

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

**ORIGINAL APPLICATION NO. 147 OF 2023**

PRADIP KUMAR PATTNAIK

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

**I N D E X.**

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CUTTACK  
DT.7.8.2024.

  
(JANMEJAYA KATIKIA)  
ADDL.GOV'T.ADVOCATE



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

**ORIGINAL APPLICATION NO. 147 OF 2023**

PRADIP KUMAR PATTHAIK

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

**COMPREHENSIVE COUNTER AFFIDAVIT**  
**FILED BY THE STATE RESPONDENTS.**

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

1. That, I am the respondent no.5 in the aforesaid original application. I have been duly authorised by the State Government to file the instant counter affidavit on behalf of all the State Respondents, as per the decision taken by the Chief Secretary, on 3.5.2024. I have gone through the records and understood the contents of the above original application. I am well acquainted with the facts of the case and competent to swear this affidavit for self and on behalf of all the State Respondents.

2. That the applicant has filed the aforesaid Original Application, inter alia, praying to record the entire 426 acres of land as forest land in ROR, destroy all the permanent and temporary constructions, made on the river bed, remove the iron pillars, installed on the river

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bed of Mahanadi, to open the old river water channel from Gadagadia Ghat to Jobra, to direct the opposite parties 9 and 10 to take appropriate steps for any violation of any environmental law, as specified in the prayer, to reduce the length of the spur to 200 meter at Matamatha and Hadiapatha area, to direct the respondents to undertake huge plantation works on the river embankment and penalise the offenders who committed any such wrongful action, as mentioned in the original application. However, for the immediate appreciation of this Hon'ble Court, the prayers advanced by the applicant in the present original application are reproduced as hereunder:

1. *Direct the Tahasildar and Collector of Cuttack to record the entire 426 Acres of land as forest land in ROR and the said land to be handed over to Forest Department for the further maintenance and development.*
2. *Destroy all the permanent and temporary construction which has been made at the river bed and the debris should be dumped in other areas far from the river bed, the expenditure should be bear by those department/officials who made those constructions and the authority may be directed not to have any further construction over the said land.*
3. *Remove the iron pillars which have been installed at the river bed of Mahanadi, to remove the soil, sand, debris and moorum (red stone power) from the river bed which has been dumped after the order of this Hon'ble Tribunal.*

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4. *Open the old river water channel from Gadagadia Ghat to Jobra by the side of the embankment by removing the sands for free flow of water during the flood time.*

5. *Direct OP 9 and 10 to take appropriate steps for any violation with regard to Air Pollution, Water Pollution, Environment and ecological disorder and they should be directed to supervise the said area periodically.*

6. *To reduce the length of the spur to 200 Mtr at Matamatha and Hadiapatha area.*

7. *Direct Respondents to undertake huge plantation work on the river embankment immediately to restore back the riverine ecology and environment.*

8. *Penalized the offenders who committed the wrongful construction aforementioned, after issuance of the guidelines by this Hon'ble Tribunal as well as the directions with reference to the plantation which has not been complied till yet.*

3. That the present application has been filed by the applicant, as reasonably understood, taking advantage of the liberty, granted by this Hon'ble Tribunal by order dated 22.09.2023, passed in MA No.26/2023/EZ (arising out of OA No.68/2020/EZ). In the said interim applicant the applicant had raised the same issues, summarised at para-4 of the said order and the same is reproduced hereunder, for the immediate appreciation of this Hon'ble Court:

*"4..... In the present Miscellaneous Application the applicant has raised a large number of issues, interalia, alleging*

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*removing the iron pillars which are alleged to have been installed in the bed of the river Mahanadi, soil, sand, debris and moorum have been dumped and they removed from the river bed; the length of the spur be reduced to 200 meter at Matamatha and Hadia Patha area”*

By the aforesaid order dated 22.09.2023, while dismissing the MA No.26/2023/EZ, as aforesaid, this Hon'ble Tribunal has granted liberty to the applicant to raise all such issues which he apprehends to be illegal construction or constructions to be of non permanent nature, through a fresh original application and not through the said MA. Accordingly, the said MA was dismissed, with the aforesaid liberty. Admittedly, the present original application is the outcome of such liberty. Copy of the order dated 22.09.2023, passed in MA No.26/2023/EZ (arising out of OA No.68/2020/EZ), is filed herewith as ANNEXURE-A/5.

4. That, it is respectfully submitted that, the Original Application filed by the applicant is thoroughly misconceived both in law and on facts and the same is liable to be dismissed. Since the applicant has not approached this Hon'ble Tribunal with clean hands and has not disclosed the true state of affairs, he is not entitled to the relief(s) sought for, in the Original Application. Apart from the above, since most of the issues raised in the present original application have been decided by this Hon'ble Tribunal vide judgment dated 21.09.2022, passed in OA No.68 of 2020 (Pradip Kumar Pattnaik-Vrs-Union of India and Others), the same need not be examined and re-decided again in the present original application, filed by the same petitioner.

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**4.A.** To justify the above contention it is respectfully submitted that the first prayer (Prayer – a) of the original application is to direct the Tahasildar and the Collector, Cuttack to record the entire 426 acres of land as forest land in ROR and the said land should be handed over to the Forest Department for the further maintenance and development.

In this context, it is very much necessary to bring to the notice of this Hon'ble Court that in his earlier application, filed by the applicant i.e. OA No.68/2020, a contradictory prayer was advanced by the applicant seeking for a direction at prayer (F) to the Government of Odisha to restore the previous ROR indicating the status of the river bed as "Nadi Kissan" instead of Anabadi (Patita). While deciding the case by judgment and order dated 21.9.2022, this Hon'ble Tribunal has held that 34 acres of land out of the total reclaimed land of 426 acres, shall be retained for **Baliyatra**, held every year and  $\frac{2}{3}$ <sup>rd</sup> of the remaining land is to be developed as a dense forest and  $\frac{1}{3}$ <sup>rd</sup> as parks/play grounds without any permanent or temporary constructions. Further, it has been directed by this Hon'ble Tribunal (at para 11 of the Judgment) that the area where forest is to be developed may be handed to the forest development, after demarcation. In view of such direction of this Hon'ble Tribunal, the first prayer is not tenable in the eye of law being hit with the principle of *res judicata*. With an ulterior motive, as is apparent from the face of the prayer, the applicant has tried to confuse this Hon'ble Tribunal.

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**4.B.** So far as the 2<sup>nd</sup> prayer (b) of the applicant, as has been prayed in the present OA to 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 for the same to be borne by the erring officials/departments is concerned, the same requires a lucid explanation.

In this context, it is respectfully submitted that the applicant is himself not clear over the terms 'permanent' or 'temporary' construction, as has been said by this Hon'ble Tribunal in the light of the pleadings, made in OA No. 68/2020/EZ. Most respectfully and humbly, the deponent hereby states that the State Respondents have got all regards to the direction (s)/order (s)/judgment (s), passed by this Hon'ble Court. The applicant has consciously and very cunningly put his pleading in this original application, in a casual fashion with ill intention, only to get the sympathy of this Hon'ble Tribunal and to divert the attention of this Hon'ble Tribunal, against the State Respondents. The very paragraph 1 of the instant original application and paragraph one of the Judgment Dt. 21.09.2022, passed by this Hon'ble Tribunal, passed in OA No. 68 of 2020, give a very positive understanding that permanent construction or temporary construction means any construction on the reclaimed land of river Mahanadi, that can cause substantial damage to the eco environment/riverine ecology, changing the nature and character of river bed with massive concretized

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structures through different projects in 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. While passing the judgment dated 21.9.2022 in OA No.68/2020 this Hon'ble Tribunal at para-11 had ordered like this'

*"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 last sentence of para-11 has been tactically avoided by the applicant so that this Hon'ble Court can lost sight of the same. It is further humbly submitted that it is the local body or the flood/Irrigation Department of Government is to decide how 1/3<sup>rd</sup> of the remaining 392 acres of reclaimed land is to be used. In such view of the matter, putting a bald statement that permanent and temporary construction has been made by the respondents on the river bed is completely motivated.

**4.C.** So far as the prayer (c) of the present Original Application to remove the iron pillars installed at river Mahanadi is concerned, in this context, it is respectfully submitted that the order dated 5.7.2021 passed by this Hon'ble Court in OA No68/2020/EZ assumes enough significance. While passing the order dated 5.7.2021, this Hon'ble Tribunal at para-4 of the said order has observed as follows;

*"Para-4: Mr. Pani submits that in para-11(ii) of the compliance report filed by the CPCB, there is a mention that the*

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order of the Orissa High Court has not been complied with. Para-11(ii) is reproduced as under:-

"The dredging and removal of shoals have been carried with RL 14 m MSL removal from Shoal 2, RL 18, MSL removal from shoal 3 and work in progress in Shoal 1. Images of Shoal 1, shoal 2, shoal 3 and the concerned area spanning over the years 2013, 2015, 2018, 2019, 2020, and 2021 are provided in Fig-1. The dredged materials are being deposited in the area across the shoals to the right bank of the river Mahanadi on the outer boundary of the embankment (not strengthening the embankment as per High Court order dated 27.2.2012). However, two rows of sheet pile arrangement were laid (Total length: 400m) to protect the bank from erosion during high flood water and to avoid spillage of the sand."

From the perusal of the report it cannot be said that the directions of the Hon'ble High Court, Odisha dated 27.2.2012 have not been complied with at all. The report mentions that two rows of sheet pile arrangement were laid over a length of 400 metres to protect the bank from erosion during High Flood Water and to avoid spillage of sand."

Hence, from the aforesaid order of this Hon'ble Tribunal and also from the final order dated 21.9.2022 passed by this Hon'ble Court in OA No.68/2020, the sheet pile arrangements have been duly taken note of and hence the applicant is estopped from raising the same issue again and again before this Hon'ble Tribunal. It is further humbly made clear that

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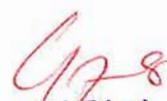
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the sheet pile arrangement has been made pursuant to the direction of the Hon'ble High Court of Odisha, vide order dated 27.2.2012, in WPC No. 20283 of 2011 and the same order has attained its finality more specifically after being confirmed by the Hon'ble Apex Court.

That, to facilitate Baliyatra for the smooth movement of visitors on the sand bed, morrum (red stone powder) has been spread with thickness of around 0.5 to one feet on the silted-up alluvium space on north side of river embankment (extended Baliyatra field) and all the conditions as has been imposed by this Hon'ble Tribunal in OA No.47/2016/EZ (Biswajit Mohanty-Vrs-State of Odisha and Others) are being complied with by the Collector, Cuttack (OP No. 7 herein) and the Cuttack Municipal Corporation, to their best possible efforts. The State administration also has always tried its best to protect the river ecology even while taking up the great festival Baliyatra. Further, it is respectfully submitted that for the seven days festival when average footfalls per day remains at around 8 to 10 lakhs, the State Administration have to take care of different aspects of such huge congregation, to ensure a successful organisation of such a great year old festival. Any prudent man can reasonably understand that footfalls of 8/10 lakhs people requires attention and arrangements on different angles viz. parking of fire vehicles, police vehicles, visitors' vehicles, traders' vehicles, departmental vehicles of Cuttack Municipal Corporation, public health department, electric department,

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ambulances etc., free movement of ambulances, police vehicles, vehicles of electricity department to provide continuous power supply, deployment of adequate police not only to curb the traffic congestion but also to provide immediate assistance at any point where law and order situation arises, deployment of student volunteers etc., who contributes towards a successful festival. Logistic support is required to be given to all such stake holders. If any immediate decision has been taken by the administration with all bonafide, the applicant need not present it as deliberate violation of the order of this Hon'ble Tribunal. Such approach of the applicant is illusory and ill motivated.

**4.D.** The prayer (d) to open the old river channel from Gadagadiaghat to Jobra is no more available to the applicant as the same has been taken note of by this Hon'ble Tribunal vide judgment dated 21.9.2022 (Supra) and this Hon'ble Tribunal has categorically observed that **"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."**

**4.E.** That so far as the prayer (e) is concerned, it is submitted that the State Respondents undertake to abide by all environmental conditions, as provided under law, so far as the reclaimed land in issue is concerned.

**4.F.** So far as the prayer made in para-2(f) is concerned, it is humbly submitted that the prayer to reduce the length of the spur to 200 metre at Matamatha and Hadiapatha

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area is imaginary and not based upon any scientific study. Such prayer is also barred by limitation. Further it is respectfully submitted that such prayer could have been made by the applicant in OA No. 68 of 2020. Otherwise also such prayer can be said to be non-existent, in view of the Judgment Dt. 21.09.2022, passed by this Hon'ble Tribunal, in the said OA No. 68 of 2020.

**4.G.** So far as the prayer (g) seeking a direction to the respondents to undertake huge plantation work on the river embankment immediately is concerned, it is most respectfully submitted that in the meantime 30000 numbers of saplings of local trees species covering about 24 hectars have been made with barbed fencing over a length of 3440 running metre to protect the plantation site from cattle and other biotic interference, by the Divisional Forest Officer and Wild Life Warden, City Forest Division, Bhubaneswar and at present the survivability of the plantation is 99 % and the average height of the plants is 7/8 feet. The plantation cost is being funded by the Cuttack Development Authority.

