

Item No. 1 & 2

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

Original Application No. 90/2020 (CZ)

Shree Degray Oran Temple and
Oran Development Institute

Applicant(s)

Versus

State of Rajasthan & Ors.

Respondent(s)

AND

Appeal No. 76/2021 (CZ)

Shree Degray Oran Temple and
Oran Development Institute

Appellant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of completion of hearing and reserving of order : 05.04.2023

Date of uploading of order on website : 19.04.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s)/Appellant(s): Mr. Rahul Choudhary, Adv.
Mr. Kaustav Dhar, Adv.

For Respondent(s): Mr. Sanyat Lodha, Adv.
Mr. Shoeb Hasan Khan, Adv.
Mr. Om Shankar Shrivastav, Adv.
Ms. Surbhi Arora, Adv.

ORDER

1. Both the matters are connected matters and thus are taken together, heard and decided by this common order.

Appeal no. 76/2021

2. The above appeal was taken up for hearing by this Tribunal on 04.01.2022 and was finally disposed of. Aggrieved by the order, an

appeal was filed before Hon'ble the Supreme Court of India and in compliance of Hon'ble Court's order dated 21.10.2022 in Civil Appeal No. 4675/2022, it was restored back for disposal. The order of the Supreme Court of India is quoted below:-

Order dated 21.10.2022

1. *The appellant challenged an order dated 25 March 2021 granting Stage I forest clearance to Powergrid Fatehgarh Transmission Limited for constructing a 765 KV DC Fatehgarh -II to Bhadla-II Transmission Line in Rajasthan and an order dated 22 June 2021 granting permission for felling of trees and commencement of work.*
2. *The NGT dismissed the appeal on the following grounds:*
 - i. *The Supreme Court was seized of proceedings relating to the protection of the Great Indian Bustard from transmission lines in M K Ranjitsinh v Union of India¹ ;*
 - ii. *The order under challenge was not a final order and since a final order was yet to be passed by the authorities; and*
 - iii. *Sufficient precautions have been taken by the authorities while issuing "the letter in question".*
3. *Pursuant to the issuance of notice on 29 July 2022, we have heard Ms Anitha Shenoy, senior counsel appearing on behalf of the appellant and Ms Aishwarya Bhati, Additional Solicitor General appearing on behalf of the Union of India.*
4. *Ms Aishwarya Bhati submitted that the transmission line has already been established and commissioned and necessary precautions have been taken to preserve the environmental*

¹ Writ Petition (Civil) No 838 of 2019

concerns. The Additional Solicitor General also submitted that no tree felling was required to be carried out.

5. In *Citizens for Green Doon v Union of India*², this Court adverted to a circular issued by the Ministry of Environment, Forests and Climate Change on 28 August 2015 prescribing a simplified procedure for the grant of permissions for felling of trees standing on forest land to be diverted for the execution of linear projects. Paragraph 2(i) of the circular, which is extracted in the judgment of this Court, *inter alia*, deals with the execution of projects involving linear diversion of forest land such as for laying of transmission lines. Clause (iv) of the circular stipulates that:

“(iv) For the purpose of Section 2A of the FC Act and Section 16 (e) of the National Green Tribunal Act, 2010 (NGT Act) the Order for tree cutting and commencement of work of linear project in forest land, specified in para (ii) above, shall be an order under Section 2 of the FC Act;”

6. In view of the above provision, this Court held as follows:

“12 The fact of the matter as it stands today is that the permission granted by the DFO for felling of trees has been placed on record in the form of a letter CA 6497-98/2021 dated 27 August 2021, as noticed above. In terms of the provisions contained in the circular dated 28 August 2021, the order for tree cutting and commencement of work of linear projects is to be treated as an order under Section 2 of the FC Act. Evidently, therefore, the order dated 27 August 2021

² 2021 SCC Online SC 1074

is amenable to the remedy of an appeal, which would now lie before the Tribunal under Section 16(e) of the NGT Act. That an appeal lies before the Tribunal is clarified by the terms of the circular itself.”

7. *The appeal before the NGT was hence maintainable in terms of Section 16(e) of the National Green Tribunal Act 2010³. This aspect is covered by the judgment of this Court in Citizens for Green Doon (supra).*
 8. *The NGT was seized of a statutory appeal under the provisions of Section 16 of the NGT Act. The NGT was required to go into the merits of the appeal. The NGT has abdicated its functions by declining to enquire into the merits of the appeal on the ground of the pendency of the proceedings before this Court in M K Ranjitsinh (supra). The NGT being seized of a statutory appeal, it was required to entertain and dispose it of on merits. The bald observation that the NGT was satisfied that sufficient precautions have been taken by the authorities concerned is not commensurate with the level of adjudication expected while deciding the appeal.*
 9. *We accordingly allow the appeal and set aside the impugned judgment and order dated 4 January 2022 of the Central Zone Bench of the NGT. Appeal No 76/2021 (CZ) is restored to the file of the Central Zone Bench of the NGT.*
 10. *All the rights and contentions of the parties are kept open to be urged before and decided by the NGT.*
 11. *Pending application, if any, stands disposed of.*
3. Challenge in this appeal is order dated. 25.03.2021, which is reported to be Stage-I Forest Clearance granted to the Powergrid Fatehgarh

³ “NGT Act”

Transmission Limited for construction of 765KV DC Fatehgarh-II to Bhadla-II Transmission Line Rajasthan and further to fix the responsibility of the erring officials who have undertaken the site inspection and submitted the report giving wrong and misleading information.

4. We have gone through the contents of the letter dated 25.03.2021, which is an order passed by MoEF&CC, integrated Regional Officer Jaipur and communicated to Govt. of Rajasthan, with regard to the diversion of forest land in favour of Powergrid Fatehgarh Transmission Limited for construction of transmission line in district Jodhpur (Rajasthan). The conditions put in the letter are enumerated as follows:

1. *“Legal status of the forest land shall remain unchanged.*
2. *Compensatory afforestation shall be taken up by the Forest Department over an area of 5.7748 ha degraded Forest land in Compartment No. Osian-6, Village Osian, Range Osian, District Jodhpur at the cost of the user agency. As far as possible, a mixture of local indigenous species shall be planted and monoculture of any species may be avoided.*
3. *The cost of compensatory afforestation at the prevailing wage rates as per compensatory afforestation scheme and the cost of survey, demarcation and erection of permanent pillars if required on the CA land shall be deposited in advance with the Forest Department by the project authority. The CA will be maintained for 10 years. The scheme may include appropriate provision for anticipated cost increase for works scheduled for subsequent years.*
4. *The State Government shall charge the Net Present Value (NPV) for the 2.8874 ha. forest area to be diverted under this proposal from the User Agency as per the orders of the Hon’ble Supreme Court of India dated 30.10.2002, 01.08.2003, 28.03.2008, 24.04.2008 and 09.05.2008 in IA No. 566 in WP (C) No. 202/1995 and as per the guidelines*

issued by the Ministry vide letters No.5—2/2006-FC dated 03.10.2006 and 5-3/2007-FC dated 05.02.2009 in this regard.

- 5. Additional amount of the NPV of the diverted forest land, if any, becoming due after finalization of the same by the Hon'ble Supreme court of India on receipt of the report from the Expert Committee, shall be charged by the State Government from the User Agency. The User Agency shall furnish an undertaking to this effect.*
- 6. User agency shall restrict the felling of trees to minimum number in the diverted forest land and the trees shall be felled under the strict supervision of the State Forest Department and the cost of felling of trees shall be deposited by the User Agency with the State Forest Department.*
- 7. The complete compliance of the FRA. 2006 shall be ensured by way of prescribed certificate from the concerned District Collector.*
- 8. The User Agency in consultation with the State Forest Department prepare a detailed scheme for creation and maintenance of plantation of dwarf species (preferably medicinal plants) in right of way under the transmission line and deposit the cost for execution of the said scheme to the State Forest Department.*
- 9. User Agency at its cost shall provide bird deflectors, which are to be fixed on upper conductor of transmission line at suitable intervals to avoid bird hits.*
- 10. The User Agency shall comply with the guidelines for laying transmission lines through forest areas issued by Ministry vide letter no. 7-25/2012-FC dated 05.05.2014 & 19.11.2014.*
- 11. Muck disposal plan as approved by the concerned DFO shall be submitted.*

12. *NOC of concerned department (NHAI etc.) shall be submitted.*
13. *User Agency shall obtain Environmental Clearance as per the provisions of the Environmental (Protection) Act, 1986, if applicable.*
14. *The layout plan of the proposal shall not be changed without prior approval of Central Government.*
15. *No labour camp shall be established on the forest land.*
16. *Sufficient firewood, preferably the alternate fuel, shall be provided by the User Agency to the labourer after purchasing the same from the State Forest Department or the Forest Development Corporation or any other legal source of alternate fuel*
17. *The boundary of the diverted forest land shall be suitably demarcated on ground at the project cost, as per the directions of the concerned Divisional Forest Officer.*
18. *No additional or new path will be constructed inside the forest area for transportation of construction materials for execution of the project work.*
19. *The period of diversion under this approval shall be co-terminus with the period of lease to be granted in favour of the user agency or the project life, whichever is less.*
20. *The forest land shall not be used for any purpose other than that specified in the project proposal.*
21. *The forest land proposed to be diverted shall under no circumstances be transferred to any other agencies, department or person without prior approval of Govt. of India.*
22. *Violation of any of these conditions will amount to violation of Forest (Conservation) Act, 1980 and action would be taken as per MoEF&CC Guidelines F. No. 11-42/2017-FC dt. 29.01.2018.*

23. Any other condition that the Ministry of Environment, Forest & Climate Change may stipulate from time to time in the interest of conservation, protection and development of forests & wildlife.

24. All the funds received from the user agency under the project shall be transferred deposited to CAMPA fund only through e-portal.

25. The compliance report shall be uploaded on e-portal (<https://parivesh.nic.in/>)

After receipt of compliance report on fulfilment of all of the above conditions from the State Government proposal will be considered for final approval under section -2 of the Forest (Conservation) Act, 1980, by this office.

The order for transfer of forest land to user agency shall not be issued by the State Government till final approval order for diversion of forest land is issued by Government of India.”

