

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**W.P.A. 15517 of 2019
CAN 1 of 2020
Biswanath Maji & Anr.
versus
Steel Authority of India Limited (I.S.P.) & Ors.
With
W.P.A. 595 of 2020
Benimadhab Maji & Ors.
versus
Steel Authority of India Limited (I.S.P.) & Ors.**

For the Petitioners : Mr. Ajay Debnath, Advocate
Ms. Jiya Bose, Advocate

For the Respondent : Mr. Kallol Basu, Advocate
Nos.1, 2 and 5 to 7 Mr. Swapnamoy Sarkar, Advocate

For the Respondent : Mr. Arjun Roy Mukherjee, Advocate
No.4

For the Respondent : Mr. Susovan Sengupta, Advocate
Nos.3, 8 to 11 Mr. Manas Kumar Sadhu, Advocate

Heard on : 28.02.2024, 04.04.2024, 24.04.2024,
14.05.2024, 14.08.2024, 21.08.2024

Judgment on : 20.03.2025

Bivas Pattanayak, J. :-

1. This writ petitions have been filed by the petitioners under Article 226 of the Constitution of India for cancellation of the reply dated 31st July, 2018 issued by Mgr. Personnel – Legal & IR, IISCO Steel Plant Burnpur and for rehabilitation of the petitioners including villagers of Namopara with proper compensation.

2. The brief fact of the petitioners' case is as follows:

(i) The petitioners are born and brought up at village Nakrasota-Namopara, J.L. No.19, Police Station-Hirapur, District-Burdwan and within the span of 1972 to 1982, huge portion of land was under acquisition by the Government of West Bengal for expansion of Indian Iron Steel Company Limited (*in short, 'IISCO'*) presently under Steel Authority of India Limited (*in short, 'SAIL'*).

(ii) In the year 1988, about 305 acres of land was in acquisition for modernization of IISCO in which village Nakasota-Namopara was included.

(iii) On 26th October, 1981, prior to acquisition of the land by the Government of West Bengal in favour of IISCO, an agreement was signed between the representative of the villagers of Nakrasota with the then Estate Manager.

(iv) The petitioners made a joint petition before the Deputy Secretary, Land and Land Reforms Department, Government of West Bengal after acquisition of land, contending that about 13 acres of land within village Namopara is lying in serious suffocation problems as the inhabitants are encircled at the North, South & East side by 30 ft. high altitude slag bank. Namopara area is of low reduced level and in rainy season there is every chance of this area inundated with water coming from the high-altitude area and there is no scope open to discharge the accumulated water as encircled by slag bank for project expansion.

(v) On 16th March, 2009, the Deputy Secretary of Commerce Industrial Department issued a letter to the Chairman, West Bengal

Pollution Control Board to look into the matter pertaining to the representation of Namopara but till date nothing has been done.

(vi) The petitioner no.1 [in WP 15517 (W) of 2019] has also submitted a letter to the Additional District Magistrate, on the basis of which direction was issued to the Sub-Divisional Officer, Asansol to make an arrangement for joint inspection.

(vii) The Sub-Divisional Officer, Asansol on 26th November, 2009, issued a letter to Managing Director, IISCO for holding joint inspection and directed him to remain present during such inspection.

(viii) On 8th December, 2009, Assistant Environmental Engineer, West Bengal Pollution Control Board Asansol Office submitted a report in view of the joint inspection that the plantation around the project boundary was observed to be less.

(ix) The Deputy Magistrate, Asansol also submitted an enquiry report in view of enquiry dated 13th December, 2009, stating *inter alia* that though it was enumerated in the report of the vulnerable conditions of the villagers of Namopara under Nakrasota submitted by the Assistant Engineer, Pollution Control Board, Asansol, yet IISCO authority failed to come out with any proposal and the threat of environment pollution may not be ignored. During enquiry, the proposal for rehabilitation of the petitioners was also considered.

(x) The Additional District Magistrate, Asansol convened a meeting on 14th July, 2011 wherein a fresh visit was decided to be made to find out possibility of curving out proper drainage and comprehensive

plan to mitigate the grievance and a proposal of rehabilitation of the petitioners was considered and discussed in an earlier meeting dated 8th July 2011.

(xi) The petitioners including the villagers of the Namopara have been suffering from aggressive action of SAIL-ISP, Burnpur and the local administrative authorities though requested the SAIL-ISP, Burnpur to maintain the standard environmental system for the safety and security of the villagers of Namopara, but respondent SAIL-ISP did not follow the minimum standard. Ultimately, the petitioners issued a demand justice to the respondents on 22nd July, 2014. However, no beneficial action to protect the petitioners from environmental pollution till date has been taken by the SAIL-ISP, Burnpur nor the demand justice has been disposed of till date. Since the respondents failed to provide remedial and equitable relief to the petitioners, the petitioners moved a petition under Section 18(1) read with Sections 14, 15, 16 and 17 of National Green Tribunal Act, 2010 (*for brevity, 'NGT Act'*) before the National Green Tribunal (*for brevity, 'NGT'*), Eastern Zone Bench, Kolkata being Original Application No. 35 of 2014.

