

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

ORIGINAL APPLICATION NO.03/2023/EZ

IN THE MATTER OF:

Caesar Sen,
S/o Late Saroj Kumar,
Resident of 66 Chowringhee Road,
Kolkata – 700020, West Bengal,

.....Applicant(s)

Versus

- 1. WEST BENGAL POLLUTION CONTROL BOARD,**
Through its Member Secretary,
Paribesh Bhawan, Block-LA, 10A, Salt Lake City,
Kolkata-7000106,
- 2. CENTRAL POLLUTION CONTROL BOARD,**
Through its Member Secretary,
Parivesh Bhawan, CBD-cum-Office Complex, East
Arjun Nagar, Delhi-110032,
- 3. OFFICE-IN-CHARGE,**
Bhowanipur Police Station,
42, Shyama Prasad Mukherjee Road,
Jatin Das Park, patuapara, Bhowanipore,
Kolkata-700026,
- 4. THE COMMISSIONER,**
Kolkata Municipal Corporation,
5, S.N. Mukherjee Road,
Kolkata-70013,
- 5. M/S TIBEAN DELIGHT,**
Represented through its proprietor Smt. Nima Mukhia,
Having its place of business at 66/1 Chowringhee Road,
Kolkata-700020,

.....Respondent(s)

Date of hearing: 12.04.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Mr. Santanu Chakraborty, Advocate

For Respondent(s) : Mr. Dipanjan Ghosh, Adv., for R-1,
Mr. Ashok Prasad, Adv., for R-2,
Mr. Sudip Kumar Dutta, Adv., for R-3,
Mr. Pritwish Basu, Adv. for R-4,
Mr. Kallol Basu, Adv., for R-5 (in Virtual Mode)

ORDER

1. The allegation in the Original Application is that the Respondent No.5, M/s Tibetan Delight, Private Respondent, has established a Restaurant, having a seating capacity of about 16 persons and the smoke from this restaurant is polluting the entire atmosphere.
2. The allegation further is that the said Unit of Respondent No.5 started its operation on 1st March, 2020, but on an RTI query made by the Applicant he was given a reply on 03.06.2022, informing that the Respondent No.5 had applied for a Consent to Operate on 15.07.2022 and for a Consent to Establish on 15.07.2022, both dates being subsequent to the RTI reply dated 03.06.2022 as well as the date of commencement of operation of the Unit i.e., 01.03.2020, and thereafter the applications of the Respondent No.5 were processed and the Consent to Operate was granted on 26.07.2022 and the Consent to Establish was also granted on 26.07.2022.
3. The question that arises is that when the Respondent's No.5 own submission is that the Unit had commenced its production on 01.03.2020, as would be evident from his application (page no. 32 of the paper book), why no action was taken by the West Bengal Pollution Control Board determining Environmental Compensation against the Respondent No.5 being the Regulatory Authority before granting Consent to Establish and Consent to Operate in July, 2022. Question also is how could a violator be granted Consent to Operate and Consent to Establish without inspection of the premises and seeking an Inspection Report first?
4. Affidavit dated 03.03.2023 has been filed by the Respondent No.1, West Bengal Pollution Control Board. Along with this affidavit, an

Inspection Report of an inspection of the site carried out on 09.02.2023 has been filed which reads as under:-

“INSPECTION REPORT

Name of the industry	M/s Tibetan Delight
Address	66/1 Chowringhee Road, Kolkata
P.O.: & Pin Code	Bhawanipur, 700020
P.S.:	Bhawanipur
District	Kolkata
Local Body/ Authority	KMC
Power Supply agency	CESC
Category of industry	Green; Restaurants with capital investment upto 30 lakh
Date & Time of inspection	09/02/2023; 4:45 to 5:30 PM
Date of previous visit	—
Inspecting officers	Sri S Mardi, SEE, Kolkata RO Smt P Maitra, AEE, Kolkata RO
Persons met during inspection	Smt Amrita Mukhia, Daughter of Proprietor of the unit Sri Caser Sen, Complainant
Observation	Cleaning activity
(A) Sources of generation of liquid waste	
(B) Facility available for treatment	None
(C) Generation of sewage and its treatment/disposal	—
(D) Observation & U comments on performance of treatment facility of liquid waste	The unit discharges its effluent directly to KMC drain.
(E) Sources of generation of gaseous emission	03 no. LPG fired oven
(F) Facility available for treatment of gaseous emission	Exhaust fan and stack
(G) Observation & comments on performance of treatment facility for gaseous emission	LPG ovens were not operating during the visit
(H) Observation on noise pollution generated from industrial process along with measured levels (if measurement required)	—
(I) Information regarding solid waste generation and disposal/storing facility	Food and vegetable waste disposed off through KMC arrangement.
(J) Information regarding hazardous waste generation and on site storing facility	--
(K) Status of hazardous waste (m & H) authorization	--
(L) Storing of hazardous chemicals under MS & I (HC) Rules	--
(M) Status of Consent to Establish	Possesses valid NOC: Yes/ No At present whether NOC required: Yes/No

