

# LEGAL ISSUES

## CHAPTER SEVEN

**T**he 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 2006-2007, the WBPCB has taken necessary legal steps to combat pollution within the state.

### LEGAL STEPS ADOPTED DURING 2006-2007

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 a public hearing following which regulatory orders, such as issuance of closure, disconnection of electricity, imposition of pollution costs & bank guarantees, forfeiture of bank guarantee, restriction of operation time — closure & disconnection of electricity being ultimate steps.

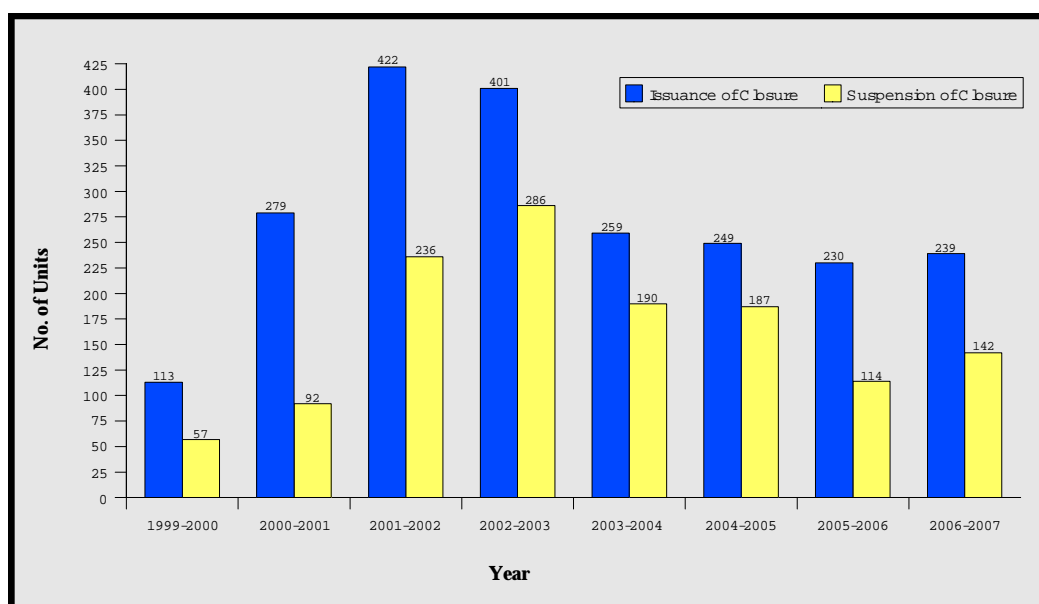
In the year 2006-2007, the Board issued closure orders against 239 industrial units. Prior to the issuing closure orders, the polluting units were

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, however, suspended closure orders against 142 such units. The WBPCB issued orders for disconnection of electricity against 230 units during 2006-2007. After adoption of pollution control systems, the Board issued orders for restoration of electricity for 104 units. In 2006-2007, the Board had imposed bank guarantee upon 37 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

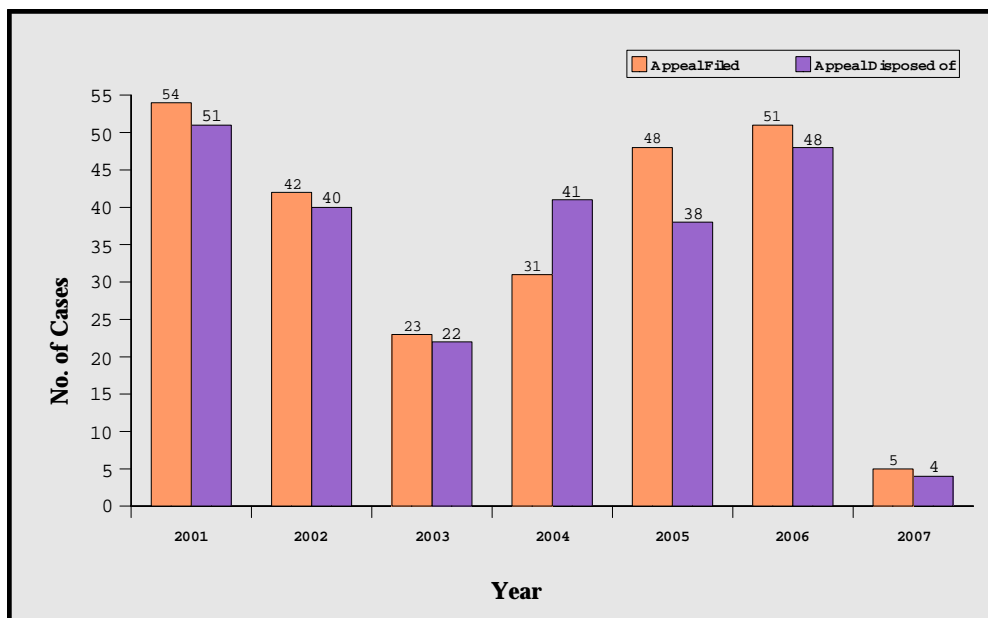
**TABLE: 2.7.1**  
REGULATORY ACTIONS OF THE BOARD DURING 2006-2007

