

IN THE NATIONAL GREEN TRIBUNAL, NEW DELHI

INDEX

IN

RESPONSE AFFIDAVIT ON BEHALF OF
RESPONDENT NO. 5

i.e. UTTARAKHAND POLLUTION CONTROL BOARD

Original Application No. 702/2022

(I.A. No. 229/2022)

Deepak Kumar and Anr.

Applicants

Versus

State of Uttarakhand and Ors.

Respondents

Sl. No.	Particulars	Pg. No.
1.	Index	
2.	Response Affidavit	
3.	Annexure-. Notification S.O. 943(E) dated 04.07.2005.	
4.	Annexure-2. Notification S.O. 2125(E) dated 13.12.2007.	

Dated: March, 2023

Advocate
(Counsel for the respondent)

IN THE NATIONAL GREEN TRIBUNAL, NEW DELHI

RESPONSE AFFIDAVIT ON BEHALF OF
UTTARAKHAND POLLUTION CONTROL BOARD

Original Application No. 702/2022

(I.A. No. 229/2022)

Deepak Kumar and Anr.

Applicants

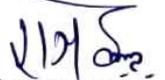
Versus

State of Uttarakhand and Ors.

Respondents



AFFIDAVIT of Dr. Rajendra Singh, aged about 50 years, S/o Shri Balbir Singh Presently posted as Scientific Officer, Uttarakhand Pollution Control Board.


Deponent

I, the above-named deponent does hereby solemnly affirm and state on oath as under: -

- 1) That the deponent is presently posted as the Scientific Officer, Uttarakhand Pollution Control Board Uttarakhand and is competent to sign and swear the instant affidavit.
- 2) That this Hon'ble Tribunal vide order dated 01.03.2023 has been pleased to direct as under: -

"12. In pursuance of above, proof of service has been filed by the applicant on 6.2.2023 but still no response has been filed though the State is represented by Counsel. We see no reason for such failure on the part of the contesting respondents. However, having regard to the significance of the issue raised in the application including the compliance of earlier judgment of Hon'ble Supreme Court in *Rural Litigation & Entitlement Kendral (supra)*, we give last opportunity to respondents, particularly Respondents No. 1, 2, 5 and 9 – State of Uttarakhand, MoEF&CC, State PCB and CPCB respectively to file their response, if any, within four weeks from today by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF. If no response is filed, the Tribunal will take decision on merits."

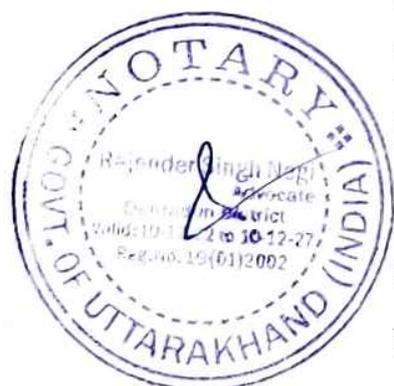
- 3) That in compliance of the aforesaid order, instant affidavit is being filed.
- 4) That it is imperative to state that under Section 3 of The Environment (Protection) Act, 1986 (hereinafter referred to as EP Act), the Central Government has been empowered to take measures with respect to certain matters enlisted therein which *inter alia* include under clause (v) to sub-section (2) of Section 3, the following-

"restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguard."



[Handwritten signature]

