IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 2083 of 2012 a/w CWP No. 9980 of 2012 & CWP 349 of 2013.
Judgment reserved on 17.5.2013.

Date of decision: 22.5.2013

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1. **CWP No. 2083 of 2012-I**

Mangi Ram & others. …Petitioners.

Versus

Union of India & others. …Respondents.

2. **CWP No. 9980 of 2012-H**

Vinod Kumar. ….Petitioner

Versus

Union of India & others. ….Respondents.

3. **CWP No. 349 of 2013-E**

GMR Bajoli-Holi Hydro Power Pvt. Ltd. …Petitioner.

Versus

State of Himachal Pradesh & others. …Respondents.

Coram:

The Hon'ble Mr. Justice A.M. Khanwilkar, Chief Justice

The Hon'ble Mr. Justice R.B.Misra, Judge

Whether approved for reporting or not? Yes.

For the petitioner(s): Mr. Digvijay Singh, Advocate in CWP Nos. 2083 and 9980 of 2012 and for respondents No. 5 to 11 in CWP No. 349 of 2013.

Mr. K.D. Shreedhar, Senior Advocate with Mr. Y.S. Thakur, Advocate, for the petitioner in CWP No. 349 of 2013 and for respondents No. 7 & 3 in CWP No. 2083 and 9980 of 2012.

Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Additional Advocate Generals and Mr. J.K. Verma, Deputy Advocate General, for respondent-State.

Mr. Sandeep Sharma, ASGI and Mr. Ravinder Thakur, CGSC, for Union of India.

Mr. J.S. Bhogal, Senior Advocate with Mr. Suneet Goel, Advocate, for respondent No. 6 in CWP No. 2083 of 2012.

Per Justice A.M.Khanwilkar, C.J.

We have heard counsel for the parties at length. We propose to dispose of all the three writ petitions together by this common judgment.

2. The first petition (CWP No. 2980 of 2012) has been filed by four petitioners in February, 2012, questioning the proposed Bajoli-Holi Hydroelectric Project at river Ravi in District Chamba. The reliefs claimed in this petition, purportedly filed as Public Interest Litigation, read thus:-

> "(A) The environment clearance dated 24.1.2011 issued by Respondent no.3 (Annexure- P14) in favour of the Respondent no.7 may be quashed and set aside.
>
> (B) The in-principle approval dated 08-07-2011 (Annexure P-13) issued by Respondent no.1 and 4 for diversion of 75.303 hectare forest land may be quashed and set aside.
>
> (C) The Respondents no. 1 and 3 may be directed not to issue further clearances without taking into consideration the Pre Feasibility Report prepared by the Respondent no. 6.

(D) The Respondent no.1 and 3 may be directed to implement the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 while issuing clearances if any to the project proponents in the state of Himachal Pradesh including to the Respondent No.7.

(E) The recommendations given and proceedings conducted by the Respondent no. 5 may also be quashed and Respondent no. 5 may be directed to associate Respondent no. 6 in future.

(F) Any other writ, order or direction which this Hon'ble Court may deem fit in the facts and circumstances of the case may also be passed in favour of the petitioner."

3. The second petition (CWP No. 9980 of 2012) has been filed by sole petitioner in November, 2012, another resident of Tehsil Holi, District Chamba, questioning the continuance of selfsame proposed project after the grant of stage II approval thereto. The reliefs claimed in the second petition reads thus:-

"The final approval of forest land dated 20.10.2012 (Annexure P-12) issued by Respondent no. 1 granting diversion of 75.303 hectare forest land may be quashed and set aside.

Any other writ, order or direction which this Hon'ble Court may deem fit in the facts and circumstances of the case may also be passed in favour of the petitioner."

4. As both these petitions, purportedly filed as Public Interest Litigation, are in respect of same project, though filed on different dates, seek overlapping direction against the State Authorities to discontinue the project being opposed to the sentiments of the locals in the area, and including the possibility of

violations of environmental laws. As a result, both these petitions were heard together.

5. The third petition (CWP No. 349 of 2013) has been filed by the project proponent-Company about the obstructionist attitude of some of the villagers for continuance of the proposed project and to the construction activity undertaken in that regard, inspite of obtaining clearance from the concerned Authorities. On this assertion, the project proponent has prayed for following reliefs:-

> "(i) That the respondents No. 1 to 4 may be directed to create congenial atmosphere so as to enable the petitioner to undertake the tasks pertaining to the execution of Bajoli-Holi Hydroelectric Project.
>
> (ii) That the respondents 1 to 4 may further be directed to ensure that the respondents 5 to 11 themselves or through their agents, do not stop the construction activities of Bajoli-Holi Hydroelectric Project.
>
> (iii) That the respondents 6 to 11 may be restrained from interfering in the construction activities of Bajoli-Holi Hydroelectric Project themselves or through their agents by blocking the road leading to the project site or in any other way whatsoever.
>
> (iv) Any other order deemed just and proper may also be passed in the facts and circumstances stated hereinabove in favour of the petitioner."

6. Even this petition was ordered to be heard alongwith other two petitions filed by the villagers, opposing the continuance of proposed Hydel Project on river Ravi, District Chamba.

7. These matters were taken up for admission on 13.5.2013. Counsel appearing for the writ petitioners in the first two matters addressed the Court for quite some time, for almost an hour but was unable to make out any specific issue warranting interference by this Court in exercise of writ jurisdiction albeit, as Public Interest Litigation. Rather it was noticed that he was making incoherent submissions. Therefore, we adjourned the hearing of these matters to give him some time to prepare the matter properly, so that he can articulate the issues which the said petitioners, wanted to pursue before this Court. Accordingly, all three matters were ordered to be listed on 17.5.2013 for further argument. On that day, at the outset, the counsel for the said petitioners submitted that he would confine the challenge to the proposed project only on three counts mentioned hereunder:

i) The proposed project was to be set up on the right bank of river Ravi but at the instance of the project proponent, it has been unilaterally shifted to the left bank, disregarding the fact that the damage and loss to be caused to the land coming under the project on the left bank and in particular, the forest area would be far greater. Moreover, the decision to shift the project on the left bank has been taken without consulting the Expert Body.

ii) The project proponent has been permitted to continue with the proposal to set up the project without discharging the obligation, as per condition No.5, imposed by the Ministry of Environment & Forest (FC Division)

Government of India (MoEF for short) vide letter dated 8.7.2011 of assessment of impact on landscape in general and wildlife ecological aspects in specific before the final sanction is accorded.

iii) The final approval has been granted to the project proponent by the concerned Authority, without complying with condition No. 16, imposed by the MoEF vide selfsame communication dated 8.7.2011, of obtaining clearance under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and including of submitting certificate towards the settlement of all claims and rights over the proposed forest land under the Act as per advisory issued by the MoEF on 3.8.2009.

8. These are the only three points, finally urged during the argument by the counsel for the petitioners in first two writ petitions. The State Authorities, MoEF (Government of India), Himachal Pradesh Electricity Board (HPSEB) and the project proponent have opposed the said writ petitions, firstly on the ground that the same suffer from laches and unexplained delay. Secondly, the petitioner in the first petition is the Pradhan of the Gram Panchayat, who now wants to oppose the project notwithstanding the 'No Objection Certificate' to the proposed project is granted by that Gram Panchayat in the past. Moreover, the said petitioner had attended the public hearing, but did not raise the three points, now urged before this Court. During the public hearing, the objection taken by

the said petitioner was duly considered by the Chairman of the meeting and the solution offered was accepted by all the persons present in the meeting. The petitions as filed by the villagers, are not only mischievous but also motivated. On merits, the counsel appearing for the respondents have relied on contemporaneous record to substantiate their argument to counter each of the points urged by the petitioners in the first two petitions being devoid of merit and untenable. Both sides, in support of their respective contentions have relied upon the judgments of the Supreme Court and the unreported judgment of the Division Bench of this Court. We shall advert to those decisions a little later.

