

IN THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO.429 OF 2022

IN THE MATTER OF:

Ridhima Pandey.....Applicant

Versus

State of Uttarakhand & Ors.... Respondents

**REPORT BY WAY OF AFFIDAVIT ON BEHALF OF DISTRICT
MAGISTRATE, NAINITAL, UTTARAKHAND IN COMPLIANCE OF
DIRECTIONS PASSED BY THE HON'BLE NATIONAL GREEN TRIBUNAL
VIDE ITS ORDER DATED 24.02.2023.**

P A P E R - B O O K
I N D E X

<u>Srl</u>	<u>Particulars</u>	<u>Pages</u>
1.	Report by way of Affidavit on behalf of District Magistrate, Nainital, Uttarakhand in compliance of directions passed by the Hon'ble National Green Tribunal vide its order dated 24.02.2023.	
2.	<u>ANNEXURE-1</u> : A true copy of the order dated 24.02.2023 passed by this Hon'ble Tribunal	
3.	<u>ANNEXURE R-2</u> : A photocopy of the letter dated 09.06.2021 issued by Senior Mining Officer, Nainital, Uttarakhand	
4.	<u>ANNEXURE R-3</u> : A photocopy of report of Joint Inspection dated 9.6.2021	
5.	<u>ANNEXURE R-4</u> : A photocopy of letter dated 07.01.2022 issued by Government of Uttarakhand	
6.	<u>ANNEXURE R-5</u> : Copy of order dated 14.02.2023 passed by the Hon'ble High Court of Uttarakhand	

Filed by:


[RAHUL VERMA]

Additional Advocate General for State of Uttarakhand /
Respondents

137, Tower No.10, Supreme Enclave,
Mayur Vihar Phase-I, Delhi-110091

Mobile No. 9717706032

Email- advrahulverma9999@gmail.com

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IN THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 429 OF 2022

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MAGISTRATE, NAINITAL, UTTARAKHAND IN COMPLIANCE OF
DIRECTIONS PASSED BY THE HON'BLE NATIONAL GREEN
TRIBUNAL VIDE ITS ORDER DATED 24.02.2023.**

I, Dhiraj Singh Garbyal (Male) S/o Shri Late Sri. Daya Ram Garbyal aged about 49 years, presently posted as District Magistrate, Nainital, Nainital, Uttarakhand, do hereby solemnly affirm on oath and state as under:

1. That in my abovementioned official capacity, I am acquainted with the facts and circumstances of the present matter based on record, and I am fully competent to file present Report by way of Affidavit on behalf of District Magistrate, Nainital, Uttarakhand.

That the abovementioned matter was listed on 24.02.2023 before this Hon'ble Tribunal, after hearing, this Hon'ble Tribunal was pleased to pass the following order:-

"1. Learned Counsel for respondents no. 1, 3 and 5 and

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learned Counsel for respondent no. 4 have filed copies of orders dated 14.02.2023 passed by Hon'ble High Court of Uttarakhand at Nainital in Writ Petition (PIL) No. 47/2022 titled as Dinesh Kumar Chandola Vs. Union of India and others and Writ Petition (PIL) No. 48/2022 titled as Gurdev Singh Vs. Union of India and others where by State of Uttarakhand has been permitted to undertake the activity of dredging entirely on its own, without involvement of private agencies, and with the involvement of the State Departments aforementioned.

2. None has appeared for the applicant today.

3. In compliance of order dated 19.12.2022 Mr. A.K. Joshi, ADM, Nainital, Mr. Babulal, DFO, NWLS and Mr. D.K. Joshi, RO, UKPCB have appeared through VC and we have interacted with them.

4. In the present case we consider the production of the relevant record to be necessary for adjudication of the questions involved in the application and the present application cannot be disposed of as having become infructuous in view of the order passed by the Hon'ble Uttarakhand High Court.

5. Accordingly, respondents no. 1 and 3 are directed to file copies of short term mining permits and other connected documents and also orders issued in compliance of order



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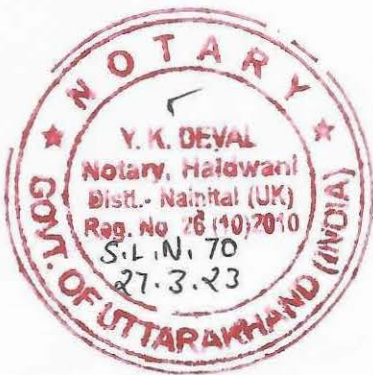
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dated 14.02.2023 passed by the Hon'ble Uttarakhand High Court within three weeks by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

6. List the matter for further consideration on 29.03.2023."

A true copy of the said order dated 24.02.2023 is annexed hereto and marked as ANNEXURE R-1.

3. That in compliance of the directions passed by this Hon'ble Tribunal on dated 24.02,2023, it is respectfully submitted that in continuation of letter dated 31st January, 2020 issued by Government of Uttarakhand, the District Magistrate, Nainital issued the directions to the concerned officials to channelize the river in upside of Nandhaur to avoid the flood situation in Chorgaliaregion of District Nainital, and in view of the directions issued by the District Magistrate, Nainital, Uttarakhand, a joint committee of the officials from Forest Department, Revenue Department and Irrigation Department etc. was constituted by the Senior Mining Officer, Nainital, vide its letter dated 09.06.2021 in the chairmanship of Sub Divisional Magistrate, Haldwani, District



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Nainital, Uttarakhand committee had also done joint inspection in the afternoon on 9.6.2021. A photocopy of the said letter dated 09.06.2021 is annexed hereto and marked as ANNEXURE R-2.

