

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

**Original Application No. 151 of 2013**

**Legal Aid Committee, National Green Tribunal Bar Association  
Vs.  
Union of India & Ors.**

**CORAM :** HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON  
HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER  
HON'BLE DR. D.K. AGRAWAL, EXPERT MEMBER  
HON'BLE PROF. (DR.) P.C. MISHRA, EXPERT MEMBER  
HON'BLE DR. R.C. TRIVEDI, EXPERT MEMBER

**Present:**

<b>Appellant:</b>	Mr. Raj Panjwani, Sr. Advocate, Mr. Sanjay Upadhyay, Advocate and Ms. Manisha Badora, Advocate
<b>Respondent No.1:</b>	Ms. Neelam Rathore, Advocate and Mr. Vikramjeet, Advocate
<b>Respondent No.2:</b>	Mr. Prateek Dwivedi and Mr. Abhishek Atrey, Advocates
<b>Respondent No.3, 4&amp;8:</b>	Ms. Ruchir Mishra, Advocate, Mr. Sanjiv Saxena, Advocate and Mr. R. Mishra, Advocate
<b>Respondent No.5:</b>	Mr. Anuraj Sharma and Mr. Atul Virmani, Advocate
<b>Respondent No.9:</b>	Mr. Ravinder Agrawal, Advocate with Mr. K. Suresh, Dep. Director (Legal)
<b>Respondent No.10:</b>	Mr. Parivesh Singh, Advocate

<b>Date and Remarks</b>	<b>Orders of the Tribunal</b>
<b>Item No. 9 August 26, 2013</b>	<p>Reply on behalf of Ministry of Environment and Forests (MoEF) has been filed in Court today and the same is taken on record.</p> <p>Learned counsel appearing for Respondent Nos. 3, 4, 8, 7 and 10 pray for further time to file Reply. We see no reason why all these Officials/Respondents should have asked for further time to file their Replies in such a sensitive matter. It is one of the worst disasters relating to damage to life limb and properties in the entire State of Uttarakhand. We would have expected all the Authorities pay greater attention to this matter and bring before the Tribunal all relevant information in terms of its Order dated 02<sup>nd</sup> July, 2013. Be that as it may, as prayed, we grant liberty to all these Respondents to file their Replies within one week from today with advance copies to the Learned counsel appearing for the Applicant who may file Rejoinder thereto, if any, within one week thereafter.</p> <p>It is unfortunate that none of the Respondents, even those who have filed their Replies, are in a position to state the complete facts and action taken by them before the Tribunal.</p>

Learned counsel appearing for the State of Uttarakhand is not able to state whether the Order of the Hon'ble Supreme Court of India dated 13<sup>th</sup> August, 2013 has been implemented as directed by the Hon'ble Supreme Court and whether in furtherance to the Notification dated 18<sup>th</sup> December, 2012 issued by the Union of India actions have been taken or not. The Affidavit filed by the State of Uttarakhand is incomplete and does not provide the requisite information in terms of our Order dated 02<sup>nd</sup> July, 2013.

Learned counsel appearing for the MoEF submits that she requires time to take instructions even with regard to the implementation of the Order of the Hon'ble Supreme Court of India aforereferred.

Learned counsel appearing for the Border Road Organisation and National Highway Authority of India is unable to say whether any appropriate study was carried out by these National Organizations before widening the Highways in the State of Uttarakhand. Pre-environmental and ecological study prior to the execution of the works would appear to us a normal conduct of such Authority as works proposed to be undertaken were likely to cause serious consequences not only on the environment and ecology but even on the human beings living in these areas. Similarly, other Respondents are unable to give the complete response to our Order dated 02<sup>nd</sup> July, 2013.

We may notice that the Hon'ble Supreme Court of India vide its Order dated 13<sup>th</sup> August, 2013 had directed MoEF not to grant any further Environmental Clearance and Forest Clearance to Hydro Electric Powers Projects in the State of Uttarakhand until further Orders of the Court. The MoEF was also directed to constitute an Expert Committee and they to examine as to whether the proposal referred to in WII Report, 24 Projects are causing significant impact on the bio-diversity of Alaknanda and Bhagirathi river basins. We would have expected from the MoEF and State Government to implement the Order of the Hon'ble Supreme Court without any delay. However, we are unable to get that information.

Be that as it may. We direct all the concerned Authorities to expeditiously comply with the Order of the

Hon'ble Supreme Court of India and place before this Tribunal the copy of the report which is directed to be filed before the Hon'ble Supreme Court of India in terms of the Order dated 13<sup>th</sup> August, 2013. Though the Hon'ble Supreme Court of India granted to them 3 months time, but it was atleast expected from them to start with the basic compliance of the Order like constitution of the Committee and beginning of the study as required. Nothing appears to have been done.

