

**BE41F410RE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

MISC APPLICATION NO. 701 OF 2015
MISC APPLICATION NO.1052 OF 2015 AND
MISC APPLICATION NO.1084 OF 2015

IN
ORIGINAL APPLICATION NO. 183(THC) OF 2013

IN THE MATTER OF:

**1.AJAY KUMAR NEGI, S/O SHRI TEJ BAHADUR
SINGH**

R/o Village and post office Rispa, Tehsil Moorang
District Kinnaur.

2.BHUVNESHWAR NEGI S/O SHRI KIRTI RATHORE

R/o Village and post office Rispa, Tehsil Moorang
District Kinnaur.

.....APPLICANTS

Versus

1.UNION OF INDIA

Through Secretary Ministry of Environment
and Forests, New Delhi.

2. STATE OF HIMACHAL PRADESH

Through Chief Secretary,
Shimla.

3. PRINCIPAL SECRETARY FORESTS,

Government of Himachal Pradesh.

4. CHIEF CONSERVATOR OF FORESTS,

Government of Himachal Pradesh

5. PRINCIPAL SECRETARY PANCHAYATS RAJ

Government of Himachal Pradesh

6. DEPUTY COMMISSIONER

Kinnaur at RekongPeo.

7. CONSERVATOR OF FORESTS,

Rampur Forest Circle
Rampur District, Shimla.

8. M/S NUZIVEEDU SEEDS LIMITED

Power Generation (P) Ltd., Site Office
Palam house, Do Nallu, RekongPeo,
District Kinnaur (HP)

9. HP STATE POLLUTION CONTROL BOARD

Through Member Secretary,
New Shimla.

.....**RESPONDENTS**

CORUM:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D.Salvi (Judicial Member)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Mr. Bikram Singh Sajwan (Expert Member)
Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Counsel for Applicant(s)

Mr. Anand Sharma,

Counsel for Respondent(s):

**Mr. Vikas Malhotra and Mr. M.P. Sahay, Advocates for
Respondent No. 1.**

**Mr. Suryanarayan Singh, AAG and Ms. Kanupriya,
Advocate for Respondent Nos. 2, 5 & 6.**

**Mr, A.D.N. Rao and Mr. SudiptoSircar, Advocates for
Respondent No. 8.**

**Mr. Anil Kumar Chandel, Advocate for Respondent No.
9.**

ORDER

Reserved on: 21st December, 2015
Pronounced on: 4th April, 2016

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

1. These Applications have been moved by Project Proponent (for short PP) -M/s Nuziveedu Seeds Ltd- Respondent No.8 and the Chief Conservator of Forest, Bashar Rampur, Himachal Pradesh for deletion of condition Nos. IX and X stipulated in the order dated 7th July, 2015, passed in the Original Application No. 183/2013(THC) and for placing on record the Report of Expert Committee appointed by this Tribunal by the said order respectively.

2. A Writ Petition (Civil Writ Petition No. 8171 of 2011) was filed before the High Court of Himachal Pradesh at Shimla with the following prayers:

- i. *“That the respondent no. 3 may be directed to prepare comprehensive damage report caused to the forest land, trees and other forest wealth.*
- ii. *That the Memorandum of Understanding dated September 23, 2004 signed between the respondent state and respondent no. 8 may be quashed and set aside.*
- iii. *That the Environmental Clearance dated September 9, 2007 may be ordered to be quashed and set aside.*
- iv. *That the respondent no. 1 may be directed to cancel the Tidong-I Hydro Electric Project.*

- v. *That an inquiry may be ordered against the official of department who forwarded the proposal for forest diversion to the respondent no. 1 in violation of the provisions Panchayat (Extension to Scheduled Areas) Act, 1996. That the Hon'ble Court may be pleased to monitor the inquiry.*
- vi. *That an inquiry may be ordered into the acts of omission and commission against the officer of the various department who failed to initiate appropriate action against the respondent no. 8 for executing the Tidong-I HEP in violation of the laws.*
- vii. *That the official and Board of Directors of the Company (respondent no. 8) responsible for execution of the Tidong-I HEP in Kinnaur in gross violation of the laws may be order to be prosecuted in accordance with law.*
- viii. *That applying the principle of polluter pays petitioners and other who have suffered a perpetual loss of livelihood may be ordered to be compensated by the respondents.*
- ix. *That the entire record may be called for.*
- x. *That the petition may be allowed with exemplary costs and further any other relief deemed fit and proper may also be granted in favour of the petitioners."*

3. The pleadings were completed and thereafter the Writ Petition was transferred to this Tribunal vide order dated 15th July, 2013 which came to be numbered as Original Application No.183 (THC) of 2013. The Respondents in the Writ Petition duly responded to it. The Petitioner inter-alia primarily challenged the Tidong Hydroelectric Project on the ground that it was in violation to the Environmental Laws and was causing

serious damage to forest wealth and the PP had violated conditions of the Environmental Clearance (for short EC) and the Forest Clearance (for short FC) and the proposal for diversion of the forest land was prepared without proper application of mind and the grant of EC and FC suffer from procedural and other legal infirmities committed by the Authorities concerned. A specific reference to the damage being caused to Chilgoza trees, was made by the petitioner.

