

CHAPTER  
SIX

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## The Howrah Matter

Howrah is the oldest industrial town in India. Academics and bureaucrats in Calcutta consider the town on the other side of the Hoogly River ‘a hopeless case’ or ‘horrible place’. According to a report in the *Asian Age* (17.3.1998), the town tops the official list of ‘critically polluted areas’ in India. Howrah is generally known to be the most troubled section of the Calcutta agglomeration.

The *Howrah Matter* is the legal culmination of a single NGO’s long struggle. It has, to some degree, been successful in using the judiciary to make the government more accountable. The court rooms have (although to a limited extent) given rise to a sense of public sphere in Howrah. Some improvements have been achieved in Howrah’s civic condition. They are modest compared to what was demanded and, by most international standards, would seem necessary. But they are, in the words of NGO leader Subhas Datta, ‘a good beginning’.

The case has also been a good beginning in the sense of raising the general public’s awareness that administrations have duties to fulfil. Following the example of the *Howrah Matter*, there have been several minor cases of litigation. The local authorities have also

begun to act somewhat more responsibly under the mere threat of litigation.

Before turning to the Supreme Court in 1995, the Howrah Ganatantrik Nagarik Samiti (GNS) had been involved in many local struggles for the protection of public parks, regular clearance of garbage, and other issues related to the poor state of Howrah's civic amenities. In several instances the High Court had been moved in the 1980s and 1990s, but with unsatisfying results even when judgements had been in favour of the NGO's petitions. In 1995, the GNS summarized such complaints in a single writ petition to the Supreme Court of India, thereby constituting the *Howrah Matter*.

Unlike PUBLIC and other NGOs involved in the wetlands dispute, the GNS did not, during my research period up to January 1998, enjoy systematic support from members of the bureaucracy. It lacked qualified scientific and engineering expertise. It had little in common with the typical environmental NGOs in Calcutta. The GNS included rickshaw wallahs and handcart pullers and thus commanded grassroot contacts of the kind desired by most Calcutta NGOs. Tellingly, this NGO is known by its Bengali name 'Ganatantrik Nagrik Samiti' meaning 'Democratic Citizens' Association'.

The GNS revolves around a small core of activists, of whom Subhas Datta is the undisputed leader. The legal activities are his brainchild, with the GNS providing a public platform. Initially, public interest litigation followed street agitation, but then the focus shifted to rallies serving as means to emphasize the legal struggle.

This chapter first assesses the environmental situation of Howrah and then, in the second section, gives a brief overview of the history, structure and activities of the Howrah GNS. The third section deals with the procedural aspects. In 1995, the GNS filed a writ petition in the Supreme Court summarising complaints about Howrah's desolate civic condition. The court took up this matter but later decided it could not adequately deal with issues so complex and so far from Delhi. The case was transferred to the High Court with the order to establish a specialized environmental bench. Since then, the High Court, the rulings of which had so far been ignored by the authorities, has had some impact on *Howrah*.

The fourth section of this chapter examines some of the individual issues dealt with by the High Court's Green Bench in the context of the *Howrah Matter*. It illustrates to what extent the Green Bench has been more effective than High Court justices in dealing with the same

or similar issues before the intervention of the Supreme Court. The last section then assesses the ground reality in Howrah and the changes in the local polity brought about by the litigation up to the winter of 1997-98.<sup>1</sup>

## 6.1 The Civic Situation in the Howrah Corporation

Howrah is Calcutta's sister city on the other side of the Hoogly river. It has always been a 'town of shanties' compared to the 'city of palaces', as Calcutta was called in colonial times. In the mid-19th century, Howrah was the nucleus of industrialization in India.

According to the CMDA (1992: 1, 9), the population of Howrah is expected to grow from 947,000 in 1992 to 1.4 million in 2012. Howrah provides the industrial base for the metropolis and serves as a major transportation node. In 1990, the State Planning Board reckoned there were over 570 large units of metal- and steel-based industries in Howrah. Other important industries included plastics, paints and jute. There are also many small-scale industries, which are basically unregulated in India. According to the State Planning Board, the estimated number of small-scale units in 1988 was 32,000, compared to only 42,000 in the much larger Calcutta corporation area and a total of 150,000 in the metropolitan district.

The available data on pollution levels in Howrah are even poorer than for Calcutta. As ODA-Consultant Fiona McCluney told me, the CEMSAP project, which compiled all existing government reports of environmental relevance, did not come upon any specific papers concerning Howrah (McCluney, interview).

Howrah's desperate situation has so far gone largely undocumented, apart from sensationalist accounts of Third World deprivation such as Dominique La Pierre's best-selling novel *The City of Joy*. In general, the description of this urban drama must therefore remain more impressionistic than supported by toxicological and

<sup>1</sup> I was able to spend the winter semesters of 1996-97 and 1997-98 in Calcutta. In February 1999, I returned to present my results at a seminar at the Max Mueller Bhavan and at an environment conference hosted by the state government. On this occasion, I was able to update some of my data, but not to do any more systematic research. This is the reason some of my data presented here are of early 1999 rather than early 1998.

other scientific data. Anybody visiting the city for the first time will be appalled by stagnant water in open drains even along major streets. Heaps of garbage are piled up just above anywhere. Tiny, light-deprived workshops operate wall to wall with residential houses on one side and slum hutments on the other.

In Howrah the industrial revolution set in at the same time as it did in the Ruhr area. However, development in Howrah appears to have stopped in its tracks. The living conditions of the vast majority of people are obviously still very similar to what Friedrich Engels described in his assessment of working class quarters in England in the 19th century.

Indeed, the dismal appearance of Howrah is by no means a new phenomenon. Howrah is historically known for squalor and urban misery (Bonnerjee, 1955: 32):

In 1889 the Sanitary Commissioner, who inspected the city, remarked: 'Of all the municipalities of Bengal which I have inspected and I have inspected nearly all of them, Howrah is without exception the dirtiest, most backward and badly managed'.... In 1893 another Sanitary Commissioner endorsed the above views: 'One is met by violent breaches of ordinary hygienic laws. I have never in fact seen a town in such dangerously insanitary condition, and I should be very sorry to live in it myself'.

As early as the 1830s, the western bank of the river had become a congested mix of industries, slum hutments, low-lying swamps and marshes (Chaturvedi, undated). According to this high-ranking Indian Administrative Service bureaucrat, Howrah in the late 1980s could not 'provide the minimum amenities of urban living' and is considered a 'town planner's despair' (chapter 1.6). Likewise, the Howrah Improvement Trust as early as 1966 (p. xi) declared the city 'a town planner's headache':

Acute congestion, lack of adequate drainage system, housing shortage, absence of proper road alignments and other deficiencies in the matter of water supply, sewerage and community facilities, have combined to make the problem of improvement of the City of Howrah one of great urgency as well as complexity.

Howrah Station is the largest railway terminus in India. On top of this, all important access roads leading into the agglomeration from the west and south pass through Howrah. In Calcutta, main thoroughfares have four to six lanes and are reasonably well

maintained. In Howrah, a city with similar (in not more) traffic, they only have two lanes and these are in a sorry state. Even Grand Trunk Road, the main highway leading to northern India and Delhi, is narrow and full of potholes. The CMDA (1992:2) stated categorically:

In spite of its locational and industrial importance at regional and national levels, the city of Howrah has been deprived of the basic facilities and infrastructure from very early days.... The actions taken in different spheres of physical, social and economic development have been utterly inadequate compared to the needs. ... The gap between the need and the supply, therefore, became wider.

Howrah's socio-economic status is desperate: 'About 70 percent of the total population lives in very poor quality houses under extreme deprivation of basic services' (CMDA, 1992: 38). Its civic amenities are in a poor state. According to State Planning Board's Perspective Plan (1990), Howrah only had 25 kilometres of underground sewers. Calcutta, with roughly four times as many people and four times as much space, had 1210 kilometres of underground sewers (48.4 times as much). It was also estimated that an average of 372 tons of solid waste accumulated in Howrah daily, with data on the collected amount and disposal areas declared to be not available. The respective figure for Calcutta was 2072 tons, of which 1500 to 1800 were stated to be collected and dumped at Dhapa.

All summed up, Howrah is environmentally the most troubled area in the Calcutta agglomeration. Accordingly, the CMDA's official Howrah policy (1192: 9) echoes the call for stringently enforced urban planning, for the conservation of parks, open spaces and water bodies, and for massive infrastructure investment:

If the growth is allowed to occur without any planned intervention it is likely that the spatial structure will be distorted with major deduction of open space, green areas and wetland. This would have very serious effect on the environment. This should be prevented by all means. Unplanned urban growth in future would also aggravate the present damages that are being created by unscrupulous promoters in permitting high rise development with consequential densification of already congested part of the city. This trend should be stopped to save the city.

