

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

**ORIGINAL APPLICATION NO. 521 OF 2014
AND
(M.A. NOS. 902 OF 2014 & 14 OF 2015)**

IN THE MATTER OF:

1. Om Dutt Singh
58 MG Marg, Allahabad
Uttar Pradesh
2. Debadityo Sinha
R/o III Floor, 943A/8
Govindpuri, Kalkaji
New Delhi - 110019

.....Applicants

Versus

1. State of Uttar Pradesh
Through its Chief Secretary,
Government of Uttar Pradesh
2. Department of Irrigation
Through its Principal Secretary
Government of Uttar Pradesh
Sinchai Bhawan, Lucknow
3. Union of India
Through the Secretary
Ministry of Environment, Forests & Climate Change
Indira Paryavaran Bhavan
Jor Bagh Road
New Delhi - 110003

.....Respondents

Counsel for Applicant:

Ms. Parul Gupta, Advocate.

Counsel for Respondents:

Mr. Pinaki Misra, Sr. Advocate, Mr. Ravi P. Mehrotra and Mr. Abhinav Kumar Malik, Advocates for Respondent Nos.1 & 2.
Mr. Vivek Chib, Mr. Asif Ahmed, Mr. Kushal Gupta, Mr. Mir Joby P. Varghese, Ms. Ruchira Goel and Mr. Ankit Prajrash, Advocates for Respondent No. 3.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 24th March, 2015

Pronounced on: 7th May, 2015

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?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The applicant no. 1 is a member of People's Union for Civil Liberties while applicant no. 2 is founder of Vindhya Bachao Abhiyan and Managing Trustee of Vindhyan Ecology and Natural History Foundation, Mirzapur (Uttar Pradesh). Both of them submit that they have been working extensively in the field of protection and conservation of environment. They have submitted that they are directly affected by the construction of the 'Kanhar Irrigation Project' and are, therefore, aggrieved persons entitled to invoke the jurisdiction of the National Green Tribunal (for short 'the Tribunal') under Sections 14(1) and 15 read with Section 18(1) of the National Green Tribunal Act, 2010 (for short the 'NGT Act').

1. The applicants have approached the Tribunal with the averments in their application that the 'Kanhar Irrigation Project', hereinafter referred to as 'the project', was originally approved by the Central Water Commission in September, 1976. The project is located downstream of the confluence of

River Pagan with Kanhar near village Sugawaman in Tehsil Dudhi of District Sonebhadra, Uttar Pradesh. The details of the projects are stated to be as under:

- i) 3.003 km earthen dam having maximum height of 39.90m from deepest bed level.
- ii) Concrete ogee spillway of 237m long having 15 Nos. mechanically operated gates of size 13x14.5m.
- iii) 31.50 km Right Main Canal and 25.6 Km Left Main Canal.
- iv) Three Lift Schemes, two on the Left Main Canal and one on the Right Main Canal.
- v) 3 km long irrigation tunnel on Right Kanhar canal.
- vi) 45 Nos. drainage crossing on right bank canal and 35 Nos. drainage crossing on left bank canal, and
- vii) 11 Nos. aqua ducts, 2 Nos. railway bridges, 7 Nos PWS bridges and 39 VRBs on canal and its distribution system.”

2. The Department of Irrigation, Uttar Pradesh vide its letter dated 6th October, 1976 had stated that the project would provide irrigation to Dudhi and Robertsganj Tehsils via left and right canal emerging from both sides of river from the dam. The capacity of right canal and left canal would be 479 and 192 cusec respectively. The project is also to provide water to Rihand reservoir to increase hydro electricity generation there, in which case the height of the project will be increased to 52.90 mtrs. instead of 39.19 mtrs. as originally contemplated. The culturable command area of the project is provided as 47,302 ha. The project envisages submergence of 4131.5 ha of land which includes parts of Uttar Pradesh, Madhya Pradesh (now, Chhattisgarh) and Bihar (now, Jharkhand). The project also involves forests lands. Though the project has been sanctioned in the year 1976, only minor construction took place at the site. The progress report of the project for the year 1998-99 indicates that due to non-availability of

funds and inter-state issues, the construction of the project was suspended in 1989-90 and for a substantial period, the work had not been carried out at all. It is further the case of the applicants that applicant no. 2 visited the site in the month of July, 2014 during which he met the affected villagers and was informed that the project has been under consideration with the Department of Irrigation, Uttar Pradesh for the past 38 years and has been inaugurated on various occasions. No substantial work was undertaken at site during the visit of applicant no. 2 and the same was completely abandoned by the Department of Irrigation, Uttar Pradesh. According to the applicant, the project in which no substantial construction or other project activity has been undertaken, prior to coming into force of the EIA Notification of 2006, the project is required to take Environmental Clearance in terms of the said Notification. The circular issued by MoEF, Government of India on 15th January 2008, specifically provides that the EIA Notification of 1994 had been superseded by the EIA Notification of 2006 and the project activities listed therein shall require prior Environmental Clearance under the said Notification, without linking it to the date of acquisition of land, if the project activity has not commenced at the site. As the project activity had hardly commenced in the year 2006 and even thereafter, the project cannot continue without obtaining the Environmental Clearance in terms of the EIA Notification of 2006.

The applicants states that they have filed two separate RTI applications on 24th July, 2014 and 29th August, 2014 respectively

with MoEF, seeking the copy of the orders granting Environment Clearance and Forest Clearance to the project in question. In response to the same, the Ministry vide its letter dated 16th September, 2014 and 27th November, 2014 has specifically stated that the Environmental Clearance of the project is way back of 14th April, 1980 and that there is no record of the Forest Clearance available in the FC Division of the Ministry with respect to the project. Thus, the project proponent have no clearances under the Environment (Protection) Act, 1986 and Forest (Conservation) Act, 1980. It is in the recent past that the construction activity of the project has been started and reports in this regard were published in the various newspapers including 'Dainik Jagran' dated 5th December 2014. In terms of these reports, the work had been abandoned totally and was being restarted without the requisite permissions in law and thus the construction activity cannot continue. The impacts of the project had never been assessed. The assessment of impacts of the project would, therefore, be essential, which can only be done by expert bodies in accordance with the EIA Notification of 2006 and therefore, the project cannot proceed any further and in fact, the work carried out is liable to be demolished.

It is the specifically pleaded case of the applicant that project is likely to have large scale adverse impacts on the environment and ecology of the area, particularly, if the same is permitted to continue its activity and become operational without prescription of appropriate safeguards in the interest of environment, ecology and the persons living in that area. Referring to various impacts, it is

averred that the project will cause displacement to a large population, the majority of which is a tribal and is likely to evict. Nearly, 7,500 families from 25 villages to make for their resettlement. The preliminary figures estimates that 9 lakhs trees, 2500 kuccha and 200 pucca houses, 500 tube wells and about 30 government schools along with some other buildings and essential amenities shall be submerged under the water. Land admeasuring around 3,000 ha will have to be submerged as per newsletter Update on Dams, Options & Related Issues of South Asia Network on Dams, Rivers and People. However, it is also stated that the project fact sheet of 1998-99 shows submergence of increased area i.e. 4,131.5 ha. It is submitted that River Kanhar is a major tributary of River Son which is a major tributary of River Ganga. Due to construction of several dams and water diversion structures on River Son including Rihand Dam and Bansagar dam, the River Son is facing great threats in terms of its riverine characteristics, loss of fish species and invasion of exotic fishes in the river. It is even adversely affecting the river flow, velocity, depth, substratum, pools, ecology and fish habitats of the area. The project is bound to result in huge loss of forest area and afforestation. Large number of trees were felled despite strong opposition by the tribals and the same is in violation of the provisions of the Forest (Conservation) Act, 1980. The work was stopped in the year 1984. Lakhs of trees were likely to be affected by the project. Renukoot forest division of the District is one of the richest and dense forest areas of Uttar Pradesh. They are known for rich biodiversity, medicinal plants and

the traditional and cultural heritage in the form of tribal knowledge which have attracted much scientific and economic attention. This area is also very rich in wildlife and is host to several species of wild life, and is now very much fragmented owing to rapid industrialisation commissioning of the Rihand reservoir and presence of the coal mines in the area. Submergence of a large forest lands will not only make the nation devoid of the carbon sequestration potential but will also release the carbon trapped in the forests. There are numerous global evidences of production of Green House Gases, especially Methane owing to dams. Methane, a potential GHG, is produced when anaerobic bacteria decomposes organic material. Methane is known for a positive feedback trigger for global warming. With reference to these averments, according to the applicant there would be grave environmental and social impacts, severe impacts on aquatic ecology, impacts on forests and biodiversity, loss of medicinal plants particularly those that are rare and endangered, loss of wildlife habitats and would have even adverse climate change impacts. This, according to the applicant, fully justifies the requirement of feasibility analysis and needs assessment studies. The project was initially approved for an estimated cost of Rs. 27.75 crores and was technically approved in 1979 with the revised estimate cost of Rs. 69.47 crores. In the 106th meeting of the Advisory Committee of the Central Water Commission held on 4th October, 2010, the estimated cost of the project was quoted as Rs. 652.59 crores, as per price level of 2008-09. According to the applicant, even the enhanced cost does not

take into consideration the environmental, social and cultural costs associated with the project which will be lost in the form of ecosystem services, livelihood, displacement and rehabilitation cost, health cost and other economic and livelihood benefits which are obtained by the people from the area. There has been a drastic increase in the population and a huge amount of public money has been spent on development of schools, roads and other infrastructures, industries and development of coal mines etc. All this has already cost significant changes in the environment and ecology. It is also the case of the applicant that there is a need for proper cost benefit analysis which should be undertaken, particularly, in view of the fact that no opportunity has been granted to the affected persons to raise their concern and grievances in regard to the project and its activity.

