

Item No. 05

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 838/2022

Prem Prakash Prajapati

Applicant

Versus

Project Director, PIU Sonipat & Ors.

Respondent(s)

Date of hearing: 06.03.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Respondent(s): Mr. Shreyansh Rathi, Advocate for NHAI
Mr. Vikrant Pachnanda, Advocate for CPCB
Ms. Jyoti Mendiratta, Advocate for GNCTD

ORDER

1. Grievance in this application is against failure of the National Highways Authority of India (NHAI) in complying with its environmental obligations in the course of construction of 8-lane highway No. 44 from Mukarba chowk to Singhu border, Delhi.

2. It is stated that near Village Khampur lot of dust is generated in absence of sprinkling of water. Other hotspots are Palla-Mod, Singhola Mod, Vaishvan Dhaba to Village Khampur. It is further stated that 161 trees have been cut in January 2021. Though 1760 trees are claimed to have been planted, the same are at Garhi Mandu, near Yamuna Bank, 26 km away from Village Khampur which does not in any manner mitigate the

dust generated by the project at the place where trees have been cut and thus do not substitute the environmental services of the cut trees. Object of compensatory afforestation is to maintain balance of ecology at the location where trees are cut. This is not achieved if trees are planted at any far of location. It is further stated that about 100 four-wheelers, trucks and buses pass per minute on the highway. Each vehicle generates about 404 gm of CO₂ per mile (1.6 Km) mean being 252 gm of CO₂ per vehicle per kilometer. Total 250 vehicles passing per 5 minutes on one side emit 252x500=126000 gm=126 Kg of CO₂ per 5 minutes. There is also non-compliance of Green Highway (Plantation, Transplantation, Beautification and Maintenance) Policy, 2015. Secretary, Environment and Forest, Delhi, has issued order for payment of compensation of Rs. 11,12,64,000/- in lieu of uprooting of 1952 trees but the NHAI has failed to make the said deposit.

3. Vide order dated 21.11.2022, the Tribunal sought a factual report in the matter from CPCB and Director, Environment Department, Delhi.

4. Accordingly, report dated 21.01.2023 has been filed by the joint Committee. The matter came up for consideration on 22.02.2023 and on the request of counsel for the NHAI, time was granted for filing response but no such response has been filed.

5. We have heard learned counsel for the parties and considered the matter.

6. The report of the joint Committee is as follows:-

“3. Observation and findings:

Observations of the joint committee based on the documents available and site visit, are as follows:

Sl. No.	Issues raised	Submission of Applicant	Submission of Project Proponent	Committee's observation and Remarks
1.	Dust generation at the site			
I.	Khampur Village	Lot of dust is Generated in Absence of Sprinkling of water.	Necessary actions are being taken for dust mitigation.	<ul style="list-style-type: none"> • At Khampur Village loose soil, sand etc. have been found in uncovered state. • No dust mitigation measures are taken by NHAI. Sprinkling was started by NHAI Officials at one place after asking by the committee.
II.	Palla-Mod		Necessary actions are being taken for dust mitigation.	<ul style="list-style-type: none"> • No dust mitigation measures are seen. • Plantation at the edge of the ROW are not properly done. • Adjacent spaces to the Flyover and at the side of Service Road near Palla Mod, plantation is possible. • Plantation is possible in the middle of 8-lane after Palla Mod towards Sonipat.

	III.	Singhola Mod		It is informed by NHAI Officials that, there shall be construction of drain and till that time, barricading shall be done and action taken report shall be sent to the Committee Members.	<ul style="list-style-type: none"> • At Singhola Mod, adequate dust mitigation measures have not been found. Only sprinkling was carried out, but loose soil, sand etc. have been found uncovered and barricades have not been found. • Near Singhola Mod, kachha road and huge quantity of loose soil have been found.
	IV.	Vaishvan Dhaba To Village Khampur		NHAI Officials during visit submitted that, Near Vaishvan Dhaba, construction of 100 m tunnel along the median has been proposed and hence there is no plantation.	Loose soil found on the median.

