

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

APPEAL NO. 39 OF 2012

CORUM:

**Hon'ble Mr. Justice U.D.Salvi (Judicial Member)
Hon'ble Prof. A.R. Yousuf (Expert Member)**

IN THE MATTER OF:

1. SAVE MON REGION FEDERATION

Through its General Secretary,
Lobsang Gyatso, Near High Secondary
School Tawang, P.O. Tawang,
District Tawang, Pin Code-790 104.

2. LOBSANG CHOEDAR

Khet Village, P.O. Mukto, P.S. Jang,
District Tawang, Pin Code 790 104
Arunachal Pradesh.

APPELLANTS

Versus

1. UNION OF INDIA

Through its Secretary
Ministry of Environment and Forests
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi-110 003.

2. ARUNACHAL PRADESH STATE POLLUTION CONTROL BOARD, (APSPCB)

Through its Member Secretary,
Arunachal Pradesh State Pollution
Control Board, Department of Forest,
Environment and Wildlife Management,
Itanagar-791111.

3. NJC HYDRO POWER LIMITED

Through its Vice President and CFO
With its registered office at
A-12, Bhilwara Towers, Sector-1,

Noida-201301.
Uttar Pradesh

4. State of Arunachal Pradesh

Respondents

Counsel for Appellant(s):

Mr. Ritwick Dutta, Mr. Rahul Choudhary, and
Ms. Parul Gupta, Advocates.

Counsel for Respondent(s) :

Ms. Divya Prakash Pande, for Respondent No.1
Mr. Anil Shrivastav, Adv for Respondent No. 2
Mr. Raj Panjwani, Sr. Advocate Mr. Sanjay Upadhyay and
Mr. Saliq Shafique, Advocates for Respondent No.3.
Mr. Anil Srivastava and Mr. Pranav Rishi Advocate for
Respondent No. 4

Per U.D. Salvi J. (Judicial Member)

J U D G M E N T

Reserved on: 29th January, 2016

Pronounced on: 7th April, 2016

1. In the present Appeal, Save Mon Region Federation – an organization consisting of citizens of Monpa indigenous community in Tawang district of Arunachal Pradesh and Mr. Lobsang Choedar a Social Activist, Senior Buddhist Lama and Chief Advisor of the said Federation, have assailed grant of Environmental Clearance (EC) dated 19.4.2012 to the construction of 780 Mega Watts (MW) Nyam Jang Chhu Hydroelectric Project (NJC-HEP) in Tawang district of Arunachal Pradesh.

2. Admittedly, 780 MW HEP envisages construction of 10.2m high and 15m long barrage on eco-sensitive stretch of Naymjang Chhu River basin near Zemithangin district

Tawang of Arunachal Pradesh. The project involves 23.45km long and 6.2m. diameter Head Race Tunnel (HRT) requiring extensive tunneling in geologically fragile landscape and comprises of eight (8) de-silting chambers and with underground Powerhouse having 6x130MW Pelton Turbines. The HRT bypasses around 35kms stretch of river between barrage and the powerhouse. The Appellant adds that the project also involves construction of captive hydropower project of 7.5MW, Khangteng HEP to provide power during construction of 780MW Nyamjang Chhu project.

3. It is also not disputed that total land proposed to be acquired for the project is around 254.55ha, out of which 10.08ha is private land and 244.46ha is community land with total submergence area of 39.34ha, and 89.5271ha of forest land has been considered for diversion proposal under the Forest (Conservation) Act, 1980.

4. Following submission of proposal for grant of EC to the said project in Form-I and the public hearing prescribed under the Environment Clearance Regulations, 2006, the Expert Appraisal Committee (EAC) for river/valley and hydroelectric projects constituted by the Ministry of Environment and Forests (MoEF), considered the project proposal and prescribed Terms of Reference (ToR) for preparation of Environment Impact Assessment (EIA)

Report on 29.12.2009. The Central Electricity Authority (CEA) assessed capacity of the project based on hydrology and discharge data approved by the Central Water Commission (CWC) and thereupon capacity of the project was reduced to 780 MW from 900MW, changing the feasibility location of the project components, land requirement and thereby environmental parameters. The public hearing was conducted at New Lumla, District Tawang on 8.2.2011. Respondent No.2- Arunachal Pradesh State Pollution Control Board (APSPCB), submitted report of public hearing to MoEF on 22.2.2011. The EAC in the Meeting held on 26th March 2011 (48th Meeting) and on 16-17th September, 2011 (52nd Meeting), considered project proposal and recommended grant of EC, whereupon the MoEF granted EC to the project on 19.4.2012.

