

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

**ORIGINAL APPLICATION NO.147/2023.**

PRADEEP KUMAR PATNAIK

APPLICANT

**VERSUS**

STATE OF ORISSA  
AND OTHERS

RESPONDENTS

INDEX

<u>SL.NO.</u>	<u>DESCRIPTION OF DOCUMENTS</u>	<u>PAGES</u>
1.	COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS NO.3,5 &6.	1-20
2.	<b><u>Annexure-A</u></b> Copy of order dated 21.9.2022	21-38

CUTTACK  
DT.1.03.2024

  
(JANMEJAYA KATIKIA)  
ADDL.GOVT.ADVOCATE



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

**ORIGINAL APPLICATION NO. 147 OF 2023**

PRADIP KUMAR PATTNAIK

APPLICANT

**VERSUS**

UNION OF INDIA & OTHERS

RESPONDENTS

COUNTER AFFIDAVIT FILED ON BEHALF OF THE  
RESPONDENTS NO.3, 5 AND 6

I, Shri Bhakta Ranjan Mohanty, aged about 58 years, son of late Bishnu Charan Mohanty, at present serving as Engineer-in-Chief, Water Resources Department, Odisha, Bhubaneswar, do hereby solemnly affirm and state as follows;

1) That I am the respondent no.5 in the aforesaid Original Application. I have thoroughly and carefully gone through the contents of the Original Application and understood the same. I am well acquainted with the facts of the case and competent to swear this affidavit for self and on behalf of the respondents no.3 and 6 for the purpose.

2) That the applicant has filed the aforesaid Original Application, inter alia, calling in question the action of the respondents in violating the provisions contained in section 2(a), 2(k) of Water (Prevention and Control Pollution) Act, 1974 read with the provisions contained in sections 7 and 39 of the Irrigation Act as

Bhakta Ranjan Mohanty

  
 AMBIKA PRASAD RAY  
 NOTARY, CUTTACK TOWN  
 REGD. NO-ON-56/2004

well as violation of the doctrine of Public Trust and has prayed to direct the respondents as follows;

1. Direct the Tahasildar and Collector of Cuttack to record the entire 426 Acres of land as forest land in ROR and the said land to be handed over to Forest Department for the further maintenance and development.
2. Destroy all the permanent and temporary construction which has been made at the river bed and the debris should be dumped in other areas far from the river bed, the expenditure should be bear by those department/officials who made those constructions and the authority may be directed not to have any further construction over the said land.
3. Remove the iron pillars which have been installed at the river bed of Mahanadi, to remove the soil, sand, debris and moorum (red stone power) from the river bed which has been dumped after the order of this Hon'ble Tribunal.
4. Open the old river water channel from Gadagadia Ghat to Jobra by the side of the embankment by removing the sands for free flow of water during the flood time.
5. Direct OP 9 and 10 to take appropriate steps for any violation with regard to Air Pollution, Water Pollution, Environment and ecological disorder and they should be directed to supervise the said area periodically.
6. To reduce the length of the spur to 200 Mtr at Matamatha and Hadiapatha area.

*Bhakta Ranjan Mohanty*

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

7. Direct Respondents to undertake huge plantation work on the river embankment immediately to restore back the riverine ecology and environment.
  8. Penalized the offenders who committed the wrongful construction aforementioned, after issuance of the guidelines by this Hon'ble Tribunal as well as the directions with reference to the plantation which has not been complied till yet.
- 3) That, it is respectfully submitted that, the Original Application filed by the applicant is thoroughly misconceived both in law and on facts and the same is liable to be dismissed. Since the applicant has not approached this Hon'ble Tribunal with clean hands and has not divulged the true state of affairs, he is not entitled to the relief(s) sought for that renders the prayers, made in the OA, invalid in the eye of law and as such, on this ground, the Original Application is liable to be dismissed. Apart from the above, since the issue raised in the present original application has been examined and decided by the Hon'ble High Court of Odisha in a writ petition vide WPC No.20283 of 2011, filed by the Nationalist Lawyers Forum, which came to be disposed of vide judgment and order dated 27.2.2012, directing the State Government and other functionaries of the government to adhere to the suggestions made by the Technical Expert Committee on certain important issues, as mentioned in para-1 to 8 and with certain observations to be carried out by the concerned authorities, which have been twice tested and examined by this Hon'ble Tribunal in two successive legal proceedings vide

Bhaxta Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

OA No.47/2016 and OA No.68/2020, the issue of which are similar and identical in nature as it involves with regard to illegal construction, and other unlawful activities in the river bed of Mahanadi, the applicant has approached this Hon'ble Tribunal with the self same prayers which is nothing but a clear attempt to mislead the issue in the garb of a fresh litigation. Hence the prayers sought for in the original application are required to be declared invalid in the eye of law.

It is pertinent to mention here that as per the kind orders of this Hon'ble Tribunal passed in OA No.68/2020, which came to be disposed of vide order dated 21.9.2022, the State Government and its functionaries are trying their best to comply the same as per the observations outlined in the said Judgment Dt. 21.09.2022. The present Original Application has been filed at the instance of the same applicant who was the applicant in OA No.68/2020, wherein the very same issue has been decided. Raising the very selfsame issue, which in essence has already attained its finality as of now, the attempt of the same applicant to agitate the same, in the present application, without any cogent, convincing and justifiable reasons justifies the ill intention of the applicant in not only to put the government and its functionaries into unnecessary litigation proceeding but also to create artificial hindrance to the developmental work, being undertaken by the government, in due obedience to the aforesaid Judgment Dt.21.09.2022, passed by this Hon'ble Tribunal in OA 68 of 2020. Hence, the prayers sought for in

Bhakta Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

the original application do not carry any merit in the eye of law and on this ground the original application is liable to be dismissed.

It is pertinent to mention here that since long the Hon'ble High Court of Odisha having examined the issue in details and so also the same having been examined and tested by this Hon'ble Tribunal on a particular issue in two successive litigation proceedings with regard to the selfsame issue, absolutely there remains nothing to be adjudicated more on the same issue again. On the other hand, the applicant masquerading to be a public spirited citizen time and again has been agitating the same issue to satisfy his undisclosed desire, the reason of which is best known to him, with false and frivolous allegations, the substance of which are far from truth, for which the original application on this ground is also liable to be dismissed. Since the applicant has not been able to make a prima-facie case in his favour with cogent, convincing and plausible reasons, no relief can be granted to the applicant and as such the original application is liable for dismissal in limine.

4) That it is respectfully submitted that the present issue raised by the applicant in the original application is not a new one. On the other hand, canvassing the same cause of action for the sake of the general public prevailing at the relevant point of time, a writ petition vide WPC No.20283/2011 was filed before the Hon'ble High Court of Orissa, which came to be disposed of vide judgment and order dated 27.2.2012 with certain directions contained in the said judgment. It is respectfully submitted that at the relevant point of time it was an important issue as it involved illegal and unauthorised

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

Bhakta Ranjan Mohanty

construction on the river bed of Mahanadi, the news of which was reflected in different news items, the Hon'ble High Court issued notice to the opposite parties therein requiring necessary affidavits from the respective parties.

Accordingly, after filing of counter affidavits and reports and the suggestions made by the Technical Expert Committee constituted for the purpose, the Hon'ble Court by a speaking and well reasoned order 27.2.2012 disposed of the said writ petition with certain directions to be carried out by the respective parties with strict guidance and supervision of the Water Resources Department.

