

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

M.A. No.07/2021/EZ
In
Original Application No.75/2021/EZ

In the matter of:

1. Abhinandan Chopra,
2. Gaurav Chopra,

(Both residing at 88, College Road,
Block-G, 4th Floor,
Howrah-711103)

.....Applicant(s)

Versus

1. Union of India,
Service through Health and Family Affairs,
Ministry of Health and Family Affairs,
Having its office at Room No.348,
A Wing, Nirman Bhavan,
New Delhi-110011
2. State of West Bengal,
Serving through the Principal Secretary,
Department of Environment,
Government of West Bengal,
5th Floor, Pranisampad Bhawan,
Block LB-II, Salt Lake,
Sector-III, Bidhannagar,
Kolkata-700106
3. West Bengal Pollution Control Board,
Service through the Member Secretary,
Having his office at Paribesh Bhaban,
10A, Block LA, Salt Lake City,
Kolkata-700098
4. M/s Rail Udyog,
Service through S.Podder (CEO)
Carrying on business from
20/1, Shalimar,
Shibpur, Howrah-711103

.....Respondent(s)

Date of hearing: 17.10.2022

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

For Applicant(s) : Mr. Sagnik Majumdar, Advocate (in Virtual Mode),

For Respondent(s) : Mr. Sibojyoti Chakraborty, Advocate for R-2,
Mr. Prithwish Basu, Advocate for R-3,
Ms. Aishwarya Rajyashree, Adv. for R-4 (in Virtual Mode)

ORDER

1. Mr. Sagnik Majumdar, learned Counsel is present for the Applicants in M.A.
2. Affidavit dated 14.10.2022 has been filed by the Respondent No.3, West Bengal Pollution Control Board; the same is taken on record. Copy of the same has not been served upon Mr. Sagnik Majumdar, learned Counsel.
3. Supplementary affidavit dated 14.10.2022 has been filed by the Respondent No.4, M/s Rail Udyog; the same is taken on record.
4. We have heard Mr. Sagnik Majumdar for the Applicants in the M.A. and Mr. Sibojyoti Chakraborty, learned Counsel appearing for Respondent No.2, State of West Bengal, Mr. Prithwish Basu, learned Counsel appearing for Respondent No.3, West Bengal Pollution Control Board and Mr. Aishwarya Rajyashree, learned Counsel appearing (in Virtual Mode) for Respondent No.4, M/s Rail Udyog.
5. The Original Application No. 75/2021/EZ was disposed of by the Tribunal vide its order dated 27.08.2021 with the following directions:-

"4. In our opinion, no useful purpose will be served in keeping the matter pending. We, therefore, dispose of this Original Application with a direction to the Respondent No.3, West Bengal Pollution Control Board, to expeditiously take a decision with regard to the show cause notice dated 18.02.2021 issued to the Respondent No.4, M/s Rail Udyog, within a period of one

month from the date of issuance of the certified copy of this order.

5. It is also made clear that the Tribunal has not adjudicated the Original Application on merit.”

6. Alleging non-compliance of the directions given by the Tribunal, the Applicants of the Original Application No. 75/2021/EZ have filed the present Miscellaneous Application No. 07/2021/EZ.
7. The allegation in this Miscellaneous Application is that after the direction given by the Tribunal vide its order dated 27.08.2021 disposing of the Original Application No. 75/2021/EZ, a meeting was held by the West Bengal Pollution Control Board, Respondent No.3, with the M/s Rail Udyog, Respondent No.4, and certain directions were issued on 03.03.2021, copy of which has been filed with the Miscellaneous Application.
8. The main contention of the Applicants in this Miscellaneous Application is that the directions given in the order of Respondent No.3, West Bengal Pollution Control Board, dated 03.03.2021, have not been complied with by the Respondent No.4, M/s Rail Udyog.
9. The West Bengal Pollution Control Board, Respondent No.3, has filed affidavit dated 20.12.2021 bringing on record an Inspection Report of an inspection carried out on 09.09.2021. The compliance status and recommendation in the Inspection Report read as under:- (order dt. 21.12.2021)

