

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

.....

ORIGINAL APPLICATION N O. 128 OF 2015

IN

MISCELLANEOUS APPLICATION NO. 363 OF 2015

IN THE MATTER OF:

Mohar Singh Yadav
H.No. 119, Khirkan,
Thana Babina, Teh-Jhansi,
District Jhansi-284401
Uttar Pradesh

.....Applicant

Versus

1. Union of India
Through the Ministry of Environment, Forests & Climate Change
Through its Secretary
Indira Paryavaran Bhavan
Jor Bagh Road
New Delhi - 110003
2. Secretary, Ministry of Power
Shram Shakti Bhawan
Rafi Marg,
New Delhi - 110001
3. State of Uttar Pradesh
Through its Chief Secretary
Lal Bahadur Shastri Bhavan
Uttar Pradesh Secretariat
Lucknow-22600
4. Uttar Pradesh Pollution Control Board
Through its Member Secretary
Building No. TC-12V
Vibhuti Khand, Gomti Nagar
Lucknow-226010
5. The District Collector
District Lalitpur-284403
Uttar Pradesh

6. Lalitpur Power Generation Company Ltd.
Through its Managing Director
Bajaj Bhawan, B-10, Sector – 3
Jamnalal Bajaj Marg
Noida - 201301

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Mrityunjay Kumar, Advocate

COUNSEL FOR RESPONDENTS:

Mr. Vishwendra Verma, Advocate for Respondent No. 1
Mr. Ardhendumauli Kumar Prasad and Mr. Jindal Gyatso
Chandkapa, Advocates for Respondent No. 2
Ms. Savitri Pandey and Ms. Azma Parvee, Advocates for
Respondent No. 3, 5 & 8
Mr. Pradeep Misra & Mrs. Daleep Kumar Dhyani, Advocate for
Respondent No. 4
Mr. Alok Krishna Agarwal, Mr. Mayank Bhagwati, Mr. Upendra
Kumar, Advocates for Respondent no. 6

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Reserved on: 20th August, 2015

Pronounced on: 15th September, 2015

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

SWATANTER KUMAR, J.

The applicant has invoked the jurisdiction of this Tribunal under Section 18 read with Section 14 & 15 of the National Green Tribunal Act, 2010 (for short 'Act of 2010') with a prayer that the Environmental Clearance granted to the Project Proponent

(respondent no. 6), vide order dated 31st March 2011 be cancelled/quashed.

2. The applicant is the President of the Bundelkhand Majdoor and Kisan Kalyan Samiti, Jhansi (UP); a Society registered under the Society Registration Act, 1860. The Society was formed with the solemn objective of safeguarding the rights and interests of the labourers and farmers of the entire region of Bundelkhand and it also undertakes various welfare activities for its members. The applicant also pleads to be interested in protecting the environment, particularly the rivers in that area. Respondent no. 6, Lalitpur Power Generation Company Ltd., has proposed to establish a 3x660 Mega Watt Imported Coal Based Thermal Power Plant at villages Mirchwara and Burogaon in Mahroni Taluk of District Lalitpur (UP). Ministry of Environment, Forests & Climate Change (for short 'MoEF'), respondent no.1 issued an Environmental Clearance dated 31st March, 2011 in favour of respondent no. 6 for establishing and functioning of the said plant. The order granting Environmental Clearance contained various specific and general conditions which respondent no. 6 was required to comply with and adhere to in its true letter and spirit. The applicant, amongst others, relies upon condition no. 7 of the said order which reads as follows:-

“No water bodies (including natural drainage system) in the area shall be disturbed due to activities associated with the setting up/ operation of the power plant”