- 5) That in exercise of the aforesaid power, the Ministry of Environment and Forest (MoEF) issued vide Notification S.O. 102(E) dated 01.02.1989, in the wake of judgment of the Hon'ble Supreme Court in Rural Litigation & Entitlement Kendra v. State of U.P & Ors., (1989 Supp 1 SCC 504), declaring the Doon Valley Area as eco sensitive zone under the Environment (Protection) Act, 1986 and prohibiting and regulating activities therein. Thereafter, Vide Notification S.O. 943(E) dated 04.07.2005, under Section 5 of the EP Act, it was directed that all the proposals covered under the orange category shall be dealt with as industries requiring environmental clearance as per the Environment Impact Assessment Notification, 1994 and also directed that all proposals, relating to development in Doon Valley, Uttarakhand falling in the category of Orange industry categorized vide notification No. S.O.10€ dated the 1st February, 1989, shall follow the same procedure as being followed for the environment clearance of industry sector projects under Environment Impact Assessment Notification, 1994 issued vide notification No. S.O. 60(E) dated the 27th February, 1994 as amended from time to time. Further, vide Notification S.O. 2125(E) dated 13.12.2007, under Section 5 of the EP Act, it was directed that since the Environment Impact Assessment Notification S.O. 943(E) dated 27.01.1994 has been superseded by Environment Impact Assessment Notification S.O. 1533(E) dated 14.09.2006, even the permitted activities will have to follow impact assessment procedure laid down in EIA Notification dated 14.09.2006, and those activities which do not



[Handwritten Signature]

fall in the EIA Notification dated 14.09.2006 but fall under the orange category, shall be considered by the State Environment Impact Assessment Authority (hereinafter referred to as SEIAA). Thus, vide Notification dated 13.12.2007, SEIAA was empowered to consider environment clearance for orange category industries in Doon Valley Area. True copy of Notifications dated 04.07.2005 and 13.12.2007 is being marked and filed as Annexure No. 1 and Annexure No. 2, respectively.

- 6) That further, invoking its power under Section 3 of the Environment (Protection) Act, 1986, the Ministry of Environment, Forest and Climate Change (MoEF&CC) again passed a Notification S.O. 94(F) dated 06.01.2020 by which the earlier notification dated 01.02.1989 was amended replacing clause (i) to (v) and ANNEXURE to notification dated 01.02.1989 thereby permitting activities in terms of Central Pollution Control Board's modified directions dated 07.03.2016 issued under 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 for harmonization of classification of industrial sectors under "Red", "Orange", "Green" and "White" categories.

7) That under the modified directions dated 07.03.2016, the Central Pollution Control Board has modified the earlier categorization of industries under "Red", "Orange" and "Green" and placed "Stone Crusher" in orange category based on pollution index score. It is pertinent to state here that, the categorization by the



[Handwritten Signature]

Central Pollution Control Board has been made applicable to Doon Valley area and thus, by virtue of the notification issued by MoEF&CC on dated 06.01.2020, stone crusher falls in the orange category for Doon Valley area as well.

- 8) That it is imperative to state here that the State Pollution Control Board is bound by the directions issued by the Central Pollution Control Board as per Section 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. Thus, the State Pollution Control Board to this extent is subservient to the Central Pollution Control Board and is bound by the directions issued by the Central Pollution Control Board.
- 9) That the directions dated 07.03.2016 issued by the Central Pollution Control Board also empowered the State Pollution Control Board for further addition of any new or leftover industrial sector and their categorization which is not listed in revised list of Red, Orange, Green and White industrial sectors following revised criteria and guidelines as prescribed by Central Pollution Control Board. The Office order issued by Uttarakhand Pollution Control Board on 15.01.2021 is based on pollution index score calculated as per criteria and guidelines as prescribed by Central Pollution Control Board and is thus, within the mandate of law.
- 10) That the deponent is a responsible Government servant having the highest regards for the Hon'ble Tribunal and orders passed by them. The deponent has always made his sincerest efforts to carry



[Handwritten Signature]

out the orders passed by this Hon'ble Tribunal in its letter and spirit and shall continue to do so in the future.


Deponent

Solemnly affirmed before me on this day of 27 March, 2023 at Dehradun at about 4:30 AM/PM by the deponent who has been identified by the aforesaid person.

I have satisfied myself by examining the deponent who understood the contents of this affidavit.

The person has signed in my presence on the affidavit.

This affidavit is sworn before me by S.No-1614/23
Shri. Rajender Singh Notary
who is identified by Shri
at Dehradun on.....

