

**4TH SURANA & SURANA AND UNIVERSITY INSTITUTE OF LEGAL STUDIES,
PANJAB UNIVERSITY, CHANDIGARH
NATIONAL ENVIRONMENT LAW MOOT COURT COMPETITION**



3rd – 5th DECEMBER, 2021



MOOT PROPOSITION

- 1.** Mindia is the world's largest democracy situated in the Tasiaan continent. The people of Mindia gave to themselves the Constitution of Mindia on 26th November 1949. The Constitution is the *grundnorm* of the country, which guarantees Fundamental Rights to all its citizens under Part-III. The judiciary in Mindia has been proactive in safeguarding the interests of its people and has over time widened the horizon of Fundamental Rights. It has been known across the world for its pro-environment decisions and striking the peculiar balance between social, economic development and safeguarding the environment.
- 2.** A shift to 'renewable energy' was one of the significant global measures to contain the emission of greenhouse gases and boost the production of clean energy in Mindia, after the country ratified the second commitment period of the Kyoto Protocol. In pursuit of this, the government of Mindia was constantly striving to produce renewable energy through Hydel Power generation to fulfill its international obligations to reduce its carbon footprints.
- 3.** Barigua is a north-eastern state of Mindia, which is home to the highest mountain range of Mindia and the Unicorn-sezza valley. This area enjoys unique geographical and ecological benefits. The Unicorn-sezza valley. is susceptible to climate change and this fragile ecosystem is also facing grave risk owing to increasing global temperature. Barigua is regarded as the cradle of Mindia's Hydropower. 45 Small Hydro Power units and 9 Mega Hydro Power Plants cumulatively of 26,536 MW have been operating in Barigua at considerable distances.
- 4.** Unicorn-Sezza Valley is mainly known for the Rivola river, rich and diverse culture, fruit orchards especially apple, almonds, apricot and Chilgoza Pine trees. Chilgoza pine is well-known for its edible seeds, is rich in carbohydrates, proteins, and has medicinal values. It is classified as an endangered and rare tree species. It is inhabited by a population of Bharus, Baji, Ruksa and Gausari tribes whose livelihood is dependent on the collection of Chilgoza nuts and selling in the nearby markets.

- 5.** Rivola River on which the dam was proposed is located 60 kilometers from the closest glacier. The Geological Survey of Mindia reported that 50 percent of the area of Barigua is prone to landslide hazards.
- 6.** Lakola, Garo, Puh, Pischu, Kinsho and Pindi are villages perched on hilltops, surrounded by higher hills. Due to their remoteness, these villages do not fall under the national grid. After sunset, the poor families relied on small handmade kerosene lamps to do household chores. Enjoying the gift of electricity after the sunset had been a distant dream for the poor people residing in these villages. Only a few families in these villages could afford solar panels to light the houses.
- 7.** Taking into consideration the demand for electricity by the people and the potential of industrialisation in the area, the government of Mindia decided to construct a Mega hydel power plant, by the name of Rivola Hydroelectric Power Plant (RHEP) of 1091-MW which would not only give these villages access to electricity but will also make the Unicorn-sezza valley a potential hub for industrialization bringing a plethora of employment opportunities for the indigenous population living in the nearby villages. The project had been planned by the State Government to fulfill both economic as well as strategic purposes as the project was to supplement the 'Har Ghar Mein Bijli' campaign started by the Barigua Government in the year 2005.
- 8.** Considering the increasing delay in the implementation of the project and the requirement for modern engineering solutions, the State Government of Mindia invited bids from both domestic as well as foreign Hydel Power Development companies on 5 October 2006 for the construction of this project.
- 9.** After the closure of the submission window and thorough scrutiny thereafter, the bid submitted by TechHydra, a firm founded by Neo-Tech, an Indian Engineering and Development Firm in collaboration with AceHydrda, a Russia based Engineering Solution and Consultation Firm, was accepted and subsequently the contract for designing, maintaining and running the 1091-MW river valley Hydel Power Project was awarded to them for a sum of Rs. 7500 Crores.
- 10.** The procedure for seeking Prior Environment Clearance was started by TechHydra on 5 November 2006. A notice was published on 12 November 2006 in two vernacular

language newspapers about the conduct of public consultation with people of Rhangla, Chinar, Markaz, Dasu and Mitkoon and other Gram Panchayats i.e., areas around and downstream the proposed power project. The public consultation was done from 1 February 2007 to 5 February 2007 and prior environment clearance was granted on 5 April 2007.

