

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

.....

ORIGINAL APPLICATION NO. 47/2016/EZ

IN THE MATTER OF:

**Biswajit Mohanty, Shantikunj,
Link Road, Cuttack, Distt-Cuttack,
Odisha-753012.**

.....Applicant

V e r s u s

- 1. State of Odisha,
Represented by Chief Secretary,
Government of Odisha, Secretariat
Building, Bhubaneswar, Oidsha-751001.**
- 2. The Secretary,
Water Resources Department,
Government of Odisha, Secretariat Building,
Bhubaneswar, Odisha, 751001.**
- 3. The District Collector At/po-Cuttack,
Dist-Cuttack, 753002 Odisha.**
- 4. The Vice-Chairman,
Cuttack Development Authority,
Arunoday Bhawan, Link Road, Cuttack
At/po-Cuttack, Dist-Cuttack, Pin-753012
Odisha.**

5. **The Commissioner, Cuttack Municipal Corporation,
At/Po-Madhupatana Colony, Cuttack,
Odisha, 753013.**

6. **The Managing Director,
Odisha Development Corporation Ltd.
Panthanivas (Old Block), Lewis Road,
Bhubaneswar-751014, Odisha.**

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Sankar Prasad Pani, Advocate

Mr. Sibojyoti Chakraborty, Advocate

COUNSEL FOR RESPONDENTS:

**Mr. Janmejaya Katikia, Addl. Govt. Advocate, Mr. S.P. Mishra,
Advocate General, Respondents no.1-3**

Mr. Biswajit Mahaptra, Advocate, Respondent no.5

Mr. B.K. Pattanaik, Advocate, Respondent no.6

**Mr. S.K. Sanganeule, Advocate, Mr. B.K. Dash, Advocate, Respondent
no.7**

Other Respondent-None

JUDGMENT

PRESENT:

Hon'ble Mr. Justice S.P. Wangdi, Judicial Member

Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

Reserved On: 03-10-2017

Pronounced On:16-10-2017

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**

Prof. (Dr) P.C. Mishra (EXPERT MEMBER)

1. The applicant Mr. Biswajit Mohanty, who claims to be a wildlife conservationist and environmental activist filed this application under Section 18(1) read with section 14 (1) and 15(1) of the National Green Tribunal Act, 2010 challenging the construction activity and reclamation of river bed, encroachment of river embankment, establishment of Labour Camps in river bed of rivers Mahanadi and Kathjodi at Cuttack, Odisha, and organization of Baliyatra and other programmes on Mahanadi river bed at Cuttack thereby affecting the river ecology and disturbing the river flow adversely.

2. The applicant contends that during his visit to Mahanadi river bed on 22nd March 2016 he found the river bed and downstream

covered with solid wastes including construction debris and household waste. It is stated that such illegal activities and encroachment are also seen in several locations in river Kathjodi thereby changing the land use of river bed into parking lot for vehicles, laying moorum roads and concrete roads, establishment of eateries, club houses, huts, concrete stage for cultural events etc. resulting in restriction of flow of river water both in rivers Mahanadi and Kathjodi.

3. It is also the contention of the applicant that the contractor of Sewerage Project has constructed permanent stores and huts including a cement mix plant and casting yards in concrete structure in 10-15 acres of river bed thereby obstructing the flow of river. Even the expanded venue of Baliyatra, an annual festival held in Cuttack city for seven days, is on the Mahanadi river bed after reclamation in front of the Gada Gadia Shiva Temple and the huge quantum of solid waste and waste water generated during the seven days festival are discharged to river Mahanadi directly.

4. With such allegations against the Government respondents allowing illegalities such as changing the land use of Mahanadi

and Kathjodi river bed and affecting the river flow, the applicant made the following prayers for consideration of the Tribunal:-

1. "Eviction of unauthorized dwellers and demolition and removal of constructions from the river bed and river bank,
2. Demarcation of the river boundary on both sides of Mahanadi and Kathjodi (tributary of Mahanadi that originates at Cuttack city) for the stretch flowing through Cuttack Municipal Corporation area to be done jointly by the Revenue/Water Resources department,
3. Excavation of dumped debris and wastes from the river beds to restore its original topography at all places pointed out in the petition,
4. Direction to the District Collector of Cuttack and Water Resources department to file jointly certified toposheet maps of river Mahanadi and Kathjodi which pass through CMC area,
5. Direction to the District Collector of Cuttack and Water Resources department to file jointly certified Revenue maps (as per latest settlement) of river Mahanadi and Kathjodi which pass through CMC area,
6. Detailed GPS based survey to be conducted by Revenue/Water Resources Department staff to identify encroachments/reclamation of river bed and river bank,
7. Direction to remove contractor sheds, machinery and housing for workers/staff from the river bed of Mahanadi,
8. Direction to demolish boat jetty and restaurants and other permanent structures built by OTDC for river cruise tourism project. At best floating jetties of non-permanent nature can be put up on the river bank for tourism purpose. No restaurant can be built on the river bed,
9. Excavation of dumped debris and filling material on the river bed in front of Sishu Bhavan and approach road of the Cuttack-BBSR Trishulia bridge in order to restore the river bed to its original layout,
10. Restrictions on use of the river bed for Balijatra or similar festivals/gatherings/fairs to be considered. If at all permitted then no permanent structure can be erected,
11. All electric power lines now laid inside the river bed (except to IOCL pumping station as per approvals) should be disconnected. The steel

poles and pylons need to be removed (except the EHT towers which enable power lines to cross the river),

12. All parks built on reclaimed river bed need to be removed and restore the mean flow level of the river. Parks may come up on the opposite side of the embankment if space permitting,
13. River bed cannot be used for parking of any vehicles or use by motor driving schools for teaching driving to learners.”

5. After hearing the applicant Respondents were directed to file their responses to the allegations and further, considering the issues involved and after perusing the photographs and Google earth satellite images of Mahanadi river area of 2002 and 2016 available on record by the applicant, the respondent no.5, the Commissioner of Cuttack Municipal Corporation was directed not to dump debris and waste on the river beds of Mahanadi and Kathjodi and encroach thereupon until further order. The District Collector of Cuttack, the respondent no.3 was directed to ensure compliance of our order.

