

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

Principal Bench, New Delhi

O.A No. 485 of 2023

Diwan Singh

Applicant

Versus

State of Uttarakhand

Respondent

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(Sharandeep Singh)

Scientist 'E'

Central Pollution Control Board,
Parivesh Bhawan, East Arjun Nagar
Delhi- 110032.

Date: 19.04.2024

Place: Delhi

Expert Joint Committee Report
on O.A. No. 485/2023
in the matter of Diwan Singh versus State of Uttarakhand
Hon'ble NGT order dated 30.01.2024

Hon'ble NGT vide its Order dated 30.01.2024 on Original Application No. 485/2023 in the matter of Diwan Singh versus State of Uttarakhand, instructed the following: -

"..... 13. Further, to complete the record, to find out whether cracks have developed in the residences of local people due to activities of Respondent 5 or there are some other reasons, it is appropriate to constitute an Expert Joint Committee to give its report on the subject. The Committee would comprise of an expert on the subject to be nominated by Director of Wadia Institute of Himalayan Geology, Dehradun, subject expert to be nominated by Director of Institute of Seismological Research, Gandhinagar, Central Pollution Control Board (hereinafter referred to as "CPCB"), Regional Officer, Ministry of Environment, Forests and Climate Change, Dehradun and Collector, Pithoragarh.

14. CPCB shall be nodal agency for coordination and compliance in the matter.

15. The report with regard to causes of cracks developed in residences of local people, after examining the matter in detail, shall be submitted within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF /OCR Support PDF and not in the form of Image PDF.

16. The other respondents who have not filed their response till date, may do so within one month.

17. A copy of this order be forwarded to Director of Wadia Institute of Himalayan Geology, Dehradun, Director of Institute of Seismological Research, Gandhinagar, CPCB, Regional Officer, Ministry of Environment, Forests and Climate Change, Dehradun and Collector, Pithoragarh by e-mail for compliance.

18. List the matter on 23.04.2024. "

Hon'ble NGT vide its Order dated 30.01.2024 constituted a Expert Joint Committee comprises the following organization's:

1. An expert on the subject to be nominated by Director of Wadia Institute of Himalayan Geology, Dehradun
2. Subject expert to be nominated by Director of Institute of Seismological Research, Gandhinagar
3. Central Pollution Control Board (hereinafter referred to as "CPCB")
4. Regional Officer, Ministry of Environment, Forests and Climate Change, Dehradun
5. Collector, Pithoragarh

In compliance of the Hon'ble NGT order, the following Expert Joint Committee (EJC) has been constituted:

1. Dr. Sumer Chopra, Director & Head, Seismic Hazard Assessment and Microzonation Group, (nominated by Institute of Seismological Research)
2. Dr. K. Luirei, Scientist-F, (nominated by Wadia Institute of Himalayan Geology, Dehradun)
3. Sh. Kamal Kumar, Scientist-E, RD-Lucknow (nominated by CPCB)
4. Dr. K. Mondal, Scientist-D, Regional Office, Dehradun (nominated by MoEF&CC)

5. Shri Yashvir Singh, SDM, Gangolihat, Pithoragarh (nominated by DM, Pithoragarh)

Further, a meeting of Joint Committee members was convened on 26.02.24 through Video conferencing to discuss the Hon'ble NGT order in details and to frame the strategy for field visit and Information collection during March 11-12, 2024. Based on the inspection and information collected during field visit, the Expert Joint Committee are delineated as under:

A. Basic Information about region under investigation: The geology of Bageshwar region can be broadly classified into the crystalline of the Almora, Askot and Baijnath nappes and the sedimentaries of the Inner Lesser Himalaya. The nappes are made up of the Almora group of rocks comprising of a variety of schists, micaeous quartzites and gneisses belonging to the lower amphibolite facies of regional metamorphism with concordantly emplaced plutonic bodies of granodiorites and granites. The vast window of the inner Lesser Himalaya reveals the Pre-Cambrian sedimentary groups made up of Damtha, Tejam and Jaunsar groups. Damtha is made up of Chakrata and Rautgara formations. In the present study area only Rautgara Formation is exposed and is made up of fine to medium-grained muddy quartzite, sparse lentils of conglomerates, slates, characterized by extensive occurrence of basic sills, dykes, and lava-flows.