2	161 trees have been cut in January, 2021	Location of compensatory plantation is GarhiMandu, near Yamuna Bank, 26 km away from village Khampur which does not in any manner mitigate the dust generated by the project at the place.	1760 trees have been planted at GarhiMandu, near Yamuna Bank.	<p>As per information submitted by South Forest Division, Department of Forests and Wildlife, Delhi;</p> <ul style="list-style-type: none"> • A land of 19.52 ha at Yamuna Flood Plains in GarhiMandu for compensatory plantation was taken over by North Forest Division, Department of Forests & Wildlife, Govt. of NCT of Delhi from Delhi Development Department on 21.08.2018 as per permission issued for the construction of 8 lane of section NH-44 from MubarkaChowk to Delhi Border. • An amount of Rs. 11,12,64,000/- (Eleven Crore Twelve Lakh and Sixty Four Thousand Rupees only) for compensatory plantation of 19520 on the same patch of land mentioned in point no. 1 was deposited in the accounts of Deputy Conservator of Forests (West). This amount was transferred to North Forest Division as the land
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3	Deposition of Rs. 11,12,64,000/- as Payment of Compensation as ordered by Secretary, Environment and Forest, Delhi	PP has failed to make the said deposit.	M/s NHA I submitted vide letter dated 16.01.2023 that, they have deposited Rs. 11,12,64,000/- as payment of compensation.	<p>for compensatory plantation falls in the jurisdiction of DCF (North).</p> <ul style="list-style-type: none"> • A total of 21689 nos. of saplings have been planted on the compensatory plantation land of 19.52 ha at Yamuna Flood Plains in GarhiMandu by North Forest Division in the year 2019-20. • On this compensatory plantation an amount of Rs. 2,66,02,930/- (Two Crore Sixty Six Lakh Two Thousand Nine Hundred and Thirty rupees) with administrative charges Rs. 47,76,879/- (Rupees Forty Seven Lakh ,Seventy Six Thousand, Eight Hundred and Seventy Nine only) has been incurred by the Division till date. Total expenditure is Rs. • 3,13,79,809/- (Rupees Three Crore, Thirteen Lakh, Seventy Nine Thousand, Eight Hundred and Nine only).
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Overall Observations:

Grievance of the Applicant is in order with regard to following:

1. Govt of NCT vide notification dated 20.09.2017 has stated as follows:
 - a. Compensatory plantation of 19250 will be raised and maintained for 7 years and monitored till its successful establishment in 19.52 Ha land at Yamuna flood plain between Yamuna bank metro station and Railway land adjacent to CWG village complex as allotted by DDA.
 - b. Planatation along the edge of ROW ,wherever feasible , in addition to above, compensatory plantation will be done by User agency.

NHAI has not carried out plantations at the project site in spite of availability of land at many places. This is the gross violation of the condition stipulated in the Clearance issued.

2. Dust mitigation measures at the project site are not being taken . As a result, adjacent villagers are being exposed to dusts which could have been avoided.

4. Action plan for Remediation

In view of above observations, following action plan for remedial have been proposed by the Joint Committee:

- M/s NHAI should follow concerned Environmental Rules and Guidelines in letter and spirit. They shall abide by the provisions of the Environment (Protection) Act, 1986 and Rules and Amendments notified from time to time under the said Acts for control of air pollution and environmental safeguards.
- They must follow Environmental Management Plan and make display of the same without further delay at different interval of the stretch under reference.

However, with regard to dust mitigation and plantation, following specific action as proposed by the Committee may be referred:

4.1 For dust mitigation

They shall take all the necessary arrangements for dust mitigation measures at the time of construction and after construction of the corresponding stretch on priority. Following action points may be referred for the same:

4.1.1 Dust Pollution Mitigation Measures during Construction Phase

The measures which may be taken during the construction phase are as follows:

- Loose soil, sand and other construction material must be kept in earmarked area and shall be covered and road side storage of construction material and C&D waste generated if any should be prohibited.
- Construction material must be covered while they are transported.
- Kachha Roads must be paved and blacktopped on priority.
- Water sprinkling be carried out on the stretches where construction work is being carried out and while loading/unloading of construction materials are being done.
- Construction Machinery which generate dust should be kept away from lane on use and should not be in placed at upwind direction.
- If any C&D waste is generated, must be placed in earmarked area and may be further sent to waste processing facility.
- Construction machineries having inbuilt dust reduction measures may be used preferably.
- For compliance of Environmental Norms at the High Way, all measures must be taken and self-monitoring of the same must be carried out by M/s NHAI.
- M/s NHAI may also install display containing information regarding measures taken for dust mitigation along with the project details at different interval of the stretch under reference for public viewing.
- Adequate number of Anti-Smog Gun(s) should be installed with minimum horizontal throw of 30-50 m for mobile and of 70-100 m for stationery Anti- Smog Guns. Mandatorily installation at active construction/excavation/earth compaction area.

4.1.2 Air Pollution Mitigation Measures during Operation Phase

- For dust mitigation during operation phase sprinkling on the road at regular interval shall be carried out depending on weather conditions and Anti Smog Guns should be suitably deployed.
- Green belt with adequate no. of native plants along the stretches wherever feasible shall be developed.

