

SYNOPSIS

The present application is filed challenging the action of the respondents for gross violation of the provisions of section 2(a) , 2(k) , 24 of water (prevention and control pollution) , Act 1974 and Section 7 and 39 of irrigation Act and particularly for deliberate violation of 'Doctrine of Public Trust ' as defined by Hon'ble Supreme Court and violation of the Order passed in O.A No – 47/2016 and O.A No 68/2020 by this Hon'ble Tribunal so also disobedience and violation of the Judgment dated 27.02.2012 passed in W.P(C) No- 23283 of 2011 by the Honorable High court of Orissa. The applicant in this petition challenges the arbitrary and illegal action of the respondents in causing damage to the environment and riverine ecosystem by uprooting about large number of trees initially planted under the green belt project under a joint venture project of Indo – Canada Environment facility IIT (Kharagpur)and Cuttack Municipal Corporation in November 2001 in the propose project area , posing a threat to the riverine ecology and changing the nature and character of the riverbed Mahanadi in the pond area of Zobra Barrage ,Cuttak.The illegal action of changing the natural course of the river by creating an artificial island to the extent of 4.5 kms length and 1. Km width by way of dumping and filling sands and shoals with an intention to create a commercial complex over the said land such action not only creates an ecological in balance but also is opposite of sustainable development and also a clear violation of Article 21 as per various decisions of the Hon'ble apex court , where in "onus of proof" is on the actor or developer /industry to show their action is environmentally begins in order to uphold the impugned act under the ambit of development that is sustainable to both citizens and the environment .

Further the action of the respondents proposing to carve out a project in the name and styled of 'BARFI' on the river bed and the pond area of Zobra barrage in the guise of development is completely violation of the order dated 16.07.2017 passed in O.A No - 47/2016 by this Hon'ble Tribunal with regard to the self same area of Mahanadi river . The entire work is being undertaken in gross violation of provisions of environmental laws so also violative of Doctrine of public trust enumerated in a catena of judgment of Hon'ble Supreme court and this Hon'ble tribunal .

Further this application is being filed challenging the action of respondents in changing the revenue status from river bed (Nadi) to Anabadi (Patit) in the

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records with an evil intention to utilize the same for commercial purposes by dumping and filling up with sands and shoals , removed from the pond area of the barrage thereby reducing the water retaining capacity and area of Jobra Barrage on Mahanandi river at Cuttack .

Further the filling up the pond area of barrage , has substantially reduced the water supply of five major canals originating from the barrage as a result about 80 lakhs farmer be substantially affected and will not be able to raise even their Kharif and Rabi Crops . Due to creation of an artificial island to the extent of (4.5 Kms length and 1 Kms width) within pond area Shall definitely reduced the ground water level of the locality to the extent of about 100 kms radius of peripheral area of the water pond.

The dumping of sand and shoals in the pond area at the lower part of barrage is a permanent threat to Cuttack town during heavy flood due to obstruction of free flow of water in the river as the pathway of water has been obstructed by creation of a artificial island on the lower part of the river bed .

Finding no other alternative the applicant knocks the door of this Hon'ble Tribunal to protect the environment and lakhs of farmers depending on the barrage at Zobra on Mahanandi river for irrigation and to protect the heritage city of Cuttack and its people from forceable natural disaster .

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YEAR WISE EVENTS LIST :-

1. In the year 2001 :-

Joint venture project of Indo-Canadian environment Facility, IIT Kharagpur and CMC for initiating plantation work in Mahanadi river bed covering 200 Acres of Land from Baliyatra Ground to Jobra, Cuttack .

2. In the year 2011 :-

Huge construction was started on that Forest area, opposing this a PIL was filed by Nationalist Lawyers Forum before Hon'ble Orissa High Court vide **WP(C) No 20283** of 2011 and Hon'ble High Court passed Favorable order accordingly on dated 27.02.2012 in the Interest of Cuttack City.

3. In the year 2016:-

Apprehending the riverine ecology, encroachment and other unauthorized activities in the riverbed of Mahanadi and Kathajodi petitioner Biswajit Mohanty approached this Hon'ble Tribunal in matter of Biswajit Mohanty Vs State of Odisha Vide **OA No 47/2016/EZ**.

4. In the year 2020:-

Huge sand filling was done by cutting the half of the Jungle area on the riverbed of Mahanadi and also Cuttack district administration was increasing the height of the said river bed, opposing this petitioner Pradip Kumar Pattanaik

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Pattanaik



approached this Hon'ble in matter of Pradip Kumar Pattanaik Vs Union Of India vide **OA No 68/2020/EZ** and Hon'ble Tribunal passed favorable order in the interest of Petitioner.

5. In the year 2023:-

Again the present petitioner approached this Hon'ble Tribunal for the gross violation of several provisions of Environmental Law as well as the previous order passed in **OA No 68/2020/EZ** .

Pradip Kumar Pattanaik



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

O.A NO - _____ /2023

In the matter of:

An application under section 14, 15, 17, 18 Of the National Green Tribunal Act, 2010 read with Rule 8 of the National Green Tribunal (Practice and Procedure) Rules, 2011.

In the matter of :

Pradip Kumar Pattnaik, aged about 62 years, S/O - Late Banabihari Pattnaik , Plot No 1206(C), sector 6 CDA, Cuttack, 753014, Odisha

.....**APPLICANT**

-Vrs-

- (1) Union of India , represented through Secretary Of Environment, forest and climate change, Jorbagh, Aliganj, New delhi , Pin - 110003.Email: secy-moef@nic.in
- (2) State of Odisha represented through it's Chief Secretary to Government, At : Lok seva

Pradip Kumar Pattnaik.

Bhawan, Bhubaneswar, Dist : Khurdha, Odisha
Email : csori@nic.in

- (3) Secretary to Government of Odisha Department Of water resources, At : Rajib Bhawan, Keshari Nagar, Bhubaneswar-751001, Dist : Khurdha, Odisha Email :- wrsec.or@nic.in
- (4) Secretary to Government of Odisha, Revenue & Disaster Management , At: : Lok seva Bhawan, Bhubaneswar, Dist : Khurdha, Odisha Email: revsec.od@nic.in
- (5) Engineer-in-chief, Water Resource department At: Rajib Bhawan, Keshari Nagar, Bhubaneswar-751001, Dist : Khurdha, , Email: eic-wr.od@nic.in
- (6) Executive Engineer , Mahanadi Barrage Division, At : Gadarpur, Dist: Cuttack, Odisha Email:- eembarragedivnctc@gmail.com 0671-2440118
- (7) Collector, Cuttack , At/Po Dist : Cuttack ,Odisha , Pin 753002 ph 0671-2508100 Email : dm-cuttack@nic.in
- (8) Tehsildar, Cuttack Sadar ,At/Po/Dist : Cuttack, Odisha Email: tahl.ctc@nic.in
- (9) Odisha State Pollution Control Board, represented Through its Member Secretary,

Pradip Kumar Rathnayk



Paribesh Bhawan A/118, Nilakantha Nagar,
Unit-8 ,Bhubaneswar – 751012 ,Dist : Khurdha,
Odisha, Email-paribesh1@ospcboard.org

- (10) State Environment Impact Assessment Authority, represented through its Chairman ,
At- SRF-2/1, AcharyaVihar, Unit IX, OPTCL Colony , Bhubaneswar – 751022 , Dist-
Khurdha,Odisha,Email: seiaaorissa@gmail.com
- (11) Odisha Tourism Development Corporation (OTDC) ,Dept. of tourism represent through
Managing Director , Paryatan Bhawan, Museum Campus, Lewis road , Bhubaneswar –
751014,Email:info@odishatourism.gov.in

...RESPONDENTS

The cause of action out of which this O.A arises was once before this Hon'ble Tribunal in O.A No 68/2020/EZ which was disposed of on 21.09.2022, since the directions were not complied on the other hand violated by the Respondents. The applicant filed Miscellaneous Application vide MA No 26 of 2023/EZ while hearing this MA this Hon'ble Tribunal considering the facts and prayer made in the M.A , allowed the petitioner with liberty to file fresh O.A agitating all the grievances and violation of the earlier order dated 21.09.2022. annex herein as ANNEXURE 5.

The humble petition of the
above named applicant ;

Pradip Kumar Pathrick



MOST RESPECTFULLY SHEWETH,

1. The address of the applicant is given above for the service of notices of this Application.
2. The addresses of the respondents are given above for the service of notices of this Application.
3. The present application is being filed U/S 14, 15, 17, 18, 19, 20 of the National Green Tribunal Act, 2010 (herein after called as the act) challenging the arbitrary and illegal action of the Respondents by causing substantial damage to the eco-environment by way of constructing permanent structure in the river bed of Mahanadi and changing the nature and character of river bed and also by violating the previous orders of this Hon'ble Tribunal i.e. Biswajit Mohanty Vs State of Odisha & Ors vide O.A. No- 47(EZ) of 2016 and Pradip Kumar Pattnaik vs Union of India(EZ) & Ors Vide O.A. No. 68 of 2020. Further the applicant challenges the impugned action of the Respondents for creating an artificial concrete island obstructing the free flow of perennial water source of River Mahanadi by creating a Cafeteria, Food Court, Liquor bar cum restaurant, Paid vehicle parking, Paid Picnic Spot, and large area surrounded by concrete wall, and also many other constructions are going on presently by dumping and filling up with sands and shoals removed from the pond area of the barrage which is causing irreparable ecology damages as well as affecting livelihood of about 80 Lakhs farmers and making the

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city of Cuttack vulnerable of floods. The entire work is being undertaken in gross violation of the provisions of the Environmental Laws so also the Doctrine of Public Trust as held as a part of Indian Environmental Law by the Hon'ble Supreme Court. Further the applicant is invoking the principle of Sustainable Development and Public Trust Doctrine and Precautionary Principle as well as Equity Principle.

BRIEF FACTS

1. That the background of the case in nutshell is that , century back in the year between 1870 to 1900 Britishers had constructed one Anicut (Jobra Anicut) and the area of the reservoir stretched from Jobra to Naraj on Mahanadi river to retain huge amount of water which could able to supply water for irrigation/farming purpose to large extent of land of costal part of Odisha in lean period via five numbers of canals. So that the situation which was occurred in 1866, called as "nananka durbikhya" (severe drought) in which about Five Lakhs people in coastal area died out of starvation , will not happen again in future .
2. That , In the year 2001 a joint venture project of Indo-canadian environment facility , IIT Kharagpur and CMC was inaugurated by urban development minister Sri Sameer Dey & MLA Sushree Nibedita Pradhan and CMC chairperson Sri Ashirbad Behera , in which plantation work initiated in the Mahanadi river bed(Mahnagar Nigam Green Belt) has been started by covering

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an area of 200 acres from Boita Gate (Welcome gate of Baliyatra ground) extending upto Hadia Patha .

3. That , through the plantation project many local species trees like Eucalyptus , Akasia, Bamboo, Neem, Jhaon, Arjun etc has been planted , it grown up rapidly due to fertile soil and appropriate weather , availability of water and also that place has become home to many endangered species of birds, animals and reptiles for which it becomes a forest .
4. That, apprehending environment disorder and scarcity of water for irrigation purpose as well as drinking water for inhabitants of Cuttack Town, a Public Interest Litigation bearing **W.P (C) No. 20283 of 2011** was filed by the **Nationalist Lawyers Forum** before the Hon'ble High Court of Orissa opposing the construction work at "Hadia Patha" by the IOCL, Paradeep . The Hon'ble High Court hearing all the parties passed an order dated 27.02.2012 and delivered a Judgement with a direction to Govt Of Odisha to take certain specific measures to enhance the water retaining capacity of the Barrage, so that water can be made available for all purpose the photocopy of this Judgement annexed herewith as **ANNEXURE-1**.
5. In the meanwhile in the year 2012 a heavy flood occurred for which reason a stream line of water flows through the side of ring road deviating its root from the main stream line and touched again with the main stream at Matamatha and the stream line have a width of approx. 300 to 400 mtr.

