

Item No. 04

Court No. 2

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

Original Application No. 614/2022

Rasesh B Vissanji and Ors

Applicant

Versus

State of Uttarakhand

Respondent(s)

Date of hearing: 04.12.2024

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: None

Respondents: Mr. Deepak Bora, Advocate for State of Uttarakhand
Mr. Mukesh Verma and Ms. Vatsala Tripathi, Advocates for
UKPCB (through VC)
Mr. Somesh Chandra Jha, Ms. Saumya Dwivedi and Mr.
Akash Kishore Advocates for Respondent No. 6

ORDER

1. This Original Application (hereinafter referred to as '**OA**') was registered taking cognizance of letter petition dated 17.05.2022 sent by Rasesh B Vissanji and several others, R/o of Chitai Manyoli, District Almora complaining that a 6 km road at Chitai Manyoli is proposed and in furtherance thereof one Jagdish Chauhan has started cutting off trees in an illegal manner using JCB machines and muck is being thrown/dumped on fertile agricultural land causing damage to agricultural field of farmers.

2. This letter petition was registered under Sections 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act**,

2010’) in exercise of *suo-moto* jurisdiction in view of law laid down by Supreme Court in ***Municipal Corporation of Greater Mumbai vs. Ankita Sinha, (2022) 13 SCC 401.***

3. Tribunal considered complaint on 23.09.2022 and after being *prima-facie* satisfied that a substantial question relating to environment has arisen out of implementation of enactments specified in Schedule 1 of NGT Act, 2010, found it appropriate to obtain a factual Report verifying facts and thus, constituted a Joint Committee comprising Uttarakhand Pollution Control Board (hereinafter referred to as ‘**UKPCB**’); Executive Engineer Public Works Department, Almora; Divisional Forest Officer, Almora; and District Magistrate, Almora. Committee was required to submit Report within one month. Tribunal also directed that in case Joint Committee finds violation of any environmental norms and laws, it shall forward copy of its Report to concerned Project Proponents to enable them to comply with recommendations or file objections against observations/findings/recommendations contained in the report before Tribunal. Authorities were also directed to take remedial steps and submit action taken report separately within one month.

4. Pursuant to above order dated 23.09.2022, Joint Committee submitted Report dated 03.01.2023 stating that on demand of local villagers and taking into consideration sharp curves/accident prone area at Kalidhar near Chitai alternative/link road of 8 km from Chatai Pant Tiraha to Petshal, District Almora was proposed as a part of Almora - Ghat National Highway No. 309 (B). State of Uttarakhand accorded administrative and financial approval of Rs. 200.16 lakhs for construction of above link road of 8 kms vide letter dated 28.03.2006. Presently, construction of only 3.25 km long road has been carried out. Integrated Regional Office, Ministry of Environment, Forest and Climate Change,

Dehradun (hereinafter referred to as '**IRO, MoEF&CC**'), vide letter dated 17.11.2022 has accorded in principle approval of non-forest use of 2.43875 hectares land to Public Works Department for construction of Chatai to Hari Dutt Petsali Inter College Motor Marg. Alignment of road was approved by Superintendent Engineer, Public Works Department, Almora vide letter dated 22.10.2021. Villagers have also given consent for use of private land for construction of proposed road. Construction Division, Public Works Department, Almora deposited an amount of Rs.32,47,715/- towards Net Present Value (hereinafter referred to as '**NPV**') and compensatory forestry cost to Forest Department on 16.03.2021. Cutting of trees is being carried out by Uttarakhand Forest Corporation Limited. Construction Division, Public Works Department, Almora has allotted contract of road construction to Shivraj Singh Banola following due process.

5. Report further said that road cutting work is being carried out by Contractor as per agreement who has started road cutting work before tree cutting work by Uttarakhand Forest Corporation Limited. Muck dumping area has been developed with gabion wall and retaining walls in private land with consent of land holders. Alignment of road was changed at village Manyoli with approval of Superintendent Engineer, First Circle Public Works Department, Almora and Joint Committee did not find any illegal felling of trees in forest area. In the light of above observations, no otherwise action was required to be taken by concerned Statutory Regulators or Authorities. Relevant extracts of report showing observations and action taken are reproduced as under:

“As per observations of the Joint Committee:

- 1. As per demand of local villagers and in view of sharp curves/ accident prone area at Kalidhar near Chitai, alternative /link road of 8 Km. length from Chatai Pant Tiraha to Petshal (District*

Almora) was proposed as a part of Almora — Ghat National Highway No. 309 (B).

- 2. The Government of Uttarakhand has accorded administrative and financial approval of Rs. 200.16 Lakh for construction of said alternative road of 8.0 Km. vide letter no. 572/III-(2)/06-08 (Pra. A)/06 dated 28.03.2006. However, presently construction of only 3.25 Km long road is being carried out.*
- 3. The Integrated Regional Office, Ministry of Environment, Forest & Climate Change, Dehradun vide its letter no. 8Bi/U.C.P./06/125/2015/ F.C./1765 dated 17.11.2022 has accorded in-principal approval of non-forest uses of 2.43875 hectare land to PWD for construction of Chatai to Han Dutt Petsali Inter College Motor Marg.*
- 4. The alignment of said motor road was approved by the Superintendent Engineer. PWD, Almora vide its letter no. 7624/204 C-01/2021 dated 22.10.2021.*
- 5. The villagers of the area has also given consent for use of private land for construction of said proposed motor road.*
- 6. The Construction Division. PWD, Almora has deposited an amount of Rs. 32,47,715.00 towards NPV and compensatory forestry cost to the Forest Department on dated 16.03.2021. Cutting of trees is being carried out by the Uttarakhand Forest Corporation Ltd.*
- 7. The Construction Division. PWD. Almora has allotted the contract of said road construction work to Shri Shivraj Singh Banola with due processes.*
- 8. As per joint inspection report. road cutting work is being carried out by contractor as per contract agreement. The contractor has started the road cutting work before trees cutting work of Uttarakhand Forest Corporation Ltd., however, kept all the trees there only. Muck dump area has been developed with gabion wall and retaining walls in private land with consent of land holders.*
- 9. The Committee also observed that the alignment of road has changed at village Manyoli with approval of Superintendent Engineer, First Circle, PVVD. Almora. The Committee also observed that no illegal trees felling is done in forest area.*

III. ACTION TAKEN BY UKPCB:

Based on the observations of the Joint Committee, it is evident that the Government of Uttarakhand has issued necessary

administrative and financial approval for construction of said road and in-principal approval has been accorded by Integrated Regional Office, Ministry of Environment, Forest & Climate Change, Dehradun. Trees cutting work is being carried out by the Uttarakhand Forest Corporation Ltd.

Muck dump sites has been developed with gabion/retaining walls for muck disposal. The Committee also reported that no illegal trees cutting/felling is observed in forest areas.”

6. After considering report on 06.01.2023, Tribunal found it appropriate to implead following as respondents:

- i. State of Uttarakhand through Chief Secretary, Government of Uttarakhand.
- ii. Chief Engineer, Public Works Department, Uttarakhand.
- iii. Principal Chief Conservator of Forests, (HoFF), Government of Uttarakhand.
- iv. Uttarakhand Pollution Control Board.
- v. District Magistrate, Almora.

7. Tribunal gave opportunity to above respondents to file their responses.

8. District Magistrate, Almora submitted reply/report through affidavit dated 17.04.2023. It virtually reiterated Joint Committee’s report and observations made therein. However, it has further stated that Divisional Forest Officer, Almora sent its report dated 17.02.2023 to Principal Chief Conservator of Forest (HoFF, Uttarakhand) (hereinafter referred to as **‘PCCF (HoFF)’**) giving current status on certain aspects, including, compensatory afforestation in a tabular form as under:

<i>Sr. No.</i>	<i>Points</i>	<i>Status of the site</i>
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1.	<i>Compensatory afforestation</i>	<i>That in reply thereto it is respectfully submitted that for compensatory afforestation, the land measuring 4.83 Hectare has been identified at Manila compartment No. 23 District Almora, Uttarakhand and the proposal for the same has already been enclosed</i>
2.	<i>Budgetary provisions made</i>	<i>In reply thereto it is respectfully submitted that the Construction Division, PWD, Almora has deposited an amount of Rs.16,45,458/ (Rupees sixteen lakhs forty five thousand four hundred & fifty eight only) at the rate of Rs. 03,37,184.00 (Rupees three lakhs thirty seven thousand one hundred and eighty four only) towards NPV and compensatory forestry cost to the Forest Department on dated 16.03.2021.</i>
3.	<i>The species to be planted</i>	<i>It is respectfully submitted that the Baanj, Falyat, Tejpat, Malta, NeebuUtis, Bhimal and Dadim etc. species of tree has to be planted.</i>
4.	<i>The particulars of the land identified for the afforestation.</i>	<i>Land measuring 4.83 hectare situated at compartment No. 23 in Manila, District Almora, Uttarakhand.</i>
5.	<i>Specific timeline</i>	<i>The compensatory afforestation will be completed within one year from the date of receiving of due approvals</i>
6.	<i>Steps to be taken for protection of the trees planted.</i>	<i>Provision has been made in plantation scheme the wall around area of the planted trees for the security of the planted trees, and sweeping will also be done from time to time for the area of 04-04 meters outside the area of security wall.</i>
7.	<i>Maintenance</i>	<i>For the maintenance of the compensatory afforestation area, the work of weeding will be done two times in a year as well as the dry grass and leafs and other flammable articles will be from the area.</i>

9. District Magistrate has also said that there is continuous demand of villagers for construction of proposed road and its earlier completion.

10. Rasesh B Vissanji, one of the complainants, filed Civil Suit Case No. 11 of 2021 in Court of Civil Judge, Junior Division, Almora which has been dismissed vide order dated 04.03.2022 since plaintiff did not press it making a statement that since a new alignment of road has been prepared, which does not affect plaintiff's land, therefore, he does not want to press suit. Copy of order dated 04.03.2022 has been placed on record as Annexure R-3 at page 98.

11. Applicant-Rasesh B Vissanji, it is said, is not original resident of State of Uttarakhand but purchased land in District Almora with prior permission of District Magistrate, Almora, as required under Section 154 (4) (3) (b) of UP Zamindari Abolition Act, 1950. Complainant- Rasesh B Vissanji subsequently violated conditions regarding transfer of land use as mentioned in permission granted by District Magistrate, Almora and conditions mentioned in affidavit. Hence, proceedings vide Revenue Case No.01/2011-2022, State of Uttarakhand through Collector versus Rasesh Bharat Vissanji are pending against him in Court of Assistant Collector - First Class, Sadar Almora and copy of notice dated 18.10.2021 issued by Assistant Collector-First Class, Sadar Almora has been placed on record as Annexure-4/1 at page 100.

12. Public Works Department, Uttarakhand through Harishchand Joshi, Assistant Engineer, Construction Division has also filed its response by means of an affidavit dated 18.04.2023, wherein also findings of Joint Committee report are reiterated and other facts as stated in District Magistrate, Almora report are mentioned. We are not repeating the same.

13. Tribunal considered matter on 25.10.2023 when it noted that as per response of District Magistrate, Almora, land measuring 4.83 hectares was identified at Manila Compartment No. 23, District Almora, State of

Uttarakhand for compensatory afforestation and Rs.16,45,458/- were deposited by Construction Division, Public Works Department, Almora but it is pending for approval. With regard to construction of road, Tribunal clarified that it has not obstructed construction of road by passing any order in this regard but also observed that issue of illegal cutting of trees and dumping of muck has not been properly responded and therefore District Magistrate and Public Works Department were required to file their replies giving requisite details regarding:

- i. Construction of road,
- ii. Compensatory afforestation,
- iii. Cutting of trees and
- iv. Disposal of muck.

