

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

ORIGINAL APPLICATION NO. 197 OF 2016

(M.A. NO. 376 OF 2016)

IN THE MATTER OF:

1. Vimal Bhai
C-85 A, South Ganesh Nagar
Shakarpur, Baramad
East Delhi-110092

.....Applicant

Versus

1. Tehri Hydro Development Corporation
Pragati Puram, Rishikesh,
District Dehradun,
Uttarakhand 249201
2. Union of India
Through Secretary
Ministry of Environment & Forest
Paryavaran Bhawan, CGO Complex
Lodhi Road
New Delhi – 110 003
3. State of Uttarakhand
Through the Chief Secretary
Civil Secretariat, Dehradun,
Uttarakhand-248001

.....Respondents

COUNSEL FOR APPLICANTS:

Mr. Ritwick Dutta, Mr. Rahul Choudhary and Ms. Meera Gopal,
Advocates.

COUNSEL FOR RESPONDENTS:

Mr. Neeraj Malhotra and Ms. Rupal Luthra, Advocates for
Respondent No. 1
Dr. Abhishek Atrey, Mr. Krishna Kumar Singh, Ms. Deep Shikha
Bharti, Advocate for Respondent No. 2

Mr. Amit Anand Tiwari, Mr. Vivek Singh, Mr. Abhishek Gupta and Mr. Vinayak Gupta, Advocates for Respondent No. 3

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 15th March, 2017

Pronounced on: 13th April, 2017

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?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

FACTUAL MATRIX OF THE CASE

An article bearing title "Dumping of construction debris into River Alaknanda" was published on 12th April, 2016 in the newspaper Amar Ujala. This article contains a statement of a senior officer of the Tehri Hydro Development Corporation India Ltd. (for short the 'THDC'), wherein the officer admitted that if due to indispensable reason, the debris was thrown into the River, it will be removed. The District Magistrate had stated that an inquiry should be conducted into the matter. It is the case of the applicant that this indiscriminate dumping of construction material and debris into River Alaknanda is polluting it and the Project Proponent of the Vishugud-Pipalkoti Hydroelectric Power project is responsible for this pollution of the River. The violations of the conditions imposed in the Environmental Clearance (for short, "EC")

granted on 22nd August, 2007 is stated to be adversely affecting the hydro and aquatic life of River Alaknanda. The Project Proponent has also failed to comply with the Environment Management Plan provided in the Comprehensive Environmental Impact Assessment for the project, according to which the retaining wall has to be constructed so as to prevent the debris from getting into the River.

2. The applicant states that he is a Gandhian social activist working for environmental protection and people's right to natural resources in middle Himalayas area since 1998. He is also the convener of Matu Jansangthan which has raised various issues concerning forest and Environmental Clearances before the concerned ministries and authorities. The applicant is actively involved in the activity of restoration of the River. As for harmful and adverse impacts on River Alaknanda as afore-stated, he has claimed the following reliefs in the present application filed under Section 14, 15 read with Section 18 (1) and (2) of the NGT Act of 2010 (for short the 'Act of 2010'):

- i. "Pass an order restraining the Respondent No. 1 from dumping any debris or muck from Vishnugad-Peepalkoti Hydroelectric Project or from construction of road in the Alaknanda River as it is in violation Muck Disposal Management Plan.
- ii. Pass an order to remove the dumped debris in the Alaknanda River and restore the same area.
- iii. Direct the project proponent of Vishnugad-Peepalkoti Hydroelectric Project, Respondent No. 1 to prepare the time bound plan for restoration of Alaknanda River into its original form.
- iv. Pass an order there by imposing heavy fine on Respondent No. 1 as environmental compensation for polluting the Alaknanda River on the basis of Polluter Pays Principle.
- v. Direct Respondent No. 2 and 3 to make efficient and transparent monitoring system any environmental violation taking place around Alaknanda River.

- vi. Pass any other orders as the Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case.”

