

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION NO.90 of 2014**

CORAM :

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)**

B E T W E E N:

VINOD RAICHAND JAIN,

Age 46 years, Occupation- Business.

Address: 985, Sadashiv Peth,

Pune-411 030.

....**APPLICANT**

A N D

1. UNION OF INDIA,

Through its Secretary,
Department of Environment & Forest,
Paryavaran Bhavan, C.G.O Complex,
Lodhi Road, New Delhi-110 003.

2. STATE OF MAHARASHTRA,

Through its Chief Secretary,
Mantralaya, Mumbai-400 001.

3. EXECUTIVE ENGINEER,

Public Work Project Department, Pune

Central Building Campus,
Pune-411 001.

4. THE FOREST OFFICER,

Forest Department,
Shirur, District- Pune.

5. THE SUB DIVISIONAL OFFICER,

Sub Division, Pune,
Administrative Building,
Pune.

.....**RESPONDENTS**

Counsel for Applicant(s):

Mr. Vishal Kale Advocate, a/w Mr. Harshad Mandke Advocate

Counsel for Respondent(s):

**Beena Pardeshi Advocate, Mr. N.K.Ghag, PWD Officer for
Respondent No.3.**

**Mr. D.M.Gupte a/w Supriya Dangare Advocates for Respondent
No.4.**

Mr. V.M.Pardeshi, Naib Tehsildar for Respondent No.5.

Date: January 29th, 2015

J U D G M E N T

1. By this Application, Applicant – Vinod Jain, seeks injunction against tree cutting and public auction, which was to be held on 2nd and 3rd September, 2014, in respect of those trees, which were planned to be cut/felled.

2. This Application is filed under Section 14 read with Section 18(1) of the National Green Tribunal Act, 2010 (for Short, “NGT Act”).

3. Undisputedly, between Shikrapur –Chakan, State Highway No.55, the Public Works Project Department (PWPD), Pune, planned widening of Highway No.55 (4-lane road and 6 lane bridge along with Biometric improvements, 24 to 53 km) within Shirur and Khed (Rajgurnagar) Tehsils, (district: Pune). The project work required removal/cutting of in all 1189 trees. Most of these trees are situated on either side of the road, which is subject matter of widening. The trees were proposed to be felled/cut down, because they come in the midway of expansion project and as such, impede expansion sought by the Respondents. The Respondents state that 769 non-scheduled trees were to be fell down but auction of 1189 trees was declared, without legal permission.

4. The Applicant read news of public auction of tree felling in a local newspaper and auction thereof for project of widening of the road. He sought information about permission granted by the Authorities for tree felling. The Respondent No.5, appears to have granted permission for tree felling only for 769 trees, without application of mind, and without following proper procedure. The transportation of trees as per required number, afforestation programme and every requirements of Law had not been followed and, therefore, the Applicant gave

Notice dated 27th August, 2014, to the Executive Engineer of PWD, Pune. He, thereafter, filed present Application.

5. A statement was made by learned Advocate for the Respondents that unless alternative road or stretch of land will be identified or arrangement can be made for replantation/new plantation of trees, so that there will be no problem of future growth of plants and project will go hand-in-hand with development of plantation work, the project work will be stalled till such issue will be resolved. Thus, it was agreed that both the works should be permitted to proceed simultaneously.

6. We have heard learned Advocates for the parties. We have perused relevant record of the matter.

7. There is no denial to the fact that widening of the road is absolutely necessary, having regard to the fact that Shikrapur-Chakan road, is now, causing lot of traffic problem. There is always bottleneck on the road, creating traffic jams and at a times the vehicles are required to trail behind for hours together during rainy season, in particular, due to slippery road, flanked by tar road. Needless to say, unless Shikrapur-Chakan road, is sufficiently widened, traffic congestion will not be taken care of. It is true, no doubt, that felling of trees is equally serious problem and unless there is proper afforestation programme, mere assurance on paper that plantation will be done in respect of certain number of trees, will be of no much use.