6. The Respondent No.6, M/s Odisha Tourism Development Corporation Ltd. (OTDC in short) in their counter affidavit would state that Boating complex, a scheme founded by Union Ministry of Tourism of Govt. of India, was executed by OTDC and that Boating complex does not affect the river's ecology or flow of river Mahanadi. However, the said complex has been closed as the

Government has cancelled the agreement of the service provided to i.e. M/s Seashore Tourism Development Company Pvt. Ltd. (in short Seashore Company). Along with the operation of Boating Complex, the user agency, the Seashore Company, obtained permission from OTDC to maintain the Parking Place, waiting space, restaurant in the boating complex at Mahanadi river near Matamatha, Cuttack. However, the operation of boating complex and the restaurant have been stopped since December, 2010.

7. The Commissioner, Cuttack Municipal Corporation (in short CMC), the respondent no.5, in their affidavit-in-opposition would state that in due compliance of the interim order dated 15.07.2016, an Enforcement Team has been constituted by the Collector, Cuttack to prevent dumping of debris and garbage into the river bed of Mahanadi and Kathjodi rivers. They have issued public notification. The said respondent has denied all other allegations with their categorical submission that the CMC has never dumped any debris in the river bed nor converted the same to parking space. During festive period, temporary roads are constructed to facilitate idol immersion in temporary immersion ponds made adjacent to river embankments and the respondent is not responsible in any manner for the alleged reclamation of Kathjodi

river in front of Cuttack Collectorate Office and the area adjacent to the ring road in front of Belle Vue. It is their admission that the encroachments of the river bed by private persons in form of huts and buildings, dhabas, construction material stores, club houses etc. are being removed by the District Administrator with logistic support provided by the CMC. With regard to the allegation of the applicant on encroachment of river bed by Sewerage Project Contractor, the CMC would state that Odisha Integrated Sanitation Improvement Project (in short OISIP) is being implemented at Cuttack and Bhubaneswar with financial assistance from Japan International Corporation Agency (in short JICA). OISIP is a time bound project with a completion time period of three years and the contractors, M/s Tantia-Volts JV & M/s L & T, have temporarily established their site office, Labour camp, storage of construction materials and installation of RMC plant on temporary basis over a patch of “anabadi” (Wasteland) Government Land, not in river bed. The CMC has not granted any permission to them but removed the excavated earth, garbage and debris dumped on river embankment by the contractor in 2015 to keep the river side clean and pollution free.

8. That, CMC would further deny the allegation that tons of solid waste generated during Baliyatra and other festivals/tradefairs held throughout the year are thrown into river Mahanadi and river bed. They would submit that the CMC regularly clear the garbage and waste materials by collecting user's fee from the generators to keep the ground clean and pollution free. There has been no man-made reclamation of river bed and any reclamation noticed today are the outcome of natural process which are used for various public utility services like park, parking lot, site for fairs/festivals etc.

9. An affidavit of objection filed on behalf of the respondents no.2&3, the Secretary Water Resources Department, Govt. of Odisha and the District Collector, Cuttack respectively reveals that in terms of our order dated 15.07.2016, the District Administration in consultation with the State authorities have taken steps to remove illegal construction and eviction of unauthorized dwellers from the river bed. On the allegation of accumulation of sand and construction materials on the river bed of Kathjodi, they would submit that during the construction work of a new bridge over Kathjodi connecting Bhubaneswar and Cuttack, there may be some accumulation at some places for a temporary period which cannot

be treated as illegal and unauthorized. Similarly, there has been the necessity of an approach road in river Kathjodi connecting the newly constructed bridge with the embankment (ring road). For the newly constructed approach road, stone packing and widening was essentially required in order to avoid future traffic congestion for which such construction cannot be treated as illegal encroachment. So far as the expanded site being used for Baliyatra festival is concerned, it is their submission that little portion of vacant land in between the water stream and the embankment is being used for the limited purpose of holding the festival for seven days in a year.

10. On 31st October, 2016, Ld. Counsel Mr. S.P. Pani, appearing on behalf of the applicant, would submit on mentioning that despite a restraining order passed by the bench, the State Respondents No. 1-3 have commenced the allotment of sites for putting stalls for Balijatra Festival on the Mahanadi riverbeds. Considering the submission of the applicant we issue notice to the Govt. respondents to show cause as to why coercive orders be not passed for violating our order dt. 15.07.2016. We also advised them to avoid allotting sites on the riverbed if the information furnished by the ld. counsel, Mr. Pani is correct. On 4th November, 2016, Mr. Janmenjay Katikia, Ld. Additional Govt. Advocate for

Respondent no.2 and 3, would submit on mentioning that stalls are being setup not on the riverbed but on alluvial soil. He also filed an affidavit of show-cause on 04.11.2016. Considering such submission by the ld. counsel, we granted them liberty to go ahead with such allotments.

11. After the Baliyatra Festival, the Ld. Counsel for the Applicant would submit on affidavit that according to the Toposheet No. F 45T15 of Survey of India of the Union Government (Annexed with the affidavit) published in 2011, the Baliyatra held in Talapadia ground of Cuttack City is on riverbed of Mahanadi. He would further submit that as per the Google Earth satellite images downloaded on dt. 04.06.2002 and dt. 24.01.2016, the Baliyatra held in Talpadia ground is on the riverbed and lies clearly within the embankment area of Mahanadi river, hence on the riverbed. In view of such rival submissions, we deemed it proper to appoint an expert on water resources as Court Commissioner to assist the Tribunal in deciding the matter. Therefore, we appointed Er. Sudhakar Patri, Retd. Chief Engineer of Water Resources Department of Govt. of Odisha, to inspect the area in question at Cuttack and submit a report answering to the following questions in our order dated 27.01.2017:-