The same document lists urgent infrastructure needs of 'water supply, drainage and sanitation, solid waste management, transport, shelter,

parcs and community open space, health, education and community facilities for urban poor as well as environmental conservation measures' (p.13).

Given the repeated call by the CMDA for stringent urban planning, it seems ironic that the 'Outline and Development Control Plan for the Howrah Corporation' had not been finalized and published till the end of 1997. This document, which is obligatory according to the West Bengal and Country Planning Act of 1979, only existed in an unpublished draft version seven years after the CMDA's Metropolitan Development Plan.

One version of the draft plan was leaked out of the CMDA in early 1997. It lists several policy priorities. Among them are the dispersion of activities from the congested city core, the conservation and preservation of cultural heritage as well as of environmentally relevant areas and a general mix of land use with certain limits for toxic and hazardous industries. It is explicitly stated (p. 14) that 'the existing parks and public open spaces will be preserved and efforts will be made for creation of new parks and public open space'. All in all, urbanization is to be regulated 'with a view to making the area functionally efficient and environmentally acceptable' (p. 15).

These policy statements, once again, are not reflected in the ground reality of Howrah. All summed up, the GNS does not demand anything beyond implementation of the principles outlined in the official documents of the CMDA. Government activities to improve Howrah's infrastructure have basically been limited to the construction of the Second Hoogly Bridge and its connecting roads. This is, no doubt, useful but might serve more to decongest Calcutta than to improve living conditions in Howrah.

In late 1997, the Central Pollution Control Board drew attention to Howrah's situation. It had declared Howrah a 'critically polluted area'. Twenty-four places, all over India, had been officially labelled critically polluted. The central government's goal was to clean them up by the year 2002, R.N. Bhattacharya of the Central Pollution Control Board told me. While one might be ill advised to expect too much of the central government in this respect, the inclusion of Howrah in its list clearly underlined the fact that this city was facing daunting challenges.

## 6.2 The Howrah Ganatantrik Nagarik Samiti

The Howrah Ganatantrik Nagarik Samiti stands in the tradition of the non-marxist Indian left. It was founded by a veteran socialist leader in the post-emergency era. Its roots are the Jayaparkash Narayan movement of the early 1970s. Initially, the GNS was not a predominantly environmentalist organization. Rather, it has taken up these issues as essential matters in the context of democratic, human and social rights. The recent environmental emphasis evolved from a struggle to protect public parks in Howrah. This led to an increased awareness of issues such as waste water and solid waste disposal.

The GNS has employed many methods to pursue its political goals. It has appealed to holders of public office with letters and memoranda, held seminars, and organized rallies and demonstrations. Good working relations have been established and maintained with the local media. On several occasions, the GNS has moved the Howrah District Court and the Calcutta High Court. However, the legal action became the main mobilizing resource only in 1995, after Subhas Datta, the organization's leader, had filed his writ petition in the Supreme Court, thus constituting the *Howrah Matter*.

In its own words, the GNS (writ petition, 1995: 4) is a 'social and non-party organization having been involved in all social movements in Howrah and Calcutta. ... There is not a single public issue in our place on which we do not try to protect the citizens' demands before the appropriate authority.'

An overview of issues highlighted by GNS campaign efforts (1995:5f) listed twenty-six items from A to Z. It included rallies and other activities on a large variety of occasions. Some examples from this list are (a) the visit of a British commerce minister, (b) a newly established family court in West Bengal, (c) support for then Election Commissioner T.N.Seshan, (d) solidarity with Bangladeshi feminist writer Taslima Nasreen, (p) proper development planning in Howrah, (q) poor postal services, (r) the democratic Chinese students' movement in 1989, (x) bad road conditions in Howrah, (y) the organization of a blood donation camp, and (z) police atrocities. Such campaigns might criticize government bodies, such as the police, or support government institutions such as the Election Commission or the judiciary.

This list exemplifies what might be called an ‘impressionistic’ approach. The cases made are obvious to anybody applying their five senses plus common sense. Agitations focus on single events or grievances that catch the public imagination. They are rarely based on scientific engineering analysis. Rather, ‘bad condition of roads’ is made an issue, a phenomenon obvious to anyone with eyes to see. Similarly, the GNS does not adhere to any overarching political ideology. Subhas Datta always stresses that he relies on ‘common sense’.



Photo: A GNS rally tidying up Howrah Maidan Crossing in early 1998

Environmental campaigns of the GNS have highlighted the piling up of over a hundred decomposing bodies in the Howrah police morgue, the informal transformation of open spaces into garbage dumps or the dismal situation of sanitation by open drains along public streets. The issues of toxic air or water pollution were mentioned only in an unscientific, general sense. Anything more would have required technical expertise that the GNS did not command.

The GNS does not propagate ‘anti-imperialism’ or ‘class struggle’, still quite *en vogue* in West Bengal. Rather, the programme is one of fundamental human and democratic rights guaranteed by the Indian constitution without much concern for the intricacies of a multicultural, multi-ethnic and multi-religious society. In fact, the GNS is itself not socially homogeneous. Roughly a quarter to a third

of the followers are not Bengalis. They belong to the Hindi- and Oriya-speaking migrant worker communities in Howrah.

The overall approach of the GNS is pragmatic, drawing attention to obvious grievances. Subhas Datta is a master of catchy slogans, which he tends to repeat whenever they are applicable. Aware of Calcutta's international reputation of severe urban crisis, he often states: 'To us, Calcutta is heaven, Howrah is hell.' His commentary on congested, unplanned growth of high-rise buildings is: 'The sky has been stolen in Howrah.' His one-liner on air pollution goes: 'In Howrah, we breathe not to live but to die.'

The GNS also practises civil disobedience, for instance blocking train tracks to highlight dissatisfaction with transport policies. On another occasion, reminiscent of the Indian independence struggle, members of the GNS dressed in lungis and then gatecrashed the Calcutta Swimming Club. This was a reaction to a newspaper report about the club refusing entry to a celebrity not wearing Western clothes. Such events are regularly covered by the local press. Rallies organized by the GNS normally provide attractive material for reporters and vivid photo opportunities.

Members of the GNS have repeatedly been exposed to lathi-charges and other forms of police harassment. All the core members of the GNS have spent nights in police custody. The police twice filed accusations of attempted murder against Subhas Datta. These were obviously of no substance and never led to legal proceedings.

Datta's life story is one of personal escape from poverty. He was born in 1949. His family moved to Howrah from East Bengal after the partition and had to make a living in a Howrah slum. Today, he enjoys relative economic independence as a chartered accountant running his own business.

The core group of the GNS consists of half a dozen close friends of Datta. They are supported by several dozens of active followers. On short notice, the inner circle can mobilize hundreds of people for demonstrations. With two weeks' preparation, they will assemble around 2000. The GNS is based on a sense of loyalty that is related to the typical patron-client relations in developing countries and largely still operational—if weakening—in the rural areas of Bengal (Mori, 1997). People facing problems ask a powerful patron for help. In case of favourable intervention, they owe him loyalty and, more often than not, economic favours in cash or kind.

Datta serves a similar function. He is regularly approached by new people for help. They may, for instance, face difficulties with their landlord or the bureaucracy. Datta says that he takes up their cases if they seem worthy and he sees a possibility of intervening successfully. Unlike the typical patron, Datta says he does not ask for money. Instead, he obliges his clients to support his public activities.

Subhas Datta is not only secretary of the GNS. He is also president of several cooperatives and trade associations. He thus legally represents, among others, groups of rickshaw wallahs, handcart pullers and taxi drivers. De facto, all these people are affiliated to the GNS. The GNS also has subgroups that are not formally organized. After the Green Bench was established, there were a number of housewife initiatives trying to do something about pollution in their neighbourhoods. Datta assisted them (and other petitioners) in going to court.

Datta's campaigns have earned him some respect within the local administration. For instance, he says that his telephone is never dead for longer than a day. It normally only takes him one call from a public pay phone to restore his telephone service. His interventions in favour of others also tend to be successful. He says he was surprised at his own prominence when he found a letter simply addressed to 'Subhas Datta, Howrah' in his mail. Both 'Subhas' and 'Datta' are, of course, quite common names in Bengal.

The GNS today is a large-scale organism of socio-political support and self-help orchestrated by Datta. Many of his followers genuinely adore him. There is ample evidence that many are prepared to suffer physically from police harassment if the GNS calls them to actions of civil disobedience. The size and cohesion of the GNS, in turn, serve to protect its leader.

