

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

APPEAL NO. 151 OF 2016

Bharat Jhunjhunwala

Lakshmoli, PO Maletha,
Kirti Nagar, Dt Tehri, UKD 248161

VERSUS

1. **Union of India**

Ministry of Environment & Forests
Through its Secretary,
Paryavaran Bhawan, CGO Complex, New Delhi –
110 003

2. **State of Uttarakhand**

Through Its Chief Secretary, Dehradun,
Uttarakhand

3. **L & T Uttranchal Hydro Electric Pvt. Limited**

Through its Managing Director,
No.6 Gavni Village, Next to Jalagam Office,
Chandrapuri, District Rudraprayag,
Uttrakhand

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Chandrapuri, District Rudraprayag,

Uttrakhand

Applicant: Applicant in person

Respondent No. 1: Mr. Vikas Malhotra and Mr. M.P.
Sahay, Advs.

Respondent No. 2: Mr. Rahul Verma and Mr D. Bharathi
Reddy, Advs.

Respondent No. 3: Mr. Atmaram N. S. Nadkarni, Sr. Adv.
and Mr. Debarshi Bhuyan, Mr. Anuj
Sarama, Mr. Santosh Rebello, adn Mr.
Datta Prasad Lavande, and Mr.
Anshuman Srivastava, Advs.
Reddy, Advs.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice Sonam Phintso Wangdi (Judicial Member)
Hon'ble Dr. D.K.Agrawal (Expert Member)

- 1) Whether the judgement is allowed to be published on the internet -- yes
- 2) Whether the Judgement is to be published in the All India NGT Reporter -- no

Reserved on : **05th February, 2016**

Pronounced on : **4th May, 2016**

Justice Sonam Phintso Wangdi (Judicial Member)

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice Sonam Phintso Wangdi (Judicial Member)
Hon'ble Dr. D.K.Agrawal (Expert Member)

- 1) Whether the judgement is allowed to be published on the net
- 2) Whether the judgment is allowed to be published in the NGT

Reserved on : **5th February, 2016**

Pronounced on :

WANGDI, J.

1. This application has been preferred by the Applicant seeking certain directions against the Respondents no. 1 and 3 in respect of Singloi-Bhatwari hydro-electric project on the river Mandakini in the State of Uttarakhand.
2. The Applicant is a former Professor of economics of IIM Begaluru who is presently living at Lakshmoli in Uttarakhand, a village lying downstream of the Singloi-Bhatwari hydro-electric project, and claims to have authored three books on hydropower and also of having filed many cases before various courts regarding environment impact of hydro electric projects.
3. As per the Applicant, the project in question had suffered severe damage in the disaster that struck the State of Uttarakhand in June, 2013. It is contended that the Respondent No. 3 who is the project proponent, started with the reconstruction of the project without complying with the Environment and Forest Clearance and the various other safeguards. These facts as per

the Applicant, came to his knowledge only in July, 2014 which led him to file the present Application.

4. Without going much into the details, it would be sufficient to note that in the present Application, the Applicant primarily alleges (i) non compliance of the terms of the Environment and Forest Clearances as noted by the Expert Appraisal Committee (EAC) in its 40th, 43rd and 46th meetings held on 20th and 21st August, 2010, 12th and 13th November, 2010 and 22nd January, 2011 respectively; (ii) no permission of the National Board of Wildlife having not been sought for before the land for the project was transferred to the State Forest Department and (iii) faulty design of the project.
5. The Applicant thus *inter alia* prays for directions (i) upon the Respondent no. 3 (a) to implement the CAT plan as required under the Environment Clearance, (b) seek clearance of the National Board of Wildlife and (c) to redesign the project and, (ii) upon the Respondent No.1 to conduct fresh Cost-Benefit Analysis of the project.

6. The Respondents in their counter-affidavits while denying all material allegations, have raised preliminary objections on the maintainability of the Application on various accounts including that it is barred by law of limitation as prescribed under Sub-Section (3) of Section 14 of the NGT Act, 2010.
7. On 05.02.2016 when the Application was taken up for hearing, the Applicant appearing in person strongly urged that the question of limitation be taken up and decided first as it may prove to be an exercise in futility to argue on the merits of the case in the event it is ultimately held that the Application was barred by limitation. This was agreed by the Learned Counsel appearing on behalf of the Respondents as they would be pressing the question of limitation seriously.
8. Under such circumstances we requested the parties to address us solely on the question of limitation leaving the rest to be decided later, if necessary.

9. Mr. Atmaram N.S. Nadkarni, Senior Advocate, appearing on behalf of the Respondent No.3 submitted that apart from the fact that the Application is frivolous, it was also barred by the law of limitation as the Applicant has approached the Tribunal much beyond the period of six months prescribed under Sub-Section (3) of Section 14 of the NGT Act, 2010, after the cause of action had arisen. It has been submitted by the respondent that no explanation at all had been furnished for the delay nor was any application for condonation of the delay filed before the Tribunal for the Tribunal to be satisfied that the Applicant had been prevented by sufficient cause in filing the Application within the permissible period and allow him one month's further time to do so. As per Mr. Nadkarni, the delay was inordinate for the reason that the project had commenced on the basis of valid Environment and Forest Clearances dating as far back as the years 2006, 2007 and 2009. That the recommendations of the EAC made in their meetings held in 2010

and 2011 and conditions under other laws had been duly complied with which as per the Learned Senior Counsel would be evident from the fact that the project was under execution even as on the date when the present Application was filed.

