

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

APPEAL NO.29 OF 2021

IN THE MATTER OF:

Citizens for Green Doon

...Appellant

Versus

Union of India & Ors.

...Respondents

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RESPONDENT No.3

THROUGH



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Dated: 08.12.2021

Place: New Delhi

WRITTEN SUBMISSIONS ON BEHALF OF NHAI

At the threshold, it is submitted that the submissions made hereunder by the Respondent No.3/NHAI, are in continuation and accordance with the reply. The same may be referred and read as a part and parcel of these submissions and contents of which are not repeated herein for the sake of brevity.

I. Introduction

1. Appeal No.29/2021 has been filed challenging the Order for working permission dated 27.08.2021 [**Pages 531-532/Reply/Appeal**] issued by the Divisional Forest Officer (“**DFO**”), Shivalik Forest Division.
2. The project is a part of the Bharatmala Pariyojna which is the umbrella program for National Highway development focusing on improving the efficiency of road freight and passenger movement across the country. The present matter pertains to the upgradation and expansion of the existing 20KM stretch of NH-72A of this 20 km, approx. 16 kms fall in the State of UP and the remaining 4 km (approx.). fall in the State of UK, as evident from Map [**Pg.403/Reply/Appeal**].
3. The project has received Stage-I FC under the Forest (Conservation) Act, 1980 on 23/24.12.2020 [**Pages 410-417/Reply/Appeal**] for the stretch in the State of UP (km 00.00 - km 16.160) and on 29.9.2020 [**Pages 404-409/Reply/Appeal**] for the stretch in the State of UK (km 16.160 - km 19.785).
4. The user agency, i.e., the NHAI has divided the road project into two segments - one falling within the State of UP (around 16km) and the rest falling within the State of UK. Thus, there are two sets of Stage-I Clearances under the FCA. This stretch of the NH72A passes through the forest and wildlife area of Shivalik Forest Division, UP, in close vicinity of the Rajaji National Park as well as the Dehradun Forest Division in UK. The proposal envisages converting an existing 2-lane road into a 4-lane road with a 25-metre carriageway and involves construction of a tunnel as well.
5. In view of the existing road 20 km (Ganeshpur to Dehradun) falling in Eco-sensitive zone (ESZ) of Rajaji National Park (RNP) and at a few stretches

into the core area of Rajaji National Park, NHAI preferred to conduct study for Wildlife mitigation from expert body Wildlife institute of India (WII), Dehradun before finalizing the project elements.

6. A Detailed report was submitted by WII in Aug, 2020 [**Pages 676-734/Reply/Appeal**]. This study was conducted by Scientist Dr. Vibhas Pandav, department of endangered species management, WII, Dehradun.
7. Out of 20 km section from Ganeshpur to Dehradun, 18.5 km is forest area and out of this forest area 14.5 km falls in UP and 4 km falls in Uttarakhand.

II. Statutory Scheme for Grant of FC

8. The Diversion of forest land for non-forest purpose is contemplated u/s 2(ii) of the Forest Conservation Act, 1980 (“FCA”). Non-forest purpose is further divided into two categories, namely Linear Projects and Localized/Non-Linear Projects.
 - i. Linear projects: Rule 2(cd) of the Forest Conservation Rules, 2003 defines linear projects as all projects involving strip/linear diversion of forest land for purposes such as roads, railway lines, pipelines, transmission lines, etc.
 - ii. Non-Linear Projects: This involves diversion of major forest area from one or many forest diversions as per activity and requirement of the project which involves felling of the trees for the proposed diversion area.
9. The instant project falls under the Linear project category as the proposed highway alignment from Ganeshpur to Dehradun of 20km is designed to have an Elevated Highway (approx. 12 kms long) to minimize footprint on the ground. In this 12 km section, the cross slope across the project highway is about 5% which is far less than 25% and hence, is classified as plain terrain.
10. Para 1.4 [**Page 583/Reply/Appeal**] of Chapter I of Part B to the Handbook of Guidelines for effective and transparent implementation of Forest Conservation Act, 1980 dated 28.03.2019 contemplates that the grant of forest clearance shall be divided in three steps:

