

**BEFORE THE CENTRAL EMPOWERED COMMITTEE
CONSTITUTED BY SUPREME COURT OF INDIA**

APPLICATION NO. OF 2007

IN

WRIT PETITION (C) NO. 202 OF 1995

IN THE MATTER OF:

AFFECTED CITIZENS OF TEESTA

THROUGH IT'S GENERAL SECRETARY

DAWA LEPCHA,

LINDONG VILLAGE

DZONGU,

NORTH SIKKIM.

APPLICANT

VERSUS

1. MINISTRY OF ENVIRONMENT AND FOREST,

THROUGH THE SECRETARY,

PARYAVARAN BHAWAN, CGO COMPLEX,

LODHI ROAD, DELHI

2. GOVERNMENT OF SIKKIM

THROUGH THE CHIEF SECRETARY,

STATE SECRETARIAT, GANGTOK,

SIKKIM

RESPONDENTS

To,

The Hon'ble Chairman and members of the Central Empowered Committee.

The above named Applicant most respectfully submits;

1. That the Applicant is an organization "Affected Citizens of Teesta" which was formed by the people likely to be affected by the implementation of Hydro Electric Power Projects in North Sikkim. The members of the Affected Citizens of Teesta are working with the people of the affected area and representing the local, dam affected people before various authorities with their grievances.
2. That the Applicant seeks the urgent attention of this Hon'ble Committee in the matter of the 280 MW Panan Hydroelectric Project in North Sikkim, being developed by Himagiri Hydro Energy Pvt. Ltd., as the Catchment Area Treatment (CAT) for the project involves carrying out works inside the Khangchendzonga National Park.
3. That the applicant would like to provide a brief about the project at this juncture. The project envisages the construction of a 56 m high dam across the river *Ramyaang Chhu* near Linigaza village in Mangan subdivision, North Sikkim District. The surface power station would be located on the right bank of the Tolungchu River. Total land required for this project is 56.835 hectare, out of which 23.629 ha is forestland. The total cost of the project is an estimated Rs. 137566/- Lakhs.

4. That for the purpose of the project an agreement was entered into between the Government of Sikkim (Respondent No. 2) and M/S Himagiri Hydro Energy Pvt. Ltd. on the 5th of December 2005.
5. That the concerned project has been accorded environmental clearance on the 2nd of January 2007 by the Ministry of Environment and Forest (MoEF), i.e. Respondent No. 1 on the basis the Environmental Management Plan submitted by the Himagiri Hydro Energy Pvt. Ltd. The clearance letter has been filed herewith and marked as **Annexure A 1**.
6. That the Applicant would like to submit that for the purpose of the Catchment Area Treatment (CAT) plan for the Panan Hydroelectric Project (280 MW) in North Sikkim to check siltation, the upstream catchment area has been identified, which includes the following seven Sub – watersheds.
 - (i) Rg 1 (Umram Chhu)
 - (ii) Rg 2 (Passaram Chhu)
 - (iii) Rg 3 (Tolung Chhu Left Bank)
 - (iv) Rg 4 (Tolung Chhu Right Bank)
 - (v) Rg 5 (Pokhram Chhu)
 - (vi) Rg 6 (Ringpi Chhu)
 - (vii) Rg 7 (Ringyong Chhu)

Reference to the CAT plan has been made in the map provided in the Environment Management Plan submitted by the Project Proponent as Figure 2.13. The copy of the Figure 2.13 of EMP is filed herewith and marked as **Annexure A2**.

7. That the total area for CAT plan is to be covered by the various schemes in the seven water sheds i.e. from Rg1 to Rg7 is 4005 ha out of which 131.64 ha would require treatment measures under very severe category and 3873.36 ha under severe erosion intensity category.

8. That the applicant would like to submit that immediate attention needs to this project as the proposed water sheds identified as Rg.1, Rg.2, Rg.3, Rg.4, Rg.7 and some parts of Rg.6, are the inner and richest parts of Kangchendzonga National Park or the Core Zone – 1 of the Kangchendzonga Biosphere Reserve. The map in Figure 11.1 of the EIA report showing the protected area and the watersheds identified for the catchment area treatment plan is attached herewith and marked as **Annexure A3**. The Applicant craves leave from this Hon'ble committee to produce the original map i.e. 1:150,000 State map of Sikkim showing the Core Zone and Buffer Zone of the Kangchendzonga National Park at the time of hearing or as the Committee require.

