

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 7469 of 2017

Registrar (Judicial), Orissa High Court, Cuttack **Petitioner**

Mr. Mohit Agarwal, Amicus Curiae
-versus-

Union of India and Others ... **Opposite Parties**

Mr. Debakanta Mohanty, Addl. Govt. Advocate
Mr. Akhaya Biswal, Advocate
Mr. B.P. Pradhan, Advocate
Mr. B.P. Das, Advocate
Mr. Manoj Kumar Mohanty, Advocate
Mr. P. K. Rath, Advocate
Mr. S.K. Dalai, Advocate
Mr. Santanu Kumar Sarangi, Senior Advocate (Caveator)
Mr. P.K. Mohapatra, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
16.01.2023

Order No.

Drone footages

75. 1. Today's hearing commenced with playing a video footage of a drone camera that has captured the extent of earthen embankments across the Chilika Lake with specific reference to the Krushnaprasad Tahasil. The drone footages showed that there were earthen embankments running all across the water body and the suggestion by counsel for some of the interveners that this may have been erected to control floods village belies credibility. Clearly, as pointed out by the Amicus Curiae, many of these have been erected for illegal shrimp farming.

2. Mr. Samarth Verma, learned Collector, Puri was present in virtual mode, explained that while the task of removal of the earthen embankments is ongoing, the systematic removal of all of them while at the same time ensuring that they do not re-emerge will be a considerable task involving additional resources and manpower, apart from machines. He has undertaken to hold consultations with the Chilika Development Authority (CDA) and come up with a comprehensive plan before the next date of hearing on the extent of the earthen embankment that requires to be removed, the manner of doing it and the resources that would be required. Apart from placing these details by way of an affidavit, he will also indicate the possible time line to achieve the complete removal of all such illegally erected earthen embankments.

3. The Court has suggested to Mr. Verma that in the initial phase the effort must be to ensure that there are breaches caused in the perimeters of such illegal earthen embankments so that there is no enclosed space within the lake which can facilitate illegal shrimp farming. The impact that this is likely to have on the water levels and whether it could pose any risk to human habitation around the lake will also be examined and indicated in the affidavit to be filed.

4. The Collectors of the other three districts, i.e., Ganjam, Kendrapara and Khurdha were also present online. Each of them has undertaken to deploy similar drone technology to have a proper survey conducted of the entire area within their respective jurisdictions. Each of them has undertaken to remove not only the

net Gheries but earthen embankments illegally erected for facilitating illegal shrimp farming. The directions issued above to the Collector, Puri would equally apply to the Collectors of Kendrapara, Ganjam and Khurdha.

5. It has been suggested by the Court that each of these Collectors should maintain in their offices a library folder of drone footages taken on a daily basis at three different hours of the day and to ensure that these footages are preserved for a construable length of time to aid effective monitoring and to ensure that there is no reemergence of the illegal prawn gheries that have been removed. The affidavits to be filed by each of them would report compliance with this direction.

6. The Court also considers it necessary to issue a general direction that hereafter prior to every hearing an updated status report will be filed by each of the Collectors of Puri, Khurdha, Ganjam and Kendrapara regarding implementation of the Court's directions. The Court would also like to emphasize that the FIRs that have been registered with the removal of every illegally erected prawn ghery must be properly investigated and the cases taken to their logical conclusion which will include filing of charge sheets and conduct of the trial ending in a result. The Court will be informed about the progress of the criminal cases on the next date of hearing in the affidavits to be filed by each of the Collectors.

7. The Court takes note of the affidavit handed over today by the Collector, Puri giving an updated status of the action taken

regarding removal of net and earthen gheries and the cases filed as a result thereof.

Directions to the Chilika Development Authority (CDA).

8. In its order dated 4th April, 2022 this Court had in Para-9 issued a set of directions to the CDA which bares repetition:

“9. It appears that although the Applicant Society is a registered Society it has no formal permission from the competent authority to carry on any fishing activities. It is also plain that after 18th June, 1999 no such permission has been granted to any PFCS including the Applicants. Consequently, the question of permitting the Applicants to continue with its fishing activities does not arise. Considering the plea of the Applicant Society that earlier there was a policy by the State concerning the traditional non-fishermen, a direction is issued to the Chilika Development Authority (CDA) to examine the entire issue and submit its recommendations to the State Government within a period of three months for the State Government to consider whether any such policy needs to be reformulated consistent with the judgments of the Supreme Court and the prevailing legal regime. It will be open to the Applicant Society to make its submissions/representations to the CDA which will give them a hearing on a mutually convenient date. The demarcation of areas in the lake where such activity if any can be carried on does not therefore also arise at this stage. No further directions can be possibly given at this stage on this issue.”

