

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
I.A. NO. 285-286 OF 2024
IN
ORIGINAL APPLICATION NO. 238/2024**

IN THE MATTER OF:

News item titled '**UP gives permission to fell 112000 trees for road along Upper Ganga Canal**' appearing in Hindustan Times dated 01.02.2024

AND IN THE MATTER OF:

1. Vikrant Tongad
2. Satendra Singh
3. Rajendra Tyagi

...Applicants/Proposed Interveners

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Through



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RESPONSE/OBJECTIONS ON BEHALF OF THE APPLICANTS TO THE INTERIM REPORT, DATED: 03.10.2024 OF THE JOINT COMMITTEE AND REPORT, DATED: 29.10.2024, OF THE SURVEY OF INDIA

The Applicants above-named

Most Respectfully Showeth:

1. That the primary issue being considered by this Hon'ble Tribunal in the present O.A. is the large-scale felling of

112000 trees for road along the Upper Ganga Canal in the Protected Forest area of three divisions – Ghaziabad, Meerut and Muzaffarnagar for construction of 111 kms Kanwar Marg from Muradnagar in Ghaziabad district to Purkaji in Muzaffarnagar district of Uttar Pradesh near Uttarakhand border, which will adversely affect the biodiversity of the region and displace wildlife and impact the environment due to critical loss of forest and tree cover.

2. That vide Order, dated: 06.11.2024, this Hon'ble Tribunal was pleased to permit the Applicants, herein, to file objections to the Interim Report, dated: 03.10.2024 of the Joint Committee and Report, dated: 29.10.2024, of the Survey of India.
3. That the contents of this Affidavit are in addition to the facts and issues agitated by the Applicants, herein, in I.A. Nos. 285-286/2024 and may also be read as part of the facts and issues raised in the aforementioned I.A.s.
4. That the Report, dated: 29.10.2024, of the Survey of India, demonstrates massive clearing of the trees and vegetation along the Upper Ganga Canal from 2023 and 2024. Out of the 18 stretches/areas which had been identified and documented along both sides of the canal wherein tree felling was found more evident, and whose pictures have been annexed as Annexure-D to the said report, some stretches have witnessed some of the biggest tree felling activity. A glance at the comparative Images at Page Nos.

1395-1418 of the said Report reveal heavy clearing of the trees and vegetation along the Upper Ganga Canal.

5. That the Joint Committee Report is incomplete, incoherent and inadequate in as much as the same fails to give any clear picture of the extent of tree cutting along the Upper Ganga Canal. The Joint Committee has made every attempt to cover up the illegalities and irregularities conducted before and during the felling of such large number of trees.
6. That it is submitted that the Joint Committee chose not to take any independent expert member or persons from the civil society, farmers, and inhabitants of the villages situated in proximity to the Upper Ganga Canal, which have been affected by the construction of the 111 km Kanwar Marg, which is completely of no use and benefit as they are already three roads connecting Ghaziabad with Muzaffarnagar.
7. That the response provided by the PWD in reply to the mandate of the Joint Committee to ascertain the extent of environmental damage on account of construction of the road, that the Environment Impact Assessment has been conducted by a QCI accredited Environmental Consultant for recommendation of EMP and mitigation measures during implementation of the construction work is completely misplaced and defies reasoning, as is also furnished in the second column at Page 1216 of the said report. The said report does not contain anything to indicate the environment impacts to be witnessed post cutting of the such large number of trees on the Canal, agriculture, wildlife,

biodiversity, water security, ground water levels and the climate and micro-climate impacts on the surrounding areas in Western Uttar Pradesh, which is one of the most fertile regions and the food-bowl of the country.

