

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

EXECUTION APPLICATION No.19/2016

In

**APPLICATION No.135(THC)/2013
(Disposed of on 13.01.2014)**

CORAM:

**Hon'ble Shri Justice U.D. Salvi
(Judicial Member)**

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

B E T W E E N:

**Divisional Commissioner (Revenue),
Konkan Division, Konkan Bhavan,
C.B.D. Belapur, Navi Mumbai**

.....Applicant

A N D

**Deputy Conservator of Forest,
Alibag Forest Division
Alibag, District Raigad – 402 201.**

.....Respondent

In

**Shobha Phadnavis
Age : 58 years, Occ:
Member of Legislative Assembly,
Bazar Chowk, Dist. Chandarpur.**

... Petitioner

Vs.

**The State of Maharashtra
Through its Chief Secretary,
Maharashtra State, Mantralya,
Mumbai 400 032.**

... Respondent

Counsel for Applicant :

Mrs. Ujwala S. Pawar, DGP

Counsel for Respondents :

Mr. D.M. Gupte, Advocate.

Date: 8th July, 2016

ORDER

1. The Divisional Commissioner (Revenue), Konkan Division, Applicant herein in its Application, has sought leave of the Tribunal, in view of the Order of the Tribunal dated 3rd December, 2015 in Application No. 135(THC)/2013, seeking permission for diversion of land tree cutting in the identified forest areas. It is submitted that M/s. Reliance Gas Pipelines Ltd. (hereinafter after referred as Project Proponent) have proposed setting up of a Pipeline for transportation of Ethane between Dahej in the State of Gujarat and Nagothane in the State of Maharashtra. The proposed Pipeline will supply Ethane imported from North American Markets which will be unloaded at Dahej and will be transported to three (03) Petrochemical plants, one of them being located at Nagothane. The Pipeline is of 12 inch diameter.

2. This Tribunal while dealing with the execution of its Judgment dated 13th January, 2014 in Application No.135(THC)/2013 has noted the issues related to

demarcation and notification of identified forests (on private lands) in the State of Maharashtra and was constrained to issue ad interim orders on 3rd December, 2015 which are as under:

“By way of ad-interim relief, we direct that Chief Secretary of State of Maharashtra, shall issue instructions to all the Collectors of all the Districts in the State of Maharashtra or the other Competent Authority concerned, to restrain themselves from issuing any permission to convert the land use, at such identified forest areas, specifically by felling trees and using of agricultural land for commercial purposes, until further order without justification, viz. urgent necessity of establishment of any essential industries or infrastructure project, which may be vetted from the competent authority and be put forth for approval of the National Green Tribunal without any delay through concerned Divisional Commissioner which we shall consider immediately, as far as possible, within a day or two depending upon bonafides and need based requirement of such connotation of the land use”.

3. The Tribunal was constrained to issue such orders in view of the fact that there are certain discrepancies in the identified forest areas as identified in 1998 and subsequently in 2007-08, and also, related to criteria for identification of such forest areas. It was,

therefore, necessary to issue certain restraining orders in order to ensure the compliance of directions of Hon'ble Apex Court in T.N. Godavarman matter.

4. The present Application has been filed in reference to these directions. It is submitted that the proposed Pipeline will be laid through some forest lands located in Raigad, Thane and Palghar Districts of State of Maharashtra and total forest land involved would be 25.66 hectares. Out of this forest land of 25.66 hectares, total identified forest is 1.8915 hectares. It is proposed to cut total 4730 trees in the forest area of which 350 trees are in notified identified forest.

5. We have perused Application and documents enclosed.

6. The Forest Department has filed their reply through Shri Ramsing Kaniram Chavan, Assistant Conservator of Forests who has also confirmed the above statistical information. It is submitted that necessary in-principle approval as per Forest (Conservation) Act, 1980, for diversion of 25.66 hectares of the forest has been granted by MoEF vide communication dated 11th December, 2015. The Forest Department has undertaken to ensure the compliance of the conditions of this in-principle approval. It is also submitted that the user

agency has made available an alternative compensatory non-forest land admeasuring 28.1960 hectares at Village Tiware Tal. Chiplum, Dist. Ratnagiri to the Forest Department and the charges towards NPV are Rs.2,40,94,742/- and charges for survey, demarcation and pillars and felling of trees are Rs.4,64,207/-. However, the cost for compensatory afforestation is not referred in the affidavit of the Forest Department.

7. The Tribunal had a limited concern in mind while issuing the interim orders referred above related to identification, demarcation and notification of the identified forests (on private lands). We enquired from the Forest Department as well as the Applicant that whether information given i.e. the identified forest area of 1.8915 hectares is as per 1998 data or 2007-08 data. However, both the agencies could not provide this particular information. However, Learned DGP appearing for the Applicant made a statement on instructions that the forest land required for the project would be strictly confined to 25.66 hectares of forest land and nothing beyond that. We believe in this submission.

8. We are conscious of the fact that the Forest Clearance granted under the provisions of Forest (Conservation) Act, 1980 is Appealable and the Appeal has to be filed before the National Green Tribunal, as per

the provisions of National Green Tribunal Act, 2010. And therefore, we would like to make it clear that this Application is not considered as Appeal proceedings and we have not gone into details and merits of any approvals granted by the forest department. The grant of leave be strictly read in terms of the ad interim relief granted on 3rd December, 2015 by this Tribunal in Application No. 135(THC)/2013. The Appeal proceedings are separate legal remedy and can be exercised independently as per provisions of National Green Tribunal Act, 2010.

9. In view of the above, the Application is allowed and leave is granted in terms of our Order in the Judgment in *(Original Application No.135/2013, **Shobha Phadnavis Vrs. State of Maharashtra & Ors.)*** to carry out project activities subject to following conditions:-

- (i) Forest Department shall verify and ensure that there are no identified forest lands covered under this project, as per 1998 data, beyond the identified forest land of 1.8915 hectares referred in the Application and the responsibility of such verification will be with the Forest Department.
- ii) The Applicant shall deposit the amount claimed by the Forest Department for compensatory afforestation and the NPV value, as and when it is received, within fifteen (15)

days from the date of receipt of such claim from the Forest Department.

(iii) The Applicant in the meantime shall carry out plantation of at least 350 trees of native species in this monsoon season (2016) without awaiting the start of the project construction activity, through the Forest Department in the affected area. This plantation is over and above as stipulated independently in the Forest Clearance.

(iv) The actual construction activity shall commence only after making necessary payment as referred above to the Forest Department and obtaining final forest clearance for the projects.

10. Forest Department is directed to ensure compliance and submit compliance report before actual start of construction activities to this Tribunal.

The Execution Application No.19/2016 is accordingly disposed of. No costs.

....., **JM**
(Justice U.D. Salvi)

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

Date : 8th July, 2016

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