

NATIONAL ENVIRONMENT APPELLATE AUTHORITY

APPEAL NO. 2/2005

February 7, 2007

To

1. Vimal Bhai, Convenor Matu Peoples Organization
Village & P.O Chham Tehri Garwal, Uttaranchal
2. Vikram Singh Rawat, Gram Pradhan, Bhageli, Sunagar
Tehsil and Post Bhatwari, Chadeti, District Uttarkashi, Uttaranchal
3. Raghavanand Nautiyal, Gram Pradhan, Bhatwari
Tehsil and Post Bhatwari, District Uttarkashi, Uttaranchal
**Representative: Shri Ritwick Dutta & Rahul Choudhary
Advocate, C – 106, Sector – 40, NOIDA**
4. Union of India, through The Secretary,
Ministry of Environment and Forests CGO Complex Lodhi Road, New Delhi
Representative: Dr. S. Bhowmik, Addl. Director, MoEF
5. Uttaranchal Pollution Control Board
Through its Member Secretary Paryavaran Bhawan E – 115, Nehru Nagar
Colony, Haridwar Road, Dehradun – 248001.
**Representative : Mukesh Verma, Advocate 50, Lawyer's Chamber, Supreme
Court of India, New Delhi- 01.**
6. National Thermal Power Corporation
Through its Managing Director, 324, R & D Building, A8-A Sector 24,
Noida – 201301
**Representative: S. B Upadhyay, Advocate, No. 303, New Lawyers Chamber,
New Delhi- 110001.**

APPELLANTS

RESPONDENTS

Sub: Appeal No. 2/2005 (Shri Vimal Bhai and Others Vs. Union of India and Others)

Sir,

Order dated 5th February 2007 of the National Environment Appellate Authority in the above appeal is enclosed

Yours faithfully

Court Master
NEAA

BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI

DATED THE 5TH FEBRUARY 2007

APPEAL NO. 2/2005

CORAM:

Hon'ble Member Kaushlendra Prasad
Hon'ble Member Dr. I. V. Manivannan
Hon'ble Member J. C. Kala

BETWEEN

1. Shri Vimal Bhai
Convenor Matu Peoples Organization
Village & P.O Chham Tehri Garwal, Uttaranchal
2. Shri Vikram Singh Rawat
Gram Pradhan, Bhageli, Sunagar
Tehsil and Post Bhatwari, Chadeti
District Uttarkashi, Uttaranchal
3. Shri Raghavanand Nautiyal
Gram Pradhan, Bhatwari
Tehsil and Post Bhatwari, District Uttarkashi,
Uttaranchal

APPELLANTS

AND

1. Union of India,
Through The Secretary,
Ministry of Environment and Forests
CGO Complex Lodhi Road, New Delhi
2. Uttaranchal Pollution Control Board
Through its Member Secretary
Paryavaran Bhawan E – 115, Nehru Nagar Colony,
Haridwar Road, Dehradun – 248001.
3. National Thermal Power Corporation
Through its Managing Director
324, R & D Building, A8-A Sector 24, Noida – 201301

RESPONDENTS

Counsel for Appellant (s): Mr. Ritwick Dutta
Mr. Rahul Choudhary

Counsel for Respondent (s):
Respondent No.1 (MoEF): Dr. S. Bhowmik, Addl, Director, MoEF

Respondent No.2 (UPCB): Mr. Mukesh Verma, Advocate
Mr. Ashish Mohan, Advocate

Respondent No.3 (NTPC): Mr. S. B. Upadhyay, Sr. Advocate
with Smt. Kumud L Das, Advocate
Mr. Amit Paaki, Advocate
Mr. Ankit Gupta, Advocate

ORDER

1. This is an appeal filed under section 11(1) of the National Environment Appellate Authority Act, 1997 against the order of the Ministry of Environment & Forests dated the 8th February 2005 granting Environmental Clearance to National Thermal Power Corporation (3rd Respondent), for setting up of Loharinag- Pala Hydroelectric Power Project 600 (4 x 150) MW in Uttarkashi District of Uttaranchal (henceforth to be referred to as the Loharinag Pala Project).

2. The National Environment Appellate Authority (Authority) in the above appeal rejected the application for condonation of delay by an order dated 20th May 2005. Against this order, the Appellants filed a Writ Petition No. 17682 of 2005 before the Hon'ble High Court of Delhi challenging the order of the Authority. Hon'ble High Court by order dated 29th September 2005 directed the Authority to revive the appeal and consider their Appeal on merits and pass appropriate orders in accordance with law. The Counsels for the Appellants filed an application before this Authority on 17th July 2006 for revival of order dated 20th May 2005 and hear the Appeal on merit.