14. Executive Engineer, Construction Division, PWD Almora, State of Uttarakhand filed response dated 05.08.2023 elaborating on all four aspects mentioned in Tribunal's order dated 25.04.2023. Relevant reply on the above aspects is reproduced as under:

“(I) Construction of Road-

- (a) That the State Government has accorded the administrative and financial approval for construction of 8.00 kilometer alternative motor road from Chatai Pant Tiraha to (beyond the Hari Dutt Petsali Inter College) to Petshal vide Government Order No.572/11I-(2)/06-08 (Pra.AA.)/06 dated 28.03.2006 by sanctioning Rs.200.16 Lakhs. Copy of the same is annexed hereto and marked as ANNEXURE R-2.*
- (b) That for the construction of the abovementioned motor road, the Regional Office (North-Central Region), Ministry of Environment, Forest & Climate Change, Dehradun vide its letter no. 8B/U.C.P./06/125/2015/ F.C.1765 dated 17.11.2020 has accorded in-principal approval. Copy of the same is annexed hereto and marked as ANNEXURE R-3.*
- (c) That the alignment of said motor road was approved by the Superintendent Engineer, (First) PWD, Almora vide its letter no.*

7624/204 C-01/2021 dated 22.10.2021. Copy of the same is annexed hereto and marked as ANNEXURE R-4.

- (d) That the Superintendent Engineer, (First) PWD, Almora vide its letter no. 8163/204 C-01/21-22 dated 06.12.2021 accorded the technical approval for length of road 3.250 kilometer and cost of Rs.200.16 Lakhs. Copy of the same is annexed hereto and marked as ANNEXURE R-5.
- (e) That the office Superintendent Engineer, (First) PWD, Almora invited the tender for the abovesaid purpose vide its letter no. 8365/Nivida-01/21 dated 27.11.2021. Copy of the same is annexed hereto and marked as ANNEXURE R-6.
- (f) That the Contract No.01/S.E./01/22 dated 07.05.2022 was prepared for the abovesaid purpose to Shri Shivraj Singh Banaula, Almora. Copy of the same is annexed hereto and marked as ANNEXURE R-7.
- (g) It is pertinent to mention herein that due to increase in the prices of the articles, the construction of abovesaid road is being done for the length of 3.00 kilometer against the length of 8.00 kilometers.
- (h) That the Public Works Department has sent the online proposal for due-approval vide its letter No.3414/3C. V. Bhu. Dated 07.11.2022 to the Divisional Forest Officer, Almora as per conditions contained in the in-principal approval granted by Government of India. Copy of the same is annexed hereto and marked as ANNEXURE R-8.
- (i) That the Regional Office (North-Central Region), Ministry of Environment, Forest & Climate Change, Government of India, Dehradun vide its letter no. 8B/U.C.P./06/125/2015/ F.C./1449 dated 25.01.2023 has suspended in-principal approval with immediate effect and had written for clarification on three points. Copy of the same is annexed hereto and marked as ANNEXURE R-9. The Construction of the work will be started with immediate effect as well as in-principal approval is granted.
- (j) That it is relevant to mention herein that the office of Executive Engineer, P.W.D. Almora vide its letter No. 978/3C (Court Case) Dated 23.03.2023 the report on the three points as desired by the Regional Office Ministry of Environment, Forest & Climate Changes, Government of India, has already been sent to the Divisional Forest Officer, Almora, the abovesaid Report has been sent by the Additional Principal Chief Conservator of Forest and Nodal Officer, Conservator of Forest, Uttarakhand Dehradun vide its letter No.2374/FP/UK/ROAD/9220/2015 Dehradun dated

15.04.2023 to the Additional Principal Conservator of Forest, Government of India for further proceedings/ action. Copy of the same is annexed hereto and marked as ANNEXURE R-10.

- (k) That the work is stopped due to the suspension of in-principal approval as already mentioned above.

(II) Compensatory Afforestation-

- (a) That it is respectfully submitted that with regard to the compensatory afforestation, the land measuring 4.83 Hectare has been identified at Manila compartment No. 23 District Almora, Uttarakhand and the proposal for the same has already been enclosed.
- (b) It is further respectfully submitted that the Construction Division, PWD, Almora has deposited an amount of Rs.16,45,458/- (Rupees sixteen lakhs forty five thousand four hundred & fifty eight only) at the rate of Rs. 03,37,184.00 (Rupees three lakhs thirty seven thousand one hundred and eighty four only) towards NPV and compensatory forestry cost to the Forest Department on dated 16.03.2021.
- (c) It is further respectfully submitted that the Construction Division, PWD, Almora has deposited an amount of Rs.16,45,458/- (Rupees sixteen lakhs forty five thousand four hundred & fifty eight only) at the rate of Rs. 03,37,184.00 (Rupees three lakhs thirty seven thousand one hundred and eighty four only) towards NPV and compensatory forestry cost to the Forest Department on dated 16.03.2021.
- (d) Land measuring 4.83 hectare situated at compartment No. 23 in Manila, District Almora, Uttarakhand.
- (e) The compensatory afforestation will be completed within one year from the date of receiving of due approvals.
- (f) The provision has been made in plantation scheme for wall around area of the planted trees for the security of the planted trees, and sweeping will also be made from time to time for the area of 0404 meters outside the area of security wall.
- (g) That for the maintenance of the compensatory afforestation area, the work of weeding will be done two times in a year as well as the dry grass and leafs and other flammable articles will be removed from the area.

- (h) That it is pertinent to mention herein that for the abovesaid work, the detailed report has already been sent by Divisional Forest Officer, Almora vide its letter No.4092/29-1 Almora dated 17.02.2023 to the Principal Chief Conservator of Forest (Hoff), Uttarakhand, Dehradun. Copy of the same is annexed hereto and marked as ANNEXURE R-11

(III) Cutting of the Trees-

- (a) That it is respectfully submitted that in continuation of Demand Note vide letter No.5076/12-1 (2) dt.15.3.2021 of Divisional Forest Officer, Almora a sum of Rs.32,47,715.00 (Rupees thirty two lakhs forty seven thousand seven hundred and fifteen) has already been deposited in favour of Forest Department on 16.03.2021. Copy of the same is annexed hereto and marked as ANNEXURE R-12.
- (b) That the Divisional Forest Officer, Almora vide its letter No.414/9-1 (2) Almora dated 20.07.2022 sent to Divisional Logging Manager, Uttarakhand Forest Development Corporation, Almora has transferred the list of trees for the abovesaid purpose and the action has been taken for lot transfer. Copy of the same is annexed hereto and marked as ANNEXURE R-13.
- (c) That in continuation of demand note vide letter No.582/Vikas Karya Praklan dated 05.08.2022 of Divisional Logging Manager, Uttarakhand Forest Development Corporation, Almora, an amount of Rs.22,78,091.00 has been deposited in favour of Uttarakhand Forest Development Corporation on 05.11.2022 for felling / transportation of trees. Copy of the same is annexed hereto and marked as ANNEXURE R-14.

(IV) Disposal of the Muck-

- (a) That the work of muck disposal is being done at Hectometer 2-4 of one kilometer of road, Hectometer 4-6 of two kilometer of road, Hectometer 8-10 of three kilometer of road is being done in wire-crate and after constructing of Wall in in dumping Zone in Naap land with the permission of the villagers. The work of muck disposal of remaining cutting will be done in wire-crate and after constructing of Wall in dumping Zone in Naap land with the permission of the villagers.”

15. Tribunal considered matter on 05.09.2023 and after considering reply of Executive Engineer, Public Works Department, Almora, found it

appropriate to implead Ministry of Environment, Forest and Climate Change, Government of India (hereinafter referred to as '**MoEF&CC**'), Uttarakhand Forest Development Corporation and Shiv Raj Singh Banola, Contractor as respondents⁶ to 8 and they were granted time to file responses.

16. Respondent 8 i.e. Contractor filed response dated 03.10.2023 stating that for construction of 3 km part of road, an agreement was executed with Public Works Department by Contractor on 07.05.2022 and he has discharged his work including, disposal of muck at construction area in terms of agreement and after being satisfied with his work, concerned Department has also made payment. He categorically denied having violated any provision of Forest Conservation Act, 1980 (hereinafter referred to as '**FC Act, 1980**') and has also denied of damaging environment in any manner. He has alleged that Rasesh Bharat Vissanji is trying to exert pressure upon him for obstruction of work and failing therein has leveled false allegations against him.

17. MoEF&CC (respondent 6) also filed its response dated 10.10.2023 through Deputy General of Forest, Dehradun stating that prior approval of Central Government is required for carrying of any non-forestry activity on forest land under Section 2 of FC Act, 1980. Vide letter dated 30.06.2015 of Additional Secretary, Government of Uttarakhand, a proposal was received in IRO, MoEF&CC, Dehradun seeking diversion of 2.43875 hectares of forest land in favour of PWD for construction of Chatai to Hari Dutt Petsali Inter College Motor Marg. After examining matter in the light of existing Guidelines and Rules, Stage I approval was granted by IRO, MoEF&CC, Dehradun vide letter dated 17.11.2020. Divisional Forest Officer, Almora however, vide letter dated 31.12.2022 reported violation of conditions of in-principle/ stage I approval accorded by IRO, MoEF&CC,

Dehradun to PWD Uttarakhand. He stated that Contractor has started cutting off trees illegally in as much as Superintendent Engineer, Circle 1, P.W.D, Almora invited tender for road cutting vide notice dated 27.11.2021 and in furtherance thereof, bond with Contractor was executed on 07.05.2022. Thereafter, Contractor immediately started cutting of trees, though requisite amount was deposited to Forest Development corporation on 07.11.2022 and this resulted in illegal cutting of trees by Contractor. Further, Layout Plan was changed but without taking any prior permission from Government. Relevant extract of letter dated 31.12.2022 sent by Divisional Forest Officer, Almora to IRO, MoEF&CC, Dehradun are reproduced as under:

