

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

.....

**Appeal No. 48 (T_{HC})/2012
And
Original Application No. 39 (T_{HC})/2012
And
Original Application No. 40(T_{HC}) of 2012
And
Original Application No. 41 (T_{HC}) of 2012
And
Appeal No. 06 of 2011 (T)**

**In the matter of :
Appeal No. 48 (T_{HC})/2012**

1. Puran Chand s/o Sh. Laxmi Ram
r/o village Mohtu P.O Rajana
Tehsil Sangrah District Sirmour H.P
2. Govind Singh s/o Sh. Jagat Singh
r/o village Malahan Turi
P.O Prara Tehsil Nahan
District Sirmour

.....Petitioners

Versus

1. State of Himachal Pradesh through its Secretary Environment to the Government of Himachal Pradesh
2. State of Himachal Pradesh through secretary MPP and Power Government of Himachal Pradesh
3. The Deputy Commissioner District Sirmour Himachal Pradesh
4. Union of India through Secretary Ministry of Environment and Forest, Paryavaran Bhawan CGO Complex Lodhi Road New Delhi-110003
5. Union of India through Secretary Ministry of Water Resources, Shram Shakti Bhawan Rafi Marg New Delhi-1
6. Himachal Pradesh Power Corporation Ltd. Renuka Construction Circle-1, Dadahu District Sirmour through its General Manager.

.....Respondents

AND
Original Application No. 39 (THC)/2012

Court on its own motion

.....Petitioner

Verses

1. The State of Himachal Pradesh through its Secretary (Power) Shimla
2. The Principal Secretary (Forest) to the Government of H.P Shimla
3. H.P Power Corporation Ltd. (HPPCL) through its Managing Director
4. Principal Chief Conservator of forest Government of H.P Shimla
5. Deputy Commissioner Sirmour at Nahan, Distt. Sirmour.
6. Member Secretary Pollution Control Board Shimla.

.....Respondents

AND
Original Application No. 40(THC) of 2012

Court on its own motion

.....Petitioner

Verses

1. The State of Himachal Pradesh through its Secretary (Power) Shimla
2. The Principal Secretary (Forest) to the Government of H.P Shimla
3. H.P Power Corporation Ltd. (HPPCL) through its Managing Director
4. Principal Chief Conservator of forest Government of H.P Shimla
5. Deputy Commissioner Sirmour at Nahan, Distt. Sirmour.
6. Member Secretary Pollution Control Board Shimla.

.....Respondents

AND
Original Application No. 41 (THC) of 2012

Court on its own motion

.....Petitioner

Verses

1. The State of Himachal Pradesh through its Secretary (Power) Shimla
2. The Principal Secretary (Forest) to the Government of H.P Shimla
3. H.P Power Corporation Ltd. (HPPCL) through its Managing Director
4. Principal Conservator of forest Government of H.P Shimla
5. Deputy Commissioner Sirmour at Nahan, Distt. Sirmour.
6. Member Secretary Pollution Control Board Shimla.

.....Respondents

AND

APPEAL NO. 06 of 2011 (T)

Durga Ram Sharma
S/o Shri Layak Ram Sharma
Village-Mohtu, Tehsil-Sangdes

.....Petitioner

Verses

1. Union of India through Secretary
2. Himachal Pradesh State Pollution Control Board through the Member Secretary
3. Himachal Pradesh Power Corporation Ltd.
4. Delhi Jal Board through the Chief Executive Officer

.....Respondents

Counsel for Appellant:

Mr. Ritwick Dutta & Mr. Rahul Choudhary, Adv.

Counsel for Respondents :

Appeal No. No.48 (THC)/2012

Ms. Panchajanya Batra Singh, Adv for Respondent No. 5

Mr. Ardhendumauli Kumar Prasad with Ms. Priyanka Swami and Mr. Jigdal F. Chanakappa Adv for respondent no.6

Mr. J.S Attri. Sr. Adv with Ms. Pragati Neekhra and Mr. Chandran Nand Jha Adv, for respondent no. 7

Appeal No. 39 to 41 (THC)/2012

Mr. Suryanaryan Singh, Sr, Addl Adv, for Respondent No.1,2 & 4.

Mr. J.S Attri. Sr. Adv with Ms. Pragati Neekhra and Mr. Chandran Nand Jha Adv, for respondent no. 3

Mr. Saurabh Munjal, Adv for respondent no.6

APPEAL NO. 06 of 2011 (T)

Ms. Panchajanya Batra Singh, Adv for Respondent No. 1

Mr. Saurabh Munjal, Adv for respondent no.2

Mr. J.S Attri. Sr. Adv with Ms. Pragati Neekhra and Mr. Chandran Nand Jha Adv, for respondent no. 3

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

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

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Reserved on : 23rd November, 2015

Pronounced on: 2nd February, 2016

- 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 M.S Nambiar (Judicial Member)

1. A Memorandum of Understanding was executed by the Governments of Himachal Pradesh, National Capital Territory of Delhi, Uttar Pradesh, Haryana and Rajasthan on 12th May, 1994 accepting identification of storage projects and allocating share of water amongst upper basin states till construction of storages. It was to conserve the monsoon flow of river Yamuna in a regulated manner. Another Memorandum of Understanding was entered into by these States on 6th November, 1994 with regard to the construction of a project across river Giri, which is a tributary of river Yamuna. The agreement envisages regulation of releases from the Renuka Dam by the Upper Yamuna River Board ("the UYRB") to meet the drinking water needs of National Capital Territory of Delhi, working out of post-Renuka seasonal distributions by UYRB,

consequential to change in drinking water allocation to National Capital Territory of Delhi. The arrangement contemplated under the agreement shall continue only till other storages are created, at which stage releases from the Renuka Dam shall be carried out keeping in view the overall allocation of Yamuna water, in accordance with the Memorandum of Understanding. Except for sharing of stored water, the other States are not entitled to the economic benefits including generation of hydropower. The cost of hydropower component shall be decided by the Central Water Commission.

2. River Giri is a perennial river which flows from its origin at Himachal Pradesh down to meet river Yamuna near Paonta Sahib in Himachal Pradesh and passes through the area between Dadahu town and Badaun village. The project is essentially a water storage scheme with the primary aim of harvesting flood water, storing and supplying the same and envisages construction of 148 meter high rock fill dam, above river bed level, just downstream of the confluence of jogar-ka-khala and river Giri at a place about 2 km upstream of Dadadu town in Sirmour District of Himachal Pradesh. Keeping in view the depth of the underlying rock strata in the river bed, geological conditions of the abutments and seismicity of the area, a rock fill dam was preferred. The project is proposed to supply approximately 23 cumecs water (about 437 mgd) in non monsoon months