4. That in continuation of the said letter, a joint inspection was constituted on 9.6.2021 to avoid the flood situation, and for purpose of security and to avoid the life and property loss, the following officers were included in joint committee:

- (i) ShriArvind Singh Negi, Executive Engineer, Irrigation Division, Sitarganj;
- (ii) ShriTarun Kumar, Executive Engineer, Irrigation Division, Haldwani;
- (iii) ShriVimal Kumar Verma, Assistant Engineer, Irrigation Division, Sitarganj;
- (iv) ShriAnandSingh Negi, Assistant Engineer, Irrigation Division, Haldwani;
- (v) ShriRohit Joshi, Additional Engineer, Irrigation Division, Haldwani;

In the abovesaid joint inspection, it is found that from the outfall



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of River Devhathe boulder, R.B.M. and mud etc. in a huge quantity (about 1.40 kilometer of length) has been stored at outfall of River Kailash at DubailbheedaDhoka Forest Compartment, because of that reason the river stream is diverted to the populated area, and in that situation the work of river channelization is urgently required, as well as it was also necessary to do the work of security of flood on the right side of Nandhaur river, so that the flood situation may be avoided and the population of villages Chorgalia, Nanakmatta and Sitarganj area may be secured. A photocopy of the report of the said Joint Inspection dated 9.6.2021 is annexed hereto and marked as ANNEXURE R-3.

5. That for channelization of river and for cleaning/ removing of R.B.M. permission was granted on 7.1.2022 for a period of six months in favour of APS Infra Engineers Pvt. Ltd. for removal of R.B.M., and it was also directed by State Government that the removed R.B.M. material will be used by project proponent in construction of National Highway 87 only, and it was also directed that the project proponent will not use the permission for any kind of commercial use.



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6. It is pertinent to mention herein the letter dated 7.1.2022 issued by Secretary, Government of Uttarakhand dated 07.01.2022, the said permission was only for a period of six months from 7.1.2022, the said period of six months expired on 6.6.2022, thereafter, from 7.6.2022 the permission is automatically terminated and no Drazzing activity or any other activity is carried out by the project proponent after the said date.
7. It is further respectfully submitted that the Government of Uttarakhand vide its abovementioned letter dt.7.1.2022 granted permission under the Uttarakhand River Drazzing Policy, 2021 for the work of river channelization and to avoid flood situation, for saving people of villages Chorgalia, Nanakmatta and Sitarganj etc. area. A photocopy of the said letter dated 07.01.2022 is annexed hereto and marked as ANNEXURE R-4.
8. In compliance of the directions passed by this Hon'ble Tribunal, the copy of the order dated 14.02.2023 passed by the Hon'ble High Court of Uttarakhand is also annexed hereto and marked as ANNEXURE R-5.
9. That the present Report by way of Affidavit on behalf of District Magistrate, Nainital, Uttarakhand, in compliance of direction



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passed by this Hon'ble Tribunal is being filed kind perusal of this Hon'ble Tribunal.

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DEPONENT

VERIFICATION

I, the deponent above named do hereby verify and say that the contents of my above report by way of affidavit are true and correct to my knowledge based on record, no part of it is false and nothing material has been concealed there from. The legal submissions are further true as per legal advice received and believed to be true and correct.

Verified by me at Haldwani, Uttarakhand on this 27th day of March, 2023.



Verified that signed by Dhiraj Singh Goshyal
the Deponent Identified by Self
Sworn & Verified the in Content of
this Affidavit At Haldwani
on Dt: 27.3.23 at 5.00 PM
Yogesh Kumar Deo
(Yogesh Kumar Deo)
Notary, Haldwani
Distt. Nainital (UK)

LB
DEPONENT

Filed through:

Rahul Verma
[RAHUL VERMA]

Additional Advocate General for State of Uttarakhand
/Respondents

137, Tower No.10, Supreme Enclave,
MayurVihar Phase-I,
Delhi-110091
Mobile No. 9717706032
Email- advrahulverma9999@gmail.com

Item No.03

(Court No. 2)

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

(Through Physical Hearing with Hybrid VC Option)

Original Application No.429/2022

Ridhima Pandey

...Applicant

Versus

State of Uttarakhand & Ors.

...Respondents

Date of hearing: 24.02.2023

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: None.

Respondent: Mr. Rahul Verma, Additional Advocate General for respondents no. 1, 3 and 5.
Mr. Mukesh Verma, Advocate for respondent no. 2-State PCB.
Mr. A.K. Joshi, ADM, Nanital (through VC).
Mr. Babulal, DFO, NWLS (through VC).
Mr. D.K. Joshi, RO, UKPCB (through VC).
Mr. S.K Chandwani and Mr. Sameer Chandwani, Advocate for respondent no. 4-M/s A.P.S Infra Engineers Pvt. Ltd.

Application is registered based on a Letter Petition received by E-mail.

ORDER

1. Learned Counsel for respondents no. 1, 3 and 5 and learned Counsel for respondent no. 4 have filed copies of orders dated 14.02.2023 passed by Hon'ble High Court of Uttarakhand at Nanital in Writ Petition (PIL) No. 47/2022 titled as Dinesh Kumar Chandola Vs. Union of India and others and Writ Petition (PIL) No. 48/2022 titled as Gurdev Singh Vs. Union of India and others where by State of Uttarakhand has been permitted to undertake the activity of dredging entirely on its own, without involvement of private



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agencies, and with the involvement of the State Departments
aforementioned.

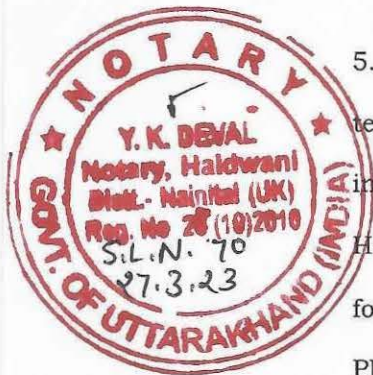
2. None has appeared for the applicant today.

3. In compliance of order dated 19.12.2022 Mr. A.K. Joshi, ADM, Nanital, Mr. Babulal, DFO, NWLS and Mr. D.K. Joshi, RO, UKPCB have appeared through VC and we have interacted with them.