4. After hearing the parties and upon considering the material before us, we declined quashing of Memorandum of Understanding (MoU) dated 23rd September, 2004 and the EC dated 9th September, 2007, but found it necessary to issue certain directions to protect environment of the area in question, particularly, in regard to its restoration and restitution as well as collection of relevant data and material before the PP could carry on its activity any further. The directions passed in the Judgment reads as follows:

"1. We hereby constitute an Expert Committee of:

- (a)** *Additional Chief Secretary, Environment & Forest, State of Himachal Pradesh.*
- (b)** *Member Secretary, Himachal Pradesh State Pollution Control Board.*

- (c) *An Officer not below the rank of Director in the relevant field as nominated by the MoEF.*
- (d) *A representative of Himalayan Forest Research Institute, Shimla.*
- (e) *Director and/or his nominee from the concerned field from the Punjab Engineering College, Chandigarh.*
- (f) *Principle Chief Conservator of Forest or his nominee not below the rank of Chief Conservator of Forest, State of Himachal Pradesh.*
2. *The above Committee shall visit the project site and submit a comprehensive report to the Tribunal within 45 days from the date of passing of this judgment.*
3. *The Committee shall specifically comment on the adequacy or otherwise of maintaining 15% flow of the river as environmental flow and if there is need for any variation in that regard.*
4. *The Committee in its report shall bring out clearly whether the conditions stated in the Forest Clearance and in Environmental Clearance have been strictly complied with or not by the Project Proponent. Progress in that behalf and particularly with regard to biodiversity conservation and management plan, compensatory afforestation, setting up a Musk Deer Farm and implementation of the CAT Plan shall also be reported.*
5. *How many trees have been felled / cut by the Project Proponent from the forest area? The number of trees that have been otherwise damaged by the construction activity of the project and if the figure of 4815 trees likely to be damaged from construction activities as given by the Forest Department, is correct or not in that regard.*
6. *What are the damages, specifically to environment, ecology and other damage caused by the construction activity of the project? What part of such damage is capable of being restored and how much damage is irreversible?*

- 7. Its recommendations with regard to restoration, restitution of the damage already done.*
- 8. It will also make recommendations on what are the adverse economic impacts on the life and livelihood of the people around the site area and also has there been compliance of the R&R Policy?*
- 9. The Project Proponent shall deposit a sum of Rupees Five Crores with the Forest Department, Government of Himachal Pradesh as an initial deposit for environment conservation subject to final adjustments. We also make it clear that the Project Proponent shall also be entitled to the adjustment of the amounts paid for destruction of trees, so far upon final settlement of accounts, as per orders of the Tribunal. These amounts shall be utilized exclusively for restitution and restoration of environment and ecology and for such other purposes as may be directed by the Tribunal. This amount shall also be utilized for the purposes of payments to people who have lost income because of divestment of the Chilgoza Trees because of road construction or other project activities, further directions would depend upon the submission of the report by the committee.*
- 10. This amount should be deposited within four weeks from the date of pronouncement of the Judgement.*
- 11. The Project Proponent shall not carry out any construction activity for a period of 45 days or till the inspection is completed by the Expert Committee, whichever is earlier.*
- 12. After the expiry of the 45 days, the Project Proponent can carry-out construction activity in accordance with law, unless otherwise directed to stop such activity by the Tribunal.*
- 13. The Project Proponent shall carry on its activity after the expiry of 45 days only in accordance with and upon taking such remedial measures as are suggested by the Committee afore-stated and the orders of the Tribunal as may be passed in future.*
- 14. It is undisputed that the Project Proponent is obliged to plant at or around the project site at least ten-times of the uprooted/damaged trees. The forest department along with the Project Proponent and a representative*

from the Himalyan Forest Research Institute, Shimla shall ensure and be responsible of the afforestation of the trees and the plants of local species or other recommended species particularly Chilgoza Tress. They shall be responsible to maintain and protect the plants so planted. The time-bound action plan shall be prepared by these persons and submitted to the Tribunal within 30 days from passing of this Judgement.