(xii) The application being O.A. No.35 of 2014 was disposed of on 6th May, 2016 by the Hon'ble Tribunal holding that the village may be vulnerable to the environmental deterioration in future in case there is unscientific management of wastes (air pollution, waste water and solid wastes) generated from the plant and in absence of the compliance to the statutory guidelines. Though it observed that it may

be desirable to rehabilitate the villagers of Namopara Village after paying compensation, however, it did not issue any direction for acquisition, rehabilitation and compensation as it did not fall within the purview of NGT Act. Thereafter on 3rd August, 2016 a demand justice was sent for rehabilitation of the petitioners including the villagers of Namopara and reminder notice was sent on 23rd November, 2016. On 5th September, 2017, the Hon'ble Member of West Bengal Legislative Assembly and Chairman of Asansol Durgapur Development Authority (ADDA) issued letter to the Chief Executive Officer of SAIL, Burnpur to take action regarding rehabilitation but nothing was disposed of. On 14th September, 2016, 11th October, 2017, 23rd November, 2017 and 30th November, 2017, Additional District Magistrate-in-Charge, Paschim Bardhaman issued letters to the respondents requesting them to take fruitful efforts regarding rehabilitation of the villagers.

(xiii) The Additional District Magistrate, Asansol had made communications with the Additional General Manager, Personnel SAIL-ISP requesting him to conduct joint survey by his letter dated 30th November, 2017 but the respondent-authorities kept silent over the issue.

(xiv) All on a sudden the Mgr Personnel-Legal & IR issued letter to the learned advocate for the petitioners on 31st July, 2018 stating that no direction was passed by the Hon'ble Tribunal in respect of the matters of acquisition, rehabilitation and compensation and, therefore, there is no question of consideration of the same in any manner.

(xv) Being aggrieved by and dissatisfied with the said reply, the petitioners have preferred the present writ petition.

3. The writ petition has been keenly contested by respondent nos. 1, 2 and 5 to 7-SAIL-ISP by filing affidavit-in-opposition with the following facts:

(i) The SAIL-IISCO Steel Plant was directed to construct a garland drain around the premises of the unit within a span of six months and also develop a green belt in order to prevent the dust particles entering the village. The aforesaid direction has been duly complied with.

(ii) There was no direction passed by the Hon'ble Tribunal for rehabilitation. The SAIL IISCO Steel Plant does not contribute to air, water or soil pollution while in operation beyond the prescribed limits in any manner whatsoever. The certificate of "Consent to Operate" has been issued by the West Bengal Pollution Control Board in the name of SAIL IISCO Steel Plant on 30th November, 2021 and the said certificate is valid upto 31st December, 2026.

(iii) A earlier writ petition was filed by the petitioners being W.P. No. 15495 (W) of 2018 which was dismissed on the ground that it did not disclose a complete cause of action alleging violation of any legal right of the respondents as against the respondent-SAIL in respect of corporate social responsibility.

(iv) The claim of the writ petitioners in the instant writ petition for rehabilitation is not governed by the term "Corporate Social Responsibilities" in any manner whatsoever. In connection with the

environmental aspect, the unit of SAIL IISCO Steel Plant has been operating in compliance with the conditions laid down in the certificate of the “Consent to Operate” granted by the West Bengal Pollution Control Board.

(v) In view of the above, the respondents-SAIL-ISP prayed for dismissal of the writ petitions.

4. The West Bengal Pollution Control Board, respondent no.4 also filed its affidavit-in-opposition and contended as follows:

(i) The Board caused a detailed inspection of the unit and adjacent villages from 2nd December, 2019 to 10th December, 2019 and filed affidavit enclosing a report thereon. A fresh inspection was also conducted on 27th April, 2022 and 28th April, 2022 by the Assistant Environments Engineers, Asansol Regional Office of the said Board and an inspection report was prepared on 6th May, 2022.

(ii) Thereafter, the Chief Engineer, Operation and Execution Cell of the said Board having considered the inspection report dated 6th May, 2022, passed certain directions upon IISCO in exercise of the powers conferred under the provisions of Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, the Environmental (Protection) Act, 1986 and the Rules framed thereunder.

