

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

Original Application No. 635 of 2017

**Ramesh Chand
Vs.
State of Himachal Pradesh & Ors.**

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

**Present: Applicant : Mr. Aditya Dhawa and Ms. Kiran Dhawan, Adv.
Respondents : Mr. Manish Kumar, Adv. for State of Himachal Pradesh
Dr. Sarbjit Sharma and Ms. Leeza Teneja, Adv.
Mr. Deepak Kaushal, Adv.
Mr. Divya Prakash Pande, Adv.**

Date and Remarks	Orders of the Tribunal
Item No. 05 July 16, 2018 A	<p>1. The original Application was filed against the Order of the Himachal Pradesh State Pollution Control Board dated 24.05.2017 granting consent for purpose of Water (Pollution) Control Act, 1974 and Air (Pollution) Control, Act, 1981 to Hotel Manali Valley. Direction was also sought to carry out demarcation under Section 107 of the Himachal Pradesh Land Revenue Act, 1954 to ascertain the extent of encroachment of forest land and consequential directions for termination of the damages to the environment were also sought.</p> <p>2. On 27th October, 2017 following question were framed for consideration:</p> <ol style="list-style-type: none">1. <i>How many hotels are operating in the city of Kullu, Planning Area, particularly in and around the Manali.</i>2. <i>Out of them how many hotels have their own STP and other anti-pollution devices installed and how many are operating without obtaining consent of the Himachal Pradesh Pollution Control Board.</i>3. <i>How many hotels out of them are located or constructed on the forest land.</i>4. <i>How many cases of unauthorized construction which includes the</i>

construction which has been raised without obtaining sanction of the plan, NOC or deviation or variations by addition of floors by construction of additional rooms beyond the sanction plan.

5. What action the State Government and the Pollution Control Board has taken in that behalf.

6. We direct Town and Country Planning Department and the State of Himachal Pradesh to submit whether any study or data have ever been prepared for the Kullu Planning Area with particularly Manali and its surrounding areas as to its carrying capacity, kind of development that should be permitted and keeping in view the fact that this area falls under Seismic Zone 4 and 5”.

3. We may note that though initially the Applicant had put only one Hotel in issue, the scope of the proceedings were enlarged in view of the further material on record. Issues later taken up for consideration include construction without sanctioned plans or in violation of sanctioned plans.

4. Reference was also made to an order of Himachal Pradesh High Court dated 22.05.1995 as follows:-

(i) “Residential houses are permitted to be constructed beyond 50 meters from the edge of both banks of rivers Beas and Ravi;

(ii) Shop-houses may be constructed beyond 100 meters from the edge of both banks of above two rivers;

(iii) House, which are already in existence within 500 meters on both banks of rivers Beas and Ravi are permitted to do necessary repairs and

(iv) Cottage industries are also permitted to be established beyond 50 meters from the edge of both banks of above two rivers. No other construction shall take place within the limit of 500 meters from the edge of both banks of rivers Ravi and beas.

(v) Further directions were issued to Director, Town & Country Planning to identify the additional planning areas and inclusion of left-out areas (if any).

(vi) *The ban shall not apply to the construction and maintenance of roads and other public utility services.”*

5. It was noted that the inspection report of the Pollution Control Board was to the effect that 112 rooms have been constructed for which consent was granted only in the year 2015-2016. 37 rooms are operating without consent. A DG set was creating pollution and environment degradation. The issue of construction being on the bank of the river in violation of the principles laid down in **M.C. Mehta Vs. Kamal Nath & Ors.** [1997 (1) SCC 388] was also considered.

6. It was also noted that having regard to severe threat to the ecology, the Himachal Pradesh High Court vide an order dated 25th November, 1998 directed that there could be no construction beyond 50 meters from the edge of the Rivers Beas and Ravi.

