

Item No.1:-

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Dated this the 06th day of November, 2023

(Through Video Conference)

**Original Application No.242 of 2021(SZ)
I.A. Nos.17 & 75 of 2023 (SZ)**

IN THE MATTER OF

1. Tejah Balantrapu

S/o Hemachandra Balantrapu,
202, Grace des res heights,
SBI colony, Baghamberpet,
Hyderabad- 500 013, Telangana.

2. Pranay Juvvadi

S/o J. Praveen Rao,
1-10-63/4,
Chikoti gardens, Begumpet,
Hyderabad- 500 016, Telangana.

3. Natasha Ramarathnam,

D/o Dr. S Ramarathnam,
504, Samala Royale,
Street No. 4, Begumpet,
Hyderabad-500 016, Telangana.

...Applicant(s)

Versus

1. Union of India,

Rep. its Secretary,
Ministry of Environment, Forest & Climate Change,
Jorbagh, New Delhi.

2. The National Highways Authority of India,

Rep. by its Project Director,
NO. 25A & 28A, ASCI, College Park Campus,
Road No. 3, Banjara Hills, Hyderabad.

...Respondent(s)

For Applicant(s):

Mr. A Yogeshwaran.

For Respondent(s):

Mr. G.M. Syed Nurullah Sheriff for R1.
Mr. Su. Srinivasan for R2.

Judgment Reserved on: 11.08.2023.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGEMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member.

**“தெள்ளிய ஆலின் சிறுபழத் தொருவிதை
தெண்ணீர்க் கயத்துச் சிறுமீன்சினையினும்
நுண்ணிதே ஆயினும் அண்ணல் யானை
அணிதேர் புரவி ஆட்பெரும் படையொடு
மன்னர்க் கிருக்க நிழலா கும்மே.”**

(பாடல் : 17 – வெற்றிவேற்கை – அதிவீர ராம பாண்டியர்)

(The tiny seed of a mighty Banyan Tree is smaller than the egg of the smallest fish, when grown, it is large enough to offer shade to the entire battalion of the King viz., Elephants, Chariots, Cavalry and Infantry.)

- 1.** The most attractive feature of the Banyan Tree is its ability to survive for hundreds of years which grows in the tropical climate. The Banyan tree is the National Tree of India known for its distinct hanging or aerial roots and has excellent medicinal properties. In our country the Banyan tree holds religious, mythical and cultural significance. It is quite common to find a Banyan tree in the middle of every Indian village, as it signifies strength and unity because of which it is considered as National tree of India.
- 2.** The Banyan tree which represents and portrays longevity are now in the risk of being cut for the purpose of widening the stretch between Moinabad and Manneguda by National Highway Authority of India (NHAI).
- 3.** In an attempt to save more than 1036 old Banyan trees along with other trees which are more than 9,000 in numbers, the applicants have filed the above Original Application not to widen the stretch of NH 163 by cutting Banyan trees along the road or in the alternative the NHAI should be directed to obtain Environmental Clearance under Section 7(f) of the EIA Notification, 2006 for the proposed project between Hyderabad and Manneguda.

4. The objection raised by the applicants are:

- (i) The project is not an expansion project as contended by the NHAI and therefore not exempted under entry 7(f) of the EIA Notification, 2006.
- (ii) The NHAI has not considered other alternatives before deciding to go for the proposed widening.
- (iii) The stretch of 46km which is the matter of concern in this application is an old road where thousands of Banyan trees among other trees were planted as avenue trees and they are at least 80 to 100 years old.
- (iv) The stretch also includes scrub forests that run for about 05 to 06 km next to the highway Mudimyal and Kandlapally.
- (v) The Banyan trees support a variety of life forms like birds, lizards and other living organisms.
- (vi) The feasibility report based on which the NHAI is executing this project has not been prepared after considering the environmental impact of the proposed tree felling.
- (vii) Other than the preliminary environmental assessment carried out to identify the critical issues and areas that would be studied in detail, no further study was taken up during the subsequent stages of the project preparation.
- (viii) The enumeration of trees that are to be felled has not been provided in the feasibility report, much less an assessment of the impact of such felling.
- (ix) No alternatives to the proposed widening have been considered in the feasibility report or otherwise by NHAI.
- (x) The proposed road is not a national highway built according to IRC standards and with Environmental Clearance. As it is a new project as far as EIA Notification, 2006 is concerned,

it has to be assessed for its impact following the procedure laid down in the notification.

- (xi) If is not an existing project or a highway, it is a new project which requires prior Environmental Clearance without which the project itself is vitiated. Therefore, the expansion as envisaged under the EIA Notification, 2006 is only for project that have obtained clearance and to contend that the provisions under Section 7(f)(2) of EIA Notification, 2006 is applicable to all roads even those notified as highway would defeat the very purpose of the law.

5. The very project is contrary to the precautionary principle, principles of sustainable development and principle of intergenerational equity, hence ought not to be allowed to be proceeded with. As the ecological impact of felling trees is irreversible and the proposed widening is contrary to the precautionary principles, the applicant has sought for direction to 2nd respondent to obtain Environmental Clearance before proceeding with the project.