3. Plant of respondent no. 6 is situated in District Lalitpur between the banks of two rivers, i.e. Sajnam and Utari. These rivers are

running parallel to each other and have their own different natural flow of water. These rivers are major source of water for agricultural activities in the area and the farmers are largely dependent upon these rivers for their requirements of water for agricultural activities. In the year 2013, the residents and the farmers of the area noticed some type of construction activity in the river. However, they believed that these construction activities were being done for some irrigation purpose by the State Government. But, to the utter surprise of the, local inhabitants, more particularly the agriculturists, somewhere in the month of April and June of 2014, respondent no. 6 proceeded to demolish the Government made Check Dam, constructed over the said rivers with the illegal and mala-fide motives for diverting the flow of water towards its own power plant. Besides demolishing the said Check Dam, the representatives or agents of respondent no. 6, had even gone ahead and constructed a huge wall upon the bank of the two rivers, so as to obstruct and change the natural flow of the rivers. To fortify this contention, the applicant has annexed certain photographs and a site map along with the application. It is the specific averment of the applicant that respondent no. 6 has not only changed the natural flow of the river Sajnam and diverted the same to get connected to the river Utari, but also has constructed a reservoir for collection of water and has installed a pump house to draw the natural water of the two rivers into his own power plant. The check dams are primarily constructed to ensure water supply on one hand and restoration and recharge of ground water levels on the other.

4. It is the specific case pleaded by the applicant that besides violating the above specific condition in the order granting Environmental Clearance to the project, vide which respondent no. 6 was not to disturb any water bodies, including the natural drain systems in the area by any of his activities while respondent no. 6 has illegally violated the provisions of the Water (Prevention and Control of Pollution) Act of 1974. The said respondent no. 6 could not have extracted water directly from the river or the check dams which were primarily meant for other purposes. Moreover, respondent no. 6 has undertaken the above illegal activities without taking permission of the concerned authorities. Therefore, there being a violation of the specific conditions of the Environmental Clearance and the law in force, the Environmental Clearance is liable to be cancelled and quashed as per its terms. The applicant states that he had filed an application under the Right to Information Act 2005, before the Chief Engineer, Irrigation Department, Division-I, District Lalitpur (U.P.) seeking information with regard to any permission being granted in favor of respondent no. 6, allowing such activities, particularly diverting the water of the river Utari or for installation of any pump house upon the river Sajnam to draw water of the two rivers into his plant. In response to this application, a reply dated 29th November, 2014 was received from the Executive Engineer, Irrigation Department of the said District, informing that no such permission has ever been granted to respondent no. 6 for any of the above-stated activities. There was a specific condition debarring the Project Proponent from extracting any ground water. The Project Proponent is indulged in

illegal extraction of water from the river. The construction of wall by the Project Proponent on the bank of the river is again an illegal activity carried out by him without any proper permission. It is on this premise that the applicant has prayed for cancellation of the Environmental Clearance dated 31st March, 2011, for an order directing demolition of the wall obstructing the natural flow of the rivers for restraining respondent no. 6 from extracting and also to remove the water from the rivers afore-noticed and also to remove the reservoir and pump house constructed on the river banks.

5. The above claim of the applicant is vehemently contested by the respondent no. 6. Respondent no. 6 contends that the application is a gross abuse of process of law. There is illegal and deliberate suppression of facts along with their misrepresentation. The applicant, who himself was a contractor for respondent no. 6 construction/renovation of Check Dams, has filed the present application with ulterior motive. Respondent no. 6 had engaged an NGO, namely, Kamal Nayan Jamnalal Bajaj Foundation, for water management in the area surrounding its unit, as a part of its Corporate Social Responsibilities (for short 'CSR'). That the NGO in turn had engaged the applicant for the work of construction/renovation of Check Dams on 18th May, 2013. The applicant failed to carry out the above work and abandoned the same, which is still incomplete and the present application is a result of. According to respondent no. 6, the applicant along with his accomplices, physically assaulted the staff of those contractors, attempted to trespass in the unit of respondent no. 6 and also

attempted to kidnap two officers of respondent no. 6 from the premises of respondent no. 6 and even a FIR was lodged in that behalf on 12th January, 2015. Besides this, the present application is a mere attempt on part of the applicant to pressurize respondent no. 6 from conceding to the illegal demands raised by the said applicant. It is also averred that the application is barred by time.

