

Uttarakhand Flood disaster:

Supreme Court's directions on Uttarakhand Hydropower Projects

On August 13, 2013, while disposing off a bunch of petitionsⁱ regarding the controversial 330 MW Srinagar Hydropower Project on Alaknanda River in Uttarakhand, the Supreme Court bench of Justice K S Radhakrishnan and Dipak Misra have given some welcome directions on the Uttarakhand hydropower projects.

Perusal of the full judgmentⁱⁱ shows that the SC decision on the Srinagar project is a bit disappointing, since the court has directed that the project be completed and has disposed off all objections related to that, while asking for implementation of the Environment Management Plan and conditions etc. However, there are several contradictions with regards to this project which seem to have escaped the attention of the court, and a review petition on that part could be filed by the petitioners. Importantly, Prof Bharat Jhunjhunwala,

who argued the case in person, should be thanked for the role he played in this case.

SC order: "We have gone through the Reports and, prima facie, we are of the view that the AHEC Report has not made any in-depth study on the cumulative impact of all project components like construction of dam, tunnels, blasting, power-house, Muck disposal, mining, deforestation etc. by the various projects in question and its consequences on Alaknanda as well as Bhagirathi river basins so also on Ganga which is a pristine river."

Courts's concerns on Uttarakhand Hydro Projects However, the most pertinent and interesting part of the order starts at the bottom on p 62 with the title "Court's concerns" and goes on till the end of the order on p 72. This part is most insightful and welcome.

In these pages, the order notes that AHEC (Alternate Hydro Energy Centre at IIT Roorkee) has not done the cumulative impact assessment it was asked to do. This is very important to note. The order says, (para 46), "We have gone through the Reports and, prima facie, we are of the view that the AHEC Report has not made any in-depth study on the cumulative impact of all project components like construction of dam, tunnels, blasting, power-house, Muck disposal, mining,

deforestation etc. by the various projects in question and its consequences on Alaknanda as well as Bhagirathi river basins so also on Ganga which is a pristine river." After this clear statement from the Highest Court, no one should rely on this report now on. We are glad that this statement of Supreme Court supports what SANDRP has been saying for yearsⁱⁱⁱ.

This part the order also refers to the BK Chaturvedi Committee (appointed by the National Ganga River Basin Authority in June 2012) report submitted in April 2013 to emphasise that, "The River Ganga has over a period of years suffered environmental degradation due to various factors." The court should have directed that the MoEF should make the BK Chaturvedi committee report public since the report is not yet in public domain. The committee itself stands discredited^{iv} since none of the independent members of the committee have accepted the report.

The operative part of the order says:

“(1) We direct the MoEF as well as State of Uttarakhand not to grant any further environmental clearance or forest clearance for any hydroelectric power project in the State of Uttarakhand, until further orders.”

This means that environment or forest clearance to any hydropower projects of any size in Uttarakhand cannot be given either by MoEF or by the Government of Uttarakhand till further orders.

SC: “We direct the MoEF as well as State of Uttarakhand not to grant any further environmental clearance or forest clearance for any hydroelectric power project in the State of Uttarakhand, until further orders.”

“(2) MoEF is directed to constitute an Expert Body consisting of representatives of the State Government, WII, Central Electricity Authority, Central Water Commission and other expert bodies to make a detailed study as to whether Hydroelectric Power Projects existing and under construction have contributed to the environmental degradation, if so, to what extent and also whether it has contributed to the present tragedy occurred at

Uttarakhand in the month of June 2013.”

This direction has two parts: A. assessment of cumulative impacts of existing and under construction hydropower projects^v to the environment degradation in Uttarakhand and B. whether the projects have contributed to the Uttarakhand flood disaster, if so to what extent.

Only a credible independent panel with sufficient number of independent members can provide a credible report in this regard. This committee should be chaired by a non government person of the stature of Prof Madhav Gadgil. We hope the MoEF will soon constitute such an expert body and also ask the expert body to hold public hearings at various relevant places and seek wider public consultation. The mandate of the committee should be for the entire Uttarakhand and not just Bhagirathi and Alaknanda sub basins. The committee should have credible and independent geologists, sociologists, environmentalists, river experts and disaster management experts.

“(3) MoEF is directed to examine, as noticed by WII in its report, as to whether the proposed 24 projects are causing significant impact on the biodiversity of Alaknanda and Bhagirathi River basins.”

