

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

.....

ORIGINAL APPLICATION No. 141/2017/EZ

IN THE MATTER OF:

**Alekha Chandra Tripathy,
Aged about 58 years,
S/o Late Joginath Tripathy,
At-Kabi Smaraka, Dagarapada,
PO-Chandini Chow, P.S.-Lalbag,
District-Cutack, Odisha,
Pin – 753002,**

....Applicant(s)

Versus

- 1. State of Odisha,
Through Chief Secretary,
Secretariat Building, Bhubaneswar,
District-Khurdha, Pin – 751001,**
- 2. Principal Secretary, Govt. of Odisha,
Deptt. of Water Resources,
Rajiv Bhawan, Bhubaneswar,
District-Khurdha, Pin – 751001,**
- 3. Principal Secretary, Govt. of Odisha,
Deptt. of Revenue & Disaster Management,
Secretariat Building, Bhubaneswar,
District-Khurdha, Pin – 751001,**
- 4. Collector and District Magistrate, Angul,
At/PO/District-Angul, Odisha,
Pin – 759122,**
- 5. Tahasildar, Banarpal,
At/PO-Banarpal, District-Angul,
Pin – 759122,**

**6. Jindal Steel & Power Ltd.,
Through Executive Director,
Chhendipada Road, SH-63,
Jindal Nagar, Angul, Odisha,
Pin – 759111.**

...Respondent(s)

COUNSEL FOR APPLICANT:

Mr. Sankar Prasad Pani, Advocate

COUNSEL FOR RESPONDENTS :

**Mr. S. K. Nayak, Addl. Govt. Advocate for R-1 to 5,
Mr. Samrat Sen, Sr. Advocate a/w Mr. Pratik Sanu, Advocate &
Mr. Vishal Sinha, Advocate for R-6,**

JUDGMENT

PRESENT:

**HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)
HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)**

**Reserved On:- 09th November, 2021
Pronounce On:- 26th November, 2021**

-
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**

JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

This Original Application has been filed by the Applicant on the allegation that the Jindal Steel & Power Limited, Respondent No.6, (hereinafter referred to as 'JSPL') has unauthorisedly usurped the Nandira river in the District Angul, Odisha in connivance with the State Authorities located at Bhubaneswar, Odisha and has filled

up the Nandira river with earth thereby completely obliterating the river and has constructed its industry over the said land for construction of an integrated steel plant with a captive power plant at Sanakerjang in Sankerjang Jungle under Nisha Police Station, District-Angul, Odisha. It is stated that no prior permission has been sought by the Respondent No.6 from the concerned authorities before filling up the Nandira river.

2. The averments in the Original Application and affidavits/documents filed by the Applicant have been vehemently denied by the Respondents.

3. We have heard the learned Counsel for the parties at length.

4. Reference has been made by Mr. Sankar Prasad Pani, learned Counsel for the Applicant, to the letter of the Sub-Collector, Angul, dated 02.05.2016 Annexure A/3 (page no. 30 of the paper book) which was addressed to the Collector & District Magistrate, Angul, and it is stated therein that from a Joint Inquiry carried out by the Tahasildar-Banarpal, Tahasildar-Chhendipada and Assistant Executive Engineer, M.I. Sub-Division, Angul on 28.04.2016, it is established that Nandira Nalla within the compact area of JSPL, Respondent No.6, has lost its characteristics. The Joint Inquiry Report dated 28.04.2016 has been filed as Annexure A/2 (page no. 28 of the paper book), which mentions that the Nandira Nalla was passing through the area acquired by the JSPL, Respondent No.6, has been filled up with earth and an industry has been constructed over that area by the Respondent No.6, JSPL, and, therefore, the

Nandira Nalla has lost its characteristics. The Joint Inquiry Report also notes that the Kurdabahali/Nandira Nalla passes over six villages covering an area of 20.460 acres of which 13.36 acres has been given to Orissa Industrial Infrastructure Development Corporation (hereinafter referred to as 'IDCO').

5. The Joint Inquiry Report further mentions that the Respondent No.6, JSPL, had entered into an MOU with the Government of Odisha on 03.01.2005 for setting up of a 6 MTPA Steel Plant and 900 MW Captive Power Plant at Kerjang in District-Angul and IDCO, Bhubaneswar has handed over a major chunk of leasable Government land as also acquired private land to JSPL, Respondent No.6, for the above purpose. The Kurdabahali/Nandira Nalla originates from village Badakerjang Jungle and passes through villages, namely, Kaliakata, Panapur, Kaliakata Jungle, Ramadihi and Sankerjang Jungle and finally merges into the Parang Minor Irrigation Project. A tributary originating in the tri-junction area of villages, namely, Basudevpur, Panapur and Sankerjang Jungle also meets this Nalla at the junction point of Village-Kaliakata Jungle and Sankerjang Jungle. The Joint Inquiry Report further notes that to allow free flow of water to the Parang Minor Irrigation Project, the JSPL, Respondent No.6, had diverted the Nalla by providing an alternate channel measuring an area of 21.29 acres on their acquired area. It is also mentioned that due to the Nalla, a big chunk of land within the compact project area of JSPL, Respondent No.6, was getting water logged and Plant activity was being hampered, and local people were also getting affected