3. Relying upon the judgment of the Hon'ble Supreme Court of India in *T.N. Godavarman v. Union of India and Others*, W.P. (Civil) No. 171/96, it was contended that forests are vital components for sustaining life support system of the earth and for preventing any damage to them. The development should be consistent with the protection of environment and not at the cost of degradation of environment. Any threat to ecology can lead to violation of the Right to Enjoyment of Healthy Life guaranteed under Article 21 of the Constitution of India and needs to be protected. On this premise, the applicant prays that the work of the project and its activities should be immediately stopped as they are being carried out in violation of the EIA Notification of 2006. It is also prayed that the

project proponent should immediately stop illegal felling of trees and use of forest land for non-forest activity, to restore the pristine environment of the area to its natural state and action be taken against the project proponent for violating the said law as per EIA Notification, 2006.

4. Though respondents no. 1 & 2 have filed a common counter affidavit and respondent no. 3 has filed a separate reply but the stand taken by all the respondents are somewhat on the common lines. The respondents, besides, contesting the case of the applicant on merits, have also taken a preliminary objection that the present application is barred by limitation and is liable to be rejected. The application is barred by time both under the provisions of Section 14 and/or Section 15 of the NGT Act. Another preliminary objection raised on behalf of the respondent is that the two writ petitions being WP No. 67043/11, *Gram Panchayat Sundri Block Babhni v. Union of India & Others* and WP No. 58444/14, *Ramdev & Ors. v. State of Uttar Pradesh* have been filed before the Allahabad High Court and therefore, the tribunal should not entertain the present application to avoid conflicting decisions and even otherwise.

5. According to respondent no. 3 the Environmental Clearance to the project had been granted on 14th April, 1980, while the present application under Section 14 has been filed in the year 2014. Where the limitation prescribed under Section 14 is six months from the date when the cause of action first arose, whereas the limitation prescribed under Section 15 is five years from the date

when the cause of action first arose and the petition having been instituted on 22nd December, 2014 is barred by time.

It is stated that the contention of the applicant that the cause of action arose when replies to the RTI filed by the applicants were received in September and November, 2004 is untenable. It is specifically stated that the project does not require fresh Environmental Clearance in terms of the Office Memorandum dated 15th January, 2008 issued by the Ministry. This is an inter-state project which had been sanctioned in the year 1976 and the Environmental Clearance was accorded on 14th April, 1980. MoEF came into existence only in the year 1985 i.e., subsequent to grant of Environmental Clearance in the present case. The Forest Department vide its letter dated 27th February, 1982 had transferred 2422.593 acres of forest land to Irrigation Department, State of Uttar Pradesh for the purposes of the said irrigation project for which the compensation of Rs. 41,27,211.93 was paid. This factual position is even supported by the letter of the Forest Department dated 17th April, 1986. The project activity had been commenced in the year 1980 and, therefore, as per respondents, no Environmental Clearance under the Notification of 2006 is required. As far as the Forest Clearance is concerned, according to the Ministry, the records pertaining to the same are not traceable since the records dates back to more than 3 decades, therefore, the Ministry prays for leave of the tribunal. According to the respondents no. 1 & 2, in addition to the above project, which is that of Government of Uttar Pradesh with the participation of other

States, had been granted Environmental and Forest Clearance by different agencies; the project is being monitored regularly and the compliance report is sent, as mandated by the Ministry. Photographs have been placed on record by these respondents to show that the construction related work on the project in question has been going on over a period of time. The project was conceived in the year 1976 which postulates the construction of the dam over River Kanhar and which also require the participation and approval of the States of Jharkhand and Chhattisgarh. The said project proposes to provide irrigation facilities to Dhudhi and Robertsganj Tehsils of district Sonebhadra in the State of Uttar Pradesh and envisages the construction of left and right canal along with concrete spill way of length of 312 metres on river Kanhar, a tributary of river Son. 11 villages in Uttar Pradesh, 4 villages in Chhattisgarh and 4 villages in Jharkhand are identified and are a part of the project in question and would be submerged by the construction of the dam on the river Kanhar. It is proposed to irrigate an area having 2605 ha. with 136 percent irrigation intensity to feed 108 villages of the two districts which are naxal affected, drought prone and constitutes tribal area. It is specifically stated in the reply that the earthwork in the main dam to the extent of 30.84 lakh cubic metres out of 64.94 lakh cubic metres had been completed. Furthermore, in the left and right main Kanhar canal, the length of which are respectively 25.60 km and 31.50 km, earthwork have been completed to the extent of 14.9 lakh cubic metres out of 62.44 lakh cubic metres, which is about 25 per cent

of the total earthwork. 14 items of pucca work of the proposal of 266 concrete works have been completed. The total land required for the project is being 4439.294 ha, have been acquired to the extent of 2681.404 ha which is about 60 percent of the land required. This itself shows that the work of the project has been going on and was never closed. In contemplation of the approval received from the States of Chhattisgarh and Jharkhand which came in the year 2002 and 2010 respectively, various construction works related with the project other than concrete spill way on the river path and related activities, had been done. It is stated by the respondents that till date almost 80 percent of the earthwork relating to main dam of the project has been completed. Forest land required for submergence area of project in the State of Uttar Pradesh has been acquired to the extent of 100 per cent and 89 per cent of the agriculture land required for the project has also been acquired till date, for which the compensation has been given. Contract works for the construction related activity in the project has been awarded. 70 percent earthwork along with the left and right Kanhar canal has been done.

The Ministry vide its letter dated 14th April 1980 though mentioned as 16th April 1981, in the short affidavit, had been granted Environmental Clearance to the project. The Forest Clearance had also been granted, though the letter granting Forest Clearance is not available, the copy of the letter dated 27th February, 1982 has been placed on record, subject of this letter relates to transfer of forest land in the district in question. Vide this

letter, the permission has been granted by the Governor for transfer of forest land to the Irrigation Department for the purposes of submergence of areas for Kanhar Dam project for the consideration stated therein. The payments received for compensatory afforestation and for transfer of forest at the rates specified therein, has been tendered by the authorities. According to these respondents, the project in question where the project related activity is ongoing does not require any fresh Environmental Clearance. The Irrigation Department is submitting a biannual compliance report relating to the project as stipulated by notification dated 14 September 2006, and the project is being monitored by the Ministry of Environment and Forest. An elaborate and more comprehensive rehabilitation scheme dated 13th October 2014 had been formulated by the State Government for the families of those villagers who are affected by the construction of spill way on the Kanhar river. In the reply, it has been stated that in October 2014, the CWC had proposed a revised cost estimate for Kanhar irrigation project to the advisory committee of the irrigation, flood control and multipurpose projects which unequivocally demonstrates that the project is one where investment clearance has been accorded by the Planning Commission and other vital aspects relating to the utility of the dam and the area to be approved and rehabilitation scheme, were approved subsequent thereto in the 124th meeting of the advisory committee of the CWC held on 16th October 2014. The said proposal was accepted and till date an amount of Rs. 223.55 crores has been invested. Thus, these

respondents submit that the allegations in the application are wholly misplaced and completely untenable and hence the application is liable to be dismissed.

6. A common rejoinder has been filed by the applicants, stating that there was no operation from the year 1989 to 2014 and it is thus, not an ongoing project. It is submitted that for a project to come into existence, the necessary elements are the allocation of funds, acceptance of design, purpose of project, specific time duration for completion of construction and operation phase, etc. All these ingredients were missing at any time earlier than 2014. According to the reply of the State itself, it is clear that the present project with its project design and cost was originally accepted by CWC in 106th meeting of the Advisory Committee on 16th September 2010 and clearance to the project was accorded only on 5th December 2010 and no substantial work had been carried out due to non-availability of funds. Subsequently, the project was again presented to CWC on 16th October 2014, wherein the technical approval with revised budget was granted.

