

CHAPTER
SEVEN

Ethnographic Observations: An Overarching Lack of Trust

It has been clear from the outset that executive and legislative branches of government are not inherently trustworthy institutions. The question at stake in this book is whether public interest litigation can sort things out in the Indian context. This, of course, involves the credibility and legitimacy of the judiciary itself. More generally speaking, the viability of liberal democracy depends on a sense of trust stemming from the accessibility and accountability of government agencies to civil society in a sufficiently transparent public sphere.

In this context, the judiciary is of particular relevance as the branch of government safeguarding constitution, law and rules of democratic conduct. It has to serve as much to check and balance the coercive powers of the state as to resolve disputes among citizens. The case studies presented in Chapters 5 and 6 have shown that writ petitions can lead to more than merely symbolic success. Judges have repeatedly given concerned citizens some leverage over the administration.

Nevertheless, the High Court in Calcutta did not appear as an altogether trustworthy institution to the German sociologist. I heard

many complaints of inefficiency and corruption. Moreover, the judges' competences sometimes seemed doubtful. In spite of public court sessions, many decisions remained non-transparent. The resulting lack of trust was reflected in an equally entrenched sense of suspicion among the NGOs involved in Green Bench proceedings. This was a serious impediment to cooperation. Rampant suspicion and the propensity to believe in conspiracy theories thwarted the potentially much stronger role of civil society.

Very generally speaking, I found that power relations were likely to be considered in personal terms. Factors such as rank in government and civil service, high public profile, media attention or a reputation for getting things done were regarded as expressions of primarily personal power. Many people would try to make a favourable impression on those perceived to be wielding influence and to monopolize such contacts once established. 'Real agendas' were often expected to be hidden. Anything negotiated openly was not normally thought to be of much substance.

This chapter deals with the issue of trust in public life—or, more precisely, the lack of trust in both civil society and public sphere as constituted by the higher judiciary. Before that, it will be necessary to briefly elaborate on ethnographic methodology, because the data presented here are of a more subjective nature than the case studies discussed above. The methods applied up to here have been fairly obvious and need no further elaboration. Basically, I have analysed the relevant documents.¹ This assessment was supplemented by personal memories of people involved in the matters. Finally, I have repeatedly visited locations in dispute to personally assess the ground reality.

The second section takes an ethnographic look at the judiciary, and particularly the Green Bench in the High Court. The third section similarly examines the network of NGO activists and bureaucrats interested in the environment.

¹ To some extent, it is a methodological problem that they are mostly not available to the public. Any researcher will have to deal with this non-transparency of administration and judiciary by relying on the photocopies of photocopies that float around in the NGO networks of civil society after having leaked out of the bureaucracy at one point or another. Of course, the legal files of petitioning parties include many relevant papers and are therefore important sources. It is time consuming but by no means impossible to lay hands on and compare nearly all the documents at stake.

7.1 The Approach of ‘Thick Description’

The ‘hard’ facts of governmental programmes, court judgements, petitions, affidavits and media coverage have dominated the argument in the case studies.² The data presented next are, to a large extent, of a ‘softer’ nature. They are based on my personal observations in the courtroom and among NGO activists in Calcutta. They rely on ethnographic methods used to discover cultures the researcher is not familiar with. I do not pretend to deliver a comprehensive ethnography of the Green Bench or Calcutta’s NGO network. Such an endeavour would have to include far more data concerning, for instance, career patterns of those in the legal professions, an assessment of administrative intricacies and a comprehensive survey of the different types of individual, formally organized, and governmental parties appearing in the courtroom.

Even though my ethnography of the Green Bench is far from complete, the lack of trust that I encountered during my research was too pervasive to be simply dismissed as an individual impression without further relevance. Accordingly, some ethnographic observations will be presented here to make the general assessment of public interest litigation more comprehensive.

Clifford Geertz (1973) introduced the idea of ethnographic ‘thick description’, which attempts to give a strong impression of one particular aspect of social life and to use it to describe specific and essential cultural dispositions of the scrutinized society as a whole. This approach of social science is based on systematic field research including qualitative methods such as participant observation and narrative interview (Spradley, 1979, 1980). Entries in meticulously

² Official data from government or court files are not necessarily ‘true’ in the sense of delivering accurate assessments of reality. Unfortunately, most of these documents are not publicly available and thus not subject to public, critical debate. It remains difficult to establish hard facts as it is, of course, impossible to check all data personally on location. However, these data are ‘hard’ in the sense that they are included in documents that, in principle, can be checked. Moreover, CMDA plans and similar documents reflect the government’s view of affairs that, in turn, may be expected to shape governmental action. It would be fascinating to assess governance by examining the quality of the expertise on which decisions are based. However, as a sociologist, I am in no position to check scientific, technological or legal assessments. What I have done in the case studies is to take official documents as valid government guidelines and then compare them to subsequent official action or inaction. This is of immediate sociological relevance.

kept field diaries are the basic data ethnographers operate with. In so far as the following pages do not quote from other sources, the data presented here result from my personal observations as recorded in my field notes.

In the 'writing culture' debate, it has been acknowledged that such ethnographic work remains highly subjective in spite of elaborate methodological codices (Clifford and Marcus, 1990). This approach implies that the social scientist has to forsake any claim of having a privileged access to social reality that would make his or her observations more true than those of other actors. On a more theoretically abstract level, the approach is acknowledged by recent systems theory (Luhmann, 1997). In this perspective, social sciences have no paramount position to analyse society but rather are only a specific social system observing other social systems according to its own terms.³

Given that any individual's subjective observations do not unproblematically reflect 'objective' reality, the person of the observer is highly relevant and becomes responsible for the observations made. This is one reason why it is customary to present ethnographic findings in the first person. Moreover, it is only fair that the researcher explicitly express some of his or her motivations.

