

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**M.A. No. 926 of 2015
In
Appeal No. 25 of 2015**

Shrushti Paryavaran Mandal Vs. Union of India & Ors.

CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE U.D.SALVI, JUDICIAL MEMBER
HON'BLE DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER
HON'BLE Mr. RANJAN CHATTERJEE, EXPERT MEMBER

Present: **Applicant:** Mr. Ritwick Dutta and Mr. Rahul Choudhary, Advs.
Respondent No.1: Mr. Vishwendra Verma and Ms. Shivali Advs.
Respondent No.2: Mr Karti Shukul, Adv.
Respondent No.4: Mr. Vikas Malhotra, Adv.
Respondent No.5: Mr. Pinaky Misra, Sr. Adv., Mr. Tavinder Sidh, Mr. S.P. Sharma,GM and Mr. S.R. Mishra, PD

Date and Remarks	Orders of the Tribunal
Item No. 02 September 07, 2015	<p><u>M.A. No. 926 of 2015</u></p> <p>This is an Application filed by the Applicant under Section 26 of the National Green Tribunal Act, 2010. The Applicant's contention is that despite the Orders of the Tribunal dated 06th May, 2015 and 05th August, 2015 indiscriminate felling of trees have been carried out by the Respondents in flagrant violation of the orders of the Tribunal. It is further contended by the Applicant that even as of today order under Section 2 of the Forest Conservation Act, 1980 has not been published by the State Government which would mean that any project activity itself is in violation of the law in force. He further states that though that matter was fixed for final hearing on 14th September, 2015 in relation to grant of Forest Clearance, the Respondents have violated the orders and cut large number of trees in the Reserved Forest area for widening of NH - 7 Mansar at the border of Maharashtra and Madhya Pradesh, and the project is being carried on by NHAI and other Respondents have taken no steps to</p>

prevent the same much less comply with the orders of the Tribunal. In support of the Application the Applicant has placed on record the photographs of the sites in question showing fully grown trees been fell/cut and even the labour continuing to work on the sites to cut these trees. The newspaper published in Nagpur has reported that there is a large felling of trees between Mansar and Khawasa in Nagpur District. The area primarily falls in Bogra and Pavni range.

We have heard the Learned counsel appearing for the parties.

After hearing the parties the Tribunal on 06th May, 2015 passed the following orders:

“Heard. The Learned counsel appearing for Applicant. Issue notice on the application for condonation of delay. The Learned Counsel appearing for MoEF accepts notice, waive service, pray for time to seek instruction. Liberty to serve the State of Maharashtra through their Resident Commissioner granted. .

In the meanwhile, we restrain Project Proponent and any Authority for from felling any tree in the areas covered under the project.

List this matter on 15th May, 2015.”

Thereafter the matter was reiterated at great length by all the parties on 05th August, 2015 and when the Tribunal has passed the following order:

“These three appeals relate to the same project, which are being heard together as they raise common questions of law based on similar facts.

In all three appeals numbered 25 of 2015, 44 of 2015 and 66 of 2015 titled as Srushti Paryavaran Mandal v. Union of India & Ors, Conservation Action Trust v. MoEF & CC & Ors, Nature Conservation

Society, Amravati v. State of Maharashtra & Ors respectively, the appellants have prayed for quashing of the working permission for commencement of work and for felling of trees granted by the Government of Maharashtra vide its letter dated 11th February, 2015 as well as for quashing of stage-I approval for forest clearance dated 13th December, 2013 granted by the Ministry of Environment and Forest (for short 'MoEF').

During the pendency of these appeals the Central Government (MoEF) vide its letter dated 15th May, 2015 granted Stage-II approval for diversion of 49.246 hectares of the forest land in favour of NHAI, subject to the conditions stated therein. The appellants in Appeal no. 66 of 2015 have also challenged this approval.

The challenge to these impugned orders is inter-alia, but, primarily on the ground that the permission is contrary to the orders of the Hon'ble Supreme Court of India dated 4th December, 2006 passed in Writ Petition No. 460 of 2004 titled as Goa foundation v. Union of India which requires every project within 10 Kms of any National Park or Tiger Reserve to take prior clearance from the National Board for Wildlife.

