



**DIRECTORATE OF ENRGY
GOVERNMENT OF HIMACHAL PRADESH**

SHANTI BHAWAN PHASE-III SECTOR-6 NEW SHIMLA -9

TEL NO: 0177-2673551, FAX NO: 2673553, Email: dir.dochp@nic.in, ceenergy09@gmail.com

No. - HPDoE/CE (Energy)/CEIA (Ravi Basin)/2021- 6834-35

Dated: 27/11/2021

From

**Director (Energy),
GoHP, Shimla-09**

To

The Nodal Officer-cum-APCCF (FCA),
Forest Department, Tolland, Shimla,
Himachal Pradesh.

Subject: Regarding diversion of 13.3082 hectare of forest land in favour of Sai Engineering Foundation, Sai Bhawan, Sector-4, New Shimla-171009, H.P. for the construction of Tundah-II HEP (24 MW) within the jurisdiction of Sub Division Bharmour, District Chamba, HP.

Sir,

This is with reference to M/s Sai Engineering Foundation letter no. SEF/SML/2021/3003 dt. 01.11.2021 on the subject cited matter wherein they have enclosed the MoEF&CC letter no. 8B/HP/01/2020/FC/351 dated 11.10.2021 and requested this office to provide the information/comments w.r.t. Point No. 10 of aforesaid MoEF&CC, GoI letter.

In this context, I am directed to intimate that at present no independent study is being carried out to assess the total potential of Ravi Basin/ Catchment to generate power. However, a Digitized Basin wise Plan for Ravi Basin study was carried out through Lahmeyer International (India) Pvt. Ltd. in the year 2012 and as per the report the Hydro Power Potential of Ravi Basin has been identified as 3237.12 MW. Further the detail with regard to potential harnessed so far and projects in pipeline in Ravi Basin is attached herewith at Annexure-I.

With regard to mitigative measures the matter was taken up with Himachal Pradesh Pollution Control Board and the information/note in this regard as received for e-flow & muck management from HPPCB is annexed at Annexure-II for reference please.

*Sh. Vinay
Sunder
for H.C. B.I.*

However, it is pertinent to mention here that as per GoHP notification no. STE/F(1)2/2017 dated 14/06/2017 (Annexure-III), it is learnt that the projects upto 25 MW have been declared as white category project by the GoI.

Hence there is no need for such HEP (up to 25 MW) to undergo consent mechanism under Water/Air Act and also to obtain Environmental Clearance from State Environment Impact Assessment Authority (SEIAA). Further, no Environmental Management Plan (EMP) cost be levied on HEP (up to 25 MW) as these are not required to undergo Environment Impact Assessment (EIA) mechanism.


This is for your kind information please.

Yours faithfully,

DA: As above

(Er. Anshul Sharma)
Superintending Engineer,
Directorate of Energy, Shimla-09.

✓ Copy to the M/s Sai Engineering Foundation, Sai Bhawan, Sector-4, New Shimla-171009 for kind information please.


27/11/2017
Superintending Engineer,
Directorate of Energy, Shimla-09.

DETAIL OF PROJECTS IN RAVI BASIN (EXCLUDING HIMURJA)

Sr. No	Project Name	Capacity in MW	District	River/ Basin	Executing Agency
A) Already harnessed Potential in Ravi Basin					
1	Sural	0.01	Chamba	Ravi	Himachal Pradesh State Electricity Board Limited (HPSEBL)
2	Bhuri Singh PH	0.45	Chamba	Ravi	Himachal Pradesh State Electricity Board Limited (HPSEBL)
3	Sach	0.9	Chamba	Ravi	Himachal Pradesh State Electricity Board Limited (HPSEBL)
4	Sal-II	2	Chamba	Ravi	Himachal Pradesh State Electricity Board Limited (HPSEBL)
5	Holi	3	Chamba	Ravi	Himachal Pradesh State Electricity Board Limited (HPSEBL)
6	Salun	9	Chamba	Ravi	Swadeshi Distributors Private Limited
7	Upper Joiner	12	Chamba	Ravi	Tejas Sarnika Hydro Energies Private Limited
8	Kuwarasi	15	Chamba	Ravi	Jagdambey Hydro Project Limited
9	Chanju-I	36	Chamba	Ravi	IA Hydro Energy Private Limited
10	Budhil	70	Chamba	Ravi	Greenko Budhil Hydro Private Limited
11	Baira Suil	180	Chamba	Ravi	National Hydro Power Corporation Limited (NHPCL)
12	Chamera-III	231	Chamba	Ravi	National Hydro Power Corporation Limited (NHPCL)
13	Chamera-II	300	Chamba	Ravi	National Hydro Power Corporation Limited (NHPCL)
14	Chamera-I	540	Chamba	Ravi	National Hydro Power Corporation Limited (NHPCL)
Total (A)		1399.36	MW		
B) Projects in Pipeline					
1	Holi-II	7	Chamba	Ravi	Om Energy Generation Private Limited
2	Chanju-II	19.8	Chamba	Ravi	Cosmos Hydro Power Private Limited
3	Bajoli Holi	180	Chamba	Ravi	GMR Energy Limited
4	Kutehr	240	Chamba	Ravi	JSW Energy Limited
5	Devi Kothi-II	16.5	Chamba	Ravi	Himachal Pradesh State Electricity Board Limited (HPSEBL)

