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NGT Order – contradictory but Government exposed

**Stay on new construction; Environment and Forest Clearance necessary;
High Level Committee constituted to look into the matter**

The last one month has been one of hyperactivity around the illegal construction of the Kanhar dam and illegal land acquisition in Sonbhadra district of Uttar Pradesh. Peacefully protesting Adivasi, Dalit and Minority community members were fired upon on Ambedkar jayanti in which Aklu Chero suffered bullet injury. The protestors again faced brutal lathi charge and firing on 18 April. The Uttar Pradesh government and district administration instead of initiating dialogue with people have taken recourse to violently suppressing peoples' voice. Constitutional and democratic rights which are the core of our political and social fabric have been wantonly violated at the behest of local land mafia who are busy organizing a loot of hundreds of crores of the project money amongst themselves in going ahead with this illegal construction of the dam.

The National Green Tribunal judgment of 7 May 2015 clearly indicates that the construction of the Kanhar dam is illegal and has in effect proved that the demands of the dalit adivasi people protesting from 23 December 2014 were correct. Despite all this, in an apparent attempt not to antagonize the government, the NGT has allowed “the construction or activity that is under way” but has put a stop on any new activity without specific recommendations of the High Level Committee. But the fact of the matter is that all current construction work is new work and thus the fifty page judgment and this one line instruction allowing construction or activity that is underway is contradictory.

The petition against the construction of Kanhar dam in the NGT was filed by O.D. Singh and Debadityo Sinha in December 2014. All facts put forward by the petitioners have actually been accepted by the court. That the project has no appropriate Forest clearance and that the claims of the Uttar Pradesh government is incorrect has also been accepted by the court. The court has also accepted that project activity had hardly commenced in the year 2006 and even thereafter and thus the project cannot continue without obtaining the Environmental Clearance in terms of the EIA Notification of 2006. The project also has no clearances under the Environment (Protection) Act, 1986 and Forest (Conservation) Act, 1980.

Sonbhadra district administration's submission that an insignificant percentage of adivasi population would be affected by this dam has also been proven to be wrong by the court which has categorically said that the project will cause displacement to a large population, the majority of which is tribal and is likely to evict nearly 7,500 families from 25 villages and that it would be necessary to arrange for their rehabilitation. The NGT has in this judgment expressed serious concern on environmental issues and has pointed out that Kanhar river is a major tributary of Son river which is a major tributary of Ganga and due to construction of several dams and water diversion structures on Son including Rihand Dam and Bansagar dam, the river Son is facing great threats in terms of its riverine characteristics - loss of fish species and invasion of exotic fishes in the river, with adverse affects on the river flow, velocity, depth, substratum, pools, ecology and fish habitats of the area.

The NGT order has also noted that the project is bound to result in huge loss of forest area; large number of trees were felled despite strong opposition by the tribals which is a gross violation of the provisions of the Forest (Conservation) Act, 1980. When the work was stopped in the year 1984 lakhs of trees were likely to be affected by the project. Renukoot forest division of the Sonbhadra district is one of the richest and dense forest areas of Uttar Pradesh and is known for its rich biodiversity, medicinal plants and the traditional and cultural heritage in the form of tribal knowledge which has attracted much scientific and economic attention. Submergence of large tracts of forest lands will not only make the nation devoid of the carbon sequestration potential but will also release the carbon trapped in the forests. There are numerous global evidences of production of Green House Gases, especially Methane owing to construction of dams. The NGT order also referred to the T.N. Godavarman v. Union of India and Others, W.P. (Civil) No. 171/96, where it was contended that forests are vital components for sustaining life support system of the earth and for preventing any damage to them and development should be consistent with the protection of environment and not at the cost of degradation of environment. Any threat to ecology can lead to violation of the Right to Enjoyment of Healthy Life guaranteed under Article 21 of the Constitution of India and needs to be protected. The court has asserted that there is a need for proper cost benefit analysis which should be undertaken, particularly, in view of the fact that no opportunity has been granted to the affected persons to raise their concern and grievances in regard to the project and its activity and also keeping in view the fact that there has been a drastic increase in the population, development of schools, roads and other infrastructures, industries and development of coal mines etc. which has already caused significant changes in the environment and ecology.

