

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

**Original Application No. 237 (T_{HC}) of 2013
(M.A. No. 389 of 2014, M.A. No. 151 of 2015, M.A. No. 423 of 2015, M.A. No. 425
of 2015, M.A. No. 498 of 2015 & M.A. No. 583 of 2015)**

And

Original Application No. 492 of 2014

IN THE MATTER OF:-

**Court on its own Motion Vs. State of Himachal Pradesh & Ors.
And
Abhimanyu Rathor Vs. State of H.P. & Ors.**

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER
HON'BLE MR. DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER
HON'BLE MR. BIKRAM SINGH SAJWAN, EXPERT MEMBER**

Original Application No. 237 (T_{HC}) of 2013

**Present: Applicant in MA Ms. Vibha Dutta Makhija, Sr. Adv., Mr. Rajesh Gupta and Mr. Pranjal Saran, Adv.
Respondent Nos. 1, 3 & 5 : Mr. Suryanaraya Singh, Addl. AG, State of HP
Respondent No. 5: Ms. Panchajanya Batra Singh, Adv. for MoEF & CC
Respondent No. 7: Mr. Elmit Vaid, Adv.
Respondent No. 9: Mr. Ajit Pudussery, Adv.
Dr. J.C. Kuniyal, Scientist-E and Mr. Kireet Kumar, Scientist-G of G. B. Pant Institute of Himalayan Environment and Development.**

Original Application No. 492 of 2014

**Present: Applicant Appearance not marked
Respondent No : Appearance not marked**

Date and Remarks	Orders of the Tribunal
Item Nos. 01-02 July 06, 2015	<p>Dr. J.C. Kuniyal, Scientist-E and Mr. Kireet Kumar, Scientist-G are present in furtherance to the order of the Tribunal. We have made queries to them in relation to Rohtang Pass and nearby glaciers. Both these officers are from the G. B. Pant Institute of Himalayan Environment and Development. One of these officers, namely, Dr. J.C. Kuniyal, Scientist-E is posted at Kullu district.</p> <p>What they have answered in response to the queries of the Tribunal can be summed up as under:</p> <ol style="list-style-type: none">1. The base of Rohtang Pass from where the mountain can be stated to have started is at 2500 meter above sea level at or near kothi. The peak of Rohtang Pass

is nearly 4000 meters above sea level.

2. The main sources of pollution in that area are vehicular traffic, fuel burning, open burning of waste, forest fires and pollution caused by human interference and activities in addition to the waste that is thrown in this area indiscriminately.
3. Glaciers around Rohtang Pass have been receding at the rate of 19 - 20 meters per year which has been estimated on the basis of studies carried out by Institute with satellite images from the year 1986.
4. There is erratic flow of rivers may be because of greater melting of glaciers. In comparative terms, the rivers have less flow in the winter and more in summer season in comparison with the record of past years lets say 15 years before.
5. Black carbon and aerosol optical depth have been found to be high.
6. PM 2.5 was found to be beyond prescribed limit in 2012, particularly during tourist season.
7. There is heavy increase in the tourism. Mass tourism has its own adverse impact upon the environment and ecology. High pollutants also have adverse impacts upon these eco-sensitive areas.
8. The recession rate of glaciers is increasing with the passage of time.

Learned Counsel appearing for the Taxi Association submits that the Government has taken no effective steps to carry-out the directions of the Tribunal in its true spirit and substance. According to her, old state government vehicles and privately owned vehicles which are polluting

vehicles have been allowed to pass through Rohtang Pass. This has been done at the cost of the common people and in addition to 1000 vehicles which had been permitted by the Tribunal. According to her, there are no proper pollution checks and even foul practices are prevailing where the government officials are abusing their authority and status in that area. The bus fare which used to be Rs. 90 has been increased to Rs. 900 with complete disadvantage to the public at large and there is complete chaos. Traffic is unregulated between Manali and Rohtang Pass. In her submission, there should be restriction on the government vehicles also and restrictions should not be imposed upon the private /taxi vehicles only.