6. **The MoEF&CC, which is the 1st respondent** has filed its counter affidavit stating that as per the provisions of the EIA Notification, 2006 new national highways and expansion of national highways greater than 30 km, involving additional right of way or land acquisition greater than 20m involving land acquisition or passing through more than one State was listed in Schedule 7(f) of the EIA Notification, 2006 and such projects were required to be undertaken only after prior Environmental Clearance from the Central Government.

7. The new national highway/State highways, irrespective of its length, width of right of way or land acquisition, requires prior Environmental Clearance from the Central Government or State Government as the case may be. The MoEF&CC constituted a high level committee in OM dated 11.12.2012 to review the provisions of EIA Notification, 2006 relating to grant of Environmental Clearances for roads, buildings and special economic zone projects. The said committee recommended that the expansion of national highway projects upto 100km involving additional right of way/land acquisition upto 40m on existing alignments and upto 60m on re-alignments/bypasses may not be insisted for prior Environmental Clearance under the EIA Notification, 2006 in view of the spatial linearity of the project. The said recommendation was accepted by the Ministry and issued an amendment notification in S.O NO. 2559 (E) dated 22.08.2013. As per the amended provisions expansion of national highways greater than 100km involving additional right of way or land acquisition greater than 40m on existing alignment and 60m on realignment or bypasses. Therefore, as per the amended EIA Notification only such projects which meets both the conditions i.e. threshold length of the highway and envisaged expansion width of the highway would require a prior Environmental Clearance.

8. Apart from the regulatory provision of MoEF&CC, the national highways have to follow the guidelines prescribed by the Ministry of Road Transport and Highways from time to time. It means that even the projects which do not fall under the purview of the EIA Notification, 2006 and its amendments also need to obtain clearances from various departments which includes:

- (i) Tree cutting permission from appropriate authority for forest and non-forest area as per the prevailing laws.
- (ii) Consent to Establish and Consent to Operate for construction machineries from the State Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.
- (iii) Clearance for diversion forest land under Forest Conservation Act, 1980.
- (iv) CRZ clearance for CRZ area etc.

9. The 2nd Respondent/National Highways Authority of India

(NHAI) had filed its status report through the GM (T) & Project Director dated 08.03.2022. The NHAI has submitted that the total length of 46.405 km of which the length of the bypass is 12 km, length of the forest is 07km and the balance length is 24km. The project alignment was approved by the Competent Authority, NHAI in 2017. Land acquisition cost has also been approved by the land acquisition committee of NHAI on 27.10.2020. The standing finance committee also approved the construction of 04 laning of NH-163 from Hyderabad to Mannegudda on hybrid annuity mode. Bids for construction of the project were invited, opened and they are under evaluation.

10. The NHAI has requested permission for felling of trees from the forest authorities concerned, which is awaited. The consultant had explored various alignments and the present alignment is the most feasible one and is approved by the Competent Authority, NHAI in 2017. It is stated that there are 2500 number of trees in the non-forest locations and 688 number of Banyan trees are so far enumerated in the stretch between Moinabad and Manneguda. During the construction of the

project, trees may be felled in bare minimum depending upon the site requirement duly considering the road safety of the road commuters. Relocation of the trees will be done as much as possible to save trees in the stretch which option will be examined before the start of the work. Only bare minimum trees will be proposed for felling during construction as necessitated only which will be examined by the expert before start of the work. The report further states approximately 53,000 number of trees will be planted in the stretch of which 40,000 will be planted towards avenue plantation and 13000 towards median plantation.

11. In its further report dated 06.01.2023 which was pursuant to the direction of this Tribunal to the 2nd respondent, to come out with a final solution by which existing trees will not be disturbed, the 2nd respondent has submitted as follows:

- (i) The conversion of the 02 lane to 04 lane is mandatory as the capacity augmentation of the national highways must be upgraded with paved shoulders before the end of the design life so that by the time the threshold capacity of the road is reached, the 04 lane highway should already be constructed.
- (ii) Upgradation to 04 lanes will trigger when the passenger car unit (PCU) crosses 10,000 per day.
- (iii) The PCUs have already crossed the threshold limit of 10,355 even in the year 2015 on the Hyderabad-manneguda stretch which further increased to 14470 in 2020 which is about 45% in excess of the threshold limit. This compels the respondent to go for expansion from 02 lane to 04 lane highway.
- (iv) The road from Hyderabad-Manneguda is the most accident prone area due to heavy vehicular traffic and the accident on the

stretch in 2021 was 240.

- (v) There are 21 existing culverts in the stretch which are in poor condition which have to be constructed in this project. There are also 10 vehicular underpass and 08 minor bridges are also proposed in the project.
- (vi) There is no widening is proposed at the Mrugavani National Park.
- (vii) As per the latest report there are about 759 Banyan trees existing on either side of the road.

12. It is stated further that the 2nd respondent has got the feasibility report and the road design was made in the best possible way keeping in view of the human life, ecology and other factors. Hence, the 2nd respondent has to widen the road.

