

**BEFORE THE NATIONAL GREEN TRIBUNAL EASTERN ZONE  
AT KOLKATA**

**ORIGINAL APPLICATION 65(THC)/2016/EZ**

**BETWEEN:**

**People United for Better Living in Calcutta & Anr.**

**...APPLICANTS**

**-VERSUS-**

**Union of India & Ors.**

**...RESPONDENTS**

SYNOPSIS OF ARGUMENTS

The Applicants submit as follows:

**A. Brief history of prior litigation**

<b>Date</b>	<b>Particulars</b>
17.05.2013	<p>Hon'ble High Court at Calcutta admitted and passed interim order to stop further filling up and construction activity in wetlands situated at Mullarbaer at Janai, Dankuni based on a Public Interest Litigation filed by the Applicants, being W.P. 461 of 2013 praying for:</p> <ul style="list-style-type: none"><li>a. actions against illegal filling up of wetland,</li><li>b. for implementation of National Environment Policy 2006 and Wetlands (Conservation and Management) Rules 2010</li><li>c. For preparation of an inventory of all wetlands in the State of West Bengal including wetland under question</li><li>d. Restoration of filled up wetland at Dankuni</li><li>e. Protect endangered species present in the said wetland</li></ul> <p><b>[Relevant order at page 51 of Vol. I of O.A. 65THC/2016 as Annexure P2]</b></p>
29.11.2013	<p>The Hon'ble High Court disposed the PIL, keeping the question of whether the said area is a wetland or not open, by directing the High Power Committee to take a decision in this regard:</p> <p>“To stop global warming and to preserve the ecological balance, the Court must rise to the occasion and support the activist who would fight for this cause that would be for public good. If we go by the niceties of law, this particular land may not be technically termed as wetland. Mr. Jayanta Mitra has drawn out attention to the photographs annexed to his petition to show, the lands acquired by him are really low lands and could not be termed as wetland. <u>We do not have the expertise to come to a definite conclusion on</u></p>

	<p><u>such issue. The High Power Committee would be the best judge for the purpose.” [at page 60 of Vol. I of O.A. 65THC/2016 as Annexure P3]</u></p> <p>The relevant directions of the Hon’ble High Court were:</p> <p>(iv) While considering any application for permission/grievance, the High Power Committee should give personal hearing to the representatives of the concerned parties.</p> <p>The petitioners are given liberty along with other environmental activists to assist the High Power Committee in this regard.”</p> <p><b>[at page 61 of Vol. I of O.A. 65THC/2016 as Annexure P3]</b></p>
<p>October, 2015</p>	<ul style="list-style-type: none"> <li>i) Being aggrieved by the failure of High Power Committee in discharging their duty and mandate imposed upon them by the Hon’ble High Court vide order dated 29.11.2013</li> <li>ii) for failing to adhere to the West Bengal Wetlands and Water Bodies Conservation Policy, 2012</li> <li>iii) for failing to inform and include Applicant in its workings and deliberations</li> <li>iv) for failing to appreciate the expert evidence being adduced by the Applicants</li> <li>v) for failing to consider the mandate to identify and protect wetlands under the Central Wetland Rules 2010</li> <li>vi) for failing to undertake any site inspection in the said wetland as per established scientific procedure</li> <li>vii) for failing to stop construction and filling up activities destroying fragile ecosystem of the entire wetlands</li> </ul> <p>among other grounds, the Applicants approached the Hon’ble High Court again vide WP No. 26238(W) of 2015</p> <p><b>[Paragraphs 10.1, 10.2, 10.3, 10.4 and 11 at pages 14 to 21 of Vol. I of O.A. 65THC/2016]</b></p>
<p>18.03.2016</p>	<p>Hon’ble High Court at Calcutta was pleased to consider the order of the Hon’ble Supreme Court in <i>Bhopal Gas Peedith Mahila Udyog Sangathan &amp; Ors. v Union of India &amp; Ors.</i> being (2012) 8 SCC 326 and transfer WP 26238(W) of 2015 to the National Green Tribunal at Calcutta.</p> <p><b>[said order is at page 363 of the Reply to the O.A. filed by Respondent no. 12 dated 19<sup>th</sup> July, 2016]</b></p> <p>The said WP 26238(W) of 2015 has been registered as O.A. 65THC/2016/EZ before the Hon’ble Tribunal</p>