(N) Status of Consent of Operate	Possesses valid Consent to Operate: Yes/ No CFO of the unit is valid upto 31/07/2029 (issued by DIC, Kolkata)
(O) Any other relevant information: <i>This is a complain case against a restaurant with seating capacity 16 no. the unit was operating during the visit. The unit possesses 03 no. oven (LPG fired). 02 no. ovens were placed inside the kitchen. An exhaust fan exists in the kitchen. The said exhaust fan is provided with stack raised above roof level of the unit. Another LPG fired oven was placed outside the kitchen in the southern side of the unit. No cooking activity was going on during the visit. The unit is housed in 02 no. rooms. 01 no. room of approx. 14ft X 12 ft with tin shed is used for dining. Another room of approx. 6 ft X 8 ft with tin shed is used for kitchen purpose. An extended area covered with tin shed is used for washing utensils. The area is mixed in nature.</i> <i>Complainant, Sri Caser Sen, resides at the second floor of an adjacent 2 stored residential building at the northern side of the unit. Complainant, Sri Caser Sen complained of smoke generated from the activity of the unit.</i> <i>The kitchen of the restaurant is approx. 14 ft away from the Complainant's house. In between the Complainant's house and the kitchen of the restaurant lies the dining room of the restaurant. The stack provided with the kitchen is placed at the farthest corner away from the Complainant's house.</i> (P) Remarks: the unit shall install (i) settling chamber for treating its effluent (ii) increase the stack height upto 3.5 m above the nearest tallest building of the unit.	

5. The Kolkata Municipal Corporation, Respondent No.4, has filed affidavit dated 10.03.2023.
6. The Central Pollution Control Board, Respondent No.2, has also filed affidavit dated 11.04.2023, bringing on record the mechanism/guidelines for control of pollution and enforcement of environment at individual establishments and area/cluster of Restaurants/Hotels/Motels/Banquets etc. Relevant extract of the guidelines reads as under:-

“Mechanism/Guidelines for Control of Pollution and Enforcement of Environment Individual Establishments and the Area/ Cluster of Restaurants/Hotels/Motels/Banquets etc.”

.....xxx.....xxx.....xxx.....

3.1 Water Pollution
(i) Effluent Treatment Plant

- a. The units shall provide effluent/sewage treatment plant. Entire waste water generated from kitchen, laundry and domestic sewage should be treated in ETP.
- b. EP Rules specify effluent discharge norms for (A) Eateries/restaurants along roadside having minimum seating capacity of 36 numbers & (B) Hotels. Details of same are as given below:

(A) Eateries/restaurants along roadside having minimum seating capacity of 36 numbers.

A restaurant with minimum seating capacity of 37 shall install ETP and treated effluent water from ETP installed should meet existing Environmental Standard notified by the MoEF&CC vide GSR 794 (E)dated 04.11.2009 and reproduced as under. The standard may be made stringent by concerned SPCB/PCCS.

Parameters	Effluent Standards (Limiting concentration in mg/l, except pH)	
	Inland surface water	On land for irrigation
pH	5.5-9.0	5.5-9.0
BOD <i>3 days 27°C</i>	100	100
Total Suspended Solids	100	100
Oil & Grease	10	10

(B) Effluent discharge norms for hotels

Hotel type	Parameters	Effluent Standards (Limiting concentration in mg/l, except pH)	
		Inland surface water	On land for irrigation
Hotel with at least 20 bedrooms	pH	5.5-9.0	5.5-9.0
	BOD <i>3 days 27°C</i>	30	100
	Total Suspended Solids	50	100
	Oil & Grease	10	10
	Phosphate as P	1.0	--
Hotel with less than 20 bedrooms or a banquet hall with minimum floor area of 100 m ² or a	pH	5.5-9.0	5.5-9.0
	BOD <i>3 days 27°C</i>	100	100
	Total Suspended Solids	100	100
	Oil & Grease	10	10

restaurant with minimum seating capacity of 36			
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Effluent from the unit shall comply with the above norms as applicable