which was creating law and order issue for the administration. It is stated that on 09.06.2012 the JSPL, Respondent No.6, had communicated to the IDCO a proposal for creating an alternate channel for Kurdabahali/Nandira Nalla passing through the compact area of Jindal Steel & Power Limited in Banarpal Tahasil of Angul District. Thereafter, the matter also came up before the Land Officer, IDCO, Bhubaneswar and Tahasildar-Banarpal as well as Tahasildar Chhendipada, and vide letter dated 23.08.2013 the Collector-Angul had forwarded the proposal of JSPL, Respondent No.6, to the Commissioner-cum-Secretary to Government, Water Resources Department regarding proposal for diversion of Kurdabahali/Nandira Nalla. The CMD, IDCO vide letter dated 25.09.2013 had also forwarded a similar proposal to the Principal Secretary to Government, Department of Water Resources, Odisha, regarding proposal for diversion of Kurdabahali/Nandira Nalla falling within the JSPL, Respondent No.6, compact plant area. The site was inspected by a High Level Committee of the Water Resources Department on 11.02.2014 and thereafter the matter regarding diversion of the Nandira Nalla remained pending active consideration of the Government. It is in this view of the matter that various correspondences with regard to diversion of the Kurdabahali/Nandira Nalla had been pending for long with the Government and no decision had been taken, the JSPL, Respondent No.6, in anticipation of approval of the said diversion, filled up the Nandira Nalla and constructed its industry over it.

6. The Applicant has also referred to the Joint Inquiry Report dated 09.02.2015 Annexure A/4 (page no. 31 of the paper book), wherein also it has been noted that during the spot visit it was observed that the Nandira Nalla within the catchment area of Parang Minor Irrigation Project is passing through the area allotted to IDCO for establishment of industry by Jindal Steel & Power Limited and that the natural Nalla had lost its characteristics as a Nalla and the JSPL, Respondent No.6, Authority has constructed its industry over the said Nalla and has diverted a portion of the Nalla by providing an alternate channel leading to the Parang Minor Irrigation Project reservoir through the land allotted in its favour. This Joint Inquiry Committee also noted that the Nalla in question is a seasonal Nalla but during the season it inundates the adjacent area of the plant as a result of which a large part of the land within the compact area of JSPL, Respondent No.6, was getting water logged and the local people were also being affected due to such water logging and, therefore, in order to overcome such a situation, the Respondent No.6, JSPL, diverted the Nalla by providing an alternate channel leading to the Parang Minor Irrigation Project reservoir through the land allotted to it.

7. Mr. Sankar Prasad Pani, learned Counsel for the Applicant submits that several letters were written by the Applicant to the Collector-Angul, Chief Secretary, Govt. of Odisha, complaining about the blocking of the Nandira river and destruction of the surrounding environment and forest but no action has been taken by the Respondents.

8. The Applicant has filed another Joint Inquiry Report dated 22.09.2016 Annexure-A/8 (page no. 37 of the paper book), which has taken note of the previous reports of the Joint Inquiry Reports, in support of his contention that the Nandira river had been filled up by the JSPL, Respondent No.6, and its industry has been constructed over the resultant land. This Joint Inquiry Report also refers to the observations of the Odisha State Pollution Control Board that the Nandira Nalla carries runoff water of the area during monsoon flows inside the Plant premises and enters into the premises from east side of the Plant and after flowing along the northern side of plant boundary, it falls into the Parang Minor Irrigation Project. It was also observed that the Respondent No.6 industry was constructing the stone pitch of the side wall of the Nalla for free flow of the Nalla water. In order to ascertain the water quality of the Nalla, water samples were collected by the Odisha State Pollution Control Board at the upstream of Kurdabahali Nalla and downstream of the Nalla before the point of confluence in the Parang Minor Irrigation Project and it was found by the Odisha Pollution Control Board that the water quality parameters are within the general standards prescribed for discharge of environmental pollutants and hence, destruction of environment does not arise. The Joint Inquiry Report also mentions that the Respondent No.6 is not taking any water from the Parang Minor Irrigation Project or the Nandira Nalla and, therefore, loss of irrigation potential of Nandira Nalla and the reservoir of Parang Minor Irrigation Project does not arise. The Joint Inquiry Report

