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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO. 120/2024/EZ



In The Matter of:
Sushil Murmu

... Applicant

Versus

Union of India & Ors.

... Respondents

AFFIDAVIT ON BEHALF OF THE RESPONDENT NUMBER 02,
ADDITIONAL CHIEF SECRETARY, DEPARTMENT OF FOREST,
GOVERNMENT OF WEST BENGAL AND RESPONDENT NO.5 DFO
PURULIA.

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Filed by
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07 AUG 2024

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO. 120/2024/EZ

In The Matter of:

Sushil Murmu

... Applicant

BEFORE THE NOTARY PUBLIC
AT BIDHANNAGAR
DIST.-NORTH 24 PARGANAS

Versus

Union of India & Ors.

... Respondents

AFFIDAVIT-IN-OPPOSITION ON BEHALF OF THE RESPONDENT NUMBER 02, ADDITIONAL CHIEF SECRETARY, DEPARTMENT OF FORESTS, GOVERNMENT OF WEST BENGAL and Respondent Number 05, Divisional Forest Officer, Purulia Division.

I, Ranjan Kumar Das S/o Bholanath Das, aged about 47 years, by occupation- service and presently posted as the Joint Secretary Forest Department, Government of West Bengal, having office address at Aranya Bhawan, Block-LA, 10A, Sector-III, Salt Lake City, Kolkata: 700106, West Bengal, do hereby solemnly affirm and submit as follows:-

1. That I am the Joint Secretary in the Department of Forests, duly authorized by the Additional Chief Secretary, Department of Forests, Government of West Bengal being impleaded as respondent number 02 above-named. I, on behalf of the respondent number 02, as well as respondent number 05, Divisional Forest Officer, Purulia Division am competent to swear and affirm this affidavit for and on behalf of

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myself and the Department. That I am affirming this after perusal of the official documents and files in this office.

2. That this affidavit/Counter Affidavit is being filed in compliance and obedience to the Solemn Order dated 31.05.2024, passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata.
3. That at the outset it is submitted that the present original application relates to a proposed diversion of 234 Ha of forest land in the Ajodhya hills in the Baghmundi Block in the district of Purulia in the State of West Bengal with respect to construction of 1000 MW Turga Pumped Storage Project by the State PSU namely West Bengal State Electricity Distribution Company Limited (hereinafter for the sake of brevity referred to as the WBSEDCL) being the respondent number 07 herein.



The said project is one of the four projects proposed by the WBSEDCL based on identification by the Central Electricity Authority (CEA). In the mid 1960's the Central Electricity Authority, Ministry of Power, Government of India had identified 4 (Four) potential Pumped Storage Project (PSP) Sites in the Ajodhya Hills of Purulia district namely Kistobazar PSP, Turga PSP, Bandhu PSP and Kathlajal PSP and the WBSEDCL (Previously known as the WBSEB) along with Geological Survey of India, Government of India carried out technical and geological feasibility of the projects.

4. The proposal for the said diversion as stated above had been prepared, finalized and uploaded by the User Agency in the website of MoEF & CC, Government of India, under Section 2 of the Forest Conservation Act, 1980 and for its further processing, the User Agency had applied to the District Magistrate/Purulia for Forest Rights Act compliance in accordance with the guideline issued by the MoEF & CC and also forwarded the proposal to the Divisional

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Forest Officer, Purulia as per Rule 6(2) of the Forest Conservation Rules, 2023.

5. That as per Rule 6(3)(d) of the Forest Conservation Rules, 2023, the office of the Divisional Forest Officer, Purulia had checked all the factual details and feasibility of the proposal, certifies the maps, did enumeration of trees at the proposed site for diversion and forwarded the report in prescribed format for Stage-I Forest Clearance approval to the Nodal Officer, FCA, West Bengal. It is worth mentioning here that no human habitation or recorded Individual Forest Rights or Community Forest Rights was found to be present in the entire 234 ha of landscape, proposed for diversion, during the Joint site inspection.
6. That thereafter, The User Agency forwarded all the additional documents/data/drawings for the said diversion, for approval of Stage-I Forest Clearance for the said project.
7. That Stage-I Forest Clearance approval was accorded to the said project. Upon receipt of the Stage-I approval, Environmental Clearance was also granted to the project.
8. That as per the condition no. (ix) stipulated in the Stage-I clearance issued by MOEFCC, Wildlife Conservation Plan was prepared and finalized by the Office of the Divisional Forest Officer, Purulia Division, which was duly approved by the Principal Chief Conservator of Forests, Wildlife and Chief Wildlife Warden, West Bengal. As per the Stage-I Forest Clearance of the said project, compliance reports were sent in proper format regarding fulfilment of all the conditions stipulated in it.
9. That Stage-II Forest clearance was also granted to the said project on the basis of compliance reports furnished by the State Govt. vide



