

## LEGAL ISSUES

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The West Bengal Pollution Control Board (WBPCB) is entrusted with the responsibility to ensure proper implementation of several statutes, judicial and legislative pronouncements to improve and protect the state of environment of West Bengal. During the year 2005-2006, the WBPCB has taken necessary legal steps to combat pollution within the state.

### LEGAL STEPS ADOPTED DURING 2005-2006

The Board pursued the industrial units, and encouraged them by way of offering technical guidance, to comply with the regulatory norms. This was done by meeting with the polluters to apprise them of the necessity to take pollution control measures, to erect pollution control systems and to perform their duties in compliance with the existing environmental statutes.

The non-complying units, however, were not spared. They were called for public hearing following which regulatory orders, such as disconnection of electricity, imposition and forfeiture of bank guarantee, restriction on operating time, etc were issued - closure of the unit being an ultimate step.

In the year 2005-2006, the Board issued closure orders against 230 industrial units. Prior to the issuing of closure orders, the polluting units were given adequate time to submit replies against show-cause notices related to the erection of pollution control systems. After erection of suitable pollution control systems, the Board suspended closure orders against 144 such units.

The WBPCB issued orders for disconnection of electricity against 222 units during 2005-2006. In most of the cases, the units did not comply with the closure orders of the Board. After adoption of pollution control systems, the Board issued orders for restoration of electricity for 146 units.

In 2005-2006, the Board had imposed bank guarantee upon 59 polluting units who failed to comply with the statutory directions of the Board. Out of these, the amount of bank

guarantee was forfeited from one unit, who did not comply with the condition of erection of pollution control system within the stipulated timeframe.

**TABLE: 2.7.1**  
REGULATORY ACTIONS OF THE BOARD DURING 2005-2006

Legal Issues	Apr '05	May '05	Jun '05	Jul '05	Aug '05	Sep '05	Oct '05	Nov '05	Dec '05	Jan '06	Feb '06	Mar '06	Total
Imposing Bank Guarantee	6	16	nil	12	3	7	2	nil	nil	5	2	6	59
Forfeiture of Bank Guarantee	nil	nil	nil	nil	nil	nil	nil	nil	1	nil	nil	nil	1
Issuance of Closure	42	42	1	15	13	5	4	nil	6	14	14	74	230
Suspension of Closure	7	11	66	15	9	3	10	1	3	8	4	7	144
Disconnection of Electricity	42	41	1	15	13	3	4	nil	6	14	14	69	222
Restoration of Electricity	8	12	66	15	9	3	10	1	3	8	4	7	146
Imposition of pollution fine	12	13	nil	6	nil	4	nil	nil	1	4	5	1	46

### IMPORTANT LEGAL DECISIONS DURING 2005-2006

#### SUPREME COURT ISSUES

- *Noise pollution – implementation of the laws for restricting use of loudspeakers and high volume sound producing systems (Date of Order: 18.07.2005)*

Before the Hon'ble Supreme Court, a number of Writ Petitions and Public Interest Litigation cases were filed regarding noise pollution generated from bursting of noise making fireworks, sound of amplifiers/loudspeakers, playing of high volume gadgets, sound of horns of vehicles and exhaust of trucks.

The Hon'ble Court, after considering the impacts on human life and damages caused thereby and hearing the submissions of the legal stalwarts, issued a direction vide order dated July 18, 2005.

The said order considered the situation and acts prevailing in countries like UK and USA in comparison with India where the

topographical conditions, density of population and enactment of laws varied. Emphasis was given on awareness campaign, without heating the religious and conventional issues, pinpointing the overall effects of noise on human body, culmination of various incurable disease, which has given explicit directions to the government in various departments including the Explosive Department.

**The directions of the Hon'ble Supreme Court are as follows:**

#### 1. Firecrackers

- On a comparison of the two systems, i.e. the present system of evaluating firecrackers on the basis of noise levels and the other where the firecrackers shall be evaluated on the basis of chemical composition, the latter was found to be more practical and workable in Indian circumstances. It shall be followed unless and until replaced by a better system.