15. *The Additional Chief Secretary, State of Himachal Pradesh shall be the Nodal Officer for compliance of this order. We direct the Officer to take immediate steps for compliance of this order.*

16. *The MoEF, within three days from today, shall inform its nominee to the Additional Chief Secretary, State of Himachal Pradesh. All expenses of the Committee shall be borne by the Project Proponent.*

17. *The Committee shall submit its report to the registry of the Tribunal within 45 days from today which then shall be placed before the Tribunal by the registry for issuance of such further directions as the Tribunal may deem fit and proper in the circumstances of the case”.*

5. The Report of the Expert Committee so constituted by us is, therefore, relevant for the purpose of deciding any further action, particularly, in reference to the project in question as solicited in the Application moved by the PP herein. We, therefore, allow the said Report to be placed on record.

6. The record reveals that the copies of the Report were furnished to the parties to the Original Application and notices were issued in all the Applications to the Non-Applicants. No objections were filed to the Report despite two opportunities being given to the parties to

respond to the Expert Committee Report vide order dated 14th December, 2015. It was further recorded in the order dated 14th December, 2015, that if no objections to the Expert Committee Report were filed, the Report would be deemed to have been accepted by the parties, particularly, the Applicant in the Original Application. On 21st December, 2015, the parties were heard.

7. The PP is seeking freedom from rigor of the condition /direction Nos. 9 and 10 stipulated in the order dated 7th July, 2015. According to PP, the Tribunal had taken notice of the status of progress of the said hydroelectric Project as revealed in the affidavit filed by the PP in the year 2011, vide para-16 of the order dated 7th July, 2015 and subsequent to filing of the said affidavit, substantial work has been completed, as per comparative Chart reproduced herein below:

S. No.	Status of the progress of the Tidong Hydroelectric Project (100MV) (Judgment-Point No.16, Page-28)	Status of the progress of the Tidong Hydroelectric Project (100MW)- As on 08 th July, 2015
a.	At diversion intake site where Spillway, Under sluices, Intake Structure, Desilting Chamber and Reservoir are located, excavation of 270,000cum has been finished and concreting of 13,500 cum has been done in Diversion Channel, Spillway& under sluices.	Total excavation of 4,06,988.00 cum is completed against 4,13,534.00cum. And about 41,102.00 cum of concreting is completed against 1,45,075.00cum.
b.	Out of the total length of 8.54km of Head Race Tunnel,	Total length of 8.504km of Head Race Tunnel excavation

	3.6km has already been excavated.	completed and Concrete Lining of 1.20km of Head Race Tunnel is completed.
c.	800m of Pressure Shaft out of the total length of 1176m has also been excavated.	Pressure Shaft total length of 1202m including two branches has been excavated
d.	In Power House complex, excavation of 86,000cum has been completed and now concreting is in progress. 2250cum out of 9600cum of concreting has also been done.	In Power House complex, excavation of 87,447cum has been completed and now concreting is in progress. 9903 cum out of 14,325cum of concreting has also been done.
e.	The Transmission line work is in progress and detailed survey has already been completed.	One route alignment out of 3 route survey alignments has already been approved by HPPTCL and two types of towers out of three types have been tested at CPRI Bangalore.
f.	Against the approved cost of Rs.543.15crores as per the detailed project report, the expenditure till the end of June,2013 is Rs.332.64crores.	Company have incurred Rs.551.24 crore on this Project.
g.	The cost of the Project is, however under revision due to the delays that have occurred in its execution.	Revised Rs.1060Cr.

8. Completion of balance work, the PP adds, does not involve any tree felling, nor is there likelihood of any damage to the environment. The present status of the work and work in balance, is described by the PP as follows:

1. Head Race Tunnel: 100% excavation is completed and entire length of 8,504m of tunnel is through. There is no more excavation left. Concrete lining will be started shortly.

2. Pressure Shaft: The total 1,202m length of Pressure shaft has been completed. The provision of Steel Liner inside the Pressure shaft is in progress.

3. Power House: The total excavation to be done in the Power House and Tail race Channel is 92,500 cum and 87,447 cum has been completed. The balance is only 5,053 cum would be done with controlled blasting.

4. Surge Shaft: The Surge Shaft excavation is being done through a pilot hole. And the muck will be collected through pilot hole at the bottom in HRT and will be transported to the assigned muck dumping yard. There is no scope of damage to trees and environment.

5. Miscellaneous Work: The entire balance works involve only concreting in all the components which will not affect the trees and environment.