1. *विषयांकित रोड हेतु उत्तराखण्ड वन विकास निगम को वृक्ष पातन हेतु लौटः (छपान सूची) कार्यालय प्रभागीय वनाधिकारी, अल्मोड़ा के पत्रांक 414/9-1(2), दिनांक 20.07.2022 द्वारा लौट संख्या 45/2022 आवंटित किया गया, जिसके क्रम में कार्यालय लौगिंग प्रबन्धक, उत्तराखण्ड वन विकास निगम, अल्मोड़ा द्वारा दिनांक 05.08.2021 को प्रस्तावक विभाग को डिमाण्ड नोट भेजा गया था। प्रभागीय लौगिंग प्रबन्धक, अल्मोड़ा द्वारा अवगत कराया गया है कि उक्त धनराशि वन निगम को दिनांक 07.11.2022 को प्राप्त हुई, जिसके क्रम में दिनांक 09.11.2022 को उनके द्वारा अपने अधीनस्थ स्टाफ को पातन कार्य प्रारम्भ करने हेतु निर्देशित किया गया।*
2. *कार्यालय अधीक्षण अभियन्ता, प्रथम वृत्त, लोक निर्माण विभाग, अल्मोड़ा के पत्रांक 8265/निविदा-01/2021, दिनांक 27.11.2021 द्वारा विषयांकित रोड कटान इत्यादि हेतु निविदा आमंत्रित की गयी, जिसके क्रम में श्री शिवराज सिंह बनौला (कॉन्ट्रैक्टर) से दिनांक 07.05.2022 को कार्य के सम्बन्ध में बॉण्ड किया गया। मौके पर कॉन्ट्रैक्टर द्वारा तत्काल रोड़ कटान कार्य प्रारम्भ कर दिया गया जबकि वन विकास निगम को वांछित धनराशि दिनांक 07.11.2022 को जमा की गयी। **उक्त से स्पष्ट है कि वन विकास निगम को पातन हेतु धनराशि उपलब्ध कराने से काफी पहले ही प्रस्तावक विभाग द्वारा न सिर्फ रोड कटान का टेण्डर किया गया वरन् कॉन्ट्रैक्टर के साथ बॉण्ड भी कर दिया गया, जिससे पश्चात कॉन्ट्रैक्टर द्वारा अवैध तरीके से वृक्षों का पातन किया गया।***
3. *वन भूमि हस्तांतरण प्रस्ताव में सैद्धांतिक स्वीकृति निर्गत होने के बाद Linear प्रस्तावों में निर्माण कार्य प्रारम्भ करने हेतु प्रभागीय वनाधिकारी से अनुमति प्राप्त कर कार्य प्रारम्भ किया जा सकता है किन्तु प्रस्तावक विभाग द्वारा न तो कार्य प्रारम्भ करने की अनुमति मांगी गयी है और न ही अधोहस्ताक्षरी द्वारा कोई अनुमति दी गयी।*
4. *विषयांकित मोटर रोड हेतु सैद्धांतिक स्वीकृति आपके द्वारा दिनांक 17.11.2020 द्वारा निर्गत की गयी है। जबकि कार्यालय अधीक्षण अभियन्ता, प्रथम वृत्त, लोक निर्माण विभाग, अल्मोड़ा के पत्रांक 7624/204/सी0-01/2021, दिनांक 22.10.2021 के अनुसार*

समरेखण को पुनरीक्षित किया गया है अर्थात् सैद्धांतिक स्वीकृति प्राप्त होने के 11 महिने के पश्चात प्रस्तावक विभाग द्वारा समरेखण में परिवर्तन किया गया और उसकी सूचना अधोहस्ताक्षरी के कार्यालय को उपलब्ध नहीं करायी गयी। सैद्धांतिक स्वीकृति की बिन्दु संख्या 16 के अनुसार "केन्द्र सरकार की पूर्वानुमति के बिना प्रस्ताव का ले-आउट प्लान नहीं बदला जायेगा", किन्तु उपरोक्त से स्पष्ट है कि प्रस्तावक विभाग द्वारा ले-आउट प्लान बदला गया है और भारत सरकार से कोई पूर्वानुमति नहीं ली गयी है। जो कि स्पष्ट रूप से सैद्धांतिक स्वीकृती में दी गयी शर्तों का उल्लंघन है।

उक्त क्रम में राजस्व विभाग द्वारा मोटर मार्ग निर्माण के सम्बन्ध में अपनी जाँच आख्या भी कार्यालय को उपलब्ध करायी गयी है। जिसमें उल्लेख किया गया है कि चितई मुन्योली पेटशाल लिंकम मार्ग में ग्राम चितई पन्त, चितई तिवाड़ी तथा मुन्योली की भूमि सम्मिलित है। उक्त मोटर मार्ग की लम्बाई 6.00 किमी है तथा वर्तमान में कुल 2.50 किमी सड़क काटी जा चुकी है। उनके द्वारा जाँच में पाया गया कि चितई पन्त, चितई तिवाड़ी में काटी गयी सड़क लो०नि०वि० द्वारा बनाये गये संरेखण के अनुरूप काटी गयी है किन्तु ग्राम मुन्योली में संरेखण के अनुरूप नहीं है। जिसके सम्बन्ध में प्रस्तावक विभाग द्वारा उनको अवगत करया गया कि संरेखण परिवर्तन के सम्बन्ध में अधीक्षण अभियन्ता लो०नि० वि० अल्मोड़ा द्वारा प्राप्त कर ही कार्य किया गया है। **संरेखण में दिखाई गयी सड़क तथा मौके पर काटी गयी सड़क में लगभग 1.5 किमी अन्तर पाया गया।**

अतः उक्त क्रम में आपसे अनुरोध है कि प्रस्तावक विभाग द्वारा मोटर मार्ग निर्माण कार्य के दौरान भारत सरकार की अनुमति प्राप्त किये संरेखण परिवर्तन किये जाने तथा वन निगम द्वारा वृक्षों के पातन जाने से पूर्व ही स्वयं के स्तर से जे०सी०बी० द्वारा वृक्षों को गिराने के सम्बन्ध में अधोहस्ताक्षरी द्वारा की वाली कार्यवाही के सम्बन्ध में आवश्यक मार्ग दर्शन करने का कष्ट करें।"

Translation by Tribunal

"The road mentioned in subject, Lot No. 45/2022 was allotted to the Uttarakhand Forest Development Corporation for tree felling (Small List) vide letter No. 414/9-1(2), dated 20.07.2022 of the Office of the Divisional Forest Officer, Almora. In pursuance of this, a demand note was sent to the proposing department on 05.08.2021 by the Office of the Logging Manager, Uttarakhand Forest Development Corporation, Almora. Divisional Logging Manager, Almora has informed that the said amount was received by the Forest Corporation on 07.11.2022, in continuation of which, on 09.11.2022 he directed his subordinate staff to start felling work.

2. Vide letter no. 8265/Tender-01/2021, dated 27.11.2021 of the office of Superintending Engineer, First Circle, Public Works Department, Almora, a tender was invited for the said road cutting etc., in the course of which a bond was made with Shri Shivrāj Singh Banola (contractor) on 07.05.2022 regarding the work. The road cutting work was started immediately by the contractor on the spot, while the desired amount was deposited to the Forest Development

Corporation on 07.11.2022. It is clear from the above that much before making the funds available to the Forest Development Corporation for felling, not only the tender for road cutting was made by the proposing department, but a bond was also made with the contractor, after which the contractor felled the trees illegally.

3. After issuance of in-principle approval in the forest land transfer proposal, the work can be started by obtaining permission from the Divisional Forest Officer to start the construction work in the Linear proposals, but the proposing department has neither asked for permission to start the work nor has any permission been given by the undersigned.

4. In-principle approval for the said motor road has been issued by you on 17.11.2020 Whereas vide letter no. 7624/204/C0-01/2021, dated 22.10.2021 of the office of Superintending Engineer, First Circle, Public Works Department, Almora, the alignment has been revised, that is, after 11 months of receiving in-principle approval, the alignment was changed by the proposing department and its information was not made available to the office of the undersigned. According to point number 16 of in-principle approval, "The layout plan of the proposal will not be changed without the prior approval of the Central Government, but it is clear from the above that the layout plan has been changed by the proposing department and no prior approval has been taken from the Government of India which is clearly a violation of the conditions given in the in-principle approval.

In the above sequence, the Revenue Department has also provided its investigation report to the office regarding the motor road construction in which it has been mentioned that the Chitai Munyoli Petshaal link road includes the land of villages Chitai Pant, Chitai Tiwari and Munyoli. The length of the said motor road is 6.00 km and at present a total of 2.50 km of road has been cut. In their investigation, it was found that the road cut in Chitai Pant, Chitai Tiwari has been cut as per the alignment prepared by PWD but is not as per the alignment in village Munyoli. Regarding which, the proposing department has now informed them that the change in alignment has been done only after getting the approval of the Superintending Engineer PWD, Almora. A difference of about 1.5 km was found between the road shown in the alignment and the road cut on the spot.

Therefore, in the above sequence, you are requested to kindly provide necessary guidance regarding the action to be taken by the undersigned in relation to the change in alignment by the proposing department after obtaining permission from the Government of India during the construction of the motorway and felling of trees by JCB at his own level before the felling of trees by the Forest Corporation."

18. In view of letter of Divisional Forest Officer, Almora complaining about violation of conditions of in-principle/stage I approval, IRO, MoEF&CC, Dehradun suspended construction of proposed motor road and sought a detailed justification including, name of persons responsible for alleged violation from Additional Principal Chief Conservator Forest, Cum Nodal Officer, Forest Department, Government of Uttarakhand vide letter dated 25.01.2023. The User Agency i.e. Public Works Department, Almora submitted a justification to Divisional Forest Officer on 15.04.2023. After examining same, IRO, MoEF&CC, Dehradun found that State Forest Department, Govt. of Uttarakhand has not conducted any enquiry at its own level about alleged violations in construction of proposed road and merely, justification given by User Agency, was forwarded without any specific comments. Accordingly vide letter dated 16.05.2023, IRO, MoEF&CC, Dehradun requested Additional Principal Chief Conservator of Forests cum Nodal Officer, State Forest Department, State of Uttarakhand to submit a detailed justification in the matter. Thereafter, justification of Divisional Forest Officer, Almora was received through Additional Principal Chief Conservator of Forests cum Nodal Officer on 18.09.2023 which was scrutinized but found incomplete. Vide letter dated 04.10.2023, IRO, MoEF&CC, Dehradun sought essential details on five points from State Forest Department. It also decided to discuss matter in upcoming fortnightly Regional Coordination Meeting of Regional Office of IRO, MoEF&CC, Dehradun. Vide letter dated 04.10.2023, State Government was requested to direct concerned User Agency to provide detailed justification in the matter before upcoming fortnightly Regional Coordination Meeting.

19. Tribunal vide order dated 21.11.2023 observed that environmental issues were being ignored and fate of project was also lying in uncertainty

due to pendency of application for requisite approval therefore it observed that let a joint meeting be convened in the office of IRO, MoEF&CC, Dehradun under its Chairmanship for consideration of entire matter and grant of requisite approvals. Status report was required to be submitted to Tribunal accordingly.

20. Meeting was held on 05.12.2023 and its minutes have been placed on record vide letter dated 18.12.2023 by Assistant Inspector General of Forests, (C) IRO, MoEF&CC, Dehradun. The minutes show that during course of meeting, after detailed discussion, all participants accepted that User Agency has violated Rules and constructed road at a place other than approved road alignment without prior approval of Competent Authority. In the circumstances, State Government was requested to submit documents /clarification/information on the following points:

“After detailed discussion, all the participants accepted that the user agency has violated the rules and constructed the road at the place other than the approved road alignment without prior approval of competent authority. (Attendance sheet of participants is attached as Annexure-I)

In this context, State Government is requested to submit documents/ clarification/ information on following points:

- (i) The detailed violation report in the proposal.*
- (ii) The name of the officials/ authority responsible for the violation.*
- (iii) The DFO shall verify the area and submit KML file of the original road diversion area and the area where road was actually constructed on ground separately (with different colors) along with the details of length and width.*
- (iv) The DFO/CF shall initiate action against violators under section 3A and 3B of the Forest (Conservation) Act, 1980 which is clarified by the MoEFCC guidelines dt. 15.05.2023 (copy enclosed). The DFO shall comply the action within 15 days.”*

21. Public Works Department, State of Uttarakhand through Executive Engineer, Construction Division has submitted an affidavit dated 26.02.2024 wherein facts stated in earlier response have been repeated and reiterated. It is said that in-principle approval was suspended by IRO, MoEF&CC, Dehradun vide letter dated 25.01.2023 and Executive Engineer vide letter dated 23.03.2023 has sent a report on three points as desired by IRO, MoEF&CC, Dehradun. However, work of road construction has been stopped due to suspension of in-principle approval by IRO, MoEF&CC, Dehradun, though villagers are continuously demanding for construction of proposed road at the earliest.