7. In the order dated 18th December, 2017, the Tribunal noted that Manali falls in seismic zone – V which was ecologically fragile. The report of the high powered committee dated 24th May, 2017 referred to in the said order dealt with the issue of shortage of drinking water and limited capacity to deal with municipal solid waste and sewage. The order of the Tribunal dated 30th May, 2017 in cases of Society for Preservation of Kasauli and its Environs (SPOKE) Vs. Bird’s View Resort, Chelsea Resorts, Hotel Pine View, Narayani Guest House and Nilgiri Hotel and Kasauli and its environs (SPOKE) Vs. Barog Heights Hotel – Original Application No. 274 of 2017 were also

referred to as the said judgments dealt with the issue of un-planned construction.

8. After consideration of the entire matter, following observations were made:-

- (a) *No proper inspection report giving the above details had been prepared at site. In fact all the officers present before the Tribunal including the Additional District Town Planner and Ms. Reetu Mahindroo, Assistant Town Planner, O/o. Divisional Town Planner at Kullu; Mr. Jagdeep Singh Thakur, Planning Officer, O/o. Planning Office, Manali and Mr. Naveen Thakur, Junior Engineer, O/o. Planning Office, Manali, nobody even was prepared to own responsibility that they have actually visited the site and measured the existing construction and the basis for granting further permission.*
- (b) *The relevant page of the noting sheet which is unpagged is also in torn/mutilated condition. Although notings on the back of the same page of the same year and time is intact and no further page of noting sheet is mutilated in the file. However, a copy of it is available which we would shortly discuss.*

9. The Tribunal also dealt with the inconsistency in the measurement and the magnitude of the violations and concluded:-

“From the above narrated facts recorded before the Tribunal, it is clear that the officers/official of all the concerned departments have failed to perform their duties in accordance with law. They have not even cared to take any appropriate action even after serving the notices under Section 39 of the Himachal Pradesh Town and Country Planning Act, 1977 and 31(A) and 33(A) of Air (Prevention and Control of Pollution) and Water (Prevention and Control of Pollution) Act respectively. If the timely action would have been taken in accordance with law, damage and degradation of environment and ecology could have been prevented. Not only this even the land admeasuring more than 1000 sq. m. of land washed off and submerged under the water of river Bias belonging to the Noticee could have been prevented by taking proper preventive and precautionary measures. The records produced before the Tribunal by these respective departments and Board of the State demonstrate a pathetic state of affairs of which the Noticee has taken undue advantage by shifting the responsibility to the officer/official of the department and claiming himself to be a law abiding citizen.

10. The Tribunal also noted that the provisions of the HP Tourism Development and Registration Act, 2002 and violation thereof.

11. Finally the following orders were passed:-

1. *“For the offence and breach committed by the Noticee resulting in apparent environmental degradation and operating without Consent to Establish as well as Consent to Operate of the State Pollution Control Board, we impose environmental compensation of Rs. 20 lacs (Rupees Twenty Lakhs only) in terms of Section 14 and 15 of the NGT Act, 2010. The compensation should be paid within two weeks from today. Seventy Five per cent (75%) of which shall be deposited with the State of Himachal Pradesh Environmental Department in its Environment Fund and remaining Twenty Five per cent (25%) shall be paid to the Central Pollution Control Board. The compensation so paid shall be utilised for restoration and restitution of the environment and ecological degradation resulting therefrom by the said Department of Environment of State of Himachal Pradesh in consultation with the Himachal Pradesh Pollution Control Board.*

In the event the said compensation is not paid the same shall be recovered as arrears of land revenue by the Dy. Commissioner of District Kullu in accordance with law.

2. *We direct the Respondent/Noticee to demolish the unauthorised, illegal and unsustainable structures constructed by Noticee right from 2006 till date to the extent of 2776.11 sq. meters. This area includes an extra floor with attic floor constructed on then existing structure of two storeyed. It also includes extra floor with attic floor constructed on the cottage. Besides that all the area which has been constructed without specific permission of the Town and Country Planning Department shall be demolished.*

The demolition should be effected by the Noticee within two weeks from the date of this Judgment. In the event of default, the Town and Country Planning Department of Himachal Pradesh, the State Pollution Control Board and Department of Environment shall demolish the said structure at the cost of the Noticee.

The C&D waste so generated upon demolition would be disposed of by the Noticee/Department as the case may be in accordance with the C&D Waste Rules at the cost of the Noticee.