- The Department of Explosive (DoE) shall undertake necessary research activities for this purpose and come out with the chemical formulae for each type or category or class of firecrackers. The DoE shall specify the proportion/composition as well as the maximum permissible weight of every chemical used in manufacturing firecrackers.
- The Department of Explosives may divide the firecrackers into two categories – (i) sound emitting firecrackers, and (ii) colour/light emitting firecrackers.
- There shall be complete ban on bursting sound emitting firecrackers between 10 p.m. and 6 a.m. It is not necessary to impose restrictions as to time on bursting of colour/light emitting firecrackers.
- Every manufacturer shall, on the box of each firecracker, mention details of its chemical contents and satisfy the requirements as laid down by the DoE. In case of failure on part of the manufacturer to mention the details or in case where the contents of the box do not match the chemical formula as stated on the box, the manufacturer may be held liable.
- Firecrackers for the purpose of export may be manufactured bearing higher noise levels subject to the following conditions: (i) The manufacturer should be permitted to do so only when he has an export order with him and not otherwise; (ii) The noise levels for these firecrackers should conform to the noise standards prescribed in the country to which they are intended to be exported as per the export order; (iii) These firecrackers should have a different colour packing from those intended to be sold in India; and (iv) They must carry a declaration printed there on something like ‘not for sale in India’ or ‘only for export to country AB’ and so on.

## 2. Loudspeakers

- The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall not exceed 10 dB (A) above the

ambient noise standards for the area or 75 dB (A), whichever is lower.

- No one shall beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10 p. m. and 6 a.m.) except in case of public emergencies.
- The peripheral noise level of privately owned sound system shall not exceed by more than 5 dB (A) than the ambient air quality standard specified for the area in which it is used, at the boundary of the private place.

## 3. Vehicular Noise

- No horn should be allowed to be used at night (between 10 p.m. and 6 a.m.) in residential areas except in exceptional circumstances.

## 4. Awareness

- There is a need for creating general awareness towards the hazardous effects of noise pollution. Suitable chapters may be added in the text books, which teach civic sense to the children and youth at the initial/early level of education. Special talks and lectures must be organised in the schools to highlight the menace of noise pollution and the role of children and younger generation in preventing it. Police and civil administration should be trained to understand the various methods to curb the problem and also the laws on the subject.
- The state must play an active role in this process. Resident welfare associations, service clubs and societies engaged in preventing noise pollution as part of their projects need to be encouraged and actively involved by the local administration.
- Special public awareness campaigns in anticipation of festivals, events and ceremonial occasions where firecrackers are likely to be used, need to be carried out.

The above guidelines were issued in exercise of power conferred on the Court under

Articles 141 and 142 of the Constitution of India. These would remain in force until modified by the Court or superseded by an appropriate legislation.

### 5. General

- The states shall make provision for seizure and confiscation of loudspeakers, amplifiers and such other equipment as are found to be creating noise beyond the permissible limits.
- Rule 3 of the Noise Pollution (Regulation and Control) Rules, 2000 makes provision for specifying ambient air quality standards in respect of noise for different areas/zones, categorisation of the areas for the purpose of implementation of noise standards, authorising the authorities for enforcement and achievement of laid down standards. The Central Government/State Government shall take steps for laying down such standards and notifying the authorities where it has not already been done.

Though the matters are closed consistently with the directions as above issued in public interest, there will be liberty of seeking further directions, as and when required, and particularly in the event of any difficulty arising in implementing the directions.

- *Petition for special leave to appeal (Civil) no. 11333/2005 [South Sundarban Matsyajibi and Matsya Karmachari Union & Another, Petitioners versus State of West Bengal & Others, Respondents] (Date of Order: 08.08.2005)*

The matter relates to construction of a reservoir on Hukaharania by the Kultali Panchayet Samity with assistance from the Sunderban Development Board, in Sunderban Area.

Previously, the petitioners moved Writ Petition before the Hon'ble High Court,

Calcutta. On consideration of submissions, reports from different authorities including the West Bengal Pollution Control Board, the Hon'ble High Court, Calcutta passed an order on 18.03.2005 directing that the construction may go on strictly subject to further orders that may be passed by the Hon'ble Court. But the Hon'ble High Court, Calcutta made it clear that if the Court finds that the project is against the public interest or will add pollution to the area, the Court reserves its right to pass necessary orders for stopping the project and restoring the area to its previous position.