Legal Issues	Apr '06	May '06	Jun '06	Jul '06	Aug '06	Sep '06	Oct '06	Nov '06	Dec '06	Jan '07	Feb '07	Mar '07	Total
Imposing Bank Guarantee	Nil	7	Nil	Nil	7	1	Nil	3	5	Nil	3	11	37
Forfeiture of Bank Guarantee	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	1	1
Issuance of Closure	28	40	16	15	13	1	16	19	8	5	43	35	239
Suspension of Closure	6	14	18	16	20	1	1	45	5	5	4	7	142
Disconnection of Electricity	25	40	14	16	12	1	15	19	8	4	42	34	230
Restoration of Electricity	6	17	22	16	19	2	Nil	Nil	5	7	3	7	104
Imposition of pollution fine	8	7	7	17	30	4	14	10	4	1	2	6	110

**FIGURE 2.7.1**  
STATUS OF CLOSURE SINCE 1997



**FIGURE 2.7.2**  
STATUS OF APPEAL CASES SINCE LAST SEVEN YEARS



## IMPORTANT LEGAL DECISIONS DURING 2006-2007:

### 1) Supreme Court Issues

- *Writ Petition (Civil) No. 309 of 2003 Laxmi Narian Modi etc. .... Petitioner Vs. Union of India & Others (date of order: 08.09.2006)*

The matter relates with the pollution generated by slaughter houses owing to discharge of effluents and disposal of solid wastes. The petitioner alleged that slaughter houses in the country are operating without taking pollution control measures and creating environmental pollution in the surrounding areas. The Hon'ble Supreme Court of India directed the Central Government, State Government and State Pollution Control Boards to submit the status report of the slaughter houses and directed the municipalities to designate places where the slaughtering will be done.

In accordance with the order of the Hon'ble Court passed earlier, the WBPCB arranged a number of meetings with the municipalities to apprise them the order of the Hon'ble Supreme Court of India, and take necessary action for compliance of the order of the Hon'ble

Court. The Board duly communi-cated the report to the Central Government (in accordance with the order passed by the Hon'ble Court) and filed affidavits before the Hon'ble Supreme Court of India narrating the status of the slaughter houses in West Bengal including those located within the KMC (Kolkata Municipal Corporation) area.

Upon hearing, the Hon'ble Supreme Court of India passed an order on September 8, 2006. The order read: "If the State Government and/or Pollution Control Board fails to satisfy the court about the compliance or at least substantial compliance of the provisions of the Act and the Rules, particularly in regard to complying with the minimum requirements of parameters and the standards and of up-keeping of the hygiene, this Court will be left with no option but to direct the closure of such slaughter houses, which fail to comply with theses minimum requirements." The Board has duly filed affidavit in compliance of the order of the Hon'ble Court. The matter is pending for hearing before the Hon'ble Supreme Court of India.

