

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

M.A. NO. 97 OF 2021
IN
IN O.A. NO. 449 OF 2019 (report submitted by Resp.No.1)
IN
OA NO. 332 OF 2017

IN THE MATTER OF:

Tejinder Kumar Jolly & Anr .. Applicants

Versus

State of Uttarakhand & Ors. ..Respondents

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Applicants

Through



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Place: New Delhi

Date: 17.03.2022

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**OBJECTION ON BEHALF OF APPLICANTS TO THE
REPORT FILED BY THE UKPCB DATED 16.03.2022 IN
COMPLIANCE OF ORDER DATED 16.12.2021 PASSED
BY THIS HON'BLE TRIBUNAL**

MOST RESPECTFULLY SHOWETH:

1. That the UK PCB has filed report dated 16.03.2022 in compliance of order dated 16.12.2021 passed by this Hon'ble Tribunal. The committee has overlooked and not reported serious illegalities and violations being committed by the stone crushers, hence the applicants seek liberty of this Hon'ble Tribunal to file present objections to the report.
2. That while remanding back the matter vide order dated 18.11.2021, Hon'ble Supreme Court in para 3 to 5 has noted the contention of the applicants as under:

“3. The matter pertains to two stone crushers operated by the respondent nos. 4 and 5 in Village Fatta Bangar at Haldwani in Nainital District.

The contention of the appellant (based on the report dated 7th April, 2014 of the Halka Patwari) is that the two stone crusher units are operating in violation of the statutory environmental norms, in close vicinity of their village and also at near distance to the nearby schools and colleges. (Copy of Report of Halka Patwari dated 07.04.2014 is @ Pg. 81-82 of MA)

4. The appellant no. 1 and his father Umrao Singh Bhandari (now deceased) had moved the NGT for relocating the two stone crushers alleging unbearable sufferings due to noise and air pollution emanating from those units.

A complaint, in this regard was also filed on 10th November, 2013 by the Principal of the Government Inter College, Moti Nagar alleging that due to the stone crushers operations, teaching is affected and the health of the students and teachers of the college are compromised. (Copy of Letter dated 10.11.2013 is @ Pg. 75 of MA)

A like complaint was made to the District Magistrate, Nainital by the appellants pointing out the suffering of their co-villagers.

5. Following the above complaint, the Deputy Director, Mining addressed a letter on 7th March, 2014 to the Regional Officer, Pollution Control Board, Haldwani for taking necessary action.

Thereafter inspection of the area was made and the letter dated 26th March, 2014 of the Deputy Director (Mining) addressed to the SDM, Haldwani indicated that the stone crushers are located in the vicinity of residential houses and those are causing air and noise pollution in the surrounding areas. (Copy of report dated 26.03.2014 is @ Pg. 79-80 of MA)

The report by the jurisdictional Halka Patwari indicated the precise distance of the residential houses / institutions, from the offending stone crusher units. (Pls see Pg.81-82 of MA)

It was also revealed that both units are in close vicinity of agricultural fields where wheat, sugar, soyabean crops are grown....”

3. Further, in Para 9 of the order dated 18.11.2021 the Hon'ble Supreme Court has noted as under:

“9. The matter was listed thereafter on various dates and in the meantime further pleadings were exchanged on the report of the Pollution Control Board, filed before the NGT.

The reports suggest that the noise level emanating from both units is beyond the permissible parameters. It is relevant to note that the subsequent Notification issued on 09.06.2021 by the Uttarakhand Government specifies silence zone upto 100 meters, from educational institutions.”(Copy of Notification dated 09.06.2021 is @ Pg. 319-323 of MA)

A copy of the order dated 18.11.2021 passed by Hon'ble Supreme Court in Civil Appeal 218 of 2020 is annexed as **ANNEXURE: A**.

4. Although, the report @ Pg. 4 suggests that the Govt. Primary School, Motinagar was established in the year 1978 i.e. much prior to the establishment of Stone Crushers, however, surprisingly the committee has not mentioned in its report that the distance of the said primary school is within 100 meters from the R-4 & 5 stone crushers i.e. silence zone according to the Notification dated 09.06.2021(**Pg. 319-323 of MA**). Thus, both the stone crushers are operating in a Silence Zone.
5. The report of Halka Patwari dated 7.4.2014 have been ignored which suggests that there are several houses which are within 100 meters to 300 meters from the Stone Crusher units.
6. That the objection of the applicant to the conclusion given by the committee @ pg. 10 of the report is as under:
- a. Although the applicant provided all the documents which are part of the present MA No. 97 of 2021 i.e.

