

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

Application No. 242 of 2021

Tejah Balantrapu  
And two others.

... Applicants

Vs.

Union of India,  
Rep. by its Secretary  
The Ministry of Environment, Forests and Climate Change  
New Delhi. And another.

Respondents

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Certified that the above documents are true copies from their originals.

Dated at Chennai on this 13<sup>th</sup> day of September 2022



Counsel for the Respondents



(i) अनुसूची के मद 8 में प्रवर्ग ख के रूप में सूचीबद्ध सही परियोजनाएं और कार्यकलाप (नगरों या वाणिज्यिक परिसरों या आवासन का संनिर्माण) ;

(ii) अनुसूची के मद 7 की उपमद (च) के अधीन स्तंभ (3) और स्तंभ (4) की प्रविष्टि (ii) के अधीन आने वाली राजमार्ग विस्तार परियोजनाएं ;

परंतु यह और कि -

अ. खंड (i) में निर्दिष्ट परियोजनाएं और कार्यकलापों का अंकन प्ररूप 1 या प्ररूप 1क और अवधारणा योजना के आधार पर किया जाएगा ;

आ. खंड (ii) में निर्दिष्ट परियोजनाएं पर्यावरण और वन मंत्रालय द्वारा विनिर्दिष्ट माडल टीओआर के आधार पर ईआईए और ईएमपी रिपोर्ट तैयार करेंगी ;

(ख) अनुसूची में मद 7 की उप मद (च) के सामने स्तंभ (3) में प्रविष्टि (ii) के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:-

"(ii) राष्ट्रीय राजमार्गों का 100 किलोमीटर से अधिक विस्तार जिनमें अतिरिक्त 40 मीटर से अधिक विद्यमान संरेखणों पर और पुनः संरेखणों या उपमार्गों पर 60 मीटर क्षेत्राधिकार या भूमि अर्जन अंतर्बलित है।"

[फा.सं.21-270/2008-आईए.।।।]

अजय त्यागी, संयुक्त सचिव

टिप्पण : मूल नियम भारत के राजपत्र असाधारण, भाग II, खंड 3, उपखंड (ii) में अधिसूचना सं. का.आ. 1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित किए गए थे और तत्पश्चात् निम्नानुसार संशोधित किए गए :

1. का.आ. 1733(अ), तारीख 11 अक्तुबर, 2007;
2. का.आ. 3067(अ), तारीख 1 दिसंबर, 2009;
3. का.आ. 695(अ), तारीख 4 अप्रैल, 2011;
4. का.आ. 2896 (अ), तारीख 13 दिसंबर, 2012; और
5. का.आ. 674(अ), तारीख 13 मार्च, 2013

MINISTRY OF ENVIRONMENT AND FORESTS  
NOTIFICATION

New Delhi, the 22nd August, 2013

S.O. 2559(E).- Whereas by notification of the Government of India in the Ministry of Environment and Forests vide number S.O.1533(E), dated the 14th September, 2006 issued under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government directed that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the said notification entailing the capacity addition with change in process or technology and or product mix shall be undertaken in any part of India only after prior environmental clearance from the Central Government or as the case may be, by the State level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified therein;

And whereas the Government of India in the Ministry of Environment and Forests had constituted a High Level Committee under the Chairmanship of Member (Environment and Forests and Science and Technology), Planning Commission, vide OM No.21-270/2008-IA.III dated the 11th December, 2012 to review the provisions of Environmental Impact Assessment Notification, 2006 relating to granting Environmental Clearances for Roads, Buildings and Special Economic Zone projects and provisions under the OM dated the 7th February, 2012 issued by the Ministry of Environment and Forests regarding guidelines for High Rise Buildings;

And whereas one of the terms of reference (ToR) of the Committee was to review the requirement of Environmental Clearance for highway expansion projects up to the right of way of 60 meters and length of 200 kms under Environmental Impact Assessment notification;

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And whereas the Committee has submitted its report to the Ministry and on this ToR, the Committee has recommended exempting highway expansion projects from the requirement of scoping and that Environmental Impact Assessment or Environment Management Plan for highway expansion projects may be prepared on the basis of model ToRs to be posted on Ministry's website and in respect of requirement of environmental clearance, the Committee has recommended that expansion of National Highway projects up to 100 kms involving additional right of way or land acquisition up to 40 mts on existing alignments and 60 mts on re-alignments or by-passes may be exempted from the preview of the notification;

And whereas the report of the Committee has been examined in the Ministry of Environment and Forests. Earlier, vide notification S.O. 3067(E), dated the 1st December 2009 all State Highway expansion projects, except those in hilly terrain (above 1000 m AMSL) and ecologically sensitive areas, have already been exempted from the purview of the Environmental Impact Assessment notification, 2006.

And whereas, keeping inter-alia in view the foregoing, the Ministry of Environment and Forests has decided to accept the aforesaid recommendations of the High Level Committee constituted vide OM No.21-270/2008-IA.III, dated the 11th December 2012;

Now, therefore in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (4) of rule (5) of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendment to the notification of the Government of India, in the Ministry of Environment and Forests number S.O. 1533(E), dated the 14th September, 2006 after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of the said rule 5 in public interest, namely:—

2. In the said notification, —

(a) in paragraph 7, in sub-paragraph II, for item (i), the following item shall be substituted, namely: —

"(i) "Scoping" refers to the process by which the Expert Appraisal Committee in the case of Category A projects activities, and State level Expert Appraisal Committee in the case of Category 'B' projects or activities, including applications for expansion or modernization or change in product mix of existing projects or activities, determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought and the Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the terms of reference on the basis of the information furnished in the prescribed application Form I or Form IA including terms of reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned;

Provided that the following shall not require Scoping:—

- (i) all projects and activities listed as Category 'B' in item 8 of the Schedule (Construction or Township or Commercial Complexes or Housing);
- (ii) all Highway expansion projects covered under entry (ii) of column (3) and column (4) under sub-item (f) of item 7 of the Schedule;

Provided further that—

- A. the projects and activities referred to in clause (i) shall be appraised on the basis of Form I or Form IA and the conceptual plan;
- B. The projects referred to in clause (ii) shall prepare EIA and EMP report on the basis of model TOR specified by Ministry of Environment and Forests;

(b) in the Schedule, against sub-item (f) of item 7, in column (3), for the entry (ii), the following entry shall be substituted, namely:—

- "(ii) Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes."

[F. No. 21-270/2008-IA.III]

AJAY TYAGI, Jt. Secy.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide notification number S.O. 1533(E), dated the 14th September, 2006 and subsequently amended as follows:—

1. S.O. 1737 (E), dated the 11th October, 2007;
2. S.O. 3067 (E), dated the 1st December, 2009;
3. S.O. 695 (E), dated the 4th April, 2011;
4. S.O. 2896 (E), dated the 13th December, 2012; and
5. S.O.674(E), dated the 13th March, 2013

पाद टिप्पण: राष्ट्रीय राजमार्ग अधिनियम, 1956 (1956 का 48) और इसकी अनुसूची, भारत के राजपत्र में अधिसूचना संख्या कानिआ 1180, दिनांकित 4 अप्रैल, 1957 द्वारा प्रकाशित की गई थी और इसे अधिसूचना संख्या का.आ. 689(अ), दिनांकित 4 अप्रैल, 2011 द्वारा प्रतिस्थापित किया गया था और पिछली बार संशोधन अधिसूचना संख्या का. आ. 2573(अ), दिनांकित 28 जुलाई, 2016 द्वारा किया गया था।

## MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

## NOTIFICATION

New Delhi, the 30th November, 2016

S.O. 3590(E).—In exercise of the powers conferred by sub-section (2) of section 2 of the National Highways Act, 1956 (48 of 1956) the Central Government hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Road Transport and Highways published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O. 689(E), dated the 4<sup>th</sup> April, 2011, namely :—

In the Schedule, for serial number 194 and entries relating thereto, the following shall be substituted, namely :—

TABLE

Sl. No.	New National Highway No.	Description of National Highways
(1)	(2)	(3)
194	163	The highway starting from its junction with NH 63 near Bhopalpatnam in the State of Chhatisgarh connecting Venkatapuram, Warangal, Hyderabad, Moynabad, Chevella, Manneguda, Kodangal in the State of Telangana and terminating near Ravulapalli at Telangana/Karnataka border.

[F. No. NH-14012/16/2016-P&amp;M]

MAYA PRAKASHI, Director (P&amp;B)

Footnote:—The National Highways Act, 1956 (48 of 1956) and the Schedule thereto was published in the Gazette of India vide notification number S.R.O. 1180 dated 4th April, 1957 and was substituted vide notification number S.O.689(E), dated 4th April, 2011 and last amended vide notification number S.O. 2573, dated 28th July, 2016

*M. S. Prakash*  
Project Director  
NHAI, PIU  
HYDERABAD.





सत्यमेव जयते

भारत सरकार

GOVERNMENT OF INDIA

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय

MINISTRY OF ENVIRONMENT, FORESTS & CLIMATE CHANGE

Regional Office (South Eastern Zone),

1st & 2nd floor, HEPC Building, No.34, Cathedral Garden Road,

Nungambakkam, Chennai - 600034, Tel. 044-28222041,

e-mail: [ro.moefccc@gov.in](mailto:ro.moefccc@gov.in) / [roefccc@gmail.com](mailto:roefccc@gmail.com)



R-3

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F.No.4-TSB132/2018-CHN/1939  
Date 13<sup>th</sup> December, 2018

To,

The Principal Secretary to the Government,  
Environment, Forests, Science & Technology Department,  
Telangana State Secretariat, Hyderabad.

Subject: Diversion of 42.7413 ha of forest land (12.7823 ha in Vikarabad and 29.959 ha in Shamshabad Division) for 4 laning of Hyderabad (ORR Appa Junction) to Manneguda Section of NH 163 in favour of Project Director, NHAI, Hyderabad-reg.

Sir,

Please refer to the State Government's letter No.3922/For.I(1)/2018 dated 25.09.2018 and online proposal No. FP/TG/ROAD/27756/2017 seeking prior approval of the Central Government for diversion of forest land in accordance with Section '2' of Forest (Conservation) Act, 1980 for the above mentioned project.

As recommended by the Regional Empowered Committee (REC), I am directed to convey the Central Government's in principle approval (Stage-I) under Section '2' of Forest (Conservation) Act, 1980 for diversion of 42.7413 ha of forest land (12.7823 ha in Vikarabad and 29.959 ha in Shamshabad Division) for 4 laning of Hyderabad (ORR Appa Junction) to Manneguda Section of NH 163 in favour of Project Director, NHAI, Hyderabad, subject to the following conditions:-

- (i) Legal status of the diverted forest land shall remain unchanged;
- (ii) The demarcation of the proposed forest area shall be carried out by erecting 4 feet high cement concrete pillars duly numbered at an interval of 20 meters at the cost of User Agency;
- (iii) The State Forest Department shall carry out Compensatory Afforestation (CA) over 60 ha of degraded forest area in Compt No 199 in Malkaram RF, Ganganpahad Beat, Shamshabad Section & Range, Shamshabad Division and 26 ha of degraded forest area in Compt No 40 of Gotlapally Antharam RF, Tandur Beat, Section and Range of Vikarabad District, at the cost of the user agency;

o/c

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DESPATCHED (BY SP)  
Date: 13/12/18 RST

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- (iv) The State Government shall charge the Net Present Value of the diverted forest land measuring **42.7413 ha** from the User Agency as per the orders of the Hon'ble Supreme Court dated 28.03.2008 and 09.05.2008 in IA Nos.826 in 566 with related IA's in Writ Petition (Civil) No.202/1995;
- (v) Additional amount of the Net Present Value (NPV) of the diverted forest land if any, becoming due after revision of the same by the Hon'ble Supreme Court of India in future, shall be charged by the State Government from User Agency. User Agency shall furnish an undertaking to this effect;
- (vi) The funds received from the User Agency towards Compensatory Afforestation, Net Present Value and any money received in compliance of the conditions stipulated by the Central Government under this project shall compulsorily be deposited in to the "State Compensatory Afforestation Fund of Telangana State" only;
- (vii) The user agency shall endeavor to avoid felling of trees existing on the forest land proposed to be utilized. Wherever necessary, the trees should be felled under the strict supervision of the DFO/ FDO concerned;
- (viii) Wherever feasible the State Forest Department shall carry out translocation of trees instead of resorting to felling, at the cost of user agency;
- (ix) The user agency shall construct retaining walls and check walls wherever required, by consulting the DFO concerned, at the project cost;
- (x) The construction of culverts/bridges, if any, over the natural streams/rivers/canals shall be done in such a manner that it does not hamper the natural course of water, does not give rise to water-logging, and also does not hamper movement of wild animals;
- (xi) Roadside cuttings and fillings which require engineering support shall be provided as per the instructions of the DFO concerned so as to stabilize the soil;
- (xii) The dug out material / overburden shall be dumped outside the forest area. Storage of any material shall not be done in the forest area proposed;
- (xiii) The User Agency shall arrange to raise strip plantation on either side of the road and also on the central verge at the project cost and maintain the same for 7- 10 years;

o/c

*[Signature]*

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- (xiv) There shall be speed breaker on the road within the wildlife areas / Wildlife crossings, along with signage boards at frequent intervals at the project cost;
- (xv) The layout plan of the proposal shall not be changed without the prior approval of the Central Government;
- (xvi) The user agency shall provide fire wood preferably alternate fuel to labourers working at the site to avoid damage/tree felling and no labour camp shall be established inside the forest area;
- (xvii) Disturbance shall be kept minimum by creating labour camps outside the forest area as far as possible and it shall be the responsibility of the user agency to ensure that the labourers & staff engaged in execution of work do not destruct nearby forest flora & fauna;
- (xviii) The total forest area utilized for the project shall not exceed **42.7413 ha** and the forest area diverted shall not be used for any purpose other than those shown in the diversion proposal. User Agency shall furnish an undertaking to this effect;
- (xix) The forest land proposed for diversion shall under no circumstances be transferred or sublet to any other agency, department or person without prior approval of the Central Government;
- (xx) User agency and the State Government shall ensure compliance to provisions of the all Acts, Rules, Regulations and Guidelines, for the time being in force, as applicable to the project;
- (xxi) Any other conditions that the Central Government or Addl. PCCF(Central) of Regional Office, Chennai may impose from time to time in the interest of afforestation, conservation and management of flora and fauna in the area, shall be complied by the user agency;
- (xxii) The Progress of the Compensatory Afforestation under the jurisdiction of Vikarabad & Shamshabad Forest Division shall be monitored by the Circle Head and a copy of such monitoring report shall be forwarded to the Regional Office to upload the same in the web portal;
- (xxiii) No working permit shall be issued by the State Government before submission of RoFR certificate and other mandatory clearances for the entire area;

o/c

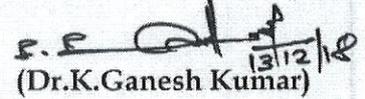
*[Handwritten signature]*

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(xxiv) In the event of failure to comply with any of the above conditions the user agency is liable for penal action as decided by the Additional PCCF (Central), Regional Office, Chennai.

After receipt of the compliance report on above mentioned conditions, the proposal will be considered for final approval. This in-principle approval shall be valid for a period of 5 years from the date of issue of this letter. In the event of non-compliance of the above conditions, this in-principle approval shall automatically stand revoked after 5 years.