and generate 221 MKwh of firm power besides 94MK wh of additional power at Giri power house. For the purpose of project, diversion of 49 hectares of forest land from Renuka Wildlife sanctuary was required. The Standing Committee of National Board for Wild Life in its meeting held on 06.04.2005 recommended the proposal with conditions as specified by the site inspection team. The State of Himachal Pradesh approached the Standing Committee once again for relaxation of the conditions. In its meeting held on 08.06.2006, Standing Committee recommended the proposal as stated by the State Government, relaxing six of the 10 conditions provided earlier. Respondent no.3, the Himachal Pradesh Power Corporation Limited in August 1999 filed an application for grant of environment clearance to the Ministry of Environment and Forest while it was being considered, the Hon'ble Supreme Court passed orders prohibiting diversion of land from Wild Life Sanctuary without the prior approval of the Hon'ble Supreme Court. The Ministry therefore returned the application in 2001 to respondent no.8. On the application filed, by order dated 17.11.2006 in IA No.1660 in Writ Petition (Civil) 202/1995, the Hon'ble Supreme Court granted permission for diversion of 49 hectares of forest land, falling within Renuka Wild life sanctuary, for construction of the project subject to the conditions laid there in. The Hon'ble Supreme Court granted the diversion considering the recommendations of

the Central Empowered Committee dated 30th October, 2006 as well as the recommendations of the Standing Committee of the National Board for Wildlife. Thereafter a representation for revival of the earlier application was made by the Chief Engineer (Projects) of the respondent no.6, along with copy of the order of Hon'ble Supreme Court, on 18th December, 2006. As the project envisages production of power generation also, the Ministry of Environment and Forest treated it as a fresh case which required submission of fresh Environment Impact Assessment, Environment Management Plan and fresh public hearing to be conducted by the Himachal Pradesh Pollution Control Board. Consequently the terms of reference for fresh Environment Impact Assessment and Environment Management Plan for the project were fixed by respondent no.6, on the recommendations of the Expert Appraisal Committee for river valley and hydro electric projects. After due consideration of the application and the fresh Environment Impact Assessment and Environment Management Plan for the project, environment clearance was granted by respondent No.1 on 23rd October, 2009 as per the provisions of Environment Impact Assessment Notification 2006, subject to strict compliance of the terms and conditions stipulated therein. Among other conditions it was provided that prior approval under Forest (Conservation) Act, 1980 for diversion of forest land should be taken and no physical

work will be initiated without forest clearance for the project. The environmental clearance granted for the Renuka Dam project was for construction of 148m high rock fill dam across river Giri 1.5 km upstream of Dadahu Bridge and 35 km downstream of confluence of jogar-ka-khala and River Giri. The project is a storage scheme to harness monsoon discharge of river Giri for augmentation of drinking water supply to NCR of Delhi and other co-basin states with an incidental power generation of 40 MW during peak flow. A surface power house with two units (2x20 MW) is proposed on the right bank of the river. As per the Environmental Clearance, the total requirement is “about 1477.78 hectares of which 901 hectares is forest land and 576.78 hectares is private land. Out of the total land 1197.60 hectares (761.60 hectares of forest land and 436 hectares of private land) will be submerged including 49 hectares of land from Renuka Wild Life Sanctuary for which approval was obtained from the Hon’ble Supreme Court on 17.11.1996 for diversion of the forest land. 32 villages consisting of 308 families are likely to be affected due to the project. So also people of 24 villages will lose their land. The total project cost as per the Environmental Clearance is about Rs. 2687.33 crores. The project is to be completed within six years.

3. Challenging the environment clearance Durga Das Sharma, the appellant in *Appeal No. 06/2011*, preferred an appeal before the then Appellate Authority as *Appeal no. 43/2009*

on 23.11.2009, before the National Environment Appellate Authority under section 11 of the National Environment Appellate Authority Act 1997, which was repealed by the National Green Tribunal Act, 2010 (in short NGT Act, 2010) with effect from 18th October, 2010. As provided under sub-Section 5 of Section 38 of the NGT Act, 2010, *Appeal No. 43/2009* pending before the National Environment Appellate Authority was transferred to the National Green Tribunal and was received and taken on file as *Appeal No. 6/2011*. Meanwhile, appellants in *Appeal no. 48/2012 filed CWP 20/2010* on 04.01.2010 before the High Court of Himachal Pradesh at Shimla seeking the Writ of Certiorari for quashing the Environmental Clearance dated 20.10.2009 granted in favour of the Renuka Dam project, and to quash the Renuka Dam project as a whole or in the alternative declare the Environment Impact Assessment Report prepared by the respondents as illegal and also the public hearing as sham *CWP PIL 207 2011* was in the meanwhile registered by the High court of Himachal Pradesh as a Public Interest Litigation, based on a letter dated 15.12.2010 received by the Chief Justice seeking an order to stay the land acquisition proceedings till the project obtains the forest clearance and other clearances and challenging invoking the urgent clause for the land acquisition for the project for which there is no forest clearance. Similarly, public interest litigation *CW PIL 3/2011 and 4/2011* were

registered by the High Court of Himachal Pradesh based on letters received against the land acquisition proceedings for the project contending that when there is no forest clearance, provided under the Land Acquisition Act, it is illegal to proceed with the land acquisitions. While these Writ Petitions were pending before the Division Bench of the High Court, taking note of the appeal preferred before the National Environment Appellate Authority which was already transferred to the National Green Tribunal and the decision of the Hon'ble Supreme Court in *Bhopal Gas Peedit Mahila Udhyog Sangathan and others Vs U.O.I and others* dated 09.08.2012. By order dated 22.08.2012, the Hon'ble High Court of Himachal Pradesh directed transfer of all these Writ Petitions to the Tribunal at the earliest. On receipt of the records *CWPIL 2/2011, 3/2011 and 4/2011* were respectively registered as *Application No. 39/2012, Application No. 40/2012 and Application No. 41/2012*. The *CWP 20/2010*, was filed on 25.12.2009 in the Himachal Pradesh High Court contending that in spite of the repealing of the National Environment Appellate Authority Act, 1997 and the constitution of NGT Act, 2010, the National Green Tribunal was not constituted and, therefore, an Appeal could not be filed before the National Green Tribunal challenging the Environmental Clearance as provided under Section 16 of the NGT Act, to quash the Environmental Clearance by order dated 22.08.2012 it was also transferred to the

Tribunal. On receipt of the records, it was registered as *Appeal no. 48/2012*.

