



## Supreme Court on Sustainable Development

# HYDRO POWER PROJECTS IN UTTARAKHAND

A Conversation on Sustainable Development, Ecological  
Vulnerability and Peoples' Movements

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**CASE BRIEF**

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**T**he Supreme Court (“**SC**”) of India has a stellar track record on environmental protection. It is credited with taking important steps to clean Delhi’s air, protecting the Taj Mahal from industrial pollution, preserving forests and halting polluting activities in the Ganga. However, the life of environmental law exists beyond the courtroom and case books. While the recognition of important environmental principles as part of the law of the land is the first step towards environmental protection, we would be failing in our duty as environmental lawyers, activists and academics if we did not scrutinise the practical implementation of these principles. We must examine whether there is compliance with the Court’s orders and directions, and if not, identify and address the reasons for this.

With this objective, the Vidhi Centre for Legal Policy has been tracking the implementation of five landmark judgments of the SC of India and the National Green Tribunal (“**NGT**”) on environmental protection. These judgments span different geographical areas-the River Alaknanda in Uttarakhand, Patancheru and Bollaram

industrial areas in Telangana, Kaziranga landscape in Assam, and toxic air and landfills in Delhi. They also span different environmental issues-ecological threats posed by dams, industrial development, wildlife conservation, air pollution, and waste management to our natural environment. Through a combination of field research, judgment analysis and interviews with petitioners, lawyers and other stakeholders, Vidhi has produced a set of five case briefs that provide a comprehensive overview of each of these judgments and their implementation on the ground. These briefs provide the legal background for each case, present the key facts, summarise the major orders and directions of the SC and NGT, and discuss the degree of success with which these have been implemented.

In focus in this case brief, are the judgments pertaining to hydropower projects in the Himalayan state of Uttarakhand. The need for such projects in these ecologically fragile areas was critically questioned in the aftermath of the 2013 floods.

# Introduction

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A flash flood wreaked havoc in the state of Uttarakhand in the year 2013.<sup>1</sup> 5700 people died in these floods as per government records, while thousands are still missing.<sup>2</sup> <sup>3</sup>The pilgrimage site of Kedarnath was particularly affected during these floods, causing massive destruction of life and property. The scale of destruction caused by the floods, and the resultant loss of life has become a part of the public imagination through its integration in popular culture via cinema such as *Kedarnath* and several documentaries. Even as the loss of life was unprecedented in Kedarnath, the floods destroyed property and livelihoods in other parts of Uttarakhand as well, especially downstream of the Alaknanda and Bhagirathi river basins.

Concerns regarding large dams in Uttarakhand, with respect to the eco-sensitivity of the fragile Himalayan region, their social impact on displaced people, submergence of vast landscapes and their seismic implications, had already been previously raised. Such concerns, which had been raised by environmental activists, particularly the Tehri Bandh Virodhi Sangharsh Samiti with respect to the Tehri

Dam on the river Bhagirathi, again found salience with respect to the building of new dams in the Alaknanda-Bhagirathi basins. Post the 2013 floods in Uttarakhand, the citizens of Srinagar town, through the Srinagar Aapada Sangharsh Samiti filed for compensation against the Alaknanda Hydro Power Company Ltd. (“**AHPCL**”) in the NGT, claiming that AHPCL was responsible for the destruction of life and property in the Bhaktiana region of Srinagar due to illegal dumping of muck on the river bank. Several other litigations against hydroelectricity companies, in relation to the floods, also arose around the same time and thereafter.

In this case brief, we will be analysing the orders in these cases, along with the on-ground challenges in the implementation of the same. We will also attempt to trace the evolution of the Sustainable Development Principle (“**SDP**”), which is often utilized in dam-related cases. Prior to understanding the evolution of SDP in India, it would be pertinent to understand the history of dams in India, their place in the public imagination, and their relationship with our political economy.

# Brief History of Dams in India

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Dams are defined as physical structures built across a stream or a river to control or store water for various purposes which may include water supply, flood control, increasing river depth for navigation of barges/ships, or for recreational use.<sup>4</sup> Traditionally, dams were seen as a means to overcome the vagaries of rainfall to benefit agriculture and mitigate droughts and floods. In India, man-made structures for irrigation have existed since time immemorial. Tanks, reservoirs, canals for irrigation purposes often found mention in ancient Indian texts. In one of such ancient Hindu scriptures on economics- *Arthaśāstra*, various uses of reservoirs and canals were enumerated, including irrigation as well as the inundation of lands of enemies by destruction of dams, canals, embankments etc.<sup>567</sup> Dams in India till 1600 AD were small in size, and were mainly limited to

impounding water from seasonal streams and surface runoffs. Some of the reservoirs were also fed with canals from diversion weirs or anicuts constructed on perennial rivers.<sup>8</sup>

The history of large dams in India dates back to 12 April 1948 when construction of the first multipurpose dam- the Hirakud reservoir started on the river Mahanadi in Odisha. The Hirakud dam was commissioned in 1957 and was followed by the commissioning of several other large dams like Gandhi Sagar dam on the river Chambal (1960), Bhakra & Nangal dams on the river Sutlej (1963) and Nagarjuna Sagar dam on the river Krishna (1967). At the inauguration of the Bhakra Nangal dam, then Prime Minister of India Jawaharlal Nehru said that '*dams are temples of modern*



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Kallanai dam on River Cauvery (also known as '*The Grand Anicut*') is considered to be the first dam of India. Located in Thanjavur district in Tamil Nadu, the dam was initially built by King Karikalan of Chola Dynasty in the first century A.D. (Photo- *Nittavinoda/Wikimedia*)

*India*'. Eventually, more such dams were planned and became symbols of development and technological advancement. According to reports, nearly half of the large dams in India were built between 1970-90. Maharashtra has the maximum number of large dams in the country followed by Madhya Pradesh and Gujarat.<sup>9</sup> However, unlike the pre-independence period, dams in post-colonial India were touted as '*multi-purpose projects*' which could increase irrigation potential to previously barren lands thus ensuring food security, providing drinking water supply, meeting water requirements for industries and generating electricity. Large dams were seen as vehicles to boost the economy. This was also reflected in the first three five-year plans of India (1950-1965) in terms of significant investment by the government of India in large infrastructure projects to jumpstart the economy.<sup>10</sup> Thus, the willingness of government to fund such projects can be seen as one of the major precursors to the mushrooming of dams of various sizes in India.

