

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)**

Original Application No. 51/2016/EZ
(Disposed of on 06.10.2017)

With

Original Application No. 24/2018/EZ
(Disposed of on 21.01.2019)

Ambarnath Sengupta

Applicant(s)

Versus

State of West Bengal & Ors.

Respondent(s)

Date of hearing: 06.12.2021

Delivered on: 15.12.2021

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s) : Mr. Ambar Nath Sengupta, in person.

For Respondent(s) : Mr. Sudip Kumar Dutta, Advocate for R-1 & 3,
Mr. Sibojyoti Chakraborty, Advocate for R-2,
Mr. Alok Kumar Ghosh, Advocate a/w
Mr. Gopal Chandra Das, Advocate for R-4,
Mr. Surendra Kumar, Advocate for R-12, 23 & 25,
Mr. Krishnaraj Thakker, Addl. Advocate General a/w
Ms. Aishwarya Rajyashree, Advocate for R-13,
Mr. Prasenjeet Mohapatra, ASC for R-14 ,
Mr. Shuvodeep Roy, Advocate for R-15,
Mr. Aniruddha Bhattacharya, a/w
Mr. Avijit Mani Tripathy, Advocate for R-16,
Mr. Dipankar Saha, Advocate for R-17,
Mr. Ahok Prasad, Advocate for R-18,
Ms. K. Enatoly Sema, Advocate for R-19,
Mr. Siddhesh Kotwal, Advocate a/w
Mr. Akash Singh, Advocate for R-20,
Mr. Sameer Abhyankar, Advocate for R-22,
Ms. Amrita Pandey, Advocate for R-24,

ORDER

1. Mr. Ambarnath Sengupta, Applicant in person is present.
2. Mr. Sudip Kumar Dutta, learned Counsel is present for Respondent Nos. 1 & 3, State of Respondents, Govt. of West Bengal, Mr. Sibojyoti Chakraborty, learned Counsel is present for Respondent No. 2, West Bengal State Pollution Control Board, Mr. Alok Kumar Ghosh, learned Counsel assisted by Mr. Gopal Chandra Das, is present for Respondent No.4, Kolkata Municipal Corporation, Mr. Surendra Kumar, learned

Counsel is present for Respondent Nos. 12, 23 & 25, State Respondents, Govt. of Bihar, A&N Administration and Central Pollution Control Board, Mr. Krishnaraj Thakker, learned Additional Advocate General assisted by Ms. Aishwarya Rajyashree, learned Counsel is present for Respondent No.13, State of Jharkhand, Mr. Prasenjeet Mohapatra, learned Additional Standing Counsel is present for Respondent No.14, State of Odisha, Mr. Shuvodeep Roy, learned Counsel is present for Respondent No.15, State of Assam, Mr. Aniruddha Bhattacharya, learned Counsel along with Mr. Avijit Mani Tripathi, learned Counsel is present for Respondent No. 16, State of Meghalaya, Mr. Dipankar Saha, Learned Counsel is present for Respondent No.17, State of Manipur, Mr. Ashok Prasad, learned Counsel is present for Respondent No.18, State of Arunachal Pradesh, Ms. K. Enatoly Sema, learned Counsel is present for Respondent No. 19, State of Nagaland, Mr. Siddhesh Kotwal, learned Standing Counsel along with Mr. Akash Singh, learned Counsel is present for Respondent No.20, State of Mizoram, Mr. Sameer Abhyankar, learned Counsel is present for Respondent No.22, State of Sikkim, and Ms. Amrita Pandey, learned Counsel is present for Respondent No.24, Howrah Municipal Corporation.

3. The Original Application No. 51/2016/EZ was filed by the Applicant seeking directions against the Respondents in general and West Bengal Pollution Control Board in particular, to implement the Guidelines issued vide order dated 13.09.2015 wherein various measures have been suggested for maintenance of cleanliness of river Hooghly after immersion of idols during various puja festivals. Further directions were sought for against the Board to Constitute a Committee to conduct a scientific study to assess the impact of Plaster of Paris (in short 'PoP') on its potential to cause pollution to the water

and suggest remedies therefor. The Tribunal disposed of the Original Application No. 51/2016/EZ vide its judgment dated 06.10.2017 with the following directions:-