“The note on the basis of which the said approval has been granted shows that CWC has suggested substantial changes in the project including the following:

- a. The spillway length have been increased from 237m to 311.75m higher grade of concrete has been suggested.
- b. The gate size is revised from 13m x 14.5 m (15 No.) to 15.5m x 14.5 (16 Nos.)
- c. Changes in Malliya aqueduct-The trough width of aqueduct increased from 3.75m to 5.3m and also higher grade of concrete has been suggested in Malliya aqueduct.
- d. Changes in Tunnel-tunnel diameter increased from 4m to 5.5m whereas the length reduced from 3.0km to 2.66m.

Apart from the same, there are significant addition to structures and change in design which are shown in tabular form in the same document. (page 179-182). The perusal of the document shows that the cost of the project has been finalized for Rs. 2252.29 crores which is due to price escalation, inadequate provision, additional requirements and change in design. It is pertinent to mention here that in 1989 the project was suspended only due to the pending permission of the CWC. The Progress Report of 1998-99 (Pg 312) clearly states:

(iv) Cost of project and clearance:

The estimate of project was presented to the Central Water Commission in October, 1973. The proposal was accepted by the Central Water Commission in September, 1976 with an estimated cost of Rupees 27.75 crores. The financial approval to this project was granted by Government of Uttar Pradesh vide letter No. 258/79/23-C-4/1991/W/73/dated 29.01.79 for 27.75 crores but due to interstate conflicts, the clearance by Central Water Commission is expected and hence the project work is suspended since 89-90.

It is absolutely clear from the aforesaid that the project is not an “ongoing” project and infact shall be treated as a new project since major changes in the project design and costs estimates have been approved by CWC only in 2014; thus even if it is assumed that the project has undertaken any construction activity prior to 2014 the same becomes defunct due to the reason that the same would be required to be reconstructed as per the revised changes.”

7. The applicants also submitted that based on the progress reports of the project which are on record and the judgment of the Tribunal in the case of *Rayons Enlightening Humanity v. MoEF*, 2013 (1), All India Reporter, page 324, the project falls within the ambit of the circular dated 15th January, 2008 issued by the Ministry. It is also stated that the project has undertaken construction activities without approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980 and the activity, whatever has been carried out, is unauthorized and illegal. As per the standing order of

the Ministry of Agriculture and Irrigation dated 18th July, 1979, wherever the proposal is for transfer of more than 10 ha of forest land, the permission of the Government of India is necessary, which has not been taken in the present case.

Kanhar irrigation project, located on Kanhar river, a tributary of river Son is located in Sonbhadra District of Uttar Pradesh. The District has a large number of thermal power plants, aluminum, cement industries and chemical industries besides a large number of coal mines. Infact Singrauli region of which Sonbhadra is a part, collectively accounts for more than 12,000 Mega watt of thermal power, besides hydro power generated through Rihand and Obra Dams. This region is also called the “energy capital of India”. The rich coal belt in the District has several open cast coal mines with a capacity of 17 million tons per annum. Most of this coal mines and the industries have come into existence during the last 35 to 40 years.

While reiterating the averments made in the application the applicants prays for the reliefs claimed in the application.

From the above factual matrix and the contentions raised by the Learned Counsels appearing for the respective parties, the following questions arise for consideration:

- (i) Whether or not the present application should be entertained by the Tribunal in view of pendency of two Writ Petitions on similar issues before the Hon’ble High Court of Allahabad?
- (ii) Whether the present application is barred by time and is therefore liable to be rejected?

- (iii) Whether it is obligatory upon the Project Proponent to seek Environmental Clearance afresh, in terms of the EIA Notification, 2006?
- (iv) Whether in the facts and circumstances of the present case, should the Tribunal issue any directions in the interest of environment and ecology?

Discussion of question (i)

8. One of the contentions raised on behalf of the Respondents is that there are two Writ Petitions pending before the Hon'ble High Court of Allahabad, raising somewhat similar issues. According to the respondents, there is a likelihood of passing of conflicting orders by the High Court and the Tribunal on similar issues, therefore, the Tribunal may not exercise its jurisdiction and entertain and decide these applications.

Undisputedly, the applicants in the present case are not parties to the petitions before the High Court. The High Court, as of now, has not passed any interim or final orders in those writ petitions. Writ Petition No. 67403 of 2011 has been instituted by the Gram Panchayat Sundari, where the prayer is that the project should be started only after a fresh study and a complete and comprehensive Resettlement and Rehabilitation Policy is framed by the Project Proponent and Respondents therein. Writ Petition No. 58444 of 2014 has been filed by Ramdev and Others in which the prayer is that the Notification, under which the lands were acquired, stood lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Re-settlement Act, 2013. Further, the Petitioner should not be dispossessed from the land in question. As is evident, the petitioners in both the Writ Petitions are different from the present applicant, the prayers made therein are also distinct and different from the prayers made before this Tribunal and the controversies to be determined in the Writ Petitions before the Allahabad High Court and before this Tribunal in this present application are governed by different laws and legal criteria. The High Court would primarily be concerned with acquisition of land and the reliefs that the petitioners in these writ petitions would be entitled to in terms of land acquisition laws. The question whether any study should be carried out or not for continuation of project activities is a very generic prayer and in view of the fact that the High Court has not passed any interim orders, the project is continuing with its activities of construction etc. On the other hand, the Tribunal has to examine the impact of the project and its activity upon the environment and ecology of the area in question. Further, the Tribunal has to adjudicate, whether seeking of Environmental Clearance for the project afresh would be necessary or not and whether any directions need to be passed by the Tribunal for restoration of the pristine environment of the area to its natural state. All the reliefs claimed, squarely fall within the provisions of the NGT Act. This is a petition that is squarely covered under Sections 14 and 15 of the NGT Act, of course, subject to the decision on other issues by the Tribunal. Since neither the parties are common nor the issues are directly and substantially similar in

both the proceedings, more so, the reliefs even claimed by the parties in their respective petitions/applications fall in different fields of law and there is hardly any possibility of passing of the conflicting judgments. Thus, there appears to be no merit in the objection raised on behalf of the Respondents. Another aspect which needs to be mentioned at this stage is that, the Respondents are more or less common in the Writ Petitions before the High Court and in the present application. If the decision on any of the issues in the Writ Petitions are likely to have any effect on the present application or vice versa, the Respondents, then should have moved the Hon'ble High Court of Allahabad for transfer of cases to the Tribunal. It is possible that the Respondents herein may not have been able to seek transfer of the cases to the Tribunal in view of the Orders passed by the Supreme Court in SLP No. 50 of 1998. However, the said impediment existed no longer than 9th August, 2012, when the said SLP was dismissed by the Supreme Court and the directions issued by earlier Bench in paragraph Nos. 40 and 41 of its judgment in *Bhopal Gas Peedith Mahila Udyog Sangathan & Ors. v. Union of India & Ors.*, (2012) 8 SCC 326, became operative. Then, nothing prevented the Respondents from seeking transfer of case to the Tribunal.

At this stage of final arguments of the application, the Respondents can hardly be heard to raise such an objection.

Resultantly, this Tribunal finds no merit in this objection raised by the Respondents and rejects the same.

Discussion on Issue No. (ii)

9. In order to examine whether the present application is within time or not, reference to certain undisputed dates would be appropriate. The project was conceived somewhere in the year 1976-1977 and was given Environmental Clearance vide order dated 14th April, 1980. In terms of this letter, the project had been cleared from environmental angle but subject to the safeguards that were stated in the said letter. Appropriately, we may refer to the conditions for the grant of Environmental Clearance as stated in the letter dated 14th April, 1980:

- (1) “ Necessary arrangements may be made by the project authorities to provide fuel wood, free of charge, to the labour force during the construction stage of the Project so that indiscriminate felling of trees in the neighborhood may be prevented. Since it is unrealistic to expect labourers to buy wood when they can easily procure it from the surrounding forest, adequate provision to meet the cost of providing free firewood should therefore be made in the project estimate (Forest Department may be requested to open fuel depots);
- (2) Restoration of Land, to the extent possible, in construction areas may be ensured to prevent erosion and removal of scars.
- (3) Adequate arrangements may be made to prevent the incidence of any endemic health problems due to water/soil-borne diseases;
- (4) It should be ensured that the construction of colonies for the project involves minimum possible deforestation. Compensatory afforestation and social forestry should be undertaken on a large scale and;
- (5) The state of the socio-economic profile of the affected (adivasis) population should be prepared to determine the problems likely to be encountered in their rehabilitation. Count of the Mahuwa trees should also be undertaken in the economic profile.”