3. The project had been conceived with an installed capacity of 444 MW. The project was to build a 65 meter diversion dam near Helang village in Chamoli district of Uttarakhand and create a small reservoir in River Alaknanda. The power house of the project is underground and situated near village Haat, which is about 3 KM from Peepalkoti. The total land requirement as per the project report was 120 hectares, out of which 40 hectares was agricultural land and 80 hectares was Government land. Nearly, 346 families were affected and relocated due to the project. The Project Proponent is constructing a road between the power house of the hydro electric project and the River outlet because of which huge quantity of muck or debris is generated which is being disposed of directly into River Alaknanda. The project was granted EC *vide* letter dated 22nd August, 2007. Amongst other conditions the order granting EC specifically stated that the muck had to be disposed of at the dumping site, which should be above the high flood level. After the World Bank intervention, various studies were made in regard to the impact of the project with respect to environment. Chapter IV of Environmental Management Plan deals with the Muck Disposal Management Plan wherein it has been provided that:

“According to the report, muck in large quantum i.e. in the volume of 1.5 Mm³ would be excavated during the construction of the project. Four muck dumping sites have been identified by THDC in this report which are adjacent to the project components, namely, i) Haat, ii) Jaisaal, iii) Gulabkoti, and iv) Guniyala.

Also, in regard to retaining wall, it has been mentioned in regard to the retaining wall that the muck will be deposited along the slope by constructing a retaining wall of 7 m each on the downhill side along the River bank and a slope of 50 cm high with 50 cm thickness on the uphill side along the footpath line”

4. The applicant also wrote a letter dated 17th October, 2015 to respondent no. 2 where he demanded cancellation of the EC of the Vishugad-Pipalkoti HEP due to non-compliance of the conditions stipulated therein. The MoEF&CC, Forest Department of State of Uttarakhand and local administration are required to continuously monitor the implementation of the conditions stipulated in the Environmental Clearance. Default on their part and negligence on part of the Project Proponent has caused serious and adverse environmental impacts upon the River, resulting in filing of the present application.

5. In response to the above pleaded case of the applicant, the Project Proponent has in reply stated that the application does not reflect the true and correct factual position and is erroneous in fact and law. The applicant is stated to not be a resident of District Chamoli in Uttarakhand where the project is being constructed. It is also averred that the applicant is known for his biased ideology/ attitude towards Hydro – Power projects and is a habitual opponent. Thus, the application should be dismissed on that ground alone.

6. According to the Respondent, a ‘ Mini Ratna Category-I’ is a Joint Venture Corporation of the Govt. of India and Govt of UP., duly registered under the provisions of the Companies Act, 1956. The principal object of the joint venture company was to operate

and maintain the Tehri Hydro Power Complex and other Hydro Projects in the State of Uttar Pradesh. Vishnugad- Peepalkoti HEP is a national project being carried out by the Tehri Hydro Development Corporation. Public hearing of the project was held in the month of January 2007 at project site. The EC was granted on 22nd August, 2007 and further Investment approval for the project was accorded by the Cabinet Committee on Economic Affairs (CCEA) in August 2008. The project was also considered for financing from the World Bank. As per the World Bank's requirements, the project report was prepared after detailed field investigations, community consultations and consolidation of previous studies on EIA which were conducted by a reputed independent environmental engineering firm, M/s Consulting Engineering Services (CES) over the period starting from April 2008 to May 2009. Various precautionary steps were taken and even numerous good practices were adopted to minimise the disruption to the life of the people as well as the impact on natural environment.

7. In addition to the above, other important studies such as Sediment Optimization, Adequacy of Water Ways for spillways, Geological Baseline Report (GBR), (the first ever for a hydro project in India) etc were also executed. The project proponent engaged a Panel of Experts who considered all aspects of project design as well as environmental and social aspects of the project. With the help of the World Bank's team for hydro projects, the project was prepared in an optimized manner giving due attention to all aspects, social

environmental and technical. The applicant had earlier even challenged the Stage –I Forest Clearance issued by MoEF&CC for transfer of Forest Land to the Vishnugad Peepalkoti HEP Project on illegal grounds before the Tribunal as well as before the Hon'ble Supreme Court of India. Now, again the present application has been filed. Appeal No. 5 of 2011 titled '*Vimal Bhai & Ors Vs MoEF and Ors.*' was dismissed by the Tribunal on 14th December, 2011. Even a review petition was dismissed and an order of dismissal dated 14.12.2011 by the Tribunal was challenged before the Hon'ble Supreme Court of India in Civil Appeal (D) No. 17694/2012 '*Vimal Bhai & ors Vs MoEF & Ors.*' which was also dismissed on 24th January, 2013. The project is being constructed entirely in consonance with the terms and conditions of the EC dated 22nd August, 2007.