Vide Gazzette publication of its Notification dated 18<sup>th</sup> December, 2012, the Central Government has issued a Notification in exercise of its powers under Sub-section read with Clause (v) and Clause (xiv) of Sub-section 2 of Section 3 of the Environment (Protection) Act, 1986 and sub-Rule 3 of Rule 5 of the Environment (Protection) Rules, 1986, whereby the entire watershed of 100 km. of stretch of river Bhagirathi from Gaumukh to Uttarkashi covering its basin area of 4179.59 square km. has been declared as Eco-sensitive Zone for which the carrying of an activity and projects which requires clearance in terms of the Notification of 2006 is prohibited. Further, it was directed that a zonal master plan shall be prepared to provide for restoration of ruined areas and conservation of existing water bodies, management of catchment area, water shed management, soil moisture conservation, and such other aspects of ecological and environmental concerns that needs attention. It directed to also ensure that there is no attempt to tamper with the natural boundaries of the rivers with the construction of any kind of structure on bank of rivers and tributaries. The master plan also contemplates regulated tourism in the State of Uttarakhand in order to ensure least ecological and environmental interference of mankind.

Learned counsel appearing for the Applicant has vehemently contended that there has been violation of this Notification and indiscriminate construction has been raised on the river bed and the banks of rivers which are eco sensitive as well. According to him, it is the indiscriminate, unauthorized and illegal construction/s which have led to recent disaster in the State of Uttarakhand.

MoEF had constituted a Monitoring Committee under the Notification in terms of Claus 4 (1) of the said Notification



but whether that Committee has been actually constituted and commenced its functioning in terms of the Notification or not is a matter left to the imagination of anyone.

The State of Uttarakhand is not able to say whether any master plan for the entire Uttarakhand and more particularly in regard to the eco-sensitive area has been prepared by State or not. The Order of the Hon'ble Supreme Court of India provides an insight into the impact of indiscriminate construction and establishment of Hydro Electric Projects which have not been permitted or even cleared by MoEF. One would have expected better and effective steps being taken by all the concerned authorities including State of Uttarakhand.

We have no hesitation in observing that each of these Authorities/ Government have failed to perform their statutory functions as well as constitutional duty of protecting the ecology and environment of such beautiful State of our Country.

Learned counsel appearing for the Applicant also pray that the Notification dated 18<sup>th</sup> December, 2012 be extended to Rudraprayag. We afraid and unable to pass any directions acceding to the prayer as it is primarily a legislative matter.

Having heard Learned counsel appearing for the parties at some length and on invoking the precautionary principle, we pass the following directions:-

1. We hereby prohibit any new construction in the entire eco-sensitive zone and more particularly on the river bed and river banks of the main Rivers or the Tributaries. The above restrictions would not operate in so far as it relates to renovation or restoration of buildings/houses which had been legally constructed.
2. Any new construction of any Project which is covered by the Notification of 2006 shall follow the procedure prescribed under the Notification. The other construction which are sought to be raised will be subject to clearance by the Monitoring Committee constituted under the Notification of 18<sup>th</sup> December, 2012.
3. We direct MoEF and the State Government, Uttarakhand to notify the said Committee within one week from today

and ensure that the said Committee meets at Uttarakhand within one week thereafter.

4. We direct all the parties before us to suggest members of a special Committee to be constituted by the Tribunal for the purposes of ecological and environmental study of Uttarakhand to be carried out in relation to the subjects which are beyond and not within the ambit of the Order of the Hon'ble Supreme Court dated 13<sup>th</sup> August, 2013. These names should be suggested by the respective bodies on the next date of hearing positively.
5. We direct the State of Uttarakhand to place a complete and comprehensive list of illegal and unauthorized constructions, more particularly on the river beds/banks and also state in the said Affidavit as to what is the extent of damage resulting from such illegal and unauthorized construction on the ecology and environment as well as in relation to the rivers in question and what will be extent of compensation payable by them on the principle of 'polluters pays' for damaging and degrading the environment of that area.
6. We hereby direct that Director General of Border Road Organization, and Chairman of National Highway Authority of India to file their personal Affidavits stating whether any ecological or environmental study was carried out before starting widening/construction of highways in the State of Uttarkhand and if so, what the said study shall be disclosed and a copy of the report shall be enclosed. The Affidavits shall be filed within one week from today and in the event, no Affidavits are filed, these Officers shall remain present before the Tribunal on the next date of hearing.
7. We hereby also direct the Massoorie Dehradun Development Authority and each of the Municipal Corporation/Committees of the respective Districts to completely supervise the renovation and restoration work of the legally constructed properties strictly in accordance with law.
8. The State of Uttarakhand while answering to the queries raised in our Order dated 02<sup>nd</sup> July, 2013 shall specifically state on Affidavit as to what steps have been taken for making good the ecology and environment, loss

to human beings and properties and what are the State Schemes for restoration of environment and providing of compensation as well as.

Stand over to 09<sup>th</sup> September, 2013.

.....,CP  
(Swatanter Kumar)

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

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

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

.....,EM  
(Dr. R.C. Trivedi)