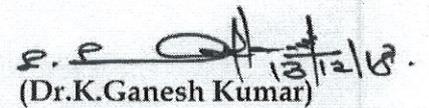
Yours faithfully,

  
(Dr.K.Ganesh Kumar)

Deputy Conservator of Forests (Central)

Copy to:-

1. The Director General of Forests & Special Secretary to Govt. of India, Ministry of Environment, Forests & Climate Change, Indira Paryavaran Bhavan, Jor Bagh Road, Aliganj, New Delhi - 110 003
2. The Principal Chief Conservator of Forests, Forests Department, Govt. of Telangana Aranya Bhavan, Saifabad, Hyderabad, PIN- 500 004.
3. The Additional Principal Chief Conservator of Forests/Nodal Officer (FCA), Office of the Principal Chief Conservator of Forests, Forests Department, Govt. of Telangana, Aranya Bhavan, Saifabad, Hyderabad, PIN- 500 004.
4. The Director, RO(HQ) Division, Ministry of Environment, Forests & Climate Change, Indira Paryavaran Bhavan, Jor Bagh Road, Aliganj, New Delhi - 110 003.
5. The Project Director, NHAI, D.No 331/2RT, 2<sup>nd</sup> Floor, PS Nagar, Masab Tank, Telangana, Hyderabad-500057
6. Guard file.

  
(Dr.K.Ganesh Kumar)

Deputy Conservator of Forests (Central)

o/c

R-4 (8)

**GOVERNMENT OF TELANGANA  
FOREST DEPARTMENT**

Rc.No.1652/2018/-FCA2,  
Dated: 24-12-2018.

Office of the Pri. Chief Conservator of Forests,  
Telangana,  
Aranya Bhavan, Salfabad, Hyderabad.

**Sri P.K.Jha, IFS,**  
Pri. Chief Conservator of Forests &  
Head of Forest Force  
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Sub: - TSFD-F(C)A, 1980 - Diversion of 42.7413 Ha of forest land (12.7823 Ha in Vikarabad and 29.959 Ha in Shamshabad Division) for 4 laning of Hyderabad (ORR Appa Junction) to Manneguda Section of NH-163 - in favour of Project Director, NHAI, Hyderabad- Stage-I approval accorded - communication - Reg.

Ref:-

1. Project Director, NHAI, Hyderabad Ref.No.NHAI/PIU-HYD/HYD-Manneguda/2018/65, dt.22.01.2018.
2. PCCF, TS, Hyderabad Rc.No.1652/2018/FCA2, dt.17.02.2018.
3. Project Director, NHAI, Hyderabad Ref.No. NHAI/PIU-HYD/HYD-Manneguda/2018/261, dt.20.03.2018.
4. PCCF, TS, Hyderabad Rc.No.1652/2018/FCA2, dt.24.03.2018.
5. Addl.PCCF/CF, Rangareddy Rc.No.404/2018/M2, dt.20-9-2018
6. Divisional Manager, Rangareddy, TSFDC, Rc.No.3.5.27/NHAI/Kandlapally/2018/242, Dt.19.09.2018
7. PCCF's Ref.No.1652/2018/FCA-2, dated 25-9-2018.
8. G.M.No.3922/For.I(1)/2018, EFS&T(For.I) Dept., dt. 22-11-2018.
9. PCCF's Ref.No.1652/2018/FCA-2, dt.05-12-2018.
10. GOI, MOEF&CC, Chennai, F.No.4-TSB132/2018-CHN/1939, dt.13-12-2018.

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A copy of the State Government reference 10<sup>th</sup> cited is enclosed herewith.

It is informed that State Government in G.O. 10<sup>th</sup> cited has accorded in-principle (Stage-I) approval for Diversion of 42.7413 Ha of forest land (12.7823 Ha in Vikarabad and 29.959 Ha in Shamshabad Division) for 4 laning of Hyderabad (ORR Appa Junction) to Manneguda Section of NH-163 - in favour of Project Director, NHAI, Hyderabad subject to certain conditions stipulated therein.

The District Forest Officer, Vikarabad and Forest Divisional Officer, Shamshabad are requested to raise demand note as per the actual rates and submit the demand note to this office for vetting & only after vetting of the demand note by this office, the Forest Divisional Officer, should raise demand with the User Agency, who in-turn has to upload the demand online on Ministry's portal, generate challan & transfer funds through online only into any of the Ad-hoc CAMPAs accounts of Telangana.

Note: The charges for felling, logging, transportation of project affected trees & the funds towards expenditure like boundary walls, stone pillars, demarcation charges etc., should be deposited with the Divisional Forest Officers concerned and the work should be undertaken departmentally in-order to ensure that the task of felling/ transportation / stone pillars etc., are undertaken faithfully and in the best interests of the forest. The funds deposited with the DFOs for carrying out such activities should be put to actual utilization only on the grant of 2<sup>nd</sup> Stage (final) clearance and / or working permission, whichever is earlier. Clarification issued by the Ad-hoc CAMPA Wing vide F.No.13-20/2015-CAMPA, dt.09.06.2016 in this regard.

The District Forest Officer, Vikarabad and Forest Divisional Officer, Shamshabad are further directed to instruct the User Agency to comply with the following in accordance with the MoEF&CC, GoI Instructions issued vide F.no.7-23-2012-FC, dt.24-07-2013 communicated vide Pri. Chief Conservator of Forests, A.P. Hyderabad Rc.No.45921/2001/F4, dt.23-08-2013.

P.T.O.

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1. Publish the entire forest clearances granted in verbatim along with the condition and safe-guards imposed by the Central government in two widely circulated daily news paper one in vernacular language and the other in English granted to the project proponent for the use of forest land for the non-forest purposes.
2. The copies of the forest clearance should also be submitted to the heads of local bodies, Panchayats and municipal bodies by the project proponents in addition to the relevant offices of the Government who in turn has to display the same for 30 days.

Further, the District Forest Officer, Vikarabad and Forest Divisional Officer, Shamshabad are specifically directed to furnish a calculation sheet of NPV and other payments / copies of paper clippings about the publishing of forest clearance etc., alongwith compliance report for taking further necessary action in the matter.

The transfer of forest land to User Agency shall not be affected prior to the issue of final approval (or) working permission whichever is earlier.

Encl.: As above.

**Sd/- R. Sobha,**  
for Principal Chief Conservator of Forests &  
Head of Forest Force

To  
The District Forest Officer, Vikarabad.

The Forest Divisional Officer, Shamshabad.

**Copy (w.e)** to the Collector & District Magistrate, Rangareddy and Vikarabad for information and necessary action. He is requested to mutate transfer the non-forest CA lands identified for the project and handover same to Forest Department.

**Copy (w.e)** to the Addl. Pri. Chief Conservator of Forests, Rangareddy Circle, Rangareddy and District Forest Officers, Rangareddy for information and necessary action.

**Copy (w.e)** to the Project Director, NHAI, Hyderabad D.No.331/2RT, 2<sup>nd</sup> Floor, PS Nagar, Masab Tank, Hyderabad. It is requested to approach both District Forest Officers, obtain the demand notice and make payment as per the demand notices issued and also the RoFR certificate for Rangareddy district and also comply the following in accordance with the MoEF&CC, GoI instructions in F.no.7/23-2012-FC, dt.24-07-2013.

1. Publish the entire forest clearances granted in verbatim along with the condition and safe-guards imposed by the Central government in two widely circulated daily news paper one in vernacular language and the other in English granted to the project proponent for the use of forest land for the non-forest purposes.
2. The copies of the forest clearance should also be submitted to the heads of local bodies, Panchayats and municipal bodies by the project proponents in addition to the relevant offices of the Government who in turn has to display the same for 30 days.

// t.c.b.o. //

*[Signature]*  
Superintendent

*[Signature]*  
8/12/18



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
(सड़क परिवहन और राजमार्ग मंत्रालय)  
**National Highways Authority of India**  
(Ministry of Road Transport & Highways)

परियोजना कार्यान्वयन इकाई - हैदराबाद / **Project Implementation Unit - Hyderabad**

आवास सं : 25A & 28A, भारत का प्रशासनिक स्टाफ कॉलेज,

कॉलेज पार्क कैम्पस, सड़क सं : 3, बंजारा हिल्स, हैदराबाद - 500 034, तेलंगाना

Qtr.No. 25A & 28A, Administrative Staff College of India (ASCI), College Park Campus, Road No.3, Banjara Hills, Hyderabad- 500 034, Telangana

Land Mark : Near TV9 Bus Stop

NHAI/PIU-HYD/Hyd-Mng/NH-163/2021/ 377

Date: 08.03.2021

टेली / Tele : 040 - 29550558

ई-मेल / E-mail : hyd@nhai.org  
nhaihyd@gmail.com



भारतमाला  
एक ही पथ पर चलना  
BHARATMALA  
ROAD TO PROSPERITY

To  
**The Principal Chief Conservator of Forests,**  
Aranya Bhavan, Saifabad,  
Hyderabad, Telangana - 500 004.

**Sub: NHAI, PIU-HYD - Four laning of NH -163 from Hyderabad (ORR near Appa Junction at Km. 14+000) to Manneguda (Km. 59+500) in the State of Telangana - Forest Clearances - Mudimiyal RF (29.959Ha) and Kandlapally RF (12.7823Ha) Total 42.742 Ha - In Principle (Stage-I) approval communicated - Deposition of NPV & C.A Amount in Telangana State CAMPA Account - Working Permission Requested - Reg.**

**Ref:** 1. MoEF&CC F.No.4-TSB132/2018-CHN/1939 dated 13.12.2018  
2. PCCF Rc. No. 1652/2018/-FCA2 dated 24.12.2018  
3. DFO, Vikarabad Rc.No.1005/A2/2018 dated 18.01.2019  
4. FDO, Shamshabad Rc.No.388/2018/SB-2 dated 23.04.2019

\* \* \* \*

Sir,

In inviting kind reference on the above subject, it is to inform that, the MoEF&CC vide reference 1<sup>st</sup> cited has accorded In Principle approval (Stage-I) for diversion of 42.7413 Ha of forest land (12.7823 Ha in Vikarabad and 29.959 Ha in Shamshabad Division) for 4 laning of Hyderabad (ORR Appa Junction) to Manneguda section of NH-163 in favour of Project Director, NHAI, Hyderabad.

2. Accordingly, Demand notices were raised by the respective DFO, Vikarabad and FDO, Shamshabad vide references 3<sup>rd</sup> & 4<sup>th</sup> cited for deposition of NPV & CA amount and Construction of Chain link fencing and boundary pillars etc., as per the stipulation at (ii), (iii) & (iv) in the Stage-I in-principle approval vide ref.1<sup>st</sup> cited and the same was deposited by NHAI details are as given below:

S. No	Beneficiary Name	Beneficiary Bank Details	Beneficiary Account no.	Credited Amount in Rs.	Purpose
1	Telangana CAMPA demand from DFO, Vikarabad and FDO, Shamshabad	Corporation Bank, Branch: New Delhi Lodhi Com, IFSC Code: CORP0000371	155706127756561	9,07,65,100/- (6,44,19,400 + 2,63,45,700) on 04.03.2021	NPV & C.A Hyderabad- Manneguda NHAI AN 6127756561

*(Signature)*

Page 1 of 2

(12) (11)

2	DFO, Vikarabad	Axis Bank, Branch: Vikarabad IFSC Code: UTIB0002889	916010031084041	4,31,90,000/- on 04.03.2021	Construction of fencing and boundaries
3	FDO, Shamshabad	Union Bank of India, Branch: Saifabad, Hyderabad IFSC Code: UBIN0537063	370602010100674	6,97,71,000/- on 04.03.2021	Construction of fencing and boundaries

3. In view of the above, it is requested to initiate the process for approval of Stage-II clearances at the earliest, please.

Encl: As above

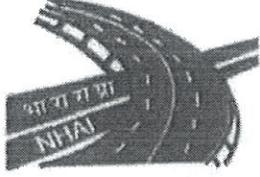
Yours faithfully

  
08/03/21

(P. Nageswara Rao)  
GM (T) cum Project Director

Copy to:

1. The Regional Officer, NHAI, RO, Hyderabad – for kind information
2. DFO, Vikarabad - for information and necessary action
3. FDO, Shamshabad – for information and necessary action



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
(सड़क परिवहन और राजमार्ग मंत्रालय)  
**National Highways Authority of India**  
(Ministry of Road Transport & Highways)

परियोजना कार्यान्वयन इकाई - हैदराबाद / **Project Implementation Unit - Hyderabad**

आवास सं : 25A & 28A, भारत का प्रशासनिक स्टाफ कॉलेज,

कॉलेज पार्क कैम्पस, सड़क सं : 3, बंजारा हिल्स, हैदराबाद - 500 034, तेलंगाना

Qtr.No. 25A & 28A, Administrative Staff College of India (ASCI), College Park Campus, Road No.3, Banjara Hills, Hyderabad- 500 034, Telangana

Land Mark : Near TV9 Bus Stop

टेली / Tele : 040 - 29550558

ई-मेल / E-mail : hyd@nhai.org

nhaihyd@gmail.com



NHAI/PIU-HYD/Hyd-Mng/NH-163/2021/547

Date: 31.03.2021

To  
Forest Divisional Officer,  
Shamshabad,  
E-mail: fdoshamshabad@gmail.com

Sub: NHAI, PIU-HYD - Four laning of NH -163 from Hyderabad (ORR near Appa Junction at Km. 14+000) to Manneguda (Km. 59+500) in the State of Telangana - Forest Clearances - Mudimiyal RF (29.959Ha) and Kandlapally RF (12.7823Ha) Total 42.7413 Ha - In Principle (Stage-I) approval communicated - NPV & C.A Amounts deposited - Public Notice published - Condition wise Compliance report - Furnished - Reg.

- Ref: 1. MoEF&CC F.No. TSB132/2018-CHN/1939 dated 13.12.2018  
2. PCCF Rc. No. 1652/2018/-FCA2 dated 24.12.2018  
3. FDO, Shamshabad Rc.No.388/2018/SB-2 dated 23.04.2019  
4. T/o lr. no. NHAI/PIU-HYD/Hyd-Mng/NH-163/2021/377 dated 08.03.2021  
5. Public Notice published in 2 Local News Papers on 20.03.2021

\*\*\*\*

Sir,

This has reference to the subject cited above. In this connection, it is to inform that the User Agency has been complied all the conditions mentioned in the RO, MoEF&CC, Chennai letter vide ref. 1<sup>st</sup> cited, conveying In-Principle Stage-I approval for the diversion of Reserve Forest of 42.7413 Ha for the subject project, subject to fulfillment of certain conditions.

2. Accordingly, the PCCF, Hyderabad vide ref. 2<sup>nd</sup> cited, directed the PD, NHAI, Hyderabad to coordinate with DFO's concerned and obtain the Demand Notice and also to comply the conditions communicated by the MoEF&CC.