8. That further ahead of the same reply, at Page 1216 of the Report, the averment of PWD that it is collaborating with environmental experts to prepare a Carbon Impact Assessment report for the project is completely elusive and incomplete in as much as the PWD has not named any such experts and nor their credentials and other particulars, such as their expertise and experience in the specialized job of preparing a Carbon Impact Assessment report.
9. That it is further surprising to note that the PWD has completely left out the Forest Department in conducting any Environment Impact Assessment. It is submitted that the magnitude and extent of wildlife and other biological diversity can be best ascertained by the Forest Department as well as by the Wildlife Institute of India (WII).
10. That it is admitted by the Irrigation Department, in Column 2 at Page 1219 of the Joint Committee report that the Upper Ganga Canal is an important canal on both banks of which Service Roads had been constructed and that such service roads are an integral part of the Canal section itself, which roads are meant for holistic supervision, patrolling, maintenance and repair. Since the British regime, the capacity and flows of the canal have been, from time to time, increased in order to meet the vital irrigation needs of

districts such as Hathras, Ferozabad and Etah, situated at the tail-end of the canal. In future also, it shall be required to increase the capacity of the canal whenever demand arises from the areas situated in command area of the canal. Consequently, for the said purpose, both the service roads shall be extremely important.

11. That the above averment of the Irrigation Department countenances the submissions made by the Applicants, herein, in the Application for Intervention and Directions and the Additional Affidavit, dated: 22.07.2024, filed on behalf, thereof.

12. That the cutting of such large number of trees along the canal, which are vital for securing the canal itself, is bound to critically affect the agriculture, livelihoods of the Western Uttar Pradesh. Not only will such an act impact the agriculture but will also affect the Mango production from Western Uttar Pradesh. It is submitted that the areas surrounding the Upper Ganga Canal, such as Niwadi in Modi Nagar (Ghaziabad) comprise one of the largest Mango belts in the country. Due to heat stress, water crisis, increasing pollution and the changing climate, the mango production from West Uttar Pradesh has been constantly on decline. Any act of cutting trees will tend to increase the ambient temperatures, lead to acute water shortages and upset the region's ecology maintained by the rich ecosystems created by these standing trees over years. Similarly, any water stress in the Canal will completely affect the potato farming in Etah district.

13. That one of the cardinal features of the canals developed by the then British administration in Western Uttar Pradesh was to have a wide strip of plants and vegetation along the Right bank of the canal to act as a buffer and to protect the waters of the canal and have a road (called as Inspection Road to be maintained by the Irrigation Department) along the Left bank so as to inspect/service the Canal during wear and tear or when the maintenance so required. This intrinsic feature of the network of small and big canals can be easily observed in all districts/areas of the Western Uttar Pradesh.
14. That the purpose of the trees and the vegetation along the Left Bank of the canals was to protect the banks from erosion, starting with rills and gullies (that create breaches in the canal) and prevent evaporation of the water from the canal. The canal bank plantation serves as shelter belts to the fields adjoining the canal. The plantations further provide greenery and cover to the wild animals along the canal. The plantations also further provide timber and firewood for the rural population living along the canals.
15. That over last several decades, the trees and the forest stretches along the Upper Ganga Canal have continued to serve the aforesaid purpose.
16. That one of the essential hydrological feature of any flowing water body, such as a canal, stream or river is the lateral, longitudinal and vertical hydrological linkages and both surface and sub-surface connections which maintain its flow and ecological integrity.

17. That the aforesaid hydrological feature of a flowing water body, such as a canal, stream or river is also laid down as an important principle for rejuvenation, protection and Management of Ganga, in the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 under the Environment (Protection) Act, 1986.

Clause 4 of the said Notification reads as follows:

“4. Principles to be followed for rejuvenation, protection and management of River Ganga. – (1) The following principles shall be followed in taking measures for the rejuvenation, protection and management of River Ganga, namely:-

- (i) the River Ganga shall be managed as a single system;*
- (ii) the restoration and maintenance of the chemical, physical, and biological quality of the waters of River Ganga shall be achieved in a time bound manner;*
- (iii) the River Ganga shall be managed in an ecologically sustainable manner;*
- (iv) the continuity of flow in the River Ganga shall be maintained without altering the natural seasonal variations;*
- (v) the longitudinal, lateral and vertical dimensions (connectivities) of River Ganga shall be incorporated into river management processes and practices;*
- (vi) the integral relationship between the surface flow and sub-surface water (ground water) shall be restored and maintained;*

(vii) the lost natural vegetation in catchment area shall be regenerated and maintained;

(viii) the aquatic and riparian biodiversity in River Ganga Basin shall be regenerated and conserved;

(ix) the bank of River Ganga and its flood plain shall be construction free Zone to reduce pollution sources, pressures and to maintain its natural ground water recharge functions;

(x) the public participation in rejuvenation, protection and management, revision and enforcement of any regulation, standard, effluent limitation plan, or programme for rejuvenation, protection and management shall be encouraged and made an integral part of processes and practices of River Ganga rejuvenation, protection and management.