- 11.** When appraisals to grant environmental clearance (EC) to the project were underway, a team of independent researchers comprising of glaciologists, geologists and scientists had written to the Expert Appraisal Committee (EAC) outlining the cumulative impact of constructing mega-dams in the Unicorn-Sezza Valley. The submission underlined four specific risks: seismic hazards, glacial hazards, flooding due to extreme precipitation events and landslides. Questions were also raised on the economic viability of the project and the over-classification of such large hydel power plants as renewable and carbon-free sources of energy.
- 12.** The firm had already been making headlines for their swift developmental techniques and strict quality control followed by them in their other hydel projects. The firm received the environment clearance after filing the requisite application.
- 13.** However, the ambitious project of run-of-the-river schemes with limited storage capacity in the form of an artificial reservoir has run into several controversies since its inception on 5 October 2007 over concerns of ecological damage, forest invasion and tribal displacement. There had been an upheaval in the valley by the Environmental Activists highlighting that and the people of Razwal, a downstream area comprising of Rhangla, Chinar, Markaz, Dasu, Mitkoon, etc. villages though have been consulted but being of tribal origin and having low literacy level were unaware about the damage that can be caused by the power project.
- 14.** Srishti Foundation an NGO is run by a group of conservationists working towards environment protection under a mission named 'Paryavaran Suraksha Mission' has also repeatedly highlighted irregularities in Environmental Impact Assessments (EIA) pertaining to dam construction projects in the region. Their imminent fears were related to increased risks of floods, landslides, the effect on fruit orchards and Chilgoza trees.

- 15.** The history of the mega hydropower plants in the area has been despicable. In the past decade, successive governments in the state have struggled to balance the ecological realities with development requirements. The result being the rampant damming of rivers to generate hydropower, deforestation, loss of biodiversity, mushrooming of settlements on river banks, and the drilling and tunneling of mountains to construct and expand the road network. Of all these damming of the rivers has been directly linked to the obstruction of river channels.
- 16.** However, the proponents of this project highlight that Hydroelectric power will improve the economic health of the state by bringing in additional revenue. Also, it is the only possible way to generate electricity with minimum cost and minimum environmental damage. This project also had a strategic value for Mindia since it would make electricity available to the remote border regions and security forces stationed there.
- 17.** The Ministry of Environment and Forest (MoEF) presently called the Ministry of Environment, Forest and Climate Change (MoEFCC) granted the environmental clearance stating the project was cleared because it has huge potential for generating clean energy (mitigating millions of tons of CO₂ every year), which far outweighed environmental and social impacts. Justifying its decision, the ministry said: "The spirit of the clearance system demands evaluation of trade-offs for balancing the developmental needs with environmental sustainability, examination of the scope of mitigation and capacity of the ecosystems to withstand the impact."
- 18.** Keeping in view the likely impacts identified for various aspects of the environment (aquatic, terrestrial and socio-economic) during the construction and operation phase of the project, an Environment Management Plan (EMP) was formulated on the recommendation of the Expert Appraisal Committee (EAC). The highlights of EMP are as follows:
- a) Water depth sensors shall be installed at suitable locations to monitor the flow.
 - b) Catchment Area Treatment (CAT) Plan shall be implemented in consultation with the State Forest Department and shall be implemented in synchronisation with the construction of the project.
 - c) A compensatory afforestation program shall be implemented.

- d) Families that are losing their entire agricultural land or left with <1 Ha of their land, at least one member from such families will be getting a job in the project as per their qualifications.
- e) Efforts to be made to reduce the impact on biodiversity.
- f) The Multi-Disciplinary Committee needs to be reconstituted and the meeting needs to be held at regular intervals. After 5 years of the commissioning of the project, a study shall be undertaken regarding the impact of the project on the environment. The study shall be undertaken by an independent agency appointed by the government of Mindia. It shall be conducted regularly after every 5 years.

19. After obtaining environment clearance, The RHEP became operational in June 2010 and became a significant source of renewable energy. It brought worldwide appreciation to the State of Barigua for its contributions to reducing levels of carbon-emission of Mindia. It also became a major source of revenue for the state. Deliberations are being conducted to supply electricity generated from RHEP to neighboring states.

20. However, the Srishti Foundation along with the local inhabitants have been raising questions over the adherence to the Environment Management Plan. There is an apprehension that the dam has caused enormous damage to the ecosystem. The report of the Multi-disciplinary Committee submitted in 2015 revealed no major damage to the ecosystem of the valley, but the compliance report has not been submitted in the year 2020. The local inhabitants claimed that the use of blasting during project construction had weakened the already fragile hills; thereby increasing the frequency and intensity of landslides in the region. The inhabitants pointed towards an increased number of landslides from the past 7 years which has caused tremendous damage to both life and property in the area.

21. The contentious RHEP in the state's Unicorn-Sezza Valley once again sparked the environmental damage concerns in 2020, when the entire country was already reeling under tremendous pressure due to the COVID-19 pandemic.

22. On the night between 16-17 June 2020, due to a glacial lake outburst in the mountain peaks to the north of Unicorn-Sezza Valley flash floods, soil erosion, landslides and uprooting of

trees took place at various places. Due to the sudden rush of water, mud and boulders in the reservoir of RHEP from the glacier; the capacity of the reservoir within no time reached its saturation point. The water in the reservoir reached the danger mark; to avoid damage to RHEP after sounding the alarm, the floods gates were immediately opened. The damage was maximum in the area downhill RHEP i.e., Razwal. It washed away around 700 houses, a historical monument believed to be the abode of *Pandavas* and an ancient temple situated in the area. More than 150 people lost life including 5 RHEP workers. Around 150 people got severe to moderate injuries and 500 persons became homeless. Apart from the loss of human life, there has been the loss of cattle, sheep, animals and birds living in the villages and forests. Hundreds of big trees in the forests, along with the rare Chilgoza trees got uprooted.