My idea of studying public interest litigation in Calcutta arose from the wish to have some personal experience of the reality of a disadvantaged country after having been involved in development journalism at Deutsche Welle, Germany's international broadcaster, for several years. As environmental challenges are among the most difficult any society faces, I found court cases revolving around these matters as interesting topic. I was hoping to discover how the polity of an Indian mega-city deals with conflicting interests in pursuit of the common good, however that might be understood. I had the opportunity to spend two winters in India, which were useful to gather my data.

I kept a field diary to supplement the harder data from the outset, as I would have anywhere else in the world. However, as it was sometimes difficult to gain access to important documents, there were periods in which the ethnographic research was of greater prominence

³ This also implies that even though certain proceedings in court may be faultless to legal experts, the sociologist may still find them troubling in his or her context.

in my work that I had originally expected.⁴

I understood the task of the researcher to be one of second order observations. Social scientists cannot uncover a somehow 'objective' truth. What they can do is observe how social communication takes place and what is communicated. To access the social reality of environmental litigation in Calcutta, it is relevant to understand how Calcuttans communicate about such issues. This, of course, includes government reports and court rulings, but also personal memories, face-to-face interaction in private and public, seminars and rallies.

Ethnographic research is based on the assumption that members of any particular culture or society are constantly explaining their social reality to one another in everyday interaction. This is directly linked to the various constructivist approaches in sociology that emphasize that this reality is created in the permanent flow of everyday communication (e.g. Goffman, 1959; Berger-Luckmann, 1966; Luhmann, 1986, 1997).

For the researcher, anecdotes, rumours, shop talk and gossip of the communities observed therefore serve as valid guides to understand their particular culture. Ethnography must strive to bypass professional attire, which to a large extent serves to exclude non-members rather than to actually carry out particular skills. In this sense, my 'thick description' of High Court culture will not primarily be supported by 'hard' facts such as quotations from court rulings. Rather, rumours and small talk are evidence of how people in this particular social setting express thoughts and feelings, at once reflecting and creating social reality. After all, anything true in people's mind is likely to have its effect on how 'reality' will eventually turn out.

Such ethnographic research has its place not only in development studies, such as the study of tribal villages in the Narmada valley (Baviskar, 1997). It has also been carried out in scientific laboratories (Knorr-Certina and Mulkay, 1983) among biologists (Latour and Woolgar, 1979; Knorr-Cetina, 1981), physicists (Traweek, 1988) and physicians (Hirschauer, 1993). Similarly, professional life in the media has been subjected to ethnographic research (Altheide, 1976;

⁴ Obviously, I personally found the inaccessibility of official documents frustrating. However, governmental non-transparency is of course a greater handicap for all the citizens of Greater Calcutta who wish to engage in democratic deliberation than for the foreign social scientist, who may simply include the phenomenon in his or her final assessment.

Tuchman, 1978; Golding and Elliott, 1979). As this approach is fit to scrutinize such professional cultures, there can be nothing wrong with applying it to Calcutta's Green Bench—even if this 'field' of educated, middle class, urban Bengalis would not normally be the community most likely to come to an ethnographer's mind with regard to India studies.⁵

While ethnographic research may have the disadvantage of not even appearing to be objective, it does have the advantage of discovering aspects of reality that would otherwise not be accessible to the social scientist. The approach aims more to understand a particular culture than to test premeditated sociological concepts. In this sense, I hope to be discovering a lack of trust rather than to be imposing German standards.

One final caveat is *de rigueur* in this context. The following ethnographic sketches are meant to illustrate certain characteristics of Calcutta's polity in the late 1990s. The societal lack of trust is quite strong. However, that does not mean it is an unchanging or unchangeable aspect of Calcutta's political culture, nor that every individual would display these traits in his or her personal behaviour.⁶

7.2 The Judiciary

Several points must be made about the trustworthiness of the High Court. Like other government bodies and branches, the High Court has a reputation of inefficiency and corruption. The course of proceedings could be quite unpredictable. Procedural surprises in the case studies presented in Chapters 5 and 6 included the sudden order of the Supreme Court to establish a specialized bench in the High

⁵ For me, it was most beneficial that this community strongly relies on English, I only have a rudimentary grasp of Bengali which, however, is no impediment in following High Court proceedings or the general environmental discourse in Calcutta.

⁶ For this reason, there is also the convention of not revealing the personal identities of the people described in an ethnographic text. For the purpose of my book, that has not been entirely possible. First, the case studies required 'hard facts'. Second, some of those involved are highly interested in publicity. Third, it would seem odd in a book the main trust of which is a demand for transparency to obscure individual identities of people who are politically and regally relevant. Nonetheless, in this chapter, some efforts have been made to maintain the anonymity of people not central to the argument. Also, I have chosen an 'alias' for one person still active in government service, not knowing whether the revelation of his identity would be welcome or not, or perhaps even harmful.

Court. More typical was the experience of cases simply not coming up for hearing for months on end, although they had not been disposed of.

I was told several times, that my discomfort with the High Court was due to the fact that I was unfamiliar with common law practices. This is undeniable. However, non-transparency and inefficiency were occasionally of a quality not to be explained by the differences between Anglo-Saxon and European legal traditions.⁷ This included, for instance, the episode in which files pertaining to the Supreme Court activities in the *Howrah Matter* were lost in the High Court and the petitioning party, rather than the High Court's administration, was held responsible by the judges to deliver these documents.

For the discussion presented here, the differences between common law and civil law traditions are not of prime relevance. The question at stake is to what extent do judicial practices in Calcutta inspire trust in the legal system and, more generally, in the public sphere? This was not to be taken for granted. Rather, suspicions abounded concerning possible collusion of executive government and the judiciary.