further notes that there is no existence of the Nandira river inside the JSPL, Respondent No.6, premises since the said river originates from the Parang Minor Irrigation Project which is beyond the area acquired by the JSPL, Respondent No.6. However, one tributary known as Kurdabahali Nalla passes through the premises. This Nalla originates from village Badakerjang Jungle and passes through several villages, namely, Kaliakata, Panapur, Kaliakata Jungle, Ramadihi and Sankerjang Jungle and finally merges into the Parang Minor Irrigation Project. The Kurdabahali Nalla is not a perennial nalla rather it is seasonal in nature and carries storm water during the rainy season. A portion of the Kurdabahali Nalla covering a distance of 3.8 Kilometers passes within the acquired area leading to the Parang Minor Irrigation Project and this has been filled up with earth and an industry has been constructed over it by the JSPL, Respondent No.6. It is also observed by the Joint Inquiry Committee that due to continuous water logging in the area and to allow free flow of water of the Kurdabahali Nalla into the Parang Minor Irrigation Project, the Jindal Steel & Power Limited has diverted the Nalla by providing an alternate channel covering a distance of 3.7 Kilometers through their acquired area. This was necessary to be done since the local people were also getting affected due to water logging which created a law and order situation and, therefore, the alternative channel was constructed by the JSPL, Respondent No.6, to allow free flow of Nalla water into the Parang Minor Irrigation Project. The Joint Inquiry Report further noted that the Jindal Steel & Power Limited is using its own water

coming from Samal Barrage and, therefore, using of water from the Nandira Nalla or Parang Minor Irrigation Project reservoir is without basis. The Joint Inquiry Report further noted that the Nandira river has neither been blocked nor lost its characteristics since it originates from the Parang Minor Irrigation Project which is outside the premises of JSPL, Respondent No.6.

9. The next document referred to by the learned Counsel for the Applicant is a letter dated 23.08.2013 addressed by the Collector-Angul to Commissioner-cum-Secretary to Govt., Water Resources Department, Govt. of Odisha, which strengthens his contention that the Respondent No.6, JSPL, has blocked the Nandira river and diverted its flow through an alternate channel. This letter, however, mentions that the user agency had submitted a proposal for diversion of Kurdabahali/Nandira Nalla passing through the plant area of JSPL, Respondent No.6, in Angul District and has proposed to IDCO for diversion of the existing Nalla by providing an alternative Nalla out of the same land which has been allotted to it to allow free flow of water into the downstream area. The letter further provides that the Jindal Steel & Power Limited shall bear the cost of new construction of the diverted canal along with structures, if any, required to make the said canal functional for the rest of its journey reaching upto the Parang Minor Irrigation Project.

10. The learned Counsel for the Applicant has also referred to the letter dated 26.07.2012 Annexure-A/11 (page no. 42 of the paper book) addressed by the Chief Engineer, Minor Irrigation, to the EIC-

cum-Special Secretary to Govt., Department of Water Resources, Bhubaneswar, to submit that the Parang Minor Irrigation Project is located on the Kurdabahali Nalla-Nandira Jhor Nalla in the Parang G. P. of Chendipada Block of Angul District, and the reservoir project has a catchment area of 23.30 Sq. Km. and the water supply to the JSPL, Respondent No.6 plant, has been approved for sourcing the same from the Brahmani river upstream of Samal Barrage through pipelines but also for operations water is being used from the emergency pump house alongside the Kurdabahali Nalla upstream of Parang Minor Irrigation Project which is not as per the water supply planning scheme and the said pump house has been constructed unauthorisedly in the Nalla which is part of the Parang Minor Irrigation Project reservoir. This letter also mentions that the natural Nalla inside the plant area has been diverted for facilitating the plant layout and pipe culverts have been constructed for letting the storm water flow into the reservoir whereas such diversion proposals have not been approved by the Water Resources Department. However, we may hasten to note that the same letter also mentions that the details of the land plan need to be verified with the revenue authorities.

11. The Respondent No.6, JSPL, in its affidavit dated 25.11.2017, filed in response to the Original Application has, however, stated that they have raised a preliminary objection that the Applicant is not a victim (within the meaning of Section 15 of the National Green Tribunal Act, 2010) of the alleged pollution as he is an advocate at the Odisha High Court and a social activist and in order to

maintain this Application he has to show that he is a victim of pollution or other environmental damages. This Original Application is, therefore, without substance and deserves to be rejected at the outset.

12. We have consciously considered the objection of the Respondent No.6 and we are of the view that for purposes of maintaining the present Original Application, the Applicant is not required under the National Green Tribunal Act, 2010 to be actually a victim of pollution or other environmental damage nor is he required to be claiming compensation for himself for suffering such pollution or environmental damage under the enactments specified in Schedule-I personally. Section 14 of the National Green Tribunal Act, 2010 provides that the Tribunal shall have jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. The language of Section 14 itself implies that the Tribunal will have jurisdiction to entertain any question where a substantial question relating to environment is involved. For purposes of exercise of such jurisdiction, it is absolutely immaterial whether the Applicant is claiming any relief for himself as a victim of pollution or other environmental damage. It is sufficient that the Applicant is able to show that a substantial question relating to environment warranting interference by the Tribunal within its jurisdiction is made out.

