

**BEFORE THE HON'BLE NATIONAL GREEN  
TRIBUNAL SITTING AT NEW DELHI.**

Original Application No. 383/2024

**In the matter of:-**

Shri Kushal Gupta son of Shri Mohan Lal Gupta resident of  
Village and Post Office Haripur, Tehsil Manali, District  
Kullu Himachal Pradesh, Pin Code 175136, Email:  
[kushalgupta5744@gmail.com](mailto:kushalgupta5744@gmail.com).

..... Applicant

**Versus**

1. State of Himachal Pradesh through Principal Secretary  
Department of Town & Country Planning Palika  
Bhavan, Talland, Shimla 171002. Email:tcp-hp@nic.in.
2. Himachal Pradesh Public Works Department Through  
Engineer-in-Chief, Nirman Bhawan, Nigam Vihar,  
Shimla -171002  
Email: [pwdsecy-hp@nic.in](mailto:pwdsecy-hp@nic.in).
3. M/S K.K, Mahajan Cosntruction Pvt. Ltd. Through  
Director Lambi Galli Tehsil Nurpur, Distt. Kangra H.P-  
176202

  
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4. Department of Fisheries, Government of Himachal Pradesh Through Secretary, Lower Nihal, Bilaspur, N.H-88, Shimla, Kangra Road Bilaspur, Himachal Pradesh- 174001.  
Email: [fisheriessecy-hp@nic.in](mailto:fisheriessecy-hp@nic.in).
5. Collector, Kullu Tehsil and Distt. H.P.
6. Himachal Pradesh Pollution Control Board Through its Director, Him Parivesh, Phase-III, New Shimla- 171009.  
Email: [chairmanpcbhp@gmail.com](mailto:chairmanpcbhp@gmail.com).
7. Deputy Commissioner, kullu. Dist. Kullu, H.P.  
Email: [dc-kul-hp@nic.in](mailto:dc-kul-hp@nic.in).
8. Himachal Pradesh Forest Department, Through Principal Chief Conservator of Forests Talland, Shimla-171001.  
Email: [forestsecy-hp@nic.in](mailto:forestsecy-hp@nic.in).

.....Respondents

**REPLY ON BEHALF OF RESPONDENT NO 2,  
HIMACHAL PRADESH PUBLIC WORKS  
DEPARTMENT TO THE APPLICATION  
UNDER SECTION 15 READ WITH SECTION 14  
OF THE NATIONAL GREEN TRIBUNAL FILED  
BY THE APPLICANT ABOVE MENTIONED**

  
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Sir,

The Respondent No. 2 by way of reply to the application submits as under:

**Preliminary Submissions:**

1. That the Application filed by the applicant is not maintainable and is liable to be dismissed as the same is barred by limitation under the NGT Act. In the present case the first instance as reported by the applicant herein is a legal notice dated 10.05.2018 sent to Deputy Commissioner Kullu and Respondent No. 2 against expressing apprehension that construction work of Haripur Bridge would cause damage to the fish farm of Applicant, construction of Haripur bridge had not started by then. Thereafter, Applicant filed a complaint to Police Chowki Patlikuhal, district-Kullu on 29.12.2018 and in the said Complaint there was an allegation that the contractor i.e. Respondent No. 3 has started work on Haripur Bridge. That from December 2018 to March 2019 there was no whisper of any complaint whatsoever by the applicant herein, despite the work being carried by the Respondent No. 3 on Haripur Bridge. In the present case the period of limitation expired in 10.05.2023. The present application is filed in April 2024, after eleven months, therefore, is barred by limitation and needs to be rejected

  
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at the threshold. The sub section 3 of Section 15 of the National Green Tribunal Act 2010 states that no application for grant of any compensation or relief or restitution of property or environment shall be entertained by the Tribunal unless it is made within a period of 5 years from the date on which the cause for such compensation or relief first arose. True translated typed copy of the Complaint date 29.12.2018 is annexed herewith and marked as **Annexure R-1 (Page \_\_\_ to \_\_\_)**

2. That the applicant by way of present application has raised disputed questions of facts which cannot be determined by way of present application. It is submitted that as per provisions of NGT Act, 2010 this Hon'ble Tribunal has jurisdiction where any question arises as to implementation of enactment which has been enumerated in Schedule I. This Hon'ble Tribunal has jurisdiction over civil cases where a substantial question relating to environment is involved which arises out of enforcement of seven enactments as given in Schedule. This Hon'ble Tribunal has to settle disputes, under Section 14 of Act, in all civil cases where substantial question relating to environment is involved. The appropriate remedy in the present case where there are disputed facts as to the events facts as well as the rights the same should be addressed by filing a civil suit before the competent court of law and

  
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need evidence in this regard. As the present case is a stale one of more than five years old therefore, there can not be any fact finding enquiry also, which can be directed by the Hon'ble Tribunal at this point of time. As the applicant is claiming a specific sum in compensation, the same has to be adjudicated upon basis of evidence by a competent court by filing of a civil suit before the Competent Court of law, where facts can be determined by way of evidence. Hence the present application is not maintainable.

3. That respondent awarded the contract of construction of Haripur Bridge on 22.12.2017. The said award of the work was followed by a contract between Respondent no. 2 and Respondent No. 3. Clause 12, clause 13 and clause 19 of the contract clearly enumerates the obligations of the contractor in this regard and states that if any loss is caused or damage to property, the same would be the responsibility of the contractor. Thus no action is called for regarding the compensation against the Respondent No. 2 herein. True copy of the conditions of the contract between the Respondent No. 2 (HPPWD) and Respondent No. 3 (the Contractor) is annexed herewith and marked as **Annexure R-2. (Page \_\_\_ to \_\_\_)**

**REPLY ON MERITS:**

1. That Para No.1 of the application needs no reply.

  
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2. That Para No. 2 of the application needs no reply.
3. That Para No. 3 of the Application is admitted to the extent of domicile/ citizenship of the Applicant. Rest of the averments as made under this para are not correct and hence denied. It is submitted that the Respondent No.2 awarded the work of construction of R.C.C. T-Beam Bridge of 15.75 Meters span, a new bridge adjacent to the old bridge which was no longer safe for transportation of heavy vehicles, public vehicles as well private vehicles. Therefore, there was an eminent need to construct a new bridge. This old bridge is of strategic importance serving the entire valley Kullu Manali Left Bank. The tourists from all over world come to Manali while visiting Art Gallery at Naggar and reach Manali through this road. It is further submitted that no excavated debris/muck was ever dumped into the Natural stream/ Haripur Nallah which would cause damage to trout farm of the applicant or cause any pollution and Geographic disturbance at site. Therefore, the question of dumping of sand, particulars, cement water and unwarranted material into the trout farm does not arise. Moreover, the distance of the trout farm of the applicant from the construction site is more than 50 meters. The water in the Nallah flows smoothly and no debris were ever dumped into the Nallah. It is submitted that Respondent No. 2 herein was very much aware of the

  
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responsibilities. Therefore, Respondent No. 3 was specifically given the adjacent land to the place from where the foundation was to be constructed on both towards the left bank as well as the right bank towards the stream and Respondent No. 3 used to safely move the debris and muck in those area allotted to the contractor. It is submitted that a JCB was also deployed by the contractor for removal of debris and muck from the allotted site from time to time. In fact, the work of constructing the abutments of the bridge was carried out on the sides of the Nallah from where there are no chances of dumping any debris into the Nallah. It may further be submitted here that the applicant has connected pipe/channels from Nallah to his Fish farm, however the distance of channels intake of trout farm is about 50 meters away from the left bank of nallah. True coloured photographs of the site of the construction of the new bridge with site plan, filed before the Hon'ble High Court of Himachal Pradesh in 2020 is annexed herewith and marked **Annexure R-3 (Page \_\_\_ to \_\_\_)**

4. That Para No. 4 of the application are facts and therefore requires no reply. However, it is submitted that the averments made in this para are not relevant for the purpose of adjudication of the original application.