In the 1970s, amidst an agrarian and economic crisis, various policy changes were introduced to facilitate rapid industrial growth which continued till the 1980s. While a number of dams were proposed and were under-construction in the country, they started facing opposition from people because of alleged violations of human rights and destruction of the environment.<sup>11</sup> Two such protests-*Tehri Bandh Virodhi Sangharsh Samiti* (started in the late 70s against the Tehri Dam on the river Bhagirathi) and *Narmada Bachao Andolan* (against dams on the river Narmada in the late 80s) emerged as major public movements against big dams in India. In their initial years, these movements are thought to have been successful in

pressurizing the government to some extent. For instance, the Tehri Dam was abandoned by the government of India in the mid-80s, which is largely seen as an effect of the large-scale protests by people and sharp criticism for its environmental impact.<sup>12</sup>

Since 1991, post the liberalization of the Indian economy to private and foreign investors, there has been a shift towards export-oriented industries, which also saw increased focus on power generation. Policies were introduced to facilitate hydropower as it was believed to be an inexpensive source of power generation. This was further supported by international money lending agencies like the World Bank which, seeing potential in India's Himalayan states for hydropower generation termed it as "*the most socially and environmentally benign [hydropower sites] in the world*".<sup>13</sup>

### **Environmental Impacts of Dams**

Though hydropower projects were encouraged as environmentally friendly alternatives by governments and international funding agencies, several concerns were raised regarding their environmental and social costs, which were not made part of the cost-benefit analysis while proposing such projects. The World Commission on Dams, which was funded by 53 international agencies including the World Bank, United Nations Environment Program, International Union for Conservation of Nature came out with a report in the year 2000 which acknowledged that large dams have many mostly negative impacts on ecosystems.<sup>14</sup>

The major environmental concern with hydropower projects is destruction (submergence) of large areas of terrestrial

forests and blocking of natural transport of sediment, both of which have a severe impact on biodiversity. There are also concerns like deterioration of water quality in rivers due to trapping of organic materials in stagnated water, which not only result in



Local residents protesting during public hearing held before grant of Environmental Clearance to Kotli Bhel Phase 1 on River Bhilganga in January 2007. (Photo- Matu Jansangathan)

algal bloom and emission of greenhouse gases, but also oxygen deprivation in the river, with significant impacts on its aquatic wildlife and health.

In Uttarakhand, the decline of migratory fishes like Snow Trout and Golden Mahseer are directly linked with the obstruction of river channels owing to dams.<sup>15 16</sup> During construction of dams, blasting and tunnelling activities undertaken at a massive scale also have immense geological impact on the fragile landscapes, causing increased risk of landslides, destruction of aquifers and natural springs. Dumping of huge quantities of muck generated from these activities on river banks are not only a serious threat to the landscape but have a tremendous role in altering natural river flow. The cumulative impact of several dams on a river channel also causes irreparable damage to the river health, leaving a

massive portion of the river dry and dead. See **Annexure-I** for a summary of environmental impacts of dams during pre-construction, construction and operation phase.

### Judiciary on Dams in India

Large dams and large hydroelectricity projects have been a subject of litigation in the SC and the High Courts for at least the last three decades. Petitioners in such cases raised several concerns and objections, ranging from the projects' lack of compliance with environmental regulations, to procedural issues in the grant of environmental and forest clearances, issues of displacement and rehabilitation of the affected people.

In the case of *Narmada Bachao Andolan v. Union of India*<sup>17</sup>, the petitioners had filed a writ petition for the stoppage of the construction of the Sardar Sarovar Project on the river Narmada in Gujarat. The main objections were regarding inadequate rehabilitation for displaced families and incomplete assessment of the environment and social impact of the dam.

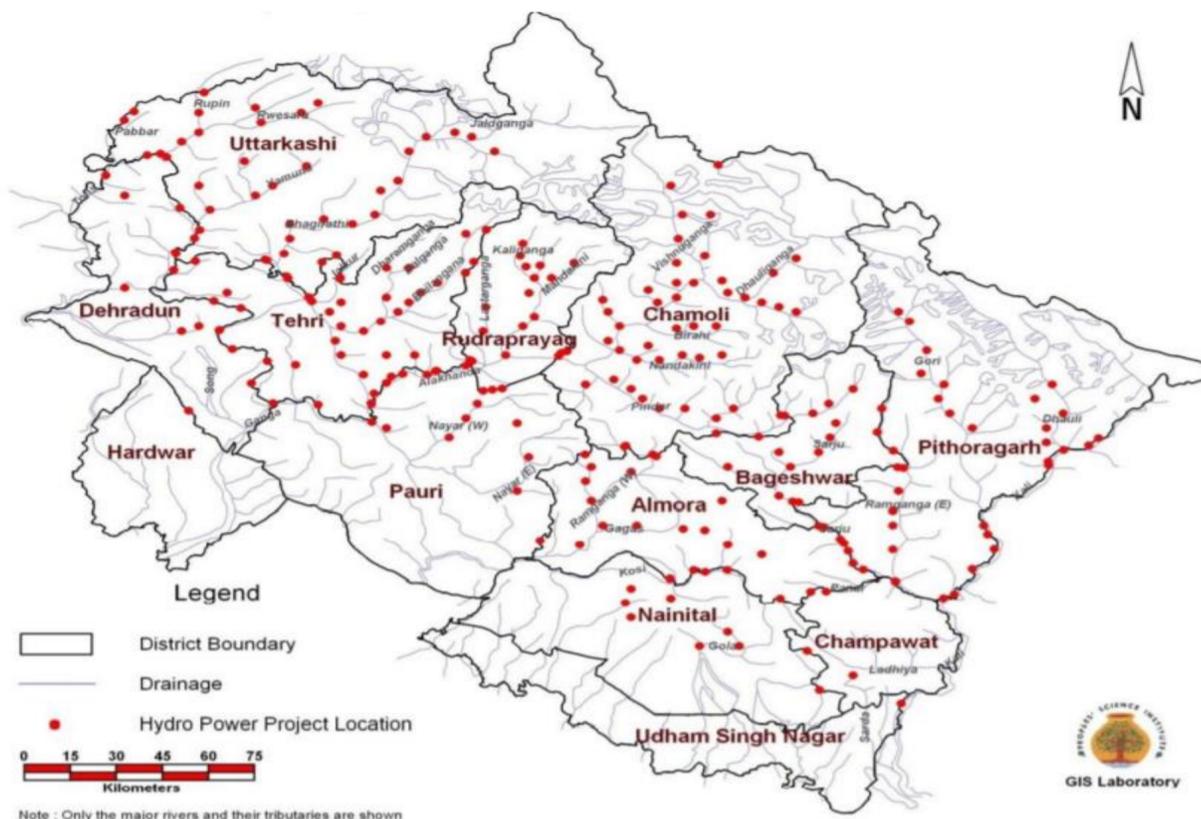
In *N.D. Jayal v. Union of India*<sup>18</sup>, the petitioners contended that the Tehri dam could endanger the seismic stability of the Himalayan region, and that further safety tests relating to the dam should be directed by the court, before further continuance of the project is allowed.