<i>Directions of WBPCB</i>	<i>Compliance Status</i>
<i>i. The height of the stack connected to the heat treatment furnace is at least 2.5 meters above the roof level of the nearest tallest establishment and complies with Emission Regulations Part III of CPCB.</i>	<i>The unit has not yet increased the height of stack above 2.5 m of the nearest building and stack is not as per Emission Regulations Part III of CPCB.</i>

ii. Emission generated from the manufacturing operations does not escape outside through any gaps in the factory shed and is let out only through the stack	Few gaps still exist in the factory shed
iii. Open spaces within factory premises are not utilized for manufacturing operations	During inspection, unit was not carrying out any activity in the open spaces of the factory premises.
iv. Nuisance is not caused by noise so that people living in the neighborhood do not suffer due to its activates in any way, whatsoever.	Noise levels measured at various locations of the factory premises are given in Para 3 of Observations.

Remarks/recommendation:

1. Unit should immediately comply with Direction No. (i) and (ii) above.
2. Unit should take adequate measures for abatement of noise generated during grinding activity and carry out the said activity only within the work zone with acoustic enclosure. No activity should be carried out in open space.
3. Unit should ensure that no unauthorized open burning of leaves, garbage or any other substance takes place in its premises.”

10. Along with this affidavit, a second Inspection Report of an inspection carried out on 25.10.2021 has been filed. The observation and the recommendations in the Inspection Report read as under:-

“Observation:

The unit is engaged in the production of different types of railway parts made of alloy steel (welded products, spring washers) etc.

1. Production of small spring washer involves the following process:

Cutting of Spring Coils (Power Press m/c) → Stamping on Spring Coil (Stamping cum power press m/c) → Heat Treatment (Electrically) for hardening → Heat Treatment (Electrically) for tempering → Finished Product. Besides this, the unit also produces coil spring in coiling m/c. Other fabrication works are

done by various machines like Welding, Grinding, Coiling, Bandsaw, Power Press, Drilling, Shaping.

2. Unit has installed the fume extraction system over the Heat Treatment furnaces with the ducting line and ID fan. Air pollution control system was in operation during inspection. The stack specifications are not as per CPCB Emission Regulations Part III and height is less than 2.5 m above the nearest building.

3. The following machinery is used by the unit Welding m/c-02 nos., Coiling m/c 01 no., Grinding m/c-02 nos., & Heat Treatment Furnace (electrically operated)-02 nos., Band saw Machine 02 nos., Power press 04 nos., Drilling m/c-02 nos., Shaping m/c-02 nos. Additional, few other machines like 02 nos. Hydraulic Press, 01 no. shearing m/c, 01 no. central lathe, 01 no. cold rolling threaded m/c, 01 no. gas fired furnace were observed which appeared to be not in use.

4. 01 no. 250 MT power press, 01 no. shaping m/c and 01 no. electrical heat treatment furnace was found within the premises which are yet to be installed by the unit. It appears that unit is installing additional machinery.

5. No open burning activity was observed during inspection.

6. The unit was requested to operate the heat treatment furnaces; however, no significant fume was observed from the stack attached to the said furnaces.

7. Though the unit and the complainant's apartment have the same boundary wall and are adjacent to each other, the entry to the unit and to the apartment is from different roads requiring a driving duration of about 8-10 minutes.

It may be mentioned that during noise monitoring at complainant's place, one inspecting official was present at the unit to check the operations status of the machinery and the other official went to the complainant's apartment for monitoring noise. During visit to the complainant's place, the complainant was informed over telephone but the complainant or his representative did not accompany during inspection. During earlier inspections on 09/09/2021 and 27/11/2020, noise levels were monitored at the terrace immediately above the complainant's room as per request of the complainant's representative due to COVID situation and the same was done during present inspection as well.