8. The Project Proponent has acquired land for disposing of the muck/debris so generated. The project has developed detailed plan for Muck Disposal Generation from each component of the project including the muck which has to be disposed at the pre-designated dump yards as has been indicated. The photographs dated 15th April, 2016 attached by the applicant are of a small stretch of 20 m length of 2100 m approach road being widened from Siasian Colony (near PH area) to Tail Race Tunnel (TRT) outlet. The topography of this area is such that, it is almost like a vertical cliff with steep slopes on the hill and on the river side. The rock mass over this overhang cliff had shown some movements and then as per advice of the resident geologist, it was considered for removal by controlled

blasting, owing to safety considerations. During the removal and blasting of this overhang cliff/ detached rock mass, some scattered /split rock boulders had fallen directly into the River despite precautionary measures being taken by the project proponent. The work of removing the detached rock mass /vertical cliff has now been suspended since 18th April, 2016. In the meantime, the Forest Department constituted a Joint Committee to suggest further measures that are required to be taken to ensure that the splitted muck from the overhang cliff/ detached rock mass so that it does not fall into the river. For the purpose of transporting the muck that will be generated from the Tail Race Tunnel (TRT) outlet area, Respondent No 1 commenced the widening of the existing road from THDCIL Colony at Siasian to Birahi during the end of Feb 2015. During the widening of the road, owing to the steep topography of the area, a small quantity of scattered/split muck generated from the detached rock mass/vertical cliff spread over a small stretch fell into the river during blasting operations. The quantity of scattered/splitted boulders was so small that it would in no way affect the health of the river or pose a threat to the people living downstream of it. The Respondent is taking all possible steps for protection in that behalf.

9. It has been denied that the project proponent was disposing of the construction debris of the road into the Alaknanda River since October 2015. The publishing of the article in the newspaper is not denied, however, no value can be attached to the same as it is merely a hearsay evidence. The State of Uttarakhand, Respondent

no. 3 has not fully supported the stand of the Respondent no. 1. It has been stated that the State of Uttarakhand is committed to protect the environment and undertakes to duly comply with all the directions passed by the Tribunal. The news in the paper on 12th April, 2016 came to the notice of the State and the Principal Secretary vide letter dated 12th May, 2016 had directed the District Magistrate, Chamoli to conduct enquiry and submit a report. The said incident of disposal of muck in the River was investigated by the Divisional Forest Officer, Kedarnath Forest Division, Gopeshwar and the Sub-Divisional Magistrate, Chamoli. On enquiry it was found that THDC was developing the Hydro Electric Project within village Haat area. A fine of Rs. 65,000/- had been levied and recovered from THDC for the muck accumulated from the construction of the power house. The Project Proponent was also given a warning not to dispose of the muck into the Alaknanda River and was further directed to construct retention wall/ net, etc. to prevent muck from falling into the Alaknanda River. Copy of the letter dated 27th May, 2016 of the District Magistrate, Chamoli is placed on record. The SDM, Chamoli vide letter 26th May, 2016 had informed the DM, Chamoli that presently the muck generated in the process was not being thrown into the Alaknanda River but was being loaded onto trucks and dumped at Siasian dumping site. Instructions to Respondent no. 1 had been issued by the said Respondent.

10. Separate affidavit has been filed on behalf of MoEF, Respondent no. 2. In that affidavit, it had been stated that the EC

for the project was granted on 22nd August, 2007 and the project proponent was required to strictly comply with the terms and conditions. Amongst others, it was specifically stated in clause (vi) of Part A of the specific conditions that “consolidation and compilation of the muck should be carried-out in the muck dump sites and the dump sites should be above high flood level”. The project proponent was, therefore, required to strictly comply with these conditions.