The balance works in addition to concreting are transportation and erecting electro mechanical and Hydro Mechanical equipment, fixing of valves, gates, erection of GIS equipment, Control Panels etc.

9. The PP submits that suspension of forty-five (45) days' work will have adverse effect on scheduled commercial operational date (COD being July,2016); and only April to November of each year are the clear working months and stopping of work during this period would further compound adverse impacts on progress of the work. These are elaborately stated at para-7 in Misc. Application No.701 of 2015. According to the Applicants,

they have been strictly complying with the conditions stipulated for grant of EC dated 7th September, 2007 and FC dated 18th June, 2008, as per Annexure R-8/1 to the Misc. Application No.701 of 2015. The PP submits that tree felling was required only for the purposes of construction of an approach road leading to Adits-I, and II and in order to avoid any inadvertent damage to the trees and to minimize damage to the trees in process of work of construction, the PP adopted controlled blasting; and on the directives of Forest Department, the PP cancelled the road proposal from Adit II to Surge Shaft and opted for ropeway to prevent any further damage to the trees and environment.

10. The PP further adds that an amount of Rs.32,86,17,451/- has been deposited by them with the Forest Department, Fisheries Department as well as Himachal Pradesh Pollution Control Board in addition to amount of Rs.14,63,66,060/- towards the Local Area Development Authority (for short LADA), Gram-panchayat for NOC.

11. As regards directions to deposit sum of Rs.5 Crores, as initial deposit as environment compensation with the Forest Department, Govt. of Himachal Pradesh, subject to final adjustment, the PP submits that only

1897 trees were fell down as compared to estimated felling of 4815 trees and there is no possibility of further damage as per the observations made by the Expert Committee. Considering these facts and circumstances, particularly, amounts already deposited by the PP as aforesaid, learned Counsel appearing on behalf of PP argued that the PP is not liable to pay any amount towards destruction of trees or causing any environmental damage.

12. The facts asserted in the Application have gone uncontroverted. No objections have been raised to the Expert Committee Report. We, therefore, have to examine worth of the contentions raised in the Application under consideration in light of findings of the Expert Committee Report.

1) The Expert Committee Members except Sh. Tarun Sridhar, Additional Chief Secretary and Sh. Vineet Kumar, Member Secretary, SPCB, for health reasons, undertook tour to Tidong Hydroelectric Project between 20th-22nd August, 2015 and visited the project site on 21st August, 2015. They have given findings on the task assigned to them.

2) As regards adequacy of environmental flow of the river, the Expert Committee Members noted that provision of maintaining 15% flow of water in the river could be implemented using flow gates and a separate conduit path already provided for the same, and sensors coupled with online recording and monitoring will assure vigil necessary to maintain environmental flow round the clock; and 15% environmental flow is quite adequate and there will be no scarcity of water whatsoever due to construction of the project.

3) As regards compliance of status of the FC vide GoI letter No.9-HPC602/2007-CHA dated 18th June, 2008, the Expert Committee observed as follows:

(i) Legal status of the forest land has remained unchanged.

(ii) Though timely deposit of full amount required for compensatory afforestation (estimated cost of Rs.2,66,76,610/) has been made the compensatory afforestation has not been carried out so far, except startup activities and establishment of two (2) Nurseries for raising Chilgoza plants due to delay in release of money by the Forest Department

as per estimated norms, non-identification of the suitable areas by the local Forest Department officials, non-availability of the planting material.

(iii) Total number of trees cut have been 1261(permitted to be cut/felled) + 419 + 217 = 1897 trees. The damage bill of 419 trees amounting to Rs.83,26,629/- has been released from the PP. The damage bill of 217 trees amounting to 88,68,594/- has not been realized and no further damage has been done by the PP.

(iv) The full amount as per details given below has been deposited by the PP.

Sr. No.	Name of Components	Amount realized
1	Compensatory Afforestation Scheme	Rs.2,66,76,610/-
2	NPV	Rs.2,73,99,165/-
3	Reclamation Plan	Rs.45,58,661/-
4	Cost of trees	Rs.1,68,00,596/-
5	CAT Plans	Rs.7,24,84,026/-
	Total	Rs.14,78,19,058/-

(v) The forest land is not being used for any purpose other than that specified in the proposal.

(vi) An undertaking to pay an additional/differential amount in case of Non Performance Value (NVP) being revised upwards has been submitted by the PP.

(vii) An amount of Rs.45,58,661/- has been deposited by the PP towards the cost of reclamation plan, the execution of which has not been started. According to the local forest department, DFO, the same shall be taken up by the Forest Department after dumping sites are taken over by the department.