1014 pages, which contained 2 previous joint inspection report of CPCB, the report of Halka Patwari regarding distance, Noise Pollution Rules, 2000 and the Notification dated 09.06.2021 issued by State of Uttarakhand to comply the said rules, however, no observation was given by the committee on them that the stone crushers are operating within the Abadi and are surrounded by hundreds of residential houses.

- b. It has wrongly been noted that the area has become industrial area. In fact, the village in question is a residential area and the area has never been notified as industrial area.
- c. The Committee has incorrectly stated that WPPIL No. 212 of 2019 Trilok Chand Vs. State of Uttarakhand & Ors. is pending before Hon'ble High Court. In fact the said PIL is not pending and was disposed of on 05.03.2022 i.e. much before filing of the present report dated 16.03.2022, however, for reasons best known to the committee members a totally misleading information regarding said PIL has been given in the report. The contention of the Respondent Stone Crusher regarding said PIL was already rejected by Hon'ble Supreme Court. A copy of the order dated 05.03.2022 finally disposing of WPPIL No. 212 of 2019 is annexed as **ANNEXURE: B.**

ADDITIONAL FACTS FOR CONSIDERATION :

7. The Respondent No.3 is operating 2 Stone Crushers i.e. Resp.Nos.4 & 5 in a residential area, in the middle of the village abadi, Fattabangar at Haldwani, District Nainital in violation of the Govt. Stone Crusher Policy of 2020. As per said policy, the stone crusher cannot operate within 300 meters from the Abadi, Schools, Educational

Institutions and Hospitals etc. The distance parameters as Uttarakhnad Stone Crusher Policy, 2020 are as under;

Sl. No.	Place	Minimum Distance of Stone Crusher
5.	Religious places (Temple, Mosque, Gurudwara & Church etc.)	300 meter
6.	School, Educational Institute, Hospital, Nursing Home etc.	300 meter
7.	Distance from Population	300ter

This shows that the Respondent Nos. 4 & 5 are operating in violation of distance parameters.

As per site inspection report of the Halka Patwari of the area @ **Pg. 81-82 of MA**, the distances of Resp.No.4&5 stone crushers from various places are as under ;

The name of the residents/ Institutions	Distance of Respondent Nos. 4 & 5 stone crusher.
1. Panchayat Ghar	Just adjacent
2. Jaipur Kanal Nehar	5 mtrs.
3. Ishwari Dutt	6 mtrs.
4. Lal Kuan Kanal	10 mtrs.
5. Umrao Singh (Appellant No.2)	24 mtrs.
6. Jaisingh Kashyap	30 mtrs.
7. Girish Kapoor (Appellant No.1)	30 mtrs.
8. Chandrapal Negi	35 mtrs.
9. Kundan Singh Mehra	43 mtrs.
10. Kanti Ballabh	46 mtrs.
11. Bhartiya Shiksha Niketan	80 mtrs.
12. Primary School Moti Nagar	97 mtrs.
13. Inter College, Moti Nagar	110rs.

8. As per joint inspection report dated 12.10.2017 of CPCB and State PCB filed before NGT, the Govt. Primary School, Motinagar is within 100 meter from Resp.No.4 and within 50 meters from Resp.No.5 and the house of the Appellant is at a distance of 100 meters from Respondent No. 4 and within 200 meters from Respondent No. 5. There are hundreds of other residential houses within the periphery of 300 meters from the Respondent Nos. 4 & 5 stone crushers. A copy of Joint Inspection Report dated 12.10.2017 filed by CPCB and State PCB is **at Pages 141 to 151 of MA.**
9. In the Joint Inspection Report dated 12.10.2017, the CPCB & State PCB have recommended as under:
- Recommendations:** 9. The Government of Uttarakhand should make policy for relocation of industrial units where new residential pockets are coming up around the existing industrial units.”
- However, despite lapse of more than 4 years the stone crushers have still not been shifted out of Abadi area.
10. That as per Noise Pollution Rules, 2000 and as per Notification dated 09.06.2021 issued by Uttarakhand Govt. for implementation of the said Rules, ambient air quality standards in respect of Noise in a residential area cannot be more than 55dB(A) in day time and 45dB(A) at night time. However, Resp.No.4&5 stone crushers are raising noise upto 89dB(A). Whereas, even in a industrial area permitted noise level is maximum 75dB(A).

