

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**Original Application No. 506/2015
(M.A. No. 1219/2015, M.A. No. 1274/2015 &
M.A. No. 633/2016)**

IN THE MATTER OF:

1. Society for Preservation of Kasauli and its Environs (SPOKE)
Registered office "Roscommon Castle" Lower Mall Kasauli,
District Solan, Himachal Pradesh,
Through its Hon. Secretary Brig. W.S. Choudary (Retired)
Resident of Ekant, Thimayya Marg, Upper Mall Kasauli,
District Solan, Himachal Pradesh
.....Applicant

Versus

1. Himachal Pradesh Tourism Development Corporation Ltd,
Through its Managing Director,
Ritz Annexe,
Shimla, Himachal Pradesh 171001
2. State of Himachal Pradesh
Through Principal Secretary (Tourism) to the Govt. of
Himachal Pradesh, Shimla-1
3. Principal Secretary (Town and Country Planning) to the Govt.
of Himachal Pradesh, Shimla-1
4. State Environment Protection & Pollution Control Board,
Through its Member Secretary New Shimla, Shimla-171009.
5. Union of India, Through Secretary, Ministry of Environment of
Forest, Paryavaran Bhawan, New Delhi.
6. Cantonment Board Kasauli, District Solan Himachal Pradesh,
Through its Chief Executive Officer at Kasauli, District
Solan, Himachal Pradesh
.....Respondents

COUNSEL FOR APPLICANT:

Mr. P.S. Patwalia, Sr. Adv. & member of Society for Preservation of Kasauli and its Environs (SPOKE) , Mr. A.R. Takkar, Mr. Dhruv Shoeron and Mr. Archit Upadhyay, Advs.

COUNSEL FOR RESPONDENTS:

Mr. Pinaki Misra, Sr. Adv. and Mr. Suryanarayana Singh, Adv for respondent no.1 to 3

Mr. D.K. Thakur, Adv for respondent no.4

Mr. Rajesh K. Singh, Adv. for respondent no.5

Mr. Arvind Kumar Sharma, Adv. with Mr. Anuj Goel, CEO and Mr. Satish Kumar, J.Engg for DCB Mr. A.K. Prasad and Mr. Panshul Chandra, Adv. for CGWA for respondent no.6

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 17th January, 2017

Pronounced on: 06th March, 2017

- 1. Whether the judgment is allowed to be published on the net?**
- 2. Whether the judgment is allowed to be published in the NGT Reporter?**

RAGHUVENDRA S. RATHORE (JUDICIAL MEMBER)

1. The applicant a registered society, with aims and objects to preserve the natural character, green cover and ambience of Kasauli and surrounding areas of the tehsil, has filed this application for the protection of the environs of Kasauli from the construction activity which is being carried out by respondent no.1 and is said to be adversely affecting the public
2. In view of the facts and circumstances mentioned in the application, the applicant has prayed that respondent no.1 be restrained from constructing 42 rooms hotel cum national

museum and geo-park cum restaurant, conference hall, reception centre and park on the old site of Roscommon Annexe, Khetarpal Marg Kasauli. Further it has been prayed that the permissions granted in favour of respondent no.1 by various authorities may be quashed and set aside. The applicant has also requested that the respondents be directed not to permit construction of hotel etc. by respondent no.1 in Kasauli, in violation of revised Development Plan of Kasauli planning area 2021, framed by respondent State.

Brief facts

3. Kasauli is a cantonment area and a town located in Solan district of State of Himachal Pradesh. This cantonment was established during the time of British Raj in 1842 as a hill station. Kasauli is 65 KM from Chandigarh and at a height of 1927 mtrs (6322 feet) above mean sea level.
4. Respondent no.1 is Himachal Pradesh Tourism Development Corporation (HPTDC) which is wholly owned and controlled by the State of Himachal Pradesh. It is a State owned Corporation. The Corporation proposes to construct a 42 room hotel cum national museum and geo-park cum restaurant with conference hall, reception centre and parking. The said construction is to be raised on the old site of Roscommon Annexe, Khetarpal Marg in the cantonment area

of Kasauli. Roscommon Annexe is more than 150 years old structure which was initially built and used as Dak bungalow by the Britishers. Presently this annexe is with HPTDC.

5. According to the applicant some trees near the annexe have been felled by HPTDC. Respondent no. 1 has started raising the construction of 42 room hotel cum museum on the old site of Roscommon Annexe. One hundred and fifty years old Roscommon Annexe has also been demolished for the said purpose. According to the applicant, all these developments have taken place but Secretary, Town and Country Planning, Government of Himachal Pradesh, respondent no.3 is not interfering in the matter despite the fact that the construction of the said hotel has infringed the provisions of the Development Plan. The members of the applicant society are said to have taken up the issue, many a times, with the concerned authorities of the State. The applicant society, through its President, has taken up the matter with the Managing Director of the Tourism Corporation and even up to the highest level of the State. Many representations had been given to various authorities of the State Government including Vice-Chairman of the Tourism Development Corporation, Additional Chief Secretary, Civil Aviation and Tourism etc. The applicant society was assured by the authorities that the issue being raised by them, in respect of construction of the hotel, shall be looked into. But according to the applicant,

since the month of September, 2015, the respondent Tourism Corporation had started felling trees for carrying out construction work. The fact regarding the felling of the trees had also been brought to the notice of the Police authorities, through a communication sent on 16.09.2015 but without any response.

- 6.** The **applicant** has primarily raised the grievance that as per the Kasauli Planning Area Development Plan, there is, per se, no need to carry out any further construction of hotels in Kasauli and this is something which has to be discouraged. Further it is stated that Kasauli is a cantonment and a sensitive area from the security point of view. The maintenance of traffic on lower Mall Road in Kasauli, in which serious note has been taken of the adverse impact of large number of vehicles being permitted to be plied. The proposed construction is coming up in an area which is surrounded by residential houses. It would create nuisance to the residents of the nearby area. It is stated by the applicant that no thought is being given to save the environment and ecology of Kasauli, during the course of construction of the proposed hotel. The construction of the hotel is in violation of Kasauli Development Plan which is evident from perusal of the relevant provisions of said plan.
- 7.** It is the case of applicant that due to fragile ecology of Kasauli town such a huge commercial activity should not be

permitted. It is also stated that there is only one approach road, eight feet wide, to Roscommon Annexe and there is no scope to widen the said road. Such road would not cater to the vehicles that will seek ingress and egress to a hotel of 42 rooms. The respondent State is permitting the Tourism Corporation to carry out the said construction which is in violation of the Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) 1981, Air (Prevention and Control of Pollution) 1974, Forest (Conservation) Act, 1980 and Development Plan of Kasauli Planning area. Such a construction would, according to the applicant, adversely affect the ecology of Kasauli hill station and it certainly necessitated Environment Impact Assessment which has not been carried out in the instant case. This makes the entire activity, undertaken by respondent Corporation, bad in law as hotel is an industry. No public hearing has been conducted nor has any public notice, to that effect, ever been given. Therefore, carrying on of such construction violates the provisions of prior Environmental Clearance Notification dated 14.09.2006, issued by the Central Government under the Environment (Protection) Act 1986 and the rules framed there under.

- 8.** It has been further submitted by the applicant that the town of Kasauli is facing huge water scarcity. The scarcity is on a day to day basis. But the respondents have closed their eyes

to such a perennial problem of Kasauli by not restraining the respondent Corporation to construct the hotel. The instant construction is a one where a new hotel of 42 rooms is being built up. Further it is submitted by the applicant that there is lack of facilities in the area, as far as issue of sanitation, drainage etc. is concerned. The Divisional Forest officer, Solan, had on 15.09.2015, given permission for cutting five trees subject to the cases mentioned therein which is pending in Hon'ble Supreme Court of India. The applicant has emphasized that no thought has been given to save the environment and ecology of Kasauli. The proposed hotel would create havoc with the ecology of Kasauli town and it would further lead to water scarcity, felling of green trees, air, noise pollution due to vehicles and congestion on the roads. Under these circumstances the applicant has approached this Tribunal stating that it is necessary to restrain respondent no.1 Corporation from making the construction, after cancelling the permission granted by the other respondent authorities.