  
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**REPLY TO THE FACTS OF THE APPLICATION:**

5. That the para-No. 5 of the facts are denied for want of knowledge. However, it is submitted that the distance of the trout farm from the Haripur Nallah is more than 50 meters on the left bank of the nallah.
6. In reply to para-No. 6 of the facts is formal in nature and require no specific comments.
7. In reply to para-No. 7 of the facts is formal in nature and require no specific comments. However, it is submitted that the distance of the trout farm from the Haripur Nallah is more than 50 meters on left bank of nallah.
8. That in reply to para-No. 8 of the application it is submitted that the Respondent No. 2 awarded the work of construction of R.C.C. T-Beam Bridge of 15.75 Meters. span adjacent to the old bridge over Haripur Nallah to Respondent No. 3. This bridge is of strategic importance serving entire valley along Kullu Manali Left Bank. The tourist from all over world come to Manali while visiting Art Gallery at Naggar and reach Manali through this road. It is further submitted that construction work of said bridge has been carried out in a controlled and scientific manner and no excavated debris/muck has ever been thrown in the Natural stream/ Haripur Nallah which would cause damage to trout farm of the applicant or

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cause any pollution and Geographic disturbance at site, a dedicated area was provided to Respondent No. 3 by Respondent No. 2 for dumping of the debris and the muck which was generated by the construction activity. Therefore, the question of dumping of sand, particulars, cement water and unwarranted material into the trout farm does not arise. Moreover, the distance of the trout farm of the applicant from the construction site is more than 50 meters. The water in the Nallah flows smoothly and no debris has ever been thrown into the Nallah. In fact, the work of constructing the abutments of the bridge was carried out on sides of Nallah from where there are no chances of dumping of debris into the Nallah. It may further be submitted here that the applicant has connected pipe/channels from Nallah to his Fish farm, however the distance of channels intake of trout farm is about 50 meters. away from the bridge site. It is further submitted that the Respondent No 3 was given separate dumping site along with the road for dumping of the muck coming out from excavation of work. The Respondent No 3 was also directed to carry out the work in scientific manner while taking all precautionary measures for dumping of muck.

9. That in reply to Para -9 of the application, it is submitted that the same relates to a legal notice dated 10.05.2018 written to Collector, Kullu as well as Superintendent

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Engineer, HP PWD, Kullu. At this point of time there was no construction activity being carried out by Respondent No.3. The legal notice under section 80 of Civil Procedure Code, 1908 talks about the mishap which is likely to be happen due to proposed construction of the bridge and its material. It is interesting that as the said legal notice also talk about the input from the fisheries officer from the concerned area that such mishap will occur. Moreover, at a premature stage the legal notice also talks about the number of fishes in trout farm as well as the annual turnover of the trout farm. As if the applicant was in a pre-meditated state had made the mind of suing the Respondent herein for construction of the bridge which was in public interest and public welfare. No excavated debris/muck was ever dumped into the natural stream/ Nallah which would cause damage to trout farm of applicant or cause any pollution and Geographic disturbance at site. Therefore, the question of entry of sand particles, cement water and unwanted material into the trout farm does not arise. Moreover, the distance between the construction site and trout fish farm of applicant is more than 50 meters. The water in the Nallah flows smoothly and no debris has ever been thrown into Nallah. In fact, the work of constructing abutments of the

  
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bridge was carried out on sides of Nallah from where there was no chance of dumping of debris into water.

10. In reply to Para-10 of the application it is admitted to be correct to the extent that a letter was received from Deputy commissioner Kullu by the Respondent No. 2 and the Respondent No. 2 issued direction to the Respondent No. 3 to carry out the construction work in control and scientific manner so that the excavated debris and muck may not be thrown in the Haripur Nallah and Respondent No. 3 carried out the construction work in a scientific manner. It is submitted that in May-June 2018 there was no construction under taken by Respondent No. 3 and therefore necessary directions were issued to Respondent No.3. That as and when the construction commences the concern of District should be taken into account and due consideration to be taken by the Respondent No. 3 while dealing with the debris and muck which would be generated by the construction activity.

11. That in reply to para-No. 11, it is submitted that all these communication are related to the concern of the applicant at a pre mature stage. The applicant clearly was trying to stall a public work project which was of utmost importance for the state. It is clear that the caveat of the Petitioners regarding the precautionary measures to be

  
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deployed was mis founded, as there was no construction activity that was being under taken at that point of time.

12. That para No.12 of the application is wrong not admitted to be correct hence denied. It is wrong that the construction work of the bridge of Haripur Nallah was carried out in reckless manner as alleged. The work of constructing the abutments of bridge was carried out on sides of Nallah from where there are no chances of dumping debris into the water of Haripur Nallah. The applicant has filed the false complaint against the replying respondent with the Police Station Patlikuhah as well as Police Station Manali, Distt. Kullu, H.P. Had there been any such loss, the applicant would have reported the same to the replying Respondent. In fact the applicant was trying to create evidence against the replying Respondent without ever factually reporting the matter to the replying Respondent. It is submitted that the site of the bridge is at a distance about 50 meters from the trout fish farm of the applicant. The construction work of the bridge was carried out after taking all precautionary measures so as to avoid polluting the nallah.

13. That para-No. 13 of the application requires no comments from replying Respondent as the same do not pertain to replying Respondent. No such representation as stated was ever made to replying Respondents. It is denied

  
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that the contractor had dumped muck in to the Nallah as such incidents have never been brought to the knowledge of Respondent and furthermore the site was regularly visited and supervised by the Respondent and no such incident of muck or debris dumping in the Nallah by the Respondent No. 3 was ever found by the Respondent No.

2. Furthermore, the assertion of the applicant in application that the applicant had already suffered a loss of more than 60 lakh due to the illegal act of the Respondent No. 2 is a disputed fact and stale claim and the same is denied by the Respondent No. 2 herein.

14. That para-No. 14 of the application pertains to communication made with various authorities. However, it is submitted that the replying Respondent had directed Respondent No. 3 time and again to take requisite measures to avoid any damage to trout farm of the applicant and property of any other land owners. The loss if any caused to the applicant is not because of any act or omission of the replying Respondent. The Respondent No. 2 had already provided a designated dumping site for handling and disposal of the muck scientifically to the Respondent No. 3 herein. Therefore, the concern raised by the Pollution Control Board was taken into account by the Respondent No. 2 herein.

  
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15. That para-No. 15 of the application is not admitted to be correct. It is submitted that the Gram Panchayat Soyol has no authority to assess the cause of death of the fishes and eggs of the trout farm. Alleged report/letter of Gram Panchayat Soyol was never prepared in the presence and with the knowledge of replying Respondent and the same cannot be relied upon. The damage if any caused to the farm of the applicant is not on account of any act or omission of the replying respondent.

16. That para-No. 16 of the application is also denied for want of knowledge. It is submitted that the village revenue officer has no expertise to determine the cause of death of the fish and their eggs due to construction of bridge and therefore, the reliance on such report by the applicant herein is mis founded and the same is denied by the Respondent no. 2 herein. The report as alleged under this para was never prepared with the knowledge and presence of the replying Respondent. Therefore, the report cannot be relied upon and used against the replying Respondent. Moreover, the Patwari is not any authority or expert to give report on such issue. The report is without authority and of no use.


17. That para No. 17 of the application is also denied for want of knowledge. It is submitted that the report of Deputy Director Fisheries District- Kullu dated

  
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16.03.2019 is a generic report based on the visit of the fisheries officer on 12.03.2019 at the Farm of the applicant. There is no scientific exercise under taken by the department of fisheries or for that matter by any other competent authority to determine that the water flowing from the site was carrying sand, silt or muck. Further, the death of the fishes and the eggs can be for various other reasons. It is submitted that the total construction activity period of the Haripur bridge was from December 2018 till January 2022. Thereafter, since march 2019 no such death of the fishes or eggs are reported by the applicant due to construction activity and dumping of muck/ silt or debris in the down stream by the Respondent no. 3. The trout farm was never visited in the presence of the replying Respondent. The loss alleged in the letter of the Deputy Director and the figures mentioned in the report Annexure-10 are disputed of fact and can be determined by way of leading the evidence. Report at its face does not appear to be genuine and prepared at the back of the respondent. The report nowhere indicates as to what tests and methods were adopted to arrive at a conclusion that the fish died due to debris coming from construction site. The report is not reliable and cannot be made basis for claim of the applicant.

  
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18. That para-No. 18 of the application so far the same pertains to the alleged communications Annexure -11 the same is matter of record. It is the generic report based on the assessment of the number of fishes died and the market rate of the price. The said assessment report mentions that the loss/death of the fishes during excavating activity and muck dumping carried out by Respondent No. 3. The said assessment report is based on no evidence that the death of the fishes and the eggs was due to muck dumping. The assessment report pre supposes that on the basis of the inspection report of fisheries department which in itself is questionable. However, it is denied that any loss on account of said annexure/rate has been caused to the applicant. The loss as shown in the Annexure-11 is imaginary and without any basis.
19. That in reply to para-No. 19 it is submitted that the newspaper reports are no evidence to prove the claim for damages. The said paragraph pertains to allegation against Respondent No. 3 and not against the replying Respondent herein. Therefore, needs no reply.
20. That para-No. 20 of the application needs no comments being matter of record. However, it is submitted that later on the said writ petition has been dismissed as withdrawn.