5) That while the matter stood thus and every steps were being taken to implement the kind order of the Hon'ble High Court which was a time taking programme due to many technical aspects including huge financial sanction, one Original Application vide OA No.47/2016 came to be filed before this Hon'ble Tribunal by one Biswajit Mohanty, claiming to be a environmental activist, though no such document was filed showing his credentials, with multiple prayers.

- a) Eviction of unauthorized dwellers and demolition and removal of constructions from the river bed and river bank.
- b) Demarcation of the river boundary on both sides of Mahanadi and Kathajodi (tributary of Mahanadi that originates at Cuttack city) for the stretch flowing through Cuttack Municipal Corporation area to be done jointly by the Revenue/Water Resources Department.

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

Bhaktaraj Mohanty

- c) Excavation of dumped debris and wastes from the river beds to restore its original topography at all places pointed out in the petition.
- d) Direction to the District Collector of Cuttack and Water Resources department to file jointly certified topo-sheet maps of river Mahanadi and Kathajodi which pass through CMC area.
- e) Direction to the District Collector of Cuttack and Water Resources Department to file jointly certified Revenue maps (as per latest settlement) of river Mahanadi and Kathajodi which pass through CMC area.
- f) Detailed GPS based survey to be conducted by Revenue/Water Resources Department staff to identify encroachment/ reclamation of river bed and river bank.
- g) Direction to remove contractor sheds, machinery and housing for workers/staff from the river bed of Mahanadi.
- h) Direction to demolish boat jetty and restaurants and other permanent structures built by OTDC for river cruise tourism project. At best floating jetties of non-permanent nature can be put up on the river bank for tourism purpose. No restaurant can be built up on the river bed.
- i) Excavation of dumped debris and filling materials on the river bed in front of Shishu Bhavan and approach

*Bharkta Ranjan Mohanty*

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

road of the Cuttack-BBSR Trishulia Bridge in order to restore the river bed to its original layout.

- j) Restrictions on use of the river bed for Balijatra or similar festivals/gatherings/fairs to be considered. If at all permitted then no permanent structure can be erected.
- k) All electric power lines now laid inside the river bed (except to IOCL pumping station as per approvals) should be disconnected. The steel poles and pylons need to be removed (except the EHT towers which enable power lines to cross the river).
- l) All parks built on reclaimed river bed need to be removed and restore the main flow level of the river. Parks may come up on the opposite side of the embankment if space permitting.
- m) River bed cannot be used for parking of any vehicles or use by motor driving schools for teaching driving to learners.

6) That, it is respectfully submitted that pursuant to notice, the respondents filed their respective counter affidavits. In the said original application i.e. OA No.47/2016 the Hon'ble Tribunal after going through the records and the affidavits filed by the respective parties passed several directions from time to time which in essence was meant to avoid and stoppage of illegal construction and dumping of wastes on the river beds of Mahanadi, protecting the

Bhakta Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

reverine ecology, etc and holding of Baliyatra festival with certain restriction and free flow of water in the river course.

7) That, it is respectfully submitted that though several orders were passed by this Hon'ble Tribunal in OA No.47/2016, the same were being implemented by the respondents in letter and spirit without any deviation under the direct supervision of the state functionaries. Raising the selfsame issue, another Original Application vide OA No.68 of 2020 was filed by the present applicant with similar prayers as follows;

- a) Issue a direction to the Government of Odisha to stop the sand filling in the Mahanadi River bed within the water area of Jobra Barrage at Cuttack.
- b) Further be pleased to direct the Government of Odisha to remove all the sands and shoals which has already been dumped and filled up within the pond area reducing the water retaining capacity of Jobra Barrage.
- c) Issue a direction to create a larger water pond of 15 feet depth from Naraj to Jobra extracting all sands and shoals. The extracted sands and shoals be utilized for strengthening of Ring Road surrounding the Cuttack City and the other embankment of the river Mahanadi and Kathajodi and utilize the balance shoals to fill up the low and swampy land in the peripheral area as per the direction of the Hon'ble High Court.

Bhakta Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

- d) Issue a direction to the Union of India to interfere in the matter and suggest the other Respondents to act as per the appropriate provisions of law to protect the environment and riverine ecology.
- e) Further be pleased to direct the State Government of Odisha not to undertake the 'BARFI' project on the bed of Mahanadi.
- f) The Government of Odisha may be directed to restore the previous R.O.R. indicating the status of the river bed as 'Nadi' kissam instead of Anabadi (Patita).
- g) Further the Respondents State Government be directed to undertake huge plantation work on the river embankment immediately to restore bank the riverine ecology and environment.
- h) Furthermore, direction may be issued to Indian Oil Corporation to provide necessary funds for execution of the work as shall be required for the purpose in compliance to the direction of the Hon'ble High Court.
- 8) That pursuant to notice, the state functionaries filed their counter affidavits refuting the allegations made in the above original application and disclosing the steps taken by them in compliance to the earlier orders passed by this Hon'ble Tribunal passed in OA No.47 of 2016 as well as the orders passed in the writ petition, as stated above.
- 9) That, it is respectfully submitted that while the matter stood thus, the Hon'ble Tribunal in order to ascertain the true state of

Bharkta Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

affairs on the allegation of the applicant, directed for constitution of a Technical Committee, which visited the site on 25.2.2022 and made a detailed study on the issue vis-a-vis the report submitted by the Joint Committee formed earlier. The present respondent as per the direction of this Hon'ble Tribunal filed a detailed counter affidavit enclosing a copy of the report of the technical committee along with other documents showing the steps taken to implement the kind orders passed earlier with regard to stoppage of illegal construction and damage caused to the environment and riverine ecosystem.

10) That it is respectfully submitted that though several orders were passed in OA No.47/2016, while disposing of the same, as yet the District Administration of Cuttack is filing compliance affidavits from time to time on the issue of celebration of Baliyatra every year. Suffice to state here that an application vide MA No.8/2020/EZ was also filed on the selfsame issue. During pendency of the said Miscellaneous Application for adjudication, the applicant filed the earlier Original Application vide OA No.68/2020.

It is pertinent to mention here that since the subject matters with regard to illegal construction in the river bed of Mahanadi and damage of riverine ecosystem and protection of environment was raised in all these three proceedings i.e. OA No.47/2016, MA No.8/2020/EZ, arising out of OA No.47/2016 and the Original Application No.68/2020 were similar and identical in nature and involved a particular issue, the Hon'ble Tribunal took up the matter together and perused the affidavits filed by the parties concerned and

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

Bhaktaraj Ranjan Mohanty

the reports submitted thereof, before passing the final verdict vide Judgment Dt. 21.09.2022.

11) That, it is respectfully submitted that this Hon'ble Tribunal after a prolonged hearing and going through the reports submitted by the committee constituted for the purpose vide order dated 21.9.2022 disposed of all the three proceedings i.e. OA No.47/2016, MA No.8/2020 and OA No.68/2020 highlighting the pros and cons of the matter with certain directions, the important portion of which amongst others have been vividly discussed and reflected in paragraphs-8 to 11 of the said order. It appears from the order that while going through the affidavits filed by the respective parties and the reports submitted by the technical committee suggesting recommendations which has been reflected in the study report, identification and demarcation of flood plain, villages to be affected, construction of medical college and river front development as per norms, categorisation of construction to be undertaken by the CDA, consequences anticipated in dumping in the mouth of barrage, alternative options to protect the flood plain, holding of Baliyatra, etc, have been dealt with while passing the aforesaid order. The applicant who is fully aware of the orders passed from time to time in different litigation proceedings, which has been averred in the Original Application, detailing the steps taken by the State Government prohibiting illegal construction in the river bed of Mahanadi, yet has raised the same by filing the present Original Application with false and baseless prayers even without raising a

Bhakti Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

new issue, which speaks of ill intention of the applicant in indulging himself in a protracted litigation.

