



ENVIRONMENT

Reasserting the Polluter Pays Principle: Judicial Intervention in River Ecology Degradation

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Introduction

The intersection of infrastructure development and environmental protection has increasingly become a site of judicial scrutiny in India. In *Court on its Own Motion v. State of Himachal Pradesh & Ors.*¹ (2026), the Himachal Pradesh High Court confronts this tension in the context of hydroelectric operations impacting a fragile river ecosystem. Triggered through a suo motu Public Interest Litigation, the case brings into focus the ecological consequences of unscientific desilting practices carried out in the Uhl River an ecologically significant habitat for cold-water trout species.

At its core, the dispute reflects a recurring governance failure: the prioritisation of operational convenience and energy generation over compliance with environmental safeguards. Despite prior judicial directions and expert recommendations, the continued degradation of water quality and destruction of aquatic life raised serious concerns regarding regulatory enforcement and ecological accountability. Against this backdrop, the judgment assumes significance not merely as a fact-specific ruling, but as a reaffirmation of foundational environmental principles particularly the “polluter pays” doctrine as evolved in *Indian Council for Enviro-Legal Action v. Union of India*², alongside the constitutional mandate to protect natural resources.

Background of the Case

The present matter arose through a suo motu Public Interest Litigation initiated by the Himachal Pradesh High Court on the basis of a letter highlighting severe ecological damage in the Uhl River caused by the discharge of silt from the Barot Dam, operated under the Shanan Hydroelectric Project. The river, recognised as a significant cold-water habitat for trout, was reportedly experiencing deterioration in water quality, leading to fish mortality, disruption of breeding cycles, and broader ecological imbalance.

This was not an isolated incident. A similar controversy had previously come before the Court in 2018, wherein concerns were raised regarding unscientific dumping of silt into the river. At that time, the Court had relied on a Joint Expert Committee comprising representatives from the Fisheries, Irrigation, and Agriculture Departments. The Committee had recommended that desilting be conducted in a controlled and scientific manner, strictly avoiding the trout breeding season and ensuring continuous monitoring of water quality. The earlier proceedings were closed based on assurances from the project authorities that such practices would not be repeated.

However, subsequent events revealed a pattern of non-compliance. Reports and complaints indicated that during 2024-2025, desilting operations were once again undertaken during the lean and breeding season (November to February), contrary to established guidelines. These activities led to increased turbidity, significant rise in suspended solids, and adverse impacts on aquatic life. Inspection reports further highlighted that the project authorities had failed to maintain the mandated ecological flow of water downstream and had not adequately coordinated with regulatory bodies such as the Fisheries Department and the State Pollution Control Board.

The cumulative effect of these actions was the degradation of a sensitive aquatic ecosystem, prompting the Court to revisit the issue. The case thus emerged against a backdrop of repeated violations, administrative inaction, and the urgent need to reconcile hydroelectric operations with environmental sustainability.

Key Legal Issues

The case raised several critical legal questions:

- Whether desilting during the breeding season violates statutory and environmental obligations
- Whether failure to maintain minimum ecological flow breaches regulatory directives
- Applicability of the **polluter pays principle** in cases of ecological damage caused by public utility projects
- The balance between economic interests (power generation) and environmental protection

Judicial Reasoning

The Himachal Pradesh High Court grounded its reasoning in a careful evaluation of empirical evidence, expert findings, and the admitted conduct of the project authorities. At the outset, the Court noted that the core issue was not the necessity of desilting per se, but the manner and timing in which it was undertaken. The repeated decision to carry out desilting during the lean and

trout breeding season, despite explicit prior directions and expert recommendations, was treated as a clear instance of wilful non-compliance.

A significant factor influencing the Court's reasoning was the stark deterioration in water quality. The data on record demonstrated an alarming increase in Total Suspended Solids (TSS) from **3 mg/L upstream to 2812 mg/L downstream**, far exceeding permissible limits. This, according to the Court, conclusively established that the desilting process was being conducted in an unscientific and environmentally destructive manner, directly impairing aquatic life.

The Court also attached considerable weight to expert committee observations, which described the effect of high turbidity on aquatic ecosystems as akin to a "perpetual sandstorm," severely restricting the ability of fish to respire and survive. By ignoring these scientific findings and proceeding with desilting during a biologically sensitive period, the project authorities were found to have acted in disregard of ecological realities and statutory obligations.

Further, the failure to maintain the mandated **minimum ecological flow of 15%**, as directed by the National Green Tribunal, was treated as an independent and serious violation. The Court observed that the drying up of river stretches and obstruction to fish migration compounded the ecological harm caused by silt discharge.

Rejecting the defence of operational necessity and potential loss of power generation, the Court unequivocally held that economic considerations cannot override environmental protection, echoing principles laid down in *M.C. Mehta v. Union of India*³. It further observed that the project proponent's own negligence in allowing excessive silt accumulation over the years could not justify sudden, large-scale desilting at the cost of ecological damage.

In reinforcing established environmental jurisprudence, the Court invoked the "**polluter pays**" principle, holding the project authorities liable for the damage caused. The reasoning reflects a broader judicial stance that entities engaged in commercial or public utility activities must internalise the environmental costs of their operations, particularly where prior warnings and regulatory frameworks have been ignored.

Ultimately, the Court's reasoning is marked by a clear prioritisation of ecological integrity, scientific evidence, and regulatory compliance, coupled with a firm rejection of administrative complacency and environmentally harmful practices.

Key Directions Issued by the Court

The High Court issued comprehensive remedial and preventive directions:

- Prohibition of desilting before 1st March each year to protect breeding cycles
- Mandatory installation of real-time monitoring systems for water quality
- Enforcement of minimum ecological flow (15%)
- Constitution of a River Monitoring Committee
- Imposition of ₹12 lakh environmental compensation for ecological restoration
- Directions for restocking trout species to revive aquatic life

Conclusion

This represents a strong assertion of environmental accountability, yet simultaneously exposes persistent governance failures. Despite prior judicial intervention in 2018, continued non-compliance highlights weak enforcement and regulatory oversight, with the Court's reliance on compensation and post-facto monitoring reflecting a largely reactive framework. While the prioritisation of ecological integrity over economic considerations is a significant reaffirmation of environmental principles, the absence of stricter punitive measures or structural reforms in hydroelectric governance limits the transformative impact of the ruling. The continued dependence on judicial intervention also points to administrative inefficiency in environmental regulation. Nevertheless, the decision stands out for its scientific grounding, reliance on expert findings, and emphasis on ecological restoration over mere penalisation. Ultimately, the ruling strengthens India's environmental jurisprudence by reiterating that development cannot come at the cost of ecological sustainability, particularly in sensitive ecosystems, and reinforces that environmental protection is both a constitutional mandate and an essential component of responsible governance.

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1. 2026:HHC:10863 ??

2. (2011) 8 SCC 161 ??

3. 1987 SCR (1) 819; AIR 1987 965 ??

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