9. As regards the first contention pursued by the petitioners in the first two petitions, we have no hesitation in taking the view that the said petitioners have been ill-advised to rely on the communications and documents which do not reflect the authoritative opinion of the Department and the Expert Body. The first contention pertains to shifting of the project to the left bank from the original proposal of establishing the same on the right bank. The argument proceeds that the villagers are opposed to the shifting of the project on the left bank, as it would cause greater damage to the forest area, as large number of trees and habitation will be swept because of the project. Whereas, if the project was to be established on the right bank, it would result in very minimal loss and damage to the trees and the habitation. Moreover, the Gram Sabha of Naya Gram as also Gram Sabha of Holi have gone on record that they were opposed to establishing the project on the left bank. Even the

officials were of the opinion that shifting the project on the left bank would cause more damage and loss and shall not be feasible, as is evident from the communications on record. It is further argued that the decision of shifting the project was unilateral and at the behest of the project proponent to favour the project proponent. However, when called upon to point out the averments in the writ petitions in support of this argument, the counsel for the said petitioners gave up that argument. He, however, submitted that there was material on record which is indicative of the fact that the land on the right side of the bank was barren and was more suited for the proposed project than the land on the left side of the bank, which is a thick forest.

10. The respondents have not only refuted these contentions but have pointed out from the record that the argument under consideration was founded on either misinformation or more particularly distorted presentation of the record. On the other hand, the decision to shift the project on the left bank from the right bank was taken after observing due diligence and because the Expert Body found it more appropriate and feasible than on the right bank. For that, reliance has been placed on the official record as to how the proposal for shifting was necessitated and was finally taken at the highest level and moreso, having received approval even of the Ministry of Environment and Forest. The learned Advocate General has handed over comparative chart prepared by the officials about the tree enumeration on the left bank vis-à-vis on the right bank and which is indicative of how the establishment of the project on the left bank was more beneficial. The said chart reads thus:-

Comparission of Tree Enumiration left bank Vs Right Bank					
LEFT BANK TREE ENUMIRATION			RIGHT BANK TREE ENUMIRATION		
Sr. No.	Component	No of Trees	Sr. No.	Component	No of trees.
1	Bajol (Reservioer Area)	540	1	Bajol (Rservioer Area)	540
2.	Dam Site Faculty Area & Dumping Yard	841	2	Dam Site Facility Area & Dumping Yard	841
3.	Dam Site & Intake	171	3	Dam Site & Intake	171
4.	Naya Gram Facility Area	35	4	Naya Gram Facility Area	35
5	Dam Site Alternate Dumping Yard	51	5	Dam Site Alternate Dumping Yard	51
6	Adit-2 and road (300m) & Dumping Yard	178	6	Adit-2 & and road (2500m) Dumping yard	400
7	Adit-3 & road	23	7	Adit-3 & road (4100m)	410
8	Quarry Area	33	8	Quarry Area	33
9	Quarry Area Road	23	9	Quarry Area Road	23
10	Contractor Colony	797	10	Contractor Colony	797
11	Adit-4 & road	55	11	Adit-4 & road (6000m) and dumping yard	1000
12	Road to Cresher Plant & Dumping Yard	64	12	Road (1850m) to Cresher Plant & Dumping Yard	64
13	Adit-5, dumping yard & road	529	13	Adit-5, dumping yard & road	150
14	Dumping yard & work shop Area	100	14	Dumping Yard & Work Shop Area	100
15	Power house Dumping Yard	367	15	Power house Dumping Yard	367
16	Power House Area	95	16	Power House Area	15
17	Adit-6, Surge Shaft & Surge Shaft Road	1013	17	Surge Shaft & Surge Shaft Road	400
	Total tree	**4915**			**5397**

LAND REQUIREMENT COMPARISION LEFT BANK SCHEME AND RIGHT BANK RIGHT BANK SCHEME

TYPE OF LAND	LEFT BANK	RIGHT BANK
FOREST (OPEN)	60.318	64.034
FOREST (UNDER GROUN)	14.986	13.065
GOVT	0.898	0

PRIVATE	9.563	13.267
TOTAL	**85.67**	90.366

11. Notably, the project proponent on affidavit, filed to oppose these writ petitions, dated 27.6.2012, has graphically described not only about the feasibility of the project on the left bank but also about the imperativeness of such shifting. It is justly pointed out that the plea raised by the petitioners is in the backdrop of pre-feasibility report, prepared by HPSEB, which was not decisive. It was prepared only with a view to initiate the proposal. Indisputably, that report was prepared without any field visit. However, after the inprinciple decision is taken by the State Government and recourse to international bidding on onerous terms such as deposit of substantial amount as upfront payment; and upon execution of pre-implementation agreement in favour of the successful bidder, and becoming the project proponent and authorized to carry out necessary survey and investigations as per the Hydro Power Policy, 2006, submitted proposal, that became the base document for further consideration. Reliance has been placed on Clause (viii) of Chapter-V of the said policy, which applies to project above 5 MW capacity, as in the present case. The same reads thus:-

> "(viii) The scope of the work will be from concept to commissioning and operation thereafter, including, inter-alia, survey and investigations, identification of transmission system for the evacuation of power and preparation/review of DPR. The transmission system for evacuation of power shall form part of the Project and shall be included in the DPR in consultation with HPSEB, keeping in view the integrated system requirements."

12. It is stated that keeping in view the said policy, the project proponent after carrying out survey and investigations, the details whereof are delineated in the said affidavit, which reads thus:

> "The details of the investigations carried out by the Company for DPR approval are as under:-
>
> (i) 1262.0 m. of Geological Core drilling for 32 numbers of Drill Holes.
>
> (ii) 260 m of Exploratory Drifting work at 5 locations.
>
> (iii) Additionally 2500 hectares of the topographical survey work along with 150 nos. of river cross section.
>
> (iv) Extensive Laboratory investigations are also carried out to ascertain the actual site conditions.
>
> (v) Hydro metrological data from Indian Metrological Department, GoI and other Government Departments are also collected for further optimization studies.
>
> (vi) Market survey for getting the base date for the basic material rate for major construction material requirements like Cement and Steel is also done.
>
> (vii) Transport logistic survey for checking the feasibility of the road conditions are limiting dimension of the road was carried out.
>
> (viii) Construction Material Survey for suitability of the in situ materials are also carried out.
>
> (ix) Additional date collection work for three seasons required for assessment under environmental consideration for flora and fauna in the project are were carried out.
>
> (x) Socio Economic Survey of the Project area was also carried out for environmental consideration."

13. These investigations were carried out in time span of one and half year from February, 2008 (granting of POR by MoEF to November, 2009, submission of DPR) and on the basis of the information collated during such investigations, the project proponent submitted DPR to the appropriate Authorities. That (DPR)

addresses all aspects including the technical aspects about the feasibility and environmental issues.

14. In the affidavit, it is then stated that due to shifting of the project on the left bank, there would be hardly any rehabilitation. For, only two families having house/shop are likely to be displaced. The said two families are already having a house in upper terrace and in any case, suitable compensation will be paid, as per Government of Himachal Pradesh (GoHP) and Government of India (GoI) Rehabilitation and Settlement Policy. As against that, the setting up of the project on the right bank would result in affectation of entire villages having about 40 families and their displacement. Similarly, the adverse impact to the environment would be far severe if the project were to be set up on the right bank. It is also stated that the petitioners have been ill-advised to rely on the reports of respondent No.6 as that respondent was not competent Authority for approval of the project being valued more than Rs. 500 crores cost, in terms of Government notification and the appropriate Authority for the subject project is CEA.

