

Item No. 16

(Court No.1)

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

(By Video Conferencing)

Original Application No. 197/2020

(With report dated 02.02.2022)

Jagdish Chandra Pandey

Applicant

Versus

State of Uttarakhand & Ors.

Respondent(s)

Date of hearing: 25.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER  
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Respondent: Mr. Mukesh Verma, Advocate for UEPPCB

**ORDER**

1. Grievance in this application is against violation of environmental norms during construction of Kotila-Gawad-Suraikhet Motor Road in Tehsil Dwarahat, District Almora, Uttarakhand. It is alleged that large number of trees are being damaged during the construction of the road which is being constructed by the Uttarakhand Forest Development Corporation through M/s Kaira Construction Firm.

2. Vide order dated 11.09.2020, a joint factual and action taken report was required to be submitted by the Principal Chief Conservator of

Forest (HoFF), Uttarakhand and the State Pollution Control Board (SPCB).

3. The matter was last considered on 05.08.2021 in the light of report of the Forest Department, Uttarakhand dated 30.07.2021, acknowledging violations without adequate remedial action. The Tribunal accordingly directed further action in view of serious violations. The operative part of the order is reproduced below:

*“xxx .....xxx .....xxx*

*4. From the above, it is seen that violations include illegal cutting of trees, construction of road without permission, construction in forest area beyond the sanctioned area and dumping of muck on reserved forest without requisite sanction. Action taken is merely lodging of range case against the Executive Engineer, PWD, charge sheet against the Range Officer, Forest Guard/Beat Officer and seeking Departmental action against Executive Engineer, Assistant Engineer and Junior Engineer of PWD for illegal felling of trees.*

*5. We have heard learned counsel for the State PCB and considered the report substance of which has been quoted above. In view of serious violations found, action initiated against the violators is highly inadequate. Illegal cutting of trees, construction of road on forest land and dumping of muck in reserved forest area calls for serious and meaningful action. Failure to take stringent action encourages lawlessness. No criminal case appears to have been registered though offences are shown to have been committed.*

*6. Accordingly, we direct the Secretary of PWD, Uttarakhand to review the actions taken and take further suitable coercive measures against the law violators, following due process of law. The State PCB and Forest Department also need to review the inadequacy of action on their part in exercise of their respective statutory authority. Coercive measures may include recovery of compensation on ‘Polluter Pays’ principle and restoration of the concerned forest area. The said departments may file their action taken reports within one month with the Chief Secretary, Uttarakhand. The Chief Secretary may file a consolidated action taken report in the matter within three months by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”*

4. In pursuance of above, an action taken report has been filed on 02.02.2022 by the State PCB as follows:

*“1 & 2. xxx .....xxx .....xxx*

## **I. Uttarakhand Forest Department:**

*In compliance of orders of the Hon'ble NGT dated 11.09.2020, the Forest Department has constituted a two members Committee comprising of Shri Praveen Kumar Conservator of Forest, North Kumaon, Almora and Shri Harish Chandra Joshi, Assistant Scientific Officer, Uttarakhand Pollution Control Board. After field inspection and perusal of available records, the Committee found that the user agency initiated the road construction work without complying to the conditions under which the in-principle permission was given for the transfer of forest land by the competent authority. Illegal cutting of trees and disposal of muck in Reserved Forests causing damage to the local biodiversity. The committee has also fixed responsibility of the then In-charge Range Officer, Section Officer (Forester) and the then Beat Officer (Forest Guard) for failing to stop the construction of said road before proper sanction was received from competent authority, and also for failing to stop the illegal felling and damage to 232 unmarked trees, along with concerned officers of user agency i.e. Public Works Department (PWD), Construction Division, Ranikhet. Said Factual Report and Action taken Report is already filed before the Hon'ble NGT. Copy of joint report of the Committee is annexed herewith as **Annexure-1**.*