9. The **Respondent No. 1 Corporation**, namely, Himachal Pradesh Tourism Development Corporation which is an undertaking of Government of Himachal Pradesh and registered under Companies Act 1956, have strongly contested the case of the Applicant. In respect of the allegation made by the Applicant that the Corporation is

carrying out an illegal activity which is adversely affecting everyone, it has been stated in the reply that such like allegations are bald, empty, baseless and hollow. Further, it is stated that these allegations are nothing but brain child of members of the Applicant society with the purpose to mislead the Tribunal. It has also been submitted in the reply of the Respondent Corporation that the three storey upcoming project of tourist complex and museum at Dak Bungalow Kasauli is a duly sanctioned project with prior approval/permissions of all the nodal agencies and concerning authorities. Moreover, no objection certificate and consent to establish have also been granted in favour of the Corporation, after due compliance and satisfaction of all the relevant rules, regulation, norms etc. It is submitted by the Respondent Corporation that the present application is not guided by any environmental concern but by the personal interest of the petitioners and, therefore, needs to be dismissed. The Petitioners are residing close to the construction and had been using the site illegally for their own use i.e. for parking purposes etc. Once the construction is complete, the petitioner would not be able to use the Government property for their own use and hence, to safeguard their personal interest, the petitioners have preferred the present application.

10. The Respondent Corporation has also submitted that it undertakes that all actions in operation would be performed with dedication to work with sensitivity to the environment and thereafter, the development of the tourist complex would be done without degrading and damaging it. It has been further stated that the Corporation assures that the construction and development of the complex would be done with utmost regard towards the environment of Kasauli town. Further, it is stated that keeping the factual and legal position in view, it is possible to carry on development activity by applying the principle of sustainable development and in that eventuality, development has to go on because one cannot lose sight of the need for development of industry, irrigation resources, construction of hotels, offices, power projects etc. including the need to improve employment opportunities and for generation of revenue. According, to the Respondent Corporation, there is no denying the fact that it has complied with all the necessary requirements under the environmental law, for the aforesaid purpose. The corporation has not, in any manner, deviated from the Rules, Regulations, Bye-laws and the Laws/ Statutes concerning the environment.

11. The Respondent Corporation has also stated that the said tourist complex would enter a new phase of sustained expansion whereby reaffirming its approach for responsible development. The Respondent Corporation will expand

the water recycling and protect bio-diversity by installing STP at the tourist complex for treating sewage water and to use the same for gardening and irrigation. The Respondent Corporation has further given undertaking that it shall plant three trees in lieu of one tree felled of proper identified species, under the guidance and supervision of the forest staff, as done when it got the permission from the DFO, Solan Forest Division to cut five number of chil trees. As per the Respondent Corporation, the contentions of the applicant are newest and the Applicant is trying to scuttle and jettison the valid rights vested in favour of the corporation. Therefore, the present application is neither sustainable nor maintainable since the applicant is resorting to unjust tactics.

- 12.** The Respondent Corporation has stated that it has taken all effective steps and measures in order to protect and safeguard the environment surrounding of Dak Bungalow, where the proposed project is coming up. Moreover, the Respondent Corporation has made all possible endeavors to make the proposed project of tourist complex and museum a green project, whereby on completion of the same, STP and solid waste management, handling, collection and disposal mechanism will be put in place. It will also ensure that solar and renewable energy is used with the aim to make the project environmental friendly, with minimum physical suffering and damage to the environment.

13. The office of the Cantonment Board has also accorded permission in favour of the respondent Corporation on 2nd December, 2013 so as to carry out the activity of construction of tourist complex and museum at Dak Bungalow Estate, Kasauli. The No Objection Certificate has also been granted to the Corporation but subject to the condition that it will take care of strengthening of roadwork during commencement of the work and onetime complete strengthening work of the entire road, in wider public interest. The office of Cantonment Board has also placed the stipulation that no additional water supply will be provided by the Board, during the execution of project and after completion of it. It is stated that the Respondent Corporation being a vigilant body acceded to all the stipulations and conditions put forth by the office of the Cantonment Board.

The office of Board has also granted permission to the Corporation for digging bore well/tube well on the Dak Bungalow Estate, Kasauli vide its communication dated 12th August 2014. Furthermore, there will be water sharing at the ratio of 60:40, i.e. 60 % water from the bore well will be used by the Corporation for the purpose of museum and hotel and the rest 40 % will be used by the cantonment board for public use. There will be restriction on the total number of hours for which the bore can be operated. In case of lesser demand, more water can be used by the cantonment

board for public use. Therefore, the digging of the bore well would not only be for the purpose of the hotel of the respondent Corporation, but general public will also be benefitted by it.

14. The requisite permissions have been granted to the respondent Corporation during the year 2010, 2013 and 2014 respectively and the applicant society is raising all these issues at this belated stage, which seems to be nothing but an afterthought in order to stall and thwart the entire proposed project. The project is still under construction. The works are still not completed. The respondent Corporation has emphasized that the construction is being raised as per the plans sanctioned by Town & Country Planning Department and the proposed project is in accordance to the requirement of the relevant laws, including the consent to establish granted by State Pollution Control Board. No violation of any condition of different Acts, Statutes, Rules, Regulations, and Notifications etc. has ever been pointed out by the State Government or its department or boards to the project proponent.

15. The respondent Corporation has also submitted that it would make all possible endeavors to minimize the degradation of the environment by making the project and tourist complex as a green complex, by treating the sewage water and further using the same for gardening and irrigation purposes. The

Corporation, on completion of the project, would also be employing efficient waste management and collection mechanism, for adequate disposal of the waste collected from the said tourist complex and museum. Further, the Corporation would be also making use of the solar energy in the tourist complex for generating electricity with the help of solar cells and as a source of heat, for water and keeping the building warm during winter months. The respondent Corporation, at no point of time was required to take environmental clearance under the Notification of 2006. The total built up area of the project is 2743 square meters and a covered area of 1097.89 square meters. Hence, the said project does not require prior EC. Only those projects having built up area of more than 20,000 square meter would require EC from the Central Government, under the said Notification. Therefore, Respondent Corporation does not require having prior EC before commencement of the construction on the site.

- 16.** It is also stated that the Respondent Corporation is a premier organization of Himachal Pradesh and over past several decades, it is involved in the business of running hotels and restaurants at various places for tourists, besides providing transport facilities. The Department of Tourism caters to the need of tourists by upgrading infrastructure and transport amenities at tourists places/ destinations, by creating new

tourist products in the State, by development /reservation/accommodation of civic amenities, by construction/maintenance of the tourist accommodation, by promotion of sports such as winter sports, golf, adventurous sports, development of lakes, etc.

The Respondent Corporation came into being in the early 70s and was created with an object of harnessing the tourism potential in the State, providing gainful employment to the people, besides generating revenues for in the State. The Corporation has now turned its focus to the importance of sustainability in the hospitality industry, as it relates to hotel development and operations, including the environmental, economic and social impact. There has been remarkable shift in recent times with the introduction of green building of new development projects and the said project of tourism complex and museum would be one of such projects where Respondent Corporation would install STP for collection of sewage water which would further be used for irrigation and gardening purposes.

- 17.** It has also stated that the Respondent Corporation, on the completion of the said project, will also put in place adequate measures for collection, management and disposal of waste, including solid and hazardous waste. The Corporation would also employ variety of strategies to reduce, reuse and recycle the waste and would also focus on sustainable procurement of

energy by installing solar panels to provide electricity by using solar energy. It would provide facility operation such as STP, storm water collection and management, hazardous waste management, environmental health and safety. The Respondent Corporation has emphasized that it will cater to the request and act accordingly to the complaints of the neighbours, as and when they are received and registered with the Respondent Corporation. It further assures that it will not violate and would adhere to the conditions imposed upon it by various authorities/departments/boards whilst granting the consent to establish, consent to construct and no objection certificate. The Respondent Corporation has, in reply to the prayer clause, submitted that the Applicant society is not entitled to any of the reliefs and that the Application be dismissed with cost.