Ambient air quality standards in respect of Noise as per Noise Pollution Rules, 2000 are as under;

Area Code	Category of Area / Zone	Limits in db(A) Leq	
		Day Time	Night Time
(A)	Industrial Area	75	70
(B)	Commercial Area	65	55
(C)	Residential Area	55	45
(D)	Silence Zone	50	40

11. As per Noise Pollution Rules, 2000 and Notification dated 09.06.2021 of the State Govt., these stone crushers are also operating in a “**Silence Zone**” i.e within 100 meters from the Educational Institutions, where maximum permitted Noise level is 50dB(A). Whereas, Resp.No.4&5 are admittedly operating at the parameters which are applicable only in an industrial area i.e. 75dB(A) or more.

VIOLATION OF NOISE POLLUTION RULES, 2000

12. In exercise of powers U/s 3, 6 and 25 of Environment (Protection) Act, 1986 r/w Rule 5 of Environment (Protection) Rules, 1986, the MoEF & CC, Govt of India has notified Noise Pollution (Regulation & Control) Rules, 2000. The schedule of the Noise Pollution Rules, 2000 provides maximum Ambient Air Quality Standards in respect of Noise in a residential area, in day time 55dB(A) and in the night time 45 dB(A). As per note-3 of the schedule, an area not less 100 meters around educational institutions has been defined as “Silence Zone”. A copy of Noise Pollution Rules, 2000 are at Pages 438-441 of MA.
13. For implementation of the Noise Pollution Rules, 2000, the Govt. of Uttarakhand has issued a notification 9.6.2021,

wherein, in Clause 1 (ii), a minimum 100 meters from the premises of educational institutions have been declared as “**Silence Zone/Area**”. A copy of the Notification issued by Govt. of Uttarakhand dated 9.6.2021 are **at Pages 319-323 of MA.**

14. That on 10.11.2013, the Principal of Govt. Inter College, Motinagar has written letter to the Chief Education Officer requesting to take appropriate actions against Resp. No. 4 & 5 stone crushers as due to air and noise pollution they are having problem in teaching and the students health is being compromised.

However, the State Govt. did not shift the stone crushers, thereby, compromising with the health of the students of the Govt. Primary School and Govt. Inter College, Motinagar. Despite lapse of more than 8 years since then the students and all entire abadi of the village is still suffering. A copy of the letter dated 10.11.2013 is **at Pages 75 of MA.**

15. As per Noise Monitoring Report dated 03.04.2017 and 6.07.2017 filed by Resp.Nos.4 & 5 they are generating a noise of average 89 dB(A). A copy of the Noise Monitoring Reports of Resp.Nos. 4 & 5 are **at Pages 448 & 460 of MA.**

In a exactly similar case, Hon’ble NGT has held that the **old industrialunits should not be permitted to contend that since it was an existing unit, it has earned a right to pollute the environment and cause environmental pollution, putting the life of the others at**

risks, on the ground that it was an existing unit and was operating in accordance with law. Such a contention, if raised, would have to be noticed only to be rejected.

LEGAL POSITION WITH REGARD TO COMPLIANCE OF ENVIRONMENTAL LAWS / NORMS BY THE OLD INDUSTRIAL UNITS

16. An identical issue has already been decided by a full bench of this Hon'ble Tribunal vide order dated 13.01.2015 in OA No. 123 of 2014, Himmat Singh Shekhawat Vs. State of Rajasthan & Ors. etc., wherein, all the state government were opposing implementation of MoEF Notification which made it compulsory for minor mineral mining lease holders of area less than 5 Hectares in the entire country to seek Environmental Clearance (EC). Existing Mining Units were contending that it will not be applicable on them because when they came in existence there was no requirement of getting prior EC.