5. The Appellants have challenged the grant of EC, mainly on the following grounds:

(1) Faulty Scoping Process:

- a) Concealment of information, submission of false and misleading data in Form-I,
- b) Lack of application of mind by the EAC at scoping stage, inasmuch as it overlooked inappropriateness for siting barrage at the place used by Black necked Crane for wintering, non-inclusion of ToR for impact assessment of captive small hydel power

7.5MW Khangteng HEP and ancillary infrastructures, unjustified exclusion of important ToRs from Model ToR for North-Eastern projects, absence of prescription for cumulative impact assessment and riverine basin studies in Tawang River Basin, and absence of ToRs relating to impacts of Catchment Area Treatment (CAT) and Compensatory Afforestation (CA).

- (2)** Faulty public consultation process, inasmuch as the EIA report was not as per ToR, poor quality of EIA Report, farcical hearing.
- (3)** Lack of application of mind by the EAC and MoEF during appraisal of project and thereafter by MoEF.

6. Respondent No.1– Ministry of Environment, Forest and Climate Change, Government of India joined issues with replies dated 26.7.2013 and dated 11.1.2016. Lastly, MoEF relied upon the record and contended that the EAC had thoroughly scrutinized the proposal for grant of EC in question and upon examination recommended the project for scoping clearance, and public hearing for the project was conducted as per provisions of the EIA Notification, 2006 and thereupon EAC thoroughly examined the environmental issues before recommending the project for grant of EC and, thereafter, the Ministry duly granted EC to

the project after following due procedure as per provisions of the EIA Notification, 2006. Respondent No.1 MoEF, placed before us copies of the Minutes of EAC Meetings held on 20-21 July, 2015 and 24-25 August, 2015, wherein the report on “carrying capacity study of Tawang River basin” through North-Eastern Hill University received in June, 2015, was considered vide affidavit dated 11.1.2016.

7. Respondent No.2- APSPCB denied Appellant’s contentions and specifically contended that the public hearing was arranged by the Respondent No.2 in systematic, time bound and transparent manner ensuring widest possibility of public participation at or about the project site as per Appendix (IV) of the EIA Notification, 2006. The Respondent No.2 revealed that date, time and venue for conduct of public hearing were finalized in consultation with the Deputy Commissioner, Tawang district and Notices for public hearing were issued, both in English and in local Mompá dialect in the English script and published in two (2) local newspapers “Arunachal Times” and “Arunachal Front” both editions dated 6.1.2011 for widest publicity, and the names of designated officers where the public could access the draft EIA Report and the Executive Summary of EIA Report before the public hearing were clearly mentioned in the public hearing Notices advertised in newspapers; and these documents were made

available in such offices and were accessible to the public for inspection as mandated in the EIA Notification, 2006. The Respondent No.2 revealed that executive summary of EIA Report and other details of the project were uploaded on the Website of the Board and Notice of public hearing inviting suggestions, views, comments and objections from public was given thirty (30) days' in advance of the scheduled date of public consultation. The Respondent No.2 further revealed that as many as 457 persons a large scale public participation in sparsely populated State of Arunachal Pradesh, attended public hearing at Multi-Purpose Hall, New Lumla, Tawang district on 8.2.2011; and entire proceedings of public hearing was Video graphed duly recorded and dispatched to the Regulatory Authority as per provisions contained in the EIA Notification, 2006. Copies of record of the public hearing were placed before us by Respondent No.2- APSPCB along with its reply dated 13th May, 2013.