15. In substance, it is stated on affidavit that all necessary care and caution has been taken by the project proponent and only after being fully convinced that shifting of the project on the left bank was imperative, such proposal was submitted to the appropriate Authority and which has been approved right upto MoEF, vide communication dated 2.12.2008. That permission was followed by the decision of the Government of Himachal Pradesh, conveyed by the Principal Secretary (Powers) vide letter dated 9.4.2009. Moreover, the

Chief Engineer Energy, Directorate of Energy also confirmed the location of the project on the left bank vide letter dated 13.10.2010. The respondents have also relied on the communication issued under the signature of the Deputy Commissioner, Chamba, District dated 26.2.2011, sent to the Principal Secretary (Powers) that no objection was raised by the locals regarding the shifting of the project component from right bank to left bank of river Ravi. Lastly, the Government of Himachal Pradesh confirmed and conveyed to the Chairman and Ex-officio Secretary of the Government of India, Central Electricity Authority (CEA) vide letter dated 7.3.2011 that respondent No.7/project proponent-company has been allowed to shift the project component from right bank to left bank of the river Ravi. The proposal was accompanied by a "detailed note of justification for exploring water conductor system and power house complex on left bank", sent alongwith letter of the project proponent dated 20.10.2008 to the Principal Secretary (Powers) to the Government of Himachal Pradesh. Similar communication was sent to the Additional Director MoEF, New Delhi. It is further stated that the HPSEB through Chief Engineer (PSP) while referring to their meeting with the project proponent through their consultants recommended that request of the project proponent for shifting the project components from right bank to left bank may be considered and approved, vide letter dated 23.3.2009. It is stated that in any case, respondent No.6 HPSEB has a limited role in processing the proposal in question as it is above 100 MW capacity and involving

cost of rupees more than 500 crores, by virtue of notification dated 18.4.2006.

16. Notably, the petitioners have not controverted the assertions so made by the respondents on affidavit. Rather, each fact is supported by contemporaneous record. The petitioners, however, for pursuing the ground under consideration, placed reliance on the communication dated 11.2.2008, issued under the signature of Additional Director MoEF, Government of India, addressed to the Associate Vice President of the project proponent, which refers to the fact that on setting up the proposed project on the left bank no forest land and habitation will be sub-merged and that clearance was granted to the proposed project on that understanding. In the first place, much water had flown after issuance of this communication by the MoEF, Government of India. Moreover, the observation in this communication was not after doing comparative study of pros and cons, as at that time the project was conceived to be on the right bank only. As aforesaid, the project proponent undertook survey and investigations from February, 2008 to November, 2009 and submitted DPR. On the basis of the said DPR approval/permission from the competent Authorities for setting up the proposed project on the left bank was sought, which request was supported by justification statement. That received favourable response from the competent Authorities and including the Ministry of Environment and Forest, Government of India. Suffice it to observe that the position recorded in the communication dated 11.2.2008, became redundant because of the subsequent permission/approval granted by the competent

Authorities and including the Ministry of Environment, Government of India.

17. Indeed, the said petitioners had relied on the subsequent communication of Chief Engineer (I&P) HPSEB dated 22.2.2011, which has concluded that the right bank of the river Ravi was best suited for construction of the project, taking into consideration all the aspects necessitated for economical and social consideration. He further concluded that there seems that no aspects substantiated to shift the project to left bank as proposed by the company by quoting various self vested reasons/grounds. This communication is addressed to the Deputy Commissioner, District Chamba. We are afraid, this communication cannot be the basis to disregard the formal approvals/permissions given by the appropriate Authorities at the highest level and including the Ministry of Environment and Forest, Government of India. In fact, the respondents have rightly contended that HPSEB has had no concern with the subject project which is for above 100 MW capacity and involving cost of more than Rs. 500 crores, by virtue of notification dated 18.4.2006, issued under the Electricity Act, 2003. It is only, the CEA, whose opinion could have influenced the final approval/ permission by the competent Authority.

18. The attempt of the petitioners, we find, is to place reliance on materials which have no bearing whatsoever on the final permission/approval granted by the competent Authority. Instead, reliance is placed on contents of inter departmental correspondence at different levels. Suffice it to observe that we are more than

satisfied that requisite procedure has been followed and due diligence has been taken by all concerned before granting approval/permission for shifting of the project on the left bank, instead of original proposal to set-up the same on the right bank of the River. The justification note and the proposal submitted by the project proponent refers to all the relative aspects and including the necessity of setting-up the project on the left bank. The Competent Authorities having granted approval/permission after considering those matters, it is not open for this Court to take another view. Assuming that two opinions are possible, it is not open to this Court to act upon the observation of some authority other than the competent Authority and answer the matter in issue. The Apex Court in the case of ***Narmada Bachao Andolan vs. Union of India & others***[1]**,** in paragraph 234 has observed that if a considered policy decision has been taken which is not in conflict with any law or is not mala fide, it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive. The Court further opined that for any project, which is approved after due deliberation, the Court should refrain from being asked to review the decision just because a petitioner in filing a public interest litigation alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. The Court plainly observed that when two or more options or views are possible and after considering them the Government takes a policy decision, it is

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[1] **(2000) 10 SCC 664**

then not the function of the Court to go into the matter afresh and in any way and sit in appeal over such a policy decision. Applying the principle under-lying this exposition, the argument of the petitioners under consideration deserves to be stated to be rejected.

19. To get over this position, the other shade of the first contention was at the public hearing on 19.4.2010, the villagers had vigorously opposed the setting up of the project on the left bank. Moreover, besides the Gram Sabha Naya Gram, even the Gram Sabaha Holi had gone on record that they were opposed to setting up the project on the left bank of the River. In view of the objection taken by the villagers in the Gram Sabha, the permission should not have been granted by the competent Authorities in favour of shifting of the project on the left bank. This argument will have to be negatived for more than one reason. Firstly because, upon perusal of the minutes of the meeting dated 19.4.2010, it is seen that the objection taken by the petitioner No.1 Mangi Ram was that the project on the left bank may cause damage to Gharoh and for which reason, suitable measures be taken to avoid such damage to Gharoh. He further stated that some of the locals, who could not remain present, may be given opportunity of hearing. In that sense, the objection was not pointedly to the shifting of the project on the left bank but only expressing apprehension about the damage likely to be caused to Gharoh and to take corrective measures in that behalf. That aspect was duly considered and suggestions made by the Chairman of the meeting were taken note of and finally, everyone present in the public meeting approved the proposal for setting up of

the project on the left bank. As regards the suggestion of giving opportunity to locals, who could not remain present, considering the fact that sufficient public notice was given about public hearing and the public hearing was held on two different dates, firstly on 19.4.2010 and the second public hearing was on 30.10.2010; coupled with the fact that the public hearing on 30.10.2010 was held in two sessions at 11.00 a.m. and the second at 3.00 p.m. and after considering all the aspects, final decision was taken. Therefore, no fault can be found with the Authorities having proceeded with the matter on the basis of such record. In other words, the challenge to the permission/approval granted by the competent Authority on the ground that it has been given without observing the requirement of public hearing and taking note of the opposition of the locals, to say the least, is ill-advised. The record substantiates the fact that sufficient notice was given about the scheduled public hearing and all persons during the meeting were allowed to raise their objections and the objections so raised were duly considered and redressed before recording final resolution of approving the setting up the plant on the left bank of the river. Further, the objection taken was limited to apprehension of damage to one area, Gharoh and not to the entire proposal of shifting the project on the left bank. Therefore, we have no hesitation in taking the view that the argument under consideration is an argument of desperation.

20. Counsel for the petitioners had relied upon the un-reported decision of this Court in Harish Chander & another vs. State of H.P. & others dated 13.12.2010 in CWP No. 3659 of 2009 and

companion matters. However, this decision proceeds on the finding that the authorities has committed manifest error in dispensing with the convening of the public meeting. The other aspect considered in this decision is about the procedural infirmity in the process of acquisition of land and about the impact of environment because of reducing the distance from 800 meters to 200 meters from the forest area. Suffice it to observe that this decision is of no avail to the petitioners herein.

21. During the rejoinder, the counsel for the said petitioners once again made a faint attempt to raise the argument that the decision to shift the project on the left bank has been taken without consultation of the experts. As noted earlier, the counsel for the petitioners had given up this ground, as he could not point out any pleading from the petition in support of the said ground. That being a factual matter, in absence of foundation in the writ petition in that behalf, it cannot be taken forward. Nevertheless, we are of the considered opinion that the proposal for shifting has been processed through proper channel and upto the highest level before granting of permission by the Ministry of Environment and Forest, Government of India. Even the Expert Appraisal Committee had examined the same, as can be discerned from the communication dated 24.1.2011, issued under the signature of Additional Director and Member-Secretary, EAC, addressed to the president of respondent No.7/project proponent- Company. In paragraph 3 of this communication, it is stated that the proposal was considered by the Expert Appraisal Committee for referred Hydel Electricity Project in

its meeting dated 20th/21st December, 2010. In other words, even this contention of the petitioners is frivolous, vexatious and has not been substantiated from the record. Taking overall view of the matter, therefore, we find that the first contention raised by the petitioners is not only devoid of merit but also unsubstantiated and motivated and has been raised for the reasons best known to them. Hence the same is rejected.

