

BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO. 10/2016/EZ

JOYDEEP MUKHERJEE

..... APPLICANT(S)

VERSUS

UNION OF INDIA & ORS.

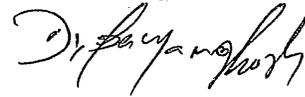
..... RESPONDENT(S)

AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 03, THE  
WEST BENGAL POLLUTION CONTROL BOARD.

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Filed by



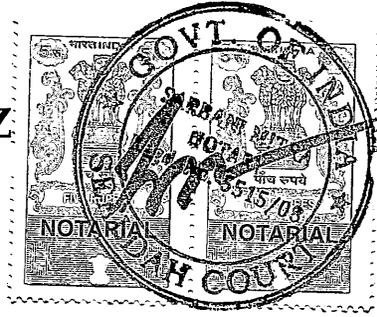
DIPANJAN GHOSH  
ADVOCATE  
HIGH COURT AT CALCUTTA

SL NO- 30 OF 6/5/22  
2

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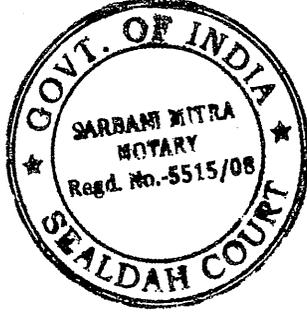
AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 03, THE  
WEST BENGAL POLLUTION CONTROL BOARD.

Most Respectfully Sheweth

I, Sri Tapas Kumar Gupta, son of Shri Late Priya Sankar Gupta,  
aged about 61 years, by Religion - Hindu, by Occupation-Service,  
working for gain at West Bengal Pollution Control Board, having  
office at 10 LA, Salt Lake City, Kolkata - 700 091, do hereby solemnly  
declare and say as follows:-

01. That, I am the Chief Technical Adviser, West Bengal Pollution  
Control Board (hereinafter will be referred to as the 'State Board')  
and look after this case and as such I am well acquainted with the

06 MAY 2022



facts and circumstances of the case. I have been duly authorized by the Respondent No. 06, to affirm this Affidavit on its behalf and as such, I am competent to do so.

02. That, this affidavit is being affirmed in pursuance to the solemn order passed by the Hon'ble Tribunal dated 31.01.2022.

03. That, the State Board being the nodal agency of the committee constituted by order of the Hon'ble Tribunal dated 20.09.2021 passed in connection with OA No:-53-2021( Jyotsna Agarwal Vs Union of India & Ors), convened several meetings and finally on 28.04.2022, for the purpose of assessment of environmental compensation pertaining to pollution of Mahananda River as well as regarding the matters in issue of the instant application i.e. O.A. No. 10/2016/EZ- Joydeep Mukherjee Versus Union of India.

It was decided that the River Mahananda comes under seventeen (17) highly polluted identified rivers in the State of West Bengal and comes in the Category of in Priority II river. Therefore, accordingly, the Environmental Compensation will be Rupees 10 Lakhs per month

**06 MAY 2022**

per STP (Sewage Treatment Plant) and the timeline to be considered is from April, 2021 till 31.03.2022 sa per direction of the Hon'ble Tribunal passed in connection with OA No 673/2018.

Thereafter, the Committee in its report, inter alia assessed the Environmental Compensation for the two STPs and calculated it to be Rs. 2,40,00000/- ( Rupees Two Crores Forty Lakhs )only in terms of the orders of the Hon'ble Tribunal passed in connection with OA No: 593/2017, OA No. 606/2018 as well as OA No 10/2016.

The Committee has also mentioned in their report that in terms of order dated 20.09.2021 of Hon'ble Tribunal the Siliguri-Jalpaiguri Development Authority has deposited Rs 2 Cr as Environmental Compensation to the District Magistrate.

As regards assessment of environmental damage to the flood plain the committee has submitted that Hon'ble Tribunal may consider to depute a reputed Institute for necessary assessment.

Copy of the report of the committee dated 02.05.2022 are collectively annexed herewith and marked with letter "R".

04. It is therefore respectfully prayed that Hon'ble Tribunal may pass such order/orders as it deems fit and proper in the interest of justice.