9. At the subsequent hearing on 15th September, 2022 the above directions were reiterated as under:

“Policy regarding traditional fishermen and non-fishermen

3. As regards the directions issued by this Court to the Chilika Development Authority (CDA) in the order dated 4th April, 2022 that a policy should be formulated

for traditional fishermen and non-fishermen, there is no response as yet filed by the CDA. It was suggested on behalf of some of the interveners/applicants represented by Mr. Sukanta Kumar Dalai, Advocate that the Revenue Department should perhaps also be involved in the formulation of such policy.

4. Since this Court was at that point in time informed that it would be the CDA which would be best suited to examine the entire issue objectively and submit recommendations to the State Government, those directions were issued. The ultimate object is to have a policy formulated to cater to the demands of the traditional fishermen and non-fishermen operating in the area.

5. The Court would like to reiterate the directions issued in para 9 of its order dated 4th April, 2022 and directs that in addition to the CDA, the State Government in the Department of Revenue will also examine the entire issue and perhaps in consultation with the CDA present a policy before the Court within a period of two months from today.”

10. Learned counsel appearing for the CDA drew attention to I.A. No.16578 of 2022 filed by CDA in which it *inter alia* it is stated that an inter-departmental meeting was held by the CDA on 3rd November, 2022. While the affidavit states that the next review meeting was to be held in the fourth week of December 2022, learned counsel for the CDA informs the Court that a further meeting is to be held on 19th January, 2023. They were ten members present at the inter-departmental meeting held on 3rd November, 2022. However, there is no indication in the said application whether the specific directions issued by this Court on 4th April, 2022 and 15th September, 2022 about hearing the traditional and non-traditional Fisherman Cooperative Societies (FCS) has been complied with.

11. Today, Mr. P.K. Rath, learned counsel appearing for 11 such Primary FCS who are Applicants in I.A. No.15769 of 2022 prayed that the said Applicants should also be heard by the CDA.

12. It is pointed out by Mr. Debakanta Mohanty, learned Additional Government Advocate, that there are several such PFCs who may want to be heard. This could comprise both traditional and non-traditional fisher folk involved in either capture or culture fishery. Their interests need not be the same and at times may be at cross purposes. Nevertheless, they would have to be heard as part of the exercise of formulation of a policy, if at all, to deal with the concerns voiced by them

13. The Court, therefore, issues the following further directions in this regard:

(i) The CDA will form sub-Committees of two or three members to visit the various PFCs and hold sittings in the villages in and around the Chilika lake as part of the exercise of implementation of this Court's directions issued on 4th April, 2022 and 15th September, 2022.

(ii) The CDA will make comprehensive recommendations to the State Government after completing the above exercise not later than 15th April, 2023.

(iii) The State Government will examine those recommendations and after due deliberations, inform the Court by way of an affidavit of the Additional Chief Secretary, Revenue and Disaster Management of the stand of the State Government on the

formulation of a policy. This affidavit positively be filed before the next date of hearing.

(iv) The CDA will inform the local administration of the dates and possible venues of the meeting to enable the local administration to provide sufficient police protection for orderly conduct of such meetings. The PFCSs are requested to cooperate in the peaceful conduct of all such meetings.

(v) All the PFCSs who wish to be heard by the CDA who are interveners before this Court will furnish to the counsel for the CDA such list on or before 1st February, 2023 indicating the name of one or maximum two representatives who will be heard by the CDA on behalf of such PFCSs.

Directions to the CAA

14. In the order passed on 15th September, 2022 this Court had issued directions to the Coastal Aqua-culture Authority (CAA) regarding disposal of the applications pending with it for grant of permissions on the recommendation of various District Level Committees. The Court reiterates those directions and further the CAA will dispose of all pending applications, if not already done, positively on or before 30th April, 2023 and communicate its decisions to the respective DLCs who will in turn communicate those decisions to the Applicants who are the Interveners before this Court. Some of them who have also filed independent writ petitions.

15. The Secretary, CAA will file an affidavit of compliance in this Court before the next date and also remain present virtually. The

interim orders in regard to such Applicants passed earlier will continue till the next date.

16. The Chief Executive Officer, CDA as well as the Collectors of Puri, Ganjam, Khurdha and Kendrapara District will also remain present virtually on the next date.

17. List on 15th May, 2023 at 2 pm.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

Balaram