The Tejam Group of rocks is well exposed in the present area and comprises of the Deoban (Gangolihat) and the Mandhali (Sor+Thalkedar) formations. Deoban formation is an extensive succession of the stromatolite bearing cherty dolomite and dolomitic limestone with bands and intercalations of blue limestone and grey slates. Mandhali Formation is made up of greyish green and black carbonaceous pyritic phyllites and slates. Berinag Formation of the Jaunsar Group is made up of huge succession of massive, coarse-grained to pebbly or even boulder and

usually sericitic quartzarenite with metamorphosed amygdaloidal vesicular basalts and tuffites.

B. Inspection of Batgeri and Sirsauli villages:

The member of Expert Joint Committee has visited the houses located in Batgeri and Sirsauli villages. During visit most of the houses were not having any kind of crack, barring few houses which were quite old. It was endorsed by the local villagers that these cracks are not developed in recent past. Most of the houses are built on weathered portion of the underlying rocks or on slope material. The houses built on slopes neither they have any back support nor have any retaining walls. The houses are also built with local available materials. The villages are also devoid of proper drainage and water percolates through this weathered portion making houses unstable. The village Batgeri area falls in the carbonate terrain of the Deoban Formation. The settlement is over unconsolidated colluvial sediments in the north facing slope on the left bank of Badhar Gad. The village Sirsauli is settled in the debris fan deposited by the Chorkhet Gadhera the bedrock is made up of the slates of the Mandhali Formation.

B1. Village Batgeri:

- a) At village, almost all the houses were found constructed over the unconsolidated colluvial sediments at Batgeri. **(Annexure-1)**
- b) The walls of the affected houses were observed to have been constructed by laying small stone slab over one another without any cementing material. The walls were only plastered on the outward side by either mixtures of cement and sand, mud, or mud mixed with cow dungs. The houses also don't have proper pillars and beams to support the weight of the structure (house).
- c) The affected houses neither they have proper foundation, nor strong concrete floor slab or roof slab. The weight of the individual small stone slabs along with that of the roof slab have resulted in redistribution of the overburden weight.
- d) Roof slabs were just laid over the walls without pillars and beams.

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B2. Village Sirsauli:

- a) The affected houses at Village Sirsauli have founded in the proximity of the debris fan deposits which is unconsolidated while some are constructed partly in bedrock and debris fan. The sediments are laid down by the Chorkhet Gadhera. (**Annexure-2**)
- b) The walls of the affected houses were built with small stone slabs without cementing materials and pillars. They were only plastered from outside using locally available materials or cement. The Roof slabs were laid over the walls without pillars.

The villagers were asked whether they felt vibrations regularly. They informed the committee that vibrations were felt occasionally but not regularly. Since the site fall in Himalayan region of Uttarakhand state, which is in active plate boundary zone. The earthquakes are more frequent here and the vibrations may be due to the earthquakes which occur within 100-200 km from the epicentre.

The vibrations from earthquakes might have been felt by the villagers but may not have any engineering significance. Also, the vibrations of all earthquakes of $M > 4$ occurring within 100 km from the epicentre, may be felt but may not cause any damage to structures though small cracks may appear in poorly constructed dwellings.

C. Inspection of Project's Construction site of Tunnel: The Expert Joint Committee Members visited Construction site where tunnel is being constructed near villages Sirsauli and Batgeri by M/s Khutani Power Company Ltd under the Khutani Hydroelectric Project of 21 MW. The Expert Joint Committee Members had discussions with the project authorities regarding blasting charge, pattern, and timings, etc. The minimum distance of the blasts is varying from 80-100 m from Sirsauli village. Generally, it is observed that most of the energy of the blasts attenuates in few tens of meters. Also, the rocks that have been excavated are very fragile and does not require heavy blast to dismember it. Looking into these inputs, it is inferred that such blasting does not have any effect

on dwellings at the surface otherwise the villages would have felt these vibrations regularly, which they denied.