- a) “Whether the Balijatra festival was organized on the Mahanadi river bed;
- b) Whether the stalls were permitted to be put up on the Mahanadi river bed;
- c) Whether putting up stalls on the river bed and other activities held during the festival has impacted the water flow or is likely to impact flow of water in river Mahanadi;
- d) Whether the above activities have any other impact on the environment of the river;
- e) Whether such event should be allowed in the same place in future considering the sensitivity of the river eco-system as well as the river bed;”

12. Mr. Pani, the Ld. Counsel appearing on behalf of the applicant filed an additional affidavit on 01.12.2016 annexing few photographs alleging fresh dumping of debris, soil and the stone found on the river bed during the visit of his client to Jobra and Mangalabag areas of Cuttack City on 25.11.2016 despite prohibitory order of 15th July, 2016, and prayed for an appropriate order from the bench. He has also filed a counter affidavit to the reply of respondent no.2 & 3 as well as rejoinder to counter affidavit filed by the respondent no.5 & 6 wherein the applicant has rejected the contention of the Govt. respondents that they are not responsible for alleged encroachments. He would further submit that they have no right to use such river bed for parks, festivals etc., even if it has been reclaimed naturally.

13. The Court Commissioner filed his report on 3rd March, 2017 and Registry was directed to make the copy of the report available to the applicant and all the respondents to file their responses. Mr. Pani, Ld. Advocate for the applicant filed an objection to the report of the Court Commissioner. For a better appreciation of the fact we reproduce the report of the Court Commissioner which reads as under:

“REPORT OF COURT COMMISSIONER, APPOINTED BY HONOURABLE NATIONAL GREEN TRIBUNAL, EASTERN ZONE BENCH, KOLKATA IN O.A. No. 47/2016/EZ (Biswajit Mohanty Vrs. State of Odisha & Ors)

Preamble:

Honourable Green Tribunal, Eastern Bench, Kolkata, vide their order dated 27th January, 2017 in O.A. case No. 47/2016/EZ (Biswajit Mohanty Vrs. State of Odisha and others), appointed Sri Sudhakar Patri, Retired Chief Engineer of Water Resources Department, Govt. of Odisha, as Court Commissioner to examine the affidavit filed by Respondent no.3 in the above case.

Honourable Court stipulated five point terms of reference on which this is to be verified on inspection of area in question at Cuttack and report to be submitted within one month.

Report:

The Court Commissioner inspected area at Cuttack City on 20th Feb 2017 on prior intimation to the parties. The applicant, Sri Biswajit Mohanty, respondents and their representatives and other citizen groups, as listed below, were present during the inspection/survey and provided documents as considered necessary by them.

1. Sri Biswajit Mohanty, -Applicant.
2. Sri Prasanta Kumar Das, E.E, Mahanadi South Divn No.1- for respondent no.2.
3. Sri Nirmal Chandra Mishra, I.A.S., Collector, Cuttack-Respondent no.3.
4. Sri Raghuram Ayar, ADM, Cuttack-with respondent no.3.
5. Sanjibita Ray, OAS, Tahasildar, Cuttack Sadar-with respondent no.3.
6. Sri Nirmal Chandra Mishra, I.A.S, Vice Chairman, C.D.A. Cuttack-Respondent no.4.
7. Sri Gyan Ranjan Das, Commissioner, CMC, Cuttack-Respondent no.5.
8. Sri Gouri Shankar Bhuyan, Planning Member, CMC, Cuttack-with Respondent no.5.
9. Sri Umakanta Gadanaik, City Engineer, CMC, Cuttack-with Respondent no.5.
10. Dr. P.K. Pradhan, DMO, CMC, Cuttack-with Respondent no.5.
11. Sri B.K. Pradhan, G.M, O.T.D. Corporation, Odisha-for respondent no.6.
12. Janmejaya Katakia, Addl. Govt. Advocate, Orissa High Court, Counsel for respondents no.2&3.
13. Mr. Bijaya Das, Advocate Orissa High Court-working President, Peace Committee, Cuttack City.
14. Mr. Debendrea Sahu, Mr. Bhikari Das, Mr. Kedar Behera and Mr. Depyan Patnaik-Members and Secretary of Cuttack City Puja Committee.

The list of documents, notes received and reviewed by the Commission is enclosed as Annexure-I.

History of the Case:

In original application dated 07.04.2016 in Case O.A. No. 47/2016 before Green Tribunal, Kolkata Bench, the applicant has challenged the construction activity and reclamation of river bed, labour camps in river bed encroaching the embankment, organizing Baliyatra and other fairs and programmes on Mahanadi river bed and other activities that is said to adversely affects the river ecology and disturbs river flow.

The Honourable Tribunal, in its orders dated 15.07.2016, had directed the respondents not to dump debris and waste on the river beds of Mahanadi and Kathjodi and encroach thereupon until further orders.

In further orders dated 31.10.2016, the Honourable Tribunal specified that “having regard to the fact that Bali-Yatra festival is an annual affair in the State, the State respondents may consider avoiding

allotting sites on river bed if the information furnished by Mr. Pani is correct.”

On 04.11.2017, Mr. Janmejaya Katikia, Ld. Additional Govt. Advocate, on behalf of respondent no.2&3, submitted before the Honourable Tribunal that “Stalls are not being set up on the river bed but on alluvial soil”. On the above submission, the Honourable Tribunal ordered that, “If that is the case, we do not see any reason as to why the State Respondents should be concerned. They are at liberty to go ahead with such allotments if the submissions of Mr. Katikiya is correct.”

Additional affidavits were filed by the applicant on 11.11.2016 and 01.12.2016. A composite rejoinder has been filed by the applicant on 11th January, 2017, stating that Balijatra festival was held on river bed of river Mahanadi, though this has been denied by the State Respondents.

Considering the above, Honourable Tribunal in their order dated 27th January, 2017, appointed Mr. Sudhakar Patri, Retd. Chief Engineer, Water Resources Department, Govt. of Odisha, as Court Commissioner with direction for inspection and verification before instituting further proceedings on the matter.

The Court Commissioner examined the different documents available, heard the applicant, representatives from State of Odisha (the respondents no. 2,3,4,5&6) and considered the views offered by them. After the inspection/survey of area in question and considering all the above, the Court Commissioner has concluded with following terms of reference wise opinion.