  
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21. That para-No. 21 of the application is also matter of record. Hence needs no comments.
22. That para-No. 22 of the application is also matter of record. Hence needs no comments.
23. That para-No. 23 of the application is also matter of record. Hence needs no comments. It is submitted that the concession granted to the applicant in the Hon'ble High Court that the period spent during the pendency of the present petition shall not be counted in limitation period in filing of appropriate proceeding, will not help the applicant herein in mounting the bar of limitation period under section 15(3) of the NGT Act, before this Hon'ble Tribunal. However, it is submitted that the present application filed before this Tribunal is wrong and concocted facts just to harass the replying respondent.
24. That para-No. 24 of the application is wrong not admitted to be correct hence denied. It is denied that the negligent act has resulted in environmental degradation and ecological imbalance. The applicant herein has not approached this Hon'ble Tribunal out of sensitivity toward environmental and ecological issues but to raise the issue of monetary compensation after failing before the Hon'ble High Court in an attempt. It is submitted that there is

  
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no negligent act on the part of the replying Respondent No. 2.

25. That para-No. 25 of the application is wrong not admitted to be correct hence denied. It is wrong that the applicant has suffered damages to the eggs and fishes of his fish farm as alleged as there was no dumping and releasing of debris, muck etc. into Haripur Nallah as alleged during the construction work of the bridge. It is submitted that the said paragraph in-fact is against the applicant herein, as the construction activity went for more than 2 years and no such complaint was made by applicant after December 2018 and March 2019. There is no incident of death of fishes/eggs reported at the fish farm of the applicant, thus to connect the death of fishes/eggs with construction activity and dumping of muck/debris down stream is incorrect.

26. That para-No. 26 of the application is wrong not admitted to be correct hence denied. The construction work of the bridge was carried out by the contractor respondent No. 3 in controlled and scientific manner. No excavated/muck was ever thrown in the natural stream/ Nallah which would cause any water pollution as alleged.

27. That para-No. 27 of the application is wrong not admitted to be correct hence denied. The replying

  
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respondent did not violate the provisions of Water (Prevention and Control of Pollution) Act, 1974 as alleged.

28. That para-No. 28 of the application is wrong not admitted to be correct hence denied. The allegations in the said paragraph are made against Respondent No. 3 hence no reply needed from the side of replying respondent.

29. That para-No. 29 of the application is wrong not admitted to be correct hence denied. The allegations in the said paragraph are made against Respondent No. 3 hence no reply needed from the side of replying respondent.

30. That para-No. 30 of the application is wrong not admitted to be correct hence denied. The allegations in the said paragraph are made against Respondent No. 3 hence no reply needed from the side of replying respondent.

31. That para-No. 31 of the application is wrong not admitted to be correct hence denied. The allegations in the said paragraph are made against Respondent No. 3 hence no reply needed from the side of replying respondent.

**GROUND:**

A. That para (A) of the grounds is admitted to be correct being matter of record.

  
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B. That para (B) of the grounds is wrong not admitted to be correct hence denied. The construction work of the bridge was carried out in controlled and scientific manner and Respondent No. 2 had taken adequate measures to ensure that no excavated debris/muck was ever thrown into the natural stream/Nallah which would cause damage to the trout farm of the applicant or cause any pollution and geographic disturbance at the site.

C. That para (C) of the grounds of application is admitted to be correct to the extent that a letter was received from Deputy commissioner Kullu by the Respondent No. 2 and the Respondent No. 2 issued direction to the Respondent No. 3 to carry out the construction work in control and scientific manner so that the excavated debris and muck may not be thrown in the Haripur Nallah and Respondent No. 3 carried out the construction work in a scientific manner. It is submitted that in May-June 2018 there was no construction undertaken by Respondent No. 3 and therefore necessary directions were issued to Respondent No.3. That as and when the construction commences the concern of District should be taken into account and due consideration to be taken by the Respondent No. 3 while dealing with the debris and muck which would be generated by the construction activity.

  
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Annexure-10 are disputed of fact and can be determined by way of leading the evidence. Report at its face does not appear to be genuine and prepared at the back of the respondent. The report nowhere indicates as to what tests and methods were adopted to arrive at a conclusion that the fish died due to debris coming from construction site. The report is not reliable and cannot be made basis for claim of the applicant.

F. That para (F) of the grounds denied for want of knowledge. The said assessment report mentions that the loss/death of the fishes during excavating activity and muck dumping carried out by Respondent No. 3. The said assessment report is based on no evidence that the death of the fishes and the eggs was due to muck dumping. The assessment report pre supposes that on the basis of the inspection report of fisheries department which in itself is questionable. However, it is denied that any loss on account of said annexure/rate has been caused to the applicant. The loss as shown in the Annexure-11 is imaginary and without any basis.

G. That para (G) of the grounds do not pertain to the replying respondent No. 2 hence needs no specific reply. The allegations in the said paragraph are made against Respondent No. 3 hence no reply needed from the side of replying respondent.

  
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D. That para (D) of the grounds is wrong not admitted to be correct hence denied. The construction work of the bridge was carried out in a controlled and scientific manner as per the direction given by the Regional Officer Pollution Control Board.

E. That para (E) of the grounds is wrong not admitted to be correct hence denied. It is submitted that the report of Deputy Director Fisheries District- Kullu dated 16.03.2019 is a generic report based on the visit of the fisheries officer on 12.03.2019 at the Farm of the applicant. There is no scientific exercise under taken by the department of fisheries or for that matter by any other competent authority to determine that the water flowing from the site was carrying sand, silt or muck. Further, the death of the fishes and the eggs can be for various other reasons. It is submitted that the total construction activity period of the Haripur bridge was from December 2018 till January 2022, at no point of time. Thereafter, since march 2019 any such death of the fishes or eggs are reported by the applicant due to construction activity and dumping of muck/ cement or debris in the down stream by the Respondent no. 3. The trout farm was never visited in the presence of the replying respondent. The loss alleged in the letter of the Deputy Director and the figures mentioned in the report

  
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H. That para (H) of the grounds is also denied for want of knowledge. The trout farm was never visited in the presence of the replying respondent. The loss alleged in the letter of the Deputy Director and the figures mentioned in the report Annexure-10 are questioned of fact and can be determined by way of leading the evidence. Report at its face does not appear to be genuine and prepared at the back of the respondent. The report nowhere indicates as to what tests and methods were adopted to arrive at a conclusion that the fish died due to debris coming from construction site. The report is not reliable and cannot be made basis for claim of the applicant. Moreover, if any loss was caused to the farm of the applicant due to natural calamity or any act mentioned, the same cannot be attributed to the replying respondent. Such fact of damage as reported in the alleged reports can only be prepared by way of leading the evidence of the fact in a civil suit and cannot be determined in this Hon'ble Court's jurisdiction.

I. That para (I) of the grounds is also denied being incorrect. It is denied that the negligent act has resulted in environmental degradation and ecological imbalance. The applicant herein has not approached this Hon'ble Tribunal out of sensitivity toward environmental and ecological issues but to raise the issue of monetary

  
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compensation after failing before the Hon'ble High Court in an attempt. It is submitted that there is no negligent act on the part of the replying Respondent No. 2.

- J. That para (J) of the grounds is wrong being incorrect.
- K. That para (K) of the grounds is wrong being incorrect  
The allegations in the said paragraph are made against Respondent No. 3 hence no reply needed from the side of replying Respondent.
- L. That para (L) of the ground though does not pertain to replying respondent No. 2. The allegations in the said paragraph are made against Respondent No. 3 hence no reply needed from the side of replying Respondent.
- M. That para (M) of the grounds do not pertain to the replying respondent No. 2. The allegations in the said paragraph are made against Respondent No. 3 hence no reply needed from the side of replying Respondent.
- N. That para (N) of the grounds do not pertain to the replying respondent No. 2. The allegations in the said paragraph are made against Respondent No. 3 hence no reply needed from the side of replying Respondent.
- O. That para (O) of the grounds do not pertain to the replying respondent No. 2. However, it is submitted that

  
Superintending Engineer  
6<sup>th</sup> Circle HPPWD Kullu

Attested   
Sheenam Negi Advocate  
Oath Commissioner  
Dist. Courts Kullu (H.P.)

the construction work was carried out in scientific and technical manner by the respondent No. 3 under the supervision of replying respondent No. 2 and as such there is no violation of the Water Prevention and Control of Pollution Act.