Moreover, phenomena similar to what I have experienced have been described in scholarship for decades (Cohn, 1990; Kidder, 1973). This has been elaborated on in Chapter 3. The following discussion will serve to show how public interest litigation in Calcutta is embedded in problematic aspects of the Indian judiciary. The aim is less to explain their origin than to show that they are having a serious impact on the performance of the judiciary.

It must also be emphasized again that triumph in the courtroom does not necessarily lead to changes on the ground. Deficiencies in enforcement do not inspire trust. Other problematic aspects included the relative non-transparency of the judicial process, a general lack of scientific insight in environmental matters and the fact that regulations were rarely mentioned in the courtroom. The following subsection deals with the issue of non-transparency and rumours of corruption.

To the German sociologist, the technical competence of the judges in dealing with issues of engineering or urban planning seemed doubtful, to say the least. Very often, the judicial process before the

⁷ I have sat in on court sessions in the United States, where proceedings did appear more organized. Legal documents were also easily made available.

Green Bench did not primarily seem to revolve around laws or Supreme Court rulings. Rather, the judges appeared to be wielding their considerable discretionary power according to their common sense, or whatever calculations appealed to them personally. The attitudes they displayed in court did not always reflect professional detachment and neutrality. These aspects are discussed in the second subsection.

7.2.1 *Non-transparency and Corruption Claims*

Court sessions are held in public, but it is difficult to follow them concisely. Unless one was exceptionally well placed, it was very difficult to hear the discussion in courtroom number 17, where the Green Bench would sit every Friday. The room was crammed with up to 140 persons. Some twenty cases might be listed. It was unclear exactly at what time individual matters would come up. Most parties involved in any item on the agenda were represented in the courtroom. At most, a quarter of the attending persons were seated. The air was stuffy. Very often, the noise of rotating fans made it difficult to follow the proceedings. There was constant agitation in the room. People would go out to have a cigarette, or come in to see whether their matter was coming up.

The proceedings were held in English. Accordingly, the vast majority of non-English-speaking Indians would not have been able to follow them. On top of that, not all those appearing in court were fluent in English and even some of the professional lawyers' language skills appeared to be limited. At times the debate became agitated with several people speaking at once.

Most matters discussed in court were detailed and involved locations unknown to those not familiar with the cases in question. The court depended on maps, photographs and other pieces of evidence which, of course, only the judges and the parties immediately involved had at hand.

Court documents were not normally accessible. This meant that the public in general had to rely on media coverage of court events. Journalists, however, did not have a privileged access to the court sessions as they have in Germany (where seats and even desks in the front of courtrooms are reserved for the media). Similarly, academic researchers were not granted access to court files—at least I was not, in spite of having personally appealed to the High Court registrar while

being affiliated to the Centre for Studies in Social Sciences, Calcutta, a deemed university.

The judges of the Green Bench did not even allow journalists to take notes during the sessions. This had helped Subhas Datta to assume the role of de facto press spokesperson before the Green Bench.⁸ During breaks, he would brief half a dozen journalists in improvised press conferences in the High Court building. The High Court itself had no systematic way of informing the public about the state of pending matters or new decisions. Therefore, Datta could become the main media informant even though he was, of course, an NGO activist and thus partisan. This again, did not contribute to official transparency that would inspire trust in the institution of the High Court.

The High Court, moreover, before the establishment of the Green Bench, had not had a good reputation, particularly as far as public interest litigation was concerned. Its speed in dealing with the wetlands case was not considered typical. PUBLIC and its lawyers had been surprised by their own success. They attributed the initial speed of the proceedings to the originally keen interest of the state government to have the matter disposed of quickly as it did not doubt that the court would rule in favour of the World Trade Centre. For me, the German sociologist, it appeared to be a collusion suspicion, articulated subtly, that PUBLIC would attempt to link court actions with the government's wishes.

Subhas Datta's initial experience in the High Court was said to be more typical. In Chapter 6, I had elaborated how eight of ten public interest litigations filed by the Howrah Ganatantrik Nagrik Samiti (before the *Howrah Matter* was taken to the Supreme Court) were eventually discontinued. They simply did not come up for hearing again. Of the two disputes that led to judgements, one dealt with foreign travels of the chief minister and was ruled in favour of the State. The other case, in which the judges decided in favour of the GNS, concerned the auditorium on the Howrah Maidan. It was enforced only six years after delivery of judgement, after several appeals to the High Court and the Supreme Court. Those who had blatantly ignored the judgements went unpunished in the end.

⁸ He normally observed all proceedings before the Green Bench from a strategic position among the lawyers in the centre of the courtroom. This is the best way to follow the proceedings and, as he was one of the main activists before the bench, the lawyers tolerated him in their midst.

Apparently, delay was no isolated experience. On 24 November 1997, the local page of the *Asian Age* ran an article by Kinsuk Basu under the headline ‘High Court officer files PIL against corrupt practices’. The clipping stated that the Supreme Court had appointed someone to report on the state of affairs in the High Court. This person had filed a writ petition in the Supreme Court to set matters straight in Calcutta. The *Asian Age* listed the following findings:

- The judicial process in Calcutta High Court is marred by rampant corruption prevalent in the system of listing out cases.
- Thousands of pending case files are missing from the record department and there is no system of recording movement of pending records...
- PIL cases are affected due to administrative mismanagement.
- In contempt cases, the contemnors never appear on time rendering the judicial process futile.

The article also stated:

Unless litigants pay ‘speed money’, officials ensure that the files lie untouched for decades. Only the rich litigants or the hard pressed ones, who are aware of the system, get the privilege of superseding those who have waited for months to see their case on the list.

