

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION NO. 38/2013**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

- 1 Mr. Shirish Barve
Aged 50 years, Occn : Architect,
"The Architech", Opp. M.J. College,
Jalgaon- 425 001
- 2 Mr. Anil Vitthal Kolhe,
Aged 51 years, Occn : Agriculturist,
R/o. 158, Rampeth, Kolhe wada
Jalgaon – 425 001
- 3 Mr. Ganesh Raghunath Khadke,
Age 58, Occn : Agriculturist,
R/o. Vitthal Peth, Jalgaon,

....Applicants

V E R S U S

- 1 The Union of India,
Through : The Ministry of Road Transport
Highways, G.5&6, Sector-10, Dwarka,
New Delhi 110 076
- 2 The Project Director,
The National Highways Authority of India,
Project Implementation
Unit No.B-23,
Kamgar Chowk, N-4, CIDCO,
Aurangabad – 431

- 3 The Collector,
Zilla Road,
Jalgaon 425 001,
- 4 The Louis Berger Group, Inc.,
Project Consultant,
B3-6, Sector 32, Gurgaon – 122 001
(Haryana State)

...Respondents

Counsel for Applicant:

Mr. Asim Sarode,

Mr. Vikas Shinde

Counsel for Respondent No.2 :

Mr. Anoop U. Patil,

Counsel for Respondent No.4 :

Mr. Vikrant S. Negi, w/

Mr. Amit Salve,

DATE : April 4th, 2014

J U D G M E N T

1. The Applicants have filed the present Application under Section 14, 15, 17 and 18 of the National Green Tribunal Act, 2010, basically challenging the proposed Jalgaon bypass road of the National Highway No.6 which has been proposed by Respondent No.2 i.e. National Highway Authority of India (NHAI). The Applicants claim that the present Application has been filed to salvage the high fertile and productive land from the proposed bypass road which is not required and this unnecessary proposal of having a by-pass which would create livelihood problems for

many farmers and change in land use thereby affecting the environment.

2. The Respondent No.1 is the Ministry of Road Transport and Highway, Government of India, New Delhi which is controlling the National Highways in the country, Respondent No.2 is the National Highway Authority of India (NHAI) which is planning and executing the said project, Respondent No.3 is the Collector of Jalgaon who is acquiring the land for such road constructions on behalf of R-1 and R-2, Respondent No.4 is the Project Consultant engaged by Respondent No.2 to prepare the project feasibility, detailed project report etc.

3. The Applicants submit that the existing National Highway that passes through Jalgaon City was built about 45 years ago as the then by-pass National Highway and for this bypass Highway, 60m Wide length of land was acquired. It is the case of the Applicants that this 60m road width was never developed to its full capacity i.e. four lane/six lanes with proper service road and necessary traffic aids. According to Applicants, as this existing road has not been properly developed as per the norms, issues like traffic congestion, traffic safety and the accidents are occurring regularly in this stretch, creating a false impression that the width of the existing N.H. stretch is inadequate, causing accidents and traffic jams. It is the case of the Applicants that with this basic premise, Respondent No.2 has proposed the NH bypass arrangements by acquiring fertile

agricultural lands, instead of developing the existing road passing through Jalgaon city as per the norms, with proper laning, dividers, traffic aids etc. It is submitted by the Applicants that due to this apathy shown by the Respondent No.2, the existing 60 m width of the National Highway passing through Jalgaon city has been illegally occupied and encroached upon by various people, even including the Government organizations. The Applicants claim that the Respondent No.2 has failed to establish control over the existing road width and have found out an excuse for development of the proposed bypass which is not required, even in view of the traffic forecast for the next 20 years.

4. The Applicants submit that the lands which are proposed to be acquired or being acquired, are fertile lands and the livelihood of the agriculturists of that area depends on these lands. Applicants have further submitted that several issues like climate change, food security etc. have not been considered by the Respondent No.2 before taking decision regarding the proposed National Highway Road as bypass.