10. It is claimed by the Project Proponent and Respondents that the project had been granted Forest Clearance. However, copy of this order granting the Forest Clearance to the project had not been

placed on record of this Tribunal by any of the Respondents including the Project Proponent. Reliance have been placed upon the letter dated 27th February, 1982 wherein the Governor of the State of Uttar Pradesh had approved the transfer of land of the forest division admeasuring about 2422.593 acres to the Irrigation Department for the construction of the project. This was an inter-state project to which State of Jharkhand and Chhattisgarh were also parties. Their land areas were to be submerged and other activities of the project were to be carried out on the lands of these states and thus, their consent was necessary. Such consent for the project was granted on 8th April, 2002 and 9th July, 2010 by the State of Jharkhand and Chhattisgarh respectively. From the documents on record, it is clear that the construction and related activity of the project had come to a halt and had not been carried out for a long time, for the want of funds, due to absence of fresh permission from the Central Water Commission in the light of change in technical and physical parameters of the project and the consent of the other States affected by the project. The Advisory Committee of the Commission in its 106th Meeting held on 16th September, 2010 had considered the project as new major project in Uttar Pradesh and proposal was accepted as follows:

**“KANHAR IRRIGATION PROJECT (NEW-MAJOR),
UTTAR PRADESH:**

CE (PAO), CWC briefly introduced the project. The Kanhar Irrigation Project envisages construction of a 3.003 km long earthen dam across river Kanhar, a tributary of river Sone. The project is proposed to provide irrigation benefits to an area of 27,898 ha (CCA-26,075 ha) annually to the Dudhi and Robertsganj Tehsils of Sonebhadra District which falls in the drought prone area of Uttar Praedesh.

The Cost Estimate for the project has been finalized as Rs. 652.59 crore at 2008-09 Price Level with BC ratio of 1:17. State Finance Concurrence has been submitted by the Project Authorities (Annexure-V).

Ganga Wing, MoWR has informed vide their letter No. 7/17/2008-Ganga/ 5511- 13 dated 15th September, 2010 that TAC Note of Kanhar Irrigation Project does not have any information about international aspect of the project. The project authorities informed that Kanhar Project has been taken up for utilizing 0.15 MAF of Kanhar water out of total allocation of 0.25 MAF to Uttar Pradesh as per Bansagar Agreement (reached on 16th September, 1973 prior to Indo-Bangladesh treaty on sharing of Ganga Water).

After brief discussion, the Committee accepted the proposal.”

It may be noticed at this stage that initially the declared cost of the project was only 27.75 crores which on the basis of 2008-2009 price level with BC Ratio 1:17 was finalized at Rs 652.59 crores. There had been considerable variations in command area, submergence area and the land required to be acquired. Subsequently, it was declared that the land measuring initially 4131.5 hectares from all the three States was required for the project. Through letter dated 27th February, 1982, the forest land measuring 2422.593 acres for non-forest activity was approved for transfer to Irrigation Department by Governor. The other land required for the project were 4439.294 hectares.

11. The Environmental Clearance had been granted to the project in 1980. However, the applicants have not filed an appeal under Section 16 of NGT Act challenging the Environmental Clearance. They have raised environmental issues falling within the ambit of Sections 14 and 15 of the NGT Act. Undoubtedly, limitation prescribed under Section 14 is of 6 months from the date when the

‘cause of action first arose’, while under Section 15, it is of 5 years from the date when the ‘cause of action first arose’. The cause of action first arose contemplates a cause of action not in its generic sense but a complete cause of action with reference to the provisions of the NGT Act. For instance, the acquisition of land would not be a cause of action contemplated under the NGT Act. In this regard we may make reference to the Judgment of the Tribunal in *Kehar Singh v. State of Haryana* 2013 ALL (I) NGT REPORTER DELHI 556.

The cause of action must be a composite cause of action which will give rise to environmental specific issues under Section 14 of the NGT Act, 2010. Even if, the land is acquired, environmental clearance is granted and for years together, the work is not carried out, it cannot be said to be a complete and a composite cause of action triggering the point of limitation under Section 16. As already noticed, there is no challenge before us to the order dated 14th April 1980, but the applicants are certainly entitled to question whether or not the conditions of Environmental Clearance are necessarily being implemented in the interest of environment and ecology. Section 15 of the NGT Act, deals with the restoration of property, damage and restitution of the environmental areas where project activity has been carried out. The limitation period specified under the said provision is 5 years. The NGT Act, 2010 itself came into force in the year 2010 and the period of 5 years is not over, even as of today. Prior to 2010, question of filing the petition as contemplated under Section 14 and 15 of the NGT Act would not

arise and the applicant could not have invoked such jurisdiction. From the date above-mentioned, it is clear that the consent of the States which will be an advantage precedence for commencement and carrying on of the project itself, was granted in the year 2010. The project reports showed that in the year 2010, scope of the project was expanded and/or modernized which was cleared by the Central Water Commission only on 16th September, 2010. If 5 years are even computed there from, the petition had been filed on 22nd December, 2014 which is well within the period of 5 years. Another relevant aspect that would call for discussion is the fact that the Forest Clearance of the project is not available and in any case has not been placed on the record of the Tribunal. The applicant had moved two RTI applications on 24th July, 2014 and 29th August, 2014 respectively which was replied by the Ministry by stating that Environmental Clearance had been granted vide order dated 14th April, 1980 but the Forest Clearance was not available though, it was stated to have been granted. After coming in to force of the Environment Protection Act, 1986, particularly the notification of 1994 and 2006, it was expected of the project proponent to put both the Forest and Environmental Clearances on its website and informed the State Government as well, though none of this kind had been done to trigger the prescribed period of limitation under the provisions of the NGT Act. It is only upon compliance of these requirements, that in terms of conditions of EIA Notification, 2006, the Respondents could have raised the plea of limitation. In light of this discussion, we are unable to find any merit in the plea of the

Respondents that the present application is barred by limitation and would reject the same.

Discussion on Issue No. (iii) and (iv)

12. Now, we will proceed to examine the merit and otherwise of the contentions raised in both question nos. (iii) and (iv) which we would prefer to examine collectively. The project in question is not a site oriented project with wide and diverse activity and consequences. According to the Respondents, the project envisages construction of the dam of total length of 3.240 kms with three lift schemes, 2.66 km long irrigation D-shape tunnel of 5.50 meters in diameter on right Kanhar Canal. 74 drainage crossings on right bank canal including Pandu basin canal and 39 drainage crossing on left bank canal and 13 aqua ducts, 2 railway bridges, 7 PWD bridges and 72 Village Road Bridges. The Project is expected to provide facility of annual irrigation to the land of up to 35,467 hectares. The project of this nature and dimension, certainly requires unambiguously stated conditions for avoiding, and in any case, minimizing its adverse impacts on environment, ecology, rivers and biodiversity of the area in question. As already noticed, the project was conceived in the year 1976-1977 and Environmental Clearance was granted to it on 14th April, 1980. The Environmental Clearance to the project was in very general terms. It imposed certain conditions which we have already referred above. The Project Proponent was required to prevent erosion and removal of scars, take effective steps in regard to restoration of the land, take due care of health problems likely to arise due to water/soil-

borne disease. The Project should involve minimum possible deforestation. Compensatory afforestation and social forestry should be undertaken on a large scale. The socio-economic profile of the affected (adivasis) population should be prepared to determine the problems likely to be encountered in their rehabilitation. Due rehabilitation scheme should be formulated. There is nothing on record before us to show complete or even partial compliance to these conditions except vague averments. Submitting of progress reports to the Ministry will be inconsequential, unless and until a strict vigil is kept and physical inspection of the site is continued, to verify the compliance of the conditions. There is no report before us by inspection team, by MoEF or any other competent authority that the project has progressed strictly in terms of these conditions, which in any case are very general in nature.