13. Regarding the alternative that were explored by the 2nd respondent, the following are submitted:

- (i) As far as the alignment and realignment is concerned, it was decided to lay the road in such a manner on account of the eccentric laying where ever possible to save the trees. This has now resulted in saving 209 number of trees.
- (ii) So far as the laying of the parallel road is concerned, it is not possible to go with the same as the entire road has serpentine shape and most of the neighbouring land is either in the catchment area or in the forest area.
- (iii) Further acquisition of land is not possible due to legal issues.
- (iv) The restriction of the carriage way is not possible in view of the heavy traffic flow. By laying the road as proposed would straighten the hairpin bends and curves into a straight line.

14. Regarding the Banyan trees which are situated on the entire stretch, it is stated that there are only 759 trees against the 1036 mentioned by the applicant. Of the 759 trees only a few have a big trunk and huge branches whereas about 90% of the trees are as good as that of any other tree. The only two alternatives suggested by the 2nd respondent are that (i) laying of the highway where ever it is feasible to make it eccentric from concentric and (ii) translocation of the Banyan trees.

15. It is also stated that NHAI had already previous experience of translocating the trees including the Banyan trees on the Hyderabad-Srisailam Highway and all of them have survived. Many of the stretches, it is stated that the Banyan trees are not very healthy and they will only have a reduced span of life due to vibrations and sound pollution. Therefore, translocation of these trees to the neighbouring areas would certainly help them to have a longer life.

16. From the above pleadings, the issues that arise for consideration are:

- (i)** Whether the NHAI had considered the alternatives before choosing the impugned alignment?
- (ii)** Whether there was a study on the impact of hydrology, flora and fauna due to felling of large number of trees including 700 and odd mature Banyan trees besides 7,000 other trees.
- (iii)** Whether NHAI requires an EIA report when segmenting of the project is done considering the numbers of trees to be cut and also when the 07km stretch is within forest area?

Issue No.1 to 3:

- 17.** This is one of the NHAI's ambitious road-widening project that has hit the major hurdle. The applicant, herein, have objected to the fact that several thousands of trees are being cut to make way for the wider road including the 700 and odd Banyan trees.
- 18.** The 2nd respondent has received all approvals from other Competent Authorities including land acquisition committee etc., for the purpose of converting the 02 lane into 04 lane to ease out the traffic in the accident prone stretch between Moinabad and Manneguda. If a mere widening of the road can solve the traffic troubles, whether the environmental destruction can be ignored.
- 19.** Though the above said trees are of vintage 80 to 100 years, axing the same would only give out a bigger loss, as they play a huge role in carbon sequestration containment of dust pollution and heat. The applicant has complained that the NHAI lacks seriousness and callous in attitude as they have not shown any regard for the real heritage of the country the avenue trees by allowing them to be cut for mere widening of the road and construction of underpass and culverts.
- 20.** The primordial concern of the applicant is that these trees are proposed to be felled without any scrutiny, impact assessment, etc. Even this widening of the road project, the NHAI had to acquire lands, construct under passes, flyovers and also strengthen the damage culverts. Therefore, even before it could be finalised the alignment or the realignment should have been done in the manner that it will not cause any loss to the ecology. The report also says the highway has realigned in the eccentric manner where ever possible only to save 209 numbers of trees. The above exercise was also done

only after the application was moved before this Tribunal. Whether the laying of parallel road is possible has not been considered at all by the NHAI as it is stated that it is not possible to go with the same as the entire road has serpentine shape and most of the neighbouring land is either in the catchment area or in the forest area. The legal issues are also quoted as one of the reason for further acquisition of the land. Yet another reason for not looking at the alternate road is that many of the villages in the stretch of Hyderabad to Bijapur are using the same highway to reach the nearby villages or to Hyderabad or Bijapur.

21. The above arguments of the Learned Counsel appearing for the NHAI may not be agreeable because the villages on the stretch of Bijapur and Hyderabad are not deprived of any access but they will only be provided with parallel road which would minimise the cutting of number of trees or not cutting of trees at all. In fact, this Tribunal had appointed a Committee to find out the possibility of any alternative access to the above referred NH-163 giving liberty to the committee to co-opt any expert in the field if necessary. Accordingly, the Committee had filed its report.

22. The Committee has in fact found that there are 915 numbers of Banyan trees along the stretch (forest and non-forest area). Out of which 759 numbers of Banyan trees are in non forest area and 156 numbers exist in the forest area. By considering eccentric widening, bypasses and realignment, 232 numbers of Banyan trees will be saved and remaining 683 numbers of trees are proposed for translocation. Translocation of trees is inevitable mainly on account of proposed vehicular under pass at black spot locations and junctions with cross roads.