The reporter wrote that this was the first time a special officer had filed a case against a High Court. It is interesting to note that it was due to the initiative of then Supreme Court Chief Justice J.S.Verma, a well-known judicial activist. The suggested measures of reform were professional training and computerization of the registrar’s office. The report urged the Supreme Court Chief Justice to pay a surprise visit to the Calcutta High Court.⁹

According to the *Asian Age*, a report on the matter had also been delivered personally to High Court Chief Justice Prabha Shankar Mishra with an appeal to ‘save the oldest court in the country’. High Court lawyers told me that the report in the newspaper reflected their experience. However, they did not expect the Supreme Court initiative to be of much avail. It was considered a personal initiative of a Supreme Court Chief Justice who would only be in office for

⁹ At the time, efforts to draft reforms for the justice system along similar lines were under way involving judges of the Supreme Court and several High Courts including Umesh C. Banerjee and others from Calcutta (Chodosh et al., 1997). At the local level of the Green Bench, however, such concern for reform was not necessarily to be felt in the courtroom.

another two months. An important issue of law was regarded as a matter of personal involvement of a high-ranking official. Similarly, environmentalism had commonly been considered to be Supreme Court Justice Kuldip Singh's personal affair.¹⁰

This highly personalized perception of discretionary power was linked to the fact that the judiciary was overburdened. Individual judges could not be expected to do all they were supposed to do, simply because their workload was too heavy. In this situation, they set priorities as they pleased. From a sociological perspective, therefore, the high number of pending cases enhanced the individual discretionary powers of high-ranking judges.

For lawyers, the widely accepted notion that bribes were fair means in official affairs may sometimes have provided an additional source of income. One advocate told me his clients would complain if he took high fees. However, he could rise in their esteem if he asked them for 10,000 to 20,000 rupees to bribe the judge. He would then be seen as someone well enough connected to influence the High Court. In the end, how were the clients to know who had actually kept how much of the total sum of the 'bribe'?

Indeed, accusations of corruption were made not only against the court administration, but also against individual judges. Most prominently, Justice Ajit Sengupta was arrested and put on trial soon after retiring in late 1996 (*Telegraph*, 23.11.1996). I was told that he indeed had had the reputation of being prone to accept personal favours.

Another interpretation, however, was that this was a measure by the state government to intimidate the other High Court judges. Justice Sengupta had apparently ruled against the government on several occasions. His arrest was interpreted to be provoked less by his having taken bribes than by his being a personally assertive member of the bench. After all, the argument went, all judges had skeletons in their closets and could be subjected to corruption charges.

To be very clear, this is gossip. The main evidence was reasoning along the lines of conspiracy theories. However, it did reflect the thinking of legal professionals in the High Court at the time and is therefore relevant to any assessment of the judicial culture. It is also relevant in the sense that these people, if any, might be expected to

¹⁰ As a matter of fact, over a year after Kuldip Singh retired, environmental matters were prominently on the Supreme Court's agenda in 1999—for instance in the judgment demanding fuel emission norms for newly registered cars in the National Capital Region (*Times of India*, 30.4.1999, 17.5.1999).

know about the procedures and manoeuvres experienced in court.

There was also some evidence that Justice Umesh Chandra Banerjee had accepted personal favours from the state government. The magazine *India Today* (8.9.1997) included him (and also Bhagabati Prashad Banerjee, who was later to replace him as a senior member of the Green Bench) in an alleged list of persons who had been allotted attractive real estate in Salt Lake City by the chief minister. According to the magazine, the allotment was illegal. Months earlier I had already been told by advocates that Umesh Banerjee was not likely to rule against the state government as he had been granted personal favours. The location and size of his house were mentioned in this context.

Advocates also told me that the High Court had ruled that such allotment of plots was within the personal discretion of the chief minister. There had been no legal consequence. To my surprise, this did not seem to even raise an eyebrow among the legal community. Eventually, there was another legal episode with members of the Trinamool Congress challenging the chief minister's allocation of property as abusive of discretionary power. This matter was dismissed by the High Court on 5.2.1999. The petitioners then took the case to the Supreme Court in April 1999 (*Telegraph*, 21.4.1999) with, as far as I know, no further consequences.

Among Calcutta's legal community, it was taken for granted that judges wanted to maintain good relations with governments in general. After all, they would want to be eligible for various appointments to well-paid positions in committees or as consultants after retirement.

7.2.2 Technical Skills and Professional Attitudes

While the judges thus did not necessarily appear to be entirely independent, there were also doubts concerning their technical competence. It was clear that they could not be expected to have profound insights into the complex field of environmental engineering. Nevertheless, they did not systematically rely on competent advisors. Often they dealt with the issues on the predominantly impressionistic level of the petitions. In doubt, they relied on the reports of the West Bengal Pollution Control Board. These, however, sometimes turned

out to be of rather poor quality.¹¹

Unsurprisingly, the WBPCB again had a rather poor reputation. It had been clearly overburdened even before its workload was increased by weekly reports to the High Court. Nonetheless, the Green Bench had made it its investigating body.

According to one officer, the WBPCB had 106 staff members in late 1996, 25 of whom could be considered technical. They were supposed to control pollution in a state with a population as large as Germany's and an industrial base just as old. West Bengal is home to some 70 to 80 million people and was the nucleus of industrialization in Asia.

All industries needed a clearance from the WBPCB. There was much money involved. To me, it seemed inconceivable that twenty-five technical staff could regularly control such a vast industrial landscape. The situation appeared worse if one considered hearsay according to which the WBPCB personnel had initially not been chosen for their technical competence. Rather, the conventional wisdom was that staff had been transferred from other government bodies as appeared convenient to those in charge (for whatever reasons).

To the visiting German sociologist, it came as little surprise that the WBPCB had a reputation for both technical incompetence and financial corruption. Indeed, business people in Calcutta would tell of fixed prices for pollution control certificates, the sum of which would depend on the total investment involved in any single business unit. In line with Renu Khator's (1991) assessment of environmental bureaucracies in India, a black market for the required documents appeared to have been set up within WBPCB. In any case, this institution could not be expected to perform irreproachably.