8. Respondent No.3 NJC Hydro Power Limited –Project Proponent (PP), resisted Appeal with reply dated 17.7.2013 and Sur-rejoinder dated 24.9.2013 to the rejoinder filed by the Appellants. According to Respondent No.3, HEPs are most eco-friendly project, generating hydropower, a benign renewable source of energy, needed for developing infrastructures in remote areas and the State Govt. has

signed Memorandum of Understanding (MoU) for developing several such projects in State of Arunachal Pradesh in pursuance to its policy- 'Arunachal Pradesh Hydro Power Policy, 2008' for development of hydropower potentials. A Memorandum of Agreement (MoA) was signed between Respondent No.4- Govt. of Arunachal Pradesh and Bhilwara Enginery (BEL) on 28.5.2009 to develop Nyamjang Chhu HEP and a Special Purpose Vehicle (SPV) in the name of NJC Hydro Power Ltd was formed by BEL for execution of Nyamjang Chhu HEP with consent given by the Respondent No.4 on 10.6.2010 in terms of said agreement. The Respondent No.3 further revealed that the project is run of the river type scheme with peaking poundage to harness the hydropower potential of River Nyamjang Chhu with its diversion barrage near Zemithang village with powerhouse in village Kharteng about 4km upstream of the confluence of Nyamjang Chhu with Tawang Chhu. According to the Respondent No.3, majority of catchments, upstream of diversion structure lies in Tibet, and the catchment within Indian Territory downstream of diversion structure shall remain largely undisturbed due to several tributaries joining the river system. Initially, the Respondent No.3, revealed that the project was allotted in three stages, but on basis of pre- feasibility report to which the Respondent No.4 accorded its consent the project was found to be more viable and environmentally less demanding in single stage,

and Memorandum of Agreement amongst other things including provisions for the following developmental and welfare activities for benefit of local areas was signed on 28.5.2009:

- a.** Development of two small HEP's viz Khangteng HEP (7.5MW and Shyaro Nallah HEP (3MW),
 - b.** From the date of commercial operation the State shall be given free power @12%.
 - c.** Additional 1% free power from the project for Local Area Development Fund.
 - d.** Hundred (100) Units of electricity per month to each Project Affected Family (PAF) for a period of ten years.
 - e.** The Company shall also bear the State Government's share of 10% of the project cost of Rajiv Gandhi Vidyutikaran Yojna (RGGVY) within a radius/surface distance from the powerhouse/dam site of 10 kms.
 - f.** Recruitment of project personnel and award of work, where preference to local contractors and project affected eligible candidates in the matter of recruitment of project personnel and award of work apart from reservation of posts in the project.
 - g.** Provision of institutional mechanism, the Project Monitoring Committee under the Chairmanship of Secretary, Power or any other State Govt. Authority for the purpose of overseeing progress of the project and address issues arising out of its implementation.
- 9.** According to the Respondent No.3, the EAC raised several issues and approved ToR with various additional

conditions and accordingly two Agencies WAPCOS Limited (A Central Govt. of India Organization) and R.S Enviro-link Technologies (RSET) for due collection of environmental data and its study were appointed and the EIA as well as EMP report was prepared by WAPCOS as per approved ToRs and the EIA study included submergence of area i.e. area within 10km of submergence area, area to be acquired for various project components and area within 10km of project components, namely barrage and powerhouse; and the Central Inland Fishery Research Institute, Kolkata (CIFRI) was appointed to conduct the study for estimation of environmental flow required to maintain aquatic life in the river and migration of fishes. According to the Respondent No.3, requisite environmental data was duly collected, detailed filed/studies were carried out, environmental impacts were examined in detail and thereupon Environmental Management Plan was developed by the consultants.

10. According to the Respondent No.3, four different alternatives for project layout were examined in detail and detailed comparison of alternatives was made, and finally fourth alternative – present barrage located in Zemithang with powerhouse proposed to be located on the left bank of NJC river in Kharteng village was selected, based on suitability of geological consideration and minimum

submergence area required, easy accessibility and other positive construction benefits with minimal environmental impact, minimum tree cutting and minimum disturbance to the local population during construction, minimum height of the diversion structure due to flat grade and sufficient width of the river and no impact on religious monuments such as Gorsan Stupa. A detailed project report in respect of fourth alternative was placed before the CEA for Techno Economic Concurrence; and the CEA finalized project capacity at 780MW during Techno Economic discussion and same was accepted by the Respondent No.3 and approved by Respondent No.4- Govt. of Arunachal Pradesh as well as MoEF for revision of project capacity from 900MW to 780 MW on 2.8.2010. After completion of studies by CIFRI, WAPCOS and RSET, the Respondent No.3 added, the draft Environmental Impact Assessment Report, including detail Environment Management Plan (EMP) was submitted to Respondent No.2- APSPCB on 10.12.2010 with a request to conduct public hearing for the project; and public hearing for the project was duly conducted by Respondent No.2- Board on 8.2.2011 under the Chairmanship of Deputy Commissioner, Tawang. According to the Respondent No.3, the EIA study was finalized and submitted in 2011 in pursuance to the proceedings of said public hearing and the same were submitted to MoEF, New Delhi for consideration; and the project was duly considered