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its letters 1395-For/O/L/10T-12/2017 dt. 22.12.2017, 314-For/O/L/10T-12/2017 dt. 11.03.2022, 678-For/O/L/10T-12/2017 dt. 12.05.2022 & 1281-For/O/L/10T-12/2017 dt. 01.09.2022, under Section-2 of Forest Conservation Act, 1980 for the said diversion. As per the Part-B, Chapter-2, Para-2.3 of the book titled as 'Handbook of Forest (Conservation) Act, 1980 & Forest Conservation Rules, 2003 (Guidelines & Clarifications), MOEFCC, 2019, 234 ha of non-forest land was arranged by the User Agency and handed over & mutated in favour of WB State Forest Department for carrying out compensatory afforestation. As per condition no. B. (ii) & (iii) stipulated in the Stage-II clearance of the proposal dated 13.10.2022, Compensatory Afforestation plantation and Soil Moisture Conservation works are undergoing. Out of the target of 234 ha of Compensatory Afforestation in four different forest divisions, till now 106.445 ha has been achieved and the rest is in under progress, as follows:



Sl. No.	Division	District	Target (in ha)	Achieved (in ha)	Remarks
1	Kangsabati North Division	Purulia	41.105	41.105	
2	Kangsabati South Division	Purulia	8.63	7.19	
3	Baikunthapur Division	Jalpaiguri	158.96	58.15	
4	Medinipur Division	Paschim Medinipur	25.39	0	The plantation to be created in this financial year i.e, 2024-2025
	Total		234.085	106.445	

A copy of the details of CA plantation as submitted by the Conservator of Forests & Joint CEO, WB CAMPA is annexed herewith and marked as "R-1".

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10. That after fulfilment of the three conditions that need to be complied prior to handing over of the Forest Land to the User Agency, the Office of this respondent had initiated the process of boundary demarcation as well as works related to tree felling at the diverted 234 ha of forest land as per the condition no. (xxii) & (xxx) of the Stage-I clearance dated 12.04.2018, and also as per the directions received from time to time for which two tender notices, namely, NIT No.-WBFOR/DFOPUR/NIT-12/2023-24 & NIT No.-WBFOR/DFOPUR/NIT-13/2023-24 were issued on 13.06.2023 & 15.06.2023 respectively. However, due to non-submission of sufficient number of bids in the first call, both the tenders were re-tendered for 2nd call which were finally matured.

11. That it is also pertinent to mention herein, that the Divisional Forest Officer, Purulia vide his letter no. 2846/8-5/2(a) dated 15.07.2024 has communicated the Principal Chief Conservator of Forests & Head of Forest Force, West Bengal, that it was experienced in the recent past, that there is a strong resistance of local community, due to the reasons best known to them, towards implementation of the instant Project. It has already led to a Law and Order unrest and may also lead such a situation in future as anticipated based on recent time ground level discussion at various corners.

A copy of the said letter is annexed herewith and marked as "R-2".

12. That it may not be out of place to mention that a communication dated 12th April, 2018 was made from the Centre to the State, wherein the In- principle approval conveyed by the FAC stands subject to fulfilment of forty conditions specified in the said communication. In that letter Condition xxiii relates to Settlement of the Rights of Scheduled Tribes and Other Traditional Forest Dwellers.

13. The issue relating to the in principle approval went up the Hon'ble High Court at Calcutta, whereby The Hon'ble Division Bench

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comprising of their Lordships The Hon'ble Justice Subrata Talukdar and The Hon'ble Justice Saugata Bhattacharyya by a Judgment and Order dated December 23, 2021, were inter alia pleased to observe "...The issue of settlement of rights as recommended by the State shall be now examined at the appropriate level by the Central Government in consonance with the requirement of Condition xxiii of the letter dated 12th April 2018. The writ petitioners, or their authorized representative, shall also be entitled to place their presentation before the Central Government, upon being put to prior notice. Needless to add, the other Conditions set forth in the letter dated 12th April, 2018 shall also be examined in accordance with law..."

A Copy of the said Judgment and Order is marked as Annexure R3.

14. That save and except those which are matters of record and which are specifically admitted by me hereinabove, each and every allegation, and/or contention, and/or submission, contained in the said Original Application, is denied and disputed as if the same is set out in seriatim herein and specifically traversed.
15. That it is submitted that the Applicant has not made out any case as to how the directions of the said Judgment and Order was not fulfilled. Thus, the Original Application is vague and omnibus.
16. That it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to pass necessary Order/Orders as is deemed fit for the ends of justice and that the deponent has high regard to the Order/Orders as passed by this Hon'ble Tribunal.

