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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
INTERLOCUTORY APPLICATION NO. 120 OF 2024

IN

ORIGINAL APPLICATION NO. 38 OF 2022

IN THE MATTER OF:

Dr. Bina Basnett

...Applicant

-Versus-

State of Sikkim and Ors.

....Respondents

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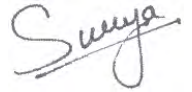
NDoH: 27.01.2025

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1.	Reply on behalf of Respondent No. 12 West Point Infrastructure Private Ltd. to the IA for directions dated 11.11.2024 filed on behalf of the Original Applicant alongwith Affidavit.	2456-2461
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Date: 22.01.2025

Place: Kolkata

DRAWN AND FILED BY:



Mr. Surya Gupta

Advocate for Respondent No. 12

29, LGF, Presidential Estate,

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SETTLED BY:

Sanjay Upadhyay

[Senior Advocate]

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**REPLY ON BEHALF OF THE RESPONDENT NO. 12, WEST POINT
INFRASTRUCTURE PVT. LTD. TO THE IA FOR DIRECTIONS DATED
11.11.2024 FILED ON BEHALF OF THE APPLICANT.**

1. That the present proceedings pertain to an O.A filed by the Original Applicant to stop the construction of a Multilevel Car Parking cum Shopping Hub at Old West Point School Area, Near Hotel Hungry Jack, Gangtok by alleging that the construction of the aforesaid building will have an adverse impact on the ecology of the town of Gangtok in the form of earthquakes, landslides, air, water and noise pollution etc. The Applicant has further alleged that the said construction has been initiated without any planning and procedure and that there is a breach of the Notification dated 19.03.2021. The Applicant has averred that the construction of such a building not only jeopardizes the future of historical monuments but also restricts the view of Mount Kanchenzonga from the M.G. Marg. The Applicant has also alleged that no Environment Impact Assessment (EIA) with respect to the construction of aforesaid building has ever been conducted in the area.
2. That the present reply is in response to the IA No. 120 of 2024 dated 11.1.20204 filed by the Applicant seeking directions under Rule 13(4) of the National Green Tribunal (Practice and Procedure), 2011.

3. In brief, the Applicant by filing the present application seeks directions from this Hon'ble Court for the production of a multitude of documents pertaining to the project.
4. That save and except those, which are matters of record, all averments, statements and submissions made by the Applicant in the present IA are disputed and denied as if traversed seriatim unless specifically admitted herein and therefore no part of the IA should be deemed to be admitted for want of specific denial.
5. That the contents of the Reply dated 16.03.2024 and Sur-Rejoinder dated filed on behalf of the answering Respondent herein to the Original Application may be read as a part of this Reply and the submissions made therein are reiterated and have not been repeated herein to avoid repetition and for the sake of brevity.

PRELIMINARY OBJECTIONS

6. It is submitted that, the IA for directions filed by the Applicant is untenable in both facts and law.
7. That the Applicant by filing the present IA for directions has sought to expand the scope of the present proceedings beyond the scope of the OA which is impermissible in law.
8. That the Applicant by filing the present IA, has sought to engage in a fishing and roving enquiry, which is strongly objected to by the answering Respondent.
9. That the IA for directions filed by the Applicant, cannot be permitted, as the same has been filed at a highly belated stage.
10. It is submitted that the present IA for directions, has been filed for vexatious purposes.

11. That the Applicants reliance on *Rule 13(4) of the National Green Tribunal (Practice and Procedure) Rules 2011*, for seeking relief as prayed for in the IA for directions, is a misplaced and erroneous interpretation of the abovesaid Rule. Further, assuming arguendo that, even if such an interpretation of Rule 13(4) was permitted, the same would still not pass the muster on principles of law established by the Constitutional Courts on provisions related to Discovery.
12. That it is pertinent to state that, the Applicant has to succeed on the strength of his own case, and cannot be permitted to engage in conjectures and surmises to prolong the present proceedings.

PARAWISE REPLY

13. That the contents of Para 1 merits no response save for what are matters of record.
14. That the contents of Para 2 and 3 are denied as wrong, false and devoid of merit, save for what are matters of record. It is submitted that the Applicant herein is engaging in a vexatious, fishing and roving enquiry. It is strongly denied that the answering Respondent has filed documents in a pick and choose manner and the Applicant is put to strict proof thereof. Further, the actions of the Applicant smack of malafides and contradictory stands. For the sake of brevity, the answering Respondent reiterates the submissions made in para 6 to 11 of the present reply.
15. That the contents of para 4 are denied as wrong, false and devoid of any merits save for a matter of record. The answering Respondent strongly objects to the vexatious, and false allegations of the Applicant on the concealment of facts pertaining to the project being within 10 km of the Eco- Sensitive Zone of Fambonglho Wildlife Sanctuary. In that regard the answering respondent herein, states the following:

