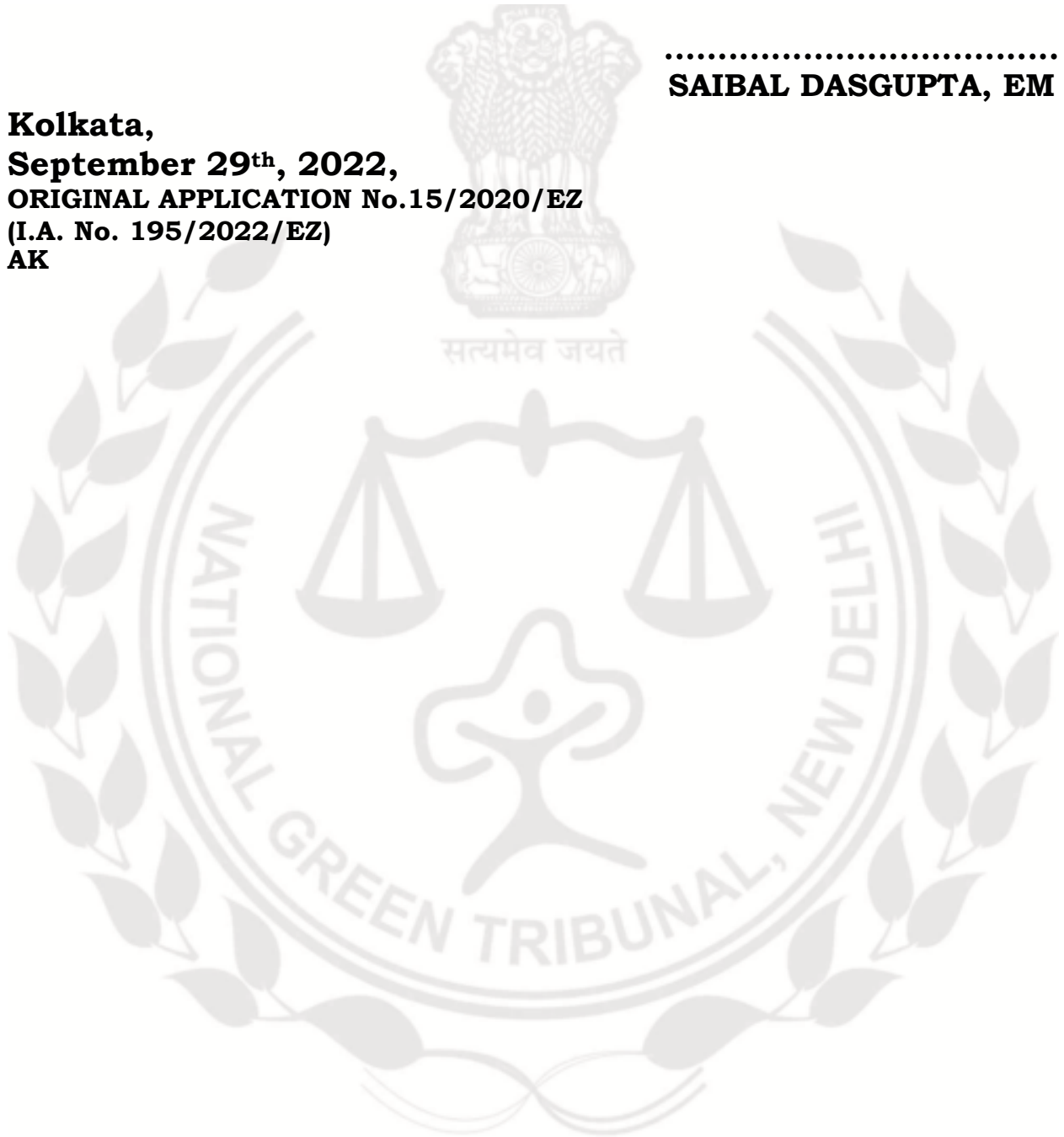
59. The I.A. No. 195/2022/EZ is also disposed of.

60. There shall be no order as to costs.

.....
B. AMIT STHALEKAR, JM

**Kolkata,
September 29th, 2022,
ORIGINAL APPLICATION No.15/2020/EZ
(I.A. No. 195/2022/EZ)
AK**

.....
SAIBAL DASGUPTA, EM



NGT