5. Mr. Ajay Debnath, learned advocate for the petitioners submitted as follows. Since 1972 huge portions of land was acquisitioned by the State on behalf of IISCO for its expansion. In the year 1988, about 305 acres of land was in acquisition for such purpose within which village Nakrasota-

Namopara was included. However, 13 acres of land belonging to the petitioners was not acquired. The said land is encircled at the North, South & East side by 30 ft. high altitude slag bank. During rainy season, the area is inundated with water coming from the high-altitude area and there is no scope open to discharge the accumulated water as encircled by slag bank for project expansion. A representation was made before the Deputy Secretary of Commerce Industrial Department for acquisition of the said land. Several inspections were held and during inspection, it was found that the village of Namopara is under vulnerable conditions. Be that as it may, the authority of SAIL-ISP failed to come out with any positive proposal. Since no beneficial action to protect the petitioners from environmental pollution was taken by the SAIL-ISP, Burnpur, the petitioners moved a petition before the National Green Tribunal, Eastern Zone Bench, Kolkata being Original Application No. 35 of 2014. The said petition was disposed of taking into consideration the environmental deterioration and it was observed that it may be desirable to rehabilitate the villagers of Namopara village after paying compensation. Direction for acquisition, rehabilitation and compensation was not issued by the Hon'ble NGT since such aspect did not fall within the purview of NGT Act. As per Section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee (*in short* 'CSR') to protect the interest of persons affected by pollution caused by the industry. The well-being of the petitioners is a

responsibility which the respondent-SAIL-ISP which is under statutory obligation to discharge its duties so that the petitioners are not affected by such environmental hazards. The above provisions state for rehabilitation of the persons affected by such environmental problems. The respondent-SAIL-ISP has not taken into consideration such responsibility and kept silent over the issue. Further the respondent- SAIL-ISP has not considered the issue of rehabilitation of the petitioners on the ground that no direction was passed by the Hon'ble NGT for rehabilitation. However, it failed to take into consideration the observation made by the Hon'ble NGT that it would be desirable for rehabilitation of the petitioners. It is pertinent to place on record that no appeal has been preferred against the order passed by the Hon'ble NGT. Once no appeal is preferred, it reaches finality. In support of his contentions, he relied on the decision of Hon'ble Supreme Court passed in ***Mantri Techzone Private Limited versus Forward Foundation and Others***¹. The appeal under the NGT Act lies before the Hon'ble Supreme Court only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court as provided under Section 22 of the NGT Act.

The Additional District Magistrate has observed in the meeting held on 8th July, 2011 the only solution to combat the potential hazard to the villagers of Namopara is by way of rehabilitation. Time and again respondent-SAIL-ISP authorities have been requested to take steps in regard to the environment hazards but all has fallen in deaf ears. In spite of taking proper reasonable action, all on a sudden the Mgr Personnel-Legal & IR

¹ (2019) 18 SCC 494

issued letter to the learned advocate for the petitioners on 31st July, 2018 stating that no direction was passed by the Hon'ble Tribunal in respect of the matters of acquisition, rehabilitation and compensation and, therefore, there is no question of consideration of the same in any manner.

The Directive Principles of State Policy provide that protection and improvement of environment, safeguarding forest and wildlife have been duly enjoined upon the Government. Those principles have found statutory expression in various enactments which have been enforced by this Court in various decisions. The inaction of State to constitutional and statutory duties cannot be permitted. The Court has to issue appropriate directions to fulfil the mandate. Article 48(A) and Article 51(A) of the Constitution of India provide fundamental duties to protect and preserve environment. In support of his contentions, he relied on the decisions of Hon'ble Supreme Court passed in ***M.C. Mehta versus Kamal Nath and Others***² and in ***Tata Housing Development Company Ltd. versus Aalok Jagga and Others***³.

The authorities should come up with a reasonable proposal in order to weed out the environmental hazards faced by the petitioners. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Sheikh Ikram Sheikh Israil and Others versus State of Maharashtra and Others***⁴.

The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. In support

² (2000) 6 SCC 213

³ (2020) 15 SCC 784

⁴ (2007) 4 SCC 217

of his aforesaid contention, he relied on the decision of Hon'ble Supreme Court passed in ***Municipal Corporation of Greater Mumbai versus Ankita Sinha and Others***⁵.

In light of his aforesaid submissions, he prayed for appropriate order for cancellation of the impugned letter dated 31st July, 2018 issued by Mgr. Personnel – Legal & IR, IISCO Steel Plant Burnpur and for passing necessary order for rehabilitation of the petitioners upon payment of compensation.

6. In reply to the contentions raised on behalf of the petitioners, Mr. Kallol Basu, learned advocate appearing for the respondent nos. 1, 2 and 5 to 7 -SAIL-ISP made the following submissions. The writ petition has been filed praying for consideration of the representation dated 3rd July, 2019 submitted before SAIL-ISP authorities by the learned advocate for the petitioners and in the said representation a request has been made for rehabilitation of the villagers of Namopara. However, it is pertinent to note that there are no allegations with respect to pollution in the village as a result of operation of the unit of SAIL-ISP.

