

BEFORE THE PRINCIPAL BENCH OF N
CIRCUIT BENCH AT

GREEN TRIBUNAL

Misc.

n No.

2014.

Application for Review

modifications of the order

19/6/14

Application No. 237 (THC)/ 2013

CWPIL No. 15 of 2010

IN THE MATTER OF:

1. Court on Its Own Motion

.....Non-Applicants/Petitioners

Versus

1. State of H.P. Through Addl. Chief Secretary (Forests) to the Govt. of H.P. Shimla-2.
2. H.P. Pollution Control Board through its Member Secretary, New Shimla.
3. The Deputy Commissioner, Kullu, Distt. Kullu,
4. The Principal Secretary (Tourism) to the Govt. of H.P. Shimla
5. The Principal Secretary (Forests) to the Govt. of H.P. Shimla.
6. HIMURJA, through its Chief Executive Officer, Shimla

.....Applicants/Respondents

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Principal Secretary (E to the Govt.) Shimla - 171002

Through

Advocate General

**BEFORE THE PRINCIPAL BENCH OF NATIONAL GREEN TRIBUNAL
CIRCUIT BENCH AT SHIMLA**

Misc. Application No. /2014.
In
Application No. 237 (THC)/ 2013
CWPII No. 15 of 2010

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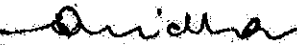
.....Applicants/Respondents

Application under section 18(I) read with section 19 of the National Green Tribunal Act, 2010 for modification of the orders/judgment issued by this Hon'ble National Green Tribunal on dated 06-02-14

MAY IT PLEASE YOUR LORDSHIP

Preliminary Submission

The Hon'ble National Green Tribunal has passed order/judgement dated 06.02.2014 in the matter of application number 237(THC)/2013, CWPII No. 15 of 2010 and has given directions for implementation related to the Rohtang Pass and its surrounding areas.


Principal Secretary (C.W.)
to the Govt. of Himachal Pradesh
Shimla

That the Government of Himachal Pradesh is committed for conserving, preserving and protecting the ecologically sensitive environment of the State particularly the fragile areas like Rohtang Pass. The State of Himachal is the first state in the country which has taken initiative to completely ban the usage of plastic and the ban on green felling has been in vogue since long. This adequately demonstrates the commitment of the State towards conservation of environment and forests.

The State Government feels that Tourism, livelihood of the local community as well as environment protection is all organically linked to each other. Hence any attempt to protect the environment at the cost of the other may not have the beneficial effect. It would be in the interest of all to ensure that livelihood opportunities should be in harmony with the Environment Protection Activities.

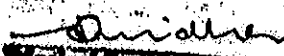
That in compliance to orders dated 27th March, 2014 of Hon'ble National Green Tribunal, the applicant has already taken steps for the implementation of the orders of the Hon'ble NGT and has filed an affidavit on dated 11th April 2014 on the status to implement the order/judgment dated 06.02.2014 which may kindly be read as part of this application.

That some of the directions contained in the order dated 06.02.2014 have affected the scarce livelihood opportunities available and being practised by the local people from the generations, thereby, resulting in huge public uproar and resentment.


The para wise details on the implementations of the order of the Hon'ble NGT dated 06-02-2014 and prayer for modification of some of the directions contained in the said order/judgment is as under:-

Para wise Prayer:-

That in compliance to orders dated 27th March, 2014 of Hon'ble National Green Tribunal, following steps for the implementation of the order/judgment of the Hon'ble National Green Tribunal dated 06.02.2014 have been taken:


Principal Secretary (P.S.)
to the Govt. of Himachal Pradesh

- (a) That Tourism Development Corporation (HPTDC) has already pressed into service 5 Nos. of Buses of 35 seats capacity at the nominal fare of Rs. 290/- which is inclusive of to and fro charges per person per seat between Manali and Rohtang.
- (b) That hoarding (25 Nos.) have been displayed containing essential information about the protection of the environment at the strategic points starting from Green Tax Barrier, Aloo Ground, Manali to Rohtang Pass and one at Green Tax Barrier.
- (c) That 15 Nos. of Dustbins have been provided to Border Road Organization by the Manali Development Council.
- (d) That the Manali Tourism Development Council has provided 18 Nos. of Pre-fabricated Structures to M/s Sulabh International. Out of which 6 Nos. of Pre-fabricated toilets have been installed at Marhi and in addition 12 Nos. of Pre-fabricated toilets have been installed at Rohtang.
- (e) That CDs containing Do's and Don'ts have already been circulated to various hotels in Manali through office of Hoteliers Association Manali, local TV cable operators, Taxi Operator Union, Hotel Association, Police Authority to create environmental awareness among general public and tourists.
- (f) That Public awareness meetings at Naggar and Burua were organized by Town and Country Planning Department on 11.03.2014 and 19.03.2014 to sensitize the public representatives and general public on the directions issued by the Hon'ble National Green Tribunal.
- (g) That carrying and/or use of any kind of plastic carry bags is strictly banned in the entire State of Himachal Pradesh. Besides this the littering of non biodegradable material is also banned in the State.
- (h) That the Government is exploring the possibility of providing ropeway from Vashisht to Rohtang.


Principal Secretary (Env.)
to the Govt. of Himachal Pradesh
Shimla - 171002

- (o) That 20 Mobile toilets (2 no of units) have been established in Manali and 20 mobile toilets (2 no. of units) & 6 units of urinals are being established in Rohtang area.
- (p) 3 phases of clean up Manali campaign has been carried out, one at Gulaba.
- (q) That establishment of eco-friendly kiosks at Rohtang (10 in nos) + 5 eco-friendly mobile catering vans for tourists visiting Rohtang Pass and beyond is in progress to meet out any eventuality in case of sudden change in weather conditions at Rohtang.
- (r) That with regard to Registration/ Regulation of Horses/Mules, Ujhi valley Ashav Sanchalan Samiti has been registered with Dy. Registrar of Societies on dated 29.04.2014, Manali. The issuance of tokens regarding no. of Horses/Mules to the respective owners is on progress.
- (s) That the permits are being issued to each kind of vehicle and to the individuals who are living across Rohtang Pass to regulate traffic by the Sub Divisional Magistrate, Manali.

While issuing various directions in order to implement the order of Hon'ble NGT, there are certain difficulties being faced by the concerned Departments and serious concern expressed by the local residents of Manali and other stakeholders upon the implications of the implementation of these orders. Therefore, State urges that some of the directions contained in the order of the Hon'ble NGT dated 06.02.2014 may kindly be modified in the interest of justice.

- i) That with regard to directions at para 23 (i) of the order dated 06-02-14 for the establishment of common check posts/barriers near Vashishta, to check pollution emission, overloading, certification, permits and to restrict and regulate traffic going towards Rohtang Pass and beyond, it is submitted that it is a matter of record that thousands of tourists visit Rohtang Pass every day. Local people living in Lahaul and Spiti District, Pangi Sub-Division of Chamba also use the road across Rohtang Pass to commute to and from their native places. In addition army convoys with men and supplies

Anand

Principal Secretary (Cm)
Himachal Pradesh
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- 1) That with regard to directions at para 23 (i) of the order dated 06-02-14 for the establishment of common check posts/barriers near Vashishta, to check pollution emission, overloading, certification, permits and to restrict and regulate traffic going towards Rohtang Pass and beyond, it is submitted that it is a matter of record that thousands of tourists visit Rohtang Pass every day. Local people living in Lahaul and Spiti District, Pangl Sub-Division of Chamla also use the road across Rohtang Pass to commute to and from their native places. In addition army convoys with men and supplies

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to Leh, convoys with ration and other essential commodities to Lahaul and Spiti, Pangl and other civil establishments in Leh also pass through this route. A large number of vehicles cross Rohtang Pass to transport crops of peas and potatoes from Lahaul to other parts of the country. This makes Manali-Rohtang Pass-Keylong-Leh Road very busy from May/June to October/November when it is open for traffic depending upon weather. Most of the vehicles going to Lahaul and beyond cross Rohtang Pass in the forenoon as it is not advisable to cross the pass in the afternoon. Similarly tourist vehicles leave Manali early in the morning with the aim to return by early evening. This means, a long unending line of thousands of vehicles move towards Rohtang every morning and most of these vehicles return to Manali by evening. Vehicles coming from Lahaul side also join this bee-line.