Views on different stipulated terms of references-

a) Whether the Balijatra festival was organised on the river bed?

Balijatra festival, an age old trade and cultural fair and historical event as well, is being organised by the District Administration of Cuttack for about seven days, starting from Kartika Purnima day, every year. This is being celebrated on the space called “Balijatra field”(also called Kali Maidan) between Barabati Stadium and Gadagadia temple

on bank of river Mahanadi. Considering the increase in population of city, growth in demand of the sellers and buyers at the festival, since nearly 20 years the venue area of Balijatra is being extended to the silted-up alluvium space on north side of river embankment up to around 50m away from the flowing channel of Mahanadi. This is being known as extended Balijatra field. This year also Balijatra festival was organised on the Balijatra Field and extended field on alluvium deposit north of flood embankment. Location of the Balijatra field (both original and extended) is shown in the map enclosed as Drg No.1,2&3.

River Mahanadi is about 2000m in width at Mahanadi Barrage site and the barrage was designed with looseness factor of 3.25, with total length of 1928m. Though the length of barrage could have been reduced substantially, considering its possible effect on the railway bridge downstream, the length was kept same as the existing width of the river.

To avoid formation of shoals upstream of the barrage in such a wide river with looseness of more than 3.00 and to make the flood flow perpendicular to the barrage, model studies were taken up at the Central Water and Power Research Station (CWPRS), Pune. Based on the results of the model study (vide Specific Note No. 1985, letter no.31/12179-HAPT dated 19th Apr. 1984 & Inspection Note dated 11th May 1984 of Review Panel Members), two numbers of high level spurs (known as Spur No.1 and Spur No.2) have been constructed on the right bank of river Mahanadi between Gadagadia Mandir to Jobra workshop. Spur no.2, in the upstream, extends 990m into the river from the right bank. Top level of Spur No.2 is at R.L.24.50m against highest flood level (HFL) of RL.23.35m at the location. Spur no.1 is located 1050m downstream of the Spur No.2. Due to construction of the two spurs in the year 1985-86, the flow on right flank of the river, which would have otherwise hugged to the concave right bank and attacked it, has been pushed to the main stream from almost 1km upstream of Spur No.2 right up-to Mahanadi Barrage. The two spurs have been constructed with the purpose of river training work to divert the flow of the river to the central portion making it perpendicular to 1928m long Mahanadi barrage, thereby improving the co-efficient of discharge for better flood disposal, preventing formation of shoals and also preventing parallel flow close to the barrage. It has been observed that

the above river training works with construction of two spurs have performed very successfully. The river flow has been diverted away from the old right bank to beyond the end of the spurs making flow perpendicular to the barrage axis and the area up-stream of spur no.2 up-to Gadagadia temple and between the spurs have been filled up with alluvium, specifically close to altered shore line. It is reported that during high floods in 1982 and 2008, flood flow did not overtop the Spur No.2. It may be mentioned that designed Highest Flood Level (HFL) of Mahanadi at Mahanadi Barrage location is in consideration of reduced width of the river on construction of the spurs no.1&2.

Extended Balijatra field is on the alluvium deposit formed due to above river training works constructed since 1985-86. Presently is flow of river in this portion, though as per revenue record the land is still classified as ‘Nadi’(river).

The location of both Balijatra field and extended Balijatra field, the location of the two spurs are shown in abstracts from the Google map/Topo map enclosed as Drg.no.1, 2 & 3. Present status of extended Balijatra field is indicative on Photograph no.1 attached herewith.

It may be mentioned that the area of extended Balijatra field (New Balijatra Padia) has been classified as “Recreational Use Zone” in the Comprehensive Development Plan of Cuttack Development Plan Area, approved by Government of Odisha, vide Housing and Urban Development Department No. T.P. Dev-57/2012-12444 dated 1st May 2012 under section 11 of O.D.A. Act, 1982 and published in Odisha Gazette dated 7th July, 2012. In para 10.1 of the Comprehensive Plan, it is planned for augmentation and development of Balijatra Cultural Festival ground at Cuttack, with infrastructural development for round the year activities. (Ref-Annexure-I(b)).

b) Whether the stalls were permitted to be put upon the Mahanadi river bed?

Stalls were permitted to be put on both original Balijatra field and extended Balijatra field on the alluvium deposit on river side of the existing embankment close to Gadagadia temple. This may be mentioned that there is flow of river in the said area.

- c) **Whether putting up stalls on the river bed and other activities held during the festival has impacted the water flow or is likely to impact flow of water in river Mahanadi?**

As reported in para (a) above, there is no flow of river in the area where Balijatra festival was held. Hence putting up stalls and other activity has not impacted the river flow or likely to impact flow of water of river Mahanadi.

- d) **Whether the above activities have any other impact on the environment of river?**

The above activities, extending for 7 to 10 days in a year, **will not have any other impact on the environment of the river**, subject to taking proper action for cleanliness and sanitation during the Balijatra festival and disposal of wastes, debris collected from the area, away from the site at designated location. In the compliance report (vide Annexure-I.c) handed over to the Commissioner during site visit, Cuttack Municipality Corporation has listed out the different actions taken for maintaining the sanitation and disposal of wastes during the Balijatra festival.

- e) **Whether such event should be allowed in the same place in future considering the sensitivity of river echo-system as well as the river bed?**

As explained earlier, due to river training works, like construction of two spurs since 1985-86, the flow of river has progressively been diverted away from the right flood embankment towards central portion and there is no flow on the alluvium deposit area of extended Balijatra field at present. **Hence such event can be allowed in the same place in future.**

Other Observations:

The Court Commissioner offers following observations on issues concerning maintaining river ecology system of rivers Mahanadi and Kathjodi on both sides of Cuttack City for consideration of the Tribunal.