- 23.** The project stretch is passing through Rangareddy and Vikarabad Districts and mainly passes through major villages such as Aziz nagar, Himayat nagar, Moinabad, Appa reddygudda, Chevella, Indra reddy nagar, many schools, and religious structures are situated along the project area. The existing carriageway is only 07m and the proposed widening is to a width of 60m. The report further states that due to huge traffic and deficient geometry of existing road, accidents are taking place on a large scale and many locations of this highway are identified as black spots. The report says that due to heavy built up areas with many buildings, commercial establishments, utility lines, bypasses were proposed for Moinabad and Chevella towns for a length of 4.350 km & 6.360 km for a total length of 10.710 km.
- 24.** The Committee had considered the inputs both from the NHAI as well as applicants. From 26.250km to 28.034km, there are cluster of Banyan trees which the NHAI is proposing to translocate. The applicant has requested the Committee to avoid or shift the proposed underpass or make a realignment so that cutting or translocation of the Banyan trees can be avoided. However, the report of the Committee states that the village road connects settlements of Kanakamidi village and religious places such as Kanakamidi Church, Venkateshawara Temple. Major traffic takes turn at this junction. In case the proposed underpass is not constructed, this location will be a potential black spot in timesto come. There will be very high chances of loss of human life due to accidents.
- 25.** Even neither in the pre-feasibility reportnor the final feasibility report there was a mention about the black spots. Black spot report itself is obtained from the Police Department only on 11.10.2022 which is in fact subsequent to the filing of the original application itself. So faras

the above road gets into the forest area, the Forest Division in the reserved forest as per the approved alignment is already approved by the MoEF&CC. It is stated that there is already forest land on both side of the highway and any deviation will again pass through the forest area for which a large extent of about 30 ha., have to be acquired. Since in the given stretch of 07km road is cutting across the Deccan scrub forest and on either side of the road there is only a forest and any deviation would cause road to realignment.

26. The Aloor Chevella Vegetable Market, LVUP is proposed at junction of village road connecting with major settlement of Kistapur and Aloor Village with project highway. The Banyan trees that are coming within this stretch of 950m cannot be avoided from translocation. This location is also an identified black spot and permanent measures for rectification of black spots, underpass is proposed to avoid loss of human lives. Similarly, at the distance of 56 km and 58 km, the proposed highway is straight at this stretch and any deviation in alignment would only create a sub standard curve which would also result in accidents.

27. In Form-A which is used for seeking approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980 for diversion of fresh forest area, the 2nd respondent as applicant has specifically mentioned that there is no other alternative examined.

28. In the final feasibility report of the NHAI regarding the trees which are more than 10,000 including the Banyan trees that are in question, no detailed study has been conducted. The report only says that there are "trees on both sides of the highway at few locations sum of these trees are required to be cut to accommodate the widening of the existing carriage way".

29. Regarding the other environmental features, “a **detailed environmental impact study will be carried out** as part of the assignment after alignment approval which will bring out in detail particular environmental characteristic or feature which may be disturbed due to the widening of the highway. **The Environmental Management Plan** to be prepared as part of the study will bring out details and mitigation measures to be adopted for issues such as tree cutting and plantation, noise or air pollution during construction, soil or water contamination, safety and health hazards during construction”.

30. Regarding the scope of the preliminary Environmental Study, the report states that further details will be taken during subsequent stages of project preparation, if required. The report has been prepared based mainly on the on-field survey and collection of secondary data.

31. Learned Counsel appearing for the applicant also invited attention to the guidelines on landscaping and tree plantation published by the Indian Road Congress. Chapter-III clause 3.1.5 which says “while constructing roads in forest areas, felling of trees should be kept minimum”. It was argued that the National Tree of India, the Banyan tree only holds a great cultural significance but does not have commercial value in India. Though, the National Tree is worshipped in the hope to receive prosperity, growth and wealth and is often known as tree of wish fulfilment by itself it does not seem to have commercial value. Therefore, the NHAI has not given importance to preserve the Banyan tree. The Indian Road Congress also insisted that the trees cutting should be avoided as far as possible.

32. Even in the guidelines of the Environmental Impact Assessment of Highway projects provided by the Indian Road Congress, 1988 the physical and environmental features of the alternatives investigated for the proposed projects should be brought out. The information may be recorded in a tabular form for all the alternatives. Clause 5.2.5 indicates the probable impact of the selected alternative on the environment and proposed mitigating measures. This provides for discussion of selected alternatives on the environment and both beneficial and adverse impact should be included. The measures proposed for mitigating the adverse impact should also be highlighted. However, the project proponent had not done these impact assessments.

33. The IRC guidelines were not considered in the EIA study regarding the tree felling. The applicant also had invited our attention to the policy guidelines for land acquisition, tree felling, utility shifting across the alignment there for in which the Ministry of Road Transport and Highways has given guidelines as follows:

“Upgradation project of any National Highway involves, (i) Acquisition of additional land, (ii) Shifting of utilities, (iii) Felling of trees, and (iv) Removal of existing structures which fall in the Right of Way (ROW) of the proposed expansion. Meeting these prerequisites not only entails heavy cost but also involves a lot of time and effort. Further, the felling of grown-up trees leads to adverse effects on environment. It has been observed that shifting of utilities, felling of trees and structures can be considerably reduced (by about 50%) if the land for expansion of any highway is acquired on one side of an existing road, as against doing the same on both sides.”

34. The above direction of the Ministry of Road Transport and Highways is not considered by the 2nd respondent in this case. Though, the 02 lane with paved shoulders with traffic between 5,000 to 10,000 PCUs is considered and the road expansion is taken up in the project.