6. On merits it is stated that the answering respondent has not violated any of conditions of the order granting Environmental Clearance dated 31st March, 2011. On the contrary, its activity is in furtherance to the letter dated 21st June, 2013, where the State Government approved the proposal and gave its No Objection and theoretical consent for making available 80 cusecs of water to the respondent's plant in question. After grant of the above permission, on 25th June, 2013, respondent no. 6 entered into a Water Use Agreement with the State Government in that regard. On 5th March, 2014, the Executive Engineer, Irrigation Department, permitted drawing of 10 cusecs of water from downstream of Kachnoda Dam on river Sajnam at the Check Dam in village Burogaon in furtherance to the agreement dated 25th June, 2013. On 25th June, 2014, the District Magistrate recommended construction of 12 Check Dams and renovation of old Check Dams, removal of silt from both the rivers Sajnam and Utari as well as its tributaries, construction of culvert and head regulator by the above mentioned NGO. Further on 17th July, 2014, the Executive Engineer, Minor Irrigation Section, Lalitpur, permitted construction of three Check Dams each on rivers Sajnam and Utari and also permitted development and cleaning of these

rivers. It is the case of respondent no. 6 that it is only in furtherance to the above agreements and permissions that the replying respondent is drawing such quantities of water which are well within the limits prescribed under the Environmental Clearance. It is specifically denied that respondent no. 6 has committed any breach of the conditions of the order granting Environmental Clearance or any other law in force. On the contrary, it is the case of respondent no. 6 that his activities have resulted only in regeneration of local water bodies without disturbing the natural course of both the rivers. Due to damage in upper catchment area, siltation had taken place in the rivers, which was causing floods and had reduced storage, water flow and ground water recharge. Respondent no. 6 has submitted that after due consultation with the local villagers and as per the needs, it carried out the work of de-silting of the Rivers Sajnam and Uttari along with its three tributaries, which has led to the increase in the water storage, water flow and ground water recharge in the area. Respondent no. 6 has submitted that average annual rain fall in the district is 1044.30 mm and there are also a number of droughts in the area. The Central Ground Water Board had recommended water conservation and artificial recharge schemes by construction of Check Dams, nala works and afforestation in the said district to combat water scarcity and droughts. It has been denied by respondent no. 6, that it had either demolished any Government Check Dam or had diverted any flow of water to its own plant. He has also denied that the averments relating to construction of huge wall upon the bank of the rivers to obstruct the natural flow of the rivers and has submitted

that it had only repaired/renovated the Government Check Dams and had constructed additional Check Dams to prevent regeneration of degenerated local water bodies. It is specifically averred by respondent no. 6 that the construction of reservoir on the land allotted to the Project Proponent and installation of Pump House, does not in any manner, violate any of conditions of the Environmental Clearance granted to the Project Proponent. These works were, in fact, executed with the prior approval of all the concerned authorities. It is also averred by the applicant that the RTI Application is based upon misguided facts, as respondent no. 6 had all the requisite permissions for executing the above works. It is also disputed and denied that respondent no. 6 has undertaken any activity due to which the natural flow of both the rivers had been diverted or changed.

7. It is submitted by respondent no. 6 that paragraph two of the Environmental Clearance does not contain any direction, but only records a proposal by the applicant company and hence does not limit the source of water for the project of respondent no. 6. In fact, in terms of clause (v) of the Environmental Clearance, respondent no. 6 was to submit to the Regional Office of the MoEF, the proposal in relation to source of water for meeting the requirements during the lean season. As per clause (ix) of the Environmental Clearance, the requirement of water was restricted to 5000 cum/hr and COC of 5.0 was to be adopted. The replying respondent claims that he had never violated this condition. Thus, the petition is stated to be ill founded and without any merit.