Citing SDP, the SC allowed for the continuance of the Sardar Sarovar project. A similar rationale was also relied on in the *N.D. Jayal* case allowing for the continuance of the projects in question.<sup>19</sup>

# Relevance of Dams in Uttarakhand and Judicial Interventions

Dams in Uttarakhand have been criticized on environmental grounds since the Tehri dam was first proposed on the River Ganga. Major concerns raised were the general eco-sensitivity of the fragile Himalayan region, social impact on the people due to displacement and submergence of vast landscapes and the ability of the dam to withstand seismic risks. Once abandoned, the project was revived by the government of India in 1987, and was subsequently challenged by environmentalists in the SC of India in 1992. The case is still pending at the apex court. Thereafter, several dams were proposed and approved in Uttarakhand despite serious resistance from the citizens and environmentalists-many of them leading to petitions in the NGT and SC of India.

The construction of hydropower dams in Uttarakhand continued amidst all such protests and litigations until the June 2013 Uttarakhand floods, which was stated to be one of the worst disasters in living memory leaving 169 people dead and more than 4000 people missing as per government reports.<sup>20</sup> Till March 2013, almost all river basins of Uttarakhand which include Alaknanda, Bhagirathi, Yamuna, Sharda and their sub-basins had at least 98 hydropower dams already operational, including 15 large (>25 MW) projects; 41 hydropower dams under-construction, including 6 large projects; and 197 proposed hydropower dams, which included 83 large projects.<sup>21</sup> An overview of the proposed hydropower projects in each river basin in Uttarakhand is provided in **Annexure-II**.



Map showing locations of different hydropower projects in Uttarakhand. (Courtesy: People's Science Institute, July 2015)



The under-construction Srinagar Hydro-Electric Power Project in the year 2012. (Photo- Matu Jansangathan)

Soon after the Uttarakhand disaster, the SC of India stayed construction of any new dams in the state of Uttarakhand while hearing an ongoing matter titled *Alaknanda Hydro Power v. Anuj Joshi*. This kind of adversarial order against dams was unprecedented in the history of environmental litigation in India, but it also opened up the debate of whether dams have increased the intensity of floods in the upper Ganga basin in Uttarakhand against the popular belief that dams help in controlling floods. This also affected the soft-cornered approach of the judiciary towards dams as the quintessence of sustainable development. Soon, applications and petitions were filed by people affected by Uttarakhand floods in various courts. In one such case, *Srinagar Bandh Aapada Sangharsh Samiti v. Alaknanda Hydropower Co. Ltd.*, the principal bench of the NGT on 19 August 2016 held the Srinagar dam absolutely liable for the

damage caused to people during the floods of June 2013 and directed the project proponent AHPCL to deposit Rs 9.26 Crores as compensation for environmental damage to the victims of the flood in Srinagar, Dist. Pauri Garhwal, details of which are discussed in the next sections.

#### **A. Alaknanda Hydropower Co. Ltd. v. Anuj Joshi**

This original case was related to the Environmental Clearance (“EC”) granted in 1985 to a concrete gravity dam project named Srinagar Hydro-Electric Power Project on the River Alaknanda planned by the then Uttar Pradesh State Electricity Board (“UPSEB”) in Tehri, Pauri Garhwal district in Uttarakhand. The Techno-Economic approval of the scheme was granted for 200 MW by the Central Electricity Authority (“CEA”) in 1982. The EC was granted for construction of a

concrete gravity dam, 63 metres in height, by the MoEF in 1985. UPSEB later requested for the installed capacity of the project to be increased from 200 MW to 330 MW and this was approved by MoEFC and CEA in 1987 followed by a sanction from the Planning Commission in 1988. Work was started by UPSEB, however due to paucity of funds, the work was stopped and the then Uttar Pradesh (UP) government entrusted the project to the Duncan North Hydro Power Co. Ltd. (“DNHPCL”) in 1994. The EC given to UPSEB was transferred to DNHPCL for developing the project with 330 MW capacity on 27th July 1999. After carrying out some work DNHPCL gave up the project which was then taken over by the current AHPCL which received the transfer of the EC from the DNHPCL in its favour on 27th March 2006.<sup>22</sup>

Mr. Anuj Joshi, along with a few others, challenged the EC granted to AHPCL for enhanced capacity of 330 MW before the High Court of Uttarakhand vide Writ Petition No. 137/2009. The matter was disposed of by the High Court on 19th April, 2011 with a direction to AHPCL to approach MoEF for a specific decision as to the clearance for increased capacity of generation and increased height of the dam. It also imposed a stay on construction of the dam beyond 63 meters of height and capacity of 200 MW until an EC is obtained from the MoEF. In response to that, MoEF issued a clarification that the EC transfer of 27 March 2006 was meant for the increased capacity of 330 MW.<sup>23</sup>

Unsatisfied with the decision of the MoEF, the petitioner Anuj Joshi along with Dr Bharat Jhunjhunwala filed another writ petition in the High Court of Uttarakhand, on the grounds that the EC granted to

AHPCL for increased capacity was in violation of the provisions of the Environment Impact Assessment (EIA) Notification, 2006 which stipulated the process of public hearing before granting an EC. This writ petition was disposed of with the direction that the MoEF must hold a public hearing for the project as envisaged in the EIA Notification.<sup>24</sup>

Aggrieved by this decision, AHPCL preferred an appeal before the SC of India. The court considered several questions regarding the need for a public hearing as provided under the EIA Notification, 2006; shifting of Dhari Devi Temple which would get submerged under the dam and ensuring dam safety and security of the people from dam-related disasters. The judgment of the case was reserved in May 2013 and the judgment was delivered on 13<sup>th</sup> August 2013.

### *The SC's referentium*

It was this appeal filed by AHPCL where SC, while disposing the original matter also expressed concern over the mushrooming of dams in Uttarakhand and its impact on Alaknanda and Bhagirathi river basins, especially after the Uttarakhand flood disaster which happened soon after the judgment was reserved. The SC acknowledged the cumulative impact of those project components like dams, tunnels, blasting, power-house, muck disposal, mining, deforestation etc. on the ecosystem on the river. The SC mainly relied on two reports commissioned by MoEF:

- i) ‘Assessment of Cumulative Impacts of Hydroelectric Projects on Aquatic and Terrestrial Biodiversity in Alaknanda and Bhagirathi Basins,

Uttarakhand' by Wildlife Institute of India (WII), 2012.

