

Anuj Joshi and Anr Vs. Chief Conservator of Forests and Ors

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Court : Supreme Court of India

Decided On : Jan-15-2016

Judge : Dipak Misra and Uday Umesh Lalit

Appellant : Anuj Joshi and Anr

Respondent : Chief Conservator of Forests and Ors

Advocate for Def. : Mr. Mohan Parasaran

Judgement :

Non-Reportable IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CONTEMPT PETITION NO245OF 2014 IN CIVIL APPEAL NO.6736 OF2013 Anuj Joshi & Anr. Petitioners Versus Chief Conservator of Forests & Others . Respondents

ORDER

Uday Umesh Lalit J.

This contempt petition under Sections 2(3) and 15 of the Contempt of Court Act, 1971 read with Article 129 of the Constitution of India alleges violation of directions contained in judgment and order dated 13.08.2013 passed by this Court in Alaknanda Hydro Power Company Limited vs. Anuj Joshi and others[1]. (C.A. No.6736/2013 with Civil Appeal No.6746-6747/2013 and Transferred Case No.55 to 57 of 2013). Four persons are arrayed as alleged contemnors in this petition.

However, during the course of arguments, the petitioners gave up their case against alleged contemnor Nos.3 and 4. We are also satisfied that no case is made out against them and as such the proceedings against them are dropped. We therefore, confine ourselves in respect of alleged act of contempt on part of alleged contemnor Nos.1 and 2. In the judgment and order dated 13.08.2013 this Court had passed certain directions in paragraph 51. We may quote said paragraph 51 :

51. We are also deeply concerned with the recent tragedy, which has affected the Char Dham Area of Uttarakhand. Wadia Institute of Himalayan Geology (WIG) recorded 350mm of rain on June 15-16, 2013. Snowfall ahead of the cloudburst also has contributed to the floods resulting in the burst on the banks of Chorabari lake near Kedarnath, leading to large scale calamity leading to loss of human lives and property. The adverse effect of the existing projects, projects under construction and proposed, on the environment and ecology calls for a detailed scientific study. Proper Disaster Management Plan, it is seen, is also not in place, resulting in loss of lives and property. In view of the above mentioned circumstances, we are inclined to give following directions:

(1) We direct the Mo EF 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) Mo EF 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.

(3) Mo EF 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 Bhagirath River basins.

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

It is alleged in the present petition as under:

That it has come to petitioners knowledge that forest land for Vishnugad- Pipalkoti Project has been transferred to Tehri Hydro Development Corporation (THDC). The current status of the project as displayed on website of THDC states that G.O. by Go UK for transfer of 80.507 ha of forest land has been issued vide letter dated 6th December, 2013.

According to news report dated 23.12.2013 work contract for the construction of Vishnugad-Pipalkoti projects has been awarded recently. These activities can be undertaken only after Government of Uttarakhand issues Forest Clearance. The petitioner has sent Right to Information request for copies of Forest Clearance regarding Vishnugad-Pipalkoti and Kotlibhel 1A to Respondents Nos 1,2 and 3 on 26.2.2013 which remain unreplied on the date of filing this petition. Though Stage 1 and Stage 2 Forest clearances were issued to the Vishnugad-Pipalkoti project before 13.08.2013, however, State Government appears to have issued Forest Clearance after 13.08.2013 which is in contempt of the judgment of this Honble Court.

4. Insofar as the aforesaid alleged violations are concerned, the following persons are arrayed as alleged contemnor Nos. 1 and 2:

1. S.S.Sharma, Principal Chief Conservator of Forests, Forest Department, State of Uttarakhand, 85, Rajpur Road, Dehradun.

2. R.S.T.Sai, Managing Director, Tehri Hydro Development Corporation, Pragatipuram, Rishikesh, Uttarakhand. The respondent no.1 in his affidavit in reply submitted that the concerned Vishnugad-Pipalkoti Project was cleared as far back as on 02.06.2006, that the documents annexed to the contempt petition themselves show that Stage 1 clearance in respect of 80.507 Hectare of forest

land (forest land for short) was accorded by Mo EF on 03.06.2011 subject to fulfillment of certain conditions and that upon compliance of the conditions, final approval for transfer of forest land was accorded by Mo EF on 25.04.2013. It was further stated that vide letter dated 06.12.2013, the approval of diversion of forest land was communicated by Additional Secretary, Uttarakhand to Additional Chief Conservator of Forests, Uttarakhand and that actual approval was accorded much before the pronouncement of the judgment and order dated 13.08.2013. It was submitted as under:

That the projects mentioned in the petition where forest land allegedly has been transferred to Hydro Projects were all cleared by Ministry of Environment and Forests (Mo EF) much before the judgment dated 13.08.2013 was pronounced. The averments made by the petitioners are not only incorrect, untrue but are totally misleading and have been made with sole purpose to prejudice this Honble Court against the State Government. By making false and misleading averments, petitioner has indulged in gross abuse of process of Court. By making a misleading and false statement in the Court, the Petitioner has tried to sensationalize the issue making this Honble Court to believe that State Government is flouting the judgment of this Honble Court.

We have perused the record and heard Shri Bharat Jhunjhuwala, Applicant No.2 in support of the petition and Mr. Amarendran Saran and Mr. Mohan Parasaran, learned counsel for the respondents. The letter dated 06.12.2013 from Additional Secretary, Uttarakhand has simply communicated the conditions stipulated in the approval dated 28.05.2013. The approval was well before the judgment and order dated 13.08.2013. Plainly, the letter dated 06.12.2013 has not taken any decision after 13.08.2013 but has merely communicated the decision taken well before 13.08.2013. There is thus no violation of any of the directions contained in para 51 of the judgment and order dated 13.08.2013. Further, the alleged contemnor no.1 has simply received the communication dated 06.12.2013, while copy of that communication was marked to General Manager, Tehri Hydro Development Corporation Ltd. In our view, the alleged contemnors Nos.1 and 2 could not be said to have committed any violation of the directions contained in judgment and order dated 13.08.2013.

7. We, therefore, dismiss this contempt petition. .J (Dipak Misra) ..J (Uday Umesh Lalit) New Delhi January 15, 2016 1A-For Order COURT NO.09 SECTION X S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS CONMT.PET.(C) No.245/2014 In C.A. No.6736/2013 ANUJ JOSHI & ANR Petitioner(s) VERSUS CHIEF CONSERVATOR OF FORESTS & ORS Respondent(s) Date :

15. 01/2016 This petition was called on for pronouncement of

ORDER

today. For Petitioner(s) Mrs. Santosh Singh, Adv. For Respondent(s) Mr. Amit Anand Tiwari, Adv. Mr. Abhinav Raghuvanshi, Adv. Mr. Abhinandan Banerjee, Adv. Hon'ble Mr. Justice Uday Umesh Lalit pronounced the order of the Bench comprising Hon'ble Mr. Justice Dipak Misra and His Lordship. Contempt petition is dismissed in terms of the signed non-reportable order. (VINOD KUMAR) (MALA KUMARI SHARMA) COURT MASTER COURT MASTER (Signed Non-Reportable order is placed on the file) ----- [1]. (2014)1 SCC76

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