

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

O.A. No. 06/2016/EZ
& MA 946/2016/EZ

SUBHASH DATTA
VS

STATE OF WEST BENGAL & ORS

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

PRESENT:

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| Applicant | : None |
| Respondents No.1, 2 & 4 | : Mr. Bikas Kargupta, Advocate |
| Respondent No. 3 | : Ms. Amrita Pandey, Advocate |
| Respondent No. 5 | : Mr. Malay Kumar Das, Advocate Mr. B. Samanta, Advocate |
| Respondent No. 6 | : Mr. Dipanjan Ghosh, Advocate |
| Respondent No. 7 | : Mr. Arnob Chakraborty, Advocate |
| Respondents No. 8 to 9 | : Mr. Swapan Banerjee, Advocate Mr. Arunava Ghosh, Advocate : Mr. V.K.Srivastava, Chief Planning & Design Engineer, Rly. Board Mr. Sunil Kumar Dubey, Dy. CE/Works Mr. D.K.Saha, Technical Expert Mr. B.Saha, DGM, Mackintosh Burn |

| Date & Remarks | Orders of the Tribunal |
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| Item No. 8 18 th January, 2017. | <p align="center">By filing an affidavit, the Commissioner, Howrah Municipal Corporation, respondent No. 3, has conveyed compliance of our directions issued vide order dated 7.12.16. In that order we had noted the objections of the Railway to the revised DPR submitted by the respondent No. 7 and had observed that those being serious having the potential to scuttle the very object of this proceedings, it should be deliberated in the Committee's meeting scheduled on the 16th December,</p> |

2016. In the affidavit filed to day it is stated that the meeting was convened on 14.12.2016.

Upon perusal of the minutes of the meeting, it appears that construction of STP which we had directed, had been abandoned in preference to an alternative which is said to be both short term and long term measures to be taken up by the respondent No. 7, M/s Mackintosh Burn Ltd. The details of the short term measure are found mentioned in the minutes.

For convenience we may reproduce para 5 of the minutes below :-

“5. It was observed by the Committee that the DPR as prepared by MACKNITOSH BURN LIMITED was not fully accepted by the railways and representatives of the railways share in the meeting a write up regarding their para-wise objection. After a detailed discussion on that issue it was resolved that as an alternative to the STP some measures both as short term and long term should be taken by the agency i.e., MACHINITOSH BURN LIMITED in close collaboration with the railways and the HMC. The short term measures were proposed as the following :

- i) A proper drainage system with gates to be worked out by Mackintosh Burn Limited both for disposal of sewerage and storm water as required. The execution of the work shall be done on cost share basis between railways and HMC.
- ii) The outfall of the proposed drainage system especially sewerage disposal drain should be aligned with the existing drainage system of HMC

which is located near the Jheel.

- iii) Moveable compactors should be put to service by HMC for daily disposal of the garbage all round the Jheel at the earliest.
- iv) HMC in collaboration with Forest Department shall taken up the cleaning of the water hyacinth from the Jheel and plantation work along the Jheel as feasible.”

We are informed by Mr. Malay Kr. Das, Ld. advocate for the respondent No. 5, on instructions from Mr. Sunil Kumar Dubey, Dy. Chief Engineer, Works, SE Railway that the meeting held ended inconclusive without being able to discuss the entire issues fixing 24.1.2017 for the next meeting to deliberate and decide on the remaining issues.

Although Mr. Arnab Chakraborty, Ld. Counsel for the respondent No. 7, submits that decision for short term measures as an alternative was taken due to the financial constraints expressed by the authorities including the State Govt., Mr. Malay Das, Ld. Advocate for the SE Railway submits on instructions that constraint of funds has never been an issue on the part of the Railways and asserted that there would be no problem for funding of the project.

It is the common submission of all that temporary measures which had been suggested, for which a

revised DPR has been prepared by the respondent No. 7, would involve substantial expenditure. We have also been informed by the parties that the entire pipe line for the intake of sewerage, planned for the main STP, in any case, would have to be laid even for the purpose of the temporary measure. This is confirmed by Mr. D.K.Saha, Technical Consultant, Mackintosh Burn Ltd.

In our view, since laying of the intake pipe line would involve considerable expenditure, it would be logical if efforts are made for setting up the main STP instead of taking up the short term measure.

We accordingly direct construction of the main STP be taken for the purpose of which measures to facilitate such construction may be resorted to, if found technically necessary.

In the meeting scheduled on 24.1.2017, the members shall discuss and deliberate on the implementation of this decision and arrive at a concrete proposal on all aspects including the expenditure. In order to avoid delay in the deliberations, the respondent No. 7, i.e. Mackintosh Burn Ltd. shall hold consultative meeting with the Railway authorities before the scheduled date of the meeting.

In the meanwhile, the HMC shall continue with the task of cleaning the Jheel with the aid and assistance of

the Department of Forest.

The affidavit of respondent No. 4, Deptt. of Environment filed by Mr. Bikas Kargupta, Id. Govt. counsel is ordered to be taken on record. We find that the affidavit is woefully short of our expectations. Expression of inability to declare the Santragachi Jheel area as 'silence zone' relying upon the notification issued by the MOEF, Govt. of India on the subject appears to be quite mechanical. It is within the authority of the State to supplement the notification of the MOEF being one having general application. It is permissible for each State to add to the notification as per requirements peculiar to them.

The State respondent shall, therefore, file an appropriate affidavit on this aspect also on or before the next date.

Mr. Arnab Chakraborty, Id. counsel for the respondent No. 7 prays for a short time to file the revised DPR. He may do so within a week with advance copies on the other side.

List on 3.3.2017.

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Justice S.P.Wangdi, JM
18-11-2017

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Prof. (Dr.) P. C. Mishra, EM
18-1-2017

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