- i. Though aggradation of Mahanadi river arm after bifurcation of river Kathjodi is a natural phenomenon considering the geomorphology of the river, existence of old anicut (with crest level higher than designed level) in front of Mahanadi barrage was a major cause of formation of shoals upstream of the barrage, rising of river bed level, diversion of higher sediment load to river Birupa and in effect increase in flood level. It is reported that action has been taken by Government of Odisha for dismantling the same up-to designed level. However, it should be ensured that the debris from dismantling is removed from front of the barrage.
- ii. Operation of the gates of Mahanadi barrage should be made aiming removal of shoals as far as possible. On development of tail water, the barrage bays in different location should kept opened during flood flow.
- iii. As reported earlier, construction of the two numbers of spurs had progressively diverted the flow of river away from the right bank to the desired location beyond the end points of the spurs. This has caused alluvium deposit upstream of Spur No.2, along the newly formed shore line and partial filling between the spurs. The old flow channel close to right bank between the spurs and downstream remains unutilised and has become a source of weed and mosquito growth affecting the health of the inhabitants nearby. People of the locality trying to encroach the channel and dumping all sorts of wastes and debris. Government may consider shifting of flood embankment to the new bank by side of the diverted flow channel and filling up of the area between the two embankments with sand/alluvium pumped from dredging of shoals in the river bed. The area can be utilised in planned manner for development of the city in accordance with the comprehensive development plan for Cuttack city.”

ANNEXURE-I**List of Documents received from Applicant and different authorities during site visit of Court Commissioner**

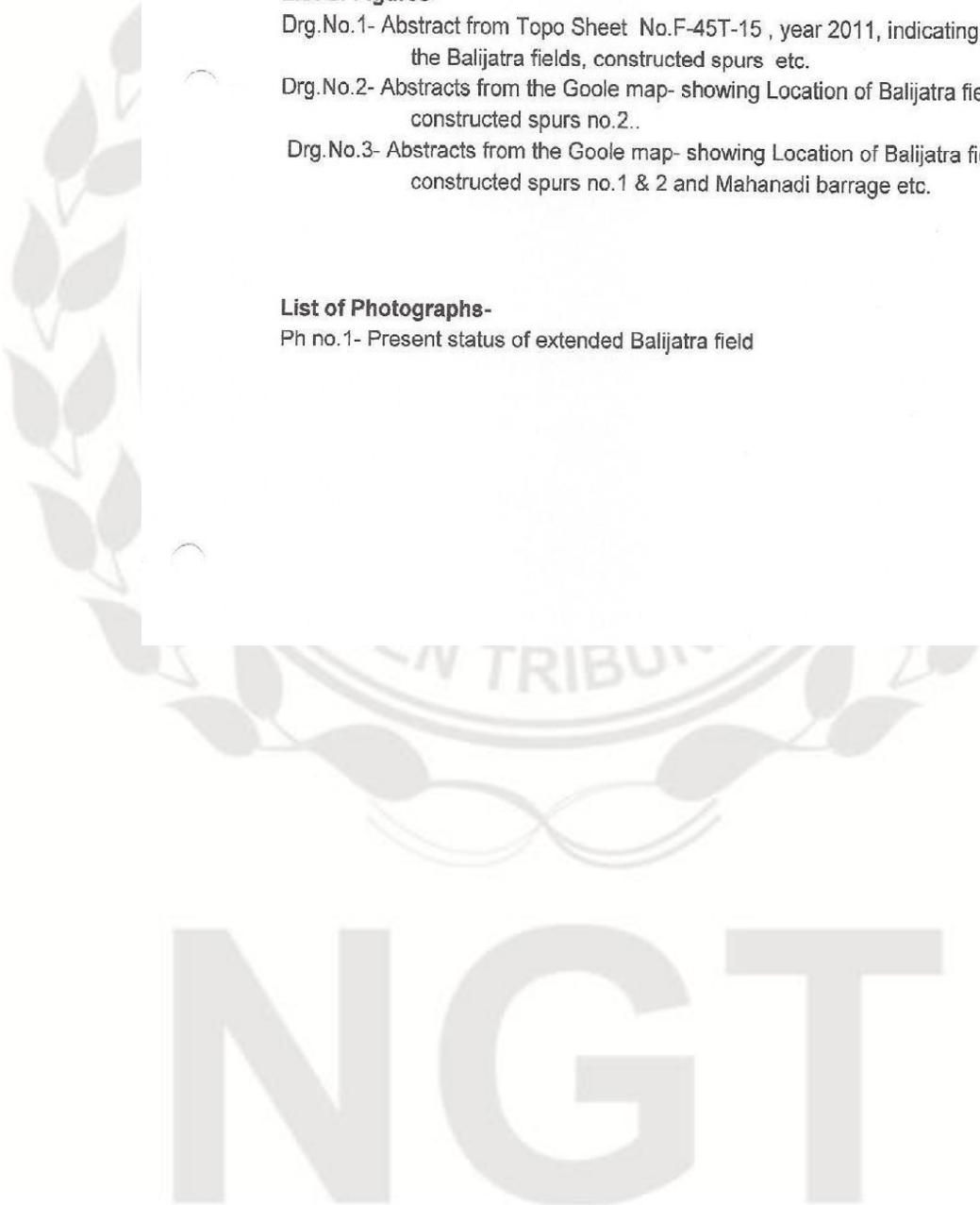
- I (a)- Submission in relation to site inspection- from Sri Biswajit Mohanty, Applicant.
- I (b)- Copy Odisha Gazette notice dated 7th July 2012, Order No.12444 dated 1st May 2012 and abstract from Comprehensive Development Plan for Cuttack Development Plan area (CDPA)- received from Collector, Cuttack, Respondent No.3.
- I (c)- Compliance Report on behalf of Cuttack Municipal Corporation-from Commissioner, CMC, Cuttack, Respondent No.5.

List of Figures-

- Drg.No.1- Abstract from Topo Sheet No.F-45T-15 , year 2011, indicating location of the Balijatra fields, constructed spurs etc.
- Drg.No.2- Abstracts from the Goole map- showing Location of Balijatra field and constructed spurs no.2..
- Drg.No.3- Abstracts from the Goole map- showing Location of Balijatra field, constructed spurs no.1 & 2 and Mahanadi barrage etc.

