

(2012) 08 SHI CK 0041
In the High Court Of Himachal Pradesh
Case No : CWP No. 777 of 2003

Bhakra Beas Management Board

APPELLANT

Vs

State Pradesh State Environment Protection and Pollution
Control Board, Paryavaran Bhawan, Phase-III, Shimla (H.P.)
and State of Himachal Pradesh

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 3
Constitution of India, 1950 — Article 132, 133, 134, 135, 136
Criminal Procedure Code, 1973 (CrPC) — Section 197
Punjab Reorganisation Act, 1966 — Section 79, 80(6)
Water (Prevention and Control of Pollution) Act, 1974 — Section 2, 2(k), 24, 24A, 24B

Citation : (2012) 08 SHI CK 0041

Hon'ble Judges : Sanjay Karol, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Kailash Vasdev and Mr. N.K. Sood, with Mr. Abhinav Agnihotri and Mr. Aman Sood, for the Appellant; Tara Singh Chauhan, Advocate for respondent No. 1 and Mr. Vivek Thakur, Addl. A.G. and Mr. Rajesh Mandhotra, Dy. A.G., for the Respondent

Judgement

Deepak Gupta, J.—The petitioner i.e. Bhakra Beas Management Board (hereinafter referred to as the BBMB) has been created under the provisions of the Punjab Reorganisation Act, 1966 (hereinafter referred to as the Act). To understand the background of the dispute it would be pertinent to refer to some historical background. The territories of the erstwhile State of Punjab and the erstwhile union territory of Himachal Pradesh were reorganized by the Punjab Reorganisation Act, 1966. A new State of Haryana was created and certain hilly areas of the erstwhile State of Punjab were transferred to the Union Territory of Himachal Pradesh. A Union Territory Chandigarh was also created by the said Act and the remaining territories were to form the new State of Punjab. The State of Punjab derived its name from the five rivers i.e. Satluj, Beas, Ravi, Chenab and Jhelum. The Bhakra dam described by the first Prime Minister of the country Pt.

Jawaharlal Nehru as one of the temples of modern India had been set up prior to the reorganisation of the State. Alongwith this dam there were many other associated projects. Some of these projects would now fall in the area of the Union Territory of Himachal Pradesh. The States of Haryana and Rajasthan being the riparian States were entitled to some of the benefits arising out of these projects.

2. Therefore, u/s 79 of the Act, the Bhakra Management Board (BMB) was constituted for the administration, maintenance and operation of the projects described therein. BMB was to consist of a whole time Chairman and two whole time members to be appointed by the Central Government. Representatives each of the Government of Punjab, Haryana, Rajasthan and Himachal Pradesh were also to be appointed. Thus it was a multi member body where representatives of all the beneficiary States were represented and the funding of the BMB was also to be shared by all the States. The Board, however, was to be under the control of the Central Government.

3. The Bhakra dam had been set up on the Satluj river. However, at the time when this Act was enacted there was already a proposal to link the waters of Beas with the Satluj and this was known as the Beas-Satluj Link Project. Under this project a dam was constructed across the river Beas at Pandoh. The waters of the Beas were diverted through a tunnel known as the Pandoh-Baggi tunnel and taken from Baggi to Sundernagar by an open channel known as Baggi-Sundernagar Hydrel Channel. At Sundernagar a balancing reservoir was constructed and thereafter there was a tunnel leading from Sundernagar to Dehar where the power house plant was erected on the right bank of the Satluj river. The construction of this Beas project was to be undertaken by the Central Government on behalf of all the successor States and the State of Rajasthan. It was further provided u/s 80(6) of the Act that after the Beas project is completed the same was to be transferred to the Bhakra Management Board which would thereafter be renamed as Bhakra Beas Management Board i.e. BBMB.

4. The whole dispute in this case revolves around the disposal and management of silt, which gets accumulated in the Baggi-Sundernagar Hydrel Channel and the balancing reservoir at Sundernagar. The contention of the respondent-Himachal Pradesh State Environment Protection and Pollution Control Board (hereinafter referred to as the Pollution Control Board) is that under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Water Act) the BBMB is causing pollution and contamination of water and is violating the provisions of Section 24 of the Water Act and therefore, requires consent of the Pollution Control Board to discharge silt. It is further averred that it is the duty of the BBMB to ensure that the pollution is managed in a proper manner. On 18.08.1993 the Pollution Control Board called upon the petitioner to apply for consent under Sections 25 and 26 of the Water Act. The BBMB did not agree to this proposal of the Pollution Control Board and the stand of the petitioner was that it was not obliged to apply for consent. It was contended that

the provisions of Section 25 did not apply to the BBMB as it was not discharging any trade effluent into any river or stream or causing any pollution.