5. On 04.01.2022 the Tribunal observed that no final order has been passed by the concerned authorities and a direction has been issued to the Govt. of Rajasthan that order for transfer of forest land to user agency shall not be issued by the State Government till final approval granted by the Government of India and further there is a direction that the proposal will be considered for final approval under section 2 of the Forest Act, 1980 after submission of the report. It is alleged that the Dy. Conservator of Forest with mala fide intention deliberately concealed the material information with respect to existence of GIB habitat in the area and further that Form A part-II filled up by Dy. Conservator of Forest for obtaining forest clearance has given incorrect and wrong information in response to sl. no. 8 regarding significance of forest land proposed for diversion from wildlife point of view. Hon'ble Supreme Court of India in Writ Petition No. 838 of 2019 in I.A. No. 85618 of 2020 vide order dated 19.04.2021 has issued certain directions which is quoted below:-

1. *“The writ petition is filed in the nature of public interest seeking to protect two species of birds namely the Great Indian Bustard (‘GIB’ for short) and the Lesser Florican, which is on the verge of extinction. The existence of overhead power lines is stated to have become a hazard due to which the said species of birds on collision are getting killed. In the pending writ petition, the application in I.A. No.85618/2020 is filed seeking interim directions to direct the State of Rajasthan (respondents No.5 and 6) and State of Gujarat (respondents No.9 to 11) to ensure predator proof fencing, controlled grazing in the enclosure development and to direct the said respondents not to permit installation of overhead power lines and also not permit further construction of windmills and installation of solar infrastructure in priority and 3 potential habitat as identified by the Wildlife Institute of India. The petitioner is also seeking a direction to the respondents to install diverters for the powerlines which has been listed in the application.*

2. *The very subject matter indicates that though such directions are sought against the respondents, the litigation is not adversarial in nature as it is community interest. In fact, the petitioners being environmentalists, are seeking to protect the rare birds which are dwindling in number. It is contended that GIB is one of the heaviest flying birds in the world, about a meter in height and wing span of around seven feet. It has disappeared from 90 per cent of habitat except parts of Rajasthan and Gujarat which is to be protected. According to the petitioners, overhead power lines are the biggest threat to the survival of the GIBs. The Wildlife Institute of India (WII) in its Report “Power Line Mitigation, 2018” has stated that every year 1 lakh birds die due to collision with power lines. The Report concluded that unless power line mortality is mitigated urgently, extinction of GIBs is certain. Surveys conducted by Wildlife Institute of India (WII) in Thar covering 80 km of power lines repeated 7 times over a year found 289 carcasses of around 30 species, including the Great Indian Bustard (GIB). The study estimated 3 bird mortalities/km/month for*

low-tension lines, 6 bird mortalities/km/month for high-tension lines, and about 1 lakh birds/per year within a 4200 sq.km area 4 in/around Desert National Park, Rajasthan. In terms of GIB, 6 mortalities have been recorded in Thar during 2017- 20, all due to high-tension transmission lines – some of them connected to wind turbine. Therefore, petitioner seeks undergrounding all future overhead power lines; selected power lines in priority GIB habitat and installation of divertors in potential habitat.

3. In fact, it is admitted by the Ministry of Power, Union of India in their affidavit dated 15.03.2021 as follows: -

“The Great Indian Bustard (“GIB”) lacks frontal vision. Due to this, they cannot detect powerlines ahead of them, from far. As they are heavy birds, they are unable to manoeuvre across power lines within close distances. Thus, they are vulnerable to collision with power lines. In case of low voltage lines, electrocution is often the cause of death due to smaller phase to phase separation distance. High voltage lines do not cause death due to electrocution but cause death due to collision.”

4. But, this Court while considering IA Nos.1433 and 1477 of 2005 in the case of **T.N. Godavarman Thirumulpad Vs. Union of India & Ors.** (2012) 3 SCC 277 has observed as hereunder:

“17. Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, intergenerational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and that non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to

humans. Ecocentrism is nature-centred where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature includes both humans and non-humans. The National Wildlife Action Plan 2002-2012 and the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 are centred on the principle of ecocentrism.”

In that context while taking note of the contention of the State relating to lack of funds, reference was made to the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 which provides for financial sharing between Centre and State. 6 Though taken note in the context of conservation of wild buffalo the pattern of funding was taken note in para-23 which provides for 100% central assistance in respect of GIB, for both recurring and non-recurring items of expenditure.

5. Further this Court in the case of **Centre for Environmental Law, World Wide Fund – India Vs. Union of India & Ors.**, (2013) 8 SCC 234 while considering the protection and conservation of endangered species has observed as hereunder :

“45. We may point out that there has been wide-ranging discussions and deliberations on the international platforms and conferences for rebuilding of certain principles laid down in the earlier conventions on the Principles of Sustainable Development. The United Nations Commission on Environment and Development defined the “sustainable development” as follows:

“Sustainable development is the development that meets the needs of the

present without compromising the ability of future generations to meet their own needs.” (World Commission on Economic Development [WCED], 1987: 43).

46. Sustainable development, it has been argued by various eminent environmentalists, clearly postulates an anthropocentric bias, least concerned with the rights of other species which live on this earth. Anthropocentrism is always human interest focussed thinking that non-human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to non-human are based on benefits to humans. Ecocentrism is nature-centred, where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is, therefore, life-centred, nature-centred where nature includes both humans and non-humans.

48. Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a species becoming & extinct, conservation and protection of environment is an inseparable part of right to life. In M.C. Mehta v. Kamal Nath [(1997) 1 SCC 388] , this Court enunciated the doctrine of “public trust”, the thrust of that theory is that certain common properties such as rivers, seashores,

forests and the air are held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of "public trust" has to be addressed in that perspective.

49. We, as human beings, have a duty to prevent the species from going extinct and have to advocate for an effective species protection regimes. NWAP 2002-2016 and 9 the Centrally- sponsored scheme, 2009 indicate that there are many animal species which are close enough to extinction and some of the other species have already disappeared from this earth. No species can survive on the brink of extinction indefinitely and that the continued existence of any species depends upon various factors like human-animal conflict, epidemics, forest fire and other natural calamities, etc."

The State as well as the Central Government therefore, have a duty cast to preserve the endangered species and as such the expenses incurred will have to be provided by them either under the schemes available or by earmarking the same in such manner. Needless to mention that in the instant case the preservation is by

undergrounding the powerlines and in that context if cost is incurred, it would also be permissible to pass on apportion of such expenses to the ultimate consumer subject to approval of the Competent Regulatory Authority.

6. The respondents though are sensitive to the issue, have contended that the high-voltage lines do not cause GIB deaths due to electrocution but cause death due to collision. It is contended that the underground high- voltage line is not technically feasible due to several factors such as (i) high cost (ii) high downtime to repair any failed cable (iii) non-availability of cables at 765 Kv level and (iv) increase in the number of joints with length of run. The petitioners/applicants in order to controvert the same and contend that the undergrounding of high- voltage line is not a novel move but has been undertaken in other cases, have referred to the tender notification issued by Power Transmission Corporation of Uttarakhand Limited for 220 KV transmission line and the one issued by Delhi Transport Limited for 220 KV underground cable.

7. In addition, the petitioners have also referred to the invitation of public comments for laying underground cable transmission line of 220 KV by the Government of India, Ministry of Road Transport and Highways. The report published by the Power Grid Corporation is referred to indicate that the undergrounding of 220 KV power line is possible and is being done in India. It is specifically contended that the 10 km long power lines were made underground by GETCO for the safety of Greater Flamingos in the Khadir Region of Kutch. Similar such instances of underground power lines being laid is also referred by Mr. Shyam Divan, learned senior counsel for the petitioner. Ms. 11 Aishwarya Bhati, learned ASG and Dr. Manish Singhvi, learned senior counsel appearing on behalf of the respondents however sought to indicate that the

instances referred, wherein the tender notifications were issued for underground power lines cannot be made comparable in all cases inasmuch as the same would be possible depending on the area, terrain and the distance for which such cable line is to be laid which cannot be of universal application.

8. In that background, keeping in view, the sustainable development concept and on striking a balance the protection of the rare species of birds is essentially to be made, the effort being to save every bird while at the same time allowing transmission of power in an appropriate manner. Even as per the study/survey conducted by the Wildlife Institute of India, it would not be feasible to lay underground power cables in certain areas and the conversion of the already existing cables also cannot be made in certain locations. In such of the locations, it is recommended that 'bird divertors' be installed on the existing power lines and the undergrounding of the new power line wherever technically feasible in the vicinity of the habitats of the rare species of birds be undertaken.

9. The report dated 11.07.2019 was submitted by the Wildlife Institute before the National Green Tribunal to that 12 effect and para 4.2 of the report reads as hereunder:

"4.2. Mitigate all power transmission lines passing through priority bustard habitats identified by WII (Please refer Annexure 10) by undergrounding cables (where technically/technologically feasible) or installing bird divertors to make them prominent to birds. The priority areas where this intervention is required has been mapped by the Wildlife Institute of India and a

technical-cum-financial proposal has been submitted to RVPNL for necessary approvals from Rajasthan Energy Department for mitigation. This action must be expeditiously implemented in the short-term (1-3 years), as power-line mortality is currently the biggest threat to the species.

10. In addition to the death of the birds due to collision and electrocution, the conservation strategy also requires protecting the eggs of the said species of birds and the same being transferred to breeding centres for the purpose of hatching. In that regard, for conservation, the habitat restoration and for making it predator proof, appropriate fencing is to be provided to the breeding 13 grounds. In that regard, pictorial representation of the priority and potential area is indicated in Annexure A-7 (page 74) of I.A. No.85618/2020 which is also depicted here below.

11. In the above background, there cannot be disagreement whatsoever that appropriate steps are required to be taken to protect the said species of birds. In that view, insofar as the existing overhead powerlines are concerned the respondents shall take steps forthwith to install divertors and in respect of existing overhead powerlines all future cases of installing the transmission lines a study shall be conducted with regard to the feasibility for the lines to be laid underground. In all such cases where it is feasible, steps shall be taken to lay the transmission line underground. For the lines to be laid in future if as per the technical report the overhead line alone is feasible and the same is ratified by the Committee, in such event the installation of the divertors shall also be a condition attached in the contract to be entered with generating companies. Insofar as, the cost incurred in the said process, the concerned

respondents No. 5 to 8 and 9 to 11 shall work out and provide for the same and the respondents No.1 to 4 aid in this regard. It would be open to them to muster the resources in accordance with law. In cases where the power generators are required to bear the additional amount adding to the cost of production, it would be open to regulate the manner in which the cost would be mitigated in accordance with contractual terms. Irrespective of the cost factor the priority shall be to save the near extinct birds.