The relevant para 75 of the said judgment reads thus;

"The environmental laws are laws enacted for the benefit of public at large. They are socio-beneficial legislation enacted to protect the environment for the benefit of the public at large. It is in discharge of their constitutional obligation that such laws have been enacted by the parliament or by other authorities in furtherance to the power of delegated legislation vested in them. These legislations and directives are incapable of being compared to the legislation in the field of taxation or criminal jurisprudence. These laws have been enacted to protect the fundamental rights of the citizens. **Thus, the contention that the existing mining mine**

holders would not be required to comply with the requirements of environmental laws, cannot be accepted. To illustratively examine this aspect, we may take hypothetical situation, not far from reality. An industrial unit which had been established and operationalized prior to 1974, 1981 and/or 1986, was granted permission under the laws in force and the unit owner had made heavy investment in making the unit operational. The Water Act came into force in 1974, Air Act in 1981 and Environment Protection Act in 1986. All these acts deal with existing units as well as units which are to be established in future. These laws granted time to the existing units to take all anti-pollution measures and obtain the consent of the respective pollution control boards to continue its operation. Failure to do so, could invite panel action including, closure of industry under these acts. **The said units should not be permitted to contend that since it was an existing unit, it has earned a right to pollute the environment and cause environmental pollution, putting the life of the others at risks, on the ground that it was an existing unit and was operating in accordance with law. Such a contention, if raised, would have to be noticed only to be rejected.** Similarly, these Notifications or Office Memorandums, having been issued under the environmental laws, would equally apply to the existing industries as well. The directions contained in these notifications and office memorandums which are otherwise valid, would equally operate to the existing mines as well as the newly undertaken mining activities."

17. The respondent No. 4 & 5 were extracting ground water without any permission from Central Ground Water Authority, which led to depletion of water level of the village. In RTI reply dated 16.11.2018 the CGW Board has informed that the Resp Nos. 4&5 have not been granted permission for installation of bore wells. A copy of the RTI

Application and reply received from CGW Board, Dehradun are **at Pages 279-280 of MA.**

In view of the aforesaid facts it is prayed that both the Stone Crusher units may be directed to be shifted from the residential area as directed earlier by this Hon'ble Tribunal vide order dated 3.4.2018 (**Pls see Pg. 158-159 of MA.**)

Applicants

Through



V.K. Shukla

Advocate for the Applicants

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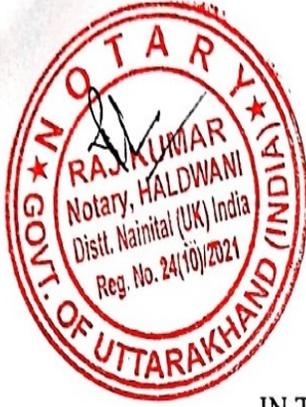
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Date: 17.03.2022



BEFORE THE NATIONAL GREEN TRIBUNAL,
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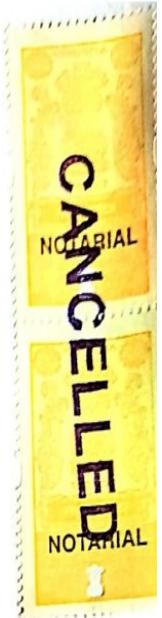
State of Uttarakhand & Ors. ... Respondents

AFFIDAVIT

I, Gulab Singh Bhandari, aged 55 years, S/o Late Shri Umrao Singh Bhandari, R/o Village Fatta Bangar, Post Office Arjun Pur, Haldwani, District- Nainital, UK-263139, do hereby solemnly affirm and state as under:

1. That, I am the Applicant No.2 in the present petition and as such I am well conversant with the facts and circumstances of the case and I have also been authorized by Applicant No.1 to swear this affidavit on his behalf as well.
2. That I have gone through the contents of accompanying objections to the report dated 16.03.2022 filed by PCB Uttarakhand which has been drafted as per my instructions. The contents of which are true and correct to the best of my knowledge derived from the record. The annexures are true copies of their respective originals.


DEPONENT



VERIFICATION:

Verified at Haldwani on this 17th day of March, 2022 that the contents of this affidavit are true and correct to the best of my knowledge derived from the record and nothing relevant has been concealed therefrom.