At the cost of repetition, we may also notice that no order granting Forest Clearance to the project had been placed on record, despite repeated opportunities. It is a matter of surprise that none of the respondents including the Project Proponent are able to produce Forest Clearance to the project, which is the very foundation for commencement of project. The entire reliance has been placed upon the letter dated 27th February, 1982 written by Joint Secretary, Government of Uttar Pradesh to the Chief Conservator of Forest. In terms of this letter, the forest land measuring 2372.593 acres and 50.00 acres i.e. total of 2422.593 acres of forest land situated in District Mirzapur of Duddhi Forest

Division was transferred to the Irrigation Department for the consideration stated therein, for the purpose of submergence of area for Kanhar Dam Project and for the construction of residential quarters for the said project. In terms of this letter, the land was to be used only for the purposes stated in the letter and not otherwise. The Irrigation Department could not transfer this land to any other department, institution or person. Value of 144 trees was to be paid by the Irrigation Department while the trees standing on the rest of the land were to be disposed by the Forest Department in a public auction. The expenses to be accrued on the plantation of 10 times of trees in lieu of the trees cut from the land measuring 2422.593 acres proposed for the transfer, shall be borne by the Irrigation Department. First and foremost, the approval granted by the governor permitting conversion of the forest land for non-forest activity of the project is not and cannot be construed as the Forest Clearance as contemplated in terms of Section 2 of the Forest Conservation Act, 1980. Secondly, this letter postulates compliance to the conditions stated therein. Again, whether these conditions have been complied with or not even as of this date, there is nothing on record of the Tribunal. Even in the counter affidavit filed by the Project Proponent, there is no specific averment that these conditions have been fully complied with. Reforestation is an activity which can safely be continued along with the progress of the project. Compliance to these conditions would have been in the interest of the environment because by now, the trees would have fully grown and would have protected the environment and

prevented pollution generated as a result of various activities, including construction and vehicular pollution, resulting from the activity of the project. Failure to produce relevant records of the Forest Clearance by the Respondents, particularly the Project Proponent, can certainly be of no advantage to them. They are the beneficiaries of the order, thus, under the responsibility to show compliance thereof.

13. In the correspondence relating as back as to 18th July, 1979, Deputy Secretary, Government of Uttar Pradesh had written to Inspector General, Forest, Government of India for permission to transfer the forest land. In the copy of this letter which was addressed to the Chief Conservator of Forest, Uttar Pradesh, it was stated that after contacting Officers of the Irrigation Department which part of the land area urgently required in order that the pruning of trees etc. in such priority area may be get done. Upon receipt of the required permission from Government of India and formal orders being passed by the State Government, there would be no impediment to give physical possession of the land. No clearance or order of the Central Government has been placed on record before this tribunal to show that the conversion and transfer of forest land for unauthorized non-forest activity was approved by the Government of India.

14. Since the inception of the project in the year 1976, a period of more than 39 years has gone by. There are rival contentions made by the parties in relation to activities and progress of the project. According to the applicants, the project has hardly progressed and

even as late as in July, 2014, not much work at site has taken place. They have filed photographs to show that there are dense forests around the area of the project at hills of Rangniya Sundri, Janta Jangal, Gohda, girgarani. It was also contended that because of the increase in population, construction activity and other allied developments in the area in question over this long period, in any case, would justify a relook into the entire project and its activities and the Project Proponent ought to seek fresh Environmental Clearance. On the contrary, the Respondents have placed on record photographs to show that the large scale construction activity is going on the site in question. The major part of the canals has been constructed. The construction of the tunnel is in the process of being completed. Huge amount of funds, i.e., Rs 223.55 crores have already been spent upon removal of earth, construction and other allied activities. It is also averred on behalf of the Respondents that the rehabilitation package, in all respects, have been provided. It was finalized on 30th October, 2014 containing provision for various categories and it is expected that nearly Rs. 7,11,000 would be given for rehabilitation and original families in the villages specified under the scheme shall be given 150 sq. mtr plots for residential units, free of charge. The amount is to be given in a time bound manner and various amenities like school, park etc. is to be provided. In nutshell, according to the Respondents, the project takes care of all essential features and there is no likelihood of the environment and ecology being adversely affected. The specific

stand, is that it is an ongoing project and does not require any fresh Environmental clearance.

Whatever be the situation at site, very substantial work of the project is still to be completed. Even the photographs placed by the Respondents on record do not show that the project is anywhere near to its completion. We are of the considered view that even if the project is treated to be an ongoing project, even then, its impact on environment, ecology and biodiversity of the area is required to be considered objectively and in its correct perspective. We have already noticed that it is not a site oriented project but is a huge project, which will have diverse impacts on a very large area and number of villages falling in the territory of the three States namely Uttar Pradesh, Jharkhand and Chhattisgarh. Nature of the project involves tunneling, making of canals, roads, bridges and other concrete works which all would, in the normal course of events have an impact on the environment. The Environmental Clearance which was granted 33 years back cannot be held as good in the field of environment. With the progress in time and the developments that have taken place during this long time, are certainly of relevant consideration for examining the environmental impact of the project on the area in question. The applicants plea that the project activity which has started at a massive scale in the recent past is bound to have impact on environment, aquatic ecology, forest and terrestrial biodiversity, wild life habitat, climate change and would also result in loss of medicinal plants and rich biodiversity is an element of merit. From the pleadings of the parties

and the documents on record, it is evident that hardly any construction or other major activity had taken place prior to 1994. The consent of the other States came in the year 2002 and 2010 respectively. The Central Water Commission granted approval in September, 2010. The cumulative effect of these documents seen in light of the circumstances of the case clearly shows that the project implementation took off in the recent past and not years back. After coming into force of Environmental (Protection) Act, 1986, the Ministry of Environment and Forests had issued a Notification dated 27th January, 1994 requiring any person who desires to undertake any new project and in any part of India, or expansion or modernization of any industry or project listed in Schedule I to the Notification had to submit an application to the Ministry to seek Environmental Clearance for the project. Schedule I to the Notification included hydro power, major irrigation projects and / or their combination including flood control projects. In view of the peculiar facts and circumstances of this case, it was expected of the Project Proponent to seek Environmental Clearance in terms of the Notification of 1994, which apparently he did not. Thereafter, came EIA Notification issued by MoEF on September, 2006. Under Schedule I to the Notification of 2006, such projects were covered and the Project Proponent was expected to take Environmental Clearance in terms of the specified category. The expansion and modernization of the existing project or activities listed in the Schedule were also covered under the Notification. Under Entry 1(c) to the Schedule to the Notification of 2006, specifically covered such

projects and they were categorized as project 'A' wherever submergence of inter-State domain was concerned. In furtherance to this Notification, MoEF vide its Circular dated 15th January, 2008 notified as under:

“All such projects listed in both EIA Notifications, 1994 and 2006, shall require prior environment clearance irrespective of issue of NOC if the project related activity has not yet commenced at site. The validity of NOC should not be extended without asking the proponent to seek prior environment clearance under the EIA Notification, 2006.

All such projects, which were issued NOC/CTE before September, 2006 and listed in both the Notification, but have not commenced project activities at the site shall not start project activity now without obtaining prior environment clearance under EIA Notification, 2006 even if the land was acquired before January 1994.”

The bare reading of the Circular above, shows that the projects which were to be established and / or which were having expansion or modernization of existing projects and were covered under the Notification of 1994, would require prior Environmental Clearance, irrespective of issue of 'NOC', if the project activity has not yet commenced at the site. Admittedly, the project in question had not established itself, much less it had become operational either in 1994, or 2006 or even in 2014. The expansion and modernization would have to be of an ongoing project. The project must exist on the site, otherwise it would be a project which is sought to be implemented and modified at planned stage, i.e., on paper and not in reality. In such projects, obligation to comply with the existing environmental laws would certainly accrue. The laws even if taken as prospective and not retrospective, even then the project which has not been implemented, at least

substantially, would be required to comply with the environmental conditions as such interpretations of these laws alone, would serve the object of environmental statutes, public good and protection of the Fundamental right in terms of Article 21 of the Constitution of India. The object of environmental laws is to protect the environment, ecology and public health in the interest of society. It would be impermissible to throttle the compliance to these laws on the assumption that such laws would not be applicable to the existing units or to the units or the projects which are on going or are at their very initial stage of construction. For instance, Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 requires not only units, industries, or operations or processes which are to be established, but also covers the existing units which all are required to take consent of the Board within the prescribed period in terms of the said provision [M/s Divya Granites v. KSPCB; 2013 ALL (I) NGT REPORTER (2); A.P. Pollution Control Board V. Prof. M.V. Nayudu, (2001) 2 SCC 62]. Of course, the provisions of the 1994 Notification and / or 2006 Notification by explicit language do not prescribe so, but what cannot be overlooked is the language of the provisions of these Notifications and the Circulars issued by the Ministry, which is intended to further the cause of the laws in force, particularly the Environmental (Protection) Act, 1986. We should give such interpretation to these provisions that would further the cause rather than defeat the very purpose and essence of these environmental statutes. The power of the Central Government to

take measures and / or to issue directions as contemplated under Sections 3 and 5 of the Act of 1986 would apply universally, without any differentiation between an existing project or project in progress or projects to be established in future. The underlining feature for exercise of such power is very fundamental and that is for protecting and improving the quality of environment and preventing, controlling and abating environmental pollution.