27/3/23
(Rajender Singh Negi)
Advocate & Notary, Dehradun

Filed by

MUKESH VERMA

Advocate for Uttarakhand Pollution Control Board/Respondent

Chamber No. 50,

G.L. Sanghi Block,

Supreme Court of India

New Delhi-110 001

9810108098

Email:- mvermadv@gamil.com





भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 686]

नई दिल्ली, सोमवार, जुलाई 4, 2005/आषाढ़ 13, 1927

No. 686]

NEW DELHI, MONDAY, JULY 4, 2005/ASADHA 13, 1927

पर्यावरण और वन मंत्रालय

आदेश

नई दिल्ली, 4 जुलाई, 2005

का.आ. 943(अ).—पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (3) के खण्ड (घ) के अधीन, उन क्रियाकलापों के सिवाय, जिन्हें पर्यावरणी समाघातों की जांच करने के लिए केन्द्रीय सरकार द्वारा अनुज्ञात किया जाता है, दून घाटी उत्तरांचल में विभिन्न क्रियाकलापों पर निर्बंधन अभिरोपित करने वाली अधिसूचना का.आ. 102(अ) तारीख 1 फरवरी, 1989 द्वारा जारी की गई थी;

और उक्त अधिसूचना ने उद्योगों को तीन प्रवर्गों में वर्गीकृत किया है, अर्थात्, हरा, नारंगी और लाल और दून घाटी क्षेत्र में औद्योगिक इकाइयों को अनुज्ञा देने और उनको निर्बंधित करने के लिए मार्गदर्शी सिद्धांतों को भी विहित किया है;

और नारंगी प्रवर्ग के अंतर्गत आने वाले उद्योगों को राज्य प्रदूषण नियंत्रण बोर्ड द्वारा निर्धारण किए जाने की और उन्हें "अनापत्ति प्रमाणपत्र" प्रदान करने से पूर्व पर्यावरण और वन मंत्रालय में केन्द्रीय सरकार को विनिर्दिष्ट किए जाने की अपेक्षा की जाती है;

और अब यह सुनिश्चित किया गया है कि उक्त अधिसूचना में यथा-विनिर्दिष्ट नारंगी प्रवर्ग के अधीन आने वाले प्रस्तावों पर का.आ. 60(अ) तारीख 27 जनवरी, 1994 द्वारा जारी पर्यावरण समाघात निर्धारण अधिसूचना के अनुसार पर्यावरणीय निकासी की अपेक्षा करने वाले उद्योगों के रूप में कार्रवाई की जाएगी।

अतः अब पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 5 में प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश दिया जाता है कि अधिसूचना संख्यांक का.आ. 102(अ) तारीख 1 फरवरी, 1989 द्वारा प्रवर्गीकृत नारंगी उद्योग के प्रवर्ग के अंतर्गत आने वाले दून घाटी, उत्तरांचल के विकास संबंधित प्रस्ताव वैसी प्रक्रिया का पालन करेंगे जैसी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से समय-समय पर यथा-संशोधित का.आ. 60(अ) तारीख 27 जनवरी, 1994 द्वारा जारी पर्यावरण समाघात निर्धारण अधिसूचना, 1994 के अधीन उद्योग सेक्टर परियोजनाओं के पर्यावरण निकासी के लिए पालन किया जा रहा है।

[फ. सं. जे-11013/25/2005-आई.ए. II(1)]

आर. चन्द्रमोहन, संयुक्त सचिव

MINISTRY OF ENVIRONMENT AND FORESTS

ORDER

New Delhi, the 4th July, 2005

S.O. 943(E).—Whereas a notification under clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Act, 1986 imposing restrictions on various activities in Doon Valley Uttranchal, except those activities which are permitted by the Central Government for examining the environmental impacts, was issued vide No. S.O. 102(E) dated the 1st February, 1989;

And whereas the said notification classified industries into three categories; namely, green, orange and red and also prescribed guidelines for permitting and restricting industrial units in Doon Valley Area;

2002 GI/2005

(1)



And whereas industries falling in the orange category are required to be assessed by State Pollution Control Board and referred to the Central Government in the Ministry of Environment and Forests before granting 'No Objection Certificate';

And whereas it has now been decided that proposals covered under the orange category, as specified in the said notification shall be dealt with as industries requiring environmental clearance as per the Environment Impact Assessment Notification, 1994, issued vide No. S.O. 60(E) dated the 27th January, 1994.