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5. Accordingly, respondents no. 1 and 3 are directed to file copies of short term mining permits and other connected documents and also orders issued in compliance of order dated 14.02.2023 passed by the Hon'ble Uttarakhand High Court within three weeks by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

6. List the matter for further consideration on 29.03.2023.



certified that the Dep. identified by...
the Dep. identified by...
sworn & Verified the in Content of
this Affidavit At Haldwani...
on D. 27.3.23 at 5:00 PM

Arun Kumar Tyagi, JM

Yogesh Kumar Deval, 27.3.23
Notary, Haldwani
Dist. Nainital (UK)

Dr. Afroz Ahmad, EM

February 24 2023
AG

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भूतत्व एवं खनिकर्म इकाई, उद्योग निदेशालय उत्तराखण्ड,
हल्द्वानी

1. उपजिलाधिकारी, हल्द्वानी, (अध्यक्ष)
2. प्रभागीय वनाधिकारी, तराई पूर्वी वन प्रभाग, हल्द्वानी के प्रतिनिधि (जो उपप्रभागीय वनाधिकारी के न्यून स्तर के ना हों, सदस्य)
3. कोषाधिकारी, हल्द्वानी (सदस्य)
4. सहायक अभियन्ता, सिंचाई खण्ड, हल्द्वानी (सदस्य)

पत्रांक: 206 / भू0खनि0इ0 / रिवर ट्रेनिंग / 2021-22

दिनांक: 09 जून, 2021

विषय: चोरगलिया क्षेत्र को बाढ़ की विभिन्निका से बचाने हेतु अपर नन्धौर में नदी के बीचों बीच जमा मलवे को रिवर ट्रेनिंग नीति के तहत नदी को चैनलाइज कर बाढ़ से बचाने हेतु।

महोदय,

कृपया उपरोक्त विषयक जिलाधिकारी कार्यालय नैनीताल के पत्र सं0 1316/30 जी0सी0/2020-21 दिनांक 19 अप्रैल, 2021 (छायाप्रति संलग्न), का अवलोकन करने का कष्ट करें जिसके द्वारा उपरोक्त विषयक श्री भुवन पोखरिया एवं अन्य द्वारा हस्ताक्षरित प्रार्थना पत्र, जिसमें उनके द्वारा अपर नन्धौर नदी में भारी मात्रा में नदी के बीचों बीच जमा मलवे को हटाकर रिवर ट्रेनिंग नीति के तहत संयुक्त निरीक्षण कर नदी के चैनलाइज करने का अनुरोध किया गया है, की छाया प्रति संलग्न कर प्रकरण में आख्या उपलब्ध कराने के निर्देश दिये गये हैं।

अतः औद्योगिक विकास (खनन) अनुभाग-1 उत्तराखण्ड शासन, देहरादून के पत्र सं0 137/ VII-A-1/2020/90ख/16 दिनांक 31 जनवरी, 2020 के द्वारा प्रख्यापित उत्तराखण्ड रिवर ट्रेनिंग नीति 2020 के क्रम में जिलाधिकारी महोदय नैनीताल के उपरोक्त पत्र के अनुपालन में प्रश्नगत स्थल के संयुक्त निरीक्षण हेतु दिनांक 15.06.2021 की तिथि निर्धारित की जाती है। अतः उक्त तिथि को पूर्वान्ह 11.30 बजे मौके पर आप स्वयं या अपने प्रतिनिधि को उक्त स्थल पर उपस्थित रहने हेतु आदेशित करने का कष्ट करें ताकि उपरोक्त क्षेत्र का संयुक्त निरीक्षण कर आख्या जिलाधिकारी महोदय को प्रेषित की जा सके।



/ तददिनांकित

भवदीय
(राजपल लेखी)
उपनिदेशक, जेष्ठ खान अधिकारी

1. जिलाधिकारी महोदय नैनीताल को उनके उपरोक्त पत्रांक के क्रम में सादर सूचनाार्थ प्रेषित।
2. निदेशक, भूतत्व एवं खनिकर्म इकाई, उद्योग निदेशालय उत्तराखण्ड, देहरादून।
3. अपर निदेशक, भूतत्व एवं खनिकर्म इकाई, उद्योग निदेशालय उत्तराखण्ड, देहरादून।

(उपनिदेशक, जेष्ठ खान अधिकारी)



ATTESTED

Birendra Singh
Advocate & Notary
Reg. No. 58(01)2022
Dohwala Court Compound
Dohwala, Dehradun (U.K.)

Secured with ComSeal

1/ TRUE COPY

संयुक्त निरीक्षण आख्या

आज दिनांक 09.06.2021 को मुख्य अभियन्ता (स्तर-2) के पत्रांक 299/ सीई0/ स्तर-2/एफ-1(बाढ़) के क्रम में चोरगलिया क्षेत्र के गाँवों की आबादी की सुरक्षा एवं नानकमत्ता, सितारगंज क्षेत्र के विभिन्न ग्रामों में जलभराव की समस्या का समाधान के लिए संयुक्त निरीक्षण किया गया, संयुक्त निरीक्षण में निम्न अधिकारी उपस्थित रहे।

1. श्री अरविन्द सिंह नेगी,	अधिरासी अभियन्ता	सिंचाई खण्ड सितारगंज
2. श्री तरुण कुमार	अधिरासी अभियन्ता	सिंचाई खण्ड हल्द्वानी
3. श्री विसल कुमार वर्मा,	सहायक अभियन्ता	सिंचाई खण्ड सितारगंज
4. श्री आनन्द सिंह नेगी	सहायक अभियन्ता	सिंचाई खण्ड हल्द्वानी
5. श्री रोहित जोशी	अपर सहायक अभियन्ता	सिंचाई खण्ड हल्द्वानी

निरीक्षण में देखा गया कि देवहा नदी के मुहाने से कैलाश नदी के मुहाने दुबैलभीड़ा ढोका फॉरेस्ट कम्पाउंड तक लगभग 1.40 किमी० लम्बाई में ऊपर से बहकर अति विशालकाय बोल्टर, आर०बी०एम०, मलवा आदि एकत्र हो गये हैं, जिसकी वजह से नदी की धारा मुड़कर दांयी तरफ आबादी क्षेत्र की ओर हो गयी है।