List of Photographs-

- Ph no.1- Present status of extended Balijatra field



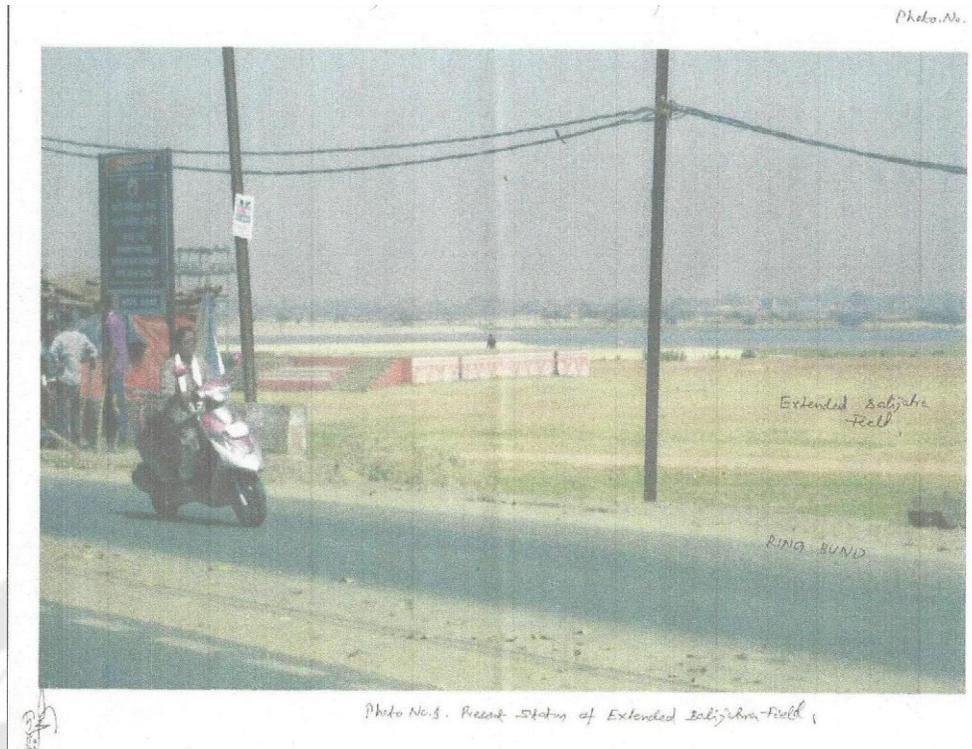
NGT



Dys. No. 2 - Abstracted from Google Map - showing location of extended Baliytra field and Dys. No. 2



Dys. No. 3 - Abstract from Google Map - showing location of extended Baliytra field.



14. As the Baliyatra festival of the current year falls during 1st week of November, 2017, in order to avoid any apprehension and uncertainty, we allowed the Baliyatra festival to be held in the same location as was held last year ensuring due compliance of all pollution norms and suggestions of the Court Commissioner.

15. The objections raised by the applicant on the Court Commissioner's report are broadly as follows:

- (i) "The new site in front of the Gadagadia Shiva Temple has been illegally reclaimed river bed by dumping debris, building waste and silt excavated from the Barbati Moat.
- (ii) During the monsoon months from June to September, the river flows over the area used as new site for Baliyatra.

- (iii) The status of land (of new site) as per revenue record is still classified as 'nadi' (river).
- (iv) As per the topo sheet published by the Survey of India the area is within two embankments of river Mahanadi which squarely falls under the definition of 'river bed'.
- (v) That the classification of the area as "Recreational Use Zone" by the Housing and Urban Development Department under the ODA Act, 1982 is illegal.
- (vi) The report is silent on the impact of huge gathering of 50 lakhs people on the river bed etc."

16. We have heard the parties, perused the pleadings and replies of respondent no.7 to the objection of the applicant to the Court Commissioner's report and written note of arguments filed by respondent no. 1-3 and 5. The allegations of the applicant can be broadly discussed under the following two major heads:

- (i) "Illegal encroachment of Mahanadi and Kathjodi river beds by Government Respondents as well as private persons in the form of dumping solid wastes, construction debris, temporary road construction and construction of eateries, huts, buildings and boating complex etc.
- (ii) Organization of annual festival Baliyatra in Mahanadi river bed affecting the riverian ecology including pollution of Mahanadi river."

17. Illegal Encroachment of Mahanadi and Kathjodi river beds.

In due compliance of the interim order dated 15.07.2016 passed by the Tribunal the Commissioner, CMC, issued a general notice for information of all the owners and drivers of the tractor engaged by CMC prohibiting dumping of garbage, debris, solid

wastes or construction wastes generated inside the city, into river bed of Mahanadi and Kathjodi or on the river embankments and to dispose these wastes only at the sites specified for that purpose. They were further informed that the tractors or vehicles found guilty of violating the aforesaid direction shall be penalized in accordance with law. The letter dated 27.08.2016, addressed to the Collector, Cuttack by the Commissioner, CMC, reveals that illegal dumping of wastes on river bed/patha of Mahanadi and Kathjodi was being done by JICA and others and there were several correspondences with District Administration, DCP of Cuttack, Executive Engineer of Mahanadi Society and JICA authorities to prevent such illegal dumping and take enforcement measures and to action taken against agencies/persons. In order to check unauthorized dumping squads have been deployed. CMC has also identified additional sites where debris/construction materials can be deposited to fill up the low-laying areas. The commissioner, CMC also requested the Executive Engineer, Mahanadi South Division in letter dated 21.07.2016 to draw eviction programme to remove encroachments on both sides of ring road from Jobra to Matamatha. These correspondences reveal that there were encroachments and dumping of wastes on river banks/beds of both the rivers and after the court intervention the District

Administration of Cuttack, in consultation with the State authorities has taken steps to remove illegal construction and evict the unauthorised dwellers. Steps have also been taken to ensure no dumping of municipal wastes on river banks/beds. However, the Governments have denied their involvement in illegal encroachment in any matter. The establishment of boating complex, jetty, eateries, approach road to Jetty are all approved project of the Government and have no way affected the river flow. However, the operation of boating complex is now completely stopped. The JICA project is an underground sewerage and drainage system in Cuttack City to prevent waste water logging inside the City and stuff and machineries were accommodated on the river bed temporarily through sheds during the construction phase without affecting the flow of river. Any reclamation made in river bed of Kathjodi was to check flood water during rainy season and to strengthen the river embankment.