18. The Respondent No. 4, the State Environment Protection and Pollution Control Board has filed its reply to the Application. It has stated that there is no cause of action qua the replying Respondent. Himachal Pradesh Tourism Development Corporation had applied for consent to the answering Respondent Board for establishment of museum and tourist complex (42 rooms) at Dak Bungalow, Kasauli. The Respondent Board has granted consent to establishment on 17th December 2015, for establishment of the said museum and tourist complex at Dak Bungalow, Kasauli

under the Water Act, 1974 and Air Act, 1981 subject to the stipulations given therein after due consideration and site inspection, from pollution angle, by the Environmental Engineer, Regional Office, Parwanu. The Respondent has also stated that the contents of Para C relates to alleged anticipated impact of air and noise pollution due to construction of hotel by Respondent No. 1 and vehicular movement of the tourists. The hotel project is at establishment stage and consent has been granted to establish, under the Water Act and Air Act. Further, it is stated that the unit does not attract the provision of EIA notification 2006 and as such it does not require EC as the proposed built up area is less than 20,000/- square meter. Therefore, the unit is also not required to conduct any public hearing under the EIA notification 2006. The alleged violation of environmental law in granting permission to the Respondent hotel has been denied by the Board.

- 19. The respondent No. 5, Ministry of Environment & Forest and Climate Change** has, through its Assistant Inspector General, filed a reply with affidavit that in case of construction in question, the environmental clearances for the project is to be considered by SEAC/SEIAA. It has further stated that so far as the issues involved in the present case, inter alia, about the proposed construction of hotel and geo-park, does not appear to involve any diversion of forest land. Hence, no call

for aforesaid provisions as no use of forest land for non-forest purposes is involved, as has been alleged in the application. It has also been stated that the application does not categorically seek any relief from the Respondent Ministry and hence, MoEF may be removed as Respondents.

20. A reply has been filed on behalf of **Respondent No. 6 Cantonment Board, Kasauli** to the present Application. The said Respondent has admitted that Kasauli is a cantonment area located in Solan District, State of Himachal Pradesh and was established by the Britishers as a hill station. Further, it is stated that Himachal Pradesh Government is the owner of the land known as “Dak Bungalow Estate” situated inside cantonment area, class B-2 land and the holder of occupancy rights also belong to the State Government of Himachal Pradesh. The said property known as Dak Bungalow estate has been managed by Himachal Pradesh Tourism Corporation. The State of Himachal Pradesh and Himachal Pradesh Tourism Corporation have started construction of museum and tourism complex on the land of Dak Bungalow Estate.

Roscommon Annexe was an old structure and it was with Respondent No. 1, Himachal Pradesh Tourism Corporation and the same has now been dismantled by them. It is further stated that Kasauli Cantonment is not the part of the Kasauli planning area development plan made by the

State Government. The Dak Bungalow Estate was used for the purpose of hotel by the State Government and Himachal Pradesh Tourism Corporation Ltd. Now, Himachal Pradesh Tourism has started construction of museum and tourist complex on the land under their ownership/occupation by demolishing the old structure known as Roscommon Annexe.

- 21.** It is further submitted by Respondent Cantonment Board that the subject property known as Dak Bungalow Estate, comprising of survey No. 67, is situated outside the civil area and under the management of DEO, Ambala. As per his direction, vide letter dated 15th March, 2012, Cantonment Board, Kasauli was asked to do the needful in accordance with the cantonment bylaws and the Cantonment Act, 2006, for the proposal of construction of museum and tourist complex at Dak Bungalow Estate. It was also directed to contact the Station Headquarter, Kasauli for security and other related concerns. The matter was placed before the Board in its meeting held on 30th July, 2012 and 28th February, 2013 (Annexure A and B respectively). The army authority also intimated, vide their letter dated 27th April, 2013 (Annexure C), advising Himachal Pradesh Tourism Corporation to submit complete plans for construction of hotel and museum at Dak Bungalow Estate for necessary sanction to be accorded by the Cantonment Board. The matter was again considered by the Board and resolved on 7th May, 2013

(Annexure D) by which Himachal Pradesh Tourism Corporation was advised to submit complete plans for the proposed construction of museum cum tourism complex at Dak Bungalow Estate. The Himachal Pradesh Tourism Corporation vide their letter dated 31st May, 2013 submitted the proposed building plan which had also been duly approved by the State Town & Country Planning Department, Solan. The matter was placed before the Board on 2nd December, 2013 (Annexure E). Accordingly, the decision of the Board had been informed, vide office letter dated 2nd December, 2013 (Annexure F) to the Himachal Pradesh Tourism Department.

22. The Respondent Cantonment Board has further submitted that Himachal Pradesh Tourism Department had also requested for sinking of bore well and the matter was placed before the Board (Annexure G) wherein it was resolved that Himachal Pradesh Tourism Corporation be asked to submit detailed project report on the subject matter. The Himachal Pradesh Corporation submitted the detailed project report vide their letter dated 8th May, 2014 and the matter was placed before the Board, where it was resolved on 21st July, 2014 (Annexure H) and permissions were granted to dig the bore well, with certain conditions.

23. The Respondent Cantonment Board has further stated that Himachal Pradesh Tourism Department has also executed an

agreement in the matter. The Himachal Pradesh Tourism Department has also agreed for strengthening/re-carpeting of Dak Bungalow road. With the aforesaid submissions, the Respondent Cantonment Board has prayed that the Application be dismissed with exemplary cost against the Applicant and in favour of Respondent No. 6.

- 24.** A counter affidavit/reply for and on behalf of **Respondent No. 7 Central Ground Water Authority** (CGWA) has been filed. It has been deposed that the ground water regulation and control of the development and management in the State of Himachal Pradesh is being carried out under the provisions of the Himachal Pradesh Ground Water (Regulation and Control of the Development and Management) Act 2005 and in terms of Himachal Pradesh Ground Water (Regulation and Control of the Development and Management) Rules 2007. The Engineer in chief of Himachal Pradesh Irrigation and Public Health Department is the Chairman of the Himachal Pradesh ground water authority. It is further stated that in order to avoid any conflict of interest CGWA, at present, is not entering into any regulatory intervention in the State in view of its own regulatory mechanism in place. However, in the instant case the project proponent i.e. HPTDC Ltd. has been granted permission for digging the bore well in survey No. 67, Dak Bungalow Estate, Kasauli, by the Chief Executive Officer, Cantonment Board, Kasauli District Solan under Section 10

(2) (B) of the Cantonment Act 2006 and the bore well was got constructed by the State Irrigation and Public Health Department.

25. It is however, submitted that as per the last resources assessment of CGWB, in the State of Himachal Pradesh, Kala Ambe Valley of District Sirmaur has been categorized as over-exploited area and Una Valley and Humb valley of District Una are categorized as critical area. All other areas in the State are categorized as safe areas regarding supply and management of water resources. In the cantonment area, it is stated to be the responsibility of the cantonment authority under the provision of Cantonment Act 2006. It is also submitted that the project proponent has permission / clearances under some other acts like Cantonment Act 2006, for bore well construction, Water (Air Prevention and Control of Pollution) Act 1981 to address pollution related issues, the Himachal Town & Country Planning Department Act, 1977, for area planning and environment (Protection) Act 1986 to address the issues related to environmental clearances. The averments related to violation of any conditional permissions/consent/clearances granted by any statutory authority under above laws as alleged by the Applicant can be clarified by the concerning Cantonment board, HPCB and the State Government authorities. In case of any violation of condition environmental clearance, the Ministry of

Environment & Forest and Climate Change, Respondent No. 5 can clarify the position.