22. That takes us to the second ground urged by the said petitioners. According to them, the project proponent was under obligation to assess the impact on landscape in general and wildlife ecological aspects in specific before final sanction is accorded, as predicated by Clause-5 of the communication dated 08.07.2011, addressed to the Principal Secretary (Forest), H.P.Govt., issued under the signature of Assistant Inspector General of Forest, MoEF, Government of India. The said clause reads thus:-.

> **"**A cumulative study may be carried out by the State Government on the behest of all project proponents on Ravi River to assess the impact on landscape in general, and wildlife and ecological aspects in specific before the final sanction is accorded. The FAC seeks special emphasis on the issues of forest fragmentation and landscape level changes due to direct and indirect impact of the project. The study should take into account on micro-hydel projects, existing and proposed in the project basin may be provided with maps."

23. It is alleged that the approval has been accorded without preparing such impact assessment report. However, it is noticed that the Assistant Inspector General (Forests) MoEF, Government of India, issued another communication dated 29.08.2011, addressed to the

Principal Secretary (Forest), Government of Himachal Pradesh, being partial modification of condition No.5 reproduced above. The said communication reads thus:-

"F.No.8-43/2011-FC
Government of India
Ministry of Environment & Forest
(FC Division)

To

The Principal Secretary (Forests),
Government of Himachal Pradesh,
Shimla.

Sub: Partial modification is condition no.5 of the in-principal approval dated 08.07.2011 in respect of diversion of 75.304 Ha of forest land for implementation of 180 MW Bajoli Hydro Electric Project in favour of M/s GMR Bajoli Holi Hydro Power Pvt. Limited in Bharmour Forest Division in Chamba District of Himachal Pradesh.

Sir,

I am directed to refer to this Ministry's letter of even no. dated 08th July, 2011 on the subject mentioned above communicated the in-principal approval of this Ministry and to say that condition no.5 of this letter may be read as given below:

"A cumulative study may be carried out by the State Government on behest of all project proponents on Ravi River to assess the impact on landscape in general and wildlife and ecological aspects in specific and the user agency shall submit an undertaking to comply with the additional conditions that the Central Government may stipulate based on outcome of the said study. Issues of forest fragmentation and landscape level changes due to direct and indirect impact of the project shall be specifically dealt in the said study. The study should also take into account on micro-hydel projects, existing and proposed in the project basin may be provided with maps.

I am further directed to request the State Government to kindly keep this Ministry informed on quarterly basis regarding the progress of the cumulative study.

Yours faithfully,

-sd-

(Anita Karn)

Assistant Inspector General Forests
(emphasis supplied)

24. It was submitted that by the subsequent communication, the authority has diluted condition No.5, to favour respondent No.7 /project proponent-company. We are not impressed by this submission at all. For, the reply-affidavit filed by respondent No.2, Principal Secretary (Forest), Government of Himachal Pradesh, belies this plea. In paragraph 2 of the reply-affidavit dated 21.09.2012 filed in compliance to the order of the Court dated 23.11.2012, is stated as follows:-

> "2. That in this regard it is submitted that vide condition no.5 of the in principal approval, the liability was imposed upon the State Govt. to carry out the study and assess the cumulative impact on landscape in general and wild life and ecological aspect in specific of the river basin study taking into account the Micro Hydel Projects in Ravi basin before according the final sanction. Accordingly the Forest Land was recommended to be diverted for the purpose of the basis of undertaking given by the respondent No.3 that any condition imposed in connection with the outcome of the aforesaid study conducted by the replying respondent shall be complied with the additional conditions that the central Government may stipulate based on the outcome of aforesaid study. In this connection it is submitted that the Government of H.P. committed to carry the cumulative environment impact assessment (CEIA) study for the Ravi basin along with other river basin of Satluj, Chenab, Beas and Yamuna and the work has been entrusted to the Directorate of Energy. River basin studies of Satluj and Chenab rivers are in progress and the work of cumulative environment impact assessment study in basins of Beas and Ravi rivers are yet to be awarded to executing agencies by the Directorate of Energy to carry out the detailed study and that the measures required to be taken for overcoming the impacts which may be caused due to the implementation of the projects. Therefore, considering the importance and necessity of the implementation of the projects and the huge minority loss involved due to delay in implementation, the Government of India i.e.

> respondent No.1 had partially modified the condition No.5 vide its letter No.F.No. 8-43/2011-FC dated 29th August, 2011 copy annexed as ***Annexure R-1.*** Therefore, the replying respondent had no malafide intension in any manner to implement and allow the sanctions/execution of the projects."

Further, the respondent No.7/project proponent-company has also invited our attention to the communication dated 13.08.2010, issued under the signature of Vice President and Head Hydel Project of respondent No.7/project proponent-company, addressed to the Principal Secretary of the State Pollution Control Board, placing on record that out of five Gram Sabhas, four Gram Sabhas have given 'No Objection Certificates' and 5th Gram Sabha, Kuleth, was still processing the proposal. The NOCs were issued under the signature of Authorized Officer(s) of four Gram Sabhas including Naya Gram and Holi dated 01.08.2010 and 19.09.2010 respectively. The same were forwarded along with the said communication. Respondent No.7/project proponent-company has also relied on the aspects considered during the public hearing dated 19.04.2010 as also on 30.10.2010 and including the communication issued under the signature of Principal Secretary, HP State Pollution Control Board dated 18.11.2010, addressed to the Director (Environment, S & T), Department of Environment Science and Technology, Government of Himachal Pradesh. Said communication reads thus:-

H.P.STATE POLLUTION CONTROL BOARD
HIM PARIVESH, PHASE-III,
NEW DELHI-171009

No.HPSPCB(47)/Bajoli-Holi-HEP, Chamba/10-16330-39
Dated:18.12.2010

From: Member Secretary

To

The Director (Env., S & T),
Department of Environment, Science and Technology,
Narayan Villa, Near Wood Villa Palace, Shimla-2.

Subject: Environment Public Hearing on the proposal submitted by M/s GMR Bajoli Holi Hydro Power Pvt. Ltd., Old Uddan Bhawan, 2nd floor, Terminal-1, IGI Air Port, Palam New Delhi-110037 for setting up of 180 MW Bajoli-Holi Hydroelectric Project based on River Ravi with diversion works near Bajoli village at an elevation of about 1975 m above MSL and Power House located on the left bank of River Ravi near village Barola, District Chamba, (H.P.).

Sir,

According to the provisions of EIA Notification No.SO 1533 dated 14.09.2006 and the procedure prescribed therein, HP State Pollution Control Board had organized a Public Hearing under the Chairmanship of the District Collector-cum-Deputy Commissioner, Chamba, on the proposal of M/s GMR Bajoli Hydro Power Pvt. Ltd. Old Uddan Bhawan, 2nd Floor, Terminal-1, IGI Air Port, Palam New Delhi – 110037 for setting up of 180 MW Bajoli-Holi Hydroelectric Project based on River Ravi with diversion works near Bajoli village at an elevation of about 1975 to above MSL in District Chamba and Power House located on the left bank of River Ravi near village Barola, District Chamba (H.P.) in Holi Town, near Forest Guest House, Tehsil Bharmour, District Chamba, H.P., on **19-04-2010 at 11.00 AM.**

On the basis of the issue raised by the Public related to change of alignment of the project from the right bank to left bank of river Ravi without consultation and NOCs from the Gram Sabhas; it was concluded during the proceedings of the said Public Hearing held under the Chairmanship of the District Collector-cum-Deputy Commissioner, Chamba that the Project Proponent shall approach the affected Gram Sabhas and apprise them on the technical view as to why the project is aligned on the left bank instead of right bank and obtain their No Objection Certificate. It was also concluded that after the proponent obtains the No Objection Certificates from the affected Gram Sabhas; the Public Hearing would be organized again.