9. That Respondent NO.1 has permitted the implementation of the following work in the Khangchendzonga National Park and some parts of the Buffer Zones- III and IV of the Kangchendzonga Biosphere Reserve as part of CAT plan for the Panan Hydroelectric Project. Accordingly:-
 - a) 170 Nos of brushwood check dams.
 - b) DRSM check dams in 977 ha,
 - c) Crate wire check dams in 516 ha,
 - d) Bench Terracing in 1,348 ha,

- e) Afforestation creation in 835 ha,
- f) Assisted Natural regeneration in 259 ha,
- g) Non Timber Forest Produce Regeneration in 70ha.

The proposed items of construction will be carried out in 2442.5 ha of Core Zone- 1 (Khangchendzonga NP) and 1562.5 ha in the Buffer Zones – III and IV of the Khangchendzonga Biosphere Reserve.

10. That as per the Environment Management Plan at Table 2.7 titled Watershed-wise details of various activities, 170 numbers of Brushwood checkdams will be constructed in four years and according to the project report these check dams will be constructed in sub – watersheds, Rg.4, Rg.5, Rg.6 & Rg.7. As per the Table 2.9 in page 53 of the Environment Management Plan, for one brushwood check dam an estimate of 40 bundles of brushwood and 12 poles of 6ft long and 6 diameter are required.

For the whole project,

$170 \times 40 = 6800$ bundles of brushwood required.

$170 \times 12 = 2040$ poles required.

How and from where these materials will be procured has not been explained in the Environment Management Plan. The Table 2.9 in page 53 of the Environment Management Plan is filed herewith and marked and annexed as **Annexure A4**.

11. That DRSM check dams will be constructed in 977 ha.

a) 12 Nos. of check dams will be constructed in a unit area of 5ha.

b) Volume of stone required for one check dam,

= $8\text{m} \times 1.5\text{m} \times 2\text{m}$

$$= \underline{24 \text{ cu.m}}$$

c) Total No. of DRSM check dams to be constructed in 977 ha is

$$= 977 / 5 \times 12$$

$$= 2340 \text{ DRSM check dams.}$$

As per the Environment Management Plan, 2340 DRSM check dams will be constructed in four years.

d) Volume of stones required to construct 2340 DRSM check dams

$$= 2340 \times 24$$

$$= \underline{56,160 \text{ cu.m}}$$

In order to procure 56,160 cu.m of dressed stone, several stone quarries are required in the core zone 1 and the Buffer Zone – III & IV of the Kangchendzonga Biosphere Reserve.

12. That the Crate wire Check dams will be constructed in 516 ha.

a) In a unit area of 10 ha 16 Nos. of crate wire check dams will be constructed.

Total check dams in 516 ha;

$$= 516 / 10 \times 16$$

$$= 52 \text{ check dams.}$$

52 crate wire check dams will be constructed in 4 years.

b) Volume of stone required for 1 unit of crate wire check dam

$$= (8\text{m} \times 1.5\text{m} \times 2\text{m})$$

$$= \underline{24 \text{ cu.m}}$$

c) Volume of stone required for constructing 24 Nos. of check dams

$$= 52 \times 24$$

$$= 1,248 \text{ cu.m.}$$

There fore to construct 2340 DRSM check dams and 52 Cratewires check dams 57, 408 cu.m of stone is required. The Environment Management Plan has not explained the method of procuring the stone.

13. That the Bench Terracing work will be carried out in an area of 1,348 ha in a period of four years. The manner of executing Bench Terracing is given in the last paragraph of page 42 and 43 of EMP (Environmental Management Plan). According to the EMP report of the project authority 1,348 ha will be converted into leveled fields where manure and fertilizers can be applied easily. The question that arise here is as to how can the Respondent No.1 allow the project proponents to convert 1, 348 ha of the Kangchendzonga National Park and the buffer Zones- III & IV into leveled fields? The page 42 and 43 of the Environment Management Plan is attached herewith and marked as **Annexure A5**.

14. That the applicant would also like to point out that as mentioned in page 33 and 34 of the Environment Management Plan the afforestation scheme will be carried out in an area of 835 ha in Core Zone – 1 and some parts of the Buffer Zones – III & IV of the Kangchendzonga Biosphere Reserve. For this purpose about 20 to 30 m long contour trenches will be constructed and 1500 pits will be dug out to plant plants and 12, 52, 500 pits will be dug out in 835 ha and numerous contour trenches will be constructed. The work will be completed in an estimated period of 4 years. At this juncture the prominent question is as to where will the animals and birds seek shelter till this period?