4. Appeal no.6/2011 was filed with the prayer to quash the Environmental Clearance dated 23.10.2009. It was claimed that appellant is directly affected by the project, as his village is coming under the submergence area. He also challenged the EC granted to the project on the grounds that there was no option assessment of the project and project alternatives have not been studied by the project proponent, the project is in complete violation of the EIA manual, no social impact assessment was done, the EIA Report is inadequate and insufficient on various counts, downstream impact of the project has not been done, there are inconsistencies in the EIA report as well as response of the project proponent and the MoEF and the project was approved without considering the Memorandum of Understanding signed by various States with respect to ensuring the minimum flow of water in river Yamuna. According to the appellant, 1.2.5 of the EIA manual provides that an EIA Report should provide clear information to the decision maker on the different environmental scenarios without the project, with the project and with the project alternatives and annexure 11 of the manual provides that the best way of impact mitigation is to prevent the event occurring and all efforts should be made to locate developmental activities in an area free of agriculture lands,

cyclones, earthquakes, ecologically sensitive, erosion, forests, flooding, human settlements, landslides, natural scenic beauty, water logging and if this is not possible, the next step is to look at the raw materials/technologies/processes alternatives which produce least impact and Section 6.3 of the National Water Policy, 2002 stipulates that in the planning, implementation and operation of a project, the preservation of the quality of the environment and the ecological balance should be a primary consideration, and the adverse impact, if any, on the environment should be minimized and should be offset by adequate compensatory measures. According to the appellant, what is required under the said provisions is to look for the least cost and least environmental impact option for the given objective, including options like reducing losses, protection of local water systems, local rain water harvesting, ground water recharge, demand side management, recycling, charging cost price and higher rates beyond the minimum use in Delhi, which is the main beneficiary state from the project and such exercise has not been done either by Delhi Jal Board or by respondent no. 3 HPPCL or by the EIA consultant. According to the appellant clearance given to the project, without such exercise is in violation of the EIA norms. It is also contended that the socio-economic impacts of the project have not been covered adequately in the Environmental Impact Assessment which

looks only at the environmental impacts. According to the appellant, even the land related data given in the EIA report is different from the data given in response by the project proponent to EAC and the total area to be acquired as given in the Environment Clearance. The figures in the Environment Impact Assessment Report indicate the total area to be acquired for the project is 1560 hectares while the project proponent in its response provides the total area as 2239 hectares. At the same time as per the EC the total land requirement is 1477.78 hectares. In the response given by the project proponent dated 29.07.2009 to the objection raised by the civil society group, indicate the figure as 2239 hectares. It is not clear as to how much land is actually acquired by the project and why there is such a huge discrepancy between the figures in the EC and the one quoted by the project proponent. So also, more than 37 villages with 740 families or more are likely to be displaced, who are directly affected as a result of the proposed dam. The thriving agricultural economy based on cash crops like ginger, garlic and tomatoes will be completely destroyed. So also, hundreds of livestock rearing families of Gujjars and Gaddis will be completely displaced from their livelihoods. Private and shamlaat forests along with the reserved forests which serve the livelihoods needs of the people, from fuel to fodder will be destroyed. Hence, the detailed social impact assessment is warranted. Clause 5 of the MoU executed by

the five States provides that the States have agreed that a minimum flow in proportion of completion of upstream storages going up to 10 cumec shall be maintained downstream of Tajewla and downstream of Okhla Headworks throughout the year from ecological considerations, as upstream storages are built up progressively in a phased manner.

5. According to the appellant, neither the EIA nor the Renuka Dam project carries any reference to the said MoU nor the DPR or EC has any provisions in it. Therefore, the project is in violation of the MoU as it does not take into account downstream flow in the river Yamuna, downstream of Tajewala and Okhla Headworks. The EIA as well as the EC has not taken into account the current and future extraction of water from the river for drinking, industrial and irrigation use in the upstream catchment. Shimla, the capital of Himachal Pradesh already depends on river Giri, for a significant part for its water supply. Similarly, Solan, Parwanu and other towns and over 100 villages in the catchment area would have increasing demands of water from the river and the EIA does not take into account these facts putting the viability of the project into question. When the MoEF enquired about the impact of climate change on the project, the project proponent did not respond and EIA report shows that it was not considered as the river Giri is a spring fed river. In view of climate change, it is likely that

there will be reduction on the flow of springs and resultantly decline in water availability. This indicative impact was not considered in the EIA report where there is no mention of how climate change will impact the proposed project. The proposed dam will have a major impact on the endemic fishes, which play a major role in maintaining the aquatic ecosystem and contribute to the livelihood opportunities for the local inhabitants. In the post Giri project scenario, the migration of Tor species (Mahseer) will be affected or curtailed. All the endemic hill stream fishes will be put to threat due to habitat destruction such as loss of breeding grounds, spawning grounds, substratum, food and shelter by submergence of river bed and change in water chemistry from flowing water to impounded water. In spite of the facts stated in the EIA report, when it does not provide how the endemic fishes can survive in an artificial environment, without providing mitigation measures whatsoever, EC should not have been granted. There is no assessment on impact due to full submergence. While features of EIA envisages that the project submergence will extend up to 772.5 meter when the dam use the full storage capacity. In addition the submergence upstream from the dam will be higher than 772.5 m due to back water affect which is supposed to be calculated once in hundred year flood. However, EIA has clearly stated that submergence level FRL of 766 m is 1210 hectare without mentioning what will be

submerged area at 772.5 m level. It is thus clear that EIA has not assessed the full submergence impact of the dam and the affected people do not even know what is the full submergence area or included them in R&R. Thus EIA is consequently inadequate. When EAC had asked the project proponent to respond, the reply was that the entire land requirement has been taken into consideration which is already up to 778 meters i.e top of the dam. But the EIA repeatedly says that the total submergence area is 1210 which takes it only FRL of 766m. There is not even the assessment of submergence of 772.5 m much less of 778m as claimed. This is one of the most serious lacuna in the EIA. On these counts the appellants seek to quash the Environmental Clearance granted.

6. MoEF, the respondent no.1 filed a reply contending that an application for grant of EC along with the Environment Impact Assessment and Environment Management Plan was initially submitted before the Ministry in 1999. The Ministry returned the same on 15.01.2001 for want of approval from the Hon'ble Supreme Court, as the Hon'ble Supreme Court passed orders prohibiting diversion of land from wild Life Sanctuary without its prior approval. The project involved 49 hectares of land from Renuka ji Wild Life Sanctuary. By order dated 17.11.2006, Hon'ble Supreme Court approved the project with certain conditions. On 18.12.2006, the Ministry received application for revival of the project, along

with a copy of the orders of approval by the Hon'ble Supreme Court. Meanwhile, EIA Notification dated 14th September, 2006 came into effect providing new procedure for EC. Therefore, the case was treated afresh requiring EIA, EMP and public hearing. Terms of reference for EIA and EMP were fixed on recommendation of Expert Appraisal Committee for river valley. After receiving fresh detailed EIA and EMP, the project was accorded EC vide letter dated 23.10.2009. MoU dated 12.5.1994 amongst the Upper Yamuna River Basin States was executed under the guidance of the Ministry of Water Resources and later on 06.11.1994, MoU was entered into between States of Himachal Pradesh, NCT Delhi, Uttar Pradesh, Haryana and Rajasthan on construction of the dam. River Yamuna is a rain-fed river whose major portion of discharge comes from monsoon. For the project affected persons R&R package was approved by State of Himachal Pradesh and an adequate publicity of compensation package was circulated in the affected village. A pure water supply project does not require EC, but as incidental power generation of less than 50 MW is also involved, being a category B project EC is to be granted by State Level Expert Appraisal Committee (SLEAC). As the project involved 49 hectares of land from Wild Life Sanctuary the project was placed before the Ministry for EC. The total land requirement is about 1477.78 hectares out of which 901 hectares is forest land and 576.78

hectares is private land. Out of the total land 1197.60 hectares will be submerged. So also 49 hectares of Renuka Wild Life Sanctuary will be submerged. The Hon'ble Supreme Court has accorded approval for diversion of the said forest land on 17.11.2006. 32 villages consisting of 308 families are likely to be affected due to the project. Out of the said villages people from 24 villages will lose their land. The total project cost is Rs. 2687.33 crores. The full reservoir level is seldom achieved. The submergence during floods is purely temporary which quickly recedes. The land requirement has been assessed up to MRL of 778 meters. All the people residing in the said area would be relocated/resettled and rehabilitated suitably. All those persons are entitled for compensation of benefits under R&R plan and there is no discrimination.