Here it may be remembered that it was MoEF which had asked Wildlife Institute of India to submit a report on the cumulative impact of the hydropower projects in Uttarakhand on aquatic and terrestrial biodiversity. It should also be remembered that WII is one of the credible institutes and is also a centre of excellence of the MoEF. There is no reason for MoEF to reject the clear recommendation of the WII report that the 24 projects listed in its report should be dropped. The clearances given to all the 24 projects in WII list, including the projects like the 300 MW Alaknanda Badrinath HEP of GMR and 171 MW Lata Tapovan HEP of NTPC should be suspended immediately keeping this direction in mind.

“(4) The Disaster Management Authority, Uttarakhand would submit a Report to this Court as to whether they had any Disaster Management Plan is in place in the State of Uttarakhand and how effective that plan was for combating the present unprecedented tragedy at Uttarakhand.”

This direction should have also been for the National Disaster Management Authority since preparation of proper State Disaster Management Plan and ensuring setting up of required machinery for its implementation is also a mandate of the NDMA. This is particularly important in view of the failure also of NDMA as reported by the Comptroller and Auditor General of India report of March 2013. Since the court has asked in para 52 that, "Reports would be submitted within a period of three months. Communicate the order to the Central and State Disaster Management Authority, Uttarakhand.", it is implied that NDMA is also to submit a report. Considering the failure of SMDA and NDMA in the Uttarakhand disaster, it would be useful to see their reports.

These orders are indeed welcome as the HEPs have certainly played big role in increasing the disaster potential & disaster proportions in Uttarakhand floods in June 2013. Over 20 groups and individuals of Uttarakhand, Himachal Pradesh and other states wrote to the MoEF in July 2013, asking for suspension of such HEPs that have *prime facie* played such a role and set up an independent enquiry. The MoEF did not respond to the letter. We are glad now SC has asked for such an inquiry.

Since the original petitions and applications are disposed off, it is not clear if the original petition survives or a new case will be registered while considering above reports to be submitted to the SC. It is also not clear if the original petitioners survive. In such cases it is the normal practice of the courts to appoint an Amicus Curie and it would be interesting to see whom the court appoints for such a purpose.

These orders are indeed welcome in view of the fact that hydropower projects in Uttarakhand have certainly played big role in increasing the disaster potential and disaster proportions in Uttarakhand floods in June 2013. More than twenty groups and individuals of Uttarakhand, Himachal Pradesh and other states have already written to the MoEF in July 2013^{vi}, asking for suspension of such hydropower projects which have prime facie played such a role and to set up an independent enquiry. The MoEF has not yet responded to this letter. We are glad now SC

has asked for such an inquiry.

SANDRP

END NOTES

ⁱ These includes Civil Appeal No 6736 of 2013, Special Leave Petition no 362 of 2012, Civil Appeal nos 6746-47 of 2013 (arising out of SLP (Civil) nos 5849-50 of 2012 and Transfer cases (C) (National Green Tribunal) numbers 55 to 57 of 2013.

ⁱⁱ Full order available at:

https://dl.dropboxusercontent.com/u/90325234/Elist_attachments/ALAKNANDA%20HYDRO%20POWER%20CO.LTD.%20Vs.%20ANUJ%20JOSHI%20%26%20ORS_imgs1.pdf

ⁱⁱⁱ For SANDRP critique of AHEC report, see:

http://www.sandrp.in/hydropower/Pathetic_Cumulative_Impact_Assessment_of_Ganga_Hydro_projects.pdf

^{iv} For detailed critique of the B K Chaturvedi Committee report, see: <http://sandrp.wordpress.com/2013/05/22/upper-ganga-report-with-pro-hydro-bias-does-not-do-justice-to-its-terms-or-to-ganga-people-or-environment/>

^v For basin wise and size wise details of existing, under construction and planned Hydropower projects in Uttarakhand see:

<http://sandrp.wordpress.com/2013/07/10/uttarakhand-existing-under-construction-and-proposed-hydropower-projects-how-do-they-add-to-the-disaster-potential-in-uttarakhand/>

^{vi} See for details: <http://sandrp.wordpress.com/2013/07/20/uttarakhand-disaster-moef-should-suspect-clearances-to-hydropower-projects-and-institute-enquiry-in-the-role-of-heps/>