3. The FDO, Shamshabad letter vide 3<sup>rd</sup> cited, raised Demand Notice for deposit of Net Present Value (NPV) & Compensatory Afforestation (CA) amounting to Rs. 6,44,19,400/- and Construction of Chain link fencing and Boundary pillars for Rs.6,97,71,000/-

4. In this connection, the following are submitted for perusal:

Sl. No.	Conditions	Compliance
(i)	Legal status of the diverted forest land shall remain unchanged;	Complied (An Undertaking is enclosed as Annexure-A)
(ii)	The demarcation of the proposed forest area shall be carried out by erecting 4 feet high cement concrete pillars duly	Erection of 4 feet high cement concrete pillars will be carried out by the Forest Department for

*[Signature]*

Page 1 of 5

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Sl. No.	Conditions	Compliance
	numbered at an interval of 20 meters at the cost of User Agency;	which FDO, Shamshabad Demand Notice issued vide his Rc.No.388/2018/SB-2 dated 23.04.2019 for an amount of Rs.6,97,71,000/- has been deposited into Union Bank of India, Saifabad branch, Account no. 370602010100674 (Copy enclosed).
(iii)	The State Forest Department shall carry out Compensatory Afforestation (CA) over 60 ha of degraded forest area in Comp No. 199 in Malkaram RF, Ganganpahad Beat, Shamshabad Section & Range, Shamshabad Division and 26 ha of degraded forest area in Compt No. 40 of Gotlapally Antharam RF, Tandur Beat, Section and Range of Vikarabad District, at the cost of the user agency;	Demand Notice raised by FDO, Shamshabad for deposit of Compensatory Afforestation (CA) for an amount of Rs.4,56,65,100/- has been deposited into Telangana State CAMPA, Corporation Bank, New Delhi Lodhi Complex branch, Account no. 155706127756561 (Copy enclosed).
(iv)	The State Government shall charge the Net Present Value of the diverted forest land measuring 42.7413 ha from the User Agency as per the orders of the Hon'ble Supreme Court dated 28.03.2008 and 09.05.2008 in IA Nos.826 in 566 with related IA's in Writ Petition (Civil) No. 202/1995;	Demand Notice raised by FDO, Shamshabad for deposit of Net Present Value (NPV) for an amount of Rs.1,87,54,300/- has been deposited into Telangana State CAMPA, Corporation Bank, New Delhi Lodhi Complex branch, Account no. 155706127756561 (Copy enclosed).
(v)	Additional amount of the Net Present Value (NPV) of the diverted forest land if any, becoming due after revision of the same by the Hon'ble Supreme Court of India in future, shall be charged by the State Government from User Agency. User Agency shall furnish an undertaking to this effect;	Complied (An Undertaking is enclosed as Annexure-B)
(vi)	The funds received from the User Agency towards Compensatory Afforestation, Net Present Value and any money received in compliance of the conditions stipulated by the Central Government under this project shall compulsorily be deposited in to the "State Compensatory Afforestation Fund of Telangana State" only;	Total amount (CA & NPV) of Rs.6,44,19,400/- has been remitted to Telangana State CAMPA, Corporation Bank, New Delhi Lodhi Complex branch, Account no. 155706127756561 on 04.03.2021 (Copy enclosed) The details are as follows: (a) CA - Rs. 4,56,65,100/- (b) NPV - Rs. 1,87,54,300/- ----- Total - Rs. 6,44,19,400/- -----

*[Signature]*

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Sl. No.	Conditions	Compliance
(vii)	The User Agency shall endeavor to avoid felling of trees existing on the forest land proposed to be utilized. Wherever necessary, the trees should be felled under the strict supervision of the DFO/FDO concerned;	Complied (An Undertaking is enclosed as Annexure-C)
(viii)	Wherever feasible the State Forest Department shall carry out translocation of trees instead of resorting to felling, at the cost of user agency;	Complied (An Undertaking is enclosed as Annexure-D)
(ix)	The user agency shall construct retaining walls and check walls wherever required, by consulting the DFO concerned, at the project cost;	Complied (An Undertaking is enclosed as Annexure-E)
(x)	The construction of culverts/bridges, if any, over the natural streams/rivers/canals shall be done in such a manner that it does not hamper the natural course of water, does not give rise to water-logging and also does not hamper movement of wild animals;	Complied (An Undertaking is enclosed as Annexure-F)
(xi)	Roadside cuttings and fillings which require engineering support shall be provided as per the instructions of the DFO concerned so as to stabilize the soil;	Complied (An Undertaking is enclosed as Annexure-G)
(xii)	The dugout material/overburden shall be duped outside the forest area. Storage of any material shall not be done in the forest area proposed;	Complied. (An Undertaking is enclosed as Annexure-H)
(xiii)	The User Agency shall arrange to rise strip plantation on either side of the road and also on the central verge at the project cost and maintain the same for 7-10 years;	Complied (An Undertaking is enclosed as Annexure-I)
(xiv)	There shall be speed breaker on the road within the Wildlife areas / Wildlife crossings, along with signage boards at frequent intervals at the project cost;	Complied (An Undertaking is enclosed as Annexure-J)
(xv)	The layout plan of the proposal shall not be changed without the prior approval of the Central Government;	Complied (An Undertaking is enclosed as Annexure-K)
(xvi)	The user agency shall provide fire wood preferably alternate fuel to labourers working at the site to avoid damage/tree felling and no labour camp shall be established inside the forest area;	Complied (An Undertaking is enclosed as Annexure-L)
(xvii)	Disturbance shall be kept minimum by	Complied



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Sl. No.	Conditions	Compliance
	creating labour camps outside the forest area as far as possible and it shall be the responsibility of the user agency to ensure that the labourers & staff engaged in execution of work do not destruct nearby forest flora & fauna;	(An Undertaking is enclosed as Annexure-M)
(xviii)	The total forest area utilized for the project shall not exceed 42.7413 ha and the forest area diverted shall not be used for any purpose other than those shown in the diversion proposal. User Agency shall furnish an undertaking to this effect;	Complied (An Undertaking is enclosed as Annexure-N)
(xix)	The forest land proposed for diversion shall under no circumstances be transferred or sublet to any other agency, department or person without prior approval of the Central Government;	Complied (An Undertaking is enclosed as Annexure-O)
(xx)	User Agency and the State Government shall ensure compliance to provisions of the all Acts, Rules, Regulations and Guidelines, for the time being in force, as applicable to the project;	Complied (An Undertaking in this regard is enclosed as Annexure-P)
(xxi)	Any other conditions that the Central Government or Addl. PCCF(Central) of Regional Office, Chennai may impose from time to time in the interest of Afforestation, conservation and management of flora and fauna in the area, shall be complied by the user agency;	Complied (An Undertaking is enclosed as Annexure-Q)
(xxii)	The Progress of the Compensatory Afforestation under the jurisdiction of Vikarabad & Shamshabad Forest Division shall be monitored by the Circle Head and a copy of such monitoring report shall be forwarded to the Regional Office to upload the same in the web portal;	To be done by Forest Department.
(xxiii)	No working permit shall be issued by the State Government before submission of RoFR certificate and other mandatory clearances for the entire area;	RoFR certificate is herewith enclosed.
(xxiv)	In the event of failure to comply with any of the above conditions the user	Complied (An Undertaking is enclosed as

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Sl. No.	Conditions	Compliance
	agency is liable for penal action as decided by the Additional PCCF (Central), Regional Office, Chennai.	Annexure-R)

4. Further, as directed vide ref. 2<sup>nd</sup> cited, the Public notice regarding In-Principle Stage-I approval for the subject project has been published in Hans India & Mana Telangana new papers on 20.03.2021 (copies enclosed).

5. In view of the above submissions, it is requested to kindly issue necessary approval for Stage-II at the earliest.

Encl: As above

Yours faithfully,

  
31/3/21

(P. Nageswara Rao)

GM (T) cum Project Director

Copy to:

1. The Prl. Chief Conservator of Forests, Govt. of Telangana, Aranya Bhavan, Saifabad, Hyderabad - for kind information & necessary action, please
2. The Additional Prl. Chief Conservator of Forests / Nodal Officer (FCA), Office of the Prl. Chief Conservator of Forests, Telangana, Aranya Bhavan, Saifabad, Hyderabad.
3. The RO, MoEF&CC, Chennai - for kind information & necessary action, please
4. The Additional Prl. Chief Conservator of Forests, Rangareddy circle
- ✓ 5. The Regional Officer, NHAI, RO, Hyderabad - for kind information, please





R-7  
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Sir,  
May pl see  
21/10/21

भारत सरकार

GOVERNMENT OF INDIA

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय

MINISTRY OF ENVIRONMENT, FORESTS & CLIMATE CHANGE

Integrated Regional Office,

Aranya Bhavan, Opp RBI, Saifabad, Hyderabad, Telangana 500004

e-mail: [irohyd.moefcc@gmail.com](mailto:irohyd.moefcc@gmail.com)

संख्या: जय/...

F.No.4-TSB132/2018-CHN/93

Date 20<sup>th</sup> October, 2021

To,

The Special Chief Secretary to the Government,  
Environment, Forests, Science & Technology Department,  
Telangana State Secretariat, Hyderabad.

**Subject:** Diversion of 42.7413 ha of forest land (12.7823 ha in Vikarabad and 29.959 ha in Shamshabad Division) for 4 laning of Hyderabad (ORR Appa Junction) to Manneguda Section of NH 163 in favour of Project Director, NHAI, Hyderabad-reg.

Sir,

Please refer to the State Government's letter No. 3922/For.I(1)/2018 dated 25.09.2018 and online proposal No. FP/IG/ROAD/27756/2017 seeking prior approval of the Government of India in accordance with Section '2' of Forest (Conservation) Act, 1980 for the above mentioned project. The project was accorded in-principle approval (Stage-I) by the Central Government vide letter dated 04.01.2021. The State Government vide letter No. 3922/For.I(1)/2018 dated 27.09.2021 have reported compliance to the conditions stipulated in the in-principle approval.

After careful consideration of the proposal of the State Government, I am to convey the Central Government's approval (*Stage-II*) under Section '2' of Forest (Conservation) Act, 1980 for diversion of 42.7413 ha of forest land (12.7823 ha in Vikarabad and 29.959 ha in Shamshabad Division) for 4 laning of Hyderabad (ORR Appa Junction) to Manneguda Section of NH 163 in favour of Project Director, NHAI, Hyderabad, subject to the following conditions:-

- (i) Legal status of the diverted forest land shall remain unchanged;
- (ii) The State Forest Department shall demarcate the diverted forest area by erecting 4 feet high cement concrete pillars duly numbered at an interval of 20 meters from the amount already been realized from the User Agency;

*U. Anand*

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- (iii) The State Forest Department shall carry out Compensatory Afforestation (CA) over 60 ha of degraded forest area in Compt No 199 in Malkaram RF, Ganganpahad Beat, Shamshabad Section & Range, Shamshabad Division and 26 ha of degraded forest area in Compt No 40 of Gotlapally Antharam RF, Tandur Beat, Section and Range of Vikarabad District, from the amount already been realized from the User Agency;
- (iv) Identified CA area and approved CA scheme shall not be changed without prior approval of central government;
- (v) Additional amount of the Net Present Value (NPV) of the diverted forest land if any, becoming due after revision of the same by the Hon'ble Supreme Court of India in future, shall be charged by the State Government from User Agency;
- (vi) As informed in the compliance report the User Agency deposited cost towards some activities like construction of chain link fencing for 3005 RMT & fixation of gate (Rs.4,24,66,000/- including boundary pillars cost) & cost towards infrastructure funds for central nursery (Rs.5,00,000/-) with FDO, Vikarabad account and cost towards see through wall either side of the road 10 km @ 57.00 lakhs per km (Rs.6,37,62,000/-) & construction of environmental education center (Rs. 25,00,000/-) been deposited with FDO Shamshabad account. This is at variance with stipulations in condition no.(ii) & (vi) of the stage I approval. Hence, all above mentioned amounts claimed to have been deposited by the User Agency with FDOs account of the respective Divisions shall be transferred ( except amount towards boundary pillars cost in the Vikarabad division) to the designated CAMPA account immediately and compliance on the same shall be informed to this office within one month from the date of issuing of this Stage II approval order;
- (vii) The user agency shall endeavor to avoid felling of trees existing on the forest land proposed to be utilized. Wherever necessary, the trees should be felled under the strict supervision of the DFO/ FDO concerned;
- (viii) Wherever feasible the State Forest Department shall carry out translocation of trees instead of resorting to felling, at the cost of user agency;
- (ix) The user agency shall construct retaining walls and check walls wherever required, by consulting the DFO concerned, at the project cost;

*U. S. S.*

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- (x) The construction of culverts/bridges, if any, over the natural streams/rivers/canals shall be done in such a manner that it does not hamper the natural course of water, does not give rise to water-logging, and also does not hamper movement of wild animals;
- (xi) Roadside cuttings and fillings which require engineering support shall be provided as per the instructions of the DFO concerned so as to stabilize the soil;
- (xii) The dug out material / overburden shall be dumped outside the forest area. Storage of any material shall not be done in the forest area proposed;
- (xiii) The User Agency shall arrange to raise strip plantation on either side of the road and also on the central verge at the project cost and maintain the same for 7- 10 years;
- (xiv) There shall be speed breaker on the road within the wildlife areas / Wildlife crossings, along with signage boards at frequent intervals at the project cost;
- (xv) The layout plan of the proposal shall not be changed without the prior approval of the Central Government;
- (xvi) The user agency shall provide fire wood preferably alternate fuel to labourers working at the site to avoid damage/tree felling and no labour camp shall be established inside the forest area;
- (xvii) Disturbance shall be kept minimum by creating labour camps outside the forest area as far as possible and it shall be the responsibility of the user agency to ensure that the labourers & staff engaged in execution of work do not destruct nearby forest flora & fauna;
- (xviii) The total forest area utilized for the project shall not exceed 42.7413 ha and the forest area diverted shall not be used for any purpose other than those shown in the diversion proposal;
- (xix) The forest land proposed for diversion shall under no circumstances be transferred or sublet to any other agency, department or person without prior approval of the Central Government;

*U. Anand*

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- (xx) User agency and the State Government shall ensure compliance to provisions of the all Acts, Rules, Regulations and Guidelines, for the time being in force, as applicable to the project;
- (xxi) Any other conditions that the Central Government or Regional Officer(Central) of Integrated Regional Office, Hyderabad may impose from time to time in the interest of afforestation, conservation and management of flora and fauna in the area, shall be complied by the user agency;
- (xxii) The Progress of the Compensatory Afforestation under the jurisdiction of Vikarabad & Shamshabad Forest Division shall be monitored by the Circle Head and a copy of such monitoring report shall be forwarded to the Integrated Regional Office;
- (xxiii) In the event of failure to comply with any of the above conditions the user agency is liable for penal action as per rules / guidelines issued under FCA, 1980.

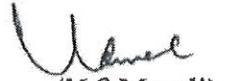
Yours faithfully,

  
(N.S.Murali)

Inspector General of Forests (Central)

Copy to:-

1. The Principal Chief Conservator of Forests, Forests Department / Nodal Officer (FCA), Govt. of Telangana Aranya Bhavan, Saifabad, Hyderabad, PIN- 500 004
2. The Project Director, NHAI, D.No 331/2RT, 2<sup>nd</sup> Floor, PS Nagar, Masab Tank, Telangana, Hyderabad-500057
3. Guard file.

  
(N.S.Murali)

Inspector General of Forests (Central)

R-8

21

Union Of India vs Kushala Shetty & Ors on 21 February, 2011

Supreme Court of India

Union Of India vs Kushala Shetty & Ors on 21 February, 2011

Bench: G.S. Singhvi, Asok Kumar Ganguly

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2866-2880 OF 2011

(Arising out of Special Leave Petition (Civil) Nos.34320-34334 of  
2009)

Union of India

... Appellant

Versus

Dr. Kushala Shetty and others

... Respondents

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted.

2. The National Highways Act, 1956 (for short, 'the 1956 Act') was enacted by Parliament to provide for the declaration of certain highways as national highways and for matters connected therewith. Sections 3A to 3I of the 1956 Act contains a comprehensive scheme for the acquisition of land for the building, maintenance, management or operation of a national highway or part thereof and determination of amount payable as compensation and other related issues.