On several occasions, parties appearing before the Green Bench had suggested establishing a panel of experts to consult the judges. This could, for instance, have comprised professors from the

¹¹ The following caption will show that it does not always take an engineer to submit some of the Pollution Control Board's reports. It deals with the Jhill (pond) of Belillious Park in Howrah and was submitted to the High Court on 8.1.98: 'The entire boundary of the Jhill inside the park was found to be full of dirty sludge, dead body of pig, leaves of plants, etc. which were being floated on the Jhill on the date of inspection i.e.16.12.97. The water of the Jhill is being polluted by the unwanted activities of the local residents inside the park'. This particular report submitted no further data with respect to the pond. Its elaborations on various other aspects of the *Howrah Matter* were similarly impressionistic.

institutions of higher learning in Calcutta and experts of government bodies such as the National Environmental Engineering Research Institute or the All India Institute of Hygiene and Public Health. While the Green Bench had on rare occasions ordered such institutions to report on environmental matters, the judges had so far not decided to set up such a committee in their support.

In this context, the fact that some (but not all) petitioners were ordered to depend on lawyers was criticized. The feeling had repeatedly been that legal experts did not understand environmental issues well enough and would constantly blunder in court. Procedural surprises also played a role in this context. If one could not even expect cases to follow a predictable, established pattern, then how was one to rely on fair and adequate judgement?¹²

While the technical and management competence in the courtroom thus seemed to be poorly developed, the level of legal argumentation also remained poor. Submissions hardly ever referred to national or state legislation, nor did they elaborate the respective rulings of the Supreme Court. Such sources did not figure prominently in the proceedings I have followed nor in the judgements I have read.

It is true that many of the matters disputed were, in the words of Subhas Datta, ‘factual, not actual’. But it would be wrong to believe that impressionistic matters lend themselves easily to impressionistic decision-making. Some orders seemed barely implementable: In January 1997, the High Court ruled that no buses or taxis would be allowed on Calcutta’s streets if they emitted ‘black or white smoke’. This was a clearly subjective, non-scientific standard.

To summarize the episode briefly: The High Court did not recur to the car pollution control legislation enacted by the central government. Instead, one of the judges complained in the courtroom that everybody knew that car owners could simply buy the certificates without taking any measures to reduce emissions—and thus took recourse to the notion of ‘black or white’ smoke. Unsurprisingly, the order was not implemented. Citizens who had hoped for relief from the massive air pollution along Calcutta’s main roads soon after were tempted to interpret the highly visible clouds of fuel exhaust as a sign of the High Court’s lack of authority, rather than of judges having

¹² Individual petitioners who were involved in cases before different benches might not know which courtroom to go to first, ignorant of when (and if) their matter would be heard. While senior lawyers would rely on their aides in such cases, other individuals would run the risk of having their cases disposed of in their absence.

passed an inadequate ruling.

Finally, the personal attitudes displayed in the courtroom were not apt to inspire trust in impersonal, rule-based decision-making. It was not uncommon for the judges to lose their temper and even start shouting in court. They would interrupt petitioners trying to deliver a complex argument with a mere 'what do you want'? Or simply tell a lawyer to 'shut up'. Advocates complained that this behaviour was 'immature' and 'rude'. The widespread perception was that the judges did not want to hear lengthy arguments. Moreover, the agitated debates before the bench, in which several persons might be trying to contribute at the same time, cast doubt on the judges' ability to organize orderly proceedings.

One lawyer observed that judges appeared 'clownish' in such emotional moments. After all, the judges were dealing, among others, with advocates appearing for those holding high-ranking public office. This attorney suggested that the judges would have done better to personally hear the secretaries, commissioners and directors of the administrative bodies concerned, thus holding them responsible and ensuring that the pressure of the investigation acted on the bureaucracy as a whole. He said that this had been the strategy of the Supreme Court, an example the Green Bench should follow to a much larger extent.

Personally, I once observed a High Court judge (neither Umesh Banerjee nor Ronojit Mitra) falling asleep during a public interest litigation session. It is of course only human to do so. However, it would seem advisable for justices to take breaks in such moments of failing concentration if they did not want to undermine the attending public's respect for their professional competence.

It is common knowledge in the sociology of professions that the display of personally uninvolved attitudes along with the use of unemotional, technical terms serve to emphasize an individual's professional competence and reliability. This goes for judges as well as for physicians, architects, engineers and other professionals. Competence and trustworthiness must be symbolically enacted. In a similar vein, it must also be mentioned that the physical state of the High Court compound did not inspire respect for professional competence. For instance, it was quite normal to find piles of old legal files, some of them torn, in a corner of the courtroom or to encounter half-broken furniture.

In early 1998, Umesh Banerjee was transferred to the Andhra Pradesh High Court, where he became Chief Justice. In early 1999, he

was serving as Justice of the Supreme Court. His replacement as senior member of the Green Bench in 1998 was Bhagabati Prasad Banerjee, who also retired later that year. The Green Bench was then reconstituted with two new member judges who were again replaced in the summer of 1999. As far as I have been told, these changes sometimes caused the cases dealt with to gain or lose momentum. It is obvious, however, that the new bench members would practically be novices to the legally, scientifically and socially complex field of environmental problems.

To summarize: The widespread perception of the Green Bench after one and a half years of proceedings, was that it was moving, but very slowly. Many advocates and environmentalists stated that the Green Bench had shied away from ruling harshly against the government and implied that the judges may have had personal reasons to do so. It was also felt that they lacked basic technical competence. For the outsider from Germany, it was surprising to note the absence of legal argument and the highly affective behaviour of the judges.

Nevertheless, the general feeling was that it was ‘better to have a Green Bench than not to have a Green Bench’, as one activist told me. Even minor progress was considered relevant. And it was felt that the establishment of the Green Bench and constant coverage of it in the media had begun to change people’s ideas about governance. The mere institution of the Green Bench implied that government officials had duties and were not inherently beyond the law.