6	Sai kothi-II	16.5	Chamba	Ravi	Himachal Pradesh State Electricity Board Limited (HPSEBL)
7	Sai kothi-I	15	Chamba	Ravi	Himachal Pradesh State Electricity Board Limited (HPSEBL)
8	Hail	18	Chamba	Ravi	Himachal Pradesh State Electricity Board Limited (HPSEBL)
9	Kurhed-II	7.5	Chamba	Ravi	Meridian Hydro Power Consultants
10	Kalah Khol	11	Chamba	Ravi	Pariyal Power
11	Sundrali	11	Chamba	Ravi	Saiurja Hydel Projects Pvt. Ltd.,
12	Chirchind-II	12.9	Chamba	Ravi	Shivalik Energy Private Limited
13	Choned	15	Chamba	Ravi	Kundan Energy LLP
14	Tundan	15	Chamba	Ravi	Gee Cee Hydro Power (P) Limited
15	Chatte Ka Nallah	9	Chamba	Ravi	Jagdambey Hydro Project Limited
16	Toral Kundli	18	Chamba	Ravi	Jagdambey Hydro Project Limited
17	Dunali-I & II	17	Chamba	Ravi	Saiurja Hydel Projects Pvt. Ltd.,
18	Tundah-II	18	Chamba	Ravi	Sai Engineering Foundation,
19	Harsar Stage-III	19	Chamba	Ravi	Harsar Hydro Projects Private Limited
20	Bharmour Stage-II	21	Chamba	Ravi	Bharmour Hydro Projects Private Limited
21	Harsar Stage-II	22.5	Chamba	Ravi	Harsar Hydro Projects Private Limited
22	Bharmour Stage-I	24	Chamba	Ravi	Bharmour Hydro Projects Private Limited
23	Jai Banni Mata	24	Chamba	Ravi	K.S. Energy (JBM) Private Limited
24	Harsar Stage-I	28.5	Chamba	Ravi	Harsar Hydro Projects Private Limited
25	Bara Bangahal Stage-I	92	Chamba	Ravi	Malana Power Company Limited
26	Bara Bangahal Stage-II	108	Chamba	Ravi	Malana Power Company Limited
27	Deothal Chanju	30	Chamba	Ravi	Himachal Pradesh Power Corporation Limited (HPPCL)
28	Surgani Sundla	48	Chamba	Ravi	Himachal Pradesh Power Corporation Limited (HPPCL)
29	Chanju-III	48	Chamba	Ravi	Himachal Pradesh Power Corporation Limited (HPPCL)
30	Sal-I	6.5	Chamba	Ravi	Yet to be allotted
31	Suil	10	Chamba	Ravi	Yet to be allotted

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32	Chobia-1	14	Chamba	Ravi	Yet to be allotted
33	Dhancho	18	Chamba	Ravi	Yet to be allotted
Total(B)		1160.7	MW		
Grand Total (A+B)		2560.06	MW		

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E-flow:

The State Government vide notifications No. PC-F(2)-1/2005 dated 16-07-2005 and dated 09-09-2005 (Annexure-I) had made it mandatory for all the existing and upcoming hydel projects to release prescribed minimum water immediately downstream of the diversion structures equivalent to 15% of the minimum inflow observed in the lean season river. State Board through an officer not below the rank of Assistant Environmental Engineer has been entrusted the responsibility to monitor, verify or gauge the volume of water released from the diversion structures.

The Hon'ble National Green Tribunal vide judgment dated 09-08-2017 (Annexure-II) passed direction that *"all the rivers in the Country shall maintain minimum 15% to 20% of the average lean season flow of that river. However, whichever State is unable to adhere to this average percentage, in that event we grant liberty to that State Government to move the Secretary, Ministry of Environment, Forest and Climate Change who shall in consultation with the Ministry of Water Resources examine such a representation and if it is desirable to fix any lower percentage than the percentage aforesaid, then it will pass appropriate order. The order should be reasoned and thereafter it would be left to the direction of the State concerned to follow the directions of the Ministry in accordance with law."* The issue has also taken with the Govt. by the State Board.

The Hon'ble NGT vide order dated 25-09-2019 (Annexure-III) in OA No. 425/2019 titled Vijay Kumar V/s State of HP & ors. has observed that: *"3.....environment norms are to be maintained irrespective of the fact whether the project is a white category and is exempted from 'consent' methodology. It is undisputed that requirement to maintain to discharge minimums flow has been duly laid down and is necessary for maintaining riverine ecology which requirement cannot be dispensed with. The State PCB has to evolve a mechanism for enforcing such requirement. The status report does not cover HEPs of more than 25 MW and projects operating prior to 09.09.2005."*

The latest order of the Hon'ble NGT dated 7.9.2020 (Annexure-IV) in this regard states that *"As already observed in the order dated 25.09.2019, maintaining minimum flow is necessary for the riverine ecology and such requirement cannot be dispensed with. The SPCB may ensure compliance of such mandate not only for all the units set*

up after 09.09.2005 when such regime was introduced prospectively, but also to pre-existing units, for future. The order of this Tribunal does not debar such a course. It merely records statement of Counsel for the applicant that the regime is prospective. Once it is held that such flow is necessary for maintaining riverine ecology, there cannot be exemption to any hydroelectric project irrespective the date of setting up for all times to come. All that can be done for the units already set up is not taking any action for the past and putting them to due notice for compliance from a future date. Since it is stated that an appeal i.e. Civil Appeal No. 1657/2018, *Bharat Jhunjhunwala vs Pushp Saini & Ors.* is pending before the Hon'ble Supreme Court, the present order will be subject to any further order which may be passed in the said appeal."