22. In respect of four points mentioned in Joint Committee meeting dated 05.12.2023, reply has been given by Divisional Forest Officer, Almora which has been reproduced in above reply in para 29, in tabular form, as under:

1.	<i>The Details violation report in proposal</i>	<i>In the spot inspection Divisional Forest Officer, Almora, enquired with the project proponent including revenue department and contractor, in which it was informed that during the construction work of the road, the cutting work of road was done by J.C.B. without permission of the Public Works Department, and therefore, the Case No.42 of 2023-24 was lodged under Section 33 of Forest Conservation Act, against the operator and the fine of Rs.1,05,000/- (Rupees one lakhs five thousand) was imposed and the same was recovered.</i>
	<i>The name of the official/ authority responsible for the violation.</i>	<i>The Divisional Forest Officer, Almora inquired with regard to Violation of Forest Conservation Act at the spot, in continuation of the same, the project proponent/department informed that vide letter no.81/3C (V.Bhu.)</i>

		dated 9.1.2024, the contractor done the work without informing the officers/employees of the department, and with regard to the same the Department issued several letters with regard to violation of conditions of the contract. That the contractor vide its letter dated 13.7.2023, had informed that their JCB machine operator namely Shri Devendra Singh had cut some corner of some civil lands in changed alignment, which cause minor harm to some trees, the Forest Department has taken the said trees into their possession, for which the contractor admitted the mistake of the machine operator and agreed to pay fine for the same and for the same the fine of Rs.1,05,000/- has already been imposed and recovered in the name of JCB operator.
	DFO shall verify the area and submit KML file to the original road diversion area and the area where road actually constructed on the ground separately (with different colour) along with the details of length and width	The Divisional Forest Officer, inspected the motor road on 20.12.2023, and also inspected the alignment and also inspected actual position. The Public Works Department provided all the records with regard to changed alignment. The total length is 5.650 KM and width is 9.00 meter in the same. The Public Works Department recommended for minor changed in the approved 1.150 K.M. length in the Naap and Civil land, and the same was approved by the appropriate officer. The Public Works Department presently done the work of road cutting of about 2.50 k. m. length and 6.00 meter width.
	The DFO/CF shall initiate action against violators	The Divisional Forest Officer, Almora issued Notice to the project

<i>under Section 31 and 3b of the Forest Conservation Act, 1980 with is clarify by the MoEF&CC guidelines dated 15.5.2023. the DFO shall comply the action within 15 days</i>	<i>proponent department under section 3 (a) and 3 (b) of the Forest Conservation Act, 1980 vide dated 18.12.2023 with regard change in alignment. In compliance of the same the report was provided vide letter no.81/03 C. (V.Bhu.) dated 9.1.2024, in which changedin alignment was found of 0.408 Hect. The project proponent department imposed fine as N.P.V. amount (in the double rate of NPV as presently, the 20 percent of the same and 12 percent annual interest total amount (0.408x1292850x2x20%) +12% annual interest for 1.5 years) comes to Rs.248972.00 (Rupees two lakhs forty eight thousand nine hundred and seventy two only), the above NPV amount of Rs.248972/- may be provided by the project proponent department as per conditions of in-principle approval.</i>
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23. It is further said that Contractor vide letter dated 13.07.2023 has admitted fault but blaming JCB Operator, agreed to pay a fine of Rs. 1.05 lakhs which has already been recovered by Divisional Forest Officer, Almora from Contractor. Change in the alignment is also admitted which has resulted in damage to certain trees. In para 31, Executive Engineer, Construction Division, PWD, Uttarakhand has said as under:

*“30. That it is also important to mention herein, that the contractor vide its letter dated 13.7.2023 has admitted the fault of their JCB operator and agreed to pay fine, **Rs.1.05 Lakhs has already been recovered** by the Divisional Forest Officer, Almora. Uttarakhand from the contractor.*

31. It is also important to mention in view of the court case file by the applicant herein before the Civil Judge (Junior Division) Almora with regard to the earlier alignment, the public works department and revenue department had done new survey for change in the

earlier alignment. The local public and public representative Shri Raghunath Singh Chauhan, the then Hon'ble Deputy Speaker, Uttarakhand Vidhan Sabha directed to change the alignment vide his letter no.1863/Hon'ble Deputy Speake dehradun dated 09.09.2021. The contractor started the work in the above said area of 5.650k.m., without informing Public Works Department and due to that minor harm caused to the trees, in cutting of the corner in the Naap land.

32. That it is relevant to mention herein that in past several accidents occurred in Almora —Ghat motor road (N.H. 309) due excessive grade of the road on the Chitai to Petshali.
33. That the said accidents can be avoided after completion of the road in question.
34. That it is respectfully submitted that proposed motor road from Chatai Pant Tiraha to (beyond the Hari Dutt Petsali Inter College) to Petshalis a very important road. For construction of the proposed road the villagers and public representatives are regularly demanding/ approaching the Government and the same is in larger public interest. By construction of the abovesaid proposed road, the villagers of villages Chitai Pant, ChitaiTiwari, Manyoli, Poonakot, PetshalBadi, PaatalDev will be benefited for education, medical facility and agriculture etc. in very short time they will reach their destination, as the farmers can take their produces to main highway/ main market etc. as well as the transportation charges will decrease for villagers, thereby the economical and financial condition will be better for the poor villagers, as well as they will get better prices of their produces after going to the main market in a less time, and it is very important to mention herein that migration will also be stop after construction of the proposed road.”

24. It is also said that due to accident prone area, construction of road in question is very important which will be beneficial for local residents towards education, medical facility and agriculture, etc. as it will reduce travelling time to reach their destination. With regard to change in alignment in para 35 and 36, affidavit says as under:

“35. That the committee of Engineer Pradeep Puri, the then Junior engineer (Contract), Engineer G.B. Joshi, the then Assistant engineer and Engineer Ashutosh Kumar, the then Executive engineer had prepare the proposal of proposed amended alignment and Engineer P.S. Nabiya, the then Superintending Engineer, First Circle, PW.D approved the same on 22.10.2021. The contract for the above said road was executed by the Engineer G.B. Joshi, the then Assistant engineer, Engineer Ashutosh Kumar, the then Executive

engineer, Construction Division, Almora and Engineer G.C. Arya, the then Superintending Engineer, First Circle, PWD, Almora.

36. *That the Chief Engineer PWD, Almora, vide its letter dated 16.2.2024 send the report to the Head of Department, PWD, Dehradun, wherein it was informed that the then Executive Engineer could not send the proposal for final / vidhiwat approval with regard to amended alignment, whereas the in-principle approval was received on 17.11.2020 for length of 7.700 K.M. It is also relevant to mention herein that in the amended alignment only 513 trees will be affected, whereas in the earlier alignment 794 trees were going to be affected, and no reserved forest land will be affected in the amended alignment and civil/ van panchayat and naap land comes in the amended alignment and proposal for transfer of forest land has to be send in the amended alignment for due approval of transfer of forest land.”*

25. Again, matter was examined by Tribunal on 02.05.2024 and it found that to resolve issues between concerned Departments let a joint meeting be held on 15.06.2024 in the office of IRO, MoEF&CC, Dehradun under his Chairmanship and a status report be submitted to Tribunal.

26. Pursuant thereto, meeting was held and its minutes have been placed on record at page 256. Relevant extract is reproduced as under:

“A proposal was received in MoEF&CC, RO Dehradun through Additional Secretary, Government of Uttarakhand vide letter No. 481/X-4-15/1(275)/2015 dated 30.06.2015 seeking diversion of 2.43875 ha forest land in favor of PWD, Almora for construction of Chitai to Hari Dutt Petsali Inter Collage motor road.

*The proposal had accorded In-principle/Stage-I approval by MoEF&CC, RO Dehradun vide letter No. 8B/UCP/06/125/2015/FC/1765 dated 17.11.2020 with a condition that the **lay out plan of proposal will not be changed without prior approval of the Central Government.***

In the month of August, 2022, Shri Rashesh B. Vissanji has filed an O. A. No. 614/2022 in the Hon’ble NGT complaining about illegal cutting of trees by using JCB for construction of proposed 6 Kms of Chitai Manjoli Petshal motor road and disposal of construction material (muck) illegally on fertile agricultural land of poor farmers damaging the crops.

The DFO, Almora vide letter dated 31.12.2022, had reported violation of condition no. 16 of Stage-I approval accorded by MoEF&CC, RO Dehradun. Afterwards, considering the alleged violation in the proposed motor road as reported by the DFO, Almora, the Stage-I approval was suspended by MoEF&CC, RO Dehradun vide letter dated 25.01.2023. Subsequently, vide letter dated 25.01.2023 of this office, three queries were raised of which the point No. 2 asked the user agency to submit a revised proposal. In compliance of which the State Forest Department submitted that the user agency had submitted a proposal for change in alignment to DFO, Almora and DFO, Almora stated that total 513 trees to be affected in revised alignment instead of 794 trees in previously approved alignment. The proposal was examined and five queries were raised by the Regional Office Dehradun on 04.10.2023 of which the replies were submitted by the office of APCCF-cum-Nodal Officer, Uttarakhand on 23.11.2023.

In compliance of the order dated 21.11.2023 passed by the Hon'ble NGT in OA no. 614 of 2022, a meeting was called under the chairmanship of Deputy Director General of Forest (C), MoEF&CC, Regional Office Dehradun on 05.12.2023. After detailed discussion, few observations were made. State Government was requested to submit documents/ clarification/ information on following points:

- (i) The detailed violation report in the proposal.*
- (ii) The name of the officials/ authority responsible for the violation.*
- (iii) The DFO shall verify the area and submit KML file of the original road diversion area and the area where road was actually constructed on ground separately (with different colors) along with the details of length and width.*
- (iv) The DFO / CF shall initiate action against violators under section 3A and 3B of the Forest (Conservation) Act, 1980 which is clarified by the MoEF&CC guidelines dt.15.05.2023 (copy enclosed). The DFO shall comply the action within 15 days.*

In view of the guidelines dated 15.06.2023 issued by the MoEF&CC, New Delhi & to comply with the direction given under point No. 4 of the MoM dated 05.12.2023, the DFO, Almora vide his letter dated 21.02.2024 has requested this office to authorize him to file a case under Section 3A & 3B of Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.

Later, MoEF&CC, RO Dehradun vide letter dated 23.02.2024, authorized the DFO, Almora to initiate action under Section 3A & 3B of Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 against User Agency.

Meanwhile, the matter was also taken up on 02.05.2024 before the Hon'ble NGT & as per the order, DFO, Almora & Ex. Eng. PWD, Almora were appeared before the tribunal through VC and they had assured to take requisite steps for compliance with the decisions taken in the meeting held on 05.12.2023.

Further, the Hon'ble NGT directed that a meeting to be convened again on 15.06.2024 in the office of Regional Officer, Integrated Regional Office MoEF&CC, Dehradun under the Chairmanship of Regional Officer which shall be attended personally by concerned Additional PPCF-Nodal Officer, Government of Uttarakhand for diversion of forest land for non forest purposes under the Forest Conservation Act, 1980, DFO, Almora, Executive Engineer, PWD, Almora, officers dully authorized by PCCF (HoFF), Government of Uttarakhand and District Magistrate, Almora for appropriate resolution of the matter of grant of requisite approvals.

In compliance to the above order, MoEF&CC, RO Dehradun issued a letter dated 17.05.2024 to the PCCF (HoFF), Govt. of Uttarakhand with a request to direct the DFO, Almora to initiate action against the violators u/s 3A & 3B of FCA, 1980 and submit a detailed report before 15.06.2024 to RO Dehradun.

