

S.L. No. 27/24

BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

OA NO.164/2023/EZ

IN THE MATTER OF:

ALL INDIA ANTI CORRUPTION ORGANIZATION

... APPLICANT

VERSUS

UNION OF INDIA AND ORS

... RESPONDENTS

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Filed by

*Subh Basu*  
Advocate



24 JUN 2024

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REJOINDER AFFIDAVIT ON BEHALF OF THE  
PETITIONER/APPLICANT

I, Subrata Mallick, Additional Director, Crime, All India Anti-Corruption Organization, S/o-Late D.C. Mallick, Religion-Hindu, Quarter No. RIII/81, Bidhannagar Housing Colony, Durgapur, PS-New Township, P.O.-ABL Township, Dist.-Paschim Bardhaman, Pin-713206, the applicant herein, do hereby solemnly affirm and state on oath as under :-

That I am the Additional Director, Crime of Petitioner/  
Applicant Organization and as such I am well conversant with



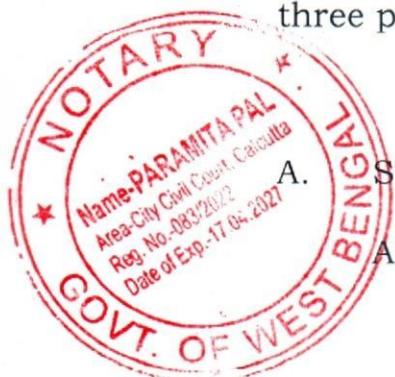
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the facts and circumstances of the case and in that capacity, I am duly competent to swear to the present affidavit.

2. That after carefully going through the Counter Affidavit filed by Respondents 6 and 13, I am submitting the present Rejoinder Affidavit for kind consideration of this Hon'ble Tribunal.

3. That the issue involved in the present Application is quite significant: ensuring effective administration of environmental justice and preserving the Rule of Law: Whether the Interim Orders and Judgments of this Hon'ble Tribunal has been complied with? Whether the steps taken by the Respondents 6 and 13 are adequate? What steps need to be taken for effective implementation of the Judgments of this Hon'ble Tribunal passed in important cases touching protection of environment and right to environment of the people, are effectively implemented? This Rejoinder Affidavit has been divided into three parts for the sake of clarity:

A. STEPS TAKEN BY THE RESPONDENTS 6 & 13, WHETHER ADEQUATE;



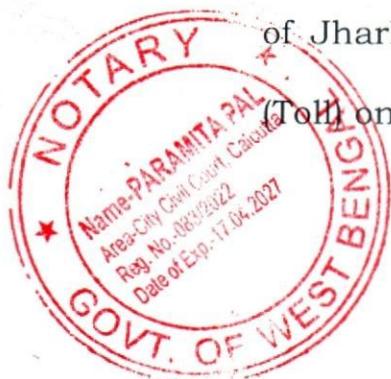
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B. DIRECTIONS REQUIRED FOR EFFECTIVE IMPLEMENTATION OF THE JUDGMENTS OF THIS HONOURABLE TRIBUNAL AND;

C. HOW EFFECTIVE IMPLEMENTATION OF THE JUDGMENTS OF THIS HON'BLE TRIBUNAL CAN BE ENSURED.

4. That another issue is involved in the present Application. Whether Respondent 6 have duly performed its statutory duties as ordained by the Environmental Laws of the country?

5. That from the series of correspondences exchanged between Respondent 6 and National Highway Authority of India it has been revealed that Respondent 6 has given to fell trees to National Highway Authority of India for the construction of 6 lane Barwa Adda-Panagarh section of NH2, ranging from Km 398.240 to Km 521.120, including Panagarh Bypass in the state of Jharkhand and West Bengal under NHDP Phase-V on BOT (Toll) on DBFOT pattern.



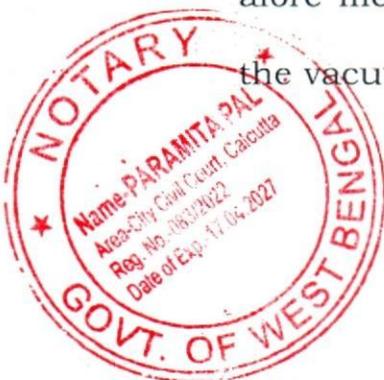
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6. That from the same correspondences it has been found that 11112 trees have been felled by National Highway Authority of India in Durgapur.

7. That it is a matter of great shock that Respondent 13 has produced the same as record before this Honourable Tribunal without enquiring about the correctness of the Information provided to them by National Highway Authority of India.

8. That moreover National Highway Authority of India have informed Respondent 13 that 24000 trees have been planted by its road construction agency M/s. Barwa Adda Expressway Ltd. and 115200 by Wbfdcl towards compensatory afforestation.