3. The Appellants in the Memorandum of Appeal have prayed for an order directing, (a) the respondents to immediately stay the clearance granted to the project, (b) a stay on ongoing land acquisition process, (c) a stay on ongoing construction work till a complete EIA is undertaken, (d) that a proper EIA be done taking into account all relevant factors so that a complete information is provided about the nature of impacts due to the project and only after mitigative measures are taken should the clearance to the project be considered, (e) that the Public Hearing conducted on 30.07.2003 be declared null and void and a proper Public Hearing be conducted after following all the prescribed procedures and specifically directing that all required information and documents be made available in local language (Hindi).

4. BRIEF HISTORY OF THE CASE

Loharinag- Pala Hydroelectric Power Project 600 (4 x 150) MW is to be constructed by the National Thermal Power Corporation [NTPC] in Uttarkashi District of Uttaranchal. This Project is a run of the river scheme across the river Bhagirathi. The Environment Impact Assessment of this Project was conducted in the month of March 2004 by the Centre for Environment, Water & Power Consultancy Services (I) Ltd. On 30.07.2004, the Uttaranchal State Pollution Control Board conducted a Public Hearing on the Environment Impact Assessment of the said Project. It is alleged that the affected people were not provided access to the relevant documents like Environment Impact Assessment Report and Environment Management Plan. The Gram Panchayats and the people of the affected villages wrote a letter to D.M Uttarkashi on 09.08.2004 asking him to direct NTPC to provide all information to villagers and also submitted a letter dated 03.09.2004 to the Chairman of the Public Hearing alleging that the Public Hearing was conducted in contravention of the established Law and Procedure. A letter dated 11.09.2004 was addressed to the Secretary, Ministry of Environment & Forests (MoEF) highlighting the issues raised by the Panchayat and affected people. Similarly, one member of the Public Hearing panel, who was Head of the Bhatwari Block, also wrote a letter to the Secretary MoEF on 14.01.2005 stating that even the panel members did not have any knowledge about the Environment Impact Assessment Report and Environment Management Plan as such a fresh Public Hearing was necessary. A Legal Notice dated 15.10.2004 was also sent to the Uttaranchal Pollution Control Board with the request to hold fresh Public Hearing which was not found justified in their reply dated 27.10.2004.

5. On the Application of revival of Memorandum of Appeal and hearing the same on merits, the Authority issued notices to the concerned parties on 20th July, 2006 enabling them to file their statements of objections to this appeal; so as not to deny them, an opportunity of having their say, if any, on their actions questioned by the Appellants in the Appeal. Most of the Respondents have filed their statements of objections, after due service of copies of such statements / objections on the counsel for the Appellants. This Appeal was taken up for hearing and heard on 08.08.2006, 29.08.2006, 13.09.2006, 27.09.2006, 12.10.2006, 07.11.2006, 16.11.2006, 28.11.2006 and finally on 12.12.2006. On conclusion of the arguments on 12.12.2006, the parties were directed to file written submissions. Apart from the Respondent No.3 the National Thermal Power Corporation (NTPC), none of the other parties have filed their written submissions. Based on the points raised in the Appeal / Arguments made by the learned counsel for the Appellant against the order of the Ministry of Environment & Forests granting Environmental Clearance to the National Thermal Power Corporation for setting up of Loharinag – Pala Hydroelectric Power Project 600 (4 x 150) MW in Uttarkashi District of Uttaranchal, the various submissions are considered in succeeding paragraphs.

(6) The First contention of the Counsel for the Appellants is that the Public Hearing conducted by the Respondent No.2 was totally illegal, as there was no meaningful participation in the absence of adequate information to them.

6.1 Referring to his rejoinder to the replied filed by the Respondents, the learned counsel for the Appellants argued that the notice for the public hearing scheduled on 30th July 2004 was not properly given to the villagers and the Gram Pradhans were not informed. They were not able to contribute through meaningful participation, as they were not provided access to the relevant documents, like Environment Impact Assessment Report and Environment Management Plan. They have further stated that the public hearing was conducted on the basis of incomplete and inadequate EIA. The Public Hearing was thus, in violation of the provisions of the EIA Notification of 1994. On 09.08.2004 Gram Panchayats and the people of the affected villages, wrote a letter to D. M. Uttarkashi asking him to direct NTPC to provide all information to villagers. The Gram Panchayat and people of the affected villages of the Project area submitted a letter on 03.09.2004 to the Chairman of the Public Hearing of the Project stating that the Public Hearing was carried out in contravention of the established Law and Procedure.

