

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

O.A. No. 37/2016/EZ

DURGA KISHAN

VS

STATE OF ODISHA & ORS

CORAM: Hon'ble Mr. Justice S.P.Wangdi, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: Applicant : Mr. Sankar Prasad Pani, Advocate
Respondents No. 1,4 & 5 : Mr. Provat Kumar Muduli, Addl. Standing Counsel
Respondents No. 2 : Mr. Sanjoy Kr. Ghosh, Advocate
Respondent No. 6 : Mr. Deepak Kumar Pani, Advocate

Date & Remarks	O R D E R
Item No. 5 17 th February, 2017.	<p style="text-align: center;"><u>Per Justice S.P.Wangdi, JM :</u></p> <p>The principal ground raised in this OA is that the expansion of State Highway No. 10 from Rourkela to Sambalpur in the State of Odisha is being carried out by the respondent No. 6 without obtaining Forest Clearance under section 2 of the Forest Conservation Act, 1980. Ancillary to this ground raised by the applicant is that during the progress of the work, a large number of trees have been felled. The forest area involved in the project, as per the applicant, is about 38.99 hectares out of which 30.95 constitutes revenue</p>

forest area and the rest i.e. 8.04 hectares, is reserve forest. It has also been alleged that the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 (in short Forest Rights Act) has been violated and that the respondent No. 6, in connivance with the State respondents, is attempting to create a *fait accompli* situation to obtain *post facto* forest clearance.

The OA is contested by the respondents No. 1,4 and 5 i.e., State respondents and the respondent No. 6, the user agency through the Executive Engineer of the work in question by filing separate affidavits-in-opposition denying and disputing all material allegations contained in the OA. It has been stated on behalf of the State respondents 1,4 and 5 that the respondent No. 6, i.e., the user agency, in compliance of the guidelines for diversion of forest land issued by the MOEF, submitted a de-reservation proposal seeking prior approval under section 2 of the Forest Conservation Act, 1980 for expansion of Sambalpur-

Sundargarh-Rourkela Highway (SH-10) from the existing two laning to four laning involving diversion of 39.11 ha of forest land. That stage-I of clearance was accorded by the MOEF & CC after following the due process. That the State Government vide No. 10F(Con) 118/2013-18340 dated 03.09.2013 permitted felling of trees and pre-construction activities in the non-forest stretch of land of road alignment as per guidelines of the MOEF issued vide letter No. F11-63/2012-FC dtd. 7.1.2013, and that, commencement of tree felling and construction activities were permitted only after the fund towards compensatory afforestation and NPV was realised from the use agency. It is further stated that the diversion proposal for road expansion does not involve any recognized rights of PTGs (Primitive Tribal Groups)/PACs (Pre-Agricultural Communities) in any of the Gram Panchayats under the Rourkela Forest Division contemplated under the Forest Rights Act. It is asserted that as per guidelines of the MOEF under letter No. F11-63/2012-FC dtd. 7.1.2013, the project

involving widening/upgradation of existing roads, has been allowed by the State Govt. after the user agency submitted an undertaking that execution of the work on non-forest land shall not be cited as a reason for grant of approval under the Forest Conservation Act, 1980 etc. It is emphasised that the process of tree felling and pre-construction activities on the forest area have been carried out in strict compliance of the MOEF guidelines issued under letters dated 07.01.2013 and 18.03.2016.

The above are the sum and substance of the stand taken on behalf of the State respondents i.e., respondents No. 1,4 and 5,

The affidavit filed by the respondent No. 6, the user agency, reiterates the contentions of the State respondents.

The respondent No. 2, the MOEF & CC in their affidavit, apart from projecting various orders and notifications which are necessary to be complied with by the projects like the one under consideration, has

stated inter alia the following in reply to paragraphs 4 and 5 of the OA :-

“ 4-5. That in reply to the contents of this para, it is to state that the Ministry vide letter No. 11-63/2012-FC dated 07.01.2013 has modified the para 4.4. of the guideline which is as follows :

In the case of linear projects involving use of forest land falling in a portion of their length, pending consideration of approval under the Act, work on non-forest land may only be executed upto such point (to be selected by the user agency) on either side of forest land if it is explicitly certified by the user agency that in case approval under the Act for diversion of forest land is declined, it is technically feasible to execute the project along an alternate alignment without involving diversion of forest land. Details of all such stretches along with alternate alignments identified to bypass the forest land should be explicitly provided in the proposal seeking approval under the Act. It is specifically clarified in terms of the Lafarge judgment that commencement of work on non-forest land will not confer any right on the user agency with regard to grant of approval under the Act.