12. In fact, a few suggestions were made in the course of arguments, as to how financial resources can be mobilised. One of the options that could be explored, is to invite the attention of each electricity utility engaged in the generation of power, to Section 135 of the Companies Act, 2013, which imposes corporate social responsibility upon companies having a specified net worth or turnover or net profit. Section 166(2) of the Companies Act, 2013 ordains the Director of a Company to act in good faith, not only in the best interest of the Company, its employees, the shareholders and the community, but also for the protection of environment. The word “environment”, though not defined in the Companies Act, has to be given the meaning assigned to it under the Environment (Protection) Act, 1986. Section 2(a) of the Environment (Protection) Act, 1986, defines the word “environment” to include the “inter relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property”

Moreover, with the implementation of the Compensatory Afforestation Fund Act, 2016 (CAF, 2016), substantial funds are available with the National and State Authorities. Sections 4, 5 and 6 of the Act, provide for the utilisation of the fund for

measures to mitigate threats to wildlife. The State of Rajasthan has already set up a Compensatory Afforestation Fund Management and Planning Authority (CAMPA) on 12.11.2009. Rule 5(2)(i) of these Rules permit the use of the State Fund for the improvement of wildlife habitat. It appears, according to the petitioners that a sum of Rs.47,436 crores, out of a total of Rs.54,685 crores CAMPA Fund have been transferred by the Union Environment Ministry to the States for afforestation projects.

13. With regard to the conservation of the habitat to secure the safety of the eggs laid by the birds, the area earmarked and indicated as islands and shown in Annexure-A-7 and in light colour in sketch here below shall be fenced and protected from invasion by predators so that the eggs laid in these areas are protected. The power supply line regarding which underground passage is to be made should also avoid these areas.

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15. As already taken note above, the laying of high-voltage underground power line would require expertise to assess the feasibility of the same. For this specific purpose of assessing the feasibility after taking into consideration all technical details, we deem it proper to constitute a committee consisting of the following members:

- i. Dr. Rahul Rawat,
Scientist Room No.021,
Block-14 Ministry of New and
Renewable Energy CGO Complex,
Lodi Road, New Delhi.*
- ii. Dr. Sutirtha Dutta
Scientist Wildlife Institute of India
Dehradun.*

*iii. Dr. Devesh Gadhavi
Deputy Director
The Corbett Foundation.*

The above committee may also obtain technical reports if need be, from experts in the field of electricity supply to arrive at their decision. The Government of India shall provide all assistance to the Committee.”

6. In compliance of the order of the Hon'ble Supreme Court of India dated 21.10.2022 and quoted above, the respondents were directed to file the reply/counter affidavit. Replies have been filed by the parties. We have heard the Learned Counsel for the parties and perused the records.

7. The facts giving rise to the present matter are summarized as below:-

- i. Rajasthan SEZ Part-B inter alia comprises of 765 kV DC Fatehgarh-11 to Bhadla-11 ('subject Transmission Line') that has been constructed, erected, charged and commissioned by Powergrid Fatehgarh Transmission Limited ('PFTL') (subsidiary of Respondent No. 5) (183.579 km). The said Project is a project of national importance and the said transmission line is part of the National Electricity Grid.*
- ii. The project was executed as a Tariff Based Competitive Bidding project and therefore there are limited funds for the execution of such projects. On 28.08.2015, Guidelines were issued by the Ministry of Environment, Forests and Climate Change (Forest Conservation Division) ('Guidelines') for diversion of forest land for non-forest purpose under the Forest (Conservation) Act, 1980 ('FCA') in respect of procedure for grant of permission for' felling of trees standing on forest land to be diverted for execution of linear projects.*

- iii. *The Guidelines inter alia state that with a view to facilitate speedy execution of projects involving linear diversion of forest land such as laying of transmission lines, in-principle approval under the FCA issued by the Central Government may be deemed as the working permission for tree cutting and commencement of work, if the required funds for compensatory afforestation, net present value ('NPV'), wildlife conservation plan, plantation of dwarf species of medicinal plants, and all such other compensatory levies specified in the in-principle approval are realized from the user agency and where necessary for compensatory afforestation, transfer and mutation of non-forest/revenue forest land in favour of State Forest Department is affected. To this effect the State Government or a Senior Officer not below the rank of Divisional Forest Officer, having jurisdiction over the forest land proposed to be diverted, duly authorized in this behalf by the State Government shall pass an order for tree cutting and commencement of work of a linear project in forest land for a period of one year. Further for the purpose of Section 2A of the FCA and Section 16(e) of the National Green Tribunal Act, 2010 ('NGT Act') the order for tree cutting and commencement of work of linear project in forest land, shall be an order under Section 2 of the FCA.*
- iv. *On 01.02.2019, in exercise of the powers conferred by sub-para 3,2 of Para 3 of the guidelines circulated under Section 63 of the Electricity Act, 2003 ("Electricity Act"), the Central Government appointed Bid- Process Coordinators for the Transmission Schemes vide Gazette Notification. As per the said notification, PFC Consulting Limited was appointed as the Bid-Process Coordinator for Transmission system associated with LTA applications from Rajasthan SEZ Part-B comprising of 765 kV DC Fatehgarh-11 to*

Bhadla-11 and 2 bays of 765 kV at both Fatehgarh-11 and Bhadla-11 for Fatehgarh-11 Bhadla-11 765 kV D/C line. Furthermore, prior approval under Section 68(1) of the Electricity Act, 2003 to PFC Consulting Limited in respect of the subject Transmission Line was granted by the Central Electricity Authority on 08.04.2019. On 15.11.2019, Central Transmission Utility recommended PFTL for grant of transmission license under Section 14 of the Electricity Act, 2003. In 2019, an Application under Section 14 of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Transmission Licence and other related matters) Regulations, 2009 was filed by PFTL with respect to subject Transmission Line before the Central Electricity Regulatory Commission ("Commission") being Petition No. 45/TL/2019. The Commission prima facie proposed to grant licence to the PFTL under Section 15 of the Electricity Act, 2003 read with Transmission License Regulations for construction, operation and maintenance of Transmission System. It directed that a public notice under Section 15(5)(a) of the Electricity Act, 2003 be published to invite suggestions, or objections to grant of transmission license. Such objections or suggestions must be filed by any person before the Commission by 12.02.2020.

- v. Public Notice under Section 15(5) of the Electricity Act was published in all editions of The Hindu (English) and Hindustan (Hindi) in respect of subject Transmission Line. PFTL published a notice for transmission scheme in local newspaper dated 01.10.2020 (Times of India, Dainik Bhaskar, Dainik Navjyoti) and in Weekly Gazette dated 31.10.2020 to 06.11.2020 for the general public to make observations/representations on the proposed transmission route within two months from the date of application. It is pertinent to note here that no suggestions/objections were received by the*

Commission from the members of the public in response to the public notice.

- vi. In the light of no objections/suggestions being received by the Commission, an order dated 04.03.2020 was passed by Commission in Petition No. 45/TL/2019 granting Transmission Licence to PFTL for 25 years subject to compliance of conditions of provisions of the Transmission License Regulations and any subsequent enactment thereof and terms and conditions of the transmission service agreement during the subsistence of the license. An affidavit to the effect that the execution of the transmission project shall be as per the terms of the transmission service agreement and time overrun and cost overrun shall be claimed by PFTL and to the effect that it would implement the project as per the provisions of Article 5 of transmission service agreement dealing with the construction of the project was filed by PFTL before the Commission.*

- vii. PFTL further made an Undertaking dated 18.04.2021 pursuant to the proposal dated 07.03.2020 to Divisional Forest Officer, Jodhpur stating that zero trees are to be felled/cut in the forest land proposed for diversion for construction of subject Transmission Line. Furthermore, on 14.03.2020, a proposal bearing No.: FP/RJ/TRANS/44981/2020 was submitted by PFTL respect of subject Transmission Line to MoEFF & under Section 2 of the FCA for use of forest land for non-forest, purposes i.e., for construction of subject Transmission Line.*

- viii. On 25.09.2020, Site Inspection Report of Deputy Conservator of Forest, Jodhpur (ANNEXURE A/2) for the forest land area of 2.8874 ha to be diverted under Section 2 of the FCA was received by PFTL. As per the report, the site inspection had been done on 11.09.2020 along with the forest staff and Associate Manager (Transmission) of PFTL. The report stated*

that the land required to be used is forest land measuring 2.8874 ha lying in Rang Phalodi, Bap and Shergarh and the legal status of the land is Protected Forest (NH-04, 11, 15 and Canal Strip Protected Forest). It further acknowledges and notes that the requirement of the forest land as proposed by the user agency in part - I is unavoidable and is bare minimum. Additionally, it notes that the subject Transmission Line is important for transmission of electricity from various solar parks nearby Bhadla and in view of the importance of the subject Transmission Line the project is recommended for acceptance.

- ix. That the limited area of Rang Phalodi, Bap and Shergarh has been granted the status of a protected forest and the areas pertaining to Degray and Rasal Oran can be conclusively determined by virtue and reference to the letter of Deputy Conservator of Forest, Jodhpur dated 29.07.2022 wherein it has been clarified that the area of Degray and Rasal Oran do not come within the ambit, jurisdiction, scope, ownership of the Forest Department.*
- x. On 15. 10.2020, the Chief Conservator of Forest, Jodhpur recommended diversion of forest land area of 2.8874 ha for the subject Transmission Line under Part III under Section 2 of the FCA. Moreover, sometime in 2020, Form A part II under Section 2 of FCA was also submitted by the Deputy Conservator of Forest in 2020 for the purpose of diversion of 2.8874 ha of forest land.*
- xi. On 6.12.2020, Additional Principal Chief Conservator of Forest & Nodal Officer FCA Rajasthan recommended granting of diversion of 2.8874 ha in favour of Powergrid Fatehgarh Transmission Limited (subsidiary of Respondent No. 5) for construction of subject Transmission Line under Part IV under Section 2 of the FCA. Pursuant to the same, on 02.01.2021,*

PFTL submitted an affidavit to the Central Electricity Authority stating that no objections were received from the public in 60 days from the publication of notice under Section 164 of the Electricity Act, 2003.