- i. In-principal approval (Stage-I)
 - ii. Final approval (Stage-II)
 - iii. State Govt. Order under Section 2 of Forest (Conservation) Act, 1980 incorporating all the conditions stipulated by Central Govt. on the recommendation of State Govt.
11. Stage-I approval in the State of UP was granted on 23.012.2020[**Page 410-417/Reply/Appeal**], Stage-II approval was granted on 20.07.2021[**Page 511-517/Reply/Appeal**] and the State Government order was also issued vide letter dated 27.11.2021 [**Page 394/Reply/Appeal**].
 12. Likewise, in the State of UK, Stage-I approval was granted on 29.09.2020[**Page 404-409/Reply/Appeal**] and Stage-II approval is yet to be issued.

III. Salient Features of the Project

13. The proposed road has saving of about 30,000 trees, saving of about 9 lakh tons of earth/rock cut as compared to conventional widening of road in hills. Further, animals are free to move beneath the highway avoiding complete man animal conflicts. Further, noise barriers have also been provisioned in elevated section along the highway to avoid disturbance to animals from vehicle noise. The proposed 20 km project comprising of elevated road and tunnel is about Rs.1500 Cr. as against about Rs.500 Cr. for widening of existing road in hills in normal case.
14. With ease of traffic movement due to project highway, there would be huge reduction in carbon emission and disturbance to the wildlife.
15. The 12 km long elevated highway is the longest wildlife corridor, not in India but in Asia too, is an example of co-existence of development and preserving nature.
16. As per present traffic condition (more than 20000 PCU (equivalent passenger car units)), there is a minimum requirement of 4 lane highway for safe traffic movement. Hence, 25m width is minimum requirement. Further, 2 lane road capacity is upto 10500 PCU and 2 lane road cannot be provided

with divider and carrying such high traffic in 2 lane road is a serious safety hazard apart from creating traffic bottleneck.

17. It is evident from above that NHAI has taken utmost care in deciding project elements considering concerns of flora and fauna in consultation with expert Wildlife Institute, Rajaji National Park (RNP) and State Govt Forest/Wildlife officials of both the States, which has resulted in cutting of lesser no. of trees, avoiding cutting of hills to great extent, enabling crossing of animals beneath the highway. This stretch of Highway is setting an example of co-existence of development and preserving nature, in fact highway would be complementing the Wildlife as compared to existing highway.

IV. Challenge in the Appeal

Forest Clearance is granted based on misleading facts

18. The Order granting permission of tree cutting and commencement of work dated 27.08.2021 [**Pages 176-180/Appeal**] issued by the DFO, Saharanpur, State of UP is based on correct facts.
19. Para 15 of Form A Part II is the report of Site inspection carried out by concerned DFO (Saharanpur, UP) on 05.11.2020. It is noteworthy that the DFO (Saharanpur, UP) and Conservator of Forest (UP) did not find any endangered species during the site inspections dated 05.11.2020 and 11.11.2020. There is, therefore, no infirmity in the finding at Para 8(v) of Form A. The inspection reports are also uploaded on Parivesh Portal [**Pages 735-736/Reply/Appeal**]
20. The power for grant of approval for non-forest purpose for the linear project has been delegated to regional offices of MoEF&CC vide Gazette Notification dated 10.10.2014, in order to expedite the linear infrastructure of the country for sustainable development. Thereafter, MoEF&CC simplified the procedure for linear activities under Forest (Conservation) Act, 1980 in view of the order dated 07.11.2012 passed by Hon'ble NGT in the case of *Vimal Bhai & Anr. vs. Union of India & Ors., Appeal No. 7/2012*.
21. In supersession of guidelines dated 07.05.2015, MoEF&CC vide notification dated 28.08.2015 [**Pages 533-536/Reply/Appeal**] issued fresh