The appellants have taken a stand that The National Tiger Conservation Authority in its report titled 'Connecting Tiger Populations for Long Term Conservation' has highlighted the significance of having corridor connectivity for meta population persistence. It is further submitted that the area in question being a Tiger Reserve, no non-forest activity can be permitted. Also, no approval from the National Board for Wildlife has been obtained even till date. It is further submitted that the permission is in direct violation of the doctrine of Public Trust as well as the species best interest standard as stated by the Hon'ble Supreme Court of India in the case of Centre for Environment Law, WWF v. Union of India (2013) 8 SCC 234. There is no order under Section 2 of The Forest Conservation Act, 1980 (for short 'Act of 1980') passed by the State Government even as of today. Any permission which is violative of the statutory provision as well as the National Forest Policy 1988 would be in clear violation to the dictum of the Hon'ble Supreme Court in the case of Lafarge Umiam Mining Private Ltd Vs Union of India (2011) 7 SCC 338.

However, according to the respondents, permissions are valid and in consonance with law and after obtaining the final permission dated 15th May, 2015 the Project proponent is entitled to cut/fell the trees and carry on the project. According to them, all the condition under required laws have been complied with.

It appears from the records that the Nagpur Bench of the Hon'ble Bombay High Court took suo-moto cognizance in response to the newspaper report dated 20th September, 2013 about poor condition of roads, particularly the 40 kms stretch of NH-7 between Manesar to Khawasa. The High Court directed NHAI or any other appropriate body in the said Public Interest Litigation to take immediate steps and action for maintenance, repair and upkeep of the road in question and to make it more motor worthy.

The dispute in these appeals is confined to 49.246 hectares which is part of 37 kms long road of NH-7 that passes through and from the border of State of Madhya Pradesh till Manser in State of Maharashtra, involving jurisdiction of these two States. It is an admitted position that the Environmental Clearance for a section of the project falling in the State of Maharashtra has been granted, but till today, the Wildlife Clearance from the National Board for Wildlife, which is chaired by the Hon'ble Prime Minister, has not been granted.

On 13th December, 2013, MoEF conveyed 'in-principle' approval for diversion of 42.246 hectares of the forest land in favour of the Project Proponent subject to 32 conditions stated in the letter. Condition 9 and 26 of the 'in-principle' approval read as under:

(ix) The project proponent will obtain clearance from the Standing Committee of the National Board for Wildlife (NBWL) before Stage-II approval.

(xxvi) Any tree felling shall be done only when it is unavoidable and that too under strict supervision of the State Forest Department.”

From the above conditions, it is clear that the 'in-principle' approval was subject to fulfillment (emphasis supplied) of the conditions stated therein. As already noticed, these conditions have not been complied with till date.

On 11th February, 2015 the State of Maharashtra issued a working permission without recording compliance of the above conditions. The State had not given even status report confirming that conditions stated by MoEF in their letter dated 13th December 2013 had been complied

with. Furthermore, it is clear that no non-forest activity can be carried on in a forest area, unless an order under Section 2 of the Act of 1980 is passed by the concerned State Government. The MoEF has no jurisdiction to pass an order in terms of Section 2 of the said Act. This is a settled position of law and has already been decided by a larger Bench of the Tribunal in the case of *Prafulla Samantara v. Union of India* 2014 ALL (I) NGT REPORTER (1) (DELHI) 59, wherein tribunal reiterated its order passed in the case of *Vimal Bhai v. Union of India & Ors* Appeal No 07 of 2012 dated 7th November, 2012, a statutory appeal against which had also been dismissed by the Hon'ble Supreme Court of India.

Later a report appears to have been submitted to MoEF which then passed a further order dated 15th May, 2015. Even in this order it has been stated that the project proponent and the State Government shall ensure compliance of all the conditions stipulated in Stage-I approval and the provisions of the Act, Rules, Regulations and Guidelines in force.

It is evident from the above narrated facts and the position of law that the project proponent has not complied with the law in force. It has not obtained permission from the National Board for Wildlife. The State Government has still not passed an order under Section 2 of the Act of 1980. It is still to be examined whether the orders impugned in the present appeals are liable to be set aside. In light of this, in our considered view, it was inappropriate for the Government of Maharashtra to issue working permission prima facie.

It is a settled position of law that Courts and Tribunals would not exercise their jurisdiction to render statutory provisions ineffective, otiose or pass orders which would violate the law.