The Khutani Hydroelectric Project site is located in Zone-V as per seismic zoning map of India. This come under high seismic hazard zone where earthquakes up to M8 may be expected. In the recent past the Uttarakhand region has experienced two large earthquake M6.8 Uttarkashi earthquake in 1991 and M6.6 Chamoli earthquake in 1999 beside many moderate earthquakes. The main Himalayan seismic belt, where earthquakes are more frequent, is around 50 km away from the project site where earthquakes are more frequent.

A report on structural design calculation for tunnel intake prepared by M/s Tata Consulting Engineers Limited is also shared with the committee. The report was reviewed in detail. It was found that M/s Tata has wrongly considered the project in Zone IV as per seismic zoning map of India published by BIS. Actually, the project site is located in Zone V. Considering the available documents, it seems the site-specific seismic studies were not carried out for the project. The calculations are based on seismic zone factor only. The recommended horizontal seismic coefficient as per Zone V is 0.24 as per National Committee on Seismic Design Parameters (NCSDP) while M/s Tata has considered 0.11 factor for calculations.

- D.** The Expert Joint Committee visited the Villages Batgeri & Sirsauli and Project's construction site of Tunnel and identified muck dump sites 1, 2, & 3. During the inspection, it was observed that tunnelling work was in progress (**Annexure- 3**) and the tunnel's debris were being dumped at the identified site no. 2. The distance between boundary wall at muck dump site no.-2 (**Annexure- 4**) and River Saryu is approx. 10-35 meters. No muck dumping seen on the river bed during the visit. It was informed by project representative that after filling the muck dump site they will develop it as agriculture/ plantation land.

Based on the field visit, observations and available information, the Joint Committee submitting the following:

Looking into all the aspects, past reports and on-site inspection, the causes of the development of cracks in the houses at both villages can be summarized as below:

- a) The houses are mostly constructed over colluvial deposit without concrete base slab as such the weight of the overburden (i.e. of the houses) must have distributed un-evenly that resulted in the development of cracks and bulging of the walls.
- b) The houses are constructed using small rock slabs without cementing materials, only the outer sides of the walls have been plastered either by cement and sand, or locally available materials (mixtures of mud and twigs and cow dungs). The roof slabs are constructed over the top of loosely made walls without proper pillars and beams. The weight of the loosely placed small slabs along with that of the roof slab have resulted in redistribution of the overburden weight that led to the development of cracks and bulging of the walls in the houses.
- c) Based on the field observations and information collected, it can be concluded that at present cracks observed in the houses of the Villages Batgeri and Sirsauli's are due to local construction practices, materials used and local site conditions. These are not developed due to works carried out by M/s. Khutani Power Company Ltd. (project proponent no.5) at the project construction site.
- d) A site-specific seismic study may be carried out for the project by Institute of repute. The design calculations of various structures shall be based on seismic coefficient arrived at from such study.
- e) The boundary wall height needs to be enhanced to about 6.0 ft, toward River Saryu to avoid the spillage of debris from muck dump site no. 2.
- f) Project proponent should submit the action plan to local concern authorities for stabilization of all muck dump site appropriately & concern

authority required to review the same periodically and verify the compliance.

- g) The debris excavated or any disposable material should not be discharged/ disposed on the bank of River Saryu or at any non-identified places. It must be disposed of as per conditions laid down in the Consent to Establish (CTE). The SPCB must periodically monitor and ensure strict compliance of the CTE issued.

The above Joint Committee Report is being filed for the kind perusal and consideration of the Hon'ble Tribunal.

