



**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

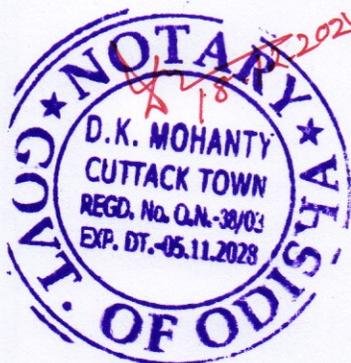
**REPLY OF THE RESPONDENTS NO.2 TO 8
(STATE) TO THE REJOINER AFFIDAVIT DTD.
23.09.2024 FILED BY THE PETITIONER.**

I, Dr. Chandra Sekhar Padhi, aged about 59 years, Son of Late Agasti Prasad Padhi, 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 Respondents No.2 to 4 and 6 to 8 to file the instant affidavit on their behalf, to the rejoinder affidavit filed by the petitioner on 23.09.2024.

I have gone through the records and also understood the contents of the rejoinder affidavit. I am well acquainted with the facts of the case and competent to swear this affidavit for self and on behalf of all the Respondents No.2 to 4 and 6 to 8.

Chandra Sekhar Padhi
Engineer-in-Chief
Water Resources
Odisha, Bhubaneswar



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23.09.2024
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NOTARY, CUTTACK TOWN

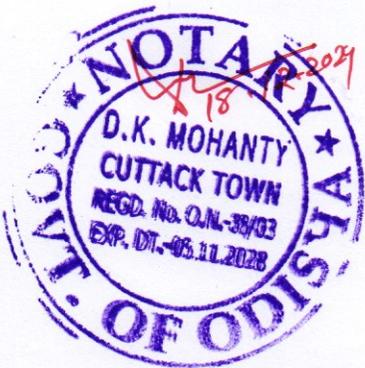
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2. That it is respectfully submitted that pursuant to the kind orders of this Hon'ble Court, a comprehensive counter affidavit has been filed for and on behalf of the State Respondents on 07.08.2024, the contents of which may be treated as part of this affidavit for sake of brevity and convenience and in order to avoid repetition.

3. That, it is respectfully submitted that the assertions and averments made in different paragraphs of the rejoinder affidavit, giving a different colour making the true state of affairs blurred, with an intention to strengthen the applicant's cause of action, are hereby denied. The State Respondents have made the entire stand clear in the comprehensive counter affidavit with all bonafide. No attempt has been made by the State to confuse this Hon'ble Court or to give an unclear picture so far as the actions taken from time to time as per the orders passed by this Hon'ble Court. Everything has been stated, looking at the ground reality and interest of the general public, in the comprehensive counter affidavit. Rather, the applicant without understanding the spirit of the orders passed in different earlier litigations has not only been trying to confuse this Hon'ble Court but also trying to introduce the same aspect which has already been decided, by this Hon'ble Tribunal and have attained finality.

Chandra Sekhar Padhi
 Engineer-in-Chief
 Water Resources
 Odisha, Bhubaneswar

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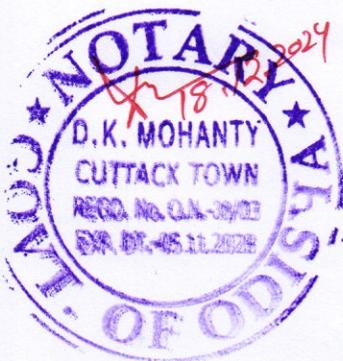
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 NOTARY, CUTTACK TOWN

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4. That, it is respectfully submitted that what the applicant intends to bring to the kind notice of this Hon'ble Court, the same has already been examined and tested by the Hon'ble High Court of Orissa in a Public Interest Litigation vide WPC (PIL) No. 20283 of 2011, filed by the Nationalist Lawyers Forum, the cause of which is similar and identical in nature to that of the present issue and that came to be disposed of vide judgment and order dated 27.2.2012 (Annexure-B/5), 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.

It is pertinent to mention here that apart from different technical questions raised by the petitioner in the aforesaid writ petition, the question of availability of water from the reservoir, which has not been dredged since its inception was raised and the Old Anicut which has remained sub-merged and has not been dismantled reducing the water retaining capacity of the reservoir and that the people of Cuttack City will suffer as they will not get drinking water during the lean season, vis-a-vis, another question was 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,

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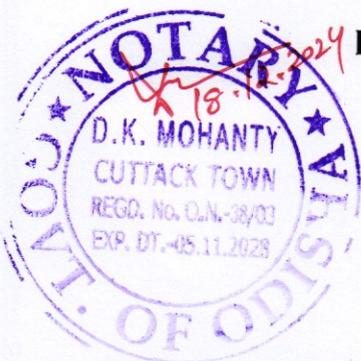
which may endanger the Cuttack City. Accordingly, as revealed from the order passed by the Hon'ble High Court in the above writ petition, on 25.11.2011, certain points were formulated for opinion of experts committee, where the question with regard to dredging of the river from Naraj to Jobra along with the progress of the work, was formulated (para-14 of the said order and page-47 of the comprehensive counter affidavit).