5. In June, 2002 the Pollution Control Board filed a complaint against the Chairman and Chief Engineer of the petitioner alleging violation of various provisions of the Water Act. This complaint was filed before the Chief Judicial Magistrate, Sundernagar, who issued orders summoning the Chairman and Chief Engineer of the BBMB. This order was challenged by the BBMB by filing Cr.M.M.O No. 42 of 2002 in this Court and finally a learned Single Judge of this Court on 21.12.2004 came to the conclusion that dredging of silt from Beas river and balancing reservoir and its ejection into Suketi Khad does not fall within the meaning of polluting matter or trade effluent. The respondent-Pollution Control Board challenged this judgement before the Apex Court, which dismissed the SLP in the following terms:-

We agree with the finding recorded by the High Court that on a reading of the complaint, no prima facie case is made out.

The SLP is dismissed.

However, on the facts of this case, the question regarding applicability of Section 197 Cr.P.C. is left open.

6. In the present petition, the petitioner has prayed for the grant of the following reliefs:-

(a) Issue a writ or writ in the nature of certiorari or such other similar or other writs as this Hon"ble Court may consider appropriate to quash all the proceedings and actions initiated or purported to be initiated by the Pollution Control Board vide communications from respondents under Annexure B collectively and finally culminating into rejection of the petitioners representation by impugned letters dated 1.9.2003 and 11.9.2003, Annexure D and Annexure E, respectively.

(b) Issue a writ or writ in the nature of mandamus or such other writ, order or direction restraining the Pollution Control Board and its officers and employees from taking any action against the petitioner or its Chairman, officers or employees under Sections 24 or 25 or 26 of the Water Act by declaring that the petitioner is not discharging any polluting matter or any trade or any sewage effluent in the activities being carried on by the petitioner in Bhakra and Beas Projects.

7. On 8.3.2004 a detailed order was passed in this petition. The scope and ambit of the petition was widened. The relevant portion of the order reads as follows:-

The issue involved in this case primarily relates to the de-silting of the reservoir(s) and the disposal of the silt which comes out of and from the de-silting process. The petitioner is not a private entrepreneur engaged in profit making; the petitioner is a wholly owned government organisation engaged in

the generation of hydro electric power. Similarly respondents No. 1 and 2 being the State and the Instrumentality of the State, are also responsible to ensure that neither water, nor any type of air pollution is caused by the disposal of the silt and in such a manner as would be hazardous to public interest.

Based on aforesaid observation, we are convinced that the issues involved in this petition are of vital public importance and, therefore, we think that this petition can be treated, apart from and in addition to the adversarial disputes involved herein, as a public interest litigation.

In our considered opinion, we feel that the issues involved herein can be amicably settled and resolved in an atmosphere of bonhomie, all sides appreciating the points involved and in the spirit of proper and mutual understanding. However, we feel that in the facts and circumstances of this case and also because of some intricate technical questions and issues raised, assistance from the Central Pollution Control Board constituted u/s 3 of the Water (Prevention and Control of Pollution) Act, 1974 and u/s 3 of the Air (Prevention and Control of Pollution) Act, 1981 and the Union of India through Ministry of Environment and Forest would be of paramount importance and of special significance. We accordingly direct that the Union of India through Secretary, Ministry of Environment and Forests as well as the Central Pollution Control Board, both be impleaded as respondents No. 3 and 4 respectively in this petition.

8. Thereafter, the Director, Control of Pollution Division, Ministry of Environment and Forest, Govt. of India and Additional Director of Central Pollution Control Board were summoned in Court and they were asked to look into the matter. The Central Pollution Control Board constituted an expert committee to suggest an action plan for management of silt and other environment related issues with respect to the hydel projects managed by the BBMB. The expert committee submitted its interim report which was accepted by all the parties. Therefore, on 25.5.2004 this Court ordered that the interim report of the expert committee be implemented in letter and spirit. The relevant portion of the order of the Court read as follows:-

The interim report submitted by the Expert Committee has been accepted by all the parties, including the petitioner Bhakra Beas Management Board. We accordingly, in the facts and circumstances of this case, direct that the interim report of the Expert Committee be implemented by all the parties in letter and spirit. The petitioner Bhakra Beas Management Board shall comply with the suggestions/recommendations in para 10-A, B and C of the interim report, read with Para 6 of the affidavit of the Senior Environment Engineer filed today in the Court.

Problem of silting is being aggravated by unscientific, indiscriminate and illegal mining of the river beds/khads and Nalas. We are informed that pursuant to the directions of this Court issued in CWP No. 188 of 2001, Government has already formulated a Policy for mining, by the mining Contractors, particularly in the river

beds and has issued certain guidelines with respect thereto. We, therefore, direct that all the mining activities in the river beds/khads/Nalas, save and except in conformity with the aforesaid policy and the guidelines, shall stop immediately and forthwith. We hold the Deputy Commissioners/District Magistrates, District Superintendents of Police and Mining Officers of all the Districts, squarely responsible to implement these directions and see that no illegal, indiscriminate and unscientific mining takes place, except as permitted under the aforesaid Policy and guidelines of the Government. If any incidence of illegal and/or unscientific mining is brought to the notice of this Court, the aforesaid officers whom we have held responsible and all persons who commit such acts, shall be liable to be proceeded against for committing the Contempt of this Court. We direct all the District Magistrates to submit Action Taken Report every three months. First report shall be submitted on or before 16th August, 2004."