## **B. Summary of Submissions by Applicants**

### **1) Location and Extent of Wetland in question**

- a. The Applicants in WP 26328(W) of 2015 had highlighted the presence of the wetland on two mouzas in Hooghly district of West Bengal by providing satellite image of the said wetlands indicating the tentative location, neighbouring landmarks and geographical coordinates. **[at page 6, paragraph 3 and Annexure P1 at page 50 of the O.A. 65THC/2016 Vol I].**
- b. Thereafter Respondent No. 11 vide affidavit dated 9<sup>th</sup> August, 2016 highlighted two more mouzas namely Madhpur and Jaykrishnapur which also contain contiguous stretch of marshes and that the ecology of the wetland runs through the tracts of lands on these mouzas. **[at page 439 of the said affidavit along with Annexure R1 at page 447]**
- c. The Applicants on being informed of the findings of the Respondent no. 11 further studied the area and found seven mouzas in total depicts the extent of the ecosystem and wetland in Dankuni. **[at page 487-488, paragraphs 4 & 5 of Supplementary Affidavit filed by the Applicants dated 3<sup>rd</sup> November, 2016]**

### **2) Whether impugned area fits the definition of wetland as per law and policy**

The Applicants relies on the following Central government programme on wetlands, Central Government statutory provisions under the Environment Protection Act, 1986, West Bengal Government policy on wetlands, expert opinion and international law on the subject of wetland definition to argue that the impugned area does indeed fall under the definition of "wetland": -

- A. National Wetland Conservation Programme Guidelines (Revised on 12.06.2009)
- B. West Bengal Wetlands and Water Bodies Conservation Policy, 2012
- C. The Wetlands (Conservation and Management) Rules, 2010 /The Wetlands (Conservation and Management) Rules, 2017 under the Environment (Protection) Act, 1986
- D. Expert Opinion of Dr. Tapan Chakraborty, Associate Professor with Geological Studies Unit, Indian Statistical Institute
- E. Ramsar Classification System for Wetland Type as approved by Recommendation 4.7 and amended by Resolutions VI.5 and VII.11 of the Conference of the Contracting Parties.

#### **a. Definition and criteria laid down in National Wetland Conservation Programme Guidelines (Revised on 12.06.2009) by Conservation and Survey Division of Ministry of Environment and Forests being Respondent no. 1 in the instant Application**

- i) Before the enactment of the Wetland (Conservation and Management) Rules, 2010, the Central Govt. in close collaboration with State/UT Governments had identified 115 wetlands throughout the country, requiring urgent conservation and management interventions under the National Wetlands Conservation Programme (NWCP) since 1985-86. **[Para 5.3 at Page 757 of the Composite Rejoinder Affidavit by Applicants dated 21<sup>st</sup> January, 2017]**
- ii) Respondent no. 1 had made several guidelines from time to time including the above mentioned 2009 revised guideline, placed as Annexure – A1 at page 754 of the Composite Rejoinder Affidavit by Applicants.

The said guideline adopted the definition of wetland from RAMSAR Convention and defined wetland as:

*"lands transitional between terrestrial and aquatic eco-systems where the water table is usually at or near the surface or the land is covered by shallow water."*

- iii) Ramsar Convention on Wetlands defines wetlands as:  
*“areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres”* [at para 2. at page 755]
- iv) The said guideline prescribed a Process for Identification of Wetlands [para 5.3.5.1 at page 758] wherein the relevant criteria for area of such wetland is given as:  
*“(ii) Minimum area for identification of wetlands should not be less than 100 ha unless it has some exceptional ecological or other significance”*
- v) The said guideline also prescribed Criteria for Identification of Wetlands of National Importance [para 5.3.6.2 at Page 759] wherein under the sub-heading – **Sites containing representative, rare or unique wetland types**, 4 Criterion are laid down (out of which 3 criterions are applicable to the case of the Applicants in Dankuni):  
**“Criteria based on species and ecological communities**  
**(ii) Criterion 2.** *If it supports vulnerable, endangered, or critically endangered species; or threatened ecological communities.*  
**(iii) Criterion 3.** *If it supports populations of plant and/or animal species important for maintaining the biological diversity of a particular biogeographic region.*  
**(iv) Criterion 4.** *If it supports plant and/or animal species at a critical stage in their life cycles, or provides refuge during adverse conditions.”*

SUBMISSION:

Petitioner relies on the same as the 2009 guideline defined what is wetland and gave importance to presence of species and ecological communities in a wetland as an indicator and criteria for protecting a said wetland as wetland of national importance.

The Petitioner submits that Dankuni fulfills the definition as Dankuni wetland region is an interfluvium (interfluvium means a region between the valleys of adjacent watercourses, in the case of Dankuni Wetland area the adjacent watercourses are Hooghly River to the East and Damodar River to the West) and a naturally occurring depressed, low-lying area and are perennially waterlogged. [based on findings of Dr. Tapan Chakraborty, Associate Professor working with the Geological Studies Unit of the Indian Statistical Institute, written to the Petitioner in a Letter, annexed as ANNEXURE – P29 at page 287]

The Petitioner submits that Dankuni also qualifies for being ‘Wetland of a National Importance’ as it fulfills the Criteria based on species and ecological communities, as evident from the 3 inventories of flora and fauna of this wetland prepared by experts; annexed collectively as Annexure P-21 at pages 183 to 232 of the Compilation II to the Original Application.

