

SL. No. 1/23

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION No. 87/2023/EZ

IN THE MATTER OF:

Abhiram Baskey and Anr

..... Applicants

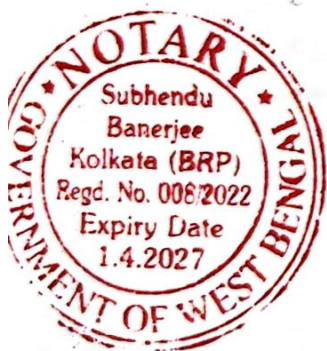
VERSUS

State of Odisha and Ors

..... Respondents

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Dated: 02/11/2023

Place: Kolkata

Filed by

Anamika Pandey
Anamika Pandey

Advocate

High Court, Calcutta

Hastings Chamber,

7C, Kiran Shankar Ray Road,

2nd Floor, Room no. 206,

Kolkata - 700 001

Sudipta Sarkar
02-11-2023
उपनिदेशक (प्रबो. एवं मूल्या. निदे.)
Deputy Director (Mon. & App. Dte.)
केंद्रीय जल आयोग
Central Water Commission
भारत सरकार/Govt. of India
कोलकाता/Kolkata

02 NOV 2023

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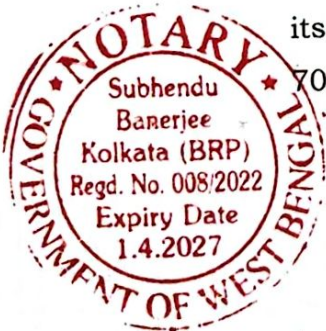
State of Odisha and Ors

...Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT No 3
CENTRAL WATER COMMISSION

I, Sudipta Sarkar, S/o Late Bijoy Pada Sarkar, aged about 58 years, employed as Deputy Director, Monitoring & Appraisal Directorate, Central Water Commission, Kolkata, functioning at Kolkata, having its office at Bidhannagar, GE-2, Sector 3, Kolkata, West Bengal 700106 do hereby solemnly affirm and declare as under:

1. That I am duly authorized and competent to swear this affidavit on behalf of Central Water Commission, in the above matter.
2. That I have read and understood the order passed by the Hon'ble NGT, EZ Bench, Kolkata dated 10.08.2023 and the copy



Sudipta Sarkar
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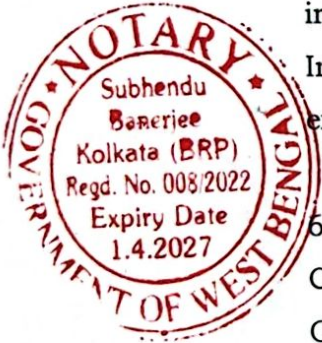
of the original application filed by the applicant and the answering respondent is filing this Counter Affidavit in compliance of direction passed by the Hon'ble Tribunal.

3. That the contents of the Application that have not been specifically admitted hereunder or are matter of record be deemed denied.

4. That the answering respondent craves liberty to raise additional submission or file additional affidavits in case need arises during the course of arguments.

5. As per information available with Central Water Commission, this may be appropriate to mention here that the River Subernarekha is an interstate river basin covering three States viz. Jharkhand, Odisha and West Bengal. As far as inter-State issues are concerned, role of Central Water Commission (CWC) is appraisal/examination of all new major and medium irrigation projects including multi-purpose projects which have Inter-State or international ramifications. All such projects are examined in CWC as per extant Guidelines.

6. The Regional (Field) Organization of Central Water Commission namely MERO, Bhubaneswar in the State of Odisha deals with hydrological data collection along with Water Quality at some locations throughout the year. It also issues Flood Forecasts during monsoon to the State Governments concerned for taking necessary actions when the water level exceeds the Warning Levels at different sites in Odisha on river Subernarekha. It is to mention here that amongst the hydro-metrological stations in respect of Subernarekha Basin, none



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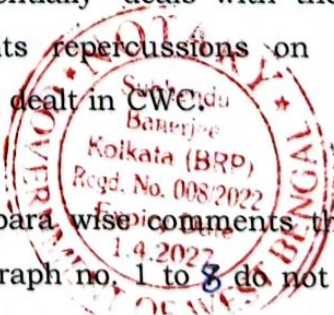
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of the water quality stations are situated downstream to the alleged location as indicated by the Petitioner. Also, there is no Central Govt. Water Resource funded Projects being dealt by CWC going on near the vicinity of the location for which the allegation has been raised by the Applicant.