12) That, the applicant for the same cause of action has filed the present Original Application with multiple prayers, as follows;

- a) Direct the Tahasildar and Collector of Cuttack to record the entire 426 Acres of land as forest land in ROR and the said land to be handed over to Forest Department for the further maintenance and development.
- b) Destroy all the permanent and temporary construction which has been made at the river bed and the debris should be dumped in other areas far from the river bed, the expenditure should be bear by those department/officials who made those constructions and the authority may be directed not to have any further construction over the said land.
- c) Remove the iron pillars which has been installed at the river bed of Mahanadi, to remove the soil, sand, debris and moorum (red stone power) from the river bed which has been dumped after the order of this Hon'ble Tribunal.
- d) Open the old river water channel from Gadagadia Ghat to Jobra by the side of the embankment by removing the sands for free flow of water during the flood time.
- e) Direct OP 9 and 10 to take appropriate steps for any violation with regard to Air Pollution, Water Pollution,

*Bhakta Ranjan Mohanty*

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

Environment and ecological disorder and they should be directed to supervise the said area periodically.

- f) To reduce the length of the spur to 200 Mtr at Matamatha and Hadiapatha area.
- g) Direct Respondents to undertake huge plantation work on the river embankment immediately to restore back the riverine ecology and environment.
- h) Penalized the offenders who committed the wrongful construction aforementioned, after issuance of the guidelines by this Hon'ble Tribunal as well as the directions with reference to the plantation which has not been complied till yet.

13) That, it is respectfully submitted that a bare perusal of the prayers sought for in all the three Original Applications including in the MA No.8/2020 would reveal that similar and identical nature of prayers have been made time and again by the applicants with regard to illegal construction in the river bed Mahanadi and damage to the environment and riverine ecosystem. It is not known to the respondents as to what prompted the applicant to file the present application at a time when everything have attended its finality.

14) That, it is respectfully submitted that the issue raised in all the above proceedings have been examined by the learned Tribunal and orders having been passed from time to time directing the state authorities for compliance of the same in due course of time without deviating the suggestions made by the committee/study report and in consonance with the kind order of this Hon'ble Tribunal, the

Bhakta Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

applicant without verifying the same, has again approached this Hon'ble Tribunal with some false and baseless allegations, the substance of which are far from truth and hence, no credence can be attached to the same, which renders the prayers sought for in the present original application invalid in the eye of law and on this ground also the OA is liable to be dismissed in limine. A copy of the order dated 21.9.2022 is filed herewith and marked as **Annexure-A** for kind perusal

15) That the present respondent has no comments to offer with regard to the averments made in paragraphs-1 and 2 of the original application.

16) That, the allegations and averments made in para-3 of the original application are not correct and hereby denied in as much as the order dated 21.9.2022, passed by this Hon'ble Tribunal is on the way to be complied with by the respondents. No illegal construction has been made on the Mahanadi river bed to cause any obstruction in the river. Besides, there has been no question of obstructing free flow of water in the river Mahanadi in view of completion of dredging work. Since there is no illegal construction and dumping of waste in the river bed so also no damage has been caused to the environment. Therefore the question of causing any damage to the ecology and environment does not arise at all. The applicant has made the aforesaid allegations in order to masquerade his cause of action without any justifiable reason. The averments made to the extent that the entire work is being undertaken in gross violation of the provisions contained in the Environmental Laws so also the

Bharata Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

Doctrine of Public Trust, is not correct and hereby denied. The applicant has perhaps forgotten the inner essence of **Doctrine of Public Trust**, which unequivocally provides a detailed understanding of how the natural resources of the earth should be taken care of by the State as a trustee and used by the people of the State, who are the beneficiaries. In a sustainable manner in the same analogy the applicant has also failed to interpret the true meaning of Sustainable Development, which doctrine is clearly based on universal action to end poverty, protect the planet, and ensure all people enjoy peace and prosperity. The applicant without verifying the true state of affairs and the actions taken by the government authorities to protect the environment and the ecosystem and to avoid illegal construction in the river bed of Mahanadi, has filed the present Original Application which do not merit any consideration.

17) That the allegations and averments made in paragraphs 3 and 4 of the writ petition are not correct and hereby denied. It is respectfully submitted that raising the selfsame issue i.e. regarding illegal construction in the river bed of Mahanadi and damaging of riverine ecosystem and environment, a writ petition vide W.P.(C) 20283 of 2011 was filed by the Nationalist Lawyers Forum which came to be disposed of vide order dated 27.02.2012. It appears from the said order that in course of several round of hearings on the affidavits filed by the respective parties, certain views on different points were aimed at to be clarified such as (1) Whether the construction of head work and controlling mechanism will in any manner affect embankments on both sides as well as courses of river

Bhakta Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

Mahanadi, (2) whether the construction will affect the canals which usually get water from river Mahanadi from Jobra Barrage for the purpose of Irrigation, (3) whether the construction will affect supply of drinking water to Cuttack City as well as ground water level of the area, (4) whether the reservoir requires a through dredging of river from Naraj to Jobra along with the progress of work and (5) whether any other suggestion that will be made by the Expert Committee for water retaining capacity.

It is respectfully submitted that the aforesaid aspects which relate to over all issue on the River Mahanadi, the State Governments in its Department of Water Resources, Collector, Cuttack, CDA, Cuttack, Cuttack Municipal Corporation, IOCL, etc. filed their response and so also the report of the Technical Expert Committee indicating a common feature to be followed by them in order to avoid illegal construction, protect environment and reverine ecosystem and free flow of flood water and for proper irrigation facilities.

It is submitted that so far as role of the respondent/Water Resources Department is concerned, it is submitted that to query no.4, an affidavit was filed by the Engineer-in-Chief, WR Department indicating therein the steps to be taken in a periodical manner in consonance with the suggestion made by the Technical Expert Committee, as reflected in para-2 to 6 of the said affidavit which has been indicated at page 59 of the order, under Annexure-1 to the Original Application. The applicant instead of ascertaining the remedial measures taken for the Shoal removal of old Anicut,

Bhaktar Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

dredging work of upstream of Mahanadi Barrage, utilization of usable earth for the dredging activities towards protection of city embankment and strict compliance of the order by executing the work, has filed the present original application with false and baseless allegations. The documents enclosed to the Original Application do not whisper violation of the kind order of this Hon'ble Tribunal so also the order passed by the Hon'ble High Court in a writ proceeding as well as the statutory provisions as averred, and as such the averments made in this regard have no substance at all.

18) That, in reply to the averments made in para-5 & 6 of the application, it is humbly submitted that, the HFL ever highest is 22.55 M during the flood 2008. When the pond level is 21.20 M, it means the water raised only 4' to 4½' above the pond level and on the forest area of Balijatra Padia. The level is not crossed till date. It is quite proper to be said there flooded of Jungle area for 12-15 ft. is not at all acceptable.

19) That in reply to the averments made in para-7 of the application, it is humbly submitted that, with regard to the compliance of the order dated 07.02.2020 passed in OA No. 47/2016 EZ of NGT, all the remedial measures were taken by the respective authorities of the government, hence the allegation in this regard is nothing but a clear attempt to mislead this Hon'ble Tribunal.

20) That, in reply to the averments made in para-9 of the application, it is humbly submitted that the deponent has no specific comments to offer as the same relates to a project "BARFI" was

Bharkta Ranjan Mohanty

  
AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

completely brought to the knowledge of this Tribunal in earlier proceedings. At the cost of repetition, it is respectfully submitted that the state administration on receipt of the order of NGT dated 21.09.2022 had examined the matter through a high-power committee held on **26.10.2022** under the chairmanship of Chief Secretary, Odisha, which decision was taken to comply the order.

