

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15884 of 2021

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Shashwat, S/o Santosh Kumar Srivastava, K- 80, RBI Flats, Sarojini Nagar,
South West Delhi, Delhi - 110023.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Main Secretariat, Patna - 800001.
2. National Highways Authority of India, Ministry of Road Transport and Highways through its Chairman, New Delhi.
3. The Department of Transport, Government of Bihar, through its Secretary, Secretariat, Patna - 800001.
4. Ministry of Environment, Forest and Climate Change, Government of Bihar, Through its Principal Secretary, Patna - 800001.
5. Bihar Urban Infrastructure Development Corporation Ltd., Through its Managing Director, Patna - 800001.
6. Bihar State of Pollution Control Board, Through its Chairman, Patna - 800001.
7. Ministry of Environment, Forest and Climate Change, through the Secretary, Government of India, New Delhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akash Keshav, Advocate
For the Respondent/s	:	Dr. K.N. Singh (ASG)
		Mr. Shivendra Kishore, Sr. Adv
		Mr. Sarvesh Kumar Singh (AAG13)
		Mr. Manoj Kumar Singh, CGC
		Mr. Tuhin Shankar, Adv
		Mr. Parijat Saurave, Adv
		Mr. Rabindra Kumar Priyadarshi, Adv

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-07-2022

The following question arises for consideration:-

- (i) What is the nature of consideration to be weighed by the State when a project of public importance is to have an impact on the surrounding ecology?

2. The scope of the petition is confined in respect to translocation of the trees necessarily required to be felled for construction of National Highways -131A Km. 34.600 (design ch: 6.000) near Narenpur to KM 79.970 (design ch:53.000) to km 82.000 (design ch:55.000) near Purnea to 2 lanes with paved shoulders standard in the State of Bihar on Hybrid Annuity Mode. The length of the project is 49 km.

3. While appreciating the issues highlighted by the petitioner, we find the respondents-authorities to have placed on record sufficient material indicating the approval and sanction in accordance with the environmental laws as also the National Highways Act, 1956.

4. The project was sanctioned in the year 2018 and all permissions, including environmental clearance were obtained immediately thereafter.

5. As is evident from the affidavit filed by the respondents, such permissions came vide communication dated 26th July, 2019 and 19th February, 2020.

6. The respondents have filed an affidavit indicating the status of the trees felled/translocated requires to be felled/translocated. The information can be best glanced in a tabular form which we may reproduced as under:-

Sl. No.	Description	Chainage from	Chainage to	Total trees (Nos.)	Tree felled (Nos.)	Tree translocated (Nos.)	Remaining trees to be felled	Trees to be translocated
1	Tree Works	06+000	18+800	4784	3370	1072	93	249
2	Tree works	33+000	43+300	3246	2566	647	25	8
3	Tree Works	43+300	55+000	2899	2404	326	126	43
	Total Quantity in (nos.)			10929	8340	2045	244	300

7. Evidently, more than 2045 trees already stand translocated and 300 (approx.) number of trees would be translocated in the near future. From the affidavit it is evidently clear that the concessionaire has been undertaking the work for forestation on the allocated site which is in close proximity to the inhabited area from where the road is to pass.

8. Concessionaire has undertaken to complete the plantation work on or before the scheduled date of completion of the project, i.e. 17th March, 2023. More than 31117 trees (14033 number of avenue and 17084 number of median plantation) would be planted. Such plantation is to take place within the zone termed as Median plantation and Avenue plantation.

9. Before us, there is no material refuting the averments made by the respondents with regard to concessionaire having commenced the work in terms of the agreement. As such, we are inclined to close the proceedings reserving liberty to the petitioner, or any other public spirited person, to highlight the

surviving grievances, if any, as also any infraction of the terms entered into between the State/its instrumentality and the concessionaire.

10. Sri Akash Keshav, learned counsel for the petitioner, emphasizes the need for constitution of the State Compensatory Afforestation Fund Management and Planning Authority envisaged under Section 10 of the Compensatory Afforestation Fund Act, 2016. From the affidavit filed, thus far, it is not clear as to whether the provisions of the said Act stand complied with or not.