3. In exercise of the power vested in it under Section 3A(1) of the 1956 Act, the Central Government issued notification dated 10.8.2005 for the acquisition of land in 18 villages of the Mangalore Taluk of the State of Karnataka for widening of National Highway No.17 from Km.358/000 to Km.375/300, National Highway No.48 from Km.328/000 to Km.345/000 and National Highway No.13 from Km.743/900 to Km.745/000. The notification contained names of the concerned villages, the survey number including its particular parcel number, nature, type and area of land proposed to be acquired. In the notification it was clearly mentioned that land plans and other details of the land are available and can be inspected at the office of the Special Land Acquisition Officer, Karnataka Industrial Area Development Board, Baikampady, Mangalore (hereinafter referred to as 'the Competent Authority'). It was also mentioned that any person interested in the lands may file objection before the Competent Authority within 21 days from the date of publication of the notification in the official Gazette. The notification was published in the official Gazette dated 10.8.2005. Simultaneously, the substance of the notification was published in two newspapers, namely, "Deccan Herald" and "Udayavani".

4. In response to the afore-mentioned notification, a number of land owners filed objections dated 26.9.2005. Majority of them claimed higher compensation by asserting that after the acquisition, his/her remaining land will become useless and he/she will not carry out any improvement. However, none made a grievance that there was any deficiency or defect in the description of land given in the notification and, on that account, he was prevented from effectively exercising his right to file objections.
5. The Competent Authority issued notice dated 28.9.2005 to the land owners under Section 3C(2) so as to enable them to appear for personal hearing. Thereupon, some of the land owners filed further objections and pleaded that their land/property may not be acquired and parambok land (government land) lying just opposite the land proposed to be acquired may be used for widening the National Highways. Some others claimed that they had constructed shops etc. and the same can be saved if alignment of the highway was slightly changed.
6. After hearing the objectors, the Competent Authority passed order dated 11.10.2005 whereby it rejected the objections of the land owners. That order reads as under:

"The Persons noted in Serial No.1 to 73 have submitted their written objection against the publication of the notification under sub-Section (1) of Section 3A of the National Highways Act, 1956. The notification was published in Udayavani and Deccan Herald daily news paper on 07.09.2005 mentioning the lands which are required for the extension of existing N.H's into four lanes in villages of Mangalore and Bantwal Taluks.

Proper notice have been issued to the objectors of Padavu village to appear either in person or through the advocates on 01.10.2005 at 11 a.m. before the Special Land Acquisition Officer and Competent Authority National Highways, Baikampady, Mangalore. On the appointed date they have been heard individually.

The persons in Serial No.1, 2, 7, 8, 9, 11, 13, 14, 15, 19, 20, 24, 26, 28, 31, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50, 54, 55, 57, 58, 59, 60, 65, 66, 68 and 70 have stated that their commercial buildings and shop are situated in the proposed land for acquisition. The persons in Serial No.3, 4, 5, 6, 16, 21, 22, 23, 25, 27, 29, 30, 48, 49, 50, 51, 52, 53, 71, 72, 73 have stated that their residential buildings are situated in the acquired land and also they loose their livelihood. Therefore, these lands should be exempted from the proposed land acquisition.

I heard their objections. It is true that some of them will have serious hardship of their livelihood. However, they will be compensated. But in Padavu Village in most of the places where the lands proposed for acquisition for widening the existing N.H. into Four lanes, the existing N.H. land is very narrow and widening this road is highly essential.

The lands which are proposed for widening the existing N.H. into four lanes are very much essential and of National important. Here without the land acquisition the four lanes cannot be laid. Since it is National important project connected with the development, hence all the objections are hereby overruled and rejected under Section 3C of the National Highway Act, 1956.

Date: 11.10.2005 Place: Mangalore Sd/-

Special Land Acquisition Officer & Competent Authority, NHAI Baikampady, Mangalore."

7. The Central Government accepted the report submitted by the Competent Authority and issued notification dated 8.8.2006 under Section 3D(1) of the 1956 Act.

8. In the meanwhile, Shri Arun Kumar Shetty and 11 others filed Writ Petition No.8780 of 2006 with the prayer that the respondents therein may be directed to consider their objections dated 4.10.2005 and representations dated 21.11.2005 and 15.5.2006 within a fixed period. Their grievance was that the objections and representations made by them against the proposed acquisition of their land have not been decided by the Competent Authority. By order dated 10.7.2006, the learned Single Judge of the Karnataka High Court disposed of the writ petition with a direction to the Competent Authority to pass necessary order in accordance with law if such orders have already not been passed on the objections of the petitioners. Paragraphs 4 and 6 of that order read as under:

"4. Their main grievance is in spite of such representations given by them and also the communication between second respondent and first respondent of Annexure "M" dated 26.11.2005, no decision or order u/s 3(C) of the National Highways Act came to be passed. The petitioners are here before this Court as they are not in a position to proceed as they are not definite what the authorities would say ultimately in the matter. Until the first respondent-authority passes the order on the objections of the petitioners, the future course of action is not possible for them. Therefore, they have approached this Court.

6. In the light of the discussions; the respondents are directed to look into the representations of the petitioners and the first respondent-authority is directed to pass necessary orders in accordance with law if such orders are not yet passed by him. In case decision is taken on the objections of the petitioners already, the same be communicated to third respondent or second respondent who is turn shall communicate the same to the petitioners, within the three months from the date of receipt of copy of the order."

9. Since the Competent Authority had already decided the objections of the writ petitioners, copies of the order were made available to them vide endorsement dated 18.8.2006, the relevant portion of which is extracted below:

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Union Of India vs Kushala Shetty & Ors on 21 February, 2011

"ENDORSEMENT Sub.:Regarding formation of Four Lane Highway (Widening) of National Highway between Surthkal to B.C. Road - Objections of Villagers of Padavu Ref.:Order of High Court of Karnataka dated 10.07.2006 in Writ Petition No.8780/2006 (G.M.) Objectors of Padavu Village The enquiry of Objections of the Objectors was conducted on 01.10.2005 in the forenoon by hearing their objections.

The main objections of the objectors is that the residential and commercial buildings at Padavu Village are owned by them are being acquired and thereby they would be suffered loss and their maintenance would be jeopardized. They contended that the vacant land as well as old buildings are situated in the other side of the road and as such equal distance has to be measured from the center line of the existing highway and they requested to exclude their properties from acquisition proceedings.

The National Highway between Nantur to Kaikamba area of Padavu Village is narrow. The subject land now notified for acquisition is essentially required for the proposed four lane highway (widening) and construction of fly over. The land subjected for acquisition is required for national development as well as public purpose and as such all the objections raised by the objectors is hereby rejected. Compensation will be paid as per rules.

This endorsement is issued to the Applicant as per order dated 10.07.2006 in W.P. No.8780/2006.

Sd/-

Special Land Acquisition Officer and Competent Authority, National Highway Baikampady, Mangalore"

10. Although order dated 10.7.2006 passed by the learned Single Judge stood complied with, some of the land owners of Padavu Village made further representations dated 16.10.2006 in which they, for the first time, claimed that notification dated 10.8.2005 was vague inasmuch as the extent of land sought to be acquired from their property had not been indicated. This appears to have been done on the advice given by some lawyer in the light of the judgment of this Court in Competent Authority v. Barangore Jute Factory (2005) 13 SCC 477. They also claimed higher compensation at the rate of Rs.3 lac per cent.

11. Soon after making fresh representations, the land owners filed Writ Petitions Nos.16272/2006, 13413/2006 and 1342/2007 for quashing notification dated 10.8.2005 and endorsement dated 18.8.2006. They pleaded that the acquisition proceedings were ultra vires the provisions of the Act and rules of natural justice and were also vitiated due to mala fides and arbitrary exercise of power. In Writ Petition No.13413/2006, it was also averred that alignment of the highway had been manipulated to save the properties of the persons who were related to politicians and those who could manipulate the things at the level of the National Highways Authority of India (NHAI). The writ petitioners also pleaded that the vacant parambok land could be utilised for widening the

National Highways and there was no justification for the acquisition of their land. In paragraphs 5 and 6 of Writ Petition No.13413/2006, Mr. S.Arun Kumar Shetty and 9 others v. Union of India and others, the petitioners made the following averments:

"5. In furtherance of the said publication the 1st petitioner on behalf of himself and the other petitioners filed joint objections dated 16.09.2005 copy of which is produced hereto as ANNEXURE-D. As per the objections filed, the petitioners pointed out that in order to benefit certain influential persons and to protect their establishments, the respondents have, instead of widening the Highways on both the sides equally and providing a straight road, have proposed acquisition on only one side of the road, thereby providing a road with a bend adversely affecting the interest of the petitioners and other who have their properties located on that side of the road. The petitioners also pointed out that the existing National Highways No.13 is almost in a straight road, have proposed acquisition on only one side of the road, thereby providing a road with a bend adversely affecting the interest of the petitioners and others who have their properties located on that side of the road.

The petitioners also pointed out that the existing National Highway No.13 is almost in a straight line and the boundaries of private lands adjacent to the road were also in a straight line. That an unnecessary dent had been given in the proposed Highways, only to save properties belonging to politically influential person on the other side of the road. It was also pointed out that in order to have a straight road, it would be necessary to proportionally acquire land on the both sides of the road calculated from the existing centre point and not by acquiring land only on side of the road and giving an unnecessary dent to the road. The petitioners also pointed out that some portion of the other side of the road belongs to the 1st respondent and that the said side also has lesser number of building and would thereby facilitate not only less financial burden on the exchequer but will also result in having a straight highway rather than a dented road. The petitioners have also urged other grounds for dropping the acquisition proceedings. The 10th Petitioner also filed a separate objection dated 16.9.2005, copy of which is produced proposed widening had a strange deviation in it. The petitioner pointed out that the respondents had not taken into the existing "BITMAC" road's and existing "Road Corridor's" Centre line as a deciding factor for the new Highway Central Median, so that equal distance could have been maintained between two existing "Building Lines" and also could have had enough width without much disturbing, the existing building from survey Nos.126/1 to Survey No.127/2. It was also pointed out that because of this strange proposal of the respondents, many of the newly constructed two to five storeyed buildings with necessary Civil Authorities permissions may have to be partially demolished, making it worthless for the purpose presently used. Similar objections were also submitted by the 10th petitioner (Dated 15.09.2005), 7th Petitioner (Dated 23.09.2005) & 6th petitioner (Dated 26.09.2005), copies of which are produced hereto as ANNEXURE-F, G & H.

6. Thereafter the 2nd respondent in accordance with Section 3-C(2), issued individual notices dated 28.9.2005 to the Petitioners, calling for written objections to the proposed acquisition. Copy of one such notice is produced hereto as ANNEXURE-j. In furtherance of the notices, the petitioners went to the office of the 2nd respondent and after informing about written objections already filed as per

ANNEXURE-D & H, inspected the sketch of the proposed widening of the Highway. The petitioners were shocked to note that there was an unnecessary dent given to the Highway so as to enable acquisition only one side of the road. This dent was given by changing the centerline of the existing Highway. It was apparent to the naked eye that the dent was given in the Highway only to favour certain influential persons on the other side of the road. In site No.128/2 a triangular land is left out of acquisition, which gives a dent to the road only in order to save a service station belonging to relative of politically influential person. Similarly a Bar and Restaurant which is within 10 mtrs from the centre of the existing road is not sought to be touched under the acquisition proceedings for the above stated reason. Although as per the former plan the road was designed in such a way that most of the land proposed to be acquired was on the Southern side of the road where plenty of Government land. However subsequently it was decided to acquire equal portion from both sides of the road. But now in order to safeguard property belonging to politically influential people, most of the land sought for acquisition is on the northern side of the road where the schedule lands are located. The petitioner thereafter met the 2nd respondent on 30.09.2005 and pointed out about the unnecessary dent in the Highway and put forward their objections. The 2nd respondent however in violation of Section 3-C of the Act, has failed to hear the objections of the petitioners and has also failed to give satisfactory explanation for the flaw in the sketch. The 2nd respondent also pointed that other than the sketch and the details of the lands to be acquired, they have no further details. The petitioners were also given to understand that the 3rd respondent is the deciding authority on the objections of the petitioners."

12. In the written statement filed on behalf of the NHAI, it was specifically averred that land plans and other details of the land proposed to be acquired were available in the office of the Competent Authority for inspection. It was further averred that the objections filed by the land owners were rejected by the Competent Authority after giving them opportunity of personal hearing. This is evinced from paragraphs 7 and 8 of the counter filed in Writ Petition No.13413/2006, which are extracted below:

"7. With reference to the para 5 of the Writ Petition it is submitted that, the averments of the petitioners are baseless. This respondent is a statutory authority known as National Highways Authority of India ("NHAI") constituted under the Act No.68 of 1988 of Parliament, namely National Highways Authority of India Act, 1988.

The main object for which this authority is constituted is the development and maintenance of the National Highways entrusted to it. It is submitted that, it is a professionally managed statutory body having high degrees of expertise in the field of highway development and maintenance. NHAI prepares and implements its plans after thorough study by experts in the field and strictly adheres to professional standards of high order. Therefore, the allegation made by the petitioner against the plan in question adopted by this respondent for widening of National Highways between Surathkal and B.C. Road in the State of Karnataka and in specific in respect of Nantoor & Maroli Flyover designed to cater the heavy traffic plying in this stretch is untenable and baseless in the eyes of the law. Hence the writ petition is liable to be rejected.

It is submitted that, the project in question has been designed based on the detailed studies done by Detailed Project Report ("DPR") consultant, keeping in view the various relevant factors including intensity of heavy vehicular traffic and public interest at large. The ministry as well as this respondent have high degree of expertise in the field and they are using the best technical know how for implementation of the projects. Hence the allegations made against the respondent are baseless and unfounded and uncalled for.

As per the approved alignment, a portion of the petitioner's property along with some other properties is required for the construction of the flyovers and widening of the road. Therefore, the said property of the petitioners along with some other properties is coming under the approved alignment of the four laning work. The acquisition has been proposed to the extent of requirement of four laning work and construction of flyovers. The allegation of the Petitioners denied as false.

8. With reference to the Para 6 of the Writ Petition it is submitted that the averments of the petitioners are baseless. The Special Land Acquisition Officer and Competent Authority has informed that after publication of the notification under sub-section (1) of section 3A of National Highways Act, 1956, notices were issued to the petitioners and objections were heard on 1st October, 2005 and overruled and rejected the Objections of the Petitioner as per sub-section (2) of Section 3C of the said act because the land proposed for acquisition is for public purpose i.e. formation of four land (widening) and undertaken only after technical survey and as per the alignments only.

It is further submitted that as per the approved alignment, a portion of the petitioner's property along with some other properties is required for the construction of the flyovers and widening of the road. Therefore, the said property of the petitioners along with some other properties is coming under the approved alignment of the four laning work. The acquisition has been proposed to the extent of requirement of four laning work and construction of flyovers. The land acquisition is for public purpose namely for the formation of four land (widening) of the National Highway and construction of flyovers and hence the Writ petition is liable to be dismissed. The required procedure as per the National Highways Act 1956 (48 of 1956) has been followed by this Respondent."

(emphasis supplied)

13. The learned Single Judge dismissed all the writ petitions by common order dated 23.1.2009. He held that objections filed by the writ petitioners were rejected by the Competent Authority after giving them opportunity of hearing and the mere fact that they would suffer some hardship due to the acquisition of their land cannot be a ground for nullifying notifications dated 10.8.2005 and 8.8.2006. On the issue of change of alignment, the learned Single Judge referred to judgment of this Court in Girias Investment Private Ltd. v. State of Karnataka (2008) 7 SCC 53 and held that the Court cannot sit over the judgment of the authorities entrusted with the task of planning and executing the project relating to widening of the National Highways.

