

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA



O.A No- 147 OF 2023

In the matter of:

Pradip Kumar PattnaikApplicant

Vrs

Union Of India & OrsRespondents

**FURTHER REJOINDER TO THE COMPREHENSIVE
COUNTER FILED BY RESPONDENTS NO 5,10 & 11**

I, Shri Pradip Kumar Pattnaik aged about 66 years, S/O-Late Banabihari Pattnaik, Plot No 1206/C, Sector 6, CDA, Cuttack-753014, Odisha do here by solemnly affirms and state as follows;

1. That I am the applicant of this aforesaid Original Application. I have thoroughly and carefully gone through the contents of the counter affidavits and the further counter affidavit filed by the Respondents No 5, 10 and 11 and understood the same. I am well acquainted to the fact of

DEBENDRA PRASAD RAY
NOTARY, CUTTACK, ODISHA
REGN.No.ON-107/2009

23.9.2024

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the case and swear this affidavit controverting the counters filed by the opposite parties.

2. That, this applicant has filed the above mentioned Original Application praying there in;

- i) *To issue a direction to the District Collector, Cuttack and Tehsildar Cuttack Sadar Res no 7 and 8 respectively to record the entire 426 Acres of land as forest land in ROR and the said land be handed over to forest dept. for further maintenance and development.*
- ii) *To demolish all permanent and temporary construction which has been developed on the river bed and debris so dumped in the said land be removed and departmental officer those who have deliberately make such permanent construction should be penalized.*
- iii) *And no further permanent or temporary construction to be made on the said land.*
- iv) *To remove the iron pillars which have been installed on the river bed and the concrete constructions and moorum(Red stone Powder) which has been spread over the land in gross violation of the order dated 21.09.2022 passed in OA 68 of 2020/EZ by a larger bench of this Hon'ble Tribunal be removed immediately.*

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- v) *Open the old river water channel from Gadgadia ghat upto Jobra Barrage by the side of the embankment by removing the sands to carter the free flow of water during the flood time and to direct the Res No 9 and 10 to take preventive steps for any violations with regard to Air Pollution, Water Pollution, Environment and ecological disorder .*
- vi) *To reduce the length of the spur at Hadia Patha area*
- vii) *To direct the respondents to undertake he plantation on reclaimed area and the river embankment, to restore back the riverine ecology and environment.*
- viii) *To penalize the offenders who have committed the wrongful construction on the land in question in gross violation of the guideline fixed by the Hon'ble Tribunal in their order dated 21.09.2022 passed in OA 68 of 2020/EZ by a larger bench of this Hon'ble Tribunal.*
3. That, it is humbly submitted that in response to the averments made in the original application the Respondent No 5, 10 & 11 have filed their respective counter. After going through the contents of the counter this deponent feels it necessary to controvert the fact and contents of the Respondents for just and proper adjudication of this case.
4. That, the respondent no 10 i.e SEIAA, Odisha has filed its counter on 22.04.2024 along with a report of a environmental scientist Dr Pradipta

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Kumar Nayak, who has visited the site and after thorough inspection of the area of the land in question has taken certain photographs and prepared his report. The observation made in the said report clearly reveals that;

- i) *There was a natural flow of Mahanadi river water closed to ring road of Cuttack city and the entire alleged area was in swampy condition and later filled with sands at Baliyatra Ground area and day by day no water flow and the water channel appeared to be closed due to putting of red morrum in that area. It is made clear from the above observation that the closing of the water channel was manmade and Baliyatra ground has been created by way of filling up sands.*
- ii) *It is also observed in the said report that 138 Acres of land has been covered and utilized by red morrum by the District Administration and very few species are existing there. Further it is stated that cemented steps has been constructed near Gadgadia Ghat by Cuttack Municipal Corporation and a children park has been constructed surrounded by cemented wall with iron sheet barricades and many electric poles with electric connection is exist in the Baliyatra Ground.*
- iii) *That, the report reveals that a SILVER CITY BOAT CLUB is existing near to Baliyatra Ground located in the bank of river*

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Mahanadi connecting with a concrete road from ring road . it is also observed that there exist a cafeteria, multipurpose rooms, water sports through boating, play area, restaurants, food courts etc for paid visitors besides that vehicle parking facilities are available near the left side of the entry gate.