The petitioners filed an application before the Hon'ble NGT being O.A. No. 35 of 2014/EZ and the Hon'ble Tribunal disposed of the said application on 6th May, 2016 directing the respondents-SAIL to construct a garland drain around the premises of the unit within a span of six months and also directed to develop a green belt in order to prevent dust particles from infiltrating into the village. SAIL-IISCO Steel Plant has acted in terms of the solemn order of the Hon'ble Tribunal and has submitted a compliance

⁵ (2022) 13 SCC 401

report before the Hon'ble Tribunal. In the original application before the Hon'ble NGT, there was no prayer for rehabilitation. In spite of the same, the Hon'ble Tribunal, in view of the precautionary principle, observed that rehabilitation of the villagers of Namopara village may be desirable which is advisable in nature. Be that as it may, no direction was passed in the matter of acquisition, rehabilitation and compensation by the Hon'ble Tribunal to this effect as it did not fall under the purview of the Act.

The writ petitioner filed an earlier writ petition being W.P. No. 15495 (W) of 2018 praying *inter alia* for rehabilitation in view of the order dated 6th May, 2016 passed by Hon'ble NGT, Eastern Zone Bench, Kolkata. The said writ petition was dismissed holding that the writ petition did not disclose a cause of action alleging violation of any legal right of the writ petitioner as against the respondent-SAIL in respect of corporate social responsibilities.

Section 11(V) of the Civil Procedure Code, 1908 (*hereinafter referred to as the 'Code'*) specifically provides that if any relief claimed by the petitioner in the petition, which is not expressly granted by an order or decree, the said prayer is deemed to have been refused. Thus, the prayer for rehabilitation of the petitioner stood refused by the Hon'ble Court in the earlier writ petition. No appeal challenging the order has been preferred. It is settled proposition of law that if a relief is sought for and not granted by the Court for whatever reason, a fresh petition seeking the very same relief cannot be entertained. To buttress his contention, he relied on the decision

of Hon'ble Supreme Court passed in ***Chief Administrator and Another versus Dr. Abhaya Charan Mishra***⁶.

The SAIL-IISCO Steel Plant does not contribute to air, water or soil pollution beyond the prescribed limits in any manner whatsoever while operating its plant. The certificate of "Consent to Operate" has been issued by the West Bengal Pollution Control Board in favour of SAIL-IISCO Steel Plant on 30th November, 2021 and such certificate is valid upto 31st December, 2026. With regard to the environmental aspect, the unit of SAIL-IISCO Steel Plant has been operating in compliance with the conditions laid down in the certificate of "Consent to Operate" granted by the West Bengal Pollution Control Board.

Moreover, the prayer of the writ petitioner for rehabilitation does not fall within the ambit of "corporate social responsibilities" of SAIL in any manner whatsoever.

After the coming into force of National Green Tribunal Act, 2010, all matters, which are covered under the provisions of the Act under Schedule-I to be precise, stood transferred to and can only be instituted before the NGT, thereby helping in rendering expeditious and specialised justice in the field of environment. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Bhopal Gas Peedith Mahila Udyog Sangathan and Others versus Union of India and Others***⁷.

⁶ 1999 SCC (L&S) 660

⁷ (2012) 8 SCC 326

The land has been acquired by the State-respondents for the establishment of SAIL-IISCO Steel Plant and the villagers in connection with the aforesaid land were duly paid compensation by SAIL. The villagers had accepted the compensation without any objection. Therefore, the petitioners have no right to claim the benefits under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (*hereinafter referred to as 'Act of 2013'*). In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Shiv Kumar and Another versus Union of India and Others***⁸.

In light of his aforesaid submissions, he prayed for dismissal of the writ petition.

7. Mr. Arjun Roy Mukherjee, learned advocate for the respondent no.4-West Bengal Pollution Control Board submitted that the Assistant Environments Engineers, Asansol Regional Office of the Pollution Control Board held fresh inspection on 27th April, 2022 and 28th April, 2022 and submitted inspection report. The Chief Engineer, Operation and Execution Cell of the Board having considered the report of the Assistant Environments Engineers passed directions upon the respondent-IISCO in exercise of the powers conferred under the provisions of Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, the Environmental (Protection) Act, 1986 and the Rules framed thereunder. He also indicated

⁸ (2019) 10 SCC 229

that SAIL-IISCO has complied with the directions issued by the West Bengal Pollution Control Board.

8. Mr. Susovan Sengupta, learned advocate for the respondent nos. 3, 8 to 11 submitted that the acquisition process of the large portion of land-in-question is complete. The compensation in respect of the acquired land has been paid by the State and possession has been handed over to the SAIL-ISP authorities. The drainage as per the requirement is also completed. Although the Hon'ble NGT observed that it is desirable to have rehabilitation, however, no order has been passed for rehabilitation.