14. The Division Bench allowed the appeals filed against the order of learned Single Judge primarily on the ground that notification under Section 3D of the 1956 Act could not have been issued before

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communication of the decision taken on the objections/representations made by the land owners. In the opinion of the Division Bench, the rejection of objections should have preceded consideration of the report submitted by the Competent Authority and issue of notification under Section 3D of the 1956 Act and violation of this requirement has the effect of vitiating the acquisition. However, the Division Bench declined to quash the acquisition in its entirety by observing that such of the objectors who have already received compensation are not entitled to any relief.

15. Shri Vivek Tankha, learned Additional Solicitor General appearing for NHAI, referred to the scheme of Sections 3A to 3I of the 1956 Act and order dated 11.10.2005 passed by the Competent Authority and argued that the Division Bench committed serious error by partially quashing the acquisition proceedings only on the ground that the order passed on the objections filed by some of the land owners had not been communicated to them before issue of notification under Section 3D. Shri Tankha emphasized that the objections filed by the land owners were duly considered and rejected by the Competent Authority and the mere fact that the order of rejection was communicated to some of them after the issue of notification dated 8.8.2006 did not justify a conclusion that the acquisition proceedings were ultra vires the provisions of the 1956 Act. He submitted that the High Court should not have partially quashed notifications dated 10.8.2005 and 8.8.2006 by ignoring the fact that majority of the land owners have already received compensation and the acquired land had been utilised for the purpose specified in notification dated 10.8.2005.

16. Learned counsel for the respondents argued that the Division Bench of the High Court did not commit any error by quashing the acquisition proceedings because the Competent Authority had submitted report without deciding the objections filed by the respondents. Learned counsel further argued that the acquisition of the respondents' land vitiated due to mala fides because the original alignment of the proposed widening of the National Highways was changed to benefit those who have political connections and those who could otherwise pull strings in the power corridors. In support of his arguments, learned counsel invited our attention to site plans, annexures R-6 and R-7 filed with the counter affidavit before this Court. Learned counsel submitted that compliance of provision contained in Section 3C (2) of the 1956 Act is not an empty formality and the Competent Authority is required to objectively consider the objections filed by the land owners and decide the same by passing a speaking order. Learned counsel then assailed the rejection of the objections filed by the land owners on the ground that the Competent Authority had not recorded cogent reasons for refusing to entertain their plea that the proposed extension of the highways can be effectively done by using the parambok land.

17. We have considered the respective submissions. Sections 3A, 3C and 3D, which have bearing on this case, read as under:

"3A. Power to acquire land, etc.-

(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3C. Hearing of objection,-

(1) Any person interested in the land may, within twenty- one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation. - For the purposes of this sub-section, legal practitioner has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub- section (2) shall be final.

3D. Declaration of acquisition.-

(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A. (2) On the publication of the declaration under sub- section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land a notification has been published under subsection (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority."

3D

18. The scheme of acquisition enshrined in the above reproduced provisions makes it clear that once the Central Government is satisfied that any land is required for the building, maintenance, management or operation of a national highway or part thereof, then, it shall declare its intention to acquire such land by issuing a notification in the official Gazette giving brief description of the land. The substance of the notification is also required to be published in two local newspapers of which one has to be in a vernacular language. Any person interested in the land can file objection within 21 days from the date of publication of the notification in the official Gazette. Such objection is required to be made to the Competent Authority in writing. Thereafter, the Competent Authority is required to give the objector an opportunity of hearing either in person or through a legal practitioner. This exercise is to be followed by an order of the Competent Authority either allowing or rejecting the objections. Where no objection is made to the Competent Authority in terms of Section 3C(1) or where the objections made by the interested persons have been disallowed, the Competent Authority is required to submit a report to the Central Government, which shall then issue a notification in the official Gazette that the land should be acquired for the purpose or purposes mentioned in Section 3A(1). On publication of declaration under Section 3D(1), the land vests absolutely in the Central Government free from all encumbrances. Sub-section (3) of Section 3D provides that where no declaration under sub-section (1) is published within a period of one year from the date of publication of notification under Section 3A(1), the said notification shall cease to have any effect. By virtue of proviso to Section 3D(3), the period during which any action or proceeding taken in pursuance of notification issued under Section 3A(1) remains stayed by a Court shall be excluded while computing the period of one year specified in Section 3D(3).

19. In this case, notification dated 10.8.2005, which was published in the official Gazette of the same date and of which substance was published in two local newspapers, contained full description of the land proposed to be acquired for widening three National Highways. The names of the villages in which the land proposed to be acquired was situated, the survey numbers including sub-survey numbers, the nature, type and area of the land were also given in the schedule appended to the notification. Not only this, it was clearly mentioned that land plans and other details of the land are available in the office of the Competent Authority. This is the reason why none of the land owners (including the respondents) made any grievance that the notification issued under Section 3A(1) of the 1956 Act was vague or that due to lack of particulars/details, they were prevented from effectively exercising their right to file objections in terms of Section 3C(1). Of course, a grievance of this score was made in the objections dated 16.10.2006 filed by some of the land owners of Padavu Village, but that was clearly an afterthought and, in any case, the same did not require consideration because of non- adherence to the time schedule specified in Section 3C(1) of the 1956 Act.

20. The only reason assigned by the Division Bench of the High Court for upsetting the well considered order passed by the learned Single Judge negating the respondents' challenge to the acquisition was that declaration under Section 3D(1) was published even before communication of the decision taken by the Competent Authority in terms of Section 3C(2). The process of reasoning adopted by the Division Bench for recording its conclusion appears to have been influenced by an assumption that the objections filed by the land owners had not been decided till the issue of declaration under Section 3D(1). However, the fact of the matter is that the Competent Authority had, after giving opportunity of personal hearing to the objectors, passed order dated 11.10.2005

and rejected the objections. Though, that order was not crafted like a judicial order which is passed by a legally trained mind, the rejection of the representations made by the respondents cannot be faulted only on that ground. The Competent Authority did advert to the substance of objections, the details of which have been incorporated in Annexure P-3 filed before this Court. The concerned officer rejected the same by observing that the land proposed for acquisition is necessary for widening the existing National Highways into four lanes. If the consideration made by the Competent Authority is judged in the backdrop of the fact that a Special Purpose Vehicle was incorporated with the name New Mangalore Port Road Company Limited for implementation of the project known as New Mangalore Port Road Connectivity Project from Surathkal to Nantoor and B.C.Road to Padil along with bypass from Nantoor to Padil, it is not possible to castigate the proved reasons recorded by the Competent Authority for rejecting the objections.

21. The plea of the respondents that alignment of the proposed widening of National Highways was manipulated to suit the vested interests sounds attractive but lacks substance and merits rejection because except making a bald assertion, the respondents have neither given particulars of the persons sought to be favoured nor placed any material to prima facie prove that the execution of the project of widening the National Highways is actuated by mala fides and, in the absence of proper pleadings and material, neither the High Court could nor this Court can make a roving enquiry to fish out some material and draw a dubious conclusion that the decision and actions of the appellants are tainted by mala fides.

22. A somewhat similar question was considered in *Girias Investment Private Ltd. v. State of Karnataka* (supra). In that case, the acquisition of the land under the Karnataka Industrial Areas Development Act, 1966 was challenged on various grounds including the one that the acquisition was vitiated due to mala fides. While rejecting the plea of mala fides, the Court referred to *S.R. Venkataraman v. Union of India* (1979) 2 SCC 491, *State of Punjab v. Gurdial Singh* (1980) 2 SCC 471 and *Collector (D.M.) v. Raja Ram Jaiswal* (1985) 3 SCC 1 and observed:

"14. It is obvious from a reading of the pleadings quoted above that only vague allegations of mala fides have been levelled and that too without any basis. There can be two ways by which a case of mala fides can be made out; one that the action which is impugned has been taken with the specific object of damaging the interest of the party and, secondly, such action is aimed at helping some party which results in damage to the party alleging mala fides. It would be seen that there is no allegation whatsoever in the pleadings that the case falls within the first category but an inference of mala fides has been sought to be drawn in the course of a vague pleading that the change had been made to help certain important persons who would have lost their land under the original acquisition. These allegations have been replied to in the paragraph quoted above and reveal that the land which had been denotified belonged to those who had absolutely no position or power. In this view of the matter, the judgments cited by Mr Dave have absolutely no bearing on the facts of the case."

23. We may also refer to the Constitution Bench judgment in *E.P. Royappa v. State of Tamil Nadu and another* (1974) 4 SCC 3. In that case, the petitioner, who was transferred from the post of Chief Secretary and posted as Officer on Special Duty, challenged the action of government on various grounds including the one that the decision of the government was vitiated due to mala fides of the Chief Minister. This Court rejected the plea of mala fides by making the following observations:

"90. .... The petitioner set out in the petition various incidents in the course of administration where he crossed the path of the second respondent and incurred his wrath by inconvenient and uncompromising acts and notings and contended that the second respondent, therefore, nursed hostility and malus animus against the petitioner and it was for this reason and not on account of exigencies of administration that the petitioner was transferred from the post of Chief Secretary. The incidents referred to by the petitioner, if true, constituted gross acts of maladministration and the charge levelled against the second respondent was that because the petitioner in the course of his duties obstructed and thwarted the second respondent in these acts of maladministration, that the second respondent was annoyed with him and it was with a view to putting him out of the way and at the same time deflating him that the second respondent transferred him from the post of Chief Secretary. The transfer of the petitioner was, therefore, in mala fide exercise of power and accordingly invalid.

91. Now, when we examine this contention we must bear in mind two important considerations. In the first place, we must make it clear, despite a very strenuous argument to the contrary, that we are not called upon to investigate into acts of maladministration by the political Government headed by the second respondent. It is not within our province to embark on a far-flung inquiry into acts of commission and omission charged against the second respondent in the administration of the affairs of Tamil Nadu. That is not the scope of the inquiry before us and we must decline to enter upon any such inquiry. It is one thing to say that the second respondent was guilty of misrule and another to say that he had malus animus against the petitioner which was the operative cause of the displacement of the petitioner from the post of Chief Secretary. We are concerned only with the latter limited issue, not with the former popular issue. We cannot permit the petitioner to side track the issue and escape the burden of establishing hostility and malus animus on the part of the second respondent by diverting our attention to incidents of suspicious exercise of executive power. That would be nothing short of drawing a red herring across the trail. The only question before us is whether the action taken by the respondents includes any component of mala fides; whether hostility and malus animus against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof

of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up

--these considerations are wholly irrelevant in judicial approach--but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent."

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.

25. In the result, the appeals are allowed, the impugned judgment is set aside and the order passed by the learned Single Judge dismissing the objections filed by the respondents is restored.

.....J.

(G.S. Singhvi) .....J.

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Union Of India vs Kushala Shetty & Ors on 21 February, 2011

(Asok Kumar Ganguly) New Delhi, February 21, 2011.

R-9 (35)

The National Highways Authority ... vs Pandarinathan Govindarajulu on 19 January, 2021

Supreme Court of India

The National Highways Authority ... vs Pandarinathan Govindarajulu on 19 January, 2021

Author: L. Nageswara Rao

Bench: Hon'ble The Justice, L. Nageswara Rao, Vineet Saran

Non-Reportable

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 4035-4037 of 2020

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA

.... Appellant(s)

Versus

PANDARINATHAN GOVINDARAJULU & ANR.

. Respondent (s)

JUDGMENT

L. NAGESWARA RAO, J.

1. The dispute in these appeals pertains to the environmental clearance for expansion of National Highway 45-A between Villuppuram to Nagapattinam. The High Court held that it is necessary. The Appellant disagrees. Hence, these appeals.

Signature Not Verified Digitally signed by Madhu Bala

2. The project of widening and improvement of the Date: 2021.01.19 16:17:07 IST Reason:

existing 4-laning carriage way in the State of Tamil Nadu 1 | Page and the Union Territory of Puducherry, from Villuppuram to Nagapattinam was bifurcated into four packages, which are as follows:

i. Villuppuram to Puducherry (29.000 kms) Package I. ii. Puducherry to Poondiankuppam (38.00 kms) Package II.

iii. Poondiankuppam to Sattanathapuram (56.800 kms) Package III.

iv. Sattanathapuram to Nagapattinam (55.755 kms) Package IV.

3. Approval was granted by the Competent Authority, i.e. Special District Revenue Officer (Land Acquisition), National Highways No. 45-A in March, 2018 and agreements were entered into

between the Appellant and the concessionaires. Process was initiated for acquisition of lands required for the project. Writ Petitions were filed in the High Court of Madras by certain aggrieved farmers and public interest litigants questioning the commencement of the project without obtaining environmental clearance. The High Court 2 | Page allowed the Writ Petitions and issued the following directions:

a. The present project of expansion of NH-45A covering a stretch of 179.555 k.m. shall be put on hold, and the present status quo is directed to be maintained. b. That the project proponent (NHAI) shall undertake an EIA study and obtain environmental clearance. c. The NHAI is also directed to obtain approval from CRZMA for CRZ clearance for two locations that it has indicated in its counter in W.P.15217/2019.

d. Once the necessary clearances are obtained as mentioned in (b) and (c) above, the project can proceed. If the EIA study to be undertaken provides any contra-indicators to the NHAI's plan of development of NH-45A, it will be at liberty to make necessary alterations and modifications to make the project environmental viable.

e. If after ensuring the environmental viability of the project, its implementation resumes, the project proponent, and subject to the terms of the contract, the concessionaire, should first identify the places for planting the saplings of the same variety, preferably native-trees, for every tree felled, and it must be grown first. Possibility of forming a Miyawaki forest has to be explored as well. f. This Court proposes to form a committee to monitor the compliance of the direction given in (e) above, and hence, before resumption of the project, NHAI is required to approach this Court.

4. Section 3 of the Environment (Protection) Act, 1986 empowers the Central Government to take all such measures for the purpose of protecting and improving the quality of the environment and preventing, 3 | Page controlling and abating environmental pollution. One of the measures provided in Section 3 (2) (v) is restriction of areas in which any industries, operations or processes or class of industries shall not be carried out or shall be carried out subject to certain safeguards. The Environment (Protection) Rules, 1986 were made in exercise of power conferred by Sections 6 and 25 of the Environment (Protection) Act, 1986. According to Rule 5, the Central Government may prohibit or restrict the location of industries and the carrying on of processes and operations in different areas.

5. In exercise of the power conferred on the Central Government by Sub-Clause (i) and Clause (v) of Sub- Section (2) of Section 3 of the Environment (Protection) Act, 1986 read with Clause (b) of Sub rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Ministry of Environment and Forests, Government of India issued a Notification on 14.09.2006 directing construction of new projects or activities or the expansion or modernisation of existing projects or activities listed under the Schedule to the Notification shall be undertaken only 4 | Page after prior environmental clearance from the Central Government or the State Level Environment Impact Assessment Authority. Clause 2 of the said Notification provides that new projects or expansion and modernisation of existing projects listed under the Schedule to the Notification require prior environmental clearance from the concerned regulatory authority. The Schedule to the Notification

includes Highways at Item No.7 (f). New National Highways and expansion of National Highways greater than 30 kms involving additional right of way greater than 20 meters or land acquisition and passing through more than one State, require prior environmental clearance. A high-level Committee headed by Member (Environment and Forests, Science and Technology), Planning Commission was constituted by the Ministry of Environment and Forests to review the provisions of the Environmental Impact Assessment Notification dated 14.09.2006 pertaining to environmental clearance for roads, buildings and Special Economic Zone projects. One of the terms of the reference for the Committee was to 5 | Page review the requirement of environmental clearance for Highways expansion projects with a right of way up to 60 meters and length of 200 km. The Committee submitted its report recommending that expansion of National Highways projects up to 100 km involving additional right of way or land acquisition up to 40 meters on existing alignments and 60 meters on realignments or by passes may be exempted from the purview of the Notification. The report of the Committee was accepted and Item 7 (f) in column (3) to the Notification dated 14.09.2006 was substituted as follows: expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40 meters on existing alignments and 60 meters on realignments or by passes.