In spite of all its ramifications, the GNS was to a certain extent an isolated social body. It was not systematically linked to other NGOs, although some friendly contacts did exist. For some time in the 1980s, it supported the local Congress MP Priyaranjan Das Munshi. According to Datta, the GNS later backed off because it found Munshi's politics disappointing. Nevertheless, this former nexus was well known in Howrah and Calcutta. The GNS was often perceived as an 'organization of the Congress Party', a reputation that also served to distance it from most environmental NGOs on the other side of the Hoogly.

### 6.3 Moving the Judiciary

The *Howrah Matter* is a multi-issue lawsuit. It consists of several single causes, most of which were initially taken up in the late 1980s and early 1990s. The first court cases dealt with the destruction of park areas in Howrah or with the illegal felling of trees. Only once such isolated, ad hoc complaints were compiled in a comprehensive writ petition did the interrelated issues of inadequate urban planning, insufficient civic amenities and inefficient government in a town of one million people emerge as the scandalous *Howrah Matter*. The petitioners demanded no less than an appropriate infrastructure for the entire city.

In order to make the description of the court proceedings accessible, this assessment does not follow them chronologically. Rather, this section elaborates on the episode in the Supreme Court constituting the *Howrah Matter* and the establishment of the specialized Green Bench in the Calcutta High Court. Single issues of the *Howrah Matter* are then dealt with in section 6.4.

#### 6.3.1 *The Role of the Supreme Court*

In April 1995, Subhas Datta filed the writ petition in the Supreme Court. Besides being impressed by M.C. Mehta's successes in the *Ganga Matter*, he was encouraged by the legal information that he would be permitted to present a public interest matter personally. He did not want to rely on (much less pay for) an attorney. His earlier experience of public interest litigation in the Calcutta High Court had proved frustrating. Datta felt that to an extent his lawyers were to blame for not presenting the cases well. Proceedings, moreover, went on for a long time. Non-enforcement of court rulings was also a major disappointment.

When he appealed to the Supreme Court, Datta had already dealt with ten cases of public interest litigation. Four of these concerned the poor condition of public parks and (overt as well as covert) government policies to transform such areas into shopping complexes. Two petitions dealt with road and sidewalk conditions and one with the construction of multi-storeyed buildings without appropriate legally binding urban planning. All these issues re-emerged in the *Howrah Matter*.

The other three cases had dealt with the alleged mismanagement of the Howrah jail, government policies concerning long distance train lines and, finally, the frequency of foreign trips by the chief minister. The GNS considered such trips a waste of public funds. Only in this matter did the High Court quickly deliver a judgement—in favour of the chief minister. In some of the other cases, there were eventually rulings in favour of the GNS, but most matters had stopped coming up for hearing and were ‘delayed in the usual process of High Court’. The Supreme Court writ petition went on to complain (p.8) that ‘by the passage of time, permanent obstructions had been caused by the Civic Authorities in our matters’.

The Supreme Court writ petition (p.78) summarized this frustration with the Calcutta High Court, complaining about ‘unreasonable delay, high expenses and unscientific system of handling of the cases’. It also stated that ‘district administration and civic authorities have shown the attitude of total disregard to the judicial directives given by the High Court.

The GNS had agitated against delays and inefficiencies of the judicial process. The Supreme Court writ petition mentioned two silent demonstrations of GNS members inside the Calcutta High Court on 22 January 1993 and 8 March 1995. The first was a protest against corruption, excessively long proceedings in matters of public interest, and judicial irregularities in general (*Statesman*, 23.1.1993; *Sanmarg*, 23.1.1993). The second was a reaction to a lawyers’ strike that had shut down the High Court for almost a month. A memorandum was delivered to the Chief Justice and the Governor of West Bengal that also highlighted other problems such as slow appointments of judges to vacant posts, extended proceedings and the lack of a computerized registration system (*Sanmarg*, 9.3.1995; *Bartaman*, 9.3.1995).

Datta had also repeatedly approached the Chief Justice of the High Court to complain about the dysfunctional judicial system. He had suggested the establishment of a specialized public interest litigation bench. Given this state of affairs, the writ petition of 1995 argued that the GNS had no alternative but to turn to the Supreme Court. It asked the Supreme Court to order the authorities concerned

- to restore all greenery in Howrah,
- to stop the felling of trees,
- to monitor and prevent pollution systematically,
- to cancel illegal allotments of public property to private firms,

- to clear garbage in Howrah (particularly from the fish market),
- to provide wholesome drinking water,
- to stop disposal of untreated sewage in the Hoogly river,
- to maintain all public parks properly, and
- to keep the police morgue clean and hygienic.

The GNS also asked the Supreme Court to order the authorities to submit all relevant documents and to appoint a special officer to assess the environmental situation of Howrah. The petition included an appeal to ‘stop any damage and further deterioration of environment’ and to ‘stop any further high-rises in the City of Howrah illegally sanctioned by the Howrah Municipal Corporation’.

The petition argued its cases over eighty-one pages. The supply of evidence in the annexures was vast and included photocopies of documents related to earlier legal proceedings, extracts from government reports, news clippings and photographs of locations and events in dispute. The entire writ petition was a massive work of 439 pages.

The *Howrah Matter* was first heard on 17 July 1995. Justice J.S. Verma and K. Venkataswami decided that it was an environmental case and should be heard by another bench. They ordered the case to be transferred to that bench. This bench of Justices Kuldeep Singh and S. Saghir Ahmad, in turn, apparently felt confused by the mass of material presented in the petition. On 1 September 1995, the judges ordered the bar associations of India, West Bengal, Howrah, the Supreme Court Bar Association and the Bar Council of India to take a look into the matter. The bench argued that environmental matters were becoming too vast for the Supreme Court to handle on its own:

We are prima facie of the view that the burden in this field of law on this Court is so much that it will not be possible for this Court to deal with the environmental problem in various parts of the country. We are of the view that the Bar Associations which is the largest collectivity of intellectuals in this country must come forward to assist this Court in this field of work.

This statement is from a letter addressed to the bar associations in question dated 5 September 1995 and signed by the assistant registrar of the Supreme Court. The bar associations were ordered to submit reports by 24 November 1995 and to suggest how the Supreme Court might deal with the matter. Their submissions basically supported the claims made by the GNS.

The bar associations also suggested that the Supreme Court might set up a permanent committee of members of the bar to give advice in environmental matters. This committee would establish contact with environment experts of governmental and non-governmental agencies to provide qualified research and expertise.

The committee further suggested that the Supreme Court might transfer environmental matters to High Courts unless cases were considered too complex or demanded more than simple compliance with statutory provisions. The bar association committee would monitor the cases and make the Supreme Court aware of flawed or problematic decisions as well as of issues of national relevance. Thus the Supreme Court would stay in control of the proceedings.

The Supreme Court did not follow this advice, which, it must be stated, does appear to be a barrister's job-creation scheme of sorts. The judges did, however, transfer the matter to the Calcutta High Court, providing some safeguards that the *Howrah Matter* would not be lost in the proceedings again. The order demanded the institution of a specialized bench and requested the parties involved in the *Howrah Matter* to appear in the High Court on 3 June 1996. The decisive passages in the final order of Justices Kuldeep Singh and S. Saghir Ahmad, delivered on 16 April 1996, read as follows:

We are of the view that the environment preservation and pollution control are to be given utmost priority by the courts in the country. Despite various enactments by the Parliament and the State Legislatures regarding pollution control and environment protection, nothing much is being done in this respect. It is common knowledge that all the big cities including Howrah are littered with garbage, household waste, etc. and there are no satisfactory arrangement for collecting and disposing the same. Even the sewage treatment plants have not been constructed. Needless to say that much attention is required to be given in this field of law. This court meets more than once in a week to attend to the environment problems in the country.

We are of the view that it would be appropriate to transfer this petition to the Calcutta High Court for consideration and necessary action. Because of the distance and various other problems it would be better that the matter is dealt with at the high court level. We request Mr. Justice V.N. Khare, Chief Justice of the Calcutta High Court to designate an appropriate Bench to consider and deal with environmental and pollution control matters including the present petition. The Bench can consider and monitor various issues involved in this writ petition and other petitions as and when they are filed before the High Court. We give

liberty to the petitioners to approach this court as and when it becomes necessary for him to do so.<sup>2</sup>

This order set a precedent. Soon after, a second Green Bench was set up in Tamil Nadu. The invitation to return to the Supreme Court again was more of symbolical than practical value. It emphasized that the judges want the matter to be resolved to the satisfaction of the petitioning party. However, as anybody at any time is entitled to appeal to any tier of the judiciary in India, the last sentence quoted above does not constitute any particular privilege.<sup>3</sup>

### 6.3.2 *Proceedings before the Green Bench*

As Subhas Datta recalls, he initially considered the transfer of the *Howrah Matter* back to the High Court a disaster. He had stated in his petition (p.74) that, in principle, a specialized ‘Public Interest Litigation Bench’ guaranteeing speedy trial was needed in the High Court. But he had also hoped the Supreme Court would deal with his particular case. Out of experience, he had little trust in the efficiency of the High Court.