The petitioners moved before the Hon'ble Supreme Court against the order. The Hon'ble Court of India on 08.08.2005, directed *status quo* on date as regards the construction.

- *Special leave petition Civil) no. 23146-47 of 2005, Green Valley Towers Pvt. Ltd. & another vs. State of West Bengal & Others and Special Leave Petition (Civil) no. 25742-46 of 2005, Sanjeevani Projects Pvt. Ltd. & Others vs. State of West Bengal & Others (Date of Order: 16-12-2005)*

The above-mentioned matters relate with restoration of the East Kolkata Wetland area wherein the appellants have undertaken housing projects.

The appellants have moved special leave petition before the Hon'ble Supreme Court against the order of Hon'ble High Court, Calcutta, dated 16-11-2005, wherein Division Bench of the Hon'ble High Court, Calcutta passed orders directing that the construction already done on wetland areas by the housing project proponents should be demolished within May 2006.

Upon hearing on 16-12-2005, the Hon'ble Supreme Court of India stayed the demolition but directed that at the same time no further construction would be undertaken. Matters are likely to come up for hearing before the Hon'ble Court in February 2006.

## HIGH COURT ISSUES

- *Writ Petition No. 2098 (W) of 2004 [M/s. Alloy Steel Rolling Mills, Petitioner Versus West Bengal Pollution Control Board & Others, Respondents] (Date of Judgment: 28.06.2005)*

The matter relates with conversion of boilers and furnaces from coal-fired to oil-fired system in terms of order of the Board for protection and betterment of environment in the city of Kolkata and its surrounding areas.

The matter was previously dealt with by the Hon'ble Pollution Control Appellate Authority (WB) in terms of Appeal No. A-45/2001 [M/s. Alloy Steel Rolling Mills, Petitioner Versus West Bengal Pollution Control Board, Respondent].

The Hon'ble Pollution Control Appellate Authority (WB) after a prolonged hearing on the matter on different dates dismissed the appeal on 23.03.2004 with certain directions, and allowed four months time to the appellant to change over from the coal-fired system to a cleaner fuel (oil or gas) system.

The petitioner unit moved before the Hon'ble High Court, Calcutta against the order of the Appellate Authority.

In consideration of the submissions made by the parties, the Hon'ble High Court, Calcutta, on 28.06.2005, dismissed the Writ Petition affirming the order of the Pollution Control Appellate Authority (WB) and also the policy decision of the West Bengal Pollution Control Board.

- *G. A. NO. 1227 OF 2005, A.POT NO. – 252 OF 2005, W. P. NO. 367 OF 2005, the State of West Bengal, Appellant vs. Green Valley Towers Pvt. Ltd. & Others, Respondents. and G. A. No. 1224 of 2005, A.Pot No. – 250 of 2005, W. P. No. 352 of 2005, the State of West Bengal, Appellant vs. Sanjeevani Projects (P) Ltd. & Others,*

*Respondents (Date of Judgment: 16-11-2005)*

The above-mentioned matter relate with restoration of East Kolkata wetland area wherein the appellants have undertaken housing projects.

The Government of West Bengal moved appeal before the Hon'ble Division Bench High Court Calcutta praying order to stop the housing projects, which were undertaken by the respondents on East Kolkata wetland areas without obtaining permissions from any statutory authority.

Considering the submission of the state of West Bengal and the Pollution Control Board, the Hon'ble High Court, Calcutta passed an order on 16-11-2005, to demolish the construction already undertaken by the project proponents within May 2006 and restore the wetland areas to its original character by the same time.

By order dated 21-11-2005, the Hon'ble Court appointed Shri Biswajit Mukherjee, Senior Law Officer, West Bengal Pollution Control Board, as Special Officer with effect from 01-01-2006 for the purpose of carrying out and implementing the order passed by the Court on 16-11-2005.

Incidentally, it may be mentioned that the WBPCB has already issued denial of 'Consent for Establishment' order in respect of the housing projects, and directed the project proponents not to proceed with further construction.