- iv) *The report reveals that right to the Silver City Boat Club gate (East Direction) there is an IOCL office and basically constructed to supply water to Paradip Refinery Limited.*
- v) *It is also observed in the said report that there is LIQUOR BAR AND RESTAURANT and a paid vehicle parking which is located opposite to the Baliyatra Ground and close to ring road.*
- vi) *It further revealed from the said report that some sand dunes has been created and exists at Mahanadi river bank(Jobra barrage side) and may be dumped through sand pumping system. There is also excavation work going on including iron pillar posting at Jobra Barrage site of Baliyatra Ground area.*
- vii) *The 16 no.s of photographs of different angle enclosed to the report indicates that permanent construction with concretization of flooring and wall have been made over the reclaimed land area in question in clear violation to the order dated 21.09.2022 passed in OA 68 of 2020(EZ) by this Hon'ble Tribunal and also the*

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judgement dated 27.02.2012 passed in WP(C) No 20283 of 2011 passed by the Hon'ble High Court of Orissa

viii) *That it is also clearly stated in their affidavit that SEIAA(respondent no 10) has not issued any environmental clearance(EC) for any type of construction and area development work.*

5. That, it is humbly submitted that the Respondent No 11 i.e Orissa Tourism Development Corporation (here in after OTDC) has filed their counter on 24.05.2024 confining its jurisdiction only to the construction of the Boat Club and its peripheral areas and denied all the allegation made against them in the Original Application . In their counter Affidavit OTDC at **Para 4** has denied any permanent construction on the river bed of Mahanadi changing the nature and character of the river bed. OTDC has also denied that they have not created artificial concrete island by creating a cafeteria, food court, liquor bar cum restaurant etc. Such denial by OTDC is a blatant lie and an evil design to mislead this Hon'ble Court by submitting frivolous facts.

It is clear from the counter affidavit of the SEIAA i.e Respondent No 10 that there is exist Cafeteria, food court, liquor bar cum restaurant etc on the bed of the river Mahanadi, this applicant has also affixed clear and visible colored photographs from page 88 to 99 in annexure 4 series of the OA, which proves that a massive permanent concrete constructions have been made on the bed of river Mahanadi by

OTDC in clear violation of the all rules and regulations, orders of the Hon'ble Tribunal. The OTDC has very cunningly and tactfully has avoided the construction part which has been alleged against them by the applicant in the OA so also they have not provided any sorts of photographs and document to prove their averments.

6. That it is further humbly submitted that the OTDC has admitted in their counter that the silver city boat club constructed in the year 2008 over the Plot No 93(part), 94(part), 95(part) admeasuring a area of 2.832 Acres. It is also admitted that by OTDC the said boat club has been constructed on the land along the river Mahanadi which has been existed from the time being immemorial, and also said it is a separate and independent land from the reclaimed land.

OTDC very cunningly avoided to give the land particulars indicating the Khata no, Tehsil, RI circle, Mouza so also the Kisam of the land and also they have not submitted any land records (RoR) in support of their averments. It is a fact that the said Boat Club existing on the mids of the Mahanadi river at distance approx 1.5 KM from the existing embankment of the Mahanadi river. Such construction is totally illegal unauthorized and violative of all the provisions of existing law. The applicant submits the violation of such construction on the following;