13. That being the import of the language of Section 14, we therefore, reject the preliminary objection raised by the JSPL, Respondent No.6.

14. It is also the contention of the Respondent No.6, JSPL, that the Applicant has not alleged any violation/contravention of any of the statutes in Schedule-I of the National Green Tribunal Act, 2010.

15. The allegation of the Applicant in the present Original Application is with regard to diversion of the Nandira river (as per his perception) from its original course leading to the Parang Minor Irrigation Project. The consequences arising from the alleged diversion of the Nandira river to the environment in the short term or in the long term itself is a substantial question relating to environment and falls within the Schedule-I of the National Green Tribunal Act, 2010.

16. Schedule-II of the National Green Tribunal Act, 2010 provides the heads under which compensation or relief for damage may be claimed which includes expenses incurred by the Government for any administrative or legal action or to cope with the harm or damage including compensation for environmental degradation and restoration of the quality of environment including loss and destruction of any property other than private property. Whether compensation is claimed by the Applicant for himself or otherwise, the jurisdiction of the Tribunal to interfere in the case is not inhibited if the facts of the case reveal that as a result of diversion

of the Nandira river, there has been environmental degradation in the short term or long term.

17. In this view of the matter, we reject the contention of Respondent No.6 with regard to maintainability of this Original Application.

18. The next objection taken in the reply of the Respondent No.6, JSPL, is with regard to limitation. It is also alleged that the present Original Application is barred by limitation as it has been filed beyond six months from the date on which the cause of action for the dispute first arose. However, when it was pointed out to Mr. Samrat Sen, learned Senior Counsel for Respondent No.6, that issues relating to environmental degradation as a result of alleged diversion of the Nandira river for the purpose of constructions made by the Respondent No.6, JSPL, would constitute a continuing wrong and, therefore, the Original Application cannot be said to be barred by limitation, the learned Senior Counsel fairly accepted that in the case of continuing wrong, a precise date for computation of limitation cannot be fixed. We are, therefore, of the view that having regard to the facts of the present case, the allegation of environmental degradation allegedly caused by blocking the Nandira Nalla constitutes a continuing wrong and the Original Application is, therefore, not barred by limitation.

19. Mr. Samrat Sen, learned Senior Counsel next submitted that the Applicant has concealed the fact that the Department of Water Resources, Govt. of Odisha, had vide its letter dated 14.07.2017

(Annexure-1 to the affidavit) approved the diversion/re-alignment of Kurdabahali/Nandira Nalla within the Plant site of the Respondent No.6, JSPL, which passes through the land of the Respondent No.6 whereas the Nandira river originates from the Parang Minor Irrigation Project and flows downstream beyond the area which has been acquired for the Respondent No.6 Plant. That being the factual submission of the learned Counsel for Respondent No.6, JSPL, it would lead to the natural inference that there has been a diversion of a natural water channel known as Kurdabahali Nalla/Nandira Nalla though not of the Nandira River.

20. In the affidavit of Respondent No.6, it is stated that the Kurdabahali Nalla originates from village Badakerjang Jungle and after flowing through the Plant premises of Respondent No.6 it empties into the Parang Minor Irrigation Project. The Kurdabahali Nalla is not perennial rather it is seasonal in nature and only carries storm water during the rainy season and passes over an area of 20.46 acres within the Plant site. The learned Senior Counsel further submitted that there was heavy flooding in September, 2011 due to rainfall, damaging civil work as well as stored equipment and machinery of the Plant and a large part of the area was water logged affecting the local villagers residing in the local villages within the vicinity of the Nalla and the Respondent No.6, necessitated the diversion of the Kurdabahali Nalla/Nandira Nalla.

21. It is the case of the Respondent No.6 that on 16.03.2013 at the request of the Land Officer, IDCO, Bhubaneswar, a proposal was submitted to the Tehsildar Banarpal, Respondent No.5, for shifting the alignment of the Kurdabahali Nalla from the Plant site in Angul District by providing an alternative route to ensure free flow of storm water downstream into the Parang Minor Irrigation Project. On 18.05.2013, on the proposal of IDCO, Bhubaneswar, a Joint Enquiry was conducted by the Respondent No.5, Tehsildar Banarpal and the Assistant Engineer, M.I. Sub-Division, Angul, and the Joint Enquiry in its report proposed that appropriate action be taken with regard to diversion of the Nalla leading to the reservoir. On 28.03.2013, the Respondent No.4, Collector & District Magistrate, Angul, forwarded the Joint Enquiry Report along with its observations and a map showing the proposed diversion of the Nalla, to the Water Resources Department, Govt. of Odisha, for necessary action. The Water Resources Department, Govt. of Odisha, allowed the proposal of the Respondent No.6 Plant for diversion/re-alignment of Kurdabahali Nalla coming within the Plant area of Jindal Steel & Power Limited vide its letter dated 14.07.2017. Copy of the letter dated 14.07.2017 has been filed as Annexure-1 (page no. 76 of the paper book) to the affidavit of Respondent No.6, JSPL.

