

**POLLUTION CONTROL APPELLATE AUTHORITY (W. B.)**

“Paribesh Bhawan”, 10A, LA Block, Sector-III, Salt Lake City,  
Kolkata – 700 098

**Re: Appeal No. A-06/2002  
Nagarik Manch**

**... Appellant**

**Vs.**

**W. B. Pollution Control Board & Ors.,  
...Respondents.**

**Appeal No. A-07/2002  
Quark Science Centre**

**...Appellant**

**Vs.**

**W. B. Pollution Control Board & Ors.,  
...Respondents.**

**ORDER**

**06.01.2004**

These two appeals, A-06/2002 and A-07/2002, have been all through dealt with and heard together as these appeals have been filed against the same order of the State Pollution Control Board dated 16.01.2002 on identical grounds. Accordingly both these appeals are being disposed of by this order. The Appellant in A-06/2002 is Nagarik Manch and that in A-07/2002 is Quark Science Centre and both are NGOs. The respondent in both the appeals is M/s. Hindustan Construction Company Limited which obtained contract from the National Highway Authority of India in or about December 2000 to carry out the work of widening 4-/-16 lanes and of strengthening the existing 2 lane carriage way of National Highway No. 6 covering a distance of about 64 kilometres from Kolaghat to Kharagpur. The respondent company is required to complete the work within a specified period. The company obtained possession of lands in the vicinity by entering into agreements of lease for three years with the respective owners of the lands for quarry of black stones and for setting up crushing plants for carrying out the said road-construction works. The owners of those lands mostly belong to the tribal community.

The respondent company applied to the State Pollution Control Board for getting necessary pollution control clearance. The present appellants however approached the State Pollution Control Board resisting grant of clearance by raising various objections including objection that tribal lands cannot be transferred nor can the nature and character of the rayati lands be changed without the permission of the appropriate authority under the West Bengal Land Reforms Act, 1955. The matter was heard and considered by the Pollution Control Board and

ultimately the Board passed order on 16.01.2002 permitting the company (Hindustan Construction Company) to continue, upto certain date, its stone crushing plant subject to certain conditions mentioned therein, such as, that the unit should convert all approach roads towards stone crushing plant into metallic roads alongwith the roads situated within the premises of the said plant as per the NOC conditions of the Board and that the unit should construct wind barrier as per the specification of the Central Pollution Control Board prescribed for stone crushing unit to control dust pollution. It was also stipulated in the order that these conditions should be complied within a specified period and that the unit should submit progress report every seven days and further that after submission of the compliance report by the unit the State Pollution Control Board Officials would inspect the site to judge the efficacy of the pollution control system. In that order the State Pollution Control Board also asked the unit to execute within seven days a Bank Guarantee of Rs. 10,00,000/- (Rupees Ten Lac) only which would be forfeited in the event of non-compliance of the conditions imposed upon the unit. It was recorded in that order that the order had been passed after getting land related clearance certificate from the Project Officer-cum-District Welfare Officer, Backward Classes of the concerned district who happens to be the Revenue Officer under the provisions of the West Bengal land Reforms Act, 1955.

The appellants who are NGOs, filed the two appeals on identical grounds against the aforesaid order of the State Pollution Control Board dated 16.01.2002 making the State Pollution Control Board and the unit, namely M/s. Hindustan Construction Company, respondents. The grounds taken in the memo of appeal for challenging the impugned order of the State Pollution Control Board, shortly stated, are that the unit did not obtain necessary permission for changing the nature and character of the lands from the concerned authority and the unit took lease of the concerned tribal lands without following the due procedure prescribed in the West Bengal Land Reforms Act and the rules framed thereunder. It is also contended in the memo of appeal that the unit did not execute the required Bank Guarantee of rupees ten lac. So far as the pollution aspect is concerned, it is contended in the memo of appeal that the dust pollution created by the stone crushers will expose the area to health hazard.

The earlier Appellate Authority in its order dated 26.02.2002 expressed the view inter alia that the lands of the tribal people could not be lawfully taken on lease for the purpose for which the lands were taken by the respondent company and accordingly directed the District

Magistrate, inter alia, to locate and restore the concerned tribal lands to the concerned tribal owners. The Appellate Authority also appointed an Expert Committee of various experts and directed it to inspect the place and ascertain the nature of the work and submit report about the actual state of affairs. The District Magistrate was also directed to enquire and submit report regarding the effect of blasting on the houses of the tribal people in the area, fixing 09.04.2002 as the next date of hearing. On 09.04.2002 the Appellate Authority received the technical report prepared by the Expert Committee and also the report submitted by the District Magistrate. It was inter alia directed on that date that until further order no blasting operation should be undertaken between 8:00 p.m. and 6:00 a.m. The next hearing was fixed on 07.05.2002.