- i) That the final notification pertaining to Fambonglho Wildlife Sanctuary (annexed at **Annexure A/10** at Pages **2348-2356** of Composite rejoinder dated 11.11.2024 clearly shows that the ESZ for the abovesaid sanctuary is 25 metres as opposed to 10 km and the project of the answering Respondent, being at a distance of 2.5 km as per the Original Applicant's own submission, is clearly outside the ESZ Notification of Fambonglho Wildlife Sanctuary.
 - ii) Further the applicant has also failed to apprise this Hon'ble Tribunal that, even the issue of appraisal such as in the abovesaid circumstances does not apply to building and construction projects, such as the present project of the answering respondent.
 - iii) That the attempts of the Applicant to raise the issue of ESZ is also contrary to Rule 14 of the NGT (Practice and Procedure) Rules, 2011 as it would lead to seeking plural remedies.
16. That the contents of para 5 to 7 are denied as wrong, false and devoid of any merits save for a matter of record. The answering Respondent strongly objects to the manner in which the Applicant herein is misleading this Hon'ble court, with the sole object of engaging in a fishing and roving enquiry as she prima facie lacks merits in her Original Application, and the present application is a feeble attempt at availing some last-minute grounds to buttress her case. It is submitted that the present application is not maintainable and has been filed at a belated stage. Further, it is humbly reiterated that, the Applicant reliance on *Rule 13(4) of the National Green Tribunal (Practice and Procedure) Rules 2011*, for seeking relief as prayed for in the IA for directions, is a misplaced and erroneous interpretation of to the abovesaid rule. Further, assuming arguendo that, even if such an interpretation of Rule 13(4) was permitted, the same would still not pass the

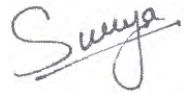
muster on principles of law established by the Constitutional Courts on provisions related to Discovery. For the sake of brevity, the answering Respondent herein reiterates submissions made in para 6 to 11 of the present reply.

17. In view thereof, it is prayed that this Hon'ble Tribunal be pleased to dismiss the present application for directions of the Applicant, along with heavy costs and pass any other or further order(s) as this Hon'ble Tribunal may deem fit and proper, in the facts and circumstances of the instant case.

Date: 22.01.2025

Place: Kolkata

DRAWN AND FILED BY:



Mr. Surya Gupta

Advocate for Respondent No. 12

29, LGF, Presidential Estate,

Nizamuddin East, New Delhi -110013

Email: eldflegal@gmail.com; +91- 8851323704

SETTLED BY:

Sanjay Upadhyay

[Senior Advocate]



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IN THE MATTER OF:

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-Versus-

State of Sikkim & Ors. ...Respondent(s)

AFFIDAVIT

I, Akhil Dalmia, S/o Late Binod Dalmia, aged about 32 years, am the authorized signatory for West Point Infrastructure Private Limited, Respondent No. 12, having its registered office at 3rd floor, Vega Circle Mall, 3rd Mile, Sevoke road, Siliguri-734001, do hereby solemnly affirms and declare as under:

1. That I am the fully conversant with the facts and circumstances of the case and competent to swear this Affidavit.
2. That I have read the contents of paragraphs No. 1 [Pg. 2456] to 17 [Pg. 2460] of the accompanying Reply and state that the facts stated therein are true to my knowledge and belief and have been drafted by the counsel on my instructions and nothing material has been concealed therefrom.
3. That the Annexures in the accompanying Reply are true and correct to the best of my knowledge.

West Point Infrastructure Private Limited

Akhil Dalmia

Chief Financial Officer
DEPONENT

VERIFICATION:

Verified at Siliguri, Sikkim on this 21st day of January, 2025 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing material has been concealed there from.

West Point Infrastructure Private Limited

Akhil Dalmia

Chief Financial Officer
DEPONENT

AFFIDAVIT

Solemnly Affirmed before me
by _____
of _____
Identified by _____
This the _____ day of _____ 20____
at _____

Debasish Chakraborty
Notary Govt. of India
Siliguri, Darjeeling
Regd. No. 13792

22 JAN 2025

Service in Dr. Bina Basnett Vs. State of Sikkim & Ors. [O.A. No. 38 of 2022/EZ]

1 message

ELDF <eldflegal@gmail.com>

Wed, Jan 22, 2025 at 3:46 PM

To: Legal Consultus <legalconsultus@gmail.com>, Amrita Pandey <amritalegal@gmail.com>, Advocate KS Thupden <Thupden2009@gmail.com>, Saumitra Jaiswal <saumitra.jaiswal@gmail.com>, "advocateshubhamupadhyay@gmail.com" <advocateshubhamupadhyay@gmail.com>, Office of Sameer Abhyankar <contactadvs@gmail.com>, Mansi Bachani <mansi.bachani08@gmail.com>

Cc: Surya Gupta <surya@eldfindia.com>

Dear Sir/Ma'am

Please find attached copy of the Sur-Rejoinder and Reply to IA dated 11.11.2024 on behalf of Respondent No. 12 in the abovementioned case.

Thanks & Regards

--

Sameer Manher

Clerk

Enviro Legal Defence Firm

29, Presidential Estate LGF,

Nizamuddin East New Delhi – 110013

Ph. No. 011-40573181

2 attachments

 **Reply R-12 to IA for Direction.pdf**

1242K

 **Sur Rejoinder R-12.pdf**

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