7. That in terms of Entry 17 in the State List (of Indian Constitution), water is a State subject. Thus, water resources projects for flood management and control are planned, funded, executed and maintained by the State Government themselves as per own resources and priorities. Role of Government of India is limited to being catalytic, providing technical support and in some cases partial financial assistance in accordance with the existing schemes being implemented by Ministry of Jal Shakti, Government of India. Central Water Commission, being an attached body of the Ministry of Jal Shakti, functions as per directive/guidelines provided by the said Ministry in this regard.

8. However, prima facie it appears that the subject matter of the aforesaid Original Application is primarily related to illegal encroachment of river bed of River Subernarekha. Water is a State subject and reliefs prayed pertain to State Government. Further, that the case essentially deals with the matters of illegal encroachment and its repercussions on environment related matters are not being dealt in CWC.

9. Now dealing with the para wise comments the answering Respondent states that paragraph no. 1 to 8 do not warrant any



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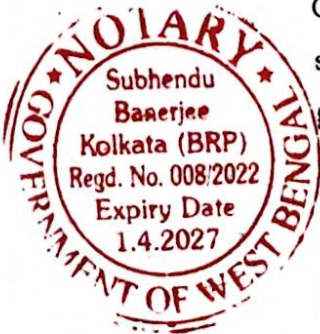
reply from the answering respondent (i.e. CWC). Hence, no comments.

10. The answering Respondent states that with reference to paragraph no. 9 to 12 of the said petition, the answering respondent states that it does not warrant any reply from the answering respondent (i.e. CWC). Hence, no comments.

11. The answering Respondent states that with reference to paragraph no. 13 of the said petition, there is no role of CWC in grant of CTE and CTO. As water being a state subject, formulation, planning, construction and execution of any scheme and granting CTE & CTO is prerogative of concerned State Government.

12. The answering Respondent states that with reference to paragraph no. 14 to 19 of the said petition, the contents of Para 14 to 19 do not warrant any reply from the answering respondent (i.e. CWC). Hence, calls for no comments.

13. The answering Respondent states that with reference to paragraph no. 20 of the said petition, the flood management including erosion control falls within the purview of the States and accordingly, flood management & anti-erosion schemes are formulated and implemented by concerned State Governments as per their priority. The Union Government supplements the efforts of the States by providing technical guidance in the matter. The emphasis for flood management in recent years has shifted to non- structural measures like Flood Plain Zoning and regulation, flood forecasting etc. to effectively supplement the structural measures for providing sustainable

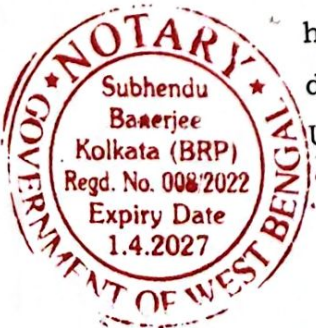


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protection to flood affected areas. Natural floodplains provide flood risk reduction benefits by slowing runoff and storing flood water. To ensure protection of river's flood plain, Flood Plain zoning has been recognized as an effective non-structural measure for flood management. Flood-plain zoning measures aim at demarcating zones or areas likely to be affected by floods of different magnitude or frequencies and probability levels and specify the types of permissible developments in these zones, so that whenever floods actually occur, the damage can be minimized. Encroachment or unplanned development of such area may prove disastrous for people affected as well as for river in the long run. Flood Plain Zoning, therefore, envisages limitations on indiscriminate development and encroachment of flood plains of a river. Floodplain zoning is not only necessary in the case of management of floods by rivers but is also useful in reducing the damage caused by drainage congestion, particularly in urban areas. It has acquired urgency in the context of increasing variability in rainfall as a result of climate change. Government of India through Central Water Commission (CWC) has continuously impressed upon the States the need to take action to implement the flood plain zoning approach in development. A model draft bill for Flood plain zoning legislation was circulated by the Union Government in 1975 to all the States. The states of Manipur, Rajasthan, Uttarakhand, and erstwhile State of Jammu & Kashmir had enacted the legislation. Recently, Govt. of Uttar Pradesh has demarcated the flood plain of River Ganga from Haridwar to Unnao as per the direction of Hon'ble NGT, Delhi.



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Sudipta Sarkar
02.11.2023.

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14. Any action for identification, delineation and demarcation of flood plain areas and regulating the activities therein, is to be undertaken by respective State Governments.

