

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 instructed the following:

" 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 to the Environment Clearance granted to the NHAI project 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. It was alleged that NHAI violated the specific conditions of EC dated 21.03.2013 and FCs in related matter.

Further application also pertains to three forest diversion cases, details as follow:

S.No.	Name of Proposal	Area	Stage-I	Stage-II
1	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 (Ahmednagar District portion) in Ahmednagar District in favour of Project Director, NHAI.	33.9585	17.12.2014	16.06.2015
2	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 in favour of Project Director, National Highway Authority of India, Project Implementation Unit	18.9749	19.11.2014	16.06.2015
3	Diversion 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 latest six monthly compliance report of conditions stipulated in 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 submitted only brief note on the allegations made in the original application. Copy is enclosed as **Annexure-2**.

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 finalise 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. Jayaramegowda 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 total 54.0478 ha forest area have been diverted under 3 no.s of forest diversion proposals as detailed mentioned in Page. 1. Copies of the FC letters are enclosed as Annexure- 5.</p> <p>It may be noted that EC and FC proposals are independent of each other and dealt by separate committees under different act and rules. Accordingly the area may vary, as the FC proposal is based on the detailed survey of forest land proposed for diversion.</p> <p>It is 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>As per details available with IRO, MoEF&CC, Nagpur and details provided by State Forest Department. There are 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 tree felling in forest land were given by State Forest Department after approval of Central Government under section-2 of Forest (Conservation) Act, 1980 and for non forest area permission was given by State Revenue Department. Copies of tree cutting permissions from competent authorities in State Government are attached as Annexure-6.</p> <p>Summary of trees felled is as follow:</p> <table border="1" data-bbox="815 1576 1422 1973"> <thead> <tr> <th data-bbox="815 1576 1043 1653" rowspan="2">Proposal</th> <th data-bbox="1043 1576 1193 1653" rowspan="2">Area diverted</th> <th colspan="2" data-bbox="1193 1576 1422 1653">Tree cutting</th> </tr> <tr> <th data-bbox="1193 1653 1305 1787">Forest area</th> <th data-bbox="1305 1653 1422 1787">Non-forest area</th> </tr> </thead> <tbody> <tr> <td data-bbox="815 1787 1043 1973">Diversion of 33.9585 ha RF for NH-50 from Khed to Sinnar from Km</td> <td data-bbox="1043 1787 1193 1973">33.9585</td> <td data-bbox="1193 1787 1305 1973">929</td> <td data-bbox="1305 1787 1422 1973">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	33.9585	929	2373
Proposal	Area diverted	Tree cutting										
		Forest area	Non-forest area									
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		97/000 to 157/000			
		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 I	1.1144	15	1069
		Total	54.0478	4527	5516
		<p>Regarding the plantation against felled trees, PP submitted that 27038 trees are to be planted on available ROW in the completed Section and it has been informed by representative of NHA I that 27038 trees have been planted along the highways. PP also informed that present scenario of survival is very poor (at present it is less than 10%). During the site inspection, it was observed that avenue plantation has been carried out in only outer edge of Right of Way (ROW) of road and central median. It was further observed that the plantation in the Central Median observed to be satisfactory. However the plantation of outer ROW observed to be very poor. It was also observed that portion of ROW in non forest land was encroached. Further NHA I submitted undertaking to carry out avenue plantation and maintenance of total 27038 trees. It is recommended that for better survival, avenue plantation shall be carried out through State Forest Department at the cost of user agency. In future also for all projects of NHA I the avenue plantation shall be carried out by State Forest Department.</p>			
	Specific Condition no. vi	During the site inspection it was observed that			

	<p>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 rainwater.</p>	<p>no rain water harvesting structures were provided in the completed road alignment of length 104 km. However, PP submitted 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>NHAI informed that the Rain Water Harvesting structures were not constructed as they understood that as per 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.”</p> <p>It was observed that all the above notifications are for the constitution of Central Ground Water Board to regulate, control, management and development of ground water in the country. However, a condition was stipulated in the EC for harvesting of rain water along the road alignment.</p> <p>NHAI also submitted that the water level along the road is very shallow, hence construction of recharge structure is not feasible. However during the site inspection, it was observed that the water level in nearby well at Narayangaon bypass was more than 30 meters. Photographs are enclosed as Annexure-8.</p> <p>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.</p> <p>NHAI submitted undertaking for the construction of rain water harvesting structures. Copy is enclosed as Annexure-9.</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>NHAI informed that all Relevant IRC guidelines were/will be followed. The list of all relevant IRC guidelines as submitted by NHAI is enclosed as Annexure -10.</p> <p>During the site inspection, it was observed that the transplanted trees were not survived.</p> <p>During the site inspection, ACF Sangamner</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>informed about the incidences of frequent leopard kill due to road accident in proposed stretch. It was further apprised that in Forest Clearance there was provision for under passes/ over passes for wildlife passage, however, same were not constructed.</p> <p>During the site inspection it was observed that maintenance of plantation in outer ROW area is very poor.</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 them.</p>	<p>No such fencing was observed during the site inspection.</p>
	<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>	<p>Already covered in previous pages.</p>
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</p>	<p>NHAI submitted undertaking to carry out avenue plantation and maintenance of total 27038 trees. It is recommended that for better survival, avenue plantation shall be carried out through State Forest Department at the cost of user agency.</p>