The State Board has also initiated the process to get the Real time on-line Continuous Flow Measurement & Data logging device installed for flow measurement to monitor the mandatory 15% release of water from the operational hydel projects. Some projects have already installed the device and the others are being directed through persuasion by the State Board. There are 227 Hydel Projects in the State out of which 136 are operational. Among 136 operational Hydel Projects 108 has installed the Real Time Online Continuous Flow Measurement System (RTOCFMS).

The State Board has also simplified the procedure for the release of 15% discharge. There are certain weir sites of Hydel Projects where internet connectivity is not available and have also not installed the Real Time Online Continuous Flow Measurement System (RTOCFMS), in such cases for the release of 15 % discharge of water, manual flow measuring devices/structure should be provided along with a flow meter to record the discharge. To monitor the same, CCTV cameras may be provided by the Hydel Projects and CCTV recording should be submitted to the State Board on regular basis and also maintain the logbook for the discharge data. In all new projects the unit shall make a mechanism by installing a pipe across the weir for the continuous release of 15% discharge of water and for operational projects, the units shall continuously maintain 15% discharge of water from the gate alongwith the diversion structure.

Muck Management:

A large quantity of muck is expected to be generated as a result of tunneling operations, construction of roads, etc. Muck generated from excavation of any project component is required to be disposed in a planned manner so that it takes a least possible space and is not hazardous to the environment. The muck disposal sites cause increased

sedimentation in the rivers (though insignificant compared to natural sedimentation) and totally spoils the visual aesthetics of the area. It is of prime importance that these sites will have to be rehabilitated as soon as the disposal sites are full.

Normally, muck is disposed in low-lying areas or depressions. Trees, if any, are cut before muck disposal, however, shrubs, grass or other types of undergrowth in the muck disposal at sites perish. Muck generated from excavation of any project component is required to be disposed in a planned manner so that it takes a least possible space and is not hazardous to the environment. In the hilly area, dumping is done after creating terraces thus usable terraces are developed. The overall idea is to enhance/maintain aesthetic view in the surrounding area of the project in post construction period and avoid contamination of any land or water resource due to muck disposal. Suitable retaining walls shall be constructed to develop terraces so as to support the muck on vertical slope and for optimum space utilization. Loose muck would be compacted layer wise. The muck disposal area will be developed in a series of terraces of boulder crate wall and masonry wall to protect the area/muck from flood water during monsoons. In-between the terraces, catch water drain will be provided. The terraces of the muck disposal area will be ultimately covered with fertile soil and suitable plants will be planted adopting suitable bio-technological measures.

The basic aim and objectives of the muck management plan are to:

- (i) protect these areas from soil erosion
- (ii) develop these areas by afforestation
- (iii) develop them into parks, gardens etc.
- (iv) utilize the maximum quantity of muck for development of infrastructure of the project
- (v) develop these areas in harmony with the landscape of the project area.

The proforma for monthly Statement of Muck/Debris disposal to be submitted to HPSPCB by Hydel Projects under Construction as per Annexure-V.

Government of Himachal Pradesh
Department of Pollution Control

No. PC-F(2)-1/2005

Dated: Shimla-2, 16-07-2005

NOTIFICATION

[Directions of the State Government]

Whereas the objective of the Environment [Protection] Act, 1986 enacted by the Central Government is to protect and improve the environment and for prevention of hazards to human beings, other living creatures and property and that of the Water [Prevention and Control of Pollution] Act, 1974 enacted by the Central Government is to provide for the prevention and control of water pollution and maintaining or restoring the wholesomeness of water;

Whereas the Central Government has delegated the powers vested in it under Section 5 of the Environment [Protection] Act to the State Government for the performance of functions under this Act to issue directions in public interest and so also the powers are vested in the State Government under Section 64 of the Water [Prevention and Control of Pollution] Act, 1974;

Whereas it has been observed that the establishment operation maintenance of the Hydel Projects and other allied inter-related activities of these projects have led to are leading to degradation of environment and ecology and have adverse effect on the wholesomeness of water.

Whereas the diversion of huge quantities/volumes of water from the rivers by the Hydel Projects has minimized water flow or even dried up the main river beds or water courses/channels, which consequently is not only damaging the water courses but also causing irrigation problems and health hazards/water borne diseases due to decreased volume of water and is cause of pollution of water streams, rivers sources.

And whereas the above mentioned facts are tantamount to violations of the Environment [Protection] Act, 1986 and the Water [Prevention and Control of Pollution] Act, 1974 constituting the offence punishable under Section 15 and Section 45-A respectively of the Acts *ibid*.

(1) Section 15 of the Environment [Protection] Act, 1986 provides that whoever fails to comply with or contravenes any of the provisions of this Act or the rules made or

contd. P.2

orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

Section 45-A of the Water (Prevention and Control of Pollution) Act, 1974 provides, "Whoever, contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure."

Now, therefore, with a view to prevent, control and abate environmental pollution and in exercise of the powers conferred by provisions of the Section 5 of the Environment (Protection) Act, 1986 directions are hereby issued under Section 5 of the aforesaid Act to all existing and up coming Hydel Projects to release and maintain a minimum flow immediately down stream of diversion structures of Hydel Projects throughout the year at a threshold value of not less than 10% of the minimum inflow observed in the lean seasons into the main river water body, whose water is being harnessed by these projects failing which State Government will be constrained to have recourse of Section 15 of the Environment [Protection] Act, 1986 and Section 45-A of the Water (Prevention and Control of Pollution) Act, 1974. It is hereby ordered that an officer not below the rank of the Assistant Environmental Engineer so authorized by the H.P. State Environment Protection and Pollution Control Board shall be responsible to monitor, verify or gauge the volume of water released by the Hydel Projects. It is mandatory for all Hydel Projects to make provisions for measurement by installing appropriate instrument devices and to keep records of flows on day-to-day basis.