**4.H.** Answering the prayer (h), it is most humbly submitted that the guidelines have been prescribed by this Hon'ble Tribunal in the previous application filed by the present applicant. There lies no deliberate violation as averred in the original application.

5. That it is respectfully submitted that the Hon'ble High Court of Odisha in a writ petition vide WPC No.20283 of 2011, filed by

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the Nationalist Lawyers Forum, which came to be disposed of vide judgment and order dated 27.2.2012, directing the State Government and other functionaries of the government to adhere to the suggestions made by the Technical Expert Committee on certain important issues, as mentioned in para-1 to 8 and with certain observations to be carried out by the concerned authorities, which have been twice tested and examined by this Hon'ble Tribunal in two successive legal proceedings vide OA No.47/2016 and OA No.68/2020, the issue of which are mostly similar and identical in nature as it relates to illegal construction and other unlawful activities on the river bed of Mahanadi. The applicant has again approached this Hon'ble Tribunal mostly with the same prayers though all the issues have been settled by this Hon'ble Tribunal vide its judgment and order dated 21.9.2022, passed in OA No.68/2020/EZ. Copy of the **Judgment dated 27.02.2012, passed in WPC No.20283 of 2011** (Nationlist Lawyers Forum and Others- Vrs- State of Orissa and Others), Copy of the **Judgment dated 16.10.2017, passed in OA No.47/2016/EZ** (Biswajit Mohanty Vrs. State of Odisha) and Copy of the Judgment **dated 21.09.2022, passed in OA No.68/2020/EZ** (Pradip Kumar Pattnaik Vrs. State of Odisha) are filed herewith as **ANNEXURES – B/5, C/5 and D/5** respectively.

6. That, it is most respectfully submitted that raising the very selfsame issue, which in essence has already attained its finality as of now, afresh, in the present application, without any cogent, convincing and justifiable reasons, justifies the ill intention of the

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applicant, not only to put the government and its functionaries into unnecessary litigation but also to create artificial hindrance to the developmental work, being and to be undertaken by the government, in due obedience to the aforesaid Judgment Dt.21.09.2022, passed by this Hon'ble Tribunal in OA 68 of 2020, under Annexure D/5. Hence, the prayers sought for in the instant original application do not carry any merit in the eye of law and on this ground the original application is liable to be dismissed.

7. That it is respectfully submitted that under the heading of "Brief Facts", the averments made in para-1 had also been taken by the applicant in his earlier original application i.e. OA No.68/2020. So far as the averments made in para-2 and 3 under the same heading, the applicant may be called upon to prove the same. However, in this context, it is most humbly submitted that pursuant to the direction of this Hon'ble Tribunal plantation work has been initiated and by now 30000 saplings of various local tree species covering 24 hectares or 60 acres of the area have been planted with 98% of survivability at present and with average height of the plants being 7/8 feet as of now. It is quite necessary to mention here that the Divisional Forest Officer and Wild Warden, City Forest Division, Bhubaneswar, has taken up the plantation work being funded by the Cuttack Development Authority. A copy of the letter dated 20.05.2024 along with the photographs is filed herewith and marked as Annexure-E/5 series.

8. That in reply to the averments made in para-4 under the heading brief facts of the OA, the present deponent begs to submit

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that the order passed by the Hon'ble High Court in WPC No.20283/2011 (Nationalist Lawyer's Forum-Vrs-State and Ors), has been duly complied with and while complying the direction of the Hon'ble Court, the State Respondents are quite conscious about the riverine ecology and ecology of river Mahanadi. The said paragraph requires no further comments.

9. That in reply to the averments taken in para-5 and 6 it is respectfully submitted that by such averments the applicant has indirectly raising the issue of restoring the reclaimed flood plain to its original situation which as per the view of the seven member committee may not be economically feasible. It is further humbly submitted that such view of the committee has been duly approved by this Hon'ble Tribunal, by its Judgment Dt. 21.09.2022. Hence,

10. That so far as para-7 is concerned, it is most humbly submitted that the conditions stipulated by this Hon'ble Tribunal while disposing of OA No.47/2026/EZ, are being duly complied as after every Baliyatra festival, the report is being filed before this Hon'ble Tribunal. It is brought to the kind notice of this Hon'ble Court that the copy of the Judgment, passed in OA No. 47 of 2016 has not been annexed, reasons best known to the applicant, though the same has been claimed to be annexed.

11. That so far as para-8 is concerned, it is submitted that such averments are nothing but sheer repetition of the facts, stated in the earlier paragraphs, which have already been answered.

12. That so far as para-9 is concerned, it is submitted that it is wrong to say that during sand filling half of the well developed

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jungles with grown up trees have been cut. In the earlier application the applicant has also stated about the project "BARFI" and expansion of the medical ground on the reclaimed land and all such issues have been taken note of while deciding the earlier application vide OA No.68/2020 and OA No. 22 of 2020 (EZ), disposed of on Dt.15.12.2020.

In this context, it is submitted that the State Government is on its move to execute the order dated 21.9.2022 passed by this Hon'ble Tribunal, passed in OA No.68/2020, in letter and spirit. As a mark of execution, plantation work has already been started, as stated above and some grown up trees of local species have been fenced to avoid illegal cutting of trees by the local inhabitants and to ensure development of parks which has been permitted by this Hon'ble Tribunal. The applicant herein has given a different colour to such temporary fencing and taking a stand that the order of this Hon'ble Tribunal has been violated, which is nothing but the misleading approach of the applicant.

13. That while answering to para-10(i), it is humbly submitted that it is wrong to say that by pouring "red stone powder" (Morrum), the Collector, Cuttack and the Cuttack Municipal Corporation have occupied 175 acres of land by raising its height by 10 feet above the sand level. It is quite imaginary to say further that the Cuttack City will get washed away due to raising of the surface level to such height that may break the embankment. Such statement of the applicant is misleading.

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14. That so far as the averments made in para-10(ii) is concerned, the applicant has again tried to mislead this Hon'ble Tribunal by stating that the State and the District Administration have encroached 175 acres of land instead of 34 acres, as has been directed by this Hon'ble Tribunal to organise the Baliyatra including cycle stand, paid parking space. In this context, it is humbly submitted that movement of huge number of visitors to Baliyatra, as stated above, requires adequate logistic support. It is the bounden duty of the state to hold such a mega festival every year with all safety and security measures.

The historical details of the Baliyatra was put up before this Hon'ble Tribunal in its counter affidavit filed by the state in OA No.47/2016/EZ and while disposing of the said OA, at para-18 of the Judgment under Annexure-C/5, this Hon'ble Tribunal has appreciatively reproduced the entire aspect highlighted in para-11 of the counter and for the immediate appreciation of this Hon'ble Tribunal, the judgment Dt. 16.10.2017, passed by this Hon'ble Tribunal, in OA No. 47/2016/EZ, has been annexed, as stated above.

15. That the allegations and averments made in para-10(iii) of the original application are not correct and hereby denied. The construction as shown in the photograph is temporary in nature which is within the specified area in terms of the order of this Hon'ble Tribunal. The applicant has not been able to specify the exact space/location where these temporary constructions have been made, on the other hand, whatever construction has been made the same is within the permissible limit.

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16. That, as averred, it is respectfully submitted that Baliyatra area is temporarily used within the earmarked 34 acres of land as per the order of this Hon'ble Tribunal. It is submitted that since per day footfall is approximately 8-10 lakhs of population with different types of vehicles, the adjacent area in close proximity to the 34 acres of land is occupied on temporary basis only for parking purpose by spilling moorum on the surface for easy/smooth/safety movement of public during the event, on the sand bed, with a height of 6"-8", which cannot be treated as permanent structure or construction. Besides, temporary permission for 32 acres of land at lower Baliyatra ground is being granted by District Administration for 7 days for celebration of the said festival.

17. That, it is respectfully submitted that as is apparent from the photographs, as shown in the body of the application, the applicant has a grievance on the functioning of "Silver City Boat Club", run by the Odisha Tourism Development Corporation (OTDC). It is further humbly submitted that no specific prayer has been made against OTDC, so far as the running of the "Silver City Boat Club" is concerned.

However, the deponent has derived from the records that the area where the "Silver City Boat Club" is functioning is not a part of the reclaimed land of 426 acres. It is submitted that in OA No.47/2016/EZ (Biswajit Mohanty-Vrs-State of Odisha and Others), the OTDC was made a party as respondent no.6 in the said OA. Appearing through its counsel, a counter affidavit was filed on

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behalf of the said OTDC in which it was stated that the boating complex was executed by OTDC in view of a scheme funded by the Union Ministry of Tourism, Government of India and that the said boating complex does not affect the river ecology or the flow of river Mahanadi. The said boating complex was being maintained by the service provider M/s. Seashore Tourism Development Company Private Limited. However, the agreement with the said service provider was cancelled later on. During operation of the said boat complex the Seashore Company obtained permission from the OTDC to maintain the parking place, waiting space, restaurant in the boating complex at Mahanadi river near Matamatha, Cuttack. However, the boating complex and the restaurant were stopped since 2010. While accepting such contention of the OTDC, this Hon'ble Tribunal has observed in the aforesaid judgment stating that "*the establishment of boating complex, jetty, eateries, approach road to jetty are all approved projects of the government and have no affected the river flow.*"

18. That, in the above context, it is further respectfully submitted that, the Silver City Boat Club, as has been learnt, is the new name of the aforesaid boating complex maintained by OTDC. Hence, the said complex having been in existence much prior to 2010, the same cannot be questioned in the instant original application as such a cause of action is barred by limitation. Further, it is a government approved plan duly recognised by this Hon'ble Tribunal and is beyond the area specified and has no nexus with the present issue.

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The silver city boat club, restaurant, bar, cafeteria, lounge, conference hall, etc are not a part of the 426 acres reclaimed land area and hence the photographs given by the applicant need not be given any importance.

19. That, it is further humbly submitted that the OTDC silver city was formed in 2008 which is prior to the order passed by this Hon'ble Tribunal. The allegation of 15' increase of height from river level is nothing but to mislead this Hon'ble Tribunal. The applicant, who is not at all sure as to which portion of specified area has been used, has been trying to make out a case without any cogent and convincing reason. The said fact would be evident from the letter dated 13.5.2024. A copy of the letter no.2036/dated 13.5.2024 of the OTDC is filed as ANNEXURE-F/5.

20. That, it is further humbly submitted that an area of Ac.0.80 of land has been developed by the OTDC, which is being used as parking space for the visitors coming to the Silver City Boat Club, is purely temporary in nature, though the same is a part and parcel of the reclaimed area of Ac.426 of land. Development of that parking area was not within the knowledge of the present deponent for a long time, particularly till physically enquired by the present deponent. The Silver City Boat Club, as stated above, has been constructed in the year 2008, as per a scheme formulated by the Union Government, Ministry of Tourism Department.

It is respectfully submitted that the allegations which have been raised by the petitioner in the present case have already been

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tested by this Hon'ble Court in various proceedings and all the developmental works which have been worked out, are within the knowledge of this Hon'ble Court. The petitioner finding no way out to raise any further claim has trying to agitate the same things time and again without even any supporting documents. At the cost of repetition the deponent most humbly submits that at no point of time there has been any violation of the kind orders of this Hon'ble Court passed from time to time. On the contrary whatever developmental works have been done the same are within the parameters of law and in obedience to the kind orders of this Hon'ble Court.

21. That, as alleged in para-10(x) "Cuttack in Cuttack" is not a program, but a space carrying big trees of local species protected by iron fencing with a guard room. The name has been given while conducting Baliyatra about two years back to attract the public as all the trees are beautified with illuminated lights of different types. As stated above, the temporary fencing has been made to protect the trees which can be removed at any point of time. No huge permanent construction has been made on the aforesaid reclaimed area named as "Cuttack in Cuttack".

In the above context, it is respectfully submitted that this Hon'ble Tribunal while passing the judgment and order dated 21.9.2022, has taken note of the report prepared by the Joint Seven Members Committee and accepted the final observations as is clear from the judgment itself. A bare reading of the said judgment makes it amply clear that this Hon'ble Tribunal has taken a broader view

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while making such observations. At no stretch of imagination, any prudent person can arrive at a just conclusion that this Hon'ble Tribunal has meant permanent constructions in the same way as the petitioner has interpreted. While categorising the type of constructions against the heading Priority-I, the structures, which were not permitted to be put up on the reclaimed land in question, are like defence installations, industries, Public Utilities like hospitals, electricity installations, water supply, telephone exchanges, aerodromes, railway stations, commercial centres, etc. The type of constructions, that has been made over the said reclaimed area in any way do not come or fall within the categories, as has been outlined against the priority No.1, as reflected above. So while visualising the direction of this Hon'ble Tribunal regarding the recommendation of the Joint Committee as per the NDMA guidelines, the alleged constructions in no way can be said to be permanent constructions. It is most humbly submitted that the Judgment, passed by this Hon'ble Tribunal, should not have understood with such a narrow sense to include the type of constructions like temporary enclosures / fencing, rather the petitioner should have approached this Hon'ble Tribunal with positive approach to make the Judgment / Order executable at the earliest and in the best possible way. Hence, the grievance as has been raised by the petitioner does not carry any substance and merit. A copy of photograph showing the enclosure named as Cuttack-in-Cuttack, showing the Trees of local species therein is filed as ANNEXURE-G/5.