22. Mr. Samrat Sen, learned Senior Counsel further submitted that it is incorrect to say that the Respondent No.6 has completely blocked the original drainage of Kurdabahali Nalla by filling it up with earth leaving no source for drainage of storm water into the

Parang Minor Irrigation Project. The submission of the learned Senior Counsel is that the letter of the Government of Odisha, granting sanction for diversion itself contained a stipulation that such diversion will neither obstruct nor use the flowing water of both the Nallas and that the normal ecology will have to be maintained. It is further provided in the sanction letter of 14.07.2017 that the Jindal Steel & Power Limited will have to maintain the path of the Kurdabahali Nalla in such a way that the public and their lands are not affected in any way. It was also stipulated that the Jindal Steel & Power Limited would ensure cleaning of the diverted Nalla before the onset of monsoon every year to ensure free and smooth flow of water.

23. The further submission of the learned Senior Counsel is that in pursuance of the specific conditions laid down in the sanction order dated 14.07.2017, the Respondent No.6, JSPL, at its own cost, had constructed the diversion of the Kurdabahali Nalla/Nandira Nalla from its entry point within the premises of the Respondent No.6 Plant and re-routed the Nalla in such a manner that there would be continuous and smooth and free flow of water including storm water through the Kurdabahali Nalla and connected it to the Parang Minor Irrigation Project. In support of his contention, a geographical map as Annexure-2 (page no. 78 of the paper book) has been filed by the learned Senior Counsel, showing the re-routed Nalla. The learned Senior Counsel further submitted that the Kurdabahali/Nandira Nalla has always been known as Kurdabahali Nalla/Nandira Nalla and it is distinct from the Nandira

river. He has also referred to the documents filed by the Applicant to show that the Nalla in question has always been referred to as 'Nalla' in the Government records and any stray reference to it as 'Nadi' is not to be confused with a river but rather it is a Nalla and the map would itself show that the said Nalla originates from village Badakerjang Jungle ahead of its entry into the Respondent No.6 Plant premises and, therefore, it used to pass over the land of the Respondent No.6 Plant and empty itself into the Parang Minor Irrigation Project. The Nandira river, on the other hand, originates from the Parang Minor Irrigation Project which is situated outside the Respondent No.6 Plant premises.

24. An affidavit dated 15.01.2018 has been filed on behalf of the Respondent Nos. 1 & 2, State Respondents, Govt. of Odisha, wherein reference has also been made to the sanction order dated 14.07.2017 granted by the Department of Water Resources, Govt. of Odisha, to show that due sanction for diversion of the Nandira Nalla has been given by the Government after proper enquiry lasting over several years from the date of the initial proposal made by the Respondent No.6 Plant. In their affidavit it is also stated by the State Respondents that the Nalla in question had to be diverted due to its continuous water logging in the area. It is also stated that the Nandira Nalla was not passing through the Respondent No.6, Plant area but the Kurdabahali Nalla was passing through the acquired area. As per the Joint Enquiry report dated 22.09.2016, the accompanying map filed as Annexure-R1/A (page no. 106 of the paper book) along with this affidavit, also shows diversion of the

Kurdabahali Nalla at the head point of the Respondent No.6 Plant and that a diversion has been created alongside the Respondent No.6 Plant which empties into the Parang Minor Irrigation Project.

25. A counter-affidavit dated 15.01.2018 has also been filed on behalf of the Respondent No.4, Collector & District Magistrate, Angul, which reiterates the contents of the affidavit filed on behalf of the State Respondents and it is stated therein that the Nandira Nalla was not passing through the premises of Respondent No.6, JSPL, area but rather it was the Kurdabahali Nalla which was passing within the acquired area of the Respondent No.6 Plant, covering an approximate distance of 3.8 Kilometers leading upto the Parang Minor Irrigation Project. It is also stated that the Respondent No.6, JSPL, has diverted the Kurdabahali Nalla by creating an alternative channel covering a distance of about 3.7 Kilometers on their acquired area of 21.25 acres. It is also stated that the Respondent No.6, JSPL, has constructed stone pitching of the side wall of the Nalla for free flow of the Nalla water and there is no obstruction in the Nalla for free flow of water/storm water into the Parang Minor Irrigation Project. It is also stated that the water quality of the Nalla was collected from the upstream and downstream of the Kurdabahali Nalla and tested by the Odisha State Pollution Control Board Analyst and its report filed as Annexure-E/4 (page no. 124 of the paper book) shows no adverse findings to the parameters prescribed by the State Pollution Control Board.