- ii) Report of the Inter-Ministerial Group (IMG) in Issues Relating to River Ganga, March 2013

There was one more report commissioned by the MOEF titled '*Assessment of Cumulative Impact of Hydropower Projects in Alaknanda and Bhagirathi Basins*' by Indian Institute of Technology (IIT)-Roorkee, 2011 which was considered by the court. However, the court refused to rely on the same and made an observation that the report was inadequate in terms of the cumulative impact of project components like construction of dams, tunnels, blasting, power-house, muck disposal, mining, deforestation etc. by the various hydropower projects in Alaknanda and Bhagirathi river basins. This report was also severely criticized by environmentalists questioning the credibility of the expert who led the study and who allegedly had a history of supporting hydropower in the past.<sup>25</sup>

The IMG report highlighted that the implementation of 69 proposed hydropower projects of approx. 9000 MW capacity will lead to 81% of River Bhagirathi and 65% of River Alaknanda getting affected. The report also stated that a large number of projects which have very small distances between them leaves little space for the river to regenerate and revive. The IMG report, however, was criticized by civil society groups as a biased report. A major allegation against the report was of favouring the hydro-power lobby to make 69 large hydropower projects in the Upper Ganga basin a fait accompli when only 17 of them were under operation and 14 were under construction.<sup>26</sup> The report was also

controversial, as none of the three non-government experts endorsed the IMG report. One expert member-Rajendra Singh gave a dissenting note, while one expert Veer Bhadra Mishra passed away while preparing the report. The third expert member-Sunita Narain submitted a note suggesting an alternate view. However, the court relied on the report to point out the impact of hydropower on the ecology of the river.

The report prepared by the WII appeared to be the most comprehensive, scientifically validated and acceptable by the court and independent experts. The report stated that out of a total of 39 proposed hydropower projects, 24 projects were found to be significantly impacting biodiversity. The report warned that if all proposed hydropower projects are implemented in the Alaknanda and Bhagirathi basin, 47% of total river stretches and 87% of the fish species will be affected.

Showing dissatisfaction with the lack of a proper disaster management plan and scientific study on the adverse effects of the existing projects, projects under construction and proposed projects on the environment and ecology of the region, the SC issued the following directions in its judgment dated 13 August 2013:

- i) *An expert body to be constituted to study the effect of hydroelectric projects on the environment.*
- ii) *A temporary halt on granting of clearances to large hydroelectric dams in Uttarakhand.*
- iii) *A specific study of the impact of 24 projects.*

- iv) *The Disaster Management Authority, Uttarakhand to submit a Report on whether they had any Disaster Management Plan in place in the State of Uttarakhand and how effective that plan was to combat the unprecedented tragedy in Uttarakhand.*

### *Suo Motu Cognizance by the SC*

It is evident from the proceedings of the case that the moratorium on new dams as passed in the judgment was not part of the original prayers or raised during regular hearings. The issue was taken up *suo motu* by the apex court after the judgment was reserved in May, 2013. According to litigant Dr Jhunjhunwala, also respondent in the appeal, an affidavit was filed by him in the court after the disastrous flood in Uttarakhand highlighting the role of dams in increasing the intensity of floods. Representations were also sent to the government by reputed environmental experts and organizations demanding that EC granted to hydropower projects in Uttarakhand should be suspended and no new clearance should be granted unless an independent inquiry investigates the role of Hydropower projects in magnifying the Uttarakhand disaster.<sup>27</sup> The role of dams in intensifying the 2013 floods in Uttarakhand was also covered well by the mainstream media during that time.<sup>28,29,30</sup> Thus, it can be assumed that the *suo motu* cognizance by the apex court of the harmful effect of the dams in Uttarakhand was a culmination of the ongoing case as well as the huge public pressure against hydropower projects in Uttarakhand which reached its peak after the disastrous floods of 2013. The above judgment was passed by a bench consisting of Justice K.S. Radhakrishnan and Justice Dipak Misra. Justice K.S. Radhakrishnan retired in May, 2014 and the case was

presided over by a bench of Justice Dipak Misra along with Justice Gopala Gowda for majority of the latter hearings. At the same time, there was a change in the ruling government at the Centre post Lok Sabha elections in May, 2014 and at the State after the Vidhan Sabha elections of Uttarakhand in February 2017- eventually making both the governments ruled by a single political party. These major changes in the political landscape as well as the change in the judicial bench made the case not only complicated, but also controversial during its course.

There was a clear visible difference in the approach of the two different benches of the apex court towards the case. While the bench chaired by Justice Radhakrishnan appeared to have followed an ecocentric approach, placing the sanctity of the ecosystem at the very centre of the dispute, the latter bench appears to be following an anthropocentric and econocentric approach. For instance, in an order dated 7th May 2014 passed by Justice Radhakrishnan and Justice Misra, the court was reluctant to allow MoEF's plea for constitution of another expert committee and asked for concrete reasons to do that while continuing stay on construction of the 24 projects. In the subsequent order dated 12 August, 2014, the court presided over by Justice Misra and Justice Gowda opined that it had only halted grant of clearance to the 24 projects mentioned in the WII list and not for other new dams.<sup>31</sup> In the following hearings, the bench further allowed 6 projects (one each of *THDC India Ltd.*, *NHPC Limited*, *NTPC Limited*, *GMR Group* and 2 of *Super Hydro Electric Power Ltd*) which received EC before the 2013 disaster to be considered by Ministry of Environment, Forest & Climate Change ("**MoEFCC**") and treated as a cluster.<sup>32,33</sup> Since that hearing,

the subsequent hearings were more of a record of proceedings revolving around submission of expert reports and affidavits by various parties involved, with no substantial directions from the court.

The orders passed by the SC made several observations which showed the apex court's difficulty in concluding the matter, and its inability to force the government to respond. The court also appears to have given considerable weight to the argument made by hydropower companies and the State of Uttarakhand that the state would face a financial crisis in the absence of dams.<sup>34</sup> A summary of court proceedings with substantial orders is provided in **Annexure-III**.

The role of the central government was also of paramount importance in this case, which formed committees after committees and requested extension of time to file their affidavits, thereby inordinately delaying the proceedings. Additionally, there were even contradictory opinions on the moratorium of dams by different Ministries of the Central Government during the pleadings, making it one of the most politically controversial cases related to environment protection. On 24<sup>th</sup> November, 2015, the Additional Solicitor General of India submitted to the court that the MoEFCC, Ministry of Water Resources (“**MoWR**”), River Development & Ganga Rejuvenation and Ministry of Power would jointly be arriving at a common policy framework, regarding the dam projects mentioned above. However, pending disagreement with MoWR, the MOEFCC filed an affidavit granting more EC on 20th January, 2016<sup>35</sup>. The affidavit filed by MoEFCC was also adopted by the Ministry of Power.<sup>36</sup> Consequently, the MoWR filed a counter-affidavit to the MOEFCC on 9th June 2016.