- guidelines for diversion of forest land for non-forest purpose under Forest (Conservation) Act, 1980 wherein a simplified procedure is detailed for grant of permission for felling of trees standing on forest land to be diverted for execution of linear project. Reference is made to para 2 in this respect.
22. The DFO is empowered on behalf of State Government, UP to grant working and tree felling permission for linear projects, after realization of funds from the user agencies in favour of ADHOC CAMPA account of State Government, which is in compliance to conditions stipulated in In-principle approval (Stage-I) granted by MoEF&CC. In the instant case, Govt. of UP vide Order dated 16.07.2015 [**Pages 537-540/Reply/Appeal**] empowered all the DFOs in State of UP to grant working/tree felling permission on behalf of State Government.
 23. The MOEF&CC Circular dated 27.09.2017 [**Pages 541-5542/Reply/Appeal**] by which power was granted to DFO (authorized by State Government) to issue working permission and order for felling of trees, once the conditions stipulated in Stage-I FC are complied by User Agency.
 24. The statutory scheme for granting forest clearance is detailed in the Handbook of Guidelines issued by MoEF&CC on 28.03.2019 [**Pages 543-675/Reply/Appeal**] for effective and transparent implementation of the provisions of Forest (Conservation) Act, 1980. The said guidelines provide a procedure of three stage approval for grant of forest clearance as under:
 - i. In-principal approval (Stage-I)
 - ii. Final approval (Stage-II)
 - iii. State Govt. Order under Section 2 of Forest (Conservation) Act, 1980 incorporating all the conditions stipulated by Central Govt. on the recommendation of State Govt.
 25. That the relevant provisions of 2019 guidelines are detailed below-
 - i. **Part-A/Para 6 [Pg.555/Reply/Appeal]** of Forest (Conservation) Rules, 2003 amended upto August, 2017, the guidelines deals with *Submission of proposal seeking approval of the Central Government under section 2 of the Act*. It clearly stipulates step-by-step procedure for diversion of

forest land and felling of trees for non-forest purpose under Section 2 of the Forest (Conservation) Act, 1980.

- ii. **Part-A/Para 7 [Pg.558/Reply/Appeal]** of the guidelines deals with *Processing of proposals received by the Central Government*. It provides the procedure for processing, appraisal and grant of clearance by the Central Government.
 - iii. **Chapter No.I/Para 1.4&1.5/[Pg.583-584/Reply/Appeal]** of handbook clearly stipulates that the approval for non-forest purpose will be granted by the Central Government and subsequently, the State of UP will issue the diversion order. Basically, three steps are involved namely Stage-I, Stage-II and State Government Order.
 - iv. The MoEF&CC directed States/UT for granting working permission and felling of trees after realization of all the levies from User Agencies in ADHOC CAMPA Fund of the concerned State Government account online. The DFO or any senior official of the State Government only can issue working permission of tree felling after realization of funds **(Chapter 11/Pg.84[Pg.629/Reply/Appeal])**.
26. MoEF, Govt. of India granted working/ tree felling permission even before final approval (Stage-II approval) to speed up linear infrastructure project vide their notifications dated 07.05.2015, 28.08.2015 **[Page 156/Appeal/NGT]**.

Compensatory Afforestation has unrealistic targets

- 27. The compensatory afforestation has been proposed in 20 hectare patch in Carbary compartment of Malhan Range in Dehradun Forest Division. As per the norms of planting 2000 plants per hectare under compensatory afforestation, total 40000 (Forty Thousand) plants will be planted on proposed Compensatory Afforestation site against 2572 number of trees (including Sal trees) proposed to be felled, and for every single tree to be felled, 15 new saplings will be planted.
- 28. The proposed planting site is located at an aerial distance of approx. 6 km from outer boundary of Rajaji National Park, and 6.012 Km from the site

where trees are to be felled. The Forest Division, Dehradun will be responsible for the maintenance of the newly planted Sal trees.