- I. An exhaustive inventory of fauna of the impugned ecosystem documented by Nature Mates, another Kolkata based nature group headed by Arjan Basu Roy, an acknowledged expert in respect of butterflies. [Pages 183 to 196]
- II. An inventory of both flora and fauna prepared by Dr. Ashish Kumar Ghosh, Former Director, Zoological Survey of India, Head of the Indian Delegation to the Ramsar Convention, Kushiro, Japan, Member, Scientific Technical Review Panel, Ramsar Convention, United Nations, 1993 – 96, Member, Expert Group, National Biodiversity Authority, Govt. of India, based on studies conducted in the said region by Center for Environment and Development.) [Pages 197 to 217]

- III. An inventory of avian, mammalian and reptile fauna documented by members of 'Prakriti Samsad', a Kolkata based environmental organization under the supervision of eminent ornithologist and founder member of the said organization, Shri Kushal Mukherjee. [Pages 218 to 232]
- IV. A Report on the Persistence of Fishing Cats and Jungle Cats in Mollarbaer, Panchgara and other surrounding areas in Dankuni, West Bengal prepared by Tiasa Adhya, [member of IUCN Species Survival Committee, President's Award; 'Nari Shakti Puruskar' recipient of 2016, Researcher at the University of Trans-Disciplinary Health Sciences and Technology, Bangalore] along with eminent scientists like Dr. Jim Sanderson, Dr. Ramana Athreya, Dr. Shomita Mukherjee and Dr. Ajith Kumar
- V. A letter of endorsement and concern for protection of fishing cats at Dankuni wetlands from Fishing Cat Working Group IUCN, Salim Ali Centre for Ornithology and Natural History (SACON), National Centre for Biological Sciences (NCBS) and Wildlife Conservation Society. [Annexure P24A at page 272 of the Original Application]

**b. Definition laid down in West Bengal Wetlands and Water Bodies Conservation Policy**

- i) The High Powered Committee was constituted by Dept. of Environment on the direction of Hon'ble High Court at Calcutta in the matter of Forum for Human, Legal & Ecological Rights, Bansdroni & Ors. v The Union of India & Ors. in Writ Petition No. 606 of 2011 vide order dated 3<sup>rd</sup> February, 2012. [Annexure P11 at page 102 of the Volume – 1 of the Original Application]
- ii) The High Powered Committee (for short "HPC") in its Report submitted to the Chief Secretary, Govt. of West Bengal [placed as Annexure – 11 at page 100], came up with a comprehensive West Bengal Wetlands and Water Bodies Conservation Policy (at page 144)
- iii) The said policy defines wetland as, "*areas of marsh, fen, peatland or water whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt including areas of marine water the depth of which at low tides does not exceed six metres*" [at page 148, first paragraph under the sub-heading II. BACKGROUND]
- iv) The said policy recommended the following policy to be adopted, relevant ones are:

*I. "However, in case of any controversy or a difference of opinion a stakeholder can appeal to the Department of Environment to get the specific parcel of land examined and assessed on the basis of accepted scientific criteria to determine whether the parcel of land in question is a wetland or has recently been filled up. In such cases, the description of the land in question as laid out by the scientific enquiry instituted by the Department of Environment will remain valid irrespective of whatever is stated and described in the existing land records of the state."* [at page 155]

*II. "The entire inventory of wetlands and water bodies should be in the public domain. The core information should include :*

*...*

*b. Catchment identification and characteristics"* [at page 155]

*III. "A major problem in West Bengal is that tracts of wetlands are declared as shali or agricultural land as a first step and thereafter converted to industrial or residential land. This entire process is not always transparent. Unless the dubious cases are thwarted*

*immediately a major portion of the remaining wetlands of the state will be quickly lost, no matter how suitable an act for wetland conservation is put in place.” [at page 157]*

*IV. “Assessment of wetlands will involve identification of the status of, and threats to, wetlands which are more specific information on these ecosystems. Water quality assessment by measuring selected physico-chemical parameters, identification and evaluation of biodiversity values using biological parameters and determining socio-cultural and economic values in relation to wetland use and ecological services (groundwater recharge, flood mitigation, shoreline stabilization, etc.) will help monitoring activities.” [First para at page 158]*

*V. “4. Planning, assessment, evaluation and monitoring for wetland sites and defining conservation and management priorities for selected sites.*

*...*

*b. Some wetlands perform vital ecological functions like flood mitigation, groundwater recharge, urban sewage treatment etc. for which specific conservation projects should be envisaged.” [at page 158]*

SUBMISSION:

Petitioner relies on the same to argue that HPC in examining the case of Dankuni Wetland ignored their own policy recommendations. That the HPC relied on land records and classification of land as “shali” to deny from conferring wetland status to Dankuni Wetland, despite recommending against the same. The HPC did not conduct any water quality assessment nor did they determine any bio-diversity value. They even ignored the importance of Dankuni wetland serving as an important wetland for flood mitigation

**c. Definition of “wetlands” in Central Wetland Rules**

- i) The Wetland (Conservation and Management) Rules, 2010 at Page 310 of Volume – II Compilation of the Application of the Petitioner, Annexure – P34, defines “wetland” at section 2(g) [Page 311] as:

“wetland” means an area or of marsh, fen, peatland or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres and includes all inland waters such as lakes, reservoirs, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and the zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification...”

