

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

.....

**ORIGINAL APPLICATION No. 23/2014/EZ**

**WITH**

**M.A. 22/2015/EZ**

**IN THE MATTER OF:**

**Dipak Mondal**

**S/o Late Rabindra Nath Mondal,**

**R/o Vill: Chhoto Mirjapur, PO Charghat**

**PS: Swarupnagar, Dist. North 24 Parganas**

**West Bengal-743 247**

**.....Applicant**

**V e r s u s**

- 1. Pollution Control Appellate Authority , WB  
"Paribesh Bhawan, 4th Floor, 10A, LA Block  
Sector-III, Salt Lake City, Kolkata-700 098**
- 2. West Bengal Pollution Control Board  
"Paribesh Bhawan, 4th Floor, 10A, LA Block  
Sector-III, Salt Lake City, Kolkata-700 098**
- 3. The Member Secretary,  
The West Bengal Pollution Control Board,  
"Paribesh Bhawan, 4th Floor, 10A, LA Block  
Sector-III, Salt Lake City, Kolkata-700 098**
- 4. The Chairman,  
The West Bengal Pollution Control Board  
"Paribesh Bhawan, 4th Floor, 10A, LA Block**

Sector-III, Salt Lake City, Kolkata-700 098

5. The Block Development Officer,

Village Chhoto Mirgapur, PO Charghat

PS: Swarupnagar, Dist. North 24 Parganas

6. The Officer-in-Charge,

Swarupnagar PS, North 24 Parganas

7. Sri Pranab Mondal,

Owner of M/s Poultry Farm,

Vill : Mirzapur, PO Charghat

Dist. North 24 Parganas

Pin 743 247

.....Respondents

**COUNSEL FOR APPLICANT:**

Mr. Kallol Basu, Advocate, Mr. Nilanjan Pal, Advocate

**COUNSEL FOR RESPONDENTS:**

Ms. Arpita Chowdhury, Advocate. Respondent Nos.2,3&4

Mr. Bikas Kargupta, Advocate, Respondent No.6

Mr. Alokesh Goswami, Advocate, Respondent No.7

**JUDGMENT**

**PRESENT:**

**Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member**

**Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member**

Reserved On 03<sup>rd</sup> December, 2015

Pronounced On 23.12.2015

**Hon'ble Prof.(Dr.) P.C. Mishra, EM**

The instant application is filed by Sri Dipak Mondal, a resident of village Chhoto Mirjapur, PO: Charghat, PS : Swarupnagar of District North 24 Parganas in West Bengal, challenging the grant of consent to Establish to the respondent No. 7, Sri Pranab Mondal (henceforth referred to as the private respondent) to establish a Poultry Farm who allegedly has breached the conditions laid down in certificate of consent to establish as well as seeking a direction from the Hon'ble Tribunal declaring the order dated 8.4.1014 passed by the Pollution Control appellate Authority directing the State Pollution Control Board to consider the application for the private respondent for grant of consent to operate as illegal and bad in law.

2. For a clear understanding of the facts, it would be better to discuss the averments as submitted by the applicant. It is the allegation of the applicant that the private respondent is running the Poultry Farm which is situated in Mouja-Mirjapur, Dag No. 1713, 1714 & 1715 near the residential premises of the applicant without obtaining statutory licences from the local authority as well as permission from the State Pollution Board. Because of such illegal running of poultry farm, the family members of the applicant and neighbours are put into great inconvenience and also suffer from various ailments. Their appeal to the private respondent either to stop the business or to shift the establishment to another place yielded no result. It is also their allegation that their various representations to State Pollution Control Board, Pradhan, Gram Panchayet, Tapul Mirjapur

Sub-Divisional Police Officer, Basirhat as well as Officer-in-Charge, Swarupnagar Police Station to stop the illegal act of the private respondent brought no relief to the applicant as well as his family members.

3. It is only during June 2011 the Environmental Engineer, Public Grievance and Assistance Cell of State Pollution Control Board intimated the Block Development Officer, vide letter No. 593-5L/WPB-2011/Poultry dt. 20.6.2011 enclosing copy of complaint letter in respect of environmental hazards generated from poultry farm, to ensure that poultry farm under question should comply with the guidelines as fixed up by the Department of Animal Husbandry and Veterinary Services failing which necessary action needs to be taken by him. It was also informed to the Block Development Officer that obtaining NOC/Consent of the West Bengal Pollution Control Board for running of Poultry Farm is a statutory requirement.