यदि देवहा नदी के मुहाने से कैलाश नदी के मुहाने दुबैलभीड़ा ढोका फॉरेस्ट कम्पाउंड के पास तक लगभग 1.40 किमी० लम्बाई में नदी के मध्य भाग में जो मलवा / बोल्टर भर गये हैं, यदि आपदा नियंत्रण एवं बाढ़ से बचाव की दशा में रिवर ट्रेनिंग नीति के तहत जमा मलवा / बोल्टर हटाकर नन्धौर नदी को उसके मध्य भाग में चैनलाइज कर दिया जाये एवं साथ ही नन्धौर नदी के दांये पार्श्व में बाढ़ सुरक्षा कार्य किये जायें तो चोरगलिया क्षेत्र के गाँवों की आबादी की सुरक्षा एवं नानकमत्ता, सितारगंज क्षेत्र के ग्रामों में जलभराव की समस्या का समाधान होना सम्भव हो सकेगा।

(विसल कुमार वर्मा)
सहायक अभियन्ता
सिंचाई खण्ड सितारगंज

(अरविन्द सिंह नेगी)
अधिरासी अभियन्ता
सिंचाई खण्ड सितारगंज

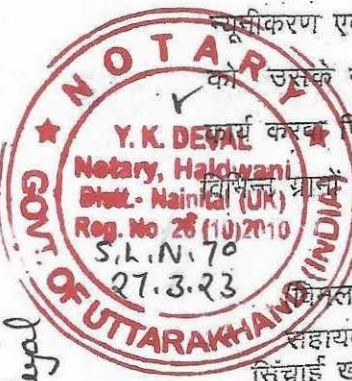
(इ० तरुण कुमार)
अधिरासी अभियन्ता
सिंचाई खण्ड हल्द्वानी

(रोहित जोशी)
अपर सहायक अभियन्ता
सिंचाई खण्ड हल्द्वानी

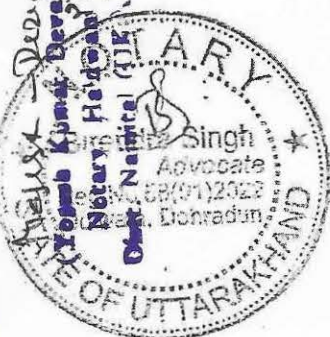
(आनन्द सिंह नेगी)
सहायक अभियन्ता
सिंचाई खण्ड हल्द्वानी

ATTESTED

Birendra Singh
Advocate & Notary
Reg. No. 58(01)2022
Doiwala Court Compound
Doiwala, Dehradun (U.P.)
19-11-2022



certified that the above thing is legal
the Dep. ment Identified by...
sworn & Verified the in Content of
this Affidavit At Haldwani...
on Dec. 27.3.23 at 6:00 PM



संयुक्त निरीक्षण आख्या

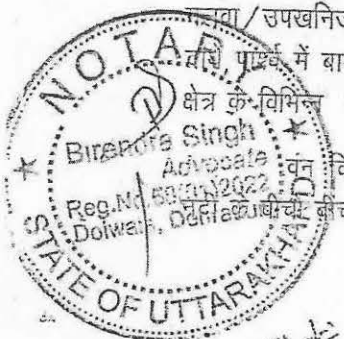
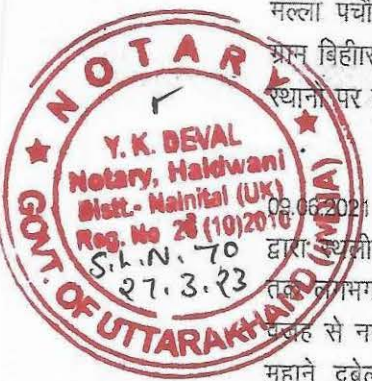
विषय: चौरगलिया क्षेत्र को बाढ़ की विभीषका से बचाने हेतु अपर नन्धौर में नदी के बीचो बीच जमा मलवे को रिवर ट्रेनिंग नीति के तहत नदी को चैनलाईज कर बाढ़ से बचाने के सम्बन्ध में।

कार्यालय जिलाधिकारी महोदय नैनीताल के पत्र सं० 1316/30-जी०सी०/2020 दिनांक 19 अप्रैल 2021 के साथ सलंगन, उपरोक्त विषयक श्री भुवन पोखरिया एवं अन्य द्वारा हस्ताक्षरित प्रार्थना पत्र जिसमें उनके द्वारा अपर नन्धौर नदी में भारी मात्रा में नदी के बीचो बीच जमा मलवे को हटाकर रिवर ट्रेनिंग नीति के तहत संयुक्त निरीक्षण कर नदी को चैनलाईज करने का अनुरोध किया गया है। जिसमें कार्यालय जिलाधिकारी महोदय नैनीताल के पत्र के अनुपालन में भूतत्व एवं खनिकर्म इकाई, उद्योग निदेशालय उत्तराखण्ड, जनपद नैनीताल के पत्र सं० 206/भू०खनि०/रिवर ट्रेनिंग/2021-22 दिनांक 09 जून 2021 के द्वारा उपरोक्त प्रकरण में संयुक्त निरीक्षण हेतु निर्धारित तिथि को राजस्व विभाग, वन विभाग, सिचाई विभाग एवं भूतत्व एवं खनिकर्म विभाग के द्वारा दिनांक 15.06.2021 को श्री भुवन पोखरिया एवं अन्य की उपस्थिति में स्थलीय निरीक्षण किया गया।

श्री भुवन पोखरिया एवं अन्य के द्वारा मौके पर अवगत कराया गया कि नन्धौर नदी के पश्चिमी तट पर चौरगलिया कस्बा, खौला बाजार, एवं ग्रामीण क्षेत्र निकट स्थित है। स्थल पर नन्धौर नदी उत्तर से दक्षिण दिशा की ओर प्रवाहित हो रही है। वर्तमान में नदी में अत्यधिक मात्रा में उपखनिज (आर० बी० एम०) एकत्रित है। प्रस्तावित चैनलाईज नदी क्षेत्र के पश्चिमी दिशा की ओर उत्तर से दक्षिण दिशा की ओर टोका वन आवासीय परिसर जिसमें प्रभागीय वनाधिकारी, हल्द्वानी वन प्रभाग का विश्राम गृह व वन क्षेत्राधिकारी, नन्धौर रेंज का कार्यालय अवस्थित है, ग्राम दुबेलबेड़ा, ग्राम खौला बाजार, ग्राम मल्ला पचौनिया, ग्राम सुनारखेड़ा, ग्राम तल्ला चौरगलिया, ग्राम आमखेड़ा, ग्राम कुटलिया, ग्राम मुखानी खड़कू, ग्राम घूसापुर, व ग्राम बिहीरगढ़ स्थित है। निरीक्षण के समय देखा गया कि नन्धौर नदी द्वारा अपने पश्चिमी किनारे पर स्थित आबादी क्षेत्र आदि स्थानों पर कटान किया गया है तथा नदी द्वारा अपनी मुख्य धारा में अत्यधिक मलवा जमा किया गया है।

