

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

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Srinagar Bandh Aapda Samiti & Ors. v. Alaknanda Hydro Power Co Ltd. & Ors. (2014): No Fault Liability

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ABSTRACT

Technological development is important for various reasons and humanity have witnessed various goals the human have been able to achieve much through it but one of the major drawback of it is that it is affecting the very mother Earth, which have provided the humans various means of existence on this planet. The current case study is one of the various incidents happening around the globe. The plant which was setup so to utilize the environment in sustainable way and to fulfill the requirements of the people became the cause of environment destruction and affected public life and property. The hydro power dam which was constructed over Alaknanda River, to generate power through sustainable means became the cause of destruction. India is a part of the nations who have mastered the hydro. Technology and this incident did not happen because of lack of research in the required domain, which usually happens but a sheer example of lack of enforcement of guidelines and which has been framed according to environment situation by the authorities and negligence shown by the company. The case study analyses the definition of "Act of God" in the light of the judgment and how it has been interpreted by the Hon'ble Court in the light if the given facts which will narrow the scope and will prevent misuse by the companies in order to absolve from their liability. The Court also applied the principle of "No Fault liability" as provided under the Environment Protection Act keeping in mind the role of sustainable development.

Keywords: *Act of God, No Fault Liability, Sustainable Development, Negligence & Environment.*

I. INTRODUCTION

CASE TYPE: Application filed by Appellant before Hon'ble Supreme Court

PETITIONER: Srinagar Bandh Aapda Sangharsh Samiti.

RESPONDENT: Alaknanda Hydro Power Co. Ltd

BENCH: Hon'ble Mr. Justice U.D. Salvi (Judicial Member) Hon'ble Prof. A.R. Yusuf

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(Expert Member)

The nature have once again depicted that humans can't withstand against nature and they must understand, that the only way they can survive on this planet is only by following the rules of nature itself.

In order to safeguard their lives, the Josh math's residents had to leave their houses in the icy January cold, A fifth of the town's roughly 2,500 buildings had foundations that were shifting and sinking and walls that had burst through. Government authorities from the Union and state of Uttarakhand are relocating thousands of villagers into hotels, while stopping all construction on a hydropower project and road expansion. But this is not the first incident, nature has given us numerous warning, but all went in vain.

A catastrophe, happened in the year 2014, where a hydroelectric plant over Alaknanda River resulted in flood in Jammu and Kashmir and submerged 300ha of land including 200ha of forest area. The floods, was spread over an area in Srinagar District Pauri and devastated various private, public governmental and quasi governmental infrastructure. The question before the Apex Court was to whether the Parent company, which constructed the plant over Alaknanda will be responsible for the catastrophic or they will be rescued by the *Vis Majeure*. The biggest dilemma before the authorities is how to balance development with nature, whether infrastructure at the cost of destroying nature will be beneficial in the longer run.

The current case had set forth the example that authorities and private companies can't escape their liability under the shield of Act of God and also strengths that No Fault Liability will be applied in stricter sense, keeping in mind the goal of Sustainable development.

II. CURRENT STATUS OF THE CASE

An organization of the residents of Srinagar District Pauri, Uttarakhand and one Vimal Bhai who calls himself as convener of Matu Jansangthan another organization raising various issues concerning forest and environment have filed this application for directions to the respondent no.1 Alaknanda Hydro Power co. ltd. to pay compensation for the damage suffered by the members of the Srinagar Bandh Aapda Sangharsh Samiti in terms of loss of life and property and for restoration of effected area in Srinagar due to the floods that hit the area between 16th&17th June, 2013.

III. FACTS OF THE CASE

1. The heavy rainfall of 350mm was recorded in Char Dham area due to a cloud burst in Uttarakhand by Wadia Institute of Himalayan Geology on 15-06-2013/16-6-2013.

Further snow fall resulted in floods in Chorabari Lake near Kedarnath, which consequently caused heavy floods in Mandakini-Alaknanda-Bagirathi river basin resulted in heavy landslides and floods in Srinagar area.