In the remnant constructed area of the hotel the applicant/Noticee, if he wants to conduct any hotel or tourism activity, shall obtain Consent to Operate afresh from the Himachal Pradesh State Pollution Control Board. The application in that behalf should be filed within one week from today. If filed, the Pollution Control Board shall conduct a complete and comprehensive inspection, prepare a report at site as well as collect samples and analyse them in

accordance with law. If the consent is granted, the Noticee could carry on his hotel tourism activity and not otherwise till this process is completed in accordance with law.

With these directions, the Noticee shall not carry on any activity which requires consent of the State Board for the premises and the building in question.

The Noticee shall obtain Certificate of Registration from the Tourism Department, State of Himachal Pradesh in accordance with law.

3. We direct the Chief Secretary of State of Himachal Pradesh to take appropriate disciplinary action in regard to dereliction of duty and for not maintaining the records and taking action in accordance with law against all the employees, officers and officials who have dealt with this file whether they are in service or have retired and providing undue advantage to Noticees. In the case of retired officers/officials, the action would be taken for reduction in pension as per rules. The employees may be of the Department of Town and Country Planning, the Government of Himachal Pradesh, Department of Tourism, State Pollution Control Board or any other agency of the Government as may be deemed proper by the department.”

12. Thereafter, the matter was taken up for monitoring the compliance of the order dated 18th December, 2017. On 11th January, 2018 a direction was issued to file phase-wise reports. Town and Country Planning was permitted to delegate its Authority to Senior State Level Functionaries. Further direction was that the scientist from the G.P. Pang Institute, Kallu Manali be made a Member of the Joint inspection team in substitution of a scientist from G.P. Pant Institute, Almora.

13. On 21st March, 2018, having regard to the violation of the orders of this Tribunal by the State of Himachal Pradesh and long delay which was being caused, cost of Rs.1 Lakh was directed to be imposed.

14. Thereafter on 10th April, 2018 and 20th April, 2018,

observations were made with regard to failure on the part of State Administration to comply with the orders of this Tribunal.

15. When the matter has been taken up today, our attention has been drawn to Affidavit dated 13th July, 2018 filed on behalf of the State stating that the joint inspection team has submitted a report dated 06th June, 2018 indicating the extent of violation and recommendations of the Committee with respect to 16 Hotels. There is further report dated 13th June, 2018 with regard to 25 Hotels. Thus, report covers 41 Hotels.

16. According to the learned counsel for the State of Himachal Pradesh the reports submitted so far covered 166 hotels out of total 1000. If 1000 Hotels are required to be inspected and only 166 so far been inspected, it is only less than 17% which work cannot be appreciated.

17. A welfare State cannot afford to adopt such attitude when the lives of the peoples are affected. It cannot claim the luxury of seeking more time repeatedly without performing its constitutional and statutory duties. The Plan of the State must be meaningful and equal to the taste and we see no justification to give more than six weeks to complete the entire task. Whatever is required to be done for the purpose may be done by the State. There cannot be plea of deficiency of funds as funds can be collected by way of penal action. The manpower can accordingly be hired and more teams can be constituted which can work simultaneous work on war footing as health

and life of the people is the primary concern of a welfare State.

18. Apart from inadequacy of the steps so far taken, we also find that the report submitted is not complete. By way of example, we find that in respect of the Victoria Palace Hotel (page 1121 from the paper book), the extent of encroachment found is not even mentioned though encroachment was found on Government/Forest land. It is not specified whether it is on Government land or on Forest land.

19. Realizing the embarrassment, the learned senior counsel for the State fairly stated he will look into the matter personally along with the concerned Authorities and work out day to day plan of further action taking into account not only the existing capacity of the available staff but also the potential for hiring suitable persons on temporary basis for completion of this task.

Accordingly, we have considered it reasonable to grant time for this purpose till 18th July, 2018.

List again on 18th July, 2018.

The learned counsel may also take assistance of the Committee in the matter.

....., CP
(Adarsh Kumar Goel)

....., JM
(Dr. Jawad Rahim)

....., JM
(Raghuvendra S. Rathore)

....., EM
(Dr. Satyawan Singh Garbyal)

13.07.2018

