

Item No.7

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL**
(Through Video Conferencing)

Original Application No.50/2021(CZ)

Shubhendra Kumar Pandey

Applicant (s)

Versus

NHAI & Ors.

Respondent(s)

Date of hearing: **08.10.2021**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s):

Mr. Dharamvir Sharma, Adv.

For Respondent(s):

Mr. Ankur Mittal, Adv
Ms. Harshita, Adv.
Ms. Nimisha Nayak, Adv.

ORDER

1. The grievance in this application is felling of Trees for the construction of the National Highway (NH 135BG), which starts from its junction with NH-35 (Old NH-76, at Chitrakoot) and terminating at the junction at NH-30 (old NH-7) near Maihar. The applicant is, concerned about tree felling area from 80.8 Km to 85.15 Km passing through Satna-Maihar, particularly when there is pre-existing alternative road is available, which is a much more sound way for transportation. The Respondent Office of Sub Divisional Officer, (Revenue) and Land Acquisition Officer, Raghurajnagar, Distt Satna (NIP) has published notification dated 15.03.2021 issued by Ministry of Road Transportation, Delhi, wherein, the proposed road of Two/Four lanes with paved shoulder from Km 80.800 to Kms 120.120 (Satna to Maihar Section) will be constructed by cutting large

number of Trees, shall definitely have long lasting effects upon the ecology of the Area, water resources and Natural Air; being a greater wealth of Satna district.

2. The applicant has stated that the application has been filed for the purpose of protection and conservation of a large numbers of Indigenous Trees from near the village of Chakbandi in Satna. More than 600 fully grown trees of various thicknesses are to be cut down for the construction of the project of National Highway NH-135BG, distance from Km 80.800 to Kms85.15 (Satna to Maihar Section), The respondents are constructing the National Highway crossing the villages Chakbandi, Gindura, ItoraKothar, Lamtara and Shergani; situated along the Satna_ Maihar area. This increasing developmental and infrastructural growth, in this disorderly fashion, to keep up with the growing economy of the region is posing a great threat and risk to the local ecology.
3. The matter was taken up by this Tribunal on 26.07.2021 and joint committee consisting Divisional Forest Officer (DFO), Satna and representative from the Madhya Pradesh Pollution Control Board was constituted with a direction to submit factual and action taken report.
4. In compliance thereof the joint committee had submitted the report on 14.09.2021 which is as follows :

“The facts as observed by the Committee are as follows:

1. The National Highways Authorities of India, Ministry of Road Transport and Highways Government of India launched a project under BharatmalaPariyojanafor Construction of Two/Four Lane of NH 135BG with paved shoulder

from Km 80 + 800 to Km 120+125 (Satna to Maihar Section) in the State of Madhya Pradesh. The respondents are constructing the National Highway crossing the villages Chakbandi, Giduri, ItauraKothar, Lamtara and Sherganj; situated along the SatnaMaihar area. The Applicant Mr. Shubhendra Kumar Pandey raised an issue of Cutting and felling of fully matured and naturally grown trees in area from 80+800 Km to 85+150 Km passing through Satna_Maihar due to the construction of the above.

2. The Committee visited along with the NH 135BG From 80+800 to 85+150 Kms with site engineer of NHAI and verified the facts regarding cutting and felling of the trees in the proposed project. The details provided by the NHAI authorities regarding cutting and felling of trees in the proposed stretch with mitigation measures is attached.

3. The geographical coordinates, photographs and other relevant information are also collected which are incorporated in the Report. The main observation of the team is given below:

1. **Point of Origin Chainage 80+800** : This is a originating point of the proposed NH-135BG. It originates near Satna from design at Km 80+800 i.e. from existing newly constructed Satna Bypass 4 lane

Road (NH-39), Village:- Giduri. There is no tree plantation at this location.

2. **Chainage - 80+800 to 81+300:-**

This section of the proposed NH 135BG located in village ItauraKothar, TalukaRaghuraj Nagar, District Satna Madhya Pradesh and has a span of 0.5Kms. There are 10 Nos. of trees standing in the acquired land but only 2Nos. trees will be affected in the construction zone which are required to be cut for construction of 2 lane with paved shoulder.

3.**Chainage 81+300 to 81+800 :-** This section of the proposed NH located in village Chakbandi, TalukaRaghuraj Nagar, District Satna M.P. and has a span of 0.5Kms. There are 426 Nos. Trees standing in the acquired land but only 276 Nos. trees will be affected due to the construction zone and are required to be cut for construction of 2 lane with paved shoulder are. This is a main span of the proposed NH which has major part of the existing matured and naturally grown trees.

4. **Chainage - 81+800 To 82+400 :-**

This part of the proposed NH is located in village MajhbogwanKothar, TalukaRaghuraj

Nagar, District Satna M.P. and has a span of 0.6Kms. There are no standing trees standing in the acquired land. Therefore the cutting and felling of trees for construction of this section of NH are Nil.