2. The Alaknanda Hydroelectric Project is a run of the river scheme on Alaknanda River involving construction of 63meters high dam across the river Alaknanda, 800 meters long diversion tunnel as well as 4.8 meters long power channel for generating 200 MW of power (50MW x4 Units).
3. The devastation caused due to the floods on Alaknanda river, both to person and property, was spread over an residential area in Srinagar District Pauri, also submerging the forest land of 200ha and causing damage to other places including Governmental or Quasi Governmental estates. The Muck (Solid waste of plant) which was illegally dumped by the company (Unscientific manner) got accumulated in the residential area through floods and caused additional damage.
4. This project was granted clearance vide letter dated 3rd May, 1985 issued by Director and Member Secretary Environmental Appraisal Committee on certain conditions, particularly, the conditions which were essential for the company to adhere to in order to provide safeguards to the area. Subsequently, the scope of the project was revised to 330MW (55x6 units) by the State of UP.

IV. ISSUES RAISED

Perusing the case in hand, the Hon'ble Supreme Court has dealt with the following issues while adjudging the case –

1. Whether Respondent No. 1- Alaknanda Hydro Power Co. Ltd can seek shelter under specious plea of “Act of God – Vis Major” and avoid responsibility to pay the compensation.
2. Whether under section 17(3) of the National Green Tribunal Act, 2010, this Tribunal can invoke the principle of No Fault and saddle the Respondent No. 1 with the liability to pay the compensation for the damages incurred as a result of the floods caused even assuming the same to be an accident involving a fortuitous or sudden or unintended occurrence.

V. HOLDING

In the present case, The Hon'ble Supreme Court while allowing the appeal and analyzing the definition of Act of God as has been provided in various judgments of Hon'ble Supreme Court

and P. Ramanatha Aiyar in his 3rd edition as “An overwhelming unpreventable event caused exclusively by forces of nature, such as an earthquake, flood, or tornado, which by no amount of foresight, pains or care, reasonably to have been expected, could have been prevented”. Held, facts clearly specify that the respondent no- 1 could have anticipated the event which had happened and it was not something respondent cannot anticipate. While referring reports which was submitted by the committees to analyze the project in past, suggests that the events have been occurred in the past but not like this and hence the respondent can’t take the defence of Act of God.

Further the Hon’ble Court also went on to analyze the section 17(3)² of the NGT Act, 2010 which talks about “No Fault Liability”. It says where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified under the act is caused, then the person responsible shall be liable to pay compensation as may be determined by the tribunal. Now in the present matter the destruction was caused or rather amplified by the Muck stored by the company in unscientific way, especially at Point 9 and 10, which got mixed with the water of the river and caused such a disastrous act and the timely safeguards prescribed for the proper management of muck, made it an integral part of the process of manufacturing power and the company’s failure to do so, will cover it under the definition of accident and hence company will be liable to pay compensation to the persons under the principle of No fault Line.

VI. ANALYSIS OF THE JUDGMENT

It’s a fact that the primary reason behind the floods was the cloud bursting, which happened on 16th and 17th June, 2013. According to petitioner, the company did not displaced the muck generated for the construction of the plant and dumped it in unscientific manner in the Alaknanda river, and dam was filled with the water due to heavy rains and when the dam gates was opened, the muck which was accumulated, increased the flow of water and entered into the residential area and effected the property and lives of the victims.

The respondent no-1 tried to raised the contention that three committees setup in the past by Hon’ble SC itself and all of them have given clean chit to the project and this petition was again filled with the ulterior motive to hinder the work of the company, which was engaged in making electricity by hydro-energy and catering to the large masses.

²National Green Tribunal Act, 2010, s 17(3), No. 19, Acts of Parliament, 2010 (India) - The Tribunal shall, in case of an accident, apply the principle of no fault.

ISSUE NO-1: Placing reliance on the definition of Act of God, as defined by the Hon'ble Court in the Judgment of *KSRTC v. Mahadeva Shetty*³, (2003) that every unexpected wind and storm does not operate as an excuse from liability, if there is reasonable possibility of anticipating their happening. An act of God provides no excuse unless it is so unexpected that no reasonable human foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing. The Court took into consideration of the stand of the union government, that the Company did not followed the proper scientific criteria required to maintain the plant waste.

The Hon'ble Court held that the frequent floods in the area and various committees formed just to study the working and establishment of the company and acceptance of the fact by the company that there was a protective wall which got washed off by the floods proves that the floods was not a very peculiar phenomena which could not have been anticipated by the company and Ministry of Environment, Forest and Climate change has sounded an alarm as regards to muck disposal on 30th June, 2011. The company was inattentive and showed laxity in taking timely protective measures such as slope dressing, terracing, toe walls covering the soil at muck disposal sites, which proved disastrous not only to environment but to the human beings.