- *Civil Appeal No. 5028 of 2006 arising out of special leave petition (Civil) No. 23146-25147 of 2005, Green Valley Towers Pvt. Ltd. & Anr ..... Petitioners, vs. State of West Bengal & Others ..... Respondents. And Civil Appeal No. 5027 of 2006*

*arising out of special leave petition (Civil) No. 25742-46 of 2005, Sanjeevani Projects Pvt. Ltd. & Ors .... petitioners, Vs. State of West Bengal & Ors ..... Respondents (Date of Order: 11.09.2006 and 17.11.2006)*

The above-mentioned matters relate with the 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 November 16, 2005, wherein Division Bench of Hon'ble High Court Calcutta passed orders directing the construction that are already done on wetland areas by the housing project proponents should be demolished within May 2006. The Hon'ble Supreme Court of India observed that petitioners made representations before the East Kolkata Wetland Management Authority, which was constituted by the Government of West Bengal under the provisions of the East Kolkata Wetland (Conservation and Management) Act, 2006. Upon hearing on September 11, 2006, the Hon'ble Court passed an order, which reads "It has been pointed out that representations have been made by the petitioners in the special leave petitions in terms of Section 10 of the East Kolkata Wetlands (Conservation and Management) Act, 2006. It is pointed out that the representations are not being considered because of the pendency of these matters. Without prejudice to the rights and contentions of the parties, the representation shall be considered by the respondents and appropriate decision, as may deem fit, shall be taken in accordance with law expeditiously."

The matter further came up for hearing on November 17, 2006, and the Hon'ble Court observed that East Kolkata Wetland Management Authority has disposed of the representations of the petitioner units on October 23, 2006, and passed an order on the same date by disposing of the Civil Appeals. The order reads "The record of proceedings of the East Kolkata Wetland Management Authority dated 23<sup>rd</sup> October 2006, which is marked as Annexure 'A' has been placed before us. All the parties submit that these matters be disposed of in terms thereof.

All the parties shall abide by the decisions recorded in the said proceedings dated 23<sup>rd</sup> October 2006. While carrying on further construction, the appellants shall comply with all the conditions stipulated in the record of proceedings dated 23<sup>rd</sup> October 2006. On violation of the conditions stipulated therein, it would be open to the authorities to take appropriate actions/proceedings. All law, including the pollution laws, shall have to be complied with. In case of non-compliance, necessary consequence will follow. In this view, the impugned judgments and orders of the High Court are set aside. Interim restrains placed by this Court on the appellants are vacated. The civil appeals are disposed of in the above terms."

## 2) High Court Issues

- *Writ Petition No. 31110 (W) of 1997 M.C. Mehta ..... Petitioner Vs Union of India and others ..... Respondents (Date of Order: 05.05.2006)*

The matter rose out from W.P. (Civil) No. 3727 of 1985 originally filed before the Hon'ble Supreme Court of India relating to pollution of river Ganga by the industries as well as by municipalities. This instant order relates with implementation of the Ganga Action Plan and discharge of sewage from municipalities of the Ganga basin in West Bengal, and also discharge of effluents of industries located within the 42 municipalities of Ganga basin.

Considering all the reports filed earlier by different authorities and WBPCB, the Hon'ble High Court Calcutta, upon hearing on May 5, 2006, constituted a Monitoring Committee with the following members:

1. Principal Secretary, Department of Environment, Chairman;
2. Representative of the Central Pollution Control Board, Member;
3. Representative of the West Bengal Pollution Control Board, Member;
4. Representative of the National Environmental Engineering & Research Institute, Member;
5. Representative of the National River Conservation Directorate, Member;

6. Representative of the All India Institute of Hygiene and Public Health, Member;
7. The Chief Engineer, Public Health Engineering Department or his representative, Member;
8. Representative of the Kolkata Municipal Corporation, Member;
9. Representative of the Howrah Municipal Corporation, Member;
10. The Chief Engineer, Kolkata Metropolitan Development Authority or his representative, Member;
11. The Director, Municipal Engineering Department, Member;
12. Representative of the Central Government, Member;
13. Shri Kalyan Rudra, River Expert, Member;
14. Shri Subhas Dutta, Member; and
15. Shri Biswajit Mukherjee, Sr. Law Officer, West Bengal Pollution Control Board, Convenor of the Committee.