*Identified by*  
*Dipankar Ghosh*  
*Advocate*

*Tapas K. Saha*  
 DEPONENT

06 MAY 2022

## VERIFICATION



I, Sri Tapas Kumar Gupta, son of Shri Late Priya Sankar Gupta, aged about 61 years, by Religion - Hindu, by Occupation-Service, working for gain at West Bengal Pollution Control Board, having office at 10 LA, Salt Lake City, Kolkata - 700 091, do hereby solemnly declare and say as follows:-

1. That, I am the Chief Technical Adviser, West Bengal Pollution Control Board and I am well acquainted with the facts and circumstances of the instant Original Application.
2. That, the statements made in paragraph 1 of this affidavit is true to my knowledge and belief.
3. That, the statements made in paragraphs 2 to 4 of this affidavit are my information derived from the records available in the office of the State Board which I verily believe to be true and the rest are my respectful submission before this Hon'ble Tribunal.

*Tapas Kumar Gupta*  
DEPONENT

Identified by me

*RNB*  
Advocate

WBPCB

*Identified by me*  
*Dipankar Ghosh*  
Advocate

Solemnly Affirmed &  
Declared Before Me  
On Identification by.....

*[Signature]*  
SARBANI MITRA  
NOTARY  
Regd. No.-5515/08

06 MAY 2022



WEST BENGAL POLLUTION CONTROL BOARD  
Siliguri Regional Laboratory,  
Paribahan Nagar, P.O.- Matigara  
Darjeeling- 734010  
Phone (0353) 2571113, 2571115 & Fax: (0353)- 2571113  
Email address-wbpcb@sancharnet.in

Memo No. 400 /WPB/SRO/NGT/190-2016

Date : 02/05/2022

To,  
The Member Secretary,  
West Bengal Pollution Control Board,  
'Paribesh Bhawan'  
10A,Block - LA  
Bidhannagar,Kolkata - 700106

Sub: Submission of Report in compliance to Solemn Order dated 20/01/2021 for ensuring Compliance of Direction dated 16.07.2021 of Hon'ble NGT passed in connection with Original Application No.53/2021/EZ now overlapped and read with O.A. 10/2016 EZ Joydeep Mukherjee (Applicant) vs Union of India & Ors (Respondents) Order dated 31.01.2022.  
Ref: Your Order vide Memo No. 285 - 3L/WPB -D (X)/2021 dated 15.09.2021.

Respected Sir,

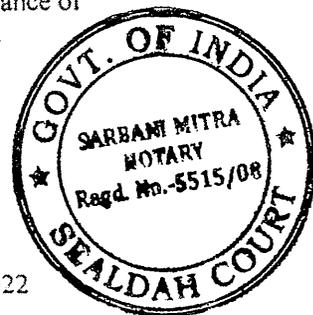
With reference to the above, Please find enclosed the Committee Report hereby submitted on the questions ie. i) Assessment of Environmental Compensation & ii) Assessment of the damage caused to the flood plain mentioned in the order of the Hon'ble Tribunal for ensuring compliance of direction dated 16.07.2021 passed in connection with Original Application No. 53/2021/EZ.

The report is being placed before your goodself.

Regards,  
*Sanku Kumar*  
02/05/2022  
Jr. Scientist & I/C,  
SRL, W.B.P.C.B.  
Memo No.

WPB/SRO/NGT/190-2016

Date: /05/2022



Copy forwarded for information to :-

1. Sri Sandeep Roy, Scientist D, Central Pollution Control Board, Regional Directorate, Kolkata
2. Dr Shahida Parvin Quazi, Scientist E, Integrated Regional Office, Kolkata, Ministry of Environment, Forest and Climate Change, Kolkata. (MoEF & CC)
3. Sri Sonam Wangdi Bhutia, Commissioner, Siliguri Municipal Corporation, Dist. Darjeeling.
4. Shri Srinivas Vyankat Rao Patil, Subdivisional Officer, District Magistrate Darjeeling.
5. Smt Rinzing Zimba, Law Officer, District Magistrate Office, Darjeeling.

Jr. Scientist & I/C,  
SRL, W.B.P.C.B.

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**REPORT**  
**IN O.A.NO. 10/2016 in reference to Order dated 31/01/2022**

**COMMITTEE REPORT ON ASSESMENT OF ENVIRONMENTAL COMPENSATION**

The Hon'ble NGT, EZB, directed to constitute a Committee in the matter of O.A.53/2001/EZ comprising of the following members:

- i. A Senior Scientist from Central Pollution Control Board, Regional Office, Kolkata.
- ii. A Senior Scientist from West Bengal State Pollution Control Board.
- iii. District Magistrate, Darjeeling.
- iv. A Scientist from the Integrated Regional Office of the Ministry of Environment, Forest and Climate Change, Bhubaneswar/Kolkata.
- v. A Representative from River Rejuvenation Committee, West Bengal Environment Department.