8. Respondent no. 2 to 5 have filed very formal replies. On behalf of respondent no. 3 & 5 i.e. the State of Uttar Pradesh, it has been stated that an agreement dated 25th June, 2013, was entered into between the Government and the Project Proponent, stipulating 80 cusecs of water to be provided to the Project Proponent. However, the Environmental Clearance was granted on the basis that Project Proponent shall meet 50 cusecs of water for its power plant. The water in excess of 50 cusecs cannot therefore, be provided to the Project Proponent. A pipeline from Rajghat Dam to power plant is at an advanced stage of completion; 20 kms out of 44 kms has been completed and total pipeline is likely to be completed by 31st March, 2016. The Project Proponent had commenced its trial run in June, 2015 and for this purpose 10 cusecs of water was required and was sanctioned. So, presently only 10 cusecs of water is being provided to the Project Proponent. It is also stated that the RTI application has been made to the wrong authority with wrong contents. The Project Proponent, in fact, had been granted permission under the CSR activity to construct Check Dam on Sanjnam and Uttari Rivers for increasing the ground water level vide letter dated 17th July, 2014, of the Executive Engineer, Minor Irrigation Section, Latitpur. Every year, keeping in view the need of the farmers 10 to 20 Check Dams are constructed on various rivers and water streams. In the present case, three Check Dams marked in the site plan on record were Check Dam – 1, Check Dam – 2 and Check Dam – 3, made by an NGO in accordance with the permission granted by the authorities. These three Check Dams are in addition to an old Check Dam and the

Project Proponent is permitted to lift water from old Check Dam only. The pumps set up by respondent no. 6 are used at a point before Buragaon Check Dam, without which water cannot be pumped and supplied to the power plant. The Government of Uttar Pradesh has stated that it has a stake in Power Plant in larger public interest, as it is has to supply a sizeable power to meet the power crisis in the state. Respondent No. 1, MoEF has submitted in its reply that there is no violation of the stipulated environmental conditions as monitored during site inspection of the project. The Environmental Clearance has been granted subject to certain conditions stated in the order. The project was monitored by the Regional Office, Lucknow and inspections were conducted on 27th March, 2012, 31st July, 2014 and 3rd August, 2015. According to them, the Project Proponent has complied with or is in the process of complying with most of the environmental conditions. The trial run of the project is subject imposed to the condition by the State Government. Further, the Department of Irrigation, Uttar Pradesh has permitted the Project Proponent to lift 10 cusecs of water from the Check Dam, downstream of Kachnodha Dam which is situated on the river Sajnam and accordingly, pump house and pipeline were constructed. The Check Dams on both the rivers had been repaired by the Project Proponent. It is categorically stated that no construction activity, including, construction/repair carried out by the Project Proponent, had diverted or obstructed the natural flow of both the Rivers. Thus, the averments in the application are stated to be incorrect. It is stated that the additional Check Dam that has been constructed on the river, is for

regeneration of local water bodies as well as de-silting of natural drains to regenerate the water bodies and has been constructed with prior approval of the Competent Authorities.

Respondent No. 2 has only prayed for deletion of its name on the ground that applicant has not raised any grievance against them.

Respondent No. 4 again has filed a very short affidavit stating that respondent no. 6 have applied for the Consent to Establish the Power project and after considering the same, Consent to Establish was granted on 11th April, 2011. The Consent to Operate was granted on 13th June, 2015 whereafter the trial run had been started by the Project Proponent.

9. To the respective replies filed by different respondents, the applicant opted not to file any rejoinder. From the above pleadings of the parties, the following issues fall for consideration of the Tribunal:

- I. Whether the present application is barred by time?
- II. Whether the Project Proponent has committed any breach of the terms & conditions of the order dated 31st March, 2011, granting Environmental Clearance and/or carried out any other illegal and unauthorized activity, so as to justify cancellation of the order granting Environmental Clearance?
- III. Does the facts and circumstances of the present case require passing of specific directions by the Tribunal?
- IV. What relief, If any, the parties are entitled to?