9. Thereafter various reports including the final report were filed and it is apparent that the problem of silting has definitely enhanced due to illegal mining and illicit felling of trees. The report of the expert Committee clearly indicates that there is high silt contained in Himalyan rivers including the rivers Beas and Satluj. The river Beas originates near the Rohtang Pass and passes through the districts of Kullu, Mandi, Hamirpur and Kangra and then it enters the State of Punjab. There are many tributaries of the river Beas. Some of the tributaries, such as, Tirthan, Parbati and Sarvari meet the Beas upstream of Pandoh dam whereas Suketi Khad another tributary of the river Beas after traversing through the Balh valley of Sundernagar joins the river Beas at Mandi downstream of the Pandoh dam. The problem of silt arises at various places. The silt first gets accumulated at the Pandoh dam itself. When the river is blocked the silt naturally settles on the bed. Thereafter, some of the silt is washed down with the waters of river Beas as the waters of river Beas are diverted into the man made tunnel from Pandoh to Baggi. In the tunnel the water flows at a fairly high velocity and the silt is washed with the water. After Baggi the waters of the Beas flow in an open channel till the balancing reservoir at Sundernagar. Here the velocity is much less and therefore, the silt settles on the bed of the open channel. At the balancing reservoir which is in the form of a lake, the waters are almost standstill and most of the silt settles down in the reservoir. It is obvious that if the silt is not removed then the Pandoh dam, the open channel and the balancing reservoir would all get blocked over a period of time. It is more than apparent that the silt has to be removed and there can be no dispute in this regard. BBMB definitely has the right as well as the responsibility to dispose of and manage the silt. In the open channel between Baggi and Pandoh the silt is removed by ejection and in the balancing reservoir at Sundernagar huge dredgers have been installed and the dredging capacity is now 810 m³ per hour. Thereafter, the slurry is discharged into the Suketi khad through a closed pipe having a 20 inch diameter.

10. In the interim report the expert committee proposed various urgent short term measures. It firstly proposed that on regular basis flushing of silt at Pandoh dam should take place. It secondly proposed that the Pandoh-Baggi tunnel may

be closed when the flow brings in high quantity of sediment. It was also proposed that dredging be done at a faster rate. The conclusion and recommendations in the interim report are as follows:-

The trial run during the monsoon period of 2004 has been successful, as neither problem of silting was observed nor any complaint regarding deterioration of water quality in river Beas was received. BBMB should also continue monitoring of water quality in the Suketi Khad as well as in the River Beas alongwith recording of bed profile of Suketi Khad.

The present interim measure "discharging of silt through Suketi Khad to River Beas" should be continued according to the parameters stated in Action Plan (Para 10.0 of this report) below for another 3 to 5 years and problems, if any, arising should be addressed to make this interim measure as a long term measure.

Since the recommended measures require close monitoring of data and operational control and in view of the sensitive nature of the problem the Committee suggests that a technical advisory committee should be constituted to evaluate the results of implementing the action plan and suggest any improvement necessary for permanently mitigating the problem related to silt disposal.

11. Here it would be pertinent to mention that in the action plan it was proposed that to minimize generation of silt in the catchment area of the river Beas a proper Catchment Area Treatment (CAT) plan should be got prepared by the State Government and all the stake holders should share the costs. As far as dredging and disposal of silt are concerned the recommendations of the Committee were as follows:-

1. BBMB should restrict the dredging operation in Balancing Reservoir and disposal of silt through Suketi Khad only during monsoon season. In the month of September, dredging should only be resorted to if the flow/discharge in Suketi Khad is more than 7 cumecs (250 cusecs) at Dadaur Bridge. However, BBMB can supplement the shortfall of the flow of 7 cumecs (250 cusecs) during September month from Balancing Reservoir by pumping/siphoning.

2. The existing output dredging capacity available with BBMB is 810 m³/h. BBMB should procure an additional dredger to ensure a flexible and reliable dredging capability during the monsoon period for dredging maximum silt from the Balancing Reservoir.

3. During non-monsoon period, BBMB may dredge and dispose the finer silt through Sundernagar Satluj Tunnel/Dehar Power House, i.e. their own water conductor system to river Satluj.

The committee also indicated that it would be necessary to strongly monitor the flow of silt, etc.

12. During the course of this petition various affidavits were filed by the District Magistrates and it now stands established that a lot of illegal mining is going on and to this extent the BBMB right in saying that the State has been unable to curb illegal mining activities to a large extent.

13. On 24.7.2008 after various orders had been passed, the linked Public Interest Litigations were dismissed and only the present petition remains to be decided.

14. We have heard Sh. Kailash Vasdev learned senior counsel appearing on behalf of the BBMB. We have also heard Sh. Vivek Thakur, learned Additional Advocate General on behalf of the State and Sh. Tara Singh Chauhan, learned counsel for the Pollution Control Board.