6.2 The learned counsel for the Respondent No.2 i.e. Uttaranchal State Pollution Control Board argued that the District Collector constituted a panel comprising of 6 Govt. Officials, 3 Public Representatives, 1 Social Worker and 2 Senior Citizens of the area and public notice was issued by this Respondent in two local news paper (Hindi) having state wise circulation viz., the Dainik Jagran on 30.06.2004 and the Amar Ujala on 01.07.2004, fixing the public hearing at 11:00 AM of 30.07.2004 at Tehsil Headquarter, Bhatwari, Uttarkashi, which was the nearest suitable place from the project site and the objections were invited from the general public within 30 days of its publication. The Executive Summary of the Environmental Impact Assessment of the Project, both in Hindi and English languages, were kept at the offices of this Respondent at Dehradun; Office of the District Collector, Uttarkashi; Secretary (Environment), Government of Uttaranchal, Dehradun; District Industries Centre, Uttarkashi, Office of the Sub-Divisional Magistrate, Bhatwari and Zila Panchayat, Uttarkashi. The Public Hearing was conducted under the Chairmanship of District Collector, Uttarkashi. List of the Participants is given in the Proceeding itself. During Public Hearing certain objections were raised and suggestions made by the participants were considered and incorporated in the proceedings as is evident from Annexure – 3 of the reply of this Respondent.

6.3 The Learned Senior Counsel appearing for Respondent No.3 (NTPC) has also supported the above averments of Respondent No.2. The Representative of Respondent No.1, Dr. S Bhowmik, has stated that the allegation of the Appellants is not correct, the process of conducting the Public Hearing was examined by MoEF and it was found that the Public Hearing was conducted as per the provision of the notification dated 27.01.1994 of MoEF and subsequent amendments, under Environment (Protection) Act, 1986.

6.4 The relevant provisions of the Notification No. S.O 60 (E) dated 27.01.1994 were perused by this Authority. For the proper examination of the case the relevant paras of the Schedule IV to this notification i.e. para (2) (i) & (ii), para (3), and para (4) are reproduced below:

“Para-(2) Notice of Public Hearing;

(i) The State Pollution Control Board shall cause a notice for environmental Public Hearing which shall be published in at least two newspapers, widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned. State Pollution Control Board shall mention the date, time and place of Public Hearing and suggestions, views, comments and objections of the public shall be invited thirty days from the date of publication of the notification,

(ii) All person including bonafide residents, environmental groups and others located at the project site / sites of displacement / sites likely to be affected can participate in the Public Hearing. They can also make oral / written suggestions to the State Pollution Control Board.

Para (3). Composition of public hearing panel: The composition of the Public Hearing Panel may consist of the following, namely: -

- (i) Representative of State Pollution Control Board;
- (ii) District Collector or his nominee;
- (iii) Representative of Department of the State Government dealing with the subject;
- (iv) Representative of Department of the State Government dealing with the Environment;
- (v) Not more than three representative of the local bodies such as Municipalities or Panchayats;
- (vi) Not more than three senior citizens of the area nominated by the District Collector.

Para(4) Access to the Executive Summary and Environmental Impact Assessment Report:- The concerned persons shall be provided access to the Executive Summary of the Project at the following places namely: -

- (i) District Collector Office;
- (ii) District Industry Centre;
- (iii) In the Office of the Chief Executive Officers of Zila Parishad or Commissioner of the Municipal Corporation / Local Body as the case may be;
- (iv) In the head office of the concerned State Pollution Control Board and its concerned Regional Office;
- (v) In the concerned Department of the State Government dealing with the subject of environment;”

6.5 From the list of participants attached to the proceedings of Public Hearing dated 30.07.2004, it is evident that the Appellant No. 2 and 3 also participated in the Public Hearing.

6.6 We have carefully considered the submissions made by the Learned Counsels on the above points and after examining the documents submitted before the Authority, we have come to the conclusion that the Respondent No.2 has given notices through two News Paper publications, in vernacular language, specifying date, time and place of Public Hearing, information them that the required documents were placed at requisite places and inviting their suggestions both oral and writing. The suggestions received during Public Hearing were recorded and the Proceedings were signed by the Panel Members. Hence the allegation of the Appellants that the Public Hearing conducted by the Respondent No.2 was totally illegal and that there was no meaningful participation in the absence of adequate information to them is not sustainable.