11. Be that as it may, we direct the respondent no.1, namely the State of Bihar through its Chief Secretary, Patna to immediately take steps for complying with the provisions of the said Act and more specifically, Sections 10 and 16 thereof which are reproduced for emphasis as follows.

“10. Constitution of State Authority.— (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted a State Authority to be called the “State Compensatory Afforestation Fund Management and Planning Authority” in each State.

(2) The Central Government may, if so desires, appoint different dates for constitution of State Authority in each of the States.

(3) The State Authority constituted in a State shall be responsible for the management of the State Fund of such

State and its utilisation for the purposes of the Act.

(4) The State Authority shall consist of a governing body and shall be assisted by a steering committee and an executive committee.

(5) The governing body of a State Authority shall consist of the following, namely:—

(i) Chief Minister of the State and in case of a Union territory having no legislature, the Lieutenant Governor or the Administrator, as the case may be— Chairperson, ex officio;

(ii) Minister of Forests—Member, ex officio;

(iii) Chief Secretary—Member, ex officio;

(iv) Principal Secretaries of the Departments dealing with Environment, Finance, Planning, Rural Development, Revenue, Agriculture, Tribal Development, Panchayati Raj, Science and Technology—Members, ex officio;

(v) Principal Chief Conservator of Forests (Head of Forest Force)—Member, ex officio;

(vi) Chief Wildlife Warden—Member, ex officio;

(6) Principal Secretary in-charge of the Forest Department in a State shall be Member Secretary of the State Authority in such State.

(7) The State Government shall appoint an officer of the rank not below the rank of a Chief Conservator of Forests as the Chief Executive Officer of the State Authority who shall be the Member-Secretary of the steering committee and the executive committee of the State Authority.”

“16. Functions of monitoring group.-(1) The monitoring group shall—

(i) evolve independent system for concurrent

monitoring and evaluation of the works implemented in the States and Union territories utilising the funds released by the National Authority and State Authorities to ensure effective and proper utilisation of funds by utilising the services of the regional offices, of the Central Government in the Ministry of Environment, Forest and Climate Change:

Provided that the Central Government may also undertake third party monitoring and evaluation of the works implemented in the States and Union territories utilising the funds released by the National Authority and State Authorities through individual and institutional experts including remote sensing agencies;

(ii) inspect and undertake financial audit of works executed by utilising the funds released by the National Authority and State Authorities in the State and Union territories;

(iii) devise measures for transparency and accountability.

(2) The monitoring group shall meet at least once in three months.”

12. If for whatever reason, the same has not been done, needful shall positively be done within four weeks.

13. Considering the importance of the conservation of the environment on one hand and the development of amenities/facilities on the other, we find it necessary to underscore the constitutional obligations and draw on the wisdom of Hon’ble the Supreme Court as it has delve into the

question of balancing the two competing interests in many cases.

Indian Constitution

14. In **Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371**, the Supreme Court noted:-

“34. Professor Michael Von Hauff of the Institute for Economics and Economic Policy, University of Kaiserlantern, Germany, in his article “The Contribution of Environmental Management Systems to Sustainable Development: Relevance of the Environmental Management and Audit Scheme” aptly observed that, “it is remarkable that India was the first country in the world to enshrine environmental protection as a State goal in its Constitution”.

15. Two Articles of the founding parchment enshrined the importance of protecting the environment. The Articles are re-produced for effect:-

“48A. Protection and improvement of environment and safeguarding of forests and wild life.- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”

“51A. Fundamental duties- It shall be the duty of every citizen of India-

...

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

International Law

16. In **Essar Oil Ltd. v. Halar Utkarsh Samiti, (2004) 2 SCC 392**, Hon'ble the Apex Court has noted that the Stockholm Declaration is the 'Magna Carta of our environment'.

17. Emphasizing such observation we find it necessary to quote some of the principles from the Declaration-

Principle 2 -The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Principle 4- Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

Principle 8 - "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".

Principle 11-“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.”¹

18. Giving statutory recognition to the commitment expressed by India at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, to take ap-

¹ <https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf>

propriate steps for the protection and improvement of human environment; an Act, titled as “The Environment (Protection) Act, 1986 Act no. 29 of 1986 [23rd May, 1986.] was put into the statute book to provide for the protection and improvement of environment and for matters connected therewith.