15. The submissions made by the petitioners are as follows:-

1. Interstate rivers fall within Entry 56 of List 1 to the 7th Schedule of the Constitution of India and therefore come within the direct control of the Government of India; the powers of the State under Entry 17 of List 2 of the 7th Schedule are subject to the provisions of Entry 56 of List 1.

2. The petitioner carries out sovereign functions in the national interest in four different States on inter-State rivers and is not bound to the State Pollution Control Boards for carrying out these functions.

3. That such usurpation and purported exercise of executive power by the HPPCB would impede and prejudice the exercise of executive power of the Union, which has been entrusted to the petitioner, who is an instrumentality of the Union, under the Punjab re-organisation Act; and this would tantamount to breach of Article 257 of the Constitution of India.

4. The petitioner is not obliged to obtain "consent" from the State Environment and Pollution Control Boards under the Water (Prevention and Control of Pollution) Act and/or Air (Prevention & Control of Pollution) Act as it does not generate any trade effluent, sewage or pollutant. The obligations imposed on the petitioner obliged it inter-alia to dredge river beds and carry out any other such operation for achieving the purposes detailed in the Reorganisation Act.

5. The findings of the Hon"ble Supreme Court in proceedings inter se the parties affirming the finding that there is no pollution being caused by the petitioner, is binding on all courts under Article 14 of the Constitution of India. The jurisdiction of the Supreme Court was invoked in proceedings arising from the Act. These findings are binding.

16. Submissions 1 to 3 can be dealt with together since basically what the petitioner is trying to urge is that the BBMB is carrying out sovereign functions which were otherwise part of the duty of the Central Government and therefore it is not bound to take consent of the State Pollution Control Board for carrying out the said sovereign function. The contention of the petitioner is that Article 257

provides that the Union shall have control over the States in certain cases and such power extends to highways and waterways. It is further contended that inter State rivers fall in entry 56 of List-1 i.e. Union List and since inter State rivers have to be regulated and developed by the Union the States or the State Pollution Control Boards have no power to oversee the functioning of the Board which is carrying out the sovereign functions of the Union in the national interest. It is urged that the State of H.P. cannot impede or prejudice the exercise of the executive powers of the Union.

17. We are not at all impressed with this argument. India is quasi federal union of States. One of the basic structures of our Constitution is that we are a sovereign democracy. It is the duty of the State not only to ensure that the rule of law is obeyed by all but the State itself cannot claim to be above the law. In ancient India the king who himself was the highest Court was also expected to obey the laws. It is a well known adage of law that no one is above the law. Even the Union or the States cannot claim that they are above the law. The rule of law is one of the basic features of the Constitution. All powers emanate from the Constitution and have to be governed by the Constitution. The State or any authority functioning under the State cannot claim that it is not bound by the laws framed by the State. Therefore, when the State itself enacts laws can it be heard to urge that because it is exercising sovereign powers it is not bound to follow the law. We cannot accept such a proposition.

18. The Environment (Protection) Act, 1986 was framed by the Central Government pursuant to the United Nations conference on the human environment held in June, 1972. At this conference the world community resolved to protect and enhance the environment quality of the earth. India was a strong votary for bringing in legislation and raised a number of environmental concerns. It was thereafter that the Environment Protection Bill was introduced in Parliament and became law of the land.

19. The Water (Prevention and Control of Pollution) Act, 1974 was enacted by Parliament in the year 1974. The State was seriously concerned with the problem of pollution of rivers and streams which had assumed alarming proportion due to growth of industries and increased urbanization. It was, therefore, felt that domestic and industrial effluents should not be allowed to be discharged into water courses without adequate treatment. Various committees were constituted and finally the Water Act was enacted by Parliament in 1974. By this enactment of the Central Government, the Central and State Boards for prevention and control of water pollution were created. The State gave some powers to the Central Pollution Board and the State Boards were vested with a number of powers. Therefore, the State Boards though they may be under the management of the State are in fact a creation of a statute enacted by the Central Government and by no stretch of imagination can it be said that the State has in any way infringed upon the rights of the Central Government. Therefore, we are of the considered view that all the submissions made in this behalf are

misconceived and cannot be accepted.

20. As far as submissions 4 and 5 are concerned, at the outset we may notice that the petitioner is justified in contending that the decision of the learned Single Judge in Cr.M.M.O No. 42 of 2002 favours them. The learned Single Judge decided a number of issues and also came to the conclusion that Sections 24, 25 and 26 of the Water Act were not applicable. The learned Single Judge held as follows:-

So far the offence u/s 25 of the Act is concerned, it provides that no person shall, without the previous consent of the Board, shall establish or take any steps to establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land or bring into use any new or altered outlet for the discharge of sewage or begin to make any new discharge of sewage. Section 26 provides that where before the commencement of the Water Act, any person was discharging any sewage or trade effluent into a stream or well or sewer or on land the provisions of Section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in Section 25 subject to the modification that the application for consent shall be made under sub section (2) of Section 25 on or before such date as may be specified by the State Government by notification in this behalf.