- 35.** The pre-feasibility report also speaks about the scope of preliminary environmental impact assessment study. The preliminary environmental assessment has been carried out to identify critical issues and areas that would be studied in detail for the detailed EIA study. As mentioned earlier, the further details will be taken up during subsequent stages of project preparation if required. Prior to implementing any alternative approach a thorough EIA and consultation with environmental experts are essential to ensure that the chosen method effectively balance the infrastructure development with environmental conservation.
- 36.** Even in the pre-planning stage, a comprehensive environmental impact assessment should have been conducted to identify the environmentally sensitive areas and critical habitats. If the said assessment is done, the early identification of potential conflicts would be identified and the road alignment planning could be guided based on the environmental impact assessment report. The EIA would involve local communities, environmental organisations and other stakeholders even in the pre-planning stage from whom the insights can be gained regarding the value of existing trees and green space in the area. Such inputs from the stakeholders, local communities and the villagers would certainly influence the project design and alignment.
- 37.** Learned Counsel appearing for the 2nd respondent stated that this is brownfield national highway project involved in widening/re-development of the existing national highway. This is only an upgradation of the existing road which is a brownfield expressway project as it has high traffic demand. If that is so it would be appropriate for the 2nd respondent to consider converting

underutilized or abandoned areas rather than encroaching on green spaces. Whether such land reclamation which can help preserving the existing green belt can be assessed only through an EIA study. In fact the environmental guidelines on sustainable construction practices recommend that scheduling of any road expansion project can be done considering the dormant season for the trees to avoid critical phases of tree growth and reproduction. The impact on the life and growth of the trees can be considered only during the pre-planning stage when the EIA is done.

38. Admittedly, for the 07km road cutting cross the Deccan Scrub forest, it would not have been difficult for realignment of the road if proper pre-planning was done by considering implementing urban forest tree programmes. A thorough environmental assessment and road alignment plan can help in avoiding ecological sensitive areas, critical inhabitants and forest regions. The impact on the existing trees can be minimised by optimising the road path. It is also possible in the areas with sensitive ecology features to construct a bypass road around the environmentally impact zones. As large number of Banyan trees, the importance of which are already discussed, are to be uprooted the construction of any bypass could have been considered by the 2nd respondent.

39. It is also not out of place to mention that the NHAI had not taken up any innovative road design techniques which ensure eco-friendly road layout. The aim of the 2nd respondent was only of widening the road and in the process had not thought of the upgradation of the existing roads instead of expanding them. This is only to state that if the efficiency of the existing roads is improved the need for laying additional roads can be reduced. However without adopting to these

pre-planning or design modification etc by going for EIA report, the Committee appointed by this Tribunal also had recommended that the proposed alignment is the only best feasible alignment to avoid minimum diversion of forest land, bare minimum felling of Banyan trees, providing connectivity to all important hamlets along the highway and safety of road users. The realignment/bypass to Mudimyal stretch is rejected by the Committee only on the ground that it is passing through the Mudimyal Reserved Forest. To be noted is that it is only Deccan Scrub Forest and it will not be difficult to implement compensatory afforestation by planting greater number of trees in the said area in the extent of 60m width right of way.

40. The Committee also had recommended 18 numbers of underpasses identified by DPR consultant which cannot be avoided in the light of the guidelines given in the Ministry of Road Transport and Highways circular dated 26.08.2019. It is also stated that there is no technical possibility as well to shift the location of such underpasses to save the Banyan trees.

41. In this regard, it is to be noted that even in densely forest areas or areas with sensitive ecological features elevated or tunnels can be considered as alternatives to cutting trees. These structures can be designed to minimise the environmental disturbances. The report has not even considered such kind of elevated roads or tunnels for avoiding the tree felling.

42. The next reason given by the Expert Committee is that the project was awarded to the concessionaire in March, 2022 and any delay in commencement of work may lead to heavy traffic congestion, continued reduction in travel speed in the entire length of 46.405km

and there will be increased number of accidents. The Committee only has spoken about the delay in implementing the already decided proposed alignment and not considered any other innovated road design techniques for ensuring the eco-friendly road layout.

43. Albeit, road expansion is important and also an essential aspect of modern infrastructure development to meet the increasing transportation demands. Nevertheless, the same should be done by taking care of adverse environmental impacts such as deforestation habitat, fragmentation and increased carbon emissions. Eco-friendly strategies that balance infrastructure growth with environmental conservation should be considered for sustainable road expansion. The environmental harm in road expansion can be limited by adopting eco-friendly practices, including EIA, smart road alignment, tree plantation etc. Such kind of collaborative efforts are possible only if the government agencies, environmental organisation and local communities work in co-ordination.

