2013

Present: CWP No. 5600 of 2012
Mr. Ajay Sharma, Advocate, for the petitioner.

Mr. Sandeep Sharma, Assistant Solicitor General of India, for respondent No. 1.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh Verma & Mr. Anup Rattan, Additional Advocate Generals, and Mr. J.K. Verma & Ms. Parul Negi, Deputy Advocate Generals, for respondents No. 2 to 4 & 6 to 8.

Mr. Devender Sharma, Advocate, vice Mr. C.N. Singh, Advocate, for respondent No. 9.

Mr. Arvind Sharma, Advocate, for respondent No. 10.

CWP No. 9797 of 2012
Mr. Bipin C. Negi, Advocate, for the petitioners.

Mr. Sandeep Sharma, Assistant Solicitor General of India, for respondent No. 1.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh Verma & Mr. Anup Rattan, Additional Advocate Generals, and Mr. J.K. Verma & Ms. Parul Negi, Deputy Advocate Generals, for respondents No. 2 to 6.

Mr. Rajnish Maniktala, Advocate, for respondent No. 8.

COPC No. 56 of 2009
Mr. Ajay Mohan Goel, Advocate, for the petitioner.

Mr. Sandeep Sharma, Assistant Solicitor General of India, for Union of India.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh Verma & Mr. Anup Rattan, Additional Advocate Generals, and Mr. J.K. Verma & Ms. Parul Negi, Deputy Advocate Generals, for respondents-State.

We have heard counsel for the parties.

2. The learned Advocate General, on instructions, submits that the State is more than keen to find out solution to the impending problem. The State is not only willing to pay compensatory costs, as may be determined by the Appropriate Authority, but is, on its own, willing to provide more infrastructure and facilities to strengthen the

environmental cause in the concerned region. Those logistics can be worked out only after the decision of the Appropriate Authority with regard to the 841 road projects in question.

3. The learned Assistant Solicitor General of India submits that the MoEF, Government of India, has no objection to examine the proposal initiated by the State Government, but the officials of the said Ministry are finding difficulty in working out the final arrangement and, more particularly, because of the directions given by the learned Single Judge of this Court in order, dated 28th August, 2009, in COPC No. 56 of 2009.

4. Keeping in mind this grievance of the respondent-Authorities, we thought it appropriate to direct the Registry to circulate the papers concerning COPC No. 56 of 2009. Although, the order has not been challenged by any Authority or party to the proceedings, in the peculiar facts of the present case, it has become essential to consider whether the direction contained in the said order should be kept in abeyance or otherwise.

5. In our considered opinion, if the direction contained in COPC No. 56 of 2009 is required to be complied by the concerned Authority and, in particular, MoEF, it will not be possible for the MoEF to work on the proposal to be submitted by the State Government, which, as observed in our previous order, is in larger public interest. The issue regarding action to be taken against the erring officials of the concerned departments and Ministry can always be redressed at the appropriate stage, but consideration of the proposal submitted by

the State Government cannot and should not brook delay. The issue regarding ratification of the action of the State Government regarding construction of 841 road projects across the State of Himachal Pradesh will have to be resolved in the first place in conformity with the requirement of law, which the State Government as well as the MoEF has assured the Court to consider the same in right earnest.

6. In these peculiar facts, we are inclined to hold that it is but appropriate that the direction given in COPC No. 56 of 2009, in order dated 28th August, 2009, should be kept in abeyance to enable the concerned departments to take a final decision on the proposal submitted by the State Government.

7. Counsel appearing for the department as well as the State Government have submitted that the Authorities would report about the possibility and feasibility of granting approval or otherwise on the proposal of the State before the next date of hearing, which can be scheduled after three weeks. In the circumstances, hearing of these matters is deferred till 5th September, 2013, to enable the MoEF, Government of India and the State Government to work out a holistic plan for not only restoration of the environment, besides quantifying the compensatory costs to be paid by the State Government. That will have to be in conformity with the provisions of law and uninfluenced by the observations in the order dated 28th August, 2009 in COPC No. 56 of 2009, referred to above.