The Supreme Court has clearly stated the proposition that generally no Court has competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of statutory provisions. The Courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. No mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or do something which is contrary to law. (Refer: *Manish Goel v. Rohini Goel*, (2010) 4 SCC 393, State of

U.P. and Ors. v. Harish Chandra and Ors. AIR 1996 SC 2173)

Learned counsel appearing for MoEF submits that a high level meeting is being held to resolve the issues arising in the present appeal. The high level meeting would consider various aspects, including the mitigating steps that they would direct the Project Proponent to take before he could actually start the project. He further submits that placing of such document would be necessary and would be of great assistance to the Tribunal for final adjudication of the matters in issue in these appeals. On his request we adjourn the matter for a period of 2 weeks as prayed. The interim orders passed by the Tribunal earlier would continue till that date.

At this stage, learned counsel appearing for Project Proponent has brought to our notice the order dated 30th July, 2015 passed by the Hon'ble High Court of Bombay at Nagpur Bench. We would just notice here that reading of the said order shows that orders passed by the Tribunal dated 06th May, 2015 and subsequent orders which were passed in these matters after hearing the parties have not been brought to the notice of the Hon'ble High Court of Bombay, as none of them find mention in the order of the Hon'ble High Court.

However, Mr. Pinaki Mishra, Sr. Advocate, upon instructions, submits that the orders were brought to the notice of the Hon'ble High Court. We would prefer to leave the matter at that.

We consider it necessary to continue the interim orders passed by the Tribunal earlier for the reason that the statutory appeals against the grant of Forest Clearance are sub-judice before the Tribunal. The statutory Wildlife Clearance admittedly has not been taken by the Project Proponent as of today. If granting of Forest Clearance is finally set aside by the Tribunal, and yet trees are permitted to be felled/cut, the environment and ecology of the area would certainly be disturbed and get adversely affected in a way that its restoration at a later stage would be impossible. In the above circumstances, the judgment of the Tribunal would be rendered ineffective and inconsequential, whether it is in favour of the appellant or the project proponent. Even if the judgment is in favour of the project proponent and is with certain directions to take remedial, precautionary and mitigative measures to carry on the project, it would become incapable of performance if the

substantial work of the project, including cutting of large number of trees (stated to be approximately 20,000) is permitted at this stage.

It is a settled canon of constitutional jurisprudence that powers of the Hon'ble Supreme Court and Hon'ble High Courts under Articles 32 and 226 respectively cannot be totally excluded by a statute. These are constitutional powers of the higher courts and are exercisable by these courts in their discretion. Historically, this extraordinary power has been exercised by the higher courts sparingly.

Furthermore, at this stage we may notice the recent judgment of the Hon'ble Supreme Court of India in the case of Shrikant Sharma v. Union of India, Civil Appeal No. 7400 of 2013 decided on 11th March, 2015 wherein matters pending before statutory Tribunals, with special jurisdiction, as opposed to the proceedings in the Hon'ble High Courts in exercise of powers under Article 226 of the Constitution of India have been dealt with at length, reference of which was made in a recent judgment of the Tribunal titled as Forward Foundation v. Union of India, OA No. 222 of 2014 decided on 7th May, 2015.

"49.....We may at this stage refer to a recent judgment of the Supreme Court of India in the case of Union of India and Others v. Shrikant Sharma and Others, Civil Appeal No. 7400 of 2013 decided on 11th March, 2015. The Supreme Court in that case was dealing with a question of law whether the right of appeal under Section 30 of the Armed Forces Tribunal Act, 2007 against an order of the Tribunal with the leave granted by the Supreme Court against such orders, under Article 136 (2) of the Constitution of India will bar the jurisdiction of the High Court Under Article 226 of the Constitution of India. After discussing the various provisions of the Act and various judgments of the Supreme Court in relation to basic principle for exercising power under Article 226 of the Constitution stated:

"34.

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma).

(iv) The High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the 64 statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma).

36. In Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) this Court observed that it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.

In Chhabil Dass Agrawal this Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

The Court then proceeded to examine the likelihood of analogous situation that could arise by exercise of such jurisdiction and finally concluded held as under:

“37.

