

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

.....

MISCELLANEOUS APPLICATION NO. 1050 OF 2015

REVIEW APPLICATION NO. 14 OF 2015

IN

ORIGINAL APPLICATION NO. 521 OF 2014

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

4. State of Jharkhand

.....Respondents

Counsel for Applicant:

Mr. Sanjay Parikh, Ms. Parul Gupta and Ms. Ninai Thomas, Advs

Counsel for Respondents:

Mr. Pinaki Misra, Sr. Advocate, Mr. Ravi P. Mehrotra and Mr. Abhinav Malik, Advocates.
Ms. Priyanka Sinha and Ms. Anu Tyagi, Adv. for State of Jharkhand.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice Sonam Phintso Wangdi (Judicial Member)

Hon'ble Dr. Devendra Kumar Agrawal (Expert Member)

Reserved on: 3rd February, 2016

Pronounced on: 19th February, 2016

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)

Miscellaneous Application No. 1050 of 2015 has been filed under sections 25, 26 read with section 28 of the National Green Tribunal Act, 2010 (for short, 'NGT Act'), read with Order 39 Rule 2A of the Code of Civil Procedure, 1908, prays that stringent action be taken against the authorities for violating the orders of the Tribunal and also to issue appropriate directions including that the respondents be restricted from taking up any construction activity at the site.

2. The applicant had filed Original Application no. 521 of 2014 before the Tribunal praying for stay of construction activity of the project, 'Kanhar Irrigation Project' in District Sonbhadra, Uttar Pradesh. This application was disposed of by the Tribunal vide its Judgment dated 7th May, 2015 and the Tribunal passed a number of directions including constitution of an Expert Committee which was to submit a report to the Tribunal in relation to the various

aspects of the Project. The Committee's Terms of Reference (TOR) related to Rehabilitation Scheme, implementation of the conditions imposed in the Forest Clearance and other steps that were required to be taken to protect and prevent any adverse impacts on ecology, environment, river hydrology, biodiversity of the surrounding areas and forests.

3. In terms of Direction no. 14 of the Judgment dated 7th May, 2015, the Project Proponent was directed to complete the construction or activity that was underway and would not commence any new activity or construction without specific recommendation of the Committee in that behalf. The Committee had submitted the detailed report on 31st December, 2015 in relation to each of the directions issued by the Tribunal in the Judgment dated 7th May, 2015. The present miscellaneous application has been filed on the ground that the construction has started after being in abeyance for almost two and a half months and there has been damage to the project during the rainy season, the project construction activity in fact is a new activity and, therefore, there is a new construction. It is also stated that the newspaper report published on 25th September, 2015 showed that the State is now preparing to start the construction of steep way which was obstructed by heavy rains. This cannot be affected as it would be in violation to the orders of the Tribunal.

4. The applicant has also filed an additional affidavit to state that various directions have not been complied with like the State of Uttar Pradesh has not submitted proposal for acquiring the balance

forest land, no clearance of the Central Government has been obtained for conversion and transfer of land and other grounds have been raised including the grounds which have been dealt with in the judgement of the Tribunal dated 7th May, 2015. The ground whether Forest Clearance or Environmental Clearance has to be obtained or not is a matter which is covered by the Judgment and will not be reconsidered by the Tribunal. The prayer in the application is that whatever be the reason, the Tribunal should take punitive action against the respondents.

5. We are not impressed with the contention raised on behalf of the applicant. The Expert Committee has filed its report; if there are any deficiencies in the report and/or the respondents have not expeditiously implemented the directions given in the main judgment per se would not invite a penal action against the respondents. The respondents have specifically taken the stand that they have not raised any new construction but have only finished the works which were under way. This project had been conceived and started as back as in the year 1976 and construction started after a number of years. Huge public investment has been made in this project. The aspects of category, dimension and sustainable development have been squarely considered by the Tribunal in its judgment dated 7th May, 2015. The Tribunal still has to examine the report of the Expert Committee, its exception and the aspect as to what further directions may be imposed upon the Project Proponent and how they are to be implemented. In that sense, the case is still

wide open and taking a penal action at this stage would be neither permissible nor acceptable.

6. Consequently, Miscellaneous Application no. 1050 of 2015 is disposed of however, with the liberty to the applicant to raise the contention before the Tribunal when the Tribunal considers the High Powered Expert Committee's Report and pass fresh directions in relation to the project in question.

7. The application is accordingly disposed of.

8. List this matter for consideration of the High Powered Expert Committee's Report on 23rd February, 2016.

**Swatanter Kumar
Chairperson**

**Sonam Phintso Wangdi
Judicial Member**

**Devendra Kumar Agrawal
Expert Member**

New Delhi
19th February, 2016