8. Perusal of affidavit filed by Shri. Salunke, Executive Engineer, Project Division, Pune, reveals that PWD, intended to construct four laning of Shikrapur – Chakan road- S H 55 (ch Km 24/00 to 53/00), on BOT basis. The tendering work was allotted to M/s Raj IVRCL, Joint Venture. In the said scope of work, Entrepreneur was to cut the trees and then do plantation of well grown trees along with sides of the road. It is stated by letter dated 21.6.2014, that the Forest Officer, Khed Tehsil granted permission for felling of the trees.

9. We are of the opinion that the permissions for felling of trees have been duly obtained by the PWD Authorities before commencement of project in question. The permissions have been obtained under the Maharashtra Felling of Trees (Regulation) Act, 1964, from the competent Authority. The trees are mostly of non-scheduled species. Copy of the Application dated 18.12.2013, (P-95), shows that the Executive Engineer, sought such permissions from the Forest Officer, Shirur and Tehsildar Shirur. The record shows that project was approved by Govt. of Maharashtra on 18.7.2013 (P-202) on various conditions. Out of these conditions, one condition was that the tender shall be accepted as per the terms on BOT basis.

10. At this juncture, it is most significant to note that scope of the work and affidavit filed by the Executive Engineer, Shri. Salunke, if read together, would clearly go to show that that the scope of work as a part of contract, included an item of cutting

of trees and arboriculture. The relevant part of affidavit of Shri. Salunke may be reproduced as below:

“b) To *construct the said Chakan-Shikrapur Road, many trees were coming in the project area. Therefore, the Respondent No.3 has included in the scope of work of the contract an item of cutting of trees and arboriculture. In the said scope the entrepreneur was to cut trees and then do plantation of well grown trees along with the sides of the road.* “

11. This part of affidavit has to be read in conjunction with para 9.0 (P-171) of the scope of work under the terms of contract.

Cumulative effect of above noted general statement made in the terms of contract and specific statement made in the part of affidavit of Shri. Salunke, is that the Entrepreneur (Contractor) was under obligation to cut trees and then do plantation of well grown trees along side of the road. This was highly important task. Even so, there was no land acquired alongside of the road for plantation of trees. It is undisputed that PWD never acquired any stretch of land alongside the road for plantation of new trees, while contemplating the project in question. So, we called for additional affidavit of the Respondents and explanatory affidavit of Executive Engineer, Shri. Salunke, as well as present Chief Engineer, (Shri. Ugile). The affidavit of Chief Engineer PWD Shri. Ugile, was called

mainly for the purpose of knowing whether there was any policy for the purpose of determination of criteria for granting of prior plantation/replantation of trees, before removal/felling of trees alongside the road at the time of planning project of widening/expansion. Mr. Eknath Ugile, Chief Engineer, filed his short affidavit. It is not necessary to elaborately reproduce his affidavit for simple reason that he has probably avoided to give details of criteria which was applied in regard to the present project. His relevant part of the affidavit may be reproduced as below:

“a) The project under consideration is BOT 4 laning of road. Public Works Department in Government of Maharashtra has formulated Public Private Partnership (PPP) policy in the year 1989 and 1996 which is as per Exhibit nos 1 and 2. In these policies there are no specific guidelines/criteria regarding cutting, plantation/replantation of trees. These policies were in force at the time of award of the project (Sept.2013) under consideration.

b) However the general policy of PWD, Government of Maharashtra regarding felling of trees, guidelines for roadside Arboriculture is as per Exhibit No-3, 4 & 5.”

12. As stated above, the cryptic affidavit filed by Shri. Ugile, Chief Engineer, vaguely points out finger towards Government Resolution (G.R) dated 30th June, 1989, being policy of Govt.

for plantation of trees for project like present one on BOT basis.

The first condition shown in the said GR is that:

In case, the Entrepreneur is unable to acquire the land for implementation of the project on his own, State Govt. will be responsible to make it available by acquiring the same at the cost of Entrepreneur.