- xii. In addition to the recommendations of Additional Principal Chief Conservator of Forest & Nodal Officer FCA Rajasthan, on 03.03.2021, Secretary, Forest Department also recommended granting diversion of 2.8874 ha in favour of Powergrid Fatehgarh Transmission Limited (subsidiary of Respondent No. 5) for construction of subject Transmission Line under Part V under Section 2 of the FCA.*
- xiii. In the meanwhile, Central Electricity Authority granted authorization under Section 164 of the Electricity Act, 2003 in favour of PFTL for subject Transmission Line for 25 years for the purpose of construction of transmission lines as a Telegraph Authority under the Indian Telegraph Act, 1885.*
- xiv. Adhering to the terms of the notification, PFTL sought approval and consent from various concerned authorities. On 25.03.2021, PFTL was granted State-I forest clearance (ANNEXURE A/ 1) by the MoEF & CC, Integrated Regional Office, Jaipur (Respondent No. 2). Respondent No. 2 further communicated to the Secretary to the Government, Forest Civil Secretariat, Government of Rajasthan, for construction of subject Transmission Line with inter alia the following conditions:*
 - a. Condition 1: Legal status of forest land to remain unchanged.*
 - b. Condition 2: Compensatory afforestation shall be taken up by the Forest Department over an area of 5.7748 ha degraded forest land in compartment no. Osian-6, Village Osian, District Jodhpur*
 - c. Condition 3: Cost of compensatory*

afforestation at the prevailing wages rates as per compensatory afforestation scheme and the cost of survey, demarcation, and erection of permanent pillars shall be deposited in advance with forest department by project authority.

- d. Condition 4 and 5: State government shall charge NPV for 2.8874 ha forest area to be diverted under the proposal from user agency alongwith additional amount of NPV of diverted land, if any.*
- e. Condition 6: Felling of trees to be restricted to the minimum number in diverted forest land with strict supervision of state forest department.*
- f. Condition 6: Costs of felling of trees to be deposited by user agency with state forest department.*
- g. Condition 7: Compliance under FRA, 2006 to be ensured.*
- h. Condition 8: Detailed scheme for creation and maintenance of plantation of dwarf species in right of way of transmission line.*
- i. Condition 9: User agency to provide cost of bird detectors to be fixed on upper conductor of transmission lines at suitable intervals to avoid bird hits.*
- j. Condition 10: Guidelines under Letter No. 7-25/2012-FC dated 05.05.2014 and 19.11.2014 to be compiled with.*
- k. Condition 17: Boundary line of the diverted forest land shall be suitably demarcated on the ground at the project cost as per the directions of the concerned Divisional Forest Officer.*
- l. Condition 20: Forest land shall not be used for any purpose other than that specified in the project proposal.*

m. Condition 25: Compliance report shall be uploaded on the website. The final approval under Section 2 of the FCA shall be considered after submission of compliance report.

xv. On 06.04.2021 a demand notice was issued by the office of Divisional Forest Officer seeking statutory payments in respect of the construction of the subject Transmission Line. The costs that were sought to be deposited were as follows:

a. Damage to affected forest (2.8874 x 25778 hectares) along with maintenance for twelve years in favour of the forest department amounting to Rs. 16,11,000/-

b. Net Present Value of the forest (Open Forest NPV @ Rs. 4,38,000: $2.8874 \times 4,38,000 =$ Rs. 12,64,88/-

c. Planting and maintenance of dwarf plants (mainly medicinal plants) under the proposed powerline for 10 years - $2.8874 \times 583916.58 =$ Rs. 16,68,000/-.

8. The contention of the learned counsel for the applicant is that for the purpose of obtaining Stage-I Forest Clearance, a Site Inspection was conducted by the Deputy Conservator of Forest for the diversion of forest land of 2.8874 hectares. The Site Inspection Report of the 25.09.2020 states that “*there is no any rare/endangered/unique species of flora fauna in the area*”.

9. This finding by the Deputy Conservator of Forest is incorrect, misleading and malafide as there are several reports by Wildlife Institute of India which are available with respect to the existence of GIB in the area and there are also news reports about death of GIB in and around the area

where forest clearances granted and that the Form A Part II filled up by Deputy Conservator of Forest for obtaining Forest Clearance has given incorrect and wrong information in response to Serial No. 8 regarding 'Significance of forest land proposed for diversion from wildlife point of view'. The Deputy Conservator of Forest has answered in negative to the question asking about details of wildlife present in and around the forest land proposed for diversion. The question related to existence of rare/ endangered/unique species of flora and fauna has also been answered in negative. It is submitted that this is done just to misrepresent the facts with respect to existence of GIB in the area and with the malafide intention to obtain Forest Clearance by concealing material and relevant facts and it is argued that impugned forest clearance is deliberate concealment or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application and require to be quest.

10. It is further argued that the Grid Sub-Station is being set up in the Oran Land which is a religious place as well as the religious Shrine is located in the very land where the grid sub-station is installed and its construction began since 2020. There exists a religious Shrine in the very land and prior to the construction of the Grid Sub-Station, villagers used to visit the place periodically to worship. That even today, the Shrine exists there and villagers can enter and worship only after being permitted by the Power Grid Corporation. The Appellants submit that the Shrine is in the memory of Dudoji whose real name was Durjansal, who was the 11th king of Jaisalmer in late 13th & early 14th centuries.
11. The Learned Counsel for the applicant has cited the reports of March, 2017 and final report titled Conserving Great Indian Bustard and Power Line Mitigation to Conserve Bustards prepared by the Wildlife Institute of

India in 2018 and submitted that the electrocution deaths of the GIB due to power lines can cause the extinction of the endangered species. The relevant portion and the data of the report are as follows :-

“Implementation of GIB friendly land users: *Using historical and survey data, priority and potential GIB areas were mapped and shared with concerned agencies. Maps of priority power-lines for mitigation were shared with Rajasthan Energy Department. Rajasthan Forest Department and power companies. Bird diverters of various makes were pilot tested on priority power-line segment. A sterilization program for stray dogs was implemented by partnering with Humane Society International (HSI) in 2018. A total of 827 dogs in/ around 20 villages in DNP were sterilized.*

Recommendations

Minimal implementable mitigation measures to ensure the survival of the Critically Endangered GIB based on scientific evidence generated by the Project are given below.

- 1. A priority/critical GIB area/habitat was defined in collaboration with Rajasthan Forest Department (RFD) which is vital for the survival of GIB (Figure I, Table I). A potential GIB area was identified (Figure I, Table I). Subsequently, within the potential GIB area, based on recent telemetry and survey information, an area of 6564 km² was identified jointly with RFD as Additional Important Area for the long-term survival of a viable GIB population in Rajasthan (Figure I Table I).*
- 2. Mitigate all overhead power-lines passing through GIB priority/critical area in Rajasthan by undergrounding -200 km of overhead power-lines (Figure I) and installing bird diverters on all other power-lines to make them prominent to birds. While no new overhead power- lines should be installed in the priority/critical and Additional Important GIB*

areas, power-line in the potential GIB area should be installed with bird diverters.

This action must be expeditiously implemented as power-tine mortality is currently the biggest threat to the species, as six detected GIB mortality due to power-line collision is recorded in Thar during 2017-20 (details provided below), and this additional mortality can cause GIB extinction within next 10-20 years according to Population Viability Analysis.

<i>Date</i>	<i>Gender</i>	<i>GPS Coordinates</i>	<i>Locality</i>
<i>11th May, 2017</i>	<i>Male</i>	<i>26°51'56.00"N 70°38'11.04"E</i>	<i>Kanol</i>
<i>9th December, 2017</i>	<i>Unknown</i>	<i>27°9'14.15"N 70°43'25.90"E</i>	<i>Mokla</i>
<i>29th December, 2017</i>	<i>Unknown</i>	<i>27°0'49.21"N 71°41'17.63"E</i>	<i>Khetolai</i>
<i>27th June, 2018</i>	<i>Male</i>	<i>27°0'50.13"N 71°56'29.13"E</i>	<i>Ramdeora</i>
<i>27th November 2018</i>	<i>Unknown</i>	<i>27°1'8.34"N 71°36'25.60"E</i>	<i>Dholiya</i>
<i>16th September, 2020</i>	<i>Female</i>	<i>26°43'18.06"N 71°19'01.20"E</i>	<i>Rasia</i>

12. The details of the death caused by hitting and over head transmission lines are as follows :-

- A. *“Newspaper article titled “Great Indian Bustard dies after hitting live wires in Jaisalmer” is published on the Times of India reports about a female Great Indian Bustard which was found dead on 16.09.2020 due to electrocution because of an existing power line in the Degray forming a part of the sacred grove Oran.*
- B. *Another female GIB died on 17.10.2022 at Sanwata village in Degray lands in Jaisalmer. It is pertinent to note that it is the seventh fatality in last four years. That the same has been published on the Times of India vide Article dated 18.10.2022 titled GIB dies after hitting live wires in Jaisalmer, 7th fatality in 4 years.*
- C. *Another death of GIB occurred on 22.03.2023, thereafter, a News article published on Times of India vide Article dated 25.03.2023 titled Wildlife experts call for steps to save GIBs from power wires.”*

13. The Learned Counsel for the applicant has further argued that the Hon’ble Supreme Court in *M.K. Ranjitsinh & Ors. vs. Union of India & Ors.* Writ Petition (Civil) No. 838 of 2019 (I.A. No. 85618 of 2020) vide order

dated 19.04.2021 mentioned about the affidavit dated 15.03.2021 by the Ministry of Power, Union of India which states that due to the lack of frontal vision of GIBs, they are unable to detect power lines and hence prone to collide and get electrocuted:

“The Great Indian Bustard (“GIB”) lacks frontal vision. Due to this, they cannot detect power lines ahead of them, from far. As they are heavy birds, they are unable to manoeuvre across power lines within close distances. Thus, they are vulnerable to collision with power lines. In case of low voltage lines, electrocution is often the cause of death due to smaller phase to phase separation distance. High voltage lines do not cause death due to electrocution but cause death due to collision.”