(Dr. Sumer Chopra)

Director & Head

Sesmic Hazard Assessment
and Microzonation Group,
Institute of Seismological
Research

(Dr. K. Luirei)

Scientist-F

Wadia Institute of
Himalayan
Geology,
Dehradun

(Kamal Kumar)

Scientist-E

RD-Lucknow
CPCB

(Dr. K. Mondal)

Scientist-D

Regional Office, Dehradun,
MoEF&CC

(Yashvir Singh)

SDM, Gangolihat
Pithoragarh



Houses in Batgeri village Showing Cracks



Houses in Sirsauli village Showing Cracks



Inside View of Tunnel



Inside View of Tunnelling work



Muck Dump Site No. 02



Muck Dump Site No. 02

Item No. 18

Court No. 2

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

Original Application No. 485/2023

Diwan Singh

Applicant

Versus

State of Uttarakhand

Respondent

Date of hearing: 30.01.2024

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: None present

Respondent: Mr. Rahul Verma, AAG for State of Uttarakhand. (Through VC)
Mr. Mukesh Verma, Advocate for UKPCB. (Through VC)
Mr. Nikhil Nayyar, Senior Advocate with Ms. Sugandha Batra Advocate
for Respondent No. 5-Project Proponent.

ORDER

1. *Suo motu* cognizance was taken in this matter on a letter petition of Diwan Singh pointing out that cracks have appeared in houses of residents in Village Batgeri and Sirsauli Tehsil Ganai Gangoli, Block Gangolihat, District Pithoragadh, State of Uttarakhand due to execution of Khutani Power Project in that area. It was also mentioned that construction activities have commenced and muck is being discharged in Saryu River which is adversely affecting aquatic life.

2. Tribunal considered the complaint on 04.08.2023 and found it appropriate to obtain a factual report for the purpose whereof it constituted a joint Committee comprising representative of Ministry of Environment, Forest and Climate Change (MoEF&CC), Integrated Regional Office, Dehradun, Uttarakhand Environment Protection and

Pollution Control Board (UEPPCB) and District Magistrate (DM), Pithoragarh.

3. Joint Committee has submitted its report dated 18.11.2023. With regard to cracks in the houses, there does not appear to be any definite opinion expressed by the Joint Committee. It has stated that survey from a subject expert should be got conducted to find out reasons of cracks developed in the residences of local people.

4. Joint Committee report was considered on 22.11.2023 and thereafter, following were impleaded as respondents:

- “(1) State of Uttarakhand through its Chief Secretary,
- (2) Uttarakhand Jal Vidyut Nigam through its Managing Director
- (3) District Magistrate, Pithoragarh,
- (4) Uttarakhand Pollution Control Board through its Member Secretary and
- (5) M/s. Khutani Power Company Ltd. Village Bankot Tehsil Ganai Gangoli District Pithoragadh, Uttarakhand.”

5. Notices were issued to all the said respondents.

6. Pursuant thereto, Respondent 5 has filed its response dated 24.01.2024. It is stated therein that similar issue relating to disposal of muck in Saryu River and cracks in the houses of local residents has been raised in Writ Petition No. 151/2022 (PIL), *Praveen Kumar vs. State of Uttarakhand & Ors.*, before High Court of Uttarakhand at Nainital. The prayers made in the writ petition are as under:

- “I. Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to **identify suitable muck disposal sites 500 meters away from the river bank of River Sarayu (Sarju) for disposal of muck, and excavated material.**
- II. Issue a writ, order or direction in the nature of mandamus commanding the District Magistrates of District Pithoragarh and Bageshwar to ensure that **no muck, debris or**

excavated material is dumped directly into the river Sarayu by Khutani Power Company Pvt. Ltd.