by the EAC on 26th March, 2011; and several observations were made by the EAC with respect to various EMPs; and the MoEF sought clarifications of the observations made by the Committee from the Respondent No.3, which were replied by the Respondent No.3 in August, 2011. The Respondent No.3 added that based on replies submitted by them the project was again considered by the EAC on 17.9.2011 and the Committee recommended the project for EC.

11. Adverting to Memorandum of Appeal, the Respondent No.3, denied specific contentions raised by the Appellants. According to the Respondent No.3, Khangteng HEP is separate, independent and small Hydropower project located about 30 km from the project in question and is part of MoA on a Built, Operate and Transfer basis for supply of power to the project in question during construction phase, which has been envisaged primarily on environmental grounds to do away with diesel generators having adverse environmental impacts. This being a project on single river system, it will not have any cumulative impact with any other existing or planned activities in the locality, though several HEPs may have been proposed in Tawang region in general. According to the Respondent No.3, cumulative effect of the project is considered when project shares same catchment.

12. Main thrust of submission made on behalf of the Appellants in the present case is on faulty project scoping, which has multiple cascading effects on various stages of process of grant of EC and its final outcome. Perusal of the Environment Clearance Regulations, 2006, reveals that prior EC process for new project has four stages namely, (1) Screening (2) Scoping, (3) Public Consultation and (4) Appraisal, though all of which may not apply to set of particular cases. However, the project in question being River Valley project of 780MW HEP generation, is category 'A' Project listed at serial No.1-(c) of the Schedule of Environment Clearance Regulations, 2006, warranting scoping, public consultation and appraisal under the said Regulations. 'Scoping' refers to process by which the EAC determines detailed and comprehensive ToR addressing relevant environmental concerns for preparation of EIA Report in respect of the project for which prior EC is sought. The EAC determines ToR on the basis of information furnished in the prescribed Application Form-I, including ToR proposed by the Applicant, site visit by Sub-group of EAC concerned, only if considered necessary by the EAC. In 'public consultation' the concerns of local affected persons (PAP) and others having plausible stake in environmental impacts of the project or activity, are ascertained with a view to take into account all material concerns in the project or activity designed; and 'public

consultation' comprises of 'public hearing' at the site or in its close proximity and obtaining responses in writing from other concerned persons, having plausible stake in environmental aspects of the project/ activity. For obtaining responses in writing from other concerned persons, having plausible stake in environment aspects of the project or activity, the concerned Regulatory Authority invites responses from such concerned persons by placing on their Website Summary of the EIA Report prepared in the format given in Appendix 3-A, along with a copy of the Application in the prescribed Format within seven (7) days of receipt of written request for arranging 'public hearing'. The Regulatory Authority concerned, is under obligation to make available on written request from any concerned person the draft of EIA Report for inspection at invited place during normal office hours. Procedure for conduct of 'public hearing' given under Appendix IV of the Environment Clearance Regulations, 2006, prescribes arrangement of 'public hearing' in a systematic, time-bound and transparent manner, ensuring widest possible public participation at the project site(s) or its close proximity and requires draft EIA Report, including Summary EIA Report in English and in the official language of the State/local language prepared directly in accordance with ToR available for inspection, electronically or otherwise to the public providing thirty (30) clear days to the public for furnishing

their responses. All the responses received, as part of such public consultation process, are forwarded to the Applicant and the Applicant is obliged to address all material environmental issues, concerns, costs during such process and make appropriate change in the draft EIA and EMP and prepare a final EIA Report. The EAC is then obliged to carry out an appraisal meaning thereby carries detailed scrutiny of the Application and other documents like final EIA Report, outcome of public consultation, including 'public hearing' proceedings submitted by the Applicant for grant of EC. The Applicant is invited to furnish necessary clarifications in course of the process of appraisal carried out by the EAC. On conclusion of this proceeding, the EAC makes recommendations to the Regulatory Authority either for grant of prior EC on stipulated terms and conditions or rejection of Application for prior EC, together with reasons for the same. Thereafter, the Regulatory Authority considers recommendations of the EAC and normally accepts the recommendations. However, in cases where it disagrees with recommendations of the EAC, the Regulatory Authority makes request for re-consideration by the EAC, while stating reasons for disagreement and the EAC has to consider observations of the Regulatory Authority, distinguish its views and thereupon after considering the views of EAC the decision is finally taken by the Regulatory Authority. Pertinently, the Application for grant of EC is