[Signature]
DEPONENT

Certified that Sri/smt..... *Gulab Singh Bhandari*
the Deponent Identified by..... *Bhaskar Bhatt*
Sworned & Verified the contents of
the Affidavit : *Haldwani*
on Date..... *17.03.2022* *4=31 Pm*

RAJ KUMAR
Notary, HALDWANI
Distt. Nainital (UK) India

[Signature]
17/03/2022

[Signature]
Identified by:
Bhaskar Bhatt

ANNEXURE: A
NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 218 OF 2021

TEJINDER KUMAR JOLLY & ANR. APPELLANT(S)

VERSUS

THE STATE OF UTTARAKHAND & ORS. RESPONDENT(S)

J U D G M E N T

Hrishikesh Roy, J.

Heard Mr. V.K. Shukla, learned counsel for the appellants. Also heard Mr. Rahul Verma, the learned Additional Advocate General for the State/respondent No.1, Mr. Mukesh Verma, learned counsel for Respondent No.2 and Mr. Dhruv Mehta, learned senior counsel for respondent Nos. 3 to 5.

2. The challenge here is to the order dated 27th August, 2019 whereby the learned National Green Tribunal (for short the 'NGT') opined that the O.A. No. 449 of 2019 registered *Suo Moto* by the Tribunal, would not require adjudication in light of the order passed while disposing of the O.A. No. 332 of 2017.

3. The matter pertains to two stone crushers operated by the respondent nos. 4 and 5 in Village Fatta Bangar at Haldwani in Nainital District. The contention of the appellant (based on the report dated 7th April, 2014 of the Halka Patwari) is that the two stone crusher units are operating in violation of the statutory environmental norms, in close vicinity of their village and also at near distance to the nearby schools and colleges.

4. The appellant no. 1 and his father Umrao Singh Bhandari (now deceased) had moved the NGT for relocating the two stone crushers alleging unbearable sufferings due to noise and air pollution emanating from those units. A complaint, in this regard was also filed on 10th November, 2013 by the Principal of the Government Inter College, Moti Nagar alleging that due to the stone crushers operations, teaching is affected and the health of the students and teachers of the college are compromised. A like complaint was made to the District Magistrate, Nainital by the appellants pointing out the suffering of their co-villagers.

5. Following the above complaint, the Deputy Director, Mining addressed a letter on 7th March, 2014 to the Regional Officer, Pollution Control Board, Haldwani for

taking necessary action. Thereafter inspection of the area was made and the letter dated 26th March, 2014 of the Deputy Director (Mining) addressed to the SDM, Haldwani indicated that the stone crushers are located in the vicinity of residential houses and those are causing air and noise pollution in the surrounding areas. The report by the jurisdictional Halka Patwari indicated the precise distance of the residential houses / institutions, from the offending stone crusher units. It was also revealed that both units are in close vicinity of agricultural fields where wheat, sugar, soyabean crops are grown. Another report of the Pollution Control Board sent to the District Magistrate, Nainital suggest that the respondent units do not have valid permission, under the *Water (Prevention and Control of Pollution) Act, 1981 and the Air (Prevention and Control of Pollution) Act, 1974* and their request for permission was pending for consideration. Moreover, the on-site inspection of both Himalaya Stone Industries and the Himalaya Grits reflected that acoustic enclosure on the DG set are not installed and the stone crushers are operating beyond the established norms and parameters.

6. Noticing the inaction of the authorities, despite the above reports, the appellants filed O.A. No. 332 of 2017 seeking closure /re-location of the stone crushers. In the said proceeding, the NGT passed an interim order on 10th August, 2017 restricting the operation of both units during the day time from 7 a.m. to 6 p.m. This interim order was modified on 19th September, 2017 whereby the NGT clarified that loading / unloading operation can be carried out by the respondent units up to 8 p.m.

7. On orders of the Tribunal, a joint inspection was also carried out and the report thereof was placed before the NGT. The appellants filed objection to the said report whereafter, O.A. No. 332 of 2017 was disposed of on 3.4.2018, with the following order :

“Heard the Learned Counsel for the parties.