The Deputy Commissioner-cum-District Collector, Chamba, vide Letter No.RRO/CBA/Bajoli-Holi HEP/2010-4136-39 dated 25.09.2010 had informed that the Proponent has obtained No Objection Certificates from all the Panchayats which are to be affected due to construction of Bajoli Holi Hydroelectric Project and had advised to fix the Public Hearing on 30-10-2010.

In view of above and according to the provision of notification No.SO 1533 (E) Dated 14-09-2006 and the procedure prescribed therein the State Board has again conducted the Public Hearing on 30-10-2010 under the Chairmanship of District Magistrate, Chamba on the proposal of M/s GMR Bajoli Holi Hydro Power Pvt. Ltd., Old Uddan Bhawan, 2nd floor, Terminal-1, IGI Air port, Palam New Delhi-110037 for setting up of 180 MW Bajoli-Holi Hydroelectric Project based on River Ravi with diversion works near Bajoli Village at an elevation of about 1975 in above MSL and Power House located on the left bank of River near village Barola, District Chamba, (H.P.).

> Further in view of the contents of notification by the State Govt. issued vide No.STE/Restructuring of ST, E, BT & PC (Vol-I)/2007 dated 13-04-2007, please find enclosed herewith:- (i) Proceedings of the Public Hearing in Hindi with attendance sheet alongwith representations received during the public hearings, (ii) Statement of issues in English as raised in the Public Hearing; (iii) CD/Videotape of the proceedings of the Public Hearing; (iv) copies of Public Notices in English and Hindi published by the State Board in the new papers.
>
> The proceedings and above-mentioned information are being sent to you for further necessary action in view of notification referred to above.
>
> Encls:- As above. Yours faithfully,
> /
> Member Secretary

25. After considering the above material, we have no hesitation in taking the view that the argument under consideration about not discharging the obligation as per condition No.5 of the communication dated 08.07.2011 is devoid of merit. As is noticed, the said condition came to be modified by the Competent Authority. Notably, it is not the case of the petitioners that the said Authority could not have modified that condition. Nor it is possible to disregard the justification given in the response filed before this Court by respondent No.2. In that sense, the modification effected by the Competent Authority vide communication dated 29.08.2007, ought to prevail. As per that condition, the State Government would carry out a cumulative study of all project proponents on Ravi River to assess the impact in general, and wildlife and ecological aspects in specific. The user agency is required to give undertaking to comply with the additional condition that the Central Government may stipulate on the basis of the outcome of such study.

26. In the first petition, the petitioners have merely referred to the communication imposing condition No.5 (un-amended) dated

08.07.2011. Communication dated 29.08.2011 modifying that condition, however, was brought on record by the respondent along with reply-affidavit. That, indisputably, is a material document. Yet, it was conveniently not produced by the petitioners and no explanation in that behalf has been offered by the said petitioners. Be that as it may, the second ground urged by the petitioners, to say the least, is an attempt to cause confusion and misinformation. That cannot be countenanced in view of the modification of condition No.5. Accordingly, even the second ground, pressed into service, does not commend to us.

27. That takes us to the third ground agitated by the said petitioners in the context of condition No.16 contained in the communication dated 08.07.2011 issued under the signature of Assistant Inspector General of Forest, MoEF, Government of India, addressed to the Principal Secretary (Forests), Government of Himachal Pradesh. The same reads thus:-

> "16. The user agency will obtain the clearance under the provisions of ST&-OTFD (Recognition of Forest Rights) Act, 2006 before the final approval and will submit certificate towards the settlement of all claims and rights over the proposed forest land under the Act along with the as per the advisory dated 03.08.2009 issued by MoEF."

28. The said petitioners have also pressed into service communication dated 03.08.2009 sent by the Senior Assistant Inspector General of Forest of MoEF (FC Division) Division, Government of India, addressed to the Chief Secretaries of all the States and Union Territories. The same reads thus:-

F.N.11-9/1998-FC(pt)
Government of India
Ministry of Environment and Forests
(FC Division)

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110510.
Dated:03.08.2009

To

The Chief Secretary/ Administrator,
(All State/UT Governments except J & K)

Subject: Diversion of forest land for non-forest purpose under the Forest (Conservation) Act, 1980 – ensuring compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

Sir,

In continuation to this Ministry's letter of even number dated 30.07.2009, I am directed to invite the attention of the State Government to the operationalization of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which has become effective from 01.01.2008. It is observed that the proposals under the Forest (Conservation) Act, 1980 are being received from different States/UT Governments with the submission that the settlement of rights under the FRA will be corapleted later on.

Accordingly, to formulate unconditional proposals under the Forest (Conservation) Act, 1980, the State/UT Governments are, wherever the process of settlement of Rights under the FRA has been completed or currently under process, required to enclose evidences **for having initiated and completed the above process, especially among other sections, Sections 3(1) (i), 3(1) (e) and 4(5).** These enclosures of evidence shall be in the form of following:

a. A letter from the State Government certifying that the complete process for identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion, with a record of all consultations and meetings held;

b. A letter from the State Government certifying that proposals for such diversion (with full details of the project and its implications, in vernacular / local

languages) have been placed before each concerned Gram Sabha of forest-dwellers, who are eligible under the FRA;

c. A letter from each of the concerned Gram Sabhas, indicating that all formalities/processes under the FRA have been carried out, and that they have given their consent to the proposed diversion and the compensatory and ameliorative measures if any, having understood the purposes and details of proposed diversion.

d. A letter from the State Government certifying that the diversion of forest land for facilities managed by the Government as required under section 3(2) of the FRA have been completed and that the Gram Sabhas have consented to it.

e. A letter from the State Government certifying that discussions and decisions on such proposals had taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present;

f. Obtaining the written consent or rejection of the Gram Sabha to the proposal.

g. A letter from the State Government certifying that the rights of Primitive Tribal Groups and Pre-Agricultural Communities, where applicable, have been specifically safeguarded as per section 3(1)(e) of the FRA.

h. Any other aspect having bearing on operationalisation of the FRA.

The State/UT Governments, where process of settlement of Rights under the FRA is yet to begin, are required to enclose evidences supporting that settlement of rights under FRA 2006 will be initiated and completed before the final approval for proposals.

This is issued with the approval of the Minister of Environment and Forests.

Sd/-
(C.D. Singh)
Sr. Assistant Inspector General of Forests."

29. Reliance is also placed on another communication sent by the Assistant Inspector General of Forests, MoEF (FC Division), Government of India, addressed to the Principal Secretary (Forests), State of Himachal Pradesh, dated 20.09.2012, the same reads thus:-

F.N.11-9/98-FC(pt)
Government of India
Ministry of Environment & Forest
(FC Division)

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110003
Dated: 20th September, 2012

To

The Principal Secretary (Forests),
Himachal Pradesh,
Shima.

Sub: Diversion of Forest land for non-forest purpose under the Forest (Conservation) Act, 1980 – ensuring compliance of the Scheduled Tribes and Other Traditional Forest, Dwellers (Recognition of Forest Rights) Act, 2006.

Sir,

In continuation of this Ministry's letter of even No. dated 3.8.2009 on the above mentioned subject, I am directed to say that this ministry has considered specific situation as intimated by the Hon'ble Chief Ministry, Himachal Pradesh vide his D.O. No.MPP-F-(10) 5/2012 Dated 19.04.2012 where according to Hon'ble Chief Ministers rights and concessions on forest land throughout the State including the tribal areas have been settled long back and recorded in settlement reports, and that no FRA compliance issues exist which need to be settled.

Accordingly, I am directed to say that after examination of the matter, this Ministry has accepted the request of the Hon'ble Chief Minister, Himachal Pradesh that in case of Himachal Pradesh, a certificate issued by Collector cum District Commissioner of the District concerned that no claim under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 exists on pending in respect of forest land, be considered as sufficient evidence to meet procedural requirement of the afore-mentioned Act. To ensure proper scrutiny, in all such cases, stage-II approval

will however, be accorded only after obtaining specific approval from the Competent Authority.

This issue with approval of the Hon'ble Minister of State (Independent Charge) for Environment and Forests.

Yours faithfully,
-sd-
(H.C.Chaudhary)
Assistant Inspector General Forests."