DISCUSSION ON ISSUE NO. I

10. According to the respondents, particularly, respondent no. 6, the application is barred by time as the Environmental Clearance to the

project was granted on 31st March, 2011, while the present application has been filed on 20th April, 2015. Nearly, two years have passed from the date since the Cause of Action first arose and therefore, the application is beyond the purview of Section 14 of the Act of 2010. According to the applicant, he has not challenged the legality or correctness of the order dated 31st March, 2011 and it is the default/ breaches committed by the respondent no. 6, of the said order, as well as the unauthorised activities carried on by the Project Proponent has reflected/provided in the reply to his RTI Application dated 29th November, 2014, by the Irrigation Department, that the occasion for filing the present application arose. Thus, computing the period of six months from 29th November, 2014, the application is well within the prescribed period of limitation.

11. Undisputedly, the present application is not an appeal under Section 16 of the Act of 2010. The applicant is not aggrieved from the grant of Environmental Clearance to the project, which was granted on 31st March, 2011. The grievance of the applicant is that the Project Proponent has carried out activities illegally, in an unauthorized manner and violated the terms and conditions of the order dated 31st March, 2011. As a result of such activities by the Project Proponent, which includes obstructing the flow of the river, construction of huge wall, diverting the river water for the use for its plant and installation of pump house without permission of the Competent Authority, the applicant is praying for cancellation of the order dated 31st March, 2011. An applicant can bring action only on accrued cause of action in terms of the provisions of Act of 2010. As per the scheme of the Act

the entire application has to be read collectively and it is not necessary that the applicant has to be personally aggrieved to bring an application before the Tribunal for exercising its jurisdiction under Section 14 of the Act of 2010. He is to be an applicant, who can show that the civil cases instituted by him raises a short substantial question in relation to environment (including enforcement of any legal right relating to environment) and such question arises out of the implementation of the Enactments specified in Schedule I of the Act of 2010. Once the applicant satisfies the above ingredients, then he has to file an application within a period of six months from the date on which the Cause of Action of such dispute first arose. The entire Cause of Action of the applicant is the breach of the terms and conditions contained in Environmental Clearance and other illegal activities done by the by the Project Proponent, affecting the water bodies in the area, which are harmful to ground water recharging. The applicant is a resident of that area claims that environment and ecology of that area is being disturbed and thus it cannot be said that he does not satisfy the requirements of *locus standi* as contemplated under the provisions of the Act of 2010. It is more so when the definition of the environment in terms of Section 2 of the said Act is kept in mind. The applicant and the villagers were first under the impression that the Project Proponent was carrying on the repairing work of the Check Dam. It is only much later in the year 2014 that they became aware about the illegal and unauthorized activities of the Project Proponent, which, according to the applicant, were confirmed by the replies of the Irrigation Department dated 29th November, 2014,

stating that no permission had been granted to the Project Proponent to carry on such activities like broadening the width of river Utari or to change the flow of river Utari so as to connect the same to river Sajnam. We have no hesitation in holding that the present application has been filed within the prescribed period of limitation. The objection taken by the respondent is, therefore, rejected.

DISCUSSION ON ISSUE NO. II.

12. According to the applicant, there are two fundamental breaches committed by the Project Proponent in relation to order dated 31st March, 2011, as well as relating to other substantial issues of environment:

- i. The Project Proponent has constructed a wall which has obstructed the natural flow of Rivers Sajnam and Utari.
- ii. The Project Proponent is drawing water in an unauthorized manner and illegally from river Sajnam and that too from a point, i.e., the Check Dam where it is impermissible.