Two sets of Noise levels measured at various locations of the factory premises and at the complainant's place are tabulated below:

No. of observations	Noise Levels at the Unit Premises <i>L_{eq}</i> dB (A)				Noise Levels at Complainants residence <i>L_{eq}</i> dB(A)			
	Unit Non-operational (ambient)	Unit Operational with following machinery		Unit Non-operational (Ambient)	Unit Operational with following machinery			
		Welding+	Welding+		Welding+	Welding+		
		Grinding+	Grinding+		Grinding+	Grinding+	Grinding+	
		Coiling+	Coiling+		Coiling+	Coiling+	Coiling+	
		Bandsaw+	Bandsaw+		Bandsaw+	Bandsaw+	Bandsaw+	
		Power	Power		Power	Power	Power	

		Press	Press+ Drilling+ Shaping		Press	Press+ Drilling+ Shaping
Set A	67.83	72.69	88.11	67.20	65.14	67.95
Set B	66.28	73.34	89.17	68.38	69.01	69.11

- Noise levels [L_{eq} dB(A)] of individual machines were measured and found to be lower than the above tabulated cumulative L_{eq} dB(A) values.
- The machines are placed at different positions within the unit. Noise levels within the unit's premises were measured from a central point in the courtyard of the unit.
- Noise levels recorded at the complainant's premises do not indicate any perceptible increase during operation of the unit vis-à-vis the ambient noise. The difference between ambient noise level and unit's working condition noise level is much less than 10 dB(A).
- 82.46 L_{eq} dB(A) observed at complainant's residence when one train and one engine was moving on the railway tracks which are in close proximity of the complainant's premises.

Photographs of the unit premises and that taken from the roof of Rabindranagar Housing Complex, 88 College Road just above the complainant's residence are enclosed.

Other relevant information:

1. During recent past, unit was inspected on 27/11/2020 and 09/09/2021 and W.B.P.C.B. had conducted hearings on 12/02/2020 and again on 03/03/2021. In the record of proceedings of W.B.P.C.B., the unit was issued certain directions, the compliance status of which is given below:

Directions of WBPCB	Compliance Status
i. The height of the stack connected to the heat treatment furnace is at least 2.5 meters above the roof level of the nearest tallest establishment and complies with Emission Regulations Part III of CPCB.	The unit has not yet increased the height of stack above 2.5 m of the nearest building and stack is not as per Emission Regulations Part III of CPCB.
ii. Emission generated from the manufacturing operations does not escape outside through any gaps in the factory shed and is let out only through the stack	Few gaps still exist in the factory shed. However, during inspection when electrically operated heat treatment furnace was in operation, no significant fumes were noticed.
iii. Open spaces within factory premises are not utilized for manufacturing operations	During inspection, unit was not carrying out any activity in the open spaces of the factory premises.

<p>iv. Nuisance is not caused by noise so that people living in the neighborhood do not suffer due to its activates in any way, whatsoever.</p>	<p>Noise levels measured at various locations of the factory premises are given in table above.</p>
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2. During inspection, some empty paint containers were found stored within the premises, the disposal of the same could not be specified by the unit representative. On enquiry it was learnt that occasionally unit carries out some manual painting activity; however, during inspection no painting activity was observed.

Remarks/recommendation:

1. Unit has obtained 'Consent to Operate' from DIC and the Gross Capital Investment on Plant and Machinery is R.2,98,000/-.

2. Unit should comply with the past Directions of WBPCB.

3. Unit should always try to adopt measures for abatement of noise generated during its activities and carry out the said activity only within the work zone with acoustic enclosure. No activity should be carried out in open space to avoid dissipation of noise.

4. Unit proposes to install some additional machinery like one no. 250 MT power press and one no. shaping m/c for which necessary noise mitigation measures should be adopted and prior consents should be obtained.

5. Work timings may be restricted as deemed fit, for avoiding early morning or late night noise generation.

6. Adequate APC system should be installed for the proposed heat treatment furnace and necessary permission including CFE and CFO should be obtained for all expansion activity from WBPCB/DIC as applicable.