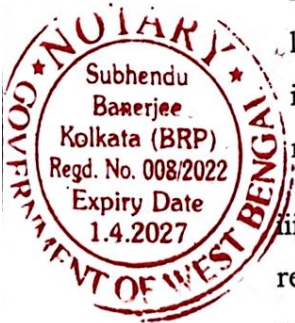
15. The answering Respondent states that paragraph no. 21 does not warrant any reply from the answering respondent (i.e. CWC). Hence, no comments.

16. The answering Respondent states that with reference to **grounds** of the said petition, the submissions are as follows:-

i. The contents of **Ground A & B** are matter of record and does not warrant any reply from the answering respondent (i.e. CWC). Hence, no comments.

ii. **Reply to Ground C & D-** To minimize the damages due to floods and to protect the pristine nature of river, there is need to regulate the activities in flood plain of river. The concept of Flood Plain Zoning recognizes the basic fact that the flood plain of a river is essentially its domain and any intrusion into or developmental activity therein must recognize the river's 'right of way'. Increased level of urbanization in the country is putting pressure on urban flood plains. Encroachment or unplanned development of such area may prove disastrous for people affected as well as for river in the long run. Flood Plain Zoning, therefore, envisages limitations on indiscriminate development and encroachment of flood plains of a river.

iii. The contents of **Ground E, F & H** are matter of record and does not warrant any reply from the answering respondent (i.e. CWC). Hence, no comments.



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02.11.2023
उपनिदेशक (प्रबो. एवं मूल्यां. निदे.)
Deputy Director (Mon. & App. Dte.)
केंद्रीय जल आयोग
Central Water Commission
भारत सरकार/Govt. of India
कोलकाता/Kolkata

17. It is most respectfully submitted and **PRAYER** that, from the aforesaid paragraphs, it can be seen that CWC does not have any role on the allegation raised by the Petitioner in the O.A. No. 87/2023/EZ. The issues raised in the present petition are outside the purview of Respondent No. 3 (i.e. CWC). Hence, Respondent No. 3 (i.e. CWC) may be deleted from the array of parties along with any other orders that the Hon'ble Tribunal finds fit & proper in the light of facts & circumstances of this case.

18. The statements made in paragraphs 1 to 16 of the foregoing petition are true to my knowledge and those contained in paragraph nos. 17, is the prayer portion are my respectful submissions before this Hon'ble Tribunal.

Identified by me &

Prepared in my office

Anamika Pandey
Advocate

F/748/2009

Deponent

Before me



Solemnly Affirmed and
Declared before me U/S 139
CPC, U/S 297 (C) Cr. P.C

[Signature]
Notary
02.11.2023

SUBHENDU BANERJEE
Notary, Govt. of W.B
Regd. No.-008/2022
neate High Court, Calcutt

VERIFICATION

Verified at Kolkata on this 2nd of November, 2023, that the contents of the above affidavit are true and correct to the best of my knowledge. No part of it is false and nothing material has been concealed therefrom.

Sudipta Sarkar
02.11.2023

DEPONENT

Place: Kolkata

Anamika Pandey
Adv



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..... Respondents

KNOW ALL MEN by these presents that I/We Monitoring & Appraisal Directorate, Central Water Commission, Kolkata, functioning at Kolkata, having its office at Bidhannagar, GE-2, Sector 3, Kolkata, West Bengal 700106; herein, do hereby in my/our name and my/our behalf constitute and appoint Anamika Pandey Advocate, Hastings Chamber, 7C KSR Road, 2nd Floor, Room No. 206, Kolkata - 700 001, as our true and lawful Pleader/Advocate & Attorneys to appear and act for me/us in the matter noted above to file suit, written statement, conduct suit, appeal from original suit, order etc., And for that purpose to do all acts and things, whatsoever in that connection including compromise of the above matter depositing in or withdrawing money from, filing or taking out of appeal, document and payment order from Court referring matters in dispute between the parties here to arbitration, withdrawing the above matters with liberty to file fresh suit, sending properties released from attachment, filing execution or miscellaneous cases and other petitions, bidding at execution sale, obtaining payment from us out of Court withdrawing custody and other fees and doing on my/our behalf other acts, in the above matter as are necessary and proper. I/We hereby agreeing to ratify and confirm all acts so done by the said advocate or attorneys as my/our own acts and as if done by me/us to all intents and purposes.

Anamika Pandey
Advocate,
Room No. 206, Hastings Chamber
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Mob. No. 8336835229
Email:- legumjure@gmail.com

उपनिदेशक (प्रबो. एवं मूल्या. निदे.)
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सुदीप तालुकर
 02.11.2023