9. That neither Respondent 13 nor National Highway Authority of India have clearly mentioned that the plantation of new trees has been done as per Green Highway Policy of the Government of India and beside the National Highway where the afore mentioned 6 lane construction is going on in order to fill the vacuum created by the felling of large number of trees.



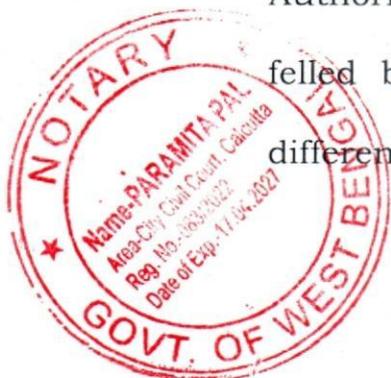
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10. That the details of Plantation given by Respondent 13 as record, on the basis of the Information provided to them by National Highway Authority of India, before this Honourable Tribunal seems to be incomplete and some important facts concealed therein.

11. That Respondent 13 have said that National Highway Authority of India and its road construction agency M/s. Barwa Expressway Limited have planted Radhachura, Krishnachura, Neem, Shisham, Kadam species of trees.

12. That Respondent 13 have solely relied on the Information provided to them by National Highway Authority of India and never bother to intervene and investigate the reality.

13. That question arises whether these are the very species of trees felled by National Highway Authority of India? Whether other species of trees have been felled by National Highway Authority of India? Whether these species of trees have not been felled by National Highway Authority of India and or rather different species of trees have been felled by them? Whether in



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reality these species of trees have been located there before felling?

14. That Respondent 13 have felled to answer these questions.

15. That moreover Respondent 13 have admitted that they have planted the following species of trees:

- A. Arjun
- B. Sirish
- C. Jarul
- D. Simul
- E. Krishnachura
- F. Radhachura
- G. Akashmoni
- H. Gamar
- I. Minjiri
- J. Chatim
- K. Shonajhuri
- L. Karanja
- M. Sissoo
- N. Chikrasi



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16. That Respondent 13 have failed miserably to answer the following questions before this Honourable Tribunal:

- A. Whether these are the very species of trees felled by National Highway Authority of India?
- B. Whether other species of trees have been felled by National Highway Authority of India?
- C. Whether these species of trees have not been felled by National Highway Authority of India and or rather different species of trees have been felled by them?
- D. Whether in reality these species of trees have been located there before felling?

17. That Respondent 13 by planting Chatim tree have made Durgapur and the areas in and around the aforementioned Expressway a special asthma zone.

18. That now comes the topic of fund disbursement and fund utilization for protection of ecology.



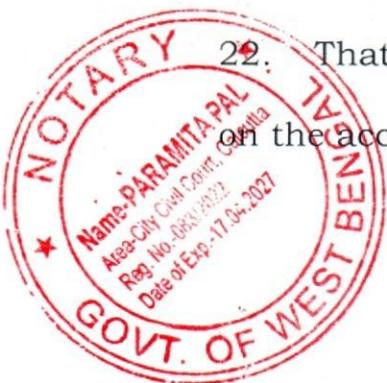
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19. That Respondent 13 have informed this Honourable Tribunal that National Highway Authority of India have given them Rs.1,26,27,250/-. This amount is most insufficient for reforestation. Total cost of the Project is 22000 crores. So as per Green Highway Policy of the Government of India it is the statutory duty of NJAI to pay to Respondent 13 1 percent of the total cost i.e. Rs.22 crores.

20. That Respondent 13 should have proceeded against NHAI for not disbursing funds as per law for reforestation as lack of funds will lead to the destruction of environment, flora and fauna.

21. That moreover depositing of the cheque of afore said amount with the West Bengal Wasteland Development Corporation Limited raises suspicion and makes the entire reforestation process a hogwash.

22. That as per law it is the duty of NHAI to deposit the cheque on the account of Respondent 13 but they haven't done so.



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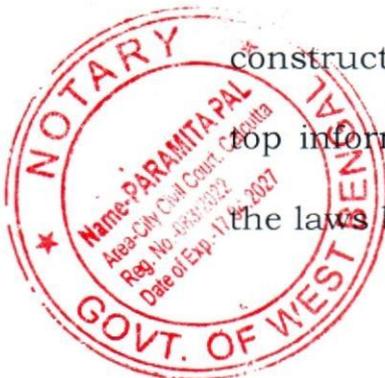
23. That Respondent 13 should have questioned the motive of NHAI.

24. That Respondent 13 have said in the Para 1 of his counter reply that he is well acquainted with the case but he has failed to do his statutory duties and haven't bothered to intervene in the interest of environment.

25. That Para 2 of the Counter Reply of Respondent 13 needs no reply. Rather Honourable Tribunal have done justice by giving him order to file counter reply in the form of affidavit.