In light of his aforesaid submissions, he also prayed for dismissal of the writ petition.

9. Mr. Debnath, learned advocate for the petitioners, in reply, submitted that from the records placed by the petitioners it will be evident that rehabilitation is the only option left to protect the petitioners from the extreme environmental hazards. The writ petition being W.P. No. 15495 (W) of 2018 was dismissed giving liberty to the petitioners to file afresh and therefore, it cannot be contended that the petitioners were estopped by such order from raising their prayer for rehabilitation afresh. Furthermore, if a *lis* is not decided in a proceeding, principle of *res judicata* will not apply in a subsequent proceeding raising the same issue. In support his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Union of India versus Pramod Gupta (Dead) By LRs. & Ors.***⁹ Further the decisions relied upon by the respondent nos. 1, 2 and 5 to 7, SAIL authority are factually distinguishable.

⁹ (2005) 12 SCC 1

10. Upon hearing the learned advocate for the respective parties, following issues have fallen for consideration in the present writ petition.

- (i) Whether the present writ petition is maintainable?
- (ii) Whether the writ petitioners are entitled to rehabilitation on the ground of environment hazards?

Issue No.1. Whether the present writ petition is maintainable?

11. Mr. Basu, learned advocate for respondent nos. 1, 2 and 5 to 7 submitted that since previously the writ petitioner filed a writ petition being W.P. No. 15495 (W) of 2018 praying, *inter alia*, for rehabilitation in view of the order dated 6th May, 2016 passed by Hon'ble NGT, Eastern Zone Bench, Kolkata, which was dismissed, hence as per Section 11(V) of the Code the said prayer is deemed to have been refused. No appeal challenging such order of dismissal has been preferred and, therefore, such order has reached its finality. Referring to *Dr. Abhaya Charan Mishra (supra)*, he submitted it is settled proposition of law that if a relief is sought for and not granted by the Court for whatever reason, a fresh petition seeking the very same relief cannot be entertained. On the contrary, learned advocate for the petitioners submitted relying on *Pramod Gupta (supra)* that since the *lis* is not decided in the earlier proceeding, principle of *res judicata* will not apply in the facts and circumstances of subsequent proceeding.

Upon perusal of the records placed before this Court namely Annexure P-13 at page 97 of the writ petition it is found that previously a writ petition being no. 15495 (W) of 2018 was filed by the petitioners for rehabilitation

after passing of the order by Hon'ble National Green Tribunal. The said writ petition was dismissed as follows:

“Accordingly, while keeping the report of the SAIL on record and noting its objections but deciding nothing, I dismiss the writ petition on the ground that it does not disclose a complete cause of action alleging violation of any legal right of the writ petitioner as against the Respondent/SAIL in respect of corporate social responsibility without deciding anything else.

This order of dismissal shall not prevent the writ petitioner from filing afresh by a properly constituted writ petition if so advised in accordance with law.”

Thus, it appears that the writ petition previously filed by the petitioners was dismissed deciding nothing. It was also noted in the order that such dismissal would not prevent the writ petitioner from filing afresh by properly constituted writ petition. Therefore, it cannot be said that the aforesaid order of dismissal amounts to refusal of the prayer of the petitioners for rehabilitation. Section 11 Explanation V of the Code provides that any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused. Since liberty was granted in the writ petition to the writ petitioner to file afresh by properly constituted writ petition it cannot be said that the order of dismissal is refusal of the claim of the petitioners for rehabilitation. In *Pramod Gupta (supra)*, the Hon'ble Supreme Court held that the principle of *res judicata* would apply only when the *lis* was inter-parties and had attained finality in respect of the issues involved. There cannot be any quarrel that the issue raised in the present writ petition with regard to rehabilitation was not decided in the previous round of litigation. Accordingly, the argument advanced on behalf of the respondent-SAIL-ISP falls short of merit. This court finds substance in the

submission advanced on behalf of the petitioners that since the *lis* has not been decided in the previous proceedings the prayer for rehabilitation can be entertained in the present writ petition relying on *Pramod Gupta (supra)*. In light of the aforesaid discussion, it is held that the writ petition is maintainable in law.

Issue No.2: Whether the writ petitioners are entitled to rehabilitation on the ground of environment hazards?

12. It is the contention of the petitioners that after acquisition of land, about 13 acres of land in the village of Namopara is lying in serious suffocation problems as the inhabitants are encircled at the North, South & East side by 30 ft. high altitude slag bank. Namopara area is of low reduced level and in rainy season there is every chance of this area inundated with water coming from the high-altitude area and there is no scope open to discharge the accumulated water as encircled by slag bank for project expansion.