26. After considering the case as pleaded by respective parties before us, it would be appropriate to first summarize the material facts. The proposed project is to come up on the property known as Dak Bungalow Estate which is situated in survey No. 67 and outside civil area. It has been classified as B – 2 land. The State of Himachal Pradesh is the landlord and holder of occupancy rights as provided under Rule 6 of the Cantonment Land Administrative Rules 1937. The Chief Secretary of the State of Himachal Pradesh, by its letter No. 6 – 44/82-TD (SECTT) Shimla dated **22nd September, 1982** had placed the building at the disposal of Tourism Department of Himachal Pradesh. According to the General Land Register the control and management of the Dak Bungalow was assumed by Himachal Pradesh Tourism Development Corporation with immediate effect, by the order passed by Cantonment Executive officer, Kasauli on **18th March, 2009**.

27. The Planning Officer, Divisional Town Planning Office, Solan had, by his order dated **13th October, 2010** granted permission for development under section 31 (A) of the Himachal Pradesh Town & Country Planning Act, 1977. The development work was to be carried out in Khasra No. 67 Mouza Kasauli cantonment, tehsil Kasauli District Solan for the proposed tourism land use keeping in view land use of

adjoining area and after considering its feasibility as per approved drawing attached, subject to the following conditions:-

(a). The building permission shall be obtained from the local authority concerned before commencement of development.

(b). The building operation shall be carried out strictly in accordance with the approved building plan.

(c). The permission shall remain valid for three years from the date of issue of sanction.

(d). No tree shall be cut without prior permission of the competent authority.

(e). No parking shall be allowed on the road side.

(f). The office granting permission be informed after raising construction at plinth level.

(g). Expansion joint be provided physically in the structure during execution of same project at site.

28. The Himachal Pradesh State Electricity Board had on **20th May, 2010** granted sanction, with reference to the letter dated 19th May, 2010 issued by Assistant Engineer, Hotel Pine Wood, Barog, District Solan, to construct the hotel and restaurant at RosCommon (Dak Bungalow) at kasauli subject to the conditions :-

- (i) That the cost for realignment of existing electricity lines, if involved, shall have to be borne by your department,
- (ii) You shall have to maintain adequate vertical and horizontal clearances between the proposed construction and existing electricity lines, as mandatory under the Indian electricity rules.

- 29.** On **31st October, 2011**, the Project Officer, Himachal Pradesh Tourism Development Corporation Limited Shimla informed the Executive officer, Cantonment Board regarding construction of hotel at Dak Bungalow (survey No. 67) after dismantling the old building. It was also mentioned that the drawings for the said project had been approved by the Town & Country Planning Department Solan, New Kasauli development plan (revised development plan of Kasauli area 2021).
- 30.** Defence Estate Officer, Ambala Circle, on the subject of permission to construct a museum and tourist complex on its land at Dak Bungalow estate, Kasauli Cant requested the Chief Executive Officer, Cantonment Board, Kasauli Cantt on **15.03.2012** to do the needful according to cantonment Bylaws and Cantonment Act, 2006. Further it was stated that the CEO may contact the Station Headquarters Kasauli cantonment for security and further related concerns, especially with reference to HQ PH and HP (I) sub-area, Ambala Cantt letter dated 19.01.2012. Thereafter the Chief

Executive Officer wrote to the Station Headquarter, Kasauli on **16.04.2012** to consider the matter for security reasons and to intimate his office accordingly. The Station Headquarter, Kasauli had intimated the Cantt Board, Kasauli on **08.05.2012** that the matter is under consideration in regard to security issues. Likewise, the Chief Executive Officer, Kasauli Cantonment Board informed the Senior Manager, HPTDC on **16.05.2012**.

- 31.** The Managing Director, HPTDC had on **13.07.2012** requested the Chief Executive Officer, office of the Cantonment Board, Kasauli for granting permission to construct a museum and tourist complex on its land at Dak Bungalow Estate, Kasauli Cantt, Kasauli, at the earliest so that the project is not delayed further and revenue loss of the Government is avoided due to acceleration as it has already been delayed considerably.

On **30.07.2012**, the matter was placed before the Cantonment Board, Kasauli and it was resolved, vide CBR No.34 that the construction work of “museum and tourist complex” at Dak Bungalow Estate, Kasauli Cantt is to be carried out at large scale. There are number of aspects related to this project. It would be in the interest of the Cantonment to further study/discuss the project. In the light of Defence Estate Officer, Ambala Circle, Ambala Cantt, the recommendation from security point of view and other related

concern is required from the local Military Authority. The Board took the decision to go into the said aspects before final decision is arrived at.

32. The Project Officer sent a letter to the Executive Engineer I&PH Division, Solan on **16.08.2012** for sending the necessary estimate to his office at the earliest so that amount is released to the department for digging the bore well. On **10.09.2012** the Project Officer had also written a letter to the Member Secretary, H.P, Ground Water Authority cum Superintendent Engineer (Planning and Investigation Unit-II), Jal Bhawan, Kasumpti, Shimla along with the project report, photocopy to Revenue papers and a cheque of Rs. 10,000/-. The Member Secretary, Ground Water Authority, Shimla was requested to convey the necessary permission for sinking of well at Kasauli to Executive Engineer, IPH Division, Solan at the earliest so that further action could be taken in the matter. The Chief Executive Officer, office of the Cantonment Board, Kasauli had on **09.10.2012** advised HPTDC that the matter be taken up with Defence Estate Officer, Ambala Cantt as the property is under their management. The Project Officer then wrote to the Defence Estate Officer, Ambala Circle on **27.11.2012** with a request to issue NOC for sinking of well at Kasauli in the premises at the earliest.

33. The Managing Director, HPTDC wrote to the Chief Executive Officer, Office of the Cantonment Board, Kasauli on

18.02.2013 in respect of construction of the hotel. It was mentioned in the letter that drawings for the construction of the hotel have been sent to him on 31.10.2011, for grant of NOC. Further it was stated that the proposed facility of conferencing and stay shall largely be utilized by visiting tourists, local residents, Defence and other establishment in Kasauli. It was specifically stated that the Cantonment Board and the Defence Authorities of Kasauli shall be accommodated on priority for organizing of seminars and other functions which were in public interest. It was on **27.04.2013** that Headquarter, Western Command c/o 56 APO wrote to Station HQ Headquarter, Kasauli to advice HPTDC to submit the building plans. The said building plans be scrutinized/vetted as per Cantt Bylaws and Cantonment Act, 2006 and necessary sanction be accorded accordingly by the Cantonment Board.

- 34.** It was on 07.05.2013 that the matter was placed before the Board. The Board resolved, vide CBR No. 24 that HPTDC be advised to apply under Section 235 of Cantonment Act, 2006 and in accordance with provisions of building Bylaws as per the direction received from the Headquarters, Western Command. The Project Officer of HPTDC had on 31.05.2013 submitted three sets of drawings along with the prescribed Form A&B of Cantonment Board for the construction of museum and tourist complex at Dak Bungalow for taking

further necessary action and approval, as desired vide letter dated 08.05.2013. The Cantonment Board, Kasauli had considered the matter and resolved on 21.12.2013 that NOC from Municipal point of view be given To the H. P. Tourism Department for the construction of Museum cum Tourist Complex as per building plans submitted by them on class B-2 land owned by the State Govt. of Himachal Pradesh subject to the following conditions:

1. H. P. Tourism department will give an undertaking that they will take care of strengthening work of Road (Khetarpal Marg) during the commencement of work and one time complete strengthening work (bituminous re-carpeting) of the entire road in wider public interest on the completion of the project as the project will attract the heavy traffic volume at large during the execution of the project.
2. The Board is already facing acute shortage of water to the General Public residing inside the Cantt. Hence, no additional water supply will be provided by the board during the execution of the project and after the completion of the project.
3. The H.P. Tourism department will have to maintain a proper record in respect of the visiting people keeping in view of the security reason of Kasauli Cant.