The first hearings in the Green Bench seemed to confirm his fears. On 3 June 1996 the case could not be heard because, allegedly, the documents had not arrived from Delhi. The Green Bench of Justices Umesh Chandra Banerjee and Ronojit K. Mitra asked him to explain why these papers were missing. They held the petitioner responsible rather than the High Court administration.

Datta travelled to Delhi, went to the Supreme Court Registrar’s Office and then traced the voyage of the *Howrah Matter* documents by mail and rail to the Calcutta High Court. He filed his first sup-

<sup>2</sup> This judgement was widely interpreted as Justice Kuldip Singh’s attempt to make sure that his environmental activism would to some extent continue after his retirement in late 1996. In the legal community and in the general media, he was known as ‘the environmental crusader’ of the Supreme Court. In the words of one advocate in Calcutta, Supreme Court justices must finish what they have started during their time in office for otherwise ‘it will never be done’. Their activities thus are perceived rather as personal wielding of almost feudal power than as the fulfilling of official duties according to the law of the land.

<sup>3</sup> It has long since been pointed out that the possibility of appealing to different courts in the same matter has the effect of reducing the efficiency of the legal system and its scope for decisive resolution (Kidder, 1973).

lementary affidavit on 14 June 1996. It meticulously documented that the Supreme Court had mailed the documents by registered parcel on 30 April 1996 and that this parcel had been delivered to the High Court on 9 May 1996 by the Calcutta General Post Office. Photocopies of the relevant certificates were included in the affidavit proving that the Supreme Court documents had been misplaced in the High Court.

The next setback was that the court admitted the Forum for Calcutta and Calcutta 36, two NGOs from Calcutta, jointly as parties to the case. They were legally represented by Amal Datta, a former CPM Member of Parliament who happened to be the nephew of the chief minister. The Green Bench, however, did not admit the South Howrah Development Association, an NGO from Howrah, as an additional party. Subhas Datta would have been in favour of doing so.

Subhas Datta disapproved of the interference of people from Calcutta, particularly of a person with a high political profile. He was afraid he would lose control of representing the matter in court and to the general public. Indeed, early newspaper reporting on the matter (*Economic Times*, 13.7.1996) draws heavily on an interview with Amal Datta. The barrister made several points that Subhas Datta considered wrong. In another supplementary affidavit (17.7.96), the activist concluded that this advocate was ‘opposing your petitioner’.

As Subhas Datta recalls, the judges reacted in anger to such criticism and even threatened to dispose of the case. This does suggest that they had not carefully read the Supreme Court documents. After all, the Supreme Court had ordered the Green Bench to deal with the *Howrah Matter* and would have been likely to uphold this demand—not least as the justices had rhetorically invited the petitioners to return to the apex body in case of dissatisfaction.

Subhas Datta subsequently managed to reduce the role of Amal Datta and the Calcutta NGO in this case to a minimum.<sup>4</sup> They soon stopped appearing in the *Howrah Matter* in spite of being present in the court room waiting for other cases to come up. The case was since perceived to be Subhas Datta’s personal affair again. After such initial difficulties, it has been regularly heard by the Green Bench.

<sup>4</sup> Personally, I have no reason not to believe in the Calcuttans’ good intentions even though it does seem irritating that they would have themselves added to the cases and then file affidavits without consulting the GNS.

Early on in the proceedings, on 11 July 1996, the two judges paid an official visit to Howrah. This event was covered extensively by the local media. It made evident that the petition's drastic description of urban life in Howrah was not exaggerated. Subhas Datta soon after gained such a standing in the court room that the two Green Bench Justices hardly insisted on his delivering extensive evidence (beyond the photographs he would invariably present). Whenever they probed his statements, the statements turned out to be accurate. I have personally heard the judges say in the court room that he was 'West Bengal's leading environmentalist' and that his submissions tended to be '200 percent true'.

## 6.4 Individual Issues

This section elaborates the particular aspects of the *Howrah Matter*. As the case has not yet been settled, and is unlikely to be disposed of for several years to come, it is impossible to give a comprehensive account of the entire matter. This is all the more so as the Green Bench has not taken up all issues listed in the petition so far, and orders have not been passed on every item heard. My assessment covers the proceedings up to January 1998, when I had to return to Germany.

In 1999, the matter was still proceeding slowly, but steadily. Initially, the first Green Bench Judges indicated in court that they intended to clean up Howrah over the long run but were aware it could not be done overnight. The authorities, in this sense, were given time to devise schemes and report on their activities (and difficulties). The case remained a slow and piecemeal process. According to Subhas Datta, this was still the case in the summer of 1999 after several changes in bench composition.

Before my research was over, several orders had been passed.<sup>5</sup> As

<sup>5</sup> As Subhas Datta did not collect the orders and they were not made available by the High Court administration, my assessments are based on a list of the judge's official decisions prepared by the GNS. This document was submitted to the court in my presence on 19 December 1997. It compared the present situation to what had been ordered by the judges. As the judges did not hesitate to accept the details of this list in the proceedings, there is no reason to doubt its validity. These orders are also referred to in the various affidavits and inspection reports relating to the proceedings. Personally, I have visited the locations several times, last in the winter of 1997-98.

will be shown, they have had some result. Adherence to judicial orders was often more symbolical than literal. On the other hand, the civic authorities had, to a certain extent, changed their attitude. They have sometimes taken steps without having been directed to do so by the court.

According to Datta, the mere threat of taking an issue to the Green Bench has lately set the local administration in motion. Also, it is possible that minor issues are mentioned once in the Green Bench and then taken care of by the authorities without explicit order. One instance was that of garbage piling up around the General Hospital in Howrah. Since the complaint was submitted in court in November 1997, garbage has been regularly cleared from the clinic compound (at least until January 1999).

This section deals first with the neglect and abuse of public parks and open spaces, specifically the Howrah Maidan (6.4.1), Bellilious Park and the space underneath the Second Hoogly Bridge (6.4.2). Then the matter of the appalling conditions of the Howrah Police Morgue (6.4.3) and of the Fish and Betel Markets are discussed (6.4.4). The last subsection (6.4.5) is a brief assessment of all the major aspects of the *Howrah Matter* in which the Green Bench had not passed orders by January 1998.

#### 6.4.1 *The Howrah Maidan*

The Howrah Maidan was originally a big park. It is located in central Howrah, behind the railway station. It has, in official documents, repeatedly been called ‘the lungs of the city’ (Gazeteers on India, 1948; West Bengal District Gazeteers, 1972). It still is the largest open space in central Howrah. However, its size has been radically reduced. There were already complaints that the General Post Office, a church and the Grand Trunk Road has encroached upon it fifty years ago.

Further encroachments were made in the 1980s and 1990s, some of them massive. Government agencies have been building them in spite of the official acknowledgement that open spaces and public parks are of high priority. The GNS has contested these schemes. There have been memoranda to officials, public demonstrations and, not least, public interest litigations in the High Court.

The remaining Maidan is split in two by a road running from east to west. The southern part of the Maidan is called Centenary Park.

Here, government agencies have set up a huge auditorium. The auditorium was subject of a public interest litigation in the High Court. The judgements were initially disobeyed by the authorities. Only after intervention of the Supreme Court and the establishment of the Green Bench was the first High Court judgement of 1991 enforced.

The northern part of the Maidan is called Dalmia Park. Here, a soccer stadium has been built that Subhas Datta considers to be merely a shopping centre in disguise. In the petition, he suggested that it had come up as a consequence of corruption. Up to early 1998, the judges had not dealt with this matter. This subsection first discusses the history of the auditorium on the southern side and then turns to that of the soccer stadium on the northern side.

As Subhas Datta recalls, plans to set up a major auditorium in Howrah became known in the late 1980s. The mayor of Howrah laid the foundation stone on 10 January 1989. The GNS organised a rally in protest on the same day. The police lathi-charged the demonstrators (*Bartaman, Ajkal, Sanmarg*, 11.1.1989).