- i) It is clear that the land over which the boat club has been constructed is the river bed of Mahanadi. The OTDC has not disclosed from which source this land has been obtained for such construction. The water resource department is the owner and revenue department is the custodian of the river and river bed. The OTDC has not filed any document indicating whether this land has been leased out or alienated to Dept of Tourism by any lawful authority, hence it is presumed that the OTDC forcefully occupied the land and is a trespasser and illegally constructed the Boat club over the said land.
- ii) Further it is made clear by SEIAA(res No 11) in their counter affidavit that it has not issued any environmental clearance(EC) for any type of construction and area development work. To have any sorts of construction over the river bed to obtain the environment clearance (EC) is a mandatory which the OTDC has not obtained.
- iii) That, it is mandatory that any construction within the Cuttack Development Area requires the approval of the authorized authority of CDA failing which any such construction be treated as illegal and without any authority of law. The OTDC has not obtained any approved plan of CDA for such construction on the

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midst of the river bed of the Mahanadi, hence such construction is illegal without any authority of law.

- iv) Further it is submitted that the OTDC has not obtained any fire safety certificate to run restaurant, Club, Bar etc hence the construction is liable to be demolished.
 - v) Further OTDC has not disclosed regarding the Foreign Liquore ON shop license details to run a open bar on the river bed of Mahanadi.
7. That, it is humbly submitted this Hon'ble Tribunal vide their judgment dated 22.09.2022 in OA no 68 of 2020(EZ) at Para no 10 has clearly directed that the authorities of the state to adopt necessary for protection of 38 villages likely to be affected by flood in the periphery of Cuttack. It is surprising that at para 6 of the counter affidavit filed by the OTDC it has been stated that water pressure in 38 villages are disputed and denied as such averments made by the OTDC are not supported by any cogent evidence . Such statement is totally defying of Hon'ble Tribunal Order dated 21.09.2022 the OTDC has undermined the Hon'ble by making such statement.
8. That, OTDC has clearly admitted in the PARA 8 of their counter that they have occupied the reclaimed land and made construction both the permanent and temporary construction of the said land.
9. That the statements made in the Para 9 of the OTDC is seems to be have no knowledge of law to have any sorts construction it requires the

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approval of State Environmental Authority, local development authority and showing Particulars of land recorded in their name. The Construction of Boat club and peripheral construction are made without obtaining any clearance/permission of the appropriate authority.

Hence from the above narration of the fact it is made clear that the OTDC ignoring all the provisions of the law without obtaining any sanction/clearances from the appropriate authority have encroached the river bed and made permanent concrete constructions and utilizing the same for purely commercial purpose with scant regards to the law of the land.

10. That, it is humbly submitted the Respondent No 3,5 & 6 in response to the averments made in the original application filed a counter affidavit on 01.03.2024 on perusal of the same the Hon'ble Tribunal on 24.04.2024 expressed their displeasure as the counter so filed was a frivolous one and permitted the Respondent No 5 to file a detailed counter affidavit. After a lapse of about four months of time the Respondent no 5 filed a further comprehensive counter on 07.08.2024.

The counter filed by respondent no 5 is nothing but the reproduction of the previous counter and the allegation as made against the respondents have not been answered properly and at some stage they have deliberately and cunningly avoided to answer the

specific allegation made against them. The Respondent No 5 has also resorted to falsehood and submitted certain distorted facts and tried to mislead this Hon'ble Court by narrating a cock and bullock story the respondent also tried to mislead this Hon'ble Tribunal by submitting certain facts figures and photographs which are no way related at all to the present case. In total the counter so filed later is an evasive and frivolous counter as the same is tenable neither in law nor in facts hence this deponent carves the leave of this Hon'ble Tribunal in order to bring true facts for just and proper adjudication of this case.