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 Bharatmala Pariyojana project. Admittedly, no environmental impact assessment was undertaken. The Appellant stated in the counter 6 | Page 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 7 | Page 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.

8. A statutory rule or Notification is to be treated as a part of the statute<sup>1</sup>. Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act, are to be of the same effect as if they are contained in the Act, and are to be judicially noticed for

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all purposes of construction or obligation<sup>2</sup>. The principles of interpretation of subordinate legislation are applicable to the interpretation of statutory Notifications<sup>3</sup>. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those 1 State of Tamil Nadu v. Hind Stone, (1982) 2 SCC 205 2 The State of Uttar Pradesh and Ors v. Babu Ram Upadhyaya 1961 SCR (2) 679 3 Bansal Wire Industries Ltd. v. State of U.P., (2011) 6 SCC 545 8 | Page words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law-giver<sup>4</sup>.

9. It has been repeatedly held by this Court that where there is no ambiguity in the words, literal meaning has to be applied, which is the golden rule of interpretation. The words of a statute must prima facie be given their ordinary meaning<sup>5</sup>.

10. In the current case, there is no ambiguity or scope for two interpretations. On a plain reading of Item 7 (f) of the Notification dated 22.08.2013, we adopt the golden rule of interpretation to hold that there is no requirement of prior environmental clearance for expansion of a National Highway project merely because the distance is greater than 100 km. The project proponent is obligated to obtain prior environmental clearance only the additional right of way or land acquisition is greater than 40 meters on existing alignments and 60 meters on realignments or by passes<sup>4</sup> (1843-60) All ER Rep 55, Sussex Peerage case<sup>5</sup> Dental Council of India v. Hari Prakash, (2001) 8 SCC 61 and Harbhajan Singh v. Press Council of India, (2002) 3 SCC 722 9 | Page for a National Highway project which is greater than 100 km.

11. It is a cardinal principle of interpretation that full effect has to be given to every word of the Notification<sup>6</sup>. Interpreting the Notification dated 22.08.2013 to mean that every expansion of National Highway which is greater than 100 km requires prior environmental clearance would be making the other words in Item 7 (f) redundant and otiose.

12. The learned Attorney General of India relied upon a judgment of this Court in CIT v. Surat Art Silk Cloth Manufacturers Association<sup>7</sup> to highlight the importance of the word involving in Item 7 (f) of the Notification in which it was held as follows:

15. We must then proceed to consider what is the meaning of the requirement that where the purpose of a trust or institution is advancement of an object of general public utility, such purpose must not involve the carrying on of any activity for profit. The question that is necessary to be asked for this purpose is as to when can the purpose of a trust or institution be said to involve the carrying on of any activity for profit. The word involve according to the Shorter Oxford Dictionary means to enwrap in anything, to enfold or<sup>6</sup> South Central Railway Employees Coop. Credit Society Employees Union v. Registrar of Coop. Societies. (1998) 2 SCC 580 And Bansal Wire Industries Ltd. v. State of U.P., (2011) 6 SCC 545 7 (1980) 2 SCC 31 10 | Page envelop; to contain or imply. The activity for profit must, therefore, be intertwined or wrapped up with or implied in the purpose of the trust or institution or in other words it must be an integral part of such purpose. ...

33. ... The word involving in the restrictive clause is not without significance. An activity is involved in the advancement of an object when it is enwrapped or enveloped in the activity of advancement. In another case, it may be interwoven into the activity of advancement, so that the resulting activity has a dual nature or is twin faceted. ...

13. We find force in the submissions made by the learned Attorney General that the word involving is of significance because in the absence of the requirement of an additional right of way or land acquisition greater than 40 meters on existing alignments and 60 meters on realignments or by passes, the expansion of National Highways which are greater than 100 km per se does not require prior environmental clearance.

14. It is submitted on behalf of the Ministry of Environment, Forest and Climate Change, Government of India that environmental clearance is necessary only if the expansion project pertains to a National Highway which is greater than 100 km and involves additional 11 | P a g e right of way or land acquisition greater than 40 meters on existing alignments and 60 meters on realignments or by passes. In case of a doubt, the interpretation of the author of the Notification has to be accepted. Ergo, the opinion of the author of the notification i.e. the Ministry of Environment, Forest and Climate Change deserves to be accepted.

15. A conspectus of the above discussion leads to the unerring conclusion that there is no ambiguity in Item 7

(f) of the Schedule to the Notification that prior environmental clearance is required for expansion of a National Highway project only if:

(a) The National Highway is greater than 100 kms.

(b) The additional right of way or land acquisition is greater than 40 meters on existing alignments and 60 meters on realignments and by passes.

16. In view of the bifurcation of the National Highway 45-A into four packages and each package being less than 100 km, the Appellant contended before the High Court that the Notifications dated 14.09.2006 and 22.08.2013 are not applicable. Seeking support from a judgment of the United States District Court for the 8 Silppi Construction Contractors v. Union of India, 2019 SCC OnLine SC 1133 12 | P a g e Southern District of Indiana in Old Town Neighborhood Association v. Kauffman,<sup>9</sup> and a judgment of the European Court of Justice in Commission of the European Communities v. Kingdom of Spain<sup>10</sup>, the High Court held that segmentation of a project as a strategy to avoid environmental clearance is impermissible. The High Court also relied upon a judgment of this Court in Deepak Kumar v. State of Haryana <sup>11</sup> and a judgment of the National Green Tribunal in Citizens for Green Doon v. Union of India<sup>12</sup> to reject the contention of the Appellants that the division of the project into four packages is for administrative expediencies. According to the High Court, if segmentation of National Highway projects is permitted, the Notifications dated 14.09.2006 and 22.08.2013 would become a dead letter as every National

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Highway beyond 100 km can be divided into packages to avoid environmental clearance.

17. It was submitted by the learned Attorney General that the division of the project was done by the 9 (S.D. Ind. 2002), Case No. 1:02-cv-1505-DFH. 10 Case C-227/01.

11 (2012) 4 SCC 629 12 2018 SCC OnLine NGT 1777 13 | Page Government of India and the National Highways Authority is only an executing agency. He stated that the proposed project is of great importance to the movement of public goods and services for which reason, speedy execution was required. It would be difficult to get one concessionaire with necessary finances to mobilise required machineries, construction material and human resources for the entire length of 179.555 km. He laid stress on the point that the project was divided into four packages in public interest.

18. While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. 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<sup>13</sup>. The traditional concept<sup>13</sup> Indian Council for Enviro-Legal Action v. Union of India [(1996) 5 SCC 281] 14 | Page that development and ecology are opposed to each other is no longer acceptable<sup>14</sup>.

19. Apart from providing smooth flow of public goods and services which contribute to the economic growth, highways also benefit regional development in the country. In the normal course, impediments should not be created in the matter of National Highways which provide the much-needed transportation infrastructure. At the same time, protection of environment is important. The Notification dated 22.08.2013 exempts a National Highway, the distance of which is less than 100 km from obtaining environmental clearance. If the project proponent is permitted to divide projects having a distance beyond 100 km into packages which are less than 100 km, the Notifications dated 14.09.2006 and 22.08.2013 will be rendered redundant. In that event, administrative exigencies and speedy completion will be a ground taken for justifying the segmentation of every project. Therefore, we are in agreement with the High Court that segmentation as a strategy is not permissible<sup>14</sup> Vellore Citizens' Welfare Forum v. Union of India [(1996) 5 SCC 647] 15 | Page for evading environmental clearance as per Notifications dated 14.09.2006 and 22.08.2013.

20. Having held that adoption of segmentation of a project cannot be adopted as a strategy to avoid environmental clearance impact assessment, the question that arises is whether segmentation of a National Highway beyond 100 kms is impermissible under any circumstance. As we lack the expertise of deciding upon this issue, we are of the considered view that an expert committee should examine the permissibility of segregation. After the issuance of a Notification dated 14.09.2006 requiring environmental clearance for new projects and expansion of the existing projects, a High-Level Committee was constituted by the Government of India to review the environmental clearances for Highway expansion projects. As per the Notification dated 14.09.2006, environmental clearance was required for new National Highway and expansion of National

Highways greater than 30 kms involving additional right of way greater than 20 meters and passing through more than one State. One of the terms 16 | Page of the reference to the High-Level Committee was to review the requirement of environmental clearance for Highway expansion projects beyond a distance of 200 kms up to the right of way of 60 meters. The High-Level Committee recommended that environmental clearance would be required for expansion of National Highway projects beyond a distance of 100 kms and if the additional right of way or land acquisition is more than 40 meters on existing alignments and 60 meters on realignments or by passes. The said recommendation was accepted by the Government of India and the Notification dated 22.08.2013 was issued, amending the Notification dated 14.09.2006. As the question of permissibility of the segmentation of a National Highway beyond a distance of 100 kms is a matter to be considered by experts, it would be necessary for a committee to be constituted by the Government of India to decide whether segmentation of a National Highway project beyond a distance of 100 kms is permissible. If it is permissible, the circumstances under which 17 | Page segmentation can be done also requires to be examined by the expert committee.

21. Mr. A. Yogeshwaran, learned counsel appearing for the first Respondent submitted that the toll plazas proposed to be erected on the National Highways should be within the permissible limits specified in the Notification dated 22.08.2013. In the note of submissions made by the learned Attorney General, reference has been made to the definition of Right of way placing reliance on Para 2.3 of the Manual of Specifications and Standards for Two-Laning of Highways through Public Private Partnership issued by the Planning Commission of India. Right of way as per the said Manual is the total land width required for the project Highway to accommodate road way (carriage way and shoulders) side drains, service roads, tree plantation, utilities etc. In the written submissions filed on behalf of the Appellant, it has been stated that the right of way not being greater than 40 meters on existing alignments and 60 meters on realignments or by passes, applies only to construction of road and is not applicable for other road amenities or facilities such as toll plazas.

18 | Page However, the Appellant has also stated in the Written submissions that if this Court is not agreeable to the above proposition, it is willing to limit the construction of toll plazas and rest areas within the permissible limits.

22. Section 10 of the Manual of Specifications & Standards for Two Laning of Highways through Public Private Partnership, issued by the Planning Commission of India deals with toll plazas. Figure 10.1 which shows the general lay out of a 2+2 lane toll plazas is as follows:

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23. A bare perusal of the above figure shows that toll plazas are included in the right of way. The aforementioned Manual issued by the Planning Commission of India has been relied upon by the Appellant to highlight the definition of the expression right of way. However, it was contended on behalf of the Appellant that amenities such as toll plazas and rest houses cannot be part of the right of way. In other words, the Appellant contended that toll plazas and rest houses can be set up beyond the limit specified in the Notification dated 22.08.2013. We do not agree. As Para 2.3 of the

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aforementioned Manual makes it clear that right of way is the total land width required for the project Highway to accommodate right of way, side drains, service roads, tree plantations, utilities etc., toll plazas and rest houses should be included in the right of way.

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 21 | P a g e 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.

26. On the basis of the above discussion, we set aside the judgment of the High Court and issue the following directions:

1. There is no requirement for obtaining environmental clearances for NH 45-A Villuppuram -

22 | P a g e Nagapattinam Highway as land acquisition is not more than 40 meters on existing alignments and 60 meters on realignments or by passes.

2. The Appellant is directed to strictly conform to the Notification dated 14.09.2006 as amended by the Notification dated 22.08.2013 in the matter of acquisition of land being restricted to 40 meters on the existing alignments and 60 meters on realignments.

3. The Ministry of Environment, Forest and Climate Change, Government of India shall constitute an Expert Committee to examine whether segmentation is permissible for National Highway projects beyond a distance of 100 kms and, if permissible, under what circumstances.

4. The Appellant is directed to fulfil the requirement of reforestation in accordance with the existing legal regime.

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27. The Appeals are allowed accordingly.

.....J.

[L. NAGESWARA RAO] .....J.

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The National Highways Authority ... vs Pandarinathan Govindarajulu on 19 January, 2021

[HEMANT GUPTA] .....J.

[AJAY RASTOGI] New Delhi, January 19, 2021.

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BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI

Original Application No. 241 of 2020 (SZ)

*(Through Video Conference)*

IN THE MATTER OF

1. Mohammed Jishar, aged 42 years,  
S/o, Hamza  
Residing at Pulikkal House,  
Veliancode P.O,  
Malappuram District,  
Kerala - 679 579.
2. Beena K.D, aged 43 years,  
W/o Das P K,  
Residing at Puthnvettil House,  
Valappadu P.O,  
Anamizhungi, Thrissur District,  
Kerala.
3. K.S. Azkariya, aged 48 years,  
S/o, K.M. Saidu Muhammed,  
Kalappurakkal, Cheranelloor P.O, Kochi,  
Ernakulam District,  
Kerala - 682 034.

...Applicant(s)

Versus

1. Union of India represented by the Secretary,  
Ministry of Environment, Forests & Climate Change,  
India Paryavaran Bhavan, Jor Bagh,  
New Delhi - 110 003.
2. Ministry of Road Transport & Highways,  
Transport Bhawan, 1, Parliament Street,  
New Delhi - 110 001.  
Represented by the Secretary.
3. The National Highways Authority of India,  
G-586, Sector 10,  
Dwaraka,  
New Delhi - 110 075.  
Represented by the Chairman.
4. The Project Director,  
National Highways Authority of India,

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VII/511 B, Neithell - Mavelipuram Road,  
Mavelipuram, Kakknad,  
Ernakulum - 682 030.

5. The State of Kerala,  
Represented by the Secretary,  
Public Works Department,  
Government of Kerala,  
Thiruvananthapuram - 695 001.

...Respondent(s)

**Date of Judgment: 25.05.2022.**

**CORAM:**

**HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER**  
**HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER**

**For Applicant(s):**

Mr. Harish Vasudevan

**For Respondent(s):**

Mrs. M. Sumathi for R1  
Mrs. M. Sumathi represented  
Mr. Su. Srinivasan for R3 & R4  
Mr. G. Prabhu represented  
Mr. E.K. Kumaresan for R5

### JUDGMENT

1. As per order dated 14.09.2021, this Tribunal had considered the supplementary report submitted by the Joint Committee and also directed the applicant to take steps to complete the service on second respondent.
2. Even on certain occasions, there was no representation for the applicant and the direction issued by this Tribunal has not been complied with.
3. The grievance in this application was regarding the construction activities of National Highway No. 66 carried out by the Respondents No. 3 & 4 for the stretch of National Highway Ramanattukara-Edapally Section in Ernakulam District. The project covers around 167 kilometres, but in fact as per the EIA Notification, 2006, it will be falling under 'Category A' and without conducting proper Environment Impact Assessment and getting Environmental Clearance, they could not proceed with the same. The 2<sup>nd</sup> respondent had made arrangements and issued notifications under National Highways Act, 1956 during February 2020, for the purpose of acquisition of land as per Annexure A1 notification dated, 12.02.2020.