44. (i) Cutting of trees for the sake of expansion have various social, economic and environmental impact. The roadside trees in general reduce 40% pollution and heat and it is more than 70% for the older trees. (ii) Cutting of trees lead to loss of biodiversity particularly Banyan trees provide habitat and food sources for man plant and animal species. The disruption in eco-system will only contribute to habitat fragmentation. (iii) The cutting of trees leads to increase the carbon emission. (iv) Trees also play a crucial role in soil erosion and excessive water runoff during rainfall. (v) Trees are natural air filters absorbing pollutants and improving air quality. (vi) Finally, the cultural practice of the local communities get disrupted because of tree cutting, as they rely on forests for resources and may even lead

to displacement. Thus, tree cutting for road expansion can lead to public opposition and environmentalists leading to delay and additional costs as are happening in the instant case.

45. The only way to address all the above issues is to have an Environmental Impact Assessment Study before proceeding further for a sustainable road expansion.

46. In the background of the above facts, it is evident that the sense of urgency about the environmental problems has changed the relationship between ecology and public policy. Issues of values and equity cannot be separated when advancement of science is used in support of policy making. To put it in other words, the sense of urgency has affected not only ecology but other disciplines that influence environmental problems. When ecological knowledge is used for regulatory purpose alone it causes difficulty particularly in executing public projects/policies.

47. Secondly, ecological understanding is an important tool for dealing with environmental problems. Therefore, interdisciplinary and comprehensive studies should have been undertaken before finalizing the execution of the project.

48. The appellant argued that NHAI failed to sufficiently consider the alternatives to the project. NHAI ought to have analysed rigorously all reasonable alternatives. The objective of any highway is to provide connectivity to two points. The respondent could have easily achieved the same by laying a Greenfield road or an alignment which would avoid felling of trees. The Learned Counsel appearing for NHAI was only mentioning that the proposed widening of road is for providing

(i) link between Manneguda and Moinabad, (ii) has an expanded capacity, (iii) increased safety and (iv) economic development.

49. As already Section 3(D) Notification issued NHAI is reluctant to go back on its stand in looking for alternative.

50. In ***Association for Protection of Democratic Rights &Anr. Vs. The State of West Bengal &Ors. (SLP No. 25047 of 2018)***, it is held as follows:

1. This petition challenges the judgment and order dated 31.8.2018, passed by the Division Bench of the Calcutta High Court, thereby holding that felling of 356 trees was necessary for implementing the important public project of constructing the five Railway Over Bridges (ROBs). The Division Bench further held that the respondent/State of West Bengal was entitled to fell only 356 trees and no other tree.

2. The Division Bench further directed that the respondent/State shall carry out compensatory plantation of at least five trees for every tree felled in the same plot or in a plot as near to the plot as possible where the trees will be felled.

3. By an interim order dated 20.09.2018, this Court had stayed the operation of the impugned judgment and order passed by the High Court.

4. Subsequently, this Court, vide order dated 09.01.2020 had appointed a Committee of Experts comprising of five members to take a decision about the best course to be adopted in the present case and to make a Report to this Court, within a stipulated period.

5. A Report was submitted by the said Committee to this Court on 18.02.2020. The Committee recommended thus:-

"that bridge will have to be constructed to resolve the congestion at the railway crossing in any event. But this issue may be solved by constructing local overbridges, at the lower cost, and possibly save some of the 306 trees from the chopping block, adding to both economic and environmental value."

6. At the end of the Report, the Committee concluded thus:-

"Conclusion: To conclude, the committee to make this report has not only been traveling on roads, but has been on a journey of discovery.

We learnt that if we factor environmental costs and do a cost/benefit analysis, into the total cost of the project it can make a difference to the strategy choices that we make. As in the intention to "Go East". We learnt to assess whether synergies of other transport modes like rail and waterways can be part of the strategy to make our decisions. We learnt that an environment impact analysis should be rigorously done 23 before a project to protect the human communities living there and their environment. We learnt that natural capital can be saved by acquiring a tree relocation technology and transferring it into the country. This will result in enormous economic benefits also. We learnt that plantation strategies should be formulated and implemented continuously to achieve the leaf area index (LAI) which has been lost as fast as is possible. And

we learnt that signage communications about the project and environment in the local language will educate the people affected, and create harmony and understanding between the project teams and the local populace.

The issues in this study have implications far beyond this particular stretch of 60 km. Road. The learnings and axioms from this study can apply to other locations where such issues may surface. In this sense this report can become a template for solutions on a much larger scale.

On a more personal note, if one may be allowed, and it is relevant. One of the members of the team went on this very road 50 years ago to liberate Bangladesh with the magnificent Indian Army. Massive army columns with very heavy war technology and armaments traversed these roads smoothly and without incident. Perhaps even then they could "see the wood from the trees".

51. Finally in the above case the Hon'ble Supreme Court found that the committee itself is not sure, as to whether by constructing over bridges any of the 306 trees could be saved or not.