- ii) The 2010 Wetland Rules have been superseded by the Wetland Rules of 2017 under section 25(1)(v) read with section 3(3) and section 23 of the Environment (Protection) Act, 1986 vide notification dated 26<sup>th</sup> September, 2017.

- iii) Though the definition of “wetland” in 2010 and 2017 rules are similar, the 2017 Rules has provided clearer definitions of “wetland”, “wetlands complexes” and “zone of influence”:

“(g) “wetland” means an area of marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water

that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters, but does not include river channels, paddy fields, human-made water bodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purposes;

(h) "wetlands complexes" means two or more ecologically and hydrologically contiguous wetlands and may include their connecting channels/ducts;

...

(j) "zone of influence" means that part of the catchment area of the wetland or wetland complex, developmental activities in which induce adverse changes in ecosystem structure, and ecosystem services.

#### SUBMISSION

That Wetland Rules 2010 and now 2017 being the law on the subject, defines wetlands to include marshy areas as well as drainage area/catchment zone of direct influence. The 2017 Rules protects not just wetland areas but wetland complexes and zone of influence as a holistic ecosystem. However, in the case of Dankuni, Dept. of Environment and HPC has only looked at protecting water bodies and refused to apply the definition in the spirit and intent of the legislation.

#### ***d. An Independent Expert's Opinion of Dankuni Wetland – Dr. Tapan Chakraborty's assessment of Dankuni Wetlands***

- i) Dr. Tapan Chakraborty, Associate Professor with Geological Studies Unit, Indian Statistical Institute provided the Applicants with his expert opinion on the geomorphology of the Mollarbaer jala (Hooghly District) and the surrounding area based on his study of the Hooghly-Damodar interfluvial region. [ANNEXURE – P29 at page 287]
- ii) Important Extracts from his opinion are:
  - I. **"The broad geomorphic setting:** The Hooghly-Damodar Doab (Interfluvial) is broadly bounded by Hooghly River to the east and Damodar River to the west. We have investigated this interfluvial through satellite image and DEM (Digital Elevation Model obtained from SRTM data)...Bound between the levees of the two major rivers (Hooghly & Damodar), the interfluvial is a naturally occurring depressed, low lying area. The irregular depressions form large wetlands, and these wetlands are at places as much as 13m deep from the adjacent ground level...The bottom of these depressions are very close to the sea-level or to the level of water in the Hooghly River, making these depressed areas perennially waterlogged for the greater part of the year." [at page 287]
  - II. "Mollarbaer-some characteristics of the area: During the ground check of the area around Mollarbaer, we found large water bodies, e.g., ponds, large lakes, and areas with thin cover of water. Abundant water plants typical of wetlands, more commonly referred to as hydrophytic plants are found to occur in all these three wetlands...One of the prime evidences of the wetland character of these vast tracts came from the thick, dark coloured soil profiles found in the shallow excavations in this area...These gleyed soil profiles are more

than 1.5 meter thick and comprise dark grey clay, at places fractured and alternating with grey silt, preserved root traces and vegetal matter that clearly indicate that these areas were submerged under shallow water for several hundred years...” [at page 288]

- III. “Wetland shrinkage in the overall study area: I summarise below our analysis of the interfluvial area. Analysis of the satellite images covering an area of about 880 Km<sup>2</sup> of the interfluvial area was carried out as a part of our study...LANDSAT satellite images of 2010 shows that within the study area of about 880 KM<sup>2</sup>, 17.81% of the land is covered by wetlands and water bodies...Similar analysis carried on image of 1999 shows that the area of wetland in the same region was 22.79%....Thus a conservative estimate of change indicates that during this period we have lost about 43.85 Km<sup>2</sup> (or about 4385 hectare) of wetland. This loss is about 21.74% of the wetland we had in this area in the year 1999.”[at page 289]

#### SUBMISSION

The Applicants relies on the expert opinion of Dr. Tapan Chakraborty on the geomorphological character of Dankuni wetlands to submit that the said region is wetland area, it is naturally formed and it is rapidly vanishing. The expert evidence acts as an impetus for the Applicant to try and protect the remaining wetland which functions as not only a habitat for rich bio-diversity but carries out important function such as flood mitigation. The expert evidence further forms the core of the argument as to why Dankuni wetland is required to be immediately protected under the relevant laws.