7. It appears from noise monitoring carried out during inspection that currently there is no significant impact of noise generated from unit's activity at the complainant's residence. Noise generated due to close proximity of Shalimar Railway Station involving movements of train is perceptibly significant.

8. Unit should ensure that no unauthorized open burning of leaves, garbage or any other substance takes place in its premises.

9. Unit should replace 'Black' DG with 'Green' DG immediately.

10. Unit should comply with the Hazardous & Other Wastes (Management and Transboundary Movement) Rules, 2016 as amended for appropriate disposal of paint containers and associated wastes generated during painting activity."

11. We also find that the West Bengal Pollution Control Board had issued a notice dated 18.02.2021 to the Respondent No.4, M/ Rail Udyog, asking them to produce all statutory licenses.
12. Affidavit dated 20.07.2022 has also been filed on behalf of the Respondent No.3, West Bengal Pollution Control Board. In this affidavit, certain observations have been noted by the Board in para 6 & 7 which may be reproduced herein for proper appreciation of the case which read as under:- order dt. 31.07.2022.

“6. That, the inspecting officers have observed that in terms of the above direction issued by the West Bengal Pollution Control Board, the unit has complied the following: -

- a) The unit has increased height of the stack approx. 2.5 meters above to the nearest building the stack is also provided with sampling arrangements as per emissions regulation of Part-III of Central Pollution Control Board.*
- b) No significant gaps were seen in the factory shed as the unit has more or less seal in the gaps in the factory shed.*
- c) During inspection the unit was not carrying out any activity in the open space.*
- d) The unit has already submitted a bank guarantee of Rs.50,000/- which is valid upto 17.11.2022.*

7. That, during inspection a black Diesel Generator Set, a newly setup laboratory were found in the premises. The State Board is going to issue necessary direction for that shortly.”

13. Along with this affidavit, an Inspection Report of an inspection carried out on 15.07.2022 has also been filed. The Observation and remarks/recommendation in the Inspection Report read as under:-

“Observation:

The unit is engaged in the production of different types of railway parts made of alloy steel (e.g. welded products, spring washers) etc.

1. Production of small spring washer involved the following process:

Cutting of Spring Coils (Power Press m/c)→Stamping on Spring Coil (Stamping cum power press m/c)→Heat Treatment (Electrically) for hardening →Heat Treatment (Electrically) for tempering following by oil quenching → Finished Product. Besides this, the unit also produces coil spring in coiling m/c. Other fabrication works are done by various machines like Welding (3 nos.), Grinding (2 nos.), Coiling (1 no.), Bandsaw (2 nos.), Power Press (6 nos.), Drilling (3 nos.), Shaping machines (3 nos.), bending (1 no.).

2. Unit has installed the common fume extraction system comprising of a hood over both the Heat Treatment furnaces with the ducting line and ID fan. The Heat Treatment furnaces were not in operation during inspection. The unit has increased the stack height by approximately about 2.5m above the nearest building (Rabindranagar Residential Complex).

3. Few other machines like 02 nos. Hydraulic Press, 02 nos. shearing m/c, 01 no. cold rolling threading m/c, 01 no. gas fired furnace were observed which appeared to be not in use. 01 no. electrical heat treatment furnace was found within the premises. These machines are yet to be installed by the unit.

4. No open burning activity was observed during inspection.

5. Though the unit and the complainant's apartment have the same boundary wall and are adjacent to each other, the entry to the unit and entry to the apartment are from different roads requiring a driving duration of about 8-10 minutes.