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- 6. That in the peak flood period the main stream of Mahanadi enters to that forest area with a depth of 12-15 ft. At that time forest and big trees prevents the soil from washing away and prevent the lower line of Cuttack city from a irreparable loss, and that the roots of the trees hold the topsoil and make it porous which allow excess water to seep through it.
- 7. That, again apprehending the riverine ecology and environmental disorder this Hon'ble Tribunal considered the issue of illegal reclamation of riverbed , encroachment and other unauthorized activities in the riverbed of Mahanadi and KathaJodi at Cuttack In the matter of **Biswajit Mohanty Vs State of Odisha Vide O A No. 47/2016/EZ** and directed the District Administration to ensure that :-

- i) **The District Administration of Cuttack Shall ensure that no construction debris /waste , municipal wastes etc , are illegally dumped on the river beds . In case of violation of this direction the local authority shall impose appropriate penalty to be decided by them , confiscate the vehicles and machinery and initiate criminal proceeding against the violators.**
- ii) **All the illegal encroachment of the river banks/ beds of Mahanadi and Kathajodi at Cuttack shall evicted by the District Administration and all illegal constructions on the river banks /bed shall**

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be removed following the provisions of law and an action taken report shall be filed by the respondent no -3 every six month in the registry .

- iii) And , allow the Baliyatra festival to be held in Baliyatra field on the silted up alluvium space on north side of river embarkment with certain guidelines .

Photocopy of this Judgement annexed herewith as **ANNEXURE-2.**

8. That , In spite of this Hon'ble tribunal's direction as afore mentioned , the District Collector , Cuttack and Commissioner of CMC , in the year 2017 – 2018 , at the first instance filled up that narrow stream line adjacent to the ring road by dumping the garbage and debris of CMC , subsequently the district administration filled up across all the area including the forest by using sand which is extend upto the Jobra Anicut.
9. That ,also during the sand filling they had cut & clear the half of the jungle where well developed trees were grown up. They not only filled the sand but also increase the height of the area located from Matamatha to Jobra(length about 2.5 KM) and chalked out a plan to make a project on that area styled as 'BARFI'. In the meanwhile to prevent such work one petition was filled by Mr Pradip Pattanaik before NGT , Eastern bench ,

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Kolkata vide O A no 68/2020/EZ and in this matter this Hon'ble tribunal passed an order as follows :-

- i. There is clear anticipated danger of flooding .
- ii. They are guided by “ precautionary principle “ under section 20 of NGT Act.
- iii. The Baliyatra Ground (34 Acres) though in a floodplain zone there should be no further expansion and no concretization or compacting of the said ground.
- iv. 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
- v. No temporary / permanent construction are allowed and also no commercial activities should be there .
- vi. Area where forest is to be developed may be handed over to forest department .
- vii. Only modification /clarification to the recommendation which we make in the light of suggestion of the advocate general is that reclaimed land that while 2/3rd of reclaimed land be developed as a dense forest , the remaining 1/3rd land may be developed as parks/playgrounds without allowing any commercial activities .

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viii. It is made clear that no concretization of any sort will be allowed in the entire 426 acres of land .

Photocopy of this order annexed herewith as ANNEXURE-3.

10. That, instead of complying the aforesaid order dated 21.09.2022 passed by this Hon'ble Tribunal in O.A No 68/2020/EZ, the respondents in gross violation of this aforesaid order undertaken following activities which is totally contrary to the order of the Hon'ble Tribunal :-

- i) The District Collector , Cuttack and CMC has occupied an area approx 175 Acres of land by pouring "red stone powder" (Moorum) in order to hike the surface a height of approximately 10 feet from the sand, as result during heavy flood the upper level embankment may brake and entire Cuttack town will be washed away.



- ii) That , the state and district administration were directed to organise Baliytra in 34 Acres but they encroached the land around 175 Acres including the

Pradip Kumar Pattnaik

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Cycle stand , Paid Parking, Silver City Boat Club ,
Resturant, Bar, Cafeteria, Lounge, Conference Hall
etc .

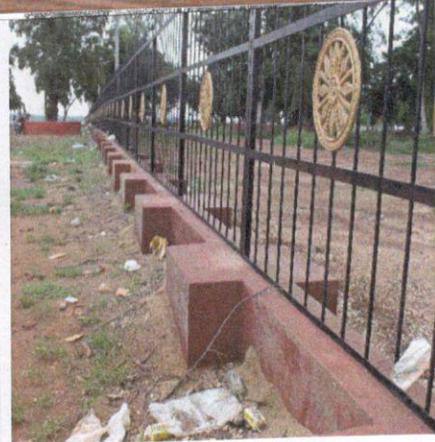
- iii) That , In the meanwhile they have constructed a
campus around **3 acres** to be used as a **paid picnic
spot** by constructing brick wall , cement pillars with
iron fense and also established 2 ticket counters for
their economic gain adjacent to the area demarked as
Baliyatra Ground and also they have cut many big
trees on that nearby areas to create a vacant land to be
used as political programs and metings .

PHOTOGRAPHS ARE ATTACHED BELOW :-



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iv) That , also the CMC itself made a **Paid vehicle parking** in that forest area in front of BOSE college, the area which retained a huge amount of water in flood period, and collecting a ransom amount using that place. Despite due order of Hon'ble NGT which clearly states that any kind of commercial activity is strictly prhobited in that total reclaimed land .

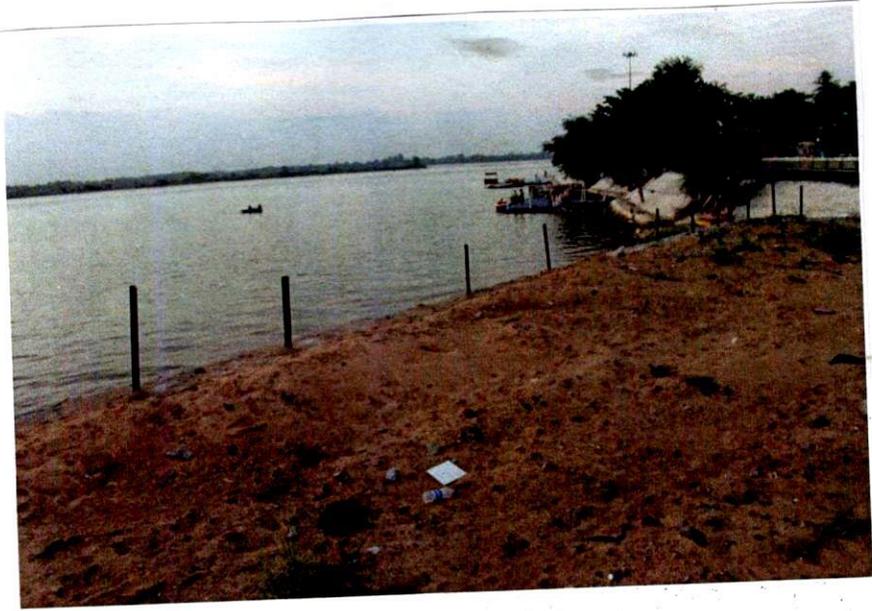


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- v) Significantly the OTDC (Odisha Tourism Development Corporation), made a huge **concrete pandal** of area around 5 acre touching the river stream and also by increasing the height around 15 feet from the river level ,which is a high priority flooded area and openly **operating bussiness like Liqoure bar, resturants , cafe and boating club etc** and also entry fees with the vehicle to that place has kept Rs 50/- per person which is grossly affecting the river bank and riverine ecology and also a clear violation of the NGT order dated 21.09.2023 passed in O A no 68/2020/EZ .

THE PHOTOGRAPHS ARE ATTACHED BELOW:

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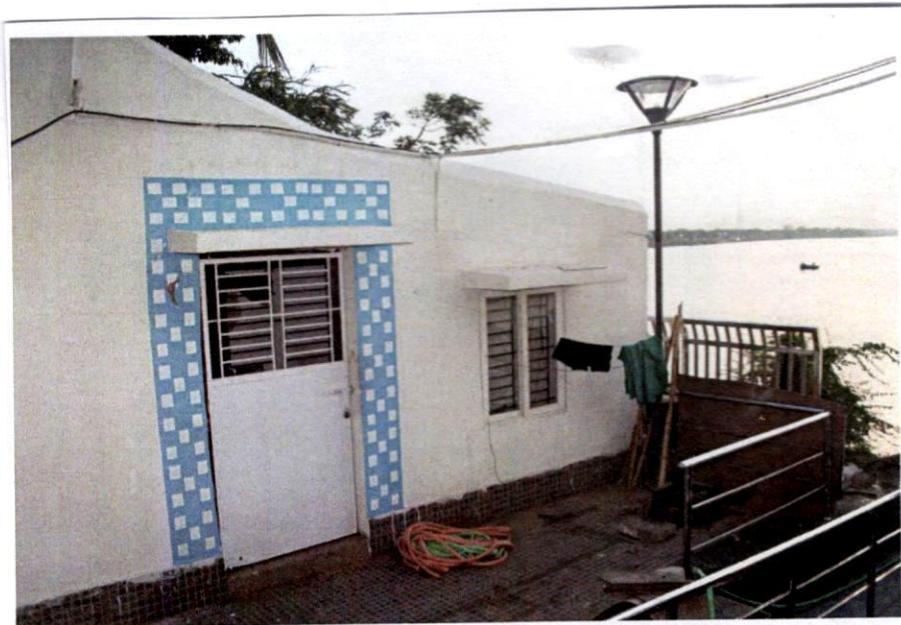




Radip Kumar Pattnaik.



(This photograph has taken during the visit of District Collector ,Cuttack at Silver City Boat Club, Cuttack)



Pradip Kumar Pathak

- vi) The aforesaid bussiness of OTDC on Mahanadi river not only obstruct the flow of Mahanadi but also alter the water pressure toward the 36 villages situated in Chowdwar opposite side to the river which may endangered the life of the residents of that villages at the time of heavy flood.

vii) In the meanwhile, huge quantity of soil bringing from outside has been dumped which is about 15 feet of height on the flood plain area, which shall obstruct the free flow of water and such dumping of soil is causing not only pollution of water but also cause serious ecological disorder .

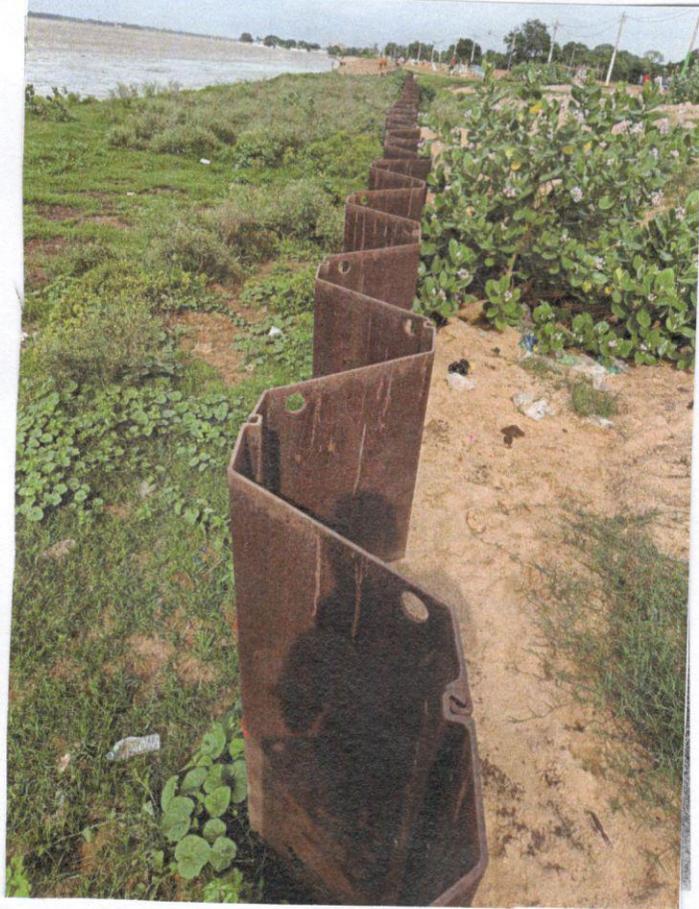
(PHOTOGRAPHS ARE ENCLOSED BELOW)



viii) That, also district administration authority recently made **one iron wall affix to the river bank**

Pradip Kumar Pathy

Mahanadi in the stretch of 200 meters which diverts the free flow of river water in order to protect the construction made in the flood plain zone. The aforementioned iron wall comes under the category of permanent construction which was strictly prohibited by the order of Hon'ble NGT.