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including the total inflow in the diversion structure and the water released immediately downstream of the diversion structure;

The Hydel Projects shall also submit quarterly reports to the H.P. State Environment Protection and Pollution Control Board;

The Himachal Pradesh State Environment Protection and Pollution Control Board H.P. State Electricity Board HIMURJA Irrigation-cum-Public Health Department Fisheries Department are hereby directed to impose include conditions of minimum flow of water as specified above upon the Hydel Projects in their respective NOCs Consent and agreements memorandum of understanding;

The condition of minimum flow of water shall be complied within a month of issue of this notification and compliance to these directions shall be reported complied with accordingly.

By Order

Pr. Secretary [Pollution Control] to the
Government of Himachal Pradesh

Dated: Shimla-2, 16-07-2005

Endorsement No. As above.

Copy forwarded for information and necessary action to:

1. The Secretary to Governor, Himachal Pradesh, Shimla-2.
2. The P.S.'s to the Chief Minister, Cabinet Ministers, State Ministers, CPSs, and Parliamentary Secretaries, H.P. Shimla-2.
3. The P.S. to the Chief Secretary to the Government of Himachal Pradesh.
4. All Administrative Secretaries, to the Government of H.P.
5. All Deputy Commissioners in Himachal Pradesh.
6. All Heads of the Department in Himachal Pradesh.
7. All Chairmen Vice-Chairmen/Managing Directors of the all Boards Corporations in Himachal Pradesh.
8. The Member Secretary, H.P. State Environment Protection and Pollution Control Board, Paryavaran Bhawan, Phase-III, Below BCS, New Shimla-9 with request to circulate the copy of this notification to all concerned Project Authorities in the State, under intimation to this Department.
9. The Member Secretary, H.P. State Council for Science, Technology and Environment, SDA-Complex, Kasumpti, Shimla-9.
10. The Controller, Printing and Stationary, I.P. Government Press, Shimla-3 for publishing in the Rajpatra.
11. Guard file.

Adtl. Secretary [Pollution Control] to
the Government of Himachal Pradesh

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Government of Himachal Pradesh
Department of Pollution Control

C-F(2)-1/2005

Dated: Shimla-2, 7/9/05

NOTIFICATION

In partial modification of this department's notification of even number dated 16-07-2005 vide which directions in exercise of the powers conferred by the provisions of Section 3 of the Environment (Protection) Act, 1986 were issued, the quantum of minimum flow of water to be released and maintained immediately downstream of the divers on structures of existing and up-coming hydel projects throughout the year should be read as "threshold value of not less than 15% of the minimum inflow observed in the lean season; to the main river water body whose water is being harnessed by these project" in stead of 10% as mentioned in the said notification.

By Order,

[J.P. Negi]

Pr. Secretary [Pollution Control] to
the Government of Himachal Pradesh.

Encls. No. : As above.

Dated: Shimla-2, 7/9/05

Copy forwarded for information and necessary action to:

1. The Secretary to Governor, Himachal Pradesh, Shimla-2.
2. The P.P.S.'s to the Chief Minister, H.P. Shimla-2.
3. The P.S. to Cabinet Ministers, H.P. Shimla-2.
4. The P.S. to the Chief Secretary to the Government of H.P., Shimla-2.
5. The Chairman-cum-Managing Director, NTPC, Plot No. B-A, Sector 24, P.D. No. 13, NOIDA-201301, U.P.
6. The Chairman-cum-Managing Director, National Hydro Electric Power Corporation, Ltd. Sector-33, Faridabad-121003, Haryana.
7. The Chairman-cum-Managing Director, Sadujal Vidyut Nigam Ltd. Himfed Building, New Shimla.
8. The Chairman, HPSEB, Kumar House, Shimla-171004.
9. All Chairman, Vice Chairman/Managing Directors of all Boards and Corporations in Himachal Pradesh.
10. Chief Executives of all Hydro-electric Projects in H.P.
11. All Administrative Secretaries to the Government of H.P.
12. All Deputy Commissioners in Himachal Pradesh.
13. All Heads of Department in Himachal Pradesh.
14. The Chief Executive Officer, HIMURJA, SDA-Office Complex, Kasumpti, Shimla-9.
15. The Member Secretary, H.P. State Environment Protection and Pollution Control Board, Pariyaran Bhawan, Below BCS, New Shimla-9 with request to circulate the copy of this notification to all concerned Project authorities in the State under attention to this Department.

Copy No. 24

Amended-1

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

Original Application No. 498 of 2015
(M.A. No. 628/2016)

IN THE MATTER OF:

Pushp Saini Vs. Ministry of Environment, Forest & Climate Change & Ors.