In furtherance to the order of the Tribunal, the Deputy Registrar of the National Green Tribunal along with the local Commissioner who had been earlier appointed by the Tribunal had visited the route from Vashisht to Rohtang Pass and onwards on 22nd and 23rd June, 2015. The Deputy Registrar has submitted a comprehensive report stating the directions of the Tribunal, summary of the action taken reports filed by the authorities at various stages and the observations made by them during the inspection on 22nd and 23rd June, 2015. From this report, it is evident that not even a single direction of the Tribunal has been fully complied with, much less in its true spirit and substance. Some of the serious violations which have been brought to the notice of the Tribunal are that the check posts are ill-equipped, under staffed and without computers either at Vashisht or at Gulaba in terms of the directions of the Tribunal. It was

noticed that many tourists were crossing the barrier on two wheelers or otherwise and they were not being stopped for checking of their permit or pollution check certificate. There was complete chaos of traffic at Vashisht and Gulaba. The officials posted at Vashisht were untrained for maintaining the required data and had no experience of checking the pollution. To defeat the very purposes of the directions of the Tribunal, it is noticed in the report that the people who could not get permits for four wheelers were instigated by the officials to go on two wheelers. Thus, large number of two wheelers were plying and parked on way to and at Vashisht. Even random checking of vehicles was not there. No computerised online monitoring system was installed at any of the check posts for recording PUC and other data. Not even a single bus, out of the buses carrying large number of passengers to Rohtang Pass which were private as well as Government owned, were stopped for pollution check or for excessive weight. According to the Deputy Commissioner, Kullu, private tourist buses have not been granted any permits to take tourists from Manali to Rohtang Pass, however, the buses were permitted to cross the check posts.

No eco-toilets were found at barriers at Solang and Rohtang Pass. There were portable toilets which either had not been cleaned or not maintained as per hygiene standards. They were lying defunct due to absence of water and cleanliness. According to the officers, this was attributable to lack of staff as well. Activities of snow scooters, snow bikes run on petrol or diesel, ATVs, tyre tube games and horse riding at Marhi and Rohtang were

completely uncontrolled. Most of the snow scooters were not battery operated and had no valid permits. There were nearly 100 to 200 horse faring tourists. None of them had registration certificate and in fact they claimed that they have no knowledge of any direction for controlling such activity. Nobody stopped them at Marhi, Rohtang Pass and Solang. Horse dung was lying anywhere and everywhere. The Glacier at Bias Kund was reduced at Marhi due to indiscriminate horse riding, snow biking and other activities.

The entire area of Rohtang Pass was found littered with horse dung, plastic, foil papers, and plastic water bottles. During the visit, it was observed that there was no system and manpower in place to collect garbage and municipal waste at these sites and not even dustbins were placed at Rohtang Pass and other eco-sensitive places. There was no system of transportation of such garbage to the dumping sites.

It has been noticed in the report that they found 2500 saplings planted by the Forest Department near Gulaba on way to Marhi. Only one forest guard had been deployed for controlling and guarding the area from Solang to Rohtang which was humanly not possible.

No vehicle was being checked for BS-IV emission standard (which we do not take note of, in view of the Supreme Court order).

The entire snow on the road side from Manali to Rohtang had turned black. The pollution and high emission have even blackened the snow at nearby mountains. The limiting of vehicles, according to the

officers of the State, has caused some inconvenience to local taxi operators. It was brought to their notice that permit worth Rs. 1000/- is being sold from Rs. 8000/- to 20,000/- and it is being treated as part of the tourists package. Even bus tickets were sold in black. The officers even say that either the restrictions should be removed or there should be a complete ban on tourism. In spite of many other directions of the Tribunal there was no compliance of the directions at all.

In the order dated 6th February, 2014, the Tribunal had completely prohibited commercial activity of any kind to be carried out in the entire area of Rohtang Pass. However, in the report it is stated that at Rohtang and Marhi, there were temporary dhabas, shops fully operational and without being regulated properly in any manner. Plastic bags, wrappers, kerosene stove oils were being used by the Khokas. Market at Marhi is being run by the locals without management and organisation. This as per the directive of the Tribunal was to be eco-friendly market and that too with license and with limited restrictions.

It is also observed that there was no proper maintenance of records as per the direction of the Tribunal of any check post at Vashisht barriers. The record discloses only 200 vehicle entries in the register. However, it was evident that nearly 5000 vehicles had gone to Rohtang and no corresponding entries were made in the records. In the concluding part of the report it has been submitted that there has been violation of the orders of the Tribunal at the site and there is least will, on the part of

the State, to carry out the directions in protecting eco-sensitive area.