To check each and every vehicle at barrier not only requires substantial manpower and space but there is always a strong possibility of traffic jams as stoppage time of even a minute at the barrier means long line of waiting vehicles because of paucity of sufficient space to park vehicles waiting to go towards Rohtang. Therefore, the barrier must not only be at a place where traffic jams can be avoided but smooth traffic flow is also ensured to the extent possible. Vashisht is a very thickly populated area with several residential and commercial establishments. The road is not wide enough to have separate lanes to segregate traffic going towards Rohtang from other normal town traffic. Secondly in between Vashishta and Kothi village which is the last village on way to Rohtang, there are several other villages, establishments of Army, Border Road Organization and other Commercial establishments- hotels, restaurants & markets which make it a thickly populated area. Beyond Kothi there is no habitation, therefore, the applicant seeks the modification of the orders of the Hon'ble NGT on the following grounds to establish the barrier at Gulaba, a few kilometers ahead of Kothi Village. This will have following advantages:

Anil
Principal Secretary (S.M.)
to the Govt. of Himachal Pradesh
Shimla - 171002

- a) The normal civil and military/BRO traffic which is not headed towards Rohtang will get filtered
- b) Land is available to create parking facilities, public conveniences, information kiosk, small eateries etc.
- c) Gulaba is at a reasonable distance beyond Manali (21 Km) which means the lines of vehicles would, most of the time, not extend to inhabited areas preventing traffic jams and environmental pollution and trouble to other commuters.
- d) The above process will facilitate in preventing air pollution and result in congenial improvement in the Environment of the Area.

It is worth mentioning that when the barrier was placed at Kothi village in May 2014, the line of vehicles extended all the way back till Vashisht near Manali (Vashisht is 1.4 km from Manali). On some days it extended right upto Manali town. This not only caused inconvenience to local people but also caused great harassment to tourists and others.

Since each vehicle will stop at least for a few minutes before being allowed to cross the barrier, the width of road is such that only one counter is possible. Thus it is practically impossible to position the barrier at Vashisht. Most appropriate place from the limitation is Gulaba even though Gulaba is also not ideal.

Therefore, it is prayed that the orders may kindly be modified and the check post may be allowed at Gulaba where there is ample space and it is away from the habitation and would be suitable from ecological point of view instead of Vashisht as more vehicle jam at this place may aggravate the pollution, air in particular.

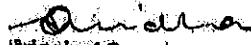
- ii) That with regard to the directions at Para 23(v) of the orders with respect to introduction of CNG or electricity operated buses, it is submitted that at present there is no CNG station in the entire state of Himachal Pradesh nor in the nearby States. In the present scenario, it would not be feasible to switch over to CNG or electrically operated buses due to lack of CNG facilities, difficult terrain and uncertain weather. However, the State Government is putting its best efforts to contain pollution by encouraging/

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Introduction of public transport vehicles being run by the Tourism Department and by discouraging the individual transport vehicles. The supply network of CNG requires huge investment and infrastructure, which is at present not apparent. The electric operated buses are also not viable option since these vehicles while easy to operate in plain terrains, in hilly terrain the average speed/energy gets exhausted rapidly and practically not feasible at this stage. It is further submitted that such vehicles may be allowed to ply on Manali-Rohatang Road that have valid registration certificate and have pollution fitness certificate in accordance with the provisions of relevant laws and rules.

iii) That with regard to the directions at Para 23(vi) for plying of vehicles fitted with catalytic convertors, it is submitted that all petrol vehicles are already fitted with catalytic convertors at Manufacturer level. With regard to soot collector system, the transport department has no technical proficiency about soot collector system and no manufacturer has also approached the department about this. The information is being gathered in this regard as up till now no information w.r.t. such system could be collected. It is further submitted that the Hon'ble NGT may kindly issue necessary directions in this regard.

iv). That with regard to the directions at Para 23(vii) for phasing out vehicles which are more than 10 years' old, it is submitted that the life of any vehicle is being governed by the Motors Vehicle Act and it is not possible to have different set of norms within State other than provisions of Motor Vehicle Act. It is also submitted that Hon'ble High Court in its order dated 3rd May, 2013 at Item 10.2.2 Recommended Plan has directed with regard to Phasing out of Private Vehicles that the vehicles older than 15 years may go through the inspection and certification every year. Vehicles not meeting the norm should be phased out. Vehicles should be able to meet the current norms at the time of certification. Vehicles between 8 and 15 years should go through inspection and certification every two years. Other vehicles can go through the inspection every three


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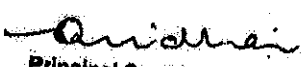
years: The basic purpose of such certification process shall be to identify vehicles needing phase-out. Therefore it is prayed that the content of this para may kindly be modified allowing the vehicles to ply with the above provisions.