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- ix) That, also in the meanwhile the district authority has allowed by way of lease, to some private persons who have **occupied an area approximately 8 acres** of land by initiating a construction using cement pillars and brick walls and also that area has been covered up by the coal powder the concerned area hold huge amount of water at the time of minor flood, which cause air as well as water pollution.

(PHOTOGRAPHS ARE ENCLOSED BELOW)



Headship Kumar Pathak,

[Signature]



Pradip Kumar Pattnaik.

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- x) That, the present collector has organised a programme known as "Cuttack in Ctack" for which for which huge permanent construction were made on the aforesaid reclaimed area (touching to flow of the river) by constructing concrete steps, at length of 100 feet with a height of 15 feet from the water level. But peculiarly in this last flood in the month of August the major portion of those steps were washed away . One can imagine the predicment if hevay flood occurs.

(Photograph falsed in daily newspaper Sambad)

ସମ୍ବାଦ

ବର୍ଷକରେ ଧୋଇଗଲା ୫୦ ଫୁଟର ପାହାଚ

ନଷ୍ଟ ହୋଇଗଲା ହରିଦ୍ୱାର ରୂପ ପାଇଥିବା ଗଡ଼ଗଡ଼ିଆ ଘାଟ

କଟକ, ୨୧।୯(ଭସିସ): ମହାନଦୀର ଗଡ଼ଗଡ଼ିଆ ଘାଟକୁ ହରିଦ୍ୱାର ରୂପ ଦିଆଗଲା। ଏଥିପାଇଁ ଲକ୍ଷ ଲକ୍ଷ ଟଙ୍କା ଖର୍ଚ୍ଚ କରାଗଲା। ହେଲେ, ନୂଆରୂପ ପାଇଥିବା ଏହି ପାହାଚ ମାତ୍ର ବର୍ଷକ ମଧ୍ୟରେ ମହାନଦୀ ପାଣିରେ ଭାଙ୍ଗି ଭାସିଯାଇଛି। ବାଲିଯାତ୍ରା ପଡ଼ିଆ ସମ୍ମୁଖ ମହାନଦୀ କୂଳରେ ହରିଦ୍ୱାର ତାହାରେ ତିଆରି ହେଲା ବୁଝା ଯାଆନ୍ତେ ଲୋକେ ପାଣି ଉଠାଉ ଆରମ୍ଭ କରି ଅତ୍ୟଧିକ କ୍ରିୟା କରିବାର ସୂଚିତ ପାଇବେ। ଏଥିପାଇଁ ବାଲିଯାତ୍ରା ତଳ ପଡ଼ିଆ ନିକଟ ମହାନଦୀ କୂଳରେ ବେଳ ଶହ ମିଟର ଅଞ୍ଚଳକୁ କଂକ୍ରିଟ୍ ପାହାଚ କରାଗଲା। ଏଥିପାଇଁ ୧୩ଲକ୍ଷରୁ ଅଧିକ ଟଙ୍କାରେ ଗତବର୍ଷ ଜୁନରେ ପାହାଚ ନିର୍ମାଣ ହୋଇଥିଲା। ମାତ୍ର, ବର୍ଷକ ମଧ୍ୟରେ ଏହା ମହାନଦୀ ବନ୍ୟା ପାଣିରେ ଧୋଇଯାଇଛି। କାମର ମାନ କେମିତି, ତାହା ଏଥିରୁ ସ୍ପଷ୍ଟ ବାରି ହେଉଛି। ଏଠାରେ



ପ୍ରଶାନ୍ତ ପାଠକ କୌଶଳୀ ମୁଦନା ପାଳକ କେତେବେଳେ ଦେହାନ୍ତର ଗଲେ ପଡ଼ିବ ସେ ମରାଯାଇ ନାହିଁ ଏବେ ଯେତିକି ପାହାଚ ନେଇ କାହା ପାଖରେ ଖବର ନାହିଁ ରହିଛି ତାହା ତଳେ ବାଲି ନଥିବାରୁ ସହରର ଗୌରବୀୟତାକୁ ପାଇଁ ପ୍ରଶାନ୍ତ

ପକ୍ଷରୁ ବିକଳ୍ପ ବ୍ୟବସ୍ଥା କରାଯାଇଛି। ଯେଥିମଧ୍ୟରେ ଗତବର୍ଷ ବାଲିଯାତ୍ରା ପଡ଼ିଆ ସମ୍ମୁଖରେ ଥିବା ଗଡ଼ଗଡ଼ିଆ ଘାଟକୁ ହରିଦ୍ୱାର ରୂପ ଦିଆଯାଇଥିଲା। ଏଥିରେ ସାଧାରଣ ଲୋକେ କାହିଁକି ପୂର୍ଣ୍ଣିମା ବନ୍ୟାପାଲୁ ଆରମ୍ଭ କରି ବୋଲୁଥିବା ପାଣି ଉଠା ଓ ଅତ୍ୟଧିକ କ୍ରିୟା ବ୍ୟବସ୍ଥା କରାଗଲେ ବିଶେଷ ସୂଚିତ। ପାହାଚ ବୋଲି ବୁଝାଯାଇଥିଲା। ଗତ ବର୍ଷ ଜୁନ ମାସରେ ୧୦ ଲକ୍ଷରୁ ଅଧିକ ଟଙ୍କାରେ ପାହାଚ ନିର୍ମାଣ କାମ ଆରମ୍ଭ ହୋଇ ବାଲିଯାତ୍ରା ପୁରୁଣୁ ଶେଷ ହୋଇଥିଲା। ମାତ୍ର, ଧରିନ ଚଳେ ମହାନଦୀରେ ଆସିଥିବା ପାଣିରେ ୫୦ ଫୁଟ ଲମ୍ବର ପାହାଚ ଭାଙ୍ଗି ଧୋଇଯାଇଛି। ଲକ୍ଷାଧିକ ଟଙ୍କା ଖର୍ଚ୍ଚ କରି ବର୍ଷକ ତଳେ ନିର୍ମାଣ ହୋଇଥିବା ପାହାଚ ବର୍ଷକ ମଧ୍ୟରେ ପାଣିରେ ଧୋଇଯିବାରୁ, ହୋଇଥିବା କାମର ମାନକୁ ନେଇ ପ୍ରଶ୍ନ ଉଠିଛି।

Pradip Kumar Pathak

11. That, from the above narration of the fact it is well presumed that the respondents and more specifically the Collector, Cuttack (OP No 7) and the Executive Engineer Mahandai Barage Division(OP No 6) having scant regard for the judgment of the Hon'ble Tribunal are utilizing the reclaimed land at their whims and caprices, causing environmental disorder and also heavy air and water pollution.

LIMITATION

That there is a continuing cause of action due to the on going construction and its commercial use, hence the present application is not barred by limitation .

INTERIM PRAYER

The Hon'ble Tribunal may direct the respondent no-2,3,4 and 5 to stop construction process which is going on in the river plain area

of Mahanadi at Cuttack within the 426 acres of area and restrained them from the commercial activities i.e Silvercity Boating Club, Resturant, cafeteria, Paid Parking, Lounge etc and encroaching the entire area from the side of ring road and also prevent the entry of any vehicle, Individual and officials to the said area, until the final disposal of this O.A .

PRAYER

It is therefore humbly prayed that this Hon'ble tribunal may graciously pleased to :-

- a. Direct the Tehsildar 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 devlopment.
- 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/officals 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 Mahandi, to remove the soil, sand, debris and moorum(red stone powder) from the river bed which has been dumped after the order of this Hon'ble tribunal .

Pradip Kumar Pathaik



- 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, 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 Mathamatha 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. Penalised the offenders who committed the wrongful construction aforementioned, after issuance of the guidelines by this Hon'ble Tribunal as well as the directions w.r.t the plantation which has not been complied till yet.
- i. Or any other order(s), direction(s) may be passed as deemed fit and proper.

And for this act of kindness the applicant as in duty bound shall ever pray.

Kolkata

by the applicant through,

Date: 4/10/2023


ADVOCATE

Pradip Kumar Pathak

BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION No. _____ OF 2023

Pradip Kumar Pattanaik Applicant

-Vrs-

Union Of India & Others Respondents

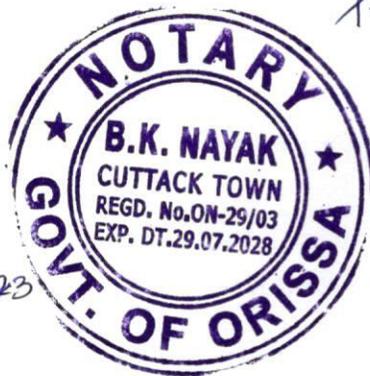
I Pradip Kumar Pattanaik , aged about 63 years , S/O Late Banbihari Pattanaik , Plot No.1206 (C) Sector 6 , CDA , Cuttack 753014 , Odisha , do here by verify and state that the contents of the original application and the facts stated are true to the best of my knowledge to me are being supported by me in any manner whatsoever .

Identified by


Advocate

Cuttack

Date - 23.09.2023



Pradip Kumar Pattanaik ✓

VERIFICANT

The deponent being identified by S.K. Samantaray Adv./Clerk swears on oath & solemnly affirms before me on dt: 23/09/2023 that the facts stated above are true to his/her knowledge.

M. Manam . 23/09/2023
Notary for Cuttack Town
Govt. of Odisha

Pradip Kumar Pattanaik

BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION No. _____ OF 2023

Pradip Kumar Pattanaik Applicant

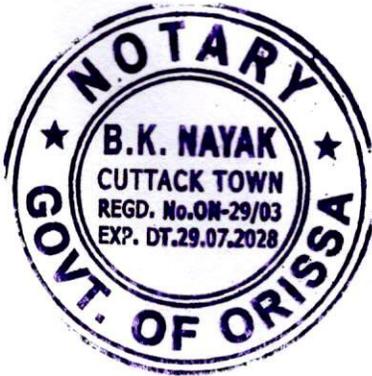
-Vrs-

Union Of India & Others Respondents

AFFIDAVIT

I Pradip Kumar Pattanaik , aged about 63 years , S/O Late Banbihari Pattanaik , Plot No.1206 (C) Sector 6 , CDA , Cuttack 753014 , Odisha , do here by solemnly affirms and state as follows that,

1. That I am the applicant in this case .
2. That the facts stated are true to best of my knowledge and belief .
3. That, no material facts which are available to me are being suppressed by me in any manner whatsoever .



Identified by

Advocate

Cuttack

Pradip Kumar Pattanaik

Deponent

The deponent being identified by *B.K. Saranatharay* Adv./Clerk swears on oath & solemnly affirms before me on date *23/09/2023* that the facts stated above are true to his/her knowledge.

B.K. Nayak - 23/09/2023
Notary for Cuttack Town
Govt. of Odisha

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 20283 of 2011

In the matter of an application under Articles 226 & 227 of the Constitution of India.

The Nationalist Lawyers Forum Petitioner

-versus-

State of Orissa and others Opposite parties

For the petitioner : M/s. Nishikanta Mishra, G.R. Verma, A.K. Mohapatra, N.K. Mohapatra, D. Mohapatra, U.N. Sahoo,-2, P.K. Panda, K. Bhuyan, M. Mishra, T.K. Sahoo.