21) That, in reply to the averments made in para 10 & 11 of the application, it is humbly submitted that all the works has been taken up as per the decision dated 26.10.2022 of the high-power committee and nothing has been deviated in this regard. So far the portion of work at sub-para VII, VIII and X thereof, it is clarified that the shoal which was collected has in the meantime been cleared making the river course more convenient for free flow of water. It is submitted that after dredging of shoal, iron walls have been constructed for the protection and safeguarding of the flood plain zone as per recommendation of IIT, Madras of OCEAN Engineering and as such by no means, the said construction shall obstruct the free flow of water in the river Mahanadi.

So far, the construction of concrete steps near Baliyatra Padia is concerned, it is submitted that the work for concrete steps for length of 400 M and height of 3 M (10') as per the report and Design, Drawing & Specification of OCEAN Engineering, IIT, Madras has been completed. However, decision has been taken for restoration of some damaged concrete steps caused during flood will be taken up. Therefore, the allegations and averments made in different paragraphs of the original application are not correct and

*Bhaktaraj Ranjan Mohanty*

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AMBIKA PRASAD RAY  
NOTARY, CUTTACK TOWN  
REGD. NO-ON-56/2004

hereby denied and as such the original application being devoid of any merit is thus liable to be dismissed.

22) That at the cost of repetition, the deponent most humbly state and submits that a bare perusal of the aforesaid would reveal that in all the proceedings i.e. similar and identical cause of action having been agitated which relates to illegal construction in the river bed Mahanadi and damaging the environment and reverine ecosystem, having brought to the notice of the Hon'ble Tribunal which have reached its finality by virtue of the orders passed by this Tribunal and there being no deviation of the same, the applicant has been raising the selfsame issue thereby putting the government authorities into unnecessary litigation renders the prayers sought for in the original application invalid in the eye of law and on this ground the original application is liable to be dismissed in limine.

23) That all other allegations which are not specifically admitted herein are deemed to have been denied and the deponent reserves the right to file further affidavit as and when required.

24) That the facts stated above are true to the best of my knowledge, belief and based on official records.

Identified by  
Advocate *J. Katikia*

*Bhaktar Ranjan Mohanty*  
DEPONENT *01/03/2024*  
**Engineer-in-Chief**  
**Water Resources**  
**Cuttack, Bhubaneswar**

Certified that cartridge papers are not available

*J. Katikia*  
(JANMEJAYA KATIKIA)

ADDL.GOV'T.ADVOCATE

CUTTACK  
DT. 09.2.2024



The above named deponent being identified by *J. Katikia* Adv. solemnly affirms and swears before me that the contents of the *counter AMB* are true to the best of their knowledge and belief. *01-03-24*

*Bhaktar Ranjan Mohanty*  
*Res. No. 356*  
**AMBIKA PRASAD RAY**  
NOTARY, CUTTACK TOWN  
Regd. No.-ON-56/2004

21-

Item Nos. 02 &amp; 03

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 68/2020/EZ

Pradip Kumar Pattnaik	Versus	Applicant
Union of India & Ors.	WITH	Respondent(s)

M. A No. 08/2020/EZ

In

Original Application No. 47/2016/EZ

Biswajit Mohanty	Versus	Applicant
State of Odisha & Ors.		Respondent(s)

Date of hearing: 21.09.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER  
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER  
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Sisir Das, Sr. Advocate a/w Mr. Prabhu Prasanna Behera, Advocate (in item 2), Mr. Sankar Prasad Pani, Advocate (Item No. 03)

Respondent(s): Mr. Ashok K. Parija, Advocate General a/w Mr. Amar Pattnaik, Advocate Mr. Ashok Panigrahi, Advocate, Mr. Janmejaya Katikia, AGA, & Mr. Venugopal Mahapatra, Advocate for R-1, 2 and 3  
Mr. Gora Chand Roy Choudhury, Advocate for R-10 (in Virtual Mode),  
Ms. Papiya Banerjee Bihani, Advocate for Odisha SPCB  
Mr. Surendra Kumar, Advocate for CPCB  
(In Item No. 03)  
Mr. Ashok K. Parija, Advocate General a/w Mr. Amar Pattnaik, Advocate, Mr. Ashok Panigrahi, Advocate, Mr. Janmejaya Katikia, AGA, & Mr. Venugopal Mahapatra, Advocate for R-1, 2 and 3, Mr. Sailazanandan Das, Advocate for R-6 in O.A. (in Virtual Mode)  
Mr. Surendra Kumar, Advocate for CPCB

**ORDER**

- Grievance in this application is against the illegal sand filling in the Mahanadi river bed within the water area of Jobra Barrage at Cuttack.

- 22 -

According to the applicant, the illegal action being undertaken is causing damage to the environment and the riverine ecosystem. The project called Balijatra River Front Improvement (BARFI) is an attempt to monetize the river bed for commercial purposes which will reduce the water retaining capacity of the river at Jobra Barrage at Cuttack. Free flow of water of the river bed will be affected in violation of judgment of the Odisha High Court dated 27.02.2012 in W.P.(C) No. 20283/2011, *The National Lawyers Forum vs. State of Orissa and Ors.* This will affect supply of drinking water and obstruct dredging which is necessary. This will also add to the floods in the city.

2. The proceedings in the matter were reviewed on 07.02.2022 in the light of earlier order dated 15.12.2020 in a connected matter (OA 22/2020(EZ) and affidavit filed by CPCB dated 04.10.2021 with a report of Joint Committee earlier constituted by the Tribunal for identification of flood plain zone. In the light of suggestion that ecological and hydrological aspects had not been covered by the report, which was mainly based on engineering aspects only, the Tribunal modified the constitution of the Committee to include ecological and hydrological experts. Relevant extracts from the order dated 07.02.2020 are:-

*"2. During the hearing, learned Counsel for the applicant has also referred to the order of this Tribunal dated 15.12.2020 in O.A. No. 22/2020(EZ), Dilip Kumar Samantaray vs. State of Odisha Board & Ors., wherein the Tribunal constituted a joint Committee as follows:*

*"16. Accordingly, we constitute a joint Committee comprising representatives of Central Water Commission (CWC), nominees of MoEF&CC, CPCB, National Institute of Hydrology, Roorkee and the State PCB to consider the issue and lay down norms so as to ensure that the proposal of the State for construction of the medical college and river front development takes place in accordance with law, without damage to the flood plains of the Rivers. Flood plain zones need to be identified and demarcated in the light of such norms. The Committee may identify the extent of floodplain zone/active floodplain zone from the*

-23-

**edge of the river. CPCB will be nodal agency for compliance.** The Committee is free to associate any other individual or institution. The Committee may complete its exercise within four months. The members of the Committee are free to interact by video conferencing or otherwise. If any grievance with regard to violation of environmental norms survives, the applicant will be free to take any further remedies as per law."

3. The matter was considered on 21.01.2021. The applicant was permitted to represent grievance in this application to the Committee already constituted so that the Committee could file a consolidated report about all the issues and the statutory authorities could take remedial action to enforce the law.

