

Item No. 05

Court No. 1

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

(By Video Conferencing)

Appeal No. 31/2022

Vivek Kamboj & Ors.

Appellant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 02.09.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Ms. Itisha Awasthi, Advocate

Respondent: Mr. Anil Grover, Senior AAG with Mr. Rahul Khurana, Advocate for
HSPCB
Mr. A.P. Singh, Advocate for NHAI (R - 5)

ORDER

1. This Appeal has been preferred against forest clearance for diversion of 47.0919 ha. of forest land for construction of 4/6 lane of Gurugram Pataudi Rewari section of NH-352W. Stage-I clearance was granted on 27.10.2021 and Stage-II clearance was granted on 28.01.2022 by MoEF&CC and interim approval for felling of trees was granted on 17.12.2021 by PCCF, Haryana.

2. According to the appellants, Ministry of Road Transport and Highways Guidelines, 2018 are not being followed in terms of which expansion of highway should be on one side to avoid felling of trees on the other side. As per inspection report dated 30.07.2021, land is being

acquired on either side of the road which makes felling of trees inevitable on both sides. The report is as follows:-

“xxx.....xxx.....xxx

The details of the project show that user agency is acquiring land on either side of the road which makes felling of the trees inevitable.”

3. It is further stated that the site where compensatory afforestation has been done is 300 km away from the site where trees are felled and thus such plantation is no compensation. This Tribunal has directed planting of ten trees for each tree cut in view of uncertainty of survival of plants.

4. Vide order dated 01.07.2022, the Tribunal considered the matter. Considering the fact that construction of road had to be consistent with the environmental norms, including appropriate compensatory measures, the Tribunal constituted a joint Committee of District Magistrates and DFOs, Gurgaon and Rewari, Regional officer, MoEF&CC and State PCB to verify facts and furnish a report which may particularly mention whether compensatory plantation is being considered 300 km away instead of contiguous areas/locations. The operative part of the order is reproduced below:-

“6. It is not disputed that construction and expansion of road network is a necessary amenity for movement of goods and persons. However, it is submitted that sustainable development requires that it should be consistent with the environmental concerns. Cutting of trees should only be allowed if inevitable and subject to suitable compensatory norms.

7. Having regard to above, we find it necessary to ascertain the factual position in respect of the project in question to determine whether intervention of this Tribunal is necessary in the matter.

8. Accordingly, a joint Committee of the District Magistrates and DFOs, Gurgaon and Rewari, Regional officer, MoEF&CC and State PCB may verify facts by undertaking visit to the site and interacting with the stakeholders, including the PP and submit a report within

one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The report may particularly mention whether compensatory plantation is being considered 300 km away instead of contiguous areas/locations. The nodal agency will be the State PCB for coordination and compliance. A copy of the report may also be furnished to the NHAI, to enable it to file its response, if any. The Committee may ensure, by coordinating with the NHAI, that no irreversible illegality is committed in the process till the matter is further considered.”

5. In pursuance of above, report has been filed by the joint Committee through the State PCB, acknowledging that compensatory afforestation has been permitted 300 Kms away from the location where the trees are to be cut. Relevant extract from the report are reproduced below:-

“Due to non-availability of such a large patch of degraded forest land in Gurugram Forest Division, CA site was proposed at C-108 of Chandi Beat and C110, 111, 112 of Mandhana Beat, Thapli Block ,Pinjore Range in Morni-Pinjore Division of Haryana which is approximately 280 KM from the project location where forest land has been diverted. This was also necessitated in view of the fact that Morni-Pinjore division is only having larger area in a stretch for undertaking CA of such extent.”

6. The applicant has questioned the justification in afforestation being undertaken at far off place, apart from making further submissions. It is submitted that the PP has made no efforts to identify degraded land within the District where the trees are to be cut. Vacant lands are available. Other objection of the appellant is against the project itself by submitting that cost-benefit analysis does not take into account contribution of the project to the climate change and also that the compensatory afforestation should be at the extent of 10 times. It is also submitted that land should be acquired only to one side of the road to avoid felling of trees on both sides.

7. We are unable to accept objections of the appellant except that the afforestation has to be nearest to the place of cutting of the trees and that in future projects the PP must consider the points raised in the appeal.

8. Accordingly, we allow this appeal and direct that the forest clearance is subject to requirement of afforestation within 10 kms from the place from which trees are cut. It will be the responsibility of the PP to find suitable land, subject to approval of the Forest Department for this purpose. If this mandatory condition is not followed up, the PP will not be allowed to proceed with the project. We have noted that number of trees have already been cut but no further tree be allowed to cut without compliance of this order. The PP may plan afforestation along the roadside in all its future projects at the planning stage itself, creating a strip with appropriate width of plantation to offset road dust pollution.

The appeal will stand disposed of accordingly.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

September 02, 2022
Appeal No. 31/2022
SN