After this, the matter was listed for hearing in a Registrar's court on 28 February 2020 after a gap of nearly 4 years, at which hearing the State of Uttarakhand and MoEFCC requested time for filing their replies. While the disagreements between Ministries within the Centre and between State and Centre might be seen as one of the reasons that the proceedings were halted for a considerable number of years, the SC also did not press the matter. This also raised questions on whether the SC had lost interest in the matter or whether the government and environmentalists found it to their advantage to maintain the *status quo*.

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### ***WHO IS BENEFITTING FROM THE STATUS QUO?***

Environmentalists and various religious groups who advocated for restoration of pristine flow of the River Ganga had high expectations from the ruling political party, Bharatiya Janata Party which came into power with an agenda of ‘*Aviral Nirmal Ganga*’ which literally means ‘Uninterrupted and Clean River Ganga’. The MoWR was renamed as the Ministry of Water Resources, River Development and Ganga Rejuvenation. Uma Bharati, a Hindu seer and a self-claimed river activist, who was also appointed as Union Minister for the reformed MoWR not only wrote letters to the MoEF against allowing new dams<sup>37</sup>, but the MoWR under her leadership also filed a counter-affidavit to the submissions of MoEFCC and Ministry of Power in June 2016.<sup>38,39</sup> A similar stand was reiterated by Nitin Gadkari, the succeeding Union Minister for MoWR who was quoted by a leading newspaper saying ‘*government won't approve any new hydro-power project on the river Ganga*’. According to the news reports, the matter is now pending with the Prime Minister's office which is in-principle in



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The auditorium building of Sashastra Seem Bal in Srinagar on 26 June 2013 after destroyed in the floods (left) and the status on 07 November 2019 (right) (*Photo- Matu Jansangathan and Debadityo Sinha*)

favour of no new dams in the upper reaches of Ganga. However, environmentalists have termed this as a mere eyewash since nothing in writing has been notified by the government of India.<sup>40</sup>

Though it is crystal clear that hydropower projects in Uttarakhand are no longer feasible and have immensely harmful impacts, the governments find it difficult to take any extreme action fearing political sensitivity attached to it. Any policy decision on the river, whether in favour or against the dams is expected to meet vehement opposition because of the various religious, economic and political interests involved. According to Dr Bharat Jhunjhunwala, the original order, which imposed a moratorium on all dams in the entire state of Uttarakhand was diluted during the subsequent hearings and now is interpreted to be applicable to only 24 projects. However, he strongly believes that the SC's intervention in the matter has helped the government to change its casual approach and given them a good reason to stop the rampant approvals granted to dams in this region, especially the rivers Alaknanda and Bhagirathi. Activists have also pointed out that though no new dams are being cleared now on the Rivers Alaknanda and Bhagirathi, more dams are now proposed and revived in

other tributaries of the River Ganga in Uttarakhand.

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### **B. Srinagar Bandh Aapda Sangharsh Samiti v. Alaknanda Hydropower Co. Ltd**

The floods that hit Srinagar town in Pauri district in 2013 caused large scale loss of life and property to inhabitants. The residents laid the blame on AHPCL for the loss, because of the company dumping large quantities of muck generated from the construction of the said project just beyond the gates of the dams, without taking necessary or prescribed measures in disposing the muck. In the heavy rains that occurred on 16<sup>th</sup> and 17<sup>th</sup> June, 2013, the Srinagar dam got filled to the brim. When the dam gates had to be opened, the massive flow of water swept away the muck into the village and other areas downstream wreaking havoc in its wake. The area affected was filled with muck at least 8 feet high, causing huge loss to property.<sup>41</sup>



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Several homes in Bhaktiyana (Srinagar) are still submerged beneath the muck and silt since the 2013 floods. People lost their material, physical, and emotional possessions in the floods. Photograph taken during our field visit to Srinagar in November 2019. (*Photo- Debadityo Sinha*)

On 6<sup>th</sup> August, 2013, a meeting took place between the Sub-Divisional Magistrate (SDM) and the residents of Srinagar who were asked to do a self-assessment of the damage suffered and claim it from AHPCL.<sup>42</sup> Accordingly, a communication dated 13<sup>th</sup> August, 2013 was sent to the AHPCL, to which there was no response.<sup>43</sup> Following this, the residents sent a letter dated 18<sup>th</sup> August, 2013 to MoEFCC, Ministry of Engineering, MoWR, Chief Minister of Uttarakhand, Commissioner of Mandal Pauri, District Magistrate Tehri Garhwal to consider their demands for restoration of the area upon removal of the muck and making the place habitable and paying compensation to the tune of Rupees 9,26,42,795/- (9.26 Crores) to affected persons. They also requested the

implementation of preventive measures, such as the construction of a protection wall along the river prior to the completion of the Srinagar dam.

Since the above-mentioned entities were reluctant to assume responsibility, the residents of Srinagar, through an organisation titled Srinagar Bandh Aapda Sangharsh Samiti and Vimal Bhai, the convenor of Matu Jansangathan approached the NGT. The respondent, AHPCL sought to use the defence of 'Act of God' to escape liabilities in this instance. It also cited the SC's judgement dated 13<sup>th</sup> August, 2013 in *Alaknanda Hydropower Co. Ltd. v. Anuj Joshi* to display its compliance with norms related to muck management. The applicants requested the Tribunal to

invoke the principle of 'No Fault' under section 17(3) of NGT Act, 2010 to hold the respondent company liable for the payment of compensation for the damages incurred as a result of the floods caused even assuming the same to be an accident involving a sudden or unintended occurrence.<sup>44</sup>

To ascertain the role of muck in intensifying the flood disasters, the NGT relied mainly on the report titled 'Assessment of Environmental Degradation and Impact of Hydroelectric projects during the June 2013 Disaster in Uttarakhand' which was prepared by a SC appointed expert committee chaired by Dr Ravi Chopra in the *Alaknanda Hydropower Co. Ltd. v. Anuj Joshi* case. The report pointed to a chemical analysis of the flood sediment which indicated the presence of 23-47% phyllite (a type of rock) which was generated due to digging of tunnel and power house, and was dumped at ten locations along the river bank.<sup>45</sup>

The NGT also relied on three inspection reports prepared before the June 2013 floods. First of them was the report submitted by a committee chaired by Dr. Arun Kumar (IIT Roorkee) constituted by the SC in the Anuj Joshi case dated 3rd May, 2013. The committee had observed that out of 10 muck disposal sites, only 2 were permanent. There was a specific observation which said that the AHPCL was able to utilize only 44% of the muck till the date of inspection. This observation was used by the Tribunal in reaching the determination of negligence by the project proponent.

The second report was submitted by an expert committee constituted by the MoEF chaired by Mr. B.P. Das (Vice Chairman, Expert Appraisal Committee- Hydro power projects) which visited the site in August

2012 and noted that the restoration work of muck disposal sites was incomplete and was to be completed in six months.