11. Upon analysis of the above pleading, the following questions would fall for the consideration before the Tribunal:

1. Whether the Applicant has no locus-standi and the present application is liable to be rejected for the reasons stated in relation to maintainability of the application?
2. Whether the Project Proponent, Respondent No. 1 had indiscriminately dumped/disposed of the debris/muck and other construction waste material into the River Alaknanda or upon its flood plains?
3. What reliefs, the applicant is entitled to, if any, and what directions should be issued by the Tribunal?

Question No. 1: **Whether the Applicant has no locus-standi and the present application is liable to be rejected for the reasons stated in relation to maintainability of the application?**

12. The only allegation made by the Respondent in relation to the *locus-standi* of the applicant is on the ground that the applicant is not a resident of village Chamoli where the project is being constructed. However, it is averred that the applicant holds a

definite bias against Hydroelectric projects and the present application is the result of it. The applicant unsuccessfully challenged the grant of Stage-I Forest Clearance before the Tribunal and the Hon'ble Supreme Court of India and therefore, the present application is not maintainable.

We are not impressed by any of these averments. Merely because the applicant is not a resident of Chamoli village, does not *per se* mean that he has no right to file the present application raising a substantial question of environment within the ambit and scope of the provisions of Section 14 of the Act of 2010. The construction of a Hydroelectric project in an eco-sensitive State like Uttarakhand would not be a localized issue of the village but its impact would be felt all over. The language of Section 14 read in conjunction with Section 18 of the Act of 2010 clearly provides that the expression *locus-standi* will have to receive a liberal interpretation and the application cannot be thrown out on this ground, if it otherwise raises a substantial question of environment in accordance to the implementation of any legal right in relation to the Acts mentioned in Schedule-I of the Act of 2010. In fact, this issue need not detain us, in view of the law settled by the Tribunal in the case of '*Goa Foundation v. Union of India*' O.A. No. 26 of 2012, *All India NGT Reporter 2013 (1) Part 5 page 234*, where it had held that the term 'aggrieved person' is to be understood in common parlance and cannot be confined within the bounds of a rigid formula. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been

refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case.

13. In the present case, the applicant has approached the Tribunal with a specific case that there is a non-compliance and in fact violation of the conditions of the order granting EC dated 22nd August, 2007 and there is indiscriminate dumping of construction waste. There is even the construction for making the road which is adversely impacting the flood plains of the river, the river itself, its aquatic life and health. The applicant is very sensitive towards the construction of the Hydroelectric project in that eco-sensitive area and this cannot be taken as a ground for rejecting the application, if it otherwise has substance in law and is based upon the facts of the case.

The reliefs claimed by the applicant are partially prohibitory as well as requires the project proponent to comply with the conditions of the EC and to take precautionary steps in the interest of the environment and ecology, particularly with reference to the River Alaknanda. It cannot be stated to be a petition not maintainable. Accordingly, we answer this question against the respondents and in favour of the applicant.

Question No. 2: **Whether the Project Proponent, Respondent No. 1 had indiscriminately dumped/disposed of the debris/muck and other construction waste material into the River Alaknanda or upon its flood plains?**

14. The Applicant has specifically stated in the application that the project proponent has violated the conditions in relation to handling of muck, in terms of the EC order dated 22nd August, 2007. It has been specifically averred that construction work of the project was in full swing and that at the relevant time, the project proponent has thrown the construction debris into the river. The road between the powerhouse of the hydroelectric project and the river outlet was being constructed and huge quantity of muck/debris was generated. Besides making this averment, the applicant has heavily relied upon the reporting of the incident relating to muck dumping into the river, in the newspaper 'Amar Ujala' dated 12th April, 2016. The applicant has further filed on record the photographs which were taken on 15th April, 2016 showing the area near the project site where the road is being constructed alongwith the stones, muck, soil and other waste which are being thrown directly into the river. There is no retention wall. The muck and the construction waste is not only being thrown on the flood plains of the river, but right in the middle of it. There is no protection of any kind. The applicant also filed the rejoinder to the reply filed by the Respondent no.1 in which, besides reiterating the averments made in the application, it has been specifically averred that the direct dumping of muck into the river with the use of heavy machinery such as trucks had been undertaken on 29th April, 2016, well after the date when the project proponent claims to have stopped the work. The averment that the work was stopped on 18th April, 2016 is completely false as it is clear from the photographs which have been placed on record in relation to the work being