Furthermore, the Hon’ble Supreme Court also stated that in priority and potential GIB areas, the overhead cables shall be converted into underground power lines within a period of one year based on the feasibility and the Committee report:

18. In all cases where the overhead power lines exist as on today in the priority and potential GIB area the respondents shall take steps forthwith to install diverters pending consideration of the conversion of the overhead cables into underground power lines. In all such cases where it is found feasible to convert the overhead cables into underground power lines the same shall be undertaken and completed within a period of one year and till such time the diverters shall be hung from the existing power lines.”

Hence, looking at the threat that has been imposed on the GIB habitat due to the collision and electrocution from the transmission lines, there is an alarming need to convert the overhead cables into underground

power lines that can protect this species which is on the verge of extinction.

14. A detailed study and statistics of AC underground cables in power networks has been filed in original application number 90/2020 (CZ) where the issue involved was illegal non-forest use of deemed forest land in the sacred groves, Oran Sri Degray Mataji at Rasala Samantha and Bhimasar village Jaisalmer, Rajasthan. It was alleged in that original application that two new transmission lines and a grid substations are being set up in violation of the provisions of the Forest (Conservation) Act, 1980 and the Biological Diversity Act, 2002, and in violation of the law laid down by the Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad vs Union Of India & Ors.* W.P. Civil No. 202/1995 by order dated 03.07.2018.
15. The issue highlighted and for consideration in the report and research was as follows:
 - i. *To collect statistics for the lengths of underground and overhead circuits at a range of transmission voltages. Only existing lines and projects planned for implementation by 2006 should be included,*
 - ii. *To describe significant underground cable projects realised in the period 1996-2006 giving the reasons why undergrounding was selected,*
 - iii. *To describe the factors which must be considered when evaluating the cost of overhead or underground connections,*
 - iv. *To describe the other factors which must be taken into account in order to make a balanced choice between overhead and underground technology.*
16. The conclusion suggests that large majority of circuits are overhead. The proportion of ac circuits that are underground falls from 6.6% for the 50

to 109 kV range down to 0.5% for the 315 to 500 kV range. There is no significant length of underground transmission at the 501 to 764 kV level.

The percentage of underground cable which has extruded polymeric insulation falls from 72% for the 50 kV - 109 kV range to 27% for 315 - 500 kV range. The decreasing proportion of extruded insulation used at the higher voltages reflects the relatively recent introduction of this technology.

The data on installed lengths clearly show that utilities have a strong preference for overhead lines rather than underground cables. For the 50 kV to 109 kV range, 93% of the ac network is overhead. This value increases to 100% overhead at the 501-764 kV level.

The preference for overhead lines is mainly on the grounds of cost and some technical issues. The cost driver becomes stronger as the voltage level increases. The main technical differences between the underground and overhead transmission of bulk electric power relate to electrical insulation of the conductor, heat transfer to prevent overheating and the construction work necessary to install the circuit. These combine and result in the additional cost and complexity of placing circuits underground. This situation becomes worse at higher power and voltages.

Factors such as visual intrusion, threats to sensitive habitat, etc. are not generally the same along the whole route. In some cases partial undergrounding is an opportunity for compromise, but the transition from overhead to underground can have significant impact on the local environment and adjacent short sections of undergrounding are unlikely to be desirable.

17. The Learned Counsel for the respondent has relied the research paper which has been filed in the Original Application and shown in table A-5 & A-6 which is as follows :-

Table A.5: Installed lengths of ac underground cable and overhead line and the percentage of total circuit length which is underground at 315 - 500 kV (other countries).

	Cable (km)	OHL (km)	Total (km)	% Cable
Australia	58	6734	6792	0.9
Austria	54	2453	2507	2.2
Belgium	0	1481	1481	0.0
Brazil	55	6799	6854	0.8
Canada	16	12847	12863	0.1
China	0	985	985	0.0
Croatia	0	1208	1208	0.0
Denmark	52	1300	1352	3.8
Finland	0	4000	4000	0.0
France	2	21007	21009	0.0
Germany	65	18200	18265	0.4
Ireland	0	438	438	0.0
Israel	0	300	300	0.0
Italy	34	10651	10685	0.3
Japan	123	15879	16002	0.8
Korea	221	7563	7784	2.8
Mexico	3	19000	19003	0.0
Netherlands	7	1997	2004	0.3
Poland	0	4830	4830	0.0
Portugal	0	1507	1507	0.0
Romania	0	4389	4389	0.0
Singapore	111	0	111	100.0
Spain	80	18806	18886	0.4
Sweden	8	10620	10628	0.1
Switzerland	0	1304	1304	0.0
United Kingdom	166	11122	11288	1.5
USA	536	122176	122712	0.4
Total	1589	306287	307876	0.5

Table A.6: Installed lengths of ac underground cable and overhead line and the percentage of total circuit length which is underground at 501 -764kV

	Cable (km)	OHL (km)	Total (km)	% Cable
Canada	0	11422	11422	0.0
Korea	0	662	662	0.0
Poland	0	114	114	0.0
Romania	0	86	86	0.0
USA	0	4406	4406	0.0
Total	0	16690	16690	0.0

18. On the basis of above, it is argued that where the line is for more than 501 to 764 kV none of the countries has adopted the method of underground cable due to technical reasons.

19. It is further argued that the decision to the overhead or underground cabling is taken on the basis of thermal design and load and rating factors.
20. The rating of a circuit (overhead and underground) is largely determined by the heat produced by the current flowing in the conductor (electrical losses) and the ability of the surroundings to transport the heat away from the conductor. The rating of a circuit is the maximum load (ampacity) that is permitted for the circuit without exceeding the maximum temperature of the conductor. A reduction in losses will increase the rating, and better cooling of the conductor will also increase the rating.
21. Underground cables have resistive losses in the conductor and the sheath and dielectric losses in the insulation. All these losses appear as heat in the cables. Heat has to be transported away from the cable, so the cable will not exceed its design temperature and suffer permanent damage.
22. The short-term rating of an overhead line can be used for about 15-30 minutes. It is also called the transient load for the line. In the event of a fault on the network, which causes a line to be switched out, another line can be overloaded by a certain percentage (typically 25 %) for some minutes. During this post-fault period the personnel in the control centre have a relatively short time to change the flow in the grid to remove the overload.

For overhead lines designed to a maximum sag it is not possible to make use of the short-term load for a longer time, because the sag of the overhead line will be too great. The design temperature of a conventional ACSR (Aluminum Conductor Steel Reinforced) conductor is typically 50-90 °C.

If the towers are sufficiently tall, the sag of the conductors will cause no problem, the limit short-term of the load is determined by the maximum temperature of the conductor. The maximum long-term

temperature for a conventional ACSR conductor is 75-90 °C. For shorter period the temperature is limited to about 120 °C. Higher temperatures will anneal the aluminum which will lose much of its strength. High-temperature conductors can operate at temperatures up to for example 150 °C or 250 °C.

23. Next point as argued by the Learned Counsel for the appellant/applicant is that forest land which have been diverted is a part of GIB habitat. The contention are on the following grounds:

“1. That the Oran is very close to the Rasla Enclosure of the Desert National Park created for the protection of the Great Indian Bustard. It is pertinent to note that the Oran land in village Rasla serves as a habitat and nesting site for the GIB which is listed as Critically Endangered in International Union for Conservation of Nature, 2011 and Schedule-I that accords it the highest level of legal protection 19 / 1 under Wildlife (Protection) Act, 1972 and has become nearly extinct with less than 150 individuals left in the wild. Further, the Oran also supports a variety of wildlife, like chikara, blue bull, jackals, desert cat, and desert fox.

3. It is submitted that the report titled "Habitat improvement and Conservation Breeding of Great Indian Bustard: An Integrated Approach" by Wildlife Institute of India from March 2017 - April 2018 found the evidence of the GIB population in the village of Rasla, where the project is proposed and forest land is diverted. On 16.09.2020, one female Bustard was found electrocuted due to an existing transmission line. That based on surveys conducted by the Wildlife Institute of India (WII) research team in Rajasthan (2017-2018), Maharashtra (2017), GIB is standing at the doorstep of extinction with 150 individuals left in the world and is in urgent need of conservation actions. That apart from GIB, eight species of raptors including the Endangered Egyptian Vultures, Vulnerable Tawny Eagle, and Near Threatened Cinereous Vulture were also found dead due to electrocution or a collision with the high-tension power lines

erected in 2020. Hence, the erection of the transmission lines in the GIB area has inflicted immense threat to the lives of the endangered species:

*"Key Recommendations: The great Indian bustard population and habitat are declining drastically across its distribution range. **Thar landscape is the only remaining habitat supporting a viable (and the largest) breeding population but is also experiencing a rapid increase in anthropogenic disturbances** in terms of human presence in remote interiors, power lines, wind turbines, and water provisioning - all of which are detrimental to the persistence of Great Indian Bustard.*

To recover great Indian bustard population by restoring habitats in this landscape we recommend:

a) *Consolidating existing enclosures where bustard breeds using predator-proof chain link fences (in Sam, Sudasari Gajaimata, Rasla and Ramdeora) as the current fencing is inadequate to keep predators away in most cases.*

.....

c) *Mitigating ill-effects of wind-turbines and overhead powerlines in priority conservation cells, particularly the Great Indian Bustard ranging arc between Sudasari - Sam - Salkha - Mokla - Mohangarh - Bhadariya -Ajasar - Ramdeora (figure x) to reduce obstruction to local bird movements. New power lines should be made underground and existing ones should be marked with Bird Happer/Diverter to make them visible and minimize collision risk (Silva et al 2074). WII has already supplied pilot diverter, which have been installed in select lines by power*

agencies (Suzlon and RVPNL). Similar products need to be imported or locally made and deployed on priority power lines across the eco-sensitive zone (ftg 10) in an expeditious manner by power/energy agencies.

d) Transferring lands in priority conservation cells (e.9., habitat near Kanoi- Salkha-Habur, Nathoosar, Chananl Ugras, Galar, Chhayan, Ajasar-Keroq Bhadariya, Mohangarh and Dhaleri) to Forest DePartment for creating new protective enclosures, and where this strategy is unfeasible or undesirable, conservation areas can be jointly managed by local communities and Forest Department."