Identified by me

Sibojyoti Chakrabarti
Advocate

State of West Bengal

07/08/2024

Rangan Kumar Das
(Deponent 07/08/2024)

Joint Secretary
Deptt. of Forests
Govt. of West Bengal

S. CHAUDHURI
★ NOTARY ★
GOVT. OF INDIA
Regd. No.-6584/08
Bidhannagar Court
Dist.-North 24 Pgs.

07 AUG 2024



BEFORE THE NOTARY PUBLIC
AT BIDHANNAGAR
DIST.-NORTH 24 PARGANAS

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VERIFICATION:

I, the deponent above- named, do hereby verify and declare that the statements made in the aforesaid paragraphs are true and correct to the best of my knowledge and information, which are gathered from the official files and documents present in the office and I believe that nothing material has been concealed there from.

Verified at Kolkata on the 7th Day of August, 2024.

Identified by me

Sibajyoti Chakrabarti
Advocate
State of West Bengal
07/08/2024

Rangan Kumar Das
Deponent
Joint Secretary
Deptt. of Forests
Govt. of West Bengal
07/08/2024

S. Chaudhuri
S. CHAUDHURI
NOTARY
GOVT. OF INDIA
Regd. No.-6584/08
Bidhannagar Court
Dist.-North 24 Pgs.

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Details of CA Plantations achieved till date (08/07/2024) with regard to 1000MW
Purulia Pumped Storage Project (Turga Project)

Sl No.	Division	Target (Ha.)	Achievement (Ha.)	Balance (Ha.)	Remarks
1	Kangsabati (South)	8.63	7.19	1.44	
2	Kangsabati (North)	41.105	41.105	-	
3	Baikunthapur	158.96	58.15	100.81	
4	Medinipur	25.39	-	25.39	The plantation to be created in this current financial year i.e. 2024-25
Total		234.085	106.445	127.64	

* For Pre-project activities under Integrated Wildlife Management Plan (IWMP) component, no fund could be released since the fund amounting Rs. 53.55 crores only earmarked for the said component was transferred to State Compensatory Afforestation Fund (SCAF) only in the month of January, 2024

Submitted to
CCF/HR, WB.

[Signature]

Conservator of Forests & Joint CEO,
W.B. CAMPA



Government of West Bengal
Directorate of Forests,
Office of the Divisional Forest Officer,
Purulia Division

Phone No. : 03252 - 222329 & FAX No. : 03252 - 228323

Email: dfopfd@gmail.com & dfopur-wb@ntc.in

No. 2846/8-5/2(a) Dated, Purulia, 15/07/2024

From : The Divisional Forest Officer,
Purulia Division.

To : The Principal Chief Conservator of Forests &
Head of Forest Force, West Bengal

Sub. : Execution of works regarding Turga Pumped Storage Project (TPSP)-regarding

Ref: 1. Chief Engineer/PSPD, WBSEDCL Memo no. PSPD/2F2/Turga-Forest
(Compliance)/389 dt. 13.03.2024

2. Original Application no. 120 of 2024/EZ/NGT

Whereas Stage-I & Stage-II approvals from Govt. of India have been accorded vide MOEFCC F.No. 8-51/2017-FC, dt. 12.04.2018 and MOEFCC F.No. 8-51/2017-FC, dt. 13.10.2022 respectively regarding execution of Turga Pumped Storage Project by West Bengal State Electricity Development Corporation Limited (WBSEDCL) , and

Whereas the undersigned has already floated Tenders for tree felling and boundary demarcation vide Tender no. WBFOR/DFOPUR/NIT-12/2023-24 dt. 13.06.2023 & Tender no. WBFOR/DFOPUR/NIT-13/2023-24 dt. 15.06.2023, in accordance with the provisions mentioned under condition no. (xxii) & (xxx) in the Stage-I approval for the said Project dated 12.04.2018 and already received L1 approval from Competent Authority vide Joint Secretary, Department of Forests, West Bengal, No. 1/493385/2024(1/3) dated 07.03.2024, and

Whereas Model Code of Conduct has been placed in vogue since 16.03.2024 and hence the Work Order could not be issued, and

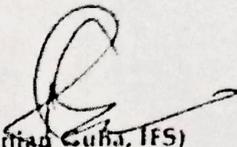
Whereas on 03.06.2024, the undersigned received the petition vide Original Application No. 120/2024/EZ before hon'ble NGT by one Shri Sushil Murmu, prior to the withdrawal of Model Code of Conduct on 06.06.2024, and



Whereas it has been experienced in the recent past, that there is a strong resistance of local community, due to the reasons best known to them, towards implementation of the Project, which already led to Law & Order situation and also may lead to such situation in future, as anticipated based on recent time ground level discussion at various corners.