7. Respondent no. 2- Himachal Pradesh Pollution Control Board filed a reply contending that the public hearing for the project was arranged by the respondent at Renukaji lake near VPO Dadahu, Tehsil Nahan, District Sirmour, H.P on 21.10.2008, on the proposal of Deputy General Manager, Renuka Construction Circle, under the Chairmanship of ADM Sirmour in order to invite public suggestion, views, comments and objections on the project. Public notices in this regard were also issued in local newspaper on 18th September, 2008. Copies of executive summaries, both in English and Hindi, of the project and Environment Impact

Assessment and complete Environment Management Plan were kept in the offices of the concerned District Administration for the perusal of the public. The affected Panchayats and concerned local authorities were also supplied copies. State Pollution Control Board had also posted these documents on its website. The appellant was free to raise the concerns through public consultation process. The proceedings of the public hearing were sent to the State department of Environment and the Central Government for necessary action. The function of the State Pollution Control Board as per the provisions of the EIA Notification 2006 on this project is limited to organising and conducting public hearing for projects which require EC.

8. The project proponent Himachal Pradesh Project Corporation Limited (respondent no. 3) in the reply contended that following the due process Environment Clearance for the project was granted by MoEF on 23.10.2009. Though the application was filed in 1999, due to involvement of the Wild Life Sanctuary area, in view of the order of the Hon'ble Supreme Court prohibiting diversion of land from Wild Life Sanctuary, it was returned on 15th January, 2001. The Hon'ble Supreme Court granted approval for diversion with certain conditions by order dated 17.11.2006 and the application for EC was revived. But in the meantime MoEF notified new procedure for EC. Therefore, in view of the Notification treating it as a fresh

case requiring EIA and EMP and public hearing, terms of reference for fresh EIA and EMP were fixed on the recommendation of EAC (Expert Appraisal Committee) for river valley projects. Fresh detailed EIA and EMP have been done by independent Indian Council of Forestry & Education (ECFRE), an independent and credible third party. The scheme envisages a 148 meter high (above the river bed level) rock fill dam, just downstream of the confluence of Jogar ka Khala and river Giri, at a place 2 KM upstream of the Dadahu town in Sirmour District of Himachal Pradesh. Keeping in view the depth of the underlying rock strata in the river bed, geological conditions of the abutments and seismicity of the area, a rock fill dam has been preferred. The project will supply 23 cumecs of water in non monsoon months and generate 221 MKwh of firm power besides 94 MKwh of additional power at river Giri power house. Considering various aspects, the project has been declared 'a project of national importance' by the Government of India. Appellant had all the opportunity to raise and file his objections during the process of consideration of EC. Firstly, at the time of environment public hearing, later while EIA and EMP were placed on the website of the Himachal Pradesh Pollution Control Board and again at the time of consideration of EAC report and lastly with the MoEF prior to grant of clearance. But no objection was raised at those stages. In fact, the objections raised in the appeal were

raised and replied by the project proponent during the process of EC, and have been duly considered by the EAC and MoEF while granting clearance for the project. The respondents have already made huge investments in the project and a considerable amount has been spent towards its execution, and each day's delay in execution of the project will cause irreparable loss. The benefit of the project will be available to a large multitude of Indian population spread over different States. The socio-economic aspects, base line studies and social impact assessment were included in the EIA as chapter 7 and are also dealt in chapter 8, though the social impact assessment is not part of EIA as it requires only an assessment on 'socio-economic and health environment'. EIA for the project is comprehensive, adequate, elaborate and fulsome. Downstream impact of the project has been assessed. EC is granted under EPA of 1986 following EIA Notification of 2006 which are part of the legal framework on the subject. EIA manual is only a guideline and not a part of the EIA laws. In the annual flow of river Yamuna, monsoon contributes to 75-80 per cent with the remaining flows coming as snow melt. Hence, creating storage scheme to harvest flood water storing and supplying the same is the obvious option. Since storage of the required magnitude is not feasible without causing massive displacement and submergence, the only viable option is to create such

storages in the hills. The projects are planned in the hills which is cost effective as well. In such a case precautionary principle is not applicable. Efforts have been made to minimise the adverse impacts, and also mitigate whatever is the likely adverse impact of the project. Principle of natural justice are fully met as citizens of Delhi have legal rights on the water of river Yamuna and river Giri is a tributary of river Yamuna. Delhi lies on the bank of River Yamuna where water of river Giri ultimately flows down Delhi as well as NCT Delhi has a rightful claim over the water. That right was recognised in the MoU of May 1994. Compared to the benefits of the projects, submergence is small for the storage project. Consequently inevitable displacements are also small. The threat perception to the habitat is a general finding. It is also mentioned in the EIA that neither rare nor endangered and threatened species of wildlife included in the Schedule of Wild Life Protection Act are present in the project area. EMP mentions that for the conservation and development of Masheer and other fishes, hatcheries shall be constructed with the help of State Fisheries Department and two sites have been identified for the hatchery and a sum of Rs. 5 crores have been kept for fish management. Nothing has been concealed or suppressed. The elevation verses submergence areas and elevation versus capacity curve, along with the tabulation of the same was clearly shown in DPR. Full Reservoir Level (FRL) is seldom

achieved. The area between FRL and MRL (Maximum Reservoir Level) may be needed temporarily once in 100 years floods scenario. The MoEF in the guidelines for FCA, does not allow felling/removal of the trees even 4 meters below the water as the submergence is temporary which quickly recedes and it has no adverse significant environment impact. The only area of concern in this case is saving lives and properties in the area between FRL and MRL. Considering all these factors land requirement has been assessed up to 778 meters, that is top of the dam irrespective of the actual levels and duly accounted in all the documents including R&R plan. All people residing in the area up to the level of 778 meters would be relocated/re-settled and re-habilitated suitably. All persons affected by land acquisition for which the project, up to the top of dam, are fully entitled to compensation and benefits under R&R plan. There is no discrimination among the affected people at all. As a matter of abundant precaution respondent has put distinctly visible RCC pillars on the ground depicting FRL (Red colour) MRL (Yellow colour) and top of dam (white colour) and this has been explained to the local people and is repeated in R&R guideline. Thus there is no possibility of the people not knowing the same. The appeal is therefore, not maintainable.