7.3 The Environmentalist Network

I have stated so far that, while litigation was potentially frustrating, it had undoubtedly become an important resource for environmental NGOs in the Calcutta agglomeration. However, as has been shown in the case studies, orders of the High Court were not press-button procedures to solve the problems at stake. Rather, they required constant monitoring to be enforced.

Normally, this burden rested entirely upon the NGO that had taken government agents to court. They were generally not supported by the existing network of environment-oriented pressure groups. Rather mistrust and envy characterized the interaction among the

NGOs. Typically a spokesperson of one NGO would belittle other groups, saying they were 'really incompetent', had 'no grassroots contacts', were just 'secretarial organizations' or 'letterheads', 'angling for foreign funds' or trying to 'raise their profile' for their commercial or political careers.

Among NGOs, any professed goal was often considered a pretext. The person in question might well be pursuing exactly the opposite interest. Take, for instance, a fishery owner saying he wanted the wetlands to be protected. He may well be hoping to raise the speculative value of his property, not necessarily expressing his heartfelt concern over the future of his current livelihood. Prices are generally higher in black markets. Wetland protection may thus make real estate speculation more lucrative.

The next subsection elaborates the conspiracy theories that are heard through Calcutta's environmentalist network. The second subsection then turns to problems of cooperation under such conditions of mistrust.

7.3.1 *Conspiracy Theories*

As far as I can tell, environmental litigation before the Green Bench in Calcutta was not financially rewarding to the petitioners. Subhas Datta, for instance, complained of lack of funds. His campaigns did not earn money. Rather, activism took time in which he might have been doing well-paid, professional work. Nonetheless, rumours abounded concerning financial profits from NGO activism.

Several people told me that they were in a position to tell me what foreign funds any single NGO was receiving. This general statement was, however, never followed up with facts. Rather, in the case of PUBLIC, it would be said that Bonani Kakkar was making money as a development consultant for the World Bank and other donor agencies. In what sense her involvement in a local court case fighting a World Trade Centre would improve her standing with the World Bank was never explained. The hassle and stress of litigation were never accounted for in this kind of discussion.

To me, it defied common sense to believe that anybody who basically earned her income on consultancy missions in other Indian states and abroad would financially profit by binding herself to the High Court with litigation. After all, the media coverage of her cases had peaked years before with the first spectacular wetlands judgement

of 1992. A later case, taken up by PUBLIC, had not captured media attention in the same way. Moreover, the World Bank was not known to be an agency of particularly strong environmentalist leanings in the early 1990s when PUBLIC first took the wetlands matter to court. It only made its U-turn concerning the Narmada Dam in 1993 (Baviskar, 1997).

Nevertheless, people who had no intimate knowledge of the case claimed to 'know' that PUBLIC had no serious interest in the wetlands whatsoever. The most absurd anecdote was one told by two independent sources. One was a High Court lawyer, the other a government official.

The allegation was that PUBLIC had been 'bribed' by Development Consultants Ltd. to take the State to the court with the goal of gaining judicial approval of the World Trade Centre. The mere fact that construction of the centre had begun served as 'proof' for this anecdote. It did not matter that the centre had, so far, not infringed upon the wetlands. PUBLIC had obviously served the goals of the company that was building the centre and therefore must have been 'bribed' by it.

The use of the word 'bribe' in this context is interesting. According to the *Concise Oxford Dictionary* of 1964, to bribe means to 'pervert by gifts or other inducements the action or the judgement'. This would normally mean the neglect or abuse of office. How can an NGO without any official duties be bribed? If it had received money, would it not be more appropriate to simply state that it had been paid?

The government official held on to his theory even when I pointed out that it did not make any sense. Why would a company that already had government approval for a specific project want an NGO to turn it into a matter of litigation? The construction of the World Trade Centre had actually been postponed by five years. How could that be in the interest of the company? I had to discover that the prejudice against the possibility of acting in the public interest was too strong for this official to accept plain arguments of rational choice.

The official in question had a professional stake in the wetlands. Yet he had never read any of the court rulings, not even the one reported in the law journals. He had no clear idea of how the court had defined the wetland area, nor did he know of the 'balance' the court had tried to strike between safeguarding the environment and laying foundations for further economic expansion. There was no

perception of the consistency of the judge's consecutive rulings on the issue.

The truth, according to him, was simple: PUBLIC had claimed to fight the World Trade Centre and now a World Trade Centre was coming up. So it was evident that PUBLIC must have lost the case. And if the NGO lost the case, that was probably what it had intended all along—why else would it have gone to court?

This was the most disturbing case of irrational myth building I came upon. I initially took it to be a case of personal paranoia, but the story was being told by at least one other person as well.

As I found this episode irritating, I discussed it with several other people. What I found even more striking was that their normal reaction would be to spontaneously give some credit to the legend of PUBLIC having been 'bribed'. It would take a lengthy discussion pointing out all the absurdities to convince my partners in these conversations that this particular allegation defied common sense. Interestingly, most people I talked to claimed to 'know PUBLIC personally'. And yet, the conspiracy theory made immediate sense to them.

Other myths spun around PUBLIC were that it was funded by 'the foreign hand' with the goal of keeping the economy of communist-run West Bengal down. This was a version popular among Left Front supporters. Similarly, it was suggested that they were being paid for by the Ananda Bazar publishing company as part of an anti-communist campaign. Yet another theory was that Bombay businessmen were behind PUBLIC. Their interest would be to make sure that Calcutta would never again become a competitor to independent India's commercial capital.

M.C. Mehta told me, as mentioned in Chapter 5, section 5.4.3, that he had been to Karaidanga, the place to which the Supreme Court had ordered the tanneries to relocate. He said he had seen no wetlands and he wondered what PUBLIC's real motive was. He implied it might have been to protect the leather industry owners from the threat of shifting.

