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09.08.2010	<p style="text-align: center;"><u>CWPIL No.24 of 2009</u></p> <p>Present: Mr. Shrawan Dogra, Amicus Curiae. Mr. Vivek Thakur, Addl. A.G. for the respondents-State. Mr. Sandeep Sharma, Asstt. Solicitor General of India for respondents No.4 & 6 Mr. Anil Chauhan, Advocate, for Pollution Control Board, respondent No.5.</p> <p>This Court had taken <i>suo motu</i> notice of a newspaper report which appeared in the Indian Express on 19.11.2009 in which it was reported that more than 10 lacs trees have been allowed to be felled for construction of Hydro Electric Power Projects in the State of Himachal Pradesh, since the early 1990's. This number does not include shrubs and bushes which also form part of the forest wealth of the State.</p> <p>2. On 23.12.2009, this Court passed a detailed order appointing a One Man Committee headed by Sh. Avay Shukla, Addl. Chief Secretary (Forests) to the Govt. of Himachal Pradesh, to look into the matter and to submit his report on various issues. The relevant portion of the order reads as follows:-</p> <p style="padding-left: 40px;">"A startling revelation has been made in the news item the manner in which ten lakhs green trees have been felled while undertaking construction of 150 hydel power projects in the State of Himachal Pradesh. The felling of trees has caused irreversible damage to the environment and ecology. The Governmental agencies have permitted diversion of 9000 hectares of forest land. The Forest Department has not initiated any legal action against the persons responsible for illicit felling except compounding the matters by charging nominal fee. The Forest Department should have taken action against the persons responsible for illicit felling under the relevant</p>

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provisions of the Indian Forest Act, 1927 to arrest large scale illicit felling of trees. The maximum number of projects is in inner "**Himalayas**". The environment and ecology of this area is fragile. This area is a catchment area for important rivers, which are lifeline of the State and adjoining States. In order to ensure that there is no large scale felling of trees and the damage caused to the environment is restored we constitute one man High Power Committee. Mr. Avay Shukla, Additional Chief Secretary (Forest) is appointed Member of this Committee. He shall furnish the report to the Court within a period of three months on the following issues:

- i) **Whether the hydel projects while undertaking the construction of projects have followed in letter and spirit the mandatory conditions of environmental clearance and forest clearance granted by the Central and State Agencies;**
- ii) **Whether precautionary/necessary steps have been taken by the companies to restore environment and ecology in the projects areas;**
- iii) **Whether it is advisable for the State Government to sanction construction of hydel projects at the height of more than 7000 feet above sea level. The alpine forests grow at the height of 7000 feet above sea level;**
- iv) **The Committee shall visit all the projects to assess the damage already caused and the essential steps required to restore the same.**

The expenditure to be incurred by the one Man High Power Committee shall be borne by the State Government. The Central and State Agencies, Public Undertakings and the Private Companies engaged in the construction of projects shall tender all the necessary assistance to the Committee. It shall be open to the Member to seek assistance of the experts drawn from various fields i.e. forestry, environment and ecology, mining and other allied subjects while undertaking this mammoth project."

3. The Committee has submitted its report. We have carefully gone through the same.

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4. A perusal of the report shows that the Committee had meetings with the various officers and experts from the Department of Forests, Environment and the Pollution Control Board. The Ministry of Environment and Forests was also associated. The Committee has found that the road construction and dumping sites are responsible for 90% of the damage which is caused by the Hydro Electric Power Projects. It also found that there is undue delay in implementation of the Catchment Area Treatment (CAT) plan and Compensatory Afforestation (CA) plan and, therefore, the restoration of the forest wealth which is sought to be achieved by the CAT and CA has not actually happened in most cases. One of the reasons given is that pursuant to the orders passed by the Apex Court, the funds are now being deposited in the Central Agency (CAMP), which in turn is not releasing the amount within time to the State. The One Man Committee identified 11 projects for detailed environmental audits. After detailed analysis of the 11 projects, the Committee has given its reasoned findings on the working of these projects and has given its recommendations.