4. At this stage, we may also note the observations in order dated 15.12.2020 in O.A. No. 22/2020(EZ), Dilip Kumar Samantaray vs. State of Odisha Board & Ors. about the legal framework and need for protection of flood plains in the interest of riverine ecology and the life and property of people. Reference was made to the judgment of the Hon'ble Supreme Court dated 30.07.2009 in D.D.A. vs. Rajendra Singh, 2009 (8) SCC 582 mentioning the significance of protecting river beds and flood plains. Reference was also made to earlier order of this Tribunal dated 13.01.2015 in OA No. 6/2012 and OA No. 300/2013, Manoj Misra vs. Union of India & Ors. reported in 2015 ALL (I) NGT REPORTER (1) (DELHI) 139, judgment of this Tribunal dated 13.07.2017 in OA No. 200/2014, M.C. Mehta vs. Union of India & Ors. reported in 2017 NGTR (3) PB 1 in the context of river Ganga. The Tribunal referred to the Notification dated 07.10.2016 issued by the Ministry of Water Resources with regard to Ganga River on the subject of protecting active flood plain areas of the river and its tributaries. Reference was also made to laws enacted on the subject in certain States including Manipur Flood Zoning Act, 1978 and the Uttarakhand Flood Plain Zoning Act, 2012. Apart from Rules/Guidelines, reference was made also to Wetland Rules and action plans prepared by River Rejuvenation Committees in all the States/UTs in pursuance of order of this Tribunal dated 21.09.2020 in OA No. 673/2018, In Re: News item published in "The Hindu" authored by Shir Jacob Koshy, titled "More river stretches are now critically polluted: CPCB to the extent of steps for protecting flood plains. The Tribunal finally observed that no project could be developed in a flood plain of the river even in absence of any statutory provision on the subject as doing so affects the riverine ecology adversely. Accordingly, the Tribunal constituted a joint Committee mentioned earlier to identify the extent of flood plain zones and to lay down norms to ensure that no project was developed on the flood plains in violation of laws, resulting in damage to flood plains.

5. Accordingly, CPCB has filed its affidavit dated 04.10.2021 annexing the report of the joint Committee. The affidavit of CPCB shows that CPCB sanctioned a project called "Floodplain Zoning Study for the Identified Stretches of Mahanadi River Basin" for mapping of the river using satellite imageries, digital elevation maps, land use and land cover map showing habitation, flood frequency analysis and demarcation of flood plain zones from the edge of the river under supervision of Prof. K.C. Patra, Civil Engineering Department, NIT

24

Rourkela, who submitted his initial study report on 03.08.2021 on flood plain zoning of the area based on discharge data provided by (i) Central Water Commission (hereinafter referred as "CWC") as well as Odisha Water Resources Department (hereinafter referred as "WRD"), (ii) DEM provided by National Remote Sensing Centre (hereinafter referred as "NRSC"), (iii) Reduced levels of Baliyatra and other points by Odisha Water Resources Department (hereinafter referred as "WRD") and (iv) Modelling through HEC-RAS 6.0. The annexed report has following conclusions and recommendations:-

**"5.4 Conclusion and Recommendation as indicated in the study:**

The floodplain zoning study for the identified stretches of Mahanadi river basin was carried out based on the discharge data provided by the (i) Central Water Commission (CWC) as well as Odisha Water Resources Department (WRD), (ii) DEM Provided by National Remote Sensing Centre (NRSC), (iii) Reduced levels of Baliyatra and other points by Odisha Water Resources Department (WRD), and (iv) Modelling through HEC-RAS 6.0. For details results and discussion of the study, **page no. 35-37** may kindly be referred. As per the report following key conclusion and recommendations have been made;

- 1 From the derived statistical parameters of the CWC as well as Odisha WRD data, the value of 25 years return period flood (Q25) of magnitude 40,063 m<sup>3</sup>/s (from CWC data) is considered for floodplain mapping of the study area. During the passage of floods of Q25 and Q100, the difference in flood depths over the study areas are not found to be significant. This may be due to the river at this stretch is quite wide and thus, it is in a position to pass the flood of various return periods without appreciable change in the floodplain submergence geometry.
- 2 While routing this Q25 flood, it can be seen that the depth of water over the Baliyatra ground during the propagation of this flood just exceeds its average formation level of 24.5 m, but below the Reduced Level (RL) of ring road. Records from Odisha WRD indicate that water level during the passage of the flood of 44,768 m<sup>3</sup>/s was less than the RL of ring road, which further strengthens the present finding on the safety of passage of the flood. Therefore, any development activities in this area can be suitably planned keeping in mind the possible submergence of this Baliyatra rehabilitated area can be expected at least once in 25 years.
- 3 **The flood of 25 year return period is most likely to affect about 38 villages in and around the Cuttack city between Munduli and up to the lower reach, while another 66 villages may be partially affected. These villages are on the outer periphery of both Kathjodi and Main Mahanadi branches.**

- 25 -

- 4 The mean and maximum velocity of flow at cross-section 5 (having sand dune) areas are 0.493 m/s and 1.051 m/s, while at cross-section 1 (having no sand dune) the corresponding values are 0.62 m/s and 1.155 m/s. The same values at cross-section 3 which is very close to the Jobra barrage are 0.527 m/s and 1.02 m/s. From this, it can be observed that the removal of sand dunes has increased the velocity of flow at the section.
- 5 **National Disaster Management Authorities (NDMA) Guidelines, 2008 and all other design codes need to be followed while implementing any concepts for the utilization of Baliyatra Ground at Cuttack.**

#### 5.5 Limitations of the study:

The study has the following limitations:

- The flood inundation area has been computed from the CARTOSAT DEM which is not verified from the ground survey and DGPS.
- Some water resources projects (both storage projects and diversion schemes) are expected to come up in future in the upstream catchment areas that is expected to store more water and moderate floods leading to reduce its peak at the Baliyatra site.
- The study has the limitations inherent to the modelling through the software, quality and accuracy of the data, accuracy of the DEM, and all other associated parameters.

#### 6.0 Recommendation of the joint committee

To comply with the directions committee carried out the study by the expert institutes and agreed with the findings of the study. The point wise compliance status of the directions are as follows;

#### 6.1 Identification and demarcation of Floodplain

Flood plain zoning study (**Annexure: 3**) was conducted by NIT Rourkela and was agreed upon by the committee members. In this study, Flood Zone Mapping and Inundation Map was done using the latest version of HEC-RAS V-6.0 (1-D Modelling). As per the study, it was found that flood of 25 year return period ( $Q_{25}$ ) can be considered for modelling and identifying the floodplain inundation maps in the concerned stretch as the difference in flood depths between  $Q_{25}$  and  $Q_{100}$  is not found to be significant. It was further found that the flood of 25 year return period is expected to affect about 38 villages in and around the Cuttack city from the Munduli barrage to the downstream of Jobra barrage as depicted in Figure 6-1. A list of these villages is also provided in Table 2. Based on

26

the analysis it was observed that the depth of water over the Baliyatra ground during the propagation of Q<sub>25</sub> flood exceeds its average formation level of 24.5 m, but is below the RL of ring road.

**Table 2: List of villages expected to be affected during the passage of 25 year return period flood in periphery outer zones**

<b>Most Likely to be Affected Village List</b>					
1.	Balipur	2.	Pahilabar	3.	Talagar
4.	Baula	5.	Lalitabisakhapur	6.	Chhagan
7.	Madhyakachha	8.	Agrahat	9.	Nuapatana
10	Sankapur	11.	Jhatia	12.	Shrirangapur
13	Bhabadeipur	14	Katkiasahi	15.	Jagannatarapur
16.	Nuahas	17.	Mangalpur	18.	Ramshyampur
19.	Badasantarapur	20.	Jemadeipur	21.	Arilo
22.	Suniamunha	23.	Bhuinbarei	24.	Kotar
25.	Bandhahata	26.	Sarakuan	27.	Paikerapur
28.	Sardarkharida	29.	Brahmanbasta	30.	Nuagada
31.	Kalankipur	32.	Anantapur	33.	Prabatia
34.	Jagmohanpur	35.	Baghua	36.	Similihanda
37.	Badapadagaon	38.	Sanakakhadi		

## **6.2 Construction of the medical college and river front development as per norms**

Based on the meeting taken by the committee with all the concerned agencies on 7th April, 2021 at Cuttack, the concept note on Mahanadi Waterfront Development describing the proposed construction activity was provided by Cuttack Development Authority (CDA). The same has been considered by the committee.