...”

(Emphasis added)

18. That in the Hindu scriptures, Nature is personified by Goddess Parvati, the cohort of Lord Shiva. Any destruction caused to the Nature by cutting/felling of such large number of old, pristine trees in the name of facilitating Kanwar Yatra is misconceived and antithetical to the preachings and beliefs contained in the texts and scriptures related to Lord Shiva and can, in no way, be construed as an act to please Lord Shiva and his devotees. For example, it was widely believed that the Kedarnath Floods and fury was caused by the shifting of the Dhari Devi Temple from its original position,

on 16.06.2013, from the Alaknanda River, for the construction of Alaknanda Hydro Electric Dam.

19. That it is the case of the Applicants that the process of the grant of the in-principle, Stage-I approval by the MOEF&CC to the Department of Environment, Forest & Climate Change, State of Uttar Pradesh has been carried out in a completely opaque and non-transparent manner in as much as the same had never been made public or uploaded on the website of the MOEF&CC, thereby, denying any opportunity to the concerned stake-holders to object or put forward suggestions or legally challenge the same.
20. That to the best of knowledge of the Applicant, neither the MOEF&CC nor the Department of Environment, Forest & Climate Change, State of Uttar Pradesh have conducted or considered any impacts of the proposed tree felling/cutting on the region. Further the Letter, dated 28.02.2023, granting in-principle, Stage-I approval by the MOEF&CC to the Department of Environment, Forest & Climate Change, State of Uttar Pradesh fails to record any assessment conducted on the site in question apart from site visits and the impacts of the tree felling/cutting in the region.
21. That it is the submission of the Applicants that the MOEF&CC has failed to prepare and execute any plan for the conservation of biological diversity under Section 36(1) of the Biological Diversity Act, 2002. The MOEF&CC has further failed to issue any directions, whatsoever, to the State of Uttar Pradesh, under Section 36(2) of the said Act to take ameliorative measures with regard to the proposed

cutting/felling of 112000 trees and road construction project along the Upper Ganga Canal. The MOEF&CC has also further failed to conduct the biological diversity assessment as required under Section 36(4) of the Biological Diversity Act, 2002.

22. That Section 36 of the Biological Diversity Act, 2006, provides as under:

“36. Central Government to develop National strategies, plans, etc., for conservation, etc., of biological diversity

(1)The Central Government shall develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of in situ , and ex situ , conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity.

(2)Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect, it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.

(3)The Central Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into

relevant sectoral or cross-sectoral plans, programmes and policies.

(4)The Central Government shall undertake measures,-

(i)wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimise such effects and where appropriate provide for public participation in such assessment;

(ii)to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

(5)The Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity Authority through such measures, which may include registration of such knowledge at the local, State or national levels, and other measures for protection, including sui generis system.

Explanation .-For the purposes of this section,-

(a)" ex situ conservation "means the conservation of components of biological diversity outside their natural habitats;

(b)" in situ conservation "means the conservation of ecosystems and natural habitats and the maintenance and

recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.”

(Emphasis supplied)

23. That the Hon’ble Supreme Court, in W.P. (Civil) No. 838/2019, *M K Ranjitsinh & Ors. Vs. Union of India & Ors.* (Neutral Citation: 2024 INSC 280), has, inter alia, held that the citizens have a right to be free from the adverse effects of climate change and that the same is recognized by Articles 14 and 21 of the Constitution of India.

The relevant excerpts of the Judgment are culled out as under:

“ ...