As the matter involves a short question which is in dispute between the parties, we propose to dispose of this Application at this stage. After perusing the materials on record, including the joint inspection report filed by CPCB along with the policy of the State Government, we pass the following directions:

1. That Respondent No. 4 and 4(A) who are running the stone crushing units within the residential area/colony shall file an undertaking before the Tribunal that as per the policy of the State Government, they

shall shift their stone crushing units to some other place, beyond residential area by 30th November, 2018. The said undertaking shall be filed within a week from today.

2. On filing of the aforesaid undertaking, respondent-State/Pollution Control Board/its authorities shall permit the respondent no. 4 and 4A to continue till 30th November, 2018, subject to their compliance to all the environmental laws.

3. In case the respondent no. 4 and 4A fail to submit the undertaking within the time stipulated, the respondent -State, including Pollution Control Board, shall be free to take steps against respondent no.4 and 4A for removal of their stone crushing units immediately.

4. On filing of undertaking by respondent no.4 and 4A, they would continue only upto 30th November, 2018. Thereafter, respondent-State as well as Pollution Control Board shall, proceed against the aforesaid respondents, to ensure that their stone crushing units are immediately stop and shall not be permitted to operate.

Consequently, the Original Application No. 332 of 2017 stands disposed of with the aforesaid directions. There shall be no order as to cost."

8. The above order was challenged by respondent Nos. 3 to 5 in C.A. No. 3664 of 2018 and this Court set aside the order and remitted the matter back to the NGT for passing fresh speaking order, after hearing the parties.

9. The matter was listed thereafter on various dates and in the meantime further pleadings were exchanged on

the report of the Pollution Control Board, filed before the NGT. The reports suggest that the noise level emanating from both units is beyond the permissible parameters. It is relevant to note that the subsequent Notification issued on 09.06.2021 by the Uttarakhand Government specifies *silence zone* upto 100 meters, from educational institutions.

10. The main stand of the respondents before the NGT is that they are old units operating since 1985 and they should not be forced to relocate because of the later developments.

11. In like cases of pre-existing industrial units, the NGT in O.A. NO. 123/2014 (*Himmat Singh Shekhawat Vs. State of Rajasthan & Ors.*) has pertinently declared the following:

“the environmental laws are laws enacted for the benefit of public at large. They are socio-beneficial legislation enacted to protect the environment for the benefit of the public at large. It is in discharge of their constitutional obligation that such laws have been enacted by the parliament or by other authorities in furtherance to the power of delegated legislation vested in them. These legislations and directives are incapable of being compared to the legislation in the field of taxation or criminal jurisprudence. These laws have been enacted to protect the fundamental

rights of the citizens. Thus, the contention that the existing mining mine holders would not be required to comply with the requirements of environmental laws, cannot be accepted. To illustratively examine this aspect, we may take hypothetical situation, not far from reality. An industrial unit which had been established and operationalized prior to 1974, 1981 and/or 1986, was granted permission under the laws in force and the unit owner had made heavy investment in making the unit operational. The Water Act came into force in 1974, Air Act in 1981 and Environment Protection Act in 1986. All these acts deal with existing units as well as units which are to be established in future. These laws granted time to the existing units to take all anti-pollution measures and obtain the consent of the respective pollution control boards to continue its operation. Failure to do so, could invite panel action including, closure of industry under these acts. The said units should not be permitted to contend that since it was an existing unit, it has earned a right to pollute the environment and cause environmental pollution, putting the life of the others at risks, on the ground that it was an existing unit and was operating in accordance with law. Such a contention, if raised, would have to be notice only to be rejected. Similarly, these Notifications or Office Memorandums, having been issued under the environmental laws, would equally apply to the existing industries as well. The directions contained in these notifications and office memorandums which are otherwise valid, would equally operate to the existing mines as well as the newly undertaken mining activities."

12. On 11.12.2018, after the Supreme Court remand, the NGT passed a fresh order disposing of the O.A. No. 332/2017 whereby the onus was shifted to the State Government to assess the functioning of the stone crushers and in the event, they are found violating any of the environmental norms, steps were to be taken for closure of the offending units. The Government was also asked to submit a compliance report to the NGT which was directed to be registered as a fresh O.A. as soon as the same is received.

13. The appellants then endeavored to ensure compliance of the NGT's directions in their O.A. No. 332 of 2017 but when those efforts yielded nothing, they were compelled to file the EP No. 2/2018 in the O.A. No. 332/2017, for executing the NGT's order dated 11.12.2018.