19. Goal 15 of Sustainable Development Goals mentions the sustainable management forests, combating desertification and reversing land degradation. 15.9 thereof mentions “integrating eco system and biodiversity values into National and local planning, development processes, ...”

20. It is, therefore, incumbent upon the State that all actions having an impact on the achievement of goal mentioned above must be taken with not only due, but extra care.

21. The integration of eco system and biodiversity values in planning also necessitate proper consideration of efforts made, for example under the Compensatory Afforestation Fund Act with the aim being not only to set off the number of trees lost but also to examine and consider the overall effect of such an exercise.

22. It must also be noted that just recently, the United Nation General Assembly has recognized the Right To Healthy Environment as a human right.² It cannot be doubted that the pro-

tection of forests is an essential component of healthy environment and so, for the realization of this right, the protection of forest becomes essential.

23. Hon'ble the Supreme Court recently in **Association For Protection of Democratic rights & Anr. The State of West Bengal & Ors.** (Order dated 25.03.2021 in Special Leave Petition (Civil) No. 25047 OF 2018),

“We note that the issue assumes significance from the perspective of climate change as a growing national and international concern. The pivotal policy document in India on climate change is the National Action Plan on Climate Change (NAPCC) formulated by Union Government in 2008, which recognizes that the country is committed to increasing tree cover from 23% to 33%. Under the Paris Agreement, India has committed itself to Nationally Determined Contributions in 2015, wherein one of the stated objectives is to create an additional carbon sink of 2.5 to 3 billion tonnes of CO₂ equivalent through additional forest and tree cover by 2030.”

24. In **Essar Oil Ltd. (supra)**, Hon'ble the Apex Court, with regard to the importance of protection of environment and maintaining a balance with economic development, observed:-

“27. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between

² <https://www.un.org/africarenewal/magazine/july-2022/un-general-assembly-declares-access-clean-and-healthy-environment-universal-human#:~:text=Environment,UN%20General%20Assembly%20declares%20access%20to%20clean%20and%20healthy%20environment,implementation%20of%20multilateral%20environmental%20agreements>

development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. This view was also taken by this Court in *Indian Council for Enviro-Legal Action v. Union of India* [(1996) 5 SCC 281], where it was said: (SCC p. 296, para 31)

“While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.”

25. In *Vikram Trivedi v. Union of India*, 2013 SCC

OnLine Guj 5792, Hon’ble High Court of Gujarat, in particular context of the development of National Highways, alongside the need of balance in economy and ecology, noted:-

“19. No development is possible without some adverse effect on the ecology and the environment but the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests and this exercise must be left best to the persons who are familiar and who have specialized in the field.

20. The expansion of highway is a project of wide public importance. It is not open to frustrate the project of such public importance only with a view to safeguard few trees standing on the land of the petitioners which has vested with the Government. While examining the grievance about adverse impact of cutting the trees and thereby disturbing the birds, the benefit which will be derived by the large number of people by expansion of the highway should also not be brushed aside. The Courts are bound to take into consideration the comparative hardship which the people at large would suffer by stalling the project of

great public utility. Trees are to be cut for a public purpose to facilitate expansion of the national highway. Once the Government has taken all precautions to ensure that the impact on the environment is transient and minimal, the Court will not substitute its own assessment in place of the opinion of persons who are specialists and who may have decided the question with objectivity and ability. The Courts should not be asked to assess the environmental impact of expansion of highway but at the most could ensure that the recommendations of the experts have been abided by the government or the authority concerned.”

26. In T.N. Godavarman Thirumulpad v. Union of India & Ors. [Writ Petition (civil) 202 of 1995, Date of Judgment: 26/09/2005], Hon’ble the Supreme Court observed as under:-

“Natural resources are the assets of entire nation. It is the obligation of all concerned including Union Government and State Governments to conserve and not waste these resources. Article 48A of the Constitution of India requires the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Under Article 51A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wild-life and to have compassion for living creatures.”

...