#### ***e. Ramsar Classification System for Wetland Type***

- i) The Applicants would accept and also rely on the observations of Respondent No. 11 in their affidavit dated 9<sup>th</sup> August, 2016 at page 441, paragraph iv to suggest that Dankuni wetland being a broad flood plain and marshland falls under the “Inland Wetlands” classification system labeled as R, Ss, Ts and W. [Annexure R2 at page 449]

### **C. Summary of contentions by State Respondents and responses of the Applicants thereto**

#### **a. Dept. of Environment, Govt. of West Bengal being Respondent no. 4**

- i.** Relies upon the findings and minutes of the 40<sup>th</sup> meeting of the HPC and state land records to state that the area under question cannot be construed as a wetland [page 407, paragraph 3c of their affidavit dated 10<sup>th</sup> August, 2016]
- ii.** Disputes the size of the area under questions to be not more than 280 hectares approx. [page 408, paragraph 3 of their affidavit dated 10<sup>th</sup> August, 2016]
- iii.** States that similar landscapes are documented in various parts of West Bengal, where initial colonizer plants grows, where seeds of the plants, insects attract animals but no endemic species could be found on site. [paragraph 4 at page 408-409 of their affidavit dated 10<sup>th</sup> August, 2016]
- iv.** Relies upon HPC minutes from 17.05.2016 to state that profile of soil does not allow ground water recharge and though the area in question may serve for flood mitigation, if Dankuni Canal had been cleared there would not have been any water logging. [paragraph 5 at page 409 of their affidavit dated 10<sup>th</sup> August, 2016]
- v.** Based on filed inspection report of HPC and guidelines by HPC, Respondent No. 4 undertook to conserve the ponds and “dobas” to the extent possible in view of the order of the Hon’ble High Court. [paragraph 5 at page 410 of their affidavit dated 10<sup>th</sup> August, 2016]

- vi.** Defends the conduct of HPC by stating that communication was made out to the Applicants to attend field visit [para 9a at page 411], that HPC did indeed go through several scientific papers before expressing their opinion including report of State Water Investigation Directorate, Govt. of West Bengal [para 9c at page 412], that other NGOs were involved when HPC thought it prudent [para 9d at page 412]
- vii.** Defended the conduct of HPC's field verification by saying that an expert team of HPC along with an external expert visited each plot after reports being made of those plots by DL&LRO. As there was no obligation to keep the applicants informed of all their activities, HPC did not request the applicants all the time. [para 10 at pages 413-414]
- viii.** They contended the map of the applicants based on the Fisheries Mapping Project Office satellite data to say that the area show small segregated ponds/tanks and Nayanjulis and a single contiguous water logged patch toward the north of Mollarber Mouza adjoining the Dankuni canal within the area in question. That the total area is 57.75 Ha which is far less than stipulated 500 ha required for designation of wetland as per Rule 3 sub rule 5 of Wetland Rules 2010. [paragraph 4 at page 686 of their affidavit dated 16<sup>th</sup> January, 2017]

### **Response by the Applicants:**

The arguments advanced by the Applicants against the Dept. of Environment and documents and proceedings of HPC relied on by the Dept. of Environment are given in a tabular form as "**Annexure A**" to this Synopsis.

#### **b. West Bengal Biodiversity Board being Respondent no. 5**

- i.** Research Officer of the Respondent No. 5, conducted a field visit on 18.02.2015
- ii.** At paragraph 4, page 432 of Affidavit by Respondent no. 5 a list of flora observed is stated.
- iii.** At paragraph 5, Respondent No. 5 states that, "no large wild animal was spotted during the visit. The plants found are neither endangered nor endemic."

### **Response by the Applicants:**

The arguments advanced by the Applicants against the West Bengal Biodiversity Board and its field proceedings are given in a tabular form as "**Annexure B**" to this Synopsis.