5.Chainage 82+400 to 83+ 100 :- This part of the proposed NH is located in village LamtaraKothar, TalukaRaghuraj Nagar, District Satna M.P. and has a span of 0.7Kms. There are 6 Nos. of standing trees in the acquired land but no tree is going to be affected and required to be cut for construction of 2 lanes with paved shoulder.

6.Chainage - 83+100 To 84+900:- This part of the proposed NH located in village Sherganj, TalukaRaghuraj Nagar, District Satna, M.p. and has a span of 1.800 Kms. There are, 27 Nos. of trees standing in the acquired land but no tree is going to be affected and required to be cut for construction of 2 lane with paved shoulder.

7. Chainage - 84+900 to 85+150 :- This part of the proposed NH located in village Bagedhi, TalukaRaghuraj Nagar, DistrictSatna, MP. and has a span of 0.250 Kms. There is no trees standing in the acquired land therefore there is nocutting and felling of trees for construction of this span.

Conclusion:-

As per the observation made by the committee, total no. of trees standing in the said span are 469 but cutting and felling will be limited to 278 trees only, due to construction of NH 1358G from Chainage 80+800 to 85+150 Kms i.e. a span of 4"35 Kms. Further, the PP has informed that efforts to will be made to transplant the maximum trees as per direction of field specialist and considering the suitability and survival of the plant. The PP i.e. NHAI submitted that provision has been made to **plant 10 times of the no. of trees felled for construction of proposed NH and accordingly the impact of felling of trees will be mitigated.**"

5. Respondent No. 2 had submitted the reply with the facts that decision of the widen/ built a new road is in the domain of NHAI based on several factors, and involves decision to be taken after considering various factors including inputs from experts dealing with the subject employees who expertise on the same.

6. Relevant paras of the reply are quoted below :

“6. That the Applicant has also misled this Hon'ble Tribunal by stating that 600 full grown natural trees of the area under acquisition shall be affected. In this regard, it is submitted that only a total of 418 trees are getting affected in 45m PROW. However, felling of trees **will be limited to only 278 trees** which are affected in construction

zone. Further, **efforts will be made to transplant maximum number of trees as per the directions of specialist in the field and the suitability of plant for survival.**

Even felling of trees will be carried out after following due process of law and obtaining all requisite approvals and permissions from the concerned departments.

The Applicant has exaggerated and made false statements. These facts stands proven by the report filed by the Expert committee appointed by this Tribunal. The joint committee vide its report dated 01.09.2021 has found that only 469 trees are standing in the acquired land and out of which only 278 trees are affected-in the construction zone, and which are required to be cut for construction of 2-lane with paved shoulder. In view of the above, it is submitted that the present application deserves to be dismissed with costs for misleading this Honble Tribunal with false statements

7. Even otherwise, the alternate route as suggested by the Applicant is located in densely populated section with such geographical location which is suffering from deficient geometry making it unviable for its alignment with the Project Highway. A copy of the screenshot of the map taken from the Google Earth map showing the geographical comparison between the alternate

route as proposed by the Applicant and the proposed route is annexed.

8. Reply to Synopsis and Chronology of Events:

That the contents of Synopsis of Chronology of Events are wrong, incorrect, baseless, misleading, and hence vehemently denied. In response to the contention pleaded by the applicant that there are hundreds of fully matured and naturally grown trees felling in Satna District of Madhya Pradesh for the construction of National Highway NH 135 BG from 80.15 Km against the set Development Plan of the City is concerned, it is submitted that only 469 trees are standing in the acquired land and out of which only 278 trees are affected in the construction zone and required to be cut for construction of 2-lane with paved shoulder. Further, the contention of the Applicant that the Applicant is a native of Satna (MP) who is constitutionally bound to conserve and protect the age-old trees are not admitted by the answering Respondent. The Applicant may be put to strict proof thereof. Furthermore, reliance is placed on the Representation dated 08.04.2021 which is totally misconceived, even otherwise the Applicant has not furnished the Representation dated 08.04.2021. It is further denied that the people of Satna are in any manner aggrieved of the alleged acts of the Respondents. It is further denied that the Respondents are arbitrarily bent upon cutting hundreds of age-old trees which are blessing for

the generation to come. As already stated hereinabove, the Applicant has exaggerated the number of trees to be felled down. The Applicant has claimed the number of affected trees to be around 600 whereas the number of affected areas (the trees to be felled down) are only 278 trees as also evident from the report of the Joint Committee as appointed by this Hon'ble Tribunal. It is further pertinent to mention that the answering Respondent would plant 10 times the number of trees felled for construction of Highway and accordingly the impact and felling of trees will be mitigated.

18. That the contents of Para No. 5.9 are wrong, baseless, and misleading, hence vehemently denied. As already submitted herein above that the applicant has exaggerated the number of trees to be cut down for the construction of the highway. The Applicant is no expert in this field and the present application is clearly a motivated one. The tree cutting has been limited to the least-possible extent. Also, para-24 of the judgment pronounced by the Hon'ble Supreme Court of India in the case between **Union of India vs. Kushala Shetty & Ors (2011) 12 SCC 69** may kindly be referred, which states that:

“28. Here it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of

National Highways. The projects involving, construction of new highway and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project report are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited”.