Hence, the Work Order in question may be kept pending till the kind direction of Honourable NGT.

*



(Anjan Guha, IFS)

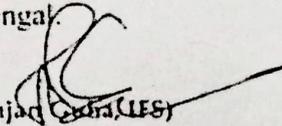
Divisional Forest Officer,
Purulia Division

Dated, Purulia, 15/07/2024

No. 2846/8-5/2(a)

Copy forwarded for information to:

1. The Conservator of Forests/South-West Circle, Govt. of West Bengal.



(Anjan Guha, IFS)

Divisional Forest Officer,
Purulia Division

*

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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR
AND
HON'BLE JUSTICE SAUGATA BHATTACHARYYA

M.A.T. 1156 of 2019
With
CAN 1 of 2019(Old No. CAN 9607 OF 2019)
CAN 2 of 2019(Old No. CAN 10307 OF 2019)
CAN 3 of 2020

WBSedCL & Anr.

vs.

Rabi Besra & Ors.

With

M.A.T. 1396 of 2019
With
CAN 1 of 2019(Old No. CAN 10259 OF 2019)
CAN 2 of 2019(Old No. CAN 10262 OF 2019)

The State of West Bengal

vs.

Rabi Besra

For the Appellants
In MAT 1156 OF 2019

: Mr. L.K. Gupta
Mr. Sujit Sankar Koley

For the Appellants
In MAT 1396 OF 2019

: Ld. Advocate General Mr. Subhabrata
Datta

Ld. Advocate General Mr. Debasish
Sarkar

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For the UOI : Mr. Nandalal Singhania
In both the appeals : Mr. Sankar Sarkar

For the respondents/ writ petitioner : Mr. Ambar Majumder
Mr. Ashirbad Sarkar

Heard on : 30/09/2021

Judgment on : 23/12/2021

Subrata Talukdar, J: The primary issue in this appeal arising out of the writ petition on the self-same point pertains to the steps taken by the State of West Bengal to submit a proposal to the Central Government seeking prior approval of the latter under Section 2 of the Forest (Conservation) Act, 1980 (for short *the 1980 Act*) for diversion of 234 hectares (234ha) of forest land for construction of the 1000 MW. Turga Pumped Storage Project of the West Bengal State Electricity Development Corporation Limited (for short *SEDCL*), also referred to as the User Agency, in Ayodhya Hills under Purulia Forest Division (for short referred to as the said Project).

Responding to the State's proposal dated 18th September 2017 seeking prior approval of the Central Government (*supra*), by a reply dated 12th April 2018 addressed on behalf of the Ministry of Environment, Forests and Climate Change (MoEF&CC), it was, *inter alia*, stated that the proposal of the State was examined by the Forest Advisory Committee (FAC) constituted by the Central

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Government under Section 3 of the 1980 Act. Further, by the said communication dated 12th April 2018, the *In-principle* approval for diversion of 234ha of forest land for the said Project on the basis of the examination of the State's proposal by the FAC was made subject to fulfilment of XL/ 40 (Forty) conditions, as also stated in the letter dated 12th April 2018.

In the light of the aforesaid developments, the writ petitioners, who are three in number and are the respondents in both the appeals, arrived before the Hon'ble Single Bench seeking a writ of *Mandamus* upon the respondent authorities, both State and Centre, not to give any effect or further effect to the *In-principle* approval as granted by the FAC to *the said Project*. The writ petitioners also prayed for a writ of *Mandamus* declaring the Certificate issued by the District Magistrate, Purulia dated 13th of June 2017, *inter alia*, declaring that the work of settlement of rights of Scheduled Tribes and Other Traditional Forest Dwellers *qua the said Project* land has been completed, to be declared *void ab initio*.

By further praying for a writ of *Certiorari*, the writ petitioners urged the Hon'ble Court to call for the records and documents showing compliance of procedure by the Project Authorities of the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short *the 2006 Act*).

The primary contention of the writ petitioners before the Hon'ble Single Bench in the writ petition being WP No. 20576 (W) of 2018 with its connected



CAN 3341 of 2019 (for short *the said writ petition*) related to non-compliance by the Project Authorities of the provisions of *the 2006 Act* which protect the rights of Scheduled Tribes and Other Traditional Forest Dwellers from being encroached without the authority of law by the Project Authorities. It is submitted on behalf of the writ petitioners/the respondents to both these appeals by Mr. Ambar Majumder, Learned Counsel, that *the 2006 Act* provides for a detailed mechanism to consult the adult members of each village likely to be affected by *the said Project* and referred to as Gram Sabhas.