6. Two sets of Noise Level were measured at the factory premises and at the complainant's building. The noise levels are tabulated below:

No. of observations	Noise Levels at the Unit Premises L_{eq} dB (A)	Noise Levels at Complainants building L_{eq} dB (A)
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	<i>Unit Non-operational (ambient)</i>	<i>Unit Operational</i>	<i>Unit Non-operational (ambient)</i>	<i>Unit Operational</i>
<i>Set A</i>	<i>65.23</i>	<i>87.22</i>	<i>62.60</i>	<i>66.74</i>
<i>Set B</i>	<i>67.11</i>	<i>72.49</i>	<i>67.86</i>	<i>65.29</i>

- *The machines are placed at different positions within the unit. Noise levels within the unit's premises were measured from a central point in the courtyard of the unit.*
- *Noise levels recorded at the complainant's building do not indicate any perceptible increase during operation of the unit vis-à-vis the ambient noise. The difference between ambient noise level and unit's working condition noise level is much less than 10 dB (A) at the complainant's building.*
- *As observed during earlier inspections, high noise levels were noted at complainant's building during movement of trains on the railway tracks which are in close proximity of the complainant's building.*

7. *The unit was issued Direction by WBPCB dated 03/11/2021 vide Memo No.368/WPB/O&E/2019 the compliance status of which is given below:*

<i>Direction of WBPCB</i>	<i>Compliance Status</i>
<i>i. The industry shall full comply with the State Board's direction which was issued earlier and increase the height of stack above 2.5 m of the nearest building and stack is constructed as per Emission Regulations Part-III of CPCB within 31.12.2021.</i>	<i>The unit has increased the height of stack by approximately about 2.5 m above the nearest building. Stack to be provided with sampling arrangements as per Emission Regulations Part-III of CPCB.</i>
<i>ii. The industry shall seal the gaps in the factory shed within 31.12.2021.</i>	<i>The industry has more or less sealed the gaps in the factory shed. No significant gaps were seen in the factory shed.</i>
<i>iii. The industry shall take</i>	<i>During inspection, unit was not</i>

adequate measure for abatement of noise during grinding activity within 31.12.2021.	carrying out any activity in the open spaces of the factory premises. No significant noise was recorded from the complainant's building.
iv. The industry shall execute a B.G. of Rs.50,000/-.	The unit has already submitted a B.G. (validity upto 17.11.2022).

- During inspection, no empty paint containers were found stored within the premises as observed during earlier inspection. As stated by the unit, presently they are not carrying out any painting activity.
- 01 'Black' DG set was observed within the premises, capacity of which could not be specified by the unit.
- Unit has set up a small laboratory inside it's premises for carrying out various testing activities. No significant noise generation was observed and expected from such laboratory activity.”

Remarks/recommendation:

1. Unit should always carry out its activities within the workzone. No activity should be carried out in open space to avoid dissipation of noise.
2. Necessary permission including CFE and CFO should be obtained for all expansion activity from DIC. Fumes from oil quenching activity, if any, should always be passed through adequate air pollution control system.
3. Work timings may be restricted as deemed fit, for avoiding early morning or late-night noise generation.
4. It appears from noise monitoring data collected during inspection that currently there is no significant impact of noise generated from unit's activity at the complainant's residence. Noise generated due to close proximity of

Shalimar Railway Station involving movements of train is perceptibly significant.

5. Unit should replace 'Black' DG with 'Green' DG immediately.

6. Pictures taken during inspection are attached below for reference and record.”

14. However, this affidavit did not indicate whether Environmental Compensation has been determined or not and if determined, how much has been determined. The Tribunal, therefore, directed the Respondent No.3, West Bengal Pollution Control Board, to file affidavit in compliance in this regard.

15. An affidavit dated 16.09.2022 has also been filed by the Respondent No.3, West Bengal Pollution Control Board, stating therein that during inspection one Black Diesel Generator set was observed within the premises and, therefore, directions were issued to M/s Rail Udyog, Respondent No.4, vide memo dated 14.09.2022 directing them to replace their 'Black Diesel Generator' set with 'Green Diesel Generator' set and a copy of the letter was also forwarded to the Officer-in-Charge, Shibpur Police Station for strict vigil regarding this matter.