liable for rejection in case of deliberate concealment and/or submission of false or misleading information or data, which is material to screening, scoping, appraisal or decision on the Application vide para 7,8 of the Environment Clearance Regulations of 2006.

13. Thus, it can very well be seen from the procedure laid down in the Environment Clearance Regulations of 2006 for grant of prior EC that the information or data furnished by the Applicant in its Application forms basis of entire process stipulated for grant of prior EC, as information/data supplied begets ToR leading to preparation of EIA Report which is indispensable for process of public consultation rendered obligatory by law to understand public concerns in relation to environmental impacts of the project; and which in turn are responsible for generating the EAC recommendations. Thus, the information/data supplied by the Applicant has cascading effect on the final outcome of process of EC. ToRs, a product of scoping process are material to EIA studies, which leads to the EIA Report and thereafter the final EIA Report as aforesaid necessary for forming objective opinion by the EAC in the process of appraisal for making recommendations to the Regulatory Authority. Material issue, therefore, needs to be answered in the present Appeal is as to whether process of grant of

prior EC to the project in question suffers from vice of faulty scoping process or not.

14. Learned counsel appearing on behalf of the appellants, with reference to a copy of the Form-I Application submitted by the PP, particularly, as regards part II- Activity Sr. no. 9.4 and III environmental sensitivity, submitted that the PP deliberately concealed material facts and this vitiates the entire process of scoping and consequently, the process of grant of EC. According to learned Counsel for the Appellants, the PP gave negative answers to the query at 9.4 regarding cumulative effect to proximity of other existing or planned projects with similar effects, when 13-HEPs particularly, 800MW Tawang II project were proposed in Tawang River basin. This is obvious, learned Counsel on behalf of the Appellants, argued from the techno economic clearances granted by the CEA to Nyam Jang Chhu project on 24th March 2011:

“ The issue of likely interference of one adit of Nyam Jang Chhu HEP with works/adit of Tawang HEP Stage-II of M/s NHPC Limited was resolved in the meeting convened by Chief Engineer (HPA),CEA....

...4(viii) M/s NJCHPL, shall co-operate with M/s NHPC limited who are developing Tawang HE Project Stage-II and other developers in the vicinity to facilitate to carry out their works during construction and O&M stages of the projects.

ix) M/s NHPC Limited shall adjust location of their (Tawang HEP Stage-II) muck dumping yard and construction facility areas to avoid any relocation of the TRT outfall of Nyam Jang Chhu HEP. During construction of TRT of Nyamjang Chhu HEP, M/s NHPC Limited shall allow M/s NJCHPL the right of way/access to construct their TRT and outfall structure after mutual discussions. M/s NHPC Limited shall also extend this facility to M/s NJHPCL during O&M, whenever necessitated.

x) M/s NJCHPL shall maintain clear lateral distance of not less than 140m between the TRT of Nyamjang Chhu HEP and construction adit of Tawang HEP Stage-II.”

15. Learned Counsel appearing on behalf of the Appellants further pointed out, from negative answers to the queries at serial Nos. 1,2, 3 regarding III Environmental sensitivity in Form I- Whether the area is protected under international conventions, or is important or sensitive for ecological reasons, or used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting or wintering migration, the insensitiveness of the PP when it is a wintering site for endangered vulnerable and threatened to species of birds- Black necked Crane and (Grus Nigricollis) and wintering site for this endangered species. He submitted that the project in question is located at the very much identified wintering site of the Black necked Crane- Zemithang Nylah, an important Schedule I-