Santanu Chakraborty

Advocate for the Applicants

## “Annexure A”

### Submissions of the Applicants against Dept. of Environment and HPC

Argument	Reference	What ought to have happened	What actually happened	Why it is not in consonance
<p>HPC was constituted by West Bengal Govt. vide a Notification:-</p> <p>a) to examine specific grievances agitated in High Court</p> <p>b) to formulate policy which would address present and future problems pertaining to wetland in West Bengal</p> <p>Thereafter in WP 461 of 2013, filed by the present Petitioner the High Court tasked them to look into the specific grievances of the petitioner regarding filling up of wetlands in Dankuni and also how to protect the same and to give the petitioner organizations audience during filed study</p>	<p>Original Application (Volume II) Rejoinder to Respondent No. 4 para 4, 5 and 6.</p>	<p>HPC should have decided on all the wetlands status, meaning whether to confer 'protected' status or not and laid down guidelines/policy on what kind/type of wetland West Bengal ought to protect.</p> <p>Furthermore, they ought to have considered MoEF guidelines on the subject (issued from time to time, latest being 2012 Guidelines under the NWCP – National Wetland Conservation Programme)</p> <p>They also should have taken petitioner organization along with them in the field visits</p>	<p>They drafted a policy being the West Bengal Wetland Policy, but ignored their own policy statement which prohibited reliance on land records alone to determine a land as wetland or not</p> <p>But they did not consider the MoEF guidelines nor did they consider a sound scientific methodology.</p> <p>They also did not take either the petitioner organization or any other environmental organizations – they did not involve any University Department of repute in assessing the lands as wetland nor any other stakeholder in the process of assessing said lands as Wetland or not</p> <p>The Petitioners had</p>	<p>a) High Court mandate - made it clear before about a policy that should address future grievance. Such a policy though framed was not considered by HPC themselves, as land records were considered which according to the Policy was often incorrect to depict character of land</p> <p>b) High Court mandate – made it clear that petitioner organization was to be involved in the assessment of lands as wetland and were to accompany HPC in their field visits, but HPC members did not involve petitioner organizations</p> <p>c) MoEF guidelines – clearly clarified about the</p>

## “Annexure A”

### Submissions of the Applicants against Dept. of Environment and HPC

			<p>previously vide a Writ Petition No. 461 of 2013 approached Hon'ble High Court at Calcutta, wherein the Hon'ble High Court at Calcutta was pleased to pass an order dated 29<sup>th</sup> November, 2013 (placed as Annexure P-3 to the Original Petition), to direct an expert body namely the High Powered Committee (HPC hereinafter), itself set up vide Notification No. EN/603/3C-08/2011 dated 15<sup>th</sup> March, 2012 (placed as Annexure P-5 to the Original Petition) by State Govt., being the respondent no. 4 herein</p>	<p>size of wetland, about the important of presence of certain biodiversity. The same was neither considered nor appreciated in finding the said land as not a wetlands</p> <p>d) Central Wetland Rules, 2010 – clearly spells out a procedure whereby State Government ought to have prepared the data in brief document format and sent it to CWRA. They are the authority under the said Rule to appraise whether a parcel of land is wetland or not. =</p>
<p>HPC conducted several field visits to determine the area in question is denied as false</p>	<p>At page 407 para 3c of Affidavit of Dept. of Environment (Respondent no. 4)</p>	<p>HPC should have conducted multiple site visits and also provide an opportunity to the applicant herein to accompany them in their site visits.</p>	<p>one field visit was conducted on 25.01.2016, as shown in the annexure provided by the respondent no. 4</p>	<p>No objection could be raised regarding the siting of the industries and its proximity to the wetland area, also the nature of biodiversity existing beside the industries also could not be highlighted</p>

## “Annexure A”

### Submissions of the Applicants against Dept. of Environment and HPC

				as the petitioners were not made parties to the field visit.
HPC members consulted various scientific reports is also denied as unsubstantiated	Rejoinder to Respondent No. 4 Para 10, para 11 (illustration of such non-consideration of reports)	HPC members ought to have considered MoEF Guidelines, ought to have also considered the scientific reports, inventory of flora and fauna brought on record in the Writ Petition No. 461 of 2013 and considered the same before opining on the nature and type of impugned land Dankuni is.	none of the the scientific rpeorts relied on by HPC have been brought on record in the Affidavit of Dept. of Environment (Respondent No. 4) dated 10 <sup>th</sup> August, 2016 (at page 405) or affidavit dated 16 <sup>th</sup> January, 2017 (at page 685)	The petitioner had provided the said annexures being:-  (Annexures P-21 at pages 218 to 232 of the Compilation II to the Original Application, Annexure P-21 at pages 183 to 196 of the Compilation II to the Original Application, Annexure P-21 at pages 197 to 217 of the Compilation II to the Original Application – being - An inventory of avian, mammalian and reptile fauna documented by members of 'Prakriti Samsad', a Kolkata based environmental organization under the supervision of eminent ornithologist and founder member of the said organization, Shri Kushal Mukherjee, An exhaustive inventory of fauna of the impugned ecosystem documented by Nature Mates, another Kolkata

## “Annexure A”

### Submissions of the Applicants against Dept. of Environment and HPC

				<p>based nature group headed by Arjan Basu Roy, an acknowledged expert in respect of butterflies, An inventory of both flora and fauna prepared by Dr. Ashish Kumar Ghosh, Former Director, Zoological Survey of India, Head of the Indian Delegation to the Ramsar Convention, Kushiro, Japan, Member, Scientific Technical Review Panel, Ramsar Convention, United Nations, 1993 – 96, Member, Expert Group, National Biodiversity Authority, Govt. of India, based on studies conducted in the said region by Center for Environment and Development.)</p> <p>These set of Annexures a/w Reports were also produced in the Writ Petition No. 461 of 2013.</p> <p>the respondent no. 4 has therefore failed to answer the contentions of the</p>
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## “Annexure A”