The third report relied by the court was prepared by a court commissioner, Advocate A.D.N. Rao, who was appointed by the NGT on 5th December, 2012 in a separate matter heard earlier by the NGT. This report pointed out several deficiencies, including the absence of any retaining wall at several locations of muck disposal sites.

Citing the above reports, the NGT rejected the project proponent's defence of 'Act of God' and imposed the following directions:

- i) *AHPCL shall deposit an amount of Rs. 9,26,42,795/- by way of compensation to the victims of the June, 2013 floods in city of Srinagar with the Environmental Relief Fund Authority established under Section 7 (a) of Public Liability Insurance Act, 1991 within a period of 30 days from the date of this order.*
- ii) *Amount of Court fee payable i.e., 1% of the amount of compensation awarded shall be deducted from the said deposited amount and remitted to the Registrar, NGT as per Rule 12 of the NGT (Practice and Procedure) Rules, 2011.*
- iii) *State of Uttarakhand shall issue necessary directions to the District Magistrate of District Pauri to depute any senior SDM to call for the claims from the persons with necessary proof in support of their claims. The SDM so deputed shall verify the claims made in light of the proofs produced and remit the amount due to such person/s after deduction therefrom the proportionate 1% amount of Court fees payable. Balance amount remaining in the environment relief fund after*

*disbursement of the amount as aforesaid shall be utilised for taking such measures for restoration of the public property affected by the floods.*

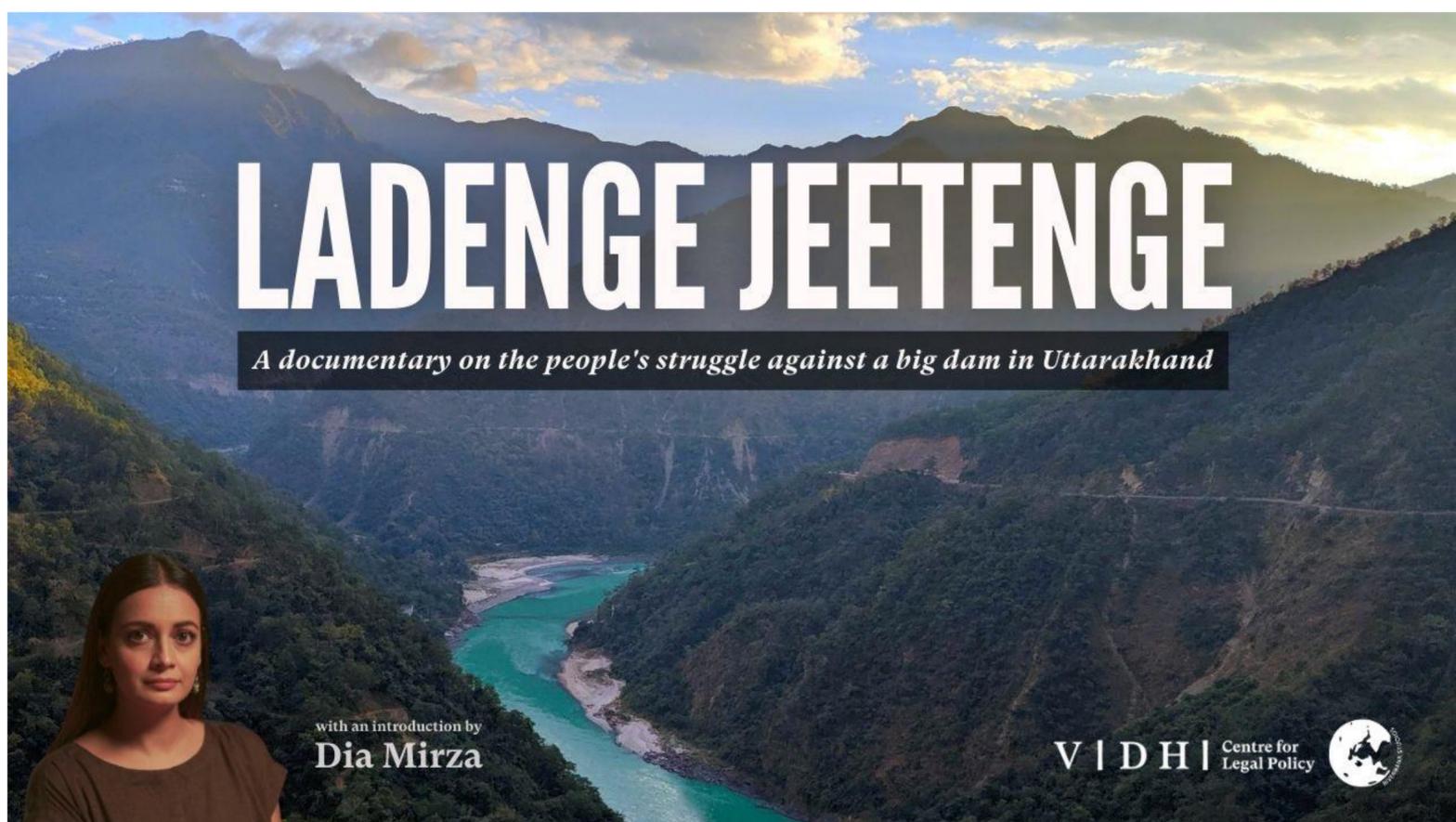
iv) *AHPCL shall pay an amount of Rs. 1 lakh each to the applicants by way of cost.*

This NGT order was challenged in the SC, where the requirement of payment of compensation by the company was stayed vide order dated 3<sup>rd</sup> October, 2016. However, the apex court allowed the claim process to continue.

### ***Implementation Status of this Case***

Many orders and judgments of the Courts require regional and local officers to

execute their implementation. The residents of Pauri faced a familiar challenge, in this regard, which they narrated to us. Initially, according to them, the deputed Sub-Divisional Magistrate (“SDM”) interpreted the NGT’s order as an order to mediate between the power company, and the petitioners. The resident-petitioners had to uphold the mantle of justice, by ensuring that the SDM correctly interprets the order, which was to collect claims from the affected residents. They also told us that the SDM was mistaken in good faith about the correct interpretation. However, this puts to question the capacities of public officials in executing judicial decisions, and what could be done to ameliorate them.