The Court held that the company would have anticipated the probable effect of their unscientific way of working and laziness in taking protective measures prescribed by the expert committee and hence it will not come under the definition of Act of God.

ISSUE NO-2: Analyzing the second issue, the inclusion of the principle of 'No fault liability in the National Green Tribunal Act, 2010 (Hereinafter referred as NGT) clarifies the intention of the legislators as they did not wanted the companies or the manufacturers to escape their social and economical liability by taking the defense of Act of God. The clear guidelines also help the judiciary to hold the companies accountable. No liability principle specifies situations in which the companies have to pay the compensation for the accident, affected to the people or environment or both, because of the accident caused by the operations of the company.

The principle of No Fault Liability is applicable in the cases of accident. The term accident has been defined under section 2(a) of the NGT, which involves sudden occurrence while handling any hazardous substance. One thing to note here, that the Muck is not a harmful substance *per se* as per the definition of section 2(e)⁴ of the Environment Protection Act but it has caused

³ (2003) 7 SCC 197; *See Union of India v. Kothari Trading Co.* AIR 1969 Ass 84.

⁴ 2(e) "hazardous substance" means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plant, micro-

injury and damage to persons and environment. Analyzing the same the Court held that the muck does not have any properties of the harmful substance as mention in the Act, but because due to the peculiar situation, the unscientific handling of muck have resulted in the heavy floods and have affected the lives and properties of the public, it will be considered under the ambit of the harmful substance.

Then the Court interpreted the definition of Plant as where an industrial or manufacturing process takes place. The word Process means a series of actions taken in order to achieve a particular end. The Hon'ble Court highlighted the fact that the project was approved subject to implementation of certain guidelines, specifying the safeguards. Thus the complexity of the geographical nature where the plant have been constructed and due to the fact that floods are natural phenomena the safeguards like construction of wall are so merged with the process of manufacturing that they will be considered as an integral part of the process and entire activity and place of project will be considered as a plant and will termed the entire work in the definition of process under the act. The regular restoration or maintenance of the waste facility for muck makes it an integral part of the definition of operation especially when the company is engaged in producing power by handling kinetic force of water element, which has the capacity to unleash floods and the entire activity, will be considered as a "Plant".

The Court noted that there were three committees setup to look into the scientific aspect of project and all the three committees on the basis of their research, allowed the manufacturing of plant subject to implementation of certain guidelines. And the report of A.D.N Rao, who was entrusted to investigate the work of company clearly specifies in his report that the company was not adhering to the guidelines prescribed by the expert body which was contrary to the claims of the company.

Applying the above reasoning the Court held that the current incident is an "accident" within the meaning of said definition and the principle of No Fault Liability makes the company liable for the lack of proper disposal plant which resulted into the muck being increasing the gravity of floods, reaching to the residential area and destroying the property and lives and they have to pay compensation for the injury caused to the human habitation

VII. CONCLUSION

The Court's decision will act a deterrent to the companies who have been working without following the proper precautions in these kinds of critical geographical area as they can't escape

organism, property or the environment.

their liability in case of any mismanagement even in the cases where their activity is not the direct cause of any unnatural happening, by taking the defence of Act of god. The current judgment has widened the interpretation of the Act. It will also improve the confidence of the peoples living around these kind of facilities, about the working of various plants as the company will be more vigilant in their activities as in case of any mistake, the manufacturers will be held liable for the same.

The current case is a classic example in which proper scientific research was conducted in the required field but because of the poor implementation of the policies by the officials and a very casual approach by the company made people suffer. That's why it also raises the question on the implementing authorities of the state as even after various reports confirming the fact that the company is not fully complying with the muck management guidelines, they were not stopped and continued their work which eventually resulted in heavy floods in the region. The proper implementation of the scientific guidelines is very imperative for environment.

One thing also gets clear that the working in the very sensitive geographical areas requires the lot of research and development and proper implementation of guidelines. It also tells us that the proper implementation is the key for the successful working of the project and it's just not only about business but responsibilities upon companies, because majority of these companies are very important for the better development of the peoples as they are the source of power for lot of people.