The PCCF-cum-Nodal Officer (FCA), Govt. of Uttarakhand informed vide letter dt. 29.05.2024 that a Range case No. 52/Almora range/2023-24 has been filed in the learned court of CJM, Almora against violators.

After detailed discussion on the above facts, the members/participants noted that DFO, Almora has already booked a case in court of CJM, Almora, under Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.

The members/ participants decided that as revised alignment of road is far different from original road alignment, the user agency shall submit a fresh proposal with violation details. As per the rules, all violation cases are to be dealt by MoEF&CC, New Delhi and this office will process the proposal accordingly.”

27. Similar status Report has been filed vide email dated 22.07.2024 by Executive Engineer, Construction Division, Public Works Department, Almora.

28. An additional status Report is submitted in continuation of earlier status report by Executive Engineer, PWD, State of Uttarakhand stating that vide letter dated 20.07.2024, a request was made to District Magistrate for allocation of land for compensatory tree plantation. Land

was allocated by District Magistrate which shall be designated *in lieu* of Artola-Jageshwar-Naini Seraghat Motor Road. District Magistrate has allocated civil land in field no. 1586 M and 1729 M, falling under Category 9 (3) E of road in Tehsil Bhikiyasain, Village Saskhet, District Almora. Relevant extract of Additional Status Report as contained in para 3 to 7 are reproduced as under:

- “3. That the undersigned vide office letter No. 2071/3C dated 20.07.2024, made a request to the District Magistrate for the allocation of land for compensation tree plantation. The land, as allotted by the District Magistrate vide his letter No. 0-5934/26-FC/2023-24 dated 25.06.2024, shall be designated *in lieu* of the Artola-Jageshwar-Naini Seraghat Motor Road. The specified motor road stretches from Chitai Pant Tirahe of Almora-Ghat Motor Road (beyond Haridatt Petshali Inter College) to Petshal, covering an area of 3.58 hectares. Additionally, from 18 km of Almora-Bajjnath-Gwaldam-Karnprayag Motor Road, extending from Ram Mandir to Gunkande Tok, an area of 1.44 hectares is involved in the land allocation request. The copies of the said letters have been annexed herewith and are marked as **Annexures A and B** respectively.
4. That, the District Magistrate's office was directed to evaluate the suitability of the previously allotted land and to request the adjustment of suitable land accordingly. Subsequently, during a joint inspection conducted by the Forest Department, Revenue Department, and Public Works Department on 26.07.2024, certain portions of land were deemed suitable. A copy of the said inspection report has been annexed herewith and is marked as **Annexure C**.
5. That the undersigned, vide office letter No. 2259/3C dated 01.08.2024, once again made a request to the District Magistrate, Almora, for the adjustment of land allocation for compensatory tree plantation. In response to this request, the District Magistrate, Almora, vide his letter No. 6973/Chhabbis-7/2023-24 dated 05.08.2024, allocated civil land in Field No. 1586M and 1729M, falling under Category 9 (3) E of road in District Almora, Tehsil Bhikiyasain, Village Saskhet, for the purpose of compensatory tree plantation. That, a copy of the said letter has been annexed herewith and is marked as Annexure D.
6. That, following the allocation of land, all necessary forms for compensatory tree plantation were duly prepared and signed by the Forest Range Officer, Sub-District Officer, and Divisional Forest Officer. After addressing the objections raised by the

Chief Forest Conservator and Nodal Officer, Forest Conservator, Indira Nagar Forest Colony, Uttarakhand, Dehradun, the proposal for the transfer of forest land was reconstituted and submitted. That, this proposal was subsequently sent online to the Divisional Forest Officer, Almora Forest Division, Almora, on 08.08.2024. A copy of the said acknowledgement has been annexed herewith and is marked as Annexure E.

7. *That, following the restoration of in-principle approval, the construction work on the road shall commence in accordance with the applicable rules, contingent upon obtaining the necessary working permission from the Divisional Forest Officer.”*

29. On 12.08.2024, when matter was heard by Tribunal, Deepak Kumar, Divisional Forest Officer, Almora appeared in virtual mode and stated that 129 trees were cut illegally without permission from Forest Department. Tribunal found that nothing was placed on record to show action, if any, taken by Forest Department against violators for illegal cutting of trees. Accordingly, PCCF (HoFF), respondent 3 was directed to submit its response giving information about action taken against violators. UKPCB was also directed to submit its report as to what action it has taken for illegal cutting of trees.

30. Divisional Forest Officer, Almora submitted its response vide letter dated 27.08.2024 stating that under FC Act, 1980, H-2 cases have been registered and penalty has also been recovered from concerned Contractor for illegal cutting of trees. Further, for change of alignment in forest land, a case under Section 3A and 3B of FC Act, 1980 has been registered in the Court of District Judge, Almora against Executive Engineer, Assistant Engineer and Junior Engineer of Public Works Department. Relevant extract of reply is reproduced as under:

“1.-कि शिकायकर्ता श्री रसेश बी० विशनजी द्वारा दिनांक 17.05.2022 को मोटर मार्ग निर्माण कार्य में अवैध वृक्षों का कटान, मलवा निस्तारण व बिना स्वीकृति कार्य किये जाने के सम्बन्ध में मा० एन०जी०टी० में शिकायत की गयी थी, जिसके क्रम में मा० एन०जी०टी० में

उनके मूल आवेदन सं० 614/2022 में पारित आदेश दिनांक 23.09.2022 के अनुपालन में गठित समिति द्वारा दिनांक 09.11.2022 को संयुक्त स्थलीय निरीक्षण किया गया। (संलग्नक-1)

2- कि संयुक्त निरीक्षण रिपोर्ट में उनके द्वारा पाया गया कि 'निर्माण कार्य के दौरान ठेकेदार द्वारा नाप भूमि में प्रभावित कुछ चीड़ के वृक्षों को सम्बन्धित ग्रामीणों/ भूस्वामियों की सहमति से गिराया गया है व अन्य वृक्ष विगत वर्षाकाल में भू-कटाव के कारण स्वतः ही गिर गये। उक्त समस्त वृक्षों को सम्बन्धित भूस्वामियों की सुपुर्दगी में रखा गया है। जांच समिति द्वारा पाया गया कि ठेकेदार द्वारा बन विकास निगम उत्तराखण्ड द्वारा वृक्षों के पातन से पूर्व ही जे०सी०पी० द्वारा रोड़ कटान का कार्य प्रारम्भ किया गया, किन्तु ठेकेदार द्वारा गिराये गये वृक्षों को क्षेत्र से कहीं अन्यत्र नहीं ले जाया गया। वर्तमान में वन विकास निगम को लॉट हस्तान्तरित की जा चुकी है (संलग्नक-2)।

3- उत्तराखण्ड वन विकास निगम द्वारा अपने पत्र के माध्यम से अवगत कराया गया है कि कार्यदायी संस्था लोक निर्माण विभाग द्वारा वृक्षों के पातन के सम्बन्ध में वांछित धनराशि रू० 2278091.00 जमा किये जाने के उपरान्त वन निगम द्वारा कुछ वृक्षों का पातन कर लिया गया। (संलग्नक-3) मौके पर ठेकेदार द्वारा वन निगम के पातन किये जाने से पूर्व जे०सी०पी० द्वारा वृक्षों के अवैध पातन के सम्बन्ध में वन क्षेत्राधिकारी अल्मोड़ा द्वारा प्रभागीय वनाधिकारी के दिशानिर्देशों के क्रम में दिनांक 24.12.2023 को एच०-2 केस पंजीकृत कर दिया गया, जिसमें वृक्षों के पातन किये जाने पर सम्बन्धित ठेकेदार से प्रतिपूर्ति वसूल कर ली गयी। (संलग्नक-4)

प्रकरण पर प्रस्तावक विभाग निर्माण खण्ड लोक निर्माण विभाग, अल्मोड़ा द्वारा अपने पत्रांक 2588/3 सी०व०भू० दिनांक 27.08.2024 के माध्यम से अवगत कराया गया है कि मोटर मार्ग में वन संरक्षण अधिनियम 1980 का उल्लंघन पाये जाने की स्थिति में उनके द्वारा सम्बन्धित ठेकेदार का अग्रिम पूर्ण भुगतान रोक दिया गया है। (संलग्नक-5)

4- कि प्राप्त शिकायत के आधार पर मोटर मार्ग निर्माण कार्य का राजस्व विभाग द्वारा स्थलीय जांच की गयी जिसमें मोटर मार्ग निर्माण कार्य के दौरान लगभग 1.5 किमी० लम्बाई में संरेखण परिवर्तन पाया गया। (संलग्नक-8) उक्त के क्रम में प्रभागीय वनाधिकारी द्वारा प्रकरण पर अग्रिम कार्यवाही किये जाने के सम्बन्ध में अपर प्रमुख वन संरक्षक, भारत सरकार, पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, देहरादून को आवश्यक मार्गदर्शन हेतु पत्र प्रेषित किया गया। जिसके क्रम में भारत सरकार की पर्वानुमति के बगैर संरेखण परिवर्तन किये जाने के सम्बन्ध में सम्बन्धित अधिशासी अभियन्ता, सहायक अभियन्ता व कनिष्ठ अभियन्ता के विरुद्ध भारत सरकार द्वारा प्रभागीय वनाधिकारी अल्मोड़ा को वन संरक्षण अधिनियम 1980 की धारा 3(ए) व 3(बी) के अन्तर्गत कार्यवाही किये जाने हेतु अधिकृत किये जाने के उपरान्त मा० जिला न्यायालय अल्मोड़ा में केस पंजीकृत कर दिया गया है। वर्तमान में कार्यवाही मा० जिला न्यायालय अल्मोड़ा में गतिमान है। (संलग्नक-7).

5- मोटर मार्ग संरेखण परिवर्तन के सम्बन्ध में भारत सरकार द्वारा संशोधित प्रस्ताव प्रस्तुत किये जाने के निर्देश दिये गये थे, जिसके क्रम में प्रस्तावक विभाग द्वारा संशोधित नवीन प्रस्ताव ऑनलाईन परिवेश पोर्टल पर अपलोड कर दिया गया है। ”

Translation by Tribunal:

“1. A complaint was made by the complainant Shri Rasesh B. Vishanji to Hon'ble NGT on 17.05.2022 regarding illegal cutting of trees, disposal of debris and work being done without approval in the construction of motor road, in the sequence of which a joint field inspection was conducted on 09.11.2022 by the committee constituted in compliance with the order dated 23.09.2022 passed in his original application no. 614/2022 in Hon'ble NGT. (Annexure-1)

2. In the joint inspection report, they found that 'during the construction work, some pine trees affected in the measured land were felled by the contractor with the consent of the concerned villagers / landowners and other trees fell automatically due to soil erosion during the last rainy season. All the said trees have been handed over to the concerned landowners. The investigation committee found that the road cutting work was started by JCP even before the felling of trees by Forest Development Corporation Uttarakhand, but the trees felled by the contractor were not taken anywhere else from the area. Presently, the lot has been transferred to the Forest Development Corporation (Annexure-2).

