

Item No.01

Court No.1

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

Original Application No.147/2023/EZ

Pradip Kumar Pattnaik

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 16.10.2023

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

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

ORDER

1. Heard Mr. Sisir Das, learned Counsel appearing (in Virtual Mode) on behalf of the Applicant.
2. This Original Application has been filed by the Applicant challenging the creation of an artificial concrete island by the Respondents obstructing the free flow of perennial water source of river Mahanadi by establishing a Cafeteria, Food Court, Liquor Bar cum Restaurant, Paid Vehicle Parking, Paid Picnic Spot and large area surrounded by concrete wall and also many other constructions are going on at present by dumping and filling up sand and shoals of the riverbed of Mahanadi. It is stated that a Public Interest Litigation (PIL) W.P.(C) No.20283 of 2011 was filed by the Nationalist Lawyers Forum before the Hon'ble High Court of Orissa opposing certain construction work at "Hadia Patha" by the IOCL, Paradeep. It is stated that the Hon'ble High Court heard the matter and the Counsel for the Parties and vide its Judgment dated 27.02.2012 directed the Government of Odisha to take specific measures to enhance the water retaining capacity of

the Barrage so that water can be made available for all purposes. It is stated that Original Application No.47/2016/EZ *Biswajit Mohanty Vs State of Odisha* has been filed which was decided by this Tribunal and directions were issued to the District Administration to ensure that no construction debris, wastes, municipal wastes etc. are dumped in the river beds and all illegal encroachment of river banks and beds of river Mahanadi and Kathajodi at Cuttack shall be evicted by the District Administration and all illegal constructions on the river banks and beds shall be removed following the due provisions of law and also allow Balliyatra festival to be held on the Baliyatra field.

3. It is stated that thereafter, Original Application No.68/2020/EZ was filed which was disposed of by this Tribunal with the following directions: -

- i. *“There is clear anticipated danger of flooding.*
- ii. *They are guided by “precautionary principle” under section 20 of NGT Act.*
- iii. *The Baliyatra Ground (34 Acres) though in a floodplain zone there should be no further expansion and no concretization or compacting of the said ground.*
- iv. *Remaining 392 acres of land be used for plantation of local species and the area be developed into a Biological Park and no commercial use be allowed.*
- v. *No temporary/permanent construction are allowed and also no commercial activities should be there.*
- vi. *Area where forest is to be developed may be handed over to forest department.*

vii. *Only modification/clarification to the recommendation which we make in the light of suggestion of the advocate general is that reclaimed land that while 2/3rd of reclaimed land be developed as a dense forest, the remaining 1/3rd land may be developed as parks/playgrounds without allowing any commercial activities.*

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

4. It is stated that instead of complying with the directions of the Tribunal dated 21.09.2022, the District Magistrate, Cuttack and the Cuttack Municipal Corporation has now occupied an area approximately 175 acres of land by pouring ‘red stone powder’ (Morrum) in order to raise the surface height to approximately 10 feet as a result of which heavy flood may occur causing danger to Cuttack town.
5. It is also alleged that previously the District Administration was directed to organize Baliyatra in 34 acres of land but they have encroached the land of about 175 acres for Cycle Stand, Paid Parking, Silver City Boat Club, Restaurant, Bar, Cafeteria, Lounge, Conference Hall etc.
6. It is also alleged that a Campus around 3 acres has been constructed to be used as Paid Picnic Spot by constructing brick wall, cement pillars with iron fence for which purpose many trees have been cut down. It is also alleged that an iron wall has been fixed on the river bank of river Mahanadi stretching to 200 meters which diverts the free flow of river water in order to protect the constructions made in the flood plain zone. The allegation further is that the District Administration has allowed some private persons to occupy an area

approximately 8 acres of land by way of lease thereby initiating construction of cement pillars and brick walls though this area holds huge amount of water at the time of floods.

7. It is alleged that concrete steps had been constructed over a length of 100 feet with a height of 15 feet from the water level even though in the floods which occurred in August 2023 a major portion of the steps were washed away.
8. It is alleged that the Odisha Tourism Development Corporation is obstructing the flow of Mahanadi river thereby altering the water pressure towards 36 villages situated in Chowdwar on the opposite side of the river thereby endangering the lives of the residents of those villages in the time of floods.
9. In our opinion, matter requires consideration.
10. Issue notice to the Respondents, returnable within four weeks.
11. Ms. Rashmi Singhee, learned Counsel who is present (in Virtual Mode), accepts notice on behalf of the Respondent No.1, Ministry of Environment, Forests and Climate Change (MoEF&CC).
12. Mr. Tarun Patnaik, learned Counsel who is present (in Virtual Mode), accepts notice on behalf of the Respondent Nos. 2,3,4,5,6,7 and 8, State Respondents, Government of Odisha.
13. Mr. Dipanjan Ghosh, learned Counsel who is present in Court, accepts notice on behalf of the Respondent No.9, Odisha State Pollution Control Board.
14. Mr. Apurba Ghosh, learned Counsel who is present (in Virtual Mode), accepts notice on behalf of the Respondent No.10, State Environment Impact Assessment Authority (SEIAA), Odisha.
15. Issue notice to the Respondent No.11, Odisha Tourism Development Corporation (OTDC), returnable within four weeks.

- 16. All the Respondents shall file their counter-affidavits within four weeks.
- 17. Mr. Sisir Das, learned Counsel for the Applicant shall serve e-copy/soft copy of the Original Application along with all its annexures upon Ms. Rashmi Singhee, Mr. Tarun Patnaik, Mr. Dipanjan Ghosh and Mr. Apurba Ghosh, within 24 hours.
- 18. **List on 04.12.2023.**

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

October 16, 2023,
Original Application No.147/2023/EZ
SKB