Bird area. He submits that the Black necked Crane is the Schedule-I species under the Wild Life (Protection) Act, 1972 (Entry-1(a), part-III Birds). To answer the counter contention that there was no scientifically validated and legally recognized material to support existence and sighting of this endangered species at Zemithang, he invited our attention to the Scientific Report and studies “Critics of Wildlife Sections of the EIA Report” published by the Senior Scientist of the Nature Conservation Foundation – Annexure A-29. The Relevant text of the Critique reads as under:

“In addition, the Nyamjang Chhu River valley is one of the few wintering sites in the world visited by the black-necked crane (about 7 birds) listed as vulnerable by IUCN and Bird Life International (2001). The valley suitable for the Black-necked crane is from Broken thang (27°43'38.47"N, 91°43'39.69" E), a 3km stretch at an average altitude of 2000msl (Dutta 2010, Rahmani 2010). The average width of the valley is 030 and water flow in this stretch of the river is gentle with small seasonal islands and grasslands on both sides. Locals who call the bird ‘Thung-Thung Karmo’ revere the bird and report that the cranes have visited the valley since time immemorial. **This crucial wintering area overlaps with the project site (see Fig.1).**

Apart from the black-necked cranes, the valley is also home to other Schedule-I species such as

red panda (*Ailurus Fulgens*) in the Zemithang-Lumpo area, and the snow leopard (*Panthera Taxi color*) in the higher reaches and the Arunachal macaque *Macacamunzala*, a newly described primate species in the area (Sinha et al.2005). There are several troops of the Arunachal macaque in the Zemithang Valley and is one of the primary habitats for this species (Kumar et al.2007, Mendiratta et al. 2009).

The EIA report does not record any of these facts nor does it refer to any of this extensive literature in its report. This is a serious omission and it incorrectly states that the area and its surrounding areas harbor no rare or endangered wildlife”.

16. It is also brought to our notice that the Black necked Crane– is revered by the local Monpa Community in Zemithang and is locally called “*Thung Thung Karmo*” incarnation of VI Dalai Lama. According to learned Advocate for the Appellants, Zemithang Nylah IBA, is one of the two wintering sites for the Black necked Crane in Arunachal Pradesh, other being syank valley.

17. It is true that these material facts were not before the EAC when scoping was done. Naturally, ToRs prescribing EIA study as regards these material facts were not prescribed thereby resulting in vacuum in the EIA Report on this material aspect. Consequently, inevitable aberration

creeps in the appraisal done by the EAC for recommending grant of EC in question.

18. Learned Counsel appearing on behalf of the PP submits that this Tribunal has authority to take an appropriate decision on the facts placed before it and has multiple options either to set aside or suspend the EC and remand the case for reconsideration to EAC on limited issue, or upheld the EC with suggested safeguards. He pointed out from the record that the project in question is pursuant to HEP Policy-2008, and is most environment- eco friendly operation for generation of energy much needed for development and environmental impacts are minimal as compared to economic gains. He submitted that initially the project was in three phases and was given up and a single phase project was considered in order to minimize environmental impacts. He further submitted that two reputed consultants have carried out EIA study and where was need for them to suppress or not to mention anything about the Black necked Crane, particularly, when they referred to Schedule-I species bird pheasant in the EIA Report. He further submits that none of the Members of Public made any utterance about the Black necked Crane and out of 700 households 300 attended 'public hearing', out of them 41 were from Zemithang. He further submits that Nyam Jang Chhu River is Perennial River, having eight

tributaries between barrage and tunnel outlet and minimum flow is ensured without there being occasion of drying of the river. Referring to description of the habitat of the Black necked Crane as spelt out in the literature produced "Threatened Birds of India" by the Appellants at Annexure A-8, to the Application, he further submits that the Black necked Crane breeds in Alpine meadows and riverine marshes, favouring lacustrine marshes from 2600-4900 MSL and winters in river valleys and along riverine shoreline in the vicinity of Barley and spring wheat fields; and such habitat would continue to remain available to the Black necked Crane, even after the project in question takes shape, particularly, on account of pond of water upstream and rice fields along Nyam Jang Chhu River and other Tributaries downstream barrage.

