

THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA

M.A. 1199/2016/EZ

&

O.A. 136/2015/EZ

ARK Nirman Pvt. Ltd.

Vs.

Subhas Datta and Ors.

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

PRESENT: Applicant In M.A. : Mr. Ajit Kumar Mishra, Advocate
Mr. Amritam Mandal, Advocate
Applicant in O.A. : Mr. Subhas Datta in person.
Respondents No.1-4,6,7&10-13 : Mr. Bikas Kargupta, Advocate
Respondent No.5 : Mr. Avijit Dey, Advocate
Respondent No. 8 : Mr. Dipanjan Ghosh, Advocate
Respondent No. 9 : Mr. Gora Chand Roy Chowdhury, Advocate
Siliguri Jalpaiguri Dev. Authority : Mrs. Arpita Chowdhury, Advocate
Other Respondents : None

Date & Remarks	Orders of the Tribunal
Item No. 7 2 nd March, 2017.	By our order dated 29.11.2016 we had directed the District Magistrate, Darjeeling to dispose of the case of the applicant in the M.A. on the basis of the claims made by him after due verification. No such report has been filed thus far. Although Mr. Amritam Mandal, Id. counsel for the applicant in M.A. (Respondent No. 15) prays that the unit should be permitted to run as it has complied with all the necessary requirements, we are not inclined to pass

such order until a report is submitted by the District Magistrate, Darjeeling as directed.

It is left open for the District Magistrate to consider the application of the M.A. applicant on its merit, and if the claim made by the applicant is to the satisfaction of the DM, he shall be at liberty to dispose of the application accordingly and permit him to operate.

Considering the fact that the M.A. has been pending since 29.11.2016 we direct the DM, Darjeeling to dispose of the matter within 15 days from hence and submit a report without fail by the next date.

List on 22.03.2017.

O.A. 136/2015/EZ

Vide order dated 01.11.2016 we had *inter alia* directed that, in the course of performance of 'Chhat Puja' on the river Mahananda at Siliguri, North Bengal, no bamboo bridge should be constructed over the river

Mahanadi for the purpose of performing Chhat Puja rituals. The relevant part of the order may be reproduced as under:-

“ The photographs at pages 49,50 and 51 of the paper book show that temporary bamboo bridges have been constructed across the river Mahananda to facilitate performance of the rituals connected with the Chhat Puja. Such facility, in our view, would not be necessary as one of the requirements associated with the rituals is the necessity of being near the river bed and not within. Although we are informed that even offering of flowers is not a part of the rituals, the photographs clearly indicate otherwise.

In this view of the matter, we are of the considered opinion that while performance of the rituals may continue, construction of bridges across the river certainly cannot be allowed.

For the convenience of the devotees it is suggested that barricades either in the form of nets or split bamboos could be laid upto 3 ft. into the river making it possible for the devotees to have access to water. The area for laying such barricades may be at identified stretches along with the river to a desired length sufficient to accommodate large number of devotees.

The above directions shall be strictly complied with by the Siliguri Municipal Corporation, Siliguri Jalpaiguri Development Authority and the District Magistrate, Darjeeling district (Respondent No. 10) who shall supervise the entire operation. After the rituals are over the puja wastes collected along the barricades shall be lifted and removed by the Siliguri Municipal Corporation or any other authority responsible

for the work.

Compliance reports shall be filed by the District Magistrate, Darjeeling, Siliguri Municipal Corporation and Siliguri Jalpaiguri Development Authority within a period of three weeks from hence.”

Although compliance reports were directed to be filed by the District Magistrate, Darjeeling, Siliguri Municipal Corporation and Siliguri Jalpaiguri Development Authority within three weeks from the date of the order, it is only today that the DM, Darjeeling has filed one. The one filed by SJDA earlier only pertains to removal of wastes after completion of ‘Chhat Puja’. The Siliguri Municipal, however, has failed to comply with the direction.

The affidavit filed by the DM, Darjeeling is of serious concern to us as it is apparent from the averments at para 4 to 6 that conscious efforts have been made to mislead us. The said paragraphs are reproduced below :-

“4. That I state that since the matter was preponed for hearing on 01.11.2016 from 07.11.2016 the representative from my office could not be present and as such the content of

the order dated 01.11.2016 was not known to me. I further state that the order passed by the Hon'ble Tribunal could not be made available in the website of the NGT, as it was not operational in view of the technical snag.

However, only after receiving the order dated 01.11.2016 by the Ld. Govt. Council, the gist of the order was communicated verbally over telephone to my office.

5. That I state that by the order dated 01.11.2016 it was directed by the Hon'ble Tribunal that no construction of wooden bridge across the river for performing the Chhat Puja rituals, but the same direction could not be complied with for the reasons stated under:-

The Chhat Puja rituals could not be made possible by the devotees without the temporary bamboo bridges as the area between the bank and the flow of the river water is full of sludge about 25 foot to 35 foot. The devotees were mainly consisting of women members along with their children and male members also, it was very difficult for them to walk through the sludge up to the river water. So, it was necessary to have such temporary bamboo bridges in order to avoid any accident or untoward incident during such festival.

6. That I state that I have no intention to disregard the order of the Hon'ble Tribunal. It was neither wilful nor deliberate. However, the plight of the women members, children as well as male members had to reach the flow of the river to perform the ritual. Such temporary bridges were required to avoid any accident or untoward situation. It is respectfully submitted that immediately after the puja the temporary bridges have been dismantled and all the puja waste

material have been taken out and cleaned.”

Even assuming that the DM was not made aware of the order dated 1.11.2016 on that day or soon thereafter but after having come to know of such order it ought to have dawned on him that either the Tribunal had to be approached to place on record the situation and seek leave to continue with the arrangement or ought to have demolished the bridge if it had already been constructed. The second paragraph of para 5 reproduced above, would undeniably make it clear that the bamboo bridge would have in any way been constructed. If there were sludge in the river, as claimed by the DM, nothing stopped the authority from identifying some other convenient place for the ritual and ensure implementation of the directions.

In our view, therefore, non-compliance of our order dated 1.11.2016 is deliberate and wilful. For the aforesaid reasons we direct the District Magistrate, Darjeeling and the Chairman, Siliguri Municipal Corporation to show cause as to why action under

Section 26 read with section 28 of the NGT Act, 2010 be not instituted against them.

Let the show cause be filed without fail within two weeks from hence.

It is made clear for convenience of all that since the issue pertaining to the 'Chhat Puja' emanates from the main O.A., other issues shall be taken up after the next date.

List on 22.03.2017.

Justice S.P.Wangdi, JM
2.3.2017

Prof. (Dr.) P. C. Mishra, EM
2.3.2017