Now, therefore, in exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986, it is hereby directed that all proposals, relating to development in Doon Valley, Uttaranchal falling in the category of orange industry categorized vide notification No. S.O. 102(E) dated the 1st February, 1989, shall follow the same procedure as is being followed for the environment clearance of Industry Sector Projects under Environment Impact Assessment Notification, 1994 issued vide No. S.O. 60(E) dated the 27th January, 1994 as amended from time to time with effect from the date of publication of this notification in the Official Gazette.

[F. No. J-11013/25/2005-LA.II(T)]
R. CHANDRAMOHAN, Jt. Secy.



भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II - खण्ड 3 - उप-खण्ड (ii)
PART II - Section 3 - Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

नई दिल्ली, बुधवार, दिसम्बर 13, 2007/अध्याय 22, 1929
No. 1539] NEW DELHI, THURSDAY, DECEMBER 13, 2007/ADYAHAYA 22, 1929

पर्यावरण एवं वन मंत्रालय
आदेश

नई दिल्ली, 13 दिसम्बर, 2007

सं. 2125(अ) - जबकि, पर्यावरण (सुरक्षा) विनियम, 1986 के नियम 5 के उप-विनियम (3) के खण्ड (घ) के तहत दूध घाटी, उत्तराखण्ड में उन गतिविधियों जिनके लिए केंद्रीय सरकार ने पर्यावरणीय प्रभाव के परीक्षण के लिए अनुमति दे दी है, का छंदक विभिन्न परियोजनाओं पर प्रतिबंध लगाने के लिए दिनांक 1 परवरी, 1989 के सं. का.आ. 102(अ) के तहत एक अधिसूचना जारी की गई थी;

और, जबकि, उक्त अधिसूचना में उद्योगों को तीन क्षेत्रों अर्थात् डीन, मोरेंज और रेड में वर्गीकृत किया गया है और दूध घाटी क्षेत्र में पर्यावरण प्रभाव के परीक्षण के लिए अनुमति देने और उन पर प्रतिबंध लगाने के लिए दिनांक 1 परवरी, 1989 के सं. का.आ. 102(अ) के तहत एक अधिसूचना जारी की गई थी;

और, जबकि, औरज श्रेणी के अंतर्गत आने वाले उद्योगों को पर्यावरण प्रभाव के परीक्षण नियंत्रण बोर्ड द्वारा किया जाना तथा उन्हें अनुमति प्रदान करने से पहले संबंधित प्रस्ताव को केंद्र सरकार, पर्यावरण एवं वन मंत्रालय को प्राप्त किया जाना अपेक्षित है;

और, जबकि, यह परिकल्पना की गई थी कि औरज श्रेणी के अंतर्गत शामिल प्रस्तावों के मामले में जारी प्रक्रिया अपनाई जाएगी जो कि दिनांक 4 जुलाई, 2005 के का.आ. 943(अ) के तहत जारी पर्यावरण प्रभाव मूल्यांकन अधिसूचना, 1994 के अंतर्गत उद्योग क्षेत्र की परियोजनाओं को पर्यावरणीय मंजूरी देने समय अपनाई जाती है;

और, जबकि, दिनांक 27 जनवरी, 1994 के का.आ. 60(अ) के तहत जारी उक्त पर्यावरण प्रभाव मूल्यांकन अधिसूचना को दिनांक

14 दिसम्बर, 2006 को का.आ. 1535(अ) के तहत जारी अधिसूचना द्वारा अंगिकृत किया जाना जाएगा;

