

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

O.A. No. 08/2015/EZ

SUBHAS DATTA

VS

STATE OF WEST BENGAL & ORS

CORAM: **Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member**
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT:

Applicant		: Mr. Subhas Datta in person
Respondent No. 1 & 2		: Mr. Bikas Kargupta, Advocate
Respondent No. 3		: None
Respondent No. 4		: None
Respondent No. 7		: Mr. Ashok Prasad, Advocate
Respondent No. 8		: Ms. Poushali Banerjee, Advocate
Respondent No. 9		: Mr. Sanjib Kr. Mukhopadhyay, Advocate
Respondent No. 10		: Ms. A. Pandey, Advocate
		Mr. N.C. Bihani, Advocate
Respondent No. 11		: Mr. G.C. Das, Advocate
		Mr. Mahaboob Ahmed, advocate
Other respondents		: None

Date & Remarks	Orders of the Tribunal
Item No. 3 13th January, 2016.	<p>Mr. G.C. Das, Id. adv. appearing for the respondent No. 11 (Kolkata Municipal Corporation) prays for an adjournment on the ground of his senior Mr. Achintya Kr. Banerjee, Id. adv. He, however, submits that written notes of arguments have been prepared by the said respondent and he seeks leave to file the same. Copies of the written notes have already been served on the applicant and other co-respondents. Let two copies of written notes, as filed by Mr. Das, Id. adv. for respondent No. 11, be kept on record.</p> <p>Heard Mr. Subhas Datta, applicant herein, who is appearing in person. Also heard the Id. advocates present for respective respondents.</p>

The issue in this application as alleged by the applicant, relates to illegal construction of pathway on the river bed of river Ganges in the name of river front beautification programme along the stretch of river adjacent to Manor Floatel Hotel by Kolkata Municipal Corporation, construction of Manor Floatel Hotel by the private respondent on the bank of river Ganga making encroachment into the river and also the construction of one crematorium and parking space at Nimtala on the river bed of river Ganga.

In his reply affidavit, the Chief Secretary, Govt. of West Bengal, would submit that in connection with river front beautification programme, the pedestrian or walkway along the stretch of river Ganga adjacent to Hotel Floatel has been constructed, whose foundation was developed on the existing bank protective wall and there was a categorical denial of any construction on the river bed. In view of such rival submissions, we by our earlier order dated 28th July 2015 constituted a committee of expert engineers from the two Departments, namely, Kolkata Port Trust and Kolkata Metropolitan Development Authority to make a spot inspection and answer to the following points :-

- (i) Whether the disputed pathway near Manor Floatel has been constructed on the river bed encroaching the river ?
- (ii) Whether construction made at Nimtala Crematorium (Burning Ghat) is on river bed by obstructing water flow of the river ?

The above stated two organisations filed their inspection report independently. The Kolkata Metropolitan Development Authority in its affidavit has submitted that the foundation of the said pathway near Manor Floatel was developed on the existing bank protective wall within the foreshore area of the river and not in the river bed in strict adherence to the approval issued by KOPT. They have not opined anything on construction at Nimtala Crematorium site. Kolkata Port Trust (KOPT), has also stated that the pathway has been constructed at the foreshore area of the river and not on the river bed;

so also the Nimtala Burning Ghat. Both the constructions are not in the river bed and are in hydraulically insignificant zone as reported by KOPT.

The applicant Mr. Subhas Datta appearing in person in his affidavit against the reports filed by KMDA and KOPT referred to the following documents filed before the Tribunal, which clearly reveal, according to him, that the said constructions are in the river bed and not in river bank :-

- (i) Page 49, paragraph 1 of the affidavit filed on 10th April 2015 by the Chief Secretary, Govt. of West Bengal on "Walkway near Floatel Hotel".
- (ii) Page 9 (annexure-R1) of the affidavit dt. 10th April 2015 filed by the Chief executive Officer, KMDA;
- (iii) Page 315 & 316 of Annexure-E of the affidavit filed by the Chairman of KOPT.
- (iv) Hydrodynamic Study report filed by Kolkata Municipal Corporation at page 20, 5.1.
- (v) Hydrodynamics report of Jadavpur University.

Thus, there are conflicting views in the documents filed by various authorities and in view of this, we hereby decide to appoint an independent body of experts on the subject to make a further inspection to answer the following points :-

1. Whether the walkway/pathway constructed adjacent to a stretch of river Ganges near Manor Floatel hotel is on the river bed ?
2. Whether such construction is hydraulically significant ?
3. Whether the construction of Nimtala Crematorium and other construction near it are on the river bed ?
4. Whether such constructions are hydraulically significant ?

It is suggested that the Professors/Scientists of Hydrology Department of Indian Institute of Technology, Roorkee will be competent to deal with the issue. The respective Id. Advocates and the applicant appearing in person have no objection if any order is passed directing the Director, IIT, Roorkee to assist the Tribunal in undertaking

an inspection of the sites by a small team of experts from Hydrology Department to answer the above stated four points.

The cost against inspection and report submission will be borne by Kolkata Municipal Corporation, Kolkata Metropolitan Development Authority, Kolkata Port Trust and Manor Floatel Hotel in equal proportion.

Hence, we direct Prof. Pradipta Banerji, Director, Indian Institute of Technology, Roorkee, Uttarakhand-247667, India to constitute a committee of experts to undertake an on the spot inspection at the site and submit five copies of the report within a month answering to the four points stated above. The other terms and conditions are as follows :-

1. The Registry of the Tribunal will communicate this order to the Director, IIT, Roorkee urgently with a request to acknowledge the receipt of the order and to submit a budget estimate and the dates of inspection to undertake the work to the Registrar, Eastern Zone Bench of National Green Tribunal, Finance Centre, 3rd Floor, New Town, Kolkata-700 157.
2. The Budget Estimate should include travel from Roorkee to Kolkata and back, Accommodation and Food in Kolkata, local conveyance during inspection, Remuneration/Honorarium/Fee, report preparation, etc.
3. The records will be available in the Registry of the Eastern Region Bench of NGT, Kolkata, which can be perused by the team on the first day of arrival and photocopies of the documents will be available to them by the Registrar, if required by the team.
4. The applicant and the Id. Counsel for respective parties will be informed about the dates of inspection by the Registry and they may also remain present at the time of inspection at their own cost.
5. A senior officer of Kolkata Municipal Corporation will be engaged by the Corporation to coordinate the activities of the team during their stay at Kolkata and provide facilities to

prepare the report by the team.

6. All the respondents are to remain in readiness to cooperate the team as and when required.

The matter is fixed on 22.2.2016.

The Registry is directed to communicate a copy of this order to the Director, IIT, Roorkee, urgently for compliance of the order.

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Justice Pratap Kumar Ray, JM

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Prof. (Dr.) P. C. Mishra, EM