15. That Assisted Natural Regeneration(ANR) scheme will be carried out in an area of 259 ha in the Khangchendzonga Biosphere Reserve. The area will be effectively closed by the barbed wire fencing to prevent animals. The obvious questions being as to where will the animals migrate?
16. That as per page 37 of the Environment Management Plan the N.T.F.P. Regeneration scheme will be carried out in an area of 70 ha of the Khangchendzonga Biosphere Reserve in Rg 4,5,6 and 7 out of which most of the areas are within the Khangchendzonga National Park.
17. That the applicant would like stress up on a few aspects of the Executive Summary of EIA made available at time of public hearing and also the Detailed Project Report submitted in relation to the Environment and Ecology that could prove detrimental in deciding this case. They are as follows:-
 - a) As per para 6.2 and 6.6 of the Executive summary and paragraph 13.11 of the Environment and Ecology section of the DPR clearly points out that the majority of the catchment area is located inside the Khangchendzonga National Park.
 - b) According to para 6.2 of the executive summary some faunal species which have been scheduled as threatened animals of India and some other species which have been considered globally threatened animals are existing in the Khangchendzonga National Park. The relevant portion of the Executive Summary is attached herewith and marked as **Annexure A6.**

Given the background it is very surprising to see that the Respondent No.1 has provided environmental clearance to the said project.

18. That the Sikkim Government vide notification No. 1/ KNP (WL)/ F/27 dated 19-05-1997 declared and constituted the Khangchendzonga (High altitude) National Park for the purpose of protecting, propagating or developing the Wild Life in Sikkim by reasons of its ecological, faunal, floral, geometrical and zoological significance. Accordingly the applicant would like to submit that the environmental clearance in question is in direct conflict with the provisions of the above mentioned notification. The Notice dated 19-05-1997 is attached herewith and marked as **Annexure A7**.
19. That as per the notification No. J- 22016/ 76/ 91 – BR dated 07-02-2000 of the MoEF (Respondent No.1) the Khangchendzonga Biosphere Reserve has come in existence with effect from 07- 02-2000. Paragraph 3(b) of the said notification reads that “the Core Zone of the Biosphere Reserve will be kept absolutely undisturbed”. Unfortunately the clearance letter issued by the Respondent No.1 dated 2nd January 2007 says the contrary. The copy of the letter dated 07-02-2000 is attached herewith and marked as **Annexure A8**.
20. That the applicant would like to submit that the Hon’ble Supreme Court in its order dated 14-02-2000 in T.N. Godavarman v. Union of India WP (C) 202 of 1995 held,

“ in the mean time, we restrain respondents No.2 to 32 from ordering the removal of dead, diseased, dying, or wind fallen trees, drift wood and grasses etc from any national park or game sanctuary or forest. If any order to

this effect has already been passed by any of the respondent states, the operation of the same shall stand immediately stayed”.

In this matter the proposed activities inside the protected area is in complete violation of the above mentioned order.

21. That the applicant submits that the Hon'ble Supreme Courts order dated 14- 02 –2000 has been further clarified in its order dated 25-11-2005 in the writ petition of T.N.Godavarman v. UOI. Accordingly the following recommendations were put forward:

a) Various activities such as removal of weeds, clearing and burning of vegetation for fire lines, maintenance of fair whether roads, habitat improvement, digging, temporary water holes, construction of anti poaching camps, chowkies, check posts, entry barriers, water towers, small civil works, research and monitoring activities, etc, are undertaken for protection and conservation of the protected areas, and therefore, permissible under the provisions of section 29 of the Wildlife Protection Act 1972. These activities are necessary for day-to-day management of the protected area beside it does not involve any type of commercial exploitation. The activities above mentioned are permissible under the various provisions of other environmental laws as well.

b) The order dated 14-02-2000 will not be applicable to the following activities provided that they;

(i) Are undertaken as per the management plan approved by the competent authority;

- (ii) Are consistent with the provisions of wildlife protection act;*
- (iii) Are consistent with the national wildlife plan;*
- (iv) Are in conformity with the guidelines issued for the management of the protected area from time to time.*
- (v) The construction and related activities are designed to merge with the natural surroundings and as far as possible use forest friendly materials.*

Accordingly the applicant submits that in the present case CAT plan works to be carried out on the basis of the Environment Management Plan is for the benefit of the hydroelectric project and hence is in direct contradiction with the orders of the Hon'ble Supreme Court as well as the various Acts as has been mentioned in the paragraphs above.

P R A Y E R

That in view of the above facts and circumstances it is respectfully submitted that this Hon'ble Committee may be pleased to:

- A. Pass an order thereby directing the respondents to immediately stay the clearance granted to the project against the violation of the Hon'ble Supreme Court.
- B. Pass an order thereby cancel the clearance granted against the violation of the order of the Hon'ble Supreme court.

C. To pass any such order as this Hon'ble Committee deems fit
and proper in the facts and circumstances of the case.

APPLICANT

THROUGH

DATE:

NEW DELHI

RITWICK DUTTA

RAHULCHOUDHARY

PRIYABRATA

SATAPATHY

ADVOCATE FOR THE APPLICANT

C- 106, SECTOR – 40, NOIDA