अतः, अब, पर्यावरण (सुरक्षा) अधिनियम, 1986 की धारा 5 द्वारा प्रदात शक्तियों का प्रयोग करते हुए, एतद्वारा, यह निर्देश दिया जाता है कि दूध घाटी, उत्तराखण्ड में विकास कार्य से संबंधित सभी परियोजनाओं को निम्नलिखित प्रक्रिया अपनाते हुए धारा 5 के तहत परीक्षण किया जाएगा -

- (i) ऐसे सभी परियोजनाओं को 14 दिसम्बर, 2006 के सं. का.आ. 1535(अ) के तहत जारी पर्यावरण प्रभाव मूल्यांकन अधिसूचना के अंतर्गत अनुसूची में शामिल की गई है, के लिए उक्त अधिसूचना में निर्धारित प्रक्रिया ही अपनाई जाएगी।
- (ii) ऐसी सभी परियोजनाओं को उक्त पर्यावरण प्रभाव मूल्यांकन अधिसूचना के अंतर्गत शामिल नहीं है, और औरज श्रेणी के अंतर्गत आती हैं उन पर राज्य सरकार के पर्यावरण प्रभाव मूल्यांकन प्रतिकारण द्वारा विचार किया जाएगा।
- (iii) उक्त अधिसूचना के लिए राज्य स्तरीय प्रभाव मूल्यांकन प्रतिकारण का गठन होने तक, प्रस्तावों को प्राप्त करने पर राज्य पर्यावरण प्रभाव बोर्ड की टिप्पणियां जमा होने से पर्यटन, उक्त अधिसूचना के अंतर्गत आने वाले परियोजनाओं को केंद्र सरकार द्वारा जारी किया जाएगा।

[सं. ३-1101/25/2005-आं ए II (1)
रा. आनन्दसुन्दर, वैज्ञानिक

MINISTRY OF ENVIRONMENT AND FORESTS
ORDER

New Delhi, the 13th December, 2007

S.O. 2125 (E).—Whereas, a notification under clause (d) of sub-rule (3) of rule 5 of the Environment (Protection)



Rules, 1986, imposing restrictions on various activities in Doon Valley Uttarakhand, except those activities which are permitted by the Central Government for examining the environmental impacts, was issued vide No. S.O. 102(E) dated the 1st February, 1989;

And, whereas, the said notification classified industries into three categories; namely, green, orange and red and also prescribed guidelines for permitting and restricting industrial units in Doon Valley Area;

And, whereas, industries falling in the orange category are required to be assessed by State Pollution Control Board and referred to the Central Government in the Ministry of Environment and Forests before granting 'No Objection Certificate';

And, whereas, it was envisaged that the proposals covered under orange category shall follow the same procedure as is being followed for the environment clearance of industry sector projects under Environment Impact Assessment Notification, 1994, issued vide S.O. 943(E) dated the 4th July, 2005;

And, whereas, the said Environment Impact Assessment notification issued vide S.O. 60(E) dated the 27th January, 1994 has been superseded by the notification vide number S.O. 1533(E) dated 14th September, 2006;

Now, therefore, in exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986, it is hereby directed that all proposals, relating to development in Doon Valley will be examined as per the following procedure:—

- (i) All those projects which are covered in the schedule under the Environment Impact Assessment notification issued vide number S.O. 1533(E) dated the 14th September, 2006 will follow the procedure laid down in that notification.
- (ii) All those projects which are not covered under the EIA notification but which fall under the orange category shall be considered by the State level Environment Impact Assessment Authority.
- (iii) Till such time as the State level Impact Assessment Authority is constituted for the State of Uttarakhand, the proposals will be examined by the Central Government, without referring them to the Appraisal Committee, after obtaining the comments of the State Pollution Control Board.

[No. J-11013/25/2005-IA-II(I)]

R. ANANDAKUMAR, Scientist 'G'