On 07.05.2002 the then Appellate Authority passed a very elaborate order, modifying its earlier view on certain aspects after considering the matter including the report of the District Magistrate. In that order the Appellate Authority noted that on the application of the respondent company to the Additional District Magistrate and District Land & Land Reforms Officer for permission to use the tribal lands for operating the crushing plant and stone quarry, such permission was granted by the appropriate authority after necessary enquiry. The Appellate Authority also noted in that order that it was not a case of purchase of land or grant of lease of land, but it was a case of license granted for a period of three years after obtaining consent in writing from the owners of the land and after obtaining due permission from the appropriate authority under the West Bengal Land Reforms Act. The Appellate Authority further noted in that order that the respondent company had duly executed a Bank Guarantee for rupees ten lac as per direction of the State Pollution Control Board. It was also recorded in that order of the Appellate Authority that the Appellate Authority was only concerned about pollution and incidentally they had made (in the earlier order) certain observation with regard to transfer of land belonging to the tribal people. It was then recorded in the said order that since the tribal owners of lands had granted permission in writing, the question of restoration of the land back to the tribal people against their wishes would not arise and the Appellate Authority had no intention to pass any order which would have the effect of stopping or interfering with the development work on this account. Thus the Appellate Authority reversed its earlier order to restore the tribal lands to their owners. But at the same time the Appellate Authority felt it necessary to protect the interest of the tribal people and accordingly directed the District Magistrate to ensure certain measures and take certain steps mentioned therein. The Appellate Authority also constituted a Committee by that order which

included the District Magistrate and certain other persons named therein to supervise and oversee the mater. The said order of the Appellate Authority also contains various other instructions and suggestions.

Salient points of the directions and suggestions recorded by the Appellate Authority in its order dated 07.05.2002 are briefly summarized below:

1. District Magistrate will see that the tribal people get proper and adequate compensation for the loss of income until such times the lands are handed back to them (after completion of the lease period).
2. Till four to six months after the concerned lands are returned to their tribal owners the respondent company should pay a monthly compensation of Rs. 2,000/- to Rs. 3,000/- to them for the lands which were taken for the installation of stone crushing unit.
3. After the completion of the work quarry may be used for pisciculture for which the respondent company should take steps under the supervision and control of the District Magistrate who will consider in consultation with the Fishery Department whether a co-operative relating to the pisciculture can be framed with the tribal landowners whose lands were taken for the purpose of stone quarry.
4. As regards the lands which can not be restored to its original position due to change of nature and character the respondent company should provide to the concerned tribal landowners alternative lands at the cost of the company in the nearby area. The District Magistrate will see that so long such alternative lands are not provided the landowners are given suitable compensation so that they can survive.
5. After completion of the stone crushing work, the respondent company may properly develop the land within the time fixed by the District Magistrate for converting the same into agricultural land again. Steps should be also taken to develop social forestry in the area.

6. The Bank Guarantee furnished by the respondent company may be retained until all actions and works are over and the same should not be released without getting proper clearance from the District Magistrate.

It appears that by letter dated 29.11.2001 the Additional District Magistrate and District Land & Land Reforms Officer, Midnapore informed the concerned Block Land & Land Reforms Officer that proposal of change of classification in respect of the classified land into stone quarry had duly been approved and that necessary correction in the RORs should be done accordingly under the relevant rules.

In his order dated 29.11.2001 the District Land & Land Reforms Officer while granting permission for conversion of land imposed certain conditions. The Project Officer cum District Welfare Officer, Backward Classes Welfare Department, Midnapore by his letter dated 21.12.01 addressed to the Project Manager of the respondent company conveyed permission to use tribal land to the tune of 20.21 acres for operating stone crushing plant and stone quarry to meet the huge requirement of good quality crushed stones required for the construction of the National Highway for a period of three years subject to certain conditions, such as, that the company would return the entire lands (20.21 acres) to the respective owners after the lease period or after the project is over, whichever is earlier, and that the owners of such lands (5.68 acres) the character of which would be changed after the project would be over should be given equivalent quantum of land in the locality (in addition to their land to be returned after the project is over) and all such owners should be provided with employment during the construction period. Since difficulty is being faced in procuring alternative land in the locality the respondent company requested the District Administration to assess the value of land measuring 5.68 acres so that in lieu of alternative land the company may deposit the assessed monetary value of such land for distribution among the concerned land owners according to the quantum of land taken from them. The District Magistrate got the value of the land assessed by the Land Acquisition Department, which has value land (5.68 acres) at Rs. 3,33,300/-. The respondent company now wants to deposit the said amount. It is also on record that the company has given employment to the concerned landowners whose lands have been taken by the company.