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22. That, since SCB Medical College is being built with AIIMS plus standard and the construction work is going on and there being no adequate space inside the hospital premises to get the construction materials stacked and to accommodate the patients and their attendants and their vehicles in day hours, CMC had made temporary arrangements for parking of vehicles of patients and their attendants. Besides, in order to ensure protection from theft, watch and ward measures are provided without any permanent constructions. All such activities are temporary in nature and only to facilitate the construction of AIIMS Plus Standard Medical at SCB Medical College Campus, Cuttack.

In this context, it is most respectfully submitted that the SCB Medical College is being renovated as a Hospital of AIIMS Plus standard and when the construction works were going on as reflected above, the vehicles carrying patients to the hospital, vehicles of the attendants of the patients, vehicles of the Doctors, Staff Members, Mobile Van, Ambulance etc., are facing serious parking problems, at present, in view of inadequate parking space / accommodation, when such a massive construction is underway. It is further respectfully submitted that for smooth movement of emergency vehicles inside the hospital campus and the movement of general public, patients, staff, attendants etc., the Cuttack Municipal Corporation (CMC) has decided to have a small / limited parking space, which is also temporary in nature, to cater to the need of the general public and more specifically till a permanent parking space

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is identified and created inside the hospital premises. The existing parking space cannot be said to be a parking space for any commercial purpose. Only to keep a number of vehicles, at a compact space, an open parking space has been created by the Cuttack Municipal Corporation. It is humbly submitted that such temporary open parking should not be treated as a commercial hob or establishment. Hence the entire grievance of the petitioner as regards the parking space is thoroughly misconceived.

23. That, so far as the photographs shown in para-10(ix) is concerned, it is submitted that in terms of the final order of this Hon'ble Tribunal passed in OA No.68/2020/EZ, two play grounds have been decided to be constructed over the permitted reclaimed area (  $1/3^{\text{rd}}$  of 392 acres). The picture shown at the early stage of temporary fencing, hence there lies no violation of the order passed by this Hon'ble Tribunal. Some photographs of the construction of the SCB Medical College, Cuttack, parking space and the play grounds with enclosures are filed herewith as ANNEXURE-H/5 series.

24. That in reply to para-11 of the OA it is most respectfully submitted that the applicant is forbidden to come up before this Hon'ble Court raising a presumptive prayer. The presumption of the applicant that the respondents 6 and 7 have got scant regard towards judgment passed by this Hon'ble Tribunal, have got no basis and it is specifically submitted that the opposite parties 6 and 7 are not acting under whims and caprice to violate the order of this Hon'ble

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Tribunal and to cause any environment disorder and also any kind of air and water pollution. Such a motivated stand of the applicant may kindly be repelled.

25. That, it is submitted that two numbers of spurs were constructed by Department of Water Resources in upstream of Mahanadi Barrage prior to reclamation of land in the area, as flood protection measure, to safeguard the right embankment on the City side from scouring and erosion. As regards increased effect of flood in 38 villages on the left side of river, no flood damages have been observed during the recent past. Necessary flood protective works/measures, if any, required in future will be taken up by Department of Water Resources to safeguard the interest of the public after detailed survey and investigation. The applicant without reflecting the exact data has made the aforesaid allegation in order to make out a prima-facie case in his favour, which renders the prayers invalid in the eye of law.

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 Engineer-in-Chief  
 Water Resources  
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To avoid formation of shoals upstream of the barrage in such a wide river, as the river Mahanadi is about 2000 mt in width, with 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 no.1985, letter no.31/12179-HAPT, dated 19.4.1984 and inspection note dated 11.5.1984 of Review panel members), two numbers of high level spurs (known as Spur no.1 and Spur No.2) have been constructed on

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the right bank of the river Mahanadi between Gadagadia Mandir to Jobra workshop, present Maritime Museum) Spur No.2, in the upstream, extends 990 mt into the river from right bank. Top level of spur no.2 is at R.L.24.50 mt against the highest flood level (HFL) of RL. 23.35 mt at the location. Spur No.1 is located 1050 m downstream of the spur no.2. Due to the construction of two spurs in the year 1985-1986, the flow on the right bank of the river, which would have hugged to the concave right bank and attacked it, has been pushed to the main stream from almost one KM upstream of spur no.2 right upto 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 1928 mt long Mahanadi barrage, thereby improving the co-efficient of discharge for better flood disposal, preventing formation of shoals and also preventing parallel flows to the barrage. Hence, the prayer to reduce the length of the spurs is thoroughly misconceived and against the scientific river training work.

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26. That, at the cost of little repetition, it is submitted that the City Cuttack being a landlocked area between 2 rivers there is scarcity of open land. States premier college & hospital i.e. SCB Medical College and Hospital is currently being redeveloped because of the demand over time. The available open space of the reclaimed land being adjacent to SCB it was decided to stack the excavated soil on temporary basis. Further this soil will be utilised during the progress of work. OBCC's construction partners has requested to stack the

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excavated soil without violating the green spaces, river flow or impacting any climate/environmental issues till July 2025 after which it shall be relocated. A copy of the letter no.574/dated 7.5.2024 is filed as ANNEXURE-I/5.

27. That, as has been averred, the sheet piling work has been done by the water resource department as per the recommendation of IIT Chennai and not the district administration authority in pursuance to the order of Hon'ble High Court , Orissa dated 27.02.2012 passed in WP (C) No. 20283 / 2011(Nationlist Lawyers Forum and Others-Vrs- State of Orissa and Others).The said order has been upheld by the Hon'ble Apex Court as the respective Special Leave Petition i.e. SLP(C) No.16606/2012 has been dismissed by the Hon'ble Apex Court vide order dated 6.1.2015. Basing upon such recommendations Of Department of Ocean Engineering, IIT, Madras sheet pile protection work has been executed to protect the dredged material to safeguard and strengthen the right embankment of river Mahanadi and to avoid erosion of soil. The photographs showing steps from the bank of the river is also an outcome of the aforesaid judgment passed by the Hon'ble Orissa High Court.

It is submitted that the place has been used for religious activities and there were instances of fatality in the existing ghats. As per the recommendations and technical guidance of the Department of Ocean Engineering, IIT, Madras and the recommendations of Technical Committee held on 16.06.2016, on right side of the river in the upstream of Mahanadi Barrage concrete

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steps have been constructed in the area used for religious activities for safety and security of the devotees. At the cost of repetition, no active electric lines are there on the reclaimed land. Pillars are temporarily installed to have power supply for the Balijatra stakeholders. Post Balijatyra, the cables and the transformers have been removed and the temporary pillars are defunct. Since Balijatra is a recurring annual event there are cost implications for installation and un-installation of poles for which the temporary pillars are yet to be removed. It is further submitted that the same can be removed at any time.

28. That, it is most respectfully submitted that the alleged constructions (which are purely temporary nature) has not gone beyond the permitted reclaimed land for different activities. However, the deponent deeply regrets for the inconvenience caused to this Hon'ble Tribunal due to the some temporary arrangements / enclosures made, for the reasons indicated above, which is meant for the public interest and the execution of the order passed by this Hon'ble Tribunal in the best possible manner. The applicant without understanding the true purport of such temporary arrangements has given an illusory picture before this Hon'ble Court to justify his stand saying that the order of this Hon'ble Tribunal has been violated and the respondents have got scant regard towards the same. Despite the justification given above, the deponent begs unqualified apology for the same as no modification /clarification/permission has been

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sought for before execution of the developmental arrangements as stated above.

29. That, all the allegations, averments, contentions and / or statement as contained in the <sup>original application</sup> which may not have been specifically denied or traversed here in but are in essence, contrary to the substance of this affidavit should not be deemed to be admitted by reason of mere non-traverse, but should be treated as expressly denied and the <sup>applicant</sup> should be put to strict proof in respect thereof. I also crave leave of this Hon'ble Court to file a further affidavit or affidavits if the situation so warrants.

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

Identified by  
*J. K. Saha*  
Advocate

*Bhakta Ranjan Mohanty*  
Engineer-in-Chief  
WATER RESOURCES  
Odisha, Bhubaneswar

CERTIFICATE

Certified that due to non-availability of cartridge papers the instant affidavit has been prepared on thick white papers.

CUTTACK  
DT. 08.08.2024

*J. K. Saha*  
(JANMEJAYA KATIKIA)  
ADDL.GOV'T.ADVOCATE

The above named Deponent  
Solemnly affirm on *28.08.2024*  
*B. K. Mohanty*  
being Identified  
by *J. K. Saha (Adv)*



*28.08.2024*  
Surenara Prasad Mishra  
Advocate  
NOTARY, CUTTACK

ANNEXURE = A/5~~22~~

Item No.02

Court No.1

**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



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)



## 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.

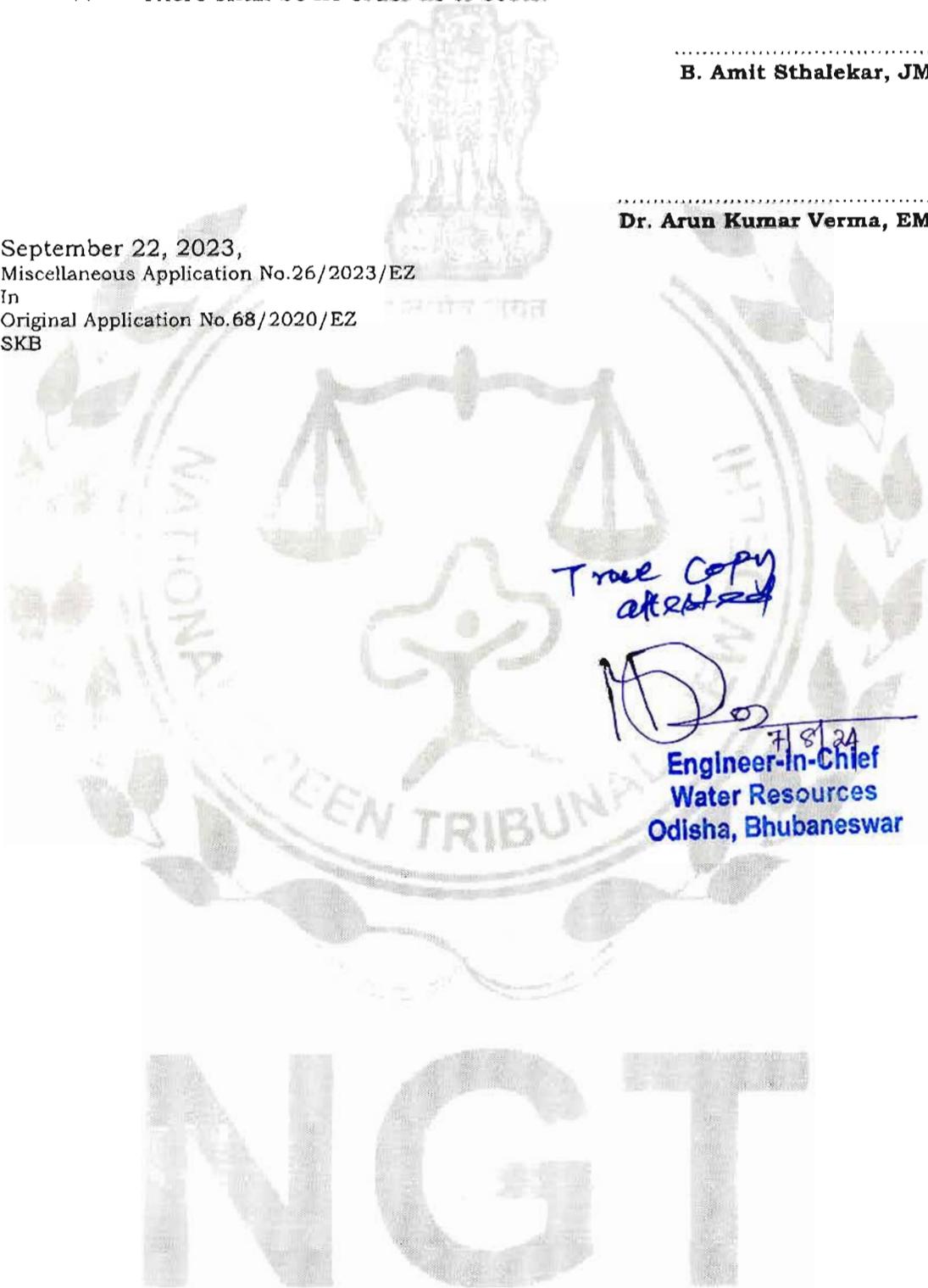
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6. The present Miscellaneous Application No.26/2023/EZ is therefore dismissed with the aforesaid liberty.
7. There shall be no order as to costs.