It is submitted that the DM, Purulia forwarded the certification dated 13th of June 2017 holding that the consultative mechanism provided by *the 2006 Act* has been completed and the Gram Sabhas have given their consent. It has been also certified by the DM, Purulia that no person has been given *patta* under *the 2006 Act* of the land in the project area and no person is in possession of forest land, also in the Project area. It is submitted by the writ petitioners/ the respondents to these appeals that *the 2006 Act*, particularly Section 3 thereof, protects both individual and community forest rights of Scheduled Tribes and Other Traditional Forest Dwellers. Although the procedure for consulting the Gram Sabhas has been clarified by the notices issued by the DM, Purulia to the effect that in compliance of the Scheduled Tribes and Other Traditional Forest Dwellers, (Recognition of Forest Rights Rules), 2008 (for short *the 2008 Rules*), the consultative mechanism in respect of each Gram Sabha within the project area was also initiated, the writ petitioners allege that actually no such consultative mechanism was followed

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prior to certifying the project area to be free from encumbrances. It is submitted that while proposing to obtain an *In-principle* approval from the Central Government, the State has been unable to show that the requirement of displacing the forest habitat *qua the said Project* was met by seeking the consent of each Gram Sabha represented by at least fifty percent of its adult population and also the public circulation of the requirement of the forest land for the project amongst the members of each Gram Sabha in a language comprehensible to the villagers.

The State was not represented before the Hon'ble Single Bench at the hearing. Neither did the State file an affidavit-in-opposition to the writ petition.

The User Agency/*SEDCL* and the Union of India were though represented before the Hon'ble Single Bench as respondents to the writ petition.

By a detailed order, the Hon'ble Single Bench noticed the requirement of specific compliance with the provisions of *the 2006 Act*. It was, *inter alia*, held that there is nothing on record to suggest that resolutions in favour of the said Project were taken by each and every Gram Sabha under Section 3 (2) of *the 2006 Act*. Therefore, in the absence of compliance with the provisions of *the 2006 Act*, the Hon'ble Single Bench quashed the *In-principle* approval granted by the Central Government, also quashing the purported resolutions of the Gram Sabhas and permission granted by the State Government to implement the project.

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It was made clear that the Judgement and Order of the Hon'ble Single Bench dated 2nd July 2019 shall not prevent the Project Authorities from taking recourse in accordance with law to *the 2006 Act* for implementing the project.

Aggrieved by the Judgement and Order dated 2nd of July 2019 the State, being one of the implementing Project authorities and the SEDCL, being the User Agency for *the said Project*, have filed the instant appeals respectively being MAT 1396 of 2019(MAT-I) and MAT 1156 of 2019 (MAT-II).

The State appellants represented by the Learned Advocate General and ably assisted by Mr. Subhabrata Datta, Learned Junior Government Advocate, argue that the writ petition is premature since, as on the date of the communication dated 12th April, 2018 from the Centre to the State, the *In-principle* approval conveyed by the FAC stands subject to fulfilment of forty conditions specified in the said communication. It is submitted that in the event if all the conditions are not fulfilled, the *In-principle* approval of the project will lapse.

This Court is taken copiously to the contents of the communication dated 12th April 2018. Reference is drawn to *Condition No. xxiii* of the said conditions. It is submitted that *Condition xxiii* relates to Settlement of the Rights of Scheduled Tribes and Other Traditional Forest Dwellers. It is pointed out that the onus has been placed on the State Government to *complete settlement of rights in terms of the 2006 Act* and providing documentary evidence as

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prescribed by the MoEF&CC in support thereof. Such documentary evidence would have to be in compliance with the MoEF&CC's orders dated 3rd August 2009 and 5th July 2013.

Therefore, it is argued that until *Condition No. xxiii* is satisfied and such condition directly relates to the issue of compliance of *the 2006 Act* raised by the writ petitioners before the Hon'ble Single Bench, the said Project can only be approved if all forty Conditions, including *Condition No. xxiii* stand fulfilled.

On the issue of the consultative mechanism *qua* Gram Sabhas stipulated by *the 2006 Act*, State takes the position that out of a total of seventeen villages said to have fallen within the Project area, one village is not within the Project area at all. Of the remaining, eleven villages fall under Ayodhya Gram Panchayat and five within Bagmundi Gram Panchayat. It is submitted that the consultative mechanism envisaged by *the 2006 Act* does not dispense with the role of Gram Panchayats acting as the vehicle for expression of consent by the Gram Sabhas under them.