The Hon'ble NGT in its order dated 31.01.22, pointed out that the committee could not evaluate the damage to the environment in monetary terms (para 12 v.) & no assessment for damage to the flood plain (para 12.iv) was done. Therefore, as per the direction of the Hon'ble NGT dated 31.01.2022 in O.A 10/2016EZ, the committee further conducted meetings on 11.04.2022, 19.04.2022, 22.04.2022, 27.04.2022, and 28.04.2022 on the remaining two points:

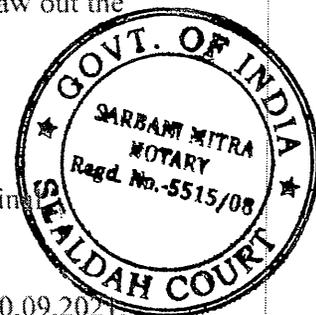
1. Para 12 (iv) Assess the damage caused to the flood plain of the river on account of encroachment & dumping of solid waste and sewage
2. Para 12 (v) Assess the environmental compensation on account of the damage caused to the river and the flood plain.

The committee during meeting have gone through the order of Hon'ble NGT to draw out the requisite directions for evaluation of the environment compensation.

**A. Assessment of Environmental Compensation**

The Hon'ble NGT has been mentioning of the following orders in various Original Applications:

- The Tribunal conducted comprehensive review of progress vide order dated 20.09.2021. It was noted there was continuous breach of directions of Hon'ble Supreme Court in Paryavaran Suraksha Samiti -vs- Union of India fixing outer limit of 31.03.2018 for completing all STPs in the country with a direction to initiate prosecution for such failure with further direction to this Tribunal to monitor compliance.
- Reference was also made to order dated 21.05.2020 in O.A No.593/201, Paryavaran Suraksha Samiti &Anr. Vs Union of India &Ors, effectuate the directions of the Hon'ble Supreme Court, requiring adherence to the laid down timeline for preventing untreated sewage/effluents into the rivers and for recovery of compensation for delay beyond the timeline.



- Reference has been made of O.A No.673/2018, CPCB, for remedial action of 351 polluted river stretches by preparing appropriate action plans for each of said polluted river stretches with reference to laid down parameters through the River Rejuvenation Committee, which was directed to be constituted in each State and UTs. Such plan to be approved by CPCB and were to, inter alia, provide for preventing discharge of untreated waste in rivers, scientific handling of solid waste, bio-medical waste, e-waste, maintaining e-flow in the rivers, removing encroachments from catchment areas and floodplains, developing biodiversity parks, preventing overdrawal of ground water and checking of illegal sand mining.
- Reference has been made to O.A No.606/2018 where Chief Secretaries of all the states and UTs were required to be present in person before the Tribunal with reference to steps taken in respect of identified issues of waste management and other environmental subjects. It is also noted by the Hon'ble Tribunal that the Chief Secretary of West Bengal appeared in person twice before the Tribunal in this matter.

Now that after having careful analysis on the above orders of Hon'ble NGT in various applications, the committee refers to the Mahananda Action Plan dated 12.07.2019 duly approved by CPCB; wherein in the executive summary it is mentioned at point no.5(b) Total no. of existing STPs and the total capacities in MLD is nil.

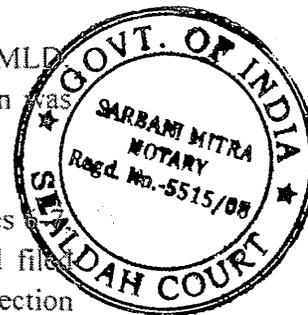
(c) Gaps in sewage treatment in MLD and no. of towns not having STPS-44-MLD. The action plan for two STPs with 47MLD in total. The Mahananda Action Plan was approved in 2019.