Similarly, the condition No.7, reads as: The Entrepreneur shall submit guarantee that all terms and conditions related to environment protection as stipulated by competent Authorities will be strictly complied with. It is obvious that Entrepreneur, is required to acquire the land for plantation of trees alongside the road, which is to be widened and if it cannot be acquired, then it is the responsibility of Govt. to do so. Coming to another document referred in the affidavit of Shri. Ugile, Chief Engineer, being GR (Ex.2), dated 19th July, 1996, it is manifest that widening of the road is subject of work, which can be provided as per item at serial No. 1(b) on BOT basis. The GR refers to agreement as provided in provision of Resolution 3(3), to allow plantation of plants on contract basis, with permission to obtain income (usufructs) generated from the plants. The terms of both the policies, thus, clearly show that plantation of trees has to be done by side of the road, which is to be widened, in accordance with the project under consideration. In other words, tree plantation alongside the widening road, is simultaneous activity contemplated in both the policies. Instead of giving clear picture of such policies of Govt., high

ranking officer of PWD, namely; Shri. Ekanath Ugile, attempted to put-up vague versions and left it for the Tribunal to read both the Govt. Resolutions. In our opinion, this is improper, incorrect and irresponsible attitude of the Chief Engineer, particularly, when by order dated 1.12.2014, he was called upon to explain particular policy of PWD in respect of plantation/replantation of trees as and when cutting of trees alongside the road for purpose of expansion of road at the time of granting such project, further to state/explain the Govt. Resolutions and norms fixed in this behalf. Obviously, he was not supposed to only refer to said Govt. Resolutions, but was required to explain Govt. policies by giving details thereof. In our opinion, he avoided to explain the same for the reasons best known to him. Probably, it may be due to heart-burning or obstinate nature about which we are unconcerned. Yet, the fact remains that his affidavit is rather dissatisfactory.

13. The subsequent policy of Govt. is as per Resolution dated 31st July, 2014, which is prospective. As can be gathered from the record, the Project Proponent was put under legal obligation to make available land alongside the road to be widened for plantation. On his failure, Govt. undertook such work in in order to ensure simultaneous plantation of trees, which was required to be done as per Govt. policy, which was in vogue even at that time. Be that may as it is, we have already noted that widening of road is need of the hour for development of traffic facility and to remove congestion. We have already

taken note of the fact that there is always heavy traffic on Shikrapur- Chakan road, which creates traffic jam and the vehicles leading towards Mumbai are put to crawling speed. In **Essar Oil Limited v. Halar Utkarsh Samiti and Ors** (AIR 2004 SC 1834), the Apex Court considered destruction of certain area in a sanctuary, particularly, on account of lying of pipelines, carrying crude oil. The Apex Court observed:

“Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life”. The importance of maintaining a balance between economic development on the one hand and environment protection on the other is again emphasized in Principle 11 which says *“The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all;”*.