**Based on the study, Baliyatra Ground comes under floodplain zone, therefore construction of structures of permanent type, as in column 2 of this Table 3 (priority-2) may be prohibited and only non-permanent structures may be allowed subject to strict adherences to the NDMA guidelines, Building Codes and others. These structures should be planned as far as away from the river water lines and active only during non-monsoon days so that there is no loss to the life and property.**

**Although most of the activities proposed in the CDA concept note fall under priority 3 and may be allowed following the guidelines, however, a few construction activities like art galleries, museums etc. fall under priority 2 and therefore may not be permitted. The construction or extension of the Medical college has neither been proposed in the CDA note nor is it permissible as per NDMA Guidelines, as this kind of structure falls under Priority 1 activities.**

= 27

Categorization of the construction activities proposed by the Cuttack Development Authority (CDA) under the Mahanadi Waterfront Development is provided in Table 3.

**Table 3; Categorization of the construction activities proposed by the Cuttack Development Authority (CDA) under the Mahanadi Waterfront Development**

Proposed Construction Activities	Priority 1	Priority 2	Priority 3
Public infrastructure such as parks, gardens, sports facilities			✓
Public infrastructure art galleries and museums		✓	
Roads with uniform travel lanes, shaded footpaths, designated cycle tracks, safe intersections and landscape and public			✓
Open air market, craft bazar, food stalls like Dilli Haat (New Delhi) & Ekamra Haat (Bhubaneswar) to promote local art &			✓
An open-air auditorium			✓
Bali Jatra grounds			✓

6. Appendix-2 annexed to the report about the scope of allowed and not allowed facilities is as follows:-

“Scope of the allowed and non-allowed facilities under Priority-1, 2 and 3

Categorization	Type of structures permitted as per NDMA Guidelines	Basis of Prioritization and guidelines	Study Recommendations (Joint Committee may decide on the Activities following NDMA guidelines)
Priority -1	<ul style="list-style-type: none"> <li>Defence installations</li> <li>Industries</li> <li>Public utilities like hospitals, electricity installations, water supply, telephone exchanges, aerodromes, railway stations, commercial centres, etc.</li> </ul>	Buildings should be located in such a fashion that they are above the levels corresponding to a 100- year frequency or the maximum observed flood levels. Similarly they should also be above the levels corresponding to a 50-year rainfall and the likely submersion due to drainage congestion.	Structures under Priority-1 of the NDMA Guidelines is not permitted in the Baliyatra Ground.

- 28 -

<b>Priority -2</b>	<ul style="list-style-type: none"> <li>• Public institutions</li> <li>• Government offices</li> <li>• Universities</li> <li>• Public libraries</li> <li>• Residential areas</li> </ul>	<p>Buildings should be above a level corresponding to a 25-year flood or a 10-year rainfall.</p> <p>Stipulation that all buildings in vulnerable zones should be constructed on columns or stilts.</p> <p>(a) Plinth levels of all buildings should be 0.6 m above the drainage/flood submerison lines.</p> <p>(b) In the areas liable to floods, all the buildings should preferably be double and multiple storeys.</p> <p>(c) In urban areas ground floor to be utilised for non-residential purposes</p>	<p>Baliyatra Ground comes under floodplain zone, therefore construction of structures of permanent type, as in column 2 of this table (priority-2) may be prohibited.</p> <p>Baliyatra Ground is within floodplain area and therefore non-permanent structures may be allowed subject to strict adherences to the NDMA guidelines, Building Codes and others. These structures should be planned as far as away from the river water lines and active only during non-monsoon days so that there is no loss to the life and property.</p>
<b>Priority -3</b>	<ul style="list-style-type: none"> <li>• Parks and playgrounds</li> </ul>	<p>Certain areas on either side of the existing and proposed drains (including rural drains) should be declared as green belts where no building or other activity should be allowed.</p> <p>This will not only facilitate improvement of these drains in future for taking discharges on account of growing urbanisation, but will also help in minimising the damage due to drainage congestion whenever rainfall of higher frequency than designed is experienced.</p> <p>These green belts, at suitable locations, can also be developed as parks and gardens.</p>	<p>Priority-3 activities such as developments of Parks, Playgrounds and creation of other facilities (such as Recreational Space, Urban Forests, Pedestrian Paths, Cycle Tracks, Solar Lighting, Rain Water Harvesting, Gardens, Footpaths, Cycle Tracks, Open Air Market, temporary Craft Bazar, Food Stalls, Open Air Auditorium) may be permitted following NDMA Guidelines in the Baliyatra Ground. These facilities should be active during non-monsoon periods so that there is no loss to the life and property.</p>

7. We have heard learned Counsels for the parties. Learned Counsel for the applicant submitted that **while the report considers**

- 28 -

**engineering aspects in light of guidelines issued by National Disaster Management Authority, it does not consider ecological and hydrological aspects in terms of order of this Tribunal dated 15.12.2020 in O.A. No. 22/2020(EZ), Dilip Kumar Samantaray (Supra). Such consideration is essential for protection of flood plain zone and associated issues relating to the ecology, environment and biodiversity. Ecological vulnerability and combined hazard vulnerability are required to be studied in light of observation of this Tribunal in order dated 15.12.2020 and safeguards need to be identified for protection of the flood plains. It requires constitution of joint Committee comprising Experts in the field of Hydrology, remote sensing and Ecology.**

8. We do not see any reason not to accept the suggestion for such further study to consider appropriate directions in the interest of environment. Accordingly, **we direct a joint Committee of seven Experts, with five members in the earlier Committee and two other Experts viz. Prof. C.R. Babu, eminent ecologist and environmentalist and Prof. P.C. Mishra, former Expert Member of NGT to undertake the study in light of above observations so as to include ecological and hydrological aspects and vulnerability, adding these components in the report and to make detailed recommendations identifying the steps required for protecting the flood plain zone and the environment within three months. It will be open to the applicant as well as State of Odisha to place their respective view point before the Committee. CPCB will be the nodal agency to carry out the entire exercise. Report may be filed before the Tribunal on or before 30.04.2022 by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF on or before 30.04.2022. Report may also be placed on the website of CPCB for response by any stakeholder before the next date of hearing.**

3. In pursuance of above, report dated 01.09.2022 has been filed by the Joint Committee constituted as per order dated 07.02.2022. The report mentions field visit undertaken on 17.04.2022, consideration of order of the Odisha High Court in WP(C) No. 20283/2011, order of this Tribunal in OA No. 47/2016/EZ, report of the Flood Pain Zoning by Prof. K.C. Patra, vision document of Cuttack Municipal Corporation and minutes of further meetings. The Committee also considered the submission of the advocates for the applicants and officials of Odisha Government. Relevant extracts from the concluding part of the report are as follows:-

### **“3.3 Conclusion**

*Based on the above mentioned field observations, the following conclusions are drawn:*