After hearing the authorities concerned, the Tribunal vide its detailed judgment dated 6th February, 2014 had issued various directions for dealing with the adverse factors prejudicial to maintenance of the pristine environment and ecological balance of this eco-sensitive area. In the judgment the Tribunal, it had noticed that excessive tourism and vehicular pollution was one of the main reasons for environmental and ecological degradation of that area. It is not necessary for us to reproduce data that we had referred to in our earlier order. The Hon'ble Supreme Court of India had repeatedly observed that the 'the issue of environment must and shall receive highest attention of the Supreme Court'. Besides the fact that right to decent and clean environment has been declared to be a fundamental right within the ambit and scope of Article 21 of the Constitution of India, 1950 by the Hon'ble Supreme Court of India. The serious impacts of environmental and ecological degradation in these areas are likely to have serious consequences on climate change and water and air as well. The directions were issued after hearing the parties deliberation with the state authorities and necessarily what was required to protect the environment and ecology was directed. These directions broadly relate to control of the vehicular pollution, cleanliness and public amenities in the area, afforestation and general directions in regard to permitting of vehicles without inconvenience to the people.

On 27th March, 2014, Learned Additional Advocate

General submitted that State of HP has taken a policy decision to implement the judgment. In furtherance to the same, the Principal Secretary of Environment and Science & Technology had held a meeting to constitute a committee and assured the Tribunal that the directions would be implemented without delay and default and status report would be submitted to the Tribunal. Not only this, Learned Advocate General of the State of HP appeared on 25th June, 2014 as it was found that the State Government was not taking requisite steps. However, learned Advocate General assured the Tribunal that the authorities and concerned departments shall take steps to comply with the directions of the Tribunal without fail. On 20th November, 2014, the Chief Secretary of State of HP, Secretary Home, Secretary, Forest and Environment, Secretary Tourism, Director General of Police of the State, Chairman and Member Secretary of HP Pollution Control Board appeared and they were made aware of the various deficiencies and shortcomings in the compliance to the directions of the Tribunal. Then they assured that these directions would be complied with without any default. Again defaults were noticed and it was found that there was serious non-compliance of the directions of the Tribunal. Learned Local Commissioners who had been appointed by the Tribunal had also submitted their reports earlier which again demonstrated lack of sincerity in compliance on behalf of the State. On 8th January, 2015, again learned Advocate General appeared and prayed for time to take complete instructions and to submit the status report. At this stage, we may notice that the State

of HP wanted certain directions to be issued to the Ministry of Environment and Forests and Ministry of Petroleum. These Ministries appeared and assured full co-operation to the State of HP for compliance with the directions, particularly in relation to running of CNG Buses between Manali and Rohtang and providing forest land for putting up a ropeway system and check posts, etc. These directions can be noticed in the order of the Tribunal dated 9th January, 2015.

On 21st January, 2015, Mr. Ajay Sharma, Executive Engineer, Mechanical-cum-Ropeway Inspector, Kull appeared and stated that no study had been carried out for installation of Ropeway system. However, later on the Tribunal was informed that steps to install the Ropeway system are being taken and now tender has been granted for constructing of the Ropeway.

On 5th May, 2015, also Additional Chief Secretary of Environment, State of HP stated that they would comply with the directions and it was on their assurance and undertaking in terms of strict regulation, the tourism activity was permitted at the glacier by the orders of the Tribunal.

On 29th May, 2015 even relaxation was given in the number of vehicles that should be permitted to go to Rohtang Pass and the vehicles were even directed to pay charges in terms of the order of the Tribunal.

From the above report of the Deputy Registrar and the submissions of the learned Counsel appearing for Taxi Owners, it is clear that the directions of the Tribunal have not been carried out. There is serious threat to the

environment and ecology of the area. The Deputy Registrar had not only taken photographs but had even prepared a video, showing these violations.