In the name of the GNS, Datta also filed a writ petition against the construction of the auditorium in the High Court. The matter was heard, and, by the end of January, an injunction had been passed, ordering the maintenance of the status quo until further decisions (*Ajkal*, 29.1.1989; *Ananda Bazar*, 1.2.1989). On 20 September 1989, High Court Justice Mahitosh Majumdar ordered Professor K.J. Nath of the All India Institute of Hygiene and Public Health to report on the environmental feasibility of the auditorium project. This report was submitted one year later, on 25 September 1990. It concluded that there was hardly any greenery left and there was not enough space for an additional building. This was particularly so as a civil defence camp had been set up on the Maidan in the 1960s. Nath suggested the following solution:

If the existing Civil Defence Barracks could be totally removed from Howrah Maidan area and the place be properly maintained with green plants, in that case the construction of the proposed (auditorium) can be accommodated in the present site without further impairment of the ecology.

Along these lines, Justice Mahitosh Majumdar passed a judgement on 6 March 1991 (Civil order No. 110 (W) of 1989). In the meantime, construction had started and was continued after, and in spite of, the

judgement.

In December 1992, the GNS filed a contempt of court affidavit, accusing the authorities in Howrah of this criminal offence. The matter hardly moved in court even though there had been appeals to the judicial administration and several out-of-court activities to keep public attention on the issue. Only two years after the formal contempt accusation did the High Court deliver a judgement. On 6 January 1995, High Court Justice Nishit Kumar Batabyal decided against the mayor and district magistrate of Howrah:

The contemnors/respondents are found guilty of conduct amounting to contempt of court. Fix 20.1.1995 for further hearing regarding punishment, till that day further construction... on the disputed land shall remain stayed.

The two high-ranking officials immediately appealed to a division bench. This bench of Justice M.G. Mukherji and Vidya Nandi gave the government authorities seven days to remove the civil defence camp. They did not, however, consider the issue of contempt of court again. This judgement was again neglected, and construction of the auditorium went on.

During this period, Datta received personal hate mail. A letter dated 24 January 1995 advised him not to 'get involved in problems'. He should withdraw the High Court matter and leave the mayor and 'the party' in peace. Otherwise someone would 'chop off your head and play football with the same'. Datta's reaction to this attempt at intimidation was to file a complaint to the police, with no further consequences.

Datta soon after turned to the Supreme Court. In his writ petition he claimed the authorities had violated the High Court judgement in two crucial aspects:

- Construction work for the auditorium had begun without the civil defence camp having been removed, and
- fifty trees had been cut down for the construction.

On top of this, the government authorities had fenced off the Maidan, completely depriving the public of access to the former park. Finally, a row of shop stalls was being built behind the auditorium, suggesting that the authorities were setting up a commercial complex within a public park.

When the matter was first heard, the Supreme Court passed yet another injunction against the auditorium. The Howrah authorities

had intentionally celebrated the inauguration of the (yet unfinished) auditorium on 27 February 1996, the very day the matter was to be heard in the Supreme Court. Annoyed, the judges stayed all activities concerning the auditorium. This order now intimidated the officials in Howrah. All work on the auditorium was stopped.

The issue of the auditorium was pending until early 1997. I was in the courtroom when the Green Bench delivered its decisive judgement on 17 January 1997. Justices Banerjee and Mitra argued that they had recently visited the unfinished auditorium. According to them, all investment was going to be lost if the project was not finished soon. Too much money had already been spent to allow that to happen. The figure discussed in court was that of 60 million rupees. The judges gave permission to finish the construction of the auditorium.

However, they insisted again that the civil defence camp had to be removed. No commercial activity was to be allowed on the compound. The building should be run by the Howrah authorities and not at any time be used as a cinema. (Datta had argued in court that an earlier city auditorium had been transformed into a privately run cinema hall). The new auditorium should serve only for dramatic, cultural and musical functions. In the back of the auditorium, a children's park was to be established. Access to this park was to be granted free of charge. The green area surrounding the auditorium would have to be opened to the public. All this was ordered to be accomplished within six months. (On 11 July 1997, the Green Bench extended this period by another three months. The Howrah authorities had applied for the extension.)

On 17 January 1997, the judges did not deal with the question of punishment for contempt of court. It was adjourned and then finally disposed of on 7 February 1997. The judges argued they had already given permission to complete the auditorium and considered the matter settled. They did not use this chance to assert their authority over the government bodies that had for so long ignored repeated High Court rulings. The judges legalized a *fait accompli*.

Nine months after the Green Bench's decision, the civil defence camp had been removed. This section of the Maidan had been opened to the public and was now a pleasant public park (with a pond and several big trees). Before 17 January 1997, local officers had submitted that civil defence was not their jurisdiction. After the ruling, they obviously found a way to relocate it nonetheless.

By late 1997, the construction of the auditorium was finished. The area immediately behind the auditorium had, however, not been turned into a children's park nor had the area around the auditorium been opened to the public. The shop stalls behind the auditorium were still unfinished in January 1998. Apparently, the Howrah Municipal Corporation (HMC) had not decided what to do here.



Photo: Reopened park on the former location of the civil defence camp

The history of the soccer stadium in the northern part of the Maidan was as follows: According to Datta's documentation, a management board for the stadium was constituted as early as 1981. The district magistrate gave permission for the scheme in 1984. Construction began in 1986. Originally, this was a project of the state government. Ownership of the compound was passed on to the HMC in 1992. The city authority was supposed to finish the construction. Since then, several commercial shops have opened within the stadium building.

Data submitted in his petition that the tribunes of the stadium were built particularly high so as to provide more space for the shopping complex. The petition also stated that the building is too large because the remaining space of the soccer field is smaller than the international standard.

The GNS argued that other large government stadiums in West Bengal did not house commercial shops. Also, as major soccer events

in the metropolitan area take place at the Salt Lake stadium, there was never a real demand for another such venue in Howrah. Finally, the space within the building might have more reasonably been used for public indoor sports facilities, which do not exist in Howrah. The petition concluded that some people in the government must have had a financial interest in building a commercial complex disguised as sports stadium.



Photo: Commercial complex or sports stadium?

Some of the shopkeepers have later allegedly set up structures on the sidewalk and cut down trees by the roadside. In early 1994, the GNS staged a rally along this stretch. They intended to plant new trees. The police attacked with lathis and arrested GNS members. At the time of the writ petition, the stadium was constantly locked. Citizens did not have access to the sports field.

Up to early 1999, the Green Bench did not rule on the issue of the stadium, except to order that no new construction be undertaken and no new shops let out. The corruption charges have not been scrutinized. However, the litigation was not totally fruitless. The city authorities did open the gate to the stadium, and the sports field is again frequented by the public. Children and teenagers play cricket and soccer here.

The HMC, in its submissions, denied having planned a shopping

complex. Rather, the revenue generated through the shops was said to be necessary to maintain such a large sports facility. Further tribunals were said to be planned. They would include administrative offices, changing rooms and club space. The affidavit of 10 July 1997 implied that so far the sports complex had done without. The HMC denied the soccer field was smaller than the international standard.

There have been other, comparatively minor building encroachments on the Maidan. Only one of them is worth dealing with here because it had a judicial angle. This concerned the south-western part of maidan.

In early 1991, construction work started for what was supposed to become a Red Cross Bhawan. Later, GNS members were told that the ground floor would be rented out to a businessman to raise funds for the building. Datta filed a public interest litigation, demanding that the building occupying space in the central public park should be used only for non-profit welfare purposes, for instance by the Red Cross (*Telegraph*, 17.11.1991).

For some time, the government authorities stated that a computer centre of educational relevance would be set up on the ground floor. According to the writ petition, finally a commercial showroom of the Vimal company was opened there in August 1992. The Red Cross was not using the building. The litigation in the High Court had been long drawn and expensive and eventually got out of hand, as the GNS argued. In this case as well as in the other pre-Supreme Court litigations, the GNS had hired a lawyer.

During this period the GNS had again organized several rallies. On one occasion, police violence escalated. On 18 November 1991, the police accused Datta and others of attempting to murder an officer. This obviously wrong accusation did not lead to a criminal case in court. However, the police referred to it five years later. On 30 December 1996, Datta was arrested and kept in police custody overnight. The police claimed that he had been 'absconding', again an absurd allegation as he had been appearing regularly in the High Court and the Supreme Court. This could only be interpreted as a strategy of intimidation.

To summarize the GNS efforts briefly, the following points are relevant: It took over five years of litigation and an appeal to the Supreme Court to get the first High Court ruling on the Howrah Maidan enforced. To do this, it was necessary to ignore intimidations such as death threats from somebody apparently close to the mayor

and his party and to withstand police harassment. In the end, more trees than permitted had been cut down and up to January 1999, some of the Green Bench's orders, concerning for instance the children's park, had still not been obeyed.