24. And that impact of overhead transmission lines on GIB habitat as follows :

"1. The Applicants submitted that the Final Report titled 'Conserving Great Indian Bustard: Landscapes through Scientific Understanding and Participatory Planning' published on 2020 by Wildlife Institute of India states that power line mortality is currently the biggest threat to the GIBs, as six GIB mortality have been detected due to power line collision and electrocution in Thar during 20th-2020. The report further states that this additional mortality can cause GIB extinction within next 10-20 years, according to the Population Viability Analysis:

Date	Gender	Locality
11 th May, 2017	Male	Kanoi
9 th December, 2017	Unknown	Mokla
29 th December, 2017	Unknown	Khetolai
27 th June, 2018	Ramdeora	Male
27 th November, 2018	Unknown	Dholiya
16 th September, 2020	Female	Rasla

The WII final report clearly highlights the death of the female GIB on 29.12.2020 is due the collision and electrocution with the transmission lines. The report further confirms that power lines, especially high voltage transmission lines with multiple overhead wires, is the most important current threat to the Critically Endangered GIB. Hence, there is an urgent need of mitigating this threat by burying high-risk power lines and installing markers on medium-risk power lines. Therefore, the report strongly recommends expeditiously mitigating power-lines by undergrounding all lines within priority area (is the only fool proof measure for conserving the GIB), and marking lines with bird diverters in potential areas. However, bird diverters reduce but do not eliminate mortality.

25. It is submitted that the GIB is also a part of the **Species Recovery Programme** initiated by the Ministry of Environment, Forests and Climate Change which seeks to promote "GIB friendly land uses" to allow the birds to nest and survive. That the National Wildlife Action Plan (2017-2031) which emphasizes the "conservation of endangered species" and has stated that "the State Governmen⁶ are encouraged to identify habitats for highly threatened species of flora and fauna outside the Pas and undertake conservation and long-term monitoring of such habitat. There is a need for up scaling these efforts in the current NWAP".
26. In reply to the above contention the Learned Counsel for the Respondent has submitted that the Hon'ble Supreme Court of India in I.A. No. 85618 of 2020 in W.P. (C) 838 of 2019 vide order dated 19.04.2021 observed that the GIB are vulnerable to collision with power lines as they lack frontal vision. It recommended that in all cases where the overhead power lines exist as on the date of the passing of the order in the priority and potential GIB area, the respondents therein shall take steps to install diverters pending consideration of conversion of the overhead cables into underground power lines within one year. The Hon'ble Supreme Court

enumerated various directions to be followed with respect to the same and formulated a Committee to specifically deal with the issues pertaining to undergrounding of transmission lines as well as installation of bird diverters on the overhead transmission lines. Some of the directions as provided by the Hon'ble Supreme Court are stated herein below: -

- a. bird diverters be installed on the existing power lines.
- b. in all future cases of installing the transmission lines a study shall be conducted with regard to the feasibility for lines to be laid underground.
- c. In cases where it is feasible, steps shall be taken to lay the transmission line underground.
- d. For lines to be laid in the future as per the technical report, if overhead line alone is feasible and the same is ratified by the Committee, the installation of diverters is also to be attached as a condition in the contract to be entered into with generating companies.
- e. Power supply lines regarding which underground passage is to be made must avoid areas with regard to the conservation of habitat to secure safety of eggs laid by birds earmarked as islands.
- f. Committee comprising of the following members was also formed to assess the feasibility of laying of high-voltage underground power lines — Dr. Rahul Rawat, (Scientist, Ministry of New and Renewable Energy) Dr. Suhirtha Dutta (Scientist Wildlife Institute of India) and Dr. Devesh Gadhavi (Deputy Director, Corbett Foundation).

27. It is further argued that there are concealment of information for part A-2 and forest land was diverted without any permission from the competent authority or forest authorities and approval for felling of trees vide letter dated 22.06.2021 granted to Power Grid Transmission Ltd. for diversion of the land for construction of 76.765 KV/DC Fatehgarh-2 to Bhadla-2 transmission line District Jodhpur (Rajasthan) by the Principal Chief Conservator, Jaipur was not according to rules.

28. In reply to the above contentions it has been submitted that the cost of the felling of trees is required to be deposited by the users agency with State Forest Department but the condition of the stage-1 Forest Clearance and in response to the demand notice by the Divisional Forest Officer issued on 06.04.2021, a letter dated 19.04.2021 was issued by the PFTL to Divisional Forest Officer, Jodhpur stating that there are zero trees to be felled/cut in the forest land proposed for diversion as the distance between the bottom conductor and the ground is 23.5 meters in construction of the subject Transmission Line. Furthermore, given there is no cutting/lopping of trees in the forest area, therefore, there is no additional cost. The only amount to be submitted is provided herein below :

- a. Compensatory afforestation Rs.16,11,000/-
- b. Net Present Value : Rs.12,64,681/-
- c. Medicine Plantation : Rs. 16,86,000/-

As mentioned in the demand notice dated 06.04.2021 amounting to a total of Rs. 45,61,681/-

29. On 20.04.2021, Committee Certificate (under FCA) issued by PFTL was provided by the Deputy Conservator of Forest, Jodhpur to the Acting Chief Conservator of Forest, Jodhpur in respect of the subject Transmission Line.

30. Pursuant to the same, an inspection of the subject Transmission Line was carried out by the Electrical Inspector to Government of India on 22.06.2021, the Principal Chief Conservator of Forest granted interim approval for felling of trees and commencement of work to PFTL for diversion of 2.8874 ha. forest land for construction of subject Transmission Line for one year.
31. Post the approval from Principal Chief Conservator of Forest, 27.08.2021, approval for energization of subject Transmission Line to Respondent No. 5 was granted by Director, Electrical Inspector to Government of India under Regulation 43 of the Central Electricity Authority (Measures relating to Safety and Electrical Supply) Regulations, 2010 subject to consistent compliance of relevant provisions of Central Electrical Authority (Measures relating to Safety and Electrical Supply) Regulations, 2010. Thus, Ckt-1 and Ckt-2 along with associated bays and 240 MVAR line reactor were synchronized on 30.08.2021 at 14:13 Hrs. Copy of approval for energization of subject Transmission Line dated 27.08.2021 to Respondent No. 5 granted by Director, Electrical Inspector to Government of India under Regulation 43 of the Central Electricity Authority (Measures relating to Safety and Electrical Supply) Regulations, 2010 subject to consistent compliance of relevant provision of Central Electrical Authority (Measures relating to Safety and Electrical Supply) Regulations, 2010 has been filed.
32. Status of the Proposal submitted by PFTL to the MoEF&CC as on 18.08.2022 as per the website of MoEF&CC reflects that a query has been raised by the Regional Office of MoEF&CC for stage-II clearance on 28.06.2022. It is reiterated that the proposal for stage-II clearance under Section 2 of FCA is pending, while all other compliances have been duly made, only on account the pendency of formal submission of "records of consultation and meeting at the sub-divisional level committee and Gram

Sabha Level”. It is therefore submitted that delay in fulfillment of the same is not attributable to the answering respondent. The Payment made by PFTL to the office of Deputy Conservator of Forest under the FCA as reflected on the website of MoEF&CC on 20.08.2022. At S. No. 18 it reflects that the payment of Rs. 45,61,681/- has been made by PFTL under the FCA. Pursuant to the said permission PFTL had been working permission under the Guidelines dated 28.08.2015, the notification was issued and published in Gazette of India Extraordinary part –II Khand –III on 1st February 2009 where the matter of 765 KVA Transmission System of Rajasthan was considered at sl. No. 629 and the authorities has taken a proper decision.

33. The Principal Chief Conservator of the Forest, Rajasthan vide communication letter 05.07.2021 has submitted the status of compliances of the forest land diversion which is annexed as R-5/16 which is as follows :

Sr. No	Conditions	Compliance
1.	<i>Legal status of the Forest land shall remain unchanged</i>	<i>The Legal Status of the forest land for construction of 765 KV DC Fatehgarh-11 to Bhadla-II Transmission line admeasuring 2.8874 ha will remain unchanged. Undertaking is Enclosed.</i>
2	<i>Compensatory afforestation shall be taken up by the Forest Department over an area of 5.7748ha. degraded Forest land in Compartment No. Osian-6, Village — Osian, Orange Osian. District Jodhpur at the cost of the User Agency. As far as possible, a mixture of local indigenous species shall be planted and monoculture of any species may be avoided.</i>	<i>Charges for Compensatory afforestation for degraded Forest land in Village — Osian, Range Osian. District Jodhpur has been paid as suggested by the forest department. Mixture of local indigenous species also considered. Under taking for the same enclosed.</i>

3.	<p>The cost of compensatory afforestation at the prevailing wage rates as per compensatory afforestation scheme and the cost of survey, demarcation and erection of- permanent pillars if required on the CA land shall be deposited in advance with the Forest Department by the project authority. The CA will be Maintained for 10 years. The scheme may include appropriate provision for anticipated cost increase for works scheduled for subsequent years.</p>	<p>Charges for compensatory afforestation at the prevailing wage rates as per compensatory afforestation scheme and the cost of survey, “ demarcation and erection of permanent pillars if required, has been paid in CAMPA Fund Amount of Rs 16,11,000 (Sixteen Lakhs, Eleven Thousand Rupees) vide E-Challan 6444981451 dated 26.04.202 1 and UTR No SBIN121120120834 dated 30.04.202 1. Undertaking for the same Enclosed.</p>
	<p>The State Government shall charge the Net Present Value (NPV) for the 2.8874 ha forest area to be diverted under this proposal from the User Agency as per the orders of the Hon’ble Supreme Court of India dated 30.10.2022, 01.08.2023, 28.03.2008, 24.04.2008 and 09.05.2008 in IA No. 566 in WP No. 202/1995 and as per the guidelines issued by the Ministry vide letters No. 5-1/1998-FC (Pt.II) dated 18/09/2003, as well as letter No. 5- 2/2006-FC dated 03/10/2008 and 5- 3/2007-FC dated 05/02/2009 in this regard.</p>	<p>Charges for NPV has been paid in CAMPA Fund Amount of Rs 12,64,081 (Twelve Lakhs, Sixty Four Thousand Six hundred eighty one Rupees) vide E-Challan 6444981451 dated 26.04.2021 and UTR NO SBIN121120120834 data 30.04.2021. Undertaking for the same Enclosed.</p>
5	<p>Additional amount of the NPV of the diverted forest land, if any, becoming due after finalization of the same by the Hon's Supreme Court of India on receipt of the report from the Expert Committee, Shall be charged by the State Government from the User Agency. The User Agency shall furnish an undertaking to this effect.</p>	<p>Undertaking for the same Enclosed.</p>
6	<p>User agency shall restrict the felling of trees to minimum number in the diverted forest land and the trees shall be felled under the strict supervision of the</p>	<p>Undertaking for the same enclosed.</p>