carried on 29th April, 2016. Even the workshop has been constructed on the main bank of the stream in village Harsari. The photographs filed alongwith the affidavit show that heavy machinery is being used for throwing the muck directly into the river. There are trucks which are being unloaded on the slope which directly meets the river. Photographs showing use of heavy machinery for that purpose, at the floodplains, have also been filed. The photographs for the period of 17th October, 2015 have also been filed where heavy machinery like dumpers, JCBs, etc. have been used and the extracted materials, which include soil, stones and other muck, is being directly thrown into the river. The photographs, in fact, show that the extended arm of the JCB is directly on the top of the river and is throwing the muck into the middle of the River.

The respondents have filed certain photographs to show that they have constructed the retention wall as well as the fact that the PWD had thrown the muck into the water bodies which resulted in flooding of the area. As is evident from these averments, the negligence, breach of conditions of the EC and indiscriminate dumping of muck and waste is directly attributable to Respondent no. 1 and/or the agencies which are working on their behalf. The defence put forward by Respondent no. 1 is unbelievable and in fact becomes irrelevant for the purposes of determining the controversy before the Tribunal. If the PWD is constructing the road and is throwing muck into other water bodies/nallahs which may ultimately join River Alaknanda is of no help to the project

proponent. This aspect can be examined separately when we issue notice to the PWD as it is neither a party in the present application nor has the applicant raised any dispute in that behalf.

15. According to Respondent no. 1, they had found no substance in the report of 'Amar Ujala' dated 12th April, 2016 as well as the protest raised by the applicant. The Principal Secretary had directed for an enquiry which was conducted by the officials of the Government Departments including the SDM and they had found that the muck had already been dumped into the river and a fine of Rs. 65,000/- was imposed upon the project proponent and directions were issued to the Project Proponent and its agencies to be more careful and take all precautionary steps. In fact, the present case is hardly a case of any dispute besides the above cogent and reliable record placed before the Tribunal. It is also evident that the project proponent itself has not taken up the stand of not dumping of muck on the downhill slope. A two-fold defence was taken by the Respondent. Firstly, it was a matter of necessity that the rocks had to be blasted for making the road and some stones must have slid into the river. Secondly, the Public Works Department was also constructing/widening the road and they had thrown the waste, stones, etc. into the Nalla. According to them, they have taken all the precautions.

16. As far as the present application is concerned, the default, negligence and breach of the conditions on the part of Respondent no. 1 has been squarely established. It cannot be disputed that these are eco-sensitive areas and even while complying with the

Principle of Sustainable Development due and in fact extra, regard has to be given to the Precautionary Principle to prevent any irretrievable and irreversible damage to the environment, ecology and natural assets of that area. It is a settled principle of law that the onus lies heavily on a project proponent to show that it has actually not caused any pollution by the activity that it was carrying on. The Polluter Pays Principle makes it mandatory for the project proponent to take all possible precautions and ensuring that there should be no pollution resulting from such activity which if carried in normal course would cause pollution. Water body is a natural asset and resource. It is an entity in itself and is entitled to all protection in law. Environmental law in our country gives due protection to natural assets particularly rivers. It, in fact, places an obligation upon the State as well as stakeholders, including the project proponent to provide due protection to these rivers and ensure that they are not polluted.