Now, Section 2 defines "pollution" to mean such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent. Admittedly silt is not sewage effluent nor can it be said to be trade effluent. Section 2(k) defines trade effluent as follows:-

2(k). "trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry operation or process, or treatment and disposal system other than domestic sewage.

The silt which comes with flow in the hydel channel from river Beas is not discharged from any premises used for carrying on any industrial operation or process.

Section 25 and 26 of the Water Act requires consent to be taken from the State Board only in the event if there is any discharge of sewage or trade effluent which is in the nature of polluting material. Admittedly, Section 25 and 26 would not be applicable to non-polluting material or a material which is not sewage or trade effluent. Undoubtedly, expression "polluting matter" is wide and includes other contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid gaseous or solid substance etc. The consent is required not for the discharge of any non-polluting matter. In my view, dredging of the silt from Beas river and balancing reservoir and its ejection into Sukedi Khad does not fall within the meaning of polluting matter or trade effluent.

It may be noticed that the entire water of River Beas channelised from Pandoh to the generating units at Dehar flows through the tunnel and open stream maintained under the statutory provisions of the Punjab Reorganisation Act.

21. Relying upon the aforesaid observations and the fact that the Judgement of the learned Single Judge has been upheld by the Apex Court it is contended that this issue is no longer *res integra* and this Court cannot now reopen the decision of the learned Single Judge. We have already quoted the order passed by the Apex Court in the SLP filed by the Pollution Control Board. There is no discussion on the issue by the Apex Court though there is an observation that the Apex Court agrees with the finding recorded by the High Court that on a reading of the complaint no *prima facie* case is made out. The question is whether this observation amounts to a declaration of law by the Apex Court and therefore, is binding on the High Court. In this regard, a large number of decisions have been cited by both the parties before us.

22. In *Kunhayammed and Others Vs. State of Kerala and Another*, the Apex Court was dealing with a case where a SLP was dismissed by an order which read "Special Leave Petition is dismissed on merits". After discussing the provisions of Articles 132 to 136 of the Constitution of India, the Apex Court culled out the following propositions of law:-

14. xxx...

1. While hearing the petition for special leave to appeal, the Court is called upon to see whether the petitioner should be granted such leave or not. While hearing such petition, the Court is not exercising its appellate jurisdiction; it is merely exercising its discretionary jurisdiction to grant or not to grant leave to appeal. The petitioner is still outside the gate of entry though aspiring to enter the appellate arena of Supreme Court. Whether he enters or not would depend on the fate of his petition for special leave;

2. If the petition seeking grant of leave to appeal is dismissed, it is an expression of opinion by the Court that a case for invoking appellate jurisdiction of the Court was not made out;

3. If leave to appeal is granted the appellate jurisdiction of the Court stands invoked; the gate for entry in appellate arena is opened. The petitioner is in and the respondent may also be called upon to face him, though in an appropriate case, in spite of having granted leave to appeal, the Court may dismiss the appeal without nothing the respondent.

4. In spite of a petition for special leave to appeal having been filed, the judgment, decree or order against which leave to appeal has been sought for, continues to be final, effective and binding as between the parties. Once leave to appeal has been granted, the finality of the judgment, decree or order appealed against is put in jeopardy though it continues to be binding and effective between the parties unless it is a nullity or unless the Court may pass a specific

order staying or suspending the operation or execution of the judgment, decree or order under challenge.

23. After laying down the aforesaid principles the Apex Court went on to hold as follows:-

27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is nonspeaking order, i.e. it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of juridical discipline, this Court being the Apex Court of the country. No Court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.

24. In *S. Nagaraj (dead) by LRs. and Others Vs. B.R. Vasudeva Murthy and Others etc. etc.*, the Apex Court held as follows:-

56. Hence, an order refusing special leave to appeal does not stand substituted in place of order under challenge and all that it means is that this Court was not inclined to exercise its discretion so as to allow the appeal being filed. The aforesaid law laid down by this Court however makes it clear that if the order refusing leave to appeal makes a statement of law, such statement of law is declaration of law by this Court within the meaning of Article 141 of the Constitution of India and if the order records some finding other than the declaration of law such finding would bind the parties thereto and also the Court,

Tribunal or Authority in any proceeding subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country.

25. In *Bhakra Beas Management Board Vs. Krishan Kumar Vij and Another*, the Apex Court after considering *Kunha Yammed*'s case supra held as follows:-

21. Thus according to the law laid down by the Bench of three learned Judges of this Court it is clear that dismissal of a matter by this Court at the threshold, with non-speaking order, would not fall in the category of binding precedent. Meaning thereby that the impugned order of the Division Bench can still be challenged on merits by the appellate Board. Thus, the earlier orders of the High Court and this Court passed in *Rajinder Singh Patpatia*'s case, creates no bar from re-examining the matter on merits.