However, the litigation was not fruitless. Some sections of the Maidan are accessible to the public again. These are the former civil defence camp and the stadium's playing field. The process of informally converting the Maidan into a row of commercial complexes has been stopped.

#### 6.4.2 *Bellilious Park and the Second Hoogly Bridge*

In this subsection, two informal garbage dumps will be discussed. Owing to the litigation, waste disposal was discontinued in both cases as had been ordered by the Green Bench. However, civic authorities have not done much to obey the obligations to spruce up the locations involved. The locations are Bellilious Park and the area underneath the Second Hoogly Bridge.

Bellilious Park is a large park in north-western Howrah. It is located in a major industrial area. The land was donated to the municipal authority by Rebecca Isaac Bellilious in 1913 with the obligation to maintain the park. It was traditionally considered 'the beauty spot' of Howrah. Today, this term no longer makes sense.

According to the writ petition, fifty-five shops on an area of 20,000 square feet were built in 1982 on the eastern side of the park. In 1987, a 'beautification project' was announced to the public. An auditorium, a soccer stadium and a boat house were to be built on the shore of the park's pond. Certain areas of the park were to be reserved for women and children. A private promoter would carry out the project. The necessary funds, according to the HMC, were to be raised from a three- to four-storey commercial complex on the park's western and southern sides.

There were several rallies against this scheme. The Congress Party, the BJP and the GNS independently agitated to stop it (*Ananda Bazar*, 5.8.1987; *Ananda Bazar, Ajkal, Jugantar*, 8.8.1987). Datta filed a writ petition in the High Court and appealed to the Minister of Urban Development to stop this project.

The High Court accepted the matter. Justice Susanta Chatterjee passed a stay order and upheld it several times (*Ananda Bazar*, 15.8.1987; *Telegraph*, 26.8.1987; *Ananda Bazar*, 17.9.1987). This

matter was never settled in court. The private promoter lost interest, fearing he might lose the case (and, in the event, any money already invested). According to the writ petition in the Supreme Court, Justice Susanta Chatterjee was eventually transferred to the Gujarat High Court and then the Bellilious Park case ‘got lost in the usual process’ (p. 50).

In this case, going to court had deterred the private investor and stopped the scheme. However, that did not suffice to save the park. After the High Court’s intervention, the civic authorities totally neglected it. The HMC allowed the north-western end of the park to be informally converted into a massive garbage dump. A slum of ragpickers and streets sweepers, some of them allegedly employed by the HMC, was allowed to come up within the park area.

As a consequence of the Green Bench proceedings, a wall has been built to seal off the north-western boundary of the park. It has become impossible to unload garbage trucks here. In November 1997, the park was no longer used as a disposal site for new solid wastes. However, the existing site was not improved in any way. The old garbage was still in place.

In a similar episode, the Green Bench has been more active. During the course of the Green Bench proceedings, Datta and the GNS discovered that the area underneath the Second Hoogly Bridge had also been converted into an informal garbage dump. In an additional affidavit dated 21 November 1996, it was submitted that Howrah’s official garbage dump at Belgachia was receiving less than 500 tons of waste on an average daily. According to official estimates, there was more solid waste in Howrah. Several places in the city thus must have become unofficial dumps. The location underneath the bridge was one of them. Originally, there had been plans to set up a sports complex here.

The garbage underneath the bridge was brought up several times in the court proceedings. On 20 December 1996, the HMC representative submitted that this garbage had become ‘solid as stone’ and could only be removed with explosives.

Sometime after Christmas, I accompanied Datta to the place. Women and girls were loading garbage on to a truck. They said the solid waste would be used to fill up a pond. Apparently, storing and selling garbage in this manner had become an informal industry underneath the bridge. Datta filed another additional affidavit on 9 January 1997 with the details.



Photo: Duke Road has become Dust Road

On 1 August 1997, the Green Bench passed an order concerning this site. In July it had obtained an inspection report by K.J. Nath, the director of the All India Institute of Hygiene and Public Health. He had visited the location and found it had until recently been used as a garbage dump. Apparently, the disposal of new garbage had been discontinued.

The inspection report stated it was technically safe to either remove all the garbage or to grow a park on it. There was only a marginal risk of methane explosions. This question regularly arose in the context of garbage ever since the Science City case mentioned in Chapter 5, section 5.6. The Green Bench subsequently ordered the site to be turned into a children's park within six months. By December 1997, not much had happened. No new waste had been dumped here and the old garbage piles had been levelled with a bulldozer.

In the directly related matter of Duke Road, the Green Bench had already passed an order on 13 June 1997 (*Telegraph*, 14.6.1997). This road passes underneath the Second Hoogly Bridge. Because of the accumulating garbage it had become inaccessible to motor traffic. The Green Bench ordered the Corporation to re-open the road. By October, duke Road has become 'Dust Road', in the words of Datta.

Traffic was now running over bulldozed garbage. The road had only been provisionally stabilized by bricks laid out on the track.

#### 6.4.3 *The Police Morgue*

The Supreme Court writ petition mentioned the unbearable conditions of the Howrah Police Morgue. In the backyard of this centrally located morgue, up to several hundred bodies could be found decomposing under the open sky. As Howrah has the most important train station in eastern India, railroad casualties from as far away as Delhi are brought to this morgue. It is assumed that people looking for a deceased relative are most likely to search near the busiest station.

According to a WBPCB report of summer 1996, the morgue received five to six bodies daily. They were transported on open trolleys. Many corpses were also brought from the General Hospital. The bodies were first kept in the small morgue building and, after a few days, were brought into the backyard. The report described the scenario as 'extremely alarming'.

The fact that dozens, sometimes even hundreds, of dead bodies rotted in the open was well known and well reported in newspapers years before the GNS brought this matter to court. For instance, *Sanmarg* (8.9.1989), the *Telegraph* (7.1.1990) and *Ananda Bazar* (12.11.1990) had run stories.

The morgue is surrounded by multi-storeyed residences and a jail. People in the neighbourhood complained about the stench. Vultures would carry away parts of dead bodies. This unhygienic scenario was understood to be a serious health hazard. There had been organized protests. However, the authorities did nothing to change the situation. Apparently, there were difficulties (and expenses involved) in cremating so many bodies.

The Green Bench judges visited the morgue on their excursion to the sites of the *Howrah Matter* in the summer of 1996. When the issue came up, once again, for hearing on 19 December 1997, they spoke of their vivid recollection of the place. Justice Banerjee said he had found the place too appalling to enter. Justice Mitra stated that the morgue had very obviously been especially prepared for their visit. For instance, fans had been placed before the windows of the building to give the impression of an operational air-conditioning system. But in spite of such preparations, there had been six more dead bodies in

the compound than the officially registered eight. There was no doubt that the morgue was neglected and mismanaged.

The Green Bench took up this case, stating in a preliminary direction on 20 December 1996 that the morgue would have to be relocated. I found it noteworthy during this court session that Justice Banerjee told the lawyers representing the Howrah authorities to impress on their clients that they should consider a new location immediately. The Green Bench would take up the issue of the morgue next and, once the judges started passing orders, the authorities would have only a few weeks to act.

This urgency was not maintained. On 9 May 1997, the Green Bench passed detailed orders: The bodies should be transported to the burning site in a covered van so that no limb could fall on the streets. Bodies would have to be burned at least twice a week. Bodies should no longer be left lying under the open sky. The building in which the bodies were to be kept would have to be air-conditioned.

From an affidavit filed on behalf of the district magistrate's office in August 1996, it resulted that this authority had assumed responsibility for the morgue. Up to then, there had been several authorities involved but 'no coordinating or supervising' activities by any of them. The morgue was to be remodelled and the requisite funds made available, the affidavit stated.

On 26 September 1997, the judges ordered that the new scheme should be operational by 28 November 1997. This did not happen. The Corporation had built a new construction to store dead bodies, but it had too many windows to be air-conditioned. There was no covered van to transport the bodies. Hired workers would carry them by hand or by open cycle rickshaw. However, as the monitoring GNS confirmed, there were no more dead bodies lying out in the open. The corpses were being brought to the funeral pyres regularly.

When the matter was discussed in court on 19 December 1997, the Corporation claimed it lacked funds to implement the orders. However, the mayor and the district magistrate of Howrah had recently appeared personally before the Green Bench. Mayor Swadesh Chakroborty had submitted that additional funds were not needed. The judges displayed their anger and threatened to start contempt of court proceedings after the Christmas break.