In addition to the above points, the State takes the point of absence of *locus* of the three writ petitioners to maintain the writ petition at all. On the basis of facts emerging from documents produced at the hearing, the State submits that none of the writ petitioners are either Scheduled Tribes and Other Traditional Forest Dwellers requiring protection under *the 2006 Act*. It is submitted that only one of the writ petitioners is stated to be a resident within the Project area. It is urged that the writ petitioners therefore cannot espouse

any legal right more so, on behalf of others, in respect of whom they (i.e. the writ petitioners) purport to file the writ petition, which is not even filed in representative capacity. Therefore, the State urges that the writ petition ought to have been dismissed *in limine* and this appeal should succeed at the very threshold.

On behalf of the User Agency, i.e. the *SEDCL*, Mr. L.K. Gupta, Learned Senior Counsel appears and takes the point outright that *the said Project* stands outside the purview of Section 3 (2) of *the 2006 Act*. It is argued that Chapter II of Section 3 (1) provides for the Forest Rights of Scheduled Tribes and Other Traditional Forest Dwellers. After such rights are enumerated in Section 3 (1), Section 3 (2) thereafter provides for the Central Government allowing for the diversion of the forest land *notwithstanding* anything contained in *the 1980 Act* connected to certain specific projects/ facilities managed by the Government which involve felling of trees. It is submitted that such facilities/ projects covered by Section 3(2) (*supra*), *inter alia*, relate to non-conventional sources of energy. It is submitted that *the said Project*, being hydel in nature, is a conventional source of energy and hence Section 3(2) stands inapplicable at the threshold.

Since the premise connected to the project itself laid down by Section 3 (2)(*supra*) stands to be inapplicable, its *Provisos* axiomatically stand inapplicable. Specific mention is made by Learned Senior Counsel for *SEDCL* to *Proviso II* requiring the Forest projects to be first recommended by the Gram Sabhas. It is urged that with *the said Project* not falling within the purview of

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Section 3(2) at all, the compliance of *Proviso (II)* as raised by the writ petitioners is wholly unnecessary.

Having considered the rival submissions and closely examined the materials placed, this Court arrives at the following findings:

- A)** That the non-application of Section 3(2) of *the 2006 Act* as raised by Learned Counsel for the User Agency/*SEDCL*/ the appellants in *MAT-II* requires to be first addressed. The premise on which Section 3(2) is based relates to facilities/projects managed by the Government which involve felling of tree which shall not exceed 75 trees per hectare. Therefore there is an arithmetical dimension to the application of 'Section 3(2) in respect of projects/facilities which involve the felling of trees specifically fixed at not exceeding 75 trees per hectare.
- B)** Keeping such arithmetic in mind *the said Project* area comprises in all 234 hectares. The total number of trees required to be felled for the said Project as recommended by the Conservator of Forests(Central) (pages 224-229 of the State' Paper Book) is 6816. Therefore, on an arithmetical basis, the number of trees required to be felled per hectare of the said Project is approx. 30 – a figure well within the limit of 75 trees per hectare provided by Section3(2).
- C)** With further regard to the arguments placed by Learned Senior Counsel for the User Agency, the attention of this Court is drawn to the contents of the National Electricity Plan (Vol.-I), Generation, as



issued by the Central Electricity Authority (CEA) Ministry of Power, Government of India in January 2018. Item 5.1 under Chapter 5 reads as follows:

“5.1 OPTIONS FOR POWER GENERATION IN INDIA

Coal is the major source for power generation in our country and since Low Carbon Growth Strategy has to be followed, other generation options need to be harnessed in the most optimum manner.

Fuel Options available for Power Generation are:

- *Conventional Sources- Coal and Ignite, Hydro, Nuclear natural gas*
- *Non-Conventional Renewable Energy Sources- Solar, Wind, Biomass, small hydro, tidal, Geothermal, Waste to energy, Hydrogen/fuel cells, etc.”*

D) From item 5.1(*supra*) the position stands unassailable that *the said Project* being hydel in nature is a conventional source of energy. Since Section 3(2) of *the 2006 Act* confers blanket clearance to projects involving non-conventional sources of energy, *the said Project* stands admittedly outside the purview of Section 3(2)(*supra*).

E) Moving on from the pure factual indices offered by Section 3(2) of *the 2006 Act*, this Court is required to examine whether the Hon'ble Single Bench was *absolutely* justified in directing the respondent State/ Central Governmenta/ the User Agency to undertake the process under *the 2006 Act* afresh.



This Court is also required to examine whether having regard to the contents of the communication dated 12th April 2018, particularly *Condition xxiii* thereof disclosing, *inter alia*, that *the said Project* is still at the approval stage, whether the Hon'ble Single Bench was correct in cancelling the exercise outright at this stage.