For the opposite parties : Advocate General & Sisir Das, Addl. Government Advocate. (O.Ps. 1, 2 and 4)

Mr. S.D. Das, Asst. Solicitor General (O.P.3)

Mr. D. Mohapatra (O.P.5)

Mr. S.K. Nayak, Senior Advocate (O.P.6)

Mr. S.K. Padhi, Senior Advocate (O.P.8)

Mr. Sanjit Mohanty (Senior Advocate), Mr. Satyajit Mohanty, R.R.Swain and S. Patnaik (O.P.9-Intervener)

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Mr. J. Pattnaik, Senior Advocate, B. Mohanty, T.K.
Patnaik, A. Patnaik, R.P. Roy,
M.S. Rizvi & B.S. Rayaguru
(O.P.10-Intervener)

PRESENT:-

**THE HON'BLE SHRI JUSTICE B. P. DAS
AND
THE HON'BLE SHRI JUSTICE M. M. DAS**

Date of Judgment: 27.2.2012

B. P. Das, J. This writ application has been filed by the Nationalist Lawyers Forum, in the shape of Public Interest Litigation, alleging therein that an illegal and unauthorized construction is going on in Mahanadi river bed, portion of which is known as Hadiapatha (low lying land), which is adjacent to the river embankment.

In support of its contention, the petitioner had annexed the extracts of the news items published in the widely circulated Oriya daily, 'The Samaj', dated 23.7.2011, 26.7.2011 and 27.7.2011, which reveal that the alleged construction is a potential threat to the Cuttack Town and will damage the entire area which is full of fruit bearing and other trees and gives an impression of a small jungle inside the city. The said area is connected to the ring road by a narrow road.

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In the news item it is indicated that before 11 years, it was decided by the State Government to develop the area by way of undertaking a forestation in and around it in order to strengthen the embankment as well as ring road that runs around the Cuttack city, from the eventuality of flood, which strikes Cuttack city in every one or two years.

In view of such, a prayer has been made by the petitioner to prohibit any construction in the Mahanadi river bed near Hadia Patha in any manner and to direct for an inquiry by the Central Bureau of Investigation, so as to bring into light as to how the Government property went to the hands of Public Enterprises.

Learned counsel for the petitioner produced the photographs of the marble plaque which shows that a Joint Venture Project of Indo-Canada Environment Facility-IIT (Kharagpur) and CMC was inaugurated on 11.11.2001 by the then Urban Development Minister, Shri Samir Dey, in presence of the then MLA Sushree Nivedita Pradhan and the then Chairman, CMC Shri Ashirbad Behera.

The affidavit filed by the Commissioner-cum-Secretary Housing & Urban Development Department discloses that the aforesaid project is for execution of plantation work in different locations as per the Memorandum of understanding (MOU) signed

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between Cuttack Municipal Corporation, Cuttack, IIT Kharagpur, University of Western Ontario, Canada with funding from India Canada Environment Facility (ICEF), New Delhi and Canada International Development Agency (CIDA) on the project "Land Restoration through waste Management in India".

It is also alleged by the petitioner that the area is just in between the river-bank road and the river. The construction work was continuing over the said area without any permission from the authorities concerned including CDA.

When this matter was taken up on 29.7.2011, this Court issued notices to the opposite parties therein and directed the Collector & District Magistrate, Cuttack and Cuttack Development Authority to immediately stop construction over the disputed land on the Mahanadi River bed at Hadia Patha. The Deputy Commissioner of Police was directed to find out the person, who was carrying out the construction work.

After issuance of notice, one M/s Indian Oil Corporation Limited, Paradip Refinery Project, Jagatsinghpur and one Lanco Infratech Limited, head Office At Plot No. 270, Phase-II, Udyog Vihar, Gurgaon having its Site Office at Mahanadi Vihar, Cuttack filed respective applications to intervene in this case. The intervention petitions are allowed and the parties were arrayed as opposite parties 9 and 10.

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An affidavit is also filed by the Collector and District Magistrate, Cuttack, wherein it is indicated that the Collector, Cuttack earlier had sanctioned 7 Acres of Government land in mouza unit No.4, Mahanadi-I, Cuttack Town pertaining to Plot No.96/121 comprising of Ac.0.170 dec and Plot No.95 (Part) Ac.2.830 dec under Anabadi Khata No.2 in lease Case No. 20 (u)/03 and Plot No.95 (part) Ac.4.000 dec under the same Anabadi Khata No.2 in lease case No.23 (u)/06 of Cuttack Sadar Tahasil totaling Ac.7.000 dec. in favour of IDCO, Bhubaneswar for the purpose of installation of Water intake Facility by Indian Oil Corporation Ltd. for supply of water from river Mahanadi to the Oil Refinery Project at Paradeep subject to payment of premium of Rs.21,00,000/- @ Rs.3.00 lakhs per acre as fixed by Government in the IPR-2003 along with annual ground rent as well as cess as admissible. But during handing over possession of the sanctioned area the IDCO Authorities objected that the land is lying in river water and hence unsuitable for the purpose for which the lease has been sanctioned. Subsequently IDCO filed fresh lease requisition for an alternative area of 7 Acres adjacent to the area earlier sanctioned in respect of Plot No.93/121 ac. 2.290 dec and Plot No. 94(part) Ac. 4.710 dec under Anabadi Khata No.2 in Mouza Unit No.4, Mahanadi-I, Cuttack Town. Accordingly the Government in Revenue & Disaster Management Department have

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been moved vide District Office Letter No.563/Rev dated 25.2.2010 for fixation of premium of the said 7 Acres of land. After fixation of premium the advance possession sanctioned would be regularized by way of lease in favour of IDCO after deposit of the estimated amount.

In the said affidavit, it is further indicated that in a meeting held on 4.8.2009 under the Chairmanship of the Chief Secretary Orissa, it was decided as follows:-

“On the issue of allotment of 7 Acres of land near Jobra Barrage, it was informed by the Managing Director, IDCO that during filed visit he has found a portion of the land earlier identified covers the river which is unsuitable for the purpose and accordingly an alternative site has been located. He has mentioned that it will be possible for the Tahasildar to handover the land within seven days.”

During the course of hearing many questions were raised objecting the construction, for which this Court vide order dated 29.8.2011 directed the State Government, CDA and the CMC to clarify on the following points.

“(1) The CDA shall produce the existing as well as proposed/revised Comprehensive Development Plan (CDP) by the next date.

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- (2) The Settlement Officer, Cuttack, shall file an affidavit furnishing details as to when the Kissam of the land in question was converted into Abadayogya Anabadi and what was its earlier Kissam.
- (3) From the photographs of the marble plaque produced by the petitioner, it appears that a Joint Venture Project of Indo-Canada Environment Facility-IIT (Kharagpur) and CMC was inaugurated on 11.11.2001 by the then Urban Development Minister, Shri Samir Dey, in presence of the then M.L.A., Sushree Nivedita Pradhan and the then Chairman, CMC, Shri Ashirbad Behera with the heading "MAHANAGAR NIGAM GREEN BELT". Let the Secretary, Housing and Urban Development, file an affidavit indicating the total money received by the State Govt. for the aforesaid project and the manner in which the same was spent.
- (4) The D.C.P., Cuttack, shall take effective steps to protect and preserve the aforesaid marble plaque and ensure that the same is neither destroyed nor removed by any miscreant."

On 13.9.2011, the Planning Member of the C.D.A appearing in person submitted that as per the old Interim

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Development Plan (IDP) the area known as Hadia Patha including the disputed land has been marked as 'river' whereas in the new Comprehensive Development Plan (CDP), which is at the stage of finalization, the said area has been mentioned as "Recreation Zone".

During the course of hearing many questions were raised including the question whether the drawal of water from Jobra Barrage at Cuttack, which is also the main source of supply of drinking water to Cuttack and Choudwar, will affect the supply of drinking water. Whether the drawing of water will affect the two canals, i.e. Kendrapara and Taladanda which supplies water to vast track of agricultural land in the undivided Cuttack District and whether the said area will starve for water during the lean season. Over and above this, it is also alleged that the trees which have densely grown in that area will be affected by the alleged construction.

At this juncture, it would be proper to mention about Cuttack City, its location and its topography.

As described by Prof. Manmath Nath Das;

The City of Katak, recently famous as a millennium city of India was the centre of wider region, the antiquity of which goes back to the neolithic ages. The City itself enjoys a situational location which is rare and unique in an otherwise riverline Orissa. It is situated between the river Mahanadi and its tributary

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Kathjodi and is provided with traditional defence system of ancient times when for any enemy forces to cross a river was a difficult problem. It is not for nothing that Katak remained the Capital of Orissan kingdom since early middle ages.

As described by Prof. N.K. Mahalik and Sri R.K. Kar;

“Mahanadi river which has its origin in the highlands of Madhya Pradesh and passes through the central mountainous part of Orissa has to divide into branches as it met a coastal depression at Naraj where its gradient was lost and so also its carrying capacity. Some of the load was shed to build the apex and the remaining load was distributed through two major channels, the Mahanadi in the north and the newly formed Kathjodi in the south. The primitive delta was built by these two channels, which include the area now occupied by Katak. Suitable land in this primitive delta provided opportunity to build human settlements.

Near Cuttack there are anicuts across Mahanadi and its branch, the Birupa river. One of such anicuts is Jobra Anicut, wherefrom two canals originates, one is Taladanda canal, which commands over 300 Sq. Km (The Imperial Gazetter of India) and the other is Kendrapara canal.

Mentioning of the aforesaid fact is only for the purpose of indicating the location of Cuttack and dependence on various

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canals originate from the reservoir, which in turn irrigates a large extent of agricultural land in undivided Cuttack District.

Drawal of water by IOCL without making any effort for improvement of the barrage, removal of shoals, dredging of the area in order to improving the water retaining capacity of the reservoir, will ultimately deprive the people of undivided Cuttack District from water for their irrigation as well as the people of the city from the drinking water for which Jobra barrage is their last hope.

Opposite party No.9-IOCL, filed an application for modification/vacation of the interim order dated 29.7.2011, in which it has been indicated that the IOCL is a Public Sector Undertaking of the Government of India and is setting up a Grass Root Refinery cum Petrochemical Complex named as 'Paradip Refinery Project' for processing 15 Million Metric Tonne per Annum Crude Oil including LPG dispatch facility and associated marine facilities namely SBM, Jetty and crude product pipeline at Abhayachandrapur, District-Jagatsinghpur, Orissa at an estimated cost of Rs.29,777 crores.

Mr. Mohanty, learned Senior Advocate submits that Paradeep Refinery Project is a project of national importance, which was envisaged by Government of India through Ministry of Petroleum & Natural Gas in Public Interest and more particularly

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to cater to the needs of nation for petroleum products which is an essential commodity.

According to him, they have submitted application before the Water Resources Department, Government of Orissa for drawal of water for its Crude Oil Refinery Project from upstream Mahanadi Barrage. The Government of Orissa approved the location of water off take facility towards end point downstream of Spur No.2 from Mahanadi Right Bank between Matamatha and Gadagadia Mandir, for installing necessary facilities for pumping of water for Paradip Refinery Project.

His further stand is that Government of Orissa in Water Resources Department has accorded in principle permission in favour of IOCL to draw 40 Million Gallons of water per day, from upstream Mahanadi Barrage from the year 2009 with condition that the same is subject to availability of water during the non-monsoon and lean period and permission has also been accorded for construction of head works and control mechanism, i.e. intake well, pump house and other related facilities.

According to them, they have obtained land from IDCO and thereafter floated tender for Transportation of Water from Mahanadi River at Cuttack to Paradip for Paradip Refinery Project on Build-Own-Operate-Transfer (BOOT) basis and M/s Infrastructure Leasing & Financial Services Limited (IL&FS Ltd.)

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being the successful tenderer was issued with Letter of Acceptance on 26.11.2009 for execution of (a) Intake structure and allied facilities, (b) laying of pipeline from Cuttack to Paradip and (c) various facilities inside Paradip refinery project area. Accordingly, they have taken over the land in February, 2010 and started the construction work and laying of pipe line.