.....  
**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



ANNEXURE - B/5~~24~~**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**

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*Date of Judgment:* *27.2.2012*

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**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.”

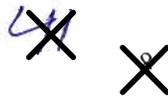
During the course of hearing many questions were raised objecting the construction, for which this Court vide order dated 29.8.2011 directed the State Government, CDA and the CMC to clarify on the following points.

“(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



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 25<sup>th</sup> 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.Baldhar 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 18<sup>th</sup> Jan 2012.

**Report:**

The Committee had five meetings on 3<sup>rd</sup> Dec 11, 13<sup>th</sup> Dec 11, 20<sup>th</sup> Dec 11, 29<sup>th</sup> Dec 11 and 6<sup>th</sup> 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



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 6<sup>th</sup> 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 28<sup>th</sup> 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



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.Irr-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 7<sup>th</sup> 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 24<sup>th</sup> 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. Hearihnch 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 25<sup>th</sup> 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 19<sup>th</sup> Apr 1984 & Inspection note dated 11<sup>th</sup> 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?**



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 38<sup>th</sup> meeting held on 11<sup>th</sup> 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 36 bays (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 IOCl no such arrangement has been made till date. IOCl should make necessary arrangement for the storage requirement for lean period and submit detailed report to the Government.
- IOCl 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. Partanaik)  
 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."

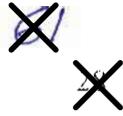
Objections was also raised by the petitioner on the Report of Technical Expert Committee and in paragraph-5 of the said objection it has indicated thus:-

"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.



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 Vallabhbhai 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 patients.

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.

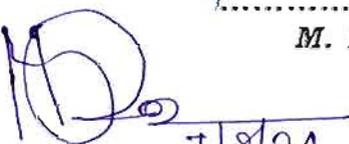
M.M. Das, J. I agree.

*Four copy attached*

.....  
B. P. Das, J.

.....  
M. M. Das, J.

Orissa High Court, Cuttack.  
February , 2012/Arun

  
Engineer-in-Chief  
Water Resources  
Odisha, Bhubaneswar  
7/8/24

ANNEXURE = C/5

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BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA

.....

ORIGINAL APPLICATION NO. 47/2016/EZ

IN THE MATTER OF:

Biswajit Mohanty, Shantikunj,  
Link Road, Cuttack, Distt-Cuttack,  
Odisha-753012.

.....Applicant

V e r s u s

1. State of Odisha,  
Represented by Chief Secretary,  
Government of Odisha, Secretariat  
Building, Bhubaneswar, Odisha-751001.
2. The Secretary,  
Water Resources Department,  
Government of Odisha, Secretariat Building,  
Bhubaneswar, Odisha, 751001.
3. The District Collector At/po-Cuttack,  
Dist-Cuttack, 753002 Odisha.
4. The Vice-Chairman,  
Cuttack Development Authority,  
Arunoday Bhawan, Link Road, Cuttack  
At/po-Cuttack, Dist-Cuttack, Pin-753012  
Odisha.

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5. The Commissioner, Cuttack Municipal Corporation,  
At/Po-Madhupatana Colony, Cuttack,  
Odisha, 753013.

6. The Managing Director,  
Odisha Development Corporation Ltd.  
Panthanivas (Old Block), Lewis Road,  
Bhubaneswar-751014, Odisha.

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Sankar Prasad Pani, Advocate

Mr. Sibojyoti Chakraborty, Advocate

COUNSEL FOR RESPONDENTS:

Mr. Janmejaya Katikia, Addl. Govt. Advocate, Mr. S.P. Mishra,  
Advocate General, Respondents no.1-3

Mr. Biswajit Mahapatra, Advocate, Respondent no.5

Mr. B.K. Pattanaik, Advocate, Respondent no.6

Mr. S.K. Sanganele, Advocate, Mr. B.K. Dash, Advocate, Respondent  
no.7

Other Respondent-None

JUDGMENT

PRESENT:

Hon'ble Mr. Justice S.P. Wangdi, Judicial Member

Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

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Reserved On: 03-10-2017

Pronounced On:16-10-2017

1. Whether the Judgment is allowed to be published on the net? Yes
2. Whether the Judgment is allowed to be published in the NGT Reporter? Yes

**Prof. (Dr) P.C. Mishra (EXPERT MEMBER)**

1. The applicant Mr. Biswajit Mohanty, who claims to be a wildlife conservationist and environmental activist filed this application under Section 18(1) read with section 14 (1) and 15(1) of the National Green Tribunal Act, 2010 challenging the construction activity and reclamation of river bed, encroachment of river embankment, establishment of Labour Camps in river bed of rivers Mahanadi and Kathjodi at Cuttack, Odisha, and organization of Baliyatra and other programmes on Mahanadi river bed at Cuttack thereby affecting the river ecology and disturbing the river flow adversely.

2. The applicant contends that during his visit to Mahanadi river bed on 22<sup>nd</sup> March 2016 he found the river bed and downstream



covered with solid wastes including construction debris and household waste. It is stated that such illegal activities and encroachment are also seen in several locations in river Kathjodi thereby changing the land use of river bed into parking lot for vehicles, laying moorum roads and concrete roads, establishment of eateries, club houses, huts, concrete stage for cultural events etc. resulting in restriction of flow of river water both in rivers Mahanadi and Kathjodi.



3. It is also the contention of the applicant that the contractor of Sewerage Project has constructed permanent stores and huts including a cement mix plant and casting yards in concrete structure in 10-15 acres of river bed thereby obstructing the flow of river. Even the expanded venue of Baliyatra, an annual festival held in Cuttack city for seven days, is on the Mahanadi river bed after reclamation in front of the Gada Gadia Shiva Temple and the huge quantum of solid waste and waste water generated during the seven days festival are discharged to river Mahanadi directly.

4. With such allegations against the Government respondents allowing illegalities such as changing the land use of Mahanadi

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and Kathjodi river bed and affecting the river flow, the applicant made the following prayers for consideration of the Tribunal:-

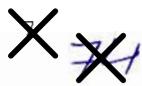
1. Eviction of unauthorized dwellers and demolition and removal of constructions from the river bed and river bank,
2. Demarcation of the river boundary on both sides of Mahanadi and Kathjodi (tributary of Mahanadi that originates at Cuttack city) for the stretch flowing through Cuttack Municipal Corporation area to be done jointly by the Revenue/Water Resources department,
3. Excavation of dumped debris and wastes from the river beds to restore its original topography at all places pointed out in the petition,
4. Direction to the District Collector of Cuttack and Water Resources department to file jointly certified toposheet maps of river Mahanadi and Kathjodi which pass through CMC area,
5. Direction to the District Collector of Cuttack and Water Resources department to file jointly certified Revenue maps (as per latest settlement) of river Mahanadi and Kathjodi which pass through CMC area,
6. Detailed GPS based survey to be conducted by Revenue/Water Resources Department staff to identify encroachments/reclamation of river bed and river bank,
7. Direction to remove contractor sheds, machinery and housing for workers/staff from the river bed of Mahanadi,
8. Direction to demolish boat jetty and restaurants and other permanent structures built by OTDC for river cruise tourism project. At best floating jetties of non-permanent nature can be put up on the river bank for tourism purpose. No restaurant can be built on the river bed,
9. Excavation of dumped debris and filling material on the river bed in front of Sishu Bhavan and approach road of the Cuttack-BBSR Trishulia bridge in order to restore the river bed to its original layout,
10. Restrictions on use of the river bed for Balijatra or similar festivals/gatherings/fairs to be considered. If at all permitted then no permanent structure can be erected,
11. All electric power lines now laid inside the river bed (except to IOCL pumping station as per approvals) should be disconnected. The steel



- poles and pylons need to be removed (except the EHT towers which enable power lines to cross the river),
12. All parks built on reclaimed river bed need to be removed and restore the mean flow level of the river. Parks may come up on the opposite side of the embankment if space permitting,
  13. River bed cannot be used for parking of any vehicles or use by motor driving schools for teaching driving to learners.”

5. After hearing the applicant Respondents were directed to file their responses to the allegations and further, considering the issues involved and after perusing the photographs and Google earth satellite images of Mahanadi river area of 2002 and 2016 available on record by the applicant, the respondent no.5, the Commissioner of Cuttack Municipal Corporation was directed not to dump debris and waste on the river beds of Mahanadi and Kathjodi and encroach thereupon until further order. The District Collector of Cuttack, the respondent no.3 was directed to ensure compliance of our order.

6. The Respondent No.6, M/s Odisha Tourism Development Corporation Ltd. (OTDC in short) in their counter affidavit would state that Boating complex, a scheme founded by Union Ministry of Tourism of Govt. of India, was executed by OTDC and that Boating complex does not affect the river's ecology or flow of river Mahanadi. However, the said complex has been closed as the



Government has cancelled the agreement of the service provided to i.e. M/s Seashore Tourism Development Company Pvt. Ltd. (in short Seashore Company). Along with the operation of Boating Complex, the user agency, the Seashore Company, obtained permission from OTDC to maintain the Parking Place, waiting space, restaurant in the boating complex at Mahanadi river near Malamatha, Cuttack. However, the operation of boating complex and the restaurant have been stopped since December, 2010.

7. The Commissioner, Cuttack Municipal Corporation (in short CMC), the respondent no.5, in their affidavit-in-opposition would state that in due compliance of the interim order dated 15.07.2016, an Enforcement Team has been constituted by the Collector, Cuttack to prevent dumping of debris and garbage into the river bed of Mahanadi and Kathjodi rivers. They have issued public notification. The said respondent has denied all other allegations with their categorical submission that the CMC has never dumped any debris in the river bed nor converted the same to parking space. During festive period, temporary roads are constructed to facilitate idol immersion in temporary immersion ponds made adjacent to river embankments and the respondent is not responsible in any manner for the alleged reclamation of Kathjodi

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river in front of Cuttack Collectorate Office and the area adjacent to the ring road in front of Belle Vue. It is their admission that the encroachments of the river bed by private persons in form of huts and buildings, dhabas, construction material stores, club houses etc. are being removed by the District Administrator with logistic support provided by the CMC. With regard to the allegation of the applicant on encroachment of river bed by Sewerage Project Contractor, the CMC would state that Odisha Integrated Sanitation Improvement Project (in short OISIP) is being implemented at Cuttack and Bhubaneswar with financial assistance from Japan International Corporation Agency (in short JICA). OISIP is a time bound project with a completion time period of three years and the contractors, M/s Tania-Volts IV & M/s L & T, have temporarily established their site office, Labour camp, storage of construction materials and installation of RMC plant on temporary basis over a patch of "anabadi" (Wasteland) Government Land, not in river bed. The CMC has not granted any permission to them but removed the excavated earth, garbage and debris dumped on river embankment by the contractor in 2015 to keep the river side clean and pollution free.

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8. That CMC would further deny the allegation that tons of solid waste generated during Baliyatra and other festivals/tradefairs held throughout the year are thrown into river Mahanadi and river bed. They would submit that the CMC regularly clear the garbage and waste materials by collecting user's fee from the generators to keep the ground clean and pollution free. There has been no man-made reclamation of river bed and any reclamation noticed today are the outcome of natural process which are used for various public utility services like park, parking lot, site for fairs/festivals etc.

9. An affidavit of objection filed on behalf of the respondents no.2&3, the Secretary Water Resources Department, Govt. of Odisha and the District Collector, Cuttack respectively reveals that in terms of our order dated 15.07.2016, the District Administration in consultation with the State authorities have taken steps to remove illegal construction and eviction of unauthorized dwellers from the river bed. On the allegation of accumulation of sand and construction materials on the river bed of Kathjodi, they would submit that during the construction work of a new bridge over Kathjodi connecting Bhubaneswar and Cuttack, there may be some accumulation at some places for a temporary period which cannot

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be treated as illegal and unauthorized. Similarly, there has been the necessity of an approach road in river Kathjodi connecting the newly constructed bridge with the embankment (ring road). For the newly constructed approach road, stone packing and widening was essentially required in order to avoid future traffic congestion for which such construction cannot be treated as illegal encroachment. So far as the expanded site being used for Baliyatra festival is concerned, it is their submission that little portion of vacant land in between the water stream and the embankment is being used for the limited purpose of holding the festival for seven days in a year.

10. On 31<sup>st</sup> October, 2016, Ld. Counsel Mr. S.P. Pani, appearing on behalf of the applicant, would submit on mentioning that despite a restraining order passed by the bench, the State Respondents No. 1-3 have commenced the allotment of sites for putting stalls for Baliyatra Festival on the Mahanadi riverbeds. Considering the submission of the applicant we issue notice to the Govt. respondents to show cause as to why coercive orders be not passed for violating our order dt. 15.07.2016. We also advised them to avoid allotting sites on the riverbed if the information furnished by the Id. counsel. Mr. Pani is correct. On 4<sup>th</sup> November, 2016, Mr. Janmenjay Katikia, Ld. Additional Govt. Advocate for

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Respondent no.2 and 3, would submit on mentioning that stalls are being setup not on the riverbed but on alluvial soil. He also filed an affidavit of show-cause on 04.11.2016. Considering such submission by the ld. counsel, we granted them liberty to go ahead with such allotments.