4. The H. P. Tourism department has to take clearance from the DEO Ambala/ Forest Department regarding cutting of green trees as requested by them before commencement of the project.
 5. The H. P. Tourism has to take NOC from the DEO Ambala regarding digging of well (bore well) etc. if required by them before commencing the same.
 6. The H. P. Tourism Department will have to obtain the other clearance/ consent from the other concerned Department required for the project.
- 35.** Accordingly, a letter was sent by Chief Executive Officer, Kasauli to the Project officer, HPTDC on 02.12.2012 itself, which reads as under:

“Subject: Construction of Museum & Tourism Complex on its land at Dak Bungalow Estate Kasauli Cantt.

Reference your letter No. PROJ/4-63/13-IV dated 31.05.2013 and letter No. Proj./4-63-123-IV dated 12.09.2013.

The Board considered the matter and resolved that No Objection from Municipality point of view be given for construction of Museum cum Tourist Complex as per building plan submitted by you on class B-2 land owned by the State Govt. of Himachal Pradesh subject to the following conditions:

1. *H. P. Tourism department will give an undertaking that they will take care of strengthening work of Road (Kheterpal Marg) during the commencement of work and one time complete strengthening work (bituminous re-*

carpeting) of the entire road in wider public interest on the completion of the project as the project will attract the heavy traffic volume at large during the execution of the project.

- 2. The Board is already facing acute shortage of water to the General Public residing inside the Cantt. Hence, no additional water supply will be provided by the board during the execution of the project and after the completion of the project.*
- 3. The H.P. Tourism department will have to maintain a proper record in respect of the visiting people keeping in view of the security reason of Kasauli Cant.*
- 4. The H. P. Tourism department has to take clearance from the DEO Ambala/ Forest Department regarding cutting of green trees as requested by you before commencement of the project.*
- 5. The H. P. Tourism has to take NOC from the DEO Ambala regarding digging of well (bore well) etc. if required by them before commencing the same.*
- 6. The H. P. Tourism Department will have to obtain the other clearance/ consents from the other concerned Department required for the project.”*

36. The Executive Engineer of HPTDC wrote a letter to Senior Hydrologist, Ground Water Organization, Una, H.P on **26.12.2013** with the request to inspect the site regarding availability of water on priority so that the process of digging the bore well is completed by January, 2015. A copy of Ground Water Potential Report prepared by State Council for Science Technology and Environment, Shimla was also sent. A reply to it was sent by Ground Water Organization on **06.01.2014** stating that the area is not found suitable for large drawl of ground water abstraction. However, to decipher

sub-surface water bearing zones which exists in the form of secondary porosity i.e. weathered/fractured/weak zone, geo-physical survey was recommended at the locations mentioned therein. On **31.03.2014**, the matter was placed before the Board vide CBR No. 130 and it was resolved that HPTDC should submit a detailed project report to the Cantonment Board. The Board considered the matter on **22.04.2014** with regard to digging of bore well. HPTDC was asked to submit the complete project report so that the matter again be placed before the Board.

Thereafter on **08.05.2014**, the HPTDC submitted a detailed project to the Cantonment Board. The said report was placed before the Board on **21.07.2014** and vide resolution No. CBR-32, permission was granted to dig a bore well subject to certain conditions mentioned therein. The letter conveying the permission for digging the bore well was sent on **12.08.2014** along with the copy of the agreement dated 18.03.2015 which reads as under:

“It is intimated that the matter regarding provision for digging of Bore Well/ Tube Well on Sy. No. 67, Dak Bungalow Estates, Kasauli Cantt. was considered by the Board in its meeting held on 21.07.2014. The Board discussed the detailed project report submitted by you and as per the provision of the Cantt. Act, 2006 regarding regulations for digging or use of Bore Well in the Cantonments. The Board vide CBR No. 32 resolved that permission to dig one Bore Well at Dak Bungalow Estates

Kasauli Cantt. be given to the H. P. Tourism Development Corporation Ltd. subject to the following conditions:

- (i) That an agreement will be executed between H. P. Tourism Department and Cantonment Board, Kasauli that the ground water will be regulated by the Cantonment Board, Kasauli.*
- (ii) That the H. P. Tourism Department will dig the Bore Well and construct pumping room etc., near the Bore Well. The water meter will be provided to regulate the Bore Well by the Cantt. Board, Kasauli. The H. P. Tourism Department will provide the space for the water tank and pumping room to Cantonment Board in connection with to sharing of water to be pumped for the use of general public.*
- (iii) That the work of digging of Bore Well will be carried out by the H. P. Tourism Department in the presence of the rep. of Cantonment Board, Kasauli and final yield of water will also be determined jointly by the H. P. Tourism Department and Cantonment Board, Kasauli respectively.*
- (iv) That the ground water yield will be shared in 60:40 ratio (60% of water of H. P. Tourism Department and 40% of water by Cantt. Board, Kasauli for public use.)*
- (v) That pumping hours will be decided and monitored by the Cantonment Board, Kasauli and electricity charges for the Bore Well will be paid by H. P. Tourism Department. The separate electricity meter will be provided by Cantt. Board for the pumping of the water shared i.e. 40% and its electricity charges will be paid by Cantonment Board, Kasauli itself.*
- (vi) The H. P. Tourism Department will give an undertaking that if H. P Tourism Department registers less requirement of water, in that situation, the extra water will be used by Cantonment Board for public use.”*

37. The HPTDC had on **06.09.2014** agreed to take care of strengthening work of the road (Khetarpal Marg) during the commencement of work and one time complete strengthening

work of the entire road on the completion of project at Dak Bunglow Estate, Kasauli. Besides, District Forest Officer, Solan had given permission on **15.09.2014** for felling of five trees. The provisional registration No. 3-26/2016-DTO-SLN-1226 for tourism unit was made by the concerned authority on **14.12.2015** for setting up of the project.

38. On **15.1.2015**, Environmental Engineer, HSPCB had written to the Member Secretary, H.P State Pollution Control Board regarding receipt of an Application for CTE-Fresh vide inward: 64/108 of M/s Museum Tourist Complex (a unit of H.P Tourism Development Corporation), Dak Bunglow, Kasauli, Distt Solan. It is stated that the case has been processed through online mechanism vide outward number: 9890 dated 15.12.2015 and a set of application along with all the enclosures in duplicate is being forwarded for taking further necessary action.

Thereafter on having received the recommendation from the Regional officer, H.P State Pollution Control Board, Parwanu, Distt Solan vide his online report as letter No. 1834 dated 15.12.2015, the State Board granted Consent to establish subject to the following conditions:

- 1. This consent to Establish is valid for one year from the date of issue and shall subsequently be got renewed for each financial year or part thereof or till commissioning of industries/ hotel.*

2. This consent to establish is subject to any orders passed by the Hon'ble National Green Tribunal in M. A. No. 1274 of 2015.

3. This consent to Establish is issued only for the purpose of and under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as the case may be, and will not construed as substitute for mandatory clearances required for the project under any other law/ regulation/ direction/ order and the applicant shall obtain any such mandatory clearances before taking any steps to establish industry/ industrial plant. Operation or process or any treatment and disposal system or an extension or addition thereto.

4. This consent to Operate is for:

(i) Noise/ Emissions from DG set conforming to limits prescribed in Sr. No. 94 & 95 of Noise Schedule-I of Environment (Protection) Rules, 1986;

(ii) Noise and ambient air quality to be maintained within Ambient air Quality Standards for noise as specified in Schedule-III of aforesaid Rules and Noise Pollution (Regulation and Control) Rules, 2000 as well as those CPCB.

(iii) The maximum Domestic Effluent to be treated in STP having capacity of 20 KLD as proposed by the unit. The treatment shall conform to the norms as prescribed in Environment (Protection) Rules, 1986.

(iv) Bio-degradable Waste to be disposed by composting/ Non-biodegradable waste to be disposed in separate pit and shall be sold to authorized waste recycler.

(v) Treated sewage shall be recycled for gardening, toilet flushing and not be used for ground water recharge. Unit shall provide dual plumbing in all the toilets for recycling the treated sewage for flushing toilets.