Thus, some reclamation has been made by the Govt. to protect the City and people from flood, some naturally reclaimed areas are used for parking lot and other activities. However, other illegal encroachments by people in the form of temporary/permanent constructions and dumping of wastes/debris

are being removed by the District Administration after the intervention of the Tribunal. It is expected that the District Administration shall continue its effort periodically and regularly to ensure that river banks/beds of Mahanadi and Kathjodi are not used for illegal construction, dumping of waste and construction debris and process of eviction of illegal dwellings is complete within a reasonable period and appropriate action may be taken by the authority on such illegal encroachers.

18. **Organisation of Baliyatra festival:**

The District Collector, respondent no.3 has elaborately discussed the importance of Baliyatra festival, an important annual festival for the people of Cuttack in particular and Odisha State in general and its historical importance. It may be relevant to reproduce this aspect highlighted in Para 11 which reads as such:

“That the deponent most humbly states that “fairs and festivals” are the part of every human life, it may be in the form of entertainment of celebrating it with fun and frivolity or even in the form of religious activities which has got its religious value and sanctity and is connected with the sentiments of every human being. Like other festivals which are being celebrated in different parts of the State of Orissa in different seasons, Bali Yatra is one of them which marks the ending of Rainy Season and beginning of winter season/harvesting period in as much as it has a long history of its own, which cannot be described in words. However, the deponent would like to elucidate a few lines as to the

historical importance of Bali Yatra, its origin, impact on the society and the religious value connected with it.

“The people of Odisha, on the day of Kartika Purnima, revive their memory by observing Biota Vandana Utsav as a significant festival. It unfolds a brilliant chapter from the glorious day of Odisha History. The festival is celebrated throughout the Odisha at the hours of full moon, in the month of Kartika. But it is the Bali Yatra at Cuttack, at the belt of Mahanadi that unfolds the most rich and complete memory of the great traders who sailed from Odisha to the distant lands of near East to leave their impact in foreign countries.

At the same time this annual fair also presents a very significant occasion that reveals the rich tradition and culture of the people of Odisha.

On the holy Purnima day of Kartika, the entire City of Cuttack turns mad and crazy to go to “Gagadia Ghat” for sacred bath in Mahanadi and the make the boats float in the current of river Mahanadi as a religious performance. This is called “Bali Yatra”. From this date ancient Oriya ‘Sadhabas’(Merchants) used to sail their Boitas (Boats) towards distant islands like Java, Sumitra, Vali and Bomeo (Indonesia). Such a performance bears the memory of that golden age when maritime trade and business of Odisha was at its pinnacle of glory. Many organizations conduct “Boita Bandana” by arranging meetings, boating in Mahanadi and cultural programmes at Barabati Fort in the open air on the bank of Gada Khai of Barabati.

At “Gadgadia Ghat” a fair is organized for seven days starting from Kartika Purnima. Various magic parties, shops from Cuttack and outside, stationary, furniture works, hotels, sweet shops, display their goods for sale. “Dahibara, Aludum, Thunkapuri and Cheese Curry are the special attractions for the onlookers of this Yatra.

According to “Kartika Purana”, Lord Kartika’s Idol, kolling the demon “Tarakasura” is worshiped on erected shrines. About 50 such “medhas” come in procession with fireworks and lighting ‘Mahatap’ for immersion in a temporary pond specially created for the purpose in the Mahanadi.

The mega festival sits for a week time as it is the biggest trade fairs in Asia, for the reasons stated above. It has a business angles besides wild celebration. All the basic necessities of like are available in the festival. The denizens of the city avail the things at their door

steps. Villagers near and far come with their merchandise and goodies to generate income in the Mela ground. It is the biggest meet of the sellers and buyers at a particular place which has a special attraction for the people. As such, visit to the festival becomes 'must' for the city dwellers. Evening also, people in large number throng into the ground and would like to get lost in the surging crowds.

The festival grows phenomenally important making the district administration to make space in the river bed. Presently the upper ground and a part of alluvium are utilized for the purpose. With good connectivity linking the ground with other areas, there is now a hassle free movement. It results in promoting good trade and commerce. The volume of transaction reaches such proportion that organizer invariably shouts for its extension for a day or two; depending on the situation. Besides the above, this occasion also reminds the people of the rich folktales, songs, legends and enrich Odia literature as well as speak of the life, customs and traditions of the medieval Odia People.

Apart from the ancient historical and cultural aspects of life that this fair presents, it also brings to light many other features of the traditions and customs of medieval Odisan people. Therefore, Bali Yatra, apparently becomes a great source of income and earning for the poor artisans who work throughout the year making different kinds and products of arts and handicraft and other house hold articles which are sold in large number in the fair. It is estimated that transactions for crores of rupees are made during a few days in this fair and traders and business men from all over India come to sell their unique and all new kinds of products which attracts the attention of buyers. Therefore, above all, Baliyatra is a famous and unique fair for the different varieties and kinds of games, entertainments and many much wonderful performances and events that are provided to all aged persons for their entertainment.