11. After the Baliyatra Festival, the Ld. Counsel for the Applicant would submit on affidavit that according to the Toposheet No. F 45T15 of Survey of India of the Union Government (Annexed with the affidavit) published in 2011, the Baliyatra held in Talapadia ground of Cuttack City is on riverbed of Mahanadi. He would further submit that as per the Google Earth satellite images downloaded on dt. 04.06.2002 and dt. 24.01.2016, the Baliyatra held in Talpadia ground is on the riverbed and lies clearly within the embankment area of Mahanadi river, hence on the riverbed. In view of such rival submissions, we deemed it proper to appoint an expert on water resources as Court Commissioner to assist the Tribunal in deciding the matter. Therefore, we appointed Er. Sudhakar Patri, Retd. Chief Engineer of Water Resources Department of Govt. of Odisha, to inspect the area in question at Cuttack and submit a report answering to the following questions in our order dated 27.01.2017:-

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- a) "Whether the Balijatra festival was organized on the Mahanadi river bed;
- b) Whether the stalls were permitted to be put up on the Mahanadi river bed;
- c) Whether putting up stalls on the river bed and other activities held during the festival has impacted the water flow or is likely to impact flow of water in river Mahanadi;
- d) Whether the above activities have any other impact on the environment of the river;
- e) Whether such event should be allowed in the same place in future considering the sensitivity of the river eco-system as well as the river bed;"

12. Mr. Pani, the Ld. Counsel appearing on behalf of the applicant filed an additional affidavit on 01.12.2016 annexing few photographs alleging fresh dumping of debris, soil and the stone found on the river bed during the visit of his client to Jobra and Mangalabag areas of Cuttack City on 25.11.2016 despite prohibitory order of 15<sup>th</sup> July, 2016, and prayed for an appropriate order from the bench. He has also filed a counter affidavit to the reply of respondent no.2 & 3 as well as rejoinder to counter affidavit filed by the respondent no.5 & 6 wherein the applicant has rejected the contention of the Govt. respondents that they are not responsible for alleged encroachments. He would further submit that they have no right to use such river bed for parks, festivals etc., even if it has been reclaimed naturally.



13. The Court Commissioner filed his report on 3<sup>rd</sup> March, 2017 and Registry was directed to make the copy of the report available to the applicant and all the respondents to file their responses. Mr. Pani, Ld. Advocate for the applicant filed an objection to the report of the Court Commissioner. For a better appreciation of the fact we reproduce the report of the Court Commissioner which reads as under:

**“REPORT OF COURT COMMISSIONER, APPOINTED BY HONOURABLE NATIONAL GREEN TRIBUNAL, EASTERN ZONE BENCH, KOLKATA IN O.A. No. 47/2016/EZ (Biswajit Mohanty Vrs. State of Odisha & Ors)**

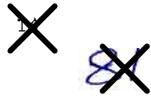
**Preamble:**

Honourable Green Tribunal, Eastern Bench, Kolkata, vide their order dated 27<sup>th</sup> January, 2017 in O.A. case No. 47/2016/EZ (Biswajit Mohanty Vrs. State of Odisha and others), appointed Sri Sudhakar Patri, Retired Chief Engineer of Water Resources Department, Govt. of Odisha, as Court Commissioner to examine the affidavit filed by Respondent no.3 in the above case.

Honourable Court stipulated five point terms of reference on which this is to be verified on inspection of area in question at Cuttack and report to be submitted within one month.

**Report:**

The Court Commissioner inspected area at Cuttack City on 20<sup>th</sup> Feb 2017 on prior intimation to the parties. The applicant, Sri Biswajit Mohanty, respondents and their representatives and other citizen groups, as listed below, were present during the inspection/survey and provided documents as considered necessary by them.



1. Sri Biswajit Mohanty. -Applicant.
2. Sri Prasanta Kumar Das, E.E. Mahanadi South Divn No.1- for respondent no.2.
3. Sri Nirmal Chandra Mishra, I.A.S., Collector, Cuttack-Respondent no.3
4. Sri Raghuram Ayar, ADM, Cuttack-with respondent no.3.
5. Sanjibita Ray, OAS, Tahasildar, Cuttack Sadar-with respondent no.3.
6. Sri Nirmal Chandra Mishra, I.A.S, Vice Chairman, C.D.A. Cuttack-Respondent no.4.
7. Sri Gyan Ranjan Das, Commissioner, CMC, Cuttack-Respondent no.5.
8. Sri Gouri Shankar Bhuyan; Planning Member, CMC, Cuttack-with Respondent no.5.
9. Sri Umakanta Gadanaik, City Engineer, CMC, Cuttack-with Respondent no.5.
10. Dr. P.K. Pradhan, DMO, CMC, Cuttack-with Respondent no.5.
11. Sri B.K. Pradhan, G.M, O.T.D. Corporation, Odisha-for respondent no.6.
12. Janmejaya Katakia, Addl. Govt. Advocate, Orissa High Court, Counsel for respondents no.2&3.
13. Mr. Bijaya Das, Advocate Orissa High Court-working President Peace Committee, Cuttack City.
14. Mr. Debendra Sahu, Mr. Bhikari Das, Mr. Kedar Behera and Mr. Depyan Patnaik-Members and Secretary of Cuttack City Puja Committee.

The list of documents, notes received and reviewed by the Commission is enclosed as Annexure-I.

#### History of the Case:

In original application dated 07.04.2016 in Case O.A. No. 47/2016 before Green Tribunal, Kolkata Bench, the applicant has challenged the construction activity and reclamation of river bed, labour camps in river bed encroaching the embankment, organizing Baliyatra and other fairs and programmes on Mahanadi river bed and other activities that is said to adversely affects the river ecology and disturbs river flow.

The Honourable Tribunal, in its orders dated 15.07.2016, had directed the respondents not to dump debris and waste on the river beds of Mahanadi and Kathjodi and encroach thereupon until further orders.

In further orders dated 31.10.2016, the Honourable Tribunal specified that "having regard to the fact that Bali-Yatra festival is an annual affair in the State, the State respondents may consider avoiding

allotting sites on river bed if the information furnished by Mr. Pani is correct."

On 04.11.2017, Mr. Janmejaya Katikia, Ld. Additional Govt. Advocate, on behalf of respondent no.2&3, submitted before the Honourable Tribunal that "Stalls are not being set up on the river bed but on alluvial soil". On the above submission, the Honourable Tribunal ordered that, "If that is the case, we do not see any reason as to why the State Respondents should be concerned. They are at liberty to go ahead with such allotments if the submissions of Mr. Katikiya is correct."

Additional affidavits were filed by the applicant on 11.11.2016 and 01.12.2016. A composite rejoinder has been filed by the applicant on 11<sup>th</sup> January, 2017, stating that Balijatra festival was held on river bed of river Mahanadi, though this has been denied by the State Respondents.

Considering the above, Honourable Tribunal in their order dated 27<sup>th</sup> January, 2017, appointed Mr. Sudhakar Patra, Retd. Chief Engineer, Water Resources Department, Govt. of Odisha, as Court Commissioner with direction for inspection and verification before instituting further proceedings on the matter.

The Court Commissioner examined the different documents available, heard the applicant, representatives from State of Odisha (the respondents no. 2,3,4,5&6) and considered the views offered by them. After the inspection/survey of area in question and considering all the above, the Court Commissioner has concluded with following terms of reference wise opinion.

**Views on different stipulated terms of references-**

**a) Whether the Balijatra festival was organised on the river bed?**

Balijatra festival, an age old trade and cultural fair and historical event as well, is being organised by the District Administration of Cuttack for about seven days, starting from Kartika Purnima day, every year. This is being celebrated on the space called "Balijatra field" (also called Kali Mandira) between Barabati Stadium and Gadagadia temple



on bank of river Mahanadi. Considering the increase in population of city, growth in demand of the sellers and buyers at the festival, since nearly 20 years the venue area of Balijatra is being extended to the silted-up alluvium space on north side of river embankment up to around 50m away from the flowing channel of Mahanadi. This is being known as extended Balijatra field. This year also Dalijatra festival was organised on the Balijatra Field and extended field on alluvium deposit north of flood embankment. Location of the Balijatra field (both original and extended) is shown in the map enclosed as Drg No.1,2&3.

River Mahanadi is about 2000m in width at Mahanadi Barrage site and the barrage was designed with looseness factor of 3.25, with total length of 1928m. Though the length of barrage could have been reduced substantially, considering its possible 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 a wide river with 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 No. 1985, letter no.31/12179-HAPT dated 19<sup>th</sup> Apr. 1984 & Inspection Note dated 11<sup>th</sup> May 1984 of Review Panel Members), two numbers of high level spurs (known as Spur No.1 and Spur No.2) have been constructed on the right bank of river Mahanadi between Gadagadia Mandir to Jobra workshop. Spur no.2, in the upstream, extends 990m into the river from the right bank. Top level of Spur No.2 is at R.L.24.50m against highest flood level (HFL) of RL.23.35m at the location. Spur no.1 is located 1050m downstream of the Spur No.2. Due to construction of the two spurs in the year 1985-86, the flow on right flank of the river, which would have otherwise hugged to the concave right bank and attacked it, has been pushed to the main stream from almost 1km 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, thereby improving the co-efficient of discharge for better flood disposal, preventing formation of shoals and also preventing parallel flow close to the barrage. It has been observed that

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the above river training works with construction of two spurs have performed very successfully. The river flow has been diverted away from the old right bank to beyond the end of the spurs making flow perpendicular to the barrage axis and the area up-stream of spur no.2 up-to Gadagadia temple and between the spurs have been filled up with alluvium, specifically, close to altered shore line. It is reported that during high floods in 1982 and 2008, flood flow did not overtop the Spur No 2. It may be mentioned that 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.

Extended Balijatra field is on the alluvium deposit formed due to above river training works constructed since 1985-86. Presently is flow of river in this portion, though as per revenue record the land is still classified as 'Nadi'(river).

The location of both Balijatra field and extended Balijatra field, the location of the two spurs are shown in abstracts from the Google map/Topo map enclosed as Drg.no.1, 2 & 3. Present status of extended Balijatra field is indicative on Photograph no.1 attached herewith.

It may be mentioned that the area of extended Balijatra field (New Balijatra Padia) has been classified as "Recreational Use Zone" in the Comprehensive Development Plan of Cuttack Development Plan Area, approved by Government of Odisha, vide Housing and Urban Development Department No. T.P. Dev-57/2012-12444 dated 1<sup>st</sup> May 2012 under section 11 of O.D.A. Act, 1982 and published in Odisha Gazette dated 7<sup>th</sup> July, 2012. In para 10.1 of the Comprehensive Plan, it is planned for augmentation and development of Balijatra Cultural Festival ground at Cuttack, with infrastructural development for round the year activities. (Ref-Annexure-I(b)).

- b) Whether the stalls were permitted to be put upon the Mahanadi river bed?

Stalls were permitted to be put on both original Balijatra field and extended Balijatra field on the alluvium deposit on river side of the existing embankment close to Gadagadia temple. This may be mentioned that there is flow of river in the said area

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- c) Whether putting up stalls on the river bed and other activities held during the festival has impacted the water flow or is likely to impact flow of water in river Mahanadi?

As reported in para (a) above, there is no flow of river in the area where Balijatra festival was held. Hence putting up stalls and other activity has not impacted the river flow or likely to impact flow of water of river Mahanadi.

- d) Whether the above activities have any other impact on the environment of river?

The above activities, extending for 7 to 10 days in a year, will not have any other impact on the environment of the river, subject to taking proper action for cleanliness and sanitation during the Balijatra festival and disposal of wastes, debris collected from the area, away from the site at designated location. In the compliance report (vide Annexure-I.c) handed over to the Commissioner during site visit, Cuttack Municipality Corporation has listed out the different actions taken for maintaining the sanitation and disposal of wastes during the Balijatra festival.

- e) Whether such event should be allowed in the same place in future considering the sensitivity of river eco-system as well as the river bed?

As explained earlier, due to river training works, like construction of two spurs since 1985-86, the flow of river has progressively been diverted away from the right flood embankment towards central portion and there is no flow on the alluvium deposit area of extended Balijatra field at present. Hence such event can be allowed in the same place in future.

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#### Other Observations:

The Court Commissioner offers following observations on issues concerning maintaining river ecology system of rivers Mahanadi and Kathjodi on both sides of Cuttack City for consideration of the Tribunal.