Admittedly, the IOCL has not taken any permission from the CDA for making the civil construction over the area, which comes within Cuttack Municipal Corporation on a plea that since permission has been taken from Water Resources Department, to which the land belongs, for construction of civil work, no permission from CDA was required.

It is submitted by Mr. Mohanty, that all steps have been taken not to affect the environment so also not to damage the tree growth of those area and not to cause damage to Cuttack city, in any manner, so far as its embankments are concerned.

The prayer made in the application filed by opposite party no.9 for vacation of interim order was not allowed, however, the hearing was expedited.

There are several technical questions raised by the petitioner including the question of availability of water from the reservoir, which has not been dredged since its inception and the Old Anicut which has remained sub-merged and has not been

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removed for which water retaining capacity of the reservoir has gone down and that the people of Cuttack City will suffer as they will not get drinking water during the lean season. Another point was also raised that the construction of civil work will not only destroy the river bed, but also it is feared that it may destroy the embankment totally, which may endanger the Cuttack city.

While hearing the misc. case filed by opposite party no.10-Lanco Infratech Ltd. on 29.9.2011 it has been indicated thus:-

“To our query, Sri Sanjit Mohanty, learned senior counsel for O.P.9-IOCL, submits that if ultimately it is found that the disputed land is permissible for construction in question, the IOCL is ready to spend over the peripheral developments including development and maintenance of the Embankment/Ring Road, dredging of the river bed from Naraj up to Jobra Anicut in order to enhance the water retaining capacity of the Barrage and supply of drinking water from its Intake Well Project to the Cuttack P.H. That apart, the IOCL is also ready and willing to improve the health care in Cuttack City.

The willingness shown by the IOCL for undertaking the aforesaid peripheral developments is quite appreciable but all depends upon whether the construction can be made without endangering the river embankment.

Mr. Padhi, learned counsel submits that the matter may be referred to a technical committee for expert opinion.

This aspect shall be considered on the next date.

Mr. G.R. Verma, learned counsel for the petitioner submits that the effort of the IOCL is laudable provided that the construction is permissible on the disputed land.”

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On 25.11.2011, the following points were formulated for opinion of experts committee.

- “1. Whether the construction of head work and controlling mechanism will in any manner affect embankments on both side as well as the course of River 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 the ground water level of the area.
4. Whether the reservoir requires a thorough dredging of the river from Naraj to Nobra along with the progress of the work.
5. Any other suggestion that will be made by the Expert Committee for water retaining capacity.”

After hearing all the parties, and considering the names suggested by the parties to be the members of the Expert Committee, a Technical Expert Committee was constituted and the following order was passed.

“After considering the names of the experts furnished by learned counsel for the parties, we constitute Technical Expert Committee with the following persons.

1. Er. S.M. Patnaik, Former Chief Engineer of Public Health and presently Member Appellate Authority constituted under the Water (PCP) Act, Bhubaneswar.
2. Er. Baidhar Panda, Chief Engineer & Basin Manager, Lower Mahanadi Basin, Bhubaneswar.

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3. Er. Sridhar Behera, Former Engineer-in-Chief (P&D), Nuasahi, Near Kalinga Stadium, Bhubaneswar.
4. Er. Sudhakar Patri, Former Chief Engineer, Water Resources Department, Plot No.656/3392, Behera Sahi, Bhubaneswar-12
5. Er. Raghunath Prasad Das, Former Engineer-in-Chief, Water Resources Department.

Er. S.M. patnaik shall be the Chairman of the aforesaid Technical Expert Committee and the Superintending Engineer, Water Resources, Eastern Circle, Cuttack, shall be the Nodal Officer of the Committee. The Committee shall submit its report to the Court within a period of three weeks from the date of communication of the order. The first sitting of the Committee shall be held within seven days from the date of communication of the order.

The petitioner, the IOCL and the State Government shall furnish their respective views to the Committee.

The State Government shall inform the Committee whether the old Anicut has been completely removed.”

On 18.1.2012, the Report of the Technical Expert Committee was produced before this Court.

The Report of the Technical Expert Committee, being relevant to the adjudication of the case is reproduced hereinbelow:-

“REPORT OF TECHNICAL EXPERT COMMITTEE CONSTITUTED BY
HONOURABLE ODISHA HIGH COURT IN W.P.No.20283 of 2011 (The
Nationalist Lawyers Forum Vrs. State and Others)

Preamble:

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Honorable High Court of Odisha vide their order dated 25th Nov 2011 in W.P.No.20283 of 2011 constituted a Technical Expert Committee with the following persons.

1. Er.S.M.Pattanaik, Former Chief Engineer of Public Health and presently Member, Appellate Authority constituted under the Water (PCP) Act, Bhubaneswar Chairman
2. Er.Baidhar Panda, Chief Engineer & Basin Manager, Lower Mahanadi Basin, Bhubaneswar Member
3. Er.Sridhar Behera, Former Engineer-in-Chief (P&D), W.R. Department, Odisha, Bhubaneswar Member
4. Er. Sudhakar Patri, Former Chief Engineer, Water Resources Department, Odisha, Bhubaneswar Member
5. Er. Raghunath Prasad Das, Former Engineer-in-Chief, Water Resources Department, Government of Odisha, Cuttack Member

Superintending Engineer, Eastern Circle, Water Resources, Cuttack was ordered to be Nodal Officer of the Committee.

Honorable High Court formulated five specific points on which opinion of the technical experts was called for. The report of the Committee was to be submitted within period of three weeks, which on request from the Committee was subsequently extended up-to 18th Jan 2012.

Report:

The Committee had five meetings on 3rd Dec 11, 13th Dec 11, 20th Dec 11, 29th Dec 11 and 6th Jan 12. In the first meeting, the Committee visited the site of construction of Intake well, Pump House and other related facilities located downstream of high level spur nO.2 at Hadia Patha location.

During second and third meeting the Committee received the written submissions and heard the views of Shri Nishikant Mishra, Secretary Nationalist Lawyers Forum, on behalf of the Petitioner and

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representatives from Indian Oil Corporation Ltd. During the fourth meeting the Committee heard the views of Engineer-in Chief, Water Resources, Odisha representing the Government of Odisha in respect of the present case. In the fifth meeting held on 6th Jan 2012, the Committee received the written submission from Mahanadi Banchao Andolan

The list of documents, notes received and reviewed by the Committee from different Authorities is enclosed as Annexure-I.

History of the case:-

1. Vide letter NO.lrr-II-HKD-7/2000/16627 dated 28th April 2000, Govt of Orissa, Department of Water Resources was pleased to allow MIS Indian Oil Corporation to draw 15MGD of water from river Mahanadi close to Mahanadi Barrage to meet the operational requirement for Eastern India Refinery Project at Paradeep. It may be mentioned that the location of water off-take facility towards end point downstream of spur nO.2 from Mahanadi right bank between Matamath and Gadagadia Mandir was approved with the stipulation that the spur No.2 with top level at RL.24.50m (the level, length & alignment fixed as per model study at CWPRS, Pune) against highest flood level(HFL) of RL.23.35m at the location, will be used as approach road, pipe lines etc laid downstream of spur and raw water off-taking platform located leaving free board of 1.50m above H.F.L.
2. Vide Letter No.lrr-II-WRC-42/06 -19672 dated 19.06.2006, Govt of Orissa in Water Resources Department have been pleased in principle to accord necessary permission in favour of Indian Oil Corporation Ltd to draw 40MGD(73.2cusec) of water from upstream of Mahanadi Barrage from the year 2009 for their proposed Refinery Complex at Paradeep subject to availability of water without assurance during non monsoon & lean period. It was mentioned in the terms and conditions that for

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construction of head works and control mechanism i.e. intake well, pump house and other related facilities, the IOL will get the land leased in their favour through IDCO.

3. Vide Letter NO.lrr-II-WRC-187/09-32442 dated 04.12.2009, Govt of Orissa in Water Resources Department have been pleased to revalidate the previous order issued in favour of Indian Oil Corporation Ltd for drawal of 40MGD (73.2cusec) of water from upstream of Mahanadi Barrage for their Crude Oil Refinery and Petrochemical Complex at Paradeep subject to availability of water in river Mahanadi during non-monsoon & lean period. It was mentioned in the terms and conditions that for construction of head works and control mechanism i.e. intake well, pump house and other related facilities, the IOL will get the land leased in their favour through IDCO.

It is reported that IDCO has allotted 7.00acs of land in selected location of Pump House and other ancillary structures in Hadiapatha in favour of Indian Oil Corporation Ltd.

Engineer-in Chief, Water Resources, Odisha vide his letter NO.P-IWS-122/07-7821 dated 7th June 2010 has accorded necessary permission for construction of intake well and laying of raw water pipe line by M/s IOCL with some stipulations. Executive Engineer, Mahanadi South Division, Jobra has also vide his letter no4172 dated 24th Aug 2010 has issued necessary provisional permission for laying raw water pipe line by IOCL with some conditions specified.

Construction of the Intake structure and allied facilities including Intake well, Pump house, Sedimentation Chamber and Control Room was under progress. Hearinhch the Case No. WP (C) NO.20283 of 2011, filed by The Nationalist lawyers Forum Vrs. State and others, Honorable High Court has stayed construction activities at the present site and in their order

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dated 25th Nov 2011 constituted the Technical Expert Committee to examine the issue and give their opinion on five points formulated.

The Committee examined the different documents available, heard the Petitioner, the IOCI and representative from State Government and considered the views offered by them. After considering all the above the Committee have concluded with following point wise opinion.

Views on different stipulated points-

- 1. Whether the construction of head work and controlling mechanism will in any manner affect embankments on both sides as well as course of river Mahanadi?**

River Mahanadi is about 2.00kms in width at the barrage site and the barrage was designed for a looseness factor of 3.25, with total length of 1928m. Though the length of barrage could have been reduced substantially, considering its effect on the railway bridge downstream, the length was kept same as the existing width of the river.

To avoid formation of shoals upstream of the barrage in such wide river with its looseness of more than 3.00 and to make the flood flow perpendicular to the barrage model studies were taken up at the Central Water and Power Research Station (CWPRS), Pune. Based on the results of the model study (vide Specific Note N01985, letter No.31/12179-HAPT dated 19th Apr 1984 & Inspection note dated 11th May 84 of Review Panel Members), two numbers of high level deflecting/repelling spurs (known as Spur No.1 and Spur No.2) have been constructed on the right bank of river between Gadagadia Mandir to Jobra work shop. Length of upstream Spur No.2 is 990m into the river from the right bank of Mahanadi. The top level of the spur nO.2 is at RL.24.50m against highest flood level (HFl) of RL.23.35m at the location. In conjunction with spur nO.1 located almost 1050m downstream, the flow on the right flank of the river which would have otherwise hugged to the concave right bank and attacked it,

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has been pushed to the main stream from almost 1 km upstream of spur nO.2 right up-to Mahanadi barrage. The two spurs have been constructed with the purpose of river training work to divert the flow of the river to the central portion making it perpendicular to 1928m long Mahanadi barrage which has high looseness factor, thereby improving co-efficient of discharge for better flood disposal, preventing formation of shoals and also preventing parallel flow close to the barrage. The area between the spurs is meant to be filled up on progressive deposition of silt. It has been observed that the spurs have performed very successfully. The river flow has been diverted away from the right bank to the end of the spurs making flow perpendicular to barrage axis and the area between the spurs being filled up, specifically close to altered shore line. It may be pointed out that during the high floods in 1982 and 2008; flood flow did not overtop the spur nO.2. Designed Highest Flood level (HFL) of Mahanadi at Mahanadi barrage location is in consideration of reduced width of the river on construction of the Spurs nO.1 &2. location of the Intake Structure and allied facilities including Intake well, Pump House, Sedimentation Chamber and Control room is in area between the two spurs which is meant to be progressively filled up.

Hence it is opined that the construction of head work and controlling mechanism **will not in any manner affect the embankments on either side as well as course of river Mahanadi.**

2. Whether the construction will affect the canals which usually get water from- river Mahanadi from Jobra Barrage for the purpose of irrigation?