The honourable tribunal has also laid bare the huge cost escalations in this long delayed project - the project was initially approved for an estimated cost of Rs. 27.75 crores and was technically approved in 1979 with the revised estimate cost of Rs. 69.47 crores. In the 106th meeting of the Advisory Committee of the Central Water Commission held on 4th October, 2010, the estimated cost of the project was quoted as Rs. 652.59 crores, as per price level of 2008-09; it has of late been revised to Rs. 2259 crores. The scope of the project was expanded in this long time period which is also a reason for the cost escalation. It is for a quick loot from the approved funds that the UP Government and the district administration of Sonbhadra have tried their best to hurry through with some construction work; this has also included local politicians, middlemen, mafia and unsocial elements.

It is evident from the NGT judgment that the UP government and UP Irrigation department have tried their best to mislead the Tribunal with many incorrect facts. The UP government informed the tribunal that this is an inter-state project which had been sanctioned in the year 1976 and the Environmental Clearance was accorded in 1980. The Forest Department vide its letter dated 27th February, 1982 had transferred 2422.593 acres of forest land to Irrigation Department, State of Uttar Pradesh for the purposes of the said irrigation project based on a letter of the then governor of Uttar Pradesh. MoEF(Ministry of Environment and Forest, Government of India)) came into existence only in the year 1985 i.e., subsequent to grant of Environmental Clearance in the present case and forest land was already transferred to the Irrigation Department prior to this date and compensation for the same was also paid. The project activity had been commenced in the year 1980 and, therefore, no Environmental Clearance under the Notification of 2006 is required. And as far as forest clearance is concerned, according to the Ministry, the records pertaining to

the same are not traceable since the records dates back to more than 3 decades. The UP government also misstated facts to the court about clearances from neighbouring states of Chattisgarh and Jharkhand where villages would also be submerged – giving an idea that that clearances were obtained during the initiation phase of the project but in reality such clearances were actually obtained 2010 and 2002 respectively. The government also gave incorrect information when it said that this project was meant to provide irrigation facilities to the drought prone areas of Duddhi and Robertsgunj in the Sonbhadra district of Uttar Pradesh (when this region has the much talked about Rihand dam which is supposed to be a large scale irrigation project though waters from this dam is being used to meet the needs of the energy producing companies of this area)Though the government claimed that work on this project has been going on from 1980 but from the documents on record, the court observed that it is clear that the construction and related activity of the project had come to a halt and had not been carried out for a long time till 2014, for the want of funds, due to absence of fresh permission from the Central Water Commission.

The UP government also questioned if the Green Tribunal should at all entertain the petition in view of pendency of two Writ Petitions on similar issues before the Hon'ble High Court of Allahabad but the Tribunal found no merit in this objection raised by the government and rejected the same. The court also criticized the UP government for assuming that the approval granted by the Governor of Uttar Pradesh permitting conversion of the forest land for non-forest activity of the project as sufficient and clearly stated that this is not and cannot be construed as the Forest Clearance as contemplated in terms of Section 2 of the Forest Conservation Act, 1980.

The Tribunal also noted that after coming into force of Environmental (Protection) Act, 1986, the Ministry of Environment and Forests had issued a Notification dated 27th January, 1994 requiring any person who desires to undertake any new project and in any part of India, or expansion or modernization of any industry or project listed in Schedule I to the Notification had to submit an application to the Ministry to seek Environmental Clearance for the project. Schedule I to the Notification included hydro power, major irrigation projects and / or their combination including flood control projects. In view of the peculiar facts and circumstances of this case, it was expected of the UP government to seek Environmental Clearance in terms of the Notification of 1994, which apparently they did not. The Environmental Clearance which was granted 33 years back cannot be held as good in the field of environment. With the progress in time and the developments that have taken place during this long time, are certainly of relevant consideration for examining the environmental impact of the project on the area in question. Thereafter, came EIA Notification issued by MoEF in September, 2006. Under Schedule I to the Notification of 2006, such projects are covered and the Project Proponent- in this case the UP Government/ or its Ministry of Irrigation is required to get prior environment clearance irrespective of issue of NOC if the project related activity has not yet commenced at site. The Green Tribunal made a very important observation that the project in question – i.e. the Kanhar dam had not established itself, much less it had become operational either in 1994, or 2006 or even in 2014. The expansion and modernization would have to be of an ongoing project. The project must exist on the site, otherwise it would be a project which is sought to be implemented and modified at planned stage, i.e., on paper and not in reality. In such projects, obligation to comply with the existing environmental laws would certainly accrue.