5. *The unit shall submit registration from Tourism department and NOC from the department of Town & Country Planning before coming into production/ final NOC is issued by the State Board.*
6. *The proponent shall install dual plumbing in the entire project for recycling of treated sewage in the toilet flushing in the hotel and gardening.*
7. *The Promoter shall submit the muck/ debris disposal and management plan and ensure that the muck/ debris is disposed off at the designated muck/ debris disposal sites.*
8. *Construction waste arising due to earth work during construction shall be used for landscaping within the premises and no debris is allowed to be disposed outside the premises.*
9. *The unit shall get the connection of sewerage and pay the user charges to the concerned authority as may be fixed by the Govt. and submit certificate to this effect from competent authority to this office when installed.*
10. *The unit shall make provisions for on-site storage of recyclables like papers and plastics, cardboard and cartons, packing material, glass, metals, pet bottles, foils, wrapping, pouches, cachets and tetra packs rinsed etc. being generated within the premises and tie up with waste collectors on weekly/ fortnightly/ monthly or as convenient basis & biodegradable waste may be disposed in the community bins provided by the concerned authority.*
11. *The unit shall provide adequate arrangement for fighting the accidental leakages/dischage of any air pollutant/gas/liquids from the vessel, mechanical equipment's etc. which are likely to cause environmental pollution.*
12. *The Unit shall comply with any other conditions laid down or direction issued by the Board under the provisions of the Water (Prevention and Control of*

Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 from time to time.

13. Nothing in this No Objection Certificate shall be deemed to preclude the institution of any legal action nor relieve the applicant from any responsibilities or penalties to which the applicant is or may be subject under the provisions of the Water/Air Acts.

14. The Unit shall ensure that the effluent discharged by it is toxicity free.

15. The Unit shall provide terminal manhole at the end of each collection system and a manhole upstream of final outlet(s) out of the premises of the industry for measurement of flow and for taking samples.

16. The Unit shall for the purpose of measuring and recording of quantity of water consumed affix meters of appropriate standards.

17. All underground water retaining structures shall be lined with an impervious layer so as to avoid seepage and contamination of sub soil/water

18. The Unit shall install Air Pollution Control devices so as to contain all the suspended particulate matter and gaseous emissions

19. Unit shall provide separate energy meter for effluent treatment plant/ sewage treatment plant.

20. Unit shall make provisions for the interlocking the operation of pollution control system with the production process ensuring that whenever the operation of pollution control devices is stopped, the production process also concurrently stops.

21. The Unit shall not discharge any fugitive emissions/odour.

22. The Unit shall obtain consent to operate from this Board and install anti-pollution devices for prevention control and abatement of Water/Air pollution before coming into production/before a final NOC is issued.

23. *The Unit shall make provisions for rain harvesting from the rooftops and built up areas before come in to production.*

24. *The State Board reserves the right to revoke/review and alter the conditions of consent to establish as the case may be.*

25. *Unit shall provide acoustic enclosures over the DG set as per norms before come into production.*

26. *The unit shall comply with the provisions of the e-waste (Management & Handling) Rules, 2011, as may be, applicable to it.*

27. *The unit will file the water cess return and make the payment of cess assessed if applicable.'*

39. First and foremost circumstance to be noted in this case is that the project in question is situated in a cantonment area, this is an admitted position by both the parties. The Cantonment Act, 2006, inter alia, makes provision with regard to buildings constructed/to be constructed in a cantonment. Under the Act, no person would erect or re-erect a building in a cantonment area without previous sanctions of the Board such powers have been provided under Section 234.

40. Any person intends to erect or re-erect any building in a cantonment has to apply for sanction by giving a notice in writing. This includes alteration of any building. The Act provides that such notice is to be given and various eventualities are given under which such a procedure has to be followed by the person concerned. Detail provision in this

regard which includes erection or re-erection of any building conversion from one nature to another, making alteration, increasing or decreasing height of the building etc have been given under Section 235 of the Act.

- 41.** It is the prerogative of the Board to either refuse sanction for erection or re-erection of the building or it may grant sanction absolutely or subject to such directions as it may think fit. All such considerations are to be done by the Board in accordance to Section 238 of the Act which provides the requisite details. It is also provided that if the Board neglects or omits for a period of one month from receipt of the valid notice and such person thereafter by a written communication sent by registered post calls the attention of the Board to the neglect or omission and even thereafter the neglect and omission continues for a further period of 15 days then it shall be deemed to have given consent. The Board is also to specify a reasonable period to complete the work from the commencement, and if the erection is not completed then the person concerned has to apply for extension, which is permissible not more than for two occasions. The sanction so provided is available for two years from the date on which it was given and if the building so sanctioned has not begun by the person who has obtained the sanction within that period then he is only to begin the work of the building after seeking permission for extension

from the Chief Executive Officer. Such powers have been given to the Board under Section 243 and 245 of the Act.

42. Subsequently, every person who has been granted sanction for erection of a building in a cantonment area has to give a notice within 30 days of completion of erection or re-erection to the Chief Executive Officer of the Board. On receipt of such notice, the building in question is inspected so as to ensure that it has been completed in accordance to the sanction granted. Such a provision is given under Section 242 of the Act of 2006.

43. Thereafter the completion certificate is issued. The said certificate is to be issued by the Chief Executive Officer within a period of 30 days. But before issuance of the same, the building is not to be occupied for habitation. In case the Chief Executive Officer fails to communicate his refusal to issue such certificate then it shall have been deemed to be granted.

It has also been provided under the Cantonment Act that whoever begins, continue and completes the erection of the building without having given a valid notice, without complying with the directions under the relevant provision or when sanction has been refused or has ceased to be available or has been suspended, then such person shall be punishable with fine which may extend to Rs. 50000/- as well as the cost of sealing the illegal construction and its

demolition also. The Board under the Act of 2006 also has the power to stop erection or to demolish the building in case it is considered that such erection is an offense under Section 247. In this regard the Board has to give notice in writing directing the owner, lessee or occupier to stop erection where the order passed earlier has been suspended. The Cantonment Board also has the power, in the circumstances as mentioned under Section 249 of the Act.

- 44.** The sources of water in a cantonment area are under full control of the Cantonment Board. The Board can declare any lake, stream, spring, well, tank, reservoir or any other source in the cantonment to be source of public water supply. It is under Section 189 of the Act of 2006 that control over sources of public water supply has been given to the Board.
- 45.** Furthermore, the Cantonment Board has a power to require maintenance or closing of private sources of drinking water. The Chief Executive Officer can by notice require the owner or any person having any source of water for drinking purpose to keep it in good order and clear it, from time to time, of silt, refuse, and decaying vegetation. The owner may be asked to protect the water from contamination. In case the water is found to be unfit for drinking then measures may be specified which the owner has to take to prevent the public from using it (Section 190).

46. Under the Cantonment Act, specific provisions exist in respect of maintenance of road and prohibition of any obstruction in it. The said powers have been given under Section 256 and 252 respectively.

Similarly, clear provision in respect of drainage and sewage connections have been made in the Act of 2006 wherein the owner or lessee of any building or land in any street is required to put up and keep in good condition pipes for receiving and carrying rain water from building or land and for discharging the same or to establish and maintain any other connection or communication between such buildings or land and a drain or sewer or a water harvesting structure for facility. For effective drainage, the Chief Executive Officer may issue notice to the owner or lessee to pave, with such material and in such manner any courtyard passage between two or more buildings and to keep them in proper repair or to make such arrangement to deliver rain water from roof top to the water harvesting facility created by the Board.

47. Strict provisions have also been made in the Cantonment Act in respect of felling, lopping and trimming of trees. There is prohibition for having hedges or fences of any material without the written permission of Chief Executive Officer.

The Cantonment Act also restricts improper use of land by removal of material from soil which is, inter alia,

dangerous to the persons residing in or frequenting the neighborhood or creating of nuisance etc. The relevant provisions under Section 261 provides in detail about the erection of boundary wall, hedges or fences of any material or to remove the same if in opinion of the Chief Executive Officer the same is objectionable or provide descriptions or dimensions for construction of the wall hedges and fences. It is also provided that the Chief Executive Officer may require the owner or lessee to cut or trim any hedge on the land in such a manner and in specified time.