29. In the said project, all the proceedings for Compensatory Afforestation are being followed as per Chapter 2, Part B of Handbook of guidelines for effective and transparent implementation of the provisions of Forest Conservation Act, 1980 dated 28.03.2019 issued by MOEFCC. The present project is covered under Clause 2.5 of said chapter, which deals with “Special provisions for CA for certain categories of projects”. Therefore, in lieu of 9.6224 ha of forest land proposed for diversion, compensatory afforestation has been proposed on 20 ha of degraded Forest land which is “**twice**” in extent of area of diverted forest land.
30. Since, the replanting of Sal trees cannot be carried out as artificial regeneration of Sal trees has not been successful due to various biotic and anthropogenic factors, there will be planting of local native species under compensatory afforestation scheme in the Degraded Forest land situated at Carbarry compartment of Malhan Range in Dehradun Forest Division of Dehradun district only.
31. In order to minimize the effect of this project on the environment, the UP Forest Department in the Stage-I Forest Clearance granted vide letter dated 23/24.12.2021 for the project made it a condition that ‘*As far as possible the maximum number of trees shall be translocated according to a detailed scheme for translocation of suitable plants prepared in consultation with the State Forest Department and the cost for the same shall be borne by the user Agency.*’ In compliance to the above condition, NHAI has undertaken the activity of transplantation of 155 nos. of trees identified during site visit held on 22.05.2021 with the representatives of the forest department. The trees are being transplanted at the land identified at Barkala and Gangali Villages in Saharanpur District. Till date 151 trees out of the identified 155 trees have transplanted. Rest of the trees could not be transplanted due to stay by Hon’ble Supreme Court. The cost to be incurred for this process shall be borne by the NHAI.

Ecological impact and value has not been considered while granting approval by REC

32. The detailed flora and fauna in and around project corridor was duly examined by the Hon'ble Committee Member of REC as per the information furnished by State Govt and DGPS Map of the project corridor. Further, Decision Support System (DSS) software developed by Forest Survey of India (FSI), Dehradun was used to examine the present scenario of landscape including vegetation through satellite. It is incorrect to allege that the REC did not examine the implication of the proposed widening of the highway and acted in a mechanical manner.

Environmental Impact Assessment should have been carried out in accordance with EIA Notification, 2006

33. The preparation of EIA / EMP is an integral part of the Detailed Project Report (DPR) of all the projects implemented by the NHAI in the country, and falls within the standard scope of DPR consultant. Accordingly, the Respondent has prepared EIA / EMP of the said project irrespective of the applicability of prior Environmental Clearance as per EIA notification dated 14th Sep, 2006 and its amendment thereafter till date. It is wrong to allege that no environmental impact assessment has been carried out for the project, and to escape the rigors of the EIA process, the User Agency is breaking up the project into smaller segments.
34. The Ganeshpur Dehradun section of 20 km passes through forest and Wildlife. During DPR preparation, the Environment Impact Assessment (EIA) & Environment Mitigation Plan (EMP) have been prepared as part of DPR study. While designing the project, special emphasis have been kept to minimize the impact on flora & fauna of the region by providing elevated road, tunnel, numbers of animal & elephant underpasses as elaborated in above paras. The additional cost of about Rs.1000 crores is involved in providing these elevated structures and tunnels, animal under passes and also as per engineering requirement. The exclusive cost of 5% of project

cost has been provisioned for mitigation measures for flora and fauna as per table given below:-

S. No.	Details	Total	UP Portion	Uttarakhand Portion
1	Compensatory Afforestation (CA) and Net Present Value (NPV) Cost	7.82	6.14	1.68
2	Plantation of Native Species	1.67	0.97	0.70
3	Environmental Monitoring and other Mitigation measures	1.35	0.90	0.45
4	Muck Disposal Cost (about 1.7 lakh MT muck to be disposed off with 40 Km lead)	5.8	2.90	2.90
5	Cost of Structure exclusively for Wildlife	-		
(i)	3 nos. Animal Passes (3.5 m vertical clearance x 12 m span) each in Uttar Pradesh	4.85	4.85	-
(ii)	3 Nos. Animal Passes (2.5 m vertical clearance x (2x10) m span (2 Nos.) and 2.5 m vertical clearance x (2x6) m span (1 No.)) in Uttarakhand	7.87	-	7.87
(iii)	2 nos. Elephant Underpasses (6 m vertical clearance x 200 m span) each in Uttarakhand	67.29	-	67.29
(iv)	Reptile crossing culverts in Uttarakhand	3.81	-	3.81
	Total	100.46	15.76	84.70