9. The Delhi Jal Board filed a reply contending that as per the existing agreement benefit of the dam is made available to

the basin States for utilisation of the surplus water of river Yamuna and a number of storage projects have been identified. The availability of treated water in Delhi is of the order of 840 MGD comprising both surface and ground water resources. As per the Master Plan of Delhi 2021, approved by Government of India in 2010, the requirement of water in Delhi would be of the order of 1380 MGD. Thus there is a gap of more than 500 MGD as well as there is requirement of increase of water production to meet the future needs. 80-85 per cent of the flow contribution to the river, is from rain during monsoon. The contribution of snow is only about 15 per cent. Thus it is absolutely necessary to construct upstream storages including Renuka storage as envisaged.

10. In the rejoinder filed by the appellant, it was contended that appellant is a resident of Mohatu village which is one of the villages that will be fully submerged once the dam is made operational and his fields and private forest land also are to be affected. The EC was granted without due process. Public had no full knowledge and implications of the dam during the public hearing. If investments and construction have been made prior to the Forest Clearance, it is illegal. Respondents still did not have the final technical clearance, forest clearance, investment clearance and therefore, the project is still in the process of getting the requisite approval. Respondent no. 3 is bound to satisfy that

alternative sites were seen and examined and the reasons for choosing the site over others. Option process is required for all options and not just water harvesting. No such process has been done. The new PAF list which has more than one thousand affected families, as against few hundred mentioned in the EIA report shows that a thorough SIA was not done. Even the current study of the list of PAF is only tentative. There was no assessment of downstream impact on forest and flora fauna, water use pattern for different uses ground water recharge, regime, fisheries, and on how livelihood of the people on the downstream portion would be impacted, existing flood regime and how that will change with the construction of the project. There is no assessment on such account too. There is no material to prove that Renuka dam is the most cost effective and viable option for the water supply of Delhi. In such circumstances, the EC is not legally sustainable.

11. Similar contentions have been raised by the parties in the connected applications though primarily they are against the land acquisition proceedings. So also similar contentions were raised by the project proponent and the State as in the appeals. Additionally, the State of Himachal Pradesh in their reply filed in Appeal No. 48/2012 submitted that the proposal for diversion of 790 Ha forest land inclusive of Reserve forest , protected forest and river bed including 49 ha of Renukaji Wild Life Sanctuary area was

submitted to the Government of India on 30.03.2009 and later a revised proposal for diversion of 695 ha of forest land and 80 ha deemed forest land was submitted and it is under process. In their reply in Appeal 48/2012, the MoEF has contended that recently a project proposal for diversion of 901 ha of forest land was received from the State Government and during inspection the user agency was advised to reduce the forest area required for the project and the revised proposal is yet to be received from the State Government. In their reply filed in Application 41/2012 the Principal Secretary (Forest) and Principal Chief Conservator of Forest, Government of Himachal Pradesh (respondent no. 2 and 4 respectively therein) submitted that the user agency reduced the requirement of forest area to 695 ha and deemed forest area to 80 ha and the proposal was submitted afresh to the MoEF for approval on 09.06.2010. However, the proposal was rejected by letter dated 31.08.2010. Now as the proposal stands rejected, the Forest Department will not allow the H.P Power Corporation Limited (R-3) to carry out any kind of works in the forest and deemed forest lands in violation of the provisions of Forest (Conservation) Act.

12. The learned counsel appearing for the appellants, applicants and respondents were heard. They have also submitted written submissions.

13. Mr. Ritwick Dutta, the learned counsel appearing for the appellant vehemently argued that there are patent

discrepancies at different stages in the Terms of Reference for EIA (Environment Impact Assessment) and EMP and the environmental clearance granted. The learned counsel pointed out that as per the provisions of the EIA Notification deliberate concealment and submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application, shall make the application liable for rejection and cancellation of prior environmental clearance granted. The learned counsel would argue that the discrepancies pointed on the land requirement and forest land are the result of deliberate concealment or submission of misleading information or data material to screening or scoping or appraisal or decision and on that sole ground the environmental clearance granted is to be set aside. The learned counsel pointed out that the total requirement for the project is a material fact for proper appraisal and decision on whether environmental clearance is to be granted or not and without the exact land requirement put forth in the terms of reference for EIA and EMP cannot be accepted and from what is reflected in the minutes of EAC and EC, it can only be found that there is either deliberate concealment or submission of misleading information or data which cuts the very root of the environment clearance granted. It was argued that when the total land requirement shown in the application terms of reference for EIA is 1240

hectares, the minutes of the EAC dated 15.12.2008 shows the land requirement as 1532.60 hectares and the same figure is shown in EIA, the land requirement as per EMP is 1630 hectares. But the land requirement as shown in the EC dated 23.10.2009 is only 1477.78 hectares. It is also argued that the land that will be submerged as shown in the application in Terms of Reference for EIA is 1197.60 hectares but in the draft EIA Report it is 1197.60 hectares while as per EIA it is 1210 hectares at FRL 766m EC it is 1197.60 hectares. But as per the minutes of the EC and EIA it is 1210 hectares at FRL 766m. While as per the EIA the project shall submerge 1730 hectares comprising 557 hectares of forest land and 1065 hectares of private land 110 hectares of Government land, it is also shown as 1685 hectares comprising 1051 hectares of private shamlat land, 559 forest land and 75 hectares of government land. The level at which live storage capacity of 498 MCM achieved as per the EIA is 766 m but in EMP it is 772.5 m and EMP also show it 778.65 m. It is argued that there is also material discrepancy in the full reservoir level (FRL) and maximum reservoir level (MRL) and all the facts show that there was no proper appraisal of the project and in such circumstances, the environment clearance is to be quashed.

14. The learned counsel appearing for the third respondent, project proponent submitted that there is no substance in the objections raised by the appellant. Though, initially, the

environment clearance sought for was not granted in view of involvement of 49 hectares of Wild Life Sanctuary land, later the Hon'ble Supreme Court permitted diversion of 49 hectares of forest land falling in Renuka wild life sanctuary for construction of the project and therefore, the application for EC was resubmitted and as by that time a new procedure was formulated by the Environment Clearance Regulations, 2006, it was treated afresh and terms of reference for fresh EIA (Environment Impact Assessment) and EMP (Environment Management Plan) were fixed by the Ministry of Environment and Forest on the recommendations of the Expert Appraisal Committee (EAC) for river valley and hydro-electric projects. Fresh detailed Environment Impact Assessment and Environment Management Plan have been done by Indian Council of Forestry Research and Education, Dehradun, an independent credible third party and submitted to the first respondent by the third respondent. The third respondent submitted executive summary for Environment Impact Assessment and Environment Management Plan for the project, to the concerned authorities for the purpose of public hearing. The second respondent organised various camps and conducted public hearing in accordance with the provisions of the EIA Notifications which was attended by a large number of affected persons. Both objections mentioned in the public hearing were adequately answered and after due

