

**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: 24.04.2024

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

For Applicant(s) : Mr. Anand Jena, Advocate (in Virtual Mode)

For Respondent(s) : Ms. Rashmi Singhee, Advocate for R-1, (in Virtual Mode)
Mr. Janmejaya Katikia, AGA for R-2 to 8, (in Virtual Mode)
Ms. Papiya Banerjee Bihani, Adv. for R-9, (in Virtual Mode)

ORDER

1. Mr. Anand Jena, learned Counsel is present (in Virtual Mode) for the Applicant.
2. Affidavit of service dated 22.04.2024 has been filed by the Applicant showing service upon the Respondent No.11, Odisha Tourism Development Corporation; the same is taken on record.
3. Rejoinder affidavit also dated 22.04.2024 has been filed on behalf of the Applicant; the same is taken on record.
4. Affidavit dated 23.04.2024 has been filed on behalf of the Respondent No.10, SEIAA, Odisha; the same is taken on record.
5. The SEIAA, Odisha, RespondentNo.10, along with its affidavit has filed an Inspection Report of an inspection carried out on 22.04.2024. In this Inspection Report, it is categorically mentioned that SEIAA, Odisha, has not issued any Environmental Clearance (EC) for any type of construction and the area development at Mahanadi River Bank near Baliyatra ground of Cuttack City.

6. In para 5 of this Inspection Report, it is also stated that east side/right side of Baliyatra ground which is just before the Silver City Boat Club main gate, there is a place where some construction material exists as seen during the visit but the exact work inside the area is not clear as it was not possible to enter the place due to *'nasty condition and the gate was closed'*.
7. In para 4 of the affidavit of SEIAA, Odisha, it is also categorically stated that *'most of the points alleged by the petitioner are true'*.
8. We are surprised as to how Mr. Bhakta Ranjan Mohanty, Engineer-in-Chief, Water Resources Department, Odisha, has filed his affidavit dated 01.03.2024, stating that there is no illegal construction and dumping of waste in the river bed and no damage has been caused to the environment, as stated by him in para 16 of his affidavit.
9. We also find that in this affidavit the Engineer-in-Chief, Water Resources Department, Odisha, has not specifically addressed himself to the allegations made in the Original Application, particularly para 10 and its sub-paras of the Original Application in respect of which the Applicant has also filed photographs.
10. The Engineer-in-Chief, Water Resources Department, Odisha, is hereby warned to be careful in future before filing false affidavits. In the affidavit, all that has been stated is that all the works have been taken up as per decision dated 26.10.2022 of the High Power Committee. The Report of the High Power Committee has not been filed by the Engineer-in-Chief with the affidavit for reasons best known to him which amounts to concealment of relevant material from this Court.

11. This Court while deciding the Original Application No.68/2020/EZ (*Pradip Kumar Pattnaik Vs. Union of India & Ors.*) with M.A. No.08/2020/EZ in Original Application No.47/2016/EZ (*Biswajit Mohanty Vs. State of Odisha & Ors.*) vide its judgment and order dated 21.09.2022 had given the following directions which read as under:-

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 2/3rd 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).

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.”

12. The Tribunal had permitted the State Government to make constructions on 1/3 of the land for development of parks and playground without any permanent or temporary constructions but without allowing any commercial activities and the rest 2/3 land was to be reclaimed and developed as a dense forest.
13. The affidavit of the Engineer-in-Chief, Water Resources Department, Odisha, is silent with regard to the compliance of these directions and, on the other hand, he sought to allege that the Applicant instead of ascertaining measures taken for Shoal removal of old Anicut, dredging work of upstream of Mahanadi Barrage, utilization of usable earth for the dredging activities towards protection of city embankment and strict compliance of the order by executing the work, has filed the present Original Application with false and baseless allegations.
14. In para 16 of his affidavit, the Engineer-in-Chief, Water Resources Department, Odisha, states that the Applicant has made the aforesaid allegations in order to “masquerade” his cause of action without any justifiable reason.

15. We are constrained to observe that the affidavit of the Engineer-in-Chief, Water Resources Department, Odisha, is deficient with regard to strict compliance of the directions given by the Tribunal in its order dated 21st September, 2022.
16. We were inclined to pass strictures against Mr. Bhakta Ranjan Mohanty, Engineer-in-Chief, Water Resources Department, Odisha, referring the matter to the Chief Secretary, Government of Odisha, for appropriate action but on the request of Mr. Janmejaya Katikia, learned Additional Government Advocate appearing for State of Odisha, we give the State Respondents one more opportunity to file a proper affidavit showing compliance of the directions of the Tribunal as also meeting the allegations made in the present Original Application coupled with the categorical averments of SEIAA, Odisha, that no Environmental Clearance has been granted to the construction referred to in the Original Application and the most of the allegations in the Original Application are true.
17. Mr. Janmejaya Katikia, learned Additional Government Advocate appearing for State of Odisha, prays for and is granted four weeks time for filing affidavit.
18. **List on 29.05.2024.**

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

April 24, 2024,
Original Application No.147/2023/EZ
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