17. The Precautionary Principle has two fold obligations. Firstly, the project proponent must take all expected precautions and preventions to ensure that no pollution results from its activity. Secondly, it has to take into consideration the Principle of Inter Generational Equity and therefore ensure that it causes no irretrievable damage to natural assets. In addition, a definite obligation is placed upon the project proponent to protect these assets. Even the Principle of Strict Liability in terms of Section 17(3) of the Act of 2010 would apply upon the applicant with its rigour. In the case of *Gurpreet Singh Bagga vs. Ministry of Environment &*

Forest & Ors.”, O.A. No. 184/2013 dated 18th February, 2016 while applying the Precautionary Principle and the safeguards which the project proponent is obliged to take and its failure, therefore, must attract the Polluter Pays Principle, the Bench held as under:

“The 'precautionary principle' places onus upon the industry, on the one hand, while on the other hand, it obligates the State Government, local authorities and State Pollution Control Boards to ensure prevention and control of pollution. Lack of scientific knowledge would be an irrelevant consideration for determining such a factor. We may refer to the judgment of this Tribunal in the case of *Krishan Kant v. Triveni* OA No. 317/2014 pronounced on 10th December, 2015 wherein the Tribunal while discussing the precautionary principle and its applicability held as under:--

"14. The Rule of 'No Fault' or 'Strict Liability' was enunciated by the House of Lords in the case of *Rylands v. Fletcher*, (1868) L.R. 3 H.L. 330, wherein it was stated that if the defendant was not negligent or rather, even if the defendant did not intentionally cause the harm, he could still be held liable under this Rule for the damage or adverse impact of his activity. To succeed in such an action in tort, the claimant was expected to show:

1. That the defendant brought something onto his land;
2. That the defendant made a "non-natural use" of his land (per Lord Cairns, LC);
3. The thing was something likely to do mischief if it escaped;
4. The thing did escape and cause damage.

The rationale behind the rule of Strict Liability is that the activity going within its fold are those entailing extraordinary risk to others, either in seriousness or the frequency of the harm threatened. Extending the basis of such liability, Blackburn, J. held as under:

"We think that the rule of law is, that the person who for his own purposes brings on his lands and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie

answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default; or perhaps that the consequence was of *vis major*, or the act of god; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

In the recent past, there has been a basic shift in the approach to environment protection. Earlier, the concept was based on the 'Assimilative Capacity' Rule as is evident from Principle 6 of the Stockholm Declaration of United Nations Conference on Human Environment in 1972. This principle assumed that science could provide policy makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilative impacts and it also presumes that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to avoid such harm. Under the 11th Principle of the United Nations General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the 'Precautionary Principle', which was then reiterated in the Rio Conference of 1992 in its Principle No. 15. The inadequacy of science is the real basis that has led to the 'Precautionary Principle'. It is based on the theory that it is better to err on the side of caution and prevent environmental harm which may indeed become irreversible.

The Precautionary Principle suggests that where there is identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution, in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or the entity proposing the activity that is potentially harmful to the environment. In the event of uncertainty, presumption should operate in favour of environmental protection and primary onus would shift in light of the presumption in favour of the environment and statutory obligation of the industry as afore referred. The test to be applied is that of a 'reasonable person'.

The 'Precautionary Principle' thus, demonstrates that an activity which poses danger and threat to the environment is to be prevented. Under this Principle, the State Government and the Local Authorities are supposed to first anticipate and then prevent the cause of environmental

degradation by checking the activity. Lack of scientific knowledge as to whether particular activity is causing degradation should not stand in the way of government in analysing such harm. 'Onus of Proof under this Principle is on the actor or the developer to show that the action is environmentally friendly. We must notice here that the provisions of the Act of 2010 under Section 20 mandates that the Tribunal has to apply the 'Precautionary Principle' while adjudicating the cases under the environmental jurisprudence."