30. The argument proceeds that the opinion recorded in this communication is contrary to the provisions of law. The provisions of Act of 2006, mandate proper proceedings, issuance of certificate by the Competent Authority under that Act mentioning the Forest dwelling Scheduled Tribes in the State or in the areas where they have been declared as Scheduled Tribes in respect of all forest rights mentioned in Section 3; and the other traditional forest dwellers in respect of all forest rights mentioned in Section 3 are duly recognized and vested in them. Moreover in the communication dated 03.08.2009, the Gram Sabha was expected to issue communication indicating that all formalities/processes under the Act of 2006 have been carried out and consented for setting up of the proposed project. It is contended that, therefore, the Chief Minister could not have issued a general letter and in any case that cannot be made basis to assume that compliance of all the formalities have been effected.

31. The argument though attractive at the first blush, in our opinion, deserves to be stated to be rejected. Before dilating further, we deem it apposite to advert to the contents of the communication sent by the Chief Minister on 19.,09.2012, addressed to the Ministry

of Environment and Forest, Government of India. The same reads thus:

> "Guidelines issued by the MoEF on 03.08.2009 require prior settlement of all claims and rights over the proposed forest land under the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, before granting forest clearance. In Himachal Pradesh, the position is that the Rights and Concessions on forest land throughout the State including the tribal areas have long been settled and recorded in Settlement Reports. These rights are inheritable through succession and local people/right holders have been enjoying them without any infringement, since their admission. The communities living in the tribal districts of H.P. do not fall in the category of Primitive Tribal Groups for Pre-Agricultural Communities specified for entitlement under this Act. These communities (ST and Others) are not even forest dwelling (Van–vasis/banbasis) communities.
>
> Given the above position, it would be seen that the guidelines of the MoEF are adequately complied with in Himachal Pradesh. However, certificates issued by Collector-cum-Deputy Commissioner of the District concerned that no claim under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is pending in respect of forestland and submitted along with the specific proposals for environment forest clearance is not being considered by MoEF as sufficient evidence to meet the procedural requirement of the Act. This is unduly delaying clearance of many development projects and specially hydel projects.
>
> I had raised this issue along with other clearance related concerns vide my earlier D.O. letter No.MPP-F(10)13/2010 dated 24th September, 2011 (copy enclosed) also but so far no resolution has been conveyed. I would, therefore, request your personal intervention to resolve the matter which is impeding the rapid development of the Hydro Power potential of Himachal Pradesh."

It is on the basis of this communication, the Ministry of Environment and Forest responded and noted that the statement made in the communication of the Chief Minister was accepted and considered as sufficient evidence to meet the procedural requirement of the Act of 2006. In addition, the Deputy Commissioner, Chamba,

on 04.10.2012 issued requisite certificate regarding compliance of necessary formalities under the Act of 2006 and in particular with reference to the subject project. The said certificate reads thus:-

CERTIFICATE

REGARDING COMPLIANCE OF SCHEDULED TRIBES & OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006 IN RESPECT OF DIVERSION OF FOREST LAND MEASURING 75.304 HECTARES TO M/s GMR BAJOLI HOLI HYDROPOWER PRIVATE LIMITED FOR CONSTRUCTION OF 180 MW BAJOLI HOLI HYDRO ELECTRIC PROJECT IN SUB-TEHSIL-HOLI, DISTRICT CHAMBA, HIMACHAL PRADESH.

1. It is certified that the complete process for diversion and settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been carried out for the entire Forest area of 75.304 Hectares proposed for diversion for construction of Bajoli Holi hydro Electric project in Tehsil Holi, district Chamba, Himachal Pradesh.

2. As per verification duly conducted through field functionaries i.e. Sub Divisional Officer (c) Bharmour/Tehsildar Bharmour cum incharge Sub-Tehsil Holi as per report of revenue agencies, there is no Primitive Tribe Groups (Schedule Tribe) and Pre Agriculture Communities (Other Traditional Forest Dwellers) were available on the proposed forest land proposed to be diverted and whose forest Right Act, 2006.

3. It is certified that on the basis of field verification there are no such facilities managed by Government requiring diversion of Forest land under section 3(2) of Forest Rights Act, 2006 exist over the forest land proposed for diversion.

Place:-Chamba -sd-
Deputy Commissioner
Chamba, Himachal Pradesh.

32. Notably, neither the decision of the Ministry of Environment and Forest noted in communication dated 20.09.2012 nor the certificate issued by the Deputy Commissioner dated

04.10.2012 has been specifically challenged or any relief claimed in that behalf. If it is so, the question of examining the grievance of the said petitioners any further does not arise. In other words, the condition stipulated in Clause 16 of communication dated 08.07.2011 has been fulfilled by the project proponent. The argument of the said petitioners, however, is that, it is not necessary to challenge every decision of the concerned authorities or for that matter any communication which has been made basis for permitting the project proponent to continue with the setting up of the proposed project. This argument does not commend to us. The petitioners cannot expect the Court to make a roving enquiry; and moreso take the opposite party by surprise during the argument. The grounds of challenge ought to have been properly articulated and including necessary reliefs claimed in the writ petition. We cannot countenance the argument that law of pleadings will have no application to the writ petitions filed as Public Interest Litigation. No doubt, in the matter of Public Interest Litigation, the Court may be somewhat liberal if the larger public interest warrants interference by the Court; and not to non-suit the cause at the threshold on technicalities or hyper technical approach. That however, does not mean that when the petitioners who have the benefit of competent legal advice and are represented by a Lawyer before the Court and were well advised to file detailed pleadings and including bringing on record several official documents coupled with the fact that they were fully aware of the stand taken by the respondents in the affidavit filed to oppose their writ petition, such petitioners cannot be permitted to use the shield of

Public Interest Litigation to disregard the palpable infirmity in their pleadings. Notably, inspite of repeated indication given by the Court, the petitioners did not deem it appropriate to take remedial steps if they were so serious about pursuing the argument under consideration. Suffice it to observe that no argument worth the name has been advanced to demonstrate that the Authority, who has accepted the stand taken by the State Government as incorporated in the communication sent by the Chief Minister, could not have done so or such stand could not be taken by the State; or for that matter to doubt the competency of the Deputy Commissioner in issuing the certificate dated 04.10.2012. In our opinion, the record does indicate that necessary compliance of condition No.16 in the communication dated 08.07.2011, has been made.

33. We may also advert to the stand taken by the Learned Assistant Solicitor General appearing for the Ministry of Environment and Forests, who has stated that the said Department had taken a conscious decision as reflected in the communication dated 20.09.2012; and there was no infirmity in the view so recorded. In his submission, the communication sent by the Chief Minister of the State reflects the stand of the State and was valid in all respects. For that reason, no fault can be found with the opinion recorded in the communication dated 20.09.2012 and moreso when the Competent Authority, namely, Deputy Commissioner has already issued certificate on 04.10.2012. He submits that some interdepartmental communication between the FC division of MoEF and the Tribal Affairs Ministry, cannot be the basis to assume that the certificate

issued by the Competent Authority of the State is erroneous. We find substance in this argument. Besides, the communication sent by Ministry of Tribal Affairs titled as Office Memorandum, issued under the signature of Director (SG) Ministry of Tribal Affairs, dated 01.04.2013, is a general stand of the said Ministry and not specific muchless to impact the approvals/permissions already granted by the Ministry of Environment to the subject project. We deem it apposite to reproduce the said communication dated 01.04.2013, which reads thus:-

F.No.23011/22/2010-FRA
Ministry of Tribal Affairs
FRA division
****

Room No.401 'B' Wing,
Shastri Bhawan, New Delhi,
Dated 01.04.2013

Office Memorandum

1. The Ministry of Environment and Forests vide letter no.F.No.11-9/98-FC (pt) dated 20.09.2012 (copy attached) addressed to Principal Secretary (Forest) Himachal Pradesh has accepted the request of the Hon'ble Chief Minister, Himachal Pradesh that in case of Himachal Pradesh, a certificate issued by the Collector of the District concerned that no claim under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 exists or pending in respect of forest land, can be considered as a sufficient evidence to meet procedural requirement of the afore-mentioned Act. This letter has been brought to the notice of this Ministry recently.