11. That, at Para 4A of the counter the Res no 5 have tried to mislead this Hon'ble Tribunal in as much as bringing the **principle of Res Judicata**, to answer the same it is submitted that the entire reclaimed land of 426 Acres was river bed of the river Mahanadi and previously the land was demarcated as river bed in the RoR. As per the direction made in order dated 27.02.2012 of the Hon'ble Orissa High Court in WP(C) No 20283 of 2011 the Water resource dept. initiated dredging work and dumped slough and sands on the embankment side of the river and thereby an area of 426 Acres of island was created. Such creation of the island was against the order of the Hon'ble High Court. This facts has brought to the notice of this Hon'ble Tribunal in OA No 68 of 2020. This Hon'ble Tribunal vide order dated 21.09.2022 directed that 2/3rd reclaimed land be developed as dense forest and remaining 1/3rd land be developed as park

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and playground without any permanent or temporary construction and without allowing any commercial activities and made it clear that no concretization of any sort be allowed in entire 426 Acres of land . further this Hon'ble Tribunal allowed 34 acres of land to hold Baliyatra with due precaution for maintaining sanitation further this Hon'ble Tribunal directed the are where forest is to developed is to be handed over to the forest dept.

It is humbly submitted that in gross violation of the aforesaid order the Respondent state authority did not hand over the 2/3rd i.e 284 acre land to forest department for plantation but they utilizing the land for construction of hotel, bar, restaurant, park and cafeteria etc with permanent concrete structure and utilize 168 Acres of for the purpose of Baliyatra festival though this Hon'ble tribunal restricted the same to 34 Acres. The prayer made by the applicant in this OA to record the land in the name of Forest Department so that the land can be protected from further encroachment or mis utilization by the sate authorities at their whims and caprices. The issue of principle of Res Judicata as raised is not at all applicable in this case and the respondents trying to mislead this Hon'ble Tribunal by submitting the false and frivolous facts. The applicant fervently pray this Hon'ble Tribunal to direct the Collector and Tehsildar Cuttack (Res No 7 & 8 respectively) to record the land in the

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name of forest department in order to protect the land from further encroachment and misutilization.

12. That, the applicant has prayed to remove the sand and shoals which has been illegally dumped on the pond area of the Jobra barrage which reduces the water retaining capacity of the barrage, the res no 5 trying to confuse this Hon'ble Tribunal taking the advantage of temporary and permanent construction made over the reclaimed land, it is made clear that the Jobra barrage over Mahanadi river is the lifeline of the 80 Lakhs people of five Districts i.e Cuttack, Jagatsinghpur, Kendrapada & part of the Jajpur and Puri of Coastal Odisha. The Jobra barrage supplies water for irrigation and drinking water purpose through five major canals i.e Taladanda, Machgan, Kendrapada, Patamundai, High level and Puri canals to 1 Crores of people of the above five district so also the caters the need of water for industry of those five districts. Unless the water retaining capacity of the barrage is enhanced there will be a major crisis for livelihood of the people of those above districts and people may die out of water. But unfortunately 5 kms long 2 KMs width of the pond area has been dumped with sand and shoals and a big island has been reclaimed, which has been used by the State Govt for Commercial purposes by using concrete . Such reclamation of the artificial island not only created water crisis but also causes ecological imbalances but also environmental hazards.

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Keeping this problem in view the applicant prays before this Hon'ble Tribunal for demolition of those major concrete constructions made on river bed of Mahanadi and remove the sand and shoals dumped over it to make the pond area of the barrage more spacious and deeper by enhancing the water retaining capacity in the interest of the people of Cuttack as well as for 1 Crore other people of neighboring 5 districts.

13. That, the applicant has prayed before this Hon'ble Tribunal for removal of 200 meters of iron wall which affix to river bank but the justification made in Para 4C of the comprehensive affidavit by the state respondent is totally vague and seems to be evasive. The putting the iron wall in the mid of river and creating a separate new island on the river bed may break the embankment at upper level of river if at all any high flood occurs in future. In that event the Cuttack town will be totally washed away. Hence the insolation of iron barricade which is permanent in nature in the midst of river is a permanent threat not only to the Cuttack Town but also to environmental ecology.