73. Man has changed the nature of many of the world's Rivers by controlling their floods, constructing large impoundments, overexploitation of living and non-living resources and using Rivers for disposal of wastes. Among these, indiscriminate extraction of non-living resources like sand and gravel from Riverbed is the most disastrous as this activity threatens the very existence of the River ecosystem (Kondolf, 1994 supra). Indiscriminate extraction of River sand and gravel, many folds higher than natural replenishments, imparts serious offsite and onsite impacts, leading ultimately to changes in channel form, physical habitats and food webs, engineering structures associated with River channels and inland sediment supply to coastal and near-shore environments.
74. Sand is vital for sustenance of Rivers. Sand mining is the removal of sand from their natural configuration. Sand and gravel are mined worldwide and account for the largest volume of solid material extracted globally. Formed by erosive processes over thousands of years, they are now being extracted at a rate far greater than their renewal. A conservative estimate for the world consumption of aggregates (sand and gravel) exceeds 40 billion tonnes a year. This is twice the yearly amount of sediment carried by all of the Rivers of the world [Milliman and Syvitski (1992) in: Journal of Geology Vol. 100 (5): 525-544], making humankind the largest of the planet's transforming agent with respect to aggregates.
75. Determining the amount of sand that can be sustainably extracted from a particular stream reach requires site-specific topographic, hydrologic, and hydraulic information. This information is used to determine the amount of sand that can be removed from the area without causing undue erosion or degradation, either at the site or at a nearby location, upstream or downstream. In-channel or near-channel sand-and-gravel mining changes the quantity of that can be extracted vis-à-vis the sediment deposited sediment, and may

result in substantial changes in the channel hydraulics. These interventions can have variable effects on aquatic habitat, depending on the magnitude and frequency of the disturbance, mining methods, particle-size characteristics of the sediment, the characteristics of riparian vegetation, and the magnitude and frequency of hydrologic events following the disturbance.”

Useful reference can be made in the case of ‘*Ashwini Kumar Dhal vs. Odisha Pollution Control Board and Ors.*’, dated 25th May, 2016 where the Tribunal held as under:

'Polluter Pays" principle, which is an overarching principle, mandates the polluter to bear the cost of pollution, prevention, control and reduction measures. This principle is an integral component of sustainable development. The Apex Court of India in *Indian Council for Enviro-Legal Action vs. Union of India* (1996) 3 SCC, *Karnataka Industrial Area Development Board vs. C. Kenchappa* : (2006) 6 SCC 371, *M.C. Mehta vs. Union of India*: (2006) 3 SCC 399, has held that the "remediation of the damaged environment is a part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology." Similarly in *Hindustan Coca Cola Beverages Pvt. Ltd. vs. West Bengal*, it has been held that "it is no more res integra, with regard to the legal proposition, that a polluter is bound to pay and eradicate the damage caused by him and restore the environment.”

18. Applying the above settled principles of environmental jurisprudence to the facts and circumstances of the present case, there is no escape from the conclusion that the project proponent has utterly failed to comply with the fundamental principles of environment protection. It has violated the conditions of the EC. The Respondent has not even made an effort to bring on record as to which of the dumping sites have been earmarked for dumping of muck and what is their present status. The Respondent no. 1 has placed on record the documents to show the estimated capacity of the sites and likely generation of the waste from the excavation, etc.

This itself shows lack of responsible behaviour on the part of the project proponent. It could have discharged its onus by placing on record before the Tribunal, documents to show the total extracted debris including from the project, how much of the muck had been deposited on the site and how all concerned persons i.e. the media, local authorities, officers, the applicant as well as the Pollution Control Board, other stakeholders had noticed that muck was indiscriminately thrown into the river. It is nobody's case that the photographs in question are doctored and they are not of the actual sites. The stand taken by the respondents that PWD has also thrown the muck into the water bodies is no defence. In fact, the State Government itself being a party should have taken steps against the PWD for committing such environmental offence.

In view of this discussion, we conclude question no. 2 against Respondent no. 1 and in favour of the applicant.

Question No. 3: **What reliefs, the applicant is entitled to, if any, and what directions should be issued by the Tribunal?**

19. The applicant would be entitled to some of the reliefs prayed in the prayer clause of the Original Application. The prayer made by the applicant completely falls within the ambit and scope of the Section 14, 15 and 17 of the Act of 2010. The damage to the River is obvious and stands proved on record. It is unfortunate that the public undertaking like Respondent no. 1 can take such a stand to shirk from the consequences of its irresponsible and negligent act. If the public authorities would carry projects in the present manner and would attempt to cause such depletion of natural assets as in

the present case, the day is not far when these eco-sensitive areas would refuse to tolerate infliction of damage by the human beings using machinery and this may result in un-manageable and uncontrollable damage.

