

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

**Original Application No. 264(T<sub>HC</sub>) of 2013  
(CWP No. 9199 of 2012)**

**IN THE MATTER OF:**

1. Yog Raj S/o Late Shri Garzmand,  
R/o Village, P.O. Barshaini Tehsil and  
District Kullu, H.P.
2. Pavitar Singh S/o Shri Sher Singh,  
R/o Village, P.O. Barshaini Tehsil and  
District Kullu, H.P.
3. Pyare Lal Thakur S/o Shri Sher Singh,  
R/o Village, P.O. Barshaini Tehsil and  
District Kullu, H.P.
4. Khekh Ram S/o Late Shri Garzmmmand,  
R/o Village, P.O. Barshaini Tehsil and  
District Kullu, H.P.

..... Applicants

Versus

1. The State of Himachal Pradesh  
Through its Secretary (Power and MPP)  
Government of Himachal Pradesh,  
Shimla.
2. Deputy Commissioner,  
Kullu, District Kullu  
H.P.
3. Sub Divisional Officer (Civil),  
Kullu Sub Division, Kullu,  
District Kullu, H.P.
4. General Manager,  
Parbati Hydroelectric Project,  
State-II, National Hydro Power Corporation  
Limited Nagwain, District Mandi, H.P.
5. National Hydro Power Corporation  
(A Government of India enterprise)  
Limited, Sector-33, Faridabad (Haryana)  
Through its Chairman-cum-Managing Director

.....Respondents

**COUNSEL FOR APPLICANTS:**

Mr. Pradeep Kumar, Advocate

**COUNSEL FOR RESPONDENTS:**

Mr. Anup Rattan, AAG, Mr. Vivek Singh Attari, Ms. Parul Negi, DAG for the State of Himachal Pradesh

Mr. C.N. Singh, Mr. Chander Narrain Singh, Advocates for Respondent Nos. 4 & 5

Mr. Ashok Sharma, Mr. Sandeep Sharma, ASGI

**PRESENT:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**

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

**JUDGMENT**

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**Reserved on: 16<sup>th</sup> July, 2015**

**Pronounced on: 30<sup>th</sup> July, 2015**

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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 prayer in this application is for directing the Respondents an enquiry into the damage caused to the houses of the Applicants because of construction (especially tunnel) and other project activities carried out by the Project Proponent in the Parbati – Stage-II Hydroelectric Project. Further the prayer is for issuance of direction to Respondent nos. 4 & 5 to pay compensation to the Applicants for rectification of the damage done. The Tribunal, vide its order dated 2.1.2014, constituted a Committee directing the committee to conduct a joint inspection of the houses and report to the Tribunal the damage caused to the properties of the Applicants.

In furtherance to the order of the Tribunal, the Committee submitted a detailed report with photographs of the properties in question to which the Applicant was directed to file objections vide order dated 28.03.2014. Along with the report, original hand-written site inspection report signed by all the Members of the Committee has also been filed. The main objections raised by the Applicants to the report of the Committee are that firstly, it associated a representative, the Chief Engineer of the Project Proponent, secondly that typed copy of the report is not signed by Mr. Anil Kumar, Geologist of the Department of Industries, State of Himachal Pradesh. According to the Applicant, for these two reasons itself, the report is liable to be rejected.

2. We find no merit in these contentions. Firstly, if the Committee had associated a representative of the Project Proponent, the Applicants were also permitted to participate in the inspection proceedings. Thus, they can hardly raise any objection in that behalf. Furthermore, as already noticed, though the typed report is not signed by Mr. Anil Kumar, one of the Member, but the original minutes and proceedings of the inspection at site dated 27.01.2014 are signed by the said Member, Mr. Anil Kumar as well. As the main typed report to which photographs have been annexed is relatable to the inspection proceedings dated 27.01.2014, the mere fact that the typed copy has not been signed, thus, would provide no benefit to the Applicants, much less be a ground for rejection of the inspection report. In the inspection report, the damage to each property has been assessed and

even valued in terms of repairing etc. for each of the property separately.

3. Another aspect that the Tribunal has to deal with is that, blasting work, major construction work and heavy machinery work, according to the Project Proponent, had been completed in the year 2007 and thereafter no major construction work had been carried out which could result in any damage to the property. The writ petition before the Hon'ble High Court was filed in October, 2012 by the Applicant claiming for compensation for damage to the properties, which according to the Project Proponent, are not attributable to the activity of the Project Proponent. However, according to the Applicant, the damage occurred due to blasting and other major mechanical activities carried out by the Project Proponent and there is serious damage to the property. The Applicant has placed an estimate of private Architects showing that repairing the damage would cost a sum of around Rs. 23,00,000/- (Rupees Twenty Three Lakhs only) as building has to be demolished and reconstructed as opposed to the extent of nearly Rs. 2,00,000/- (Rupees Two Lakhs only) or so suggested by the Committee in relation to repair in the property of one of the Applicants. Similar reports have been filed in relation to other properties. We may refer to the documents placed by the Applicants himself on record which would show that the blasting and major mechanical construction work had been completed much prior to the institution of the writ petition. The Annexure-P-17/A that has been filed by the Applicant is the translated copy of the reply received by him in response to his RTI application. In this, it has specifically been