- Further the committee makes reference to order dated 30/11/2021 in O.A 606 pages paragraph 8. Accordingly, the Chief Secretaries of 18 States/UTs appeared and filed updated status reports. Since there still existed huge gaps in compliance, further direction was issued by way of different orders. Last such order is of 28.02.2020. Others are on the same pattern. The direction part of the said order is reproduced below:

“41. In view of above, consistent with the directions referred to in Para 29 issued on 10.01.2020 in case of UP, Punjab and Chandigarh which have also been repeated for other States in matters already dealt with, we direct:

d. The compensation regime already laid down for failure of the Local Bodies and/or Department of Irrigation and Public Health/In charge Department to take action for treatment of sewage in terms of observations in paragraph 36 above will result in liability to pay compensation as already noted above which are reproduced for ready reference-

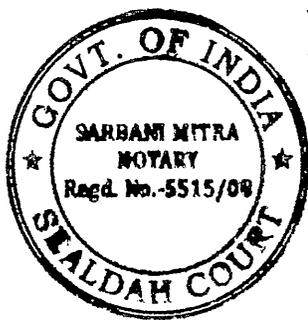
ii Commencement of setting up of STPs-31.03.2020. Compensation is payable for failure to do so at the rate of Rs 5lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A.No.593/2017 and order dated 06.12.2019 in O.A.No.673/2018 w.e.f.01.04.2020.



iii. Commissioning of STPs-31.03.2021. Compensation is payable for failure to do so at the rate of Rs.10 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A.593/2017 and order dated 06.12.2019 in O.A.No.673/2018) w.e.f.01.04.2021.

Similarly the Committee refers to O.A No.593/2017 order dated 22.02.2021 which reads as-

46. The report of CPCB shows the status of compliance. As already noted, the action plans have been prepared with respect to 351 river stretches by the concerned States/UTs with regard to category P-I & P-II (the most polluted river stretches), the action plans have been duly recommended by CPCB with certain changes. The said action plans are reported to be complete with respect to necessary components for river rejuvenation including identification of drains, their interception, setting up of STPs, utilization of treated water, identification of flood plain zones, maintaining e-flow, etc. Let the same be executed by 31.03.2021 as already directed. No case is made out to extend the laid down timeline unconditionally. As noted earlier, situation of water pollution is grim in the country and there has been deterioration in spite of the Water Act which was enacted way back in 1974 which was intended to bring about any improvement. This Tribunal has repeatedly put all authorities to notice in the light of earlier orders of the Hon'ble Supreme Court on the subject. Directions were also issued for budgetary support as part of the action plans which has been done in indicative terms. There can be no plea of lack of funds on issue threatening the existence of human beings. We have thus no option except to be strict about the timelines already laid down. We are also of the view that adherence to the timelines must be monitored by the Chief Secretaries of all the States/UTs and should also be monitored at National level by the Secretary, Ministry of Jal Shakti with the assistance of NMCG and CPCB. For this purpose, a meeting at central level must be held with the Chief Secretaries of all the States/UTs atleast once in a month (option of video conferencing facility is open) to take stock of the progress and to plan further action. NMCG will be the nodal agency for compliance and may give its quarterly report to this Tribunal commencing from 01.04.2020. The Chief Secretaries may set up appropriate monitoring mechanism at State level specifying accountability of nodal authorities not below the secretary level and ensuring appropriate adverse entries in the ACRs. Monitoring at State level must take place on fortnightly basis and record of progress maintained. The Chief Secretaries may have an accountable person attached in his office for this purpose. Monthly progress report may be furnished to Secretary, Ministry of Jal Shakti with a copy to CPCB. Steps for in situ remediation as an interim measure may be ensured as directed above as per laid down timeline. Any default must be visited with serious consequences at every level, including initiation of prosecution,



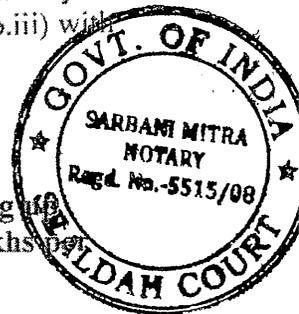
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disciplinary action and entries in ACRs of the erring officers. As already mentioned, procedures for DPRs/tender process needs to be shortened and if found viable business model developed at central/state level. Wherever work is awarded to any contractor, performance guarantee must be taken in above terms”

It will be highly appropriate to put forward a further observation, that the Central Water Monitoring Committee headed by the Ministry of Jal Shakti is now monitoring 351 Rivers in the matter of O.A.673/2018,(presently disposed)and River Mahananda is one of the 351 polluted rivers considered.

According to the minutes of the 1<sup>st</sup> meeting of the Central Monitoring Committee, Ministry of Jal Shakti, based on the directions of Hon<sup>ble</sup> NGT in the matter O.A 673/2018 point no.iii) with respect to timeline and environmental compensation reads-

“the timeline for completing all steps of Action Plan, including completion of setting up STPs and their commissioning is by March,2021.Compensation liable is Rs. 10 Lakhs per month per STP for default”.



