

Item No.02

Court No. 2

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

(Through Physical Hearing with Hybrid VC Option)

Original Application No. 614/2022

Rasesh B. Vissanji & Ors.

Applicant

Versus

State of Uttarakhand & Ors.

Respondents

Date of hearing: 05.09.2023

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

Applicant: None.

Respondents: Mr. Rahul Verma, Addl. Advocate General for State of Uttarakhand alongwith Mr. Deepak Singh, DFO Almora and Mr. Vibhor Gupta, Executive Engineer PWD Almora (Through VC)
Mr. Mukesh Verma, Adv. for UKPCB (Through VC).

Application is registered based on a Letter Petition received by post.

ORDER

1. The grievance of the applicants in the present application is about Illegal cutting of trees by using JCB for construction of proposed 6 Kms of Chitai Manjoli Petshal National Highway and disposal of construction material (muck) illegally on fertile agricultural land of poor farmers damaging the crops.

2. Vide order dated 23.09.2022, this Tribunal constituted a Joint Committee comprising of representatives of the Uttarakhand Pollution Control Board (UKPCB), the Executive Engineer, PWD, Almora, the DFO and the District Magistrate, Almora and directed the same to verify the factual position and submit its report within one month.

3. In compliance thereof, report was submitted by the Joint Committee vide email dated 04.01.2023. In its report the Joint Committee made the following factual observations:-

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“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 Chital, 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. 8B/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 Hari 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 gabian 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, PWD, Almora. The Committee also observed that no illegal trees felling is done in forest area.”*

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4. Vide order dated 06.01.2023 notices were issued to respondents no. 1 to 5 for filing of their reply/response and in compliance thereof

report/response has been filed by the District Magistrate, Almora and PWD, Uttarakhand.

5. Since, the compensatory afforestation had not been done and construction of the road was also stated to have been stopped, vide order dated 25.04.2023, the District Magistrate, Almora and PWD, Uttarakhand were directed to file replies with requisite details regarding (i) Construction of Road, (ii) Compensatory afforestation, (iii) Cutting of the tree and (iv) disposal of the muck.

6. In compliance thereof, reply has been filed by State of Uttarakhand vide email dated 14.08.2023. The relevant part of the reply is reproduced as under:-

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“5. That in compliance of the abovementioned directions passed by this Hon'ble Tribunal, the following Response by way of Affidavit is being submitted for kind consideration of this Hon'ble Tribunal:-

(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/IJ1-(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) PID, 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 above said 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 above said 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/P/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.

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 respectfully submitted that the Baan], Falyat, Tejpat, Malta, Neebu Utis, Bhimal and Dadim etc. species tree has to be planted.

(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 04-04 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.

6. That it is pertinent to mention herein that due to excessive damage on the Almora-Ghat National Highway no.309 from Chitai to Petshal, specially on the place namely Kaalidhar, many accidents and causalities happened in the past time due to very bad grade, width and curve of the road.

7. That it is respectfully submitted that proposed motor road from Chatal Pant Tiraha to (beyond the Hari Dutt Petsali Inter College) to Petshal is 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, Chital Tiwari, Manyoli, Poonakot, Petshal Badi, Paatal Dev 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 state herein that migration will also be stop after construction of the proposed road.

8. That the present Response by way of Affidavit in compliance of direction passed by this Hon'ble Tribunal is being filed kind perusal of this Hon'ble Tribunal."

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7. In view of the facts and circumstances of the case, presence of MoEF&CC, Uttarakhand Forest Development Corporation and the Contractor-Sh. Shivraj Singh Banaula is essential for just and fair adjudication of the questions involved in the case. Accordingly MoEF&CC, Uttarakhand Forest Development Corporation and the Contractor-Sh. Shivraj Singh Banaula are impleaded as respondents no. 6 to 8 and the Registry is directed to amend the memo of parties and issue notices to respondents no. 6 to 8 requiring them to file their reply/response within one month by way of email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

8. List for further **consideration on 12.10.2023.**

9. In the facts and circumstances of this case, presence of the Principal Chief Conservator of Forest, Uttarakhand alongwith other concerned forest officers, Regional Officer, Integrated Regional Office MoEF&CC, Dehradun, Chief Engineer, PWD alongwith other concerned officers and the District Magistrate, Almora before this Tribunal through VC on the date of hearing fixed is considered to be essential for producing

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the relevant record and assisting this Tribunal in effective and proper adjudication of questions relating to environment involved in the case and they are accordingly directed to remain present before this Tribunal with all relevant material on the date of hearing fixed.

10. A copy of this order be forwarded to the Principal Chief Conservator of Forest, Uttarakhand, Regional Officer, Integrated Regional Office MoEF&CC, Dehradun, Chief Engineer, PWD and the District Magistrate, Almora by E-mail for compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

September 5th, 2023
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