7. The Second contention is that the people of the project affected village were not notified about the Public Hearing through the concerned Gram Panchayat as per the direction of the Hon'ble High Court of Gujarat held in the case of Center for Social Justice Vs. Union of India and Others (reported in AIR AIR Guj 71).

7.1 The Learned Counsel for the Appellants stated that the direction of the Hon'ble Gujarat High Court in Case of Center for Social Justice Vs. Union of India and Others reported in AIR 2001 Guj 71 that the people of the project affected village should be notified about the Public Hearing by informing them through concerned Gram Panchayat as the members of Gram Panchayat would bring it to the notice of local people as normally rural population in India is illiterate and does not read news paper was not followed in the present case.

7.2 Respondent No.3 has stated that the guidelines stated in the said Judgment of Gujarat High Court relates to Thermal Power Project which has different parameters / requirements and it has nothing to do with the Hydel Power Project, that all other the guidelines stated in the said judgment of the High Court were observed, by and large.

7.3 Counsel for the Respondent No. 2 made a submission that the Gujarat High Court made this observation in the special circumstances and may not be applicable to the present case. The judgment of Hon'ble Gujarat High Court was for the Thermal Power Plants, which are highly polluting in nature and not for the Hydro Power Projects, which are least polluting.

7.4 The representative of Respondent No. 1 stated that the Hon'ble High Court of Gujarat has made observation in the case of Public Hearing for Dhuvaran Thermal Power Project, Anand, Gujarat that "The Gujarat Pollution Control Board shall also send a copy of the public notice about the public hearing to the Gram Panchayat / Nagar Panchayat / Municipality of each of the villages / towns likely to be affected by the project with a respect to bring it to the notice of people likely to be affected by the project". In case of Loharinag- Pala Project, Head of Regional Panchayat, Bhatwari Tehsil and Vice-President, District Panchayat themselves were members of the Panel.

7.5 From the perusal of the Sub-para 2(i) of Schedule – IV of the Notification dated 27.01.2004 the responsibility for informing the public for Public Hearing rests with the

State Pollution Control Board. It is not clear, either from the records or any submission made on the above points by the Counsel for the Respondent No.2, that the information regarding Public Hearing was communicated to Gram Panchayat as per the directions of the Hon'ble High Court of Gujarat. However, the Authority takes note of submission made by the Respondent No.1 that the Head of Regional Panchayat and Vice President District Panchayat were part of Public Hearing Panel, which certainly would have enabled further flow of information to the villagers. We also note that the provisions of the Environment Impact Assessment Notification dated 27.01.2004 as amended by Notification dated 10th April 1997 do not provide for service of notice regarding Public Hearing on the Gram Panchayat and that all provisions in respect to the Public Hearing were followed. Therefore, the contention of the Appellants on the point is not maintainable and it fails for the same reason.

8. The Third contention is that the Environmental Impact Assessment and Environmental Management Plan were made in complete isolation and no consultation took place with the affected people.

8.1 The Learned Counsel for the Appellants has stated that the EIA study conducted is grossly inadequate; it ignores important facts and data and it is misleading. The infirmities of the EIA report and other aspects are: (a) the major land use category in the study area has dense vegetation, the area is ecologically sensitive but the study has failed to report about the effect on the ecology of the area; (b) the runoff from the construction sites will flow towards Bhagirathi River resulting in reduction of light penetration which, in turn, could reduce the photosynthetic activity to some extent of the aquatic plants; (c) the study should have been based on the recent Census and not based on 1991 census figures and is silent on the question of the rehabilitation as required under clause 10 of the Schedule II of the EIA notification; (d) the ownership details of the land were being collected and detailed socio-economic survey was proposed to be conducted; (e) the entire state of Uttaranchal comes under seismic zones IV and V with seismic intensities VIII and IX (MSK – 64) scale respectively and the area is a landslide prone and these factors were not considered while designing the project; (f) the report neither discloses the alternate sites as required in the clause 1 (c) nor does it conform the stipulated land use as per local use plan as required in clause 1 (d) of the Schedule II of the EIA Notification; (g) prior consent of the project affected community has not been taken in identifying the site for disposal of solid waste on common land being used by the local people for grazing or any other activity, or in an area which is close to a water source, or part of a river catchments; (h) the minimum water flow that will be critical for the aquatic biodiversity to be maintained in the Bhagirathi River, in addition to the water required for the social, cultural and livelihood needs of the local community, has not been calculated which may have impact on the projected power generation, on the project power tariffs and project feasibility, and (i) the cumulative impact assessment study has not been carried out to evaluate the project against the carrying capacity of the Bhagirathi River with reference to hydroelectric projects and other developments in the valleys.