The Expect Committee appointed by the Appellate Authority by its order dated 26.02.2002 submitted its report after inspection. One report was submitted by Sri A. Bandyopadhyay,

Environmental Engineer, Haldia Regional Office of the State Pollution Control Board. In his report he has inter alia mentioned of the air pollution control system arranged by the company at its crushing plants. The measures taken include water sprinklers for controlling dust pollution, wind breaking walls surrounding the plant, metalled roads and chute. He has recorded in his report that no deposit of dust particles was found on the paddy field and plants at nearby location. Photograph of a deep green paddy field in the close vicinity of the crushing plant was also annexed to his report. Dr. Debashis Chakroborty, Scientist, State Pollution Control Board recorded in his report the noise level in and around the quarry and crushing unit and recorded that mild vibration was felt in the village approximately 200 metres from the blasting spot. He recommended that blasting operation might not be allowed in the nighttime. We have already seen that the Appellate Authority by its order dated 09.04.2002 prohibited blasting operation from 8:00 p.m. to 6:00 a.m. Sri Subir Mukhapadhyay, Reader in Geology, Jadavpur University inter alia recorded in his report that the water quality of the wells of the surrounding villages was found good as far as transparency and odour was concerned. He suggested that for further details analysis of water quality might be carried out. He however recorded that the on-going mining activity did not apparently show any effluent discharge or any contaminating character in the present scenario. He also recorded that neither the leaves of the surrounding trees and bushes of the quarry nor soil did show precipitation of dust, though both mining and crushing of rocks were in operation in the near vicinity. It has however been commented in his report that monitoring of blasting was required in the present mining activity. As regards proposed fishery he considered it to be a viable proposition but observed that appropriate measures must be taken to prevent contamination of the ground water through existing fracture system in the dykes and this would require systematic study of the fracture system in the subsurface rock system. Dr. Sajal Das Gupta, Professor and Head, Department of Mining and Geology, Bengal Engineering College recorded in his report his preliminary observations that apparently there was no air pollution due to mining activity and there was no remarkable depletion of water level in the wells. He however recorded that mine workers were not using personal protective equipment, etc. He suggested further verification of his preliminary observations through blast vibration monitoring, SPM and RMP survey and water analysis, and pending that he suggested certain measures, such as, implementing of control blasting technique, issuing of PPE to all the mine workers, effective water sprinkling arrangement and CMRI approved drilling and blasting pattern. Dr. A. Roy Chowdhury, Deputy Director (S.G.) and Officer-in-Charge, Regional Occupational Health Centre (Eastern) also submitted a

report recommending certain measures such as putting up of mask on the face covering nose and mouth of workers for protecting them from inhalation of dust and use of ear plug by the workers during the drilling at the process of crushing to avoid high level noise at work place. Regarding community health point of view he has noted that it has been observed that dust is accumulated on the agricultural land nearby the unit and dust may spread over nearby environment which is harmful. It may be noted that no other expert who visited the place as member of the Expert Team however spoke of any dust accumulation in the neighborhood and rather two members, as we have seen, specifically reported that there was no such dust accumulation. Be that as it may, even Dr. Roy Chowdhury has also suggested as a remedy against possible dust nuisance that water sprinkling process is essential to avoid the high dust concentration in the community environment. We have seen that it is on record that the company has taken measures like installation of water sprinlers and wind breaking walls and construction of metalled roads and chute. Another report was submitted by Sri A Bandyopadhyay, Environmental Engineer, Haldia Regional Office of the State Pollution Control Board on the basis of a subsequent inspection held on 05.07.2002. In that report also he mentioned the air pollution control system installed by the respondent company. He recorded that the dust suppression systems were in operation during the inspection and that during the inspection deposition of dust particles was not observed on the agricultural fields in and around the crusting plant. Fugitive emission was however observed during inspection from top over crusher sand stored after crushing due to wind effect, but such emission was however seen restricted within the crushing arena only. It was observed in the report that this stored crushing sand would increase with the aging of the plant and the industry should be asked to take adequate measures to prevent such fugitive emission. It was also recorded that the industry was in the process of monitoring of Ambient Air Quality in and around the crushing and quarry plants at five locations and the State Pollution Control Board might direct the industry to continue the Ambient Air Quality monitoring at strategic locations and the results of such monitoring might be submitted to the Haldia Regional Office of the State Pollution Control Board. Also from time to time the District Magistrate and the respondent company submitted reports about the progress and position of compliance regarding the various directions of the Appellate Authority. The company has inter alia reported about supply of protective equipments to their workers, the health care measures it has introduced, etc.