Interestingly, there was a rumour in the Central Pollution Control Board that stated that Mehta's efforts to relocate small-scale industries from the national capital to reduce air pollution had 'really' been on behalf of real estate promoters. The plots thus vacated would make good business for anyone in Delhi's construction and housing

market and, naturally, Mehta would have already secured his share of the profit.

In the Central Pollution Control Board it was generally said that public interest litigation was beneficial. It had given ‘teeth’ to the pollution control boards all over India. However, it also had a ‘dark side’. And that was that many cases were only filed in order to blackmail industries and then to collect illegitimate financial benefits.

In Calcutta, only those who confessed to be ‘friends’, ‘supporters’ or even ‘members’ of PUBLIC immediately rejected such conspiracy theories concerning this NGO as absurd. The conventional wisdom of Calcutta’s educated, English-speaking middle class seemed to rule out the possibility of any serious activity in the public interest.

Ironically, people with a personal stake in an environmental issue were also not perceived to be honest. Weren’t people suing a polluting industry in their neighbourhood probably acting in self-interest? If so, they would not be perceived to be speaking on behalf of the environment. Similarly, fishery owners would not be expected to care about biodiversity but ‘only’ to try and save their livelihoods. To me, this seemed to be a tragic, catch-22 situation. Whoever had a personal interest could not possibly be expected to be honest. And whoever had no personal interest could not possibly be expected to be active. Consequently, any engagement in pursuit of the common good appeared to be next to inconceivable.

7.3.2 *Impeded Cooperation*

During my research, I did not find the notion of bargaining for compromise, building coalitions of several diverse interests and cooperation with other organizations to have deep roots among middle class, urban Bengalis. Such activities were expected to take place secretly and were than apparently viewed as illegitimate incidents of ‘corruption’. Conflicts of different interests were seen not so much as being open to negotiation but rather as battles in which only one party could prevail.

Accordingly, there existed a constant fear among Calcutta’s environmentalists that someone else might get too much credit. In this sense, someone else’s prominence often seemed to be felt as a missed opportunity to enhance one’s own standing. Discussing the merit of a certain litigation objective of one NGO with another, I would often be told that the latter’s own issues were far more valid. Another person’s

or group's gain would always be one's own loss. There seemed to be only a weak notion of acting for the common good or in the public interest.

One government officer, whom I will here give the alias 'Dipankar Basu' because he is still in active service, seemed to be trying to systematically monopolize the issue of wetlands conservation as his personal mission. He had undoubtedly done very much to save the wetlands and was in the words of another environmentalist 'the only one to have paid for it' because his career as a bureaucrat had been slowed down. Apparently, there had been threats to kill him and kidnap his child.

On the other hand,, he was highly acknowledged as one of India's leading environmentalists. He had received international recognition and been invited to conferences abroad. He was also prominently involved in the Indian activities of an international environmental NGO. In the activist network of Calcutta, he was generally considered to be the leading wetlands expert. His bureaucratic career had not been stalled totally. During my research period, he was promoted to a senior position in the state government.

Nevertheless, he seemed to fear that this was not enough. He tended to present himself as the only real wetlands expert. He initially told me that Ashis K. Ghosh was old and 'not doing anything any more' and that PUBLIC was incompetent and did not have the 'necessary grassroots contacts' and 'lacked rudimentary scientific knowledge'.

According to Dipankar Basu, PUBLIC did not understand that the World Trade Centre was not the main issue. Rather, he said, the real threat to the wetlands was the informal conversion of agricultural land to potentially built-up real estate, with the upcoming constructions of the Lions' Club serving as the main example. At this time, PUBLIC had already filed its contempt of court petition, including passages concerning these very construction sites.

Obviously, Dipankar Basu and PUBLIC, at this point, were competing to be perceived as the one and only wetlands savers. PUBLIC's Bonani Kakkar and Dipankar Basu would each say that they didn't know what the other wanted and that, in any case, they did not trust the other's motives. Both PUBLIC and Dipankar Basu had gained much local and even international attention through their pro-wetlands activities. Campaigning for wetlands protection and thus gaining recognition was clearly not a zero-sum game.

Ironically, to the outside observer, their dispute appeared to be one of the factors actually threatening the wetlands. Rather than cooperating, they risked to lose what they had achieved so far in a struggle spanning almost eight years in the case of PUBLIC and more than a decade in the case of Dipankar Basu. The reputation of both would suffer should the wetlands really be lost.

To me, it seemed peculiar that several government officials interested in wetlands protection gloated about PUBLIC's poor 'grassroots contacts'. For this reason, the NGO was said to be unaware of recent construction activities along the road beyond Bantala. Rather than support the NGO's attempt to reinforce its legal approach through a contempt of court petition, bureaucrats jealously monopolized their own information. Only the people living and working in the wetlands could serve as watchdogs, these officials said. The efforts of PUBLIC were supposedly meaningless. To me, it was never made convincingly clear why public interest litigation would get in the way of grassroots mobilization, or, for that matter, why grassroots mobilization would hamper the litigation approach.

PUBLIC and others suggested that one particular officer basically relied on the fish producers union. In turn, a leading member of the union told me that even though this officer was a good friend, he was not of much help. But PUBLIC could not be trusted at all. In his view, the wetlands were lost—if I myself (the foreign sociologist!) didn't step in to save them.

Similarly, the bulk of activists from Calcutta had no interest in Subhas Datta and the GNS in 1996. Again it was 'known' that he was a Congress supporter whose main interest was to undermine the Left Front's position. Therefore, there could not be much legitimacy to his cause. After all, Congress was considered to be more corrupt than the CPM.