Besides, Odisha's long maritime trade and culture, and rich heritage is a pointer to the historically, almost the natural history of the erstwhile Kalinga, that used to be the maritime province in not so distant past, now displayed in a capsule in the Maritime Museum at Jobra, and fondly reminisced in the popular Bali Yatra held for a week every year commencing on Rasa Purnima of the auspicious month of Kartika. Hence, the endeavour is to bring out Cuttack in a historical perspective. This reminds of the Romantic Poet.S.T. Colridge's

Ancient Mariner sailing across the seas and returning dried and dejected contrary to Kalinga's Sadhabas returning rich, successful and overjoyed in the holy month of Kartika. Many historical fairs such as Baliyatra at Cuttack, Dhanuyatra at Bargarh, Suliayatra at Patnagarh in the district of Bolangir and the Chhatra Yatra at Bhwanipatna in the district of Kalahandi have enriched the history of Odisha. All such festivals have their own religious and cultural values having been strongly connected with the socio-religious sentiments of the general public. Besides, many National level Festivals i.e. Kumbhamela at Prayag (Allahad) is being celebrated in the bank of Ganges, Kumbhamela at Ujjain in Madhya Pradesh, Kumbhamela at Haridwar are all celebrated in the river bed. Similarly, Baliyatra festival which itself carries its importance in view of socio-religious and economic value, is being celebrated at Cuttack in a befitting manner, from its very foundation in the early 13th Century and the Capital of the then Odisha till 1955 as its geographical location did not permit for over population. Many historical monuments are seen in Cuttack City and it still has kept alive its past glory being the birth place of a great son of India, Netaji Subhas Chandra Bose.

Here did not end the history of Baliyatra. People of Kalinga or Utkal were advanced in art and sculpture. They produced excellent filigree and ivory works apart from fine silk and cotton fabrics. Till middle age international trade was conducted mainly through sea routes/sports. Historians believe that even Roman empire had trade relation with Kalinga during that period. Brave young Odia boatmen fondly known as Sadhab puas or sons of Sadhabas sailed across the sea in sail boat to reach distant places like Java, Sumatra, Borneo, Bali besides Ceylon, Burma to make a fortune from international trade.

It is noteworthy that Kalinga emerged as a strong and powerful state during Ramayan (300 BC) and Mahabharat era. These two epics shaped the psychology, theology and spiritualism of the people over and above their higher literary value. But lack of scientific knowledge forced primitive type of living.

The Sadhabas (sea-farers) were courageous who sailed across the sea and reached the distant land of Java, Sumatra, Bali and Borneo with their saleable wares like silken and refined soft linen saris, scented matters, ivory and filigree work of superior artistic quality. The daughters-in-law or Sadhab Bohus gave them warm ceremonial send

off, wished them bon voyage and safe return. That was said to be heroic and glorious period in the lives of the ethnic Odias who also sailed to Burma and Ceylon. They left indelible mark of Odia culture and religion in those places.

Lord Shri Chaitanya Deva walked on the sacred sands also in Gadagadia Ghat en route to Puri in 1509 AD on the auspicious day of Kartika Purnima. On this propitious day the Sadhabas commenced their sea-voyage up to Bali, an island where they left permanent mark of culture, heritage and religious and here in Cuttack we fondly call the fair as Baliyatra.

The month of Kartika is the most sacred month of a year and Kartika Purnima is being celebrated as Voita Vandana Divas since ancient times. The memories of Odisha maritime activities are closely connected with the Kartika Purnima celebrations. The famous Baliyatra of Cuttack starts in this auspicious day. Baliyatra has not established a commercial hub and approach like Puskar Mela of Rajasthan. Therefore, Bali Yatra is a festival of huge gatherings for exchange of fellow feelings, place of trade and commerce, commemorates the ancient maritime activities of Odias/Sadhaba Pua and connects the religious value as the idol of Kartika is being worshiped as the myths and legends depict, which is the sum and substance of Baliyatra.”

19. We are not averse to such festivals but such festival with a gathering of few lakhs of people must not threaten the riverine ecology and contaminate the water body. The Court Commissioner report is very clear on one aspect i.e. the extended area of Baliyatra is in the silted-up alluvium space on northside of river embankment upto around 50m away from the flowing channel of Mahanadi and presently there is no flow of river in this portion. We are also aware that as per revenue record the extended site is still classified as ‘Nadi’ (river) and technically it is the river bed.

There may be a probability of monsoon water of the river reaching the site. But the festival is held after onset of winter when the river flows beyond the designated site. Therefore, we are of the view that the age old tradition of organising such historic festival should continue provided the District Administration take all preventive measures to ensure that the festival in no way affects the river ecology and contaminate the water body.

20. Considering the pleadings of the applicant and respondents, report of the Court Commissioner and objection raised thereto by the applicant and rejoinders filed by the parties and based on our observation enumerated in Para 17,18 & 19 Supra, we hereby issue the following directions for timely compliance by the respective government respondents:-

1. "The District Administration of Cuttack shall ensure that no construction debris/waste, municipal wastes etc. are illegally dumped on the river beds. In case of violation of this direction the local authority shall impose appropriate penalty to be decided by them, confiscate the vehicles and machinery and initiate criminal proceedings against the violators.
2. All illegal encroachments of the river banks/beds of Mahanadi and Kathjodi at Cuttack shall be evicted by the District Administration and all illegal constructions on the river bank/bed shall be removed following the provisions of law and an action taken report shall be filed by the respondent no.3 every six months in the Registry.

3. We allow the Baliyatra festival to be held in the Balijatra field (Kila Maidan) between Barabati Stadium & Gadagadia temple as well as in the silted-up alluvium space on north side of river embankment (extended Balijatra field), the areas where the festival was held during 2016 on the following conditions:
- (i) The distance of the river flow from the boarder of the extended site shall be a minimum of 50 m.
 - (ii) The festival site shall be declared as Plastic Free Zone by the authorities.
 - (iii) The solid waste generated during the festival shall be regularly collected on daily basis by the municipal corporation for appropriate disposal. Throwing of such wastes on river bed and burning of such wastes shall be strictly prohibited.
 - (iv) Appropriate arrangement shall be made for proper drainage of waste water from festival site to the nearest municipal drain.
 - (v) The public and vendors shall be informed through announcement and distribution of leaflets about their role for making the area clean and pollution free. The organizer shall prepare a guideline for an ecofriendly Baliyatra festival.
 - (vi) The Balijatra site shall be completely restored by 9th day of the commencement of the festival.
 - (vii) A compliance report shall be filed by the District Collector in the Registry of the NGT within a month of completion of Baliyatra every year.”

With the above directions, the OA stands disposed of.

No order as to costs.

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Justice S.P. Wangdi, JM

Kolkata
16/10/2017

Prof. (Dr) P.C. Mishra, EM