The orders of the Tribunal are being abused at their will. *Prima facie*, we have no hesitation in coming to the conclusion that the State has failed to carry out directions issued by the Tribunal and maintain the assurance given to the Tribunal from time to time. There is complete chaos at the Rohtang Pass and its adjacent glaciers, which, as per the statement made by the experts afore referred to, are reducing by 19 - 20 meters per year. They are required to be protected. The snow at Solang, Rohtang Pass and Bias Kund is being blackened. The black carbon and other pollutants are found to be higher. There is a right to tourism, but it has to be within the framework of the Indian Constitution where the fundamental right of the public at large in terms of Article 21 has to take precedence. There is also a Constitutional Directive to the State to maintain the pristine condition of rivers, air, water and natural resources of the country. On the other hand, there are Constitutional Duties on the part of the citizens also to protect the environment, ecology and nature. If we fail to check and control the human activity for ensuring protection of eco-sensitive areas, inevitable consequences would be drastic. We are sorry to note that we expected the State of HP to comply with the directions with greater sense of responsibility and in the interest of protection of not only the beautiful area but even in the interest of environment and ecology.

We may also notice at this stage that some of the

parties aggrieved from the order of the Tribunal had approached the Hon'ble Supreme Court by filing appeals. One such appeal being Appeal No. 4864 of 2015 had already been disposed of by the Supreme Court, however, with a proviso that compliance to BS-IV emission standard would not be insisted upon at this stage and the Supreme Court declined to interfere in the other directions issued by the Tribunal.

In the normal course, we would have passed certain directions of serious consequences today itself. However, on the request of the learned Counsel appearing for the State of HP, we grant an opportunity to the State of HP to submit the affidavit of an officer not below the rank of the Chief Secretary of the State on the following. In other words, we issue notice to show cause to the State of HP as to why:

1. The Tribunal should not direct complete ban on tourism activity in the Rohtang Pass and glaciers?
2. The Tribunal should not order attachment of the treasury amounts of the State of HP, until there is complete and comprehensive compliance of the directions issued by the Tribunal in its judgment?
3. The Tribunal should not direct attachment of salaries and confinement in civil imprisonment of the officers of the State of HP including the following: (i) Secretary, Environment (ii) Additional Secretary, Science & Technology (iii) Secretary and Director of Tourism of the State of HP (iv) Chief Conservator of Forests, Kullu District (v) Secretary, Transport (vi) Deputy Commissioner, Kullu, (vii) S.P.

Kullu (viii) S.D.M. Manali (ix) District Tourism Officer, Manali.

The show cause notice is being issued in terms of Section 25 of the NGT Act read with Order XXI of Code of Civil Procedure as the orders of the Tribunal are executable as a decree of civil court and in exercise of all other powers vested in the Tribunal under the National Green Tribunal Act, 2010. Let reply us to the show cause notice be filed within one week from today with advance copies to all the learned counsel appearing in this case. Liberty is granted to all the Counsel appearing in the case to file objections thereto before the next date of hearing.

In the meanwhile, we direct that:

- (1) The Deputy Commissioner, Kullu and SP, Kullu shall ensure that no snow scooters, ATVs, horse riding, paragliders, snow biking, tyre tube gaming, will be permitted at Solang, Rohtang and Marhi. All these activities shall be prohibited forthwith.
- (2) No two wheeler vehicles shall be permitted to go to Rohtang Pass.
- (3) No commercial activity, dhabas, Khokas, Rehdies or any other kind of activity of eating would be carried out at Rohtang Pass. The Dhabas existing at Rohtang Pass shall be removed by these two officers forthwith.
- (4) It will be ensured that the shops operating at Marhi would carry on their business activities in terms of the directions of the Tribunal. It will be ensured that no waste of any kind is permitted to be spread

around Rohtang Pass and in fact, people should not even be permitted to carry with any packed eatables, plastic or other allied material to Rohtang Pass. Except water, everything else should be prohibited.

(5) The above two officers and Municipal Council, Manali shall ensure that toilets are provided at Rohtang Pass and are maintained hygienically, and properly, without delay and default.

Let these directions be carried out by these officers and compliance report shall be submitted to the Tribunal before the next date of hearing.

List the matters on 16th July, 2015 at Shimla.

.....,CP
(Swatanter Kumar)

.....,JM
(U.D. Salvi)

.....,JM
(M.S. Nambiar)

.....,EM
(Dr. D.K. Agrawal)

.....,EM
(Prof. A.R. Yousuf)

.....,EM
(B.S. Sajwan)