- v). That with regard to the directions at Para 23(viii) to introduce BS-IV norms, it is submitted that Bharat Stage Pollution norms are mandated under the section 110 of Motor Vehicle Act, 1988 and Central Government has power to fix the standards for emission of smoke, vapour etc. for motor vehicles. Central Government has introduced sub rule 15 (Rule 115) which deals with the introduction of BS-IV norms in certain cities in the country and State Government has limited role to play in this regard. Accordingly Hon'ble NGT is requested to issue modification of the order.

- vi). (a) That with regard to the directions at Para 24, it is submitted that the Government is in process of making a policy with respect to issuance of permits to the vehicles which have to cross Rohtang Pass and en route to their destination ahead of Rohtang Pass so far as the issuance of permits are concerned, the same are being issued.


With respect to allowing the vehicles conforming to BS-III norms to Rohtang Pass and beyond the Rohtang Pass, it is humbly prayed that putting this restriction of BS-III Norms on the vehicles already owned by the Local people living across Rohtang will restrict the use of vehicles not conforming to these norms. Therefore, it is prayed that this restriction may kindly be modified allowing the local and public transport vehicles and to cross the Rohtang pass subject to pollution fitness certificate.

- b) That the Hon'ble High Court in its order dated 03.05.2013 at para 19 has reiterated that restrictions in relation to private vehicles shall not be applied to the vehicles of Army, Border Road Organizations (BRO), Govt. Vehicles, Public Utility Vehicles and vehicles used for supply chain and goods in the region which is as under:


Principal Secretary (Env.)
to the Govt. of Himachal Pradesh
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"We reiterate the position stated in the order, dated 3rd January, 2013, that the restrictions in relation to private vehicles shall not apply to the vehicles of the Army, Border Road Organization, Government Vehicles, Public Utility Vehicles and the vehicles used for supply chain and goods in the region. The State Government shall frame a policy to permit movement of private vehicles of local residents in Leh-Ladakh, Pangl, Spiti and Keylong to travel through Rohtang on suitable terms and conditions in consultation with the Pollution Control Board and experts and if those vehicles adhere to the said policy/norms, can be allowed to be operated"

- vii). That with regard to the directions at Para 24 (b) with respect to the vehicles carrying goods to be issued permits from Vashisht up to Marhi and return and vehicles transporting goods will not be permitted to Rohtang Pass. It is submitted that entire District of Lahaul & Spiti lies beyond Rohtang Pass and there is very limited period for supplying and storing of essential commodities in the entire area for the winter season and thus these directions would cause restrictions and may kindly be modified and the vehicles carrying essential items may be allowed subject to emission norms.
- viii). That with regard to the directions at Para 24(c) with respect to age of the Snow scooters less than four years' old should be permitted and which should be battery operated. In this regard, it is submitted that Snow Scooters are not capable of plying on road or any other hard surface and it is an off-road machine. Being seasonal use, for 2-3 months, it should be subjected to emission norms rather than age of the snow scooter.
- ix). That with regard to the directions at Para 26(v) with respect to no permission to any commercial activity in, around and en route to Rohtang Pass without any exception, it is submitted that the conditions related to ban on commercial activities enroute to Rohtang may kindly be relaxed, as Rohtang Pass and the area beyond and Kothi enroute to Rohtang is a main attraction for tourists coming to Kullu-Manali. Several Local People indulge in activities of


Principal Secretary (Gen)
to the Govt. of Himachal Pradesh
Shimla - 171002

tourist interest in the area during tourist season. Livelihood of hundreds of families depends on these activities. The activities include rides on snow scooters/ all terrain vehicles, snowboarding, sliding/gliding on snow, snow walking, horse riding etc. besides this, several local people rent out warm clothes, snow boots, woolens, caps, walking sticks and such like items to tourist. Some set up small portable temporary stalls to offer tea & snacks to tourists.