P. That para (P) of the grounds is wrong, hence denied.

Q. That para (Q) of the grounds is wrong, hence denied.

The replying respondent complied with the guidelines of the Central Pollution Control Board on Environmental Management of Construction and Demolition Waste Policy and Strategy.

**LIMITATION:**

32. That para-No. 32 of the application is wrong not admitted to be correct hence denied. The Application filed by the applicant is not maintainable and is liable to be dismissed as the same is barred by limitation under the NGT Act. In the present case the first instance as reported by the applicant herein is a legal notice dated 10.05.2018 sent to Deputy Commissioner Kullu and Respondent no. 2 against expressing apprehension that construction work of Haripur Bridge would cause damage to the fish farm of Applicant, construction of Haripur bridge had not started by then. The cause of action first arose for the applicant herein on 10.05.2018 and the present application has been

  
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filed by the applicant herein after gap of years. Therefore, the limitation of five years has already been lapsed. It is submitted that there is no application for condonation of delay has been filed with OA. Therefore, the OA ought to be rejected on this preliminary ground. In fact in the said paragraph the applicant himself admits that the cause of action first arose on 28.12.2018.

33. That para-No. 33 of the application is wrong not admitted to be correct hence denied. No subsequent cause of action is recognized under the NGT Act, and therefore, the said paragraph is wrong and denied.

34. That para-No. 34 of the application is wrong not admitted to be correct hence denied. No subsequent cause of action is recognized under the NGT Act and therefore, the said paragraph is wrong and denied.

35. That para-No. 35 of the application is matter of record. However, the same would not be of any legal assistance to the applicant herein for claiming compensation as the first instant where the applicant reported the loss of the fishes and eggs. However, no claim as to the quantum of compensation was made at that point of time. Any subsequent event as in case of March 2019 would be of any use to the applicant in raising the legal contention qua limitation as well as compensation.

  
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Oath Commissioner  
Dist. Courts Kullu (H.P.)

36. That para-No. 36 of the application is matter of record hence no remarks. The application of the applicant is beyond limitation. Hence liable to the dismissed.

37. That para-No. 37 of the application wrong, hence denied. It needs no reply.

Prayer para of the application is wrong not admitted to be correct hence denied. The applicant is not entitled for the relief claimed in sub para (a)(b)(c) and (d) against the replying respondent No. 2. It may be submitted here there is no violation of guidelines of the Central Pollution Control Board on Environmental Management of construction and Demolition (c) and (d) waste and Himachal Pradesh State Construction and Demolition Waste Policy and Strategy.

In view of the facts and submission made hereinabove, the application being devoid of any merit against the replying respondent No. 2 may kindly be dismissed, in the interest of justice.

  
Respondent  
S. P. Singh, Engineer  
6th Circle, H.P.P.W.D Kullu

Advocate General  
State of H.P.

Place: -KULLU

Date: 10/12/2024

  
Attested  
Sheenam Negi Advocate  
Oath Commissioner  
J. L. Courts Kullu (H.P.)

**BEFORE THE HON'BLE NATIONAL GREEN  
TRIBUNAL SITTING AT NEW DELHI.**

Application No. 383/2024

**In the matter of:-**

Shri Kushal Gupta.

**..... Applicant**

**Versus**

State of Himachal Pradesh and others.

**..... Respondents**

**Application U/S 15 read with Section 14 of NGT  
Act.**

**Reply to the application on behalf of respondent  
No. 2.**

**AFFIDAVIT IN SUPPORT REPLY TO  
PETITION.**

I, Jitender Kumar Gupta aged 54 years presently posted as  
Superintending Engineer; 6<sup>th</sup> Circle; HPPWD Kullu, do  
hereby solemnly affirm and declare on oath as under:

  
Superintending Engineer  
6<sup>th</sup> Circle HPPWD Kullu

  
Attested  
Sheenam Negi Advocate  
Oath Commissioner  
Dist. Courts Kullu (H.P.)

- 1) That the accompanying reply of the original application U/S 15 read with Section 14 of the NGT Act has been prepared and drafted at my instance and under my instructions by my counsel.
- 2) That the contents of accompanying reply of the original application U/S 15 read with Section 14 of the NGT Act from paras No. 1 to 37 on merits and paras No. 1 to 3 of Preliminary objections have been read by me, which are true and correct to the best of my knowledge and information derived from the official record.

**Deponent**  
 Superintending Engineer  
 6<sup>th</sup> Circle HPPWD Kullu

**Verification:-**

I, the above named deponent further declare and state whatever stated above in this affidavit are true and correct and nothing has been concealed therein as such verified at Kullu to day on 10/12/2024.

Attested  
 Sheenam Negi Advocate  
 Oath Commissioner  
 Dist. Courts Kullu (H.P.)

**Deponent**  
 Superintending Engineer  
 6<sup>th</sup> Circle HPPWD Kullu

Deponent  
 Identity by me.

Sr No. 4669  
 Certified that the affidavit declared on oath by Sh. Hemraj Kumar S/o Sh. Suprinsing Engineer HPPWD 6<sup>th</sup> Circle Kullu  
 Dated 10/12/24 its personally identified to me  
 By Sh. Raju who is personally known to me and the contents of the above affidavit has been read over and explained to the deponent vernacular who admitted them to be true at the time of making their oath  
 Oath Commissioner  
 Courts Kullu (H.P.)

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL SITTING AT NEW DELHI**

OA No. 383/2024

(IA No. 181/2024)

In the matter of:

Kushal Gupta:

**Applicant**

**Versus**

State of Himachal Pradesh and others:

**Respondents**

**Chronological list of events**

<b>Date &amp; Year</b>	<b>List of Events</b>
22.12.2017	Public Works Department awarded the work C/O 15.70 mtr. Span RCC T-beam bridge (Double lane) over Haripur Nallah to M/S K.K. Mahajan Construction Pvt. Ltd. Lambi Gali Tehsil Nurpur, Distt. Kangra HP.
01.06.2018	Office of the Deputy Commissioner/ District Collector, Kullu sent communication to the office of Superintending Engineer HPPWD Kullu, for taking appropriate action in the matter.
20.12.2018	Contractor started the construction of New Bridge on Haripur Nalla.
11.03.2019	The Gram Panchayat Soyal Committee reported that in Himalayan Fish farm, fishes and eggs of fish are dying in huge quantity.
16.03.2020	Applicant preferred the Writ Petition (Civil) No. 1566 of 2020 before the Hon'ble High Court of Himachal Pradesh at Shimla for damage of Rs. 47,14,000/- along with interest @ the rate of 18% per annum.
14.09.2020	The Hon'ble High Court vide order dated 14.09.2020 dismissed the writ petition with the liberty to file appropriate proceedings before appropriate court of law. It was also stated there in that the period spent during the pendency of the writ petition shall not be counted towards limitations in filing appropriate proceedings.
25.01.2022	Date of completion of work.
10.07.2023	This Trout Fish Farm was washed away due to flood and Applicant closed the Farm.

*[Signature]*  
Superintending Engineer  
6<sup>th</sup> Circle HPPWD Kullu

Attested  
Sheenam Negi Advocate  
Oath Commissioner  
Distt. Courts Kullu (H.P.)



Form No.22.48 (1)

Copy of Rapat No.14, daily diary dated 29/12/2018

Sr. No.	Name of Informer	Report Type
14.	Kushal Gupta S/o Sh. Mohan Lal Gupta, VPO Haripur, Teh. Manali, Distt. Kullu, H.P. Aged 34 years.	

**Disclosure report**

At 1:35 o'clock it is entered that today Kushal Gupta came to police post and got entered a report that I am a resident of Haripur and run a Himalayan Trout Fish Farm at Haripur stream/Nala. I have a land adjoining to Haripur stream/Nala and we have run the fish farm by using the water of Haripur Nala. About 4-5 days ago, the HPPWD has started the construction of Haripur bridge. Due to the construction of bridge, sand and mud alongwith water is coming into the tanks of Fish Farm, notice of which has been sent to HPPWD Department. But the HPPWD department has not informed the contractor to whom the construction work is allotted, neither any heed has been paid despite repeated requests nor I was informed before starting the construction work. Due to the contamination of mud with water of Nala, a loss of fishes and their eggs is taking place in our tanks. If a loss occurred to the fishes and their eggs in our tanks, then the HPPWD will be responsible for this. Hence, this report.

Police action: The report of the complainant has been written word to word. From the above report, the matter is not a police case. The applicant has been instructed to approach the concerned office for the redressal of his grievance and Rapat thereof has been entered so as he may approach the Ld. Court.