4. It is submitted by the applicant that in spite of such intimation to the Block Development Officer, no action was taken and the private respondent continued with the illegal running of poultry farm causing hardship to the applicant for which the applicant filed an application under section 133 of Cr.PC being MP case No. 2075 of 2011 before the Court of Executive Magistrate, Basirhat against the private respondent for illegally running the poultry farm without obtaining the statutory licence. The Id. Court in the order dt. 20.3.2012 directed removal of poultry farm within 7 days in default of which the private respondent will be liable to be prosecuted under section 188 of the IPC.

5. Thereafter the applicant had preferred one writ petition before the Hon'ble High Court at Calcutta being WP No. 8555(w) of 2012 which was disposed of on 8<sup>th</sup> January 2013 with a direction to the State Pollution Control Board to decide the application for consent to establish and/or consent to operate the poultry farm of the private respondent in accordance with law as expeditiously as possible along with other consequential order.

6. Thereafter, the applicant could come to know through RTI that the State Pollution Control Board had granted consent to establish on 24.6.2013 for establishment of Poultry Farm by the private respondent. Being aggrieved by the consent to Establish order passed by the PCB, he preferred an appeal being No. A-02/2014 before the Pollution Control Appellate Authority. It is the submission of the applicant that even though there is no consent to operate granted by the State Pollution Control Board, the private respondent had started running the unit even before the consent to establish was granted in violation of the pollution norms and conditions stipulated in the consent to Establish certificate.

7. The Appellate Authority, as alleged by the applicant, disposed of the appeal by directing the State Pollution control Board to consider the application of the private respondent for grant of consent to operate in accordance with law ignoring the non-compliance of the poultry farm to the guidelines of the Department of Animal Husbandry and Veterinary Services as well as the terms and conditions prescribed by the Pollution Control Board in the consent to establish certificate. Aggrieved with such



order of PCB and PCAA, the applicant has thus preferred this application before the NGT.

8. Based on the averments aforesaid the applicant has prayed to allow the application and set aside the order of consent to establish dt. 26.6.2013 issued by the Pollution Control Board as well as order dt. 08.04.2014 of Pollution Control Appellate Authority and for grant of interim stay pending disposal of the instant application.

9. In the reply affidavit the private respondent No. 7 would submit that the WBPCB by its letter dt. 12.6.2014 has extended the validity period of consent to operate upto 30.6.2017 which was earlier issued on 26.6.2013 for a period from 27.6.2013 in favour of his poultry farm. He would further submit that the proceeding under section 133 of Cr.P.C has been dropped by the Id. Executive Magistrate, Basirhat on 7.2.2013.

10. In the reply affidavit the respondent No. 7 has not made any para-wise opposition to the allegation made by the applicant excepting his admission that he has a valid consent to operate from the Pollution Control Board. However, he has opposed to the amendment allowed by the Tribunal to convert the appeal earlier filed by the applicant to original application.

11. The applicant in his rejoinder filed new documents regarding issuance of Trade License by Tapul Mirzapur Gram Panchayat in 2010-11 and subsequently renewed for 2011-12 as well as the inspection report by AEE (BRO) for the inspection conducted on 16.6.2012 in the poultry farm of the respondent No. 7. It is the submission of the applicant that in the remark of the

said report , it is clearly mentioned that the unit is stated to be in operation from May 2010, i.e. much before the consent to establish/operate was granted by PCB which is a breach of Air Act, 1981.

12. The State respondent No. 6 caused a local inquiry as per the order dt. 27.2.2015 of the Hon'ble Tribunal and it is their submission that the poultry farm was set up by the private respondent in the year 2010 adjacent to the house of the applicant after obtaining necessary trade licence from Tapul Mirzapur Gram Panchayat.

13. We have perused the documents filed by the applicant as well as the respondents and record our following observations.

14. The Legal Cell of the State Board caused an inspection through Sri K. Bhattacharjee, AEE (BRO), in respect of WP No. 8555(w) of 2012, in the poultry farm of Mr. Pranab Mondal, the private respondent in this OA on 15.6.12. In the 'Remarks' it is mentioned that the unit stated to be in operation from May 2010. The enquiry conducted by the State respondents also reveals that the unit was set up in the year 2010 i.e. much before the consent to establish was granted by the state Pollution Control Board i.e. dt. 26.6.2013. Thus, running the poultry farm without obtaining consent to establish and consent to operate is illegal and a breach of Water Act, 1974, Air Act, 1981 and Environment (Protection) Act, 1986.