26. That the Petitioner/Applicant is grateful to Honourable Tribunal for considering our humble submission regarding the improper utilization of funds by Respondent 13 towards compensatory afforestation.

27. That in Para 4 of the counter reply Respondent 13 have stated that they have given permission to NHAI to fell trees for construction of afore mentioned road project but failed miserably to inform this Honourable Tribunal the terms, conditions and the laws by which permission for deforestation has been given.



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28. That in the Para 5 of the counter reply Respondent 13 have failed to inform this Honourable Tribunal as to whether he has ascertained the truth of the information provided to him by NHAI. He has not stated the species of trees felled. He has not stated whether more trees have been felled by NHAI or not.

29. That in the Para 6 of the counter reply Respondent 13 has failed to answer why NHAI has disbursed so less funds for compensatory afforestation.

30. That in the Para 7 of the counter reply Respondent 13 has failed to answer why NHAI has deposited the cheque with the West Bengal Wasteland Corporation Private Limited.

31. That Respondent 13 has failed to answer in Paras 6 and 7 what adequate steps he has taken to bring the rest necessary amount from NHAI for compensatory afforestation.

32. That in Paras 8 and 9 of the counter reply no mention has been made by Respondent 13 of the facts that whether the number of trees planted by NHAI is accurate or not, whether the

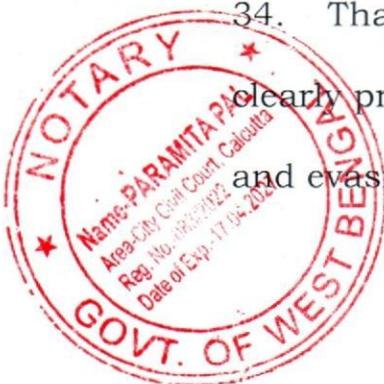


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species of trees as claimed to be planted by them existed there or not at the time of felling, whether different species of trees existed there before and or whether different species of trees have been felled by NHAI and or whether more trees should have been planted and or whether trees planted as per Green Highway Policy of the Govt. of India and or whether the plantation have been done beside the aforementioned expressway where the vacuum has been created by the felling of trees.

33. That in the Paras 10, 11, 12 and 13 of the counter reply Respondent 13 has failed to state whether afore mentioned amount of money has been properly utilized for compensatory afforestation as per Green Highways Policy of the Govt. of India, Indian Forests Act, 1927 and Forest Conservation Act, 1980. So, his claim that his counter reply is based on true records does not hold waters and kind intervention of the NGT is the need of the hour.

34. That Paras 1 and 2 of the Counter Reply of Respondent 6 clearly proves that he is in a mood of unnecessary denial of truth and evasion of his statutory duties.



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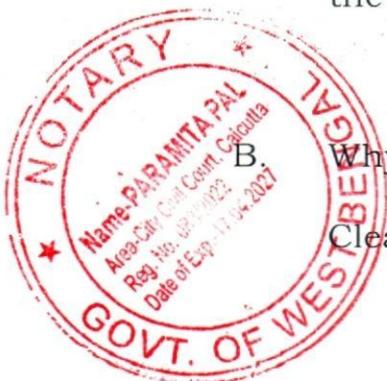
35. That Para 3 of the counter reply of Respondent 6 is accepted and needs no reply.

36. That in the Para 4 of the Counter Reply Respondent 6 has wrongly alleged that the Applicant has made allegations about non-fulfilment of conditions about felling of trees in non-forest areas of West Bengal. The Applicant has not made any wild allegation rather has knocked the door of this Honourable Tribunal for the protection of ecological balance, after seeing the lackadaisical approach of Respondent 6 in eradicating environmental pollution, by presenting true facts. Moreover, the areas are non-forest areas as claimed by Respondent 6 is absolutely false. These are all forest areas.

37. That from Paras 5 to 20 of the counter reply Respondent 6 has failed to answer the following questions:

A. On what grounds he kept on saying paras after paras of the Original Application needs no answer?

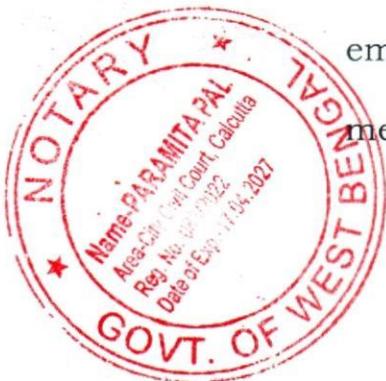
B. Why he has not intervened to see whether Environmental Clearance, Forest Clearance and Pollution Clearance is being



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properly abided by the National Highway Authority of India?