3. Uttarakhand Forest Development Corporation has informed vide its letter that after the Public Works Department i.e. implementing agency deposited the desired amount of Rs. 2278091.00 in relation to felling of trees, some trees were felled by the Forest Corporation. (Annexure-3) Before the felling by the contractor on the spot, in relation to illegal felling of trees by JCP, Forest Area Officer Almora registered H-2 case on 24.12.2023 in accordance with the guidelines of Divisional Forest Officer, in which compensation was recovered from the concerned contractor for felling of trees. (Annexure-4)

The proposing department, Construction Section, Public Works Department, Almora has informed vide its letter no. 2588/3 C.V.Bhu. dated 27.08.2024 that in case of violation of Forest Protection Act 1980 found in the motor road, the full advance payment of the concerned contractor has been stopped by them. (Annexure-5)

4. On the basis of the complaint received, the Revenue Department conducted a field investigation of the motor road construction work in which alignment change of about 1.5 km length was found during the motor road construction work. (Annexure-8) In continuation of the above, the Divisional Forest Officer sent a letter to the Additional Chief Conservator of Forests, Government of India, Ministry of Environment, Forest and Climate Change, Dehradun for necessary guidance regarding taking further action on the case. In continuation of which, after the Divisional Forest Officer Almora was authorized by the Government of India to take action under Section 3(A) and 3(B) of the Forest Conservation Act 1980 against the concerned Executive Engineer, Assistant Engineer and Junior

Engineer regarding changing the alignment without the prior permission of the Government of India, a case has been registered in the Hon'ble District Court Almora. Presently the proceedings are in progress in the Hon'ble District Court Almora. (Annexure-7).

5. Instructions were given by the Government of India to submit a revised proposal regarding the change in the alignment of the motorway, in which sequence the revised new proposal has been uploaded by the proposing department on the online environment portal.”

31. UKPCB also filed response vide Affidavit dated 09.09.2024 reiterating virtually facts as disclosed by Regional Forest Officer, Almora and it is said that Rs. 1,05,000/- has been recovered from Contractor towards penalty for illegal felling of 129 trees and a forest offence (H-2) has also been registered.

32. Above reply of UKPCB did not contain anything towards imposition of environmental compensation for damage caused to environment due to illegal cutting of trees and when questioned on this aspect in proceedings dated 12.09.2024, time was sought by UKPCB for assessment of imposition of environmental compensation for illegal cutting of trees and damage caused to forest as well as environment, which was granted.

33. An Affidavit dated October 2024 has been filed vide e-mail dated 21.10.2024 stating that there was no mechanism for assessment of environmental compensation on account of illegal felling of trees earlier and, therefore, a Committee was constituted to examine this aspect. And now, in minutes dated 15.10.2024, Committee has proposed following factors to be considered for imposition of environmental compensation for unlawful tree felling:

“1. **GBH and trunk area** of the tree.

2. **Rupee factor:** Cost of sapling as per present market rates/ notified rates, if any including the cost transportation/ fixing/ logistic

is proposed to be considered as rupee factor Cost of sampling shall be varied and the cost of fixing the plant will be fixed. The fixing cost shall be taken because it will reflect the care of tree during its growth.

3. **Species factor** shall be considered by classifying or grouping tree species in different classes and giving them weightage say ranged from 0.1 to 1.0 scale.

4. **Condition factor:** Depend on the condition of tree the index shall be made and higher value shall be assigned to the health tree. It is also agreed that a tree of a particular species has its average age in years So, age factor shall be incorporated. For example, such trees who have attained average age, shall be given an additional value say ranged from 0.1 to 0.5 depending on the surplus age from the average age.

5. **Location factor:** This may include rural, urban, metro, national parks, wild life sanctuaries, tiger reserve, conservation reserve, reserve forest, protected forest and the index shall be made. It is also proposed if in any area the tree is of a religious importance/ sacred grove, then the value of location factor shall be taken as the value assigned for one step above in the index.”

34. Learned Counsel for UKPCB stated that initially only Forest Department used to charge penalty for felling of trees in non-forest area without appropriate permission and there was no methodology available for imposition of environmental compensation by Pollution Control Board. Since there was no specific provision, hence, environmental compensation was never imposed by UKPCB but now in the light of the observations made by this Tribunal, the methodology for computation of environmental compensation for the damage caused to environment due to illegal felling of trees has been prepared and would be acted upon.

35. We intend to clarify at this stage that an illegality committed in felling of a tree in violation of the laws which requires permission from the Competent Authority before felling of trees, and penalty imposed for such violation, is not something akin to the loss caused to the environment due to illegal felling of trees for which environmental compensation is to be

determined and leviable by application of principle of 'Polluter Pays'. Further, deterioration of environmental compensation is not within the Province of the Forest Officers or any district authority but within the power and ambit of concerned Pollution Control Board/Committee.

36. The purpose of imposition of fine by the forest authorities is for non-compliance of the provisions of Statutes which require their permission if any operating or enforced in the area concerned and/or to charge penalty upon the violator for the property in the trees which is/are cut illegally provided trees are on public land. This later aspect does not cover the trees which are cut on private land.

37. However, the purpose of environmental compensation is totally different. Environmental compensation is imposed when an act or omission on the part of a person has caused any loss/damage to the environment which requires its remediation. This would include loss to the environment caused due to illegal cutting of trees, whether on forest land or on non-forest land.

38. Tribunal has repeatedly held that assessment/computation of environmental compensation for restoration of the damaged environment should take care of damage caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of being punitive. The idea is not only for restoration/remediation or to mitigate damage/loss to environment, but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment. The imposition of environmental compensation is in furtherance of the application of principle of 'Polluter Pays'. In the context of this Tribunal, NGT Act, 2010 vide Section 20 itself recognizes application

of the said principle but for the Statutory Authorities who have power to issue statutory directions for enforcement of environmental laws, principle of 'Polluter Pays' is available being integral part of environmental jurisprudence. The power of Statutory Authorities to levy Environmental Compensation by application of 'Polluter Pays' principle is available in the provisions of environmental laws containing provisions to issue direction like Section 33A of Water act, 1974, Section 5 of EP Act, 1986, etc.

39. When environment is damaged on account of act of someone's illegal activity in violation of environmental laws and norms, such violator is liable to share the cost which may be incurred for remediation and rejuvenation of damaged environment. This has been recognized as principle of 'Polluter Pays'.

40. This Principle was recognized as part of environmental law in India in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996) 3 SCC 212***. Certain industries producing assets were dumping their waste. Even untreated waste water was allowed to flow freely polluting atmosphere and sub-terrain supply of water which ultimately caused darkening and dirtiness of wells and the streams water rendering it unfit for human consumption. Certain environmentalists' organizations broadly alleging severe damage to villager's health, filed a Writ petition as PIL in 1989 before Supreme Court. By that time, some of the units were already closed. Referring to Article 48-A in Directive Principles of State Policy and 51-A in the Fundamental duties of citizens, Supreme Court observed that said provisions say that State shall endeavour to protect and improve environment and to safeguard the forest and wildlife of the country. One of the fundamental duties of citizens is to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creature. Where a **Proponent has established its**

commercial unit and operate contrary to law flouting norms provided by law, Statutory Regulator is bound to act and if it fails, a judicial forum can direct it to act in accordance with law.

41. Referring to Oleum Gas leak case, i.e., *M.C. Mehta vs. Union of India, (1987) 1 SCC 395*, Court observed in para 58 that the constitution bench held that **enterprise must be held strictly liable for causing such harm as a part of social cost of carrying on the hazardous or inherently dangerous activity**. Hazardous or inherently harmful activities for private profits can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of carrying on of such hazardous or inherently dangerous activity, regardless of whether it is carried on carefully or not.

42. Court also referred to its earlier decision in *Indian Council for Enviro Legal action vs. Union of India, (1995) 3 SCC 77*, wherein concerned Pollution Control Board identified about 22 industries responsible for causing pollution by discharge of their effluent and a direction was issued by Court observing that they were responsible to compensate the farmers. It was the duty of State Government to ensure that this amount was recovered from the industries and paid to the farmers. In para 67 of the judgment, Court said that the **question of liability of respondent units to defray the costs of remedial measures can also be looked into from another angle which has now come to be accepted universally as a sound principle**, for example, 'Polluter Pays' principle. On this aspect, Court further observed as under:

“67. ...The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out

remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'Polluter Pays' principle was promoted by the Organization for Economic Co-operation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialized society. Since then, there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactory agreed.

*Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme ([1987] OJC 328/1) makes it clear that **the cost of preventing and eliminating nuisances must in principle be borne by the polluter**', and the polluter pays principle has now been incorporated into the European Community Treaty as part of the new Articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventative action; the need for environmental damage to be rectified at source; and that the polluter should pay."*

43. Court further said that **according to the above principle of 'Polluter Pays', responsibility for repairing the damage is that of the offending industry**. Sections 3 and 5 of EP Act, 1986 empower Central Government to give directions and take measures for giving effect to this principle. Court further said:

*"...In all the circumstances of the case, **we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment [Protection] Act, 1986**. It is, of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit."*

44. The above principle has been followed in **Vellore Citizen Welfare Forum vs. Union of India, 1996 (5) SCC 647**. In para 25, direction no. 2 reads as under:

*2. The authority so constituted by the Central Government shall implement the “precautionary principle” and the “polluter pays” principle. The **authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.***

45. In **Bittu Sehgal and Another vs Union of India & Others, (2001) 9 SCC 181**, referring the earlier judgments, Supreme Court has said that ‘Precautionary Principle’ and ‘Polluter Pays Principle’ have been accepted as part of the law of the land.

46. In **Research Foundation for Science vs. Union of India & Ors., (2005) 13 SCC 186**, in para 26 and 29, Court, on ‘Polluter Pays’ Principle, has said as under:

“26. The liability of the importers to pay the amounts to be spent for destroying the goods in question cannot be doubted on applicability of precautionary principle and polluter-pays principle. These principles are part of the environmental law of India. There is constitutional mandate to protect and improve the environment. In order to fulfill the constitutional mandate various legislations have been enacted with attempt to solve the problem of environmental degradation.

29. The polluter-pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The

principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case.”

47. In ***Karnataka Industrial Areas Development Board vs. C. Kenchappa & Others, (2006) 6 SCC 371***, principle of ‘Polluter Pays’ has been explained in detail referring to the earlier judgments in ***Indian Council for Enviro-Legal Action vs. Union of India (supra)*** and ***Vellore Citizen Welfare Forum (supra)***.

48. So far as the cutting of trees is concerned, if a tree is illegally cut in a forest area, the provisions of FC Act, 1980 take care so far as the Forest Department is concerned but with regard to the damage to environment due to loss caused by removal of tree, environmental compensation has to be assessed by Statutory Regulator under the environmental laws. Similarly, in the case of non-forest area, different Provincial Legislations make laws to govern and regulate falling/removal of trees in given circumstances. There also, if felling of trees is illegal, for the damage caused to environment, environmental compensation has to be assessed and imposed by Statutory Regulators under the environmental laws.

49. In other words, it can be said that illegal cutting of a tree in a forest area or in non-forest area has equal damaging and adverse impact upon environment irrespective of the fact whether tree which has been removed was in forest area or in non-forest area. Therefore, for the purpose of application of environmental laws, considerations relevant for environmental protection have to be taken into consideration and applied accordingly in both the cases i.e., where a damage is caused to tree(s) illegally, whether in forest area or non-forest area.

50. Felling/cutting of trees is commonly known as deforestation. It represents a critical environmental challenge with far-reaching consequences. The causes of cutting of trees may be many. For example, timber production, land clearing for agriculture, urban development and forest management. The reasons may be genuine but damage to environment is normally same or similar and therefore, while permitting cutting of trees, the principle of 'Sustainable Development' has to be kept into consideration and while there is illegal felling of trees, appropriate action includes application of 'Polluters Pay' principle, i.e. the polluter must pay for the damage caused to the environment for its restoration. There may be instances where felling of trees may be necessary for economic development or safety reasons. It is crucial to comprehend its implications for environment and essential role that trees play in maintaining ecological balance. A renowned environmentalist, Wangari Maathai once said *"it is the little things citizens do. That is what will make the difference. My little thing is planting trees"*.