15. In the case of *Rayons Enlightening Humanity & Anr. v. MoEF Ors.* 2013 1 All (I) NGT Reporter (2) 324, where the Tribunal was concerned with the interpretation of the Circular dated 15th January, 2008 while noticing that even the State Pollution Control Boards were required not to grant/extend/revalidate NOC/CTE without advising the Project Proponent to seek prior Environment Clearance under EIA Notification, 2006, for the projects which were listed in EIA Notification, 1994 and have not commenced project activity at the site and such projects were required not to start activity on the site without grant of Environmental Clearance. The Tribunal after considering various judgments of the Supreme Court of India held as under:

“36. The purpose of issuing executive directions or circulars is primarily to provide guidelines which then must be read together for the purpose of ascertaining the intendment thereof. Thus, executive orders and circulars have to be interpreted and construed in the backdrop of these stated principles and they cannot be intended to achieve an object which is contra or even different than the statutory law.

37. Now, we revert back to consider the circular dated 15th January, 2008. Admittedly, the project in question was not listed in EIA notification of 1994 and is listed under EIA notification of 2006. It would not require EC under the EIA notification of 2006 if it was not shown in EIA notification of 1994 and NOC was issued on or

before 14th September, 2006. Here, we are concerned with environmental protection with reference to Municipal Solid Waste (Management and Handling) Rules, 2000 (for short 'MSW Rules). These rules elaborately dealt with the collection and disposal of municipal solid waste. None of the terms and conditions of these rules were complied with by Respondent No.4 till expiry of the NOC period of five years in 2010. The NOC referred to in clause (ii) relates to the NOC being issued under the provisions of the Environment (Protection) Act, 1986 read with MSW Rules of 2000. The NOC issued by Respondent No.3 does not state as to under what provision of law or under what statute the NOC was being issued. In any case, this was the NOC for the purpose of establishment of MSWM plant, which itself was not set up till the expiry of the NOC period in 2010. Thus, the NOC was rendered ineffective and infructuous.

38. Furthermore, we must see the intent of the circular which has been clearly conveyed in clause (iii) of the circular dated 15th January, 2008, though in a different context. Under that clause, obtaining of EC irrespective of NOC would be necessary if the project has not commenced and it was listed under both the notifications of 1994 and 2006, but what is important is that the 44 NOC should not be extended without asking the project proponent to seek prior EC under the notification. The purpose and intent of the circular dated 15th January, 2008, thus cannot be construed to provide an exemption to the statutory notification of 2006 but is to provide solutions in some given situations while ensuring that EC is taken. The exception is relatable to only those projects where the project has been commenced. That is why, the project activity must relate to operation of the plant rather than commencing of ancillary works (such as construction of staff quarters). Now we must also examine the stand taken by Respondent No.3 for all these years. Though the circular had been issued in the year 2008, still the Board was of the firm view that Respondent No.4 need to obtain EC from SEIAA. Even as late as on 5th March, 2012, the Board wrote to Respondent No.4 that NOC had already lapsed and in view of the notification of 2006, there was a compulsion for seeking environmental approval for solid waste management project and specifically stated that no report had been submitted and the authorisation requested was specifically declined. Even on 11th July, 2012, similar stand was taken and the Board called for rapid environmental impact and general environmental assessment report to consider the request. Thus, as late as the end of 2012, the Board was not willing to

grant any authorisation or permission to Respondent No.4 for operating the MSWM project in question. It is also evident at that stage that the project had not been completed and even its construction was not complete. The stand 45 taken by Respondent No.3, apparently was in consonance with law.”

In light of this position of law, let us examine the status of the present project. Undoubtedly, the project is nowhere near its completion. It has still miles to go before it is operationalised and serves the purpose that it is required to serve. There were considerable changes in the scope of the work, technical parameters, dimensions and particularly, the expenditure of the project. We have already noticed that till 2010 even the concurrence of all the concerned States had not been received and the project had not been cleared by Central Water Commission for the revised parameters. The Project Proponent had submitted a note for consideration of the Advisory Committee on ‘irrigation, flood control or multipurpose projects’. The Project Proponent has submitted that the estimated cost for the construction of the project had gone up from Rs. 652.58 crores as was in 2008-09 to Rs. 2252.29 crores in 2013, annual irrigation has gone up from 27898 hectares as was in 2008 to 35467 hectares in 2013 while CCA was stable at 26075 hectares. This had been approved on 10th March, 2010. The grounds given in the said proposal for variations stated in the proposal related to increase in spillway length from 237m to 311.75m, revision in size of the gates, changes in the aqua duct and changes in length and diameter of the tunnel. Besides this, the following recommendations were requested to be considered by the Advisory Committee of the Ministry of Water Resources:

- (1) “ The detailed review of proposed revised costing has been done by CWC and finalized the estimated revised cost as Rs. 2252.29 crore on 2013 price level.
- (2) BC ratio of the project has been revised to 1.42 taking into account the present rates and yield as communicated by State Agriculture Department. The same is acceptable as the project also benefits drought prone Sonbhadra district of Uttar Pradesh. As such the project is techno-economically viable.
- (3) The project has been proposed to complete in four years after investment clearance from Planning Commission. Therefore keeping in view the proposed completion duration, State Government needs to stick the proposed timelines for respective components.
- (4) The State Finance concurrence is granted for cost Rs. 1761.81 crore for which the proposal was submitted. However the cost has been increased as a change in design and other aspects. For remaining balance cost SFC is yet to be obtained from State Govt. The project proposal is recommended for consideration and acceptance of the Advisory Committee subject to condition that State Finance Concurrence from State Government is furnished during the meeting.”

The above recommendations which are stated to have been approved by the Advisory Committee provided a comprehensive differentiation in design and structure plans of the project. This also added considerably to the cost of the project. These modifications would have environmental impacts which nobody appears to have considered. When the proposal was submitted, the work on spillways and distributaries was still to commence. The F-cross drainage work and canal earthwork till March 2014 had only been done to the extent of 17 to 19 percent respectively.

The above discussion clearly shows that the Project Proponent should have been advised to seek Environmental Clearance under the Notification of 1994 and / or 2006. There is legal obligation upon the Project Proponent to continue and complete the project

with due regard to the environmental laws in force. Any law and for that matter, more specifically, the environmental laws are not mutable. They are progressive and subject to change. The provisions must be construed with regard to the scheme of the laws in force and the object sought to be achieved by such legislations. Certainly the entire development of the area will affect 19 villages of 3 States, which is a relevant consideration. The impact of the project activities and its completion will have diverse impacts upon the environment, ecology, rivers and the biodiversity of the area in question. Having obtained the Environmental Clearance in the year 1980 and the project being nowhere near completion even in 2015, the environment and ecological degradation is a matter of serious concern and the Project Proponent should be obligated to take all such precautionary and preventive measures that are required to be taken in the interest of environment and ecology. We have already noticed that there is nothing on record of the Tribunal to show that there has been strict compliance to the conditions of the Environmental Clearance granted in the year 1980 and even to the conditions stated for transfer of forest land in the letter dated 27th February, 1982.

16. The project proponent claims that environmental clearance was granted in the year 1980. However, the project has taken off in the very recent past. If this project was required to take environmental clearance during the period when it has actually started construction, then the laws governing the grant of clearance would have been entirely distinct and different. The laws in force

requires much more stringent compliance to the standards prescribed under different environmental enactments. The concept of EIA in India started much subsequent to the grant of environmental clearance. The full-fledged EIA studies and environmental clearance practices became effective only with the coming into force of the Notification of 1994 issued under the Environmental Act, 1986. The Environmental Clearance granted in the year 1980 was a mere formality and did not safeguard environment and ecology of the area in question. If the project of similar scale was proposed in the times when actual construction work had started after transfer of the required lands, it would have required serious considerations from various environmental perspectives and much harsher conditions would have been imposed on the project proponent. Some activities of the project, like the building of the roads, bridge and dams etc. would have a different impact at the construction stage and operation stage. The facts of the present case, examined in the light of the principles of sustainable development and the precautionary principle would tilt in favour of the project proponent but even by imposition of proper conditions in consonance with the laws in force, which in any case exists right from 1986 onwards. Another factor that has persuaded us to pass an equitable order in the present case is the fact that huge amount of public funds have already been spent on the project, large scale construction and digging has already taken place as of now. Any direction for stoppage of work or demolition of the project would certainly not serve either the ends of justice or the

environment. The project also contemplates to provide water to drought prone areas.