- c. *The units shall provide effluent treatment plant as proposed and maximize reuse of treated sewage in toilet flushing, floor washing, gardening and other non-potable purposes.*
 - d. *The units shall install water meters to record the daily consumption of water and separate electromagnetic flow meter at the inlet and outlet of effluent treatment plant to record actual flows on a daily basis.*
 - e. *The unit shall install separate energy meters also to record the daily energy consumption of the effluent treatment plant on daily basis prior to completion of the project.*
 - f. *The treated water has to be discharged as per conditions specified b the SPCB/PCCs*
 - g. *The quality of treated sewage and treated effluent should be analyzed regularly once in a month and report shall be furnished to SPCB/PCC. Moreover, SPCB//PCCs are required to carry out surprise cross-checks.*
 - h. *In case of bigger halls/star hotels with the capacity of hosting more than 500 people/guests, the halls shall install water meters to record daily consumption of water along with separate electromagnetic flow meters at the inlet and outlet of effluent treatment plants to record actual flows during events. The units having capacity of hosing less than 500 people/guests are required to install water meters only for recording consumption.*
 - i. *Provisions/arrangements for utilizing treated wastewater for gardening and non-potable uses need to be done in case of all such units (smaller & bigger).*
 - j. *The local authorities to ensure that necessary arrangement for collection and treatment of waste water generated from these units.*
-xxx.....xxx.....xxx.....”*

7. The Respondent No.5, M/s Tibetan Delight, has filed its affidavit dated 11.04.2023 and has also filed a further supplementary affidavit dated 12.04.2023.

8. The Stand of the Respondent No.5 is that the Applicant is the landlord of the Respondent No.5 since 1991. The Respondent No.5 Unit has a Certificate of Enlistment valid upto 31.03.2023 and it has obtained Consent to Establish and Consent to Operate from the West Bengal Pollution Control Board on 26.07.2022 and the Consent to Operate is valid upto 31.07.2029. With regard to the inspection which was conducted on 09.02.2023 by the West Bengal Pollution Control Board, it is stated that the Respondent No.5 Unit has authorized an agency, namely, Aquatreat Engineering Private Limited for installing Effluent Treatment Plant of capacity 200 litres/per day. It is also stated that the Unit of Respondent No.5 had applied before the Calcutta Electric Supply Corporation ('CESC' for short) for installing a new electricity meter in the name of the Restaurant to which objection was filed by the Applicant and, therefore, the Restaurant was operating through a generator but the dispute has been resolved and a new meter has been installed in the name of the Restaurant on 01.01.2023. So far as Effluent Treatment Plant (ETP) is concerned, it is stated that the same will be installed by 11.04.2023.

Since the 11.04.2023 has already passed, we expect the ETP must have been installed.

9. With regard to the directions given by the West Bengal Pollution Control Board during inspection, for raising the height of the chimney to 3.5 meters above the nearest tallest building of the Unit, the contention of the Respondent No.5 is that it is difficult as well as risky to raise the height of the chimney to 3.5 meters above the nearest tallest building as proper tie rope support cannot be given due to non-availability of space and there is a chance of the

chimney falling down due to gusty winds during pre-monsoon and monsoon which can lead to accident. Sub-para 'o' of Para 5 of the affidavit reads as under:-

“5.XXX.....XXX.....XXX.....

o. It is submitted that as per the second direction, Exhaust fan has been installed in the kitchen and ventilate emission from the kitchen is discharged to the atmosphere through a chimney. Height of the chimney is 3.5 mtr. It is difficult as well as risky to raise the height of the chimney to a height of 3.5 m above of the height of the nearest tallest building as proper tie rope support cannot be given due to non-availability of space. There will e a chance of the chimney being fall down due to gusty winds during pre-monsoon and monsoon which can lead to accident.”