(viii) Debris has been methodologically disposed of behind retaining wall having concrete Toe walls constructed in each of the retaining wall, depression/improvement of grades and proper concrete have been constructed and dumping sites have been provided with adequate protection measures. Use of DS-PA2 muck disposal site has been abandoned on directions of the State dated 23rd August, 2011.

(ix) The EC has been obtained by the PP vide No. J-12011/35/2007-dated 7.9.2007.

(x) No damage to adjoining forest was noticed and adequate protection, precautionary measures for stability of the Forest land were found adopted.

(xi) According to Rampur CCF, approved action-plan is being implemented by the said Forest Department at the cost of User Agency since 2010-11 and total cost incurred till 2014-15, is Rs.2,83,93,603/-.

(xii) Expert Committee was intimated about adhering to regimen of obtaining necessary approval/clearances under law.

4) As regards compliance status of EC, the Expert Committee observed as follows:

A. PP has paid total requisite amount of Rs.7,24,84,026/- towards Catchment Area Treatment (CAT) implementation, but the Forest Department is in the start-up process and not much advances have been made so far.

(i) No land owner has given away 70% of their total landholdings to the Company and as such, nothing has been identified as fully affected family/person in respect of which their liability

for compensation will have to be undertaken by the PP.

(ii) The PP assures that the commitment made during public hearing will be fulfilled and same are being implemented.

(iii) The biodiversity conservation and management plan as proposed in EMP is yet to be complied with.

The PP informs that no specific Biodiversity Conservation and Management Plan was proposed in the EMP. Considering importance of biodiversity of the region, the PP is required to get prepared a comprehensive Biodiversity Conservation and Management Plan urgently by an organization of national repute for its immediate implementation.

(iv) Silent DG sets of capacity of 250 KVA each have been provided at powerhouse site, surge shaft Adit and intake; and DJ sets and other construction equipment have been provided with enclosures to attenuate the noise levels.

(v) Local Forest Department informs that two (2) Nurseries for raising plants of Chilgoza, Deodar and Kali and broad leaved trees on the 79ha

degraded forest area as compensatory afforestation programme are being raised and the plantation works actually are yet to be undertaken. Setting up of a joint compensatory afforestation monitoring team of forest officials and the PP may be considered to expedite its implementation.

(vi) Approved action-plan for developing a Musk Deer Farm near Pibber or Sholling, which will include ex-situ breeding of the animal, has been submitted by the Central Zoo Authority. The Environment Impact Assessment (EIA) report prepared in 2006 and subsequent ESIA report prepared in the year 2011 and 2013, indicate that there is no population of Musk Deer in and around the project site. In lieu of such musk deer farm, the Forest Department has included development of 'Pheasant Bird' breeding center plan, wherein fund of Rs.9,25,000/- has been earmarked for this purpose.

(viii) The PP has paid an amount of Rs.1.11Crore to the Fishery Department for construction of fish hatchery on their directions for Fishery development. However, the Committee did not

find any such action being taken/accomplished by the Fishery Department and has advised the PP to take up the matter with the State Fishery Department.

- (ix)** The muck was found dumped in the earmarked muck dumps as approved by the Forest Department for non-forest use and proper protection in form of retaining wall to prevent spillage of muck into the river on dumping site and the PP has paid required amount to the Food Department for restoration of dumps. The PP is required to ensure that “Angle of Repose” of these muck dumping sites should strictly be as per specified standards for its stability.

B.GENERAL CONDITIONS:

- (i)** The PP submitted that adequate free fuel arrangement has been made for labour force engaged in the construction work at project site as per contract agreement in order to prevent indiscriminate felling of trees.

- (ii)** The Committee noticed that Contractor has set up labour huts habitat, which include community kitchen and during winter season, wood is procured from the

authorized depot from the adjacent villages and no depot has been opened at the project site.

(iii) A dispensary managed by the experienced pharmacists was found at the camp office; and according to the PP medicines were given free of charge to the workers and the patients were referred to the General Hospital at Reckong Peo if the same cannot be treated at the dispensary; and medical facility extended to the nearby villages free of charge.

(iv) Muck generated was found to be stored in the muck dump area and charges have been paid by the PP to the Forest Department for restoration of the dumps.

(v) According to PP, budgetary provision has been made for implementation of the safeguard measures and these factors have already been considered in the project cost.

(vi) No multi-disciplinary Committee comprising of Ecologists, Environmental Scientists, Conservationists and experienced administrators etc. has been

constituted in consultation with the Ministry to oversee implementation of suggested safeguard measures.