- 30 -

1. **The 426 acre area is a dump of anthropogenic origin within the pondage area along the ring road (bund road) and is filled with solid waste and sand dredged from the exposed floodplain (shoals/ islands) of the pond.**
2. **The size of pond is vast and perhaps 3 to 5 km<sup>2</sup> and the dump is about 5 km length wise and <0.5-1.2 km widthwise.**
3. **There are evidences that the area has been used for dumping for a long period and was encroached as evident by old trees and some of trees might have come up on their own from seeds brought by water. Heavy dumping of dredged sand took place resulting in the death of some trees and iron sheets of 8.5 mm thick and 12 m high were piled at two levels on the shoreline to prevent erosion of dumped material. Recent dumping was also done on water bearing portion of the pond. The 1000 mm pipeline was standing short columns at one time but now seems standing on sand (Figure 15).**
4. **Time series of maps starting from 2007 to 2022 Google Earth also show water channels passing through the area and flooding of the area but photographs of 2021/ 2022 showed only sand.**
5. **In simple way, the 426 acre dump is on the floodplain of river Mahanadi in the upstream of Mahanadi barrage which resulted in the submergence of the area under water due to barrage.**

### 3.4 Consequences anticipated

#### **What are the consequences of such dumps in the mouth of barrage?**

- (i) *The impact of habitat vulnerability during once in 25 years flood and once 100 years flood events have been worked out by the Joint Committee based on the studies carried out by Prof. K. C. Patra and the Report was submitted to Hon'ble NGT: The objections to the studies carried by Prof K. C. Patra have been filed by the Odisha State Government at Hon'ble NGT and a copy of which was submitted to the Members of the Joint Committee for responses. The responses of K. C. Patra to the objection have been accepted by the Committee and included in the Report (Annexure 6).*
- (ii) *The hydrological impact and vulnerability of the dump are:*
  - (A) *possible reduction in the water quantity retained in the pond of the tune of  $426 \times 4046 \times 6.50 \text{ m} = 11203374 \text{ m}^3 \times 1000 \text{ L} / \text{m}^3 = 11203374000 \text{ L} = 2463 \text{ MG}$ ,*
  - (B) *enhanced resistance to floodway of waters which result in the following hydrological and ecological vulnerability;*

c 31-

- (a) The floodwaters may breach embankments leading to flooding of the city and human habitations located along the embankments, particularly during the extreme events of flooding due to climate change, as it has happened in in the past not only in India but also outside India.
- (b) The floodwaters may result in washing away of the barrage leading to flashfloods in the downstream that not only submerge crop fields and washing away of villages but also drastically alter the downstream of river ecosystems, particularly floodplain ecosystems.

### 3.5 Alternative options to protect the flood plain

1. The Committee further deliberated on the following options to address the issues arising out of the dump area within the pondage of Jobra barrage.

**Option 1:** Remove 426 acre dump from the pondage and utilize the sand for construction purpose.

**Option 2:** Bring the entire mound to the level of lower iron sheet pile so that the area receives flood water, like other islands in the river and mitigate the impacts of flood water and also retain more water during monsoon and greater recharging of ground water. The Channels that used to exist can be easily revived.

**Option 3:** The extended Baliyatra ground (34 acres) may be retained without further expanding it and rising its height and use it as per the Hon'ble High Court Order (Honourable Odisha High Court, Cuttack in W.P(C) NO. 20283 of 2011 in the matter of The Nationalist Lawyers Forum Vrs State of Odisha and Ors.). The remaining part of the dump may be removed and no concretization nor compacting with gravel is permitted at Baliyatra ground.

**Option 4:** The whole area may be developed into greens with revival of channels buried under sand.

**Option 5:** Develop the area into a Biodiversity Park that includes revival of old channels, development of Recreational Parks and Bamboo huts that contain Natural History of the River Mahanadi and its people.

**Option 6:** Integration of Option 2 with Option 4.

**Option 7:** Integration of Option 2 with Option 5.

### 4.0 Recommendations

Considering the above mentioned facts and figures, the Committee makes the following recommendations:

1. The Hon'ble NGT may consider to immediately issue direction to Govt. of Odisha
- i. not to dump any solid material (sand and/or solid wastes etc.) nor undertake any activity in 426 acre area, including dredging of remaining islands in the pondage area.
  - ii. To remove all encroachments including unauthorized religious structure on the floodplain.

r 32 r

2. **Although the members are of the view that the flood plain has been illegally reclaimed in the river bed and there has been violation of Hon'ble High Court Order, any attempt to restore it to original situation may create further problem and may not be economically feasible.** Therefore, Committee unanimously recommends that
- i. the extended Baliyatra ground (34 acres) may be retained without further expanding it or raising its height and shall be used as per the Hon'ble High Court/ NGT Order as stated above.
  - ii. Neither concretization nor compacting with gravel be permitted at extended Baliyatra ground.
  - iii. The whole reclaimed land (426-34 = 392 acres) except the 34 acre of Baliyatra ground may be used for plantation with appropriate Local species and the area may be developed into a Biological park reviving the old channel buried under sand.
  - iv. The reclaimed land must not be used for any commercial use.
3. The Government of Odisha may also be directed to take necessary steps for floodplain zoning of major rivers in the State and secure them to prevent floods, particularly flash floods that cause community losses, loses of human lives and irreparable damage to river ecosystems."
4. On behalf of the applicant an additional affidavit has been filed on 20.09.2022 *inter alia* stating as follows:-
- "8. That 426 acres of land reclaimed from Mahanadi River is of Nadi Kisam land and it use to receive the water flow during monsoon and there used to be a channel adjoining the river embankment which has been buried under sand dump.
  9. That the applicant humbly submits that the original status of the reclaimed area of 426 acres may be restored and the sand dumped be removed and used for construction purpose.
  10. That the attempt of District Administration to reclaim the Mahanadi Riverbed and use of same for Baliyatra and other purposes may be restrained and the dumped sand be immediately removed so as to restore the original status of the land."
5. On behalf of the State of Odisha, objections have been filed by Collector, Cuttack on 20.09.2022. It is stated that in view of Odisha High Court order dated 27.02.2012 in WP(C) No. 20283/2011, bathymetric survey was to be done by IIT Madras and dredging and strengthening of protective embankment were to be undertaken. IIT Madras conducted

-33-

survey and submitted its report in June, 2015 regarding removal of shoal formation and deposition of sand locations. It recommended dredging and disposal of dredged material for reclaiming area of erosion. In the light thereof, steps were taken resulting in reclamation of low lying land on the bank of the river adjoining the ring road, using the dredged material under the supervision of the IIT Madras. In the process, 426 acres of land adjacent to City Protective Embankment around Cuttack (between new Baliyatra ground to Viewing Gallery near Maritime Museum) being the low-lying area has been filled upto 24.5m in terms of the directions issued by the Orissa High Court in WP(C) No. 20283/2021. The State has referred to CPCB report filed on 06.10.2021 and report of Technical Committee of Odisha about flood data dated 25.04.2022 and its objections dated 20.05.2022 to the report filed by CPCB on 04.10.2022. According to the State, seven member Committee report wrongly held the dredging to be illegal, overlooking Prof. K.C. Patra report that the dredging and embankments were in pursuance of order of High Court and studies. Thus, the 426 acres of reclaimed land cannot be restored back, as sought by the applicants. The State's proposal is to prepare a master plan for development of the reclaimed land as per its vision document as follows:-

**“Vision:** *To transform the quality of life for all in the Cuttack region by creating an Iconic Waterfront development on the 426 acres of reclaimed land that provides opportunities for live work-play supported by robust infrastructure, a resilient and responsive water edge and sustainable financial models.*

*The vision for the masterplan is guided by a **3 E principle: Environment, Economy and Equity** to attract and develop economic energies, provide for social and civic infrastructure for all and create a sustainable development which transforms Cuttack to a pull city from a push city.*