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. NIKRAM SINGH SAJJWAN, EXPERT MEMBER**

Present: Applicant:
Respondent No. 1:
Respondent Nos. 15&26:

Respondent No. 19:

Respondent No. 22:

Respondent No. 37:

Ms. Shilpini Ghosh, Adv. for Intervenor
Mr. Divya Prakash Panda, Adv.
Mr. Mukesh Verma, Adv.
Mr. Nisha Rajen Shanker and Ms. Anu K.
Jey, Adv. for State of Kerala
Ms. K. Enstoli Sema, Adv. For Nagaland
SPCB and Mr. Amith J, Adv.,
Mr. Shiv Mangal Sharma, AAO, Mr.
Bansabh Rajpal, Adv., and Mr. Adhiraj
Singh, Adv. for State of Rajasthan
Respondent No. 25&29: Mr. Nikhil
Nayyar, Adv., Ms. Smriti Shah, Adv. for
APFCB & TSPCB
Mr. G.M. Kawoosa, Adv. and Ms. Palak
Mittal, Adv. for State of J&K
Mr. Gantur Prabhakar, Mr. Pramod
Kumar and Mr. Gantam Prabhakar, Adv.
for State of AP
Mr. Devraj Ashok, Adv. for State of
Karnataka
Mr. A.K. Panda and Mr. M. Palharay,
Adv. for SPCB, Odisha
Mr. Atul Jha, Adv. For State of
Chhattisgarh
Mr. Ranjan Mukherjee and Ms. Aprajita
Mukherjee, Adv. For State of Meghalaya
Mr. Raja Chatterjee and Mr. Chanchal
Kumar Ganguly, Adv., Mr. Piyush
Sachdev, Adv. for State of WB
Mr. Aruna Mathura, Mr. Avneesh
Aryutham, Ms. Simran Jeet and Ms.
Anuradha Aryutham, Adv. For State of
Sikkim
Mr. Edward Belho, Mr. K. Lukang
Michael and Mr. Hoinethiam, Adv. for
State of Nagaland
Ms. Yogmaya Agasthota, Adv. for CECB
Ms. Priyanka Sinha, Adv. for State of
Jharkhand
Mr. Anil Shrivastav, Mr. Rituraj Biswas
and Ms. Sujaya Bardhan, Adv. for State
of Arunachal Pradesh
Mr. Tayenjam Mono Singh, Adv. for
Meghalaya SPCB
Mr. Sapam Biswajit Meital and Mr.
Harish Kumar Gaur, Adv. for MPFCB
Mr. Gopal Singh, Mr. Rituraj Biswas,
Adv. for State of Tripura
Mr. Dhruv Pal and Mr. Himanshu Pal,
Adv. for State of Gujarat & GSPCB
Mr. Ajay Marwah, Adv. for HPSPCB
Mr. Gautam Singh, Adv. for Mr. Shresh
Alam, Adv. for State of Bihar
Mr. R. Rakesh Sharma, Adv. For State of
Tamil Nadu & TN Pollution Control Board
Mr. Rajul Shrivastav, Adv. for MPFCB
Mr. V.K. Shukla, Adv. and Ms. Vijay
Laxmi, Adv. for State of MP
Mr. Anurag Agarwal and Ms. Asha N. Rao,
Adv. for WSPCB

Mr. Navin Dubey, Adv.
 Mr. Utkarsh Sharma, Adv. for State of UP
 Mr. Gaurav M. Libarhan, AAG, State of
 Punjab
 Mr. Jigy Searla, Adv., Mr. Rangan S. Sai
 and Mr. Deena Victor, Adv. for Kerala
 State Pollution Control Board
 Mr. Shrovesh Roy, Adv. and Mr. Sayooj
 Mohandas M., Adv. for State of Assam
 and ASPCB
 Mr. Rajkumar, Adv. for Central Pollution
 Control Board
 Mr. Anil Grover, AAG, Mr. Rahul
 Khurana, Mr. Sandeep Yadav and Mr.
 Mishal Vij, Adv. for HSPCB
 Mr. Naginder Benipal, Adv. for FPCCB
 Mr. D.V. Niren, Adv. and Mr. Vinayak
 Gupta, Adv.

Date and Remarks	Orders of the Tribunal
<p>Item No. 21 August 09, 2017 sn</p>	<p>The Learned Counsel appearing for Ministry of Environment, Forest and Climate Change submits that the Ministry has already completed river basin study of 6 river basins i.e. Siang River Basin, Twang River Basin, Bichom River Basin, Subansiri River Basin, Dibang River Basin and Lohit River Basin and upon study the Ministry has recommended the minimum flow of the river to be 18% of the average of lean season flow of the river. However, in some of the cases, it has stated to be even 20%.</p> <p>The Tribunal in the recent Judgment pronounced on river Ganga had directed 20% minimum environment flow to be maintained from Haridwar onwards on the basis of the average lean season flow. In light of the above and the clear stand being taken by the Ministry, we direct that all the rivers in the Country shall maintain minimum 15% to 20% of the average lean season flow of that river. However, whichever State is unable to adhere to this average percentage, in that event we grant liberty to that State Government to move the Secretary, Ministry of Environment, Forest and Climate Change who shall in</p>

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August 09,
2017

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consultation with the Ministry of Water Resources examine such a representation and if it is desirable to fix any lower percentage than the percentage aforesaid, then it will pass appropriate order. The order should be reasoned and thereafter it would be left to the discretion of the State concerned to follow the directions of the Ministry in accordance with law.

We also grant liberty to the Applicant to move the Ministry of Environment, Forest and Climate Change if it has material with them in respect of any river of the country, which should have minimum environment flow in excess of 20%. If such representation is moved the same shall be disposed of by the Committee headed by Secretary in the Ministry of Environment, Forest and Climate Change in accordance with law.

With the above direction, Original Application No. 498 of 2015 stands disposed of without any order as to cost.

M.A. No. 628 of 2016

This Application does not survive for consideration as the main Application itself stands disposed of.

Thus, M.A. No. 628 of 2016 stands disposed of accordingly.

