

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

APPLICATION NO. 431 OF 2015

IN THE MATTER OF:

1. Manoj Kumar Mishra

178-F, Pocket 4,
Mayur Vihar, Phase 1
Delhi -110091

2. Bhim Singh Rawat

House No. 213, Street No. 7
Sanjay Colony,
Safiabad Road,
Narela, Delhi - 110040

.....Applicants

Versus

1. Union of India

Through the Secretary
Ministry of Environment, Forest and Climate Change
Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi – 110 003

2. Ministry of Water Resources, River Development and Ganga Rejuvenation

Through its Secretary,
Shram Shakti Bhawan
Rafi Marg, New Delhi- 110 001

3. Uttarakhand Jal Vidyut Nigam

Maharani Bagh, G.M.S. Road
Dehradun, Uttarakhand – 248006

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Ritwick Dutta, Sr. Adv. with Mr. Rahul Choudhary, Mr. Saurabh Sharma, Ms Meera Gopal, Ms. Geetanjali Sreedhar & Mr. Utkarsh Jain, Advs.

COUNSEL FOR RESPONDENTS:

Mr. Balendu Shekhar, Mr. Sriansh Prakash and Mr. Raj Kumar Maurya, Advs. for MoEF

Mr. Ardhendumauli Kr. Prasad, Mr. Shashank Saxena, Mr. Amritesh and Ms. Diksha Gera, B.V. Niren & Mr. Kshitij Mudgal, Advs for MoWR (R-2)

Mr. Amit Anand Tiwari and Mr. Shashwat Singh, Advs. for UJVNL

Mr. Brajesh Pandey and Mr. Varun Thakur, Advs. for NMCG

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Dr. Satyawan Singh Garbyal (Expert Member)

Reserved on: 04th January, 2019
Pronounced on: 10th January, 2019

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

Dr. S.S. GARBYAL, (EXPERT MEMBER)

This Original Application is regarding Lakhwar Vyasi Hydro Electric Project (HEP) which involves construction of 204 mt. high concrete dam with a 40 km long reservoir on river, Yamuna, Ministry of Environment & Forest gave its approval on 03.02.1987 stipulating following conditions:-

(a) Adequate fuel arrangement for the labour force to avoid destruction of nearby vegetation cover in the forests;

- (b) Restoration of the construction area;**
- (c) Catchment area treatment scheme;**
- (d) Grazing to be prohibited in the Reserve Forests;**
- (e) Scheme for training of the displaced people;**
- (f) No additional forest to be acquired;**
- (g) Monitoring Committee to be constituted by the State Government should include the expert on soil conservation, forest research etc.**

2. The construction work started in 1987 and continued till 1992. Thereafter construction work stopped. The project was subsequently bifurcated into two components namely Lakhwar Multipurposes Dam (300 MW) and Vyasi HEP (120 MW). A separate Environmental Clearance was obtained for Vyasi HEP on 07.09.2007.

3. The Construction work on Lakhwar Multipurpose Dam which was stopped in 1992 is yet to restart. This project came up for consideration of the EAC on 12.11.2010 and following clarification were sought by the EAC:-

- I. It was noted that irrigation facility will be increased by augmentation of water by constructing a barrage in Katapathar. However, no details in this regard has been provided.**
- II. The purpose of Vyasi dam shown downstream of Lakhwar dam is not spelt out.**
- III. Katapathar barrage is proposed for irrigation (or regulated) release to Hathinkund barrage (11,100 sq. km basin). No clear description with a flow chart to explain the functioning of schemes is available. A map may be provided showing the followings:-**
 - (a) Lakhwar dam, linkage to Vyasi dam, is Lakhwar dam UG power house a dam to power house?**

- (b) Vyasi dam, mentioned as 5 km downstream of Lakhwar dam with additional catchment area of 20 km². Its Public Hearing at Hathiary (is this the underground powerhouse of Lakhwar project, or Vyasi project) fig- 1.2 of EMP Report.**
- (c) Does katapathar barrage, provide direct irrigation and drinking water benefit or merely feed Hathnikund barrage?**
- (d) Command area of EYC from Hathnikund barrage to be augmented by Katapathar barrage regulation linked with (functioning from the regulated power release of Lakhwar dam and Vyasi power house) Lakhwar project primarily. The extent of irrigation supplementation to the existing command, its impact on drainage, soil quality (due to additional input of water) has to be brought out in the EIA studies. A simulation of 90% and 75% dependable year of Lakhwar reservoir, out flow from Vyasi power house and moderation done at Hathnikund barrage, its water demand, deficit to be met from lakhwar dam be brought out with clarity.**

At page – 4.1 of Vol.- VI (Executive summary), it is mentioned that “Lakhwar hydro project with an installed capacity of 300 MW and downstream Vyasi project with installed capacity of 120 MW are geographically very attractive sites”. Where are the details of Vyasi projects such as the dam, the water conductor system and power house, tail race etc.

It is quite obvious the developers have submitted piecemeal documents with no linkage, particularly on the environment aspects. The Vol.-I DPR (Engineering) does not show/ contain Form-1 required for scoping clearance. Instead a long check list required for TEC of CWC/ CEA is enclosed, which is totally irrelevant for environmental scoping. A look at reservoir operation study for 1974-75 shows the project

generates 4-8 hours of electricity every day thereby grossly altering the existing hydrological regime of the river.