Sir,

Attested to be a true copy.

Sd/-

Station House Officer,  
Police Station Patlikuhal,  
Distt. Kullu (H.P.)

SECTION - 3

CONDITIONS OF CONTRACT

## Conditions of Contract

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2. Interpretation	34. Tests
3. Language and Law	35. Correction of Defects
4. Engineer's Decisions	36. Uncorrected Defects
5. Delegation	
6. Communications	<b>D. Cost Control</b>
7. Sub-contracting	37. Bill of Quantities
8. Other Contractors	38. Changes in the Quantities
9. Personnel	39. Variations
10. Employer's & Contractor's Risks	40. Payments for Variations
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25. Procedure for Disputes	<b>E. Finishing the Contract</b>
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## Conditions of Contract

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CONDITIONS OF CONTRACT

## A. GENERAL

## 1. Definitions

1.1 Terms which are defined in the Contract Data are not also defined in the Conditions of Contract but keep their defined meanings. Capital initials are used to identify defined terms.

The **Adjudicator** (synonymous with **Dispute Review Expert**) is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses 24 and 25. The name of the Adjudicator is defined in the Contract Data.

**Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.

**Compensation Events** are those defined in Clause 44 hereunder.

The **Completion Date** is the date of completion of the Works as certified by the Engineer in accordance with Sub Clause 55.1.

The **Contract** is the contract between the Employer and the Contractor to execute, complete and maintain the Work till the completion of defect liability period. It consists of the documents listed in Clause 2.3 below.

The **Contract Data** defines the documents and other information which comprise the Contract.

The **Contractor** is a person or corporate body whose Bid to carry out the Works has been accepted by the Employer.

The **Contractor's Bid** is the completed Bidding document submitted by the Contractor to the Employer and includes Technical and Financial bids.

The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

Days are calendar days; **months** are calendar months.

A **Defect** is any part of the Works not completed in accordance with the Contract.

The **Defects Liability Period** is the period named in the Contract Data and calculated from the Completion Date.

The **Employer** is the party who will employ the Contractor to carry out the Works.

The **Engineer** is the person named in the Contract Data (or any other competent person appointed and notified to the contractor to act in replacement of the Engineer) who is responsible for supervising the Contractor, administering the Contract, certifying payments due to the Contractor, issuing and valuing Variations to the Contract, awarding extensions of time, and valuing the Compensation Events.

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**Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Engineer by issuing an extension of time.

**Materials** are all supplies, including consumables, used by the contractor for incorporation in the Works.

**Plant** is any integral part of the Works which is to have a mechanical, electrical, electronic or chemical or biological function.

The **Site** is the area defined as such in the Contract Data.

**Site Investigation Reports** are those which were included in the Bidding documents and are factual **interpretative** reports about the surface and sub-surface conditions at the site.

**Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Engineer.

The **Start Date** is given in the Contract Data. It is the date when the Contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.

A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract which includes work on the Site.

**Temporary Works** are works designed, constructed, installed, and removed by the Contractor which are needed for construction or installation of the Works.


A **Variation** is an instruction given by the Engineer, which varies the Works.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Contract Data.

## 2. Interpretation

- 2.1. In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Engineer will provide instructions clarifying queries about the Conditions of Contract.
- 2.2. If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion.

  
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Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion date for the whole of the Works).

- 2.3. The documents forming the Contract shall be interpreted in the following order of priority:
- (1) Agreement
  - (2) Letter of Acceptance, notice to proceed with the works
  - (3) Contractor's Bid
  - (4) Contract Data
  - (5) Conditions of Contract including Special Conditions of Contract
  - (6) Specifications
  - (7) Drawings
  - (8) Bill of quantities and
  - (9) Any other document listed in the Contract Data as forming part of the Contract.

### **3. Language and Law**

- 3.1. The language of the Contract and the law governing the Contract are stated in the Contract Data.

### **4. Engineer's Decisions**

- 4.1. Except where otherwise specifically stated, the Engineer will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

### **5. Delegation**

- 5.1. The Engineer may delegate any of his duties and responsibilities to other people except to the Adjudicator after notifying the Contractor and may cancel any delegation after notifying the Contractor.

### **6. Communications**

- 6.1. Communications between parties which are referred to in the conditions are effective only when in writing. A notice shall be effective only when it is delivered (in terms of Indian Contract Act).

### **7. Sub-contracting**

- 7.1 The Contractor may sub contract any portion of work, upto a limit specified in Contract Data, with the approval of the Engineer but may not assign the Contract without the approval of the Employer in writing. Sub-contracting does not alter the Contractor's obligations:-

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**8. Other Contractors**

- 8.1. The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of other Contractors. The Contractor shall as referred to in the Contract Data, also provide facilities and services for them as described in the Schedule. The employer may modify the schedule of other contractors and shall notify the contractor of any such modification.

**9. Personnel**

- 9.1. The Contractor shall employ the key personnel named in the Schedule of Key Personnel as referred to in the Contract Data to carry out the functions stated in the Schedule or other personnel approved by the Engineer. The Engineer will approve any proposed replacement of key personnel only if their qualifications, abilities, and relevant experience are substantially equal to or better than those of the personnel listed in the Schedule.
- 9.2. If the Engineer asks the Contractor to remove a person who is a member of the Contractor's staff or his work force stating the reasons the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

**10. Employer's and Contractor's Risks**

- 10.1. The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

**11. Employer's Risks**

- 11.1. The Employer is responsible for the excepted risks which are (a) in so far as they directly affect the execution of the Works in India, the risks of war, hostilities, invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, riot commotion or disorder (unless restricted to the Contractor's employees), and contamination from any nuclear fuel or nuclear waste or radioactive toxic explosive, or (b) a cause due solely to the design of the Works, other than the Contractor's design.

**12. Contractor's Risks**

- 12.1. All risks of loss of or damage to physical property and of personal injury and death which arise during and in consequence of the performance of the Contract other than the excepted risks are the responsibility of the Contractor.

**13. Insurance**

- 13.1. The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the Contract Data for the following events which are due to the Contractor's risks:

- (a) loss of or damage to the Works, Plant and Materials;
- (b) loss of or damage to Equipment;

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- (c) loss of or damage of property (except the Works, Plant, Materials and Equipment) in connection with the Contract; and
  - (d) personal injury or death.
- 13.2. Policies and certificates for insurance shall be delivered by the Contractor to the Engineer for the Engineer's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 13.3. If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 13.4. Alterations to the terms of an insurance shall not be made without the approval of the Engineer.
- 13.5. Both parties shall comply with any conditions of the insurance policies.

### **13. Site Investigation Reports**

14.1, The Contractor, in preparing the Bid, shall rely on any site Investigation Reports referred to in the Contract Data, supplemented by any information available to the Bidder.

### **15. Queries about the Contract Data**

15.1. The Engineer will clarify queries on the Contract Data.

### **16. Contractor to Construct the Works**

16.1. The Contractor shall construct and install the Works in accordance with the Specification and Drawings.

### **17. The Works to be Completed by the Intended Completion Date**

17.1. The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the programme submitted by the Contractor, as updated with the approval of the Engineer, and complete them by the Intended Completion Date.

### **18. Approval by the Engineer**

- 18.1. The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Engineer, who is to approve them if they comply with the Specifications and Drawings.
- 18.2. The Contractor shall be responsible for design of Temporary Works.
- 18.3. The Engineer's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 18.4. The Contractor shall obtain approval of third parties to the design of the Temporary Works from N.I.T./I.I.T.

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- 18.5. All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Engineer before their use.
- 19. Safety**
- 19.1. The Contractor shall be responsible for the safety of all activities on the Site,
- 20. Discoveries**
- 20.1. Anything of historical or other interest or of significant value unexpectedly discovered on the Site is the property of the Employer. The Contractor is to notify the Engineer of such discoveries and carry out the Engineer's instructions for dealing with them.
- 21. Possession of the Site**
- 21.1. The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data the Employer is deemed to have delayed the start of the relevant activities and this will be Compensation Event.
- 22. Access to the Site**
- 22.1. The Contractor shall allow the Engineer and any person authorized by the Engineer access to the Site, to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where materials or plant are being manufactured / fabricated / assembled for the works.
- 23. Instructions**
- 23.1. The Contractor shall carry out all instructions of the Engineer pertaining to works which comply with the applicable laws where the Site is located.
- 23.2. The Contractor shall permit the Employer to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Employer, if so required by the Employer.
- 24. Disputes**
- 24.1. If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the decision shall be referred to the Dispute Review Expert within 14 days of the notification of the Engineer's decision.
- 25. Procedure for Disputes**
- 25.1. The Dispute Review Expert (Board)\* shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 25.2. The Dispute Review Expert (Board)\* shall be paid daily at the rate specified in the Contract Data together with reimbursable expenses of the types specified in the Contract

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\* *Dispute Review Expert to be provided for works costing upto Rs. 50 Crores. Dispute Review Board of three members (One from Employer, One from Contractor and One to be nominated by IRC Council and agreed by the representative members of Employer and Contractor) for works costing more than Rs. 50 crores.*

Data and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Dispute Review Expert. Either party may give notice to the other to refer a decision of the Dispute Review Expert to an Arbitrator within 28 days of the Dispute Review Expert's written decision. If neither party refers the dispute to arbitration within the next 28 days, the Dispute Review Expert's decision will be final and binding.