As per the analysis done by Water and Power Consultancy Services Ltd (WAPCOS), based on daily discharge data from Mahanadi Barrage for period 1998 to 2007 collected from Mahanadi Barrage Division, Cuttack, the 75% dependable release from the Mahanadi barrage in non-monsoon

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months, after meeting all the demands for irrigation, industrial and domestic use, was calculated to be 4054,3799,3522,2196, 1982,2341, and 2156cusec for the months of Nov, Dec, Jan, Feb, March, April and May respectively. The lowest average release was 1230cusec (34.63cumec) in the month of March 2003 (ref-Table no.3.4(A) and table No.3.5(A) of Vol-I of Final Report on Hydrological Study). The proposed drawal of 40MGD (73.2cusec) by Indian Oil Corporation Ltd (IOCI) for the Refinery Project at Paradeep is only 6% of the lowest monthly 95% dependable release of 1230cusec(34.63cumec) from the barrage to the downstream after meeting all the demand up-to the barrage. Using the Extreme Value type III distribution with frequency analysis of the minimum flow series, the 30 year and 50 year return period low flow from the Mahanadi barrage was estimated to be reduced 773.46cusec and 615.22cusec respectively after meeting drawal requirement of IOCI for the Refinery project.

Considering the monthly flow series at Naraj for the year 1969-70 to 2005-06, 75% dependable monthly flow for the non-monsoon months Nov to May is calculated to be 14338,8838,8981,8497,8677,9410 and 7647cusec respectively. Against this, drawal requirement for different purposes, irrigation, municipal and industrial/institutional (inclusive of IOI requirement) is indicated bellow.

	Nov	Dec	Jan	Feb	March	April	May
75% dependable flow at Naraj (cusec)	14338	8838	8981	8497	8677	9410	7647
Irrigation equirement							
Delta Stage-I (cusec)-	3235	2878	3400	2556	611		
Delta Stage-II(cusec)-	2437	2167	2560	1925	593		
(cusec)-	5672	5045	5960	4481	1204		
Municipal demand (cusec)	43	43	43	43	43	43	43
Industrial/ Institutional							

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(cusec)-	584	584	584	584	584	584	584
(Cusec)-	6299	5672	6587	5108	1831	627	627
Surplus for downstream Use (Cusec)-	8039	3166	2394	3389	6846	8783	7020

Thus the construction of the intake structure **will not affect Delta Stage-I and Delta Stage-II irrigation supply.**

3. Whether the construction will affect supply of drinking water to Cuttack city as well as ground water level of the area?

As per the information received from the Superintending Engineer, Public Health Circle, Nayabazar, Cuttack, present water supply to Cuttack city is mostly ground water lifted from 142nos of bore wells. Present utilization is 101.71 MLD (41.82 say 42cusec); The drawal for Choudwar town from 19nos of bore wells is 2.0MLD (0.82 say 1cusec). The demand for Cuttack city is projected to be increased to 179.5MLD (73.80cusec) by year 2050.

As discussed in the previous para there is surplus water available in Mahanadi river even after meeting present demand for irrigation, municipal supply and the committed industrial infrastructural supply. Full drinking water **requirement can be met from river Mahanadi on priority basis. Ground water recharge will not be affected as the pond level and area remains un-altered by the construction of Intake structure.**

4. Whether the reservoir requires a thorough dredging of river from Naraj to Jobra along with the progress of work?

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It may be mentioned that barrage is a diversion structure. The storage in the pond created upstream of the barrages may cater to the variation of inflow and outflow within short time span of one to two days only. The storage capacity is not considered for meeting drawal demand, which is dependant on the available flow in the river.

Crest of the barrage bays of Mahanadi barrage has been fixed at RL.18.50m, 1.10m lower than the crest level of old anicut (RL.19.60m). As per the drawings of Mahanadi Barrage (by CWC), based on model study reports of CWPRS, Pune, the old anicut was to be dismantled up-to upstream apron level of RL.17.20m. During construction of the barrage, dismantling was done in front of 8+8=16 sluice bays only out of total 95 bays. Immediately after operation of the barrage, formation of shoals in the up-stream pond and increased sediment inflow to the canal was observed. CWPRS, Pune was referred to study the effect of the non-removal of the old anicut bays and suggest remedial measures. In Specific Note.no.2777 dated 27.09.1990 and NO.2847 dated 16.04.1991, CPRS, Pune reported higher afflux upstream of the barrage due to formation shoals upstream of the barrage and recommended dismantling and removal of at least 12 bays adjacent to each of the left and right side divide walls in the first stage.

Gate Regulation Committee (1994) with representatives from C.W.C, Delhi and C.W.P.R.S, Pune, opined that shoal formation have increased due to existence of old anicut and recommended for dismantling the same.

Technical Advisory Committee (Major) in their 38th meeting held on 1st Jan 2001, after detailed discussion agreed that dismantling of the old anicut in front of all spillway bays up-to RL.17.20m as per the original design is required. However in the first phase it was recommended to take up dismantling in front of 12 nos of bays adjacent to each of the left and right divide walls and 12nos in the central portion (total 36 bays

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out of total 79nos spillway bays).

It was reported by Executive Engineer, Mahanadi Barrage Division, Cuttack that dismantling of old anicut in front of .36bays (Bays nO.24 to 43-20nos and Bays nO.61 to 76-16nos) has been completed during 2003-2005 and the debris removed from river bed. On enquiry as to why the location of the dismantling was not as per recommendations of CPWRS, Pune based on model study and the TAC(Major)' as mentioned above, the Executive Engineer explained. that Chief Engineer, Drainage, Odisha approved the location considering position of shoals formed in front of the barrage as on pre-monsoon of 2002.

The Committee after detailed discussion opined that even though the aggradation of Mahanadi river arm after bifurcation of river Kathjori is a natural phenomenon considering the geomorphology of river, the old anicut existing in front of the barrage bays of Mahanadi barrage is major cause of formation shoals upstream of barrage, rising of river bed level, diversion of higher sediment load to river Birupa and in effect will cause rising of flood level. Therefore they **recommend that dismantling of the existing old anicut in front of balance 43 bays up-to RL.17.20m (upstream apron level of barrage bays) should be taken up on priority basis. The shoals formed in the barrage pond if removed by dredging will increase the storage capacity of pond** which will cater to the variation of inflow drawal within short span of one or two days. However formation of fresh shoal or deposit of sand in river bed can not be completely stopped. Removal of shoals close to the Mahanadi barrage will avoid cross flow close to upstream of barrage and hence improve its flood release capacity.

5. Any other suggestion that will be made by the Expert Committee for water retaining capacity .

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- Dissatisfaction arising from allocation of the water resource among the various conflicting interests in relation to their respective importance was brought to the notice of the Technical Committee. The Committee is of the opinion that comprehensive study of water availability during different periods and demands for different purposes like municipal supply, irrigation, power generation, ecological requirement, industrial institutional requirement etc for entire basin should be taken up keeping State Water Policy in view. Any further demand for industrial purposes should be examined in consideration to the availability after meeting the previous commitments and its effect on the overall scenario for the basin. Industrial Establishments may be encouraged to invest in water resources development in their own interest.
- Government of Odisha, Department of Water Resources while issuing permission for drawal of water from the present source has stipulated condition that "the industry will have to show clearly as to what storage facility the company will create for the lean period and to what extent and how water is going to be recycled." As stated by representatives of IOCI no such arrangement has been made till date. IOCI should make necessary arrangement for the storage requirement for lean period and submit detailed report to the Government.
- IOCI should not be allowed to construct any further structure in the area allocated, except the Intake well, Pump House, Sedimentation Chamber and Control Room Building which are under construction, without specific approval from Chief Engineer & Basin Manager, lower Mahanadi Basin.

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- It is observed that there is wide gap between water availability derived from monthly flow data of Mahanadi at Naraj site and the data obtained from Mahanadi Barrage Division. Action should be taken to verify the same and set right available flow series.
- The operation of gates of Mahanadi barrage should be made aiming removal of shoals as far as possible. On development of downstream tail water level, the barrage bays in different locations should be kept opened.

(Er. R.P. Das) (Er. S. Patri) (Er. Sridhar Behera) (Er. Baidhar Panda) (Er. S.M. Pattanaik)
Member Member Member Member Member

After the said Committee Report was submitted, reactions/ suggestions were called for from the parties.

The petitioner as well as IOCL submitted their respective reaction/suggestions on the Report of the Technical Expert Committee.

The IOCL in its Reaction/Suggestion has indicated thus.

“Point No.1,2 & 3

Since the Committee has clearly indicted this issues, IOCL has nothing more to add.

Point No.4.

No Comment. It is noted that

a) removal of anicut has been considered by the committee as urgent requirement to prevent formation of shoals.

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b) The shoals can be removed by proper operation of the gates.”

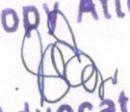
Objections was also raised by the petitioner on the Report of Technical Expert Committee and in paragraph-5 of the said objection it has indicated thus:-

“That the Technical Expert Committee has made certain suggestions and pre-conditions before implementation of the project which are to be fulfilled first. Further the Indian Oil Corporation has not come out with any proposals to be made for the welfare of the Cuttack City.

On 13.2.2012, while hearing on the reactions/suggestions made by the parties to the Report of the Technical Committee, when it was decided that the old anicut is to be removed at the cost of IOCL, this Court required the presence of the Engineer-in-Chief and the Secretary, Water Resources Department, under whose administrative control the same was situated.

On 21.2.2012, the Secretary as well as the Engineer-in-Chief, Water Resources Department appeared before this Court. We heard them as well as learned counsel for the parties.

Another question was raised that the entire construction is unauthorized as no permission has been granted to the IOCL by the Cuttack Development Authorities, under the Orissa Development Authorities Act, 1982.

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In this regard, Mr. Mohanty, learned counsel for the IOCL reiterated that no permission from the CDA is required to be taken since the land belongs to Water Resources Department, who has given permission to them.

We are not moved by the aforesaid submission of learned counsel for the IOCL for the reason that Water Resources Department has allowed for construction of the civil work with a condition to obtain the necessary permissions from the authorities concerned.

However, learned counsel for the IOCL submitted that IOCL has already applied for sanction of their plan before the CDA.

With regard to our query No.4, i.e. whether the reservoir requires a thorough dredging of the river from Naraj to Jobra along with the progress of the work, the opinion of Expert Committee was that dismantling of the existing old anicut should be taken up on priority Basis. The shoals formed in the barrage pond should be removed and a thorough dredging of the reservoir is required.

An affidavit was filed by the Engineer-in-Chief, Water Recourses Department, the relevant portion of which are quoted herein below:-

- "2. That with regard to removal of shoals in the pond area of Mahandi barrage, a bathematic survey of the pond

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area in the U/S of Mahanadi barrage is to be done and removal of shoals with proper dredging of the area are to be done at regular intervals. The cost of the pre survey, dredging and post survey are to be executed by M/s IOCL and the Department of Water Resources will supervise the work on dredging activities.

3. That with regard to removal of old Anicut, it is suggested that the balance removal of old Anicut up to the desired level are to be done by M/S. IOCL so as to facilitate improvement of pond area. This removal is required for restriction of further siltation in the pond area. Department of Water Resources will do the supervision and provide technical guidance to the work of removal of old Anicut. Control blasting with all precautionary measures under water should be executed keeping in view the safety without endangering the newly constructed existing barrage.
4. That with regard to strengthening of existing city protective embankment it is suggested that the usable earth from the dredging activities will be utilized for strengthening of the exiting city protective embankment. The unusable earth will be utilized for filling of low lying areas nearby area. Department of Revenue and Disaster Management and Department of Water Resources will demarcate the land and areas where unusable earth can be dumped. Suitable stone protection should be made so as to strengthen and restrain those earths in embankment.
5. That it is suggested by the Water Resources Department that since there will not be any water supply during the lean period, M/s IOCL will have their own reservoir near the plant area for utilization of water during those period.
6. That the periodical maintenance of dredging should be done in consultation with the Department of Water Resources. A corpus fund may be created from all the Industries including M/s IOCL so that the dredging activities and necessary improvement of the system can be met from this fund."

