

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6736/2013

ALAKNANDA HYDRO POWER CO. LTD THROUGH ITS  
AUTHORISED SIGNATORY MR. S. DHAWAN

Appellant(s)

VERSUS

ANUJ JOSHI & ORS.

Respondent(s)

( [ AS FIRST ITEM ]

IA No. 31634/2022 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 8847/2019 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 164794/2023 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 28817/2021 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 148631/2023 - APPROPRIATE ORDERS/DIRECTIONS  
 IA No. 28979/2020 - CLARIFICATION/DIRECTION  
 IA No. 121923/2019 - CLARIFICATION/DIRECTION  
 IA No. 25461/2022 - CLARIFICATION/DIRECTION  
 IA No. 65725/2021 - CLARIFICATION/DIRECTION  
 IA No. 162928/2024 - CLARIFICATION/DIRECTION  
 IA No. 128956/2021 - EXEMPTION FROM FILING AFFIDAVIT  
 IA No. 28819/2021 - EXEMPTION FROM FILING AFFIDAVIT  
 IA No. 251250/2023 - EXEMPTION FROM FILING O.T.  
 IA No. 148632/2023 - EXEMPTION FROM FILING O.T.  
 IA No. 162929/2024 - EXEMPTION FROM FILING O.T.  
 IA No. 28980/2020 - EXEMPTION FROM FILING O.T.  
 IA No. 6/2014 - EXTENSION OF TIME  
 IA No. 162875/2024 - INTERVENTION/IMPLEADMENT  
 IA No. 254287/2023 - INTERVENTION/IMPLEADMENT  
 IA No. 17/2014 - MODIFICATION OF COURT ORDER  
 IA No. 39/2015 - PERMISSION TO APPEAR AND ARGUE IN PERSON  
 IA No. 68180/2024 - PERMISSION TO APPEAR AND ARGUE IN PERSON  
 IA No. 68962/2022 - PERMISSION TO FILE ADDITIONAL  
 DOCUMENTS/FACTS/ANNEXURES, IA No. 251249/2023 - PERMISSION TO FILE  
 APPLICATION FOR DIRECTION)

Date : 08-08-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI  
 HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA  
 HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Appellant(s) Mr. Himanshu Shekhar, AOR

For Respondent(s) Ms. Aishwarya Bhati, A.S.G.  
 Mr. Gurmeet Singh Makker, AOR  
 Ms. Ruchi Kohli, Adv.

Mr. R Bala, Adv.  
Mr. Ss Rebello, Adv.  
Ms. Chinmayee Chandra, Adv.  
Mr. Devashish Bharukha, Adv.  
Mr. Shyam Gopal, Adv.  
Mr. Ankur Talwar, Adv.  
Mr. Chitvan Singhal, Adv.  
Mr. Raman Yadav, Adv.  
Mr. Kartikay Agarwal, Adv.  
Mr. Abhisek Kumar Pandey, Adv.  
Ms. Ameyavikrama Thanvi, Adv.  
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Mr. Rohan Gupta, Adv.  
Ms. Manisha Chava, Adv.  
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Mr. Dinesh Chandra Pandey, AOR  
Mrs. Anil Katiyar, AOR

Ms. Dharitry Phookan, AOR  
Mr. Ajit Pudussery, AOR  
Mr. Prashant Bhushan, AOR

Mr. Kunal Chatterji, AOR  
Mr. Krishnayan Sen, Adv.  
Ms. Shivi Sethi, Adv.  
Mr. Damandeep Singh Bhalla, Adv.

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Ms. Ruchi Kohli, Adv.  
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Mr. Ankur Talwar, Adv.  
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Mr. Mukesh Kumar Singh, Adv.  
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Ms. Shreya Jain, Adv.

**Applicant(s)/Respondent(s) -in-person**

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Mr. Jitender Choudhary, Adv.  
Mr. Rajesh Singh, AOR

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Mr. Prithu Garg, AOR

Mr. S Gurukrishna Kumar, Sr. Adv.  
Mr. Arjun Garg, AOR  
Mr. Aakash Nandolia, Adv.  
Ms. Sagun Srivastava, Adv.  
Ms. Kriti Gupta, Adv.

Mr. Ankur Sood, AOR

UPON hearing the counsel the Court made the following  
O R D E R

1. I.A. No.162875/2024 (Application for impleadment) is allowed.  
A perusal of the record would reveal that in pursuance of the orders passed by this Court on 12.05.2015, the Government of India, vide notification dated 03.06.2015 had constituted a Committee of

the Experts body as under :-

S. No.	Name of Organization	Experties
1	Dr. B.P. Das 717-Shahid Nagar, Bhubaneswar - 751007 (Odisha)	Civil Engineering Hydrology Expert
2	Shri Prem Barakoti Shankaracharya Trust Hospital Koteswar, Rudraprayag (Uttrakhand)	NGO
3	Chief Engineer. Central Electricity Authority, Sewa Bhawan, R.K. Puram, New Delhi - 66.	Technical Organization Expert
4	Chief Engineer, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi - 66.	Technical Organization Expert
5	Chief Secretary of his nominee Govt. of Uttrakhand, 4, Subhash Road, Dehradun (Uttrakhand)	Representative of State Govt.
6	Expert Representative in Blasting & Tunnelling, National Institute of Rock Mechanics Champion Reefs P O Kolar Gold Fields 563117 (Karnataka)	Blasting & Tunnelling Expert
7	Expert Representative in Biodiversity Indian Council of Forestry Research & Education (ICFRE), P.O. New Forest, Dehradun - 248 006 (Uttrakhand)	Biodiversity Expert
8	Prof. S.S. Rai, IISER , Dr. Homi Bhabha Road, Peshan, Pune - 411008 (Maharashtra)	Seismology Expert
9	Dr. Umesh Patnaik, Tata Institute of Social Sciences, Mumbai V.N. Purav Marg, Deonar, Mumbai- 400088.	Social Science Expert