8.2 Learned Senior Counsel for the Respondent No.3 has argued that the EIA report is a comprehensive and complete document with respect to the project and its impact on

environment ecology. It consists of 9 chapters. Chapter 1 provides for an overview of the need for the project. Alternatives sites were also considered and the policy, with legal and administrative framework for environment clearance, was summarized. Chapter 2 provides a brief write up on various project appurtenances, construction schedule and construction material requirements. Chapter 3 details the pre-project environmental baseline conditions including physical biological and socio-economic parameters. Chapter 4 deals with anticipated positive and negative impacts as a result of the construction and operation of the proposed Hydel Project. It is essentially a process to forecast the future environmental conditions of the project area that might be expected to occur as a result of the construction and operation of the proposed project. Chapter 5 deals with the socio-economic details of the project including demographic profile, occupational pattern, and infrastructure details for the project. Various norms and guidelines of resettlement and rehabilitation policies formulated by the corporation were also taken into account. Chapter 6 deals with the environmental management plan and amelioration of anticipated adverse impact likely to accrue as a result of the proposed project. Learned Senior Counsel for Respondent No.3 has further stated that seismological studies were conducted by the IIT Roorkee and site specific seismological parameters of the project were worked out by the institution and proper and adequate measures were taken in respect of landslides, seismic effect and blasting. The issue of seismic effect was also considered by the Expert Committee on 25.10.2004. In view of Earthquake in *Uttar Karshi on October, 20, 1991*, the initial design of the project using IS 1893 (part-I) (Indian Standard Criteria for Earthquake Resistant Design of Structure) was taken into account. The barrage was also designed with the above criteria and as per the guidelines of IS 6512-1984 with the approval of the National Committee of Seismic Design Parameters, a Government of India nominated Apex Body for River Valley Projects. The approach for formation of environmental management plan is to maximize the positive environmental impacts and minimize the negative ones. The aim is to keep the stress / load on the ecological system within its carrying capacity. The step taken consists of incorporation of appropriate measures in engineering designs, construction schedule and technique as well as operational and management practices. Chapter 7 deals with the catchment area treatment plan. Catchment silt-yield index method was used for categorization of sub water – shed into erodability class. Treatment measures for very high erosion categories of sub water – sheds were also formulated. Chapter 8 deals with the environmental monitoring programme for implementation during project construction and operation phases. The environmental monitoring programme is also suggested to assess the adequacy of various environmental safeguards and to compare the predicated and actual scenario during the plan stage but assigned during these phases and to generate data for further use. Chapter 9 takes care of the cost of implementation of the Environmental Management Plan and environmental monitoring programme. The EIA report and the executive summary report of the project are prepared for obtaining statutory clearance. The executive summary of the project only brings out the salient features of the detailed EIA report. To understand the requirement of the project any interested person would be required to go through minutely with the EIA report. The figure of 16018.4 hectares of the dense vegetarian pertains to total study area. The low diversity as indicated pertains to barrage and powerhouse site thus there is no infirmity as alleged by the Appellant.

8.3 The Respondent No.3 has submitted copy of letters bearing No. F. No. 8-38/2005-FC dated 09.06.2005 and dated 02.08.2005 of the Ministry of Environment and Forests, Government of India through which permission was granted under the Forest (Conservation) Act 1980 for diversion of 139.029 hectares of Forest Land for construction of 600 MW Loharinag – Pala Hydro-electric Project subject to fulfilling certain conditions and Conditions No. 5, 9 & 10, in particular, safeguards the allegations relating to (i) Reclamation of quarry area for muck disposal (ii) Protection against damage to wildlife and (iii) All precautions to be taken from geological point of view.