13. Respondent no. 6 has specifically disputed that it has committed any violations of the terms and conditions of the order dated 31st March, 2011. It has also specifically denied that it is drawing water in an unauthorized manner and illegally. The State of Uttar Pradesh has supported the case of the Project Proponent and has specifically taken up the plea that they had entered into an agreement on 25th June, 2013 with the Project Proponent, wherein it had been stipulated that 80 cusecs of water would be provided to the Project Proponent. However, this quantity of water is in excess of 50 cusecs as

contemplated by the order dated 31st March, 2011. As far as the extraction of water from the Check Dam and downstream is concerned, the State Government has taken up the plea that pipeline from Rajghat Dam to power plant is under construction and would be completed by 31st March, 2016. Presently, the project is under trial run and as temporary measures, only 10 cusecs of water is being provided to the Project Proponent to run the unit on trial basis. As far as Check Dams are concerned, the three Check Dams had been constructed by an NGO with the permission of the Government Authorities. The Check Dams have been provided primarily to ensure water needs of the farmers as well as proper recharging of ground water. The MoEF has also taken a definite stand that there is no breach or violations of the conditions of the Environmental Clearance dated 31st March, 2011. They have monitored the project by conducting inspection at regular intervals. As far as withdrawal of water is concerned, the same was being done in furtherance to the permission granted by the Chief Secretary of the Uttar Pradesh vide letter dated 2nd June, 2013. As per the spot layout plan placed on record by the State of UP, there are three Check Dams in Burogaon, Check Dam – 1, Check Dam – 2 and Check Dam – 3. Check Dam 1 & 2 are upstream and downstream in river Sajnam while Check Dam – 3 is on river Utari closer to the point, where it join river Sajnam. The power plant is expected to draw its water from Rajghat Minor Canal, Reservoir of Rajghat Dam by a pipeline but presently it is drawing water for trial run from Burogaon Check Dam. It is clear from above, that the Project Proponent has not violated the terms and conditions

of the Environmental Clearance dated 31st March, 2011. As far as the establishment of Check Dam is concerned, it has been done through the NGO for betterment of the farming community as well as for recharging of ground water. The only dispute which requires some consideration is that the drawl of water of 10 cusecs from the Burogaon Check Dam is not very proper. Check Dams are primarily constructed for the aforesaid two purposes and indiscriminate drawl of water from there would not be proper and may vitiate the very two purposes for which such Check Dams are constructed. But this is a temporary measure and only 10 cusecs of water may be extracted with the permission of the State Government. Once the pipeline is completed between the Rajghat Dam and the power plant, the present extraction from Dam would automatically stop. Copy of the agreement executed between the parties has been placed on record which deals with extent of Water Abstraction System, the conditions to be satisfied and use of water by the Project Proponent. Under this agreement, the Government has assured 60 cusecs of water to be supplied throughout the year from Lower Rajghat Canal by constructing a cross regulator 3.80 kms from canal. This also is subject to the terms and conditions stated in the agreement and payment of royalty in terms thereof.

DISCUSSION ON ISSUE NO. III & IV

14. In light of the above discussion, we do not find any merit in the allegations made by the applicant as far as the prayer for cancellation of Environmental Clearance is concerned. The only concern that

deserves attention of the Tribunal is direction that this Tribunal can issue for protective steps in relation to extraction of water from the Check Dam for trial run and its consequences. It is undisputed that presently, the Project Proponent is abstracting water from the Burogaon Dam while it is expected to draw water from the Rajghat Canal. The Check Dams are primarily constructed for securing the need of the agriculturists and to ensure proper recharging of the ground water. If the water is extracted from the Check Dams it can prejudicially affect both these aspects which are fundamentally of ecological and environmental concern.

15. At this stage, we may take note of few facts. As per the affidavit of the UP Pollution Control Board, Consent To Operate to the project had been granted on 13th June, 2015 and according to the affidavit, the Project Proponent started generation through 2 units of 660 MW each out of 3x660 MW.