...Once, the High Court entertains a petition Under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal Under Section 30 with leave to appeal Under Section 31 of the Act against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court Under Article 226 of the Constitution Under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court Under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy Under Section 30 read with Section 31 Armed Forces Act.

38. The High Court (Delhi High Court) while entertaining the writ petition Under Article 226 of the Constitution bypassed the machinery created Under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions Under Article 226 and directed the writ Petitioners to seek resort Under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition Under Article 226 of the Constitution of India.

39. For the reasons aforesaid, we set aside the impugned judgments passed by the Delhi High Court and upheld the judgments and orders passed by the Andhra Pradesh High Court and Allahabad High Court. Aggrieved persons are given liberty to avail the remedy Under Section 30 with leave to appeal Under Section 31 of the Act, and if so necessary may file petition for condonation of delay to avail remedy before this Court.”

In the present case the Hon'ble High Court had been pleased to exercise its jurisdiction in relation to improving the condition of the roads and thus it has passed interim direction only in that regard. The scope of the Writ Petition before the High Court and the present appeals are different and distinct. The scope of both proceedings is not adversarial. The Doctrine of Sustainable Development presupposes adherence to Precautionary Principle and doctrine of Balancing. Development is necessary for the progress of the country, but, not by irretrievable and irreversible damage to the ecology and environment and that too, in violation of the statutory provisions of the laws in force.

It was obligatory upon the parties to bring the correct facts, scope of the statutory appeals and all orders of the Tribunal to the notice of the Hon'ble High Court, which they failed to do. It appears to us that the Hon'ble High Court did not in any way intend to deal with or render these statutory appeals pending before the Tribunal infructuous.

Another aspect which has to be noticed at this stage is that the interim

orders passed by the Tribunal including that of 6th May, 2015 were not challenged by any of the parties either before the Hon'ble High Court or by filing a statutory appeal before the Hon'ble Supreme Court of India to which alone, the orders of the Tribunal are appealable.

Non-continuation of the interim orders would not only render the present appeals practically infructuous but would also result in irreversible damage and degradation of the environment and ecology of the area. Thus, we direct that the interim orders would continue till next date of hearing.

Let these matters be listed for hearing on 24th August, 2015 as prayed.”

We are prima facie satisfied that the above orders of the Tribunal have been violated with impunity. We may notice that when the matters previously came up for hearing. We were informed on behalf of the Project Proponent that there would be no tree felling, however the documents on record shows to the contrary.

It is a Reserve Forest area and that the State Government is yet to pass order under Section 2 of the Forest Conservation Act, 1980. This indiscriminate felling of trees, where nearly 30000 trees are expected to be cut and felled in this Project, would have devastating effect upon the environment and ecology-particularly wildlife. Besides all this it is a patent violation of the orders of the Tribunal.

We find it necessary to notice here that neither the order dated 06th May, 2015 nor 05th August, 2015 has been challenged before the Hon'ble Supreme Court of India before whom the statutory Appeal lies. If the parties were aggrieved from the said Orders they were expected to take recourse to the process of law and not violate the

Orders with impunity particularly when the Project Proponent have assured that the trees would not be felled during the intergnum.

Therefore, in exercise of the Powers vested in the Tribunal under Section 26 of the National Green Tribunal Act, 2010 and read with Order XII of the Civil Procedure Code and Contempt of Court Act, 1981, we issue Notice to the following to show cause as to why their properties be not attached, and/or they be not committed to the Civil prison and further directions be not passed to the following:-

1. Secretary of Forest and Environment, State of Maharashtra;
2. Chief General Manager of the NHAI, State of Maharashtra
3. Chief Conservator of Forest, State of Maharashtra

Learned counsel appearing for all the contemnors accept Notice and pray for time to file the Reply. Let the Reply to the show cause be filed before the next date of hearing.

In the meanwhile, we direct Commissioner of Police, and SP in-charge of the above area and the Collector to ensure that no trees are permitted to be fell or cut by any Authority or the Project Proponent. They shall be personally responsible for compliance of this direction.

List this matter on 14th September, 2015.

.....,CP
(Swatanter Kumar)

		<p>.....,JM (U.D. Salvi)</p> <p>.....,EM (Dr. D.K. Agrawal)</p> <p>.....,EM (Prof. A.R. Yousuf)</p> <p>.....,EM (Ranjan Chatterjee)</p>
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