8.4 Representative of Respondent No.1 has submitted in writing that the EIA was examined on 25.10.2004 and reconsidered on 09.12.2004 by the Impact Assessment Agency i.e. Ministry of Environment & Forests before granting Environmental Clearance on 08.02.2005. During evaluation and assessment it was observed that – (a) the cumulative study of different dams on the Bhagirathi River was deliberated by the Expert Committee during the meeting. The committee recommended that a study should be initiated on the long-term sustainability of water to be received from the glaciers. The Representative also mentioned that as per the corrigendum dated 01.04.2005 issued by the Ministry of Environment and Forest, Minimum Water Flow of 30 cusecs during lean season was to be maintained as considered adequate supply for aquatic bodies; (b) At the time of preparation of EIA report Census – 2001 report was not published as such the report was based on Census – 1991 data. In the comprehensive EIA report a decade (1981-1991) growth rate of 25% was assumed; (c) The Socio-economic details mentioned in the EIA report pertain to the study area. The study was for the project affected people and it was conducted after freezing the total and boundaries and notifications under Land Acquisition Act. NTPC has signed an Implementation Agreement with the Government of Uttaranchal on June 2004 relating to preparation and implementation of R& R Plan in consultation with State Government which shall not be inferior to the national R & R policy. The R & R Policy of NTPC has provision for imparting training to Project Affected People and shall also run community development schemes for the villagers around the project site as per objectives and policies of NTPC and social activities in the area such as renovation of school buildings; supply of computer to school; lighting of Gaurikund – Kedarnath Path; establishment of a Polytechnic Institute in Uttaranchal and provision of modern equipment for Van Chikitsalaya Trust in Uttaranchal has already been undertaken. (d) Detailed design parameters are being worked out by IIT, Roorkee under the guidelines of National Committee of Seismic Design Parameters in order to take adequate measures for safety of all civil structures; and (e) The comprehensive EIA report does incorporate the land for dumping solid waste and Management Plan for muck disposal.

8.5 The Notification dated 27.01.1994 was perused and it was found that as per provision 1 (a), any person who desires to undertake any new project shall submit an application to the Secretary, Ministry of Environment & Forests along with Environmental Impact Assessment Report, Environment Management Plan prepared in accordance with the guidelines issued by the Ministry of Environment & Forests from time to time. As per provision III (a) the report submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it

may consult a Committee of Experts, having a composition as specified in Schedule – III of this Notification i.e. (i) Eco-System Management, (ii) Air / Water Pollution Control, (iii) Water Resources Management, (iv) Flora / Fauna Conservation and Management, (v) Land Use Planning, (vi) Social Science / Rehabilitation, (vii) Project Appraisal, (viii) Ecology, (ix) Environmental health, (x) Subject area specialists and (xi) Representatives of NGOs / persons concerned with environmental issues and as per provision III (c) the Impact Assessment Agency shall prepare a list of recommendations based on the technical assessment of documents and data, furnished by the project authorities.

8.6 The Counsel for the Appellants have neither made out any factual assessment justifying the gap in the Environment Impact Assessment leading to adverse impact of the project on the Environment nor suggested any measure beyond the Specific and General Conditions mentioned in the Environment Clearance order dated 08.02.2005. The entire allegation is only in respect of preparation of Environment Impact Assessment Report. There is no provision of consultation with the affected people at the time of preparation of Environment Impact Assessment Report therefore, it was not obligatory on the part of the Respondent No. 3. The first stage of Public participation is obligatory in the form and by way of Public Hearing. Further, the allegation that the Environment Impact Assessment Report and Environment Management Plan were prepared in complete isolation is also not correct because the material available on record shows that the said reports were prepared in accordance with the provisions of the Environment Impact Assessment Notification 1994 and the Report & Management Plan are subject to changes as per suggestions received at the time of Public Hearing and recommendations of the Expert Committee constituted by the Impact Assessment Agency. Therefore, the allegation that if the project is allowed to come up in the present form without addressing some of the critical concerns it will not only be ecologically and socially disastrous but also impact the long term viability of the project is not tenable in view of the conditions imposed while granting clearances under the Forest (Conservation) Act, 1980 and Environment (Protection) Act, 1986. The allegation of the Counsel for the Appellants on the above points is therefore not sustainable.

9. The Fourth contention of the Counsel for the Appellants is that the Respondent deliberately tried to conceal vital information about the impact of the project.

9.1 The Learned Counsel for the Appellants argued that the Respondent No. 3 deliberately tried to conceal vital information about the impact of the project including the GSI report. In support of his argument, he referred to para 4 of the Environment Impact Assessment Notification, 1994 which reads as under:

“Concealing factual data or submission of false, misleading data / reports, decisions or recommendations would lead to the project being rejected. Approval, if granted earlier on the basis of false data would also be revoked. Misleading and wrong information will cover the following:

- False information

- False data
- Engineered reports
- Concealing of factual data
- False recommendations or decisions”

9.2 The Counsel for the Respondent No.3 has denied any concealment of facts and defended that the Environment Impact Assessment Report and Environment Management Plan were prepared in accordance with the provisions of the said notification and these documents were accessible to the public for scrutiny, discussion and suggestion at the time of Public Hearing. The representative of the Respondent No.1 has also denied the allegation, as it was incorrect.