The Hon'ble Court directed that the Committee shall take up the task of inspection of the sewage plants and industrial effluents treatment plants through its members/representatives, and make suggestion to the Hon'ble Court for curbing and minimising the level of pollution within two months from the date of the first meeting. The Hon'ble Court also directed that the Committee shall have all the powers to take up such steps as are felt necessary, and all the departments who have been given the representation in the committee shall be bound to accept the suggestions made by the committee. The committee also extended liberty to represent to the Court about the necessity of adding certain departments or the persons as the case may be. The Hon'ble High Court Calcutta passed some more directions regarding filing applications and granting of consents, setting up effluent treatment plants by the industries and complying with the effluent standard. The municipalities were also directed to take up a programme called 'River Bank Protection Programme' to protect the river banks from pollution. For this purpose, the municipalities would try to construct septic latrines by seeking finance from the State Government.

- *Writ Petition No. 150 of 2006 Mohan Vanija Viniyog Pvt. Ltd.....Petitioners Vs. The State of West Bengal & Others..... Respondents and Writ Petition No. 165 of 2006 Bothra Automotive Pvt. Ltd. & Others..... Petitioners Vs. The State of West Bengal & Others..... Respondents (Date of Judgment: 17.08.2006)*

The matter relates with the order of the Board directing the petitioner units on March 9, 2005, to shift the Automobile Service Center and garage units running within the East Kolkata Wetlands area. The units preferred appeals before the Pollution Control Appellate Authority, and the Authority considering the report of the Expert Committee appointed by the Appellate Authority dismissed the appeals upholding the order of the Board, and extended liberty to the appellant units (Mohon Motors, Mohon 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.

It is pertinent to mention that the Hon'ble Appellate Authority directed the appellant units not to carry any garage activities on the concerned land upon the expiry of a period of one month. Under the provisions of the Ordinance, they filed application before the concerned authority for permission to change the character/mode of use of the land. The concerned authority was directed to dispose of the same within two months from the date of receipt of the application, and the Board was asked not to demolish the concerned garage within those two months.

The petitioner units hence moved Writ Petitions before the Hon'ble High Court, Calcutta, and upon hearing on 17-08-2006, and in consideration of the submissions made before the Hon'ble Court, the Court upheld the order of the Board as well as the order of the Pollution Control Appellate Authority (West Bengal) passed on 17-01-2006. The relevant portion of the order reads "We, therefore, hold that the Pollution Control Board was right in ordering the closure though for additional

reasons. It is undoubtedly true that the petitioners had not disclosed that the lands on which they were constructing, were a part of the wetlands. In fact, it would have been for the other authorities to note that these lands were covered by the High Court Judgment in which a clear injunction was given restraining the change of user of the land. But we are not on that. Even otherwise, the petitioners could not have started the industry unless they had obtained a consent to operate the industry. Therefore, we find no fault with the conclusions reached by the Pollution Control Board and the dismissal of the appeal with a direction. We would, therefore, choose not to interfere with the orders and would dismiss both the writ petitions, but without any order as to costs.”

### 3) Pollution Control Appellant Authority (West Bengal) Issues

- *Appeal No. A-17/2006 M/s. S. R. Texwash Pvt. Ltd. ... Appellant Vs. West Bengal Pollution Control Board..... Respondent (Date of Order: 16-05-2006)*

The matter relates with the fact that is allegedly and virtually against purported inaction on the part of the Board in the matter of granting consent for establishment of a unit, categorically dyeing and bleaching, which is located on a land where West Bengal Land and Land Reforms Act is attracted. The Hon'ble Appellate Authority observed that the unit requires a formal consent prior to starting the establishment, so that they can have an order from other appropriate authority to proceed further in the matter. The Land Conversion Certificate is the compelling requirement in this case.

The Hon'ble Authority also observed that if on the basis of presumption that 'Consent to Establish' will be granted, the unit starts necessary construction by mobilising its resources and by spending money, and ultimately if the Board is not in a position to grant 'Consent to Operate' (because of non-availability or refusal of Land and Land Conversion Certificate) by the appropriate authority, then it will put the unit into enormous difficulties including wastage of money and the likes. It was submitted by the unit that in anticipation of formal 'Consent to Establish' they

have already made substantial construction, placed orders for installation of machines and as a result, have already invested about Rs. 1 crore.