The tribunal has also observed another very important fact about the Kanhar project -that this is not a site oriented project but is a huge project, which will have diverse impacts on a very large area and number of villages falling in the territory of the three States namely Uttar Pradesh, Jharkhand and Chhattisgarh. Nature of the project involves tunneling, making of canals, roads, bridges etc. Whatever be the situation at site, very substantial work of the project is still to be completed. Even the photographs placed by the Respondents on record do not show that the project is anywhere near to its completion. From the pleadings of the parties and the documents on record, it is evident that hardly any construction or other major activity had taken place prior to 1994. There were considerable changes in the scope of the work, technical parameters, dimensions and particularly, the expenditure of the project. We have already noticed that till 2010 even the concurrence of all the concerned States had not been received and the project had not been cleared by Central Water Commission for the revised parameters.

The tribunal has also raised questions regarding compensatory afforestation activity carried out by the Forest department as per terms of the permission of the Governor of Uttar Pradesh approving diversion of 2422.593 acres of forest land situated in Dudhi Forest Division of District Mirzapur to the Irrigation Department. The tribunal found that against an area of 980.40 hectares diverted for the irrigation project, the area brought under compensatory afforestation in terms of the statement filed by a Divisional Forest Officer, Renukoot Forest Division is only 666 hectares of forest plantations and 80 KMs of road side plantations. Though not specifically mentioned in the Report of the DFO, however, it emerges that there is still deficit of about 314 hectares of area to be covered under compensatory afforestation. The reply filed by the State of UP is silent as to when and where the deficit of compensatory afforestation is proposed to be liquidated. It is also not clear from the Report filed by the Divisional Forest Officer as to the present status of the compensatory afforestation in terms of the survival percentage of the plantation and their growth and their present status.

Paradoxically although Sonbhadra is one of the highly industrially developed districts of the State of Uttar Pradesh, it is also the district which is classified as one of the 250 most backward districts in the Country. The district is also one of the districts which have high percentage of the area under forest. As against the forest cover of less than 6 % for the entire State of UP, Sonbhadra District accounts for about 38 % of the forest cover. Although large scale industrial development has taken place in and around Sonbhadra area but still it has not improved the lives of the local population in terms of prosperity and health. Life of the people living in that area still remains backward. Any project should intend to provide and inject better facilities of living and better environmental to the area in question. The industrial development that has taken place in the last 30 to 40 years, has created great deal of environmental stress. Air and water pollution has increased manifold. Mining activity has resulted in large dumps of over burden being created which is physically, nutritionally and micro biologically harming the environment and impoverishing the ecosystem. This has also led to soil erosion and contamination of rivers including adverse impact on agricultural lands through leaching of heavy metals. The ground water is also severely under stress due to contamination with heavy metals like Mercury, Arsenic and Fluoride from the fly ash generated by the power plants. There are Reports of the CPCB (Central Pollution Control Board) to suggest that there is a presence of Mercury, Arsenic and Fluoride in the water samples which is entering the food chain and thereby, affecting the health of the people. It therefore does not come as a surprise that the Singrauli region was identified as

a critically polluted area by CPCB as far back as 1991. As a consequence thereof the Government of India placed a moratorium on setting up of new industries in 2010. Thus environment clearance of 1980 makes no sense in the changed situations and warrants a fresh approval.