9.3 The Appellant has not expressed in particular as to how the Environment Impact Assessment Report has been prepared by concealing factual data or submission of false, misleading data / reports, decisions or recommendations especially under the five points classified in the above provision. During the Public Hearing held on 30.07.2004 the participants did not express anything about concealment of factual data etc. On the other hand there were certain suggestions as safeguard measures for the benefits of the people and the environment. The defects pointed out by the Counsel for the Appellants have already been discussed at length above and none of the observations have been found leading to concealment of facts data and submission of false, misleading data / reports, decisions or recommendations is not sustainable.

10. The Fifth and the last contention of the Appellants is that the action of the Respondent is totally in violation of the Precautionary Principle which is an essential part of Indian Law.

10.1 The Learned Counsel for the Appellants argued that the Precautionary Principle is a part of the law of the country and the action of the Respondent is in total disregard to this established law in India. The omission of vital information in the EIA Report could lead to unimaginable catastrophe in future unless remedial measures are not taken now.

10.2 In Vellore Citizens Welfare Vs. Union of India, (1996 5 SCC 647) the Hon'ble Supreme Court has stated that “Precautionary Principle in the context of the municipal law means:

“Environment Measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

Where there are threats of serious and irreversible damage, lack of scientific measures should not be used as a reason for postponing measures to prevent environmental degradation.

The “onus of proof” is on the actor or the developer / industrialist to show that his action is environmentally benign.”

10.3 Learned Senior Counsel for the Respondent No. 3 stated that the Precautionary Principle, as stated above, was strictly kept in mind by the Corporation. The corporation carried out investigation and conducted EIA which was needed to analyze the feasibility of the project. All the vital information required for grant of clearance was considered in the EIA report. All mitigatory measures have been provided to minimize and avoid the adverse impacts. Enough safeguards thus are being taken for sustainable development of ecology and economy in the EIA and EMP. The project has been considered, examined and recommended by expert body at various levels before granting Forest and Environmental clearance. He further submitted that the Loharinag – Pala Hydro-electric Project of NTPC Ltd. provides adequate safeguards for continue of the project keeping in view the sustainable development of both the Ecology and Economy. The project, once completed, will generate 2508 GWH of electricity power, during a year on 12% dependability and contribution towards base load requirement of northern grid. The State of Uttaranchal would get 20% of power generated free of cost. This will cater to the energy requirement of not only the State of Uttaranchal but also of northern region, having direct impact on the industrial and agricultural sector. In this regard the Respondent No.3 has invited attention of the Authority to decision of the Hon'ble Supreme Court to paragraph 234 of Narmada Bachao Andholan Vs. Union of India, 2000 (1) SCC 664 which reads as under:

“In respect of public projects and policies, which are initiated by the Government, the court should not become approval authority. Normally, such decisions are taken by the Government after due care and consideration. In a democracy welfare of people at large and not merely of a small section of the society has to be concerned of responsible government. If a considered policy decision has been taken, which is not in conflict in any law or and not malafide, it will not be in public interest to require the court to go into and investigate those areas which are functions of the executive. For any project which is approved after due deliberations, the court should refrain from being asked to review the decision just because the Petitioner in filing a PIL alleges that such a decision should not have been taken because a opposite view against the undertaking of the project which may have been considered by the Government is possible. When two or more options of views are possible and after considering them, the government takes policy decision it is then to the function of the court to go into the matter afresh and in a way sit in appeal over such a policy decision.”

10.4 The Respondent No.3 has further relied upon another decision of the Hon'ble Supreme Court in Sachidanand Pandey Vs. State of West Bengal 1987 (2) SCC 295, the Hon'ble Supreme Court in Essar Oil Ltd. Vs. Halar Utrakash Samiti, 2004 (3) SCC 292 further held in para 37 that once the State Government has taken all precautions to ensure that the impact on the environment is transient and minimal, a court will not substitute its own assessment in place of the opinion of persons who are specialists and who may have decided the question with objectivity and ability. The courts cannot be asked to assess the environmental impact of the pipelines on the wildlife but can at least oversee that those with established credentials and who have the requisite expertise have been consulted and that their recommendations have been abided by, by the State Government.