सिचाई विभाग के अपर सहायक अभियन्ता द्वारा मौके पर अवगत कराया गया कि उपरोक्त स्थल में दिनांक 09.06.2021 को सिचाई विभाग हल्द्वानी एवं सितारगंज के अधिशासी अभियन्ता, सहायक अभियन्ता, अपर सहायक अभियन्ता के द्वारा स्थलीय निरीक्षण किया गया। जिसमें देवहा नदी के मुहाने से कैलाश नदी के मुहाने दुबेलबेड़ा डोका फोरेस्ट कम्पाउंड तक लगभग 1.40 कि०मी० लम्बाई में ऊपर से बहकर अति विशालकाय बोल्टर, आर० बी० एम० मलवा एकत्रित हो गया है, जिसकी वजह से नदी की धारा मुड़कर दायी तरफ आबादी क्षेत्र की ओर हो गयी है। जिसमें देवहा नदी के मुहाने से कैलाश नदी के मुहाने दुबेलबेड़ा डोका फोरेस्ट कम्पाउंड के पास तक लगभग 1.40 कि० मी० लम्बाई में नदी के मध्य भाग में जो मलवा/उपखनिज/बोल्टर भर गये हैं को आपदा न्यूनीकरण एवं बाढ़ से बचाव की दशा में रिवर ट्रेनिंग नीति के तहत जमा मलवा/उपखनिज/बोल्टर हटाकर नन्धौर नदी को उसके मध्य भाग में चैनलाईज कर दिया जाये एवं साथ ही नन्धौर नदी के दोनों पार्श्व में बाढ़ सुरक्षा कार्य करवा दिया जाये, चौरगलिया क्षेत्र के गावों की आबादी की सुरक्षा एवं नानकमत्ता, सितारगंज क्षेत्र के विभिन्न ग्रामों में जलभराव की समस्या का समाधान होना सम्भव होगा।

वन विभाग के वन क्षेत्राधिकारी हल्द्वानी वन प्रभाग द्वारा मौके पर अवगत कराया गया कि नदी में भारी मात्रा से जमा मलवा/उपखनिज/बोल्टर को सक्षम स्तर से अनुमति मिलने उपरान्त ही हटाया जाना सम्भव होगा।



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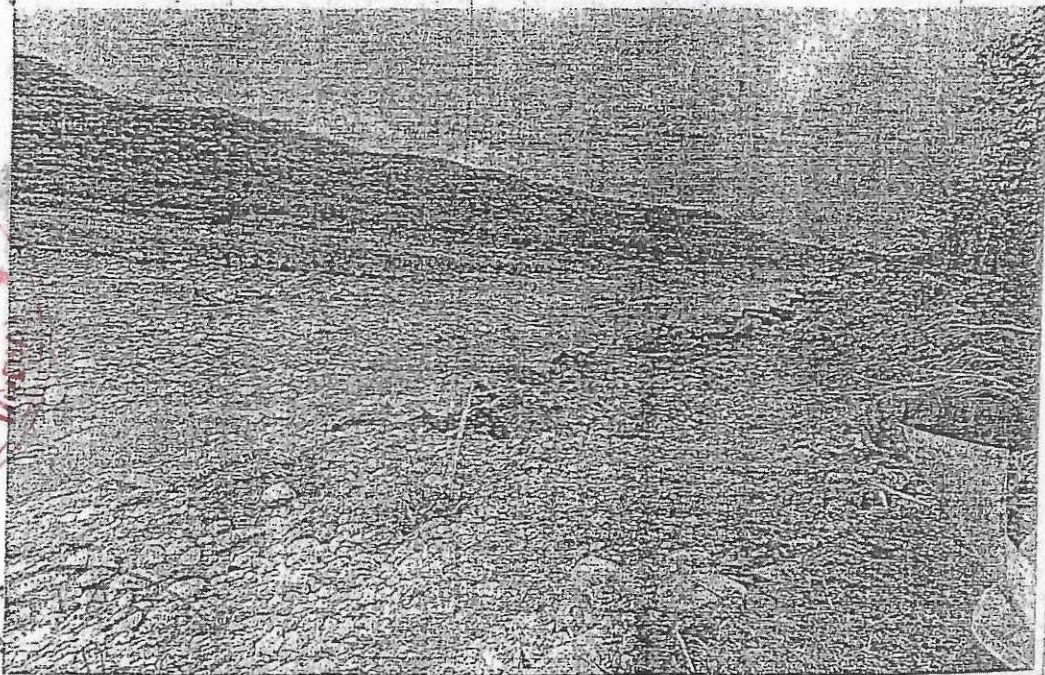
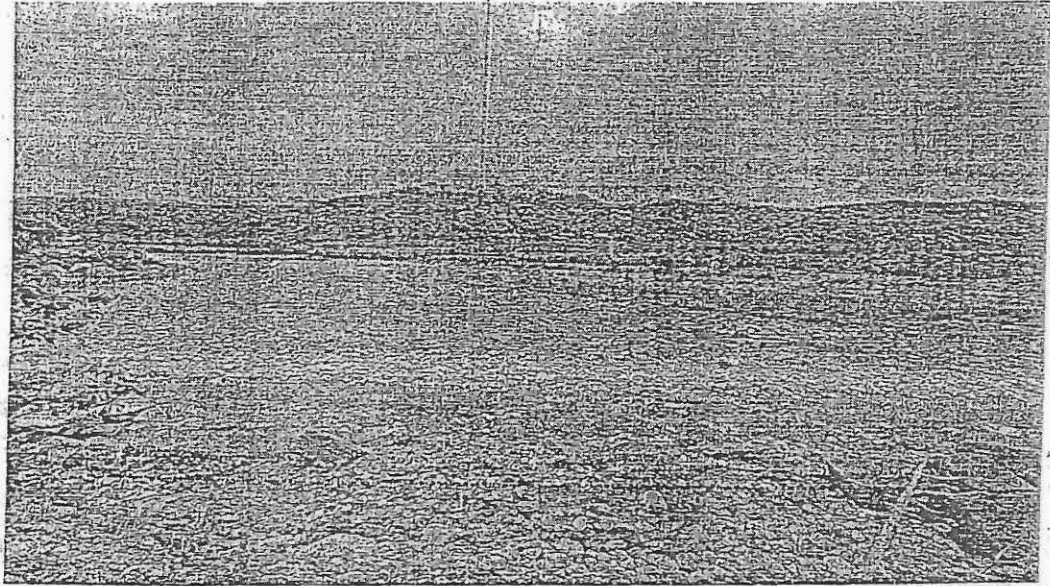
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निम्नलिखित हैं:-