- 48.** The Cantonment Board has the power to stop the use of premises which is used in contravention of the license. It also has the power to vary the license. Any person who carries any trade, occupation for which license is required or where the license is suspended or cancelled, uses or allowed to be used any place or building in contravention thereof is to be punished with fine extending to Rs. 5000/-. In case of continuing offence, additional fine of Rs. 500/- per day is to be imposed.
- 49.** The Act provides appeals against the executive orders as described under Schedule V. The Appellate Authority is empowered to order for suspension of action, pending appeal. In case of an appeal having been disposed of by the District Magistrate then either of the parties may file revision, through the Chief Officer Commanding Chief, to the Central

Government or to such authorities as the Central Government may appoint in this behalf for revision of the decision.

50. Coming back to the present case, we would now proceed to discuss the submissions made by the rival parties. The applicant has basically made two folds submissions, namely, bringing up of the project in question would disturb the ecology of Kasauli town and secondly that as there is scarcity of water in the area, the respondent should not permit coming up of the project. There is no dispute about the fact that the project in the present case is at the initial stage and part of the construction has been made. The project proponent i.e. Himachal Pradesh Tourism Development Corporation, respondent no.1 have placed before us the relevant record of the permission which it has obtained from various authorities and have submitted that all precautions in respect of ecology have been taken.

51. The learned counsel for the applicant had also submitted that the permission for digging bore well, granted by Cantonment Board, is not by the competent authority and prior permission should have been taken from Himachal Pradesh Ground (Regulation and Control of Development and Management) Act notified on 09.08.2011 for construction of ground water abstraction. But the fact remains that respondent, Tourism Corporation has obtained permission for

digging bore well from the Cantonment Board in whose area it lies. As long as the Boards approval order stands and the same not been objected to by the applicant or set aside by the competent authority, it cannot be said that the same is illegal. In the report given by CGWA, before the Tribunal, it is opined that the overall ground water potential in Kasauli area is moderate to low.

In the counter affidavit filed by respondent no.7, Central Ground Water Authority it has been stated as under:

'However, in the instant case it is observed that the project proponent i.e. HPTDC Ltd. has been granted permission for digging a bore well in survey No. 67, Dak Bungalow Estates, Kasauli, by the Chief Executive Officer, Cantonment Board, Kasauli District Solan under Section 10 (2) (b) of the Cantonments Act, 2006 and the bore well was got constructed by the State Irrigation and Public Health Department.'

- 52.** In the month of October, 2011, the Project Officer of the Tourism Development Corporation intimated the Executive Officer of the Cantonment Board regarding the construction of the hotel at the Dak Banglow after dismantling the old building. The Defence Estate Officer had then asked the Chief Executive Officer to do the needful in accordance to the Cantonment Act, 2006 and the Bye-laws. The Executive Officer sent a communication to Station Headquarter, Kasauli for consideration of the matter, who had then intimated the

Cantonment Board. Thereafter, the matter was placed before the Cantonment Board in July, 2012 where it was resolved to further study/discuss the project.

The Managing Director of the Tourism Development Corporation had written to the Chief Executive Officer of the Cantonment Board that the drawings of the construction had already sent and the proposed hotel would be a facility of conferencing and stay which will be largely utilized by tourists, local residents, defence and other establishments at Kasauli. It was also informed that the defence authorities would be accommodated on priority for organizing seminars and other functions. Subsequently, the Headquarter of Western Command wrote to the Station Headquarter, Kasauli for submitting building plans and the same was scrutinized and weighed as per the Cantonment Act, 2006.

The matter was then placed before the Board in May, 2013 wherein it was resolved that the Tourism Corporation would apply under Section 235 of the Cantonment Act, 2006 and Bye-laws, as the direction received from the Headquarter, Western Command. The Cantonment Board, Kasauli considered the matter and resolved on 31.12.2013 that NOC be given to HPTDC for construction of museum cum tourist complex. However, certain conditions were imposed which included to take care

of the road, no additional water supply would be provided by the Board for the execution of the project, to maintain a visitor's register for security reasons, to take clearance from DEO, Ambala/Ist Division for cutting of trees, digging of well and to obtain clearance from other concerned department, if required in the project.

- 53.** On perusal of the record it is revealed that the plot survey no. 67 is 2.28 acre i.e. 8944 sq. mtrs. However the net area available for the construction of the hotel complex is only approximate 5000 sq. mtrs after reducing the area lost due to PWD staff quarters complex (2800 sq. mtrs), residential complex of Executive Engineer, PWD (600 sq. mtrs), Khetarpal Marg (250 sq. mtrs) and the proposed access road (300 sq. mtrs) for the village located on the other side of the site, from the total area of 8944 sq. mtrs.

As per the norms, hotels with plot area of 5000 sq. mtrs are authorized to build on 25% of the total area leaving behind the balance of 75% of the plot area as open space. Out of 5000 sq. mtrs of the area available, approximate 4500 sq. mtrs would be occupied by the main hotel complex, its ancillaries and the area earmarked for parking, thereby leaving only 500 sq. mtrs for sanitation facilities i.e. septic tank and sewage treatment plant, solid waste garbage dump and solid waste processing plant and bore well and portable water tank as well as rain water harvesting infrastructure, as

against the estimated requirement of 2000 sq. mtrs. Such a situation is a matter of concern which needs to be taken up by further assessing a correct ground reality and position on the site.

54. On receipt of an application from the Tourism Development Corporation, the Environmental Engineer, State Pollution Control Board had written to the Member Secretary that the case was processed through online mechanism and the set of application and enclosures was forwarded to him for necessary action. After receiving the recommendations of the Regional Officer and the Pollution Control Board, Parwanu on 15.12.2015, the project proponent was granted a consent to establish on 17.12.2015 with certain conditions which included that the same is issued only for the purpose and under the provisions of Water and Air Act.

However, the fact is that the date on which this Petition was filed and notice was issued, the Corporation had not even applied for the permission from the State Pollution Control Board. The application for seeking permission was submitted on 15.12.2015 and surprisingly it was granted under the Air Act of 1984, Water Act of 1974 on the third day i.e on 17.12.2015. This shows that in such a short time there could not have been any proper assessment under the environmental laws and the Air and Water Pollution Control Acts. Further it is apparent from the records that when the

original reply was filed by the respondent Board, Pollution Control Board, it was stated that the application had been filed on 15.12.2015 and the inspection was also done on 15.12.2015. Before granting permission a thorough inspection of the site is to be conducted with the purpose as to whether the project is being taken up in accordance to the law. A required time has to be given for inspection. The inspection is not to be done in haste. The fact that the inspection was done on the same date when the application was submitted goes to show that it was not in accordance to the object for which it is meant to be done. But in the additional written submissions filed by the Board subsequently, the stand taken was that the online application was received on 14.12.2015 and the site was inspected on 14.12.2015. This appears to be factually incorrect for the reason that the permission document states that inspection was conducted on 15.12.2015. No document could be produced before us to show that the application had actually been filed on 14.12.2015.

In addition to this, the Pollution Control Board had also under estimated the maximum domestic effluent to be treated in sewage treatment plant on the basis of only sixty one tourist and staff as against the estimated strength of 200. Therefore, the capacity of STP of 200 KLD is inadequate to meet the requirements of the hotel complex. Moreover, the

instant hotel project is coming up in the midst of an area which is habituated all around. According to the respondent, there would be a sewage treatment plant but it is obvious that running of such plant would pollute and stink the surrounding areas of the villages. Another thing to be considered is as to how could the rain water storage tank, soak pit for sewage and sewage treatment plant could be clustered within an area of one acre. This may lead to seepage and soakage flow from one tank to another leading to contamination. Therefore, in the present case there is lack of deep study or thinking on all the aspects by the authorities of Pollution Control Board. The matter requires a thorough study and assessment by the Pollution Board before granting consent to the respondent Tourist Development Corporation. Consequently the order dated 17.12.2015 passed by Pollution Control Board is not in accordance to the procedure under law.