Amongst other points, point no.4 of the report reveals as to whether the reservoir requires a thorough dredging of river from Naraj to Jobra along with the progress of work. Accordingly, the technical experts committee recommended 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.

It is humbly submitted that during the course of hearing of the said writ petition, an affidavit was filed by the Engineer-in-Chief, Water Resources Department, in which para-4 deals with regard to strengthening of existing city protective embankment which suggested that the **usable earth from the dredging activities will be utilised for strengthening of the existing city protective embankment. The unusable earth will be**

Chandra Sekhar Padhi
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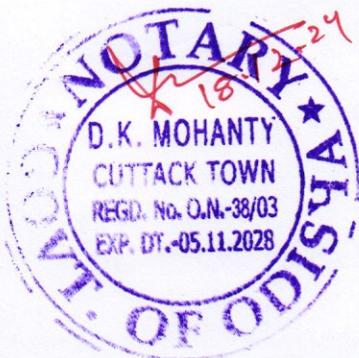
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utilised for filling of low lying areas in the nearby area. Department of Revenue and Disaster Management and Department of Water Resources will demarcate the land and areas where unusable earth can be dumped and suitable stone protection should be made so as to strengthen and restrain those earths in embankment and the periodical maintenance of dredging should be done in consultation with the Department of Water Resources.

Therefore, considering the true state of affairs and after going through the report of the Technical Expert Committee, the Hon'ble High Court was pleased to accept the report as sacrosanct and passed certain orders. So far as dredging is concerned, the Hon'ble Court directed that the dredging can also be done by the OCC with the help and expertise of Water Resource Department at the cost of the IOCL and modalities of the same shall be decided by the officials of the Water Resources Department and IOCL and the Executing Agency and the dredging shall be done at the cost of IOCL as suggested in the report. Regarding the strengthening of the existing City Protective embankment, the Hon'ble Court directed that usable earth from the dredging activities will have to be utilised for strengthening of the existing City Protective

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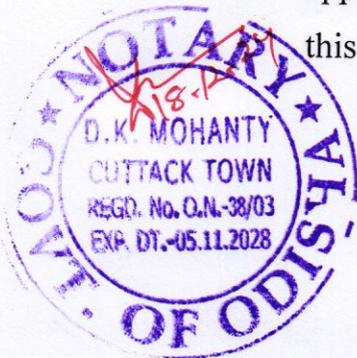
embankment and the unusable earth will be utilised for filling up the low lying areas.

Therefore, in view of the facts and circumstances of the case and as discussed in the order passed by the Hon'ble High Court, there has been no illegal dredging of shoals, as averred by the applicant. On the contrary, water retaining capacity of the reservoir has been increased, as desired by the Hon'ble High Court.

5. That the averments and assertions made in para- 1 to 9 of the rejoinder affidavit filed by the applicant do not call any specific reply in view of the reasons that the said aspects have been discussed and elaborated in the comprehensive counter affidavit filed by the Respondent No.5.

6. That, the allegation made in para-10 of the rejoinder affidavit that the comprehensive counter affidavit filed on 7.8.2024 is a reproduction of the previous counter affidavit filed on 1.3.2024, is not correct and hereby denied. It is incorrect to say that the allegations made against the respondents have not been answered properly. Further, it is also disputed that the respondents have deliberately and cunningly avoided to answer the specific issue/point made against them, as averred in the rejoinder affidavit. It is rather, the applicant has tried his level best to mislead and confuse this Hon'ble Tribunal by way of false and baseless

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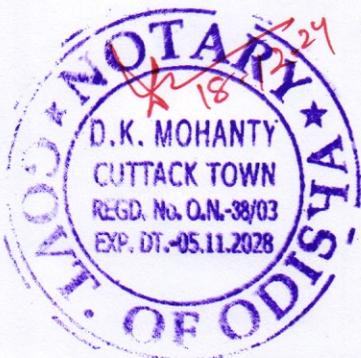
allegations with cock and bull story. The deponent most humbly submits that a detailed counter version in shape of comprehensive counter affidavit has been filed which may kindly be appreciated by this Hon'ble Tribunal.