23. The massive flow of water swept away the muck that was stored by the dam authorities damaged apple orchards, terrace fields, standing crops and houses in Razwal. In certain areas, the level of debris and silt in the houses rose to two feet.

24. The people took out protests for the closure of RHEP. It was alleged that sudden release of water from the dam constructed to generate electricity, irresponsible dumping of debris and muck removed from the power plant and improper construction of the retention wall to hold the silt and debris has resulted in damage in the Razwal area. The incident was widely covered by the national and international media.

25. On 5 July 2020, the Principal Bench of the National Green Tribunal (NGT) took *suo moto* cognizance of the matter against RHEP. The media praised the NGT for taking *suo moto* cognizance of the matter as the people living in such remote areas of the country cannot approach the Court on their own for legal redressal. RHEP objected that the NGT does not have the power to take *suo moto* cognizance. The Srishti Foundation filed an intervening application in the NGT. This application was accepted by the NGT and Srishti Foundation argued against the RHEP. The NGO also argued that the NGT had the power to take *suo moto* cognizance.

26. The NGT after hearing both sides held that it has the power to take *suo moto* cognizance. Further, an expert committee was constituted to undertake an on-site inspection of the matter. The report submitted by the committee is annexed as Annexure-I.

- 27.** On 15 September 2021, the NGT after hearing the arguments of the concerned parties ordered the closure of RHEP canceling the earlier granted environmental clearances. It made the direction of carrying out fresh Cumulative EIA and get fresh Environmental Clearances from the concerned authorities before making the plant operational. It further directed RHEP to pay Rs. 6 crores for the loss of life and injuries suffered due to flood, Rs. 4.5 Crore for loss/damage to private property and Rupees 3 crores for restoring the ecology and clean-up processes.
- 28.** On 20 November 2021, RHEP filed a Special Leave Petition against the order of the NGT in the Supreme Court of India.
- 29.** The Srishti Foundation again filed an intervention application in the SLP alleging the callousness with which the power project was operated and muck was stored. It contends for enhancing the compensation granted to for loss of life, property of the villagers. It has specially made a plea for taking into consideration the loss suffered by the tribal population whose livelihood depended on the collection of nuts from the Chilgoza trees because they did not own any land or orchards but collected Chilgoza nuts from the forest land and will not get much from the compensation awarded by the NGT. It also contends that the compensation for clean-up and restoring the environment was inadequate and should be enhanced.
- 30.** The Hon'ble Supreme Court admitted the SLP filed by RHEP and also allowed the intervening application filed by Srishti Foundation. The case is now listed for final arguments before a three-judge bench.

The issues are:

- 1. Whether NGT can take *suo moto* cognizance of the issue?**
- 2. Whether RHEP is liable for the loss of life, property and damage to the environment caused by the flash floods and release of muck?**
- 3. Whether the NGT's order of closure of RHEP is justified?**
- 4. Whether compensation awarded is adequate and if not what should be the extent of compensation?**

Note:

- 1. Participants have to argue from both sides. (RHEP and Srishti Foundation)**
- 2. The laws in Mindia are *pari materia* to India.**
- 3. Any resemblance to any person, natural or artificial is purely coincidental.**
- 4. The participants are free to raise any additional issues in accordance with the facts stated in the Moot Proposition.**

ANNEXURE- I

EXPERT COMMITTEE REPORT

It is to be informed that the report has been prepared as per the order dated 20 August 2021 of the NGT.

- *The RHEP in dispute was having a total of 10 muck locations for the collection of muck which was identified and allotted during the development of the project and the said locations were identical to each other. The muck locations were covered with rigid retention walls and were designed to resist the lateral pressure of the soil to the slope. The wall which broke out was a bulkhead that was restraining soil from the backside and water from the front side. The said Hydropower Project had been taking precautionary measures which included a wall bearing 4 meters of height, a slope of 1 inch which was provided for every 12 inches of the project land, with a proper drainage system for optimum safety.*
- *The muck dumping site no. 7 to 9 was severely attacked by a high intense velocity of 8m/sec and a deep flow of water. The project experienced an unusual 10600 cumecs catastrophic flood against the highest 8000 cumecs in the last 10 decades. The said calamitous incident led to the destruction of the retention wall. Sites no. 7 to 9 were found to be damaged and all the muck and debris flowed away.*
- *The muck dumping area was about 12 km away from the nearest villages. Due to the massive flow of water, the villages were flooded with water, muck, and layers of soil. The area of Razwal including houses, terrace fields, fruit orchards, forest sites was covered with sediments released from muck dumping sites no. 7 to 9.*
 - *cubic meter per second (cumecs)*