The order of the Hon'ble High Court was very clear and cogent as it is only confined to strengthen the river embankment by using dredged sand and shoals but the Hon'ble Orissa High Court has never directed to create a big patch of land of about 2Km width and 5Km long on the river bed preventing the water flow of the river and reducing the

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water retaining capacity of the pond area. The Respondents have defaced and defied the order of Hon'ble High Court of Orissa so also the order of Hon'ble NGT. So far as the Baliyatra is concern the Hon'ble Tribunal directed to utilize 34 Acres of land without creating any permanent and temporary construction and also without affecting the environmental ecology. But practically it is seen that around 175 Acres of land are being utilized for Baliyatra making temporary/permanent construction by spreading moorums (Red stone powder) and permanent installation of more than 500 Nos of electric poles, which environmental disorder as well as ecological imbalances. This 175 Acres of land are utilized only for commercial purposes in Baliyatra, from which Crores of rupees is being earned.

14. That, it is humbly submitted the State Respondents has filed their first counter on 01.03.2024, there was no mention about the undertaking of plantation work by the State but when the Hon'ble Tribunal expressed their displeasure and directed to file a further counter in the order dated 24.04.2024 the Respondents very hurriedly started the plantation work which seems to be very recent and few. And it can very well determine the age of the said plants, photograph of which is affixed in the present comprehensive affidavit filed by the State respondents. It is also admitted by the Respondent that the plantation work has started after 24.04.24 which is very well proved from the letter of DFO, Bhubaneswar of dated

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20.05.2024, which is annexed as annexure E/5 of the comprehensive affidavit filed by the state respondent.

The Hon'ble Tribunal vide their order dated 21.09.2022 at Para 11 of the said order specifically directed, "*area where forest is to be developed may be handed over to the forest department and after demarcation rest of the area be maintained by the concerned local body/flood and irrigation department as may be decided by the Govt of Orissa.*" In the view of the above direction 2/3rd of the reclaimed land i.e 284 Acres of the land ought to be handed over to forest department for development of dense forest. But unfortunately, till now no such land has been handed over to forest department nor any plantation has been raised so far. This is nothing but clear violation of the Hon'ble Tribunal order. The Respondent in their counter has made some certain frivolous and confused averments with an evil design to mislead this Hon'ble Tribunal.

15. That, in contention to the Para 17 it is humbly submitted that any construction over the reclaimed land requires sanction of appropriate authority like SEIAA i.e Respondent no 10 and approval of Respondent no 9 i.e Odisha State Pollution Control Board so also the construction plan requires the approval of Cuttack Development Authority but so far the construction built over reclaimed land of the river bed has not

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approved by the SEIAA, OSPCB, CDA etc hence all the construction are made over the reclaimed land are illegal and liable to be demolished.

16. That, in contention to the Para 19 and 20 of the comprehensive affidavit filed by the respondent it is humbly submitted that there was no OTDC Silver Club existed in the year 2008 but the true fact is that the Silver City Boating Club was constructed and inaugurated on 15th April, 2021 which is being proved by the local news paper and various web news. Extract of which is annexed here in with as **Annexure 1 series**. The respondent clearly misleads the Hon'ble Tribunal by adducing untrue and frivolous facts.

17. That, in contention to the Para 21 it is to be mention here that the "Cuttack in Cuttack" is spreading in 3 acres of land and is surrounded by huge 10 inches pillar walls with fencing which is purely permanent in nature and is strictly prohibited in the said reclaimed land. The fact is that the respondents are utilizing the said land for commercial purpose. It is pertinent to mention here that all the debris and waste from the said construction is being thrown to the river Mahanadi which is drastically affecting the river ecology.

18. That, in contention to the Para 22 it is a admitted fact by the respondent is that certain area of reclaimed land is being used as parking of SCB medical So in this context it is pertinent to mention here that the Cuttack Municipal (CMC) leased out the said land and using that parking as

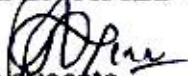
commercial purpose and collecting a certain sum from parked two wheeler and four wheeler, which is pure violation of Hon'ble Tribunal's direction.