5. This matter was listed for hearing on December 6th, 2013, where this Tribunal had noted that :

“Considering the averments made in the Application, as it prima facie appears that the issue involved in the Application is not directly concerned with substantial dispute pertaining to environmental degradation. Still, however, we deem it proper to ascertain whether certain number of trees are likely to be cut, as stated in the

Application and shown at page No.127 while preparing the bypass road and whether such bypass road is really essential when the highway is available and goes through the city area of Jalgaon.”

6. We also directed the Respondents to furnish certain information as under :

“Issue Notices to the Respondents. The respondents to furnish details and reports regarding the necessity found for carving of bypass road traffic management plan, the reasons for non use or non availability of complete space available in the context of highway, which goes through the city area and the reasons which needed taking over of agricultural fields for the purpose of constructing bypass road. The Application is likely to be heard on Preliminary issue, pertaining to involvement of substantial Environmental dispute, in as much as, we are not much concerned with the legality of acquisition of the lands for the purpose of construction of bypass road outside Jalgaon city and that issue is being dealt with by the Hon’ble High Court of Bombay Bench at Aurangabad, in Writ Petition, which is pending (WP NO.469 of 2012). “Dasti” service is allowed.”

7. Shri. Asim Sarode, Learned Advocate for Applicants would to emphasize that the land is a natural resource and more particularly, the fertile agricultural lands are very important component of the local environmental and ecological system. He further submits that the fertile land–agricultural production–food security are the essential components of the environment and therefore, any issue related to destruction of the fertile lands can definitely considered as a substantial question related to the

environment and therefore, the Tribunal is competent to consider this particular Application. He further argued that any project which has been planned for execution needs to be selected from various alternatives considering various evaluation criteria and environmental viability is an essential evaluation criteria in view of the nature of the project. He strongly argued that the decision, of NHA to develop the bypass is a factual incorrect decision as existing road can be developed scientifically to cater present as well as future traffic and thereby negating the requirement of the bypass project with acquisition of the fertile lands. He, therefore, strongly pleaded that as the project is commenced without compliances of the environment laws and regulations, the Tribunal may direct the Respondents to immediately stop implementing the proposed NH bypass project. The prayers of the Application are reproduced below :

- i) Directions may be given to the Respondents to immediately stop implementing the proposed bye-pass highway construction plan and not to induce people by depositing money in the accounts of the land owners to acquire their fertile lands.*
- ii) 'Stay' may be granted immediately on the acquiring of the land for the said bypass and implementation of the Notification dated October 28, 2011.*
- iii) Directions may be given to the Respondent No.1- National Highway Authority to develop the existing available Right of Way (ROW) of National Highway that is passing through Jalgaon City as a four-lane/six lane*

National Highway with service road on both the sides with proper junction management bridges and fly-overs.

iv) To find out sustainable solutions regarding use of the existing National Highway passing through Jalgaon City, directions may kindly be given to set up a Committee comprising of local experts and representatives of Applicants under the guidance of the Collector of Jalgaon.

8. The Respondent No. 2 i.e. NHAI has filed detailed Affidavit and resisted the Application on several grounds. The Respondent-2 submits that the official gazette Notification for the proposed project is of October 27th, 2011 which has also been admitted by the Applicants and therefore, the application is hopelessly time barred as far as section 14 of National Green Tribunal Act. Respondent-2 further submits that the Applicants have not made any specific prayer U/s. 15 of the National Green Tribunal Act, 2010 relating to restitution/compensation etc., therefore, the Application cannot be considered U/s. 15 of the N.G.T. Act and therefore, also, the Application needs to be dismissed on that ground itself. The Respondent-2 further submits that the National Highway Authority of India (NHAI) is a statutory body constituted U/s. 3 of the National Highway Authority of India Act, 1988 for the purpose of development, management and maintenance of the National Highways or the stretch thereof, vested in or entrusted to it by Central Government. It is further submitted that as per the statement of the object and reasons of the N.H.A.I. Act, namely 5(c) :-

“Any land required by the Authority for discharging its functions will be deemed to be land needed for the public purpose”.

