

Item No. 08

Court No. 2

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

Original Application No. 646/2023

Manoj Kumar Kaushal

Applicant

Versus

State of Himachal Pradesh & Ors.

Respondent(s)

Date of hearing: 24.10.2024

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

Applicant: None

Respondents: Mr. Anup Kumar Rattan, Advocate General (through VC) with Mr. Raj Kumar, Advocate for State of H.P. With Mr. R. D. Nazeem, PS, Industries and Dr. Pawnesh Kumar, PCCF (through VC)
Mr Vaibhav Srivastav, AAG with Ms. Vineeta Tiwari and Ms. Rajnandani Kumari, Advocate for HPSPCB

ORDER

1. Original Application in question was registered under Section 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') exercising *suo moto* jurisdiction in view of the law laid down by Supreme Court in ***Municipal Corporation of Greater Mumbai Versus Ankita Sinha and Others, (2022) 13 SCC 401*** on a letter petition dated 10.07.2023 sent by Manoj Kumar Kaushal, resident of Kotla Kalan Lower Takka Road, Una, Himachal Pradesh.

2. Complainant is a retired Officer from Indian Military Intelligence and stated that in Army he found greenery everywhere but when returned to civil life, found development of industries even in forest areas disturbing

and damaging flora and fauna everywhere. In 2016, Pandoga Industrial Area of Himachal Pradesh was developed which has caused damage to environment in as much as chemical industries have been allowed to be established therein though it is a green area; hills have been damaged and trees have been cut. A number of photographs are appended in support of complaint.

3. Tribunal took cognizance of complaint on 08.01.2024 and after being satisfied *prima facie* that a substantial question relating to environment has arisen out of the implementation of the enactments specified in Schedule 1 to NGT Act, 2010, impleaded following as respondents:

1. State of Himachal Pradesh, through Chief Secretary, Government of Himachal Pradesh, Uttarakhand Secretariat, 4 Subash Road, Fourth Floor, New Building, Dehradun, Uttarakhand, Pin Code: 248001
2. Principal Secretary, Industries, Government of Himachal Pradesh, Gaura Devi Bhawan, 46 B IT Park, Sahastradhara, Dehradun, Uttarakhand, Pin Code: 248001
3. District Magistrate, Una, Collectorate, New Tehri, Tehri Garhwal, Uttarakhand, Pin Code: 249001
4. Divisional Forest Officer, Una Tehri Forest Division, New Tehri, Tehri Garhwal, Uttarakhand, Pin Code: 249001, and
5. Himachal Pradesh Pollution Control Board through its Member Secretary, Him Parivesh, Phase-III, New Shimla 171009, H.P

4. Notices were issued to respondents requiring them to file their responses.

5. Vide email dated 28.02.2024, Himachal Pradesh State Pollution Control Board (hereinafter referred to as '**HPPCB**') filed its reply stating

that as per information available with HPPCB, State Government proposed to set up a state-of-art Industrial Area for establishment of various kinds of industries for example chemical, glass, ceramic, mechanical and allied products, service establishment, engineering, steel, furniture, pharma, steel wire, wooden furniture, wood based and paper based industries. The said proposal for development of industrial area was recommended by Himachal Pradesh State Industrial Development Corporation (hereinafter referred to as '**HPSIDC**'). It also proposed a greenfield project for construction of a Common Effluent Treatment Plant (hereinafter referred to as '**CETP**') of capacity of 5 MLD for treatment of waste water likely to be generated from the operation of upcoming industrial units in proposed industrial area. Here the term 'greenfield' did not imply establishment of only 'green' category industries. For establishment of CETP, an application for prior Environmental Clearance (hereinafter referred to as '**Prior EC**'), was submitted which was allowed by Ministry of Environment, Forest and Climate Change, New Delhi (hereinafter referred to as '**MoEF&CC**') vide letter dated 14.01.2019.

6. HPPCB has further said that as per information submitted by Industry Department vide letter dated 20.02.2024, construction of CETP had not started due to lack of requisite quantity of effluent discharge. In industrial area, 18 number of industries are already in operation while 7 are at construction stage. With regard to cutting and labelling of trees, it is said that the information is to be given by the Forest and Industry Department.

7. Another reply vide email dated 05.04.2024 was filed by Deputy Conservator of Forest, Una on behalf of Divisional Forest Officer stating that status of land on which Industrial Area proposed was recorded as '*Banjar Kadim*' and '*Banjar Mumkin Choi*' in Revenue record. Further, as

per Supreme Court's order dated 12.12.1998, proposed land was treated as forest land. For diversion of land, matter was forwarded to Competent Authority under Forest (Conservation) Act, 1980 (hereinafter referred to as '**FC Act, 1980**').

8. Vide letter dated 19.03.2015, MoEF&CC conveyed in principle approval, accorded by Government of India, for diversion of 60-29-20 hectares forest land in favour of General Manager, District Industry Centre, Una, H.P for establishment of State of Arts Industrial Area in village Pandoga Uparla, District, Una. 9930 trees/saplings were liable to cut, for which user agency was required to deposit amount towards compensatory afforestation, net present value, contingency, etc. Details thereof are given as under:-

1. For compensatory afforestation = Rs. 77,40,900/-
2. Net Present Value = Rs. 5,09,46,740/-
3. Contingencies@ 5% on C.A. = Rs. 3,87,045/-
4. Departmental charges @17.5% = Rs. 13,54,658/-
5. Cost of 9930 trees/saplings = Rs. 1,93,83,399/-
6. VAT = Rs. 26,65,217/-

Total: = Rs.8,24,77,959/-

9. Final approval was accorded by Govt of India, vide letter dated 21.07.2015 for diversion of 60-29-20 hectares forest land In favour of General Manager, District Industry Centre, Una.