The authorities' lawyers then asked for detailed directions. The judges said they would not do the municipality's work. The senior judge, on this occasion, repeated his stance that the Green Bench's

goal was to make the local authorities do their job and thus clean up Howrah. The Green Bench was deliberately moving slowly as the immense problems could not be solved quickly, but this did not mean that the judges were not determined to have them solved.

After the Christmas break, however, the Green Bench did not start contempt proceedings. The judges only asked for another report and granted several more weeks for this purpose. Then it became clear that Justice Banerjee was to be transferred to Hyderabad, where he was to become Chief Justice of the Andhra Pradesh High Court. Again, the issue of contempt of court was postponed. The Green Bench has so far not used this instrument to assert its power.

The issue of the Howrah Police Morgue in the Green Bench triggered some unexpected consequences. Datta was approached by people from the town of Diamond Harbour and two other places. They made him aware of the dismal conditions of the morgues maintained by the local authorities there. Two lawyers also approached the Green Bench to report a similar situation in a village called Gatakpukur. In all of these cases, litigation was started.

Evidently, morgues were neglected in many municipalities. The *Howrah Matter* had set a precedent, acknowledged throughout West Bengal, of such conditions being neither legal nor acceptable. Over time, the Green Bench began to deal with some fifty public morgues in the entire state in the summer of 1998, Datta informed me.

#### 6.4.4 *The Fish and Betel Markets*

The Fish and Betel Markets are located close to Howrah Station, north of the railway tracks that separate them from the Maidan area. They are wholesale markets serving West Bengal and the neighbouring states.

When Subhas Datta filed the petition in the Supreme Court, the Fish Market had, for around two decades, been housed in provisional, makeshift stalls. As there was no appropriate drainage, the place was regularly flooded. The fish sellers use big slabs of ice to cool their merchandise. The ice melts away during the day and is continuously replaced with new slabs. In the rainy season, the provisional market would often be badly flooded. There also was a garbage problem. Solid waste from the Fish Market had, for years on end, been deposited on public space. Mukram Kanoria Road was particularly affected. By 1995, this road was totally blocked (and traffic diverted).

Solid waste from the Betel Market made matters worse. This market was located in the ground floor of an empty, unfinished concrete construction of the Howrah Improvement Trust (HIT) north-west of the Fish Market. The traders had moved into this building years before the writ petition, after a fire in the traditional Betel Market.

As the Howrah authorities submitted to the courts, their core problem with these markets was as follows: The HIT had set up permanent buildings for the Fish Market, allegedly with World Bank funding. However, there had been legal disputes over the allotment of the various stalls. The Fish Market had therefore never shifted to the permanent building west of its provisional site. Apparently, all involved had lost interest in, and hope for, a settlement. Similarly, the authorities had not been able to relocate the Betel Market.

There had been several appeals to the HMC and the HIT to clean up the markets. In 1995, the GNS had filed a petition in the High Court. Subsequently, on 10 April 1995, Justice Ruma Paul had ordered the garbage to be cleared within two weeks (*Statesman*, 21.4.1995). The authorities did not clear it. In the Supreme Court, they submitted that the market vendors were not doing their part of the job. Without their cooperation the markets could not be kept clean.

The Green Bench took up this matter early on. From the submissions of the HIT it became apparent that the old, pending litigation cases were the reason for not relocating the Fish Market. The Green Bench assumed the power to settle all questions of stall allotment. Apparently, it could do so, backed by the authority of the Supreme Court. The Fish Market was afterwards repeatedly ordered to relocate (17.1.1997, 31.1.1997). The Betel Market was also ordered to move (14.2.1997).

By October 1997, the Fish Market had moved to the permanent stalls.<sup>6</sup> A small number of the old fish stalls remained, however. It turned out that the provisional Fish Market had consisted of more stalls than were available at the new site. According to Subhas Datta, the idea was now that these stalls would move to a completely different site. Similarly, the Betel Market would eventually relocate.

<sup>6</sup> I was in Germany from March to September. Therefore, I was not in Howrah to witness the relocation of the fish stalls and do not know the exact dates, which, anyway, are not essential for my argument.

But the new places were not ready, even in December 1997.

The garbage situation, however, had clearly improved. The fish vendors were now regularly cleaning the market after closing their stalls in the evening. Waste had not been blocking traffic for over a year. In the winter 1997-98, new road construction was going on where the provisional Fish Market had been. By February 1999, the road was finished and open to traffic again.

The drainage situation was better than it had been at the provisional site, but still unsatisfactory. The system in the new market complex did not seem to function efficiently. There still were big, stagnant puddles. A huge basement underneath the market complex, originally meant to serve as parking space, was permanently flooded with dirty water, although the Green Bench had several times ordered it to be pumped dry and cleaned up. According to Datta, this had been done once.

During the early phase of the Green Bench proceedings, Datta was somewhat frustrated with the priority given to the Fish Market by the judges. He felt they were doing the government authorities a favour. After all, the HIT, which had built the permanent structures, wanted the market to move and had, so far, been unable to implement its plans. In this sense, the Green Bench had served the HIT by settling the backlog of pending cases.

#### 6.4.5 *Major Unresolved Issues*

As will have become apparent, the Green Bench has intervened in several individual matters. In general, it has ruled in favour of the petitioners. As a consequence, the ground reality of the locations in dispute had changed. However, the enforcement of the rulings was not always convincing, being often more symbolic than effective. Nevertheless, the Corporation, the district magistrate's office, and the Improvement Trust have fulfilled their duties somewhat more reliably within the same troubled setting.

Of course, this is not enough to solve Howrah's environmental crisis. For that to happen, some major challenges would have to be faced, which have also been mentioned in the petition and subsequent additional affidavits. By early 1998, however, the Green Bench had not passed orders. Rather, it had restricted its role to asking for extensive reports on these issues. To a limited extent, the High Court was thus putting the authorities under pressure, making them deal

with these questions at least conceptually.

Particularly, five major issues were at stake: the provision of safe drinking water, adequate disposal and treatment of sewage and waste water, adequate garbage disposal, improvement in the condition of Howrah's roads, and control of the so far inadequately planned mushrooming of high-rise residential housing. This subsection will very briefly comment on these challenges in order to outline their daunting scope.

As the writ petition complained, the authorities in Howrah are only obliged to provide 'filtered' water to the citizens. In Calcutta, 'wholesome' water is required. In order to do this, the HMC would need adequate treatment plants and a reliable system of pipes.

This challenge is all the more problematic as Howrah's drainage and sewage system is insufficient. As described in section 6.1 of this chapter, Howrah basically relies on open drains. These drains become clogged, particularly with garbage, and in severe cases they overflow and flood the surrounding area.

The only sewage treatment plant in Howrah does not work reliably, according to GNS submissions. The problem is exacerbated by the fact that the Hoogly is tidal. Some of the waste water discharged into the river at low tide is carried upstream at high tide and is likely to be channelled back into the filtration system that provides supposedly safe drinking water. This problem was emphasized several times by Subhas Datta and others. The Green Bench had occasionally heard the matter but not passed any orders up to 1998.

The challenge of adequate garbage collection and disposal is another important infrastructure issue. It is clear that the official dumping ground in Belgachia will not suffice in the long run. Datta emphasized that this is partly due to the fact that buildings have been allowed to encroach upon the ground. The Green Bench did not tackle this issue in the first two years of its existence.

The poor condition of Howrah's roads is similarly disturbing. Even major thoroughfares, serving as national highways, are narrow and full of potholes. As Datta argues, this is made worse by the fact that road damages are inadequately repaired. Basically, potholes are simply filled with brick chips. Traffic then grinds down the chips. As a result, Howrah's roads are particularly dusty. Additionally, the permanent disrepair of the roads slows down traffic and thus contributes to air and noise pollution.

In spite of all these problems, Howrah has, over the last decade,

witnessed a building spree. High-rise apartment buildings have come up in central Howrah. It is acknowledged that there is a massive demand for housing in the entire metropolitan area. However, Datta's point is that, if such massive constructions take place unplanned in an already congested city, environmental conditions can only deteriorate. It is the duty of the CMDA to devise implementable planning, but it has not done so. The Green Bench has, so far, not taken up this issue in any judgement.

It is noteworthy that the Green Bench did not tackle issues of urban planning or budgetary matters. Indeed, there has not been much investment made to obey its orders. Some malpractices were discontinued without any measures to repair the damage done. Insiders agreed that the authorities did not have the funds to solve all urgent matters. However, they expressed frustration that there was little consistency in development schemes and that much money was wasted because there was no follow-up to initial investments.