9. The Respondent No.2 submits that the present project relates to four laning and up gradation of National Highway No.6 from Amravati to Maharashtra-Gujarat border in the State of Maharashtra. The Government has taken a Policy Decision to improve and upgrade this particular road in view of the increasing traffic and also, to have speedy communication. The Respondent No.2 submits that they have complied with all environmental regulations and have also obtained environmental clearance from MoEF dated March 21st, 2013 after following due procedure as per the EIA notification, 2006. The Respondent-2 submits that the mandatory Public Hearing as per the EIA Notification 2006 was held on May 15th 2012 at Jalgaon and the Applicants could have attended this public hearing to raise their environmental concerns in the said public hearing in the legal manner. The Respondent-2 submits that the Applicants have failed to attend the public hearing and raise environmental concerns. The Respondent further submits that they have also obtained the Forest Clearance (FC) for the given stretch of road from the MoEF on April 25th 2013. The Respondents further submit that necessary permissions from the local forest and revenue authorities have also been taken to cut the trees which have been identified as an obstruction in the proposed Road Development Work. The Respondent-2 have also

made submissions that all the necessary conditions stipulated in the environment clearance and Forest Clearance will be fully complied with.

10. The Counsel for Respondent-2 submits that the Jalgaon bypass is planned to avoid all vehicular and truck traffic for which Jalgaon is not the final destination. This traffic diversion will attract the environment benefits in terms of speedy communication, lesser vehicular emissions, besides lesser air emissions within the highly populated Jalgaon city alignment. He further informs that this project is being developed in public interest and it is during the execution that some people including Applicant Nos.2 and 3, who used to own the land along the proposed bypass alignment, will be at dis-advantage due to acquisition of land. However, Respondent No.3 submits that there are several Supreme Court Judgments where it has been clarified that when the Government or the concerned authorities, after due consideration of all view points and full application of mind, take a decision then it is not appropriate for the Court to interfere. Further, the question whether to have an infrastructure project or not, and what is the type of project to be undertaken and how it has to be executed are part of policy making process and the Courts are ill-equipped to adjudicate on a policy decision so undertaken. The Respondent and their Counsel have relied on some judgments which are enlisted below

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1. **Union of India Vrs. Kushala Shetty, “2012 SCC 69 (2011).**
2. **Narmada Bachao Andolan Vrs. Union of India, “A.I.R. 2000 SC 3751”.**
3. **G. Sundarrajan Vrs. Union of India, “(2013) 6 SCC 620”.**
4. **M.P. Oil Extraction and Anr. Vrs. State of MP and Ors., “(1997) 7SCC 592”.**

11. The Respondent No.2 further submits that the proposed bypass will increase and improve the connectivity benefiting larger segment of the farmers and all types of traffic. Moreover the proposed bypass would route all the heavy load and pass-through traffic away from the city which will reduce the air pollution, traffic congestion and accidents in the city. The Respondent-2 submit that the proposed project cannot be linked with the climate change aspect except for the air emissions which will definitely be lowered by the proposed bypass due to lesser traffic congestion and smooth traffic. The Counsel for Respondent-2 therefore, submits that the project has necessary environmental and forest clearances wherein necessary safeguards have been stipulated by the regulatory authorities and which will be duly verified by these authorities from time to time. The Counsel further informs that the actual construction activities on the proposed bypass have not started and the land

acquisition is under progress as per the law. The Respondents have therefore pleaded that the project is being developed in the public interest and therefore, requested the Tribunal to dismiss the Application.

12. Respondent Nos.1 and 3 have not filed an Affidavit in spite of service. We do not find necessary to get their responses as the Respondent-2 is the main contesting Respondent and is working on the directions of Respondent-1. Further Respondent-3 is acquiring lands as per requirement given by Respondent-2. Hence, the Tribunal is of the opinion that the present Application can be effectively adjudicated without getting their response. Respondent No.4 has filed an affidavit which is basically in line with the affidavit of Respondent No.2, and therefore we do not find it necessary to elaborate the contents, except to the submission made by Respondent No.4 that they have used all advanced methods and techniques, in suggesting the most appropriate alternative to Respondent No.4 in most professional manner.

13. In view of the above submissions of the parties, following issues are to be framed for the adjudication of the present Application :

- A. Whether the Application has raised a substantial issue related to environment which needs to be adjudicated by the Tribunal?

