

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

Execution Application No. 29/2018
IN
O. A. No. 386/2016
(I.A. No. 363/2020)

(With additional affidavits dated 05.08.2020 and 17.11.2020)

Society for Protection of Culture, Heritage, Environment,
Traditions and Promotion of National Awareness

Applicant

Versus

National Highway Authority of India & Ors.

Respondent(s)

Date of hearing: 03.12.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For the Respondents: Mr. Pinaki Misra, Senior Advocate with Mr. Kshitez Kaushik,
Advocate for NHAI
Mr. A.K. Jain, Advocate for NHIDCL

ORDER

1. The issue for consideration is the remedial action for protection of environment along the highways. The steps include green cover to minimize the impact of dust pollution on account of traffic, leaving of space on both sides of highways for tree plantation and expansion, preventing direct access to the highways without bye-lanes/exit routes and regulating the opening of access to the buildings directly from the highways.

2. We may refer to the background of the proceedings. The Applicant approached this Tribunal for directions under Section 15 of the NGT Act, 2010 for mandatory green cover on both sides of highways on the pattern

of notification dated 25.07.2012 issued by the Town and Country Planning Department (“T&CPD”), Government of Haryana under Section 5(4) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. The said notification published the Draft Plan 2031 AD for Sohna and provided that **“the eastern and western peripheral roads of 75m width has been proposed with 100m wide green belt on outer side and 50m green belt on inner side. A minimum width of 60 meters has been proposed for sector dividing roads. The width of Gurgaon-Sohna-Alwar road, Rewari-Sohna-Palwal (NH-71) road and Sohna-Ballabgarh road has been proposed to be widened to 60m with 50m wide green belt on either sides.”**

3. The applicant alleged that continuous movement of vehicles caused dust pollution and increase of PM_{2.5} and PM₁₀ and consequential health hazards. Large number of structures were built on the sides of highways having direct illegal access to NH8, destroying the space for mandatory green cover. Reference was also made to layout plan of Delhi Development Authority (“DDA”) dated 28.09.2017 providing for 30 mts wide green strip on either side of the highway. The applicant relied upon the judgement of the High Court of Punjab and Haryana in *Ahuja Vaishno Dhaba No.1 v. State of Haryana*¹ to the effect that no construction can be allowed in 30 – 50 mts of highway on either side. Further reliance was placed on the 2009 Guidelines (Guidelines on Landscaping and Tree Plantation (IRC: SP-21-2009) prepared by IRC, stipulating maintaining green areas on the highways and to “Green Highways (Plantation, Transplantation, beautification and Maintenance)

¹ (2003) 2 RCR (Civil) 598 (DB)

Policy-2015” (“the 2015 Policy”) of the National Highway Authority of India (“NHAI”), further revising the said guidelines.

4. **On 05.09.2017, the application was disposed of by recording the statement on behalf of the NHAI that the 2015 Policy will be followed to ensure plantation of green belts on both sides of the roads, wherever Government land was available, after leaving scope for expansion. The NCT Delhi, State of Haryana and State of Rajasthan were also directed to ensure such action. The State Governments and all Local Authorities were to issue directions to the Group Housing Societies, owners of commercial plots, offices, and residential blocks for plantation of the trees along the boundaries of the plots and around the buildings. The State Government and Local Authorities were to encourage plantation of trees in public parks for better environment and for better ambient air quality.**

5. Present execution application seeks enforcement of the above directions.

6. The matter was last considered on 03.12.2019. It was observed:

“6. The matter was further reviewed on 21.05.2019 with reference to the following questions:

i) Whether adequate steps are being taken for maintenance of green belts on both sides of all categories of highways consistent with ‘Sustainable Development’ principle?

ii) Whether progress of removing encroachments to achieve the object of leaving the highways free from direct access and leaving sufficient space for plantation is sufficient or any further steps are required?