12.1. The petitioners filed an application before the Hon'ble National Green Tribunal, Eastern Zone being Original Application no. 35/2014/EZ raising the issue of environmental hazards faced by the villagers of Namopara. The Hon'ble NGT upon due consideration passed the following directions upon the project proponent.

"17. In the instant case, the machines used are new in the expansive project and require sometime to stabilize. Therefore, from the results of the few samples analysed during the infancy of the expansive project it can't be conclusively proved that the unit is noncompliant. However, with the intervention of the Tribunal the unit could meet most of the deficiencies subsequently. Since the unit is a large integrated iron and steel industry with a captive power plant, it has a high pollution potential and requires constant surveillance and monitoring by the State pollution control for from timely action to plug the holes. We direct the project proponent to construct a garland drain around the premises of the unit within a span of six months and also develop a green belt in order to prevent the dust particles entering into the village."

12.2. It is found from the aforesaid order that the project proponent i.e. SAIL-ISP was directed to construct a garland drain around the premises of the unit within a span of six months and also develop a green parent in order to prevent the dust particles entering into the village. It is contended in the affidavit in opposition as well as exception filed on behalf of the respondent nos. 1, 2 and 5 to 7- SAIL-ISP that the aforesaid direction of the Hon'ble NGT has been duly complied with. During the course of argument as well as in the written notes of argument filed on behalf of the aforementioned respondents it is informed to this court that such direction of the Hon'ble NGT has been duly complied. Such contention of the respondents-SAIL-ISP is not disputed either by the petitioners or the respondent no.4-West Bengal Pollution Control Board.

12.3. Moreover, the respondent no.4-West Bengal Pollution Control Board in its affidavit-in-opposition has stated that on 27 April 2022 and 28 April 2022 inspection of the unit and the adjacent villages was conducted by Assistant Environments Engineers, Asansol Regional Office of the Board. The inspection report recorded the following remarks.

“Remarks:

1. *The unit has valid Consent to Operate up to 30.12.2026 & and Hazardous Waste Authorization up to 30.11.2025.*
2. *Proper emission control system should be installed in the Base Mix Plant, Lime and Dolomite Crushing Plant (Hammer Mill) and Hammer Mill in CHP.*
3. *Stacking & reclaiming area of Raw Material Handling plant should be provided with more dust suppression system. The floor & road should be concretized as far as possible. The unit may also explore the possibility to convert the open pile storage section to a covered section.*
4. *Dust extraction and control system should be installed in the Lime & Dolomite Crusher Plant. The entire crusher plant needs upgradation to control the dust.*
5. *Stack emissions from lime & dolomite calcinations plants (LDGP) were noticed (Pic:27). All the Bag Filters should be upgraded. It may be*

mentioned here that one or another stack emission of this section fails to comply with norms more often than not. (LDPC-II & LDCP-IV failed on the last air sampling on 10.02.2022.)

6. *Dust extraction system should be upgraded in the return fines area & screening area of the Sinter Plant. A proper emission control system should be installed in Transfer Points & Product House also. The ESPs of the Sinter Plants themselves need upgradation. High emission was noticed from both stacks during the inspection.*
7. *Both the ESPs of the Blast Furnace 5 cast house I & II should be checked and necessary measures should be taken immediately to reduce high stack emission as observed during the inspection. Emission during tapping must be minimized. Fugitive emissions from all aides of the Blast Furnace must be restricted.*
8. *Dust dissipation/extraction system of the stock house should be upgraded.*
9. *Both the Coke Ovens cause high fugitive emission during Charging & Pushing. Suitable remedial measures should be taken.*
10. *Tar Sludge and Acid Sludge must be handled in line with the guidelines of Hazardous Waste Management Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016.*
11. *BOF plants should be operated in such a way that no fugitive emission (particularly during oxygen charging) is escaped into the outside atmosphere. Though no fugitive emission was observed during this inspection, the same is a common occurrence in the BOF area as observed on earlier visits. The high stack emission during charging also must be checked and suitable measures should be taken immediately.*
12. *No central designated place for storage of hazardous waste was there. Hazardous waste as and when generated at different section are stored mostly in tin shaded storage place without any proper enclosure and/or hazardous waste signage.*
13. *The industry has installed 05 nos of Automatic Ambient Air Quality Monitoring Stations (AAAQMS) at SCOB gate, Sanmara gate, near Water Treatment Plant near Kulapur, Dharampur yard and at Township (behind Burnpur club). All the AAAQMS were found to be functioning except for the Kulapur. (Pic: 28)*
14. *Necessary arrangements should be made for suppression of road dust, during the movement of vehicles.*
15. *A few photographs are enclosed which indicate significant stack emission, fugitive emission, housekeeping, etc.”*

12.4. The Chief Engineer, Operation and Execution Cell of the Board having considered the report of the Assistant Environments Engineers passed directions upon the respondent-IISCO vide memo No. 643 (5)-WPBA/Red(Bwn)/Cont(299)/02(Part-IV) dated 9th June, 2022 in exercise of the powers conferred under the provisions of Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, the Environmental

(Protection) Act, 1986 and the Rules framed thereunder. The aforementioned Authority of the Pollution Control Board passed the following direction which is reproduced hereunder.