*Based on the guiding principles, the masterplan development is divided into three parts:*

**Environment**

24

- (i) A buffer along the river edge is to be developed as a green eco sensitive recreational space for the city inclusive of floodable wetlands, bio diversity parks, urban forests etc.
- (ii) A hierarchy of green spaces connected to a large central open space is planned for along with a robust network of pedestrian paths and cycle tracks.
- (iii) Several zones in the masterplan will be demarcated as no-vehicular zones.
- (iv) Solar lighting, rain water harvesting and other smart technologies will be mandatory in the development

#### **Equity**

- (i) The masterplan will provide the residents of Cuttack and regional, national and international tourists equal access to world class public infrastructure such as parks, gardens, sports facilities, art galleries and museums
- (ii) **The entire area will be serviced by a hierarchy of roads with uniform travel lanes, shaded footpaths, designated cycle tracks, safe intersections and landscape and public space inclusion.**
- (iii) **The masterplan will be serviced by robust networked infrastructure in terms of underground sewage, 24/7 water supply, uninterrupted access to power, telecom, and a sustainable solid waste management system.**

#### **Economy**

- (i) Portions of the masterplan will be developed as **open air market, craft bazar, food stalls like Dilli Haat (New Delhi) & Ekamra Haat (Bhubaneswar) to promote local art & crafts as well as traditional works i.e. applique work, filigree work, Maniabandha Saree. Sambalpuri Sarees etc. to improve livelihood and create employment in the region.**
- (ii) **100 acres will be reserved for the Bali Jatra grounds to hold the 9 day festival in November, and it will be used as a multifunctional events ground for the rest of the year.**
- (iii) **An open air auditorium also shall be planned for performance of Odissi dance and other Indian dance forms to promote culture & tourism in the State. Some Stadia will be constructed for promoting sports.**
- (iv) **As suggested by the Expert committee of Govt. of Odisha about 66 Acres of road side reclaimed land out**

- 35 -

**of 426 Acres would be utilized for permanent construction.**

An underlying principle and perhaps the most important of all is to build a strong link between the city and river, visually and physically with a nature responsive approach.

- (i) The development will be volumetrically zoned **to have terraced buildings, viewpoints and vistas to capitalise the proximity to the river.**
- (ii) The river edge will be designed as a green edge with various edge engineering solutions to revive the riparian ecology and promote bio diversity.
- (iii) There shall be a green buffer zone i.e. no development zone which will protect the river and create a flood safe zone for the development

The impact of the proposed development of the reclaimed land is to incrementally improve the economy, tourism and environment of Cuttack and create a space with improved access to all services and infrastructure as well as opportunity for a better quality of life of people staying in this millennium city.”

6. It is further submitted that:-

**“43. Therefore, to implement the vision plan of the CDA for the development of the riverfront and enhance the life and livelihood of the people of the historic city of Cuttack, permanent construction activities as permissible under the NDMA Guidelines may be permitted on at least 1/3<sup>rd</sup> of the total area of such reclaimed land.**

**44. The balance 2/3<sup>rd</sup> of the total area of reclaimed land would be used for plantation of appropriate local species, development of a Bio-Diversity Park and other temporary constructions, as and when necessary.**

45. In this context, it may also be pertinent to note that the State Government has removed four unauthorised slums and a large number of unauthorised religious structures from the Hadiapatha and Bali Yatra area following its reclamation. Keeping this land vacant would also pose a perennial threat to its encroachment in future as this land is close to the city of Cuttack. In fact, the Objection Affidavit dated 20.05.2022 filed by the Superintendent Engineer, Mahanadi River Barrage states as follows:

“10. ...It is apt to mention here that earlier the said area was under the occupation of slum dwellers. If the same portion would not be used for the purpose of public

36

utilities, the said area, in all probability, is likely to be occupied again by slum dweller.

46. Therefore, it would be in public interest to allow the State Government to make permanent constructions on, at least, 1/3<sup>rd</sup> land of the reclaimed area.

**HOLDING OF BALI YATRA**

47. In this regard, it is pertinent to note that an Original Application being OA No. 47 of 2016 was filed before the Hon'ble NGT, Eastern Bench, Kolkata. challenging inter alia organization of Bali Yatra.

48. In the said matter, the Hon'ble NGT, Eastern Bench, Kolkata in its judgment dated 16.10.2017 directed as follows:

"... There may be a probability of monsoon water of the river reaching the site. But the festival is held after onset of winter when the river flows beyond the designated site. Therefore, we are of the view that the age old tradition of organization such historic festival should continue provided the District Administration takes all preventive measures to ensure that the festival in no way affects the river ecology and contaminate the water body."

49. It is pertinent to note that the Bali Yatra festival is organized for a short duration of 9-10 days only during the month of November every year.

50. It is stated that all structures to be constructed for the purposes of Bali Yatra festival in this period would be temporary in nature.

51. The District Administration, in terms of the earlier order of the NGT, Eastern Bench in Q.A. 47 of 2016, undertakes to take all preventive measures to ensure that the festival in no way affects the river ecology and contaminate the water body including carrying out an extensive cleaning exercise to restore the area used for Bali Yatra festival to its pre-Yatra stage."

7. We have heard the learned Counsel for the applicants and learned Advocate General for the State of Odisha.

8. While, we are in agreement with learned Advocate General, supported by the view of the seven-member Committee Report that even restoration of reclaimed land is not viable. However, we find it difficult to

- 37 -

accept the proposal of the State by way of vision document/master plan for constructions in the reclaimed land which is established to be part of floodplain zone. There is clear anticipated danger of flooding. We are guided by 'precautionary principle' under section 20 of the NGT Act. We further agree with the recommendations of the Committee that while Baliyatra ground (34 acres) may be retained, though in floodplain zone, there should be no further expansion and no concretization or compacting of the said ground. Remaining 392 acres of land be used for plantation of local species and the area be developed into a Biological Park and no commercial use be allowed. State of Odisha may take steps for floodplain zoning of other major rivers.

9. Only modification/clarification to the recommendations which we make in the light of suggestion of the Advocate General is that reclaimed land that while 2/3<sup>rd</sup> of reclaimed land be developed as a dense forest, the remaining 1/3<sup>rd</sup> land may be developed as parks/playgrounds without any permanent or temporary constructions but without allowing any commercial activities. Parks may be maintained in accordance with the judgments of the Hon'ble Supreme Court in *Bangalore Medical Trust v. B.S. Muddappa*, (1991) 4 SCC 54 and *Lal Bahadur vs. UP*, (2018) 15 SCC 407. It is made clear that no concretization of any sort will be allowed in the entire 426 acres of land. While allowing Baliyatra in 34 acres of land, all due precautions for maintaining sanitation and hygiene shall be observed.

10. The State may adopt necessary safeguards for protection of 38 villages likely to be affected by floods in the periphery of Cuttack, identified in para 7 of the report of Prof. K.C. Patra of September, 2020, Annexure II to the report of the seven-member Committee. List of 38 villages find mention in quoted part of earlier order in para 2 above (Table 2).

- 38 -

11. Area where forest is to be developed may be handed over to the forest department, after demarcation. Rest of the area be maintained by concerned local body/Flood and Irrigation Department, as may be decided by the Orissa Government.

The applications stand disposed of accordingly.

If any grievance survives, aggrieved party will be free to take further remedies as per law.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Saibal Dasgupta, EM

Prof. A. Senthil Vel, EM

September 21, 2022  
OA No. 68/2020/EZ with  
MA No. 08/2020/EZ in  
OA No. 47/2016/EZ  
AVT