consideration of the application and the detailed Environment Impact Assessment and Environment Management Plan, following the due process, EC was granted. It is absolutely valid and there is no lacuna. Adequate opportunities were granted to all including the appellants to raise or file the objections and all the objections were considered and therefore, the appellant is not entitled to raise the same objections again. The project was conceived as a water harvesting project to give effect to the provisions of the MoU, though it does not require option assessment, third respondent carried out option assessment in order to ascertain whether to create one large storage dam or to create a series of small storage structures and also with regard to the locations of the dam. These assessments were carried out prior to the preparation of EIA Report. Standing Committee for National Board for Wild Life had suggested exploring the possibility of having series of two or three smaller dams in place of 148 meter high dam. Alternatives were studied and series of smaller dams in place of one high dam was examined and it was found not feasible. Consequently, the project was finalised. The learned counsel also argued that there was no material inconsistency in the Environment Assessment Report as is argued by the learned counsel appearing for the appellant. The argument is that land use study for the project has been conducted within a radius of 10 kms from the project site as

required by the EIA Notification and guidelines issued there under from time to time, using satellite remote sensing facilities. The EIA Report for the project clearly depicts the total requirement of the project as 2239 hectares. It was pointed out that out of this extent, 504 hectares of land is required for temporary use like dumping, quarries, construction facilities etc and is to be taken on lease with the consent of the owners in case of private land, for the duration of the construction phase of the project and consequently a total of 1735 hectares is required for permanent use for the purpose of the project. The learned counsel argued that the forest clearance for the project under the Forest (Conservation) Act, 1980 is being processed by competent authorities who have the inherent duty and obligation under the said statute to reduce forest land requirement to the barest minimum in accordance with their best judgement. The argument is that a reduction in the area of forest land diversion does not influence the impact assessment of the project in any significant manner, as the area is being reduced and not increased and till the final forest clearance is granted land requirement limited data is liable to be changed and in any case it has no bearing on the environment impact assessment of the project. The learned counsel argued that the total land requirement for the project as set out in the EC is based on the figures, which was set out in the Executive summary submitted by the

third respondent at the time of re-submission of its application for grant of EC in September, 2008, which was based upon the land requirement calculated up to full reservoir level/maximum reservoir level (FRL/MRL). However, for safety reasons, land is being acquired 5.5 m above the maximum reservoir level keeping in view the past experience for reservoir projects, reservoir bank/foreshore/slope stability, which led to upward revision in the total land requirement figure in the final EIA report. It was argued that third respondent had submitted a final copy of the EIA Report to respondent no.1, but the figures from the executive summary was inadvertently mentioned in the EC. It was also argued that for that reason, the EC, cannot be quashed.

15. Certain undisputed facts are relevant for a proper resolution of the disputes involved. The project was conceived and an application for Environment clearance was submitted in 1999. As per the proposal 49 hectares of forest land of Renuka Wild Life Sanctuary is to be used for the proposed dam. As there was no recommendation from the National Board for Wild Life, the application was returned in 2001 by the Ministry of Environment and Forest, as by that time the Hon'ble Supreme Court prohibited diversion of land from wild life sanctuary. Later, the Hon'ble Supreme Court by order dated 17th November, 2006 in *IA 1660 in WP Civil 202/1995*, granted permission to divert 49 hectares of

sanctuary land on the recommendation made by the National Board for Wild Life and Central Empowered Committee. The third respondent re-submitted the application in view of the order of the Hon'ble Supreme Court granting permission for the diversion, in September, 2006. Though an application for forest clearance, for diversion of 790 hectares of the reserve forest and river bed was submitted, by order dated 31.8.2010, MoEF rejected the forest clearance sought for on the ground that it includes dense forest. The third respondent later re-submitted the application for forest clearance. It is admitted fact that it is still pending with the Ministry and the Forest Clearance is yet to be granted.

16. Environment Clearance Regulations, 2006 prescribes the procedure for granting the EC. Regulations 6 provides that an application seeking prior Environment Clearance in all cases shall be made by the project proponent in the prescribed form 1 annexed to the EC regulations and supplementary form 1-A if applicable as given in appendix 2, after identification of prospective sites for the project and or activities to which the application relates before commencing any construction activity or preparation of land at the site by the applicant. Along with the application, the applicant shall furnish a copy of the pre-feasibility project report, except that in case of construction project or activities (item 8 of the Schedule) in addition to form 1 and

the supplementary form 1-A a copy of the conceptual plan shall be provided instead of the pre-feasibility report. Under Regulations 7 (i) (ii) the terms of reference (ToR) shall be conveyed to the applicant by the Expert Appraisal Committee, within 60 days of the receipt of the form 1. Under Regulation 7 (i) (iii) an application for prior EC may be rejected by the regulatory authority concerned, on the recommendation of the EAC or SEAC at the scoping stage itself. Regulation 7 (iii) provides for public consultation. Under the said regulations, public consultation shall ordinarily have two components comprising of (a) public hearing at the site or in close proximity and (b) obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity. The public hearing at or in close proximity to the sites shall be conducted by the State Pollution Control Board or the Union territory pollution Control Committee in the specified manner and the proceedings have to be forwarded to the Regulatory Authority concerned. Under Regulation 7 (iii) vii, after completion of the public consultation, the applicant shall address all the material environment concerns expressed during the process and make proper changes in the draft EIA and EMP, and the final EIA report so prepared shall be submitted by the applicant to the concerned Regulatory Authority for appraisal. Alternatively the applicant can submit a supplementary report to the

draft EIA and EMP addressing all the concerns expressed during the public consultations. Regulations 7 (IV) provides the procedure for appraisal. Under (i) Appraisal means the detail scrutiny by the Expert Appraisal Committee or State level Appraisal Committee, of the application and other documents like the final EIA Report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the Regulatory Authority for grant of EC. This appraisal shall be made by the Expert Appraisal Committee (EAC) or State Level Expert Appraisal Committee (SEAC) in a transparent manner in the proceedings to which the application shall be invited for furnishing necessary clarifications in person, or through the representative. On conclusion of these proceedings the EAC shall make categorical recommendations to the Regulatory Authority concerned, either for grant of prior EC on stipulated terms and conditions or rejection of the application for prior EC together with the reasons for the same. Regulation 8 provides that the grant or rejection of EC under (i) the Regulatory Authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant. Under (ii) the Regulatory Authority shall normally accept the recommendations of the EAC or SEAC and in cases where it disagrees with the said recommendations, the Regulatory Authority shall request re-consideration by the EAC or SEAC, the recommendations

stating the reasons for the disagreement. Under 8 (vi) 'deliberate concealment and /or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection and even cancellation of prior EC granted on that basis.

17. Article 48A of the Constitution of India mandates that the state shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. According to the spirit of the constitution, it is the bounden duty of all to protect our natural environment Article 51 A (g) imposes a duty to protect and improve the natural environment including forest, lakes, rivers and wild life and to have compassion for all living creatures. One has to balance economic and social needs with the environmental considerations. All developments in one way is an environmental threat. The ever increasing population with the consequential demands, result in environmental degradation in development. The objective of all laws on environment is to create harmony between the two, as one cannot be sacrificed for the other. The Hon'ble Supreme Court in *Indian Council of Enviro-legal action Vs U.O.I ((1996) 5SCC 281)* held

“while economic development should not be allowed to take place at the cost of ecology or by causing wide spread environmental destruction and violation; at the same time, the

necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand. In other words there should not be development at the cost of environment and vice-versa but there should be development while taking due care and ensuring the protection of environment.”