10. Out of 9930 trees of various species and classes, 7781 trees of various species and classes were marked and handed over to Himachal Pradesh State Forest Development Corporation Limited for exploitation during 2015-16 and 2016-17. It is also said that necessary compensatory

afforestation has also been carried out by planting 67100 trees as per the following details:-

Year plantation	of	Year plantation	of	Area (Ha)	No. of plants planted
2016-17		R.F. Badhera		5.03	5500
-do-		R.F. Polian Beet (Tibbian)		5.00	5544
-do-		R.F. Bhadsali (Jungle Bhadsali)		15.00	16500
-do-		R.F. Ispur (Ispur Uperla)		12.00	13200
-do-		R.F. Lam		9.00	9900
-do-		R.F. Behdala (Chokhyal)		4.66	5126
-do-		R.F. Basal (Thakurdwara)		10.3	11330
		Total:		60.99	67100

11. Tribunal found from the above replies that the specific queries made by Tribunal were not replied properly and there is no response given by Government of Himachal Pradesh and Principal Chief Conservator of Forest who were directed to appear in person though vide order dated 19.09.2024 when the above officers were present, time was granted to file reply incorporating all aspects of the matter particularly, showing compliance of the conditions of letter of diversion of land issued by MoEF&CC and also conditions of EC.

12. An additional reply vide email dated 23.10.2024 has been filed which shows that industrial area in question for development required Prior EC in view of requirement under clause 7 (c) of Schedule to Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as ‘**EIA 2006**’) which provides as under:-

7 (c)	Industrial estates/ parks/ complexes/ areas, export processing Zones (EPZs), Special Economic Zones	If at least one industry in the proposed industrial estate falls under the Category A, entire industrial area shall be treated as	Industrial estates housing at least one Category B industry and area	V “Genral as well as special conditions shall apply Note: 1.
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	(SEZs), Biotech Parks, Leather Complexes	Category A, irrespective of the area Industrial estates with area greater than 500 ha. and housing at least one Category B industry.	Industrial estates of area > 500 ha. and not housing any industry belonging to Category A or B.	Industrial Estate of area below 500 ha. and not housing any industry of Category 'A' or 'B' does not require clearance. 2. If the area is less than 500 ha. but contains building and construction projects > 20,000 Sq. mts. And or development area more than 50 ha it will be treated as activity listed at serial no. 8(a) or 8(b) in the Schedule, as the case may be."
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13. However, State of Himachal Pradesh did not proceed for Prior EC on the ground that the area of development of Industrial Area was less than 500 hectares and it did not possess a proposal for setting up of any 'A' or 'B' category of industry in the said area. Thus, apparently there was a representation on the part of State of Himachal Pradesh that no Prior EC is required since it did not propose to allow any 'A' and 'B' category industry in concerned Industrial Area.

14. However, subsequently it is not in dispute that three industries which are in category 'A' and 'B' have been allowed and therefore, apparently there is a breach of provisions of environmental laws in as much as on the one hand, prior EC was not obtained in development of Industrial Area in question on a representation or a decision that 'A' and 'B' category industries shall not be installed but subsequently with development of industrial area, such categories of industries have been allowed to be established. Details of these industries are given as under:-

1. M/s Hindustan Pectin Farmdirect Powder, Ingredients Pvt. Citric Acid, Ltd. Plot no:A-5 lime, Pandoga Industrial Area, Uparla district Una.
2. M/s Ian Macleod Distillers India Pvt. Ltd. Plot no: A2, A3, A4, Pandoga Industrial Area, Uparla district Una

3. M/s Ambaji Enterprises, Plot No:D10, DII Pandoga Industrial Area, Uparla district Una.

15. Shri Anup Kumar Rattan, Advocate General assisted by Sh. Raj Kumar, Advocate, appearing on behalf of State of Himachal Pradesh, Principal Secretary, Industry and PCCF have also appeared virtually. During course of argument, it could not be disputed by Principal Secretary and also learned Advocate General that Prior EC was not obtained for establishment of industrial area meaning thereby category 'A' and 'B' industries could not have been allowed to be established in this Industrial Area but the same have been allowed wrongly and this matter require investigation and remedial action.

16. Principal Secretary, Industry and also learned Advocate General stated that they may be granted some time to make proposal for the manner in which remedial action may be taken in this regard so as to show total compliance of environmental law. They may file reply within four weeks.

17. We also implead above three industries as respondents number 6, 7 and 8.

18. Registry is directed to issue notices to newly impleaded respondents.

19. Notices to newly impleaded respondents may also be served through HPPCB who shall file a service report within 15 days.

20. Newly impleaded respondents may file their responses within two weeks after receipt of notice.

21. List on 12.12.2024.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

October 24, 2024
Original ApplicationNo.646/2023
AB