26. In the counter-affidavit dated 15.01.2018 filed on behalf of the Respondent No.5, Tehsildar Banarpal, it is stated that the Kurdabahali/Nandira Nalla originates from villages Kaliakata, Panapur, Kaliakata Jungle, Ramadihi and Sankerjang Jungle and finally merges into the Parang Minor Irrigation Project. A tributary originating in the tri-junction area of villages Basudevpur, Panapur and Sankerjang Jungle also meets this Nalla at the junction point of villages Kaliakata Jungle and Sankerjang Jungle. The Kurdabahali/Nandira Nalla passes over six villages covering an area of about 20.460 acres within the compact area of Respondent No.6, JSPL. It is further stated that the Respondent No.6, JSPL, has filled up a portion of the Nandira Nalla with earth and constructed its industry over it but to ensure free flow of water to the Parang Minor Irrigation Project, they have diverted the Nalla by providing an alternate channel measuring an area of 21.29 acres within their acquired area since the Plant of Respondent No.6 was getting water logged and Plant activity was also often hampered and the local people were also getting affected due to flooding.

27. Mr. Sankar Prasad Pani, learned Counsel for the Applicant, on the other hand, referring to this affidavit submitted that the State Respondents' Officers have themselves admitted that the natural Nalla has lost its characteristics as the Respondent No.6, JSPL, has constructed its industry over the said Nalla and diverted the portion of Nalla by providing an alternative channel leading to the Parang Minor Irrigation Project reservoir out of the land allotted in its favour. The learned Counsel also referred to the private

correspondence of IDCO, Bhubaneswar to suggest that Nandira river has been diverted and he has also referred to the revenue documents filed as Annexure-B to his composite rejoinder affidavit dated 03.08.2021. The contention of Mr. Pani is that even in the revenue records the alleged Nalla has been referred to as 'Kisam Nadi' and, therefore, it is the river which has been diverted and the Respondents have deliberately interfered with nature by diverting the Nandira river leading to environmental degradation.

28. The learned Counsel for the Applicant has also relied upon the judgment of the Hon'ble Supreme Court in the case of M. C. Mehta Vs. Kamal Nath (1997) 1 SCC 388 and submitted that since it is established that the Respondent No.6, Jindal Steel & Power Limited, has filled up the Nandira river with earth and constructed its Plant over it, it should be directed to demolish and remove all such constructions and restore the Kurdabahali Nalla channel to its original form as also directed by the Hon'ble Supreme Court in the case of Kamal Nath (Supra).

29. In our opinion, the facts of the case in Kamal Nath (Supra) were on its own peculiar facts as noted in para 22 of the said judgment and are quite different from the present case. In that case forest lands had been given on lease to the Motel (therein) by the State Government situated on the bank of River Beas. Para 22 of the judgment is reproduced herein below:-

“22. The forest lands which have been given on lease to the Motel by the State Government are situated at the bank of River Beas. Beas is a young and dynamic river. It runs

through Kullu Valley between the mountain ranges of the Dhauladhar in the right bank and the Chandrakheni in the left. The river is fast-flowing, carrying large boulders, at the times of flood. When water velocity is not sufficient to carry the boulders, those are deposited in the channel often blocking the flow of water. Under such circumstances the river stream changes its course, remaining within the valley but swinging from one bank to the other. The river bank of Beas where the Motel is located mostly comes under forest, the left bank consists of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains.”

30. In the present case the water channel Nandira Nalla is a storm water seasonal nalla and not a large fast flowing river which has been filled up by the Respondent No.6, Jindal Steel & Power Limited, and its industry constructed thereon. Moreover, the Respondent No.6 has diverted the Kurdabahali Nalla/Nandira Nalla from where it enters its premises, to another part of its own Plant premises for a distance of 3.7 Kilometers which then empties into the Parang Minor Irrigation Project and there is no obstruction to the free flow of water/storm water through the diversionary Nalla into the Parang Minor Irrigation Project, and, therefore, the judgment in the case of M. C. Mehta Vs. Kamal Nath (Supra) has no application to the facts of the present case.

31. In the given circumstances, we reject the contention of the learned Counsel for the Applicant for demolition and removal of the Respondent No.6 Plant from the site in question for restoration of the Kurdabahali Nalla to its original form.