- III. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to 5 to **take suitable action and coercive steps against** the persons including officials of Khutani Power Company Pvt. Ltd. **involved in the dumping of muck/excavating material into the river Sarayu directly in an indiscriminate manner, forthwith.**
- IV. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to 5 to initiate a fair investigation on the subject of illegal transfers of land made by Khutani Power Company Pvt. Ltd. from the people belonging to Schedule Caste category in the 15 revenue villages (mentioned in para 07) and take proper action according to law and direct them to follow the GO No. 702/XVIII (II)/2017-01(03)/2016 dated 04.05.2017 (annexed as Annexure-3 with this petition) in letter and spirit.
- V. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to 5 to direct the Khutani Power Company to disburse the correct rehabilitation and displacement amount to the affected parties of the 15 revenue villages of the SHEP area.
- VI. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to 5 to review the Joint Investigation Report dated 18.12.2015 (annexed as Annexure-4) and take appropriate actions in this regard.
- VII. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to 5 to reallocate Sateshwar Shiv Dham, Masand Baba Mandir located at Village Naghar Gram Sabha Batgeri, Gandai. Gangoli Gangolihaat. District Pithoragarh and the cemetery from the to be submerged area to safe zone.
- VIII. Issue a writ, order or direction in the nature of mandamus commanding the respondent no, 1 to 5 to resettle the Bodi-Dhurapaat Drinking Water Pump Plan in the area.
- IX. Issue a writ, order or direction-inn the. nature of mandamus commanding the respondent. no. 1 to 5 to initiate proper investigation upon the Company **to check for socio-economic viability of the tunnel being built from the middle of the Village Sirsloi because of which a hazardous situation is prevalent as many cracks are flow been seen in the houses of the Villagers and to seek proper compensation in the regard.**
- X. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 6 and 7 to verify the demarcation of the forest land through RCC pillars by the

Khutani Power Company Pvt. Ltd, and take into account the indiscriminate deforestation of the forest land.

- XI. *Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to 5 to initiate investigation upon the change of alignment of approach road by the Khutani Power Company from FWD road to Bhanmati Village as was approved in DPR.*
- XII. *Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to 5 to resettle the suspension bridge in the SHEP area.*
- XIII. *Issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”*

7. Leaned Counsel appearing for Respondent 5 also referred to order dated 24.11.2022 passed in above Writ Petition by Division Bench of High Court of Uttarakhand at Nainital which reads as under:

“Mr. Shashank Saun, the learned counsel for the petitioner.

Issue notice.

Mr. B.S. Parihar, the learned Standing Counsel for the State of Uttarakhand appears and accepts notice on behalf of respondent nos. 1, 3, 4, 5, 6 and 7.

Mr. Aditya Pratap Singh, the learned counsel appears and accepts notice on behalf of respondent no. 2.

Mr. Shubhr Rastogi, the learned counsel appears and accepts notice on behalf of respondent nos. 8 and 9.

Copy of the Writ Petition be supplied by the counsel for the petitioner, to the counsel for respondent nos. 8 and 9, during the course of the day.

The grievance of the petitioner is that respondent nos. 8 and 9 are dumping muck and debris in the banks of River Sarju (Sarayu), while undertaking developmental works. Photographs have been placed on record in this regard.

We direct the respondents to file their status report/ counter affidavit within three weeks.

The State Pollution Control Board, i.e. the respondent no. 2, should cause an immediate inspection of the area, and it should issue necessary directions, if they are called for in the circumstances of the case.

List on 24.04.2023.”

8. There are two subsequent short orders dated 24.04.2023 and 21.09.2023 therein last sentence is that ‘interim order, if any, shall continue to operate till the next date’. Learned Senior Counsel however stated that no interim order has been passed by High Court of Uttarakhand at Nainital in the above writ petition.

9. Placing reliance on Supreme Court’s judgment in *The State of Andhra Pradesh vs. Raghu Ramakrishna Raju Kanumuru (Member of Parliament)*, (2022) 8 SCC 156 particularly Paragraphs 12, 13, 14, learned Senior Counsel argued that once High Court is seized of the matter, similar matter should not be taken up by Tribunal. Reliance is also placed on another Supreme Court judgment in Civil Appeal Nos. 5348-5349/2019, *State of Himachal Pradesh & Ors. vs. Yogendera Mohan Sengupta & Anr.*, decided on 11.01.2024, paragraph 109, wherein Supreme Court has observed as under:

“xxxxxx.....xxx

109. In view of the settled legal position, we are of the view that the continuation of the proceedings by the NGT during the pendency of the writ petitions before the High Court was not in conformity with the principles of judicial propriety. Needless to state that the High Court of Himachal Pradesh, insofar as its territorial jurisdiction is concerned, has supervisory jurisdiction over the NGT. Despite pendency of the proceedings before the High Court including the one challenging the interim order dated 12th May 2022 passed by NGT, the NGT went ahead with the passing of the second order impugned herein.”