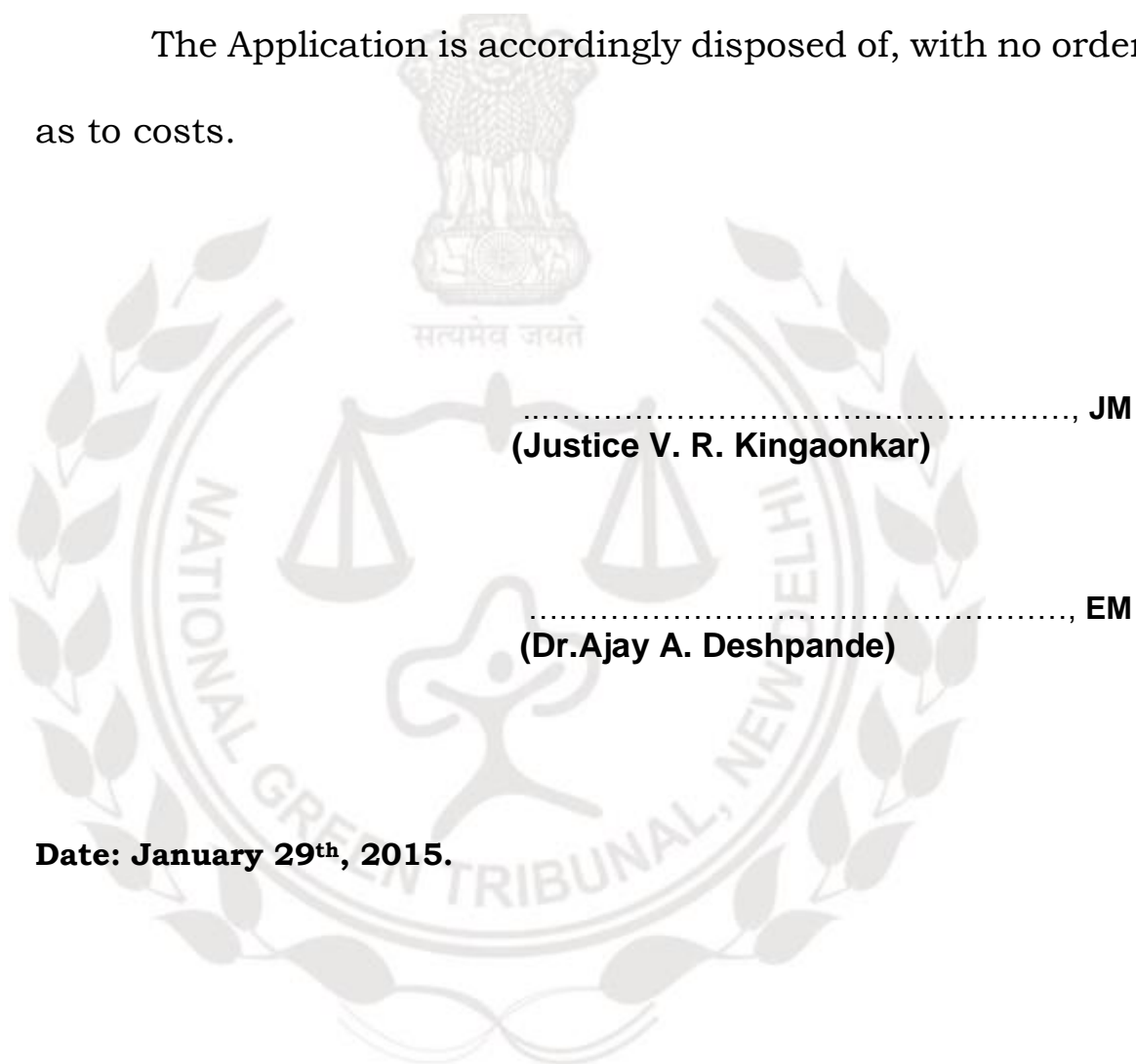
14. We may approve the work of Shri. Sadashiv Salunke, Executive Engineer, who took call having regard to necessity of widening of the road required for development. He could see that there was permission available for removal/cutting of trees, yet the illegality could obstruct the project, but there was no land available for plantation/replantation of the trees. So,

alternative arrangement was made by selecting land of CRPF. He has placed letter of consent issued by DIGP, GC, CRPF, Pune, dated 24th November, 2014, (Ex-D), (P-235) on record. By the said letter, it is agreed that CRPF, Talegaon to allow plantation of 10,000 plants in the campus on certain conditions. Shri. Sadashiv Salunke has taken due efforts to identify such alternative land of Govt. for plantation. But for his sincere efforts, the project could be derailed, protracted and unnecessarily stuck. Such effective measures of good officers also should be taken into consideration at the time of dealing with the matter.

15. In our view, expansion of State Highway, is an important project in public interest, which cannot be stopped, only because there are trees, which may obstruct the project when alternative arrangement for plantation/afforestation can be made. We have been informed by learned Counsel appearing for the Respondent No.3, that number of trees will be planted to maintain ecological balance, as per the directions of competent Authority, which granted permission to fell trees in question. We direct that the concerned Authority i.e. Project Proponent, Executive Engineer of the project and DIGP, GC, CRPF, shall manage to execute proper agreement and place a copy thereof on the record of this Tribunal, within period of three (3) weeks. The project may be started immediately, inasmuch as we trust the affidavits filed by the Respondent No.3 and hope that assurances will not fail.

16. The Registrar of NGT (WZ), is directed to forward copy of this Judgment to the Additional Chief Secretary, PWD, Govt. of Maharashtra for suitable action, as may be deemed proper and particularly in the context of work/conduct of PWD officials, named in the Judgment.

The Application is accordingly disposed of, with no order as to costs.



....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr. Ajay A. Deshpande)

Date: January 29th, 2015.

NGT