## POLLUTION CONTROL APPELLATE AUTHORITY (WEST BENGAL) ISSUES

The Pollution Control Appellate Authority (West Bengal) comprises of:

- a) Justice Gitesh Ranjan Bhattacharjee, Chairman, Appellate Authority;
- b) Prof. Pinaki Bhattacharya, Department of Chemical Engineering, Jadavpur

University, and Member, Appellate Authority; and

- c) Prof. Dipak Kumar Bhattacharya, Emeritus Fellow, All India Council of Technical Education, New Delhi and Member, Appellate Authority.

- *Appeal No. A-27/2005 [Neelachal Natural Resource Private Limited, Appellant Versus West Bengal Pollution Control Board, Respondent] (Date of Order: 21.06.2005)*

The matter relates with an appeal filed by an asbestos pipe manufacturing unit against the regulatory order of the Board dated 01.06.2005 by which the Board directed the unit to take certain pollution control measures. Considering the background, the Board also imposed pollution cost to the tune of Rs. 50,000/- and execution of bank guarantee to the tune of Rs. 1,00,000/-.

In view of the facts and circumstances of the matter, the Hon'ble Pollution Control Appellate Authority (WB) did not find any reason to interfere either in respect of pollution cost or in respect of bank guarantee imposed by the Board and dismissed the appeal.

- *Appeal No. A-38/2005 Dipak Chanda/ Prabir Bera ...Appellants Vs. W.B. Pollution Control Board & Ors.(Belda Chemical Industries) ...Respondents (Date of Order: 03-01-2006)*

The complaints/appellants preferred appeal against the suspension of closure order issued by the Board on 09-06-2005 against M/s. Belda Chemical Industries alleging generation of pollution hazards by the said industry. It was also alleged that the groundwater strata of the area concerned has been destroyed by leaching of hazardous chemicals and wastes by the respondent industry.

Considering the report of the expert committee appointed by the Appellant

Authority, the Hon'ble Authority directed that the concerned industry shall remain closed till the industry adopts proper pollution control systems, and measures to protect groundwater from any sort of pollution and deterioration, and also adopt measures to reclaim the quality of the deteriorated groundwater to a safety level, as may be suitable for the purpose.

The unit was also directed to supply safe water to the locality, and dump and store the hazardous wastes in a scientific manner to the satisfaction of the Board.

The Hon'ble Appellant Authority also directed the respondent unit to deposit pollution cost of Rs.5,00,000/- to the Board within 15 days and directed the Board to utilise the same for the purpose of improvement of environment of the area concerned. All concerned authorities were directed to ensure the compliance of the order.

- *Appeal No. A-17/2004 Dimple Vincom Pvt. Ltd.....Appellant -Vs- West Bengal Pollution Control Board & Others.....Respondent (Order dated 17.01.2006)*

The appellants preferred appeal against denial of 'Consent for Establishment' by the Board in respect of a water park proposed to be established within the East Kolkata Wetland Area.

The matters earlier were dealt with by the Hon'ble High Court, Calcutta and Hon'ble Supreme Court of India and subsequently in terms of the orders of the Hon'ble Courts, the appellant preferred appeal against the order of the Board.

Considering the report of the Expert Committee appointed by the Appellate Authority, the Hon'ble Authority dismissed the appeal of Dimple Vincom Pvt. Ltd., upholding the order of the Board, and extended leave to the appellant unit to

approach the concerned authority for obtaining permission in terms of the provisions of the East Kolkata Wetland (Conservation & Management) Ordinance, 2005.

- *Appeal No. A-11/2005 Mohan Lal Bajaj (Mohan Motors) ..... Appellant Vs- West Bengal Pollution Control Board & Ors. .... Respondents and Appeal No. A-13/2005 Mohan Lal Bajaj ( Mohan Motor Udyog) ..... Appellant Vs West Bengal Pollution Control Board & Ors. .... Respondents AND Appeal No. A-17/2005 Bothra Automotives Pvt. Ltd. .... Appellant Vs- West Bengal Pollution Control Board & Ors. .... Respondents (Order dated 17.01.2006)*

The appellants preferred appeal against the order of the Board for shifting of the Automobile Service Centre and garage units running within the East Kolkata Wetlands areas.