	<p>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>													
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, 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." 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. 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</p>	<p>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.</p>												
		<table border="1"> <thead> <tr> <th rowspan="2">Proposal</th> <th rowspan="2">Area diverted ha</th> <th colspan="2">CA details</th> </tr> <tr> <th>Area ha</th> <th>Plantation year</th> </tr> </thead> <tbody> <tr> <td>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</td> <td>33.9585</td> <td>68</td> <td>2016-17</td> </tr> </tbody> </table>			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
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	local persons, in strict and direct contravention of the FC granted.	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 to Km 177/000 f/o Project Director NHA I	1.1144	3	Proposed for CAMPA Annual Plan of Operation year 2021-22
		Total	54.0474	109	
4.	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/I.D.12323/(13)/2145/14-15 dated 15.03.2015 identifies that the respondent NHA I deposited Rs.4,89,47,646/- towards the cost of compensatory afforestation over	It was observed that the payment of compensatory afforestation charges is made on the basis of the demand note raised by the State Forest Department. The charges are calculated on the basis of MoEF&CC guidelines and notifications.			

	<p>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 unbefitting of public office.</p>	
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Other Observations:**1. Leopard Kill Incidents**

During the site inspection, Sub DFO, Sangamner informed that there are incidences of leopard kills at 4 to 5 locations along the road. The representatives of State Forest Department requested the NHAI to construct underpasses at the above locations to avoid the leopard kills. Details (as submitted by DCF Junnar) of leopard deaths from January 2018 to 31.12.2020 are enclosed as **Annexure-11**.

The condition for the construction of underpasses for the passage of wild animals was stipulated in both EC and FCs granted by Ministry. However the same was not complied by NHAI. 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.

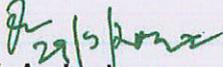
It is suggested that NHAI should construct the under passes/ over passes at suitable places in consultation with State Forest Department. Further, for dimensions of all such under/over passes; the Wildlife Institute of India's manual entitled "Eco-friendly Measures to Mitigate Impacts of Linear Infrastructure on Wildlife, published in 2016" shall be referred.

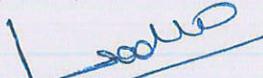
2. Soil Moisture Conservation Works in RFs:

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. NHAI shall provide funds to SFD for execution of Soil Moisture Conservation Works.

3. Compensatory Afforestation:

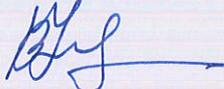
The compensatory afforestation schemes have to be prepared by State Forest Department specifically based on site specific requirement/treatment. It should not be based on the general norms of raising plantation. The aim of taking compensatory afforestation has to be improvement of the green cover as envisaged in the National Forest Policy, 1988.


Shri V.N. Ambade
Chairman
Regional Officer (APCCF)
IRO, MoEF& CC, Nagpur


Shri. Y.L.P. Rao
PCCF (HoFF)
Govt. of Maharashtra
Vanbhavan, Nagpur

Dr. B.Mukopadhyay
General Manager
National Highway Authority
of India (NHAI), New Delhi

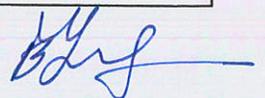
The duly signed report received from IRO, MoEF&CC, Nagpur is broadly agreed by undersigned with some modification/amendment as per joint site visit and site/project specific scenario. In this regards, a **Decent Note** is enclosed with report for kind consideration please.


Dr B.Mukhopadhyay
Ex General Manager (Env), Jt Advisor (Env)

Descent Note

The duly signed report from IRO, MoEF&CC, Nagpur is broadly agreed by undersigned with some modification/amendment as per site condition.

Sr.No.	Para of submission	Submission of IRO, MoEF&CC, Nagpur	Views of NHAI
1	Specific Condition No.3	<i>"In future also, for all projects of NHAI the avenue plantation shall be carried out by State Forest Department".</i>	NHAI is agreed for carrying out the avenue plantation of subject project through State Forest Department as deposit work for better survival of avenue plantation. However, it may not be feasible/appropriate that, <i>in future also, for all projects of NHAI the avenue plantation shall be carried out by State Forest Department because the contract agreement is varied from project to project.</i>
2	Specific Condition No.6	<i>The water level in nearby well at Narayangaon bypass was more than 30m.</i>	Ground water level in nearby well at Narayangaon bypass was about 6 to 7m observed during site inspection. The photograph of the well at that area is attached.
3	Specific Condition No.7	<i>During the site inspection, it was observed that, the transplanted trees were not survived.</i>	<i>It was observed that the many of the transplanted trees (almost 90%) were not survived.</i>
4	Other observations No.2	<i>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 grave surface. Legally it is Reserve Forest and has some natural water flow throw the rocks. The Committee opined that, the representative 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. NHAI shall provide funds to SFD for execution of soil moisture Conservation works.</i>	NHAI has agreed to deposit funds with SFD towards the job of Soil & Moisture conservation as per SOR of Forest Department, Govt. of Maharashtra within the ROW and adjoining ROW to prevent and control of erosion of forest area. It may be mentioned such type of jobs is generally taking care either formulation of comprehensive compensatory afforestation plan or stipulated such type of condition while granting in-principle approval under section II of FCA, 1980.



Dr B. Mukhopadhyay
Ex General Manager (Env), Jt Advisor (Env)