	<i>State Forest Department and the cost of felling of trees shall be deposited by the User Agency with the State Forest Department.</i>	
7	<i>The complete compliance of the FRA, 2006 shall be ensured by way of prescribed certificate from the concerned District Collector.</i>	<i>FRA Certificate from the District Collector enclosed.</i>
8	<i>The User agency in consultation with the State Forest Department prepare a detailed scheme for creation and maintenance of plantation of dwarf species (preferably medicinal plants) in right of way under the transmission line and deposit the cost for execution of the said scheme to the State Forest Department.</i>	<i>Charges deposited for plantation of dwarf species (preferably medicinal plants) in consultation with State Forest Department, Amount of Rs 16,86,000/- (Sixteen Lakhs, Eighty Six Thousand Rupees Only) vide E-Challan 6444981451 dated 26.04.2021 and UTR No SB!N121120120834 dated 30.04.2021. Undertaking for the same enclosed.</i>
9	<i>The user agency at its cost shall provided bird detectors, which are to be fixed on upper conductor of transmission line at suitable intervals to avoid bird hits.</i>	<i>Undertaking for the same enclosed.</i>
10	<i>The User Agency shall comply ,with the guidelines for laying transmission lines through forest areas issued by Ministry .vide letter no. 7-25/2012-FC dated 05/05/2014 & 19/11/2014.</i>	<i>Undertaking for the same enclosed</i>
11	<i>Muck disposal Scheme approved by DFO shall be submitted</i>	<i>Undertaking for the same enclosed.</i>
12	<i>NOC of concerned department (NHAI etc shall be submitted.</i>	<i>figure has been obtain by User Agency Annexure-I (NHAI) and Annexure-VI (Irrigation) attached ,also Undertaking for the same enclosed.</i>

13	<i>User Agency shall obtain Environmental Clearance as per the provisions of the Environmental (Protection) Act, 1986, if applicable.</i>	<i>Undertaking is Enclosed.</i>
14	<i>The layout plan of the proposal shall not be changed without prior approval of Central Government.</i>	<i>Undertaking for the same enclosed.</i>
15	<i>No labour camp shall be established on the forest land.</i>	<i>Undertaking for the same enclosed.</i>
16	<i>Sufficient firewood, preferably the alternate fuel, shall be provided by the User Agency to the labourer after purchasing the same from the State Forest Department or the Forest Development Corporation or any other legal source of alternate fuel</i>	<i>Undertaking for the same enclosed.</i>
17	<i>The boundary of the diverted forest land shall be suitably demarcated on ground at the project cost, as per the directions of the concerned Divisional Forest Officer.</i>	<i>Undertaking for the same enclosed.</i>
18	<i>No additional or new path will be constructed inside the forest area for transportation of construction materials for execution of the project work.</i>	<i>Undertaking for the same enclosed.</i>
19	<i>The Period of diversion under this approval shall be co-terminus with the period of lease to be granted in favour of the user agency or the project life, whichever is less.</i>	<i>Undertaking for the same enclosed.</i>
20	<i>The forest land shall not be used for any purpose other than that specified in the protect proposal.</i>	<i>Undertaking for the same enclosed.</i>
21	<i>The forest land proposed to be diverted shall under no circumstances be transferred to</i>	<i>Undertaking for the same enclosed.</i>

	<i>any other agencies, department or person without prior approval of Govt. of India.</i>	
22	<i>Violation of any of these conditions will amount to violation of Forest (Conservation) Act, 1980 and action would be taken as per the MoEF&CC Guideline F.No. 11-42/2017-FC dt 29/01/2018.</i>	<i>Undertaking for the same enclosed.</i>
23	<i>Any other condition that the Ministry of Environment, Forest & Climate Change may stipulate from time to time in the interest of conservation, protection and development of forests & wildlife.</i>	<i>Undertaking for the same enclosed.</i>
24	<i>All the funds received from the user agency under the project shall be transferred/deposited to CAMPA fund only through e-portal</i>	<i>Charges deposited in the CAMPA fund vide challan no. 644498145 dated 26.04.2021 and U No.SBIN121120120834 DATED 30.04.2021</i>
25	<i>The compliance report shall be uploaded on e-Portal (https://parivesh.nic.in/)</i>	<i>Compliance report has been uploaded on e-Portal (https://parivesh.nic.in/)</i>

34. The appellant has filed the rejoinder to the counter affidavit filed by the Respondent No. 5. submitted that the contention of the respondent that the appellant has no locus standi or appeal is barred by limitation or appeal is factuated by mala-fidely and not material. Since we have discussed the matter on merit thus all these grounds are not required to be discussed.

35. In the matter of appeal the respondent nos. 1 & 2/MoEF&CC has submitted that the protection and management of forest and forest resources are primarily the responsibility of the concerned State Government and the proposal for diversion of land for transmission line was received in the office of Respondent no. 2 and the proposal was examined for stage –I approval and granted with certain conditions which was required to be complied by the respondent no. 5. The matter related

to the protection of the GIB habitat is pending with the Writ Petition No. 838 of 2019. And will be governed by the directions of Hon'ble the Supreme Court of India. Rest of the Respondents 1,2,3, 4 & 5 had the reply in the Original Application which are the repetition of the above facts.

36. Both cases have been filed by Shri Degray Oran Temple and Oran Development Institute & Anr. and the ERD Foundation (Ecology, Rural Development and Sustainability Foundation) against two transmission lines and the grid station coming up allegedly on Oran forest, which is the deemed forest at Rasla, Sawanta in Bhimsar village of Jaisalmer, Rajasthan.

37. The most important points as alleged in the application are that-

- i. These transmission lines and service stations are coming up on the Oran forest without any forest clearance from the Government of India under Forest (Conservation) Act, 1980.
- ii. The forest clearance stage-I is based on false information.
- iii. The area is habitat of Great Indian Bustard (GIB) which is an endangered species.

38. The project, in the present application relates to the establishment of the following transmission lines and sub-station:-

- a) Loop in and Loop Out of 765 KV D/C Fatehgarh (TBCB).
Bhadla (PG) transmission line at Fatehgarh 2 (PG);
- b) 765 KV D/C Fatehgarh 2 – Bhadla 2 Transmission line; and

c) 765/400/220 KV Substation at Fatehgarh 2 (hereinafter collectively referred to as 'the said transmission lines and grid sub-station).

39. Out of these three components (a) and (c) as mentioned above are not in the Oran forest area and do not require any forest clearance, though they are in GIB habitat. The applicant has attached the details of oran forest giving Khasra No. and Rakba (Area) etc. from the Khatuni whereas component (a) & (c) are established on different Khasra Numbers. These Khasra Numbers are 210, 211, 212/854, 215/852, 218 and 219 with rakba (area) respectively 156.05, 156.05, 44.00 to 44.02, 49.05 and 156.05 admeasuring 4055 bigha and 15 biswa as seen from the order of the Collector, Jaisalmer, Rajasthan dated 28.08.2019. Thus, the survey numbers referred by the applicant and the survey numbers on which (a) & (c) are established , for which permission has been given by the Collector, Jaisalmer are different. The grid station and the transmission line referred at (a) & (c) are not on the Oran forest area as verified by the Joint Committee constituted by the Tribunal.

40. As these two components (a) & (c) have not come upon the oran forest, the Forest (Conservation) Act, 1980 does not apply and clearance is not required and the Competent Revenue Authority/Collector, Jaisalmer has given due approval for the establishment of the two components (a) & (c).

41. Component (b) i.e. 765 KV D/C Fatehgarh 2 – Bhadla 2 Transmission line involves diversion of 2.8874 hq. of forest land for which the Govt. of India has given the stage –I Forest Clearance on 25.03.2021.
42. The Appeal No. 76/2021 has been filed against this grant of Forest Clearance Stage-I mainly on two grounds :-
- i. That incorrect information has been supplied by the Dy. Conservator of Forest regarding the existence of flora and fauna; and
 - ii. The area is the habitat of GIB and same has not been mentioned in the proposal. The proposal mentions that there would be no tree cutting, however, the tree cutting has been done.
43. Considering both the cases together it is very clear that component (a) & (c) have been established on non Oran forest area and they do not need clearance under the Forest (Conservation) Act, 1980. For the establishment of the second component (b) clearance under the Forest (Conservation) Act, 1980 has been sought. So far as the details of the habitat is concerned, the proposal does not mention specifically about the habitat of GIB. Seeing the permission from the Govt. of India, it is very clear that the permission entails the use of forest land for non-forestry purpose as well as cutting of 244 trees. The point no. 9 of the order granting FC-1 specifically mentions that the user agency at its cost shall

provide bird deflectors, which are to be fixed on upper conductor of transmission line at suitable intervals to avoid bird hits.

44. Therefore, the order for the forest clearance stage-1 includes cutting of trees as well as takes care of the habitat of the GIB. Based on the forest clearance stage-1, the Principle Chief Conservator of Forest, Rajasthan vide its order dated 22.06.2021 has permitted the cutting of trees as well as the commencement of the work as transmission line is a linier project. The guidelines issued by the Govt. of India in respect of the Forest (Conservation) Act, 1980 vide para 11.2 of Hand Book of guidelines provides for such approval based on the conditions mentioned in the Forest Clearance Stage-I.
45. The order for commencement of work has been issued on 22.06.2021 but in the meantime on 19.04.2021 the Hon'ble Supreme Court in the case of *M.K. Ranjitsinh vs Union of India* has laid down certain guidelines for the establishment of transmission line in the habitat of GIB. In accordance with that order whether a line will be overhead or underground that can be decided by the Expert Committee appointed by the Hon'ble Supreme Court. Whether these lines are in the revenue land or in the forest land they are certainly in the habitat area of GIB and therefore this could have been referred to that committee. However, this was not referred to the committee.
46. This line is of very high voltage 765 KV/DC and as argued by the project proponent (respondent no. 5) given the technical details, it has been

submitted that such high voltage transmission line cannot be made underground because of the technical reasons. Conditions (a) of the FC Stage-I order provides for bird diverters to be installed at the cost of project proponent.