10.5 The Authority thoroughly examined the above point. It is clear from the records submitted before the Authority that the Respondent No.3, while preparing the EIA and EMP has taken into consideration, the decision of the Hon'ble Supreme Court on Precautionary Principle and it appears that the Respondent No.3 has made adequate provisions in the EMP to safeguard the Environment in the background of sustainable development. Additional safeguard measures have also been imposed by the Respondent No.1 while granting the Environment Clearance. We find no malafide in this decision making process. Hence, this point also cannot support the Appeal.

11. Thus, we find that none of the above points urged against the sustainable of the order under Appeal, could be upheld by this Authority.

12. During the course of hearing of the Appeal, certain important issues closely related to the problems of the affected people were raised by the Learned Counsel for the Appellants. They are

- (a) Need for improvement in the quality of Environment Impact Assessment Reports;
- (b) Need for service of notice of Public Hearing on the Village level, Local Bodies like Gram Panchayat; and
- (c) Need for an affective Multidisciplinary Monitoring Mechanism.

These three suggestions are dealt with and the decisions of the Authority are given below:

12.1 Multidisciplinary Monitoring Mechanism is at present monitoring the progress of various aspects including the R & R package of the Project. The Authority notes that this mechanism is under the control of the Project Proponent. Having examined the various inadequacies brought out during the course of Appeal, the Authority is convinced about the need for an effective Monitoring Mechanism to ensure timely implementation of all suggested environmental safeguards including the R & R package so as to repose the faith of the public in Government's intentions and commitments to conservation and sustainable Development. Accordingly, the Appellants and the Respondents were asked to file their suggestions on composition of the Monitoring Committee and measures for qualitative improvement of Environment Impact Assessment Report and Environment Management Plan. The Authority has examined the various suggestions received on the aspects and is convinced of the need for reconstitution of Monitoring Committee so as to ensure strict implementation of various general and specific conditions imposed while granting Environment Clearance. Accordingly, this Authority directs (1) Constitution of a Multidisciplinary Monitoring Committee under the control of the Respondent No.1 instead of Project proponent, as given at para (vii) of General Conditions of the Environmental Clearance letter, to implementation of the Project and (2) Inclusion of Ecologists, Environmental scientist, Conservationists and experienced Administrators in that Committee so that the project leads to sustainable development with adequate protection to the Environment.

12.2 The Environment Impact Assessment Report and Environment Management Plan that are mandated for every developmental project of a certain size must be prepared

scientifically, in an un-biased manner by Specialized Agencies and with enough autonomy. In order to improve the quality of the EIAs and EMPs the Authority feels that MoEF, GOI should consider appropriate mechanism for Empanelment of Suitable Specialized Agencies for preparation of EIA and EMP with a provision for enabling the project proponents to choose their own agency from out of the list of Agencies approved by MoEF, GOI.

12.3 As regards the much agitated issue of service of notice for Public Hearing the Local Gram Panchayat or any other Local Body, this Authority finds some force in the argument of the learned counsel for the Appellants, though we have not agreed with his contention that failure to service the notice for Public Hearing on the Gram Panchayat should vitiate the entire proceedings resulting in quashing of the Environment Clearance Order issued by the Respondent No. 1. The Authority notes that Schedule IV of Notification dated 10th April 1997 issued by the MoEF, GOI deals with the procedure for conduct of Public Hearing. While the said notification provides for access of the concerned persons to the Executive Summary of the Project at the Office of the Chief Executive Officers of Zila Parishad or Commissioner of the Municipal Corporation or Local Body, there is no such clear provision regarding service of notice for Public Hearing. The Authority is convinced that mere publication of notice in at least two newspapers widely circulated in the region, one of which shall be in local vernacular language is not adequate enough to meet the Principle of Natural Justice for the affected people, in view of the fact that considerable segment of rural population are still illiterate unable to read or write the local vernacular language. Further, the recent notification issued by the Respondent No.1 on 14th September 2006 does not make any provision in this regard. The Authority therefore directs that the notice for the Public Hearing should be exhibited in the office of the concerned Local Bodies of the area affected by the Project. The Respondent No. 1 is requested to take necessary action accordingly.

13. With these observations this Appeal is disallowed.

14. As regards orders on cost, having regard to the fairness with which the learned counsel for Appellants answered the queries relating to this Appeal, no order is made as to costs payable by the Appellants in this Appeal.

(K. PRASAD)
MEMBER

(Dr. I.V. MANIVANAN)
MEMBER

(J.C.KALA)
MEMBER