32. The determinative facts which emerge from the pleadings of the parties and the documents on record undisputedly establish that there has been a diversion of a water channel by the Respondent No.6, JSPL, over an area passing through its area. However, this water channel, even from the map, is shown to be the Kurdabahali Nalla and not the Nandira river. The Nandira river is shown outside the boundary of Respondent No.6, JSPL, and has its origin in the Parang Minor Irrigation Project. The Kurdabahali Nalla, on the other hand, is shown entering the premises of the Respondent No.6, JSPL, and exiting therefrom to flow into the Parang Minor Irrigation Project. The Respondent No.6, as the several letters on record show, had requested the Government of Odisha for permission to divert the Nalla since it was causing flooding during the rainy season within the Plant premises of Respondent No.6 and also affecting the local villagers residing within the villages covered by the flow of this Nalla. The proposal in this regard was initiated by the Jindal Steel & Power Limited in the year 2013 and the matter was pending before the Government of Odisha and sanction was only granted in 2017 by the Government of Odisha vide its letter dated 14.07.2017 with certain conditions stipulated in the letter of sanction itself. This sanction letter stipulated that the diversion would be made by the Jindal Steel & Power Limited in such a manner as to ensure free and smooth flow of rain water/storm water through its diversion into the Parang Minor Irrigation Project. It was also observed that the alternate diversion would be constructed entirely through the fund of the

Jindal Steel & Power Limited which would bear the cost and its maintenance cost would also be entirely borne by the Jindal Steel & Power Limited. This diversion would be inspected from time to time by the officers of the Government of Odisha to ensure smooth and free flow of water/rain water/storm water into the Parang Minor Irrigation Project.

33. In the affidavit filed by the Govt. of Odisha, the State Respondents have also clearly stated that the Respondent No.6, JSPL, has constructed the stone pitching side wall of the Nalla for free flow of the water into the Parang Minor Irrigation Project. The water samples taken from upstream and downstream of the Kurdabahali Nalla by the State Pollution Control Board Analyst also does not reveal any finding adverse to the established parameters of the Board. The revenue documents filed by the Applicant also refer to the same Nalla at some places, for example, at Panapur, Kaliakata Jungle, Sankerjang Jungle as 'Nadi' and at some places the same Nalla is referred to in Kaliakata as 'Jora', in Badakerjang Jungle as 'Nala' and in Ramadiha as 'Taila-II'.

34. The Applicant in his composite rejoinder affidavit dated 03.08.2021 himself mentions that at some places Kisam mentions this water channel as 'Nadi' and in two plots as 'Jora', at one place as 'Paninala' and in other paragraphs refers to it as 'Jor'.

35. It may be noted that on an allegation of illegal construction by the Respondent No.6, the Public Accounts Committee of the Odisha Legislative Assembly also examined the matter and submitted its

report, copy of which has been filed as Annexure-18 (page no. 167 of the paper book) and in its 'Recommendation' the Committee has noted that the Respondent No.6, JSPL, has 'dismembered the concerned nalla/river beyond repair'. The water channel in question has been referred to both as River and Nalla. The Committee also recommended taking legal action against the Respondent No.6, JSPL, as well as disciplinary action against the officers who were directly/indirectly involved in the process of violation of law.

36. The report of the Public Accounts Committee of the Odisha Legislative Assembly itself mentions that this water channel has been 'destroyed beyond repair' and in such circumstances, it would be futile to order for demolition and removal of the Respondent No.6 Plant from its site to re-create the original Kurdabahali Nalla. It is established from the documents on record that even if the Kurdabahali Nalla is obliterated beyond repair within the premises of the Respondent No.6, a diversion channel has been created by the Respondent No.6, JSPL, at the entry point of the original Nalla in its premises and this alternate channel then empties into the Parang Minor Irrigation Project. It is also established that there is no obstruction to the free and smooth flow of rain water/storm water through this diverted channel into the Parang Minor Irrigation Project.

37. Mr. Sankar Prasad Pani, learned Counsel for the Applicant, therefore, submitted that the fact that the Nalla has been

'dismembered beyond repair' is confirmed and, therefore, the environmental degradation emanating therefrom is also confirmed.

38. No doubt, in its recommendation the Public Accounts Committee has observed that the Nalla/River has been dismembered beyond repair but this fact is even otherwise established by the own averments of the Respondent No.6, JSPL, in their affidavit that the concerned Nalla was filled up and its industry constructed thereupon since the water flowing through its premises was causing water logging during the rainy season and damaging its Plant and also affected the local people of the villages through which Nalla passed, and it is for this reason that the Respondent No.6 had proposed to the State Government for permission to divert the Nalla at its head point where it enters the premises of the Respondent No.6 so as to ensure free and smooth flow of water of the Nalla through the alternative diversionary channel into the Parang Minor Irrigation Project. This sanction was ultimately granted by the Government of Odisha on 14.07.2017 after several enquiries and reports over a period of four years. However, we may observe that the Respondent No.6 did not wait to commence the diversion of the concerned Nalla before receiving the actual sanction from the Government of Odisha on 14.07.2017 but rather proceeded to fill up the Nalla with earth and established its Plant thereon and at the same time constructed the alternate water channel as well. At the same time, having gone through the map filed by the State Respondents as well as by the Respondent No.6, it is established that the Nalla has been diverted outside the premises

of Respondent No.6 Plant and though the original Nalla may have been 'dismembered beyond repair' within the premises of Respondent No.6, the free and smooth flow of the water has not been hampered and it continues to flow through the alternative diversionary channel into the Parang Minor Irrigation Project. So far as Nandira River is concerned, there is absolutely no interference with or damage to the same since the said river originates from the Parang Minor Irrigation Project and is beyond the premises of the Respondent No.6.