25.3. The arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract.

**26. Replacement of Dispute Review Expert**

26.1. Should the Dispute Review Expert resign or die, or should the Employer and the Contractor agree that the Dispute Review Expert is not fulfilling his functions in accordance with the provisions of the Contract, a new Dispute Review Expert will be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Dispute Review Expert, shall be designated by the Appointing Authority designated in the Contract Data at the request of either party, within 14 days of receipt of such request.

**B. TIME CONTROL**

**27. Programme**

27.1. Within the time stated in the Contract Data the Contractor shall submit to the Engineer for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works along with monthly cash flow forecast.

27.2. An update of the Programme shall be a programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work including any changes to the sequence of the activities.

27.3. The Contractor shall submit to the Engineer, for approval, an updated Programme at intervals no longer than the period stated in the Contract Data. If the Contractor does not submit an updated Programme within this period, the Engineer may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.

27.4. The Engineer's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Engineer again at any time. A revised Programme is to show the effect of Variations and Compensation Events.

**28. Extension of the Intended Completion Date**

28.1. The Engineer shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work and which would cause the Contractor to incur additional cost.

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28.2. The Engineer shall decide whether and by how much to extend the Intended Completion Date within 35 days of the Contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

28.3. The Engineer shall within 14 days of receiving full justification from the contractor for extension of Intended Completion Date refer to the Employer his decision. The Employer shall in not more than 21 days communicate to the Engineer the acceptance or otherwise of the Engineer's decision. If the Employer fails to give his acceptance, the Engineer shall not grant the extension and the contractor may refer the matter to the Dispute Review Expert under Clause 24.1.

29. **Deleted**

30. **Delays Ordered by the Engineer**

30.1 The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works.

31. **Management Meetings**

31.1. Either the Engineer or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

31.2. The Engineer shall record the business of management meetings and is to provide copies of his record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken is to be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

32. **Early Warning**

32.1. The Contractor is to warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of works. The Engineer may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate is to be provided by the Contractor as soon as reasonably possible.

32.2. The Contractor shall cooperate with the Engineer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer.

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### C. QUALITY CONTROL

#### 33. Identifying Defects

33.1. The Engineer shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Engineer may instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect.

33.2 **Consultants for Quality Controls:-** It is expected that every Contractor will have proper quality control staff and procedures in order to ensure quality. They are also expected to improve their procedures in line with ISO 9002 and get the certification. The Contractor shall engage a competent and Independent Quality Control Consultant approved by Chief Engineer (MZ) HP.PWD, Mandi to exercise effective control over" the constructions operations so as to produce quality works. The fully equipped laboratory shall be set up and trained staff shall be employed by the said consultant. The contractor shall supply to the Engineer a copy of his agreement and the fee for quality control should generally be 0.5% of the contract value. The payment of the quality control consultant shall be made by the Engineer direct as per the copy of the agreement supplied by the contractor. This payment shall be recoverable from the Contractor. The consultant shall guide the contractor for production of quality works at all stages and shall maintain records, reports and test results so as to indicate the extent of quality achieved. The consultant shall also supply a copy of the all these reports, tests and check to the Engineer regularly. The contractor shall also attach a copy of these reports, tests and checks with his bill, without which no payment shall be made. The Chief Engineer (MZ) HP.PWD, Mandi can also order the change of consultant, if in his opinion he is not performing competently. The Engineer will be free to conduct surprise, random or in situ checks so as to have cross check in quality. In case the contractor fails to employ for the whole or part of the period of execution a quality control consultant, the Chief Engineer (MZ) HP.PWD, Mandi may order employment of consultant at the cost of the Contractor or may order the departmental staff to carry out the quality control checks and a deduction @ 1.5 % of the total cost of the work shall be made from the bill of the contractor, even if the actual expenditure incurred on private consultant or departmental quality control is less. Nothing in this clause shall reduce the overall responsibility of the Contractor regarding quality and he shall remain liable for any defect in the execution.

**34. Tests**

- 34.1. If the Engineer instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect the test shall be a Compensation Event.

**35. Correction of Defects**

- 35.1. The Engineer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 35.2. Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer's notice.

**36. Uncorrected Defects**

- 36.1. If the Contractor has not corrected a Defect within the time specified in the Engineer's notice, the Engineer will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

**D. COST CONTROL****37. Bill of Quantities**

- 37.1. The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
- 37.2. The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

**38. Changes in the Quantities**

- 38.1. If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 per cent provided the change exceeds 1 % of initial Contract Price, the Engineer shall adjust the rate to allow for the change, duly considering,
- (a) Justification for rate adjustment as furnished by the contractor,

- (b) Economies resulting from increase in quantities by way of reduced plant, equipment, and overhead costs,
- (c) Entitlement of the contractor to compensation events where such events are caused by any additional work

38.2. The Engineer shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 per cent, except with the Prior approval of the Employer.

38.3. If requested by the Engineer, the Contractor shall provide the Engineer with a detailed cost breakdown of any rate in the Bill of Quantities.

### 39. Variations

39.1. All Variations shall be included in updated Programmes produced by the Contractor.

### 40. Payments for Variations

40.1. The Contractor shall provide the Engineer with a quotation (with breakdown of unit rates) for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Engineer and before the Variation is ordered.

40.2. If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Engineer, the quantity of work above the limit stated in Sub Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

40.3. If the Contractor's quotation is unreasonable, the Engineer may order the Variation and make a change to the Contract Price which shall be based on Engineer's own forecast of the effects of the Variation on the Contractor's costs.

40.4. If the Engineer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

40.5. The Contractor shall not be entitled to additional payment for costs which could have been avoided by giving early warning.

### 41. Cash Flow Forecasts

41.1. When the Programme is updated, the contractor is to provide the Engineer with an updated cash flow forecast.

### 42. Payment Certificates

42.1. The Contractor shall submit to the Engineer monthly statements of the estimated value of the work completed less the cumulative amount certified previously.

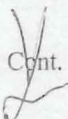
- 42.2. The Engineer shall check the Contractor's monthly statement within 14 days and certify the amount to be paid to the Contractor after taking into account any credit or debit for the month in question in respect of materials for the works in the relevant amounts and under conditions set forth in sub-clause 51(3) of the Contract Data (Secured Advance).
- 42.3. The value of work executed shall be determined by the Engineer.
- 42.4. The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.
- 42.5. The value of work executed shall include the valuation of Variations and Compensation Events.
- 42.6. The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

#### 43. Payments

- 43.1. Payments shall be adjusted for deductions for advance payments, retention, other recoveries in terms of the contract and taxes at source, as applicable under the law. The Employer shall pay the Contractor the amounts certified by the Engineer within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made upto the date when the late payment is made at 12% per annum.
- 43.2. If an amount certified is increased in a later certificate as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 43.3. Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

#### 44. Compensation Events

- 44.1. The following are Compensation Events unless they are caused by the Contractor:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.
  - (b) The Employer modifies the schedule of other contractors in a way which affects the work of the contractor under the contract.
  - (c) The Engineer orders a delay or does not issue drawings, specifications or instructions required for execution of works on time.
  - (d) The Engineer instructs the Contractor to uncover or to carry out additional tests upon work which is then found to have no Defects.
  - (e) The Engineer does not approve of a subcontract to be let, within 15 days.

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- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of Letter of Acceptance from the information issued to Bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the site.
- (g) The Engineer gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed, beyond 28 days after receipt of application and bank guarantee.
- (j) The effect on the Contractor of any of the Employer's Risks,
- (k) The Engineer unreasonably delays issuing a Certificate of Completion.
- (i) Other Compensation Events listed in the Contract Data or mentioned in the Contract.