7. The Tribunal found that the steps taken for maintenance of green belts on both sides of the highways and for removing encroachments were not adequate in absence of

effective institutional mechanism to monitor compliance of such norms.

8. Accordingly, following directions were issued:

“24. Accordingly we direct the Secretary MoEF&CC in collaboration with Secretary MoRTH to evolve an effective monitoring mechanism at national level with the object of ensuring maintenance of Green Belts on both sides of all Highways upto specified distance, there is no construction upto specified distance, there is no direct access to the Highway, there is no encroachment and buildings on roadsides are regulated in terms of environmental norms so that no air/water pollution or encroachment of Highway is caused. For this purpose, MoEF&CC may collect the requisite data in respect of National Highways from NHAI and in respect of State Highways from respective States and UTs. The data by the State may be compiled by the Chief Secretaries of States/UTs in coordination with their respective Environment, Forests and Public Works Departments. We suggest that data should be compiled with reference to the following:

- i) *Extent of encroachment and action plan for its removal.*
- ii) *Provisions for leaving space up to a particular distance from the road for expansion and for plantation.*
- iii) *Extent of access directly allowed from Highway to buildings and ensuring that there is no direct access to the road obstructing existing or potential plantation.*
- iv) *Buildings near roads upto a specified distance are regulated to ensure that no air, water or other pollution is caused and no encroachment takes place or space on roads on account of activities of such buildings.*
- v) *Extent of plantation carried out.*
- vi) *Highway where no space is left for ensuring green belt on the sides.*
- vii) *Highway projects on PPP model where green plantation cannot be done according to NHAI.*

25. The monitoring mechanism may deal with the issue in following parts:

- i) Future policy with regard to Highways to be constructed henceforth;**
- ii) Policy with regard to Highways already constructed or in progress where space is available;**
- iii) Policy with regard to Highways where constructions have already been made with regard to division in nature of construction and legality thereof.**

26. The MoEF&CC may file an affidavit within two months.

27. Member (Administration), NHAI may file further affidavit about the extent of encroachment on National Highway, action plan for removal of such encroachment, extent of plantations,

extent of access directly allowed from highways to buildings, requirement of distance from highways for construction and indicating the status of preparation and execution of action plans by individual teams to ensure green work development and status of removal of encroachment by Task Force constructed by NHIDCL.”

9. *Compliance affidavit has been filed on behalf of the NHAI and NHIDCL which furnishes some information on the subject but the same is not adequate. Let further affidavit be filed giving complete information before the next date.*

10. *The information also be provided in brief in a tabulated format giving details in cumulative manner on quarterly basis for last one year on State-wise numbers and extent of encroachments, numbers and extent of encroachments removed in the quarter for the last one year and number of direct openings created on national highways and action taken.*

Similarly, details be provided with regard to provision and maintenance of green belt on either side of highways and survival percentage of trees/saplings planted.

MoEF&CC has also not filed any response whatsoever nor is represented today. Last opportunity is granted for compliance and filing of response failing which the Joint Secretary concerned may remain present on the next date. MoEF&CC may coordinate with NHAI and concerned States/UTs or any other concerned authority.

11. *We are informed that NHIDCL is a separate corporate identity. Accordingly, NHIDCL may file a separate status report on the subject on similar lines before the next date.”*

7. The matter was last considered on 18.06.2020 and it was found that NHAI had not filed any affidavit while the NHIDCL had given some particulars which were inadequate. Response of the MoEF&CC was formal without any effective steps. Accordingly, the matter was deferred for further consideration with a direction to the NHAI and the NHIDCL to file a proper response.

8. In pursuance of the above, an additional affidavit has been filed by the NHIDCL giving the status of encroachments and plantations without mentioning the action plan to take remedial action against acknowledged illegal encroachments and steps to strengthen the monitoring

mechanism. An additional affidavit has also been filed by the NHAI without providing information which may show that an effective monitoring mechanism is in place. The affidavit shows indifference to the issue by stating that it is the primary responsibility of the Concessionaire to protect the sites from any encroachments and for removal of illegal access and plantation of trees along carriage way and median as well as maintenance thereto. The affidavits filed can hardly be held to be satisfactory. Ownership of responsibility is sought to be avoided which is a matter of regret.