.....,CP
(Swatanter Kumar)

.....JM
(Raghuvendra S. Rathore)

.....EM
(Bikram Singh Sajwan)

Amended-II

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

Original Application No. 425/2019

(With Report dated 27.11.2019)

Vijay Kumar

Applicant(s)

Versus

State of Himachal Pradesh

Respondent(s)

Date of hearing: 03.12.2019

CORAM:

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

None

For Respondent(s):

Mr. Sanjay Kumar, Mr. A. Kumar, Hon. n,
Advocates for SPCB with Mr. Aditya Wari,
Member Secretary and Dr. S. Kumar, Sr. Env.
Engineer for SPCB

ORDER

1. The issue for consideration is enforcement of requirement of releasing minimum water downstream by the Hydro Electric Projects (HEPs) in Himachal Pradesh.
2. The matter was considered on 25.09.2019 in the light of report of the State Pollution Control Board (SPCB) dated 20.08.2019 as follows:

"2. In the light of an allegation that the minimum flow was not being maintained by the HEPs, a factual and action taken report was sought from the State PCB vide order dated 04.07.2019. Report filed by the State PCB on 20.08.2019 is that HEPs producing less than 25 MW are not under any regulatory regime being white category as per CPCB letter dated 18.01.2017. Thus, the State board is not in a position to enforce the requirement of installing online flow measurement data logger and release of 15% water.

3. We are unable to accept the contention. Principle of Sustainable Development as well as Precautionary principle requires that environment norms are maintained irrespective of the fact whether the project is a white category and is exempted from 'consent' methodology. It is undisputed that requirement to maintain to discharge minimums flow has been duly laid down and is necessary for maintaining riverine ecology which requirement cannot be dispensed with. The State PCB has to evolve a mechanism for enforcing such requirement. The status report does not cover HEPs of more than 25 MW and projects operating prior to 09.09.2005.

4. In view of the above, let further necessary action be taken. The Member Secretary, State PCB, may remain present with the compliance report on the next date."

3. Accordingly, Member Secretary, SPCB is present in person and a compliance report has been filed on 27.11.2019 as follows:

"3. That as per afore-cited directions and with a view to evolve mechanism for enforcing 15% water release requirement it is submitted that the State Board constituted a Joint Committee comprising of Senior Environmental Engineer and two Assistant Environmental Engineers on 5-10-2019 (Annexure R-1) to inventorize all HEPs in the State of HP which are not releasing 15% water. The Joint Committee submitted its report on 4-11-2019. Copy of the Joint Committee's report is annexed as Annexure R-2. As per report of the Joint Committee dated 4-11-2019, there are 26 number of HEPs (below 25 MW and also including more than 25 MW) which are not complying the provision of 15% water release, hence the Joint Committee made the following observations and recommendations which are reproduced below :-

There are certain weir sites of hydroelectric projects where internet connectivity is not available and have not installed the real-time online monitoring device. In such cases for the release of 15% discharge of water manual flow measuring devices/structure (V Notch, Rectangular Notch, Orifice, etc) should be provided along with a flow meter to record the discharge. To monitor the same, it is recommended that CCTV cameras may be installed by the concerned HEPs and the CCTV recording should be submitted to the State Board on regular basis and also maintain the logbook for the discharge data. The State Pollution Control Board will also randomly check the same. The concerned unit will have to maintain power backup for the CCTV and will also keep the video recording of one year in their system/computer.

• In case where the real time online monitoring devices are installed but the online data is not being transmitted, the units may be directed by the concerned Regional Offices to make it

- discharge data on quarterly basis to the State Board.
- In case of new projects, the unit should make a mechanism by installing a pipe across the weir for the continuous release of 15% discharge of water and for operational projects, the units should continuously maintain the 15% discharge of water from the gate along-with the diversion structure.
- The condition to install CCTV cameras should be applicable to all the units except the one which already have or will be installing the realtime online monitoring device.
- An undertaking from all the HEPs should be taken on an affidavit to maintain the continuous 15% discharge of water and stating that in case of non-compliance, HEP will be liable to pay Environmental Compensation as per the rules.
- It is suggested that the HEPs below 25 MW may also be included in green category keeping in view the environmental degradation caused by them due to excavation/muck disposal during construction phase and monitoring of 15% discharge of the lean season during operation phase would be mandatory.

4. That the Joint Committee has also submitted detail of units commissioned before 9-9-2005. The State Board has accepted the recommendations of the Joint Committee. Accordingly, State Board in furtherance to such recommendations has taken further action and issued directions dated 15-11-2019 to the non-complying units (below 25 MW and including those commissioned before 9-9-2005 above 25 MW) to comply with the recommendations of the Joint Committee to ensure release of 15% water from the HEP. Copy of directions are annexed as Annexure R-3 for kind perusal of the Hon'ble Tribunal.

5. That it is pertinent to submit here that the release of 15% mandatory water by HEPs is regulated by the State Govt. notification dated 09-09-2005. However, it is submitted that old projects i.e. Punjab State Electricity Board (Shanon HEP), NHPC (Chamera power Station) and M/s JP (Bilaspur) HEP had challenged the applicability of notification dated 9-9-2005 on old projects vide OA No. 241/2013, 242/2013 and 243/2013 on the ground that this notification is not applicable to them as these are old projects commissioned before 09-09-2005 i.e. prior to issuance of this notification. In the meanwhile during the pendency of the litigation the matter was considered by Council of Ministers Govt. of HP in its meeting held on 18-4-2012 wherein following decision was taken :-

- (i) The impugned notification has only prospective effect for projects commissioned after 09-09-2005.
- (ii) In case of projects which have entered into PPA/IA before the issuance of notification dated 09-09-2005 but not commissioned, a minimum discharge as agreed or accounted for as per TEC/MOU/IA/PPA (where 110 specific condition quantifying water discharge has been imposed) or as per any specific condition in MOU/IA/PPA shall be applicable till.