5. On going through the report of the Committee, we find that some of the projects, by and large, are following all the guidelines and the damage caused to the environment is being minimized. In certain projects, however, a perusal of the report shows that either the detailed project reports which were filed purposely minimized the number of trees which were to be damaged and during the course of the projects the number of trees being damaged is more than 4 times the number given in the

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project report. Barring a few projects, invariably, the number of trees damaged/destroyed is more than the number given in the detailed project report. We are prima facie of the view that penalty for deviation should be much higher and the project proponents should be directed to suitably compensate for the loss by planting at least 10 times number of trees damaged and also paying for the maintenance of this new plantation for at least 5 years.

6. Various important issues have arisen in this petition. One major issue which arises is that most of the projects have not made adequate provisions for discharge of 15% water into natural bed of the rivers/streams. As per the directions of the Govt., 15% of the natural flow of water must be discharged in the natural bed of the rivers/streams, so that minimum sustenance can be provided to the aquatic flora and fauna and also for the sustenance and use of the people and wild life residing down stream of the projects. The Committee observed that in none of the projects there is a system by which this 15% water shall be automatically discharged in the river. This is not an issue which can be left for the project authorities to decide. In fact, while considering the detailed project reports, it was the duty of the authorities to have ensured that the project is constructed in such a manner that 15% water is automatically discharged into the natural river bed. If this is not done, it will cause great harm and loss to the environment of the area. The entire aquatic flora and fauna and forest life depends on the streams. If the projects are permitted to utilize all the water for

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the generation of electricity by diverting the water into tunnels the rivers/streams will become totally dry.

7. We may also make reference to certain very important observations made by the Committee. The Committee has done yeoman services not only to this Court but to the State. The entire Hydro policy of the State may have to be changed in view of the recommendations made by the Committee. The Committee was headed by one of the senior most officers of the State and he visited each and every area in the State before making this report.

8. The Court places on record its appreciation for the in-depth study done by Sh. Avay Shukla and the great effort he has put in to prepare this extremely fine report. The following observations of the Committee are apposite for development of a proper policy in this regard:-

"The Committee is strongly of the view that the Govt's present practice of indiscriminately allotting hydel projects all over the state without any consideration to their impact on the larger environment-which mere EIAs and EMPs cannot address- is short sighted, unplanned and could result in serious depletion of the state's natural resources in the long run. This is not, however, an issue of altitude alone, as vulnerable areas in dire need of protection exist at even lower altitudes. Protection has to be provided, for example, to dense forests (which, according to successive reports of the Forest Survey of India itself, have been declining in HP year after year), protected wild life areas, critical catchments of river systems, critical wildlife habitats outside Protected Areas, permanent glaciers, alpine pastures and so on by declaring them as eco-sensitive zones under the Environment Protection Act. Only this would ensure that

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these vulnerable but vital natural buffers remain inviolate. Currently no area in the state not even National Parks and Sanctuaries are exempt from hydel exploitation, but this has to change, and change fast given the speed at which the hydel tentacles are crawling up the valleys and side valleys of the state. This requires the setting up of an interdisciplinary body of experts in which the MOEF- which accords the final clearances should also be associated. However, pending that, there are some recommendations which this Committee would like to make which need to be adopted immediately so that the environment of the state can be somewhat protected in the interim."


9. The Committee also found that the State has not made any effort to study the impact of the construction in the major river basins of the state, namely, Sutlej, Beas and Ravi basins. These basins have been flooded with hydel projects on the basis of EIAs Environment Assessment reports and Environment Measurement Projects EMP's, for individual projects. The Committee observed as follows:

"Individual EIAs and EMPs for individual projects do not address the larger concerns for, where environmental impacts are concerned, the whole is larger than the sum of the parts."

10. Consequently, the Committee recommended as follows:

"The Committee therefore recommends that the state govt. should carry out basin-wide EIAs for all the river basins of the state, and till these are finalized no more hydel projects should be allotted or, where allotted, their clearances should be withheld."