उत्तर 29° 07' 54.4"

पूरव 79° 41' 28.0"



मौके के स्थलीय फोटोग्राफ

Handwritten signatures and initials are present below the stamps, including a signature that appears to be 'Shalini Joshi' and another that appears to be 'Raj'.

उपरोक्त प्रकरण में सिंचाई विभाग के अपर सहायक अभियन्ता द्वारा मौके पर दिखाये गये स्थल के अनुसार नदी को मुख्य धारा में चैनलाईजेशन करने हेतु 1.40 कि०मी० लम्बाई और औसतानुसार 40 मीटर चौड़ाई व औसतानुसार 3.0 मीटर गहराई का चैनल बनाकर मौके पर उपलब्ध/विद्यमान, आर० बी० एम०/उपखनिज/बोल्डर को हटाया जाना आवश्यक है ताकि चोरगलिया क्षेत्र के गांवों की आबादी की सुरक्षा एवं नानकमत्ता, सितारगंज क्षेत्र के विभिन्न ग्रामों में जलभराव की समस्या का समाधान होना सम्भव हो पायेगा।

अतः उपरोक्तानुसार संयुक्त निरीक्षण आख्या अग्रेतर कार्यवाही हेतु सादर प्रेषित।



(क्षेत्रीय राजस्व उपनिरीक्षक)
क्षेत्र चो-रगलिया



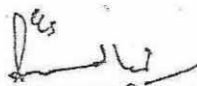
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हल्द्वानी वन प्रभाग, हल्द्वानी



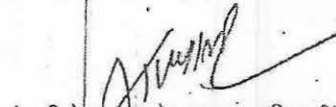
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भूतत्व एवं खनिकर्म इकाई,
हल्द्वानी



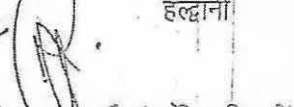
अपर सहायक अभियन्ता
सिंचाई विभाग
हल्द्वानी



सहायक अभियन्ता
सिंचाई विभाग
हल्द्वानी



(उपनिदेशक/ज्येष्ठ खान अधिकारी)
भूतत्व एवं खनिकर्म इकाई, हल्द्वानी



तहसीलदार (मुख्य जिलाधिकारी)
हल्द्वानी





ATTESTED

Birendra Singh
Advocate & Notary
Reg. No. 58 (01) 2022
Dehra Court Compound
Dehra, Dehradun (U.K.)

14.11.2024

Certified that Sri/Ds. Thiraj Singh Gargyal
the Dependent Identified by Self
Sworn & Verified the in Content of
his Affidavit At Haldwani
on Ds. 27.3.23 at 5.10.0 PM

Yogesh Kumar Deval
(Yogesh Kumar Deval)
Notary, Haldwani
Dist. Nainital (UK)

UTR 08 08411

संख्या: 23-70 / VII-A-1 / 2022 / 5(120) / 21

प्रेषक,

आर० मीनाक्षी सुन्दरम,
सचिव,
उत्तराखण्ड शासन।

सेवा में,

जिलाधिकारी,
नैनीताल।

औद्योगिक विकास (खनन) अनुभाग-1

देहरादून, दिनांक: ०७ जनवरी, 2022

विषय: उत्तराखण्ड रिवर ड्रेजिंग नीति, 2021 के बिन्दु सं० 10(2) के अनुसार राष्ट्रीय महत्त्व की परियोजनाओं के सरकारी कार्यदायी संस्थाओं अथवा उनके द्वारा अधिकृत ठेकेदारों को रिवर ड्रेजिंग कार्य की अनुमति के संबंध में।

महोदय,

उपर्युक्त विषयक निदेशक, भूतत्व एवं खनिकर्म इकाई, उत्तराखण्ड के पत्र संख्या-3932/खनन/भूखनि०ई०/रे०वि०नि०-रि०ट्रे०/2021-22, दिनांक 24 दिसम्बर, 2021 की छायाप्रति संलग्नक सहित प्रेषित करते हुए मुझे यह कहने का निदेश हुआ है कि आपदा प्रबंधन अधिनियम 2005 की धारा 72 में निहित प्रावधान का समस्त अधिनियमों, विधियों आदि पर अध्यारोही प्रभाव होने के फलस्वरूप शासन स्तर पर सम्यक् विचारोपरान्त लिये गये निर्णय के क्रम में आपदा प्रबंधन अधिनियम, 2005 के उपबन्ध अन्य किसी विधि या अधिनियम से असंगत होते हुए भी प्रभावी होने के दृष्टिगत उत्तराखण्ड रिवर ड्रेजिंग नीति, 2021 के बिन्दु सं० 10(2) के प्रावधानानुसार ड्रेजिंग कार्य हेतु नदी के समुचित चैनलाइजेशन, नदी के बहाव को सुव्यवस्थित करने तथा आस-पास के गाँव/क्षेत्रों में बाढ़ व जनहानि से बचाव आदि के दृष्टिगत जनपद नैनीताल, तहसील हल्द्वानी के अपर नन्धौर चोरगलिया क्षेत्र (अपर नन्धौर नदी) में जमा मलवा/आर०बी०एम० की निकासी एन०एच० 87 के निर्माण कार्य हेतु ए०पी०एस० इन्फ्रा इन्जीनियर्स प्रा०लि० के पक्ष में 06 माह की अवधि हेतु अनुज्ञा स्वीकृत किये जाने तथा उत्तराखण्ड रिवर ड्रेजिंग नीति, 2021 के बिन्दु सं० 11 एवं उत्तराखण्ड उपखनिज परिहार नियमावली, 2001 के नियम-68 के अन्तर्गत नियम 54 को शिथिल करते हुए इस कार्य हेतु जमा आर०बी०एम० की मात्रा पर देय रायल्टी की धनराशि व अन्य देय धनराशि को 06 समान किश्तों में जमा किये जाने की अनुमति प्रदान की जाती है।