(vii) The PP is required to upload the latest six (6) monthly compliance reports together with monitored data on the company's website and send the same to the Ministry and its regional office, Dehradun for review.

There has been no complaint as regards providing full co-operation, facilities and documents and data by the PP to the officials of Regional office of MoEF monitoring implementation of environmental safeguard.

HPPCB has not noticed any gross violation or irregularities so far. According to PP, monthly muck generated, utilization and storage statement is being submitted to HPPCB and NTGPL is paying environment Monitoring fund to HPPCB, and amount of Rs.25 lakh is paid out of total Rs.40lakh.

There has been an agreement as regards requirement of fresh appraisal in case of change in the scope of project.

There has also been agreement as regards reservation of right to add additional safeguard measures subsequently, if found necessary and to take action including revoking of the clearance under provisions of the Environment (Protection) Act, 1986 to ensure effective implementation of suggested measures in time bound and satisfactory manner.

There has also been agreement as regards validity for a period of ten (10) years of clearance letter from the date of issue for commencement of construction work.

A copy of clearance letter has been marked to concern Panchayat/local NGO, from whom any suggestion or representation were received while processing the proposal.

Display of copy of clearance letter at the Regional office, District Industries Centre and Collector's office/Tehsildar's office for thirty (30) days by SPCB/Committee could not be checked, as action in that regard had been taken six (6) years back. The PP confirms before the Committee that grant of EC to the project and availability of copies of

the clearance letters with SPCB/Committee and on the website of MoEF at <http://www.envfor.nic.in> has been duly publicized as per PP's statement in two (2) local newspapers widely circulated in the region around the project one of which in vernacular language.

Estimate of likely damage to 4815 trees during construction as recorded by R.O. Moorang during 2009 was found to be incorrect as enumeration of trees was done during 2009 before actual fixation of alignment of the road and was done in anticipation of more extensive and broad construction with margin of adjustments in case of shifting of alignment. De Facto 1897 trees have been felled/damaged and a travel along the constructed road by the Committee Members confirmed that there is no possibility of further damage.

5) According to the Committee cognizance of the damage caused to the trees in the forest has been taken by the Forest Department and its value has been worked out and realized. However, damage if

any, caused to the environment will require considerable time for assessment. However, likely impacts due to project construction will be as mentioned in the EIA Report of the project.

6) As regards restoration and restitution, the Committee has only referred to the orders passed by this Tribunal, requiring the PP to deposit Rs.5 Crores (rupees five crores) and embargo on carrying out any construction activity till inspection of the project by the Expert Committee. The Committee, however, found that there has been no irreversible heavy damage caused by the construction activity undertaken by the PP.

7) On adverse impact of life and livelihood of the people, the Expert Committee recorded that livelihood of the people is least likely to be affected by project operation of the project as there has been neither population displacement nor commercial displacement during land acquisition process and no farmer is rendered landless. As per records produced by the PP, land compensation has already been paid to all land losers and R&R plan has been prepared and approved by the Revenue Department, Govt. of Himachal Pradesh and is waiting for preparation of final

Notification and its implementation. The PP further revealed to the Committee that 45 land losers besides 66 local people have been given employment and many contract worth Rs.26 Crores have been awarded to local contractors from affected villages and Rs.1 Crore for village; Morang, Rs.1 Crore to village Rispa and Rs.2 Crore to village Thangi have been paid respectively for village development and Rs.14,63,66,066/- towards Community Development through LADA and under CSR initiative; and each family member of Rispa village is provided aggregates worth Rs.28,000/- for construction/improvement of the houses, the PP is in the process of compensating loss of Chilgoza crop to the villages having forest rights; and the PP is providing medical facilities at the site dispensaries to all villagers, of free of charges and Thangi Contractors union constructed steel bridge in Thangi village at the cost of Rs.12,25,000/-. The PP further revealed before the Committee that it is in process of implementation of CRS activities and Rs. 62,96,968/- have reportedly been spent at various infrastructure development and social development programmes and Rs.18 lakhs has been paid to affected Thangi panchayat for obtaining permission to install

stone-crusher and in addition Rs. 75 lakhs has been paid to Thangi Contractors Union.