18. The Hon'ble Supreme Court in *M.C Mehta Vs Kamal Nath* ((1997) 1 SCC 388) dealing with public trust held “We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forest, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressure of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands hereto before inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be

eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.”

19. The point for decision in the cases is whether the Environmental Clearance dated October, 20, 2009 is vitiated on any of these grounds alleged and whether any modification is warranted. At the outset itself it is to be noted that challenging the awards passed in the land acquisitions for the project, special leave to Appeal No. 19409/2015 was preferred by the State of Himachal Pradesh and others, before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court taking note of the fact that the project is of national importance, meant to provide drinking water to the State of Delhi and surrounding areas, declared that the project cannot be allowed to be killed by any kind of apathy or indifference and at the same time the owners whose lands were acquired cannot be made to suffer for no fault of theirs.

20. Taking note of the importance of the project declared as a national project the Hon'ble Supreme Court, in *Special Leave Appeal 1940/2015* filed by the State of Himachal Pradesh against the judgement of the High Court of Himachal Pradesh, challenging the decision in the land acquisition proceedings for the Renuka Dam project held as follows *“the project, as noticed above, is a project of national importance meant to provide drinking water to the NCT of Delhi. Even*

surrounding areas like NOIDA, Faridabad, U.P and Haryana may benefit from the successful and early completion of the project. We would, therefore, have appreciated if all concerned were to focus their attention and work towards completion of the project instead of taking an obstructionist stance in the matter. We only hope and trust that the delay is not deliberate or that it does not arise out of any consideration other than the government's anxiety for adherence to the statutory provisions. All that we need say is that the project cannot be allowed to be killed by any kind of apathy or indifference nor can land owners be made to suffer for no fault of theirs. We also need to mention that according to the Government of H.P the total project cost was initially estimated at Rs. 3498.86 crores as in March, 2009 and with every day's delay in the execution of the project the same is likely to go beyond Rs. 5,000 crores.

21. Taking note of the failure to get clearances for the project the Hon'ble Supreme Court further held

"We also expect the Government of H.P to pursue the matter with concerned authority for clearance that remain to be obtained and file a status report about what is deficient in obtaining such clearances."

22. Though the project was envisaged in 1999 and had undergone an appraisal after the EIA Report and EMP as provided under the Environment Regulations, 2006 and for which Environmental Clearance was granted in 2009, much

progress has not been achieved. The estimated cost of the project can never be sufficient to complete the project, even if the environmental clearance is to be upheld at this stage,, especially when the project cannot be proceeded with as the forest clearance is yet to be obtained. Therefore, at the outset itself it is to be noted that there should be a re-look on the entire aspect, as the project is yet to be commenced in spite of granting of the Environmental Clearance. This Tribunal in *Om Dutt Singh and Anr. Vs. State of Uttar Pradesh and Ors. (Original Application No. 521/2014)* had occasion to consider case when EC was granted in 1980 but major portion of the construction was yet to be completed. It was held

“The facts of the present case, examined in the light of the principles of sustainable development and the precautionary principle would tilt in favour of the project proponent but even by imposition of proper conditions in consonance with the laws in force, which in any case exists right from 1986 onwards. Another factor that has persuaded us to pass an equitable order in the present case is the fact that huge amount of public funds have already been spent on the project, large scale construction and digging has already taken place as of now. Any direction for stoppage of work or demolition of the project would certainly not serve either the ends of justice or the environment. The project also contemplates to provide water to drought prone areas”.

23. Finding that huge amounts have been spent on the project which was expected to cost 27.75 crores but now costing 2252.29 crores it was further held

‘Applying the principle of sustainable development, while giving due regard to the protection of environment while ensuring that no irreversible damage and degradation of environment is permitted in terms of Section 20 of NGT Act,

we are constrained to issue certain directions.’ A committee

was constituted to consider whether the conditions imposed

in the consent granted have been strictly complied with or

not and whether there is a complete and comprehensive

resettlement and rehabilitation policy in place and whether

any modification is required to ensure protection of

environment and ecology in the execution of the project in

question and to make recommendations, measures and

conditions that should be imposed upon the project

proponent to ensure that further progress of the project does

not have any developmental impacts on ecology,

environment, rivers, hydrology, bio-diversity and of all the

surrounding forest, villages and tribes. The application for

the Environmental Clearance was submitted earlier in 1999

and was returned by the MoEF due to the prohibition of

diversion of forest land from the wild life sanctuary by the

Hon’ble Supreme Court. It was resubmitted after obtaining

the approval for diversion of 1009 hectares of Forest Land

from the Wildlife Sanctuary, from the Hon’ble Supreme

Court. Environmental Clearance was thereafter granted for the project by the MoEF in October 23, 2009. Consideration No. VII of the Environmental Clearance reads:

(vii) "Prior approval under Forest (Conservation) Act, 1980 for diversion of forest land showed by taken. No physical work will be initiated without forest clearance for this project."

Though a proposal for diversion of 790 hectares of forest land inclusive of Reserve Forest, protected forest and river bed was modified and a revised proposal for diversion of 695 hectares of forests land and 80 hectares of deemed forest was submitted to the MoEF for approval on 09.06.2010, that proposal was rejected on 31.08.2010. Therefore, the projects could not be commenced for want of Forest Clearance. The cost of the projects as envisaged thus will not be sufficient for execution of the project.

24. Though the third respondent sought to simplify the discrepancies pointed out by the appellant in the ToR, EAC, EMP and EC stating that forest clearance is yet to be granted and once final forest clearance is granted, the total land requirement of the project would stand crystallized and the discrepancies are, therefore, not fatal. We cannot agree. As stated earlier, at the stage of scoping the Expert Appraisal Committee shall determine detailed and comprehensive Terms and Reference addressing all relevant environmental concerns for the preparation of the Environment Impact Assessment (EIA) Report in respect of

the project for which the environmental clearance is sought. Such ToR shall be determined on the basis of the information furnished in the prescribed application form, including the ToR proposed by the applicant, a site visit by the group of Expert Appraisal Committee, if considered necessary, and other information that may be available with the EAC. The ToR shall be conveyed to the applicant by the EAC. The public consultation contemplated under stage III is a process by which the concerns of local affected persons and others who have plausible stake in the environment impact of the project or the activity are ascertained, taking into account all of the material concerns in the project or activity design as appropriate. It is pertinent to note that even at this stage of scoping, the application for Environmental Clearance can be rejected for reasons to be recorded and conveyed to the applicant. Appraisal contemplated under stage IV Regulation is a detailed scrutiny by the EAC of the application and other documents like the final EIA report, outcome of the public consultation including public hearing proceedings submitted to the applicant to the regulated authority. Such appraisal shall be made in a transparent manner. The importance of these procedures cannot be lightly viewed. The information furnished by the applicant shall be accurate and there shall be no deliberate concealment, or misleading information. It is for that reason, under 8 (vi) provide that deliberate