10. It is also stated that after the new meter was installed by the Respondent No.5, the Applicant filed a Writ Petition being W.P.A. No. 7401 of 2023 (*Ceasar Sen Vs. The Calcutta Electric Supply Corporation Limited & Ors.*) before the Hon'ble High Court of Calcutta, challenging the new connection in the premises of the Respondent No.5. The said Writ Petition was disposed of by the Hon'ble High Court vide order dated 17.02.2023 observing that the Petitioner (therein) does not have a proper cause of action for WPA No. 26064 of 2022, granting liberty to the Petitioner, namely, Nima Mukhia, to make a fresh application for taking a metered electricity connection at Premises No. 66/1, Chowringhee Road in her own name. The Hon'ble High Court also directed the CESC Limited to initiate proceedings against Nima Mukhia as envisaged in law under Section 135 of the Electricity Act, 2003, observing that it is evident that an unauthorised use of electricity is involved which may even tantamount to theft since there is an apparent dishonest

intention behind it to avoid paying charges under provisional assessment order in terms of Section 126 of the Act, 2003.

11. After the order was passed by the Hon'ble High Court on 17.02.2023, it appears that applications were filed before the Hon'ble High Court being CAN No. 01 of 2023 and CAN No. 02 of 2023 and in pursuance thereof, the Hon'ble High Court vide its order dated 29.03.2023 directed that the order dated 17.02.2023 would be deemed to stand corrected to the effect that there was no pre-existing service connection at the Premises No. 66/1, Chowringhee Road.
12. Thereafter, it appears that another order was passed by the Hon'ble High Court on 11.04.2023 in W.P.A. No. 7401 of 2023 (*Cesar Sen Vs. The Calcutta Electric Supply Corporation Limited & Ors.*). The said Writ Petition was disposed of by the Hon'ble High Court with a direction to the Petitioner, therein, to pay cost of Rs. 50,000/- (Rupees Fifty Thousand only) to the Respondent Nos. 1 & 2, therein, and an equivalent amount of Rs. 50,000/- (Rupees Fifty Thousand only) as costs to the Respondent No.3.
13. Be that as it may, this Tribunal is a Court of limited jurisdiction and can only examine questions relating to environmental violations and violations of environmental norms. This Court cannot go into the personal or private disputes between the landlord or tenant as in the present case.
14. From the documents on record, it is seen that the Unit of Respondent No.5 has started its operations on 01.03.2020, as would be evident from the document which is a Project Report filed at page no. 30-32 of the paper book, wherein the Respondent No.5 has itself, in its application dated 26.07.2022 before the West

Bengal Pollution Control Board, seeking certificates for Consent to Establish and Consent to Operate mentioned that the date of commencement of the production of the Unit is 01.03.2020. The Consent to Establish and Consent to Operate were given to the Respondent No.5 Unit on 26.07.2022. Thus it is clear beyond doubt that the Unit of Respondent No.5 has been carrying on its operations from 01.03.2020 till 26.07.2022 without the mandatory Consents from the West Bengal Pollution Control Board.

15. It is further seen that the Respondent No.5 Unit has not installed/established its chimney at 3.5 meters height above the height of the nearest tallest building as directed by the West Bengal Pollution Control Board in its Inspection Report. Even in the matter of installing/establishing the chimney as per the directions of the West Bengal Pollution Control Board, the Respondent No.5 Unit instead of complying with the directions is only giving its explanation that there is a chance of the chimney falling down due to strong winds during pre-monsoon and monsoon. In our opinion, this is no defence to the mandatory requirements of environmental norms/guidelines. If the Respondent No.5 wants to operate the Restaurant Unit, it must comply with the directions given by the West Bengal Pollution Control Board.
16. The Inspection Report also shows that the kitchen of the Restaurant is approximately 14 feet away from the Complainant's house. Few flimsy excuses advanced by the Respondent No.5 for not installing the requisite chimney height is no defence and, in fact, compounds the environmental violations.
17. This Original Application is accordingly disposed of with a direction to the Respondent No.1, West Bengal Pollution Control Board, to

compute the Environmental Compensation/Penalty against the Unit of Respondent No.5 for violations of the environmental norms as well as non-compliance of the directions given by the Board within one month. Needless to say, the West Bengal Pollution Control Board shall give an opportunity of being heard to the Respondent No.5 before passing of any final order.

18. We also restrain the Respondent No.5 from operating its Restaurant Unit further till compliance of the directions given by the West Bengal Pollution Control Board is effected which shall be subject to further inspection by the Pollution Control Board.
19. I.As. if any, stand disposed of accordingly.
20. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Dr. Afroz Ahmad, EM

April 12, 2023,
Original Application No.03/2023/EZ
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NGT