DPR Vol.-I (b) "Irrigation Aspects" do not contain any linkage of power release with irrigation drawal/ need either at katapathar or Hathnikund barrages.

In view of the facts that part construction of Lakhwar dam complex is already done, the environmental impacts have already occurred. How do the developers address this issue?

The Lakhwar reservoir operation during non-monsoon has to match the crop water need of the proposed expansion/ stabilization of EY Canal? What is the existing cropping pattern and proposed cropping pattern of the Lakhwar-Vyasi-Hathnikund project? Does the Table - 1.3 at Page-5 at Table at page-6 of irrigation Report depict the position correctly? In the absence of salient features, linkages, sketchy information the scheme cannot be examined. The EIA/ EMP reports prepared do not serve much purpose in the absence of an approved Form-1 and TOR.

This project should be broken down to three independent projects such as Lakhwar, Vyasi and Katapathar with their linkages and clear hydrological details and other environmental issues for examining and granting a scoping clearance. All past clearances of MoEF, CWC, CEA may also be provided.

4. It is revealed from the letter dated 10.01.2011 from MoEF to Director Uttarakhand Jal Vidyut Nigam Limited, which is on record that after bifurcation of the original projects into Lakhwar and Vyasi HEP the construction of Vyasi HEP was transferred to NHPC and EC was granted for this project on 07.09.2007 and subsequently EC was transferred to Uttarakhand Jal Vidyut Nigam (UJVNL). The MoEF

had reviewed the request of the State Government to exempt the project from obtaining fresh EC and it was intimated by the MoEF that the validity of EC issued to the project continues. It was, however, observed as follows:-

However, as the project was granted environment clearance long time back and since then there may be several changes in the surroundings of the project. As such the clarifications sought by the EAC all its meeting held on 12.11.2010 as per current practice should be submitted. Minutes of the meeting is available in the Ministry's website (envfor.nic.in). A copy of the same is annexed. Additional conditions as safeguard measures would be proposed after examining the clarifications.

5. The applicant submits that the approval which was given in 1987 was only an administrative approval and not proper EC as it was given without proper EIA reports and EMP. The applicant contends that there has been many changes on the ground, after 1992 including disaster of 2013 and has also brought to our notice the findings of a study conducted by a noted geologist K.S. Valdiya in 2014 which are summarised as below :-

“In the fault-ridden, seismically and tectonically ravaged by excessive rains and resultant Landslides in Uttarakhand, a very large number of big and small dams are being constructed and planned. Quite many of these projects suffered crippling damages during the 2013 disaster as mountain slopes slid down and floodwater severely eroded stream banks and dumped huge volumes of sediments on critical facilities. If the idea is to have environment-friendly power projects, then the planners and dam builders must not ignore the geological

reality of the geodynamically sensitive region. Better sites for dams can be explored far upstream of the main Central Thrust Zone”.

6. It has further been submitted that after 2013 tragedy an expert body was set up by MoEF IN October, 2013 on the direction of Hon’ble Supreme Court and one of the terms of reference was to assess and review extent of progress made in respect of ongoing/ under construction Hydro Electric Power Projects as on the date of occurrence of the tragedy vis-à-vis progress made in compliance of environmental conditions/ safeguard measures. Summary of “Assessment of Environmental Degradation and Impact of Hydro Electric Power Project during the June, 2013 Disaster in Uttarakhand” submitted to MoEF in 2014 includes observation of one of the Member of the expert body Dr. Hemant Dhyani which reads as follows :-

“It was brought to the notice of the EB that clearances to start work had been granted recently to the Lakhwar (300 MW) and Vyasi (120 MW) projects. This is in violation of the spirit of the Hon’ble Supreme Court’s order of August 13, 2013. It is also noticed that these projects were approved more than 25 years ago. Consequently they do not have any EIA/EMP/DMP studies that are mandatory today. Without conducting cumulative impact assessments and disaster management studies of the Yamuna and Kali basins no such projects should be allowed at the risk of fragile ecology, biodiversity and lives of people living in and around the project sites”.

7. It has been noted by the expert Committee that as per the EIA notification dated 14.09.2006 the validity of approval EC is 10 years and that in number of cases the validity of EC is 5 years. The expert Committee have recommended that the validity should not be extended, unless fresh appraisal is done.

8. Learned Counsel for the Project Proponent submits that they have complied with all the conditions of the approvals and have also clarified the various points raised by the EAC in 2010. It is, however, not known whether the clarifications given by the project authorities were placed before the EAC.

9. After considering the pleadings and materials on record, we are of the considered opinion that the clarifications given by the Project Proponent, the report of the expert Committee and finding of various studies need to be looked into and studied by the EAC and project needs to be reappraised in terms of EIA notification, 2006.

10. We, therefore, direct the EAC to appraise the project afresh in terms of EIA notification 2006 and impose additional general and specific conditions as may be considered necessary. EAC will be free to call for any reports which it may consider necessary. EAC is further directed to complete the appraisal by 15.04.2019. Till the project is reappraised status quo shall be maintained.

With above directions this Original Application No. 431/2015 is disposed of, with no order as to cost.

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Justice Raghuvendra S. Rathore
(Judicial Member)

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Satyawan Singh Garbyal
(Expert Member)

Dated: 10th January, 2019
New Delhi