7. We have gone through the joint committee report and the reply submitted by the respondents and the contention of the Learned Counsel for the applicant. The view of the applicant is the damage to the cutting of trees should be mitigated by way of plantation of the trees more than double in number ratio of the trees which has been cut by the NHAI. It is to be noted that conservation and development

need not be viewed as binaries, but as complementary strategies that weave into one another. In other words, conservation of nature must be viewed as part of the development and not as a factor of stultifying development.

8. For the sustainable development Hon'ble Supreme Court in case of **N.D. Jayal&Anr. Vs. Union of India & Ors.** reported in (2004) 9 SCC 362 dealing with the matter of Tehri Dam observed as follows:

"22. Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In Vellore Citizens Welfare Forum v. Union of India, and in M C Mehta v. Union of India, it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of sustainable development.' This is a development strategy that caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environmental related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of coming generations will be in jeopardy.

In a catena of cases we have reiterated that right to clean environment is a guaranteed fundamental right. May be in different context, the right to development is also declared as a component of Article 21 in cases like Samata v. State of Andhra Pradesh and in Madhu Kishore v. State of Bihar.

9. The right to development cannot be treated as a mere right to economic betterment or cannot be limited to as a misnomer to simple construction activities. The right to development encompasses much more than economic well being, and includes within its definition the guarantee of fundamental human rights. The 'development' is not related only to the growth of GNP. In the classic work – 'Development As Freedom' the Nobel prize winner Amartya Sen pointed out that the issue of development cannot be separated from the conceptual framework of human right'. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well being and realization of their full potential. It is an integral part of human right. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.
10. Therefore, the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand right to development is also one. Here the right to 'sustainable development' cannot be singled out. Therefore, the concept of 'sustainable development' is to be treated an integral part of 'life' under Article 21. The weighty concepts like inter-generational equity State of Himachal Pradesh v. Ganesh Wood Products, public trust doctrine M C Mehta v. Kamal Nath, and precautionary principle (Vellore Citizens), which we declared as inseparable ingredients of

our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

11. To ensure sustainable development is one of the goals of Environmental Protection Act, 1986 (for short 'the Act') and this is quite necessary to guarantee 'right to life' under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of 'life' under Article 21. Acknowledgment of this principle will breathe new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance of the directions under the Act. The object and purpose of the Act - "to provide for the protection and improvement of environment" could only be achieved by ensuring the strict compliance of its directions. The concerned authorities by exercising its powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfillment of conditions or direction under the Act. Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act. The conditions glued to the environmental clearance for the Tehri Dam Project given by the Ministry of Environment vide its Order dated July 19, 1990 has to be viewed from this perspective.

12. When natural resources are exploited in a big way for big projects by State with all sincerity and good intentions for general common benefit, social conflicts arise as a natural adverse consequence. Generally the conflicts arise between marginal farmers, peasants and other landless persons who survive on natural resources and those who are better off, rich or affluent and who desire to undertake agriculture and industry. When river projects for dams are undertaken to generate electricity and improve irrigation facilities, conflicts arise between people living up-stream who have to necessarily lose their source of living and habitat and those living down-stream who need water and electricity for their homes, industries and agricultural fields. When such social conflicts between different social groups i.e. up-stream population and down-stream population, between rural population and urban population, between poor surviving on natural resources and others needing natural resources for further development arise what should be the duty and priorities of the State and its authorities who have undertaken the projects? When such social conflicts arise between poor and more needy on one side and rich or affluent or less needy on the other, prior attention has to be paid to the former group which is both financially and politically weak. Such less advantaged group is expected to be given prior attention by Welfare State like ours which is committed and obliged by the Constitution, particularly by its provisions contained in the Preamble, Fundamental rights, Fundamental duties and Directive Principles, to take care of such deprived sections of people who are likely to lose their home and source of livelihood.

13. Learned Counsel appearing for the Applicant has suggested that in

the middle of the town there is pre existing road and instead of taking the existing road NHAI has taken alternate road as a bypass for construction of the Highway. Learned Counsel appearing for the respondent has argued that the widening of the existing road through the middle of the city requires displacement of maximum number of persons and acquiring the land which is situated in the densely populated area causing displacement, re-settlement, rehabilitation and payment of compensation. Since the policy with regard to the bypass road, safety and alignment condition was considered by the expert committee, thus proper and appropriate care has been taken and minimum loss to the trees was considered. It has further been submitted that the NHAI had already made provisions for plantation of 10 times of the number of trees felled for construction of proposed NH and in this way the impact of felling of trees will be mitigated.

14. Accordingly, in view of the joint committee report and the reply submitted by the respondents the report submitted by the Joint Committee is accepted. The respondents are directed to take care and the undertaking which have been submitted for plantation of 10 times of the number of trees felled for construction of proposed NH to mitigate the felling of trees should be taken care of. In addition to that the guidelines issued by Ministry of Road Transport and Highway dated 26.06.2020 must be followed.

Original Application No. 50/2021(CZ) is **finally disposed of** accordingly.

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

8th October, 2021
O.A. No.50/2021(CZ)
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