The Hon'ble Appellate Authority directed the Board to grant formal 'Consent to Establish' to the unit within a fortnight with the imposition of strict conditions that the unit shall neither make any further installation or construction, nor shall it start any operation before getting Land Conversion Certificate. The Hon'ble Authority also directed the Land Conversion Authority to dispose of the appellant unit's application for Land Conversion Certificate in accordance with law within eight weeks from the date of grant of 'Consent to Establish' referring the Memo No. 5024 G/ 4345/96 dated 28-07-1999 of the Land and Land Reforms Department. The appeal was thus disposed of. A similar nature of order was also passed by the Hon'ble Appellate Authority on 06-06-2006, in connection with Appeal No. A-20/2006 filed by the M/s. Dhanbad Fuels Pvt. Ltd.

- *Appeal No. A-11/2006 M/s. Landmark Hotel... Appellant Vs. West Bengal Pollution Control Board... Respondent (Date of Order: 20-06-2006)*

The matter relates with the issue of construction of a hotel unit. The hotel was constructed and the operation was started without obtaining 'Consent to Establish' and 'Consent to Operate' from the Board for which the Board issued orders of disconnection of electricity and closure.

The Hon'ble Appellate Authority observed that the appellant constructed a massive hotel for commercial use on a location which was recorded in the settlement record of rights as Raiyati Bastu Land with some kinds of modest structures standing thereon, without obtaining necessary land conversion certificate under the West Bengal Land Reforms Act. The Hon'ble Authority also observed that such conversion without permission is no less pernicious. The Hon'ble Authority observed the conversion of the wetland or waterbody into a filled up land even assuming that such filling up did not take place in this case. As such, the Authority denied approval as some mandatory provisions of law was violated. The appeal was therefore dismissed.

The Hon'ble Appellate Authority passed a general direction that wherever it shall come to the notice of the Board that any industry, operation, process, plant or project of any kind has been established (wholly or partly or even any steps have been taken to establish the same) or put into operation before obtaining the 'Consent to Establish' or 'Consent to Operate' of the Board, as the case may be, the Board shall immediately take appropriate legal action in the matter.

- *Appeal No. A-35/2005 Pramila Singh ...Appellant Vs. W.B. Pollution Control Board & Ors. ...Respondents (Date of Order: 17-10-2006)*

The matter relates with an appeal file by the appellant against the order of the Board (dated 09-02-2005) where the Board *inter alia* directed the appellant named M/s Bright Gas Agency not to undertake any activity of loading and unloading of LPG (Liquefied Petroleum Gas) cylinders at its showroom (located at 141, B. K. Avenue, P.S. Burtolla, Kolkata -700005). The genesis of such order was the complaints received by the Board against noise pollution generated by the loading/unloading of gas cylinders by the appellant unit who is a distributor of Indian Oil Corporation Ltd. (IOCL). The unit's business involves purchase of LPG cylinders from IOCL and distribution of those cylinders to the customers.

The Appellate Authority considered all records and submissions, and appointed a committee comprising of the following members:

1. Additional Director General of Police (Pollution Control);
2. Deputy Commissioner of Kolkata Police to be nominated by the Commissioner of Police, Kolkata;
3. One senior officer of the Explosive Department not below the rank of Deputy Director, Government of India;
4. Senior Officer of oil Industries to be nominated by the General Manager (LPG) IOCL;
5. Senior Scientist of the Board to be nominated by the Chairman of the Board;
6. One Senior Officer of Kolkata Municipal Corporation to be nominated by the

Commissioner, Kolkata Municipal Corporation.

Shri B. Mukherjee, Ld. Senior Law Officer of the Board was nominated as Convener Member of the said Committee.

The Pollution Control Appellate Authority also considered the safety aspect of loading, unloading and storing of LPG cylinders in the showroom located in a densely populated area. Incidentally, it may be mentioned that the Board (under the direction of the Hon'ble High Court, Calcutta in connection with a separate matter previously dealt with and heard by the Hon'ble Court) had prepared a guideline for handling, loading and unloading of LPG cylinders.