51. The above quote encapsulates the importance of trees not only in combating climate change, but also in fostering biodiversity and supporting human well-being. Trees play a vital role in the ecosystem by offering numerous benefits that extend beyond their physical presence. They provide habitats and sustenance for a wide array of species, thereby support biodiversity. Trees absorb carbon dioxide from atmosphere and thereby help mitigation of climate change by reducing greenhouse gas levels.

52. According to a study published in 'Nature', forests are responsible for sequestering approximately 30% of global carbon emissions and this highlights their critical role in climate regulation. Trees influence water cycle by maintaining soil moisture, reduce runoff and prevent erosion. They

act as natural sponges that absorb rainfall and release it slowly into environment thereby regulating stream flow and reduce flood risk. Trees improve air quality by filtering pollutants such as Sulfur Dioxide, Ammonia and Nitrogen Oxide. The extensive root system of trees stabilizes soil, prevents erosion and promotes nutrient cycle within ecosystems. Trees are crucial in regulating both local and global climates by influencing temperature and precipitation pattern. They serve as natural buffers against extreme weather events such as floods and droughts.

53. In brief, understanding importance of trees and recognizing impact of tree felling is essential for developing sustainable practices that balance human needs and environmental conservation. The importance and effect of trees on the environment of the ecology may be placed under the following heads:

(I) Habitat Loss and Biodiversity Decline

(a) Impact on Species Diversity: With more than 80% of terrestrial species found there, forests are hotspots for biodiversity. Habitat fragmentation brought on by tree loss can separate species populations and interfere with their mating habits. For example, in order to move and obtain food, huge creatures like tigers and elephants need to occupy large areas. These animals frequently have to relocate to smaller places where they are unable to flourish when forests are cut down.

(b) Ecosystem Services Interrupted: Forests provide essential ecosystem services such as pollination, seed dispersal, and nutrient cycling. The loss of tree cover can disrupt these processes, leading to reduced agricultural productivity and

compromised food security for animal kingdom that rely on these services.

- (c) **Extinction Risks:** The loss of habitat puts an estimated 1 million species in danger of going extinct, according to the International Union for Conservation of Nature (IUCN). Individual species are not the only ones impacted by this loss; entire ecosystems may become unstable. For instance, the loss of one pollinator species may have a domino effect on the capacity of other species to reproduce and obtain food.

(II) **Soil Erosion and Degradation**

- (a) **Soil Erosion Mechanisms:** By binding soil together, tree roots stop wind and water erosion. The soil becomes loose and more susceptible to erosion when trees are cut down. Significant land degradation can result from topsoil being washed away by heavy rains. In tropical areas with frequent heavy rainfall, this process is very severe.
- (b) **Increased Flooding Risks:** Deforested areas are more prone to flooding because there are fewer trees to absorb rainfall and slow down runoff. This increased runoff can lead to flash floods that devastate communities downstream and erode riverbanks.
- (c) **Extended Loss of Soil Fertility:** Additionally, the normal nutrition cycle is upset when trees are cut down. Organic matter and decomposing leaves add to soil fertility; in the absence of trees, this organic input is greatly reduced. This can eventually result in bare terrain that is unfit for natural regeneration or cultivation.

(III) Climate Change and Carbon Emissions

- (a) Role of Trees in Carbon Sequestration:** Trees play a critical role in sequestering carbon dioxide (CO₂) from the atmosphere through photosynthesis. When trees are cut down, not only is this carbon storage capacity lost, but the act of cutting down trees releases stored carbon back into the atmosphere.
- (b) Global Warming Contribution:** Deforestation contributes significantly to global warming. The Food and Agriculture Organization (FAO) reports that deforestation accounts for approximately 10-15% of global greenhouse gas emissions. The release of carbon from felled trees exacerbates climate change, leading to more extreme weather events such as droughts, hurricanes, and heatwaves.
- (c) Feedback Loops:** As climate change progresses due to increased greenhouse gas emissions from deforestation, it creates feedback loops that further threaten forests. For example, rising temperatures can lead to increased forest fires or pest infestations that further reduce tree cover.

(IV) Disruption of Water Cycles

- (a) Transpiration Process:** Trees contribute significantly to local water cycles through transpiration—the process by which water is absorbed by roots from the soil and released as vapor through leaves. This process helps to regulate local humidity levels and precipitation patterns.
- (b) Altered Rainfall Patterns:** Deforestation can lead to reduced rainfall in previously forested areas due to decreased moisture release into the atmosphere. Studies have shown that regions

experiencing deforestation often see a decline in annual precipitation levels.

- (c) **Impact on Aquifers:** Forests play a crucial role in recharging aquifers by allowing rainwater to infiltrate the ground slowly. Without trees, rainwater runs off quickly rather than being absorbed into the soil, leading to lower groundwater levels and increased risks of drought during dry seasons.

(V) Air Quality Deterioration

- (a) **Pollutant Absorption:** Trees improve air quality by absorbing pollutants such as sulfur dioxide (SO₂), ammonia (NH₃), nitrogen oxides (NO_x), and particulate matter (PM). They filter these pollutants from the air and release oxygen through photosynthesis.
- (b) **Health Implications:** The removal of trees leads to poorer air quality in urban areas where pollution levels are already high due to industrial activities and vehicle emissions. Increased air pollution can exacerbate respiratory diseases such as asthma and bronchitis among urban populations.
- (c) **Urban Heat Island Effect:** In urban areas, tree cover helps mitigate the urban heat island effect where cities become significantly warmer than surrounding rural areas due to human activities. The loss of trees contributes to higher temperatures in cities, increasing energy consumption for cooling purposes and exacerbating heat-related health issues.

(VI) Socioeconomic Impacts

- (a) Food Security Risks:** Deforestation can disrupt local food systems by reducing agricultural productivity due to soil degradation and altered water cycles. As forests are cleared for agriculture without sustainable practices in place, communities may face food insecurity as crop yields decline.
- (b) The displacement of Native American communities:** Forests are essential to the livelihoods, culture, and identity of many indigenous groups. They are frequently displaced as a result of deforestation, which occurs when land is destroyed for urbanization or cultivation. Their way of life is in danger, and traditional knowledge about sustainable land management is being undermined by this displacement.
- (c) The Impact on the Economy:** Although logging or land conversion for agriculture (such as palm oil plantations) may result in short-term financial rewards, deforestation frequently causes long-term financial losses because it reduces ecosystem services like flood protection and clean water supply.

54. The above discussion shows that trees are an essential part of our ecosystem. They provide oxygen, regulate climate and support biodiversity. While tree felling may be necessary for various reasons, like harvesting wood for construction, furniture, paper products and fuel, creating space for agricultural expansion, facilitating urban development and infrastructure projects, removing diseased or hazardous trees to prevent accidents, thinning forests to promote healthy growth, providing shelter and food sources for wildlife, preventing spread of pests and diseases, but simultaneously it also cannot be ignored that the trees have significant environmental impact. Therefore, felling of trees wherever is regulated by

statute must strictly follow the procedure prescribed in such Statutes and felling should be strictly controlled by such provisions. Wherever any permission for felling of trees is granted, the condition for reforestation should also be imposed so as to mitigate the damage as much as possible. But wherever felling of trees is not required, or felling does not follow the procedure prescribed in this Statute or is not in accordance with the Regulatory Statute or there is otherwise illegal felling of trees, punitive, prohibitive and compensatory regime must be implemented and applied so as to act as deterrent against felling of trees. The Regulatory measures may also contain provisions for imposition of fine for violation of the statutes with regard to felling of trees and also for realization of cost of timber/wood realizable by Forest Department or any other regulatory Authority under such provisions but with regard to damage caused to the environment due to illegal felling of trees, it is the responsibility of Authority who are under an obligation to take care of the environment to issue necessary directions which includes, application of 'Polluter Pays' principle by requiring the violator to pay environmental compensation.

55. The environmental compensation due to felling of trees illegally is not a component on account of illegal felling of trees without permission of the competent Authority or in violation of the statutes regulating felling of trees but for damage caused to the environment and the cost needed for its restoration which is required to be compensated by the violator by application of principle of 'Polluter Pays' which is well recognized in the jurisprudence of environment by the highest Court of the land.

56. It is not in dispute that the trees with which we are concerned in the present matter, were in a non-forest area and that too, on a private land. Cutting of such trees however is governed by a provincial statute which

provides procedure and method in which a tree can be allowed to be cut by the owner or anyone else.

57. It is not disputed in the present case that in non-forest area, the process of felling of trees has to follow the law laid down in Uttar Pradesh Protection of Trees Act, 1976 (hereinafter referred to as '**UPPT Act, 1976**').

58. The above Statute presently, is applicable on State of Uttarakhand also as it is admitted by Learned Counsel for the parties.

59. Section 2 of UPPT Act, 1976 shows that it does not apply to the trees in "Reserved and Protected Forest"; in a Forest or Forest land in respect of which any notification under Indian Forest Act, 1927, as amended in its application to UP, is in force; and trees situate in Cantonment areas.

60. The term "**tree**" has been defined in Section 3(xi) as under:

"3.Definitions- *In this Act, unless there is anything repugnant in the context:*

*(xi) "**Tree**" means any woody plant whose branches spring from and are supported upon a trunk or body and whose trunk or body is not less than five centimeter in diameter at height of thirty centimeters from the ground level and is not less than one meter in height from the ground level, and the expressions "timber trees" and "fruit trees" means respectively the trees of the species specified in Schedule I and Schedule II respectively; Provided that the State Government may by notifications add to or modify the Schedules;"*

61. Section 4 imposes restriction on felling and removal of trees and says that except as provided in the Act or the Rules made thereunder, no person shall fell any tree standing on any land whether included in a holding or not; cut, remove or otherwise dispose of any tree other than a tree which is completely dead and has fallen without the aid of human agency on any such land. It reads as under:

“4. Restriction on felling and removal of trees- Except as provided in this Act or the rules made there under, no person shall-

(a) fell any tree standing on any land, whether included in a holding or not;

(b) cut, remove or otherwise dispose of any tree other than a tree which is completely dead and has fallen without the aid of human agency on any such land.”

62. Procedure for permission to fell or remove trees is provided in Section 5, which reads as under:

“5. Procedure for permission to fell or remove trees- (1) Any person entitled to fell a standing tree or to cut, remove or otherwise dispose of a fallen tree, **may make an application to such officer in such form as may be notified by the State Government, for permission to fell such standing tree or to cut, remove or otherwise dispose of such fallen tree** and the officer to whom such application is made, shall, within twenty days after making such enquiry as he thinks fit, forward the application along with his report to the competent authority.

(2) The competent authority shall, within fifteen days from the date of receipt of the report under sub-section (1), grant or refuse the permission applied for;

Provided that the competent authority may, if he is not satisfied with the report made under sub-section (1), make such further enquiry as he thinks fit:

Provided further that such permission shall not be refused without affording the opportunity of hearing to the applicant;

Provided also that such permission shall not be refused if the tree constitutes danger to person or property:

Provided further that except in such areas as may be notified by the State Government in this behalf, such permission shall not be required for felling of any tree with a view to appropriating the wood or leaves thereof for bona fide use for purposes of fuel, fodder, agricultural implements or other domestic use:

Provided also that such immediate steps as are necessary to remove any obstruction or nuisance or to prevent any danger may be taken without such permission.

(3) Where the competent authority fails to take any decision under sub-section (2) within the time specified therefor, it shall be deemed that the permission applied for, has been granted.