19. In view of the above narration of the facts it is clear that the respondent state authorities on gross violation of the order of the Hon'ble Orissa High Court as well as the order of Hon'ble NGT misutilized the reclaimed land for commercial purposes by undertaking permanent and temporary construction, which is creating ecological imbalances as well as environmental disorders which requires the immediate intervention of this Hon'ble Tribunal in order to save the life of the people of Cuttack City and also about one crore people of neighbor districts. And exemplary punishment be awarded to the Sate Respondents to disobeying and defying this Hon'ble Tribunal's Order.

20. That. The deponent reserve the right to adduce more evidence and facts at the time of hearing if so required and if any Para of the Comprehensive affidavit filed by the state respondent has not been specifically denied has presumed to be denied.

21. That, the facts stated above are true to the best of my knowledge and belief.

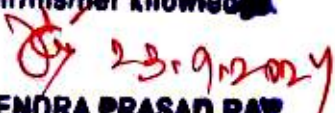
IDENTIFIED BY


Advocate
Cuttack

Date - 23/9/24


DEPONENT

Certified that the above named Deponent is:
Being Identified by.....
Advocate solemnly affirms and states before
me that the contents of this affidavit are all
true to the best of their/his/her knowledge.


DEBENDRA PRASAD RAY
NOTARY, CUTTACK

BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

O.A No- 147 OF 2023

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Vrs

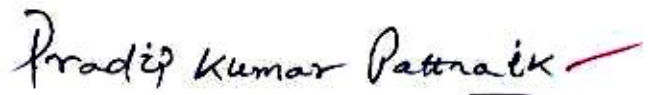
Union Of India & OrsRespondents

VERIFICATON

I, Shri Pradip Kumar Pattnaik aged about 66 years, S/O-Late Banabihari Pattnaik, Plot No 1206/C, Sector 6, CDA, Cuttack-753014, Odisha do here by verify and state that the contents of the OA and the facts stated are true to the best of my knowledge to me are being supported by me in any manner whatsoever.

Identified By


ADVOCATE



VERIFICANT

Cuttack

Date: 23/9/24



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Odisha CM Naveen Patnaik inaugurates Silver City Boat Club of Cuttack



By Himanshu

Last updated Apr 14, 2021



Cuttack: Odisha Chief Minister Naveen Patnaik on Wednesday inaugurated the Silver City Boat Club at Cuttack through Video Conferencing.

This revamped boat club is created by Odisha Tourism through OTDC with an investment of approximately 2 Crore rupees with a view to promote water-based recreation in river Mahanadi.


The activities that will be operational in the Boat Club include Jet Skis, Speed Boats, Day Cruise, Banana Boat, Inflatable Boat, Water Scooters, Floating café, Kayaking, Canoeing, Pedal Boats, Scuba Diving etc.

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T.C
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Odisha Opens Silver City Boat Club For Public

Bhubaneswar: In a bid to boost the tourism potential of Odisha's biggest river Mahanadi, Chief Minister Naveen Patnaik Wednesday inaugurated the Silver City Boat Club at Cuttack through virtual mode...

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 PUBLISHED: THURSDAY, 15 APRIL 2021 LAST UPDATED: 15 APRIL 2021, 07:58 AM IST



Odisha Opens Silver City Boat Club For Public

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T.C. attested

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Odisha opens Silver City Boat Club for public in an attempt to boost tourism

