

# Bibhindra Beura vs State Of Odisha on 12 June, 2023

**Author: Adarsh Kumar Goel**

**Bench: Adarsh Kumar Goel**

Item No. 01

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH,  
FINANCE CENTRE KOLKATA

VACATION BENCH

(By Video Conference)

Original Application No. 59/2023/EZ

Bibhindra Beura & Ors.

Applicant(s)

Versus

State of Odisha & Ors.

Respondent(s)

Date of hearing: 12.06.2023

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

Applicant: Mr. Pratik Dash, Advocate for applicant (virtual mode)

## ORDER

1. Grievance in this application is against setting up and operation of Greenfield Project of 125 KLD Grain based Ethanol Plant along with 4.0 MW Co-generation Power Plant at Village - Banana, Tehsil Dumpada, District-Cuttack, Odisha by M/s. Cuttack Agrivet Private Limited, Respondent No. 13, the Project Proponent (PP).

2. According to the applicant, the said plant is in the vicinity of Chandaka Dampara Wildlife Sanctuary which has been declared as eco- sensitive zone. However, the DFO and Wildlife Warden

wrongly mentioned that the area is outside the eco-sensitive zone and the wildlife. On that basis, the State of Odisha wrongly allotted land to the Industrial Development Corporation (IDCO), who in-turn allotted the same for the project. State PCB wrongly granted consents under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. Local inhabitants raised objections pointing out potential for damage to flora and fauna. Though no CTO has been yet granted, the PP is proceeding with the project.

3. We have heard learned Counsel for the applicant and perused the record.

4. Main contention of learned Counsel for the applicant is that as per ESZ Notification, commercial mining and other such activities producing hazardous substances, hydroelectric projects, etc. are prohibited and activities like widening of roads, movement of traffic at night and such other activities are regulated. Relevant provisions in the ESZ Notification relied upon by the applicant are:

"Prohibited Activities: Commercial Mining, stone quarrying and crushing units, Setting up of saw mills, Setting up of industries causing water or air or soil or noise pollution, Use or production of any hazardous substances, Commercial use of firewood, Establishment of new major hydroelectric projects, Undertaking activities related to tourism like over-flying the sanctuary area by hot air balloons, etc, Use of plastic carry bags, Discharge of untreated effluents and solid waste in natural water bodies or land area etc. Regulated Activities: Widening and strengthening of existing and new roads, Movement of vehicular traffic at night, Introduction of exotic species, Protection of hill slopes and river banks, Commercial Sign boards and hoardings, Air (including noise) and vehicular pollution, Discharge of treated effluents in natural water bodies or land area, Small scale industries not causing pollution, Collection of Forest produce or No-Timber Forest Produce (NTFP), Security Forces Camp, New wood based industry, Eco-friendly tourism activities."

5. We have considered the objection. It is undisputed that IDCO allotted land to the PP for the project in question and executed conveyance deed in its favour. According to the Director of Industries, Cuttack, the project is priority sector project. EC was granted by MoEF&CC on 4.3.2022 after due examination which mentions that the project falls under entry 5(ga) of the Schedule to the EIA Notification, 14.09.2006, as amended on 16.6.2021 and is category 'B-2'. The same has been duly appraised by Expert Appraisal Committee (EAC). It is exempted from TOR and public hearing. Conditions have been prescribed for protection of environment. According to impugned EC, the project is within 2.2 km from Chandka Dampara Wildlife Sanctuary.

6. There is no allegation of violation of EC or consent conditions. The impugned EC dated 4.3.2022 has not been challenged within the prescribed limitation. Only allegation in the application is that the project is within the ESZ which is not shown to be factually correct. Legality of EC is not within the purview of the Tribunal after expiry of period of limitation for filing appeal. Thus, in our view, the application cannot be entertained. However, we find it necessary to make some observations for being looked into and acted upon by statutory authorities for which we do not consider it necessary to issue notice.

7. First issue is procedure for appraisal of the project. Though issue of validity of EC is not open to be gone into in these proceedings, we make it clear that the MoEF&CC is not debarred from looking into and taking remedial measures, if any, if procedure of appraising the project as A category is applies in view of applicability of 'general condition' appended to EIA Notification dated 14.9.2006, since the project is within 5 km from the Wildlife Sanctuary. MoEF&CC may take decision in this regard preferably within one month.

8. Second issue is to consider how ZLD condition which has been imposed will be enforced. As per EC, water requirement mentioned in para 9 of EC is 1869 KLD which is one time and subsequently, net fresh water requirement, including for the power plant is 739 KLD which will be treated through 670 KLD ETP/CPU. Since the plant has to follow ZLD system, water recovered out of process is to be used back in the manufacturing process and closed loop for recirculation is to be followed.

The application is disposed of accordingly.

A copy of this order be forwarded to MoEF&CC and State PCB by e- mail for compliance.

Adarsh Kumar Goel, CP B. Amit Sthalekar, JM Arun Kumar Tyagi, JM Dr. A. Senthil Vel, EM June 12, 2023 Original Application No. 59/2023/EZ DV