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11. The Committee also found that on some rivers one project after the other is being set up without any linear distance being left between the tail race of one project and the intake of the next. The Committee found that on the river Ravi on a stretch of 70 kms. due to the setting up of various hydel projects, 67 kms. of the river would be diverted into tunnels and only 3 kms. of the river would flow in its original bed. The pertinent observations of the Committee in this regard are as follows:-

"In other words, in this entire 70 kms. stretch, only 3 kms. of the river shall flow in its original bed and 67 kms. shall disappear underground. This cannot be anything but an unmitigated disaster, for a river is not just a flowing mass of water-it is an entire eco-system, sustaining human, animal and rich aquatic life within it and along its banks, creating green belts of vegetation on both sides, re-charging underground aquifers, feeding surface streams, creating micro-climates along its path. And yet, the state or central governments have not carried out any EIAs of such a cascading pattern from independent experts before allowing this cascade of projects. A survey of the other river valleys would, we have no doubt, establish that precisely the same pattern is being repeated in them. The Committee therefore strongly recommends that some minimum riparian distance must be maintained between the tail race of one project and the intake of the next in order to enable the river to recharge itself and to continue to sustain life along its length. Until some expert body gives its advice this distance should be kept at 5 kms. Projects which have not yet received clearances and which do not conform to this requirement should be put on hold until such time that this entire issue is fully examined and a proper policy framed."

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12. We are not experts in the field and in fact the One Man Committee headed by Sh. Avay Shukla has also recommended that the experts in the field should be consulted and a proper policy be framed for development of hydel projects in such a manner that there is a sustained development on the one hand and the environment and ecology is protected on the other side.

13. Prima facie, we are of the opinion that the short time recommendations made by the Committee should be accepted. However, before accepting the same, we feel that notices must be issued to all the concerned parties. We also feel that it would be essential to join the Ministry of Environment and Forests, Govt. of India through the Secretary, Ministry of Environment and Forests as respondent No.4, the H.P. State Pollution Control Board as respondent No.5 and CAMPA as respondent No.6. Mr. Sandeep Sharma, learned Asstt. Solicitor General of India waives service of notice on behalf of respondents No.4 & 6 and Sh. Anil Chauhan, on behalf of respondent No.5. Keeping in view the importance of the matter, the in depth study done by Sh. Avay Shukla and the impact, this case may have on future projects, we direct the learned Advocate General and the Asstt. Solicitor General of India to ensure that a copy of this report is placed before the Hon'ble Chief Minister of the State of Himachal Pradesh and the Hon'ble Minister of State for Environment and Forests, Govt. of India before the responses to the same are filed. Some of the recommendations made by the Committee in respect of the individual projects mentioned in its report need to be urgently

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addressed. Therefore, the parties executing the projects, namely, Karcham Wangtoo, Parvati-II, Parvati-III, Alain Duhangan, UHL-III, Kol Dam, Sawra Kuddu, Sorang, Chamera-III, Tidong & Rampur are also added as respondents No. 7 to 17 to this petition.

14. Notices be issued to the newly added respondents returnable for 1.10.2010. Response to the report be filed within 8 weeks and the matter be listed on 1st October, 2010. In case any of the parties does not file response in the report of Sh. Avay Shukla before the said date, it shall be presumed that the party concerned has nothing to say in respect of the observations made therein. The response on behalf of the Union of India shall be filed on the personal affidavit of the Secretary, Ministry of Environment and Forests, Govt. of India and on behalf of the State of Himachal Pradesh on the personal affidavit of the Chief Secretary to the Govt. of Himachal Pradesh. We may mention that as far as Malana Project is concerned, the party executing the project is not being impleaded in this petition, since a separate petition in respect of that project is pending before this Court. A copy of this order as well as the report of the Committee shall be supplied to any party on an application made by it.

Copy *dasti*.

Sd/- Deepak Gupta, J.
Sd/- Sanjay Karol, J.

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August 09, 2010
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