39. Having said that, the consistent reports of the Government and the own averments of Respondent No.6, show that the Respondent No.6, JSPL, has interfered with nature by changing the natural course of Kurdabahali Nalla which cannot now be restored. We, therefore, impose a cost of Rs. 2,00,00,000/- (Two Crore) upon the Respondent No.6, Jindal Steel & Power Limited, for filling up the original Kurdabahali Nalla with earth and constructing its industrial complex thereon at a time when it had not received sanction from the Government of Odisha for diversion of the Kurdabahali Nalla through an alternate diversion into the Parang Minor Irrigation Project.

40. We also direct that out of the amount of Rs. 2,00,00,000/- (Rupees Two Crores), Rupees 1,50,00,000/- (Rupees One Crore Fifty Lakhs) shall be deposited with the Forest Department, Govt. of Odisha and Rupees 50,00,000/- (Rupees Fifty Lakhs) shall be deposited with the Odisha State Pollution Control Board. The Forest

Department, Govt. of Odisha, will utilize the said amount for increasing the green cover in the area along the banks of the Nalla and in available vacant areas. The Odisha State Pollution Control Board will be responsible for continuous monitoring of the water quality of the Nalla as well as in the Parang Minor Irrigation Project.

41. We also issue the following directions to the Respondent No.6, JSPL, Forest Department, Govt. of Odisha and Odisha State Pollution Control Board:-

- i) The Respondent No.6, Jindal Steel & Power Limited, shall maintain the diversion it has created in the Kurdabahali Nalla from its head point upto the point where it empties into the Parang Minor Irrigation Project and this maintenance shall be in a manner conforming with the preservation of peripheral boundaries of lakes and other water bodies, other than use of stone/concrete or any other solid material on the banks of this alternate diversion;
- ii) The Forest Department, Govt. of Odisha, will carry out the plantation including planting of fruit bearing trees on the sides of the alternate banks of this alternate diversion. The plantation and creation of a Biodiversity Park in a small area to enhance green cover and biodiversity will also be carried out. The cost for the above shall be borne out of the amount of Rupees 1,50,00,000/- (Rupees One Crore Fifty Lakhs) to be paid by Respondent No.6.

- iii) The Forest Department, Govt. Odisha, shall also consider creating an adequate eco-system on both sides of the banks of the alternate diversion from the point where the diversion originates upto where it empties into the Parang Minor Irrigation Project;
- iv) The Odisha State Pollution Control Board shall be responsible for continuous monitoring of the water quality in the Kurdabahali Nalla (inlet and outlet) as well as the water quality in the Parang Minor Irrigation Project. Measures including microbial, bio-remediation, phyto-remediation etc. for removal of pollutants, if any, may be taken into consideration. The cost of the above shall be borne out of the amount of Rupees 50,00,000/- (Rupees Fifty Lakhs) to be paid by Respondent No.6.

42. So far as the recommendations of the Public Accounts Committee for taking disciplinary action against the officers of the Government of Odisha whose responsibility it was to prevent any blockage of the original Kurdabahali Nalla by filling up of the earth etc. upto the time when the sanction was granted by the Government of Odisha, there is nothing on record to show whether such disciplinary action has been taken against the concerned officers involved directly/indirectly in the process of gross violation of laws. We, therefore, direct the Respondent No.1, Government of Odisha, to take appropriate disciplinary action against the concerned officers who were directly/indirectly involved in the

process of gross violation of environmental laws and an action taken report in this regard shall be filed by the State Respondents, Govt. of Odisha, within a period of six months. The Govt. of Odisha shall also file an affidavit showing what action has been taken by the Respondent No.6, Jindal Steel & Power Limited, the Forest Department, Govt. of Odisha and the Odisha State Pollution Control Board, towards compliance of our directions given in paragraphs 39, 40 & 41 within a period of six months from the date of this judgment. Further, in the eventuality of such action being not initiated/taken by the Respondent No.6, The Govt. of Odisha shall file affidavit stating what action has been taken by the Government Authorities against the Respondent No. 6.

43. With the above observations, the Original Application No. 141/2017/EZ is accordingly disposed of.

44. There shall be no order as to costs.

.....
B. AMIT STHALEKAR , JM

.....
SAIBAL DASGUPTA, EM

Kolkata
26th November, 2021
Original Application No. 141/2017/EZ
AK