52. Nonetheless, it has been the uniform approach of the judiciary to emphasize on the importance of EIA Assessment. In ***T.N. GodavarmanThirumulpad Vs. Union of India and Ors. (2011) 1 SCC 744***, it is stated as follows:

"51. In substance the EIA notification provides that all projects and activities enumerated in the schedule would require prior environmental clearance before any construction work or preparation of land for the project is started on the project or activity. The project and activities depending upon various factors such as the potential hazard to environment, location, the extent of area involved, etc., are categorised in Categories A or B. For projects or activities falling in Category A, the competent authority to grant prior environmental clearance is the MoEF and for projects or activities falling Category B, the State Environmental Impact Assessment Authority (SEIAA). The Constitution of SEIAA is provided for in Clause 3 of the notification with which we are not concerned in this case. In certain cases a project or activity, though categorised in Category B may be treated as Category A by application of the general condition [on account of its location being within a distance of 10 km from a protected area notified under the wildlife (Protection) Act, etc.,]. In other words, if a project or activity attracts the general condition, the competent authority to grant prior environmental clearance in that case would be the Central Government, even though, the project or activity may figure in the schedule in Category B.

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84. Before putting down the records of the case a few observations may not be out of place. The EIA Notification dated 14.09.2006 urgently calls for a close second look by the authorities concerned. The projects/activities under Item 8(a)

and 8(b) of the Schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness. The question of application of the general condition to the projects/activities listed in the schedule also needs to be put beyond any debate or dispute. We would also like to point out that the environmental impact studies in this case were not conducted either by the MoEF or any organisation under it or even by any agencies appointed by it. All the three studies that were finally placed before the Expert Appraisal Committee and which this Court has also taken into consideration, were made at the behest of the project proponents and by agencies of their choice. This court would have been more comfortable if the environment impact studies were made by the MoEF or by any organisation under it or at least by agencies appointed and recommended by it.”

53. In the case of ***National Highways Authority of India vs. Pandarinathan Govindarajulu and Anr. (2021) 6 SCC 693***, it is held as follows:

“6. The project under consideration in this case pertains to the expansion of NH-45A between Villuppuram to Nagapattinam for a distance of 179.555 kms as a part of the BharatmalaPariyojana project. Admittedly, no environmental impact assessment was undertaken. The Appellant stated in the counter affidavit filed before the High Court that environmental clearance is not required as the additional right of way or land acquisition was not greater than the limits specified in the Notification even if the expansion of the National Highways is beyond 100 km. Environmental clearance under the Notifications dated 14.09.2006 and 22.08.2013 is required only if the additional right of way or land acquisition is greater than 40 meters on existing alignments and 60 meters on realignments or bypasses. The pivot of the controversy relates to the applicability of Notifications dated 14.09.2006 and 22.08.2013 to the project in question. Therefore, we deem it necessary to adjudicate on the interpretation of the said Notifications though the High Court did not consider the said point.

7. A plain reading of Item 7 (f) to the Notification dated 22.08.2013 would make it clear that expansion of a National Highway project needs prior environmental clearance in case (a) expansion of the National Highway project is greater than 100 km. and (b) it involves additional right of way or land acquisition greater than 40 meters on existing alignments and 60 meters on realignments or bypasses. There is no ambiguity in the above provision as it gives no scope for any doubt. The distance of 100 km is important as expansion of National Highways below 100 km needs no prior environmental clearance. If the project involves expansion of a National Highway greater than 100 km, prior environmental clearance would be required only if it involves additional right of way or land acquisition greater than 40 meters on existing alignments and 60 meters on realignments or by passes.

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24. For the sake of clarity, we hold that the “right of way” includes the existing National Highway and the additional right of way. To illustrate further, if the existing National Highway is 20 meters then the right of way will be that 20 meters and the land acquired for the additional right of way.

25. The consternation of the High Court that the Appellant had been remiss in not fulfilling the requirement of reforestation in spite of giving undertakings for the projects taken up earlier is to be noted. There is an obligation on the part of the Appellant to plant ten trees

for each felled tree. The High Court commented upon Coastal Regulation Zones (CRZ) clearances to be taken at certain points. The learned Attorney General submitted that the Appellant has already obtained CRZ clearances, wherever it is required. We have not dealt with the issues relating to acquisition of land being in contravention of the National Highways Act, 1956 as no such submission was made either before the High Court or this Court.”

- 54.** It is pointed out by the Learned Counsel for the applicant that in the strip chart filed by NHAI, clusters of Banyans i.e. about 169 Banyan trees are located in cluster in a distance of 18.95 km. Therefore the entire 47 km long road need not be realigned but only one-third of the length. In order to save the trees, NHAI only has to create a bypass and realign the road in the above segments of the road referred in the strip chart.
- 55.** In this regard, it would not be out of place to refer to ***Hanuman Laxman Aroskar Vs. Union of India 2019 (15) SCC 401***, wherein it is held that the objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available.
- 56.** In ***M.C. Mehta Vs. Union of India 2004 (12) SCC 118***, the protection of green belts and forest areas from destruction during highway expansion projects are dealt with. The Hon'ble Supreme Court emphasised the need for sustainable development and directed that no trees should be cut down for road expansion in environmentally sensitive areas. The Hon'ble Apex Court emphasised the importance of Environmental Impact Assessments and encouraged the adoption of eco-friendly road construction techniques. It also directed the authorities to explore alternative routes that cause less damage to the exploring environment. The said Judgement also recommended exploring options such as elevated roads, flyovers or underpasses to reduce the need for cutting trees. Additionally the

court emphasised the importance of Environmental Impact Assessment (EIA) before undertaking road expansion projects and incorporating measures to prevent green spaces and protect trees wherever possible.