*Further, Forest Department initiated departmental enquiry against the then In-charge Range Officer, Dwarahat Range; Section Officer (Van Daroga) and Van Rakshak (now- Van Daroga) for negligence of their duties and issued Chargesheet on dated 22.12.2020. Considering the Charge-sheet and reply of above said Forest Officials, the Investigating Officer (Divisional Forest Officer, Civil & Soyam Forest Division, Almora) found that said Forest Officials have had failed to ensure effective control over illegal felling of trees and other illegal activities of the User Agency. The Said Officers were also unable to stop illegal road cutting in their respective work areas and also not informed about the incident to higher officials. As departmental punishment, the Enquiry Officer recommended the stoppage of two annual increments with Cumulative effect from the date of issue of order i.e. 23.11.2021, of all three Forest Officials. On the recommendation of the Enquiry Officer, the Conservator of Forest, North Kumaon, Almora issued punishment order vide his letter No. 1948/1-15-7 dated 24.11.2021. Copy of orders issued by Investigating Officer are annexed herewith as **Annexure-2 (1 to 3)**.*

### **Assessment of Damage Compensation and Proposed Mitigation measures:**

*In compliance to the direction dated 05.08.2021 of the Hon'ble National Green Tribunal, New Delhi, the Divisional Forest Officer, Almora Forest Division, Almora assessed the damage caused to forest area during the said construction of road by the User Agency and the damage caused has been evaluated to the tune of Rs.43,01,650.86 (Rupees Forty three lacs one thousand six hundred fifty and paise eighty six only). Subsequently, in order to honour the directions completely, passed by this Hon'ble Tribunal, the Executive Engineer, Construction Division, Public Works Department, Ranikhet and Chief Engineer, Public Works Department, Dehradun were asked to deposit compensation amount vide letters dated 06.09.2021, 22.11.2021 & 23.11.2021.*

*The Divisional Forest Officer, Almora has proposed restorative works for the damage caused to environment. The said proposal includes reclamation of degraded forest area by planting 1600 trees against affected 399 trees in the vacant places in the area and the muck disposal sites. The estimated cost of said works is about 23.42 Lacs.*

*For rejuvenation of two natural water sources that were damaged during the construction of the said road, the construction of 5-Checkdams, 9-Chal-Khal (rain water impounding structures) and 3-water ponds for water conservation have been proposed in affected areas. The estimated cost of said works is about Rs. 20.00 Lacs. The action taken/reply submitted by the Uttarakhand Forest Department is annexed herewith as **Annexure-3**.*

*Further, Public Works Department, Dehradun vide its letter re. no. 2234/3008fo0iz0/2021/2021 dated 22.12.2021 expressed their reservation regarding the calculation of compensation imposed by the Forest Department. Copy of letter dated 22.12.2021 of Public Works Department is annexed herewith as **Annexure-4**.*

## **II. Public Works Department (PWD) Uttarakhand:**

*Public Works Department considered the facts that while construction of Kotila-Gwad-Suraikhet motor road, conditions of in-principle approval of the Ministry of Environment, Forest and Climate Change, Regional Office, Dehradun for transfer of forest land have been violated along with illegal cutting of trees and cutting of road in additional to approved alignment. Muck generated from road cutting was also disposed in forest area. During the investigation, in addition to others, indulgence of officers/Engineers of Construction Division, PWD, Ranikhet were also reported.*

*The Competent Authority of Public Works Department, after due consideration of facts, granted permission under section 197(1)(b) of Indian Penal Code, 1973 for cognizance of offence and trial against three officers before the Designated Court under the law. Copy of order issued by Public Works Department ref no. 1565/III(1)/2021-4(42) Ri.Ya./2021 dated 01.09.2021 is annexed herewith as **Annexure-5**.*

*Copy of action report of submitted by the Public Works department vide letter dated 26.11.2021 is enclosed as **Annexure-6**.*

*Further, Public Works Department, Dehradun vide its letter re. no. 2234/3008V.Pr./2021 dated 22.12.2021 expressed their reservation regarding calculation of compensation imposed by the Forest Department and environmental compensation imposed by the Uttarakhand Pollution Control Board. Copy of letter dated 22.12.2021 of Public Works Department is annexed herewith as **Annexure-4**.*