44.2. If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date is extended. The Engineer shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

44.3. As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it is to be assessed by the Engineer and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Engineer shall adjust the Contract Price based on Engineer's own forecast. The Engineer will assume that the Contractor will react competently and promptly to the event.

44.4. The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Engineer.

#### 45. Tax

45.1. The rates quoted by the Contractor shall be deemed to be inclusive of the sales and other taxes that the Contractor will have to pay for the performance of this Contract. The Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law.

#### 46. Currencies

46.1. All payments shall be made in Indian Rupees.

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**47. Price Adjustment**

47.1 Contract price shall be adjusted for increase or decrease in rates and price of labour, material, fuels and lubricants in accordance with the following principles and procedures and as per formula given in the contract data.

- (a) The price adjustment shall apply for the work done from the start date given in the contract data up to end of the initial intended completion date or extensions granted by the Engineer and shall not apply to the work carried out beyond the stipulated time for reasons attributable to the contractor.
- (b) The price adjustment shall be determined during each month from the formula given in the contract data.
- (c) Following expressions and meanings are assigned to the work done during each month:-

R= Total value of the work done during the month. It would include the amount of secured advance granted, if any, during the month, less the amount of secured advance recovered, if any during the month. It will exclude value for works executed under variations for which price adjustment will be worked separately based on the terms mutually agreed.

47.2. To the extent that full compensation for any rise or fall in costs to the contractor is no covered by the provisions of this or other clauses in the contract, the unit rates and price included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs.

**48. Retention**

- 48.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the Contract Data until Completion of the whole of the Works.
- 48.2. On Completion of the whole of the works half the total amount retained is repaid to the contractor and half when the defects liability period has passed and the Engineer has certified that all defects notified by the Engineer to the Contractor before the end of this period have been corrected.
- 48.3. On completion of the whole works, the contractor may substitute retention money with an "on demand" Bank guarantee.

**49. Liquidated Damages**

49.1. The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date (for the whole of the works or the milestone as stated in the contract data). The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages does not affect Contractor's liabilities.

- 49.2. If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the over payment calculated from the date of payment to the date of repayment at the rates specified in Sub Clause 43.1.
- 49.3. If the contractor fails to comply with the time for completion as stipulated in the tender, then the contractor shall pay to the employer the relevant sum stated in the Contract Data as Liquidated damages for such default and not as penalty for everyday or part of day which shall elapse between relevant time for completion and the date stated in the taking over certificate of the whole of the works on the relevant section, subject to the limit stated in the contract data. The employer may, without prejudice to any other method of recovery deduct the amount of such damages from any monies due or to become due to the contractor. The payment or deduction of such damages shall not relieve the contractor from his obligation to complete the works on from any other of his obligations and liabilities under the contract.
- 49.4. If, before the Time for Completion of the whole of the Works or, if applicable, any Section, a Taking - Over Certificate has been issued for any part of the Works or of a Section, the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

## 50. Bonus

- 50.1. ~~If the Contractor achieves completion of the whole of the works prior to the Intended Completion Date prescribed in Contract Data the Employer shall pay to the contractor a sum stated in the Contract Data as bonus for every complete month which shall elapse between the date of completion of all items of works as stipulated in the contract, including variations ordered by the Engineer and the time prescribed in Clause 17.~~  
 For the purpose of calculating bonus payments, the time given in the Bid for completion of the whole of the works is fixed and unless otherwise agreed, no adjustments of the time by reason of granting an extension of time pursuant to clause 28 or any other clause of these conditions will be allowed. Any period falling short of a complete month shall be ignored for the purpose of computing the period relevant for the payment of bonus.

## 51. Advance Payment

- 51.1. ~~The Employer shall make advance payment to the contractor of the amounts stated in the Contract Data by the date stated in the Contract Data against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the Advance payment. The guarantee shall remain effective until the advance payment has been repaid, the amount of the guarantee shall be progressively~~

~~reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.~~

51.2. ~~The contractor is to use the advance payment only to pay for Equipment, Plant and Mobilization expenses required specifically for execution of the Works. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer.~~

51.3. ~~The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of the work done, Variations, price adjustments, Compensation Events, or Liquidated Damages.~~

51.4 **Secured Advance**

The Engineer shall make advance payment in respect of materials intended for but not yet incorporated in the Works in accordance with conditions stipulated in the Contract Data.

52. **Securities**

52.1. The Performance Security (including additional security for unbalanced bids) shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in Indian Rupees. The Performance Security shall be valid until a date 28 days from the date of expiry of Defects Liability Period and the additional security for unbalanced bids shall be valid until a date 28 days from the date of issue of the certificate of completion.

53. **Deleted**

54. **Cost of Repairs**

54.1. Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

## E. FINISHING THE CONTRACT

55. **Completion**

55.1 The Contractor shall request the Engineer to issue a Certificate of Completion of the Works and the Engineer will do so upon deciding that the Work is completed.

56. **Taking Over**

56.1. The Employer shall take over the Site and the Works within seven days of the Engineer issuing a certificate of Completion.

**57. Final Account**

57.1. The Contractor shall supply to the Engineer a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Engineer shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a payment certificate, within 56 days of receiving the Contractor's revised account.

**58. Operating and Maintenance Manuals**

58.1. If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.

58.2. If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data, or they do not receive the Engineer's approval, the Engineer shall withhold the amount stated in the Contract Data from payments due to the Contractor.

**59. Termination**

59.1. The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

59.2. Fundamental breaches of Contract include, but shall not be limited to the following:

- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Engineer;
- (b) the Engineer instructs the Contractor to delay the progress of the Works and the instruction is not withdrawn within 28 days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Engineer is not paid by the Employer to the Contractor within 56 days of the date of the Engineer's certificate;
- (e) the Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer;
- (f) the Contractor does not maintain a security which is required;
- (g) the Contractor has delayed the completion of works by the number of days for which the maximum amount of liquidated damages can be paid as defined in the Contract data; and
- (h) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph : "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the

Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition."

- 59.3. When either party to the Contract gives notice of a breach of contract to the Engineer for a cause other than those listed under Sub Clause 59.2 above, the Engineer shall decide whether the breach is fundamental or not.
- 59.4. Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 59.5. If the Contract is terminated the Contractor shall stop work immediately, make the Site safe and secure and leave the Site as soon as reasonably possible.

**60. Payment upon Termination**

- 60.1. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Engineer shall issue a certificate for the value of the work done less advance payments received up to the date of the issue of the certificate, less other recoveries due in terms of the contract, less taxes due to be deducted at source as per applicable law and less the percentage to apply to the work not completed as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor the difference shall be a debt payable to the Employer.
- 60.2. If the Contract is terminated at the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Engineer shall issue a certificate for the value of the work done, the cost of balance material brought by the contractor and available at site, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works and less advance payments received up to the date of the certificate, less other recoveries due in terms of the contract and less taxes due to be deducted at source as per applicable law.

**61. Property**

- 61.1. All materials on the Site, Plant, Equipment, Temporary Works and Works are deemed to be the property of the Employer, if the Contract is terminated because of a Contractor's default.

**62. Release from Performance**

- 62.1. If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor the Engineer shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which commitment was made.

**F. SPECIAL CONDITIONS OF CONTRACT**

**LABOUR:**

The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport.

The Contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such other information as the Engineer may require.

2. **COMPLIANCE WITH LABOUR REGULATIONS:**

During continuance of the contract, the Contractor and his sub-contractors shall abide at all times by all existing labour enactments and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority. Salient features of some of the major labour laws that are applicable to construction industry are given below. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made there under, regulations or notifications including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/Acts/Rules/regulations including amendments, if any, on the part of the Contractor, the Engineer/Employer shall have the right to deduct any money due to the Contractor including his amount of performance security. The Employer/Engineer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.

The employees of the Contractor and the Sub-Contractor in no case shall be treated as the employees of the Employer at any point of time.

**SALIENT FEATURES OF SOME MAJOR LABOUR LAWS APPLICABLE TO ESTABLISHMENTS ENGAGED IN BUILDING AND OTHER CONSTRUCTION WORK.**

- a) **Workmen Compensation Act 1923** :- The Act provides for compensation in case of injury by accident arising out of and during the course of employment.
- b) **Payment of Gratuity Act 1972** :- Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years service or more on death, the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 or more employees.
- c) **Employees P.F. and Miscellaneous Provision Act 1952** : The Act Provides for monthly contributions by the employer plus workers @ 10% or 8.33%. The benefits payable under the Act are :
  - (i) Pension or family pension on retirement or death, as the case may be.
  - (ii) Deposit linked insurance on the death in harness of the worker, (iii) Payment of PR accumulation on retirement/death etc.