States of Uttarakhand, Sikkim, Arunachal Pradesh, West Bengal
(North Region), Assam, Jammu & Kashmir by e-mail.

List for further consideration on 13.03.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM



Item No. 03

Court No. 1

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

(By Video Conferencing)

Original Application No. 425/2019

(With report dated 23.03.2020)

Vijay Kumar

Applicant(s)

Versus

State of Himachal Pradesh

Respondent(s)

Date of hearing: 07.09.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent(s):

Mr. Sanjay Kumar, Advocate for HPSPCB
Mr. Tarkeshwar Nath, Advocate for NHPC

ORDER

1. The issue for consideration is enforcement of requirement of releasing minimum water downstream by the Hydro Electric Projects (HEPs) in Himachal Pradesh.
2. Vide order dated 03.12.2019, the Tribunal noted the report of the State PCB of Himachal Pradesh as follows:

*5. That it is pertinent to submit here that the release of 15% mandatory water by HEPs is regulated by the State Govt. notification dated 9-9-2005. However, it is submitted that old projects i.e. Punjab State Electricity Board (Shanan HEP), NHPC (Chamera power Station) and M/s JP (Baspas) HEP had challenged the applicability of notification dated 9-9-2005 on old projects vide OA No. 241/2013, 242/2013 and 243/2013 on the ground that this notification is not applicable to them as these are old projects commissioned before 09-09-2005 i.e.

prior to issuance of this notification. In the meanwhile during the pendency of the litigation the matter was considered by Council of Ministers Govt. of HP in its meeting held on 18-4-2012 wherein following decision was taken :-

- (i) The impugned notification has only prospective effect for projects commissioned after 09-09-2005.
- (ii) In case of projects which have entered into PPA/IA before the issuance of notification dated 09-09-2005 but not commissioned, a minimum discharge as agreed, or accounted for as per TEC/MOU/IA/PPA (where 110 specific condition quantifying water discharge has been imposed) or as per any specific condition in MOU/IA/PPA shall be applicable till based on a long term study, the minimum discharge in their case is determined.

That the aforesaid decision taken by the Council of Ministers, Govt. of HP was placed before the Hon'ble NGT by Deptt. of MPP & Power vide affidavit dated 20-11-2014 (Annexure R-4). The Hon'ble NGT was pleased to dispose off the cases and vide order dated 20-11-2014 upheld the decision of State Govt.:-

"Learned Counsel appearing for the applicants submits that since the clarification has been issued and the same is stated to be prospective. Their prayer in the application stands satisfied. However, they reserve the right to take such other actions as may be permissible in accordance with law. Liberty granted. All the application nos. 241/2013(The), 242/2013(The) and 243/2013(The) stand finally disposed of with no order as to costs."

Copy of order dated 20-11-2014 of Hon'ble NGT is annexed as Annexure R-5. It is submitted that though now Board has issued directions for release of 15 % water to aforementioned 5 non-complying old projects (i.e. BBMB-Pandoh, Shanan Power House, Chamera-I NUIPC, Chamba, Chamera-II-NHPC, Chamba, Baira Shul Chamba) however these old projects have claimed that they are exempted by the State Govt. decision that notification dated 9-9-2005 has prospective effect and such decision was further upheld by this Hon'ble Tribunal vide order dated 20-11-2014. Moreover, they have also intimated that issue of 15% release of water by all HEPs is sub judice in a Civil Appeal No. 1657/2018 titled Bharat Jhunjhunwala vs Pushp Saini & Ors. before the Hon'ble Supreme Court of India. Therefore, it is humbly prayed that the afore-cited order dated 20-11-2014 may be relooked into or modified keeping in view the situation mentioned above, so that release of 15% water from old projects could also be ensured.

6. It is submitted that the State Board has issued directions to 21 non-complying HEPs less than 25 MW to adopt the mechanism recommended by Joint Committee for release of 15% water from

the 1 IP, so that it could be monitored by the State Pollution Control Board. In this regard some of the projects represented that though they are releasing 15% water from HEN however, they require three months time for installation of necessary devices for measurement of 15% flow. Hence it is humbly prayed that three months time may kindly be granted to ensure implementation of recommendations of the Committee for installation of necessary devices for monitoring/measurement of 15% flow of water from HEPs.

The State Board shall ensure compliance of 15% release of water by HEPs and in this regard directions to concerned Regional Offices of the Board has been issued to conduct random surprise inspection of the I-IEPs to check the status of 15% release. Copy of directions dated 26-11-2019 annexed as Annexure R-6."

3. Considering the above, the Tribunal directed:

- *4. The recommendations mentioned in the above report (para 5 quoted above) may be duly complied.
5. As already observed in the order dated 25.09.2019, maintaining minimum flow is necessary for the riverine ecology and such requirement cannot be dispensed with. The SPCB may ensure compliance of such mandate not only for all the units set up after 09.09.2005 when such regime was introduced prospectively, but also to pre-existing units, for future. The order of this Tribunal does not debar such a course. It merely records statement of Counsel for the applicant that the regime is prospective. Once it is held that such flow is necessary for maintaining riverine ecology, there cannot be exemption to any hydroelectric project irrespective the date of setting up for all times to come. All that can be done for the units already set up is not taking any action for the past and putting them to due notice for compliance from a future date. Since it is stated that an appeal i.e. Civil Appeal No. 1657/2018, *Bharat Jhunjhunwala vs Pushp Saini & Ors.* is pending before the Hon'ble Supreme Court, the present order will be subject to any further order which may be passed in the said appeal.
6. We are also of the view that similar course of action needs to be adopted with regard to hydroelectric projects in other States, including Uttarakhand, Sikkim, Arunachal Pradesh, West Bengal (North Region), Assam and Jammu & Kashmir.
7. Let the Ministry of Jal Shakti ensure such compliance and furnish a compliance report to this Tribunal before the next date by e-mail at judicial-ngu@gov.in after coordination with the concerned States."