2. The Hon'ble Chief Minister, Himachal Pradesh vide his D.O. letter no. MPP-F-(10)5/2012 dated 19.04.2012 had sought exemption from compliance of FRA regarding diversion of forest land for non-forest purposes on the ground that rights and concession on forest land throughout the state including the tribal areas have been settled long back and recorded in settlement reports and that no FRA compliance issues exist which need to be settled.

3. This Ministry is concerned about the letter issued by MoEF cited above. In this connection, I would like to once again bring to your notice that FRA has been enacted with the purpose clearly laid down in Preamble of the Act, firstly to recognize and record rights of the forest dwellers who have been residing in such forests for generations and whose rights could not be recorded; secondly to empower them and their community institutions as statutory authorities with the power to protect and manage forests. The Preamble of the Act stipulates that both these measures are required to ensure conservation of forests and address historical injustice done to the forest dwellers, including those forced to relocate due to State development interventions.

4. It is pertinent to mention here that this letter of MoEF to the State of Himachal Pradesh is not only violative of the spirit of the FRA, 2006, but also goes against the circular issued by MoEF on 3.08.2009 wherein clause (c) requires certification of Gram Sabha indicating that all formalities and processes under FRA have been carried out. Since claims under FRA are first received by the Gram Sabha, therefore, certificates from the Gram Sabha(s) must be obtained before concluding that all rights under FRA have been settled.

5. Hon'ble Minister of Tribal Affairs also in his letter to Hon'ble MoS(I/C), MOEF dated 7.12.2012 (copy attached) had reiterated that "any takeover or diversion of forest land under any other law has to respect both parts of the Forest Rights Act as mentioned above. In particular, it cannot take place until the recognition of rights is complete in the areas and the forest dwellers have expressed their collective prior informed consent to the destruction and/or takeover of the forest and to the rehabilitation/compensation plan that is being provided to them." The same letter also points that Under Section 6(1) and Rule 11, "Gram Sabha is the institution that initiates rights recognition and may extend it as long as required. Hence it must certify that the process is done."

6. Further Hon'ble Minister of Tribal Affairs has recently written to Hon'ble Chief Minister of Himachal Pradesh (D.O.No.23011/26/2012-FRA(pt) dated 28.02.2013 (copy attached) stating that "The State Government has been consistently been taking the stand that

rights over forest land has been settled long back and recorded in settlement and therefore there is limited scope of implementation of Forest Rights Act in the State of Himachal Pradesh. This stand is not correct as in many States, rights over forest land has been settled but that rights of forest dwellers were not recorded properly and as the Preamble of FRA states, that this Act is meant to undo the historical injustice. It is also pertinent to mention that even after settlement, fresh rights accrue over a period time. Therefore, implementation of FRA cannot be set aside due to settlements done in the past".

7. Therefore, it is requested that this letter is immediately withdrawn and the State of Himachal Pradesh is directed to comply with the circular of MoEF issued on 3.08.2009 and ensure that all rights are recognized and vested before any forest land is diverted for non-forest purpose. I would also request you that in future, the Ministry of Tribal Affairs must be consulted before any directions are issued in matters relating to ensuring compliance of FRA in diversion of forest land for non-forest purposes.

(Asit Gopal)
Dir(SG)"

(emphasis supplied)

34. The stand taken by the learned Assistant Solicitor General is reinforced from this communication and/or on fair reading of Clause 6 of this communication, it contains general remark that " in many States" rights over Forest land have been settled but that rights of dwellers were not recorded properly. The petitioners are not in a position to demonstrate that the Ministry of Tribal Affairs has issued any communication specifically with reference to the subject project and indicating that the procedure followed by the State Authorities and approved by the Ministry of MoEF, Government of India was not in accordance with law, much less, void-abinitio. Considering the above and taking over all view of the matter, we have no hesitation in

concluding that even the third ground under consideration is completely devoid of merit and has been raised only on the basis of some assumptions or figment of imagination of the petitioners which are not supported by any tangible material and decisive enough to interdict the activities for setting up of the proposed project.

35. Counsel for the said petitioners would then rely on the unreported decision of the Apex Court in the case of Orissa Mining Corporation Limited Versus Ministry of Environment and Forests and others, being writ petition No.180 of 2011, decided on 18.04.2013. Emphasis was placed on paragraph 49, in which guidelines issued by the Ministry of Environment and Forests vide letter dated 12.07.2012 have been reproduced. One of the guideline pertains to the community rights and in particular relates to the forest produce rights inter alia in the State of Himachal Pradesh. The guidelines from which the District Level Committee should ensure that the records of prior recorded nistri or other traditional community rights are provided to Gram Sabhas and if claims are filed for recognition of such age-old usufructory rights, such claims are not rejected except for valid reason. We fail to understand as to how this guideline has any bearing on the factual matrix of this case and in particular in the backdrop of acceptance of the stand taken by the State of Himachal Pradesh about the compliance of necessary formalities under the Act of 2006, as noted in the communication of Ministry of Environment and Forests dated 20.09.2012. Learned counsel for the petitioners has not adverted to any other portion of the said unreported judgment in support of the third ground which is under

consideration. Therefore, we do not deem it necessary to dilate any further on this judgment.

36. We may now turn to the preliminary objections taken by the respondents that the first two writ petitions filed as Public Interest Litigation, suffer from delay and laches and for which reason, the Court must be loath to interfere at this stage when the project proponent has acted to its detriment on the basis of the approval/permission given by the competent Authorities. It is submitted that the project proponent responded to the international bidding in August, 2007. As per the onerous conditions to participate in the said bidding, it had to pay substantial upfront amount, and after being successful bidder, at the time of execution of pre-implementation agreement dated 15.2.2008, the project proponent paid further amount of Rs. 42 crores as one of the stipulation for execution of the said agreement. After executing that agreement, the project proponent undertook survey and investigations and considering all aspects, including of sustainable development, DPR was submitted on 18.11.2009. The same was done within the time specified by the State Government, as per the conditions in the agreement. Not only that, information regarding setting up of the proposed project was in public domain and the stage-I approvals/permissions were accorded by the competent Authority, only after compliance of all the formalities and after taking into account the objections received from different quarters, including the locals. The five Gram Panchayats gave 'No Objection Certificates' for the setting up of the proposed project. Notably, public hearing was

held on more than one occasion. At that time, not only representatives of the concerned Gram Sabha, but also the locals participated. All objections raised during the said meetings were discussed and solution was offered in those meetings. Even the Expert Appraisal Committee accorded approval to the setting up of the proposed project on the left bank of the river. On the basis of the pre-appraisal report, the Revenue Department, in the first place issued Inescapability Certificate in the year 2010, which was followed by the Essentiality Certificate, issued by the Director of Energy on 4.9.2010. The project proponent then proactively pursued the proposal and without waiting for the culmination of the proceedings under the Land Acquisition Act, acquired the lands required for the proposed project by private negotiations with the concerned land owners. Land to the extent of 90%, required for the project has already been purchased by the project proponent by paying compensation to the extent of Rs. 4 crores. All these activities were in public domain and after due notice to all concerned. However, it is only after grant of stage-I approval to the proposed project, the petitioners in the first petition chose to file writ petition in February, 2012, asking for limited reliefs. After the stage-II approval was accorded by the competent Authorities, the second writ petition came to be filed on 18.11.2012, seeking further reliefs, through the same Advocate, without challenging the basic permissions and decisions of the competent Authorities. Considering the above, it was submitted by the counsel for the project proponent that, both the petitions should be dismissed at the threshold on the ground of unexplained

delay and laches. To buttress this submission, reliance was placed on the dictum of the Apex Court in the case of ***State of M.P. v. Nandlal***[2]**.** In paragraph 22 of this decision, the Court adverted to facts of that case and found that the writ petition was filed after 11 months from the passing of the policy decision and the respondents having acted on the said decision and spent substantial amount of Rs. 1.5 crores, the petition cannot be entertained. Apex Court, in paragraph 23 of the decision, noted thus:-

> "23. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasized time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decisions of this Court one in Ramanna Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCR 1014: (AIR 1979 SC 1628) and the other in Ashok Kumar v. Collector, Raipur (1980) 1 SCR 491: (AIR 1980 SC 112). We may point out that in R.D. Shetty's case (supra), even though the State action

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[2] **AIR 1987 SC 251**

was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs. 1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar. Of course, this rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the Court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

37. Reliance is then placed on the decision of the Apex Court in the case of ***Bomyay Dyeing & Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group & others***[3] in particular at paragraphs 341 and 345 thereof. The same read thus:-

> **"341**. Delay and laches on the part of the writ petitioners indisputably have a role to play in the matter of grant of relief in a writ petition. This Court in a large number of decisions has categorically laid down that where by reason of delay and/or laches on the part of the writ petitioners the parties altered their positions and/or third-party interests have been created, public interest litigations may be summarily dismissed. Delay although may not be the sole ground for dismissing a public interest litigation in some cases and, thus, each case must be considered having regard to the facts and circumstances obtaining therein, the underlying equitable principles cannot be ignored. As regards applicability of the said principles, public interest litigations are no exceptions. We have heretobefore noticed the scope and object of public interest litigation. Delay of such a nature in some cases is considered to be of vital importance. (See Chairman & MD, BPL Ltd. V. S.P. Gururaja)."