15. After the disposal of the writ petition No. WP No. 8555(w) of 2012 by the Hon'ble High Court of Calcutta directing

the State PCB to consider the application of the private respondent for consent to establish and/or consent to operate in accordance with law, the State PCB considered the application of the private respondent and granted consent to establish the poultry farm on 26.06.2013 subject to general and specific conditions as annexed. The conditions are as follows :-

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A. Emission : Nil

B. Effluent :-

a. Process/wash : to be discharged to Panchayet drain after proper treatment to comply with the environmental norms.

b. Domestic – to be discharged through septic tank to Panchayet drain.

C. Solid Waste: Poultry litter shall be cleared regularly and the same to be sold.

D. General :-

1. No additional machinery/equipment can be installed without prior permission from WBPCB. No change in raw materials, products, production capacity and manufacturing process shall be made without prior permission from the Board.

2. Noise Control – Ambient noise level not be exceed the permissible limit.

3. Work shall be done under covered shed for noise reduction.

4. Good housekeeping to be maintained.



5. Tree planting/saplings – along the periphery of the unit.
6. 'Land Conversion Certificate' to be obtained.
7. Provision of drinking water & waste water disposal shall be ensured for labour camps. Proper sanitation facilities shall be provided for construction workers to ensure environmental sanitation. Health and safety of the workers shall be ensured during construction.
8. The project proponent shall take necessary care not to cause any inconvenience to the residents of surrounding neighbourhood. Regular supervision shall be in place all through the construction phase so as to avoid disturbance to the surrounding.
9. The project proponent will ensure that no accumulation of any kind of water occurs within the project area to prevent breeding of various disease spreading vectors.
10. Ground water shall not be abstracted without prior permission of the Local Body as well as the Competent Authority as per the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005.
11. No tree can be felled without prior permission from the Tree Cutting Authority constituted as per the West Bengal Tree (Protection and Conservation in Non-Forest Areas) Act, 2006 and subsequent rules.

12. No water body shall be lined and no embankments shall be cemented. The water body, if any, is to be kept in natural conditions without disturbing the ecological habitat.

13. No expansion of the project shall be undertaken without prior permission of the State Board.

14. Guidelines (Annexure-II) of Animal Husbandry Deptt. Govt. of W.B. for a poultry farm to be followed strictly.”

16. As per the Consent Management Rules of PCB, the Project Proponent will have to apply to the Board for its consent to operate and discharge of sewage and trade effluent according to the provisions of the Water (Prevention and Control of Pollution) Act 1974. Since general and specific conditions are prescribed in the consent to establish certificate, the Pollution control Board ought to have undertaken an inspection of the unit on receipt of the application for consent to operate filed by the project proponent for their satisfaction that the unit has already complied with the conditions or has an intent to comply within reasonable time before grant of consent to operate by the Board.

17. In the instant case, the consent to Establish (NOC) is a post-Facto approval only without any date of commencement. We fail to understand how the Board was forced to accord post-facto approval for consent to establish when to consider the grant of consent to establish only the project report or proposal by the project proponent is enough. By according post facto approval, the Board has tried to legalise the illegal operation of

the unit from 2010 which is a bad decision in the eyes of law.

18. However, the State Pollution Control Board granted consent to operate to the poultry farm on the same date when consent to establish was granted i.e. 26.6.2013. Thus, it is crystal clear that the Board was in haste to grant the unit consent to operate without making any enquiry/inspection on the fulfilment of the general/specific conditions in part or full prescribed in the consent to establish certificate for the reason best known to them.

19. On 8.4.2014, the Pollution control Appellate Authority in its order in Appeal No. A-02/2014 directed the State Board to consider the application made by the private respondent for renewal of consent to operate strictly on merit in accordance with provision of law. On 12.6.2014, the Board granted extension of validity period of consent to operate to the unit upto 30.06.2017.