Another aspect which requires to be noticed in favour of the invocation of precautionary principle is that large scale industrial development has taken place in and around this area but still it has not affected the area in terms of prosperity and health. Life of the people living in that area still remains backward. This project is intended to provide and inject better facilities of living and better environmental air to the area in question.

17. The Environmental Clearance to the Project is of a period prior to the enactment of the Environmental (Protection) Act 1986. In the light of the fact that actual impacts of the project on the ecology, environment and the people would be noticed only on commissioning of the project, thus there is need to reassess the environmental impacts in the light of the development that has taken place in the area around the project, both within the District of Sonbhadra and in the entire Singrauli region. The environmental impact assessment prior to the grant of EC in 1980 confined itself to the assessment of natural resources, mainly, forest diversity with botanical surveys of trees, shrubs and grasses being carried out by the botanical survey of India. The EIA study had merely listed out the various plant species occurring in the area and made observation that there are no rare or endangered species of the plant occurring in the area. It is further said that there is not much vegetation in the area except common species of dry deciduous

forest and that there will be no major environmental impact if the proposed dam is constructed.

18. The industrial development that has taken place in the last 30 to 40 years, have created great deal of environmental stress. The air and water pollution has increased manifold. The mining activity has resulted in large dumps of over burden being created which is physically, nutritionally and micro biologically harming the environment and impoverishing the ecosystem. This has also led to soil erosion and contamination of rivers including adverse impact on agricultural lands through leaching of heavy metals. The ground water is also severely under stress due to contamination with heavy metals like Mercury, Arsenic and Fluoride from the fly ash generated by the power plants. There are Reports of the CPCB to suggest that there is a presence of Mercury, Arsenic and Fluoride in the water samples which is entering the food chain and thereby, affecting the health of the people. It therefore does not come as a surprise that the Singrauli region was identified as a critically polluted area by CPCB as far back as 1991. The State of Madhya Pradesh and Uttar Pradesh were required to prepare action plan to control pollution. Even in terms of the study conducted in 2009 by CPCB in collaboration with IIT, Delhi, Singrauli region, of which Sonbhadra is a part as already stated above, was identified as critically polluted area with a comprehensive environmental pollution index (CEPI) of 81.79 out of 100 and was among the 88 most critically polluted industrial cluster in the Country. As a consequence thereof the Government of India placed a moratorium

on setting up of new industries in 2010. The soil is withered and impoverished and consequently natural forest and the eco system are fragile. Most of the industrial development which has taken place in last 30 to 40 years has caused immense stress on the environment and consequently on the people. Obviously, therefore, an environmental clearance granted in 1980 would not have factored with the level of industrial development and its cumulative impact on the environment.

A simple reading of the conditions for EC will only demonstrate that such factors as Air Pollution caused due to the industries, power plants, mining and stone crushing has not even been mentioned in the EC, let alone gone into comprehensively while undertaking Environmental Impact Assessment.

19. Paradoxically although Sonbhadra is one of the highly industrially developed districts of the State of Uttar Pradesh, it is also the district which is classified as one of the 250 most backward districts in the Country. The district is also one of the districts which have high percentage of the area under forest. As against the forest cover of less than 6 % for the entire State of UP, Sonbhadra District accounts for about 38 % of the forest cover (though most of it is more than 60 % open forests with canopy density of less than 40 %).

In terms of the permission of the Governor of Uttar Pradesh approving diversion of 2422.593 acres of forest land situated in Dudhi Forest Division of District Mirzapur to the Irrigation Department, Respondent No. 1 and 2 (the State of UP) have averred

that in lieu of the 2422.593 acres (equal to 980.40 hectares), compensatory afforestation over an area of 666 hectares has been done, besides 80 KMs of road side plantations along Myorpur – Dhaba and Myorpur Babhuni Roads. Therefore, against an area of 980.40 hectares diverted for the irrigation project, the area brought under compensatory afforestation in terms of the statement filed by a Divisional Forest Officer, Renukoot Forest Division is only 666 hectares of forest plantations and 80 KMs of road side plantations. Though not specifically mentioned in the Report of the DFO, however, it emerges that there is still deficit of about 314 hectares of area to be covered under compensatory afforestation. The reply filed by the State of UP (Respondent No. 1 and 2) is silent as to when and where the deficit of compensatory afforestation is proposed to be liquidated. It is also not clear from the Report filed by the Divisional Forest Officer as to the present status of the compensatory afforestation in terms of the survival percentage of the plantation and their growth and their present status. The compensatory afforestation which is claimed to have been done in the years 1984 to 86 would have reached sufficient degree of maturity and should be a full grown forest in 30 years, the time elapsed since the compensatory afforestation activity was done. This is particularly important considering the fact that all the forest areas that were diverted in terms of the order of Governor of UP in 1982, has been cleared of the pre existing vegetation and in the area that was taken up for compensatory afforestation should be a full grown forest as of now. It is also essential to assess the impact

of such large scale clearance of forest when compensatory afforestation has not been completed. There being a deficit of more than 300 hectares even now as per the document on record.

20. From the affidavit filed by the State of UP it is evident that in a note prepared by the District Magistrate Sonbhadra (who is also the Administrator of the irrigation project) which was submitted to Secretary, Irrigation and water resources, Government of UP that in so far as land acquisition is concerned, the total forest land required to be acquired is 1421.47 hectares out of which 980.40 hectares has already been acquired and balance forest land that is required to be acquired is 441.07 hectares. The relevant portions of the Annexure A/12 of the State of UP are reproduced below:

“11. Land acquisition

A total 4610.87 ha of land (including submergence and main canal and branches) is required for construction of this project.

Details of updated land acquisition are given below:

Sr. No	Type of land	Total Land requirement (ha)	Land acquire d (ha)	Balance (ha)	Remark
1	Agricultural	2085.85	1752.39	333.46	Land required for submergence and construction of dam has been acquired completely only gram samaj (govt. land) is to be transferred to project authority by the District Magistrate is under process
2	Forest land	1421.47	980.40	441.07	
3	Gram Samaj	1103.55	0	1103.55	
	Total	4610.87			

It thus emerges that the 980.40 hectares is the land already diverted in terms of the order of the Governor of the UP vide letter dated 27.02.1982. This leaves a balance of 441.07 hectares of forest lands which is still to be acquired. In other words, in order for the project to be completed as per the revised technical and physical parameters, the project authority would require additional 441.07 hectare of forest land for its completion. There is not even a whisper in the reply of the State of UP to suggest that State of UP has submitted a proposal for acquiring this balance forest lands in terms of the Provision of the Forest (Conservation) Act 1980. The Affidavit of the MoEF & CC (Respondent No. 3) is also silent on this.

21. The applicants have also referred to a study conducted by Central Inland Fisheries Research Institute (CIFRI) in the year 2014 in respect of the River Sone, of which Kanhar River is a tributary. The research paper has categorized the Sone river as environmental class 'F', which suggests that the modification of the river flow has reached critical level and river system has been completely modified with almost total loss of natural habitat and biota. The applicant has averred that with the impounding of River Kanhar, there will be serious adverse impacts on the aquatic fauna particularly the fishes population and also on the number of species present, due to the dams already constructed.

22. The Respondent No. 3 (MoEF & CC) in its Additional Affidavit filed on 11th March, 2015 have averred that the Forest (Conservation) Act 1980 was enacted on 25th October, 1980 and

that it is evident that the issue of application and grant of environmental and forest clearance as raised by applicant pertains to the period prior to 25th October, 1980, that is the date of enactment of Forest (Conservation) Act 1980. In any case the Respondent No. 3 (MoEF & CC) has taken different stands on the subject and is unable to produce document to conclusively say, whether the forest clearance under the Forest (Conservation) Act, 1980 was granted if taken after the enactment of the Forest (Conservation) Act 1980 or whether in view of the fact that since the project pertains to the period prior to 1980 there is no forest clearance required. Be that as it may, assuming that the Governor of UP approved the diversion of 2422.593 acres of forest land validly, no such diversion could have happened in 1982 without prior concurrence of the central govt. under Section 2 of the Forest (Conservation) Act 1980.

