

Court No.05 06.03.2026
JPD
Item no. 4 Piya

**In The High Court At Calcutta
In the Circuit Bench at Jalpaiguri
Appellate Side**

**W.P.A. 287 of 2026
Mr. Bipul Roy
-vs-
State of West Bengal and Ors.**

Mr. Anindya Lahiri (Sr. Adv.),
Ms. Suman Sehanabis,
Mr. Salok Sah,
Ms. Anwesha Chakraborty
... for the petitioner

Mr. Joyjit Choudhury, Ld. AAG
Mr. Nabankur Paul
... for the State

1. The writ application has been preferred praying for direction upon the respondent no.1 to physically measure the distance of the stone crusher unit of the petitioner in respect of which, consent to establish dated 29.9.2023 was issued, from the boundaries of the Mahananda Wildlife Sanctuary in presence of the petitioner upon giving due prior notice to the petitioner and has further prayed that the respondents be directed to recall/withdraw the direction dated 13.01.2026.
2. It is the case of the petitioner herein that a tenancy/lease agreement has been entered into between the

petitioner's proprietorship company and Smt. Debika Shaibya by way of a lease deed executed on 17.07.2023.

3. The petitioner vide an application dated 24.07.2023 applied to the respondent no. 5 for "consent to establish" a stone crusher unit by praying for licence, for the said unit.
4. The application for the said unit is under the "orange category".
5. It appears from the record that vide an order dated 30.01.2023, the West Bengal Pollution Control Board directed as follows:-

".....NOW THEREFORE to ensure uniformity in consent application, processing through OCMMS and in supersession of all previous orders in this regard, the State Board hereby orders that henceforth **Consent to Establish (NOC) and Consent to Operate applications of stone crushers and units dealing with mining of all **minor minerals** such as river sand, black stone, China Clay etc., attracting Environmental Clearance (EC) provisions **shall be dealt by the State Board.****

This order will take immediate effect.

Sd/-
Chairman"

6. The West Bengal Pollution Control Board conducted an enquiry **with due notice to the petitioner** vide a notice dated 09.08.2023. It appears from the note sheet attached that the following is stated therein:-

*“As per ESZ notification of Mahananda Wild Life Sanctuary of MoEF, dated 22/09/2020, Mouza Nemai is situated outside the ESZ boundary of Mahananda WLS. No notified National Park/Wildlife Sanctuary or Eco-Sensitive Zone or Protected Area falls **within 5 KM radial distance of the proposed site.**”*

7. An “NOC” has been granted in favour of the petitioner herein by the West Bengal Pollution Control Board for a period of 7 years on 26.09.2023 **for establishment but not for operation.** The petitioner was directed to **apply for “consent to operate”** before operation.

8. Subsequently, on the prayer the petitioner for “consent to operate” the West Bengal pollution Control Board directed as follows:-

“1. That, the unit shall not start the operation of the stone crusher plant at the existing premises without obtaining Consent to Operate from the State Board.

2. That, the stone crusher unit cannot violate the norms of protection of flood plain zone which has significant environmental functions and has to be protected. As per order of Hon'ble National Green Tribunal, Eastern Zone Bench dated 15.12.2020 in O.A. No. 22/2020, Dilip Kumar Samantaray-vs-State of Odisha Board & Ors. **the extent of flood plain zone has to be 100 meters from the edge of the river.** Hence, the unit was given an opportunity for submission of the same within 30.10.2024. But the unit has failed to submit the same. Hence, the unit is directed to submit authenticated credible document regarding the same within 30.11.2024 as a last chance in regards to the Balason River certified by the competent authority to the Siliguri Regional Office as well as the Head Office of the State Board. If the unit fails to submit the same, the State Board will have no other alternative, but to revoke the Consent to Establish issued by the State Board in favour of M/s. B.R. Roy Company and also the Siliguri Regional Office is requested not to issue Consent to Operate in this regard.

The Asst. Environmental Engineer & In-charge, Siliguri Regional Office of the State Board is requested to conduct a fresh joint inspection along with the representative from the office of the Additional District Magistrate & District Land and Land Reforms Officer, Darjeeling **for determination of distance between the unit and the edge of Balason River and send a report to the headquarter of the State**

- "NOW**
- THEREFORE,**
- considering the above, M/s. B.R. Roy
Company located at Mouza-Nimai, JL
no.-57, Plot no. 486, 504, Patharghata
GP, P.S.-Matigara, Dist.-Darjeeling,
Pin-734010 is hereby directed as
follows:-*

That, the unit shall submit NOC from the Forest Department, Govt. of West Bengal stating that the stone crusher plant does not fall under the Eco-Sensitive Zone of Mahananda Wildlife Sanctuary. After submitting the same, the State Board will take further course of action for Consent to Operate.