Considering the report of the Expert Committee appointed by the Hon'ble Appellate Authority, the Hon'ble Authority dismissed the appeals upholding the order of the Board and extended liberty to the appellant units (Mohan Motors , Mohan Motor Udyog and Bothra Automotives Pvt. Ltd.) to approach the concerned authority for obtaining permission in terms of the provisions of the East Kolkata Wetland (Conservation & Management) Ordinance, 2005.

The Hon'ble Appellate Authority directed the appellant units not to carry any garage activities on the concerned lands on the expiry of a period of one month. In the event, they filed application under the provisions of the Ordinance 2005 for permission to change the

character or mode of use of the land before the concerned authority. The concerned authority was directed to dispose of the same within two months from the date of receipt of the application, and till such two months, the Board shall not demolish the concerned garage.

- *Appeal No. A-05/2006 M/s. Bengal Nestors Indus Ltd. ....Appellants Vs. W.B. Pollution Control Board & Others .....Respondents (Date of Order: 21-02-2006)*

The matter relates with imposition of pollution cost to the tune of Rs. 50,000/- and imposition of bank guarantee to the tune of Rs. 1,00,000/- upon the appellant dairy unit by the Board vide order dated 12-01-2006, for making expansion of the existing capacity without taking proper measures for control of pollution, which caused environmental degradation of the surrounding areas. The Board observed that it was a fit case for issuance of closure but as the unit was producing essential commodity like milk, they were directed to complete the job of pollution control system within two months.

The Hon'ble Appellate Authority upon hearing on 21-02-2006, upheld the order of the Board for imposing pollution cost but modified the impugned order directing the unit to pay pollution cost of Rs. 40,000/- instead of Rs. 50,000/- within three weeks from the date of order. In view of undertaking given by the appellant unit, the Hon'ble Appellate Authority waived the furnishing of bank guarantee by the appellant unit. In case of violation of the above order, the Board was given liberty to take action in accordance with law.