4. The authorities were now trying to widen the road without getting prior Environmental Clearance. According to the applicant, this is against the Dictum laid down in the decision reported in *Society for Protection of Environment and Biodiversity Vs Union of India and others in O.A. No. 677 of 2016, the Principal Bench of National Green Tribunal, New Delhi P.V. Krishnamoorthy Vs The Government of India & Others in (WPC No. 16630 of 2018) in connected matters, Pandarinathan Govindarajulu Vs union of India & Others, of Hon'ble Madras High Court, Research Foundation for Science Technology and Natural Resource Policy Vs. Union of India reported in AIR 2007 Sc (Supp) 852, A.P. Pollution Control Board Vs. Prof. M.V. Nayudu and Others (1999)1SCR235.*
5. According to the applicant the respondents were making ingenious method of reducing the length of widening portions in piecemeal, so as to avoid the process of undergoing obtaining Environmental Clearance. So the applicant filed this application seeking the following reliefs:
- i) *Declare that the obtaining of prior Environmental Clearance from the 1<sup>st</sup> respondent is a pre-requisite for the construction/development/widening of the National Highway-66 from Ramanattukara to Edappally.*
  - ii) *Restrain the Respondents No. 2 to 5 from carrying any action for the implementation of the project of construction/development/widening of the National Highway-66 from Ramanattukara to Edappally without obtaining prior Environmental Clearance from the 1<sup>st</sup> respondent;*
6. This Tribunal had appointed a Joint Committee comprising of **1)** a Senior Officer from Ministry of Environment, Forests and Climate Change, (MoEF&CC) Regional Office, Bangalore and **2)** a Senior Officer deputed by the National Highway Authority of India, Regional Office, Thiruvananthapuram, Kerala to inspect the area in question and to file a factual as well as action report, if there is any violation found.
7. The committee was directed to ascertain as to:
- i) Whether prior environmental clearance was required for the purpose of carrying out the project in question,
  - ii) Whether if such projects are allowed to continue in piecemeal with ultimate aim of completing the entire stretch without conducting any prior environmental impact assessment and obtaining prior Environment Clearance, will it have any impact on environment.
  - iii) Even if the project had to continue what are all the

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precautions to be taken by them to avoid the possible environmental impact of such project.

iv) If there was any violation found, the committee was also directed to assess the environment damage caused on account of such violation and assess the environmental compensation to be recovered from the National Highways Authority of India.

8. The Ministry of Environmental, Forests and Climate Change (MoEF&CC), Regional Office, Bangalore was designated as the nodal agency for co-ordination and for providing all necessary logistics for this purpose.
9. The First respondent/Ministry of Environment, Forests and Climate Change had filed their counter affidavit contending that the project was widening of National Highway 66 in the Kapplrikkad-Edappally section in Ernakulum and Malappuram District. The Section was part of the Ramanattukara - Edapally section covering a stretch of 167 Km involving land acquisition and with additional right of way greater than 45 meters is the allegation made in the application. As per the provisions of the EIA Notification 2006, they will have to obtain Environmental Clearance (EC) in respect of certain categories enumerated therein.
10. As regards, the Highway projects are concerned, that will fall under entry 7(f) of the Schedule of EIA Notification 2006 which reads as follows:-

	Project or Activity	Category with threshold limit		Conditions if any
		A	B	
(1)	(2)	(3)	(4)	(5)
		<b>Physical Infrastructure including Environmental Services</b>		
7(f)	Highways	i) New National Highways; and ii) Expansion of National Highways greater than 30 KM. involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	i) All New State Highways projects; ii) State Highway expansion projects in hilly terrain (above 1000 m AMSL) and/or ecologically sensitive areas	General Condition shall Apply  Note: Highways include Expressways

- 11. As per the amended Notification, New National Highways and expansion of National Highways greater than 30 Km, involving additional right of way or land acquisition greater than 20 Km involving land acquisition or passing through more than one state was listed in the Schedule 7 (f) of the EIA Notification, 2006 and only in such cases they will have to obtain prior Environmental Clearance (EC).
- 12. Further as per the amended Notification, namely, S.O. 2559(E) dated 22.08.2013. *"Expansion of National ways greater than 100 Km involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes alone require prior Environmental Clearance"*.
- 13. They have also given certain regulatory mechanism which National Highways Authority has to follow the guidelines issued by the Ministry of Road Transport & Highways (MoRTH)/IRC from time to time which reads as follows:-

- i. RC-104-1988 Guidelines for Environmental Impact
- ii. IRC -SP-2009 : Guidelines on Landscaping and Tree Plantation (IRC:SP-21-2009)
- iii. MoRTH – Environment Management Framework - A Guidance Document to deal with Environmental Issues during Planning, Design and Construction of Roads Under the Project - 30/11/2019 (Draft).

- 14. The projects which do not fall under the purview of the EIA Notification, 2006 and its amendments had to obtain necessary clearances from the various departments for the following activities:-

- i. Tree cutting permission from appropriate authority for forest and non-forest area as per prevailing laws;
- ii. Consent to Establish and Consent to Operate for construction

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- Machineries from State Pollution Control Board under Air Act, 1981 (amended thereof) and Water Act, 1974 (amended thereof);
- iii. NOC from appropriate authority for setting up the construction camps;
  - iv. Permission from ground water authority for withdrawing / abstracting any ground water;
  - v. Permission from the Irrigation dept. for abstraction of water from surface sources;
  - vi. Permission from mining dept. / appropriate authority for procurement of aggregates, sands and borrow area;
  - vii. Clearance for diversion forest land under Forest Conservation Act, 1980;
  - viii. Wildlife clearance for stretches passing through protected areas under wildlife Protection Act, 1972;
  - ix. Permission from State Board of Wildlife (SBWL) and National Board of Wildlife (NBWL) for crossing any tiger corridor notified in section 38 O(1g) under Wildlife Conservation Act, 1972;
  - x. Permission from SBWL and NBWL for crossing conservation reserve notified under Wildlife Protection Act, 1972;
  - xi. CRZ clearance for CRZ area falling in the project alignment;
  - xii. social Impact Assessment Study as per applicable provisions of LARR, 2013.

15. In the matter of SLP (C) No. 8665 - 8667 of 2020 titled as "The National Highways Authority of India vs. Pandarinathan Govindarajulu & Others. The Hon'ble Apex Court had directed Ministry of Environment, Forests and Climate Change (MoEF&CC) to constitute an Expert Committee to examine "whether segmentation is permissible for national Highways projects beyond a distance of 100 Kms and, if permissible, under what circumstances".
16. The Ministry vide OM No. F. No. 3-65/2020/IA, III dated 15<sup>th</sup> march, 2021 had constituted the said Committee. The report is under finalization. So, they prayed for accepting their contentions and passing appropriate orders.
17. The Joint Committee had filed an Interim report which reads as follows:-

2. COMPOSITION OF THE JOINT COMMITTEE

In compliance of above-mentioned order, the Integrated Regional Office, Ministry of Environment, Forest and Climate Change (MoEF & CC), Bangalore, vide letter No F. No. EP / 12.7 / NGT/66/KER/ dated 20.11.2020 has requested the NHAI, Kerala to nominate a Senior official for the Committee to complete the task as assigned by the Hon'ble NGT. On receipt of the nomination, following Committee has been constituted:

Sl. No.	Name and Designation	Organization/ Department
1.	Sh. J. Balaiahnder General Manager (P) & Project Director	National Highway Authority of India, Regional Office, Project Implementing Unit, Cochin, Kerala.
2.	Dr. S. Prabhu Scientist - C	Ministry of Environment, Forest and Climate Change (MoEF&CC), Integrated Regional Office (IRO), Bangalore.

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3. BRIEF ABOUT THE PROJECT:

According to NHAI, the National Highway 66, commonly referred to as NH 66 (erstwhile NH-17 and a part of NH-47), is a busy National Highway that runs north-south along the western coast of India, parallel to the Western Ghats. It connects Panvel (a city south of Mumbai) to Cape Comorin (Kanyakumari), passing through the states of Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu.

The project has been entrusted to the DPR consultant M/s. Feedback Infra Project Pvt. Ltd for preparation of Detailed project Report from Ramanattukara, Kozhikode District to Edappally in Ernakulam District. NHAI officials informed that the total stretch from Ramanattukara to Edappally is 194.200 Km, for viability, the project has been divided in to

Table 1. Details of the Project:

Sl. No.	Name of Stretches	Chainage		Length in Km	Existing ROW in m	Additional RoW /land acquisition in m	Status of the Project
		From	To				
1	6 - laning of Ramanattukara to Valancherry	258+800	298+500	39.700	7 m to 45 m	0 m to 38 m	Bids Invited
2	6 - laning of Valancherry to Kappirikkad	298+500	335+850	37.350			Bids Invited
3	6 - laning of Kappirikkad to Thalikulam	335+850	369+015	33.165			Bids Invited
4	6 - laning of Thalikulam to Kodungallur	369+015	397+850	28.835			Bids Invited
5	6 - laning of Kodungallur to Edappally	397+850	423+000	25.150			Under bidding process
Total Length in KM				194.200			

Table 2. Details of the Various Bypasses:

Sl. No.	Bypass Location	Existing Chainage		Design Chainage		Length in Km	Proposed RoW	Project
		From	To	From	To			
1	Kottakkal	290.070	295.225	285+300	289+720	4.420	45 m	Ramanattukara to Valanchery
2	Valanchery	306.150	311.330	300+400	304+580	4.180		Valanchery to Kappirikkad
3	Chavakkad	363.140	365.600	349+800	351+840	2.040		Kappirikkad to Thalikulam
4	Vadanapally	374.580	380.315	360+880	367+030	6.150		Thalikulam to Kodungallur
5	Thriprayar Bypass	383.680	387.340	370+400	374+100	3.700		
6	Chentrapim Bypass	389.900	392.100	376+650	378+640	1.990		
7	Moonmupeedika Bypass	395.140	397.350	381+680	384+320	2.640		
8	Mathilakam Bypass	398.450	403.200	385+240	390+020	4.780		
9	North Paravoor Bypass	413.400	422.980	400+410	407+930	7.520		Kodungallur to Edappally

Further, the joint committee noted that Existing road carriage width is 7 meters and the existing Right of Way (RoW) is varying from 7 meter to 45 meter. The proposed RoW for 6 lane configurations is 45 meters with additional land acquisition varying from zero meter to 38 meters and it is also assured that in Bypasses as well realignment section the maximum width of land acquisition is 45 m.

#### 4. STATUTORY CLEARANCES FROM VARIOUS RELEVANT AGENCIES

4.1 Approval from State Government of Kerala: The feasibility study of the alignment has been conducted by M/s. Feedback Infra Pvt Ltd and the alignment report for all above projects were tentatively submitted to NHAI by M/s. Feedback Infra Pvt. Ltd adhering to the relevant technical standards/ specifications which was subsequently presented before the representatives of the people in the presence of the district administration. Accordingly, the draft alignment was finalized tentatively and was submitted for the approval of the Govt. of Kerala. The Govt. of Kerala has subsequently approved the alignment and based on the recommendation of Govt. of Kerala the alignment was finally approved by NHAI/ Ministry of Road Transport and Highways (MoRTH).

Alignment of all above stretches attracts CRZ Notification and according to NHAI, the CRZ maps are getting prepared through National Centre for Earth Science Studies (NCESS), Thiruvananthapuram for obtaining CRZ clearance. Further, there is no protected / Reserve Forest area in the alignment of above projects.

#### 5. CURRENT STATUS OF THE PROJECT:

All the stretches are under bidding stage (bidding invited for four projects and one is under bidding process). The Joint Committee visited the entire stretch from Edapally, Ernakulam District to Ramanattukara, Kozhikode District on 28<sup>th</sup> - 29<sup>th</sup> December, 2020 and observed that no work at the site has been started.

#### 6. DELIBERATIONS OF THE JOINT COMMITTEE

Hon'ble National Green Tribunal in the order dated 11.11.2020 directed the Joint committee to look into the following:

- i. *Whether there is any violation of any environmental laws in carrying out the project committed by the National Highway Authority?*
- ii. *Whether prior environmental clearance is required for the purpose of carrying out the project in question and whether if such projects are allowed to continue in piecemeal with ultimate aim of completing the entire stretch without conducting any prior environmental impact assessment and obtaining prior Environment Clearance, will it have any impact on environment?*
- iii. *Even if the project has to continue what are all the precautions to be taken by them to avoid the possible environmental impact of such project. If there is any violation found, the committee is also directed to assess the environment damage caused on account of such violation and assess the environmental compensation to be recovered from the National Highway Authority of India?*

In order to deliberate on the above given Terms of References (ToR), the Committee, inspected the entire stretch of the project, had examined relevant Detailed projects Reports (DPR), Regulations, Judgements etc,. Based on the above, each ToR has been deliberated in detail and following are the observations/comments:

6.1 Whether prior environmental clearance is required for the purpose of carrying out the project in question and whether if such projects are allowed to continue in piecemeal with ultimate aim of completing the entire stretch without conducting any prior environmental impact assessment and obtaining prior Environment Clearance, will it have any impact on environment?

As per the EIA Notification, 2006; Highways are covered under entry 7(f) of the Schedule to the EIA Notification, 2006. The entry 7(f) of the Schedule of EIA Notification 2006 provides as follows:

(1)	Project or Activity (2)	Category with threshold limit		Conditions if any (5)
		A (3)	B (4)	
7		Physical Infrastructure including Environmental Services		
7(f)	Highways	i) New National Highways; and  ii) Expansion of National Highways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	i) All New State Highwaysprojects ;  ii) State Highway expansion projects in hilly terrain (above 1000 m AMSL) and/or ecologically sensitive areas	General Condition shall Apply  Note: Highways include Expressways

Further, the Ministry has issued an amendment Notification S.O. 2559(E) dated 22.08.2013. The amended provision reads as follows.

“b) in the Schedule, against sub-item (f) of item 7, in column (3), for the entry (ii) the following entry shall be substituted namely:-

(ii) Expansion of National Highways greater than 100 Km involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes.”

A copy of the amendment notification dated 22.08.2013 is annexed herewith as Annexure - R2.

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Further, joint committee has noted that as per the judgment of Hon'ble Supreme Court in Civil Appeal Nos. 4035-4037 of 2020 order dated 19<sup>th</sup> January, 2021 (The National Highways Authority of India vs Pandarinathan Govindrajulu & Anr) "There is no requirement for obtaining environmental clearances for NH 45-A Villuppuram - Nagapattinam Highway as land acquisition is not more than 40 meters on existing alignments and 60 meters on realignments or by passes". Judgment copy is annexed herewith as Annexure - R3.

In view of above, only such project which meets both the conditions, i.e., threshold length of the highway and envisaged expansion width (RoW or land acquisition) of the highway, would require a prior EC.

In this case, it is noted that combined length of the Highway including all the stretches are more than 100 km, however, the envisaged additional ROW is less than 40 m (38 m) and ROW in bypasses are also less than 60 m (45 m).

Based on the above, the Joint Committee concluded that the proposed project does not require Environmental Clearance (EC) even though all stretches are considered as one project.

6.2 Whether there is any violation of any environmental laws in carrying out the project committed by the National Highway Authority?

As observed during site visit by the Joint Committee, no work at the site has been started. Therefore, the joint committee has not found any kind of violation of environmental law.