(4) Every permission granted under this Act shall be subject to such conditions, including taking of security for ensuring regeneration of the area and replanting of trees or otherwise, as may be specified from time to time by the State Government by notification.”

63. A perusal of Section 5 shows that the person entitled to fell or remove tree or otherwise disposal of a tree, may make an application to an officer notified by State Government for the permission to fell such standing tree or to cut, remove or otherwise dispose of such fallen tree. “Notified Officer” within 20 days, after making such enquiry as it thinks fit, shall forward the application along with its report to the “Competent Authority”.

64. The term **“Competent Authority”** has been defined in Section 3(iii) as under:

“3.Definitions- *In this Act, unless there is anything repugnant in the context:*

*(iii) **“Competent authority” means an authority appointed by the State Government by notification to perform the duties and exercise the powers imposed or conferred upon a competent authority by this Act; and different competent authorities may be appointed in respect of different classes of timber, fruit and other trees, and for different purposes;”***

65. Competent Authority, within 15 days from the date of receipt of the report from Notified Officer, shall grant or refuse permission applied for. If he is not satisfied with the report, may direct for further enquiry as it thinks fit, but permission shall not be refused without affording opportunity of hearing to the applicant.

66. Where Competent Authority fails to take any decision within 15 days from the date of receipt of report; permission shall be deemed to have been granted.

67. While granting permission, Competent Authority may impose such conditions including taking of security for ensuring re-generation of the area and re-planting of trees or otherwise as may be specified from time to time by State Government by notification.

68. Section 7 imposes an obligation upon the person who has been granted permission to fell, cut, remove or disposal of a tree, to plant and tend two trees in place of every tree in the area from where such tree has been felled, cut, removed or disposed under such permission. Competent Authority, however, for the reasons recorded in writing, permit lesser number of trees to be planted, or exempt from such obligation.

69. Section 8 deals with plantation of trees in blank area. The term **“Blank area”** is defined in Section 3(i) and reads as under:

“3.Definitions- *In this Act, unless there is anything repugnant in the context:*

*(i) **“Blank area”** means any piece of land (not being under cultivation) measuring one half of a hectare or more, which has five or less trees growing on it;”*

70. Section 8 provides that Divisional Forest Officer is of the opinion that trees should be planted in a blank area. He may issue a notice to owner, occupier or tenure-holder of such area to show cause why trees should not be planted in such area as may be specified in such notice. Implementation of Sections 7 and 8 by virtue of Section 9 is the responsibility of Divisional Forest Officer.

71. Section 10 provides for penalty for felling or removal of trees in contravention of Section 4 declaring it an offence, punishable with imprisonment which may extend to six months or with fine which may extend to One Thousand Rupees or with both.

72. Section 12 talks of forfeiture of timber and provides that where any person is convicted of an offence under UPPT Act, 1976, any timber or tree in respect of which the offence is committed and the implements used for felling such trees may be ordered by the Court to be forfeited to Government. Such timber forfeited under Section 12 shall be disposed of by the Competent Authority in such manner as may be prescribed.

73. Section 17 provides that award of penalty or confiscation of any property under UPPT Act, 1976 shall not prevent the inflicting of any punishment to which the person affected thereby, is liable under any other law.

74. Section 21 empowers the State Government, if it consider necessary, in the public interest, to exempt any area or any species of trees from all or any of the provisions of UPPT Act, 1976 by issuing a notification in the Official Gazette.

75. Section 23 empowers State Government, in the interest of general public, to declare by notification that any class of trees shall not be felled for such period as is specified in that notification.

76. Section 24 confers power upon the State Government to make rules.

77. Schedule I of the Act gives list of timber trees with reference to Section 3(xi) and Schedule II provides the list of fruit trees with reference to Section 3(xi) and both may be reproduced as under:

SCHEDULE-I
TIMBER TREES
[See Section 3(xi)]

Sl. No.	Common Name	Botanical Name
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1	2	3
1.	<i>Akhrot</i>	<i>Juglans regia</i>
2.	<i>Arjun</i>	<i>Terminalia arjuna</i>
3.	<i>Aam</i>	<i>Mangifera indica</i>
4.	<i>Imli</i>	<i>Tamarindus indica</i>
5.	<i>Kardhai</i>	<i>Anogeissus pendula</i>
6.	<i>Kanju</i>	<i>Holoptelea integrifolia</i>
7.	<i>Kusum</i>	<i>Schleichera trijuga</i>
8.	<i>Kail</i>	<i>Pinus excelsa</i>
9.	<i>Kharshu</i>	<i>Quercus Sernecarpifolia</i>
10.	<i>Khair</i>	<i>Acacia catechu</i>
11.	<i>Gutel</i>	<i>Trewia nudiflora</i>
12.	<i>Dhau/Bakli</i>	<i>Anogeissus latifolia</i>
13.	<i>Chandan</i>	<i>Santalum ablum</i>
14.	<i>Chamkharik</i>	<i>Carpinus viminea</i>
15.	<i>Chironji</i>	<i>Buchanania latifolia</i>
16.	<i>Chir</i>	<i>Pinus roxburgii</i>
17.	<i>Jamun</i>	<i>Sygyzium cumini</i>
18.	<i>Dhak-Palas</i>	<i>Butea Monosperma</i> (For Mirzapur, Varanasi, Banda and Jhansi districts only.)
19.	<i>Tuni</i>	<i>Cedrella Serrata</i>
20.	<i>Tun</i>	<i>Cedrella Toona</i>
21.	<i>Tendu</i>	<i>Diospirous tomentosa</i>
22.	<i>Deodar</i>	<i>Cedrus Deodara</i>
23.	<i>Neem</i>	<i>Azadirachta indica</i>
24.	<i>Papri/Sansadu/Chikri</i>	<i>Buxus Sempervirens</i>
25.	<i>Phaliyant</i>	<i>Quercus glauca</i>
26.	<i>Bakain</i>	<i>Melia azedarach</i>
27.	<i>Bahera</i>	<i>Terminalia belerica</i>
28.	<i>Banj</i>	<i>Quercus incona</i>

29.	<i>Mahua</i>	<i>Madhuca latifolia</i>
30.	<i>Morinda</i>	<i>Abies pindrow</i>
31.	<i>Moru</i>	<i>Quercus dilatata</i>
32.	<i>Rai</i>	<i>Picea morinda</i>
33.	<i>Rianj</i>	<i>Quercus Lanuginosa</i>
34.	<i>Shisham</i>	<i>Dalbergia sissoo</i>
35.	<i>Salai</i>	<i>Boswellia serrata</i>
36.	<i>Sagaon</i>	<i>Tactona grandis</i>
37.	<i>Sal</i>	<i>Shorea robusta</i>
38.	<i>Siris</i>	<i>Albizia species</i>
39.	<i>Sain/ Asna</i>	<i>Terminalia tomentosa</i>
40.	<i>Semal</i>	<i>Salmalia melabarica</i>
41.	<i>Harr</i>	<i>Terminalia chebula</i>
42.	<i>Haldu</i>	<i>Adina cordifolia</i>

SCHEDULE-II
FRUIT TREES
[See Section 3(xi)]

Sl. No.	Common Name	Botanical Name
1	2	3
1.	<i>Anar</i>	<i>Punica Granutum</i>
2.	<i>Amrood</i>	<i>Psidium Guyava</i>
3.	<i>Aroo</i>	<i>Prunus perrico</i>
4.	<i>Aloobukhara</i>	<i>Prunus communis</i>
5.	<i>Aam</i>	<i>Mangifera indica</i>
6.	<i>Aonla</i>	<i>Embica officinale</i>
7.	<i>Kathal</i>	<i>Artocarupus integrifolia</i>
8.	<i>Khubani</i>	<i>Prunus armeniaca</i>
9.	<i>Naspati</i>	<i>Pyrus communis</i>

10.	<i>Narangi, Neebu, Malta, Mussammi, Santra</i>	<i>All varieties of citrus</i>
11.	<i>Litchi</i>	<i>Nephelium litchi</i>
12.	<i>Sharifa</i>	<i>Amona squamosa</i>
13.	<i>Sev</i>	<i>Pyrus Malus</i>

78. The provisions of UPPT Act, 1976 show that if the trees within the ambit of the said Act are cut or removed or disposed of illegally, without permission of Competent Authority, the violator is liable for punishment under the provisions of the said Act and may also face other punishment, if any, provided under some other laws.

79. The compounding of the offence by Competent Authority, if any made, the payment recovered from the violator is referable to the violation of UPPT Act, 1976.

80. Similarly, for granting permission if the conditions of afforestation is imposed, that is also in respect of the compliance of UPPT Act, 1976 but cutting/felling/removal of a tree has its own impact upon environment adversely and it damages environment in various ways. When a damage to environment is caused which has the impact of contamination of water, pollution of air etc., Statutory Regulator under environmental laws is empowered to take action for such damage caused to the trees which in turn affects the environment adversely in various ways. This would include direction to pay Environmental Compensation by application of 'Polluter Pays' principle.

81. Here, at this stage, we may also refer to the definition of 'environment' which is provided in Section 2(a) of EP Act, 1986 as under:

“2.DEFINITIONS.-

In this Act, unless the context otherwise requires,--

*(a) “**environment**” includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;”*

82. The above definition clearly shows that all the aspects which we have already discussed are adversely affected due to cutting of a tree and affect the environment/damages the environment so as to fall within the ambit of the definition of ‘environment’ in Section 2(a) of EP Act, 1986.

83. Shri Mukesh Verma, Learned Counsel appearing for UKPCB stated that since framework for computation and assessment of environmental compensation for illegal felling of trees has been finalized, now UKPCB is proposing to take appropriate action for assessment of environmental compensation and its computation in accordance with above framework against persons responsible for illegal felling of trees by application of ‘Polluter Pays’ principle after giving due opportunity of hearing to all concerned parties.

84. Since, issue of construction of road has been resolved by state of Uttarakhand and its Authorities in consultation with Government of India, issue which is which is now crystallized so far as this case is concerned before us, is, with regard to damage caused to environment due to illegal cutting of trees and application of ‘Polluter Pays’ principle for imposition of environmental compensation on account of such damage caused to environment.

85. Since methodology for computation of environmental compensation has been finalized by UKPCB, we find it appropriate that UKPCB be

directed to finalize action with regard to computation and assessment of Environmental Compensation due to illegal felling of trees in question after giving due opportunity of hearing to all concerned parties including, violators and thereafter, recover said amount from violator(s) in accordance with law within three months.

86. A compliance report shall be filed by UKPCB with Registrar General of this Tribunal by 15.03.2025. If Registrar General finds that any further order is required, may place the matter before appropriate Bench of Tribunal.

87. We also direct that amount of Environmental Compensation realized/recovered by UKPCB shall be utilized for remediation/rejuvenation/ restoration of damaged environment in area in question in light of a Restoration Plan which shall be prepared by a joint committee comprising Divisional Forest Officer, Almora, UKPCB, Central Pollution Control Board and District Magistrate, Almora.

88. District Magistrate, Almora shall be nodal authority for this purpose.

89. Plan shall be prepared by above Committee within one month and shall be executed within two months after realization of Environmental Compensation from violators and a compliance report shall be submitted in next 15 days with Registrar General of this Tribunal, who if finds any further order is required, shall place the matter before appropriate Bench.

90. With above direction, this Original Application is disposed of.

91. A copy of this order be forwarded to State of Uttarakhand, UKPCB, Central Pollution Control Board, Divisional Forest Officer, Almora and District Magistrate, Almora by email for compliance.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

December 04, 2024
Original Application No. 614/2022
AB