- C. Why he has not intervened to see whether the reports submitted by NHAI with regard to Environmental Clearance, Forest Clearance and Pollution Clearance is true or not?
- D. What steps he has taken to eradicate Air Pollution created by felling of trees by NHAI?
- E. What steps he has taken to eradicate Air Pollution created by improper disbursement of funds by NHAI and improper utilization of funds by Respondent 6 for compensatory afforestation?
- F. What steps he has taken against them?
- G. What steps he has taken to eradicate noise pollution emanating from the horns of vehicles plying on afore mentioned Expressway?



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H. Why he has not bothered to check whether trees have been planted in toto with the environmental laws and on the spots where it is required to be done with regard to the compensatory afforestation in and around the afore mentioned expressway?

I. Why he has not given necessary directions under the environmental laws to check pollution?

38. That it is as clear as daylight that Respondent 6 has done nothing to protect the environment from getting damaged due to occurrence of pollution.

39. That it is crystal clear that Respondent 6 has failed to control environmental pollution by not revoking the EC, FC and Pollution Control Certificates issued to NHAI.

40. That Respondent 6 has intentionally not given any lawful directions to West Bengal Pollution Control Board, who is a sleeping beauty, nor castigated them for failing to control pollution.



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41. That the following submissions, along with the following prayer, may be kindly considered by this Honourable Tribunal for effective implementation of the environmental laws, Green Highway Policies of the Government of India and landmark judgments of Honourable Tribunal by Respondents 6, 13 and NHAI, West Bengal Pollution Control Board and all concerned agencies:

- A. NHAI be kindly directed to deposit 22 crores of rupees needed for compensatory afforestation with Respondent 13.
- B. Respondent 13 be kindly directed to submit compliance report in this regard.
- C. Respondent 6 be kindly directed to proceed under Section 5 of the Environmental Protection Act, 1986 to Respondent 13, NHAI, West Bengal Pollution Control Board to properly utilize the funds and properly carry out reforestation/compensatory afforestation.

D. Respondent 6 be kindly directed to proceed under The Air (Prevention and Control of Pollution) Act, 1981,



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Environmental Protection Act, 1981 and Noise Pollution Rules, 2000 and eradicate air and noise pollution.

- E. Respondent 6 be kindly directed to revoke EC, FC and Pollution Clearance Certificates issued to NHAI and its road construction agencies.
- F. Respondent 6 be kindly directed to submit compliance report with regard to the same.
- G. Respondent 13 be kindly directed to abide by the Green Highway Policies of the Govt. of India.
- H. Respondent 13 be kindly directed to direct NHAI to disburse proper funds and deposit cheque with them as per law for the proper utilization of compensatory afforestation.
- I. Respondent 13 be kindly directed to proceed under the Indian Forests Act, 1927 and Forest Conservation Act, 1980 and enquire the truth of information given to them regarding both deforestation and afforestation by NHAI.



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- J. Respondent 13 be kindly directed to proceed under the Indian Forests Act, 1927, Forest Conservation Act, 1980 and Green Highway Policies of Govt. of India and make NHAI properly plant trees in and around areas of the aforementioned Expressway where trees have been felled.
- K. Respondent 13 be kindly directed to properly utilize the Rs.1,26,27,250/- disbursed by NHAI till now for compensatory afforestation and see to it that afforestation has been done in letter and spirit and fit and proper and on the areas in and around the afore mentioned Expressway where deforestation has been done.
- L. Respondent 13 be kindly directed to submit a compliance report.
- M. In addition to the above, accountability may be fixed on Respondents 6 and 13, NHAI, WBPCB and other agencies and authorities concerned and further direct contempt proceedings for deliberate violation.



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42. That this Honourable Tribunal may consider passing such other directions in addition to the above suggestions, as it deems fit.



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VERIFICATION

I, Subrata Mallick, S/o-Late D.C. Mallick, aged about 50 years, by faith -Hindu, by occupation - Social Service, Quarter No.RIII/81, Bidhannagar Housing Colony, Durgapur, P.S. - New Township, P.O. - ABL Township, District - Paschim Bardhaman, Pin-713206, the applicant herein on behalf of All India Anti-Corruption Organization, do hereby verify that the contents of the above paragraphs are true to the best of my Knowledge and grounds are based on legal advice and that I have not suppressed any material fact.

Date: 12 4 JUN 2024

Place:

ALL INDIA ANTI CORRUPTION ORGANIZATION  
Subrata Mallick  
DEPONENT  
Add. Director Crime

Identified by me

Identified by me  
Subh Banerji  
Advocate  
W.B. 640/2012



Solemnly affirmed and declared  
me on identification  
PARAMITA PAL  
City Civil Court  
Kolkata  
Reg No 083/2022

12 4 JUN 2024

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REJOINDER AFFIDAVIT ON  
BEHALF OF THE  
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