In general, submissions of the authorities (Corporation, District, HIT and CMDA) acknowledged that Howrah's situation was bad. However, according to them, Howrah's infrastructure was more effectively operational than stated by the GNS. Improvements were supposedly planned and under way. Anybody visiting central Howrah would have found ample reason to doubt such statements. The State Pollution Control Board's assessments were mixed. In court, it by and large supported the individual submissions of the GNS while at the same time trying to maintain an attitude of governmental authority according to which basically everything was fine in the Calcutta agglomeration.

Some critics said that the judges proved their incompetence by not giving priority to the big issues. Other environmentalists did not agree. Their point was that the judiciary could not successfully tackle such comprehensive matters. But by dealing with the smaller, locally specific matters, the judges were in a better position to make individual officers responsible. There was a chance of having some impact on the ground reality and on the administration's work culture.

## **6.5 An Assessment: The Court's Role in Changing the Polity**

With respect to the local polity, the Green Bench proceedings in the *Howrah Matter* have had several interrelated effects. They raised the profile of Subhas Datta and the GNS. The case had gained public attention and media coverage, especially since it has to some extent changed the ground reality in Howrah. The Maidan, the morgue, the Fish Market, the garbage situation (in Bellilious Park, under the Second Hoogly Bridge and at the General Hospital) have improved.

Many court orders went in favour of the petitioners and were actually obeyed to a discernible extent by the authorities. This suggested that the general attitude of the government agents in Howrah was slowly changing. The fear of judicial intervention was making them take complaints more seriously. In other words, the Green Bench was making them more accountable.

The mix of legal activism and media coverage was moreover having an impact on what a growing number of people expected of the government. The idea was taking root that government agencies have duties to fulfil. While the Green Bench did not guarantee alleviation of grievances brought to its notice, it definitely did inspire hope of change. This was gaining a circular dynamic, as more and more people were taking matters to court, often with the advice and encouragement of Subhas Datta.

As the GNS leader was, along with the judges, perceived to be the key person in the process, this further strengthened his standing. Moreover, with the scope of his legal action having expanded beyond the city limits of Howrah, he had become a person of state-wide reputation and relevance. Increasingly, political parties tried to get his support and to cooperate with him. Indeed, had he wanted, he would probably have become a member of parliament in 1998.

The Trinamool Congress, a faction split away from the Congress Party with promising electoral perspectives, wanted him to run for the Howrah constituency in the general election. Datta declined to do so, stating he felt he could achieve more as an independent person fighting legal matters. He said he regretted ever having supported a (Congress) candidate in an election as that had for years earned him the reputation of being a party person. Before the Trinamool Congress approached him, the right wing BJP had also offered him its ticket in

Howrah. In the 1998 election, the Trinamool Congress won the Howrah seat.

Finally, Howrah's polity changed in yet another aspect. As mentioned in section 6.1, the Central Pollution Control Board had taken up the issue of Howrah's environmental crisis emphasizing several of the issues mentioned in the writ petition. Datta was personally involved. For instance, he was the only environmental NGO representative at an official meeting of government agencies in Calcutta on 7 November 1997. The Board had invited him to take part in the discussions meant to draft an action plan for Howrah.<sup>7</sup>

It is far too early to determine whether the action plan proposed by the Central Pollution Control Board will ever take off. It was also disappointing that the Board did not publish any of the data it had collected on Howrah's environmental situation. According to R.N. Bhattacharyya of the Central Pollution Control Board, there had been some additional research. Nonetheless, it is interesting that the central government staked a claim in the *Howrah Matter* and that Subhas Datta was considered to be among the people relevant to the issue. Before the Green Bench was established, he had been regarded as a notorious rabblouser rather than as someone to be taken seriously.

By the end of 1997, the *Howrah Matter* had been dealt with by the Green Bench for one and a half years. Datta expected the struggle to go on for many more years, particularly as there was a general impression among those regularly frequenting Green Bench sessions that the judges had, so far, shied away from the big issues.

Also, it was expected that the point was bound to come when the High Court would have to punish officials for contempt of court in order to assert its authority. The experiences in the courtroom—not only in the cases discussed—suggested that the Green Bench was not yet prepared to do so.

Without resorting to the penal powers they are vested with, it may prove difficult for the judges to move government bodies to tackle the 'big issues' such as provision of safe drinking water or overall road

<sup>7</sup> The WBPCB later sent a letter with the minutes (including a draft version of the action plan) to the participants. This document was dated 4 December 1997. It listed several points of concern, some of which reflected GNS positions. These included the upgradation of sewage collection and treatment and garbage collection. The letter also added that 'proper land use planning' and 'improvement of road conditions' had, among others, emerged in the discussion as important issues to be taken into account.

conditions. However, in these matters, it will be even more difficult to use those powers. Who is to be held responsible in an overall inefficient bureaucratic organization? If the ceremonial inauguration of the public building finalized in spite of court injunctions could go unpunished, who will bear the blame for more anonymous and impersonal government dysfunctions?

The judges' declared strategy of proceeding at slow but steady pace may sound convincing in theory.<sup>8</sup> In the *Howrah Matter*, it did not work too well. The authorities' attitude was a mix of arrogance, symbolical compliance and display of helplessness. Deadlines imposed by the court were regularly missed. Officers claimed the submissions of the petitioning party were exaggerated. HMC Commissioner Basudev Guha Majumdar even said in an interview for this research project that the entire litigation added up to nothing but 'pin pricks' for a 'competent administration'. On the other hand, the authorities asked for detailed directions of the court when the failure of their schemes could no longer be denied.

The *Howrah Matter* has, moreover, attracted media attention. Its constant coverage has helped turn the Green Bench into a platform serving to raise Subhas Datta's personal profile. He has become a figurehead of public life in West Bengal.

As soon as the Green Bench was established, he started to file additional cases in High Court. By the end of 1997, he was dealing with several other matters, including the maintenance of public parks in south Calcutta and Salt Lake City and the conditions of morgues in Diamond Harbour and Karagpukur. By the end of 1997, he was almost daily approached by people asking him for help, from all over West Bengal.

One important incident concerned plans for a new suburban township. The state government wanted to build a new settlement called 'Rajarhat' that would have dimensions similar to Salt Lake City. The plans bordered on (but did not infringe upon) the northern part of the Waste Recycling Region. Datta was approached by local activists for help in a campaign against the settlement. In January 1998, he intended to take the issue to court. This was a new

<sup>8</sup> Since early 1998, there have been several changes of bench membership. As I have only once been present at proceedings before judges other than Justices Banerjee and Mitra, I am in no position to comment on whether these changes affected the matters heard.

development. Eighteen months earlier, Calcutta's environmentalists had felt he was simply a partisan activist supporting the Congress Party rather than a potentially important ally.

In 1999, his main emphasis was environmental litigation in general with the *Howrah Matter* having become one of many cases he was involved in. The Green Bench had taken up proceedings concerning all public morgues in West Bengal. Datta had also been officially made the representative of M.C. Mehta in all aspects of the *Ganga Matter* still to be dealt with by the High Court.<sup>9</sup>

Increasingly, Datta advised people approaching him for help to go to court themselves. According to him, a dozen such cases had materialized in Howrah since the establishment of the Green Bench by early 1998. Roughly the same number of court cases had been initiated with his advice outside Howrah.

Many of these initiatives brought some relief to the petitioners, partly because some of the authorities, particularly in Howrah, had begun to change their attitude. Whereas complaints had not bothered them until very recently, the threat of going to the High Court might now set them in motion. The visible achievements in the 'small' issues of the *Howrah Matter* have set precedents. The shadow of litigation (Dammann, 1997) is itself becoming a force of change.

To summarize: The litigation in the Green Bench has not solved the environmental crisis in Howrah. Major problems, such as inadequate urban planning and an overall inadequate infrastructure, have not been tackled. However, specific locations have been dealt with and seen undeniably positive results.

After years of almost entirely unsuccessful campaigning, the GNS has achieved some of its goals. It has not been possible to make the government fully accountable. However, the court has given those citizens who are prepared to go to court some leverage over the administration. The judiciary has (in an initial and rudimentary way) forced government agencies to enter into the discourse of the public sphere, making them accountable to agents of civil society.

This in turn has spawned additional NGO activity, to a large

<sup>9</sup> Datta took up this responsibility only after I left Calcutta. I am in no position to assess what impact it has had on his relation with PUBLIC and other Calcutta NGOs which, with good reasons elaborated before, consider M.C. Mehta more a foe than an ally in the wetlands dispute.

extent gravitating around Datta and the GNS. By taking more and more issues to the Green Bench, this NGO leader has enhanced his political clout. As, in the experience of the judges, his cases were normally well researched and argued, his legal activism also provided opportunity for the Green Bench to further its own reputation in a reflexive process.