4.2 For Plantation

- Scheduled plantation may be ensured by M/a NHAI in consultation with concerned Departments.
- Further, scope of plantation may be explored at following spaces:
 - a. Spaces opposite to Bageecha Resort (near Gurdwara)
 - b. From Vill. NaangliPuna towards Sonipat concreting may be avoided at the middle of the Lanes and plantation may be done.
 - c. Possibility of plantation between 8-lane and Service Road before Sani DhamMandir has been found.
 - d. Opposite side of Carnival Marriage Hall and Bharat Petroleum Pump along Sani Mandir Road possibility of plantation has been found.

- *Encroachments of ROW have been found at various locations of the Stretch under reference and same may be removed in consultation with concerned Departments and possibility of plantation may be explored there.*
- *Local plants and bushes variety have been found in some locations and plantation of those and native plants are encouraged.*
- *Representatives of M/s NHAI are advised to explore the scope of plantation of shrubs, grasses etc. before and after tunnel construction.*
- *Plantation along the edge of ROW, wherever feasible must be done by the M/s NHAI.*

4.3 For Air Quality Monitoring

- *Periodic monitoring of air quality be carried out as per NAAQS, 2009 and submit reports to Delhi Pollution Control committee.*
- *Air Quality Monitoring of major parameters i.e. PM2.5, PM10, SOx, NOx must be carried out monthly basis during construction phase and half yearly basis during operation phases and report of the same must be sent to Delhi Pollution Control committee. The information derived from the monitoring can be used to mitigate and reduce the impact on air quality.*

5. Joint Committee's Recommendations

Following recommendations have been made by the Joint Committee Members:

- *M/s NHAI must comply with the conditions stipulated in the Forest Clearances / NOCs.*
- *M/s NHAI may follow above mentioned Action Plans from the time of availability of this report.*
- *M/s NHAI may also follow-up with the Forest Department, Government of Delhi and ensure scheduled plantation.”*

7. NHAI has failed to rebut the report inspite of opportunity being given.

We do not see any reason not to accept the factual observations and recommendations mentioned in the report. NHAI is bound to take remedial measures for dust mitigation during construction and operation phases which include covering of the construction material while transporting and storing, sprinkling at regular intervals, plantation, removing encroachments from ROW and air quality monitoring of major parameters of air in the area with a view to take further mitigation measures having regard to massive violations.

8. The report shows massive violations of Guidelines of Ministry of Road Transport and Highways titled 'Green Highways, Policy, 2015' for plantation, transportation, beautification and maintenance. Apart from remedial measures, NHAI has to be held accountable for violations on polluter pays principle even if violations are by its officers or contractors.

Guidelines for ROW plantation are reproduced below:-

“6.3. Plantation Pattern

6.3.1 The road landscape shall be developed envisaging a holistic approach to the entire stretch. A concept shall be evolved so as to maintain visual characteristics and uniformity in terms of landscape along the stretch. In the absence of uniform land availability for the plantations, different schemes may be worked out in tune with local variations in the design. To achieve this, the entire stretch of the project corridor shall be divided into homogenous landscape sections based on similarity in terms of available width, soil conditions, climate (temperature and rainfall) and topography. A study on the local flora and vegetative cover native to these sections shall be carried out as part of the field surveys to enable a choice of the suitable species for particular section. Depending on the available ROW, plantation pattern shall be worked out as follows:-

- *The first row along the Highways will be of small to medium sized ornamental trees.*
- *Subsequent rows depending on the availability of width will comprise of ornamental and/or shade bearing species, of more height than those in the first row. In rural sections the last row will always be of shade bearing tall trees.*
- *Planting of shrubs in the median.*
- *Planting of herbaceous species as ground cover in the median, special landscapes, and embankment slopes.*
- *Turfing with grass in the median, special landscapes, and embankment slopes. 6.3.2 Table 1, 2 and 3 list a few species, which can generally be planted throughout India.”*

9. Air pollution control norms are essential component of sustainable development. Any activity resulting in generation of dust has to be accompanied by dust control measures which have not been taken. As already observed, remedial action may be taken expeditiously and for the past violation, we require NHAI to pay compensation of Rs. 2 Crores to be deposited with PCCF (HoFF), Haryana within one month. This will be in addition to levy of compensation by any other authority. The same be utilized for restoration measures in the area by suitable plantation in

addition to the remedial measures to be taken by NHAI by preparing an action plan with the approval of joint Committee of CPCB and Director, Environment, Delhi within one month. The approved plan may be executed within three months.

The Application is disposed of.

A copy of this order be forwarded to Chief Secretary, Delhi, Chief Secretary, Haryana, Chairman, NHAI, PCCF (HoFF), Haryana CPCB and Director, Environment, Delhi by email for compliance. NHAI will be free to recover the amount from erring officers/contractors following due process of law.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

March 06, 2023
Original Application No. 838/2022
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