Ultimately however, despite expressing so much concern about the environment and the state of the people of the region, the order passed by the Tribunal is not in consonance with the concerns expressed. The tribunal order ultimately bases itself on the cost factor only and allows construction work to continue because it felt that huge amount of public funds have already been spent on the project - the project which was expected to cost the nation Rs. 27.75 crores, is now costing the country Rs. 2252.29 crores at 2013 price level. Stoppage of work would further enhance the cost of construction and would be unnecessary burden on public exchequer and thus any direction for stoppage of work or demolition of the project would certainly not serve either the ends of justice or the environment. (All work is new work and thus it should have been stopped). The order of the tribunal is also contradictory because in its interim order of 24 December 2014 it had asked the government to stop all construction because appropriate Forest Clearance had not been produced. But construction work continued and trees continued to be cut down despite this interim stay order. People of nearby villages of Sundari, Bhisur, Korchi, based on this NGT interim stay order had decided to peacefully protest this construction work and when they moved closer to the site of construction to express their opposition on 14 April they were lathi charged and fired at indicating that the state is hell bent on crushing peoples voices of democratic dissent.

For stopping new construction and seeing to it that all environmental and forest clearance norms have been adhered to the Tribunal has set up a High Level Committee which does not however have any representation from mass organisations, experts or expert organisations which is a matter of grave concern. Who will actually ensure that no new construction is being done or that all conditions as set out by the tribunal order are followed? There is no clarity on this aspect. When the actual ground reality is that the Sonbhadra district administration, police and UP government is only focused on silencing peoples' voice by using state power who will see to it that this scam of a project is following norms as set out by the Tribunal order of 7 May 2015?

This region of Sonbhadra comes under the Forest Rights Act 2006 but no efforts have been made to get the consent of Gram Sabha for such a project as per the FRA. The people of five villages have filed a case in the Allahabad High Court under section 24(2) of the land Acquisition Act 2013 whereby people are supposed to be returned land acquired for projects if that has not been utilized for projects for five years but the court has not responded – probably it is waiting for the changes in the Act as proposed by the BJP government where such provisions are proposed to be scrapped. It seems the UP government is also bent on silencing the peoples' voices of dissent and going ahead with the construction of the dam however illegal and unconstitutional it may be and however dangerous it may be in environmental terms – even the warnings of the recent devastating earthquake in Nepal seems to have no repercussions among the powers that be. In such a situation where is the guarantee for people under Article 21 of the Constitution safeguarding their right to life? This right to life is not being guaranteed by the government, judiciary or political parties or mainstream media – which seems to have completely surrendered to corporate designs. The only option left for people would be to unleash militant democratic

struggles which are being and will be in the days to come attempted to be brutally silenced. The landless and marginalized dalit adivasi and minority communities are beginning to forge a fighting unity on the ground to challenge this state of affairs and the country is on the cusp of witnessing this united challenge which will redraw the political landscape of the country. Unfortunately the Green tribunal order does not take in to account this emerging political ground reality and in effect tries to weaken the peoples resolve and support the unsocial elements and land mafia in their greedy overtures. But whatever be the given situation it will be incorrect to underestimate the democratic values of this country because it is our firm belief that peoples struggle would be victorious.

Is the judiciary really protecting the just needs and demands of society or is it serving the unjust neoliberal diktats? But the Indian judiciary which, with some exceptions, still carries the legacy of British colonialism which hanged Bhagat Singh finding him guilty in a case where his name was not even mentioned in the FIR and without a witness, will ultimately protect the interests of the ruling class and their governments. Social change has come about because of social movements and not because of court orders. Thus it is important that people fighting democratically on the streets and fields against projects of devastation in the name of development analyse and understand court judgments like the NGT order of 7 May 2015 which has in effect blown away the very basis of the construction of the Kanhar dam. It is also the responsibility of organisations and progressive sections of society to build up public opinion especially amongst the section of people who are actually fighting on the ground by laying bare the real meaning of such judgments.

As the departed *shayar* Harjeet had written (After the massacre of Sikh community in 1984)–

*“Munsif ka sach sunahari sihayion mein chhip gaya,
Waise wo janta hai khatawar kaun hai”*

(Truth hides beneath the golden ink of the judges’
But they know, who the offenders are ”)