8) The Expert Committee generally observed that following civil works have been completed; including most excavation activities and only 8547 cubic meters of excavation is still to be carried out (2000cum. at surge shaft, 102cum. at reservoir, 4736 cum. at Head Regulator and 1709 cum. at under sluice):

1. Approach road to Adit-I (2.40km)
2. Approach road to Adit-II (5.12km)
3. Approach road to Power House (2.75km)
4. Steel Bridge near intake
5. Steel Bridge near intake
6. Diversion/Spillway Excavation
7. Head regulator and under sluice excavation (About 80%)
8. Head regulator and under sluice excavation (About 50%)
9. Reservoir excavation (About 99%)
10. Reservoir excavation (About 50%)
11. HRT excavation
12. HRT concrete lining (About 50%)
13. Surge Shaft Pilot Hole Excavation
14. Surge Shaft Excavation
15. Enlargement of full section
16. Pressure Shaft excavation
17. Pressure Shaft Steel Liners Fabrication
18. Erection of ferrules under progress
19. TRT excavation
20. TRT concrete Cladding.

13. The PP's case that completion of balance work does not involve any tree felling is substantiated by the findings of Expert Committee. However, the Expert Committee has recorded that damage, if any, caused to

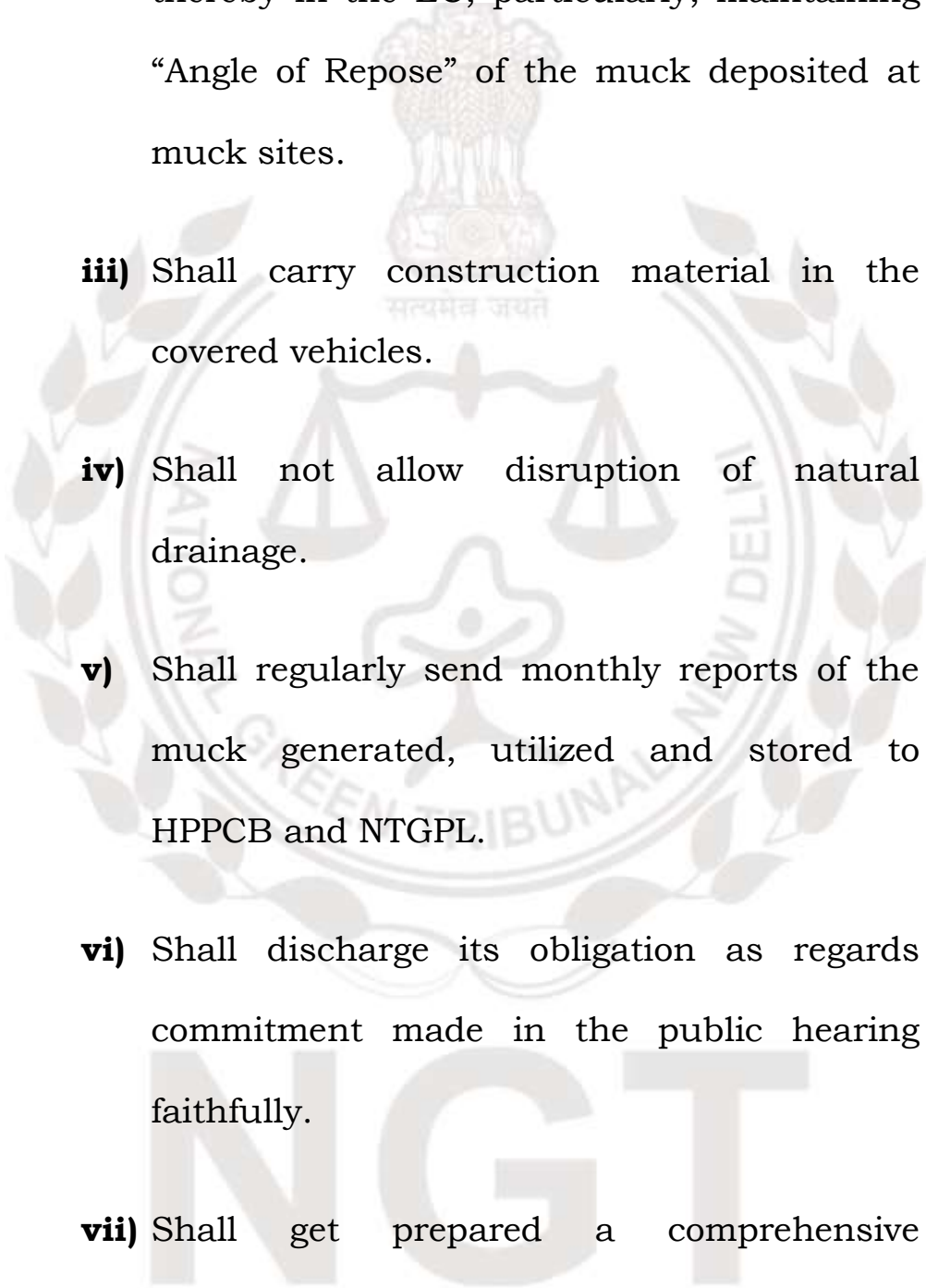
environment will require considerable time for its assessment.