24. Despite a plethora of decisions on the right to a clean environment, some decisions which recognise climate change as a serious threat, and national policies which seek to combat climate change, it is yet to be articulated that the people have a right against the adverse effects of climate change. This is perhaps because this right and the right to a clean environment are two sides of the same coin. As the havoc caused by climate change increases year by year, it becomes necessary to articulate this as a distinct right. It is recognised by Articles 14 and 21.

27. The right to equality under Article 14 and the right to life under Article 21 must be appreciated in the context of the

decisions of this Court, the actions and commitments of the state on the national and international level, and scientific consensus on climate change and its adverse effects. From these, it emerges that there is a right to be free from the adverse effects of climate change.

55. India's commitment to sustainable development is also underpinned by its international obligations and commitments. As a signatory to various international conventions and agreements, including the UNFCCC and the Convention on Biological Diversity, India has pledged to uphold principles of environmental stewardship, biodiversity conservation, and climate action on the global stage. Through partnerships, knowledge sharing, and collaborative action, India seeks to amplify the impact of its sustainable development efforts, contributing to collective efforts aimed at addressing global challenges.

56. Needless to say, it is the duty of the Court to give effect to international agreements and treaties to which India is a party.

...”

(Emphasis added)

(A True Copy of the Judgment, passed by the Hon'ble Supreme Court in W.P.(Civil) No. 838/2019, *M K Ranjitsinh & Ors. Vs. Union of India & Ors.*, is annexed as **ANNEXURE A-7 [Page Nos. 740-790]** to the Application for Intervention filed by the Applicants, herein).

24. That this Hon'ble Tribunal, vide Order, dated: 11.09.2018, in O.A. No. 805/2017, *Kshitij Agnihotri Vs Ministry of Environment, Forests and Climate Change & Ors.*, has held:

“11....

Even without the Uttar Pradesh Trees Protection Act, 1976 felling of trees indiscriminately is not permitted as it violates Article 21 of the Constitution.

...

15. There is no impact assessment with regard to the impact of exemption of species of trees covered by the impugned Notification which was a must before such Notification was issued.

...”

(Emphasis added)

(A True Copy of the Order, dated: 11.09.2018, passed by this Hon'ble Tribunal, in O.A. No. 805/2017, *Kshitij Agnihotri Vs Ministry of Environment, Forests and Climate Change & Ors.*, is annexed as **ANNEXURE A-8 [Page Nos. 791-799]** to the Application for Intervention filed by the Applicants, herein))

PRAYER

In light of the facts and circumstances as stated hereinabove, it is most respectfully, prayed that this Hon'ble Tribunal may be pleased to grant the reliefs, as prayed for, by the

Applicants, herein, in I.A. No. 285/2024 and I.A. No. 286/2024 in the aforementioned Original Application and/or Pass any such other or further Order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.



APPLICANT NO.1

Through



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PLACE:- DELHI

DATED:- 20.11.2024

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AND IN THE MATTER OF:

Vikrant Tongad & Ors.

...Applicants

AFFIDAVIT

I, Vikrant Tongad, S/o. Lt. Sh. Baljeet Singh, aged about 34 years, R/o 84, Bhanauta, Greater Noida, Uttar Pradesh - 201311, presently at New Delhi, do hereby solemnly affirm and declare as under:

1. That I am the Applicant No. 1 in the above-mentioned Application and am fully conversant with the facts and circumstances of the case and am competent to swear this affidavit.
2. That the Response has been drafted by my counsel on my instructions. The contents of the same have been read



over and explained to me in my language and the same are true and correct to the best of my knowledge and no part of it is false and nothing material has been concealed therefrom.



I IDENTIFIED THE
DEPONENT WHO HAS
SIGNED IN MY PRESENCE



DEPONENT

VERIFICATION:

I, the deponent above-named do hereby verify that the contents of this Affidavit from Para 1 to 24 are true to my knowledge nothing material has been concealed therefrom.

VERIFIED at New Delhi on this _____ day of November, 2024.

NOTARY PUBLIC APPOINTED BY
GOVT. OF INDIA
G. S. KHARRANDA

Notary Reg. No. 785	20 NOV 2024	ADVOCATE ENL. No. D.287181
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ATTESTED 9899422266

ATTESTED

NOTARY PUBLIC



DEPONENT