In compliance to the Order O.A 10/2016 dated 31.01.2022, the assessment of environmental compensation has been calculated and is as follows –

- a. STP I : The EC for STP - I stands at Rs 1,20,00000/- (Rupees One Crores twenty Lakhs only) at the rate of 10 lakhs /month for 12 months ( 01.04.2021 till 31.03.2022)
- b. STP II : The EC for STP - II stands at Rs 1,20,00000(Rupees One Crores twenty Lakhs only) at the rate of 10 lakhs /month for for 12 months ( 01.04.2021 till 31.03.2022)

Therefore, the environmental compensation for the two STPs as calculated above is noted to be 2, 40, 00000/- (Rupees Two Crores Forty Lakhs Only)

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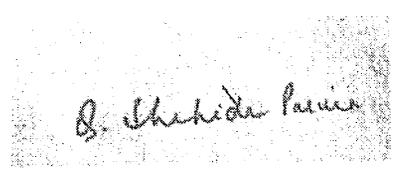
**Recommendation:** The committee has decided on the Environmental Compensation of Rs 2,40,00,000 based on the direction detailed at O.A.593/2017 order dated 22.02.2021, O.A.606/2018 Order dated 30.11.2021 which is also referred in order dated 31.01.2022 in O.A.10/2016.

As mentioned in order dated 31.01.2022 OA10/2016, the Hon'ble NGT has mentioned that an interim compensation amount of Rs 2,00,00,000/- (Rupees Two Crores only) has been paid by the Siliguri, Jalpaiguri Development Authority (SJDA) to the District Magistrate, Darjeeling for restoration of Water Quality of Rivers in the District.

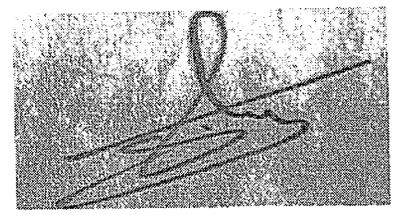
Recommendation Development Authority (SJDA) to the District Magistrate, Darjeeling for restoration of Water Quality of Rivers in the District.

**B. Assessment of damage caused to the flood plain**

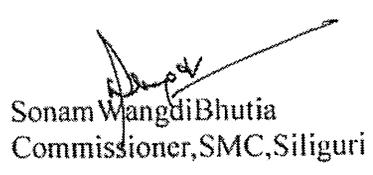
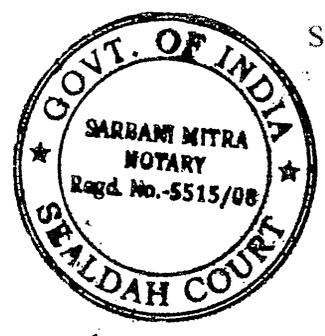
For assessing the damage caused to the flood plain of the river on account of encroachment the committee makes a humble submission before the Hon'ble NGT for passing necessary direction to depute reputed institutions for making the said assessment.



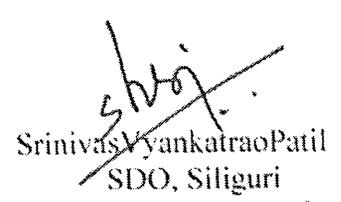
Dr. Shahida Parvin Quazi,  
Scientist 'E', IRO, Kolkata, MoEF&CC



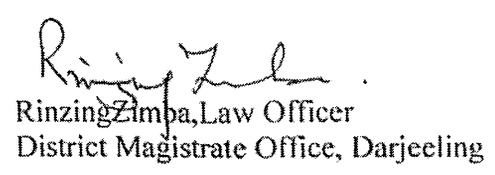
Sandeep Roy, Scientist 'D' CPCB  
RD- Kolkata



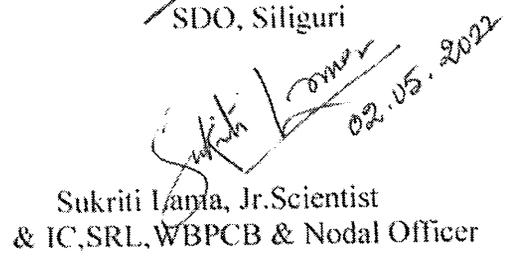
Sonam Wangdi Bhutia  
Commissioner, SMC, Siliguri



Srinivas Vyankatrao Patil  
SDO, Siliguri



Rinzing Zimpa, Law Officer  
District Magistrate Office, Darjeeling



Sukriti Lanta, Jr. Scientist  
& IC, SRL, WBPCB & Nodal Officer

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