- (i) *There shall be a complete ban on the use of POP in idol making till it is established that PO has no negative effect on the water quality and aquatic biodiversity.*
- (ii) *There shall be a complete ban on the use of synthetic colour for painting of idols that would require immersion as part of final ritual of the festival.*
- (iii) *The height of the super structure of the idol shall be less than 40 ft. and the idol by itself shall not be exceeded 20 ft. in height.*
- (iv) *All Puja Committees or individual or organizations who organize the festivals also make the idols in pandals raised by them, shall submit a declaration before the respective Municipal Corporation, Municipalities and Panchayats, as the case may be, specifying that in the making of idols and raising super structure:-*
 - (a) *No POP shall be used.*
 - (b) *No synthetic paint or colour containing toxic heavy metals like mercury, cadmium, arsenic, lead and chromium shall be used.*
 - (c) *The height of idol shall be limited to 20 ft.*
 - (d) *The height of the super structure shall be limited to 40 ft.*
- (v) *A copy of such declaration will be made available to the respective Regional Pollution Control Boards by the Municipalities/Municipal Corporations/Panchayats and, both the local bodies and PCBs shall make surprise inspections. If any violation is detected, action shall be initiated by imposition of penalty of such sum as may be decided by each of the State Board or as may be prescribed by rules framed therefor and may further prohibit them from organizing festivals in future, either temporarily or permanently.*
- (vi) *The biodegradable materials shall be removed before immersion and the concerned local bodies, as far as it may be practicable, may use these materials for composting and other useful purpose.*
- (vii) *In case of temples where biodegradable wastes are generated every day in the form of used flowers, leaves, fruits, coconut case etc. there shall be scientific disposal of biodegradable wastes and no such wastes shall be disposed of to water bodies. Disposal of such biodegradable wastes of water bodies will invite penalty to be imposed by the local authorities on the temple committees.*

(viii) We leave it upon the State Governments to frame rules, if not already framed, incorporating the guidelines framed by the Central Pollution Control Board and the above directions. The rules so framed shall also include the punitive action for violation of the rules and the extent and amount of the penalties. The rules thus framed shall be placed before us after three months from hence”.

4. Thereafter, the Applicant had filed another Original Application No. 24/2018/EZ seeking enforcement of the order of Tribunal dated 06.10.2017 passed in Original Application No. 51/2016/EZ (Ambarnath Sengupta Vs. State of West Bengal & Others). As noted by the Tribunal in its order dated 21.01.2019, the substance of the directions in the said order was that all the States in the Region falling within the jurisdiction of the National Green Tribunal, Eastern Zone Bench, should frame rules, governing immersion of idols keeping in view the guidelines issued by the Central Pollution Control Board. The Tribunal vide its order dated 21.01.2019 disposed of the said Original Application No. 24/2018/EZ observing that it is not essential to keep the matter pending further except to direct all the States which have not yet framed rules, governing immersion of idols to do so within a period of three months and file copies of the same before the Tribunal.
5. In pursuance of the directions of the Tribunal dated 21.01.2019, various compliance reports have been filed in the case by various States which are being monitored by this Tribunal ensuring compliance of the order of the Tribunal dated 21.01.2019.
6. One affidavit dated 03.12.2021 along with the proposed guidelines for promulgation of Rules for idol immersion has been submitted to the Government of Assam by the Assam Pollution Control Board dated 03.11.2021 which is under-consideration, and the action taken report of the Assam Pollution Control Board dated 22.11.2021 has been filed as

Annexure-A, has been filed on behalf of the Respondent No.15, State of Assam; the same is taken on record.

7. The draft guidelines which are at present being followed by the State of Assam have been filed as Annexure-I (page nos. 8 & 9 of the affidavit) and it is stated that these rules have been submitted to the Government of Assam for approval.
8. One affidavit dated 06.10.2021 along with notification dated 05.10.2021 issued by the Forest and Environment Department, Govt. of Meghalaya, laying down the comprehensive guidelines for idol makers-craftsman or artisans, guidelines for pooja organizing committees and guidelines for idol immersion in rivers, lakes and ponds by households, has been filed on behalf of the Respondent No.16, State of Meghalaya; the same is taken on record.
9. One affidavit dated 22.09.2021 along with notification dated 30.01.2020 issued by the Department of Environment, Forests and Climate Change, Govt. of Nagaland, laying down the Rules known as Nagaland Prevention and Control of Water Pollution (Procedure for Immersion of idol after Pujas) Rules, 2019, has been filed on behalf of the State of Nagaland; the same is taken on record.
10. A notification dated 04.10.2021 issued by the Forest, Environment and Climate Change Department, Govt. of Odisha, framing rules called the Odisha Prevention and Control of Water Pollution (Procedure for Immersion of Idol after Pujas) Rules, 2021, laying down the procedure to be followed for immersion of idol in rivers, lakes, ponds and sea, on behalf of the State of Odisha; the same is taken on record.
11. So far as the State of Jharkhand is concerned, it is already noted in paragraph 8 of our previous order of 08.10.2021 that the guidelines issued by the National Mission for Clean Ganga, New Delhi for idol

immersion and the guidelines issued by the Central Pollution Control Board, New Delhi for idol immersion are being followed by the State of Jharkhand till the rules are framed for urban areas.