10	Dr. A.V. Kulkarni Indian Institute of Science (IISc) Bengalore - 560 012 (Karnataka)	Glaciology Expert
11	Shri Bishwanath Sinha, Joint Secretary, MoEF&CC	Convenor
12	Shri B.B. Baman Director, NRCD, MoEF&CC	Co-Convenor

2. The terms of reference of the said Experts Body were as under:-

“(i) Cumulative Impact Assessment (CIA) and Carrying Capacity of river Ganga in general for development of HEPs in upper reaches of river Ganga and focussing upon likely impacts caused by HEP structures (projects other than six specific):-

- Hydro-geoglaciology with specific reference to glacial movement; seismological vulnerability assessment, cloud burst phenomenon, and micro climate change studies having impact on sediment transportation;
- ecological carrying capacity analysis of the disaster affected river valleys;
- socio-economic impact of HEPs;
- identification of inviolate areas with respect to HEP constructions;
- to indicate location and size of permissible projects and, if possible, the design of future HEPs;
- disaster mitigation plans.

(ii) For 6 specific HEPs, namely, Lata-Tapovan (171 MW),

Jhelum Tamak (106 MW), Kotlibhel 1-A (195 MW), Alaknanda (300 MW), Khironi Ganga (4 MW) & Bhyunder Ganga (24.3 MW), having certain clearances, the ToR shall be as follows:

- Longitudinal connectivity and month wise e-flow;
- mitigation of bio-diversity impact;
- safety measures required during tunnelling, muck disposal and transportation etc;
- to consider overall feasible design modifications to ensure the above;
- disaster mitigation plans.”

3. The Expert Body was also required to consider e-flow stipulation on the approved principle of constant unfettered flow of minimum 1000 cusecs in all the seasons. It was also to consider the suggestions given by the State of Uttarakhand in keeping with the orders passed by this Court.

4. Indisputably, the Committee, after due deliberations, has submitted its report to the Union of India in March, 2020. In the said report it has recommended grant of approval to 26 projects. It has also recommended grant of approval to two additional projects with certain modifications. The said report of the Committee has been partly accepted by the Union of India. The Union of India has decided to grant approval only to seven projects out of these 28 projects.

5. On a specific query, Mrs. Aishwarya Bhati, learned Additional Solicitor General of India, states that there was a conflict of opinions between the Ministry of Environment & Forest and Climate

Change (MoEF&CC), Ministry of Power (MoP) on one hand and the Ministry of Jal Shakti on the other hand. She submits that as a consensus, the Union of India decided to grant approval only to the seven projects, to which neither of the three Ministries nor the State of Jharkhand had opposition.

6. While exercising our jurisdiction of judicial review, we are not concerned with the final decision of an authority. The scope of judicial review is limited to examine the decision making process.

7. No doubt that as a final decision making authority, the Union of India is not bound by the report of the Expert Committee. However, when an experts body that too appointed under the orders of this Court consisting of experts drawn from various fields like Civil Engineering and Hydrology, Technical Organization, Blasting and Tunnelling, bio-diversity, seismology, social science, glaciology has submitted its report, the least that is expected of the decision making authority is the due consideration of the said report. At the cost of repetition, we may state that the Union of India is not bound to accept the recommendations of the Committee, however, due consideration as to why the said report cannot be accepted and as to why the recommendations of the experts body have to be substituted with another decision should reflect, at least in the files of the Union of India.

8. On a specific query, as to whether the Union of India is in a position to point out the same from any of the files, the learned Additional Solicitor General fairly states that she is not in a position to produce any of the files to show the same.

9. In that view of the matter, we find that it will be appropriate that a Committee consisted of the Cabinet Secretary, Union of India, Secretary of Ministry of Environment, Forest and Climate Change, Secretary of Ministry of Power, Secretary of the Ministry of Jal Shakti along with the Chief Secretary of the State of Uttarakhand, give due consideration to the report of the experts body and thereafter the Union of India should arrive at a final decision with regard to the recommendations of the said Committee.

10. We, therefore, direct that the Union of India shall constitute a Committee of:-

- i. Cabinet Secretary, Union of India.
- ii. Secretary of Ministry of Environment, Forest and Climate Change.
- iii. Secretary of Ministry of Power,
- iv. Secretary of the Ministry of Jal Shakti; and
- v. Chief Secretary of the State of Uttarakhand.

The Secretary, Ministry of Environment, Forest and Climate Change would be the convenor of the said Committee.

11. The said committee shall give due deliberations to the considerations, findings and recommendations of the said experts body and thereafter, the Union of India shall take a decision with regard to the recommendations of the said Committee.

12. The same shall be done within a period of three months from today.

13. Needless to state that prior to the matter being listed on the next date, the Union of India shall place on record the Minutes of

the said Committee and the final decision of the Union of India.

14. We further clarify that in the event the Union of India decides to fully agree, fully disagree, partly agree or partly disagree with the recommendations of the said Committee, the same shall reflect in its decision so that this Court can exercise its jurisdiction of judicial review in an effective manner.

15. Needless to state that the parties before this Court would be at liberty to make a representation to the aforesaid Committee either in support or in opposition of the report of Experts Body, as above. The said representations be addressed to the Secretary, Ministry of Environment, Forest and Climate Change, which shall be taken into consideration by the aforesaid committee.

16. List on 13.11.2024.

(NARENDRA PRASAD)  
DEPUTY REGISTRAR

(ANJU KAPOOR)  
COURT MASTER