6.3 Even if the project has to continue what are all the precautions to be taken by them to avoid the possible environmental impact of such project. If there is any violation found, the committee is also directed to assess the environment damage caused on account of such violation and assess the environmental compensation to be recovered from the National Highway Authority of India?

During the visit, the committee has not found any violation related to environment. Therefore, the committee has not calculated environmental compensation.

Further, the committee recommends following precautionary measures to prevent the possible environmental impact by such projects.

- i. Necessary prior permission shall be obtained for cutting of trees from the Competent Authority. Compensatory afforestation shall be carried out as required and the regulations and regular supervision /monitoring to carried out to ensure higher survival rate.
- ii. The hot mix plant shall be located away from the habitational / School/ Hospital areas
- iii. The vehicle used for transportation of raw materials shall be properly covered to control dust as well as spillage on the route.
- iv. Frequent water spraying shall be carried out to control dust during the laying of road.
- v. Rainwater harvesting including oil and grease trap shall be provided. Water harvesting structures shall be located at every 500 mts along the road. Vertical drain type rainwater harvesting structures shall be set up to minimize surface runoff losses of rainwater.
- vi. The PA shall ensure that the widening of road/laying of bypasses should not alter the natural drainage pattern of the area, also to ensure that any dumping in water /river course/CRZ area be prevented.
- vii. PA should take adequate care to prevent damage and destruction of mangroves.
- viii. The material required for the project shall be sourced only through the authorized vendors.
- ix. Adequate number of underpasses shall be provided in the habitation areas.
- x. No horn zone shall be delineated, and sign boards placed clearly at habitation / School/ Hospital areas.

7. CONCLUSION AND RECOMMENDATION:

The Joint Committee after examining relevant documents concluded the following:

- (i) The proposed project does not require Environmental Clearance (EC) even though all the stretches of highway are considered as one project.
- (ii) There is no violation of environmental laws, as on date as the project work has not started yet.

RECOMMENDATIONS:

- i. All relevant and applicable statutory clearances to be obtained by the Project Authority prior to start of work.
- ii. Necessary fugitive/dust suppression methods to be adopted during construction phase.
- iii. During the construction phase, best traffic management/ diversion measures to be adopted to avoid traffic congestion.
- iv. All precautionary measures detailed at point No 6.3 to be followed.

18. The applicant had filed their objection to the Joint Committee report and this

Tribunal had directed the Joint Committee to consider the same and to file a detailed report. Accordingly, the Joint Committee had filed the supplementary report and was extracted in Para (1) of the order dated 14.09.2021 which reads as follows:-

SUPPLEMENTARY REPORT REGARDING OBJECTION SUBMITTED BY SHRI MOHAMMED JISHAR & ORS IN CONNECTION WITH THE ORIGINAL APPLICATION NO. 241 OF 2020 (SZ) FILED BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI

Background:

Original Application No. 241 of 2020 (SZ) was filed by M/s. Shri Mohammd Jishar & Ors before the Hon'ble NGT (SZ) on 22<sup>nd</sup> October, 2020 alleging the implementation of the project of construction/development/widening of the National Highway-66 from Ramanattukara to Edappally by Respondents No 2 to 5 without obtaining prior Environmental Clearance from the 1<sup>st</sup> Respondent (Ministry of Environment, Forest and Climate Change).

The Hon'ble National Green Tribunal (NGT) in its order dated 11<sup>th</sup> November, 2020 directed constitution of a committee comprising of representatives of Regional Office, Ministry of Environment, Forest and Climate Change (MoEF&CC), Bangalore and National Highway Authority of India, Regional Office, Thiruvananthapuram, Kerala with orders to inspect the area in question and examine the project and a factual as well as action report, if there is any violation found. Further, the committee is directed to ascertain as to whether prior environmental clearance is required for the purpose of carrying out the project in question and whether if such projects are allowed to continue in piecemeal with ultimate aim of completing the entire stretch without conducting any prior environmental impact assessment and obtaining prior Environment Clearance, will it have any impact on environment. Even if the project has to continue what are all the precautions to be taken by them to avoid the possible environmental impact of such project. If there is any violation found, the committee is also directed to assess the environment damage caused on account of such violation and assess the environmental compensation to be recovered from the National Highway Authority of India.

As per the directions of Hon'ble NGT, a Joint Committee was constituted which examined records/documents available with various agencies and visited the entire stretch from Edappally, Ernakulam District to Ramanattukara, Kozhikode District on 28<sup>th</sup>-29<sup>th</sup> December, 2020. The Joint Committee has submitted report to Hon'ble

NGT on 1<sup>st</sup> February, 2021. Further, the committee had concluded the following in its report submitted to the Hon'ble NGT.

The proposed project does not require Environmental Clearance (EC) even though all the stretches of highway are considered as one project.

There is no violation of environmental laws, as on date as the project work has not started yet.

The Hon'ble NGT in its order dated 17<sup>th</sup> March, 2021 directed the applicant to serve copy of the objection to the Members of the Committee within a week and directed the Joint Committee to submit the comments on the objection filed by the applicant. Till now the committee members have not received any objections from the applicant. Therefore, the committee find out objections from website of Hon'ble NGT.

The committee observed that the major objection is about land acquisition. Therefore, the committee sought para-wise report from Regional Officer, National Highway Authority of India, Regional Office, Thiruvananthapuram, Kerala vide letter no EP/12.7/66/NGT/KER- 230 dated 12<sup>th</sup> July, 2021. The report received from Manager (T) For Project Director, NHAI, Ernakulam, Kerala on 27<sup>th</sup> July, 2021 is annexed as Annexure- I.

Following are the objections of the applicant and the comments of the Committee based on the information provided by the NHAI:

Sl. No.	Objections made by the applicant	Response / comments
1	<b>Para 1</b>	<b>No Comments.</b>
2	<p><b>Para 2.</b></p> <p>It is respectfully submitted that the submission of the respondents in the joint committee report that all the acquisition of the land are within inside 7 to 45 meters and the proposed RoW for 6 lane configurations is 45 meters with additional land acquisition varying from zero to 38 meters and that in bypasses realignment maximum width of land acquisition is 45 meters from Ramanattukara to Edappally is not true. The applicants herein submit that in various areas, the respondents are making land acquisitions in excess of what is submitted in the joint committee report. Some of such acquisitions are as follows:</p> <ul style="list-style-type: none"> <li>• In Manathala Village in Thrissur district, in design chainage from 349+730 to 349+ 800, in the existing alignment, the acquisition done is more than 40 meters in width.</li> <li>• In Orumanayoor Village in Thrissur district, in the design chainage from 353+980 to 354+ 150, in the existing alignment, the width of additional right of way is more than 40 meters in width.</li> <li>• In Orumanayoor Village in Thrissur district, in the design chainage from 353+980 to 354+150, in the existing alignment, the width of additional right of way is more than 40 meters in</li> </ul>	<p>As per the information from NHAI, it is reiterated that the acquisition of land for expansion varying from 0 m to 38 m. Further, in realignment and Bypasses section, 45 m land has been acquired to accommodate the six-lane configuration from Ramanattukara to Edappally Section of NH-66.</p> <ul style="list-style-type: none"> <li>• In Manathala Village in Thrissur District in the design ch from 349.740 to 349.800 - The location falls under the starting point of the Chavakkad Bypass wherein 45 m land has been acquired. The Land Acquisition Plan (LAP) has been attached as <b>Annexure - II.</b></li> <li>• In Orumanyoor Village in Thrissur District in the design Ch from 352.350 to 352.420 - The said location falls under the realignment portion to straighten the curve which exists at Ch Km 352.380 wherein 45 m land has been acquired. The Land Acquisition Plan (LAP) has been attached as <b>Annexure -III.</b></li> <li>• In Orumanyoor Village in Thrissur District in the design Ch from 353.980 to 354.150 - The said location falls under the realignment portion to straighten the curve which exists at Ch Km 354.000 wherein 45 m land has been acquired. The Land Acquisition Plan (LAP) has been attached as <b>Annexure -IV.</b></li> <li>• In Valappad Village in Thrissur District in the design Ch from 374.780</li> </ul>

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width.

- In Valappadu Village in Thrissur district, in the design chainage from 374+780 to 374+910, the acquisition for additional right of way is more than 40 meters in width.
- In Ala Village in Thrissur district, the design chainage from 392+340 to 392+720, acquisition is done more than 40 meters for the additional right of way in existing alignment.

This is in Edappally-Ramanattukara stretch. This area is not involved in the realignment or by-pass area as stated by the sub-committee, but comes within the existing alignment. These are only some of the acquisitions done by the respondents in this manner. The applicants have been able to find out the exact details the above mentioned chainage for these area only due to the time constraint granted by this Hon'ble Tribunal.

**Para 3.**

*It is Submitted that in the project at the Cheranelloor Junction in Ernakulam district, the approved alignment for the proposed acquisition contains a butterfly flyover having more than 100 meters width in both sides in the year 2019. The said flyover is still part of the project and as per the information received from Special Deputy Collector (LA), it is seen that as per the notification dated 29.11.2018, it was proposed to acquire 14.6768 hectares of land for the construction of the above-mentioned flyover. However, in the notification dated 12.02.2020, only 5.0928 hectares of land is proposed for the said flyover construction. Now, the applicant submit that in order to circumvent the issue of obtaining prior environmental clearance, the respondents have reduced the acquisition of this area. The modus operandi of the respondents is to complete this land acquisition process and then issue fresh notifications under Section. This is nothing but apprehension which was raised by the EAC in annexure A9. On the earlier occasion, the piece by the EAC in annexure A9. On the earlier occasion, the piece meal approach was taken up length wise now it is being done for the width of the project in various stages. A true photocopy of the information dated*

to 374.910 - The said location falls under the realignment portion to straighten the curve which exists at Ch Km 374.850 wherein 45 m land has been acquired. The Land Acquisition Plan (LAP) has been attached as **Annexure -V.**

- *In Ala Village in Thrissur District in the design Ch from 392.340 to 392.720 - The said location falls under the realignment portion to straighten the sharp curve which exists between Ch Km 392.300 to Ch Km 392.700 wherein 45 m land has been acquired. The Land Acquisition Plan (LAP) has been attached as **Annexure -VI.***
- The submission of the applicant that at Cheranelloor Junction the acquisition of land is for a width of 100 m is not based on the facts and figures. Further at Cheranelloor Junction the acquisition of additional land below 38 m including both the sides. The land acquisition plan is attached as **Annexure - VII.**

	11.08.2020, obtained through RTI from the office of the Special Deputy Collector, (I.A) along with its English Translation is produced herewith and marked as Annexure A10	
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4 Para 4

No comments.

3. RECOMMENDATIONS OF THE COMMITTEE

*The above reveals that there are two merits in the application/objections made by the*

*Applicant and it is liable to be dismissed.*

19. Considered the pleadings, reports filled and objections filed by the parties to the reports and submissions made by the counsel appearing for the parties.
20. The short question that arises for consideration as to whether the project requires prior Environmental Clearance (EC) or not.
21. It is seen from the report submitted by the Joint Committee that it does not exceed the extent mentioned in the amended Notification, 2013 referred to above. Further the Hon'ble Apex Court in *Civil Appeal Nos. 4035 - 4037 of 2020, The National Highways Authority of India vs. Pandarinathan Govindarajulu & Another* had set-aside the order passed by the Hon'ble High Court of Madras in *WP(C) No. 16630 of 2018* and other connected matters relied on by the applicant in the Original Application and observed that if the threshold limit of the length and the right of way did not exceed the limits provided under the amended Notification, 2013 for establishing National Highways as on the law exist today, there is no necessity to obtain prior Environmental Clearance (EC). But in that decision, the Hon'ble Apex Court had directed the Ministry of Environment, Forests and Climate Change (MoEF&CC) to consider the question as to whether segmentation of the project can be possible for the purpose of avoiding the question of obtaining Environmental Clearance (EC) and if so, under what circumstances it can be possible. It is for the policy maker, namely, Ministry of Environment, Forests and Climate Change (MoEF&CC) to take a decision on this aspect.
22. It is also seen from the counter affidavit filed by the first respondent that a committee had been already constituted as directed by the Hon'ble Apex Court in the decision titled as "*The National Highways Authority of India vs. Pandarinathan*

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*Govindarajulu & Others*" cited supra and it is under the stage of finalisation and after considering the committee's report, necessary steps will have to be taken in this regard.

23. As the law stands today, there is no necessity for obtaining any Environmental Clearance (EC) for the project in question and as such the applicant is not entitled to get any of the reliefs claimed in the application.
24. The National Highways Authority of India (NHAI) is directed to carry out the recommendations made by the Joint Committee, while carrying out the project in question. In view of the decisions of the Hon'ble Apex Court and also the report submitted by the Joint Committee after considering the objections filed by the applicant regarding the extent of acquisition and the right of way, there is nothing that survives in the matter.
25. We feel, that the application can be disposed of with following directions:-

- i) The applicant is not entitled to get any of the reliefs claimed as per the law stands today and considering the nature of project envisaged by the National Highways Authority of India (NHAI), there is no necessity to get any prior Environmental Clearance (EC) for the project in view of the decision of the Hon'ble Apex Court in *"The National Highways Authority of India vs. Pandarinathan Govindarajulu & Others"* (2021) 6 SCC 693.
- ii) National Highways Authority of India (NHAI) is directed to carry out the recommendations made by the Joint Committee while executing the project in its letter and spirit.
- iii) Considering the circumstances, the parties are directed to bear the respective cost in the Original Application.
- iv) The Registry is directed to communicate this order to the official respondents including the National Highways Authority of India (NHAI) for their information and also for compliance of the direction.

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26. With the above observations and directions, the Original Application is disposed of.

Sd/-

.....J.M.  
(Justice K. Ramakrishnan)

Sd/-

.....E.M.  
(Dr. Satyagopal Korlapati)

O.A. No.241/2020  
25.05.2022. (Sr.)



ITEM NO.13

COURT NO.2

SECTION XII-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 9314-9315/2022

(Arising out of impugned final judgment and order dated 22-04-2022 in WA No. 123/2022 22-04-2022 in WA No. 124/2022 passed by the High Court for the State of Telangana at Hyderabad)

G. NARSING RAO (DIED) THR. LRS.

Petitioner(s)

VERSUS

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA &amp; ANR.

Respondent(s)

(IA No. 74884/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT; IA No. 82025/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES; IA No. 76547/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 08-06-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.R. SHAH  
HON'BLE MR. JUSTICE ANIRUDDHA BOSE  
(Vacation Bench)

For Petitioner(s) Mr. Basava Prabhu S Patil, Sr. Adv.  
Mr. Eranki Phani Kumar, Adv.  
Mr. Srinivas R. Rao, Adv.  
Mr. Nirmal Manohar, Adv.  
Ms. Geeta Ahuja, Adv.  
Mr. Abid Ali Beeran P, AOR

For Respondent(s) Mr. Arjun Singh Bhati, Adv.  
Mr. Santosh Kumar - I, AOR(Caveator)

UPON hearing the counsel the Court made the following  
O R D E R

Having heard learned counsel for the respective parties and going gone through the impugned order passed by the High Court, we are of the opinion that the High Court is absolutely justified in passing the impugned order. It cannot be disputed that the public

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interest is the paramount consideration and the National Highway Authority can be said to be best judge to decide which land to be acquired and which not to be acquired for the purpose of construction of the Highways.

In that view of the matter, no interference is called for in exercise of powers under Article 136 of the Constitution of India. The Special Leave Petitions stand dismissed.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)  
COURT MASTER (SH)

(NISHA TRIPATHI)  
ASSISTANT REGISTRAR