26. In *Gangadhara Palo Vs. The Revenue Divisional Officer and Another*, , the Apex Court held as follows:-

7. The situation is totally different where a SLP is dismissed without giving any reasons whatsoever. It is well settled that special leave under Article 136 of the Constitution of India is a discretionary remedy, and hence a SLP can be dismissed for a variety of reasons and not necessarily on merits. We cannot say what was in the mind of the Court while dismissing the SLP without giving any reasons. Hence, when a SLP is dismissed without giving any reasons, there is no merger of the judgment of the High Court with the order of this Court. Hence, the judgment of the High Court can be reviewed since it continues to exist, though the scope of the review petition is limited to errors apparent on the face of the record. If, on the other hand, a SLP is dismissed with reasons, however meagre (it can be even of just one sentence), there is a merger of the judgment of the High Court in the order of the Supreme Court. (See the decisions of this Court in the cases of *Kunhayammed and Others Vs. State of Kerala and Another*, ; *State of Manipur Vs. Thingujam Brojen Meetei*, and *U.P. State Road Transport Corporation through its Chairman Vs. Omaditya Verma and Others*,

27. It has been strongly contended on behalf of the petitioner that since the Apex Court had observed that it agreed with the findings recorded by the High Court this amounts to reasoning of the Apex Court and therefore, there is a decision on merits by the Apex Court. We are unable to persuade ourselves to accept this submission. The learned Single Judge dealt with a large number of questions. The Apex Court specifically left the question of applicability of Section 197 open. The Apex Court did say that it agreed with the findings of the High Court but we must appreciate in what context these observations were made. The learned Single Judge was dealing with a criminal case wherein the issue was whether the Chairman and other officials of the BBMB were criminally liable and should face prosecution. True it is that one of the ancillary questions was with regard to interpretation of Sections 24 to 27 of the Water Act but we are of the considered view that there is no clear cut finding of the Apex Court with regard to interpretation of those Sections.

28. The Apex Court in Devendra and Others Vs. State of U.P. and Another, has clearly held that the decision of a Criminal Court would not be binding on a Civil Court and therefore, for this reason also we are unable to accept the first part of the submission that the matter is no longer res integra has been adjudicated upon by the Apex Court. The SLP was dismissed at the threshold and the Apex Court did not feel that it was a fit case where it should entertain the petition. Nothing was said on the merits of the case.

29. Coming to the merits of the case, at the outset it would be pertinent to refer to Sections 24, 25 and 26 of the Water Act.

24. Prohibition on use of stream or well for disposal of pollution matter, etc.- (1) Subject to the provisions of this section,-

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any [stream or well or sewer or on land]; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

(2) A person shall not be guilty of an offence under sub-section (1), by reason only of having done or caused to be done any of the following acts, namely:-

(a) constructing, improving or maintaining in or across or on the bank or bed of any stream any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

(b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;

(c) putting into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream;

(d) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.

(3) The State Government may, after consultation with, or on the recommendation of, the State Board, exempt, by notification in the Official Gazette, any person from the operation of sub-section (1) subject to such conditions, if any, as may be specified in the notification and any condition so specified may by a like notification be altered, varied or amended.

25. Restrictions on new outlets and new discharges - (1) Subject to the

provisions of this section, no person shall, without the previous consent of the State Board,-

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlets for the discharge of sewage; or

(c) begin to make any new discharge of sewage;

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may --

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being-

(i) in cases referred to in clauses (a) and (b) of subsection (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars or conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30 -

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

26. Provision regarding existing discharge of sewage or trade effluent -

Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a [stream or well or sewer or on land], the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under subsection (2) of that section [shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official

Gazette].

30. Under clause (1)(a) of Section 24 no person can knowingly permit any poisonous, noxious or polluting matter to enter into any stream, well or sewer or on land. For our purpose, clause (b) is more important, which lays down that no person shall knowingly cause or enter into any stream any other matter which may either directly or in combination with similar matters tend to impede the proper flow of the water of the stream in a manner leading or likely to lead a substantial aggravation of pollution due to other causes or of its consequences. Deposit of silt in the Suketi khad would definitely amount to pollution and lead to aggravation of pollution. There are exemptions provided under this Section and even if a person is guilty of any of the aforesaid acts the said act will not amount to an offence if it is done during the construction, improvement or maintenance of any building, bridge, dam, etc. which he has a right to construct, improve or maintain. Similarly it is not an offence if such act is done with the purpose of claiming land or protecting the bank or bed of such stream. Clause (c) of sub-section 2 is very important and as per this clause if any sand or gravel or any other natural deposit which had flowed from or deposited by the current of such stream is put back into the stream then the same is not an offence.

31. The present case is not covered under sub clause (c) since the silt which has flown from river Beas is being deposited in Suketi river. Both the rivers are two different entities till the river Suketi meets the river Beas at Mandi. When the petitioner is depositing the silt which is a creation of river Beas into the river Suketi then it is depositing something which was not the natural part of Suketi river. This silt would have never come into river Suketi and would not have accumulated to such a large extent if the Pandoh dam, Baggi-Sundernagar Hydel Channel and Sundernagar balancing reservoir had not been erected by the BBMB. This project is not some natural barrier but is a man made project. By erecting a man made barrier, i.e. the dam at Pandoh, the waters of the river Beas have been blocked and have been diverted and linked with the river Satluj. Therefore, the project has affected the natural flow of water. The silt would not have accumulated in river Suketi if this project had not come up. Therefore, sub clause 6(c) does not help the BBMB at all. The deposit of silt amounts to causing pollution and therefore, we are of the opinion that the BBMB should have taken the consent of the Pollution Control Board and we do not agree with the contrary findings given by the learned Single Judge in Cr.M.M.O No. 42 of 2002.