- F)** At the heart of the controversy raised by the writ petitioners lies the consultative mechanism *qua* Gram Sabhas. While on the one hand, the writ petitioners insist on disclosure of the complete consultative mechanism in terms of the 2008 Rules attached to *the 2006 Act*, it will not be out of place to also notice the merits of the nature of the consultative exercise disclosed by the State leading up to its recommendation for confirmation of the *In-principle* approval.
- G)** The State has submitted that the villages within *the said Project* area are part of two Gram Panchayats namely, Ayodhya and Bagmundi. The State has disclosed the assent of the two Gram Panchayats, i.e. Ayodhya and Bagmundi. Now, the definition of Gram Sabha provided under Section 2(g) of *the 2006 Act* reads as follows :

“(g) “Gram Sabha” means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women;”



The definition of a Gram Panchayat in the West Bengal Panchayat Act, 1973 (for short, *the 1973 Act*) *vide* Section 4 thereof reads as follows :

“Section 4. Gram Panchayat and its constitutions.- (1) For every Gram the State Government shall constitute a Gram Panchayat bearing the name of the Gram. (2) Persons whose names are included in the electoral roll 2 [prepared in accordance with such rules as may be made by the State Government in this behalf and in force on such date as the State Election Commissioner may declare for the purpose of an election] pertaining to the area comprised in the Gram, shall elect by secret ballot at such time and in such manner as may be prescribed, from among themselves such number of members 3 [not being less than five] or 4 [more than thirty] 5 [as the prescribed authority may, having regard to the number of voters in hill areas and other areas and in accordance with such rules as may be made in this behalf by the State Government, determine

Provided that seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in a Gram Panchayat, and the number of seats so reserved shall bear, as nearly as may be and in the manner and in accordance with such rules as may be made in this behalf by the State Government, the same proportion to the total number of seats in that Gram Panchayat to be filled up by election as the population of the Scheduled Castes in that Gram or of the Scheduled Tribes in that Gram, as the case may be, bears to the total population of that Gram and such seats shall be subject to allocation by rotation, in the manner prescribed, to such different constituencies having Scheduled Castes or Scheduled Tribes population which bears with the total population in that constituency not less than half of the proportion that the total Scheduled Castes population or the Scheduled Tribes population in that



Gram, as the case may be, bears with the total population in that Gram."

The definition of Gram Sabha is provided in Section 2(11a) of the 1973 Act and reads as follows:

"11(a) "Gram Sabha" means a body consisting of persons registered in the electoral rolls pertaining to a Gram declared as such under sub-section (1) of section 3;"

Section 2(10) and Section 2(11) of the said 1973 Act refer to Gram and Gram Panchayat and read as follows :

"(10) "Gram" means an area referred to in section 3;

(11) "Gram Panchayat" means a Gram Panchayat constituted under section 4;"

Finally Section 3 of the 1973 Act defines the area which forms part of a Gram and reads as follows:

"3. Gram. - (1) The State Government may, by notification, declare for the purposes of this Act any mauza or part of a mauza or group of contiguous mauzas or parts thereof to be a Gram: 3 Provided that any group of mammas or parts thereof, when they are not contiguous or have no common boundaries and are separated by an area to which this Act does not extend or in which the remaining sections of this Act referred to in subsection (3) of section 1 have not come into force, may also be declared to be a Gram.



(2) The notification under sub-section (1) shall specify the name of the Gram by which it shall be known and shall specify the local limits of such Gram.

(3) The State Government may, after making such enquiry as it may think fit and after consulting the views of the Gram Panchayat or Panchayats concerned, by notification—

(a) exclude from any Gram any area comprised therein; or

(b) include in any Gram any area contiguous to such Gram or separated by an area to which this Act does not extend or in which the remaining sections of this Act referred to in sub-section (3) of section 1 have not come into force; or

(c) divide the area of a Gram so as to constitute two or more Grams, or

(d) unite the area of two or more Grams so as to constitute a single Gram.”

H) Therefore, to the mind of this Court from a conjoint reading of the 2006 Act and the 1973 Act the following may be deduced.

That Gram Sabha would mean a village assembly under *the 2006 Act* and, in case of States having no Panchayats, such village assembly shall include other traditional village institutions.

That in the context of a State such as West Bengal, the Gram Sabha, as statutorily defined, essentially indicates an electoral-



cum-geographical area comprising villagers residing in a particular Gram.

That again in the context of the State of West Bengal the statutory administrative unit for every Gram shall be the Gram Panchayat elected on the basis of adult franchise including women.

- I) In the light of the discussion at the **Paragraph-F** above, the disclosure by the State of the consent of Ayodhya and Bagmundi Gram Panchayats comprising the villages stated to be within *the said Project* area requires to be tested. It also requires to be tested whether the specific consent mechanism enshrined in the 2008 Rules attached to *the 2006 Act* as also notified by the DM, Purulia at the pre-recommendation stage of *the said Project* stands essentially fulfilled.