20. The project proponent is liable to be directed to take preventive and precautionary measures coupled with the prohibitory orders that are patently called for, in the facts and circumstances of the present case. We are unable to condone these irresponsible omissions, acts, and avoidable damage to the nature. They have certainly polluted the water of the river. The analysis reports that have been placed on record do not show that these samples were collected at the relevant time and from the site in question where the muck was being thrown into the River. If the samples are taken upstream and downstream, the samples from the affected sites and the consequences that follow would be totally different and would be immaterial for determining the controversy in the present case. The photographs placed on record clearly show that even the colour of the water has changed along the course of the River. These are uncondonable breaches and actions. Development does not mean destruction of nature. The Respondent no. 1 has certainly violated the spirit of Principle of Sustainable Development and therefore must bear the consequences that will follow in law in the facts of the present case.

Thus, we dispose of this application with the following order and directions:

1. We hereby restrain Respondent No. 1 from throwing any muck, soil, stones by blasting or otherwise or construction debris of the Hydroelectric project into the River Alaknanda, its floodplains or in any other water body in the entire area where the construction work of the road or the project is going on.
2. It shall maintain regular records which shall be computerised to show the nature and quantity of excavated material, blasting of stones and construction activity at the project site, the muck generated, the muck deposited, details and capacity of the site, etc. It shall also duly maintain records of all heavy and small vehicles and machineries being operated by the project proponent or any of its sub-contractors or agents. They shall have GPS system installed to track their movement, within two weeks from the date of pronouncement of this judgment.
3. We impose environmental compensation of Rs. 50 Lakh upon Respondent no. 1. This compensation shall be paid within two weeks from today to the Uttarakhand Pollution Control Board and the Central Pollution Control Board in equal shares. The amount shall be utilised for environmental protection after obtaining the orders of the Tribunal.

The said sum of Rs. 50 Lakh at the first instance would be paid by the Respondent no.1. However, a sum of Rs. 20 Lakh shall be recovered from sub-contractors or agents operating on

behalf of the Respondent no. 1 who were responsible for excavation and carriage/dumping of waste and have thrown the same into River Alaknanda. A sum of Rs. 20 Lakh shall be recovered within 4 weeks from the date of pronouncement of this judgement and compliance report should be submitted to the Tribunal.

4. We also issue notice to the Public Works Department of State of Uttarakhand to show cause as to why environmental compensation be not imposed upon them, on the basis of the disclosure made by Respondent no. 1 that they were dumping muck and construction waste into the water bodies/nallahs.

Notice shall be made returnable by 28th April, 2017 for which registry will maintain a separate file.

5. Further, we direct Respondent no. 1, its contractors/sub-contractors or agents to remove the entire dumped debris from River Alaknanda and restore the same to its original condition within 4 weeks from today. In the event of default, Respondent no. 1 shall be further liable to pay a sum of Rs. 25 Lakh, which shall be used by a committee appointed by the Tribunal at the relevant time for removal of the muck from the River and also for taking the protective measures.

6. We direct Respondent No. 1 as well as Respondents No. 2 and 3 to direct installation of efficient transportation monitoring system to ensure that such projects do not cause any pollution in River Alaknanda in the State of Uttarakhand.

7. All the concerned officers, authorities and State Government shall comply with this order without default and delay, and would submit a compliance report before this Tribunal within six weeks from the date of pronouncement of this judgment.

21. Application No. 197 of 2016 is disposed of without any order as to costs. M.A. No. 376 of 2016 does not survive for consideration as the main application has been disposed of. Consequently, M.A. No. 376 of 2016 stands disposed of. No order as to cost.

Swatanter Kumar
Chairperson

Raghuvendra S. Rathore
Judicial Member

Bikram Singh Sajwan
Expert Member

New Delhi
13th April, 2017

NGT