**Ladenge Jeetenge** is a film produced by Vidhi Centre for Legal Policy which tracks the implementation of the court orders related to Srinagar dam. It is the fourth of the five films produced in association with Riverbank Studios on the implementation of landmark environmental judgments. To watch the films, visit: [vidhilegalpolicy.in/research/courting-the-environment/](http://vidhilegalpolicy.in/research/courting-the-environment/)

# Principle of Sustainable Development and its usage in Dam Cases

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Since most SC decisions involving dam projects have deployed the SDP, it would be useful to understand its origins. The principle originated from the argument proposed by early political economists such as Thomas Maltas and David Ricardo who felt that the existing development model would cause an increase in population which would soon outrun Earth's carrying capacity.<sup>46</sup>

This was followed by a United Nations' General Assembly Resolution calling for balancing protection of fauna and flora with economic development. Subsequently, SDP was proposed in the Stockholm Declaration, 1972. Further, the Report of the World Commission on Environment and Development, also called the Brundtland Report named 'Our Common Future' defined Sustainable Development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". The principle became codified in the Rio Declaration, 1992, United Nations Framework Convention on Climate Change, 1992, United Nations Convention on Biological Diversity, 1992 and the United Nations Convention to Combat Desertification, 1994.<sup>47</sup> In 2000, the UN came out with a Millennium Declaration and corresponding Millennium Development Goals meant to be achieved by member states by 2015. Later in 2015, Millennium Development Goals evolved into Sustainable Development Goals achievable by member states by 2030.<sup>48</sup>

In the Indian context, sustainable planning for developmental projects was introduced in the 6th Five Year Plan (1980-1985). Future Five-Year Plans continued with the trend of promoting sustainability in India's future development goals. During this time, the SC also started adopting SDP in landmark judgements. It was in the Vellore judgement<sup>49</sup> that SDP was substantially introduced and where the Court concluded that attempts to balance between ecology and development is the need of the hour. This was followed by the Narmada case and N.D. Jayal case as discussed in the following paragraph.

In the *Narmada* case, the SC allowed the continuance of the Sardar Sarovar project, stating that "Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation", and that a large hydroelectric project is not known to have adverse impacts on the ecology. A similar rationale was also relied on in the *N.D. Jayal* and *Nabachandra Singh* cases, allowing for the continuance of the projects in question. In *N.D. Jayal*, the Court relied on *Narmada Bachao Andolan v. Union of India* as a precedent, and further elucidated on the SDP, pronouncing that "the adherence of sustainable development principle is a *sine qua non* for the maintenance of the symbiotic balance between the rights to environment and development."

Interestingly though, the courts' decisions in these cases weighed more towards "right to development" than the "right to environment", and any measures initiated towards restoration of environment or compensation or rehabilitation of displaced persons were considered adequate towards fulfilment of the right to environment.<sup>50</sup> This understanding has changed over time. Evolution of SDP in current times also shows us that environmental sustainability needs to be balanced with wider development goals on poverty alleviation, healthcare, education, social empowerment and child mortality.<sup>51</sup> To this end, the court's interpretation of this principle has also been kept open-ended.

# Conclusion

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This case brief reflects the approach of the SC in dealing with matters relating to the environmental impacts of the hydropower dams in Uttarakhand. While the Anuj Joshi matter concerned itself with stopping ecological damage by large-hydroelectric projects in the future, the petitioners in the Srinagar Bandh Aapda Case in the NGT petitioned in order to affix responsibility and resultantly be compensated for the material damage that negligence by a large dam company created in their lives.

Both these could be seen and read as very different approaches in environmental petitioning. In the *Anuj Joshi* matter, the court had to intervene in important policy decisions. It has to consider scientific evidence and responses of various ministries, to decide the extent to which hydro-electric project development should happen in Uttarakhand. Various aspects such as change in bench composition, different scientific views, and differences in opinions of various ministries affected the shape which the orders in this case undertook. With the SC forming, and in some cases, allowing, the formation of multiple committees to deliberate on the subject of ecological soundness of hydro-electric projects in Uttarakhand, the manner in which the court responds to scientific information put forth by various groups becomes worth observing. The fact that the SC has not had an effective hearing in this matter for the past 4 years is reflective of the inert reluctance of the judiciary in stepping in on significant issues of policy-making.

At the same time, in the *Srinagar Bandh Aapda* case, even after 7 years of the disastrous floods which hit Uttarakhand, the victims of environmental damage wait to receive compensation. Through studying the passage of the petition, one may notice the importance of capacity-building of public servants, as well as the role of civil society and scientific information in affecting the outcome and implementation of a judgment. The residents of Pauri, Srinagar remain hopeful, and have faith in the ability of the judiciary to dispense justice.

Reading in detail of these two cases gives the reader a perspective on two different varieties of environmental activism surrounding an environmental catastrophe. For residents of Pauri, the fight for compensation and its eventual award is what would encapsulate justice. The activists, who are respondents in *Alaknanda Hydropower Co. Ltd. vs Anuj Joshi*, who are now advocating against construction of new dams in the upper Alaknanda-Bhagirathi regions are petitioning to protect the ecosystems of Himalayas. Even as the aims may appear different, both these cases, and the scientific reports considered prove to be an effective cautionary note against mindless development in eco-sensitive regions.

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# Annexure-I

## Environment & Social Impact of Hydroelectric Projects

Pre-Project Construction	
Construction of approach roads	<ul style="list-style-type: none"> <li>▪ Land acquisition (displacement, loss of lands, homes, and livelihoods)</li> <li>▪ Deforestation (loss of tree cover, access to CPRs, soil erosion and landslides, loss of flora and fauna, changes in micro-climate)</li> <li>▪ Disposal of debris and earth (loss of trees, river water pollution)</li> </ul>
Construction of housing for staff and labour	<ul style="list-style-type: none"> <li>▪ Deforestation</li> <li>▪ Pollution due to sewage releases</li> </ul>
Quarrying	<ul style="list-style-type: none"> <li>▪ Noise pollution, slopes destabilization, disruption of underground seepages and damage to houses</li> </ul>
Project Construction	
Tunnelling	<ul style="list-style-type: none"> <li>▪ Air and noise pollution, destabilization of slopes, damage to houses, disturbing wildlife, drying of springs, disposal of muck into the river, psychological trauma to people and animals due to the repeated blasts</li> </ul>
Dam Construction	<ul style="list-style-type: none"> <li>▪ Disruption of river flows (biotic changes, disruption of natural functions, e.g., sediments disposal, land shaping, nutrient cycling), river pollution, loss of aesthetic, cultural, economic and recreational values.</li> </ul>
Project Operation	
	<ul style="list-style-type: none"> <li>▪ Slope destabilization (loss of tree cover, land, livelihoods, water sources and access to CPRs)</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Sedimentation (effect on river water quality)</li> <li>▪ Disruption of river flow</li> <li>▪ Secondary effects (release of greenhouse gases, warming of valleys, increased earthquake risks, floods, downstream urban and industrial development)</li> </ul>
Laying of Power Lines	<ul style="list-style-type: none"> <li>▪ Deforestation (loss of wild life habitat), soil erosion</li> </ul>