14. The Uttarakhand Government thereafter on 21.2.2019 filed a Report by way of an affidavit together with two Joint Inspection Reports dated 1.1.2019 and 1.2.2019 respectively. In the report dated 1.2.2019, several violations by the respondent units were highlighted but steps were not taken to shut those down as per the NGT's earlier directions.

15. The aforesaid Government Report dated 21.2.2019 was then registered as a fresh O.A. No. 449/2019 in the NGT. As the Report of the State Government led to registration of a fresh OA, the appellants withdrew their Execution Application No. 2/2018 in the earlier O.A. No. 332/2017.

16. Noticing the continued inaction of the State Government, despite the adverse finding in the Report submitted to the NGT on 21.2.2019, the appellants moved this Court by filing the Civil Appeal Diary No. 11823/2019. The said matter was disposed of by this Court on 15.4.2019 with the following Order:

"We do not find any good ground to interfere with the impugned order passed by the National Green Tribunal, the Tribunal having directed the State Government to assess the functioning of respondents private units and in case the said units are found violating the policies dated 19.11.2016 and 20.11.2018, to take appropriate action."

17. Thereafter on 26.08.2019 when the O.A. No. 449/2019 was posted for hearing, the NGT passed the following order under an erroneous impression: -

"The Learned Counsel for the applicant submits that he may be permitted to withdraw this original application, so as to pursue his remedy elsewhere, in accordance to law."

Consequently, original application no. 449/2019 is dismissed, as withdrawn.

Thereafter, the Learned Counsel for respondent Mr. Vivek Gupta appeared and submitted that the original application filed by the applicant was O.A. (332/2017) whereas the present O.A. (449/2019) has been registered by the office after receiving the report. Therefore, the Counsel for the original applicant is not to withdraw the original application (449/2019) as the same has not been filed by the original applicant.

In view of the above, list this case in Court tomorrow i.e. 27th August, 2019."

18. As noted above, since the O.A. No. 449/2019 was not filed by the appellants (who had filed the earlier O.A. No. 332/2017, which was already disposed of by the NGT), it was observed that the withdrawal of the O.A. No. 449/2019 at the instance of the appellants was not proper and accordingly, the said O.A. was directed to be listed on the next date i.e. 27.08.2019. When the matter was listed next on 27.08.2019, the following order came to be passed which is the subject matter of challenge in this proceeding:-

"On account of some factual misunderstanding, an order was passed yesterday. However, after having come to know the fact that original application (449/2019) is not the one filed by the applicant but has been so registered by the

office on receipt of the report by the respondents, in light of the order passed while disposing original application (332/2017), we ordered to list the matter in court again.

We have perused the contents of the original application (449/2019) and in the facts and circumstances of the case, we are of the view that no further adjudication is required.

Consequently, original application (449/2019) stands disposed of, with no order as to cost."

19. The impugned order of the NGT, as extracted above, clearly suggests that the O.A. No. 449/2019, which was registered in pursuance to the adverse Govt. Report against the respondents-stone crushers, was never adjudicated on merit. The issues were never taken to its logical end despite the clear finding in the Government Report that the respondents 4 & 5 are operating in violation of the Government Policy and the Environmental norms and ameliorative steps were needed. The contesting counsel for the parties are in agreement on the aspect that the NGT should have decided the O.A. 449/2019 on merit, instead of closing the proceeding, as a disposed of matter. Decision on merit was particularly expected since the NGT itself on 11.12.2018 (while disposing of

O.A. No. 332/2017), had directed the State Government to assess the functioning of the stone crushers, and to take action for their closure in the event they are found violating any of the policy parameters or environmental norms. To facilitate appropriate action, the fresh O.A. No. 449/2019 was directed to be registered, soon after the Government Report was produced before the NGT.