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[3] **2006(III) SCC 434**

> **345**. However, we do not intend to lay down a law that delay or laches alone should be the sole ground for throwing out a public interest litigation irrespective of the merit of the matter or the stage thereof. Keeping in view the magnitude of public interest, the court may consider the desirability to relax the rigours of the accepted norms. We do not accept the explanation in this regard sought to be offered by the writ petitioners. We have no doubt in our mind that the writ petitioners are guilty of serious delay and laches on their part."

38. Reliance is also placed on the decision in case of ***R & M Trust vs. Koramangala Residents Vigilance Group and others***[4] in particular paragraphs 33 thereof, which read thus:-

> "**33**. In the case of State of Maharashtra v. Digambar Their Lordships observed as follows: (SCC p. 684)
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> > "The power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. Persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where the High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State."

39. We are in agreement with the grievance of respondent No.7/ project proponent-Company that in the fact situation of the present case, the Court should be loath in interfering at the instance of these petitioners.

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[4] **2005 (III) SCC 91**

40. The counsel for the said writ petitioners, however, was at pains to persuade the Court that the petitioner No.1 in the first petition had participated in the public hearing and also raised objections, that cannot be the basis to non-suit the other petitioners. Even this argument deserves to be stated to be rejected. Inasmuch as, it is not the case of the other petitioners that the activities regarding setting up of the proposed project were not in public domain at all and were done secretively. It is not their case that public hearing was not held at all or for that matter meeting was convened at short notice. The record clearly indicates that sufficient notice was given regarding the public hearing. If the other petitioners failed to attend the meeting, convened to hold public hearing, now, cannot be heard to complain about the same. In any case, the grounds on which the proposed project is sought to be stalled or objected to, as found in the earlier part of this judgment, are completely untenable and figment of imagination of the petitioners. The same have not been substantiated from the record at all. On the other hand, the record indicates to the contrary and supports the stand of the respondents. Suffice it to observe that in the writ petitions no explanation whatsoever muchless satisfactory or plausible explanation has been given for filing of the writ petitions belatedly and for waiting till the approvals/permissions were granted of Stage-I and also Stage-II. Both these petitions therefore, deserve to be dismissed because of unexplained delay and laches.

41. The last aspect that needs to be considered is the argument of respondent No.7/project proponent-Company that in the

facts of the present case, it is but appropriate that Court must not only provide for costs to the respondents for having been embroiled in frivolous and vexatious litigation but also exemplary costs, as each of these petitions are motivated. To buttress this argument, learned counsel has invited our attention to the decision of the Apex Court in the case of ***Raghbir Singh Sehrawat vs. State of Haryana and others***[5], in which, the Court directed the opposite party to pay costs to the appellant, quantified of Rs. 2.50 lacks. He submits that similar amount be directed to be paid by each of the petitioners to the respective respondents. We find substance in this argument. We have already noticed that the allegations and/or grounds urged in the respective petitions are not only untenable but irresponsible, frivolous and vexatious. These petitions have been filed with purpose best known to the petitioners therein. The filing of such petitions inevitably causes confusion amongst the stakeholders. Such action must be held to be against the larger public interest; and is not a genuine public interest litigation. The petitions being motivated and being an attempt to stall the project, which is being set up in larger public interest and has been variously supported by the locals in all respects except the petitioners or few other disgruntled persons, acting at the behest of the petitioners herein, coupled with the fact that the Advocate for the petitioners made incoherent submissions for almost one hour on 13th May, 2013 and the Court had no option but to give him some more time for better preparation and articulation of the issues and on 17th May, 2013, the Court had to again spend

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[5] **2012(1) SCC 792**

substantial part of the day in hearing these matters, which as aforesaid raise frivolous and vexatious grounds, we accede to the request of respondent No.7/project proponent-company that the Court while dismissing these petitions must impose atleast costs to be paid to the contesting respondents, if not exemplary costs.

42. In the circumstances, we are not only inclined to dismiss the first two petitions but also direct the petitioners in each of these petitions to pay costs quantified at Rs. 25,000/-, (Rupees Twenty Five Thousand) each to be made over to the contesting respondents equally. In other words, four petitioners in the first petition shall pay Rs. 25,000/- each i.e. Rs. One lakh and the sole petitioner in the second petition shall also pay Rs. 25,000/-. The aggregate amount of Rs. 1.25 lakhs shall be distributed equally amongst (i) Ministry of Environment and Forest, Government of India, (ii) H.P. State Pollution Control Board, (iii) H.P. State Electricity Board Limited, (iv) H.P. State Forest Department and (v) The Project Proponent, GMR Bajoli-Holi Hydro Power Pvt. Ltd., who are the contesting respondents. In other words, each of the abovenamed parties, will be entitled to costs of Rs. 25,000/- respectively. The amount of costs shall be paid by the petitioners within four weeks from today, failing which the Collector, Chamba is directed to recover the aforesaid amount from the respective petitioners jointly and severally, within eight weeks from today as arrears of land revenue and deposit the same in the Registry of this Court within the same time.

43. That takes us to the third petition filed by the project proponent. That petition was filed because of the obstructionist

attitude adopted by the respondent No. 5 to 11 when the further construction activity of the proposed project was in progress. However, the counsel for the petitioner therein, in all fairness submits that in view of the reply-affidavit filed by the State and more particularly because the situation is now under control after registration of criminal cases against the miscreants, nothing survives for consideration in this petition. As a result, this petition is being disposed of with liberty to the said petitioner (project proponent) to resort to appropriate remedy against the concerned persons, if and when occasion arises and including to pursue the criminal case already registered against the concerned accused and also for claim for damages against them, if so advised.

44. In view of the above, we pass the following order:-

i) Writ petition No. 2083 of 2012 and Writ Petition No. 9980 of 2012 are dismissed with costs quantified at Rs. 25,000/- to be paid by each of the petitioners in the respective petitions to the abovenamed contesting respondents, within four weeks from today, failing which, the Collector, Chamba is directed to recover the aggregate amount of Rs. 1.25 lakhs (Rupees One Lack Twenty Five Thousand) jointly and severally from the four petitioners in the first petition and/or sole petitioner in the second petition, within eight weeks from today as arrears of land revenue and deposit that amount in the Registry of this Court to be made over to (i) Ministry of Environment and Forest, Government of India, (ii) H.P. State Pollution

Control Board, (iii) H.P. State Electricity Board Limited, (iv) H.P. State Forest Department and (v) the Project Proponent, GMR Bajoli-Holi Hydro Power Pvt. Ltd. equally i.e. Rs. 25,000/-each.

ii) Writ Petition No. 349 of 2013 is disposed of with liberty to the petitioner to pursue remedy against the concerned persons in accordance with law and including without expressing any opinion on the criminal case already registered against them. Withdrawal of writ petition should not be construed as petitioners having diluted or withdrawn the allegations against the concerned accused in the criminal case, in any manner. In other words, the petitioners are free to pursue other remedies as may be permissible in law.

iii) Ordered accordingly.

(A.M. Khanwilkar)
Chief Justice

(R.B. Misra)
Judge

22nd May, 2013.
(kck/purohit)