concealment and/ or submission of false or misleading information or data which is material to screening or scoping or approval or decision on the application shall make the application not only liable for rejection, but also for cancellation of prior EC granted on that basis. It is thus clear that for a proper scoping and appraisal, the land requirement of the project is a material aspect. In fact the identity of the affected people can be determined only when there is a proper disclosure of the land required for the project. Unfortunately in this case, it is seen from the records that there has been inconsistent and contradictory disclosure of the land requirement for the project from the stage of submission of the application for ToR, to the stage of granting of EC. In the application for the ToR, the land requirement shown is 1240 hectares. The minutes of the EAC dated 15.12.2008 shows that out of 1532.60 hectares, 955.82 hectares is forest land, and 576.78 hectares is private land. When the EIA shows the extent of 1532.60 hectares, in the EMP it is 1630 hectares. The land requirement shown in the EC is 1477.78 hectares. The project proponent admits that the extent shown in the EC is based on the summary submitted at the time of resubmission of the application for grant of EC in September 2008 and was based on land requirement calculated up to FRL/MRL and for safety reasons land is being acquired 5.5 meters above MRL. It is also clarified that the project

proponent had submitted a final copy of the EIA report to the respondent no. 6, but inadvertently the figures from the Executive summary was mentioned in the EC. It was also submitted that once the final forest clearance is granted, the actual land requirement would be clear and then the EC granted could be corrected accordingly. It is also admitted fact that subsequently when this application for diversion of forest land was pending before the Ministry, a revised proposal for lesser extent of forest land was also submitted and that proposal was also rejected by the MoEF. Similarly, the area to be submerged by the reservoir differs from stage to stage. As per the application for the ToR for EIA, it is 1197.60 hectares. The EAC minutes of 15.12.2008 and the EC show that out of total land, land of 1197.60 hectares, (761.60 hectares of forest land and 436 hectares of private land) will be submerged. As per the draft EIA Report also the area is 1197.60 hectares. But the EIA shows that the reservoir behind the dam shall extent to a distance of 24 km with water spread over 1210 hectares at FRL 766m. Even on the total forest land required for the project, there is inconsistency when as per the EIA, it is 790 hectares, the EMP shows compensatory afforestation over 1878 hectares is needed which may imply forest land requirement of 939 hectares. As per the EMP it is 642 hectares. But as per the minutes of EAC dated 16.2.2008 it is 955.82 hectares. The EC granted shows it as 901 hectares. Though this

discrepancy are sought to be explained by contending that it would be re-assessed at the time of the final forest clearance, the total land requirement and the total land that may be submerged, as a result of the completion of the project. These are all relevant matters which should be explicitly stated by the project proponent in the application and has to be stated to the EIA report and EMP report for proper appraisal of the project. In such circumstances, it can only be found that the appraisal of the project was not sufficient. But considering the national importance of the project and declared by the Hon'ble Supreme Court as "cannot be allowed to be killed by any kind of apathy or indifference, we find that the environment clearance granted is not to be quashed as sought for by the appellant. Considering the national interest and the amount already spent, we are not inclined to accept the submission of the appellant to quash the EC. Complying the principle of sustainable development, giving due regard to the protection of the environment, we consider it necessary to issue certain directions to ensure that the development is not to be sacrificed as well as irreversible damage and degradation of the environment is not permitted.

25. We, therefore, issue the following directions in the peculiar facts and circumstances of the case as follows:

We constitute a committee which shall submit a report to the Tribunal in the light of the judgement

- i. Principle Chief Conservator of Forest, Himachal Pradesh.
- ii. Chairman or his nominee of Expert Appraisal Committee of River Valley and Hydro Power Project of Ministry of Environment and Forest and Climate Change
- iii. Representative of the Ministry of Environment and Forest, & Climate Change (not below the level of Director)
- iv. Representative of Central Water Commission
- v. Chief Engineer, Department of Irrigation, State of Himachal Pradesh
- vi. Chief Engineer, Department of Irrigation, State of NCT of Delhi
- vii. An Expert from IIT, Delhi to be nominated by the Director.
- viii. A nominee of the Director, Wildlife Institute of India, Dehradun.

The Principal Chief Conservator of Forest, Himachal Pradesh will be the Chairman/convenor of the Committee.

- (a.) The committee shall specifically report whether there is a complete and comprehensive resettlement and rehabilitation policy in place, in relation to the project in view of the discrepancy in the land requirement for the project and the submergible land.
- (b.) Modification, if any required to ensure protection of environment and ecology in the execution of the project in question.

- (c.) The committee shall make general recommendations, measures and conditions that should be imposed upon the project proponent to ensure that progress of the project does not have any adverse impact on ecology and environment, river, hydrology and bio-diversity on the surrounding forest and villages.
- (d.) The committee shall assess and examine the present status of the compliance done by the project proponent in terms of condition imposed by the NBWL and the Hon'ble Supreme Court while granting clearance for diversion of 49 hectare of Renuka Wild Life Sanctuary.
- (e.) The committee shall examine the proposal of the project proponent with reference to the actual forest and non-forest land required, public and private.
- (f.) The committee shall study the impact of the loss of forest land when the project materialises, with reference to its adverse affect on the wild life habitat with special reference to the flora and fauna and suggest remedial measures
- (g.) The committee shall pay specific attention to the conditions that should be imposed upon the project proponent for conservation, protection, re-forestation and restoration of environment and ecology, wherever any environmental damage or degradation has occurred as a result of the project.
- (h.) The Committee shall make recommendation on the minimum environmental flow to be maintained downstream of

the dam for human population in the lower riparian zone as well for maintaining aquatic bio-diversity.

(i.)The report is to be submitted within 4 months from the date of pronouncement of the judgement.

26.In view of the directions, the Appeal No. 6/2011 and Appeal No. 48/2012 are disposed of.

27.Application No. 39/2012, Application No. 40/2012 and Application No. 41/2012 which were originally pending before the High Court of Himachal Pradesh as *CWPIL No. 2/2011, 3/2011 and 4/2011* is challenging the land acquisition proceedings contending that when forest clearance is not obtained land acquisition proceedings cannot be proceeded with. A large portion of the land required for the project has already been acquired. The awards have been passed and compensation have also been enhanced by the Land Acquisition Court which were challenged before the High Court of Himachal Pradesh and decided. It was challenged in Special Leave Appeal No. 19409/2015 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court, took note of the fact that the land acquisition proceedings were initiated in 2008 and the project is of national importance meant to provide drinking water to the NCT of Delhi and even surrounding areas like NOIDA, Faridabad, Uttar Pradesh and Haryana and the project cannot be killed. The Hon'ble Supreme Court has directed all concerned to focus their attention and work

towards completion of the project instead of taking obstructionist stance. In such circumstances, we find no reason to hold that the State cannot acquire the land for the project, even though the forest clearance is yet to be obtained. In such circumstances, Original Application Nos. 39/2012, 40/2012 and 41/2012 are dismissed but without any order as to cost.



Justice Swatanter Kumar
Chairperson

Hon'ble Mr. Justice M.S. Nambiar
Judicial Member

Hon'ble Mr. Bikram Singh Sajwan
Expert Member

Hon'ble Mr. Ranjan Chatterjee
Expert Member

NGT

New Delhi,
February, 2016