10. Shri Rahul Verma and Shri Mukesh Verma, Advocates have appeared on behalf of State of Uttarakhand and Uttarakhand Pollution Control Board. Both of them stated that they also want to file their detailed response and may be given two weeks’ time for the said purpose.

11. Further on the objection raised by learned Senior Counsel appearing for Respondent 5 that since similar issue has been raised by

another petitioner in Uttarakhand High Court at Nainital in a Writ Petition (PIL) No. 151/2022, therefore, this Tribunal should not continue with the parallel proceedings, both learned Counsel appearing for Respondents 1 and 4 said that cognizance in the matter has been taken on a complaint made by a different person. If there is an issue giving rise to substantial question of environment arising due to implementation of enactments mentioned in the Schedule of National Green Tribunal Act, 2010 (hereinafter referred to as "**NGT Act, 2010**"), this Tribunal is under statutory obligation to adjudicate the same and it has no discretion to non-suit or close its door to such matter only on the ground that some other person has filed a writ petition in the High Court. It is said that Tribunal may not pass any order contradictory to the order(s) of High Court, but when a substantial question relating to environment which is duly covered by Section 14 of NGT Act, 2010 is brought before Tribunal, being a statutory body governed by the provisions of NGT Act, 2010, it is under statutory obligation to adjudicate the same and there is no discretion vested in it to decline to answer or adjudicate such issue only on the ground that the matter is pending in High Court in a writ petition, a discretionary jurisdiction. Any other approach adopted by Tribunal would amount to ousting its jurisdiction vested in it which would not be consistent with the provisions of NGT Act, 2010.

12. In our view, the question raised by learned Senior Counsel appearing for Respondent 5 needs be considered. Since present matter has been initiated on a letter petition, we find it appropriate to appoint an Amicus Curiae in the matter to assist Tribunal on behalf of Applicant and, therefore, we appoint Mohd. Rafat Shamshad, Advocate (Enrollment No. D/1349/2000) as Amicus Curiae to assist Tribunal who will be paid professional remuneration/fee of Rs. 35,000/-, per hearing, by

Uttarakhand Pollution Control Board from the funds of environment compensation deposited with it.

13. Further, to complete the record, to find out whether cracks have developed in the residences of local people due to activities of Respondent 5 or there are some other reasons, it is appropriate to constitute an Expert Joint Committee to give its report on the subject. The Committee would comprise of an expert on the subject to be nominated by Director of Wadia Institute of Himalayan Geology, Dehradun, subject expert to be nominated by Director of Institute of Seismological Research, Gandhinagar, Central Pollution Control Board (hereinafter referred to as **“CPCB”**), Regional Officer, Ministry of Environment, Forests and Climate Change, Dehradun and Collector, Pithoragarh.

14. CPCB shall be nodal agency for coordination and compliance in the matter.

15. The report with regard to causes of cracks developed in residences of local people, after examining the matter in detail, shall be submitted within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

16. The other respondents who have not filed their response till date, may do so within one month.

17. A copy of this order be forwarded to Director of Wadia Institute of Himalayan Geology, Dehradun, Director of Institute of Seismological Research, Gandhinagar, CPCB, Regional Officer, Ministry of Environment, Forests and Climate Change, Dehradun and Collector, Pithoragarh by e-mail for compliance.

18. List the matter on 23.04.2024.

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

January 30, 2024
Original Application No. 485/2023
DV