

Report of Joint Committee constituted in Original Application No. 40/2020 (WZ) in the matter of Shri Ganesh Suresh Borhade Vs Union of India &Ors

A. Brief Background

Hon'ble NGT, Principal Bench in the matter OA no. 40/2020 (WZ) Ganesh Suresh Borade vs. Union of India &Ors. vide order dated 26.08.2020 directed as under:

"In the meantime we deem it just and proper to constitute a Committee consisting (i) Principal Chief Conservator of Forest, Maharashtra (ii) A representative of NHAI (iii) Additional Principal Chief Conservator of Forests (APCCF), MoEF&CC, Regional Office, Pune and to direct them to submit a factual and action taken report with regard to allegations made in the present application. Report to be submitted within six weeks. APCCF, MoEF&CC, Regional Office, Pune will be the nodal agency".

The application pertains for the compliance of specific conditions stipulated in the Environment Clearance granted for the upgradation of 2 lane carriageway to 4 lane of Khed-Sinnar Section of NH-50 from km 42.000 to km 177.000 in the State of Maharashtra. The allegation is that EC dated 21.03.2013 is violated.

The details of forest land diverted for the said project under Section 2 of the Forest Conservation Act, 1980.

S.No.	Name of Proposal	Area	Stage-I	Stage-II
1	Diversions of 33.9585 ha RF for Rehabilitation and upgrading to 4 laning of NH-50 from Khed to Sinnar from Km 97/000 to 157/000 (Ahmednagar District portion) in Ahmednagar District in favour of Project Director, NHAI.	33.9585	17.12.2014	16.06.2015
2	Diversions of 18.9749 ha RF, Unclassified forest and RF in charge of revenue department for 4 laning of NH-50 from Khed to Sinnar in Pune District in favour of Project Director, National Highway Authority of India, Project Implementation Unit	18.9749	19.11.2014	16.06.2015
3	Diversions of 1.1144 ha RF for Rehabilitation and upgrading to 4 laning of NH-50 from Khed to Sinnar from Km 157/100 to Km 177/000 f/o Project Director NHAI (Nashik District portion), Nashik District of Maharashtra	1.1144	04.07.2014	Yet to be granted

The Integrated Regional Office (IRO) vide letter dated 23.09.2020 requested the State Forest Department, Govt. of Maharashtra and National Highways Authority of India (NHAI) for nomination of representatives. NHAI vide letter dated 22.10.2020 nominated Dr. B. Mukhopadhyay, General Manager (Environment) for the committee. Details are enclosed as Annexure-1.



The IRO vide letter dated 03.11.2020 requested the State Forest Department, Govt. of Maharashtra to provide current status on the allegations raised by the applicant in OA no. 40/2020.

The IRO vide letter dated 03.11.2020 requested the National Highways Authority of India (NHAI) to provide details in accordance with the Environmental Clearance granted for the upgradation of 2 lane carriageway to 4 lane of Khed-Sinnar Section of NH-50 from km 42.000 to km 177.000 in the State of Maharashtra. In reply, NHAI provided sufficient details to address the allegations made through the petition. A copy is enclosed as **Annexure-2**.

The State Forest Department (SFD), Govt. of Maharashtra vide letter dated 18.01.2021 submitted the details pertaining to the diversion of forest land, compensatory afforestation and number of project affected trees. Copy is enclosed as **Annexure-3**.

The IRO vide letter dated 22.01.2021 informed the SFD and NHAI that the site inspection of the project will be carried out from 28.01.2021 to 30.01.2021. Copy of the letter is enclosed as **Annexure-4**.

Accordingly preliminary meeting has been conducted at Chief Conservator of Forests (CCF), Pune office on 28.01.2021 to finalize the itinerary and details to be inspected during the site visit. Site inspection was carried out on 29.01.2021. The final meeting of the inspection team was conducted on 30.01.2021 at CCF, Pune Office.

Following members attended the site inspection and meetings:

1. Representatives of IRO, MoEF&CC
 - a. Shri. V.N. Ambade, Regional Officer/APCCF(Central)
 - b. Shri. Suresh Kumar Adapa, Scientist'D'
 - c. Shri. Nand Kishor Dimri, Technical Officer, Gr.I
2. Representatives of SFD, Govt. of Maharashtra
 - a. Shri. Sujay Dodal, CCF, Pune
 - b. Shri. Anil Anjankar, CF (Wildlife), Nashik (Addl. Charge CCF Nashik)
 - c. Shri. Jayaramgowda R., DCF(Junnar)
 - d. Shri. Pankaj Garg, DCF, Nashik (West)
 - e. Shri. Gajanan Zole, Sub DFO, Sangamner
3. Representatives of NHAI
 - a. Dr. B. Mukhopadhyay, General Manager (Environment)
 - b. Shri. Suhas Chitnis, Project Director, Pune Division