After submission of the report of the Committee, the Hon'ble Authority took up the matter for hearing and considering all relevant aspects of the matter, disposed of the appeal on 17-10-2006. An excerpt of the order indicating the direction of the Pollution Control Appellate Authority reads as follows: "Having regard to all relevant aspects of the matter, we direct the appellant unit to shift its godown to a suitable locality nearer to their showroom with necessary prior permission of the appropriate licensing and other authorities and make delivery of gas cylinders from that godown to the homes of their customers directly on cycle vans with the help of porters, if necessary or arrange for delivery of cylinders from the existing godown to the homes of their customers directly on small vehicles of workably appropriate size or on cycle vans with the help of porters, if necessary, without involving any loading and unloading exercise at or in the immediate vicinity of their showroom. For this purpose we allow the appellant unit a time limit of four months so that the unit may comply with our direction in the meantime. The interim order passed by us on 20-12-2005, will continue to operate for four months more on the expiry of which the same shall lapse and if in the meantime the unit fails in any manner to strictly comply with the said interim order or thereafter to comply with our aforesaid new direction the Board will be at liberty to take action against the unit in accordance with law including imposition of pollution cost. The Board will also be at liberty to introduce the principle

of this order for compliance of all distributors and oil companies as a matter of general application in a phased manner over a time period which the Board may think practicable. The oil companies including IOCL are directed to extend necessary cooperation in the matter.”

- *Appeal No. A- 38/2006 M/s. Oswal Vyapaar Pvt. Ltd. ... Appellant Vs. W.B. Pollution Control Board ... Respondent (Date of Order: 20-02-2007)*

The matter relates with the issuance of closure order and order for disconnection of electricity against eight hotel units in Mandarmoni Beach, Purba Medinipore, West Bengal including this instant petitioner. Against such order, the petitioner hotel moved appeal (Appeal No. A-38/2006) before the Hon'ble Pollution Control Appellate Authority (West Bengal) and upon hearing on 20-02-2007, the Hon'ble Authority disposed of the appeal on 20-02-2007, directing the appellant to dismantle its unit within two months from the date of the order in view of the violation of the Coastal Regulation Zone Rule formulated by the Government of India. It was further directed that in case of failure of compliance, a cost of Rs. 1000/- per day will have to be paid by the concerned hotel units to the Board.

#### **Constitution of Committee**

The Pollution Control Appellate Authority (West Bengal) formulated a Committee to oversee the compliance of the order and implement the same. The Committee constituted of the following members:

1. Prof. P. N. Roy, Member, West Bengal Pollution Control Board (Chairman);
2. Scientist from the Coastal Regulation Zone Authority as may be nominated by such Authority (Member);
3. Sabhapati, Panchayat Authority, 8 No. Kalindi Gram Panchayat, Block Ramnagar -II, Vill. & P.O. Kalindi, Dist. Purba Medinipore (Member).
4. A representative of the District Magistrate, Purba Medinipore, not below the rank of Deputy Magistrate (Member);
5. Representative of the Superintendent of Police, Purba Medinipore, not below the rank of Deputy Superintendent of Police (Member);
6. Representative of the Member-Secretary of the West Bengal Pollution Control Board, not below the rank of Senior Environmental Engineer or Senior Scientist (Member); and
7. Shri Biswajit Mukherjee, Senior Law Officer, WBPCB, now posted as Senior Law Officer, Department of Environment, Government of West Bengal (Member Secretary).

## **TRAINING PROGRAMS ON ENVIRONMENTAL LAW**

During 2006-2007, the WBPCB arranged programmes for law students to offer training on environmental law and its applications. These training programs were held at Paribesh Bhawan Auditorium, Kolkata. A brief account of such training programmes organised during 2006-2007 are given below.

1. One-day training program was held for students of Jogesh Chandra Law College on April 19, 2006. About 111 students attended the programme.
2. One-day training program was held for students of Surendranath Law College on February 14, 2007. About 138 students attended the programme.
3. One-day training program was held for students of Jogesh Chandra Law College on February 14, 2007. About 167 students attended the programme.