### Submissions of the Applicants against Dept. of Environment and HPC

				<p>petitioner as far as a plethora of scientific views and assessment about the land in question and not a single reasoned deliberation of HPC is produced to show that the same was considered</p>
<p>Contradictory views of the HPC</p>	<p>Annexure R 4/2 to the affidavit of respondent no. 4.</p> <p>Rejoinder to Respondent No. 4 para 13.</p> <p>Rejoinder Affidavit of Petitioner starting at Page 896; Annexure B2 at page 911</p>	<p>State Government cannot form an opinion, when the same is to be formulated by the Authority concerned under Central Wetland Rules, 2010 as to whether a said ecosystem is a wetland to be identified as a protected wetland as per the definition stated therein.</p>	<p>previous opinion of the HPC “<i>A major problem in West Bengal is that tracts of wetlands are declared as shali or agricultural land as a first step and thereafter converted to industrial or residential land. This entire process is not always transparent</i>”</p> <p>HPC opined that based on land records available with Dept. of Land &amp; Land Reforms the said area cannot be classified as wetland technically.</p> <p>the field visit team's report</p>	<p>Respondent No. 4 is heavily relying on the opinion of HPC although HPC itself has stated that land records not being sufficient to conclude the nature of land which has not been adopted by Respondent No. 4.</p> <p>despite such contradiction of opinion in HPC towards placing reliance on revenue records, the respondent no. 4 has adopted the same as the stance of State Government herein.</p>

## “Annexure A”

### Submissions of the Applicants against Dept. of Environment and HPC

			<p>herein, in fact admits at para 'e)' that, “...It gives an impression of a wetland area from the standpoint of scientific view but cannot be construed as a wetland technically as per classification of the Dept. of Land &amp; Land Reforms as Sali/Doba/Karkhana, etc.”</p> <p>HPC assessment in its 33<sup>rd</sup> meeting: “The area in consideration in spite of being recorded as agricultural land appeared in parts as wetland for containing water for more than six months. On a wider context the area in question is a part of inter distributory swamp in between Hooghly in the east and Saraswati in the West. The area is hydro-geomorphologically and ecologically important as retention basin and</p>	
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## “Annexure A”

### Submissions of the Applicants against Dept. of Environment and HPC

			<p>serves as a saucer for the entire lower Damodar basin which is historically flood prone. It appears to be rich in biodiversity as and supports livelihood for a large wetland community.”</p>	
<p>Size of the Wetlands</p>	<p>Rejoinder to Respondent no. 4 at page 742 (para 17)</p>	<p>Respondent no. 4 ought to have disclosed the same before the NGT as well as briefed HPC members accordingly.</p>	<p>in the 3<sup>rd</sup> meeting of Central Wetland Regulatory Authority under Central Wetland Rules 2010, held on 27<sup>th</sup> April, 2012 there were deliberations on the question of size of wetland as well as identification of zone of influence for identification and notification of new wetlands under the 2010 rules on proposal received from State Governments. It was categorically mentioned that size was in itself not a criteria where notification is possible</p>	<p>despite the knowledge and being participant in such meetings of the Authority where clarifications were made and State Govt. was constantly reminded of ‘what’ and ‘how’ to proceed under the provisions and statutory obligations of Central Wetland Rules, 2010</p>
<p>Respondent No. 4 are under a statutory obligation to</p>	<p>Rejoinder to Respondent No. 4</p>	<p>Respondent No. 4 should have followed the</p>	<p>They only complied with directions under Calcutta</p>	<p>Inaction on the part of the Respondent authority to</p>

## “Annexure A”

### Submissions of the Applicants against Dept. of Environment and HPC

conduct survey for the purpose of making brief document as provided in the Central Wetland Rules, 2010		guidelines under NWCP and sought help from CWRA wherever necessary to finish the brief document within statutory time.	High Court within a limited framework. Which was also ad hoc in the sense that specific mandate to comply with Central Rules, 2010 was never addressed.	comply with statutory obligations and suppression of facts.
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## “Annexure B”