7. That so far as the allegation made in para-11 of the rejoinder affidavit is concerned, the response of the State Respondents is that the dredging work and the subsequent dumping of slur and shoal have been made as per the direction passed by the Hon'ble High Court of Orissa in WPC No. 20283 of 2011.

8. That though the allegations and averments made in the Original Application relate to the duty, responsibility and redressal of the same to a large extent by the Cuttack Municipal Commissioner and the Cuttack Development Authority, the applicant has not made the said authorities as parties in the present Original Application as well as in OA No.68/2020. Both the proceedings are identical nature having a common question of law and facts involved in both the litigations are also similar. Accordingly the present OA may kindly be dismissed for non-joinder of necessary parties.

9. That so far as the allegations and assertion made in para-12 of the rejoinder affidavit is concerned, it is submitted that the said allegations carry false, frivolous and baseless allegations which is based on imagination

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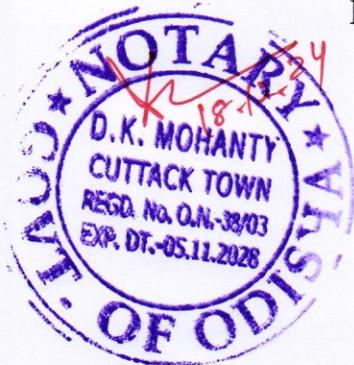
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and do not have any semblance of truth. Similarly, the allegations contained in para-13 of the rejoinder affidavit do not call for any specific reply in view of the fact that the same has been discussed and described in the comprehensive counter affidavit filed by the respondents.

10. That so far as the averments made in para-14 of the rejoinder affidavit is concerned, it is again imaginary on the part of the applicant that the respondents hurriedly started the plantation work which seems to be recent and few. To confuse this Hon'ble Court the applicant has relied upon a letter dated 20.5.2024 (Annexure-E/5) of the DFO, with an illusory explanation. Since the State Respondents have been adhering to the orders passed by this Hon'ble Court from time to time and there being no violation of any orders passed earlier, the allegations and averments made in the rejoinders affidavit have to be rejected in toto and the Original Application on this ground is liable to be dismissed.

11. That it is respectfully submitted that the deponent felt it proper to bring to the kind notice of this Hon'ble Court that earlier the present applicant had approached this Hon'ble Court in OA No.68/2020, which came to be disposed of vide order dated 21.09.2022 (Annexure-D/5). In the said proceeding, the applicant filed MA

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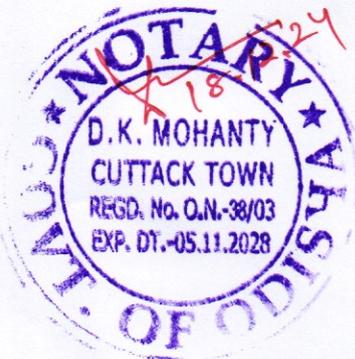
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No.26/2023/EZ (arising out of OA No.68/2020/EZ) and raised the same issues, as under.

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

The aforesaid MA came to be dismissed vide order dated 22.09.2023, with a liberty to the applicant to raise all such issues which he apprehends to be illegal construction or constructions to be of non permanent nature. It is pertinent to mention here that the orders passed by the Hon'ble High Court in a writ petition and in OA No.68/2020 on the selfsame issue, which has got its finality, raising the same with false and baseless allegations is nothing but a clear attempt to subvert the orders passed earlier and to put the government officials into unnecessary and protracted litigation proceedings, which do not warrant any further interference by this Hon'ble Court and as such the prayers sought for in the OA merit no consideration and the same is liable to be dismissed. Since every aspects has been dealt with in

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the comprehensive counter affidavit the deponent feel it proper not to reiterate the same. As averred, there has been no illegal and permanent construction in the river bed.

12. That, all the allegations, averments, contentions and / or statement as contained in the writ petition 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 petitioner should be put to strict proof in respect thereof.

13. That, this deponent also crave leave of this Hon'ble Court to file a further affidavit or affidavits if the situation so warrants.

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

Identified by,

Chandra Sekhar Padhi
Engineer-in-Chief
DEPONENT Resources
Odisha, Bhubaneswar

M. R. Badajena
Advocate
18/12/2024

CERTIFICATE

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

CUTTACK
DT. 18.12.2024

(SANJIB SWAIN)
ADDL.GOV'T. ADVOCATE



I solemnly swear
by... Chandra Sekhar Padhi
being identified by... M. R. Badajena, Adv.
Cuttack, dated 18th Dec 2024
18.12.24

Dipan Kumar Monari
Notary, Cuttack Tr