Datta, in turn, asked me again and again who he might turn to for technical advice. He would lose interest as soon as I suggested someone from Calcutta. For him, it seemed clear that anybody from the other side of the river could not have an honest concern for the *Howrah Matter*. Getting them involved would imply losing control of the campaign and becoming exposed to their intrigues and manipulations. On the other hand, he seemed to be quite happy to cooperate with M.C. Mehta, who was not in favour with the Calcuttan NGOs.

One might have expected the Green Bench to serve as a point of crystallization for the environmentalists in the Calcutta area to organize. After all, the court had become a weekly meeting point for many of them, and the proceedings showed certain patterns of government failure and of judicial blind spots. Cooperative monitoring would have lessened the burden for all NGOs involved. However, that sense of cooperation did not exist among them. Rather, one environmentalist pointed out to me that the situation had to be regarded as very positive the way it was. After all, there was no 'back-stabbing'.

This person also emphasized that the initial wetlands campaign had not kept up its momentum because it had taken too heavy a toll on the participants. All were working professionally full time and could not continuously afford to stay up late drafting petitions or organizing rallies for several months. While this undeniably made sense, it did not explain why a campaign that had achieved its goal to a large degree was in retrospect seen cynically as having accomplished hardly anything.

The wetlands campaign had also been plagued by internal dispute over goals and strategy. Some people involved wanted to stop urban development on Calcutta's east side altogether. Others felt it was more realistic to focus on protecting the Waste Recycling Region. Different strategic approaches are likely to split any social movement anywhere. However, it is peculiar how little scope for compromise there seemed to be in this case. After all, without the achievements of the PUBLIC case, large parts of the Waste Recycling Region probably would have had already given way to the extension of Salt Lake City and other projects.

Some individuals did not conform to this culture of near-paranoid non-cooperation. One example was C.R. Datta, a leading member of Calcutta 36, the NGO meant to serve as an umbrella organization. He was one of the few people who instantly suggested I should talk to other activists. He did not try to monopolize my attention for his issues. I have been told that even in his active time as a CMDA officer he had been known to speak his mind in front of superiors and to have generally been very cooperative.

Calcutta 36 was not, however, considered to be performing well according to many member organizations. There was a general complaint that C.R. Datta was only using it as his personal platform. I have heard the suggestion, again unsubstantiated, that he was

preparing to run as a candidate for the West Bengal Legislative Assembly. Consequently, it was said, his interest in environmental issues could not possibly be genuine.

For the German sociologist, these claims seemed odd. Would it not be positive to have legislators who had made their names campaigning for worthy causes? The attitude of well-established middle class Bengalis concerning potential political careers appeared to me to be as dysfunctional and biased as the ‘fundamentalist’ attitude against emerging prominence in the early days of the Green Party in Germany. However, that had been an expression of a youthful counterculture and not the common sense of middle class professionals, many of whom were even retired.

Another individual who was open to cooperation was Ashis K. Ghosh. After retiring from the Zoological Survey of India, he was doing freelance work and is currently running a Centre for Environment and Development. He was known to get assignments from the Government of West Bengal, for instance during the CEMSAP project. He was also preparing a report for the State Environment Department on the biodiversity of West Bengal. He said he was happy that the government wanted his advice and was even willing to pay for it. This, in his view, enhanced the chances of his papers being used. He also said he could make more money as consultant for large industries, but felt that government assignments were politically more important. Again, all this seemed convincing to me.

It was not so to some environmentalists in Calcutta. To them, it was clear that Ghosh was ‘selling out’. He was perceived as only being in it for the money. If he was paid then his intentions could not be good. The argument that only paid advice is likely to be heeded did not convince his critics. Was it not a positive sign that the government was willing to pay for reports, even though it knew from experience, for instance in the case of the wetlands, that his advice was not necessarily comfortable? No, the answer went, a service in the public cause should not involve any payment.

While the spokespersons of the fish producers were constantly asking for support, they were hesitant to cooperate with Ghosh in the CEMSAP context. One of them told me he had reasons not to trust Ghosh’s intentions ‘knowing’ that he had been involved in some kind of prior scam. Another person told me he could not trust Ghosh because, according to a newspaper report years ago, he had demanded that 5000 *acres* (rather than *hectares*) of wetlands should be

protected. Ghosh told me this had been the mistake of the journalist. However, in the eyes of someone else, this report became evidence of Ghosh's intention to cheat. Interestingly, such conspiracy theories were often not supported by any clear idea of the other person's possible motives.

The irony of such negative attitudes was obvious. They were prone to be self-fulfilling because they made cooperation unlikely and served as a constant disincentive to act in pursuit of the public good. To overstate the case drastically, in this view, nobody had any reputation left to lose. As there could be no compromise between the public interest and individual goals, everybody perceived everybody else to be self-serving in the pursuit of ill-begotten gains. Constant saintly self-denial is, of course, as unlikely in Bengal as anywhere else.

On the other hand, real cooperation was not displayed. A number of times, NGO members told me they had been asked to sue the State by officials who were frustrated with the performance of their own bureaucracy. As exemplified in the wetlands case, there appeared to be a pattern of bureaucrats attempting to mobilize the public when they could not prevail in internal disputes in the administration. This suggests that the dynamics of mistrust and intrigue inside the Government probably resembled those experienced in civil society.

To some extent this actually might be seen as a sign of hope. The governmental bureaucracy is, after, not a monolith. There is scope for dissent. Indeed, some bureaucrats may be expected to try to serve the substantive goals of their office rather than merely exploiting their positions for personal benefits. Indeed, to me as a foreign observer, matters often appeared to be less bleak than expressed in the rampant rumours of NGO, administration and High Court small talk.

While much criticism will be justified, it appears advisable not to make a difficult situation even more difficult by seeing the government, including its judicial branch, in too sceptical a light. After all, public interest litigation has brought about some changes. It may, so far, not justify trust in the institutions of democratic government, but it does inspire hope for the alleviation of grievances. In more theoretical terms, it has served to establish a rudimentary sense of public sphere.