stated that in response to the information sought by the Applicant, the quantum of explosive used for drilling during the period from 2002 to 2012 be treated as 'NIL'. Annexure P-14/A is the copy of the letter filed by the Applicant dated 4<sup>th</sup> July, 2012 which is written by the Chief Engineer of the Dam to the SDO Kullu clearly stating that after inspecting the buildings of the Applicants, the Officers have reported upon investigation that reason for damage to the building is not blasting. Even in the letter written on 9<sup>th</sup> June, 2012 by one of the Applicants, Mr. Deshraj to the Chief Manager of the Project, it has specifically been stated that the blasting work had been completed in May, 2010. Though according to the Applicant and as averred, the blasting work was still going on at the time of filing of petition. There are other documents placed on record by the parties to show that the blasting work had completed in any case prior to 2010.

The Applicants have filed various photographs, as stated above and other materials on record to show the damage caused to their property by construction, tunnelling and blasting activity carried out by the Project Proponents. Respondents no.1, 2 and 3 in their reply have stated that an application was submitted on 15<sup>th</sup> March, 2012 by the Applicants to them which was forwarded to Tehsildar, Kullu on 26<sup>th</sup> March, 2012 to conduct the spot inspection. Respondents no. 4 and 5 had denied the damage on account of blasting activity. However, the report of Tehsildar dated 22<sup>nd</sup> March, 2013, reported that some damage had occurred to the properties of the Applicants. According to the Respondents no.4 and 5, while filed an independent reply and took various preliminary objections, it is also stated that it

was the responsibility of the contractor to carry out the construction work strictly in accordance with the permissions granted for that purpose. It is specifically averred by them that during the course of construction, major ground work, blasting activity for underground construction stood completed in April 2007 and thereafter lining invert and overt is going on. They deny having received any complaint of damage to the property of anyone because of such activity.

It is stated that the contractor, vide their letter dated 22<sup>nd</sup> March, 2013 to Respondent no.5 had informed that there was no complaint registered even by Yog Raj in regard to the damage to the property. They also denied that the muck has been generated and dumped anywhere else except at the site for that purpose. Further, according to these Respondents, the report submitted by the Engineering, Geology and Geo-technical divisions of Respondents, in the office of SDO, Kullu, does not conclude that the cracks in the structure were caused because of underground blasting and this report had its own limitations.

The report of the Committee which visited the houses on 12<sup>th</sup> February, 2014 has not commented upon the cause of damage to the houses. However, it noticed that there was a damage that required repair. It directed the Executive Engineer, HPPWD to submit the documents which then were to be considered by the Committee. The Committee then has submitted the detailed report to the Tribunal in which it has assessed the damage to the respective properties. In relation to the house of Khekh Ram, it is observed that on visual inspection, no significant structure change in building has been

observed. No surface cracks have been found in the surrounding area of the building. Hence, there is no major damage to the structure. It recommended re-plastering of 99.66 sq. metres with the cost that is required. In relation to the house of Paviter Singh, the Committee observed that the ground floor of the house was in good condition with no significant structure changes. Some deformation was shown on the wall of the first floor at some places. Repair of the said wall was recommended along with mud plastering in the 29.04 sq. meters. An amount of Rs.43,777/- was estimated. In relation to the house of Yog Raj, it was stated that on visual inspection, no significant structural changes in the building were observed. No major damage to the structure except the minor repair in dry stone masonry. Recommended repairs with the cost of Rs. 2839/-. Similarly for Pyare Lal it was stated that on visual inspection, the mud plaster needed repair at some places. Recommended repairs with the cost of Rs.6135/-.

From the above, it is clear that some damage has been caused to the houses of the Applicants. No direct nexus on technical basis has been shown between the damage and the activity carried on by the contractors. Keeping in view the lapse of a long period between the event of blasting and when the inspections were conducted, it is very difficult to come to an exact conclusion in relation to the damage, cause and extent thereof and particularly the exact amount required for restoration of such damage. However, it is the responsibility of Respondents no.4 and 5 to make good the damage that has been suffered as it can be safely inferred from the record before the

Tribunal that there is a link between the carrying on of blasting and heavy construction activity to the damage to these properties.