“The shift in the approach of the legislation is evident from the FC Act of 1980 when compared with the scheme underlying the Indian Forest Act, 1927 which was State oriented for conserving the Forest Policy of 1952. Further, in 1977, Forest and Wildlife were taken out from the State list and incorporated in Concurrent list. Considering compulsions of States and large depletion of forest, these legislative measures have shifted the responsibility from States to Centre. Moreover, any threat to the ecology can lead to violation of right of enjoyment of healthy life guaranteed under Article 21 which is required to be protected. The Constitution of India enjoins upon this Court a duty to protect environments. The aforesaid background has been given to demonstrate that the object of

amount of NPV is to utilize the fund to conserve the ecology without in any manner affecting proprietary rights of the State Government over the land, timber or the minerals. The Notification dated 23rd April, 2004 does not deprive any State of any land timber or mineral and, therefore, there is no question of disbursement of any amount to the State. The damage to environment is a damage to the country's assets as a whole. Ecology knows no boundaries. It can have impact on the climate. The principles and parameters for valuation of the damage have to be evolved also keeping in view the likely impact of activities on future generation."

27. We must also note the recent decision of Hon'ble the Apex Court in **T.N. Godavarman Thirumulpad vs. Union of India & Ors. 2022 SCC OnLine SC 583**, where it has been held that in case of doubt, precedence must be given to environment. This view of the Hon'ble Apex Court underlines the importance of protection of environment. Para 17 and 18 thereof are reproduced hereinunder:-

"17. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential.³

18. A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest.⁴ This Court held that in case of a doubt, protection of environment would have precedence over the economic interest. It was further held that

³ A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.), (1999) 2 SCC 718

⁴ M.C. Mehta v. Union of India, (2004) 12 SCC 118

precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasises in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment.”

(Emphasis supplied)

28. It is clear from the above discussion that the environment is to be given an equal, if not prime, consideration as opposed to any other need to which it may be juxtaposed.

29. Environmental protection is a responsibility cast upon each and every citizen, organization or wing of Government, by the Constitution with equal force. It is not to be taken lightly.

30. However, it cannot also be ignored that economic development is essential for the growth of a country and, therefore, the State is consistently engaged in finding the balance. There can be no straight jacket formula or preferences to one over the other, when making such a decision. Each situation, must be weighed on its own merits. In certain situations, the economic development may take precedence, whereas in others the need to protect the environment is stronger.

31. In the present case, the felling and translocation of trees being undertaken is for the purposes of construction of highway as recorded earlier and the number of trees to be planted to compensate for the loss also stands decided with an

outer limit prescribed to the concessionaire by when to complete the same.

32. In the case at hand, Compensatory Afforestation is being undertaken and that is, in view of this Court no less important than the obligation imposed by the precautionary principle, of taking preventive action against harm that may be caused, even on reasonable suspicion thereof. It is essential that all action be taken to mitigate the damage caused by the undertaking over development project. So, even when there exists no doubt, the obligation of maintaining or compensating the environment, continues with force.

33. The question is answered accordingly.

34. Keeping in view the obligations of the Constitution; Statutes; principles of International Law, decisions rendered by Hon'ble the Apex Court and the need to strike a delicate balance between economy and ecology, this Court finds it appropriate to issue the following directions:

- (i) The Chief Secretary, Government of Bihar to ensure formation of committee stipulated under Section 10 of the Compensatory Afforestation Fund Act, 2016 and effective implementation of its provision.
- (ii) The Committee so constituted as also the other rele-

vant constituents of the State to monitor any and all such compensatory Afforestation that shall be undertaken for future projects.

(iii) The State; National Highway Authority of India; and the State Pollution Control Board, Bihar to monitor the progress of the Afforestation being carried out by the concessionaire and to ensure compliance therewith in strict terms., i.e. 31117 trees (14033 number of avenue and 17084 number of median plantation).

(iv) The State to consider a mechanism for Geo-Tagging the trees planted under the instant project as also others of similar nature undertaken in the future. Per illustration, Geo-Tagging has been undertaken by the National Highways Authority of India with it having Geo-Tagged more than six lakhs plantations in the Nagpur region.

(v) Liberty reserved to the petitioner or any other public spirited person to file a fresh petition, should the need so arise for enforcement of the provisions of the Act.

35. Petition stands disposed of with the aforesaid observations and directions.

36. We place on record our special appreciation for all the

assistance rendered by Shri Akash Keshav and other learned counsel appearing for the parties in this matter.

37. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sunil/ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.08.2022
Transmission Date	NA