S.No.	Issues raised by the applicant	Committee observation										
1.	<p>The applicant alleged that the Respondent no. 4 (NHAI) has violated the specific conditions of the EC</p> <p>Specific Condition no. i: <i>The project involves the diversion of 49.79 ha. of forest land for which the proponent shall obtain the requisite FC. The proponent can execute the above project on the entire stretch located in non forest land, provided that the proponent submits an undertaking while making application to get FC that the execution of work on non forest land shall not be cited as a reason for grant of FC and in case FC is declined, width of the portion of the road falling in the forest land will be maintained at its existing level.</i></p>	<p>As per records available with the IRO, MoEF&CC, Nagpur a total 54.0478 ha forest area have been diverted under 3 nos of forest diversion proposals as detailed mentioned in Page. 1. Copies of the FC Stage 1 and Stage 2 letters are enclosed as Annexure- 5.</p> <p>In this regard, the Stage 2 clearance for the proposal at S.No. 3 of page no. 1 is pending with APCCF, Nagpur. It was observed that entire land of 54.0478 ha. has been diverted under the section-2 of Forest (Conservation) Act, 1980 and there is no violation.</p>										
	<p>Specific Condition no. iii</p> <p>It is indicated that 4700 nos. trees from forest areas and 3500 trees in non-forests area to be felled for the project. Necessary permission from competent authority shall be obtained for tree cutting. Compensatory tree plantation shall be carried out and cost provision should be made for regular maintenance.</p>	<p>There are a total 10043 numbers of trees felled in entire stretch, out of which 4527 were felled in forest area and 5516 in non-forest area. Permission for felling of trees from forest and non-forest area were granted from the appropriate authorities as per Forest (Conservation) Act, 1980 and local laws.</p> <p>Copies of inprinciple approval under Section 2 FCA and tree cutting permissions from competent authorities of State Government are attached as Annexure-6.</p> <p>Summary of trees felled in forest and non-forest area is as follow:</p> <table border="1" data-bbox="807 1536 1401 1955"> <thead> <tr> <th data-bbox="807 1536 1034 1688" rowspan="2">Proposal</th> <th data-bbox="1034 1536 1177 1688" rowspan="2">Area diverted</th> <th colspan="2" data-bbox="1177 1536 1401 1576">Tree cutting</th> </tr> <tr> <th data-bbox="1177 1576 1289 1688">Forest area</th> <th data-bbox="1289 1576 1401 1688">Non-forest area</th> </tr> </thead> <tbody> <tr> <td data-bbox="807 1688 1034 1955">Diversion of 33.9585 ha RF for NH-50 from Khed to Sinnar from Km 97/000 to 157/000</td> <td data-bbox="1034 1688 1177 1955">33.9585</td> <td data-bbox="1177 1688 1289 1955">929</td> <td data-bbox="1289 1688 1401 1955">2373</td> </tr> </tbody> </table>	Proposal	Area diverted	Tree cutting		Forest area	Non-forest area	Diversion of 33.9585 ha RF for NH-50 from Khed to Sinnar from Km 97/000 to 157/000	33.9585	929	2373
Proposal	Area diverted	Tree cutting										
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		Diversion of 18.9749 ha forest for NH-50 from Khed to Sinnar from Km 42/000 to 97/000	18.9749	3583	2074
		Diversion of 1.1144 ha forest for NH-50 from Khed to Sinnar from Km 157/100 to Km 177/000 f/o Project Director NHA	1.1144	15	1069
		Total	54.0478	4527	5516
		<p>More than 27038 trees are planted by M/sKhed-Sinnar Expressway Limited Concessionaire on available RoW and also in median as per IRC SP:21-2009 in lieu of felling of trees.</p> <p>NHA deposited an amount of Rs. 17.68 crore in the Adhoc-CAMPA account of State Government for Compensatory Afforestation on degraded forest area of 109 ha. (i.e about 109000 trees @ 1000 trees /ha.) by the Forest Department. Please refer compliance para no. 3 of this table.</p> <p>Hence, more than three times were already planted to compensate ecological loss for felling of trees.</p> <p>It may be mentioned that survival rate of avenue plantation is very low as observed by the Committee members during their site visit.</p>			
	<p>Specific Condition no. vi Rain water 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</p>	<p>NHA submitted that the Rain Water Harvesting structures were to be constructed in accordance with the Ministry of Environment and Forests Notifications, New Delhi dated 14.01.1997 (as amended on 13.01.1998, 05.01.1999 & 06.11.2000) the construction of Rain Water Harvesting structure is mandatory in and around water crisis area, notified by the Central Ground Water Board." The stretch of</p>			