B. Whether the Application is within Limitation as per NGT Act, 2010?

C. Whether the proposed project has necessary environmental and Forest related permission in place with adequate safeguards?

14. We have carefully gone through the pleadings and arguments of the counsel. The present Application has been filed U/s. 14, 15, 17 and 18 of National Green Tribunal Act. However, the prayer Nos.1 and 2 relates to the stoppage of the work. Prayer No.4 is related to finding alternative sustainable solution for the project. The prayer No.3 is related to development of the existing National Highway passing through the city. As mentioned in the aforesaid paras, the Tribunal had raised a query whether the issue involved is directly concerned with the substantial dispute pertaining to environment. The learned Advocate for the Applicants has vehemently tried to impress upon the Tribunal with arguments related to loss of fertile land, fertile land as a natural resource, food security as a part of Right to Live etc. The Respondents have also not clearly objected to the basic question whether the issue raised in this Application is related to environment.

15. Respondent-2 has placed on record the copies of Environmental Clearance and Forest Clearance granted for the Project. Considering the above, Tribunal is of the considered opinion that the issues raised in the Application relates to

substantial dispute pertaining to environment and therefore, we are proceeding with the other aspects of the issues raised in the Application.

16. The Respondent Nos. 2 and 4 have put on record, the copy of environmental clearance dated March 21st, 2013 and also the in principle Forest Clearance dated April 25th, 2013. Considering the dates on which these clearances have been issued, it is clear that the period of limitation will start from the later of these two dates. The present Application has been filed on November 18th, 2013. Therefore, it can be seen that present Application has been filed after six (6) months after the grant of for its clearance dated April 25th, 2013. The Applicant has also not filed any application for condonation of delay, but the counsel has made a request for condonation of delay during the course of Arguments. Though, the Application has been filed under section 14, 15 and 18 of the Act, there is no material on record to show that there are environmental impacts and damages caused due to proposed bypass. Moreover, as per the statement of counsel for Respondents, the project construction work has not even started and only land acquisition is in progress. Considering this, the Tribunal is of the considered opinion that there is no case related to section 15 as presented in the present Application. The NGT Act, 2010 provides limitation of 6 months for application under section 14.

17. Respondent Nos. 2 have placed on record copies of the Environmental Clearance received for the complete project of rehabilitation and up gradation of existing carriage way four-lining from Amravati to Maharashtra-Gujarat border which specifically includes the Jalgaon bypass on March 21st, 2013 from Ministry of Environment and Forest under the provisions of EIA Notification 2006. It is also brought on record that in principal of Forest Clearance has also been obtained from MoEF on April 25th, 2013. The Environmental Clearance has been granted after the mandatory public hearing which was conducted on May 15th, 2012 at Collector, Jalgaon. It is also observed from the Environmental Clearance that the Expert Advisory Committee has appraised the project and based on its recommendations several conditions have been stipulated to mitigate the Environment Impacts. We have carefully gone through the Environmental Clearance and do not find any specific deviation form the process by the authorities while appraising this project and we do not find any specific fault in the entire process of Environment Clearance in the instant case.

18. Further, learned Counsel for Applicants has specifically argued that the existing Highway passing through the Jalgaon city has designated width of 60 mtrs. and if this width is developed scientifically then the existing road itself can take the additional traffic load thereby negating the need of new bypass. We have gone through the Affidavit and also arguments of

learned Counsel for the Respondent. The Respondents have submitted that the existing National Highway which is passing through Jalgaon city has the available Right of Way (RoW) varying between 24m to 90m. It is the case of the Respondents that for accommodating of four lane divided carriage-way and service road, 60m width will be required all-along route and not just at intervals. Moreover, many cross-roads join with National Highway-6 (NH-6) in Jalgaon town which would have required many fly-overs and under-passes, thereby increasing the cost exorbitantly. The Respondents have submitted the detailed maps in this regard and further submitted that at few locations, the ROW is as low as 24m and if any widening has to be done, huge displacement of public and also demolition of properties would be required. It is the case of the Respondents that the increasing traffic which is passing through the Jalgaon city, mainly, bypass traffic and heavy load traffic is causing air and noise pollution within the city area which is having more serious impacts by direct exposure to the large population. The Respondents have taken a stand that they have considered all these aspects before arriving at the policy decision to develop bypass.