32. We may also note that Section 24 itself empowers the State Government to exempt any body from the operation of Section 24. This has not been done in the present case.

33. Even as far as Section 25 is concerned the BBMB was set up prior to the commencement of the Water Act and therefore, no consent was necessary prior to the Act. The question is whether within three months of the commencement of the Act the BBMB should have sought consent from the Pollution Control Board while discharging the silt in the river Suketi or not. The learned Single Judge in

Cr.M.M.O No. 42 of 2002 held that there is no polluting matter and there was no industry which had been set up. We are unable to agree to the reasoning of the learned Single Judge. The definition of Section 25 is very wide and when any person takes any step to establish any industry, operation or process wherein there is likely to be discharge of trade effluent then it is necessary to obtain the consent of the Board. The entire Beas-Satluj link project consists of the Pandoh dam, the tunnels, the open channels, the balancing reservoir, the power house, etc. These are all various units of one huge industry which has been set up to generate power. Today, huge power projects including hydro electric projects are being executed by the private industry. If we are to accept the submissions of the BBMB then none of these power projects would fall within the purview of Section 25. This could lead to an environmental disaster.

34. Trade effluent does not necessarily have to be a pollutant. If it is polluting and the pollutants are beyond the limits prescribed then action can be taken against the industry. However, even before action is taken the Water Act provides for preventive measures in as much as the consent of the Pollution Control Board has to be taken and the Pollution Control Board can, therefore, examine how to reduce the pollution or to manage the pollutant. A perusal of the provisions of Section 25(3) to 25(8) clearly envisage that the State Pollution Control Board may while granting consent impose certain conditions with a view to either eradicating the pollution or managing it in such a manner that the adverse impact is minimal. Once consent of the State Pollution Control Board is taken then the official of the Pollution Control Board can carry out inspection to ensure that the conditions laid down are being complied with. Thus the Board only ensures that the discharge/pollutant is managed in a proper manner. It is not necessary that effluent must necessarily be a pollutant. Trade effluent has been defined in Section 2 (k) of the Water Act, which reads as follows:-

trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any [industry operation or process, or treatment and disposal system], other than domestic sewage.

35. We may point out that a Division Bench of this Court in which one of us Deepak Gupta (J) was a member specifically disagreed with the judgement rendered by the learned Single Judge in Cr.M.M.O No. 42 of 2002 and held as follows:-

12. It is, therefore, clear from a bare perusal of the term "trade effluent" that it includes any liquid being discharged from any premises used for carrying on any industry operation or process other than domestic sewage. The question as to whether the water being discharged from the unit is causing pollution or not is to be considered subsequently, but all such units are required to take the consent of the Board when they discharge such liquid including water. The consent is even necessary for the unit already in existence and they have to apply within a period of three months from the date of issuance of the notification for obtaining the consent of the Board.

xxx...

15. With great respect to the learned Single Judge, we do not feel that this is the correct interpretation of the legal provisions. Section 25 of the Act clearly lays down that consent of the Board is required where the industry is likely to discharge sewage or trade effluent into a stream or well or sewer on the land. Thus the section contemplates the discharge of two materials i.e. sewage and trade effluent. In the present case there will be no discharge of sewage from the plant itself but sewage will definitely be discharged from the residential colonies of the employees engaged in the project. Undisputedly, large number of employees are working on the project and their residences are in the colony premises. Even if the sewage is being treated in the septic-tanks the sewage is being discharged on the land. With regard to trade effluent the argument of the petitioner is that after generation of electricity only pure water is discharged and there is no discharge of any polluting material. Section 2(k) of the Act defines trade effluent to include any liquid, gaseous or solid substance discharged from the premises. Thus it is not the requirement of the Section 2(k) that the effluent should be a polluting material. If any liquid, gaseous or solid substance is being discharged from the premises then there is discharge of trade effluent within the meaning of Section 2(k). Therefore, in that event also consent is required u/s 25 and 26 of the Act. We are, therefore, not in agreement with the view laid down by the learned Single Judge."

36. We may, however, point out that when we had delivered the aforesaid judgement it had not been brought to our notice that the SLP against the judgement of the learned Single Judge had been dismissed. We are of the considered view that once there is a trade effluent being discharged into any river, stream, land, etc. then regardless of the fact whether it is polluting or not consent of the Pollution Control Board will have to be taken. This is to ensure that the Board can manage and prevent pollution before it takes place. Merely seeking of the consent of the Pollution Control Board does not in any way hamper the activities of the industry. It on the other hand enhances the functionality and usefulness of the Pollution Control Board with regard to the prevention of pollution. We are also not in agreement that the slurry which is discharged is not polluting material. From the material which has been placed on record including the reports of the Committee given from time to time it is apparent that what is being discharged into the Suketi khad is not water but water mixed with a huge amount of silt.