The EIA & EMP report detailing out the monitoring mechanism and detailed mitigation plan is available on NHAI website <https://nhai.gov.in/#/general/environment-forest-wild-life-clearance>

No Carrying Capacity has been conducted in view of increasing traffic

35. The present stretch carries traffic more than 20,000 equivalent passenger car units (PCUs) per day which is much beyond the 2 lane capacity of 10500

PCU, necessitating urgent upgradation of highway capacity. As a result, the travel time between the two cities on the existing Highway (NH-72A) currently is 6-7 hours in the Non Peak Hours and more than 8 hours during the Peak Hours. The average travelling time between Ganeshpur to Dehradun (20.7KM Stretch) is 45 – 60 mins during Tourist/Yatra season, which extends to 2 hours leading to frequent traffic jams, resulting in significant increase in Air & Sound pollution in the area, besides safety hazards to road users. Longer Travel time of vehicles in forest zone means longer time of disturbance to wildlife also.

36. The design of the Highway is done based on the Current Traffic plying on the highway and future traffic projections. As per current traffic, 4 lane highway is required and considering the increased tourism/commercial activities being promoted by the State Government in the State of Uttarakhand, there is a requirement for such highways.
37. The traffic studies conducted on the project highway have shown that the traffic on the existing highway is more than 20,000 PCU/day as per Para 2.11.2 Table 2.9 of Indian highway capacity Manual 2012-2017 published by CSIR- CRRRI New Delhi. The threshold value suggested for conversion from 2 to 4 lane divided road to ensure enhanced safety and traffic operation is 10,500 PCU/day. The existing traffic on the highway in question is almost double than that suggested for safe traffic operation.

The Cost Benefit Analysis is erroneous

38. The Cost benefit analysis has been done strictly as per the Guidelines & parameters given in the Handbook for Forest Conservation Act-1980. All the conditions under Forest (Conservation) Act, 1980 have been duly taken care as per law while recommending the proposal, in order to compensate the ecological loss as per density & eco-class of forest cover and legal status of forest land in question.
39. Additionally, the cost benefit analysis was done as per MoEF&CC guidelines dated 01.08.2017 with due consideration of Ecosystem losses, loss of fodder, loss of public facilities, possession value of forest land (30% of NPV), cost of suffering of oustees, Habitat fragmentation Cost,

Compensatory afforestation and soil moisture conservation cost, increase in productivity, population benefitted, economic benefits due to employment and compensatory afforestation.

40. However, while calculating the benefit part, the benefits to the economy due to this project is only elaborated but not quantified in monetary terms. Despite that the benefit/cost ratio is coming out to be 7.42 i.e. > 1 . Had the benefit to the economy due to this project been considered, the benefit cost ratio would have been much higher than 7.42. Projects having benefit/cost ratio more than 1 are viable projects. Hence, the project has been recommended only after it was found to be feasible based on the Cost Benefit Ratio.
41. The allegations regarding the incorrect calculation of NPV in the cost benefit analysis is wholly denied. It is clarified that in case of any increase in the evaluation of the NPV for any reason, the Respondent has given Undertakings with DFO Shivalik [**Pages 737-743/Reply/Appeal**] and DFO Dehradun [**Pages 744-750/Reply/Appeal**], stating that if the NPV increases, then as per the direction of the Hon'ble Supreme Court of India in the case of *T.N. Godavarman Thirumulpad vs. Union of India & Ors. (2006) 1 SCC 1*, the amount shall be deposited by NHAI in the ADHOC CAMPA Fund of the concerned State Government.

In light of the submissions made herein above, it is prayed that this Hon'ble Tribunal may graciously be pleased to dismiss the present appeal; and pass such other or further Order as this Hon'ble Tribunal may deem fit.

THROUGH

RESPONDENT No.3



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