19. The Applicants have relied on the judgments referred above and mainly in case of “**Narmada Bachav Andolan Vrs. UoI, A.I.R.2000 SC 3751**” case where the Hon’ble Apex Court has held that :

“In Governance of State, such decisions have to be taken where there are conflicting interests. When a decision is taken by a Government after due consideration and full application of mind, the Court is not to sit in Appeal over such decision”.

It is also held that :

“In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not malafide, it will not be in Public Interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the Court should refrain from being asked to review the decision just because the petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or view are possible and after considering them the Government taken a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such policy decision”.

And, in the same case it was also stated by the Hon'ble Supreme Court that :

“In a democratic set up, it is for the elected Government to decide what project should be undertaken

for the benefit of the people. Once such a decision had been taken that unless and until can be proved or shown that there is a blatant illegality in the undertaking of the project or its execution, the Court ought not to interfere with the execution of the project”.

While referring to earlier case “**MP Oil Extraction and Anr. Vrs. State of MP and Ors, (1997) 7 SCC 592**” the Hon’ble Apex Court held that :

“Unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory madnate, Court’s interference is not called for”.

20. In the instant case, the authority i.e. Respondent-2, NHAI, have developed the proposal for the rehabilitation and up gradation of the NH-6 from Amravati to Maharashtra-Gujarat border by engaging provisional services and have also obtained the necessary Environment Clearance following the due process of law. The public hearings from environmental angle as a part of EIA process was held in Jalgaon itself. When we posed a query to the Applicants whether they attended the public hearing and raised objections, the Counsel for Applicant replied in ‘*negative*’. We, therefore, note that the Applicants have failed to raise their objections on environmental grounds when an opportunity was given to them in the form of public hearing and consultation. Considering the above submissions and facts, we find no merits in objections of the Applicants against the proposed bypass project on the environmental grounds and therefore, we are not

inclined to grant prayers related to stoppage of work on Bypass as pleaded in the Application.

21. As for the prayer No.3, we would like to emphasize the need of improvement and up gradation of the existing National Highway which is passing through the Jalgaon city. The Respondent Nos. 2 and 4 have already emphasized that the existing National Highway passing through Jalgaon city has not been developed which is causing traffic jams, delay and also accidents besides air and noise pollution. We are concerned with this state of affairs, more particularly, when Respondent Nos. 2 (NHAI) is planning and developing the entire National Highway, the project should have included the up gradation of the existing road passing through the city also. Respondents themselves mention that the increasing traffic and the resultant air/noise pollution are causing health impacts on the residents of Jalgaon. This is also corroborated from the available air quality data for Jalgaon city, which shows high R.S.P.M. concentrations. We, therefore, hold that there is an urgent need of up gradation of the existing National Highway passing through Jalgaon city by proper laning, removal of encroachments, provision of proper traffic aids, and other infrastructure as may be required. It is necessary that the Respondent Nos. 2 shall consider such up gradation of the existing roads while planning the new bypass arrangements. It cannot be the case that when the existing road is not suitable for a projected capacity then develop a new road

or bypass, and leave the existing road which is in use, without any development. This cannot be termed as sustainable development in any case. The citizens of Jalgaon also, have a right of clean environment and therefore, the NHAI is duty bound to upgrade the existing road by proper laning, provision of traffic aids and other infrastructure so as to avoid traffic congestion and resultant air/noise pollution.

22. We are, therefore, inclined to partially allow the Application with following directions to Respondent No.1 and 2:

A. Respondent-2 shall submit a detailed up gradation proposal for the existing road passing through Jalgaon city by proper laning and strengthening of road, provision of traffic aids etc. within next three (3) months.

B. We also direct that this project shall be undertaken along with the proposed bypass project and this work will be given priority over the proposed bypass to ensure that it is commissioned and made operational before the approval and implementation of proposed bypass road.

C. Respondent-3 shall ensure the compliance of these directions of the Tribunal.

Accordingly, the Application is disposed off. No costs.

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

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