“NOW THEREFOR, considering the above, **M/s. IISCO Steel Plant, SAIL** located at P.O. – Burnpur, P.S. – Hirapur, Dist – Paschim Bardhaman, Pin – 713325 is hereby directed as follows:-

1. **That**, the industry shall always operate with efficient functioning of pollution control system for compliance of environmental norms.
2. **That**, the industry shall install proper pollution control system in the Base Mix Plant, Lime and Dolomite Crushing Plant and Hammer Mill in Coal Handling Plant.
3. **That**, the industry shall provide proper dust suppression system at the stacking and reclaiming area of Raw Material Handling plant and concretize the floor and road. The industry shall also explore the possibility to convert the open pile storage section to a covered section.
4. **That**, the industry shall install additional high pressure water sprinklers in the coal beds and other material handling beds.
5. **That**, the industry shall install dust extraction and control system in the Lime and Dolomite Crusher Plant and shall upgrade the entire crusher plant to control the dust pollution.
6. **That**, the industry shall modify/upgrade the pollution control system attached to the lime and dolomite calcination plants to minimize the stack emission.
7. **That**, the industry shall undertake necessary upgradation/modification of pollution control system attached to the sinter plants. Proper dust extraction system in the return fines area, screening areas of the sinter plants as well as in Transfer Points and Product house should be installed.
8. **That**, the industry shall immediately take necessary measures to reduce high stack emission attached to the Blast Furnace 5 cast house I & II. Fugitive emissions from all sides of the blast furnace must be restricted.
9. **That**, the industry shall upgrade dust dissipation/extraction system of the stock house.
10. **That**, the industry shall take remedial measures to minimize fugitive emission during charging and pushing of Coke Ovens.
11. **That**, the industry shall properly handle tar sludge and acid sludge as per provisions of Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016.
12. **That**, the industry shall necessary measures to reduce fugitive emission in the BOF plant especially during oxygen charging.
13. **That**, the industry shall always keep hazardous waste in a designated place with proper enclosure and hazardous waste signage.
14. **That**, the industry shall always make functional of all Automatic Ambient air Quality Monitoring Stations.
15. **That**, the industry shall take necessary arrangements for suppression of road dust during movement of vehicles.
16. **That**, the industry shall submit an EC (Environmental Compensation) of **Rs. 3,85,000/-** (Rupees three lakh eighty five thousand) only within ten (10) days from the date of issuance of this direction, by Demand Draft in favour of **WEST BENGAL**

POLLUTION CONTROL BOARD payable at Kolkata for above mentioned non-compliance of environmental norms.

17. **That**, the industry shall execute a **BANK GUARANTEE (BG)** (proforma enclosed) of **Rs. 20,00,000/-** (Rupees twenty lakh) only valid for twelve (12) months with fifteen [15] days from the date of issuance of this direction in favour of the **WEST BENGAL POLLUTION CONTROL BOARD (Union Bank of India IFSC Code UBIN0906638)** as an assurance to comply with the Board's directions as well as environmental norms."

12.5. It is found from the aforesaid directions that the respondent-SAIL-ISP was called for a hearing on 10th May, 2022 at the head office of the State Board for certain non-compliance of environmental norms. Representatives on behalf of the SAIL-ISP appeared in the hearing and submitted that they would take necessary measures in respect of the non-compliances observed during inspection by the State Board official for environmental compliance. Further the respondents would submit a detailed time bound action plan within seven days covering all the areas as mentioned in the inspection report. In compliance thereof the SAIL-ISP submitted a time bound action plan on 25th May, 2022. It is indicated during hearing that IISCO has complied with the directions issued by the West Bengal Pollution Control Board. The aforesaid direction also records that the Environmental Engineer & In-charge, Asansol Regional Office of the State Board shall keep strict vigil on the industry and if the industry is again found to be non-complying with the above-mentioned boards direction, the board will take strict regulatory action against the industry.

12.6. Thus, from the above materials, it is quite evident that after passing of the order by the Hon'ble NGT, the West Bengal Pollution Control Board has caused inspection and thereafter the Board has issued certain directions upon the SAIL-ISP. The industry has also submitted a time

bound action plan. In the aforesaid backdrop, it cannot be said that the plight of the villagers of Namopara adjacent to the industry have not been taken care of. Rather, it is found that specific directions have been issued which are being complied with and the Environmental Engineer & In-Charge to keep strict vigil on the industry so as to monitor whether the industry is complying with the directions of the Board contained herein.