The tourists rush at Rohtang Pass is seasonal and most of the local people earn for the year during the limited Tourist Season. It is felt that the livelihood issues of the local population are not in conflict with the need to protect, conserve & sustain the ecological balance in the area. Thus it will be appropriate to allow these activities in a regulated, restrained and eco-friendly manner with the condition that general cleanliness is maintained. As tourists coming to Manali want to visit Rohtang pass to see the snow and to participate in adventurous activities and these activities are the major tourist attraction, these activities are undertaken where snow exists for a few months in a year. Thus adventurous activities can be undertaken at designated places without damaging the environment.

It is further submitted that the hawkers sell their items in the open to earn their livelihoods and they have not constructed any permanent structure enroute to Rohtang pass. Therefore, orders may kindly be modified as no permanent structure is going to be constructed; only hawkers may be allowed to earn their livelihood as in the past with the condition to provide and prevail healthy environment without having any adverse impact on the ecology. Thus it is prayed that minimal commercial activities may be allowed with the condition to maintain clean and healthy environment.

- x). That with regard to the directions at Para 38(i) with respect to collection of green tax, it is submitted that Green Tax is being already charged as per the Notification issued by the Tourism Department near a barrier at Manali as per directions of the Hon'ble

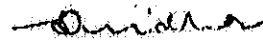
Anil Kumar
Principal Secretary (C.M.)
the Govt. of Himachal Pradesh
Janta - 171002

High court vide order dated 19.04.2004 in CWP No. 528 of 2003

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charged on the vehicles entering Manali Town bearing registration numbers other than the State of H.P. Copy of the notification issued by the department of Tourism and Civil Aviation is annexed as annexure R-1.

The Hon'ble National Green Tribunal vide its orders/ Judgement dated 6-02-14 at para 38 has given directions for imposition of Green Tax on the vehicles passing ahead of vailah and it is understood that the vehicles of the local populace living beyond Rohtang pass used for supply chain and individual vehicles have already been exempted from the green tax so imposed. The State Government is already charging the Green Tax at Manali Barrier from the visitors coming to Rohtang as Himachal Pradesh is tourist friendly State and tourism being a boon for the economy of the State. As Tourists visiting Manali and Rohtang in particular has to pay entry fees to the State, Green tax at Manali barrier besides the parking fees, therefore, directions may kindly be issued to implement the notification dated 29-05-2004 issued by the Department of Tourism and Civil Aviation in compliance to the Hon'ble High Court order dated 19-04-2004 in CWP No. 528 of 2003 titled as Raj Chauhan V/s State of H.P & oths.

- xi That various protests/ agitations, road blockade, dharnas etc. have been held by the members of the Gram Panchayats, Block Samiti and Zila Parishad, Taxi Operators, Travel Agent association, Himalayan Adventure Sports and Tourism association, Kullu Manali Paryatan Vikas Mandal, Vypar Mandal, Private Bus Operators while implementing the orders of the Hon'ble National Green Tribunal dated 06-02-14. There is apprehension amongst the local population especially people belonging to Lahaul & Spiti that this order will result in shortage of vehicles which may damage the crops in the fields per se such as apples, green peas, potatoes flowers and exotic vegetables which are perishable in nature as these are the main source of their sustenance.


Principal Secretary (T&C)
to the Govt. of Himachal Pradesh
Shimla - 171002

Prayer:-

The State Government while reiterating of its commitment to the conservation of the Environment strongly urges the Hon'ble Tribunal to appreciate that some of these directions are very difficult to implement and would cause serious practical problems leading to discontent to the citizens of the state and the visiting tourists.

In view of the submissions made in the paras above, it is humbly prayed that the orders/judgment of the Hon'ble National Green Tribunal dated 06-02-2014 may kindly be modified to the extent as prayed above in the interest of justice and fair play

[Signature]
Applicant
Principal Secretary (Envy)
to the Govt. of Himachal Pradesh
Shimla-171002
Through

Place Shimla

Advocate General

Date