It may be noted here that on the last several dates of hearing the appellants did not appear before the Appellate Authority. The Appellate Authority has already passed several orders such as order dated 07.05.2002, etc. giving specific directions for compliance. The road construction project undertaken by the respondent company is going to be completed, we are told, by the end of December 2004. Thereafter still it will be responsibility of the respondent company to reclaim the land of the crushing plant to its original character as far as possible and return the same to its owners within the shortest possible time. It will also be the responsibility of the company to convert the quarry into fishery under the advice and supervision of the Fishery Department and under the over all control of the District Magistrate. Creation of social forestry under the advice and supervision of the Forest Department and under the over-all control of the District Magistrate will be another area of responsibility for the company. The District Magistrate will also take effective steps for formation of a Co-operative with the concerned landowners as already directed. As regards alternative lands for the concerned landowners, since land may not be readily available in the locality the respondent company is permitted to deposit with the District Magistrate the amount (Rs. 3,33,300/-) which has been assessed by the Land Acquisition Authority as the value of 5.68 acres of land together with a further amount of 15% as solatium. Such deposit shall be made within 15 days. The District Magistrate shall give notice to the concerned landowners and shall within two months of such deposit pay the amount of compensation with solatium on pro-rata basis to the concerned landowners who may be willing to accept the same in lieu of alternative land. The District Magistrate shall ensure very cautiously that the whole compensation goes to the right person in each case without suffering any subversion or diversion. For those of the landowners who may not be agreeable to accept the compensation in lieu of land the company shall with the help of the District Administration procure alternative land and make the same available to them within the shortest possible time. The respondent company will also discharge its health care responsibilities under the scrutiny of the District Magistrate.

So far as the pollution control aspect is concerned, the respondent company will sensitively respond, as a continuing on-going process, to the relentless responsibility to ensure by all means that the environment is not polluted by reason of the project it has undertaken, whether in the form of air pollution, dust pollution, sound pollution, tremor pollution, water pollution or any other form of pollution whatsoever. The State Pollution Control Board will review the situation from time to time, desirably at bi-monthly intervals on obtaining reports of

inspection from its own experts or from outside experts also if considered necessary by it and issue necessary directions upon the company to take appropriate measures as may be warranted. The State Pollution Control Board will also consider what further steps should be taken in future in the light of the reports submitted by the expert committee and others and shall act accordingly. A representative of the District Magistrate shall also be associated by the State Pollution Control Board with such review and inspection and the District Magistrate will depute a responsible officer for the purpose on the request of the State Pollution Control Board. Henceforth it shall be the joint responsibility of the State Pollution Control Board and the District Magistrate to ensure compliance, by all concerned, of the directions and orders passed by the Appellate Authority including its order dated 07.05.2002. Sri Biswajit Mukherjee, Senior Law Officer of the State Pollution Control Board will act as the coordinator and Sri A. K. Bhunia, Retired District Judge and Member of the Committee constituted by the Appellate Authority by its order dated 07.05.2002 shall monitor the matter.

The appeals accordingly stand disposed of with liberty to mention if necessary.

Sd/-

( Prof. Pinaki Bhattacharyya )  
Head, Dept. of Chemical Engineering Jadavpur  
University  
And  
Member, Appellate Authority

Sd/-

( Prof. Dipak Kumar Bhattacharyya )  
Emeritus Fellow, All India Council of  
Technical Education, New Delhi  
And  
Member, Appellate Authority

Sd/-

(Justice Gitesh Ranjan Bhattacharjee)  
Chairman, Appellate Authority