47. The project has three components and FCA guidelines also provide that the proposal should be made in entirety taking forest and non- forest land together, which has not been done in this case. The proposal under FCA made only for the 2.8 ha. whereas the project entail much bigger of non forest area.
48. During the course of hearing, the petitioner submitted that even the bird reflectors / diverters have not been installed systematically and therefore that should also be considered by the Tribunal in case of overhead transmission line of 765 KV/DC.
49. Though it is a *fait accompli*, the matter must be referred to the committee appointed by the Hon'ble Supreme Court in the case of *M.K. Ranjitsinh vs Union of India* for the technical consideration, even after establishment so that future accidents of bird collision can be taken care.
50. The Project proponent should revisit the entire length of transmission line and must repair, reinstall, install necessary bird diverters systematically, so that, it is effective and saves the GIB from further collisions and accidents.
51. The Forest Department/MoEF&CC should take care of making comprehensive proposal under Forest (Conservation) Act, 1980 giving full

details of forest or non-forest land required for any project in future. Therefore, the copy of the order / judgment should be sent to Chief Secretary, Rajasthan and also Secretary, MoEF&CC, for necessary action.

52. The matter of tree felling and requirement of forest clearance was agitated by the appellant in Civil Appeal No. 4675/2022 before Hon'ble the Supreme Court of India and vide order dated 21.10.2022. Hon'ble the Court observed as follows:-

1. *Ms Aishwarya Bhati submitted that the transmission line has already been established and commissioned and necessary precautions have been taken to preserve the environmental concerns. The Additional Solicitor General also submitted that no tree felling was required to be carried out.*
2. *In Citizens for Green Doon v Union of India⁴, this Court adverted to a circular issued by the Ministry of Environment, Forests and Climate Change on 28 August 2015 prescribing a simplified procedure for the grant of permissions for felling of trees standing on forest land to be diverted for the execution of linear projects. Paragraph 2(i) of the circular, which is extracted in the judgment of this Court, inter alia, deals with the execution of projects involving linear diversion of forest land such as for laying of transmission lines. Clause (iv) of the circular stipulates that:*

“(iv) For the purpose of Section 2A of the FC Act and Section 16 (e) of the National Green Tribunal Act, 2010 (NGT Act) the Order for tree cutting and commencement of work of linear project in forest land, specified in para (ii) above, shall be an order under Section 2 of the FC Act;”

3. *In view of the above provision, the Court held as follows:*

⁴ 2021 SCC Online SC 1074

12. The fact of the matter as it stands today is that the permission granted by the DFO for felling of trees has been placed on record in the form of a letter CA 6497- 98/2021 dated 27 August 2021, as noticed above. In terms of the provisions contained in the circular dated 28 August 2021, the order for tree cutting and commencement of work of linear projects is to be treated as an order under Section 2 of the FC Act. Evidently, therefore, the order dated 27 August 2021 is amenable to the remedy of an appeal, which would now lie before the Tribunal under Section 16(e) of the NGT Act. That an appeal lies before the Tribunal is clarified by the terms of the circular itself.

53. During the course of hearing of Original Application No.90/2020, this Tribunal directed the Forest Department to submit a report with regard to the facts, contained in the application and vide letter number एफ () विधी (लाईट)/ऊवस/2022/7040 dated 20.12.2022, it was reported that –

- i. The land in question is not Oran land.
- ii. The land in question does not come within the category of deemed forest.
- iii. As per revenue records, the land in question is recorded as Banjar Land (available for agriculture).
- iv. Presently the land has not been notified as a forest land.
- v. Some proceedings are going on with the State Government.

54. Respondent No. 1 (State of Rajasthan) and the Respondent No. 2 (Rajasthan Forest Department) (O.A. No. 90/2022) has filed the reply with the facts that the ownership of the land lies within the revenue authorities and aforesaid land is not part of the Oran land.

55. The Rajasthan State Pollution Control Board in compliance of the order of this Tribunal passed in OA No. 90/2020(CZ) constituted a committee consisting a representative of the Forest Department (Officer of the rank of DFO), Engineer of the Department and Legal Representative of the Department who has submitted the report after the field visit that the land in question is recorded in the revenue record as the land of the State and not the oran land. There is no probability or likelihood of cutting of any tree because there are no trees except some small plants. The Power Grid Corporation are planting the trees near the area. There is no cutting of trees in the area and more than 70 to 80% of the work has been completed.
56. It is further submitted that the matter is under consideration before Hon'ble the Supreme Court of India in Civil No. 838/2019 (*M.K. Ranjitsinh & Ors. vs Union of India*) and vide order dated 19.04.2021 while disposing the petition, the Hon'ble Court constituted a committee comprising of three members for the purpose of assessing the matter and arriving at the conclusions as to whether the underground Power line is feasible or not and based on the said report, the respondents will take further necessary actions.
57. Now the question which remains to be decided is the methods and the technique which should be adopted and i.e. installation of bird diverters in the priority basis. This matter was duly considered in W.P. (Civil) No.

838/2019 vide order dated 21.04.2022 in which Hon'ble the Supreme

Court of India observed as follows :-

1. *"We have heard submissions by Mr K K Venugopal, learned Attorney General, Mr Shyam Divan, Mr. Prashanto Chandra Sen, Mr Rakesh Dwivedi, Mr K V Viswanathan and Dr Manish Singhvi, senior counsel among other counsel who appear on behalf of the contesting parties.*
2. *During the course of the hearing, it has emerged that none of the parties before the Court or the intervenors have any objection to the installation of bird divertors. Though in the IA which has been filed before the Court by the State of Rajasthan an attempt has been made to indicate the steps which have been taken, the progress has been deficient in all respects. The installation of bird divertors at least in the priority areas of the States of Gujarat and Rajasthan must be taken up with the utmost expedition. The installation of bird divertors in the priority areas shall be completed before 20 July 2022, when these proceedings shall be taken up for further direction. This direction shall govern all State owned as well as private power producers.*
3. *The States of Rajasthan and Gujarat as well as all power producers in the private domain shall ensure that within the priority areas, a comprehensive exercise is completed within a period of three weeks to assess (i) the total length of transmission lines; and (ii) the estimated number of bird divertors required for the purpose.*
4. *The Committee which has been appointed by the Court shall within a month in consultation with the CEA formulate the standards of quality required for the bird divertors so that uniformity can be maintained in the standards to be observed. Necessary steps shall be taken immediately thereafter for ensuring that the time schedule of completing the installation of bird divertors in the priority areas associated with the Great Indian Bustard and Lesser Florican is observed by all power producers in Gujarat and Rajasthan.*

5. *Compliance reports shall be filed before this Court at least a week before the next date of listing.*
6. *In terms of the previous order dated 19 April 2021, any company which seeks an exemption from the direction to install underground transmission lines, shall be at liberty to move the Committee which has been constituted by this Court. Any grievance thereafter may be submitted before this Court.*
7. *The injunction which has been imposed in the order of this Court from the installation of fresh overhead transmission lines, save with the approval of the Committee, shall be scrupulously enforced. The Committee has stated that it has received reports in regard to the ongoing installation of power lines despite the directions of this Court. The States of Gujarat and Rajasthan as well as private power producers shall ensure that there is no breach of the directions of this Court. As already noted earlier, the feasibility of and need for installation of fresh overhead transmission lines is being examined by the Committee on a case to case basis and hence, applicants have sufficient remedies in the first instance to approach the Committee, and thereafter move this Court, if there be any subsisting grievance.”*

58. On the basis of above discussion and analysis conclusions are as follows :-

- i. That the Power Grid Corporation has taken due permission from the Forest authorities /competent authorities as required under Forest (Conservation) Act, 1980 and there is no direct violation of forest rules or the Forest (Conservation) Act, 1980.
- ii. That the prayer in appeal no. 76/2021 with regard to quashing the stage-I forest clearance dated 25.03.2021 and the interim approval for felling up trees and commencement of work dated 22.06.2021 granted to the Power Grid Corporation, Fatehgarh

Transmission Ltd. for construction of 765KV/DC Fatehgarh 2 to Bhadla 2 Transmission line Rajasthan has no substance and no ground to set aside the order as the FC Stage-1 order entails cutting of trees as well as commencement of work is in accordance with the guidelines for linear project and thus appeal on this point is not maintainable. Prayer to set aside to forest clearance dated 25.03.2021 is without any substance and merit and thus dismissed.

59. The matter of bird diverters has been considered by the Hon'ble Supreme Court of India as narrated above and the respondents are directed to ensure the guidelines issued by the Hon'ble Supreme Court of India as mentioned and quoted above contained in para 7 to 12 of the order dated 21.04.2022 and further order is issued in this regard in the Writ Petition (Civil) No. 838/2019 and feasibility and need of installation of fresh overhead transfer lines which is being examined by the Committee constituted by the Hon'ble Supreme Court of India may be consulted and directions issued by the committee/ the Hon'ble Supreme Court of India must be complied with and also consideration bird diverters should be fixed as mentioned earlier in para 50 above.
60. A copy of the order be sent to Chief Secretary, State of Rajasthan, Secretary, MoEF&CC, and also Chairman cum Managing Director, Power Grid Corporation of India to comply the directions with regard to

installation of bird diverters, consideration of the committee and FCA proposal as mentioned in para 50, 51 & 52 above.

61. With these observations the **Original Application No. 90/2020 and Appeal No. 76/2021 stands disposed of.**

62. A copy of the order be kept in another file.

Sheo Kumar Singh, JM

Dr. Arun Kumar Verma, EM

19th April, 2023
O.A. No. 90/2020 (CZ) &
Appeal No. 76/2021(CZ)
PN