<p>rainwater.</p>	<p>the highway does not pass through notified water crisis area.</p> <p>However, it is observed that the rain water harvesting structures are being implemented in the ongoing construction for balance alignment. Photographs of the rain water harvesting structure under construction as observed during site inspection are enclosed as Annexure-7.</p>
<p>Specific Condition no. vii IRC guidelines shall be followed for widening & up-gradation of road</p> <p>3.8 Transplantation of large trees</p> <p>8.6.2 Cutting of trees should be avoided, as far as possible. But wherever road passes through animal corridor, it may be ascertained that there is a minimum disturbance to the forest and the animal life.</p> <p>10.6 The trees and plants should be maintained under the supervision of horticulture staff and new plants put up, wherever necessary in adequate time, especially to replace the dead and old trees. Proper working plan should be prepared where the work involves felling of matured trees/plantation.</p> <p>11.15 Protection measures:</p> <p>11.15.1 The fencing of single row plantation is generally done by using iron/brick/cement guards. Locally available bamboo guards or thorn fencing should be used where protection can be ensured through</p>	<p>NHAI informed that all Relevant IRC guidelines were/will be followed.</p> <p>During the site inspection, it was observed that the large trees were transplanted along edge of RoW. However, only few of them are alive.</p> <p>The bare minimum trees were felled under close supervision of forest officials in forest areas and Revenue officer in Non-forest areas.</p> <p>There is a Horticulture Expert with Contractor as well as with an Independent Engineer for maintenance and monitoring of plantation along RoW and median.</p>



	them.	
	<p>Specific Condition no. xviii Minimum of three times the number of trees to be cut shall be planted. It shall be ensured that the trees planted as a part of the afforestation shall be looked after by NHAI. Tree plantation shall be of the same species/local species and survival shall be monitored. Transplantation of the trees shall be carried out whenever possible. The tree plantation shall be taken up on the extreme end of the road.</p>	Addressed herein above
2.	<p>Applicant submitted that letter written by SDO, Sangamner granting permission to fell trees was subject to 7 conditions. Since the SDO Sangamner was the authority to which permission for felling of trees was done, the conditions imposed by SDO, Sangamner pursuant to the power granted by virtue of Section 25 of Maharashtra Land Revenue Code 1966 and rule 3 of Maharashtra Land Revenue Rules 1967. The respondent NHAI has failed to fulfill conditions as stipulated by the SDO, Sangamner, viz, condition no. 4 which specified that for every tree cut, 10 times as many as trees were to be planted by the respondent NHAI. As 2373 trees have been identified for felling by the SDO based on the information submitted by the respondent NHAI, it was incumbent on the respondent NHAI to plant 23730 trees.</p>	<p>NHAI submitted undertaking to carry out balance avenue plantation of 25038 and maintenance of total 27038 trees for the completed work of 104.636 Km. through forest department as deposit work.</p> <p>It is also undertaken that, the balance plantation of around 10,200 nos. shall be executed after the completion of the ongoing works of bypass through the respective EPC Contractors.</p>
3.	<p>Applicant submitted that respondents till date have not carried out any compensatory afforestation in the identified land. Condition 3 (a) of the FC stipulated that: "Compensatory afforestation shall be taken up by the Forest Department over 67.917 ha. degraded forest land (Gut no. 232,</p>	<p>It has been informed by State Forest Department that total compensatory afforestation (CA) in lieu of 54.0474 ha diverted forest land was proposed over 109 ha double degraded forest land. It has been further informed that out of 109 ha, CA over 106 ha has already been carried out during 2016-17 and only 3 ha area is remaining and same is proposed in Annual Plan of Operation</p>

<p>233, 234, 235, 236,237 village Pokhari Baleshwar, Gut no. 100, Village Nimaj and Gut no. 172, Village Gabanwadi, Taluka Sangamner, District Ahmednagar) at the cost of the user agency. As far as practice able a mixture of local indigenous species will be planted and mono culture of species has to be avoided.”</p> <p>The same condition was modified by virtue of letter F.No. 6-MHC-029/2014-BHO/1960 dated 23.06.2017 where in the Regional Office (WCZ) of MoEF&CC had specified the new areas wherein the proposed compensatory afforestation has to be carried out by the responded NHAI.</p> <p>It is submitted that as is evident upon the perusal of various land records extracts, that such land which has been identified for compensatory afforestation is in fact used for agricultural purposes by local persons, in strict and direct contravention of the FC granted.</p>	(APO) of CAMPA for year 2021-22. Summary of CA as per forest diversion proposal is as follow.			
	Proposal	Area diverted ha	CA details	
			Area ha	Plantation year
	Diversion of 33.9585 ha RF for Rehabilitation and upgrading to 4 laning of NH-50 from Khed to Sinnar from Km 97/000 to 157/000 in Ahmednagar District	33.9585	68	2016-17
Diversion of 18.9749 ha RF, Unclassified forest and RF in charge of revenue department for 4 laning of NH-50 from Khed to Sinnar in Pune District	18.9749	38	2016-17	
Diversion of 1.1144 ha RF for Rehabilitation and upgrading to 4 laning of NH-50 from Khed to Sinnar from Km 157/100	1.1144	3	Proposed for CAMPA Annual Plan of Operation year 2021-22	