9. As already held and is acknowledged by the concerned authorities that green cover on both sides of highways is absolutely essential to mitigate adverse impact of vehicular pollution on the highways. The dust leads to increase of PM_{2.5} and PM₁₀ and consequential health hazards. The pollution is aggravated by permitting constructions close to the highways, making it impossible to provide green cover. This happens with or without connivance of the authorities. Encroachments are allowed close to the highways, in spite of requirement of keeping open space for road expansion and green belts upto specified distance from the highways. The guidelines on tree plantations require leaving of the space for the plantations upto 30 meters width. Encroachments obstruct compliance of such mandate. The stand of the NHAI that the roads are constructed by Concessioners and it is only their responsibility to comply with the mandate of law is patently untenable and shows indifference and breach of public trust and statutory duties. If the NHAI in the course of its activities hires its agents, the liability of the principal does not end. The Criminal as well as Civil liability of NHAI and its highest officers under the Environmental Law to be prosecuted and to be required to pay compensation continues. Such inalienable duty cannot be abandoned on

specious plea that a contractor is being hired. Moreover, being public authorities, taking such plea shows lack of responsibility or lack of knowledge of law. Indifference to issues of environment affecting public health by a public authority can hardly be appreciated. The NHAI as well as the NHIDCL have to be the role model to ensure compliance of environmental norms. Same is expected from the State PWD and other concerned Authorities. There has to be continuous meaningful and responsible monitoring at highest levels. It is not a charity but Constitutional mandate. The record shows that on every occasion the matter has been taken up, the Tribunal has regrettably found lack of involvement of the concerned authorities on the subject. We are stating so with a hope that the authorities realise their responsibility in the matter and coercive measures are avoided against erring officers. We expect the highest in the organisations to look into these aspects to ensure change of attitude and counselling. We are compelled to make these observations after observing indifference for long. Accordingly, we direct the NHAI and the NHIDCL and concerned Central and State Ministries to develop appropriate mechanism for compliance of the law, which may be overseen by the Environmental Regulatory Authorities in the Central Government as well as in the States.

10. We further direct that while granting Environmental Clearance, the MoEF&CC must ensure that an effective monitoring mechanism exists to ensure compliance of requisite safeguards including the plantations on the road sides and keeping such roadsides free from encroachments upto specified distance. NHAI and NHIDCL must give undertaking of responsible level officers to take ownership of maintaining environmental norms instead of taking a plea that it was not their basic responsibility and responsibility was of the contractor.

11. We have also perused I.A. No. 363/2020 filed by the Applicant pointing out violations at Highway from Gurugram - Kotputli - Jaipur and several other places including Kundli border, Ambala – Chandigarh road, Indore, Bhopal, Jaipur. The applicant has also mentioned an order of the Rajasthan High Court. Under RTI, deficiencies have been acknowledged but not remedied. We direct the NHAI/NHIDCL and other authorities to take remedial action. The applicant is at liberty to make a representation to the concerned authorities within one month. This IA will stand disposed of in these terms.

12. As regards the Execution Application, having recorded our disapproval for the attitude of the NHAI and NHIDCL and directed remedial action, we do not feel it necessary to keep the same pending for indefinite period. We expect higher level authorities in the establishments to take remedial action in the light of observations already made. If any grievance survives, the same can be further considered in fresh proceedings. The application will thus stand disposed of.

A copy of this order be forwarded to the Secretaries, MoEF&CC and MoRTH, Central Government, the Managing Directors of NHAI and NHIDCL, CPCB, the Chief Secretaries and the Secretaries PWD of all the States/UTs and the PCBs/PCCs for compliance.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

December 03, 2020
EA No. 29/2018 in O. A. No. 386/2016
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