16. Another fact that needs attention is submission by respondent no. 3, regarding permission by Executive Engineer, Irrigation Construction Division – 3, Lalitpur, by a letter dated 05th March, 2015 to take 10 cusecs of water from a Check Dam located on Sajnam River at Buragaon from a point downstream of Kachnoda Dam for “trial run on temporary basis” (emphasis supplied). It would be pertinent to note that in this letter, reference has been made to a letter dated 17th April, 2014 in terms of sanction for drawl of water. However, the letter dated 17th April, 2014 placed before us is only permission letter for construction of Check Dams under the CSR activity.

Related to the above fact is the admitted position that average flow at Kachnoda Dam is 97 cusec. As such Kachnoda Dam is a storage reservoir and the downstream releases from Kachnoda Dam towards old Check Dam at Buragaon would be just meeting the environmental flow of the Sajnam River, which must be around 10 cusec, looking at the data of average flow at Kachnoda Dam. In view of such being the fact, it would be unjust for any Competent Authority to grant permission for drawl of environmental flow for industrial usage.

17. Finally, it is an admitted position by the Project Proponent himself that Check Dams are meant for local irrigation and drinking water needs, apart from the basic purpose of ground water recharge. It is also undisputed that the area receives scanty rainfall and falls in drought-prone area, where farmers are largely dependent on rainfall and Check Dams for irrigation and drinking water needs (as per Project Proponent's affidavit, 77 farmers/family benefitted with a total land holding of 407 acres).

From the above facts, it appears that it is not a case of pure and simple trial run as the project proponent is operating the two units simultaneously. Furthermore, the Project Proponent does not have specific permission for drawl of 10 cusecs of water from the old Check Dam and Buragaon. Drawl of water from this Check Dam for industrial use would be unreasonable and would affect the rights of the people living in the affected villages. Despite this fact, it will be opposed to the Principal of Sustainable Development, if the unit is asked to shut down its operations, including the trial run, especially

when appropriate directions can be issued for preventing and controlling the likely adverse effects upon the ecology of the area.

18. Therefore, while declining to grant relief for cancellation of Environmental Clearance as prayed by the applicant, we issue the following directions:

i) The Project Proponent is directed to complete the pipeline from Rajghat Minor Canal to the site of the project at the earliest and in any case not later than 3 months from the date of passing of this order.

ii). A team of officers from the MoEF, CPCB, UP Pollution Control Board and Irrigation Department of the Government of UP would conduct an inspection and ensure that temporary abstraction of water from the Buragaon Check Dam is permitted without any adverse effect either on the agricultural activities or upon recharging of the ground water.

The Committee upon physical inspection would ensure that if the drawl of 10 cusecs of water from the Old Check Dam is causing or has caused to the agriculturists any hardships or has adversely affected the recharging of ground water, then minimum required average flow from Kachnoda Dam shall be maintained, in order to makeup deficiency of water at Burogaon Check Dam.

If for any reason this is not possible, then the Project Proponent would not be permitted to draw water from the said Check Dam.

iii) The Committee shall also submit a report to the Tribunal that if unauthorized or even excessive drawl of water by the Project Proponent has caused loss of agricultural productivity to the dependent farmers, then extent of compensation payable to them.

iv). Once the pipeline is completed, the Project Proponent will not be permitted to draw any water from any of the Check Dam on River Sajnam and any equipment or pumps installed at the power plant and the Check Dam shall be removed.

19. With the above directions, Original Application No. 128 of 2015 stands disposed of without any order as to costs.

M.A. No. 363/2015

17. This Miscellaneous Application does not survive for consideration, in view of the fact that main Application itself stands disposed of.

Accordingly, M.A. No. 363 of 2015 also stands disposed of without any order as to costs.

Hon'ble Justice Swatanter Kumar
Chairperson

Hon'ble Dr. D.K. Agrawal
Expert Member

New Delhi
15th September, 2015