### Citation:

Ravi Chopra, 'Environmental Impacts of Hydro Power Projects in Uttarakhand: Governance & Audit Issues', International Centre for Environment and Sustainable Development (July 2015)  
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## Annexure-II

### Basin wise numbers of existing, under construction and proposed hydropower projects of all sizes in Uttarakhand till July 2013

Basin	Large Hydro projects (above 25 MW)		Small Hydro projects (1-25 MW)		Micro Hydro projects (below 1 MW)		Total Hydro projects	
	No. of projects	Capacity (MW)	No. of Projects	Capacity (MW)	No. of Projects	Capacity (MW)	No. of Projects	Capacity (MW)
Alaknanda	29	4823	43	375.6	2	0.65	74	5199.25
Bhagirathi	5	675	13	125.5	4	1.4	22	801.9
Ramganga	6	314	12	93.5	2	1	20	408.5
Sharda	26	11920	16	101.95	6	0.33	48	12022.28
Yamuna	17	2670	13	110.3	3	0.55	33	2780.85
<b>TOTAL</b>	<b>83</b>	<b>20402</b>	<b>97</b>	<b>806.85</b>	<b>17</b>	<b>3.93</b>	<b>197</b>	<b>21212.78</b>

#### Citation:

SANDRP, 'Uttarakhand: Existing, under Construction and Proposed Hydropower Projects: How Do They Add to the State's Disaster Potential?' (July 11, 2013) <https://sandrp.in/2013/07/10/uttarakhand-existing-under-construction-and-proposed-hydropower-projects-how-do-they-add-to-the-disaster-potential-in-uttarakhand/> accessed 30 December 2020

## Annexure-III

### Chronology of SC developments in Alaknanda Hydro Power v Anuj Joshi case on moratorium on dams in Uttarakhand

S. No.	Date	Important Developments	Coram of Judges
1.	13 August 2013	<p>SC relied on the report by the Wildlife Institute of India (“WII”) points out that 24 of the proposed 69 projects are extremely dangerous to the Himalayan ecosystem.</p> <p>The Court directed: -</p> <ol style="list-style-type: none"> <li>An expert body study on the effect of hydroelectric projects on the environment.</li> <li>Stay on granting of clearances to large hydroelectric dams in Uttarakhand until further orders.</li> <li>A specific study of the impact of 24 projects.</li> <li>The Disaster Management Authority, Uttarakhand to submit a Report on whether they had any Disaster Management Plan in place in the State of Uttarakhand and how effective that plan was for combating the unprecedented tragedy at Uttarakhand.</li> </ol>	Justice K. S. Radhakrishnan, Justice Dipak Misra
	07 February 2014	The Supreme Court showed dissatisfaction for non-compliance of the judgment dated 13 August 2013 which was supposed to be done within 3 months. MoEF was asked to file an affidavit explaining the steps already taken to comply with the August 2013 directions	Justice K. S. Radhakrishnan; Justice Vikramjit Sen
	07 May 2014	MoEF sought permission to constitute another committee since there are two conflicting reports on the issue. The court instead asked the MoEF to examine the reports and come with concrete reasons for constituting another committee. Construction of 24 projects stayed until further orders.	Justice K. S. Radhakrishnan; Justice Vikramjit Sen
2.	12 August 2014	The question of grant of clearance for 3 projects outside the purview of the 24 aforementioned projects was raised by a Energy Development Company Ltd. The Court opined that it had only	Justice Dipak Misra, Justice Gopala Gowda

		<p>halted grant of clearance to the 24 projects mentioned in the WII list.</p> <p>MOEF informs about a report by an expert body and an appraisal report will be filed in 4 weeks.</p>	
9th October 2014	<p>Judges expressed dissatisfaction that requisite reports were not filed. Only a partial report was handed over. The relevant portion quoted states that MoEFCC is willing to appraise the projects including the 24 projects by involving the IIT consortium to suggest suitable design modification and capacity alterations.</p> <p>Public sector companies THDC, NTPC and NHPC submit that they are willing to make changes to design after a preliminary meeting with the competent authorities.</p> <p>Dr. Bharat Jhunjhunwala, Matri Sadan and the State of Uttarakhand also requested to be present in the meeting. Court directed that the outcome of the preliminary meetings (on design modification) should be communicated to them after which another meeting shall be held on 29th October, 2014.</p> <p>Court also directed that the MoEF should file a detailed report on other projects suffering a stay from the court.</p>	Justice Dipak Misra, Justice R.F. Nariman	
5th November 2014	<p>MoEF requests extension of time to submit the report on the 3 public sector corporation's dams.</p> <p><i>Super Hydro Electric Power Limited and GMR Energy Limited</i> requested that their case should also be considered as they received EC by the year 2012. Court directed MoEF to consider them in the report if their assertion is correct and submit a status report for such projects which gave no clearance at all.</p> <p>The MOEFCC to file the report by 5th December 2014.</p>	Justice Dipak Misra, Justice Uday Umesh Lalit	
9th December 2014	<p>MoEFCC submits report. Respondents contest that the report is in violation of the court direction and that the report is not project specific.</p>	Same coram	

	16th December 2014	Court said that the cases of 6 projects (each of THDC, NHPC, NTPC, GMR and 2 of Super Hydro) will be treated as clusters. MoEFCC to further deliberate their EC, point out deficiencies and seek the project proponent's and the State of Uttarakhand's response.	Same coram
	13 April 2015	State of Uttarakhand submits that in absence of consideration of dams beyond the 24 projects, the state is facing financial crisis. Dr Jhunjhunwala submits that the principal judgment may have stayed 24 projects, yet considering the environmental impact, it has to encompass all the projects coming in the said basin.	Same coram
	05th May 2015	State of Uttarakhand and public sector corporation submits that the Court had stayed 24 projects but the central government is not granting any clearance even to the projects which are not covered within these 24.  The Central Government was directed to clarify its stand through an affidavit.	Same coram
	12th May 2015	Affidavit was filed by MoEFCC. It mentioned that the decision regarding the 6 projects can only be taken after the expert body submits its findings, which the government will try to expedite within 6 months.	Same coram
	12th October 2015	MoEFCC informs that the expert committee is in process of preparing the final report and will be filed by 31st October 2015. Court directs that the objections shall be filed by the respondents by 15th November 2015.	Same coram
	24th November 2015	The ASG informs the court that an inter-ministerial consultation of MOEFCC, MOWR and MoP will require 4 weeks' time to reach a common policy framework.	Same coram
	26 April 2016	Affidavit by MOEFCC filed. No affidavit by MoWR and MoP. Court asked both the Ministries to file their affidavit by 6th May 2020.	Same coram
	10th May 2016	MoP adopts the affidavit of MoEFCC. MoWR was given 3 weeks' time to file their affidavit.	Same coram

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