20. It is pertinent to mention that one of the general conditions prescribed in the consent to establish certificate relate to Land conversion certificate. It is mentioned at serial No. 6 of consent to establish conditions that Land conversion certificate to be obtained. It is also mentioned in Sl. No. 8 that the project proponent shall take necessary care not to cause any inconvenience to the residents of the surrounding neighbourhood. However, in the instant case, the Board did not insist for production of land conversion certificate by the project proponent before grant of consent to operate nor considered the complaints of the residents of the neighbourhood. The land conversion certificate was issued only on 30.4.2014 i.e. much after the first

consent to operate was granted and even extension of consent to operate was granted.

21. Having regard to the basic illegality committed by the private respondent No. 7 for operating/running the poultry farm without having consent to establish and consent to operate for more than 2 years and granting consent to operate without having land conversion, we restrained, as an interim measure, the respondent No. 7 from operating the poultry business till the final hearing of the application.

22. During the pendency of the application, the applicant filed one MA No. 24/2014/EZ praying that the Poultry, hatchery and Piggery units, which are listed under green category by WBPCB be delisted from Green category due to its hazardous effect on human health and their establishment be prohibited in residential area.

23. A scientific article which appeared in National Agriculture Data base on Respiration Health on Poultry Farm written by George W Maltone and Ronald C Jester of University of Delaware discusses in details the Respiratory health problem on the Poultry Farm. Poultry house dusts which is organic in nature contains feed and faecal particles, feather barbules, skin debris, fungal fragments and spores, bacterial and bacterial fragments, viruses and particles of litter. The dusts also contain a toxin of gram-negative bacteria called endotoxins which can cause toxin fever similar to influenza with symptoms of headache, nausea, coughing, nasal irritation, chest tightness. Ammonia, which is produced from breakdown of nitrogenous compounds and

prevalent in poultry houses during winter months can also impact the eyes and respiratory tract. Their potential \*pollutants that are generated by intensive poultry farming include solid, liquid and air emissions such as litter, dead birds, spoiled feed, hatchery wastes, waste water etc. which require proper environmental management.

24. Considering the affidavits and counter affidavits filed by the parties both for the original application and MA, we framed a point, relying on the judgement passed in the case of **Sri La Subramania Deshika Gnarasabanda Pandrarasannidi –vs- State of Madras and Anr.** reported in AIR 1965 SC 1578 that considering the health hazards from poultry farm from obnoxious smell, excreta, disease to the human beings if it may be desirable to establish units outside the limit of the residential zone of any locality in spite of the fact that it falls under green category.

25. We have examined the documents available on record. The Central Pollution Control Board has prepared a consolidated list of industrial activities falling under Red, Orange and Green category based on their pollution potential and circulated to SPCBs with a direction to adopt it. The WBPCB adopted the said list where the 'poultry, hatchery, piggery' comes under green category due to its least pollution potential in comparison to red and orange categories. However, as per the rules framed by WBPCB, consideration of siting for the 'Poultry, hatchery & Piggery' activity will be location specific and will be decided by the Board. In addition to this the unit shall also follow a guideline of Animal Husbandry & Veterinary Services, in order to



control the health and hygiene conditions, which is reproduced below :

**“ GUIDELINES FOR ESTABLISHMENT OF POULTRY FARMS (BOTH LAYRY AND POULTRY) IN RURAL & URBAN AREAS OF WEST BENGAL COVERING POLLUTION CONTROL MEASURES :**

1. Space requirement :Bird should not be maintained in overcrowded conditions.

Proper floor – Space is an essential criteria for managing poultry farm. An average floor space requirement is mentioned below :-

Age Group	Layer Farming		Broiler Farming
	Deep Litter System	Cage System	
0 – 4 weeks	0.125 – 0.50 Sft/Chick		0.25 – 0.50 Sft/Chick
5 - 8 weeks	0.50 – 1.00 Sft/Chick		1.00 Sft/Chick
9 -17 weeks	1.00 – 1.50 Sft/Bird		
Above 17 weeks	2.00 Sft/Bird	1.00 Sft/Bird	