The projects involving widening /upgradation of existing roads will only be allowed to be executed on the entire stretch located in non-forest land shall not be cited as a reason for grant of approval under the Act and in case approval under the Act for diversion of forest land is

declined, width of the portion of road falling in the forest land will be maintained at its existing level. This will also be incorporated as specific condition of the Environmental Clearance. This clarification will not apply to the roads falling in Protected Areas and the Eco-sensitive zones around Protected Areas.”

It has been specifically stated that the Ministry had accorded in principle the approval to the proposal submitted by the State Govt. for diversion of 39.110 ha of forest land for expansion of Sambalpur-Sundargarh-Rourkela Road (SH-10) inter alia on the condition that if desired, the State Govt. may allow commencement of the work in areas falling within the forest land as per guideline of the Ministry issued vide letter No. 11-306/2014-FC (pt) dated 28.8.2015.

In view of the affidavit filed by the MOEF order dated 16.12.2016 was issued directing the respondent No. 1 and 5 and respondent No. 6 to file affidavits clarifying as to whether the modified requirements contained in para 4.4 of the modified guideline issued by the MOEF & CC referred to in their affidavit, had

been complied with or not. In the affidavit filed in response thereto, and it has been stated in paragraph 3 as follows :-

“3. That it is submitted that in the order dated 16.12.2016 there were two directions. First direction relates to compliance of the requirements contained in Paragraph -4.4 of the guidelines dated 07.01.2013 of MoEF and the direction relates to the present status of the enquiry of the four cases pertaining to felling of 34 trees.

So far as compliance of the requirements contained in Paragraph 4.4 of the guideline dated 07.01.2013 of MoEF, it is submitted that the User Agency has given an undertaking on 28.08.2013 that if there is any problem in forest clearance in future, they will either find out alternate alignment on adjacent non-forest land or confine the road improvement of the existing road width (Annexure-L/5). It is further submitted that in the project proposal, they user agency mentioned that it is best suitable alignment from technical point of view and require minimum forest area and minimum nos. of trees are affected. There is no suitable alternative non-forest land to construct the highway. The proposed widening of S.H.-10 is on existing road, hence forest area is proposed for diversion. User agency has not submitted any alternate alignment without involving diversion of forest land (Annexure-M/S).

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In view of the above facts and circumstances, the case was listed for hearing initially on 12.1.2017 when the respondent No. 6 filed an affidavit in compliance of the order dated 16.12.2016 stating categorically that the modified guidelines contained in paragraph 4.4 of the guidelines issued by the MOEF referred to above had been complied with by them when the Chief Engineer, World Bank Projects, Odisha gave an undertaking as required thereunder.

We have heard Mr. Sankar Prasad Pani, Ld. Advocate for the applicant and the learned counsel for the respondents.

Considering the fact that the grievance expressed by the applicant as regards non-compliance of statutory provision have been set at naught by the actions alluded above, we do not find anything further left for determination in this case.

Mr. Pani, Ld. advocate for the applicant while

accepting the above position, sought to raise some other objections and prayed that an affidavit be called for from the user agency affirming compliance of the conditions of the Forest Clearance (FC), particularly, condition No. 9. However, we are not inclined to issue any such direction as it is not one of the questions in *lis* before us. In the event the user agency or the State respondents fail to comply with any of the FC conditions, it shall remain open for the applicant to approach this Tribunal for redressal.

For the reasons stated above, the OA stands dismissed.

No order as to costs.

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Justice S.P.Wangdi, JM
17-2-2017

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Prof. (Dr.) P. C. Mishra, EM
17-2-2017