2- उक्तानुसार स्वीकृत की जाने वाली अनुज्ञा के क्रम में ए०पी०एस० इन्फ्रा इन्जीनियर्स प्रा०लि० द्वारा निकासी किये जाने वाले मलवा, आर०बी०एम० की आपूर्ति एन०एच० निर्माण कार्य हेतु स्थानीय क्रेशर को करते हुए तैयार माल का उपयोग संबंधित इकाई द्वारा एन०एच० 87 के निर्माण कार्य हेतु किया जायेगा। ए०पी०एस० इन्फ्रा इन्जीनियर्स प्रा०लि० के पक्ष में एन०एच० 87 के निर्माण कार्य हेतु दी जा रही अनुज्ञा अनुमति मात्र एन०एच० परियोजना कार्य हेतु ही प्रदत्त की जा रही है, संबंधित कार्यदायी इकाई द्वारा किसी भी दशा में इसका व्यवसायिक उपयोग नहीं किया जायेगा।

कृपया अनुसंधान आवश्यक कार्यवाही करने का कष्ट करें।



भवदीय,

(आर० मीनाक्षी सुन्दरम)
सचिव

संख्या: 2370 (1)/VII-A-1/2021 तददिनांकित।

प्रतिलिपि: निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

1. आयुक्त, कुमायूँ मण्डल, नैनीताल।
2. महानिदेशक, भूतत्व एवं खनिकर्म इकाई, उत्तराखण्ड।
3. ए०पी०एस० इन्फ्रा इन्जीनियर्स प्रा०लि०, डी-138, सेक्टर-51, नोयडा (वर्तमान पता-मोटाहल्दू, रिलाइन्स पम्प के सामने, हल्द्वानी, नैनीताल)।
4. गार्ड फाईल।

आज्ञा से,

(लक्ष्मण सिंह)

संयुक्त सचिव



LB



ATTESTED

Brendra Singh
Advocate & Notary
Reg. No. 58(01)2022
Deiwala, Dehraadun - U.K.

14.11.2022

UTR vs copy,

certified that my client, Shri Singh Garhwal
the Dep. ment Identified by Self
sworn & Verified me in Content of
his Affidavit At Haldwani
on D^y 27.3.23 at 5:00 P.M

Yogesh Kumar Deval
(Yogesh Kumar Deval) 27.3.23
Notary, Haldwani

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
HON'BLE SRI JUSTICE RAVINDRA MAITHANI

14TH FEBRUARY, 2023

WRIT PETITION (PIL) No. 47 OF 2022

Between:

Dinesh Kumar Chandola.

...Petitioner

and

Union of India and others.

...Respondents

Counsel for the petitioner.	: Mr. Dushyant Mainali, the learned counsel.
Counsel for respondent no. 1.	: Mr. Lalit Sharma, the learned Standing Counsel for the Union of India.
Counsel for respondent nos. 2 to 7.	: Mr. S.N. Babulkar, the learned Advocate General assisted by Mr. C.S. Rawat, the learned Chief Standing Counsel for the State of Uttarakhand.
Counsel for respondent no. 8.	: Mr. Rajeev Bhatt, the learned counsel.
Counsel for respondent no. 9.	: Mr. Aditya Pratap Singh, the learned counsel.

JUDGMENT : (per Sri Vipin Sanghi, C.J.)

We have heard Mr. Dushyant Mainali, the learned counsel for the petitioner, and Mr. S.N. Babulkar, the learned Advocate General assisted by Mr. C.S. Rawat, the learned Chief Standing Counsel for the State of Uttarakhand, and proceed to dispose of this Public Interest Litigation.

1/2



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2. The challenge raised in this Writ Petition (PIL) is to the Government Order dated 07.01.2022, and the subsequent permission granted for mining/ dredging of Nandhaur River in the Eco-Sensitive Zone of Nandhaur Wildlife Sanctuary. The petitioner also seeks a direction to the respondents to notify and categorize the zones, where mining is prohibited in the State of Uttarakhand, in consonance with the guidelines issued by respondent no. 1, i.e. the Ministry of Environment, Forest and Climate Change of the Union Government.

3. By the order dated 07.01.2022, the State Government had permitted M/s A.P.S. Infra Engineers Private Limited to carry out the activity of dredging in the Upper Nandhaur Chorgalia Area for a period of six months, and also to remove the silt and RBM, which is dredged.

4. According to the petitioner, the activity of removing of the mineral, which is dredged, tantamounts to mining, which is completely prohibited in the Eco-Sensitive Zone, which Nandhaur Wildlife Sanctuary is. In this regard, Mr. Mainali has referred to the definition of "mining operations" contained in Section 3(d) of the Mines and Minerals (Development and Regulation) Act, 1957, which



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means "any operations undertaken for the purpose of winning any mineral".

5. Mr. Mainali has placed reliance on the judgment passed by the Supreme Court in **T.N. Godavarman Thirumulpad v. Union of India & Ors., 2010 (13) SCC 740** dated 04.08.2006, on the basis of which the Office Memorandum dated 08.08.2019 was issued by respondent no. 1, i.e. the Ministry of Environment, Forest and Climate Change of the Union Government. In the light of the aforesaid order passed by the Supreme Court, the Central Government has directed that "Proposals involving mining of minerals within the ESZ (or) one kilometer from the boundaries of National Parks and Sanctuaries whichever is higher is prohibited in accordance with the order of the Hon'ble Supreme Court dated 4.08.2006 in the matter of T.N. Godavarman Thirumulpad Vs. UOI in W.P.(C) No. 202 of 1995 and dated 21.4.2014 in the matter of Goa Foundation Vs. UOI in W.P.(C) No. 435 of 2012."