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2. Litter Condition/Management : Litter should be made with dry straw and/or dry saw dust. The thickness of litter should be 2' to 6' and the litter should always be dry. In case of soaking with water, the wet litter should immediately be removed and replaced with dry straw and/or saw-dust mixed with dry line.
3. Disposal of Spoiled Eggs : the spoiled eggs should be disposed off in a pit with a depth of 2'6" to 8'0" with an average radius of 3'0" depending upon the volume of spoiled eggs. Lime or bleaching powder should be spread over the spoiled eggs before covering the pit.
4. Disposal of dead birds/fowls etc, : Dead birds should be disposed off in a pit with depth of 3'0" to 8'0" with an average radius of 3'0" depending upon the volume of dead birds. Lime or bleaching powder should be spread over the dead birds before covering the pit.
5. Disposal of used litter : The litter should be removed and disposed off in a manure pit or cultivable land in an isolated place. The litter may also be disposed/destroyed by burning. After removal of the litter, the shed should be washed and cleaned with phenyl solution. Fumigation is also advocated, particularly after any outbreak of epidemics. Before introducing new litter, total shed area should be spread with lime.
6. Other Sanitation & Hygienic measures :

- i. Outside area attached with the poultry shed should be washed with phenyl solution.
- ii. Utensils like Feeding trough, water tray etc. should be washed with detergent solution.
- iii. Dry lime should be spread over in an surrounding area of the poultry shed on regular basis.

Sd/-

Director of Animal Husbandry &  
Vety. Services, West Bengal”

26. In our considered view there must be some codified rules/conditions for siting such Poultry and hatchery units and should not be left to the whim of the State Pollution Control Board. We have also examined the order dt. 29.5.2013 issued by the Haryana Government, Environment Department addressing the Pollution problems from Poultry Farms by way of prescribing siting criteria, Methods for manure storage & Management, addressing odour and gaseous pollution problem, dead bird disposal, waste water discharge, solid waste disposal etc. Considering all the aspects discussed above, we hereby issue the following directions in respect of the Poultry and Hatchery units/Farms which falls under green category :

- i) **All Poultry and Hatchery Units shall be set up as per the following siting criteria :**

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1. The poultry farm shall not be located within:
  - 500 meters from residential zone
  - 200 meters from major water course
  - 1000 meters from any major drinking water reservoir or catchment side.
  - 100 meters from any drinking water source like wells, summer storage tanks, tanks
  - 500 meters from nearby poultry, dairy or another livestock enterprises or industry.
2. The poultry sheds shall not be located within :
  - 20 meters from farm boundary
  - 200 meters from public roads
  - 20 meters from other sheds on the same farm
  - 100 meters from any other dwelling on the same property
3. The poultry sheds shall be positioned:
  - On East to West direction
  - At least 2 meters above the water table
  - At least 0.5 meters above ground level
4. The poultry farm shall raise green belt all around the farm with minimum of two rows spaced apart or not more than 3 meters.
5. The poultry farm shall be fenced with barbed wire/linked mesh upto a height of 1.5 meters with appropriately secured entrance and outlet.

6. No open burning or indiscriminate dumping of any dead birds/feathers/offal's unused material like litter/empty gunnies/containers etc. Shall be adopted within or outside the farm premises.

7. Proper drainage/outlet for collection and discharge shall be provided for storm runoff/discharges from the farm.

8. No obstruction shall be created for any water course within the farm or outside the farm boundary.”

**ii) The guidelines of Animal husbandry and Veterinary Services, Govt. of WB for establishment of poultry farm be strictly followed.**

**iii) The consent to establish be granted to the units who satisfies the above siting criteria and subject to other general and specific conditions.**

**iv) The consent to operate shall be granted after causing inspection and enquiry to the satisfaction of the PCB that the unit has complied or intend to comply within specific period to the general and specific conditions and/or guidelines of AHVS without making any compromise with siting criteria.**

27. We hereby constitute a committee consisting of Director, Animal Husbandry & Veterinary Services, Head of Regional Office, CPCB, Kolkata & Member Secretary, State PCB (as Member-Convener) to frame guidelines for siting criteria and management of waste and pollution generated from 'poultry, hatchery' in the light of the present order and the guidelines



issued by the Haryana Government for consideration and implementation in the state of West Bengal within three months. Till such guidelines are approved by the Government for implementation consent be granted as per our direction at paragraph 26.

28. With the above direction, **the application along with connected M.A. stands allowed and disposed of accordingly.** The unit of the private respondent No. 7 shall remain closed till it is granted fresh consent to operate by the Pollution Control Board. No order as to costs.

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Justice Pratap Kumar Ray,

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

Kolkata

23<sup>rd</sup> December, 2015

NGT