4. Thus, every Hydro Electric Projects (HEPs) irrespective of the date of its commissioning is under an obligation to release minimum water downstream. This is a mandate of "Sustainable Development" which is part of right to life. Accordingly, the Tribunal directed compliance by all the Hydro Electric Projects (HEPs), including in States of Uttarakhand, Sikkim, Arunachal Pradesh, West Bengal (North Region), Assam and Jammu & Kashmir.

5. Unfortunately, no report has been filed by the Ministry of Jal Shakti, even though period of 9 months has passed. The report of the State PCB, Sikkim, dated 23.03.2020 is to the effect that e-flow meter has been installed or is to be installed or the power project was 'under establishment'.

6. I.A. No. 294/2020 and I.A. 295/2020 have been filed by NHPC Limited seeking impleadment and exemption from releasing water to maintain 15 % e-flow during the lean period, in terms of the direction of the State PCB, with the view to comply the order of this Tribunal. Even though none appeared during the hearing, telephonic contact was made with the learned Counsel who stated that he was not in position to add anything as he had missed the list. The NHPC has annexed Notice issued by the HP State PCB dated 05.02.2020 and by the J&K PCB dated 06.02.2020 directing maintenance of e-flow and the HEPs in the said States.

7. We have gone through the applications. Only reason given in para 9 of I.A. 294/2020 is that it is practically and structurally not feasible to release water to maintain the requisite e-flow in projects commissioned earlier. We do not find any substance in this submission. The mandate of

"Sustainable Development" has to be complied. We do not see any hurdle in doing so. Whatever changes are required for the purpose can certainly be done. Technical and/or commercial limitations cannot be a ground to ignore the mandate of law. No business or commercial interest can override the requirement of maintaining riverine ecology.

Accordingly, the application is disposed of. The State PCBs may ensure compliance.

A copy of this order be sent to the PCBs of the States/UTs of Uttarakhand, Sikkim, Arunachal Pradesh, West Bengal (North Region), Assam and Jammu & Kashmir by e-mail for compliance.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

September 07, 2020
Original Application No. 425/2019
(I.A. No. 294/2020 & I.A. No. 295/2020)
SN

PROFORMA FOR MONTHLY STATEMENT OF MUCK/DEBRIS DISPOSAL TO BE SUBMITTED TO HPSPCB BY HYDEL PROJECTS UNDER CONSTRUCTION

NAME & ADDRESS OF PROJECT:

MONTH FOR WHICH STATEMENT IS SUBMITTED:

NOTES:

- i. All quantities are to be reported in cubic metres.
- ii. All the quantities are to be reported with appropriate swell factor as accounted for at the time of application for consent to establish/environmental clearance.
- iii. Report is to be submitted before 7th day of the following month to the Member-Secretary along with copy to the concerned Assistant Environmental Engineer/Environmental Engineer of the Regional Office of HPSPCB who will verify the statement and submit it duly verified within 7 days thereafter.

Sr. no	Project component	Gross estimated quantity of Muck/debris to be generated.	Quantities of muck/debris for the month being reported.			Cumulative Quantities at the end of month being reported.			Name of the dumping site.	Capacity of the dumping site.	Remarks
			Generated		Dumped						

Name & designation of the person submitting the statement

Signature

No. STE-F (1)2/2017
Government of Himachal Pradesh
Department of Env. Science & Tech.

From

The Addl. Chief Secretary (Env. Science & Tech.) to the
Government of Himachal Pradesh

To

1. The Director,
Environment, Science & Technology,
Paryayaran Bhawan, Near US Club, Shimla
Himachal Pradesh-171001
2. The Member Secretary,
HP State Pollution Control Board,
Him Parivesh, Phase-III, New Shimla, Himachal Pradesh 171009

Dated: Shimla-171002, the

June, 2017

Subject: -

Issues pertain to hydro power projects up to 25 MW in the State.

Madam/Sir,

I am directed to refer to the subject captioned above and to say that the matter with regard to consent to operate for the projects up to 25 MW was engaging the attention of the Government for some time past since the hydel projects up to 25 MW have been declared as white category project by the GoI, hence there is no need for such HEP (up to 25 MW) to undergo consent mechanism under Water/Air Act and also to obtain Environmental Clearance from SEIAA.

Further, no Environmental Management Plan (EMP) cost be levied on HEP (up to 25 MW) as these are not required to undergo EIA mechanism.

You are, therefore requested to take further necessary action in the matter under intimation to this department.

Yours faithfully,

(Hans Raj Sharma)

Spl. Secy. (Env. Science & Tech.) to the
Government of Himachal Pradesh
+91-177-2624899

Contd...P/2-

-2-

95

14 June, 2017
~~14 June, 2016~~

Ref: (2)1/2016

Dated: Shimla-2, the

is forwarded for information:-

1. SCS (MPP & Power) to the Government of Himachal Pradesh, Shimla-2

The President, Bonafide Himachalies Hydro Power Developers Association, Sai
Bhawan, Sector-IV, New Shimla

By Spt. Secy. (Env. Science & Tech.) to the
Government of Himachal Pradesh