- i. Though aggradation of Mahanadi river arm after bifurcation of river Kathjodi is a natural phenomenon considering the geomorphology of the river, existence of old anicut (with crest level higher than designed level) in front of Mahanadi barrage was a major cause of formation of shoals upstream of the barrage, rising of river bed level, diversion of higher sediment load to river Birupa and in effect increase in flood level. It is reported that action has been taken by Government of Odisha for dismantling the same up-to designed level. However, it should be ensured that the debris from dismantling is removed from front of the barrage.
- ii. Operation of the gates of Mahanadi barrage should be made aiming removal of shoals as far as possible. On development of tail water, the barrage bays in different location should kept opened during flood flow.
- iii. As reported earlier, construction of the two numbers of spurs had progressively diverted the flow of river away from the right bank to the desired location beyond the end points of the spurs. This has caused alluvium deposit upstream of Spur No.2, along the newly formed shore line and partial filling between the spurs. The old flow channel close to right bank between the spurs and downstream remains unutilised and has become a source of weed and mosquito growth affecting the health of the inhabitants nearby. People of the locality trying to encroach the channel and dumping all sorts of wastes and debris. Government may consider shifting of flood embankment to the new bank by side of the diverted flow channel and filling up of the area between the two embankments with sand/alluvium pumped from dredging of shoals in the river bed. The area can be utilised in planned manner for development of the city in accordance with the comprehensive development plan for Cuttack city."

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**ANNEXURE-I**

List of Documents received from Applicant and different authorities during site visit of Court Commissioner

- (a)- Submission in relation to site inspection- from Sri Biswajit Mohanty, Applicant.
- (b)- Copy Odisha Gazette notice dated 7th July 2012, Order No.12444 dated 1st May 2012 and abstract from Comprehensive Development Plan for Cuttack Development Plan area (CDPA)- received from Collector, Cuttack, Respondent No.3.
- (c)- Compliance Report on behalf of Cuttack Municipal Corporation- from Commissioner, CMC, Cuttack, Respondent No.5.

**List of Figures-**

- Drg.No.1- Abstract from Topo Sheet No.F-45T-15, year 2011, indicating location of the Balijatra fields, constructed spurs etc.
- Drg.No.2- Abstracts from the Google map- showing Location of Balijatra field and constructed spurs no.2.
- Drg.No.3- Abstracts from the Google map- showing Location of Balijatra field, constructed spurs no. 1 & 2 and Mahanadi barrage etc.

**List of Photographs-**

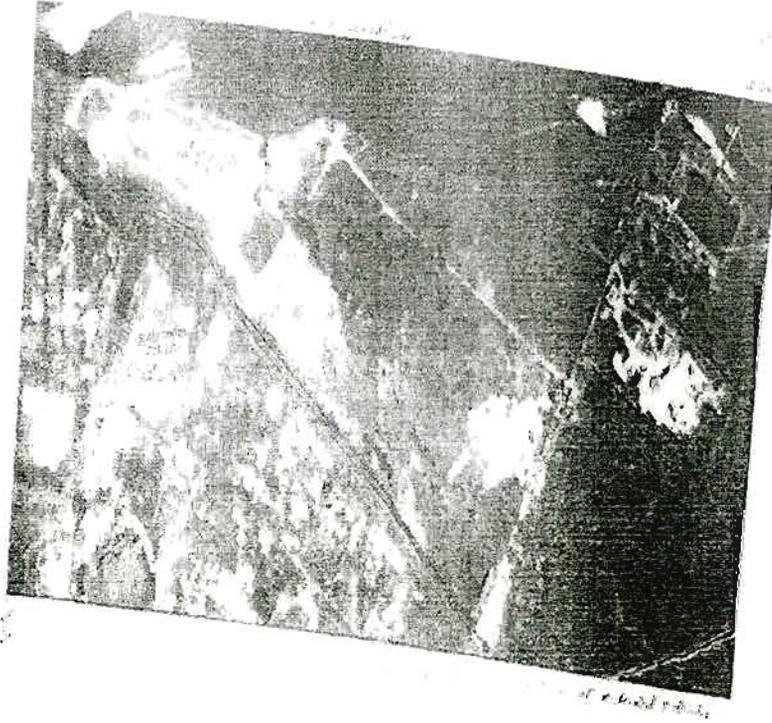
- Ph.No.1- Present status of extended Balijatra field

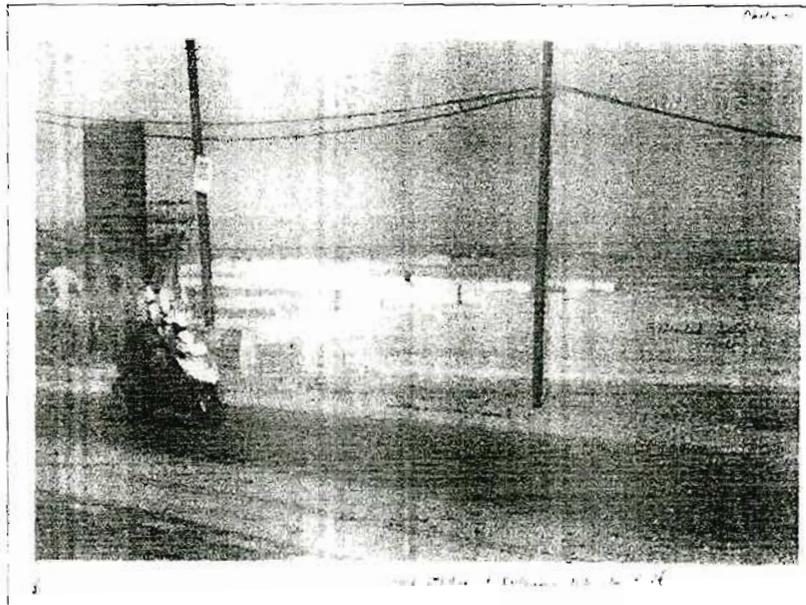
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14. As the Baliyatra festival of the current year falls during 1<sup>st</sup> week of November, 2017, in order to avoid any apprehension and uncertainty, we allowed the Baliyatra festival to be held in the same location as was held last year ensuring due compliance of all pollution norms and suggestions of the Court Commissioner.

15. The objections raised by the applicant on the Court Commissioner's report are broadly as follows:

- (i) "The new site in front of the Gadagadia Shiva Temple has been illegally reclaimed river bed by dumping debris, building waste and silt excavated from the Barbati Moat.
- (ii) During the monsoon months from June to September, the river flows over the area used as new site for Baliyatra.



- (iii) The status of land (of new site) as per revenue record is still classified as 'nadi' (river).
- (iv) As per the topo sheet published by the Survey of India the area is within two embankments of river Mahanadi which squarely falls under the definition of 'river bed'
- (v) That the classification of the area as "Recreational Use Zone" by the Housing and Urban Development Department under the ODA Act, 1982 is illegal.
- (vi) The report is silent on the impact of huge gathering of 50 lakhs people on the river bed etc."

16. We have heard the parties, perused the pleadings and replies of respondent no.7 to the objection of the applicant to the Court Commissioner's report and written note of arguments filed by respondent no. 1-3 and 5. The allegations of the applicant can be broadly discussed under the following two major heads:

- (i) "Illegal encroachment of Mahanadi and Kathjodi river beds by Government Respondents as well as private persons in the form of dumping solid wastes, construction debris, temporary road construction and construction of eateries, huts, buildings and boating complex etc.
- (ii) Organization of annual festival Baliyatra in Mahanadi river bed affecting the riverian ecology including pollution of Mahanadi river."

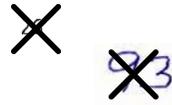
17. Illegal Encroachment of Mahanadi and Kathjodi river beds.

In due compliance of the interim order dated 15.07.2016 passed by the Tribunal the Commissioner, CMC, issued a general notice for information of all the owners and drivers of the tractor engaged by CMC prohibiting dumping of garbage, debris, solid

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wastes or construction wastes generated inside the city, into river bed of Mahanadi and Kathjodi or on the river embankments and to dispose these wastes only at the sites specified for that purpose. They were further informed that the tractors or vehicles found guilty of violating the aforesaid direction shall be penalized in accordance with law. The letter dated 27.08.2016, addressed to the Collector, Cuttack by the Commissioner, CMC, reveals that illegal dumping of wastes on river bed/patha of Mahanadi and Kathjodi was being done by JICA and others and there were several correspondences with District Administration, DCP of Cuttack, Executive Engineer of Mahanadi Society and JICA authorities to prevent such illegal dumping and take enforcement measures and to action taken against agencies/persons. In order to check unauthorized dumping squads have been deployed. CMC has also identified additional sites where debris/construction materials can be deposited to fill up the low-laying areas. The commissioner, CMC also requested the Executive Engineer, Mahanadi South Division in letter dated 21.07.2016 to draw eviction programme to remove encroachments on both sides of ring road from Jobra to Matamatha. These correspondences reveal that there were encroachments and dumping of wastes on river banks/beds of both the rivers and after the court intervention the District



Administration of Cuttack, in consultation with the State authorities has taken steps to remove illegal construction and evict the unauthorised dwellers. Steps have also been taken to ensure no dumping of municipal wastes on river banks/beds. However, the Governments have denied their involvement in illegal encroachment in any matter. The establishment of boating complex, jetty, eateries, approach road to Jetty are all approved project of the Government and have no way affected the river flow. However, the operation of boating complex is now completely stopped. The JICA project is an underground sewerage and drainage system in Cuttack City to prevent waste water logging inside the City and stuff and machineries were accommodated on the river bed temporarily through sheds during the construction phase without affecting the flow of river. Any reclamation made in river bed of Kathjodi was to check flood water during rainy season and to strengthen the river embankment.

Thus, some reclamation has been made by the Govt. to protect the City and people from flood, some naturally reclaimed areas are used for parking lot and other activities. However, other illegal encroachments by people in the form of temporary/permanent constructions and dumping of wastes/debris

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are being removed by the District Administration after the intervention of the Tribunal. It is expected that the District Administration shall continue its effort periodically and regularly to ensure that river banks/beds of Mahanadi and Kathjodi are not used for illegal construction, dumping of waste and construction debris and process of eviction of illegal dwellings is complete within a reasonable period and appropriate action may be taken by the authority on such illegal encroachers.

18. Organisation of Baliyatra festival:

The District Collector, respondent no.3 has elaborately discussed the importance of Baliyatra festival, an important annual festival for the people of Cuttack in particular and Odisha State in general and its historical importance. It may be relevant to reproduce this aspect highlighted in Para 11 which reads as such:

"That the deponent most humbly states that "fairs and festivals" are the part of every human life, it may be in the form of entertainment or celebrating it with fun and frivolity or even in the form of religious activities which has got its religious value and sanctity and is connected with the sentiments of every human being. Like other festivals which are being celebrated in different parts of the State of Orissa in different seasons, Bali Yatra is one of them which marks the ending of Rainy Season and beginning of winter season/harvesting period in as much as it has a long history of its own, which cannot be described in words. However, the deponent would like to elucidate a few lines as to the

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historical importance of Bali Yatra, its origin, impact on the society and the religious value connected with it.

“The people of Odisha, on the day of Kartika Purnima, revive their memory by observing Boita Vandana Utsav as a significant festival. It unfolds a brilliant chapter from the glorious day of Odisha History. The festival is celebrated throughout the Odisha at the hours of full moon, in the month of Kartika. But it is the Bali Yatra at Cuttack, at the belt of Mahanadi that unfolds the most rich and complete memory of the great traders who sailed from Odisha to the distant lands of near East to leave their impact in foreign countries.

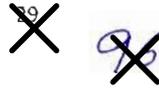
At the same time this annual fair also presents a very significant occasion that reveals the rich tradition and culture of the people of Odisha.

On the holy Purnima day of Kartika, the entire City of Cuttack turns mad and crazy to go to “Gagadia Ghat” for sacred bath in Mahanadi and then make the boats float in the current of river Mahanadi as a religious performance. This is called “Bali Yatra”. From this date ancient Oriya ‘Sadhabas’(Merchants) used to sail their Boitas (Boats) towards distant islands like Java, Sumatra, Bali and Borneo (Indonesia). Such a performance bears the memory of that golden age when maritime trade and business of Odisha was at its pinnacle of glory. Many organizations conduct “Boita Bandana” by arranging meetings, boating in Mahanadi and cultural programmes at Barabati Fort in the open air on the bank of Gada Khai of Barabati.

At “Gadgadia Ghat” a fair is organized for seven days starting from Kartika Purnima. Various magic parties, shops from Cuttack and outside, stationary, furniture works, hotels, sweet shops, display their goods for sale. “Dahibara, Aludum, Thunkapuri and Cheese Curry are the special attractions for the onlookers of this Yatra.

According to “Kartika Purana”, Lord Kartika’s Idol, killing the demon “Tarakasura” is worshiped on erected shrines. About 50 such “medhas” come in procession with fireworks and lighting ‘Mahatap’ for immersion in a temporary pond specially created for the purpose in the Mahanadi.