The Asstt. Environmental Engineer & In-charge, Siliguri Regional Office of the State Board is requested to oversee the compliance of Board's direction."

- 11.** The petitioner states that he has applied for the said 'NOC' vide an application dated 15.01.2026 (Copy at page 94, Annexure P-15 to the writ

application). It appears that there is an endorsement that the matter does not fall within the Bagdogra Range and the same has been communicated to the concerned range.

12. The petitioner relies upon the judgment of the Supreme Court in ***Deepak Ananda Patil vs State of Maharashtra & Ors., (2023) 11 SCC 130, decided on January 4, 2023, (Para 18, 19)***, wherein the Court held:-

*“18. It is a well-established principle of Administrative Law that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilised has been apprised of it and **given an opportunity to respond to it.** Surveying the precedents extensively, M.P. Jain and S.N. Jain's treatise on Principles of Administrative Law [M.P. Jain & S.N. Jain, Principles of Administrative Law (LexisNexis, 8th Edn.) at pp. 490-91.] notes that:*

“If the adjudicatory body is going to rely on any material, evidence or document for its decision against a party, then the same must be brought to his notice and he be given an opportunity to rebut it or comment thereon. It is regarded as a fundamental principle of natural justice that no material ought to be relied on against a party without giving him an opportunity to respond to the same. The right of being heard may be of little value if the individual is kept in the dark as to the evidence against him and is not given an opportunity to

deal with it. The right to know the material on which the authority is going to base its decision is an element of the right to defend oneself. If without disclosing any evidence to the party, the authority takes it into its consideration, and decides the matter against the party, then the decision is vitiated for it amounts to denial of a real and effective opportunity to the party to meet the case against him. The principle can be seen operating in several judicial pronouncements where non-disclosure of materials to the affected party has been held fatal to the validity of the hearing proceedings.”

(emphasis supplied)

19. In *T. Takano v. SEBI* [T. Takano v. SEBI, (2022) 8 SCC 162 : (2022) 4 SCC (Civ) 248 : (2022) 3 SCC (Cri) 306], a two-Judge Bench of this Court, of which one of us was a part (D.Y. Chandrachud, J.), discussed the line of cases of this Court on the duty to disclose investigative material. The Court analysed the ratio in *Natwar Singh v. Enforcement Directorate* [Natwar Singh v. Enforcement Directorate, (2010) 13 SCC 255], *Krishna Chandra Tandon v. Union of India* [Krishna Chandra Tandon v. Union of India, (1974) 4 SCC 374 : 1974 SCC (L&S) 329], *Khudiram Das v. State of W.B.* [Khudiram Das v. State of W.B., (1975) 2 SCC 81 : 1975 SCC (Cri) 435], *Union of India v. Mohd. Ramzan Khan* [Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588 : 1991 SCC (L&S) 612], *ECIL v. B. Karunakar* [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184], *State Bank of Patiala v. S.K. Sharma* [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364], *State of U.P. v. Ramesh Chandra Mangalik* [State of

U.P. v. Ramesh Chandra Mangalik, (2002) 3 SCC 443 : 2002 SCC (L&S) 413], *Kothari Filaments v. Commr. of Customs* [*Kothari Filaments v. Commr. of Customs*, (2009) 2 SCC 192 : (2009) 1 SCC (Cri) 705], and noted that : (*T. Takano case* [*T. Takano v. SEBI*, (2022) 8 SCC 162 : (2022) 4 SCC (Civ) 248 : (2022) 3 SCC (Cri) 306], SCC p. 198, para 50)

“50. The following principles emerge from the above discussion:

50.1. A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and

50.2. An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.

50.3. Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.”

(emphasis supplied)”

- 13.** Thus, in the present case, if there is any material, evidence, or document, which the adjudicatory body shall rely upon to base its decision, the same be brought to the notice of the petitioner herein and he be given an opportunity to rebut it or respond to it and also be given a proper hearing.

14. As the petitioner submits that his unit is 6.5 kms away from the Eco-sensitive zone of Mahananda wild life sanctuary, which it is submitted is more than the required 5 km, it is directed that the measurement to assess the distance, while granting the 'NOC' be done with prior notice to the petitioner, as the same affects his right of livelihood and the same be done in his presence, treating the same to be part of hearing to decide, the granting of NOC.

15. The petitioner shall co-operate with the authorities and not cause any disturbance or obstruction during the said process.

16. The respondent authorities shall decide the petitioner's application for 'NOC' dated 15.01.2026, following the directions of this Court, by permitting the petitioner, to remain present during the measurement to be under taken and complete the process within 30 days from the date of communication of this order.

17. WPA 287 of 2026 is disposed of.

18. All connected application, if any, stands disposed of.
19. Interim order, if any, stands vacated.
20. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)