12.7. It has been argued on behalf of the petitioner that in the facts and circumstances of the case, the industry is under statutory obligation under Section 135 of the Companies Act in discharge of its corporate responsibility is duty bound to rehabilitate the petitioners. Such argument of the petitioner is refuted by respondent-SAIL-ISP contending that the aforesaid provisions under the Companies Act does not provide for rehabilitation. Section 135 of the Companies Act provides for Corporate Social Responsibility of the industry to the extent of promoting education, providing water supply including drinking water, organizing health care and health awareness camps, ensuring environment sustainability, social empowerment, sports and culture etc. Be that as it may, the scope of the aforesaid provision does not include rehabilitation. Thus, the argument advanced on the behalf of the petitioners for rehabilitation basing on Section 135 of Companies Act fall short of merit.

12.8. Relying on *Mantri Techzone Private Limited (supra)* it has been pressed into service that as no appeal has been preferred against the observation of the Hon'ble NGT desiring for rehabilitation, hence that should be taken into consideration. Admittedly no appeal against the order of Hon'ble NGT has been preferred. Be that as it may, although the Hon'ble

NGT observed that it would be desirable for rehabilitation of the villagers of Namopara, however, since its direction upon the project proponent to construct a garland drain around the premises of the unit within a span of six months and also develop a green parent in order to prevent the dust particles entering into the village, has been duly complied with and directions issued by the West Bengal Pollution Control Board upon the industry which has been also complied with, this Court is of the opinion that the rehabilitation of the villagers of Namopara as prayed for cannot be a necessary consequence. However, it is made clear that the respondent nos. 1, 2 and 5 to 7-SAIL-ISP would continue to comply with directions of the respondent no.4-West Bengal Pollution Control Board from time to time.

13. Further relying on the decision of Hon'ble Supreme Court in *M.C. Mehta (supra)* and *Tata Housing Development Company (supra)* it has been strenuously argued on behalf of the petitioners that the Directive Principles of State Policy provide for protection and improvement of environment, safeguarding forest and wildlife have been duly enjoined upon the Government and Article 48(A) and Article 51(A) of the Constitution of India provide fundamental duties to protect and preserve environment. The Court has to issue appropriate directions to fulfil the mandate. *Per contra*, it is argued on behalf of respondent-SAIL-ISP that after the coming into force of National Green Tribunal Act, 2010, all matters, which are covered under the provisions of the Act under Schedule-I to be precise, stood transferred to and can only be instituted before the NGT, thereby helping in rendering expeditious and specialised

justice in the field of environment and reliance has been placed on the on the decision of Hon'ble Supreme Court passed in *Bhopal Gas Peedith Mahila Udyog Sangathan (supra)*. Upon hearing the learned advocates of the respective parties, on this aspect, this court finds substance in the submissions of learned advocate for respondent-SAIL-ISP that so far as adjudication in the field of environment is concerned the same falls within the ambit of the NGT Act. Further in *Municipal Corporation of Greater Mumbai (supra)* it has been held by Hon'ble Supreme Court that "NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also concerned with the responsibility to discharge the role of the supervisory body and to decide substantial question relating to the environment. The necessity of having a specialised body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice." Therefore, the argument made on behalf of the petitioners that this court is to pass orders to fulfil the mandate of law so far as protection of environment is concerned, would not be a correct proposition. The decision in *Sheikh Ikram Sheikh Israil (supra)* is factually distinguishable.

14. In *Shiv Kumar (supra)* the Hon'ble Supreme court held that "Given that, the transaction of sale, effected after section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim 'possession' and

challenge the acquisition as having lapsed under section 24 by questioning the legality or regularity of proceedings of taking over of possession under the Act of 1894. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the Act of 2013. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.” Thus, it appears that the Hon’ble court has dealt with a situation where the land is purchased after notification under Section 4 of Land Acquisition Act. The facts and circumstances is dissimilar to the case at hand. Be that as it may, since this court has already observed that the question of rehabilitation of the petitioners cannot be a necessary consequence as directions issued by the Hon’ble NGT and West Bengal Pollution Control Board has been complied by the project proponent i.e. SAIL-ISP, it would not be proper to make any further observation as regards whether the petitioners are entitled to have rehabilitations and compensation under the Act of 2013 or not.

15. In light of the above discussion, the writ petitions being no. **15517 of 2019** and **W.P.A. 595 of 2020** stand dismissed. However, the respondent nos. 1, 2 and 5 to 7-SAIL-ISP would continue to comply with directions of the respondent no.4-West Bengal Pollution Control Board. No order as to costs.

16. All connected applications, if any, stand disposed of.

17. Interim orders, if any, stand vacated.

18. Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)