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- d) **Maternity Benefit Act 1951:-** The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.
- e) **Contract Labour (Regulation & Abolition") Act 1970:-** The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided, by the Principal Employer by Law. The Principal Employer is required to take Certificate of Registration and the Contractor is required to take license from the designated Officer, The Act is applicable to the establishments or Contractor of Principal Employer, if they employ 20 or more contract labour.
- f) **Minimum Wages Act-1948:-** The Employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provisions of the Act, if the employment is a scheduled employment. Construction of Buildings, Roads, Run ways are scheduled employments.
- g) **Payment of Wages Act 1936:-** It lies down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.
- h) **Equal Remuneration Act 1979:-** The Act provides for payment of equal wages for work of equal nature to Male and Female workers and for not making discrimination against Female employees in the matters of transfers, training and promotions etc.
- i) **Payment of Bonus Act 1965:-** The Act is applicable to all establishments employing 20 or more employees. The Act provides for payments of annual bonus subject to a minimum of 8.33% of wages and maximum of 20% of wages to employees drawing Rs.3500/-per month or less. The bonus to be paid to employees getting Rs.2500/- per month or above up to Rs.3500/- per month shall be worked out by taking wages as Rs.2500/ -per month only. The Act does not apply to certain establishments. The newly set-up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of this Act.
- j) **Industrial Disputes Act 1947 :-** The Act lays down the machinery and procedure for resolution of Industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.
- k) **Industrial Employment (Standing Orders) Act 1946 :-** It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the States and Central Government to 50). The Act provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and get the same certified by the designated Authority.

- l) **Trade Unions Act 1926**:- The Act lays down the procedure for registration of trade unions of workmen and employers. The Trade Unions registered under the Act have been given certain immunities from civil and criminal liabilities.
- m) **Child Labour (Prohibition & Regulation) Act 1986** :- The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of Child Labour is prohibited in Building and Construction Industry.
- n) **Inter-State Migrant workmen's (Regulation of Employment & Conditions of Service) Act 1979** :- The Act is applicable to an establishment which employs 5 or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The Inter-State migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, travelling expenses from home upto the establishment and back, etc.
- o) **The Building and Other Construction workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996** :- All the establishments who carry on any building or other construction work and employs 10 or more workers are covered under this Act. All such establishments are required to pay cess at the rate not exceeding 2% of the cost of construction as may be modified by the Government. The Employer of the establishment is required to provide safety measures at the Building or construction work and other welfare measures, such as Canteens, First-Aid facilities, Ambulance, Housing accommodations for workers near the work place etc. The Employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the Government.
- p) **Factories Act 1948** :- The Act lays down the procedure for approval of plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons without the aid of power engaged in manufacturing process.

### 3. **ARBITRATION (GCC Clause 25.3)**

The procedure for arbitration will be as follows:

25.3 (a) In case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The parties shall make efforts to agree on a sole arbitrator and only if such an attempt does not succeed and the Arbitral Tribunal consisting of 3 arbitrators one each to be appointed by the

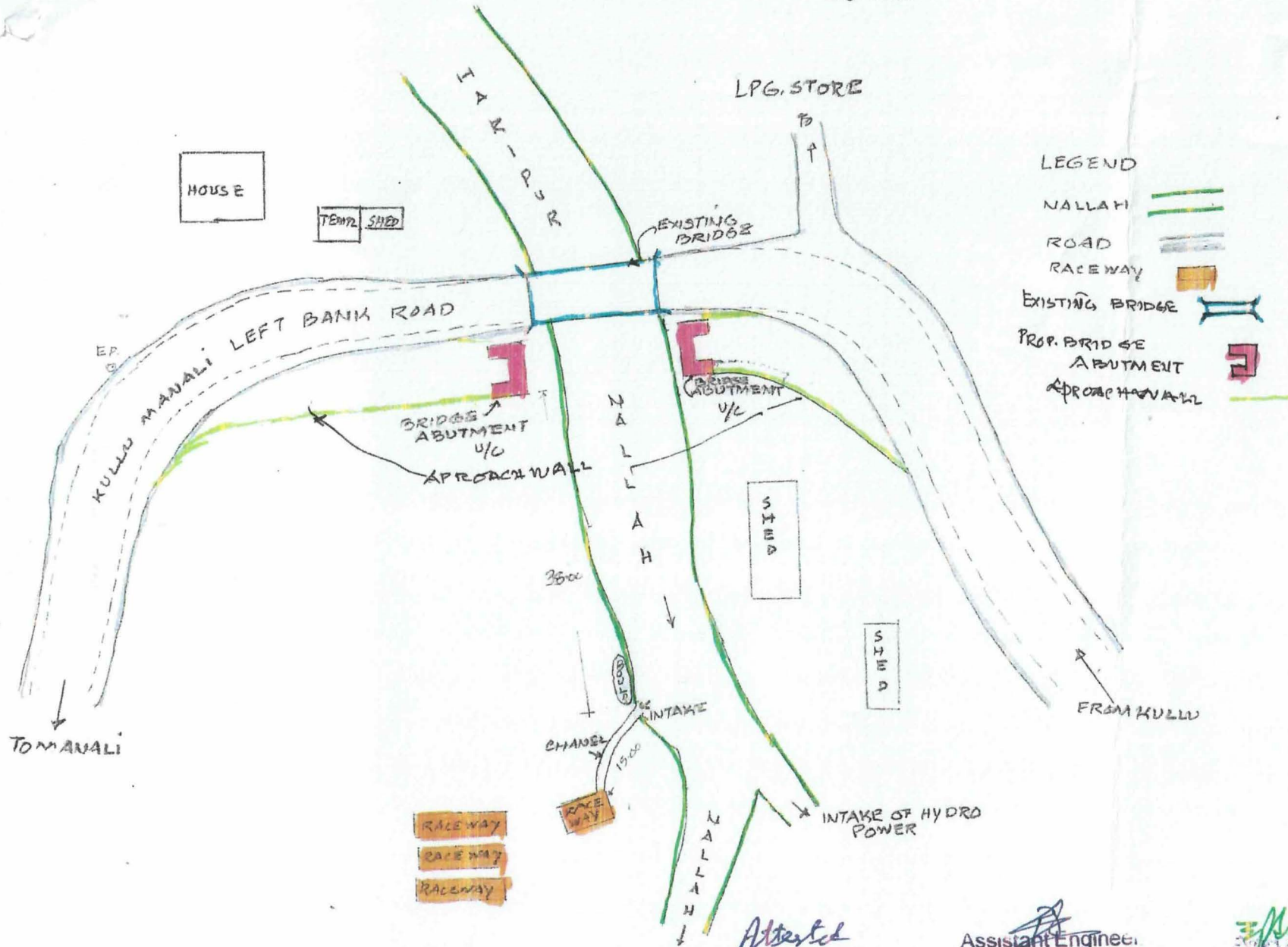
Employer and the Contractor and the third Arbitrator to be chosen by the two Arbitrators so appointed by the Parties to act as Presiding Arbitrator shall be considered. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the \* Council, Indian Roads Congress.

- (b) The Arbitral Tribunal shall consist of three Arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties, and shall act a presiding arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding arbitrator shall be appointed by the \* Council, Indian Roads Congress.
- (c) If one of the parties fails to appoint its arbitrator in pursuance of sub-clause (a) and (b) above within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the \* Council, Indian Roads Congress shall appoint the arbitrator. A certified copy of the order of the Council, Indian Roads Congress, making such an appointment shall be furnished to each of the parties.
- (d) Arbitration proceedings shall be held in India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.
- (e) The decision of the majority of arbitrators shall be final and binding upon both parties. The cost-and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.
- (f) Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the owners shall not be withheld, unless they are the subject matter of the arbitration proceedings.

SITE PLAN OF HARIPUR NALLAH BRIDGE

204

KM. 26/097



**LEGEND**

- NALLAH
- ROAD
- RACEWAY
- EXISTING BRIDGE
- PROP. BRIDGE ABUTMENT
- APPROACH WALL

RACEWAY  
RACEWAY  
RACEWAY

*Attested*  
Assistant Engineer,  
Manali Sub Division  
H.P.P.W.D. Manali (H P)

*[Signature]*  
Assistant Engineer,  
Manali Sub Division  
H.P.P.W.D. Manali (H P)

*[Signature]*  
Assistant Engineer,  
Manali Sub Division  
H.P.P.W.D. Manali (H P)