FIGURE: 2.7.1

STATUS OF HIGH COURT CASES SINCE LAST NINE YEARS

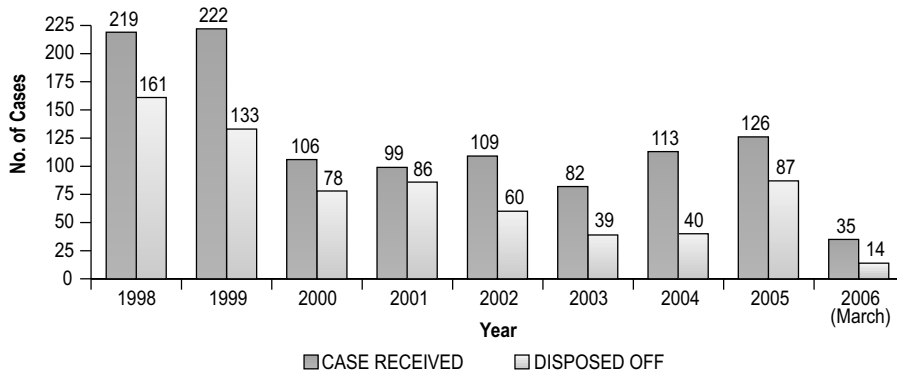


FIGURE: 2.7.2

STATUS OF APPEAL CASES SINCE LAST SEVEN YEARS

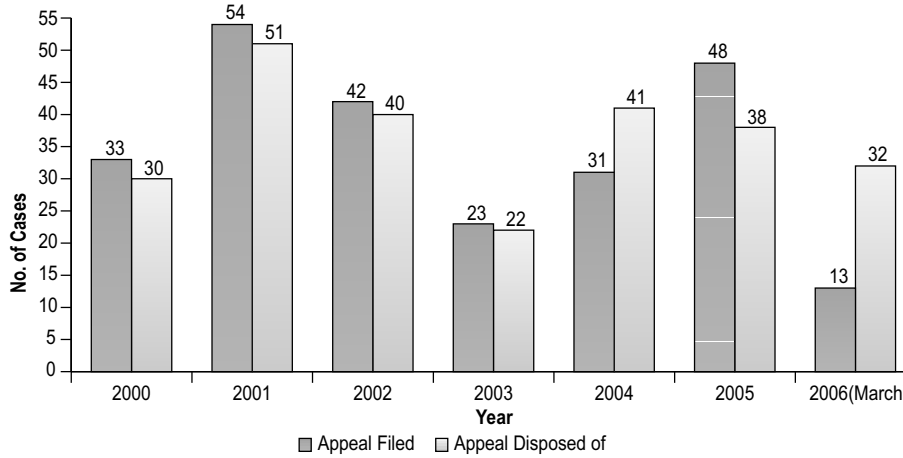


FIGURE: 2.7.3

STATUS OF BANK GUARANTEE SINCE 1997

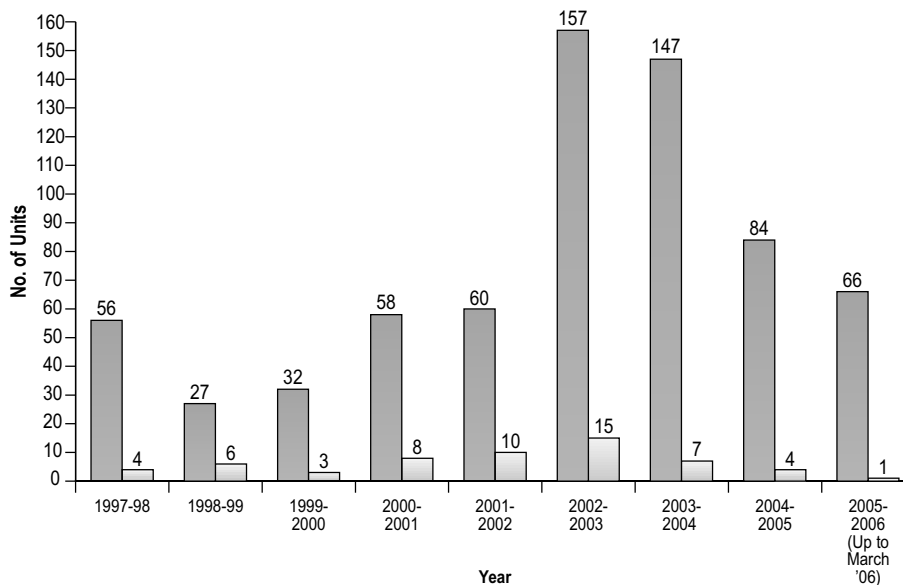
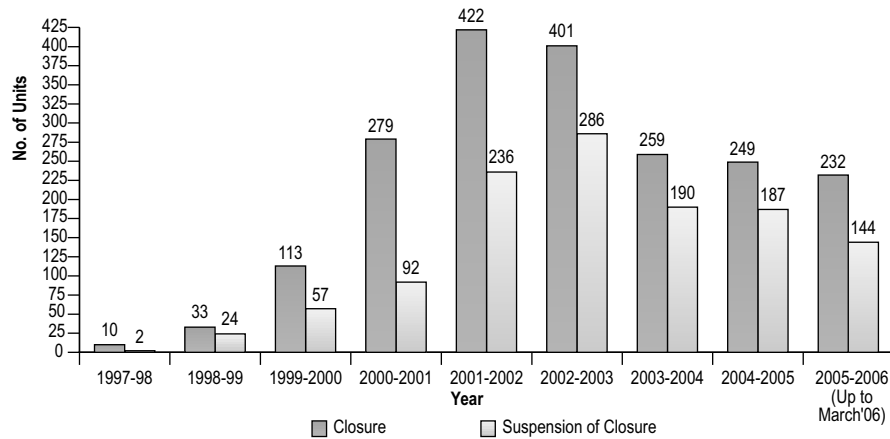


FIGURE: 2.7.4  
STATUS OF CLOSURE SINCE 1997



### TRAINING PROGRAMMES ON ENVIRONMENTAL LAW

During 2005-2006, the WBPCB arranged programmes for law students to offer training on environmental law and its applications. These training programmes were held at Paribesh Bhawan Auditorium, Kolkata. A brief account of such training programme are illustrated below.

- A one-day training programme was arranged for college and university teachers on environment. About 24 teachers participated in the programme that was held on March, 29, 2006.
- A one-day training programme was held for students of Surendranath Law College on March 25, 2006. About 140 students attended the programme.
- 36 students of Jogesh Chandra Law College attended a one-day training programme on April 28, 2005.