### **III. Uttarakhand Pollution Control Board:**

*In compliance of the order dated 05.08.2021 of the Hon'ble Tribunal, the Uttarakhand Pollution Control Board (UKPCB) assessed the environmental compensation based on field inspection and observation, made by the Joint Committee in the matter. It was evident from the report of Joint Committee that the User Agency had illegally disposed the muck generated from the said motor road cutting in reserved forest blocks. Therefore, considering the nature of deliberated violation, the matter was considered for imposition of an environmental compensation as per criteria and procedure decided by the State Board in its 23rd Board Meeting held on dated 29.11.2019, in pursuance of Hon'ble Tribunal order in the matter of O.A. No. 593/2017. UKPCB assessed an environmental compensation of Rs. 18.75 Lakh and issued directions to show cause under section-33(A) of the Water (Prevention and Control of Pollution) Act, 1974 and under section-31(A) of the Air (Prevention and Control of Pollution) Act, 1981 to the user agency i.e. Officer-In-Charge, Public Works Department, Construction Division, Ranikhet, Distt. Almora stating that why an environmental compensation of Rs. 18.75 Lakh not be imposed against the user agency, vide letter ref. no. UEPPCB/HO/Gen-183-484/2021/81 dated 30.09.2021. Copy of directions issued by UKPCB is annexed herewith as **Annexure-7**.*

*The Executive Engineer, Public Works Department, Construction Division, Ranikhet, Distt. Almora*

submitted its reply vide letters dated 14.10.201 and 02.12.201 enclosing with replies of than Executive Engineer, Assistant Engineer and Upper Assistant Engineer in the said matter. It is evident from the replies of than Assistant Engineer and Upper Assistant Engineer, that single road cutting (3-meter width) was done in reserved forest area and muck generated was dumped along the road side which eventually proposed to disposed at designated dump sites. Some part of stored muck along the road side may would have come down due to specific hilly terrains and rains. Replies of the Executive Engineer dated 14.10.2021 and 02.09.2021 were duly considered by the Board and observed that muck generated from the said road cutting has not been disposed at designated/identified places. Therefore, Uttarakhand Pollution Control Board confirmed its directions under section-33(A) of the Water (Prevention and Control of Pollution) Act, 1974 and under section-31(A) of the Air (Prevention and Control of Pollution) Act, 1981 issued to the user agency i.e. Officer-In-Charge, Public Works Department, Construction Division, Ranikhet, Distt. Almora vide letter dated 10.12.2021 and directed to deposit an environmental compensation of Rs. 18.75 Lakh to UKPCB within 30 days. Copy of directions issued by UKPCB is annexed herewith as Annexure-8. Said directions issued by the UKPCB are yet to be complied.

The Executive Engineer, Public Works Department, Construction Division, Ranikhet, District Almora has informed that the matter of deposition of an environmental compensation is referred to higher officials and further action will be taken accordingly. Copy of reply submitted by Executive Engineer is annexed herewith as **Annexure-9**.

3. That the present Consolidated Action Taken Report, in compliance of direction passed by the Hon'ble Tribunal, is being filed on behalf of State of Uttarakhand for kind perusal of the Hon'ble Tribunal.

4. In view of the facts and circumstances as explained hereinabove sincere efforts are taken by the State of Uttarakhand in compliance of the directions passed by this Hon'ble Tribunal, the same may kindly be accepted by the Hon'ble Tribunal and the deponent is sincerely getting the directions complied with and hereby undertakes to comply with every direction passed by the Hon'ble Tribunal.”

5. In view of above, further follow up restoration action may be taken which may be monitored by the Principal Secretary, Forest Department, Uttarakhand atleast once in a month till satisfactory compliance. Action

taken may include plantation against tree cut, restoration of water courses, scientific muck disposal at identified sites and recovery of environmental compensation from violators, for restoration works.

The application is disposed of.

A copy of this order be forwarded to Principal Secretary, Forest Department, Uttarakhand by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

February 25, 2022  
Original Application No. 197/2020  
DV