19. All said and done, there has to be application of mind by the EAC in prescribing ToRs and in the appraisal process to the material facts. Even at scoping stage the EAC can take decision and recommend rejection of Application for prior EC, on which the Regulatory Authority is obliged to act in terms of provisions of the Environment Clearance Regulations, 2006- (VII (2) stage-2, Scoping Part-III). The issue raised earlier therefore, needs to be answered affirmatively. The facts, however, reveal that this has not happened. Pertinently, it is revealed by Respondent No.1

MoEF that in the 86th Meeting of EAC (Annexure-2), the EAC took cognizance of Tawang River Basin Study Report conducted by the North-Eastern Hill University (NEHU) and that the Department of Power, Govt. of Arunachal Pradesh has made carrying capacity study of Tawang River basin through NEHU, Shillong; and carrying capacity Study and cumulative impact assessment for river and river basin has been mandatory requirement to consider environment and forest clearance of individual HEPs. The EAC has acknowledged that basin study serves as an important decision-making tool for the Ministry insofar as considerations and grant of EC and FC for HEPs are concerned. The EAC has taken into consideration submissions of NEHU on the issue of conservation of the Black necked Crane and destructing wintering habitat by Nyam Jang Chhu project and concluded that E-flow data computed for Nyam Jang Chhu project, in NEHU draft report (September 2014 version) should be included along with migration measures suggested and separate study on E-flow requirement for protection of habitat and conservation of the Black necked Crane would be commissioned by the MoEF&CC through the Wildlife Institute of India, Dehradun for taking a final decision on Nyam Jang Chhu project.

20. The record also reveals that the CIFRI had carried out field study, collected samples and carried out analysis based on commonly used environment stop methodology for estimation of environment flow required for maintaining aquatic life in the river and migration of fishes, and has made following recommendations in its final report dated July, 2011:

- a)** The minimum environmental release of 3.5cumecs from the barrage during lean period is recommended for maintaining the aquatic life in the river
- b)** The recommended discharge of 3.5cumecs will maintain flow depth and flow velocity of 0.55m and 0.36 m/s respectively.
- c)** A suitably designed fish ladder should be provided in the barrage to facilitate fish migration for sustenance of the native fish population.
- d)** Hatchery unit for indigenous species, nursery ponds, rearing ponds, stocking ponds must be created prior to storage of water in the barrage. Regular ranching of seeds of this species would be an alternative to natural recruitment.

21. However, this report has surfaced only after public consultation held in February, 2011. Respondent No.1-MoEF submits that Tawang basin study is already a cumulative impact study carried out and takes care of alleged concerns and Nyam Jang Chhu being the only project in the entire catchment of Nyam Jang Chhu River,

and no more study is required as regards micro-hydel power project of Khangtang and Shyrao as necessary clearances have been obtained and they are 32-40 km away from the project and are being used primarily to displace use of diesel as a fuel during construction of the project. Learned Counsel appearing on behalf of MoEF further submits that it needs to be left to the discretion of EAC and MoEF to decide whether fresh 'public hearing' or consultation are required on account of changes in scope alignment/project features/operation regime and fresh studies commissioned for project.

22. It is true that hydel power project provides eco friendly renewable source of energy and its development is necessary, however, we are of the considered view that such development should be 'sustainable development' without there being any irretrievable loss to environment. We are also of the view that studies done should be open for public consultation in order to offer an opportunity to affected persons having plausible stake in environment to express their concerns following such studies. This would facilitate objective decision by the EAC on all environmental issues and open a way for sustainable development of the region. In order to do justice in the matter, therefore, we pass the following directions:

- i)** The EC dated 19.4.2011, is suspended till the time the studies as directed are carried out, public consultation thereon done, the EAC considers outcome of such public consultation, carries out a fresh appraisal of proposal for grant of EC, makes recommendation to the MoEF&CC, and the MoEF&CC acts upon such recommendations in accordance with law.
- ii)** The MoEF&CC shall cause to be made a separate study of E-flow requirement for protection of habitat of the Black necked Crane and for conservation of the Black necked Crane through the Wildlife Institute of India, Dehradun, as expeditiously as possible and make such study report along with Tawang River Basin study available for 'public consultation' and shall hold 'public consultation' in compliance of the aforesaid direction in accordance with law.
- iii)** The EAC shall thereupon, make fresh appraisal of the proposal for grant of EC and take appropriate decision for making recommendations to the MoEF&CC, who shall take decision thereupon in accordance with law.
- iv)** The Appeal stands disposed of with no order as to costs.

Justice U.D.Salvi
Judicial Member

Prof. A.R. Yousuf
Expert Member