### Submission of the Applicants against Biodiversity Board (Respondent no. 5)

<b>ARGUMENTS</b>	<b>REFERENCE</b>	<b>WHAT OUGHT TO HAVE HAPPENED</b>	<b>WHAT HAS ACTUALLY HAPPENED</b>	<b>WHY IS IT NOT IN CONSONANCE</b>
Respondent No. 5 did not carry out their statutory duties	<p>Rejoinder to the Respondent No. 5 para 5, 6, 7 and 9.</p> <p>section 23 of Biological Diversity Act, 2002</p> <p>section 37 of Biological Diversity Act, 2002</p>	<p>the Biological Diversity Act, 2002 casts a statutory duty upon the State Biodiversity Board to advise the State Govt. on matters relating to the conservation of biodiversity, sustainable use of its components as well as to restrict activities which are detrimental or contrary to the objectives of conservation and sustainable use of biodiversity</p> <p>have further statutory duties to identify Biological Heritage Sites, wherein areas such as the impugned land which is outside Protected Area Network requires emphasis and careful study, as is evident</p>	<p>respondent no. 5 conducted a day visit only and gave their findings accordingly.</p> <p>respondent no. 5 has volunteered to not respond to the Supplementary Affidavit of the Petitioners. That in the said Supplementary Affidavit filed by the Petitioners herein, observations from a site visit on 13<sup>th</sup> September, 2016 were disclosed wherein it was stated that several flora, classified as wetland indicators were spotted by the volunteers of the Petitioner organization.</p>	<p>respondent no. 5 has waived of their right to controvert such claims and therefore an adverse inference can be drawn in favour of the Petitioners from such action of respondent no. 5.</p>

	<p>Annexure A1 at page 809 of Rejoinder to Respondent No. 5</p> <p>item 21 at page 819 of the Rejoinder to Respondent No. 5</p>	<p>from the inventory cited in the original application that the impugned region provides habitat for aquatic and seasonal migrant species for feeding and breeding.</p> <p>That Biodiversity Heritage Site Guidelines provide for detailed parameters for identifying such biodiversity sites as well as mandate for a study to be undertaken over a period of 3 to 6 months.</p> <p>Furthermore, Actionable Points under India's National Biodiversity Action Plan 2008 further casts a duty on the respondent no. 5 to, "Integrate conservation and wise use of wetlands and river basins involving all stakeholders, in particular local</p>		
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	<p>item 90 at page 824 of Rejoinder to Respondent No. 5</p>	<p>communities, to ensure maintenance of hydrological regimes and conservation of biodiversity” as well as, “Give priority to impact assessment of development projects on wetlands; in particular, ensuring that environmental services of wetlands are explicitly factored into cost-benefit analysis”</p>		
<p>Non-application of Mind</p>	<p>Annexure P-21 at pages 218 to 232 of the Compilation II to the Original Application.</p> <p>Annexure P-21 at pages 183 to 196 of the Compilation II to the Original Application.</p> <p>Annexure P-21 at pages 197 to 217 of the Original Application</p>	<p>The respondent authority ought to have conducted a proper filed study, including verifying the contents of the reports cited by the petitioners in the Writ Petition 461 of 2013 as well as Annexures in the OA 65THC/2016/EZ.</p> <p>They also ought to have sought clarifications from the National Biodiversity Board, as opinion was given on the subject matter by a former expert member of the</p>	<p>No such scientific filed study was conducted. No attempt was made to verify or deny the claims of the petitioners. The petitioners had also given geo-locations of the endemic species, the same was also not verified or denied.</p>	<p>That in light of the following reports/study of the petitioner, an image of a biodiversity hot spot emerges from the said region, which faces acute threat due to rampant destruction of habitat and other anthropogenic activities. That there are legal obligations upon the Respondent no. 5 to take steps to protect loss of such habitats by considering declaring the area as protected. However, no such steps contrary to law</p>

	Para 4 of the Rejoinder to the Respondent No. 5	National Biodiversity Board.		<p>was taken:</p> <p>The said reports being:-</p> <p>Several inventories/reports which have been relied upon by the applicant indicate the flora and fauna of the region. Particularly, An inventory of avian, mammalian and reptile fauna documented by members of 'Prakriti Samsad', a Kolkata based environmental organization under the supervision of eminent ornithologist and founder member of the said organization, Shri Kushal Mukherjee, at the impugned location during their prolonged field visits over a long period of time. They have observed more than 152 species of birds at the said location.</p> <p>An exhaustive inventory of fauna of the impugned</p>
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			<p>ecosystem documented by Nature Mates, another Kolkata based nature group headed by Arjan Basu Roy, an acknowledged expert in respect of butterflies, prepared in the course of their several field visits over many years, documenting around 145 species of birds, 12 species of reptiles, 10 species of mammals and 83 species of butterflies from the said area. Many of which are categories as Endangered, facing extinction, Schedule I species under Wild Life Protection Act and listed as Red Category in the IUCN List.</p> <p>An inventory of both flora and fauna prepared by Dr. Ashish Kumar Ghosh, Former Director, Zoological Survey of India, Head of the Indian Delegation to the</p>
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				<p>Ramsar Convention, Kushiro, Japan, Member, Scientific Technical Review Panel, Ramsar Convention, United Nations, 1993 – 96, Member, Expert Group, National Biodiversity Authority, Govt. of India, based on studies conducted in the said region by Center for Environment and Development. Based on the study, he has concluded that the area has more than 145 species of birds, 12 species of reptiles and at least 10 species of mammals almost all of which are protected under various schedules of the Wildlife Protection Act, 1972. His findings record more than 85 species of flora in the said area of which 73 are wetland dependent.</p>
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