4. The present writ petition before the Hon'ble High Court was filed in October, 2012 and was transferred to this Tribunal by order of the Hon'ble High Court dated 9<sup>th</sup> July, 2013 and re-numbered as O.A. 264(T<sub>HC</sub>)/2013. In the clear terms, this application would be liable to be dismissed as barred by time under Section 14 and/or Section 15 of the National Green Tribunal Act, 2010 but as it is a case of transfer to the Tribunal in terms of the order of the Hon'ble Supreme Court of India in the case of "*Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India & Ors.*" (2012) 8 SCC 326, we do not propose to reject this application on the ground of limitation. But the consequences of filing a belated petition would have to be borne by the Applicant. Applicants cannot claim advantage of their own delay. The Committee appointed by the Tribunal has submitted its report and the objection raised by the Applicants has no merit as already noticed. The photographs placed on record show that there is damage to the property but the damage does not appear to be of such nature that the entire property requires dismantling and reconstruction. It is a figmentation of the Applicants.

5. As a result of the above discussion, we find that the only relief that the Applicant can be granted is that the Respondents should either pay the determined amount by the Committee to the respective Applicants or repair their houses as per the report.

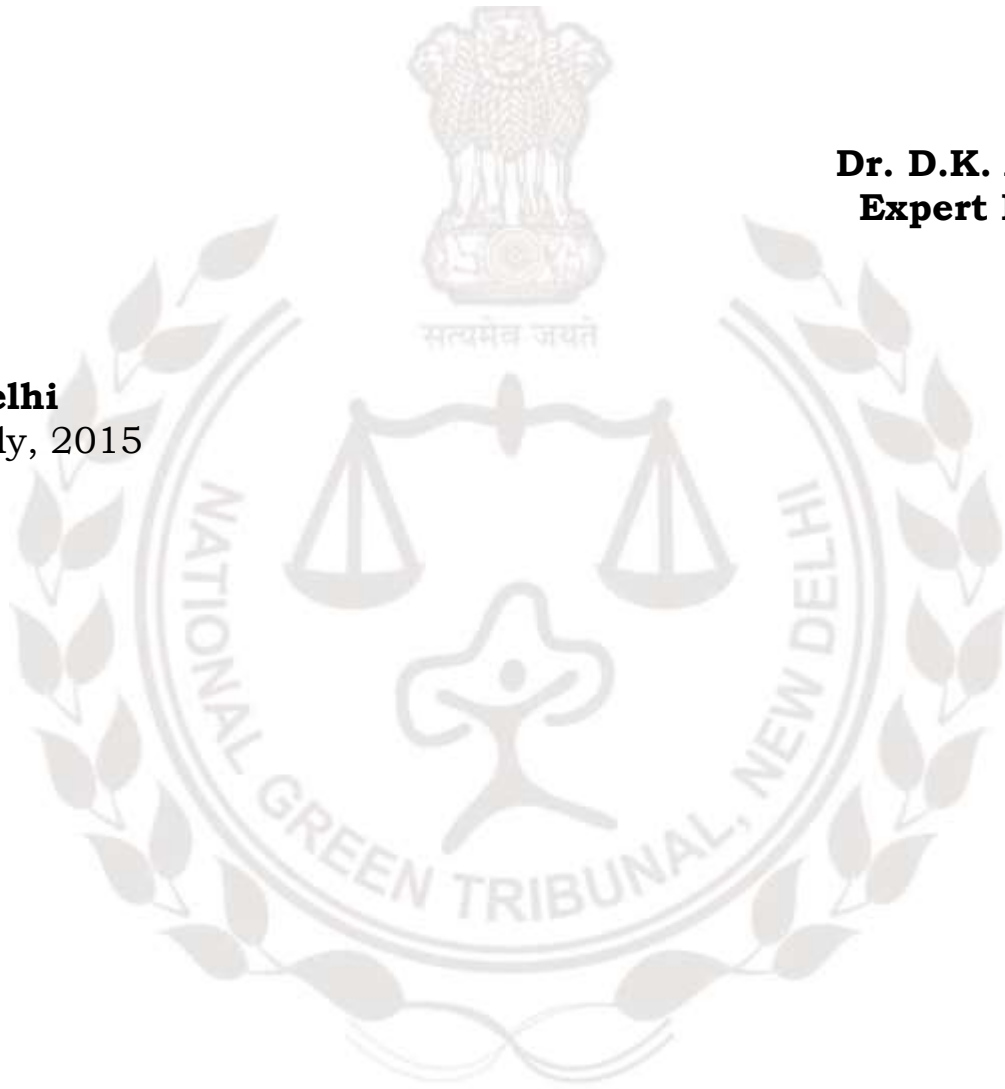


6. With the above observation, the Original Application No. 264 (T<sub>HC</sub>) of 2013 is allowed without any order as to costs.

**Justice Swatanter Kumar**  
**Chairperson**

**Dr. D.K. Agrawal**  
**Expert Member**

**New Delhi**  
30<sup>th</sup> July, 2015



**NGT**