

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE**

**APPLICATION NO.57/2015**

**CORAM:**

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

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

**IN THE MATTER OF:**

**THE NATIONAL HIGHWAYS AUTHORITY OF INDIA**

Through Project Director,  
Project Implementation Unit,  
Panvel, S.No.63, NH-4B, "D" point,  
Chinchpada- Kalamboli Bypass road,  
Panvel-4100206.

**....APPLICANT**

**V E R S U S**

**1. CHIEF SECRETARY,**

Government of Maharashtra,  
Mantralaya,  
Mumbai-400 032.

**2. PRINCIPAL SECRETARY,**

Ministry of Forest,  
Government of Maharashtra,  
Mantralaya,  
Mumbai-400 032.

**3. PRINCIPAL CHIEF CONSERVATOR OF FOREST,**

(Head of Forest Force)  
State of Maharashtra,  
'Van Bhavan', Civil Lines,  
Nagpur-440001.

**4. DEPUTY CONSERVATOR OF FOREST,**

Forest Division ALibaug,  
Near District Collector Compound,  
ALibaug, Dist. Raigad.

**RESPONDENTS**

**Counsel for Applicants:**

**Mr. Deepak Manorkar a/w S.S. Chavan.**

**Counsel for Respondent:**

**Mr. Nitin B. Gudge, Deputy Conservator of Forests.**

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**DATE : SEPTEMBER 3<sup>rd</sup>, 2015**

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**JUDGMENT**

**1.** By this Application – Applicant- National Highways Authority of India (NHAI), has prayed as follows:

**Prayers:**

- a) Issue necessary approvals as to the diversion of Forest Land to the non-forest purpose in the area of Karnala Bird Sanctuary (beyond 1km of both sides of the restricted area).

- b) Direct the Respondents to take note of the same and give the necessary approval to the present Applicant accordingly.
- c) Pass such other order/relief deems fit in the circumstances of the case, in the interest of justice and equity.

**2.** The Applicant has been entrusted with work of widening of Panvel – Indapur section of NH No.17, (new No.NH.66), and the said work is being carried out on a Design Built, Finance, Operate and Transfer Basis (DBFOTB) by the Concessionaire (Supreme Panvel-Indapur Tollways Pvt. Ltd). The Applicant states that they have taken necessary approval from the forest department by obtaining Clearance dated 23<sup>rd</sup> August, 2013, for an area of 9.03Ha and also, the Environment Clearance (EC) dated 3<sup>rd</sup> June, 2009, which does not include Karnala Bird Sanctuary stretch which is approximately about 1.5km. The present work for which the Application has been submitted do not cover Karnala Bird Sanctuary area and only restricts to activities in 10k.m surrounding area of Karnala Bird Sanctuary.

**3.** The Applicant further seeks leave of this Tribunal for necessary permission for cutting of the trees in the proposed alignment in compliance of directives of this Tribunal in case of **Shobha Phadanavis Vs State of Maharashtra and Ors.**

**4.** We have perused the submissions made by the Applicants and also a map indicating the number underpasses of passages for animals in the Karnala Bird Sanctuary and the forest area, contemplated and prepared in consultation with the forest department.

**5.** We have also heard Mr. Nitin Gudge Deputy Conservator of Forests, who was present in the Tribunal and also perused his affidavit. He has submitted that user agency i.e. NHAI has confirmed that the route was selected with minimum forest area and it is observed that there is no better alternative route available. It is also stated that compensatory afforestation area of 21Ha, has been proposed at village Savane, Tal. Pen and cost of compensatory afforestation i.e. Rs.71,27,793/- in lieu of diversion of forest area for 9.0379Ha has been paid by the Project Proponent. Necessary Forest Clearance has already been granted by the MoEF, Government of India vide letter dated 14.6.2013. It is further stated that the conditions specified by the Government of India in project approval letter have been complied with and, therefore, the project has been granted stage-II clearance by the MoEF, Government of India, on 23.8.2013. The total number of trees proposed to be cut for diversion of 9.0379Ha of the forest land between Pannel and Pen Talukas, is 1001. Therefore, it is submitted by the forest department that

they do not have any objection for granting NOC to NHAI for widening of the national highway as per the present Application.