57. Even Courts across the world are also in favour of environmental activities and emphasised transparency and the importance of considering public opinion and ecological impact in infrastructural development. In ***SIERAA CLUB Vs. FEDERAL HIGHWAY ADMINISTRATION (UNITED STATES)*** where a case involved a proposed road expansion projects in California which would result in felling of trees and environmental destruction, it was held that the highways administration had violated the National Environmental Policy by failing to adequately assess the environmental impact of the project and directed the Federal Highway Administration to conduct a comprehensive environmental impact statement to identify alternate routes and measures that will minimise the trees cutting and mitigate environmental harm.

58. R (Friends of the Earth Limited) Vs. Secretary of State of Transport in 2020 EWCA Civ 214 (UNITED KINGDOM), a road expansion was challenged as it involved tree felling and potentially harming the protected habitat. The Hon'ble High Court Justice has held in favour of the petitioner holding that the Government had not properly considered the environmental impact and had not taken into account the alternative options. The Hon'ble Court emphasised the need for the Government to explore the alternative options and conduct thorough environmental impact assessment before proceeding with the road expansion considering the measures to protect the trees and the habitat.

59. Therefore the aim is to balance the economic and social needs on the one hand and the environmental consideration on the other. The rapid increase in the population with consequential demands to sustain the population has resulted in polluting the water resources, encroaching upon the lakes, deforestation, concreting the open lands and polluting the air. This need not mean that there should be deadlock in the development on the one hand and the environment on the other. In ***Enviro Legal Action Vs. Union of India 1996 (5) SCC 281***, it is categorically held that the objective of all laws on environment should be to create harmony between the two, since neither one can be satisfied at the altar of the other which reads as follows:

“While economic development should not be allowed to take place at the cost of ecology or by causing wide-spread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice-versa, but there should be development while taking due care and ensuring the protection of environment.”

60. The Learned Counsel appearing for the applicant submitted that trees could be saved if there is a slight deviation in the alignment of the road fixed by the authority. The Learned Counsel for the respondent relied on ***Union of India Vs. Dr. Kushala Shetty & Ors. AIR 2011 SC 3210*** to state that the appellant cannot act as an expert, as the NHAI Projects are implemented after a thorough study and referred to the relevant paragraph:

" 24. 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 highways 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 reports 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. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained."

61. In view of the forgoing facts and as demonstrated by various judgements and cases worldwide, there is growing awareness of the need to balance road expansion and environment conservation. There cannot be any debate in so far as preservation of environment and maintenance of ecological balance is concerned. The Constitution of India mandates under Article 48(A) that it is the endeavour of the State to protect and improve the environment and safeguard the forest and wildlife of the country. The findings of the various courts in different countries also have considered the ecological significance of the trees. In majority of the cases, the Environmental Impact Assessment is highlighted before undertaking road expansion projects. Such assessment can identify potential alternatives and mitigative measures to reduce tree cutting, particularly, the Banyan trees which are said to be ecology by itself. In this case also the NHAI is ready to re-transplant the trees in the places earmarked by the Forest Department. It may also not be possible for transplanting the Banyan Trees which are more than 780 in number as it is expensive. Secondly, the transplantation is possible only of those trees whose width is not more than 65cm in girth and any Banyan Tree would be more than that. Even if the trees are uprooted and transplanted, if they do not survive, the cost incurred would be a waste. Though the compensatory afforestation and reforestation as a mean to offset the

loss of trees due to road expansion that cannot be the wise option. Therefore, we would have to strike balance between development and conservation for creating greater, bigger and more sustainable future for which the authorities ought to have explore alternative roads and involve thorough Environmental Impact Assessment by consulting the experts and stakeholders to identify less harmful options for the road project.

62. In the light of the above, we hold that the courts being not experts an Environmental Impact Study in this regard if conducted would have given a better appreciation of the project. While we appreciate the project which is of public interest and the same could not be stopped or put to stand still, considering the rare phenomena of existence of more than 800 numbers of Banyan Trees besides several thousands of other trees, an Environmental Impact Assessment is suggested and the expansion project of the road may be taken up after the EIA study is conducted.

63. Accordingly,

(i) The NHAI (Respondent No.2) is directed to undertake an Environmental Impact Assessment (EIA) Study to minimize the loss to the trees before proceeding further.

(ii) The MoEF&CC (Respondent No.1) is directed to issue the Terms of Reference (ToR) at the earliest and complete the process in 4 (Four) months time.

64. With the above directions, this Original Application [O.A. No.242 of 2021 (SZ)] is disposed of.

65. As a corollary, the interlocutory applications [I.A. Nos.17 and 75 of 2023 (SZ)] are closed.

Sd/-
Smt. Justice Pushpa Sathyanarayana, JM

Sd/-
Dr. Satyagopal Korlapati, EM

Internet – Yes/No
All India NGT Reporter – Yes/No

O.A. No.242/2021(SZ)
06th November, 2023(AM)