14. According to PP, major excavation work is over and what is left is concreting and excavation work at the powerhouse (5053cu.m) and Surge Shaft, where there is no scope of damage to trees and environment. According to the Expert Committee ,only 8547cu.m excavation is still to be carried out. The PP in its Miscellaneous Application No.701 of 2015 at para-6, tabulated the muck details; estimated, generated, utilized and disposed of, with reference to work sites. Even going by these estimates with reference to the powerhouse site and Surge Shaft work in balance, spare capacity of 299122cu.m of dumping sites is available for disposal of muck which is far exceeding muck likely to be generated during completion of construction work. The project has received Forest as well as Environment Clearance. While declining to quash EC, we have only expressed our anxiety regarding compliance of conditions stipulated for grant of FC and EC, as they prescribe safeguard measures against likely adverse impacts on environment. We had, therefore, directed constitution of an Expert Committee for the purposes of apprising us the material aspects of the development undertaken by the PP.

15. The Expert Committee Report while giving its findings as aforesaid, apparently sees no threat to existing forest cover and imminent threat of irreversible damage to environment by construction activity undertaken by the PP. EIA Report to which the Expert Committee makes reference, while considering the issue of environmental and ecological damage, foresees likely impacts due to construction works as mostly temporary which need to be addressed adequately.

16. In our considered view, therefore, the PP needs to be allowed to carry out the works on certain terms and conditions. However, as regards relieving the PP of condition No. 9, in the order dated 7th July, 2015, we can only observe that stage is not yet matured for relief as solicited, particularly, damage to environment, if any, arising out of the project activity is yet to be completely assessed. We, therefore, dispose of these Applications and direct that PP – M/s Nuziveedu Seeds Limited, is permitted to carry out the construction work of the project on the following conditions:

- i)** Shall not fell trees in any manner whatsoever.

- 
- ii)** Shall carry muck in covered vehicles to the nearest available disposal site, having spare capacity and shall dispose of muck in accordance with conditions stipulated thereby in the EC, particularly, maintaining “Angle of Repose” of the muck deposited at muck sites.
- iii)** Shall carry construction material in the covered vehicles.
- iv)** Shall not allow disruption of natural drainage.
- v)** Shall regularly send monthly reports of the muck generated, utilized and stored to HPPCB and NTGPL.
- vi)** Shall discharge its obligation as regards commitment made in the public hearing faithfully.
- vii)** Shall get prepared a comprehensive Biodiversity Conservation and Management Plan, by an Organization of National repute in consultation with the National Biodiversity Authority within three (3) months and initiate steps for its execution promptly

thereafter. As and when utility of muck dumping site is over /or the site is abandoned the same shall be handed over to the Forest Department for execution of reclamation plan.

viii) Shall pursue the matter of identification of site for construction of fish hatchery and its construction expeditiously with Fisheries Department of the State.

ix) Shall take steps to expeditiously constitute a Multi-Disciplinary Committee comprising of Ecologists, Environmental Scientists, Conservationists and experienced administrators etc. in consultation with the Ministry of Environment & Forests to oversee effective implementation of suggested safeguard measures within three (3) months.

x) Shall upload latest six (6) monthly compliance report with monitored data on its Website and shall continue to do so in future.

xi) Shall generally adhere to comply with the conditions stipulated for grant of FC & EC.

xii) The Forest Department of State of Himachal Pradesh is directed to expedite compensatory afforestation and execution of reclamation plan in respect of muck dumping sites and is further directed to expedite implementation of Catchment Area Treatment (for short CAT) plan and show appreciable progress in its execution.

xiii) The Department of Fisheries of State of Himachal Pradesh is directed to co-operate with the PP for construction of Fish Hatchery, as envisaged in the EC.

xiv) The Ministry of Environment, Forest and Climate Change, Government of India is directed to expeditiously constitute the Multidisciplinary Committee comprising of Ecologists, Environmental Scientists, Conservationists and experienced administrators to oversee effective implementation of suggested safeguard measures within three (3) months.

xv) M. A.NO. 701 OF 2015, M. A.NO.1052 of 2015 and M.A.NO.1084 OF 2015 stand disposed of accordingly.

**Justice Swatanter Kumar
Chairperson**

**Justice U.D.Salvi
Judicial Member**

**Justice M.S. Nambiar
Judicial Member**

**Mr. Bikram Singh Sajwan
Expert Member**

**Mr. Ranjan Chatterjee
Expert Member**

NGT