12. Ms. Aishwarya Rajyashree, learned Counsel submits that the Rules 2021 will be forwarded to the Cabinet and orders are expected expeditiously.

13. On 22.09.2021, this Court has already taken on record the affidavit dated 19.09.2018 filed by the State of West Bengal, bringing on record the West Bengal Prevention and Control of Water Pollution (Procedure for Immersion of Idol after Pujas) Rules, 2018; Affidavit dated 04.10.2018 filed by the Union Territory of Andaman & Nicobar Administration bringing on record the Gazette notification dated 01.03.2018 notifying the Rules for Idol Immersion and related issues for the Union Territory of Andaman & Nicobar Islands; Affidavit dated 13.11.2019 filed by the State of Mizoram, bringing on record the Notification notifying the Mizoram Prevention and Control of Water Pollution (Procedure for Immersion of Idol after Pujas) Rules, 2019; Affidavit filed by the State of Manipur bringing on record the Gazette Notification dated 15.09.2018 providing guidelines for manufacture and immersion of idols in the State of Manipur; and Affidavit dated 04.01.2018 filed by the State of Tripura, bringing on record the Govt. Notification to be followed in the matter of Immersion of Idol after Pujas vide Notification dated 02.01.2018.

14. On 08.10.2021 this Court has also taken on record the affidavit dated 27.09.2021 filed by the State of Sikkim, bringing on record notification, notifying the Rule 19 with regard to idol immersion which has been notified in the Govt. of Sikkim Gazette Extraordinary No. 19 dated 06.04.2019 in compliance of the judgment of the Tribunal dated

06.10.2017 and marked as Annexure-A/1; Affidavit dated 06.10.2019 filed by the State of Bihar, annexing a notification Parya Van (Mu.)-22/2016 779 (e)/E.F&CC dated 04.10.2021.

15. So far as the State of Arunachal Pradesh is concerned, it has also been noted on 08.10.2021 by the Court that an affidavit dated 06.10.2021 has been filed on behalf of the State of Arunachal Pradesh, bringing on record the Arunachal Pradesh (Procedure for Immersion of Idols after Pujas) Rules, 2016 which has been notified on 05.10.2021. The Court has also taken on record the affidavit dated 05.10.2021 filed by the State of Odisha, bringing on record the Odisha Prevention and Control of Water Pollution (Procedure for Immersion of Idol after Pujas) Rules, 2021, which has been notified in the Official Gazette vide Notification No. 17937 dated 04.10.2021, the affidavit dated 07.10.2021 filed by the Respondent No.24, Howrah Municipal Corporation, stating therein that the West Bengal Government Prevention and Control of Water Pollution (Procedure for Immersion of Idol after Pujas) Rules, 20108 have been adopted and the guidelines to that effect have been issued on 01.10.2021, which has been filed as Annexure-B to the affidavit.

16. Mr. Ambarnath Sengupta, the Applicant in person, has filed an affidavit alleging therein that in the State of West Bengal on field enquiries it was revealed that the State has distributed one kilogram paint each to 16 artisans in Kumertuly Main Market of idol makers in Kolkata but there are about 2000 artists. The Applicant is then asking a question “is it possible to use 16 Kilogram paints by all of them”? At another place in the affidavit it is alleged that “the condition of thousands of immersion spots in other 29 ghats in Kolkata and rest of the enumerable uncared ghats in the whole State, it is not mentioned the conditions of the other ghats in the whole State.”

17. The Applicant further in his written submissions titled as “Observation on order dated 08.10.2021” has also raised several points which may be extracted herein below:-

“ 5 Most interestingly I like to record here that CPCB had revised the guidelines Ref. Probe/2020 as noticed on the internet but it was never mentioned in their affidavits, of course, they submitted only one affidavit as mentioned several times and their respective scientists never faced the challenges made by the applicant; actually they ignored the NGT very squarely indicated by the absence of any mention about the case vis-à-vis obliteration of idol on the ground to prevent water pollution certified by NGT as ‘Ideal’, it is better than cure to try to remove after washing the carcinogenic paints in water bodies by even use of the crane in lieu of manpower, at the enormous cost of the public exchequer (Rs. 26,000/- per idol in 2015-16.)” in the latest Guidelines, they have progressed to some extent and advised to ‘Idol immersion pond/tank with liner made of well-graded/highly impervious clay or eco-friendly synthetic liner should be arranged at a suitable location on the bank or stagnant water bodies like ponds/lakes’. (Previously it was beside the bed of water bodies!). Again, I am requesting CPCB to adopt the technique of using crane to recover salt available in plenty in sea and file a historic patent for the benefit of mankind!