It must be also noticed that, as stated in the communication dated 12th of April 2018 the *In-principle* approval is not final but subject to fulfilment of settlement rights as provided by the 2006 Act. Reference may be had to *Condition xxiii* which requires the State Government/User Agency to complete the settlement of rights in terms of *the 2006 Act* and submit documentary evidence thereof. For the benefit of this discussion *Condition XXIII* stands quoted below :

“(xxiii). The State Government shall complete settlement of rights, in terms of the Scheduled Tribes and Other



Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, if any, on the forest land to be diverted and submit the documentary evidence as prescribed by this Ministry in its letter No. 11-9/1998-FC(pt.) dated 03.08.2009 read with 05.07.2013, in support thereof”

- J)** Accordingly, in terms of *Condition xxiii*, the issue of consent of the Gram Sabhas is still open for scrutiny under Section 2 of *the 1980 Act* by the appropriate authority constituted by the Central Government. It has been clearly conveyed by the communication dated 12th of April 2018 that there shall be no transfer of forest land to the User Agency till formal orders approving the diversion of forest land are issued by the Central Government. In the above view of the matter this Court finds substance in the argument of the State appellants that the writ petition is premature, although at the same time this Court does appreciate that compliance of the terms of *the 2006 Act* pertaining to rights of Scheduled Tribes and Other Traditional Forest Dwellers is an issue which requires scrutiny at the appropriate level.
- K)** This Court is now also required to notice certain supplementary but important facts.

That it is the second Project of its type in the Purulia region named as the Turga Pumped Storage Scheme. The previous project by the name of Purulia Pumped Storage Scheme is already operational. The

Geological Survey of India had conducted feasibility studies in 1978-1979.

That the Project is suitable for the terrain from the technical point of view.

That the Project is likely to generate permanent/ regular employment for 169 persons and temporary employment for 1890000 persons.

That the Project area also comprises of an Elephant corridor for a herd of around 14 wild elephants. However, the Project work involves minimum to nil displacement of humans, fauna and flora.(Source: Site Inspection Report of the Conservator of Forests (Central); (Pages 224-229 of the State' Paper Book).

It would be not without significance to notice that the above topographical, social, economic and natural facts stood uncontroverted at the hearing.

For the reasons as already stated above in this Judgement and Order, this Court is not persuaded to agree with the finding of the Hon'ble Single Bench that the consultative mechanism involving Gram Sabhas under *the 2006 Act* read with its 2008 Rules has been absolutely subverted.

This Court finds that the consultative mechanism performed and placed by the State requires to be tested at the appropriate level whether reflective of the consent of the minimum required adult members, including women, in villages covered by the *said Project* area.

For the above reasons, the Judgement and Order of the Hon'ble Single Bench dated 2nd July, 2019 directing the process of settlement to be executed afresh stands set aside.

The issue of settlement of rights as recommended by the State shall be now examined at the appropriate level by the Central Government in consonance with the requirement of *Condition xxiii* of the letter dated 12th April 2018. The writ petitioners, or their authorized representative, shall also be entitled to place their presentation before the Central Government, upon being put to prior notice. Needless to add, the other *Conditions* set forth in the letter dated 12th April, 2018 shall also be examined in accordance with law.

M.A.T. 1156 of 2019 with CAN 1 of 2019(Old No. CAN 9607 of 2019), CAN 2 of 2019(Old No. CAN 10307 of 2019), CAN 3 of 2020 and M.A.T. 1396 of 2019 with CAN 1 of 2019(Old No. CAN 10259 OF 2019), CAN 2 of 2019(Old No. CAN 10262 OF 2019) stand accordingly disposed of.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities

I agree.

(Saugata Bhattacharyya, J.)

(Subrata Talukdar, J.)

X

BEFORE THE HON'BLE NATIONAL
GREEN TRIBUNAL EASTERN ZONE
BENCH, KOLKATA

O. A. No. 120/2024/EZ

In The Matter of:

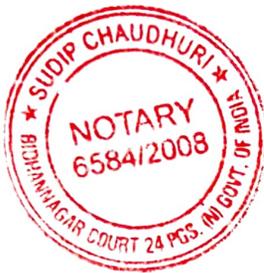
Sushil Murmu

... Applicant

Versus

Union of India & Ors

... Respondents



AFFIDAVIT ON BEHALF OF THE
RESPONDENT NUMBER 02,
ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF FORESTS,
GOVERNMENT OF WEST BENGAL
AND RESPONDENT NO.5, DFO
PURULIA DIVISION.

SIBOJYOTI CHAKRABARTI
Advocate

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07 AUG 2024