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Keeping in view the aforesaid fact and after going through the report of the Technical Expert Committee, we accept the Report and direct the followings:

- (1) We direct the State Government as well as the IOCL to strictly adhere to the suggestion made by the Technical Expert Committee in Point No.5 of their report, as quoted above.
- (2) As it is stated that the IOCL has already applied for permission before the CDA for the construction made, they shall be permitted for the construction, which has been indicated in the suggestions given by the Technical Committee in Point No.5, which should have been approved by the chief Engineer & Basin Manager, Lower Mahanadi Division.
- (3) With regard to removal of Shoal, as stated by the Secretary Water Resources Department as well as the Engineer-in-Chief, the bathometric survey is to be done through IIT Chennai, as the State Government had already taken the expertise of IIT Chennai in some other projects. Cost of which shall be borne by the IOCL.

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- (4) So far as removal of old Anicut is concerned, it shall be done at the cost of the IOCL under the supervision and technical guidance of the Water Resource Department. Since it is stated that previously a part of the Anicut was removed by the Orissa Construction Corporation (OCC) and eventually the present Secretary, Water Resource Department is the Chairman of the said Corporation and the Corporation had got the men and machinery and expertise for the aforesaid work, let the IOCL keep in touch with the Chairman, OCC and if the Government desires, it can be done through OCC, but at the cost of the IOCL.
- (5) So far as dredging is concerned, it is also stated that the dredging can also be done by the OCC with the help and expertise of Water Resources Department at the cost of IOCL and modalities of the same shall be decided by the officials of the Water Resources Department and IOCL and the Executing Agency. Hence such dredging shall be done as suggested above, at the cost of the IOCL.
- (6) Regarding the strengthening of the existing City Protective embankment, since it is stated in the affidavit of the Chief Engineer that usable earth from the dredging activities will have to be utilized for strengthening of the

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existing City Protective embankment and the unusable earth will be utilized for filling up the low lying areas nearby, let the Revenue Department and Department of Water Resources demarcate the land and areas where the unusable earths can be dumped or if any portion of the same shall be used for widening of the embankment (Ring) Road.

(7) It is directed that, during lean period there shall be no water supply to IOCL and the IOCL will have its own reservoir near the plant area for utilization of water during those period.

(8) So far as, Survey, dredging and removal of old Anicut are concerned, the work should be taken up at the earliest and it should be completed before the actual drawal of water from the reservoir is made by the IOCL. So, the Water Resources Department shall give proposals to the IOCL, who shall place funds with the respective executing agency as per the decision taken between the Water Resources Department and the IOCL. It shall be done within a period of two months from today.

In order to expedite the matter, we form a committee comprising Shri Suresh Ch. Mohapatra, Secretary, Water

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Resources Department, Revenue Divisional Commissioner (CD), Cuttack, Collector, Cuttack, Er. Baidhar Panda, Chief Engineer & Basin Manager, Lower Mahanadi Basin, Bhubaneswar and one of the citizens of the Cuttack City, namely Akshaya Kumar Das, President Jala Surakhya Janamanch. Er. Baidhar Panda will be the Nodal Officer of the Committee

Now with regard to the Corporate Social Responsibility of the IOCL, which it has to discharge so far as Cuttack City is concerned, we have already indicated this fact in our order dated 29.9.2011 and also discussed in the hearing of the case. Adding to this, it may be indicated that Cuttack is a very old city, which includes its narrow lanes and bye-lanes. The health system is at its primitive stage. The traffic signal system is not up to the mark. One of the major difficulties the city people are facing is due to lack of well equipped ambulances.

In view of such, we direct the IOCL to provide a Water Treatment Plant for drinking water to be utilized for Public Health Department, Cuttack for the purpose of supplying drinking water in Cuttack City. The plan and estimate is to be made by the P.H.D. and the land for the said plant is to be identified and provided by the Collector and permission be granted for establishment of said plant. After the said plant is commissioned, the same be handed over to PHD

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With regard to Health Care, we direct the IOCL to provide Rs.10.00 crores to Sardar Vallabhai Patel P.G. Institute of Paediatrics (Shishu Bhawan) to be used for its developmental works including drinking water facility, sanitation, modernization of wards and a modernized outdoor for providing treatment to the emergency patents.

Apart from that, Rs.3.00 crores be provided to the Commissioner of Police, Cuttack-Bhubaneswar towards the improvement and management of traffic system and traffic signal lights at various junctions in the city of Cuttack.

The IOCL shall also provide five hi-tech Ambulances to the Committee so formed above, which shall provide the same to different Government Hospitals or Philanthropic Organizations of their own choice. The running and recurring cost for three years shall be assessed by the Committee, which shall be deposited by the IOCL with the Committee, thereafter the Government/Philanthropic Organization shall bear the same.

With the aforesaid terms and conditions, all the interim orders stand vacated and the writ petition is disposed of.

M.M. Das, J. I agree.

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B. P. Das, J.

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M. M. Das, J.

Orissa High Court, Cuttack.
February , 2012/Arun

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National Green Tribunal

Biswajit Mohanty vs State Of Odisha Represented By The ... on 7 February, 2022

Bench: Adarsh Kumar Goel, Sudhir Agarwal, B. Amit Sthalekar, Nagin Nanda, Saibal Dasgupta, Afroz Ahmad

Item No.03

(Court No. 1)

BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH

(By Video Conferencing)

M. A No. 08/2020/EZ

In

Original Application No. 47/2016/EZ

Biswajit Mohanty

Applicant

Versus

State of Odisha & Ors.

Respondent(s)

Date of hearing: 07.02.2022

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 DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Applicant: Mr. Sankar Prasad Pani, Advocate in M.A. 08/2020/EZ

Respondent(s): Mr. Janmejaya Katikia, AGA for R-1,2&3,
Mr. Surendra Kumar, Advocate for CPCB,

ORDER

1. This application in effect seeks enforcement of order of this Tribunal dated 16.10.2017 in OA No. 47/2016/EZ, Biswajit Mohanty vs. State of Odisha & Ors. By the said order, the Tribunal considered the issue of illegal reclamation of riverbed, encroachment and other unauthorized activities in the riverbed of Rivers Mahanadi and Kathjodi at Cuttack, Odisha. Such activities were alleged to be taking place in the course of a traditional fair at Cuttack called "Baliyatra" affecting the riverine ecology. It was also alleged that the river is covered with the waste, including construction debris at various locations, adversely affecting the land use and riverine ecology. There are permanent constructions, including cement mixed plants and other structures, obstructing the flow of the river.

After reclamation, a temple has been constructed. The Tribunal sought response of the authorities and also considered the satellite images of the river area in 2002 and 2016. Municipal Corporation was directed not to dump debris or other waste on the riverbeds. District Collector was also directed to ensure compliance. The application was finally disposed of with following directions:

"1. "The District Administration of Cuttack shall ensure that no construction debris/waste, municipal wastes etc. are illegally dumped on the river beds. In case of violation of this direction the local authority shall impose appropriate penalty to be decided by them, confiscate the vehicles and machinery and initiate criminal proceedings against the violators.

2. All illegal encroachments of the river banks/beds of Mahanadi and Kathjodi at Cuttack shall be evicted by the District Administration and all illegal constructions on the river bank/bed shall be removed following the provisions of law and an action taken report shall be filed by the respondent no.3 every six months in the Registry.

3. We allow the Baliyatra festival to be held in the Balijatra field (Kila Maidan) between Barabati Stadium & Gadagadia temple as well as in the silted-up alluvium space on north side of river embankment (extended Balijatra field), the areas where the festival was held during 2016 on the following conditions:

(i) The distance of the river flow from the boarder of the extended site shall be a minimum of 50 m.

(ii) The festival site shall be declared as Plastic Free Zone by the authorities.

(iii) The solid waste generated during the festival shall be regularly collected on daily basis by the municipal corporation for appropriate disposal. Throwing of such wastes on river bed and burning of such wastes shall be strictly prohibited.

(iv) Appropriate arrangement shall be made for proper drainage of waste water from festival site to the nearest municipal drain.

(v) The public and vendors shall be informed through announcement and distribution of leaflets about their role for making the area clean and pollution free. The organizer shall prepare a guideline for an ecofriendly Baliyatra festival.

(vi) The Balijatra site shall be completely restored by 9th day of the commencement of the festival.

(vii) A compliance report shall be filed by the District Collector in the Registry of the NGT within a month of completion of Baliyatra every year."

2. In the present application, it is alleged that no steps have been taken for protection of the rivers from encroachment and other unauthorized activities. 421 acres of land has been encroached in the name of Balijatra River Front Improvement (BARFI) Project. There is also proposal for expansion of ring road and renovation of medical college ignoring the riverine ecology. BARFI project envisages filling up of the river area close to embankment with sand. 72 acres of land has been reclaimed at Jagatpur. River bed height has been raised by dumping huge quantity of sand. River has been pushed back into the middle.

3. On 22.06.2021, the Tribunal took up the application for consideration and issued notice to the respondents to ascertain the status of compliance of order dated 15.10.2017. District Collector, Cuttack was required to file personal affidavit on the subject. On 02.12.2021, the matter was further considered alongwith OA No. 68/2020(EZ), Pradip Kumar Pattnaik vs. Union of India & Ors. and time was granted for filing necessary response.

4. An affidavit has been filed by the Collector-cum-District Magistrate, Cuttack on 26.07.2021 mentioning the steps taken as follows:

"2. That, in this regard it is humbly submitted that, regular eviction drive is being carried out by the Cuttack Municipal Corporation to remove illegal encroachment of the river banks/beds of Mahanadi and Kathajodi at Cuttack. It is pertinent to mention here that, unauthorized structures of 199 families, 7 commercial units, 5 Cattle sheds along with 6 Private Shrines were evicted from the banks of river Mahanadi. Further, unauthorized structures of 37 families were evicted from banks of river Kathajodi. Copy of report received from Commissioner, CMC, Cuttack vide letter No. 6643 Dtd. 22.07.2021 is annexed herewith as Annexure-A.

3. That, families evicted from banks of river Mahanadi have been rehabilitated under the provision of special R&R Package of Govt. in R&DM Department, Odisha issued vide order No. 11766/R&DM dtd. 06.04.2021, which includes free of cost Transport, 15x15 ft land, Eight days free fooding along with compensation of Rs. 50,000/- to each family, Rs. 20,000/- to each unauthorized commercial units and cattle sheds. Copy of the R&R package is annexed herewith as "Annexure-B".

4. That, the families evicted from the bank of river Kathajodi were provided with free transport facilities and accommodation in CMC Transit House, Tulasipur.

5. That, the festival Baliyatra was held last time between 12.11.2019 to 19.11.2019. Following this a compliance report was submitted to Hon'ble NGT vide letter No. 1485 Dated 18.12.2019, which is annexed herewith as "Annexure-C". It is pertinent to mention here that, Baliyatra festival could not be held for the year 2020 due to COVID-19 pandemic.

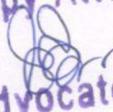
6. That, as regards the allegations of the Applicant in M.A. No. 08/2020/EZ with regard to the 421 acres of low lying land reclaimed near river Mahanadi by the Water

Resource Department with the shoals being dredged from the said river, the Hon'ble Tribunal vide order dated 21.01.2021 in OA No. 68/2020/EZ has constituted a joint Committee. The report of the said committee is awaited for which no specific decision regarding utilization of said land has been taken. Therefore, allegations of the petitioner in this regard are baseless."

5. From the above, it is clear that the land has been reclaimed by the Water Resource Department of Odisha to the extent of 421 acres of low-lying area which is also subject matter of consideration in OA No. 68/2020(EZ). Since OA No. 68/2020(EZ) is being separately considered, we are not passing any separate order on this M.A. which will be governed by the order separately passed in OA No. 68/2020(EZ).