It will be relevant to mention here that supreme court ruling in 2018 NGT’s in 2020 this year, with the concern of city, ‘s deteriorated environment WBPCB issued strict order avoiding ‘we also run’ syndrome compelled KMC. KP, KMDA to take a slew of measures during Kalipuja and chhatpuja in respect of water and sound pollution, 138 ghats and temporary ponds with barricade, temporary vats to collect flowers etc. even bio-toilets.

However, as objection by the traders, the High Court did not interfere with the Supreme Court order of bursting Green Crackers in schedule time due to proximity of the date of puja, undoubtedly, we experienced respite due to strict vigilance of 28 Dy, police commissioners in the roads to maintain law and order. It is said ‘where there is will there is way’!

On the other hand, nobody cared about water pollution during the festivals, the administration being respondents of the case and sending advocates paying substantial fees since last 5 years, completely ignored NGT’s order since 2017 and try to discover a new model since 2019 jointly with WBPCB as discussed. Astonishingly,

the NGT WITH THE POWER EQUIVALENT TO HIGH COURT DID NOT CARE TO RISE TO THE OCCASION!

On 22nd March, 2018 on World day with the theme 'Nature for Water,' it was resolved for Sustainable Development Goal by 2030 in water sanitation, it was aimed to stressing on protection and restoration of water related eco-system and targeted water conservation with the improvement of quality of water by reducing pollution, minimizing hazardous chemicals and reducing the proportion of untreated wastewater substantially by increasing recycling and reuse globally. In the background of 'SWACHHA BHARAT MISSION' and PM pledged 'NIRMAL HOTI GANGA NAHIN RUKEGE HUM SWACHH KARENGE' in 2019 inaugurating "Namami Ganga Rejuvenation Mission".

The 21st century challenges in the water sector, inter-alia, resolve around water availability and its access, about 2.1 billion people are without access to safe water and in India, over 76 million people lack access to safe water, people living in villages and peri-urban areas.

Behind this gloomy backdrop, I do feel that I should not repeat my earlier prayer except indicating to record the activities of the whistleblowers in the just concluded festivals who encouraged the additional load of pollution in water bodies.

Should we not reconcile what the eminent jurist, honourable Nani Palkiwala referred to as our ethical obligation to be good wardens of the planet and responsible trustees of the legacy to future generations. Should we expect that climate change with its associated catalysts is now at least getting the attention to proper the direction, it is said 'better late than never!'

With best regards.

Yours sincerely

Ambar Nath Sen Gupta,

dated: 21.11.2021

Retd. Scientist, Dy. Director, CSIR,

E-320, Neelambar Vihar, 40 Dum Dum Road,

Kolkata – 700074,

Mobile No. 9433629607,

Applicant in OA 51/2016/EZ and OA/24/2018/EZ"

18. In our opinion, such vague allegations cannot be examined by the Tribunal and only specific acts of environmental violations, if alleged, can be enquired individually.

19. Since all the States and Union Territories have filed their rules/guidelines with regard to the procedure for idol immersion in lakes, rivers, ponds or sea, as the case may be, nothing further remains to be adjudicated in this case. We accordingly close the case.

M.A. No. 10/2021/EZ:-

1. The M.A. No. 10/2021/EZ filed in the Original Application No. 51/2016/EZ is taken up.
2. This M.A. has been filed by the Applicant with the prayer that the Chief Secretary, Govt. of Assam, may be exempted from personal appearance through virtual mode and the Applicant may be permitted to be represented through his Counsel
3. Mr. Shuvodeep Roy, learned Standing Counsel, State of Assam, is present and has filed affidavit on behalf of the Chief Secretary, State of Assam.
4. The M.A. No. 10/2021/EZ is accordingly allowed and the personal appearance of Chief Secretary, Govt. of Assam is exempted.

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B. Amit Sthalekar, JM

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Saibal Dasgupta, EM

December 15, 2021
Original Application No. 51/2016/EZ
With
Original Application No. 24/2018/EZ
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