

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

Original Application No. 353/2022
(IA No. 146/2023 & IA No. 69/2023)

Kartik Sharma

Applicant

Versus

State of Uttarakhand

Respondent

Date of hearing: 16.02.2024

**CORAM: HON’BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON’BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON’BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON’BLE DR. A. AFROZ AHMAD, EXPERT MEMBER**

Respondent: Mr. Kaushal Gautam, AAG with Ms. Mrinal Sharma, Adv. for UKPCB
Mr. Rahul Verma, AAG for the State of Uttarakhand (Through VC)
Mr. Abhishek Atrey, Adv. for Uttarakhand Jal Sansthan (Through VC)

ORDER

1. This original application involves the issue in respect of the operation of the hotels at Mussoorie without following the environmental norms and unregulated withdrawal of water from lake Mussoorie.
2. The Tribunal by the order dated 07.11.2023 had taken note of the fact that 106 hotels were operating without valid Consent to Operate (CTO) from the State Pollution Control Board (SPCB). The action taken report filed by the Uttarakhand Pollution Control Board (UKPCB) on 06.11.2023 was also considered and the Tribunal in para 4 of the order dated 07.11.2023 had noted the following deficiencies in the report:

“4. xxxxxx.....xxx

The current report filed on 06.11.2023 does not disclose the action which has been taken against the defaulting hotels for their past violation and this report also does not completely disclose the action against 18 hotels which were either found to be non-compliant in the past or found to be closed or under assessment or not responding as mentioned in paragraph g) of earlier affidavit

dated 24.07.2023. Further, the report is silent on compliance by the individual hotels about management of sewage, water balance and dual piping system as directed in para 4 of the order dated 26.07.2023. We also note that even the notices which are enclosed with the fresh report are issued only yesterday i.e. on 06.11.2023 and till yesterday, there was no action. Hence, we are of the view that the direction issued by the Tribunal in paragraph 4 of the earlier order has not been fully complied with.”

3. Further time was sought by the Counsel for the UKPCB to comply with the direction of the Tribunal. Accordingly, the Tribunal had granted time of two weeks to file a fresh report, subject to deposit of cost of Rs. 10,000/- by directing as under:

“5. Learned Counsel appearing for UKPCB seeks further time to comply with the said direction. The direction of the Tribunal was very clear and has not been complied with. Therefore, we accept the prayer for grant of further time to fully comply with the earlier order of the Tribunal and also to disclose the outcome of the notices which were issued to the defaulting hotels by filing a fresh report within two weeks, subject to deposit of cost of Rs. 10,000/- in the ring-fenced account of the UKPCB.”

4. Now, the fresh action taken report has been filed by the UKPCB but in the fresh action taken report, there is no response in pursuance to the direction contained in para 4 of the order dated 07.11.2023 in respect of management of sewage, water balance and dual piping system. The direction in this regard as contained in the orders dated 26.07.2023 and 07.11.2023 has remained uncompiled even after imposition of cost by the order dated 07.11.2023.

5. Fresh action taken report at the instance of UKPCB reveals that uniform action against all the defaulting hotels has not been taken. Annexure 2 to the report mentions the amount of environmental compensation imposed against the different hotels, but no details as to how the said amount has been arrived at, period for which and rate at which the amount has been calculated, have been disclosed.

6. Learned Counsel appearing for the UKPCB has prayed for further time to file a fresh report disclosing the full particulars in respect of calculation of environmental compensation and also giving the details as required by the earlier orders dated 26.07.2023 and 07.11.2023.

7. We are surprised that inspite of imposition of cost and deposit of the same, the direction of the Tribunal remains uncompiled till now and the requisite information has not been furnished.

8. Hence, in the circumstances noted above, we grant further four weeks' time to the UKPCB to file a fresh report keeping in view the observations made above, subject to deposit of Cost of Rs. 25,000/- in the ring-fenced account of the UKPCB.

9. The above cost at the first instance will be deposited by the UKPCB but the Member Secretary, UKPCB will ensure that this cost is recovered from the erring officer who was responsible for not disclosing the requisite information to the Tribunal inspite of repeated opportunity. Let the same be recovered by the Member Secretary, UKPCB from the erring officer within a period of eight weeks and submit a report before the Tribunal in this regard.

10. In view of the circumstances which are noted above, we also direct that the Principal Secretary, Environment and Forest Department, State of Uttarakhand will remain virtually present on the next date of hearing to apprise the Tribunal about the action taken.

11. In the proceedings dated 07.11.2023, learned Counsel appearing for State of Uttarakhand had made a statement that additional 6 MLD water was being supplied to Mussoorie by the Jal Sansthan which was recorded on 07.11.2023 as under:

“6. Learned Counsel appearing for the State submits that in terms of the earlier statement, the additional 6 MLD water is now being supplied to Mussoorie by the Jal Sansthan. He is directed to file affidavit disclosing that the additional 6 MLD supply of water takes care of the need of all the hotels in Mussoorie.”

12. Now, the affidavit on behalf of Uttarakhand Jal Sansthan in compliance of order dated 07.11.2023 has been filed reflecting a different factual position as under:

“xxxxxx.....xxx

3. That as per assessment of Uttarakhand Jal Sansthan, in the year 2024, total demand of water in Mussoorie is 14.50 MLD and the total supply by Uttarakhand Jal Sansthan is 7.67 MLD and 4 MLD is being supplied by Jal Sansthan after receiving from Uttarakhand Pey Jal Nigam from Mussoorie reorganisation water supply scheme (Yamuna River Pumping Water Scheme of Mussoorie) which will be 6 MLD from June 2024 which will fulfil almost total demand of Mussoorie.

xxxxxx.....xxx

6. That presently 4 NILD water is being supplied by Uttarakhand Peyjal Nigam to Uttarakhand Jal Sansthan through rising main to Radha Bhawan Reservoir which is being supplied by Uttarakhand Jal Sansthan to Mussoorie by existing distribution system and after completion of the said project 6 MLD water will be produced by Mussoorie by Uttarakhand Jal Nigam.”

13. Hence, it is clear that the Counsel for the State of Uttarakhand had not disclosed the correct factual position on 07.11.2023. The State Authorities will remain cautioned while disclosing the information and will ensure that correct factual information is disclosed before the Tribunal.

14. The Uttarakhand Jal Sansthan will also file a report disclosing the manner and timeline for meeting the requirement of supply of water in the area concerned.

15. List on 19.04.2024.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

February 16, 2024
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DV.