**6.** We have perused the documents and it is observed that National Board of Wild Life (NBWL) considered said proposal in its meeting dated 12-13<sup>th</sup> August, 2014 and has stipulated following conditions:

i. Widening of road should be restricted beyond 1 km distance, on the both sides from the boundary of the sanctuary area on both sides):

a. Proper speed breakers should be created, barriers will be erected and the traffic will be channelized within the existing lanes of the road, passing through the sanctuary area. This will facilitate smooth traffic on the road passing through the sanctuary area.

b. Signage should be displayed restricting the speed limit to 30km/hour, while passing through the sanctuary area.

ii. There shall be controlled movement of traffic in the sanctuary with proper traffic signals located on the boundaries of the sanctuary.

iii. The entire stretch has a high rainfall area. Hence, measures to prevent flooding of the road, landslides etc. shall be used by the vehicles in the Karnala Sanctuary.

iv. Adequate number of under passes for the animals shall be provided in the Karnala sanctuary and in the forest area in consultation with the Forest Department and Wildlife Wing.

**7.** One of the important condition is 2% of the project cost is to be paid for wildlife conservation and management. It is already on record that the amount of compensatory afforestation, Net Profit Value (NPV), cost of removal of trees, cost of survey etc. totaling to amount of Rs.1,62,105/- has been paid to the Deputy Conservator of Forest for depositing the said amount in CAMPA Fund. When we enquired with Deputy Conservator of Forest, who was present in the Tribunal, about availability of funds for necessary compensatory afforestation at 21Ha of land, it was stated that such funds needs to be released back through CAMPA to the forest field offices for plantation purpose. In other words, compensatory afforestation at 21Ha alternative land cannot be initiated, unless and until, the funds are released to the field offices for such plantation purpose. It is essential to note that compensatory afforestation is in lieu of the trees to be cut and forest area to be diverted; and, therefore, it is necessary that compensatory afforestation needs to be

carried out, at least along with cutting of trees, if not prior. We find that depositing funds in CAMPA and its release to the field offices generally takes substantial time, may be even years and therefore, the trees are cut and only after substantial time lag, compensatory afforestation is practiced. This cannot be called 'sustainable development' and defeats the very purpose of the concept of 'compensatory afforestation'

**8.** We are, therefore, of clear opinion that the MoEF through its forest wing shall release necessary funds for carrying out compensatory afforestation at the proposed 21Ha of land immediately to enable local forest offices to carry out the proposed compensatory afforestation, which has been made mandatory as per the Forest Clearance. It is also necessary that the project Proponent shall deposit 2% of project cost for Wild Life conservation, as per condition of NBWL. The activity of tree cutting and plantation preferably should be carried out *pari passu*, if not possible, at least, at the first available season, suited for plantation purpose.

**9.** With these conditions, the Applicant is allowed and granted leave, in terms of our Order in the Judgment of **Shobha Phadnavis** and the forest department is directed to ensure compliances and submit six (6) monthly report for next three (3) years to this Tribunal. NHAI, through its

internal mechanism should also, as part of compliance of environment/forest clearance, engage themselves in ensuring that compensatory afforestation is carried out as per the proposed plan and should provide all the necessary assistance and support to the forest department for successful compensatory afforestation. We are hopeful that organization like NHAI, will not consider mere payment of compensatory afforestation as compliance of conditions and would also get involved in monitoring of progress of compensatory afforestation, as a part of corporate environmental governance, and will avoid further complications/directions in this behalf.

The Application is, accordingly, disposed of. No costs.

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

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

**DATE: SEPTEMBER 3<sup>rd</sup>, 2015.**  
**PUNE.**

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