20. There can be no quarrel with the proposition that public interest would warrant action against polluting units. This is equally applicable to those industrial units which have been functioning since long. Adherence to the environmental and pollution norms cannot be compromised for factual misunderstandings or due to cryptic determination. Orders which have direct repercussions on the right to clean environment must surely be the outcome of careful scrutiny and substantive deliberation, as per the applicable facts. The NGT was required to address the grievance on the adverse health impacts on local populace by the stone crushers. The Tribunal itself had recognized that orders were necessary to resolve the issue. The factual determination had reflected the need to ensure heightened compliance with the environmental norms for the concerned area. On 13.01.2015 in the related O.A. No. 123 of 2014 (*Himmat*

Singh Shekhawat Vs. State of Rajasthan), the Tribunal made it clear that even the pre-existing units must fall in line. As noted before, the subsequent O.A. 449/2019 was ordered to be registered for consideration of the report requisitioned by the NGT itself. It was also clarified that the O.A. 449/2019 was based upon the Report furnished to the Tribunal. In this backdrop, the action needed on the Report, should have been indicated. At the very least, the Tribunal would be expected to ascertain whether substantial compliance of its earlier orders was made by the two stone crushing units of the respondents.

21. We are therefore of the opinion that the view taken in the impugned order to the effect that the O.A. No.449/2019 does not require adjudication, does not appear to be in order and the same is therefore set aside. Consequently, the O.A. No.449/2019 is restored and ordered to be adjudicated on merit. The NGT should however render its decision without being influenced by the observations made in this judgment. It is ordered accordingly. The appeal stands allowed, leaving the parties to bear their own cost.

.....J.
(R. SUBHASH REDDY)

.....J.
(HRISHIKESH ROY)

New Delhi;
November 18, 2021

A handwritten signature in blue ink, appearing to read 'Hrishi', is written over a rectangular stamp area.

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ANNEXURE: B

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

SRI JUSTICE S.K. MISHRA, A.C.J.
 AND
 SRI JUSTICE R.C. KHULBE, J.

05th MARCH, 2022

WRIT PETITION (PIL) No. 212 OF 2019

Between:

Trilok Chand.

...Petitioner

and

State of Uttarakhand and others.

...Respondents

Counsel for the petitioner. : Mr. S.R.S. Gill, the learned counsel.

Counsel for the respondent nos. 1 to 7. : Mr. A.S. Rawat, the learned Special Counsel assisted by Mr. Pradeep Joshi, the learned Additional Chief Standing Counsel for the State of Uttarakhand.

Upon hearing the learned Counsel, the Court made the following

JUDGMENT : (per Sri S.K. Mishra, A.C.J.)

In this Writ Petition, the petitioner has prayed for the following reliefs :-

"i) Issue a writ, order or direction in the nature of mandamus directing the respondents authorities to forthwith stop any further granting of license for the establishment of new Stone Crushers and Screening plants in the entire State of Uttarakhand.

ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to forthwith frame norms regarding the establishment of Stone Crushers and Screening Plants only in the Industrial area.

iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to forthwith stop the licenses for establishment of Stone Crushers and Screening Plants near the river banks and Reserve Forest Area in the entire State of Uttarakhand.

iv) Issue a writ, order or direction in the nature of mandamus directing the respondents to not to issue further licenses for establishment of Stone Crushers and Screening Plants in Tehsil Ramnagar, District Nainital as it comes under eco-sensitive zone.

v) Issue any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

vi) To award the cost of the petition in favour of the petitioner."

2. It is apparent from the records that prayer nos. 1 and 2 have become infructuous in view of the adoption of the new mining policy, dated 10.11.2021, by the State of Uttarakhand. As far as the rest of the prayers are concerned, it is apparent from the records that the petitioner has directly approached this Court without ventilating his grievances before the authorities.

3. In that view of the matter, we dispose of the Writ Petition by granting liberty to the petitioner to file a properly articulated representation ventilating his grievances before the respondent no. 1 i.e. the Principal Secretary, Industrial Development Department, within 30 days by annexing a copy of this order as well as a copy of the Writ Petition.

4. In such an event, the Principal Secretary, Industrial Development Department-respondent no. 1 shall hear the concerned parties and, after affording a reasonable opportunity of hearing and production of documents to the parties, shall take a decision within 45 days from the date of production of a certified copy of this order, along with a copy of the Writ Petition.

5. With the aforesaid observations, the Writ Petition is disposed of.

6. In sequel thereto, all pending applications also stand disposed of.

7. Urgent certified copy of this judgment be provided to the parties, as per Rules.

S.K. MISHRA, A.C.J.



R.C. KHULBE, J.

Dt: 05th March, 2022
Rohini

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