16. Another Affidavit dated 14.10.2022 has also been filed by the Respondent No.3, West Bengal Pollution Control Board, reiterating the earlier facts. Along with this affidavit, an Inspection Report of an inspection carried out on 28.09.2022 has also been filed. The Inspection Report reads as under:-

“INSPECTION REPORT OF M/s. RAIL UDYOG

<i>Inspection Reference</i>	<i>1. NGT (EZ) O.A. No.75/2022 2. M.A. No.07/2021/EZ, order dated 19.09.2022</i>
<i>Name of the unit/site</i>	<i>M/s. Rail Udyog</i>

Address	20/1 Shalimar Road, Howrah-711103
P.S.	Shibpur
Local body	HMC
Power supply authority	CESC
Date & Time of visit	28/09/2022, 17.00hrs-17.40hrs
Visiting official(s)	Sri S. Mukherjee, AEE
Person(s) met	Sri. Gautam Majhi, Manager, M/s. Rail Udhog
Industry Category	Green- [Category No.24-Heat treatment with any of the new technology like ultrasound probe, induction hardening, ionization beam, gas carburizing etc., (including heat treatment using electrical heater)-no fuel burning is involved.]
Status of CFE/CFO	CFO valid upto Sept. 2026 (issued by DIC)

Observation:

No Black D.G set was found within the unit. No green DG set was also observed within the unit. The unit is not installed any Green D.G set. As stated the unit runs its activity by existing power supply agency (CESC). Pictures taken during inspection are attached below for reference and record.”

17. The observation of the Inspecting Team in its inspection dated 09.09.2021 was that the stack specifications were not as per Central Pollution Control Board Emission Regulations Part III and its height was less than 2.5m above the nearest building. The same finding was also recorded in the inspection carried out on 27.11.2020. The Inspecting Team also found some empty paint containers stored within the premises but the disposal of the same could not be specified by the Unit representative and, therefore, the Inspecting Team recommended in its remarks that the Unit should comply with Hazardous & Other (Management and Transboundary Movement) Rules, 2016 as amended for appropriate disposal of paint containers and associated wastes generated during painting activity.
18. The Inspecting Team also observed that no Black Diesel Generator set was found within the Unit of Respondent No.4, but no Green

Diesel Generator set was also observed within the Unit and it is stated that the Unit has not installed any Green Diesel Generator set as the Unit is running its activity by the existing power supply agency (CESC).

19. M/s Rail Udyog, Respondent No.4, has also filed supplementary affidavit dated 14.10.2022 stating therein that there has been no power cut in the last 20 years and, therefore, it has removed the Black Diesel Generator set from the premises and in any case it was not in use since so many years. A tax invoice has also been filed as 'Annexure SA-1', showing that the Black Diesel Generator set has been sold.
20. However, we may note that even though the Respondent No.4, M/s Rail Udyog, has claimed that it has not used the Black Diesel Generator set in the last 20 years and now it has been sold off and the West Bengal Pollution Control Board has also observed during its inspection that no Black Diesel Generator set was observed in the premises, however, we cannot overlook the fact that for other violations noted in the observations and remarks of the previous inspections, the Unit of Respondent No.4 would be liable for payment of Environmental Compensation which is required to be computed by the West Bengal Pollution Control Board, being the Regulatory Authority.
21. We, therefore, dispose of this M.A. with a direction to the West Bengal Pollution Control Board, Respondent No.3, to assess the Environmental Compensation for violations noted in its observations and remarks of the previous inspections, after giving due notice to the Unit of Respondent No.4 who may file its objections, if any, on the Environmental Compensation so

determined. The objections, if submitted by the Respondent No.4 Unit, shall be duly considered by the West Bengal Pollution Control Board in accordance with law within a period of one month and thereafter final Environmental Compensation shall be determined by the Board which shall be deposited by the Respondent No.4 Unit with the Respondent No.3, West Bengal Pollution Control Board, within 15 days thereof.

22. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Saibal Dasgupta, EM

October 17, 2022
M.A. No.07/2021/EZ
In
Original Application No.75/2021/EZ
AK