23. In the application, there is no prayer for setting aside of the Environmental Clearance dated 14th April, 1980. There is no Forest Clearance placed on record by any of the parties before the Tribunal. We are not inclined to accept the contentions of the applicant and grant prayer that the project work should be stopped and it should not be permitted to continue till the Project Proponent seeks fresh Environmental Clearance. In our considered opinion, it would neither serve the interest of the environment or ecology nor would it serve public purpose. Huge amounts have been spent on this project. The project which was expected to cost the nation 27.75 Crores, is now costing the country 2252.29 Crores at 2013

price level. Stoppage of work would further enhance the cost of construction and would be unnecessary burden on public exchequer. Applying the principle of sustainable development, while giving due regard to the protection of environment and while ensuring that no irreversible damage and degradation of environment is permitted in terms of Section 20 of NGT Act, we are constrained to issue certain directions. We find it inevitable for us to issue directions keeping in mind peculiar facts and circumstances of the present case, thus, the following order:

(1) We constitute the following Committee which shall submit the report to the Tribunal on the issues stated hereinafter and in light of this judgment:

- (a) Principle Chief Conservator of Forest (Uttar Pradesh) or his representative.
- (b) Chairman or his Nominee of Expert Appraisal Committee of River Valley and Hydro Power Projects of Ministry of Environment, Forest and Climate Change.
- (c) Member Secretary, Central Pollution Control Board.
- (d) Representative of Ministry of Environment, forest and Climate Change.
- (e) Representative of Central Water Commission.
- (f) Chief Engineer, Department of Irrigation, State of Uttar Pradesh.
- (g) Chief Engineer, Department of Irrigation, State of Chhattisgarh.
- (h) Expert from IIT, Kanpur.

- (2) The Committee shall specifically report whether the conditions imposed in the consent order dated 14th April, 1980 and 27th February, 1982 of the Forest Department have been strictly complied with or not, in all respects.
- (3) The Committee while examining the compliance of the conditions, as noticed above, shall specifically report whether the conditions have been complied with in its entirety or not. What is the status thereof and what steps are required to be taken in that regard?
- (4) Whether there is complete and comprehensive Resettlement and Rehabilitation Policy in place in relation to the project.
- (5) Modifications in execution of the project, if any, required to ensure protection of environment and ecology in the execution of the project in question.
- (6) The Committee is required to make its general recommendations, measures and the conditions that should be imposed upon the project proponent to ensure that further progress of the project does not have any adverse impacts on ecology, environment, rivers, hydrology, biodiversity and on all the surrounding forests, villages and tribes.
- (7) The Committee shall assess and examine the present status of the compensatory afforestation done by the forest department during 1984, 85 and 86 over an area of 666 hectares and 80 kms on the road side. The Committee shall make assessment of the survival percentage and the present status of compensatory plantation through random sampling.

- (8) The Committee shall examine the proposal of Project Proponent with reference to the forest area already diverted (980.40 Hectare) and the balance area of 441.07 hectares that is required to be diverted in terms of the note prepared by the Administrator of the project while seeking clearance for the project.
- (9) The Project Proponent shall not take up any new activity on the additional forest area of 441.07 hectares proposed to be acquired unless specific permissions under the Forest (Conservation) Act 1980 is taken and the area diverted for non forest activity by the Competent Authority.
- (10) The Committee shall study the impact of loss of 980 hectares of forest area which is comprised of wild life habitats with specific reference to the elephant corridor, rich floral and faunal diversity.
- (11) Undertaking Social forestry in resettlement colonies of the displaced persons was one of the conditions of EC. The Committee shall examine whether social forestry for ameliorative measures against air pollution and adverse impact on local ecology and environment has been taken up and to what extent. The committee shall also suggest measures as to how the resettlement colonies particularly, if located close to the industrial clusters of Sonbhadra, can be protected from the adverse effects of thermal power plants, coal and bauxite mining, aluminum and cement industries, particularly, from the air and water pollution and health

impacts due to Mercury, Arsenic and Fluoride contamination and as a consequence of the presence of large number of industries in the District of Sonbhadra in particular and Singrauli in general.

(12) In the light of the fact that the Kanhar River flows through to a drought prone area where water is a critical input for the life supports systems, both on land and within the aquatic ecosystem, the Committee should examine maintenance of certain minimum environmental flow downstream of the Dam.

(13) The Committee while preparing the comprehensive report shall take into consideration, if there is any adverse impact of the works already executed, on the environment and ecology of the areas and the remedial steps that should be taken.

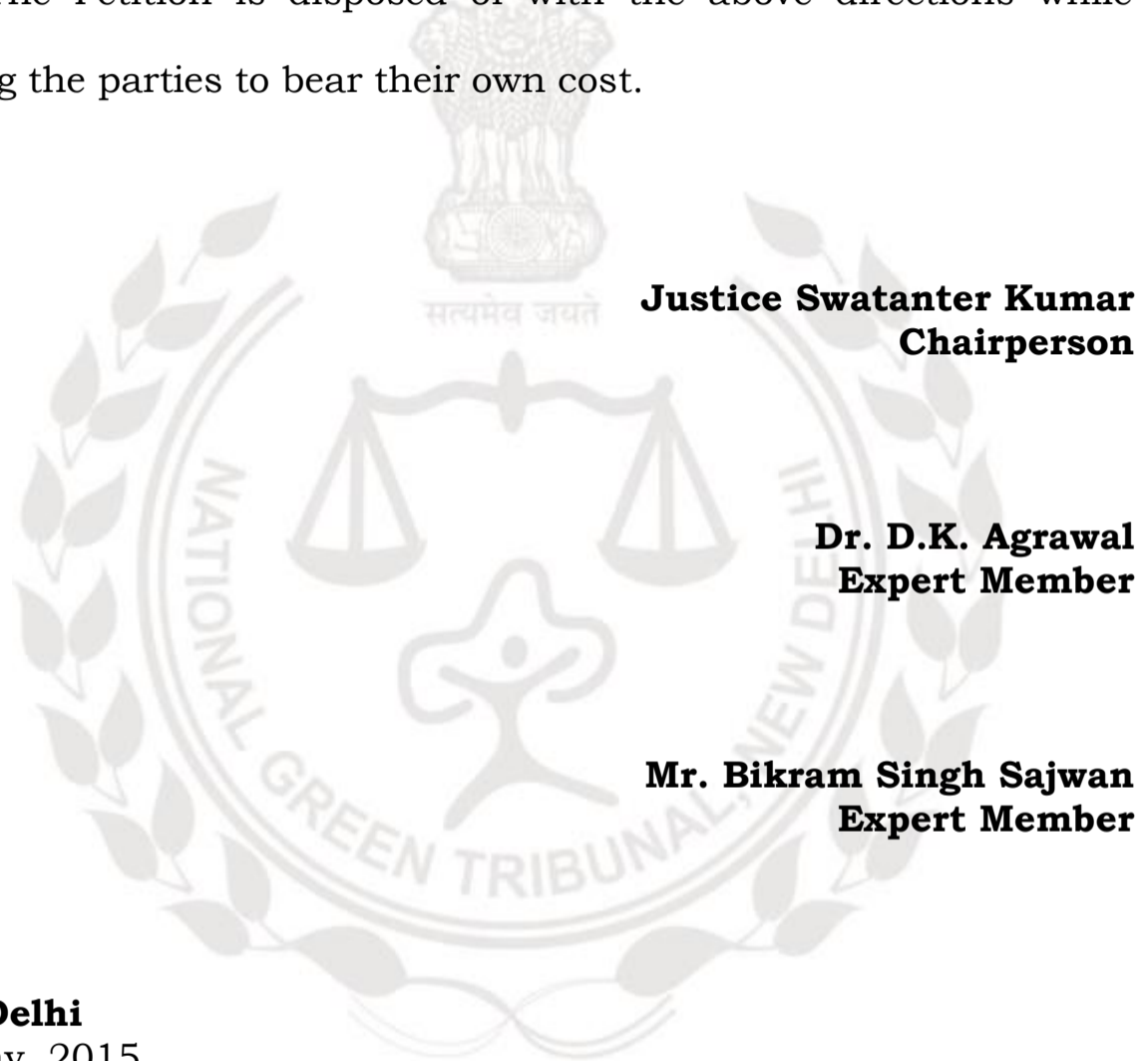
(14) The Project Proponent shall complete the construction or activity that is under way and would not commence any new activity or construction without specific recommendations of the Committee in that behalf.

(15) The Committee shall pay specific attention in regard to the conditions that should be imposed upon the project proponent for conservation, protection, reforestation, restoration of environment and ecology wherever any environmental damage or degradation has occurred as a result of this project.

24. In view of the fact that we are finally disposing off the Original Application, M.A. No. 902 of 2014 (praying for interim stay on the

further progress and construction of the project) and M.A. No. 14 of 2014 (praying for taking of action against respondents for violating the orders of the Tribunal on 24th December, 2014) do not survive for consideration of the Tribunal and are, therefore, disposed of as such.

The Petition is disposed of with the above directions while leaving the parties to bear their own cost.



Justice Swatanter Kumar
Chairperson

Dr. D.K. Agrawal
Expert Member

Mr. Bikram Singh Sajwan
Expert Member

New Delhi
7th May, 2015

NGT