The mega festival lasts for a week time as it is the biggest trade fair in Asia, for the reasons stated above. It has a business angle besides wild celebration. All the basic necessities of life are available in the festival. The denizens of the city avail the things at their door

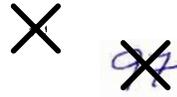


steps. Villagers near and far come with their merchandise and goodies to generate income in the Mela ground. It is the biggest meet of the sellers and buyers at a particular place which has a special attraction for the people. As such, visit to the festival becomes 'must' for the city dwellers. Evening also, people in large number throng into the ground and would like to get lost in the surging crowds

The festival grows phenomenally important making the district administration to make space in the river bed. Presently the upper ground and a part of alluvium are utilized for the purpose. With good connectivity linking the ground with other areas, there is now a hassle free movement. It results in promoting good trade and commerce. The volume of transaction reaches such proportion that organizer invariably shouts for its extension for a day or two, depending on the situation. Besides the above, this occasion also reminds the people of the rich folktales, songs, legends and enrich Odia literature as well as speak of the life, customs and traditions of the medieval Odia People.

Apart from the ancient historical and cultural aspects of life that this fair presents, it also brings to light many other features of the traditions and customs of medieval Odisan people. Therefore, Bali Yatra, apparently becomes a great source of income and earning for the poor artisans who work throughout the year making different kinds and products of arts and handicraft and other house hold articles which are sold in large number in the fair. It is estimated that transactions for crores of rupees are made during a few days in this fair and traders and business men from all over India come to sell their unique and all new kinds of products which attracts the attention of buyers. Therefore, above all, Baliyatra is a famous and unique fair for the different varieties and kinds of games, entertainments and many much wonderful performances and events that are provided to all aged persons for their entertainment.

Besides, Odisha's long maritime trade and culture, and rich heritage is a pointer to the historically, almost the natural history of the erstwhile Kalinga, that used to be the maritime province in not so distant past, now displayed in a capsule in the Maritime Museum at Jobra, and fondly reminisced in the popular Bali Yatra held for a week every year commencing on Rasa Purnima of the auspicious month of Kartika. Hence, the endeavour is to bring out Cuttack in a historical perspective. This reminds of the Romantic Poet, S.T. Colridge's



Ancient Mariner sailing across the seas and returning dried and dejected contrary to Kalinga's Sadhabas returning rich, successful and overjoyed in the holy month of Kartika. Many historical fairs such as Baliyatra at Cuttack, Dhanuyatra at Bargarh, Suliayatra at Patnagarh in the district of Bolangir and the Chhatra Yatra at Bhwanipatna in the district of Kalahandi have enriched the history of Odisha. All such festivals have their own religious and cultural values having been strongly connected with the socio-religious sentiments of the general public. Besides, many National level Festivals i.e. Kumbhamela at Prayag (Allahad) is being celebrated in the bank of Ganges, Kumbhamela at Ujjain in Madhya Pradesh, Kumbhamela at Haridwar are all celebrated in the river bed. Similarly, Baliyatra festival which itself carries its importance in view of socio-religious and economic value, is being celebrated at Cuttack in a befitting manner, from its very foundation in the early 13<sup>th</sup> Century and the Capital of the then Odisha till 1955 as its geographical location did not permit for over population. Many historical monuments are seen in Cuttack City and it still has kept alive its past glory being the birth place of a great son of India, Netaji Subhas Chandra Bose.

Here did not end the history of Baliyatra. People of Kalinga or Utkal were advanced in art and sculpture. They produced excellent filigree and ivory works apart from fine silk and cotton fabrics. Till middle age international trade was conducted mainly through sea routes/sports. Historians believe that even Roman empire had trade relation with Kalinga during that period. Brave young Odia boatmen fondly known as Sadhab puas or sons of Sadhabas sailed across the sea in sail boat to reach distant places like Java, Sumatra, Borneo, Bali besides Ceylon, Burma to make a fortune from international trade.

It is noteworthy that Kalinga emerged as a strong and powerful state during Ramayan (300 BC) and Mahabharat era. These two epics shaped the psychology, theology and spiritualism of the people over and above their higher literary value. But lack of scientific knowledge forced primitive type of living.

The Sadhabas (sea-farers) were courageous who sailed across the sea and reached the distant land of Java, Sumatra, Bali and Borneo with their saleable wares like silken and refined soft linen saris, scented matters, ivory and filigree work of superior artistic quality. The daughters-in-law or Sadhab Bohus gave them warm ceremonial send



off, wished them bon voyage and safe return. That was said to be heroic and glorious period in the lives of the ethnic Odias who also sailed to Burma and Ceylon. They left indelible mark of Odia culture and religion in those places.

Lord Shri Chaitanya Deva walked on the sacred sands also in Gadagadia Ghat en route to Puri in 1509 AD on the auspicious day of Kartika Purnima. On this propitious day the Sadhabas commenced their sea-voyage up to Bali, an island where they left permanent mark of culture, heritage and religious and here in Cuttack we fondly call the fair as Baliyatra.

The month of Kartika is the most sacred month of a year and Kartika Purnima is being celebrated as Voita Vandana Divas since ancient times. The memories of Odisha maritime activities are closely connected with the Kartika Purnima celebrations. The famous Baliyatra of Cuttack starts in this auspicious day. Baliyatra has not established a commercial hub and approach like Puskar Mela of Rajasthan. Therefore, Bali Yatra is a festival of huge gatherings for exchange of fellow feelings, place of trade and commerce, commemorates the ancient maritime activities of Odias/Sadhaba Pua and connects the religious value as the idol of Kartika is being worshiped as the myths and legends depict, which is the sum and substance of Baliyatra.”

19. We are not averse to such festivals but such festival with a gathering of few lakhs of people must not threaten the riverine ecology and contaminate the water body. The Court Commissioner report is very clear on one aspect i.e. the extended area of Baliyatra is in the silted-up alluvium space on northside of river embankment upto around 50m away from the flowing channel of Mahanadi and presently there is no flow of river in this portion. We are also aware that as per revenue record the extended site is still classified as ‘Nadi’ (river) and technically it is the river bed.

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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 organising such historic festival should continue provided the District Administration take all preventive measures to ensure that the festival in no way affects the river ecology and contaminate the water body.

20. Considering the pleadings of the applicant and respondents, report of the Court Commissioner and objection raised thereto by the applicant and rejoinders filed by the parties and based on our observation enumerated in Para 17, 18 & 19 Supra, we hereby issue the following directions for timely compliance by the respective government respondents:-

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.

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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 9<sup>th</sup> 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."

With the above directions, the OA stands disposed of.

No order as to costs.

.....  
Justice S.P. Wangdi, JM  
.....

*True copy  
attested*

Kolkata  
16/10/2017

  
Engineer-in-Chief  
Water Resources  
Odisha, Bhubaneswar

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

~~101~~ANNEXURE- D/5

Item Nos. 02 &amp; 03

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 68/2020/EZ

Pradip Kumar Pattnaik

Versus

Applicant

Union of India &amp; Ors.

WITH

Respondent(s)

M. A No. 08/2020/EZ

In

Original Application No. 47/2016/EZ

Biswajit Mohanty

Versus

Applicant

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

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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<sub>25</sub> flood exceeds its average formation level of 24.5 m, but is below the RL of ring road.

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

<b>Most Likely to be Affected Village List</b>					
1.	Balipur	2.	Pahilabar	3.	Talagar
4.	Baula	5.	Lalitabisakhapur	6.	Chhagan
7.	Madhyakachha	8.	Agrahat	9.	Nuapatana
10.	Sankapur	11.	Jhatia	12.	Shrirangapur
13.	Bhabadeipur	14.	Katkiasahi	15.	Jagannatarapur
16.	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"> <li>Defence installations</li> <li>Industries</li> <li>Public utilities like hospitals, electricity installations, water supply, telephone exchanges, aerodromes, railway stations, commercial centres, etc.</li> </ul>	Buildings should be located in such a fashion that they are above the levels corresponding to a 100- year frequency or the maximum observed flood levels. Similarly they should also be above the levels corresponding to a 50-year rainfall and the likely submersion due to drainage congestion.	Structures under Priority-1 of the NDMA Guidelines is not permitted in the Baliyatra Ground.

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Priority -2	<ul style="list-style-type: none"> <li>• Public institutions</li> <li>• Government offices</li> <li>• Universities</li> <li>• Public libraries</li> <li>• Residential areas</li> </ul>	<p>Buildings should be above a level corresponding to a 25-year flood or a 10-year rainfall.</p> <p>Stipulation that all buildings in vulnerable zones should be constructed on columns or stilts.</p> <p>(a) Plinth levels of all buildings should be 0.6 m above the drainage/flood submerision 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"> <li>• Parks and playgrounds</li> </ul>	<p>Certain areas on either side of the existing and proposed drains (including rural drains) should be declared as green belts where no building or other activity should be allowed.</p> <p>This will not only facilitate improvement of these drains in future for taking discharges on account of growing urbanisation, but will also help in minimising the damage due to drainage congestion whenever rainfall of higher frequency than designed is experienced.</p> <p>These green belts, at suitable locations, can also be developed as parks and gardens.</p>	<p>Priority-3 activities such as developments of Parks, Playgrounds and creation of other facilities (such as Recreational Space, Urban Forests, Pedestrian Paths, Cycle Tracks, Solar Lighting, Rain Water Harvesting, Gardens, Footpaths, Cycle Tracks, Open Air Market, temporary Craft Bazar, Food Stalls, Open Air Auditorium) may be permitted following NDMA Guidelines in the Baliyatra Ground. These facilities should be active during non-monsoon periods so that there is no loss to the life and property.</p>

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

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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:*



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

### **3.4 Consequences anticipated**

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

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

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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.*

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**



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

### **Equity**

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

### **Economy**

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

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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 1/3<sup>rd</sup> of the total area of such reclaimed land.**

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

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

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

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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, 1/3<sup>rd</sup> land of the reclaimed area.

**HOLDING OF BALI YATRA**

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

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

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

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

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

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

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

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

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

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

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

~~HB~~

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

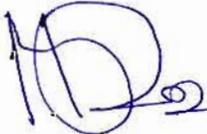
Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Saibal Dasgupta, EM

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

*True copy* Prof. A. Senthil Vel, EM  
*attested*

  
 7/8/24  
**Engineer-in-Chief**  
**Water Resources**  
**Odisha, Bhubaneswar**

ANNEXURE - E/5 - Series

OFFICE OF THE DIVISIONAL FOREST OFFICER & WILDLIFE WARDEN  
CITY FOREST DIVISION, AT- GREEN PARK NURSERY, PO: SAHEEDNAGAR,  
BHUBANESWAR-751007, TEL/FAX:(0674)2548836, E-mail:dfocity@gmail.com

Memo No 3050 /4F-(Misc.) 156/2024  
Dated, BBSR, the 20<sup>th</sup> May'2024

To The Vice Chairman,  
Cuttack Development Authority,  
Cuttack.

Sub: Regarding NGT OA No.147/2023 on reclamation of Hadiapatha  
and Baliyatra Ground.

In inviting reference to the above cited subject, the detail information on Hadiapatha and Baliyatra plantation of City Forest Division is furnished below for favour of your information and necessary action.

Plantation at Hadiapatha, Cuttack

Hadiapatha Plantation adjacent to Baliyatra ground is being created at Mahanadi waterfront area under Cuttack Range, City Forest Division. The Plantation was raised during 2023 by planting 30000 nos. of saplings of various local tree species covering 24 hectare or 60 acres of area. The Spacing between plant to plant and row to row was managed according to norm of 2.0 mtr X 2.0 mtr, 2.5mtr X 2.5mtr & 3mtr X 3mtr respectively. Barbed wire fencing has been over a length of 3440 running mtr to protect the plantation from cattle grazing and other biotic interference. The list of Species planted at Hadiapatha Plantation, Cuttack are as follows:

Sl No	Species Planted	Botanical name	Quantity
1	Bali sisoo	Dalbergia sisoo	2700
2	Kathabadam	Terminalia catappa	2900
3	Jhaun	Casuarina equisetifolia	1200
4	Sirisa	Albizia lebbeck	100
5	Neem	Azadirachta indica	2700
6	Phasi	Anogeissus acuminata	4600
7	Jammu	Syzygium cumini	3200

  
7/8/24  
Engineer-in-Chief  
Water Resources  
Cuttack, Bhubaneswar

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8	Karanja	Pongamia pinnata	1300
9	Mahaneem	Melia azadirachta	1300
10	Mahogany	Swietenia macrophylla	1250
11	Kalgelia	Kalgelia pinnata	50
12	Mundi	Sphaeranthus indicus	2000
13	Gambhari	Gmelina arborea	1400
14	Asan	Terminalia tomentosa	400
15	Bahada	Terminalia bellirica	100
16	Tentuli	Tamarindus Indica	100
17	Arjun	Terminalia arjuna	3500
18	Pestabadam	Sterculia foetida	100
19	Patuli	Pogostemon cablin	50
20	Simili	Bombax ceiba	100
21	Phanaphana	Oroxylum indicum	100
22	Chhatian	Alstonia scholaris	200
23	Polanga	Calophyllum inophyllum	200
24	Kanchan	Bauhinia variegata	50
25	Putranjiba	Putranjiva roxburghii	200
26	Dhaura	Anogeissus latifolia	100
27	Mahula	Madhuca indica	50
28	Mysore queen	Spathodea campanulata	50
	<b>Total</b>		<b>30000</b>

At present the survivability of the plantation is 98%. The average height of plants is 7ft to 8 ft. The plantation cost is funded by the Cuttack Development Authority.