37. As per interim report of the Expert Committee, the following environmental/field problems are caused by silt:- ? Adverse impact on water quality;

? Adverse impact on water supply and irrigation sources.

? Adverse impact on agricultural land;

? Soil erosion on the banks of Suketi Khad and;

? Physical and biological changes downstream of Pandoh Dam due to reduced flow in River Beas.

? There are agricultural fields on both banks of Suketi Khad in the flat terrain after about 10 km from the silt discharge point. Agricultural fields are spread upto 9 to 10 km length along the Suketi Khad. There were signs of silt deposition on the agricultural fields located near the khad and adjoining area.

? It is reported that about 43 ha. Agricultural land is affected due to silt deposition. The compensation is paid every year by BBMB on the basis of assessment made by HP Govt. regularly since the year 1988-89 for both Rabi and Kharif crops.

A perusal of the report of the Committee itself depicts the environmental problems caused by silt. What is being dredged out and put in the Suketi Khad is a slurry consisted of a huge amount of silt mixed with water. The various documents annexed with the report clearly indicate that in case the silt is deposited without following a proper procedure then it adversely impacts the water quality, it impacts the water supply and irrigation sources, it erodes the banks of the Suketi Khad and has adverse impact on the agricultural land. It also causes physical and biological changes and adversely affects the flora and fauna around the Suketi Khad. By no means can it be said that this not pollution.

38. We may refer to three photographs attached with the interim report which shall form part of the judgement.

39. A bare perusal of plate-1 shows that the silt which is being discharged from the balancing reservoir through the 20 inch diameter pipeline is so dark in colour that to the naked eye it is pollution. From plate-2 it is apparent that the Suketi Khad is filled up with stones, pebbles, sand and gravel due to deposit of silt in it. The third photograph is of the confluence of the Suketi Khad and river Beas at Mandi. The Suketi Khad is horribly polluted basically due to the silt. We may add that these photographs are those attached with the first report of May, 2004. The situation has improved greatly after the first report was filed because during the pendency of the petition this Court had ensured that the silt is managed in accordance with the report of the Committee. However, this petition cannot remain pending in perpetuity and the Committee appointed by the Court cannot ensure that the silt is disposed of in a scientific manner for all times to come. This is the job of the State Pollution Control Board and therefore, we are of the considered that the provisions of Section 24 to 26 of the Water Act are applicable and the petitioner-BBMB shall have to apply for consent of the Pollution Control Board and it is the duty of the respondent-Pollution Control Board to ensure that the silt is disposed of in a scientific manner causing as little harm to the environment as possible.

40. At this stage, we would like to dispel certain doubts in the mind of the petitioner-BBMB. As we have clearly stated above silt is bound to be generated in the project which is one of national importance. The main issue is how the silt

should be disposed of and managed. There are various reports of the expert committee on file and we have already accepted these reports and after the recommendations of the expert committee have been followed, we find that the situation has improved to a great extent. This by itself shows that prior to the present petition being filed the silt was not being disposed of in a proper manner. Though we do not doubt the intention of the petitioner-BBMB but we cannot leave it to the petitioner-BBMB to dispose of the silt without their being any other supervising authority. In our considered view the Pollution Control Board is the statutorily constituted authority empowered to supervise the discharge of trade effluent in this case silt.

41. We are aware that a lot of silt is generated due to illegal mining and illicit felling of trees being carried out. The Catchment Area Treatment Plan (CAT) has been prepared and the expert committee has made certain observations about the CAT plan. We are not experts in the field and we, therefore, direct the State of Himachal Pradesh, the Union of India in consultation with the petitioner-BBMB and other authorities to ensure that a properly thought out CAT plan is prepared which ensures that there is minimization of mining and illicit felling of trees and there is afforestation in the area so that there is minimum amount of generation of silt. It is the duty of the State of Himachal Pradesh being the protector of its people to ensure that there is no illegal mining and it shall be open to the petitioner-BBMB to bring to the notice of the authorities incidents of illegal mining and we are sure that if such incidents are brought to the notice of the competent authority then immediate action will be taken.

42. In view of the above discussion, we find no merit in the contention of the petitioner-Board that it is not covered by the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and we are of the considered view that it is required to seek consent of the Board. Since the matter has been pending for a long time and with the help of the expert committees the pollution has been controlled effectively, we while rejecting the contention of the petitioner direct that in case the petitioner-Board applies for consent on or before 31st October, 2012 no penal action shall be taken against it by the H.P. State Pollution Control Board. We also direct that the Pollution Control Board shall take a holistic approach and while dealing with the issues involved will not take a confrontationist approach and shall be guided by the reports of the expert committees which have been accepted by this Court and form part of the record of the case. The petition is disposed of in the aforesaid terms. No order as to costs.