6. The submission of Mr. S.N. Babulkar, the learned Advocate General, is that the activity of dredging is essential to conserve the river and the adjoining areas, as failure to carry out dredging would lead to rise in the riverbed levels, leading to flooding in the adjoining areas

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in the rainy season, where agriculture is carried out and habitations are in place. He further submits that the Central Government has also exempted the requirement of obtaining environmental clearance for the purpose of carrying out the activity of dredging and de-silting of, *inter alia*, rivers and canals for the purpose of their maintenance, upkeep and disaster management. In this regard, he has placed reliance on the notification dated 28.03.2020 issued by the Ministry of Environment, Forest and Climate Change. Appendix-IX to this notification enlists at Serial Nos. 7 and 12, the activities, in respect whereof exemption has been granted by the Ministry of Environment, Forest and Climate Change, which reads as follows :-

"APPENDIX-IX

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

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7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.
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10.
11.
12. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon



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orders of the District Collector or District Magistrate or any other Competent Authority."

7. The further submission of Mr. Babulkar is that leaving the dredged minerals on the banks of the river, and their non-disposal would also create practical difficulties, inasmuch, as, the silt would flow back into the river in rainy season, and render the activity of dredging nugatory.

8. Mr. Mainali has, with his rejoinder affidavit, placed on record a Joint Inspection Report prepared by a team of Officers, which include the Conservator of Forests, Western Circle, Haldwani, the Deputy Director, MoEF&CC, Dehraun, the Scientist D, CPCB, Lucknow, the Regional Officer, UKPCB, Haldwani, the Sub-Divisional Magistrate, Haldwani, the Geo Chemist, Geology and Mining, Unit- Haldwani, and the Mining Officer, Geology and Mining, Unit- Champawat (Representative of the District Magistrate, Champawat), on the aspect of mining activity in upstream part of Nandhaur River, and Upper-stream part of Sharda Barrage, Tanakpur. This report was prepared in the matter of *Ridhima Pandey v. State of Uttarakhand*, (OA No. 429/2022). This report takes note of the impugned order issued by the State Government dated 07.01.2022 above referred to, which permits M/s



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A.P.S. Infra Engineers Private Limited to undertake dredging work, and also to remove the silt and RBM for a period of six months from the aforesaid river. The conclusion and recommendation made in this report by the aforesaid Team/ Committee of Officers is that the area in question is rich in bio-diversity and comes within Eco-Sensitive Zone of Nandhaur Wildlife Sanctuary. Hence, mining activity may not be permitted.

9. Mr. Mainali has also referred to the letter dated 28.03.2022 issued by the Divisional Forest Officer, Haldwani Division, wherein he states that the requisite permission is required to be obtained from the Ministry of Environment, Forest and Climate Change, as well as from the National Board of Wildlife, before permitting the activity to be carried out in terms of the impugned order dated 07.01.2022.

10. We have heard and considered the rival submissions.

11. There is no doubt that the activity of dredging is essential, and should be carried out in rivers and streams from time to time, so that the riverbed levels are maintained. This is essential to prevent flooding in rainy season, which also causes environmental degradation and



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loss of life and property along the path of the river, or the stream concerned. At the same time, it cannot be that under the garb of dredging, what is permitted, and what is actually carried out, is the activity of mining for commercial purposes. The impugned communication permits a private agency, namely M/s A.P.S. Infra Engineers Private Limited, to carry out not only the dredging activity in the Nandhaur Wildlife Sanctuary, but also to win the mineral, which is dredged. For this, undisputedly, it would be essential for the said agency to send its tools and tackles, men and heavy machinery, as well as trucks into the Wildlife Sanctuary to carry out the activity. Thus, what the impugned order dated 07.01.2022 permits M/s A.P.S. Infra Engineers Private Limited to carry out is not merely the activity of dredging, but also the activity of mining. There is no denying the fact that the activity of mining cannot be carried out in an Eco-Sensitive Zone, as we have already noticed above.



12. Another aspect that we cannot lose sight of, is that the grant of a contract to a private agency for the purpose of dredging, and also winning the dredged mineral, would lead to carrying out of the said activity purely for commercial purposes. The private agency would have its commercial interest in mind, and not the

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environmental interest, which is the rationale for carrying out the dredging activity in the first place. The dredging activity – which is carried out for environmental reasons, would be limited to the extent it is necessary for achieving that limited objective. However, once the activity is entrusted to a private agency, and that too with a right to carry out mining activity i.e. to win the mineral which is dredged, the extent of dredging that may be carried out on the site is very difficult to monitor or control. The moment the dredged mineral is removed for commercial purposes, the nature of the activity would change from merely dredging to mining, which is clearly prohibited in an Eco-Sensitive Zone.



13. Aforesaid being the position, we cannot permit the respondents to act in terms of their order dated 07.01.2022. The State departments, namely the Forest Conservation Department, and the Agriculture Department, of which the Soil Conservation Division is now a part, should have an active role to play in the carrying out of the activity of dredging in the river in question on its own, without the involvement of a private agency. The activity of mining, i.e. the winning of the dredged mineral, in any case, cannot be permitted. We, therefore, permit the State to undertake the activity of dredging entirely on

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its own, without the involvement of private agencies, and with the involvement of the State departments aforementioned.

14. The Writ Petition stands disposed of in the aforesaid terms.

15. Consequently, pending applications, if any, also stand disposed of.

VIPIN SANGHI, C.J.

RAVINDRA MAITHANI, J.

Dt: 14th February, 2023
Rahul



ITR or COPY
Dhruv Singh Gargyal
certified that on/Date...
the Deponent Identified by... Self...
sworn & Verified the in Content of
his Affidavit At... Haldwani...
on Dt. 27.3.23 at 5:00 PM
Yogesh - Deval
(Yogesh Kumar Deval) 27.3.23
Notary, Haldwani
Distt. Nainital (UK)