In addition to this we are prepared to raise another 72000 seedlings of local forest species during 2024 planting season under Corporate Social Responsibility scheme of Mahanadi Coal Fields Ltd a subsidiary of Coal India Ltd.

True copy  
attested

M.D.

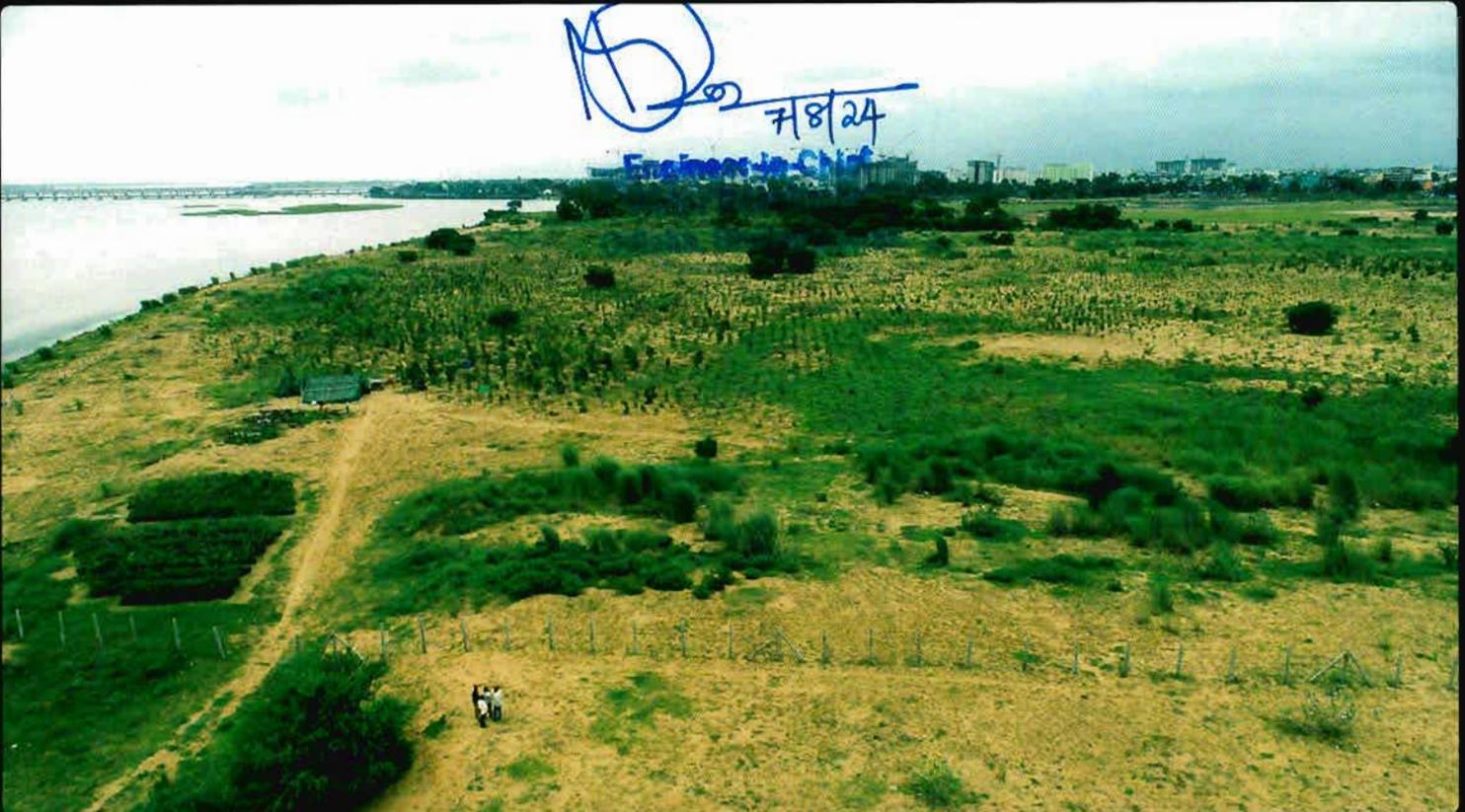
7/8/24  
Engineer-in-Chief  
Water Resources  
Odisha, Bhubaneswar



Divisional Forest Officer

City Forest Division

# PHOTOGRAPH OF PLANTATION AREA WORK



# PHOTOGRAPH OF PLANTATION AREA WORK



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ANNEXURE-F/5



## ODISHA TOURISM DEVELOPMENT CORPORATION LIMITED

(A Govt. of Odisha Undertaking)

Lewis Road, Bhubaneswar - 751014, Odisha, India

Phone : 0674 - 2430764 / 2435618, Fax : 0674 - 2431053

E-mail : otdc@panthanivas.com, Website : www.panthanivas.com

Dr. Lalatendu Sahoo, OAS (S)

CIN : U55101OR1979OTC0008392036

General Manager

Date 13/05/2024

To,

The Chairman,  
Cuttack Development AuthoritySub: Point wise compliance on Original Application no. 147/ 2023/EZ before  
the Hon'ble National Green Tribunal

- Ref.: 1. Committee Meeting held at 4:00 PM on 8 May 2024 at Maritime  
Museum, Cuttack.
2. Letter from DoT to OTDC vide letter No. 4364 dtd. 13.05.2024

Sir,

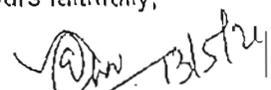
With reference to the subject cited above and meeting held on 8<sup>th</sup> May, 2024 at Maritime Museum, Cuttack, all the allegations have been studied carefully and point wise compliances have been prepared. It is pertinent to mention that the only development of OTDC is Silver City Boat Club, which is separate from the reclaimed area against which allegations have been made. The point wise compliances have been backed with annexures as follows-

1. Annexure-1 : Proof of development initiated at Silver City Boat Club in 2008
2. Annexure-2 : Land sketch of Silver City Boat Club as on 6 May 2024  
(Done by Tahasildar, Cuttack)
3. Annexure-3 : Administrative Approvals of the renovations undertaken for Silver City Boat Club in 2020 and 2021
4. Annexure-4 : Silver City Boat Club Google Earth historical Timelapse video
5. Annexure-5 : Silver City google earth historical images.

The above information has been provided as to support stating that Silver City Boat Club is not a part of the 426 Acres reclaimed land.

For kind information and necessary action.

Yours faithfully,

  
General Manager

Memo No. \_\_\_\_\_ Date \_\_\_\_\_

Copy to the Director, Dept. of Tourism, Govt. of Odisha for information and necessary action please.

General Manager

PANTHANIVAS - OTDC CHAIN OF HOTELS

  
Engineer-in-Chief  
Water Resources  
Odisha, Bhubaneswar  
7/8/24

# PHOTOGRAPH OF CUTTACK IN CUTTACK



# PHOTOGRAPH OF SCB REDEVELOPMENT WORK



# NIGHT TIME OF SCB REDEVELOPMENT WORK



# PHOTOGRAPH OF PARKING AREA WORK



# PHOTOGRAPH OF PLAY GROUND AREA WORK



# PHOTOGRAPH OF PLAY GROUND AREA WORK



obcc

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ANNEXURE = 1/5

OFFICE OF THE GENERAL MANAGER CUTTACK DIVISION  
ODISHA BRIDGE & CONSTRUCTION CORPORATION LIMITED  
(A Government of Odisha Undertaking under Works Department)

Letter No. 57A/WE.

Date- 07 05 24

To

The Superintending Engineer  
Mahanadi South Division-I  
Cantonment Road, Cuttack

Sub: Redevelopment and Expansion of SCB Medical College and Hospital, Cuttack under Phase-I - Regarding dumping of earth and concrete blocks on reclaimed land of Hadiapatha (Mahanadi flood plain) opposite to Acharya Harihar Cancer Institute, Cuttack.

- Ref: 1. Your office letter no.- 4308, Dt-30.04.2024.  
2. Letter No.- 1075, Dt- 06.05.2024 of Task Force Leader and Team Leader, I & T Construction.  
3. Letter No.- 660, Dt-06.05.2024 of Project Director, NCC Ltd.

Sir.

With reference to the subject cited above, it is to intimate that Shri Ram Chandra Bhanja Medical College, Cuttack is a premier undergraduate and post graduate medical institution of Odisha, it was established in 1944 before the Independence. This is one of the pioneer institutes of its kind in India in Medical teaching, training, research and patient care. The institution campus is a 2086 bed healthcare facility spread in multiple blocks which have developed originally over time and need. This has led to a series of buildings and departments set apart from one another and spread over a large area. Over the time, patient load has also increased progressively leading to an acute pressure on its facilities and infrastructure. Hence it was planned for the Redevelopment and Expansion of SCB Medical College and Hospital, Cuttack under Phase-I over a vast area of 67.98 acre of land. The work has been entrusted to O.B.& C.C. Ltd. in which the Clinical Part is being constructed by M/s I&T Construction Ltd. and the Residential Part is being constructed by M/s NCC Ltd.

It is to also state that, the millennium city Cuttack having vast heritage is a total river locked densely populated city. the aforesaid projects are being executed in such a densely populated area due to which there is insufficient space for dumping of huge amount of excavated earth. So as there is scarcity of land to dumping the excavated earth inside the project area itself, it was decided to stack the excavated earth in the open space of adjacent riverbed of Mahanadi (i.e., over the reclaimed land of Hadiapatha, Mahanadi flood plain, opposite to Achary Harihar Cancer Institute, Cuttack) without violating the green spaces, river flow or impacting on any climate or environmental issues, this was done with the prior verbal permission from the Local Administration.

All this stacking of excavated soil is purely on temporary basis, which will be further entirely utilised along with the progress of work. And process of refilling has already is under progress.

Furthermore, it is to mention that M/s I&T Construction Ltd. vide their letter under ref (2) and M/s NCC Ltd. vide their letter under ref (3) (both enclosed) have requested the authority for the permission to keep the excavated earth till July-2025 as the construction

  
Engineer-in-Charge  
Water Resources  
Odisha, Bhubaneswar  
7/8/24

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**Work is under progress** and the same excavated earth shall be reclaimed by them for backfilling of the aforesaid projects.

Therefore, in view of the above facts as stated by M/s L&I Construction Ltd. and M/s NCC Ltd. it is requested that the stacking of the dumped earth at Hadiapatha may be allowed till July-2025.

This is for your information & necessary action.

Incl. as above

Yours faithfully,

7/5/24  
General Manager,  
Cuttack-I Division  
O.B. & C.C. Ltd, Cuttack

Memo No. 575 /Dt 07-05-24

Copy submitted to the Chairman, Cuttack Development Authority, Cuttack for favour of kind information.

7/5/24  
General Manager,  
Cuttack-I Division  
O.B. & C.C. Ltd, Cuttack

Memo No. 576 /Dt 07-05-24

Copy submitted to the Collector & District Magistrate, Cuttack for favour of kind information.

7/5/24  
General Manager,  
Cuttack-I Division  
O.B. & C.C. Ltd, Cuttack

Memo No. 577 /Dt 07-05-24

Copy submitted to the Commissioner, C.M.C, Cuttack for favour of kind information.

7/5/24  
General Manager,  
Cuttack-I Division  
O.B. & C.C. Ltd, Cuttack

7/8/24  
Engineer-in-Chief  
Water Resources  
Odisha, Bhubaneswar

~~1/2~~Memo No. 578 /DI 07 05 24

Copy submitted to the Chief General Manager-II, O.B. & C.C. Ltd. Bhubaneswar for favour of kind information and necessary action.



7/5/24  
General Manager,  
Cuttack-I Division  
O.B. & C.C. Ltd, Cuttack

Memo No. 579 /DI 07 05 24

Copy to the Team Leader, M/s AECOM India Pvt. Ltd, SCBMCH Cuttack for information and necessary action.



7/5/24  
General Manager,  
Cuttack-I Division  
O.B. & C.C. Ltd, Cuttack

Memo No. 580 /DI 07-05-24

Copy to the Project Director, L&T Construction Ltd, SCBMCH Cuttack for information and necessary action.



7/5/24  
General Manager,  
Cuttack-I Division  
O.B. & C.C. Ltd, Cuttack

Memo No. 581 /DI 07-05-24

Copy to the Project Director, NCC Ltd, SCBMCH Cuttack for information and necessary action.



7/5/24  
General Manager,  
Cuttack-I Division  
O.B. & C.C. Ltd, Cuttack



7/8/24  
Engineer-in-Chief  
Water Resources  
Odisha, Bhubaneswar

BEFORE THE NATIONAL GREEN TRIBUNAL, E-Z, BENCH, KOLKATA

O.A. NO: 147 OF 2023

Pradeep kumar pattnaik . . . . . Applicant

-vs-

Union of India & others . . . . . Respondents

Receipt

Received copy of the Comprehensive Counter Affidavit, from the Counsel for the Respondent no-5

Sisir D<sup>m</sup> 8/8/2024  
Advocate for the Applicant