		to Km 177/000 f/o Project Director NHAI			
		Total	54.0474	109	
4.	<p>Applicant submitted that it is noteworthy to observe that the EIA report at 10-4 identifies the amount of money to be spent on tree plantation as Rs. 2,55,56,706/- with total afforestation cost as Rs.2,79,89,568/-. Furthermore, letter to the Additional Principal Chief Conservator of Forests (Central) no.: Desk- 17/NC/III.D.12323/(13)/2145/14-15 dated 15.03.2015 identifies that the respondent NHAI deposited Rs.4,89,47,646/- towards the cost of compensatory afforestation over 67.917 ha. degraded forest land. It is therefore evident that the Respondent Forest Department is causing the waste of public funds and is treating the entire issue of plantation of trees with flippancy unbecoming of public office.</p>	<p>NHAI deposited an amount of Rs. 17.68 crore in the Adhoc-CAMPA account of State Government for Compensatory Afforestation on degraded forest area of 109 ha. (i.e about 109000 trees @ 1000 trees /ha.) by the Forest Department. The demand of the forest department is as per the FCA, 1980 and local laws.</p>			

Principal Chief Conservator of
Forest (PCCF),
Maharashtra


Sh. B. Mukhopadhyay,
Env. Div. NHAI HQ
New Delhi

Additional Principal Chief
Conservator of Forest (APCCF),
MoEF&CC, Regional Office,
Nagpur

Other Observations:

1. It is recommended that for better survival, avenue plantation shall be carried out through State Forest Department at the cost of user agency.
2. The notification issued by the Ministry of Environment and Forests, New Delhi, dated 13.01.1998, 05.01.1999 and 06.11.2000 stipulate that the construction of rainwater harvesting is mandatory in and around water crisis area, notified by the Central Ground Water Board. However, the subject project does not pass through the notified crisis area. Moreover, the water level along the road is very shallow and hence, in this background, construction of recharge structure is not feasible. During the site inspection on 29.01.2021, it was observed that the water level in the nearby well at Narayangaon bypass was 6-7 meters. Photographs are enclosed as **Annexure-8**.
3. In view of the above, it is recommended that NHAI shall carry out the survey of bore wells along the road and construct the rain water harvesting structures at feasible locations in consultation with Central Ground Water Board. The condition for the construction of underpasses for the passage of wild animals was stipulated in both EC and FCs granted by Ministry. The committee opined that the representatives of SFD and NHAI shall carry out the joint survey and finalize the locations for the construction of underpasses.

During site visit, one location was suggested by forest department for construction of over pass on completed section as topography does not permit for construction of underpass and NHAI agreed to construct the same. Further, it is suggested that NHAI should construct the under passes/ over passes at suitable places in consultation with State Forest Department in the stretch where for laning implementation is going on.

4. Soil Moisture Conservation Works in RFs:

During the site inspection, it was observed that there exists no plantation in the Reserved Forest areas adjacent to the road and in some small ghat sections soil erosion is taking place. The proposed area is a small hillock with rocky gravel surface. Legally it is Reserve Forest and also has some natural water flow through the rocks. The Committee opined that the representatives of SFD and NHAI shall carry out the joint survey and finalize works to be carry out for soil and moisture conservation especially in above mentioned ghat section within RoW of NHAI. NHAI shall provide funds to SFD for execution of Soil Moisture Conservation



Works only for area diverted in favour of NHAI and rest of the area of reserved forest is liability of forest department.

5. Compensatory Afforestation:

The compensatory afforestation schemes have to be prepared by State Forest Department specifically based on site specific requirement/treatment. It has been informed by State Forest Department that total CA in lieu of 54.0474 ha diverted forest land was proposed over 109 ha double degraded forest land. It has been further informed that out of 109 ha, CA over 106 ha has already been carried out during 2016-17 and only 3 ha area is remaining and same is proposed in Annual Plan of Operation (APO) of CAMPA for year 2021-22. Summary of CA as per forest diversion proposal is as follow.

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