The application may now be listed again on 23.05.2022 along with OA No. 68/2020(EZ), Pradip Kumar Pattnaik vs. Union of India & Ors.

Adarsh Kumar Goel, CP Sudhir Agarwal, JM B. Amit Sthalekar, JM Dr. Nagin Nanda, EM Saibal Dasgupta, EM Dr. Afroz Ahmad, EM February 07, 2022 M. A No. 08/2020/EZ In Original Application No. 47/2016/EZ DV

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Item Nos. 02 & 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

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

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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

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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

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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 m³/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 m³/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.**

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- 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

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the analysis it was observed that the depth of water over the Baliyatra ground during the propagation of Q_{25} 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

Most Likely to be Affected Village List					
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.	Nuwasas	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.

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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"> Defence installations Industries Public utilities like hospitals, electricity installations, water supply, telephone exchanges, aerodromes, railway stations, commercial centres, etc. 	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.

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Priority -2	<ul style="list-style-type: none"> • Public institutions • Government offices • Universities • Public libraries • Residential areas 	<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 submersion 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>
Priority -3	<ul style="list-style-type: none"> • Parks and playgrounds 	<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**

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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 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:

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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 km² 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;*

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- (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.

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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

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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

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- (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 non-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**

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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 1/3rd of the total area of such reclaimed land.

44. The balance 2/3rd 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

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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, 1/3rd 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

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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 2/3rd of reclaimed land be developed as a dense forest, the remaining 1/3rd 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).

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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

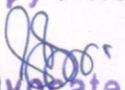
B. Amit Sthalekar, JM

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

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Advocate
Advaita Kumar Saini
Advocate

Reg.No. *O-667/2

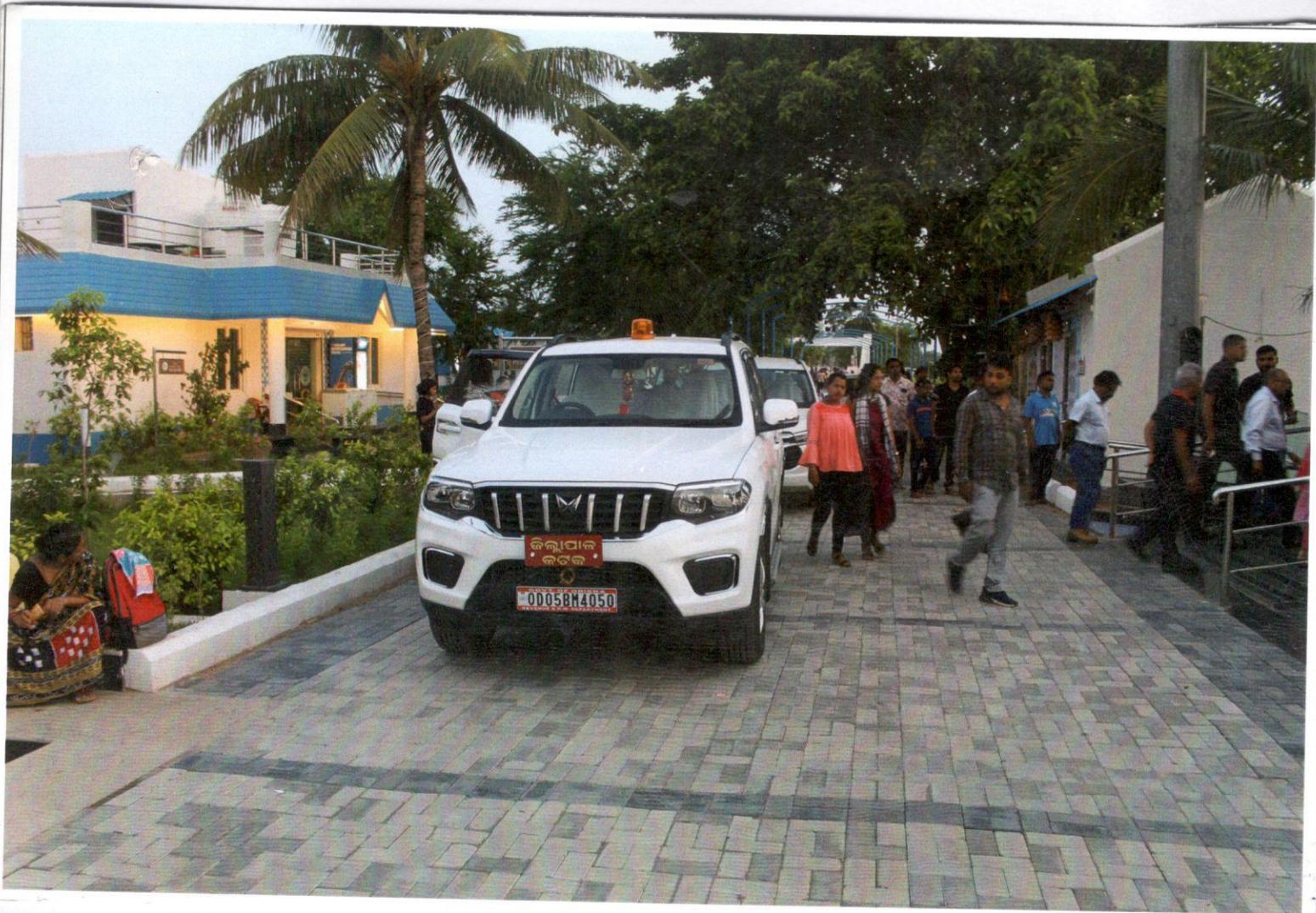
ANNEXURE-4 SERIES



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B.K. NAYAK
NOTARY
CUTTACK



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NOTARY
PUBLIC
TAMIL NADU



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Advocate



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Advocate


B.K. NAYAK
NOTARY
CUTTACK TOWN



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Advocate

Notary Public
DUTCH TOWN



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Advocate

NOTARY
TOWN



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Advocate

B. K. NAYAK
NOTARY
CUTTACK TOWN



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Advocate

B.K. NAYAK
NOTARY
CUTTACK TOWN



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Advocate

OUTBACK TOWNSHIP
NOTARY
B.K. NATARAJ



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Advocate

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Miscellaneous Application No.26/2023/EZ
In
Original Application No.68/2020/EZ

In the matter of:

Pradip Kumar Pattnaik
Aged about 62 years,
S/o Late Banabihari Pattnaik,
Plot No.1206(C),
Sector 6 CDA, Cuttack,
Pin - 753014

.... Applicant(s)

Versus

1. Union of India

Represented through Secretary of Environment, Forests and Climate
Change,
Jorbagh, Aliganj,
New Delhi,
Pin - 110003

2. State of Odisha

Represented through its Chief Secretary to Government,
At : Lok Seva Bhawan,
Bhubaneswar,
Dist : Khurdha,
Odisha

3. Secretary to Government of Odisha,

Department of Water Resources,
At : Lok Seva Bhawan,
Bhubaneswar,
Dist.: Khurdha,
Odisha

4. Secretary to Government of Odish,

Revenue & Disaster Management,
At : Lok Seva Bhawan,
Bhubaneswar,
Dist.: Khurdha,
Odisha

5. Engineer-in-Chief,

Water Resource Department,
At : Heads of Department Building,
Bhubaneswar,
Dist.: Khurdha,
Odisha

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6. Executive Engineer, Mahanadi Barrage Division,

At : Gadarpur,
Dist.: Cuttack,
Odisha

7. Collector, Cuttack,

At/Po Dist : Cuttack,
Odisha
Pin - 753002

8. Tehsildar, Cuttack Sadar,

At/Po/Dist : Cuttack,
Odisha

9. State Pollution Control Board,

Represented through its Member Secretary,
Paribesh Bhawan,
A/118, Nilakantha Nagar,
Bhubaneswar,
Dist.: Khurdha,
Odisha - 751012

10. State Environment Impact Assessment Authority,

Represented through its Chairman,
At : SRF-2/1, Acharya Vihar, Unit-IX,
OPTCL Colony,
Bhubaneswar,
Dist.: Khurdha,
Odisha - 751022

11. Industrial Development Corporation of Odisha Limited,

IDICOL House,
Unit -II, Ashok Nagar,
Bhubaneswar,
Odisha

12. Odisha Tourism Development Corporation (OTDC),

Department of Tourism,
Paryatan Bhawan, Museum Campus,
Lewis Road,
Bhubaneswar - 751014

.... Respondent(s)

Date of hearing: 22.09.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : Mr. Sisir Das, Sr. Advocate (in Virtual Mode)

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Advocate

ORDER

1. This Miscellaneous Application has purportedly been filed, as stated in paragraph 3 thereof, u/s 14, 15, 16, 17, 18, 19, 20 and 26 of the National Green Tribunal Act 2010.
2. The allegation is that the Respondents are violating the specific directions given by this Tribunal in its order dated 21.09.2022 in Original Application No.68/2020/EZ with Miscellaneous Application No.08/2020/EZ in Original Application No.47/2016/EZ (*Pradip Kumar Pattnaik Vs. Union of India & Ors.*).
3. The directions given by the Tribunal in paragraph 8, 9 and 10 of the order dated 21.09.2022 read as under: -

"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 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

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reclaimed land that while 2/3rd of reclaimed land be developed as a dense forest, the remaining 1/3rd 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)."

4. In the present Miscellaneous Application, the Applicant has raised a large number of issues, inter alia, alleging removing the iron pillars which are alleged to have been installed in the bed of the river Mahanadi; soil, sand, debris and morrum have been dumped and be removed from the river bed; the length of the spur be reduced to 200 mtr. at Mathamatha and Hadiapatha area.
5. In our opinion, the Applicant should raise all such issues which he apprehends to be illegal constructions or constructions of a non-permanent nature, through a fresh Original Application and not through the present Miscellaneous Application.

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- 6. The present Miscellaneous Application No.26/2023/EZ is therefore dismissed with the aforesaid liberty.
- 7. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

September 22, 2023,
Miscellaneous Application No.26/2023/EZ
In
Original Application No.68/2020/EZ
SKB

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[Signature]
Advocate

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NGT

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

O.A NO- /2023

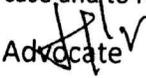
Pradip Kumar Pattanaik Petitioner / Applicant
-versus

Union Of India & Others Opp. Party/Respondents

I Mr Pradip Kumar Pattnaik, Aged about 63 years, S/O Late Banabihari Pattnaik, At – Plot No-1206(c), CDA Sector 6, PS- Markatnagar, PO – Bidanasi, Dist-Cuttack, Odisha Applicant / Petitioner in the aforesaid OA/ Appeal Case do hereby appoint and retain,

1. Shri.Sisir Das(O-50/1982) Contact-+917008363909 Email Id-
sisirdasadvohc@gmail.com
2. Sumanata Kumar Samantaray (O-667/2016) Contact - +919853793594 Email Id-
jitusamantaray1991@gmail.com
3. Anand Jena (O-725/2022) Contact- +919337157964 Email Id –
jenaanand7@gmail.com
4. Mrs. A.Panda(O-731/2016) contact-+917008205804 Email Id –
ashajyotipanda1993@gmail.com
5. Miss Hena Das(O-232/2019) Contact- +918917670679 Email Id-
henadas067@gmail.com

Advocates to appear for me , in the above case and to conduct and prosecute (or defend) the same and all proceeding that may be taken in respect of any application connected with the same and all proceeding that may be taken in respect of any application connected with the same or any decree or order passed there in including all application for return of documents or receipt of any money that may be payable to me in the said case and also in applications for review in appeals under NATIONAL GREEN TRIBUNAL, EASTERN BENCH, KOLKATTA and in applications for leave to appeal to SUPREME COURT I authorize my Advocate (s) to admit any compromise lawfully entered in the said case and to represent me in during the trial .


Advocate
Accepted as above


Advocate
Accepted as above


Advocate
Accepted as above


Advocate
Accepted as above


Advocate
Accepted as above


Signature of Executant