8. The learned Advocate General assures the Court that in

the joint meeting to be held between the officials of the concerned departments and Authorities, broad guidelines will be worked out on the basis of which the plan can be taken forward. We place this submission on record. The joint meeting to be convened on 19th August, 2013, in the office of Conservator of Forests (Central), Government of India, Chandigarh, at 11.00 a.m.

Copy **dasti.**

(A.M. Khanwilkar)
Chief Justice

(Kuldip Singh)
Judge

August 8, 2013
(rajni / sl)

05.09.2013 Present:

CWP No. 5600 of 2012
Mr. Ajay Sharma, Advocate, for the petitioner.

Mr. Sandeep Sharma, Assistant Solicitor General of India, for respondent No. 1.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh Verma & Mr. Anup Rattan, Additional Advocate Generals, and Mr. J.K. Verma & Ms. Parul Negi, Deputy Advocate Generals, for respondents No. 2 to 4 & 6 to 8.

Mr. C.N. Singh, Advocate, for respondent No. 9.

Mr. Arvind Sharma, Advocate, for respondent No. 10.

CWP No. 9797 of 2012
Mr. Bipin C. Negi, Advocate, for the petitioners.

Mr. Sandeep Sharma, Assistant Solicitor General of India, for respondent No. 1.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh Verma & Mr. Anup Rattan, Additional Advocate Generals, and Mr. J.K. Verma & Ms. Parul Negi, Deputy Advocate Generals, for respondents No. 2 to 6.

Mr. Rajnish Maniktala, Advocate, for respondent No. 8.

COPC No. 56 of 2009
None for the petitioner.

Mr. Sandeep Sharma, Assistant Solicitor General of India, for Union of India.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh Verma & Mr. Anup Rattan, Additional Advocate Generals, and Mr. J.K. Verma & Ms. Parul Negi, Deputy Advocate Generals, for respondents-State.

Heard counsel for the parties.

2. We have perused the minutes of the proceedings of the joint meeting held on 19th August, 2013, attended by all the concerned duty holders noted in our order dated 8th August, 2013. Since, in principal, agreement has been reached for regularization of 841 roads subject to certain compliances to be made by the State Government and

that process is likely to take some time, we have no hesitation in deferring the hearing of this matter for the time being till 30th December, 2013, for reporting of further action taken by the concerned duty holders.

3. Learned Assistant Solicitor General of India submitted that the MoEF is of the opinion that in addition to 841 roads, referred to in the order dated 8th August, 2013, by this Court, it is possible that there are other roads, which are not included in the list of 841 roads. That figure may jump to around 1500. In other words, there are more than 660 roads, which have not been brought to the notice of the MoEF as of today.

4. The learned Advocate General appearing for the State submits that this apprehension will be duly examined at the highest level by the State Government and the information that would be collated during such enquiry, the Principal Secretary (PWD) to the Government of Himachal Pradesh shall submit that information to the MoEF not later than two months from today. The State Government, through learned Advocate General, undertakes to abide by all the conditions specified in the minutes of the joint meeting held on 19th August, 2013, even with regard to the unlisted roads of which information will be furnished by the State Government in due course.

5. In view of this assurance given by the State Government, we do not deem it necessary to issue any direction on that issue as of now.

6. Learned Assistant Solicitor General of India then invited

our attention to Clause (x) of the minutes and pointed out that the State Government be directed to submit the list of officers responsible for violation.

7. In our opinion, insistence of this compliance will be counter productive at this stage. In our order, dated 8th August, 2013, we have already kept the order dated 28th August, 2009, in abeyance. Necessity of furnishing list of officers of the State Government responsible for violation would arise only if the said order was to be revived and the abeyance order is recalled.

8. In the circumstances, we hope that the officials of MoEF or any other department of the Government of India shall not insist for compliance of furnishing the names, designations and complete addresses of the officers of the State Government responsible for past violations.

9. Accordingly, this matter be notified on **30th December, 2013.** The arrangement directed in terms of order dated 8th August, 2013, to continue till further directions.

Copy dasti.

(A.M. Khanwilkar)
Chief Justice

(Kuldip Singh)
Judge

September 5, 2013
(rajni / vt)