- 55.** It would not be out of place to mention here that while considering matters relating to environment, balance has to be maintained between development on one hand and protection of environment on the other. The larger Bench of this Tribunal had, in the case of M/s Prashanti Surya Construction Co. Versus Central Empowered Committee decided on 4th May, 2016 had reiterated the aforesaid principle in a concise manner which is as follows:

“32. The Courts have normally invoked the Principle of Sustainable Development. The development may go on but without irreparable and irreversible damage caused to the environment and ecology. The basic tenets of the Precautionary Principle make it obligatory for the Court to draw a balance between development on the one hand and protection of environment on the other. But, this Doctrine of Balancing comes into play only when the acts are done in accordance with law and in obedience to law. Unauthorised and illegal activities contrary to law cannot squarely fall within the framework of Sustainable Development. It is a settled principle of law that nobody can be permitted to take advantage of his intentional wrongs or intentional flouting of law.”

The Hon'ble Supreme Court of India in the case of *M.C Mehta vs. Union of India 1996*, observed as under:

“The functioning of eco-systems and the status of environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the eco-systems operating in the environment surroundings under consideration”.

- 56.** At the time of consideration of the submissions of rival parties, during the course of hearing, it was revealed that in the neighborhood of the project in question there are other private buildings in existence which are having more than three to four storeys and running hotel business. On a specific query from the respondent, we were informed that eleven such hotels/guest houses are being run.

Furthermore, during the course of present proceedings, vide order dated 24.02.2016, this Tribunal had ordered for constitution of an expert body with regard to, inter alia, construction of various hotels which were running unauthorisedly or having more rooms than registered. The conclusion of the Committee was as under:

“17. Various hotels pointed out in Chapter 9 are running unauthorisedly. Many have registered for lower number of rooms with the Tourism Department than actually being operated. In all such cases, there could be huge evasion of Luxury/VAT tax and spot inspection rather than confining assessment to the number of rooms registered with Tourism Department”

- 57.** From the records before the Tribunal and the contentions raised at the bar it was evident that besides these hotels which had raised construction much in excess and violation to the sanction plan and operating without consent of the Board, there were large number of other residential and hotel/guest house constructions raised in the area of Kasauli. These structures have been raised in violation of law and were having adverse impact on environment and ecology of that area. Besides the problems of water and sewage, the issue in relation to dealing with municipal solid waste being generated in the area was also a matter of serious concern. The cantonment board failed to grant permission in accordance with the relevant laws in force, as well as

indiscriminate and arbitrary exercise of its power. The Cantonment Act has an inbuilt element of precautionary principle which this authority has failed to observe and apply. The cumulative effect of these violations and indiscriminate construction activity in the area of Kasauli would compel the Tribunal to have proper assessment of all factors and considerations to prevent degradation of environment and ecology in that region. The Kasauli hills are part of the Himalayan range which is considered to be geologically weak, eco-sensitive and fragile. Thus their protection has to be given priority in terms of the Environment (Protection) Act 1986, and in light of this it would be necessary to direct proper data based study to be carried out for Kasauli.

58. Therefore it was thought proper to issue notices to the owners of the hotels namely:

1. Birds's View Resort;
2. Chelsea Resorts;
3. Hotel Pine View;
4. Narayani Guest House;
5. Nilgiri Hotel;
6. Hotel Divshikha;
7. Rudra Resorts;
8. Hotel Wook Creek;
9. Hotel Nature Inn;
10. Shivalik Guest House and
11. M/s Anuj Garg

The State of Himachal Pradesh was directed to serve the notices on the owners of the aforesaid hotels, who after service had appeared before us. Such an all-round construction in the town of Kasauli would adversely affect the environment, ecology and other eco-systems. Therefore we propose to take up the matter against the afore stated hotels separately.

59. In view of the larger interest of the residents and public of Kasauli and for long term solution in respect of growing adverse effect on environment, ecology and other eco-systems of the town due to increase in construction we propose to dispose of this original application in the following terms/directions:

1. The order of HPPCB granting consent to establish dated 17.12.2015 is quashed and set aside. Himachal Pradesh State Pollution Control Board shall reconsider the question of granting consent to establish and operate to the project proponent expeditiously after detailed verification of the site and the project in question, the adequacy of the land available for the parking, setting up of the sewage treatment plant, municipal waste processing plan, rain water harvesting system, besides leaving enough open areas for the ingress and egress of vehicles coming to the hotel, keeping in view the terrain/topography of the area and the limited scope of widening of approach road to the proposed hotel.

2. The project proponent can continue with its project subject to strictly following the laws relating to the environment and any action taken contrary to it or deviate from the relevant Act, Rules and Bye-laws, would make it liable to pay compensation and even closure of the hotel, if need arises.

3. The project proponent shall not make any changes in the construction plan of the building or deviate, from the one which has been got approved. The project proponent shall not raise any further storey or height of the building, than the one which has been approved.

4. We consider it appropriate to constitute a Special Expert Committee which shall have dual assignments of assessing the effect on environment and ecology due to project in question and activities in the town of Kasauli at large. The Committee shall be of the following members:

- (i) An expert of Ecology from G.B Pant Institute, Almora, Uttrakhand to be nominated by the Director of institute.
- (ii) Chief Town Planner, Shimla or senior Architect (Planner) from PWD.
- (iii) A senior Scientist from MoEF & CC, to be nominated by the Secretary, MoEF & CC.
- (iv) A senior Scientist from the Indian Council of Forestry Research and Education, Dehradun.

(v) Senior Scientist from Wadia Institute of Himalayan Geology, Dehradun, to be nominated by the Director

(vi) Scientist/senior official from the Central Ground Water Board, New Delhi.

(vii) Scientist/senior official from Central Pollution Control Board.

(viii) Member Secretary, Himachal Pradesh Pollution Control Board, shall be a member and Nodal Officer who shall ensure the compliance.

5. The Special Expert Committee shall make an assessment of the carrying capacity of the town of Kasauli in terms of tourist inflow, vehicular traffic keeping in view the road infrastructure, the general scarcity of underground water, the availability of drinking water in the town and the overall impact on the air quality and bio-diversity of the area.

6. There shall be no further construction whatsoever in the town of Kasauli both the civilian area and the cantonment area till the time report of the Special Expert Committee is received and passing of the further order by this Tribunal.

7. The Special Expert Committee should also assess as to whether the project in question could be continued in the present form or further restrictions need to be imposed.

8. The Special Expert Committee shall also make assessment and submit report as to whether construction in the town of Kasauli be permitted or whether any restrictions

need to be imposed, if so, the nature of restrictions which are to be laid down, keeping in view the seismicity and geo-physical setting.

9. The report of the Special Expert Committee shall include the present situation of Kasauli in respect of environment, ecology, forest, sewage system, water supply, collection and disposal of municipal solid waste and the carrying capacity as well as the strength of the hills.

10. We direct the Cantonment Board not to grant any permission for construction till the report of the Special Expert Committee is received and orders passed thereafter by this Tribunal.

All the Members of the Special Expert Committee shall be nominated by the appropriate authorities within a period of two weeks from today. The learned counsel appearing for MoEF & CC shall ensure that this order is communicated to all the concerned authorities. The Special Committee shall take up this matter on utmost priority and submit its report within three months.

On receipt of the report from the Committee, Registry shall register it separately and place it before the Tribunal.

60. Consequently, the Original Application is disposed of, with no order as to cost.

61. As the main application has been decided today, the miscellaneous applications in respect of interim relief etc. do

not survive for consideration. Therefore M.A No. 1212/2015,
M.A No. 1274/2015 & M.A No. 633/2016 stands disposed of.

There shall be no order as to cost.



.....
Justice Swatanter Kumar
(Chairperson)

.....
Justice Raghuvendra S. Rathore
(Judicial Member)

.....
Mr. Bikram Singh Sajwan
(Expert Member)

New Delhi.
DATE: 06th March, 2017

NGT