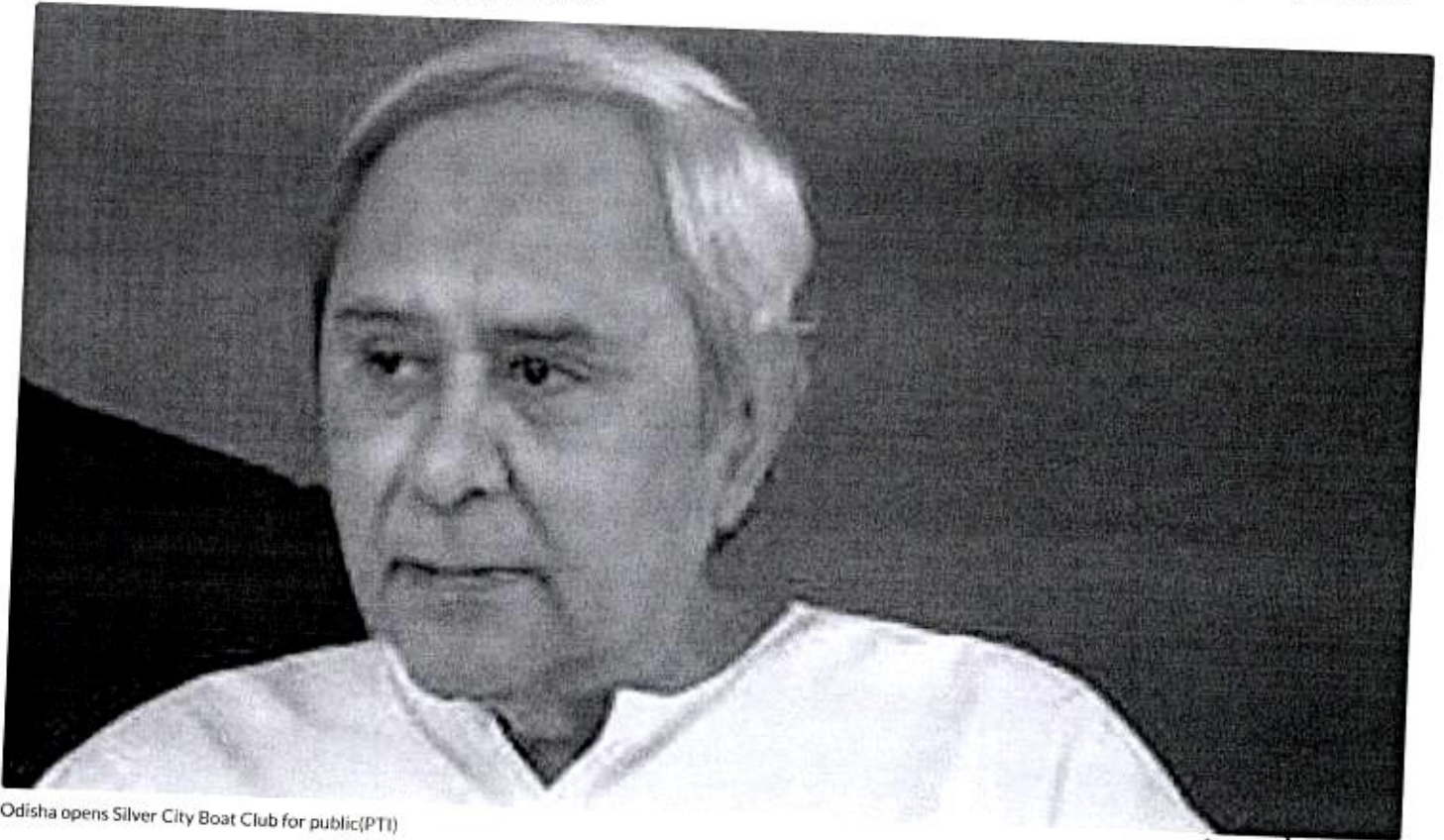
PTI | Bhubaneswar

Apr 15, 2021 07:30 AM IST

Chief Minister of Odisha, Naveen Patnaik inaugurated the Silver City Boat Club on Wednesday in an attempt to boost tourism potential of the state's biggest river Mahanadi.

Story continues below advertisement

In a bid to boost the tourism potential of Odisha's biggest river Mahanadi, Chief Minister Naveen Patnaik Wednesday inaugurated the Silver City Boat Club at Cuttack through virtual mode.



Odisha opens Silver City Boat Club for public(PTI)

Story continues below advertisement

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