10. It was next contended that a similar application filed earlier before this Tribunal in the year 2011 being Application No.12 of 2011, by one Jaya Prakash Dabral Vs. Union of India & Ors. where the Applicant sought to cancel the Forest Clearance granted in favour of the project proponent on various grounds one of which was the alleged threat to ecology and the environment caused by the underground tunnel, was dismissed by judgment dated 14th December, 2011 as being barred by limitation. It was then submitted that although writ petition being Writ Petition (PIL) No.38 Of 2011, filed in the High Court of Uttarakhand raising those very questions had been dismissed by the judgment dated 15th April, 2013 giving the petitioners liberty to approach this Tribunal, neither the

petitioners nor anyone else had chosen to exercise the liberty. It is submitted that the Applicant was thus barred by the principle of estoppel in preferring the present Application.

11. Mr. Bharat Jhunjunwala, the Applicant, while admitting to the delay neither furnished explanation for such delay nor prayed for condonation of the delay and contended that it was sufficiently explained in O.A. No. 97 of 2014 filed by one Raghuvir Dutt Tiwari and another in paragraph 6 of the Application. It was submitted that he had been duly authorized by the Applicants in that case to represent them and also to argue on their behalf. The submission having been accepted, the Applicant drew our attention to paragraph 6 of O.A. No. 97 of 2014 which shall be dealt with in detail later but at this stage suffice it to note that it is the stated case of the Applicants that they had preferred the Application only after they had come to learn in February, 2014 that the project had been restarted after having remained closed since June 2013 when natural calamity had struck the

State of Uttaranchal. It was the submission of the Applicant that since the Application was filed within six months from the month of February, 2014, it was within time.

12. We have given anxious consideration to the respective submissions of the parties, carefully examined the pleadings and the documents on record. Having regard to the fact that we are considering only the limited question on the point of limitation, we need not delay ourselves on the merits of the contentions raised in the Application.

13. At the outset it may be noted that admittedly the Respondent No. 3 had commenced with the project after it had obtained necessary Forest and Environment clearances in the years 2006, 2007 and 2009 which the Respondent No 1 had granted following the Precautionary Principle and the principle of Sustainable Development. In the Application, the Applicant has failed to cogently set out the violations of the Forest and the Environmental Clearances which are said to have

been committed by the Respondents except to state vaguely that there were violations.

14. Next, we find that in Application No. 12 of 2011 the Applicants, one of which was the Applicant in the present Application, had sought for cancellation of the Forest and the Environment Clearances and also had questioned the very feasibility of the project on various grounds including the threat and peril which will be caused by underground tunnels that are associated with the project. Although the Application was dismissed by the Tribunal vide its judgment dated 14th December, 2011, the Applicants chose not to challenge it in Appeal before the Hon'ble Supreme Court thereby giving it a finality. It would, therefore, not be open for the Applicant to file the present Applicant camouflaging the grounds by clever ingenuity and concealing the true intent and purport of the Application.

15. The other aspect of the matter which makes it worse for the Applicant is that he has also failed to exercise the liberty granted by the Hon'ble

High Court of Uttarakhand to approach this Tribunal in terms of its judgment dated 15th April, 2013 in Writ Petition (PIL) No. 38 Of 2011. The Application was filed only on 2nd August, 2014. Admittedly there has been a delay in filing the Application which the Applicant has failed to explain. Curiously, he seeks to rely upon an averment made in another Application filed by some other persons being Original Application No. 97 of 2014 in the matter of *Raghuvir Dutt Tiwari and Another Versus Union of India and Others*. For the ends of justice we have perused the averment relied upon by the Applicant which reads as follows:-

“6. That the Applicants were busy in getting their life as well as trying to help others to get back to their normal life after such a huge tragedy, which took a considerable time, energy and resources. Further, no work was being done on the Singoli Bhatwari project till January, 2014. The Applicants were under the impression that the Project Proponent (PP) had abandoned

the idea of restarting the project. However, sometime during February, 2014 the Applicants found that the PP had restarted work on the project. The Applicants are approaching this Hon'ble Tribunal after learning of this restart of work within 6 months of coming to know of this.”

16. A bare reading of the above would reveal that it is replete with vagueness. That apart firstly, there is no explanation whatsoever as to why no appeal was preferred against the Judgment of the Tribunal dated 14th December, 2011 in Application No. 12 of 2011 and secondly, it has not been stated as to why this Tribunal was not approached in terms of the Judgment dated 15th April, 2013 of the Hon'ble High Court of Uttarakhand in Writ Petition (PIL) No. 38 of 2011.

17. The Petitioner then made efforts to extricate himself from the situation by feebly submitting that the subject matters involved in the present Application are quite distinct from those involved in the previous litigations. However, the ground

set out in the averment reproduced above clearly belies this position.

18. For the reasons aforesaid we unhesitatingly hold that the Application is inordinately delayed and, therefore, barred by limitation. A public spirited person which the Applicant claims to be is expected to be diligent in pursuing public cause and not be indolent and lackadaisical, particularly when his action is likely to hinder and jeopardize public work of the magnitude and proportion as the project in question.

As a result the Application is dismissed with no order as to costs.

Justice Swatanter Kumar
Chairperson

Justice Sonam Phintso Wangdi
Judicial Member

Dr. D.K. Agrawal
Expert Member

NEW DELHI

DATE: 4th May, 2016